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CHAPTER

Strike Off and Restoration of Name of the Company and LLP

Chapter Coverage

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Regulatory Framework Coverage

The Companies Act, 2013

Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016

Limited Liability Partnership Act, 2008

Limited Liability Partnership Rules, 2009

20.1 Introduction

The Ministry of Corporate Affairs ("MCA") vide Notification dated 26th December, 2016 notified Sections 248 to 252 of the Companies Act, 2013 ("Act") dealing with the provision for Removal of Names of Companies from the Register of Companies ("ROC"). The provisions relating to strike off provide an opportunity to the non working companies to get their names struck off from the records of the ROC. The MCA had also issued the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 ("Rules") to be effective from the same date i.e. 26th December, 2016 in order to provide procedural aspects of striking off.

20.2 Meaning of Important Terms

Defunct Company	The company which failed to commence business within one year from the date registration without any proper reason which beyond the control of the company. If a company is not filling its balance sheet for many years than also it will be traded as defunct company.
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Vanishing Company	A company registered under the Act or previous company law or any other law for the time being in force and listed with Stock Exchange which has failed to file its returns with the 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.
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20.3 Different ways of Strike-off of Companies

Modes: A company can be struck off by any of the following modes:

- ◆ *Suo moto* by the ROC under section 248(1) of the Act; or
- ◆ An application by the company for removal of name/ strike off of company under section 248(2) of the Act.

Note(s):

1. *The company which is undergoing the process of 'Striking Off' either voluntarily or by an action of the ROC is given the status as 'Striking Off' and the status of the company is changed to 'Dissolved' or 'Liquidated' when affairs of the company are completely wound-up by following the provision of winding-up of company. After dissolution or liquidation, the company ceases to exist.*
2. *The provisions of Sections 248 to 252 of the Companies Act, 2013 read with Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 deal with the removal of names of companies from the Register of Companies.*

Analysis of Two ways of Strike-off of Companies

By Application of Company for removal of name/ strike off of Company [Section 248(2) of Companies Act, 2013 read with Rule 4 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016]	By Registrar of Companies on suo motu under section 248(1) of the Companies Act, 2013
<p>◆ Strike -off provisions gives a choice or an option to non-working company to remove its name from the Register of Companies. There are many companies which are registered with ROC but due to various reasons they are not operative.</p> <p>◆ Strike off gives an option to such companies to apply to ROC for removal of their name from the Register of Companies.</p> <p>◆ This act is a speedy way to close down a company being non-operational over a period of time.</p> <p>As per provisions of Section 248(2) of Companies Act, 2013 read with Rule 4 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016, the company can on its own file an application for removal of name of company from the Register of Companies.</p>	<p>As per provisions of Section 248(1) of Companies Act, 2013 read with Rule 3 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 in the following cases, the Registrar can <i>suo motu</i> remove the name of the company from the Register:</p> <ul style="list-style-type: none"> ◆ a company has failed to commence its business within one year of its incorporation or; ◆ 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 Companies Act, 2013; or ◆ the subscribers to the memorandum have not paid the subscription which they had undertaken to pay at the time of incorporation of a company and a declaration to this effect has not filed within 180 days of its incorporation under section 10A(i) of Companies Act, 2013; or <p>the company is not carrying on any business or operations as revealed after the physical verification carried out under section 12(9) of Companies Act, 2013.</p>

Legal Framework**Strike Off by ROC:**

In case of an existing company which has failed to commence its business within one year of its incorporation or 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 or the subscribers to the memorandum have not paid the subscription and a declaration to this effect has not been filed within 180 days of incorporation or it is revealed after a physical verification that the company is not carrying on any business or operations, the Registrar can *suo moto* after giving notice and opportunity of being heard, strike off the name of the company from the register of companies and publish notice thereof of the striking off of the name of the company from the register of companies in the Official Gazette and on the publication of this notice in the Official Gazette, the company shall stand dissolved.

Strike Off by the company:

- ◆ Striking off under Chapter XVIII of the Companies Act, 2013 can also be by way of an application filed by the company with the ROC for removing its name from the Register of Companies on all or any of the grounds mentioned above.
- ◆ A company may file such an application, after extinguishing all its liabilities, by a special resolution or consent of seventy-five per cent members in terms of paid-up share capital.
- ◆ On receipt of the application along with necessary fees, the Registrar shall issue a public notice for intimating the general public about the receipt of an application for removal of name of the company and giving a chance to the creditors and general public to submit their objection, if any, to the proposed application.
- ◆ In case no objection is received after the expiry of the time mentioned in the notice, the ROC may proceed to strike off the name of the company from the Register of Companies and shall publish a notice thereof in the Official Gazette.
- ◆ On publication in the Official Gazette of this notice, the name of the company stands struck off with effect from the date mentioned therein and the company shall stand dissolved.

