

Elevated status of Company Secretary as Compliance Officer under the amended SEBI(LODR) Regulations, 2015

As the fraternity is aware, SEBI has through amendments introduced to the LODR Regulations in the month of December 2024, made a slew of changes to give effect substantially to the recommendations of the Expert Committee appointed by it ostensibly to review the provisions in the above Regulations with the intent to ease considerably the economic environment relating to conduct of business by listed companies in India.

One of the significant changes brought about by way of an amendment relates to the status of the Compliance Officer who is also the Company Secretary of the Company.

Regulation 6(1) of LODR contemplates that a listed company shall appoint a qualified Company Secretary as the Compliance Officer.

A proviso under Regulation 6(1) has been introduced with effect from December 12, 2024, to stipulate that the Compliance Officer shall be an officer of the company in the full-time employment of the company who stands at a level in the corporate hierarchy not more than one level below the Board of Directors who shall also be designated as a “Key Managerial Personnel”. The term “officer” for the purpose of this proviso shall carry the meaning assigned to it under Section 2(59) of the Companies Act, 2013 (hereinafter referred to as “The Act”) and Key Managerial personnel shall be one who is described as such under Section 2(51) of the Act. A Company Secretary falls within the ambit of the definition of the above term under Section 2(51).

It is common knowledge that a Company Secretary has to discharge a huge volume of responsibilities while carrying out his onerous duties, in particular in the context of a listed entity where there is a constant interplay between the Act and the Listing Regulations, accentuated by the fact that in many

circumstances there is considerable divergence of views in terms of concepts and principles between the two set of regulations.

The Company Secretary is the catalyst of the corporate governance movement and he has to show his prowess while navigating his way through the slew of intricate legislations which impact corporate operations and he has to guide the Board and the directors while articulating on intricate matters. Both the Act and the LODR Regulations recognize his role as an important cog in the wheel of the organizational framework.

In fact, it is fair to say that in the context of the present legislation where corporate governance is the hallowed mantra, the Company Secretary’s role has grown exponentially as compared to the times when the old Act of 1956 was in force as also when the listing regulations were pretty much innocuous and inert, as the need for corporate governance had not been felt in those times due to the protected economic environment that prevailed back then.

Given the humongous responsibilities that he has to shoulder, it is but fair that the Compliance Officer should have a place of prominence in the corporate hierarchy so that the board as also the peers in the organization recognize his abilities, respect his erudition and consider him as an important component of the corporate decision making process.

It is precisely for this reason that the proviso as referred to above has been inserted under Reg. 6(1) to provide to the position of the company secretary, a much-needed face lift in his status. The proviso ordains that he shall rank in hierarchy at a level which is only one rung below the Board of directors.

The term “level” has not been defined for the purposes of the above proviso and it has to be given its natural meaning as understood in common parlance.

As per the lexicon, “level” refers to a position in a scale”. When used as a noun, it refers to the position of something on a scale of intensity.

The insert of the above proviso is a step in the right direction in that it has elevated the status of the compliance officer to a level which is commensurate with his multifarious skills.

If the intention of the Regulation were to only make him responsible and report to the Board without moving him up positionally in the corporate ladder, it would have been paradoxical and would have given rise to a position which would have been counterproductive and run contrary to the intent of law.

It would be blatantly unfair to make someone who languishes in the lower rungs of the corporate ladder and yet make him report to the Board.

The insert of the above proviso has, in a manner of speaking, set the cat amongst the pigeons, in that there is considerable confusion amongst the fraternity as to whether “level” in this instance refers to the position of his “reporting” or whether it refers to his position in the hierarchy of the company.

Some are of the erroneous view that his status in the corporate echelons would continue to remain unaffected whilst his reporting would be to the Board. Such an arrangement would be hackneyed, given the principles associated with delegation of Authority as conventionally followed in the corporate world.

The Scalar Chain Principle as propounded by Henri Fayol, emphasizes that there shall be a clear hierarchical line of authority and communication within the organization. Hence not moving up the Compliance Officer up the corporate ladder and yet make him report to the Board would result in considerable confusion which might imperil the organization’s well-being.

