



**\*Private Circulation Only**

**Newsletter for December, 2018**

**By Amita Desai & Co.**



We love to serve and add value to business of our clients



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**Greetings and a warm welcome to our December Month's edition of Newsletter!**

We are pleased to share our Newsletter for the month of December 2018. The newsletter covers the updates / amendments of Ministry of Corporate Affairs (MCA), Reserve Bank of India (RBI), Securities and Exchange Board of India (SEBI) and Department of Industrial Policy & Promotion (DIPP).

The Newsletter is part of our knowledge sharing initiative. Efforts have been made to share notifications and circular issued by regulatory authorities during the month in concise and in simplified manner.

Our article of the month is **“Report on closure of Private Limited Company or put the company in dormancy.”**

We appreciate your support and are so happy to have you as a reader.

With warmest thanks,  
**Amita Desai & Team**



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## MCA UPDATES

### A. The Companies (Cost Records and Audit) Rules, 2014:

- Ministry of Corporate Affairs (MCA) while its notification dated December 03, 2018 has issued the Companies (Cost and Audit) Amendment Rules, 2018.
- In the Companies (Cost Records and Audit) Rules, 2014 (hereinafter referred to as the Principal Rules), in rule 3, in TABLE, under the heading (B) Non-regulated Sectors, following changes have been made:

Sr. No.	The Companies (Cost and Audit) Rules, 2014	Amendment	The Companies (Cost and Audit) Amendment Rules, 2018
7	Port services of stevedoring, pilotage, hauling, mooring, re-mooring, hooking, measuring, loading and unloading <b>services rendered by a Port in relation to a vessel or goods regulated by the Tariff Authority for Major Ports;</b>	for the words “services rendered by a Port in relation to a vessel or goods regulated by the Tariff Authority for Major Ports” the words, figures and brackets “services rendered for a Port in relation to a vessel or goods regulated by the Tariff Authority for Major Ports under the Major Port Trusts Act, 1963 (38 of 1963)”, has been <b>substituted</b>	Port services of stevedoring, pilotage, hauling, mooring, re-mooring, hooking, measuring, loading and unloading <b>services rendered for a Port in relation to a vessel or goods regulated by the Tariff Authority for Major Ports under the Major Port Trusts Act, 1963 (38 of 1963)</b>
8	Aeronautical services of air traffic management, aircraft operations, ground safety services, ground handling, cargo facilities and supplying fuel rendered by airports and regulated by the Airports Economic Regulatory Authority under the Airports Economic Regulatory Authority of India Act, 2008 (27 of 2008);	for the words ‘by airports’ the words ‘at the airports’ has been <b>substituted</b>	Aeronautical services of air traffic management, aircraft operations, ground safety services, ground handling, cargo facilities and supplying fuel rendered <b>at the airports</b> and regulated by the Airports Economic Regulatory Authority under the Airports Economic Regulatory Authority of India Act, 2008 (27 of 2008)
28	Paper	for the words ‘Paper’ the words ‘Pulp and Paper’ has been <b>substituted</b>	<b>Pulp and Paper</b>
33	(xiii) Automatic impalpable cardiac deflobillator	for the word ‘deflobillator’ the word ‘defibrillators’ has been	Automatic impalpable cardiac <b>defibrillators</b>

	<b>substituted</b>	
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The Amendment has made the following changes in the Custom Tariff heading:

Sr. No.	Custom Tariff Act Heading (Wherever Applicable) as per the Companies (Cost Record and Audit) Amendment, Rules 2018	Amendment	Custom Tariff Act Heading wherever Applicable as per the Companies (Cost Record and Audit) Amendment, Rules 2018
13	8601 to 8608	after the entry '8608', the entry '8609' is <b>inserted</b>	8601 to 8608, 8609
19	5303, 5310	after the entry '5303', the entry '5307' is <b>inserted</b>	5303, 5307, 5310
28	4801 to 4802	Before entry '4801 to 4802' the entry '4701 to 4704' has been <b>inserted</b>	4701 to 4704 4801 to 4802

- In sub-rule (6) of Rule 6, the following proviso has been inserted, namely:-  
“Provided that the Companies which have got extension of time of holding Annual General Meeting under section 96 (1) of the Companies Act, 2013, may file form CRA-4 within resultant extended period of filing financial statements under section 137 of the Companies Act, 2013.
- In the Annexure of the Rules, the following has been inserted,-
  - (i) in Form CRA-1, paragraph number 31 has been inserted:-  
“31. Unit of Measurement (UOM)-The Unit of Measurement (UOM) for each Customs Tariff Act Heading, wherever applicable, shall be the same as provided for in the Customs Tariff Act, 1975 (51 of 1975) corresponding to that particular Customs Tariff Act Heading.”;
  - (ii) in form CRA-3, in Note, Note (3) shall be added, namely:-  
Note. (3) The Unit of Measurement (UOM) for each Customs Tariff Act Heading, wherever applicable, shall be the same as provided for in the Customs Tariff Act, 1975 (51 of 1975) corresponding to that particular Customs Tariff Act Heading.”

#### **B. Relaxation of Additional Fees and Extension of Last Date of Filing Form CRA-4 (Cost Audit Report in XBRL Format):**

MCA vide its Notification dated December 10, 2018 had extended the last day of filing e-Form CRA-4 (Cost Audit Report to be submitted in XBRL Format) to December 31, 2018 wherever additional fees was applicable taking into consideration requests received from various stakeholders.

#### **C. Extension of Last Date of Filing of Form NFRA-1:**

- As per sub-rule (2) and sub-rule (3) of Rule 3 of the National Financial Reporting Authority (NFRA) Rules, 2018, Every existing body corporate other than a company governed by these rules, had to inform the Authority within 30 days of the commencement of the rules, in Form NFRA-1, the particulars of the auditor as on the date of commencement of the rules.
- However, the time limit of filing form NFRA-1 has been extended to 30 days after the form is deployed on MCA's website.

#### **D. Central Government Delegates Powers To Regional Directors:**

- As per Section 458(1) of the Companies Act, 2013, the Central Government vide Notification dated December 18, 2018 has delegated power to Regional Directors at Mumbai, Kolkata, Chennai, New Delhi, Ahmedabad, Hyderabad and Shillong as per the powers and functions vested in it under proviso of Section 2(41) – Application to follow a different financial year and second proviso of Section 14 (1) – Approval of tribunal in case of conversion of a public company into a private company.
- This is subject to the condition that the Central Government may revoke such delegation of powers or may itself exercise the powers under the said sub-section, if in its opinion such a course of action is necessary in the public interest.

#### **E. The Companies (Registration Of Charges) Second Amendment Rules, 2018:**

- MCA vide its Notification dated December 18, 2018 has amended the Companies (Registration of Charges) Rules, 2014 in which e-Form CHG-4 regarding Particulars of Satisfaction of Charge has been substituted.

#### **F. The Companies (Incorporation) Fourth Amendment Rules, 2018:**

- MCA vide Notification dated December 18, 2018 has amended the Companies (Incorporation) Rules, 2018
- The rules are called the Companies (Incorporation) Fourth Amendment Rules, 2018.
- After Rule 23 (Intimation to registrar of revocation of license issued under Section 8) of the Companies (Incorporation) Rules, 2014, Rule 23A has been inserted

##### **23A] Declaration at the time of commencement of business-**

Every Director of the newly incorporated Company is required to give a declaration for commencement of business etc. in form INC-20 A within a period of 180 days from the date of incorporation of the Company.

- After Rule 39 (Conversion of a Company limited by guarantee into Company limited by shares) of the Companies (Incorporation) Rules, 2014, Rule 40 and Rule 41 have been inserted which reads as-

##### **40] Application under Section 2 (41) of the Companies Act, 2013 for change in financial year**

Section 2 (41) defines the term ‘financial year’ to be the period ending on 31<sup>st</sup> March every year, and where it has been incorporated on or after 1<sup>st</sup> day of January of a year, the period ending 31<sup>st</sup> day of March the following year. However, a Company or a body corporate which is a holding company or subsidiary or associate of a Company incorporated outside India and is required to follow a different financial year for consolidation of its accounts outside India, the Company or the body corporate may apply to the tribunal in e-Form RD-1 (power delegated to the Regional Director) to allow any period as its financial year.

#### **41]. Application under Section 14 of the Companies Act for conversion of public company into private company.**

Section 14 (1) talks about alteration of the articles of the Company including the alterations having effect of the conversion of a public company into a private company or vice-versa subject to the memorandum of the Company. The application for conversion is to be made within 60 days from the date of passing of special resolution, with Regional Director in e-Form No. RD-1.