QUESTIONS

Ques 1: Write a short note on: Provisions and procedure for striking off the name of the company.

Hint: Refer Topic 20.3 Different ways of Strike-off of Companies.

Ques 2: What is meant by striking the name of company under section 248 of the Companies Act, 2013?

Hint: Refer Topic 20.3 Different ways of Strike-off of Companies.

20.4 Procedure to be followed by ROC for striking of the name of the Company on *suo motu* basis.

Service of notice	<ul style="list-style-type: none"> ◆ The registrar is required to send a notice in Form STK 1 to the company and all the directors of the company of his intention to remove the name of the company from the register of companies. ◆ Such a notice should contain the reasons on which the name of the company is to be removed from the register of companies. ◆ Such a notice should be sent to all the directors of the company at the addresses available on record by registered post with acknowledgement due or by speed post.
Reply to Notice	<ul style="list-style-type: none"> ◆ On receipt of such a notice the company and all the directors of the company are required to send their representations along with copies of the relevant documents, if any explaining the reasons as to why the name of the company should not be removed from the register of companies. ◆ Such a representation should be given within a period of thirty days from the date of the notice
Consideration of the representation made	<ul style="list-style-type: none"> ◆ ROC will consider the representation made by the company and all the directors of the company. ◆ If ROC is not satisfied with the representation made by the company and its directors, it may proceed to strike off the name of company.
Publication of Notice	<p>Notice for removal of the name of the company should be in form STK 5 for the information of the general public and should be:</p> <ul style="list-style-type: none"> ◆ published in the Official Gazette. ◆ placed on the official website of the Ministry of Corporate Affairs on a separate link established on such website in this regard. ◆ published in Form No. STK 5A in English language in a leading English newspaper and at least once in vernacular language in a leading vernacular language newspaper both having wide circulation in the State in which the registered office of the company is situated. <p>Such a publication is required to be given for the information of the general public in order to enable the general public to give their objections, if any, to the proposed removal / striking off of name of the companies from the Register of Companies and requiring them to send their objection to the ROC within thirty days from the date of publication of the notice.</p>
Intimation to regulatory authorities	Intimation about the proposed action of removal or striking off the names of company should be sent to the Income-tax authorities, central excise authorities and service-tax authorities having jurisdiction over such a company. Such intimation should be given to enable the authorities to give their objections, if any. Such objections are required to be given within a period of thirty days from the date of issue of the letter of intimation.
Striking off / Removal of the name of the company	After expiry of thirty days from the date of issue of the letter of intimation, if there are no objections received within thirty days from the general public or respective authority and unless cause to the contrary is shown by the company, the ROC can proceed to strike off or remove the name of the company from the Register of Companies.
Provision for realisation of amount due	The ROC before passing an order for Striking off / Removal of the name of the company should satisfy himself that sufficient provision has been made for realisation of all amount due to the company and for the payment or discharge of its liabilities and obligations by the company within a reasonable time. The ROC can obtain necessary undertakings from the managing director, director or other persons in charge of the management of the company. Notwithstanding the undertakings, the assets of the company shall be made available for the payment or discharge of all its liabilities and obligations even after the date of the order removing the name of the company from the Register of Companies.

Notice of dissolution of the company	After the expiry of the time mentioned in the notice, the ROC can strike off the name of the company from the Register. The notice of striking off the name of the company from the Register of Companies and its dissolution should be published in the Official Gazette in Form STK 7 and the same should also be placed on the official website of the Ministry of Corporate Affairs. The company shall stand dissolved on the publication of this notice in the Official Gazette.
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QUESTION

Ques 1: ROC can strike-off the name of a company on *suo motu* basis only after following certain procedures. Comment.

*Hint: Refer Topic 20.4 Procedure to be followed by ROC for striking of the name of the Company on *suo motu* basis.*

20.5 List of Companies which cannot be removed by Way of Filing an Application by the Company [Section 248(1) & (2) of the Companies Act, 2013]

Type of Companies which cannot be removed :

- I. Listed Companies;
- II. Companies registered under section 8;
- III. Companies having charges which are pending for satisfaction;
- IV. Companies whose application for compounding is pending for compounding of offences committed by the company or any of its officers in default;
- V. Companies against which any prosecution for an offence is pending in any court;
- VI. Vanishing Companies;
- VII. Companies that have been delisted due to non-compliance of listing regulations or listing agreement or any other statutory laws;
- VIII. Companies where inspection or investigation is ordered and being carried out or actions or such order are yet to be taken up or were complete but prosecutions arising out of such inspection or investigation are pending in the court;
- IX. Companies which have accepted public deposits which are either outstanding or the company is in default in repayment of the same;
- X. Companies where notices under section 234 of CA 1956 or 206 or 207 of the CA 2013 have been issued by the Registrar or Inspector and reply thereto is pending or report under section 208 is pending or where any prosecution arising out of such inquiry or scrutiny, if any, is pending with the court.

