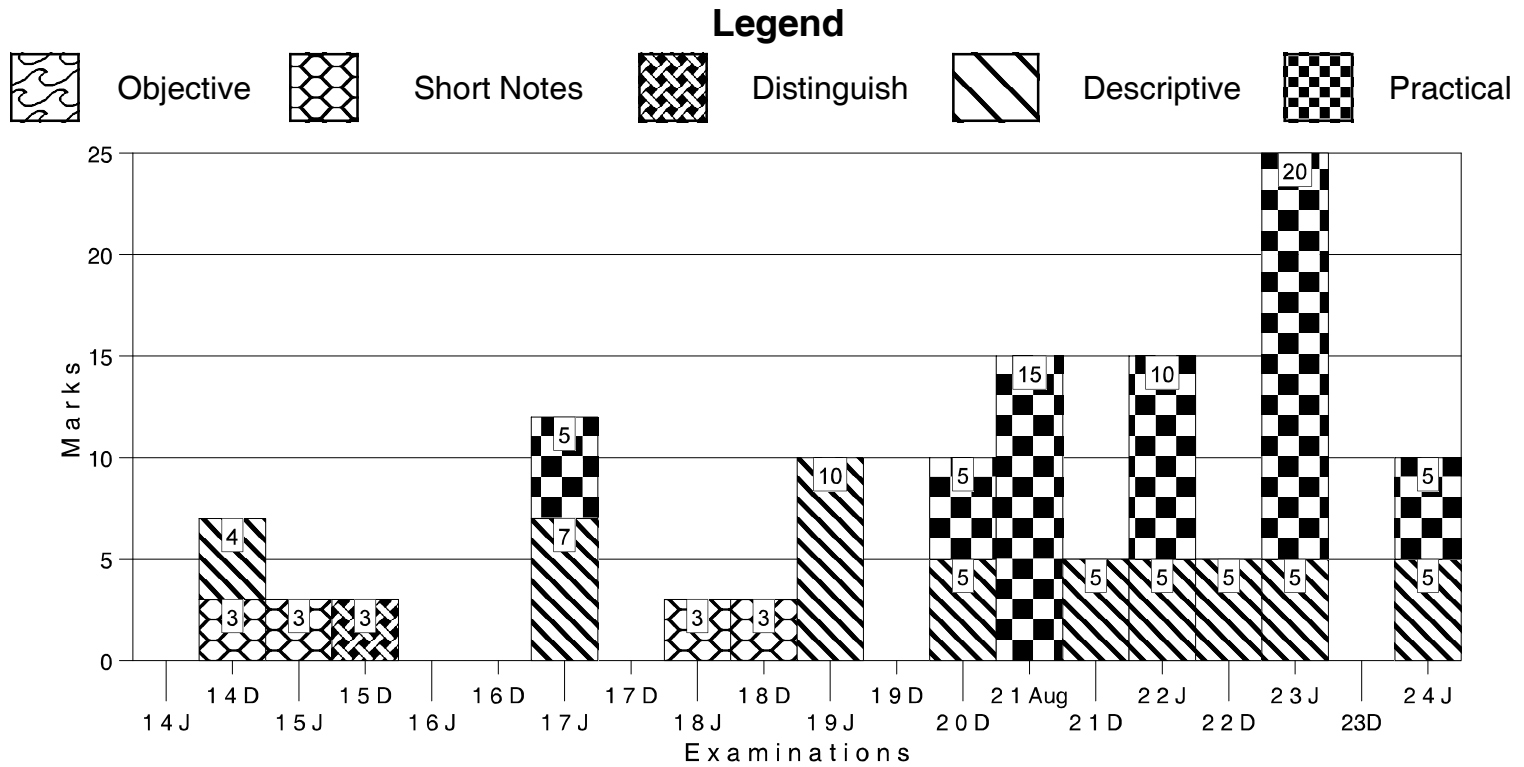


Marks of Objective, Short Notes, Distinguish Between, Descriptive & Practical Questions



1

COMPLIANCE FRAMEWORK

THIS CHAPTER INCLUDES

- | | |
|---------------------------------------|--|
| 1. Corporate Compliance Framework | 5. Training and Implementation |
| 2. Preparation of Compliance Chart | 6. Need for Compliance Management |
| 3. Contents of Compliance Chart | 7. Process of Corporate Compliance Reporting |
| 4. Compliance Risk– Review and Update | 8. Compliance Management tools |

