



TAGGING OF COMPANIES

The Ministry of Corporate Affairs (MCA) has vide Notification dated 21st February, 2019 has amended the Companies (Incorporation) Rules, 2014 by insertion of a new Rule 25A for enabling Active Company Tagging Identities and Verification (ACTIVE) for every company registered on or before 31st December, 2017. This is yet another measure by MCA to identify shell companies, defunct companies, inactive companies, in addition to the series of clean-up measures taken by it earlier (like strike off of companies which have defaulted in filing annual financial statements and annual return). Further, this measure is expected to identify companies using same address for their registered office without their being actually present in such address or companies without proper registered office, which is typical of a shell or defunct or inactive company. The compliance measures of the aforesaid Rule 25A is explained hereunder:

To whom ACTIVE compliance is applicable?

Every company (including a one-person company) which is registered as on 31st December, 2017 is required to comply.

What companies need to do?

Every company which is registered as on 31st December, 2017 is required to file e-form ACTIVE on or before 25th April, 2019 in the prescribed e-form INC-22A.

Copyright © 2019 KSR & Co. Company Secretaries LLP. All rights reserved. You are receiving this email because you opted in via our website.

Mailing Address: KSR & Co Company secretaries LLP, 101, Indus Chambers, Govt. Arts College Road, Coimbatore 641018.



I-CUBE NEWSLETTER

TUESDAY, 26 FEBRUARY 2019

Which companies are eligible for ACTIVE compliance?

Every company which has completed annual filings up to the financial year 2017-18 i.e., companies which have filed e-forms AOC-4 / AOC-4 XBRL and MGT-7 (with MGT-8 where applicable) up to the financial year 2017-18.

Which company is ineligible for ACTIVE compliance?

A company registered as on 31st December, 2017 and which has not filed the annual financial statements and annual return upto financial year 2017-18 will not be able file the Form 22 A, unless, the company first files the said financial statements and return.

Which company is exempt for the time being from ACTIVE compliance?

A company which has filed e-form -SCP with the jurisdictional Registrar of Companies (RoC) reporting management dispute and the RoC has taken the said e-form SCP on record is not required to make ACTIVE compliance until the disputes are resolved. Further, a company which is under the process of striking off, or under liquidation are also not required to make ACTIVE compliance. ACTIVE compliance will not apply to a company which has been struck off and an amalgamated company (through an approved scheme of amalgamation) and which has been dissolved without winding-up.

What major information is required to be provided for ACTIVE compliance in e-form INC-22A?

- (i) Postal address of the registered office of the company along with exact geographical coordinates – latitude and longitude for their accurate physical identification. For this, companies may take the details from websites like <https://www.latlong.net/>
- (ii) Email address of the company verified by OTP process.
- (iii) Maximum number of directors that the company is enabled to appoint under first proviso to Section 149(1) of the Companies Act, 2013 (the Act). As per the Act, a company can appoint more than 15 directors if members have by special resolution authorized a higher number. If so, date of such resolution and SRN of the Form MGT-14 filed for this purpose should be given.
- (iv) List of all directors comprising the Board of Directors of the company as on date of filing of e-form along with their respective DIN. Ensure that KYC (through filing DIR-3 KYC) has been verified and approved by MCA.
- (v) Number and category of auditors appointed (firm or individual) together with income tax PAN, membership number of the auditor and also the period of their appointment.
- (vi) Similar details of the cost auditor if the company is required to appoint cost auditor
- (vii) Details of Managing Director, Company Secretary, Chief Financial Officer of the company.

Copyright © 2019 KSR & Co. Company Secretaries LLP. All rights reserved. You are receiving this email because you opted in via our website.

Mailing Address: KSR & Co Company secretaries LLP, 101, Indus Chambers, Govt. Arts College Road, Coimbatore 641018.



What are the compulsory attachments to the e-form INC-22A?

The e-form has to be digitally signed by two directors or one director and a Key Managerial Personnel (namely the Managing Director or Whole-time Director Company Secretary or Chief Financial Officer, as authorized, of the company concerned). Photographs of the registered office of the company needs to be attached. The photographs should show the external building where the registered office is situated (preferably with the name board of the company and its registered office address in terms of Section 12(3) of the Act) and also the interior of the office showing any one the directors or the Key Managerial Personnel who digitally signed the e-form should be attached.

