



Chapter 1

Compliance Framework

CORPORATE COMPLIANCE FRAMEWORK (CCF)

- BOD need to establish compliance framework as compliance with laws must be considered in the process of strategy formulation.

Why? - Because a strategy involving steps which could lead to non-compliance of the laws will lead to regulatory actions and business may suffer in such a case.

- It supports Risk Management System (RMS) by reducing risk of non-compliance.

How? - RMS helps to manage all the types of risk including risk of non-compliance. Having CCF helps to manage compliances properly. Proper compliances reduce the risk of non-compliance. So, RMS gets less burden on its shoulder.

- Steps BOD can take for effective compliance approach:
 - **involving senior management** in development of compliance program.
 - **periodically reviewing effectiveness** of compliance management system (CMS).
 - **updating it as per changes** in laws & business environment



Question Alert - They can ask you a question on above point of steps that BOD can take. They can frame a case study in which they might discuss the current CCF of the company, tells you about the problem in the current CCF and ask you to suggest what can be done.

- CCF helps organisation in achieving its goals by mitigating risk.

How? - As CCF helps in complying with laws, a company will not face legal obstacles and can progress towards its goals smoothly.

IMPORTANT POINTS FROM MARUTI SUZUKI's COMPLIANCE MANAGEMENT:

- Have systems to ensure zero non-compliance.
- Compliance certificate is submitted to BOD on quarterly basis.
- Compliances are monitored through electronic system.
- Periodic compliance health checks are carried out.
- Compliance Month is observed every year to reinforce commitment to compliance.

Question Alert - They can ask you a question in which the company might want to improve its compliance management and you will be required to advise the company on what can be done. You can use the above points from the Maruti Suzuki's case.



Governance, Risk management, and Compliance (GRC)

- It is a CMS which integrates GRC into processes of every department.
- Reduces risk, cost, and duplication of efforts (in short RCD).
- Requires company-wide cooperation to get results (in short CWC).
- Let's understand 3 elements –

Governance:

- It's the way in which BOD **structures & organizes** the entire company.
- It **explains the management's approach** using which a company is directed & controlled by senior executives.
- It **helps to ensure that accurate & sufficient information is communicated** in timely manner to facilitate decision making.
- It **provides control mechanisms** to ensure that strategies are carried out properly.

Risk Management:

- It's the process of **identifying potential risk to the business & taking actions** to reduce their financial impact.
- It involves identification of risk, analysis of risk, and responding to risk.

Compliance:

- It's set of processes and procedures to ensure company and its employees do business legally and ethically.
- It involves adherence to laws & regulations.
- In organisation, it could be achieved in following 4 steps:
 1. Identify the applicable laws or regulations.
 2. Assess the current state of compliance.



3. Assess the risks and potential costs of non-compliance against the projected expenses to achieve compliance.
4. Prioritize, fund and initiate any corrective actions deemed necessary.

Question Alert - They can ask you to write a note on GRC or how it helps a company. You are required to discuss the 3 elements in such a case.

3 COMPONENTS OF CCF

Compliance Chart:

- It **provides an overview** of the applicable local, state, central and international laws, regulations and standards relating to a business' operations.
- It outlines **how compliance risk mitigation activities are placed** in business processes.
- It **helps business in meeting its compliance obligations** towards the customers, regulators, shareholders and employees because it provides a centralized compliance information of the company on a single chart.
- It **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. It helps organisation to evaluate their compliance functions, prevent compliance breaches and respond quickly and effectively when a breach occurs.

Compliance Scorecard:

- It is a **tool to analyse the position** of an organisation in compliance.
- It **helps to quickly correct the non-compliance** by informing the concerned person about the violation.
- It also **includes the tracking of steps taken** for correcting the non-compliance.



Question Alert - They can ask you a direct question on 3 components.

COMPLIANCE CHART

- It is prepared after considering the operations & structure of the company.
- Following activities are considered for its preparation:
 - 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).

CONTENTS OF COMPLIANCE CHART

It must contain all the information on compliance dashboard which includes:

- **Reference** to the key compliance related laws, regulations, industry standards and compliance related policies and standards of the company.
- **Concise statements** on the relevant internal and external compliance obligations and associated risks.
- Inherent and managed **risk level** (critical, high, medium, low) of the identified obligations.
- The **business processes or people** to which the compliance obligations are linked or on which they have an impact.
- Specific compliance **risk mitigation activities** and compliance **risk tracking** and monitoring for managing the compliance obligations.
- **To whom and how frequently** compliance related results and findings are reported.



- **Clear ownership** of the processes, activities and obligations outlined in the chart.

ROLE OF CS IN CREATING COMPLIANCE CHART

- Identification of applicable law, rules and regulations
- Risk Assessment
- Compliance Risk Mitigation
- Compliance Monitoring
- Compliance Reporting

KEY FUNCTIONS PERFORMED BY WELL-DESIGNED COMPLIANCE FRAMEWORK

- Compliance Dashboard
- Compliance policy and procedure
- Access to rules and regulations
- Compliance Audit
- Quality Management
- Compliance Training
- Compliance task Management

Compliance Dashboard:

- It **helps to track** compliance events.
- All **compliance events should be easily viewed** through compliance dashboard.



- Statutory auditors, internal auditors, compliance officers can **use the dashboards to make decisions** on the compliance status of the organization.

Compliance Policy & Procedure:

- A well-designed document management system (DMS) is **crucial for handling the lifecycle of policies and procedures** in an enterprise.
- Ensuring **alignment with changing rules and regulations** is a critical requirement for these policies and procedures.
- The creation, review, approval, and release (in short CRAR) process of policy documents and SOPs should be facilitated by collaborative tools.
- These tools should provide core document management functionality (in short CDMF) for effective governance.

