

# LEGAL COMPLIANCES SPECIFIC TO FOOD INDUSTRY



# Secretarial Compliances and the Companies Act, 2013

## Sec 205 :

- The functions of a CS include -
- to report to the Board about compliance with the provisions of:  
(the Companies Act and rules made hereunder; and)  
other laws applicable to the company;

## Sec 204

In case of Public Companies having paid share capital of 50 crores or turnover of 200 Crores to have Secretarial Audit

## Secretarial Audit Report Draft

I/We have conducted the **secretarial audit of the compliance of applicable statutory provisions and the adherence to good corporate practices** by.....

Based on my/our **verification** of the ..... (name of the company's) books, papers, minute books, forms and returns filed and other records maintained by the company and also the information provided by the Company, its officers, agents and authorized representatives during the conduct of secretarial audit, I/We hereby report that **in my/our opinion**, the company has, during the audit period covering the financial year ended on \_\_\_\_\_, \_\_\_\_\_ **complied with the statutory provisions listed hereunder and also that the Company has proper Board-processes and compliance-mechanism in place to the extent, in the manner and subject to the reporting made hereinafter:**

## Secretarial Audit Report

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I/we have examined the books, papers, minute books, forms and returns filed and other records maintained by the company for the financial year ended on xxxxxxxx according to the provisions of:

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(vi) Food Safety and Standards Act 2006, read with its rules 2011 and all applicable regulations

During the period under review the Company has **complied** with the provisions of the Act, Rules, Regulations, Guidelines, Standards, etc. mentioned above subject to the following observations:

I/we further report that there are **adequate systems and processes in the company commensurate with the size and operations of the company to monitor and ensure compliance with applicable laws, rules, regulations and guidelines.**

# Legal Compliances x Food Industry

Compliance with FDI Policy →

Compliance with major laws regulating food →

Compliance with other/minor sectoral food Laws →

IPC provisions on Food adulteration etc. →

ASCI code →

The law on Weights and Measures →

# Legal Compliances x Food Industry

## Major Laws

The Food Safety and Standards Act, 2006, The Food Safety and Standards Rules, 2011, and several Regulations, namely

- Food Safety and Standards (Licensing and Registration of Food Businesses) Regulations, 2011
- Food Safety and Standards (Packaging and Labelling) Regulations, 2011
- Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011
- Food Safety and Standards (Prohibition and Restrictions on Sales) Regulations, 2011
- Food Safety and Standards (Contaminants, Toxins and Residues) Regulations, 2011
- Food Safety and Standards (Laboratory and Sample Analysis) Regulations, 2011

# Legal Compliances x Food Industry

## Major Laws


- Compliance with Licensing and Registration requirements 

# Compliance as to Registration/ Licensing



# Compliance as to Registration/ Licensing

## Who requires Licensing/Registration ?

- Any person carrying on the business of manufacture, packing, sale, storage, transport of food is called Food Business Operator (FBO)
- All FBOs require either a Registration or License under the Act to carry on the business of manufacture, packing, sale, storage, transport of food 

## Registration

- All Petty Food Manufacturers are required to register themselves with the Registration Authority by submitting an application for registration in Form A under Schedule 2 with fees provided in Schedule 3.

# Compliance as to Registration/ Licensing Contd...

Central Licensing Authority grants license to following food businesses :

- ❖ All FBOs including re-labellers and re-packers falling under the requisite criteria.
- ❖ All Importers and 100% Export oriented Units.
- ❖ All FBOs manufacturing any article of food
- ❖ FBO operating in two or more States

# Conditions of License

- All Food Business operators shall ensure that the following conditions are complied with at all times during the course of its Food Business.
  1. Display a true copy of the license granted in Form C shall at all time at a prominent place in the premises.
  2. Give necessary access to licensing authorities or their authorized personnel to the premises.
  3. Inform authorities about any change or modifications in activities.
  4. Employ at least one technical person to supervise the production process
  5. Furnish periodic annual return 1st April to 31st March, with in 31st May of each year.

## Conditions of License Cont...

6. Ensure that no product other than the product indicated in the license /registration is produced in the unit.
7. Maintain factory's sanitary and hygienic standards and workers hygiene as specified in the schedule-4 according to the category of food business.
8. Maintain daily records of production, raw materials utilization and sales separately.
9. Ensure that the source and standards of raw material used are of optimum quality.
10. Food business operator shall not manufacture , store or expose for sale or permit the sale of any article of food in any premises not effectively separated to the satisfaction of the licensing authority from any privy, urine, sullage ,drain or place of storage of foul and waste matter
11. Ensure clean-in-place system (whatever necessary) for regular cleaning of machine & equipment.