CHAPTER AT A GLANCE

Compliance Chart

The Chart provides an overview of the applicable local, state, central and international laws, regulations and standards relating to a business' operations. The compliance chart also outlines how compliance risk mitigation activities are embedded in business processes. In other words, how compliance with the laws, regulations and standards is embedded and ensured. The compliance chart help business in meeting its compliance obligations towards the customers, regulators, shareholders and employees because it provides a centralize compliance information of the company on a single chart. The compliance chart also 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 advices on compliances of applicable laws and effect of non-compliances. Compliance advisory helps organisation to evaluate their compliance finctions, prevent compliance breaches and respond quickly and effectively when a breach occurred.

Compliance Scorecard
It is a tool to analyse the position of an organisation in compliance.
Compliance Dashboard
The compliance program must provide a single enterprise-wide dashboard for all users to track and trend compliance events. All compliance events should be easily viewed interactively through the enterprise compliance dashboard. Statutory auditors, internal auditors, compliance officers can use the dashboards to make decisions on the compliance status of the organization.
Compliance Ownership
Compliance Ownership of the various compliances identified has to be described function wise and individual wise. Clear description of primary and secondary ownership is also very important. While the primary owner is mainly responsible for the compliance the secondary owner (usually the supervisor of the primary owner) has to supervise the compliance.
Compliance Awareness
The Compliance Awareness covers the establishment of the legal compliance management and creation of awareness of the various Legal Compliances amongst those responsible. Sometimes the compliances are handled by persons who are not fully aware of the requirements of the legislations and hence creating appropriate awareness amongst the owners is very important. This could be done in the form of meetings/ trainings explaining various compliances or some manual containing the details of compliances.
Compliance Management tool
Compliance Management tool is generally required in large organisations where many risks are involved. These organisations required to adhere to a wide variety of laws and regulations applicable. Now a day's not only big companies but also smaller companies are required to comply with

applicable laws and regulations to them. Compliance Management Tool handles and controls their business processes and enables them in scaling their operations without increasing their risk of non-compliance. A manual approach to tracking and monitoring compliance activities drives up costs and is more prone to error.

SHORT NOTES

2014 - Dec [5] (a) Write short note on the following:

(ii) Risk of non-compliance

(3 marks)

Answer:

Risk of non-compliance

The risks of non-compliance of the law are many:

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.

2015 - June [5] (a) Write note on the following :

(i) Compliance programme

(3 marks)

Answer:

Compliance Programmes:

Compliance programmes have following three main purposes:

- (i) They strive to prevent violation of law,
- (ii) Promote a culture of compliance, and
- (iii) Encourage good corporate citizenship.

2018 - June [5] (a) Write short note on the following:

(iii) Compliance Risk

(3 marks)

Answer:

Compliance risk is the current and prospective risk to earnings or capital arising from violations of, or non conformance with, laws, rules, regulations, prescribed practices, internal policies, and procedures, or ethical standards. This risk exposes the institution to fines, civil money penalties, payment of damages, and the voiding of contracts. Compliance risk can lead to diminished reputation, reduced expansion potential and an inability to enforce contracts.

2018 - Dec [5] (b) Write short notes on the following:

(ii) Compliance Dash Board.

(3 marks)

Answer:

The compliance dashboard helps in simplifying the compliance obligation, effectively managing the compliance risk, facilitating board oversight, effective co-ordination of functional units. Some of the features of an effective Compliance Dashboard is as follows:

- The Compliance Dashboard should alert the company in the risk prone areas or in case of non compliances.
- It should display the compliance obligations on the compliance calendar or dashboard.
- Before the date of regulatory mandate an e-mail should be sent to the compliance owner.
- The Compliance owner should send the response once compliance is done.

DISTINGUISH BETWEEN

2015 - Dec [5] (a) Distinguish between the following:

(ii) 'Apparent', 'adequate' and 'absolute' compliance.

(3 marks)

Answer:

Apparent compliance is a disguise form of non-compliance, which is worse than a non compliance. 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.

Adequate compliance is compliance in letters. The aspects specified in law are complied in letters, without getting into the spirit of the law, e.g. box ticking practices.

Absolute compliances are those which are in line with the spirit and intent of the law. A typical example in this regard is demonstrating shareholder democracy as prescribed by law. When a company complies with law in spirit it gains public confidence as well.