#### **RBI UPDATES:**

##### **A. Inclusion of SBM Bank (India) Limited in the Second Schedule of RBI Act, 1934:**

- RBI vide its Notification No. DBR.IBD.No.3645/23.13.043/2018-19 dated October 30, 2018 issued notification for inclusion of “SBM Bank (India) Limited” in the Second Schedule of the Reserve Bank of India Act, 1934 and the same is published in the Gazette of India dated December 01- December 07, 2018.
- The Link of this notification is as under:  
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11432&Mode=0>

##### **B. Foreign Exchange Management (Borrowing And Lending) Regulations, 2018**

- Reserve Bank of India makes following regulations for borrowing and lending between a person resident in India and a person resident outside India and this regulations may be called the Foreign Exchange Management (Borrowing and Lending) Regulations, 2018 vide its Notification No. FEMA.3(R)/2018-RB dated December 17, 2018.
- This notification is in supersession of Regulation 3 and 4 in the earlier notification dated May 03, 2000 and Regulation 21 in the earlier notification dated July 04, 2004. The notification shall come into force from the date of their publication in the Official Gazette.
- Restricted End Uses means the end uses where borrowed funds cannot be deployed and shall include the following:
  - a) In the business of chit fund or Nidhi Company;
  - b) Investment in capital market including margin trading and derivatives;
  - c) Agricultural or plantation activities;
  - d) Real estate activity or construction of farm houses; and
  - e) Trading in Transferrable Development Rights (TDR), where TDR shall have the meaning as assigned to it in the Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2015.
- No person resident in India shall borrow or lend in foreign exchange from or to a person resident in or outside India and no person resident in India shall borrow in rupees from, or lend in rupees to, a person resident outside India except on sufficient reason and use of Credit card shall be allowed.
- The provision for External Commercial Borrowings is contained in Schedule I. The provision for Trade Credit for Import is contained in Schedule II. The provisions for Lending to borrowers outside India by a person resident in India is contained in Schedule III.



- The Link of this Notification is as under:  
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11441&Mode=0>

### **C. Inclusion of ESAF Small Finance Bank Limited in the Second Schedule of RBI Act, 1934:**

- RBI vide its Notification no. DBR.NBD.(SFB-ESAF).No.4083/16.13.216/2018-19 dated November 12, 2018 issued notification for inclusion of “ESAF Small Finance Bank Limited” in the Second Schedule of the Reserve Bank of India Act, 1934 and the same is published in the Gazette of India dated December 22- December 28, 2018.
- The Link of this notification is as under:  
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11440&Mode=0>

### **D. Restrictions on the activities of e-commerce entities having Foreign Direct Investment (“FDI”)**

- DIPP has issued a Press Note 2 on December 26, 2018 on FDI in e-commerce activities and clarifies most of the conditions specified in FDI Policy by introducing few restrictions in existing functioning of e-commerce activities.
- Press Note 2 states the RBI has allowed 100% foreign direct investment (FDI) in online retail of goods and services under market place model through the automatic route. India has allowed 100% foreign investment in Business-to-Business (B2B) e-commerce but not in Business-to-Consumer (B2C) e-commerce.
- According to Press Note issued Marketplace based Model of e-commerce is means providing of an information technology platform by an e-commerce entity on a digital and electronic network to act as a facilitator between buyer and seller.
- The e-commerce entity is prohibited from influencing the pricing of the products listed for sale on its online platform, directly or indirectly.
- FDI is not allowed in Inventory based model where the ownership in/control of the inventory of products lies with the e-commerce entities. If more than 25% of purchases of vendor are from the e-commerce entity or its group companies, that e-commerce entity will be deemed to be carrying on inventory based model.
- E-commerce entities are not allowed to list products of entities in which the e-commerce entities or its group company/s has any equity participation except if e-commerce entities are providing services in connection with the sale of products on its online platform and the terms of provisions of such services are on arm’s length basis and are non-discriminatory.

### **SEBI UPDATES:**

#### **A. SEBI (Settlement Proceedings) Regulations, 2018:**

- SEBI vide its Notification No. **SEBI/LAD-NRO/GN/ 2018/48** dated November 30, 2018 has introduced SEBI (Settlement Proceedings) Regulations, 2018 (“Settlement Regulations”).
- The Settlement Regulations, effective from January 01, 2019 will replace the SEBI (Settlement of Administrative and Civil Proceedings) Regulations, 2014 (“2014 Regulations”). The Settlement

Regulations have set out the terms and procedure for settlement of any proceedings initiated and pending before the SEBI or any other forum, for the violation of specified securities laws.

- Material changes introduced by the Settlement Regulations includes the following:
  - A default shall not be settled if, in SEBI's opinion, it has a market wide impact, caused losses to a large number of investors or affected the integrity of the market.
  - The SEBI may not settle certain specified proceedings where the applicant is a wilful defaulter, a fugitive economic offender or has defaulted in payment of any fees due or penalty imposed under securities laws.
  - The SEBI may agree to settle "in confidentiality" to benefit applicants who agree to provide "substantial assistance in the investigation, inspection, inquiry or audit, to be initiated or ongoing, against any other person in respect of a violation of securities laws.
  - The terms of settlement may include monetary or non-monetary terms or a combination of the two. Non-monetary terms may include suspension or cessation of business activities for a specified period, disgorgement on account of the action or inaction of the applicant, exit from the management of the company, submit to enhanced internal audit and reporting requirements, locking – in securities, etc.
- The Notification also provides details on:
  - Scope of Settlement - Scope of settlement proceedings, Rejection of application, Withdrawal of application, Effect of pending application on specified proceedings.
  - Terms of Settlement - Settlement terms, Factors to be considered to arrive at the settlement terms.
  - Committees - High Powered Advisory Committee, Internal committee(s)
  - Procedure of Settlement - Proceedings before the Internal Committee, Proceedings before the High Powered Advisory Committee, Action on the recommendation of High Powered Advisory Committee
  - Summary Settlement Procedure
  - Settlement Notice
  - Settlement Orders - Settlement of proceedings before the Adjudicating Officer and the Board, Settlement of the proceedings pending before the Tribunal or any court, Service and publication of settlement order, Settlement Schemes, Effect of settlement order on third party rights or other proceedings, Revocation of the settlement order.
  - Miscellaneous - Confidentiality of information, Power to remove difficulties, Irregularity in procedure, Relevance of these regulations in specified proceedings, Procedure for composition, Repeal and savings.
  - Schedule-I: FORM - Application for settlement.
  - Schedule-II: Guidelines for arriving at settlement terms, indicative amount and the settlement amount, proceeding conversion factor, regulatory action factor - value for all orders and regulatory directions, applicable base values and factors, applicable base amount, repetitive nature of default



- The Link of this notification is as under:

[https://www.sebi.gov.in/legal/regulations/dec-2018/securities-and-exchange-board-of-india-settlement-proceeding-regulations-2018\\_41212.html](https://www.sebi.gov.in/legal/regulations/dec-2018/securities-and-exchange-board-of-india-settlement-proceeding-regulations-2018_41212.html)

#### **B. Transfer of Securities only in Demat Form:**

- SEBI Vide its Press Release No. 49/2018 dated December 03, 2018 extended the deadline for transfer of shares of listed companies only in demat form to April 01, 2019.
- In March, the Board decided that except in case of transmission or transposition of securities, requests for effecting transfer of securities will not be processed unless the securities are held in the dematerialized form with a depository. This measure was to come into effect from December 05, 2018.
- Subsequently, the regulator has received representations from shareholders for extension of the date of compliance. In view of the same, the deadline has been extended and the aforesaid requirement of transfer of securities only in demat form shall now come into force from April 1, 2019.
- The Link of this Circular is as under:  
[https://www.sebi.gov.in/media/press-releases/dec-2018/transfer-of-securities-only-in-demat-form-deadline-extended-till-april-1-2019\\_41214.html](https://www.sebi.gov.in/media/press-releases/dec-2018/transfer-of-securities-only-in-demat-form-deadline-extended-till-april-1-2019_41214.html)

#### **C. Listing of Equity Shares of Companies Incorporated in India on Foreign Stock Exchanges and Vice Versa:**

- SEBI Vide its Press Release No. 50/2018 dated December 04, 2018, Submitted Report of the Expert Committee for listing of equity shares of companies incorporated in India on foreign stock exchanges and vice versa.
- SEBI constituted the 'Expert Committee for listing of equity shares of companies incorporated in India on foreign stock exchanges and of companies incorporated outside India on Indian stock exchanges' on June 12, 2018, with a view to facilitating companies incorporated in India to directly list their equity shares on foreign stock exchanges and companies incorporated outside India to list on Indian stock exchanges, in view, particularly, of the ongoing evolution and internationalization of capital markets across the globe.
- Such a framework would help Indian companies to access foreign capital at lower cost. The Indian economy, in turn, will experience added growth and economic development. Similarly, equity listings of companies incorporated outside India on Indian Stock Exchanges would improve the efficient allocation of capital and diversification for investors across the Indian economy.
- Currently, Indian companies can list their shares through depository receipts abroad, while foreign companies need to go through the Indian Depository Receipt route for listing of equities. Moreover, Indian firms can list their debt securities directly on international exchanges through a security instrument known as 'Masala Bonds'.
- The Committee in its report recommended that the framework should allow listing only on specified stock exchanges in 'Permissible Jurisdictions'. A "permissible jurisdiction" would mean

a jurisdiction which has treaty obligations to share information and cooperate with Indian authorities in the event of any investigation.

