EASY EXIT SCHEME 2011

THE SCHEME IS BACK !!!!

Inside This Issue

Overview of the Scheme 2011

- ✓ **It has been observed that certain companies have been registered under the Companies Act, 1956, but due to various reasons some of them are inoperative since incorporation or commenced business but became inoperative later on and are not filing their due documents timely with the Registrar of Companies. These companies may be defunct and are desirous of getting their names strike off from the Register of Companies.**

- ✓ **In order to give an opportunity to the defunct companies, for getting their names strike off from the Register of Companies, the Ministry had launched a Scheme namely, "Easy Exit Scheme, 2010" under Section 560 of the Companies Act, 1956 during May-Aug, 2010. A large number of companies availed this scheme. However, on huge demands from corporate sector, the Ministry has decided to re-launch the Scheme as, "Easy Exit Scheme, 2011".**

Applicability

- ✓ **Any "defunct company" which has active status on Ministry of Corporate Affairs portal may apply under EES, 2011 in accordance with the provisions of this Scheme for getting its name strike off from the Register of Companies.**

- ✓ **Any defunct company which is a Government Company shall submit 'No Objection Certificate' issued by the concerned Administrative Ministry or Department or State Government along with the application under this Scheme;**

- ✓ **The purpose of the Scheme is to allow eligible companies to avail of this opportunity to exit from the Register of Companies after fulfilling the requirements laid down herewith and the decision of the Registrar of Companies in respect of striking off the name of company shall be final.**

PROCEDURE FOR MAKING AN APPLICATION

Make application in e-form EES 2011

File electronically with fees of Rs.3000

If no DSC, manually signed application to be attached in E-form

The company should disclose pending litigation if any.

It should be certified by practicing CS\CA

- The Form shall be accompanied by an affidavit annexed at Annexure- A of Form EES, 2011, which should be sworn by each of the existing director(s) of the company before a First Class Judicial Magistrate or Executive Magistrate or Oath Commissioner or Notary, to the 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, as the case may be.
- The Form EES, 2011 shall further be accompanied by an Indemnity Bond, duly notarized, as annexed at Annexure B of Form EES, 2011, 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;
- The Company shall also file a Statement of Account annexed at Annexure C, prepared as on date not prior to more than one month preceding the date of filing of application in Form EES, 2011, duly certified by a statutory auditor or Chartered Accountant in whole time practice, as the case may be.

NOT APPLICABLE TO FOLLOWING CATEGORIES

- LISTED COMPANIES
- SECTION 25 COMPANIES
- VANISHING COMPANIES
- COMPANIES WHERE INVESTIGATION/ INSPECTION ORDERED AND YET TO BE TAKEN UP OR PENDING
- COMPANIES WHERE ORDER U/S 234 HAS BEEN ISSUED BY ROC AND REPLY IS PENDING
- COMPANIES WHERE PROSECUTION FOR A NON-COMPOUNDABLE OFFENCE IS PENDING IN COURT
- COMPANIES ACCEPTED DEPOSITS WHICH ARE OUTSTANDING OR DEFAULT IN REPAYMENT
- COMPANY HAVING SECURED LOAN
- COMPANY HAVING MANAGEMENT DISPUTE
- COMPANY FOR WHICH FILING OF DOCS HAVE BEEN STAYED BY COURT OR CLB OR CG OR ANY OTHER COMPETENT AUTHORITY
- COMPANY HAVING DUES OF INCOME TAX / SALES TAX / CENTRAL EXCISE /BANKS /FINANCIAL INSTITUTIONS/CG/SG/OTHER LOCAL AUTHORITIES
- COMPANIES NOT HAVING ACTIVE STATUS ON MCA PORTAL

DOCUMENTS REQUIRED FOR EES 2011

- ✓ Statement of Accounts (duly signed by MD, Director, Secretary and Certified by Auditor of the Company or any other Practicing Chartered Accountant
- ✓ Copy of Board Resolution authorizing directors to file application
- ✓ Indemnity Bond duly notarized and signed by all directors
- ✓ Affidavit duly notarized and signed by all directors
- ✓ Physical Copy of e-form EES 2011 duly signed by Director/MD/Manager/ Secretary if no DSC is available.
- ✓ Attested copy of PAN/ Passport (in case DIN is not available)
- ✓ NOC from Govt (if applicable)
- ✓ Any other optional attachment