DESCRIPTIVE QUESTIONS

2014 - Dec [1] {C} Examine and comment on the following:

- (ii) Compliance audit is not a fault finding exercise; rather a device to scale-up compliance mechanism of a company, commensurate to its size and operations. **(4 marks)**

Answer:

Compliance audit involves a full process of research and analysis as well as investigation and evaluation. Such an exercise is undertaken in order to determine the potential issues and get a realistic view about how the entity is performing and how it is likely to perform in the future.

2017 - June [3] (b) Explain the role of the Board of Directors in doing their oversight function on the subject of Compliance Management. How Company Secretary of the Company could play a significant role in helping the Board in institutionalizing an adequate and effective Compliance Management System? **(7 marks)**

Answer:

Role of the Board of Directors in doing their oversight function on the subject of Compliance Management

- The Board should be updated with the compliance of applicable laws at least every quarter, ensuring compliance by all functional heads and presented by Compliance department/Chief compliance officer helps in effective Board oversight.
- Compliance Management programme has to be revisited at regular intervals in tune with the business environment, regulatory changes etc.

- The Board Members are expected to visit Compliance Dashboard every day in over-seeing the compliance level in the organization.
- The Board should be updated with the applicable laws at regular intervals that helps the board in reviewing compliance plan, overseeing compliances, reading compliance dash board etc.

Role of Company Secretaries in Compliance Management

Corporate Compliance Management can add substantial business value only if compliance is done with due diligence. A Company Secretary is the 'Compliance Manager' of the company. It is he who 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, specified 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.

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.

2019 - June [1] (b) "Good Corporate Governance demands compliances level that match the intentions of Legislature, expectations of Stakeholders and requirements of Regulators". Explain. **(5 marks)**

Answer:

Good Corporate Governance demands compliance level that match the intentions of legislature, expectations of stakeholders and requirements of

regulators. The compliance, however, generally found to fall in three categories, i.e. Apparent Compliance, Adequate Compliance and Absolute Compliance.

Apparent compliance is a disguise form of non-compliance, which is worse than a non-compliance. The classic example for Apparent Compliances are generating documents such as notice, agenda, minutes on paper for board and general meeting which are not actually held.

Adequate compliance is compliance in letters. The aspects specified in law are complied in letters, without getting into the spirit of the law, e.g. box ticking practices.

Absolute compliances are those which are in line with the spirit and intent of the law. A typical example in this regard is demonstrating shareholder democracy as prescribed by law.

When a company complies with law in spirit it gains public confidence as well. Experts view annual report as self-appraisal report of the company. The shift from shareholder concept to stakeholder concept has necessitated the corporates to provide a transparent report which is viewed by all stakeholders such as shareholders, creditors, lenders, strategic investors etc. as a potential source of information. In order to attain corporate sustainability and to ensure a level playing field with international market, corporates has to necessarily increase their level of compliance from apparent to adequate leading to level of absolute compliance.

2019 - June [2A] (Or) (i) Z Ltd. seeks your opinion on the role of the various levels of management for compliance ownership. Explain the role.

(5 marks)

Answer:

The ownership of the various compliances has to be described function wise and individual wise. Clear description of primary and secondary ownership is also very important. While the primary owner is mainly responsible for the compliance the secondary owner (usually the supervisor of the primary owner) has to supervise the compliance. The role of the various level of management for compliance ownership can be illustrated as under:

(a) Top Management:

- Understanding the compliance obligations and recent changes.
- Approval of Policy and Procedures.
- Motivating employees to ensuring compliance on time.

(b) Legal Cell:

- Identification of new and changed relevant local laws, regulations and standards.
- Communication in Writing to compliance owner/ executor.
- Review of systems, policies and Procedures.
- Resolution of Doubts and Clarity in Directions.
- Periodical Review and Assessment.

(c) Senior Management and functional Heads:

- Analysis and research on the Regulatory changes.
- Formation of Policy and procedure.
- Motivating Compliance officer to ensure timely compliance.
- Guiding compliance officer in executing compliance.
- Tracking the Compliance chart.
- Risk Escalation.
- Conflict Resolution.

