

# Compliance Management, Audit and Due Diligence

Marathon notes

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# CHAPTER 1: COMPLIANCE FRAMEWORK

- The compliance program consists of the policies and procedures which guide in adherence of the applicable laws and regulations on the company.
- **CORPORATE COMPLIANCE FRAMEWORK**
- • **Compliance Dashboard** : The compliance program must provide a single enterprise-wide dashboard for all users to track and trend compliance events.
- • **Compliance Policy and Procedure:** A well-designed document management system forms the basis of managing the entire lifecycle of policies and procedures within an enterprise, The creation, review, approval and release process of the policy documents and SOPs (Standard Operating Procedures) should be driven by collaborative tools that provide core document management functionality.
- • **Compliance Audit:** Because of CMS, Internal audits, financial audits, external audits, vendor audits must be facilitated through a real-time system.
- **Access to Rules and Regulations:** A well-designed compliance management solution must offer capabilities for organization to continuously stay in sync with changing rules and regulations. As soon as there are regulatory changes, various departments should be notified proactively through “email based” collaboration.
- • **Quality Management:** A well-designed compliance management program incorporates and supports ongoing quality initiatives such as Six-sigma
- • **Compliance Training:** The compliance office has to work closely with the legal team of the organization to facilitate employee training. Well-designed compliance program requires a well-integrated approach to training management.

- • **Compliance Task Management:** Automated updates from the various compliance modules should provide for up-to-the-date status reporting that could be viewed by the Board, compliance officer, entity compliance coordinators, quality offices and others as designated

- **CORPORATE COMPLIANCE FRAMEWORK:**

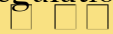
- **Compliance Chart:** The Chart provides an overview of the applicable local, state, central and international laws, regulations and standards relating to a business' operations. The compliance chart also outlines how compliance risk mitigation activities are embedded in business processes. In other words, how compliance with the laws, regulations and standards is embedded and ensured.
- **Compliance Advisory:** It advises on compliances of applicable laws and effect of non-compliances. Compliance advisory helps organisation to evaluate their compliance functions, prevent compliance breaches and respond quickly and effectively when a breach occurred.
- **Compliance Scorecard:** It is a tool to analyse the position of an organisation in compliance. A compliance scorecard must be set up by organizations. The scorecard is not to be used as a mere reporting but as a compliance management tool. It enables the reported compliance breaches' immediate remediation by informing a predefined responsible person in the case of a violation

# COMPLIANCE CHART

- The Compliance Chart, Compliance Advisory and Compliance Scorecard and the Compliance Chart is a vital part of the Framework, the company should give more focus on the preparation of the compliance chart.
- 1. Reference to the key compliance-related laws, regulations, industry standards and compliance related policies and standards of the company ;
- 2. Concise statements that capture the relevant internal and external compliance obligations and the risks arising from those obligations;
- 3. Inherent and managed risk level (critical, high, medium, low) of the identified obligations;
- 4. The business processes or people to which the compliance obligations are linked or on which they have an impact;
- 5. Specific Compliance Risk mitigation activities and Compliance Risk tracking and monitoring for managing the compliance obligations;
- 6. To whom and how frequently compliance-related results and findings are reported;
- 7. Clear ownership of the processes, activities and obligations outlined in the Chart.

# ◦ III. Role of Company Secretary in Creation of Compliance Chart

◦ 1. Identification of applicable law, rules and regulations



◦ 2. RISK ASSESSMENT

◦ 3. Compliance Risk Mitigation

◦ 4. Compliance Monitoring

◦ 5. Compliance reporting

## A. Identification of applicable laws, rules and regulations

### Sources:

Engagement with management    Laws and regulations.

Permits, licences or other forms of authorisation.

Orders by regulatory agencies.    Judgements of courts

Treaties, conventions and protocols

Internal policies and procedures.    Commentary sourced from the public domain.

Membership of professional groups.

Subscriptions to relevant information services.

Attending industry forums and seminars.

## B. Compliance risk Assessment

◦ Risk assessments includes:

1. **Identification areas of potential non Compliances**
2. **Rating the risks**
3. **Assessing the outcomes to find the need for training, monitoring, internal controls, detailed reviews and corrective steps**

**Types of risk drivers:**

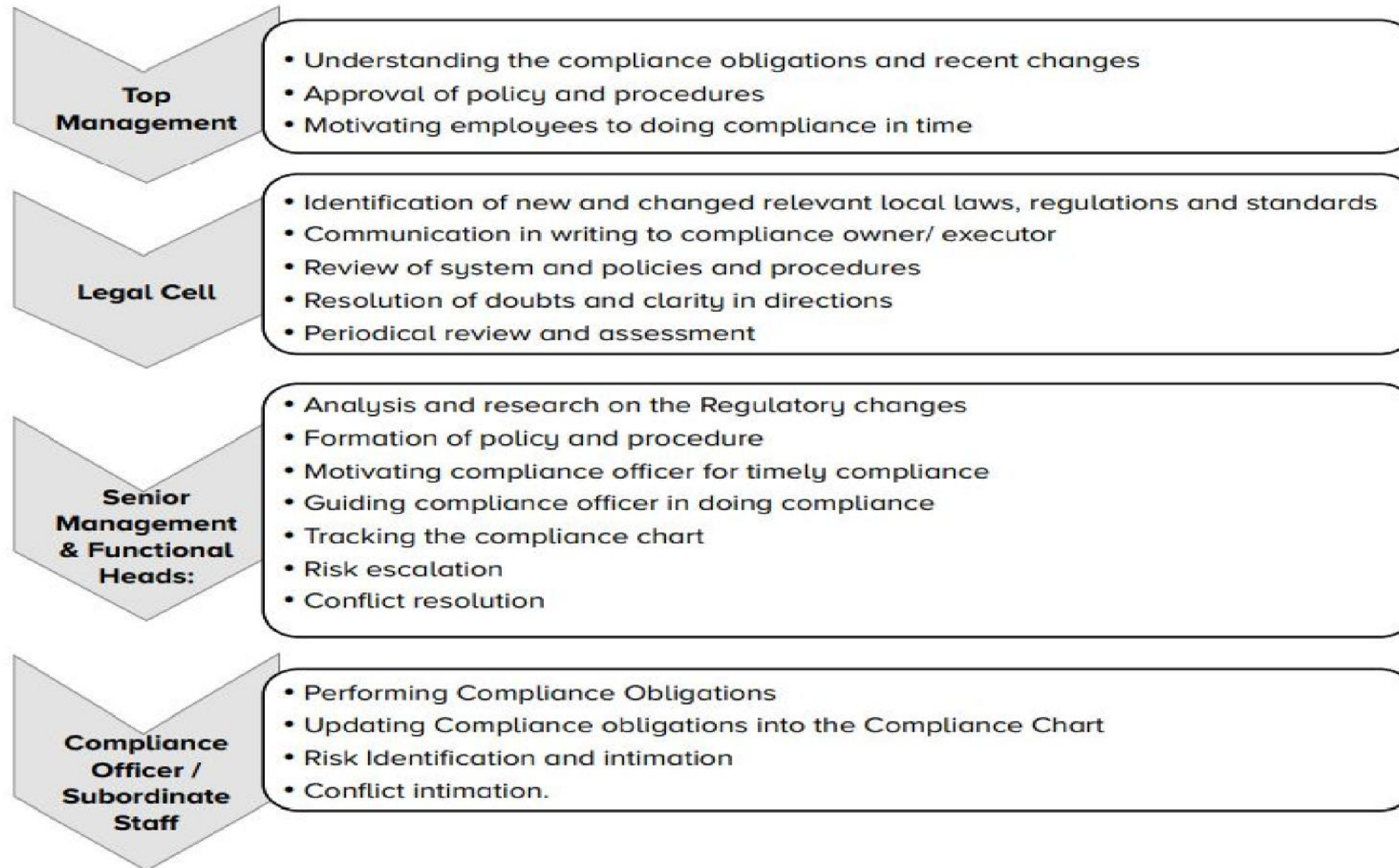
**Legal Effect:** Non compliances by the organisation can leads to various penalties, fines, imprisonment, debarment, and seizing the products etc. against the organisation and its officers.

**Financial Effect:** Low share prices of the securities of the organisation, financial losses and low revenues and lowering the trust of the investors are some of its negative effects.

