

Lesson 18

Striking Off Names Of Companies

LESSON OUTLINE

- Introduction
- Meaning of defunct company
- Important provisions of law on strike off
- Power of ROC to strike off defunct companies
- Position of company's creditors
- Court's power to wind a company even after dissolved u/s 560
- Restoration of company within 20 years
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LEARNING OBJECTIVES

The provisions relating to striking off names from the Register under New Companies Act, 2013 has not yet enforced and the provisions of Act 1956 has been dealt in this chapter. Section 560 of the Companies Act, 1956 prescribes the law and procedure for striking off the names of defunct companies which are not carrying on any business, from the register of companies maintained by the Registrar. This is an alternative to winding up of a company subject to statutory criterion specified under the section.

Provisions relating to Dormant Company have already been notified under Companies Act 2013 and the procedural aspects have been dealt in this chapter.

After reading this chapter you will be able to understand the procedural aspects relating to striking off names of companies.

INTRODUCTION

On incorporation of a company under the Companies Act, the Registrar of Companies (ROC) issues a Certificate of Incorporation to the Company certifying that the company named in the Certificate has come into existence from the date of issue of the Certificate and its name has been entered in the Register of Companies maintained by the ROC. Every company so registered is assigned a unique identification number in one consecutive series called Corporate Identification Number (CIN). A private company can take steps to start business enumerated in the object clause of the memorandum and a public company is required to obtain certificate of commencement of business before it commences business or exercises borrowing powers.

Once registered, the name of the company cannot be removed from the Register unless it is dissolved by the process of law, either as a result of its winding up or upon its amalgamation with another company. However, in case the company is a defunct company, the Companies Act provides a short-cut to the winding up process, namely striking the name of the Company off the Register of Companies by the ROC under Section 560 of Companies Act, 1956. Thus it is an alternative mode of dissolution to the winding-up of a company provided the company does not have adequate realizable assets or has such assets as would not be sufficient to meet the costs of liquidation.

MEANING OF DEFUNCT COMPANY

The expression “defunct company” for the purposes of Section 560, means a company which is not operating or functioning; not carrying on any business or in operation. Generally it is evident from the latest available balance sheet of a company. Again, if a company is not filing its balance sheet for many years then also the concerned Registrar of Companies (ROC) has reasonable cause to believe that the company is not in operation.

A company which is in the course of being wound-up voluntarily is still in operation within the meaning of the section [*Langlagate Proprietary Co. (1912) 28 TLR 529*]. A company, although not carrying on business, may be in operation. [*Central India Mining Co. v. Society Coloniale (1920) 1 KB 753*] A company if it is operating as a company for doing something in relation to its past obligations or to avoid future pecuniary liability will be deemed to be in operation. Such companies cannot be dissolved by following the procedure mentioned in Sec. 560 of the Act

IMPORTANT PROVISIONS OF LAW ON STRIKING OFF

- (i) Power of ROC to strike off
- (ii) Position of company’s creditors
- (iii) Court’s power to wind up a company even after it is dissolved u/s. 560
- (iv) Restoration of company within 20 years

POWER OF REGISTRAR TO STRIKE OFF NAMES OF DEFUNCT COMPANIES

Under section 560, the Registrar of Companies has been empowered to strike off names of those companies who are not carrying on any business or are not in operation after following the prescribed procedure given in the section. Once satisfied, the ROC shall strike the name of the company off the Register, and shall publish notice thereof in the Official Gazette and the company stands dissolved.

The Registrar is not bound to remove a company from the register, even though an application has been made for the purpose, and it has come to his notice that the company is not functioning or that its members have been reduced to less than seven. Where the object of the application to the Registrar under this section is to avoid liability on a suit pending against the company, the application must be rejected.

Under two circumstances ROC has been empowered to strike off the names of companies under liquidation. Firstly, where a company is being wound up and the ROC has reasonable cause to believe that no liquidator is acting. Secondly, if he finds that the affairs of the company have been completely wound up, and the required returns are not forthcoming from the liquidator appointed for a period of six consecutive months. In these two circumstances as mentioned above, the ROC pursuant to Section 560(4) has to send a notice by registered post about striking off its name from the Register to the company, if no liquidator is acting and to the liquidator, if the required returns are not forthcoming from him.

POSITION OF COMPANY'S CREDITORS AFTER STRIKING OFF

The striking off the name of a company does not materially affect the creditors of the company, because such creditors may-

- (i) enforce their claims against every director, secretaries and treasurers, manager or any other officer of the company and against every member of the company as if the name of the company had not been struck off; the liability being limited to the one existing prior to the dissolution of the company. The liability is not enhanced such as making them personally liable when they were not so liable before. *Shrikishen Dhoot v. Kamalapurkar*, (1965) 1 Comp LJ 233; or
- (ii) apply to the court for the winding-up of the company whose name has been struck off; or
- (iii) apply to the court, at any time within 20 years from the date of publication of the notice intimating that the name of the company has been struck off, for the restoration of the name of the company to the Register of Companies and on such application being made, court may order the name of the company to be restored to the register.

