

**STUDY MATERIAL**

**PROFESSIONAL PROGRAMME**

**COMPLIANCE  
MANAGEMENT, AUDIT  
& DUE DILIGENCE**

**GROUP 1  
PAPER 3**



**THE INSTITUTE OF  
Company Secretaries of India**

**भारतीय कम्पनी सचिव संस्थान**

**IN PURSUIT OF PROFESSIONAL EXCELLENCE**

Statutory body under an Act of Parliament

(Under the jurisdiction of Ministry of Corporate Affairs)

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**Timing of Headquarters :**

Monday to Friday  
Office Timings : 9.00 A.M. to 5.30 P.M.

**Public Dealing Timings :**

Without financial transactions – 9.30 A.M. to 5.00 P.M.  
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**Laser Typesetting by :**

Druck Media Private Limited, Greater Noida, Uttar Pradesh

# PROFESSIONAL PROGRAMME

## COMPLIANCE MANAGEMENT, AUDIT & DUE DILIGENCE

Compliance management is the method by which corporate manage the entire compliance process with the help of check list of compliance calendar. It includes compliance program, compliance audit, compliance report etc. In other words it is called compliance solution. Secretarial Audit and Compliance Management are the routine tools for effective governance. Compliance Management is into a corporate system to avoid non-compliances and the Secretarial Audit is carried out on periodical basis by an independent professional.

Secretarial Audit is a process to check compliance under the provisions of various laws and rules/ regulations/ procedures applicable to organization. It is conducted by an independent professional to ensure that the company has complied with the appealable legal and procedural requirements and has also followed the due process. It is essentially a mechanism to monitor compliance with the requirements of stated laws.

Due diligence is a pre-emptive tool to assess a business transaction. Due diligence is an investigative process for providing the desired comfort level about the potential investment and to minimize the risks such as hidden uncovered liabilities, poor growth prospects, price claimed for proposed investment being on higher side etc., In general, due diligence process is based on transaction.

This study material is published to aid the students in preparing for the paper on Compliance Management, Audit & Due Diligence of Professional Programme. It is part of the educational kit and guide the students step by step through each phase of preparation while emphasizing on key concepts, principles, comprehending, integrating and advising to resolve complex issues case studies and decision making.

Company Secretaryship being a professional course, requires the examination standards to be set very high, with emphasis as expert of concepts, applications, procedures and case laws, for which sole reliance on the contents of the study material may not be enough. Besides Company Secretaries Regulations, 1982 it requires the students to be conversant with the amendments in the laws made upto six months preceding the date of examination. This study material may therefore be regarded as basic material and must be read along with the respective amendments in the Act, Rules, Regulations, Order, Circulars, Clarification notified by the Central Government or issued by the respective Regulators.

The coverage of subject is “Hybrid” in nature which requires integrated application of several Core / Ancillary areas or references of the other subjects included in the ICSI Syllabus. This study material has covered such topics to a limited context. The students are advised to refer the relevant topics from the Bare Acts, Rules & regulations and study material of the respective subjects or from the publications such as ICSI Auditing Standards, guidance note on Secretarial Audit, Annual Secretarial Compliance Audit, Peer Review, Quality review etc., referencer published by the ICSI.

The Study Material is divided in two parts covers in the details the concepts of Compliance Management in Part I and Audit & Due Diligence in detail under Part II.

The legislative changes made upto May 31, 2025 have been incorporated in the study material. In addition to study material students are advised to refer to the updations at the Regulator’s website, supplements relevant for the subject issued by ICSI and ICSI Journal Chartered Secretary and Other publications. Specifically, students are advised to read “Student Company Secretary” e-Journal which covers regulatory and other relevant developments relating to the subject, which is available at academic portal <https://www.icsi.edu/student-n/academic-portal>. In the event of any doubt, students may contact the Directorate of Academics at **academics@icsi.edu**.

***The amendments to law made upto 31st May of the Calendar Year for December Examinations and upto 30th November of the previous Calendar Year for June Examinations shall be applicable.***

Although due care has been taken in publishing this study material, the possibility of errors, missions and / ordiscrepancies cannot be rules out. This publication is released with an understanding that the Institute shall not be responsible for any errors, omissions and/or discrepancies or any action taken in that behalf.

**PROFESSIONAL PROGRAMME**  
**Group 1**  
**Paper 3**  
**COMPLIANCE MANAGEMENT, AUDIT  
& DUE DILIGENCE**

**SYLLABUS**

**OBJECTIVES**

**Part I :** To develop expertise to monitor compliance with the requirements of laws.

**Part II :** To equip with the process involved in conducting Audits and to impart knowledge on the process for conducting Due Diligence of various business transactions.

**Level of Knowledge:** Expert Knowledge

**Detailed Contents**

**PART I : COMPLIANCE MANAGEMENT (40 MARKS)**

- 1. Compliance Framework:** • Identification of applicable laws, rules, regulations • Risk Assessment • Responsibility center mapping/ allocation • Escalation & reporting • Creation of Compliance framework and reporting system • Review & Updation • Training & Implementation • Need/benefit/ scope of Compliance Management • Directors' Responsibility Statement • Compliances under Companies Act • Compliance Management Tool • Importance of Compliance Management Tool • Difference types of Compliance Management Tools • Case Laws and Case Studies
- 2. Documentation & Maintenance of Records:** • General principles of good documentation, coding, storage, preservation, safety & retrieval Privacy & Control • Case Laws and Case Studies
- 3. Signing and Certification:** • Various Certification(s) by Company Secretary in Practice • Pre-certification of Forms Signing & Certification of Annual Return • Corporate Governance Certification • Signing of Financial Statement • Obligations and Penal provisions • Case Laws and Case Studies
- 4. Legal Framework Governing Company Secretaries:** • Power and functions of Company Secretary • The Company Secretaries Act, 1980 along with Rules and Regulations • Disciplinary Mechanism and Penalties for Professional Misconduct Professional Liabilities
- 5. Values, Ethics and Professional Conduct:** • Ethical Practices • ICSI Code of Conduct • Fundamental duties of Professional • Ethical Dilemma • Recent Disciplinary case studies on Values, Ethics and Professional conduct
- 6. Non-Compliances, Penalties and Adjudications:** • Non-Compliances under Companies Act, 2013 • Penalties and Adjudications • Prosecution procedures • Compliant by Registrar and Serious Fraud Investigation Office • Tribunals Case Laws and Case Studies

7. **Relief and Remedies:** • What is Compounding • Which Offences can be Compounded • Which Offences cannot be Compounded • When Compounding can be done • Who are the Compounding Authorities/ who can Compound the Offence? • Mediation and Conciliation • Case Laws and Case Studies

## PART II: AUDIT & DUE DILIGENCE (60 MARKS)

8. **Concepts of Various Audits:** • Corporate Governance Audit • Secretarial Audit • Internal Audit • CSR Audit • Takeover Audit • Insider Trading Audit • Industrial and Labour Laws Audit • Cyber Audit • Environment Audit • Systems Audit • Forensic Audit • Social Audit
9. **Audit Engagement:** • Auditing Standard on Audit Engagement (CSAS-1) • Audit Engagement Process • Audit Fee Limit on Audit Engagements • Conflict of interest • Confidentiality • Changes in terms of Engagement • Case Laws and Case Studies
10. **Audit Principles and Techniques:** • Audit Techniques, Examination and its Process • Enquiry • Confirmation • Sampling Compliance test of Internal Control System • Substantive Checking • Verification of documents/ records • Creation of Audit Trails • Analysis of Audit findings • Case Laws and Case Studies
11. **Audit Process and Documentation :** • Auditing Standard on Audit Process and Documentation (CSAS-2) • Audit Planning • Risk Assessment • Information about the Auditee • Audit Check-lists • Collection and Verification of Audit Evidence • Third Party Confirmation • Analysis of Audit Evidence • Documentation Record Keeping and Retention • Case Laws and Case Studies
12. **Forming an Opinion & Reporting:** • Auditing Standard on Forming of Opinion (CSAS-3) • Process of Forming of Opinion • Precedence and Practice • Third Party Report or Opinion • Form of an Opinion • Limitation • Auditor's Responsibility • Management Representation Letter • Discussion with Management Format of Report • Audit Report and drafting of qualification • Sharing of draft report with Management • Signing of Audit Report and Submission • Case Laws and Case Studies
13. **Secretarial Audit:** • Auditing Standard on Secretarial Audit (CSAS-4) • Concept & Advantages • Legal Provisions • Risk of Secretarial Auditor • Code of Conduct • Scope of Secretarial Audit • Identification and Segregation of applicable Laws • Verification of corporate conduct and compliance of Laws • Board Composition • Board Processes • System and Process • Detection of Fraud Reporting of Fraud • Identification and Reporting of the events/actions having major bearing on Auditee's affairs • Impact of Audit Report • Case Laws and Case Studies
14. **Internal Audit & Performance Audit:** • Objective & Scope • Internal Audit Techniques • Appraisal of Management Decisions • Performance Assessment • Internal Control Mechanism • Case Laws and Case Studies
15. **Peer Review and Quality Review:** • Peer Review • Monitoring of Certification and Audit Work by Quality Review Board • Case Laws and Case Studies
16. **Due Diligence:** • Overview and Introduction to Due Diligence • Scope of Due Diligence • Stages and Process of Due Diligence • Techniques of Due Diligence and Risk Assessment • Types of Due Diligence : Legal Due Diligence; Financial Due Diligence; Bank Due Diligence • Case Laws and Case Studies

**ARRANGEMENT OF STUDY LESSONS**  
**COMPLIANCE MANAGEMENT, AUDIT**  
**& DUE DILIGENCE**  
**GROUP 1 • PAPER 3**

**PART I: COMPLIANCE MANAGEMENT (40 MARKS)**

<b>Sl. No.</b>	<b>Lesson Title</b>
1.	Compliance Framework
2.	Documentation & Maintenance of Records
3.	Signing and Certification
4.	Legal Framework Governing Company Secretaries
5.	Values, Ethics and Professional Conduct
6.	Non-Compliances, Penalties and Adjudications
7.	Relief and Remedies

**PART II: AUDIT & DUE DILIGENCE (60 MARKS)**

8.	Concepts of Various Audits
9.	Audit Engagement
10.	Audit Principles and Techniques
11.	Audit Process and Documentation
12.	Forming an Opinion & Reporting
13.	Secretarial Audit
14.	Internal Audit & Performance Audit
15.	Peer Review and Quality Review
16.	Due Diligence

# LESSON WISE SUMMARY

## COMPLIANCE MANAGEMENT, AUDIT & DUE DILIGENCE

### PART I : COMPLIANCE MANAGEMENT

#### Lesson 1 - Compliance Framework

A compliance management system manages the entire compliance process of the company. It includes the compliance program, compliance audit, compliance reporting etc. The compliance program consists of the policies and procedures which guide in adherence of the applicable laws and regulations on the company. Further, the compliance audit is an independent testing of level of compliance with applicable laws and regulations on an Organisation.

The core function of the company secretary is to formation of the compliance framework in association with the other functional heads of the company. The lesson covers process of formation of the compliance frame work and point to be considered while dealing with the corporate compliances.

#### Lesson 2 - Documentation & Maintenance of Records

The good documentation promotes good corporate governance practices and improves the compliance level of the company. Also the documentation provides a detailed knowledge of the historical records of the company. The effective documentation provides easy access to the required information on time for the effective and timely utilization of the information. The primary responsibly of a company secretary to prepare and maintain the secretarial and other records, which are required to be kept by the company under the various regulatory requirements.

The lesson covers the various method of documents and the principles to be followed by the professional while preparation of records as well as at the time of preserving the records in the record room.

#### Lesson 3 - Signing and Certification

Pre-certification means certification of correctness of any document by a professional including Company Secretary in Practice before the same is filed with the respective authority or with the Registrar in terms of the requirements of the Companies Act, 2013 and certification under SEBI Laws. The signing professional should check the correctness of the particulars stated in form or supporting documents after due consideration of the provisions of the Act and the rules made thereunder. The professional should also ensure that the particulars stated in the form/ disclosure/ certificates are in agreement with the books and records of the company. The lesson covers the prerequisite for the signing and certification by the professionals and the requirement for various forms, annual return, corporate governance certification.

#### Lesson 4 - Legal Framework Governing Company Secretaries

Professionals are expected to conduct themselves in such a manner so as to uphold the grace, dignity and professional standing of their respective Institutes. Any commitment to complete a particular assignment as agreed by the person himself should be completed in a professional manner.

The purpose of this Lesson is to explain to the students, expectation as a member with respect to various aspects of the ethical conduct. This lesson has been designed to assist in defining appropriate personal and professional conduct, to provide guidance in the identification and resolution of ethical issues, and to help the

students (the future members) of the Institute to maintain the culture of honesty, integrity, transparency and accountability.

### **Lesson 5 - Values, Ethics and Professional Conduct**

India with its inherent spiritual strength, rich traditions and strong value systems- which drive from the core of family run businesses to large corporate houses become the role model for other countries in corporate governance. The company secretaries being practitioners of corporate governance should play a leading role in making India a global leader in their field.

Further, the company secretary is not only the conscience keeper of an enterprise, but he also has a larger social responsibility represent internal and external stakeholders of the company and to play a pivotal role in ensuring compliances and implementing principles of good governance.

Accordingly, every professional should inculcate highest standards of professional ethics and moral values and adherence to professional code of conduct in its true letter and spirit while working in the various capacities. The lesson covers the various ethical principles, issues, practical aspects and the recent case laws in the Indian corporate sectors.

### **Lesson 6 - Non-Compliances, Penalties and Adjudications**

Corporate compliance involves adhering to various rules, regulations, laws, and standards which are designed to protect business, employees, and all others stake holders involved in the organization. The impact of the noncompliance of such rules and regulations on a business could be in the form of monetary fines, disqualification of directors, prohibition of doing business, regulatory enforcement, and court cases or even extended to the closure of the business entity.

In the recent years the instances of the non-compliances have been continuously increased and the business owners are getting impatient as these consequences would affect their eligibility and affect the business in many ways.

The lesson covers the various non-compliances under the Companies Act, 2013, SEBI Act, 1992 & RBI Act, etc. and the manner of adjudication and compounding of such offences.

### **Lesson 7 - Relief and Remedies**

The NCLT consolidates the corporate jurisdiction of: i. Company Law Board, ii. Board of Industrial and Financial Reconstruction, iii. Appellate Authority for Industrial and Financial Reconstruction and iv. jurisdiction and powers relating to winding up, restructuring and other provisions as vested with the High Courts resulting the Reduction of the burden on courts and will help companies facing issues related to winding up, mismanagement and insolvency of businesses and to Eliminates the overlap the conflicting rulings and minimize the delays in the resolution of disputes.

The proceedings before the NCLT or NCLAT are deemed to be judicial proceedings within the meaning of sections 193 and 228, and for the purposes of section 196 of the Indian Penal Code, and the Tribunal and the Appellate Tribunal shall be deemed to be civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973. The lesson cover the various aspects under Code of Criminal Procedures relevant for dealing with the various judicial authorities.

## **PART II: AUDIT & DUE DILIGENCE**

### **Lesson 8 - Concepts of Various Audits**

Audit is an independent and systematic examination of statutory records, books of accounts, documents and vouchers of an organization. This mainly performed or conducted to ascertain how far the financial statements as well as non-financial disclosures present a true and fair view of the affairs of the company. Audit provides a significant assurance to the management and other stakeholders on the affairs of the company. The Auditor

while conducting audit obtains evidence and formulates an opinion on the basis of his judgement which is communicated through his audit report.

As an independent professional, auditor provide third party assurance on every subject matter for which he has been engaged. The lesson covers the areas which are commonly audited by the company secretaries such as Corporate Governance Audit, CSR Audit, Takeover Audit, Insider Trading Audit, Industrial and Labour Laws Audit, Cyber Audit, Environment Audit, Systems Audit, Forensic Audit, Social Audit etc.

### **Lesson 9 - Audit Engagement**

The Companies Act, 2013 provides that the statutory auditors of the company shall be appointed by the members of the company, through a resolution passed at the annual general meeting. However In case of other audit the auditors are appointed by the board of the company or by the person authorized by the board of the company, by the tribunal/ courts, company liquidators etc.

In any auditing assignment, the engagement letter is the governing documents for whole audit process, as it covers the scope of audit, terms & conditions of audit, responsibility of auditor and the management etc.

The lesson covers the various requirements of laws and the points to be considered while taking up the audit engagement by any professional.

### **Lesson 10 - Audit Principles and Techniques**

The Auditing principles are the generally accepted rules, which are commonly applicable for the every type of Audit, whereas the audit techniques stand for the methods that are adopted by an auditor to obtain audit evidence and performance of the audit as per the scope of the audit. An auditor can apply various techniques of auditing which may be applied by the auditor under different circumstances of audit.

The purpose of an audit is to enhance the degree of confidence in the secretarial records/non-financial statements, of intended users. An auditor expresses his opinion as to whether the significant reporting aspects of an enterprise are duly covered within the prescribed framework. The auditor is required to conduct the audit and express his opinion based on these principles and techniques for conducting audit.

The lesson covers the various auditing principles and techniques which are useful for undertaking the audit.

### **Lesson 11 - Audit Process and Documentation**

The auditing process is a way to ensure that the affairs of the company were in accordance with the applicable laws, rules, regulations and principles and that they are free of material misstatement. The audit process include the phase like Pre-Planning, Planning, Fieldwork, Reporting, Corrective Action etc.

The audit documentation is the written record of the basis for the auditor's conclusions. The audit documentation also facilitates the planning, performance, and supervision of the engagement, and is the basis for the review of the quality of the work because it provides the reviewer with written documentation of the evidence supporting the auditor's significant conclusions. Among other things, audit documentation includes records of the planning and performance of the work, the procedures performed, evidence obtained, and conclusions reached by the auditor. Audit documentation also may be referred to as work papers or working papers.

The lesson covers designing the auditing program, procedures and documentation procedures relating to the performance of the audit.

### **Lesson 12 - Forming an Opinion & Reporting**

On the completion of each audit assignment, the auditor need to prepare a written report setting out the audit observations and conclusions in an appropriate form; the content of the audit report should be easy to understand, free from ambiguity and supported by sufficient, competent and relevant audit evidence and be independent, objective, fair, complete, accurate, constructive and concise.

The content of the opinion will need to indicate unambiguously whether it is unqualified or qualified and, if the same is qualified, whether it is qualified in certain respects or is adverse or a disclaimer of opinion.

The lesson covers process of forming opinion and the process to be followed by the auditor before submitting the final reports to the management.

### **Lesson 13 - Secretarial Audit**

Secretarial Audit is a mechanism which gives necessary comfort to the management, regulators and the stakeholders, as to the compliance by the company of applicable laws and the existence of proper and adequate systems and processes in the company. Submission of Secretarial Audit Reports for the prescribed companies was mandated from financial year 2014-15 under section 204 of the Companies Act, 2013.

Further, Regulation 24A of the SEBI (LODR) Regulations, 2015, every listed entity and its material unlisted subsidiaries incorporated in India is required to undertake secretarial audit and shall annex with its annual report, a secretarial audit report, given by a company secretary in practice, in Form No. MR-3 from the year ended March 31, 2019.

The secretarial auditors should detect the instances of non-compliances and in result facilitate taking corrective-measures. The professional should perform an effective due diligence exercise before the issuance of Secretarial Audit Report.

The lesson covers the various requirements under the scope of secretarial audit and process to be followed by the company secretaries while conducting secretarial audit.

### **Lesson 14 - Internal Audit & Performance Audit**

The internal audit is an Independent review and appraisal of financial and operational control systems across the organization. The internal audit also includes the ascertainment of the extent of compliance of policies, procedures, regulations and legislations and facilitate in risk management.

The internal auditor is also involved in structuring programs and activities that safeguard company assets, it also provide internal check systems which minimize the possibility of fraud / early warning signals for identifying fraud.

The provisions of Companies Act, 2013 provides that an internal auditor appointed under section 138 shall either be a chartered accountant or a cost accountant, or such other professional (including company secretaries) as may be decided by the board to conduct internal audit of the functions and activities of the company. The lesson cover the objective & scope of internal audit, manner of engagement, internal audit techniques and the process for reviewing the internal control mechanism in the company.

### **Lesson 15 - Peer Review and Quality Review**

The Professional Codes of Conduct are one of the most important characteristics of a profession. Such Codes of Conduct illustrate the high ethical and professional standards to reassure stakeholders of two conditions, namely, that any particular set of professional services is being rendered not only by (i) properly qualified or technically expert persons but also (ii) by persons whose professional standards merit the high degrees of trustworthiness, typically required of professionals.

The Peer Review mechanisms used in working groups for many professional occupations only to strengthen systems and infrastructure to enhance the quality of professional services. Whereas the Quality Review Board (QRB) has been set up to review and enhance the quality of the services rendered by the members of the ICSI. The Board aims to standardize the practices followed by the Company Secretaries and enhance the quality of the services rendered by the members of ICSI on continuous basis.

The lesson covers the various aspects relating to the peer review of the company secretaries in practice and the highlights relating to the Quality of Audit & Attestation Services by the company secretaries.

## Lesson 16 - Due Diligence

Due diligence is an analysis and risk assessment of an impending business transaction. It is the careful and methodological investigation of a business or persons, or the performance of an act with a certain standard of care to ensure that information is accurate, and to uncover information that may affect the outcome of the transaction.

For any strategic business transactions the detailed analysis of both financial and non-financial information requires careful and methodological investigation of business processes and the parties involved. Due diligence of business transaction includes methodical investigation of information relating to the financial, human resources, tax, environmental, legal matters, intellectual property matters etc. The lesson covers the various types of the due diligence, due diligence process and the points need to be considered while performing due diligence.

### ***Important Note:***

The new criminal laws i.e. Bharatiya Nyaya Sanhita 2023, Bharatiya Nagarik Suraksha Sanhita 2023 and Bharatiya Sakshya Adhinyam 2023 have repealed Indian Penal Code 1860, Criminal Procedure Code 1973 and Indian Evidence Act 1872 (old criminal laws) respectively.

Therefore, by virtue of Section 8 of General Clauses Act 1897, the references to the old criminal laws, unless a different intention appears, be construed as references to the provision of new criminal laws.

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## PART II

### AUDIT & DUE DILIGENCE

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**PART I**

**COMPLIANCE  
MANAGEMENT**





### KEY CONCEPTS

- Compliance Management ■ Risk Assessment ■ Risk Mitigation ■ Risk Escalation ■ Compliance Ownership
- Cyclical Reporting ■ Incident Reporting

### Learning Objectives

#### To understand:

- The need of timely compliance and how it reduces risks as well as potential cost of non-compliance and also builds better corporate image.
- Compliance framework as a system designed to assist an organisation to meet its obligations and to reduce the risk of non-compliance.
- How a systematic compliance framework establishes better compliance platform by timely compliances with the provisions of various statutes including, laws, rules & regulations, procedures therein.
- The importance of the compliance framework in an organization.
- Systematic approach in identifying, responding, implementing, reporting of compliances and changes in it.

### Lesson Outline

- Corporate Compliance Framework
- Preparation of Compliance Chart
- Contents of Compliance Chart
- Compliance Risk– Review and Updation
- Training and Implementation
- Need for Compliance Management
- Process of Corporate Compliance Reporting
- Compliance Management tools
- Lesson Round-Up
- Glossary
- Test Yourself
- List of Further Readings
- Other References (Including Websites / Video Links)

## CORPORATE COMPLIANCE FRAMEWORK

Compliance with laws and regulations must be an integral part of any corporate strategy. It is the responsibility of the board of directors of the company to recognize scope and implications of applicable laws and regulations on the company. While framing and setting the corporate strategies for achieving their target goals and objectives, they must duly consider the compliance of applicable laws and regulations on the company. The board of directors of the company need to establish the compliance framework. It serves as a supporting system of risk management system as it reduces risk associated with non-compliance. However, to ensure an effective approach to compliance, the following steps are to be undertaken by the Board of Directors:

- The participation of senior management in the development and maintenance of a compliance program.
- Reviewing the effectiveness of compliance management system at periodic intervals.
- To ensure that it remains updated and relevant in terms of modifications/ changes in regulatory regime including acts, rules, regulations etc. and business environment.

Development and maintenance of a compliance program

Reviewing the effectiveness of compliance system

Ensuring its updation and relevance

Effective Corporate Compliance Framework enables the organization to achieve its objectives and goals with compliance of applicable laws and regulations, mitigating the risks associated with and making continuous improvements as required.

