

# Company Law Settlement Scheme 2010 & Easy Exit Scheme 2010

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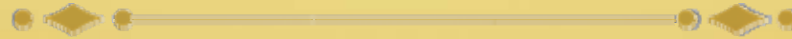


# History of CLSS



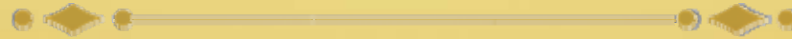
- ✦ In 2000, Company Law Settlement Scheme 2000 was brought in for the first time in the history of Company Law
- ✦ CLSS – 2010 is the Second Scheme granting immunity against prosecution for non-filing of documents under General Circular 1/2010 dated 26 May 2010
- ✦ Next Scheme – 2020?

# Comparison



CLSS 2000	CLSS 2010
Issued through a Notification in exercise of powers under section 637B read with section 637	Issued through a Circular under section 611(2) read with section 637B
Primarily for settlement of offences under Companies Act including filing of documents	Only for filing of documents
Compounding Fee to be paid plus normal filing fee	25% of Additional Fee plus Normal filing fee
Compounding Fee was dependent upon delay and number of documents	Flat 25% Additional fee irrespective of number of documents and delay
Authorised Capital was not relevant for calculating compounding fee	Additional fee is dependent upon Authorised Capital

# Comparison



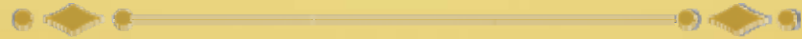
CLSS 2000	CLSS 2010
No refund under CLSS 2000	CLSS 2010 is silent – presumption that no refund will be given
CLSS 2000 was not mandatory. Normal filing with full additional fee was allowed	CLSS 2010 is also optional though normal filing with full additional fee option is not there
Format of Immunity Certificate was attached	No such format attached
Application for grant of immunity was allowed to be made anytime after filing of documents	Application for immunity can be made after closure of scheme only with some more conditions attached
CLSS 2000 was not applicable to Form 5	CLSS 2010 covers even Form 5

# Why CLSS 2010?



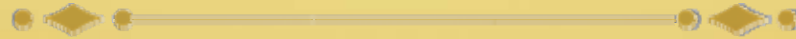
- ✦ Default by quite a large number of companies in filing of documents with ROC
- ✦ Records in e-registry not updated and hence not available to public for inspection
- ✦ Companies are burdened with additional filing fee plus prosecution under the Act

# Benefits under CLSS 2010



- ✦ Condonation of delay in filing documents
- ✦ Immunity from prosecution
- ✦ Payment of only  $\frac{1}{4}$  of additional filing fee

# Validity of Scheme



- ✦ Commences on 30 May 2010
- ✦ Ends on 31 August 2010
- ✦ Unless extended further

# Who can Avail?



- ✦ Defaulting Company
  - ✦ Company registered under the Companies Act, 1956
  - ✦ Foreign Company falling under Section 591
- ✦ Private Companies & Public Companies to first increase their capital to prescribed minimum and file documents under this Scheme before availing benefit under this Scheme



# Who Cannot Avail?



- ✦ Companies against which action u/s 560 (5) has been initiated by ROC
- ✦ Not applicable to filing of documents for incorporation of companies (Form 1), for establishment of place in India (Form 52)
- ✦ Not applicable to documents where specific order for condonation of delay or prior approval is required from CLB or Central Government or any other Competent Authority (Form 8, Form 17, Form 44 etc.)

# Procedure



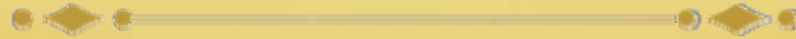
- ✦ File documents by adopting normal procedure (Fee will be calculated automatically)
- ✦ Withdraw appeal, if already filed, against notice by ROC or Complaint by ROC
- ✦ File CLSS 2010 Form within 6 months from date of closure i.e. 28 February 2011

# Application for Immunity



- ✦ Specific Form for CLSS 2010
- ✦ Available on portal after closure of Scheme
- ✦ To be filed within 6 months of date of close of scheme i.e. by 28 February 2011, unless extended
- ✦ To be filed after documents filed are taken on record or approved by ROC

# Application for Immunity



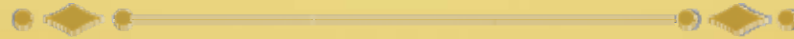
- ✦ No fee to be paid
- ✦ Furnish proof of withdrawal of appeal
- ✦ Hold Board Meeting to authorize some one to sign and file this document

# Immunity Certificate



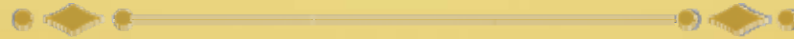
- ✦ ROC **shall** consider the Application
- ✦ Upon being satisfied, ROC **shall** grant the immunity certificate in respect of documents filed in the Scheme

# Prosecution



- ✦ ROC to withdraw prosecution filed, if any, pending before the Court

# Consequences



- ✦ Companies who do not avail the Scheme and continue to be in default in filing of documents shall be liable for action by ROC

# Issues



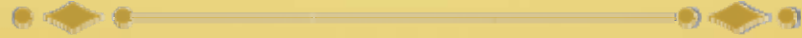
- ✦ Whether applicable to Government Companies?
- ✦ Documents filed under the Scheme and before filing of Form CLSS 2010, Company shifts its registered office to other state, which ROC will issue immunity certificate?
- ✦ Time limit for issue of immunity certificate?



# Issues

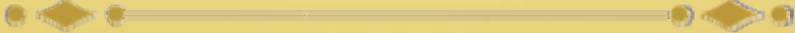


- ✦ Consequences of Immunity certificate being rejected?
- ✦ Legal sanctity of Scheme – Charging lower fee is fine but what about grant of immunity?
- ✦ How is fee calculated?
- ✦ What is the text of immunity certificate?
- ✦ In how much time complaint will be withdrawn?



