

KEY CONCEPTS

■ Dormant Company ■ Inactive Company ■ Significant Accounting Transaction ■ Active Company

Learning Objectives

To understand:

- The Concepts of Dormant and Active Company
- Legal Procedure Involved in Obtaining the Status of Dormant Company
- Compliances for Dormant Company
- Procedure to make a Dormant Company to Active Company
- Advantage of Dormant Company

Lesson Outline

- Legal framework for Dormant Companies
- Procedure to obtain the status of a Dormant Company
- Prerequisite for obtaining the status of Dormant Company
- Benefits/exemptions provided to a Dormant Company
- Compliance requirements by Dormant Company
- Procedure to obtain the status of an active company from dormant company
- Lesson Round-Up
- Glossary
- Test Yourself
- List of Further Readings
- Other References

REGULATORY FRAMEWORK

- The Companies Act, 2013 (Section 455)
- The Companies (Miscellaneous) Rule, 2014

INTRODUCTION

A dormant company means a company which is inactive or inoperative i.e., not carrying out any business activity and has applied to the Registrar of Companies (“ROC”) to change its status in the Register of Companies maintained by the said Registrar of Companies from “Active Company” to “Dormant Company”. A company may become dormant immediately after its registration or after a few years of its incorporation. There are many reasons as to why a company may change its status from “active” to “dormant”. The major reason for such a change is that it gives the company the liberty to start its business activities after a few years rather than incorporating a new company at that time, thus providing cost and time advantage to the company. A company may also choose to temporarily shut down its operations due to adverse market conditions and decide to commence its operations at a future date. In all such cases, a company may make an application to the ROC to change its status from “active” to “dormant”.

Dormant companies are also known as inactive companies.

CASE LAW

In Re: AVS Enterprises Pvt. Ltd. v. Registrar of Companies, Delhi and Ors. Company Appeal (AT) No. 47 of 2021

It was pertinently pointed out that Section 455 of the Companies Act, 2013 mentions ‘Dormant Company’. The word ‘Dormant’ in ‘Business Per longs’ means an entity’s identity being unknown to others, inactive and a passive one. No wonder, in law, a ‘Company’ can apply for securing the nomenclature of a ‘Dormant Company’ by passing a ‘Special Resolution’ at the General Meeting of the Company or by getting shareholders’ consent holding at least ‘3/4th of the Shares in Value’.

Section 455 of the Companies Act, 2013 read with Companies (Miscellaneous) Rules, 2014 stipulates the provisions pertaining to “Dormant Company”. Where a company is formed and registered under this Act for a future project or to hold an asset or intellectual property without having any significant accounting transaction, such a company or an inactive company may make an application to the ROC in such a manner as may be prescribed for obtaining the status of a dormant company. A dormant company may either be a public company or a private company or a one person company (OPC).

For the above purposes, ‘inactive company’ means a company which:

- has not been carrying on any business or operation; or
- has not made any significant accounting transaction during last two financial years; or
- has not filed financial statements and annual returns during the last two financial years.

‘Significant Accounting Transaction’ means any transaction made by the company except transactions mentioned below:

- payment of fees by a company to the Registrar;*

- (b) *payments made by the company to fulfil the requirements of this Act or any other law;*
- (c) *allotment of shares to fulfil the requirements of this Act; and*
- (d) *Payments for maintenance of its office and records.*

All the transactions, apart from the above mentioned transactions, will be considered as significant accounting transactions. If a company has made only the above mentioned transactions in the last two financial years, then that company will fall under the definition of 'Inactive Company'.

The Registrar on consideration of the application shall allow the status of a dormant company to the applicant and issue a certificate allowing the status of a Dormant Company to the applicant and the Registrar shall also maintain a register of dormant companies.

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. Further, it shall file required documents and pay such annual fee as may be prescribed to the Registrar to retain its dormant status in the register. The dormant company may become an active company on an application made in this behalf accompanied by required documents and fees.

