

DORMANT COMPANY

A Company formed and registered under the Act for a future project or to hold an asset or intellectual property and which has no significant accounting transaction.

Such a company or an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant Co.

PRIVATE LIMITED COMPANY:

- a) The Articles restrict the right to transfer its shares
- b) Minimum No. 2; Maximum No: 200 (except in one Person Company).

PUBLIC COMPANY:

- a) Minimum member for Public Company is 7 and there is no maximum
- b) Public company to have minimum 3 Directors and maximum limit is 15.

Woman Director

At least one woman Director Mandatory for.

- (a) Every listed company, and
- (b) Every other public company having paid up share capital of Rs. 100 crore or more or turnover of Rs. 300 crore or more

Resident Director

Every Company must have at least one Director who has stayed in India for a total period of not less than 182 days in the previous calendar year.

Registered office

All companies to have registered office within 15 days of its incorporation and to furnish verification of its registered office within a period of 30 days of its incorporation.

REGISTRATION OF CHARGES

DUTY TO REGISTER CHARGES

- As per Sec 77, it is the duty of the company to register any/ charge created on its property or assets, situated in or outside India, with the registrar of companies **within 30 days of its creation.**
- The ROC may permit registration within 300 days of the creation of the charge if before the **Companies Amendment ordinance 2019**, after ordinance 2019 it shall be registered within 60 days after satisfying ROC about delay and on payment of additional fees.
- The ROC will **issue a certificate of registration** of such a charge.
- Liquidator or any other creditor 'cannot take into account' any charge created by a company unless it is duly registered and a certificate of registration of such a charge is given by the ROC.
- However, the non-registration shall not prejudice any contract or obligation for the repayment of the money secured by a charge.
- Pledge is not expressly excluded by Section 77 but excluded in the form CHG.1.

CHARGE - HOLDER CREDITOR CAN APPROACH ROC

- **If the company fails to register the charge within 30 days**, the person/ entity in whose favour the charge is created may apply to the ROC for registration.

- **The registrar may, within 14 days, allow such registration.** Such creditor can recover from the company the sum of fees paid by him to ROC for registration.

MODIFICATION OF CHARGE

As per Sec 79, any modification in the term and conditions or the extent or operation of a charge shall be registered as the charge registered in Sec 77.

REGISTER OF CHARGES

As per Sec 81 ROC keeps a register of charges. It can be inspected by any person.

SATISFACTION OF CHARGE

- As per Sec 82, the Company shall intimate the ROC of the payment of satisfaction in full of any charge within 30 days from the date of such payment or satisfaction.
- Before registering the satisfaction, the ROC will send a notice to the holder of the charge asking him to show cause within 14 days, as to why the satisfaction should not be recorded.
- No objection is raised by holder, a memorandum of satisfaction shall be entered in the register of charges under intimation to the company

REGISTER OF CHARGES

As per Sec 85, company shall keep at its registered office, a register of charges which should contain all charges and floating charges affecting any property or assets of the Co. Any other person can also inspect it on payment of fees.

PUNISHMENT

- As per sec 86, the company will be punished for any contravention of any provisions in the Chapter IV with a fine ranging between Rs.1 lakh and Rs 10 lakh;
- Also, every officer of the company who is in default shall be punishable with imprisonment up to 6 months or with fine ranging between Rs.25000 and Rs. 1 lakh, or with both.

COMPANIES (AMENDMENT) ACT, 2015

The Companies (Amendment) Bill received the President's Assent on 25th May, 2015 and came as Companies (Amendment) Act, 2015

SECTION	EARLIER PROVISION	PROVISIONS AFTER AMENDMENT
2(68)	Private Company required Minimum Paid up capital of Rs. 1 lac	No requirement of Minimum Paid up capital
2(71)	Public company required Minimum Paid up capital of Rs.5 lacs	No requirement of Minimum Paid up capital
9,12, & 223	Affixation of common seal was mandatory	Use of common seal is now optional
11	Commencement of Business	No requirement of Certificate of Commencement of Business. Section

		11 has been omitted now. But re-introduced as section 10A in companies (Amendment) ordinance 2018
46	A share certificate was issued under common seal of the company	Use of common seal is now optional company does not have a common seal then authorization by two directors or one director and one common seal is sufficient.
123(1)	No provision earlier	No company shall declare dividend unless carried over previous losses and Depreciation are not provided in the previous year set off against profits of current year of company.

