

ISSN 2582-0613



STUDENT PROFESSIONALS TODAY

Volume 3 | Issue 10 | October 2019 | Pages 1-20 | Price Rs. 20



An Initiative by :



**THE INSTITUTE OF
Company Secretaries of India**

IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament

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Printed and Published by B P Bhargava on behalf of Vidhimaan Publishers Pvt. Ltd.

Printed at Delhi Press Samachar Patra Pvt. Ltd., 36-A, UPSIDC, Site-4, Sahibabad and Published at 158 Basant Enclave, Palam Road, New Delhi 110057.

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email id : articles@vidhimaan.com

For non receipt of issue

email id : notreceived@vidhimaan.com

For feedback

email id : info@vidhimaan.com

Annual subscription price Rs.750/- (January - December, 2019), send your cheque in favour of Vidhimaan Publishers Private Limited, at Krishna Law House, 128, Municipal Market, Super Bazar Compound, Connaught Place, New Delhi-110001. Tel.: 011-23417866, 64566061

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MESSAGE FROM THE PRESIDENT

“Take up one idea. Make that one idea your life – think of it, dream of it, live on that idea. Let the brain, muscles, nerves, every part of your body, be full of that idea, and just leave every other idea alone. This is the way to success.”

– Swami Vivekananda

Dear Students,

As the nation celebrated the 150th Birth Anniversary of the Father of the Nation, the Institute resonated the celebration with that of its 51st Foundation Day in the benign presence of the First Citizen of India, Shri Ram Nath Kovind, the Hon'ble President of India.

All these celebrations, have marked the beginning of a new era, new commitments and reverberation of greater responsibilities for the professionals. Apart from having received appreciation for the roles played by the Company Secretaries in the India Inc., the expectations metted out from the dignitaries presiding over the Foundation Day celebrations including the Hon'ble President of India himself, elucidate the path lying ahead; path that shall be walked upon by the future governance professionals of this magnanimous Institute.

Apart from fulfilling its duty in developing high calibre professionals, promoting ethical values and discipline to bring a culture of good governance in our society and the country, the Institute in the past five decades has attempted to partner in the various initiatives of the Government of India.

Congratulating and thanking all of you for your participation and support in the 'Fit India-Fit ICSI Walkathon' organised on the 4th of October, 2019 Pan-India, I hope and believe that this moment of our partnership with the Fit India Movement shall mark the beginning of your fitness journey.

For as Franklin D. Roosevelt, erstwhile American President said and I quote, *“We cannot always build the future for our youth, but we can build our youth for the future”*.

In the end, I once again wish you all a very happy and prosperous Diwali. May you all hone and develop yourself to light the nation to glory...

My best wishes to you all!

Regards

CS Ranjeet Pandey

President, ICSI



Shifting of Registered Office : An Analysis of Compliances

Sections 12 and 13 of the Companies Act, 2013 and rules 25, 27, 28, 30 and 31 of the Companies (Incorporation) Rules, 2014 deal with related provisions for Shifting of Registered Office. The shifting of registered office, especially from one State to another or from jurisdiction of one Registrar of Companies to another Registrar of Companies, is a very tedious process involving lot of time and paper work. The objective of this article is to draw the attention of the regulators to the same.

Shukla Bansal - Practising Company Secretary

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Introduction

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 Registrar of Companies ('ROC') to jurisdiction of another ROC (from Delhi to Maharashtra) and sometimes, from one state to another.

Process to Shift the Registered Office Within Same State

Shifting of Registered office from one place to

another, within the same State could be either within the local limits of any city, town or village or outside the local limits of any city, town or village or from Jurisdiction of one ROC to another

How to Identify Local Limits

The local limits of the registered office can be identified by PIN Codes. For example pin code 110015 is to be sorted as follows: First digit refers to region in India, i.e., North, East, West and South. Second digit refers to Circle, i.e., State. Third digit refers to District. Last three digits i.e. 015 refers to Post Office Number. With reference to decoding of the PIN Code, the last three digits of the PIN Code i.e., post office number specifies local limits. It means in case 4th digit of the PIN Code (in our case 110015 its 0) of the address changes, the address is outside the local limits of the area.

Procedure for Change in Registered Office Within Local Limits

Shifting of registered office from one place to another within the local limits of any city, town or village is as follows :

- *Calling of Board meeting* - Meeting of Board of directors should be called by giving 7 days' notice to Directors
- *Passing of Board resolution* - Resolution to shifting of registered office from one place

to another within the local limits of any city, town or village to be passed at duly convened Board meeting.

- *Intimation to ROC* - Notice of every change of the situation of the registered office, verified in the manner prescribed, after the date of incorporation of the company, shall be given to the ROC within fifteen days of the change, in Form INC-22, who shall record the same.

Attachments of Form INC-22 :

- Proof of registered office address (conveyance/ Lease deed/ rent agreement etc. along with the rent receipts is required to be attached).
- Copies of the utility bills (proof of evidence of any utility service like telephone, gas ,electricity, etc., depicting the address of the premises not older than two months is required to be attached).
- Proof that the company is permitted to use the address as the registered office of the company (authorization from the owner or occupant of the premises along with proof of ownership or occupancy and it is mandatory if registered office is owned by any other entity/ person (not taken on lease by company).

