

General Circular No. 36/2011

F. No. 2/3/2011-CL V

Government of India

Ministry of Corporate Affairs

5th Floor, 'A' Wing, Shastri Bhavan,

Dr. R.P. Road, New Delhi

Dated the 7th June, 2011

To

All Regional Director,
All Registrar of Companies.

Subject: Guidelines for Fast Track Exit mode for defunct companies under section 560 of the Companies Act, 1956

Sir,

There are a number of companies, which are registered under the Companies Act, 1956, but due to various reasons they are inoperative since incorporation or commenced business but became inoperative or defunct later on. Such companies may be desirous of getting their names strike off from the Register of Companies maintained by Registrar of Companies.

2. As per section 560 of the Companies Act, 1956, Registrar of Companies may strike off the name of companies on satisfying the conditions therein. As per present practice, a company desirous of getting its name struck off, has to apply to Registrar of companies in e-form 61. All pending statutory returns are required to be filed along with e-form 61.

3. In order to give an opportunity for fast track exit by a defunct company, for getting its name struck off from the register of companies, the Ministry has decided to modify the existing route through e-form – 61 and has prescribed the new Guidelines. The Guidelines for “Fast Track Exit mode” for defunct companies under section 560 of the Companies Act, 1956 are enclosed herewith.

4. These Guidelines will be implemented w.e.f. 3rd July, 2011.

Yours faithfully,

-Sd/-

(Monika Gupta)

Assistant Director

Encl: As above

Guidelines for Fast Track Exit mode for defunct companies under section 560 of the Companies Act, 1956

1. For Fast Track Exit mode (FTE), it is stated as under:-
 - (a) Any company will be called as “defunct company” for the purpose of these guidelines, which has nil asset and liability and
 - (i) has not commenced any business activity or operation since incorporation; or
 - (ii) is not carrying over any business activity or operation for last one year before making application under FTE.
 - (b) Any defunct company which has active status or identified as dormant by the Ministry of Corporate Affairs, may apply for getting its name strike off from the Register of Companies;
 - (c) Any defunct company which is a Government Company shall submit ‘No Objection Certificate’ issued by the concerned Administrative Ministry or Department or State Government along with the application;
 - (d) the decision of the Registrar of Companies in respect of striking off the name of company shall be final.
 - (e) The fast track exit mode is not being extended to the following companies namely:-
 - (i) listed companies;
 - (ii) companies that have been de-listed due to non-compliance of Listing Agreement or any other statutory Laws,
 - (iii) companies registered under section 25 of the Companies Act, 1956;
 - (iv) vanishing companies;
 - (v) companies where inspection or investigation is ordered and being carried out or yet to be taken up or where completed prosecutions arising out of such inspection or investigation are pending in the court;
 - (vi) companies where order under section 234 of the Companies Act, 1956 has been issued by the Registrar and reply thereto

is pending or where prosecution if any, is pending in the court;

- (vii) companies against which prosecution for a non-compoundable offence is pending in court;
- (viii) companies accepted public deposits which are either outstanding or the company is in default in repayment of the same;
- (ix) company having secured loan ;
- (x) company having management dispute;
- (xi) company in respect of which filing of documents have been stayed by court or Company Law Board (CLB) or Central Government or any other competent authority;
- (xii) company having dues towards income tax or sales tax or central excise or banks and financial institutions or any other Central Government or State Government Departments or authorities or any local authorities.

Explanation: “vanishing company” means a company, registered under the Companies Act, 1956 and listed with Stock Exchange which, has failed to file its returns with Registrar of Companies and Stock Exchange for a consecutive period of two years, and is not maintaining its registered office at the address notified with the Registrar of Companies or Stock Exchange and none of its Directors are traceable.

- (f) Any defunct company desirous of getting its name strike off the Register under Section 560 of the Companies Act, 1956 shall make an application in the Form FTE, annexed electronically on the Ministry of Corporate Affairs portal namely www.mca.gov.in accompanied by filing fee of ₹ 5,000/-;
- (g) In case, the application in Form FTE, is not being digitally signed by any of the director or Manager or Secretary, a physical copy of the Form duly filled in, shall be signed manually by a director authorised by the Board of Directors of the company and shall be attached with the application Form at the time of its filing electronically;

- (h) In all cases, the Form FTE, shall be certified by a Chartered Accountant in whole time practice or Company Secretary in whole time practice or Cost Accountant in whole time practice;
- (i) In case, the applicant name is not available in the database of directors maintained by the Ministry, the application shall be accompanied by certificate from a Chartered Accountant in whole time practice or Company Secretary in whole time practice or Cost Accountant in whole time practice alongwith their membership number, certifying that the applicants are present directors of the company. In such cases, the applicants shall not be asked to file Form 32 and Form DIN 3.
- (j) The company shall disclose pending litigations if any, involving the company while applying under FTE;
- (k) If the pending prosecutions are only for non-filing of Annual Returns under section 159 and Balance Sheet under section 220 of the Companies Act, 1956, such application may be accepted provided the applicants have already filed the compounding application. However, steps for final strike of the name of the company will be taken only after disposal of compounding application by the competent authority.
- (l) The Form FTE shall be accompanied by an affidavit annexed at Annexure- A, which should be sworn by each of the existing director(s) of the company before a First Class Judicial Magistrate or Executive Magistrate or Oath Commissioner or Notary, to the effect that the company has not carried on any business since incorporation or that the company did some business for a period up to a date (which should be specified) and then discontinued its operations, as the case may be;
- (m) Form FTE shall further be accompanied by an Indemnity Bond, duly notarized, as annexed at Annexure B, to be given by every director individually or collectively, to the effect that any losses, claim and liabilities on the company, will be met in full by every director individually or collectively, even after the name of the company is struck off the register of Companies;

- (n) In case of foreign nationals and NRIs, Indemnity Bond and Affidavit may be notarized as per their respective country's law.
- (o) The Company shall also file a Statement of Account annexed at Annexure C, prepared as on date not prior to more than one month preceding the date of filing of application in Form FTE, duly certified by a statutory auditor or Chartered Accountant in whole time practice, as the case may be.
- (p) In the case of 100% Government companies, if no Board is in existence, an officer not below the rank of Deputy Secretary of the concerned administrative Ministry may be authorized to enter his name and other details in Form FTE and in Annexure A, B and C in place of name and other details of the directors and also to sign the said documents before filing.

