

No: 17/78/2001-CL-V
Government of India
Ministry of Company Affairs

5th Floor, "A" Wing, Shastri Bhavan,
Dr. R P Road, New Delhi-110 001
Dated the 28th January 2005

To

All RDs
All ROCs

Subject: Striking off names of defunct companies

Sir,

The matter regarding striking off/removal of the names of the defunct companies from the Register of Companies has been considered by the Ministry of Company Affairs. In the past simplified guidelines had been conveyed to Registrars of Companies (ROCS) through (i) circular nos.9/7/83-CL.III dated 17.2.1987 and 1/3/91-CL.V; 5/4/91-CL.III dated 19.2.1991 (ii) "The Fast Track Section 560 Scheme of year 2000" and (iii) "The Simplified Exit Scheme" introduced during 25.3.2003 to 31.3.2004 to operationalise the provisions of Section 560 to enable the ROCs to weed out the defunct companies.

2. Now, it has been decided to launch a fresh scheme to enable defunct companies to get their names struck off from the Register of Companies u/s 560 of the Companies Act, 1956 through the operation of the Scheme called "Simplified Exit Scheme, 2005" (SES 2005) [The "Scheme"]. In supercession of all earlier circulars and schemes, the Ministry issues the following directions for striking off names of defunct companies from the Register of Companies under section 560 of the Companies Act, 1956.

OPERATION OF THE SCHEME

3. The SES 2005 will come into operation on 1.2.2005 and will continue till 31.7.2005.

WHO CAN APPLY

4. (i) All defunct companies which are registered under the Companies Act, 1956 can apply under this Circular, except Section 25 Companies, subject to fulfillment of conditions laid down hereinafter.

(ii) More particularly, the following companies are eligible to apply under this Scheme: _

- (a) Companies that did not carry out any business at any time;
- (b) Companies that carried out some business activity but discontinued the same thereafter;

Provided that in the case of a Non Banking Financial Company (NBFC) as defined under section 45-I(f) of RBI Act, 1934:-

- (a) if such NBFC is not registered with the RBI, it will be allowed to avail of this scheme only if it has not carried out any operation or commercial activity since its incorporation;

- (b) if such NBFC is registered with RBI, it will be allowed to avail of this scheme if no objection from RBI to their availing the exit option under the Scheme is obtained and enclosed alongwith the application.

Provided further that in case of a Collective Investment Management Company as defined in regulation 2(1)(h) of SEBI (Collective Investment Companies) Regulations, 1999:-

- (a) if such Collective Investment Management Company is not registered with the SEBI, it will be allowed to avail of this scheme only if it has not carried out any operation or commercial activity since its incorporation;
- (b) if such Collective Investment Management Company is registered with SEBI, it will be allowed to avail of this scheme if no objection from SEBI to their availing the exit option under the Scheme is obtained and enclosed alongwith the application.
- (iii) Government Companies, which have no assets and liabilities may also apply for strike off/removal of name under this Scheme provided they comply with the other prescribed requirements and submit an approval letter issued by the concerned administrative ministry.

PROCEDURE AND DOCUMENTS REQUIRED

How to apply

5. (i) A company desirous of getting its name struck off under this scheme can apply to the Registrar of Companies concerned in the form prescribed and enclosed in Annexure 'A'.
- (ii) If a validly constituted Board of the Company is in existence, the application should be supported by a Board resolution to exit from the Register of Companies.
- (iii) The application should be signed by two directors of the company which will include Managing Director or Whole Time Director, if there is one.
- (iv) In case of companies where the number of directors is reduced below the quorum fixed by the Act for a meeting of the Board, the continuing directors or director may act for the purpose of increasing the number of directors to that fixed for the quorum in terms of regulation 75 of Table A of Schedule I to the Companies Act, 1956 or as per the relevant articles of association of the company.
- (v) The foreign nationals and Non Resident Indians (NRIs) may also apply adhering to the procedure laid down in section 558 of the Companies Act, 1956.

