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Important Company Law Procedures at one place - Part 2

Dear Professional Colleague

In last few days I have written and uploaded different corporate law procedures under Companies Act, 2013 for fellow professionals. In this article you may find some of them at one place in to the point and crisp language. I am sure that this article will act as a ready reference as far as procedure and corporate secretarial practice is concerned. This is actually second article of this series. First article of this series is available at the link given below:

[Important Company Law Procedures at one place - Part 1](#)

Please find below procedures for certain corporate secretarial practices:

1. Procedure for change in registered office address from one city to another city within the same state

Secretarial procedure for change in registered office address from one city to another city within the same state is given below in brief:

1. Issue notice under section 173(3) of the Companies Act, 2013, for convening a meeting of the Board of Directors.
2. Hold Board meeting and:
 - a. Pass board resolution in order to obtain approval of Directors for shifting registered office from one city to another city.
 - b. Pass board resolution to fix date, time and place for holding EGM to get approval of shareholders, by way of Special Resolution, for shifting the registered office outside the local limits of any city, town or village where such office is situated. This Special resolution is required by virtue of Section 12(5)(a) of Companies Act, 2013;
 - c. Pass board resolution to approve notice of EGM along with Agenda and Explanatory Statement as per section 102(1) of the Companies Act, 2013;
 - d. Pass board resolution to authorise the Director or Company Secretary to issue Notice of the Extraordinary General meeting (EGM).
3. Issue Notice of the EGM to all Members, Directors and the Auditors of the company in accordance with the provisions of Section 101 of the Companies Act, 2013;
4. Hold the EGM on due date and pass the necessary Special Resolution under section 12(5)(a) of the Companies Act, 2013, for shifting registered office from one city to another city.
5. In case of change in situation of registered office of the Company from One city to another city but within the same State, 2 E-forms will be filed with concerned Registrar of Companies as per the details given below:
 - a. File **E-form INC.22** within fifteen (15) days of the change in registered office address along with the following attachments:

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- i. Proof of registered office addresses (Conveyance/Lease deed/Rent Agreement etc. along with the rent receipts not older than one month.
 - ii. Copies of the utility bills (Proof of evidence of any utility service like telephone, gas, electricity, etc. not older than two months.
 - iii. Proof that company is authorized to use the address as the registered office of the Company (Authorisation letter from the owner or occupant of the premises along with proof of ownership or occupancy and it is mandatory if registered office is owned by any other entity / person (Not taken on lease by the Company).
- b. File E-form MGT.14** within 30 days of passing special resolution in EGM for change in registered office address along with the following attachments:
- i. Notice of EGM;
 - ii. Certified True copy of Special Resolution;
 - iii. Certified True copy of Board Resolution may be attached as an optional attachment.

For detailed Knowledge and understanding of relevant Section, Rules, legal and practical interpretation along with sample Secretarial documents regarding this topic, kindly refer my exclusive article "Procedure for change in Registered Office Part-2" available at the link below:

<http://www.caclubindia.com/articles/procedure-for-change-in-registered-office-part-2-21340.asp#.VAg9BaNqOZQ>

2. Procedure for change in registered office address from one ROC to another ROC within the same State

Secretarial procedure for Shifting of registered office from one Registrar to another Registrar within the same State is given below in brief:

- i.) **Calling of Board Meeting:** Issue notice under section 173(3) for convening a board meeting. Main agenda for this Board meeting would be:
 - a. Pass a board resolution for change in registered office from one Registrar to another Registrar within the same State along with and alteration in MOA with regard to registered office clause;
 - b. Fix date, time and place for holding Extra-ordinary General meeting (EGM) to get approval of shareholders, by way of Special Resolution, for shifting the registered office.
 - c. To approve notice of EGM along with Agenda and Explanatory Statement to be annexed to the notice of General Meeting as per section 102(1) of the Companies Act, 2013;
 - d. To authorise the Director or Company Secretary to issue Notice of the Extra-ordinary General meeting (EGM) as approved by the board under clause 1(c) mentioned above.
- ii.) **Issue of EGM Notice:** Issue Notice of the Extra-ordinary General meeting (EGM) to all Members, Directors and the Auditors of the company under Section 101 of the Companies Act, 2013;
- iii.) **Holding of Extra Ordinary General Meeting:** Hold the EGM on due date and pass the necessary Special Resolution, to get shareholders' approval for change in registered office address.
- iv.) **ROC Form filing:** File E-form MGT.14 – For filing special resolution with ROC, passed for change in registered office address within 30 days of passing special resolution in the EGM.

