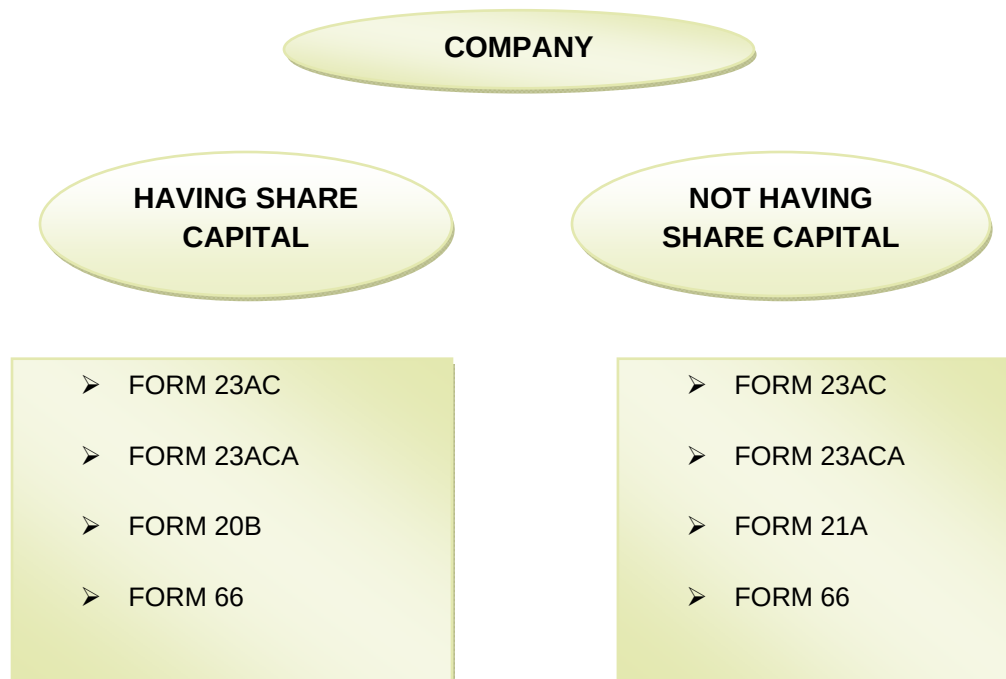


**WRITE UP ON COMPANY LAW SETTLEMENT SCHEME, 2011
AND
FAST TRACK EXIT MODE FOR DEFUNCT COMPANIES**

COMPANY LAW SETTLEMENT SCHEME, 2011

ANNUAL FILING REQUIREMENTS UNDER COMPANIES ACT 1956



In practice, there are many Companies not filing their yearly returns due to their lack of knowledge of the provisions of the Companies Act and other reasons. Such negligence may lead to serious consequences like prosecutions, heavy additional fee and disallowance from filing other event based documents electronically with effect from 3rd July, 2011. The Ministry of Corporate Affairs, in its latest initiative, has categorized companies who have not filed any of their yearly returns for the years 2006-07, 2007-08, 2008-09 and 2009-2010 as “Defaulting Companies” and the list of such companies along with their directors and secretaries have been posted on the MCA website. Vide the CLSS, 2011; such DEFAULTING companies are given an opportunity to file an application to enable them to make their default good by filing belated documents, obtaining immunity for prosecutions and levy of reduced additional fee @ 25% of actual additional fee.

PROBLEMS TO STAKEHOLDERS AND ROC FOR NON-COMPLIANCE OF PROVISIONS

- Non – Availability of Documents to stakeholders for Inspection the Company's records.
- Non-Availability of Data to Registrar of companies to update company's records.

APPLICABILITY OF SCHEME

The CLS Scheme is applicable only to Defaulting Companies, the definition of the defaulting company is given by the Company Law Settlement Scheme, 2011 and it is as follows:

- ✓ Defaulting Company means a company registered under Companies Act, 1956 and a foreign company falling under section 591 of the Act, which has made a default in filing of documents on the due dates specified under the companies Act, 1956.

