

FILING OF PARTICULARS OF THE COMPANY AND VERIFICATION OF ITS REGISTERED OFFICE- BY ACTIVE NON-COMPLIANT COMPANY

{Section 12 of the Act read with Rule 25 A of the
Companies (Incorporation) Rules, 2014}

Synopsis

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Relevant Sections, Rules and Forms at a Glance

Particulars	Section(s), Rule(s) and Name of e-Form(s)
The Companies Act, 2013	Sections 12, 118, 149, 164, 179 , 203 and 403
The Companies (Incorporation) Rules, 2014	Rule 25A
The Companies (Appointment & Qualification of Directors) Rules, 2014	Rule 12 B
The Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014.	Rules 8 and 8 A
The Companies (Registration Offices and Fees) Rules, 2014	Rules 7, 8, and 12
Secretarial Standard-1 of ICSI	Clauses 3, 4, 5, 6, 7 and 8
e-Form to be filed	INC-22A (ACTIVE)

Significant Relevant Approvals and Requirements

- ❖ Board resolution
- ❖ Photograph of the registered office premises
- ❖ Latitude and Longitude of the registered office.
- ❖ E-mail ID of the company for receiving OTP.

11.1 PROCEDURE WITH CHECK POINTS

S. No.	Particulars
1.	<p>Ensure that:</p> <ul style="list-style-type: none"> • the company is incorporated before the 1st January, 2018 and was required to file the particulars of the company and its registered office in E-Form INC-22A on or before 15th June, 2019 but has not filed the said form. The following companies are exempted from filing E-Form INC-22A: <ul style="list-style-type: none"> (a) Companies which have been struck off. (b) Company under process of striking off. (c) Company under liquidation or amalgamation or dissolved company. (d) Company having management dispute and the Registrar of Companies has recorded the same on the register. • the company failed to file “E-Form INC-22A”, on or before 15th June, 2019, and the status of the company on Ministry of Corporate Affairs (MCA) portal is marked as “ACTIVE NON-COMPLIANT”. <p>{Rule 25A(1) of the Companies (Incorporation) Rules, 2014}.</p>
2.	<p>Note that the Registrar of Companies will not accept or take on record the following event-based forms in case of non-filing of e-Form INC 22 A:</p> <ul style="list-style-type: none"> (i) SH- 7 (Change in Authorized Share Capital) (ii) PAS-3 (Change in Paid-up Capital) (iii) DIR-12 (Change in Directors except in case of: <ul style="list-style-type: none"> (a) cessation of any director or (b) appointment of directors in such company where the total number of directors are less than the minimum number provided in clause (a) of sub section (1) of Section 149 on account of disqualification of all or any of the director under Section 164. (c) appointment of any director in such company where DINs of all or any it’s director(s) have been deactivated. (d) appointment of director(s) for implementation of the order passed by the Court or Tribunal or Appellate Tribunal under the provision of the Companies Act, 2013 or under the Insolvency and Bankruptcy Code, 2016. (iv) INC-22 (Change in Registered Office) (v) INC-28 (Amalgamation/de-merger) <p>{Fourth proviso to rule 25A(1) of the Companies (Incorporation) Rules, 2014}.</p>
3.	<p>Note that the company which has not filed “e-Form INC-22A”, can file the same after 15th June, 2019, with a fee of Rs. 10,000/- and after the due filing of the said form, the status of the company on MCA portal will be marked as “ACTIVE Compliant” {Rule 25A(2) of the Companies (Incorporation) Rules, 2014}.</p>

S. No.	Particulars
	<p>The subscribers, who are individuals in the Memorandum of Association (MOA) shall be deemed as first directors until the directors are duly appointed by the members in accordance with Section 152 of the Companies Act, 2013 and rules made thereunder (Section 152 of the Act).</p> <ul style="list-style-type: none"> • Not the person intended/proposed to be appointed a director of a company has a valid Director Identification Number (DIN) under section 174 or any other number as may be prescribed under section 174 of the Companies Act, 2013, however, in case of first directors of a new company, the DIN up to 3 (three) persons can be obtained through incorporation with integrated form SPICe-1 (INC-11) (Section 152 of the Act read with rule 152 of the Companies Incorporation Rules, 2014). • Not a total number of directors, at least one director has stayed in India for a total period of not less than 182 days during the financial year. Provided that in case of newly incorporated company, residential status shall be determined proportionately. However, it is not required in case the director is appointed by the Central Government or State Government (Section 152 of the Act). • A person, who is intended to be appointed, shall not be eligible for appointment, if he/she has any disqualification for appointment under section 164 of the Act (Section 164 of the Act read with company provisions of government company and regulations in COA 2012 about COA 2012). • A person proposed to be appointed as a director in a company other than a company registered under Section 8 (non-profit company) of the Companies Act, 2013 (Section 152 of the Act) <ul style="list-style-type: none"> - shall not hold office as a director including any alternate directorship in more than 20 companies including directorship in dormant companies. - shall not hold office in more than 10 public companies including the private companies which are holding or subsidiary of public company.
2.	In case of one person company, an individual being sole member is deemed to be the first director of the company, if the articles of association has not mentioned the names of first directors (Section 152 of the Act).
3.	Forms created in writing, on or before appointment, from the appointed director to act as director in the company as Form 208-2 (Part 2 of the Companies Appointment and Qualification of Directors) Rule, 2014.
4.	Form as mentioned in writing, on or before appointment, from the appointed director as Form 208-2 regarding that he/she is not disqualified under Section 164 of Companies Act, 2013, to act as a Director (Section 164 of the Act read with rule 17 of the Companies Appointment and Qualification of <u>Directors</u>) Rule, 2014.
5.	The particulars of first directors to be integrated with Form SPICe-1 (INC-11) at the time of incorporation of company.

For the detailed procedure, please refer Company Law Procedures & Compliances by Dr. Sanjeev Gupta, 2nd edn, 2021. You can buy from your bookseller or online at www.bharatlaws.com

[COMPANY LAW Procedures & Compliances \(in 2 vols.\)](#)