

De Jure

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Constellate Abidance



Rajani Associates
simple solutions

ONE STOP SOLUTION FOR LEGAL COMPLIANCE

INTRODUCTION

In order for an organisation setup in India to carry on its business smoothly and effectively, it must comply with various laws from its incorporation.

Managing the day-to-day operations of an organisation, along with complying with various corporate laws may prove taxing for the organisation and its officers. Many a times, there are lesser-known laws which an organisation may be unaware of resulting in an unintentional non-compliance on their part. It is, therefore, essential to seek professional assistance which may enable an organisation to understand such legal requirements and to ensure timely compliances, without levy of interest or penalty.

Rajani Associates ("**RA**"), in association with Complykaro Service Private Limited ("**Complykaro**"), has undertaken the initiative to ensure that our clients receive accurate and extensive compliance training solutions.

Complykaro is India's first end-to-end compliance service provider. It specializes in providing training solutions to its clients, while also assisting them in complying with various laws. In partnership with RA, clients receive specialized legal expertise across various sectors on relevant laws and their compliance, providing extensive training, workshops and solutions catering to the need of each client in accordance with the kind of organisation set up by each client.

We have elaborated below some of the common compliances /training solutions which Complykaro, along with RA, offers:

THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013 ("POSH")

The PoSH Act protects women from sexual harassment at their place of work. Every organisation with ten (10) or more employees must constitute an Internal Complaint Committee ("**ICC**") to handle sexual harassment complaints.

Amongst various compliances as set out under the PoSH Act, it is mandatory for every employer of the organisation to (i) formulate an internal policy for prohibition, prevention and redressal of sexual harassment at the workplace and provide a safe working environment; (ii) conduct awareness programmes, training sessions and workshops for sensitising the employees with the provisions of the POSH Act; (iii) conduct orientation programmes, capacity building and skill building programmes and seminars for the members of the ICC; (iv) assist in any manner required to enable the aggrieved woman to receive justice according to the law; and (v) include a statement in its board of directors report that the company has complied with provisions relating to the constitution of ICC under PoSH.

If an employer fails to either constitute an ICC or fails to discharge any duty under the PoSH Act, it shall be punished with fine which may extend to Rs.50,000 (Rupees fifty thousand). In the event an employer continues to contravene the provisions of the PoSH Act, then the employer may be either fined twice the amount of fine levied for the first contravention, or even face cancellation of the license, permit or registration for carrying on its business.

Complykaro is empanelled by the Ministry of Women and Child Development, Government of India, as a resource organization for providing training and conducting workshops as required as per the PoSH Act.

Complykaro provides cloud-based PoSH E-Learning modules and live online sessions to equip employees and ICC members with the knowledge of different kinds of behaviours that may be perceived as sexual harassment and sensitizes all employees towards their legal rights and duties under the PoSH Act.

INFORMATION SECURITY

For any organisation, their data or electronic records and other activities carried out by electronic means is one of their biggest assets. In today's digital world most of the organisations use an online data storage medium to store all its data or records. Moreover, this COVID-19 induced work from home situation poses even greater challenges and threats to an organisation's data. Accordingly, the management of information security or cyber security has become an absolute and critical necessity for the success of any organisation.

Most of the security breaches in an organisation arise from lack of information and security awareness of employees. Hence, it is vital for an organisation to introduce information security awareness for its employees, its technicalities, and their ethical duties regarding an organisation's cyber security.

Complykaro provides information security training programmes where it assists an organisation to comply with the law by training to employees of the organisation to operate ethically and educates them on the different cyber security risks and

threats out there, as well as potential weak spots. Through the training programme, employees will learn the best practices and procedures for keeping networks and data secure and also the consequences of not doing so.

THE PREVENTION OF MONEY LAUNDERING ACT, 2002/ANTI-MONEY LAUNDERING

In order to combat and prevent money laundering, the Indian government enacted the Prevention of Money Laundering Act in 2002 ("**PMLA**") which enables the Government or a public authority to confiscate the property earned from illegally gained proceeds.

Any person or organisation, directly or indirectly, attempting to indulge or assisting or is a party or is actually involved in any process or activity, which is connected with proceeds of crime, including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money-laundering under the PMLA. The offense of money laundering in India carries huge penalties.

Complykaro assists an organisation to comply with various legal obligations under the PLMA, such as maintaining transactional records etc. and provides training program to the employees of the organisations which assists the employees to understand the concept of money laundering along with the legal repercussions of any contravention of PMLA.

It is essential for every reporting entity to create awareness of PMLA by providing training to its employees not only for financial security of the organisation but also to avoid getting involved in such activities directly or indirectly and to act as whistleblowers in case they come across any illegal money transactions.

CODE OF CONDUCT

Regardless of whether an organisation is legally mandated to have a code of conduct (as in the case of public companies), every organisation should have one. A code of conduct is a set of rules around behaviour for the employees to follow within an organisation. The code acts as a standard that staff need to meet so that they can know what is expected of them to produce a generally more efficient business.