- The Committee in its report also provides details on:
  - Benefits to the Indian economy, Companies incorporated in India, Companies incorporated outside India & Indian investors
  - Principles for identifying the permissible jurisdictions and Stock Exchanges
  - Primary policy issues under various Indian regulations and the requisite changes
  - KYC and Anti-Money Laundering (AML) requirements applicable to investors and intermediaries
  - Applicable rules of accounting for preparation of consolidated financial statements
  - Primary policy issues under various indian laws and the requisite changes
  - Recommendations on listing of equity shares of companies incorporated in india on foreign stock exchanges and vice versa.
- The link of this Press Release is and under:
 

[https://www.sebi.gov.in/media/press-releases/dec-2018/submission-of-report-of-the-expert-committee-for-listing-of-equity-shares-of-companies-incorporated-in-india-on-foreign-stock-exchanges-and-vice-versa\\_41220.html](https://www.sebi.gov.in/media/press-releases/dec-2018/submission-of-report-of-the-expert-committee-for-listing-of-equity-shares-of-companies-incorporated-in-india-on-foreign-stock-exchanges-and-vice-versa_41220.html)
- The link of Committee Report is as under:
 

[https://www.sebi.gov.in/reports/reports/dec-2018/report-of-the-expert-committee-for-listing-of-equity-shares-of-companies-incorporated-in-india-on-foreign-stock-exchanges-and-of-companies-incorporated-outside-india-on-indian-stock-exchange\\_41219.html](https://www.sebi.gov.in/reports/reports/dec-2018/report-of-the-expert-committee-for-listing-of-equity-shares-of-companies-incorporated-in-india-on-foreign-stock-exchanges-and-of-companies-incorporated-outside-india-on-indian-stock-exchange_41219.html)

#### **D. Disclosure of Significant Beneficial Ownership In The Shareholding Pattern:**

- SEBI vide its Circular No. SEBI/HO/CFD/CMD1/CIR/P/2018/0000000149 dated December 07, 2018 has mandated all listed entities to disclose to stock exchanges details pertaining to significant beneficial owners ("SBO") holding with effect from quarter ending March 31, 2019 and modified Circular No. CIR/CFD/CMD/13/2015 dated November 30, 2015 (Format for Disclosure of Holding of Specified Securities and Shareholding Pattern) issued under Regulation 31 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015.
- SEBI has also prescribed the format for disclosure of SBO holdings by listed entities i.e listed entities will have to disclose the name, permanent account number and nationality of the SBO as well as the registered owner. Further, listed entities will also have to disclose details of the shares in which significant beneficial interest is held by the SBO and the date of acquisition of significant beneficial interest.
- The link of this circular is as under:
 

[https://www.sebi.gov.in/legal/circulars/dec-2018/disclosure-of-significant-beneficial-ownership-in-the-shareholding-pattern\\_41245.html](https://www.sebi.gov.in/legal/circulars/dec-2018/disclosure-of-significant-beneficial-ownership-in-the-shareholding-pattern_41245.html)

### **E. SEBI Board Meeting:**

- SEBI has approved certain proposals and revised few regulations relating to the securities market at its Board Meeting dated December 12, 2018.
- The Proposals made by the Board includes,
  - Proposal for Creation of Segregated Portfolio by Mutual Funds
  - Review of framework for Institutional Trading Platform
  - Clubbing of investment limits for Foreign Portfolio Investors (FPIs)
- The approval for amendment of few regulations includes,
  - Amendment to SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018:
  - Amendment in Regulation 29(4) of Takeover Regulations, 2011
- Other proposals includes,
  - Review of framework for Offer for Sale (OFS) of shares through Stock Exchange mechanism
  - Role of Custodians in Commodity Derivatives Market to enable institutional participation
  - Consultation Paper on Uniform Valuation Methodology for Pricing of Corporate Bonds
- The link of press release is as under:  
[https://www.sebi.gov.in/media/press-releases/dec-2018/sebi-board-meeting\\_41274.html](https://www.sebi.gov.in/media/press-releases/dec-2018/sebi-board-meeting_41274.html)

### **F. Clarification on Clubbing of Investment Limits of Foreign Portfolio Investors ("FPIs"):**

- SEBI vide its circular No. SEBI/HO/IMD/FPIC/CIR/P/2018/150 dated December 13, 2018 with reference to its earlier circulars No CIR/IMD/FPIC/CIR/P/2018/64 dated April 10, 2018 on Know Your Client (KYC) requirements for Foreign Portfolio Investors (FPIs) and No SEBI/HO/IMD/FPIC/CIR/P/2018/66 dated April 10, 2018 provides Clarification on clubbing of investment limits of foreign Government/ foreign Government related entities.
- Clarifications includes the following,
  - Clubbing of investment limit for FPIs will be on the basis of common ownership of more than 50% or based on common control. However, clubbing of investment limit of FPIs having common control shall not be done in case of,
    - (a) FPIs which are appropriately regulated public retail funds or
    - (b) FPIs which are public retail funds majority owned by appropriately regulated public retail funds on look through basis or
    - (c) FPIs which are public retail funds and investment managers (IMs) of such FPIs are appropriately regulated.
  - In case, two or more FPIs including foreign Governments/ their related entities are having direct or indirect common ownership of more than 50% or control, all such FPIs will be treated as forming part of an investor group and the investment limits of all such entities shall be clubbed at the investment limit as applicable to a single foreign portfolio investor.

- In cases where Government of India enters into agreements or treaties with other sovereign Governments and where such agreements or treaties specifically recognize certain entities to be distinct and separate, SEBI may, during the validity of such agreements or treaties, recognize them as such, subject to conditions as may be specified by it.
- The investment by foreign Government agencies shall be clubbed with the investment by the foreign Government/ its related entities for the purpose of calculation of 10% limit for FPI investments in a single company, if they form part of an investor group.
- The investment by foreign Government/ its related entities from provinces/ states of countries with federal structure shall not be clubbed if the said foreign entities have different ownership and control.
- In respect of any breach of the investment limit mentioned above, the FPI's will have the following two options:-
  - (i) FPI in breach shall have to divest its holding within five trading days from the date of settlement of the trades to bring its shareholding below 10% of the paid up capital of the company, or
  - (ii) The said investments will be treated as Foreign Direct Investment from the date of breach.
- The Board will notify necessary amendments in SEBI (Foreign Portfolio Investors) Regulations, 2014 separately.
- The link of this circular is as follows:  
<https://www.sebi.gov.in/legal/circulars/dec-2018/clarification-on-clubbing-of-investment-limits-of-foreign-portfolio-investors-fpis-41281.html>

#### **G. Creation of Segregated Portfolio in Mutual Fund Schemes:**

- SEBI vide its circular No. SEBI/HO/IMD/DF2/CIR/P/2018/160 dated December 28, 2018 has decided to permit creation of segregated portfolio of debt and money market instruments by mutual funds schemes, in order to ensure fair treatment to all investors in case of a credit event and to deal with liquidity risk.
- Asset Management Company (AMC) may create segregated portfolio in a mutual fund scheme subject to the following:
  - (a) Segregated portfolio may be created, in case of a credit event at issuer level i.e. downgrade in credit rating by a SEBI registered Credit Rating Agency (CRA);
  - (b) In case of difference in rating by multiple CRAs, the most conservative rating shall be considered. Creation of segregated portfolio shall be based on issuer level credit events as detailed at paragraph C-1 and implemented at the ISIN level;
  - (c) Creation of segregated portfolio shall be optional and at the discretion of the AMC. It should be created only if the Scheme Information Document (SID) of the scheme has provisions for segregated portfolio with adequate disclosures;
  - (d) AMCs shall have a detailed written down policy on creation of segregated portfolio and the same shall be approved by the trustees.

- The Board also provides,
  - Process for creation of segregated portfolio
  - Valuation and processing of subscriptions and redemptions
  - Disclosure Requirements
  - TER for Segregated Portfolio
  - Monitoring by Trustees
  
- The link of this circular is as under:  
[https://www.sebi.gov.in/legal/circulars/dec-2018/creation-of-segregated-portfolio-in-mutual-fund-schemes\\_41462.html](https://www.sebi.gov.in/legal/circulars/dec-2018/creation-of-segregated-portfolio-in-mutual-fund-schemes_41462.html)

### **DIPP UPDATES:**

#### **DIPP Press Note on review of policy of FDI investment in e-commerce:**

- The Department of Industrial Policy and Promotion (DIPP) has issued a Press Note 2 of 2018 on December 26, 2018 to provide clarification to FDI Policy on e-commerce sector. According to the policy, e-commerce entities can engage only in Business to Business (B2B) and not in Business to Consumer (B2C) e-commerce.
- FDI has permitted 100% FDI in market place model of e-commerce through Automatic route. Marketplace model of e-commerce entity will be permitted to enter into transaction with sellers registered on its platform on B2B basis.
- Market place model of e-commerce means providing of an information technology platform by an e-commerce entity on a digital and electronic network to act as a facilitator between buyer and seller.
- FDI is not permitted under Inventory based model of e-commerce. In case purchase from vendor from e-commerce entities if more than 25% from e-commerce entity or its group companies, it is deemed to be carrying on inventory based model.
- The link of the above press note is below:  
[https://dipp.gov.in/sites/default/files/pn2\\_2018.pdf](https://dipp.gov.in/sites/default/files/pn2_2018.pdf)

## ARTICLE OF THE MONTH

### REPORT FOR CLOSURE OF PRIVATE LIMITED COMPANY IN INDIA OR PUT THE COMPANY IN DORMANCY

The Company is a legal entity incorporated under the Companies Act with certain legal procedure, same way when you would like to close the Company, there is process to do so. In India there are various ways by which the Company can be closed, like

1. Apply for Strike off the name of the Company from the Register maintained by the Registrar of Companies
2. Voluntary winding-up or liquidation of the Company
3. Merger with other company and dissolve the Company
4. Transfer of all 100% shares to new buyer and sell the Company
5. Apply for status of Dormant Company ( maximum for 5 years )

We will study now each of above options in detail below:

#### 1. Apply for Strike off the name of the Company from the Register maintained by the Registrar of Companies :

**STRIKE OFF**

Removal of Name of Company 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 26<sup>th</sup> 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.



