

# DOCUMENTATION & LEGAL ASPECTS



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# DOCUMENT IS AN EVIDENCE OF CONTRACT

- ❖ Banking relationship is a **contract** between the Bank & the Customer. (Indian Contract Act, 1872).
- ❖ Customer should be **legally capable** of entering into a valid contract .
- ❖ **Application** from customer to the Bank must be in the proper form.
- ❖ Above holds good for both **Deposit & Borrower** accounts.
- ❖ Banker needs to be conversant with **legal provisions** of various Acts.
- ❖ Banker should take care more caution in respect of **lending**.

# WHAT IS DOCUMENT ?

❖ Document means any matter expressed or described upon any substance by means of **letters, figures** or by more than one of these means intended to be used or which may be used for the purpose of **recording** that matter with an intention of producing the same as **evidence**.

(Sec.3 of Indian Evidence Act 1872)

❖ In common usage Documents are related to **written record** created for the purpose of **evidence** while lending the bank funds.

# WHY DO WE NEED DOCUMENTS



- For creation of **charge** on the securities.
- *Means of **evidence** acceptable to the **Court** of Law under Section 61 and 62 of Indian Evidence Act and Section 34 of Bankers' Books Evidence Act **1872**. To provide acceptable evidence to the court of law for enforcing securities charged to the Bank.*
- Under Negotiable Instruments Act 1881, Banker acquires a right to file a **money suit** based on Demand Promissory Note executed by the borrower.

# NEED & IMPORTANCE OF DOCUMENTS



- ▶ It **identifies** borrower, guarantor, security, nature of charge & creation of Bank's charge on security.
- ▶ **Written evidence** of transaction & hence can not be disputed by the executant in future.
- ▶ It is accepted as an evidence of fact in **court of law** in any legal proceedings against defaulter. **Documentary evidence** (Section 64 of the Indian Evidence Act).
- ▶ **Recording** happening of an event/incident.
- ▶ Helps Bank to safeguard it's interest by incorporating **protective clauses** as & when felt necessary.
- ▶ Filing of **money suit or suit for enforcement of securities.**
- ▶ Deciding period of **limitation.**



# PROCESS OF DOCUMENTATION

- Drafting \ Taking Proper Documents/ Formats
- Stamping
- Filling Up
- Signing/Execution
- Checking ( Vetting for limits of Rs. 50 lakhs & above)
- Recording
- Registration
- Documentation Charges collection
- Safe-keeping
- Keeping documents Alive

# PRECAUTIONS IN DOCUMENTATION

- ◆ Obtain **full set of documents** depending upon the nature of facilities.
- ◆ **Fill in the documents correctly** as per the terms of Sanction .
- ◆ **Never** to deliver **blank documents** to the borrower for execution in absentia as it may prove to be fatal.
- ◆ **Schedules of Securities** should be properly filled in full details.
- ◆ As a principle, the security documents should always be **signed by the borrower/s himself/themselves** and not by their Constituted Attorneys otherwise it may lead to several legal complications. However, in law such an execution is not invalid if executed legally. Hence, ZO legal Dept. Should be consulted in case of necessity.

# REQUISITE OF SOUND DOCUMENTATION

- **Correct name** of borrower/guarantor,
- **Proper Recital** (Drafting part),
- Properly **stamped**. Documents with shortfall of stamp duty can be validated after payment of shortfall in duty along with penalty. Collector of Stamps is the authority to decide about the correct amount of stamp duty payable.
- Description of **security**,
- **Consideration amount**, i.e. Amount of loan/limit,
- **Terms of Repayment**,
- **Other Terms** mutually agreed **upon**,
- **Place** of execution & **date** of execution,
- Duly **registered** wherever required,
- ***Valid & Legally enforceable.***



# CARE TO BE TAKEN IN DOCUMENTATION DURING EXECUTION

- Documents should be **properly filled in**.
- **Alteration**, if any to be authenticated by executants. Hence, we obtain Borrower's/Guarantor's signatures/initials at every place wherever 'blanks' appear which are to be filled.
- Execution should be **in the presence of officer** responsible for obtaining them as he should be able to identify the executants **personally**.
- **Same handwriting, same ink** for maintaining continuity and uniformity in the fields.
- **Full signature** (not initials) & each page to be signed at the end and at also the places wherever blanks (information to be filled in) appear.
- **Date & Place** of execution.
- **Date** to coincide with first **disbursement**.

