

## Closure of Defunct Companies

- Is your company a defunct company?
- Is your company non-operational from past 2 years?
- Has your company failed to commence business since incorporation?
- Has your company failed to file returns with Registrar of Companies for a consecutive period of two years?



If you fall under any of the above mentioned categories then you would have received a notice from the Registrar of Companies to remove your company name from the register. Then, if there is any objection by the company, it may reply to the notice within 30 days to Registrar and if no objection is raised, it would be deemed that the company has no objection being struck off.

In case your company intends to close down, by making an application to the Registrar then this option is for you to explore as it is one of the quickest and simplified ways to close down a company being non-operational over a period of time.

### What is defunct Company?

A company is deemed to be a defunct company

1. Which has nil asset and liability and
2. Has not commenced any business activity or operation since incorporation;

**Or**

Is not carrying on any business activity or operations for last two years before making application under Fast Track Exit Scheme

### What is Fast Track Exit Scheme?

Fast Track Exit (“FTE”) Scheme gives an option to defunct companies to get their names struck off from the Register maintained by the Registrar of Companies (“ROC”).



The Ministry of Corporate Affairs (“MCA”) on 26th December, 2016 has notified and introduced E-form STK-2 for making an application by a company to ROC. Earlier E-form FTE has been withdrawn and made available for only resubmissions on the MCA21 portal and the corresponding e-form under the Companies Act, 2013 i.e., E-form STK-2 is made available w.e.f 5th April, 2017.

**What is the criteria/eligibility to make an application?**

1. Within one year of incorporation, if a company fails to commence its business;
2. Not able to carry any business for a period of two years as per new rule and has not sought to call itself a dormant company.

**Who are ineligible to make an application?**

1. Listed companies;
2. Companies that have been delisted due to non-compliance of listing regulations or listing agreement or any other statutory laws;
3. Vanishing companies;

(The expression “vanishing company” means a company, registered under the Act and listed with Stock Exchange which:

- Fails to file its returns with the ROC and Stock Exchange for a consecutive period of two years.
  - Not maintaining of its registered office at the address notified with the Registrar of Companies or Stock Exchange and
  - None of its directors are traceable.)
4. Companies where inspection or investigation is ordered and prosecutions arising out of such inspection or investigation are pending in the Court;
  5. Companies where notices have been issued by the Registrar or Inspector and reply thereto is pending;
  6. Companies against which any prosecution for an offence is pending in any court;
  7. Companies whose application for compounding is pending;
  8. Companies which have defaulted in repayment of the accepted public deposits;
  9. Companies having charges which are pending for satisfaction; and
  10. Not-for-profit Companies registered under Section 25 of the Companies Act, 1956 or section 8 of the Act.

**Are there any restrictions to make an application?**

Yes, making an application is restricted under certain situations and they are:

1. An application under sub-section (2) of section 248 on behalf of a company shall not be made 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 termination 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 this 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, whether voluntarily or by the Tribunal.

**What is the procedure to be followed by company to strike off its name from Registrar?**

1. Call for Board Meeting and pass a Board resolution for the purpose of Strike off of Company and authorize any director of the Company to file application with ROC.
  2. After passing of Board resolution if there are any liabilities in the Company, the same to be cleared by the Company.
  3. Call for General meeting of members of the Company and Pass a resolution for strike off of Company with the approval of members of the Company.
  4. After passing of Special resolution, the same to be filed in MGT-14 within 30 days.
  5. An application to be made by company to Registrar in E- Form STK-2 along with a fee of Rs.5,000/- (Rupees Five Thousand).
  6. The application in Form STK 2 shall be accompanied by:
    - Indemnity bond duly notarised by every director in Form STK 3;
    - A statement of accounts containing 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;
    - An affidavit in Form STK 4 by every director of the company;
    - A copy of the 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;
- A statement regarding pending litigations, if any, involving the company.

7. The application in Form STK 2 shall be signed by a director duly authorised by the Board in their behalf.

In case, where the director concerned does not have a registered digital signature certificate, a physical copy of the form duly filled in shall be signed manually by the director duly authorised in that behalf and shall be attached with the Form STK 2 while uploading the form.

8. 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, as the case may be.

**What is the procedure followed by Registrar after receiving an application by Company?**

1. Where a company has filed an application (e-form STK-2), a public notice shall be issued by ROC under sub-section (1) or sub-section (2) of section 248 in Form STK 5 and Form STK 5A or STK 6, as the case may be.
2. 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.
  - Application shall also be placed on the website of the company, if any.
3. The ROC shall, simultaneously intimate the concerned regulatory authorities regulating the company about the proposed action of striking off the names of such companies and seek objections.
4. If there is any objection, the same to be furnished within a period of thirty days from the date of issue of the letter of intimation.
5. If no objections are received within thirty days from the respective authority, it shall be presumed that they have no objections to the proposed action of striking off of name.
6. After following the above mentioned steps, the Registrar shall strike off the name and dissolve the Company.
7. Notice of striking off and its dissolution to be published in the Official Gazette (Form STK 7). The published notice shall be to the effect that the company's name has been struck off by the ROC and the said company is dissolved with effect from the date mentioned therein. The same shall also be placed on the official website of the Ministry of Corporate Affairs.



### What are the Key Changes in Fast track Exit Scheme?

1. Earlier Board Resolution was sufficient for approval for making application for removal of the name, however, now it is mandatory to pass and certify Special Resolution by each of the directors of the company or take consent of the 75% of the members of the company in terms of paid up share capital as on the date of application.
2. Earlier the eligibility for applying for FTE was a company not carrying any business operations since last one year, however, now it is changed to a company not carrying any business or operation for a period of two immediately Preceding Financial Years.



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