

Corpsec Hotline

June 28, 2010

WIND UP EASY - EASY EXIT SCHEME

Recently, Mr. Salman Khurshid, Minister for Corporate Affairs, informed the Parliament while replying to a question that according to a recent study, it takes an average of about 10 years to complete a company liquidation process in India. Certainly, this is a cumbersome and costly process for defunct companies and therefore they are usually hesitant to initiate steps under the normal winding up process. Considering this, the Ministry of Corporate Affairs ("MCA") issues circulars under Section 560 of the Companies Act, 1956 ("Act") at regular intervals of 2-3 years, providing an option for the defunct companies to get their name struck off from the relevant Registrar of Companies ("RoC") under a simplified route.

Toward this end, MCA has once again introduced an "Easy Exit Scheme, 2010" ("EES") recently for defunct companies vide its circular no. 2/2010. This is the first EES scheme after implementation of online filing of forms with the RoC in the year 2006. The inoperative companies and the companies that commenced operations but subsequently became inoperative can make use of EES by applying to the concerned RoC for striking off its name from the RoC. The EES scheme has come into effect from May 30, 2010 and shall remain in force up to August 31, 2010.

However, certain companies are specifically excluded from making use of EES to strike off their names from the Register of Companies. Please [click here](#) to see the list of the excluded companies.

Who can take the benefit of the Scheme:

Companies which are not carrying over any business activity or operation on or after April 1, 2008 can take the benefit of this scheme. Further, the companies that have not raised their minimum paid-up capital to the threshold level of INR 1 lakh in case of private limited companies and INR 5 lakh in case of public limited companies under Section 3 of the Act can also make use of EES.

Under the earlier schemes, there was a condition that companies which would like to exit under these schemes should not have any assets and or / liabilities. Due to this condition, the companies which had some assets and or / liabilities could not make use of the earlier schemes and had to follow customary long drawn process of winding up. This requirement is not part of the new EES and it seems that it may be possible for companies to have assets and liabilities in their books at the time of making a simplified exit application under EES.

Procedure for filing an application:

Any defunct company desirous of getting its name struck off from the RoC can apply in form EES, 2010. This form should be accompanied by an affidavit from the existing director(s) of the company to the effect that the company has not carried any business since its incorporation or that the company did some business for a certain period and then discontinued its operations and has not carried on any business after the April 1, 2008.

The directors of the Company are personally liable for all the claims, losses and liabilities of the company after the date of striking off. An indemnity to this effect should form part of the Form EES, 2010.

Role of RoCs for striking off name of defunct companies:

The RoC after verifying the documents and satisfying himself that the documents are in order shall give a notice to the company under Section 560 (3) of the Act stating that unless a cause is shown to the contrary within a period of 30 days from the date of issue of notice to the company, its name will be struck off from the Register of Companies and the company shall be dissolved.

There is also a provision for raising objections for removing the name of the company from the Register of Companies. Any person who will be affected if the RoC approves the deletion of the name of the company can file the objections with the concerned RoC.

In case of NBFCs and credit investment companies, the RoC is required to send intimation to the RBI and SEBI respectively, on a weekly basis, to confirm whether they have any objections for striking off name of the companies. The RBI and SEBI have thirty days time to respond to the RoC.

Further, the RoC will also send intimation of the companies that have filed application under EES to the Income Tax Department ("IT Dept") and the IT Dept has thirty days time to respond if they have any objections.

Once the above procedure is completed and the RoC is satisfied that the company is fit for deletion of its name from the Register of Companies, it will strike its name and send a notice prescribed under sub-section (5) of Section 560 of the Companies for publication in the official gazette. The company shall stand dissolved from the date of publication of the notice in the official gazette.¹

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Key Highlights of the Scheme:

- (a) There is no condition of NIL assets and liabilities. The defunct companies can file the application even if they have some assets and/or liabilities;
- (b) Timelines have been prescribed for RBI, SEBI and IT Dept to raise any objections if they have against striking off name of the company and this would help the RoCs to process the documents and strike off name of the companies from the register at much faster rate;
- (c) Simpler process which may take around 2-3 months under EES compared to long drawn process of winding up of companies which may take few years to complete.

Conclusion:

It is hoped that EES is likely to be successful since some of the stringent conditions that were imposed in earlier schemes are not applicable under this scheme. A total of 26,483 defunct companies opted to avail of exit under the Simplified Exit Scheme introduced in 2005. Currently under EES, as on June 27, 2010, a total of 187 companies have already filed the applications under EES.² The defunct companies still have time up to August 31, 2010 to file the necessary documents under EES and more and more companies are expected to make use of this simplified regime.

1 As per Section 560 (6) of the Act:

If a company, or any member or creditor thereof, feels aggrieved by the company having been struck off the register, the court (This power will be transferred to National Company Law Tribunal once it is constituted) on an application made by the company, member or creditor before the expiry of twenty years from the publication in the Official Gazette of the notice aforesaid, may, if satisfied that the company was, at the time of the striking off, carrying on business or in operation or otherwise that it is just that the company be restored to the register, order the name of the company to be restored to the register; and the Tribunal may, by the order, give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

2 <http://mca.gov.in/Ministry/EES.html>

- Vishwanath Kolhar & Vaidhyadnan Iyer

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