*(Our Bank's practice is to pass on at least nominal consideration on the date of execution of documents)*

## CARE TO BE TAKEN IN DOCUMENTATION DURING EXECUTION

- Word **'ONLY'** never to be put after the amount particularly in the **DP Note**.
- Power of Attorney (**POA**) should be **registered** one.
- **Documents checked stamp** to be put on the reverse of the documents & initialed by checking officer.
- Documents to be entered in the **security register** under initial of responsible officer.
- **Illiterate person** – contents of the documents to be explained in the language understood by him. Declaration to be obtained from borrower duly countersigned by responsible officer to be kept on record.
- Normally we obtain Right Hand Thumb Impression (RHT) in case of females & Left Hand Thumb Impression (LHT) in case of males.

# WITNESSING

U/S 3 of TP ACT If document is not duly witnessed will be treated as not executed must be executed first then witnessed by 2 or more persons not a party to the transaction.

1. Mortgage Deed
2. Sale Deed
3. Guarantee Deed
4. POA
5. Assignment on Instrument
6. Will.

# SARFAESI ACT 2002

- As per SARFAESI ACT 2002, GOI has formed a Central Registry called CERSAI, HEADED by the Central Registrar, to maintain a central register in electronic form.
- As per the rule framed under this act, banks/FI must register the creation of security interest within 30 days of such creation.
- It may be registered with penalty within further 30 days.

# THE CHARGE IS OF THREE TYPES

Fixed Charge: This covers a legal on specific property of the company and the company can not deal with the property without consent of the holder of the charge.

Floating Charge: This is an equitable charge created on certain assets of the company, which is continuously changing i.e. .Stock in Trade.

Pari Passu Charge: This charge is created in favour of several creditors with equal priority in proportion to the amount of their advances.

# STAMPING OF DOCUMENTS

- ❖ The law relating to stamp duty in India is governed by the Indian Stamp Act 1899, which extends to whole of India **except J&K**.
- ❖ Any document which creates or relinquish or transfers a right represented in the document needs to be stamped as per Indian Stamp Act as otherwise, it will not be admissible as evidence in the court.
- ❖ DP note, Bill of exchange, Bill of lading, Letter of Credit, Share Transfer Form Debenture, Proxy, Insurance policy and money receipts need to be stamped as per Central Act i.e. contained in union list.
- ❖ The State Govt. can prescribe the rate of stamp duty for instruments other than the one listed in Union list above.

# STAMP DUTY

## Central Government Stamps applicable on

- a) DP Note
- b) Bill of Exchange
- c) Letter of Credit
- d) Money Receipt
- e) Share Certificate
- f) Debenture
- g) Proxy
- h) Insurance Policy

# STAMP OF STATE GOVT.

## State Government Stamps applicable on

- a) Mortgage
- b) Hypothecation**
- c) Guarantee
- d) Pledge
- e) Power of Attorney
- f) Partnership Deed**
- g) Agreements



# TYPE OF STAMPS

**1. Judicial**

**2. Non Judicial**

**Adhesive**

**Special Adhesive**

**Embossed/E-Stamp**

**3. Postal**

# VALUE/CANCELLATION OF STAMPS

- As per section 17-Document should be stamped on or before execution.
- **Value of the Stamp** - sec 31 In case of doubt collector stamp duty will decide the amount.
- By executants in writing and across the stamp so that it cannot be re used.
- **Non Cancellation or Improper Cancellation will be deemed as unstamped.**
- One signature to be obtained outside the stamp also.

# EXECUTION OUT OF STATE/ INDIA

## INDIA

If documents executed out side India, then after reaching to India again stamping is required within 3 months.

## STATE

It should be stamped as per state act where it is executed first then to be send to other state, difference to be paid if duty is more in second state (in 2<sup>nd</sup> state).

If documents are signed in one state end to be enforced in other state difference to be paid within 3 months of receipt of document.

