

MINISTRY OF CORPORATE AFFAIRS

NOTIFICATION

New Delhi, the 27th July, 2017

G.S.R. 955(E).—In exercise of the powers conferred by sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Incorporation) Rules, 2014, namely: —

1. (1) These rules may be called the Companies (Incorporation) Second Amendment Rules, 2017.
(2) They shall come into force on the date of their publication in the official gazette.
2. In the Companies (Incorporation) Rules, 2014 (hereinafter referred to as the principal rules), for rule 28, the following rule shall be substituted, namely:—

“28. Shifting of registered office within the same State. —(1) An application seeking confirmation from the Regional Director for shifting the registered office within the same State from the jurisdiction of one Registrar of Companies to the jurisdiction of another Registrar of Companies, shall be filed by the company with the Regional Director in **Form No.INC.23** along with the fee and following documents, —

- (a) Board Resolution for shifting of registered office;
- (b) Special Resolution of the members of the company approving the shifting of registered office;
- (c) a declaration given by the Key Managerial Personnel or any two directors authorised 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;
- (d) a declaration not to seek change in the jurisdiction of the Court where cases for prosecution are pending;
- (e) 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”.

3. In the principal rules, for rule 30, the following rule shall be substituted, namely: —

“30. Shifting of Registered Office from one State or Union Territory to another State

(1) An application under sub-section (4) of section 13, 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 in **Form No. INC.23** along with the fee and shall be accompanied by the following documents, namely: —

- (a) a copy of Memorandum of Association, with proposed alterations;
- (b) a copy of the minutes of the general meeting at which the resolution authorising such alteration was passed, giving details of the number of votes cast in favour or against the resolution;
- (c) a copy of Board Resolution or Power of Attorney or the executed Vakalatnama, as the case may be.

(2) 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:

Provided that the list of creditors and debenture holders, accompanied by declaration signed by the Company Secretary of the company, if any, and not less than two 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 are 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, and

(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.

(3) 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.

(4) There shall also be attached to the application a copy of the acknowledgment of service of a copy of the application with complete annexures 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.

(5) The company shall, not more than thirty days before the date of filing the application in Form No. INC.23 -

- (a) advertise in the **Form No. INC.26** in the 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, to the effect set out in clause (a) 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.

(6) There shall be attached to the application a duly authenticated copy of the advertisement and notices issued under sub-rule (5), 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 issued under sub-rule (5).

(7) 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 fifteen days of the receipt of the application.

(8) 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 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.

(9) The order passed by the Central Government 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.

(10) 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”.

4. In the principal rules, for Form No.INC-23, the following form shall be substituted, namely:-

FORM NO. INC-23
[Pursuant to section 12(5) and 13(4) of the Companies Act, 2013 and rule 28 and 30 of the Companies Rules, 2014]



Application to the Regional Director for approval to shift the Registered Office from one state to another state or from jurisdiction of one Registrar to another Registrar within the same State

Form language English Hindi

Refer the instruction kit for filing the form.

1. *Application is for shifting the Registered Office from

- One state to another state
- One registrar to another registrar within the State

Pre-fill

2. (a) *Corporate identity number (CIN) of company

(b) Global location number (GLN) of company

3. (a) Name of the company

(b) Address of the registered office of the company

(c) Name of the existing ROC

4. *(a) Name of the state/Union territory where the new registered office of the company would be situated

*(b) Name of the office of new ROC where the new proposed registered office of the company would be situated

*(c) Reasons for shifting the registered office

5. *(a) Service request number of Form MGT-14

*(b) Date of filing Form MGT-14

*(c) Date of passing the special resolution

6. (a) Details of members present at the meeting where the decision of shifting was taken and number of shares held by them

(i) Number of members

(ii) Number of shares held by them

(b) Details of the members who voted in favour of the proposal and number of shares held by them

(i) *Number of members

(ii) Number of shares held by them

(c) Details of the members who voted against the proposal and number of shares held by them

(i) *Number of members

(ii) Number of shares held by them

(d) Details of members who abstained from voting and number of shares held by them

(i) *Number of members

(ii) Number of shares held by them

7. *(a) Total Number of creditors

*(b) Total Number of depositors

* (c) Total Number of debenture holders

(d) Brief details of the objections, if received any in response to the advertisement

8. *Whether any prosecution is pending against the company under the Act

Yes No

If yes, Give brief details of the prosecution

9. *Whether any of the following is initiated against the company under the Act

inquiry inspection investigation

If yes, Give brief details of the inquiry, inspection, investigation

10. *Whether the company has serviced the copy of the application with complete annexures with the Registrar and the chief secretary of the state

Yes No

If yes, specify the date of service

11. Facts of the case are given below

(Give a concise statement of facts in a chronological order, each paragraph containing as nearly as possible a separate issue, fact or otherwise)

