

WIRC of ICAI

Company Law Refresher Scheme

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Company Fresh Start ▶ Scheme 2020

In order to give an opportunity to the defaulting companies and to enable them to file the belated documents in the MCA-21 registry', the Central Government has decided to introduce a Scheme




Why Companies Fresh Start Scheme, 2020?

- To provide opportunity to the defaulting companies and to enable them to file the belated documents in the MCA-21 registry, the Central Government introduce a Scheme "Companies Fresh Start Scheme, 2020" ("CFSS-2020").
- It condone the delay in filing the specified documents with the Registrar, insofar as it relates to charging of additional fees, and granting of immunity from launching of prosecution or proceedings for imposing penalty on account of delay associated with certain filings.
- Only normal fees for filing of documents in the MCA-21 registry will be payable in such ease during the currency of CFSS-2020 i.e. 01-04-2020 and 30-09-2020.



CFSS to whom applicable?

- Any "defaulting company" is permitted to file belated documents which were due for filing on the given date.
- "Defaulting company" means a company defined under the Companies Act, 2013, and which has made a default in filing of any of the
 - documents,
 - statement,
 - returns,
 - annual statutory documentson the MCA-21 registry.
- Whether it applies to foreign company?
- Whether it is applicable to defaulting officers too?

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- Annual statutory documents (AOC-4 & MGT- 7)
 - Return of allotment (PAS-3)
 - Filing of resolution /agreements (MGT-14)
 - Resignation of Director (DIR-11)
 - Appointment of Director/KMP (DIR-12)
 - Appointment of Auditor (ADT-1),
Resignation of Auditor (ADT -3)
 - Declaration of commencement of business (INC-20A)
 - Return of Deposit (DPT-3)
 - Active Company (INC 22A)

Advantages on availing Scheme

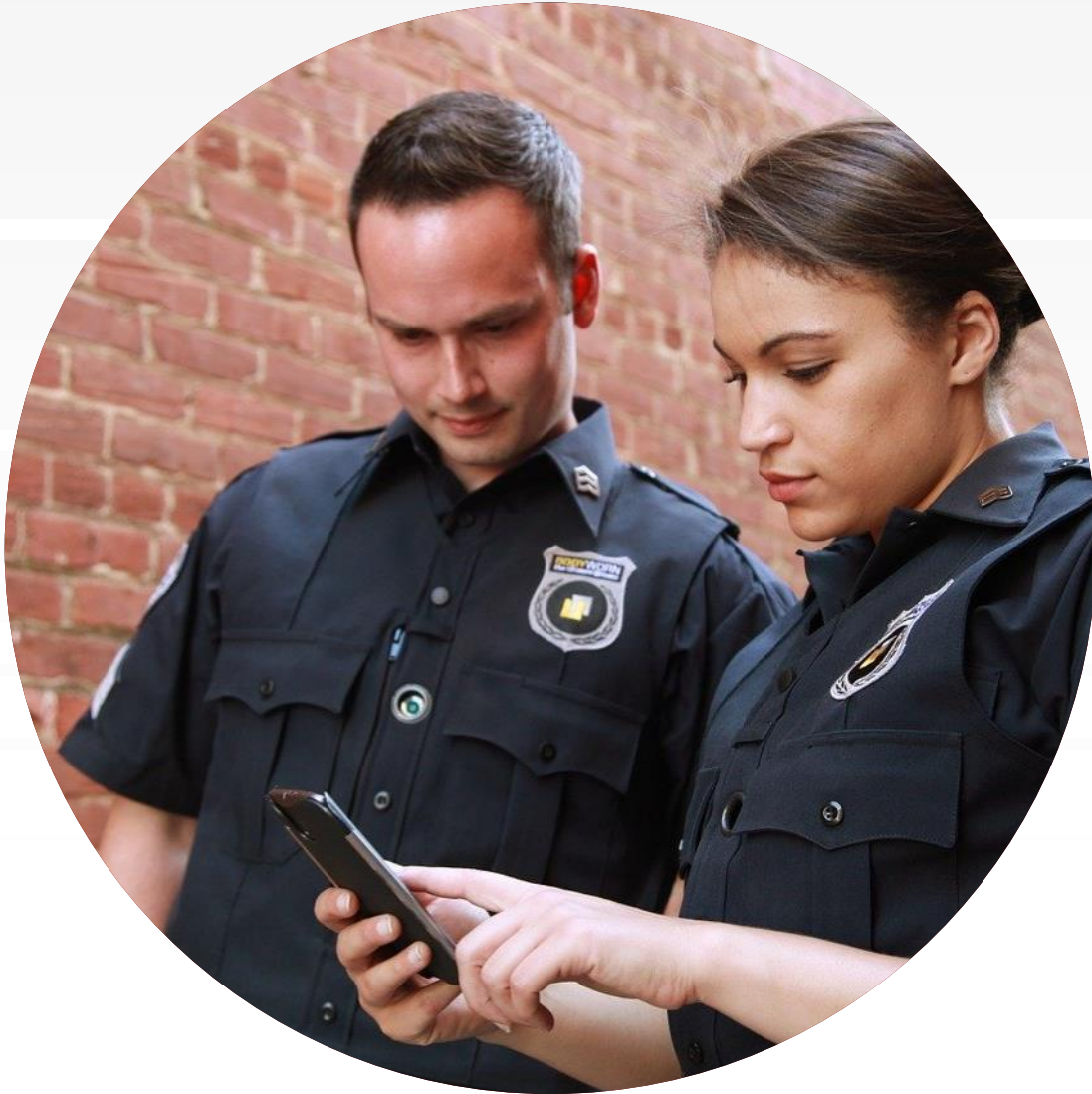
- Every defaulting company shall be required to pay only the normal fees as prescribed under the Companies (Registration Offices and Fee) Rules, 2014 on the date of filing of each belated document and no additional fee shall be payable.
- Immunity from the launch of prosecution or proceedings for imposing penalty pertaining to any delay associated with the filings of belated documents.