**Business Effect:** Shutdown of the factories can affect the business operations of the organisation.

**Reputational Effect:** Loss in customers' confidence in the brand of the organisation, bad media or social discussion can tarnish the reputation of the organisation

## C. COMPLIANCE MONITORING



## D. COMPLIANCE REPORTING

### CYCLICAL REPORTING

At least quarterly basis, the Compliance officer works with management and other risk functions to provide non-financial risk reporting.

### INCIDENT REPORTING

The material compliance incidents are reported, which need to be handled through the risk management process.

### CREATION OF COMPLIANCE REPORTING SYSTEM

1. Reporting by the functional heads for which they have the compliance ownership
2. Each of the functional heads may collect and classify the relevant information from the various units/ locations pertaining to their department and consolidate them in the form of a report.
3. The report shall carry an affirmation from the functional heads that the said report has been prepared based on the inputs received from the various units/offices and then list out the specific compliances/ non-compliances, as already circulated to the functional heads.
4. Each of the functional heads will forward their respective compliance reports to the company secretary/ managing director.
5. He company secretary would then brief the managing director

# IV Compliance risk Assessment

◦ Risk assessments includes:

1. **Identification areas of potential non Compliances**

2. **Rating the risks**

3. **Assessing the outcomes to find the need for training, monitoring, internal controls, detailed reviews and corrective steps** □ □ □

◦ Critical and high Compliance Risks, focusing on inherent and managed risk levels;

◦ Key Compliance Risk mitigation activities;

◦ Routine business transactions to which compliance obligations or risks are associated;

◦ The implementation / embedding of the Framework and all policies issued by the corporate compliance department;

◦ Compliance with the laws, regulations and standards included in the Chart, including the Company Values and

◦ The obligations that have been delegated to the Compliance Function (e.g. Complaints Handling, Privacy related obligations).

◦ **Approaches:**

◦ 1. Risk/cultural assessment

◦ 2. Program Design and update

◦ 2. Policies and procedures

◦ 3. Communication, training & implementation

## ◦ **V Compliance Audit:**

- Compliance auditing may be concerned with
- ❖ Regularity - adherence of the subject matter to the formal criteria emanating from relevant laws, regulations and agreements applicable to the entity
- ❖ Propriety - observance of the general principles governing sound financial management and the ethical conduct of public officials.

### **SIGNIFICANCE OF CORPORATE COMPLIANCE MANAGEMENT**

—Companies that go the extra mile with their compliance programs lay the foundation for the control environment.

—Companies with effective compliance management programme are more likely to avoid stiff personal penalties, both monetary and imprisonment.

—Companies that embed positive ethics and effective compliance management programme deep within their culture often enjoy healthy returns through employee and customer loyalty and public respect for their brand, both of which can translate into stronger market capitalization and shareholder returns.

—Safety valve against unintended non compliances/ prosecutions, etc.

—Cost savings by avoiding penalties/fines and minimizing litigation —Better brand image and positioning of the company in the market

—Enhanced credibility/creditworthiness that only a law abiding company can command

—Goodwill among the shareholders, investors, and stakeholders.

—Recognition as Good corporate citizen.

# Process of Corporate Compliance Framework

**Compliance Identification** - It includes the process to identify various acts and legislations applicable to the company in consultation with the functional heads.

**Compliance Ownership** - Primary and Secondary owner

**Compliance Awareness** - This could be done in the form of meetings/ trainings explaining various compliances or some manual containing the details of compliances.

**Compliance Reporting**- Reporting of non-compliances ensures that appropriate corrective action is being taken by the responsible person in case of the failure in doing compliances.

The compliance system and processes in a company are dependent mainly on the following factors:

- ❖ Nature of business (es).
- ❖ Geographical domain of its area of operation(s)
- ❖ Size of the company both in terms of operations as well as investments, technology, multiplicity of business activities and manpower employed.
- ❖ Jurisdictions in which it operates.
- ❖ Whether the company is a listed company or not.
- ❖ Regulatory authority (ies) in respect of its business operations.
- ❖ Nature of the company viz., private, public, government company, etc.

## CERTAIN IMPORTANT COMPLIANCE REQUIREMENTS UNDER COMPANIES ACT, 2013

1. Disclosures by a Director of his interest: Form MBP-1
2. Disqualification of Directors: Form DIR-8
3. Annual Return: Form MGT-7
4. Filing Financial Statements: Form AOC-4 & AOC-4 CFS
5. Certification of Return: Form MGT -8
6. Notice of AGM
7. Board Meetings
8. Notice of Board Meeting
9. Appointment of Auditor: Form ADT-1
10. Appointment of Company Secretary
11. Register of members

The objectives of Compliance Management Tool with respect to digitization, automation and compliances are:

### Digitization

1. Robust compliance tool replaces spreadsheets and manual processes
2. Enhances visibility & accountability
3. Reduces the information & knowledge gap

### Automation

1. Provides automated legal updates
2. Helps in automated compliance tracker with reminders and escalations
3. Showcase automated workflows, dashboards & reports

### Compliances

1. Monitor the activities of the organisation
2. Ensures compliance with all applicable laws
3. Helps to avoid penalties, prosecutions & litigation
4. Helps implement better processes and controls enabled by technology
5. Helps in Audit Management
6. Helps in Audit Documentation

## KINDS OF COMPLIANCE MANAGEMENT TOOL

- 1. All-Purpose Compliance Management Platforms:** These compliance Management Platforms can be used in any kind of the organisation but with low level of organisation focused at providing: Risk remedy Solving Technical issues Corporate Governance
- 2. Industry-Specific Compliance Management Tools:** These tools focus on the compliance of laws and regulations applicable to specific industry like health care industry, manufacturing, financial, etc. It is structured in specialised frameworks that complies with particular regulations and laws.
- 3. GRC Software:** This software is a general compliance tool which focuses on the following:  
Managing the risks  
Monitoring the compliance risks  
Handling corporate governance tasks  
Streamline the compliance workflows and initiatives

## BENEFITS OF COMPLIANCE MANAGEMENT TOOLS

1. Reduction in Manual Work
2. Streamlining implementation
3. Simplification in Monitoring and reporting
4. Risk in human errors reduced
5. Builds Organisation Reputation
6. Creates a Roadmap for Business

## Chapter 2: Documentation and maintenance of records

The Company secretary is also responsible for storing, maintaining, retrieving, certifying, and explaining corporate documents.

### PURPOSE OF DOCUMENTATION

- Client Service: to serve better to their clients in a timely and effective manner
- Communication: Clear, complete, accurate and factual documentation provides a reliable permanent record of client
- Accountability: Documentation demonstrates professional accountability and records the work of the professional
- Professional Responsibility: Documentation is an integral part of professional practice and forms the basis for evidence of professional conduct.
- Legal Requirement: Professionals are required to make and keep records of their professional work in accordance with practice standards followed and organisational policy.
- Quality: Documentation may be used to evaluate professional practice in terms of Peer reviews
- Research: Documentation is a valuable source of data for researchers. It provides information to professional, evaluates client outcomes
- Resource Management: Accurate and comprehensive documentation is a valuable source of evidence and provide basis for resource management.

### **Principles of documentation**

- Clear                      Concise                      Complete                      Contemporary                      Consecutive                      Correct
- Client centric              Collaborative                      Confidential

### Advantages of Electronic Record

- **Cost Effective**
- **Ease of Use**
- **Labour Saving**
- **Search Ability**
- **Portability**
- **Version Tracking**

### Disadvantages of Electronic Record

- **Software Risk**
- **Format Risk**
- **Reliability**
- **Portability**
- **Conversion Expense**

### SAFETY AND RETRIEVAL OF RECORDS

- Operating logs : the names of the individuals who all have worked on the same Documents
- Results of reviews: the recording of the changes suggested by the each reviewer and basis of the rejection on Non agreement
- Inspections: list of individuals who have access of the records and have inspection rights of the same.
- Monitoring of work performance: will ease in the monitoring of work performed by the person to whom the file is shared,
- Information analyses: Provide ease in the Information system of the organization and tracking of files.