Access to Rules and Regulations:

- **Continuous sync** with changing rules and regulations is essential for a well-designed compliance management solution.
- Various departments should be **notified proactively about the regulatory changes** through "email-based" collaboration.
- This proactive process **allows organizations to adjust** their policies and procedures according to the updated rules and regulations.
- Manually tracking a single regulation may be feasible, but it becomes error-prone when dealing with numerous regulations at local, state, and central levels, including global changes.
- An effective compliance management program **provides up-to-date regulatory alerts** across the entire 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**.
- Appropriate **evidence of internal audit** becomes critical in defending compliance to regulations.



Quality Management:

- Most organizations have their own operational, plant-level or departmental **quality initiatives to industry mandates** (in short QI to IM) like Six-sigma or ISO 9000.
- A well-designed compliance management program **incorporates and supports ongoing quality initiatives**.

Compliance Training:

- Sometimes **lack of knowledge** and incomplete 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:

- **Centralized data base** must be created to manage and report status of all compliance related activities.
- **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.

PROCESS/ STAGES FOR SETTING UP OF COMPLIANCE FRAMEWORK

1. Identification of Compliance Obligations

Applicability of the various Act, Rules, Regulations, Policies and Procedures covering Industry Specific, Sector Specific, Specific Activity, Specific Entity, Specific State Law, Local Laws.

2. Preparation of Compliance Chart



Setting-up role and responsibilities of Senior Management, Legal Department, and Compliance Executor.

3. Assessment of Historical Compliance Status

Assessment of File/ Report/ Return Statements/ Internal Auditor/ Independent agency/Regulator.

4. Assessment of Compliance Risk

Identification of possible situations of non-compliance and development of strategy for Risk Mitigation/Risk Monitoring/Risk Reporting.

5. Compliance/ Action Reporting

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



Question Alert - They can ask you:

- Direct question on compliance chart & its contents.
- Indirect question on compliance chart & its contents - here they can mention that a company is considering to create a compliance chart. Advise company on what should be included in the compliance chart. You are required to write the contents.
- Direct question on role of CS in creation of compliance chart.
- Direct question on key functions performed by compliance framework. If they ask you to write key functions, you are required to write all the points. You can cut short the explanation of each of the point.
- Direct question where they might give you a heading of one or more key function and ask you to explain the same.
- Direct question on process/ stages for setting up compliance framework.
- Indirect question on process/ stages by saying that a company is planning to establish a compliance framework. Advise the BOD of the company on how they should go about the same or what are the steps they should follow.

STEPS IN THE PROCESS OF CORPORATE COMPLIANCE FRAMEWORK

1. Compliance Identification

- It includes the process to **identify various acts & legislations & compliances** applicable to the company.
- **Legal team** carries out the process of identification.
- This is done in consultation with the **functional heads**.



2. Compliance Ownership (CO)

- **Compliance owner** is one who is responsible for compliances.
- CO has to be described **function wise and individual wise**.
- Clear description of **primary and secondary ownership** is also important.
- **Primary owner** - responsible for the compliance. E.g., Secretarial Officer.
- **Secondary owner** - supervisor of the primary owner which supervises the compliance. E.g., Group Company Secretary's responsibility is secondary.

3. Compliance Awareness

- It covers establishment of the **legal compliance management (LCM)** and
- **Creation of awareness** of the various legal compliances amongst those responsible.
- It is essential as it **helps to make compliance owners fully aware** of the legislation's requirement.
- This could be done in the form of **meetings/ trainings** explaining various compliances or some manual containing the details of compliances.

4. Compliance Reporting

- Under this, the **status of compliances or non-compliances should be communicated** to the concerned person.
- This is **done annually** by the compliance officer.
- Reporting of non-compliances ensures that appropriate **corrective action is being taken** by the responsible person.



STEPS IN THE PROCESS OF COMPLIANCE MANAGEMENT

- Identification and evaluation of compliance obligations
- Mitigating the compliance risks
- Evaluating the performance and reporting the needs
- Managing the non-compliance and working on continuous improvements

Question Alert - They can ask you:

- Direct question on Steps in the process of corporate compliance framework.
- Direct question on Steps in the process of compliance management.

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.
- It **facilitates easy management** of litigation dates, documents and orders.
- It **ensures compliance with policies** in respect of documents.



Be Mindful:

- If they ask you steps for setting up compliance framework, you are supposed to write the stages we have discussed. Do not end up writing compliance identification, compliance ownership, compliance awareness, and compliance reporting.
- If they simply ask you steps in the process of corporate compliance framework, then write compliance identification, compliance ownership, compliance awareness, and compliance reporting.
- Keep eyes open for the word "setting up" or "establishing".

IDENTIFICATION OF APPLICABLE LAWS AND REGULATIONS

- It involves identification of the compliances.
- There should be a systematic process of identifying compliance obligations and their implications.
- To identify compliances, CS should get familiar with the:
 - business model (in short BM)
 - environmental, health and safety aspects (in short EHSA)
 - data security requirements (in short DSR)
- Compliance chart containing applicable laws must be kept up to date.
- Company should communicate to compliance executor what he should or should not do for performing any compliance requirement.



- If a conflict arises between local laws and policies issued by the company, one containing stringent requirement shall prevail.
- Sources of identification includes the following (13 points):
 - Engagement with management and other key staff in Divisions.
 - Laws and regulations.
 - Permits, licences or other forms of authorisation.
 - Orders, rules or guidance issued 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).
- Organisation need to comply with following laws depending on the nature of the business:
 1. Labour Laws
 2. Fiscal/ Tax Laws
 3. Pollution/Environment related Laws
 4. Securities Laws

Question Alert - They can ask you:

- Direct question on sources of identification.
- Direct question on various types of laws.



