

## Introduction

Even before the calendar year 2017 is over, the Ministry of Corporate Affairs has issued a Scheme for 2018 – Condonation of Delay Scheme, 2018 – ‘CODS, 2018’.

The Scheme has been introduced by issuing a Circular<sup>1</sup>. The write-up is an analysis of the Scheme introduced by Ministry.

## Background:

In September 2017, the Ministry identified 3,09,614 directors associated with the companies, wherein the companies defaulted in filing of Annual Accounts or Annual Returns for a continuous period of 3 Financial Years [2013-2014 to 2015-2016]. Further, these directors were also barred from filing eForms for the other companies in which they were directors.

Several Writs were filed before High Courts by the aggrieved parties i.e. the directors, seeking relief from the disqualification.

Based on the representations made by the industrial bodies, defaulting companies and directors, the Ministry has introduced the Scheme – CODS, 2018.

## Highlights of CODS, 2018:

### *Which Companies can file documents under CODS, 2018?*

- ✓ Only defaulting Cos. which have not been deregistered i.e. removed from Register of Companies by the Registrar of Cos,
- ✓ Such defaulting Co. can file Annual Accounts or Annual Return which are overdue for filing till June 30, 2017.

### *Which Companies cannot file under CODS, 2018?*

Cos. which have been de-registered / removed from Register of Companies by the Registrar of Cos.,

### *What is the procedure for filing under CODS, 2018?*

- ✓ Deactivated DINs of defaulting directors will be activated for a temporary purpose only,
- ✓ Defaulting Cos. shall complete pending filing by payment of additional fees, as prescribed,
- ✓ Defaulting Co. shall file an eForm ‘e-CODS’ along with a fees of Rs. 30,000/-,
- ✓ If Defaulting Co. does not file the requisite documents / e-Forms, the DIN of the directors will be deactivated,
- ✓ Where a Co. has been restored after an application to NCLT, the DIN of such directors would be re-activated, subject to company filing all overdue documents.

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<sup>1</sup> No. 16 / 2017 dated Dec. 29, 2017

*Which eForms can be filed with activated DIN?*

- ✓ Annual Return,
- ✓ Annual Accounts / Financial Statements,
- ✓ Submission of Compliance Certificate<sup>2</sup>,
- ✓ Appointment of Auditors.

*Liability & Prosecution:*

- ✓ Registrar of Cos. shall withdraw the prosecution(s) pending, if any, before the concerned Court(s) for all documents filed under the Scheme,
- ✓ This Scheme, is without prejudice to action u/s 167(2) of the Act, Civil and Criminal Liabilities, if any, of such disqualified directors during the period remain disqualified,
- ✓ Registrar of Companies may take necessary actions against the defaulting Cos. which have not availed the Scheme and continue to default in filing documents;

**Key Features of eForm CODS, 2018:**

- (i) Disclosure about whether any appeal was filed against any notice issued or complaint filed before competent Court for violating provisions of Act,
- (ii) Disclosure about prosecution pending before Court against the Co. and its officers in respect of belated documents,
- (iii) Disclosure & details about any director who is declared as proclaimed offender or facing criminal case(s) for economic offences,
- (iv) Declaration that Co. has withdrawn appeal(s)/writ(s) pending before Court,
- (v) No certification for eForm e-CODS.

**[Click here](#) to read the Scheme introduced by MCA.**

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**Analysis and Compilation by:**  
**Gaurav Pingle & Associates | Company Secretaries**  
**(M): +91 9975565713**  
**(E): [gp@csgauravpingle.com](mailto:gp@csgauravpingle.com)**  
**(W): [www.csgauravpingle.com](http://www.csgauravpingle.com)**

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<sup>2</sup> Under Cos. Act, 1956