

Physical Verification of Registered office – New Initiative by MCA

Introduction

In terms of Section 12 of the Companies Act, 2013 (**CA 2013**), every company registered under the provisions of the CA 2013 or any other previous company law, within 30 days of its incorporation and at all times thereafter, needs to maintain a registered office (**RO**) capable of receiving and acknowledging all communications and notices as may be addressed to it. The said Section further provides that a company should:

- (a) paint or affix its name, and the address of its RO, and keep the same painted or affixed, on the outside of every office or place in which its business is carried on, in a conspicuous position, in legible letters, in English and local language.
- (b) get its name, address of its RO and the Corporate Identity Number along with telephone number, fax number, if any, e-mail and website addresses, if any, printed in all its business letters, billheads, letter papers and in all its notices and other official publications.
- (c) where it has changed its name or names during the last two years, it shall paint or affix or print (as the case may be) along with its name, the former name or names so changed during the last two years at all the places mentioned in (a) and (b) above.

In the recent past, several cases have come in the limelight where the Ministry of Corporate Affairs (**MCA**) have found that a lot of companies appearing in their database are non-existent at the registered office addresses furnished by them on the MCA Portal and/or are non-compliant under the provisions of CA 2013. The MCA deliberated on the gravity of such issues and decided to view the RO non-compliances very seriously.

New Rule 25B added in the Companies (Incorporation) Rules, 2014

In an attempt to ensure RO compliances by the companies, the MCA vide its Notification dated August 18, 2022 inserted a new Rule 25B (**New Rule**), in the Companies (Incorporation) Rules, 2014 to provide the modus operandi for physical verification of the registered office (**RO**) of a company by the Registrar, where it has a reasonable cause to believe that the company is not carrying on any business or operations. The requirements laid down in the New Rule are summarized herein below:

- The Registrar, based upon the information or documents made available on the MCA Portal, may cause the physical verification of the RO of a company, where it has reasonable cause to believe that the said company is not carrying on any business or operations (reference to Section 12(9) of the CA 2013), in presence of two independent witnesses of the locality in which the said RO is situated and may also seek the assistance of the local Police for such verification, if required.



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- The Registrar should carry the documents filed by the company on MCA Portal supporting the RO address for the purposes of physical verification and to check the authenticity of the same by cross verification with the copies of supporting documents of RO address collected during the said physical verification duly authenticated from the occupant of the property where the RO is situated.

Report on Physical Verification of the Registered Office of the Company		
S. No.	Particulars	Findings
1.	Name and CIN of the Company	
2.	Latest address of the registered office of the company as per MCA 21 record	
3.	Date of authorization letter issued by the Registrar of Companies*	
4.	Name of the Registrar of Companies	
5.	Date and time of visit for physical verification of the registered office	
6.	Location details along with landmark	
7.	Details of the person available, if any at the time of the visit-	
(i)	Name	
(ii)	Fathers' Name	
(iii)	Residential Address	
(iv)	Relationship with the company, if applicable	
8.	Remarks if any	
9.	Documents attached	
(i)	Copy of the agreement/ownership/rent agreement/no objection certificate of the registered office of the company from owner/tenant/lessor	
(ii)	Photograph of the registered office	
(iii)	Self-Attested ID-Card of the person available, if any	
(iv)	Any other document(s)	
Date: Place: <div style="float: right; margin-top: 10px;"> _____ Name: Designation: Official Address: </div>		

- The Registrar should take a photograph of the RO of the company while causing physical verification of the same.
- The New Rule provides that the report of the physical verification of the RO of the company should be prepared in the following format:

***It is imperative to note from the aforesaid format of the verification report given under the New Rule that the concerned official who will be visiting the RO of a company for the purposes of physical verification should carry an authorization letter issued by the concerned Registrar of Companies within whose jurisdiction the RO of the company is situated. The company before allowing the said official to conduct the verification should check the aforesaid authorization letter and powers delegated to the said official in the said authorization letter for the purposes of implementation of the New Rule. The company may request the concerned official for the copy of the said authorization letter for its records.**

- Where the RO of the company is found to be not capable of receiving and acknowledging all communications and notices, the Registrar should send a notice to the company and all the directors of the company, of his

intention to remove the name of the company from the register of companies and requesting them to send their representations along with copies of relevant documents, if any, within a period of 30 days from the date of the notice before taking further actions in accordance with the provisions of Section 248 of the CA 2013.

