

# Implementation & Monitoring of Legal Framework

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27 Nov 2015





# Risks of Non Compliance

- Interest Payments
- Late Fees
- Penalties
- Prosecution
- Show cause notice
- Statutory officers conducting Search & Seizure
- Closure of business in extreme cases

# Purpose of Compliance program

- Monitor compliance of various laws and regulations are completed in a timely manner
- Ensure a centralized and robust Compliance program
- Monitor various process owners comply with assigned responsibility for completing compliance
- Provide assurance to Board and various stakeholders of an effective compliance framework and monitoring
- Track status of litigations and legal proceedings with Statutory Authorities and courts
- Purpose of program is to ensure effective regular compliance and avoid actions from Statutory Authorities

# Companies Act 2013 Requirement

*Section 134 (5) (f) requires “the directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively.”*

Companies Act 2013 thus **mandates the Board of Directors** of the Company to give a **declaration in Annual Report** under Director Responsibility Statement that, the **Company has its legal compliance process in place** and the same is **running effectively** to ensure that the Company is **regularly complying with all the laws** applicable for its business operations.



# Companies Act 2013 Secretarial Audit

## Scope of Secretarial Audit

A secretarial auditor has to check compliances by the company under the following laws and rules made there-under

### viii. **Other laws as may be applicable specifically to the company**

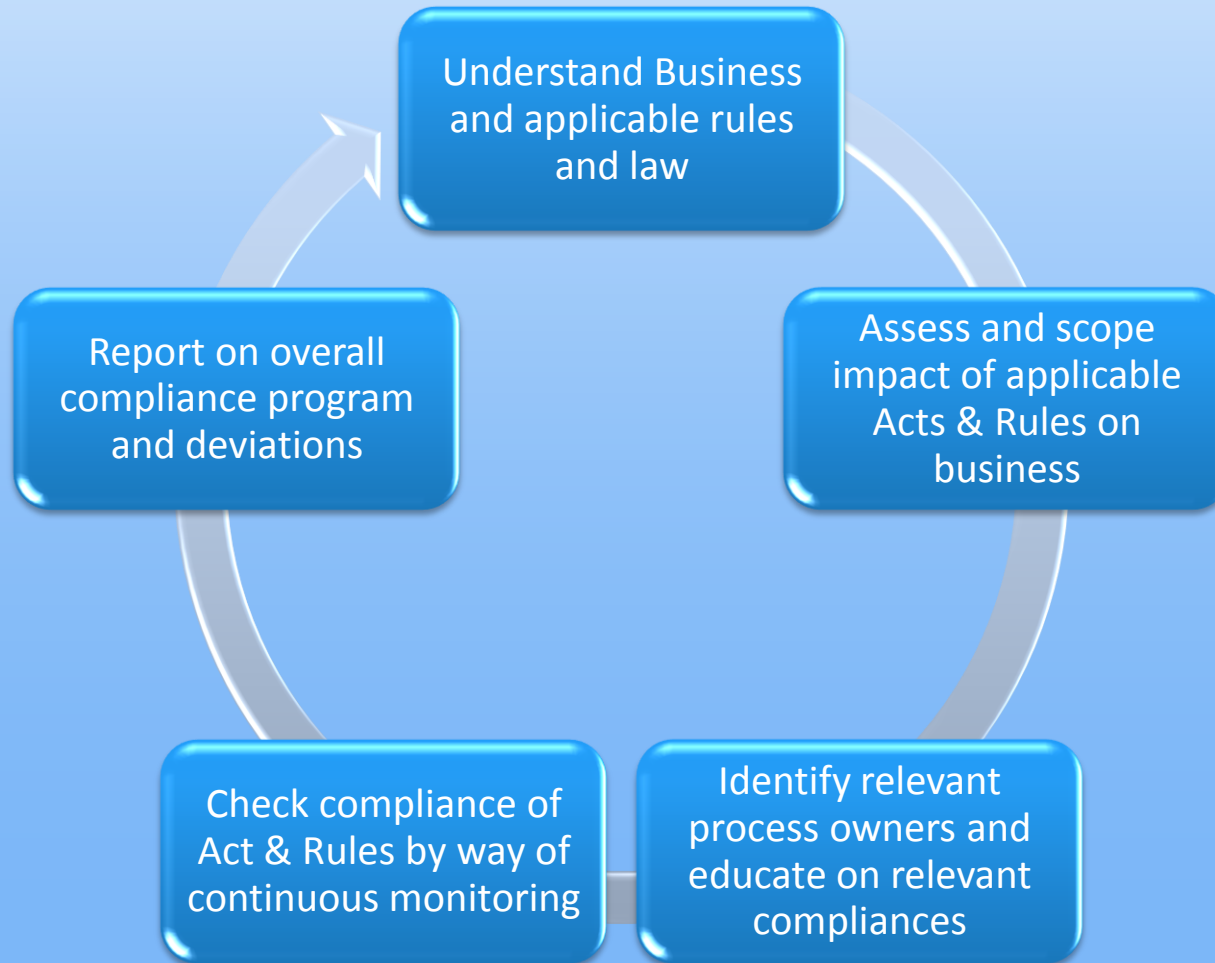
The Council of the ICSI at its 226th meeting held on November 21, 2014 decided on the Scope of Secretarial Audit as regards “point (viii) .....(other laws as may be applicable specifically to the company)”, which is placed as under -

- Reporting on compliance of **‘Other laws as may be applicable specifically to the company’** shall include all the **laws which are applicable to specific industry** for example; for Banks- all laws applicable to Banking Industry; for insurance company-all laws applicable to insurance industry; likewise for a company in petroleum sector- all laws applicable to petroleum industry; similarly for companies in pharmaceutical sector, cement industry etc.
- Examining and reporting whether the **adequate systems and processes are in place to monitor and ensure compliance with general laws** like labour laws, competition law, environmental laws etc.

# COSO Framework for Compliance



# Implementing Compliance Program





# Understand Business and applicable rules and law

- ❖ Understand business and mode of operation in various geographies
- ❖ Meet various stakeholders and process owners for gaining the understanding of various regulations applicable to Company
- ❖ Perform general assessment of applicable Acts, rules & regulations on business
- ❖ Each specific business has peculiar Acts required to be complied

Industry	Act
Seed	Seeds Act, 1966
Insecticides	The Insecticides Act, 1968
Food	Food Safety Standards Act
Pharma	Drugs and Cosmetic Act 1940

# Assess and scope impact of applicable Acts & Rules on business

- ❖ Perform a risk assessment of each applicable Act and rules
- ❖ Understand impact (Penalty and Prosecution) of deviations from applicable laws
- ❖ Prepare a checklist of compliance for applicable laws and rules

Compliance Requirement	Risk	Sec/Rule	Due Date	Criticality	Frequency
TDS to be paid within due date 7 <sup>th</sup> of each month	Interest on late payment	Sec 192-195	7 <sup>th</sup> of month	Major	Monthly
TDS return to filed	Late fees	Chapter XIV	15 <sup>th</sup> of every quarter	Minor	Quarterly
Advance Tax	Interest on late fees		15 Jun, Sep, Dec, Mar	Major	Quarterly

# Identify relevant process owners and educate on relevant compliances

- ❖ Identify personnel, process owners and reporting managers for compliance of relevant rules and laws
- ❖ Educate process owners for compliance responsibility along with relevant dates for completion of work

Compliance Requirement	Process Owner	Due Date
Remittance of PF contribution, Pension Fund , Administration & Inspection charges, EDLI, & its admin charges.	Payroll Manager & Finance Exec	15 <sup>th</sup> of month
Is registration certificate obtained from registering officer where 20 or more workmen employed as contract labour	Admin Officer & HR Head	On occurrence and to be renewed Annually
License for Contract labour obtained by Contractor	Admin Head	Yearly

# Check compliance of Act & Rules by way of continuous monitoring

- ❖ Check compliance is performed as per checklist for various Acts, rules and regulations
- ❖ Supporting documentary evidence is produced and validated for compliance
- ❖ Frequency of testing for compliance program can be decided based on no of locations, Units or on applicable laws
- ❖ Control self assessment approach can be used on a quarterly basis

# Report on overall compliance program and deviations

- ❖ Prepare report on deviations and mitigation plan for compliance program
- ❖ Periodically communicate results to management and board of directors
- ❖ Key non compliances should be communicated along with pending litigations to Management and Board

# Methods for Implementation of Program

- ❖ Excel based Checklist can be created for tracking
- ❖ Compliance monitoring Software / Tools
- ❖ Centralized storage system can be used for licenses, challans, certificates and other important documents
- ❖ System for periodic review of compliances by subordinates
- ❖ Roll out Compliance self assessment program

# Illustrative List of Compliances

## Taxation & Allied Laws

- ❖ The Value Added Tax Act (VAT)
- ❖ The Central Sales Tax Act 1956
- ❖ The Income Tax Act 1961
- ❖ The Central Excise Act
- ❖ The Customs Act
- ❖ The Finance Act, 1994 - Service Tax
- ❖ The Professions, Trades, Calling & Employments Act
- ❖ The Foreign Exchange Management Act (FEMA) 1999
- ❖ The Companies Act 2013

## Environmental

- ❖ The Water Prevention and Control of Pollution Act 1974
- ❖ The Hazardous Wastes management and Handling Rules, 1989
- ❖ The Air Prevention and Control of Pollution Act 1981
- ❖ The Environment Protection Act 1986

# Illustrative List of Compliances

## Labour & Industrial Laws

- ❖ The Employees Provident Fund & Miscellaneous Provisions Act, 1952
- ❖ The Employees State Insurance Act 1948 (ESI)
- ❖ The Contract Labour ( Regulation & Abolition ) Act, 1970
- ❖ The Employees Compensation Act 1923
- ❖ The Maternity Benefit Act 1961
- ❖ The Minimum Wages Act 1948
- ❖ The Payment Of Bonus Act 1965
- ❖ The Apprentices Act 1961
- ❖ The Factories Act 1948
- ❖ The Equal Remuneration Act 1976
- ❖ The Labour Welfare Fund Act 1986
- ❖ The Shop & Establishment Act
- ❖ The Payment Of Gratuity Act, 1972
- ❖ The Payment of Wages Act 1963



**Thanking You**

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