

**Corporate Compliance Management  
Compliance Disclosures and Reporting**

**A Presentation by  
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**At**

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Management of the Institute of Company Secretaries  
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## **Need for Legal Compliance System (LCS)**

- Multiplicity and complexity of laws- LCS facilitates to ensure compliance and avoid risk associated with non-compliance.
- Objectives:
  - to check and report on compliances;
  - to pinpoint non-compliances and inadequate compliances;
  - to protect the interests of directors and officers.
  - to avoid legal actions by the law-enforcing agencies and others.

Clause 49 of Listing Agreement (LA) requires Board to periodically review compliance reports of all laws applicable to the company and steps taken to rectify non-compliances.

# Salient Features of LCS

- Identify laws affecting the company and allocate them amongst various Divisions/Departments having regard to their functions.
- Primary responsibility for compliance to rest with the concerned Division/Department Head.

- The Company Secretary (CS) to act as facilitator, coordinator and counselor.
- Legal Compliance Report (LCR) to travel from operating level officer to Department/Division Head to CS to MD to Board.

## **Secretarial Audit (SA)**

### **Objectives:**

- to check and report on compliances under Corporate Laws.
- to help improve quality and speed of compliance.

## Scope

- SA wider in scope than Compliance Certificate u/s 383A.
- It covers –
  - Listed Co: Company Law, Articles of association, SCRA, Depositories Act, Listing Agreement, Insider Trading Code, Takeover Code.
  - Unlisted Co: Company Law, Articles of association.

- SA of a listed company involves intense exercise and calls for a higher degree of skill and knowledge of law and procedures.



- Currently, SA is a voluntary compliance audit.
- SA is a continuous process- SA Reports are generated quarterly and placed before Board.

- The Secretary of the company has a key role to play.
- The Secretary has to be a sponsor of SA and act as facilitator, coordinator and counselor.

## **The SA Process**

- Checklists.
- List of documents to be checked.
- Timetable.

- People to interact with.
- Persons to do checking.
- Review progress at suitable intervals depending upon coverage.
- Complete the SA within given time.

- Make a draft SA Report.
- Advise on non-compliances or inadequate compliances for corrective action, eg non-filing and late filing of forms.
- Discuss substantive issues, eg whether Board composition is as per cl 49 of LA; whether Takeover Code applies to the acquisition of shares.

- Final SA Report.
- SA Report is placed before Audit Committee and then before Board.
- Annual SA Report approved by Board and published in Company's Annual Report.

## Why PCS is fit to do SA?

- Practising Company Secretary (PCS) is most competent, fit and proper professional to do SA.
- Corporate laws is the core competence of SA.
- PCS is a highly specialized professional in matters of statute law, and procedural and practical aspects involved in legal compliances under various corporate laws

## Sample Checklists

### 1. Status of a company as a private company

*Check whether-*

- The company's name in the memorandum is in accordance with the Name as stated on the Certificate of Incorporation.
- The Certificate of Incorporation confirms that the company is a private company.



- The company has paid up share capital of at least Rs.1 lakh.
- The company's articles contain the conditions specified in s. 3(1)(iii) to constitute the company as a private company.

- The company has complied with the four conditions specified in s. 3(1)(iii) of the Act as contained in its articles and there has been no contravention of any of these conditions.
- If any of the conditions specified in s. 3(1)(iii) was violated, an order of the CLB had been obtained in terms of s. 43.

- The company is a subsidiary of a public company; hence though the basic structure of the company has been kept that of a private company, all the provisions of the Act which are applicable to a public company have been complied with.

## **Documents to be verified:**

- Memorandum of association
- Articles of association
- Certificate of Incorporation
- Latest audited balance sheet
- Ledger (Share Capital Account)
- Register of Members.
- Return/s of Allotment.
- Names depositors, if any.

## Sample Checklist

### **Contracts with directors and others attracting section 297**

#### ***Check whether-***

- During the relevant financial year, the company entered into any contract, whether a formal or informal, written or oral-
  - for the sale, purchase or supply of any goods or materials;
  - for the sale, purchase or supply of any services;
  - for underwriting the subscription of any shares in, or debentures of, the company,

with any of the following-

- any director of the company;
- any relative of any director of the company;
- any partnership firm in which any director of the company is a partner;
- any partnership firm in which any relative of any director of the company is a partner;
- any partner of the partnership firm in which any director of the company is a partner;

- any partner of the partnership firm in which any relative of any director of the company is a partner;
- any private company in which any director of the company is a member;
- any private company in which any director of the company is a director.

