

Director's familiarisation program

Astra Microwave Products Limited



Background

There have been significant changes in the world of Corporate Governance with the advent of Companies Act 2013.

The management of Astra, in its continuous endeavor to keep its Directors updated on changes in regulations, is conducting a Director's familiarisation program along with the meeting of Board of Directors scheduled on July 31, 2015.

For this purpose, certain key aspects have been covered around roles, rights and responsibilities of Directors. Since the listing agreement has also undergone changes, the relevant aspects have also been covered.

A detailed discussion is proposed on the Board meeting on July 31, 2015.

Overview

Status as of today

Sections notified

1 section w.e.f 30.08.2013
98 sections w.e.f 12.09.2013
1 section w.e.f 01.04.2014
183 sections w.e.f 01.04.2014

187 yet to be notified

Circulars/ Notifications issued

Various Circulars / Notifications issued with respect to clarifications of notified sections

Orders issued

8 removal of difficulties orders issued

Rules notified

21 Chapters

Companies Act, 1956 and Companies Act, 2013 co-exist.

Key aspects

- Enhancement in the charters
- Internal Financial Controls - Director's responsibility
- Risk Management
- Fraud prevention and detection
- Compliance Framework
- Oversight vis-a-vis the subsidiaries
- Director's evaluation
- Immunity to Independent Directors under certain circumstances
- Related Party Transactions
- Other significant provisions

Enhancement in charters

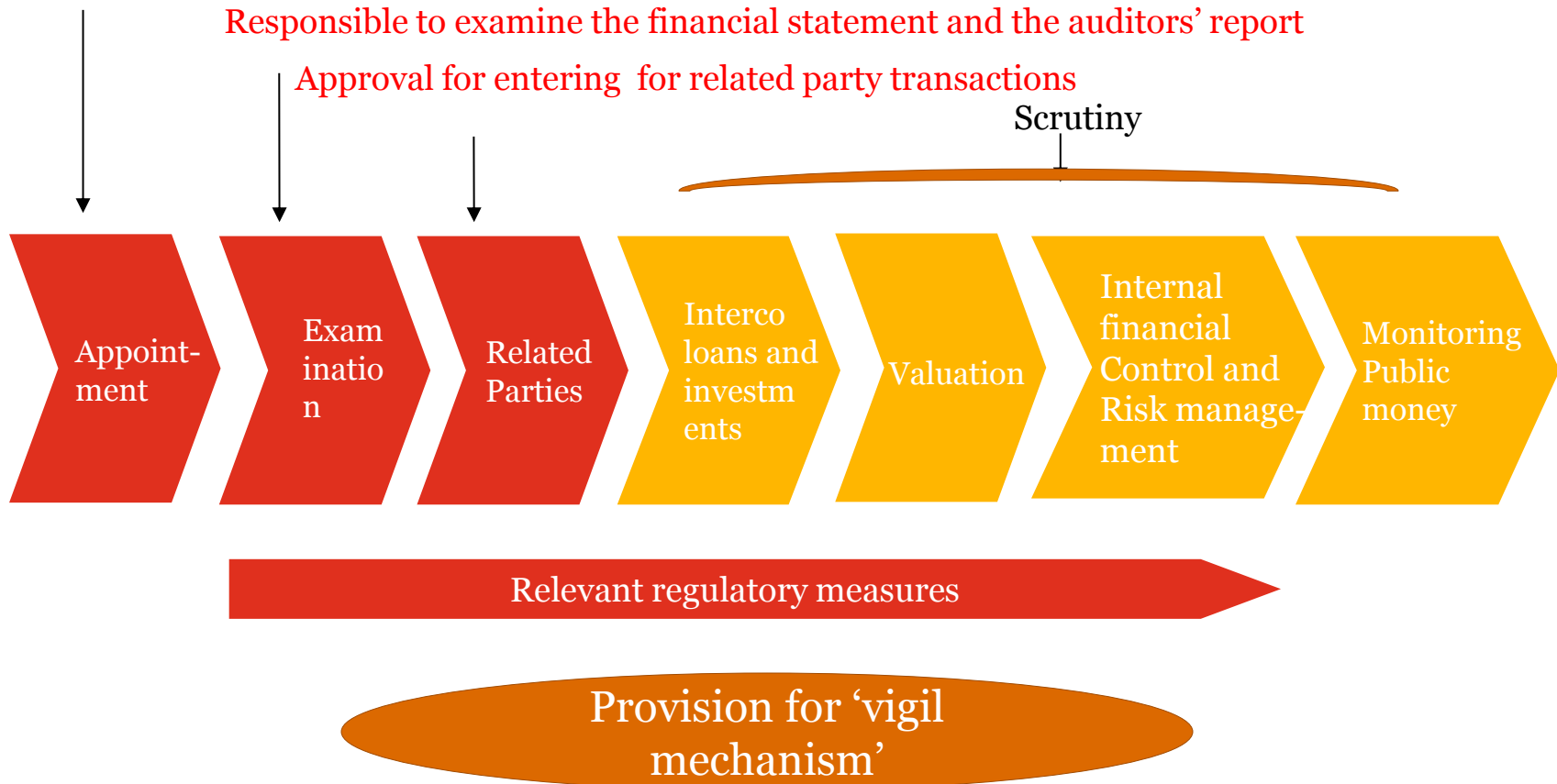
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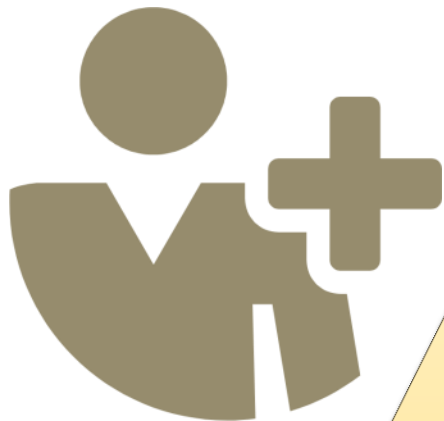
Audit committee [Sec. 177]: Increasing roles and responsibilities

