



# SECRETARIAL AUDIT COMPLIANCE MANAGEMENT AND DUE DILIGENCE

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## HIGHLIGHTS

- Amended in line with new modules issued by ICSI
- Covers all important topics
- Covers past topics of previous year exams

### 1. INTRODUCTION

- Compliance means to obey the rules and regulations applicable on the companies. Company needs to comply with various law and regulations and non-compliance of same attracts heavy penalties and fines provided under the relevant statute. It is duty of Board of directors and Management of company to ensure company's compliance with all rules and regulations as timely compliance not only reduces risks and costs but also helps in building a better corporate image. In order to ensure timely compliance and reduce compliance risks, Board must establish a compliance management system.
- A compliance management system manages the entire compliance process of the company. It is incorporated to analyse the issues that a company may face in compliance and how it is likely to perform in the future. This system includes compliance programmes, compliance reporting, compliance audit, etc. Compliance programmes are the policies and procedures established in the company to ensure compliance with various rules and regulations. Compliance reporting means reporting to seniors, whether all the laws have been complied. Compliance audit means independent testing of level of compliance with applicable laws and regulations on an organisation.
- Company Secretaries play a crucial role in the corporate compliance management.

### 2. CORPORATE COMPLIANCE FRAMEWORK

1. Compliance Chart: Mentions applicable Laws relating a business' operation. And explains how compliance risk mitigation activities are embedded in business processes.
2. Compliance Advisory: Mentions advice on compliances of applicable laws and effect of non-compliances.
3. Compliance Scorecard: A tool to analyse the position of an organisation in compliance  
Compliance framework consists of three key components: compliance chart, compliance advisory and compliance board. Compliance chart is a vital part of this framework and a Company Secretary plays a crucial role in preparation of the same. The Chart provides an overview of the relevant local, state, central and international laws, regulations and standards relating to a business' operations and outlines how compliance risk mitigation activities are incorporated in business. The compliance chart reflects the key activities and compliance

calendar which is to be followed and performed by a business unit to manage its compliance risks.

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

1. **Compliance Dashboard:** Dashboard is used to indicate the performance of the company with respect to a specific purpose. Compliance dashboard is used to see a company's performance with respect to compliance. A well-designed compliance framework will provide a compliance dashboard for all users to track the compliance events of the company. External auditors, internal auditors, compliance officers can use the dashboards to make decisions on the compliance status of the organization.
2. **Compliance policy and procedures:** If compliance framework has been well-designed, policies and procedures for implementation of compliance management system can be designed properly and in conformity with updated laws.
3. **Access to rules and regulations:** a well-designed compliance management system always stays in sync with changing rules and regulations and as soon as there are changes in law, the departments are informed through and e-mail based collaboration. This helps an organisation to stay updated with changing rules and regulations and accordingly change their policies and procedures.  
It offers up-to-date alerts with respect to any change made by the regulatory authorities.
4. **Compliance Training:** Sometimes lack of knowledge of complete procedure lead to fines and penalties to the director and officers of the company. Hence, a well-designed system has to provide employee training to mitigate risks.
5. **Compliance Task Management:** The company must create plan to manage and report status of all compliance related activities from a centralized data base. Automated updates from the various compliance modules could be viewed by the Board, compliance officer, entity compliance coordinators, quality offices and others as designated.
6. **Compliance audit:** a well-designed compliance framework ensures that an audit is conducted to make sure that company is in compliance with applicable rules and regulations and compliance management system is implemented properly.

### 3. PREPARATION OF COMPLIANCE CHART

Compliance framework consists of three key components: compliance chart, compliance advisory and compliance board.

Compliance chart is a vital part of this framework and a Company Secretary plays a crucial role in preparation of the same. The Chart provides an overview of the relevant local, state, central and international laws, regulations and standards relating to a business' operations and outlines how compliance risk mitigation activities are incorporated in business. The compliance chart reflects the key activities and compliance calendar which is to be followed and performed by a business unit to manage its compliance risks. The compliance chart of the company is prepared after considering the operations and the structure of the company, activity of the company, Industry, Sector in which the company operates and laws which are specifically applicable to the company.