5. Commercial Laws including Intellectual Property Rights Laws;
6. Industry Specified Laws
7. Corporate and Economic Laws
8. Cyber Laws which is also known as 'The Information Technology Laws'
9. All other laws affecting the company concerned depending upon the type of industry/activity.

Case Law: Siddarth Gupta (Appellant) v. The Delhi Golf Club Limited & Anr (Respondent)

Facts:

- Appellant acquired Delhi Golf Club's Membership.
- Appellant got to know that resolution has been passed in AGM and his membership has been cancelled.
- Appellant filed petition against the resolution in the Delhi HC.

Decision:

- Membership can be cancelled only after following provisions of MOA & AOA.
- Principle of Natural Justice not followed as neither notice was given nor an opportunity of being heard was provided.
- Expulsion provisions given in MOA & AOA were not followed.
- Court directed the club to reverse the resolution.

Case Study of Cloutail

A fine of Rs. 1 Lakh was imposed on Cloutail India for unfair trade practice by selling domestic pressure cookers in violation of the mandatory standards prescribed as per the Domestic Pressure Cooker (Quality Control) Order, 2020 and consumer rights.



COMPLIANCE RISK ASSESSMENT: BASIS FOR COMPLIANCE MANAGEMENT

- Risk assessments should be done according to the changes in the business' profile.
- It includes:
 - Identification of areas of potential non-compliances.
 - Rating the risks.
 - Assessing the outcomes to find the need for training, monitoring, internal controls, detailed reviews & corrective steps.
- While identifying inherent risks company needs to consider the following risks drivers which can be categorised as follows:

Legal Effect:

Non compliances by the organisation can lead to various actions against the organisation and its officers like penalties, fines, imprisonment, debarment, and seizing the products etc.

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.



- Depending on outcome, risk mitigation strategy is chosen.
- 2 types of risk assessments that can be performed by the company:

High Level Risk Assessment

- Inputs for this assessment are: risk identification procedures & detailed risk assessment results.
- Must be included in its process: current & anticipated critical & high compliance risks.

Detailed Risk Assessment

- 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.

ILLUSTRATIONS ON BEST PRACTICES FOR RISK ASSESSMENT

Future Generali India Insurance Company Limited

- Top-down approach to risk Identification.
- Risk Surveys
- Top Risk Workshop and Bottom-Up approach which includes Risk Registers and Scenario Analysis, Strategic Risk Assessment, Risk Appetite Framework including risk metrics and tolerance limits.
- Vendor risk assessment for material vendors at the time of on boarding and at the time of renewal.
- Remote Monitoring System (RMS) for safety of Branches.



Bharti Airtel Limited

Identified risks are mapped to the Key Responsibility Area (KRA) of senior executives.

Hindustan Unilever Limited

- Management Committee led discussions for identification of Functional & Company Level Risk.
- Clearly defined ownership of risks and mitigation action along with detailed KPIs.

Wipro Limited

- Enterprise Risk Management (ERM) Framework.
- Risk and Governance Committee.
- Multi-layered risk governance structure across the enterprise.
- 'DigiQ' is used as a central tracker for all audits.

Question Alert - They can ask you:

- Direct question on Compliance Risk Assessment.
- Direct question on risk drivers.
- A question in which you would be required to suggest some best practices for risk assessment. You can write the practices followed by companies we have discussed above.



COMPLIANCE MONITORING AND RESPONSIBILITY CENTRE MAPPING /ALLOCATION

- Compliance monitoring is the most essential mechanism of corporate compliance framework because it helps to understand whether compliance framework has been implemented properly in practice and whether it is practicable, responsive, and suitable for the company.
- It means “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.
- The effectiveness of risk assessment and monitoring should be reviewed periodically to ensure compliance framework remain relevant in changing business conditions.

The role of the various level of management for compliance ownership is illustrated as under:

Top Management:

- Understanding the compliance obligations and recent changes.
- Approval of policy and procedures.
- Motivating employees to doing compliance in time.

Question Alert - They can ask you direct question on role of various level of management.

Legal Cell:

- Identification of new and changed relevant local laws, regulations and standards
- Communication in writing to compliance owner/ executor
- Review of system and policies and procedures
- Resolution of doubts and clarity in directions
- Periodical review and assessment



Senior Management & Functional Heads:

- Analysis and research on the Regulatory changes
- Formation of policy and procedure
- Motivating compliance officer for timely compliance
- Guiding compliance officer in doing compliance
- Tracking the compliance chart
- Risk escalation
- Conflict resolution

Compliance Officer / Subordinate Staff

- Performing Compliance Obligations
- Updating Compliance obligations into the Compliance Chart
- Risk Identification and intimation
- Conflict intimation.

ESCLATION AND COMPLIANCE REPORTING

- Compliance reporting allows Management and the Compliance function to assess whether Compliance Risks exceed the risk appetite of Company.
- It also allows for communication and discussion of potential Compliance Risks.
- It is the responsibility of Management and the Compliance officer to gather information, and analyse and communicate the results so that informed, timely decisions can be made.
- Reports should be discussed quarterly at the risk management committee meeting.
- 2 types of reporting:

Cyclical Reporting: Under this, the Compliance officer works on quarterly basis with management and other risk functions to provide non-financial risk reporting.



Incident Reporting:

- Under this, material compliance incidents (which have effect on the company's integrity or can damage company reputation or lead to legal or regulatory sanctions, or financial loss on failure to comply with laws) are reported when they take place.
- Such incidents need to be handled through the risk management process.