For reasons explained above, the obvious conclusion would be to look at the legislative intent which is to provide him a face-lift to the Compliance Officer in the corporate set up.

To clear the cobwebs of doubt that have been given rise to, SEBI has clarified vide its circular dated April 01, 2025, *inter alia*, that the term “level” used in Regulation 6(1) refers to the position of the compliance officer in the organization structure of the corporate entity (emphasis supplied).

The circular goes on to say that “one level below the Board of directors” means one-level below the Managing Director or the Whole Time Directors who are part of the Board of directors. The above interpretation shall also be in line with Reg 2(1)(o) of the listing regulations as also Section 2(51) of the Act.

The circular concludes on the note that where the listed company does not have a Managing or Whole Time Director, the Compliance Officer cannot be more than one level below the CEO or the Manager or any other person handling the day-to-day affairs of the company.

It is also pertinent to note that SEBI has issued two Informal Guidance both dated April 03, 2025 to clear the air further in the context of questions raised by [DCB Bank Limited](#) and [Pakka Limited](#). Both the Informal Guidance are substantially similarly worded except for the fact that the circumstances in each case is slightly different.

The moot point that emanates from the Informal Guidance is that both articulate on the usage of the term “level” as used in the Regulations. The term has been used in the context of *inter alia*, the “Compliance Officer”, “Senior Management” determining the number of independent directors required on the Board, information to be placed before the Board and in the context of SEBI (PIT) Regulations to determine the Code of Conduct applicable thereunder.

The Informal Guidance also emphasize on the point that the term “level” in the face of the proviso to Regulation 6(1) refers to the position a person is occupying in the organizational hierarchy. On the other hand, the usage of the expressions “reporting” or “report to” would mean the obligation of a person to communicate/submit his work or an issue to the concerned individual or body for consideration.

The Informal Guidance puts to rest all the speculation on the issue by referring to the rationale used by the Expert Committee for facilitating ease of doing business and harmonization of the provisions of the ICDR and LODR Regulations on amendments to Regulation 6 of LODR which is reproduced below:

Quote

“The Committee discussed the position of the Compliance Officer under the LODR Regulations and other laws. While different statutes have cast numerous responsibilities on the Compliance Officer, it was informed that the position of the Compliance Officer in a listed company is not commensurate to the responsibilities cast upon him. It was informed that in some companies Compliance Officer is a junior level person, generally two levels below the Board of directors and reporting to other KMPs/Senior Management (like CFO, legal head etc). Therefore, the Committee recommends the strengthening of the position of the Compliance Officer in order to effectively discharge his/her statutory duties and responsibilities”.

Unquote

The proviso under Regulation 6(1) referred to above encapsulates entirely the ethos of the Expert Committee as quoted above while endeavoring to elevate the status of the Compliance Officer.

To conclude, we can say categorically that the consequence of the insert of the proviso under

Regulation 6(1) is to elevate the status of the compliance officer in the corporate echelons to a position which is one rung below the Board.

Were it that the Regulation contemplated that he would only report to the Board while languishing at a lower level in the line of control, it would be foolhardy to expect him to discharge his responsibilities efficaciously. Such a situation would be only dysfunctional to the Company.

In the light of the above, it would be appropriate if the hierarchy of the Company Secretary is pushed up in the manner specified in the amended regulations.

In our view, it would be in order if the change in hierarchy is made effective from the beginning of the financial year 2025-26 or preferably as early as possible.

Conclusion

The Regulator has given the much needed “leg up” to the status of the Company Secretary. It is only fair for the corporate sector to expect him to rise up to the challenges that go with his exalted position. Corporate India should recognize what the Company Secretary can bring by way of value to the Board room and treat him accordingly as opposed to loading him up with mere administrative functions as was the perception some decades ago. The change in the Regulation has caused, we dare say, considerable heartburn in other professional circles which should disappear over a period of time once the Company Secretary shows his prowess in the Board Room and becomes an important conduit to the corporate governance process.

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