## POLICY ON PRESERVATION OF DOCUMENTS AND ARCHIVAL OF DOCUMENTS IN THE WEBSITE [Under Regulation 9 and 30(8) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015]

1. Purpose and scope: The policy is framed for the purpose of systematic identification, categorization, maintenance, review, retention and destruction of documents received or created in the course of business. The policy gives guidelines on how to identify documents that need to be maintained, how long certain documents should be retained
2. Classification of documents to be preserved and retained: A. Documents whose preservation shall be permanent in nature; B. Documents whose preservation period shall not be less than eight years after completion of the relevant transactions; C. Documents whose preservation shall be for a minimum period of three years after completion of the event.
3. Principle of responsibility: All the Employees in the permanent rolls of the Company are responsible for preservation of the documents
4. Periodical review of the policy: The CEO/MD/WTD of the Company is authorised to periodically review the policy
5. Suspension of record disposal in case of litigation: In case the Company is served with any notice for request of document, any further disposal of documents connected with the matter shall be suspended
6. Statutory requirements: a physical or electronic record should be preserved for a longer period than what has been stipulated in this policy, then **LAW MUST BE FOLLOWED**
7. Web archival policy: The Company shall disclose on its website for 5 years all events or information which has been disclosed to stock exchange

## SETTING UP OF A RECORD ROOM

Factors:

- **Humidity:** An excess of humidity creates fungus and produces a proliferation of corrosive insects. The lack of humidity, produces brittle and fragile sheets of paper. A controlled humidity between 30% and 40% is the best
- **Temperature:** The lower is the temperature, the better is for preservation of Records.
- **Light:** The infrared or ultraviolet radiation, could cause damages. At the environments exposed to the daylight, should be installed curtains with UV filters.

**Following documents must be kept safe in the record room:**

- 1. Customer & Employee information:** It includes discussions about employee relations issues, disciplinary actions, impending layoffs/reductions-in-force, terminations, workplace investigations of employee misconduct, etc. they should hire a trusted information destruction agency to physically destroy both electronic and physical data
- 2. Office plans:** It is important to place the documents with detailed office layouts throughout offices to identify key exits in case of emergency but the other documents and forms related to internal processes and procedures should be kept secured
- 3. Contracts and trade secrets:** The business should avoid sharing contracts broadly unless strictly required, and limit physical copies; consider using tools to sign contracts electronically in order to reduce unnecessary print-out. The confidential business information as “proprietary information” or “trade secrets.” Which is not generally known to the public and would not ordinarily be available to competitors except via illegal or improper means.

### **Security of Records Maintained in Electronic Form- Rule 28**

- (a) provide adequate protection against unauthorized access, alteration or tampering of records;
- (b) ensure against loss of the records as a result of damage to, or failure of the media on which the records are maintained;
- (c) ensure that the signatory of electronic records does not repudiate the signed record as not genuine; (d) ensure that computer systems, software and hardware are adequately secured and validated to ensure their accuracy, reliability and consistent intended performance;
- (e) ensure that the computer systems can discern invalid and altered records;
- (f) ensure that records are accurate, accessible, and capable of being reproduced for reference later; (g) ensure that the records are at all times capable of being retrieved to a readable and printable form; (h) ensure that records are kept in a non-rewriteable and non-erasable format like pdf. version or some other version which cannot be altered or tampered;
- (i) ensure that at least one backup, taken at a periodicity of not exceeding one day, are kept of the updated records kept in electronic form, every backup is authenticated and dated and such backups shall be securely kept at such places as may be decided by the Board;
- (j) limit the access to the records to the managing director, company secretary or any other director or officer or persons performing work of the company as may be authorized by the Board in this behalf

SNo.	Particulars	Physical Data Room	Virtual Data Room
1	Form of documents	Papers, files, boxes or other tangible thing	Electronic/Digital/soft copies of documents including video/audio documents
2	Security of documents	Lies with the integrity of person who is in-charge of the data room	More secured through specific log- in id and pass word. In addition facilities like internet fire walls are there.
3	Time required for creation of data room	Longer time required.	Can be created within 48 hours once demands of prospective bidders are identified.

4	Cost	<p>Cost is High because of reasons like-</p> <p>Requirement of one person to take care of data room.</p> <p>Requires bidders to travel from their place to the place of location of data room etc</p>	Cost is Low as the documents can be viewed from any location with internet security.
5	Convenience	searching the documents is time consuming	More convenient as it enables multiple bidders to review documents at the same time with search facility also.
6	Accessibility to data room	Timings to access data may be restricted	Data may be accessed nearly any time.
7	Facility to restrict access of specific document	Difficult to implement any restriction	Access can be restricted.
8	Facility to check who has reviewed what documents and how many times	Not available	Available

9	Facility to highlight new information	To be conveyed manually to all bidders	A highlight can be made in the website created as data room
10	Ability to copy documents	Possible	Not possible always
11	One to one communication with the seller or his representatives	Available	Not available

S.No.	Particulars	Do's	Don'ts	Reason
1	Avoid extra-long folder names and complex hierarchical structures but use information-rich filenames instead.	D:\ABC\FY\16-17\ AR\ MGT-7.doc	D:/ Alfa Botanicals Private\Financial Year\2016-2017\ Annual Return\ Form MGT-7.doc	Complex hierarchical folder structures require extra browsing at time of storage and at the time of file retrieval. By having all the essential information concisely in the file name itself, both the search and identification of the file is streamlined and more precise.
2	Put sufficient elements in the structure for easy retrieval and identification but do not overdo it.	ABC_SearchReport_ Invoice 20.07.2018. pdf	ABC_Report_ Invoice.pdf	Precision targeted retrieval requires sufficient elements to avoid ambiguous search results but too much information adds undue effort at file naming time with little or no returns at retrieval time.
3	Use the underscore (_) as element delimiter. Do not use spaces or other characters such as: ! # \$ % & ' @ ^ ` ~ + , . ; = ) (	SMITH-J_ AXA_7654-6_ POLICY_20120915. pdf    FUJITSU_ S1500_SPEC_ Scanner.pdf	SMITH-J AXA 7654-6 POLICY 20120915.pdf    FUJITSU \$S1500\$ SPEC\$Scanner.pdf	The underscore (_) is a quasi standard for field delimiting and is the most visually ergonomic character. Some search tools do not work with spaces and should be especially avoided for internet files. Other characters may be interesting but visually confusing and awkward.
4	Use the hyphen (-) to delimit words within an element or capitalize the first letter of each word within an element.	Smith-John_AIG _7654-6_POLI- CY_2009-09-15. pdf    WhitePaper_ Structured File Naming Strategy. doc	Smith John AIG 7654 6 POLICY 2009 09 15.pdf    White Paper Structured file naming strategy.doc	Spaces are poor visual delimiters and some search tools do not work with spaces. The hyphen (-) is a common word delimiter. Alternatively, capitalizing the words within an element is an efficient method of differentiating words but is harder to read.
5	Elements should be ordered from general to specific detail of importance as much as possible.	FY2009_Acme-Corp _Q3_ TrialBaL_20091015_ V02.xls    Production_ Paint-Shop_ WorkOrder_775-2. xls	TrialBaL _ Q3_20091015_ Acme-Corp_V02_ FY2009.xls    Paint-Shop_775-2_ WorkOrder_ Production.xls	In general the elements should be ordered logically, in the same sequence that you would normally search for a targeted file.

6	<p>The order of importance rule holds true when elements include date and time stamps. Dates should be ordered: YEAR, MONTH, DAY. (e.g. YYYYMMDD, Y Y Y Y M M D D , YYYYMM). Time should be ordered: HOUR, MINUTES, SECONDS (HHMMSS).</p>	<p>RFQ375_Cables-Unlimited _BID_20091015-1655.pdf    2009-11-20_AMATProj_Phase1_Report.doc</p>	<p>RFQ375_Cables-Unlimited _BID_10152009-1655.pdf    Nov-20-2009_AMATProj_Phase1_Report.doc</p>	<p>To ensure that files are sorted in proper chronological order the most significant date and time components should appear first followed with the least significant components.</p>
7	<p>Personal names within an element should have family name first followed by first names or initials.</p>	<p>Tate-Peter_SunLife_1-7566-2_POLICY_10YrTerm.pdf    SmithJ_ID3567_ADMIN_WageReview.xls</p>	<p>Peter-Tate_SunLife_1-7566-2_POLICY_10 Year Term.pdf    JSmith_ID3567_ADMIN_Wage Review.xls</p>	<p>The family name is the standard reference for retrieving records. Having the family name first will ensure that files are sorted in proper alphabetical order.</p>
8	<p>Abbreviate the content of elements whenever possible.</p>	<p>RevQC _QST_2009-Q2.xls    MCIM_27643 _POD. doc</p>	<p>Minister of Revenue Quebec _Quebec-Sales-Tax_2009-2ndQuarter.xls    MultiCIM-Technologies-Inc_27643_Proof-Of-Delivery.pdf</p>	<p>Abbreviating helps create concise file names that are easier to read and recognize.</p>

