

**Companies Act 2013**



**SHELL  
COMPANIES**



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# SHELL COMPANY NEWS

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- ✖ August 14, 2017:
- ✖ SEBI's directive to stock exchanges to initiate action against 331 suspect shell companies and ban them from trading. Following SEBI's diktat, BSE and NSE moved 162 and 48 companies, respectively, into Stage-VI of the Graded Surveillance Measure (GSM), implying these stocks would not be available for active trading.

## **SHELL COMPANY NEWS**

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- ✖ **On 14 September, 2017 the MCA and CBDT signed a MoU to facilitate the sharing of data and information with each other on an automatic and regular basis.**
- ✖ **According to a press release by MCA, “The move is targeted to curb the menace of shell companies, money laundering and black money in the country and prevent misuse of corporate structure by shell companies for various illegal purposes.**

# **SHELL COMPANY NEWS**

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- ✘ **MCA cancelled registration of around 2,09,032 defaulting companies & Ministry of Finance directed banks to restrict operations of bank a/cs of such companies by directors of such companies or their authorized representatives.**
- ✘ **MCA has identified 1,06,578 directors for disqualification u/s164(2)(a) as on 12 September 2017**

# **SHELL COMPANY NEWS**

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- ✖ **MCA Press Release – 6.9.2017**
- ✖ **Director or authorized signatory of any “struck off” co. tries to unauthorizedly siphon-off money from its bank a/c, he/she may attract punishment of imprisonment of not less than 6 months extendible to 10 years. If it is found that fraud involves public interest, punishment shall not be less than 3 years & fine may also be imposed which would be 3 times the amount involved**

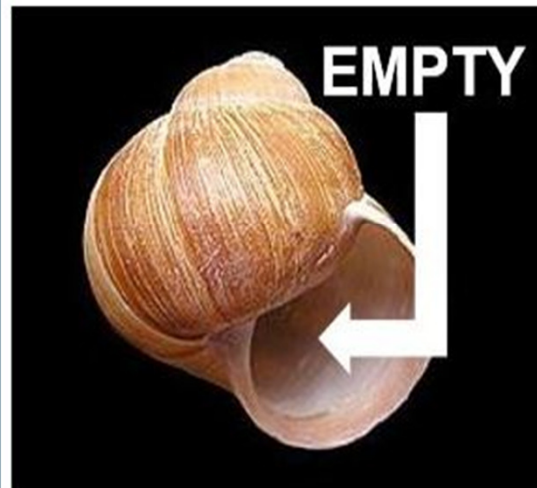


**Shell  
Companies**



**Is it  
defined ?**

# Shell Company



*A shell company is like an empty shell  
There is nothing inside*



# SHELL COMPANY

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- ✗ Could be - a company incorporated having no significant assets or operations
- ✗ Exists mainly on papers
- ✗ Mostly have no true physical presence
- ✗ Little or no economic value



# **SHELL COMPANY**

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- ✗ **General Mind-set – Plays vital role in underground economy:**
  - + **Money Laundering**
  - + **Benami Properties**
  - + **Tax Evasion**
  - + **Penny Stocks**
  - + **Market manipulations**
  - + **Fraudulent invoices**
  - + **Financing Terrorism**
  - + **Financing Politics?**

# SHELL COMPANY

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- ✖ In the US, however, the Securities Act defines a shell firm as one that has no or nominal operations and assets.
- ✖ The assets must consist mainly of cash and cash equivalents with very little other assets.
- ✖ In other words, a shell company should not have active business operations or assets.

## **SEBI ACTION**

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- ✖ **21st November 2017 - SEBI formed a sub-committee under the Secondary Market and Advisory Committee (SMAC).**
- ✖ **It will be hearing cases filed by companies complaining that they have been wrongly classified as shell companies because of technical errors.**
- ✖ **In some cases, the sub-committee will make representations to the Ministry of Corporate Affairs for relief.**

## SEBI ACTION

- ✖ **SEBI ordered forensic audit of few Cos– Khoobsurat, Indian Infotech and Software, Newever Trade Wings & Shivom Investment & Consultancy (total around 12) which figures among 331 suspected shell cos.**
- ✖ **SAT lifted trading restrictions on few cos. including Parsvnath Developers, Kavit Ind., Pincon Spirit, Signet Ind., SQS India BFSI, KKalpana Ind., Cybermate Infotek.**



**Strike Off**



**Director's  
Disqualification**

# STRIKE OFF

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- ✖ **Sections 248 to 252 made applicable w.e.f. 26.12.2016**
- ✖ **Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 effective from 26.12.2016**