COURT'S POWER TO WIND UP THE COMPANY NEVEN AFTER DISSOLUTION UNDER SECTION 560(5) OF COMPANIES ACT 1956

By virtue of the powers given by the proviso (b) to the Section 560(5), the Court can order winding up of a company, even without the company being first restored. Normal course for winding up of a dissolved company would have been that the company's name be first restored and then the winding up order by the court is made.

RESTORATION OF COMPANY WITHIN 20 YEARS

A company dissolved under section 560 can be restored on the Register of Companies by a Court order and while restoring, the Court may, by the order, give such directions and make such provisions as seen just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

An application for restoration can only be made by the company, member or creditor. It must be shown that at the date when the company was dissolved, the petitioner was a member or creditor thereof, and anyone, whether in ignorance of the dissolution or not, who purported to become a member or creditor afterwards, was not so qualified. One, who acquires shares or a debt of a company whose name has been struck off the register, and who at the time of acquisition has knowledge of that fact, is not a 'person aggrieved' within this sub-section.

A third party unless he is a creditor has no *locus standi* to apply. The expressions "member" or "creditor" used in sub-section (6) of Section 560 includes the personal representatives of a deceased member or creditor.

When a suit is actually pending against a company and is being contested by it at the time of removal of its name from the register, it is proper to direct the restoration of the name of the company, particularly when the directors were aware of the fact of the contested litigation and were actually taking part in it.

PROCEDURE INVOLVED IN STRIKING OFF NAMES OF COMPANIES BY REGISTRAR UNDER SECTION 560

Section 560 prescribes the procedure for striking off the name of defunct companies which are not carrying on any business, from the register of companies maintained by the Registrar. The Registrar's satisfaction that the company is not carrying on business is to be based on the records available with him, particularly in respect of the companies which have not filed the prescribed returns/documents, e.g., annual return and balance-sheets for the past years. The name of a company can also be struck off by the ROC at the instance of the company under this section.

(i) Striking off by Registrar on his own motion

To strike a company off the Register of Companies under section 560, by the Registrar of his own motion, the following procedure is followed:

(1) Letter of enquiry: Where the Registrar has reasonable cause to believe that a company is not carrying on business or in operation; he shall send to the company by post a letter inquiring whether the company is carrying on business or in operation. The company should be given one month time to reply.

(2) Notice threatening striking-off: If the Registrar does not within one month of sending the letter mentioned above receive any answer thereto, send to the company second letter referring to the first letter, and stating that –

- No answer to the first letter has been received; and
- If an answer is not received to the second letter within one month from the date thereof, a notice will be published in the Official Gazette with a view to striking the name of the company off the register.

This second letter should be sent within fourteen days after the expiry of one month after sending the first letter and it should be sent by registered post.

(3) Final notice of removal: If, in response to the second letter, the Registrar –

- Either receives an answer from the company to the effect that it is not carrying on business or in operation, or
- does not within one month after sending the second letter receive any answer, he may proceed to strike the company off the Register of Companies. This will be done by taking two steps:
 - (a) sending for publishing in the Official Gazette, a notice to the effect that, at the expiration of three months from the date of that notice, the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved; and
 - (b) Sending to the company as well as to the income-tax authorities the above-mentioned notice by registered post. Similar procedure of publication of the notice in official Gazette shall be adopted by the Registrar in case of a company in liquidation, where the Registrar is satisfied that either no liquidator is acting or that the affairs of the company have been completely wound up and the returns required to be filed by the liquidator have not been filed for a period of six months. A copy of such notice shall also be forwarded to the company or the liquidator, as applicable, by registered post.

(4) Notification and removal of the company: At the expiry of three months from the date of the notice mentioned above, the Registrar may, unless cause to the contrary is previously shown by the company, strike its name off the register, and shall publish notice thereof in the Official Gazette. On the publication in the Official Gazette of this notice, the company shall stand dissolved. A model notification published in the Official Gazette is set out below.

(ii) Striking-off on company's application

The Registrar can exercise the power conferred on him by section 560, when an application is received by him from the company for striking it off the register on the ground that it is a defunct company, i.e. it is not carrying on business or in operation. The following procedure should be followed:

(1) Board resolution: Although section 560 does not so stipulate, it would be advisable to pass a resolution by the Board of Directors of the company to the effect that an application be made to the Registrar of Companies to have the company struck off the Register of Companies under section 560. Model Board resolution is placed on *Annexure I* at the end of the study.

(2) Application to Registrar: A application shall be made to the Registrar in e- form no. 61 in electronic mode for striking the company off the Register and declaring it as a defunct company, pursuant to the Board resolution. The application in e-form 61 should be accompanied by:

- (a) Copy of Board Resolution;
- (b) Detailed application (A specimen of application form is placed as *Annexure II* at the end of this study);
- (c) Nil balance sheets;
- (d) an affidavit by at least two directors (including managing or whole-time director) to the effect that the company has no assets or liabilities and that it has not been carrying on any business or operation, should be filed with the Registrar of Companies duly supported by the latest balance sheet. (A specimen of affidavit is placed as *Annexure III* at the end of this study.);
- (e) An indemnity bond by two directors (at least one of them should be managing or whole-time director) to the effect that liabilities of the company, if any, will be met by them, even after the name of the company is struck off from the register under section 560 of the Companies. (A specimen of indemnity bond is placed as *Annexure IV* at the end of this study.);
- (f) Any other information can be provided as an optional attachment.