Compliance Framework is to be built into the corporate system to avoid non-compliances and the secretarial audit is carried out on periodical basis by an independent professional to check the effectiveness of the controls within the organization and report that how the organization is complying with the statutory requirements. Company Secretaries plays a vital role and hold the responsibility for the compliance being the compliance officer and KMP of the entity.

Corporate compliance management involves a full process of research and analysis as well as investigation and evaluation. Such an exercise is undertaken in order to determine the potential issues and get a realistic view about how the entity is performing and how it is likely to perform in the future. Corporates which ensure compliance are rewarded with positive public image and customer trust. Company Secretaries with core competence in compliance and corporate governance play a crucial role in the corporate compliance management in an organisation.

### Compliance Management -Maruti Suzuki Limited

The Company appreciates the importance of having a robust Compliance framework to withstand the rigorous of regulatory scrutiny and periodically reviews its Compliance Management Program to align it with industry best practices. In FY 2023-24, the Company benchmarked its Compliance practices with best-in-class industry players. Based on the outcome, the Company has taken steps to strengthen its Compliance Program. The key initiatives include formation of a Compliance Committee comprising of business leaders led by MD & CEO to enhance visibility and accountability of business towards Compliance. The Company has further operationalized this by appointing Senior Compliance Leaders at the business level, leading to better engagement and ownership of risk management. This resonates with the Company's Compliance theme for FY 2023-24 – 'Compliance Begins with me'. The Company is compliant with all applicable laws including but not limited to labour, environmental, industrial, financial, IT, corporate laws and ensures compliances mandated for a listed company under the Companies Act, 2013 and the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015. A Compliance Certificate is submitted to the Board of Directors on a quarterly basis.

The Company observed its 7th annual Compliance Month in October 2023 with the theme – ‘Compliance Begins with me’. All employees pledged to uphold the Company’s Code of Business Conduct and Ethics, the related policies and procedures governing their areas of work to promote a Culture of Compliance in the Company. The Company conducted over 100 sessions covering different aspects of Compliance and risk management for its employees, business associates and partners to meet the requirements of a fast-evolving regulatory ecosystem.

*(Source: Annual Report 2023-24)*

### **Compliance Management – Hindustan Unilever Limited – Annual Report 2022-23**

The Company is committed to complying with the laws and regulations of the country. In specialist areas, the relevant teams are responsible for setting detailed standards and ensuring that all employees are aware of and comply with regulations and laws specific and relevant to their roles. Our legal and regulatory teams are involved in monitoring and reviewing our regulatory practices to provide reasonable assurance that we remain aware of and are in line with all relevant laws and legal obligations. The teams also work with the Industry and Trade Associations in making recommendations on newer and evolving regulations keeping the multistakeholder model in mind.

The Company has Received the Certificate of Recognition at the 22nd ICSI National Awards for Excellence in Corporate Governance, for adopting and promoting exemplary corporate governance practices.

### **Emerging concept of 21st century: The GRC**

The Governance, Risk Management, and Compliance (GRC) is a relatively new corporate management system that integrates these three crucial functions into the processes of every department within an organization. The overall purpose of GRC is to reduce risks and costs as well as duplication of effort. It is a strategy that requires company-wide cooperation to achieve results that meet internal guidelines and processes established for each of the three key functions.

The three elements of GRC are:

**Governance, or Corporate Governance**, is the overall system of rules, practices, and standards that guide a business. Governance is the combination of processes established and executed by the directors (or the board of directors) that are reflected in the organization’s structure and how it is managed and led toward achieving goals. Governance describes the overall management approach through which senior executives direct and control the entire organization, using a combination of management information and hierarchical management control structures. Governance activities ensure that critical management information reaching the executive team is sufficiently complete, accurate and timely to enable appropriate management decision making, and provide the control mechanisms to ensure that strategies, directions and instructions from management are carried out systematically and effectively.

**Risk, or Enterprise Risk Management**, is the process of identifying potential hazards to the business and acting to reduce or eliminate their financial impact.

Risk Management is predicting and managing risks that could hinder the organization from reliably achieving its objectives under uncertainty. Risk management is the set of processes through which management identifies, analyzes, and, where necessary, responds appropriately to risks that might adversely affect realization of the organization’s business objectives. The response to risks typically depends on their perceived gravity, and involves controlling, avoiding, accepting or transferring them to a third party, whereas organizations routinely manage a wide range of risks (e.g. technological risks, commercial/financial risks, information security risks etc.)

**Compliance, or Corporate Compliance,** is the set of processes and procedures that a company has in place in order to make certain that the company and its employees are conducting business in a legal and ethical manner.

Compliance refers to adhering with the mandated boundaries (laws and regulations) and voluntary boundaries (company's policies, procedures, etc.). Compliance means conforming to the stated requirements. At an organizational level, it is achieved through management processes which identify the applicable requirements (defined for example in laws, regulations, contracts, strategies and policies), assess the state of compliance, assess the risks and potential costs of non-compliance against the projected expenses to achieve compliance, and hence prioritize, fund and initiate any corrective actions deemed necessary.

### CASE STUDIES

Tata Motors has implemented a comprehensive GRC program that covers all aspects of its operations, including legal compliance, risk management, and ethical practices. The company has established a risk management framework that enables it to identify and mitigate potential risks and ensure compliance with all applicable laws and regulations.

Mahindra & Mahindra has implemented a GRC framework that encompasses all aspects of its operations, including risk management, compliance, and ethical practices. The company has established a risk management committee that oversees the identification and mitigation of potential risks and ensures compliance with all applicable laws and regulations.

## COMPONENTS OF CORPORATE COMPLIANCE FRAMEWORK

Organizations in every industry face a growing array of compliance obligations. In addition to anti-money laundering regulations, there are an increasing number of environmental, social and governance (ESG) requirements covering everything from board composition to data privacy. Furthermore, economic and trade sanctions pose a constantly shifting challenge given the global nature of supply chains, subsidiary holdings, and customer and banking relationships.

Fulfilling these compliance requirements requires a complex mechanism that includes policies and procedures, training, whistleblowing channels, internal audit, escalation, response and disclosure. Complicating matters further, the mechanism must comply with regulations that differ across jurisdictions, and that may even be at odds with one another.

The corporate compliance framework consists of three key components:

COMPLIANCE  
CHART

COMPLIANCE  
ADVISORY

COMPLIANCE  
SCORECARD

- **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. The compliance chart help business in meeting its compliance obligations towards the customers, regulators, shareholders and employees because it provides a centralize compliance information of the company on a single chart. The compliance chart also reflects the key activities and compliance calendar which is to be followed and performed by a business unit to manage its compliance risks.

- **Compliance Advisory:** It advises on compliances of applicable laws and effect of non-compliances. Compliance advisory helps organisation to evaluate their compliance finctions, 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. Thus, this employee can directly start remediation activities. The tracking of the remediation activities' status is again included into the scorecard. An integrated escalation structure, predefined by organizational hierarchies ensures timely remediation. Also the possibility of classifying a rule breach according to its level of risk must be included into the scorecard. So a risk-prioritized remediation of violations can be ensured.

## COMPLIANCE CHART

As discussed in above paragraphs, the corporate compliance framework consists of three key components Compliance Chart, Compliance Advisory and Compliance Scorecard. The Compliance Chart is a vital part of the Framework and every organization shall give more focus on the preparation of the compliance chart. The compliance chart of a company is prepared after considering the operations and the structure of the company as the compliance requirements for an organization is based on the type of organization, activity of the organization, industry, sector in which the company operates and laws which are specifically applicable to the company.

Broadly, the compliance chart is prepared by considering the following activities:

- Identification of compliances under applicable Laws, Rules and Regulations;
- Risk Assessment;
- Risk Mitigation (includes Training);
- Compliance Monitoring (includes Action Tracking);
- Compliance Reporting (includes Incident Management).

### Test Yourself:

**Question :** Which of the following activity is not required to be considered while preparing compliance chart?

**Options:** (A) Risk Assessment (B) Risk Mitigation (C) Compliances reported in previous years (D) Compliance monitoring

**Answer:** (C)

## CONTENTS OF COMPLIANCE CHART

The Compliance Chart of any company must contain the complete information on compliance dashboard, which provide a detailed compliance procedure to the compliance executor, this information includes:

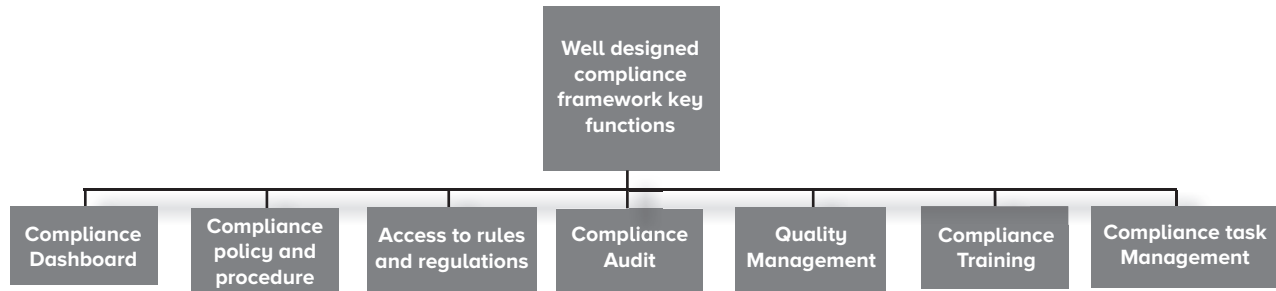


The role of Company Secretary as a compliance manager in a company is now extended to create a compliance framework for translating the regulatory requirements into management actions.

Role of Company Secretary in creation of Compliance Chart:



A well-designed compliance framework has abilities to perform the following key functions across every type of business organisation:



**Compliance Dashboard:** The compliance program must provide a single enterprise-wide dashboard for all users to track and trend compliance events. All compliance events should be easily viewed interactively through the enterprise compliance dashboard. Statutory auditors, internal auditors, compliance officers can use the dashboards to make decisions on the compliance status of the organization.

#### **Illustration**

A financial institution should generally establish a formal, written compliance program. In addition to being a planned and organized effort to guide the institution's compliance activities, a written program represents an essential source document that will serve as a training and reference tool for all employees. A well planned, implemented, and maintained compliance program will prevent or reduce regulatory violations, provide cost efficiencies, and is a sound business step.

**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. Ensuring that these policies and procedures are in conformity with the ever-changing rules and regulations is a critical requirement. 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.

**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. This process critically enables the organization to dynamically change their policies and procedures in adherence to the revised rules and regulations. While tracking a single regulation may be manually feasible, it becomes an error-prone task to track all local, state, and central regulations including those taking place across the globe. A well-designed compliance management program offers up-to-date regulatory alerts across the enterprise.

**Compliance Audit:** Audits have now become part of the enterprise core infrastructure. Internal audits, financial audits, external audits, vendor audits must be facilitated through a real-time system. Audits are no more an annual activity and corporations offer appropriate audit capabilities. Appropriate evidence of internal audits becomes critical in defending compliance to regulations.

**Quality Management:** Most organizations have internal operational, plant-level or departmental quality initiatives to industry mandates like Six-sigma or ISO 9000. A well-designed compliance management program incorporates and supports ongoing quality initiatives. Most quality practitioners agree that compliance and quality are two sides of the same coin. Therefore, it is critical to ensure that compliance management solution offers support for enterprise-wide quality initiatives.

**Compliance Training:** Most compliance programs often require evidence of employee training. Sometimes lack of knowledge and in complete procedure lead to fines and penalties to the director and officers of the company. 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:** The company must create plan to manage and report status of all compliance related activities from a centralized data base. 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.