F A Q

F A Q

1) **IS THERE ANY ATTESTATION / NOTARY REQUIRED ON AFFIDAVIT AND INDEMNITY BOND?**

AN AFFIDAVIT SHOULD BE SWORN BY EACH OF THE EXISTING DIRECTOR(S) OF THE COMPANY BEFORE A FIRST CLASS JUDICIAL MAGISTRATE OR EXECUTIVE MAGISTRATE OR OATH COMMISSIONER OR NOTARY. AN INDEMNITY BOND SHALL BE DULY NOTARIZED.

2) **IS DIRECTOR IDENTIFICATION NUMBER (DIN) MANDATORY FOR FILING APPLICATION WITH ROC?**

DIN IS NOT MANDATORY FOR MANAGING DIRECTOR OR DIRECTOR OF THE COMPANY MAKING APPLICATION UNDER EES 2011. DETAILS OF MANAGING DIRECTOR OR DIRECTOR CAN BE FILLED UP FOR INSERTING PERMANENT ACCOUNT NUMBER (PAN) OR PASSPORT NUMBER INSTEAD OF DIN.

3) **CAN A COMPANY AGAINST WHICH LITIGATION(S) ARE PENDING CAN GO FOR THE SCHEME?**

EES 2011 DOES NOT MENTION ANYWHERE THAT A COMPANY AGAINST WHICH LITIGATION IS PENDING CANNOT APPLY FOR STRIKING OFF THE NAME OF THE COMPANY FROM THE REGISTER MAINTAINED BY THE ROC. HENCE, A COMPANY AGAINST WHICH LITIGATION IS PENDING CAN APPLY UNDER EES 2011. FURTHER, DETAILS OF PENDING LITIGATIONS ARE REQUIRED TO BE FILLED UP IN E-FORM EES 2011 WHICH HAS A REFERENCE IN AFFIDAVIT FORMAT TOO.

HOW MANY DIRECTORS ETC. ARE REQUIRED TO SIGN VARIOUS DOCUMENTS REQUIRED TO BE FILED WITH REGISTRAR OF COMPANIES?

SIGNATURES OF MANAGING DIRECTOR/DIRECTOR/SECRETARY ETC. IS REQUIRED AS FOLLOWS:-

SR NO	NAME OF THE DOCUMENT	SIGNATURE REQUIREMENT
1	**E-form EES 2011**	Digital Signature Certificate (DSC) of any one of the following who is authorized to sign as per Board Resolution:- • Managing Director • Director • Manager • Secretary
2	**Board Resolution**	Certified True Copy signed by any one of the following:- • Managing Director • Director • Manager • Secretary
3	**Affidavit**	Signed before authorities by all existing directors of the company.
4	**Indemnity Bond**	Signed before authorities by all existing directors of the company.
5	**Statement of Accounts**	The EES Scheme is silent on how many directors should sign the Statement of Accounts. So, it is advisable to take signatures of 2 directors, including Managing Director, if any. It is also required to be signed by Secretary, if any. To be certified by any one of the following:- • Statutory Auditor of the company • Chartered Accountant in whole-time practice

PROCEDURE TO BE FOLLOWED BY REGISTRAR OF COMPANIES

If EES FORM is found in 'Order'

ROC shall issue 30 days notice to the company under section 560(3) of the Companies Act 1956 by email to the Email Id specified in the documents filed with ROC

Name of the company and date of making application to be displayed on MCA site on daily basis giving 30 days time to raise objection. The Ministry of Corporate Affairs website will generally be updated on daily basis.

