

# Annual Secretarial Compliance Report

**SUPERFLUOUS?**



A study of Nifty 50 companies

July 2019

# Team



Eti Basaniwal



Hema Gopalsamy



Raghunath S



Ritika Bassi



Shankar Jaganathan



Srividhya Sampath



Suhas G P



Swathi Nagaraj



Swati Kuthari

\*Cover page designed by Monish Basaniwal

## Disclaimer and Limitations of the Study

- **General Information:** CimplifyFive has prepared Annual Secretarial Compliance Report to identify new trends, practices and lessons emerging from the introduction of the Companies Act, 2013, with the intent of disseminating it to all Corporates in general and the CSs and CAs professionals in particular. This report is not intended to act as a recommendation or condemnation of any practice, company or firm covered in this report.
- **Risk Warning:** CimplifyFive shall not be responsible for any loss or damage arising for anyone using any information contained in this report.
- **Source of Information:** CimplifyFive has used the information contained in the Annual Secretarial Compliance Report of the Companies found in the pdf format in BSE's website.
- **Limitations:** Competent professionals with adequate experience have undertaken this study. Further, they have also followed a due process of checks and verifications to ensure accuracy of this report. This should have eliminated almost all errors from this report. If any points in the nature of errors are brought to our notice and we agree with the same, CimplifyFive will rectify the report at the earliest and have the revised report available on its website. CimplifyFive does not accept any loss or damage caused to any individual or institution by use of this report.

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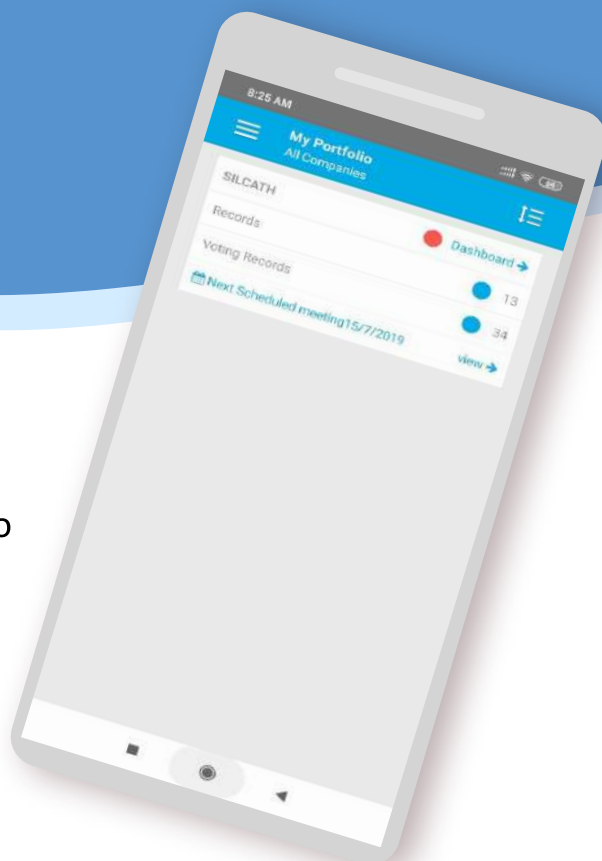


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# NIFTY 50 Companies

1. Adani Ports and Special Economic Zone	11. Cipla Ltd	21. Hindustan Unilever Ltd	31. Larsen & Turbo Ltd	40. Tata Consultancy Services Ltd
2. Asian Paints Ltd	12. Coal India Ltd	22. Housing Development Finance Corp Ltd	32. Mahindra & Mahindra Ltd	41. Tata Motors Ltd
3. Axis Bank Ltd	13. Dr. Reddy's Laboratories Ltd	23. ICICI Bank Ltd	33. Maruti Suzuki India Ltd	42. Tata Steel Ltd
4. Bajaj Auto Ltd	14. Eicher Motor Ltd	24. Indiabulls Housing Finance Ltd	34. NTPC Ltd	43. Tech Mahindra Ltd
5. Bajaj Finance Ltd	15. GAIL India Ltd	25. Indian Oil Corp Ltd	35. Oil & Natural Gas Corp Ltd	44. Titan Co Ltd
6. Bajaj Finserv Ltd	16. Grasim Industries Ltd	26. IndusInd Bank Ltd	36. Power Grid Corp of India Ltd	45. UltraTech Cement Ltd
7. Bharat Petroleum Corp Ltd	17. HCL Technologies Ltd	27. Infosys Ltd	37. Reliance Industries Ltd	46. UPL Ltd
8. Bharti Airtel Ltd	18. HDFC Bank Ltd	28. ITC Ltd	38. State Bank of India	47. Vedanta Ltd
9. Bharti Infratel Ltd	19. Hero MotoCorp Ltd	29. JSW Steel Ltd	39. Sun Pharmaceuticals Industries Ltd	48. Wipro Ltd
10. Britannia Industries Ltd	20. Hindalco Industries Ltd	30. Kotak Mahindra Bank Ltd		49. Yes Bank Ltd
				50. Zee Entertainment