2. Procedure to be adopted by Registrar of Companies in this matter:-

- (a) The Registrar of Companies, on receipt of the application, shall examine the same and if found in order, shall give a notice to the company under section 560(3) of the Companies Act, 1956 by e-mail on its e-mail address intimated in the Form, giving thirty days time, stating that unless cause is shown to the contrary, its name be struck off from the Register and the company will be dissolved;
- (b) The Registrar of companies shall put the name of applicant(s) and date of making the application(s) under fast track exit mode, on daily basis, on the MCA portal www.mca.gov.in, giving thirty days time for raising objection, if any, by the stakeholders to the concerned Registrar;
- (c) In case of company(s) like Non-Banking Financial Company(s), Collective Investment Management Company(s) which are regulated by other Regulator(s) namely RBI, SEBI, the Registrar of Companies, at the end of every week, shall send intimation of such companies availing fast track exit mode during that period to the concerned Regulator(s) and also an intimation in respect of all companies availing fast track exit mode during that period to

the office of the Income Tax Department giving thirty days time for their objection, if any;

Explanation (1) “Non-Banking Financial Company” means a company as defined under clause (f) of section 45-I of the Reserve Bank of India Act, 1934

(2) “Collective Investment Management Company” means the company as defined in clause (h) of sub-regulation of 2 of Securities and Exchange Board of India (Collective Investment Companies) Regulations, 1999

- (d) The Registrar of Companies immediately after passing of time given in sub-paras (a) to (c) of this Para and on being satisfied that the case is otherwise in order, shall strike its name off the Register and shall send notice under sub-section (5) of section 560 of the Companies Act, 1956 for publication in the Official Gazette and the applicant company shall stand dissolved from the date of publication of the notice in the Official Gazette.

ANNEXURE-A

AFFIDAVIT

(to be given individually by every director)

1. I/, Director of _____, (hereinafter called “the Company”), incorporated on ___/___/___ under the Companies Act, 1956 having its Registered Office at _____ and having CIN No _____ do solemnly affirm and state as under:
2. I/ _____, S/o/ D/o Shri/ Smt _____, holder of DIN /Income Tax PAN /Passport number: _____ (copy of Income Tax PAN /Passport duly attested by a Gazetted Officer or a whole time practicing professional (Chartered Accountant/ Company Secretary/Cost Accountant) or a Company Secretary in full time employment of the company is enclosed) am Director of the company stated above since _____ (mention date of appointment).
3. My present residential address is _____ (Copy of documentary evidence duly attested by a Gazetted Officer or a whole time practicing professional (Chartered Accountant/ Company Secretary/Cost Accountant) or a Company Secretary in full time employment of the company is enclosed. Alternatively, an affidavit sworn before Magistrate may be enclosed)
4. My permanent address is _____ (Copy of documentary evidence duly attested by a Gazetted Officer or a whole time practicing professional (Chartered Accountant/ Company Secretary/Cost Accountant) or a Company Secretary in full time employment of the company is enclosed. Alternatively, an affidavit sworn before Magistrate may be enclosed)
5. The company does not maintain any bank account as on date.
6. I affirm that the Company _____ (mention name of the company) do not have any assets and liabilities as on date.

7. 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)

8. 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.

9. 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, details of which are mentioned under serial number 9 of Form FTE.

10. In case of any loss(es) to any person or any valid claim and liability arising from any person after the striking off the name of the Company_____(mention name) from the Register of Companies, I, the director of the company, undertake to indemnify any person for such losses, valid claim and liability and the indemnity bond to this effect is being submitted separately with the application Form.

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: _____

ANNEXURE-B

INDEMNITY BOND

(to be given individually or collectively by every director)

To

The Registrar of Companies,

1. I/ We, the director (s) of _____
(mention name of the company), incorporated on ___/___/_____ under the
Companies Act, 1956, having its Registered Office at _____
_____do hereby declare that:

2. I/ We _____, S/o D/o Shri/Smt _____
am/are Director (s) of this company.

3. That I/We have made an affidavit dated the _____, duly sworn
before First Class Judicial Magistrate or Executive Magistrate or Oath
Commissioner or Notary, affirming that the Company
_____Private/ Limited have nil assets and liabilities as on
date.

4. 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.

5. I/We 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 up to this stage, even after the name of the Company has been struck off in terms of Section 560 of the Companies Act, 1956.

Place: (Name, Father's name, Address & Signature)

Date: (To be given by every director)

WITNESSES:

1. Signature:

Name:

Father's name:

Address:

Occupation:

2. Signature:

Name:

Father's name:

Address:

Occupation:

Payables	
Others	
Total 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	

Date : **Name and Signature of**
Place: **(Managing Director)***
Name and Signature **Name and Signature of**
(Secretary)* **(Directors)**

* Applicable only if there is MD/Secretary

Duly certified by Statutory Auditor or Chartered Accountant in whole time practice.
Membership No/Certificate of Practice Number with seal