

**SERIES
546**

PROCESS OF SHIFTING OF REGISTERED OFFICE

(Shifting of Registered Office) [Section 12(4) Rule 25 & 27]
Date: 10th February, 2020



Meaning of Registered Office:

Every business organization has a principal place of business activities, which in case of a company called its registered office. The address of the situation of the registered office is very important from general public, shareholders, customers and various other points of view. Every company is governed in accordance with the provisions of the Companies Act, 2013, therefore, it is mandatory for all companies to keep the Registrar of Companies informed about the location of the registered office and changes Thereto from time to time. Promoters of the Company decide the State in which the registered office shall be situated.

A registered office is the official address of a company to which all official letters 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 thirty 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 t the time of incorporation itself.

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.

The company shall **on and from the 30th day of its incorporation** have a Registered Office capable of receiving and acknowledging all communications and notices as may be addressed to it. This is very important because without the Registered Office in place and a verification duly filed there under the company cannot commence its business;

As per section 12(2), it is duty of the Company to furnish to the ROC verification of its registered office within a period of thirty days of its incorporation in such manner as may be prescribed. Provisions related to Verification of Registered office of the Company are given in Rule 25 of Companies (Incorporation) Rules, 2014.

Registered Office of Company Mandatory for following Some Purposes:

- I. Determination the Jurisdiction of Court.
 - II. Determination of domicile of a company for all practical purposes.
 - III. Inspections of Registers and Records, as required to maintain under companies act at registered office of company.
 - IV. Determination of Jurisdiction for payment of different types of duties.
 - V.
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The Board of Directors of Company (Public or Private Limited) may find it necessary to change the location of the registered office from time to time. There are four ways to shifting of registered office as given below:

Modes of Shifting of Registered Office	
S. No.	
A.	Shifting of the registered office from its “Existing location in a city, town or village to another place within the limits of the same city, town or village ”.
B.	Shifting of the registered office to a place “ Outside the local limits of the existing place but in the same State ” under the jurisdiction of the same Registrar of Companies”. [Section- 12, sub section- 5 clause- a]
C.	Shifting of the registered office from the “ Jurisdiction of one Registrar of the Jurisdiction of another Registrar within the same State”. [Rule- 28 of The Companies (Incorporation) Rules, 2014]
D.	Shifting of the registered office to another State in India. [Section- 13(4)] [Rule- 30 of The Companies (Incorporation) Rules, 2014]

PROCESS OF SHIFTING OF REGISTERED OFFICE

A. WITHIN THE LOCAL LIMIT OF CITY, TOWN OR VILLAGE TO ANOTHER PLACE
IN WITHIN THE LIMIT OF SAME CITY, TOWN OR VILLAGE:

STEP – I: Convey Board Meeting of Directors: (As per section 173 and 55-1)

- Issue Notice of Board Meeting to all the directors of company at least 7 days before the date of Board Meeting.
- Attach Agenda
- Notes to Agenda
- Draft Resolution

STEP – II: Held Board Meeting: (As per section 173 and 55-1)

- Get Approval of Directors by passing of Board Resolution for shifting of Registered Office of Company (within the local limit of city, town & village).
- Authorize any director to file form with ROC.

STEP- III - Filing and Fees:

I) File FORM NO. INC – 22 (Section-12 (2) & (4) Read with Rule 25 & 27 of the Companies (Incorporation) Rules- 2014) **within 30 days of passing the Board resolution**, along with given documents:-

ATTACHMENTS:

- Certified True Copies of the Board Resolutions;
- Proof of Registered Office Address (Utility Bill) – Not older than 2 month
- NOC that company is authorized to use the address as the registered office of company.