(3) Any further information called for in respect of this application should be filed electronically with the ROC in **Form No. 67** as an addendum.

(4) Notification and striking-off: On receipt of the application, the Registrar, if satisfied about the correctness of the application as regards the basic condition stipulated in section 560 and the DCA's (now Ministry of Corporate Affairs) guidelines for striking companies off, may proceed to strike the name of company off the Register, and shall publish notice thereof in the Official Gazette. (Specimen of notification is placed in *Annexure V* at the end of this study.)

THE RIGHTS OF PERSON AGGRIEVED BY THE COMPANY HAVING BEEN STRUCK OFF THE REGISTER [SECTION 560(6)]

The company having been struck off the register or any member or creditor of such company may make an application to the High Court if the company or the member or creditor feels aggrieved by the company having been struck off, for the restoration of the company to the register. Such an application must be made before the expiry of 20 years from the publication in the Official Gazette of the notice of the striking-off.

The High Court may order the name of the company to be restored to the register, if it is satisfied that-

- The company was, at the time of the striking off, carrying on business or in operation; or
- It is just that the company be restored to the register.

The procedure for making application to the High Court under section 560 (6) is as under:-

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1. Make an application by way of a petition to the concerned High Court before the expiry of twenty years from the date of the publication in the Official Gazette of the notice of striking the name of your company from the register. [Section 560(6)].
2. There is no prescribed form given in the *Companies (Court) Rules, 1959*, but rule 17 provides that the forms set out in *Appendix 1* to the said Rules shall be used with such variations as circumstances may require.
3. Annex the following documents along with the petition:
 - (a) An affidavit in Form No. 3 of the *Companies (Court) Rules, 1959*, verifying the petition. [Rule 21];
 - (b) A certified true copy of the Gazette notification striking out the company's name from the concerned ROC. [Annexure 11, Sr. No. 10 to the *Companies (Court) Rules, 1959*]
4. Serve the above petition on the concerned ROC and on such other persons as the High Court may direct not less than fourteen days before the date fixed for the hearing of the petition. [Rule 92 of the *Companies (Court) Rules, 1959*].
5. Within fourteen days of the receipt of the order of the High Court, deliver a certified copy of the order to the concerned ROC for registration. The company shall be deemed to have continued in existence as if its name had not been struck off from the Register of Companies. [Section 560(7) and Rule 93 of the *Companies (Court) Rules 1959*].

One of the reasons for exercising the High Court's direction in favor of restoring a company must be that after restoration the company will be in a position to carry on the business of the company. High Court would not exercise discretion when there is no evidence of substantial benefit to member or creditors.

In such a case the court may, by the order, give such directions and make such provision as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

The company must file electronically with the Registrar a certified true copy of the order passed by the Court, along with **e-form-21**. Upon a certified copy of the order under sub-section (6) being delivered to the Registrar for registration, the company shall be deemed to have continued in existence as if its name had not been struck off.

EFFECT OF RESTORATION

The effect of an order of restoration of the name of a company under this section is to place the company whose name was struck off by the Registrar in the same position as if the name of the company had never been struck off during the interregnum. If a court of competent jurisdiction directs restoration of the name of the company, it shall be deemed to have continued throughout.

The effect of the provision in sub-section (6) that the company should be "deemed to have continued in existence as if its name had not been struck off" was not only that the corporate existence of the company was preserved, but was also retrospective, so that at the date of the hearing of the application the company was to be regarded as never having been dissolved.

Another consequence was that the rights of all parties would be as though there had been no cessation or interruption in the existence of the company on account of the striking off and subsequent restoration.

Company Law Board has no power to restore the company in terms of Section 560(6), as the powers under that section were vested in the High Court.

RELEVANT CASE LAWS ON STRIKING OFF/RESTORATION OF NAME

1. Where at the time of striking off, the company was flourishing but accounts and returns could not be filed with ROC due to the negligence of Secretary, restoration was ordered subject to the payment of costs, and the completion of other formalities, including payment of late fee or other charges. [*Vats Association P. Ltd. v. ROC*, (2010) 102 SCL 397 (Del)]
2. Due to clerical negligence there was non-filing of returns/accounts. Restoration was ordered subject to fulfillment of applicable formalities. [*Himalaya Packaging & Printing P. Ltd. v. ROC*, (2010) 101 SCL 6 (Del)]
3. A company was incorporated for manufacturing certain products. Such manufacture required government sanction which the company failed to obtain. The managing director (petitioner) by a letter informed the Registrar that the company could not commence business and requested that the name be struck off the register and to treat the company as defunct. Thereafter, the petitioner received complaints along with the summons from the Special Court of Chief Judicial Magistrate (Economic Offences) directing him to appear in court. The Registrar did not submit any explanation why he had not struck off the company as requested. He was directed to pass an appropriate order on the company's request invoking power under section 560 (1). [*S. M. Thaj v. ROC*, (2010) 97 SCL 192 (Ker)]
4. The name of the company was struck off on an application under section 560. Thereafter, the management of the company changed. The new management brought forth a proposal for the revival of the company. Their application of the restoration of the company was accepted. There was no objection from the Registrar. [*Radima Exports P. Ltd. v. ROC*, (2009) 148 Com Cases 473.
5. The name of a company was struck off on an application under "Simplified Exit Scheme." The shareholders subsequently sought to revive the company because of the favorable market conditions. The court directed restoration of the company's name. [*VI Brij Fiscal Services P. Ltd. vs. Registrar of Companies* (2010) 155 Com Cases 157 (MP)]
6. The company's name was struck off after issue of notice under section 560 (1) & (2) for failure to file balance sheets and annual returns. It was found that the notice under section 560 (2) was issued beyond the prescribed period of limitation and notice under section 560 (3) was not served at all. The company filed the necessary documents before the issue of second notice. The court declared that the company had remained in operation since its inception. [*Aakankcha Security Service & Co. P. Ltd. v. Union of India*, (2009) 148 Com Cases 430 (Pat)]
7. If any employee, whether part-time or full-time, defaults in his duties, the primary responsibility for ensuring statutory compliances, as per Sections 159 and 200 of the Companies Act, 1956, remains that of the management.

