

## **PROCEDURAL ASPECTS AND DOCUMENTATION ON**

### **EASY EXIT SCHEME 2010**

#### **AND**

### **COMPANY LAW SETTLEMENT SCHEME 2010**

#### **EASY EXIT SCHEME, 2010**

As professionals, we are aware about the various schemes introduced in the past like Simplified exit scheme 2003 and Simplified exit scheme 2005 relating to striking off the names of the company from the Register of Companies as defunct companies. Despite those schemes, many Companies did not show any interest in filing their due documents timely with the Registrar of Companies as no business operations / activities were/are carried on by them. For those companies, it is a **golden opportunity** for **getting their names strike off** from the Register of Companies at no cost except minimal documentation expenses.

Once again, Ministry has introduced a Scheme namely, "Easy Exit Scheme, 2010" under Section 560 of the Companies Act, 1956. The Scheme has come into force on the 30th May, 2010 and shall remain in force up to 31st August, 2010.

#### **APPLICABILITY OF THE SCHEME**

- Defunct company which has active status on Ministry of Corporate Affairs portal may apply under EES, 2010
- Government Company shall submit 'No Objection Certificate' issued by the concerned Administrative Ministry or Department or State Government along with the application under this Scheme

#### **DETAILS OF THE FORM AND ANNEXURES INVOLVED IN THE SCHEME**

##### **EES FORM -- (Application)**

- An application in the Form EES, 2010, annexure is available in MCA site and the form to be filed electronically without fee.
- In case, the application in Form EES, 2010, is not being digitally signed by any of the director or Manager or Secretary, a physical copy of the Form duly filled in, shall be signed manually by a director authorised by the Board of Directors of the company and shall be attached with the application Form at the time of its filing electronically;
- The Form EES, 2010, has to be certified by a Chartered Accountant in whole time practice or Company Secretary in whole time practice or Cost Accountant in whole time practice
- The company shall disclose pending litigations if any, while applying under this Scheme

##### **ANNEXURE A -- (Affidavit)**

The Form shall be accompanied by an affidavit be sworn by each of the existing director(s) of the company before a

- First Class Judicial Magistrate or
- Executive Magistrate or
- Oath Commissioner or
- Notary,

to the effect that the company has not carried on any business since incorporation or that the company did some business for a period up to a date (which should be specified) and then discontinued its operations and has not carried on any business after the 1st April, 2008, as the case may be.

#### **ANNEXURE B – (Indemnity Bond)**

The Form EES, 2010 shall further be accompanied by an Indemnity Bond, to be given by every director individually or collectively,

- Duly notarized

to the effect that any losses, claim and liabilities on the company, will be met in full by every director individually or collectively, even after the name of the company is struck off by the REGISTRAR OF COMPANIES.

#### **ANNEXURE C – (Statement of Account)**

The Company shall also file a Statement of Account prepared as on date **not prior to more than one month preceding the date of filing** of application duly certified by a

- Statutory Auditor of the Company or
- Chartered Accountant in whole time practice, as the case may be.

#### **PROCESS FOR ROC TO STRIKE OFF DEFUNCT COMPANIES:-**

- The RoC on receipt of the application, shall examine the same and if found in order, shall give a notice to the company under section 560(3) of the Companies Act, 1956 by e-mail on its e-mail address intimated in the Form, giving thirty days time, stating that unless cause is shown to the contrary, its name be struck off from the Register and the company will be dissolved;
- The Registrar of Companies shall put the name of applicant(s) and date of making the application(s) under Easy Exit Scheme, 2010, on daily basis, on the MCA portal [www.mca.gov.in](http://www.mca.gov.in), giving thirty days time for raising objection, if any, by the stakeholders to the concerned Registrar;

- In case of company(s) like Non-Banking Financial Company(s), Collective Investment Management Company(s) which are regulated by other Regulator(s) namely RBI, SEBI, the Registrar of Companies, at the end of every week, after the Scheme commences, shall send intimation of such companies availing EES, 2010, during that period to the concerned Regulator(s) and also an intimation in respect of all companies availing EES, 2010, during that period to the office of the Income Tax Department giving thirty days time for their objection, if any;
- The Registrar of Companies immediately after passing of time given above and on being satisfied that the case is otherwise in order, shall strike its name off the Register and shall send notice under sub-section (5) of section 560 of the Companies Act, 1956 for publication in the Official Gazette and the applicant company under this Scheme shall stand dissolved from the date of publication of the notice in the Official Gazette.