# EXECUTION OF DOCUMENTS AS PER TYPE OF BORROWERS

- Individual;
- Joint Account holder;
- Hindu Undivided Family (HUF);
- Trusts;
- Executors & Administrators;
- Agent/Attorney;
- Firms – Proprietary & Partnership;
- Clubs & Associations;
- Limited companies;
- **Legal provisions & Documentation differ for all above customers.**

# DOCUMENTATION BY INDIVIDUAL

- Individual should be **major**, i.e. of **18 years** of age in normal or **21 years** in exceptional cases,
- Should be of **sound mind**,
- Should not be an **undischarged insolvent**,
- Should be in **good sense** while executing documents/entering into a contract,
- **Drunken person** is not legally competent to enter into a contract.

[Indian Contract Act, 1872].

# CONTRACT WITH MINOR IS NULL & VOID

- Person below the age of 18 is called as **Minor**.
- **Minor is not capable of entering into contract & such contract entered into by minor is null & void. It will not stand in law & the assets of the minor are not available to the Bank for appropriation.**
- Even if advance is granted to the minor against the **guarantee of third party who is legally competent** to execute guarantee, legal remedy to recover the dues from guarantor is not available to the Bank.

## EXCEPTION – FINANCING TO MINOR

- Normally Banks do not finance to the minors.
- However, there is an *exception* where finance can be made for the **benefit of minor**. Security documents in such cases are executed by **Guardian** of the minor.
- Minor can draw, endorse, deliver & negotiate instruments so as to bind all other parties except himself.
- Even minor can be a partner & may make an agreement which will be binding on other partners but will not be binding on himself.

# COMPANIES ACT (MODIFIED), 2013

## REGISTRATION OF CHARGE UNDER THE COMPANIES ACT

- Under Section 77 of the Companies Act, the following charges created by a company are required to be registered with Registrar of Companies (ROC).
- A charge on any immovable property of the company.
- A charge on any book debt of the company.
- A charge, not being a charge of Pledge, on any movable property of the company.
- A floating charge on the undertaking or any property of the company including stock-in-trade.
- A charge on any issue of debenture, uncalled share, call made but not paid, a charge on goodwill, patent etc.



# COMPANIES ACT, 2013

## Rules for Charge of Registration:

- The applicable forms CHG-1 is required to be completed and submitted, **ON LINE**, within 30 days of creation of charge, for Registration of Charge with ROC.
- CHG series from CHG-1 to CHG-9 is to be used for various purposes.
- Charge eligible for registration to be registered within 30 days of date of execution of such Document, as per which charge is created.
- Registrar may condone the delay of another 270 days on payment of additional fees not more than 10 times the amount of specified fees.
- If not filed within 300 days – Govt. of India, Ministry of Corporate Affairs, through Company Law Board, is to accord sanction, for delayed registration.



# COMPANIES ACT (MODIFIED), 2013

- Consequence of non-filing of charge Form for Registration with R.O.C.
- A charge, if not registered, is void against the liquidator in case the company goes in liquidation and against the creditor who has created & registered charge on the same assets. However, a charge, although not registered, is a valid charge against the company as long as it is a going concern. Further, the priority of charge is reckoned from the date of its creation and not from its filing/registration, AS HITHERTO.

# CASE LAW FOR RTO REGISTRATION

- CONSEQUENCE OF NON-REGISTRATION OF CHARGE OF A MOTOR VEHICLE WITH R.T.A.
- Non – registration of charge on the vehicle with Regional Transport Authority discharges the guarantor under Sections 139 and 141 of Indian Contract Act (Jose Inacio Lourence Vs. Syndicate Bank and another – H.O. Br.Cir. 83/124 dated 29.05.89)

# FINANCING BY MULTIPLE BANKS & CONSORTIUM FINANCE

- ❖ **Increasing frauds** owing to **lack of information** about **credit history & conduct of account** among banks.
- ❖ Policy on **Joint Lending Agreement** prepared by Ministry of Finance (GOI) & given to the PSBs.
- ❖ Joint Lending Arrangement (**JLA**) is **mandatory** for PSBs in case of borrowers seeking credit limits of **Rs. 150 crore & above** from multiple banks.
- ❖ Financing banks also required **to exchange information on continuous basis** for proper monitoring of the accounts.

