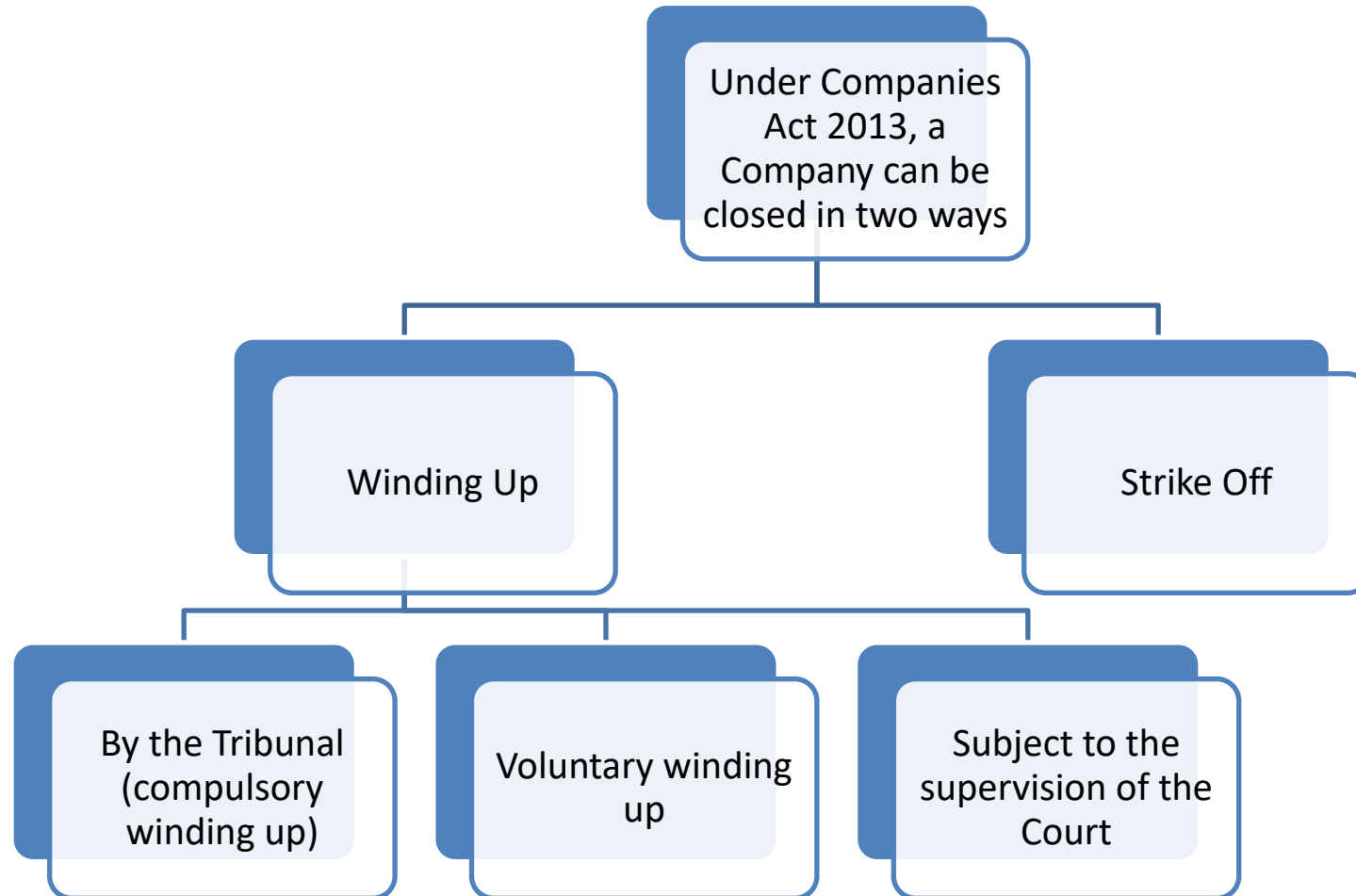


Striking off a Company

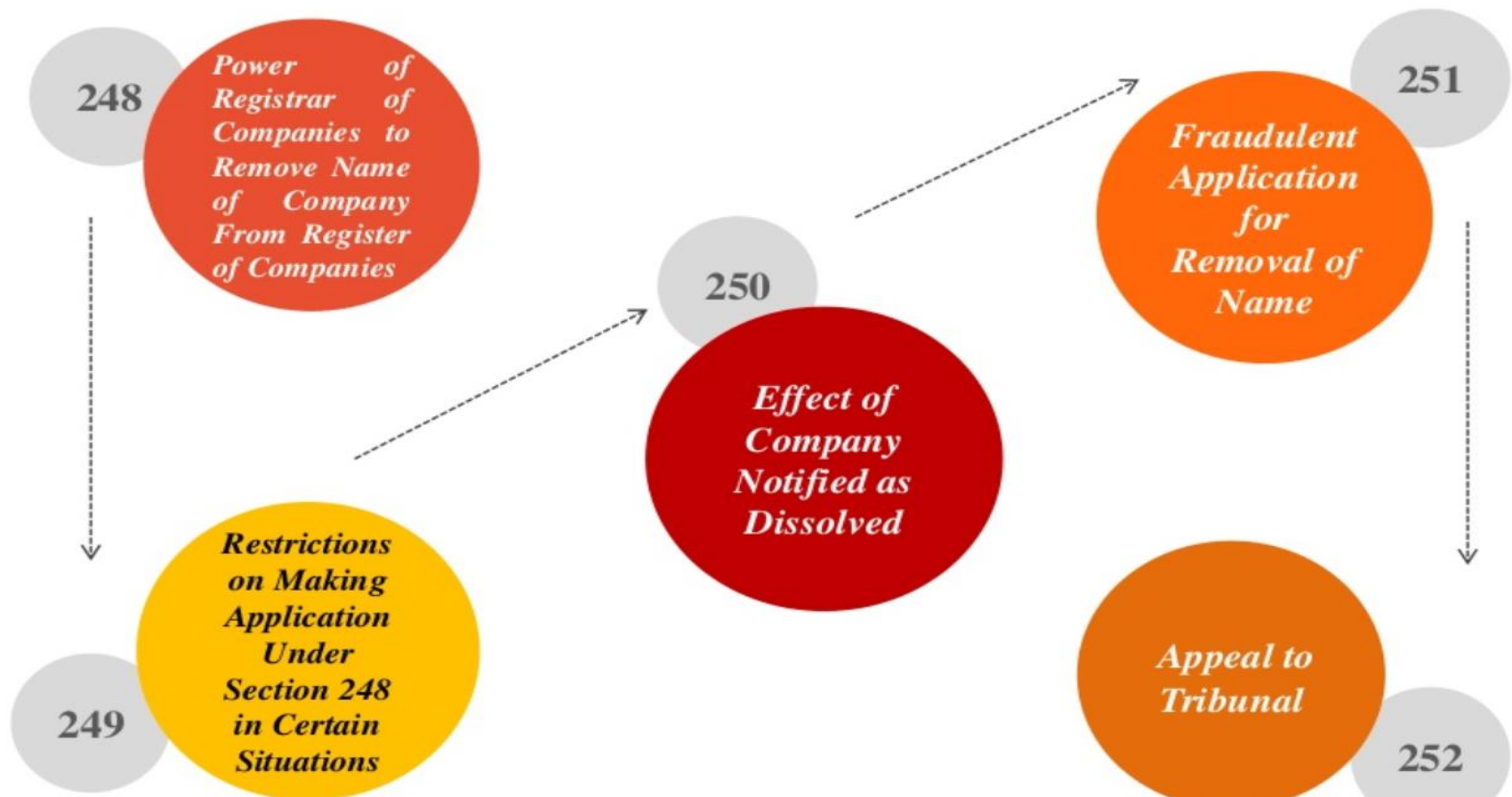


Ways to close a company



Sections under Companies Act, 2013

- Strike Off is a method prescribed under sections 248-252 of the Companies Act, 2013



Introduction

- Strike Off is a method prescribed under sections 248-252 of the Companies Act, 2013. The process of striking off is an alternative mechanism to the winding up of a company.
- Strike-off of company from registrar of companies is an opportunity given to defunct companies* or those who want to voluntarily shut down their company can file their application with ROC under section 248. This is one of the best and easiest way where companies can struck off its name without any hassle by properly arranging all the required documents as per the law.
- Importantly, only companies that are solvent can be dissolved. If there are any debts then they must be paid in full before the company can be struck off.

