

Info Capsule

MCA NOTIFIES COMPANIES (INCORPORATION) SECOND AMENDMENT RULES, 2017¹

Ministry of Corporate Affairs notifies *Companies (Incorporation) Second Amendment Rules, 2017* dated **July 27, 2017**. As per the notification following amendment has been made in the Companies (Incorporation) Rules, 2014 -

**1. In 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".

2. For Rule 30, the following rule has been substituted:-

"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.

¹ Available at: <http://www.mca.gov.in/Ministry/pdf/CompaniesIncorporationSecondAmendmentRules2017.pdf>

(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 date 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".

3. The amendment also provides for the substitution of the following forms:-

- (a) **Form INC-23:** 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.
- (b) **Form INC-26:** Advertisement to be published in the newspaper for change of registered office of the company from one state to another.

WTO REGIME²

The World Trade Organization (WTO) deals with the rules of trade among nations, as negotiated and agreed among its member countries, and inter alia, also settles trade disputes between its members. Its fundamental principles include non-discrimination in trade matters, freer trade, predictability and transparency. Decision-making is largely based on the principle of consensus. However, the impact of the rules on different member countries and sectors would depend on several factors, both external and internal to a member country, and would consequently vary across countries. Negotiations in a multilateral forum such as the WTO require some give and take, so that the best possible outcomes are achieved. The Government is pushing for outcomes in the priority areas of India's interest, such as in the area of agriculture negotiations.

Under the National Food Security Mission (NFSM), for the year 2017-18, out of a total allocation of Rs. 1720.00 Crore Government has allocated an amount of Rs. 1069.87 Crore for pulses as central share to increase the production of pulses in the country. A programme on Additional Area coverage of Pulses is operational since 2013-14 under the NFSM to increase the production of rabi/ summer

² Available at: <http://pib.nic.in/newsite/erelease.aspx>

pulses through area expansion of rabi pigeon pea, gram, pea and lentil during rabi and, moong and urad during summer in NFSM-Pulses implementing States.

The Government believes that a rules-based, non-discriminatory multilateral trading system is necessary for bringing transparency, equity and fair play into global trade relations. The multilateral trading system potentially offers a suitable institutional architecture for a developing country. While framing trade-related policies, the Government is mindful of the need to ensure that these are aligned with India's obligations and commitments under various WTO Agreements. Internal economic and market reforms are an ongoing autonomous process based on national goals and priorities. These include strengthening and upgradation of trade-related infrastructure, steps to enhance the ease of doing business, steps to improve India's export competitiveness and deepen engagements with new markets, deepen and widen the export basket and promote product standards, packaging and branding of Indian products.

India has a long standing position on the need to prioritize the agreed mandate of the Doha Round, in particular, the Ministerial decision to find a permanent solution by December 2017 on public stockholding for food security purposes, which relates to protection of our food-grain procurement programme at Minimum Support Prices and subsidized distribution to economically weaker sections. The Government is committed to pursuing this issue in the WTO in order to take forward the mandate given in the Bali and Nairobi Ministerial Conferences of the WTO in 2013 and 2015 respectively. India is seeking to implement the decisions on the issue through active and constructive engagement with Member countries.

Further, India's proposal for facilitating trade in services in the WTO was made with the objective of imparting much needed momentum to the discussion on services. The proposal provides a framework to address the various impediments to trade in services in a comprehensive and holistic manner. The proposal has been discussed in the relevant services bodies of the WTO.

This information was given by the Commerce and Industry Minister Smt. Nirmala Sitharaman in a written reply in Lok Sabha on July 31, 2017.

Team ICSI

Disclaimer : The information in the Info Capsules is developed according to the information available in public domain and for academic purposes only. Any person wishing to act on the basis of this document should do so only after cross checking with the original source.