Composition: Minimum 3 directors *with independent directors forming majority*

Auditor appointment to be monitored by Audit Committees



Duties of Independent Directors (specimen)



At least one
separate
meeting of
Independent
Directors
(annually)

extended towards protection of environment and community – Sec 166(2)

to exercise due and reasonable care, skill and diligence and independent judgment – Sec 166(3)

safeguard the interest of all stakeholders, particularly the minority shareholders – Sch IV

devote sufficient time and attention for informed and balanced decision making – Sch IV

independent judgment on issues of strategy, performance, risk management, resources, key appointments/ removal, remuneration, conflict management – Sch IV

address concerns about the running of the Company and record in minutes, if not addressed- Sch IV

Director's Report: Additional Disclosures

Sec 134(3)

Development and implementation of ***a risk management policy***

Contracts with ***Related Parties with justification***

Extracts of ***Annual Return***

CSR policies and initiatives

Director's Report: Additional Disclosures

Sec 134(3)

System of **compliance** with provisions of **all applicable laws**

Adequacy and **operating effectiveness** of internal financial controls

Manner of formal **evaluation of the Board, its committees and individual directors**

Internal financial controls

2



Building a demonstrable controls framework...

1

Key constituents



2

Process Level Controls

Create inventory of **key existing internal controls** in the form of **Risk & Control Matrices**

Review adequacy of existing controls to identify **design level gaps** and **institute new controls**

Financial Reporting Controls eg revenue recognition, reconciliations – bank, GL etc, physical verification of assets/inventory

Operating/Business Controls – controls around tendering, production reconciliations, recruitment etc.

