

Process for Shifting of Registered off from one State to another

After notification dated July 27, 2017 issued by Ministry of Corporate Affairs

As per provisions of Section 13 of the Companies Act, 2013 the Company may, by a special resolution and after complying with the procedure alter the provisions of its memorandum. The alteration of the memorandum relating to the place of the registered office from one State to another shall not have any effect unless it is approved by the Central Government, powers are with Regional Director (“RD”) on an application as prescribed.

The Central Government shall dispose of the application made as above within a period of sixty days and before passing its order it may satisfy itself that the alteration has the consent of the creditors, debenture-holders and other persons concerned with the Company or that the sufficient provision has been made by the Company either for the due discharge of all its debts and obligations or that adequate security has been provided for such discharge.

1. **Board Meeting** :The Company is required to call a Board Meeting and discuss the following :
 - (i) 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 Extraordinary General Meeting and calling of EGM.
 - (iv) 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.
 - (v) 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
2. **Extra Ordinary General Meeting (EGM)** : The Company to convene the EGM to pass the resolution by way of special resolution for alteration in MoA wrt shifting of Registered Office from one State to another .
3. **Form MGT 14** : The Company shall file with the Registrarthe special resolution passed by the Company in Form MGT 14 in 30 days from the date of EGM

4. **Application:** Application for the purpose of seeking approval for alteration of memorandum with regard to the change of place of the registered office from one State Government or Union territory to another, shall be filed with the Central Government (Powers are with Regional Director) in **Form No. INC. 23** along with the fee and shall be accompanied by the following documents, namely:-

Mandatory attachments as per rules:-

- (a) a copy of the memorandum and articles of association;
- (b) 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;
- (c) a copy of board resolution or Power of Attorney or the executed Vakalatnama, as the case may be.

Optional attachments:-

- (a) a copy of the notice convening the general meeting along with relevant Explanatory Statement;
- (b) a copy of the special resolution sanctioning the alteration by the members of the Company;
- (c) an affidavit verifying the application;
- (d) the list of creditors and debenture holders entitled to object to the application;
- (e) an affidavit verifying the list of creditors;
- (f) the document relating to payment of application fee.

5. **List of Creditors :** There shall be attached to the application, a list of creditors and debenture holders, drawn up to the latest practicable date preceding the date of filing of application by not more than one month, setting forth the following details, namely:-
- (a) the names and address of every creditor and debenture holder of the Company;
 - (b) the nature and respective amounts due to them in respect of debts, claims or liabilities.
6. **The List of Creditors and Debenture holders,** shall be accompanied by declaration signed by the **Company Secretary of the Company**, if any and not less than 2 directors of the Company, one of whom shall be a managing director, where there is one, stating that
- i. they have made a full enquiry into the affairs of the Company and, having done so, have concluded that the list of creditors is correct, and that the estimated value as given in the list of the debts or claims payable on a 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.
 - ii. no employee shall be retrenched as a consequence of shifting of the registered office from one state to another state and also there shall be an application filed by the Company to the Chief secretary of the concerned State Government or the Union territory.
7. **Inspection of list of Creditors:** A duly authenticated copy of the list of 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 from the same on payment of a sum not exceeding ten rupees per page to the Company.
8. **Serve the Application to ROC and Chief Secretary of the State:** The Company to serve the complete set of application to the RoC and Chief Secretary of the State and attach a copy of the acknowledgment of service of it to the Registrar and Chief Secretary of the State Government or Union territory where the registered office is situated at the time of filing the application.

9. **News paper Notice:** The Company shall **at least 30 days** before the date of filing the application in Form No. INC. 23

(a) advertise the application in the **Form No.INC.26** in a vernacular newspaper in the principal vernacular language in the district and in English Language in an English newspaper with the widest circulation in the state in which the registered office of the Company is situated.

Provided that a copy of advertisement shall be served on the Central Government immediately on its publication.

(b) serve, by registered post with acknowledgement due, individual notice(s), to the effect on each debenture-holder and creditor of the Company; and

(c) serve, by registered post with acknowledgement due, a notice together with the copy of the application to the Registrar and to the Securities and Exchange Board of India, in the case of listed companies and to the regulatory body, if the Company is regulated under any special Act or law for the time being in force.

10. There shall be attached to the application a duly authenticated copy of the advertisement and notices issued under a copy each of the objection received by the applicant, and tabulated details of responses along with the counter response from the company received either in the electronic mode or in physical mode in response to the advertisements and notices

11. **Hearing before RD :**

1. Where an objection has been received,

[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 60 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.

2. Where **no objection** has been received, from any person in response to the advertisement or notice under sub-rule (5) 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 15 days of the receipt of the application.**
12. The order passed by the RD confirming the alteration may be on such terms and conditions, if any, as it thinks fit, and may include such order as to costs as it thinks proper:
- 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.
- On completion of such inquiry, inspection or investigation as a consequence of which no prosecution is envisaged or no prosecution is pending, shifting of registered office shall be allowed.
13. **RD to confirm:** Before confirming the alteration, the Central Government (powers with Regional Director) shall ensure that, with respect to every creditor and debenture holder who, in its opinion is entitled to object to the alteration, and who signifies his objection in the manner directed by it, either his consent to the alteration has been obtained or his debt or claim has been discharged or has determined, or has been secured to its satisfaction.
14. **Order of RD :** The Central Government (powers with Regional Director) may 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. Please note that 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.
15. **Order Copy to file with RoC:** The Company also need to file certified copy of the order of the Central Government (RD) approving the alteration in the Memorandum with respect to shifting of Registered Office from One State to another, with the Registrar of each of the States within 30 days in Form INC 28 and the Registrar of the State where the registered office is being shifted to, shall issue a fresh certificate of incorporation indicating the alteration.

16. **File Form INC 22:** The Company to file Form INC-22 with ROC within 15 days of confirmation of shifting by Central Government along with following Documents:

- (i) 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;
- (ii) 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.
- (iii) 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 2months.
- (iv) The list of all other companies with their CIN, having the same unit/tenement/premises as their registered office address.
- (v) NOC from the owner of premises.
- (vi) 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.
- (vii) 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.

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

16. New Certificate of Incorporation: The Company shall be receiving New Certificate of Incorporation by the Registrar of the State, where the Company's registered office is going to be shifted.

STEPS AFTER OBTAINING NEW CERTIFICATE OF INCORPORATION

- (1) Make alteration in the **MOA** with respect to the state in every copy of Memorandum.
 - (2) 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.
 - (3) 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.
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