

“DORMANT COMPANY”



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Dormant Company status is a new tool in the Companies Act 2013 and is an excellent way for keeping assets in the company for its usage at a later stage. A dormant company may be either a public company or a private company or a one person company. Section 455 of Companies Act, 2013 primarily deals with the provision regarding Dormant Companies.

Companies eligible for obtaining the status of a Dormant Company:

1. A Company incorporated under Companies Act, 2013 and not having any significant accounting transaction, and

“significant accounting transaction” means any 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.

2. Incorporated for purpose of holding an asset or IPRs; or

3. Incorporated for a future project; or

4. Company has not been carrying on any business or operation i.e. an inactive Company

“inactive company” means 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;

Suomoto action by the Registrar of Companies:

In case of a company which has not filed financial statements or annual returns for two financial years consecutively, the Registrar shall issue a notice to that company and enter the name of such company in the register maintained for dormant companies.

If it comes to the knowledge of the Registrar 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.

The Registrar shall strike off the name of a dormant company from the register of dormant companies, which has failed to comply with the requirements of Section 455 of Companies Act, 2013.

Conditions to be satisfied for getting the status of Dormant Company:

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 neither having any public deposits which are outstanding nor the company is in default in payment thereof or interest thereon;

the company is not having any outstanding loan whether secured or unsecured or if there is any, the concurrence of the lender has been obtained and is enclosed with the application in Form MSC-1;

there is no dispute in the management or ownership of the company and a certificate in this regard is enclosed with Form MSC-1;

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.;

the company has not defaulted in the payment of workmen’s dues;

the securities of the company are not listed on any stock exchange within or outside India;

Procedure for obtaining the status of DORMANT COMPANY:

As per Section 455 of the Companies Act, 2013 and the Companies (Miscellaneous) Rules, 2014 notified by Central Government, the following procedure is to be followed for obtaining the status of Dormant Company:

1. A company has to file an application in Form MSC-1 along with such fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 to the Registrar in accordance with the provisions of section 455 after passing a special resolution to this effect in the general meeting of the company or after issuing a notice to all the shareholders of the company for this purpose and obtaining consent of at least 3/4th shareholders (in value). E Form MGT-14 must have been filed before for special resolution.
2. The Registrar shall, after considering the application filed in Form MSC-1, issue a certificate in Form MSC-2 allowing the status of a Dormant Company to the applicant.
3. The Registrar shall maintain a register of Dormant Companies. The Register maintained under the portal maintained by the Ministry of Corporate Affairs on its web-site www.mca.gov.in or any other website notified by the Central Government, shall be the register for dormant companies.

Minimum Number of Directors for Dormant Company:

A dormant company shall have a minimum number of three directors in case of a public company, two directors in case of a private company and one director in case of a One Person Company.

Return of Dormant Companies:

A dormant company shall file a “Return of Dormant Company” annually indicating financial position duly audited by a chartered accountant in practice in Form MSC-3 along with such annual fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 within a period of thirty days from the end of each financial year. It further provides that the company shall continue to file the return or returns of allotment and change in directors in the manner and within the time specified in the Act, whenever the company allots any security to any person or there is any change in the directors of the company.

Procedure for seeking status of an Active Company:

1. An application under sub-section (5) of section 455 for obtaining the status of an active company from that of dormant company shall be made in Form MSC-4 along with such fee as may be provided in Companies (Registration Offices and Fees) Rules, 2014 and shall be accompanied by a return in Form MSC-3 in respect of the financial year in which the application for obtaining the status of an active company is being filed.
2. The Registrar shall, after considering the application filed, issue a certificate in Form MSC-5 allowing the status of an active company to the applicant.

Obligation for seeking status of Active Company:

Where a dormant company does or omits to do any act mentioned in the Grounds of application in Form MSC-1 submitted to ROC for obtaining the status of dormant company, affecting its status of dormant company, the directors shall within seven days from such event, file an application, under sub rule (1) of this rule, for obtaining the status of an active company.

Privileges or Exemptions of a Dormant Company:

1. Cash Flow Statement not required – As per Section 2(40) the financial statement, with respect to One Person Company, small company and dormant company, may not include the cash flow statement
2. Frequency of Board Meeting – As per Section 173(3), only one meeting of Board of Directors is required in each half of calendar year. There must be a gap of not less than ninety days is required between two board meetings.

3. Retirement of Directors by rotation – As per Rule 6 of Companies (Miscellaneous) Rules, 2014 the provisions of the Act in relation to the rotation of directors shall not apply on dormant companies

Fee to be paid to the Registrar:

As per Rule 12 of Companies (Registration Offices and Fees) Rules, 2014, a company willing to declare itself as Dormant Company needs to file an application with Registrar of Companies along with the fee as prescribed below:

For submitting, filing, registering or recording any document by this Act required or authorized to be submitted, filed, registered or recorded	Amount of Fee (in Rs.)	
	Other than OPCs and Small Companies	OPC and Small Companies
A. For OPC and small companies whose nominal share capital does not exceeds Rs. 10,00,000.	----	2000
B. For OPC and small companies for every Rs. 10,000 of nominal share capital or part of Rs. 10,000 after the first Rs. 10,00,000 and uptoRs. 50,00,000.	----	200
C. In respect of a company having a nominal share capital of upto 1,00,000.	200	----
D. In respect of a company having a nominal share capital of Rs. 1,00,000 or more but less than Rs.5,00,000.	300	----
E. In respect of a company having a nominal share capital of Rs. 5,00,000 or more but less than Rs.25,00,000.	400	----
F. In respect of a company having a nominal share capital of Rs.25,00,000 or more but less than Rs. 1 crore or more.	500	----
G. In respect of a company having a nominal share capital of Rs. 1 crore or more.	600	----

With Warm Regards

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