



The Companies Act 2013

Enlightening Nation

E-newsletter

JULY, 2017

About the E-newsletter

Dear Users,

To keep you updated about the latest notifications, circulars & orders issued during the month, thecompaniesact2013.com present herewith its monthly e-newsletter. This is the issue of the March month comprising contemporary articles & monthly amendments.

The notion is to render all the updates in a compiled format and serve a better pavement for easy accessibility.

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ARTICLE

Shifting of Registered Office of Company

Definition of registered office:

Every business organization has a principal place of business activities, which in case of a company called its **registered office**. The address of the situation of the registered office is very important from general public, shareholders, customers and various other points of view. Every company is governed in accordance with the provisions of the Companies Act, 2013, therefore, it is mandatory for all companies to keep the Registrar of Companies informed about the location of the registered office and changes thereto from time to time. Promoters of the Company decide the State in which the registered office shall be situated.

Why it is necessary to have registered office of a company :

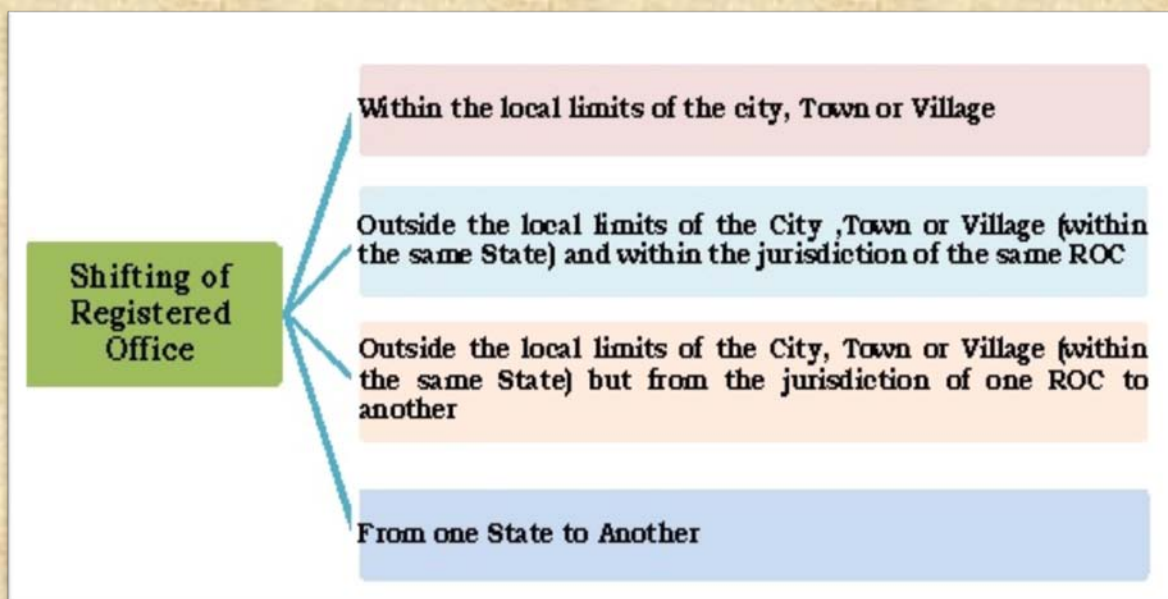
- ❖ For service of documents on a company or an officer thereof either personally or by a certificate of posting or by a registered post and
- ❖ inspection of different registers and records as provided under the Companies Act
- ❖ Determination of jurisdiction of Court;
- ❖ Determination of domicile of a company for all practical purposes;
- ❖ Determination of applicability of duty as per relevant Stamps Act for stamping on Memorandum of Association, Articles of Association, Share certificates and Debenture certificates, etc.

Statutory provisions related to Location of the registered office of a new Company

(1) A company shall, on and from the **fifteenth day** of its incorporation and at all times thereafter, have a registered office capable of receiving and acknowledging all communications and notices as may be addressed to it.

(2) The company shall furnish to the Registrar verification of its registered office within a period of **thirty days** of its incorporation in such manner as may be prescribed.