## Conditions of License Cont...

12. Ensure testing of relevant chemical and/or microbiological contaminants in food products in accordance with these regulation as frequency as required on the basis of historical data and risk assessment to ensure production and delivery of safe food through own or NABL accredited /FSSAI recognized labs atleast once in six month.
13. Ensure that as much as possible the required temperature shall be maintained throughout the supply chain from the place of procurement or sourcing till it reaches the end consumer including chilling, transportation, storage etc.
14. The manufacturer/ importer/ distributor shall buy and sell food products only from, or to, licensed/ registered vendors and maintain record thereof.

# Sanitary & Hygiene Requirements

- Premises to be clean, adequately lighted, ventilated.
- Floor, walls, ceiling to be in sound condition
- Floor and skirted walls to be washed daily with disinfectant
- Lay-out of the premises should be such that there is no cross-contamination
- Floor, walls to be made of impervious, non-absorbent, washable material
- Premises to be kept free from all insects
- Water used in manufacturing (food handling, washing, processing, cooking) to be potable, meeting BIS standards
- Workers in processing and preparation to use clean aprons, hand gloves, head wears
- No person employed should be suffering from infectious disease
- Workers to have finger nails trimmed, clean.
- Vehicles used to transport food must be kept in good repair and kept clean.
- Display board mentioning do's and don'ts to be displayed
- Segregation of raw material, processed, rejected, recalled products – suitable marking
- FIFO norms to be followed for raw material, ingredients, WIP, finished products
- Detailed SOP to be developed for proper management

## Sanitary & Hygiene Requirements Cont...

- Well-equipped, modern lab. to be in place within the premises.
- Alternatively, regular testing through an accredited lab.
- Periodic audit as per SOP to check compliance.
- Proper cleaning & sanitation program to be drawn up.
- Preventive maintenance of machinery as per manufacturers' instructions.
- Non-toxic edible grade lubricants to be used.
- Pest Control Systems to be in place.
- Food material to be stored in pest-proof containers above the ground
- Records of pesticide / insecticide used along with dates and frequency
- Food handlers to be provided with protective clothing, head covering, face mask, gloves, footwear
- Provide training to food handlers in food hygiene and food safety

### **Special hygiene and sanitary requirements**

- Slaughter house
- Catering/food service
- High risk food
- Street Food Vendors

# Format of Form D-1 for filing Annual Return

## 'FORM D-1'

### Annual Return

(For business other than Milk and Milk products)

(See Regulation 2.1.13)

1. Name and address of Licensee:
2. Address of the authorized premises for the manufacturing / importer of food products:
3. License No.:
4. Statement showing quantities of food products manufactured/ /imported in Tonnes

Name of the food product manufactured/imported	Size of can / bottle/any other package (like PP) or bulk package	Quantity in MT	Sale price per Kg or per unit of packing	Value (in INR)	Quantity imported in Kg	Name of the country	Rate per Kg or per unit of packing C.I.F. /F.O.B.	Value	Remarks
1	2	3	4	5	6	7	8	9	10



# Legal Compliances x Food Industry

- Compliance that the food you manufacture/ sell is not unsafe →
- Compliance that the food you manufacture/ sell is not misbranded →
- Compliance that the food you manufacture/ sell is not substandard →

# Form E

## Form E

### Form of Guarantee

(Refer Regulation 2.1.14(2))

Invoice No. \_\_\_\_\_

Place: \_\_\_\_\_

From: \_\_\_\_\_

Date: \_\_\_\_\_

To: \_\_\_\_\_

Date of Sale	Nature and Quality of article/ brand name, if any	Batch No. or Code No.	Quantity	Price
1	2	3	4	5

I/ We hereby certify that food/ foods mentioned in this invoice is/ area warranted to be of the nature and quality which it/ these purports/ purported to be.

Signature of the manufacturer/ distributor/ dealer

Name and address of

Manufacturer/ Packer



(in case of packed article)

License No. (Whenever applicable)



## Ensuring Compliance that the food is Not

- Unsafe
- Misbranded or
- Substandard, and
  
- Secretarial Audit of the same

- Test Reports of Products, RM and PM
- Compliance with Product Standards 
- Proprietary Food 

# Ensuring Food Safety: Best before date/Expiry

## Best before date

- The date which signifies the end of the period under any stated storage conditions during which the food shall remain fully marketable and shall retain any specific qualities for which tacit or express claims have been made
- Beyond that date, the food may still be perfectly safe to consume, though its quality may have diminished.
- However the food shall not be sold if at any stage the product becomes unsafe.

## Expiry Date

The date which signifies the end of the estimated period under any stated storage conditions,

After which the food probably will not have the quality and safety attributes normally expected by the consumers and the food shall not be sold

# Compliance as to regulations vis-à-vis Label Declaration.

- Every FBO to ensure that the labelling of foods should conform to the regulations and does not mislead the consumers.