Question For Practice

Ques 1: List out Companies which cannot be removed by Way of Filing an Application by the Company?

Hint: Refer Topic 20.5 List of Companies which cannot be removed by Way of Filing an Application by the Company [Section 248(1) & (2) of the Companies Act, 2013]

20.6 Required conditions to be fulfilled for filing an application for removal of name of company from the Register of Companies

A company through its board of directors, can file an application for removal of name of company from the Register of Companies on the following grounds:

- ◆ Where a company has failed to commence its business within one year of its incorporation; or
- ◆ Where 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 Companies Act, 2013; or
- ◆ The subscribers to the memorandum have not paid the subscription which they had undertaken to pay at the time of incorporation of a company and a declaration to this effect has not been filed within 180 days of its incorporation. This provision is applicable to companies incorporated after 02nd November, 2018; or

- ◆ The company is not carrying on any business or operations as revealed after the physical verification carried out under section 12(9).

Note: Before making an application to the ROC for removal of the name of the company, the board of directors of the company shall take all the steps necessary in order to extinguish all its liabilities. Approval of the shareholders by way of special resolution or consent of seventy five per cent members in terms of paid up share capital is also required to be taken for filing an application to the ROC for the removal of the name of the company from the Register of Companies. In the case of a company regulated under a Special Act, approval of the regulatory body constituted or established under that Act shall also be obtained and enclosed with the application.

QUESTION

Ques 1: Radha Manufacturing Ltd. wants to file an application for removal of name of the company from the Registrar of Companies (ROC). Enumerate the various grounds on which company is permitted to file an application for removal of name the company from ROC under the provisions of the Companies Act, 2013.

Hint: Refer Topic 20.6 Required conditions to be fulfilled for filing an application for removal of name of company from the Register of Companies.

20.7 Situations in which Company cannot apply for Strike-off [Section 248(2) of the Companies Act, 2013]

The Company shall not make any application for the strike off of the company, if at any time in the previous 3 months, the company has done any of the below mentioned activities:

- I. Has changed its name; or
- II. Has shifted its registered office from one State to another; or
- III. Has made a disposal for value of property or rights held by it, immediately before cesser of trade or otherwise carrying on of business, for the purpose of disposal for gain in the normal course of trading or otherwise carrying on of business; or
- IV. Has engaged in any other activity except the one which is necessary or expedient for the purpose of making an application under that section, or deciding whether to do so or concluding the affairs of the company, or complying with any statutory requirement; or
- V. Has made an application to the Tribunal for the sanctioning of a scheme of compromise or arrangement and the matter has not been finally concluded; or
- VI. Is being wound up under Chapter XX of the Companies Act, 2013 or under the Insolvency and Bankruptcy Code, 2016.

An application for striking off the name of the company under section 248(2) of the Act shall be withdrawn by the company or rejected by the ROC as soon as the above stated conditions are brought to notice. In case of violation of the above provision, the company shall be punishable with fine which may extend to one lakh rupees.

QUESTION

Ques 1: List out various situations in which a company is not permitted to apply for strike-off the name of the company from Register of Companies.

Or

Situations under which a company cannot apply for strike-off its name from the Register of the companies.
Comment.

Hint: Refer Topic 20.7 Situations in which Company cannot apply for Strike-off. [Section 248(2) of the Companies Act, 2013].

20.8 Procedure of striking off of the name of the company by way of an application to ROC

The board of directors of the company shall follow the following procedure for removal of name of the company from the Register of Companies maintained by the ROC:

Step 1: Call and hold Board Meeting to pass Board resolution for the purpose of striking off of the name of the company from the Register maintained by the ROC, subject to the approval of the shareholders of the company, and to authorize any director to file an application and for fixing date, time and venue for the Extraordinary General Meeting of the shareholder.

Step 2: After passing of Board resolution, if there is any liability in the company, the company will set off/pay all its liabilities.

Step 3: Every director of the company should sign and execute indemnity bond duly notarised by every director in Form STK 3 and Affidavit in Form STK 4. In case director is a foreign national or non-resident Indian, the documents should be notarized or apostilled or consularised.

Step 4: Company should get the statement of accounts in Form STK-8 containing the assets and liabilities of the company made up to a day, not more than thirty days before the date of application. Such a statement should be certified by a Chartered Accountant.

Step 5: General Meeting should be held on the day, date, time and venue as fixed earlier for passing of the special resolution.

Step 6: Within thirty days from the date of the passing of the special resolution in the General Meeting or after obtaining consent, company should file MGT-14.

Step 7: Approval of concerned authorities is required in case of a company regulated by any other authority.