Types of Shifting Registered office



Procedure For Shifting of Registered office :

1. Shifting of registered office within the local limits of the city, town or village where the registered office is originally Situated :-

For Example – Shifting of Registered office from Premises 1 City A to Premises 2 City A

Nature of Approval Required:

Approval by resolution of Board of Directors

E-form to be filed-

Form INC 22 is Required to file Within 15 days From the change -

There shall be attached to e-Form, any of the following documents, namely:-

- the registered document of the title of the premises of the registered office in the name of the company; or
- the notarized copy of lease or rent agreement in the name of the company along with a copy of rent paid receipt not older than one month;
- the authorization from the owner or authorized occupant of the premises along with proof of ownership or occupancy authorization, to use the premises by the company as its registered office;
and
- the proof of evidence of any utility service like telephone, gas, electricity, etc. depicting the address of the premises in the name of the owner or document, as the case may be, which is not older than two months.

Steps post shifting of Registered Office :

- Necessary change be done in letter head, visiting cards , other stationery items , banner, signboard, bills, invoice etc.
- Intimate the change to all stakeholders, associated financial institutions and government departments within prescribed time.

2. Shifting of registered office outside the local limits of the city, town or village where the registered office is originally situated and within the jurisdiction of the same ROC

For Example – Shifting of Registered Office from Jaipur, Rajasthan (ROC, Jaipur) to Jodhpur, Rajasthan (ROC, Jaipur)

Nature of Approval Required:

- Passed Board Resolution by Board of Director .
- Passed Special resolution by Member of Company in General meeting .

E-form to be filed :

Form MGT 14 Shall be filled for Registration of Special resolution within 30 Days from passing the same resolution .

Form INC 22 is Required to file Within 15 days From the change –

There shall be attached to e-Form, any of the following documents, namely:-

- the registered document of the title of the premises of the registered office in the name of the company; or
- the notarized copy of lease or rent agreement in the name of the company along with a copy of rent paid receipt not older than one month;
- the authorization from the owner or authorized occupant of the premises along with proof of ownership or occupancy authorization, to use the premises by the company as its registered office; and
- the proof of evidence of any utility service like telephone, gas, electricity, etc. depicting the address of the premises in the name of the owner or document, as the case may be, which is not older than two months.

Steps post shifting of Registered Office :

- Each stationery, banner, signboard, bills, invoice etc. should show the new address and necessary advice should be sent to shareholders, debenture holders, and other concerned parties.
- Necessary changes are required to be made in the letter heads, books, records etc. of the company. The necessary changes are required to be made in PAN. TAN and ST2 etc and inform to all the Government departments, banks, customers and others wherever required.

3. Shifting of registered office outside the local limits of the city, town or village where the registered office is originally situated and from the jurisdiction of one ROC to another –

For Example – Shifting of Registered Office from Chennai, Tamilnadu (ROC, Chennai) to Coimbatore, Tamilnadu (ROC, Coimbatore)

Step 1:- Call and Hold a Board Meeting:

- To consider the proposal for shifting of registered office.
- Fix up the date, time, and place of the General Meeting.
- Approve the notice of Extraordinary General Meeting and calling of General Meeting.
- Authorize the CS or Director to move an application before RD to alter Clause II of Memorandum of Association within whose jurisdiction the registered office of the company (before change) is situated.
- The Board shall authorized the Director and the Secretary severally to see that the consent of the Creditor and debenture holders if any etc. is obtained or that sufficient provisions is made for the discharge of their debts or adequate security is made section 13(5).

Step 2:-Send Notice of general meeting : . Send Notice of general meeting to all members along with Explanatory Statement (Section-102), Proxy Form, Route Map and Attendance Slip.

Step 3:- Hold General Meeting :- Hold **General Meeting** and Pass the Special Resolution approving the shifting subject to the approval of the RD.

Step 4:- Prepare the Minutes: Prepare the Minutes of Extraordinary General meeting/ General Meeting .

Step 5:-File MGT 14 : After taking the approval of the members, file a certified copy of the special resolution along with the explanatory statement and altered copy of MOA within 30 days of passing of **Special Resolution** in form **MGT-14** (Filing of Resolution and agreement to the registrar under section 117) with ROC.