THE COMPANIES (AMENDMENT) ACT, 2017

Ministry of Corporate Affairs has notified the Companies (Amendment) Act. 2017. The Amendment Act amended some provisions of Companies Act. 2013 with an aim to help in simplifying procedures, make compliance and for taking stringent action against defaulting companies.

KEY AMENDMENTS:

Issuance of Shares at a Discount

- It was prohibited Section 53 of the Act.
- The Amendment Act allows companies to issue shares at discount to its creditors when its debt is converted into shares in pursuance

of any statutory resolution plan such as resolution plan under Indian Bankruptcy Code (IBC) or debt restructuring scheme.

Payment of Managerial Remuneration in Excess

- It was required for company in general meeting for payment of managerial remuneration in excess of 11% of net profit as per Section 19 of parent Act.
- The Amendment Act now requires company which has defaulted in payment of dues, prior approval of bank or public financial institution concerned or non-convertible debenture holders or other secured creditor. Such payment of managerial remuneration shall be obtained by company before obtaining approval in general meeting.

KNOW YOUR CUSTOMER (KYC)

KYC Guidelines have been issued by RBI under Section 35A of Banking Regulation Act to check Money Laundering i.e., using of banking channel for conversion of illegal funds up to legal funds and financial frauds.

Guidelines

Based on recommendations of Financial Action Task Force (FATF) on Anti Money Laundering standards and on Combating Financing of Terrorism (CFT)

Four Pillars:

- (i) Customer acceptance policy:
- (ii) Customer identification procedures;
- (iii) Categorization of customers; &
- (iv) Risk Management.

Customer Acceptance Policy:

- No account should be opened fictitious, benami or on behalf of other persons whose identity has not been disclosed/verified
- Should not match with any person or entity name listed in sanction list
- Name appearing in Schedule of UAPA, Unlawful Activities Prevention Act, 1967
- FIU Alert List
- ECGC, RBI caution List
- Criminal lists of various law enforcement authorities

Risk Management

- **Risk profiles to be maintained (Low, medium & High Risk)**
- Customer profile
- Based on product category

Customer Identification Procedure

- To identify the customer
- Verify the identity using sources and documents
- There must be sufficient information to establish the identity of customer

- Ascertain the purpose of the intended nature of the banking relationship.
- **OVDs – Officially valid documents**
 - **Valid for all customers:** Passport, DL, PAN Card, Voter ID Card, NREGA Job Card, Letter issued by UIDAI or NPR
 - **Valid for Low Risk Customers:** Simplified procedure to be followed:
 - **ID card with applicant's Photograph issued by:**
 - Central/ State Govt Deptt
 - Statutory/ Regulatory Authorities
 - PSU
 - SCBs
 - Public financial Institutions
 - In case of Low Risk Customer where customer is unable to complete the documentation and the **due diligence is pending**, it is to be done in 6 months after establishing the relationship
- For simplified measures the utility Bills not older than 2 months, property tax receipts, bank account/ PO Account Statement, Pension or Family pension payment orders (if they contain the address), letter of allotment of accommodation from govt authorities & Documents issued by Govt Deptt of foreign jurisdictions and letter issued by foreign embassy or mission of India are **valid for as proof of address.**

Monitoring Transactions

- As per **PMLA/PMLR** stipulations
- Unusual transactions
- Large and complex transactions

- Transactions exceeding the threshold amounts
- Transactions not consistent with customer profile
- High or quick turnover
- 5 reports namely CTR, CCR, STR, CBTR and NTR are to submitted with FIU-IND

E-KYC – AADHAAR Enabled Verification

- Valid under PMLR 9 for KYC verification
- Information like age, name, gender, photograph electronically available
- Validated by biometrics

Another Important Account Types:

Small Accounts:

- where customer is **Low risk Customer** unable to provide OVD, small deposit account be opened subject to:
 - aggregate of total credits in FY not to exceed Rs 100000-
 - aggregate of withdrawals in a month not to exceed Rs 10000-
 - balance at any point is not above Rs 50000
- just to provide a self-attested photograph affixed with signatures or thumb impression
- to be opened only where branches are CBS linked
- A/c is operational for first 12 months, after the 12 months if the customer produces the receipt of applying for OVD, 12 months more period be provided. Means next review after 24 months in total.

