

Central Scrutiny Centre (CSC)—Under MCA

Effective from 23 March 2021

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Ministry of Corporate Affairs (MCA) had issued a Notification on March 18, 2021 which shall be effective from March 23, 2021 notifying as follows:

Link of the notification <http://egazette.nic.in/WriteReadData/2021/225985.pdf>

1. MCA vide power u/s 396 (1) & (2) of the Companies Act, 2013 (CA 13) established a Central Scrutiny Centre (CSC) under the administrative control of e-governance Cell of the MCA. CSC shall be located at the Indian Institute of Corporate Affairs (IICA), Plot No. 6, 7, 8, Sector 5, IMT Manesar, District Gurgaon (Haryana), Pin Code- 122050.
2. CSC shall carry out scrutiny of e-Forms filed as Straight Through Processes (STP) and forward their findings to the concerned jurisdictional Registrar of Companies (RoC)
3. RoC shall then prosecute the defaulters and initiate action.

Challenges ahead :

Let's examine and review MCA Circular No.5/ 2020 dt March 02, 2020, the Companies Amendment Act, 2020 and the Companies (Registration Office and Fees) Rules, 2014 (these Rules)

A. **Circular No.5/ 2020 dated March 02, 2020** (link is as below) was issued by MCA which had set a Standard Operating Procedure (SoP) for RoC for initiating any notice of default.

1. Roc offices are directed to follow meticulously at the time of serving notices to the company by first ascertaining the involvement of the officers and if lapses are explicable to the decisions of the Board or the Committee, care must be taken to ensure that civil or criminal proceedings **are not unnecessarily initiated** against the Independent Directors (IDs) and Non-Executive Directors (NEDs) unless sufficient evidence exists to the contrary.
2. RoC office to **examine Financial Statement, Form DIR 12 and Annual Returns** to ascertain name of Directors and KMPs as on the date of default.
3. RoC office may **seek guidance of Director General of Corporate Affairs** in case of any doubts on liability of any person or proceedings

https://www.mca.gov.in/Ministry/pdf/Circular_03032020.pdf

B. **The Companies Amendment Act, 2020** : For promoting Ease of Doing Business and there by facilitating Ease of Living in India, many offenses under the CA 13 has been decriminalized by notifying the Companies Amendment Act, 2020. Also under various sections of the CA 13, the term “fine” has been replaced with the term “penalty” whereby the defaults of technical nature and related with filings are addressed by levying of late fees and process of adjudication, which is an in-house process . Section 454 of the CA 13 provides for Adjudication which can be initiated by the RoCs by giving the company and officers in default a reasonable opportunity of being heard. There is mechanism of Appeal also with the Regional Director (RD) against the order of Adjudication by RoC.

C. **Aims of MCA:** We understand that MCA aims to have accurate and readable proper data and information from the corporate and professionals and hence Central Scrutiny Centre (CSC) has been established by MCA. CSC which shall carry out scrutiny of e-Forms filed as Straight Through Processes (STP). CRC will then send the report to RoCs for necessary penal action by initiating Adjudication process.

D. List of few e-forms which are accepted on MCA Portal as STP.

STP means process in which e-form is approved through system without manual intervention.

1. Form ADT-1- For Auditors
2. Form ADT-3- For Auditors
3. Form AOC-4- For Balance Sheet
4. Form AOC-5- For keeping the books of account at place other than Regd Off
5. Form CHG-1- For Charge related
6. Form CHG-4- For Charge related
7. Form DIR- 3- For Directors DIN
8. Form DIR -3 KYC—For Directors details
9. Form DIR-12- For Directors appointment or cessation
10. Form INC-22- For Registered Office details
11. Form MGT-7- For Annual Return
12. Form MGT-15- For informing outcome of AGM by listed company
13. Form MSME-1-For outstanding to MSME
14. Form PAS-3 -For Return of Allotment

E. **The Companies (Registration Office and Fees) Rules, 2014** (“these Rules”) need to be read thoroughly which give details about the power and duties of the Registrar, manner and condition of electronic filing with MCA and how MCA maintain electronic registry/repository of all documents filed by the company.

Rule 7 to 12 of these Rules are relevant to understand the consequences of scrutiny by CSC of e-Forms which were approved under Straight Through Processes (STP).

Based on the report of CRC, RoC may initiate action against the defaulter company, Professional who has certified it and officers in default as per the CA 13.

Let’s understand the requirement of filing documents, forms and information with MCA as per these Rules :

F. Requirement of filing of e-forms with MCA as per the Companies (Registration Office and Fees) Rules, 2014 (these Rules)

1. The electronic forms (e-form) required to be filed under the Act or these Rules need to be **authenticated** on behalf of the company by the Managing Director or Director or Secretary of the Company or other key managerial personnel and the e-form need to be filed with **digital signature** of such authorized person.

