



THE INSTITUTE OF  
Company Secretaries of India

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE  
Statutory body under an Act of Parliament  
(Under the jurisdiction of Ministry of Corporate Affairs)

जि.सि.

MCA: MAY/2024

May 24, 2024

**Dr. Manoj Govil, IAS**  
Secretary  
Ministry of Corporate Affairs  
Government of India  
Shastri Bhawan  
New Delhi -110001

Ministry of Corp  
Dy. No. 341  
Date 24/5/24

**Subject: ESI/EPF Registration in e-form AGILE-PRO-S – Request to Develop Optionality**

Respected Sir,

At the outset we appreciate the initiative of the Ministry of Corporate Affairs (MCA) for streamlining the registration procedures to be completed with multiple authorities by rolling out a single e-form for filing the application for Incorporation of a Company.

Rule 38A of Companies (Incorporation) Rules, 2014 states that the application for incorporation of a company under rule 38 shall be accompanied by e-form AGILE-PRO-S (INC-35) containing an application for registration of the following numbers, namely: -

- GSTIN
- EPFO
- ESIC
- Profession Tax Registration
- Opening Bank Account
- Shops and Establishment Registration

It is to be noted that application for registration in GSTIN and Shops and Establishment is optional. However, it is mandatory to apply for registration in EPFO, ESIC, Profession Tax Registration and Opening of Bank Account along with the application for incorporation of company.

However, due to the requirement of mandatory registration in EPFO & ESIC the newly incorporated companies are being allotted establishment code by the Employees Provident Fund Organisation without taking into cognizance their eligibility criteria. Although being an initiative for promoting ease of doing business, the said assignment of registration numbers is creating unintended repercussions for businesses which do not meet the necessary criteria for mandatory EPF coverage.

Furthermore, such class of companies which are exempted from ESI & EPF requirement due to their size of business and other factors are also receiving notices from the EPFO for non-

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filing of returns and being levied penalties on account of this non-compliance. The same is laying immense financial burden on the companies and even absorbing their time & resources.

In an attempt to provide clarity to companies pertaining to compliance requirements for companies, the Employees' State Insurance Corporation issued circular dated November 21, 2022 pertaining to *Online Registration through MCA Portal and inspection of the Units*, which states as follows:

***“In case, the companies registered through MCA portal are found not coverable as per the Statutory Provisions of the ESI Act, they need not make compliance for next 6 months or till they reach the threshold of ESIC coverage/ whichever is earlier. If the company does not reach the threshold in six months, it has to login on the ESIC website to further extend the 'dormant' mode. In case, it does not extend the same, the registration will automatically activate and company has to start compliance under ESIC Act. If it is not followed by the respective employers, necessary actions under the existing provisions of ESI Act may be taken against the defaulting units.”***

The above Circular mandates the newly registered companies not coverable as per stated provisions of ESI Act to change their status on the ESIC Portal to 'Dormant' for non-application of the statutory provisions stipulated under ESI Act. In case such companies fail to extend their 'dormant status' inadvertently, the registration is activated and the compliance of the Act becomes applicable, and failing which attracts penal action.

In view of the challenges being faced by the stakeholders and to uphold the agenda of the Government of promoting ease of doing business, you are requested to kindly provide an option to companies to opt-out of EPF and ESI registration as in the case of GSTIN Registration (where such company falls under exemption criteria) during the incorporation process itself thereby reducing unnecessary hassles. The same shall go a long way in supporting the objective of making the Indian Corporate Sector and the nation, Business Ready (B-Ready).

We shall be pleased to provide any further information or clarification in this regard on hearing from your goodself.

Thanking you,

Yours faithfully



(CS B Narasimhan)

President

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