

# Regulatory compliance management – clarity needed on reverse situations

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Every company, in order to achieve its goals and maximise returns, does set forth internal policies and procedures to be followed by the management team and down the line. Internal compliance is an essential tool for every company to perform well in business activities, sustain the business model and become a leader in their product or services. On the other side, regulatory compliance is in the form of external legal mandates set by the regulators or government agencies. Regulatory compliance management means the set of processes, procedures and technology put in place by an organisation to ensure regulatory compliance; and, in today's scenario, with multiple regulators and government agencies, it is very important for an organisation to set both the internal and external compliances.



Companies are registered under the provisions of the Companies Act (the Act) and they are regulated by the Ministry of Corporate Affairs (MCA). The Act consists of 470 sections, seven schedules along with respective rules for the proper compliance by every company registered under the Companies Act. The MCA keeps a watch on all such sections, schedules and rules and prescribe forms and returns for companies to comply with the applicable provisions. The MCA also comes out with clarifications, issues circulars, and amends the Act as well as the Rules with notifications as and when need arises in the overall interest of all stakeholders for the proper compliance of the Act and Rules.

However, there is a need to address some of the issues for clarity and for better compliance of the Act and Rules.

## **Beneficial and nominee shareholders**

There is a provision in the Act that the name of a person can be entered in the Register of Members of a company but he necessarily need not to be the beneficial owner of the shares held in his name. The name of the person that is entered in the Register of Members is called “nominee shareholder” and some other person is the “beneficial owner” of that share. The Register

of Members is being maintained by the company. The company has to comply with certain provisions of the Act and Rules made thereunder:

- (i) Where the **name of a person is entered in the register of members of a company** as the holder of shares in that company but who does not hold the beneficial interest in such shares, such person shall make a declaration within a period of thirty days from the date on which his name is entered in the Register of Members of a company in Form No. MGT 4 and the same to be submitted to the company specifying the name and other particulars of the person who holds the beneficial interest in such share.
- (ii) **Every person who holds or acquires a beneficial interest in share of a company** shall make a declaration to the company specifying the nature of his interest, particulars of the person in whose name the shares stand registered in the books of the company and such other particulars has to be given by the beneficial owner to the company, in Form No. MGT 5 within thirty days after acquiring the beneficial interest in such shares.
- (iii) Where any **declaration** under this section is **made to a company**, the company shall make a note of such declaration in the register of members and shall file, **within thirty days** from the date of receipt of declaration by it, **a return in the Form MGT 6** with the Registrar in respect of such declaration with such fee.

***However, at a later date, if the beneficial owner wants to remove the nominee and to bring back his status as beneficial owner without any nominee shareholder, the law is silent on such matter and there is no provisions in the law regarding any declaration or forms that need to be filed with the Registrar of Companies (ROC), if the beneficiary holder wants to hold the shares on its own without any nominee shareholder.***

### **Maintenance of books of accounts**

Every company shall prepare and **keep at its registered office** books of account and other relevant books and papers and financial statement for every financial year which give a true and fair view of the state of the affairs

of the company, including that of its branch office or offices, if any, and explain the transactions effected both at the registered office and its branches and such books shall be kept on accrual basis and according to the double entry system of accounting.

However, the Act permits that a company for their convenience and better compliance can keep all or any of the books of account aforesaid and other relevant papers **at such other place in India as the Board of directors may decide** and where such a decision is taken, the company shall, within seven days thereof, file with the Registrar a notice in writing giving the full address of that other place. Rule 2A of The Companies (Accounts) Rules, 2014, provide that for this purpose *the notice regarding address at which books of account may be kept shall be in **Form AOC-5***.

Interestingly, in the said Form AOC-5, the heading for giving address of other place is “Address at which the books of account are to be maintained”. Therefore, whenever a company decides to keep the books of accounts at some other place other than registered office of the company, the same address has to be filled in at that place.

***However, if at a later date, the company wants to bring back the books of accounts to registered office or the Board decides to shift the registered office at that place itself, the law is silent on this i.e. there are no provision in the Act for bringing the books of account back to the registered office. Also, there is no prescribed form which could be filed by a company for intimating the ROC that the company is again maintaining its books of accounts at its registered office only.***

## **Conclusion**

Regulatory compliance management is very important for every company for its timely compliance in the interest of all stakeholders. Non-compliance of regulatory requirements not only lands the company and every officer in default, but also dents the image and goodwill of a company. At the same time, it is also very important that the Act, Rules and Regulations should address all sorts of compliance. The above two situations are highlighted as examples of not addressing the situation on the reverse of the original compliance.

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