Step 8: An application for removal of the name of the company shall be made in Form STK-2 along with the fee of ten thousand rupees.

Signing and Certification of E-Form STK-2: E-Form STK-2 shall be signed by an authorized director. E-Form STK-2 shall be certified by Company secretary in whole time practice or Chartered Accountant in whole time practice or Cost Accountant in whole time practice.

Note: Form STK-2 cannot be filed by a company unless it has filed its 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. Also, in case a company intends to file Form No. STK-2 after the action under sub-section of section 248 has been initiated by the ROC, 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 Form No. STK-2. Form No STK-2 also cannot be filed once notice in Form No. STK-7 has been issued by the ROC pursuant to the action initiated under section 248(1).

Following documents will be attached in the Form STK-2:

- ◆ No objection certificate from the appropriate concerned authority, if applicable (RBI, IRDA, Housing Finance, SEBI etc.) Rule 4(2).
- ◆ Indemnity Bond duly notarised by every Director in Form STK-3. However, in case of a government company or a subsidiary of a government company, a duly notarised indemnity bond in Form STK-3A shall be given by an authorised representative, not below the rank of Under Secretary or its equivalent, in the administrative Ministry or Department of the Government of India or the State Government, as the case may be, on behalf of the company.
- ◆ Statement of Accounts certified by CA in Form STK-8. Statement should not be older than 30 days from the date of application.
- ◆ An Affidavit by every director in Form STK-4.
- ◆ Certified true copy of special resolution duly certified by each of the directors of the company; or consent of seventy five per cent of the members of the company in terms of paid up share capital as on the date of application.
- ◆ Statement regarding pending litigations, if any, involving company. (In affidavit format).

Step 9: Public notice by ROC: After filing application for strike off by the company, the ROC shall publish a public notice in Form STK-6 inviting objections to the proposed strike off, if any. The notice will also be published for information of the general public in the following ways:

- ◆ placed on the official website of the Ministry of Corporate Affairs on a separate link established on such website in this regard;
- ◆ published in the Official Gazette;
- ◆ published in English language in a leading English newspaper and at least once in vernacular language in a leading vernacular language newspaper, both having wide circulation in the State in which the registered office of the company is situated.

The company shall also place the application on its website, if any, till the disposal of the application.

Step 10: Intimation to regulatory authorities: Intimation about the proposed action of removal or striking off the name of the company should be sent to the Income-tax authorities, central excise authorities and service-tax authorities having jurisdiction over the company to seek their objections, if any, which shall be furnished within a period of thirty days from the date of issue of the letter of intimation.

Step 11: Striking off / Removal of the name of the company: After thirty days from the date of issue of the letter of intimation and unless cause to the contrary is shown by the company, if there are no objections received within thirty days from the general public or respective authority, the ROC can proceed to strike off or remove the name of the company from the Register of Companies.

Step 12: Provision for realisation of amount due: The ROC before passing an order for striking off / Removal of the name of the company should satisfy himself that sufficient provision has been made for the realisation of all amount due to the company and for the payment or discharge of its liabilities and obligations by the company within a reasonable time. The ROC can obtain necessary undertakings from the managing director, director or other persons in charge of the management of the company. The assets of the company should be made available for the payment or discharge of all its liabilities and obligations even after the date of the order removing the name of the company from the Register of Companies.

Step 13: Notice of dissolution of the company: After the expiry of the time mentioned in the notice, the ROC can strike off the name of the company from the Register. The notice of striking off the name of the company from the register of companies and its dissolution should be published in the Official Gazette in Form STK 7 and the same should also be placed on the official website of the Ministry of Corporate Affairs. The company shall stand dissolved on the publication of this notice in the Official Gazette.

Draft Format of Form No. STK - 4

FORM No. STK - 4

AFFIDAVIT

(To be given individually by every Director)

[Pursuant to Section 248(2) read with clause (iii) of sub-rule (3) of Rule 4]

I _____ Director of _____ (hereinafter called "the Company"), incorporated on _____ under the Companies Act, 2013 or the Companies Act, 1956 having its registered office at _____ and having CIN _____ do solemnly affirm and state as under:

- (i) I _____ S/o Shri _____ Holder of DIN/Income Tax PAN/Passport number _____ (copy of Income Tax PAN/Passport duly attested by a Company Secretary) Director of the Company stated above since _____ (mention date of appointment).
- (ii) My present residential address is _____ (copy of documentary evidence duly attested by Company Secretary) is enclosed.
- (iii) My permanent address is _____ (copy of documentary evidence duly attested by a Company Secretary) is enclosed.
- (iv) The Company does not maintain any bank account as on date.
- (v) The Company _____ (mention name of the Company) does not have any assets and liabilities as on date.