9	<p>An element for version control should start with V followed by at least 2 digits and should be placed as the last most element. To distinguish between working drafts (i.e. minor revisions) use Vx-01-&gt;Vx-99 range and for final draft (i.e. major version release) use V1-00-&gt; V9-xx. (where x =0-9)</p>	<p>MCIM_Proposal_V09.doc    eXadox_UserManual_V1-02.doc</p>	<p>MCIM_Proposal_9.doc    eXadox_UserManual_V2FinalDraft.doc</p>	<p>The “V” helps denote that the element pertains to a version number. A minimum of 2 digits with a leading zero is required to ensure that search results are properly sorted. The intent is to avoid the situation where for example, a filename with a “V1-13” will wrongly appear before an identical filename with a “V1-2” version number when sorted in ascending alphabetical/numerical order. To distinguish between working, review and final draft a single digit prefix followed by hyphen “-” is preferred to facilitate proper sorting; using words in the file name such Final, Draft or Review in the filename affect the order and should be avoided.</p>
10	<p>Prefix the names of the pertinent sub-folders to the file name of files that are being shared via email or portable storage devices.</p>	<p>Prod_PS_AssL7_W O _ Suzuki _ J3688-20090725.xls    FY2009_Acme-Corp_Q3_TrialBal_20091015_V02.xls</p>	<p>WO_Suzuki_J3688-20090725.xls    Q3_TrialBal_20091015_V02.xls</p>	<p>Attached files and files shared through portable devices include only the file name and can be totally devoid of the context that is generally provided by the folder structure of origin. To compensate and avoid confusion it is sometimes essential to prefix the name of the subfolder(s) to such file names.</p>

## UNIT 3 & 4: Signing and Certification + Legal framework for CS

Pre-certification means certification of correctness of any document by a professional including Company Secretary in Practice, before the same is filed with the Registrar in terms of the requirements of the Companies Act, 2013.

### **IMPORTANCE OF PRE-CERTIFICATION**

Ensure correctness: If he notices any defect or finds that the information provided in the form is incomplete or defective, he appropriately advises/provides guidance for completion of document/ rectification of defect and makes pre-certification only after completion of documents/ rectification of such defects

Pre-emptive step: Pre-certification acts as a pre-emptive check to ensure that the particulars stated in the form or return are as per the books and records of the company and are true and correct. This would mean that the Registrar can rely on the certification of the PCS

Aids good governance: the Act has stipulated stringent measures and requirements for disclosure, included in financial statements, Board's report and annual return which is ensured by pre-certification

Self-regulation: It is aimed at self-regulations of companies and to reduce the involvement of government machinery, i.e. the Registrar of Companies.

## PRE-CERTIFICATION UNDER SEBI REGULATIONS

S. No.	Regulation	Purpose
1.	Regulation 40(9) (Listing Obligations and Disclosure Requirements) Regulations, 2015	The listed entity shall ensure that the Share transfer agent and/or the in-house share transfer facility, as the case may be, produces a certificate from a practicing company secretary within thirty days from the end of the financial year, certifying that all certificates have been issued within thirty days of the date of lodgement for transfer, sub-division, consolidation, renewal, exchange or endorsement of calls/allotment monies.
2.	Regulation 24A (Listing Obligations and Disclosure Requirements) Regulations, 2015	Secretarial audit report given by a company secretary in practice
3.	Regulation 55A SEBI (Depositories and Participants) Regulations, 2018	Every issuer shall submit to the Stock Exchanges, audit report by a practicing company secretary on a quarterly basis, for the purposes of reconciliation of the total issued capital.
4.	Regulation on 76 SEBI (Depositories and Participants) Regulations, 2018.	Reconciliation of Share Capital Audit Report

### Other Certifications:

- Certificate regarding Compliance of Conditions of Corporate Governance (Schedule V, Clause E).
- Certificate under Schedule V (10)(i) pertaining to directors' disqualification. [Regulation 34(3)].
- Certification by PCS in case of Offer/allotment of securities to more than 49 to up to 200 investors (SEBI Circular No. CFD/DIL3/CIR/P/2016/53 dated May 03, 2016).
- To issue certificate of compliance to an investment adviser under SEBI (Investment Advisers) Regulations, 2013.
- To conduct annual audit of Research analyst or research entity in respect of Compliance with SEBI (Research Analysts) Regulations, 2014.
- Certification of shareholding pattern for registration as authorised person & Board Resolution in case the applicant is a Corporate body/ Sharing Pattern of Profit/loss in case the applicant is Partnership Firm / LLP.
- Certifications required during IPO's - certifying basis of allotment, allotment of shares from employees quota, etc.
- Certifying that the SEBI (ICDR) Regulations, 2018 for bonus issue has been complied with.
- Certificate for receipt of money specifically certifying that the company has received the application/ allotment monies from the applicants of these shares.
- Quarterly certificate specifically certifying that the company has received the application/ allotment monies from the applicants of these shares.
- Certifying that the floor price for the proposed placement to QIBs is based on the pricing formula prescribed under Chapter VI of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018.
- Certifying that debenture holders have provided their consent for changing the terms of the Debentures whereby mentioning the existing as well as revised terms.

## LLP forms

S. No.	Form/Web Form	Purpose
1.	Form- 3	Information with regard to Limited Liability Partnership Agreement and changes, if any, made therein
2.	Form- 4	In case of change in designated partners or partners in the LLP (i.e. appointment or cessation)
3	Form- 11	Annual Return of Limited Liability Partnership
4.	Form- 15	Shifting of registered office of Limited Liability Partnership

## REGISTER OF CERTIFICATION

1. Signing of Annual Return (MGT-7); 2. Certification of Annual Return (MGT-8); 3. Issue of Secretarial Audit Report (MR-3); 4. Certification of E forms of MCA under Companies Act, 2013 / LLP Act, 2008; 5. Internal Audit of Depository Participants/ portfolio Manager/ Stock Broker; 6. Annual Compliance auditor under SEBI (Research Analyst) Regulations, 2014; 7. Issue of certificate of Securities Transfers in compliance with the Listing Agreement with Stock Exchanges; 8. Certificate of reconciliation of capital 9. Conduct of Internal Audit of Operations of the Depository Participants; 10. Corporate Governance Certification under SEBI (LODR) Regulations, 2015; 11. Information relation to E-forms certified and signed; 12. Register of various reports issued.

## **POINTS TO BE KEPT IN MIND WITH REGARD TO PRE-CERTIFICATION**

- ✓ Ensure that letter of engagement/Board Resolution authorizing the professional for the particular assignment by the company is obtained.
- ✓ Maintain a physical/scanned copy of all documents verified (subject to confidentiality requirement).
- ✓ Obtain the signature(s) of the authorised signatories on the e-forms in presence of the professional.
- ✓ Ensure that all relevant documents and attachments in the form are legible & visible.

## ***DO'S AND DON'TS WHILE FILLING AND FILING OF E-FORMS***

- Before filling of e-forms, the professional should go through the instruction kit of the respective eform provided by the MCA on MCA-21 portal.
- Ensure that latest version of the e-forms has been downloaded from the MCA Website;
- DIN is mandatory for e-filing of documents. Therefore, the professional should ensure that the details related to DIN of the Directors has been updated on the MCA Portal;
- Digital Signature is mandatory and same shall be registered on the MCA Portal before it first use;

- Check Master Data of the company before filing any documents.
- Don't wait for the last days or the due date of the filing of e-forms.
- Don't fill up the forms in hurry, ensure that the all the entries in the forms are correct and as per the supporting documents to be attached.
- Option for revision/cancellation of e-forms is not available on MCA Portal once it is taken on Record.

### **COMMON ERRORS IN E-FILING**

- Digital signature is not registered / expired.
- Payment of Challan not done before the expiry date;
- Duplicate Payments has been made.
- Excess size of the form.
- Approval status of e-forms in not verified.
- Status of Resubmission of E forms
- Use of outdated version of Form;
- Incorrect particulars in the e-Form;
- Using older versions of Adobe and Java.