SECTION 12(3): The change of Location of Registered office shall be noted in the Name Board kept on the outside of every office of the company, its letter heads, business letters, bills of exchange and other documents where the registered office is mentioned

PROCESS OF SHIFTING OF REGISTERED OFFICE

B. "OUTSIDE THE LOCAL LIMITS OF THE EXISTING PLACE

BUT IN THE SAME STATE"

UNDER THE JURISDICTION OF THE SAME REGISTRAR OF COMPANIES

STEP – I: Convey Board Meeting of Directors: (As per section 173 and 55-1)

- Issue Notice of Board Meeting to all the directors of company at least 7 days before the date of Board Meeting.
 - Attach Agenda
 - Notes to Agenda
 - Draft Resolution
-

STEP – II: Held Board Meeting: (As per section 173 and 55-1)

- Get Approval of Directors by passing of Board Resolution for shifting of Registered Office of Company (within the local limit of city, town & village).
 - Authorize any director to file form with ROC.
 - Fixing the date, time, and venue of the general meeting and authorizing a director or any other person to send the notice for the same to the members.
 - Approval of Notice of EGM
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STEP- III: Issue Notice of General Meeting: (Section 101)

Notice of EGM **shall** be given at least 21 days before the actual date of EGM. EGM can be called on Shorter Notice with the consent of at least majority in number and ninety five percent of such part of the paid up share capital of the company giving a right to vote at such a meeting:

- All the Directors.
- Members
- Auditors of Company

The notice shall specify the place, date, day and time of the meeting and contain a statement on the business to be transacted at the EGM.

STEP- IV: Hold General Meeting: (Section 101)

- Check the Quorum.
 - Check whether auditor is present, if not. Then Leave of absence is Granted or Not. (As per Section- 146).
 - Pass Special Resolution.
 - Approval of Alteration in MOA.
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STEP- V- Filing and Fees:

I) File FORM NO. INC – 22 (Section-12 (2) & (4) Read with Rule 25 & 27 of the Companies (Incorporation) Rules- 2014) **within 30 days of passing the Board resolution**, along with given documents:-

ATTACHMENTS:

- Certified True Copies of the Special Resolutions;

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- Notice of EGM along with Explanatory Statement
 - Attendance Sheet of GM
 - Proof of Registered Office Address (Utility Bill) – Not older than 2 month
 - NOC that company is authorized to use the address as the registered office of company.
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II) File **FORM NO. MGT-14** (Filing of Resolutions and agreements to the Registrar under section 117) with the Registrar along with the requisite filing within 30 days of passing the special resolution, along with given documents:-

- Certified True Copies of the Special Resolutions along with explanatory statement;
 - Copy of the Notice of meeting send to members along with all the annexure;
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SECTION 12(3): The change of Location of Registered office shall be noted in the Name Board kept on the outside of every office of the company, its letter heads, business letters, bills of exchange and other documents where the registered office is mentioned

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PROCESS OF SHIFTING OF REGISTERED OFFICE

C. "JURISDICTION OF ONE REGISTRAR OF THE JURISDICTION OF ANOTHER
REGISTRAR WITHIN THE SAME STATE"

SECTION 12(5) AND (6) OF THE COMPANIES ACT, 2013 READ WITH RULE 28

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 .
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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.

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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. **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:

G. 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.

H. Prepare List of Application:

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

I. 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.

J. 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.

K. 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.

L. 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.

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

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- 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)
 - 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. Affidavit by Director verifying non-retrenchment of employees
 - k. Memorandum of Appearance and Board resolution authorizing company secretary / Chartered Accountant or advocate
 - l. A copy of Board Resolution Or Power Of Attorney or the executed Vakalatnama, as the case may be (in the favour of Professional)
 - m. An Affidavit verifying the list of Employees.(On Stamp Paper duly notarized)
 - n. Copy of the latest audited balance sheet and profit and loss account of the company along with auditors' and directors' report.
 - o. Affidavit proving the dispatch and service of notice to the Chief Secretary.
 - p. Board resolution authorizing the director to submit the petition.
 - q. Form MGT-14 along with paid challan.
- ❖ Further, Hard copy of the petition is to be submitted with Concerned Regional Director Office.

M. 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.

N. **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.

O. 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:

P. 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 30 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.

* **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

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- ✓ 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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