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CONSULTANTS:

GST, CUSTOMS, FOREIGN TRADE LAWS,
FOREIGN EXCHANGE MANAGEMENT ACT.

OPINION

1. **Queriest :**

M/s. Flyjac Logistics Pvt. Ltd.,
No.25-32, Readymade Garment Complex,
SIDCO Industrial Estate, Guindy,
Chennai – 600 032.

2. **Facts :**

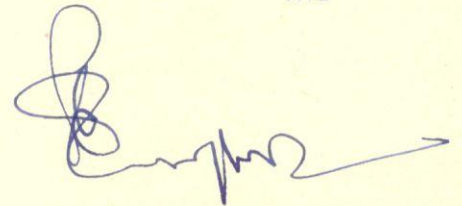
Queriest proposes to digitize all the documents maintained by them and keep them electronically by discarding the old age method of maintaining them as physical documents. As of now, it appears that the queriest is registered as authorized 'Customs Broker' under the regulations issued under the Customs Act and also is registered with GST authorities as 'service provider'. Additionally, the queriest is a company incorporated under the Companies Act.

3. **Query :**

In the above context, querist would like to have clarifications on the following.

- 3.1 What are the laws that are applicable for the querist with respect to the documents-maintenance?
- 3.2 Can the querist keep all the related documents in pdf in specific folders, with reference to the concerned voucher/job number?
- 3.3 In the changed circumstances, where most of the documents are either system generated or received digitally signed or received in pdf format, is it necessary to keep the documents in physical form?
- 3.4 Are there any copies querist needs to compulsorily keep in physical form and if so, what are they?
- 3.5 How many years do they need to keep the documents in physical form after which they can positively destroy them?
- 3.6 Can the querist also delete the digital copies after the mandatory documents-retention period? If so, how many years hence, the querist can delete them?

...2



- 3.7 What are those documents querist needs to keep permanently beyond any retention period?
- 3.8 Any other advice with respect to the documents-retention would be advisable.
- 3.9 Possibility of calling for original documents even when the scanned copies are shown during departmental audits.
- 3.10 What are those documents for which original signed copies will be compulsorily sought? Physical printouts can always be taken from the folder and given.
- 3.11 Potential risks of inability to produce originals, where copies are available.

4. Opinion :

- 4.1 The querist, as such, may be performing functions and carrying on business activities under and with reference to various enactments. These enactments may provide and contain specific provisions with regard to the method of maintenance of records and the period up to which they are to be kept. In this opinion details are provided only with reference to the Customs Act and GST Act and also the provisions relating to Companies Act. With reference to other enactments that may be applicable to the querist, including income tax, querist can check with their auditors and the provisions contained in those enactments.
- 4.2 As far as Customs Act is concerned, in terms of Customs Brokers Licensing Regulations 2018, provisions are made with regard to maintenance of records. Regulation 10(p) of CBLR 2018 specifies the following:

*“(p) maintain all records and accounts that are required to be maintained under these regulations and preserve for at least **five** years and all such records and accounts shall be made available at any time for the inspection of officers authorised for this purpose; and”*

It does not indicate in what format i.e. physical form or electronic form the records are to be maintained.

- 4.3 As far as GST provisions are concerned, Section 36 of CGST Act 2017 stipulates the following:

*“Every registered person required to keep and maintain books of account or other records in accordance with the provisions of sub-section (1) of section 35 shall retain them until the expiry of **seventy-two months** from the due date of furnishing of annual return for the year pertaining to such accounts and records:*

Provided that a registered person, who is a party to an appeal or revision or any other proceedings before any Appellate Authority or Revisional Authority or Appellate Tribunal or court, whether filed by him or by the Commissioner,



or is under investigation for an offence under Chapter XIX, shall retain the books of account and other records pertaining to the subject matter of such appeal or revision or proceedings or investigation for a period of one year after final disposal of such appeal or revision or proceedings or investigation, or for the period specified above, whichever is later.”

