

07th May, 2010

M/s. Raqmiyat Information Technology Private Limited

DLF IT Park, 1.124, Block – 5,

2nd Floor, Mount Poonamallee Road,

Manapakkam, Chennai – 600 089

Dear Sir,

For Kind Attn of: Mr. Devaraj Sreeram, Asst. Manager – Finance &
Ms. Latha Mahesh, Manager – HR & Recruitment

Query Raised:

The Company Secretarial mandates to be mandatorily adhered to annually by the Company. A brief opinion on Company Secretarial procedures including forms and other related documents to be maintained by a Company which is being/would be funded and managed by a Foreign Investing Company.

OUR Opinion:

We are giving our detailed opinion with respect to the secretarial procedures and necessary forms to be complied annually which is detailed below:

Importance of Secretarial Compliances:

The multiplicity of laws, rules, regulations, etc. has necessitated introduction of a system to ensure secretarial compliances and it has two-fold objective:—

(a) Firstly, to protect the interests of the customers, employees, revenue, the directors and officers of the company.

(b) Secondly, to avoid any unwarranted legal actions by the law-enforcing agencies and other persons as well.

Under most laws, the persons responsible for compliance and liable for punishment are directors, company secretary and some of the senior officers who have been designated for specific compliances. Amongst the directors, the responsibility of managing and executive directors is greater. As a result of stricter enforcement of laws and implications of recent decisions of the courts in some cases, it has become imperative for the Board to perform periodically the following functions:

- 1) 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-compliances.
- 2) Check and report on compliances;
- 3) To point out non-compliances and inadequate compliances;
- 4) To protect the interests of directors and officers.
- 5) To avoid legal actions by the law-enforcing agencies and others.

COMPLIANCE CERTIFICATION:

Compliance Certification (CC) was made statutorily applicable in 2000 Inserted by the Companies (Amendment) Act, 2000, w.e.f. 13-12-2000, which inserted a provision in section 383A(1) of the Companies Act making it mandatory that every company not required to employ a whole-time secretary under sub-section (1) and having a paid-up share capital of Rs.10 lakhs or more shall file with the Registrar a certificate from a secretary in whole-time practice in such form and within such time and subject to such conditions as may be prescribed, as to whether the company has complied with all provisions of this Act and a copy of such certificate shall be attached with Board's report referred to in Section 217. The Companies (Compliance Certificate) Rules, 2001 prescribe a 33-item formula for CC. There is a big list by which the Company's Compliances will be checked for the whole year or quarterly by way of Secretarial Audit. In which all the legal compliances such as

- 1) Status of a company as a private company
- 2) Documents of the company MOA, AOA, balance sheet, registers and minutes need to be verified

- 3) Loans given to directors, company's holding company and to others and
- 4) Corporate, Labour and other laws Compliances and Management and Secretarial Audit : Compliance Audit, Reporting & Disclosures
- 5) The Secretarial Standards issued with respect to General Meeting, Board of Directors Meeting, Maintenance of Minutes, Transfer and Transmission of shares and debentures and payment of dividends accordingly need to be adhered in strict manner.
- 6) Any events or developments or charges or changes or special resolution affecting major changes in the company need to be filed with the ROC by appropriate forms.

Annual Compliances:

The following are the mandatory compliances under Companies Act, 1956 which need to be strictly adhered with in an annual manner:

- 1) Register and index of members, directors, director's shareholdings, managing directors, charges, deposits, investments/loans/guarantees, debentures (if any), minutes books, accounts books, contracts, annual returns, etc at Registered Office of the Company
- 2) Profit and Loss Account and Balance Sheet to be adopted in the ensuing AGM and to file 3 copies within 30 days of AGM as per the schedule of the Companies Act, 1956
- 3) Compliance Certificate to be filed within 30 days of AGM (need to check whether the paid up capital of your company comes within this condition)
- 4) Any changes in the company viz. Capital (Form 5), Registered Office (Form 18), Order from CLB / Court (Form 21), Resolution or Agreements (Form 23), WT Director / MD (Form 25C), Charge created or modified (Form 8 & 13), Directors Interest (Form 24AA), Change in MOA or AOA (Form 17 & 31)
- 5) Notice sent before 21 days for AGM with balance sheet, directors' report and other necessary annexures. Any EGM held during the year
- 6) Maintenance of minimum directors of the company
- 7) Also ensure that appropriate tax on income, service tax, corporate tax, property tax, etc. provisions are complied with in a strict manner
- 8) Necessary licenses and other permits are renewed without any default
- 9) Banking transaction and other laws such as labour, wages, standing orders, trade mark rights and registration, payroll transactions, GST transactions,

Accounts are maintained as per Accounting Standards, etc. are complied with.

- 10) DIN and DSC are maintained by the Directors need to be checked in case of appointment of new directors
- 11) Under Corporate Income Tax: The corporate income tax effective rate for domestic companies is 35% while the profits of branches in India of foreign companies are taxed at 45%. Companies incorporated in India even with 100% foreign ownership, are considered domestic companies under the Indian laws
- 12) Conducting and holding appropriate meetings timely will also to be adhere to or else compounding need to be done for the delay or fine amount need to be paid by the company

Penalty on Non-Compliances:

The Companies Act, 1956 provides for penalty/fine or imprisonment either of the officer in default and/or the company. The Managing Director, Executive Director are the “officer in default”. If there is no executive director, all the directors are treated as “officer in default”. For the procedural lapses such as late filing of forms, additional filing fees are required to be paid. In case of FEMA, the penalty for noncompliance can go up to thrice the amount involved.

Foreign Direct Investment:

FDI is big concept under which we are giving our general opinion with respect to the FDI Concept and we are not aware of the capital or funding ratio of your company by the FII or by foreign company.

- 1) Foreign Institutional Investors (FIIs) are permitted to invest in Indian company either under FDI scheme or portfolio investment scheme
- 2) The limit shall be 10% for individuals and 24% shall be for FII investment in aggregate under FDI scheme
- 3) Indian companies are permitted to issue equity, shares, fully, compulsorily and mandatorily convertible debentures (FCD) and Compulsorily and

- Mandatorily convertible preference shares (CCPs) to non-residents subject to pricing guidelines / valuation norms under FEMA.
- 4) Share / debentures would need to comply the External Commercial Borrowing (ECB) Guide-lines. Since these instruments are denominated in Rupees, the rupee interest rate will be based on the swap equivalent of incase of foreign currency is involved plus the spread permissible for ECBs of corresponding maturity.
 - 5) It has been clarified that prior approval of FIPB followed by permission from RBI would be required for transfer of equity shares/FCD's/CCPS, from residents to non residents by way of sale or otherwise, if the Indian company is engaged in any sectors falling under the Government route.
 - 6) Prior permission from RBI would also be required if the transfer of equity shares/FCD's/CCPS, from residents to non residents, by way of sale is at a price which is not in accordance with the pricing guidelines specified by RBI; and also for transfer where the non-resident acquirer proposes deferment of payment of the amount of consideration.
 - 7) Prior permission from RBI would also be required if the transfer of equity shares/FCD's/ CCPS from residents to non residents of an Indian company engaged in financial services sector.

OPINION:

Since you have only sought our opinion on the necessary annual secretarial compliance under Companies Act, 1956, we have rendered the secretarial concepts and related aspects of your company as elaborated in the above said paragraphs. We are of opinion that in case of default on the part of statutory compliances will lead to unnecessary fines, penalty and court proceedings involving huge expense and thus to avoid those complications and as your company is basically a private limited company, it is advisable to take help of a corporate personnel having knowledge of Companies Act to get the entire things done in a professional manner.

In case you require any further details on this issue please let us know.

We trust that we have answered your queries to your satisfaction. Should you still need any clarification, kindly revert to us.

D. Padma Priya

Advocate & Partner



SLP Legal Experts and Attorneys