SECRETARIAL AUDIT

LEGAL COMPLIANCE MANAGEMENT & ITS REPORTING

Satwinder Singh
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Central Council Member-ICSI
WHAT IS AUDIT?
GENERAL MEANING

- As per **Black law dictionary** the word audit means “systematic inspection of accounting records **involving analysis, tests and confirmations.**”

- In relation to statutory audit, it refers to a systematic examination of books, accounts, documents and vouchers of an organization to ascertain how far **the financial** statements present a true and fair view of the company.

- Attempts to ensure that the books of accounts are properly maintained by the company as required by law.
INTERNAL AUDIT

Internal Audit function takes care of financial compliance along with accuracy and completeness of data subjected to audit with the main focus to validate the process applied in generating data.
WHAT IS SECRETARIAL AUDIT?
SECRETARIAL AUDIT is a mechanism which gives necessary comfort to the management, regulators and the stakeholders, who are the beneficiaries of the secretarial audit, as to the compliance by the company of applicable laws and the existence of proper and adequate systems and processes.

- Covers non financial aspects of the business having impact on its business and performance.
- Verifies compliances of applicable laws, regulations and guidelines.
- Evaluates the manner in which the affairs of a company are conducted.
- Detects the instances of non-compliances and facilitates taking corrective-measures.
Section 204 of the Companies Act, 2013 provides for mandatory secretarial audit for every listed company and companies belonging to other prescribed class of companies.

Such company is required to annex a secretarial audit report with its Board’s report.

As per rule 9 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, the prescribed class of companies is as under:

(a) every public company having a paid-up share capital of fifty crore rupees or more; or
(b) every public company having a turnover of two hundred fifty crore rupees or more.

Turnover is defined under section 2(91) as:

“The aggregate value of the realisation of amount made from the sale, supply or distribution of goods or on account of services rendered, or both by the company during a financial year.”
APPROACH TO SECRETARIAL AUDIT

- Knowledge
- Trained Staff
- Third party supporting and evidences
- Adhering to the timeline
- Documentation and backup
- Maintaining audit diary
- Unbiased and objective view

Corporate laws, securities laws, FEMA, industry specific laws etc.
<table>
<thead>
<tr>
<th><strong>Companies Act, 1956</strong></th>
<th><strong>Companies Act, 2013</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Major focus on Companies Act</td>
<td>Scope of Audit Expanded: focus on applicable laws</td>
</tr>
<tr>
<td>Format - E-form - 66</td>
<td>Format - Form MR - 3</td>
</tr>
</tbody>
</table>

**Penalty** - Company and every officer shall be punishable with fine which may extend to Rs. 500 for every day during which default continues.

**Penalty** - Company, every officer or the Company Secretary in practice in default shall be punishable with fine which shall not be less than Rs. 1 Lakh but which may extend to Rs. 5 Lakhs.
Evaluation of compliances made under listed laws

- Companies Act, 2013
- SCRA
- Depositories Act, 1996
- FEMA
- Other Laws
- Industry specific laws

Other Laws

- SEBI
- Takeover laws
- Insider trading
- ICDR
- ESOP
- Delisting
- Listing Agreement
- Buy Back

e.g. Competition Law, Labour Law, etc
BENEFITS OF SECRETARIAL AUDIT
BENEFITS OF SECRETARIAL AUDIT

- Secretarial audit monitors compliances through compliance management program provides positive results:
  - Ensures good corporate governance.
  - Lesser chances of penalties including both monetary and imprisonment.
  - An effective compliance management programme enjoy employee and customer loyalty and public respect for their brand, resulting in better market capitalization and shareholder returns.
  - Recognition for the company as a good corporate citizen.
SCOPE OF SECRETARIAL AUDIT ACCORDING TO FORM MR-3
Statutory provisions

- Provisions of major laws stated in form MR-3 are to be complied timely.

Secretarial standards

- Standards issued by ICSI are to be taken care of while dealing with the audit process. Eg. SS-1 for board meetings

Listing agreement

- If the company has signed any listing agreement with stock exchange, then to review its compliances.