AFFIDAVIT AND INDEMNITY

- 6 (i) The application should be accompanied by an affidavit by the Applicants as mentioned in para 5(1) above sworn before a Magistrate/Executive Magistrate/Oath Commissioner/Notary, to the effect that the company has not carried on any business or the company did some business for a period upto a date (which should be specified) and then discontinued its operations, as the case may be, and has no assets or liabilities. The draft of the Affidavit is as per draft prescribed and enclosed at Annex 'B' to this Circular.

(ii) The application should further be accompanied by an Indemnity Bond, duly notarized as per draft prescribed and enclosed in Annex 'C' to this Circular, to the effect that should there be any liabilities on the company, such liabilities will be met in full by the applicants, even after the name of the company is struck off the register of the companies. Such applicants will be liable jointly as well as severally.

ACCOUNTS

7 (a) In case of companies which have not carried out any operations, business or commercial activity since their incorporation and have no financial information to furnish, a declaration by Applicants in the affidavit itself that the company has no assets and liabilities shall be sufficient and there shall be no need to attach separate audited financial statements. If however, such companies have been filing regular financial statements, they should file the financial statement for the latest year prepared upto a period which ended one month preceding the date of application.

(b) Companies which discontinued their operations after having carried out the same for some period, should file audited financial statements under the Companies Act, 1956 for the period upto which they carried on business provided such period is of one accounting year or more. For subsequent period, a Statement of Account as per format prescribed at Annex D of this Circular, for the latest year prepared upto a period which ended one month preceding the date of application should be enclosed. Where the period of operation is less than one accounting year, a Statement of Account, as prescribed at Annex D shall suffice. The Applicants shall also give a declaration that the "Statement of Account" so submitted gives true and fair view of company's financial position specifying the reasons for non submission of audited financial statements. However if companies wish to voluntarily file the regular audited financial statement even for the subsequent period, they may do so.

For the purposes of this Circular, the expression "Financial Statements" means balance sheet and profit and loss account required to be maintained as per provisions of section 211 of the Companies Act, 1956.

8. A company shall not be allowed to avail of this scheme in case any prosecution for a non-compoundable offence is pending against the company. The company shall declare pending litigations, if any, involving the company while applying under this Scheme. However, in respect of companies which are involved in compoundable offences under the Companies Act, 1956, the company will be allowed to avail of the scheme only if the company files a compounding application first and then applies under this scheme.

9. The purpose of the Scheme is to allow eligible companies to avail of this opportunity to exit from the Register of Companies after fulfilling the requirements laid down in this Circular. No penal action would be initiated against eligible companies availing this Scheme from the date of filing of the application for simplified exit. After the Scheme ends, the Ministry would take necessary penal action under the Companies Act, 1956 against such defunct companies which have not availed of this opportunity and have not complied with the provisions of the Companies Act, 1956 or are not filing documents with ROCs in a timely manner.

10. The applicant company under this Scheme would be deemed to be struck off from Register of Companies from the date of issue of Order/Notification by the ROC.

11. An application shall be accompanied with a fee of Rs. 3000.

Yours faithfully,

Encl: As above

(B.L. Sinha)
Joint Director (R)

ANNEXURE A

APPLICATION FORM FOR STRIKING OF NAME OF COMPANY
UNDER SECTION 560 OF THE COMPANIES ACT, 1956

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No. of Company												
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Name of the Company:												
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Address of the Company::

To
The Registrar of Companies,

(Name of the State)

Sir,

The Company after carefully considering all aspects has duly resolved in the Board meeting held on _____ to make an application for striking the name of our company off the Register u/s 560 of the Companies Act, 1956. We, the directors of the company make an application for striking the name of our company off the Register u/s 560 of the Companies Act, 1956.

(2) I/We furnish the following details and documents for considering my/our application.

(i) Audited Financial Statements for the year ending _____ showing no assets and liabilities.

Or

(ii) A Statement of Account for the period from _____ to _____ being the latest period applicable for the company. It is declared that due to _____ (give here reasons) the Balance Sheet and Profit and Loss Account can not be prepared, hence a Statement of Accounts is submitted.

