CORPORATE GOVERNANCE AND REGULATORY COMPLIANCE IN AN '*EMERGING*' ERA OF ELECTRONIC FILING

A KEYNOTE ADDRESS

BY

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Areas of focus/Deliverables

▶ 1. An introduction that attempt to define corporate governance in relation to compliance and 'filing.'

▶ 2. The pre-electronic filing era and its challenges.

▶ 3. The electronic filing era: goal alignment between the regulators and practitioners.

▶ 4. Looking at it in general.

▶ 5. The expectations of Practitioners and companies from Regulators in terms of regulatory filings

▶ 6. Understanding the transactional imperatives of filings and compliance

▶ 7. What practitioners need to do.

▶ 8. Areas that Regulators need to look into.

▶ 9. Conclusion.

Introduction

▶ Companies are expected to take deliberate and responsible steps to align their structures, operating procedures, policies and board composition with best practices in the interest of the entity's sustainable good performance and stakeholders' satisfaction.

▶ When a company is seen to have taken these steps, and the conduct of its key players reflects the content of the operational policies in terms of restraints deliberately imposed on themselves, then there is good governance.

▶ These are all embedded in a wider structure of *'compliance.' Compliance with the law, regulations, ethics and standards.*

▶ Regulators monitor and enforce compliance. They also provide the mechanism for compliance. It is the mechanism and methodology of compliance that brings about "electronic filing" which forms the crux of this year's discussion.

▶ Electronic Compliance/filing.

The Pre-Electronic Era

The pre-electronic era was characterized by:

▶ 1.   Files and documents having to be physically moved from one office to another, practitioners had the opportunity of pleading their courses with verifying and approving authorities. This is reduced to the barest minimum. Has this brought about the desired efficiency?

▶ 2.   Practitioners seem to have an interpersonal relationship with the regulators and a lot of exchange of view took place in shaping and reshaping the processes.

▶ 3.   Practitioners showed dexterity by knowing what form is needed for each of the applications. The procedural steps of moving from point A to point B was mastered. The younger generation of practitioners no long need to appreciate the levels of approval in various offices.

▶ 4.   Processes could be delayed as files sometimes got missing and temporary files created.

▶ 5.   Registries were created as repositories of documents that may never be useful after the transactions are completed, the statutory retention period was not spelt out!

▶ 6.   Have we really moved away from this manual method?

The Electronic Filing Era

Typically, in this era:

► 1.   There was limited interface between practitioners and the regulators until things really go wrong. Total quality management and mastery of regulatory and procedural requirements are key for practitioners. Ask colleagues who must have done it. Check the applicable regulations – Tax, Companies, Trademark, Financial reporting, etc.

► 2.   The hitherto prescribed forms are remodified and accessible through the relevant portal. Practitioners' ability to work through and adapt templates are quite necessary. You may need to convert documents from one presentation format to another.

► 3.   Regulators should be concerned with quality checks, system efficiency, speed of delivery, avoidance of duplication of duties, constantly reviewing the portal as the laws and regulations change and system upgrades.

► 4.   Authentication and proof of filing must be verifiable, and regulators must design the portal to issue certificates that are universally acceptable using appropriate ISO standards.

► 5.   The liberalization impact of IT should be borne in mind as this can lead to proliferation and lowers the standard of practice. As it is with a few 'Regulators' access to portals should be restricted.

► 6.   Periodic feedback from practitioners should be encouraged.   !

Users' Expectations from Electronic Filing Portals.

▶ 1. **Reliability:** Information uploaded should be well represented to subsequent users and searchers. Regular scanning and strengthening of security software around the database.

▶ 2. **Accessibility:** It should not be difficult to create an account or log in to any portal. Yet, adequate security needs to be mounted to prevent hacking.

▶ 3. **Verifiability:** Portals should be able to support due diligence examinations, internal and external audit processes. Therefore, searches should produce accurate information.

▶ 4. **Timely:** Processing time should be as short as possible. Time is of the essence in regulatory and statutory compliance.

