

# 19

## CHAPTER

# Dormant Company

### Chapter Coverage

S. No.	Topic
19.1	Introduction
19.2	Inactive Company
19.3	Obtaining Dormant Status
19.4	Benefits/Exemptions Provided to a Dormant Company
19.5	Compliance Requirements by Dormant Company
19.6	Procedure to obtain the status of an active Company from dormant Company
19.7	Cases for changing the status of the dormant Company to Active Company

### Regulatory Framework Coverage

The Companies Act, 2013

The Companies (Miscellaneous) Rule, 2014

### 19.1 Introduction

**Background:** The Ministry of Corporate Affairs ("MCA") vide Notification dated 31st March, 2014 notified Section 455 of the Companies Act, 2013 ("Act") dealing with the provision of Dormant Company effective from 01st April, 2014. In addition to the provisions of the Act relating to Dormant Company, MCA had also issued the Companies (Miscellaneous) Rules, 2014 ("Rules") to be effective from the same date i.e. 01st April, 2014 in order to provide procedural guidelines for changing the status of an "Active" company to "Dormant" company and *vice versa*.

**Meaning of Dormant Company:** The word "Dormant" means inactive or inoperative. A dormant company means a company which is inactive i.e., not carrying out any business activity and has applied to the Registrar of Companies ("ROC") to change its status in the Register of Companies maintained by the said Registrar of Companies from "Active Company" to "Dormant Company". A company may become dormant immediately after its registration or after a few years of its incorporation.

**Reasons of Dormant Status:** Major reason for such a change is that it gives the company the liberty to start its business activities after a few years rather than incorporating a new company at that time, thus providing cost and time advantage to the company. A company may also choose to temporarily shut down its operations due to adverse market conditions and decide to commence its operations at a future date. In all such cases, a company may make an application to the ROC to change its status from "active" to "dormant". Dormant companies are also known as inactive companies.

**Advantage of Dormant Company:** Dormant Company offers excellent advantage to the promoters who want to hold an asset or intellectual property under the corporate shield for its usage at a later stage. For instance: if a promoter wants to buy land now for its future project at a comparatively lesser price, he may do the same through dormant company so that he can use the land for its future project. Thus, 'dormant company' status is a new phenomenon in the Companies Act, 2013 and is an excellent tool for keeping assets in the company for its future usage. A dormant company may either be a public company or a private company or a one person company (OPC).

### Question For Practice

#### Ques 1: Discuss Reasons for Dormant Status of the Company?

*Hint: Refer Topic Reasons of Dormant Status as mentioned above.*

### 19.2 Inactive Company

Section 455 of the Companies Act, 2013 read with Companies (Miscellaneous) Rules, 2014 stipulates the provisions pertaining to "Dormant Company". Where a company is formed and registered under this Act for a future project or to hold an asset or intellectual property without having any significant accounting transaction, such a company or an inactive company may make an application to the ROC in such a manner as may be prescribed for obtaining the status of a dormant company.

For the above purposes, 'inactive company' means a company which:

- ◆ has not been carrying on any business or operation; or
- ◆ has not made any significant accounting transaction during last two financial years; or
- ◆ has not filed financial statements and annual returns during the last two financial years.

#### Note(s):

1. *'Significant Accounting Transaction' means any transaction made by the company except transactions mentioned below:*
  - (a) *payment of fees by a company to the Registrar;*
  - (b) *payments made by the company 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.*
2. *All the transactions, apart from the above mentioned transactions, will be considered as significant accounting transactions. If a company has made only the above mentioned transactions in the last two financial years, then that company will fall under the definition of 'Inactive Company'.*

### QUESTIONS

**Ques 1:** Explain the term 'Significant Accounting Transaction' while determining status of a company as a dormant company under the Companies Act, 2013.

*Hint: Refer Topic 'Significant Accounting Transaction' in Note(s) as mentioned above.*

**Ques 2:** Preetha has recently become Director of a Company. She wants to know about 'active' and 'inactive' status shown in MCA website. Explain the concept of 'Inactive Company' to her referring the Relevant provisions of the Company Law mid also brief her under what circumstances a company can make application for obtaining 'dormant' status.

*Hint: Refer Topic(s) 19.1 Introduction and 19.2 Inactive Companies.*

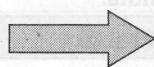
### 19.3 Obtaining Dormant Status

A Company can obtain its status as Dormant Company *suo moto* or the ROC may declare a company as Dormant.

<b>Suo-Moto application</b>	A company which meets the above criteria can apply <i>suo moto</i> to ROC for the status of a "Dormant company" in Form MSC-1 along with such fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 after complying with the provision of Rule 3 of The Companies (Miscellaneous) Rules, 2014.
<b>Dormant by ROC</b>	In case of a company which has not filed financial statements or annual returns for two financial years consecutively, the ROC shall issue a notice to the company and enter the name of such company in the register maintained for dormant companies. Hence, it is not always the company which applies for the status of the dormant company; even the ROC is empowered <i>suo moto</i> to change the status of a company into a dormant company. The Registrar shall initiate the process of striking off the name of the company, if the company remains as a dormant company for a period of five consecutive years.