Procedure for Change in Registered Office Outside the Local Limits

When a company is planning to shift their registered office from one District to another within the same state under the same ROC Jurisdiction, the company needs to procedure listed below :

- Call a Board meeting and pass a Board resolution
- Call a general meeting of its members to approve the special resolution for shifting of registered office address of the company.
- After the approval of resolution by the members the company needs to inform the concerned ROC (under which the company

operates its business) electronically by submitting e-form MGT-14 for registering the special resolution taken by the members of the company within 30 days and e-form INC-22 for intimation of shifting of registered office address within fifteen days from the date of passing of special resolution.

Attachments to MGT-14 :

- Copy of special resolution passed by the shareholders of the company.
- Copy of notice & explanatory statement.

Attachments to INC-22 :

- Copy of resolution passed by the Board of directors [extra attachment] and copy of special resolution approved by the shareholders of the company.
- Copy of lease deed/purchase deed/ rent agreement, etc. (title of using that property by the Company, if the premises is owned by any director than copy of NOC from that director)
- Copy of utility bill (not older by two months)

Procedure for Shifting the Registered Office from Jurisdiction of One Registrar to Another Within the Same State

Convene and hold a Board meeting by issuing notices to all directors and to decide on (i) shifting of registered office from Jurisdiction of one ROC to another, (ii) calling of extra ordinary general meeting, fixing of day, date and time of extra ordinary general meeting and (iii) authorizing company secretary or any director for moving an application to Regional Director (RD) in form INC-23 and other miscellaneous compliance required in this behalf.

- Issue notice of EGM along with clear agenda of business, draft resolution for shifting of registered office from jurisdiction of one ROC to another and explanatory statement to all members.

- Hold the extra EGM on appointed date and time and obtain approval of members by passing a special resolution for shifting of registered office from jurisdiction of one Registrar to another [section 12(5)].
- File form MGT-14 within 30 days of passing of special resolution along with notice of EGM, certified true copy of special resolution with explanatory statement annexed thereto.
- File an application for seeking confirmation from the RD (under whose jurisdiction existing registered office of the company is situated) in e- form INC-23 along with prescribed fee, accompanied by following documents [section 12(5) read with rule 25]:
 - Board resolution for shifting of registered office ;
 - Special Resolution of the members of the company approving the shifting of registered office;
 - A declaration given by the key managerial personnel or any two directors authorized by the Board, that the company has not defaulted in payment of dues to its workmen and has either the consent of its creditors for the proposed shifting or has made necessary provision for the payment thereof;
 - A declaration not to seek change in the jurisdiction of the court where cases for prosecution are pending;
 - Acknowledged copy of intimation to the Chief Secretary of the State as to the proposed shifting and that the employees interest is not adversely affected consequent to proposed shifting.
- Obtain a confirmation order from RD for shifting of registered office from jurisdiction of one Registrar to another and file same with ROC in form INC-28 along with the prescribed fees within 60 days from the date of order [section 12(6)].
- Notify ROC in e-form INC-22 within 30 days from the receipt of confirmation order of RD along with prescribed fees and accompanied by following documents [section 12(4)]:
 - Registered document of the title of the premises of the registered office in the name of the company; or
 - Notarized copy of lease or rent agreement in the name of the company along with a copy of rent paid receipt not older than one month;
 - 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; and
 - Proof of evidence of any utility service like telephone, gas, electricity, etc. depicting the address of the premises in the name of the owner or document, as the case may be, which is not older than two months;
- Get the copy of order of competent authority.
- Get the new address of registered office printed on all company's business letters, bill heads, letter papers, notices and other official publications (section 12).

Shifting of Registered Office from One State to Another State

Follow the procedure detailed below :

- Call Board meeting -
 - (i) to consider the proposal for shifting of registered office;
 - (ii) fix up the date, time, and place of the general meeting;
 - (iii) approve the notice of EGM and calling of general meeting;
 - (iv) authorize the company secretary (CS)

or director to move an application before the RD to alter Clause II of memorandum of association within whose jurisdiction the registered office of the company (before change) is situated;

- (v) authorize 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);
- (vi) authorize the CS or director to move an application before the Central Government for approval.
- Send notice of general meeting to all members along with explanatory Statement (section 102), Proxy form, route map and attendance slip.
- Hold general meeting and pass the special resolution approving the shifting subject to the approval of the RD.
- Prepare the Minutes of EGM/ general meeting.
- After taking the approval of the members, file a certified copy of the special resolution along with the explanatory statement and altered copy of memorandum of association (MOA) within 30 days of passing of special resolution in form MGT-14 (filling of resolution and agreement to the registrar under section 117) with ROC.

Attachments of e-form MGT-14):

- Copy(s) of special resolution(s) along with copy of explanatory statement under section 102.
- Altered MOA.
- Minutes of EGM.
- Shorter notice consent if any.
- Publish a notice in Form 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.