▶ 5. **Authentic:** Evidence of compliance should bear special features that differentiate it and prevent forgery.
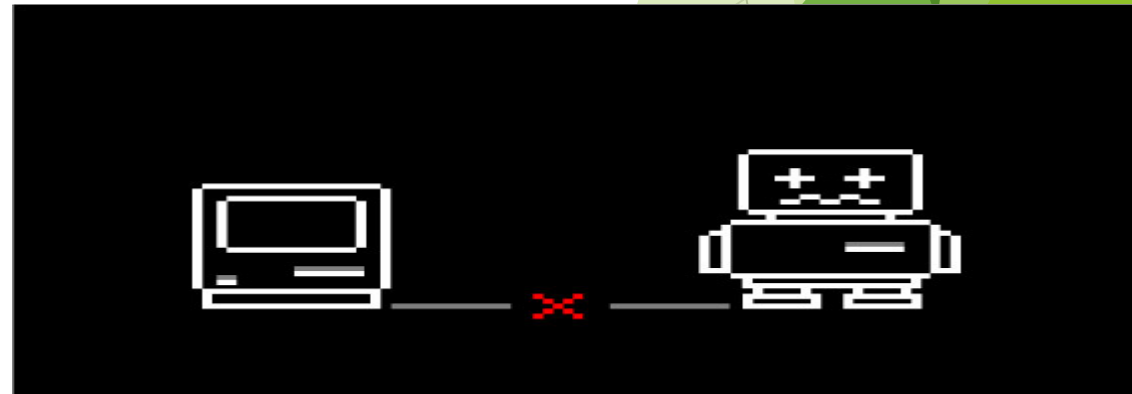
Understanding the Transactional Imperatives of Filing and Compliance.

Both the regulators and the Practitioners should understand that filing for purposes of compliance is not an end in itself. Its objective, aside from avoiding fines and sanctions from regulators is, most of the time, to enable the entity to discharge other important to third parties.

For regulators: There is a need to understand that as you grow, the need to rely more on data in taking fundamental decisions that affect both the micro and macro economy of the nation, is key. There is a need for more engagement, even at an early stage of systems design to accommodate the expectations of the users in terms of format, content and deliverables of systems.

Practitioners and Companies: Be professional, in taking up matters with regulators in the area of electronic filing and the glitches sometimes experienced. Work through professional bodies to present a common challenge. Not necessarily through the OPS organisation whole focus are wider than the localized technicalities that only professionals in the field can better understand.

There must be collaboration.

The Areas Regulators need to Consider

- Processes should align properly with the law and regulations.

- Data gathering from Practitioners and relevant professional bodies is key to landmark initiatives that border on compliance.

- Make it simple to understand and create alternative routes.

- Maintain a complaints Management Desk.

As Practitioner….

- Be able to distinguish between the *requirements* of a process and its *procedures.*

- Appreciate the fact that when you file, physically or electronically, you are embarking on compliance. Know the *ethos of compliance.*

- Work with the *Guidelines*. Most guidelines will educate on the *format* of presentation and content.

- Speak to *colleagues* in the field and maintain a professional network.

- Get *accredited* if required.

- Recognize *IT as a universal language* that must be understood to function in the modern business world.

As Governance Gatekeepers

▶ You play a key role in setting the tone and foundation for sound governance. This is also a matter of compliance, not just filing papers.

▶ Recognize your role in handling the reporting and disclosure obligations of your entity and/or clients.

▶ You are a Governance Evaluators. Practice manuals in this area of endeavour *'should be obtainable from ICSAN.'*

▶ *Governance is a wide field; you can carve a niche.*

Conclusion

Governance and compliance work like a pair of scissors. Good governance is routed in the discipline to ensure compliance with the law, rules, regulations and ethical standards.

Governance Practitioners should therefore understand that the practice of governance is encompassing – it covers compliance, consultancy and gatekeeping. You must understand the ethos first and foremost.

Regulators play a major role in all this and should therefore make it easy through enhanced engagement. Landmark IT solutions for compliance matters should be carefully implemented based, not only on engagement but research and adequate data gathering from both the practitioners and corporate entities whose expectations should be catered for.