A company may retain its status of Dormant Company for five (5) years once it has obtained the dormant company status, after it Registrar may strike off the name of the company from the register of companies, if such company failed to comply with the requirements of section 455.

ADVANTAGES OF DORMANT COMPANIES UNDER COMPANIES ACT, 2013

Dormant Companies offers number of advantages to its promoters. Some of the main advantages are listed below:

- (a) It helps in preserving the domain name and hence a company may be founded to prepare for a future undertaking.
- (b) A Dormant Company offers excellent advantage to the promoters who want to hold an asset or intellectual property under the corporate shield for its usage at a later stage. A Trademark of a Company Name is among the intellectual property owned by a dormant company. Others are not authorized to trade using the name of the dormant company since it is protected.
For instance: if a promoter wants to buy land now for its future project at a comparatively lesser price, he may do the same through dormant company so that he can use the land for its future project.
- (c) It assists the company in projecting a more positive image to potential consumers and/or lenders.
- (d) Once a company is registered as a dormant company, the annual return for the company can be filed using a simplified Form MSC-3. Also, the number of Board Meetings to be conducted by the Company is reduced. The compliance burden of the company is also reduced.
- (e) Dormant Company is not liable to pay any taxes until it is reactive.
- (f) Dormant Company is not required to include the statement of cash flow in its financial statement.
- (g) The provision of rotation of auditors is not applicable in case of a dormant company.
- (h) Dormant companies enjoy the advantages of lower statutory compliance cost as there are few statutory compliances applicable to dormant company as compared to active company, for example, a dormant company need not hold Annual General Meeting every year and no need to hold and convene four (4) Board Meetings in a year, etc.
- (i) It is easier for dormant companies to reacquire its active status and it also reduces the cost of incorporation of a new company.

COMPLIANCES FOR DORMANT COMPANY

There are certain compliances which needs to be fulfilled by the dormant company. These are mentioned below:

- 1) Company needs to have minimum number director as required by Companies Act, 2013 i.e. at least 3 Directors in case of a Public Company, 2 for Private Company and 1 for OPC.
- 2) The company shall continue to file the returns of allotment and change in directors, whenever the company allots any security to any person or there is any change in the directors of the company.
- 3) The Dormant Company is required to hold at least one meeting of the Board of Directors in every half year. The gap between two meetings shall not be more than 90 days.
- 4) The maximum tenure for which a company can remain dormant is 5 consecutive financial years. If a company remains dormant for more than 5 years, the Registrar commences the process of striking off the name of the company from the Records, i.e. the company will be removed.
- 5) A dormant company is required to file a “Return of Dormant Company” in Form MSC-3 annually, *inter-alia*, indicating financial position duly audited by a Chartered Accountant in Practice 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.
- 6) No need not enclose cash flow statements in its annual accounts.
- 7) The provisions of the Act in relation to the rotation of auditors are not applicable to dormant companies.

Test Yourself:

State the privileges and exemptions available to the dormant companies under the provisions of the Companies Act, 2013.

Illustration:

A Limited Company wants to start its operations after three years. For the business purpose, the company needs to acquire land. The land prices will be very high after the period of three years.

Hence, in this case, the company will acquire the land at current price which is much cheaper as compared to land prices after three years by incorporating the company and applying the dormant status afterwards.

PROCEDURE TO OBTAIN THE STATUS OF A DORMANT COMPANY

A Company can obtain its status as Dormant Company suo-moto or the ROC may declare a company as Dormant:

Suo-Moto application : A company which meets the above criteria can apply suo-moto to ROC for the status of a “Dormant company” in Form MSC-1 along with such fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 after complying with the provision of Rule 3 of the Companies (Miscellaneous) Rules, 2014.

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 a notice to the company and enter the name of such company in the register maintained for dormant companies.

Hence, it is not always the 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 a dormant company.

