

# Shell Companies

September 21, 2020

A shell corporation is a corporation without active business operations or significant assets. These types of corporations are not all necessarily illegal, but they are sometimes used illegitimately, such as to disguise business ownership from law enforcement or the public.

## Features of Shell Companies

- OECD defines shell companies as a firm that is formally registered, incorporated, or otherwise **legally organised in an economy but which does not conduct any operations in that economy other than in a pass-through capacity.**
- **Illegitimate purposes** for registering a shell company include-

.hiding particulars of ownership from law enforcement

.laundering unaccounted money

.avoiding tax.

- With the shell company as a front, all transactions are shown on paper as legitimate business transactions, thereby turning black money into white. In this process, the business person also avoids paying tax on the laundered money.
- Shell corporations also act as tax avoidance vehicles for legitimate businesses, as is the case with Apple's corporate entities based in the United Kingdom. It is done to **realize tax haven abroad by taking advantage of looser tax codes.**
- India, however, does not have a concrete definition of shell companies. **Shell companies are not defined in any law or act in India.**

## Steps to Eliminate Shell Companies

- A **Task Force on shell companies** was set up by the Prime Minister's Office, under the joint chairmanship of the Revenue Secretary and Secretary, Ministry of Corporate Affairs in **2017**.
- Databases have been compiled, more than 2 lakh companies have been identified and their names have been **struck off the Registrar of Companies (RoC) under Section 248 of the Companies Act, 2013**.
- Section 248 is the crux, and at present, one of the few provisions in the legislation that seeks to curtail shell companies.
- Section 248 vests the power with the Registrar to remove the name of any such company from the RoC where a **company has failed to commence business within 1 year of incorporation or where the company has not been carrying on any business or operation for a period of the preceding 2 financial years and has not applied for dormant company status**.
- The Companies (Amendment) Act, 2019 supplements the provisions of Section 248.

A new **Section 10A** has been inserted which stipulates that a declaration is to be filed by a director within a period of 180 days from the date of incorporation of the company affirming that every subscriber to the memorandum has paid the value of the shares agreed to be paid by him.

Where no declaration has been filed in accordance with Section 10 A, and the Registrar has **reasonable cause to believe that the company is not carrying on any business or operations**, the registrar may initiate action for removal of the name of the company from the RoC.

The Amendment Act has also inserted sub-section (9) in **Section 12** of the Act, which empowers the Registrar to cause a **physical verification of the registered office** of the company on reasonable cause.

The Amendment Act has also **widened the ambit of powers assigned to the Serious Fraud Investigation Office** to ensure speedy and more effective enforcement.