

J.K. SHAH[®]

**TEST
SERIES**



SUGGESTED SOLUTION

CS PROFESSIONAL

**Subject – Secretarial Audit, Compliance
Management and Due - Diligence**

Topic – Test-1 Chp-01 to 07

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Answer to Q1.A.

(a) MCA-21 offers the facility to view documents and also search and other facilities of public documents. This facility is handy for users and banks and financial institutions while sanctioning loans. The procedure for viewing such documents is as follows:

- (a) User has to access My MCA portal and login to the My MCA portal.
 - (b) After Log in click on tab MCA Service and View Public Document.
 - (c) Mention name of Company and make payment of `100/-
 - (d) Click on the 'Work space' tab.
 - (e) List of company names will be displayed, for which user have already paid for public viewing.
- It also displays the following: (i) Date of request i.e. the date, when user made the request to view the company document. (ii) Status of the request i.e. whether viewed or to view.
- (f) Click on the view link under status field.
 - (g) The documents are grouped under categories i.e. user has to click on the desired category under which the document falls.
 - (h) If more than one document is listed the user can arrange them name wise or date wise
 - (i) On clicking the document name, the document shall be displayed for viewing.

(b) The public documents under this facility are available for viewing by public on payment of requisite fee. Public documents include charge documents. So, we can view documents relating to charges on MCA website.

(5 Marks)

Answer to Q1.B.

Corporate Compliance Management is significant to ensure the following:

1. Better compliance of the law.
2. Real time status of legal/statutory compliances.
3. Safety valve against unintended non compliances/ prosecutions, etc.
4. Real time status on the progress of pending litigation before the judicial/quasijudicial fora.
5. Cost savings by avoiding penalties/fines and minimizing litigation.
6. Better brand image and positioning of the company in the market.
7. Enhanced credibility/creditworthiness that only a law abiding company can command.
8. Goodwill among the shareholders, investors, and stakeholders.
9. Recognition as Good corporate citizen.
10. Positive results at several levels.

(5 Marks)

Answer to Q1.C.

1	Financial Statements	Section 137 & Rule 12(1) of Companies	E-form AOC-4 & E-	Company is required to file its financial statements, including consolidated financial statement along with all the
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		(Accounts) Rules, 2014	form AOC-4 CFS	documents required to be or attached to such financial statements, duly adopted at the AGM of the company with the Registrar within 30 days of the date of AGM or in case financial statements are adopted in the adjourned AGM, within 30 days of the date of adjourned AGM. If annual general meeting is not held for any year, the financial statements along with the documents required to be attached under sub-section (1) of section 137 duly signed along with the statement of facts and reasons for not holding the annual general meeting shall be with the Registrar within 30 days of the last date before which the annual general meeting should have been held.
2	Boards' Report	Section 134 & Rule 8 of the Companies (Accounts) Rules, 2014.		Directors' Report shall be prepared in a manner which shall include all the information required under Section 134. It should be signed by the "Chairperson" authorized by the Board, and where he is not so authorized, by at least 2 Directors one of whom shall be a managing director or by the director where there is one director. In case of a Specified IFSC private company, if any information listed in this sub-section is provided in the financial statement, the company may not include such information in the report of the Board of Directors. (Vide Notification No. G.S.R. 9(E) dated 4th January, 2017)

(5 Marks)

Answer to Q1.D.

Purpose of Documentation:

- 1) Client Service: Documentation is a tool for professionals to serve better to their clients in a timely and effective manner.
- 2) Communication: Documentation is the base for better communication between professionals. Clear, complete, accurate and factual documentation provides a reliable, permanent record of client.
- 3) Accountability: Documentation demonstrates Professional accountability and records the work of the professional. It may be used in relation to performance management, internal inquiries, regulatory proceedings and/or legal proceedings.
- 4) Professional Responsibility: Documentation is an integral part of professional practice and forms the basis for evidence of professional conduct.
- 5) Legal Requirement: Professionals are required to make and keep records of their professional work in accordance with practice standards followed and organisational policy. However, the laws mandate specific information to be recorded and maintained.
- 6) Quality: Documentation may be used to evaluate professional practice in terms of Peer reviews, Quality reviews, audits and accreditation processes, Regulatory inspections or critical incident reviews.
- 7) Research: Documentation is a valuable source of data for researchers. It provides information to professional, evaluates client outcomes and is a concise record, essential for accurate research data and evidence based practice.
- 8) Resource Management: Accurate and comprehensive documentation is a valuable source of evidence and provide basis for resource management.

Thus, before drafting any document, it is the most essential to familiar with the purpose of document.

