e-Form ACTIVE
COMPANIES (AMENDMENT) ORDINANCE, 2019
MSME & DPT-3 Compliance

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Shared at

Noida Branch of CIRC of ICAI

16.03.2019

LETS GET ACTIVE

e-form ACTIVE INC-22A

Companies (Incorporation) Amendment Rules, 2019 ➡ dated February 25, 2019 ➡ Insertion of Rule 25A

Active
Company
Tagging
Identities
and
VErification

e-form ACTIVE INC-22A

Applicable to companies incorporated on or before 31.12.2017

Particulars of Registered Offices of the companies are to be filed in the said form.

e-form ACTIVE INC-22A

Who cannot file?

When filing of either Financial Statements u/S 137 or Annual Return u/S 92 or both is due

Exception – Company is under Management Dispute and ROC has recorded the same.

Who need not file?

1. Struck off Companies
2. Those under process of striking off
3. Those under Liquidation
4. Amalgamated
5. Dissolved

e-form ACTIVE INC-22A

Requirements:

1. External Building Photograph – With Name Plate (Section 12 compliant)
2. Inside photograph of the office – with photograph of atleast 1 director/ KMP who has signed the form digitally.
3. Details of directors
   I. Active and Approved Status
   II. Should not be deactivated
   III. Should not be disqualified u/S 164(2)

e-form ACTIVE INC-22A

Requirements:

4. Details of auditors
   I. Statutory Auditor
   II. Cost Auditor
5. Details of:
   I. MD, CEO, Manager or WTD
   II. CS
   III. CFO
6. SRN of AOC-4, MGT-7 for FY 2017-18
7. Company’s own email id

e-form ACTIVE INC-22A

Requirements:

5. To be signed by:
    I. 1 Director and KMP
    II. 2 Directors
    III. 1 Director in case of OPC

6. Verification by professional

e-form ACTIVE INC-22A

Section 12 Compliance:

Every company shall paint or affix its name and address of its registered office in legible letters , outside every office or place of business of the Company.

Further, every company shall get under-mentioned particulars printed on all its Business Letters, Bill heads , Letter Papers, Notices, official Publications etc , with effect from 01.04.2014 :-

a) Name of the Company and CIN
b) Address of the Registered Office of the company
c) Telephone Number of the Company
d) Fax Number of the Company
e) E-mail ID of the company
f) Website Address of the Company

e-form ACTIVE INC-22A

Type	Degree	DMS
Latitude	22.763688579323066	22°45'49" N
Longitude	75.950692659 05667	75°57'2" E

Standard Photograph

e-form ACTIVE INC-22A

e-form ACTIVE INC-22A

Consequences:

1. DIN status shall be marked ACTIVE-Non-compliant on and after April 26, 2019
2. Action u/S 12(9) – Removal of name of the company
3. If being filed after April 26, 2019 –Filing Fees - Rs. 10,000
4. The following forms cannot be filed, unless INC-22A is filed:
   I. SH-07
   II. PAS-3
   III. DIR-12 (Except cessation)
   IV. INC-22
   V. INC-28 (Amalgamation, Demerger)

Companies (Amendment) Ordinance, 2019

Companies (Amendment) Ordinance, 2019

Ordinance promulgated on 02.11.2018

→

Companies (Amendment) Bill, 2019 to replace the ordinance passed by Lok Sabha on 04.01.2019

↓

Companies (Amendment) Ordinance will cease to operate on 21.01.2019

→

Companies (Amendment) Ordinance, 2019 promulgated on 12.01.2019 to be effective from 02.11.2018

Companies (Amendment) Ordinance, 2019

A. Fine by NCLT, Penalty by ROC / RD

1. Section 53(3) – Prohibition on issue of shares at discount
2. Section 64(2) – Notice to be given to registrar for alteration of share capital
3. Section 92(5) – Annual Return
4. Section 102(5) – Statement to be annexed to notice
5. Section 105 - Proxies
6. Section 117(2) – Resolutions and agreement to be filed
7. Section 121(3) – Report on AGM
8. Section 137(3) – Copy of Financial Statement to be filed with Registrar
9. Section 140(3) – Removal, resignation of auditor and giving of special notice