## ***MGT-8***

- ✓ Every listed company
- ✓ Every company having paid-up capital of Rs. 10 crore or more of
- ✓ Every company having turnover of 50 crore rupees or more

While certifying the Form No. MGT 8, the practicing company secretary provide certification relating the following points:

1. The Annual Return discloses the facts as at the close of the financial year correctly and adequately
2. The Company has complied with the provisions of the Act

While certifying the Form No. MGT 8, the PCS shall certify that:

1. Its status under the Act; 2. Maintenance of registers/records 3. Filing of forms and returns 4. Calling/ convening/ holding meetings 5. Closure of Register of Members 6. Advances/loans to its directors 7. arrangements with related parties 8. Issue or allotment or transfer or transmission or buy back of securities 9. Declaration/ payment of dividend 10. Constitution/ appointment/ re-appointments/ retirement/ filling up casual vacancies/ disclosures of the Directors, Key Managerial Personnel and the remuneration paid to them; 11. Appointment/ reappointment/ filling up casual vacancies of auditors as per the provisions of section 139 of the Act;

Documents to be Obtained/ Verified before Certification of Annual Return by Company Secretary in Practice

- 1. Memorandum and Articles of Association.*
- 2. Forms & receipts filed with the Registrar of Companies.*
- 3. Statutory Registers*
- 4. Minutes of the Meetings*
- 5. Notices and agenda papers for convening meetings of the Board and Committees thereof*
- 6. Attendance Registers of all Meetings*
- 7. Copy of Latest Financial Statements along with the Boards Report and Auditors Reports.*
- 8. Copy of Notice of Annual General Meeting/ Extraordinary General Meetings/Postal Ballots/Court convened meetings/Creditors meetings and debenture holders meeting*

9. Certificate from RTA stating the number of shareholders as on the close of the financial year.
10. Indebtedness Certificate signed by Company Secretary/ CFO/Statutory Auditors of the Company.
11. Board Resolution for any type of corporate actions taken by the Company.
12. Corporate Action Forms filed by the Company with Depositories.
13. Shareholding pattern and its break up
14. Any orders received by the company, Director or officer from the High court or from any other regulatory body under any act.
15. Other Statutory Registers and Records
16. List of Promoters.

### **Annual Return Signing Requirement**

– Small company and one Person Company

To be signed by Company Secretary or where no Company Secretary by Director.

– Others

To be signed by Director and Company secretary or where there is no Company Secretary, by a Company **Secretary in practice.**

## **Guiding principles to check AR:**

- (i) **Internal Controls:** The PCS shall perform a detailed review of the internal controls, checks and balances built into the systems and procedures of the Company. If appropriate internal controls exist, and operate effectively, the need for detailed checking is reduced to a large extent.
- (ii) **Materiality:** The sample chosen for detailed checking should be representative of the whole, or the 'population', in statistical parlance.
- (iii) **Risk Assessment:** The PCS shall have an overall understanding of the Company, the industry in which it operates, corporate governance practices, etc., and perform risk assessment to identify the 'high risk' areas.

**Whether non-filing of Annual Return is a compoundable-** If any company fails to file its annual return under section 92 (4), before the expiry of the period specified therein, such company and its every officer who is in default shall be liable to and in case of continuing failure, with further penalty of one hundred rupees for each day during which such failure continues, subject to a maximum of five lakh rupees.

**Filing Annual Return in Absence of Annual General Meeting-** Where no Annual General Meeting is held in a particular year, the Annual Return has to be filed from the last day on which the meeting should have been held together with the statement specifying the reasons for not holding the annual general meeting, with such fees or additional fees as may be prescribed, within the time as specified, under section 403. [Section 92(4)]

# Consequences of Non-filing of annual return

## Director

### Penalty-

Min: Rs. 10000

Continuing default: Rs. 100 p.d.

Max: Rs. 2 lacs

### Disqualification-

Non filing for consecutive 3 years- disqualification for 5 years

### Penalty for misstatement-

(a) If in false in any material particulars, knowing it to be false; or (b) which omits any material fact, - 6m to 10 years + fine upto 3 times of fraud

### Class action suit

## Company

### Penalty-

Min: Rs. 10000

Continuing default: Rs. 100 p.d.

Max: Rs. 2 lacs

### Winding up-

Non filing for consecutive 5 years

### Inactive status-

Non filing for consecutive 2 years

# TYPES OF CERTIFICATIONS

**Unqualified Certificate:** An unqualified certificate should be issued when the PCS forms the opinion that the conditions of Corporate Governance have been duly complied with by the Company.

**Qualified Certificate:** A qualified certificate should be issued when the PCS concludes that there are certain specific non-compliances or inadequacies

## REPORTING WITH QUALIFICATION

1. It is recommended that the qualifications, if any, should be stated in bold type or in italics in the CGCC.
2. If the PCS is unable to form any opinion with regard to any specific matter, the PCS shall state clearly the fact that he is unable to form an opinion with regard to that matter and the reasons therefor.
3. If the scope of work required to be performed is restricted on account of limitations imposed by the client, or on account of other limitations (such as certain books or papers being in custody of another person or Government Authority), the certificate may indicate such limitations.
4. If such limitations are so material that the PCS is unable to express any opinion, the PCS should state that “in the absence of necessary information and records, he is unable to certify compliance or otherwise of the conditions of Corporate Governance by the Company”.

## **CORPORATE GOVERNANCE CERTIFICATION**

Within 21 days of end of quarter

Not applicable on: . 1. The listed entity having: paid up equity share capital not exceeding rupees 10 crore; and net worth not exceeding rupees 25 crore, as on the last day of the previous financial year. 2. The listed entity which has listed its specified securities on the SME Exchange.

For issuing CGCC a three-step procedure needs to be followed: (i) The PCS would first obtain from the listed entity its draft report on Corporate Governance. (ii) PCS would examine relevant records relating to Corporate Governance and obtain necessary information and explanation from the management. An illustrative list of compliance inputs and checklists has been indicated in each paragraph in this Guidance Note. The list is however, not exhaustive. (iii) PCS on the basis of the report and verification of such other records as well as information and explanation so obtained, would certify the compliance of the conditions of Corporate Governance and give his certification to the Board to be annexed to the Board's Report. (iv) Where a Company has adopted the Voluntary Guidelines, the PCS would also certify the compliance thereof.

• Periodical Compliance Reports prepared by the company;

**1. Companies Act, 2013:**

1.He shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.

2.Further, company secretary in practice may also attract the provisions of Section 447, sections 448 and 449 of Companies Act, 2013. Provided that where the fraud in question involves public interest, the term of imprisonment shall **not be less than three years.**

Provided further that where the fraud involves an amount **less than ten lakh rupees or one per cent. of the turnover of the company, whichever is lower**, and does not involve public interest, any person guilty of such fraud shall be punishable with imprisonment for a term which may extend to **five years or with fine which may extend to fifty lakh rupees or with both.**

**2. Action by regulator:**

- **RD/ROC shall conduct** quick inquiry against PCS for submitting false or misleading or incorrect information with a 15 days' notice
- The notice will submit his/her report in respect of the inquiry initiated, and then, to the E-Governance cell of the Ministry within 15 days of reply shall initiate disciplinary proceedings
- The Registrar shall forward a fortnightly report to the concerned Regional Director as well as to the E-Governance Division. Thereafter, the Regional Director shall forward a consolidated report to the Joint Secretary E-Governance Division on or before 7th of every month.

### **3. TO PCS:**

1. Risk of reputation
2. Under CS act, 1980- clause 2, part 1, Sch 2 (allowing your name for work which PCS has not personally done)
3. Under CS act, 1980- clause 5,6,7,8, part 1, Sch 2 (material misstatement and omission of material statement, gross negligence)

#### **THEN PENALTY UNEDR Company Secretaries Act, 1980**

Reprimand the member

Remove the name of the member from the Register permanently;

Impose such fine as it may think fit which may extend to rupees FIVE lakh.

In the matters, which are placed before the Disciplinary Committee, and Where the Disciplinary Committee is of the opinion that a member is guilty of a professional or other misconduct mentioned in the Second Schedule or both the First Schedule and the Second Schedule, it afford to the member an opportunity of being heard before making any order against him and may thereafter take any one or more of the following actions, namely:—

- (a) Reprimand the member;
- (b) Remove the name of the member from the Register permanently or for such period, as it thinks fit;
- (c) Impose such fine as it may think fit, which may extend to rupees five lakhs

~~ARTICLE 10~~ **PROFESSIONAL MISCONDUCT COVERED UNDER THE FIRST SCHEDULE** *Practising in Practice*

A Company Secretary in Practice shall be deemed to be guilty of professional misconduct, if he—

- (1) Allows any person to practice in his name as a Company Secretary unless such person is also a Company Secretary in practice and is in partnership with or employed by him;
- (2) Pays or allows or agrees to pay or allow, directly or indirectly, any share, commission or brokerage in the fees or profits of his professional business, to any person other than member of the Institute or a partner or a retired partner or the legal representative of a deceased partner, or a member of any other professional body
- (3) Accepts or agrees to accept any part of the profits of the professional work of a person who is not a member of the Institute:

- (4) enters into partnership, in or outside India, with any person other than a Company Secretary in practice or such other person who is a member of any other professional body having such qualifications as may be prescribed.
- (5) Secures, either through the services of a person who is not an employee of such company secretary or who is not his partner or by means which are not open to a Company Secretary, any professional business:
- (6) Solicits clients or professional work, either directly or indirectly, by circular, advertisement, personal communication or interview or by any other means.

### **PART II - Professional misconduct in relation to members of the Institute in service**

- (1) Pays or allows or agrees to pay, directly or indirectly, to any person any share in the emoluments of the employment undertaken by him;
- (2) accepts or agrees to accept any part of fees, profits or gains from a lawyer, a Company Secretary or broker engaged by such company, firm or person or agent or customer of such company, firm or person by way of commission or gratification.

### **PART III - Professional misconduct in relation to members of the Institute generally**

A member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he –

- (1) Not being a Fellow of the Institute, acts as a Fellow of the Institute;

(1) does not supply the information called for, or does not comply with the requirements asked for, by the Institute, Council or any of its Committees, Director (Discipline), Board of Discipline, Disciplinary Committee, Quality Review Board or the Appellate Authority;

#### **PART IV - Other misconduct in relation to members of the Institute generally**

A member of the Institute, whether in practice or not, shall be deemed to be guilty of other misconduct, if—

- (1) he is held guilty by any civil or criminal court for an offence which is punishable with imprisonment for a term not exceeding six months;
- (2) in the opinion of the Council, he brings disrepute to the profession or the institute as a result of his action whether or not related to his professional work.

### **PROFESSIONAL MISCONDUCT COVERED UNDER THE SECOND SCHEDULE**

#### **PART I - Professional misconduct in relation to Company Secretaries in Practice**

A Company Secretary in practice shall be deemed to be guilty of professional misconduct, if he—

- (1) discloses information acquired in the course of his professional engagement to any person other than his client so engaging him, without the consent of his client, or otherwise than as required by any law for the time being in force;

(2) certifies or submits in his name, or in the name of his firm, a report of an examination of the matters relating to company secretarial practice and related statements unless the examination of such statements has been made by him or by a partner or an employee in his firm or by another Company Secretary in practice;

(3) permits his name or the name of his firm to be used in connection with any report or statement contingent upon future transactions in a manner which may lead to the belief that he vouches for the accuracy of the forecast;

(4) Expresses his opinion on any report or statement given to any business or enterprise in which he, his firm, or a partner in his firm has a substantial interest;

### **PART II - Professional misconduct in relation to members of the Institute generally**

A member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he—

(1) contravenes any of the provisions of this Act or the regulations made thereunder or any guidelines issued by the Council;

(2) being an employee of any company, firm or person, discloses confidential information acquired in the course of his employment, except as and when required by any law for the time being in force or except as permitted by the employer;

(3) defalcates or embezzles moneys received in his professional capacity.

### **PART III- Other misconduct in relation to members of the Institute generally**

A member of the Institute, whether in practice or not, shall be deemed to be guilty of other misconduct, if he is held guilty by any civil or criminal court for an offence which is punishable with imprisonment for a term exceeding six months.

## **CONSEQUENCES OF NON-FILING ANNUAL RETURN**

### **For the Director**

- (1) If the company has not filed its Annual Return from the date by which it should have been filed with fee and additional fees, every officer who is in default shall be liable to **a penalty of fifty thousand rupees** and in case of continuing failure, with **further penalty of one hundred rupees for each day during which such failure continues**, subject to a maximum of five lakh rupees. (Section 92)
- (2) If the company has not filed its financial statement or Annual Return for continuous period of three financial years, then every person who is or has been director of that company shall not be eligible for reappointment as Director of that company or appointed in any other company for a

**period of five years from the date on which the said company fails to do so.** (Section 164(2))

(3) If in Annual Return, any Director or any Person makes a statement (a) which is false in any material particulars, knowing it to be false; or (b) which omits any material fact, knowing it to be material, he shall be punishable with imprisonment for a term which shall not be less than 6 months but which may extend to 10 years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud. (Section 448)

### **For the Company**

- (1) If the company has not filed its Annual Return by which it should have been filed with fee and additional fees, the company shall be punishable with fine **which shall not be less than fifty thousand rupees and in case of continuing failure, with further penalty of one hundred rupees for each day during which such failure continues, subject to a maximum of five lakh rupees**
- (2) If the Company has defaulted in filing Annual Returns for the immediately preceding five financial years, the Company may be wound up by the Tribunal. (Section 271)
- (3) If the Company has not filed its Annual Return for last two financial years, it will be termed as “inactive company” [Section 455(1)]

**Functions & Duties of the Company Secretary as per section 205 of the Companies Act, 2013 read with rule 10 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 includes-**

1. To report to the Board about compliance with the provisions of this Act, the rules made thereunder and other laws applicable to the company;
2. To ensure that the company complies with the applicable secretarial standards;
3. To discharge such other duties which includes:
  - To provide to the directors such guidance as they may require, with regard to their duties, responsibilities and powers;
  - To facilitate the convening of meetings and attend Board, committee and general meetings and maintain the minutes of these meetings;
  - To obtain approvals from the Board, general meeting, the government and such other authorities as required under the provisions of the Act;
  - To represent before various regulators, and other authorities under the Act in connection with discharge of various duties under the Act;
  - To assist the Board in the conduct of the affairs of the company;
  - To assist and advise the Board in ensuring good corporate governance.

**Further, as per regulation 6(2) of the SEBI (LODR) Regulations, 2015, duties of CS are-**

- (a) ensuring conformity with the regulatory provisions applicable to the listed entity in letter and spirit;
- (b) co-ordination with and reporting to the Board, recognised stock exchange(s) and depositories
- (c) ensuring that the correct procedures have been followed that would result in the correctness, authenticity and comprehensiveness of the information
- (d) monitoring email address of grievance redressal division as designated by the listed entity for the purpose of registering complaints by investors:

## **Associate and fellows**

### Associate Members

- (a) has passed examinations conducted by the dissolved company and has completed practical training
- (b) has passed the qualifying examinations and completed the practical training
- (c) has passed such other examination and completed such other training outside India as is recognised by the Central Government or the Council as being equivalent to the examination and training prescribed in these regulations;
- (d) had registered himself as a student with the Institute of Chartered Secretaries and Administrators, London on or before 31st December, 1972 and had passed the Final Examination or Professional Programme Examination of that Institute

### **Fellow member**

1. is an Associate and has been in continuous practice in India as a Company Secretary for at least five years;
2. is an Associate for a continuous period of not less than five years and possesses such qualifications or practical experience as may be determined by the Council.

### **Exclusions:**

1. he has been found guilty of any professional or other misconduct and his name has been removed from the Register during the preceding five years
2. he has not completed such minimum numbers of Professional Development Credit Hours as may be determined by the Council:

# Disciplinary mechanism

## **UDIN**

UDIN is a 17 digit system generated number which is used to verify the authenticity of documents attested / certified by a Company Secretary in Practice. Quoting UDIN on certifications, w.r.t the professional services has been made mandatory w.e.f 1st October, 2019.

## **Ecsin**

eCSIN is a system- generated 18 digit unique number for identification of the Company Secretaries employed in a particular company which shall be generated by the Company Secretary at the time of employment as a Company Secretary (KMP or otherwise), as well as at the time of demitting office in any manner

## **ICSI (Guidelines for Advertisement by Company Secretaries), 2020**

Allowed:

1. Display of Location and décor of the workplace, meeting rooms, etc.
2. Display of Firm name, Logo or any other identity on Uniform, Office/s, office stationary& equipments/ material and providing Training to Staff.
3. Professional Updates and Write ups in any mode.
4. Appearing on local radio or television.
5. Giving speeches/lectures at any platform including Seminars, Conferences, training programmes, Workshops, Conventions, etc so organised by any forum.
6. Holding professional seminars, conferences and workshops.
7. Sponsoring any event (cultural, professional or otherwise) or helping with community programmes or doing voluntary work as a professional for charitable organizations

**Disallowed:**

1. not be in violation of provisions of Company Secretaries Act, 1980;
2. not be false or misleading;
3. not claim superiority over any or all other Company Secretaries;
4. not be indecent, sensational or otherwise of such nature which may bring disrepute to the profession or the Institute (ICSI);
5. not contain fabricated or false testimonials or endorsements concerning the Company Secretary;
6. not refer the Company Secretaries in the terms such as “specialists” or “experts”;
7. not represent that the quality of the professional services to be performed is greater than the quality of professional
8. not constitute a guarantee, warranty, or prediction regarding the outcome of any professional assignment etc.

## Unit 5: Values, ethics and Professional conduct

### TYPES/BRANCHES OF ETHICS

**Descriptive Ethics** deals with what people actually believe (or made to believe) to be right or wrong and accordingly holds up the human actions acceptable or not acceptable or punishable under a custom or law. Descriptive Ethics is also called comparative ethics because it compares the ethics or past and present; ethics of one society and other. **Descriptive ethics: What do people think is right?**

**Normative Ethics** deals with “norms” or set of considerations how one should act. Thus, it is a study of “ethical action” and sets out the rightness or wrongness of the actions. It is also called prescriptive ethics because it rests on the principles which determine whether an action is right or wrong. **Normative (prescriptive) ethics: How should people act?**

**Meta-Ethics or “analytical ethics”** deals with the origin of the ethical concepts themselves. It does not consider whether an action is good or bad, right or wrong. Rather, it questions – what goodness or rightness or morality itself is. It is basically a highly abstract way of thinking about ethics. **Meta-ethics: What does “right” even mean?**

**Applied Ethics** deals with the philosophical examination, from a moral standpoint, of particular issues in private and public life which are matters of moral judgment. This branch of ethics is most important for professionals in different walks of life including doctors, teachers, administrators, rulers and so on. There are six key domains of applied ethics viz. Decision ethics {ethical decision making process}, Professional ethics {for good professionalism}, Clinical Ethics {good clinical practices}, Business Ethics {good business practices}, Organizational ethics {ethics within and among organizations} and social ethics. **Applied ethics: How do we take moral knowledge and put it into practice?**

<b>ETHICS</b>	<b>VALUES</b>
Ethics refers to the guidelines for conduct, that address question about morality.	Value is defined as the principles and ideals, which helps them in making the judgement of what is more important.
Ethics is a system of moral principles.	In contrast to values, which is the stimuli of our thinking.
Ethics compels to follow a particular course of action.	On the other hand, Values strongly influence the emotional state of mind. Therefore it acts as a motivator.
Ethics are consistent in nature.	Whereas values are different for different persons, i.e. what is important for one person, may not be important for another person.
Ethics helps us in deciding what is morally correct or incorrect, in the given situation.	Values tell us what we want to do or achieve in our life.
Ethics determines to what extent our options are right or wrong.	As opposed to values, which defines our priorities for life.

## ETHICAL PRACTICES

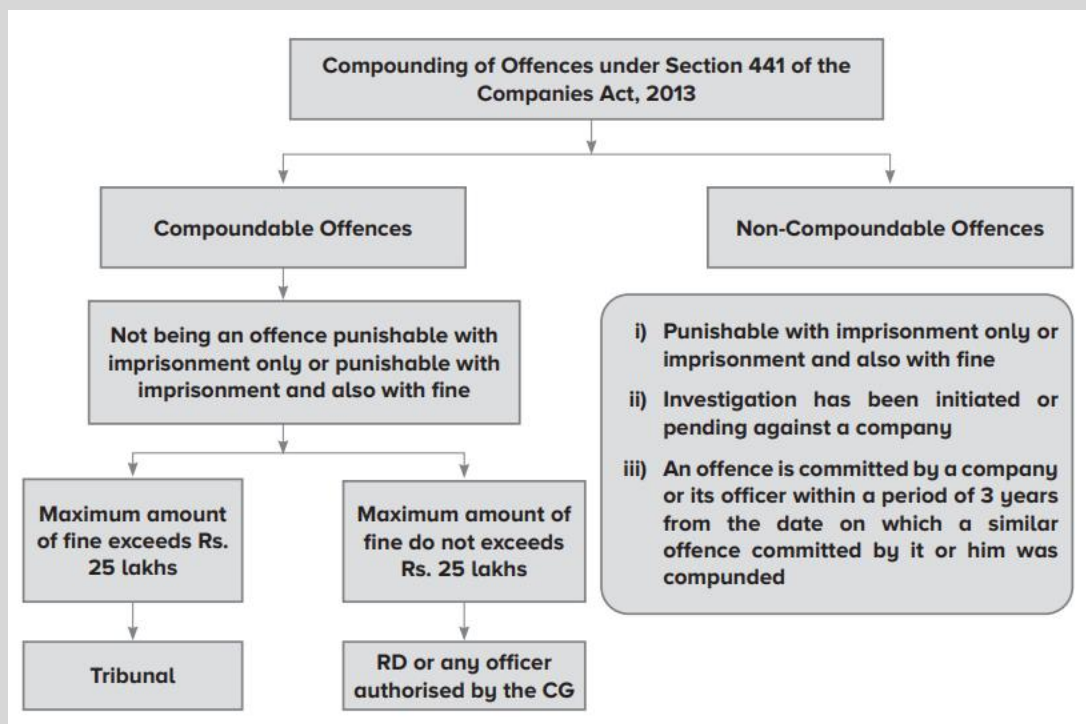
1. **Beneficence:** This is related to the principle of utility, which states that one should attempt to generate the largest ratio of good over evil possibility.
2. **Least Harm:** This theory deals with situations in which no choice appears beneficial. In such cases, decision makers seek to choose to do the least harm possible and to do harm to the fewest people. This principle is mainly associated with the utilitarian ethical theory discussed below.
3. **Utilitarian:** This is a normative ethical theory that places the locus of right and wrong solely on the outcome or consequences of choosing one action/policy over other.
4. **Autonomy:** people should have control over their own selves as much as possible because they are the only people who completely understand their chosen type of work/life style.
5. **Justice:** The justice ethical principle states that decision makers should focus on actions that are fair to all those involved.

### MODEL ETHICAL PRINCIPLES FOR COMPANY SECRETARIES

1. Strive for excellence:
2. Be trustworthy
3. Be accountable
4. Be courteous and respectful
5. Be honest, open and transparent
6. Be competent and improve continually:
7. Be ethical
8. High Integrity
9. Be respectful of confidentiality
10. Set Good Examples

Cats chee

## UNIT 7: RELIEFS AND REMEDIES



**Q. How to quantify the limit of Rs. 25 lacs in order determine the jurisdiction of RD?**

A. The quantum of Rs. 25 lacs shall be determined based upon each applicant and is not required to be consolidated of all the applicants where joint application is moved.

A compounding of offense has three basic constituents i.e.: (1) Consciousness of offence; (2) The agreement not to prosecute; and (3) The receipt of penalty.

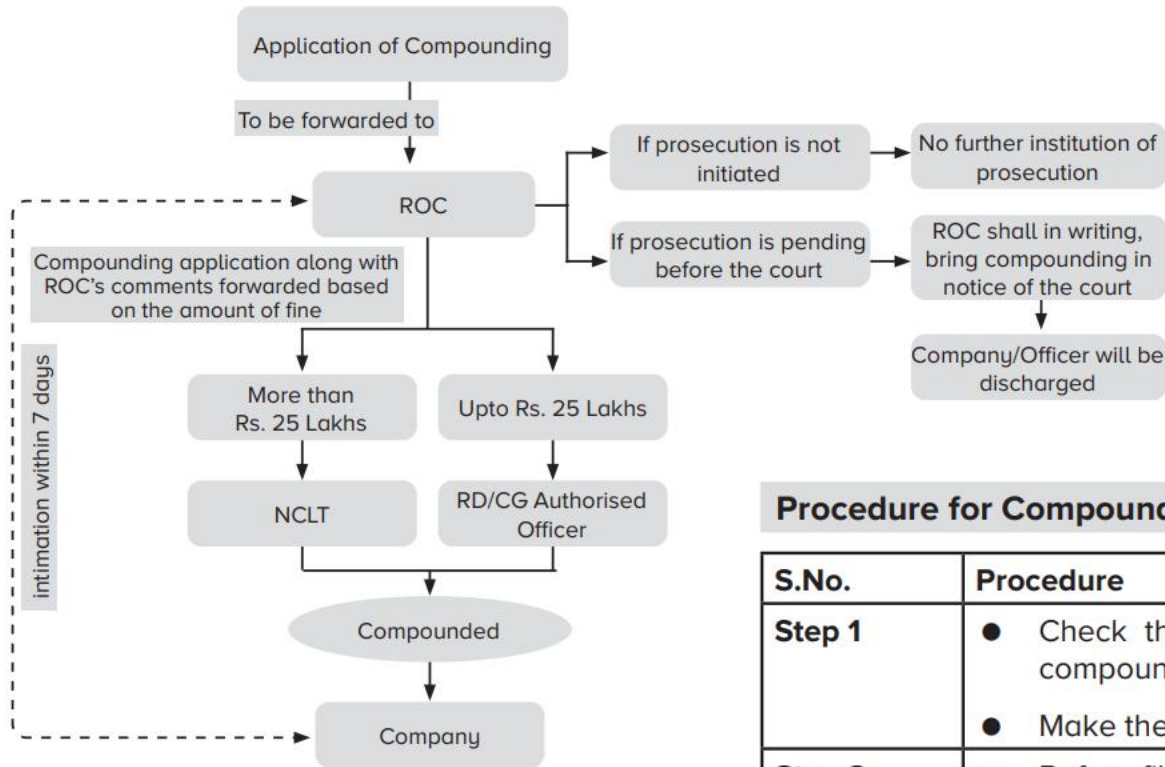
Persons eligible to make a compounding application

- A company (any director of the company authorized by its board in this behalf) and/or
- Officers in default of the company who are liable for prosecution under the respective provisions for non-compliances.

**Benefits of Compounding of Offences:** 1. Acts as a deterrent and prevents commission of offence; 2. Avoid heavy fines and penalty; 3. Keep the flow of business activity unhindered; 4. Help to maintain dignity; 5. Does not burden court with cases; 6. Less time consuming and summary proceedings; 7. No disqualification for Directors, since fees payable on compounding are not treated as penalty.

Somya Kataria (CS, MBA)

## Process of Compounding



## Procedure for Compounding of Offence under the Companies Act, 2013:

S.No.	Procedure	Forms
<b>Step 1</b>	<ul style="list-style-type: none"> <li>● Check the provisions under the Act, if such offence are compoundable or not.</li> <li>● Make the default good.</li> </ul>	
<b>Step 2</b>	<ul style="list-style-type: none"> <li>● Before filing an application for compounding of offence, the company must hold a board meeting to consider, determine the offence and calculate the fine to be paid by the company and/or officer in default as per the relevant section.</li> </ul> <p>Pass the following Board resolution :</p> <ul style="list-style-type: none"> <li>✓ For filing of the application for compounding;</li> <li>✓ To authorize any Director or Officer of the company to sign and submit the application on behalf of the company;</li> <li>✓ To appoint professionals (lawyer/CS/CA) to appear before the authority.</li> </ul>	E-Form MGT-14 for filing of Board Resolution to ROC in case of Public Company

<b>Step 3</b>	<p>Filing Application for Compounding of Offence with ROC (As Per NCLT Rules, 2016)</p> <ul style="list-style-type: none"> <li>● Detailed compounding application is required in Triplicate;</li> <li>● Board resolution passed for the purpose of making an application;</li> <li>● Affidavit verifying the application/petition;</li> <li>● General profile and history of the company containing details such as name, date of incorporation, main objects of the company;</li> <li>● Memorandum of appearance or power of attorney;</li> <li>● Copy of notice received from ROC or any other competent authority in case application for compounding of offence is filed in pursuance to notice received from ROC or any other authority;</li> <li>● Other documents based on requirements.</li> </ul> <p><i>Note: The application (e-form GNL-1) can be filed for Company, Director or Manager/Secretary or Others. Enter number of person(s) and their details excluding Company. Details of only 8 persons can be entered in the e-Form. If number of persons is greater than 8, then additional details can be provided in optional attachment.</i></p>	E-Form GNL-1 With Fees of Rs. 1000
<b>Step 4</b>	<ul style="list-style-type: none"> <li>● This application will be forwarded by ROC together with his comments thereon, to NCLT/Regional Director based on the amount of fine.</li> </ul>	
<b>Step 5</b>	<ul style="list-style-type: none"> <li>● Once the NCLT/RD receives the application for compounding, the concerned authority would send a notice to the company for personal hearing and the authorized representative of the company is liable to make their submission and admit the contravention committed under relevant sections of the Companies Act, 2013 and rules made thereunder.</li> </ul>	
<b>Step 6</b>	<ul style="list-style-type: none"> <li>● Payment of fees for compounding within the time period mentioned.</li> </ul>	
<b>Step 7</b>	<ul style="list-style-type: none"> <li>● Passing of order by the RD/Tribunal</li> </ul>	INC-28
<b>Step 7</b>	<ul style="list-style-type: none"> <li>● Intimation of order of NCLT or RD to RoC within 7 days of receipt of order. ROC will take note of the same.</li> </ul>	

Compounding of repeated offences Sub-sec (2) of sec 441 makes it clear that an offence committed by a company or its officer within a period of 3 years from the date on which a similar offence committed by it or him was compounded under this section cannot be compounded.

#### **Application to Registrar of Companies - section 441(3)**

1. Application for compounding of an offence is required to be made to the registrar of companies. The registrar shall forward the application, together with his comments thereon, to the Tribunal or the regional director
2. Where any offence is compounded an intimation thereof shall be given by the company to the Registrar within **seven** days from the date on which the offence is so compounded.
3. Where any offence is compounded before the institution of any prosecution, no prosecution shall be instituted
4. Where the compounding of any offence is made after the institution of any prosecution, such compounding shall be brought by the Registrar in writing, to the notice of the court in which the prosecution is pending and on such notice of the compounding of the offence being given, the company or its officer in relation to whom the offence is so compounded shall be discharged.

## COMPOUNDING PROVISIONS UNDER THE FOREIGN EXCHANGE MANAGEMENT ACT, 1999 (FEMA)

### Compounding application to be made to RBI or ED within 180 days of contravention

#### Power of Reserve Bank to compound contravention

- (a) in case where the sum involved in such contravention is Rs.10 lakhs or below, by the Assistant General Manager of the Reserve Bank of India;
- (b) in case where the sum involved in such contravention is more than Rs.10 lakhs but less than Rs.40 lakhs, by the Deputy General Manager of Reserve Bank of India;
- (c) in case where the sum involved in the contravention is Rs. 40 lakhs or more but less than Rs.100 lakhs by the General Manager of Reserve Bank of India;
- (d) in case the sum involved in such contravention is Rs.100 lakhs or more, by the Chief General Manager of the Reserve Bank of India; Further no contravention shall be compounded unless the amount involved in such contravention is quantifiable.

**No compounding of the same offence within 3 years**

### Power of Enforcement Directorate to compound contraventions –

- (a) in case where the sum involved in such contravention is five lakhs rupees or below, by the Deputy Director of the Directorate of Enforcement;
- (b) in case where the sum involved in such contravention is more than rupees five lakhs but less than rupees ten lakhs, by the Additional Director of the Directorate of Enforcement;
- (c) in case where the sum involved in the contravention is rupees ten lakhs or more but less than fifty lakhs rupees by the Special Director of the Directorate of Enforcement;
- (d) in case where the sum involved in the contravention is rupees fifty lakhs or more but less than one crore rupees by Special Director with Deputy Legal Adviser of the Directorate of Enforcement;
- (e) in case the sum involved in such contravention is one crore rupees or more, by the Director of Enforcement with Special Director of the Enforcement Directorate. Provided further that no contravention shall be compounded unless the amount involved in such contravention is quantifiable.

Late Submission Fee (LSF) -An alternative to Compounding under FEMA LSF mechanism provides for a simple process of paying a prescribed late fee to regularise reporting delays of Foreign Investment, External Commercial Borrowing and Overseas Investment transactions.