### **EASY EXIT SCHEME 2010— PRACTICAL ASPECTS (ANALYSING IN FAQ METHOD)**

#### **Situation 1**

**Whether the company is required to obtain DIN or DSC for filing the pending documents pertaining to preceding years with Registrar of Companies?**

#### **Suggestion**

**According to this scheme, the defunct companies are not required to file the pending documents pertaining to preceding years with Registrar of Companies and further the closure documents under EES Scheme 2010 can be filed without obtaining DIN and DSC**

#### **Situation 2**

**A company which has not raised its paid up capital as provided in sub sections (3) and (4) of section 3 of the Companies Act, 1956, Whether it is required to raise the capital up to the threshold limit to strike off the company under this scheme?**

#### **Suggestion**

**No, the Company is not required to raise its capital to its minimum requirement before filing the EES 2010. Those Companies can file documents under EES 2010 without increasing the paid up capital to the threshold limit of capital as specified in the sub sections (3) and (4) of section 3 of the Companies Act, 1956,**

#### **Situation 3**

**Whether company having secured loans can proceed to strike off the company under this scheme?**

#### **Suggestion**

**The Company has to satisfy the existing charges with the Bank and can produce the satisfaction letter obtained from Bank with the Registrar of Companies along with the EES documents.**

Alternative the Company at its discretion, may decide to file Form 17 for satisfaction of charge then file the closure documents under EES Scheme 2010.

**Situation 4**

**A Private Limited company incorporated with two Directors and one of the Directors is deceased. How to proceed under this scheme?**

**Suggestion**

The Company can produce the death certificate and Form 32 (relating to appointment) of deceased Director physically with the Registrar of Companies along with the EES documents.

**Situation 5**

**Any Company having filed its annual filing for the year 2008-2009 and wants to strike off its name under this scheme. How it can proceed?**

**Suggestion**

The Company can proceed to file documents in this scheme by preparing the statement of accounts as on date not prior to more than one month preceding the date of filing of application (i.e) a Company can prepare statement of account as on 31.05.2010 to file application before 30.06.2010.

However, in this case, it is not required to do annual filing for the year 2009-2010.

**Situation 6**

**Whether any filing fee is required?**

**Suggestion**

No, there is no fee for filing the Form EES, 2010.

**Situation 7**

**Whether certification by practicing professional (i.e. CA/ CS/ CWA) is mandatory?**

**Suggestion**

It is mandatory to obtain the certification by practicing professional (i.e. CA/ CS/ CWA) irrespective of filing forms electronically / physically.

**Situation 8**

**List out the categories of companies / situations to which the EES is not applicable.**

**Suggestion**

The Scheme does not inter-alia cover the following cases

- Listed companies,
- Section 25 companies,
- Vanishing companies,
- Companies under inspection/investigation,

- Companies to which prosecution (non-compoundable offence) is pending in Court,
- Companies having outstanding public deposits
- Companies having secured loan
- Companies having dues towards banks and financial institutions
- Companies having dues towards any other Government Departments
- Companies having management dispute
- Company in respect of which filing of documents have been stayed by court
- Company in respect of which filing of documents have been stayed by CLB
- Company of which filing of documents have been stayed by Central Government
- Company of which filing of records have been stayed by other competent authority.

### **Situation 9**

**Can a company whose winding up application is pending at the office of Official Liquidator avail the benefit of “Easy Exit Scheme, 2010” introduced by the Ministry.**

#### **Suggestion**

The applicability of condition for the exit scheme for a particular company is that it should be a “defunct company”, which has active status on Ministry of Corporate Affairs portal on the date of filing of records. The term defunct has been defined in the scheme itself. “Defunct company” means a company registered under the Companies Act, 1956 which is not carrying over any business activity or operation on or after the 1st April, 2008. The scheme also specifically excludes certain companies from its purview. These are the only criteria to decide whether a company is eligible or not. It can be construed from this that a company whose winding up application is pending at the office of Official Liquidator may be considered for closure under the scheme on complying the requirements of the Scheme and other statutory provisions and at discretion of the Registrar of Companies.