Companies (Amendment) Ordinance, 2019

A. Fine by NCLT, Penalty by ROC / RD

10. Section 157(2) – Company to inform DIN to Registrar
11. Section 159 – Punishment for contravention
12. Section 165(6) – Number of Directorships
13. Section 191(5) – Payment to director for loss of office
14. Section 197(15) – Overall maximum managerial remuneration and managerial remuneration in case of absence or inadequacy of profits
15. Section 203(5) – Appointment of KMP
16. Section 238(3) – Registration of the offer of scheme involving transfer of shares

Companies (Amendment) Ordinance, 2019

B. Section 2(41) & Section 14

Powers have now been vested in Central Government instead of NCLT

Pending applications submitted before NCLT prior to November 02, 2018, shall be dealt with by NCLT.

Companies (Amendment) Ordinance, 2019

C. Commencement of Business

Section 10A introduced

Earlier removed by amending Section 11 through Companies (Amendment) Act, 2015.

Any company incorporated on or after November 02, 2018 shall not commence business or exercise any borrowing powers, unless:

- Declaration is filed in Form INC20A within 180 days of incorporation and
- Files verification of registered office in 30 days with the RoC.

Companies (Amendment) Ordinance, 2019

C. Commencement of Business

Penalty in case of default:

- Company – Rs. 50,000
- Officer-in-default – Rs. 1000 per day subject to maximum Rs. 100000

RoC may initiate cause of action for removal of name u/S 248(5). Section 248 has been amended accordingly.

Companies (Amendment) Ordinance, 2019

D. Registered Office

Section 12(9) has been introduced – Physical verification of registered office in case of reasons to believe.

And if not found complying with Section 12(1), RO should be capable of receiving and acknowledging all communications and notices as may be addressed to it.

RoC may initiate cause of action for removal of name u/S 248(5).

Companies (Amendment) Ordinance, 2019

E. Shares at Discount

Fine has been changed to Penalty

Imprisonment provisions of Officer in Default has been removed

Penalty has been rationalized:

Equal to the amount raised by the issue of shares at discount or five lakh rupees, whichever is lower.

Company shall be liable to refund the said amount with interest at 12% per annum from the date of issue of the shares.

Companies (Amendment) Ordinance, 2019

F. Charges

Section 77:

If charge is created before Ordinance – Within 300 days

If not registered, to be completed within 6 months, from the date of ordinance on paying fee.

If charge is created after Ordinance - Within 60 days

If not registered, RoC may grant another 60 days on application on payment of advalorem fee

Companies (Amendment) Ordinance, 2019

F. Charges

Section 86:

If a person wilfully

- furnishes false or incorrect information

Or

- Suppresses material information

Which is required to be registered, he will be liable for fraud u/S 447.

Companies (Amendment) Ordinance, 2019

F. Charges

Section 87:

Central Government now has power to rectify any omission or mis-statement.

Time of intimation of payment or satisfaction, can be rectified on CG satisfaction

Just and equitable ground for grant of relief, can no longer be rectified.

Companies (Amendment) Ordinance, 2019

G. Annual Return

Filing within 60 days – Normal Fees

Upto 30.06.2018 – Additional Fees till 300 days

w.e.f. 01.07.2018 – Additional Fees Rs. 100/- day

Subsequently, penalty w.e.f. 02.11.2018

- Company – 50,000 + 100/- day on continuous default
- Officer-in-default – 500000 (Imprisonment provision omitted)

Companies (Amendment) Ordinance, 2019

H. Filing of Resolutions

- Earlier for default – fine:
  - Company:
    - Min. Rs. 100000; Max. Rs. 2500000
  - Officer-in-default:
    - Min. Rs. 50000; Max. Rs. 500000
- Now – penalty:
  - Company:
    - Min. Rs. 100000, continuing Rs. 500/- day
    - Max. Rs. 25000
  - Officer-in-default including liquidator:
    - Min. Rs. 50000, continuing Rs. 500/- day.
    - Max. Rs. 500000

Companies (Amendment) Ordinance, 2019

I. Filing of Financial Statements

Filing within 30 days – Normal Fees

Upto 30.06.2018 – Additional Fees till 300 days

w.e.f. 01.07.2018 – Additional Fees Rs. 100/- day

Subsequently, penalty w.e.f. 02.11.2018

- Company – Rs. 1,000/- day > Rs. 10,00,000
- MD etc. in-charge by Board
  - Penalty – Rs. 1,00,000 (100/- day, if continuous default) to Rs. 5,00,000
  - Imprisonment provision omitted

