

[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (i)]

**Government of India
Ministry of Corporate Affairs
Notification**

New Delhi, the 26th December, 2016

G.S.R.(E).- In exercise of the powers conferred by sub-sections (1), (2) and (4) of section 248 read with section 469 of the Companies Act, 2013 (18 of 2013) and in supersession of the Companies (Central Government) General Rules and Forms, 1956 except as respects things done or omitted to be done before such supersession, the Central Government hereby makes the following rules, namely:-

1. Short title and commencement.- (1) These rules may be called the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016.

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

2. Definitions.- (1) In these rules, unless the context otherwise requires, -

- (a) "Act" means the Companies Act, 2013 (18 of 2013);
- (b) "Form" or "e-Form" means a non-electronic form or an electronic form annexed to these rules.

(2) Words and expressions used in these rules but not defined and defined in the Act or in the Companies (Specification of Definitions Details) Rules, 2014, shall have the same meanings respectively assigned to them in the Act or in the said rules.

3. Removal of name of company from the Register on suo-motu basis.- (1) The Registrar of Companies may remove the name of a company from the register of companies in terms of sub-section (1) of section 248 of the Act:

Provided that following categories of companies shall not be removed from the register of companies under this rule and rule 4, namely:-

- (i) listed companies;
- (ii) companies that have been delisted due to non-compliance of listing regulations or listing agreement or any other statutory laws;
- (iii) vanishing companies;
- (iv) 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;

- (v) companies where notices under section 234 of the Companies Act, 1956 (1 of 1956) or section 206 or section 207 of the Act have been issued by the Registrar or Inspector and reply thereto is pending or report under section 208 has not yet been submitted or follow up of instructions on report under section 208 is pending or where any prosecution arising out of such inquiry or scrutiny, if any, is pending with the Court;
- (vi) companies against which any prosecution for an offence is pending in any court;
- (vii) 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;
- (viii) companies, which have accepted public deposits which are either outstanding or the company is in default in repayment of the same;
- (ix) companies having charges which are pending for satisfaction; and
- (x) companies registered under section 25 of the Companies Act, 1956 or section 8 of the Act.

Explanation.- For the purposes of clause (iii), the expression "vanishing company" means a company, registered under the Act or previous company law or any other law for the time being in force and 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.

(2) For the purpose of sub-rule (1), the Registrar shall give a notice in writing in Form STK 1 which shall be sent to all the directors of the company at the addresses available on record, by registered post with acknowledgement due or by speed post.

(3) The notice shall contain the reasons on which the name of the company is to be removed from the register of companies and shall seek representations, if any, against the proposed action from the company and its Directors along with the copies of relevant documents, if any, within a period of thirty days from the date of the notice.

4. Application for removal of name of company. - (1) An application for removal of name of the company under sub-section (2) of section 248 shall be made in Form STK-2 along with the fee of five thousand rupees.

(2) Every application under sub-rule (1) shall accompany a no objection certificate from appropriate Regulatory Authority concerned in respect of following companies, namely :-

- (i) companies which have conducted or conducting non-banking financial and investment activities as referred to in the Reserve Bank of India Act, 1934 (2 of 1934) or rules and regulations thereunder;

- (ii) housing finance companies as referred to in the Housing Finance Companies (National Housing Bank) Directions, 2010 issued under the National Housing Bank Act, 1987 (53 of 1987);
- (iii) insurance companies as referred to in the Insurance Act, 1938 (4 of 1938) or rules and regulations thereunder;
- (iv) companies in the business of capital market intermediaries as referred to in the Securities and Exchange Board of India Act, 1992 (15 of 1992) or rules and regulations thereunder;
- (v) companies engaged in collective investment schemes as referred to in the Securities and Exchange Board of India Act, 1992 (15 of 1992) or rules and regulations thereunder;
- (vi) asset management companies as referred to in the Securities and Exchange Board of India Act, 1992 (15 of 1992) or rules and regulations thereunder;
- (vii) any other company which is regulated under any other law for the time being in force.

(3) The application in Form STK 2 shall be accompanied by -

- (i) indemnity bond duly notarised by every director in Form STK 3;
- (ii) a statement of accounts containing assets and liabilities of the company made up to a day, not more than thirty days before the date of application and certified by a Chartered Accountant;
- (iii) An affidavit in Form STK 4 by every director of the company;
- (iv) a copy of the special resolution duly certified by each of the directors of the company or consent of seventy five per cent of the members of the company in terms of paid up share capital as on the date of application;
- (v) a statement regarding pending litigations, if any, involving the company.

5. Manner of filing of application.- (1) The application in Form STK 2 shall be signed by a director duly authorised by the Board in their behalf.

(2) Where the director concerned does not have a registered digital signature certificate, a physical copy of the form duly filled in shall be signed manually by the director duly authorised in that behalf and shall be attached with the Form STK 2 while uploading the form.

6. Form to be certified.- The Form STK 2 shall be certified by a Chartered Accountant in whole time practice or Company Secretary in whole time Practice or Cost Accountant in whole time practice, as the case may be.

