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General Information: CimplyFive Corporate Secretarial Services (CimplyFive) has prepared this report to quantify the cost of Compliance and Non-compliance under the Companies Act, 2013 with the intent of disseminating it to all Corporates in general and the Company Secretaries and Chartered Accountants in particular. This report is not intended to act as a recommendation of any practice, company or firm covered in this report.

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Source of Information: CimplyFive has quantified the cost of compliance and non-compliance using sources that are indicated in the relevant part of the reports. Where no source is indicated, it is an estimate made by CimplyFive based on the factors indicated there or in the absence of such information a reasonable judgement made by CimplyFive.

Limitations: Corporate professionals with adequate experience have undertaken this study. Further, a due process of checks and verifications to ensure accuracy of this report has been followed. This should have eliminated all errors from this report. If any points in the name of errors are brought to our notice and we agree with the same, CimplyFive will rectify the report at the earliest and have the revised report available on its website- www.cimplyfive.com. CimplyFive does not accept any loss or damage caused to any individual, company, professional or institution by use of this report.

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1. Editorial Note

Dear Reader.

For the Indian corporate professional, Come September stands for much more than a famous romantic comedy film of the 1960s. The scale at which punitive action was taken against non-compliant Indian companies and their directors in September 2017 struck at the core of Indian corporate professionals, leaving them stunned. This research was in the planning stage for a long time, only for the events of September 2017 to trigger it by making this subject relevant to all India corporate professionals.

In any civilized society compliance with law is mandatory and non-negotiable. Despite this, in practice we see a strong co-relation between the penalties levied and the cost of compliance. Rational businesses invest in compliance cost to the extent it is justified by penalties they would be required to pay arising from remaining non-compliant. The penalties they use to evaluate is not the penal provisions enacted in law but what is seen in actual levy. Consequently the extent of compliance in any regulatory environment is directly related to the certainty of its enforcement reflected in the amount of penalties collected and number of convictions obtained for non-compliance.

The ratio of the Penalty paid for non-compliance to the Cost of compliance may be called the 'Compliance Index' where the Penalty for non-compliance is equal to the Cost of compliance, the Compliance Index is 1, reflecting indifference to the state of compliance. At less than 1, there is an economic incentive to be non-compliant. To promote compliance this index should be at a minimum of more than 1 and higher the Compliance Index, better would be the compliance status in an economy. An apt case illustrating this feature can be seen in enforcement and levy of penalties for drunken driving in India. In the last decade, not only has the quantum of penalties increased but the certainty of enforcement has also gone up significantly, acting as a strong deterrent for drunken driving. With the result, 'party goers' are now willing to spend more, using Uber and Ola for a safe return home.

We have quantified the cost of compliance under six distinct heads namely Filing fees, Professional expenses, Audit fees, Records management cost, Insurance premium for directors' liability and Directors sitting fees. Similarly we have classified the cost of non-compliance under eleven heads that includes Penalties & fines, Imprisonment, Legal costs, Punitive damages, Operational disruptions including

Shutdown and Withdrawal of limited liability. A significant element of the compliance cost is the time and efforts invested in it by the leadership team, often the promoters or the founders. While this is not quantified in monetary terms, leaders who devote their time to compliance related matters see it as an investment in nourishing a culture of respect that is very essential for building a sustainable business.

Since the compliance requirement in India are more stringent for larger companies, we have quantified the compliance cost for three categories of companies, a company with authorized/paid-up capital of Rs. 1 lakh, Rs.5 crores and Rs.25 crores, as among other things, paid-up capital of the company is considered for different levels of compliance.

We have also looked beyond India by analysing the compliance requirement, quantum of penalties and certainty of enforcement in five countries that have a common heritage for their company law in the English Companies Act, 1844. In addition to Great Britain, the other four countries that we have included are Australia. Canada, Ireland and the Republic of South Africa.

At a systemic level, we believe there are regulatory vicious circles or regulatory virtuous circles. The direction in which the regulatory environment of a country moves depends on the certainty of law enforcement. New compliance requirements are mainly brought in as a reaction to the damage caused by



corporate scandals and to prevent their recurrence. In regulatory environment where action against non-compliance is uncertain, impractical compliance requirements are introduced and in absence of its enforcement, these onerous compliance requirements keep piling up as they are not able to stem the periodic recurrence of corporate scandals. With time, this results in voluminous rules and regulations that strangle the law-abiding business by bogging them down with huge compliance costs and unproductive use of time and effort, even as the less scrupulous or street smart businesses carry on unhindered.

On the other hand, where prosecution of a non-compliant business is certain, impractical compliance requirements are discarded as soon as their impracticability becomes apparent. This could be either at the design stage itself as much more consideration is given to its implementation or at the implementation stage due to the large number of prosecutions that are initiated. Over time this results in fewer rules and regulations which are strictly enforced, thereby strengthening the culture of compliance. Given this rationale, we believe Ease of Doing Business is a result of stringent enforcement of existing regulations, a by-product of it being a conscious effort made to discard impractical compliance requirements. The alternate avenue to achieve Ease of Doing Business by diluting regulations can only yield short term results, as at the first set of corporate scandals that occurs after this deregulation initiative will be a fertile ground for draconian legislations that sets the regulatory calendar back by a few years, if not decades.

This study is undertaken by CimplyFive Corporate Secretarial Services Private Limited, a company with the vision to 'leverage research and technology to eliminate procedural non-compliance for entities regulated by the Companies Act, 2013'. We think research reports of this nature can initiate or accelerate debates and dialogues that promote a more compliant regulatory environment which paves the way for Ease of Doing Business in India.

We look forward to your feedback to enrich this study. Please share your feedback with us at contact@cimplyfive.com

Yours Sincerely,

Shankar Jaaanathan

Founder & Chief Executive CimplyFive Corporate Secretarial Services Private Limited

December 18, 2017

2. Our Approach to Quantifying Cost of Compliance and Penalty for Non-compliance

A. Cost of Compliance

The anatomy of most legal compliance systems is built on the 5R's –Registration, Registers, Requisites, Remittances and Returns. We have quantified the cost of compliance around these five anchors as they are done only to comply with the laws of the land and serve no other business objectives, even though there could be some incidental benefits arising to the business from their compliance.

1. Registration: The society in return for registering with a specified authority gives a right to an individual or a business that is not available to others. Further, the specified authority is entrusted with the job of monitoring and regulating the registered individuals or entities. Passport required for foreign travel, Income tax PAN required for executing high value transactions, vehicle registrations for using high speed vehicles on road or driving license for driving high speed / heavy vehicles are some illustrations.

In the case of companies, the right to limited liability is extended only on completing the registration process with the Registrar of Companies and obtaining a registration certificate, called the Certificate of Incorporation.