100% Waiver of Additional fees, Penalties. No prosecution for belated filing



Consequences if companies does not avails scheme

- Normal and additional fee payable on the forms;
- Action for Strike Off by the Registrar;
- Prosecution/Heavy Penalty for the Directors & other Officers in default.



Is immunity universal?

- The immunity under the Scheme shall only be available in respect of the proceedings for imposing penalty on account of delay in filing the return etc.
- Immunity is not granted against any other consequential proceedings, including any proceedings involving
 - interests of any shareholder or
 - any other person qua the Company or
 - the directors or
 - key managerial personnel

Every company is required to file the return of allotment within the specified period. However, the proviso to section 42(4) also requires that the money raised through private placement shall not be used unless the return of allotment has been filed in the registry.

The immunity would be granted for non timely filing return of allotment and not on account of utilization of the money raised through private placement prior to the filing of the return with the registry.

Immunity limitation

- Immunity shall not be applicable
 - in case appeal is pending before the court of law and
 - in case of management disputes of the company pending before any court of law or tribunal
- No immunity shall be provided
 - in case any court has ordered conviction in any matter, or
 - an order imposing penalty has been passed by an adjudicating authority under the Act; and

no appeal has been preferred against such orders of the court or of the adjudicating authority, as the case may be, before this Scheme has come into force.






Procedure to avail the Scheme


1. File all your pending documents and forms before 30th of September, 2020 along with ordinary fees.
2. File E-form CFSS – 2020, within the six months of the closure of the said scheme.

Is immunity automatic?

- **Application:** The application for seeking immunity in respect of belated documents filed under the Scheme may be made electronically in the Form CFSS-2020
- **When:** After closure of the Scheme and after the document(s) are taken on file, or on record or approved by the Designated authority as the case may be but not after the expiry or six months from the date of closure of the Scheme.
- **Fees:** NIL
- **Effect:** After granting the immunity, the Designated authority concerned shall withdraw the prosecution(s) pending, if any, before the concerned Court(s) and the proceedings of adjudication of penalties under section 454 of the Act, other than those barred, in respect of defaults against which immunity has been so granted shall be deemed to have been completed without any further action on the part of the Designated authority



The applicant before filing an application for issue of immunity certificate, withdraw the appeal filed against any prosecution launched or the proceedings initiated for imposing penalties in respect to any statutory filing under the Act



All pending forms to
filed before filing
application for grant
of Immunity



Can all company apply under the Scheme?