3

Test Operating Effectiveness of Controls

Control Self Assessment Framework

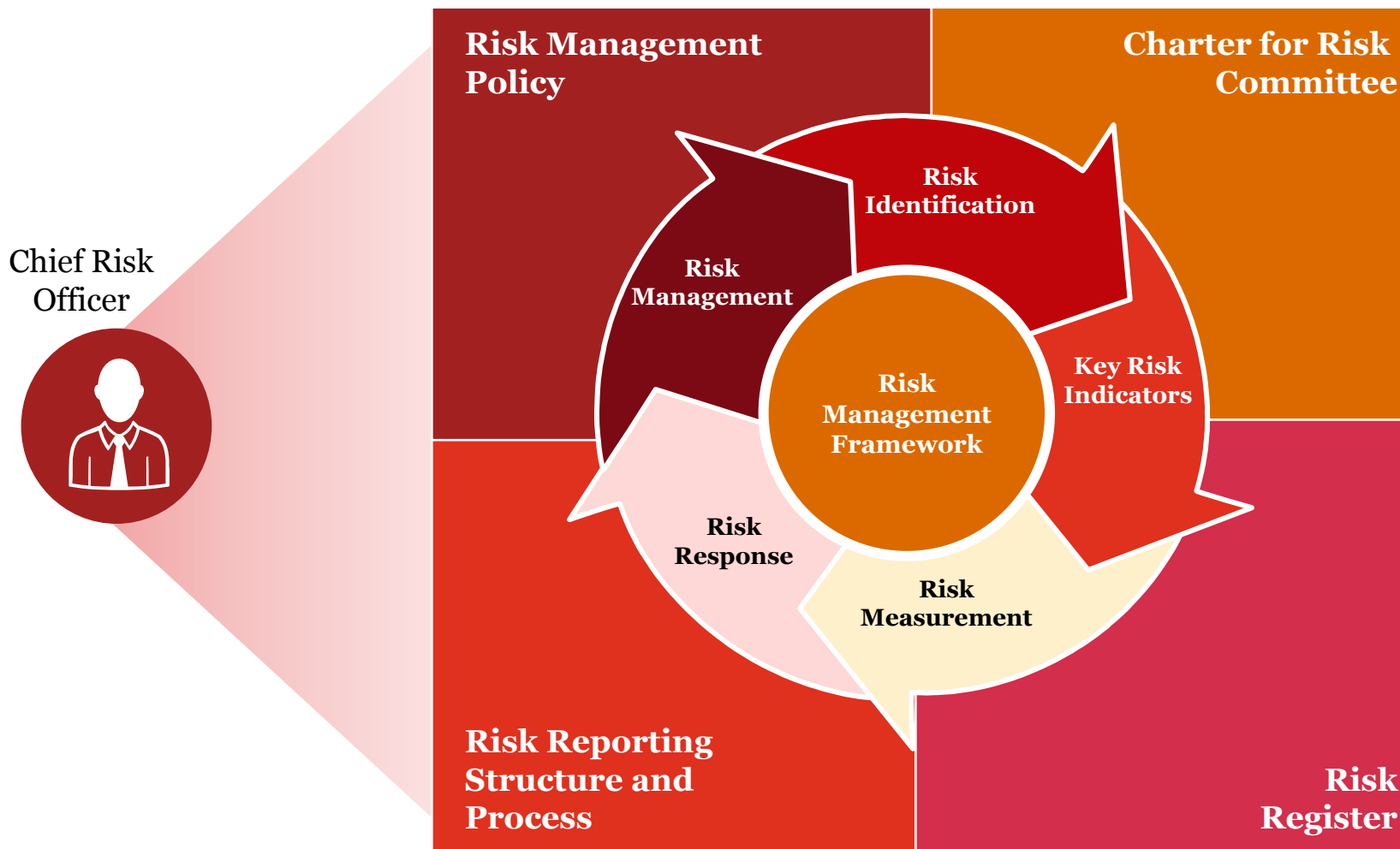
Sample testing by Internal Audit Team

Risk Management

3



Building the right components



Demonstrable anti-fraud framework

***Fraud**' now defined as any act of omission, concealment of any fact, abuse of position, connivance with intent to injure the interests of the company, shareholders, creditors, any other person*

1

Entity level

Phase 1

Establish **whistle blower framework** (Policies & Procedures)

Define code of conduct and existing policies to cover sensitive accounts such as gifts, travel & entertainment etc.

Employee training and awareness

2

Business Cycle Level

Phase 2

Institutionalizing **fraud risk assessment framework** for business cycles and focus on areas with higher exposure to frauds .

Enable implementing appropriate anti fraud controls to highlight exposed items / red flags on an ongoing basis.

Phase 3

Institutionalizing **proactive fraud analytics and monitoring** by leveraging ERP system

Developing system queries (factoring business rules) to generate red flags report to identify potentially fraudulent transactions.

Building a qualitative risk register...