The plea that responsibility of default vests on the relevant officer/professional is not acceptable to the court. But the plea that the company continued in business is certainly a mitigating factor and this cannot be ignored by the court. Therefore on fully satisfying itself that the company did exist and continued in business, it would be proper for the court to allow restoration as the objective of Companies Act is to allow company form of business to operate in the society in public interest but in a regulated manner. The courts in most cases have allowed restoration after satisfying that the company did not cease to operate but there was a compliance failure (whosoever may be responsible) and the compliance failure needs to be punished. Accordingly, the court while allowing restoration has imposed exemplary punishment in the form of penalties, costs, late fee etc. on company and setting it as the condition for curing the compliance defaults. [*M/S Auto Kashyap India Private Ltd. vs. ROC* [2010] 100 SCL 418 (Del)], [*Vats Associates Pvt. Ltd. vs. ROC* [2010] 102 SCL 397 (Del)]

12. GUIDELINES FOR FAST TRACK EXIT MODE FOR DEFUNCT COMPANIES UNDER SECTION 560 OF THE COMPANIES ACT, 1956

There are a number of companies, which are registered under the Companies Act, 1956, but due to various reasons they are inoperative since incorporation or commenced business but became inoperative or defunct later on. Such companies may be desirous of getting their names strike off from the Register of Companies maintained by Registrar of Companies

As per section 560 of the Companies Act, 1956, Registrar of Companies may strike off the name of companies on satisfying the conditions therein. As per present practice, a company desirous of getting its name struck off has to apply to Registrar of companies in **e-form-61**. All pending statutory returns are required to be filed along with **e-form-61**.

In order to give an opportunity for fast track exit by a defunct company, for getting its name struck off from the register of companies, the Ministry has decided to modify the existing route through e-form – 61 and has prescribed the new Guidelines vide its circular General Circular No. 36/2011 dated June 07, 2011. These guidelines are called as the “Guidelines for Fast Track Exit mode for defunct companies under section 560 of the Companies Act, 1956” and are enclosed as *Annexure VII* at the end of this study. These Guidelines have been implemented w.e.f. 3rd July, 2011.

DORMANT COMPANY UNDER SECTION 455 OF COMPANIES ACT 2013

According to section 455 of Companies Act, 2013 Dormant Company is an inactive company which has not been carrying any business or has not made any significant accounting transaction in the last two financial years.

Such company may make an application to the Registrar for obtaining the status of a dormant company. Concurrently, the Registrar may also suo motu direct such a company for the status of a dormant company. The Registrar on consideration of the application allow the status of a dormant company to the applicant and issue a certificate in **Form MSC-1&2** to that effect. The Registrar shall maintain a register of Dormant Companies under the portal maintained by the Ministry of Corporate Affairs.

A company, once identified as dormant, will need to maintain only a minimum number of Directors and pay some annual fees as prescribed in the Companies (Registration Offices and Fees) Rules, 2014.

Such companies could be restarted at a later stage, without actually going through the administrative process of closing down the existing company by making an application. The dormant companies can become active by, making an application.

The Ministry had introduced Easy Exit Schemes, 2010 and 2011 for companies that were inactive on or after 1st April, 2008. In July, Guidelines were issued for ‘Fast Track Exit Mode’ for simplified exit of defunct companies that have been inactive since their incorporation or for 1 year.

If the Dormant Company fails to comply with the requirements of the Section 455 of the Companies Act, 2013 the Registrar shall have the power to strike off its name.

CONDITIONS FOR OBTAINING STATUS OF DORMANT COMPANY

A company shall be eligible to apply for status of dormant company only, if-

- (i) No inspection, inquiry or investigation has been ordered or taken up or carried out against the company.
- (ii) No prosecution has been initiated and pending against the company under any law.
- (iii) The company is neither having any public deposits which are outstanding nor is the company in default in payment thereof or interest thereon.

- (iv) The company is not having any outstanding loan, whether secured or unsecured. If there is any outstanding unsecured loan, the company may apply after obtaining concurrence of the lender and enclosing the same with Form **MSC-1**.
- (v) There is no dispute in the management or ownership of the company and a certificate in this regard is enclosed with Form **MSC-1**.
- (vi) The company does not have any outstanding statutory taxes, dues, duties etc. payable to the Central Government or any State Government or local authorities etc.
- (vii) The company has not defaulted in the payment of workmen's dues.
- (viii) The securities of the company are not listed on any stock exchange within or outside India.

