



A FASTER WAY TO EXIT

July 2011

The Scheme provides an easy route for the defunct companies to make an application to the ROC to remove their names from the ROC register which has not (i) been doing any business activity in the previous financial year, (ii) commenced any business activity since incorporation, or (iii) been identified as dormant by MCA or have an active status. The Scheme, which will come into effect from July 03, 2011, is an improvement over the previous Easy Exit Scheme (EES) and will provide an opportunity to the defunct companies to a fast track exit with minimal compliance.

1. Procedure – To avail the Scheme, a defunct company has to file an application in e-form FTE with (i) a fee of INR 5,000, (ii) an affidavit and an indemnity bond signed by all directors and (iii) statement of accounts as on date not prior to more than one month preceding the date of filing of application with the ROC. The affidavit must be sworn in by all the directors individually with a declaration regarding the business of the company stating whether it has not carried on any business since the time of incorporation or discontinued the business later. The indemnity bond should also be from all directors either individually or collectively stating that any losses, claims and liabilities on the company will be met in full by them even after the name of the company is removed from the register of ROC. ROC will update the list of companies availing the Scheme on a daily basis and the stakeholders (creditors or shareholders) having any objection against any defunct company availing the Scheme can approach the ROC within 30 days of the application. The company shall stand dissolved from the date of publication of notice in the official gazette.

2. Exclusions – The Scheme is not open to all companies and certain exclusions have also been cited. The Scheme excludes companies that are –

- Listed,
- Delisted due to non compliance,
- Registered under section 25 of the Act,
- Vanishing companies (*They are so called because they are registered under the Act and listed with stock exchange but have failed to file returns with ROC and Stock Exchange for a consecutive 2 years, not maintaining its registered office at the address notified with the ROC or stock exchange, and none of its directors are traceable*),
- Under investigation or prosecution,
- Facing prosecution for a non-compoundable offence in a court,
- Having outstanding public deposits or defaulted in repayment,
- Having a secured loan,

- Having management dispute,
- Unable to do filings as that has been stayed by court or Company Law Board or any authority, and
- Having dues towards any tax or banks or government departments.

It may be noted that the decision of the ROC to remove the name from the ROC register is final and on the condition that it should not materially affect the creditors of the company. Indemnity bond attached to the e-form FTE holds the directors personally liable for all future claims from the creditors. Given the time and cost involved in winding up procedure, the Scheme is a welcome respite for small companies who have already stopped their business and have nil assets and liabilities.

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