The scheme shall not be available in the following cases:

- Action for striking-off has already been initiated by the Designated Authority;
- Application (STK-2) for strike off of Company with ROC has been filed by the companies;
- Companies which have amalgamated as per the provision of law;
- Where an increase in authorized capital is involved (Form SH-7) and all charge related documents (CHG-1, CHG-4, CHG-8 and CHG-9);
- Companies which has applied u/s 455 for obtaining dormant status;
- Vanishing Companies;



Temporary halt on the prosecution

- In the matters where penalties were imposed by an adjudicating officer due to delayed filing, and no appeal has been made before the Regional Director then
 - If the due date for filing the appeal falls between March 01, 2020 and May 31, 2020, an additional 120 days shall be allowed for filing the appeal, and
 - During this additional period, no prosecution shall be initiated against the company or its officers, insofar as it relates to delay in filing of any document, statement or return, etc. in the MCA-21 registry.



Other issues

Active–non compliant company i.e. company which has not filed INC 22-A

- As per the scheme, filing of Active form is allowed thus company is required to file Active forms without any additional fees and then proceed for further filings.

Disqualification of Directors non-filing of DIR3 KYC

- Issue of disqualification of directors due to non-filing of DIR3 KYC cannot be resolved by filing form under CFSS
- DIN holders whose DINs marked as 'Deactivated' due to non-filing of DIR-3KYC/DIR-3 KYC-Web can file form without late fees Rs 5,000/Rs 10,000 respectively latest by 30/09/2020

Filing by the
companies
struck down by
ROC?



Options for Inactive Companies

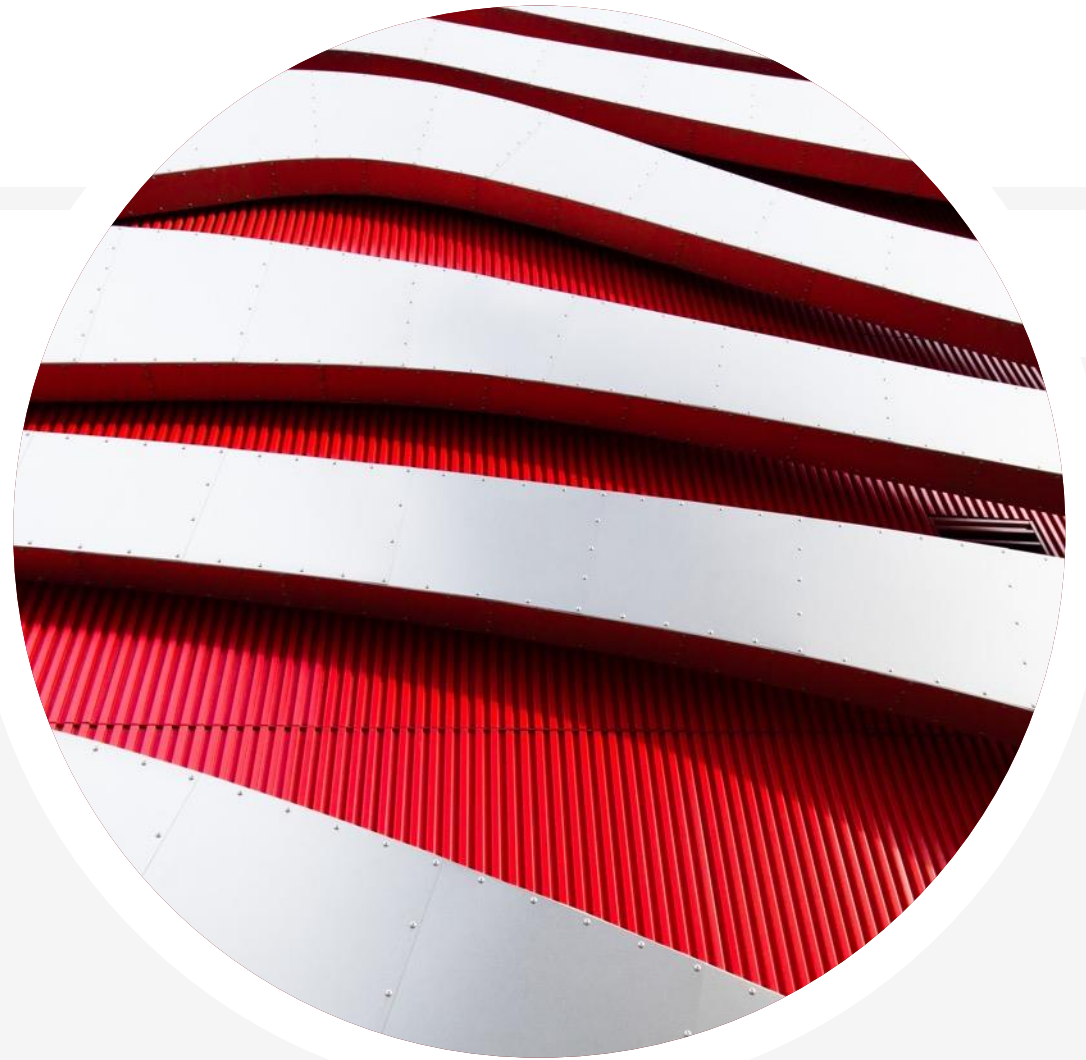
- The defaulting inactive company, while filing document under CFSS-2020 can, simultaneously, has option to apply either,
 - to get themselves declared as Dormant Company under section 155 of the Companies Act, 2013 by filing form MSC-1 at a normal fee on said form, or
 - apply for striking off the name of the company by filing e-Form STK-2 by paying the fee payable on form STK-2

