



## GUEST COLUMN

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# In the wonderland of regulation

It is often said that wisdom lies in putting oneself in the shoes of the person on the other side, before taking any decision that impacts that person. In the area of regulation, this is sought to be attempted by putting out the proposed contents of new regulations for discussion or consultation. It is presumably with this intention that the Reserve Bank of India (RBI) had put out, in June 2020, a *Discussion Paper on Governance in Commercial Banks in India*.

In the words of the RBI, "the objective is to align current regulatory framework with global best practices, *while being mindful* (emphasis added) of the context of the domestic financial system." The RBI goes on to state that the paper has been "compiled after reviewing instructions/guidelines / directions of the RBI, and the relevant guidance available in public domain, including those issued by the Basel Committee of Banking Supervision, Financial Stability Board as well as the Banks Boards Bureau." There is no indication, expressed or implied, that many of the banks being listed entities, the regulatory prescriptions of the Securities and Exchange Board of India (Sebi) or the Ministry of Corporate Affairs have been taken into account.



**"It is perhaps time for the RBI to resume the practice of deputing middle-level officers to large commercial banks for two years, so that they gain an understanding of commercial banking before returning to the central bank, and taking up supervisory responsibility"**

However, after the consultation period had expired, and hopefully, on the basis of feedback received, the RBI has on September 11, 2020, written to banks regarding the compliance functions and the role of the chief compliance officer (CCO). These "guidelines" are aimed "at bringing uniformity in the approach followed by banks, as also align[ing] the supervisory expectations from CCOs with best practices."

The paper had contemplated that "the compliance function and its functionaries shall be accountable and shall report only to the risk management committee of the Board". It had also envisaged that the chief compliance officer shall have "the overall responsibility for identification, management, mitigation of the bank's compliance risk and supervising activities of other compliance functional staff."

The guidelines issued on September 11, 2020, provide that the chief compliance officer shall have direct reporting lines to the managing director and chief executive officer; and/or the Board or the audit committee of the Board. It would appear that there has been a rethink on the reporting relationships, recognising that the chief executive officer is the leader of the management team.

While rightly recognising the importance of the compliance function in banks, the RBI seems to have gone overboard by giving a preeminent position to the chief compliance officer. Compliance, however important, can at best be only a supporting function. Further, it cannot be the role of compliance to override the risk function and the vigilance function as also to undermine, even if unintentionally, the role of the company secretary, who is not only the secretary to the Board, but is also one of the identified key managerial personnel in the entity. The latest guidelines would seem to circumscribe the role of the Company Secretary in regard to the compliance function.

A plethora of regulations is never the answer to identified regulatory gaps. The concluding paragraph of the letter dated September 11, 2020 states as under: "This circular *supplements* (emphasis added) the guidelines issued by RBI on April 20, 2007 and March 04, 2015 and for any common area of guidance, the prescription of this circular shall be followed". Would not one comprehensive circular have been better?

It is perhaps time for the RBI to resume the practice of deputing middle-level officers to large commercial banks for a period of two years, so that they gain a first-hand understanding of commercial banking before returning to the central bank, and taking up supervisory responsibility.

*The writer is Chairperson of Excellence Enablers, and a former chairman of Sebi. This column has been edited for space*