

PROCEDURE FOR SHIFTING OF REGISTERED OFFICE WITHIN SAME STATE BUT FROM THE JURISDICTION OF ONE REGISTRAR OF COMPANIES TO ANOTHER REGISTRAR OF COMPANIES

34

{Section 12 (5) read with Rule 28 of the Companies (Incorporation) Rules, 2014}

Synopsis

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Relevant Sections, Rules and Forms at a Glance

Particulars	Section(s), Rule(s) and Name of e-Form(s)
The Companies Act, 2013	Sections 4, 12, 13, 15, 110, 117, 118, 173, 179 and 403
The Companies (Incorporation) Rules, 2014	Rules 25, 25A, 27 and 28
The Companies (Management and Administration) Rules, 2014	Rules 22 and 24
The Companies (Registration Offices and Fees) Rules, 2014	Rules 7,8 and 12
Secretarial Standard-1 of ICSI	Clauses 3, 4, 5, 6, 7 and 8
Secretarial Standard-2 of ICSI	Clauses 1, 3, 4, 5, 6, 7 and 17
e-Forms to be filed	MGT-14 INC-23 INC-28 INC-22 GNL-2

Significant Relevant Approvals and Requirements

- ❖ Documents related to new premise.
- ❖ Board resolution.
- ❖ Special resolution.
- ❖ Consent of creditors or made necessary provisions for their payment.
- ❖ Declaration that company is not defaulted in payment of workmen's due.
- ❖ Declaration regarding no effect on employees due to shifting.

- ❖ Declaration not to seek change in the jurisdiction of Court, if cases for prosecution are pending.
- ❖ Acknowledged copy of intimation to Chief Secretary of the State.
- ❖ Regional Director's approval.

34.1 PROCEDURE WITH CHECK POINTS

S. No.	Particulars
1.	<p>Ensure that—</p> <ul style="list-style-type: none"> • the status of the company is 'ACTIVE COMPLIANT COMPANY' otherwise the Registrar shall not accept and take on record the e-Form INC-22 which is required to be filed in case of shifting of registered office. (<i>Fourth Proviso of Rule 25A of the Companies (Incorporation) Rules, 2014</i>), and if the status of the company is 'ACTIVE NON-COMPLIANT', then first complete the formalities of filing of e-FORM INC-22 A as per rule 25A of the Companies (Incorporation) Rules, 2014. • the proposed new registered office is within the same state where the existing registered office of the company is presently situated but within the jurisdiction of another Registrar of Companies. • if the memorandum of association of the company has mentioned the jurisdiction of the Registrar of Companies in the situation clause, then the memorandum of association of the company shall be changed. • the company is not defaulted in payment of dues to its workmen and creditors {<i>Rule 28(1)(c) of the Companies (Incorporation) Rules, 2014</i>}. • that the consent of creditors shall be obtained, or their amount shall be paid or discharged or settled and proof of the same shall be kept for filing the same with the Regional Director at the time of filing application for shifting of registered office {<i>Rule 28(1) (c) of the Companies (Incorporation) Rules, 2014</i>}. • that the board shall not seek change in the jurisdiction of the court where cases for prosecution are pending, if any {<i>Rule 28(1)(d) of the Companies (Incorporation) Rules, 2014</i>}. • that the employee's interest shall not be adversely affected consequent to proposed shifting of registered office {<i>Rule 28(1)(e) of the Companies (Incorporation) Rules, 2014</i>}. • the company is not a listed company or company is an unlisted public company and the number of members is up to 200 or the company is a One Person Company, otherwise, members resolution shall be transacted through postal ballot {<i>Section 110(1) read with Rule 22(16)(c) of the Companies (Management and Administration) Rules, 2014</i>} and the resolution may be transacted in general meeting after providing facility to members to vote by electronic means in the manner provided under section 108 of the Act {<i>First proviso to Rule 22(16)(c) of the Companies (Management and Administration) Rules, 2014</i>}.

S. No.	Particulars
	<p>The subscribers, who are individuals in the Memorandum of Association (MOA) shall be deemed as first directors until the directors are duly appointed by the members in accordance with Section 152 of the Companies Act, 2013 and rules made thereunder (Section 152 of the Act).</p> <ul style="list-style-type: none"> • Not the person intended/proposed to be appointed a director of a company has a valid Director Identification Number (DIN) under section 174 or any other number as may be prescribed under section 174 of the Companies Act, 2013, however, in case of first directors of a new company, the DIN up to 3 (three) persons can be obtained through incorporation with integrated form SPICe+ (INC-32) (Section 152 of the Act read with rule 152 of the Companies Incorporation Rules, 2014). • Not a total number of directors, at least one director has stayed in India for a total period of not less than 182 days during the financial year. Provided that in case of newly incorporated company, residential status shall be determined proportionately. However, it is not required in case the director is appointed by the Central Government or State Government (Section 152 of the Act). • A person, who is intended to be appointed, shall not be eligible for appointment, if he/she has any disqualification for appointment under section 164 of the Act (Section 164 of the Act read with companies provisions a government company and regulations in COA 2012 about COA 2012). • A person proposed to be appointed as a director in a company other than a company registered under Section 8 (non-profit company) of the Companies Act, 2013 (Section 152 of the Act) <ul style="list-style-type: none"> - shall not hold office as a director including any alternate directorship in more than 20 companies including directorship in dormant companies. - shall not hold office in more than 10 public companies including the private companies which are holding or subsidiary of public company.
1.	In case of one person company, an individual being sole member is deemed to be the first director of the company, if the articles of association has not mentioned the names of first directors (Section 152 of the Act).
2.	Forms created in writing, on or before appointment, from the appointed director to act as director in the company as Form 208-2 (Part 2 of the Companies Incorporation and Qualification of Directors Rules, 2014).
3.	Forms an certificate in writing, on or before appointment, from the appointed director as Form 208-3 regarding that he/she is not disqualified under Section 164 of Companies Act, 2013, to act as a Director (Section 164 of the Act read with rule 17 of the Companies Incorporation and Qualification of Directors Rules, 2014).
4.	The particulars of first directors to be integrated with Form SPICe+ (INC-32) at the time of incorporation of company.

For the detailed procedure, please refer Company Law Procedures & Compliances by Dr. Sanjeev Gupta, 2nd edn, 2021. You can buy from your bookseller or online at www.bharatlaws.com

[COMPANY LAW Procedures & Compliances \(in 2 vols.\)](#)