## LIMITATION PERIOD OF DOCUMENTS

- **Limitation Act** prescribes **max. period within which Bank can enforce it's right to recovery in court of law.** No suit is allowed after lapse of limitation period.
- **DP Note** – 3 years from the date of execution.
- **Mortgage** – 12 years from the date of creation of charge.
- **Guarantee** – 3 years from the date of invocation of guarantee.
- **Execution of Decree** – 12 years from the date of decree.

# LOAN ACCOUNT-WISE LIMITATION

- ❖ DEMAND LOANS....3 Years from date of loan
- ❖ DP Note                      3 Years from the date of DPN
- ❖ Term Loan ...              3 Years from due date of each installment
- ❖ CC Hyp. of stock            3 Years from date of document.
- ❖ Bills discounting            3 Years from due date of respective bill
- ❖ Bills purchase                3 Years from bill date
- ❖ Execution of decree..12 Years from date of decree

# DOCUMENTATION IS A WIDER CONCEPT

- Documentation is **not restricted only to the security documents.**
- Also includes every important document right from *Loan Application, CBD-23, Other supporting papers submitted by the Borrower, Sanctioned Proposal, sanction conveying letter to the borrower, Inspection Reports, Statement of Account, Important correspondence with the borrower & every such important piece of document that strengthens Bank's case against the defaulter borrower.*
- **Hence, Documentation needs to be done in all seriousness to protect Bank's interest.**

# FACILITY WISE DOCUMENTATION

- ❖ Branches need to obtain prescribed stipulated documents depending upon the nature/type of loan/finance & terms of sanction.
- ❖ Documents for Retail loans are stipulated in respective Master Branch Circulars.
- ❖ Details about the relevant Branch Circular Nos. of Retail loans & other information about CHA series documents is given by way of an Annexure to this PPT. [security documents.docx](#)



# WHO WILL EXECUTE THE DOCUMENTS

- ▶ Minor – **Guardian** to execute clearly stating him as guardian for the minor.
- ▶ Sole Proprietorship – Proprietor to sign documents **on behalf of the firm as well as in his individual capacity**. On DP Note “**We**” to be written.
- ▶ HUF – Documents to be executed by **Karta**. All **major coparceners** to be made **guarantors**.

## WHO WILL EXECUTE THE DOCUMENTS

- ▶ **Illiterate Borrower** –Normally Left hand thumb (**LHT**) impression in case of **males** in the presence of Bank official. Wording to appear below LTI – “Left Thumb Impression of Shri-----”. This ***should not be attested*** on the document.
- ▶ May be **attested** on a **separate piece of paper** which may be kept with the documents. Additionally, a **letter** stating that the contents of the documents were explained to & understood by him to be obtained and **countersigned by a witness** & kept on record.

# JOINT BORROWERS

- Two or more persons or a group of individuals who do not constitute a registered body of association are called joint borrowers.
- All **documents are signed by all** – jointly & severally. It means all are jointly liable plus each one of them is individually liable for repayment of Bank's dues.
- In case of death or insolvency of any one or more of joint borrowers, account showing debit balance is **broken** to determine liability of deceased joint account holder/s.

# WHO WILL EXECUTE THE DOCUMENTS

- ▶ Partnership firm – Documents to be executed by **all partners on behalf of firm** as well **as in their individual capacity**. This is to make their individual estate liable for bank's dues.
- ▶ Limited company – As per stipulation in **Board Resolution**. Affixing of common **seal of the company** on security documents. Registration of charge with Registrar of Companies (**ROC**) under S.125 of Companies Act 1956. Charge to be created within 30 days of the date of documents.
- ▶ **Form 8** – For Registration & Modification of charge.
- ▶ **Form 17** – For satisfaction of charge.