Cost of compliance with respect to registration can be captured under the following two heads -Incorporation expenses which is paid to the registration authority and Professional charges paid for getting the registration process completed. In addition there is the Risk Assessment Cost that involves identifying the compliance requirement that need to be complied with, which may not be applicable for all promoters. For an experienced promoter, Risk Assessment Cost may be non-existent or low, while for a new promoter or for a promoter from another country, the cost of risk assessment can be a sizeable sum as they need to consult professionals to quantify the cost of both compliance and cost of non-compliance before deciding if they want to be exposed to such risk of non-compliance.

2. Registers: As a pre-condition for getting the specified rights, the registered entity, undertakes to maintain identified registers that chronologically record

specified key events that are required to monitor its performance. These registers have detailed requirements specifying their format and the mode of its maintenance captured in the Rules that are required to be enacted along with the Acts. These Registers are used as evidence with the regulators or the courts of law in cases of disputes.

For companies, registers required to be maintained by the company can be classified into two broad categories -statutory registers, that are required to be maintained by law and their non-maintenance is a punishable event and non-statutory registers that are maintained for ease of administration even though Acts and Rules do not prescribe penalty for their non-maintenance. Registers of Members, Registers of Directors, Register of Charges and Annual Returns are examples of statutory registers. On the other hand Register of Transfers and Register of Share splits are examples of non-statutory registers.

The compliance cost with respect to creation and maintenance of Registers is on account of the Professionals/ Staff required to create and maintain it, Record Maintenance costs for keeping it updated and the Time and money required to be spent on it as it is required to be maintained in real-time.

3. **Requisites**: By virtue of registration, the registered entity is required to comply with specific conditions defined by the regulators. This varies with the regulation, as the regulations for health and safety in factories may require maintenance of standard safety equipment and first aid kits and employment of women may require provision of crèches for their children.

With regard to companies, the company law may stipulate periodic meetings of the Board of Directors and Shareholders, maintenance of books of accounts and getting the financial statements periodically audited among other things. This in turn translates to compliance costs incurred on Audits, Sitting fee for Directors and optionally companies may be required to take D&O Insurance to attract Directors on their Board, among other requirements.

Table 2.1: Compliance Costs

SI. No.	Compliance Category/ Compliance Costs	One-time cost	Recurring cost	Optional Costs
1	Registration			
	Incorporation Expenses	Yes		
	Professional Charges	Yes		
	Risk Assessment cost			Yes
2	Registers			
	Professional /Staff cost		Yes	
	Record Maintenance cost		Yes	
3	Requisites		Yes	
	Audit Fees			
	Sitting Fess for Directors			Yes
	D&O Insurance for Directors			Yes
4	Remittances			
5	Returns			
	Form filing Fees		Yes	
	Professional charges		Yes	

4. Remittances: The regulating authorities recover the cost of regulating their entities by charging fees from the registered entity either at the time of registration and/or its renewal, which is required to be remitted to the authority. This takes the form of annual renewal fee or filing fees for the various returns that are required to be filed with the regulators.

Company law requires remittances to be made at the time of incorporation of companies and at every stage when the authorized capital of the company is enhanced. The amount to be paid is linked to the amount of Authorized Capital.

Costs associated with remittances in the case of companies are in the form of Filing fees including late filing fees and Professional Charges required for preparing these returns and where required having them certified.

5. Returns: Certain matters of public interest or information that is required to monitor the registered entities performance is required to be filed at periodic intervals -either calendar based filings or event triggered filings with designated authorities for its scrutiny.

Company law requires various returns to be filed with the regulatory authorities which are either calendar based filings or filings triggered by events occurring in the company. Annual Return to be filed once a year and returns filed on appointment of Directors or allotment of shares are some of the common returns required for a company.

Costs associated with returns in the case of companies are in the form of Filing fees, including late filing fees and Professional Charges required for preparing these returns, having them certified wherever required.

B. Penalty for Non-compliance

The enactment of a law is not as impactful as its enforcement, for a law is only as effective as it is enforced. This is the reason why when the Indian parliament repealed 1,159 Acts in the last three years, its impact went unnoticed as these were laws only on the statute book without any effort made to enforce them.

A brief review of the history of law enforcement shows the six methods used, namely, Death penalty, Exile, Corporal punishment taking the form of flogging, branding, mutilation, torture and solitary confinement, Imprisonment, Imposition of financial penalties and Social degradation. With time, in civilized societies, most of these methods have given way to imprisonment and/or imposition of financial penalties and only in the rarest of rare cases death penalty is being used. In addition to the two heads to capture cost of non-compliance, of imposition of financial penalties and imprisonment, our secondary research helped us identify eight other heads under which the Penalty for non-compliance is today measured.

All the ten heads under which the penalty for non-compliance can be captured is listed below along with a short description and an example to illustrate the penalty for non-compliance:

- 1. Fines: The primary objective of a fine is to enforce discipline and promote compliance by imposing a financial cost on the violator and to deter future non-compliances. Most common examples of fines are for traffic offences. Fines imposed are on a varying scale linked to the gravity of non-compliance and the track-record of the offender. The quantum of fines imposed is linked to the magnitude of non-compliance, which distinguishing between the gravity of non-compliance and the track-record of the particular offender to promote a more compliant society.
- 2. Imprisonment: The primary objective of imprisonment is to prevent the offender from committing more such crimes and to act as a deterrent for others. By insulating and confining the individual responsible for non-compliance, wealthy individuals who can 'afford' to pay monetary penalties are also sought to be deterred. The Chairman and CFO of Satyam Computers being imprisoned for their role in the 2009 defalcation of cash and misrepresentation of accounts illustrates this.

- 3. Legal fees and law suits: before a penalty is awarded against the individual or the company for non-compliance, an executive officer of the government is required to establish the fact of non-compliance to the satisfaction of an appellate authority or a court of law. This requires the individual or company against whom a notice is issued to be present before the appellate authority or the court of law and state their position including mitigating circumstances that led to the non-compliance to reduce the quantum of penalties imposed. This often involves respondents hiring professionals to represent them, which requires payment of professional fees that can be quite substantial. The recent case involving Delhi CM Arvind Kejriwal and Ram Jethmalani involving Rs.2 crores in legal fees is an illustrative case of professional fees at the higher end.
- 4. Compensation or punitive damages: These are instances of major or significant wrongdoing which involves imposing a large amount as penalty primarily intended to compensate the victims or act as a deterrent for others who can potentially commit such a violation or prevent the current violator from repeating this offense. The interim award of Rs.350 crores in the Bhopal Gas tragedy case in 1988 is a point to illustrate.
- 5. Operational disruptions or temporary shut-downs: Non-compliance with the laws of the land can result in temporary shut-downs or operational disruptions. A prominent example of this is the 2015 Maggi noodles ban, where the popular noodles brand was banned for sale in India. Even after the issue was resolved, it took some time for the brand to regain its previous position, as it had the taint of adulteration
- **6.** Loss of license to operate: For serious violations involving loss of life or damage to environment, a business or a legal entity may lose its' right to operate. Union Carbide in India is a case to illustrate this, when the company was shut down after gas leak in its Bhopal plant in 1984. Like this, the entire operations of a company can be shut down by withdrawing the license to operate for violations that are serious in nature.
- 7. Reputational impairment for the legal entity: A company involved in a serious non-compliance issue or frequent instances of non-compliances can attract notoriety for its business practices resulting in the enactment of very restrictive legislations.