The Registrar shall initiate the process of striking off the name of the company, if the company remains as a dormant company for a period of five consecutive years.

Maximum period for which the company can be in the dormant status is **five consecutive years**. Before completion of five years as dormant company, such a company may apply for activation or strike off.

Where a company fails to comply with the requirements of Section 455 of the Companies Act, 2013 read with the Companies (Miscellaneous) Rules, 2014, the Registrar can strike off the name of a dormant company from the Register of dormant companies.

PRE-REQUISITES FOR OBTAINING THE STATUS OF DORMANT COMPANY

As per rule 3 of the Companies (Miscellaneous) Rules, 2014, the Registrar **shall not grant** the status of a dormant company if:

- i. Any 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. There are public deposits which are outstanding or the company is in default in payment thereof or interest thereon.
- iv. There is any outstanding loan, whether secured or unsecured. In case the company has any outstanding unsecured loan, the company may apply for the status of a dormant company after obtaining the concurrence of the lender.
- v. There is no dispute in the management or ownership of the company.
- vi. There are outstanding statutory taxes, dues, duties, etc., payable to the Central Government or any State Government or local authorities etc.
- vii. There is default in payment of its workmen's dues.
- viii. The Company is a listed company within or outside India.

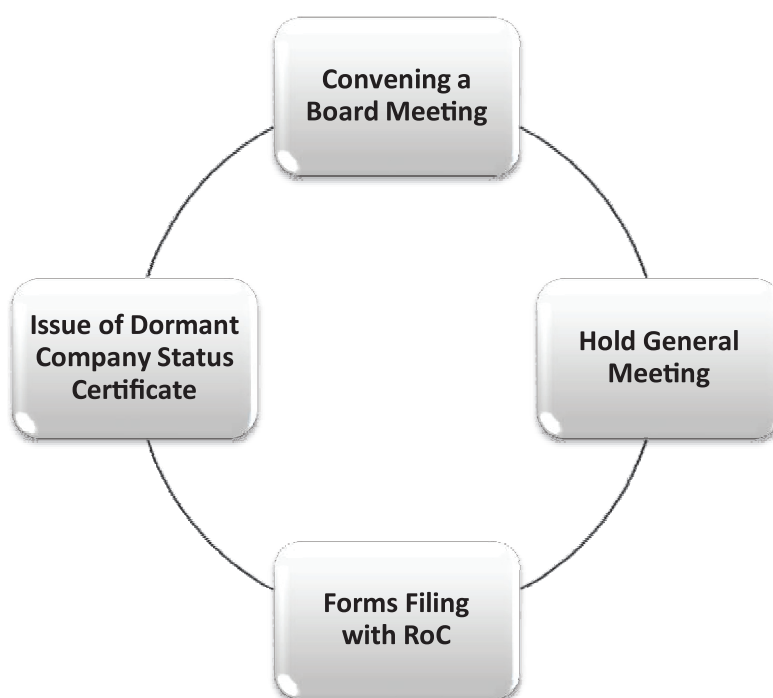
Approvals/documents required for obtaining the status of Dormant Company:

- Board Resolution.
- Special Resolution or consent of 3/4th shareholders of the company.
- Copy of Memorandum and Articles of Association.
- Consent of lender, if any loan is subsisting.
- Statement of affairs duly certified by a Chartered Accountant or Auditor.
- Latest financial statement and annual return of the company.
- No objection certificate from regulatory authority, if company, is regulated by any such authority.

- Certificate that company has not defaulted in the payment of workmen’s dues.
- Certificate that company does not have any outstanding taxes, dues, duties, etc payable to Central or State Government or local authority.
- Certificate regarding no inspection, inquiry or investigation has been ordered or taken up or carried out against the company.
- Certificate regarding no prosecution has been initiated and pending against the company under any law.