PROCEDURE FOR OBTAINING STATUS OF DORMANT COMPANY

1. A company may make an application in **Form MSC-1** along with such fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 to the Registrar for obtaining the status of a Dormant Company in accordance with the provisions of section 455 after passing a special resolution to this effect in the general meeting of the company or after issuing a notice to all the shareholders of the company for this purpose and obtaining consent of at least 3/4th shareholders (in value).
2. The Registrar shall, after considering the application filed in **Form MSC-1**, issue a certificate in **Form MSC-2** allowing the status of a Dormant Company to the applicant.
3. The Register maintained under the portal maintained by the Ministry of Corporate Affairs on its *web-site www.mca.gov.in* or any other website notified by the Central Government, shall be the register for dormant companies.
4. A dormant company shall have a minimum number of three directors in case of a public company, two directors in case of a private company and one director in case of a One Person Company. The provisions of the Act in relation to the rotation of auditors shall not apply on dormant companies.
5. A dormant company shall file a "Return of Dormant Company" annually, *inter-alia*, indicating financial position duly audited by a chartered accountant in practice in **Form MSC-3** along with such annual fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 within a period of 30 days from the end of each financial year:
6. The company shall continue to file the return or returns of allotment and change in directors in the manner and within the time specified in the Act, whenever the company allots any security to any person or there is any change in the directors of the company.
7. An application, for obtaining the status of an active company shall be made in **Form MSC-4** along with fees as provided in the Companies (Registration Offices and Fees) Rules, 2014 and shall be accompanied by a return in **Form MSC-3** in respect of the financial year in which the application for obtaining the status of an active company is being filed.
8. The Registrar shall initiate the process of striking off the name of the company if the company remains as a dormant company for a period of consecutive five years.
9. The Registrar shall, after considering the application filed issue a certificate in **Form MSC-5** allowing the status of an active company to the applicant.
10. When a dormant company does or omits to do any act mentioned in the Grounds of application in Form **MSC-1** submitted to Registrar for obtaining the status of dormant company, affecting its status of dormant company, the directors shall within 7 days from such event, file an application, for obtaining the status of an active company.

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11. Where the Registrar has reasonable cause to believe that any company registered as 'dormant company' under his jurisdiction has been functioning in any manner, directly or indirectly, he may initiate the proceedings for enquiry under section 206 of the Act and if, after giving a reasonable opportunity of being heard to the company in this regard, it is found that the company has actually been functioning, the Registrar may remove the name of such company from register of dormant companies and treat it as an active company.

APPLICATION SEEKING STATUS OF AN ACTIVE COMPANY

- (1) An application, under section 455, for obtaining the status of an active company shall be made in **Form MSC-4** along with fees as provided in the Companies (Registration Offices and Fees) Rules, 2014 and shall be accompanied by a return in **Form MSC-3** in respect of the financial year in which the application for obtaining the status of an active company is being filed.
- (2) The Registrar shall initiate the process of striking off the name of the company if the company remains as a dormant company for a period of consecutive five years.
- (3) The Registrar shall, after considering the application filed, issue a certificate in **Form MSC-5** allowing the status of an active company to the applicant
- (4) When a dormant company does or omits to do any act mentioned in the Grounds of application in **Form MSC-1** submitted to Registrar for obtaining the status of dormant company, affecting its status of dormant company, the directors shall within seven days from such event, file an application, for obtaining the status of an active company.
- (5) When the Registrar has reasonable cause to believe that any company registered as 'Dormant Company' under his jurisdiction has been functioning in any manner, directly or indirectly, he may initiate the proceedings for enquiry under section 206 of the Act and if, after giving a reasonable opportunity of being heard to the company in this regard, it is found that the company has actually been functioning, the Registrar may remove the name of such company from register of dormant companies and treat it as an active company.

ANNEXURE

ANNEXURE I

Board Resolution for Getting the Company Struck Off

"RESOLVED THAT consequent to the company not carrying on any business or not being in operation and since it does not intend to carry on any business in future, an application be made to the Registrar of Companies,for striking off its name under section 560 of the Companies Act, 1956 and the guidelines issued by the Ministry of Corporate Affairs in this regard, and that Mr./Ms....., Director and Mr./Mrs....., Director be and are hereby jointly and severally authorized to to make an application to the Registrar of Companies,and to do everything that may be necessary or incidental, for striking off Company under section 560 of the Companies Act 1956 and the guidelines issued by the Ministry of Corporate Affairs in this regard."

ANNEXURE II

Application form for striking off name of company under Section 560 of the Companies Act, 1956

Affix	Affix
PP	PP
Size	Size
Photo	Photo

No. of Company

[Name of the Company:

Address of the Company:

To

The Registrar of Companies,

(Name of the State)

Sir,

The Company after carefully considering all aspects has duly resolved in the Board meeting held on..... to make an application for striking the name of our company off the Register u/s 560 of the Companies Act, 1956.

