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SHIFTING OF REGISTERED OFFICE FROM ONE STATE TO OTHER



Meaning of Registered Office:

A registered office is the official address of a company to which all official letters, notices and reminders will be sent by any person, any government or non government or regulatory body. In terms of Section 7 of the Companies Act, 2013 (the “Act”), all registered companies are legally required to have a registered office address in India from the date of commencement of business or within fifteen days (As per Companies Amendment Act, 2017 period of 15 days shall be substituted with 30 days) from the date of incorporation whichever is earlier. However, under the incorporation process effective as on date, the proposed company is required to intimate the address of its proposed registered office the time of incorporation itself.

Usually a registered office is situated where most of the stakeholders reside. The only reason being is for their convenience. However sometimes it happens so that the registered office needs to be shifted to another place for better management of the company. The shifting can be within the local limits of same city, outside the local limits within same city, from jurisdiction of present ROC to jurisdiction of another ROC (in Maharashtra and Tamilnadu) and sometimes, from one state to another.

Out of State Shifting of the Registered Office under the Companies Act, 2013 Provisions relating to shifting of the registered office from one state to another are contained in Section 13(4) of the Companies Act, 2013 which are detailed

in the rule 30 of The Companies (Incorporating) Rules, 2014. In the present article, this procedure has been given in a step by step manner for easy understanding of the readers.

BELOW WE DISCUSS THE DETAILED PROCEDURE FOR SHIFTING OF REGISTERED OFFICE OF A COMPANY STEP BY STEP:

A. Call and Hold a Board Meeting:

- To consider the proposal for shifting of registered office.
- Fix up the date, time, and place of the General Meeting.
- Approve the notice of Extraordinary General Meeting and calling of General Meeting.

- Authorize the CS or Director to move an application before RD to alter Clause II of Memorandum of Association within whose jurisdiction the registered office of the company (before change) is situated.
- The Board shall authorized the Director and the Secretary severally to see that the consent of the Creditor and debenture holders if any etc. is obtained or that sufficient provisions is made for the discharge of their debts or adequate security is made section 13(5).
- Authorise the CS or Director to move an application before CG for approval .

B. Send Notice of general meeting to all members along with Explanatory Statement (Section-102), Proxy Form, Route Map and Attendance Slip.

C. Hold General Meeting and Pass the Special Resolution approving the shifting subject to the approval of the RD.

D. Prepare the Minutes of Extraordinary General meeting/ General Meeting.

E. After taking the approval of the members, file a certified copy of the special resolution along with the explanatory statement and altered copy of MOA within 30 days of passing of Special Resolution in form MGT-14 (Filing of Resolution and agreement to the registrar under section 117) with ROC.

Attachments: (Attachments of e-form MGT-14)

- ✓ Copy(s) of Special Resolution(s) along with copy of explanatory statement under section 102.
- ✓ Altered Memorandum of Association [MOA].
- ✓ Minutes of EGM.
- ✓ Shorter Notice consent if any.

F. Publication of Notice in News Paper:

Publish a notice in Form No.INC.26, at least once vernacular newspaper in the principal vernacular language in the district in which the registered office of the company is situated, and at least once in English language in an English newspaper circulating in that district.

G. **Prepare a list of CREDITORS and DEBENTURE HOLDERS** and intimate them accordingly.

- ✓ The list is required to be filed with the application.
- ✓ The list should be duly verified by an affidavit.
- ✓ List should be verified by the Statutory Auditor of the Company.

- ✓ The list should not precede the date of filing of petition by more than one month (List Should not be older than one month from filling of petition).

List Contain the Information:

- ✓ The names and address of every creditor and debenture holder of the company;
- ✓ The nature and respective amounts due to them in respect of debts, claims or liabilities:

AFFIDAVIT:

As per Rule 30 Sub Rule (2) of The Companies (Incorporation) Rules, 2014 (Affidavit should be signed by the Company Secretary of the Company, if any and not less than two directors of the Company, one of whom shall be managing Director, where there is one, to the effect that they have made a full equity into the affairs of the company and, having done so, have formed an opinion that the list of creditors is correct, and that the estimated value as given in the list of the debts or claims payable on the contingency or not ascertained are proper estimates of the values of such debts and claims and that there are no other debts of or claims against the company to their knowledge)

H. **Prepare List of Employees:**

The Application on affidavit from the directors of the company that no employee shall be retrenched as a consequence of shifting of the registered office from one state to another state.