Sources of Risk

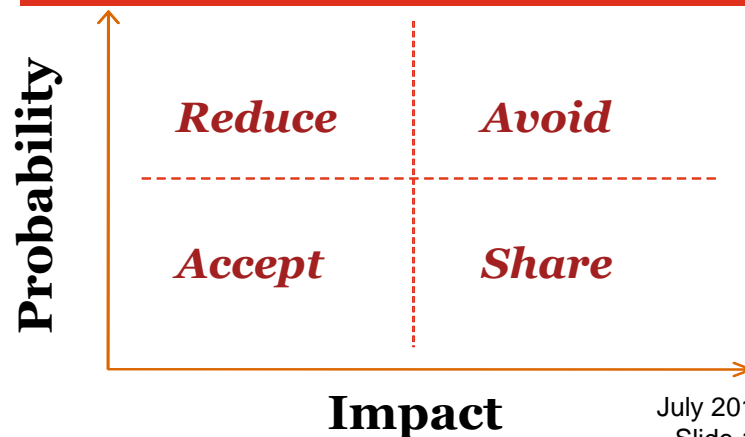
Internal

- Strategy
- Structure
- Processes
- People
- Culture
- Technology

External

- Economic
- Social
- Political
- Technological
- Ecological

Risk Response/Mitigation

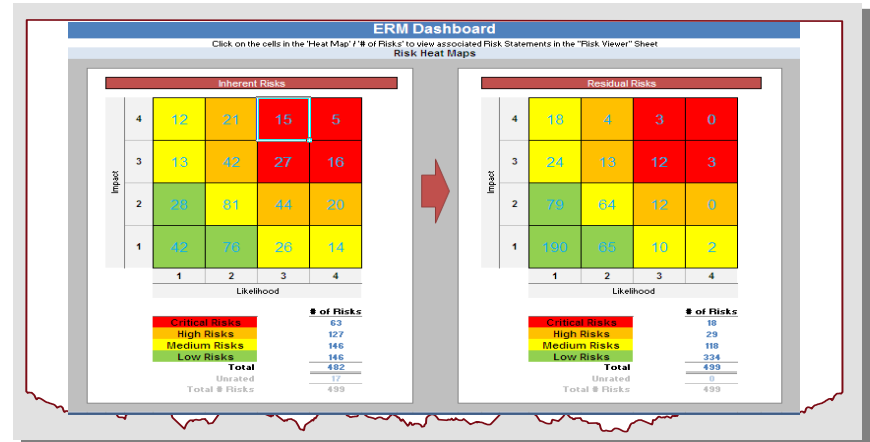


Illustrative Risk Management Outputs

Sample Risk Register

Risk Reference	Business Vertical	Department/Division	Business Objectives	Risk Event Description	Risk Category	Risk Classification	Risk Owner	Root Cause	Inherent Risk Rating			Comments	Current Mitigation Measures/Controls	Residual Risk Rating			
									Likelihood	Impact	Exposure		Mitigation Measures/control description	Likelihood	Impact	Exposure	

Sample Risk Profile



Sample Risk Assessment Criteria

	Impact Areas	Parameters	Measurement Reference
Impact	Financial	Impact on topline	% of revenues for the year
		Impact on bottom line	xxxx
	Customer	Impact on end customer experience	xxxx
		Impact on internal customer experience (partners/agents)	xxxx
	Process	Compliance to legal and regulatory guidelines	Regulatory breach and its consequences
		Compliance to internal policies	xxxx
	People	Impact at Top / Senior management	Unavailability of CXO & Senior Management Staff
		Impact at Middle Management	xxxx

Assessment	Description (Probability)	Rating Criterion
HIGH	Frequent or Probable	Current or continuous exposure
		Potential of occurring every 0 -1 years
		Has occurred in the last 0 -1 year
MEDIUM	Occasional or Possible	History of occurrence in the organisation / industry
		Will probably occur in next 1 - 3 years
LOW	Unlikely or Remote	Similar events have occurred within last 3 years in the organization and similar industry
		Would be unexpected if it occurs
		Occurs very rarely
		Practically impossible
		Has not occurred within the last 3 years in the organization and similar industry

Fraud prevention and detection

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Fraud [Sec. 447]

- Fraud is defined as any act of omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders, or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss.