Step by step procedure for obtaining the status of Dormant Company:

The Act read with the Rules stipulates the following procedure to be followed by a company for obtaining status as a ‘dormant company’:



1. **Holding a Board Meeting:** The Company shall prepare notice of board meeting alongwith draft resolutions to be passed in the board meeting. Send the notice of board meeting to all the directors at least 7 days before the date of board meeting as per section 173 of Companies Act, 2013 and SS-1.

Prepare a draft notice that may be sent to the shareholders for holding General Meeting for obtaining the status of the company as Dormant Company. Hold a board meeting to fix day, date, time and venue for General Meeting of the members of the company to pass a special resolution for making application to the ROC to obtain status of a dormant company.

The company shall obtain Statement of affairs from the Auditor of the company. The statement of affairs shall give the financial position of the company at the time of passing said resolution in the shareholders meeting.

2. **Hold General Meeting:** The Company shall hold the General Meeting at the appointed time, place and date as per the notice calling the said meeting. The notice shall propose the resolution as

a special resolution. The company shall pass a special resolution for obtaining the status of a dormant company and authorize the director(s) to make application to ROC 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).

3. **Filing of Form MGT-14:** After passing the special resolution, the company shall file Form MGT-14 with ROC for filing special resolution and notice alongwith explanatory statement within 30 days from the date of passing of the said special resolution.
4. **Filing of Form MSC-1:** After filing of Form MGT-14, the company shall file an application in Form MSC-1 with the ROC within 30 days of passing special resolution for change of status of the company as dormant company along with the copy of the special resolution, copy of statement of affairs, declarations by the directors and other necessary documents.

Attachments to be filed with Form MSC-1: Following attachments needs to be filed alongwith e-form MSC-1:

- Certified true copy of board resolution authorizing making application.
 - Certified true copy of special resolution authorizing for obtaining dormant status.
 - Statement of affairs duly certified by the Chartered Accountant or auditor of company.
 - Concurrence of lender if the company is having any outstanding loans, whether secured or unsecured.
 - Latest financial statement and annual return of the company.
 - Copy of approval or no objection certificate from the regulatory authority in case company is regulated by such authority.
5. **Issue of Dormant Company Status Certificate:** On being satisfied with the merits of the application, the ROC shall issue a certificate in **Form MSC -2** for confirming the application and allowing the status of a dormant company to the applicant.

PROCEDURE TO OBTAIN THE STATUS OF ACTIVE COMPANY FROM DORMANT COMPANY

Section 455 of the Companies Act, 2013 read with Rule 8 of the Companies (Miscellaneous) Rule, 2014 lays down the provisions for seeking the status of active company from dormant company. An application shall be made in Form MSC-4 for obtaining the status of an active company from dormant company before the end of five consecutive years from the date of becoming a dormant company. In case the said application is not made before the said period of five consecutive years, the name of the company may be removed from the Register of Companies maintained by the ROC.

Moreover, if any company has contravened any of the conditions mentioned in the grounds of application for obtaining the status of dormant company, the directors should, within seven days of such contravention, file an application for obtaining the status of an active company. The Registrar can take action to remove the company from the list of dormant companies, if it is observed that the company has contravened the conditions for granting the dormant company status, after carrying out an enquiry and after giving a notice and a reasonable opportunity of being heard.

The dormant company shall follow the below procedure for obtaining status of an active company on its own:

1. **Hold board meeting:** The Company shall prepare notice of board meeting alongwith draft resolutions to be passed in the board meeting. Send the notice of board meeting to all the directors at least 7 days

before the date of board meeting as per section 173 of Companies Act, 2013 and SS-1. The following resolutions needs to be passed at the board meeting:

- To make an application with the Registrar of Companies for obtaining status of dormant company as an active company.
 - To authorize a director to make an application and sign the documents or forms and to complete all the formalities relating to the application.
2. **Prepare return in Form MSC-3:** The return in form MSC-3 shall be prepared in respect of the financial year in which the application for obtaining the status of an active company is being filed.
 3. **File e-Form MSC-4:** An application for obtaining the status of an active company is required to be made in Form MSC-4 along with fees as provided in the Companies (Registration Offices and Fees) Rules, 2014 which should 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.
 4. **Certificate for active company:** The ROC after considering the application filed for obtaining the status of the active company from dormant company shall issue a certificate in Form MSC-5 allowing the status of an active company to the applicant.

