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KYC of Active Companies
- MCA's spree to clean up the waste

- *Published on February 23, 2019*

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KYC of Active Companies - MCA's spree to clean up the waste

In its further endeavour to eradicate the sham companies the Ministry of Corporate Affairs ("MCA") has come up with Notification dated 21st February, 2019¹ inserting Rule 25A vide Companies (Incorporation) Amendment Rules, 2019 ("Rules") providing for KYC of companies pursuant to powers under section 12 (9) and 469 of the Companies Act, 2013 ("Act"). Below we discuss the applicability and provisions of the said Rules.

❖ What is the effective date of the said Rule?

The Rules comes into effect on and from 25th February, 2019.

❖ What is the form to be filed pursuant to the Rules?

The companies are required to file Active Company Tagging Identities and Verification (ACTIVE).

❖ Which companies are required to file ACTIVE?

All the companies incorporated on or before 31st December, 2017 shall file ACTIVE.

❖ A Ltd. is listed on BSE Ltd., will such company be required to file ACTIVE?

Yes. ACTIVE is applicable on all companies, public, private, listed, unlisted.

❖ What does the form ACTIVE pertain to?

Companies are required to fill in the particulars of the company including registered office, directors, KMPs, last annual filings, details of auditors vide the said form.

❖ What are the other categories required in ACTIVE?

- In case a company has passed resolution for having directors beyond limit of maximum number of directors then the company shall be also required to fill in SRN of the said MGT 14.
- Exact latitude and longitude of the registered office of the company.

❖ What is the due date of filing of ACTIVE?

The said form is required to be filed on or before 25.04.2019.

¹ http://www.mca.gov.in/Ministry/pdf/CompaniesIncorporationAmendmentRules_21022019.pdf

❖ Which companies are restricted to file ACTIVE?

- Companies which have not filed its due financial statements under section 137, or
- Companies which have not filed annual returns under section 92, or
- Companies which have not filed both financial statements and annual return, or
- Companies which have been struck off, or
- Companies which are under process of striking off, or
- Companies which are under liquidation or amalgamated or dissolved, as recorded in the register.
- Companies whose directors are disqualified due to non-filing of DIR 3 KYC or disqualified under section 164 (2).

❖ Is there any exemption to the restricted companies?

Where a company has failed to file financial statements under section 137 and section 92 in case such company has been marked as management dispute and marked as such by the Registrar will be able to file ACTIVE.

❖ What are the consequences of non-filing of ACTIVE?

The Company shall be marked as “ACTIVE-Non-Compliant” on or after 26th April, 2019 and shall be liable for action under sub-section (9) of Section 12 of the Act.

❖ What are the consequences of being marked as ACTIVE-Non-Compliant?

The following event based information or changes shall not be accepted by the Registrar:-

- (i) SH-07 (Change in authorized capital)
- (ii) PAS-03 (Change in Paid up Capital)
- (iii) DIR-12 (Change in Director except cessation)
- (iv) INC-22 (Change in registered office)
- (v) INC-28 (Amalgamation, De-merger)

Therefore, such companies will not be able to undertake any other transaction as such transactions will not be filed with the Registrar.

❖ Can the “Active-non compliant” companies make the default good?

Where a non-compliant company files ACTIVE, after 26th April 2019, the company shall be marked as “ACTIVE Compliant”, on payment of fees of ten thousand rupees.

❖ Is there any filing fees for ACTIVE?

As of now it seems there is no fees for filing of ACTIVE till 26th April, 2019.

❖ If a company has not filed AOC-4 for financial year ending 2018, will such company be able to file ACTIVE?

No.

❖ A company is incorporated on 5th May, 2017, will such company file ACTIVE?
Yes. All companies incorporated prior to 31st December, 2017 will have to file ACTIVE.

❖ A company is incorporated on 2nd February, 2018 and has not yet filed its MGT 7. Will it be able to file ACTIVE?
Such company is not eligible to file ACTIVE since the company is incorporated after 31.12.2017.

❖ What are the mandatory attachments to the form ACTIVE?
Photograph of the registered office showing therein external and internal office with at least one director and/or KMP who has attested their dsc to the said form.

❖ Is there any OTP generation?
Yes. An OTP will be sent to the email id of the Company. Thereafter, only one will be able to proceed with rest of the form filling and filing. Therefore, company should have a valid email id.

Analysis

The introduction of ACTIVE is another fall out of the MCA's drive after striking of lakhs of companies and issuance of letters under section 248 of the Act, to ensure KYC of companies as well and to wipe out the sham companies which are non-operating and/or non-compliant with their filings. As of now some companies have been struggling to restore their status on account of being struck off by the Registrar due to non-filing of returns as a mass initiative by the MCA while the others are suffering for their directors' DIN being marked as disqualified. While one may feel this compliance as a burden but the intent of such rule is clear enough to gather. We may soon also face KYC of professionals in due course of time.

However, this move comes at a time when the corporate are already juggling with other newly introduced compliances, so it is to see how the professionals in cooperation with the management handle such compliance burden. Further, while the due date is 25.04.2019, this should only in case the e-form is readily available without any technical glitch, else, the due date may be extended by MCA in the last hour given in its usual style.

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