- (1) We, the directors of the company make an application for striking the name of our company off the Register u/s 560 of the Companies Act, 1956.
- (2) I/We furnish the following details and documents for considering my/our application:
 - (i) Audited Financial Statements for the year ending..... showing no assets and liabilities.
Or
A Statement of Account for the period from..... to..... being the latest period applicable for the company. It is declared that due to..... (Give here reasons) the Balance Sheet and Profit and Loss Account cannot be prepared; hence a Statement of Accounts is submitted. (Specimen of Statement of Account is placed as Annexure VI).
 - (ii) Affidavits as per Annexure B of this Circular No. 17/78/2001-CL.V, dated 28-1-2005 of D/o Company Affairs. (Now, M/o Corporate Affairs)
 - (iii) Indemnity Bonds as per Annexure C of the General Circular No. 17/78/2001-CL.V dated 28-1-2005 of Ministry of Corporate Affairs.
 - (iv) Demand Draft/Pay Order/Banker's Cheque No..... dated..... drawn in favour of "Registrar of Companies..... (Name of State in which registered office of the company is situated)" payable at.....
 - (v) NOC from RBI/SEBI as the case may be, in case an NBFC/Collective Investment Management Company is registered with RBI/SEBI.
 - (vi) Copy of Board Resolution and/or other document showing authorization given to us for filing of this application.
- (3) Now, therefore, the undersigned request you to strike off the name of the company from the Register.
- (4) I shall be liable under section 628 of the Companies Act, 1956 and under relevant provisions of the Indian Penal Code if I make any statement pursuant to this circular:
 - (a) Which is false in any material particular, knowing it to be false; or
 - (b) Which omits any material fact knowing it to be material.
- (5) Ours is a Collective Investment Management Company (CIMC)/NBFC registered/not registered with SEBI/ RBI.

For CIMC/NBFC

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(6) (a) Ours is a CIMC/NBFC company registered with SEBI/RBI. Our registration number with SEBI/RBI is..... and we had Head Office at..... and branches at (indicate places of Branch Offices).

We have been issued a "No Objection Certificate" by SEBI/RBI to exit from the Register of Companies.

(b) Ours is a CIMC/NBFC company not registered with SEBI/RBI. We declare that we had not commenced business or carried out any business or operations or commercial activity at any time.

Yours faithfully,

Names and addresses of Applicants

1. Signature

Date:

2. Signature

ANNEXURE III

Affidavit

(To be given individually by applicant)

I, Director of..... Private/Limited, (hereinafter called "the Company"), incorporated on...../...../..... under the Companies Act, 1956 having its Registered Office at..... and having PAN No: do solemnly affirm and state as under:

1. I....., S/o D/o. Shri....., holder of Passport No:/ PAN..... (copy of Passport/PAN duly attested by Gazetted Officer is enclosed) am Director of the company stated above since.....
2. My present residential address is..... (copy of documentary evidence duly attested by Gazetted Officer is enclosed. Alternatively, an affidavit sworn before Magistrate may be enclosed)
3. My permanent address is..... (Copy of documentary evidence duly attested by Gazetted Officer is enclosed. Alternatively, an affidavit sworn before Magistrate may be enclosed).
4. The Company was incorporated on..... with the object to carry on the business of.....
5. The company maintains/does not maintain any bank account as on date.
6. The Company has been inoperative from the date of its incorporation./The company commenced business/operations/commercial activity after incorporation but has been inoperative for the past..... year(s) due to following reasons.* (give the reasons here)
7. As on date, the Company does not have any dues towards Income Tax/Sales Tax/Central Excise/Banks and Financial Institutions; any other Central or State Government Departments/Authorities or any Local Authorities.
8. Strike out whichever is not applicable:
 - (i) There is no litigation pending against or involving the company.
 - (ii) There are litigations pending against the company which are mentioned as under:–

(give brief particulars of litigation and state the authority, with address, where it is pending, along with case number).
 - (iii) The litigation under Companies Act, 1956 or other Act (specify the name of the Act) pertains to an offence which is compoundable and the compounding application has been filed with the appropriate

authority. (A copy of compounding application to be enclosed).

9. I have been authorised to file this application by Board resolution dated..... (Copy of resolution is annexed).

10. That an application is hereby filed for action under section 560 of the Companies Act, 1956, before the Registrar of Companies with necessary fees and required Financial Statement/Statement of Account (Refer Annexure VI)/declaration* signed by me.

*Strike out whichever is not applicable.

11. In case of any loss (es) to any person or any valid claim arising from any person after the striking off of the name of the Company from the Register of Companies....., I the applicant, undertake to indemnify any person for such losses and the indemnity bond to this effect is enclosed and submitted.

I solemnly state that the contents of this affidavit are true to the best of my knowledge and belief and that it conceals nothing and that no part of it is false.

Signature:

(Deponent)

Verification

I verify that the contents of this affidavit are true to the best of my knowledge and belief.

Place:

Signature:.....

Date:

(Deponent)

ANNEXURE IV

Indemnity Bond

(To be given individually by Applicant)

To

The Registrar of Companies

I, the director of..... Private/Limited, (hereinafter called "the Company"), incorporated on...../...../.....under the Companies Act, 1956, having its Registered Office at, and having PAN Number..... do hereby declare that:

1. (a)(i) I....., S/o D/o Shri....., am holder of passport/ PAN.....etc. (copy of Passport/PAN duly attested by Gazetted Officer is enclosed)

(ii) I am Director of this company since.....

