Compliance Landscape in India

B.N.Ramakrishnan
Chief Compliance Officer
Link Intime India Pvt.Ltd.

"Compliance" means "the act of obeying an order, rule or request" or "the state of meeting rules or standards".

Financial Market is the heart of any economy through which savings are channelized into effective short-term and long-term investments. A developed, vibrant and robust Financial Market contributes immensely towards speedy economic growth and development of the nation. For the healthy functioning of the financial market, it is essential to have a well-organized regulatory framework where compliances are given importance for promoting, preserving and sustaining the strength of the market.

Indian Financial Markets are regulated by regulators like SEBI, RBI, IRDA and PFRDA. SEBI regulates Indian Capital Markets, RBI regulates the banking sector, IRDA regulates the Insurance sector and PFRDA regulates the Pension Fund.

Securities and Exchange Board of India (SEBI), a regulatory authority established under the SEBI Act, 1992 under the Ministry of Finance, plays a major role to protect the interest of the investors in the securities market as well as promote the orderly development of the capital market. SEBI regulates three market participants i.e. investors, issuers of securities and intermediaries.

SEBI regulatory powers include– Quasi Judicial, Quasi Executive and Quasi Legislative. Under these powers, SEBI has notified various regulations for the market participants. The three major functions of SEBI are – Protective functions, Regulatory functions and Development functions.

Reserve Bank of India (RBI), a regulatory authority established under the Reserve Bank of India Act, 1934 under the Ministry of Finance plays a major role in protecting the interests of depositors as well as promoting the development of banking industry and money markets. RBI has put in place a framework for a well-regulated, robust compliance culture among Indian banks. NBFCs are regulated by RBI as well as SEBI depending on their business and dealings.

As a part of regulatory function, RBI issued guidelines on step-by-step implementation of BASEL III which is applicable to every bank functioning within India. BASEL III has been implemented with the aim of reducing probability of loss and enhancing financial stability. It targets higher risk coverage and equity tier capital and hence forms a strong financial infrastructure. BASEL accord covers compliance requirements to avoid money laundering and terror financing.

Insurance Regulatory and Development Authority of India (IRDAI), a statutory body formed under an Act of Parliament i.e. Insurance Regulatory and Development Authority Act, 1999 (IRDAI Act, 1999) for overall supervision and development of the insurance sector in India. IRDAI regulates Life Insurance Companies and General Insurance Companies both public and private sector companies.

Pension Fund Regulatory and Development Authority (PFRDA), a statutory regulatory body set up under PFRDA Act enacted in 2014 with an objective to promote old age income security and protect the interests of National Pension System (NPS) subscribers of pension fund. PFRDA regulates NPS, subscribed by employees of Government of India, State Governments and by employees of private institutions / organizations and unorganised sectors. PFRDA ensures the orderly growth and development of pension market.

Compliance function has many dimensions:

- **Prudential and regulatory compliance:** It includes complying with guidance and directives issued by regulators like RBI, SEBI, IRDA, PFRDA, etc.
- **Integrity and Market Conduct:** Compliances under this dimension ensures prevention measures against misuse of banking services for illegal purpose, i.e. following AML/ CFT guidelines issued under PMLA.
- **Legal compliances** ensure proper maintenance of applicable laws, rules and regulations like Companies Act, 2013, SEBI (LODR) Regulations, 2015, SEBI (ICDR) Regulations, Banking Regulation Act, 1949, Reserve Bank of India Act,1934, etc.

Internal Compliance: Apart from the external compliances mentioned above, internal compliances also play an important role in proper functioning of any entity. The Compliance Department is expected to ensure that a proper framework is prepared, implemented, assessed and corrective actions are taken on regular basis.