The Company can make application or power is given to the RoC that if he has reason to believe, it can strike off the name of the Company by giving notice to such companies which are non-compliant and/or not doing any business since past 2 years. When RoC does it on his own (suo moto), the Director of the company becomes disqualified to act as Director for a period of five years as per provisions of section 164(2) of the Companies Act, 2013. Hence it is advisable to make application rather than RoC taking any such action of strike off by its own.

#### A. STRIKE OFF BY RoC ON HIS OWN (SUO MOTO)

RoC on its own due to valid reasons may take action to strike off the name of the Company.

##### 1. Trigger events for striking off:

The Registrar of Companies (RoC) 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 within such period for obtaining the status of a Dormant Company under section 455.

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

(As per Rule 3 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016)

- 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 is ordered and being carried out or action 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 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 prosecution for an offence is pending in any court;

- vii. 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;
- 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.

\*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 in Form STK -1 to all the Directors of the Company at the address available on record by registered post acknowledgement due or by speed post informing the reason or grounds on which the name of the Company may be removed and requesting them to send their representations, if any along with the copies of relevant documents within 30 days from the date of notice. After satisfying the reason is valid, the RoC may strike off the name of the Company and put the list of such companies on the website of Ministry of Corporate Affairs namely at [www.mca.gov.in](http://www.mca.gov.in)

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

A Company may, After extinguishing all its liabilities, by a special resolution or with the consent of 75% members in terms of its paid –up share capital, file an application to the RoC for removing the name of the Company from the Register of Companies on all or any of the grounds specified above (triggering of event for strike off).

1. Which company can make application : Any company(other than Section 8 company that is NGO or Not for Profit organization) may as per section 248(2) of the Act, voluntarily make an application for striking off the name of the Company from the Register of Companies maintained by the RoC, after extinguishing all its liabilities and 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 mentioned above . However, a company which is regulated under a Special Act is required to enclose approval of the regulatory body constituted or established under that Act.

2. Which company cannot make application

The Company cannot make application for strike off of the name if, at any time in the previous three months, the Company—

- (a) has changed its name or shifted its registered office from one State to another;
- (b) has made a disposal for value of property or rights held by it, immediately before cesser of trade or otherwise carrying on of business, for the purpose of disposal for gain in the normal course of trading or otherwise carrying on of business;
- (c) has engaged in any other activity except the one which is necessary or expedient for the purpose of making an application under that section, or deciding whether to do so or concluding the affairs of the company, or complying with any statutory requirement;
- (d) has made an application to the Tribunal for the sanctioning of a compromise or arrangement and the matter has not been finally concluded; or
- (e) is being wound up under Chapter XX of this Act or under the Insolvency and Bankruptcy Code, 2016.

3. 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 Notice convening General Meeting of the members to obtain their approval for such proposal of strike off of the name of the Company.
- (ii) Call members meeting to consider proposal of strike off: A Company may after extinguishing all its liabilities need to get approval of members for making application to

RoC to strike off the name of the Company, by way of passing 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 then need to file an application in e-Form STK-2 with RoC for removal of its name from the Register of Companies maintained by the RoC and pay fees of Rs. 5000/-. Such application need to be signed by a Director who is authorized by the Board and with following 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 Accounts containing assets and liabilities of the Company made up to a day, 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) A 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 arising out of such inspection or investigation.
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 are required to be Notarized or Apostilised or attested by Consulate of the Country of which the person is citizen.

If the concerned Director does not have registered Digital Signature Certificate, then a physical copy of a form duly filled in shall be signed manually by the director duly authorised in that behalf and shall be attached with form STK-2 while uploading the form.

- (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: Ministry upon getting such application publish a Notice under sub-section (1) and (2) of section 248 in Form STK-5 or 5A( Notification dated 12<sup>th</sup> April, 2017) (in case notice for strike off received from ROC) and Form STK-6 (Voluntary strike off) and the same 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, both having wide circulation in the State where the Registered Office of the Company is situated.

In case of the Company had made application for striking off of the name, it shall also place the application on its website, if any, till the Disposal of such application.

**(vi) Undertakings by Directors and Discharge of Liabilities**

Before passing an order for strike off of the name, RoC shall satisfy himself that sufficient provision has been made for the realization of all amount due to the Company and for the payment or discharge of all its liabilities and obligations by the company within a reasonable time and if necessary, obtain necessary undertakings from the Managing Director, Director or other persons in charge of the management of the Company.

Notwithstanding the undertaking given as above, the assets of the Company shall be made available for the payment or discharge of all its liabilities and obligations even after the date of order removing the name of the Company from the register of Companies.

Further, the liability, if any, of every Director, manager or other officer who was exercising any power of management, and of every member of the Company dissolved, shall continue and may be enforced as if the company had not been dissolved.

Nothing shall affect the power of National Company Law Tribunal to wind up a company, the name of which has been struck off 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, the Company shall stand dissolved and same shall also be placed on the official website of MCA.

#### C. Effect of company notified as dissolved

Where a Company stands dissolved under section 248 (strike off), it shall on and from the date mentioned in the Notice of RoC 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 realising the amount due to the Company and for the payment or discharge of the liabilities or obligations of the Company.

#### D. Various Forms for application for Strike off the name of the company

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 by Directors	Directors
STK-4	Affidavit of Directors	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

#### E. Discussion

- (a) The Company to give statement of Assets and Liabilities of the Company made upto a day not more than 30 days before the date of application and certified by any Chartered Accountant
- (b) On liability side only share capital should be there and no other liability to remain
- (c) On asset side there has to be only losses and no other assets
- (d) The Directors who gives indemnity bond and affidavit shall be responsible for any liability of past period that may arise in future.
- (e) Time period to dissolve the Company is one year

#### 2. Voluntary winding-up or liquidation of the Company

A body-corporate incorporated under any act becomes a legal entity born. If such legal entity decides to end its legal existence, then the Companies Act and Insolvency and Bankruptcy Code, 2016 (IBC) provide a process for bringing an end to its legal existence. Liquidation or winding up of any legal entity is the process whereby its life is ended.

Any company which is solvent wants to liquidate the Company voluntarily and has not committed any default, may initiate voluntary liquidation proceedings under the provisions of Section 59 (Chapter V) of Insolvency and Bankruptcy Code, 2016, now referred to as “IBC, 2016” and as per Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 (notified on 31<sup>st</sup> March, 2017) now referred to as “IBBI (VLP) Regulation, 2017 or the Regulation”. The Company is required to meet such conditions and procedural requirements as may be specified by Insolvency and Bankruptcy Board of India, now referred to as “IBBI”.

It is a process of selling all of its assets, making payment of its debts, dues and obligation and distributes the remaining assets to the shareholders of the Company and then dissolving the Company with Order of Tribunal (National Company Law Tribunal/ NCLT).

1. Section 2 (94A) of the Companies Act 2013- Definition of Winding up is inserted as Section 2 (94A) in the Companies Act, 2013 with effect from 15<sup>th</sup> November 2016 . It reads “winding up” means winding up under this Act or liquidation under the Insolvency and Bankruptcy Code, 2016, as applicable.
2. Section 117 (3) (f) of the Companies Act 2013- reads that the provisions of this section shall apply to resolutions requiring a company to be wound up voluntarily passed in pursuance of section 59 of the Insolvency and Bankruptcy Code, 2016 (IBC, 2016)
3. Section 59 of IBC which was effective from April 01, 2017, gives right to any Corporate Person\* which intends to liquidate itself voluntarily, which can do so if it has not committed any default.
4. Section 3(12) of IBC defines 'default' as non-payment of debt, when whole, any part or an installment of the amount of debt has become due and payable and is not repaid by the debtor or the corporate debtor, as the case may be.

#### **A. PROCESS FOR VOLUNTARY LIQUIDATION OF CORPORATE PERSON:**

##### **A.1 INITIATION OF LIQUIDATION BY A COMPANY: Reg.3 and Section 59(3)**

As per Section 59(3) of IBC, for initiation of liquidation, the Company shall do the following:

1. A Registered Valuer shall prepare a report on valuation of assets of the Company
2. Convene a Board Meeting and at such meeting it shall take into account the audited financial statements of the Company for the previous two years or for a period since the Company's incorporation; whichever is later.
3. The Directors of the Company shall make a Declaration of Solvency which shall be verified by an affidavit primarily stating that full enquiry has been made into the affairs of the Company and the Board had formed an opinion that (a) the Company has no debt or will be able to pay off its debts in full from realization of assets under voluntary liquidation and (b) the Company is not being liquidated to defraud any person.
4. Such declaration shall be accompanied with (a) audited financial statements and record of business operations of the company for the previous two years or for the period since its incorporation, whichever is later and (b) a report of the valuation of the assets of the corporate person, if any prepared by a registered valuer;
5. The Company shall file such Declaration of Solvency given by the Board with the Registrar of Companies (RoC) in Form GNL-2.