4.4 Apart from the above, Rule 56 of CGST Rules 2017 contains detailed instructions with regard to maintenance of records. In this regard, sub-rule (16) of Rule 56 which will be relevant reads as follows.

“(16) Accounts maintained by the registered person together with all the invoices, bills of supply, credit and debit notes, and delivery challans relating to stocks, deliveries, inward supply and outward supply shall be preserved for the period as provided in section 36 and shall, where such accounts and documents are maintained manually, be kept at every related place of business mentioned in the certificate of registration and shall be accessible at every related place of business where such accounts and documents are maintained digitally.”

4.5 It may be noted that in respect of both the above enactments there are no specific instructions with regard to maintenance of records in physical form only. However, it has to be ensured that all documents signed by the Customs / CGST authorities and other officers functioning under these enactments are kept in physical form till the periods indicated as above.

4.6 If there is any dispute or any issue pending with the authorities then, it is necessary that the records relating to those issues are to be kept till the issues are finally sorted out and for another year subsequent to such sorting out. In these pending issues if there are physical records, which are signed, then, it may be necessary to keep them also till the matters are concluded. In disputed matters if the issue is settled before the statutory period of retention of such documents, then they have to be kept till the statutory period is over.

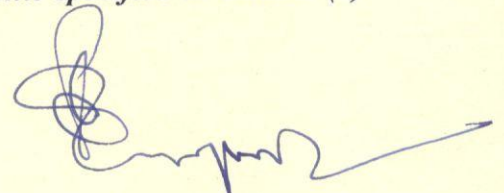
4.7 As far as the Companies Act is concerned, as per Regulation 9 of Listing Obligations and Disclosure Requirements Regulations 2015 issued by SEBI the following policy will apply.

“Regulation 9: Preservation of Documents

The listed entity shall have a Policy for preservation of documents, approved by its board of directors, classifying them in at least two categories as follows-

- (a) Documents whose preservation shall be permanent in nature;
- (b) Documents with preservation period of not less than eight years after completion of the relevant transactions:

Provided that the listed entity may keep documents specified in clauses (a) and (b) in electronic mode.”



- 4.8 The above regulation indicates that the company has the option to keep these documents in electronic mode. The following documents/records are all permanent in nature and need to be preserved permanently under the provisions of Companies Act and related regulations / rules.

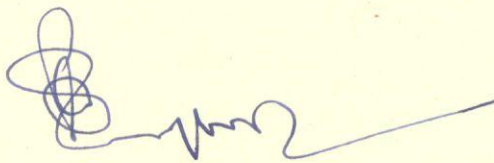
Sl.No.	Name of Documents
1.	All Documents and Information as originally filed with the Registrar of Companies for Incorporation of Company [Section 7(1)].
2.	Memorandum and Articles of Association, duly updated from time to time [Section 15]
3.	Register of Renewed and Duplicate Share Certificate (Form SH-2) [Section 46 & Rule 6(3) of Chapter IV]
4.	Books and documents relating to the issue of share certificates including blank forms of share certificates [Section 46 and Rule 7 of Chapter IV]
5.	Register of Transfer and Transmission [Section 56]
6.	Register of Charge (Form CHG-7) [Section 85 & Rule 10 of Chapter VI]
7.	Register of Members including foreign register, if required (with index of names if no. of members is not less than 50) (Form MGT-1) and Record of Beneficial Owners [Section 88 (1) (a) and Rule 3 of Chapter VII]
8.	Minutes of Board Meeting and other Committee Meetings of the Board and resolutions passed by Circulation Minutes of the General Meetings of class of shareholders / creditors or resolutions passed by way of postal ballots. [Section 118, 119 & Rule 25 of Chapter VII]
9.	Books and Papers of Amalgamated Companies [Section 239]. Minutes of all Meetings of the transferor company, as handed over to the transferee company. [SS-1 & SS-2]
10.	Register of Investments made by Company not held in its own name (Form MBP-3) [Section 187 & Rule 14 of Chapter XII]
11.	Register of Contracts or Arrangements in which Directors are interested (Form MBP-4) and copy of contracts or arrangements entered into [Section 189 & Rule 16 of Chapter XII]
12.	Agreements with Registrar and Share Transfer Agent and Depositories
13.	Listing Agreements entered with Stock Exchanges