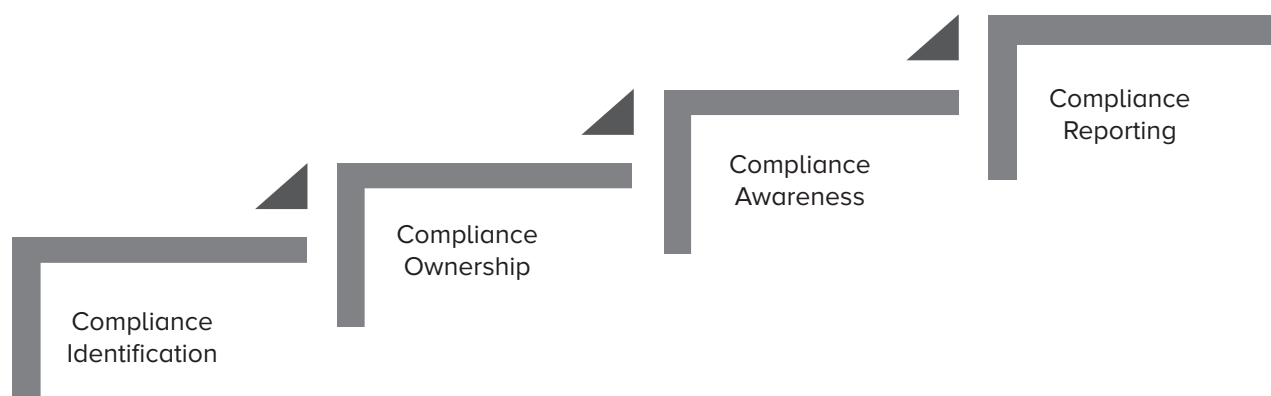
Accordingly, for creating a compliance management framework an organization need to perform activities relating to the compliance identification, compliance ownership, compliance awareness, compliance reporting and periodical compliance MIS.

However, the compliance framework in summary form consists of the following:

Process for Setting up of Compliance Framework				
Stage-1	Stage-2	Stage-3	Stage-4	Stage-5
Identification of Compliance Obligations	Preparation of Compliance Chart	Assessment of Historical Compliance Status	Assessment of Compliance Risk	Compliance/ Action Reporting
Applicability of the various Act, Rules, Regulations, Policies and Procedures covering Industry Specific Sector Specific, Specific Activity, Specific Entity, Specific State Law, Local Laws	Setting-up role and responsibilities of senior Management, Legal Department, and Compliance Executor	Assessment of File/ Report/ Return Statements/ Internal Auditor/ Independent agency/ Regulator	Identification of possible situations of non-compliance and development of strategy for Risk Mitigation/Risk Monitoring/Risk Reporting	Report of Internal Auditor/ Independent agency/Regulator with the possible consequence such as disqualification/ suspension/ lock out/ license cancellation

**Process of Corporate Compliance Framework**

Various steps are involved in the process of Corporate Compliance Framework which are as follows:



**Step 1: Compliance Identification:**

It includes the process to identify various acts and legislations applicable to the company in consultation with the functional heads. The legal team has to identify the legislations applicable to the company and identify the compliances that are required under each legislation or rules and regulations made there under.

**Step 2: Compliance Ownership:**

**Definition:** *Compliance owner is the person who is responsible for the compliances.*

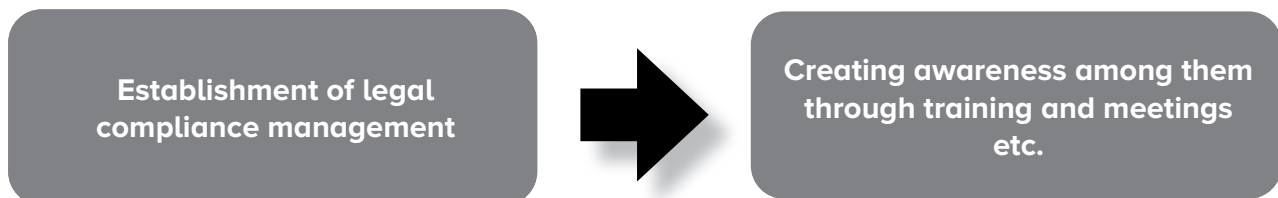
Compliance Ownership of the various compliances identified has to be described function wise and individual wise. Clear description of primary and secondary ownership is also very important. While the primary owner is mainly responsible for the compliance the secondary owner (usually the supervisor of the primary owner) has to supervise the compliance.

**Illustration**

*In a Company ABC Private Limited, Mr. S, Company Secretary, is the person primarily responsible for all the compliances made under various laws applicable to ABC Pvt. Ltd.*

**Step 3: Compliance Awareness:**

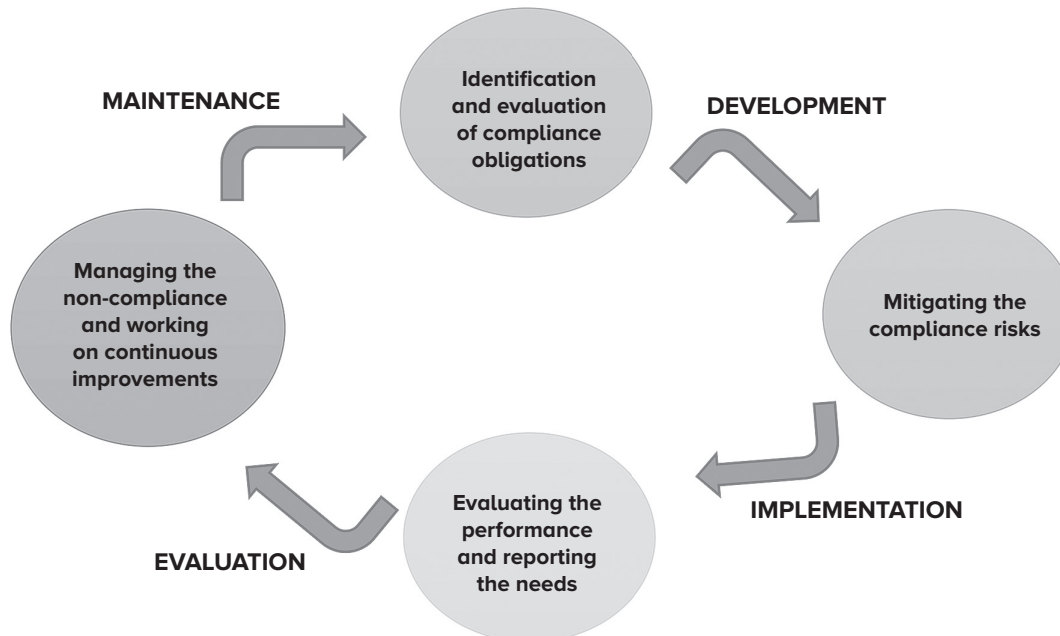
The Compliance Awareness covers the establishment of the legal compliance management and creation of awareness of the various Legal Compliances amongst those responsible. Sometimes the compliances are handled by persons who are not fully aware of the requirements of the legislations and hence creating appropriate awareness amongst the owners is very important. This could be done in the form of meetings/ trainings explaining various compliances or some manual containing the details of compliances.

**Step 4: Compliance Reporting:**

In the process of the Compliance Reporting status of compliances or non-compliances should be communicated to the concerned. This is done annually by the compliance officer. Reporting of non-compliances ensures that appropriate corrective action is being taken by the responsible person in case of the failure in doing compliances.

*Such compliance should be reported periodically in MIS (Management information system).*

The Compliance management process revolves around the following steps:



#### How Compliance Management Works in Legal Department

- It monitors compliances across all entities, locations & various departments.
- It tracks the expiry dates of all executed contracts which needs to be renewed.
- Easy management of Litigation dates, documents and orders.
- Complying with documents policies and processes.

#### IDENTIFICATION OF APPLICABLE LAWS AND REGULATIONS

The identification of compliance requirements involves the compliances under various applicable laws and regulations to the organisation. There must be as systematic process of identifying compliance obligations of the organisation and their implications for its activities and services. It includes the identification and implementation of such changed in managing the compliances with amended laws and regulations.

For preparation of compliance framework by a company secretary and to identify the compliances & other requirements, it is necessary for him to get familiar with the business model of the company along with the environmental, health and safety aspects, and data security requirements. Further, a periodically review of the compliance requirements in the light of the regulatory updates is also necessary for the effective compliance management.

The compliance chart covering above applicable laws must be kept up to date and should also reflect the compliance obligations and associated risks that may arise. Such obligations may be based on company compliance policies and / or international and local laws, regulations and standards that apply to a business' activities. As a good practice the company should communicate to the compliance executor that what he should or should not do for performing any compliance requirement.

**CASE LAW**

In *Re Siddarth Gupta (Appellant) v. The Delhi Golf Club Limited & Anr (Respondent)* [DEL] I.A. No. 19355/2015 in C.S (OS) No. 2805/2015, in this matter the Appellant had acquired membership in the Delhi Golf Club Ltd after paying the requisite fees and was enjoying the rights and privileges guaranteed to the members of the Club. Meanwhile, the Appellant got to know that a resolution had been passed in the AGM of the Club wherein the Appellant's membership was cancelled. Consequently, the Appellant filed a Petition against the said resolution in the Delhi High Court.

The honourable court observed that the membership of a person can be cancelled only after following the related provisions of the Memorandum of Association and Articles of Association of the Club and also the Principles of Natural justice. In this scenario neither any notice was given to the appellant nor any opportunity of being heard was provided to Appellant. Further, the provisions related to expulsion of members as mentioned in the Memorandum of Association and Articles of Association were not followed. Therefore, the resolution could not be sustained. The Court directed the club to reverse the Resolutions and refrained from cancelling the membership of the appellant.

In case where there is a policy issued by a company, research must be conducted to identify whether additional or different local laws exist. If a conflict between policies issued by company, local law and/or international law arises, the conflict must be resolved and the appropriate obligation must be identified. Where the obligations of local laws or regulations impose greater or more stringent requirements than those included in a policy issued by company (or if the opposite situation exists), the more stringent obligations shall prevail.

**The sources for the identification of compliance obligations include:**

- Engagement with management and other key staff in Divisions.
- Laws and regulations.
- Permits, licences or other forms of authorisation.
- Orders, rules or guidance issues by regulatory agencies.
- Judgements of courts or administrative Tribunals.
- Treaties, conventions and protocols.
- Internal policies and procedures.
- Voluntary principals or codes of practice.
- Commentary sourced from the public domain.
- Membership of professional groups.
- Subscriptions to relevant information services.
- Attending industry forums and seminars.
- Monitoring regulators (websites, mailing lists, meetings, media).

Depending on the nature of the business of the organisation, it is required to comply with following laws and regulations:

- Labour Laws;
- Fiscal/ Tax Laws;
- Pollution/Environment related Laws;
- Securities Laws;
- Commercial Laws including Intellectual Property Rights Laws;
- Industry Specified Laws;
- Corporate and Economic Laws;
- Cyber Laws which is also known as 'The Information Technology Laws';
- All other laws affecting the company concerned depending upon the type of industry/activity.

## CASE STUDIES

### **Non Compliance of mandatory standards prescribed as per the Domestic Pressure Cooker (Quality Control) Order, 2020**

#### **CCPA fines Cloudtail with Rs 1 Lakh for not complying with BIS standards**

The Central Consumer Protection Authority (CCPA) has imposed a fine of Rs 1 Lakh on Cloudtail India for violating the Quality Control Orders and consumer rights.

The company has also been asked for the price reimbursement of 1,033 pressure cookers to the consumers and is directed to submit the compliance report within 45 days.

Cloudtail, a retail company selling pressure cookers on an e-commerce platform, was issued an order for unfair trade practice by selling domestic pressure cookers in violation of mandatory standards prescribed as per the Domestic Pressure Cooker (Quality Control) Order, 2020.

The company was also directed to pay a penalty of Rs 100,000 for selling domestic pressure cookers to consumers in violation of mandatory standards prescribed under the QCO and violating the rights of consumers

In the matter of: ***M/s. Assam Timber Products Pvt. Ltd. (ATPPL) (Transferee Company) AND M/s. Ravi Marketing and Services Pvt. Ltd. (RMSPL) (Transferor Company) NCLT Guwahati Bench 13.04.25***

The NCLT held that since publishing an advertisement in widely circulated newspapers in both States was required in the interest of all stakeholders, the statutory requirement of sections 230 and 232 of the Companies Act, 2013 had not been complied with.

Therefore, the proposed scheme of amalgamation of companies was not to be sanctioned in the interest of all shareholders. Hence, the petition was to be dismissed.

Source: [https://nclt.gov.in/gen\\_pdf.php?filepath=/Efile\\_Document/ncltdoc/casedoc/1806122002202021/04/Order-Challenge/04\\_order-Challenge\\_004\\_1681826097594874024643ea1315115e.pdf](https://nclt.gov.in/gen_pdf.php?filepath=/Efile_Document/ncltdoc/casedoc/1806122002202021/04/Order-Challenge/04_order-Challenge_004_1681826097594874024643ea1315115e.pdf)

## COMPLIANCE RISK ASSESSMENT: BASIS FOR COMPLIANCE MANAGEMENT

The compliance chart of the company oversees and objectively challenges execution, management, control and reporting of risk, however the management of the company has ultimate accountability for the effective control of risks affecting their business and the management should take ownership and responsibility for execution of risk assessments.