# PROVISIONS

**S. 248**

- Power of Registrar to Remove the name of the company from Register of Members

**S. 249**

- Restrictions on making application u/s 248 in certain cases

**S. 250**

- Effect of company notified as dissolved

**S. 251**

- Fraudulent application for removal of name

**S. 252**

- Appeal to Tribunal



# **SUO-MOTO REMOVAL**

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- ✘ Failed to commence business within 1 year of incorporation**
- ✘ Not carrying on business / operations for continuous period of 2 years and not made application for obtaining status as dormant company u/s 455**

## **COMPANIES THAT CAN'T BE STRIKE OFF**

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- ✗ **Listed companies**
- ✗ **Companies that have been delisted due to non-compliance of listing regulations or listing agreement or other statutory laws**
- ✗ **Vanishing companies**
- ✗ **Cos. where inspection/investigation is ordered & being carried out or actions on such order are yet to be taken up or were completed but prosecutions on such inspection/investigation are pending**

## **COMPANIES THAT CAN'T BE STRIKE OFF**

- ✖ **Cos. where notices u/ss 234 / 206 / 207 of 1956 Act have been issued by ROC or Inspector & reply thereto is pending or report u/s 208 has not yet been submitted or follow up of instructions thereon is pending or where any prosecution arising out of such inquiry or scrutiny, if any, is pending with the Court;**
- ✖ **Cos. against which any prosecution for an offence is pending in any court;**

## **COMPANIES THAT CAN'T BE STRIKE OFF**

- ✖ **Cos. whose application for compounding is pending before the competent authority or any of its officers in default;**
- ✖ **Cos. which have accepted public deposits which are either outstanding or company is in default in repayment of the same;**
- ✖ **Cos. having charges which are pending for satisfaction; and**
- ✖ **Companies registered u/s 25 of 1956 Act or section 8 of 2013 Act.**

# **PROCEDURE FOR STRIKE OFF**

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- ✘ Serving of Notice in Form STK - 1 to all the directors of the company at the addresses available on record. The notice shall:**
  - + contain the reasons on which the name of the company is to be removed; and**
  - + seek representations, if any, against the proposed action from the company and its Directors along with the copies of relevant documents, if any, within a period of 30 days from the date of the notice.**

# **PROCEDURE FOR STRIKE OFF**

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- ✖ **Representation of Company: The ROC shall consider the representation of the Company if it has received the same. If the ROC is not satisfied with the representation made by the company and its directors, it may proceed further for the strike off the name of company.**

# **PROCEDURE FOR STRIKE OFF**

- ✕ Publication of notice for removal of name u/s 248 (1) shall be in Form STK 5 and the same be –**
  - + Placed on official website of the MCA on a separate link established on such website**
  - + Published in the Official Gazette**
  - + Published in Form STK 5A in english language in a leading english newspaper and at least once in vernacular language in a leading vernacular language newspaper, both having wide circulation in the State in which the registered office of the company is situated.**



# PROCEDURE FOR STRIKE OFF

- ✗ **Intimation to regulatory authorities: The ROC shall simultaneously intimate the concerned regulatory authorities regulating the company, viz, Income tax authorities, central excise authorities and service-tax authorities having jurisdiction over company, about proposed action of removal or striking off the names of such companies and seek objections, if any, to be furnished within 30 days of notice.**

# **PROCEDURE FOR STRIKE OFF**

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- ✘ In accordance s. 248(5) ROC may, at the expiry of the time mentioned in the notice, unless cause to the contrary is shown by the company, strike off its name from the register of companies, and publish notice thereof in the Official Gazette.**
- ✘ The company shall stand dissolved on publication of this notice in the Official Gazette.**

# **PROCEDURE FOR STRIKE OFF**

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- ✖ **ROC, before striking off, shall satisfy itself that sufficient provision has been made for realization of all amounts due to the company and for the payment or discharging of its liabilities.**

## **EFFECT OF STRIKE OFF**

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- ✖ **On dissolution u/s 248, it shall on & from date mentioned in notice of dissolution, cease to operate as company except for purpose of realizing amount due to co. & for payment or discharge of liabilities or obligations of company.**
- ✖ **Liabilities of directors, managers, officers and members to be continue as if the company had not been dissolved.**

## **RESTORATION BY NCLT – ON APPEAL BY ANY PERSON**

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- ✖ **Any person aggrieved by removal order may file appeal before NCLT within 3 yrs of order**
- ✖ **NCLT may pass order for restoration if it is of opinion that removal of name of co is not justified in view of absence of any of the ground on which order was passed by ROC.**
- ✖ **NCLT to give reasonable opportunity of making representations and of being heard to ROC, company and all persons concerned.**

## **RESTORATION BY NCLT – ON APPLICATION BY ROC**

- ✗ **ROC may, within a period of 3 yrs from the date of passing of the order dissolving the company u/s 248, file an application before NCLT seeking restoration of name of such company if it is satisfied that the name of the company has been struck off from the register of companies either inadvertently or on the basis of incorrect information furnished by the company or its directors.**

## **RESTORATION BY NCLT – ON APPLICATION BY OTHERS**

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- ✘ **An application to NCLT for restoration may be made by co., member, creditor or workmen before expiry of 20 yrs from publication in Official Gazette of notice of dissolution of the company, if:**
  - + **Company was, at the time of its name being struck off, carrying on business or in operation; or**
  - + **Otherwise it is just that the name of the company be restored**





# **AUDITOR'S DUTY**

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- ✖ **Section 143(3)(g)**
- ✖ **Auditors to Report in its Auditors Report**
- ✖ **Whether any director is disqualified from being appointed as a director u/s 164(2)**

# **DISQUALIFICATION [164(2)]**

- ✖ **A person not eligible for 5 Years to be:**
  - + **Reappointed in that Co.; or**
  - + **Appointed as director in other company**
- ✖ **Co. has not filed FS or Annual returns for any continuous period of 3 Years**
- ✖ **Failed to repay deposits or repay interest thereon and such failure continues for 1 Year or more**
- ✖ **Failed to redeem debentures or repay interest thereon and such failure continues for 1 Year or more**
- ✖ **Failed to pay any dividend declared and such failure continues for 1 Year or more**

# **ACTION - ON DISQUALIFICATION**

- ✖ **Every director to inform to the company concerned about his disqualification u/s 164(2) in Form DIR-8 before he is appointed or re-appointed.**
- ✖ **Whenever a company fails to file the FS or A/R, or fails to repay any deposit, interest, dividend, or fails to redeem its debentures, as specified in s. 164(2) the company to file Form DIR-9 within 30 days, to ROC furnishing the names and addresses of all the directors of the company during the relevant FYs.**
- ✖ **Proposed Amendment - 164(2) disqualification not applicable for 6 mns of new appointment in said co. Existing director disqualified in all Cos except said Co.**

## VACATION - (167)

- ✖ He incurs any of disqualifications specified in s. 164;
- ✖ If a person, functions as a director even when he knows that the office of director held by him has become vacant on a/c of any of the disqualifications specified in s. 167(1), he shall be punishable with impr. upto 1 Yr or with fine –Min 1 L Max 5 L or with both. [167(2)]
- ✖ Where all the directors of a company vacate their offices under any of the disqualifications specified in 167(1), the promoter or, in his absence, the CG shall appoint the required number of directors who shall hold office till the directors are appointed by the company in the general meeting[167(3)]

## OLD VS. NEW

- ✖ **1956 Act, disqualification was only for Public companies, 2013 Act for all companies**
- ✖ **3 years from when?**
- ✖ **Director to file his resignation in DIR 11 under 2013 Act – no such requirement under 1956 Act**

# **LESS THAN 2 DIRECTORS**

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- ✖ **Disqualified w.e.f. 1<sup>st</sup> November 2016?**
- ✖ **Public notice... 5/6/.. September 2017**
- ✖ **Actions taken during being disqualified?**



# THE WAY OUT

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- ✗ **Move high court for stay**
- ✗ **Wait for any scheme which may be announced by Government**
- ✗ **Instruction Dated 6.10.2017:**
  - + **Promoters may appoint new directors u/s167(3). In such cases, the issue of role check shall arise.**
  - + **RoCs already have facility to add signatory details from the back end with the approval of RD.**
  - + **RoCs/RD's have been directed to approve such applications within 1 week from the date of receipt of application.**

# TAXATION OF STRIKE OFF COMPANIES

**S. 159**

- Legal Representative

**S. 170**

- Succession of business otherwise than on death

**S. 176**

- Discontinuation of business

**S. 178**

- Company in liquidation– responsibility of official liquidator

**S. 179**

- Liability of directors of private company in Liquidation

# **TAXATION OF STRIKE OFF COMPANIES**

- ✖ **Assessment of company struck off**
- ✖ **S. 248(7) [Companies Act] – The liability, if any of every director, manager or other officer who was exercising any power of management and of every member of the company dissolved shall continue and may be enforced as if the company had not been dissolved.**

# TAXATION

**Investors of company  
strike off**

**Capital Loss??**

**Extinguishment of  
Right therein 2(47)(ii)**

# OTHER STRIKE OFF EFFECTS??

- ✗ **Company's shareholder non- existent??**
- ✗ **Unsecured loans from strike off company??**
- ✗ **Auditor responsibility when shareholder does not exist - ??**
- ✗ **GM when shareholders do not exist – if all shareholders non-existent ??**

# THANK YOU!



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