(d) Compliance Officer/ Subordinate staff:

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

2020 - Dec [2A] (Or) (i) Explain the process of Compliance Risk Mitigation indicating various risks of non-compliance. **(5 marks)**

Answer:

Compliance Risk Mitigation is the process of developing and implementing controls such as standards, policies, procedures and guidelines to prevent or minimise risks arising from compliance obligations. From time to time, the company may issue a policy that must be implemented at the local level. If a corporate policy does not encompass local obligations of any unit of the company, a local policy to facilitate the effective management of the

identified compliance risk must be developed. Framework components, policies and procedures must be developed and communicated and should be placed either on the local server accessible to all employees or on the prominent places in the organization, so employees understand their obligations (e.g. how to make a whistle blower report, complaints handling process, gifts, entertainment and anti-bribery procedures, etc.

All documentation must be easily accessible to employees. Maintenance of the supporting material can be in the form of a manual, handbook or other physical or electronic means.

Various Risk of Non-compliance:

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.

2021 - Dec [1] (a) “ The Compliance Chart of any company must contain the complete information on compliance dashboard, which provide a detailed compliance procedure to the compliance executor”. As a Company Secretary, list out the various content of the Compliance Chart. **(5 marks)**

Answer:

Content of Compliance Chart

The Compliance Chart of any company must contain the complete information on compliance dashboard, which provide a detailed compliance procedure to the compliance executor.

This information includes:

- (i) Reference to the key compliance related laws, regulations, industry standards and compliance related policies and standards of the company;

- (ii) Inherent and managed risk level (critical, high, medium, low) of the identified obligations;
- (iii) Concise statements that capture the relevant internal and external compliance obligations and the risks arising from those obligations;
- (iv) Specific compliance risk mitigation activities and compliance risk tracking and monitoring for managing the compliance obligations;
- (v) The business processes or people to which the compliance obligations are linked or on which they have an impact;
- (vi) Clear ownership of the processes, activities and obligations outlined in the chart;
- (vii) To whom and how frequently compliance related results and findings are reported.

Such compliance chart must be practical and concise on the role and responsibilities of the management and of the compliance officer who is specifically responsible for existing and newly identified business activities.

2022 - June [2A] (Or) (ii) What are the various risks a company may face for non-compliance of law? **(5 marks)**

Answer:

Compliances of laws and regulations must be managed as an integral part of any corporate strategy. In case of non-compliance of law, the following risks are likely to be faced:

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 & loss of reputation of the company and its employees
6. Attachment of bank accounts etc.
7. Initiation of action by the regulators like MCA, SEBI, RBI or others authorities, which may jeopardize the very stability of the financial and manufacturing operations.

2022 - Dec [2] (a) "Compliance Chart is only key component of Corporate Compliance Framework." Explain. **(5 marks)**

Answer:

The corporate compliance framework consists of three key components: Compliance Chart, Compliance Advisory and Compliance Scorecard. The Compliance Chart is a vital part of the framework. The Chart provides an overview of the applicable local, state, central and international laws, regulations and standards relating to a business' operations. The compliance chart also outlines how compliance risk mitigation activities are embedded in business processes. In other words, how compliance with the laws, regulations and standards is embedded and ensured. The compliance chart help business in meeting its compliance obligations towards the customers, regulators, shareholders and employees because it provides a centralize compliance information of the company on a single chart. The compliance chart also reflects the key activities and compliance calendar which is to be followed and performed by a business unit to manage its compliance risks.

2023 - June [1] (d) You as a company Secretary in Practice (PCS) are asked by the Managing Director of a client company to explain the need for Compliance Management in his company. Explain **(5 marks)**

Answer:

Need for Compliance Management

Every company needs to follow laws and regulations enacted by Central and State Governments or such other regulator from time to time. Corporate compliance is an ongoing process, and businesses especially ones that have incorporated under any statue need to make sure that they are following the rules set in place. In every organization top executive plays a significant role in complying with multiple rules and regulations under different laws. Many companies are adopting comprehensive compliance plans to address emerging regulatory paradigm and those fail to address the new regulations, pay huge fines, incur punitive restrictions on their operations and loose shareholders confidence by reduced share value which in turn damage the reputation of their businesses. Increased liability and regulatory oversight has amplified risk to appoint where it demands continuous evaluation of compliance management systems.