Table 2.2: Cost of Non-compliance

SI. No.	Heads of Non- compliance Costs	Legal entity	Promoters, Directors, Executives (called officers in default)	Or Both Legal entity & Promoters/ Executives
1	Penalties or fines			Yes
2	Imprisonment		Yes	
3	Legal suit/ Legal expenses	Yes	Yes	
4	Compensation or punitive damage	Yes		
5	Operational disruptions or temporary shutdown	Yes		
6	Loss of license to operate	Yes		
7	Reputational impact or brand impairment	Yes		
8	Social embarrassment or personal restrictions		Yes	
9	Loss of attractiveness to investors/ lenders		Yes	
10	Withdrawal of limited liability given to the legal entity		Yes	

The Real Estate (Development & Regulation) Act, 2016 that was enacted in response to the track record of the real estate industry is a case in point.

- 8. Social embarrassment for the promoters / executives: The practice of naming and shaming individuals responsible for non-compliance in a company is a practice that has significant impact as a deterrent as it curbs the ability of the individual to undertake other business or commercial ventures thereby limiting their economic potential. A case in example is of SEBI debarring both companies and individuals from raising money from the capital markets at periodic intervals, which happens at regular intervals.
- 9. Loss of attractiveness to investors/lenders: Information pertaining to receipt of show cause notice or demand notice by a legal entity for

non-compliance can have a significant impact on the share price of the recipient, in addition to stalling the process of raising money from investors and lenders till such time the liability is crystalized. A recent case that attracted prominent attention is that of NDTV which received show cause notice from Enforcement Directorate for non-compliance with FEMA regulations.

10. Withdrawal of Limited liability given to the company: Specific sections in our company law like Section 339 provides for withdrawal of limited liability given to the company and the directors, mangers or officers who were knowingly carrying on business with in a fraudulent manner are made personally liable for the liability arising from such non-compliance.

3. International Experience in Company Law Enforcement

Compliance under the corporate law was tracked for the five countries –United Kingdom, Australia, Canada, Ireland and Republic of South Africa. The objective was to compare them with compliance requirement in India to determine its rigour and effectiveness of its enforcement. The prevailing act and the number of companies in these countries is given in **table 3.1** placed below.

Table 3.1 Applicable Acts and Number of Companies

Country	Applicable Act	# of Limited Liability Companies	As of Date
United Kingdom	The United Kingdom Companies Act, 2006	38,96,755	March 2017
Australia	Corporations Act 2001- Australia	25,28,720	September 2017
Canada	Canada Corporation Act, 2009	22,20,000	July 2010
Ireland	The Irish Companies Act, 2014	2,05,019	December 2016
South Africa	Companies Act, 2008- South Africa	374,844	March 2017

Table 3.2 Comparative number of Board Meetings, Shareholder Meetings and Audit of Accounts

Countries	Board Meetings	Shareholder Meetings	Audit of Accounts
United Kingdom	As desired by Directors. Nothing prescribed in the statute	Meeting to be held after giving 21 day notice. AGM to be held within 6 months of the day following its accounting reference date.	Required, except for small and dormant companies.
Australia	As desired by Directors. Nothing prescribed in the statute.	Meeting to be held after giving 21 day notice. First meeting within 18 months of incorporation and subsequent meetings within 5 months of the financial year end.	Required, except for i. small companies limited by guarantee, ii. Company limited by guarantee and annual consolidated revenue of less than \$1 million.
Canada	As provided in Articles. Nothing prescribed in the statute.	Meeting to be held after giving 21-day notice. First meeting within 18 months of incorporation and subsequent meetings within 6 months of the financial year end and the interval between two meetings not more than 15 months	Required
Ireland	As desired by Directors. Nothing prescribed in the statute.	Meeting to be held after giving 21 day notice. First meeting within 18 months of incorporation and subsequent meetings within 15 months of the earlier meeting.	Required
South Africa	As desired by Directors. Nothing prescribed in the statute.	Meeting to be held after giving 15 day notice in case of public company or not-for-profit company that has voting members and 10 day notice in all other cases. First meeting within 18 months of incorporation and subsequent meetings once in every calendar year with maximum interval of 15 months between two meetings.	Required

Table 3.3. Comparative List of Registers required to be maintained

SI. No.	Names of Registers	Australian	Canada	Ireland	South African	United Kingdom
1	Register of Members	Yes	Yes	Yes	Yes	Yes
2	Register of Option holders	Yes				
3	Register of Debenture holders	Yes		Yes		Yes
4	Securities register		Yes		Yes	
5	Overseas Branch registers	Yes				Yes
6	Register of Interest	Yes		Yes	Yes	Yes
7	Company's register of Mortgages					
8	Register of Charges			Yes		Yes
9	Central and Branch Register for issue or transfer of a security		Yes			
10	Register of Directors		*	Yes	Yes	Yes
11	Register of Secretaries			Yes		Yes
12	Individual and Group Acquisitions register			Yes		
13	Register of directors' residential addresses					Yes
	Total	5	3	7	4	8

^{*} Only Not for Profit Organisations are required to maintain Register of Directors

A. Requisites

Under requisites, we have captured the requirement mandated in the five countries for having Board meetings, Shareholder meetings and the need to have company accounts audited. Based on the requirements tabulated in **table 3.2** placed in the previous page, we observe:

- Audit of accounts is a requirement in all the five countries, subject to some exemptions given to some categories of companies in United Kingdom and Australia.
- **Annual Shareholder Meetings** in all the five countries is required to be held with the time interval varying marginally.

Board Meetings As required in India, where a minimum of four meetings are required to be held, there is no mandated requirement to have a minimum number of board meetings. The requirement to have board meetings is as decided by the directors or in the case of Canada as specified in the Articles of the company.

B. Registers

As in the Indian Companies Act, Register is a feature of the companies act in all the five countries. In India fourteen registers are required to be maintained, in comparison, the statutory registers that are required to be maintained by company law in these countries is tabulated in table 3.3 placed above.

