

Scope: This note deals with the various exit opportunities available for the company under the Companies Act, 1956

a) Procedure to Strike off the name of the company under Section 560 of the Companies Act, 1956:

As per this section, the Registrar of Companies, if satisfied that the company is not in operation, can strike the name off the register of companies. The Ministry of Company Affairs vide Press Note No 1/2003 dated 29-03-2003 has simplified the procedure to strike off the names of defunct companies.

The Registrar of Companies is authorized to do so upon an application made in this behalf by two director's confirming that the company has no assets and liabilities and they have no intention to carry on the business and undertaking that they would be reasonably liable for claims arising in future.

The Press note also prescribes the format of application and other annexure to be submitted for the same. A detailed list of documents to be submitted in this behalf is annexed hereto.

Further, the license issued under Section 25 of the Companies Act, 1956 has to be revoked for which a separate application has to be made to the Regional Director, Southern Regional bench, Chennai, Ministry of Company Affairs.

Following documents are required to be submitted to ROC -

1. Application form in Annexure A, with photographs
2. letter to ROC requesting striking off under Sec.560
3. Certified copy of the resolution of the Board of Directors authorizing one or two Directors to make the requisite application, and to do all acts, deeds, etc.
4. Directors' Report signed by two Directors
5. Statement of Account in Annexure X, duly signed by two Directors
6. Affidavit in Annexure B, on Rs.20/- stamp paper in respect of Director 1 (duly notarized)
7. Affidavit in Annexure B, on Rs.20/- stamp paper in respect of Director 2 (duly notarized)
8. Indemnity Bond in Annexure C on Rs.100/- stamp paper in respect of Director 1 (duly notarized)
9. Indemnity Bond in Annexure C on Rs.100/- stamp paper in respect of Director 2 (duly notarized).
10. Letter of undertaking from Director 1, addressed to the company, not to claim any money due from the company on whatsoever account.
11. Letter of undertaking from Director 2, addressed to the company, not to claim any money due from the company on whatsoever account.
12. Address proof of Director 1
13. Address proof of Director 2.
14. Photocopy of PAN Card of Director 1
15. Photocopy of PAN Card of Director 2.

Prerequisites:

Prior to making an application to the Registrar of Companies, Hyderabad the following legal formalities are to be complied with:

S No	Particulars	Information required
1.	Director Identification number for all the past and present Directors	Address proof, identity proof, 2 passport size photographs
2.	Balance sheet, Profit & Loss account since incorporation till date	Audited balance sheet
3.	Auditor's report, Directors' report	--
4.	Annual Return since incorporation till date	--
5.	Details of past and present Directors (Form 32)	DIN, Nomination letters for appointment or resignation of directors
6.	Filing of the above documents with the Registrar of Companies, Hyderabad	Relevant filing fee
7.	Digital Signature for one Director	Name, Bank account details, one passport size photograph

All the above assignment takes atleast 3-4 months after fulfillment of the above prerequisite compliances.

b) Voluntary winding up

Under section 433(a) of the Companies Act, 1956 the company may present a petition to the Hon'ble High Court for winding up by passing a special resolution in the General meeting. The Court after examining the petition may pass an order for winding up the company. In this case, the following course of action is to be followed:

1. Convene a board meeting to approve the notice convening the General meeting
2. Convene the General meeting and pass the special resolution for winding up
3. Submit the copy of the said resolution together with the petition to the High Court
4. Submit other documents to the High Court such as list of Assets and liabilities as on the date of making the petition, at least three years Balance sheet Balance sheet and proof of filing the same with the Registrar of Companies
5. Further the presence of authorized representative is required.

The process will take at least 7-8 months subject to the hearing given by the Court.

Conclusion:

1. In either cases of winding up the prerequisite is to file the Balance sheet and Annual return with the registrar of Companies
2. It is advisable to wind up the company under Section 560 of the Act since, the procedure is simple and less time taking
3. The personal presence of the directors can be avoided.