**A company which is not carrying on any business or which is not in operation is called a defunct company.*

Modes of Strike Off

Pursuant to the provisions of Companies Act, 2013 there are two modes of strike off :

Under
Section
248(1)

- Strike off by ROC

Under
Section
248(2)

- Strike off by Company on its own

Eligibility / Grounds for Strike Off

A company has failed to commence its business within one year of incorporation;

OR

The company is not carrying out any business or operation for a period of two immediately preceding financial years and has not made any application within such period for obtaining the status of a dormant company under section 455,

OR

The subscribers to the memorandum have not paid the subscription which they had undertaken to pay within a period of one hundred and eighty days from the date of incorporation of a company and a declaration under sub-section (1) of section 11 to this effect has not been filed within one hundred and eighty days of its incorporation;

Dormant Company (Section 455)

Dormant Company

Company registered for a future project *or* to hold an asset or intellectual property

And

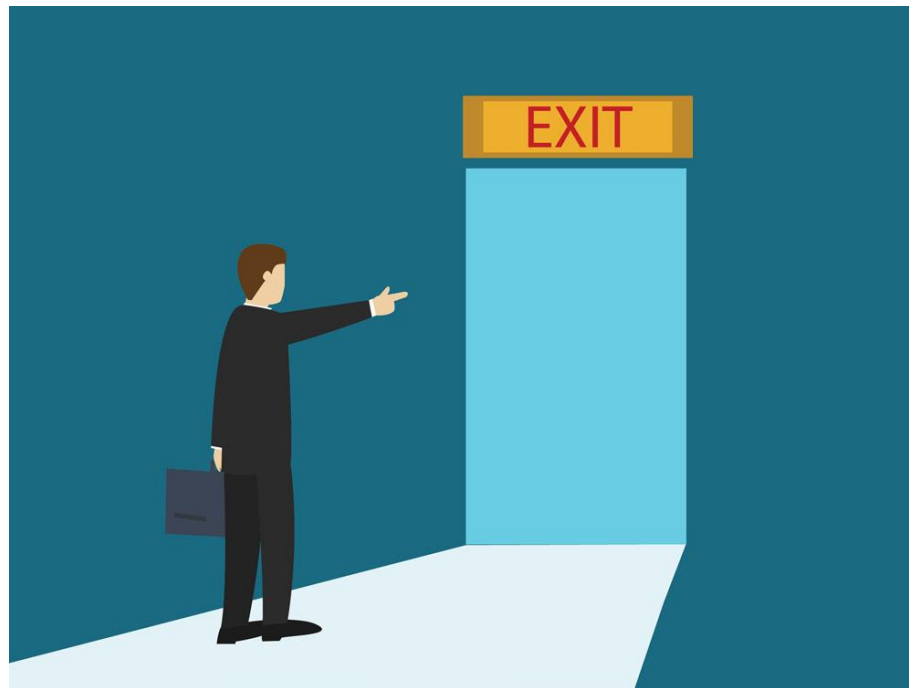
Has no significant accounting transaction

“Significant Accounting Transaction” means any transaction other than—

- Payment of fees by a company to the Registrar;
- Payments made by it to fulfil the requirements of this Act or any other law;
- Allotment of shares to fulfil the requirements of this Act; and
- Payments for maintenance of its office and records.

Strike off by ROC under Section 248(1) of the Companies Act, 2013

The registrar if having a reasonable cause as mentioned above, may send notice in Form STK-1 of Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 to the Company and all the Directors of the company, informing his intention to remove company's name from the record and request company to send its representations along with supporting documents within thirty days from the date of notice. This process is also referred to as Compulsory removal of name from Registrar of Companies.