Directors responsible for taking sufficient care for preventing and detecting fraud and other irregularities – Sec 134(5)(c)

Directors and management could be held responsible if there are materially false statements or omission of any material facts in any document required by the Act – Sec 448

Imprisonment – 6 months to 10 years. Minimum of 3 years where public companies are involved

Changes from 1956 Act

Punishment where there was none prescribed

Criminal liability included where it was only civil liability

Option of compounding removed where such option existed

Manifold increase in monetary fines + period of imprisonment

Auditor to report to Central Government if has reason to believe that an offence involving fraud is being or has been committed against the company by officers or employees of the company

Compliance framework

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Building a robust compliance framework...

Define the CCO Charter



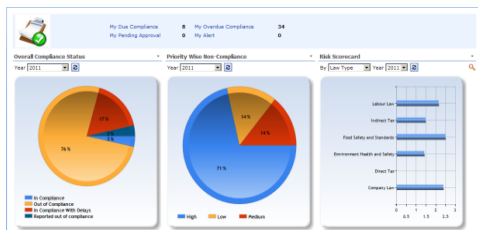
Comprehensive Compliance Landscape

Compliance Area	Compliance Type	Compliance Category	Compliance Description	Compliance Status	Compliance Risk	Compliance Impact	Compliance Response	Compliance Review
1	Compliance Area	Compliance Type	Compliance Description	Compliance Status	Compliance Risk	Compliance Impact	Compliance Response	Compliance Review
2	Compliance Area	Compliance Type	Compliance Description	Compliance Status	Compliance Risk	Compliance Impact	Compliance Response	Compliance Review
3	Compliance Area	Compliance Type	Compliance Description	Compliance Status	Compliance Risk	Compliance Impact	Compliance Response	Compliance Review
4	Compliance Area	Compliance Type	Compliance Description	Compliance Status	Compliance Risk	Compliance Impact	Compliance Response	Compliance Review

Define responsibility and accountability



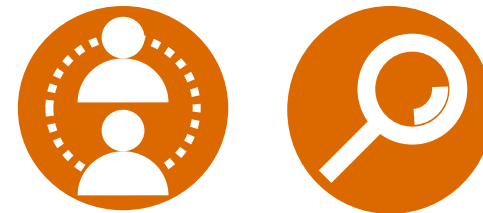
Use of Technology/ Tools



Increase Awareness and Sensitivity



Continuous compliance monitoring & Health checks



It is imperative to define the compliance landscape...

Illustrative Landscape

Labour & Social Security

- **The Contract Labour Act***
- **Factories Act***
- **Minimum Wages Act***
- Shops and Establishment Act
- **Employees Provident Fund***
- Employees State Insurance
- Payment of Gratuity Act,
- Employees' Compensation Act,
- Employment Exchanges Act,
- Equal Remuneration Act
- Maternity Benefit Act,
- Payment of Bonus Act,
- Payment of Wages Act,
- Prevention of Sexual Harassment
- Trade Unions Act
- **Child Labour Prohibition***

Tax Laws:

- **Income Tax Act ***
- Service Tax,
- Wealth Tax Act
- **Customs Act***,
- **Central Excise Act***,
- Value Added Tax & Sales Tax
- Professional Tax

Corporate Laws:

- **Companies Act***,
- **Foreign Exchange Management***
- Competition Act
- **SEBI Regulations***
- **Listing Agreement***

EHS Laws:

- **Environment Protection Act***
- **Air Pollution Act***
- **Water Pollution Act***
- Noise Pollution rules
- Batteries Management and Handling Rules
- **Hazardous Waste Management Rules***
- E-waste Management Rules
- Water Cess Act
- Manufacture, storage and import of hazardous chemical rules
- Boilers Act read with rules
- **Explosives Act read with rules***
- Plastic waste management rules
- Energy Conservation act
- Fire Extinguisher code