Onerous responsibility to guide to the management for compliance with the relevant laws casts upon the Company Secretaries. They have to advise companies in totality to provide full, timely and intelligible information. To enable companies to put in place an effective Compliance Management System, Company Secretaries should ensure that companies:

- Adhere to necessary industry and Government regulations.
- Change business processes according to legislative change.
- Realign resources to meet compliance deadlines.
- React quickly and cost-effectively if regulations change.

2024 - June [2] (b) The rules notified by MCA Notification G.S.R. dated 9th November, 2023, conferred under section 79 of the Limited Liability Partnership Act, 2008, directs to regulate and identify significant beneficial owners in Limited Liability Partnerships. Elucidate. **(5 marks)**

PRACTICAL QUESTIONS

2017 - June [6] (b) Hindstan Zinc Ltd. has issued the tender for developing Compliance Software for the Company. Webscroll Co. Ltd. was the successful bidder giving lowest price bid. As a Compliance Solution provider, what are the approaches to be adopted by Webscroll Co. Ltd. **(5 marks)**

Answer:

Compliance solution providers adopts following approaches for creating or enhancing an ethics and compliance program for companies:

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.

Program Design/Update: In this phase, compliance solution providers help company in creating guideline documents that outline the reporting structure, communications methods, and other key components of the code of ethics and compliance program.

Policies and Procedures: In this phase compliance solution providers help company to develop or enhance the detailed policies of the program,

including issues of financial reporting, antitrust, conflicts of interest, gifts and entertainment, records accuracy and retention, employment, the environment, global business, fraud, political activities, securities, and sexual harassment, among others.

Communication, Training, and Implementation: Compliance solution providers help company to clearly articulate, communicate, and reinforce not only the specifics of the program, but also the philosophy behind it and the day-to-day realities of it. In this way, key stakeholders and other personnel are more likely to embrace the program and incorporate it into their attitudes and behaviours.

Ongoing Self-Assessment, Monitoring, and Reporting: The true test of a company's ethics and compliance program comes over time. How do one know in one year or five that both the intent and letter of the law are still being observed throughout organization? How does the program and the organization adapt to changing legislation and business conditions? As the organization evolves for example, through mergers and acquisitions will the program remain relevant? The cultural assessment, mechanisms, and processes put in place including employee surveys, internal controls, and monitoring and auditing programs, help organisations achieve sustained success.

2020 - Dec [2] (a) ABC Ltd. is having a paid up capital of ₹ 1,000 crore and annual turnover of ₹ 2,500 crore. The company has asked you, as a Company Secretary in Practice, to advise it on preparation and finalization of its Compliance Management Framework. Give your advice. **(5 marks)**

Answer:

Any corporate compliance management framework encompasses the various steps relating to Compliance Identification, Compliance Ownership, Compliance Awareness, Compliance Reporting and Periodical Compliance MIS.

The Compliance Identification involves the identification of compliances under various legislations applicable to the company, in consultation with the functional heads. The legal team has to identify the legislations applicable to the company and identify the compliances that are required under each legislation or rules and regulations made there under.

The Compliance Ownership of the various compliances has to be described function wise and individual wise. Clear description of primary and secondary ownership is also very important. While the primary owner is mainly responsible for the compliance the secondary owner (usually the supervisor of the primary owner) has to supervise the compliance. Ex: Secretarial Officer/Company Secretary may be primarily responsible.

The Compliance Awareness covers the establishment of the legal compliance management and creation of awareness of the various Legal Compliances amongst those responsible. Sometimes the compliances are handled by persons who are not fully aware of the requirements of the legislations and hence creating appropriate awareness amongst the owners is very important. This could be done in the form of meetings/trainings explaining the various compliances or some manual containing the details of compliances.

In the process of the Compliance Reporting status of Compliances or non-compliances should be communicated to the concerned. Reporting of non-compliances ensures that appropriate corrective action is being taken by the responsible person in case of the failure in doing compliances.

2021 - Aug [1] (a) Unique Ltd., a start-up company launched in the year 2019, manufactures electric two-wheelers. Jayco, the Company Secretary was discussing the corporate compliance framework of the company. One of the consultants suggested that the Compliance Chart is a vital part of the framework and the company must at present first focus on preparation of the Compliance Chart. Explain the activities in preparation of a compliance chart and its contents. **(5 marks)**

Answer:

The compliance chart of a company is prepared after considering the operations and the structure of the company as the compliance requirements for an organization are based on the type of organization, activity of the organization, scale of operations, 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:

- 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)

The Compliance Chart of any company must contain the complete information on compliance dashboard, which provide a detailed compliance procedure to the compliance executor, this information includes:

- Reference to the key compliance related laws, regulations, industry standards and compliance related policies and standards of the company;
- Concise statements that capture the relevant internal and external compliance obligations and the risks associated with those obligations;
- 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; and
- Clear ownership of the processes, activities and obligations outlined in the chart.

