Chapter II
ORGANIZATION

2.1. Role of Governance Control and Legal function

Change is the most constant activity in the corporate world. Most of the changes in the corporate world are result of globalisation and economic liberalisation. These changes also lead to certain ancillary changes such as change in work culture and change in ethics. The most crucial and positive outcome of continuous changes resulted to build good governance, control environment and compliance framework in the organisation. Governance Control and Legal (GC&L) functions have made vital contribution in Corporate Governance. The concept has been known in both political and academic circle since old era, Corporate Governance is not mere corporate management; it is exhaustive process to ensure fair, efficient, transparent and legally compliant administration to meet some well-defined objective of the organisation however it has been defined and critically analysed by World Bank and OECD various authorities.

According to World Bank “Good Governance and compliance environment is epitomized by predictable, open and enlightened policy. Making a bureaucracy imbued with professional ethics acting in furtherance of the public good, the rule of law, transparent process and a strong civil society participating in public affairs”

Organisation for Economic Cooperation and Development (OECD) “Governance and compliance are strategic use of authority and exercise control in organisation in relation to management of resources for cultural/ ethical and economic development”

The border definition comprehends the role of Governance Control and Legal functions in establishing the environment in which business activities of the organisation will continue without disruption.

GC&L function identifies the Key Risks for the company and Risk Mitigation Mechanism. Companies leverage GC&L functions to establish desired a regulatory and internal governance framework for sustaining governance requirements, evaluate risk across the organisation and tracking how the organization complies with the conventional governance requirements are
complied with. GC&L function characteristically support following functions to establish Governance across the Company.

2.1.1. **Role of GC&L at Information Technology department:**
Establish Information Technology related and Information Technology based governance. This includes Information Security and Data Privacy (which includes norms stated under Information Technology Act, 2000 and Rules made there-under, European Union Directives (EUD) on Data Protection (DP), UK and USA data protections laws which has extra territorial jurisdiction). Create controls such as firewalls and or security information management system, system controls automation (including automated compliance tools/software) and vulnerability monitoring tools, identity and access management system, business continuity planning, disaster management and recovery systems.

2.1.2. **Role of GC&L at Operations department:**
Organization must ensure that there is efficient operations department to support management and other functions. GC&L embedded control environment by supporting operations teams to have robust contracting process to mitigate any potential legal risk before engaging any supplier, client, vendor, to procure goods or services. Such engagement needs to be categorized by procurement team, concerned Legal team to recommend appropriate contract template based on the risk categorization, routine check on on-boarding and off boarding vendors on the panel of company. Operations department is key function of company hence it is important to demonstrate governance culture by way of conduct.

2.1.3. **Role of GC&L at Finance department:**
Inappropriate management of funds may lead to financial crises. GC&L support Finance team to ensure compliance with applicable tax laws, company laws, accounting standards/principles in the organizations. GC&L also renders services to Finance department while accepting funds and lending money. Engaging competent auditor and filing timely returns on behalf of company. Enhance awareness about international accounting standards by awareness trainings. Review segregation of duties to manage conflicting permissions, process-related business rules such as the signature requirements for expenses above a certain amount joint signatory, empanelment of multiple bankers, online expense approval
mechanism, issuing e-copy of Form 16, conducting anti-bribery and related party transaction checks before setting any vendor as approved vendor, online payment of invoice, system generated purchase order. Zero reimbursement of out of pocket expenses without submission of original bills.

2.1.4. Role of GC&L at Secretarial department:
2.1.4.1. Structure of the Board:

Once of the key function of Legal function is to guide other functions to ensure compliance with the applicable laws, hence it is important that composition of board is accordance with provisions stated under the applicable laws and also accordance with the principals of Corporate Governance. In the current era most of the listed companies’ board comprises with high profile individuals such as retired civil servants. The recommended position is combination of administrative experience and technical (subject matter) expertise. As Board member needs to work in a fiduciary capacity there should be combination of capability to lead the organization towards common corporate goal and at the same time ability of identifying the road blocks (which includes study of a market trend, application of new technology, monitoring existing quality of products against expectation of current market. Another important factor is adequate participation of a gender in a board, as it has been observed and recommended by several committees at national level that there should be appropriate representation of female/s in the Board of a company (though it is not a statutory requirement but as part of good governance it is a recommended approach). The role of in-house Legal Counsel is also important to ensure the existing structures of Board accommodate the requirement of having independent Director and they are empowered with required rights/ access, so it will balance the decision of Board. Also Legal Counsel to ensure that the term of an independent Director is not extended beyond 9 years (to uphold the sprite of having independent Director). In the listed Company Legal Counsel to review the powers and duties of Board, Chairman and CEO to avoid any conflicting situation (which may challenge principals of natural justice and good governance).
2.1.4.2. Supporting the Board:

Once Board’s compositions are decided then it becomes important to determine the key focus is to align the approach with the suggested CG guidelines/approach:-

(a) Each member of Board should have direct access to key functions of the company such as Legal, Risk and Governance, Tax, Finance, HR, Admin etc.

(b) The compensations and benefits to all Board member shall be at par unless there is any specific requirement (such as if a Director is heading Marketing department and need to travel across the world, then such Director shall be provided additional travel budget). In-case of listed company the salary and benefits to Directors shall be accordance with the prevailing market/industry practice (this should be supported by latest survey/statistical reports)

(c) There shall be adequate controls in place to monitor Related Party Transactions, Legal Counsel to timely circulate the guidance note to tap such Related Party Transactions.

(d) Legal Counsel should encourage each member of a Board to attend external conferences, seminars, master class to acquaint with the latest requirements of regulatory and statutory compliances. This will also be an networking opportunity for Directors to understand best practices adopted by other companies (w.r.t. Corporate Governance)

2.1.4.3. Efficient Planning of Meeting:

Legal Counsel Supports considerably to Company secretary for planning and holding board meeting, as par to good governance formalizing various committees at board level to monitor the business as usual activities of the Company. In listed companies board meetings can be conducted in the ideal range of 6 to 8, nevertheless this number may change based on the critical requirements of any specific industry.

Notice and agenda of a board meeting shall be sending well in advance to all the members, while deciding the agenda items for meeting inputs from senior
management and concerned stakeholders (e.g. CEO, CFO, CRO, CIO, etc) should be sought. This will be ensure the decision made during board meeting is in lines with the business requirements of a company and supportive of a common goal of organization. In addition to standard meetings of company special arrangement shall be made for certain meeting e.g. for audit committee meeting the discussion shall be kept confidential and should avoid invitee members unless otherwise required to provide necessary justification to auditors. Also presence of external auditor is recommended in such meeting to provide future compliance guidance to board members.

2.1.4.4. **Self-review:**

Board conducts annual self-assessment to evaluate performance during last year. This will be opportunity to review the decisions made during past year and decide next plan of action for next year. GC&L department should support and guide board members for conducting such self-assessment. Alternatively board can engage external agency having required experience and expertise to conduct such activities.

2.1.4.5. **Risk Management:**

GC&L department works in-conjunction with CEO, CIO and board members to set process to identification of risk, having risk mitigation mechanism, and ensuring logical closure of all such risks. If board may deem fit they can designate Whistle Blowing officer in each department. This will provide additional opportunity to all the employees to highlight any potential risk to board. GC&L department should investigate such matter and provide final report to the board members.

2.1.5. **Role of GC&L at Human Resource (HR) department:**

Human Resource is one of the important ‘M’ (out of machine, material, money and man) for the growth of any Organization. GC&L works closely with HR department of any company. It is important that the employee related policies introduced by HR are complying statutory requirements stated under Law of Land, all these policies are aligned with internal guidelines (main theme of the company) and mapped with the other group companies (in-
order to provide equal benefits to the employees). All HR policies need periodic review, either change in legislative requirements or to meet business requirements, in-case of review while altering polices to cope up with business requirements it shall not supersede/ set aside statutory requirements. HR-Operations always synchronize with GC&L team while acting as frontier for actual statutory (labour/ employment law related) compliance such as filing returns, maintain records/ registers, etc. GC&L guide HR-Resourcing (recruitment) while hiring new resources from Vendor/ Client to ensure Company is not violating contractual obligations such as non-solicitation/ no-hire, also while hiring resources from other country it is important to ensure if there are any restrictive legends on the passport of such resource which may restrict him/ her to travel, trade, accept occupation outside the home county, verifying his visa rejection history, whether such resource is under trial of any court which requires his/ her periodical presence in the home country. It is important for Rewards and Benefits team to engage GC&L team while deciding/ altering payment structure, perquisites for the employees such as bonus, subsidize loan scheme, annual increments, etc. Employee relations is another team in HR which requires ongoing intervention of GC&L team, on the event of dealing with any employee grievances, disciplinary situation, employee capability/ performance issue, harassment at workplace and while conducting investigations for all such matters.