Complykaro provides for an online training programme which consists of three (3) modules in total – the first module explores the basics of Code of Conduct and clauses for employees of the firm; the second module delves into the clauses for other stakeholders of the organisation; the final module provides details about the clauses for shareholders, the Government, and the code's administration.

This training programme will assist organisations to align the ethical mind set of the employees with the organisation's mandatory legal compliance.

THE FOREIGN CORRUPT PRACTICES ACT, 1977 ("FCPA") AND PREVENTION OF CORRUPTION ACT, 1988 ("PCA")

In light of the corrupt practices prevalent in businesses across various sectors, FCPA and PCA is to prohibit any organization and their individual officers from influencing government officials with any personal payments or rewards.

Organisations must formulate policies to curb bribery and corruption within a corporate framework as well as with any third party.

Complykaro provides an extensive anti-bribery and anti-corruption online training program which covers a wide variety of topics such as: (i) the overview of FCPA and PCA and its effect on Indian business practices; (ii) detailed information about the anti-bribery and anti-corruption policies and throwing light on the importance of conducting ethical business practices; and (iii) consequences of non-compliance of anti-bribery and anti-corruption policies, both monetary and intangible.

Complykaro assists an organisation to comply with the provisions of the FCPA and the PCA and introduces its clients to interactive workshops and training programme with scenario-based assessment throughout to ensure absolute understanding of FCPA and the PCA. The training program will help an organisation to build a trustworthy work-force and a healthy work environment while reducing any financial losses an organisation might suffer at the hands of any corrupt employee and protecting its brand image. It will also enable the employees to comply with relevant laws and policies and avoid any penalties it may have to suffer otherwise.

HUMAN IMMUNODEFICIENCY VIRUS AND ACQUIRED IMMUNE DEFICIENCY SYNDROME (PREVENTION AND CONTROL) ACT, 2017 ("HIV PREVENTION ACT")

Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome ("**HIV/AIDS**") has been a cause for concern for many nations including India which ranks third amongst all the nations with approximately twenty-one lakh (21,00,000) Indians living with the disease. The majority of these infected persons fall under the most productive age-bracket between 15-49 years of age.

With such high numbers, many workplaces may have a person infected with the virus and the insensitive discrimination and social out casting of those infected may become a practice. In light of the same, the HIV Prevention Act was put into place. Every establishment consisting of 100 or more persons, whether as an employee or officer or member or director or trustee or manager must comply with the HIV Prevention Act, 2017, and also adopt the Model HIV & AIDS Policy as notified by National Aids Control Organisation (**NACO**). Any discrimination caused upon such persons infected with the virus shall make the discriminator or offender (which may be the colleagues/ superiors of such persons) liable to imprisonment for a term up to two (2) years or with fine of Rs.1,00,000 (Rupees one lakh) or both.

Complykaro assists its clients to comply with the provisions of the HIV Prevention Act and introduces its clients to a legally curated E-Learning module to ensure absolute understanding and compliance of HIV Prevention Act. The training program will help an organisation to build an inclusive work-force and a safe work environment while improving the brand image of the client.

THE RIGHTS OF PERSONS WITH DISABILITIES ACT, 2016 ("RPWD ACT")

A person with disabilities has to face various hurdles and challenges in their day-to-day lives. Add to the fact that they may have to provide for themselves and their families, it becomes very crucial that such persons be provided with the same opportunities as those without disabilities and are not discriminated against. To counter any discrimination against such differently abled persons, and to enable them to receive equal opportunities as others, the RPWD Act was introduced.

Every organisation must formulate an "Equal Opportunity for Persons with Disabilities Policy" setting out measures proposed to be taken by it in pursuance of the RPWD Act and also register a copy of the said policy with the concerned Commissioner for Persons with Disabilities. Every organization must also maintain a record of the persons with disabilities in relation to the matter of employment, facilities provided and other necessary information in compliance with the RPWD Act.

An organisation and any of its officers in non-compliance of the RPWD Act or partaking in any offence as provided for under the RPWD Act, will be deemed to be guilty of the offence and will be liable to be proceeded against and punished accordingly.

Complykaro assists its clients to comply with the provisions of the RPWD Act and introduces its clients to legally curated E-learning module to ensure absolute understanding of the RPWD Act. The training program will help an organisation to build an inclusive workplace while helping the client to fulfil its social responsibility and also help the client build an emphatic brand image. Complykaro will ensure the RPWD Act compliance of its clients and help create awareness about the client's inclusive culture to their employees and other stakeholders.

THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012 ("POSCO")

Sexual offences against children are at an all-time high. In this regard, any person (including the person in-charge of the establishment) working in or managing an establishment, which fails to report any offence under POSCO by their colleagues or subordinates, as the case may be, will be punishable with imprisonment up to six (6) months (one year in case of person in-charge) and fine.