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

- a) Identification of compliances under applicable Laws, Rules and Regulations
- b) Risk Assessment
- c) Risk Mitigation
- d) Compliance Monitoring
- e) Compliance Reporting

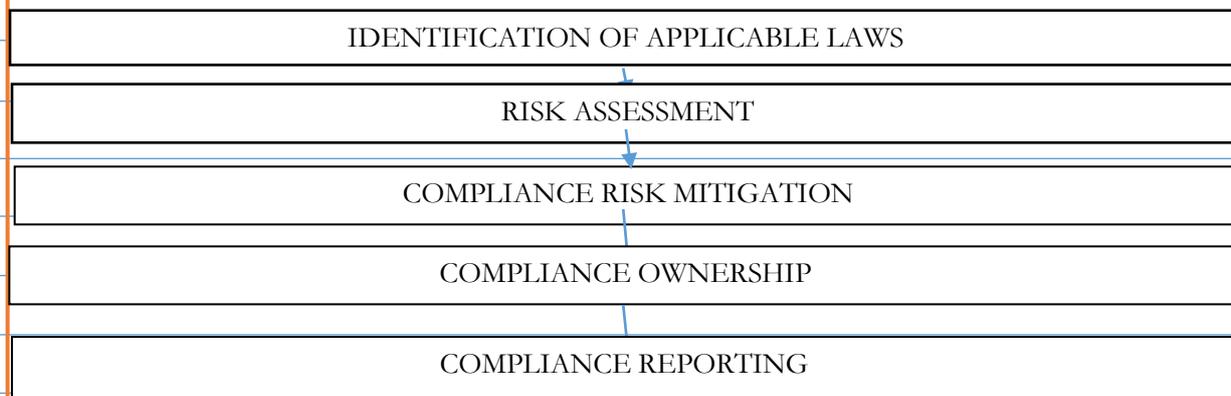
### 4. CONTENT OF COMPLIANCE CHART

A compliance chart should contain all information relating to compliances including-

1. Reference to compliance related laws, rules, regulations and policies and procedures of the company.
2. Statements which provide about compliance obligations and risk arising from such obligations.
3. Risk level of such obligations (critical, medium or low)
4. Compliance risk mitigation policies and compliance risk tracking and monitoring for managing compliance obligations.
5. Ownership of activities outlined in the chart.
6. To whom and how frequently compliance related findings and results are reported.

## 5. ROLE OF COMPANY SECRETARY IN CREATION OF COMPLIANCE CHART

Company Secretary plays a major role in formation of compliance chart. Though the information to be provided in the compliance chart depends on various factors but a brief process for preparation of compliance chart is as follows:



1. **Identification of applicable rules and laws:** The compliance identification involves the identification of compliances requirement under various laws applicable to the company, in consultation with the functional heads. The legal team of the company guides the functional heads in identification of the laws applicable to the company and to identify the compliances that are required under each law, rules and regulations applicable on the company. For preparation of such compliance framework by a company secretary and to identify the compliances & other requirements, it is necessary for him to be familiar with the business model of the company along with the environmental, health and safety aspects, and data security requirements. It is also necessary to review the compliance requirements periodically, considering the amendments given by the regulatory authorities.

2. **Risk Assessment:** Risk assessment involves assessment of risk arising from compliance, obligations. In the risk assessment process, the company identifies the inherent risk of each obligation as critical, high, medium or low and on the basis of the outcomes a risk mitigation strategy is prepared. Risk assessments should be performed according to the changes in the business' profile. Such changes may result because of new laws or regulations, new interpretations of existing laws or regulations.

There are two types of risk assessments that can be performed by the company, these risk assessments are known as high level risk assessment and detailed risk assessments. To

ensure that risk is properly assessed and mitigated, a detailed risk assessment should be undertaken whereas, results from detailed risk assessments are used for high risk assessments.