Attachments: (Attachments of e-form MGT-14

- Copy(s) of Special Resolution(s) along with copy of explanatory statement under section 102.
- Altered Memorandum of Association [MOA].
- Minutes of EGM.
- Shorter Notice consent if any .

Step 6. Prepare List of Employees:

The Application on affidavit from the directors of the company that no employee shall be retrenched as a consequence of shifting of the registered office from one state to another state.

Step 7:-Application to Regional Director :- 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".

Step 8. Proceeding will Start By Regional Director: After checking of application with Annexure the hearing will take place at the Regional Director office and it should be represented by the company or practicing professional or advocate.

Step 9. Order passed by the Regional Director:- The order passed by the **Regional Director** 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 .

Step 10. File E-form INC-28 with ROC :- File E-form INC-28 with ROC within 30 days of confirmation of shifting by Central Government along with following Documents:

- i. Confirmation given by Central Government for change of registered office

Step 11. File Form INC-22 with ROC within 15 days of confirmation of shifting by Central Government along with following Documents:

- The registered document of the title of the premises of the registered office in the name of the company; or
- The notarized copy of lease or rent agreement in the name of the company along with a copy of rent paid receipt not older than one month;

- The authorization from the owner or authorized occupant of the premises along with proof of ownership or occupancy authorization, to use the premises by the company as its registered office; and
- The proof of evidence of any utility service like telephone, gas, electricity, etc. depicting the address of the premises in the name of the owner or document, as the case may be, which is not older than two months.
- Copy of order passed by RD.

Steps After Obtaining New Certificate From ROC:

- Make alteration in the MOA with respect to the state in every copy of Memorandum.
- Each stationery, banner, signboard, bills, invoice etc. should show the new address and necessary advice should be sent to shareholders, debenture holders, and other concerned parties.
- Necessary changes are required to be made in the letter heads, books, records etc. of the company. The necessary changes are required to be made in PAN, TAN and ST2 etc and inform to all the Government departments, banks, customers and others wherever required.

4. Shifting of registered office from one state or union territory to another State **For Example – Shifting of Registered Office from Tamilnadu (ROC, Chennai) to Rajasthan , (ROC, Jaipur)**

Step 1: Call and Hold a Board Meeting:

- To consider the proposal for shifting of registered office.
- Fix up the date, time, and place of the General Meeting.
- Approve the notice of Extraordinary General Meeting and calling of General Meeting.
- Authorize the CS or Director to move an application before RD to alter Clause II of Memorandum of Association within whose jurisdiction the registered office of the company (before change) is situated.
- The Board shall authorized the Director and the Secretary severally to see that the consent of the Creditor and debenture holders if any etc. is obtained or that sufficient provisions is made for the discharge of their debts or adequate security is made section 13(5).

Step 2:- Send Notice of general meeting :- Send Notice of general meeting to all members along with Explanatory Statement (Section-102), Proxy Form, Route Map and Attendance Slip.

Step 3:- Hold General Meeting :- Hold General Meeting and Pass the Special Resolution approving the shifting subject to the approval of the RD.

Step 4: - Prepare the Minutes :- Prepare the Minutes of Extraordinary General meeting/ General Meeting.

Step 5:- File MGT 14 :- After taking the approval of the members, file a certified copy of the special resolution along with the explanatory statement and altered copy of MOA within 30 days of passing of **Special Resolution** in form **MGT-14** (Filing of Resolution and agreement to the registrar under section 117) with ROC.

Attachments: (Attachments of e-form MGT-14)

- Copy(s) of Special Resolution(s) along with copy of explanatory statement under section 102.
- Altered Memorandum of Association [MOA].
- Minutes of EGM.
- Shorter Notice consent if any .

Step 6:- Prepare a list of creditors and debenture holders and intimate them accordingly.

- The list is required to be filed with the application.
- The list should be duly verified by an affidavit.
- List should be verified by the **Statutory Auditor** of the Company.
- The list should not precede the date of filing of petition by more than one month (List Should not be older than one month from filling of petition).

Step 7- Prepare List of Employees:

The Application on affidavit from the directors of the company that no employee shall be retrenched as a consequence of shifting of the registered office from one state to another state.

Step 8:- Advertise In The Form No.Inc.26

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 State 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.

- 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 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.