(iii) My present residential address is..... (copy of documentary evidence duly attested by Gazetted Officer is enclosed. Alternatively an affidavit sworn before Magistrate may be enclosed.)

(iv) My permanent address is..... (copy of documentary evidence duly attested by Gazetted Officer is enclosed. Alternatively an affidavit sworn before Magistrate may be enclosed.)

(b) That I have made an affidavit dated the....., duly sworn before Magistrate/Executive Magistrate/Oath Commissioner/Notary affirming that the Company..... Private/Limited, has no assets and no liabilities.

(c) Further, the Company has been inoperative from the date of its incorporation. The company commenced business/operations/commercial activity after incorporation but has been inoperative for

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the past year(s)*.

And the company is not intending to do any business or commercial activity. Thus, the Company is defunct and I request the Registrar of Companies, to strike off the name of the Company from the Register of Companies under Section 560 of the Companies Act, 1956.

*Strike out whichever is not applicable.

2. I, do hereby undertake and indemnify in writing:

- (a) To pay and settle all lawful claims arising in future after the striking off the name of the Company.
- (b) To indemnify any person for any losses that may arise pursuant to striking off the name of the Company.
- (c) to settle all lawful claims and liabilities which have not come to our notice upto this stage, even after the name of the Company has been struck off in terms of Section 560 of the Companies Act, 1956.

Signature:

Place:

Name:

Date:

Witnesses:

1. Signature

Name:

Father's name:

Address:

Occupation:

2. Signature

Name:

Father's name:

Address:

Occupation:

Accepted

Registrar of Companies

ANNEXURE V

Notification Published in the Official Gazette to strike a company off the register

In the matter of the Companies Act, 1956 and of M/s.....Limited New Delhi 110003, the 2001-03-27 No..... Notice is hereby given pursuant to sub-section (3) of section 560 of the Companies Act, 1956 that at the expiration of three months from the date hereof the name of M/ s.....Limited unless cause is shown to the contrary will be struck off from the Register of Companies and the said company shall be dissolved.

Registrar of Companies

[Please refer Annexure III]

Statement of Account*

(Para I(b) of circular)

Name of the Company:

Year to which the Statement of Account pertains:

Part A

Particulars:

I. Sources of Funds

(Brief break up in respect of each item needs to be given).

- (1) Capital
- (2) Reserves & Surplus (including balance in Profit and Loss Account)
- (3) Loan Funds
- Total of (1) to (3)

II. Application of Funds

(Brief break up in respect of each item needs to be given).

- (1) Fixed Assets
- (2) Investments
- (3) (i) Current Assets, loans and Advances
 - Less: (ii) Current Liabilities and provisions
 - Net Current assets (i) - (ii)
- (4) Miscellaneous expenditure to the extent not written off or adjusted
- (5) Profit & Loss Account (Debit balance)
- Total of 1 to 5

Part B

Particulars

(Brief break up in respect of each item needs to be given).

- I. Income
- II. Expenditure
- III. Profit/Loss before Tax (MI)
- IV. Appropriation in case of profit

Date:

Place:

Signature (Secretary/Applicant*)

*Applicable only if there is MD/Secretary.

**Guidelines for Fast Track Exit mode for defunct companies under section 560
of the Companies Act, 1956**

1. For Fast Track Exit mode (FTE), it is stated as under:-
 - (a) Any company will be called as “defunct company” for the purpose of these guidelines, which has nil asset and liability and
 - (i) Has not commenced any business activity or operation since incorporation; or
 - (ii) Is not carrying over any business activity or operation for last one year before making application under FTE.
 - (b) Any defunct company which has active status or identified as dormant by the Ministry of Corporate Affairs, may apply for getting its name strike off from the Register of Companies;
 - (c) Any defunct company which is a Government Company shall submit ‘No Objection Certificate’ issued by the concerned Administrative Ministry or Department or State Government along with the application;
 - (d) The decision of the Registrar of Companies in respect of striking off the name of company shall be final.
 - (e) The fast track exit mode is not being extended to the following companies namely:-
 - (i) listed companies;
 - (ii) Companies that have been de-listed due to non-compliance of Listing Agreement or any other statutory Laws,
 - (iii) Companies registered under section 25 of the Companies Act, 1956;
 - (iv) Vanishing companies;
 - (v) Companies where inspection or investigation is ordered and being carried out or yet to be taken up or where completed prosecutions arising out of such inspection or investigation are pending in the court;
 - (vi) companies where order under section 234 of the Companies Act, 1956 has been issued by the Registrar and reply thereto is pending or where prosecution if any, is pending in the court;
 - (vii) companies against which prosecution for a non- compoundable offence is pending in court;
 - (viii) Companies accepted public deposits which are either outstanding or the company is in default in repayment of the same;
 - (ix) Company having secured loan;
 - (x) Company having management dispute;
 - (xi) company in respect of which filing of documents have been stayed by court or Company Law Board (CLB) or Central Government or any other competent authority;
 - (xii) company having dues towards income tax or sales tax or central excise or banks and financial institutions or any other Central Government or State Government Departments or authorities or any local authorities.

Explanation: “vanishing company” means a company, registered under the Companies Act, 1956 and listed with Stock Exchange which, has failed to file its returns with 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.

