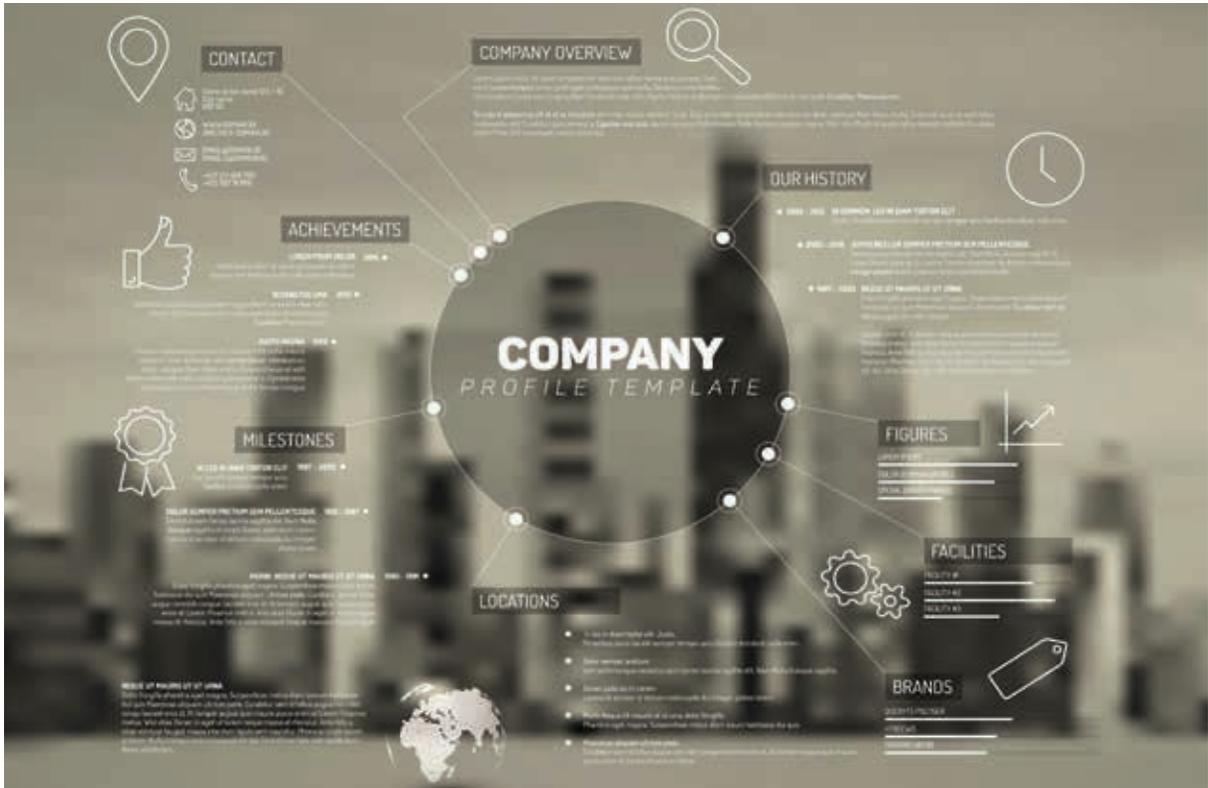


Decoding 'ACTIVE (Active Company Tagging Identities and Verification) -INC22A' Introduced by MCA for Companies



Introduction of 'ACTIVE (Active Company Tagging Identities and Verification)-INC-22A' shall enable common public to be aware of KYC (Know Your Company) status of the companies and their directors. Companies flouting the applicable provisions of maintenance of registered office, appointment of statutory auditor(s) /cost auditor(s), key managerial personnel, company secretary are bound to earn the tag of 'ACTIVE-Non-Compliant'. Further, any company which has not filed its due financial statements under section 137 or due annual returns under section 92 or both with the Registrar shall be restricted from filing e-Form-ACTIVE, and hence treated as 'ACTIVE-Non-Compliant', unless such company is under management dispute and the Registrar has recorded the same on the register. Companies which have been struck off or are under process of striking off or under liquidation or amalgamated or dissolved as recorded in the register, shall not be required to file e-Form ACTIVE. Read on to know more...



