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REMOVAL OF NAMES OF COMPANIES FROM THE REGISTER OF COMPANIES



INTRODUCTION

"There are many things which are easy to form but difficult to demolish. Company is one of them which form part of that list"

With the commencement of **Companies Act, 2013 ("the Act"),** the compliance requirement have been increased when compared with earlier **Companies Act, 1956.** There are many companies which are formed for a conceived business but never took off or the business is ceased for quite some time, and remained unused or inoperative.

Therefore it is difficult for those companies to maintain themselves and retain the Status of Active Company. The options left behind by the act are:

1. **To make an application to get the status of Dormant Company under Section 455 of the Act, and**
2. **To make application for Strike-off of name from register of companies under Section 248 of the Act**

DEFINITIONS

1. **Dormant Company: Section 455 of the act** defines it as - a company is formed and registered under this Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company.
2. **Inactive Company:** A company which has not been carrying on any business or operation, or has not made any significant accounting transaction during the last two financial years, or has not filed financial statements and annual returns during the last two financial years.
3. **Significant Accounting Transaction:** Any Transaction other than:
   (a) Payment of fees by a company to the Registrar;
   (b) Payments made by it to fulfill the requirements of this Act or any other law;
   (c) Allotment of shares to fulfill the requirements of this Act; and
   (d) Payments for maintenance of its office and records
4. **Fast Track Exit:** Fast Track Exit mode is **introduced by Ministry of Corporate Affairs ("MCA")** for giving opportunity to non-operating companies for getting their names struck off from the records of

MCA. Fast Track Exit mode is an easy mode of closing non-operating companies at cheaper cost with lesser formalities under **Section 560 of Companies Act, 1956**

5. **Vanishing Company:** A company listed with Stock Exchange which has failed to file its returns with the Registrar of Companies and Stock Exchange for a consecutive period of two years, and is not maintaining its registered office at the address notified with the Registrar of Companies or Stock Exchange and none of its directors are traceable

CHECKS FOR REMOVAL OF NAME

MCA vide **Notification no. G.S.R. 1174(E) dated: 26th December, 2016 notified Section 248 to Section 252 of the Act** which replaced the existing scheme FTE which came into force on 3rd July, 2011. Following are check points for a company to apply under Section 248 of the act:

1. Company has failed to commence its business within one year of its incorporation.
2. Company is not carrying on any business for a period of two immediately preceding financial years before making the application of Form STK-2
3. Company has no assets and liabilities as on date.
4. Documents required to be attached to Form STK-2:
   i. An Affidavit from all the directors individually in Form STK-4 (Mentioning company has not carried on any business since incorporation or that the company did some business for a period up to a date and then discontinued its operations, as the case may be; and no inquiry or prosecution is pending against the company)
   ii. An Indemnity Bond (duly notarized) by every director individually or collectively in Form STK-3 (Mentioning any losses, claim and liabilities on the company, will be met in full by every director)
   iii. A Statement of Accounts containing assets and liabilities made up to a day, not more than thirty days before the date of application duly certified by a Chartered Accountant.
   iv. Copy of Board Resolution authorizing directors to file application.
   v. Copy of Special Resolution duly certified by each of the directors of the company or consent of seventy five percent of the members of the company in terms of paid up share capital as on date of application.
   vi. A statement of pending litigations, if any, involving the company.
   vii. No objection certificate from appropriate Regulatory Authority, if regulated by any special act under which company is covered.

PROCEDURE

After the preparation of required documents and crossing the checks, company can apply for Removal of Name with ROC.

1. An eligible company can apply for Removal of name from register of companies

electronically in Form STK-2 along with the fee of five thousand rupees under sub-section (2) of section 248 of the act.

2. Form STK-2 shall be signed by a director duly authorized by board in their behalf, where a director concerned doesn't have a registered Digital Signature Certificate, a physical copy of the form duly filled in shall be signed manually by the director duly authorized in that behalf and shall be attached to Form STK-2.
3. Form STK-2 shall be certified by a CA/CMA/CS in whole time practice
4. The registrar shall put the name of the applicant and date of making application in Form STK-6, on MCA portal on daily basis , giving thirty days time for raising objection, if any, by the stakeholders
5. The Registrar of Companies shall, simultaneously intimate the concerned regulatory authorities, viz, the Income-tax authorities, central excise and service-tax authorities having jurisdiction over the company, about the proposed action of the removal names of such companies and seek objections, if any, to be furnished within a period of thirty days from the date of issue of the letter of intimation and if no objections are received within thirty days from the respective authority, it shall be presumed that they have no objections to the proposed action.
6. The registrar of companies on passing of time specified, shall cause a notice under sub-section (5) of section 248 of striking off the name of the company to be published in Official Gazette in Form STK-7 and he same shall also be placed on the official website of the MCA

CLARIFICATIONS

Companies cannot apply for removal of name under sub-section (2) of section 248:

1. Listed Companies
2. Companies registered under Section 8 of the act or Section 25 of the Companies Act, 1956
3. Companies having charges which are pending for satisfaction
4. Companies, which have accepted public deposits which are either outstanding or company is in default in repayment of the same
5. Companies that have been delisted due to non-compliance of listing regulations agreement
6. Companies whose application for compounding is pending before the competent authority for compounding the offences committed by the company or any of its officers in default
7. Companies where inspection or investigation is ordered and being carried out or actions on such order are yet to be taken up or were completed but prosecutions arising out of such inspection or investigation are pending in the Court
8. Vanishing Companies
9. if, at any time in the previous three months, the company has changed its name or shifted its registered office from one State to another
10. has engaged in any other activity except the one which is necessary or expedient for the purpose of making an application
11. Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 doesn't restrict anywhere a foreign company to apply under form STK-2, but if we observe Form STK-2 we cannot prefill FCRN of the company. Hence, a foreign company has to go under procedure

of voluntary winding up/ winding up by tribunal though it is not restricted under the rules.

Applications or forms pending before Central Government:

Any application or pending proceeding for striking off or Form-FTE filed with the Registrar of Companies prior to the commencement of these rules but not disposed of by such authority for want of any information or document shall, on its submission, to the satisfaction of the authority, be disposed of in accordance with the rules made under the Companies Act, 1956

Litigations:

Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 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 fast track mode. Further, details of pending litigations are required to be filled up in e-form STK-2 which has a reference in affidavit too. Any pending litigations involving the company should be disclosed while making application.