

Dormant Companies under the Companies Act, 2013



'Dormant company' is an innovative concept introduced by the Companies Act, 2013. In certain circumstances, a company is allowed to change its status from 'active' to 'dormant'. On such change, there is a reduction in the quantum of compliance by the company concerned. The regulatory authorities have imposed immense faith on chartered accountants and they are assigned an important role in monitoring the domain of dormant companies. This article covers various dimensions of the functioning of a dormant company. Read on...

Introduction

One of the many unique concepts introduced by the Companies Act, 2013 (the Act) is the change of status of a company from 'active' to 'dormant'. In certain situations, a company is permitted to change its status from 'active company' to 'dormant company'. Key issues relating to the regulation of a dormant company are prescribed under Section 455 of the Act. Exercising its powers under Section 455, the Central Government has framed the Companies (Miscellaneous) Rules, 2014 (Rules). Rule 3 to Rule 8 of these Rules relate to the functioning of a dormant company. Various aspects related to a dormant company are discussed in this article.

Change of the Status to Dormant Company

Section 455 envisages two scenarios where the company can be declared to be a 'dormant' company:

- I. **On application by the company:** A company falling into any of the two categories is eligible to change its status to a dormant company:
 - (i) Company which is incorporated for a future project or to hold an asset or intellectual property and has no significant accounting transaction; or
 - (ii) Company which is an inactive company.

'Significant accounting transaction' is defined to mean a transaction other than:

- (a) payment of fees by a company to the Registrar;
- (b) payments made by it to fulfill the requirements of this Act or any other law;
- (c) allotment of shares to fulfill the requirements of this Act; and
- (d) payments for maintenance of its office and records.

'Inactive Company' is a company which has not been carrying on any business or operation, or has not made any significant accounting transaction during the last two financial years, or has not filed financial statements and annual returns during the last two financial years.



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II. **Suo-moto Action by the Registrar of Companies:** Section 455(4) empowers the Registrar of Companies to issue notice to a company which has not filed financial statements or annual returns for two financial years consecutively and enter the name of such company in the register maintained for dormant companies.

Companies Not Eligible To Change the Status

A Company shall not be eligible to apply for the change of status to dormant if-

- (i) an inspection, inquiry or investigation has been ordered or taken up or carried out against the company;
- (ii) any prosecution has been initiated and pending against the company under any law;
- (iii) the company is having any public deposits which are outstanding;
- (iv) the company is in default in payment of public deposits or interest thereon;
- (v) the company is having any outstanding loan, whether secured or unsecured - however a company is eligible if only unsecured loans are outstanding and it has obtained the concurrence from the lender. In such a case, the consent from the lender shall have to be filed with the Registrar of Companies;
- (vi) there is a dispute in the management or ownership of the company;
- (vii) the company has any outstanding statutory taxes, dues, duties, *etc.* payable to the Central Government or any State Government or local authorities, *etc.*;
- (viii) the company has defaulted in the payment of workmen's dues;
- (ix) the securities of the company are listed on any stock exchange within or outside India.

Members' Approval

The decision to go 'dormant' has to be taken by the members of the company. The decision can be taken

— [REDACTED] —

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— [REDACTED] —

in any of the following manners:

- (i) by passing a special resolution in the general meeting of the company; or
- (ii) by obtaining consent of the shareholders holding at least 3/4th of the shares in value. In this case, the company is required to issue notice to all shareholders, so as to ensure that this route is not followed by ignoring the minority shareholders.

If the company has obtained the consent of the members through a special resolution, it has to be ensured that Form No. MGT-14 has been filed within 30 days of the general meeting.

Certificate of Status to Dormant Company

The company complying with all the related norms and desirous to change its status has to apply to the Registrar of Companies by filing Form No. MSC-1. On approval of this form, the Registrar of Companies shall issue a certificate to the company declaring that the company is a dormant company. Thereafter, the company's status on the portal of the Ministry of Corporate Affairs would be shown as 'dormant'. On getting this status, the company would be eligible to file only those forms which relate to allotment of securities (Form No. PAS-3), change in directors (Form No. DIR-12) and annual return of the dormant company (Form No. MSC-3). This would ensure that the company does not perform any other activity without changing its status back to active company.

Compliance under the Companies Act, 2013

Return: Once the company is declared a dormant company, it is required to file a "Return of Dormant Company" every year within a period of 30 days from the end of each financial year and pay an annual fee. This return is to be filed in Form No. MSC-3. It includes *inter alia*, the information on financial position; details of the Board meetings and change in management; accounting transactions during the financial year; break-up of allowable payments; allotment of shares, if any; shareholding pattern, *etc.* The statement of financial position duly audited by a chartered accountant in practice has to be attached to this form.

Directors: The dormant company shall continue to have minimum number of directors as prescribed in the Act i.e. 3 in case of a public company, 2 in case of a private company and 1 in case of a one person company.

“Board of Directors of a dormant company can decide to change the status of the company from dormant to active and approve the making of application for the same. The said application has to be made to the Registrar of Companies by filing Form No. MSC - 4.”

Board meetings: Section 173 permits a dormant company to hold only two Board meetings in a year in a manner that at least one Board meeting has taken place in each half of a calendar year.

Financial statement: Section 2(40) exempts a dormant company from including the cash flow statement in its financial statement.