Bhasker Subramanian

The Author is an Industry Principal with the India Business Unit (IBU) of Infosys Limited. He can be reached at bhaskersiyer@gmail.com or eboard@icai.in

Introduction

Close on the heels of successful roll out of DIR-3 KYC for Directors/DIN holders, the Ministry of Corporate Affairs has introduced yet another mandatory eform (INC-22A) christened 'ACTIVE (Active Company Tagging Identities and Verification) *vide* rule 25 A of the

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Companies (Incorporation) Rules, 2014 inserted vide notification dated 21st February 2019 which is effective from 25th February 2019 for Companies. Accordingly, all Companies which got incorporated on or before 31st December 2017 and are under 'Active' status as on the date of filing shall file the particulars for verification of registration and registered office, in e-Form eForm ACTIVE-INC-22A on or before **25th April 2019**. ACTIVE contains 8 fields and the information mostly gets pre-filled based on CIN entered. Author herein proceeds to decode the form 'field by field', for enabling users to do hassle free filing.

2. Details of Company: In field number 1(c), address of the registered office gets pre-filled. However, if a company has violated the relevant provision by not filing INC-22 (wherever applicable), ACTIVE filing would not be permitted. Latitude and Longitude details have to be entered by the user in the relevant fields. In field 1(e), the email id of the company gets pre-filled which can be editable by the user. On pressing the 'Send OTP' button, a number containing 'onetime password (OTP)' is generated and sent to the email id of the company which has to be verified by the user by pressing 'Verify OTP' button. In field 1(f) for 'Whether the company is listed Yes/No', the radio button gets pre-filled and users would not be permitted to edit.

3. Rules for OTP functionality: The Send OTP button shall be enabled only after successful Pre-scrutiny of the form. Send OTP button shall be enabled for a maximum of 10 times in one day (24 hours) for a combination of IP address and Form Unique ID. *Please note that you may Send OTP for a maximum of 10 times through one form in one day. For more chances, you may try downloading a new form or wait till the next day.* Message will be displayed after 10 attempts on the same form ID and IP address.

4. Details of Directors: In field 2(a), on pressing the Pre-fill button by the user, number of Directors gets pre-filled based on number of active associations of all Directors i.e., roles based on unique DIN. If the company has appointed more than fifteen Directors (as per the first proviso to section 149(1)), the Service Request Number and the date of resolution has to be entered in field 2(b). However, this is not applicable to Section 8 and Government companies. In field 2(c), the list of Directors as on the date of filing ACTIVE

gets pre-filled showing their DIN, Name and Status. Associations based on ascending order of appointment date would be pre-filled. The minimum requirement of Directors of **2** in case of a Private Company (other than Producer Company), **5** in case of a Private Producer Company, **3** for a Public Company and **1** for OPC would be ensured. If any company has breached the minimum requirement for any reason, ACTIVE would not get filed till the same has been complied with. Further, users may note that if the DIN status is other than 'Approved', error message shall be shown to file the relevant form before filing ACTIVE. Accordingly, before filing ACTIVE, please ensure that the DINs of all Directors are in 'approved' status and are neither '*De-activated due to non-filing of DIR-3 KYC*' nor '*Disqualified u/s 164(2)*'.

The minimum requirement of Directors of 2 in case of a Private Company (other than Producer Company), 5 in case of a Private Producer Company, 3 for a Public Company and 1 for OPC would be ensured. If any company has breached the minimum requirement for any reason, ACTIVE would not get filed till the same has been complied with. Before filing ACTIVE, users may please ensure that the DINs of all Directors are in 'approved' status and are neither 'De-activated due to non-filing of DIR-3 KYC' nor 'Disqualified u/s 164(2)'.