- 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 and list should not be older than one month from filling of petition. The list should contain names and address of every creditor and debenture holder of the company and nature and respective amounts due to them in respect of debts, claims or liabilities.
- Affidavit in terms of rule 30 (2) of the Companies (Incorporation) Rules, 2014 (Affidavit should be signed by the CS 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).
- 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.
- Company will prepare the application for shifting of registered office along with the required documents.
- 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.

- 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.
- The petition along with the enclosure should be serially numbered and scanned copy of the petition is filed in Form GNL-2 with ROC.
- The original application under section 13(4) along with all necessary annexure for seeking approval of the Central Government (RD) 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 copy of the memorandum and Articles of association
 - Certified true copy of board resolution
 - Copy of the notice convening the general meeting along with relevant explanatory statement
 - Copy of the special resolution sanctioning the alteration by the members of the company; (if possible supportive by attendance sheet)
 - 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
 - Affidavit Verifying the application (On Stamp Paper duly notarized)
 - List of creditors and debenture holders entitled to object to the application
 - Affidavit verifying the list of creditors; (on stamp paper duly notarized)
 - Document relating to payment of application fee
- Copy of news paper advertisement
- Affidavit by director verifying non-retrenchment of employees
- Affidavit verifying the publication of news paper notice
- Memorandum of appearance and board resolution authorizing company secretary / chartered accountant or advocate
- Copy of Board resolution or power of attorney or the executed vakalatnama, as the case may be (in the favour of professional)
- Affidavit verifying the list of employees. (on stamp paper duly notarized)
- Copy of the latest audited balance sheet and profit and loss account of the company along with auditors' and directors' report
- Affidavit proving the dispatch and service of notice to the chief secretary.
- Board resolution authorizing the director to submit the petition
- Form MGT-14 along with paid challan
- Hard copy of the petition is to be submitted with concerned RD Office.
- An affidavit verifying the petition on a non-judicial stamp paper, which is notarized, shall be attached. The following affidavits are to be given along with the petition :
 - Affidavit verifying the petition
 - Affidavit verifying publication of notice
 - Affidavit verifying the creditors
 - Affidavit verifying the non-retrenchment of Employee
 - Affidavit from director in terms of rules.
- Affidavit from director that there is no enquiry,

inspection, investigation and prosecution is pending against the company.

- Third, Fourth and Fifth affidavit shall be given by two directors of the company. Petition should not be prepared in the letter head. After checking of application with Annexures the hearing will take place at the RD 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.
- 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.
- 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, the 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.
- 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.
- 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.
- If no objection is received from anybody, the Central Government (RD) 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. The RD 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: Obtain certified copies of the order confirming the shifting of registered office from one State to another, passed by the Central Government.
- File e-form INC-28 with ROC within 30 days of confirmation of shifting by Central Government confirmation given by Central Government for change of registered office.
- File e-form INC-22 with ROC within 15 days of confirmation of shifting by Central Government along with following documents:
 - Registered document of the title of the premises of the registered office in the name of the company; or 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
 - 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.

- 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.
- List of all other companies with their CIN, having the same unit/tenement/ premises as their registered office address.
- NOC from the owner of premises.
- If the documents are in order, Registrars of both the 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

Following steps need to taken after obtaining new certificates :

- 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 GST etc. and inform to all the Government departments, banks, customers and others wherever required.

- Proof of registered office includes conveyance, lease deed, rent agreement (along with rent receipt not older than 1 (one) month.
- Depicting the address of the premises in the name of the owner and documents, should note be older than 2 months., Telephone bill, gas bill, electricity bill, etc.

Verification of Registered Office

Rule 25 of the Companies (Incorporation) Rules, 2014 lays down following requirements :

- 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.
- If premises is not on the name of company, not on rent and not on lease, then obtain 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.
- 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.
- 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.

Active Company Tagging Identities and Verification (Active) - Rule 25A

The Companies (Incorporation) (Amendment) Rules, 2019 enforcing a new 'e-Form ACTIVE (Form INC- 22A)' along with insertion of a new rule 25A came in force from 25th February 2019. Every company incorporated on or before 31-December-2017 shall file details of the company, directors, auditors, registered office, etc. (discussed later) in e-Form ACTIVE (INC-22A). This form is required to be filed by every company incorporated

on or before 31-December-2017. 'Company' as defined in section 2(20) of can be public, private, government, One person company, section 8 Company, Nidhi Company, or any other company whether incorporated under Companies Act 2013 or any other previous law in this regard. There are a few exceptions inserted by proviso to rule 25A wherein companies are restricted from filling Form INC- 22A. Such are as follows:

- Companies who have defaulted in filing their financial statements [Form AOC-4] or annual returns [Form MGT- 7] or both, which became due up till the date of the filing of the said form. But, such defaulting companies can file Form INC- 22A if they are under management dispute and the same has been recorded by the registrar of companies.
- Also, companies which have been struck off, or under process of striking off or under liquidation or amalgamated or dissolved are not required to file such form. My view is that a company 'undergoing 'dissolution or 'under' amalgamation is still required to file such e-Form if such process has not attained finality.
- Where DIN status of the director is not 'Approved' will not be able to file the form. So such companies need to ensure that DIN of all the active directors is 'Approved' before filing he form. For this criterion, it should make sure that annual Form DIR- 3 KYC is filed by the directors holding a valid DIN.
- Where a company did not furnish/intimate the prescribed particulars or furnished particulars disregarding any clause of Form INC- 22A file the form, then even if such form is filed within due date, it might still be marked as "Active Non-Compliant".
- Consequences of the mark "Active Non-Compliant" shall be that the following events or changes might not be accepted or taken on record by the ROC :

- Form SH-07 for change in authorized capital;
- Form PAS-03 for change in paid-up capital;
- DIR-12 for changes in Directorship except in the event of cessation of any director;
- Form INC-22 for change in registered office;
- Form INC-28 for amalgamation, de-merger.