## About CimpfyFive

CimpfyFive Corporate Secretarial Services Private Limited is a pioneer in offering research and technology-based solutions for compliance with the Companies Act, 2013 and LODR, 2015. Our SaaS based product portfolio, Board Leaders Integrated Software Solution (BLISS) and its variants, is designed to eliminate the procedural non-compliance risk for entities regulated under the Indian Companies Act, 2013 and LODR, 2015. More details about CimpfyFive and its product BLISS can be obtained from our website [www.cimpfyfive.com](http://www.cimpfyfive.com).

CimpfyFive also provides a free to use website [www.ca2013.com](http://www.ca2013.com) that provides company law at your fingertips. This site uses hypertext to integrate rules, notifications, orders and circulars with the Act and provides real-time, online access to the Companies Act, 2013, LODR, 2015 and IB Code, 2016 as it stands on that day.

# 1. Introduction

Following the recommendation of Uday Kotak's Committee on Corporate Governance, SEBI has mandated through LODR that all listed companies prepare and disclose in the format prescribed an Annual Secretarial Compliance status certified by a Practicing Company Secretary. This requirement is in addition to the Annual Secretarial Audit that is prescribed for all companies above a threshold size, both listed and unlisted, under the Companies Act, 2013.

The objective of this Report, as articulated by the Uday Kotak committee, is to ensure efficient board functioning. The reason attributed by SEBI for requiring this additional Report is that the Secretarial Audit Report covers only 'a broad check on compliance with all laws.' Therefore, by inference, this Secretarial Compliance Report is intended to be an in-depth check that is specific to the SEBI regulations.

After this new requirement was mandated, companies have disclosed their first Annual Secretarial Compliance report in May 2019. We have analysed the reports published by the Nifty 50 companies to answer the following three questions:

- What are the lessons that a listed company can learn from this analysis?
- What can be done to improve the value add from this report?
- Does this report pass the test of cost-benefit analysis?

## 2. Analysis highlights

- All the Nifty 50 companies have filed their Annual Secretarial Compliance Report within the prescribed time, i.e. within 60 days of the year end.
  - HDFC was the first company to file it on April 16<sup>th</sup>
  - 7 companies (14% of the population) filed their return on May 30<sup>th</sup>, the last date for filing.
- The practices followed for addressing the Report varied with the auditor and in some case, the same auditor had followed different practices for different companies. Tabulated in Table 1 is the different practices followed among the Nifty 50 Companies

**Table 1: Annual Secretarial Compliance Report Addressed to**

Sr no	Addressed to	Number of Companies	Company names
1	To the Board	8	Bharti Airtel, Bharti Infratel, HCL Technologies, Hindustan Unilever, Larsen & Turbo, Maruti Suzuki, UPL, Vedanta
2	To the Company by name	6	Britannia, Coal India, ICICI Bank, Reliance Industries, Tata Steel, Tata Consultancy Services
3	To Members	1	Asian Paints
4	Does not contain any recipient	35	All other Nifty 50 companies

- c) A total of 26 deviations or non-compliances were reported by 11 of the Nifty 50 for the year 2018-19, which is tabulated in Table 2.

**Table 2: Deviations / Non-compliances reported by Nifty 50 Companies**

Number of Non-compliances	# of Companies	Names of Companies *
7	1	State Bank of India
3	3	Larsen & Turbo, Indian Oil, NTPC
2	3	IndusInd Bank, Power Grid, GAIL
1	4	Adani Ports, Bharat Petroleum, Eicher Motors, ONGC

\*Of the 11 companies reporting non-compliances, 7 are from the public sector and the balance 4 are from the private sector.