### Legal framework for Dormant Companies

Application for Dormant Company by the applicant



*Suo Moto* change in the status of the company by the Registrar

Before end of 5 consecutive years –  
Change the status of Company from “Dormant” to either “Strike-off” or “Active”.

#### Procedure to obtain the status of a Dormant Company

The Act read with the Rules stipulates the following procedure to be followed by a company for obtaining status as a ‘dormant company’:

1. The company shall call a board meeting to fix day, date, time and venue for General Meeting of the members of the company to pass a special resolution for making application to the ROC to obtain status of a dormant company.
2. The company shall obtain Statement of affairs from the Auditor of the company. The statement of affairs shall give the financial position of the company at the time of passing said resolution in the shareholders meeting.
3. The company shall hold the General Meeting at the appointed time, place and date as per the notice calling the said meeting. The notice shall propose the resolution as a special resolution.
4. The company shall pass a special resolution for obtaining the status of a dormant company and authorize the director(s) to make application to ROC after issuing a notice to all the shareholders of the company for this purpose and obtaining consent of at least 3/4th shareholders (in value). After passing the special resolution, the company shall file Form MGT-14 with ROC for filing special resolution within 30 days from passing of the said special resolution.
5. After filing of Form MGT-14, the company shall file Form MSC-1 with the ROC along with the copy of the special resolution, copy of statement of affairs, declarations by the directors and other necessary documents.
6. On being satisfied with the merits of the application, the ROC shall issue a certificate in Form MSC -2 for confirming the application and allowing the status of a dormant company to the applicant.

#### Pre-Requisites for obtaining the status of Dormant Company

The Registrar shall not grant the status of a dormant company if:

- ◆ any inspection, inquiry or investigation has been ordered or taken up or carried out against the company.
- ◆ any prosecution has been initiated and pending against the company under any law.
- ◆ there are public deposits which are outstanding or the company is in default in payment thereof or interest thereon.
- ◆ there is any outstanding loan, whether secured or unsecured. In case the company has any outstanding unsecured loan, the company must apply for the status of a dormant company after obtaining the concurrence or approval of the lender which is required to be enclosed with Form MSC-1.
- ◆ if company has any Outstanding Unsecured Loan then the company may apply for status of Dormant only after obtaining NOC from the lender. Such NOC is required to be attached in the Form which is required to be filed with ROC.
- ◆ there is no dispute in the management or ownership of the company. A certificate in this regard is required to be taken from the management. Such a certificate is required to be enclosed with Form MSC-1 which is required to be filed with ROC.
- ◆ there are outstanding statutory taxes, dues, duties, etc., payable to the Central Government or any State Government or local authorities etc.

- ◆ there is default in payment of its workmen's dues.
- ◆ the Company is a listed company within or outside India.

#### Questions For Practice

**Ques 1: Discuss Pre-Requisites for obtaining the status of Dormant Company?**

*Hint: Refer Topic Pre-Requisites for obtaining the status of Dormant Company.*

**Ques 2: Discuss Procedure to obtain the status of a Dormant Company ?**

*Hint: Refer Topic Procedure to obtain the status of a Dormant Company.*

#### QUESTION

**Ques 1: A group of persons wants to form a company for a future project and acquire the status of a 'dormant company'. The group seeks your advice about the procedure and the conditions to be complied with under the provisions of the Companies Act, 2013.**

*Hint: Refer Topic 19.3 Obtaining Dormant Status.*

#### **19.4 Benefits/Exemptions Provided to a Dormant Company**

By obtaining the status of a dormant company, the company enjoys the following exemptions:

<b>Two Board Meeting(s) in a Year</b>	Dormant Company shall hold only two board meetings in a year with a gap of 90 days in between the two board meetings.
<b>Non-inclusion of Cash flow Statement in Financials</b>	Dormant Company is not required to include the statement of cash flow in its financial statement.
<b>Non-Applicability of Rotation of Auditors</b>	The provision of rotation of auditors is not applicable in case of a dormant company.
<b>Lower Compliance Cost</b>	Dormant companies enjoy the advantages of lower statutory compliance cost as there are few statutory compliances applicable to dormant company as compared to active company.
<b>Holding IP or Asset under Corporate Shield</b>	Dormant status is an advantage to promoters who want to hold intellectual property or an asset under the corporate shield for its usage at a later stage.
<b>Status for period of 5 consecutive Years</b>	Companies can enjoy the status of dormant company for a period of 5 consecutive years.
<b>Not liable to pay</b>	Dormant Company is not liable to pay any taxes until it reacquires its active status.
<b>Easier to reacquire its active status</b>	It is easier for dormant companies to reacquire its active status and it also reduces the cost of incorporation of a new company.