## **A.2 CONVENE MEMBERS / CONTRIBUTORIES MEETING**

As per section 59 (3)(c) of IBC, within 4 weeks of making a Declaration of Solvency, a Special Resolution shall be passed by the members / contributory in the general meeting requiring the Company to be liquidated voluntarily and appointing an Insolvency Professional as liquidator. Contributory is defined in Regulation 2(1) (b) of the Regulation as member of the Company, partner of LLP, and any person liable to contribute towards assets of the corporate person in the event of its liquidation.

The members may pass an Ordinary Resolution to liquidate the Company after expiry of fixed duration specified in Article of Association (AoA) or occurrence of any event which AoA may provide, as the case may be, and appointing an Insolvency Professional as liquidator.

The resolution (special/ ordinary) passed by the members shall be filed with RoC in Form MGT-14.

## **A.3 CREDITORS MEETING:**

If the Company owes any debt to any person:

Creditors representing 2/3<sup>rd</sup> in value of the debt of the Company shall approve the resolution (members/ contributories) within 7 days of passing of such special resolution.

## **A.4 LIQUIDATION COMMENCEMENT DATE:**

Subject to the approval of Creditors (if any), the voluntary liquidation proceedings in respect of a Company shall be deemed to have commenced from the date of passing of the members/ contributories resolution. ( Liquidation Commencement Date ).

## **A.5 INTIMATION TO ROC AND IBBI:**

The Company/ Corporate Person shall notify the RoC and IBBI about the resolution to liquidate the Company/ Corporate Person within 7 days of such resolution or the subsequent approval by the creditors, as the case may be.

**A.6 EFFECTS OF LIQUIDATION:**

On and from the Liquidation Commencement Date, the Company/ Corporate Person shall cease to carry on its business, but shall carry on its functions which are beneficial for winding up and shall not act prejudicial to it. The physical existence of the Company/ Corporate Person shall continue exist unless it is dissolved by order of Adjudicating Authority/ Tribunal/ NCLT.

**A.7 APPOINTMENT AND REMUNERATION OF LIQUIDATOR:**

- (a) The terms and conditions for appointment and remuneration of liquidator shall be discussed by resolution passed by members/ contributories of the Company/ Corporate Person as the case may be.
- (b) The remuneration payable to the liquidator shall form part of the liquidation cost.
- (c) The Corporate Person shall appoint an insolvency professional as liquidator if such insolvency professional, and every partner or director of the insolvency professional entity of which he is a partner or Director is independent of Company.

The following persons shall be considered independent of the Corporate Person:

- i. Eligible to be appointed as an Independent Director on the Board of the Corporate Person under section 149 of Companies Act, 2013, if such Corporate Person is a Company ;
- ii. Such person is not a related party to the Corporate Person
- iii. Such person has not been an employee or proprietor or a partner:
  - of a firm of auditors or company secretaries or cost auditors of the Corporate Person; or
  - of a legal or a consulting firm, that has or had any transaction with the corporate person contributing 10 % or more of the gross turnover of such firm, at any time in the last three years.

**A.8 ENGAGEMENT OF PROFESSIONALS:**

- (a) A liquidator may enroll professionals, to assist him in the discharge of his duties, obligations and functions for a reasonable remuneration and such remuneration shall form part of the liquidation cost.

- (b) The liquidator shall not engage professional who is his relative, a related party of the Corporate Person or has served as an auditor to the Corporate Person at any time during the five years preceding the liquidation commencement date.
- (c) The professional enrolled or proposed to be enrolled, shall disclose the existence of any pecuniary or personal relationship with any stakeholder or Corporate Person forthwith to the liquidator.
- (d) Primary functions of the Liquidator
- Various Reporting such as Preliminary, Annual status, Final Reports etc.
  - Engagement of professionals to assist him in the discharge of his duties, obligations and functions
  - To value, sell, recover and realize all assets of and monies due to such corporate persons in a time-bound manner;
  - Opening a bank account for the purpose of receiving all moneys due to the corporate person;
  - Distribution of proceeds to the stakeholders with in a period of 6 (six) months of receipt of the proceeds (Reg.35); and
  - To preserve a physical or an electronic copy of the reports, registers and books of account for atleast 8 (eight) years after the dissolution of the corporate person, either with himself for with an information utility (Reg.41)

#### **A.9 PUBLIC ANNOUNCEMENT BY LIQUIDATOR:**

The liquidator shall within maximum of 5 days of his appointment, make public announcement in Form A of Schedule I to call upon the claims from the stakeholders as on Liquidation Commencement Date. He will also mention in the announcement, the last date of making any claim, which shall be 30 days from the Liquidation Commencement Date.

The public announcement shall be published in Official Gazette, in English and in a regional language newspaper having wide circulation at the location of registered office and principal office, on the website of the Corporate Person and on IBBI website.

#### **A.10 CLAIMS AND VERIFICATION OF CLAIMS:**

The stakeholders will have to prove their claims for the debts or dues to them including interest, if any as on Liquidation Commencement Date. The stakeholders include financial creditors,

operational creditors, workmen and employees along with other stakeholders. The aforesaid claims by stakeholders shall submit the proof of claim in prescribed form as stated below:

Forms	Purpose	Responsibility
Form B	Proof of claim by Operational Creditors except Workmen and Employees	Operational Creditors
Form C	Proof of claim by Financial Creditors	Financial Creditors
Form D	Proof of claim by Workman or Employee	Workman or Employee
Form E	Proof of claim by Authorised Representative of Workmen or Employees	Authorised Representative of Workmen or Employees
Form F	Proof of claim by any other Stakeholder.	Stakeholder.

Debt payable at future time can also be claimed, however if debt has not fallen due as on the date of distribution of the claims, the claimant is entitled to reduced claim.

The liquidator shall verify the claims within 30 days from the last date for receipt of claims. He may either admit or reject the claim in whole or in part.

The liquidator shall then prepare the list of stakeholders within 45 days from the last date for receipt of claims

If the claim is rejected, the creditor can appeal to Adjudicating Authority (National Company Law Tribunal - NCLT) against the decision of liquidator within 14 days of such decision.

#### **A.11 REALISATION OF ASSETS:**

The assets of the Company shall be valued and sold in the manner approved by such Company in compliance with the provisions of applicable law.

The liquidator shall attempt to recover and realize all assets of and dues to the Company in a time bound manner for maximization of value for the stakeholders.

The liquidator shall realize any amount due from any contributory to the Company, irrespective of any encumbrance or charge on uncalled share capital of the Company.



Liquidator shall be entitled to call and realize such uncalled capital of the Company, and to collect the calls in arrears made prior to liquidation by providing a notice to the contributory to make payment within 15 days from the receipt of notice. Subject to rights of holder of any charges or encumbrances, the liquidator shall hold the money realized.

No distribution shall be made to a contributory, unless he makes his contribution to the uncalled or unpaid capital as required in the constitutional document of the corporate person.

#### **A.12 PRELIMINARY REPORT:**

The liquidator shall submit a Preliminary Report to the Corporate Person / Company within 45 days from the Liquidation Commencement Date ( Reg 9), detailing:

- a) the capital structure of the Corporate Person / Company;
- b) the estimates of its assets and liabilities as on the Liquidation Commencement Date based on the books of the Corporate Person / Company;
- c) whether he intends to make any further inquiry in to any matter relating to the promotion, formation or failure of the Corporate Person / Company or the conduct of the business thereof; and
- d) the proposed plan of action for carrying out the liquidation, including the timeline within which he proposes to carry it out and the estimated liquidation costs.

#### **A.13 REGISTER AND BOOKS OF ACCOUNTS:**

Where the Books of Accounts of the Corporate Person / Company are incomplete on the Liquidation Commencement Date, the liquidator shall have them completed and brought up-to-date forthwith, with all convenient speed. The liquidator shall maintain all the registers and books, as may be applicable and specified in Regulation 10 of the Regulation, in relation to the liquidation of the Corporate Person / Company.

List Of Registers And Books specified in Regulation 10			
1	Cash Book	10	Register of Claims and Dividends
2	Ledger	11	Contributories Ledger
3	Bank Ledger	12	Distribution Ledger
4	Register of Fixed Assets and Inventories	13	Fee Register
5	Securities and Investment Register	14	Suspense Register
6	Register of Book Debts and Outstanding Debts	15	Documents Register
7	Tenants Ledger	16	Books Register

8	Suits Register	17	Register of unclaimed dividends and undistributed properties deposited
9	Decree Register	18	such other books or registers as may be necessary to account for transactions entered into by him in relation to the corporate debtor

#### **A.14 RIGHT OF LIQUIDATOR TO SUSPEND THE PROCESS OF LIQUIDATION:**

If the liquidator is of the opinion that (i) the liquidation is being done to defraud a person or (ii) the Corporate Person / Company is unable to pay off its debts in full from the proceeds of realization from liquidation, then he shall make an application to NCLT to suspend the liquidation process and pass any such orders as it deems fit.

