EXITING BUSINESS IN INDIA

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Following are the various modes for existing business in India -

- Transfer of shares for exiting business in India
- Voluntary Liquidation in Existing Business in India
- Winding up by the National Company Law Tribunal when Exiting Business in India
- Other Options for Exiting Business in India

This article discusses all of the above mentioned points in greater detail-

Transfer of shares for exiting business in India

1. Legal provisions governing transfer of shares

Transfer of shares is governed by provisions of the Companies Act, 2013 in India. Further, in case of transfer of shares of an Indian company from resident to non- resident and vice versa, provisions of the Foreign Exchange Management Act, 1999 shall also be applicable.

2. Procedure for transfer of shares to exit business in India

The procedure for transfer of shares is as follows:

- Signing of share transfer form (i.e. form SH-4). Stamp duty of 0.25% is payable on the consideration in case of share transfer. The stamp duty is required to be paid at or before execution of share transfer deed;
- Submission of original stamped and signed share transfer deed along with share certificates by transferor or transferee with the Indian company.
- Approval of transfer of shares by the Indian company by passing resolution either in the board meeting or through resolution by circulation.
- Upon approval, endorsement of share certificate or issuance of new share certificate in the name of the transferee.

- Updation of Register of Members by the Indian company.

In addition, in case of transfer of shares from resident to non- resident and vice versa, transferor or transferor whoever is a resident of India is required to file form FC-TRS with the Reserve Bank of India within 60 days from the date of receipt of funds or transfer of capital instruments, whichever is earlier.

3. Labour and Employment Issues in Exiting Business in India

In case, the existing employees are being transferred to another entity upon change in control through transfer of shares in such a case the employees should be transferred on similar terms and conditions. Also, depending upon number of employees, the company will have to notify the State Government and Central Government and the company may need necessary approvals.

Voluntary Liquidation in Existing Business in India

Voluntary liquidation of company in India is governed by the provisions of the Insolvency and Bankruptcy Code, 2016 and the regulations made thereunder.

Procedure relating to voluntary liquidation while Existing Business in India

To initiate voluntary liquidation, the Board of Directors and shareholders of the company are required pass resolution for approving initiation of voluntary liquidation and for appointment of Insolvency Professional in this regard. Upon appointment of Insolvency Professional, he shall take over the charge of the company and will proceed with further steps including realization of assets of the company, settlement of outstanding dues and distribution of proceeds to the stakeholders and filing of application of voluntary liquidation with National Company Law Tribunal. The Tribunal shall on an application filed by the Insolvency Professional and upon review of documents, pass an order that the company shall be dissolved from the date of that order and be dissolved accordingly.

Winding up by the National Company Law Tribunal when Exiting Business in India

1. Legal provisions governing winding up by the National Company Law Tribunal

Winding up by the National Company Law Tribunal ("Tribunal") is governed by the provisions of the Companies Act, 2013 and Rules made thereunder. A company may be wound up by a Tribunal in the following circumstances:

(i) if the company has by special resolution resolved that the company be wound up by the Tribunal,
(ii) If the company has not filed financial statements or annual returns for the preceding five consecutive financial years,
(iii) If the affairs of the company have been conducted in a fraudulent manner,
(iv) If the Tribunal is of the opinion that it is just and equitable that be company should be wound up etc.

Procedure relating to winding up by the National Company Law Tribunal

In case of winding up of a company by the Tribunal, prior approval of shareholders of the company is required to be obtained. Shareholders of the company shall pass special resolution in the general meeting resolving that the company be wound up by the Tribunal. Upon which, petition for winding up shall be filed by the company with the Tribunal and the Registrar of Companies. The Registrar of Companies is required to provide its views to the Tribunal within 60 days of receipt of such petition. The Tribunal is required to pass an order within 90 days from the date of presentation of the petition.

Other Options for Exiting Business in India

1. Sale of Assets

The shareholders may also exit by way of sale of assets of the company. There are no specific provisions under the Indian laws governing sale of assets. Usually, the parties enter into an Asset Sale Agreement or Asset Purchase Agreement in such kind of arrangement.

2. Fast Track Exit Route for Exiting Business in India

Fast Track Exit Route is another option for business exit in India. However, the said option can be exercised where the company has not commenced its business within a period of 1 year from the date of its incorporation or has not carried business for a period of 2 immediately preceding financial years and has not made any application within such period for obtaining status of a dormant company. Fast Track Exit Route is governed by the provisions of the Companies Act, 2013. Under said route, the application may be made by company where it satisfies any of the aforementioned conditions to the Registrar of Companies to strike off the name of the company. The company shall make such application upon extinguishing all its liabilities.

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