

# Amnesty Schemes introduced by the MCA

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The much awaited amnesty scheme has finally been notified by the Ministry of Corporate Affairs whereby companies that have not filed their returns for more than one year can make a one-time settlement by paying some penalty.

The Ministry vide General Circular No. 1 /2010 and General Circular No. 2 /2010 both dated 26<sup>th</sup> May 2010 has come out with two Scheme:

- Company Law Settlement Scheme, 2010 and
- Easy Exit Scheme, 2010

*These Schemes shall remain in effect for a period of three months from 30<sup>th</sup> May 2010 to 31<sup>st</sup> August 2010.*

## **Easy Exit Scheme, 2010**

This Scheme has been introduced by the Ministry to give an opportunity to the defunct companies to get their name strike off from the Register of Companies under section 560 of the Companies Act, 1956. Eligible companies may after complying with the requirements of the Scheme, exit from the Register of Companies.

The Ministry has from time to time, come out with Schemes under section 560 of the Companies Act so as to provide an easy exit route to defunct companies. Before discussing the salient features of the present scheme, we will discuss the significant difference between the present scheme and earlier schemes launched by the MCA.

## **Significant Difference between the three Schemes**

<b>Heading</b>	<b>SES 2003</b>	<b>SES 205</b>	<b>EES2010</b>
<b>Fees</b>	Fee Rs.2000	Fee Rs.3000	No fees
<b>Requirement of submission of financial statements</b>	Audited Account upto 31st March 2002/03 required to be submitted	Audited financial statements upto the period for which business is carried and Statement of Account for subsequent period	Statement of Account certified by a Chartered Accountant to be filed
<b>Asset- Liability status</b>	Audited accounts to show no assets and liabilities	Though not stated in the body of the Scheme, the application stated that the company has no	Only eligibility criteria is “being inoperative” or “not carrying on any business” for atleast two years.

		assets and liabilities	As is clear from statement of accounts, even companies with Assets and Liabilities may apply under the Scheme
<b>Signing of Application</b>	Application to be signed by minimum of Two directors	Application to be signed by minimum of Two Directors	Application to be digitally signed by one Director or in case of manual signing, by one director.

## Missing links in the present Scheme

### “Inoperative” or “Not carrying on any business” –meaning:

The Scheme stipulates that the applicant company should be either inoperative or should not be carrying on any business after 1-4-2008. In fact, this is the fundamental requirement of Section 560 of the Companies Act, 1956 under which section this scheme has been framed. However, what is meant by “carrying on any business” is a matter of fact and has to be determined accordingly. A company may not be having any manufacturing/trading or any other economic activity, nonetheless it has to incur expenses for its maintenance. Such company will be considered to be not carrying on any business.

### What happens to “Assets and Liabilities”:

Surprisingly, unlike the 2003 or 2005 scheme or any other prior mechanism, this scheme does not require “Zero Asset-Liability” status of an applicant company. It is pertinent to note that Section 560 is not a substitute for winding-up proceedings and does not provide for distribution of assets or determination of liabilities. In the absence of any mechanism for distribution of assets or determination of liabilities, it is unclear as to what would be the status of assets/liabilities of applicant companies, howsoever, insignificant they might be. Further, since a company stands dissolved in terms of Section 560(3) upon its name being struck off, will the status of assets of applicant companies become *bona vacantia* and become vested in the State? This surely could not have been the intention. Notably, all the schemes that have come prior to the present one have always prescribed for a zero-asset-liability status as a condition precedent for availing section 560; this Scheme has left the issue unresolved and it is likely that very soon necessary clarification in this regard will follow from the Ministry.

## Salient features

The salient features of the Scheme are as under:

Heading	Particulars
<b>Applicability</b>	<ul style="list-style-type: none"> <li>Defunct company which is not carrying over any business activity/operation on or after the 1<sup>st</sup> April, 2008 and includes a</li> </ul>

	<p>company which has not raised its paid up capital in terms of sub-sections (3) and (4) of section 3 of the Act <b>having “active” status on MCA Portal</b></p> <ul style="list-style-type: none"> <li>• Defunct Government company on submitting ‘No Objection Certificate’ issued by the concerned Administrative Ministry</li> </ul>
<b>Not applicable to</b>	<ul style="list-style-type: none"> <li>• Listed companies</li> <li>• Section 25 Companies</li> <li>• Vanishing companies</li> <li>• Companies where inspection or investigation is ordered and being carried out/ yet to be taken up or where completed, prosecutions arising out of such inspection or investigation are pending in the court;</li> <li>• Companies where order u/s 234 of the Act has been issued by the Registrar and reply thereto is pending or where prosecution if any, is pending in the court;</li> <li>• Companies against which prosecution for non-compoundable offence is pending in court;</li> <li>• Companies accepted public deposits which are either outstanding or the company is in default in repayment of the same;</li> <li>• Company having secured loan;</li> <li>• Company having management dispute;</li> <li>• Company in respect of which filing of documents have been stayed by court or CLB or Central Government or any other competent authority;</li> <li>• Company having dues towards income tax or sales tax or central excise or banks and financial institutions or any other Central Government or State Government Departments or authorities or any local authorities.</li> </ul>
<b>Procedure for making application</b>	<ul style="list-style-type: none"> <li>• Application to be made by desiring company in the form prescribed in the Scheme</li> <li>• Form EES 2010 to be filed electronically</li> <li>• No fees payable</li> <li>• Signing of application: <ul style="list-style-type: none"> <li>○ Either to be digitally signed by any of the director/ Manager/ Secretary,</li> <li>○ Or a physical copy of the Form duly filled in, shall be signed manually by a director authorised by the Board of Directors of the company and attached with the application Form at the time of its filing electronically</li> </ul> </li> <li>• Form to be certified by a CA in whole time practice or CS in whole time practice or Cost Accountant in whole time practice</li> <li>• Company to disclose pending litigations if any, involving the company</li> <li>• The Form shall be accompanied by an affidavit annexed at Annexure- A of the Form which should be sworn by each of the existing director(s) before a First Class Judicial Magistrate or Executive Magistrate or Oath Commissioner or Notary, to the</li> </ul>