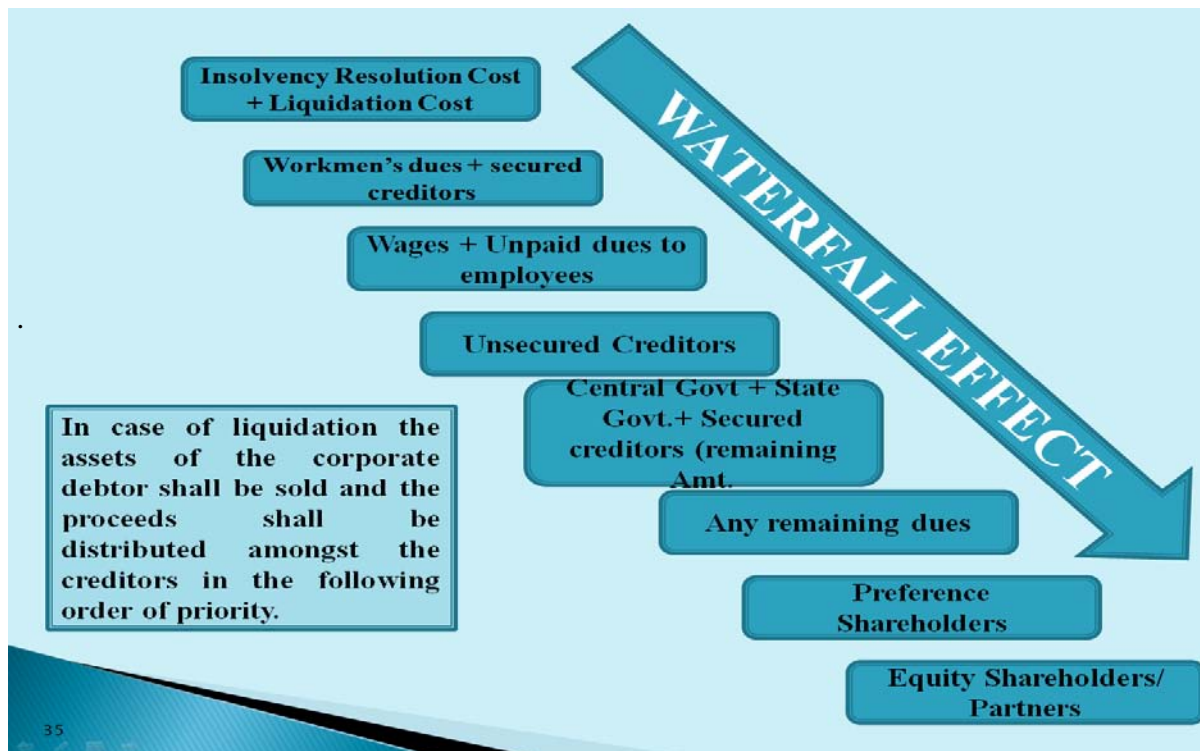
#### **A.15 MONEY TO BE PAID INTO BANK ACCOUNT:**

The liquidator shall open a bank account in the name of the Corporate Person / Company followed by the words 'in voluntary liquidation', in a scheduled bank, for the receipt of all moneys due to the Corporate Person / Company. All payments made out of voluntary liquidation account by the liquidator above Rs. 5000/- shall be made by cheque drawn or by online banking transaction against the bank account.

#### **A.16 DISTRIBUTION OF PROCEEDS:**

- The liquidator shall distribute the proceeds from realization within 6 months from the receipt of amount to the stakeholders.
- The liquidation cost shall be primarily deducted before distribution of proceeds. (Reg 35)
- Any asset of the Corporate Person / Company which cannot be readily or advantageously sold due to peculiar or other special circumstances, then such asset shall be distributed among the stakeholder subject to approval of Corporate Person / Company.

The money in the credit of the bank account shall not be used except in accordance with section 53(1) of IBC i.e. Waterfall Effect.



#### **A.17 COMPLETION OF LIQUIDATION:**

The liquidator shall attempt to complete liquidation process within 12 months from passing of resolution for winding up.

In case liquidation process continues for more than 12 months, the liquidator shall hold a meeting of the contributories of the Corporate Person / Company within 15 fifteen days from the end of the 12 months from the Liquidation Commencement Date and at the end every succeeding 12 months till dissolution of the Corporate Person.

The liquidator shall present an Annual Status Report indicating progress in liquidation, which shall include the following:

- settlement of list of stakeholders,
- details of any assets that remains to be sold and realized,
- distribution made to the stakeholders, and
- distribution of unsold assets made to the stakeholders;
- developments in any material litigation, by or against the corporate person; and
- filing of, and developments in applications for avoidance of transactions in accordance with Chapter III of Part II of IBC.

The Annual Status Report shall be accompanied with the audited accounts which shall disclose the receipt and payment in relation to liquidation the liquidation commencement date.

**A.18 FINAL REPORT:**

On completion of liquidation, the liquidator shall prepare a Final Report to send it to the Registrar and IBBI, which shall be accompanied with

- Audited accounts which shall disclose the receipt and payment in relation to liquidation the Liquidation Commencement Date ;
- A statement demonstrating that the assets of the Corporate Person has been disposed off, the debt of Corporate Person has been discharged to the satisfaction of the creditors, there are no pending litigation or necessary provisions are made for obligations arising from pending litigation.
- A detailed sale statement in respect to realization of assets of Corporate Person.

**A.19 UNCLAIMED PROCEEDS OF LIQUIDATION OR UNDISTRIBUTED ASSETS:**

Before the order of dissolution is passed, the liquidator shall apply to NCLT for an order to pay any unclaimed proceeds of liquidation or undistributed assets or any other balance payable to the stakeholders in his hands on the date of order of dissolution into the Company Liquidation Account (CLA) which is a Public Account of India. Liquidator on making payment in the CLA, shall furnish to RoC and IBBI, a statement containing:

- the nature of sum included
- the names and last known address of stakeholders entitled to participate therein
- amount entitled to each stakeholders
- nature of the claims

If the liquidator retains any unclaimed proceeds which should have been paid into CLA, then such liquidator shall pay interest of 12% p.a. on the retained unclaimed proceeds and also pay such other penalty prescribed by IBBI.

On payment of aforesaid interest and penalty by the liquidator the RBI shall provide a receipt, and such receipt would be sufficient evidence for effectual discharge of liquidator.

If a person claiming his entitlement to any money paid into CLA can make application to IBBI to seek order for payment of the money claimed. If IBBI is satisfied with the person's entitlement whether in whole or in part, shall make an order to make payment to that person of the sum due to him, after taking such security from him as it may think fit.

Any amount paid into CLA, which remains unclaimed for a period of 15 years will be transferred to general revenue account of Central Government.

#### **A.20 DISSOLUTION:**

The liquidator shall send the Final Report to RoC, IBBI. Further when affairs of the Corporate Person are completely wound up and all its assets are realized, the liquidator shall make an application to Adjudicating Authority (NCLT) for dissolution of such Corporate Person.

The Adjudicating Authority (NCLT) shall pass an order that the Corporate Person shall be dissolved from the date of such Order.

A copy of such order of Adjudicating Authority (NCLT) shall be filed in 14 days from the date of such order, with authority, with which the Corporate Person is registered .

#### **A.21 PRESERVATION OF RECORDS:**

The liquidator shall preserve a physical or an electronic copy of the reports, registers and books of account as for at least 8 years after the dissolution of the corporate person, either with himself or with an information utility.

#### **B. TIME LINE:**

##### Broad Timeline

- ✓ Declaration from Majority of Directors (x day)
- ✓ Within 4 week resolution by special majority of contributories –Appointing IP as Liquidator (x+28 days)
- ✓ Within 7 days Creditors (2/3rd of debt), to approve the resolution (liquidation commencement date) (x+35 days)
- ✓ Within 7 days notify IBBI and Registrar (x+ 42 days)
- ✓ Within 30 days Public Announcement (x+35-40 days)
- ✓ Last day of submission of claims (x+ 65 –70 days)
- ✓ Verification of claims by liquidator (x+ 95 days)
- ✓ Preliminary Report to the corporate person (x+80 days) LCD + 45 days