Operations Specific Laws

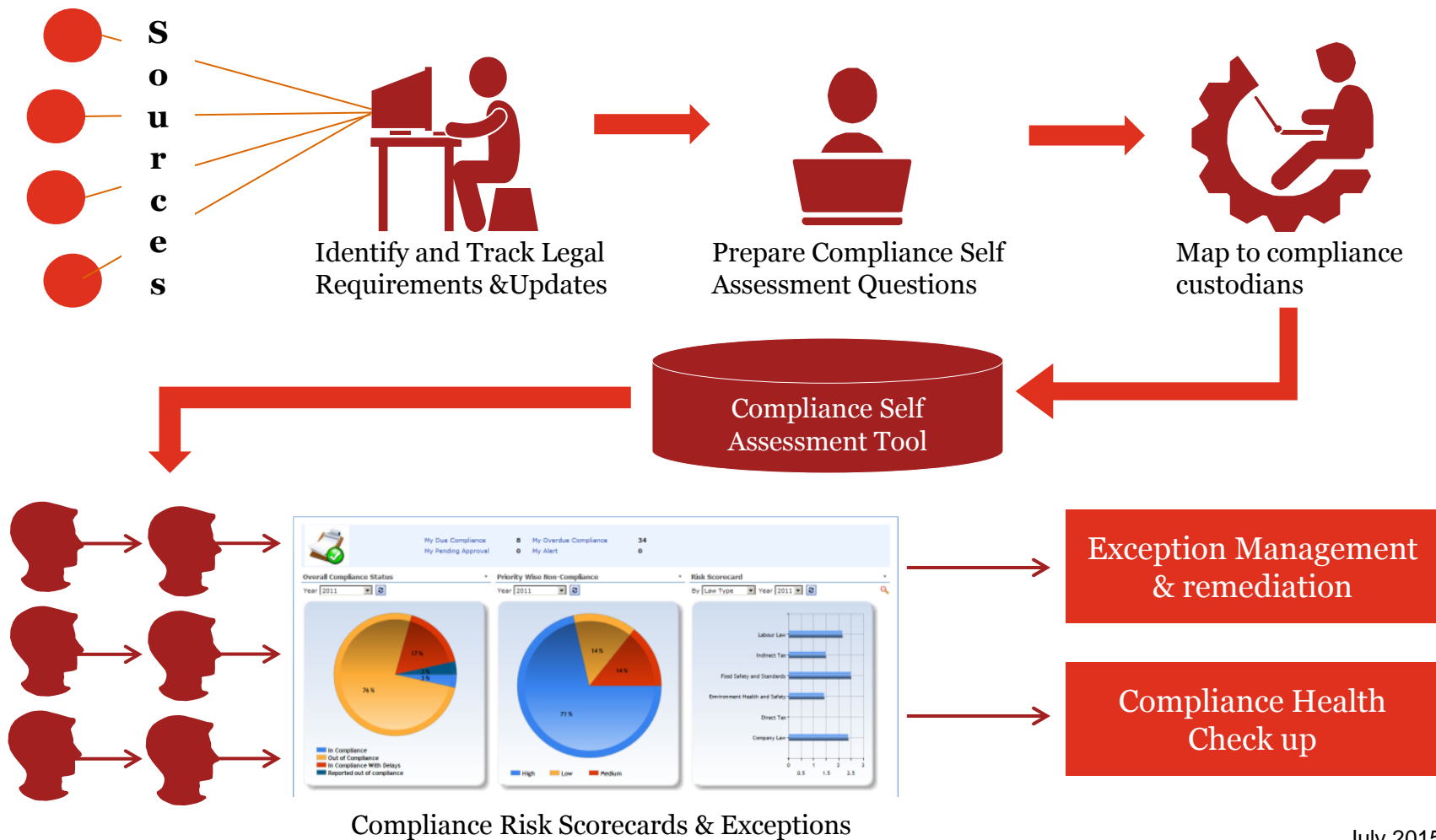
- Food Safety and Standards Act
- Tamil Nadu Catering Establishments Act
- **Legal Metrology Act***
- Gas Cylinder Rules
- Essential Commodities Act and product specific orders
- BIS Standards

Misc Laws:

- **Information Technology Act**
- Motor Vehicles Act
- Trademarks, Patents and Copyrights
- Registration Act
- Indian Stamp Act
- Collection of Statistics Act
- Prevention of Corruption Act

** Laws which have severe penal consequences including imprisonment and regulatory vigilance*

Leading companies leverage on technology for compliance monitoring...