When ROC shall change the status of the dormant company to active company?

- (a) Where a dormant company does or omits to do any act mentioned in the grounds in the application made for obtaining status of a dormant company and such act or omission affects its status of dormant company, the directors of such a company are required to file an application within seven days from such event for obtaining the status of an active company.
- (b) Where the ROC has reasonable cause to believe that any company registered as 'dormant company' under his jurisdiction has been functioning in any manner, directly or indirectly affecting the status of dormant company, the ROC can initiate the proceedings for enquiry under section 206 of the Companies Act, 2013 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 active, the ROC can remove the name of such company from Register of dormant companies and treat it as an active company.

SPECIMEN RESOLUTIONS

A. Draft Board Resolution for obtaining status of Dormant Company:

“RESOLVED THAT consent of Board of directors of the company be and is hereby accorded to make an application to the Registrar of Companies, _____ (ROC), for obtaining the status of “dormant company” for the company, in pursuance of the provisions of section 455 of the Companies Act, 2013 and rules made thereunder, including any amendments thereto from time to time, and subject to the approval of the members of the company.

RESOLVED FURTHER THAT Mr./Ms. _____ (Designation), be and is hereby authorized to sign and file Form MSC-1 to the ROC alongwith all the necessary documents as may be required with regard to the application for obtaining the status of dormant company.

RESOLVED FURTHER THAT Mr./Ms. _____ (Designation), be and is hereby authorized to file such documents and ensure payment of such annual fees as may be prescribed to the ROC to retain the dormant status of the company.”

B. Draft Special Resolution for obtaining status of Dormant Company:

“RESOLVED THAT pursuant to provisions of Section 455 of the Companies Act, 2013 (“the Act”) and the Companies (Miscellaneous) Rules, 2014 and other applicable provisions, if any, of the Companies Act, 2013 and the rules made thereunder, (including any statutory modifications or re-enactments thereof) and subject to such other approvals and permissions as may be required, the consent of the Members be and is hereby accorded to the Company to make an application to the Registrar of Companies, _____ in Form MSC-1 for obtaining the status of a dormant company.

RESOLVED FURTHER THAT Mr./Mrs. _____, Director and/or Mr./Mrs. _____, Director be and are hereby jointly and severally authorized to submit necessary e-forms to ROC for obtaining the status of a dormant company and to do all such acts, deeds, matters and things as may be deemed necessary, desirable, proper or expedient for the purpose of giving effect to this Resolution and for matters connected therewith or incidental thereto.”

C. Draft Board Resolution for Dormant to Active Company:

“RESOLVED THAT consent of Board be and is hereby accorded to make an application to the Registrar of Companies, _____ (ROC), for seeking the status of an “active company” for the company, in pursuance of the provisions of section 455 (5) of the Companies Act, 2013 and rule 8 of the Companies (Miscellaneous) Rules, 2014 and any other applicable provisions thereof, including any amendments thereto for the time being in force.

RESOLVED FURTHER THAT Mr./Ms. _____ (Designation) and Mr./Ms. _____ (Designation) be and is hereby severally authorized to sign and file Form MSC-4 to the ROC alongwith all the necessary documents as may be required with regard to the application for seeking the status of an active company and further authorized to all such acts, deeds and things as may be necessary in this regard.”

