

Dormant company

Q Procedure for obtaining dormant company.

→ A company can obtain dormant status by suo-moto or the ROC may declare a company as dormant.

1) suo moto application:-

A company which meets the above criteria can apply suo moto for the status of dormant company to ROC in form MSC-1 along with suo fees as provided in the Companies (Registration offices ~~rules~~ fees) rules 2014 after complying with the provision of Rule 3 of the Companies Rule 2014.

2) Dormant by ROC:- In case of a company which has not filed financial statements or annual returns for two financial years consecutively, the ROC shall issue no notice to the company and enter the name of such company in the registrar maintain for dormant company.

Hence it is not always company which applies for the status of the dormant company; even the ROC is empowered suo moto to change the status of a company into dormant company.

Q Discuss in brief the law relating to ^{an} Active company.

→ ^{have} minimum number of director as required by companies Act, 2013

→ shall continue to file the returns of allotments and changes in directors

→ Required to held at least one meeting of board of directors in every half year.

- maximum tenure for which company can remain dormant is 5 consecutive financial years
- no need to enclose cash flow statement in its annual accounts.
- rotation of auditors are not applicable to dormant companies.
- a. State the circumstances under which the status of the dormant company is restored to active company.
 - where dormant company does or omits to do any Act mentioned in the grounds in the application made for obtaining status of dormant and such act or omission affect its status of dormant company, directors of such company are required to file an application within seven days from such event for obtaining the status of active company.
 - where RoC has reasonable cause to believe that any company registered as dormant company under his jurisdiction has been functioning in the manner directly or indirectly affecting the status of dormant company RoC can initiate proceeding for inquiry and after giving opportunity of being heard RoC can remove the name of such company from the Register of dormant company.

- (c) Pre-requisite: for obtaining the status for dormant company
- As per rule 3 of the companies (miscellaneous) rules, 2014 the registrar shall not grant status of dormant company if:
- 1) Any inspection, inquiry or investigation has been ordered or taken up or carried out against the company.
 - 2) Any Prosecution has been initiated and pending against the company under any law.
 - 3) There are public deposits which are outstanding or the company is in default in payment thereof or interest thereon.
 - 4) In case the company has any outstanding unsecured loan, the company must apply for the status of dormant company after obtaining the concurrence or a approval of the lender which is required to be enclosed with Form MISC-1
 - 5) There are outstanding taxes, dues, duties, etc. Payable to the central gov or any state gov, or local authorities.
 - 6) default in workmen dues.
 - 7) The company is a listed company within or outside India.

Q) State the circumstance under which a dormant company is struck off from the Register of Companies.

→ The registrar of company shall initiate the process of striking off the name of the company, if the company remains as a dormant for a period of 9 continuous years.

Q) Can a dormant company make allotment? and also there be a change in directors?

→ dormant company means -

- a) not carrying on any business operation
- b) not made any significant accounting transaction
- c) not filled financial statements and annual returns during the last two financial years.

2) Here significant accounting transaction means any transaction ^{extra}

- Payment of fees to ROC
- allotment of shares
- Payment for maintenance of its office and records
- Payment made by the company to fulfill the requirement.

3) ∴ as per companies (miscellaneous) rule 2014, dormant company can allot shares. ☺

Attachment of MSCL:-

- Copy of board resolution, authorising making application
- Copy of special resolution
- Statement of affairs of duly certified by the chartered accountant or auditor of company
- Consurrence of lender if the company is having any outstanding loans whether secured and unsecured.
- Latest financial statement and annual return of the company
- Copy of approval or no objection certificate from the regulatory authority in case of company is regulated by such authority
- Certificate that there is no dispute in the management or ownership of the company: