

Article

MCA Unleashes-Compliance Monitoring System

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Introduction

India is land with vast database of around 1.9 million registered companies in its basket. Having such humongous set of companies surely invites some major non-compliances on their part. There is definite need of legal and monitoring framework to carefully vet the defaulting companies.

As a savior to the said problem MCA has launched an Artificial Intelligence initiative known as “**Ministry of Corporate Affairs – Compliance Monitoring System**” (MCACMS)¹ to monitor the companies’ compliance level and trace the transparency of their affairs.

This article briefly explains the process to seek registration on the said portal and submission of reply to show cause notice (SCN).

Classification of Offences

Under Companies Act 2013 (**‘the Act’**) the offences are basically classified as compoundable as well as non-compoundable offences. Compounding of offence is a mechanism by which one can avoid prosecution by simply making payment of fine. Section 441 of the Act deals with compounding of offences.

Compounding of Offences

According to section 441, any offence can be compounded other than those offences punishable with imprisonment only or with fine and imprisonment both. Offences may be compounded either by NCLT or where the maximum amount of fine for violation of that offence is upto Rs. 25 lakhs, then it may be compounded by Regional Director or any officer authorized by Central Government.

Pursuant to the Companies (Amendment) Act, 2019², some of the provisions have been amended by substituting the word **‘fines’** with **‘penalties’** which can be directly imposed without any prosecution. The resultant effect could not only save time but also prove to be fairly effective mechanism for chopping off the additional burden of the courts. Adjudication of such penalties is governed by section 454 of the Act.

¹ <https://mcacms.gov.in/#/>

² https://www.mca.gov.in/Ministry/pdf/AMENDMENTACT_01082019.pdf



Adjudication of Penalties

Section 454 of the Act read with Companies (Adjudication of Penalties) Amendment Rules, 2019³ provides the following provisions:

AO shall issue SCN to company/officer in default specifying the following:

- Nature of Non-compliance or default
- Relevant provisions of Companies Act/Rules for which SCN has been issued.
- Maximum quantum of penalty which can be levied for such disobedience.
- Time within which reply to such SCN to be made which shall be not less than 15 days and not more than 30 days.

Recipient of SCN shall make reply within time prescribed therein and if in any case the recipient fails to submit his reply, then AO can make maximum prolongation for 15 days.

The main function of AO shall be:

- To impose penalty on the company or any officer in default or any person for non-compliance.
- To provide necessary directions to the company or officer in default for rectification of default made by them.

AO shall provide reasonable opportunity of being heard before passing any order imposing penalties. Penalty shall be paid through Ministry of Corporate Affairs portal only. All sums realized by way of penalties under the Act shall be credited to the Consolidated Fund of India.

Factors to be considered by AO

AO shall consider the following factors while passing the order:

- Size of the company;
- Nature of business carried on by the company;
- Injury to public interest;
- Nature of the default;
- Repetition of the default;
- The amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default; and
- The amount of loss caused to an investor or group of investors or creditors as a result of the default.

³ http://www.mca.gov.in/Ministry/pdf/AdjudicatioPenalties2019_20022019.pdf

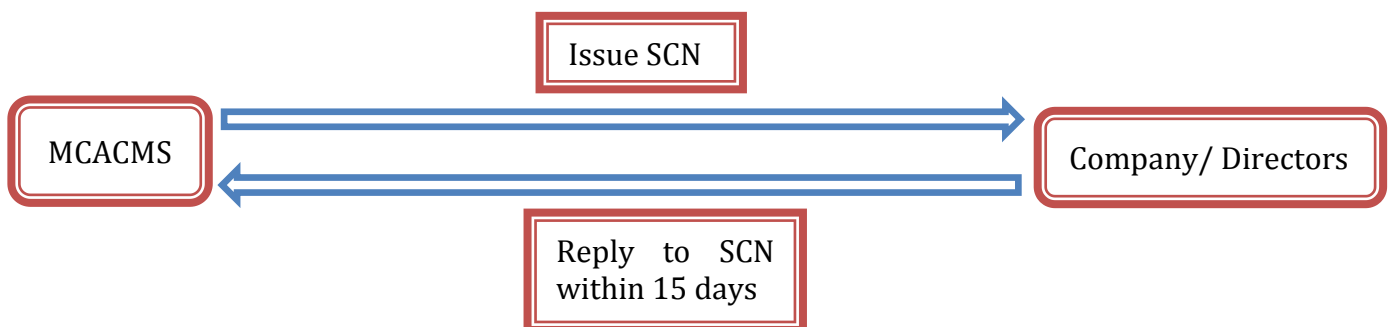
Importance of Compliance Monitoring System

MCACMS is the online portal invented by MCA for issuance of electronic SCN to the company or director or any officer in default regarding any non-compliance of any provisions of the Act. Also it mandates recipient of the SCN to submit reply through the same portal electronically.

This portal facilitates quick issuance of SCN and submission of reply to the same through electronic mode. MCACMS has already started issuing notice to the company or its directors for non-compliance. Currently SCNs are being issued only for the non-compliance of section 96 (Annual General Meeting) and section 204 (Secretarial Audit) and recipient of such SCN must file reply within 15 days of the date of SCN. Every SCN carries CMS reference Number, which shall be relevant in replying to the Notice through online portal.

Following are the steps for filing reply to the SCN⁴:

1. Visit the MCA CMS portal;
2. Click on 'Reply for Show Cause Notice Tab'
3. Click the relevant section for which SCN has been issued;
4. Fill the CMS Reference number written on the SCN & click search. The system will validate the number;
5. After validation click on 'Send OTP' tab.
6. OTP will be sent on the email id on which SCN was received;
7. Reply upto 480 words can be written. Also, reply in maximum 2 attachments of up to 50 MB in pdf format can only be attached;
8. Click on 'Submit Reply' tab and reply once submitted cannot be altered;
9. The system will show a confirmation message and the 'Action' tab will show reply status.



⁴ https://mcacms.gov.in/assets/How_to_file_Reply.pdf



Conclusion

By introducing this system, Government would be saving a lot of time to issue SCN and awaiting for the company's reply. Also recipient of SCN can submit its reply without appearing physically to any regulatory authority. At present the SCNs have been issued by MCACMS only for non-compliance of section 96 and 204 of the Act. The offences committed by company and officer under the said sections are being punishable only with fine and hence, they are compoundable under section 441 of the Act.

With respect to offences for non-compliances of other sections of the Act are yet awaited. In long run, MCA may also encompass other sections under this mechanism.

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