

**DORMANT COMPANY – COMPLIANCES UNDER 2013
ACT: A COMPILATION**



(A). DORMANT COMPANY [Section 455]:

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(1) Where a company is formed and registered under this Act for a future project or to hold an asset or intellectual property and 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 company.

Explanation.—For the purposes of this section,—

- (i) "inactive company" means a company which has not been carrying on any business or operation, or has not made any significant accounting transaction during the last two financial years, or has not filed financial statements and annual returns during the last two financial years;
- (ii) "significant accounting transaction" means any transaction other than—
 - (a) payment of fees by a company to the Registrar;
 - (b) payments made by it to fulfil the requirements of this Act or any other law;
 - (c) allotment of shares to fulfil the requirements of this Act; and
 - (d) payments for maintenance of its office and records.

(2) The Registrar on consideration of the application shall allow the status of a dormant company to the applicant and issue a certificate in such form as may be prescribed to that effect.

(3) The Registrar shall maintain a register of dormant companies in such form as may be prescribed.

(4) In case of a company which has not filed financial statements or annual returns for two financial years consecutively, the Registrar shall issue a notice to that company and enter the name of such company in the register maintained for dormant companies.

(5) A dormant company shall have such minimum number of directors, file such documents and pay such annual fee as may be prescribed to the Registrar to retain its dormant status in the register and may become an active company on an application made in this behalf accompanied by such documents and fee as may be prescribed.

(6) The Registrar shall strike off the name of a dormant company from the register of dormant companies, which has failed to comply with the requirements of this section.

(B). COMPANIES (MISCELLANEOUS) RULES, 2014 VIS-À-VIS DORMANT COMPANIES:

1. Register of dormant companies

Rule 5. The Register maintained under the portal maintained by the Ministry of Corporate Affairs on its web-site www.mca.gov.in or any other website notified by the Central Government, shall be the register for dormant companies.

2. Return of dormant companies

Rule 7. A dormant company shall file a "Return of Dormant Company" annually, inter alia, indicating financial position duly audited by a chartered accountant in practice in Form MSC-3 along with such annual fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 within a period of thirty days from the end of each financial year:

Provided that the company shall continue to file the return or returns of allotment and change in directors in the manner and within the time specified in the Act. whenever the company allots any security to any person or there is any change in the directors of the company.

3. Certificate of status of dormant company

Rule 4. The Registrar shall, after considering the application filed in Form MSC-1. issue a certificate in Form MSC-2 allowing the status of a Dormant Company to the applicant.

4. Minimum number of directors for dormant company

Rule 6. A dormant company shall have a minimum number of three directors in case of a public company, two directors in case of a private company and one director in case of a One Person Company:

Provided that the provisions of the Act in relation to the rotation or auditors shall not apply on dormant companies.

5. Application for obtaining status of dormant company

Rule 3. For the purposes of sub-section (1) of section 455, a company may make an application in Form MSC-1 along with such fee as provided in the Companies (Registration Offices and Fees) Rules. 2014 to the Registrar for obtaining the status of a Dormant Company in accordance with the provisions of section 455 after passing a special resolution to this effect in the general meeting of the company or after issuing a notice to all the shareholders of the company for this purpose and obtaining consent of at least 3/4th shareholders (in value):

Provided that a company shall be eligible to apply under this rule only, if—

- (i) no inspection inquiry or investigation has been ordered or taken up or carried out against the company;
- (ii) no prosecution has been initiated and pending against the company under any law;
- (iii) the company is neither having any public deposits which are outstanding nor the company is in default in payment thereof or interest thereon;
- (iv) the company is not having any outstanding loan, whether secured or unsecured:

Provided that if there is any outstanding unsecured loan, the company may apply under this rule after obtaining concurrence of the lender and enclosing the same with Form MSC-1 ;

- (v) there is no dispute in the management or ownership of the company and a certificate in this regard is enclosed with Form MSC-1;
- (vi) the company does not have any outstanding statutory taxes, dues, duties etc. payable to the

Central Government or any State Government or local authorities etc.;

- (vii) the company has not defaulted in the payment of workmen's dues;
- (viii) the securities of the company are not listed on any stock exchange within or outside India.

(C). FINANCIAL STATEMENTS FOR DORMANT COMPANIES

Financial statements have to be prepared as per format stated in Schedule III which is in line with Schedule VI. The major change in financial statements includes - cash flow statement and statement of changes in equity. Cash flow statement is part of financial statements for all companies except one-person-company, small-company and dormant-company [Section 2(40)]. Cash flow statement needs to be prepared as per AS 3, i.e., direct method or indirect method, but for listed companies indirect-method is to be followed. Statement of changes in equity is included keeping in view applicability of Ind-AS when notified. Expenditure on CSR has to be shown as a separate line item in profit and loss account.

