



The Companies Act 2013

Enlightening Nation

E-newsletter

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About the E-newsletter

Dear Users,

To keep you updated about the latest notifications, circulars & orders issued during the month, thecompaniesact2013.com present herewith its monthly e-newsletter. This is the issue of the January month comprising contemporary articles & monthly amendments.

The notion is to render all the updates in a compiled format and serve a better pavement for easy accessibility.



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Strike off and Restoration Companies under Companies Act 2013

Ministry of Corporate Affairs (MCA) issued a Notification dated 26th December, 2016 notifying Section 248, 249, 250, 251 and 252 of Companies Act, 2013 (Chapter XVIII). This chapter deals with Removal of Names of Companies from Register of Companies. MCA has appointed 26.12.2016 as effective date for Section 248 to 252.

This is alternative to winding up of a Company subject to statutory criterion specified under the section. This has replaced Section 560 (Form FTE) of erstwhile Companies Act, 1956.

Chapter XVIII The Companies (Removal of Name of Companies from the Register of Companies) Rules, 2016 , Under this Chapter and Rule MCA has given Notice to defunct, Non operational companies for Strike off Name of such companies . This Notices has became boon for Non working companies , Non working Companies have got opportunity to Exit from corporate World with Easy process, After the introduction of STK 2 Form companies Received Notices from their respective ROC for strike off and on the basis of Reply of Notices ROCs have been struck off 3 lacs of Companies in India , This was Announced by our beloved **P.M. Sh Narendra Modi** on GST launching ceremony .

But as proverb **”Mite with wheat is also grinding”** . ROCs have Striked off Working companies also with Non Working Companies . Such Companies have sound balance sheet with appropriate assets and properties . Striking off order disturbed to all working Companies and Management of Companies wanted to Restoration of that companies, On the Demand and Requirement of such management, MCA has introduced process and Form NCLT 9 for Restoration of Companies .

In this article we have discussed process for Strike off and Restoration of Companies .

1. Strike off Companies

1.Ways of Striking off of Companies

- By Registrar of Companies on suo-motto
- By Application of Company for removal of name/ Strike off of Company

2. Type of Companies which can not be removed under these provisions:

- i. Listed Companies

- ii. Companies registered under section 8
- iii. Companies having charges which are pending for satisfaction
- iv. Companies whose application for Compounding is pending
- v. Companies against which any prosecution for an offence is pending in any court
- vi. Vanishing Companies
- vii. Companies that have been delisted due to non-compliance of listing regulations or listing agreement or any other statutory laws;
- viii. Companies where inspection or investigation is ordered and being carried out or actions or such order are yet to be taken up or were complete but prosecutions arising out of such inspection or investigation are pending in the court.
- ix. Companies which have accepted public deposits which are either outstanding or the company is in default in repayment of the same;
- x. Companies where notices under section 234 of CA 1956 or 206 or 207 of the Act, 2016 have been issued by the Registrar or Inspector and reply thereto is pending or report under section 208 is pending or where any prosecution arising out of such inquiry or scrutiny, if any, is pending with the court

3. Grounds of Strike off of Companies

- i. A company has failed to commence its business within one year of its incorporation. OR
- ii. A company is not carrying on any business or operation for a period of two immediately preceding financial years and has not made any application within such period for obtaining the status of a dormant company under section 455.

4. Process For the Removal of Name of Company

Step 1- Call Board Meeting

Company will call the Board Meeting as per Secretarial Standard 1 to pass a Board resolution for the purpose of Strike off of Company and to authorize any director of the Company to file application with Registrar of Companies.

Step 2- Extinguishment of the Liabilities:

After passing of Board resolution if there is any liabilities in the Company. Company will set off all the liabilities before next step.

Step 3- Calling of General Meeting:

Company will hold the general meeting of members of the Company and pass a resolution for strike off of Companies with the approval of 75% of members as per paid up share capital of the Company. After passing of Special resolution company will file MGT-14 within 30 days.

Step4- Application to ROC by Company:

Application shall be made in E-form STK-2 (fee Rs. 5,000/-). Following below mentioned documents will be attached in the Form STK-2.

Step 5- Certification- STK-2

E-form STK-2 shall be signed (Affixation of DSC) by a Director. Director should be authorized by the Board for such purpose.

Step 6-In case director don't have DSC:

Physical copy of STK-2 manually signed by the director authorized shall be attached with the form STK-2.

Step 7-Certification from Professional:

The e-form STK-2 shall be certified by Company Secretary in Whole time Practice or Chartered Accountant or Cost Accountant in whole time practice.