As per the recent circular any company applying for striking off the name of the company by filing STK-2, all pending forms need to be filed before applying for strike off

Limited Liability Settlement Scheme

▶ 2020

As part of Government's constant efforts to promote ease of doing business a Onetime relaxation in additional fees to the defaulting LLPs to make good their default by filing pending documents and to serve as a compliant LLP in future



Limited Liability Partnership Settlement Scheme 2020 (Version 1.0)

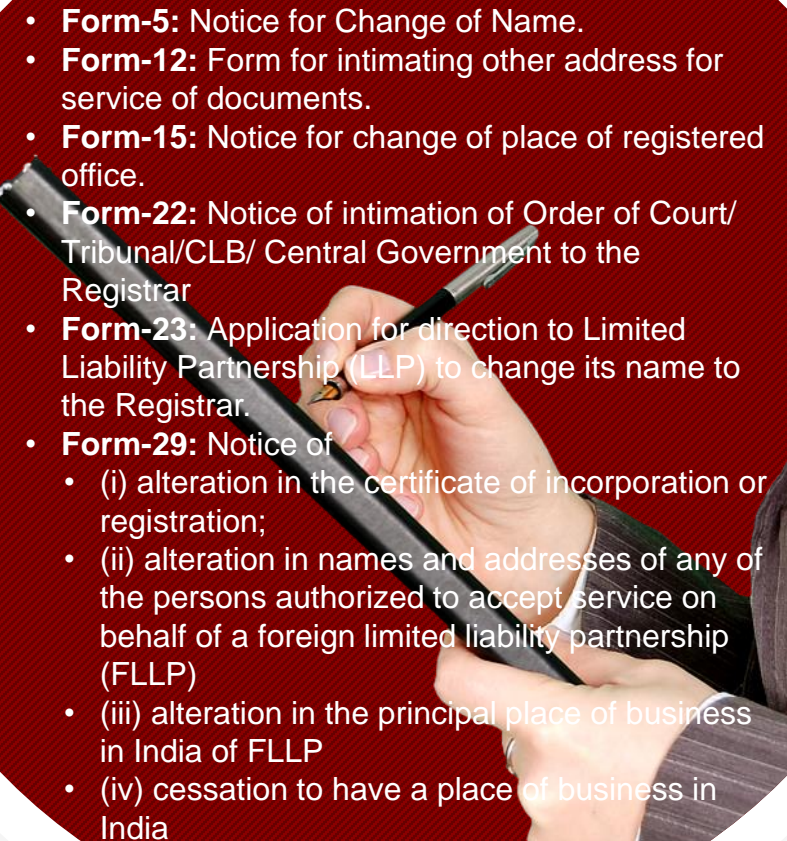
- LLP Settlement Scheme 2020 was notified for condoning the delay in filing of the specified forms General Circular No. 6/2020 dated 04th March, 2020
- Scheme was applicable from 16-March-2020 to 13-June-2020.
- Allowed filing of forms with reduced late fees which were due upto 31-October-2020.
- Additional fees of Rs 10 (in lieu of Rs 100) per day subject to maximum of Rs 5,000 was payable.
- **Form-3:** Information with regard to limited liability partnership agreement and changes, if any, made therein;
- **Form-4:** Notice of appointment, cessation, change in name/ address/designation of a designated partner or partner. and consent to become a partner/designated partner;
- **Form-8:** Statement of Account & Solvency;
- **Form-11:** Annual Return of Limited Liability Partnership.