# Easy Exit Scheme 2010

# EES 2010



- ✦ Issued through General Circular No. 2/2010 dated 26 May 2010

- ✦ Reasons

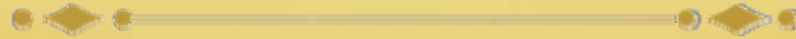
- ✦ Companies registered but inoperative since incorporation

- ✦ Companies becoming inoperative after initial commencement of business

- ✦ Not filing documents

- ✦ Considered defunct and wish to have the names struck off

# Validity of Scheme



- ✦ Commences on 30 May 2010
- ✦ Ends on 31 August 2010

# Applicability



- ✦ Defunct Company can file application
  - ✦ Company registered under Companies Act, 1956
  - ✦ Not carrying on any business activity or operation on or after 1 April 2008
  - ✦ Includes a company which has not raised its paid-up capital to minimum prescribed
  - ✦ Must have status as “Active”
  - ✦ Government defunct company to submit NOC issued by Administrative Ministry or State Government or Deptt.

# Who Cannot Avail?



- ✦ Listed Companies
- ✦ Section 25 Companies
- ✦ Vanishing Companies
- ✦ Companies where inspection or investigation ordered and being carried out or to be taken up or completed but prosecution pending

# Who Cannot Avail?



- ✦ Companies where order u/s 234 issued and reply is pending
- ✦ Companies against which prosecution for non-compoundable offence is pending in Court
- ✦ Public Deposit accepted is outstanding or company is in default in repayment of deposits
- ✦ Company having secured loan

# Who Cannot Avail?



- ✦ Company having management dispute
- ✦ Company where filing of documents have been stayed by Court or CLB or Central Government
- ✦ Companies having dues towards Income Tax, Sales tax or Excise or Banks and FI's or any other Central or State Government Departments or authorities or any local authorities



# Procedure



- ✦ Form EES 2010 to be filed
- ✦ To be filed electronically
- ✦ No fee for EES 2010
- ✦ Form EES 2010 not being digitally signed can be signed manually by a director authorised by BOD and such manual application to be attached with electronic filing

# Procedure



- ✦ Form EES 2010 to be certified by a whole-time practicing CA/CS/CWA
- ✦ To disclose all pending litigation
- ✦ Affidavit by each existing director and sworn before Magistrate or Oath Commissioner or Notary stating
  - ✦ Company has not carried on any business since incorporation, or
  - ✦ Carried some business but discontinued
  - ✦ Not carrying on any business on or after 1 April 2008

# Procedure



- ✦ To file Indemnity Bond by all directors for
  - ✦ Losses, claims and liabilities arising after strike off to be met individually or collectively
- ✦ To file Statement of Account prepared as on date but not earlier than one month preceding filing date
- ✦ Statement of Account to be certified by Auditor or any practicing CA

# Procedure



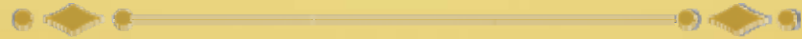
- ✦ ROC to examine Application
- ✦ ROC to issue notice u/s 560(3) by e-mail – 30 days notice
- ✦ ROC to put the name of applicant and date of making application under EES 2010 on daily basis for objections within 30 days

# Procedure



- ✦ ROC to send intimation to RBI, SEBI in respect of NBFC's, Collective Investment Management Company's availing scheme at the end of every week
- ✦ ROC to intimate Income Tax office in respect of all companies availing EES 2010 for their objections within 30 days
- ✦ No objections received within time frame stated in Scheme and upon being satisfied, ROC to strike off the name and send notice u/s 560(5)

# Consequence



- ✦ Company to stand dissolved from the date of publication of notice in Official Gazette

# Applications filed till 12 June 2010

- ✦ Delhi – 9
- ✦ Karnataka – 3
- ✦ Maharashtra – 5
- ✦ Kerala – 3
- ✦ Gujarat – 5
- ✦ Tamil Nadu - 5

# Applications filed till 12 June 2010

- ✦ Rajasthan – 4
- ✦ West Bengal – 2
- ✦ Bihar – 2
- ✦ Punjab – 2
- ✦ Madhya Pradesh – 1
- ✦ **Total - 41**



# Issues



- ✦ Last date of scheme pertains to filing of Form under Scheme or completion of entire procedure under the Scheme?
- ✦ What should be done by “Inactive” Company?
- ✦ Definition of Defunct Company includes companies not raising capital to prescribed minimum. Do such a company also has to satisfy the criteria of not carrying on any operation after 1 April 2008?

# Issues



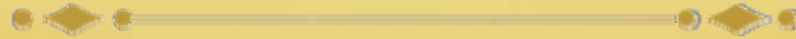
- ✦ Why this scheme is not applicable to Section 25 companies?
- ✦ What happens to companies where inspection carried out and no prosecution has been filed?
- ✦ Can a company against which prosecution is pending for compoundable offence avail the Scheme?
- ✦ Companies having secured loans means what?

# Issues



- ✦ How do you define management dispute?
- ✦ No dues towards Income Tax, Sales Tax, Excise etc is a mandatory condition. Why notice is being sent to Income Tax alone? To whom such a notice will be sent?
- ✦ Scheme says existing directors to file Affidavit and Indemnity Bond. What happens if few directors are not there?
- ✦ Is DIN mandatory?

# Issues



- ✦ Should the Assets and Liabilities be NIL?
- ✦ Should Affidavit and Indemnity Bond be on a stamp paper?



Thank you for your  
patience

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