Step 7-Place of application on Website:

The Company will place the copy of application on its website till the disposal of the application. .

Step 7-Undertaking from Director – Discharge of Liability:

The Registrar, if feel necessary, obtain necessary undertakings from the managing director, director or other persons in charge of the management of the company that the sufficient provision has been made for the realization of all amount due to the company and for the payment or discharge of its liabilities and obligations by the company.

Step 8 -Declaration from any Director:

The directors will give following below mentioned declarations:

- (i) The application has been in accordance with the conditions mentioned under sub section (1) and (2) of section 248 and sub section (1) of section 249:
- (ii) There is no inspection or investigation ordered and carried out or yet to be carried out or being carried out against the company and where inspection or investigation have been carried out , no prosecution pending in any court arising out of such inspection or investigation;
- (iii) The company is neither having any public deposit which are outstanding nor the company is in default in its repayment or interest thereon ;
- (iv) The company does not have any outstanding loans, secured or unsecured;
- (v) The company does not have any dues towards income tax .VAT, excise duty, service tax or any other duty, by whatever name called, payable to the central government or state government, statutory authority or local authority;
- (vi) All other liabilities of the company have been settled or discharged or extinguished;
- (vii) All the requirements of the act and rules made there under relating to removing the name of the company from the register of companies and matters incidental or supplemental thereto have been complied with;
- (viii) To the best of my knowledge and belief, the information given in this application and attachment is correct and complete; the requisite fee has been paid.

Step 9-Issue of Notice for any objections:

The Registrar shall, on receipt of such application Issue a public notice in form STK-6. Such notice shall be published in following manner.

- (i) Place copy of notice on the official website of MCA on a separate link.
- (ii)Published in the Official gazette
- (iii)Publish in one English and one vernacular language newspaper, both having wide circulation in
- (iv)the state in which registered office of the Company is situated.

Step 10- Intimation to Authorities for any objections:

The Registrar of Companies shall, simultaneously intimate the concerned regulatory authorities regulating the Company, having jurisdiction over the Company,

- (i) Income Tax Authorities
- (ii) Central Excise Authorities
- (iii) Service Tax Authorities

If the authorities have any objections, they have to furnished the same within a period of 30 days from the date of issue of the letter of intimation.

Step 11- Issue notice of Striking off and dissolution of Companies:

If no objections received then ROC shall issue a notice u/s 248(5) of striking off of Company and publish the same in official gazette in form No. STK-7. The copy of notice shall also be placed on the official website of the MCA.

Effect of Strike off:

It shall on and from the date mentioned in the notice under sub-section (5) of section 248 cease to operate as a company and the Certificate of Incorporation issued to it shall be deemed to have been cancelled from such date except for the purpose of realizing the amount due to the company and for the payment or discharge of the liabilities or obligations of the company.

II. Restoring/Revival of Struck off Companies

MCA has notified the National Company Law Tribunal (NCLT) (Amendment) Rules, 2017 and a new NCLT Rule 87A has been inserted for procedure relating to appeal/ application (in Form NCLT 9) u/s 252(1) and 252(3) of the Companies Act, 2017, as under -

Step - 1: Draft an Appeal in Format NCLT- 9 (Legal Paper) NCLT- 9 is a format for drafting an Appeal and already notified on 22.07.2016.

Here is the link (http://www.mca.gov.in/Ministry/pdf/Rules_22072016_1.pdf) draft your own format

Step- 2: Get all Documents arranged in proper manner and get all affidavits properly notarised from a public Notary. Appeal should be with a proper cover. While drafting the Petition do give a declaration through Directors that all pending Annual Filing shall be completed within stipulated time as per the directions of the NCLT.

Step 3 Serve an advance copy of the appeal to the concerned ROC (Speed Post + Physical Submission through a covering letter as well)

Step- 4 Submit the Original Appeal along with proof of service to the concerned ROC with NCLT along with the requisite demand draft (In Favour of Pay and Accounts Officer, Ministry of Corporate Affairs)

Step- 5- Get the matter listed in the concerned court and argue the matter based upon your appeal.

Step 6- After the order file the order of the NCLT through e- Form INC- 28 and thereafter the concerned ROC shall publish the order in Official Gazette

Step- 7 : ROC shall thereafter remove the status from Striked Off to Active and your Company shall be revived.