I. **Prepare List of Application:**

Company will prepare the application for shifting of Registered Office along with the required documents.

J. Prepare an Application in and all relevant annexure to be filled with the Regional Director for seeking approval for shifting of the registered office from one state to another.

K. Send a copy of the application with complete annexure to the **Chief Secretary of the State** where the registered office is situated at the time of filing the application and obtain acknowledgment for sending the notice.

L. The Petition along with the enclosure should be Serially Numbered and scanned copy of the petition is filed in Form GNL-2 with Registrar of Companies.

M. The Original Application U/s 13(4) along with all Necessary Annexure for seeking approval of the ¹Central Government (Regional Director) for shifting of Registered office from one State to another shall be filed in **Form- INC-23** along with the fee and the following documents:-

- a. A copy of the Memorandum And Articles Of Association;
- b. **Certified True Copy of Board Resolution.**
- c. A copy of the Notice Convening The General Meeting along with relevant Explanatory Statement;
- d. A copy of the Special Resolution sanctioning the alteration by the members of the company; (if possible supportive by Attendance sheet)

¹ Power of Central Government has been delegated to Regional Director.

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- e. A copy of the Minutes of The General Meeting at which the resolution authorizing such alteration was passed, giving details of the number of votes cast in favor or against the resolution;
 - f. An Affidavit Verifying the application (On Stamp Paper duly notarized)
 - g. The List of Creditors and Debenture Holders entitled to object to the application;
 - h. An Affidavit Verifying The List of Creditors; (On Stamp Paper duly notarized)
 - i. The document relating to payment of application fee;
 - j. Copy of News Paper Advertisement.
 - k. Affidavit by Director verifying non-retrenchment of employees
 - l. Affidavit verifying the Publication of News Paper Notice.
 - m. Memorandum of Appearance and Board resolution authorizing company secretary / Chartered Accountant or advocate
 - n. A copy of Board Resolution Or Power Of Attorney or the executed Vakalatnama, as the case may be (in the favour of Professional)
 - o. An Affidavit verifying the list of Employees.(On Stamp Paper duly notarized)
 - p. Copy of the latest audited balance sheet and profit and loss account of the company along with auditors' and directors' report.
 - q. Affidavit proving the dispatch and service of notice to the Chief Secretary.
 - r. Board resolution authorizing the director to submit the petition.
 - s. Form MGT-14 along with paid challan.
- ❖ Further, Hard dopy of the petition is to be submitted with Concerned Regional Director Office.

❖ **AFFIDAVIT:** An affidavit verifying the petition on a non judicial stamp paper, which is notarized, shall be attached. **Five affidavits** are to be given along with the petition.

- i. One affidavit is verifying the petition;
- ii. One affidavit is verifying publication of notice
- iii. One affidavit verifying the creditors.’
- iv. One affidavit verifying the Non retrenchment of Employee
- v. One Affidavit from Director in terms of rules
- vi. One Affidavit from Director that there is no enquiry, inspection, investigation and prosecution is pending against the Company

Where the Third, Forth & Fifth affidavit shall be given by two directors of the company.

❖ Petition should not be prepared in the letter head.

N. After checking of application with Annexures the hearing will take place at the Regional Director office and it should be represented by the company or practicing professional or advocate. The creditors, if any and the representatives of the company may also represent and are heard before making any order.

O. **Power to Inspect:** A duly authenticated copy of the list of the creditors shall be kept at the registered office of the company and any person desirous of inspecting the same may at any time during the ordinary hours of business, inspect and take extracts of the same on the payment of a sum not exceeding ten rupees per page to the company.

P. Objection if Any Received:

Where any objection of any person whose interest is likely to be affected by the proposed application has been received by the applicant, it shall serve a copy thereof to the Central Government on or before the date of hearing .If objection is received, Central Government will, before passing any order, ensure that the company has either obtained consent of the person who had objected to the alteration or his debt or claim has been discharged or has determined, or has been secured to the satisfaction of the Central Government.