2.1.6. Role of GC&L at Administration department:
The Department of Administration is the nodal function of any company; they monitors day to day function of a company which includes Physical Security, House Keeping, Space Management, Fixed Asset Management, In-house Engineering/ Maintenance, and Company Transport.

2.1.6.1. Physical Security team: Guard Board (Private Security Guards Act) related statutory compliances, proper checks on inwards and outwards of goods, no access to any outsider unless there is email approval from concerned BU head, background verification (including Police verification) of security personnel before employing robust access control system, restriction to bring in any personal IT device (laptop, pen drive, CD, any other devise capable of staring and carrying data outside the company),
review of collection of access cards while separation from company (end of employment), periodical testing of CC TV cameras, Fire and Safety mock drill.

2.1.6.2. **House Keeping**: Hospitality of gusts and employees, ensuring hygiene and sanitation at cafeteria, quality check of the food serve at company cafeteria, recreation hall and all the equipment’s (Table tennis, Pool, Carom, Chess, and TV sets).

2.1.6.3. **Space Management**: Routine meetings with each Business unit to understand space requirements, space allocation considering nature of business activities, forecasting of new requirements, electronic room booking system for meeting/ events and synchronization with on-boarding team.

2.1.6.4. **Fixed Asset Management**: Nominal roll (numbering) to all fixed assets, monthly review of fix asset, Monthly Information System (MIS) of annual depreciation of assets, in-case of change of location restaging assets.

2.1.6.5. **In-house Engineering/ Maintenance**: Each company has standard norms related to color combination, interior designs hence compliance with such internal norms, adherence with National Building Code, green initiatives wherever possible, while decommissioning good/ assets compliance with guidelines issued by Environmental Board, Zero down time of power supply, and maintenance on weekly offs.

2.1.6.6. **Company Transport**: Free transport with protection to female employees before 6:00AM and after 8:30 PM, Formation of transport committee with representation of male and female employees, Monthly routine meeting to monitor closure of issues, GPS systems at Buses/ Cabs to track rout and speed, Displaying emergency contact numbers inside the bus/ cab, background verification (including Police verification) of drivers before employing, zero tolerance for drink and drive instances, drivers shall be briefed on periodical basis on new traffic rules.
2.2. GC&L focus areas:

2.2.1. Risk management:
Identifying Key Risks for each function, discussion on those risks with concerned department to design risk management plan. Designating concerned risk owner for each
department, who can further become first point of contact in case of any risk event. Monthly meetings with these risk owner and first point of contact to discuss for closure status of existing risk and mitigation plan for any new/ potential risk. There has to be following key positions in each company to manage risk event:

1. Chief information security officer
2. Chief governance officer
3. Chief legal officer
4. Chief ethics officer
5. Chief security officer
6. Chief risk officer
7. Chief compliance officer
8. Chief privacy officer

2.2.2. Compliance:

*Compliance is not an activity but a culture* which lead business at sustainable growth. It is important to enhance awareness around various compliances within business few of them are listed below:

1. Statutory Compliances (Compliances stated under various laws)
2. Regulatory Compliances (Compliances laid down by regulatory authorities e.g. RBI, SEBI, TRI, IRDA, etc.)
3. Contractual Compliances (Obligations set out under contract with vendor or client)
4. Internal Policy Compliances (Compliances stated under various company policies, ethics, code of conduct, etc.)

To evaluation degree of compliances conducting periodical reviews, checks, and obtaining self- attestations from respective compliance owner. There shall be escalation matrix which will trigger non-compliance to higher management to mitigate the potential liability.
Figure 1.10

**Corporate Governance structure of Reserve Bank of India**

2.2.3. **Governance**

Establishing tangible governance in the company is to provide resilience to the business. The good governance agenda is idealistically long and emergent longer over time. Among the congregation of governance reforms that “must be done” to encourage development and reduce risks, it is important while making business decisions that what should come first and what should follow, what can be achieved in the short term and what can only be achieved over the longer term, what is feasible and what is not. If adequate devotion is given to sorting out these questions, “Good Corporate Governance”
may become a more realistic goal for many companies/organizations encountering any business crisis. Working toward Good Corporate Governance means adapting a more nuanced understanding of the evolution of institutions and organizational capabilities; being obvious about trade-offs and significances in a world in which all good things cannot be pursued at once; absorbing about what's operational rather than focusing merely on Corporate Governance gaps; taking the role of organization in crisis mitigation seriously; and grounding action in the contextual realities of each company.