(5 Marks)

Answer to Q2.A.

While preparing the Search and Status Report regarding Stock Exchanges, it is important for the professionals to conduct due diligence of the documents available in public domain on the NSE and BSE website in relation to the listed companies.

Key documents to be analysed while preparing the search and status report on information/ documents available on NSE and BSE website:

1. Corporate Announcements
2. Corporate Actions
3. Financial Results
4. Board Meetings

5. Shareholders Meetings
6. Voting Results
7. Results Calendar
8. Shareholding Patterns
9. Corporate Governance
10. Disclosures
11. Offer Documents
12. Information Memorandum (a) QIP (b) Scheme of Arrangement (c) Companies listed under Direct Listing (d) Revocation
13. Pledge Data
14. Sustainability Reports
15. Buyback / Redemption
16. Public Notice - Compulsory Delisting

(5 Marks)

Answer to Q2.B.

- (i) Box ticking practices will fall under Adequate Compliances. Adequate compliance is compliance in letters. The aspects specified in law are compiled in letters, without getting into the spirit of the law.
- (ii) The other two categories of compliance in this regard are:
 - (a) Apparent compliance is a disguise form of non-compliance, which is worse than a non compliance. The classic example for Apparent Compliances are generating documents such as notice, agenda, minutes on papers for board and general meeting which are not actually held.
 - (b) Absolute compliances are those which are in line with the spirit and intent of the law. A typical example in this regard is demonstrating shareholder democracy as prescribed by law. When a company complies with law in spirit it gains public confidence as well. For example, Infosys has set new and effective standards in communicating with shareholders, stock exchanges and general public at large. Its Annual Report is said to be a trend setter and has been commended as an ideal report by SEC. This company has demonstrated through its practices and procedures its commitment to enhance investor-relations and has amply rewarded its shareholders through its impressive performance and its value based management philosophy helps increase its brand value. The company has achieved trust of stakeholders by having a strategic balance between wealth and welfare.

(5 Marks)

Answer to Q2.C.

The KYC of Directors had been conducted by the MCA at the time of the Allotment of the Director Identification Number and earlier it is not mandatory for the Director to update their KYC on the subsequent change.

With the recent insertion of Rule 12A in the Companies (Appointment and Qualification of Directors) Rules, 2014. Every individual who holds a Director Identification Number (DIN) as on 31st March of a financial year as per these rules shall, submit e-form DIR-3-KYC for the said financial year to the Central Government on or before 30th, September of immediate next financial year.

However, where an individual who has already submitted e-form DIR-3 KYC in relation to any previous financial year, submits web-form DIR-3 KYC-WEB through the web service in relation to any subsequent financial year it shall be deemed to be compliance of the provisions of this rule for the said financial year: In case an individual desires to update his personal mobile number or the e-mail address, as the case may be, he shall update the same by submitting e-form DIR-3 KYC only. The fee for filing e-form DIR-3 KYC or web-form DIR-3 KYC-WEB through the web service, as the case may be, shall be payable as provided in Companies (Registration Offices and Fees) Rules, 2014.

Some important points to be noted in respect of DIR-3 KYC

1. DIR-3 KYC is required to be filed by every Director who holds DIN on or before 31st March, of a Financial Year and whose DIN status is 'Approved'.
2. Due date of filing of DIR-3KYC is on or before 30th September of immediate next financial year,
3. Prerequisite Mandatory Information DIR-3 :
 - Unique Personal Mobile Number
 - Personal Email ID.
 - Email ID and Mobile Number for receiving OTP
4. Certification of DIR-3 KYC
 - First by the affixing Registered Digital Signature of respective person / Director
 - Certification by practicing professional by affixing Digital Signature (CS/CA/CMA)
5. Filing of DIR-3 KYC would be mandatory for Disqualified Directors as well.
6. If director fails to file DIR-3 KYC the MCA21 system will mark all approved DINs (allotted on or before 31st March, 2018) against which DIR-3 KYC form has not been filed as 'Deactivated' with reason as 'Non-filing of DIR-3 KYC'
7. MCA has notified 'Nil Fee' and 'late Fee of Rs. 5,000 (Applicable after the due date) for Filing e-Form DIR-3 KYC under rule 12A of the Companies (Appointment and Qualification of Directors) Rules, 2014.
8. MCA has also notified format of e-form DIR-3 KYC under new Rule 12A (Directors KYC) along with procedure for restoration of deactivated DINs of Directors, applicable.

(5 Marks)

Answer to Q2.D.

The PCS is required to be considerably responsible, since he/she is bound by the certification in the Annual Return. A very pertinent question which arises for consideration is the extent of detailed verification that has to be resorted to before certifying the Annual Return.