# HINDU UNDIVIDED FAMILY (HUF)

- Creation of Hindu Law under which all male members of the family get right by birth in the ancestral property of the family.
- Major male members are called **coparceners**.
- All members of HUF are bound by community of interest and unity of possession of property.
- HUF property is managed by senior most male member called **Karta**. Upon death of Karta, next senior male coparcener becomes Karta.
- **Karta has authority to borrow money for the family necessities & for ancestral family business.**
- ***In law, each coparcener's liability is limited to his own interest in the joint property. Hence, Bank insists that security documents are signed by all the coparceners.***

# PROPRIETARY FIRMS

- Business wholly owned by an individual.
- In law, there is no difference between proprietor & the firm.
- Creditors have recourse not only against assets of the firm but also against **private assets of the proprietor.**
- Bank insist that proprietor should execute the security documents in the capacity as **Proprietor on behalf of the firm** as well as in his **individual capacity.**

# LIMITED COMPANIES

- Company incorporated under Companies Act 1956.
- Company is a legal person with perpetual entity & is distinct from its members.
- Company limited by shares.
- Public Limited Company – Whose shares are offered to the public & are listed on stock exchange. Min 7 members & max. no limit.
- Private Limited Company – Members more than 2 but max. 200 members. Shares are not offered to public. Transfer of shares is restricted. (Closely held shares).
- *Public Limited Company – Certificate of commencement of business must to commence business.*

# DOCUMENTS TO BE OBTAINED FROM LIMITED COMPANY

- Certificate of Incorporation & Certificate of commencement of business – Issued by Registrar of Companies. It is **conclusive proof for incorporation of the company & compliance of all formalities** by promoters. **Certificate of commencement of business is not required by Private Ltd. Co.** as it's shares are closely held & it can commence business on it's incorporation
- Memorandum of Association – Company's **fundamental & unalterable law**. Embodies Company's name, Authorized capital, Objectives of the company, Liability of share holders, Borrowing powers etc. Any act done or contract entered into by the company which is outside the scope of Memorandum is **ultra vires**, i.e. Beyond the powers of the company & not binding on it.



# DOCUMENTS TO BE OBTAINED FROM LIMITED COMPANY

- Article of Association – Regulations controlling **internal management** of the company. Rights & powers of the Directors, rules about conduct of company meetings & business, Procedure for borrowing & limit on borrowing etc.
- Borrowing powers of the company are restricted by the Memorandum of Association. For borrowing in excess of the ceiling set by Memorandum, a resolution needs to be passed by shareholders at general meeting specifying limit upto which the company may borrow.
- Copy of Board Resolution – Certified copy of Board Resolution authorizing to borrow from the Bank with details of limit, security etc., Persons who are authorized to sign the security documents & operate the Bank Account, persons in whose presence Seal of the company will be affixed to the security documents.

# BEST PRACTICES BY BANKS

- Photo copies of the documents to be made available to the borrower on demand.
- Original documents (Title Deeds etc.) to be returned to the borrower within max. period of 15 days from the closure of the account or else Bank will have to pay penalty as per BCSBI code.

# DOCUMENTATION

**ADDITIONAL DOCUMENTS TO BE OBTAINED AS PER CONSTITUTION OF THE BORROWER:**

***Limited Company:***

- Certificate of incorporation
- Certificate of commencement of business (in case of Public Ltd. Company only)
- Memorandum of Association
- Article of Association
- Board Resolution (True copy of the resolution duly certified by the Chairman of the meeting at which resolution was passed)

**Stage I: At the time of opening of account**

**Stage II: At the time of applying for advance facility**

**Stage III: At the time of documentation/disbursement: affixing of common seal where required – for model resolution, please refer to Manual of Instructions Vol. III Part II Page No. 184 to 186.**

- Guarantee by the directors in their personal capacities (wherever being obtained)
- Stamped undertaking signed by the directors of the company/guarantors not to receive any charges/commission/fee etc. (L490)
- Undertaking from the company not to pay any charge/commission/guarantee fee to the directors
- Stamped undertaking from the company to the effect that in the event of company turning sick, bank will be authorized to nominate director.