2.3. **Barriers to achieving Corporate Governance:**

2.3.1. There are few establishments which do not have full-fledged approach in the direction of establishing Corporate Governance.

2.3.2. Corporate Governance program in India is facing complication because of its technically.

2.3.3. Existing technologies/governance framework is not adequate to support Corporate Governance objective.

2.3.4. Another most identified barrier is internal powerlessness in the originations which prohibit from establishing good governance.

2.3.5. Important matter-of-fact is problems to employ proficient resources in GC&L function.

2.3.6. Lack of C-level support, i.e. lack of support from Company, Colleagues, Cost and company Culture.

2.3.7. Organization has their own priority list and Corporate Governance is not top priority for such Organization, sometime Corporate Governance is not even part of priority list.

2.3.8. Merger-Acquisition, Change in market trends, Economical changes lead to organizational changes, which also result in negligence towards Corporate Governance objective.

2.3.9. Incase leadership has no roadmap for the organization, then such leadership will always focus on immediate gain however they miss to attend long term goal of Corporate Governance.

2.3.10. Incase process are completely governed by automated tool (purely technology driven), wherein required awareness/training is not provided to users then it could be a reason of failure to meet Corporate Governance objective. Lack of cooperation and collaboration.

2.3.11. Unavailability of required resources (i.e. man power, technology, governance framework, etc.) may be a reason on inability to establish Corporate Governance in the organization.
2.4. **Key activities to establish Corporate Governance with the help of GC&L function:**

2.4.1. **Risk Assessment:**
Each function need to assess risk areas for respective function and share such details with GC&L team along with the proposed risk mitigation plan which will provide resilience to business.

2.4.2. **Advising the organization:**
GC&L function to advise each function on the risk management framework and ongoing compliances to eliminate any legal liability on the Organisation.

2.4.3. **Reporting of events:**
In-case of any risk event (though prospective) it shall be reported promptly to GC&L team for their inputs, GC&L shall promptly advise on the next steps to mitigate the risk

2.4.4. **Training and awareness:**
GC&L function to conduct training (classroom training/ online training) to enhance awareness about the governance and compliances. Such training shall be mandatory for all the grades of employees.

2.4.5. **Circulating Legal and Regulatory updates:**
GC&L shall ensure to circulate all the Legal and Regulatory updates to relevant departments to enable them comply with new requirement/ compliance. This would also make their internal customers life easy by sharing requirement promptly.

2.4.6. **Creation and implementation of internal policies in lines with legal requirements:**
All the internal polices, process, guidelines shall be designed in a manner to ensure compliance set out under applicable laws.

2.4.7. **Reporting all risk to senior management:**
Organisation wide risk tracker shall be maintained which shall be updated on periodical basis, this tracker should provide high level overview of all existing and new risk of the organization.
2.4.8. **Developing strategies to ensure business continuity:**
There shall be robust business continuity planning, which shall be reviewed and evaluated on annual basis to ascertain effectiveness of this plan.

2.4.9. **Compliance review:**
This includes but not limited to periodical review of compliance checklist to make it more comprehensive. Half-yearly conformance testing shall be carried out evidence of compliances.

2.4.10. **Business process analysis and Business process mapping:**
Analyzing current business process to understand if these processes are substantially contributing to organizational growth, else mapping these processes with targeted organizational goals to ensure these processes are ample to accelerate business growth.

2.5. **Corporate Governance and Enterprise Risk Management:**
Establishing good governance in the establishment is not possible without effective enterprise risk management. This precisely includes the establishment should have in-house Governance and Control function which defines risk portfolios for each department of the corporation and controls to mitigate identified risks. This is expanded form of the traditional risk management framework wherein respective risk is managed by respective functions (e.g. operations risk, commercial/financial risk, reputational risk, Legal risk, etc.). Centralised risk function will oversees the risk management activities of respective function. This ensure comprehensive risk management framework in the establishment.