Companies (Amendment) Ordinance, 2019

J. Auditor Resignation

Earlier for default – Fine:

- Min. Rs. 50,000 or remuneration of auditor whichever is less;
- Max. Rs. 5,00,000

Now – Penalty:

- Min. Rs. 50,000/- day or remuneration of auditor whichever is less, continuing Rs. 500/- day,
- Max. Rs. 5,00,000

Companies (Amendment) Ordinance, 2019

K. Director Disqualification

Contravening Provision of directorship in more than 20 companies, will now be a ground for disqualification from directorship.

Non-Compliance will now attract penalty of Rs. 5,000/- day

Companies (Amendment) Ordinance, 2019

L. Appointment of KMP

- Earlier for default – fine:
  - Company:
    - Min. Rs. 100000; Max. Rs. 500000
  - Director and KMP:
    - Min. Rs. 50000; continuing Max. Rs. 1000/-day
- Now – penalty:
  - Company:
    - Min. Rs. 500000,
  - Director and KMP:
    - Min. Rs. 50000, continuing Rs. 1,000/- day.
    - Max. Rs. 500000

Companies (Amendment) Ordinance, 2019

M. Compounding

RD can compound offences with a penalty upto Rs. 25,00,000

Companies (Amendment) Ordinance, 2019

N. Fraud

- Imprisonment not less than 6 months to 10 years
- Fine not be less than amount involved in the fraud which may extend to 3 times.
- If fraud in question involves public interest then the imprisonment shall not be less than 3 years.
- If amount involved in fraud is less than Rs. 10L or 1% of turnover – imprisonment upto 5 years or fine upto Rs. 25 Lacs or with both. No minimum term or amount - (9.2.2018)
- Ordinance – Fine limit increased to Rs. 50 Lacs

Companies (Amendment) Ordinance, 2019

O. Penalties Adjudication

- The Act allows the central government to appoint adjudicating officers to decide penalties under the Act.
- The Ordinance states that these officers, in addition to imposing penalties, may direct the defaulting entity to rectify the default.

Companies (Amendment) Ordinance, 2019

P. Repeated Default

- New section introduced
- If a company, or an officer, or other person commits a default again within three years of the previous case, the entity will be liable to twice the penalty as provided for such default.

MSME

MICRO, SMALL & MEDIUM ENTERPRISES

सूक्ष्म, लघु एवं मध्यम उद्यम

MSME Form 1

Notification dated 2nd November 2018

All companies who get supplies of goods or services from micro and small enterprises and whose payments to them exceed 45 days from the date of acceptance or the date of deemed acceptance of the goods or services as per the provisions of the Act, shall submit a half yearly return to MCA stating the following:

(a) The amount of payments due; and

(b) The reasons of the delay.

MSME Form 1

MCA notified Specified Companies (Furnishing of information about payment to micro and small enterprises suppliers) Order 2019 on 22nd January 2019

- 1st Return with 30 days of notification - EXTENDED
- MSME Form 1 to be filed half-yearly by Specified Companies by 31st October / 30th April
- Reason for Delay to be given
- Director / CEO / CS (employed) to certify

MSME Form 1

Applicable, if goods/ services received from micro and small enterprises who have filed memorandum with MSME Authorities.

To be filed only:

for the outstanding amount due ;and

to registered Micro & Small Enterprises – Udyog Aadhar

Medium Enterprises – not covered

Only manufacturers and services providers covered

MSME Form 1

- Default if payment not made:
  - If date agreed upon in writing - within that date (can't agree beyond 45 days)
  - If not agreed in writing within 15 days of date of acceptance - appointed day
- Interest compound interest with monthly rest from the appointed day or from the date immediately following the date agreed upon, @ 3 times the Bank Rate
- Interest is not allowable under Income Tax

Deposit

DPT-3

- To be filed annually by 30th June and furnish information as on 31st March of that year duly audited by auditor of the company.
- Was to be filed only by companies accepting deposits
- Later companies accepting deposits from shareholders were also covered w.e.f. 19th September 2017
- Insertions made to Rule 16 and 16A of the Deposit Rules vide notification dated 22nd January 2019
- Form DPT-3 also amended.