- In addition to above, actions prescribed under sub-section (9) of section 12 might also be initiated and result in removal of name of the company from the records of registrar of companies. Also, penalties and fees relating to non-filing of the above forms (a to e) will also get attracted.
- When a company which has been marked as "active non-compliant" because of any of the reasons listed above and files the eForm ACTIVE on or after 26th April, 2019 along with payment of fee of Rs. 10,000 shall be marked as "ACTIVE COMPLIANT" and allowed to file the forms mentioned above.

Conclusion

Shifting of registered office under the Companies Act 2013 is quite lengthy and time-consuming process as we know the involvement of authority, the company itself and documentation process are very long which need to be compiled at any cost before effecting the shifting of registered office.



- *The views expressed are personal views of the author and do not necessarily reflect those of the Institute.*



Charges – Legal Provisions and Procedures

To beat the challenges of competitive market, corporates are now having variety of sources to get acquainted with the financial requirement. 'Charge' is one of the key source of meeting financial needs. This article deals with the legal provisions and procedures of charge.

Kanika Abhishek Lohiya – Practising Company Secretary

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Introduction

A layman meaning of charge is “a certain sum of money is paid for availing any service or taking benefit of any kind of goods”. Normally charge is synonymous to fees, compensation etc. The Companies Act, 2013 (‘the Act’) has different meaning of ‘charge’ which is specifically defined in clause (16) of section 2 of the Act to mean an interest or lien created on the property or assets of a company or any of its undertaking or both as security and included a mortgage. A security (charge) is created on the property or asset and against which a certain amount (charge amount) is lent to the owner of the property. This is a two party transaction. One is moneylender (creator of charge) and another is property giver (charge holder). Here, the asset can be a fixed asset or current asset of the company. The amount is calculated on the valuation of the asset secured with moneylender. Money is lent for a specific period and the asset remains with the moneylender till the complete amount is repaid to the lender.

Procedural Part for Creation and Satisfaction of Charge

The companies are required to register their charge with the Registrar of Companies (ROC). The Act also provides option for creation of charge on debentures also. Sections 77 to 88 of the Act and the Companies (Registration of Charges) Rules, 2014 deal with the charges. The process for creation of charge and registration of charge is as follows :

- The borrowing company and lending institution execute an agreement, providing details like ; date of agreement, details of property, valuation of property, amount of charge, number and amount of installments, date of repayment of amount (satisfaction of charge: discussed later), sanction letter, hypothecation agreement and the like, and much more documents as per the requirements of the lender. The lender may be a bank, a financial institution etc.
- A Board meeting will be conducted in which a special resolution will be passed authorizing the Board to borrow funds and comply the legal requirements for creation of charge on the property in favor of the lender.
- The copy of resolution passed in the Board meeting will be filed as an attachment to the Form MGT –14 with the ROC within 30 days of passing of resolution.
- Form CHG–1 (for other than debentures) or Form CHG– 9 (for debentures including rectification) will be filed to ROC within a period of 30 days from the creation of charge. All the necessary documents executed between the lender and borrower will be attached with this form.

The Form CHG– 1 will be signed by all the three: (i) Company (Borrower) (ii) Lender (Bank, Financial institution etc.) (iii) Professional (CA, CS, CWA).

- The respective Form CHG– 1 will be filled with the prescribed fees. Now it is responsibility of the ROC to examine the documents and issue Certificate of Registration of charge in the Form CHG– 2 to the company.
- The charge is created.
- Every charge is recognized with the charge ID.
- The details of such registered charge available on the MCA portal under Index of Charge link are as follows :
 - Service request number of the Form CHG– 1
 - Charge ID
 - Name of charge holder
 - Date of creation of charge
 - Amount of charge
 - Date of satisfaction of charge (payment of charge amount)
 - Address of the charge holder

Satisfaction of Charge

Satisfaction of charge means, the complete amount which has been borrowed from the lender is being paid. The institution (lender) will issue a letter of satisfaction which explains no dues are there towards the facility provided. The property secured with the moneylender get relieved. The procedural part is as follows :

- Within a period of 30 days from the date of satisfaction of charge, form CHG– 4 is required to be filed with the ROC, by paying prescribed fees.
- Letter of satisfaction will be attached with the respective form.
- After examining the form, ROC will issue the Certificate for satisfaction of charge in the form CHG –5.
- Relevant satisfaction details will be updated on the MCA portal.