Table 3.4 Comparative List of Returns required to be filed

SI. No.	Purpose of filing Returns	Australian	Canada	Ireland	South African	United Kingdom
1	Incorporation related Returns	1	1	1	5	1
2	Event based Returns	27	4	20	5	20
3	Recurring Returns	3	1	1	4	1
To	otal number of returns	31	6	22	14	22

Table 3.5 Comparative Listing of Penal Provisions in the Companies Act

SI. No.	Description	Australian	Canada	Ireland	South African	United Kingdom	India
1	# of Penal provisions	700	14	267	3	145	101
	Monetary Penalties		14	267	3	144	101
	Imprisonment		11	219	2	29	56
2	Minimum penalty - Monetary	\$1050	<\$5000	<€5000 but>€4000	NA*	€ 200	500
	Minimum Penalty - Imprisonment	3 months	<6 months	<6 months	<12 months	<6 months	6months
3	Maximum penalty - Monetary	\$1,050,000	<\$1,000,000	€500,000	<r1,000,000*< td=""><td><unlimited< td=""><td>2 Crore</td></unlimited<></td></r1,000,000*<>	<unlimited< td=""><td>2 Crore</td></unlimited<>	2 Crore
	Maximum penalty - Imprisonment	10 yrs	<6 months	<10 yrs	<10 yrs	<10 yrs	<10 yrs

[#] There are around 700 penalty provisions; for this exercise only the maximum and minimum is quantified

Based on a review of the **table 3.3** placed in the previous page, we find:

- Register of Members is the only register that is required to be maintained by all the five countries. This is followed by Register of Interest which is required to be maintained by four counties other than Canada.
- Canada has the least number of registers required to be maintained, at three, which includes Register of Transfers or Branch Register of Transfers and Securities Reaister.
- United Kingdom have the maximum number of registers required to be maintained at eight. This is followed by Ireland which requires maintenance of seven Registers.

C. Returns

Like in India, Returns filed with the incorporating authority is a feature of the companies act in all the five countries. The Returns required to be filed with the regulating authorities can be classified under three categories, namely, Returns pertaining to Incorporation, Event based Returns and Recurring returns, a summary of these returns is tabulated in **table 3.4** placed above. A review of this table reveals:

- Canada has the least number of return at six
- Australia has the highest number of returns at 31
- Event based returns are the most numerous with Australia having 27 and United Kingdom and Ireland havina 20 each
- Annual Return is a common feature across all these countries.

^{*} Despite anything to the contrary contained in any other law, a Magistrate's Court has jurisdiction to impose any penalty.

Category of offence	Nature of penalty	Summary conviction	Conviction on indictment
Catagony	Fine	Not exceeding €5,000 but greater than €4,000	Not exceeding €500,000
Category I	Imprisonment	Not exceeding 12 months or both	Not exceeding 10 years or both.
Category II	Fine	Not exceeding €5,000 but greater than €4,000	Not exceeding €50,000
	Imprisonment	Not exceeding 12 months or both	Not exceeding 5 years or both
Category III	Fine	Not exceeding €5,000 but greater than €4,000	NA
	Imprisonment	Not exceeding 6 months or both.	NA
Category III	Fine	Not exceeding €5,000 but greater than €4,000	NA
	Imprisonment	NA	NA

Table 3.7: Categories of Offense in Ireland

Table 3.6: Penalties Scale in the United Kingdom

Scale Level	1	Ш	III	IV	V
Maximum Fine in £	200	500	1000	2500	Unlimited

D. Penal Provisions in Law

A law is only as effective as it is enforced and penalty provisions in the respective act reflects the intent to implement the act. Table 3.5 placed in the previous page is a comparative listing of the penal provisions of the act in the respective countries.

In Australia, penalties are quantified in penalty units in the Act and the penalty units are converted into monetary terms by using a conversion rate that is fixed on July 1, once every third year, considering All Groups Consumer Price Index. The latest date on which penalty unit conversion rate was fixed was on July 1, 2017 at \$210. The earlier rate fixed on July 1, 2014 was at \$159. In table 3.5 placed in the previous page, the maximum and minimum penalty is quantified using conversion rate of \$210 per penalty unit.

In Ireland, penalties are quantified in Fines Act, 2010 and are classified into four categories as Class A, B, C and D. In the Irish Companies Act only penalties of Class A and

Class D are invoked. Further, the Companies Act defines four categories of offenses. Category IV is mildest and Category I is the harshest and is tabulated in table 3.6 placed above for ready reference.

In United Kingdom penalties are based on a scale of 5 standard scale, with fines varying from a minimum of £200 to a maximum of unlimited, as tabulated in table 3.7 placed above.

E. Status of Enforcement

In Ireland, as tabulated in table 3.8 placed below, the Companies Registration Office (CRO) Annual Report 2016 reported during 2016, CRO has received €20.109 million which represents an increase of 13% on the 2015 figure of €17,722m. The increased income received by CRO in 2016 can be attributed to a substantial increase in late filing penalties paid, number of annual returns filed in 2016 due to an increase in new company registrations and additional documents being filed due to Companies Act 2014 requirements.

Table 3.8: Ireland's Companies Registration Office Income Schedule

CRO Income	2015	2016
Late Filing Penalties	8.239m	10.088m
Submission Fees	8.256m	8.767m
Registry of Friendly Societies Fees	0.056m	0.043m
Miscellaneous, Enquiries Bulk Data Sales, Credit Notes, Customer Account Balances	1.15m	1.211m
Total	17.722m	20.109m

Table 3.9: Companies struck off in 2016 in Ireland

Enforcement Activities for 2016 Strike off Process	
Companies dissolved (struck off for failure to file returns)	8302
Companies dissolved under Section 882 of Consolidated Finance Acts (Revenue StrikeOff)	0
Companies dissolved (voluntary strikeoff	5137

In Ireland, the annual report also provided data on companies that were struck off as part of its enforcement in the year 2016, as given in **table 3.9** placed above.

In South Africa, the Annual Report of Companies and Intellectual Property Commission (CIPC) has reported that between April 2016 and March 2017, 293 cases of reportable irregularities were received to add to the list of 189 cases pending resolution. During the year, 302 cases were closed leaving 180 pending.

Cases closed includes instances where the entity complied with the observation made by CIPC or the entity was liquidated or deregistered and/or the matter is referred to another entity. Penalties recovered from the companies are not separately report as it is included in the Annual Return Fees, which was quantified at 315,308 thousand Rand for the year 2016-17.

