

Fast Track Exit

Introduction

The Fast Track Exit (FTE) mode is introduced by the **Ministry of Corporate Affairs (MCA) vide General Circular No. 36/2011 dated 7th June, 2011 (the Circular) and made effective from 3rd July 2011** as a Fast Track opportunity for Defunct Companies i.e. Companies not carrying any business, to Strike off their names from Register of Companies under Section 560 of the Companies Act, 1956 (the Act) (corresponding to Section 248 of the Companies Act, 2013 which is not yet notified).

Conditions for FTE

- The defunct company should have “**Nil**” Assets & Liabilities **and**
 - has not commenced any business activity or operation since incorporation; **or**
 - is not carrying over any business activity or operation for last one year before making application under FTE
- A Company which has “Active” status or identified as “Dormant” by the MCA

Companies not eligible for FTE

- Listed Companies
- De-listed Companies
- Section 8 Company (corresponding to Section 25 Company under the Companies Act, 1956)
- Vanishing Companies
- Companies under Inspection/Investigation pending in any Court
- Companies where order under Section 234 of the Companies Act, 1956 has been issued and reply thereto or prosecution, if any, is pending in the court
- Companies against which prosecution for a non-compoundable offence is pending in court

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CONTACT No.: +91 80807 59275; +91 99690 07526

EMAIL: SHARMAFINANCIALSERVICES@GMAIL.COM

- Companies which have accepted public deposits and has made defaults in repayment of the same
- Companies having secured loans
- Companies having management disputes
- Companies whose filing of documents has been stayed by Court or Company Law Board (CLB) or Central Government or any other Competent Authority
- Companies having dues to income tax, sales tax, central excise, banks and financial institutions or Central Government or State Government or any local authorities

How to apply for FTE?

The application shall be made in **Form FTE** accompanied by filing fees of ₹ 5,000/-.

Attachments to Form FTE

1. Affidavit (as per “**Annexure A**” to the Circular) to be given individually by all Directors;
2. Indemnity Bond (as per “**Annexure B**” to the Circular) to be given individually by all Directors;
3. Statement of Accounts (as per “**Annexure C**” to the Circular) duly certified by Practicing Chartered Accountant or Statutory Auditor of the Company as the case may be;
4. Board Resolution stating to Strike off the name of the Company under FTE Mode;
5. Board Resolution for closure of Bank Accounts;

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6. Confirmation letter duly signed by the concerned Banks Official that the Bank Account of the Company is closed;
7. The company shall disclose pending litigations, if any, involving the company while applying under FTE;
8. **Form FTE** shall be certified by Practicing Chartered Accountant / Practicing Company Secretary / Practicing Cost Accountant.

Note: In case, the applicants name are not available in database of directors maintained by the MCA, a certificate from Practicing Chartered Accountant / Practicing Company Secretary / Practicing Cost Accountant along with membership number certifying that the applicants are present Directors of the Company. In such cases the applicants will not be required to file **Form DIR-12** (earlier Form 32) and **Form DIR-3** (earlier Form DIN 3).

Procedure adopted by the Registrar of Companies (ROC)

The Registrar on receipt of application shall examine the same and if application found in order, it shall intimate the Company by issuing a notice under Section 560 (3) of the Act giving 30 days time, stating that unless cause is shown to the contrary, the name of Company be struck off from the register and the lead to dissolution of the Company.

The Registrar on being satisfied shall strike off the name of the Company from its Register and send notice under Section 560 (5) of the Act for publication in the Official Gazette and the Company stands dissolved from date of publication of the notice in the Official Gazette.

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Note: A Company dissolved under Section 560 of the Act **can be restored** before expiry of **20 years** from the date of publication of notice in the Official Gazette by order of the Court. The application for restoration can be made only by the Company, member or creditor. It must be shown that on the date of dissolution of the Company, the Petitioner was a member or creditor. The procedure for application for restoration should be as per provisions of Section 560 (6) of the Act.

Parth Sharma

Sharma Financial Service

+91 8080 75927; +91 99690 07526

sharmafinancialserices@gmail.com

***Disclaimer:** The article has been prepared considering the relevant provisions of the Companies Act, 2013 and the rules made thereunder. The contents of the article are personal views of the author and the readers are requested to cross-check the provisions before acting upon the same. The author is not responsible for any damages or penalties caused.*

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