### **Situation 10**

**A company has commenced Member Voluntary Liquidation and necessary form has been filed with ROC. However, the official Liquidator is still not appointed. Whether such a company is eligible to file application under easy exit scheme 2010?**

#### **Suggestion**

If the company has filed the necessary form with the concerned ROC, then it indicates the Company has started voluntary winding up process, therefore, in such case, the company cannot be struck off under the new scheme but however subject to said form been approved by the ROC. In case, said form has not been approved and still in progress in respect of non filing of some other documents, then the company may be considered for striking off subject to complying the requirements of the Scheme and other statutory provisions and at discretion of the Registrar of Companies.

### **Situation 11**

**In case a company has been incorporated and has not made any annual filings with the Registrar of Companies right from its incorporation. Whether the company is eligible for this scheme?**

**Suggestion**

Yes. Such company is eligible for this scheme. It has to make an application along with annexure as stated in this scheme. In that case, the requirement of filing the pending documents pertaining to the preceding year will not be stressed upon at the discretion of Registrar of Companies

**Situation 12**

**How fixed assets should be treated while preparing the Statement of Accounts to be filed under this Scheme?**

**Suggestion**

Fixed Assets like Plant & Machinery etc. can be written off by charging necessary depreciation as per law and can be shown as nil Statement of Accounts to be filed under this Scheme. Suppose the Company has got Land as its fixed assets as on date of drawing of Accounts, then it may not be eligible to apply under the scheme.

**Situation 13**

**What is the requirement with regard to share capital while preparing the Statement of Accounts under this Scheme?**

**Suggestion**

The Company need not require to raise its capital to threshold limit i.e. one lakh for Private Company and five lakh for Public Company. Hence it can proceed under this scheme with the present existing capital.

**CHECKLIST FOR EASY EXIT SCHEME 2010**

<b>DETAILS / DOCUMENTS REQUIRED</b>	<b>DOCUMENTS TO BE CHECKED</b>
<b>SHOULD NOT HAVE ANY BANK ACCOUNT AS ON THE DATE OF CLOSURE</b>	<b>Balance Sheet For Cash And Bank Balance Bank closure letter</b>
<b>NO DUES TOWARDS IT, SALES TAX, CENTRAL EXCISE, BANK AND FINANCIAL INSTITUTIONS, ANY OTHER GOVERNMENT AUTHORITIES</b>	<b>Auditor Certification</b>
<b>NO LITIGATION PENDING AGAINST OR INVOLVING THE COMPANY</b>	<b>Auditors report, Compliance Certificate Notices, petitions Investor compliant form Directors report</b>
<b>DIN/ PAN COPY/ PASSPORT COPY OF DIRECTORS</b>	<b>Pan card Passport View signatory details (MCA Site)</b>

<b>Compliance Certificate NAME, FATHER NAME AND GRANDFATHER NAME OF DIRECTORS</b>	<b>Form32 ID / Address Proof View signatory details (MCA site)</b>
<b>COPY OF ADDRESS PROOF OF DIRECTORS</b>	<b>Voter id Driving license Ration card Bank statement Telephone bill Passport copy</b>
<b>NUMBER OF YEARS AND REASONS FOR BEING INOPERATIVE</b>	<b>Brief Note by Directors of company</b>
<b>LATEST STATEMENT OF ACCOUNTS/ BALANCESHEET</b>	<b>Previous year Balance sheet or Previous financial figures or Current year statement of accounts or Current year Balance sheet.</b>
<b>MAIN OBJECTS AS PER MEMORANDUM OF ASSOCIATION OF THE COMPANY</b>	<b>MEMORANDUM OF ASSOCIATION</b>
<b>BRIEF DESCRIPTION OF MAIN BUSINESS LAST CARRIED DOWN BY THE COMPANY</b>	<b>NOTE BY DIRECTORS OF COMPANY</b>

## **COMPANY LAW SETTLEMENT SCHEME, 2010**

This scheme gives opportunity to the defaulting Companies to enable them to make their default good by filing belated documents and to become a regular compliant in future. The Company shall pay statutory filing fees and additional fee of 25% of the actual total additional fee i.e. there shall be a waiver of 75% of the actual additional fee while filing the belated documents. The Scheme has come into force on the 30th May 2010 and shall remain effective up to 31st August 2010.