### Detailed Timeline

Tentative Timeline	Particulars for Voluntary Winding Up (VWU) under Insolvency & Bankruptcy Code
Day 1	Convene the Board Meeting to transact the following Business, before that close all business activities and surrender all licenses: <ol style="list-style-type: none"> <li>i. Approve the resolution of Voluntary Winding Up of the Company ;</li> <li>ii. Appoint of Insolvency Professional as the Liquidator of the Company subject to the approval of member.</li> <li>iii. Fix the date and time for holding of General Meeting of Member.</li> </ol>
Day 1	<u>DECLARATION OF SOLVENCY</u> Duly verified through an affidavit by majority of Directors, stating that: <ol style="list-style-type: none"> <li>i. The Company has no debt or it will able pay its debt fully; and</li> <li>ii. The winding up is not to defraud any person</li> </ol> Declaration shall be accompanied by: <ol style="list-style-type: none"> <li>i. Audited Financial Statements and record of Business operations of corporate person for previous two years or for period since incorporation.</li> <li>ii. A report of the valuation of the Assets of the Corporate Person, if any, prepared by a registered valuer.</li> </ol>
Day 1	Send of Notice of General Meeting to all the Members.
Day (1+28) i.e. Day 29	Convene the General Meeting and pass the Ordinary Resolution / Special Resolution for: <ol style="list-style-type: none"> <li>i. Approval of Voluntary Liquidation of the Company;</li> <li>ii. Appointment of Liquidator (IRP) and fixation of his/ her Remuneration.</li> </ol>
Day (29+7) i.e. 36	Provided that, if the Corporate Person/ Company owes any debt to any person creditors representing two thirds (2/3rd) in value of Debt shall approve the same resolution.
Day (29+7) i.e. 36	Filing of Special Resolution passed for voluntary Liquidation with ROC and with the IBBC, under the code.
Day 1	Filing of declaration of Solvency with RoC.
Day (29+5) i.e. Day 34	<u>Liquidator shall make public announcement</u> in max 5 days of his appointment inviting stakeholders to submit their claims within 30 days from the Liquidation commencement date.
Day (29+30)	Claims by operational creditor to be received by Liquidator

i.e. Day 59	
Day (29+30) i.e. Day 59	Claims by financial creditor to be received by Liquidator
Day (29+30) i.e. Day 59	Claims by workmen and employees and if dues are pending with numerous workmen or employees by Authorized Representative.
Day (29+30) i.e. Day 59	Claims by other stakeholders by giving Affidavit along with Documentary evidence and Bank statement
Day (29+45) i.e. Day 74	<u>Liquidator shall submit Preliminary report detailing:</u> i. capital structure of corporate person; ii. estimates of its assets and liabilities on liquidation commencement date based on books of accounts of corporate person iii. Further inquiry if he intends in any matter (s) relating to corporate person. iv. proposed plan of action carrying out liquidation
Day 29+ ASAP	The Liquidator shall have the books of accounts completed and brought up to date, if incomplete.
Day 29+ ASAP	The Liquidator shall maintain certain books and registers. The Liquidator shall also maintain receipts of all payments and expenses made.
Day (29+30+30) i.e Day 89	The Liquidator shall verify claims submitted for receipt of claims submitted for receipt of claims and may either admit or reject the claim, in whole or in part, as the case may be.
Day (59+45) i.e. Day 104	The Liquidator shall prepare a list of creditors based on the proof of claims submitted by the creditors
Within requisite time	The Liquidator shall open bank account in name of corporate person followed by words 'in voluntary liquidation', in scheduled bank
Day (29+30+180)	Liquidators to realize all assets and deduct the liquidation cost from the said realization and after deducting the liquidation cost, shall distribute the realization among the stakeholders
Day 29+365 or requisite time	Liquidator shall endeavor to complete the process within 12 months from the date of commencement of Liquidation process
Indispensable time	Upon Completion of Liquidation Process, the Liquidator shall prepare Final Report consisting of- i. Audited accounts of Liquidation showing receipts and payments, ii. Statements demonstrating that assets are sold, debts are satisfied and no



	Litigation is pending iii. Sale statement w.r.t. all assets realized.
Indispensable time	The Liquidator shall i. send the Final Report to RoC and IBBI ii. submit the final Report to NCLT with application for Dissolution.
Indispensable time	Where the Liquidator is of the opinion that i. Liquidation is done to Defraud a Person, ii. the Corporate person will not be able to pay its debts in full from the proceeds of assets to be sold in the liquidation , shall make the application to NCLT to suspend the process of liquidation and pass any such orders as it deems fit.
NA	The Liquidator to preserve copy of the reports, registers and books of account for at least 8 years after dissolution, either with himself or with an information utility.
Indispensable time	Upon receipt of application, NCLT shall pass an <u>Oder of Dissolution of Corporate Person/ Company</u>
Within 14 days from the date of NCLT order	Copy of order shall be forwarded to RoC and / or any other authority with which the corporate person is registered.

### C. DISCUSSION

- a. Insolvency Professional (IP) only can act as liquidator.
- b. The Company shall cease to carry on its business except required for beneficial winding up from the liquidation commencement date (that is date of passing of resolution by members)
- c. As per Rule 37 of IBBI (VLP) Regulation, 2017, the liquidator shall endeavor to complete the liquidation process of the Company within 12 months from the liquidation commencement date (that is date of passing of resolution by members)
- d. The Company should stop all its business and activities and surrender all its license and certificates like GST, Shops & Establishment License, Import & Export Code Number, Provident Fund and ESIC etc.
- e. As per Rule 37 of IBBI (VLP) Regulation, 2017, the liquidator shall preserve a physical or an electronic copy of the reports, registers and books of account of the Company for at least eight years after the dissolution of the corporate person, either with himself or with an information utility.
- f. An Independent Insolvency Resolution Professional only can act as Liquidator.

### 3. Merger with other company and dissolve the Company

The Company may decide to merge itself to another company and dissolve itself. All assets, liabilities (including refund or tax payments) gets transferred to another company (including continuing litigation also).

Provisions of section 230 to 240 of the Companies Act 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 governs the process of merger.

Following is detailed checklist for merger.

Sr. No	Title	Merger process u/s 232 read with rules of Companies (Compromises, Arrangement and Amalgamations) Rules, 2016	Time Frame
1	Object Clause in MOA	Check the Objects Clause of the Memorandum of Association of the Company, if no provision then to alter the object clause of the Memorandum of Association of the Company. The Company need to take approval of Board and Members to alter the Objects Clause of the Memorandum of Association.	
2	Notice of Board Meeting	Send Notice and agenda calling the BM for agenda item as mentioned below : <ol style="list-style-type: none"> <li>1. Approval of proposal of merger of the Company, approval of Draft Scheme of Merger and appointment of Professional.</li> <li>2. Approval of financial statements till last date of submission of Scheme.</li> <li>3. Approval of Declaration of Solvency by the Directors, finalise Appointed Date for the merger of entity, Noting details of Creditors, Noting of list of Employees and Affidavit to that effect by the Directors.</li> <li>4. Noting of Certificate of Statutory Auditors certifying (i) List of Creditors and (ii) that the Accounting treatment</li> </ol>	7 days prior to board meeting or shorter notice

		<p>proposed in the Scheme is as per the Accounting Standard (AS)</p> <p>5. Approval to convene EGM and authority given to Authorised Representative/ Director to issue the Notice once NCLT approval comes or in 30 days.</p>	
3	Convene Board Meeting	Convene Board Meeting for all above agenda	
4	Filing a Joint Application for the order of the meeting.	<p>As per the details mentioned under Rule 3 of the Companies (Compromises, Arrangement and Amalgamations) Rules, 2016, Joint Application to be made in Form No. NCLT - 1 (appended in the National Company Law Tribunal Rules, 2016) to the Tribunal along with:</p> <ul style="list-style-type: none"> <li>• A notice of admission in Form No NCLT - 2 (appended in the National Company law Tribunal Rules, 2016)</li> <li>• An affidavit in Form No- NCLT - 6 (appended in the National Company law Tribunal Rules, 2016)</li> <li>• A copy of scheme of compromise or arrangement, which should disclose as per Section 230 (2) and</li> <li>• Fee as prescribed in schedule of fees.</li> <li>• List of Directors and Shareholders</li> <li>• Board Resolution for approving the Scheme of Amalgamation.</li> </ul>	
5	Filing of scheme with Regional Director/ ROC/ Official Liquidator.	<p>The Transferee Company shall file the copy of the Scheme so approved along with Form CAA-11 with:</p> <ol style="list-style-type: none"> <li>1) Regional Director in Form RD - 1</li> <li>2) Registrar of Companies (RoC) in Form GNL -1</li> <li>3) Official Liquidator through hand delivery or by registered post or speed post</li> </ol>	<p>within 7 days of conclusion meeting of members or class of members or creditors or class of creditors</p>
6	Hearing of the Application at the Tribunal.	<p>Tribunal may at its discretion, give directions to convene meeting of shareholders / creditors or dispense with the meeting of creditors of the transferor and transferee company if 90% or more of value of creditors have consented to the scheme by way of an affidavit, then creditors meeting shall be dispensed with the Tribunal.</p>	