- d) The 26 non-compliances reported by the Nifty 50 companies by its nature can be categorized into 14 different types, which is classified in Table 3:

**Table 3: Non-Compliances reported by Nifty 50 Companies classified by their Nature**

Sr no.	Nature of non-compliance	# of Companies	Companies by name
1	Reg 17 (1) (b) of LODR- Independent Directors inadequately represented in the Board	6	Adani Ports, Bharat Petroleum, Indian Oil, NTPC, Power Grid, SBI
2	Reg. 17(10) of LODR- Evaluation of Independent Directors not conducted	5	GAIL, Indian Oil, NTPC, ONGC, Power Grid
3	Reg 25(4) of LODR- Evaluation of the Non-Independent Director and Board of Directors by Independent Directors not conducted	2	GAIL, NTPC
4	Reg 60 (2) of LODR- Provided Less than 7 days notice for intimation of Record date for interest payment	2	IndusInd Bank, Larsen & Turbo
5	Reg 29 (d) of LODR- Prior intimation to Stock Exchange not given for a Board of Directors meeting in which funds raising proposal was been considered	2	Larsen & Turbo, SBI
6	Reg 17 (1) of LODR- Gap between resignation and appointment of Women Directors more than the permitted 3 months interval	1	Indian Oil
7	Reg 31 (1) (b) of LODR- Late submission of Shareholding pattern to the stock exchange	1	Eicher Motors
8	Reg 30 (6)- Shares allotted under ESOS not intimated to one of the two exchanges within 24 hours of allotment	1	IndusInd Bank
9	Reg 30 (2) of LODR -Outcome of board meeting regarding funds raising not intimated to stock exchange within 30 minutes of the meeting end time	1	Larsen & Turbo
10	Reg 18 (1) (b) of LODR- Audit Committee did not consist of two thirds of Independent Directors as mandated	1	SBI
11	Reg 18 (3) and 22(2) of LODR- Whistle Blowers mechanism not reviewed by Audit Committee	1	SBI

Sr no.	Nature of non-compliance	# of Companies	Companies by name
12	Reg 44(1) of LODR -e-voting facility not provided to shareholders for resolutions requiring their approval	1	SBI
13	Reg 46 (2) of LODR- Vigil mechanism/ Whistle blower policy not disclosed on Company's website	1	SBI
14	Reg 7(2) of PIT- The promoter (Central Government) did not disclose for increasing their stake	1	SBI
	<b>Total</b>	<b>26</b>	

- e) Of the 26 non-compliances reported by 11 Nifty 50 companies, Stock Exchanges took penal action against 5 companies for 6 non-compliances which is tabulated in Table 4.

**Table 4: Action Taken by Stock Exchanges (NSE/BSE)**

Sr no.	Nature of Action taken	No. of Actions taken	Penalty levied Rs. Lakhs	Company
1	Reg 17 (1) (b) of LODR- Independent Directors inadequately represented in the Board (Adani Ports also quantified the penalty paid)	4	Not disclosed 18.88	Indian Oil, NTPC, Power Grid & Adani Ports
2	Reg 17 (1) of LODR- Gap between resignation and appointment of Women Directors more than the permitted 3 months interval	1	Not disclosed	India Oil
3	Reg 31 (1) (b) of LODR- Late submission of Shareholding pattern to the stock exchange	1	Not disclosed	Eicher Motors
	<b>Total</b>	<b>6</b>		

- Of the 6 companies that reported non-compliance with Composition of the Board, penal action is reported only in the case of 4 companies. In the other two companies- Bharat Petroleum and SBI, penal action is either not taken or if taken, not reported.
- For all the 5 companies that had not undertaken evaluation of Independent Directors, no penal action is reported by the auditors of any of these companies. In all these companies, penal action is either not taken or if taken, not reported.
- Only one company has quantified the monetary penalty paid by them, in the other five instances where action was taken by SEBI/Exchange, the amount of penalty paid is not disclosed.
- Further in the case of two companies, SEBI had issued show cause notices, which had not resulted in any penal action as reported in the Annual Secretarial Compliance Reports.

- f) Table 5 contains the details of specific regulations that have been covered by the Practicing Company Secretary in preparing their Annual Secretarial Compliance Report.