Oversight of subsidiaries

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Oversight of subsidiaries

Clause 49 requirements

Companies Act 2013, does not have any significant explicit requirement for oversight of subsidiaries

Clause 49 under sub-clause (V) categories oversight requirements with respect to subsidiaries under following categories:

- All subsidiaries
- Material non-listed Indian subsidiaries
- Material subsidiaries

Having more than 20% of consolidated networth / revenue

Requires policy formulation for determination of 'material' subsidiaries (policy disclosure on website and annual report)

Material subsidiary – minimum threshold – Investment exceeds 20% of consolidated networth or revenue is 20% of consolidated networth

Oversight of subsidiaries

Clause 49 requirements

All

- AC to review of financial statements, in particular investments
- Minutes to be placed before Board

Material non-listed Indian

- One ID to be director

Material

- Board to be informed about all significant * transactions / arrangement
- Shareholding reducing below 50% requires shareholders approval
- Selling, disposing or leasing of more than 10% of subsidiary assets

** (10% of subsidiary's assets / liabilities / revenue / expense)*

Director's evaluation



Board Performance Evaluation

Section 134 (3)(p) of CA, 2013

Applicable to the following companies:

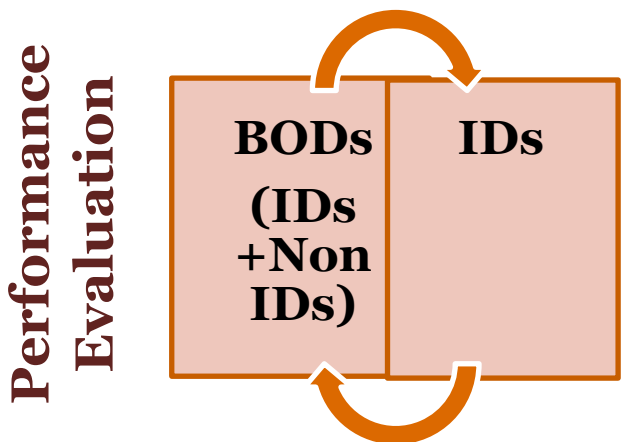
- **Listed Companies**
- **Unlisted Public companies with paid up capital > INR 25 Crores**

Section 149 (8) of CA, 2013 read with Schedule IV

- IDs review performance of each Non IDs and the Board as whole
- IDs review performance of chairperson
- Board review performance of each IDs (In the absence of ID being evaluated)

Clause 49(II)(B)(5) of Listing Agreement

- Board review performance of each IDs (In the absence of ID being evaluated) and nomination committee to lay down the evaluation criteria.



Section 134 (3)(p) of CA, 2013

Board to disclose in the Directors' report the manner in which formal annual evaluation has been made for:

- 1. Board's performance**
- 2. Performance of committees**
- 3. Performance of individual Directors**

Immunity to independent directors

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Immunity to independent directors

Sec. 149 – Independent Directors and Non executive directors (being non-promoter / non-KMP) shall be liable only if:

- Omission / commission by the Company with his knowledge, through board process and
- With his consent / connivance or where he did not act diligently