Limited Liability Partnership Settlement Scheme 2020 (Version 2.0)

- Inline that of CFSS, LLP Settlement Scheme 2020 has been revised vide General Circular No. 13/2020 dated 30 March 2020
- Under the revised scheme, defaulting LLPs are allowed to file all documents which are due for filling up to 31 August 2020 by 30 September 2020.
- Defaulting LLPs can file form without any additional fees
- **Defaulting LLP** means LLP registered under the Limited Liability Partnership Act, 2008 which has made a default in filing of documents on the due date(s) specified under the LLP Act, 2008 and rules made there under.
- **Advantages** The defaulting LLPs, which have filed their pending Forms without additional fees till 30-September-2020 and made good the default, LLPs & its DPs shall not be subjected to prosecution by Registrar for such defaults.

100% Waiver
of Additional
fees

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- **Form-5:** Notice for Change of Name.
 - **Form-12:** Form for intimating other address for service of documents.
 - **Form-15:** Notice for change of place of registered office.
 - **Form-22:** Notice of intimation of Order of Court/ Tribunal/CLB/ Central Government to the Registrar
 - **Form-23:** Application for direction to Limited Liability Partnership (LLP) to change its name to the Registrar.
 - **Form-29:** Notice of
 - (i) alteration in the certificate of incorporation or registration;
 - (ii) alteration in names and addresses of any of the persons authorized to accept service on behalf of a foreign limited liability partnership (FLLP)
 - (iii) alteration in the principal place of business in India of FLLP
 - (iv) cessation to have a place of business in India

LLPs which have made applications in Form 24 to the Registrar, for striking off their name from the register are eligible to apply



How to comply under scheme

- Compliance under scheme
- The defaulting LLPs may themselves avail this scheme for filing documents which have not been filed or registered in time on the payment of normal fee as payable for filing of such document or return.
- No separate application is required to be filed for availing immunity by LLP and its partners.
- Consequences for not availing the scheme
- On the conclusion of the Scheme, after 30 September, 2020 the Registrar shall take necessary action under the LLP Act, 2008 against the LLPs which have not availed this Scheme and are in default in filing of documents as required under the provisions of LLP Act, 2008 in a timely manner.
- Exorbitant late fees
- Penal consequences including criminal prosecution against LLP and DPs



