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COMPANY SECRETARIES

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Some important changes happened in the Corporate and Legal world in the month of February 2019:

1. Companies (Incorporation) Amendment Rules, 2019

Ministry of Corporate Affairs vide notification dated February 25, 2019 notifies Companies **(Incorporation) Amendment Rules, 2019** by inserting following new rule 25A.

- Every company incorporated on or before the 31st December, 2017 shall file the particulars of the company and its registered office, in **e-Form ACTIVE** (Active Company Tagging Identities and Verification) on or before **25.04.2019**.

- Any company which has not filed its financial statements under section 137 or annual returns under section 92 or both with the Registrar shall be restricted from filing e-Form-ACTIVE, 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.

- In case a company does not intimate the said particulars, 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.

- No request for recording the following event based information or changes shall be accepted by the Registrar from such companies marked as "ACTIVE-non-compliant", unless " e-Form ACTIVE" is filed-

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

- Where a company files "e-Form ACTIVE", on or after 26th April, 2019, the company shall be marked as "ACTIVE Compliant", on payment of fee of ten thousand rupees".

Impact: Every Company incorporated on or after 31st December, 2017 will have to file E Form Active on or before 25th April, 2019. This is **first time** been introduced and each company is required to comply with requirements **within due** timeline.



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2. Companies (Region offices and fees) amendment Rules, 2019

Ministry of Corporate Affairs vide notification dated February 21, 2019 notifies Companies (Region offices and fees) amendment Rules, 2019.

In the Companies (Registration Offices and Fees) Rules, 2014, in the Annexure, after item VII relating to Fees for filing e-Form DIR-3 KYC under rule 12A of the Companies (Appointment and Qualification of Directors) Rules, 2014, the following item shall inserted, namely:-

“VIII. FEE FOR FILING e-Form ACTIVE under rule 25A of the Companies (Incorporation) Rules, 2014.

- (i) Fee payable till 25.04.2019 on e -form ACTIVE - NIL
- (ii) Fee payable (in delayed case). Rs.10,000/-

Impact: Every company shall file eForm Active on or before 25th April, 2019 and delayed case fee payable will be Rs. 10,000/-.

3. Extension for last date of filing initial return in MSME Form 1

Pending the deployment of MSME Form I on MCA portal and in order to avoid inconvenience to stakeholders on account of various factors, it is stated the period of thirty days for filing initial return in MSME Form 1 as specified in Specified Companies (Furnishing of information about payment to micro and small enterprise suppliers) Order, 2019 dated 22.01.2019 shall be reckoned from the date the said e-form is deployed on MCA 21 portal

Impact: The due date for filing form MSME 1 has been reckoned.

4. MCA notifies Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2019

Ministry of Corporate Affairs notified above rules dated February 19, 2019. The amendment brought a delation of column inconsistent with new changes in serial no. 6(b).

5. Companies (Adjudication of Penalties Amendment Rules), 2019

Ministry of Corporate Affairs vide notification dated February 19, 2019 notifies Companies (Adjudication of Penalties Amendment Rules), 2019



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- The power has been granted to the Central Government to appoint any officer who shall be not be below the rank of Registrar as adjudicating officers for adjudging penalties for non-compliances or default under Act by the Company or by any officer who is in default.
- A written notice will be sent to the concerned Company or the officer and a reply to the same shall be filed within stipulated time in electronic mode which can be further extended to fifteen days.
- After considering the reply as submitted by the Company the officer may call for physical appearance if required on the date fixed for hearing and after hearing the case the adjudicating officer shall pass any order in writing as he thinks fit within a period of thirty days from the date of physical appearance.
- Every order of the adjudicating officer shall be duly dated and signed by him and the officer shall send a copy of the order passed by him to the concerned Company or the officer who is in default.
- If any person fails to reply or refuses to appear before the adjudicating officer, the officer may pass an order imposing penalty which shall be paid through Ministry of Corporate Affairs portal only.
- All the funds realised by way of penalties under the Act shall be credited to the Consolidated Fund of India.

Impact: Earlier there were penalties and prosecution and now for many sections the Central Government has removed prosecution and now only penalty will be levied.



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We suggest readers to draw their conclusions after taking into consideration various other relevant sections, rules to be notified from time to time and applicable Secretarial Standards, Accounting Standards and Guidance notes and other notifications, circulars and amendments notified from time to time.

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