Step 9:- Application to Central Government :- .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 copy of Memorandum of Association, with proposed alterations;
- 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;
- a copy of Board Resolution or Power of Attorney or the executed vakalatnama, as the case may be

Other Annexure with Application

1. 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:-

- the names and address of every creditor and debenture holder of the company;
- 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

- 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

- 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.

Note : 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.

2. There shall also be attached to the application a copy of the acknowledgment of service of a copy of the application with complete annexure 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.

3. There shall be attached to the application a duly authenticated copy of the advertisement and notices issued 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 .

Step 10:-.Proceeding will Start by Central Government:- After checking of application with Annexure the hearing will take place at the **Central Government** office and it should be represented by the company or practicing professional or advocate. The creditors, if any and the representatives of the company may also represent and are heard before making any order.

Step 11:-

- **Where no objection has been received** - Where no objection has been received from any person in response to the advertisement or notice 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.
- **Where an objection has been received,**
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.

Step 12:- Order Passed By The Central Government

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 .

Step 13. File E-form INC-28

File **E-form INC-28** with ROC within 30 days of confirmation of shifting by Central Government along with following Documents:

- i. Confirmation given by Central Government for change of registered office

Step 14. File Form INC-22 with ROC within 15 days of confirmation of shifting by Central Government along with following Documents:

- The registered document of the title of the premises of the registered office in the name of the company; or

- The notarized copy of lease or rent agreement in the name of the company along with a copy of rent paid receipt not older than one month;
- The authorization from the owner or authorized occupant of the premises along with proof of ownership or occupancy authorization, to use the premises by the company as its registered office; and
- The proof of evidence of any utility service like telephone, gas, electricity, etc. depicting the address of the premises in the name of the owner or document, as the case may be, which is not older than two months.
- Copy of order passed by RD.

Steps After Obtaining New Certificate From ROC:

- Make alteration in the MOA with respect to the state in every copy of Memorandum.
- Each stationery, banner, signboard, bills, invoice etc. should show the new address and necessary advice should be sent to shareholders, debenture holders, and other concerned parties.
- Necessary changes are required to be made in the letter heads, books, records etc. of the company. The necessary changes are required to be made in PAN. TAN and ST2 etc and inform to all the Government departments, banks, customers and others wherever required.

Note: 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.

COVERAGE ON INDEPENDENCY DAY



Wish You All A Happy Independence Day May Our Country Progress In Everywhere And In Everything So That The Whole World Should Have Proud On Us.

*Freedom in the Mind,
Faith in the words..
Pride in our Souls..
Lets salute the Nation on Independence Day!
Wish you a very Happy Independence Day!!!*

A red, rounded rectangular button with a white border and a slight 3D effect. The text "UPDATE NOW" is written in white, bold, sans-serif capital letters. "UPDATE" is on the top line and "NOW" is on the bottom line.

NOTIFICATIONS

A. G.S.R.880(E) Companies (Meetings of Board and its Powers) Second Amendment Rules, 2017 Dated 13.07.2017

G.S.R. 880(E).—In exercise of the powers conferred under sections 173, 175, 177, 178, 179, 184, 185, 186, 187, 188, 189 and section 191 read with section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Meetings of Board and its Powers) Rules, 2014, namely:—

1. Short title and commencement.-

1. (1) These rules may be called the Companies (Meetings of Board and its Powers) Second Amendment Rules, 2017.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Companies (Meetings of Board and its Powers) Rules, 2014 (hereinafter referred to as principal rules), in rule 3,- (i)

in sub-rule (3), for clause (e), the following shall be substituted, namely:-

“(e) Any director who intends to participate in the meeting through electronic mode may intimate about such participation at the beginning of the calendar year and such declaration shall be valid for one year :

Provided that such declaration shall not debar him from participation in the meeting in person in which case he shall intimate the company sufficiently in advance of his intention to participate in person.”.

(ii) in sub-rule (11), in clause (a), after the words “decision taken by majority”, the words “and the draft minutes so recorded shall be preserved by the company till the confirmation of the draft minutes in accordance with sub-rule (12)” shall be inserted.

