

# Regulatory Compliance – A Business Imperative

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## Background

As per Section 134(5) (f) of The Companies Act, 2013, the Director's Responsibility Statement should state that directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively. Also, as per clause 49, information to be reviewed by the Audit Committee includes "Reports relating to compliance with laws and to risk management".

The regularly compliance requirement in India is fairly complex and depend upon multiple State specific Acts, Rules and notification. Further, multiple regulations depend upon type of business e.g. Oil & Gas, Chemical, Steel, Cement, Sugar etc. have varied requirements. In addition few industries are heavily regulated e.g. banking, financial services, insurance and telecom, among others.

The legal requirements coupled with complex regularly landscape make compliances tedious as well as a business imperative, because failure to comply with legal requirement could even impair ability of the organization to run its operations and cast negative impact its brand and reputation.

## Responsibility as per Three Lines model issued in July 2020 by Institute of Internal Auditors

- The management should ensure compliance with legal, regulatory, and ethical expectations
- Second line (responsible for supporting or monitoring risk related matters) can focus on specific objectives of risk management such as compliance with laws, regulations, and acceptable ethical behavior, internal control, information and technology security, sustainability, and quality assurance
- Internal audit (Third line) provides independent and objective assurance and advice on the adequacy and effectiveness of governance and risk management

- The Governing Body should maintain oversight of compliance with legal, regulatory, and ethical expectations

## Regulatory Compliance Maturity Models

The organizations across the country have achieved different level of compliance maturity, which decide compliance health and its corresponding impact of financials, brand, reputation, survival and growth.

**Level 1: (Initial)** – Regulatory compliances are managed by different process owners according to their past knowledge and experience, which may results in the following:

- Compliance depend upon past knowledge and experience of process owners
- Compliance level fluctuate with change in roles or attrition in the organization
- Delays in compliances leading to penalties and payment of interest
- Completeness of compliances can't be ensured
- Compliance certificates were provided to the Board and Audit Committee without any structure

**Level 2: (Repeatable)** – Process owners have developed their own broad list of Acts/Rules to be complied, which may results in the following:

- Compliance depend upon broad list of Acts and Rules
- Basic compliances may be ensured despite change in roles or attrition in the organization
- Delays in compliances leading to penalties and payment of interest
- Fragmented procedures results in completeness of compliances can't be ensured
- Compliance certificates were provided for broad Acts/Rules to the Board and Audit Committee, which could be incomplete or

गेल (इंडिया) लिमिटेड



# लाएं ताज़गी भरा बदलाव

- हरित ईंधन प्राकृतिक गैस अपनाएं
- सार्वजनिक वाहन का इस्तेमाल करें
- प्रदूषण-मुक्त वातावरण बनाएं



#HawaBadlo



inaccurate

**Level 3: (Defined)** – Process owners have developed their list of applicable Acts and Provisions to be complied, which may results in the following:

- Compliance depend upon process owners developed list of applicable Acts and Provisions
- Consistency in process owner wise compliance level
- Detailed list might not results in delayed compliances
- Lack of comprehensive list of completeness may lead to all applicable compliances May not be ensured
- Compliance certificates were provided based on list of applicable Acts and Provisions to the Board and Audit Committee, which could be incomplete or inaccurate

**Level 4: (Managed)** – Organization wide consolidated excel based compliance tracker is maintained and roles and responsibilities are defined, which may results in the following:

- Company-wide compliances might be adhered
- Company-wide compliance level is consistent
- Detailed list might not results in delayed compliance
- Lack of process for regular update of change in Law or Provisions could lead to all applicable compliances might not be ensured
- Compliance certificates were provided based on company wide list of applicable Acts and Provisions, however few compliances could be misreported

The above referred compliance maturity models have its own disadvantages, which could lead to non-compliance and eventually negatively impact organization, directors and other key stakeholders. The level#5 is the most matured and advance stage and could eliminate most of the compliance related risks.

**Level 5: (Optimizing)** – Regulatory compliance tool is deployed, rules defined, compliance evidences are maintained and independent review performed. The key benefits of level 5 are as follows:

- Company-wide repository of applicable Acts and provisions defined
- Acts and provision wise roles and responsibility defined
- Compliance evidences are preserved in the tool for future reference
- Maker checker process to review accuracy and completeness
- Alerts are send for compliances falling due in next 1-2 weeks
- Compliance status could be assessed 2-3 days before actual due date for timely compliances
- Tracking of regulatory changes for timely update in compliance tool and therefore ensuring compliances

- Systematic reporting to the Board or Audit Committee

#### Key considerations for Internal Auditor

- Review process for identification of applicable Acts and provisions
- Check whether roles and responsibilities for compliances are defined
- Review process for maintaining compliance evidences
- Review whether compliance status is reviewed by someone independent of the process owners
- Sample checking of compliance evidences to ensure that evidences are correct, complete and adequate
- Check whether roles and responsibility in compliance tool is updated once process owners are transferred or exited from the organization
- Review process of updating compliance requirements due in changes in Laws, business environment, addition of new geography or product line etc.
- Whether training is provided to process owners for awareness about compliance, process to be followed and implications on non-compliances
- Review trend of non-compliances e.g. Acts, provisions, location, process owners etc. and provide insights to the Management, Board to Audit Committee for timely action and remediation

#### Conclusion

The key takeaways of regulatory compliance are as follows:

- Adherence of regulatory compliance is non-negotiable
- Adhoc ways of compliance could be fatal
- Cost of deploying compliance tool is much lower than cost of penalties, fines, prosecution and reputation issues
- Any major injuries or accident at plant could lead to permanent shutdown of the plant
- Compliances win accolades and better brand recognition and customer confidence
- First line, second line, third line, Governing body, Statutory Auditors and regulators are interested in effective governance and compliance framework

In nutshell, well laid down regulatory compliance framework and review procedures would ensure timely compliance and effective discharge of responsibility cast upon the Board of Directors and the Committee.

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Note: The views expressed in this article are personal. ■