Maintenance of Register of Charges

According to section 85 of the Act, all the companies have to maintain register of charges in the prescribed Form CHG –7 which will provide statistics of registered charges in the points briefed below:

- Serial No.,
- Charge ID,
- Date of creation of charge,
- Short description of the property charged,
- Period and amount secured,
- Details of charge holder,
- Terms and conditions of charge and description of instrument,
- Modification (any change in registered charge) details,
- Satisfaction details,
- Facts and details of Condonation of delay filed.

Fees Structure

The law has provided a span of time for compliance. If there is default, additional fees is charged and calculated according to the time of delay. Fees structure is as follows :

Period of delay	Fee Applicable on Small Companies & One Person Company	Fee Applicable on other than Small Companies and One Person Company
Upto 30 days	Normal Fee	Normal Fee
Next 30 days	3 time of normal fee	6 time of normal fee

From 60 days to 90 days	3 times of normal fees plus an ad valorem fee of 0.025 per cent of the amount secured by the charge, subject to the maximum of rupees one lakh.	6 times of normal fees, plus an ad valorem fee of 0.05 per cent of the amount secured by the charge, subject to the maximum of rupees five lakhs.
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A key point to be noticed for filing of registration of charge is, it should be filed within a period of 300 days from the date of creation of charge. After the expiry of 300 days, the registration of charge is allowed only after applying a *condonation of delay* in Form CHG- 8 to the Regional Director stating a genuine and strong reason.

Penalty Provisions

The penalty for contravention a fine of Rs 1 lakh to Rs 10 lakh and each and every officer, who is in default, involved in the above stated process, is liable for imprisonment for a period upto 6 months or with fine of Rs. 25000 to Rs. 10 lakh or both

Conclusion

Charge can be concluded an uncomplicated, secured and painless source of meeting financial requirement. The key part of it is the same property can be utilized for number of charges. To have authenticity and legal significance, registration of the charge is a crucial step. The procedure for registration and satisfaction is also very relaxed and speedy. The detailed description of the charge creation is recorded formally on documents which are good reference for mis happenings. Besides this, penal provisions reduce non compliances.



● *The views expressed are personal views of the author and do not necessarily reflect those of the Institute.*

KNOWLEDGE UPDATE

COMPANY LAW

National Financial Reporting Authority (Amendment) Rules, 2019

Central Government, vide Notification No. G.S.R 636 (E) dated 5th September, 2019, has amended the National Financial Reporting Authority Rules, 2018, inter-alia, by inserting Form NFRA-2.

Constitution of the Company Law Committee

In line with the Government's objective of promoting Ease of Living in the country by providing Ease of Doing Business to law abiding corporates, fostering improved corporate compliance for stakeholders at large and also to address emerging issues having impact on the working of corporates in the country, Central Government vide Order F. No. 2/1/2018-CL-V dated 18th September 2019 constituted a Company Law Committee under the chairmanship of Secretary, MCA for examining and making recommendations to the Government on various provisions and issues pertaining to implementation of the Companies Act, 2013 and the Limited Liability Partnership Act, 2008.

Appointment of Judicial and Technical Members in the National Company Law Tribunal

Central Government, vide Notification No. S.O. 3412(E) dated 20th September 2019, has appointed Judicial and Technical Members in the National Company Law Tribunal.

Relaxation of additional fees and extension of last date of filing of e-Form BEN-2 and BEN-1 under the Companies Act, 2013

Central Government, vide General Circular No.10/2019 dated 24th September 2019, has extended the last date for filing of e-Form BEN-2 without additional fees on account of certain new aspects which require further examination and clarification. The time limit for filing e-form BEN-2 is extended upto 31st December, 2019 without payment of additional fee and thereafter fee and additional fee shall be payable. Consequent to the extension in the date of filing of e-Form BEN-2, the date of filing of Form BEN-1 may be construed accordingly.



One Person Company : A Brief Note

In this article, the author explains the concept of One Person Company introduced for the first time in the Companies Act, 2013 to encourage micro business and entrepreneurship with simple legal compliances.

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Introduction

Section 2(62) of Companies Act, 2013 (the Act) defines "one person company" means a company which has only one person as a member. The concept of One Person Company (OPC) was introduced in the Act as an alternative to the 'sole-proprietorship' form of business. It is a move that will encourage micro businesses and entrepreneurship with simpler legal compliances that will enable individuals to generate economic growth as well as employment opportunities. OPC provides a whole new bracket of opportunities for those who look forward to start their own ventures with a structure of organized business. OPC will give the young businessman all benefits of a private limited company which categorically means they will have access to credits, bank loans, limited liability, legal protection for business, access to market etc., all in the name of a separate legal entity. Though the concept of OPC is new in India but it is a very successful form of business in UK and several European countries since a very long time now.

This concept of OPC was first recommended by the expert committee of Dr. JJ Irani in 2005. As per the definition there will be only one member in the OPC. Only a natural person can be a member in a OPC. OPC is a recognised form of business entity in many other countries too. The Committee in its report stated as follows :

"The law should recognize the potential for diversity in the form of companies and rather than seeking to regulate specific aspects of each forms, seek to provide for principles that enable economic inter-action for wealth

creation on the basis of clear and widely accepted principles.