3. In the principal rules, for rule 6, the following rule shall be substituted, namely:-

“**6. Committees of the Board.** - The Board of directors of every listed company and a company covered under rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014 shall constitute an ‘Audit Committee’ and a ‘Nomination and Remuneration Committee of the Board’.”.

B. G.S.R.840(E) National Company Law Tribunal (Amendment) Rules, 2017 Dated 05.07.2017

In exercise of the powers conferred by sub-section (1) and sub-section (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the National Company Law Tribunal Rules, 2016, namely:-

1. Short title and commencement.-

(1) These rules may be called the National Company Law Tribunal (Amendment) Rules, 2017.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the National Company Law Tribunal Rules, 2016, after rule 87, the following rule shall be inserted, namely:-

“87A. Appeal or application under sub-section (1) and sub-section (3) of section 252.—(1) An appeal under subsection (1) or an application under sub-section (3) of section 252, may be filed before the Tribunal in Form No. NCLT. 9, with such modifications as may be necessary.

(2) A copy of the appeal or application, shall be served on the Registrar and on such other persons as the Tribunal may direct, not less than fourteen days before the date fixed for hearing of the appeal or application, as the case may be.

(3) Upon hearing the appeal or the application or any adjourned hearing thereof, the Tribunal may pass appropriate order, as it deems fit.

(4) Where the Tribunal makes an order restoring the name of a company in the register of companies, the order shall direct that-

(a) the appellant or applicant shall deliver a certified copy to the Registrar of Companies within thirty days from the date of the order;

(b) on such delivery, the Registrar of Companies do, in his official name and seal, publish the order in the Official Gazette;

(c) the appellant or applicant do pay to the Registrar of Companies his costs of, and occasioned by, the appeal or application, unless the Tribunal directs otherwise; and

(d) the company shall file pending financial statements and annual returns with the Registrar and comply with the requirements of the Companies Act, 2013 and rules made thereunder within such time as may be directed by the Tribunal.

(5) An application filed by the Registrar of Companies for restoration of name of a company in the register of companies under second proviso to sub-section (1) of section 252 shall be in Form No. NCLT 9 and upon hearing the application or any adjourned hearing thereof, the Tribunal may pass an appropriate order, as it deems fit.”

C. SEBI General Circular No: CIR/CFD/CMD/93/2017 Dated on 04.08.2017

1. Current Scenario -SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("SEBI LODR Regulations") currently require disclosure of material events / information by listed entities to stock exchanges. Specific disclosures are required under the SEBI LODR Regulations in certain matters such as delay / default in payment of interest / principal on debt securities, including listed Non-Convertible Debentures, listed Non-Convertible Redeemable Preference Shares, Foreign Currency Convertible Bonds (FCCBs) etc. **Similar disclosures are presently not stipulated with respect to loans from banks and financial institutions.** This circular is issued under Regulation 101 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

Corporate in India are even today primarily **reliant** on loans from the banking sector. And its increasing day by day , Banks are going to Creating NPAs . Listed entity are not bound to disclose the default of Non payment of interest, Principal Amount to SEBI & its Stakeholder, Due to non disclosure public don't have clear analytical facts . and investor could not analysis Exact price of its stock , he invests the hard earned money in that company , and after that he faces hidden risks .

For protecting interest of investor SEBI issued under Regulation 101 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

2. About Circular :

The disclosures shall be made to the stock exchanges when the entity has defaulted in payment of interest / installment obligations on debt securities (including commercial paper), Medium Term Notes (MTNs), Foreign Currency Convertible Bonds (FCCBs), loans from banks and financial institutions, External Commercial Borrowings (ECBs) etc.

Now listed entity shall disclose the Non-Payment of loans from banks and financial institutions,

Note ;-Listed Entities shall disclose its default report to Credit Rating Agencies in a timely manner and as may be specified by SEBI from time to time.

3. Timing of Disclosures :-

i. The entities shall make disclosures within **one working day** from the date of default at the first instance of default in the format specified in Clause C1 .

ii. listed entities if there is any outstanding amount under default as on the last date of any quarter **within 7 days** from the end of such quarter.

Note :-This circular shall come into effect with effect from 01.10.2017

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In Association with: An Initiative by www.thecompaniesact2013.com

In Association with:

Arms & Associates LLP

Practicing Company Secretaries

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