Step- 8 : Complete your annual filing as per the Directions of the Court



NOTIFICATIONS

A. G.S.R. 621(E) Notification – Companies (Audit and Auditors) Second Amendment Rules, 2017 Dated 22.06.2017

In exercise of the powers conferred by section 139 read with sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Audit and Auditors) Rules, 2014, namely:—

1. Short title and commencement.-

(1) These rules may be called the Companies (Audit and Auditors) Second Amendment Rules, 2017.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Companies (Audit and Auditors) Rules, 2014, in rule 5, in clause (b), for the word “twenty”, the word “fifty” shall be substituted.

B. GSR 732(E) Notification – Companies (Transfer of Pending Proceedings) Second Amendment Rules, 2017 Dated 29.06.2017

In exercise of the powers conferred under sub-sections (1) and (2) of section 434 of the Companies Act, 2013 (18 of 2013) read with sub-section (1) of section 239 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016) (hereinafter referred to as the Code), the Central Government hereby makes the following rules further to amend the Companies (Transfer of Pending Proceedings) Rules, 2016, namely:—

1. Short title and Commencement—

(1) These rules may be called the Companies (Transfer of Pending Proceedings) Second Amendment Rules, 2017.

(2) Save as otherwise provided they shall come into force on the date of their publication in the Official Gazette.

2. In the Companies (Transfer of Pending Proceedings) Rules, 2016 (hereafter referred to as principal rules), for rule 4, the following rule shall be substituted, namely:-

“4. Pending proceeding relating to voluntary winding up.- All proceedings relating to voluntary winding up of a company where notice of the resolution by advertisement has been given under sub-section (1) of section 485 of the Act but the company has not been dissolved before the 1st day of April, 2017 shall continue to be dealt with in accordance with provisions of the Act.”.

3. In the principal rules, for rule 5, the following rule shall be substituted and shall be deemed to have been substituted with effect from the 16th day of June, 2017, namely:-

“5. Transfer of pending proceedings of Winding up on the ground of inability to pay debts.— (1) All petitions relating to winding up of a company under clause (e) of section 433 of the Act on the ground of inability to pay its debts pending before a High Court, and, where the petition has not been served on the respondent under rule 26 of the Companies (Court) Rules, 1959 shall be transferred to the Bench of the Tribunal established under sub-section (4) of section 419 of the Companies Act, 2013 exercising territorial jurisdiction to be dealt with in accordance with Part II of the Code:

Provided that the petitioner shall submit all information, other than information forming part of the records transferred in accordance with rule 7, required for admission of the petition under sections 7, 8 or 9 of the Code, as the case may be, including details of the proposed insolvency professional to the Tribunal upto 15th day of July, 2017, failing which the petition shall stand abated:

Provided further that any party or parties to the petitions shall, after the 15th day of July, 2017, be eligible to file fresh applications under sections 7 or 8 or 9 of the Code, as the case may be, in accordance with the provisions of the Code:

Provided also that where a petition relating to winding up of a company is not transferred to the Tribunal under this rule and remains in the High Court and where there is another petition under clause (e) of section 433 of the Act for winding up against the same company pending as on 15th December, 2016, such other petition shall not be transferred to the Tribunal, even if the petition has not been served on the respondent.”.

C. GSR (E) Notification Companies (Appointment and Qualification of Directors) Amendment Rules, 2017 Dated 05.07.2017

In exercise of the powers conferred by the second proviso to sub-section (1), sub-section (4), clause (f) of sub-section (6) of section 149, subsections (3) and (4) of section 150, section 151, sub-section (5) of section 152, section 153, section 154, section 157, section 160, sub-section (1) of section 158 and section 170 read with section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Appointment and Qualification of Directors) Rules, 2014, namely: -

1.(1) These rules may be called the Companies (Appointment and Qualification of Directors) Amendment Rules, 2017.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Companies (Appointment and Qualification of Directors) Rules, 2014 (hereinafter referred to as the principal rules), rule 4 shall be numbered as sub rule (1) and after sub-rule (1) as so renumbered, the following sub-rule shall be inserted namely :-

"(2) The following classes of unlisted public company shall not be covered under sub-rule (1), namely:-

- (a) a joint venture;
- (b) a wholly owned subsidiary; and
- (c) a dormant company as defined under section 455 of the Act."

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- [Companies \(Audit and Auditors\) Second Amendment Rules, 2017](#)
- [Companies \(Transfer of Pending Proceedings\) Second Amendment Rules, 2017](#)
- [Companies \(Appointment and Qualification of Directors\) Amendment Rules, 2017](#)

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