

ALTERATION OF CHARTER DOCUMENT- MEMORANDUM & ARTICLE OF ASSOCIATION

➤ **Notice and verification of change of situation of the registered office**

The notice of change of the situation of the registered office and verification thereof shall be filed in **Form No.INC.22** along with the fee and shall be attached to the said form, the similar documents and manner of verification as are specified for verification of Registered office on incorporation in terms of sub- section (2) of section 12.

➤ **Shifting of registered office within the same State from one ROC to another ROC**

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.

The company shall, not less than one month before filing any application with the Regional Director for the change of registered office.-

- (a) publish a notice, at least once in a daily newspaper published in English and in the principal language of that district in which the registered office of the company is situated and circulating in that district; and
- (b) serve individual notice on each debenture holder, depositor and creditor of the company, clearly indicating the matter of application and stating that any person whose interest is likely to be affected by the proposed alteration of the memorandum may intimate his nature of interest and grounds of opposition to the Regional Director with a copy to the company within twenty one days of the date of publication of that notice:

Provided that in case no objection is received by the Regional Director within twenty one days from the date of service or publication of the notice, the person concerned shall be deemed to have given his consent to the change of registered office proposed in the application:

Provided further 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.

➤ **Alteration of Memorandum by change of name**

The change of name shall not be allowed to a company which has defaulted in filing its annual returns or financial statements or any document due for filing with the Registrar or which has defaulted in repayment of matured deposits or debentures or interest on deposits or debentures.

An application shall be filed in **Form No.INC.24** along with the fee for change in the name of the company and

new certificate of incorporation in **Form No.INC.25** shall be issued to the company consequent upon change of name.

➤ **Shifting of registered office from one State or Union territory to another State**

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 the memorandum and articles of association;
- (b) copy of notice convening the general meeting along with relevant Explanatory Statement;
- (c) copy of the special resolution sanctioning the alteration by the members of the company;
- (d) a copy of the minutes of the general meeting
- (e) an affidavit verifying the application;
- (f) the list of creditors and debenture holders entitled to object to the application;
- (g) an affidavit verifying the list of creditors;
- (h) the document relating to payment of application fee;
- (i) a copy of board resolution or Power of Attorney or the executed Vakalatnama, as the case may be.

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 applicant company shall file an affidavit, 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, to the effect that they have made a full enquiry 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 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.

There shall also be attached to the application an 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 and also there shall be an application filed by the company to the Chief Secretary of the concerned State Government or the Union territory.

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.

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.

The company shall **at least fourteen days** before the date of hearing-

- (a) advertise the application in the **Form No.INC.26** in a 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;
- (b) serve, by registered post with acknowledgement due, individual notice(s), 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.

- (7) 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.
- (8) Where no objection has been received from any of the parties, who have been duly served, the application may be put up for orders without hearing.
- (9.) Before confirming the alteration, the Central Government shall ensure that, with respect to every creditor and debenture holder who, in the opinion of the Central government, is entitled to object to the alteration, and who signifies his objection in the manner directed by the Central government, 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 the satisfaction of the Central Government.

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.

The certified copy of the order of the Central Government, approving the alteration of the memorandum for transfer of registered office of the company from one State to another, shall be filed in **Form No.INC.28** along with the fee as with the Registrar of the State within thirty days from the date of receipt of certified copy of the order.

➤ **Change of objects**

Where the company has raised money from public through prospectus and has any unutilized amount out of the money so raised, it shall not change the objects for which the money so raised is to be applied Unless a special resolution is passed through postal ballot and the notice in respect of the resolution for altering the objects shall contain the following particulars, namely:-

- (a) the total money received;
- (b) the total money utilized for the objects stated in the prospectus;
- (c) the unutilized amount out of the money so raised through prospectus,
- (d) the particulars of the proposed alteration or change in the objects;
- (e) the justification for the alteration or change in the objects;
- (f) the amount proposed to be utilized for the new objects;
- (g) the estimated financial impact of the proposed alteration on the earnings and cash flow of the company;
- (h) the other relevant information which is necessary for the members to take an

- informed decision on the proposed resolution;
- (i) the place from where any interested person may obtain a copy of the notice of resolution to be passed.
 - (2) The advertisement giving details of each resolution to be passed for change in objects which shall be published simultaneously with the dispatch of postal ballot notices to shareholders.
 - (3) The notice shall also be placed on the website of the company, if any.