- (vi) 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)
- (vii) As on date, the Company does not have any dues towards Income Tax/Sales Tax/Central Excise/Banks and Financial Institutions; and other Central or State Government Departments/Authorities or any Local Authorities.
- (viii) I further affirm that -
- No inquiry, technical scrutiny, inspection or investigation is ordered or pending against the company;
 - No prosecution or any compounding application for any offence under the Act or under any of the other Acts is pending against the company or against the undersigned;
 - The company is neither listed nor delisted for non-compliance of listing agreement;
 - The company is not a company incorporated for charitable purposes under section 8 of the Companies Act, 2013 or Section 25 of the Companies Act, 1956;
 - The company does not have any management disputes or there is no litigation pending with regard to management or shareholding of the company;
 - No order is in operation staying filing of the documents by a court or tribunal or any other competent authority;
 - The company is not prevented from making the applications for strike off as mentioned in section 249 of the Companies Act, 2013.

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: _____

Note: Attention is also drawn to provisions of section 449 which provide for punishment for false evidence.

QUESTION

Ques 1: Spectacular Ltd. wants to make an application to Registrar of Companies (ROC) for removal of its name under section 248(2) of the Companies Act, 2013 from register. It is understood that the application, *inter alia*, shall be accompanied by an 'affidavit' by every director of the company. You are a practicing Company Secretary. The company has approached you to draft such an affidavit. Help the company.

Hint: Refer Topic Draft Format of Form No. STK – 4.

Question For Practice

Ques 1: Discuss Procedure of striking off of the name of the company by way of an application to ROC?

Hint: Refer Topic 20.8 Procedure of striking off of the name of the company by way of an application to ROC.

20.9 No objection certificate from Appropriate Regulatory Authority

No objection certificate ("NOC") from appropriate Regulatory Authority concerned is required in case a company is regulated under a special Act which shall be attached to the application in form STK- 2. The said NOC is required in case of the following companies:

- ◆ 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;
- ◆ housing finance companies as referred to in the Housing Finance Companies (National Housing Bank) Directions, 2010 issued under the National Housing Bank Act, 1987;
- ◆ insurance companies as referred to in the Insurance Act, 1938 or rules and regulations thereunder;
- ◆ companies in the business of capital market intermediaries as referred to in the Securities and Exchange Board of India Act, 1992 or rules and regulations thereunder;
- ◆ companies engaged in collective investment schemes as referred to in the Securities and Exchange Board of India Act, 1992 or rules and regulations thereunder;
- ◆ asset management companies as referred to in the Securities and Exchange Board of India Act, 1992 or rules and regulations thereunder;
- ◆ any other company which is regulated under any other law for the time being in force.

Penalty: If an application is made in violation of section 248(1), it shall be punishable with fine which may extend to one lakh rupees. An application filed under sub-section (2) of section 248 shall be withdrawn by the company or rejected by the Registrar as soon as conditions under sub-section (1) are brought to his notice.

Question For Practice

Ques 1: Discuss No objection certificate ("NOC") from appropriate Regulatory Authority concerned is required in case a company is regulated under a special Act which shall be attached to the application in form STK- 2?

Hint: Refer Topic 20.9 No objection certificate from Appropriate Regulatory Authority.

20.10 Fraudulent Application for Removal of Name

If it is found that an application by a company has been made with the object of evading the liabilities of the company or with the intention to deceive the creditors or to defraud any other persons, the persons in charge of the management of the company shall, notwithstanding that the company has been notified as dissolved be liable for the following:

- ◆ be jointly and severally liable to any person or persons who had incurred loss or damage as a result of the company being notified as dissolved; and
- ◆ be punishable for fraud in the manner as provided in section 447.

The Registrar has the power to recommend prosecution of the persons responsible for the filing of a fraudulent application.

Liabilities of directors, managers, officers and members to be continued: The liability, if any, of every director, manager or other officer who was exercising any power of management, and of every member of the company dissolved under section 248(5) of the Act, shall continue and may be enforced as if the company had not been dissolved.

Question For Practice

Ques 1: Write short note on: Fraudulent Application for Removal of Name.

Hint: Refer Topic 20.10 Fraudulent Application for Removal of Name.

20.11 Status of Strike Off Company

If a company stands dissolved under section 248, it shall on and from the date mentioned in the notice of dissolution cease to operate as a company and the Certificate of Incorporation issued to it shall be deemed to have been cancelled from such date except for the purpose of realising the amount due to the company and for the payment or discharge of the liabilities or obligations of the company.