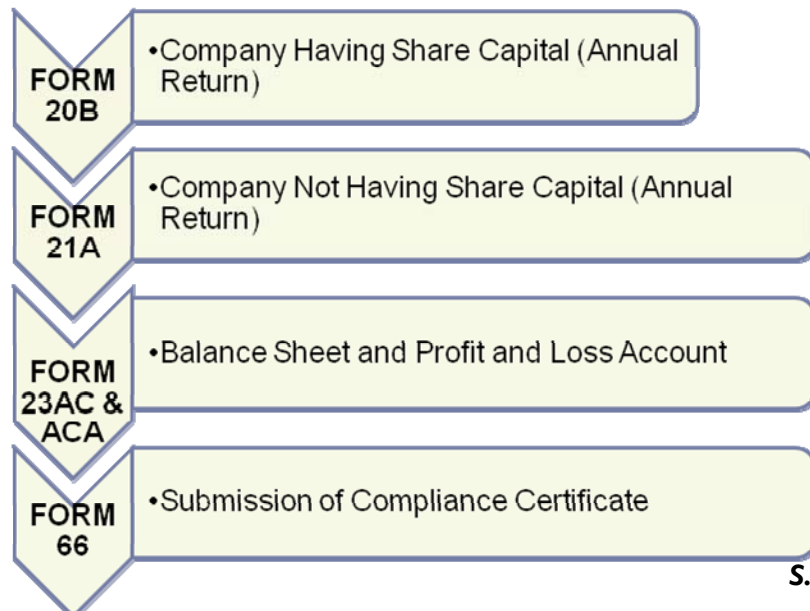
REMEDY AVAILABLE TO DEFAULTING COMPANY

The Designated Authority (ROC) has provided a solution to such defaulting companies to enable them to make their default good by filing belated documents and to become a regular compliant in future by way of introduction of a Scheme namely, "Company Law Settlement Scheme, 2011. The scheme shall come into force on **12th August, 2011 and shall remain in force upto 31st October, 2011.**

Note: Company Law Settlement Scheme, 2011 allows the Defaulting companies to file belated documents which are falling due for filing till 30th June, 2011.

AVAILABILITY OF THE SCHEME

The COMPANY LAW SETTLEMENT SCHEME, 2011 is applicable only for filing following Compliance related forms



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Note: Scheme shall not apply to the Companies against which action under sub-section (5) of section 560 of the action initiated by the ROC

ADVANTAGES OF COMPANY LAW SETTLEMENT SCHEME, 2011

- Prevention of Initiating prosecution and other legal action.
- Opportunity to the defaulting companies to enable them to make their default good by filing belated documents
- Companies can avail immunity against any prosecution (whether or not appeal has been filed) pending against itself with reference to delayed or non filing of statutory forms or returns.
- Charging of additional fee of only 25 percent of actual additional fee payable for filing belated documents under the Companies Act, 1956 (75% of additional filing fees is waived by the Government) (as on date of filing)

STEPS FOR OBTAINING IMMUNITY FROM PROSECUTION

- Before filing an application for issue of immunity certificate, such companies has to withdraw any appeal / compliant filed before the court for violation of the provisions under the Act and should furnish the proof for such withdrawal.
- Application for seeking immunity may be made electronically after closure of Scheme and after the document(s) are taken on file, or on record or approved by the Registrar of Companies. Such form carries no fees.
- Registrar of companies on being satisfied with the documents filed shall grant the immunity certificate. After granting the immunity, the Registrar concerned shall withdraw the prosecution(s) pending if any before the concerned Court(s)

Note: No application seeking immunity shall be made after the expiry of six months from the date of closure of the Scheme.

FAST TRACK EXIT MODE FOR DEFUNCT COMPANIES

As professionals, we are aware about the various schemes introduced in past like

1. Simplified exit scheme during the year 2003
2. Simplified exit scheme 2005
3. Easy Exit Scheme 2010

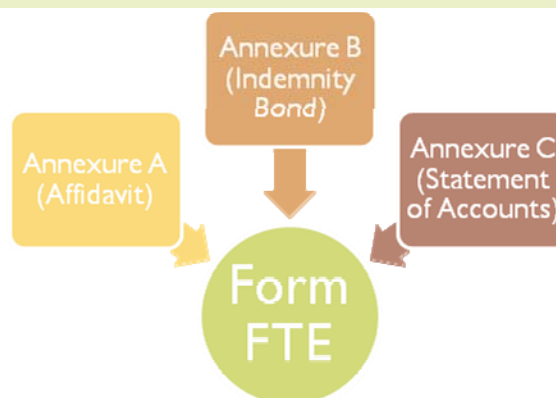
relating to striking off the names of the company from the Register of Companies as defunct companies. Ministry of Corporate Affairs has introduced a mode namely, "FAST TRACK EXIT MODE" under Section 560 of the Companies Act, 1956. The Scheme has come into force on 3rd July, 2011.

APPLICABILITY OF FAST TRACK MODE

- Defunct companies which has active status or identified as dormant by the Ministry of Corporate Affairs portal
- Defunct companies which is a Government Company
- Decision of Registrar of companies is final incase of striking of the name of the Defunct Company.

