UNYKS CORPORATE SOLUTIONS PRIVATE LIMITED

Guide on Shifting of Registered Office

(One State to another State as per the Companies Act 2013)





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GUIDANCE NOTE ON SHIFTING OF REGISTERED OFFICE FROM ONE STATE TO ANOTHER STATE

APPLICABLE LAW:

Section **12(5) & 13(4)** of the Companies Act, 2013 and rule **28 & 30** of the Companies (Incorporation) Rules, 2014

Section 12(5):

Except on the authority of **a special resolution** passed by a company, the registered office of the company shall not be changed,—

(a) in the case of an existing company, outside the local limits of any city, town or village where such office is situated at the commencement of this Act or where it may be situated later by virtue of a special resolution passed by the company; and

(b) in the case of any other company, outside the local limits of any city, town or village where such office is first situated or where it may be situated later by virtue of a special resolution passed by the company:

Provided that no company shall change the place of its registered office from the jurisdiction of one Registrar to the jurisdiction of another Registrar within the same State unless such change is confirmed by the Regional Director on an application made in this behalf by the company in the prescribed manner

Section 13(4):

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** on an application in such form and manner as may be prescribed.

Note: Central Government has delegated above such powers to Concerned **Regional Directors** *vide MCA notification dated 21st May 2014.*

Section 13(7):

Where an alteration of the memorandum results in the transfer of the registered office of a company from one State to another, a certified copy of the order of the Central Government approving the alteration shall be filed by the company with the Registrar of each of the States within such time and in such manner as may be prescribed, who shall register the same, and the Registrar of the State where the registered office is being shifted to, shall issue a fresh certificate of incorporation indicating the alteration

PROCESS CHECKLIST BY UNYKS

A. Obtain approval from the Board, preferably at a Board Meeting, on the following resolutions:

   a. Approval of Shifting in registered office and authorization to Directors/ Practicing CS to making application and appear before Regional Director.
   b. To fix the date, venue and time for holding a general meeting to obtain the approval of members by special resolution
   c. To approve the notice of the general meeting and explanatory statement to be sent to the members

   [Note: Resolutions approved via Circular / Video conference meeting shall treated as a valid approval]

B. Send out notice of General Meeting to all the members of the Company. 21 clear days' notice to be provided.
C. Obtain approval from members of the Company via duly convened general meeting, on the following resolutions;

   a. Approval of Shifting of Registered Office Address from state to state and to alter the situation clause in Memorandum of Association of the Company – Special Resolution, subject to the approval of Regional Director.
   b. Authorize Board of Directors to file the application with Regional Director and deal with matters incidental thereto.

D. Convene the Board Meeting for;
   a. Authentication of Latest Creditors and Debentures List, not more than one month, setting forth the following details, namely:-
      i. the names and address of every creditor and debenture holder of the company;
      ii. the nature and respective amounts due to them in respect of debts, claims or liabilities:
   b. List out the names of person whose interest is likely to be affected by the proposed shifting/ Application.
   c. Approve the notice of Advertisement in Form INC 26.
   d. Noting of 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 –
   e. Noting of affidavit from the directors of the company.

E. Advertisement 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 - company – Objection to be made within 21 days of publication of notice.

F. Serve, **by registered post** with acknowledgement due, individual notice(s), to the effect set out in clause (E) on each debenture-holder, depositor and creditor of the company – Objection to be made within 21 days of publication of notice.

G. 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.

H. 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.

I. Filing of Form INC 23 with Regional Director along with the following documents;

   a. Memorandum of Association and Articles of Association.
   b. Certified true copy of **NOTICE** of the general meeting along with relevant **EXPLANATORY STATEMENT.**
   c. Certified true copy of special resolution sanctioning shifting of registered office.
   d. Certified true copy of the minutes of the general meeting authorizing such alteration.
   e. Proof of service of the application to the Registrar, Chief Secretary of the state, SEBI or any other regulatory authority, if applicable.
   f. Power of attorney/vakalatnama/Board resolution.
   g. List of creditors and debenture holders.
   h. Affidavit from Directors in terms of rules.
   i. Affidavit verifying the application.
   j. Affidavit by the company secretary of the company and the directors in regards to the correctness of list of creditors and affairs of the company.
   k. Affidavit by directors about no retrenchment of employees.
   l. Affidavit verifying the list of creditors.
   m. It is mandatory to attach in case if there is any prosecution is pending against the company or if any inquiry, inspection or investigation is initiated against the company.
   n. Copy of newspaper advertisement for notice of shifting the registered office. It is mandatory to attach copy of newspaper publication in case if the registered office is shifting within the state.
   o. Copy of objections (if received any)

   [Note: Not less than one month time Gap should be there in between filing of application with Regional Director Vs Form INC 26 Advertisement and Notice to creditors and Debenture holders]

J. 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.

K. 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.

L. 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.
M. Make alteration in the MOA with respect to the state in every copy of Memorandum.
N. Notify the change of registered office with Banker, customers and other company linked people including other relevant statutory authorities in their prescribed format.
O. 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.
P. In case of listed Companies, follow listing agreement and SEBI prescribed procedures in addition to the above.

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