4.8.1 The following documents can be kept for the periods indicated against each.

Sl.No.	Name of Documents	Period specified under the law
1.	Instrument creating Charge or Modification thereof [Section 85 and Rule 10 of Chapter VI]	Eight years from the date of Satisfaction of Charge
2.	Register of Debenture Holders or other security holders (Form MGT-2) [Section 88 (1) (a) and Rule 4,5,6 of Chapter VII]	Eight years after the redemption of debentures or other security holders
3.	Annual Return and copies of all certificates and documents required to be annexed thereto [Section 92 and Rule 15(3) of Chapter VII]	Eight years from the date of filing with the Registrar
4.	Books of Accounts and Balance Sheet and Profit and Loss Statement [Section 128(5)]	Eight years from the close of relevant financial year
5.	Notice of Interest by Directors and Key Managerial Personnel [Section 184(1) and Rule 9(3) of Chapter XII]	Eight years from the close of the relevant financial year
6.	Attendance Register of Meetings of the Board and Committees [SS-1 – Clause 4.1.7]	At least eight financial years
7.	Office copies of Notices, Agenda, Notes on Agenda and other related papers of the transferor company, as handed over to the transferee company [SS-1 – Clause 8.2]	As long as they remain current or for eight financial years, whichever is later
8.	Office copies of Notices, scrutiniser's report, and related papers of the transferor company, as handed over to the transferee company [SS-2 – Clause 18.2]	As long as they remain current or for eight financial years, whichever is later
9.	Attendance register of general meeting [Section 118 & Rule 27 of Chapter VII]	At least eight financial years
10.	Register of Proxies [Section 105 & Rule 19 of Chapter VII]	At least eight financial years
11.	Details / statement of unclaimed dividend [Section 124 and Rule 4 of Chapter VIII]	At least for eight years from the relevant financial year of transfer to IEPF.
12.	Return of allotment of shares and Contract of allotment of shares fully or partly paid up otherwise than in cash and	Not specified

	verified copies of such contract	
13.	Disclosures from Promoters and others under SEBI (Substantial Acquisitions of Shares and Takeover) Regulations, 2011 or other previously applicable Takeover Regulations of 1992	Not specified
14.	Certified copy of the order of any court or Tribunal confirming reconstruction and amalgamation of companies, Schemes, Arrangements or contract involving transfer of shares, reduction of share capital and certified copy of the order and minute, cancellation or variation of shareholders' right, compromises and arrangements with creditors and members and copy of orders in appeal.	At least for eight years

- 4.9 From the above, it can be seen as far as these three enactments are concerned, there is no specific requirement that all records need to be kept in physical form and the querist has option of keeping them in electronic form (except those original documents duly signed/approved/certified by the authorities). When there is no specific provision in the enactment or rules with regard to maintenance of any particular record physically then, in such cases, the department officials call for that records, it will be sufficient that the records kept in electronic mode are made available. There cannot be any charge by the authorities that the physical documents have not been produced in such cases.
- 4.10 The bills of entry copies where customs officials have signed and other approvals, registration certificates etc. need to be kept in physical form.
- 4.11 Where there is a need to keep the physical document and the querist is not able to provide the same, then such situations can result in penal proceedings and imposition of penalties.



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Disclaimer:- The above opinion is provided based on the information and documents made available to us by the querist and further based on the laws and rules prevalent as on date and the understanding of such provisions by the author and is meant for the private use of the person to whom it is provided without assuming any liability for any consequential action taken based on the views expressed here.