ROC shall intimate:

- **In case of NBFC Co. -RBI for raising objection, if any within 30 days**
- **In case of CIMC Co. - SEBI for raising objection, if any within 30 days**
- **All Companies - Income Tax Department for raising objection, if any within 30 days**

After expiry of the time as given above and on being satisfied that the case is in order and fit enough one, ROC shall strike off the name of company from the Register and shall send a notice under section 560(5) for publication in the Official Gazette

Company shall stand dissolved from the date of publication of notice in the Official Gazette

CHECKLIST FOR EASY EXIT SCHEME 2010

S.NO	DETAILS / DOCUMENTS REQUIRED	DOCUMENTS TO BE CHECKED
1	SHOULD NOT HAVE ANY BANK ACCOUNT AS ON THE DATE OF CLOSURE	■ Balance Sheet For Cash And Bank Balance ■ Bank closure letter
2	NO DUES TOWARDS IT, SALES TAX, CENTRAL EXCISE, BANK AND FINANCIAL INSTITUTIONS, ANY OTHER GOVERNMENT AUTHORITIES	■ Auditor Certification
3	NO LITIGATION PENDING AGAINST OR INVOLVING THE COMPANY	■ Auditors report, ■ Compliance Certificate ■ Notices, petitions ■ Investor compliant form ■ Directors report
4	DIN/ PAN COPY/ PASSPORT COPY OF DIRECTORS	■ Pan card ■ Passport ■ View signatory details(MCA Site)
5	NAME, FATHER NAME AND GRANDFATHER NAME OF DIRECTORS	■ Form32 ■ ID / Address Proof ■ View signatory details (MCA site)

6	COPY OF ADDRESS PROOF OF DIRECTORS	■ Voter id ■ Driving license ■ Ration card ■ Bank statement ■ Telephone bill ■ Passport copy
7	NUMBER OF YEARS AND REASONS FOR BEING INOPERATIVE	■ Brief Note by Directors of company
8	LATEST STATEMENT OF ACCOUNTS/ BALANCESHEET	■ Previous year Balance sheet or ■ Previous financial figures or ■ Current year statement of accounts or ■ Current year Balance sheet.
9	MAIN OBJECTS AS PER MEMORANDUM OF ASSOCIATION OF THE COMPANY	■ MEMORANDUM OF ASSOCIATION
10	BRIEF DESCRIPTION OF MAIN BUSINESS LAST CARRIED DOWN BY THE COMPANY	■ NOTE BY DIRECTORS OF COMPANY

EES SCHEME 2011 AT A GLANCE

- IT COMMENCES FROM 1ST JAN TO 31 JAN 2011
- THE SCHEME IS APPLICABLE TO A "DEFUNCT COMPANY" TO MEAN A COMPANY REGISTERED UNDER THE COMPANIES ACT, 1956 WHICH IS NOT CARRYING OVER ANY BUSINESS ACTIVITY OR OPERATION ON OR AFTER THE 1ST APRIL, 2008 AND INCLUDES A COMPANY WHICH HAS NOT RAISED ITS PAID UP CAPITAL AS PROVIDED IN SUB SECTIONS (3) AND (4) OF SECTION 3 OF THE COMPANIES ACT, 1956;
- THE PURPOSE OF THE SCHEME IS TO ALLOW ELIGIBLE COMPANIES TO AVAIL OF THIS OPPORTUNITY TO EXIT
- THE DECISION OF THE REGISTRAR OF COMPANIES IN RESPECT OF STRIKING OFF THE NAME OF COMPANY SHALL BE FINAL.

New Changes Introduced in "Easy Exit Scheme - 2011":-

- **Filing Fees of Rs.3000/-.**
- **Scheme is not applicable for De-listed Companies.**
- **In case of 100% Government Companies, if no Board is in existence, an officer not below the rank of Deputy Secretary of the concerned administrative Ministry may be authorized to enter his name and other details in Form EES, 2011 and in Annexure A, B and C in place of name and other details of the Directors and also to sign the said documents before filing.**

Post your reflections to :

S.Dhanapal
Managing partner
S DHANAPAL & ASSOCIATES
Practising Company Secretaries
3rd Floor,Victory Towers,
Old No.724/725, New No.486,
Poonamallee High Road,
(opp to Pachaippa's College),
Aminjikarai, Chennai- 600 029.
Ph.No. 044 - 4553 0256 / 57
Direct Ph: 044-42652127
Cell No. 96770 22712
Email Id. csdhanapal@gmail.com

PROFESSIONAL LIFE

ENDLESS POSSIBILITIES WITH BORDERLESS SUCCESSES