

In order to engage with our readers and simplify the legal complexities of the infrastructure sector, EPC World has partnered with Rajani Associates, a full-service law firm for a series of legal Q&As. Through this Legal Q&A column, **SHISHAM PRIYADARSHINI**, Partner, Rajani Associates and **AMISH SHROFF**, Associate Partner, Rajani Associates, will endeavour to address the queries and challenges faced by our readers.

What is a Dormant Company?

In a simple word, the Dormant Company means inactive company. In common parlance, while dormant and defunct Company may seem to have the same meaning, however, under the provisions of the (Indian) Companies Act, 2013 both these terms are two different concepts having different meanings. The term “Dormant Company” as such is not defined in the definition clause and the same is explained in the relevant section dealing with this provision.

In case a company is formed and registered for a future project or to hold an asset or intellectual property and it has no significant accounting transaction, then such a company or an inactive company is eligible to make an application to the Registrar of Companies to obtain the status of a dormant company. Interestingly, the manner in which the inactive company is defined under the Act, even an active company which undertakes day-to-day business and non-significant transactions but has in fact failed to file financial statements and annual returns, is eligible to get the status of a dormant company.

The term “significant accounting transaction” means transactions other than (i) payment of fees by a company to the Registrar of Companies, (ii) allotment of shares to fulfil the requirements under the Act, (iii) payments for maintenance of its office and records and (iv) payments made by the company to fulfil the requirements of the Act or any other law.

In countries like Singapore, Australia, Hong Kong and United Kingdom the practice to grant the dormant status to the companies has been quite prevalent. However, in India, it is for the first time that the Companies Act, 2013 (Act) has introduced the provisions dealing with dormant companies. As per the government data more than 1.5 lakh companies in India are the dormant companies which are either incorporated for future project or to hold only IPRs or assets.

How can the companies obtain the status of the Dormant Company?

In order for the company to obtain the status of the dormant company, it will have to make an application with the Registrar of Companies in the prescribed format. The Registrar of Companies shall after considering the application issue a “dormant company” status to the company and enter its name in the Registrar maintained for the purpose (which is Registrar of dormant companies). After having accorded the status of the dormant company, the company can remain a dormant company for period of consecutive 5 years. Any time before the expiry of 5 years, a dormant company can revert to the status of an active company by making an application in the prescribed format along with the payment of the requisite fee to the authorities. Where the company remains a dormant company for a period exceeding the permissible time period of 5 years, the Registrar of Companies shall then have a right to commence the process of striking off the name of the company from its records. The Act prescribes separate provisions dealing with striking off.

Why it may be relevant for the Company to obtain the status of Dormant Company?

After incorporating the companies there may be a situation where some companies may not be necessarily functional and undertaking active business. The reason to remain in an inactive state is sometimes a conscious decision because the company is incorporated to do a business on a future date. At times situations like failure in business, poor financial conditions and disputes among the promoters compel the company to stall its active business. The fate of such dormant or inactive company in some cases, where they fail to revive, would be that they will then become a defunct company whose name would be struck-off.

Are there any conditions to be fulfilled to acquire the status of dormant company? If yes, what are the conditions to be complied with?

Yes, there are certain conditions to be fulfilled which are: the company should neither have any

public deposits which are outstanding nor should be the company in default in payment thereof or interest thereon; No inspection, inquiry or investigation has been ordered or taken up or carried out against the company; No prosecution has been initiated or pending against the company under any law; The company is not having any outstanding loan or if there is any, the concurrence of the lender has been obtained and is enclosed with the application; The company has not defaulted in the payment of workmen's dues; The company does not have any outstanding statutory taxes, dues, duties etc, payable to the Central Government or any State Government or local authorities etc.; There is no dispute in the management or ownership of the company; The application has not been made with an objective to deceive the creditors or to defraud any other person; and The securities of the company are not listed on any stock exchange within or outside India.

Are there any compliances to be fulfilled by a Dormant Company?

Yes, as a dormant company, there are certain requirements to be fulfilled. A Dormant Company will need to have a minimum of 3 directors in case of a public company, 2 directors in case of a private company and 1 director for a One Person Company. In addition to this condition, a dormant company is also required to hold 2 Board meetings, pay annual fee and file one annual financial document (Return of Dormant Company) with the Registrar of Companies. During the period when the company has been accorded the status of a dormant company, if the Registrar of Companies has a doubt that a dormant company has been undertaking business activities and in fact it is not dormant, then the Act provides the right to the Registrar of Companies to take necessary action against such company, wherein, it will be required to revert to an active company.

What does the Act provide in relation to the striking off the companies?

The Ministry of Corporate Affairs had introduced "Fast Track Exit Mode" on July 3, 2011 to provide an opportunity for the defunct companies under the erstwhile Companies Act to get their names struck off from the Register, to

facilitate the exit of such defunct companies without getting into the process of winding up. Replacing these provisions, the Act has brought in a process called Removal of Names of Companies from Register, with effect from December 26, 2016. Essentially, there are two modes of strike off under the Act (i) by Registrar of Companies itself; (ii) by way of filing application by the company. The Act provides that even after the Company has been dissolved, its name removed from the Registrar and an intimation in this regard has been provided to tax authorities, nevertheless the liabilities, if any, continues on every director, key officer, members of the Company and may be enforced as if the Company had not been dissolved.

When can the company apply for striking off?

Any company can apply for removal of its name from the records of the Registrar when: A company has failed to commence its business within one (1) year from the date of incorporation; The subscribers to Memorandum of Association have not paid the initial subscription amount within 180 days and no declaration has been filed by such subscriber to this effect; A company is not carrying any business or operation for a period of two years and has not sought to call itself a dormant company. In addition to the above, even when a company voluntarily wants to wind-up its operations, it can, after clearing all its liabilities and by obtaining consent of at least 75% of the shareholders can make an application to have its name struck off.

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