The seven pillars of Corporate Governance are accountability, fairness, assurance, transparency, risk management, leadership and stakeholder management. Corporates, in order to ensure highest levels of corporate governance, have set up various committees i.e. Audit Committee, Nomination and Remuneration Committee, Risk Management Committee, Stakeholders Relationship Committee, Finance Committee, Corporate Social Responsibility and Sustainability Committee. Apart from the Committees, policies like Code of Conduct Policy, Whistle Blower Policy, Anti Bribery and Anti-Corruption Policy, Prevention of Sexual harassment of women at workplace Policy, Risk Management Policy, Cyber Security and Cyber Resilience Policy and framework, various policies in technology arena, etc. are framed to enhance the compliance standards.

Digitization is the "mantra" of the Government of India. With digitization there are associated risks due to cyber-attacks and as a safeguard against that, the Ministry of Electronics and Information Technology of the Government of India through The Indian Computer Emergency Response Team (CERT-In) has emphasized their focus and attention on cyber security compliance. Advisories and circulars on cyber security and cyber resilience at regular intervals are being issued besides conducting trainings on some of the critical aspects of cyberattacks, cyber security and cyber resilience to some of the larger corporations and intermediaries. Besides this framework has been put in place by CERT-In for the reporting entities to provide updates including incidents, if any. **SEBI as watchdog** of the industry has also laid down framework on the lines of CERT-In directions with clear focus and increased emphasis on compliance in cyber security and cyber resilience.

SEBI recently introduced new rules to improve the reporting of ESG performance for listed entities by including audits and value chain disclosures under the Business Responsibility and Sustainability Report (BRSR). The Corporates have to scale up internal controls and compliances so as to ensure that ESG related activities are performed on expected lines.

Besides the above, recently changes have been introduced in SEBI (LODR) Regulations, 2015 on disclosures to be made by listed entities i.e. confirmation or denial of market rumours, changes in directors, key managerial personnel, senior management employees, frauds or defaults, actions taken or orders passed by any regulatory, statutory authority, business contracts / agreements, outcome of meetings of the board of directors etc. to be disclosed within the specified timelines. SEBI has further tightened the compliance under SEBI (Prohibition of Insider Trading) Regulations, 2015 by making stringent provisions with respect to Structured Digital Database for dissemination of Unpublished Price Sensitive Information (UPSI) to be maintained by the listed entities and intermediaries. In order to bring discipline in Compliance by the listed entities and market participants, SEBI had introduced **"Name and Shame"** wherein the names of the entities and market participants are published on the website of SEBI and Stock Exchanges about their non-compliance in certain areas. The emphasis on Compliance can very well be seen by number of consultation papers floated by SEBI in the recent past.

The Government's focus on tightening the compliances under direct taxes, indirect taxes, Companies Act by analysing data from various sources using Artificial Intelligence and Big Data analytics coupled with in-built stringent penalty measures acts as a deterrent to non-compliance.

Given the emphasis being placed on compliance the need for experienced senior-level risk, compliance and audit professionals has witnessed a massive surge in the past few years. Companies across the manufacturing sector, services sector, banking, insurance, intermediaries are ramping up their risk and compliance functions with senior-level hiring to ensure proper compliance. Non-compliance could lead to reputational losses apart from the monetary impact. Tendency to deal with entities having higher compliance standards is on the rise.

India is being looked upon as an important investment destination by most of the countries in the world due to its stupendous success and resilience in handling the Covid-19 pandemic and the economy bouncing back within a very short time. Various liberalised measures announced by the Government during the last few years with ease of doing business for promoting investments in the country have been attracting foreign investors in droves. This has further increased focus on compliance in line with international standards.

Every organization ought to adhere to corporate compliances in letter and spirit with constant emphasis on ethics, professionalism, transparency and accountability in their operations.

Cost of the compliance burden and changing regulations, are the top challenges for Corporates. In such a situation, tapping the increasing role of technology in compliance through enhanced digital capabilities will be the next big disruption.

Exiting attitude towards compliance or the "avoidance approach" are unlikely to provide desired results on an ongoing basis.

Increased focus on compliance not only helps the individuals and corporates but also benefits the nation as a whole build a sustainable and systematic growth. "Compliance is the Need of the Hour and a Necessity".