



*It is widely believed that Corporate Governance mainly concerns with (i) Statutory Compliances; (ii) Transparency of information sharing and (iii) Growth and wealth creation for stake holders. The scope of this article is limited to the Statutory Compliances more specifically relating to listed companies.*

## Compliances under SEBI and Related Laws

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### STATUTORY COMPLIANCES

A company listed with any stock exchange has a host of statutory compliances to be complied with under Companies Act, Depositories Act, Listing Agreement etc. While every compliance requirement is intended for better sharing of information, transparency of activities etc., some of the compliances do require a re-look by the Statutory Authorities. A few such compliances taken for observation currently relates to place of maintenance of Register of Members, mailing of Annual Reports, Quarterly Reports, concept of market lot, conducting General Meeting of the members etc.

### MAINTENANCE OF REGISTER OF MEMBERS

Section 163 of the Companies Act specifies that the Register of Members should be maintained at the Registered Office of the company only. This truly applied when the shares were issued in physical mode and the number of shareholders were also handy. Under the SEBI regulations, the companies are compulsorily required to allot the shares in electronic form only and when it is mandatory for the companies to provide the dematerialization facility to their shareholders, this particular requirement is diluted. For providing dematerialization facility, companies are required to appoint a Share Transfer Agent who need not be in the same place where the registered office of the company situates.

This has given doubts in the minds of the Company Secretaries if they comply the provisions under section 163 of the Companies Act. Some companies pass a resolution at the Annual General Meeting of the Members presumably to safeguard their interests. One other option is to establish the required connectivity with the Depositories by the companies themselves which is a costly affair and certainly not feasible for every company.

In view of the above contradiction, it is impossible for the companies to comply with the requirement of Section 163. The only way is to repeal this section. Ministry of Company Affairs will do well to repeal this section or issue a notification clarifying that non compliance of section 163 would not an offence.

### MAILING OF ANNUAL REPORTS

Despite the fact that recently SEBI had suggested issue of abridged annual reports to the shareholders, with various reports like reports on Corporate Governance, reports on subsidiary companies etc., the annual reports are so voluminous that its printing and mailing costs are prohibitive and are also becoming difficult to handle. SEBI would do well to bring out an amendment to this requirement by restricting the minimum number of shares to be held by shareholders to get the annual report. This is more important since the trading happens in electronic mode and the minimum lot is one share, the number of shareholders who buy the shares of a company more so as a fancy than as an investment is bulging. For example, Infosys Technologies limited which had less than 7000 shareholders prior to introduction of Dematerialisation facility in India, is currently having close to 6 lakh shareholders. This is the case with almost every company where the shares are actively traded. Such a huge number of shareholders does cost huge money for the companies in servicing them especially in printing and mailing of annual reports, distribution of dividend or while forwarding any corporate communication.

If SEBI could bring in certain amount of restriction in sending such communications, of course except payment of dividend, it will be of great help to the companies. For example, SEBI may insist that only shareholders holding more than 100 shares or market value of Rs.1 lakh need to be sent the annual reports and such other communications, it would be great.

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Information Gateway for Directors through Intranet or any web based technology which Directors can access online should consist of :

- Agenda and Notes to Agenda of all Board Meetings & Shareholder Meetings
- Minutes of all Board Meetings & Shareholder Meetings
- Form24 AA, Disclosures of Interest, Related Parties
- Directors Identification No Guidance Note
- Digital Signature Certificate usage Guidance Note
- Compliance Quick updates and presentation in Board Meetings
- Exact corporate hierarchy & structure, Investment tree
- Compliance & Legislative updates and presentation in Board Meetings
- Important emails- Archive
- Financials (Quarterly , Half yearly, Annual)
- MIS-Dashboards
- Accounting Standards simplified
- Charges on Assets-Detailed Chart
- Litigation or Pending cases relating to Corporate Laws-Detailed MIS
- Key compliances under Company Law of overseas subsidiary companies
- Details about meetings organized by professional bodies like ICSI, NCFG etc on Directors etc

The JJ Irani Committee was of the view that law should facilitate use of technology to carry out statutory processes efficiently. Meetings of the Board of Directors by electronic means (Teleconferencing and video conferencing included) to be allowed and directors who participate through electronic means should be counted for attendance and form part of Quorum. Minutes should be approved/ accepted by such directors who attended by way of teleconferencing/ videoconferencing Signature may be accepted by use of digital signature certification.

If any director has some reservation about the contents of the Minutes, he may raise the issue in succeeding meeting and the dissent, if any, may be recorded in the minutes of that meeting. The information gateway through web based technology will be of great help for online Board Meetings.

*Shareholders Information* : The intranet portal can be given access to the shareholders with information to the extent shared. This would be good practice and classic example of good corporate governance.

### **CEO /CFO CERTIFICATION & COMPLIANCE CERTIFICATE- GREAT AID FOR COMPLIANCE MANAGEMENT**

Various certifications play a dominant role in overall process of compliance management covers the audit of the compliances and the reports give a confidence to the stakeholders. Presence of automated compliance management systems gives confidence to Directors when they can see the documented proof of all

compliances in an automated system in detail and when they can access the whole documents and the transaction trail. Certification by independent company secretary irrespective of whether mandatory or not is a good practice and companies should start taking certificates from company secretary in practice. Automated compliance management and certifications help Corporate Restructuring, Mergers, Takeovers, Acquisitions, Buyback, Re-organizations in the process of Due diligence.