Records maintained by the company

- All the books, papers, minutes books, forms and returns filed are to be verified as recorded by the company.
Compliance with the provisions

- All the regulatory updates, amendments, rules, standards and guidelines are to be checked.

System and processes

- Company shall have proper compliance system depending upon the size of the structure and process of compliance should be clarified.

Control process

- Simultaneously company shall have a proper monitoring system to ensure timely compliance of applicable laws, rules, regulations and guidelines.

Specific events

- Events affecting the company’s affairs and have major bearings shall be looked into. Eg. Public issue, redemption or buy back of securities, merger/amalgamation and foreign technical collaboration.
REPORT - TO WHAT EXTENT COMPANY HAS COMPLIED

- Statutes
- Rules and Regulations
- Guidelines/Internal Policies
- Corporate Conduct
- Existence of compliance management system and processes
GOOD CORPORATE CONDUCT
GOOD CORPORATE CONDUCT

- A set of systems, processes, principles by which companies are directed and controlled.

- Ensures-
  - Adequate disclosures and effective decision making
  - Authority and Responsibility
  - Transparency in business transaction;
  - Statutory and business compliances;
  - Protection of Stakeholders’ interest;
  - Promote Customers’ loyalty and public respect
CORPORATE PRACTICES TO BE FOLLOWED

- **Board processes**
  - Composition of number of executive, non-executive and independent directors should be reasonable and legally compliant.
  - Any changes in the composition must be reported accordingly.
  - Proper notices of the meetings and agendas should be given.
  - Notices, agendas and detailed notes shall be given timely.
  - A system should exist to obtain clarifications regarding the agenda for meaningful participation in the board meeting.
  - Views of dissenting members should be recorded.
  - Proper minutes are to be maintained to keep the records of the meeting.

- **Committees to be established for effective compliance**
  - Audit committee
  - Nomination and remuneration committee
  - Stakeholder relationship committee
  - Corporate social responsibility committee
### Status of Statutory Compliances

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Description</th>
<th>Doc. no.</th>
<th>Recd. On</th>
<th>Validity</th>
<th>Current Status</th>
<th>Applied Upto</th>
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<tbody>
<tr>
<td>1</td>
<td>Occupier Mr. Daljit Singh</td>
<td></td>
<td>20.11.2014</td>
<td>31.12.2015</td>
<td></td>
<td></td>
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<tr>
<td>2</td>
<td>Factory Manager Mr. N.L. TYAGI</td>
<td></td>
<td>20.11.2014</td>
<td>31.12.2015</td>
<td></td>
<td></td>
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<tr>
<td>3</td>
<td>PF Code Number HR/9499</td>
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<td>27.02.1998</td>
<td>Permanent</td>
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<td></td>
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<tr>
<td>4</td>
<td>ESIC / EWC Policy 13/18062/65</td>
<td></td>
<td>25.09.1996</td>
<td>Permanent</td>
<td></td>
<td></td>
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<td>6</td>
<td>Building Plans No-1400</td>
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<td>31.10.2012</td>
<td>Permanent</td>
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<tr>
<td>7</td>
<td>Factory License FBD/K-225/3817</td>
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<td>27.01.2015</td>
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<td>8</td>
<td>Pollution consent Air HSPCB/Consent/:2843214FDBBC TOHWM479443</td>
<td>30.12.2013</td>
<td>31.03.2017</td>
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<td>10</td>
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<td>13</td>
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<td></td>
<td>Alive</td>
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<td>14</td>
<td>DG Sets permission/Inspections No-HTI/JUNE/28</td>
<td>07.01.2015</td>
<td>25.10.2015</td>
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<td>15</td>
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<td>FAB NO-H0882038</td>
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<td>16</td>
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<td>Sr.No-83 Dt.18.11.2014</td>
<td>01.11.2015</td>
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<td>18</td>
<td>Air Dryer No-PV/AV/PICL99/2015-04</td>
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<td>19</td>
<td>Electrical Stacker No LT/AB/PICL99/2014-02-03</td>
<td>08.01.2015</td>
<td>07.07.2015</td>
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<td></td>
</tr>
</tbody>
</table>

Immediate attention is required
Follow up should be done
Ok
CORPORATE PRACTICES TO BE FOLLOWED

- Define roles and responsibilities
  - Establish clear lines of accountability among the Board, Chair, CEO, Executive Officers and management.
  - Proper delegation of work should be done.

- Emphasize integrity and ethical dealing
  - Adopt a conflict of interest policy, a code of business conduct setting out the company’s requirements and process to report and deal with non-compliance.
  - Make someone responsible for oversight and management of these policies and procedures.

- The company should establish various policies hereunder
  - Risk management policy
  - Corporate social responsibility
  - Vigil mechanism policy
  - Directors appointment and remuneration policy
STEPS OF SECRETARIAL AUDIT
Initiating the process with discussion

Identifying the scope

Determining all the applicable laws

Seeking all the requisite information and documents from the Management

Listing down the activities to be undertaken for the process

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Receiving all the documents

Time to time meeting with officers responsible for compliances under different laws

Conducting the audit

Observations and reporting of all the findings

Audit Report
ESSENTIAL PARTS OF SECRETARIAL AUDIT PROCESS
The company secretary in practice should obtain a management representation letter from the company while audit process.

The letter must be signed by the company secretary/managing director/senior management having the authority.

The format of the letter should be appropriate and may be changed according to the facts and circumstances. Refer Annexure ‘C’.

Secretarial auditor can use the letter as part of audit evidence.
Company Secretary in practice may give a disclaimer regarding the following:

- We have not conducted any business and/or financial audit of the Company and the figures mentioned by the company are assumed to be true.

- We have not examined status of compliances pertaining to taxation laws, as they are outside the scope of our mandate for this audit. We have expressed no opinion on any matters pertaining to marketing, operations, technical services, tax, commercial or financial and accounting of the Company;

- We have assumed the authenticity of all signatures, originality and completeness of all the documents provided to us, and further which were not in originals, to be in conformity with its corresponding original.

- Our Report is based on the laws stand on the date hereof and we express no comment/opinion/observation as to matters governed by any law other than the laws as specifically covered in the Report.
REQUIRED DOCUMENTS
DOCUMENTS PRELIMINARY REQUIRED AT THE TIME OF SECRETARIAL AUDIT

- All statutory registers
- Financial statements
- Internal policies and guidelines
- Notices, Minutes of meetings and attendance registers
- Disclosures made by the company and the directors
- Statements of borrowings and investments
- Filings with requisite authorities and receipts in that respect
- Listing and trading approvals from stock exchange(s)
- Corporate action forms filed with depositories
- Orders/notices of judicial, quasi judicial bodies and statutory authorities
- Documents relating to specific events
STATUTORY REGISTERS INCLUDE

- MGT-1: Register of members.
- MGT-2: Register of debenture holders.
- Register of directors and key managerial personnel.
- Register of securities held by directors.
- MBP-2: Register of loans, guarantee and security.
- PAS-5: Records of private placement in form.
- SH-2: Register of renewed and duplicate share certificate.
- SH-3: Register of sweat equity shares.
- SH-6: Register for employee stock option.
- SH-10: Register of shares or other bought back securities.
- CHG-7: Register of charges.
A SPECIMEN CHECKLIST
APPOINTMENT

- As per rule 8 of the Companies (Meetings of Board and its powers) Rules, 2014, secretarial auditor is required to be appointed by means of resolution at a duly convened board meeting of the company.

REPORTING WITH QUALIFICATION

- A qualification, reservation or adverse remarks, if any, should be stated by the Secretarial Auditor at the relevant places in his report in **bold type** or in *italics*. If the Secretarial Auditor is unable to express an opinion on any matter, he should mention that he is unable to express an opinion on that matter and the reasons therefore.

- Further, the Board of Directors, in its Board’s report, shall explain in full any qualification or observation or other remarks made by the Company Secretary in Practice in the Secretarial Audit Report.
DUTY TO REPORT FRAUD

- A very significant duty has been cast on the company secretary in practice under section 143 (12) of the Companies Act, 2013. It provides that if the company secretary in practice, in the course of the performance of his duties as auditor, has reason to believe that an offence involving fraud is being or has been committed against the company by officers or employees of the company, he shall immediately report the matter to the Central Government.