The Enterprise Risk Management is closely associated with the Corporate Governance as this provides high level of comfort to stakeholders and investors because enterprise risk management establishes high level of transparency, accountability and allows management of foresee the risk/crisis situation. Though implementation of enterprise risk management in any establishment is costly and it requires heavy investment but it provides upper edge in the competitive environment.
While Enterprise Risk Management is turned as useful tool to achieve good governance in the establishment it is also revealed during various research that there are establishment wherein enterprise risk management is present however the there is no Chief Risk Officer or enterprise risk management function reports to some other department head (and not to the CEO or MD).

2.6. **Corporate Governance and Legislative measure in India:**

2.6.1. **Defense Rule of India, 1943:**

The Rule was enacted to keep an eye on and prohibit capital flow in the merchandise which are essential for the citizens and need to use/consume on day to day basis. This legislation was passed by the parliament during Second World War.

2.6.2. **The Capital Issues Control Act, 1947:**

The legislation was introduced with the multiple objectives such as protecting the interests of investors, promoting investments in the capital market, motivating establishments to set up muscular capital structure. Separate government department namely Controller of Capital Issues was set up to monitor all the movements related to capital market.

2.6.3. **The Securities Contracts (Regulation) Act, 1956:**

There was heavy growth in the capital market, as investment in the capital market was immerged as new trend. The earlier legislative measures (i.e. The Capital Issues Control Act, 1947) were turned inadequate and ineffective to manage and monitor the activities related to capital market and there was need to improvise the existing legislative monitoring. Hence The Securities Contracts (Regulation) Act, 1956 was introduced by the parliament of India with the primary intent to support establishments in India during five-year plan and enhance comfort level in the investors. The legislation was further amended to accommodate the requirements of good governance including the prospective needs to public companies (listed establishments to stock exchange).

2.6.4. **Company Law Board:**

The Company Law Board (CLB) was set for the grievance redressing of stakeholders, corporations, agents and investors. Company Law Board addressed
the grievances from the company law perspectives. Further companies act was amended second time in 2002 and all the matters pending with company law board were transferred to National Company Law Tribunal.

2.6.5. **Companies Act, 1956:**

The hardcore legislation governing and providing legislative protections to companies was passed during 1956 as Companies Act, 1956. This law becomes bible for the all companies incorporated in India. Companies Act, 1956 also has various provisions which lead to good governance in the establishment.

2.6.6. **Securities Exchange Board of India Act, 1992:**

The Securities Exchange Board of India was established by the ordinance passed by the parliament of India. The key objective of the board was to provide guidance to companies’ w.r.t. Initial Public Offering, issuing bonus, debentures, trading guidelines, etc. This was useful platform for protecting interests of the small investors. The enactment was made by the parliament during 1992 to provide legislative status of Securities Exchange Board of India.

Figure No. 1.11

**Statutory Framework of the Stock Market and Corporate Governance**

Source: Clause 49 of Listing Agreement (prescribed by Securities Exchange Board)
Securities Exchange Board of India as regulatory authority is empowered to adjudicate the matters wherein norms of Corporate Governance are violated by the company. SEBI primarily work to ensure rights of investors are protected and member are complying with the requirements laid down from time to time. SEBI perform following activities broadly:

1. Acting as regulator and rules maker for various products listed to board.


3. Inspecting books of accounts and setting frequency for filing various records in the form of returns.

4. Inspecting books of accounts and other relevant records of the Financial Intermediaries.

5. Issuing mandate to certain corporations to list their shares to more than one stock exchange.

6. Enhancing awareness amongst investors and organizing knowledge sharing sessions.

7. Acting as adjudicator for the complaints made to the board (for violation of the rule or guidelines made by the board).

8. Ensuring that insider training discouraged in each company listed to stock exchange.


10. Controlling activities related to issuing capital and debt in market.

11. Restricting unfair trade practices and exploitation of market.

12. Formulating guidelines related to Corporate Governance.
Process for adjudicating matters referred to SEBI

1. Occurrence of breach of SEBI rules/guidelines/policy/procedures
2. Obtaining information from respective Stock Exchange
3. Appointing adjudicating officer
4. Show cause notice to defaulter
5. Rely to notice and appearance before board via representative
6. In-case no reply received within timeframe then ex-parte order
7. Commencement and completion of investigations and final verdict by board

SEBI may recommend for inquiry, completions of enquiry, issuing summons for gathering evidences, submission of enquiry report to SEBI and show cause notice to defaulter

Source: The Securities and Exchange Board of India Act, 1992