

PROCEDURE FOR STRIKING OFF OF NAME OF AN ELIGIBLE COMPANY

124

{Sections 248(2) and 249 of the Act read with Rule 4 of the Companies (Removal of name of companies from the Register of Companies) Rules, 2016}

Synopsis

124.1	Procedure with check points	2180
124.2	Forms to be filed	2184
124.3	List of documents required	2188
124.4	List of information required	2189
Appendix 124.1	Format of notice by registrar for removal of name of a company from the register of companies	2191
Appendix 124.2	Format of indemnity bond	2192
Appendix 124.3	Format of affidavit	2193
Appendix 124.4	Format of public notice	2194
Appendix 124.5	Form No. STK-6: Public notice	2195
Appendix 124.6	Format of notice of striking off and dissolution	2196
Appendix 124.7	Format of waiver letter	2197
Appendix 124.8	Format of consent letter	2198
Appendix 124.9	Sample board resolutions	2198
Appendix 124.10	Sample shareholder resolution	2199

Relevant Sections, Rules and Forms at a Glance

Particulars	Section(s), Rule(s) and Name of e-Form(s)
The Companies Act, 2013	Sections 117, 248, 249, 250, 251, 252 and 403
The Companies (Removal of Name of Companies from the Register of Companies) Rules, 2016	Rules 3, 4, 5, 6, 7, 8, 9 and 10
The Companies (Registration Offices and Fees) Rules, 2014	Rules 7, 8 and 12
Secretarial Standard-1 of ICSI	Clauses 3, 4, 5, 6, 7 and 8
Secretarial Standard-2 of ICSI	Clauses 1,3,4,5,6,7 and 17
e-Forms to be filed	MGT-14 (if special resolution is passed) STK-2
Forms to be filed as an attachment with respective e-Forms	STK-3 STK-4

Significant Relevant Approvals and Requirements

- ❖ Board resolution
- ❖ Special resolution, if general meeting convened
- ❖ Consent letter from 75% members of the company
- ❖ Statement of Accounts duly signed by a Chartered Accountant in practice
- ❖ Affidavit from all directors

- ❖ Indemnity bond from all directors
- ❖ Bank closure letter from the bankers of the company
- ❖ No objection certificate from sectoral regulatory authority, if any
- ❖ Waiver letter from director(s) if any loan is outstanding towards them

124.1 PROCEDURE WITH CHECK POINTS

S. No.	Particulars
1.	<p>Note that a company, after extinguishing all its liabilities, by a special resolution or consent of seventy-five per cent members in terms of paid-up share capital, may file an application to the Registrar for removing the name of the company from the register of companies on all or any of the following grounds:</p> <ul style="list-style-type: none"> • a company has failed to commence its business within one year of its incorporation; • a company is not carrying on any business or operation for a period of two immediately preceding financial years and has not made any application within such period for obtaining the status of a dormant company under section 455 of the Act. <i>{Section 248(2) of the Act}.</i>
2.	<p>The company can file an application under section 248(2) of the Act pursuant to conditions prescribed under section 249 of the Act and Rules 3 and 4 of the Companies (Removal of Name of Companies from the Register of Companies) Rules, 2016, so before taking steps for filing an application under section 248(2) of the Act, the company shall ensure that-</p> <p>(a) the company has filed its all overdue returns in Form No. AOC-4 (Financial Statement) or AOC-4 XBRL, as the case may be, and Form No. MGT-7 (Annual Return), up to the end of the financial year in which the company ceased to carry its business operations with the Registrar of Companies and further that in case a company intends to file an application under section 248(2) of the Act after the action under section 248 (1) of the Act has been initiated by the Registrar, it shall file all pending overdue returns in Form No. AOC-4 (Financial Statement) or AOC-4 XBRL, as the case may be, and Form No. MGT-7 (Annual Return) before filing application under section 248(2) of the Act:</p> <p>(b) the company is not carrying on any business or operation for a period of two immediately preceding financial years and has not made any application within such period for obtaining the status of a dormant company under section 455.</p> <p>(c) the company has no secured loan, and charge in respect of loans taken earlier has been repaid and satisfied.</p> <p>(d) the company is not regulated by any Sectoral Regulatory Authority and in case it is regulated under any Special Act, no objection certificate has been obtained from appropriate Regulatory Authority concerned in respect of following companies, namely:—</p> <p>(i) companies which have conducted or conducting non-banking financial and investment activities as referred to in the Reserve Bank of India Act, 1934 or rules and regulations thereunder;</p>

S. No.	Particulars
	<p>The subscribers, who are individuals in the Memorandum of Association (MOA) shall be deemed as first directors until the directors are duly appointed by the members in accordance with Section 152 of the Companies Act, 2013 and rules made thereunder (Section 152 of the Act).</p> <ul style="list-style-type: none"> • Not the person intended/proposed to be appointed a director of a company has a valid Director Identification Number (DIN) under section 174 or any other number as may be prescribed under section 174 of the Companies Act, 2013, however, in case of first directors of a new company, the DIN up to 3 (three) persons can be obtained through incorporation with integrated form SPICe-1 (INC-11) (Section 152 of the Act read with rule 152 of the Companies Incorporation Rules, 2014). • Not a total number of directors, at least one director has stayed in India for a total period of not less than 182 days during the financial year. Provided that in case of newly incorporated company, residential status shall be determined proportionately. However, it is not required in case the director is appointed by the Central Government or State Government (Section 152 of the Act). • A person, who is intended to be appointed, shall not be eligible for appointment, if he/she has any disqualification for appointment under section 164 of the Act (Section 164 of the Act read with companies provisions a government company and regulations in COA 2012 about COA 2012). • A person proposed to be appointed as a director in a company other than a company registered under Section 8 (non-profit company) of the Companies Act, 2013 (Section 152 of the Act) <ul style="list-style-type: none"> - shall not hold office as a director including any alternate directorship in more than 20 companies including directorship in dormant companies. - shall not hold office in more than 10 public companies including the private companies which are holding or subsidiary of public company.
1.	In case of one person company, an individual being sole member is deemed to be the first director of the company, if the articles of association has not mentioned the names of first directors (Section 152 of the Act).
2.	Forms created in writing, on or before appointment, from the appointed director to act as director in the company as Form 208-2 (Part 2 of the Companies Appointment and Qualification of Directors) Rule, 2014.
3.	Form created in writing, on or before appointment, from the appointed director as Form 208-3 regarding that he/she is not disqualified under Section 164 of Companies Act, 2013, to act as a Director (Section 164 of the Act read with rule 164 of the Companies Appointment and Qualification of <u>Directors</u>) Rule, 2014.
4.	The particulars of first directors to be integrated with Form SPICe-1 (INC-11) at the time of incorporation of company.

For the detailed procedure, please refer Company Law Procedures & Compliances by Dr. Sanjeev Gupta, 2nd edn, 2021. You can buy from your bookseller or online at www.bharatlaws.com

[COMPANY LAW Procedures & Compliances \(in 2 vols.\)](#)