Process of Strike Off (Section 248 (1))

ROC sends a notice to the company and the Directors (in form STK 1) of its intention to remove the name of the company from registrar of companies

Directors shall send representation to ROC within 30 days from the date of receipt of the notice through Registered / Speed post

After the expiry of time mentioned in the notice, ROC may strike off the company unless cause to the contrary is shown by the company

Notice will be issued (in form STK 5) by ROC and the same shall be published in official Gazette and placed on the website of Ministry of Corporate Affairs (MCA) to seek objection from public within 30 days from the notice

If no Objection is received from public, notice of striking off the name of the company and its dissolution (in form STK 7) will be published in official gazette and Official Website of MCA

Strike off by Company on its own under Section 248(2) of the Companies Act, 2013

The company can file an application in E-form STK-2 with Registrar of Companies suo-motto after extinguishing all its liabilities, by special resolution or with the consent of seventy five percent of the members in terms of paid up share capital, to the Registrar for removing the name of the Company on all or any of the above mentioned grounds.

FORM NO. STK-2

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



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

In case of following companies, No objection certificate (NOC) from regulatory authorities is also required:-

- ❖ Non-Banking Financial Companies
- ❖ Housing Finance Companies
- ❖ Insurance Companies
- ❖ Asset Management Companies
- ❖ any other company which is regulated under any other law for the time being in force

Course of action of Striking off of a Company by itself under Section 248(2) of the Companies Act, 2013

Holding of Board Meeting

The Company will hold Board Meeting for passing a Board resolution for the purpose of Striking off the name of the Company and to authorize any director of the Company to apply to Registrar of Companies.

Extinguishment of all the Liabilities

Once the board resolution has been passed; the company shall clear all the remaining liabilities, if any.

Holding of General Meeting

The Company will hold the general meeting of shareholders by passing a resolution for striking off the name of the Company with the approval of 75% of members as per paid up share capital of the Company and after passing of Special resolution Company will file E-form MGT-14 within 30 days.

Course of action of Striking off of a Company by itself under Section 248(2) of the Companies Act, 2013 (Contd.)

Approval of Concerned Authorities

If the company is regulated by any other authority, then the consent of such authority must be obtained for this purpose.

Application to ROC by Company

Application in Form STK- 2 to be filed by the Company along with following documents:

- Indemnity Bond duly notarized by every director in Form STK 3 along with Id and Address Proof of directors;
- A statement of accounts containing assets and liabilities of the company made up for a day, not more than 30 days before the date of application and certified by a Chartered Accountant (STK 8);
- An affidavit in Form STK 4 by every director of the company;
- CTC of Special Resolution duly signed by each Director;
- In the case of a Company regulated by any other authority, approval of such authority shall also be required;
- A statement with respect to any pending litigations, involving the Company.

Process Followed by ROC

- ❑ After receiving the application, ROC shall publish a public notice in form STK-6. Any objection on proposed strike off shall be sent within 30 days.
- ❑ The notice shall be placed on the website of Ministry of Corporate Affairs, published in the Official Gazette and published in a leading English newspaper and at least in one vernacular newspaper where the registered office of the company is situated.
- ❑ ROC shall simultaneously intimate the concerned regulatory authorities regulating the company, i.e. the Income-tax authorities, central excise authorities and Goods and service-tax authorities, having jurisdiction over the company, about the proposed action of removal or striking off the names of such companies and seek objections, if any.
- ❑ After complying all the processes, ROC shall strike off the name and dissolve the company by sending notice in the official gazette in form STK-7.
- ❑ On the publication in the Official Gazette of this notice, the Company shall stand dissolved in effect from the date mentioned therein. The same shall also be placed on the official website of the MCA.