Where as in case of a Balance Sheet certified by the Statutory Auditor, the Cost Statements certified by a Cost Auditor, the statement of consumption of materials certified for the Customs and Central Excise Authorities, or the statement of exports for the purpose of export incentives, a major source of dilemma for the professional concerned is the determination of the extent of detailed scrutiny required before satisfying himself that the statement certified by him is correct.

It is a well-established principle in any auditing practice that an auditor is not expected to carry out a 100% checking of every piece of paper generated by the company, in arriving at the final facts and figures represented in the end document. In financial audit, for instance, the auditor is not expected to make a thorough scrutiny of each and every invoice raised / voucher created by the company before accepting the sales figure given in the Balance Sheet. Similarly, while certifying the list of past and present shareholders given in the Annual Return, a PCS cannot be expected to check every folio of the Registrar of Members, whose number could run into lakhs. Similarly, the number of share transfers Registered in a year could run into thousands. If one is expected to check every transaction in these matters, it could be well almost impossible to meet the statutory time limits for filing the documents.

Therefore, certain techniques of sample checking and test checking should be resorted to before forming a reasonable opinion that the document being certified projects a true and fair view of the state of affairs. There are no specific modalities or stringent test practices applicable for Certification of Annual Return.

However, the following guiding principles can be adopted while deciding about the extent of checking that is required.

- (i) The need for every detailed checking is greatly reduced if PCS confirms that there are adequate measures of internal control and checks and balances built into the systems and procedures of the organization. For instance, the procedure for registration of share transfers could be so designed that the mistakes and errors committed at one stage are automatically detected and corrected by another before the whole process is complete. The system could also provide for automatic cross- verification particularly in cases where the process is computerized.
- (ii) The principle of materiality is another important concept. The sample chosen for detailed checking should be representative of the whole, or the 'population', in statistical parlance. To take the example of share transfers again, instances of transfer of large blocks of shares could be chosen for detailed scrutiny. Or, the 'busy' period for transfer of shares in the year could be identified and selected for sample checking.
- (iii) 'High risk' areas could be identified and subjected to more extensive scrutiny than others. For instance, in the case of shares on which there are restrictions on transfer statutory or otherwise, a more extensive examination is warranted. In

conclusion, it may be pointed out that the ultimate responsibility of the document certified will rest with the professional. While the extent of checking is a matter of personal judgment, he should safeguard himself against any possible charge of negligence in respect of inaccurate or incomplete statements, certified by him.

(5 Marks)

Answer to Q3.A.

Functions & Duties of the Company Secretary includes –

Section 205 read with rule 10 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 provide the following functions & duties on the Company Secretary includes

1. to report to the Board about compliance with the provisions of the Companies Act, 2013, the rules made thereunder and other laws applicable to the company;
2. to ensure that the company complies with the applicable secretarial standards;
3. to discharge such other duties which include:
 - to provide to the directors of the company, collectively and individually, such guidance as they may require, with regard to their duties, responsibilities and powers;
 - to facilitate the convening of meetings and attend board, committee and general meetings and maintain the minutes of these meetings;
 - to obtain approvals from the board, general meeting, the government and such other authorities as required under the provisions of the Companies Act, 2013;
 - to represent before various regulators, and other authorities under the Companies Act, 2013 in connection with discharge of various duties under the Companies Act, 2013;
 - to assist the Board in the conduct of the affairs of the company;
 - to assist and advise the Board in ensuring good corporate governance and in complying with the corporate governance requirements and best practices;
 - to discharge such other duties as have been specified under the Companies Act, 2013 or rules made thereunder; and
 - such other duties as may be assigned by the Board from time to time.

(5 Marks)

Answer to Q3.B.

While certifying the Form No. MGT 8, the practicing company secretary provide certification relating the following points:

A. the Annual Return discloses the facts as at the close of the financial year correctly and adequately; and

B. the Company has complied with the provisions of the Act & Rules made there under during the financial year in respect of:

1. Its status under the Act;
2. Maintenance of registers/records & making entries therein within the time prescribed therefore

