

F.No.17/178/2011-CL-V
Government of India
Ministry of Corporate Affairs
CL V Section

5th Floor, A Wing, Shastri Bhavan,
Dr. R.P. Road, New Delhi
Dated the

All Regional Directors,
All Registrar of Companies,
All Stakeholders

Sub : Proposed guidelines for conversion of section 25 company (non profit company) to an ordinary company under Companies Act, 1956.

Sir,

The Ministry has been receiving representation from various stakeholders to develop a procedure under Companies Act, 1956 for conversion of section 25 company (non-profit company) to an ordinary company because there are a number of section 25 companies which have not done any activity after obtaining license under section 25 or have stopped such activities, and now want to convert themselves as an ordinary company.

2. At present there is no specific provision under Companies Act, 1956, where a company can apply for conversion of a section 25 company (non profit company) to an ordinary company. The Central Government is however empowered under section 25(7) of the Companies Act, 1956 to revoke the license granted under section 25(1) or 25(3) of the Companies Act, 1956. This may tantamount as conversion of section 25 (non-profit) company to an ordinary company subject to certain conditions.

3. Section 25 companies, being a non profit organization/company normally receive contribution from all sections of the society in the form of donations, contributions, etc for the furtherance of the charitable, philanthropic activities or for such other useful objects. Such non profit companies sometime also enjoy special status and benefit from various authorities such as Income Tax, Commissioner of Charity, any organization of Central Government or State Government, Municipal Body or any other recognized authority.

4. The Companies Regulation, 1956 also provides for distribution of assets of such companies on winding up as under : --

“If upon a winding up or dissolution of the company, there remains, after the satisfaction of all the debts and liabilities, any property whatsoever, the same shall not be distributed amongst the members of the company but shall be given or transferred to such other company having objects similar to the objects of this company, to be determined by the members of the company at or before the time of dissolution or in default thereof, by the High Court of Judicature that has or may acquire jurisdiction in the matter.”

5. In the background of above provisions, the Ministry of Corporate Affairs is considering to prescribe following guidelines for conversion of a section 25 company to an ordinary company: --

I. A section 25 Company may apply to Registrar of Company in e-form 61 for its revocation of license under section 25 (7) of the Act. Such section 25 Company should satisfy following conditions: --

- (a) The company should have passed a resolution in general meeting to convert itself into a non section 25 company which should have been approved by all members/shareholders of the company by adopting revised Memorandum and Articles of Association.
- (b) The company has not commenced any activity or operation since its incorporation.
- (c) The company has not received any donation, grants or contribution etc., other than from its members.
- (d) Where the company has obtained any special status from any authority such as Income Tax, Commissioner of Charity or any organization or Department of Central Government, State Government, Municipal Body or any recognized authority then a “No Objection Certificate” has to be obtained from the concerned authority.
- (e) The existing assets, if any has to be transferred to a similar object company before converting it into a non-section 25 company.
- (f) The company should have filed its all upto date Balance Sheets and Annual Returns.
- (g) The Directors have to file an affidavit confirming above compliances/ status.
- (h) A certificate from practicing Chartered Accountants/ Company Secretary/ Cost Accountant certifying the above status / compliances by the company.

II. On receipt of above documents and being satisfied, the Registrar of Companies can considered to revoke license in exercise of his power under section 25(7) of the Act on merits.

6. You are requested to examine the proposed guidelines and furnish your comments/recommendations to the Ministry by 15th July, 2011 by e-mail on following e-mail addresses.

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Yours faithfully,

(Monica Gupta)
Assistant Director