



Removal of Names of Companies by the Registrar of Companies (RoC) from the Register of companies maintained by RoC

Section 248 to 252 of the Companies Act, 2013 (“**the Act**”) read with the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 deals with removal of names of the Companies from the Register of Companies. The same has been notified with effect from 26th December 2016.

Similar provisions were under Section 560 of the Companies Act, 1956 and the procedure for strike off the name of the Company was more or less the same. Now powers are widely used by RoC to weed out companies which are non-compliant and not doing any business.

A. STRIKE OFF BY ROC

1. Trigger events for striking off:

The Registrar of Companies may remove the name of the Company from the register of companies in terms of section 248 (1) of the Act , if he has reasonable cause to believe that :

- (a) A company has failed to commence its business within 1 (one) year of its incorporation OR
- (b) A company is not carrying on any business or operation for a period of 2 (two) immediately preceding financial years and has not made any application for obtaining the status of Dormant Company.

2. Following categories of companies name shall not be removed by roc:

- i. Listed Companies;
- ii. Delisted Companies due to non-compliance of listing regulations or listing agreement or any other statutory laws;
- iii. Vanishing Companies*;
- iv. Companies where inspection or investigations are pending in the Court;
- v. Companies whose actions are pending under Section 206 or Section 207 or Section 208 of the Act before the Court;
- vi. Companies against which prosecution for an offence is pending;

- vii. Companies which have accepted public deposits which are either outstanding or the Company is in default in repayment of the same;
- viii. Companies whose application for compounding is pending before the competent authority for compounding of offences committed by the Company or any of its officers in default;
- ix. Companies whose charges are pending for satisfaction and
- x. Companies registered under Section 25 of the Companies Act, 1956 or Section 8 of the Act.

***Vanishing Company:** A Company registered under the Act or previous Company law or any other law for the time being in force and listed with the stock exchange which has failed to file its returns with the RoC and stock exchange for a consecutive period of two years, and is not maintaining its registered office at the address notified with the RoC or stock exchange and none of its Directors are traceable.

3. Notice to be given by RoC

ROC shall issue a notice to the Company and to all the Directors at their registered address of his intention to remove the name of the Company, requesting them to send their representations, if any along with the copies of relevant documents **within 30 days** from the date of notice.

The notice shall be issued in **form STK-1**. The Notice shall contain the reasons or grounds on which the name of the Company is to be removed.

B. VOLUNTARY APPLICATION BY COMPANY FOR STRIKING OFF THE NAME FROM THE REGISTER OF ROC

1. **Who can make application :** Any company(other than Section 8 company (non profit organization) may as per section 248(2) of the Act , may voluntarily make an application for striking off the name of the Company from the Register of companies maintained by ROC, after extinguishing all its liabilities , by obtaining approval of 75% members in terms of paid up share capital or consent by way of special resolution on any of the ground that it has not started or commenced its business or it is not carrying on business or operation for a period of two immediately preceding financial years and not made any application for obtaining the status of the company as a dormant company.

A Company which is regulated under a special Act is required to obtain approval of the regulatory body constituted or established under that Act.

2. **Procedure of Application** :In order to make an application for voluntary strike off; the Company needs to follow the below mentioned procedure:

(i) Call Board Meeting to consider the following :

- a) Approval of statement of accounts certified by a Chartered Accountant upto a day not more than thirty days before the date of application.
- b) Taking note of Indemnity Bond to be given by the Directors of the Company and
- c) Approval of Noticeconvening Extra Ordinary General Meeting of the members in order to obtain their approval for such proposal of strike off of the name of the Company.

(ii) Call Shareholders Meeting to consider proposal of strike off: A Company may after extinguishing all its liabilities shall pass a special resolution or obtain the consent of 75% of the members in terms of paid up share capital.

(iii) Application to ROC:The Company shall file an applicationfor removalof its name from Register of Companies maintained by RoC in e-**Form STK-2**along with the fees of Rs.5000/-which shall be signed by a Directorandwithfollowing attachments:

- (a) Indemnity Bond duly notarized by every Director in Form STK-3
- (b) No Objection Certificate from appropriate Regulatory Authority under which the Company may be registered like RBI, IRDA, SEBI and Housing Finance Companies etc.
- (c) Statement of Account containing assets and liabilities of the Company made not more than 30 days before the date of application and duly certified by Chartered Accountant.
- (d) An Affidavit in Form STK -4 by every Director of the Company
- (e) Copy of Special Resolution certified by each of the Director of the Company or consent of 75% of the members of the Company in terms of paid up share capital of the Company.
- (f) Statement regarding pending litigations, if any, involving the Company.