Case Study of ABC Ltd, a BSE listed company

Company made following cyclical reporting arrangements:

Audit & Risk Management Committee:

- Submission of Quarterly reports on the performance of the compliance programme to the committee.
- These reports include a high-level summary of activities by all functions undertaking significant compliance.
- Separate reports submitted to the committee for major non-compliance 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 company has complied with the obligations relevant to their area of responsibility.

Assurance Maps (provides a structured way to identify the main sources and types of assurance in an organisation):

To facilitate quarterly and annual reporting requirements an assurance mapping approach will be undertaken.

Regulatory Reporting:

The reporting of significant compliance issues which are required by law must be undertaken in accordance with the procedures.



What does an assurance map look like in its most basic form

The map is intended to provide a snapshot view of the assurance obtained over an organisation's principal risks by various teams which form the organisation's four lines of defence. The below illustrative example of an assurance map captures both the gross risk scores prior to any assurance and controls and the net risk score post all assurance.

Principal Risks	Current Gross Risk score (pre controls)	First Line of Defence Business operations "Management Controls"			Second Line of Defence Oversight functions, e.g. Finance, Legal, HR, H&S, Risk and Compliance				Third Line of Defence Internal Audit and other independent assurance providers		Fourth Line of Defence Regulators and External Audit		Current Net Risk score (post controls)
		Group Function	Division	Sites	Compliance	Control Excellence	Risk	Governance Committees	Internal Audit	Third Party/ Consultant	Regulator	Ext. Audit	
1. Regulatory change	15	M	M	M	N/A	M	M	M	M	M	N/A	M	12
2. Loss of facilities	8	H	H	H	N/A	H	L	H	N	M	N/A	H	3
3. Ability to attract and retain talent	15	H	H	M	N/A	H	M	H	N	M	N	N/A	8
4. IT Resilience	8	H	M	N	M	M	O	M	N	N	H	N/A	4
5. Supply Chain incl. rising costs	9	H	H	N	N/A	H	L	M	N	N	N/A	M	6
6. ESG	12	M	M	M	M	M	M	M	N	N	N/A	N/A	8
7. Cyber	12	L	L	L	N	O	H	M	N	M	N/A	N	10
8. Transformation delivery	8	H	M	N	H	H	M	M	N	N	H	N/A	6

1

High assurance

Control(s) cover all aspects of the risk and are effective.

2

Medium assurance

Control(s) cover significant aspects of the risk and/or are partially effective.

3

Low assurance

Control(s) provide minimum coverage of the risk and/or are not effective.

4

Other assurance

Control(s) do not directly cover the risk but can be secondary source of assurance.

5

Not applicable or No assurance

N/A - Source of assurance is not applicable for this risk.
None – no assurance identified by management.

Source: KPMG



Question Alert - They can ask you a question in which a company might want to know arrangements it can make for cyclical reporting. You can use the points we discussed under the case study of ABC Limited.

CREATION OF COMPLIANCE REPORTING SYSTEM

Brief Process of Compliance Reporting is as follows:

Question Alert - They can ask you a direct question on process of compliance reporting.

- 1) Reporting by the functional heads on areas 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.
- 2) Collection and classification of the relevant information from various units/ locations by each of the functional heads & consolidating them in the form of a report.
- 3) The report shall carry an affirmation from the functional heads that the said report has been prepared based on the inputs received from the various units/offices and then list out the specific compliances/ non-compliances, as already circulated to the functional heads.
- 4) Each of the functional heads will forward their respective compliance reports to the company secretary/ managing director.
- 5) 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.



- 6) The whole process of compliance reporting is contingent on the creation and implementation of comprehensive legal Management Information System (MIS).

COMPLIANCE RISK - REVIEW AND UPDATE

PURPOSE OF REVIEW

- 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:

Question Alert - They can ask you a direct question on 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).

MUST BE INCLUDED IN THE MONITORING PLAN

Question Alert - They can ask you a direct question on inclusions in the monitoring plan.



- **Concise statements** that capture the relevant internal and external compliance obligations and the risks arising from those obligations.
- The **business processes** to which the compliance obligations are linked or on which they have an impact.
- Specific Compliance Risk **mitigation activities** for managing the compliance obligations.
- 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).
- **Brief description** of how tracking and monitoring activities are performed.
- **Frequency** of tracking and monitoring activities.
- **Recipient(s)** of the tracking and monitoring reports.

METHODOLOGY FOR ACCESSING THE COMPLIANCE MECHANISM OF THE COMPANY:

- Risk/Cultural Assessment
- Program Design/Update
- Policies and Procedures
- Communication, Training, and Implementation
- Ongoing self-Assessment, Monitoring, and Reporting

Question Alert - They can ask you a direct question on methodology or they can use a case to establish the context and indirectly ask you about methodology.



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 purpose of this assessment is to **identify gaps** between company's current practices and the regulatory requirements.

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 cover **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 on various programs**, 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 inculcate it into the attitudes and behaviours of the employees of the company.

Ongoing self-Assessment, Monitoring, and Reporting:

- It helps to know that **both the intent and letter of the law are continuously being observed** throughout the organization.
- It **helps to understand how does the organization adapt** to changing legislation and business conditions.
- It **helps to understand the relevancy of the program** as the organization evolves for example, through mergers and acquisitions.



- It helps organisations **achieve sustained success**.

TRAINING AND IMPLEMENTATION

- Helps in compliance awareness.
- It reinforces company's compliance culture.
- It should build awareness of:
 - Company Framework, including the 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.

Question Alert - They can ask you to write a note on training & implementation. They can also ask you a question in following form:

"Training helps in compliance awareness. State the things which training should build awareness of." In this you are required to write the 5 points under the heading "It should build awareness of".