LESSON ROUND-UP

- ‘Dormant company’ means a company which is an inactive company in the records of the Registrar of Companies and which is not carrying out any business activity and has applied to the Registrar of Companies to change its status in the Register of Companies.
- ‘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.
- Section 455 of the Companies Act, 2013 read with Companies (Miscellaneous) Rules, 2014 stipulate the provisions pertaining to “Dormant Company”.
- A company can either on an application to Registrar change the status of the company from active to dormant company or the Registrar can suo moto after issuing the notice to the concerned company change the status of the company from active to dormant company in the Register of Companies and enter the name of such a dormant company in the Register of Dormant Companies maintained by the Registrar.

- A dormant company enjoys the status of the dormant company for a maximum period of five consecutive years. Before the end of the five consecutive years, an application is required to be made for changing the status of the company from dormant to active company or such a company's name is struck off from the Register of Companies. However, if the company breaches any of the grounds of being a dormant company, then such a company's status is automatically changed from dormant to active company in the Register maintained by the Registrar.
- The Act provides certain benefits / exemptions to a dormant company apart from lesser compliance requirements.

GLOSSARY

Inactive Company: Means a company which has not:

- (a) carried on any business or operations
- (b) not made any significant accounting transaction during last two financial years
- (c) not filed financial statements and annual returns during the last two financial years

Significant Accounting Transaction: It means any transaction made by the company except below transaction:

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

Listed company: It means a Company whose shares are traded on an official stock exchange.

TEST YOURSELF

(These are meant for re-capitulation only. Answers to these questions are not to be submitted for evaluation)

1. Hans Plastic Ltd., not carrying out any business activity, wants to apply to ROC to change its status from Active Company to Dormant Company. Board of directors seeks your advice about the procedure to obtain the status of Dormant Company.
2. Discuss in brief the law relating to Active Company.
3. State the circumstances under which the status of the Dormant Company is restored to active company.
4. Summarize the provisions of the Companies Act, 2013 relating to prerequisite for an active company to change its status to dormant company.
5. State the circumstances under which a dormant company is struck off from the Register of Companies.
6. Can a Dormant company make allotment of shares? Also, can there be a change in Directors of such Company?

7. A Company is not carrying on any business for last two years, the Management of the Company decided to make an application for obtaining the status of Dormant Company. One of the Director stated that since, the Company is having unsecured loans from Shareholders and relatives of Directors, the Company cannot obtain the dormant status. Citing relevant provisions of the Companies Act, 2013 and Rules made thereunder, explain whether the statement of the Director of the Company is correct? Will your answer differ, if the Company have also obtained Loans from Shareholders and relatives of Directors in the form of secured Debentures?
8. Alishaan Ltd., has recently obtained the status of dormant company. The Board of Directors seeks your advice about the required compliances in respect of the following :
- i. Minimum number of Directors.
 - ii. Requirement of Return filing.
 - iii. Meeting of Board of Directors.
9. ABC Pvt Ltd is not carrying on any business for last two years, the Management of the Company decided to make an application for obtaining the status of Dormant Company. One of the Director stated that since, the Company is having unsecured loans from Shareholders and relatives of Directors, the Company cannot obtain the Dormant status. Choose whether the statement of the Director of the Company is correct ?
- (a) No, Registrar shall not grant the status of a dormant company, if there is any outstanding loan, whether secured or unsecured and until the concurrence or approval of the lender is received.
 - (b) Yes, Registrar shall grant the status of a dormant company, even if there is any outstanding loan, whether secured or unsecured and concurrence or approval of the lender is not required.
 - (c) No, Registrar shall not grant the status of a dormant company, if there is any outstanding loan, whether secured or unsecured and until the concurrence or approval of the lender is not required.
 - (d) None of the above

LIST OF FURTHER READINGS

- Company Law Exploring Procedural Dimensions VOL I / II / III – by ICSI
- Bare Act- The Companies Act, 2013

OTHER REFERENCES (Including Websites/Video Links)

<https://www.mca.gov.in/content/mca/global/en/acts-rules/ebooks.html>