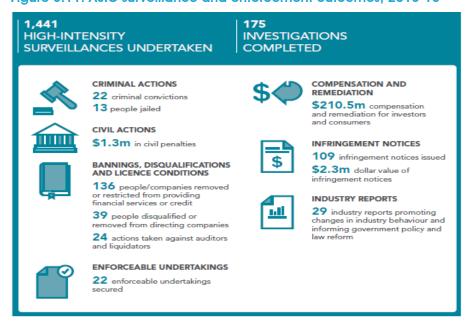
In United Kingdom, the Company House has issued late filing penalty statistics 2015-2016. Extract of the statistics is reproduced in table 3.10 placed in the next page. For the year 2015-16, late filing penalties were enforced in 182,475 cases collecting £88.57 million.

In Australia, the enforcement action taken by the regulators is presented graphically in a very informative way, which is reproduced in figure 3.11 placed in the next page.

Table 3.10: UK-Late filing penalty imposed in 2015-16

Month	Number of Penalties Imposed	Total Value of Penalties Imposed (000's)	Number of Appeals Received	Number of Penalties where discretion used not to collect	Number of Penalties cancelled	Total Value of Penalties cancelled (000's)
Apr-15	15,123	7,797.5	2,539	496	82	23.3
May-15	13,512	6,646.7	2,575	583	70	24.9
Jun-15	13,985	7,3111.0	2,854	455	53	25.2
Jul-15	15,019	7,459.4	2,752	378	54	20.8
Aug-15	12,199	6,273.9	1,951	310	78	29.3
Sep-15	12,268	6,004.2	2,910	588	56	21.3
Oct-15	17,734	7,624.2	2,588	494	71	20.3
Nov-15	15,328	6,963.5	2,797	587	71	23.6
Dec-15	16,106	7,926.1	2,485	428	71	20.3
Jan-15	22,305	8,546.7	2,692	530	75	21.0
Feb-15	5,828	2,280.9	2,296	464	68	24.6
Mar-15	30,276	14,375.8	2,772	404	742	381.1
Total 2015/16	189,683	89,209.7	31,211	5,717	1,491	635.5
Total 2014-15	174,068	82,536.1	31,993	5,460	1,259	

Figure 3.11: ASIC surveillance and enforcement outcomes, 2015-16



4. Quantifying the Cost of Compliance

The cost of compliance is captured under the four events of Registration, Requisites, Registers, and Returns. Under each of these four events where relevant we have captured the cost of compliance under the six heads – Filing fees, Professional expenses, Record maintenance costs, Audit Fees, Directors sitting fees and Insurance D&O premium.

A. Registration

Cost of Registration is a non-discretionary cost, as without registering, a company cannot be incorporated. The cost of registration can be tabulated into seven heads as represented in table 4.1 below, of which all but one are mandatory. Apostille fee is required to be incurred only in case the company has a non-resident director.

In addition to the mandatory cost incurred in registering a company, a discretionary cost in the form of risk assessment exists, especially when a non-resident promotes a company in India as they would like a professional advice

on the process of incorporation and the compliance practices that need to be followed for a company to be compliance is listed out for them due to their unfamiliarity with the country. This expense could be in the region of Rs. 2 - 10 lakhs depending on the professional standing of the advisor.

B. Requisites

Requisites or the conditions for a company to be compliant with the law can be captured under ten heads. The cost computed in table 4.2 placed in the next page, is the annual cost to be incurred by the companies for staying compliant. These costs pertain to requirements like the appointment of Auditors, holding board meetings at regular frequency and having a full time Company Secretary on their rolls. The costs estimated here are in the lower end of the spectrum, while not being the rock-bottom of what prevails in Corporate India.

4.1 Cost Incurred in Registration of a Company

SI.		Nature of	Authoriz	ed up Capi	tal®
No.	Expenses head	expense	Rs.1 lac	Rs.5 crores	Rs.25 crores
1	Notary fee/ Resident Director	Mandatory	300	450	750
2	Apostille fee for NR Director	Specific case based	-	5,000	5,000
3	Integrated Filing fees	Mandatory	5,800	5,07,100	20,08,100
4	Stamp Duty#	Mandatory	2,020	51,020	2,51,020
5	DSC Fees for Directors	Mandatory	3,000	4,500	7,500
6	PAN/TAN for the Company	Mandatory	172	172	172
7	Professional Charges	Optional	25,000	50,000	50,000
	Total		36,292	6,18,242	23,22,452

We have considered 2, 3 and 5 directors for the three categories; further only in company with authorized capital of Rs.5 crores and Rs25 crores we have considered one Non-Resident director each

[#] The stamp duty applicable in Karnataka is considered in this table, however it varies from State to State

SI.		Paid	up Capital	
No.	Expenses head	Rs 1 lac	Rs.5 crores	Rs.25 crores
1	Company Secretary on payroll	-	600,000	900,000
2	Internal Audit System	-	-	600,000
3	Statutory Audit	25,000	50,000	100,000
4	Secretarial Audit	-	-	50,000
5	Annual Board Evaluation	-	-	100,000
6	Company Secretary Retainer for advising the company on company law	10,000	25,000	
7	Director Sitting Fees®	-	80,000	240,000
8	Audit Committee Sitting fees	-	-	120,000
9	D&O insurance premium	-	40,000	160,000
10	Board/Shareholder meeting expenses	5000	10,000	100,000
	Total	40,000	8,05,000	23,70,000

4.2 Annual Compliance Cost for Remaining Complaint

C. Registers

Under the Companies Act, 2013, fourteen different registers have to be maintained. Of these, three are manda tory for all companies –Register of Members, Register of Directors and KMPs and the Attendance Register for Board and Shareholder Meetings. Depending on the capital structure of the company Register of Debenture Holders and Register of Other Securities Holders may be required. Further where the company has used ESOPs or Sweat Equity, Register of ESOPs and Register of Sweat Equity becomes necessary.

Further where a company borrows giving security, Register of Charges needs to be maintained, likewise where there are transactions with the Director or KMPs, Register of Contracts with Related Parties and Register of loans, guarantee, security and acquisition made by the company become a necessity.

Other registers are Register of Contract of Employment, Register of investments not held in its own name by the Company, Register of Renewed and Duplicate Share Certificates and Register of Shares or other securities bought back.

The financial cost involved in maintaining Registers is almost non-existent. The only investment needed is discipline and an eve for detail. In table 4.3 placed in the next page, the cost quantified is that of professional charges paid for upkeep of the registers. While no such distinct payment is made, this is an estimate of what can be allocated for this purpose.

D. Returns

A company at a minimum will have to file two/ three returns every year, i.e. Annual Returns, Financial Statements and Appointment of Auditor. Further additional returns required to be filed is based on the activities of the company that result in triggering events that necessitate filling of returns like, appointment, removal or retirement of Directors, change in the capital structure or registered office of the company among others.

[@] We have considered 1 and 3 Non-Executive directors for 5 crores and 25 crores paid-up capital respectively.