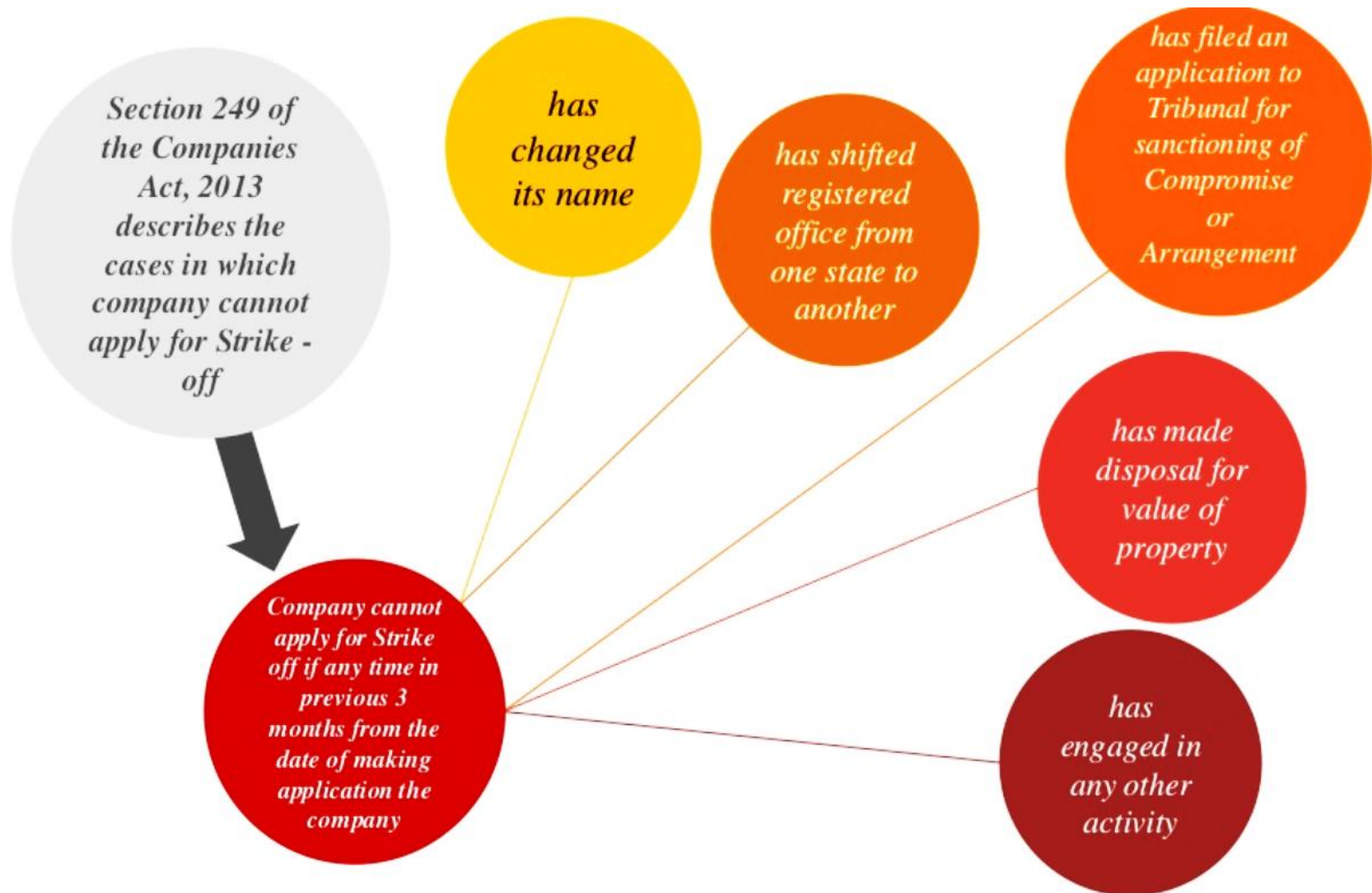
Important points for consideration

- ✓ Annual filing is necessary before applying for strike off but ROC may approve forms without annual filing if ROC finds that there have been no transactions and bank account is not operational.
- ✓ Make sure that the company does not maintain any bank account as on the date of filing application and also does not have any assets and liabilities.
- ✓ Form STK 3 (Indemnity Bond) can be given individually or collectively by every director
- ✓ Form STK 4 (Affidavit) is to be given individually by every Director
- ✓ Form STK 4 to be accompanied by copy of Income Tax PAN card or Passport and an address proof duly attested by a Gazetted Officer or a whole time practicing professional viz Chartered Accountant / Company Secretary / Cost Accountant

Important points for consideration

- ✓ If the Director of the Company applying for striking off, is a foreign national or non-resident Indian, the indemnity bond and affidavit shall be notarized or apostilled or consularised in the country of the foreign national.
- ✓ For Indian nationals Stamp Duty is required to be paid on Affidavit and Indemnity Bond as per respective State Stamp laws. (Normally it is INR 500 for Indemnity Bond and INR 100 for Affidavit)
- ✓ It is mandatory for the company to post a copy of strike off application on its website as per Provision R.7 (1).
- ✓ DIN of Directors should be Active

Cases in which company cannot apply for Strike Off, Section 249(1)



Violation of Section 249(1)

Section 249 (2)

If a company files an application under sub-section (2) of section 248 in violation of sub-section (1), **it shall be punishable with fine which may extend to one lakh rupees.**

Section 249(3)

An application filed under sub-section (2) of section 248 shall be withdrawn by the company or rejected by the Registrar as soon as conditions under sub-section (1) are brought to his notice.

