

# Easy Exit Scheme, 2011

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The Ministry has from time to time, come out with Schemes under section 560 of the Companies Act so as to provide an easy exit route to defunct companies. Easy Exit Scheme, 2011 (EES, 2011) is launched by the Ministry vide General Circular No.6/ 2010 and is back due to huge demand. However the Scheme is in force from 1<sup>st</sup> January, 2011 to 31<sup>st</sup> January, 2011 only and is very similar to EES, 2010. As per the circular any **defunct company** which has its name active on the MCA portal may apply under EES, 2011 to get the name stricken off from the Register of Companies. For the purpose of this Scheme, Defunct Company has been defined as:

“defunct company” means a company registered under the Companies Act, 1956 which is not carrying over any business activity or operation on or after the 1<sup>st</sup> April, 2008 and includes a company which has not raised its paid up capital as provided in sub sections (3) and (4) of section 3 of the Companies Act, 1956”

In case of Government Company which is defunct No Objection Certificate is required from the concerned Ministry. In case of 100% government companies with no board in existence, an officer not below the rank of Deputy Secretary of the concerned Ministry may make the application.

The scheme is NOT applicable to the following companies:

- a) listed companies;
- b) companies that have been de-listed,
- c) companies registered under section 25 of the Companies Act, 1956;
- d) vanishing companies;
- e) companies where inspection or investigation is ordered and being carried out or yet to be taken up or where completed prosecutions arising out of such inspection or investigation are pending in the court;
- f) companies where order under section 234 of the Companies Act, 1956 has been issued by the Registrar and reply thereto is pending or where prosecution if any, is pending in the court;
- g) companies against which prosecution for a non-compoundable offence is pending in court;
- h) companies accepted public deposits which are either outstanding or the company is in default in repayment of the same;
- i) company having secured loan ;
- j) company having management dispute;
- k) company in respect of which filing of documents have been stayed by court or Company Law Board (CLB) or Central Government or any other competent authority;

- 1) company having dues towards income tax or sales tax or central excise or banks and financial institutions or any other Central Government or State Government Departments or authorities or any local authorities

### **How to make application:**

Any defunct company can make an application in Form EES, 2011 u/s 560 of the Act certified by a chartered accountant/ company secretary/ cost accountant in whole time practice. The form is to be accompanied with the following annexures:

- Annexure A - affidavit sworn by each of the existing directors of the company stating that company has discontinued their operations since 1<sup>st</sup> April, 2008 or not carried out any operations since its incorporation.
- Annexure B - an indemnity bond given by directors either individually or collectively that all the losses, claims and liabilities on company would be fully met by directors individually or collectively even after the name is struck off from the Register.
- Annexure C - Statement of Accounts prepared on a date not more than one month prior to the date of filing of the application under Form EES, 2011 certified by the Chartered Accountant in whole time practice or statutory auditors.
- The Application is filed with filing fees of Rs.3000/- unlike EES, 2010.
- Companies with pending litigation need to specifically state so in the application.

### **Proceeding post application:**

- Name and date of application under EES, 2011 would be put on the MCA website and 30 days time is given to stakeholders to raise objection with the Registrar.
- Requisite authorities such as RBI, SEBI shall be intimated about the companies availing EES, 2011 and also the Income Tax Department for raising objection within 30 days.
- The Registrar of Companies shall give a notice u/s 560(3) for the name to be struck off from the register and the Company to be dissolved.
- Being satisfied that the case is in order, the Registrar of Companies shall strike off the name of the Company from its Register and shall issue notice u/s 560(5) for publication in the Official Gazette that the Applicant Company stands dissolved under this Scheme from the date of publication of the notice in the Official Gazette.

## Missing links in the Scheme

### “Inoperative” or “Not carrying on any business” – meaning:

The Scheme stipulates that the applicant company should be either inoperative or should not be carrying on any business after 1-4-2008. In fact, this is the fundamental requirement of Section 560 of the Companies Act, 1956 under which section this scheme has been framed. However, what is meant by “carrying on any business” is a matter of fact and has to be determined accordingly. A company may not be having any manufacturing/trading or any other economic activity, nonetheless it has to incur expenses for its maintenance. Such company will be considered to be not carrying on any business.

### What happens to “Assets and Liabilities”:

Surprisingly, unlike the 2003 or 2005 scheme or any other prior mechanism, this scheme does not require “Zero Asset-Liability” status of an applicant company. It is pertinent to note that Section 560 is not a substitute for winding-up proceedings and does not provide for distribution of assets or determination of liabilities. In the absence of any mechanism for distribution of assets or determination of liabilities, it is unclear as to what would be the status of assets/liabilities of applicant companies, howsoever, insignificant they might be. Further, since a company stands dissolved in terms of Section 560(3) upon its name being struck off, will the status of assets of applicant companies become *bona vacantia* and become vested in the State? This surely could not have been the intention. Notably, all the schemes that have come in the past have always prescribed for a zero-asset-liability status as a condition precedent for availing section 560; this Scheme like EES 2010, has left the issue unresolved.

## Significant Difference between the Four Schemes

Heading	SES 2003	SES 205	EES2010	EES2011
Fees	Fee Rs.2000	Fee Rs.3000	No fees	Fee Rs.3000
Requirement of submission of financial statements	Audited Account upto 31st March 2002/03 required to be submitted	Audited financial statements upto the period for which business is carried and Statement of Account for	Statement of Account certified by a Chartered Accountant to be filed	Statement of Account certified by a Chartered Accountant or Statutory Auditor to be filed

		subsequent period		
<b>Asset- Liability status</b>	Audited accounts to show no assets and liabilities	Though not stated in the body of the Scheme, the application stated that the company has no assets and liabilities	Only eligibility criteria is “being inoperative” or “not carrying on any business” for atleast two years.  As is clear from statement of accounts, even companies with Assets and Liabilities may apply under the Scheme	Eligibility criteria is “being inoperative” or “not carrying on any business” since 1 <sup>st</sup> April, 2008
<b>Signing of Application</b>	Application to be signed by minimum of Two directors	Application to be signed by minimum of Two Directors	Application to be digitally signed by one Director or in case of manual signing, by one director.	Application to be digitally signed by one Director or in case of manual signing, by one director.

The scheme is one more opportunity for companies remove deadwood of incorporated entities. Winding up in India is terribly slow and unreasonably complicated. The exit schemes come as a short cut alternative to winding up in cases of companies which have become empty shells