MANNER OF REPORTING FRAUD

- Section 143(12) read with Rule 13 gives the procedure and time limits for reporting of frauds to the board and the audit committee and thereafter to the Central Government.
LEGAL COMPLIANCES
Legal Compliance is review & identification of applicable statutes to the Company, benchmarking non-compliant/partly compliant Statutes and to define a process and system that ensures full compliance.
PERIODIC COMPLIANCES
Periodic compliance -
Annual return to be filed within 60 of AGM in Form No. MGT 7 & MGT - 8 (listed companies)

Periodic compliance -
Financial Statements to be filed within 30 days of AGM along with Form No. AOC - 4

Periodic compliance -
In case of listed company report on AGM to be filed with the Registrar within 30 days of AGM in Form No. MGT - 15

Periodic compliance -
Extract of the annual return to be attached to the Board’s report in Form MGT - 9

Periodic compliance -
Secretarial Audit Report to be annexed to the Board’s report forming part of the financial statements in Form No. MR- 3

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EVENT-BASED COMPLIANCES
Event based compliance -
Notice of alteration of share capital is to be filed with the Registrar within 30 days in Form No. SH - 7

Event based compliance -
Creation or modification of charge to be filed within 30 days in Form No. CHG - 1

Event based compliance -
Satisfaction of charge to be reported out within 30 days in Form No. CHG - 4

Event based compliance -
Copy of order of competent authority in case of alteration of articles is to be filed within 15 days in Form No. INC - 27

Event based compliance -
Copy of records maintained in Form No. PAS – 5 u/s 42 along with private placement offer letter in Form PAS – 4 to be filed within 30 days to the Registrar
CORPORATE COMPLIANCE PROGRAMME
A corporate compliance program is a system which is designed to detect and prevent violations of law by the agents, employees, officers and directors of a business.

Compliance should be permanent and integral part of business processes that is ongoing and needs continuous check.

To establish and maintain centralised mechanism to ensure compliance with all applicable laws.

To establish effective monitoring and control systems.

Effective communication of the changes in the regulatory mandates to the applicable functional and other units in real time manner.

To introduce and implement ethics programs for Board, Senior Management and other staff members.
• To establish pro-active **compliance risk management** culture into the organisation.
• To **provide training** to concerned officials on compliance requirements at regular intervals.

**SCOPE OF CCP**

• **Compliance** with applicable laws
• Adherence to **Company Specific internal policies** and procedures.
• Adherence with **Vision and Mission** statement of the Company.
• To devise **code of conduct** for Board, senior management and employees
• Conducting **training** on compliance, ethics, code of conduct.
• Establishment of **Corporate Compliance Committee**.
• Appointment of **Chief Compliance officer**.
• **Quarterly compliance Report** to be presented to the Board.
• Organisation of **compliance Audit**, feedback, remedies.
COMPLIANCE RELATED INITIATIVES

**Appointment of Chief Compliance Officer**

- To establish the compliance program.
- To guide the Board on compliances, regulatory and policies.
- Liaison between Board, Functional heads and compliance staff.
- To advise the Compliance department.
- To define the role and responsibilities of functional units.
- To present quarterly compliance report before the Board.

**Board Level Corporate Compliance Committee**

- Compliance with the laws, rules and regulations applicable to the company.
- Compliance with the Company’s Code of Conduct.
- Compliance with Company’s policies and procedures.
- Compliance with established standards.
Establish Compliance Department

- Department should be independent and sufficiently resourced.
- It should not be entrusted with any business targets.
- The staff of compliance department should have fair knowledge of applicable laws, internal policies etc and should be imparted training at regular intervals.
- The Chief Compliance Officer shall oversee the activities of Compliance Department.