With the increase use of information technology and computers, emergence of the service sector, it is that the entrepreneurial capabilities of the people are given for the participation of an economic activity. Such economic activity may take place through the creation of an economic person in the form of company. Yet it would not be reasonable to expect that every entrepreneur who is capable of developing his ideas and participating in the market place should do it through an association of persons. We feel that it is possible for individuals to operate in the economic domain and contribute effectively. To facilitate this the Committee recommends that the law should recognize the formation of single person economic entity in the form of 'One Person Company'. Such an entity may be provided with a simpler regime through exemptions so that the single entrepreneur is not compelled to fritter away his time, energy and resources on the procedural matters."

Who is eligible to act as a member of OPC?

Only a natural person who is an Indian citizen and resident in India shall be eligible to act as a member and nominee of OPC. For the above purpose, the term "resident in India" means a person who has stayed in India for a period of not less than one hundred and eighty two days during the immediately preceding one financial year. It is to be noted that a minor cannot become member or nominee of OPC or can hold share with beneficial interest.

Number of OPC in which a natural person can be a member or nominee

A natural person shall not be member of more than a OPC at any point of time and the said person shall not be a nominee of more than a OPC.

Where a natural person, being member in OPC becomes a member in another such company by virtue of his being a nominee in that OPC, such person shall choose to continue to be a member of one of the OPC within a period of one hundred and eighty days.

Reasons to Register an OPC

Single Promoter: One Person Company is the only type of corporate entity that can be started and operated by a single promoter with limited liability protection in India. A corporate form of legal entity in One Person Company ensures that the business has perpetual existence and easy ownership transferability.

Perpetual Succession: A company has «perpetual succession», meaning uninterrupted existence until it is legally dissolved. A company being a separate legal person, is unaffected by the death or other departure of any member and continues to be in existence irrespective of the changes in ownership.

Easy Transferability: Ownership of a business can be easily transferred in a company by transferring shares. The signing, filing and transfer of share transfer form and share certificates is sufficient to transfer ownership of a company. In a one person company, the ownership can be transferred by altering the shareholding, directorship and nominee director information.

Access to Borrowing: Banks and financial Institutions prefer to provide funding to a company rather than partnership firms or proprietary concerns. However, a one person company cannot issue different types of equity security, as it can only be owned by one person at all times.

Owning Property: A company being an artificial person, can acquire, own, enjoy and alienate, property in its own name. The property owned by a company could be machinery, building, intangible assets, land, residential property, factory, etc.

Further, the nominee director cannot claim any ownership of the company while serving as a nominee director.

Relevant provisions of the Act applicable to OPC

Following are the provisions of the Act relevant to OPC :

- Section 98 which lays down power of tribunal to call meetings of members, etc. and sections 100 to 111 shall not apply to an OPC.
- If an OPC or a small company fails to comply with the provisions of sub-section (5) of section 92, sub-section (2) of section 117 or sub-section (3) of section 137, such company and officer in default of such company will be liable to a penalty which shall not be more than one half of the penalty specified in such sections.
- For the purposes of section 114, any business which is required to be transacted at an annual general meeting or other general meeting of a company by means of an ordinary or special resolution, it shall be sufficient if, in case of OPC, the resolution is communicated by the member to the company and entered in the minutes-book required to be maintained under section 118 and signed and dated by the member and such date shall be deemed to be the date of the meeting for all the purposes under this Act.
- Where there is only one director on the Board of directors of a OPC, any business which is required to be transacted at the meeting of the Board of directors of a company, it shall be sufficient if, in case of such OPC, the resolution by such director is entered in the minutes book required to be maintained under section 118 and signed and dated by such director and such date shall be deemed to be the date of the meeting of the Board of Directors for all the purposes under this Act.

Matters to be included in Board's report for OPC and small company

The Board's Report of OPC and small company shall be prepared based on the standalone financial statement of the company, which shall be in abridged form and contain the following :

- ◆ The web address, if any, where annual return referred to in sub-section (3) of section 92 has been placed
- ◆ Number of meetings of the Board
- ◆ Directors' responsibility statement as referred to in sub-section (5) of section 134
- ◆ Details in respect of frauds reported by auditors under sub-section (12) of section 143 other than those which are reportable to the Central Government
- ◆ Explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor in his report
- ◆ State of the company's affairs
- ◆ Financial summary or highlights
- ◆ Material changes from the date of closure of the financial year in the nature of business and their effect on the financial position of the company
- ◆ Details of directors who were appointed or have resigned during the year
- ◆ Details or significant and material orders passed by the regulators or courts or tribunals impacting the going concern status and company's operations in future.

The Report of the Board shall contain the particulars of contracts or arrangements with related parties referred to in sub-section (1) of section 188 in the Form AOC-2.

Merits of OPC

Merits of OPC can be listed as follows :

Sole Ownership - Single ownership helps in quick decision-making, controlling and managing the business without following any long processes and methodologies as adopted in other companies. The sense of belonging inspires to grow the business further.