FIVE ESSENTIAL THINGS TO CREATE COMPLIANCE TRAINING PROGRAM:

- Make it personal
- Make it interesting
- Make it understandable
- Make it accessible
- Make it ongoing

Question Alert - They can ask you a direct question on 5 essentials.



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.

PLANS FOR COMPLIANCE TRAINING AND EDUCATION PROGRAM MAY INCLUDE:

Question Alert - They can ask you a direct question on contents of plan for compliance training & education program.

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

Question Alert - They can ask you to write a note on compliance audit.

COMPLIANCE AUDIT

- Compliance audit is the **independent assessment** of whether a given subject matter is in compliance with applicable criteria.
- 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 performance audits**.
- The compliance audits **may be conducted separately on a regular basis** related to a specific subject matter.
- Compliance auditing may be concerned with:

Regulatory:

Adherence of subject matter to formal criteria arising 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.

BENEFITS OF CORPORATE COMPLIANCE MANAGEMENT

- Better compliance of the law.
- Real time status of legal/statutory compliances.
- Improved operations and higher productivity.
- 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.
- Healthy returns, stronger market capitalization and shareholder returns through employees and customers loyalty and public respect for the brand.
- Safety valve against unintended non compliances/ prosecutions, etc.
- Cost savings by avoiding penalties/fines and minimizing litigation.
- Better employee engagement and talent retention.
- Better brand image and positioning of the company in the market.
- Enhanced credibility/creditworthiness among the shareholders, investors, and stakeholders and regulators.
- Recognition as Good corporate citizen.

Question Alert - They can ask you a direct question on benefits of corporate compliance management.



SECRETARIAL AUDIT AND COMPLIANCE MANAGEMENT SYSTEM

Following are the factors on which the compliance system and processes in a company are mainly dependent:

- 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.

Question Alert - They can ask you a question on "As a secretarial auditor advise a company on how it can build a strong compliance system". You are required write the factors which we have discussed above.

Secretarial Auditor can constitute a broad idea about the desired system and process to be adopted by a company on the basis of the above factors.

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 **(comment-based question can be asked by giving this line)**.

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.

Question Alert - They can ask you a question on "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. Comment". Here, you can write points from compliance audit and how it helps the company in improving its compliance mechanism.



ROLE OF COMPANY SECRETARIES IN COMPLIANCE MANAGEMENT

- CS is the 'Compliance Manager' of the company.
- He ensures that the company is in compliance with all regulatory provisions.
- Corporate disclosure is the forte of a company secretary. These disclosures can be classified into statutory disclosures, non-statutory disclosures, specific disclosures and continuous disclosures.
- Corporate governance report which is published in the annual accounts is duly certified by the professional like company secretaries.
- CS has to ensure that these disclosures are made to shareholders and other stakeholders in true letter and spirit.
- The advisory services of company secretaries impact all the 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.
- CS play a proactive advisory role as he advises management, Boards and committees, the compliance executor, and the employees on compliance risk, responsibilities, obligations, concerns and other compliance issues that are suitable for the business' practices and operational constraints of the company.
- CS guides the Board and the company in all matters 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

The Directors' Responsibility Statement under Section 134(5) of the Act shall state:

- In preparing the annual accounts, the applicable accounting standards and proper explanations relating to material departures were followed.
- 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.



- 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.
- The directors had prepared the annual accounts on a going concern basis.
- 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.
- 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: Rajeev Saumitra Vs Neetu Singh

Facts:

- Director initiated competing business which conflicted with company's interest in order to gain advantage for himself and his relatives.

Decision:

- Director has breached fiduciary duty u/s 166 of Companies Act, 2013.
- Cause of action accrues in favour of Company.

Question Alert - They can ask you a direct question on:

- Role of CS in compliance management.
- Directors Responsibility Statement.



CERTAIN IMPORTANT COMPLIANCE REQUIREMENTS UNDER COMPANIES ACT, 2013

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.

Disqualification of Directors: Form DIR-8

Question Alert - They can ask you a case study question on section 164(2).

As per section 164(2), 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 3 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 1 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 **5 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 6 months from the date of his appointment.

[it simply means that because of default of 164(2), existing director of the company will get disqualified. Now, the new director will come in. Such new director will not incur disqualification of 164(2) for a period of 6 months from his appointment. In other words, new director gets time of 6 months to correct the default of 164(2). If default continues even after 6 months, such new director will also get disqualified].



Illustration - The Company ABC Pvt. Ltd. has not filed annual returns for the year 2019-2020, 2020-2021 & 2021-2022 yet. What could be the 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 that company or any other company.

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.

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, to 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.

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.

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.

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.

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 60 days of its incorporation** and thereafter at least one meeting of the Board of Directors in each half of a calendar year.



Illustration - 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.

Question Alert - They can ask you a case study question on shorter notice.

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 1 independent director**, if any and

IN HIS ABSENCE decision shall be circulated to **ALL DIRECTORS** (even to those who didn't attend the meeting) and shall be final on ratification by **AT LEAST ONE** independent director, if any.

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.

Appointment of Company Secretary

Private Company having paid up share capital of **Rs. 10 crores or more** is required to appoint a whole time Company Secretary.



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

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.

Register of members

Company shall keep & maintain the following mandatory Registers viz:

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

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

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 sub-section (1) or sub-section (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/-.



Economy Hotels India Services (Appellant) Private Limited Vs. Registrar of Companies & Anr

Facts:

- NCLT rejected Reduction of Share Capital.
- In the extract of minutes, due to typographical error, special resolution was written as unanimous ordinary resolution.
- Appellant filed SR with ROC and fulfilled all the requirements.

Decision:

- Reduction of share capital is a domestic affair.
- Tribunal will not interfere and majority decision prevails.
- Appellant admitted the typographical error.
- Reduction allowed.

