

**DECLARATION FOR COMMENCEMENT OF BUSINESS IN FORM
INC-20A**

Ministry of Corporate Affairs has made Several Amendments in the Companies Act, 2013 vide its Companies (Amendment) Ordinance, 2018 dated November 2nd, 2018 which is replaced by the Companies (Amendment) Ordinance, 2019 dated January 12th, 2019 was passed by the house of people on 4th January, 2019 however the same was pending in the council of the states for the approval.

Further the House of Parliament was not in the session therefore Hon'ble President of India in pursuance of power conferred by clause (1) of Article 123 of Constitution of India has promulgated an ordinance named as Companies (Amendment) Second Ordinance, 2019 in order to give continue effect of the provisions of the Companies (Amendment) Ordinance, 2018 which was replaced by the Companies (Amendment) Ordinance, 2019.

Out of those several amendments made through this ordinance, amendment by way of insertion of new section 10(A) for the Commencement of business is a major amendment, by which the Ministry of Corporate Affairs has re-introduced the concept to take the Commencement Business Certificate for commencing business activities or exercising any borrowing powers for all the companies which are registered on or after 2nd November, 2018 and having a share capital by way of filing the declaration in E-Form INC-20A, within 180 days of incorporation of the company. Which inter-alia effective date and compliances with respect to this amendment have been briefed below:

EFFECTIVE DATE

It shall be deemed to have come into force on the 2nd Day of November, 2018.

INSERTION OF NEW SECTION 10A IN THE COMPANIES ACT, 2013

After Section 10 of the principal Act, the following section shall be inserted, namely:-

Section 10(A): Commencement of business etc.

(1) A company incorporated after the commencement of the Companies (Amendment) Ordinance, 2019 and having a share capital shall not commence any business or exercise any borrowing powers unless.

(a) a declaration is filed by a director within a period of one hundred and eighty days of the date of incorporation of the company in such form and verified in such manner as may be prescribed, with the Registrar that every subscriber to the memorandum has paid the value of the shares agreed to be taken by him on the date of making of such declaration; and

(b) The company has filed with the Registrar a verification of its registered office as provided in sub-section (2) of section 12.

(2) If any default is made in complying with the requirements of this section, the company shall be liable to a penalty of fifty thousand rupees and every officer who is in default shall be liable to a penalty of one thousand rupees for each day during which such default continues but not exceeding an amount of one lakh rupees.

(3) Where no declaration has been filed with the Registrar under clause (a) of sub-section (1) within a period of one hundred and eighty days of the date of incorporation of the company and the Registrar has reasonable cause to believe that the company is not carrying on any business or operations, he may, without prejudice to the provisions of sub-section (2), initiate action for the removal of the name of the company from the register of companies under Chapter XVIII.

In pursuance to the above given amendment all the companies which are registered on or after 2nd November, 2018 are mandatorily required to file the declaration in E-Form INC-20A, within 180 days of its Incorporation of the Company Stating that the Subscribers to Memorandum of Company has paid the Value of Share so agreed by them along with Verification of Registered Office Address of the Company.

Basically the Ministry of Corporate Affairs has re-introduced the concept to take the Commencement Business Certificate for commencing business activities or exercising any borrowing powers for all the companies which are registered on or after 2nd November, 2018 and having a share capital by way of filing the declaration in E-Form INC-20A, within above specified time period.

Mandatory Attachment of the Form INC-20A

1. Proof of Receiving of Subscription Money of the value of shares agreed by the subscriber to the Memorandum of Association of the company (Copy of Bank Statement of the company).
2. Certificate of Registration issued by the RBI (**Only in case of Non-Banking Financial Companies**)/from other regulators.

Mandatory Certification of Practicing Professionals in form INC-20A

The Form INC-20A shall be certified by the Practicing Professionals. i.e **CS/CMA/CA**

Consequences of Non-filing of Declaration within prescribed time period.

- If the declaration is not filed within 180 days of incorporation of the company and the Registrar of companies has reasonable cause to believe that the company is not carrying any business or operations, he may, without prejudice to the to the provisions of section 2(2), initiate actions for the removal of the name of the company from the Register of Companies under chapter XVIII of the Act.
- There may be chances that Registrar of companies may not accept the filing of any E-form by such companies unless the declaration in E-Form INC-20A is being filed with the Registrar of companies.
- Penalty for non-filing of declaration for the Commencement of Business.

Company:	Rs.50, 000/- (Fifty Thousand Rupees)
Every officer in Default:	Rs 1000/- per day but subject to Max amount Rs 1, 00,000/- (One lakhs Rupees)

For the detailed reading of original notification you may click on the below given hyperlink:
http://www.mca.gov.in/Ministry/pdf/NotificationCAO2019_15012019.pdf

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