#### QUESTION

**Ques 1: State the privileges and exemptions available to dormant company under the provisions of the Companies Act, 2013.**

**Or**

**Anshul Gold Farm Ltd. has obtained the status of dormant company on 15th December 2018. Enumerate the various exemptions which the company shall be entitled to under the Companies Act, 2013.**

*Hint: Refer Topic 19.4 Benefits / Exemptions Provided To A Dormant Company.*

### 19.5 Compliance Requirements By Dormant Company

The ROC maintains the Register of dormant companies. The compliance requirements to retain the status of a dormant company are as follows:

- ◆ A dormant company shall have a minimum number of three directors in case of a public company, two directors in case of a private company and one director in case of a One Person Company.
- ◆ A dormant company is required to file a "Return of Dormant Company" in form MSC-3 annually, *inter alia*, indicating financial position duly audited by a chartered accountant in practice along with such annual fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 within a period of thirty days from the end of each financial year.
- ◆ A Dormant Company need not enclose cash flow statements in its annual accounts.
- ◆ A Dormant Company is required to convene at least one meeting of the Board of Directors in each half of a calendar year and the gap between the two meetings is not less than ninety days. [Section 173(5) of the Act].
- ◆ The provisions of the Act in relation to the rotation of auditors are not applicable to dormant companies.
- ◆ A Dormant Company shall continue to file the return or returns of allotment and change in directors in the manner and within the time specified in the Act, whenever the company allots any security to any person or there is any change in the directors of the company.

#### QUESTION

**Ques 1:** Cute Garments Ltd. has recently obtained the status of dormant company. The Board of Directors seeks your advice about the required compliances in respect of the following:

- (i) Minimum number of directors
- (ii) Requirement of Return filing
- (iii) Meetings of Board of Directors.

*Hint: Refer Topic 19.5 Compliance Requirements By Dormant Company.*

### 19.6 Procedure to obtain the status of an Active Company from Dormant Company

#### Legal Framework Dealing With The Provision of Seeking The Status Of Active Company From Dormant Company

- ◆ Section 455 of the Companies Act, 2013 read with Rule 8 of the Companies (Miscellaneous) Rule, 2014 lays down the provisions for seeking the status of active company from dormant company. An application shall be made in Form MSC-4 for obtaining the status of an active company from dormant company before the end of five consecutive years from the date of becoming a dormant company. In case they said application is not made before the said period of five consecutive years, the name of the company may be removed from the Register of Companies maintained by the ROC.
- ◆ If any company has contravened any of the conditions mentioned in the grounds of application for obtaining the status of dormant company, the directors should within seven days of such contravention file an application for obtaining the status of an active company.
- ◆ The Registrar can take action to remove the company from the list of dormant companies, if it is observed that the company has contravened the conditions for granting the dormant company status, after carrying out an enquiry and after giving a notice and a reasonable opportunity of being heard.

#### Procedure to obtain the status of an Active Company

**Procedure:** The dormant company shall follow the below procedure for obtaining status of an active company on its own:

- ◆ An application for obtaining the status of an active company is required to be made in Form MSC-4 along with fees as provided in the Companies (Registration Offices and Fees) Rules, 2014 which should be accompanied by a return in Form MSC-3 in respect of the financial year in which the application for obtaining the status of an active company is being filed.

- The ROC after considering the application filed for obtaining the status of the active company from dormant company shall issue a certificate in Form MSC-5 allowing the status of an active company to the applicant.

#### Question For Practice

**Ques 1: Discuss Legal Framework Dealing With The Provision Of Seeking The Status of Active Company From Dormant Company and Procedure to obtain the status of an Active Company?**

*Hint: Refer Topic 19.6 Procedure to obtain the status of an Active Company from Dormant Company.*

#### **19.7 Cases when the status changes from dormant to active company**

- Where a dormant company does or omits to do any act mentioned in the grounds in the application made for obtaining status of a dormant company and such act or omission affects its status of dormant company, the directors of such a company are required to file an application within seven days from such event for obtaining the status of an active company.
- Where the ROC has reasonable cause to believe that any company registered as 'dormant company' under his jurisdiction has been functioning in any manner, directly or indirectly affecting the status of dormant company, the ROC can initiate the proceedings for enquiry under section 206 of the Companies Act, 2013 and if, after giving a reasonable opportunity of being heard to the company in this regard, it is found that the company has actually been active, the ROC can remove the name of such company from Register of dormant companies and treat it as an active company.

#### Question For Practice

**Ques 1: Discuss cases for which status change from dormant to active company?**

*Hint: Refer Topic 19.7 Cases when the status changes from dormant to active company.*