DPT-3

- Explanation to Rule 16 added – to clarify that DPT-3 is to be filed annually by every company other than Government company for :
  - Deposit or
  - Particulars of transaction not considered as deposit or
  - Both

DPT-3

Sub-rule (3) added to Rule 16A:

- Every company other than Government company shall file a one-time return of
- outstanding receipt of money or loan by a company but not considered as deposits, in terms of rule 2(1)(c)
- From April 01,2014 to the date of publication of this notification (22.1.19),
- within 90 days from the date of said publication of this notification (22.1.19)
- along with fee.

DPT-3

Amounts Received
Deposits
Not Deposits
From Public
From shareholders

DPT-3

Amount not treated as deposits:

- Amount received from CG, SG, L Auth., Stat. Auth.
- Amount from Foreign Govt, Bank, etc as per FEMA
- Amount received from Banks, PFIs, CPs
- ICD
- From director out of his own funds – to report in D.R. w.e.f. 15.9.15 – FS – 29.6.16
- From relative of director for Pvt. Co. out of his own funds – to report in D.R. w.e.f. 15.9.15 – FS – 29.6.16

DPT-3

Amount not treated as deposits:

- Convertible bond / debenture – shares within 5 years 10 from 29.6.16. & Listed unsecured NCD
- Interest free security deposit – employee – 1 year salary
- Share appl. money, except not allotted / refunded
- Non-Interest bearing amt received & held in Trust

DPT-3

Amount not treated as deposits:

- Business advances:
  - Supply of goods / services – within 365 days
  - Against Immovable property – if adjusted as per agreement
  - Security deposit for performance of contract for supply of goods or provision of services
  - Under long term project-supply of capital goods
  - Advance for providing future services in form of warranty or maintenance contract (written) upto 5 years – 29.6.2016
  - Advance received and as allowed by sectoral regulator as per CG or SG – 29.6.2016
  - Advance for subscription towards publication– 29.6.2016

DPT-3

Amount not treated as deposits:

- If Co. accepting money does not havenecessary permission or approval to deal in goods or properties or services - Deposit
- Subscription to chit under Chit Fund Act–29.6.16
- Rs. 25 Lakh or more by start up company in single tranche by convertible note (in equity or repayable within 5 years) – 29.6.16
- Promoters - stipulation of any FI or abanks:-
  - Loan is brought in pursuance of stipulation imposed by lending institutions on promoters to contribute such finance; and
  - Loan is provided by the promoters themselvesand/or by their relatives.
  - Exemption available only till loans arerepaid

DPT-3

Amount not treated as deposits:

- Amount received by the company under any collective investment scheme in compliance with regulations framed by SEBI;(29.6.2016)
- Amount received by a company from Alternate Investment Funds, Domestic Venture Capital Funds, and Mutual Funds registered with the SEBI (29.6.16).
  - Infrastructure Investment Trusts(11.5.2017)
  - Real Estate Investment Trusts(22.01.2019)
- Amt. received by Nidhi companies
  - Specified IFSC Public company can accept from its members monies not exceeding 100% of aggregate of the paid up share capital, free reserves and securities premium account and such company shall file the details of monies so accepted to the Registrar in Form DPT-3 (w.e.f. 19.9.2017)

DPT-3

Amount not treated as deposits:

- However, they have to comply with provisions of Section 73(2) of Companies Act 2013 and Companies (Acceptance of Deposit) Rules 2014

DPT-3

DEPOSITS FROM MEMBERS

DPT-3

- In case Private Company is in default in filing AOC-4 or MGT-7, then the limits for start-up and other than start-up companies remains same.
- However, they would have to comply with conditions of S. 73(2) on or after 19th September 2017

DPT-3

- Every company receiving monies deposits, loans, ICD, advances, etc. to file DPT-3 annually
- 1 time return for all companies who have outstanding monies which are not deposits as per rule 2(1)(c)
- Point no. 14 of amended DPT-3 - Total amounts of outstanding money or loan received by a company but not considered as deposits in terms of rule 2(1)(c) as specified in rule16(A)(3)
- Non - Compliance Fine – 5,000 – continuing Rs. 500/- per day – Rule 21

THANK YOU
FOR
LISTENING

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