



PRACTICAL ASPECTS OF STRIKE OFF

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Why Strike Off?

- ▶ Company that is 'Defunct' i.e., a Company that has no substance, is inoperative, no adequate realisable assets to meet costs of liquidation etc.
- ▶ Non filing of returns gives RoC reasonable cause to believe that the Company is defunct.
- ▶ Strike-off can be initiated by:
 - ▶ The Registrar of Companies,
 - ▶ The Company on a voluntary basis.
- ▶ Earlier under S.560 of CA56 (FTE, 2011).
- ▶ Chapter XVIII – Removal of names of Companies from the Register of Companies (Ss. 248 – 252)
- ▶ Companies (Removal of names of Companies from the Register of Companies) Rules, 2016 – R.1 to 10.

Companies that cannot undergo Strike-off

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- ▶ Listed companies,
- ▶ Companies delisted due to non-compliance,
- ▶ Vanishing companies,
- ▶ Companies under inspection and investigation,
- ▶ Notice issued by RoC / Inspector and pending for reply under S.206 or S.207,
- ▶ Companies against which any prosecution for an offence is pending,
- ▶ Companies whose compounding application is pending for offences committed by company or its officers in default,
- ▶ Companies with public deposits that are outstanding or in default of repayment,
- ▶ Companies having charges pending for satisfaction,
- ▶ Section 8 Companies / Section 25 Companies (CA56).

Voluntary Strike-Off

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- Company – on a voluntary basis.
- **Restrictions:** Cooling off period of 3 months between below activities and application for strike-off,
 - Name change,
 - Shifting of registered office from one State to another,
 - Property / Rights disposed off for gains,
 - 'Any other activity' other than what is necessary to make an application for strike-off or comply with statutory requirement,
 - Compromise & Arrangement application pending,
 - Winding up or under IBC proceedings.
- **Pre-conditions:**
 - Extinguish all liabilities,
 - File all overdue AOC-4 / AOC-4 XBRL and MGT-7.

What is required for Strike-Off Application?

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- ▶ **NOC** from sectoral regulator: RBI, SEBI, IRDAI etc.
- ▶ **Board Resolution**, authorising any director to make application in Form STK-2.
- ▶ **Special Resolution / Consent** of 75% members in terms of PUSC, approving application for Strike-off.
- ▶ Application in **Form STK-2** – duly signed by authorized director with DSC; certified by Practising CA / CS / CMA.
- ▶ Indemnity bond duly notarised by every director in **Form STK-3**. (For Govt. Co. Form STK-3A)
- ▶ Affidavit in **Form STK-4** by every director of the Company.
- ▶ Statement of accounts in **Form No. STK-8** 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.
- ▶ Statement regarding **pending litigations**, if any.
- ▶ Filing fee: INR 10,000/-

Steps involved for Voluntary Strike-off (before submitting application to RoC)

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Preconditions to be met	Board Meeting	Shareholders Meeting	Attachments to be prepared	Application in STK-2
<ul style="list-style-type: none">• Check if the Company can actually go for strike-off.• Check if there are any restrictions.• Liability to be extinguished.• B/S Clear-up.• Close the Company's Bank Account.• Overdue forms to be filed.	<ul style="list-style-type: none">• Approving for Strike-Off• Authorizing directors to file strike-off application.• Calling for Shareholders Meeting.	<ul style="list-style-type: none">• Special Resolution of the Members.• File the Special Resolution in Form MGT-14.• CTC of the Special Resolution to be signed by all the directors.	<ul style="list-style-type: none">• CTC – BR• CTC – SHR• Indemnity Bond from all the directors• Statement of Accounts (Audited and Certified)• Affidavit from all the directors (stamp paper)• NOC from regulator• Notary / Apostille – Foreign National / NRI	<ul style="list-style-type: none">• DSC Role Check, DIN Active etc.• E-Form with all attachments• Certified by Professional

Strike-off by RoC: Triggers

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Within 1 year of incorporation, company fails to commence business.

Not carrying on any business or operation for a period of two immediately preceding financial years **and** has not made any application for obtaining the status of a dormant company.

Subscribers to MoA not paid subscription money **and** Declaration of Commencement of Business is not filed in INC-20A.

Physical verification under S.12(9) and Companies not carrying on business operations.

ROC sends reasoned notice in **Form STK-1** to all directors of the Company at the address available on record, by RPAD or Speed Post;

time to provide representations – within 30 days from date of notice.

Process after Application for Strike-off

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RoC call for Additional Information

- Resubmission 15 days + 15 days.

Notice for public information in Gazette

- Form STK-5: RoC initiation.
- Form STK-6: Suo-motu initiation.
- Form STK-5A: Gazette, MCA website, English and vernacular newspaper, website of the Company

RoC intimation to other authorities

- IT Authorities, Excise / Service Tax authorities.
- 30 days time limit to make objection.

RoC to satisfy himself: provision for realization of amount due to the company.

- Discharge of liabilities within reasonable time.
- Undertaking from directors.

Strike off of name of Company and dissolution to be published in Gazette in Form STK-7

Other Provisions

- ▶ Continuing liability of director / manager / other officer.
- ▶ Power of the Tribunal to wind up a company.
- ▶ Application with intention to defraud.
- ▶ Effect of strike-off:
 - ▶ Cease to operate as a Company.
 - ▶ COI deemed to be cancelled.
 - ▶ Realization of amounts due to company and for payment /discharge of liabilities/ obligations immediately before the dissolution not effected.
 - ▶ Continuation of business, operation of bank accounts etc. not possible once company is dissolved, unless its restored.

RESTORATION OF NAME OF COMPANY – S.252

- ▶ Authority: NCLT
- ▶ Time limit:
 - ▶ Appeal by *any* person: within 3 years.
 - ▶ Application by RoC: within 3 years.
 - ▶ Application by Company / Member / Creditor / Workmen: within 20 years.
- ▶ Rule 87A, NCLT (Amendment) Rules, 2017.
- ▶ Form No. NCLT-9

Case Laws – Strike Off

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CIRP against a struck off Company?

- **Hemang Phophalia v. The Greater Bombay Co-operative Bank (Penguin Umbrella Works Pvt Ltd.)** [CA(AT)765 of 2019]
- Adjudicating Authority who is also the Tribunal is empowered to restore the name of the Company and all other persons in their respective position for the purpose of initiation of CIRP under Ss. 7 and 9 of the IBC based on the application, if filed by the 'Creditor' ('Financial Creditor' or 'Operational Creditor') or workman within twenty years from the date the name of the Company is struck off under sub-section (5) of Section 248.

Voluntary Strike Off – revival allowed?

- **Mausam Hotels Private Limited v. ROC, Mumbai**
- Company voluntarily applied for strike off and received STK-7. Subsequently, the Company received a letter of allotment of land for development from MIDC. Company applied for revival and the same was allowed.

Procedural Compliance in Strike Off – strict?

- **Poly Auto System Pvt. Ltd. v. RoC Delhi**
- RoC has to comply with the comprehensive procedural obligations before passing the final order of striking off the name of the company from the register of members. The casual approach of the RoC which would lead to abrupt conclusion will not be a legal act.

Subsisting Right / Title / Ownership / Interest – What happens?

- **Re UN Mandal's Estate Case** and **Peirce Leslie and Co. Ltd. v. Violet Ouchterlony Wapshare.**
- The shareholders or creditors of a dissolved company cannot be regarded as its heirs and successors. On dissolution of a company, its properties, if any, will vest in the Government.



Thank You

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