

PROCEDURE FOR OBTAINING STATUS OF ACTIVE COMPANY AS DORMANT COMPANY

49

{Section 455(1) of the Act read with Rule 3 of the Companies (Incorporation) Rules, 2014}.

Synopsis

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Relevant Sections, Rules and Forms at a Glance

Particulars	Section(s), Rule(s) and Name of e-Form(s)
The Companies Act, 2013	Sections 18, 117, 118, 173, 179, 403 and 455
The Companies (Miscellaneous) Rules, 2014	Rules 3, 4, 5, 6, 7 and 9
The Companies (Management and Administration) Rules, 2014	Rule 24
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 MSC-1 MSC-3

Significant Relevant Approvals and Requirements

- ❖ Board resolution
- ❖ Special resolution **OR** consent of 3/4th shareholders of the company
- ❖ No inspection, inquiry or investigation has been ordered or taken up or carried out against the company
- ❖ No prosecution has been initiated and pending against the company under any law;
- ❖ No outstanding public deposits and not in default in payment thereof;
- ❖ No outstanding loan and if have, has obtained concurrence of the lender
- ❖ No dispute in the management or ownership of the company
- ❖ No outstanding statutory taxes, dues, duties etc. payable to the Central Government or any State Government or local authorities, etc.;
- ❖ No default in the payment of workmen's dues;

- ❖ Securities of the company are not listed on any stock exchange
- ❖ Statement of affairs duly certified by a Chartered Accountant or Auditor.
- ❖ Latest financial statement and annual return of the company.
- ❖ No objection certificate from regulatory authority, if company is regulated by such authority.

49.1 PROCEDURE WITH CHECK POINTS

S. No.	Particulars
1.	<p>Ensure that—</p> <ul style="list-style-type: none"> • the company is formed and registered under the Companies Act, 2013 for a future project or to hold an asset or intellectual property and has no significant accounting transaction and is an inactive company, whereas— <ul style="list-style-type: none"> - “inactive company” means a company which has not been carrying on any business or operation, or has not made any significant accounting transaction during the last two financial years, or has not filed financial statements and annual returns during the last two financial years; - “significant accounting transaction” means any transaction other than (a) payment of fees by a company to the Registrar; (b) payments made by it to fulfil the requirements of this Act or any other law; (c) allotment of shares to fulfil the requirements of this Act; and (d) payments for maintenance of its office and records. <i>{Section 455(1) of the Act}</i>. • the company, pursuant to <i>Rule 3 of the Companies (Miscellaneous) Rules, 2014</i> shall be eligible to apply for obtaining the status of a dormant company, only if: <ul style="list-style-type: none"> - no inspection, inquiry or investigation has been ordered or taken up or carried out against the company - no prosecution has been initiated and pending against the company under any law; - the company is neither having any public deposits which are outstanding, nor the company is in default in payment thereof or interest thereon; - the company is not having any outstanding loan, whether secured or unsecured and if have, has obtained concurrence of the lender - there is no dispute in the management or ownership of the company and - the company does not have any outstanding statutory taxes, dues, duties etc. payable to the Central Government or any State Government or local authorities, etc.; - the company has not defaulted in the payment of workmen’s dues; - the securities of the company are not listed on any stock exchange within or outside India. • a dormant company shall have a minimum number of 3 (three) directors in case of a public company, 2 (two) directors in case of a private company and 1 (one) director in case of a One Person Company <i>{Rule 6 of the Companies (Miscellaneous) Rules, 2014}</i>.

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 companies.
2.	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).
3.	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.
4.	Forms in electronic in writing, on or before appointment, from the appointed director as Form 208-2 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 17 of the Companies Appointment and Qualification of <u>Directors</u>) Rule, 2014.
5.	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 \(in 2 vols.\)](#)