



Role of CS in Compliance Management & Compliance Audit

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Section 134 of Companies Act, 2013 ('2013 Act') relates to 'Financial statement, Board's report'. Sub-section (5) of Section 134 of 2013 Act relates to the 'Directors Responsibility Statement'. Six clauses are prescribed under the said statement, of which the last clause states that "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". The provisions of clause (f) of sub-section (5) of Section 134 of 2013 Act are applicable to all companies (whether a private company, unlisted public company or listed public company).

Introduction to 'compliance management': The preparation and signing of the Financial Statements and Board's Report for a financial year take place after completion of the said financial year. Hence, directors of the company can give the aforesaid declaration only after the company has devised a proper system for ensuring compliance with all applicable laws during that financial year. Therefore, it becomes mandatory for each company set-up 'compliance management mechanism' and such mechanism is maintained. It is also important that the Board of Directors ensure that mechanism or system is adequate and operating effectively. Therefore, it can be said that devising and monitoring the compliance management in the company is a 'continuous process'.

Compliance Management Process: Generally, the process of compliance management in a company is as follows:

1. Complete understanding the operations and industry in which the company operates,
2. Identifying the applicable laws to the company,
3. Preparing a check-list for the applicable laws to the company,
4. Discussion with the concerned Legal Head and / or the Company Secretary of the company for implementation of the compliance management mechanism,
5. Updating the check-list on regular basis, on the amendments to the applicable laws or issue of circular or notification by the Govt.,
6. Updating the check-list on regular basis, depending on the expansion of operations of the company,
7. Updating the check-list on regular basis, depending on changes / amendments to the applicable laws,
8. Generation of status reports of compliance by company on monthly, quarterly, half-yearly or yearly basis,
9. Identifying operational issues in compliance with provisions of the applicable laws to the company,
10. Resolving the operational issues in compliance with provisions of the applicable laws.

Generally, in the process of compliance management, the directors of the company are not actively involved during the financial year. It is either the Legal Head and / or the Company Secretary of the company has to ensure effective implementation of the said compliances. It is desirable that the concerned Legal Head and / or the Company Secretary presents a detailed report or makes a presentation to the Board of directors on the status of compliance at every board meeting.

Introduction to 'Compliance Audit': The Board of Directors of the company may also appoint a practising professional (usually, Practising Company Secretary or an Advocate) for the purpose of verification and issue of the report on the status of the compliances. Such activity can also be termed as "Quarterly Compliance Audit", wherein the company is required to provide necessary inputs and documents for the practising professional for the audit. Legal Head and / or the Company Secretary of the company plays a pivotal role in co-ordination with the practising professional with respect to sharing of information, data, reports documents, certificates required for conducting the quarterly audit or review. It is desirable that the Report or Certificate, as may be issued by the practising professional, is presented placed at the board meeting. The board of directors of the company, in its meeting, may also deliberate on the adverse opinion or qualified opinion given the practising professional in the Report.

Value addition via Compliance Mechanism: The compliance mechanism in the company will get strengthened over a period of time, as the issues raised in each quarter by the practising professional are addressed by the Legal Head and / or Company Secretary of the company. The inputs received from the practising professional during the 'Quarterly Compliance Audit' will be also helpful for the directors of the company to confidently sign the 'responsibility statement' in Board's Report with respect to the devising proper systems to ensure compliance with the provisions of all applicable laws. The quarterly reports issued by the practising professional will help the Practising Company Secretary in conducting Secretarial Audit of the company under Section 205 of the 2013 Act. It is not necessary for the Practising Company Secretary to fully rely on such reports, however, he can take necessary guidance from the same.

Compliance Management process (performed within the company) and the Compliance Audit (conducted by practising professional) are helpful for the company and its directors, as it would it ensure compliance of all applicable laws and the said system is adequate and operating effectively. Both these activities, compliance management process and compliance, would also be helpful for any company during the due diligence process when it proposes to enter into joint venture or during capital infusion by PE/VC or during corporate restructuring.

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