- Additionally, the concerned official may during the physical RO inspection ask for the copy of the documents and records required to be maintained by a company under the provisions of the CA 2013, which the company should furnish to show case that it is compliant under the provisions of the CA 2013. For quick reference, we have given below the list of the key documents required to be maintained by a company at its RO.

List of the key documents required to be maintained at RO

The CA 2013 cast a mandatory obligation on a company to maintain and preserve at its RO certain key documents [in physical and/or electronic form (to the extent permissible under the CA 2013)], which are enlisted below:

- (a) Copies of all documents and information as originally filed at the time of incorporation on MCA Portal.
- (b) Updated copy of the Memorandum and Articles of Association along with the Certificate of Incorporation and all other certificates issued under the CA 2013.
- (c) All the Statutory Registers applicable to it under the CA 2013.
- (d) Minutes of the general meeting/Board meeting/committee meeting.
- (e) Notice, agenda, agenda notes of general meeting/Board meeting/committee meeting.
- (f) Attendance register of the meetings.
- (g) Circular resolutions.
- (h) Copies of the filings (including the annual return) done by the company on MCA Portal.
- (i) Copies of instruments of share transfer.
- (j) Copies of declarations received by the company from its directors/key managerial personnel under CA 2013.
- (k) Consents and resignation letters received by the company from its directors/key managerial personnel under CA 2013.
- (l) Books of account and other relevant books and papers and financial statement for every financial year which give a true and fair view of the state of the affairs of the company, including that of its branch office or offices, if any, and explain the transactions effected both at the RO and its branches and such books shall be kept on accrual basis and according to the double entry system of accounting. It is further provided that all or any of the books of account aforesaid and other relevant papers may be kept at such other place in India as the Board of Directors may decide and where such a decision is taken, the company shall, within 7 days thereof, file with the Registrar a notice in writing giving the full address of that other place.
- (m) Copy of the financial statements, including consolidated financial statements, if any, auditors' report, directors' report and every other document required by law to be annexed or attached to the financial statements. Where the company has subsidiary(ies), then it should also maintain a copy of separate audited or unaudited financial statements (as the case may be) in respect of each of its subsidiary.
- (n) The documents (such as rental agreement/lease deed/no objection certificate by the owner/utility bill in the name of the owner) which evidences the right of the company to use a particular premises as its RO.
- (o) Copy of the instrument creating the charge, where a company has created a charge on its assets.
- (p) Copy of the contract of service with a managing or whole-time director, where it is in writing; or where such a contract is not in writing, a written memorandum setting out its terms. However, this is not applicable on private companies.
- (q) Documents on which the common seal of the company has been affixed.
- (r) Advertisements published.

The CA 2013 prescribes different penalties which may be imposed on the company and its directors, if it fails to maintain the requisite documents listed under the different provisions of the CA 2013 and rules made thereunder.

Conclusion

Whether this MCA initiative will turn out to be an efficient tool in curbing the existence of fictitious/false ROs appearing on the MCA Portal and safeguarding the interest of the stakeholders which are often defrauded by fly-by-night companies, only time will tell. However, it is a warning signal for all the companies which are not adhering to the RO compliances provided under the CA 2013. It is advisable that the companies revisit their records maintained at RO and update them regularly to ensure aforesaid RO compliances (including but not limited to display of the signage board and maintenance of records) at the address furnished by them on MCA Portal to avoid imposition of the penalties for non-compliance and/or issuance of the show cause notice for removal of the name of the company from the register of companies, under the provisions of CA 2013.