7. Manner of publication of notice - (1) The notice under sub-section (1) or sub-section (2) of section 248 shall be in Form STK 5 or STK 6, as the case may be, and be-

- (i) placed on the official website of the Ministry of Corporate Affairs on a separate link established on such website in this regard;

(ii) published in the Official Gazette;

(iii) published in English language in a leading English newspaper and at least once in vernacular language in a leading vernacular language newspaper, both having wide circulation in the State in which the registered office of the company is situated.

Provided that in case of any application made under sub-section (2) of section 248 of the Act, the company shall also place the application on its website, if any, till the disposal of the application.

(2) The Registrar of Companies shall, simultaneously intimate the concerned regulatory authorities regulating the company, viz, the Income-tax authorities, central excise authorities and service-tax authorities having jurisdiction over the company, about the proposed action of removal or striking off the 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 of striking off or removal of name.

8. Manner of notarisation, apostilisation or consularisation of indemnity bond and declaration in case of foreign nationals or non-resident Indians:- For the purposes of these rules, if the person is a foreign national or non-resident Indian, the indemnity bond, and declaration shall be notarised or apostilised or consularised.

9. Notice of striking off and dissolution of company. - The Registrar shall cause a notice under sub-section (5) of section 248 of striking off the name of the company from the register of companies and its dissolution to be published in the Official Gazette in Form STK 7 and the same shall also be placed on the official website of the Ministry of Corporate Affairs.

10. 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 (1 of 1956).

Form No. STK 1

Notice by Registrar for removal of name of a company from the register of companies

*[Pursuant to sub-section (1) of section 248 of the Companies Act, 2013 and rule 3 of the Companies
(Removal of Names of Companies from the Register of Companies) Rules, 2016]*

GOVERNMENT OF INDIA

MINISTRY OF CORPORATE AFFAIRS

Office of the Registrar Of Companies, (State)

(Address of ROC)

Letter No.-----

Dated:-----

Reference:

In the matter of M/s ----- In the matter of Companies Act, 2013

To,

.....

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(1) Pursuant to sub-sections (1) and (2) of Section 248 of the Companies Act, 2013, notice is hereby given that as per available record :-

- the company has failed to commence its business within one year of its incorporation; or
- the 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.
- the company has filed an application under sub-section (2) of section 248 for removing the name from the register of companies on the grounds mentioned in sub-section (1) of section 248.

(tick whichever is applicable)

- (2) Therefore, on the basis of aforesaid ground(s), I intend to remove the name of company from the register of companies and request you to send your representation along with copies of the relevant documents, if any, within thirty days from the date of receipt of this notice.
- (3) Unless a cause to the contrary is shown within the time period above mentioned, the name of the above mentioned company shall be liable to be removed from the register of companies. However, the directors of the company shall be liable for appropriate action under the Act.

Registrar of Companies

To

The Company/ All Directors

Mailing address as per record available in Registrar of Companies Office

Copy to all directors : [in case the notice issued to the company only]

FORM NO. STK-2

[Pursuant to Section 248(2) of Companies Act, 2013 and Rule 4(1) of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016]



सत्यमेव जयते

Application by company to ROC for removing its name from register of companies

Form language English Hindi

Refer the instruction kit for filing the form

1. (a) *Corporate identity number (CIN) of the company

Pre-fill

(b) Global location number (GLN) of the company

2. (a) Name of the company

(b) Address of registered office of the company

(c) email id of the company

(d) Date of incorporation of the company

3. (a) *Whether the company is listed or not Yes No

(b) *Whether the company has been delisted Yes No

(If yes, attach a copy of relevant order for delisting from the concerned stock exchange)

*4. Whether the company's activities is/are regulated by a Sectoral Regulator like RBI, SEBI, IRDAI etc. under a special Act Yes No

(a) If Yes, specify Name of the regulator

(b) Registration Number

(c) Date of approval of regulatory body

5. *Whether special resolution is passed for removal of name Yes No

(a) *Specify the date of passing the resolution

(b) *If No, whether consent of seventy-five percent members in terms of paid-up share capital has been obtained and attached Yes No

6. (a) *Brief description of main objects of the company as per Memorandum of Association (MOA)

(b) *Brief description of main business last carried out by the company

7. Details of director(s), Managing Director, manager, secretary, CEO or CFO of the company

*Number of director(s), Managing Director, manager, secretary, CEO or CFO

(In case of director or Managing Director, enter Director identification number (DIN). Otherwise provide Income-tax permanent account number (Income-tax PAN) or passport number)

DIN or Income-tax PAN Passport number

Pre-fill

*Designation

*Name

*Present residential address

Line I

Line II

City

State

ISO country code

Country

Pin code

8. (a) * Whether there are litigation(s) pending against or involving the company or any of its directors

Yes No

(b) *Details in respect of pending litigation

(In case of more than one litigation, attach a separate sheet giving particulars for all such litigations)

(i) Act under which litigation is pending

(ii) Name of the authority before which it is pending

(iii) Case number