The Registrar of Companies, West Bengal (Appellant) V. Karan Kishore Samtani (Respondent)

Facts:

- Respondent was the Director in more than 20 Companies.
- ROC, West Bengal sent show cause notice.
- Respondent admitted the guilt with a request to compound the offence.
- NCLT allowed the compounding for compounding fees of Rs. 50,000.
- ROC has filed this Appeal alleging that fees of 50,000 is not appropriate as it is less than the minimum amount of fine prescribed.



Decision:

- NCLAT said that NCLT didn't took notice of the minimum fine.
- NCLAT imposed fine of Rs. 1360000.
- It also 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

FORM	PARTICULARS
PAS-5	Maintenance of complete record of Private Placement Offers
SH-2	Register of Renewed and Duplicate Share Certificates
SH-3	Register of Sweat Equity Shares
SH-6	Register of Employees Stock Options
SH-10	Register of Shares or other Securities bought back
CHG- 7	Register of Charges
MGT- 1/ MGT- 2	Register of Members Register of debenture holder and other security holders
MGT- 1	Foreign Register of Members
MGT- 2	Foreign Register of Debenture holders/other security holders with index of names
BEN-3	Register of significant beneficial owners
No format specified	Attendance Register – Board & Committee Meetings
No format specified	Minutes (General Meeting, Class of Shareholders, Creditors or Resolution passed by Postal Ballot)
Schedule III	Books of Account (together with the vouchers to any entry in such books of account)
MBP-1	Notice of interest by Director



MBP-2	Register of Loans, Guarantee, Security and in respect of Acquisition made by the company
MBP-3	Register of Investment not held in its own name by the company
MBP-4	Register of Contracts or arrangements with related party and with Bodies corporate etc. in which directors are interested

Question Alert - They can ask you a direct question on registers to be maintained under companies act, 2013.

COMPLIANCE MANAGEMENT TOOL

Question Alert - They can ask you to write a note on compliance management tool.

- 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.
- It is generally **required in large organisations** where many risks are involved as these organisations are required to adhere to a wide variety of laws and regulations applicable.
- It **handles and controls the business processes** and helps in scaling operations without increasing the risk of non-compliance.
- For e.g., 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.

OBJECTIVES OF COMPLIANCE MANAGEMENT TOOL



Digitization

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

Question Alert - They can ask you a direct question on objectives of compliance management tool.

Automation

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

Compliances

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

Question Alert - They can form a case study and ask you to suggest some of the best practices around compliance management. You can use the points from Bharti Airtel's case study discussed on the next page.



Case Study: Compliance Management at Bharti Airtel Limited

- Has a robust automated Compliance Framework based on the global inventory of all applicable laws.
- Proactive automated alerts are sent to compliance owners to ensure compliance within stipulated timelines.
- Compliance owners certify the compliance status which is reviewed by compliance approvers.
- Consolidated dashboard is presented to the respective Business Leaders and the Managing Director & CEO.
- A certificate of compliance of all applicable laws and regulations along with exceptions report and mitigation plan, if any, is placed before the Audit Committee and Board of Directors on a quarterly basis.
- Has centralised automated tool in place viz. Notice Management System to regularly monitor and update the legal notices and court cases.

KINDS OF COMPLIANCE MANAGEMENT TOOL

All-Purpose Compliance Management Platforms

These compliance Management Platforms can be used in any kind of the organisation focused at providing:

- Risk remedy
- Solving Technical issues
- Corporate Governance

Question Alert - They can ask you a direct question on kinds of compliance management tool.

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.



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

Illustration

- Bharti Airtel Limited has in-house rule-based data analytics tool and oracle Governance Risk and Compliance (GRC).
- Reliance BP Mobility Limited has Governance, Risk, Compliance and Audit (GRCA 2.0) Platform which is an in-house developed platform on open-source technology, which enables 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 COMPLIANCE MANAGEMENT TOOL

Reduction in Manual Work:

The management of compliances in spreadsheet is time consuming. Compliance management tools automates the work and enables easy task management.

Streamlining implementation:

It reduces the compliance efforts by streamlining various frameworks. It facilitates the compliance audits and corrective steps.

Question Alert - They can ask you a direct question on benefits.



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 among its customer base and with its employees.

Creates a Roadmap for Business:

One of the biggest benefits of a compliance management tool is that it shows you where to go. It maps out organisations regulatory requirements and tells where it need to improve. For e.g., the “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

- It is intended to track, detect, prevent and remediate any violations of applicable laws and regulations and to encourage a culture of compliance.
- Project Eagle covers various applicable regulations like Global Immigration, Health, Safety, HR & Employment Law, etc.
- Project Eagle is supported by the implementation of software tool-based systems (“Compliance Manager Tool”) to effectively track and monitor such applicable compliances.



- 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.
- 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.



5 Pager Revision Chart of Chapter 1

Corporate Compliance Framework

4 points:

- BOD need to establish compliance framework.
- supports RMS
- BOD can take 3 steps for effective compliance approach:
 1. involving senior management.
 2. periodically reviewing effectiveness
 3. updating it as per changes
- helps to achieve goals.

5 points under Maruti Suzuki's Compliance Management:

- Have systems for zero non-compliance.
- Compliance certificate is submitted to BOD.
- Electronic system monitors compliance.
- Periodic compliance health checks are done.
- Compliance Month is observed every year.