3. **Compliance Risk Mitigation:** Compliance risk mitigation is the process of developing and implementing controls such as policies, procedures and guidelines to prevent or minimise risks arising from compliance obligations. It involves development and communication of policies and procedures in an organised manner, so employees understand their obligations (e.g. how to make a whistle-blower report, complaints handling process and anti-bribery procedures, etc). The risks of non-compliance of the law are many which include the followings:

1. Cessation of business activities
2. Civil action by the authorities
3. Punitive action resulting in fines against the company/officials
4. Imprisonment of the errant officials
5. Public embarrassment
6. Damage to the reputation of the company and its employees
7. Attachment of bank accounts.

4. **Compliance Monitoring- ownership/allocation:** The next important step of designing compliance framework is the compliance ownership. It is necessary to describe primary and secondary ownership of compliance obligations, where, the primary owner is mainly responsible for the compliance and the secondary owner has to supervise the compliance.

Compliance chart should identify the individuals having accountability for compliance obligations and specify the same.

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

**Top Management:**

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

### 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 to 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.

5. **Compliance Reporting:** all compliances and non-compliances should be properly reported to the concerned authority so that an appropriate action can be taken by the authorities to reduce the compliance risk.

Procedure for Compliance Reporting is as following:

1. Firstly, functional heads should be identified for reporting of various laws. For example - the company secretary would be the functional head for reporting of company law, listing regulations and commercial laws.
2. Each of the functional heads then collect and classify the relevant information from the various units of their department and consolidate it in the form of a report.

3. The report should carry an affirmation from the functional heads that the report is prepared based on the inputs received from the various unit and should provide, specific compliances/ non-compliances.
4. These reports are then forwarded to Company Secretary or managing director.
5. The company secretary would give a brief to the managing director and managing director after consolidating the inputs from company secretary, submit the report to the Board with his signature.
6. The whole process of CCR is contingent on the creation and implementation of comprehensive legal Management Information System (MIS).

## 6. COMPLIANCE RISK- REVIEW AND UPDATION

Monitoring of compliance risk is essential to identify if any new risk has arise and to ensure that risk mitigation activities are working properly. Hence, the plan for monitoring the compliance risk should be documented, reviewed and updated timely. It should include:

- a) Critical and high Compliance Risks.
- b) Key Compliance Risk mitigation activities.
- c) Routine business transactions to which compliance obligations or risks are associated.
- d) Compliance with the laws, regulations and standards included in the chart, including the company values.
- e) The implementation /embedding of the Framework and all policies issued by the corporate compliance department.

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

- a) **Risk Assessment:** Through employee surveys, interviews, and document reviews, a company's culture of ethics and compliance at all levels of the organization is validated. This assessment is done to identify gaps between company's current practices and the regulatory requirements.
- b) **Program Design/Update:** This approach can be used to assess the compliance programme and the reporting structure or communication methods in an organisation.

- c) **Policies and Procedures:** The company should review and keep updating and enhancing the policies and procedures, including issues of financial reporting, fraud, conflicts of interest, sexual harassment etc.
- d) **Communication, Training, and Implementation:** This approach involves the communication of the various policies and procedure of the company along with the **philosophy behind such policies** and training programme on such policies which may help in the adoption of such policies in day-to-day realities and incorporate it into the attitudes and behaviours of the employees of the company.
- e) **Ongoing self-Assessment, Monitoring, and Reporting:** In order to understand that both the intent and letter of the law are still being observed throughout organization and the program and the organization adapt to changing legislation and business conditions, the assessment, mechanisms, and processes must be incorporated including employee surveys, internal controls, and monitoring and auditing programs, to achieve success.

## 7. TRAINING AND IMPLEMENTATION

A compliance system can be helpful, if the individuals who are responsible for compliances are aware of such compliances. Creating appropriate awareness amongst the owners of compliances is very important as many times compliances are handled by such persons who are not fully aware of the requirements of the law. This can be done through trainings/ meetings or through a manual containing detail of compliances. A strong Compliance training and education programme reinforces Company compliance culture and builds awareness and understanding of -:

1. Company Framework
2. Roles and responsibilities outlined in the policies and Framework
3. Critical and high compliance obligations identified in the Compliance Chart
4. The process for addressing compliance issues
5. Consequences of failing to meet compliance obligations.

An annual plan for Compliance Risk related training and education must be developed and updated and must include-:

1. Statements that provide relevant internal and external compliance obligations and the risks arising from those obligations;
2. The business processes to which the compliance obligations are linked or on which they have an impact
3. Brief description of the training or education activity;
4. Target audience (new employees or existing employees)
5. Frequency of training

## 8. COMPLIANCE AUDIT

Compliance audit is completely different from financial audits. It is performed to check if company is in compliance with various rules and regulations. These audits may be conducted separately on regular basis.

Compliance audits are carried out by assessing whether activities, financial transactions and information comply with the rules laid down in various statutes. Compliance auditing is concerned with **Regulatory** i.e. adherence to relevant laws, regulations and agreements applicable to the entity and **Propriety** i.e. observance of the general principles governing sound financial management and the ethical conduct of public officials.

## 9. SIGNIFICANCE OF CORPORATE COMPLIANCE MANAGEMENT

A compliance management programme has following significance:

1. Companies with effective compliance management programme are more likely to avoid penalties.
2. It creates safety valve against non-compliances which were unintended.
3. Ensures cost savings by avoiding penalties/fines and minimizing litigation.
4. Creates better brand image of the company in the market.
5. Enhances credibility/creditworthiness that only a law-abiding company can have.
6. Creates goodwill among the shareholders, investors, and stakeholders.
7. Gives recognition as Good corporate citizen.

## 10. APPARENT ADEQUATE AND ABSOLUTE COMPLIANCES

Corporates are expected to comply with the regulatory requirements in their true letter and spirit to enhance trust level of stakeholders. As regards corporate disclosure, there has been a shift from letter to spirit because of factors like demand from stakeholders, regulatory shift from control to self-regulation, market competition etc.

Company needs to timely comply with the laws and regulations and to ensure good corporate governance the compliance levels should match the intentions of the Legislature, expectations of stakeholders and requirements of regulators. The compliances generally fall in three categories, i.e. Apparent Compliances, Adequate Compliances and Absolute Compliances.

1. **Apparent Compliances-** apparent compliances are superficial compliances which seems to be true but are not. The classic example for Apparent Compliances are generating documents such as notice, agenda, minutes on papers for board and general meeting which are not actually held.
2. **Adequate Compliances-** is compliance in letters. The aspects specified in law are complied in letters, without getting into the spirit of the law.
3. **Absolute Compliances-** are those which are in line with the spirit and intent of the law. When a company complies with law in spirit it gains public confidence as well. For example, Infosys has set new and effective standards in communicating with shareholders, stock exchanges and general public at large. Its Annual Report is said to be a trend setter and has been commended as an ideal report. the company has demonstrated through its practices and procedures its commitment to enhance investor-relations and has amply rewarded its shareholders through its impressive performance and its value based management philosophy helps increase its brand value. The company has achieved trust of stakeholders by having a strategic balance between wealth and welfare.

## 11. SECRETARIAL AUDIT AND COMPLIANCE MANAGEMENT SYSTEM.

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

- A. Nature of business (es).
- B. Geographical domain of its area of operation(s).

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

Based on the above the Secretarial Auditor can constitute a broad idea about the desired system and process to be adopted by a company. For example, a multi-product / multi operation company is supposed to comply all the applicable corporate laws in addition to regulatory framework applicable at products/ operations. Auditing in such systems requires the Auditor to enter and to have access within the system. While taking up the audit assignment, the Auditor needs to ensure that access would be given so that assessment of proper system and process of compliance is made. Auditing of compliance system and process is not a fault-finding exercise, rather a device to improve compliance mechanism of a company. It is expected that the Secretarial Auditor as an expert in corporate compliance would advice the companies to build up strong corporate compliance system in case the system appears to be insufficient during the audit process.