Advantages for complying with the scheme

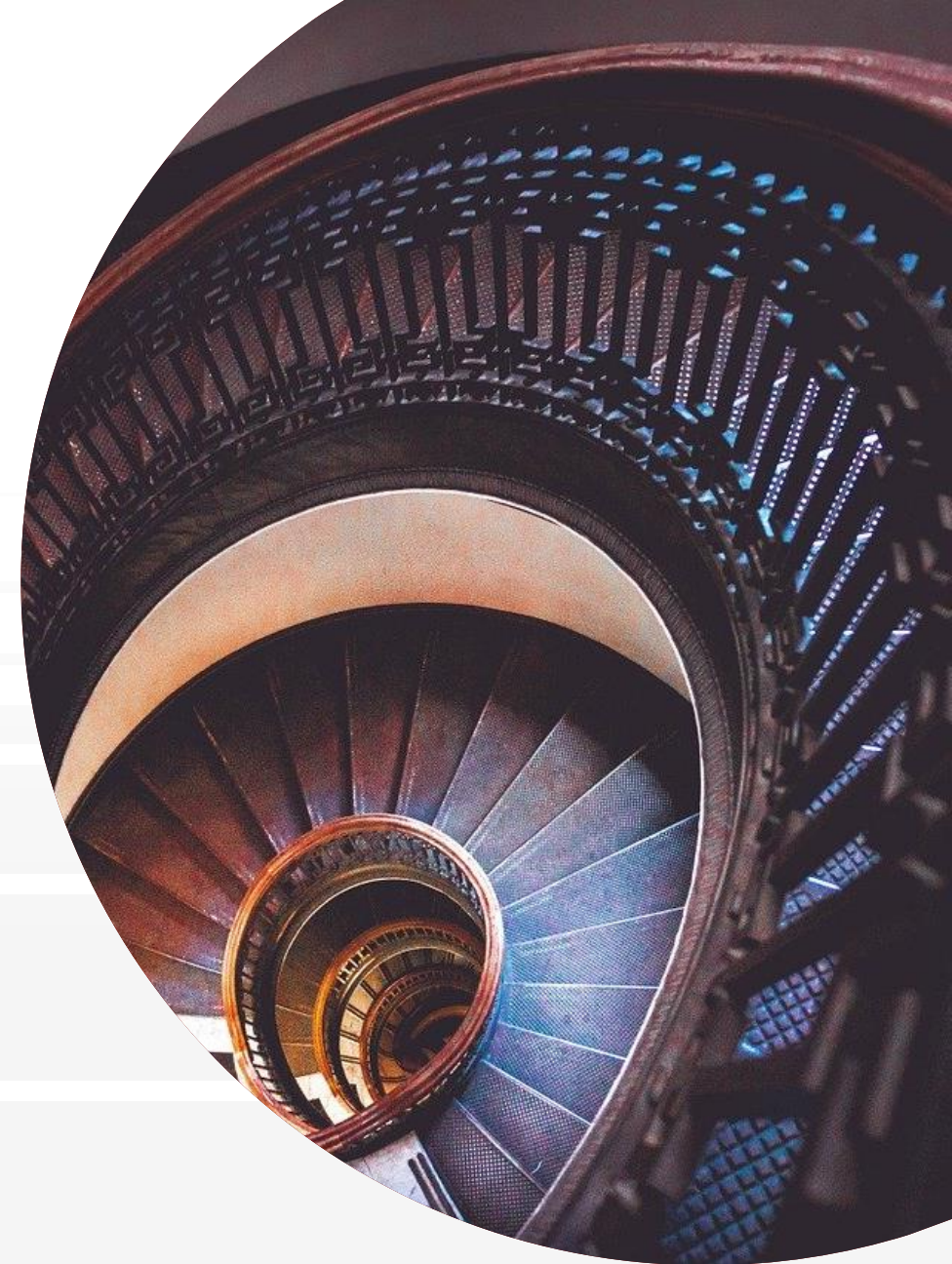
Sl. No	Form Name	Delay (Days)	Normal Cost	Late Fees
1	Form -11 - (FY 2017-18)	761	50	76,100
2	Form - 8 - (FY 2017-18)	639	50	63,900
3	Form -11 - (FY 2018-19)	396	50	39,600
4	Form - 8 - (FY 2018-19)	274	50	27,400
		Total	200	2,07,000