Categories of Companies which cannot be Strike Off [Proviso of R.3(1)]

Following categories of companies are not eligible to file application for strike off of its name from company's register:-

Listed companies

Vanishing companies

Companies that have been delisted due to non-compliance of listing regulations

Companies which has been listed for inspection or investigation

Companies which haven't yet responded to notices u/s 206 / 207

Companies against which any prosecution for an offence is pending in any court;

Companies whose application for compounding is pending before the competent authority

Companies which have accepted public deposits which are either outstanding or the company is in default in repayment of the same

Companies having charges which are pending for satisfaction

Non-profit companies registered under section 8

Effect of company notified as dissolved (Section 250)

- ❖ Where a company stands dissolved under section 248, it shall on and from the date mentioned in the notice under sub-section (5) of that section 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 realizing the amount due to the company and for the payment or discharge of the liabilities or obligations of the company.
- ❖ The Corporate liability, if any, of every directors and officer who was exercising any power of management directly or indirectly, and of every member of the Company dissolved, shall continue and may be enforced as if the Company had not been dissolved.

Fraudulent application for removal of name (Section 251)

As per Section 251 if fraudulent application is made removal of its name

Intention

- ◆ To deceive the creditors
- ◆ To defraud any other persons
- ◆ To evade Liabilities

- ❖ Company shall be liable to the person who has incurred loss
- ❖ Punishable for fraud as provided in section 447
- ❖ Registrar may also recommend prosecution

Appeal to Tribunal (Section 252)

Person aggrieved by the order of ROC may file an application to Tribunal

*Section 252
of the
Companies
Act, 2013
deals with it*

Within 3 years from date of ROC order

If removal of name is not justified, Tribunal will order restoration of name of company

Section 252(3) of Companies Act, 2013

Who may file application?

- Company; or
- Any Member; or
- Creditor; or
- Any Workman

Where to file application?

NCLT (National Company Law Tribunal)

When to file application?

Before expiry of Twenty years from the publication in the official gazette of the notice under section 248(5)

Tribunal, if satisfied that the company was, at the time of its name being struck off, was carrying on business or was in operation or otherwise it is just that the name of the company be restored to the register of companies, order restoration and give directions for placing the company and all other persons in the same position as if the name of the company had not been struck off from the register of companies.

A brief on all forms for Strike off process

STK 1

- Notice by Registrar for Removal of name of a company from Register of companies

STK 2

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

STK 3

- Indemnity Bond

STK 4

- Affidavit

STK 5

- Public Notice in case of Section 248(1)

STK 6

- Public Notice in case of Section 248(2)

STK 7

- Notice of Striking Off and Dissolution

Basic Preview of Form STK-2

FORM NO. STK-2

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



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

Form language English Hindi

Refer the instruction kit for filing the form

1. (a) *Corporate identity number (CIN) of the company
- (b) Global location number (GLN) of the company
2. (a) Name of the company
- (b) Address of registered office of the company
- (c) email id of the company
- (d) Date of incorporation of the company

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

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

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

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

(a) If Yes, specify Name of the regulator

(b) Registration Number

(c) Date of approval of regulatory body

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

(a) *Specify the date of passing the resolution

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

Basic Preview of Form STK-2

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

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

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

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

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

* DIN or Income-tax PAN Passport number

*Designation

*Name

*Present residential address

Line I

Line II

City State ISO country code

Country Pin code

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

Yes No

(b) *Details in respect of pending litigation

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

(i) Act under which litigation is pending

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

(iii) Case number

(iv) Subject matter

Basic Preview of Form STK-2

9. I, * _____ son/daughter of _____ MD/Director of hereby make this application for removing the name of the company from the register of companies under section 248 of the Act and declare that:

- (i) I have been authorized by the Board of Directors' resolution No*.....dated*..... to sign and submit this application for removal of name of the company from the register of companies;
- (ii) The application has been in accordance with the conditions mentioned under sub-section (1) and (2) of section 248 and sub-section (1) of section 249;
- (iii) 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;
- (iv) The company is neither having any public deposits which are outstanding nor the company is in default in its repayment or interest thereon;
- (v) The company does not have any outstanding loans, secured or unsecured;
- (vi) 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;
- (vii) All the other liabilities of the company have been settled or discharged or extinguished;
- (viii) All the requirements of the Act and rules made thereunder relating to removing the name of the company from the register of companies and matters incidental or supplemental thereto have been complied with;
- (ix) To the best of my knowledge and belief, the information given in this application and its attachments is correct and complete;
- (x) the requisite fee has been paid.

10. I/We understand that I/We shall be liable for punishment as provided under section 251 of the Companies Act, 2013 if the application is found to be fraudulent at any stage within the meaning of section 251 read with sections 248 and 249 of the Companies Act, 2013.

Attachments

List of attachments

1. * A statement of accounts showing the assets and liabilities of the Company made up to a day, not more than thirty days before the date of application and certified by a Chartered Accountant;
2. * Copy of Board resolution authorizing the filing of this application;
3. * Copy of special resolution passed or copies of consent obtained under sub-section (2) of section 248, as applicable;
4. * Indemnity bonds [to be given individually or collectively by the director(s)] in Form No. STK-3;
5. * Affidavit in Form No. STK-4

Attach

Attach

Attach

Attach

Attach

Basic Preview of Form STK-2

6. Copy of order of the concerned regulatory authority, if any, approving the filing of this application;

Attach

7. Copy of relevant order for delisting, if any, from the concerned Stock Exchange;

Attach

8. Other attachments as per applicable Rule;

Attach

9. Optional attachment(s), if any.

Attach

Remove attachments

To be digitally signed by

DSC BOX

*Designation

*Director identification number of the director; or

DIN or PAN of the manager or CEO or CFO; or

Membership number of the Company secretary

Certificate by practicing professional

I declare that I have been duly engaged for the purpose of certification of this form. It is hereby certified that I have gone through the provisions of the Companies Act, 2013 and Rules thereunder relevant to this form and I have verified the above particulars (including attachment(s)) from the original records maintained by the Company/applicant which is subject matter of this form and found them to be true, correct and complete and no information material to this form has been suppressed.

To be digitally signed by

- Chartered accountant (in whole-time practice) or
- Cost accountant (in whole-time practice) or
- Company secretary (in whole-time practice)

DSC BOX

Whether associate or fellow

Associate

Fellow

(Radio Button)

Membership number

Certificate of practice number

Note : Attention is also drawn to provision of section 448 which provides for punishment for false statement and certification.

Basic Preview of Form STK-7

<p>FORM No. STK - 7 NOTICE OF STRIKING OFF AND DISSOLUTION <i>[Pursuant to sub-section (5) of section 248 of the Companies Act, 2013 and rule 9 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016]</i></p> <hr style="border-top: 1px dashed black;"/> <p>GOVERNMENT OF INDIA MINISTRY OF CORPORATE AFFAIRS Office of the Registrar Of Companies <i>(Address of RoC)</i></p> <p style="text-align: right;">Dated:-----</p> <p style="text-align: center;">Reference:</p> <p>In the matter of Companies Act, 2013 and of M/s -----, CIN -----</p> <p>This is with respect to this Office's Notice No. _____ dated _____ application (Form STK 2) dated ----- vide SRN and notice in form STK 5 issued on dated _____. Notice is hereby published that pursuant to sub-section (5) of Section 248 of the Companies Act, 2013 the name of M/s----- has this day of been struck off the register of companies and the said Company is dissolved.</p> <p style="text-align: right;">Registrar of Companies</p> <p style="text-align: center;">Registrar of Companies/ Additional Registrar of Companies/Joint Registrar of Companies/Deputy Registrar of Companies/ Assistant Registrar of Companies</p> <hr style="border-top: 1px solid black;"/> <p>Mailing Address of the company as per record available in Registrar of Companies office: M/s -----</p>

Thank You!!

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