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- v.) **Application for Seeking Approval of Regional Director:** As per Rule 28 of Companies (Incorporation) Rules, 2014, an application seeking confirmation from the Regional Director for shifting the registered office from the jurisdiction of one Registrar to the jurisdiction of another Registrar within the same State, shall be filed by the company with the Regional Director in Form no.**INC.23** along with the fee and following attachments:
- i. Certified copy of the amended MOA and AOA
 - ii. Copy of notice of the General Meeting along with relevant explanatory statement under section 102;
 - iii. Certified True copy of Special Resolution;
 - iv. Copy of the minutes of the General Meeting in which special resolution was passed;
 - v. Proof of service of the application to the Registrar, Chief secretary of the state , SEBI or any other regulatory authority, (if applicable)
 - vi. Copy of objections, (if received any);
- vi.) **Duty of Regional Director to Intimate Company:** As per section 12(6), it is duty of RD to communicate his confirmation to the Company within a period of 30 days from the date of receipt of application by the Regional Director.
- vii.) **Duty of Company to Intimate ROC:** After getting the confirmation by the RD, Company is required to file certified true copy of such confirmation in e-Form **INC.28** with the ROC under whose jurisdiction the old office is situated within a period of 60 days from the date of order of RD communicated to the company. [Section 12(6)].
- viii.) **File form INC.22:** Notice of every change of the situation of the registered office shall be given to the Registrar within **fifteen days** of the change through filing of E-form **INC.22** along with the necessary attachments.
- ix.) **Duty of ROC to register RD order:** The Registrar shall within a period of 30 days from the date of filing of such RD confirmation by the Company, register the same and certify the registration and shall issue a fresh certificate indicating new CIN to that effect. This certificate shall be conclusive evidence that all the requirements of this Act with respect to change of registered office have been complied with and the change shall take effect from the date of the certificate.

For detailed Knowledge and understanding of relevant Section, Rules, legal and practical interpretation along with sample Secretarial documents regarding this topic, kindly refer my exclusive article "Procedure for shifting of registered office from one ROC to another ROC within the same State" available at the link below:

http://www.caclubindia.com/articles/shifting-of-registered-office-from-one-roc-to-another-roc-within-the-same-state-21429.asp#.U_3LDKNqOZQ

3. **Procedure for change in name of the company**

According to section 13(1) of the Companies Act, 2013, a special resolution is required to be passed at the general meeting for change in name of the Company. For change in name of the Company approval of the Central Government shall also be required (Powers have been delegated to the Registrar of Companies). Secretarial procedure for alteration in Name clause is given below:

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- a.) **Calling of Board Meeting:** Issue notice under section 173(3) of the Companies Act, 2013, for convening a board meeting to consider the need and reason for changing name of the company.
- b.) **Seeking name availability for proposed new name from the ROC:** As per section 4(4) read with **Rule-9** of Companies (Incorporation) Rules, 2014, application for the reservation/availability of name shall be in Form no. **INC.1** along with prescribed fee of Rs. 1,000/-. In selection of Company name should be in accordance with name guidelines given in **Rule-8** of Companies (Incorporation) Rules, 2014. After approval of name ROC will issue a Name availability letter w.r.t. approval for availability of name for a proposed company. As per section 4(5), available name will be valid for a period of 60 Days from the date on which the application for Reservation was made.
- c.) **Approval of members in general meeting:** After getting name availability from the ROC, the Board shall convene a general meeting of members for the purpose of getting member's approval through passing special resolution. Find below stepwise procedure for calling General Meeting:
- d.) **Issue of EGM Notice:** Issue Notice of the Extra-ordinary General meeting (EGM) to all Members, Directors and the Auditors of the company in accordance with the provisions of Section 101 of the Companies Act, 2013;
- e.) **Holding of General Meeting:** Hold the Extra-ordinary General meeting (EGM) on due date and pass the necessary Special Resolution under section 13(1) of the Companies Act, 2013, for change in Name clause of Memorandum.
- f.) **ROC Form filing:** E-form MGT.14 and E-form INC.24, would be filed as per the details below:
 - i. **E-form MGT.14:** As per section 13(6), Company is required to file Special Resolution with concerned ROC through form **MGT.14** within 30 days of passing of Special Resolution along with relevant attachments.
 - ii. **E-form INC.24:** Form INC.24 is required to be filed within 30 days of EGM in order to obtain approval of Central Government (power delegated to ROC) for change in Name of the Company. Find below few points regarding form INC.24:
 - a. Form INC.24 is required to be filed after form INC.1 and MGT.14 as form INC.24 has compulsorily asked about SRN of form INC.1 and MGT.14.
 - b. You have to attach Minutes of EGM with form INC.24 as compulsory attachment.
- g.) **Duty of Registrar of Companies:** As per Section 13(3), Concerned Registrar of Companies (ROC) will check the E-forms and attached documents and will give effect to the change in Name clause of the Memorandum.