Benefits of being a small scale industries (SSI) - An OPC can avail the various benefits provided to small scale industries like the lower rate of Interest on loans, easy funding from the bank without depositing any security to a certain limit, manifold benefits under Foreign Trade Policy and others. All these benefits can be boon to any business in initial years.

Benefits of being micro, small & medium enterprises (MSME) - OPC avails all the benefits under Enterprises Development Act, 2006. The newly start-up OPC is micro, small, or medium, hence they are covered under this act. As per the Act, if buyer or receiver receives any late payment (receives payment after a specified period), then he is entitled to receive interest which is three times the bank rate.

A Separate legal entity - OPC is a separate legal entity as distinct from its members, therefore it is distinct in the eyes of law from its shareholders, directors, promoters etc. and as such is conferred with rights and is subject to certain duties and obligations.

Limited Liability - OPC is a corporate structure whereby the member of the company is not personally liable for the company debts or liabilities.

Minimum Requirements are as follows :

- ◆ Minimum 1 shareholder
- ◆ Minimum 1 director
- ◆ The director and shareholder can be same person
- ◆ Minimum 1 nominee
- ◆ Letters 'One Person Company' to be suffixed with the name of OPC to distinguish it from other companies

Demerits of OPC

Demerits of OPC are as follows :

- ◆ *Restriction on membership* - The owner cannot become the member or say shareholder at two OPC at same time.
- ◆ *Limitation on business activities* - With respect to business activities, it cannot carry out Non-Banking Financial Investment activities including investment in securities

of any body corporates. OPC cannot be incorporated or converted into a company under Section 8 of the Act.

- ◆ **Constraints on conversion to other category** - An OPC cannot convert voluntarily into any kind of company unless two years is expired from the date of incorporation, except threshold limit where the paid up share capital is increased beyond fifty lakh rupees or average annual turnover as per profit and loss account for the immediately preceding year exceeds two crore rupees.

Conversion of OPC into a Public Company or a Private Company

Following are the cases in which OPC can convert itself into public company or a private company :

- Where the paid up share capital of an OPC exceeds fifty lakh rupees and its average annual turnover during the relevant period exceeds two crore rupees, it shall cease to be entitled to continue as an OPC
 - Such OPC shall be required to convert itself, within six months of the date on which its paid up share capital is increased beyond fifty lakh rupees or the last day of the relevant period during which its average annual turnover exceeds two crore rupees as the case may be, into either a private company with minimum of two members and two directors or a public company with at least of seven members and three directors in accordance with the provisions of section 18 of the Act.
 - The OPC shall alter its memorandum and articles by passing a resolution in accordance with sub-section (3) of section 122 of the Act to give effect to the conversion and to make necessary changes incidental thereto.
 - The OPC shall within period of sixty days from the date of applicability, give a notice to the Registrar in Form No.INC.5 informing that it has ceased to be an OPC and that it is now required to convert itself into a private company or a public company by virtue of its paid up share capital or average annual turnover, having exceeded the threshold limit laid down in sub-point 1.
- If OPC or any officer of the OPC contravenes the provisions of these rules, then such OPC or any officer of the OPC shall be punishable with fine which may extend to ten thousand rupees and with a further fine which may extend to one thousand rupees for every day after the first during which such contravention continues.
 - A OPC can get itself converted into a private or public company after increasing the minimum number of members and directors to two or minimum of seven members and two or three directors as the case may be, and by maintaining the minimum paid-up capital as per requirements of the Act for such class of company and by making due compliance of section 18 of the Act for conversion.

Nomination by the Subscriber or Member of One Person Company

The subscriber to the memorandum of a OPC shall nominate a person, after obtaining prior written consent of such person who shall in the event of the subscriber's death or his incapacity to contract, become the member of that OPC. Such nomination shall be in Form No.INC-32 (SPICe) along with consent of such nominee obtained in Form No.INC-3. The person nominated may withdraw his consent by giving a notice in writing to such sole member and to the OPC. The company shall within 30 days of receipt of the notice of withdrawal of consent shall file with the Registrar a notice of such withdrawal and the intimation of the name of another person nominated by the sole member in Form No INC.4. Where the sole member of OPC ceases to be the member in the event of death or incapacity to contract and his nominee becomes the member of such One Person Company, such new member shall be nominate within fifteen days of becoming member and the company shall file with the Registrar an intimation of such cessation and nomination in Form No INC.4 within thirty days of the change in membership and with the prior written consent of the person so nominated in Form No.INC.3



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KNOWLEDGE UPDATE

Foreign Exchange Management Law

Licensing requirement for parts and accessories in Defence Sector

DIPP, vide Press Note No. 2 (2019 Series) dated 11th September 2019, has clarified no industrial licence/ arms licence is required for the manufacture of any parts or accessories in Defence Sector, unless they are specifically listed in any of the Annexures of the said Press Note. This shall not apply to issue of Arms Licence for small arms by MHA.