Position of Auditors

Number of audits: Section 141 empowers the Central Government to exempt certain class of companies from complying with certain provisions of the Act. Exercising these powers, the Ministry of Corporate Affairs has issued a Notification on 5th June 2015 conferring certain privileges on the private companies. The Notification has the effect of modifying clause (g) of sub-Section (3) of Section 141. Hence in case of private companies, the said clause reads as follows:

(g) *a person who is in full time employment elsewhere or a person or a partner of a firm holding appointment as its auditor, if such persons or partner is at the date of such appointment or reappointment holding appointment as auditor of more than twenty other than one person companies, dormant companies, small companies and private companies having paid-up share capital less than one hundred crore rupees (underlined text added by the Notification).*

Rotation of auditors: Rule 6 provides for a specific exemption that the provision relating to the rotation of auditors shall not apply to the dormant companies.

Change of Status to Active Company

On application: Board of Directors of a dormant company can decide to change the status of the company from dormant to active and approve the making of application for the same. The said application has to be made to the Registrar of Companies by filing Form No. MSC-4. On change of the status, the Registrar shall issue a certificate allowing the status of active company to the applicant company.

On default: In case a company happens to do or omits to do any act mentioned in the grounds of application, affecting its status of dormant company, the directors shall within seven days from such event, file an application by filing Form No. MSC-3. For example, commencement of inspection or investigation; institution of any prosecution; dispute in the management, *etc.*

By the Registrar: Where the Registrar has reasonable cause to believe that any company registered as ‘dormant company’ under his jurisdiction has been functioning in any manner, directly or indirectly, he may initiate the proceedings for enquiry under Section 206 of the Act 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 functioning, the Registrar may remove the name of such company from register of dormant companies and treat it as an active company.

Striking Off Of the Name

A company remaining dormant for a period of consecutive five years is liable to get its name struck off and the Registrar is empowered to initiate the process for the same. If a company wants to continue the ‘dormant’ status for a longer period, for valid reasons, it may first change its status to ‘active’ before expiry of five years and then again it can make an application to go dormant for another five years. For example, a company got its status changed to ‘dormant’ on 1st January 2016. The said company will be allowed to maintain the said status for five years i.e. till 31st December 2020. In case the said company wishes to continue its status as dormant thereafter, it will have to first apply and get its status changed to ‘active’ before 31st December 2020, say in November 2020. In January 2021 again, the company may make fresh application for change of its status from ‘active’ to ‘dormant’. By doing so, the company would be in a position to continue remaining dormant for another five years i.e. till 2025.

“The certificate that the company does not suffer from any grounds spelt out in Rule 3 has to be given by the auditors of the company. This would enable the Registrar of Companies to conclude that the company making the application is not otherwise disqualified from getting the status as dormant company.”

Role of Auditors

The law makers have expressed immense reliance on the chartered accountants. The application in Form No. MSC-1 should be supported by the Auditor's Certificate. The Statement of Affairs from the close of the latest financial year till the date of application should be certified by the auditors or a chartered accountant. The certificate that the company does not suffer from any grounds spelt out in Rule 3 has to be given by the auditors of the company. This would enable the Registrar of Companies to conclude that the company making the application is not otherwise disqualified from getting

the status as dormant company. The only Form to be mandatorily filed by a dormant company- Form No. MSC-3 has to be supported by the statement of the financial position to be audited by a chartered accountant. Application for seeking change of status to 'active' has to be supported by the chartered accountant's certificate in respect of the current financial year. Box 1 below gives an overview of the role of the chartered accountants with regard to the journey of a company, from active to dormant and back to active. Box 2 gives an overview of various forms related to the dormant companies.

Box 1: Dormant Company and the Chartered Accountants

<i>Activity</i>	<i>Role of Auditors</i>
Application for obtaining the status of dormant company (Form No. MSC-1)	(i) Auditors to certify that the company is eligible to be declared a dormant company. (ii) Auditors/chartered accountant to certify the statement of affairs. (iii) Chartered accountant in practice to certify Form No. MSC-1 (this form can be certified by a company secretary or cost accountant also).
Statement of financial position	Chartered accountant in practice to issue the statement of financial position within 30 days of the close of financial year.
Return of dormant companies (Form No. MSC-3)	Chartered accountant in practice to certify Form No. MSC-3 (this form can be certified by a company secretary or cost accountant also).
Financial statement	Audit of financial statement for every financial year.
Statement of financial position	Auditors to issue the statement of financial position from close of previous financial year to the date when application is being filed for seeking the status of active company.
Application for seeking status of dormant company (Form No. MSC-4)	Chartered accountant in practice to certify Form No. MSC-4 (this form can be certified by a company secretary or cost accountant also).

Box 2: Forms relating to dormant company as prescribed under the Companies (Miscellaneous) Rules, 2014

<i>Form No.</i>	<i>Particulars</i>
MSC -1	Application to ROC for obtaining the status of dormant company
MSC -2	Certificate of status of a dormant company
MSC -3	Return of dormant companies
MSC -4	Certificate of status of an active company
MSC -5	Application for seeking status of active company

Conclusion

A chartered accountant is the professional who has a major say with regard to the functioning of a dormant company. In view of his constant watch on the operations of the companies, a chartered accountant can play a vital role in advising the

eligible companies to opt for the dormant status till the time they commence the operations. This would enable the companies to avail the privileges available to the dormant companies in the form of reduced compliance norms and the promoters to devote their attention to more important pursuits. ■