“An analysis of the concept of ‘Legal Compliance Audit’”

EZY LAWS
Advocates & Legal Consultants
“Statutory Compliance Defined”

Statutory Compliance means adhering to all laws, rules and regulations applicable to that particular unit.
**Background**

- Complex Legal Environment (multiple laws, wider coverage)

- Stricter government implementation, resulting in possible criminal persecution

- Active Civil Society, NGOs and Activists monitoring action of corporates

- The pressure from the international trading partners on compliance, specially for labour laws

- Compliance statement, signed by directors has to be submitted by the companies listed in Stock exchange every year (Clause 49).

- Corporate governance and social responsibility leading to expectation of compliances.
Requirement of Clause 49 of SEBI Listing Agreement

• Clause 49 of the Stock exchange listing agreement includes requirement of structural legal compliance management (LCM) system.

• Clause 49 1(c)(iii) “The boards shall periodically review compliance reports of all laws applicable to the company, prepared by the company as well as steps taken by the company to rectify instances of non compliance.”

• There must be some mechanism to provide for checking to allow the directors to sign a statement stating the company is compliant with statutory regulations.
Objectives

• Laying down policy and procedures to be followed by each unit.

• Improving internal process and system.

• Training the organization on legal compliance related issues and their implications.

• Ensuring high level of compliance across the organization.
Methodology

Stage 1 – Compliance Audit Checklist (CAC)

- Preparation of CAC covering all relevant laws applicable to the target unit.

Stage 2 – Intimation of Audit dates and Visit to location

- Deciding date of audit and intimating to the unit allowing them to prepare for audit.
- Forwarding to the unit list of documents required for audit
- Getting from unit soft copy of pay-roll and attendance data 1 week prior to audit.
- Verification of relevant records and documents available.
- Compilation of draft report based upon findings and observations of the audit team
- Review meeting with the unit head/work directors to discussion on the finding of audit
Methodology (contd..)

Stage 3 – Report

- Submission of detailed Non Compliance (NC) report to
  - Unit’s Legal team
  - G M Risk management

- Comparison of current observation with previous year observation and quarterly compliance check-list

- Legal team will forward a hard copy to unit head (no soft copy to be sent)

- Review of audit observation by Legal team.

- Suggestion to the unit for correction of problems

- Follow up with the unit to verify action taken
Non Compliance Report

- Primary report is Non-Compliance Summary, a list of all items where the unit is not compliant. It provides
  - Details of non-compliance
  - Criticality of the matter
  - Impact of non-compliance
  - Recommended action (if any)

- Criticality of Non-Compliance is defined as below:
  - **Critical** - Possibility of unit being shut down.
  - **Serious** - Heavy Penalty, criminal offense, imprisonment
  - **Minor** – Let of with warning and mild fines.
  - **Technical** - Wrong format / documentation easily corrected
Acts covered - HR

- Factories Act, 1948
- Payment of Wages Act
- Payment of Bonus Act
- Maternity Benefits Act
- Gratuity Act
- Equal Remuneration Act
- ESIC Act
- Minimum Wages Act
- Apprentice Act
- Provident Funds & Misc Provisions Act
- Trade Unions Act
- Contract Labour (Regulation and Abolition) Act
- Industrial Dispute Act
- Workmen’s Compensation Act
Acts covered - Engineering

- Electricity Act
- Petroleum Act
- Explosives Act
- Boilers Act
- Legal Metrology Act
- Essential Commodities Act
- Environment Protection Act
- Water Act
- Air Act
- Water Cess Rules
- Hazardous Waste management Act
Acts covered – Tax & Misc

- Central Excise Act
- Central Sales Tax Act
- Customs Act
- Income Tax Act
- Negotiable Instruments Act
- Licensing & IEM Act
- Competition Act
- Entry Tax Act
- State VAT Act
- Service Tax Act
- FEMA
- Industries Act
- Motor Vehicles Act
- Profession Tax Act
Important Aspects of Certain Acts
General Register Checklist

- To simplify compliance, all registers required under various labour acts have been listed in one “Reg-List”

- Consisting of:
  - 30 Registers (Maintained)
  - 12 Abstracts (Displayed)
  - 28 Notices (Displayed / Submitted)
  - 10 Returns (Submitted)

- Blank registers needed even where no activity takes place
- Reg-List gives the status of each of the above
Factories Act

- The most critical act
- Occupier & Factory Manager are liable for most violations
- Each unit must have valid factory license
- Renewal application to be sent on time (60 days before expiry in most states)
- Total number of workers not to exceed number specified in License
- Stability certificate to be renewed every 5 years
- Pressure Vessels to be checked every 6 months / 1 year
- Lift, Hoists & Tackles to be checked every year
Factories Act (Contd.)

• Other conditions
  – Follow all Health & Safety regulations
  – Creche required for more than 40 women workmen subject to certain rules
  – Canteen required (for above 250 workmen). Detailed rules provided
  – Provision for clean, safe, adequate drinking water
  – Adequate provision for toilet facility
  – Special regulations in case any children working
Contract Labour – Unit Side

— Registration Certificate required if more than 20 contract workers.

— Each contractor with more than 20 workers needs license.

— Number of workers not to exceed maximum stated in license.