GRC:

- CMS which integrates into each department's processes.
- Reduces RCD.
- Requires CWC.
- 3 elements -
 1. Governance:
 - way in which BOD structures & organizes the entire company.
 - explains the management's approach.
 - ensures that accurate & sufficient information is communicated.
 - provides control mechanisms to ensure.
 2. Risk Management:
 - identifying potential risk & taking actions.
 - involves identification, analysis & response to risk.
 3. Compliance:
 - P & P to ensure business done legally & ethically.
 - involves adherence.
 - 4 steps to achieve:
 - a) Identify applicable laws.
 - b) Assess current state.
 - c) Assess risk & potential costs of Non-compliance.
 - d) Prioritize, Fund, Initiate corrective actions.

3 Components of CCF

Compliance Chart (4 points):

- provides an overview of laws
- how compliance risk mitigation activities are placed
- helps business in meeting its compliance obligations
- reflects the key activities and compliance calendar

Compliance Advisory:

advices on compliances of applicable laws and effect of non-compliances.

Compliance Scorecard

(3 points):

- tool to analyse the position
- helps to quickly correct the non-compliance
- includes the tracking of steps taken

Compliance Chart

- prepared after considering Operations & Structure.
- 5 activities are considered for preparation (IOC/RA/ RM/CM/CR).
- 7 points under contents of chart (reference, concise statements, risk level, business processes or people, risk mitigation activities and risk tracking, to whom & how frequently results reported, clear ownership).
- 5 points under role of CS in creation of chart (IOAL, RA, CRM, CM, CR).



Key functions performed by well-designed compliance framework

7 KEY FUNCTIONS:

- Compliance Dashboard: helps to track, view, make decisions.
- Compliance Policy & Procedure: DMS, alignment, CRAR process, tool provide CDMF.
- Access to Rules and Regulations: sync, notified proactively, adjust, up-to-date.
- Compliance Audit: core infra, RT system, no more annual activity, evidence of IA.
- Quality Management: QI to IM, supports ongoing QI.
- Compliance Training: lack of knowledge, work closely, training management.
- Compliance Task Management - centralized data base, automated updates.

5 STEP PROCESS/ STAGES FOR SETTING UP OF COMPLIANCE FRAMEWORK:

1. Identification of Compliance Obligations.
2. Preparation of Compliance Chart.
3. Assessment of historical compliance status.
4. Assessment of Compliance Risk.
5. Compliance/ Action Reporting.

4 STEPS IN THE PROCESS OF CORPORATE COMPLIANCE FRAMEWORK:

1. Compliance Identification: identify, legal team, functional heads.
2. Compliance Ownership: owner, function & individual wise, P & S, PO & SO.
3. Compliance Awareness: establish LCM, awareness, meetings/ trainings.
4. Compliance Reporting: communication, done annually, corrective action.

4 STEPS IN THE PROCESS OF COMPLIANCE MANAGEMENT:

1. Identification and evaluation of compliance obligations.
2. Mitigating the compliance risks.
3. Evaluating the performance and reporting the needs.
4. Managing the non-compliance and working on continuous improvements.

How compliance management works in legal department:

- monitors compliances
- tracks the expiry dates
- facilitates easy management
- ensures compliance with policies

Identification of applicable laws and regulations

- involves identification of the compliances
- should be a systematic process of identifying compliance obligations.
- to identify compliances, CS should get familiar with – BM, EHSA, DSR.
- compliance chart must be kept up to date.
- should communicate to compliance executor what he should or should not do
- conflict arises between local laws and policies, stringent one prevails.
- Sources of identification (13 points)
- Organisation need to comply with following laws (9 points)
 - case Law of Siddarth Gupta (Appellant) v. The Delhi Golf Club Limited & Anr (Respondent) – Facts - Delhi Golf Club's Membership cancelled in AGM – Decision – membership can be cancelled only after following provisions of MOA & AOA, principle of natural justice not followed, expulsion provisions not followed, court directed the club to reverse the resolution.
 - case study of Cloudtail



Compliance Risk Assessment: Basis for Compliance Management

- Done according to the changes in the business' profile.
- It includes:
 - o Identification of areas of potential non-compliances
 - o Rating the risks
 - o Assessing the outcomes
- 4 Risk Drivers:
 - o Legal Effect
 - o Financial Effect
 - o Business Effect
 - o Reputational Effect
- 2 types of Risk Assessment (RA):
 - o High Level
 - o Detailed
- Illustrations on best practices for RA:
 - Top-down approach to risk Identification.
 - Risk Surveys.
 - Top Risk Workshop and Bottom-Up approach.
 - Vendor risk assessment.
 - Remote Monitoring System (RMS)
 - Mapping of Risks to KRAs
 - Management Committee led discussions
 - Clearly defined ownership of risks
 - ERM Framework
 - Risk and Governance Committee.
 - Multi-layered risk governance structure
 - Central Tracker for all audits

Compliance Monitoring and Responsibility Centre Mapping /Allocation

- o most essential mechanism
- o means "oversight" of the company's operations and activities
- o effectiveness of risk assessment and monitoring should be reviewed periodically
- o the role of the various level of management for compliance ownership:
 - Top Management
 - Legal Cell
 - Senior Management & Functional Heads
 - Compliance Officer / Subordinate Staff

Creation of Compliance Reporting System

Brief process of compliance reporting:

- o reporting by the functional heads
- o collection and classification of the relevant information
- o report shall carry an affirmation from the functional heads
- o each of the functional heads will forward their respective compliance reports to the company secretary/ managing director.
- o company secretary would then brief the managing director.
- o whole process of compliance reporting is contingent on the creation and implementation of legal MIS.