# Ensuring Food Safety

## Claim

- “claim” means any representation which states, suggests, or implies that a food has particular qualities relating to its origin, nutritional properties, nature, processing, composition or otherwise

# Types of Claim

## **A. Conditions for using specific words or phrase as part of claims/Brand or Fancy name/Trademark**

Claims for the use of: Natural, Pure, Fresh, Premium/finest/best/authentic/genuine, Traditional, Original

## **B. Conditions for use of Nutrient content & Nutrient comparative Claims & their conditions**

Low or reduced energy, low fat, Fat free, Low Cholesterol, Cholesterol free, low saturated fat, Saturated fat free, Trans fat free, Rich in MUFA/PUFA, Source of omega 3 FA, Source of protein, source of dietary fibre, Low Sugar, Sugar Free, with no added sugar, Source of minerals, vitamins etc.



# Offences by Companies- Sec 66

Where an offence under this Act which has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

**Provided that**

# Offences by Companies- Sec 66

where a company has different establishments or branches or different units in any establishment or branch, the concerned Head or the person in-charge of such establishment, branch, unit nominated by the company as responsible for food safety shall be liable for contravention in respect of such establishment, branch or unit:

# Offences by Companies- Sec 66

it is proved that the offence has been committed with the consent or connivance of or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

# Attempting to Insulate Management

## Nomination:

- All plants, plant warehouses and CFA warehouses need to file Form IX with Licensing Authorities for appointing a nominee.
- Form IX shall be accompanied with a Board Resolution
- File with a covering letter and keep acknowledged copy for records
- In case of change of nominee, file fresh Form IX along with Board Resolution immediately

# Nomination Cont...

## FORM NO.IX

(Form of Nomination – Refer rule 2.5.1)

### NOMINATION OF PERSONS BY A COMPANY

Being the proprietor or a signatory authorized by the board of directors of the company in terms of Rule 2.5.1 (2), I do hereby gives notice that the following persons(s) is/are nominated as the person(s) in charge of establishment, branch or the unit mentioned against the name of the person(s) and shall be responsible and liable for food safety or any contravention of the Act and rules/regulations or directions issued thereunder in respect of the concerned establishment/branch/unit. The person(s) shall take all such steps as may be necessary to prevent the commission by the Company of any offence under and comply with the provisions of Food Safety and Standards Act, 2006 and the Rules and Regulations made thereunder.

Branch wise/office wise nomination .

Establishment/branch/unit name

Name and Sign of Person i/c

1.

1.

2.

2.

3.

3.

A certified copy of the resolution of the board regarding the authorized signatory, dated \_\_\_\_\_ is enclosed.

Place: \_\_\_\_\_

For \_\_\_\_\_ Ltd./Private Ltd.

Date: \_\_\_\_\_

1. Authorized signatory of the company

Place:

Date:



# How is Compliance Enforced by the Regulator

## 1. Improvement & Prohibition Notices

- **Improvement Notices**

- Issued by Designated Officer
- Failure to comply results in suspension / cancellation of license
- Appeal to Commissioner of Food Safety

- **Prohibition Notices**

- Court can issue prohibition notice if:
  - Food Business Operator is convicted of any offence under this Act and
  - Health risk exist with respect to that business
- Prohibition as to:
  - Use of process or treatment
  - Use of premises or equipment
  - Participation of any FBO in the management of any food business
- Application can be made for lifting of prohibition order

# How is Compliance Enforced by the Regulator Cont...

## 2. Sampling of Food

- The Food Safety Officer is authorized to pick samples of food for analysis by following the procedure:
  - Shall call one or more witnesses while lifting of samples
  - Obtain signatures from the witnesses in all documents
  - Serve the notice in Form VA to the FBO regarding the same
  - Serve notice to the manufacturer/ distributor/ supplier in case the FBO obtains the product from them
  - In case of drawing sample from an open container, to be drawn in original condition
  - Pay the cost of such sample to the person concerned calculated at the rate at which article is sold to public
  - Take samples in clean, dry bottles or jars which shall be closed to prevent leakage and ensure that it is sealed
  - The bottles and jars should be properly labelled carrying code no. of the sample, name of the sender with official designation, date and place of collection, nature of articles being sent for analysis, nature and quantity of preservatives, if any and parcel shall be properly addressed
- The sample is then sent to the Food Analyst for testing

# How is Compliance Enforced by the Regulator Cont...

## 3. Food Recall

- All Food Business Operators (FBO) to have up-to-date Food Recall Plan
- Recall Plan to be in written form
- Available to the Food Authorities on request
- Initiation of Food Recall
  - By FBO if food is unsafe or non-compliant
  - May be initiated as a result of reports / complaints by manufacturers, wholesalers, importer, exporter, distributors, retailers, consumer, media, government agencies, Food Authorities
  - If FBO does not initiate food recall, consumer / complainant may report to the Food Authorities who can direct food recall
  - Food Authorities may on its own direct recall of food that is unsafe or non-compliant.
  - FBO in the entire distribution chain to implement recall instructions of the recalling FBO and report to recalling FBO
  - Recall of imported food products can also be initiated
  - Food Authority to monitor recall of exported food products



# Penalties

<b>Unsafe food</b>	
• Non Injurious	6 months + upto Rs. 1 lakh
• Non-grievous injury	1 year + upto Rs. 3 lakhs
• Grievous injury	6 years + upto Rs. 5 lakhs
• Death	7 years (or life) + upto Rs. 10 lakhs
<b>Punishment for interfering with seized items</b>	6 months+ fine upto Rs 2 lakhs
<b>Punishment for false information</b>	3 months +fine upto Rs 2 lakhs
<b>Punishment for obstruction</b>	3 months + fine upto Rs 1 lakh
<b>Punishment for business without licence</b>	6 months + fine upto Rs 5 lakhs
<b>Provision for subsequent offence and compensation</b> : twice the punishment	

# Food Law Regime

- Food Safety and Standards Act, 2006 ("**FSSA**") overrides all other food related laws which were in force prior to 2006.
- It specifically repealed following eight laws:
  - The Prevention of Food Adulteration Act, 1954
  - The Fruit Products Order, 1955
  - The Meat Food Products Order, 1973
  - The Vegetable Oil Products (Control) Order, 1947
  - The Edible Oils Packaging (Regulation) Order, 1998
  - The Solvent Extracted Oil, De oiled Meal, and Edible Flour (Control) Order, 1967
  - The Milk and Milk Products Order, 1992
  - Essential Commodities Act, 1955 (in relation to food)



# IPC provision on Food adulteration

## Section 272

Adulteration of food or drink intended for sale.—Whoever adulterates any article of food or drink, so as to make such article noxious as food or drink, intending to sell such article as food or drink, or knowing it to be likely that the same will be sold as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both



# Industry Specific Regulations

- Sugar Sector
- Tea
- Milk & Milk Products
- Spices
- Meat & Poultry
- Fruits & Vegetables
- Fisheries
- Restaurants etc.



# ASCI & Other Advertising laws on Food

# Food vis-à-vis Advertising laws

## Advertising Standards Council of India (ASCI)

Caution and care should be observed in advertising of F& B especially ones containing high fat, Sugar and Salt (HFSS)

- Advertisements should not be misleading or deceptive
- Advertisements for food or beverages unless nutritionally designed as such should not be promoted or portrayed as meal replacement.

## Cable Television Networks Rules, 1994 (Programme and Advertisement Code)

These Rules prohibit advertisements which promote, directly or indirectly, production, sale or consumption of -

- Wine, alcohol, liquor or other intoxicants;
- Infant milk substitutes, feeding bottles or infant food.



# The law on Weights and Measures

# The law on Weights and Measures

## Legal Metrology Act, 2009

- Manufacturing, packing, selling or importing any pre-packaged commodity is prohibited unless it is in standard quantity and carries all prescribed declarations.
- Any advertisement mentioning the retail price of packaged commodity should also contain the net quantity thereof.

## Legal Metrology (Packaged Commodities) Rules, 2011

It is punishable if any pre-packaged commodity is packed with error in net quantity beyond the limit prescribed in the Rules.

Declarations under the Act and Rules should be legible and prominent. For example, the Net Content and MRP must be very clear. The language has to be English or Hindi in Devnagari Script. Regional languages may be used in addition only and not as a replacement.





# Some Other Laws Applicable to Food Industry

## **Export (Quality Control and Inspection) Amendment Act, 1984**

The Act facilitates export trade through quality control and inspection before the products are sold to international buyers.

## **Environment Protection Act, 1986**

This Act incorporates rules for the manufacture, use, import and storage of hazardous microorganisms / substances / cells used as foodstuff.

## **The Bureau of Indian Standards (BIS)**

# Maggi Row: Background

- Maggi has come under the scanner of Food regulators lately

## **FSSAI has asked Nestle to :**

- Immediately withdraw and recall all nine variants of Maggi from all across country
- Called upon to show cause as to why the product approval granted by FSSAI be not withdrawn
- FSSAI is planning to visit Nestle's manufacturing facilities

## **Background**

- Testing in Government laboratory in UP and Kolkata revealed that Maggi had:
  - MSG (monosodium glutamate) a taste enhancer, whereas label of Maggi says “No added MSG”
  - 7 times (17.2 ppm) the permissible amount of lead
- UP FDA has recalled more than 2 lakhs packets of various quantities of Maggi noodles



*Thank you...!*