For detailed Knowledge and understanding of relevant Section, Rules, legal and practical interpretation along with sample Secretarial documents regarding this topic, kindly refer my exclusive article "Procedure for change in Name of the Company" available at the link below:

<http://www.caclubindia.com/articles/procedure-for-change-in-name-of-the-company-under-ca-2013-21564.asp#.VAhNbaNqOZO>

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4. Procedure for Transfer of shares under Companies Act, 2013

Procedure related to Transfer of shares under Companies Act, 2013 is regulated by Section 56 of Companies Act, 2013 read with Rule 11 of Companies (Share Capital & Debentures) Rules 2014 and Article of Association of the Company. For procedure related to transfer of share one should refer the provisions of Article of Association as generally articles contain the detailed provisions as regards the procedure for transfer of shares.

Basic Procedure for Transfer of Share

A. In a Private Company

Usually following steps shall be followed by a private company to give effect to the transfer of shares in a Private Company:—

- (i) Transferor should give a notice in writing for his intention to transfer his share to the company.
- (ii) The company in turn should notify to other members as regards the availability of shares and the price at which such share would be available to them.
- (iii) Such price is generally determined by the directors or the auditors of the company.
- (iv) The company should also intimate to the members, the time limit within which they should communicate their option to purchase shares on transfer.
- (v) If none of the members comes forward to purchase shares then the shares can be transferred to an outsider and the company will have no option, other than to accept the transfer.
- (vi) Get the Share transfer deed in **form SH-4** duly executed both by the transferor and the transferee.
- (vii) The transfer deed should bear stamps according to the Indian Stamp Act and Stamp Duty Notification in force in the State concerned. The present rate of transfer of shares is 25 Paise for every one hundred rupees of the value of shares or part thereof. Do not forget to cancel the stamps affixed at the time or before signing of the transfer deed.
- (viii) The signatures of the transferor and the transferee in the share transfer deed must be witnessed by a person giving his signature, name and address.
- (ix) Attach the relevant share certificate or allotment letter with the share transfer deed and deliver the same to the company. The share transfer deed should be deposited with the company within sixty (60) days from the date of such execution by or on behalf of the transferor and by or on behalf of the transferee.
- (x) After receipt of share transfer deed, board shall consider the same. If the documentation for transfer of share is in order, board shall register the transfer by passing a resolution.

B. In a Public Company

Section 58(2) provides that the shares or debentures and any interest therein of a public company **shall be freely transferable**. Usually following steps shall be followed by a private company to give effect to the transfer of shares:—

- (i) Get the Share transfer deed in **form SH-4** duly executed both by the transferor and the transferee.
- (ii) The transfer deed should bear stamps according to the Indian Stamp Act and Stamp Duty Notification in force in the State concerned. The present rate of transfer of shares is 25 Paise for every one hundred rupees of the value of shares or part thereof. Do not forget to cancel the stamps affixed at the time or before signing of the transfer deed.

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- (iii) The signatures of the transferor and the transferee in the share transfer deed must be witnessed by a person giving his signature, name and address.
- (iv) Attach the relevant share certificate or allotment letter with the share transfer deed and deliver the same to the company. The share transfer deed should be deposited with the company within sixty (60) days from the date of such execution by or on behalf of the transferor and by or on behalf of the transferee.
- (v) After receipt of share transfer deed, board shall consider the same. If the documentation for transfer of share is in order, board shall register the transfer by passing a resolution and issue a share certificate to the transferee.

For detailed Knowledge and understanding of relevant Section, Rules, legal and practical interpretation along with sample Secretarial documents regarding this topic, kindly refer my exclusive article “Procedure for Transfer of shares under Companies Act, 2013” available at the link below:

<http://www.caclubindia.com/articles/procedure-for-transfer-of-shares-under-companies-act-2013-21623.asp#.VA1SK6NqOZQ>

5. Procedure for Transmission of shares under Companies Act, 2013

Generally articles contain the detailed provisions as regards the procedure for transmission of shares. Usually following steps shall be followed in order to give effect to the transmission of shares:—

1. The survivor or legal heir, as the case may be, who want transmission by operation of law in his/her favour, shall file a simple application with the Company with relevant documents such as death certificate, succession certificate, probate, etc., depending upon various circumstances may be considers necessary for transmission by the Company.
2. The company records the particulars of the death certificate and a reference number of recording entry is given to the shareholder so as to enable him to quote such number in all future correspondence with the company.
3. The company review and verify the documents submitted with transmission request. In case all the documents are in order, company shall approve the transmission request and register the shares in the name of the survivor or legal heir as the case may be.
4. However in case documents submitted with transmission request are not in order and it is the case of refusal, company shall within thirty (30) days, from the date on which the intimation of transmission is delivered to the company, communicate refusal to the concerned person.
5. Dividend declared before the death of the shareholder will be payable to legal representative but dividend declared after the death of a member can be paid to him only after registration of his name and till that period it has to be kept in abeyance.