Escalation and compliance reporting

- o assess whether compliance risks exceed the risk appetite of company
- o allows for communication and discussion of potential compliance risks
- o responsibility of management and the compliance officer to gather information, and analyze and communicate the results.
- o reports should be discussed quarterly
- o 2 types of reporting
 - Cyclical Reporting
 - Incident Reporting
- o case study of ABC Ltd, a BSE listed company

Compliance Risk - Review and Updation

- o purpose of review (4 points)
- o contents of compliance risk monitoring plan (6 points)
- o must be included in the monitoring plan - concise statements - business processes - mitigation activities - tracking, monitoring, assurance - brief description - frequency - recipient(s)
- o methodology for accessing the compliance mechanism of the company
- o Risk/Cultural Assessment
- o Program Design/Update
- o Policies and Procedures
- o Communication, Training, and Implementation
- o Ongoing self-Assessment, Monitoring, and Reporting



Training and Implementation

- Helps in compliance awareness
- reinforces company's compliance culture
- should build awareness of (5 points)
- 5 essential things to create compliance training program
- plans for compliance training and education program may include (5 points)

Compliance Audit

- o independent assessment
- o may be planned, performed and reported separately
- o completely different from the audit of financial statements and performance audits
- o may be conducted separately on a regular basis
- o regulatory & propriety

Role of CS in Compliance_Management

- o 'Compliance Manager'
- o ensures that the company is in compliance
- o ensure disclosures are made in true letter & spirit
- o Corporate disclosure is the forte of a CS
- o Corporate governance report certified by CS
- o Advisory services of CS impact all the components
- o CS play a proactive advisory role
- o CS guides the Board

Benefits of Corporate Compliance Management

- Better compliance of the law.
- Real time status of legal/statutory compliances.
- Improved operations and higher productivity.
- 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.
- Healthy returns, stronger market capitalization and shareholder returns through employees and customers loyalty and public respect for the brand.
- Safety valve against unintended non compliances/prosecutions, etc.
- Cost savings by avoiding penalties/fines and minimizing litigation.
- Better employee engagement and talent retention.
- Better brand image and positioning of the company in the market.
- Enhanced credibility/creditworthiness among the shareholders, investors, and stakeholders and regulators.
- Recognition as Good corporate citizen.

Case Law of Rajeev Saumitra Vs Neetu Singh

Facts - Director initiated competing business which conflicted with company's interest – Decision - Director has breached fiduciary duty u/s 166 of Companies Act, 2013 - Cause of action accrues in favour of Company.

Secretarial Audit and Compliance Management System

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

Directors Responsibility Statement

- o applicable accounting standards were followed
- o directors had selected such accounting policies and applied them consistently
- o directors had taken proper and sufficient care for the maintenance of adequate accounting records
- o directors had prepared the annual accounts on a going concern basis
- o directors had laid down internal financial controls
- o directors had devised a proper system to ensure compliance

Certain Important Compliance Requirements under Companies Act, 2013

- Disclosures by a Director of his interest
- Disqualification of Directors: Form DIR-8
- Annual Return: Form MGT-7
- Filing Financial Statements: Form AOC-4 & AOC-4 CFS
- Certification of Return: Form MGT -8
- Circulation of Financial Statement & other relevant Documents
- Notice of AGM
- Board Meetings
- Notice of Board Meeting
- Appointment of Auditor: Form ADT-1
- Appointment of Company Secretary
- Register of members

Case of Economy Hotels India Services (Appellant) Private Limited Vs. Registrar of Companies & Anr

Facts - NCLT rejected Reduction of Share Capital - typographical error, special resolution was written as unanimous ordinary resolution - Appellant filed SR with ROC and fulfilled all the requirements - Decision - Reduction of share capital is a domestic affair - Tribunal will not interfere and majority decision prevails - Appellant admitted the typographical error - Reduction allowed.

Project Eagle: Infosys

Case of The Registrar of Companies, West Bengal (Appellant) V. Karan Kishore Samtani (Respondent)

Facts - Respondent was the Director in more than 20 Companies - ROC, West Bengal sent show cause notice - Respondent admitted the guilt with a request to compound the offence - NCLT allowed the compounding for compounding fees of Rs. 50,000 - ROC has filed this Appeal alleging that fees of 50,000 is not appropriate as it is less than the minimum amount of fine prescribed - Decision - NCLAT said that NCLT didn't took notice of the minimum fine - NCLAT imposed fine of Rs. 1360000 - It also held that the compounding fees has to be more than or equal to the minimum fine prescribed under the Act.

Compliance Management Tool

- Software products that automate or facilitate processes and procedures that businesses must have in place to be compliant - required in large organisations - handles and controls the business processes
- Objectives of compliance management tool: Digitization - Automation - Compliances
- Case study: compliance management at Bharti Airtel Limited

Benefits of Compliance Management Tool

Registers to be maintained under Companies Act

PAS-5 - Record of Private Placement Offers; SH-2 - Register of Renewed & Duplicate Share Certificates; SH-3 - Register of Sweat Equity Shares; SH-6 - Register of Employees Stock Options; SH-10 - Register of Shares or other Securities bought back; CHG- 7 - Register of Charges; MGT- 1/ MGT- 2 - Register of Members/ Register of debenture holder and other security holders; MGT- 1 - Foreign Register of Members; MGT- 2 - Foreign Register of Debenture holders/other security holders with index of names; BEN-3 - Register of significant beneficial owners; No format specified for Attendance Register; No format specified for Minutes; Schedule III - Books of A/C; MBP-1 - Notice of interest by Director; MBP-2 - Register of LIGS; MBP-3 - Register of Investment not held in its own name by the company; MBP-4 - Register of Contracts or arrangements with related party and with Bodies corporate etc. in which directors are interested

Kinds of Compliance Management Tool

- All-Purpose Compliance Management Platforms
- Industry-Specific Compliance Management Tools
- GRC Software

Reduction in Manual Work; Streamlining implementation; Simplification in Monitoring and reporting; Risk in human errors reduced; Builds Organisation Reputation; Creates a Roadmap for Business