

F.No.17/178/2011-CL-V
Government of India
Ministry of Corporate Affairs
CL V Section

5th Floor, A Wing, Shastri Bhavan,
Dr. R.P. Road, New Delhi
Dated the

All Regional Directors,
All Registrar of Companies,
All Stakeholders

Sub : Proposed guidelines for strike off name under section 560 of the Companies Act, 1956 of companies (non profit companies) which have been granted license under section 25 of the Companies Act, 1956.

Sir,

The Ministry has been receiving representation from various stakeholders to develop a procedure for strike off name under section 560 of the Companies Act, 1956 of companies (non profit companies) which have been granted license under section 25 of the Companies Act, 1956. There are a number of section 25 companies which have not done any activity after obtaining license under section 25 or have stopped such activities, and now want to strike off their name under section 560 of the Companies Act, 1956.

2. At present Registrar of Companies are not taking action either suo-moto or on request of companies for striking off the name of section 25 companies (non profit companies) under section 560 of the Companies Act, 1956. The Ministry of Corporate Affairs has also not permitted for exit of section 25 companies under various exit schemes under section 560 of the Act announced by it from time to time.

3. Section 25 companies, being a non profit organization/company normally receive contribution from all sections of the society in the form of donations, contributions, etc for the furtherance of the charitable, philanthropic activities or for such other useful objects. Such non profit companies sometime also enjoy special status and benefit from various authorities such as Income Tax, Commissioner of Charity, any organization of Central Government or State Government, Municipal Body or any other recognized authority.

4. The Companies Regulation, 1956 also provides for distribution of assets of such companies on winding up as under: --

“If upon a winding up or dissolution of the company, there remains, after the satisfaction of all the debts and liabilities, any property whatsoever, the same shall not be distributed amongst the members of the company but shall be given or transferred to such other company having objects similar to the objects of this company, to be determined by the members of the company at or before the time of dissolution or in default thereof, by the High Court of Judicature that has or may acquire jurisdiction in the matter.”

5. In the background of above provisions, the Ministry of Corporate Affairs is considering to prescribe following guidelines for strike off name under 560 of the Companies Act, 1956 for section 25 companies as under : --

I. A section 25 Company may apply to Registrar of Companies in e-form (to be prescribed) for strike off name under 560 of the Companies Act, 1956 after satisfying following conditions : --

- (a) The section 25 company should have passed a resolution in general meeting to apply Registrar of Companies to strike off name under 560 of the Companies Act, 1956 which should have been approved by all members/shareholders of the company.
- (b) The section 25 company has not commenced any activity or operation since its incorporation or stopped activities for more than last 03 years.
- (c) The company has not received any donation, grants or contribution etc., other than its members.
- (d) Where the company has obtained any special status from any authority such as Income Tax, Commissioner of Charity or any organization or Department of Central Government, State Government, Municipal Body or any recognized authority then a “No Objection Certificate” has to be obtained from the concerned authority.
- (e) The existing assets, if any has to be transferred to a similar object company (section 25 company) before applying to Registrar of Companies for strike off the name under section 560 of the Act.
- (f) The company should have filed its all upto date Balance Sheets and Annual Returns and latest Balance Sheet should not have any Assets or Liabilities.
- (g) The Directors have to file an affidavit and indemnity as required under present exit guidelines and confirming above compliances/ status.
- (h) A certificate from practicing Chartered Accountants/ Company Secretary/ Cost Accountant certifying the above status / compliances by the company.

II. On receipt of above documents and being satisfied, the Registrar of Companies may consider to initiate action under section 560 of the Companies Act, 1956.

6. You are requested to examine the proposed guidelines and furnish your comments/recommendations to the Ministry by 15th July, 2011 by e-mail on following e-mail addresses.

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Yours faithfully,

(Monika Gupta)
Assistant Director