

Everything about Strike off under Companies Act, 2013

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In brief

Company is incorporated through a legal process and Certificate of Incorporation is granted in which the Name of the Company along with CIN is written, which implies the existence of a Company. Now, if a Company wants to shut down its business legally, it has to follow the certain procedure laid down under The Companies Act, 2013.

Relevant provisions

Chapter XVIII

Section-248-252 of the Companies Act, 2013

Rules-Removal of Names of Companies from the Register of Companies) Rules, 2016

In detail

The Companies Act, 2013 facilitates two modes of strike-off – namely,

- Strike off by the ROC (Registrar of Companies) under Section 248(1) of the Companies Act 2013, and
- Strike off by a Company on its own under Section 248(2) of the Companies Act, 2013.

This article dwells into the concept of strike off of a company with respect to both the modes.

I. Strike off by RoC (Registrar of Companies)

- (1) Where the registrar has reasonable cause to believe that –

(a) the company has not commenced its business **within one year** of its incorporation; or

(b) the company is **not carrying on any business** for a period of 2 immediately preceding financial years and has not made any application within such period for obtaining the status of a dormant company; or

(c) the subscribers to the memorandum have **not paid the subscription money** at the time of incorporation and a declaration to this effect has not been filed within 180 days of its incorporation; or

(d) the company is **not carrying on any business or operations**, as revealed after the physical verification carried;

Roc shall send a notice in form STK-1 of his intention to remove the name of the company from the register of companies, to the company and all the directors of the company.

Any representation to be made by directors shall be sent within 30 days.

II. Strike off by a company on its own will

No business started since incorporation? Close your private limited Company and stop complying with routine compliances.

A Company may file an application for strike off in **e-Form STK-2** –

- (1) After extinguishing all its liabilities;
- (2) Filing all pending returns AOC-4, MGT-7 up to the end of the financial year in which the Company ceased to carry its business operations;
- (3) By a special resolution or consent of 75 % members in terms of PUSC.

In the case of a Company regulated under a special Act, approval of the regulatory body constituted or established under that Act shall also be obtained and enclosed with the application.

III. Procedure to be followed by Company for Strike off under Section 248 (2) of the Companies Act, 2013

Step 1: Hold Meeting of Board of Directors

A Board resolution for the purpose of striking off name of the Company and to authorize any of

its directors to make an application to the ROC for strike off.

Step 2: Extinguish all its Liabilities

A Company which intends to strike off must extinguish all its liabilities appearing in the balance sheet of the Company.

Step 3: Conduct General Meeting of members

A General meeting should be held by the Company for passing special resolution for striking off the name of the Company. After the general meeting, the Company shall file e-Form MGT-14 within a time-frame of 30 days.

Step 4: Furnishing application and documents

Companies during the course of strike-off must file an application to the Registrar of Companies (ROC), along with the following documents:

- Indemnity Bond duly notarized by all directors (in Form STK 3);
- A statement of accounts in Form STK-8 containing details of 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;
- An affidavit in Form STK 4 (by all directors of the Company);
- Certified copy of Special Resolution (duly signed by every director of the Company);
- A statement concerning any pending litigations with respect to the Company, if any;
- Other documents, if required;
- After completion, before uploading the Form is to be

certified by CA or CS or CMA as the case may be.

Step 5: RoC's responsibility after submission of application

- After receiving an application, Public notice in Form STK-6 shall be published by ROC;
- Publish the application in English newspaper and at least in one vernacular newspaper where the registered office of the Company is situated and shall be placed on website of MCA, published in the Official Gazette;
- After complying with all the steps, ROC shall strike off the name and dissolve the Company by sending notice in the official gazette in form STK-7.

Step 6: Effect of Company upon notified as dissolved

The Company shall from the date of the notice in the Official Gazette, cease to operate as a Company and the Certificate of Incorporation issued shall be deemed to have been cancelled except for the purpose of releasing the amount due to the Company and for the payment or discharge of the liabilities or obligations of the Company. The same shall also be placed on the official website of the MCA.

IV. Restrictions on application for strike off in certain situation:

An application under section 248 (2) shall not be made if, at any time in the **previous 3 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, 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.

V. Non-Qualifying Companies

The following companies do not qualify for the provisions of strike off:

- Listed companies.
- Companies delisted on account of non-compliance of listing regulations, listing agreement or any other statutory laws.
- Vanishing companies.
- Companies which has been listed for inspection or investigation – if such directive is being carried out/pending/completed but the prosecutions concerning such inspection or investigation are pending in the Court of law.
- Companies which hasn't yet responded to notices of select provisions.
- Companies which hasn't furnished the follow-up instructions on any report under section 208 of the Act.

- If the prosecutions related to the above two provisions are pending in a Court of law.
- Companies against which any case for prosecution is pending in a Court of law.
- Companies, whose application for compounding is pending before the competent authority for compounding the offences committed by it or any of its officers in default.
- Companies accepting any public deposits which are outstanding.
- Companies having any charges which remain to be satisfied.
- Companies registered under Section 25 of the Companies Act, 1956 or section 8 of the Act.

VI. Conclusion

Suo moto closing a Company, if a Company is not in operations, is always advisable rather than Non-filing the statutory dues on time which incurs fines and penalties and waiting for ROC to strike off the Company because in later case along with the Company, Director is also disqualified i.e. debarred from starting another Company or being Director in any other Company.

Reference

<http://ebook.mca.gov.in/Default.aspx?page=main>



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