- The contract did not require compliance with s. 297, either because the contract did not attract the provisions of s. 297 or it was eligible for exemption under any of the clauses (a), (b) and (c) of sub-section (2) of s. 297.



- If the contract fell within the purview of section 297 and it was not one of the three exempted classes, a consent to the contract was given by the Board of Directors-
  - Either before entering into a contract; or
  - after entering into of a contract in circumstances of urgent necessity,and in the latter case, the consent was given within three months of the date on which the contract was entered into.

- The consent was given by the Board by a resolution passed at its meeting and not otherwise (eg by a circular resolution or in any other manner).
- There was requisite disinterested quorum at the Board meeting when the Board consented to the contract and the interested director had not been counted in quorum and had not participated in the discussion and voted [s.300].

## **Documents to be checked:**

- Register of Contracts, Companies and Firms in which Directors are interested [see next item].
- Notices of disclosure of directors' interests in Form No. 24AA.

- Specific notices received u/s 299 and 305 from during the year from the directors.
- Minutes of Board meetings.
- Copies of contracts made between the company and any of the parties mentioned above.

## **Sample Quarterly SA Report**

The Board of Directors  
... Limited

### **SECRETARIAL AUDIT REPORT** **FOR THE THREE MONTHS FROM ... TO ...**

In this Report-

- “the Act” means the Companies Act 1956.
- “the Audit Period” means the period mentioned in the title of this report.
- “the Board” means the Board of Directors of ... Limited.
- “BSE” means Bombay Stock Exchange Limited.
- “the Company” means ... Limited.
- “NSE” means The National Stock Exchange of India Limited.

## 1. Foreword

In terms of my appointment for conducting Secretarial Audit and the instructions I received, I conducted the audit of the records and documents maintained by the Company under the-

- The Act;
- The Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations 1997
- The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations 1992; and
- The Listing Agreement with the Stock Exchanges.

I submit my report for the quarter ended on ....

# **SECTION A : THE COMPANIES ACT AND RULES MADE UNDER IT**

## **01. Status of the company as a public company [section 3(1)(iv)]**

- The Company has complied with the requirements of section 3(1)(iv) concerning the definition of a ‘public company’ and the minimum paid-up share capital.

## **02. Common seal [sections 50, 147]**

- The Company has a Common Seal with its name engraved on it in legible characters, which is not affixed to any document except in accordance with Article 173 of the articles of association of the Company.
- M/s. ..., the Company's Registrars & Share Transfer Agents ('RTA') have confirmed that the Common Seal is affixed on every new share certificate issued in lieu of the defaced, mutilated or torn ones and issue of duplicate share certificates in lieu of the certificates lost or destroyed.



### **03. Renewal/exchange of a share certificate and issue of duplicate share certificates [section 84]**

- The R & T Auditors have confirmed that, the provisions of section 84 of the Act, the Companies (Issue of Share Certificates) Rules 1960, the articles of association of the Company, the guidelines/instructions issued by the SEBI and the Listing Agreement have been complied with in respect of the renewal / exchange of the share certificates in lieu of the defaced, mutilated or torn ones and issue of duplicate share certificates in lieu of the certificates lost or destroyed.
- During the Audit Period, duplicate share certificates were issued on the authority of the Board/Investors' Grievance Committee has

## **Extract from Board's Annual Report**

### **Secretarial Audit Report**

Dr. K.R. Chandratre, Practicing Company Secretary conducted Secretarial Audit of the Company for the financial year 2004-2005. The Secretarial Audit report confirms that the Company has complied with all the applicable provisions of-

- the Companies Act, 1956;
- Listing Agreement with the Stock Exchanges;
- Securities Contracts (Regulation) Act, Depositories Act; and
- the Regulations of SEBI as applicable to the Company, including the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 and the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992.

**The Annual SA Report is published in  
the Annual Report as part of the  
Directors' Report**