- (f) Any defunct company desirous of getting its name strike off the Register under Section 560 of the Companies Act, 1956 shall make an application in the Form FTE, annexed electronically on the Ministry of Corporate Affairs portal namely www.mca.gov.in accompanied by filing fee of ₹ 5,000/-;
 - (g) In case, the application in Form FTE, is not being digitally signed by any of the director or Manager or Secretary, a physical copy of the Form duly filled in, shall be signed manually by a director authorised by the Board of Directors of the company and shall be attached with the application Form at the time of its filing electronically;
 - (h) In all cases, the Form FTE, 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;
 - (i) In case, the applicant name is not available in the database of directors maintained by the Ministry, the application shall be accompanied by certificate from a Chartered Accountant in whole time practice or Company Secretary in whole time practice or Cost Accountant in whole time practice alongwith their membership number, certifying that the applicants are present directors of the company. In such cases, the applicants shall not be asked to file Form 32 and Form DIN 3.
 - (j) The company shall disclose pending litigations if any, involving the company while applying under FTE;
 - (k) If the pending prosecutions are only for non-filing of Annual Returns under section 159 and Balance Sheet under section 220 of the Companies Act, 1956, such application may be accepted provided the applicants have already filed the compounding application. However, steps for final strike of the name of the company will be taken only after disposal of compounding application by the competent authority.
 - (l) The Form FTE shall be accompanied by an affidavit annexed at Annexure- A, which should be sworn by each of the existing director(s) of the company before First Class Judicial Magistrate or Executive Magistrate or Oath Commissioner or Notary, to the effect that the company has not carried on any business since incorporation or that the company did some business for a period up to a date (which should be specified) and then discontinued its operations, as the case may be;
 - (m) Form FTE shall further be accompanied by an Indemnity Bond, duly notarized, as annexed at Annexure B, to be given by every director individually or collectively, to the effect that any losses, claim and liabilities on the company, will be met in full by every director individually or collectively, even after the name of the company is struck off the register of Companies;
 - (n) In case of foreign nationals and NRIs, Indemnity Bond and Affidavit may be notarized as per their respective country's law.
 - (o) The Company shall also file a Statement of Account annexed at Annexure C, prepared as on date not prior to more than one month preceding the date of filing of application in Form FTE, duly certified by a statutory auditor or Chartered Accountant in whole time practice, as the case may be.
 - (p) In the case of 100% Government companies, if no Board is in existence, an officer not below the rank of Deputy Secretary of the concerned administrative Ministry may be authorized to enter his name and other details in Form FTE and in Annexure A, B and C in place of name and other details of the directors and also to sign the said documents before filing.
- 2 Procedure to be adopted by Registrar of Companies in this matter:-

- (a) The Registrar of Companies, on receipt of the application, shall examine the same and if found in order, shall give a notice to the company under section 560(3) of the Companies Act, 1956 by e-mail on its email address intimated in the Form, giving thirty days time, stating that unless cause is shown to the contrary, its name be struck off from the Register and the company will be dissolved;
- (b) The Registrar of companies shall put the name of applicant(s) and date of making the application(s) under fast track exit mode, on daily basis, on the MCA portal www.mca.gov.in, giving thirty days time for raising objection, if any, by the stakeholders to the concerned Registrar; (c) In case of company(s) like Non-Banking Financial Company(s), Collective Investment Management Company(s) which are regulated by other Regulator(s) namely RBI, SEBI, the Registrar of Companies, at the end of every week, shall send intimation of such companies availing fast track exit mode during that period to the concerned Regulator(s) and also an intimation in respect of all companies availing fast track exit mode during that period to the office of the Income Tax Department giving thirty days time for their objection, if any;

Explanation: (1) “Non-Banking Financial Company” means a company as defined under clause (f) of section 45- I of the Reserve Bank of India Act, 1934.

(2) “Collective Investment Management Company” means the company as defined in clause (h) of sub-regulation of 2 of Securities and Exchange Board of India (Collective Investment Companies) Regulations, 1999

- (d) The Registrar of Companies immediately after passing of time given in sub-paras (a) to (c) of this Para and on being satisfied that the case is otherwise in order, shall strike its name off the Register and shall send notice under sub-section (5) of section 560 of the Companies Act, 1956 for publication in the Official Gazette and the applicant company shall stand dissolved from the date of publication of the notice in the Official Gazette.

For viewing Annexures to these guidelines please refer www.mca.gov.in.

LESSON ROUND-UP

- A defunct company is a company which is not carrying on any business or in operation. It may be struck off from the register of companies under Section 560 of the Companies Act, 1956.
- The Registrar may on its own motion proceed to strike off a company, if he has reasonable cause to believe that a company is not carrying on business.
- The Registrar can exercise the power to strike off on receiving an application for the same under Section 560.
- A company or a member or a creditor may make an application to the court for restoration of company to the register, if they feel aggrieved by such decision of striking off.
- The effect of the order of restoration of the name of the company is to place the company in same position as if the name had never been struck off.

SELF TEST QUESTIONS

(These are meant for recapitulation only. Answers to these questions are not to be submitted for evaluation.)

1. Define Defunct Company.
2. Explain the procedure for striking off the company by Registrar on his own motion.