Such compliance chart must be practical and concise on the role and responsibilities of the management and of the compliance officer who is specifically responsible for existing and newly identified business activities.

2021 - Aug [2A] (Or) (ii) The audit of Financial Statements in respect of Spinex Ltd. for the year ended 31st March, 2021 was not completed due to difference of opinion on certain accounting matters between the Management and the Statutory Auditors. Hence, the company was not able

to hold its Annual General Meeting (AGM) within the statutory timelines. As the AGM was not conducted the Company Secretary was in a dilemma whether to file the Annual return. Advise the Company Secretary.

(5 marks)

Answer:

According to section 92(4) of the Companies Act, 2013, where no Annual General Meeting (AGM) is held in a particular year, the Annual Return has to be filed within 60 days from the last day on which the annual general meeting should have been held together with the statement specifying the reasons for not holding the annual general meeting, with such fees or additional fees as may be prescribed.

Consequently, the company cannot excuse itself from the obligation to file the Annual Return on the plea of the AGM not having been held. As per the proviso to Section 403(1) if the Annual return under section 92 is not filed within the due date the same can be filed on payment of additional fee as may be prescribed, which shall not be less than ₹100 per day and different amounts may be prescribed for different classes of companies.

Where there is default on two or more occasions in submitting, filing, registering or recording of the document, fact or information, it may, without prejudice to any other legal action or liability under this Act, be submitted, filed, registered or recorded, as the case may be, on payment of a higher additional fee, as may be prescribed and which shall not be lesser than twice the additional fee provided under the first or the second proviso as applicable.

Also, where a company fails or commits any default to submit, file, register or record any document, fact or information, before the expiry of the period specified in the relevant section, the company and the officers of the company who are in default, shall, without prejudice to the liability for the payment of fee and additional fee, be liable for the penalty or punishment provided under this Act for such failure or default.

Thus, management cannot escape from the responsibility of filing the return, if the AGM is not held. Similarly, the responsibility cannot be abandoned even if the company is inoperative. This section casts an

important obligation on the part of management to file the returns and can be relinquished only when the company is wound-up or its name struck-off from the Register maintained by the Registrar of Companies.

2021 - Aug [2A] (Or) (iv) Sames Ltd. is a recently listed company. To cater to the growing reporting requirements, the company recruited various professionals across its finance and secretarial team. The Company Secretary was requested to prepare a Compliance training and education programme for providing training to the new recruits. Briefly explain the objective and contents of such Compliance training programme. **(5 marks)**

Answer:

Objective of Compliance Training Program

A strong Compliance training and education programme reinforces the company's compliance culture. It builds awareness and understanding of compliance standards, procedures, guidelines and issues. The objective of Compliance training programme is to build awareness and understanding of:

- Company Framework, including the four 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.

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. Compliance Risk related training program should, to the extent possible, be integrated into the training plans.

Contents of Compliance Training Program

The plans for compliance training and education program must include:

- 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.

2022 - June [1] (a) You are the Company Secretary of the newly formed company Star Infrastructure Ltd. Your chairman has asked you to prepare a compliance chart. What are the various points you would mention in the compliance chart? **(5 marks)**

Answer:

The Compliance Chart is an important part of the compliance framework and every organization shall give more focus on the preparation of the compliance chart based on the operations and the structure of the company as the compliance requirements depends on the type of organization, type of industry, activity, sector in which the company operates and laws which are specifically applicable to the company, etc.

Broadly, the Compliance Chart should include the following details:

1. Reference to the key compliance related laws, regulations, industry standards and compliance related policies and standards of the company;
2. Concise statements that capture the relevant internal and external compliance obligations and the risks arising from those obligations;
3. Inherent and managed risk level (critical, high, medium, low) of the identified obligations;
4. The business processes or people to which the compliance obligations are linked or on which they have an impact;
5. Specific compliance risk mitigation activities and compliance risk tracking and monitoring for managing the compliance obligations;
6. To whom and how frequently compliance related results and findings are reported; and
7. Clear ownership of the processes, activities and obligations outlined in the chart.

