

## **DRAFT RULES UNDER COMPANIES ACT, 2013**

### **CHAPTER-XVIII**

#### **REMOVAL OF NAMES OF COMPANIES FROM THE REGISTER OF COMPANIES**

##### **Notice by the Registrar to the company for removal of name from Register of Companies.**

18.1. (1) For the purposes of sub-section (1) of section 248, the Registrar shall send a notice in Form No. 18.1 to the company and all the directors thereof, by registered post with acknowledgement due or by speed post of his intention to remove the name of the company from the register of companies and requesting them to send their representations along with copies of the relevant documents, if any, within a period of thirty days from the date of issue of receipt of such notice.

(2) Following companies, are not eligible for taking action by the Registrar under these rules:-

- (i) Listed companies;
- (ii) Companies that have been delisted due to non-compliance of listing agreement or any other statutory laws;
- (iii) Vanishing companies;
- (iv) Companies where inspection or investigation is ordered and being carried out or yet to be taken up or where completed prosecutions arising out of such inspection or investigation or pending in the Court;
- (v) Companies where notice under section 206 of the Act has been issued by the Registrar and reply thereto is pending or where prosecution if any, is pending with the court;

- (vi) Companies against which prosecution for non-compoundable offence is pending in Court;
- (vii) Companies accepted Public Deposits which are either outstanding or the company is in default in repayment of the same;
- (viii) Company having secured loan.

Explanation : "Vanishing company" means a company, registered under the Companies Act and listed with Stock Exchange which, has failed to file its returns with 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.

### **Application by the company for removal of its name from the Register of Companies.**

18.2. (1) For the purposes of sub-section (2) of section 248, a company may file with the Registrar, an application in Form No. 18.2 along with fee as prescribed in Annexure C for removing its name from the register of companies on all or any of the ground(s) specified in sub-section (1) of Section 248.

(2) The application in Form No. 18.2 shall be accompanied by:

- (i) Indemnity bond duly Notarized by every director in Form No. 18.3; and
- (ii) A statement of accounts containing assets and liabilities of the company made up to a day, not more than seven days before the date of application and certified by a chartered accountant.
- (iii) An affidavit in Form 18.5 should be sworn by every director of the company before a first class Judicial Magistrate or Executive Magistrate or Oath Commissioner or Notary to the effect that –
  - (a) Extinguished all its liabilities;
  - (b) Filed up to date financial statements and annual returns;
  - (c) Company is not in operation or doing any business;

- (d) No dues towards income tax or sales tax or central excise or banks and financial institution or public deposits or any other Central Government or State Government Departments or authorities or any local authorities;
- (e) No inspection or investigation is ordered and pending;
- (f) No prosecution for non-compoundable offence under the Act is pending;
- (g) The company is not a listed company; and
- (h) The company is not a company registered under section 8 of this Act.
  - (iv) No objection Certificate from sectoral Regulator as provided in sub-section (2) of section 248.
  - (v) In the case of vanishing companies, no objection from the Securities Exchange Board India, Ministry of Corporate Affairs and Reserve Bank of India (in the case of NBFCs).
  - (vi) Copy of the Special Resolution or consent of seventy five per cent number in terms of paid up share capital

**Public Notice:**

18.3 For the purposes of sub-section (1) or (2) of section 248, the Registrar shall cause a Public Notice to be published in Form No. 18.4.

**Manner of publication of notice:**

18.4. (1) For the purposes of sub-section (4) of section 248, a notice prescribed under sub-section (1) or sub-section (2) of section 248 shall be:

- (i) published at least once in English language in a leading English newspaper and at least once in vernacular language in a leading vernacular newspaper having wide circulation in the State in which the registered office of the company is situated within thirty seven days of issue of notice under sub-section (1) of section 248 or receipt of completed application in Form No. 18.2 under sub-section (2) of section 248, as the case may be; and
- (ii) Placed on the official website of the Ministry on a separate link established on such website in this regard.

(2) For the purposes of sub-rule(1) above, the Registrar may publish a consolidated notice in the manner specified in clause (i) of the said sub-rule, including therein the names of all the companies to whom notices are issued under sub-section(1) or sub section(2) of section 248;

(3) Every notice issued under sub-section (1) or sub-section (2) of section 248 shall be placed on the website of the company, if any.

(4) The Registrar of Companies shall, within fifteen days forthwith, intimate the concerned regulatory authorities regulating the company, if any, Income Tax authorities, Central Excise authorities and Service Tax authorities having jurisdiction over the company , the Chief Secretary of the State where the registered office of the company is situated, about the issue of such notice under sub-section (1) or sub-section (2) of section 248 by way of a Letter of Intimation along with such notice for comments/ objections, if any, within thirty days from the date of issue receipt of such Letter of Intimation.

(5) Registrar of Companies shall put names of the companies to whom Notice has been issued under sub-section (1) or sub-section (2) on the Ministry's web-site.

(i) The Registrar of Companies shall maintain and place on its website, the list of Companies to whom the notice under sub-section (1) of section 248 has been issued and from whom notice under sub-section(2) of section 248 have been received.

(ii) The Registrar of Companies shall update the list prescribed under this rule on the official website of the Ministry on a weekly basis.

18.5 (1) In the case of foreign nationals and NRIs an indemnity bond and affidavit may be notarized as per their respective country's law.

(2) The decision of the Registrar of Companies with respect of striking off the name of company shall be final.

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