4.3 Annual Compliance Cost for Maintaining Registers

		Paid (up Capital [©]	9
SI. No.	Expenses head	Rs.1 lac	Rs.5 crores	Rs.25 crores
1	Records' Maintenance cost in Rs	5,000	5,000	5,000
	Total	5,000	5,000	5,000

4.4. Annual Compliance Cost for Filing Returns

SI.		Authori	zed Capital®	
No.	Expenses head	Rs.1 lac	Rs.5 crores	Rs.25 crores
1	Annual Return Filing	300	600	600
2	Filing of Annual Financial Statements	300		600
3	XBRL Filing	-	8,000	8,000
4	Annual Return certification	-	-	25,000
	Total	600	9,200	34,200

In the cost estimation made in table 4.4 placed above, only direct costs incurred in filing the returns are captured, as the professional charges for preparing and filing the returns is captured in the Company Secretary Retainer fees in section II under Requisites.

For all other event based returns filed by the company, the filing fee is either Rs.300 or Rs.600, except in the case where Authorized Capital of the Company is increased, where the filing fee is based on the amount of capital enhanced. In the financial year 2016-17, the number of returns filed by the company 34,48,143 of which the top 10 returns filed is tabulated in table 4.5 placed in next page for a ready reference on the frequency of such occurrence.

E. Total Cost of Compliance

Tabulated in table 4.6 placed in the next page is the total cost of compliance and its components under the four heads quantified in this section. To get a magnitude of its relevance, as of March 31, 2017, there were 423,775 companies with share capital of either Rs.1 lakh or lower. Further, companies with share capital of Rs.5 crores and above were 42,633 and companies with share capital of Rs.25 crores were 11.976.

4.5 Top ten returns filed in the financial year 2016-17

SI. No.	Service Name	No. of e-Transactions
1	Annual Return filed by Companies having a Share Capital	6,87,749
2	Director Identification Number Approved	3,37,618
3	Forms Filed for Directors or Appointment of Secretaries	3,26,881
4	Appointments of Statutory Auditors	2,41,459
5	Resolution(s) and Agreement(s) Filed with RoC	2,15,681
6	Company Names Approved	1,13,462
7	Companies Incorporated	90,258
8	Notice of Situation or Change of Situation of Registered Office	78,757
9	Return of Allotment Approved	66,024
10	Charges Created (other than Debentures)	62,425

4.6 Summary of the Cost of Compliance

SI.		Authorize	d/Paid up Car	oital®
No.	Expenses head	Rs.1 lac	Rs.5 crores	Rs.25 crores
1	Cost of Registration	36,292	6,18,242	23,22,542
2	Cost of Requisites	40,000	805,000	23,70,000
3	Cost of Register maintenance	5,000	5,000	5,000
4	Cost of Return filing	600	9,200	34,200
	Total	81,892	14,37,442	47,31,742
	Non-Recurring cost	36,292	6,18,242	23,22,542
	Non-Recurring costl	45,600	819,350	24,09,350

5. Quantifying the Penalty for Non-compliance

The Companies Act, 2013, is a comprehensive piece of legislation with 470 Sections, which is enacted with an intent to enforce as is evidenced by 102 Sections or sub-sections that have penal provisions. The penalties prescribed in the Act range from fines or monetary costs imposed to imprisonment. The cost of non-compliance can be analysed based on who pays the price for non-compliance from amongst:

- The legal entity or
- The promoter, director or officers of the company, or

Monetary Penalties

Of the 101 sections or sub-sections that have monetary penalties for non-compliance, in 59 instances, both the legal entity and the concerned personnel are penalized and rightly so to be effective as a deterrent. Of the remainder, in 40 instances only the concerned personnel is penalized and in the balance 3 instances, only the legal entity is penalized.

The three instances where only the legal entity is penalized, without the concerned promoter, director or officer attracting penalty are:

- 1. Section 66 pertaining to reduction of share capital. In this section provision is made to penalize an officer in default under the much harsher provisions of Section 447, which deals with Punishment for Frauds.
- 2. Section 33 pertaining to issue of application forms without abridged prospectus
- 3. Section 249 pertaining to restrictions imposed on companies that cannot apply for getting their name voluntarily struck off from the Register of Companies.

In the other two instances too, where the personnel do not attract direct penalty, it is possible to prosecute the concerned individual under Section 447, dealing with punishment for fraud.

The 40 instances where only the personnel is penalized but not the company are mostly situations in which the individual has potential for personal gains at the cost of the company or other stakeholders, or for fraud, or not obeying the orders of a tribunal or court. A few illustrations of these situations are:

- 1. Wrong statement is made in the documents pertaining to incorporation of a company (3 instances)
- 2. Misstatement in prospectus or fraudulent inducement to invest money (3 instances)
- 3. Deceitful impersonation as an owner of securities
- 4. Contravention of an order of Tribunal
 - Related to transfer (1 instance)
 - Redemption of debenture or interest payment
 - Failure to repay deposit or interest (1 instance)
- 5. Incomplete notice for the shareholder meeting (3) instances)
- 6. Related to fraud
 - Tampering with Minutes (1 instance)
 - Maintaining accounts (2 instances)
- 7. Failure in doing their duties as a Director
- 8. Violation of related party transactions (2 instances)

Fines or monetary penalties, which is the most common form of non-compliance cost prescribed in the Companies Act, 2013 range from:

- A low of Rs.500 to a high of Rs.2 crores or twice the amount involved, whichever is higher
- Penalties that are punitive or compensatory in nature -Section 42 of the Act, where the Company, the Promoter or the Director has not followed the provisions of Private Placement can be required to pay a maximum of twice the amount involved.

Imprisonment

Promoter, director or officers of the company (also referred as Officer in Default) can be imprisoned along with monetary penalties. Under the Companies Act, 2013 there are 56 sections or sub-sections that have imprisonment as penalty for non-compliance along with fine. There is no penal provision that includes only imprisonment as penalty.

For a violation that attracts imprisonment, the minimum period of imprisonment that can be imposed under the Companies Act, 2013 is six months and maximum period may extend up to ten years.

Measuring Enforcement Effectiveness: Compliance Index

Compliance Index is a financial measure of the ratio of the Penalty paid for non-compliance to the Cost of compliance. Like most financial measures, Compliance Index too does not consider non-economic costs like damage to the reputation, impairment of brands or loss of freedom due to imprisonment. Mathematically Compliance Index is it computed as under

Compliance Index = Penalty Paid for Non-Compliance Cost of Compliance

Where Compliance Index is 1, the regulated entity is indifference to the state of compliance, as the Cost of compliance is equal to the cost of Penalty for non-compliance.