The Directors need to give declaration in Form STK 2 as follow :

1. 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 is pending in any court.
2. The company is neither having any public deposits which are outstanding nor the company is in default in its repayment or interest thereon;
3. The company does not have any outstanding loans, secured or unsecured;
4. The company does not have any dues towards income tax, VAT, excise duty, service tax or any other tax or duty, by whatever name called, payable to the Central or any State Government, statutory authority or local authority.
5. All the other liabilities of the company have been settled or discharged or extinguished;

In case of foreign nationals or non-resident Indians, the indemnity bond and declaration shall be notarized or apostilled or consularised. If the concerned Director does not have Digital Signature Certificate, then a physical copy signed by such Director shall be attached with form STK-2

(iv) Certification: Form STK-2 shall be certified by Company Secretary, Chartered Accountant or a Cost Accountant in whole-time practice as the case may be.

(v) Publication of Notice: The Notice under sub-section (1) and (2) of section 248 shall be published in **Form STK-5 or 5A (Notification dated 12th April, 2017) (in case notice for strike off received from ROC) and Form STK-6 (Voluntary strike off)** which shall be:

- a) Placed on official website of MCA.
- b) Published in official Gazette.
- c) Published in English language in a leading English Newspaper and in vernacular language in a leading vernacular language newspaper, having wide circulation in the State where the Registered Office of the Company is situated.

In case of voluntary winding up an application for striking off shall also be placed on the website of the Company till the Disposal of such application.

(vi) Undertakings by Directors and Discharge of Liabilities

Before passing an order for dissolution, RoC shall satisfy himself that sufficient provision has been made for the payment or discharge of all its liabilities within a reasonable time and has obtained necessary undertakings from the Managing Director, Director or other person in charge of the management of the Company.

The Liability of every Director, manager or other officer and of every member of the Company shall continue even after the Company is dissolved and it may be enforced.

The assets of the Company shall be made available for the payment or discharge of all its liabilities and obligations even after the order removing the name of the Company from the register of Companies.

(vii) Objections or suggestions: ROC shall intimate to the authorities having jurisdiction over the Company for seeking objections **within 30 days** from the date of issue of the letter of intimation to:

- a) Income tax authorities
- b) Central exercise authority
- c) Service tax authority

If no Objection is received from the aforesaid authorities within 30 days, then it shall be presumed that they have no objections to the striking off.

(viii) Dissolution of Company: If ROC has not received any objection, then after the expiry of the period specified in the notice shall strike off the name of the Company and publish a notice in **form STK-7** in official Gazette, upon such publication Company shall stand dissolve and same shall also be placed on the official website of MCA.

(ix) Application or forms pending before central government: Any application for striking off or Form FTE filed with RoC prior to the commencement of these rules is pending or not disposed of, such application shall be disposed in accordance with the rules made under the Companies Act, 1956.

C. Various Forms

Forms	Particulars	Responsibility
STK-1	Notice from RoC for strike off	RoC
STK-2	Application for removal of name of the Company	Company
STK-3	Indemnity Bond	Directors
STK-4	Affidavit	Directors
STK-5	Publication of notice in case notice for strike off received from ROC	RoC
STK-6	Publication of notice in case of Voluntary strike off.	RoC
STK-7	Notice of striking off and dissolution of Company	RoC

D. CONCLUSION

Recently in the last few months of FY 2016-17, RoC across country had started issuing Show Cause Notices u/s 248 (1) for striking off the name of approx. 4 Lac companies and giving them a time limit of 30 days to give appropriate replies, or represent their case, failing which the name of these 4 Lac companies may be struck off by RoC. The possible intention behind issuing Show Cause Notices to the companies is to reduce the burden of RoC in maintaining their records for such Companies. This is a welcome move by RoC, which will be helpful to the defunct Companies also, as strike off is an easy, fast and cheapest way of closing down a Company. RoC will be free from large number of such non compliant companies and then he can rather spend more time to ensure that proper corporate governance and compliances are made by companies.

However, such issuance of Show Cause Notices has left us with various questions unanswered as to whether the Director would be disqualified u/s 164(2) of the Act? Whether the office of the Director would be considered as vacant u/s 167 (1) (a) of the Act? what will be the liabilities on members and directors as mentioned under the show cause notice issued by RoC. Whether there is any levy of penalty on the directors of the Company u/s. 166 of the Companies Act, 2013 due to non-compliance of their duties? .

One can form an opinion that RoC may send show cause notice and prosecute the Directors of such companies for violation of non filing of Balance Sheet and Annual Return of past period and such Directors may have to file application for compounding of such offence, till then they may be considered as disqualified as Director and his office shall be considered as vacant not only from these companies but all other companies where he is Director.