What declaration and verification that the signatory to the e-form INC-22A is required to give?

The signatories to the e-form should declare that the registered office of the company is situated in the address that is mentioned in the e-form and the details of the directors, Key Managerial Personnel, auditors presently associated with the company are correct. Further the signatories to the e-form should confirm and verify that the particulars given in the e-form are true and are also in agreement with the documents maintained by the company.

What precautions that that a practicing CA/CS/CMA (Certifying Professional or CP) has to take prior to certifying the e-form?

The CP has to ensure that he or she is engaged properly for the certification of the e-form. While a board resolution may not be essential for the engagement, a letter / email addressed to the CP from the company for engaging his or her services for certification is required. The CP has to specifically verify prior to certification:

- (i) That the identity of the company is established by verifying the certificate of incorporation and the data on the MCA portal.
- (ii) That the situation of the registered office of the company is established by visiting the registered office of the company and matching the physical presence with the photographs produced by the company of the registered office. Further the CP has to verify the documents to the title or ownership of the registered office with the company / or the lease / rental agreement vis-à-vis the landlord and the company for establishing the registered office.
- (iii) That the appointments of directors / KMP whose particulars are provided are duly made and the relevant e-forms thereto have been filed with the MCA and approved.
- (iv) That the email address provided by the company is genuine.



I-CUBE NEWSLETTER

TUESDAY, 26 FEBRUARY 2019

What risk a company runs in not complying with ACTIVE?

A company which fails to file e-form INC-22A will face the following risks:

Risk 1

A belated filing of e-form will require payment of additional fee of Rs.10,000/- (Rupees Ten Thousand Only). Companies which have not filed the Form INC 22A on or before 25th April 2019, will be marked as “ACTIVE- NON-COMPLAINT” by MCA

Risk 2

The company which is marked “**ACTIVE-Non-Compliant**” will not be able to file the following e-forms until such time it completes the ACTIVE compliance:

- (i) e-form SH-07 – For change in the Authorised Share Capital of the Company
- (ii) e-form PAS-03 – For change of paid-up capital consequent to allotment of shares
- (iii) e-form DIR-12 – For appointment of directors, change in designation except cessation
- (iv) e-form INC-22 – For change in the registered office of the Company
- (v) e-form INC-28 – For reporting amalgamation demerger and other schemes of arrangement.

Risk 3

The company marked “**ACTIVE-Non-Compliant**” will be liable for action under Section 12(9) of the Act. Accordingly, the RoC can take a stand that the company is not carrying on any business or operations and can physically inspect the registered office premises can take the following actions:

- (i) Prosecute company and every officer who is in default for non-compliance of Rule 25A of the Companies (Incorporation) Rules, 2014 which can result in penalty to be imposed on the company and on every officer on default a sum of Rs.1,000/- (Rupees One Thousand Only) for every day of default; (or)
- (ii) Initiate action under Section 248(1) of the Act for striking off the company.



End note

The ACTIVE compliance will bring on record the latest information about the company, its physical location of registered office and its officers namely the directors and KMP on record. This will also bring on record the active companies which have complied with the requirements of at least the annual filings of financial statements and annual return, thus enabling the MCA to have the latest information about the company and its officers on hand, like never before. This process will effectively identify companies which have defaulted in appointing KMPs, companies that have failed to have a proper registered office, defunct companies, vanishing companies and directors of such companies, for the MCA to take action against them.

A truly Corporate Surgical Strike to say the least!!

CENTRAL OFFICE	BRANCH OFFICE	BRANCH OFFICE
Indus Chamber No.101, Govt Arts College Road, Coimbatore – 641018. Tel No: - (0422)2302868, 4952868 Email: info@ksrandco.in Linked in: gene@ksrandco.in	Flat No.1, 26/27, Venkatesham Flat, Gopal Street, T-Nagar, Chennai – 600 017. Tel No: - (044)24337620, Email: chennai@ksrandco.in	S-311, 3 rd Floor, South Block, Manipal Centre, No.47, Dickenson Road. Bangalore – 560042, Tel No: - (080)25323232 Email: bangalore@ksrandco.in