Complykaro's POSCO training program assists the organisation in the following manner: (i) understanding different kinds of sexual offences that a child may encounter; (ii) responsibilities of the adult spectators or any adult the aggrieved child confided in regarding the sexual offence; and (iii) responsibilities of the authorities towards the aggrieved child, amongst others.

Complykaro assists its clients to create awareness in their employees of POSCO and the responsibilities of any adults involved. The training program will help an organisation to build and enhance ethical culture while helping the client to fulfil its social responsibility and also help the client with reputational risk management

TRANSGENDER PERSONS (PROTECTION OF RIGHTS) ACT, 2019 ("TRANSGENDER' RIGHTS ACT"):

Transgender is one of the most marginalized, discriminated and shunned communities and have had to fight an uphill battle from their very birth. In the year 2019, India introduced the Transgender Rights Act to provide the community with an equal footing in life. Under the Transgender Rights Act, every organisation is prohibited from discriminating against a transgender person on the grounds of unfair treatment in, or in relation to, employment or occupation and the denial of, or termination from, employment or occupation, amongst others. The organization must, not later than September 28, 2022, publish and display Equal Opportunity Policy for Transgender Person, create grievance redressal mechanism, and provide adequate infrastructure facilities to protect the rights of transgender persons.

Complykaro's training program will assist clients to build an inclusive workplace while helping the client to fulfil its social responsibility and also help the client build a unique brand image by conveying their support of transgender community to all

the stakeholders and create an environment of inclusion and empathy. Complykaro will ensure the Transgender Rights Act compliance of its clients and help create awareness about the client's inclusive culture to their employees and other stakeholders.

CORPORATE GOVERNANCE AND RISK MANAGEMENT

The Reserve Bank of India and Securities and Exchange Board of India, vide their guidelines, circulars, regulation, and rules, requires a bank and/or any listed company, to comply with the corporate governance requirements as laid down by the said statutory authorities. One of the corporate governance requirements, requires a company/bank including but not limited to NBFC to have in place, framework for management of risks associated with the company and its business. Such framework will allow the executive management of the company to assess, manage and minimize the risks associated with the company in a timely manner.

Also, Section 134 of the Companies Act, 2013 requires the board of directors of a company, in its report to disclose the development and implementation of a risk management policy of the company, including identification therein of elements of risk, if any, which in the opinion of the board of directors may threaten the existence of the company. Whilst the company may periodically apprise the board on key risks associated with the business of the company and the internal control mechanisms, to mitigate such risks, for the reasons and facts as stated above a company must document the risk management framework encompassing all its functions.

WHISTLE-BLOWER MECHANISM

Any actual or potential violation of the policy howsoever insignificant or perceived as such, shall be a matter of serious concern for any company, and therefore, every company must encourage all its employees including directors to report in good faith without fear of punishment or unfair treatment, on actual or suspected actions due to dishonesty that require combating practices to safeguard Company's integrity.

Section 177(9) of the Companies Act, 2013 read with rule 7 of the Companies (Meetings of Board and its Powers) Rules, 2014 (the "Rules") and regulation 22 of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, requires a company to formulate vigil mechanism for the directors and employees of the Company to report their genuine concerns to the management, such as instances of fraud or violation of the Company's code of conduct or ethics policy, and lay down the principles and standards that should govern the actions of the Company and their employees.

COVID-19

Today everyone knows of the virus COVID-19 and the desolation it has caused around the globe. In an economy shackled with lockdowns, it is getting harder for organisations to stay afloat, especially ones that are unable to perform optimally with work from home (such as sales and operational departments).

With many offices aiming to open post the relaxation of the lockdown, it is imperative for every member of an establishment to know and understand the risks related with the virus, the methods to prevent its spread and the rules and regulations laid down by the Government in this regard.

Complykaro's COVID-19 Training Program apprises employees of an establishment about: (i) identifying the symptoms caused by COVID-19, how it spreads and preventive steps to be taken by the establishment to limit the spread; (ii) preventive steps that retail stores, restaurants and hotels need to take to be COVID-19 safe; and (iii) responsibilities of all individuals in the establishment to fight against COVID-19.

Complykaro assists its clients to comply with COVID-19 related rules and regulations as set out by the Government from time to time. The training program will help an organisation to increase awareness of the virus in the workplace and how it can be prevented while enabling the client to enhance its productivity. The workshops conducted by Complykaro will help instil a feeling of trust in the client's workforce and in their customers and will also help prepare for the post-Covid world

CONCLUSION

We hope that the above brief on the various compliance requirements by an organization is helpful to you. If you need any further information or clarification or any assistance with respect to the compliance, then please feel free to contact us using the following contact details. We also provide our expertise by becoming a part of an ICC Committee.

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DISCLAIMER

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