Attachments

1. Copy of Memorandum of Association;

Attach

2. *Copy of special resolution sanctioning alteration;

Attach

3. *Copy of the minutes of the general meeting authorizing such alteration;

Attach

4. *Power of attorney/vakalatnama/Board resolution;

Attach

5. Declaration by directors about no retrenchment of employees;

Attach

6. Copy of newspaper advertisement for notice of shifting the registered office;

Attach

7. *Proof of service of the application to the Registrar, Chief secretary of the state, SEBI or any other regulatory authority (if applicable);

Attach

8. List of creditors or debentureholders duly verified, as per proviso to sub rule (2) to Rule 30
9. Copy of objections (if received any);
10. Optional attachment(s), if any including those filed in MCA portal (investors complaint form).

Declaration

I am authorized by the Board of Directors of the Company vide resolution no. * Dated * to sign this form and declare that all the requirements of Companies Act, 2013 and the rules made thereunder in respect of the subject matter of this form and matters incidental thereto have been complied with. I further declare that:

- Whatever is stated in this form and in the attachments thereto is true, correct and complete and no information material to the subject matter of this form has been suppressed or concealed and is as per the original records maintained by the company.
- All the required attachments have been completely and legibly attached to this form
- Any application, writ petition or suit had not been filed regarding the matter in respect of which this petition/application has been made, before any court of law or any other authority or any other Bench or the Board and not any such application, writ petition or suit is pending before any of them.
- 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.
- the company shall not seek change in the jurisdiction of the Court where cases for prosecution are pending.

DSC BOX***To be digitally signed by***Designation *Director identification number of the director; or DIN or PAN of the manager or CEO or CFO; or Membership number of the Company secretary

Note: Attention is drawn to provisions of Section 448 and 449 which provide for punishment for false statement / certificate and punishment for false evidence respectively.

<input type="button" value="Modify"/>	<input type="button" value="Check Form"/>	<input type="button" value="Prescrutiny"/>	<input type="button" value="Submit"/>
For office use only :			
eForm Service request number (SRN) <input type="text"/>	Affix filing details <input type="text"/>		eForm filing date <input type="text"/> (DD/MM/YYYY)
Digital signature of the authorising officer	<input type="text"/>		
This e-Form is hereby approved	<input type="checkbox"/>	<input type="button" value="Confirm Submission"/>	
This e-Form is hereby rejected	<input type="checkbox"/>		
Date of signing <input type="text"/>	(DD/MM/YYYY)		

5. In the principal rules, for Form No.INC-26, the following form shall be substituted, namely:-

“Form No. INC-26

[Pursuant to rule 30 the Companies (Incorporation) Rules, 2014]

Advertisement to be published in the newspaper for change of registered office of the company from one state to another

Before the Central Government
_____Region

In the matter of sub-section (4) of Section 13 of Companies Act, 2013 and clause (a) of sub-rule (5) of rule 30 of the Companies (Incorporation) Rules, 2014

AND

In the matter of _____ Limited having its registered office at
_____, Petitioner

Notice is hereby given to the General Public that the company proposes to make application to the Central Government under section 13 of the Companies Act, 2013 seeking confirmation of alteration of the Memorandum of Association of the Company in terms of the special resolution passed at the Annual General Meeting/ Extra ordinary general meeting held on _____ to enable the company to change its Registered Office from “State of _____” to “State of _____”.

Any person whose interest is likely to be affected by the proposed change of the registered office of the company may deliver **either on the MCA-21 portal (www.mca.gov.in) by filing investor complaint form** or cause to be delivered or send by registered post of his/her objections supported by an affidavit stating the nature of his/her interest and grounds of opposition to the the Regional Director at the address _____ within fourteen days of the date of publication of this notice with a copy to the applicant company with a copy of the applicant company at its registered office at the address mentioned below:

For and on behalf of the Applicant

.....

Director

Date.....

Place.....

Note:— Strike off whichever is not applicable.

[F. No. 1/13/2013 CL-V]

AMARDEEP SINGH BHATIA, Jt. Secy.

Note: The principal notification was published in the Gazette of India, Extraordinary Part II, Section 3, Sub-section (i) *vide* number G.S.R. 250(E) dated 31st March, 2014 and subsequently amended *vide* the following notifications:-

Serial Number	Notification Number	Notification Date
1.	G.S.R. 349(E)	01-05-2015
2.	G.S.R. 442(E)	29-05-2015
3.	G.S.R. 99(E)	22-01-2016
4.	G.S.R.336(E)	23-03-2016
5.	G.S.R.743(E)	27-07-2016
6.	G.S.R.936(E)	01-10-2016
7.	G.S.R.1184(E)	29-12-2016
8.	G.S.R. 70(E)	25-01-2017