(ii) Affidavits as per Annexure B of this Circular No. 17/78/2001-CL.V dated 28-01-2005 of M/o Company Affairs.

(iii) Indemnity Bonds as per Annexure C of the General Circular No. 17/78/2001-CL.V dated 28-01-2005 of M/o Company Affairs.

(iv) Demand Draft/Pay Order/Banker's Cheque No. _____ dated _____ drawn in favour of "Registrar of Companies _____ (name of State in which registered office of the company is situated)" payable at _____.

(v) NOC from RBI/SEBI as the case may be, in case an NBFC/Collective Investment Management Company is registered with RBI/SEBI.

(vi) Copy of Board Resolution and/or other document showing authorization given to us for filing of this application.

(3) Now, therefore, the undersigned request you to strike off the name of the company from the Register.

(4) I shall be liable under section 628 of the Companies Act, 1956 and under relevant provisions of the Indian Penal Code if I make any statement pursuant to this circular:-

- (a) which is false in any material particular, knowing it to be false; or
- (b) which omits any material fact knowing it to be material

(5) * Ours is a Collective Investment Management Company (CIMC) /NBFC* registered/not registered* with SEBI/RBI*.
For CIMC/NBFC

(6) (a) Ours is a CIMC /NBFC company registered with SEBI/RBI. Our registration number with SEBI/RBI is _____ and we had Head Office at _____ and branches at _____(indicate places of Branch Offices). We have been issued a “No Objection Certificate” by SEBI/RBI* to exit from the Register of Companies.

(b) Ours is a CIMC /NBFC company not registered with SEBI/RBI. We declare that we had not commenced business or carried out any business or operations or commercial activity at any time.

* Clauses 5 and 6 applicable only in case of an CIMC/NBFC

* Strike out which-ever is not applicable

Yours faithfully,

Names and addresses of Applicants

Date :

- 1. Signature
- 2. Signature

AFFIDAVIT

(to be given individually by applicant)

I, Director of _____ Private/Limited, (hereinafter called "the Company"), incorporated on ___/___/___ under the Companies Act, 1956 having its Registered Office at _____ and having PAN No: _____ do solemnly affirm and state as under:

1. I _____, S/o D/o . Shri _____, holder of Passport No: _____/PAN _____ (copy of Passport/PAN duly attested by Gazetted Officer is enclosed) am Director of the company stated above since _____
2. My present residential address is _____ (copy of documentary evidence duly attested by Gazetted Officer is enclosed. Alternatively, an affidavit sworn before Magistrate may be enclosed)
3. My permanent address is _____ (copy of documentary evidence duly attested by Gazetted Officer is enclosed. Alternatively, an affidavit sworn before Magistrate may be enclosed)
4. The Company was incorporated on _____ with the object to carry _____ on the business of _____.
5. The company maintains/does not maintain any bank account as on date.
6. The Company has been inoperative from the date of its incorporation. / The company commenced business/operations/commercial activity after incorporation but has been inoperative for the past _____ year(s) due to following reasons*.

(give the reasons here)

* Strike out whichever is not applicable

7. As on date, the Company does not have any dues towards Income Tax / Sales Tax / Central Excise/ Banks and Financial Institutions; any other Central or State Government Departments/Authorities or any Local Authorities.

8. Strike out whichever is not applicable :-

- (i) There is no litigation pending against or involving the company.
- (ii) There are litigations pending against the company which are mentioned as under:-

(give brief particulars of litigation and state the authority, with address, where it is pending, along with case number).

(iii) The litigation under Companies Act, 1956 or other Act (specify the name of the Act) pertains to an offence which is compoundable and the compounding application has been filed with the appropriate authority. (A copy of compounding application to be enclosed).

9. I have been authorised to file this application by Board resolution dated _____. (Copy of resolution is annexed).

10. That an application is hereby filed for action under section 560 of the Companies Act, 1956, before the Registrar of Companies with necessary fees and required Financial Statement/Statement of Account/declaration* signed by me.