Risk assessments should be done according to the changes in the business' profile. Such changes may result because of new laws or regulations, new interpretations of existing laws or regulations, new theories of liability, a new activity of the business or changing social standards.

**Risk assessments includes:**

Identification areas of potential non Compliances

Rating the risks

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

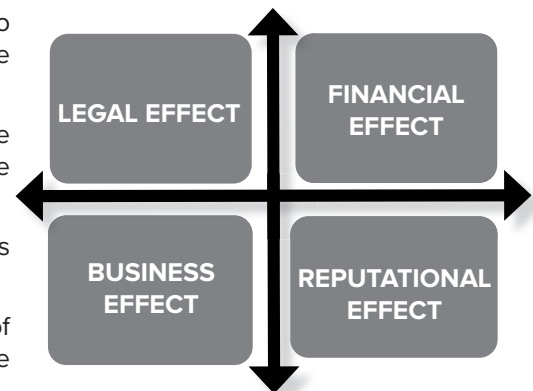
An organisation assesses risks for identification of different types of organisation risks. While identifying inherent risks it need to consider the following risks drivers which can be categorised in the following:

**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.



In the risk assessment process, the company identifies the inherent risk of each obligation as critical, high, medium or low. The outcome determines the type of risk mitigation strategy. However, the systems and procedure at the first line tracking and second line monitoring needed to effectively utilize to manage the risk. Thereafter the business assesses its managed risk levels for the identified compliance obligations.

There are two types of risk assessments that can be performed by the company, i.e.,

- High Level Risk Assessment
- Detailed Risk Assessments

In the High Level Risk Assessment, the risk identification procedures and its assessment and the detailed risk assessment results are required as inputs for high level risk assessment which are facilitated by representatives of Risk Management team. The current and anticipated critical and high compliance risks must be included in the high level risk assessment process. The outcome of the risk assessment is the high level risk assessment report.

Reports from the detailed and high level risk assessments must include key compliance risks, with existing and approved risk mitigation activities. Assessment Reports must be discussed and signed off in accordance with the risk management procedure of the company. Risk assessment techniques can be a combination of desk assessments, interviews and/or workshops; however they should be aligned with risk management standards of the company.

To ensure that risk is properly assessed and mitigated, a detailed risk assessment should be undertaken, particularly when further input is needed from support functions (i.e. outside experts) and/or to manage certain current and anticipated critical and high risk areas.

#### Illustrations:

Below mentioned companies are observing following practices for Risk Assessment (2023-24)

#### 1. Future Generali India Insurance Company Limited

All risks are tracked and monitored on a continuous basis. A Top-Down Risk Assessment is conducted annually. The assessment is a forward-looking exercise that helps identify key risks for your Company for the following year. Key risks identified are assessed for their impact and probability and for the preparedness of the Company to manage these risks.

*(Source: Annual Report 2023-24)*

#### 2. Bharti Airtel Limited

The Company has in place a separate Risk Management Committee to, inter-alia, formulate, review and oversee the implementation of Risk Management Framework, determination of Company's risk appetite and regularly monitor the risk assessments and risk mitigation strategies (risk identification, risk quantification and risk evaluation) etc.

*(Source: Annual Report 2023-24)*

#### 3. Hindustan Unilever Limited

Business Risk Assessment procedures have been set in place for self-assessment of business risks, operating controls and compliance with Corporate Policies. The objective of risk assessment framework is to provide to the operating management, a proactive and value adding review process, which enables them to maintain a risk profile associated with transactional controls at an acceptable level. This is an ongoing process to track the evolution of the risks and delivery of mitigating action plans.

*(Source: Annual Report 2023-24)*

#### 4. Wipro Limited

The Company has implemented an Enterprise Risk Management ("ERM") framework based on globally recognized standards and industry best practices. The ERM framework is administered by the Audit, Risk and Compliance Committee. The ERM framework enables business by promoting a risk resilient culture, proactive management of 'Emerging' risks and is supported by technology.

*(Source: Annual Report 2023-24)*

#### 5. Reliance Industries Limited

Enterprise Risk Management (ERM) at Reliance

The Company's Risk Management Framework follows the below mentioned risk assessment process and thus enables the management to:

- Identify specific risks and assess overall potential exposure
- Decide how best to deal with those risks to manage overall exposure
- Allocate resources and actively manage those risks
- Obtain assurance over effectiveness of the management of risks and reporting.

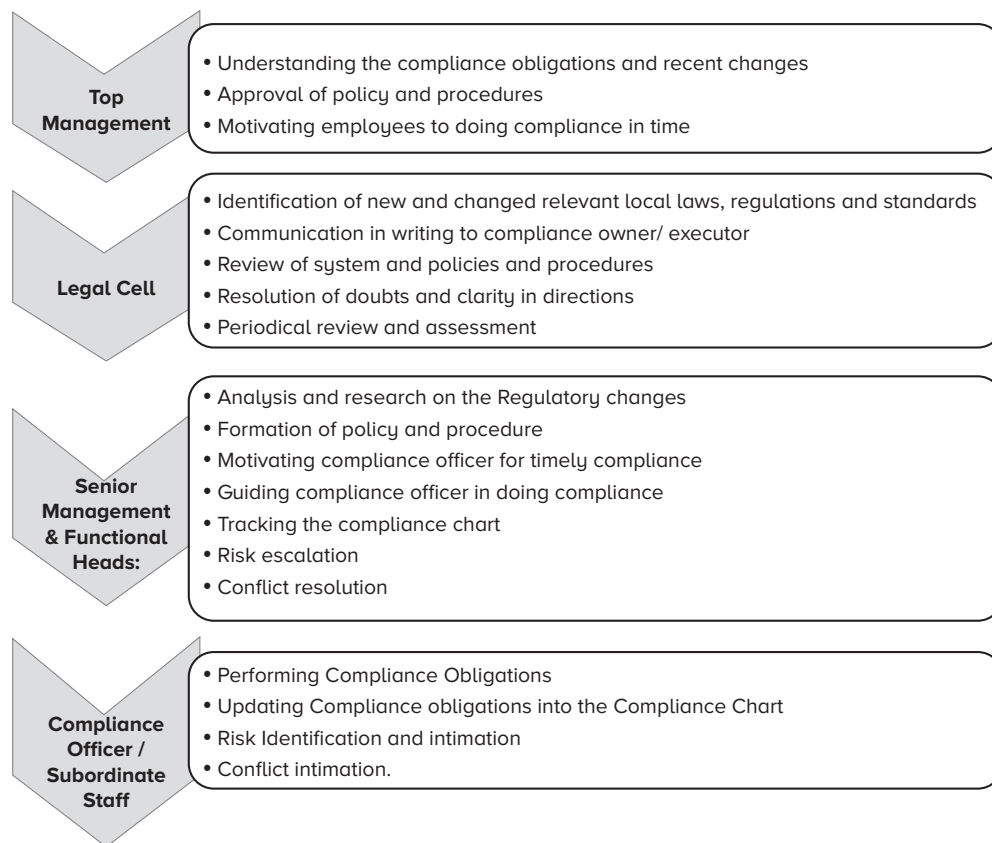
*(Source: Annual Report 2023-24)*

## COMPLIANCE MONITORING AND RESPONSIBILITY CENTRE MAPPING /ALLOCATION

Compliance monitoring is the most essential mechanism of corporate compliance framework because it enables companies to recognize whether their compliance framework has been implemented in practice and whether it is practicable, responsive, and suitable for the characteristics of the company.

Further, Compliance monitoring, as the most effective tool of compliance framework, concisely means the “oversight” of the company’s operations and activities, both in light of local and binding cross-border regulations and the company’s local and global policies, procedures, and ethical rules. However, a one-off regulatory compliance check will not be enough as companies typically operate within a dynamic business environment. Business activities and services may rapidly change; for instance, companies may make mergers and acquisitions, enter into new business with state-owned entities, and/or cooperate with new private business partners. For this reason, the effectiveness of risk assessment and monitoring should be reviewed periodically to ensure compliance framework remain relevant in changing business conditions.

The next important aspect of designing compliance framework is the compliance ownership. The ownership of the various compliances has to be described function wise and individual wise. Clear description of primary and secondary ownership is also very important. While the primary owner is mainly responsible for the compliance, secondary owner (usually the supervisor of the primary owner) has to supervise the compliance. Ex: Secretarial Officer /Asst. Company Secretary may be primarily responsible and Group Company Secretary’s responsibility is secondary. The role of the various level of management for compliance ownership is illustrated as under:



The management of the company should develop and update the chart by clearly identifying the principle business activities and relevant processes affected by the obligation(s) and should identify the individuals having accountability for executing the activities outlined in the chart including those individuals with managerial responsibility. The management should formally approves the compliance chart and they should notify any changes in the policies, products, activities, strategy or governance structures of the company immediately.

## ESCLATION AND COMPLIANCE REPORTING

Compliance reporting allows Management and the Compliance function to assess whether Compliance Risks exceed the risk appetite of Company. Compliance Reporting also allows for communication and discussion of potential Compliance Risks. Management and the Compliance officer is responsible for gathering information,

and the analysing and communicating the results so that informed, timely decisions can be made. At least quarterly, reports should be discussed at the risk management committee meeting.

Broadly, there can be two primary types of reporting: **Cyclical Reporting and Incident 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.

**Material compliance incidents are defined as events that have effect on the company's integrity, damaging company reputation, legal or regulatory sanctions, or financial loss, as a result of a failure (or perceived failure) to comply with applicable compliance related laws, regulations and standards.**

#### CASE STUDY

ABC Limited, A BSE limited company has made following cyclical reporting arrangements for compliance activities which includes:

##### **Audit & Risk Management Committee:**

Quarterly reports on the performance of the compliance programme will be submitted to the Audit and Risk Management Committee. These reports will include a high-level summary of activities by all functions undertaking significant compliance related activities.

Separate reports will also be submitted to the Audit and Risk Committee for major noncompliance incidents or emerging compliance issues.

##### **Annual Certifications:**

At the end of each financial year Responsible Officers will be required to provide an assurance that to the best of their knowledge, the ABC Limited has complied with the obligations relevant to their area of responsibility.

##### **Assurance Maps:**

To facilitate quarterly and annual reporting requirements an assurance mapping approach that is consistent with the model.

##### **Regulatory Reporting:**

The regulatory reporting arrangements for compliance activities shall be accounted. The reporting of significant compliance issues which are required by law must be undertaken in accordance with the procedures.

#### CREATION OF COMPLIANCE REPORTING SYSTEM

Compliances or non-compliances should be communicated to the concerned person. Reporting of non-compliances ensures that appropriate corrective action is taken by the responsible person to reduce the compliance risk. For example, Automated escalation emails in case of non-compliance, Pop-ups for the Compliance Due dates etc. Although, the actual process of compliance reporting under the various laws may vary from company to company and is dependent on various factors such as the number of units and scale of operations, a brief process of the Compliance reporting is as follows:

- A. Reporting by the functional heads for which they have the compliance ownership. For instance, the Chief Financial Officer (CFO) will report on the various finance, accounting and taxation laws, the head of the personnel department could report the compliance of labour and industrial laws.
- B. 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.
- C. 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.
- D. Each of the functional heads will forward their respective compliance reports to the company secretary/ managing director.
- E. The company secretary would then brief the managing director. Upon receipt of suitable inputs from the company secretary, the Managing Director would consolidate and present, under his signature, a comprehensive compliance report to the Board for its information, advice and noting.
- F. The whole process of compliance reporting is contingent on the creation and implementation of comprehensive legal Management Information System (MIS).

#### EFFECTIVE COMPLIANCE REPORTING REQUIREMENTS

- Language must be cleared
- Language to be concise
- Must contain an executive summary
- Listing actions to be taken
- Timelines for improving non compliance
- Necessary actions to be taken by the management of the organization

Periodical compliance MIS is a type of reporting that occurs at a pre decided period, at least quarterly, if not monthly. This report contain status of the various compliances need to be done by the company and any gap in compliance and other incidents which are needed to be reported to Board, Senior Management of the company.