2. The attachments to e-form must be in a **PDF form, legible and clear** as per requirement of the Act.
3. Scanned image of documents need **to be of original signed documents** and the scanned document image shall not be left blank without bearing the actual signature of authorized person.
4. The person signing the form digitally must ensure **correctness of the content** of the Form and **enclosures** attached with it
5. Original **stamped documents** need to be stored for minimum 8 years and RoC may call for such documents for verification.
6. Documents filed by any person need to have his **name, designation, address, membership number of professional or Director Identification Number (DIN) of Director, who also confirms the correctness** thereof. Documents **merely with signature and writing as an authorised signatory shall not** be acceptable.
7. E-Form for change in directors or secretaries need to **be signed by any continuing director or the secretary** of the company.
8. If any Form or attachments contained **false or misleading information or omission of material fact**, the person who has signed the form digitally shall be liable for fraud and false evidence under section 448 and 449 of CA 13 respectively.

G. Following are the provisions if MCA finds any default in e-Form filed

1. If any e-form, document, application or return under the CA 13 filed with RoC containing wrong or false or misleading information or omission of material fact or attachments by the person, the **Digital Signature Certificate of that person shall be de-activated** by the Central Government till a final decision is taken in this regard.
2. Rule 10 of these Rules gives power to RoC that if the e-Forms or documents identified as informative in nature and **filed under Straight Through Process (STP) may be examined at any time on suo-moto** or on receipt of any information or complaint from any source at any time after its filing and RoC may call for further information or documents.
Forms filed as Normal filing and not STP
3. If RoC finds any application or e-form or document to be defective or incomplete in any respect, he shall **give intimation** of such information called for or defects or incompleteness, **by e-mail** on the last intimated e-mail address of the person or the company, which has filed such application or e-form or document, directing him or it to furnish such information or to rectify such defects or incompleteness or **to re-submit** such application or e-Form or document **within the period of 15 days**.
4. In case the e-mail address of the person or the company in question is not available with RoC, the **intimation shall be given by post** at the last intimated registered office address of the company or the last intimated address of the person, as the case may be and the Registrar shall preserve the facts of the intimation in the electronic record.
5. In case where such further information called for **has not been provided** or has been furnished partially or **defects or incompleteness has not been rectified** or has been rectified partially or has not been rectified as required within 15 days time, RoC shall either **reject or treat the application or e-form or document, as the case may be, as invalid** in the electronic record, and shall inform the person or company, as the case may be, about its incompleteness or defective by email or post.

6. Where any document has been recorded as invalid by RoC, the document may be rectified by the person or company **only by fresh filing along with payment of fee and additional fee, as applicable at the time of fresh filing,** without prejudice to any other liability under the Act.

Form is filed as STP

7. In case the RoC finds any e-form or document **filed under Straight Through Process** as defective or incomplete in any respect, at any time **suo-moto or on receipt of information or compliant from any source at any time,** he shall treat the e-form or document as **defective** and shall also **issue a notice** pointing out the defects or incompleteness in the e-Form or document at the last intimated **e-mail address** of the person or the company which has filed the document, calling upon the person or company **to file the e-Form or document afresh along with fee and additional fee,** as applicable at the time of actual re-filing, after rectifying the defects or incompleteness **within a period of 30 (thirty) days** from the date of the notice.
8. In case the e-mail address of the person or the company in question is not available, the **intimation shall be given by the Registrar by post** at the last intimated registered office address of the company or the last intimated address of the person, as the case may be and the RoC shall preserve the facts of the intimation in the electronic record.
9. Any further information or documents called for, in respect of application or e-form or document, filed electronically with the Ministry of corporate Affairs shall be furnished in **form No. GNL-4 as an addendum.**

H. Challenges after March 23, 2021

1. Any **e-Form approved through STP** are later within 8 years found as defective by CSC, then it will report to RoC and RoC will send Notice to file e-Form or document afresh **along with the fees** and additional fees in 30 days time. Please note there is no opportunity being given for resubmission or rectification of defect.
2. Whereas for any **other e-Form other than STP**, RoC will be sending notice and give opportunity to company to rectify and resubmit the form in 15 days time **without any fees or additional fees.**
3. RoC through CSC may open e-Forms filed earlier under STP (upto past 8 years) and Rule 10 (6) of these Rules provide that RoC may issue notice.
4. Provisions were already in these Rules, however same was not so far implemented, which now on establishment of CSC will be implemented.