Review of Foreign Direct Investment (FDI) Policy on various Sectors

DIPP, vide Press Note No. 4 (2019 Series) dated 18th September 2019, has reviewed the extant FDI policy on various sectors and has made amendments in the Consolidated FDI Policy Circular of 2017 (FDI Policy), effective from August 28, 2017, and as amended from time to time.

Insolvency and Bankruptcy Law

Statutory Repositories under regulation 21(2)(c)(ii) of the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017

For the purposes of sub-clause (ii) of clause (c) of sub-regulation (2) of regulation 21 of the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017, IBBI, vide Circular No. IBBI/IU/025/2019 dated 7th September 2019, has approved MCA 21 database of the Ministry of Corporate Affairs and the Central Registry of Securitisation Asset Reconstruction and Security Interest of India (CERSAI) registry as repositories.

Valuation required under the provisions of the Companies Act, 2013 and the Insolvency and Bankruptcy Code, 2016

IBBI, vide Circular No. IBBI/RVO/026/2019 dated 16th September 2019, has issued list of the provisions of the Companies Act, 2013 and the Insolvency and Bankruptcy Code, 2016 and the

Regulations thereunder which valuations are required to be conducted by a registered valuer for ready reference of the stakeholders.

Prevention of Money-Laundering Law

Prevention of Money-Laundering (Maintenance of Records) (Fourth Amendment) Rules, 2019

Central Government, vide Notification No. G.S.R. 669(E) dated 18th September 2019, has amended the Prevention of Money-laundering (Maintenance of Records) Rules, 2005.

SEBI Law

Schemes of arrangement by listed entities and relaxation under sub-rule (7) of rule 19 of the Securities Contracts (Regulation) Rules, 1957

In order to streamline the processing of draft schemes, SEBI, vide Circular No. SEBI/HO/CFD/DIL1/CIR/P/2019/192 dated 12th September 2019, has decided to seek additional information further, at one go and amended the Circular No. CFD/DIL3/CIR/2017/21 dated March 10, 2017, in relation to payment of outstanding dues of SEBI, Stock exchanges and the Depositories.

Additional commodities as eligible liquid assets for commodity derivatives segment

Currently the list of commodities/commodity groups permitted as liquid assets consists of bullion, steel and agricultural commodities. Considering the introduction of compulsory delivery based diamond and base metal derivatives contracts and feedback received from the stakeholders, SEBI, vide Circular SEBI/HO/CDMRD/DRMP/CIR/P/2019/100 dated 13th September 2019, has decided to include diamond, base metals and alloys in the list of permissible liquid assets, subject to concentration limits for non-bullion collateral as specified vide SEBI Circular dated 14th October, 2016.

KNOWLEDGE UPDATE

CASE LAW

COMPANIES ACT, 2013

Appointment of managing director and removing a director against restraint order of court is not legal where removal of a director is also found to be not legal. Therefore, appointment of managing director is to be set aside as removal of the director is to be cancelled reinstating him.

Where the respondent has been appointed as managing director in the meeting against the restraint order of the court, the said appointment is not legal, and where the removal of a certain director is also found to be not legal, the appointment of managing director is to be set aside, as the removal of the director is to be cancelled reinstating him- *Assam Chemical & Pharmaceutical (P.) Ltd. v. Deba Kumar Hazarika, National Company Law Appellate Tribunal, Company Appeal (AT) No.148 of 2018 dated 28th May 2019.*

Where the Tribunal failed to adhere to the mandate of law, the order is liable to be set aside and the matter has to be remanded back to the Tribunal for proceeding in accordance with law after hearing the parties

Where Tribunal declined to sanction the proposed scheme of demerger, without either considering prayer for dispensation of meeting of creditors and members of the appellant-companies or in the alternative directing convening of a meeting of the creditor and members, for considering the proposed schemes of demerger, resulting in breach of mandatory provisions of sub-section (1) of section 230, the Tribunal seriously erred in dismissing application on merit when the stage of consideration of scheme of merger was yet to arrive and consequently the order suffered from serious legal infirmity and is to be set aside- *Mineral Enterprises Ltd. v. Mel Windmills (P.) Ltd. National Company Law Appellate Tribunal, Company Appeal*

(AT) Nos. 4 & 5 of 2019 and Company Appeal (AT) No. 6 of 2019 dated 27th May 2019.

INSOLVENCY AND BANKRUPTCY CODE, 2016

An application for avoidance of preferential transaction under section 43 is liable to be rejected where transfer of property to the corporate debtor has been made in ordinary course of business.

Where the transfer of property or interest of resolution professional to the corporate debtor for the benefit of a creditor has been made or the transfer has been effective on putting such creditor in beneficial position than it would have been in the event of distribution of assets, the resolution professional has failed to make out a case under section 43 and transfer in question having made in ordinary course of business- *Anup Kumar v. BDR Builder & Developers (P.) Ltd./Anup Kumar v. Chharia Holding (P.) Ltd./Anup Kumar v. Vipul Motors (P.) Ltd., National Company Law Appellate Tribunal, Company Appeal (AT) (Insolvency) No. 679 of 2018, Company Appeal (AT) (Insolvency) No. 680 of 2018, Company Appeal (AT) (Insolvency) No. 681 of 2018 dated 2nd May 2019.*

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