### COMPLIANCE RISK - REVIEW AND UPDATION

Compliance risk monitoring makes it possible for the business to test if risk mitigation activities are working properly and to identify new or changed risks. The plan for monitoring must be documented and reviewed and, if necessary, updated annually and more frequently based on other framework activities and monitoring results.

The purpose of the review is to determine:

if the plan is still necessary and accurate

if the plan should be combined with another plan or if it should be rescinded

if the plan is up to date with current laws and regulations

if changes are required to improve the effectiveness or clarity of the plan

**Contents of compliance risk monitoring plan :**

- 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).

The plan for monitoring must include:

1. Concise statements that capture the relevant internal and external compliance obligations and the risks arising from those obligations;
2. The business processes to which the compliance obligations are linked or on which they have an impact;
3. Specific Compliance Risk mitigation activities for managing the compliance obligations;
4. The first line tracking (ongoing tracking as part of the normal course of business activities), second line monitoring (health check performed by the Compliance Function) and third line assurance (independent review performed by internal audit) for efficiency and / or effectiveness of first and second line activities);
5. Brief description of how tracking and monitoring activities are performed;
6. Frequency of tracking and monitoring activities;
7. Recipient(s) of the tracking and monitoring reports.

**The following methodology may be adopted for accessing the compliance mechanism of the company:**



**Risk/Cultural Assessment:** Through employee surveys, interviews, and document reviews, a company’s culture of ethics and compliance at all levels of the organization is validated. The basis of this assessment is to identify gaps between company’s current practices and the regulatory requirements.

**Test Yourself**

**Question:** What is purpose of cultural assessment?

**Options:** (A) To identify gaps between current practices and regulatory requirements (B) To understand the culture of particular place (C) To find out, how many CSR activities are done by an organization (D) None of the above

**Answer:** (A)

**Program Design/Update:** In this approach the review of the guideline documents that outline the reporting structure, communications methods, and other key components of the code of ethics and compliance program is accessed. This encompasses review of all aspects of the compliance program, from grass root policies to structuring board committees that oversee the program.

**Policies and Procedures:** In this approach of compliance assessment, the company should review, develop or enhance the detailed policies of the program, including issues of financial reporting, anti-trust, conflicts of interest, gifts and entertainment, records accuracy and retention, employment, the environment, global business, fraud, political activities, securities, and sexual harassment etc.

**Communication, Training, and Implementation:** In this stage of compliance assessment, the Company focuses on the articulation, communication and reinforcement of the various policies and procedure of the company along with the philosophy behind such policies. Further training program on such policies help in the adoption of such policies in day-to-day realities and helps inculcation the same incorporate it into the attitudes and behaviors of the employees of the company.

**Ongoing self-Assessment, Monitoring, and Reporting:** The true test of a company's ethics and compliance program comes over time. How does one know in one year or five years that both the intent and letter of the law are still being observed throughout organization? How does the program and the organization adapt to changing legislation and business conditions? As the organization evolves for example, through mergers and acquisitions will the program remain relevant? The cultural assessment, mechanisms, and processes put in place including employee surveys, internal controls, and monitoring and auditing programs, help organisations achieve sustained success.

## TRAINING AND IMPLEMENTATION

In compliance framework, it is most important to create awareness of the various compliances requirements amongst the individuals responsible for such compliances. Many a times compliances are handled by persons who are not fully aware of the requirements of the law and hence creating appropriate awareness amongst the owners is very important. This could be done in the form of meetings/trainings/ communications explaining the various compliances or some manual containing the details of compliances.

A strong Compliance training and education programme reinforces the company compliance culture. It builds awareness and understanding of compliance standards, procedures, guidelines and issues. Specifically, it should build awareness and understanding of:

- Company Framework, including the four conduct-related integrity risk areas;
- Roles and responsibilities outlined in the policies and framework;
- Critical and high compliance obligations identified in the Compliance Chart;
- The process for addressing compliance issues and reporting concerns; and
- Consequences of failing to meet compliance obligations.

**FIVE ESSENTIAL THINGS TO CREATE COMPLIANCE TRAINING PROGRAM:**

An annual plan for Compliance Risk related training and education must be developed and updated, as necessary, and should indicate the target audience and training delivery method. Compliance Risk related training program should, to the extent possible, be integrated into the training plans.

**Plans for Compliance Training and Education Program may include:**

1. Concise statements that capture the relevant internal and external compliance obligations and the risks arising from those obligations;
2. The business processes to which the compliance obligations are linked or on which they have an impact;
3. Brief description of the training or education activity;
4. Target audience (refresher for existing Employees, induction for new Employees, or Adhoc when required);
5. Frequency of training or education activity.

**Test Yourself**

**Question:** Training and Implementation can be done in the form of ..... explaining various compliances or some manual containing the details of compliances.

**Options:** (A) Meetings (B) Trainings (C) Communications (D) All of the above

**Answer: (D)**

**COMPLIANCE AUDIT**

Compliance audits may be planned, performed and reported separately to the Board, senior management or Regulators. The compliance audit is completely different from the audit of financial statements and from performance audits. The compliance audits may be conducted separately on a regular basis, as distinct and clearly-defined audits each related to a specific subject matter.

As per Comptroller and Auditor General of India (CAG) Auditing Standards, the Compliance audit is the independent assessment of whether a given subject matter is in compliance with applicable authorities identified as criteria. Compliance audits are carried out by assessing whether activities, financial transactions and information comply in all material respects, with the authorities who govern the audited entity. Compliance auditing may be concerned with:

- Regulatory - 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.

### Objectives of Compliance Audit

- **Contracting and Procurement**
- To verify whether procurement was carried out as per extant rules and in accordance with delegated financial powers.
- To verify whether financial propriety was ensured during the stages of tendering, evaluation and award of contract.
- **In case of Plant efficiency:**
  - To verify whether the usage of power, fuel are as per approved norms.
  - To verify whether plant shutdowns are as per approved norms.
  - To verify whether the production is as per the prescribed scale.
  - To verify whether the installed capacity of the plant is designed as per regulatory approvals.
  - To verify whether the operation of plant complies with environmental norms
- **Corporate social responsibility**
  - To verify whether corporate social responsibility framework is as per regulatory approvals.
  - To verify whether activities of corporate social responsibility are as per corporate policy.
  - To verify whether the corporate policy is in consonance with relevant regulations and DPE guidelines.

(Source: <https://cag.gov.in/uploads/guidelines/Compliance-Guidelines-approved-final-preface-05de4efef9159d0-85033036.pdf>)

### BENEFITS OF CORPORATE COMPLIANCE MANAGEMENT

Compliance management program can produce positive results at several levels:

- Better compliance of the law;
- Real time status of legal/statutory compliances;
- Improved operations and higher productivity;
- Go to the extra mile and lays the foundation for the control environment;
- Real time status on the progress of pending litigation before the judicial/quasi-judicial authority;
- Likely to avoid stiff personal penalties, both monetary and imprisonment;
- Companies that embed positive ethics and effective compliance management program deep within their culture often enjoy healthy returns through employees and customers 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 employee engagement and retained talent;
- 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 and regulators;
- Recognition as Good corporate citizen.

Clearly, the benefits of implementing and maintaining an effective compliance program far outweigh its costs. Not only does the compliance management protect investor's wealth but also helps the business in running successfully with any potential risk being addressed in a timely and accurate manner.

### SECRETARIAL AUDIT AND COMPLIANCE MANAGEMENT SYSTEM

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

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

Based on the above the Secretarial Auditor can constitute a broad idea about the desired system and process to be adopted by a company. For example, a multi product / multi operation company is supposed to comply all the applicable corporate laws in addition to regulatory framework applicable at products/ operations.

Now-a-days most of the large companies have adopted Enterprise Resource Planning (ERP) Systems to cater to their complex operations. In many a cases, compliance system becomes a part of these modules.

Auditing in such systems requires the Auditor to enter and to have access within the system. While taking up the audit assignment, the Auditor needs to ensure that access would be given so that assessment of proper system and process of compliance is made.

Auditing of compliance system and process is not a fault finding exercise, rather a device to scale up compliance mechanism of a company commensurate to its size and operations. It is desired that the Secretarial Auditor as an expert in corporate compliance would advise the companies to build up strong corporate compliance system in case the system appears to be insufficient during the audit process.

### ROLE OF COMPANY SECRETARIES IN COMPLIANCE MANAGEMENT

Compliance Management can add substantial business value only if compliance is done with due diligence. A company secretary is the 'Compliance Manager' of the company. It is he, who ensures that the company is in compliance with all regulatory provisions. Corporate disclosures, which play a vital role in enhancing corporate valuation, is the forte of a company secretary. These disclosures can be classified into statutory disclosures, non-statutory disclosures, specific disclosures and continuous disclosures. Companies Act, 2013 and SEBI (Listing Obligations and Disclosure Requirements) Regulation, 2015 spells out elaborately on

various aspects of disclosures which are to be made by the company such as contingent liabilities, related party transactions, proceeds from initial public offerings, remuneration of directors and various details giving the threats, risks and opportunities under management discussion and analysis in the corporate governance report which is published in the annual accounts duly certified by the professional like company secretaries. A company secretary has to ensure that these disclosures are made to shareholders and other stakeholders in true letter and spirit.

The advisory services of the company secretaries impacts to all components and activities of the compliance framework, as the business receives one point specialized support and advice to help manage its compliance risks more effectively. The company secretary play a proactive advisory role as he advises management, Boards and committees, the compliance executor, and the employees. The company secretary provide advice on compliance risk, responsibilities, obligations, concerns and other compliance issues that are suitable for the business' practices and operational constraints of the company.

In nutshell, the company secretary is the professional who guides the Board and the company in all matters, renders advice in terms of compliance and ensures that the Board procedures are duly followed, best global practices are brought in and the organisation is taken forward towards good corporate citizenship.

### DIRECTORS RESPONSIBILITY STATEMENT

Section 134(5) of the Companies Act, 2013 casts responsibility on each and every director to apply their judgment in preparation of annual accounts according to applicable accounting standards and accounting policies, preparing accounting records on going concern basis. The directors are responsible to devise a proper system to ensure compliance with all applicable laws.

The Directors' Responsibility Statement is required under Section 134(5) of the Act to state as under:

- i. In preparing the annual accounts, the applicable accounting standards and proper explanations relating to material departures were followed.
- ii. The directors had selected such accounting policies and applied them consistently and made judgments and estimates that were reasonable and prudent to give a true and fair view of the state of affairs of the Company at the end of the financial year and of the profit and loss of the Company for that period.
- iii. The directors had taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the Act's provisions for safeguarding the Company's assets and for preventing and detecting fraud and other irregularities.
- iv. The directors had prepared the annual accounts on a going concern basis.
- v. In the case of a listed company, the directors had laid down internal financial controls to be followed by the Company and that such internal financial controls are adequate and operating effectively.
- vi. The directors had devised a proper system to ensure compliance with all applicable laws and that such systems are adequate and operating effectively.

#### CASE LAW

Director carrying competing business breaches fiduciary duty, imposes restriction, interprets Section 166 of the Companies Act, 2013

In the matter of *Rajeev Saumitra Vs Neetu Singh (I.A. NO. 17545 OF 2015. CS (OS) NO. 2528 OF 2015 JANUARY 27, 2016*, the honourable Court held that director has breached fiduciary duty u/s 166 of Companies Act, 2013 by initiating competing business as the director was involved in the situation in which there was a direct interest that conflicted with company's interest, in order to gain advantage by director and its relatives. In case a Director violates the duties prescribed in Section 166, the cause of action accrues in favour of Company.

**CERTAIN IMPORTANT COMPLIANCE REQUIREMENTS UNDER COMPANIES ACT, 2013****1. Disclosures by a Director of his interest: Form MBP-1**

Every director shall at the first meeting of the Board in which he participates as a director and thereafter at the first meeting in every financial year or whenever there is any change in the disclosures already made, then at the first Board meeting held after such change, should disclose his concern or interest in any entity which shall include the shareholding.

**2. Disqualification of Directors: Form DIR-8**

No person who is or has been a director of a company which:

- (a) has not filed financial statements/ annual returns for any continuous period of three financial years; or
- (b) has failed to repay the deposits accepted by it or pay interest thereon or to redeem any debentures on the due date or pay interest due thereon or pay any dividend declared and such failure to pay or redeem continues for one year or more,

shall be eligible to be re-appointed as a director of that company or appointed in other company for a period of five years from the date on which the said company fails to do so.