(i) the Central Government shall hold a hearing or hearings, as required and direct the company to file an affidavit to record the consensus reached at the hearing, upon executing which, the Central Government shall pass an order approving the shifting, within sixty days of filing the application.

(ii) where no consensus is reached at the hearings the company shall file an affidavit specifying the manner in which objection is to be resolved within a definite time frame, duly reserving the original jurisdiction to the objector for pursuing its legal remedies, even after the registered office is shifted, upon execution of which the Central Government shall pass an order confirming or rejecting the alteration within sixty days of the filing of application.

Q. Where No Objection Is Received:

If no objection is received from anybody, Central Government (Regional Director) will confirm the change of registered office on the date of hearing and put the application for necessary orders.

Where no objection has been received from any person in response to the advertisement or notice or otherwise, the application may be put up for

orders without hearing and the order either approving or rejecting the application shall be passed within fifteen days of the receipt of the application.

R. The Regional Director will make an order confirming the alteration on such terms and conditions, if any, as it thinks fit, and may make such order as to costs as it thinks proper:

S. Obtain certified copies of the order confirming the shifting of registered office from one state to another, passed by the Central Government,

18) File e-form INC-28 with ROC within 30 days of confirmation of shifting by Central Government along with following Documents:

i. Confirmation given by Central Government for change of registered office.

19) File e-form INC-22 with ROC within 15 days of confirmation of shifting by Central Government along with following Documents:

a. Registered document of the title of the premises of the registered office in the name of the company; or (b) Notarized copy of lease / rent agreement in the name of the company along with a **copy of rent paid receipt not older than one month;**

b. **Authorization from the owner** or authorized occupant of the premises along with proof of Ownership or occupancy authorization, to use the premises by the company as its registered office.

- c. Document of connection of any **utility service** like telephone, gas, electricity, etc. depicting the address of the premises in the name of the owner/document as the case may be which is **not older than 2 months.**
- d. The list of all other companies with their CIN, having the same unit/tenement/premises as their registered office address.
- e. NOC from the owner of premises.

If the documents are in order, Registrars of both states will approve the forms and registered office change will be updated in register of Registrar and **new Certificate of Incorporation will be** issued by the Registrar of the State within 30 days, where the company's registered office is going to be shifted.

STEPS AFTER OBTAINING NEW CERTIFICATE FROM ROC:

- Make alteration in the MOA with respect to the state in every copy of Memorandum.
- Each stationery, banner, signboard, bills, invoice etc. should show the new address and necessary advice should be sent to shareholders, debenture holders, and other concerned parties.
- Necessary changes are required to be made in the letter heads, books, records etc. of the company. The necessary changes are required to be made in PAN. TAN and ST2 etc and inform to all the Government departments, banks, customers and others wherever required.

Tail Piece: Provided that the shifting of registered office shall not be allowed if any inquiry, inspection or investigation has been initiated against the company or any prosecution is pending against the company under the Act.

*** Proof of Registered Office Includes:**

- ✓ Conveyance
- ✓ Lease Deed
- ✓ Rent Agreement (along with rent receipt not older than 1 (one) month).

*** Utility Bill:** Depicting the address of the premises in the name of the owner and documents

Should note be older than 2 (Two) months.

- ✓ Telephone Bill
- ✓ Gas Bill
- ✓ Electricity Bill etc

VERIFICATION OF REGISTERED OFFICE:

(Rule- 25 of the Companies (Incorporation) Rules, 2014

- I. If Premises is on the name of company: The registered document of the title of the premises of the registered office “in the name of company”.
- II. If Premises is not on the name of company, not on rent and not on Lease: Than Authorization from the owner of the premises + along with the proof of ownership and NOC in the favour of Company for use of the premises by the company as its registered office.
- III. If premises is taken on Lease: The Notarized Copy of Lease deed in the name of the company along with a copy of rent paid receipt not older than one month.

- IV. If premises taken on Rent: The Notarized Copy of Rent Agreement in the name of the company along with a copy of rent paid receipt not older than one month.

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