**Table 5: Details of Regulations covered by Practicing Company Secretaries**

Description	Applicable Regulations	Company reference
Maximum number of regulations	16	Kotak Mahindra Bank
Minimum number of regulations	3	Asian Paints

- I. Nifty 50 companies have reported a total of 29 regulations in all.
- II. The three regulations—Listing Obligations and Disclosure Requirements (LODR), Substantial Acquisition of Shares and Takeover (SAST) and Prohibition of Insider Trading (PIT) regulations were reported by all the Nifty 50 companies.
- III. Of the other regulations reported,
  - 38 companies have mentioned SEBI (Share Based Employee Benefits) Regulations, 2014
  - 28 companies have mentioned SEBI (Issue and Listing of Debt Securities) Regulations, 2008
  - 27 companies have mentioned SEBI (ICDR) Regulations, 2018
  - 21 companies have mentioned SEBI (Depositories and Participants) Regulations, 2018
  - 15 companies have mentioned SEBI (Registrars to an issue and Share Transfer Agents) Regulations, 1993



## 3. SimplifyFive's Recommendations

### Lessons for listed companies:

- A. Our analysis of the applicable LODR regulations indicates that there are more than 150 compliances that an equity listed company needs to undertake every year. Even among the cream of Indian corporate sector, represented by the Nifty 50 companies, 26 non-compliances were reported by 11 companies, 22% of the population.

Given the onerous nature of compliance requirements, there is a need for an automated solution to track and capture compliances of the listed companies. However, investment in a compliance software by itself is not sufficient, as it is a necessity but not by itself adequate to insulate the company from the penalties that a SEBI or the Stock Exchange could levy. The additional factor required to track compliances is to maintain a high level of discipline in documentation and record maintenance by its corporate secretarial team.

### What can be done to improve the value-add from this report:

- a) **To whom the report is addressed:** The format specified for Annual Secretarial Compliance Report, does not specify to whom the report is to be addressed. As evidenced by the practice seen in the Nifty 50 companies, the report could be addressed to any one of the following-the members, the Board of Directors or just the name of the company. Hence it may be prudent to specify to whom this report is to be addressed.

**Recommend that the Annual Secretarial Compliance Report be addressed to the Board of Directors, as the primary intent of this new compliance is to enhance efficient board functioning and therefore keeping the board members informed could be the first step in this.**

- b) **Listing of the Regulations reviewed:** 29 different regulations have been listed by all the Nifty 50 companies taken together. Given that many of the regulations may not be applicable to a company or would not be applicable to a company in that financial year under review, clarification is needed on the process to be followed in naming the regulations in the Report. Different practices followed by the auditors of the Nifty 50 companies include:

1. Mentioning only the regulations that are applicable to the company for the financial year under review;
2. Mentioning all the regulations applicable to the company irrespective of whether the regulation was applicable in the year under review or not. And following this with a statement in parenthesis (not applicable for the year)

**Recommend that only the regulations that are applicable to the company for the financial year under review be reported, as this provides the Board members and other stakeholders information that is relevant for their efficient functioning, without overloading them with incidental information that may not have immediate relevance.**

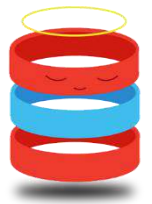
- c) **Quantification of Monetary Penalties:** Auditors have followed different practices in reporting the monetary penalties paid by the companies during the audit period. In one instance, the monetary penalty levied on the company is quantified, whereas in five other cases, only the fact that monetary penalty was levied is mentioned, without the penalty amount being quantified.

**Recommend that the monetary penalty paid be quantified. This quantification not only sensitises the board members and acts as a deterrent to the company that has paid the penalty but it could also help usher in a more compliant corporate sector by sensitizing other companies of the potential penalty that can be levied on them if they fail to comply with the provisions.**

**Test of Cost-benefit analysis:**

- B. In our considered view, the Annual Secretarial Compliance Report even after incorporating the value-adds proposed in the immediately earlier section of the report does not provide any additional information to the Board Members or other stakeholders than what is available in the Secretarial Audit Report for the following reasons:
- 1. Timing of the report:** Annual Secretarial Compliance Report is available in the month of May, after the year end, and the annual report is available in most companies a few months later in the month of July to September.
  - 2. Prepared by the same Auditor:** Our review indicates that the secretarial auditor and the Practicing Company Secretary who is certifying the report are the same in most cases, thereby nothing new could emerge from an additional report given by the same individual or firm.
  - 3. Added to the Annual Report:** The guidance note of the ICSI on Annual Secretarial Compliance Report recommends a company to annex this report to their annual report, thereby duplicating the information provided and further increasing the already bulky Annual report.

**Given the reasoning listed, we believe Annual Secretarial Compliance Report does not pass the test of cost-benefit analysis. Further by adding a superfluous reporting requirement, it also could be a deterrent to Ease of Doing Business in India. Hence requiring the companies to continue with this report may be discontinued.**



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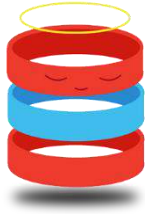


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