The compliance chart must be practical and concise on the role and responsibilities of the management and of the compliance officer.

2022 - June [1] (d) Ashok, the Managing Director (MD) of XYZ Ltd., has observed that some confidential information has leaked in the company. MD has called the Company Secretary and asked him to prepare Standard Operating Procedure (SOP) for protecting the confidential information. Suggest the matters for inclusion in the SOP. **(5 marks)**

Answer:

For every business/organization it is important to have a written confidentiality procedure describing both the type of information considered confidential and the procedures employees must follow for protecting confidential information and dealing with the confidential information. However, the company may adopt the following standard operating procedure for protecting confidential information:

- All confidential documents should be stored in locked file cabinets or rooms accessible only to those who are authorized.
- All electronic confidential information should be protected via firewalls, encryption and passwords.
- Employees should clear their desks of any confidential information before going home at the end of the day.
- Employees should refrain from leaving confidential information visible on their computer monitors when they leave their work stations.
- All confidential information, whether contained on written documents or electronically, should be marked as “confidential.”
- All confidential information should be disposed of properly (e.g., employees should not print out a confidential document and then throw it away without shredding it first.)
- Employees should refrain from discussing confidential information in public places.
- Employees should avoid using e-mail to transmit certain sensitive or controversial information.
- Limit the acquisition of confidential client data (e.g., social security numbers, bank accounts, or driver’s license numbers) unless it is integral to the business transaction and restrict access on a ‘need-to-know’ basis.

- Before disposing of an old computer, use software programs to wipe out the data contained on the computer or have the hard drive destroyed.

2023 - June [1] (a) ABC Private Ltd. requires to conduct a Board meeting in 5 days to transact an urgent business. You are the Company Secretary in Practice (PCS) of the company. The company seeks your advice in this regard, on conducting the Board meeting and the validity of the decisions taken in such meeting. Assume that it doesn't have any independent director on Board. Advise. **(5 marks)**

Answer:

As per Section 173(3) of the Companies Act, 2013, a meeting of the Board of Directors 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.

Provided that a meeting of the Board may be called at shorter notice to transact urgent business subject to the condition that at least one independent director, if any, shall be present at the meeting.

Provided further that in case of absence of independent directors from such a meeting of the Board, decisions taken at such a meeting shall be circulated to all the directors and shall be final only on ratification thereof by at least one independent director.

As ABC Private Ltd. is a private limited company is advised to follow the above provisions to transact and validly decide on their urgent business. As sending notices by electronic means and attending meetings through VC (Video Conference) are approved measures, ABC Private Ltd, is facilitated to conduct the Board Meeting, by a shorter notice. Hence, ABC Private Ltd can conduct the Board Meeting by a shorter notice, as the Companies Act, 2013 does not mandate the presence of Independent Directors in the constitution of Board of a Private Limited Company.

Further, as per Para 1.3.11 of SS-1, in case the company does not have an Independent Director, the decisions shall be final only on ratification thereof by a majority of the Directors of the company, unless such decisions were approved at the Meeting itself by a majority of Directors of the company.

2023 - June [1] (b) A strong compliance training and education program reinforces the company's compliance culture. In the light of the above statement, you are asked to give a "Compliance Education and Training Program" for the employees of Z Ltd. stating five suitable points which must be included in your above plan. Explain. **(5 marks)**

Answer:

A strong compliance training and education program reinforces the company's compliance culture. It builds awareness and understanding of compliance standards, procedures, guidelines and issues.

Hence, the plan for compliance training and education program must include:

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

2023 - June [2A] (Or) (i) During the process of preparing the Form No. MGT-8 and Form No. MGT-7, for ABC Ltd. X, the PCS felt that there are some anomalies in information, which may need a reservation /qualification. How can X ensure the execution of the assignment as per the norms?

(5 marks)

Answer:

A PCS, while scrutinizing the client's information for certifying Form No. MGT-8, (Certification of Annual Return), observe all the relevant information/statements/documents and ensure that they are reflecting the true and fair status. If needed, the observations, limitations, reservations, qualification, adverse remarks, disclaimer, if any, shall be suitably incorporated in Form No. MGT-8.