	<p>effect that the company has not carried on any business since incorporation or that the company did some business for a period up to a date (which should be specified) and then discontinued its operations and has not carried on any business after the 1st April, 2008;</p> <ul style="list-style-type: none"> <li>• Form to be further accompanied by <ul style="list-style-type: none"> <li>○ An Indemnity Bond, duly notarized, as Annexure B to be given by every director individually or collectively, to the effect that any losses, claim and liabilities on the company, will be met in full by every director individually or collectively, even after the name of the company is struck off the register of Companies;</li> <li>○ A Statement of Account as Annexure C, prepared as on date not prior to more than one month preceding the date of filing of application, duly certified by a statutory auditor or CA in whole time practice.</li> </ul> </li> </ul>
<p><b>Simplified procedure for ROC for removal of name of defunct companies:-</b></p>	<ul style="list-style-type: none"> <li>○ After examining the application, if found in order, ROC shall give a notice to the company under section 560(3) of the Act by e-mail on its e-mail address intimated in the Form, giving 30 days time, stating that unless cause is shown to the contrary, its name be struck off from the Register and the company will be dissolved</li> <li>○ The ROC shall put the name of applicant(s) and date of making the application(s) under Easy Exit Scheme, 2010, on daily basis, on the MCA portal <a href="http://www.mca.gov.in">www.mca.gov.in</a>, giving 30 days time for raising objection, if any, by the stakeholders to the concerned Registrar;</li> <li>○ For companies regulated by other regulators like NBFC, Collective Investment Management Company, the Registrar of Companies, at the end of every week, after the Scheme commences, shall send intimation of such companies, during that period to the concerned Regulator(s) and also an intimation in respect of all companies availing EES, 2010, during that period to the office of the Income Tax Department giving thirty days time for their objection, if any;</li> <li>○ The ROC immediately after passing of time as above and on being satisfied that the case is otherwise in order, shall strike its name off the Register and shall send notice under sub-section (5) of section 560 of the Companies Act, 1956 for publication in the Official Gazette and the applicant company under this Scheme shall stand dissolved from the date of publication of the notice in the Official Gazette.</li> </ul>

### **Company Law Settlement Scheme, 2010**

Company Law Settlement Scheme has been issued by the Ministry to give an opportunity to the defaulting companies to enable them to make their default good by filing belated documents and become a regular compliant by

- condoning the delay in filing documents with the Registrar,
- granting immunity from prosecution
- charging additional fee of 25 % of actual additional fee payable for filing belated documents

The salient features of the Scheme are as under:

<b>Heading</b>	<b>Particulars</b>
<b>Applicable to</b>	All defaulting companies
<b>Payment of fees and additional fees</b>	The defaulting company shall the prescribed fees for filing the document plus 25 % of the actual additional fee required to be paid on the date of filing of each belated document
<b>Withdrawal of appeal against prosecution launched for the offences-</b>	Any appeal against any notice issued/ complaint filed before the competent court for violation of the provisions under the Act in respect of which application is made under this Scheme has to be withdrawn before filing an application for issue of immunity certificate.
<b>Application for issue of immunity</b>	The application for seeking immunity in respect of belated documents filed under the Scheme may be made electronically in the Form annexed, before expiry of six months from the date of closure of the Scheme.  No fees payable on this Form;
<b>Order granting immunity from the penalty/prosecution</b>	Upon being satisfied, the ROC shall grant the immunity certificate in respect of documents filed in the Scheme;
<b>Scheme not applicable to</b>	<ul style="list-style-type: none"> <li>• Filing of documents for incorporation</li> <li>• Establishment of place of business in India</li> <li>• Where specific order for condonation of delay or prior approval under the provisions of the Act is required to be obtained from the Company Law Board/ the Central Government/ Court/ any other Competent Authority</li> <li>• Companies against which action under section 560(5) of the Act has been initiated by the ROC;</li> </ul>
<b>Withdrawal of prosecution</b>	After granting immunity, the Registrar concerned shall withdraw the pending prosecution.