

# MCA Notifies amendment in The Companies (Incorporation) Rules, 2014

## **Introduction:**

Ministry of Corporate Affairs (MCA) had on 21<sup>st</sup> February, 2019 Notified the Companies (Incorporation) Amendment Rules, 2019 in which Rule 25A is inserted, which will be effective from 25<sup>th</sup> February 2019. This newly inserted Rule 25A mandated as follow:

## **Rule 25A: ACTIVE , which means Active Company Tagging Identities and Verification .**

### **Applicability:**

Every company incorporated on or before 31<sup>st</sup> December 2017 to file the e-form ACTIVE (which is e-Form 22A) which gives particulars of the Company and its Registered Office . The purpose of such e- Form is to update the KYC of a company. This form is required to be filed once only and not every year.

### **Non-Applicability:**

Filing of e-Form ACTIVE which is e-Form 22A is not required to be filed by following companies

- (a) which have been struck off ; or
- (b) are under process of striking off; or
- (c) are under liquidation ;or
- (d) are amalgamated; or
- (e) are dissolved

And are recorded as such in the Register maintained by the Registrar of Companies.

### **Unable to file**

Any company which has not filed with the Registrar of Companies “;

- (a) its due financial statements under Section 137 of the Companies Act, 2013; or
- (b) its due annual returns under Section 92 of the Companies Act, 2013; or
- (c) both (a) and (b) above,

Unless such Company is under management dispute **and** the Registrar has recorded the same on the register.

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Off : 1005, Solaris Hubtown, Prof N S Phadke Marg, Andheri East, Mumbai-400 069

Tel : 91 22 26845919/20/21 Cell 09820177691

Website: [www.amitadesai.com](http://www.amitadesai.com) E-mail: [info@amitadesai.com](mailto:info@amitadesai.com)

**Due Date of filing :**

E-Form INC-22A need to be filed on or before 25<sup>th</sup> April, 2019.

**Filing Fees :**

- (a) If e- Form INC-22A filed **before 25<sup>th</sup> April, 2019** then the same will be filed with **no fees** ;  
and
- (b) If e-Form INC -22A is filed **after 26<sup>th</sup> April, 2019** then the same will be field with fees of **Rs. 10,000/-**

**Approval of e-Form INC 22**

The e-Form INC 22A will be processed in Straight Through Process (STP)

**Implication of non-filing of e-Form 22A**

If a Company does not intimate Registrar by filing e-form INC 22A:

- (a) the company shall be marked as **“ACTIVE- non-compliant”** on or after 26<sup>th</sup> April, 2019,  
and
- (b) shall also be liable for action under sub- section (9) of section 12 of the Companies Act, 2013, which reads that if the Registrar of Companies has reasonable cause to believe that the company is not carrying on any business or operation he may **cause a physical verification of the Registered Office** of the Company in such manner as may be prescribed and
- (c) if any default is found to be made in complying with the requirement of section 12(1) of the Companies Act, 2013 ( intimation of registered office) he may without prejudice to the provisions of **levying of penalty** under section 12(8) (which is to the company and every officer in default to pay penalty of Rs.1000/- for every day during which the default continues **but not exceeding Rs.1 Lac**) initiate action for the removal of name of the company from the Register of Companies under chapter XVIII and

(d) the following e-forms ( event based or changes) shall not be recorded by the Registrar till e-Form 22A is filed by such company:

- SH-07 (Change in Authorized Capital)
- PAS-03 (Change in Paid-up Capital)
- DIR-12 (Changes in Director except cessation)
- INC-22 (Change in Registered Office)
- INC-28 (Amalgamation, de-merger)

#### **Pre-requisite for filing of e-Form INC -22A**

- Email address of the company to be provided (on which One Time Password (OTP) will be generated ( Maximum 10 times in a day and OTP shall be valid for a span of 30 minutes) and that OTP to be filled in the said Form INC 22A)
- Latitude and Longitude of Registered Office of the Company. It is advisable to extract the Latitude and Longitude of the Registered Office of the Company by using authentic websites. Such as- [www.latlong.net](http://www.latlong.net)
- The company should have minimum number of Directors as prescribed in the Companies Act, 2013 that is
  - (a) For One Person Company ----- 1 Director
  - (b) For Private Limited Company -----2 Directors
  - (c) For Private Producer Company -----5 Directors
  - (d) For Public Limited Company ----- 3 Directors
- If the number of Directors of the company is in excess of 15 ( Refer section 149 (1) (b) then e-Form MGT 14 should have been filed with Special Resolution to this effect ;
- The status of DIN of all Directors of the company should be “**Approved**” i.e. DIN are *neither 'De-activated due to non-filing of DIR-3 KYC' nor 'Disqualified u/s 164(2)of the Companies act, 2013;*
- The company should have filed e-Form ADT 1 giving details of Auditor of the company;
- The company should have filed e-Form CRA 2 giving details of Cost Auditor of the company (If applicable);

- The company should have filed e-Form DIR 12 and MR 1 , if applicable , for the appointment of its Managing Director/CFO/WTD/Manager/ CS;
- The Company should have filed e- Form AOC-4 (Annual Accounts) or AOC-4 XBRL and MGT-7 (Annual Return) filed for F.Y. 2017-18;

**Mandatory attachment to e-Form INC-22A:**

- (ii) Photograph of Registered Office showing external building and
- (iii) Photograph of Registered Office from inside and
- (iv) Both above showing therein at least one director/Key Managerial personnel (KMP) who has affixed his/her Digital Signature to e-Form INC 22A.

**e-Form INC 22A to be digitally signed**

e-Form INC 22A to be digitally signed by one director in case of OPC and In case company is other than OPC, the same need to be signed by one director and one KMP or two directors.

**Declaration and verification**

In e-Form INC 22A any one Director or Manager or CFO or CEO or Company Secretary gives

- (a) declaration stating that he/ she hereby declare that the Registered Office of the company is situated in the address mentioned in e-Form INC 22A and the details of Director, KMP, Auditors are presently associated with the company are correct;
- (b) confirmation and verification that the particulars given in the e-Form INC 22A are true and are in agreement with the documents maintained by the Company.

**Certification of e-Form INC 22A**

E- Form INC-22A is required to be certified by Chartered Accountant or Cost Accountant or by Company Secretary in whole time practice. The certifying professional need to certify that he shall keep a copy of e-Form INC 22A and attachments thereto, in his record for further reference.

**Conclusion :**

MCA has come up with this new e-Form INC 22A to resolve various issues like vanishing companies to defraud the investors, authorities etc, incorrect address of Registered Office due to which unable to send Notices, use of inactive companies during demonetization period

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Amita Desai

**Amita Desai & Co.**

**Company Secretaries**

1005, Hubtown Solaris

Landline: + 91-22-2684-5920/21

Prof N S Phadke Marg, Andheri East

Fax: + 91-22-6678-7499

Mumbai -400 069, India

Mobile : + 91-982-017-7691

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Off : 1005, Solaris Hubtown, Prof N S Phadke Marg, Andheri East, Mumbai-400 069

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