

# SURESH & CO.

Chartered Accountants

## Spotted & Reported – Companies (Incorporation) Amendment Rules, 2019.

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## **FOREWORD**

With the introduction of Companies (Incorporation) Amendment Rules, 2019 which will be notified on February 25, 2019, there has been an important amendment to the Companies Act, 2013 with respect to the Registered Office of the Company.

“Spotted & Reported” is one of the many other initiatives undertaken by SURESH & CO., Chartered Accountants, to enable its members, articled assistants, associates, clients, business partners, professionals and other trade/industry practitioners to be informed and updated about the new developments in the industry. Four reports on following have already been issued:

1. “CBDT Amends the Tax Audit Report (Form 3CD)”;
2. “Business Valuation” and
3. “GST Audit”
4. “Companies (Amendment) Ordinance, 2018”

This 5<sup>th</sup> issue of Spotted & Reported is drafted with a view of giving its readers a quick understanding of Companies (Incorporation) Amendment Rules, 2019. The report has been drafted in a manner covering the new amendment in its entirety. Apart from this, the report also includes a section on newly notified MSME Reporting.

The key focus of this report is on the major Compliance brought into action by MCA which requires a Company to file the verification of its registered office all again. This amendment mainly focuses on the removal of the non-functional companies from the Registrar of Companies.

The report does not deal with legal interpretations and rulings. This report is only meant for general awareness and should not be used as a basis for any decision-making.





## 1. APPLICABILITY:

This Compliance shall be applicable to all the Companies incorporated on or before 31<sup>st</sup> December, 2017.

Companies incorporated during the aforementioned period and who have not filed its due financial statements under section 137 (Form AOC-4 or AOC-4 XBRL, as the case may be) or due annual returns under section 92 (Form MGT-7) or both with the Registrar shall be restricted from filing e-Form-ACTIVE.

Provided further that 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, as the main objective of this form would be to authenticate the active functioning of the active Companies.

## 2. CONSEQUENCES OF NON - COMPLIANCE:

In case a company does not intimate the required particulars in form INC-22A, the Company shall be marked as "ACTIVE - non-compliant" on or after 26<sup>th</sup> April, 2019 and shall be liable for action under sub-section (9) of section 12 of the Act.

Section 12 (9) is reproduced for reference:

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, he may initiate action for the removal

of the name of the company from the register of companies.

Where a company files "e-Form ACTIVE", on or after 26<sup>th</sup> April 2019, the company shall be marked as "ACTIVE Compliant", on payment of fee of ten thousand rupees (Rs. 10,000/-).

Provided also that during the period of subsisting "ACTIVE non-compliant" status, 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).

## 3. CONTENTS OF THE FORM:

This form basically seeks to authenticate the registered office of a Company and to put a check on the active functioning of the Company and whether the Company is all round compliant with Companies Act, 2013. The form seeks information with respect to the following heads:

- i. **Verification of E-mail ID of the Company:**  
E-mail ID of the Company would be required to be verified through OTP sent by the MCA Portal.

**ii. Directors' Data:**

Information like no. of Directors, along with their DINs and Status of their DINs would be required to be furnished. Ensure that the status of all the Directors are in "approved" status and are neither 'de-activated due to non-filing of Form DIR-3 KYC' nor 'disqualified u/s 164 (2)'.

would not suffice. The photograph (external building and inside office) should also be showing at least one of the Director/ KMP who will be signing the Form INC-22A digitally.

**iii. Auditor's Data:**

Companies would be required to provide their Statutory Auditor's data which includes PAN of the Auditor's firm or the Auditor, as the case may be; Firm Registration number; Membership Number and the period for which the Auditor is appointed.

**iv. Other Details with respect to Cost Auditor, Managing Director, Whole-time Director, Manager, Chief Executive Officer, Company Secretary, Chief Financial Officer, if applicable.****v. SRN of Form AOC-4 and MGT-7:**

SRN of Form AOC-4/ AOC-4 XBRL and MGT-7 filed for the FY 2017-18 would be required to be provided here. This will act as a check whether the Company has filed its latest Financial Statements or not, because a Company cannot go ahead without observing the annual compliance of filing Form AOC-4 and Form MGT-7.

**vi. Attachments:**

One of the important attachments would be **photograph** of the registered office of the Company.

It would be important to note that mere photograph of the registered office

## MSME REPORTING:

Through its notification dated 2nd November, 2018, Ministry of Corporate Affairs had directed that all the companies, who get supplies of goods or services from micro and small enterprises and whose payments to micro and small enterprise suppliers exceed forty five days from the date of acceptance or the date of deemed acceptance of the goods or services (hereafter referred to as "Specified Companies"), shall submit a half yearly return to the Ministry of Corporate Affairs stating the following:

- (a) the amount of payment due; and
- (b) the reasons of the delay;

On 22<sup>nd</sup> January, 2019, a notification was published stating about MSME Form-I.

Every specified company shall file in MSME Form I details of all outstanding dues to Micro or small enterprises suppliers existing on the date of notification of this order within thirty days from the date of publication of this notification (Accordingly, the due date was 21<sup>st</sup> February, 2019).

Further, every specified company shall file a return as per MSME Form I by 31<sup>st</sup> October for the period from April to September and by 30<sup>th</sup> April for the period from October to March.

However, the MSME Form-I was not released as on 21<sup>st</sup> February, 2019. Hence, a circular was released by Ministry of Corporate Affairs stating that Pending the deployment of MSME Form I on MCA 21 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 I 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.

The form is yet to be deployed and would be advantageous to keep a track on the release of the form in order to avoid any penalty for non-compliance in future.



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