20.12 List of STK forms

Name of Form	Governing Provisions	Purpose
Form STK-1	Section 248(1) of the Companies Act, 2013 & rule 3 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016	Notice by Registrar for removal of name of a company from the register of Companies.
Form STK-2	Section 248(2) of the Companies Act, 2013 & Rule 4(1) of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016.	Application by company to ROC for removing its name from register of Companies.
Form STK-3	Pursuant to clause (i) of sub-rule (3) of rule 4 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016.	INDEMNITY BOND (to be given individually or collectively by every director).
Form STK-4	Section 248(2) of the Companies Act, 2013 & clause (iii) of sub-rule (3) of Rule 4.	AFFIDAVIT (to be given individually by every Director).
Form STK-5	Section 248(1) & (4) of the Companies Act, 2013 & rule 7 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016.	PUBLIC NOTICE
Form STK-5A	Section 248(1) & (4) of the Companies Act, 2013 & rule 7(1) of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016.	PUBLIC NOTICE
Form STK-6	Section 248(2) & (4) of the Companies Act, 2013 & rule 7 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016.	PUBLIC NOTICE
Form STK-7	Section 248(5) of the Companies Act, 2013 & rule 9 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016.	Notice of Striking Off and Dissolution.

Question For Practice**Ques 1: List out STK Forms?**

Hint: Refer Topic 20.12 List of STK forms.

20.13 Restoration of the company

Introduction	The ROC can <i>suo moto</i> after issuing the notice under section 248(1) of the Act, strike off the name of the company. It may so happen that the name of the company may be struck off from the Register of Companies by the ROC even though the company is active company due to non-filing of reply to the said notice. In such a case, the directors of such a company have no option but to approach National Company Law Tribunal ("NCLT") by making an appeal for the restoration of the name of the company in the Register of Companies maintained by the ROC. The legal provisions related to restoration of name of the struck off companies are given in Sections 248 to 252 of the Act read with Rule 87A of the NCLT (Amendment) Rules, 2017 and the Companies (Removal of Name of Companies from the Register of Companies) Rules, 2016.
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Appeal to NCLT for restoration of the name of the company	<ul style="list-style-type: none"> ◆ Any person aggrieved by the order of the ROC may file an appeal before the Tribunal within 3 years of the order passed by ROC. ◆ If the Tribunal is of the opinion that the removal of name of company is not justified in view of the absence of any of the grounds on which the order was passed by the ROC, it may pass an order for restoration of the name of the company in the register of companies after giving a reasonable opportunity of making representations and of being heard to the ROC, the company and all the persons concerned.
Application to NCLT by ROC for restoration of the name of the company	<ul style="list-style-type: none"> ◆ The ROC may within a period of three years from the date of passing of the order dissolving the company file an application before the Tribunal seeking restoration of name of such company if it is satisfied that the name of the company has been struck off from the register of companies either inadvertently or on the basis of incorrect information furnished by the company or its directors. ◆ Application to NCLT for restoration of the name of the company by Company or any member or creditor or workmen: The Tribunal on an application made by the company, member, creditor or workman before the expiry of 20 years from the publication in the Official Gazette of the notice of dissolution of the company, if satisfied that: <ul style="list-style-type: none"> ■ the company was, at the time of its name being struck off, carrying on business or in operation; or ■ otherwise it is just that the name of the company be restored to the register of companies, may order the name of the company to be restored to the register of companies. ◆ The Tribunal may pass an order and give such other directions and make such provisions as deemed 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 from the register of companies.

QUESTION

Ques 1: Registrar of Companies may file an appeal before National Company Law Tribunal for restoration of the name of the company. Elucidate.

Hint: Refer Topic 20.13 Restoration of the company.

20.14 Striking of the name of the Limited Liability Partnership (LLP) from the Register of Limited Liability Partnerships	
Legal Framework dealing with the provision of Striking off	<ul style="list-style-type: none"> ◆ In case of an existing LLP which is not carrying on any business or operation for a period of one year or more, it can make an application in Form 24 to the Registrar with the consent of all partners of the limited liability partnership for striking off its name from the register. ◆ Where the Registrar has reasonable cause to believe that a limited liability partnership is not carrying on business or its operation in accordance with the provisions of this Act for a period of two years or more, the name of limited liability partnership may be struck off from the register of limited liability partnerships by ROC by taking <i>suo motu</i> action for striking off the name of the LLP. However before striking off the name of the LLP, the registrar shall give reasonable opportunity of being heard.
Strike Off by ROC Suo Motu	As per Section 75 of Limited Liability Partnership Act, 2008 read with Rule 37 of Limited Liability Partnership Rules, 2009 as amended from time to time, the Registrar can <i>suo motu</i> remove the name of the LLP from the Register in case a limited liability partnership is not carrying on any business/operation for a period of two years or more and the Registrar has reasonable cause to believe the same. In such a case the Registrar can <i>suo motu</i> take the action for striking off the name of the LLP.