5. Details of statutory auditor(s): In field 3, details of statutory auditor(s) gets pre-filled based on ADT-1 filed (and approved) by the company for the latest period of accounts for which auditor has been appointed. Details of auditor(s) viz. category (Individual/Firm), Permanent Account Number, Name, Membership number of auditor or auditor's registration number and period of account for which appointed gets pre-filled. However, users may please note that 'Period To' date shall be on or after 31-03-2019. If not, an error message would be shown advising the user to file ADT-1 before filing ACTIVE.

6. Details of Cost Auditor(s): In field 4, it shall be mandatory to click on prefill button in case 'Yes' is selected. Users may note that in case YES is selected and no cost auditor details are pre-filled, filing shall not be allowed. They have to file CRA-2 intimating the appointment of Cost Auditor before filing ACTIVE. Details of Cost Auditor(s) viz. number of Cost auditor(s), Category (Individual/

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Partnership firm/LLP), Membership number of the Cost Auditor/ member representing the Cost Auditor's Firm/LLP, Name of the cost auditor or member representing the firm/LLP, Firm Registration Number(FRN) of the Cost Auditor/ Cost Auditor's firm/LLP, Name of the Cost auditor's firm/LLP, Financial year to be covered by the cost auditor(s) 'From-To' shall be prefilled based on CRA-2 approved for the latest financial year for which cost auditor is appointed. Similar to field 3, 'To date' shall be on or after 31-03-2019. If not, an error message would be shown advising the user to file CRA-2 before filing ACTIVE.

7. Details of Key Managerial Personnel: (i) Users may refer to the provisions of section 203 of the Companies Act, 2013 and rule 8 of the Companies (Appointment & Remuneration of Managerial Personnel) Rules, 2014. Accordingly, in case of listed company and public company having a paid-up share capital of ten crore rupees or more, company shall have:

- a. Managing Director, or Chief Executive Officer or Manager and in their absence, a whole-time director;
- b. Company Secretary* and
- c. Chief Financial Officer

However, Govt. companies shall be excluded while validating the above rule.

*As per rule 8A of the Companies (Appointment & Remuneration of Managerial Personnel) Rules, 2014, *a company other than a company covered under rule 8 which has a paid up share capital of five crore or more shall have a whole-time company secretary.*

However, Govt. companies shall be excluded while validating the above rule.

(ii) In field 5, number of rolls is prefilled based on no. of roles associated with designation 'Managing Director/Chief Executive Officer (CEO)/Manager/ Whole-time director'. DIN shall be prefilled in case designation is MD/WTD. Else, PAN shall be prefilled. In respect of the field (with radio button Yes/No) 'Whether the company has Managing Director or CEO' shall be enabled and mandatory in case only Manager role gets prefilled above.

8. Details of Company Secretary: In field 6, details of Company Secretary of the company, if applicable gets pre-filled. In case the company

has not appointed whole-time company secretary, a message viz. '*Company is having a paid-up share capital <Amount> and shall have whole-time company secretary. Kindly file the relevant form for appointment of company secretary before filing eForm INC-22A*' would be displayed.

9. Details of Chief Financial Officer: In field 7, this information is prefilled based on PAN entered. In respect of non-appointment of CFO, a message viz. '*Company is listed company/public company having a paid-up share capital <Amount> and shall have managing director, or Chief Executive Officer or manager and in their absence, a whole-time director; and company secretary and Chief Financial Officer. Kindly file the relevant form for appointment of KMP before filing eForm INC-22A*' would be displayed.

10. Details of forms AOC-4/AOC-4 XBRL and MGT-7 filed for FY 2017-18: In field 8, this information is prefilled based on CIN. SRNs shall be filed for the FY ending 31.03.2018 for which Payment status is 'Paid' and SRNs' status is either pending for processing or approved. SRNs shall not be marked for 'defective'. In case of multiple filings for the same FY, prefill would be based on the latest form filed. In case the same has not been filed for the FY 17-18, filing shall not be allowed for the companies which are not marked for 'management dispute'.

11. Prohibition on event based information or changes: Following event based information or changes shall NOT be permitted from such companies marked as "KYC non-compliant Company", unless they file ACTIVE. Defaulting companies 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.