At less than 1, there is an economic incentive for the Regulated entity to be non-compliant. For promoting compliance in the economy, Compliance Index should be at a minimum of more than 1 and higher Compliance Index promotes better compliance in the economy.

Using this concept, we have computed the Compliance Index for major offenses under the Companies Act, 2013, which is tabulated in table 5.1 placed in the next page A review of the data in **table 5.1** reveals the following:

- The penalty for non-compliance is not related to the size of the company, with the result there is a reduced economic incentive for larger companies to remain compliant. Further as the cost of compliance is higher for bigger companies, with the penalty remaining the same, the Compliance Index is lower than 1 or just around 1 revealing an economic incentive to be non-compliant. However the price paid by a large non-compliant company in significant when measured using its reputation and brand value, which is very tangible, but difficult to quantify.
- Smaller companies have an extremely high Compliance Index score reflecting the benefit of compliant behaviour. However, the poor track record for enforcement of penalties against the non-compliant companies, reflected by only 7,892 compounding applications made in FY 2016-17, indicated that the compliance incentive is more on paper than in reality.

Table 5.1: Compliance Index for major offences under the Companies Act, 2013

Particulars of	Monetary Penalty	mo)	Compliance Index (Company Only)	dex (y)	Monetary Penalty imposed on	After co imposed	After considering the fines imposed on Company and Officers in Default	ne fines any and ault
Occupan		Rs.1 lac	Rs.5 crores	Rs.25 crores	Officer on Default*	Rs.1 lac	Rs.5 crores	Rs.25 crores
:		1.10	0.06	0.02	Not less than Rs.	2.19	0.18	0.06
Failure to file Annual Return	Not less than Rs. 50,000 but may extend to Rs. 5,00,000	10.96	0.61	0.21	50,000 but may extend to Rs. 5,00,000	21.93	1.83	0.62
Default in compliance with provisions of Private Placement	The amount involved in the offer or invitation or Rs. 2 crores, whichever is higher.	438.60	24.41	8.30	The amount involved in the offer or invitation or Rs. 2 crores, whichever is higher.	877.19	73.24	24.90
Failure to repay deposit or	Not be less than Rs. 1 crore	219.30	12.21	4.15	Not less than Rs.	274.12	18.31	6.23
interest thereof, within the time specified.	but which may extend to Rs. 10 crores	2192.98	122.07	41.51	25,00,000 but which may extend to Rs. 2 crores	2631.58	170.90	58.11
If a Company	Not less than Rs. 1 lakh but	2.19	0.12	0.04	Not less than Rs. 25,000 but which	2.74	0.18	0.06
confravenes the provisions of Charge.	which may extend to Rs. 10 lakh	21.93	1.22	0.42	may extend to Rs. 1 lakh	24.12	1.46	0.50
Failure to file the resolution	Not less than Rs. 5 lakh but	10.96	0.61	0.21	Not less than Rs. 1 lakh but which	13.16	0.85	0.29
or the agreement in the prescribed time.	which may extend to Rs. 25 lakh	54.82	3.05	1.04	may extend to Rs. 5 lakh	62.79	4.27	1.45

* We have considered one Director as Officer in default for companies with Rs. 1 lakh paid-up capital and one Director and one KMP for companies with paid-up capital of Rs. 5 crores and Rs. 25 crores

Table 5.1: Compliance Index for major offences under the Companies Act, 2013 contd.

Particulars of	Monetary Penalty	Com (Cor	Compliance Index (Company Only)	X (A	Monetary Penalty imposed on	After co imposed Offi	After considering the fines imposed on Company and Officers in Default	ne fines any and ault
O E GENERAL	10000000000000000000000000000000000000	Rs.1 lac	Rs.5 crores	Rs.25 crores	Officer on Default*	Rs.1 lac	Rs.5 crores	Rs.25 crores
Violation with provisions	Not less than Rs. 50,000 but	1.10	0.00	0.02	Not less than Rs.	2.19	0.18	90:0
of Board's Report and Financial Statements	which may extend to Rs. 25 lakh	54.82	3.05	1.04	may extend to Rs. 5 lakh	65.79	4.27	1.45
Contravention with provisions of appointment and qualification of	Not less than Rs. 50,000 but which may extend to Be	1.10	0.00	0.02	Not less than Rs. 50,000 but which	2.19	0.18	0.06
Director for which no specific penalty is prescribed.	5 lakh	10.96	0.61	0.21	may extend to Rs. 5 lakh	21.93	1.83	0.62
If a Company fails to attach secretarial audit	1 lakh rupees but which	2.19	0.12	0.04	Rs 1 lakh rupees but which may	4.39	0.37	0.12
Report to Board's Report in a prescribed form	may extend to 5 lakh Rs	10.96	0.61	0.21	extend to 5 lakh Rs.	21.93	1.83	0.62
Contravention with provisions relating	Not less than Rs.1 lakh but	2.19	0.12	0.04	Not less than Rs. I lakh but which	4.39	0.37	0.12
to Merger and Amalgamation	wnich may exteria to ks. 25 lakh	54.82	3.05	1.04	may extend to Rs. 3 lakh	61.40	3.78	1.29
If a Company fails to	Not less than Rs. 50,000 but	1.10	0.09	0.02	Not less than Rs. 50,000 but which	2.19	0.18	90.0
maintain register of members.	which may extend to Rs. 3 lakh	6.58	0.37	0.12	may extend to Rs. 3 lakh	13.16	1.10	0.37

* We have considered one Director as Officer in default for companies with Rs. 1 lakh paid-up capital and one Director and one KMP for companies with paid-up capital of Rs. 5 crores and Rs. 25 crores

6. Three Aspects for Consideration to Enhance Compliance

The prevailing culture in corporate secretarial work throw up three aspects for consideration that have widespread practice but could be the cause for non-compliance. Rectifying or clarifying these practices can reduce the extent of non-compliance and at the same time promote Ease of Doing Business. CimplyFive believes a wider discussion and debate on these three issues is required and the faster it happens, better it would be for all stakeholders:

1. Paper Board Meetings:

The requirement for companies to have a minimum of four board meeting in a financial year is quite an onerous requirement for many Indian companies, especially the non-listed companies. Often Board Meetings takes the form of what is colloquially called 'Paper Meetings', which as the name suggests is only an event occurring on the "paper".

We believe holding a board meeting only for the purpose of complying with the law and not to undertake any business activity is a burden to the business, resulting in many companies disregarding the sanctity of the mandated legislations, resulting in non-compliant practices. Further despite this wide spread practice, there is no effort to enforce this compliance resulting in this provision remaining only on paper. Further in the five countries we have analysed, there is no such requirement to have a minimum number of board meetings.