For detailed Knowledge and understanding of relevant Section, Rules, legal and practical interpretation along with sample Secretarial documents regarding this topic, kindly refer my exclusive article “Procedure for Transmission of shares under Companies Act, 2013” available at the link below:

<http://www.caclubindia.com/articles/procedure-for-transmission-of-shares-under-ca-2013-21629.asp#.VA1SC6NqOZQ>

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6. **Procedure for appointment of Director by small shareholders**

Section 151 of the Companies Act, 2013 read with Rule 7 of Companies (Appointment and Qualification of Directors) Rules, 2014, governs the process for appointment of director by small shareholders.

Procedure for appointment of small shareholders' Director

Please find below point wise process for appointment of small shareholders' Director under Rule 7 of Companies (Appointment and Qualification of Directors) Rules, 2014:

1. **Minimum Number of Members required:** Not less than one thousand small shareholders or one-tenth of the total number of such shareholders, whichever is lower, intending to propose a person as a candidate for the post of small shareholders' director shall leave a notice of their intention with the company at least 14 days before the meeting under their signatures specifying the name, address, shares held and folio number of the person whose name is being proposed for the post of director.
2. The notice shall be accompanied by a statement signed by the person whose name is being proposed for the post of small shareholders' director. This statement must contain the following information:
 - a. Director Identification Number of the nominated person;
 - b. Declaration that he is not disqualified to become a director under the Act; and
 - c. Consent to act as a director of the company
3. The appointment of small shareholders' director shall not be liable to retire by rotation and his tenure shall not exceed a period of three consecutive years. On the expiry of the tenure, such director shall not be eligible for re-appointment.
4. **Disqualification for being appointed as Small Shareholders' Director:** Candidate for the position of small shareholders' director shall not be suffering from disqualifications mentioned u/s 164 for being appointed as Director.
5. Collect DIN number of the proposed small shareholders' director u/s 153 read with from **DIR-3** and **DIR-4**. Also Procure following Documents/Consent/Declaration from the proposed small shareholders' director:
 - i. Consent in writing to act as small shareholders' director in form **DIR-2** pursuant to Rule-8 of Companies (Appointment & Qualification of Directors) Rules, 2014.
 - ii. Intimation in Form DIR-8 pursuant to Rule-14 in terms of Companies (Appointment & Qualification of Directors) Rules, 2014, to the effect that he/she is not disqualified u/s 164(2) of Companies Act, 2013.
 - iii. Disclosure of Interest in Form MBP.1 pursuant to section 184(1) read with rule 9(1) of Companies (Meetings of Board and its Powers) Rules, 2014. Remember one thing MBP.1 should not be dated earlier than date of his/her appointment as small shareholders' director.

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- iv. Self-certified copies of Proof of Identity and Proof of Residence.
 - v. Document with respect to Interest in other entities (One of the attachment of form DIR.12)
6. Hold a General Meeting of shareholders to pass necessary Resolution for appointment of small shareholders' director u/s 151 of Companies Act, 2013.
7. File form **DIR.12** with ROC as return of appointment of small shareholders' director within 30 days of passing board resolution for appointment along with following **attachments**:
- i. Board Resolution for appointment
 - ii. Appointment Letter given to small shareholders' director
 - iii. Form DIR.2
 - iv. Interest in other entities
 - v. Self-certified copies of Proof of Identity
 - vi. Self-certified copies of Proof of Residence
8. Make necessary entries in the Register of Directors along with their Shareholding, if any, maintained u/s 170 of Companies Act, 2013.

For detailed Knowledge and understanding of relevant Section, Rules, legal and practical interpretation along with sample Secretarial documents regarding this topic, kindly refer my exclusive article "Provision for appointment of Director by small shareholders" available at the link below:

<http://www.caclubindia.com/articles/provisions-for-appointment-of-director-by-small-shareholders-21598.asp#.VAhPBqNqOZQ>

Disclaimer:

This write up is intended to start academic discussion on few significant interpretations under Companies Act, 2013. It is not intended to be a professional advice and should not be relied upon for real time professional facts. Readers are advised to refer relevant provision of law before applying or accepting any of the point mentioned above. Author accepts no responsibility whatsoever and will not be liable for any losses, claims or damages which may arise because of the contents of this write up.

I am hopeful that this write up would be of some help w.r.t. your professional working and endeavors under Companies Act, 2013. Kindly share your opinion.

Thanks

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Sept 08, 2014