(D). MEETINGS OF BOARD

A One Person Company, small company and dormant company shall be deemed to have complied with the provisions of this section if at least one meeting of the Board of Directors has been conducted in each half of a calendar year and the gap between the two meetings is not less than ninety days [Section 173(5)]

(E). APPROVAL OF FINANCIAL STATEMENTS BY BOARD OF DIRECTORS

Sub-section (1) of section 134 of the Act provides that the financial statement, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board.

The following points may be noted:

- ◆ Approval cannot be by circular resolution of the Board.
- ◆ Approval has to be at Board Meeting in terms of section 179(3) (g) of the 2013 Act.
- ◆ Approval of accounts shall not be dealt with in any Board meeting held through video conferencing or other audio-visual means.

(F). CIRCULATION OF FINANCIAL STATEMENTS

Sub-section (7) of section 134 provides that a signed copy of every financial statement, including consolidated financial statement, if any, shall be issued, circulated or published along with a copy each of—

- (a) any notes annexed to or forming part of such financial statement;
- (b) the auditor's report; and
- (c) the Board's report referred to in sub-section (3).

(G). PERSONS ENTITLED TO COPIES OF FINANCIAL STATEMENTS

Section 136(1) of the Act provides that a copy of the financial statements, including consolidated financial statements, if any, auditor's report and every other document required by law to be annexed or attached to the financial statements, which are to be laid before a company in its general meeting, shall be sent to:

- ◆ every member of the company,

- ◆ every trustee for the debenture-holder of any debentures issued by the company, and
- ◆ all persons other than such member or trustee, being the person so entitled,

not less than 21 days before the date of the meeting.

(H). FILING OF FINANCIAL STATEMENT WITH REGISTRAR

The company is required to file with the concerned Registrar of Companies the financial statement including consolidated financial statement, if any, along with all the documents which are required to be or attached to such financial statements in the Form AOC-4 with prescribed fees within 30 days from the date on which the financial statement were laid before a company at an annual general meeting. [Section 137(2)]

A company shall, along with its financial statements to be filed with the Registrar, attach the accounts of its subsidiaries which have been incorporated outside India and which have not established their place of business in India.

If an annual general meeting of a company is not held even then the financial statement along with the documents required to be attached shall be filed with the Registrar within thirty days of the last date before which the annual general meeting should have been held along with a statement for stating reasons for not holding AGM with the prescribed fees. [Section 137(2)]

(I). ANNUAL GENERAL MEETING

Pursuant to the provisions of section 96, every company other than a One Person Company, whether public or private, incorporated under the provisions of the Companies Act, 2013 shall hold during every year a general meeting of members, which shall be called 'Annual General Meeting'. It is mandatory on every company to hold an annual general meeting in every calendar year. Year means calendar year.

The fact that the company did not function is no excuse for not convening an annual general meeting. [Madan Gopal Dev v West Bengal (1969) 39 Comp Cas 119: AIR 1968 Cal 79]

A new company which is registered under the Act other than a one person company, shall hold its first annual general meeting latest within a period of nine months from the date of closing of the first financial year of the company. Not more than 15 months shall elapse between the date of one annual general meeting of a company and that of the next [Section 96(1)]. If the first annual general meeting is so held, it is not necessary for the company to hold another annual general meeting in the year of its incorporation. The subsequent annual general meetings shall be held within a period of six months from the date of closing of the financial year.

(J). ANNUAL RETURN

Section 92(1) read with Rule 11 of the Companies (Management and Administration) Rules, 2014 provides that every company shall prepare a return (hereinafter referred to as the annual return) in the prescribed Form MGT-7 containing the prescribed particulars as they stood on the close of the financial year.

Section 92(4) provides that every company shall file with the Registrar a copy of the annual return, within sixty days from the date on which the annual general meeting is held or where no annual general meeting is held in any year within sixty days from the date on which the annual general meeting should have been held together with the statement specifying the reasons for not holding the annual general meeting, with such fees or additional fees as prescribed in the Companies (Registration Offices and Fees) Rules, 2014. [Rule 12(2)]

Section 92(3) of the Companies Act, 2013 read with Rule 12(1) of the Companies (Management and Administration) Rules, 2014 states that an extract of the annual return to be attached with the Board's Report shall be in Form MGT-9.

1. Signing of annual returns

(a) The annual return shall be signed by a director and the company secretary, or where there is no company secretary, by a company secretary in practice.

(b) In relation to One Person Company and small company, the annual return shall be signed by the company secretary, or where there is no company secretary, by the director of the company.

2. Certification of annual returns in case of listed company

(a) The annual return, filed by a listed company or, by a company having paid-up share capital of Rs. 10 crore or more and turnover of Rs. 50 crore rupees or more, shall be certified by a Company Secretary in practice. The certificate shall be in Form MGT-8. [Rule 11(2)]

(b) The certificate shall state that the annual return discloses the facts correctly and adequately and that the company has complied with all the provisions of this Companies Act.

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**With Warm Regards
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