* Strike out whichever is not applicable.

11. In case of any loss(es) to any person or any valid claim arising from any person after the striking off of the name of the Company from the Register of Companies, , _____, I the applicant, undertake to indemnify any person for such losses and the indemnity bond to this effect is enclosed and submitted.

I solemnly state that the contents of this affidavit are true to the best of my knowledge and belief and that it conceals nothing and that no part of it is false.

Signature: _____
(Deponent)

Verification:-

I verify that the contents of this affidavit are true to the best of my knowledge and belief.

Place:

Signature: _____
(Deponent)

Date:

INDEMNITY BOND

(to be given individually by Applicant)

I, the director of _____ Private/Limited, (hereinafter called “the Company”), incorporated on ___/___/___ under the Companies Act, 1956, having its Registered Office at _____ and having PAN Number _____ do hereby declare that:

(a) (i) I _____, S/o D/o Shri _____, am holder of passport/PAN _____ etc.

(copy of Passport/PAN duly attested by Gazetted Officer is enclosed)

(ii) I am Director of this company since _____

(iii) My present residential address is _____

(copy of documentary evidence duly attested by Gazetted Officer is enclosed. Alternatively an affidavit sworn before Magistrate may be enclosed.)

(iv) My permanent address is _____

(copy of documentary evidence duly attested by Gazetted Officer is enclosed. Alternatively an affidavit sworn before Magistrate may be enclosed.)

(b) That I have made an affidavit dated the _____, duly sworn before Magistrate/Executive Magistrate/Oath Commissioner/Notary affirming that the Company _____ Private/ Limited, has no assets and no liabilities.

(c) Further, the Company has been inoperative from the date of its incorporation. / The company commenced business/operations/commercial activity after incorporation but has been inoperative for the past _____ year(s)*. And the company is not intending to do any business or commercial activity. Thus the Company is defunct and I request the Registrar of Companies, _____ to strike off the name of the Company from the Register of Companies under Section 560 of the Companies Act, 1956.

* Strike out whichever is not applicable.

2. I do hereby undertake and indemnify in writing:

(a) to pay and settle all lawful claims arising in future after the striking off the name of the Company.

(b) to indemnify any person for any losses that may arise pursuant to striking off the name of the Company.

(c) to settle all lawful claims and liabilities

which have not come to our notice upto this stage,

even after the name of the Company has been struck off in terms of Section 560 of the Companies Act, 1956.

Place: Signature: 1. _____
Name:

Date:

WITNESSES:

1. Signature

Name:

Father's name:

Address:

Occupation:

2. Signature

Name:

Father's name:

Address:

Occupation:

ACCEPTED
Registrar of Companies

Annexure D

Statement of Account

(Para 7(b) of circular)

Name of the Company:

Year to which the Statement of Account pertains:

Part A

Particulars :

I. Sources of Funds

(Brief break up in respect of each item needs to be given).

(1) Capital

(2) Reserves & Surplus (including balance in Profit and Loss Account)

(3) Loan Funds

Total of (1) to (3)

II. Application of Funds

(Brief break up in respect of each item needs to be given).

(1) Fixed Assets

(2) Investments

(3) (i) Current Assets, loans and Advances

Less : (ii) Current Liabilities & provisions

Net Current assets (I –ii)

(4) Miscellaneous expenditure to the extent not written off or adjusted

(5) Profit && Loss Account (Debit balance)

Total of 1 to 5

Part-B

Particulars

(Brief break up in respect of each item needs to be given).

I. Income

II. Expenditure

III. Profit / Loss before Tax (I-II)

IV. Appropriation in case of profit

Date :

Signature
(Secretary/Applicant*)

* Applicable only if there is MD/Secretary

Figures at the end of	
Current Financial Year	Previous Financial Year
Current Financial Year	Previous Financial Year

Current Financial Year	Previous Financial Year

Signature
(Managing Director*/Applicant)

Signature
(Director/Applicant)

(BL Sinha)
Joint Director (R)