

REMOVAL OF NAMES OF COMPANIES FROM THE REGISTER OF COMPANIES

The process of striking off is governed under Chapter XVIII (Sections 248- 252) of the Companies Act, 2013 and the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016.

What is Removal of Names of Companies from the Register of Companies?

It is removal of the name of a company from the register of companies voluntarily on the request of the company or by the Registrar of Companies (ROC). The existence of the company comes to an end and no transactions can be made in the name of the company thereafter.

What are the grounds for striking off?

The name of the company shall be removed if the Registrar has reasonable cause to believe anyone or all of the following, either on his own or on an application made, that

- The company has failed to commence the business within one year of its incorporation or
- The company is not carrying on its business or operation for a period of 2 immediately preceding financial years without making any application for obtaining status of Dormant company or
- The subscribers to the MOA have not paid subscription which they had undertaken to pay at the time of incorporation and a declaration in Form 20A has not been filed by the company within 180 days of its incorporation.

What is the procedure for removing name of a company from the register of companies?

- i. To Strike off the name of the company, the company has to hold a Board meeting and pass resolution to strike off.
- ii. Then the company has to extinguish all its liabilities.
- iii. The Company has to hold general meeting of the shareholders to get approval for striking of the company by passing special resolution or consent of 75% members in terms of paid up share capital. This is not applicable for Section 8 companies.
- iv. If the company is regulated under a Special Act, the company has to get approval from the regulatory body under that Act.
- v. Then application for removing name can be done by filing Form STK-2 along with prescribed fees.
- vi. A Section 8 Company under the Companies Act, 2013/Section 25 Company under the Companies Act 1956 however cannot make an application under Section 248.

What are the pre- conditions to apply for striking- off the company?

Form STK-2 can be filed only if the overdue returns (i.e., Form AOC-4/ AOC-4 XBRL and Form MGT -7) has been filed up to the financial year in which the company ceased to carry on its business operations.

How to file Application for Strike- off?

As mentioned above, application for striking- off the name of a company can be filed in Form STK-2 with the Registrar of Companies. Such application can be made along with the following:

- ▶ Indemnity bond notarized by all the existing directors in Form STK-3;
- ▶ Statement of Accounts in Form STK-8 containing assets and liabilities of the company made up to a day not more than 30 days before the date of application and certified by a Chartered Accountant;
- ▶ Affidavit in Form STK-4 by all directors of the Company;
- ▶ Copy of special resolution duly certified by each of the directors of the company or consent of 75% of the members of the company in terms of paid up share capital as on the date of application and
- ▶ A statement regarding pending litigations, if any involving the company.

If the person is a foreign national or non- resident Indian, the Indemnity bond and declaration shall be notarized or apostilled or consularised. The Form STK-2 shall be certified by Chartered Accountant in whole time practice or Company Secretary in whole time practice or Cost Accountant in whole time practice.

Categories of companies which cannot be removed from the register of companies by Registrar

- listed companies;
- delisted companies due to non- compliance of listing regulations or listing agreement or any other statutory laws;
- vanishing companies;
- Companies where inspection or investigation is ordered and being carried out or actions 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.
- companies where notices under section 234 of the Companies Act, 1956 (1 of 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;
- companies against which any prosecution for an offence is pending in any court;
- companies whose application for compounding is pending before the competent authority for compounding the offences committed by the company or any of its officers in default;

- 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; and
- Companies registered under section 25 of the Companies Act, 1956 or section 8 of the Act.

Restrictions on companies making application for strike- off

A company cannot file application for strike off if at any time in the previous 3 months, the company;

- ✗ has changed its name or shifted its registered office from one State to another;
- ✗ has made 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;
- ✗ 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;
- ✗ has made an application to the Tribunal for the sanctioning of a compromise or arrangement and the matter has not been finally concluded; or
- ✗ is being wound up under Chapter XX of this Act or under the Insolvency and Bankruptcy Code, 2016.

Soemmya &