Note: Any defunct company desirous of getting its name strike off from the Register under Section 560 of the Companies Act, 1956 shall make an application in the Form FTE, electronically on the Ministry of Corporate Affairs portal, namely www.mca.gov.in, accompanied by filing fee of Rs.5,000/-.

PROCESS INVOLVED IN FILING FORM FTE



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STEPS FOR MAKING APPLICATION:

- An application in the Form FTE should be filed electronically accompanied by filing fee of Rs.5,000/-.
- If the application in Form FTE is not being digitally signed by any of the directors or Manager or Secretary, a physical copy of the Form duly filled in, shall be signed manually by a director duly authorised by the Board of Directors of the company and shall be attached with the application Form at the time of its filing electronically.
- Form FTE to be certified by a Chartered Accountant in whole time practice or Company Secretary in whole time practice or Cost Accountant in whole time practice.
- The company shall disclose pending litigations if any, involving the company
- The Form FTE shall be accompanied by an affidavit 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, as the case may be
- Form FTE shall further be accompanied by an Indemnity Bond, duly notarized, 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 prepared as on date not prior to more than one month preceding the date of filing of application in Form FTE, duly certified by a statutory auditor or Chartered Accountant in whole time practice, as the case may be

Note: In case of foreign nationals and NRIs, Indemnity Bond and Affidavit may be notarized as per their respective country's law.

REGISTRAR OF COMPANIES:

PROCESS INVOLVED:

- The Registrar of Companies, on receipt of the application, shall examine the same and if found in order, shall give a notice to the company under section 560(3) of the Companies Act, 1956 by email on its e-mail address intimated in the Form, giving thirty 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.
- The Registrar of companies shall put the name of applicant(s) and date of making the application(s) under fast track exit mode, on daily basis, on the MCA portal www.mca.gov.in, giving thirty days time for raising objection, if any, by the stakeholders to the concerned Registrar.
- In case of Companies regulated by other bodies the Registrar of Companies, at the end of every week, shall send intimation of such companies availing fast track exit mode during that period to the concerned Regulator(s) and also an intimation in respect of all companies availing fast track exit mode during that period to the office of the Income Tax Department giving thirty days time for their objection.
- The Registrar of Companies immediately after being satisfied 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 shall stand dissolved from the date of publication of the notice in the Official Gazette

ADVANTAGES OF FAST TRACK MODE

- If the applicant name is not available in the database of directors maintained by the Ministry, the application can be accompanied by certifying (Practicing Professional) that the applicants are present directors of the company. In such cases, the applicants shall not be asked to file Form 32 and Form DIN 3

- Company which has been identified as dormant by the Ministry of Corporate Affairs can apply under FAST TRACK MODE and such companies need not to file Form 61 for normalizing.
- Company, which has not filed its statutory documents i.e. Balance Sheet and Annual Return for any of the financial year 2006-07, 2007-08, 2008-09 and 2009-10 and has been identified as defaulting company can apply under FTE.

NON APPLICABILITY OF FAST TRACK MODE

- Listed companies and companies that have been de-listed due to non-compliance of Listing Agreement or any other statutory Laws.
- Companies registered under section 25 of the Companies Act, 1956.
- Vanishing companies.
- A company where order under section 234 of the Companies Act, 1956 has been issued by the Registrar and reply thereto is pending or where prosecution if any, is pending in the court.
- Companies where inspection or investigation is ordered and being carried out or yet to be taken up or where completed prosecutions arising out of such inspection or investigation are pending in the court.
- Companies against which prosecution for a non compoundable offence is pending in court.
- Companies accepted public deposits which are either outstanding or the company is in default in repayment of the same.
- Company having secured loan and management dispute.
- Company in respect of which filing of documents have been stayed by court or Company Law Board (CLB) or Central Government or any other competent authority.
- 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

CHECKLIST FOR FAST TRACK MODE

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

S.NO	DETAILS / DOCUMENTS REQUIRED	DOCUMENTS TO BE CHECKED
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

CONCLUSION

Ministry has issued the scheme to knock out the companies which desire their names to strike off from the register under Section 560 of the Companies Act, 1956. Further it also provides solution to large companies which have defaulted in filing their due documents timely with the Registrar of Companies. Such Companies can avail this opportunity to make their default good by filing belated documents and to become a regular compliant in future.

The purpose of the schemes is to reduce the financial burden on the company by waiver of 75% of the actual additional fee and also no filing fee for making application for grant of immunity under CLSS.

It should be noted that the CLSS and Fast Track Exit Mode implemented by Ministry of Corporate Affairs mainly aims at improving the Compliance of the company and also to initiate the process of generating additional revenue to the government. It is evident from the various schemes issued by the Ministry that it is striving towards achieving a better Corporate Governance.

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