Procedure to be followed by ROC for striking off the name of the LLP on suo motu basis	<p>Step 1: Serve of notice: Before striking off the name of the LLP, the registrar is required to send a notice to the LLP and all the partners of the LLP of his intention to remove the name of the LLP from the register of partnership. Such a notice shall contain the reasons for which the name of the LLP is to be removed from the register.</p> <p>Step 2: Reply to Notice: On receipt of such a notice the LLP and all the partners of the LLP are required to send their representations along with copies of the relevant documents, if any explaining the reasons as to why the name of the LLP should not be removed from the register. Such a representation should be given within a period of one month from the date of the notice.</p> <p>Step 3: Consideration of the representation made: The Registrar will consider the representation made. If the Registrar is not satisfied with the representation made by the LLP and its partners, it may proceed to strike off the name of LLP.</p> <p>Step 4: Publication of Notice: Notice shall be placed on the website of the Ministry of Corporate Affairs for the information of the general public for the period of one month.</p> <p>Step 5: Striking off of the name of the LLP: If there are no objections received after the expiry of the time limit of one month and unless cause to the contrary is shown by LLP, the Registrar can proceed to strike off the name of the LLP from the Register of partnership.</p> <p>Step 6: Provision for realisation of amount due: The Registrar before passing an order for striking off of the name of the LLP should satisfy that the sufficient provision has been made for the realization of all amount due to the limited liability partnership and for the payment or discharge of its liabilities and obligations by the limited liability partnership within a reasonable time.</p> <p>Step 7: Notice of dissolution of the LLP: The notice of striking off the name of the LLP from the register and its dissolution should be published in the Official Gazette. LLP shall stand dissolved on the publication of this notice in the Official Gazette.</p>
Procedure of striking off of the name of the LLP by way of an application to ROC	<p>Step 1: Calling and holding the meeting of the partners of LLP making an application for the striking off of the name of the LLP and authorizing the partner to make the application to Registrar. The consent of all partners of the limited liability partnership should be obtained before making an application to the Registrar for striking off of the name of the LLP.</p> <p>Step 2: All the pending filing including the Annual Filing of form 8 and 11 up to the end of the financial year in which the limited liability partnership ceased to carry on its business or commercial operations should be completed before making of an application for striking off of the name of the LLP.</p> <p>Step 3: Approval of concerned authorities should be obtained in case of a LLP regulated by any Special Law.</p> <p>Step 4: Liability of the Partners would not be extinguished even after closure of a LLP while using Form LLP 24.</p> <p>Step 5: An application for striking of the name of the LLP shall be made in Form 24 along with fees as prescribed and along with following documents:</p> <ul style="list-style-type: none"> ◆ statement of account disclosing nil assets and nil liabilities certified by a Chartered Accountant in practice made up to a date not earlier than thirty days of the date of filing of Form 24. ◆ copy of acknowledgement of latest Income tax return- Self Explanatory. ◆ copy of the initial limited liability partnership agreement, if entered into and not filed, along with changes thereof. ◆ affidavit signed by the designated partners, either jointly or severally. ◆ copy of Detailed Application- Mention full details of LLP plus reasons for closure. ◆ copy of Authority to Make the Application- Duly signed by all the Partners.

	<p>Step 6: Publication of Notice: Notice shall be placed on the website of the Ministry of Corporate Affairs for the information of the general public for the period of one month.</p> <p>Step 7: Striking off of the name of the LLP: If there are no objections received, the Registrar can proceed to strike off the name of the LLP from the Register of partnership.</p> <p>Step 8: Provision for realisation of amount due: The Registrar before passing an order for striking off of the name of the LLP should satisfy that the sufficient provision has been made for the realization of all amount due to the limited liability partnership and for the payment or discharge of its liabilities and obligations by the limited liability partnership within a reasonable time.</p> <p>Step 9: Notice of dissolution of the LLP: The notice of striking off the name of the LLP from the register and its dissolution should be published in the Official Gazette. The company shall stand dissolved on the publication of this notice in the Official Gazette.</p> <p>Step 10: Striking off of the name of the LLP: On processing the application, if found acceptable the concerned Registrar will strike off the name of the LLP from the Register of the Partnership.</p>
Restoration of the LLP	<p>Registrar can strike off the name of LLP <i>suo motu</i> after issuing the notices u/s 75. In such a case it may happen that the name of the LLP may be struck off even though the LLP is active. The partners of such a LLP can approach to the NCLT by making an application for the restoration of the name of the LLP in the Register of Partnership maintained by the Register.</p> <p>Application can be made by:- a) LLP b) Partner c) Creditor to the Tribunal before the expiry of 5 years from the publication in the Official Gazette of the notice of removal of name of the LLP. If the Tribunal is satisfied that the LLP was, at the time of the striking off, carrying on business or in operation or otherwise that it is just that the LLP be restored to the register, order the name of the LLP to be restored to the register.</p> <p>Procedure for making an application to NCLT:</p> <ul style="list-style-type: none"> (1) Application to NCLT:- An application is to be filed before the bench of the NCLT where the registered office of the LLP is situated, in Form No. NCLT-9. Such an application should be accompanied by various documents showing that the LLP is active and that the name of the LLP should be restored in the Register. (2) Copy to Registrar:- A copy of application or appeal is required to be sent to Registrar. (3) Comments of Registrar:- Registrar may send his report to NCLT along with his comments and views on the restoration of the name of the LLP. (4) Order by NCLT:- NCLT after hearing all the parties shall pass an appropriate order for restoration of the name of the LLP in the register.

