FREQUENTLY ASKED QUESTIONS
ACTIVE-(INC-22A)

1. What is the applicability of ACTIVE?

Every Company incorporated on or before the 31st December, 2017 shall file the particulars of the Company and its registered office, in ACTIVE on or before 25.04.2019. However, following companies are exempted for filing eForm ACTIVE:

(a)Companies which have been struck off

(b)Companies under process of striking off

(c)Companies under liquidation

(d)Companies which are amalgamated or dissolved.

2. What are the restrictions on filing the ACTIVE?

Any company which has not filed its due

(i) financial statements under section 137 or

(ii) annual returns under section 92 or

(iii) both(i) and(ii)

with the registrar shall be restricted for filling ACTIVE, unless such company is under management dispute and the registrar has recorded the same on register.

3. A Company is under Management Dispute due to which it is unable to file Financial Statement or Annual Return. Whether such company is required to file e-form ACTIVE?

In case a company is under management dispute and the same has been informed and registered by the jurisdictional ROC, filing of ACTIVE is permitted and required to file ACTIVE even if the financial statement and Annual Return is not filed.

4. What is the fee for filing ACTIVE?

According to Companies (Registration Offices and Fees) Third Amendment Rules, 2018, there is no fee payable by the company for filing ACTIVE on or before the due date (as per notification). Forms filed after the mentioned due date shall be allowed to be filed along with a fee of Rs. 10,000 only.

5. What will happen if the company does not file ACTIVE?

In case ACTIVE is not filed, the compliance status for such companies shall be marked as 'ACTIVE Non-compliant' and also liable for action under section 12(9) of the Act and such Companies shall not be eligible to file the following forms:

- SH-07 (Change in Authorized Capital)
- PAS-03 (Change in Paid-up Capital)

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- DIR-12 (Changes in Director except for cessation)
- INC-22 (Change in Registered Office)
- INC-28 (Amalgamation, de-merger)

6. **In respect of filing of e-form Active pursuant to the Companies (Incorporation) Amendment Rules 2019, please confirm whether companies which are already under the process of amalgamation (yet to be amalgamated) are required to file ACTIVE.**

   Yes, companies which are already under the process of amalgamation (yet to be amalgamated) are required to file ACTIVE.

7. **Many Government Companies have not filed ADT-1 as no approval in AGM is required for their appointment. The details of auditors' appointment do not get pre-filled in such cases. What is the solution?**

   No exemption is granted to Government Companies from filing Form ADT-1. But for any reasons, if they have not filed ADT-1 earlier they are advised to first file form ADT-1. Thereafter, ACTIVE can be filed so that auditors' details are pre-filled.

8. **Can any details be updated through filing of ACTIVE?**

   All the details of a company, as available in the MCA database is fetched to pre-fill ACTIVE. However, the Email ID and co-ordinates of registered office of the company is the only information that can be edited while filing the form.

9. **Whether an LLP or a Foreign company having Branch office is also required to file ACTIVE?**

   No.

10. **Explain the concept of Email & OTP Verification for Validation of ACTIVE?**

    Email ID of the company that is pre-filled or entered by the user is required to be verified by OTP. Note that the Send OTP button remains disabled till successful Pre-scrutiny of the form. Send OTP button gets enabled only after successful Pre-scrutiny of the form. After successful pre-scrutiny, the form must be saved and only after saving the form, the 'Send OTP' button gets enabled. OTP verification is a mandatory requirement for successful filing of the form ACTIVE.

11. **What are the mandatory attachments of ACTIVE?**

    It is mandatory to attach the photograph of registered office of the company showing external building and inside office also showing therein at least one director/KMP who has affixed his/her digital signature to this form.

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12. **Whether ACTIVE can be filed by a company if one of the director's DIN status is 'Deactivated due to non-filing of DIR-3KYC' or 'Disqualified'?**

No. The details of all the directors associated with the company is pre-filled in ACTIVE along with the respective DIN status. However, in case any of the DINs is pre-filled with status other than 'Approved', filing of ACTIVE shall not be allowed.

13. **Who shall digitally sign the ACTIVE?**

i) In case of One Person Company(OPC) - One Director; orIn case of Company other than One Person Company - Two Directors or One Director and KMP; and
ii) For all companies – A Practising Professional.

14. **In case the company has filed form GNL-2 after 20th October 2014 in respect of auditor's appointment i.e. form ADT-1 as an attachment in form GNL-2, what is the remedy available?**

In case the company has filed form GNL-2 after 20th October, 2014 for intimation of auditor's appointment, then companies are requested to file form ADT-1 and thereafter file ACTIVE.

15. **In case the company has not followed the uniform financial year as per section 2(41) of the Companies Act,2013 but has taken order from Company Law Board(CLB), National Company Law Tribunal(NCLT), Regional Director(RD) in this regard, what is the remedy available to the company?**

Companies who have obtained the approval of Company Law Board(CLB)/National Company Law Tribunal(NCLT)/Regional Director (RD)to follow a different Financial Year other than the period ending on the 31st day of March every year or the period ending on the 31st day of March of the following year as the case may be may please note the following:(a) Companies which have Financial Year end date as 31 Dec and have filed annual filing form for the Financial Year end date '31 Dec 2017' will be able to file ACTIVE form now by downloading the latest form from the portal(b) However, Companies which have Financial Year end date other than 31st March and 31st December are requested to raise a ticket attaching the CLB/NCLT/RD Order therein to enable the filing of ACTIVE form

16. **The Company is in the process of shifting of registered office from one state to another and the Order is still pending before RD. Will it be required to file this form or needs to wait till the order comes?**

In case the order for approval of shifting the registered office from one state to another is still pending before RD, ACTIVE may be filed with the existing address that is available in MCA database.

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17. **Whether a company which is 'ACTIVE non-complaint' can file the annual filing and charge related forms?**
Yes.

18. **What should be done in case a company has appointed more than maximum number of directors i.e. more than fifteen directors as prescribed in the Companies Act, 2013.**
In case a company has appointed more than 15 directors, it may provide the SRN of a valid form MGT-14 filed in respect of appointment of more than 15 directors along with resolution date in the form.

19. **Is the Company required to appoint the minimum number of directors as prescribed in the Companies Act, 2013 for the purpose of filing ACTIVE?**
Yes, the minimum prescribed limit of directors i.e. 1 in case of a One Person Company, 2 in case of a private company and 3 in case of a public company should not be violated. In case the number of directors fall below the minimum requirement, the company has to comply the applicable provisions by appointing the minimum number of directors first and then file ACTIVE.

20. **Whether all the directors of a company must file DIR-3 KYC before filing ACTIVE?**
Yes,in case form DIR-3 KYC is not filed by any of the directors of a company, the DIN status of such director is marked as 'Deactivated due to non-filing of form DR-3 KYC'. Further, ACTIVE can only be filed by a company if all its directors' DIN status is 'Approved'.

21. **Whether the dormant companies are required to file form INC-22A?**
No, dormant companies are not required to file form INC-22A.

Source: www.mca.gov.in
In case you need further assistance please feel free to contact us!!
We will be more than happy to work with you :-)

COMPANY SECRETARIES

Thanks & Regards,

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