Every director shall inform to the company concerned about his disqualification under sub-section (2) of section 164, if any, before he is appointed or re- appointed.

However, where a person is appointed as a director of a company which is in default of clause (a) or clause (b) of section 164(2) , he shall not incur the disqualification for a period of six months from the date of his appointment.

**3. Annual Return: Form MGT-7**

Every Company shall file its Annual Return within 60 days of holding the AGM or where no AGM is held in any year within 60 days from the date on which the AGM should have been held together with the statement specifying the reasons for not holding the AGM with such fees or additional fees as may be prescribed.

Annual Return of every Private Company shall be signed by a director and the company secretary, or where there is no company secretary, by a company secretary in practice.

**4. Filing Financial Statements: Form AOC-4 & AOC-4 CFS**

Company is required to file its financial statements, including consolidated financial statements, if any, along with all the documents required to be or attached to such financial statements, duly adopted at the AGM of the company, shall be filed with the Registrar within 30 days of the date of AGM in such manner, with such fees or additional fees as may be prescribed. In case financial statements are not adopted in the AGM or adjourned AGM, such unadopted financial statements along with the required documents shall be filed with the ROC within 30 days of the date of AGM and the Registrar shall take them in his records as provisional till the financial statements are filed with him after their adoption in the adjourned annual general meeting for that purpose: with such fees or such additional fees.

If annual general meeting is not held for any year, the financial statements along with the documents required to be attached under section 137(1) duly signed along with the statement of facts and reasons for not holding the annual general meeting shall be with the Registrar within 30 days of the last date before which the annual general meeting should have been held in such manner, with such fees or additional fees as may be prescribed.

**Illustration:**

*The Company ABC Pvt. Ltd. has not filed annual returns for the year 2019-2020, 2020-2021 & 2021-2022 yet. What can be consequences of such non filing?*

*If Company does not file annual returns for any continuous period of three financial years; then directors of said company shall become disqualified for continuous period of 5 years, and they would not be eligible to be appointed, re-appointed as directors in other company.*

**5. Certification of Return: Form MGT -8**

The annual return filed by a listed company or a company having paid up share capital of Rs. 10 Crores or more or turnover of Rs. 50 crores or more shall be certified by a Company Secretary in Practice.

**6. Circulation of Financial Statement & other relevant Documents**

Company shall send to all the members of the Company, all trustees for the debenture holders and to all persons being the persons so entitled, copy of the approved financial statements (including consolidated financial statements, if any, auditor's report and every other document required by law to be annexed/ attached to the financial statements) at least 21 clear days before the AGM.

**7. Notice of AGM**

Every Notice of Annual General Meeting shall be prepared as per Section 101 of Companies Act, 2013 and Secretarial Standard - 2. In case of private company - Section 101 shall apply, unless otherwise specified in such section or the articles of the company provide otherwise. - Notification No. G.S.R.464 (E) dated 5th June, 2015.

**8. Board Meetings**

Every Company shall hold a minimum of 4 meetings of its Board of Directors every year in such a manner that maximum gap between two meetings should not exceed 120 days. In case of Specified IFSC Private Company—The Company shall hold the first meeting of the Board of Directors within sixty days of its incorporation and thereafter atleast one meeting of the Board of Directors in each half of a calendar year.

If a company is incorporated on 15th June, the first Meeting should be held within thirty days i.e. latest by 14th July. if the meeting is held say on 10th July, then the next Meeting should be held within 120 days from 10th July.

*A One Person Company, small company and dormant company shall be deemed to have complied with the provisions of this section if at least one meeting of the Board of Directors has been conducted in each half of a calendar year and the gap between the two meetings is not less than ninety days*

**9. Notice of Board Meeting**

Board meeting shall be called by giving not less than 7 days notice in writing to every director at his address registered with the company and such notice shall be sent by hand delivery or by post or by electronic means. However, meeting may be called at shorter notice to transact urgent business subject to the presence of one independent director, if any and in his absence decision shall be circulated to all directors and shall be final on ratification by atleast one independent director, if any.

**10. Appointment of Auditor: Form ADT-1**

Auditor shall be appointed for 5 years in the AGM. Company shall inform the auditor concerned of its appointment and also file a notice of such appointment with the Registrar within 15 days of the meeting in which the auditor is appointed in E-form ADT-1.

In case of Specified IFSC Private Company- notice of auditor's appointment shall be filed with the Registrar within 30 days of the meeting in which the auditor is appointed.

[Vide Notification No. G.S.R. 9 (E) Dated 4th January, 2017].

**11. Appointment of Company Secretary**

Every listed company and every other public company having paid up share capital of ten crore rupees or more shall have whole time key managerial personnel.

Private Company having paid up share capital of Rs. 10 crores or more is required to appoint a whole time Company Secretary (Vide notification dated January 03, 2020)

**Illustration:**

What if the company secretary is not appointed in ABC Pvt. Ltd., where required under Companies Act, 2013?

**Solution:** Such company shall be liable to a penalty of five lakh rupees and every director and key managerial personnel of the company who is in default shall be liable to a penalty of fifty thousand rupees and where the default is a continuing one, with a further penalty of one thousand rupees for each day after the first during which such default continues but not exceeding five lakh rupees.

**12. Register of members**

Company shall keep & maintain the following mandatory Registers viz:

1. Register of Members residing in or outside India,
2. Register of debenture-holders, and
3. Register of any other security holders

**Illustration:** ABC Pvt. Ltd. has not maintained register of members. What can be penalty under Companies Act, 2013?

**Solution:** If a company does not maintain a register of members or debenture-holders or other security holders or fails to maintain them in accordance with the provisions of section 89 (1) or 88 (2), the company shall be liable to a penalty of three lakh rupees and every officer of the company who is in default shall be liable to a penalty of fifty thousand rupees.

ABC Pvt. Ltd. Shall be liable to a penalty of three lakh rupees and directors liable to a penalty of ₹50000/-.

**CASE LAW**

In this matter of **Economy Hotels India Services (Appellant) Private Limited Vs. Registrar of Companies & Anr.(Respondent) (NCLAT) Company Appeal (AT) No. 97 of 2020**, the Appellant Company had filed a petition under Section 66 of the Companies Act praying for confirming the reduction of share capital against the NCLT order for rejection of application for reduction of share capital because in the extract of the minutes submitted to NCLT, the case is, it was written that the 'unanimous ordinary resolution' required for reduction has been obtained. The case is it was a mere typographical error in the minutes characterising the 'special resolution' as 'unanimous ordinary resolution' and the Appellant had filed the special resolution with ROC and fulfilled all the statutory requirements prescribed in the Companies Act, 2013.

The honourable NCLAT observed that 'Reduction of Capital' under Section 66 of the Companies Act, 2013 is a 'Domestic Affair' of a particular Company in which, ordinarily, a Tribunal will not interfere because of the reason that it is a 'majority decision' which prevails. As the Appellant has admitted its typographical error in the extract of the Minutes of the Meeting characterizing the 'special resolution' as 'unanimous ordinary resolution' and also taking into consideration of the fact that the Appellant had filed the special resolution with ROC, which satisfies the requirement of Section 66 of the Companies Act, 2013. NCLAT allowed the Appeal, thereby confirming the reduction of share capital of the Appellant Company.

**The Registrar Of Companies, West Bengal (Appellant) V. Karan Kishore Samtani (Respondent)(NCLAT) Company Appeal (AT) No. 13 of 2019**, in this matter the Respondent was the Director, for more than 20 Companies till 31.03.2015. On 27.01.2016 the Registrar of Companies, West Bengal sent show cause notice on the ground that he was the Director of more than 20.Companies at once. The Respondent admitted the guilty and sent representation to the Registrar with a request to compound the offence under Section.441(1) of the Companies Act, 2013. After hearing the parties the NCLT Kolkata Bench (Tribunal) allowed the compounding application subject to payment of compounding fees of Rs. 50,000/-.

Being aggrieved with this order ROC has filed this Appeal saying that the minimum fine prescribed for the offence is more than 50,000,.Hence the compounding fees of 50,000 is not appropriate. The issue for consideration is, whether Tribunal can impose the compounding fees, less than minimum fine prescribed for the offence under the Act.

Provision Involved: Section 165(6) of Companies Act, 2013 states - If a person accepts an appointment as a director in contravention of sub-section (1), he shall be punishable with fine which shall not be less than five thousand rupees but which may extend to twenty-five thousand rupees for every day after the first during which the contravention continues.

The NCLAT held that the NCLT, Kolkata Bench has failed to notice the minimum fine prescribed under Section 165 of the Companies Act, 2013 which was applicable at relevant time. Accordingly, NCLAT imposed minimum fine at the rate of 5000 rupees for every day for the period 01.04.2015 to 21.02.2016 i.e. 272 days, which came to Rs. 13,60,000. Further, the court held that the compounding fees has to be more than or equal to the minimum fine prescribed under the Act.

### REGISTERS TO BE MAINTAINED UNDER COMPANIES ACT 2013

S.NO.	FORM NO. /FORMATS UNDER COMPANIES ACT 2013	PARTICULARS
1.	PAS-5	Maintenance of complete record of Private Placement Offers
2.	SH-2	Register of Renewed and Duplicate Share Certificates
3.	SH-3	Register of Sweat Equity Shares
4.	SH-6	Register of Employees Stock Options
5.	SH-10	Register of Shares or other Securities bought back
6.	CHG- 7	Register of Charges
7.	MGT- 1	Foreign Register of Members
8.	MGT- 2	Foreign Register of Debenture holders/other security holders with index of names
9.	BEN-3	Register of significant beneficial owners
10.	No format specified	Attendance Register – Board & Committee Meetings
11.	No format specified	Minutes (General Meeting, Class of Shareholders, Creditors or Resolution passed by Postal Ballot)
12.	Schedule III	Books of Account (together with the vouchers to any entry in such books of account)
13.	MBP-1	Notice of interest by Director
14.	MBP-2	Register of Loans, Guarantee, Security and in respect of Acquisition made by the company
15.	MBP-3	Register of Investment not held in its own name by the company
16.	MBP-4	Register of Contracts or arrangements with related party and with Bodies corporate etc. in which directors are interested

### COMPLIANCE MANAGEMENT TOOL

Compliance Management tool is generally required in large organisations where many risks are involved. These organisations required to adhere to a wide variety of laws and regulations applicable. Now a day's not only big companies but also smaller companies are required to comply with applicable laws and regulations

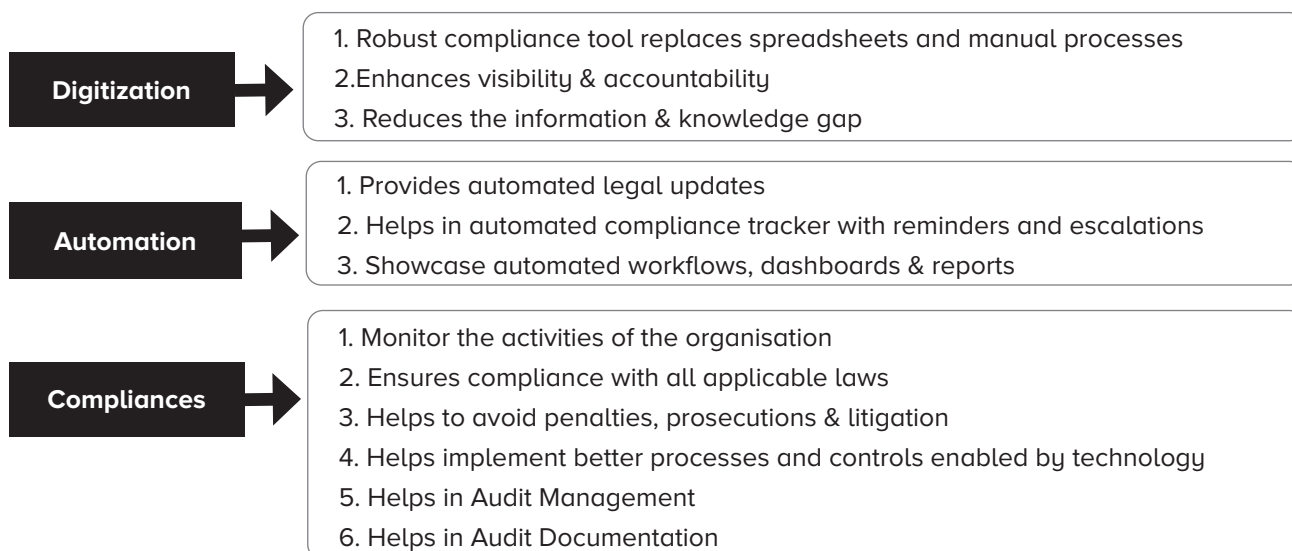
to them. Compliance Management Tool handles and controls their business processes and enables them in scaling their operations without increasing their risk of non-compliance. A manual approach to tracking and monitoring compliance activities drives up costs and is more prone to error.