3. Filing of forms and returns as stated in the Annual Return, with the Registrar of Companies, Regional Director, Central Government, the Tribunal, Court or other authorities within / beyond the prescribed time;
4. Calling/ convening/ holding meetings of Board of directors or its committees if any, and the meetings of the members of the company on due dates as stated in the annual return in respect of which meetings, proper notices were given and the proceedings including the circular resolutions and resolutions passed by postal ballot, if any, have been properly recorded in the Minute Book / registers maintained for the purpose and the same have been signed;
5. Closure of Register of Members / Security holders, as the case may be.
6. Advances/loans to its directors and/or persons or firms or companies referred in section 185 of the Act;
7. Contracts/arrangements with related parties as specified in section 188 of the Act;
8. Issue or allotment or transfer or transmission or buy back of securities/ redemption of preference shares or debentures/ alteration or reduction of share capital/ conversion of shares/ securities and issue of security certificates in all instances;
9. Keeping in abeyance the rights to dividend, rights shares and bonus shares pending registration of transfer in compliance with the provisions of the Act;
10. Declaration/ payment of dividend; transfer of unpaid/ unclaimed dividend/ other amounts as applicable to the IEPF in accordance with section 125 of the Act;
11. Signing of audited financial statement and report of directors is as per section 134 of the Act;
12. Constitution/ appointment/ re-appointments/ retirement/ filling up casual vacancies/ disclosures of the Directors, Key Managerial Personnel and the remuneration paid to them;
13. Appointment/ reappointment/ filling up casual vacancies of auditors as per the provisions of section 139 of the Act;
14. Approvals required to be taken from the Central Government, Tribunal, Regional Director, Registrar, Court or such other authorities under the various provisions of the Act;
15. Acceptance/ renewal/ repayment of deposits;
16. Borrowings from its director, members, public financial institutions, banks and others and creation /modification /satisfaction of charges in that respect, wherever applicable;
17. Loans and investments or guarantees given or providing of securities to other bodies corporate or persons falling under the provisions of section 186 of the Act;
18. Alteration of the provisions of the memorandum and / or articles of association of the Company.

(5 Marks)

Answer to Q3.C.

In last few years, the majority fraud cases reported were reported as technology-related frauds (covering frauds committed through / at an internet banking channel, ATMs and other payment channels like credit/debit/prepaid cards).

Business and technology innovations that the banking sector is adopting in their quest for growth are in turn presenting heightened levels of cyber risks. These innovations have probably introduced new vulnerabilities and complexities into the system. For example, the continued adoption of web, mobile, cloud, and social media technologies has increased opportunities for attackers. Similarly, the waves of outsourcing, offshoring, and third-party contracting driven by a cost reduction objective may have further diluted institutional control over IT systems and access points.

These trends have resulted in the development of an increasingly boundaryless ecosystem within which banking companies operate, and thus a much broader “attack surface” for the fraudsters to exploit.

- Hacking: Hackers/fraudsters obtain unauthorized access to the card management system of the respective bank. Counterfeit cards are then issued for the purpose of money laundering.
- Phishing: A technique used to obtain your card and personal details through a fake email.
- Pharming: A similar technique where a fraudster installs malicious code on a personal computer or server. This code then redirects clicks you make on a Website to another fraudulent Website without your consent or knowledge.
- Vishing: Fraudsters also use the phone to solicit your personal information.
- Smishing: It uses cell phone text messages to lure consumers in. Often the text will contain an URL or phone number. The phone number often has an automated voice response system. And again just like phishing, the smishing message usually asks for your immediate attention.
- Debit card skimming: A machine or camera is installed at an ATM which picks up card related information and PIN numbers when customers use their cards.
- Computer viruses: With every click on the internet, a company’s systems are open to the risk of being infected with nefarious software that is set up to harvest information from the company servers.
- Counterfeit instruments: Fake cheques / Demand Drafts that look too good to be true are being used in a growing number of fraudulent schemes, including foreign lottery scams, cheque overpayment scams, internet auction scams and secret shopper scams.

(5 Marks)

Answer to Q3.D.

A strong Compliance training and education programme reinforces the company compliance culture. It builds awareness and understanding of compliance standards, procedures, guidelines and issues. Specifically, it should build awareness and understanding of: | Company Framework, including the four conduct-related integrity risk areas;

- Roles and responsibilities outlined in the policies and framework;
- Critical and high compliance obligations identified in the Compliance Chart;

- The process for addressing compliance issues and reporting concerns; and
- Consequences of failing to meet compliance obligations.

An annual plan for Compliance Risk related training and education must be developed and updated, as necessary, and should indicate the target audience and training delivery method. Compliance Risk related training program should, to the extent possible, be integrated into the training plans.

The plans for compliance training and education program must include:

1. Concise statements that capture the relevant internal and external compliance obligations and the risks arising from those obligations;
2. The business processes to which the compliance obligations are linked or on which they have an impact;
3. Brief description of the training or education activity;
4. Target audience (refresher for existing Employees, induction for new Employees, or Adhoc when required);
5. Frequency of training or education activity.

(5 Marks)