### **MCA 21-WAY AHEAD**

Keeping in tune with the eGovernance initiatives the world over, Ministry of Corporate Affairs (MCA), Government of India, has initiated the MCA21 project, to enable an easy and secure access to MCA services in a manner that best suits the corporate entities and professionals besides the public. MCA21 is intended to achieve the objectives of a versatile eGovernance project.

The MCA21 project is designed to fully automate all processes related to the proactive enforcement and compliance of the legal requirements under the Companies Act, 1956. This will help the business community to meet their statutory obligations. From the customer perspective, the Front Office operations assume significance, which would be administered through the Front Office portal. The entire Back Office operations of the MCA would be automated so as to achieve the objective of a user friendly computerized environment. MCA portal is the single point of contact for all MCA related services, which can be easily accessed over the Internet by all users.

The Ministry is all set to exploit the benefits of its ambitious e-Governance programme - MCA21, which is considered to have been successfully implemented by the Government of India as one of the Mission Mode Projects under the NeGP. Compliance management is under serious review. The Ministry has decided its priorities clearly and is keen to take up the issue of non-compliance of filing of statutory returns by the defaulting listed companies, public limited companies, Government companies and those with an authorized capital exceeding Rs. 1.00 crore in the first phase. "About 75% of the companies in this group are already compliant in filing the Annual Returns and the Balance Sheets. The target of Ministry is to take this to at least 90% compliance level in this group before the year end".

The Ministry is clearly demonstrating that level of compliance management and efficiency through use of Technology.

May be in future if the intranet portals maintained by company with all information is given access to the Department when need for inspections the complete governance will be online and automated, their will not be a need of physical inspections and department can act through email notices and responses from company thus making a 100% online compliance management by Department

### **ROLE OF COMPANY SECRETARY**

With the advent of MCA 21 and emerging technology and dynamic business and compliance era as Company Secretary and compliance officers we should start adopting the new technology and methods towards compliance management.

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## CONCEPT OF MARKET LOT

Removal of the concept of market lot subsequent to introduction of dematerialization in India has done a great deal in improving the retail segment of Indian stock market. However, as discussed above, it has also resulted in draining of much required financial source for the companies in servicing the shareholders. Hence, it would be beneficial should SEBI determine the market lots into two different segments say, market lot of less than 100 shares is purely retail and odd lots and anything above 100 shares and in multiples of 100 shares as shares held in market lot for the consideration of shareholders eligible for all statutory and other corporate communications. It is felt that this is very important considering the surging number of shareholders who hold less than 100 shares.

## CONDUCTING GENERAL MEETING OF THE MEMBERS

Conducting of annual general meeting or extraordinary general meeting of the shareholders has become an agony for all the companies for the following reasons:

- (i) The shareholders who attend such meetings do not form even 1% of the total number of shareholders of the company. Since the majority of the shareholders are spread across the country, they do not have an opportunity to attend the meetings and take part in the proceedings.
- (ii) Contribution of such shareholders who attend the general meetings are either NIL or negative.

- (iii) No sensible discussions take place at such meetings except shouting for much negligible issues like non availability of conveyance to attend the meeting, or on the quality of the snacks provided or a demand for a gift for the shareholders who attend the meetings.
- (iv) Shareholders consider it their birth right to bring their spouse and children to the general meetings
- (v) A certain section of such attendees misbehave with the company officials and directors on petty issues rather than discussing the financials and performance of the company.
- (vi) Handling such a crowd has become difficult for professionals more so for Company Secretaries in service.

To avoid it, SEBI would do well, in line with our recommendations supra, that only shareholders holding more than a particular number of shares, say 100 need to be sent the notice or would be allowed to attend the meetings. Such a measure would reduce the strain on the companies more so on the Company Secretaries to a great extent.

As a matter of fact, such meetings are held more or less to fulfill the statutory requirement than to share any information with the shareholders. In such a situation, it is felt that the Ministry of Company Affairs may do well if they ask the companies to do away with conducting the general meetings of the members and instead, the companies may be asked to take compulsory postal ballot for all the resolutions which ofcourse needs to be scrutinized and certified by a Practicing Company Secretary. This may provide a new horizon of service to the Practicing Company Secretaries as well. □

## “Compliance Management of Company Law Compliances”-Approach and Technology Perspective

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Some of the requirements are as under :

- Online Libraries of Bare Acts, Rules, Regulations, Circulars, Notifications
- Repository Important Judgments of Company Law, SEBI guidelines
- Annual Reports of Top companies across various industry domains
- Memorandum and Articles of Association of Top companies across various industry domains
- Shareholders and Joint venture agreements Drafts
- Listing of Websites (Department and Legal information) providing complete information
- Active part in online groups, discussions forums, blogs and networking with professionals
- Having subscriptions with magazines like Chartered Secretary & other subscriptions
- Understanding of Business domain

- Use of Microsoft Office tools like Power point, Access, Project, Outlook
- Special presentation tools like Adobe, Flash Player etc.

## CONCLUSION

The emphasis of the Compliance management is on enabling companies to acquire the skill-sets and systems to ensure continued adherence of law Compliance is one of the steps in corporate governance initiatives since governance is a strategy while legal compliance is an operational plan of action. Core to good corporate governance is compliance with the laws of the land. This assists companies in their endeavor towards being a good corporate citizen Today compliance is not an option; it has become cost of doing business and the best possible way of managing risks. Compliance management solution addresses this with the help of integrated framework supported by an automated IT solution and strong management commitment. Compliance management when automated provides sustainable framework and a predictable and proactive way of managing compliances. □