QUESTIONS

Ques 1: The Registrar has *suo motu* struck off the name of the M/s A2Z Solutions, a LLP from the register as Registrar has a reasonable cause to believe that the LLP is not carrying on any business for the last two years. Being aggrieved by the order of Registrar, the LLP wants to file an appeal before National Company Law Tribunal (NCLT) for restoration of the name of the LLP in the Register of Partnership maintained by the Registrar. Referring to the provisions of the Limited Liability Partnership Act, 2008, advise the LLP on the procedure to be followed for making an application to NCLT.

Hint: Refer Topic Restoration of the LLP as discussed above.

Ques 2: Glory Technology LLP is not carrying on any business for a period of two years desirous of striking the name from the register of Limited Liability Partnership maintained by Registrar of Companies. Whether LLP is allowed to do so? Examine.

Hint : Facts of Case:- Glory Technology LLP is not carrying on any business for a period of two years desirous of striking the name from the register of Limited Liability Partnership maintained by Registrar of Companies.

Provision:- As per **Section 75** of the LLP Act, 2008, where the Registrar has reasonable cause to believe that a Limited Liability Partnership (LLP) is not carrying on business or its operation, in accordance with the provisions of the Act, the name of LLP may be struck off the register of limited liability partnerships in such manner as may be prescribed.

However, the Registrar shall, before striking off the name of any LLP, give such LLP a reasonable opportunity of being heard.

As per **Rule 37 of the LLP Rules, 2009**, where LLP is not carrying on any business or operation -

- (a) For a period of **2 years or more** and the Registrar has reasonable cause to believe the same, for the purpose of taking *suo motu* action for striking off the name of the LLP; or
- (b) For a period of **1 year or more** and has made an application in **Form No. 24** to the Registrar, with the consent of all partners of the LLP for striking off its name from the register,

the Registrar shall send a notice to the LLP and all its partners, of his intention to strike off the name of the LLP from the register and requesting them to send their representations along with copies of the relevant documents, if any, within a period of 1 month from the date of the notice.

Conclusion:- Glory Technology LLP is not carrying on any business for a period more than 1 year and thus it can voluntarily apply to the ROC for striking its name from the Register of LLPs.

Ques 3: Mithali sports LLP has been struck off by Registrar of Companies. One of its unsecured creditors has approached you to know his eligibility in making application for revival of struck off LLP. Also brief with the procedures for the revival of struck off LLP.

Hint Answer: Registrar can strike off the name of LLP *suo motu* after issuing the notices u/s 75. In such a case it may happen that the name of the LLP may be struck off even though the LLP is active. The partners of such a LLP can approach to the NCLT by making an application for the restoration of the name of the LLP in the Register of Partnership maintained by the Register.

If LLP, or any partner or creditor thereof, feels aggrieved by the order of Registrar then they can make an application to the Tribunal before the expiry of 5 years from the publication in the Official Gazette of the notice of removal of name of the LLP. If the Tribunal is satisfied that the LLP was, at the time of the striking off, carrying on business or in operation or otherwise that it is just that the LLP be restored to the register, order the name of the LLP to be restored to the register.

Procedure for making an application to NCLT:

- ◆ An application is to be filed before the bench of the NCLT where the registered office of the LLP is situated, in **Form No. NCLT-9**. Such an application should be accompanied by various documents showing that the LLP is active and that the name of the LLP should be restored in the Register.
- ◆ A copy of application or appeal is required to be sent to Registrar.
- ◆ Registrar may send his report to NCLT along with his comments and views on the restoration of the name of the LLP.
- ◆ NCLT after hearing all the parties shall pass an appropriate order for restoration of the name of the LLP in the register.

Question For Practice

Ques 1: Discuss procedure of striking off of the name of the LLP by way of an application to ROC.

Hint: Refer Topic Procedure of striking off of the name of the LLP by way of an application to ROC.

Ques 2: Discuss procedure to be followed by ROC for striking of the name of the LLP on *suo motu* basis.

*Hint: Refer Topic Procedure to be followed by ROC for striking of the name of the LLP on *suo motu* basis.*