The Compliance Dashboard

- The Compliance Dashboard should alert the company in the risk prone areas or non compliances.
- It should display the compliance obligations on the compliance calendar or dashboard
- Before the date of regulatory mandate, and e-mail should be sent to the compliance owner.
- The Compliance owner should send the response once compliance is done.
PREPARING TO IMPLEMENT COMPLIANCE MANAGEMENT PROGRAM

CORPORATE COMPLIANCE MANAGEMENT

- Remediation
- First five steps
- Compliance monitor
- Compliance scheduler
- Alerts and notifications
- Task performance
- Online and offline support
- Form archives
- Compliance statistics
- Risk assessment and analysis
- Report wizard

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FIRST FIVE STEPS

STEP 1 • Understanding company’s background

STEP 2 • Identification of applicable laws

STEP 3 • Evaluation of the laws identified

STEP 4 • Assessment of the procedure

STEP 5 • Compliance organisation structure
STEP 1-COMPANY’S BACKGROUND

Understanding the company

- Company’s history and background
- Business of the company
- Directors Board composition
- Capital structure and Shareholding pattern
- Management and administration build up
- Financial and debt structure
- Merger and amalgamations
STEP 2 - IDENTIFICATION OF APPLICABLE LAWS

- Companies Act
- SCRA
- Depositaries Act
- FEMA
- SEBI Act

Laws stated in form MR-3

- Takeover laws
- Insider trading
- ICDR
- ESOP & ESPS
- Delisting
- Buy-back
- Listing of debt securities

SEBI act
Industry specific laws

- Banking
- Insurance
- Shipping
- Mining etc.

Fiscal laws

- Excise
- Custom
- VAT
- Income tax

General laws

- Factories Act
- Industrial Dispute Act
- Environment Act
- Stamp Act etc.
STEP 3- EVALUATION OF THE IDENTIFIED LAWS

Evaluate the laws identified in accordance with the form MR-3.

All the rules, regulations and amendments made in the statute should be reviewed.

To check whether proper system and processes are established for timely compliances.

To verify the compliances
STEP 4- ASSESSMENT PROCESS

- Assessment process identify the gap between present compliance results and the evaluation process
- Implication of compliance system
- Effective usability
- Timely compliances of periodical and event based matters
- Difference between compliance in letter and compliance in letter and spirit is to be understood
STEP 5 - COMPLIANCE STRUCTURE IN THE ORGANISATION

- Board of directors
- Compliance officer
- Departments
- Executive

Responsibilities:
- HIGH
- LOW

Rights available to carry out the compliance process
COMPLIANCE PLANNER
### Income Tax Act

<table>
<thead>
<tr>
<th>TITLE</th>
<th>SECTION</th>
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<tbody>
<tr>
<td>Tax Audit</td>
<td>u/s 44-AB</td>
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**Due Date:** On or before 31st October of the assessment year.

### Companies Act

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<thead>
<tr>
<th>TITLE</th>
<th>SHAREHOLDING PATTERN</th>
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<tr>
<td>Return of appointment of a MD, WTD or Manager, CEO, CS and CFO</td>
<td><strong>FORM NO</strong></td>
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<td>FIXED FORMAT</td>
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<td>DUE DATE</td>
<td>WITHIN 21 DAYS FROM THE END OF EACH QUARTER</td>
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<td>WITHIN 60 DAYS OF APPOINTMENT</td>
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### Listing Agreement

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</tr>
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<td>DUE DATE</td>
<td>WITHIN 21 DAYS FROM THE END OF EACH QUARTER</td>
</tr>
</tbody>
</table>
CAN WE DO ALL THIS MANUALLY WITH SO MANY LAWS?
Technology has to be invented or adopted and adopting technology to defeat technology is the next survival mantra....
Reduce time consumption in repetitive tasks

Devote more time on strategic analysis, value additions and planning.

Use online regulatory services.

Make use of exhaustive databases, checklists, research papers, available online.

Manage multiple tasks through IT.
E-COMPLIANCE

24x7 monitoring system

Regular updates for changes, amendments, notifications, etc.

Auto calendar sends regular reminder/alerts for compliance execution

Compliance data can be reviewed in graphs, statistics, certificates, MIS reports, detailed reports

In-built Auditor role helps in conducting various audits like Secretarial Audit, Internal Audit and reports used for certification purpose

Generation of compliance certificate – Department wise, Unit – wise and Act wise, covering all entities in a group
Thank You

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