Foreign Student Account:

- **NRO Account** can be permitted
- **Documents:**
 - Passport (visa & immigration endorsement) bearing proof of identity and address in home country
 - Photograph
 - Letter of offering admission from the educational institute in INDIA
 - **Local Address:** Undertaking to be obtained in 30 days
 - **Students with Pakistani and Bangladeshi Nationality will require the RBI permissions prior opening the accounts**
 - During first 30 days/ pending address verification – foreign inward remittance not to exceed USD 1000 and max withdrawal of Rs 50000

OTP Based EKYC account

- Consent and declaration to be obtained that no account has been opened and will be opened using OTP based KYC
- Aggregate balance of all the accounts of the customer should not exceed Rs 100000
- Aggregate of all the credits in a FY should not Exceed Rs 200000-
- For loan accounts **only term loan can be sanctioned** and the aggregate amount of term loans cannot exceed Rs 60000

- **CDD** to be completed within 1 year failure to which the account shall be closed. In case of loan account further no debit is allowed.

Customer Due Diligence

- Collect and verify the information & positively establish the identity of the customer
- Understand the nature of the activities of the customer and satisfy regarding them to be legitimate.
 - **Basic Due Diligence**
 - **Simplified Due Diligence**
 - **Enhanced Due Diligence**
- **Screening of Customers**
- It should be done by bank on ongoing basis
- There must be **periodic updating of the documents:**
 - 2 years in case of High Risk Customer
 - 8 years in case of medium risk
 - 10 years in case of Low Risk Customer
- **If KYC requirements are not completed**
 - Partial freezing (DEBIT) after initial notice of 3 months followed by 3 month notice
 - If not completed even after 6 months total freeze the account

Basic Saving Bank Deposit Account

- No-frill account were replaced by BSBDA to provide minimum facilities at the advice of RBI
- No requirement of minimum balance
- Deposit and withdrawals of cash at branch, ATMs, remittance services and collection of cheques
- No limit of deposit transactions, debit transactions are limited to 4 transactions in a month (ATM transactions also included)
- ATM card facility
- Subject to KYC/AML Guidelines, if the account is opened using simplified KYC guidelines then the account would be treated a small account
- Holders of the account will not be eligible for opening any other saving bank account in that bank.
- Existing account is to be closed within a period of 30 days from Date of opening of BSBDA account

Anti-Money Laundering

Process of converting the illegal money into legal/ legitimate one.

- Stages of Money Laundering:
 - Placement
 - Layering
 - Integration

PMLA 2002

- ✓ To prevent the usage of banking system for money laundering
- ✓ To put in place the controls for detection and reporting of suspicious activities

Maintenance of records of Transactions

- Cash transactions of above Rs 10 lakh or its equivalent are to be reported
- Cash transactions where value of all these transactions within a month aggregating rupees 10 lakh even of these transactions or below rupees 10 lakh
- Cash transactions in forged or counterfeit currency notes or banknotes and forgery of a valuable security has taken

Preservation of records

- Banks should maintain for at least five years from the date of cessation of transactions between the bank and the customer, all the necessary records

Reporting of financial intelligence unit

- Cash Transaction Report
- Counterfeit currency notes report
- Non-profit organisation Transaction Report
- Cross border wire Transaction Report
- Suspicious Transaction Report.

Violations under prevention of money laundering act

On Path of violations by the designated director or reporting entity or any of its employees, these can be imposed with penalty not be less than Rs 10000 but may extend to Rs 100000 for each failure.

Central KYC records registry

- CKYCR is the central repository of KYC records of customers in financial sector with uniform KYC norms and inter usability of KYC records across the sector.
- A **14 digit identifier is issued**. All the reporting entities including banks or to file the CKYCR that is the electronic copy of KYC records of customers within 3 days after commencement of an account based relationship.