

Compliance Requirements relating to Registered Office for Companies in India

Dr. Amartya Kumar Bhattacharya

BCE (Hons.) (Jadavpur), MTech (Civil) (IIT Kharagpur), PhD (Civil) (IIT Kharagpur), Cert.MTERM (AIT Bangkok), CEng(I), FIE, FACCE(I), FISH, FIWRS, FIPHE, FIAH, FAE, MIGS, MIGS – Kolkata Chapter, MIGS – Chennai Chapter, MISTE, MAHI, MISCA, MIAHS, MISTAM, MNSFMFP, MIIBE, MICI, MIEES, MCITP, MISRS, MISRMTT, MAGGS, MCSI, MIAENG, MMBSI, MBMSM

Chairman and Managing Director,

MultiSpectra Consultants,

23, Biplabi Ambika Chakraborty Sarani,

Kolkata – 700029, West Bengal, INDIA.

E-mail: dramartyakumar@gmail.com

Website: <https://multispectraconsultants.com>

In India, companies are mandated to have an office registered with the government. This office need not be the headquarter. Documents need to be maintained at this location and letterheads should contain this address. The name and registered address should be painted or affixed outside every place of business of the company. This requirement is hard for startups working out of shared spaces.

The working office of a company may or may not be the registered address. If you draw three circles, one for government, one for customers and one for internal, the registered office will lie at the cusp of government and customers. In the customer circle, the registered office is overshadowed by a corporate office or a regional office. While it is a legal requirement to have a registered office, it is not needed to conduct all or rather any activity there.

Also, unless there is an actual office there, where employees work, or where there are walk-ins, the Shops and Establishments Act would not be applicable and it would not be considered as a commercial establishment. This is for cases where most of the work is virtual or through distributed teams.

Recently, it has been made compulsory for organisations to have a verified registered office. This is not a new requirement. A registered office has been mandatory under the Companies Act, 2013. It was so under Companies Act, 1956, as well. The existing requirement was to intimate the Registrar of Companies (RoC) the registered address within 30 days of incorporation. At the time of incorporation, it is mandatory to mention the state where the registered office would be located. However, chartered accountants and company secretaries insist that at the time of incorporation the full address of the office be given.

Concerns: There are a number of issues with this approach. The main one relates to getting contracts in the name of a company that is yet to be incorporated and editing all documents in

case the name is not approved. The registered office can be intimated to RoC within 30 days which should be sufficient to get the paperwork done.

ACTIVE Form: Some months ago, the Ministry of Corporate Affairs came out with the ACTIVE notification that required startups to click pictures and send a video to confirm their existence. This is to fight the menace of shell companies. This is a one-time exercise that only applied to companies incorporated till calendar year 2017.

Legal Implications

There are few legal implications of a registered office. Most of them pertain to maintaining records at that place. These pertain to register of members, Articles of Association and other documents that any company is expected to maintain. Maintenance of documents is covered under separate sections. The legal implication of a registered office is just that these documents are to be maintained at that place and that they should be open to public for inspection during specified hours. These hours can be specified through the Articles of Association. The business is also required to mention the registered address on letterheads and bills of exchange.

Another requirement that is not that small is that the entity is required to paint/affix the name of the company and the registered address on the outside of every office or place where the business is carried on. Painting or affixing letters is not a problem for most manufacturing industries. However, startups that work out of shared spaces and especially that work out of hostel rooms and their own houses are not able to comply easily.

Incubators have come up with a nice way by putting the Company Names on a "Brand Wall" where all startups that have a cabin get a name in a nice plaque that is hung on the wall. As and when the startup moves out, the plaque is removed. While this defeats the purpose of permanence, it is a nice workaround. As for startups that work on flexidesks, they are allowed to mention the name of the company on those desks. An interesting question is that startups that have distributed teams, let us say, based in Kolkata and Bengaluru, all working out of co-working spaces/incubators would need to do the same. This means that even though a startup might not be registered with a co-working space, if some employees sit there, it would count as a place where the business of the startup is conducted. In those cases, where would the plaque be put and would it contain the registered office address?

The other concern is that in rented residential premises, it is hard to paint/affix the name outside the property. There is a stigma associated with permanence and commercial establishments when it comes to rented premises. It is no wonder that out of the many startups working out of residential properties or shared spaces, few have received incorporation. Without incorporation, startups are not eligible for Startup India recognition which deprives them of various benefits.

© MultiSpectra Consultants, 2020.