## **12. ROLE OF COMPANY SECRETARIES IN COMPLIANCE MANAGEMENT**

- 1. A Company Secretary is the 'Compliance Manager' of the company. He ensures that the company is in total compliance with all regulatory provisions. Corporate disclosures, which play a vital role in enhancing corporate valuation, is the forte of a Company Secretary. These disclosures can be classified into statutory disclosures, non-statutory disclosures, specifies disclosures and continuous disclosures. SEBI (Listing Obligations and Disclosure Requirements) Regulation, 2015 spells out elaborately on various aspects of disclosures which are to be made by the company such as contingent liabilities, related party transactions, proceeds from initial public offerings, remuneration of directors and various details giving the threats, risks and opportunities under management discussion and analysis in the corporate governance report which is published in the annual accounts duly certified by the professional like company secretaries. A company secretary has to ensure that these disclosures are made to shareholders and other stakeholders in true letter and spirit.

2. The company secretary provide advice on compliance risk, responsibilities, obligations, concerns and other compliance issues. The advisory services of the company secretaries impact the compliance framework, as the business receives advice to help manage its compliance risks more effectively. The company secretary is the professional who guides the board and the company in all matters, renders advice in terms of compliance and ensures that the board procedures are duly followed.
3. In nutshell, the company secretary is the professional who guides the board and the company in all matters, renders advice in terms of compliance and ensures that the board procedures are duly followed, best global practices are brought in and the organisation is taken forward towards good corporate citizenship.

### 13. ASCERTAINING CORPORATE COMPLIANCE FRAMEWORK

1. Are you aware of all important laws applicable to your organization?
2. How do you prevent/ track legal non-compliances?
3. Are you confident while signing the legal compliance declaration?
4. Does your organization have a compliance officer?
5. Who tracks legal cases in your organization?

### 14. RISK PROFILING OF A COMPANY MAY INCLUDE FOLLOWING RISK

1. **Business Risk Management**
  - (ii) Whether risk management policy and procedures are in place?
  - (iii) Whether formal risk assessment has been carried out or not?
2. **Business Ethics Framework**

Whether whistle-blower policy and Code of conduct exists and implemented?
3. **Internal Audit and Financial Integrity**
  - (i) Whether internal audit function is independently reporting to Audit Committee?
  - (ii) Whether roles and responsibilities of senior management is defined and documented?
  - (iii) Whether adequate segregation of duties exists?
4. **Legal Compliance Framework**

Whether legal compliance framework is documented and compliance health to checked on periodic basis?

5. **Fraud Risk Management**

- (i) *Whether Fraud Risk Management policy exists, detailing structure of fraud deterrence, prevention and investigation, fraud incidence response guidelines.*
- (ii) *Whether Key controls to mitigate fraud risks are identified and monitored for compliance on regular basis.*

6. **Business Continuity**

*Whether Disaster Recovery Plan, Business continuity plan and crisis management policy defined and implemented?*

7. **Succession Planning**

*Whether formal process of succession planning defined and implemented?*

8. **Management Operational Review**

*Whether formal process management oversight and review mechanism exist and followed.*



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Muskan is a graduate from ILS Law College, Pune. She Qualified as a Company Secretary at the age of 21 with AIR 15 in Foundation Programme. She has completed her masters in Psychology and pursuing masters in law from Bhartiya Vidyapeeth, Pune.

She has worked with esteemed lawyers and firms and has always shown great interest in subjects like Crpc, CPC, Constitution of India and Corporate Laws. She contributes to the legal fraternity by running a project called "VAKAALAT" which is a venture to brighten up the future of students pursuing law.

She has authored and published research papers in the field of Intellectual Property Rights, Cyber Law, Corporate Laws, etc. She has an inherent passion for teaching and firmly believes-

"Keep working hard, until you are insanely proud of yourself"