Compliance Management tools are software products that automate or facilitate processes and procedures that businesses must have in place to be compliant with industry, legal, security and regulatory requirements. Compliance Management tool is a software which facilitates your compliance management by bundling all important workflows on a digital platform.

**Illustration:**

*NSE has introduced NEAPS (NSE Electronic Application Processing System) which is a web based application facilitates online filing of SEBI Disclosures, Clarifications and Compliance Filings, Corporate Governance Report, the Shareholding Pattern by companies, Results and other disclosures.*

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



Cloud computing is becoming increasingly popular for delivering IT services, thanks to its scalability, ease of deployment, and lower maintenance costs. However, it also introduces new cyber security risks and challenges that businesses need to be aware of.

To help regulated entities (REs) navigate these risks, SEBI vide circular no. SEBI/HO/ITD/ITD\_VAPT/P/ CIR/2023/033, dated March 6, 2023 has introduced a cloud framework that sets baseline standards for security and regulatory compliances. This framework is a crucial addition to SEBI's existing guidelines on cloud computing and is designed to help regulated entities (REs) implement secure and compliant cloud adoption practices.

By following the guidelines outlined in the framework, REs can establish a robust risk management approach for cloud adoption, which includes assessing risks, implementing appropriate controls, monitoring compliance, and ensuring regulatory compliance.

**CASE STUDIES****1. Compliance Management at Bharti Airtel Limited**

The company has in place an online compliance management system which is driven by a robust standard operating procedure providing guidance on broad categories of applicable laws and detailed process for monitoring compliances. The system enables proactive automated alerts to compliance owners and compliance approvers, for each compliance requirement at defined frequencies. The compliance owners certify the compliance status which is reviewed by compliance approvers and a consolidated compliance dashboard is presented to the senior management and Managing Director & CEO. A certificate of compliance with applicable laws alongwith the corrective measures/ mitigation plan, if any, is placed before the Audit Committee and Board of Directors on a quarterly basis. Additionally, the Company has centralised automated tool in place viz. Notice Management System for regular management, tracking and closure of the statutory/ regulatory notices received by the Company at all locations.

*Source: Annual Report 2023-24*

**2. Compliance Management at BCL India**

Compliance Management Services is a set of complex legal acquiescence required to be adhered to by organizations. The legal obligations differ with Central or State specific laws depending upon the industry, locations and jurisdictions and they are updated from time to time. Organizations irrespective of their size must adhere to statutory laws and regulations to keep the businesses out of any legal trouble and avoid penalties. Keeping track of changing government norms and regulations is not always easy and is a challenge for most companies.

The experts at BCL India stay updated with recent legislation and provide end-to-end proficient service regarding registrations, renewals, filing, auditing, reporting, and collation of documents.

*(Source: <https://bclindia.in/>)*

**3. Compliance Management at ORACLE****Governance Guidelines and Committee Charters**

Oracle's Board of Directors has adopted Corporate Governance Guidelines and committee charters to help ensure it has the necessary authority and procedures in place to oversee the work of management and to exercise independence in evaluating Oracle's business operations. These guidelines allow the Board to align the interests of directors and management with those of Oracle's shareholders.

*Source: <https://www.oracle.com/in/corporate/corporate-governance/>*

**KINDS OF COMPLIANCE MANAGEMENT TOOL**

All-Purpose Compliance Management Platforms

Industry-Specific Compliance Management Tools

GRC Software

### I 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

### II 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.

### III 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

#### **Illustrations:**

*Below mentioned companies are have adopted compliance management tools (2022):*

#### **1. Bharti Airtel Limited**

*The company has implemented in-house rule based data analytics tool and oracle Governance Risk and Compliance (GRC).*

#### **2. Reliance BP Mobility Limited**

*Governance, Risk, Compliance and Audit (GRCA 2.0) Platform which is an in-house developed platform on open source technology, has enabled real-time actionable dashboards and real-time monitoring of risks and controls.*

*The company has integrated Reliance Compliance Managements System (iRCMS), an online compliance monitoring system which maps and tracks compliances applicable to the company and its units state wise and legislation wise, ensuring "Zero non-compliance" and "Zero Pendency".*

## **BENEFITS OF COMPLAINE MANAGEMETN TOOLS**

Compliance Management Tools help to work more efficiently so that it can work upon more compliance initiatives with following:

- **Reduction in Manual Work:** The management of compliances and requirement in spreadsheet is time consuming and tedious work. Compliance management tools helps in the growth of the business and highlights where the improvements are required. It helps in easy task management and documenting the corrective steps.
- **Streamlining implementation:** With streamlining the implementation of various relevant frameworks, it reduces the compliance efforts. It facilitates the compliance audits and corrective steps.

- **Simplification in Monitoring and reporting:** It auto populates the compliances dates and give alerts pertaining to compliance issues. It helps the responsible persons to ask their subordinates to update the metrics in compliance with regulations and laws.
- **Risk in human errors reduced:** It helps in improving the compliance programs performance and it reduces the risk in human errors. It generates the reports quickly with detection of compliance failures.
- **Builds Organisation Reputation:** The more organisation can maintain compliance, the better its reputation is going to be. This includes both organisational reputation with its customer base and with its employees. The Customers only want to work with trustworthy organizations, which is why a record of compliance will boost its reputation.
- **Creates a Roadmap for Business:** One of the biggest benefits of a compliance management tool is that it shows you where to go. Compliance management tool maps out organisations regulatory requirements and tells where it need to improve. It tells everything Essentially, this “compliance calendar” helps you prioritize what needs to be fixed/resolved and when. This way, it can effectively map out your compliance activities to best drive compliance in the organization.

### CASE STUDY

#### Project Eagle: Infosys Regulatory Compliance Program

Infosys compliance program, known as Project Eagle, is intended to track, detect, prevent and remediate any violations of applicable laws and regulations and to encourage a culture of compliance to protect our organizations value and guides our interactions with governments, regulators, shareholders, employees. Infosys regularly assesses and enhances the compliance mechanisms to meet its evolving compliance needs and obligations, in collaboration with Functional Heads and external consultants. Project Eagle covers the applicable regulations emanating from, for example, Global Immigration, Health, Safety, HR & Employment Law, Tax, Anti Bribery, Export Control, Information Security, Intellectual Property etc.

Project Eagle is supported by the implementation of software tool-based systems (“Compliance Manager Tool”) to effectively track and monitor such applicable compliances under various regulations and enable compliance with the same. Infosys use the Compliance Manager Tool to implement an enterprise-wide regulatory compliance management to oversee and track regulatory compliance for applicable regulations globally. The company also have a contractual arrangement with external consultant to add more countries in the tool as and when required.

Any changes in applicable regulations are also being updated on the tool on a regular basis, in collaboration with external consultant. An inter-functional team of designated users and checkers oversee implementation and its functioning. Further, respective Functional Heads also supervise and certify continued adherence of applicable regulations as well as any risk of non-compliance with mitigation plan to the Board on a quarterly basis. Infosys culture of compliance and the compliance tracking tools are reviewed by Audit Committee of the Board and Management at regular intervals. It further undergoes independent assessment internally and with the help of external auditors.

### LESSON ROUND-UP

- Effective Corporate Compliance Framework enables the organization to achieve its objectives and goals with compliance of applicable laws and regulations, mitigating the risks associated with and making continuous improvements as required.
- Corporate compliance management involves a full process of research and analysis as well as investigation and evaluation.

- The role of company secretaries in a company is to create such framework which can translate the regulatory requirements into management actions of the company.
- The compliances requirement under various laws applicable to the company should be prepared in consultation with the respective functional heads.
- The risk monitoring plan must include critical and high compliance risks and should focus on inherent and managed risk levels.
- The material compliance incidents are the events having effect on the company's integrity, damaging company reputation, legal or regulatory sanctions, or financial loss, as a result of a failure (or perceived failure) to comply with applicable compliance related laws, regulations and standards.
- The compliance audit is the independent assessment of whether a given subject matter is in compliance with applicable laws and criteria defined by the authorities.
- The corporate compliance framework consists of three key components Compliance Chart, Compliance Advisory and Compliance Scorecard.
- The compliance chart of a company is prepared after considering the operations and the structure of the company as the compliance requirements for an organization is based on the type of organization, activity of the organization, industry, sector in which the company operates and laws which are specifically applicable to the company.
- The Compliance Chart of any company must contain the complete information on compliance dashboard, which provide a detailed compliance procedure to the compliance executor.
- The identification of compliance requirements involves the compliances under various applicable laws and regulations to the organisation. There must be as systematic process of identifying compliance obligations of the organisation and their implications for its activities and services.
- Risk assessments should be done according to the changes in the business' profile. Such changes may result because of new laws or regulations, new interpretations of existing laws or regulations, new theories of liability, a new activity of the business or changing social standards.
- Compliance monitoring, as the most effective tool of compliance framework, concisely means the "oversight" of the company's operations and activities, both in light of local and binding cross-border regulations and the company's local and global policies, procedures, and ethical rules.
- A strong Compliance training and education programme reinforces the company compliance culture. It builds awareness and understanding of compliance standards, procedures, guidelines and issues.

## GLOSSARY

**Compliance Chart :** The Chart that provides an overview of the applicable local, state, central and international laws, regulations and standards relating to a business' operations.

**Compliance Advisory :** Advice on compliances of applicable laws and effect of non-compliances.

**Compliance Scorecard :** A tool to analyse the position of an organisation in compliances.

**Compliance Dashboard :** a single enterprise-wide dashboard for all users to track and trend compliance events.

**Action Reporting :** Report of Internal Auditor/Independent agency/Regulator with the possible consequence such as disqualification/ suspension/ lock out/ license cancellation.

**Monitoring :** Determining the status of a system, a process or an activity.

**Non-compliance :** Non-fulfilment of a compliance obligation, either deliberately or inadvertently. It involves circumstances where a compliance obligation has not been met or has only partially been met.

### TEST YOURSELF

*(These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation.)*

1. You are the Company Secretary of the newly formed company Sun Moon Ltd. Your chairman has asked you to prepare a compliance chart. What are the various points you would mention in the compliance chart?
2. Define the point which should be kept in mind while developing a compliance framework.
3. “The Compliance Chart of any company must contain the complete information on compliance dashboard. Which provide a detailed compliance procedure to the compliance executor”. As a Company Secretary, list out the various content of the Compliance Chart.
4. Describe the importance of the compliance chart in the managing compliances of the company.
5. What are the various risks a company may face for non-compliance of law?
6. “A strong compliance training and education program reinforces company compliance culture”  
Comment.
7. ABC Ltd., a listed company has appointed two independent directors. As part of its familiarization policy it provides key updates and background about the company to the newly appointed directors. The directors have requested you as the Company Secretary of the company to explain the process of Corporate Compliance Reporting. Explain the process.
8. Why does compliance management crucial to any business? Elucidate.

### LIST OF FURTHER READINGS

- Companies Act, 2013 and Rules made thereunder
- SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015
- ICSI Publication on “CS: A Preferred Professional”

### OTHER REFERENCES (Including Websites / Video Links)

- [https://static.mygov.in/rest/s3fs-public/mygov\\_160975438978977151.pdf](https://static.mygov.in/rest/s3fs-public/mygov_160975438978977151.pdf)
- <https://prsindia.org/policy/report-summaries/revised-draft-non-personal-data-governance-framework>
- [https://www.business-standard.com/article/companies/ccpa-fines-cloudtail-with-rs-1-lakh-for-not-complying-with-bis-standards-122110501204\\_1.html](https://www.business-standard.com/article/companies/ccpa-fines-cloudtail-with-rs-1-lakh-for-not-complying-with-bis-standards-122110501204_1.html)
- <https://www.otago.ac.nz/risk/otago701770.pdf>
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