

# Article

## Alteration in charter documents of a Company: Companies Act, 1956 vis-à-vis Companies Bill, 2012

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## *Update*

The Companies Bill, 2012 (“**Bill, 2012**”) has brought sweeping changes to the extant Companies Act, 1956 (“**Act**”). In this article, we discuss the effect of alteration of Memorandum of Association (“**MoA**”) and Articles of Association (“**AoA**”) of a company as contained in the Act, juxtaposing the same with the provisions in the Bill, 2012.

### Changes in MoA of the Company

#### Alteration of Name Clause:

Act	Bill, 2012
<b>Deletion of the word ‘private’ from name</b>	
No Central Government’s approval required where the only change in name is addition or deletion of the word ‘private’. [Proviso to Section 21]	No change. [Proviso to Section 13(2)]
<b>Change of name</b>	
Company can change name subsequent to passing of special resolution and approval of Central Government. [Section 21]	No change. [Section 13(1) and 13(6)]

#### Alteration in Registered Office Clause:

A company’s Registered Office (“**RO**”) is the place where all the communications are supposed to be addressed to. Thus, it is the place where the company is supposed to *reside*.

Under section 146 of the Act, Companies are required to intimate the situation of its RO to the concerned Registrar of Companies (“**ROC**”) within 30 (thirty) days of incorporation or any change therein after its incorporation. The companies are also required to affix its name and address of registered office and keep the same painted and affixed on outside of every office, place in which its business is carried on and on its letter heads, official publications and all other correspondences in terms of section 147 of the Act.

However, contrary to the requirement of Section 146 of the Act, Section 12 of the Bill requires intimation within 15 days of incorporation and a **verification** of place where RO is situated within 30 days of incorporation. Recently, e-form 18 has been altered w.e.f. December 25, 2012 to include the verification of the RO to be certified by the certifying



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professional. In terms of Section 12(3) of the Bill, the companies are now required to affix and print, along with the name and RO address, company's CIN, email id, website address (if any), telephone number, fax number etc on all its business correspondences.

This is in line with the recent practice of the Registrar of Companies ("RoC") whereby, it has been asking reasons for situation of two companies in the same premises. This, looks to bring to books companies which have a conglomerate and mostly have the ROs of its group companies within the same practice. However, the need of certification by a professional has received thumbs down. This is considering that the Ministry's site does not have any such assistance and physical verification might not always be practically possible.

Presented below is a comparison between the provisions relating to RO as contained in the Act and the Bill, 2012:

Act	Bill, 2012
<b>Requirement of having RO</b>	
Companies to compulsorily have an RO within 30 <sup>th</sup> (thirtieth) day of incorporation. [Section 146(1)]	Companies to compulsorily have a RO on and from the 15 <sup>th</sup> (fifteenth) day of incorporation [Section 12(1)]
<b>Notice of change of situation of RO</b>	
To be intimated to ROC within 30 (thirty) days of date of change. [Section 146(2)]	To be intimated to ROC within 15 (fifteen) days of change along with verification. [Section 12(4)]
<b>Change of RO from one place to another within the local limits of the city</b>	
By passing a Board Resolution and intimation to be given to ROC within a period of 30 days from the date of change. [Section 146(2)]	No changes specified.
<b>Change of RO from one place to another outside the local limits of the city</b>	
With the approval of members by way of a special resolution and the intimation to be given to ROC within a period of 30 days from the date of change [Section 146(2)]	Same procedure specified. [Section 12(5)]
<b>Change of RO from jurisdiction of one ROC to another within the same state after approval of Regional Director ("RD")</b>	
Confirmation by RD to be conveyed to the company within 4 (four) weeks from	No change. [Section 12(6)]



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<p>the date of receipt of application and companies to file the confirmation with the ROC within 2 months from the date of receipt of confirmation. [Section 17A]</p>	
<b>Change of RO from one state to another</b>	
<p>An application to be made to CG (presently power delegated to Regional Director) with required annexures. No time limit for disposal of application had been prescribed. [Section 17(2)]</p>	<p>Central Government (“CG”) shall dispose of the application for change in RO from one state to another within a period of 60 (sixty) days. [Section 12(6)]</p>
<p>Before passing the order the CG must be satisfied that:</p> <ul style="list-style-type: none"> <li>➤ Sufficient notice has been given to debenture holders</li> <li>➤ Consent of dissenting creditor has been obtained or his claim has been discharged or has been determined or has been secured.</li> </ul> <p>[Section 17(3)]</p>	<p>Before passing the order the CG must be satisfied that the alteration has the consent of the creditors, debenture holders or that sufficient provision has been made for the due discharge of all its debts or that adequate security has been provided. [Section 13(5)]</p>

**Alteration of Objects Clause:**

Act	Bill, 2012
<p>Objects Clause of the company can be changed for fulfillment of reasons as specified in Section 17(1)(a) to 17(1)(g).</p>	<p>No such reason for change in objects clause has been specified.</p>
<p>The CG may give such directions for purchase of interests of dissentient shareholders. [Section 17(7)]</p>	<p>Company which has raised money from public through prospectus and still has any unutilised amount out of the money so raised, shall not change its objects for which it has raised the money through prospectus unless a special resolution is passed and:</p> <ul style="list-style-type: none"> <li>➤ Details of the resolution are published in the newspapers.</li> <li>➤ Dissenting shareholders shall be given opportunity to exit by the promoters and shareholders</li> </ul>



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	having control. [Section 13(8)]
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### **Alteration of Capital Clause:**

Act	Bill, 2012
1. Ordinary resolution to be passed and the same to be intimated to Registrar in e-form. [Section 94, 97]	Pass a special resolution to alter the capital clause of the company. [Section 13]
2. In a limited company, the articles of the company should have specific provisions for alteration. [Section 94]	In a limited company, the articles of the company should have specific provisions for alteration. [Section 61]

### **Alteration of Articles of Association of the Company**

Act	Bill, 2012
<b>Alteration of article by Special Resolution</b>	
Company to pass special resolution to alter articles. [Section 31(1)] If the alteration relates to converting a public company into a private company, the alteration shall have effect only if approved by the Central Government. [Proviso to Section 31(1)]	Company to pass special resolution to alter articles. This would also be applicable in cases where: <ul style="list-style-type: none"> <li>➤ Private company is converted to public company</li> <li>➤ Public company is converted to private company.</li> </ul> Alteration of public company into a private company shall take effect only if approved by National Company Law Tribunal. [Section 14]
<b>Action to be taken after approval</b>	
Printed copy of the altered AoA as altered shall be filed with the Registrar within 1 (one) month of the date of receipt of approval of order relating to conversion of public company into a private company. Presently this is done in e-form 21. [Section 31(2A)]	Printed copy of the altered AoA along with the order of the Tribunal approving conversion from public company to private company shall be filed with the Registrar within 15(fifteen) days. [Section 14(2)]

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### **Effect of alteration of MoA/AoA**

Act	Bill, 2012
<b>Noting of change</b>	
Every copy of the memorandum, articles, agreement or resolution issued after the date if alteration shall be in accordance with the alteration.[ <i>Section 40(1)</i> ]	Every alteration to be noted in every copy of the MoA and AoA. [ <i>Section 15(1)</i> ]
<b>Penalty for non-compliance</b>	
The company and every officer in default shall be punishable with fine which may extend to Rs. 100/- (one hundred) rupees for each copy so issued .[ <i>Section 40(2)</i> ]	The company and every officer in default shall be punishable with fine which may extend to Rs. 1000/- (one thousand) rupees for each copy so issued .[ <i>Section 15(2)</i> ]