## **In case of Limited Company Borrowers following additional precautions need to be taken:-**

- Branch must have on its records the address of the Registered Office of the Company, where all documents and notices need to be served.
- Branches should ensure that Corporate Borrowers deal exclusively with the Bank or Banks where credit limits are granted to them under consortium. An undertaking to the effect that Company will not open any account or approach any other Bank for facilities with prior consent in writing from the Bank should be obtained.
- Branches must pursue the Memorandum of Association of Ltd. Co. to ascertain that the purpose and the amount of facility are authorized under it. **It must be ascertained whether there is any restriction on the Borrowing by the Company. If yes, that limit should never be breached, since this excess borrowing will be ultra-virus and such borrowing cannot be regularized by the General Meeting. Thus Bank cannot avail itself of any security held to cover such borrowing.**

- **The Board of Directors of a Company, is required, under Section 292 of the Companies Act 1956 to exercise the powers specified therein on behalf of the company only by means of Resolutions passed at duly convened meetings of the Board and such powers cannot be exercised by means of a Circular Resolution passed without calling a meeting of the Board.**

- **The Board of Directors cannot borrow in excess of Paid-up Capital and Free Reserves (apart from temporary limits) of the Company without consent of the Company in General Meeting. A Certificate that total Borrowings of the Co. together with the advance limit fixed by the Bank are not in excess of the limits prescribed under Section 293(1) should be incorporated in the Board Resolution.**

**(For detailed instructions on Temporary Limits please refer to Page 71 Para 4.11.16 of Manual of Instructions**

**Volume 3, Part I Revised 31.07.2004)**

## ➤ **Other Legal formalities in case of a Ltd. Co.**

- Search report in the office of Registrar of Companies to the effect that there is no outstanding charge on the security proposed.
- Registration of charge u/s 125 of the Indian Companies Act 1956. Form required to be filed in triplicate is 8 and 8.
- Modification of charge u/s 135 of the Indian Companies Act 1956. Form required to be filed in triplicate is 8 & 8
- Satisfaction of charge u/s 138 of the Indian Companies Act 1956. Form required to be filed is 17 & 8.
- Charge with ROC must be registered immediately but maximum within 30 days of the date of Creation of Charge i.e. date of Execution of Documents

## ***Partnership Firm:***

1. Partnership Letter L-438
2. Copy of registration with Registrar of firms.

## ***Hindu Undivided Family:***

- HUF Letter OD-115A [HUF letter for trading purposes (OD-115) at the time of opening account]
- Undertaking from major co-parceners of the family:
  - regarding business being their family business;
  - regarding liabilities on behalf of minor and new co-parceners
  - regarding their continuance to the liability to the bank in the capacity of co-parceners and separately, both.

### ***Trust:***

- Copy of trust deed, verified from the original trust deed only
- Registration of trust with Charity Commissioner. Certificate of registration under the Local Public Trust Act.
- Copy of resolution passed in the board of trustees duly signed by all the trustees.

### **Checkpoints in Trust Accounts:**

- Relevant extract from the instrument pertaining to the number of trustees, operation of bank account, power of delegation etc. would be entered in the register OD-127A.
- All the trustees should act together.
- Trustees cannot delegate their authority.
- Verify whether public or private trust.
- What is the objective of the trust and who are beneficiaries.
- Trust Deed should have a provision regarding avilment of advance.
- Advance to trust can be sanctioned by Zonal Manager and above.
- Personal guarantee of trustees should be obtained.



## ***Clubs, Schools, Societies etc:***

- Certified true copy of rules, regulations and byelaws.
- Certificate of registration – certified true copy.
- Certified true copy of the resolution, passed by the Managing Committee of the society.
- List of members of Managing Committee with true copy of the resolution electing them as committee members.

## **Check Points for Accounts of Clubs, Schools, Societies etc:**

- Club, School, Society is compulsorily registered. In the accounts of the unregistered body, even overdraft should not be allowed.
- Bye Laws must include purpose for which an advance can be made.
- Ascertain borrowing powers.
- As far as possible, personal guarantee of respectable members of means of the Managing committee should be taken.
- In case of need, advice from Law Department should be taken.
- Mortgage ( Property in the name of Society} – Provisions of Societies Registration Act of State to be observed and followed.
- Powers to borrow
- Limitation of the powers
- Whether sanction from Government or any other authority is required.
- Whether any restriction on rate of interest and form of advance.

## ***Accounts of Bodies/Authorities:***

- Certified true copy of rules, regulations, if any.
- Verify the statute under which the local body is created.
- Certified true copy of resolution passed by local body in accordance with its constitution.
- Seek legal advice from the law department before finalizing the proposal (It is to verify the statute under which the local body is governed)