Given the rationale highlighted, we believe the provision to have minimum number of meeting with gap between the two meeting prescribed is a sub-optimal requirement that cannot be enforced, thereby resulting in paper meetings. As this non-compliance is not enforced through penal provisions, it has the effect of treating corporate regulations in a perfunctory manner setting a bad precedent.

We suggest that the provision to have a minimum number of board meeting be done away with. This will remove any excuse to companies for not holding a board meeting.

In its place a provision can be introduced where critical decisions like approval of accounts, borrowing of money, change in capital structure, sales or purchase of businesses or companies and appointment of Directors and KMPs and the like can be made only in scheduled meetings where the directors are present in person or through video conference.

2. Tokens used for digital signature:

India is among the few countries that has adopted electronic filing as the sole means to file Returns with the Company Law Regulator, MCA in India. All the Directors and KMPs need to affix their digital signature on the various returns filed with MCA. This requires all the Directors to obtain a digital signature as a precondition for getting their DIN (Directors Identity Number).

Under the current system of physical tokens given for affixing digital signatures, the presence or the knowledge of the holder of Digital signature or their consent is not expressly sought or documented, except for the requirement to have possession of the digital token. However, anyone with the possession of the digital signature token can affix it, without a record of all the places where the signature is affixed being documented for future reference.

Given the absence of personal involvement in affixing digital signature, we suggest introduction of a two-factor authentication by using SMS or an email that can receive OTPs (One-Time-Password) as a precondition for affixing digital signature so that digital signatures may not be a point of litigation or dispute given the current process where affixing digital signature without the owners knowledge is feasible.

3. Clear-cut Guidelines for Maintaining and Authenticating Registers in electronic form:

The requirement for companies that opt to maintaining electronic records in the five countries reviewed reflected a minimum of conditions imposed, which have clearly articulated features that are required to be put in place for maintaining records, including electronic records:

- That is capable of reproducing any required information in intelligible form /written form within a reasonable time, (South Africa, Ireland, Australia, United Kingdom)
- The records must be accessible from or kept at the Registered Office of the Company, (South Africa, Ireland)

- Take all reasonable steps to guard against damage to, destruction of, or falsification of and discovery of falsification of the records, (Ireland)
- Arranged in such manner as the directors of the company think fit, provided the information in question is adequately recorded for future reference (UK)

In contrast, the provision for maintenance of registers and records in electronic form in India is quite elaborate. Section 120 of the Act prescribes the specification for maintenance of records in electronic form. Further sub-clause 2 of clause 28 in the Companies (Management and Administration) Rules, 2014 lists out thirteen features that are required to be ensured by the person responsible for maintaining electronic records. While many of these requirements are logical, in addition to being in sync with the practices in the five countries, three clauses in particular need attention:

- Ensure that the signatory of electronic records does not repudiate the signed record as not genuine
- Ensure that the computer system can discern invalid and altered records
- Ensure that records are kept in a <u>non-rewriteable</u> and non-erasable format like pdf, version or some other version which cannot be altered or tampered.

The words and phrases underlined in the part of the rule reproduced above could be aspects that are contestable and hence require attention to ensure maintenance of electronic records is in compliance with law, without leaving any aspects for interpretation.

We suggest the following changes to be effected to the sub-clause 2 of clause 28 in the Companies (Management and Administration) Rules, 2014:

- 1. Delete clause (c), as the only way to ensure the signatory of electronic records does not repudiate it is by having a two factor authentication or by having a witness for each signature affixed
- 2. In clause (e) we suggest that the word 'invalid' records be deleted as invalid records is not defined in the rule or the act.
- 3. Delete clause (h) as pdf is only an output format and not the medium of storage. Where required, different versions of output can be produced without 'altering or tampering' with the output. Hence having a non-rewriteable and non-erasable format may be provided without meeting the intended requirement.

7. Learnings from This study

In enforcement of law the following three principles enunciated in the century old Halsbury's Law of England is recognized for its comprehensiveness and is considered of profound importance:

- 1. The twin objects of punishment are to prevent a person who has committed a crime from repeating it and to prevent others from committing similar crimes. The sentence must be the least that will achieve both these objects.
- 2. In deciding the measure of punishment the factors to be considered are the nature of the offence. circumstances in which offence was committed, the degree of deliberations, the provocation received if the crime is of violence, antecedents of the offender up to the time of crime, his age and character, etc.
- 3. The prevalence of a particular crime in a particular area or during a particular period should also be taken into account.

Using these three principles and based on the study of the practices used to enforce compliance, especially the penalty system followed in the five countries studied, we place the following suggestions for the consideration of regulators and corporate well-wishers:

1. Predictable Enforcement of Regulatory requirements:

The economic incentive to remain compliant for an Indian corporate as reflected by the Compliance Index is low. This requires stringent enforcement to promote an environment for Indian Companies to be compliant that reflects certainty of punishment for all non-compliances. Occasional enforcement moves even if they are of a large magnitude as in the case of striking off of companies that had not filed annual returns in September 2017 in one surprise move is not effective, if it is not predicable. A case in contrast is the practice in Ireland where data is reported by the regulators annually of the list of companies that have been stuck off for not filing their annual returns.

Regular enforcement of law, as evidenced by predictable action that follows a fixed calendar and reporting on the same, for instance striking off a company from the Register of Companies for not filing their annual returns three years in a row in the first week of January, which is one month after the deadline for filling annual return, i.e. November 30th each year can be a powerful stimulant for promoting compliance.

Likewise, an enforcement calendar for the top 5 offenses that is published with calendar of enforcement and data on companies penalised can act as a powerful stimulant to create a compliant Indian corporate sector.

2. Prevent dilution of economic incentive to remain compliant over time:

Most penalties in the Indian Company Law are fixed and are not indexed to either inflation or the size of the company's revenue. Even today most of the provisions of the companies act have penalty of Rs.1000/- per day of default and Rs.10000/- for many non-compliances, a grossly inadequate deterrent. Indexing penalties to inflation will at a minimum ensure that the penalties keep pace with the increase in cost of compliance. Further as companies grow in revenue and profits, the penalties become more affordable, thereby providing an economic disincentive for a company to be compliant. The use of penalty points and indexing them to Group Consumer Price Index as practiced in Australia can be a role model for emulation.

We believe translating penalties in the Companies Act, 2013, into penalty points and indexing them to either Wholesale Price Index or the limits on managerial remuneration fixed in the Companies Act can make the penalty provisions a real deterrent and promote compliance.

3. Promote Digitization in Corporate Sector

India has prioritized digitization as a major country wide initiative. Promoting electronic record keeping in the corporate sector can go a long way in promoting compliance and protecting stakeholders' interest.

To realize this, maintenance of all statutory registers in electronic form could be mandated for all corporates. Further, access to all those who have the right to inspect these records can be provided thereby ensuring real time compliance.









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