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Event based information or changes viz. 'Change in Authorized Capital/ Return of allotment/ Changes in Director except cessation/ Change in Registered Office except for change of address within the State' would NOT be permitted from companies marked as "KYC non-compliant Company", unless they file ACTIVE. It is expected that these restrictions would greatly help MCA to identify and monitor through a single form (ACTIVE) the companies violating various provisions.

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- (i) SH-07 (Alteration of share capital)
- (ii) PAS-03 (Return of Allotment)
- (iii) DIR-12 (Changes in Director except cessation)
- (iv) INC-22 (Change in Registered Office)
- (v) INC-28 (Amalgamation, Demerger)

12. Miscellaneous: (i) Photograph of Registered Office showing external building and inside office also showing therein at least one director/KMP who has affixed his/her Digital Signature to this form being clearly seen therein has to be attached while filing the form. Persons signing the form shall have a valid & non expired/ revoked DSC. DSC has been registered on MCA portal against the DIN/PAN/Membership number mentioned in the form. Person(s) signing the form shall have a valid DIN/PAN/Membership number.

(ii) Number of Signatories: To be digitally signed by one Director in case of OPC. In case of other than OPC it has to be signed by one Director and one KMP or two Directors.

(iii) 'View Public Document (VPD)': This eform is NOT available for view under VPD service of Front Office. This form is processed under **Straight Through Process (STP)** mode.

(iv) Pre-scrutiny rules: System validates that the document template has not been tampered with and the document has not been changed after being digitally signed. System validates that the DIN is an approved DIN or PAN/Membership number entered is valid. System checks that the affixed DSC is registered against the DIN/PAN/Membership number entered. System validates that the person digitally signing the eForm is associated with the CIN of the company on whose behalf filing is being done. System validates/restricts that DIN is not flagged for disqualification.

13. Other Checks: System checks that the form has not been signed by a Director/Manager/ Company Secretary/ CEO/ CFO of the company in respect of whom Form DIR-11 or Form DIR-12 or old form 32 has been filed for cessation and the work item in respect of same has been approved/ has not been closed. All Pre scrutiny rules to be checked at the time of form upload. System validates the correct version number of the eForm. System validates whether the DSC is valid and

has not been revoked/expired. System validates that the OTP for email ID has been verified by the Applicant.

14. Fee: There is NO fee applicable for filing the form within the prescribed due date (25th April 2019). However, a fee of INR 10000 becomes payable for filing beyond the prescribed due date i.e., on or after **26th April 2019**.

15. Post filing formalities: eForm ACTIVE will be approved and details updated into the system. Email id gets updated in the master table. An email shall be generated and sent to the applicant. At MCA21 Portal, the company is shown as 'ACTIVE Compliant company'.

16. Treatment of defaulting companies: In case any company fails to file ACTIVE within the time limit, 'ACTIVE (Active Company Tagging Identities and Verification)' flag shall be updated with description 'ACTIVE non-complaint company' in MCA21 Portal. DINs of associated Directors as on date shall be marked 'Director of ACTIVE non-compliant company'. The status of compliance (wherever applicable) shall be updated on a daily basis. It is pertinent to draw attention to the provisions contained in 3rd proviso under rule 25A of the Companies (Incorporation) Rules, 2014: *'If the Registrar has reasonable cause to believe that the company is not carrying on any business or operations, he may cause a physical verification of the registered office of the company in such manner as may be prescribed and if any default is found to be made in complying with the requirements of sub-section (1), he may without prejudice to the provisions of sub-section (8), initiate action for the removal of the name of the company from the register of companies under Chapter XVIII.'*

Conclusion

It is envisaged that introduction of ACTIVE shall enable common public to be aware of KYC (Know Your Company) status of the companies and their directors. Further, the filing of ACTIVE would be very easy as many fields are pre-filled based on CIN and if the company has not violated the applicable provisions of the Companies Act, 2013 and the rules thereunder, it would be a breeze for them while filing it. ■