— Contractor needs to renew his license 60 days prior to expiry (deemed renewal). If he has not submitted it on time, his contract should be suspended till he gets his license renewed.

— Proper Legal Agreement to be entered into with contractor on stamp paper (PO or letter issued not valid).

— Agreements must be renewed by making new agreement on stamp paper except in case of automatic renewal.

— Agreement to be vetted by Unit’s Legal Department.

— Company nominated person, present at time of paying wages.

— Allow access to Toilet, Rest-Room and Canteen facilities to contract workers.
Contract Labour – Contractor Side

- Ensure that contractor:
  - maintains all necessary registers and keep it in the factory.
  - pays above minimum wage level.
  - pays OT at double rate
  - gives proper weekly offs
  - pays all statutory dues on time
  - has independent PF, ESI number
  - provides all workers with photo ID cards
  - intimates authorities on start and completion of contract

- Unit is liable for any violations by the contractor. Therefore, unit must monitor the compliances by Contractor
Minimum Wages

• Wages paid to be above minimum wage level as fixed by the state government.

• Minimum wage rate is revised twice a year and wages must be updated immediately.

• Minimum wages differs for each industry, skill level of the workmen and zone of the state.

• Skilled, Semi-Skilled, Un-Skilled classification specified in notification to be followed.

• Minimum wages is based on Basic & HRA only. All other items of salary structure (allowances, etc) are not counted.
Guidelines for Prevention of Sexual Harassment

- Redressal committee to be formed
  - Headed by woman
  - Involve NGO or independent party in committee (to prevent undue influence from senior levels)
  - Committee must meet regularly

- Procedure to be laid out for recording and managing complaint

- Standing Orders to be modified to provide for complaints and penalty for sexual harassment

- Sensitising training to be given to employees to avoid unintended harassment cases

- Regular discussion with women workers to understand and resolve problems

- Work hours to be fixed in line with Factories Act / Shop & Establishment Act

- Provide separate Toilets, Rest-Rooms and partitioned Lunch Rooms for women workers
Motor Vehicles Act

- Ensure correct document validity for owned and contract vehicles (copy must be kept with Admin Dept in file):
  - Registration Certificate
  - PUC
  - Insurance
  - Fitness (for transport vehicles and buses)
  - Permits
  - Road Tax

- All drivers must have “TR” license

- Company managers driving their own vehicles must have valid license

- Contract vehicles taken on long term hire must be with Agreement on stamp paper, vetted by Unit’s Legal Team

- Ensure proper transfer in case of sale of vehicles
Environment Laws

Backdrop – India’s environmental laws span more than a century –

1927  Forest Act, amended 1980  
1974  Water Act  
1981  Air Act  
1986  Environment Protection Act  
      Coastal Regulation Zones

New Rules, made under Environment Protection Act are moving from the general to Specifics

1989  Hazardous Waste Rules  
1998  Biomedical Waste Rules  
1999  Rules for Recycled Plastics, Fly Ash Notification  
2000  Municipal Solid Waste Rules  
2000  Battery Mgt & Handling Rules  
2011  Plastic bags for retail sale
Environmental Laws (Contd.)

- Unit must have a valid Consent
- Renewal application must be given within the time specified
- Consent terms must be read carefully and followed / implemented
- Annual Environmental Returns to be submitted by September
- Test Effluent levels regularly to ensure it is within limit specified
- Affix water meters at proper places to measure water consumption to ensure it is in line with the consent
- Maintain Water Log and ETP log files properly
- Water Cess Returns to be filed monthly, payment to be made on assessment
Environmental Laws (Contd.)

- **Hazardous Waste Management**:
  - All hazardous waste material mentioned in consent
  - To be disposed off in the manner specified in consent
  - Stored in Hazardous Waste area in factory before disposal
  - Labeled in proper manner (Form 8)
  - Warning sign as Hazardous
  - Mostly sold to approved Waste Management Companies
  - Transported by approved transporters, with manifest in Form 9
  - Record of waste generated and disposed off
  - Hazardous Waste Returns to be filed annual
Legal Metrology

- New act to replace Standards of Weights and Measures
- Registration as Manufacturer / Packer
- All measuring scales to be calibrated and certified annually
- Price Labels must contain:
  - Name & Address of Manufacturer / Packer (address of factory where manufactured now required)
  - For imported goods, also name & address of packer
  - Common / Generic name of product
  - Net quantity in standard weight or measure or number
  - Year & Month of manufacture or Pre-Packing / Import
  - Retail Sale Price in terms of “MRP not to exceed Rs. ______ inclusive of all taxes
  - Telephone number and Email Id of the Customer Support Service Provider/
Steps for Easier Compliance

• Monitor Reg List (registers, notices and abstracts) closely. Will resolve lots of non-compliances

• Maintain calendar to know when various actions are needed. Escalate to HOD and Unit Head when not done on time

• Implement safety measures strictly

• Follow the letter and the spirit of Law

• Keep proper documentation to prove that you have done the right thing and on time

• Keep acknowledgement of all documents submitted or Proof of Delivery (Post AD or Courier)

• Keep copies of critical documents (registration certificates, etc) in separate file, with scanned copy as back up.
Thank you