A PCS may certify the Form No. MGT-7 (Annual Return), subject to certain reservations/qualifications/observations/adverse remarks, by way of an annexure to his/her, certification. However this course of action can only

be resorted to in case where material facts are not stated correctly and completely in the Annual Return or where the Company has not complied with the applicable provisions of the statutes.

To ensure the execution of the assignment as per norms, X, shall adopt the above cited concepts, and check thoroughly the correctness of the information and documents provided by the company. Then, if needed beyond doubt, X can incorporate the reservations/qualifications, adverse remarks, disclaimers, if any in his report.

2023 - June [2A] (Or) (ii) ABC Ltd. a section 8 company has been incorporated on 15th April, 2013, with 19 directors in its Board. The first Board meeting was held on 13th May, 2013 with 7 directors as quorum.

- (a) The company had approached you to advice on the validity relevant to the quorum and the date of its first Board meeting. Advise.
(b) Also advise the company in deciding the date of the next Board meeting.

(5 marks)

Answer:

As per Section 173(1) of the Companies Act, 2013 (the Act), every Section 8 Company incorporated under the Companies Act, 2013, shall hold its first Board meeting within 30 days of its incorporation as other Companies incorporated under the Companies Act, 2013, are required to do.

Section 173(1) also provides for the subsequent Board meetings of a Section 8 Company as, "section 173(1) shall apply to section 8 companies, to the extent that the Board of Directors, of such Companies shall hold at least one meeting within every 6 calendar months.

Section 174 indicates the quorum for the Board meeting of a section 8 Company is "either 8 members or 25% of its total strength whichever is less, provided that lesser number is not less than 2.

- (a) First Board meeting held on 13th May 2013:

Meeting held on 13th May, 2023, is in order regarding the date, as it was conducted within 30 days of its incorporation on 15th April, 2023.

Quorum as per requirement was, the lesser of the following-

- (i) 8 Members of the Board or
(ii) 25% of the Total strength of 19, which is 4.75, rounded of to 5.

Lesser is 5. As 7 members attended the meeting, quorum was also in order.

- (b) The first board meeting was held on 13th May, 2013 (i.e. for first six calendar months 1st January, 2013 to 30th June, 2013). The Board meeting is to be conducted in every 6 calendar months. The next can be held in between 1st July 2023 and 31st December, 2023.

2024 - June [1] (b) The Board of A-to-Z Ltd., a listed entity incorporated under the Companies Act, 2013 asked you as a Practicing Company Secretary (PCS) to present through a power point presentation the process for setting up of Compliance Framework in the Secretarial Department of the Company. Prepare one slide indicating various stages required in this regard. **(5 marks)**

TOPIC NOT YET ASKED BUT EQUALLY IMPORTANT FOR EXAMINATION

SHORT NOTES

Q. 1. Write a short note on significance of corporate compliance management.

Answer:

Compliance with the requirements of law through a compliance management programme can produce positive results at several levels:

- Companies that go the extra mile with their compliance programs lay the foundation for the control environment.
- Companies with effective compliance management programme are more likely to avoid stiff personal penalties, both monetary and imprisonment.
- Companies that embed positive ethics and effective compliance management programme deep within their culture often enjoy healthy returns through employee and customer loyalty and public respect for their brand, both of which can translate into stronger market capitalization and shareholder returns.
- Safety valve against unintended non compliances/ prosecutions, etc.
- Cost savings by avoiding penalties/fines and minimizing litigation
- Better brand image and positioning of the company in the market

- Enhanced credibility/creditworthiness that only a law abiding company can command
- Goodwill among the shareholders, investors, and stakeholders.
- Recognition as Good corporate citizen.

DESCRIPTIVE QUESTIONS

Q. 1. Explain the content of compliance chart.

Answer:

The Compliance Chart of any company must contain the complete information on compliance dashboard, which provide a detailed compliance procedure to the compliance executor, this information includes:

- Reference to the key compliance-related laws, regulations, industry standards and compliance related policies and standards of the company;
- Concise statements that capture the relevant internal and external compliance obligations and the risks arising from those obligations;
- 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.

Q. 2. “A strong Compliance training and education programme reinforces Company compliance culture” Comment.

Answer:

A strong Compliance training and education programme reinforces Company compliance culture. It builds awareness and understanding of Compliance standards, procedures, guidelines and issues. Specifically, it should build awareness and understanding of:

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- Company Framework, including the four 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.