7	Notice of the Meeting of the creditors or class of creditors or the members or class of members.	<p>After the order is made by the Tribunal, following documents shall be attached along with the notice of the meeting to shareholders/ creditors</p> <ul style="list-style-type: none"> <li>• Draft Scheme of Merger.</li> <li>• Appointed Date</li> <li>• Effective Date</li> <li>• Confirmation copy of the draft scheme filed with the Registrar</li> <li>• Report adopted by the directors explaining the effect of compromise on creditor, KMP, promoters, non-promoter members laying out share exchange ratio, specifying valuation difficulties.</li> <li>• Valuation report by the expert</li> <li>• A supplementary accounting statement (if the last annual accounts of any merging company related to a financial year ending more than six months before the 1st meeting of the company for the purpose of approving the scheme.</li> </ul>	
8	Details of the compromise or arrangement in the scheme.	<ul style="list-style-type: none"> <li>• Details of the order of the Tribunal directing the calling of the meeting.</li> <li>• Details of the Company.</li> <li>• Fact and details of any relationship subsisting between such companies</li> <li>• Date of the board meeting at when scheme is approved.</li> <li>• Explanatory Statement.</li> <li>• Disclosure about the effect of the compromise.</li> <li>• Disclosure about the effect on the creditor, KMP, promoters, non-promoter members, debenture holders, on any material interest of the director of the company.</li> <li>• Investigation or proceedings, if any pending against the company under the Act.</li> </ul>	
9	Publishing Advertisement of the notice of the meeting	As mentioned under Rule 7 of the Companies (Compromises, Arrangement and Amalgamations) Rules, 2016, the notice of the meeting shall be advertised in <b>Form No. CAA.2</b> in atleast one English newspaper and in One vernacular newspaper in which the registered office is	Atleast 1 month before the date fixed in for the meeting of members / class

		situated or such newspaper directed by Tribunal and shall also be placed on the website of the Company (if any) and on the website of SEBI or BSE if securities are listed.	of members or creditors or class of creditors
10	Sending of notice to sectorial regulators / statutory authorities.	<p>As mentioned under Rule 8 of the Companies (Compromises, Arrangement and Amalgamations) Rules, 2016,</p> <p>i) Notice in <b>Form No. CAA.3</b> shall be sent <u>forthwith</u>, after the notice is sent to the members or creditors of the company by - registered post / speed post / courier / hand delivery.</p> <p>ii) Notice shall be accompanied with a <u>copy of scheme</u>, <u>explanatory statement</u>, and <u>other disclosure</u> as mentioned and shall be sent to:</p> <ul style="list-style-type: none"> <li>• The Central Government,</li> <li>• The Register of Companies,</li> <li>• The Reserve Bank of India</li> <li>• The Income Tax authorities,</li> <li>• other sectorial regulators or authorities, as required by Tribunal</li> </ul>	Within 30 days from the date of receipt of such notice of the meeting.
11	Affidavit of Service	The Chairperson appointed for the meeting or person directed to issue the advertisement shall file an affidavit before the Tribunal, stating that the directions regarding the issue of notices and the advertisement have been complied.	Within 7 days before the date fixed for the meeting or date of the first of the meeting.
12	Convene Meeting of class/ class of creditors and all members.	<p>Person receiving the notice may vote in the meeting either themselves or through proxies or by electronic means.</p> <ul style="list-style-type: none"> <li>• Notice shall be sent at the address registered with the company along with the statement disclosing the details of compromise or arrangement.</li> <li>• Copy of valuation report, (if any).</li> </ul>	Within 1 month from date of receipt of such notice.
13	Objections, if any.	Objections may be raised by the persons holding not less than 10% of shareholding or having outstanding debt to not less than 5% of total outstanding debt as per last audited financial statement	

14	Filing of representation by the regulators / statutory authorities to tribunal	Filing of representation by the regulators / statutory authorities to tribunal, if any and serve the copy to concerned companies.	Within 30 days of receiving notice
15	Procedure post the meeting of members / creditors	As mentioned under Rule 14 of the Companies (Compromises, Arrangement and Amalgamations) Rules, 2016 the Chairperson of the meetings shall submit to the Tribunal, a report of the result of the meeting.	Within 3 days after conclusion of the meeting or time fixed by the tribunal.
16	Filing of the Petition with the Tribunal	As mentioned under Rule 15 (1) of the Companies (Compromises, Arrangement and Amalgamations) Rules, 2016, the Company to file the Petition for confirming the compromise or arrangement with Tribunal.	Within 7 days of the filing of the report by the chairperson
17	Hearing of the Petition with the Tribunal	The Tribunal shall fix a date for the hearing of the Petition and notice of the hearing shall be advertised in the same newspaper in which the notice of the meeting was advertised. <ul style="list-style-type: none"> <li>• Tribunal to send notices of hearing of Petition to the members / creditors who have objected the scheme and to Central Government and other regulators / statutory authorities who have made representation.</li> <li>• Submission of report by regulatory authorities.</li> </ul>	Not less than 10 days before the date fixed for the hearing.
18	Final Hearing	Final hearing of the Petition by the Tribunal.	
19	Procedure post completion of final hearing at the Tribunal	Order on Petition: Every company in relation to which the order is made shall file certified copy of the order with the Registrar of Companies for registration.	Within 30 days of the receipt of copy of the order, or such other time as may be fixed by the Tribunal.
20	Statement of compliance in mergers and	Until the scheme is fully implemented, every company shall file a statement with the ROC every year, duly certified by a Chartered Accountant or a Cost Accountant	Within 210 days from the end of each financial

	arrangement	or a Company Secretary in practice indicating whether the Scheme is being complied with in accordance with the Orders of the Tribunal or not.	year.
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#### 4. Transfer of all 100% shares to new buyer and sell the Company

The Company can be transferred by 100% shareholders to other company or individual by sell of shares held by them. If the transfer of shares are from Non Resident to Resident or vice versa, the Company need to intimate or get the approval of the Central Bank of India that is Reserve Bank of India and obtain fair value certificate from the Registered Valuer. The Company will continue as it is.

#### 5. Dormant status

##### CHECKLIST FOR DORMANT OR ACTIVE COMPANY

(Section 455 of the Companies Act, 2013 and Rule 3 of Companies (Miscellaneous) Rules, 2014)

1. As per Section 455 of The Companies Act, 2013("the Act"), any Company which is formed and registered under the Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction as detailed below, such a Company or an inactive Company may make an application to the registrar.
  - i. "inactive company" means a Company which has not been carrying on any business or operation or has not made any significant accounting transaction during the last two financial years, or has not filed financial statements and annual returns during the last two financial years;
  - ii. "significant accounting transaction" means any transaction other than-
    - (a) payment of fees by Company to the Registrar;
    - (b) payments made by it to fulfill the requirements of this Act or any other law;
    - (c) allotment of shares to fulfill the requirements of this Act; and
    - (d) payments for maintenance of its office and records.
  
2. Application in Form MSC-1 to Registrar of Companies (RoC) for obtaining Dormant Status.

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):

A Company shall be eligible to apply under this rule only, if-

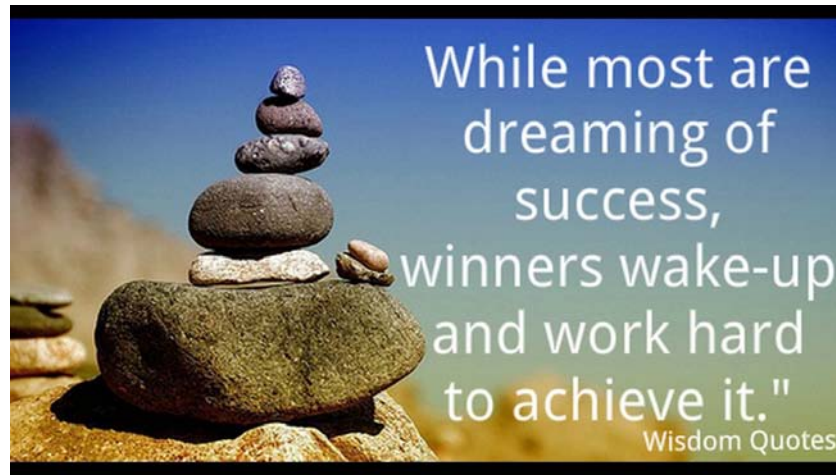
- i. no inspection, inquiry or investigation has been ordered or taken up or carried out against the Company;
  - ii. no prosecution has been initiated and pending against the Company under any law;
  - iii. the Company is neither having any public deposits which are outstanding nor the company is in default in payment thereof or interest thereon;
  - iv. the Company is not having any outstanding loan, whether secured or unsecured;
  - v. However, if there is any outstanding unsecured loan, the company may apply under this rule after obtaining concurrence of the lender and enclosing the same with Form MSC-1;
  - vi. there is no dispute in the management or ownership of the Company and a certificate in this regard is enclosed with Form MSC-1;
  - vii. 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.;
  - viii. the company has not defaulted in the payment of workmen's dues;
  - ix. the securities of the Company are not listed on any stock exchange within or outside India.
3. On application the Registrar shall issue a certificate in Form MSC-2 allowing the status of a Dormant Company to the applicant.
  4. A Dormant Company shall have a minimum number of 3 (three) directors in case of a public Company, 2 (two) Directors in case of a private Company and one director in case of One person Company. However, 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 thirty days from the end of each financial year:  
However, the Company shall continue to file:
    - (i) The return or returns of allotment and
    - (ii) 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.

6. Application for seeking status of an active Company.-

- i. An application, under sub-section (5) of 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:
- ii. It should be noted that 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.
- iii. The Registrar shall, after considering the application filed in Form MSC-4, issue a certificate in Form MSC-5 allowing the status of an active Company to the applicant.
- iv. Where 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 with the RoC for obtaining the status of an active Company.
- v. 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.

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INSPIRATIONAL QUOTE



AMITA DESAI

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