**Limited Liability
Partnership a vehicle
▶ for Structuring**

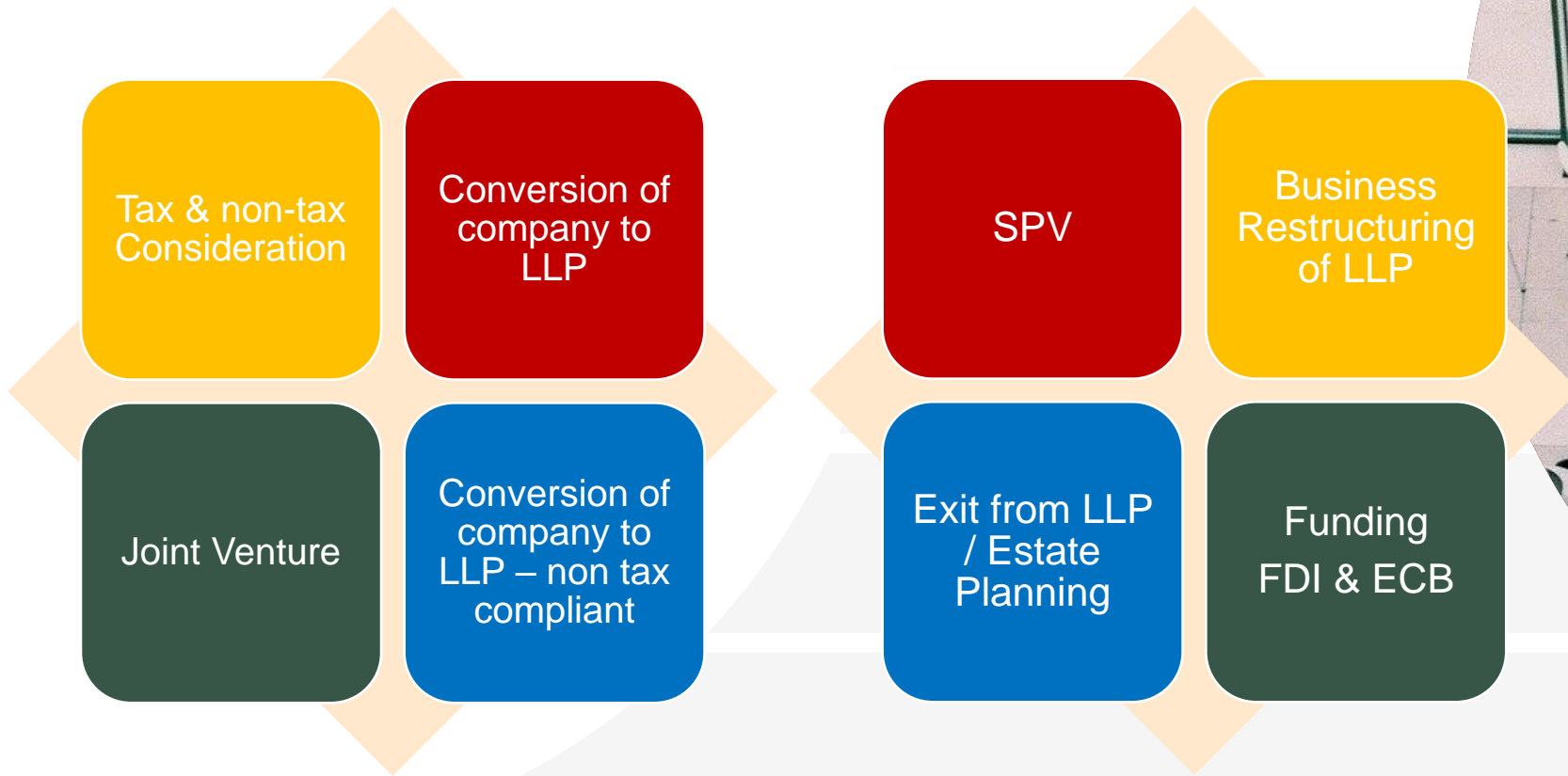


Structuring through LLP

- LLP is a supple form of business entity combining the advantages of corporate entity and general partnership firm.
- LLP is a corporate entity with perpetual succession but at the same time it does not demands strict compliance as are required by the companies and also irons out certain tax inefficiencies of corporate structure.
- Given the operational and structural flexibility, it may make sense for the firm or private / unlisted company to migrate themselves into the new LLP structure.
- LLP being an agile entitle would certainly be a winner as compared to any other form of organisation.
- However recently rate of taxation of the company has been reduced drastically effective from AY 2020-21 and even DDT has been abolished effective from AY 2021-22.
- Tax provisions allowing conversion of Company into LLP come with host of restrictions
- No tax provisions for business restructuring of LLPs



Structuring through LLP



THANK YOU!



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