Creating the Safety net for IDs / NEDs



A strong Company
Secretary's office

A robust business
controllership Function

Oversight by internal and
external auditors

An effective and functional
whistle blower mechanism

Risk Management Programme
integrated with business

Ability to demonstrate due diligence = Ability to claim Immunity

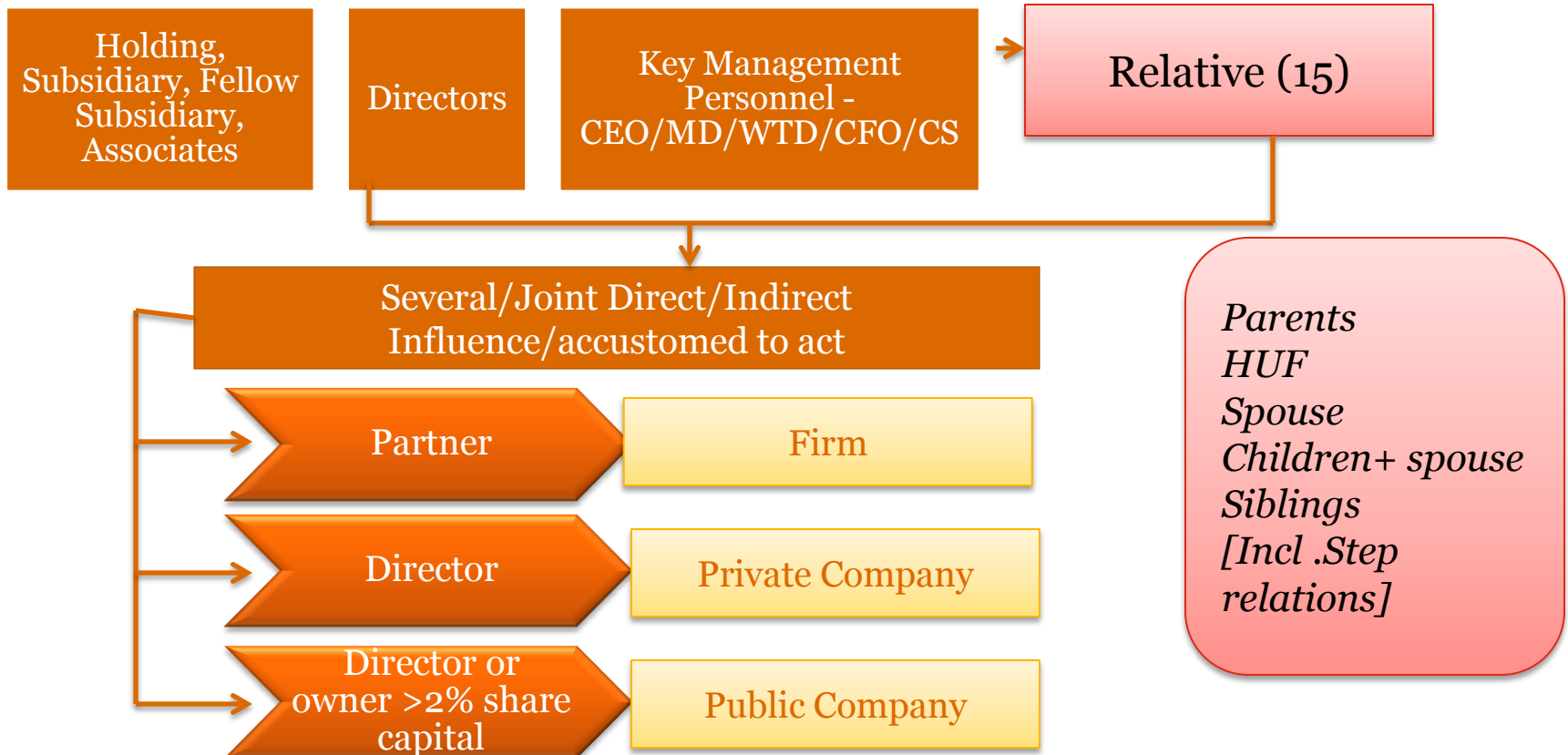
Related Party Transactions

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Related Party

Definition [Sec. 2(76)]



Differs with the AS 18 definition

Related Party Transactions

Additional requirements of Revised Clause 49

- Formulate a policy on dealing with Related Party Transactions (RPT)
 - ***Policy to be disclosed in website & Annual Report***
- All RPT shall require ***prior approval*** of the Audit Committee, except with wholly owned subsidiary. However, omnibus approvals are allowed.
- All ***material RPT*** shall require approval of the shareholders through special resolution and the ***related parties shall abstain*** from voting on such resolutions
 - ***Materiality defined*** as 10% of consolidated turnover
- ***Transitional Provision:*** All existing material related party transactions expected to continue beyond March 31, 2015 to be placed before the first General Meeting subsequent to October 1, 2014 for approval

Other Significant Provisions

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Other Significant Provisions :

Board and Directors:

- Board to approve appointment / removal of KMPs and take note of appointment/ removal of 1 level below KMPs – Sec 179(3), Rule VIII of Chapter XII
- Minutes of the Board meeting to be circulated within 15 days. Every director who attended shall confirm or give comment within 7 days or reasonable time determined by Board, failing which his approval will be assumed [Rule 3(12) of Chapter XII]
- The erstwhile 274(1)(g) disqualification is extended to all Companies and not just to Public Companies - Sec 164
- The Directors will be required to monitor compliance by all the Companies in which they are Directors – Sec 164

Declaration and Payment of Dividend:

- Voluntarily transfer a portion of its profits to reserves. - Sec 123
- Companies cannot declare dividend on equity shares in case of failure to comply with the provisions of acceptance / repayment of public deposits prior to the commencement of the Act- Sec 123

Thank you