### **Grant of immunity**

- The company may file application for seeking immunity in respect of belated documents filed under the Scheme
- Application for issue of immunity certificate under CLSS, 2010 shall be available on the portal after the closure of the scheme

- The Registrar, upon being satisfied shall grant the immunity from prosecution in respect of documents filed in the Scheme.
- After granting the immunity, the Registrar concerned shall withdraw the prosecution(s) pending if any before the concerned Court(s).
- Such application cannot be filed after the expiry of six months from the date of closure of the Scheme.

### **Paid up capital up to the threshold limit**

The Company not having paid up capital up to the threshold limit provided in sub-section (3) and sub-section (4) of Section 3 of the Companies Act, 1956 shall first file its documents to increase the paid up capital up to the threshold limit under the scheme and thereafter would be allowed to file other belated documents. In other words, the Companies those are not having the minimum paid capital ( if Private company - Rs.1 lakh and if Public Company - Rs.5 lakhs), shall first increase their paid up capital to minimum required limit and shall file form 2 to intimate respective allotment to update the paid up capital in the MCA portal. Then only the MCA portal will allow filing of other pending records with the Registrar of Companies.

### **List of the documents on which CLSS 2010 is not applicable?**

#### **CLSS, 2010 shall not be applicable for the following documents:**

- Filing of documents for incorporation; or
- Filing of documents for establishment of place of business in India; or
- Filing of documents where specific order for condonation of delay is required under the provisions of the Companies Act, 1956
- Filing of documents where prior approval under the provisions of the Companies Act, 1956 is to be obtained from the Company Law Board
- Filing of documents where prior approval under the provisions of the Companies Act, 1956 is to be obtained from the Central Government
- Filing of documents where prior approval is to be obtained from the Court
- Filing of documents where prior approval is to be obtained from any other Competent Authority.
- Companies against which action under sub-section (5) of section 560 of the Act has been initiated by the Registrar of Companies;

#### **Eligibility:**

CLSS is available till 31 August 2010, for Indian companies and foreign companies (liaison / branch / project offices). But the companies should have first increased their minimum paid up capital (Rs. 1 lakh for private limited and Rs. 5 lakh for public limited).

#### **Non-applicability:**

CLSS is not applicable where 'prior approval' of any authority (like Company Law Board, Central Govt.) is required or if there is any on-going prosecution. Delayed filings during the period of the Scheme are not eligible for the fee rebate.



### **Reduced penalty:**

The defaulting company shall pay statutory filing fees as prescribed under the Companies Act and rules made there under along with an additional fee of 25 percent of the actual additional fee standardized under subsection (2) of Section 611 of the Companies Act, 1956, payable on the date of filing of each belated document;

### **CONCLUSION**

As far as EES 2010 is concerned, it is a **golden opportunity** for Companies those are not operative for **getting their names strike off** from the Register of Companies at no cost except minimal documentation expenses and it is a wonderful step taken by the Ministry to knock out the companies which desire their names to strike off from the register under Section 560 of the Companies Act, 1956.

As far as CLSS 2010 is concerned, it provides solution to large companies, which have defaulted in filing their due documents timely with the Registrar of Companies. Such Companies can avail this opportunity to make their default good by filing belated documents and to become a regular compliant in future.

The purpose of the scheme is to reduce the financial burden on the company by waiver of 75% of the actual additional fee and also no filing fee for making application for grant of immunity under CLSS and applications under EES.

**By**  
**S.DHANAPAL & ASSOCIATES**  
**Company Secretaries**  
**Chennai**