Non-Compliance with Provisions of a Company’s Registered Office: Way to Heavy Penalties

written by King Stubb & Kasiva | December 15, 2022

The Ministry of Corporate Affairs (MCA) recently notified the Companies (Incorporation) Third Amendment Rules, 2022 (The Amendment).[1] Through this notification, the Ministry has undertaken stringent measures to ensure a proper and unambiguous procedure for physical verification of the registered offices of companies to eliminate shell companies and dormant firms.

In furtherance of the same, the Registrar of Companies (ROC) shall impose heavy penalties on companies and their directors for non-maintaining of registered companies. One such instance was with M/s. Chakra Vision Mutual Benefits India Limited, wherein the ROC imposed a penalty of 1 lakh on the company and 1 lakh each on the 3 directors for non-compliance with Section 12(1) and 12(4) of the Companies Act, 2013[2].

Importance of Having a Registered Office

Every company that is incorporated under the Companies Act, 2013 is required to have its registered office within 30 days of incorporation. A Registered Office is where all communications and notices pertaining to the company are sent by any person/government/ non-government/regulatory bodies. It is the principal place of business that maintains all necessary documents. According to the address of the registered office, the company decides which ROC to submit the incorporation documents to.

Section 12 of the Companies Act provides that a company must have a registered office that is capable of receiving all communications and notices. This is a mandatory legal requirement for every company.

Apart from it being a legal requirement, having a registered office is imperative for any company. Companies are required to print their name and the registered office address and keep the same printed or affixed on the outside of every office or place of business of the Company, in a conspicuous position and in legible letters. In case the characters printed or affixed are not those of the language which is commonly used in the locality, then the same must also be printed or affixed in the local language.

Further, companies must get their name and registered office address and other prescribed details on several company-related official documents such as letterheads, bills of exchange, and so on. Once a company has a registered office, it can open offices at additional locations without any intimation to the ROC. Hence, having a registered office provides *legitimacy to a Company and furthers its credibility* in the minds of the general public who may want to invest or enter into business transactions with the company.

Points to be Kept in Mind by Companies

The companies must ensure due compliance with the requirements of the registered office as provided under the Companies Act, in the absence of which, they shall be liable for penalties.

According to the new Amendment, the ROC will physically inspect the Registered Office of a company in the presence of two impartial and unbiased witnesses from the locality. During this inspection, he will take a photo of the registered office and validate its existence by carrying the documents filed on the MCA 21 portal in support of the registered office and comparing them with the copies of the supporting documents collected during physical verification and duly authenticated from the occupant of the property where the said registered office is situated. This will be followed by a detailed report including the location details, pictures, etc.

Consequences of Not having a Registered Office

According to the new guidelines laid down by The Amendment, a stringent process of physical verification of a company’s registered office has been laid down under Rule 25B, added after Rule 25A.

In several cases recently, the ROC’s office issued a show cause notice to several companies and their officers or managing directors but did not receive any reply. Instead, such notice was returned undelivered with the remark of not found at the address. In these cases where the company has not maintained a registered office, the ROC has imposed penalties amounting to 1 lakh on both the company and its directors as well as all its Directors under Section 12(8) for contravening Section 12 of the Companies Act, 2013.

In case after physical verification, it is found that a Registered Office is not being maintained for receiving and acknowledging all communications and notices, the ROC shall initiate action for the removal of the company’s name from the Register of Companies and give notice of such intention to the company and its directors.

The intention of the Ministry of Corporate Affairs

The Ministry believes that law, as laid down under the Companies Act, must be complied with by the entities in their own interest. However, because of realistic problems associated with this, the law also provides clear definitions of what act constitutes an offence and is penalized for deterrence.

The schemes provided under the law aim to encourage compliance by self-regulation. According to the analysis of the Committee under the ministry, the existing penal provisions did not provide suitable deterrence and required enhancement. Whether a penalty is appropriate or not has to be seen in the context of the damage, the violation of law to the rights of stakeholders, and the deterrent impact required. In furtherance of the flexibility and dynamic nature of the law, the penalties may be revised from time to time. The penalties are imposed considering the nature of the offence and the size of the company.

Conclusion

Given the recent Amendment and trends of imposing penalties on companies for non-compliance with the mandatory provision of registered office maintenance, the vitality of having a registered office is further highlighted.

At this stage, it is crucial for all companies who have not complied with the provisions of Section 12 of the Companies Act, 2013 to ensure compliance to avoid the stringent consequences associated with non-compliance. The technical and important process of ensuring compliance with all provisions of the Companies Act during incorporation and the initial stage becomes simpler with legal advice. Once this is done, the companies are free to conduct their operations without any hindrances.

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[1]https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MTcyODE0NDc2&docCategory=Notifications&type=open.

[2] Sections 12(1) & 12(4), Companies Act, 2013.