COST OF COMPLIANCE
19TH JUNE, 2015 | NEW DELHI
Summary of roundtable discussions with Company Secretaries

RATIONALE FOR THE DISCUSSIONS

Following the coming into force of the Companies Act, 2013 and the Rules thereunder and the tightening of SEBI Regulations, corporate India, (especially the smaller entities therein), has been voicing concern about the increasing cost of compliance. It is well recognised that rules and regulations exist to ensure orderly conduct of entities with multiple stakeholders. At the same time, it is necessary to ensure that the increasing number of complex rules and regulations does not adversely affect those in whose interest such seemingly needless prescriptive arrangements are being put in place.

In order to understand the nature and extent of the problem of increasing compliance costs, Excellence Enablers Private Limited (EEPL) facilitated a roundtable discussion among persons who have firsthand experience of where the shoe pinches, the Company Secretaries.

SUMMARY OF DISCUSSIONS

With the coming into force of the Companies Act, 2013 and with the tightening of SEBI regulations, the workload relating to compliance has considerably increased at various levels within corporate entities. It is universally recognised that laws, rules and regulations exist for the protection of the legitimate interests of those, who by virtue of information asymmetry, suffer comparative disadvantage. As far as company law is concerned, it seeks to address the vexed question of improving the ease of doing business while simultaneously attempting to ensure that business is done in a manner in which the legitimate interests of all stakeholders are not lost sight of. This is a balancing act which the framers of the law and those writing regulations must constantly keep in mind. It has often been noticed that whenever corporate misdemeanors take place, new laws and regulations are put in place without examining whether timely enforcement of existing laws and regulations can deal with the problem. The Companies Act, 2013 is not free from the temptation of having provisions which are knee-jerk reactions to isolated instances of misconduct.

The assimilation of the new provisions and the comparatively onerous task of complying with them has given rise to a feeling that the costs of compliance have become disproportionately high. Costs of compliance are not merely financial costs. They extend to the cost of time, energy, effort and bandwidth in many corporates, especially smaller companies. It is increasingly being experienced, as well as expressed, that Boards and managements are having to spend much more time, than in the past, on ensuring compliance with the numerous provisions of law that govern their businesses. Resultantly, the focus on actual conduct of business, strategy, alternatives that needs to be addressed and, in general, the role of the Board in supervision, direction and control is getting much less time and attention.

There is no evidence required to be led that regulation is a necessity in ensuring smooth conduct of business, consistent with the interest of all stakeholders. At the same time, there needs to be serious application of mind on whether laws and regulations are getting increasingly prescriptive and procedural, often leading to tick-box compliance that might negate genuine governance.

Excessively prescriptive laws and regulations often lead to the focus being on the process and not on the end-product, which is improvement of governance standards. It is also noticed that there is no cost benefit analysis whatsoever in the writing of new regulations. What is often forgotten is that the cost of compliance is ultimately paid by the persons in whose interest the new regulatory arrangements are being put in place. There is an urgent need for a regulatory impact assessment to be undertaken before new regulations are given effect to.

The Board of Directors of a company is the highest level of decision making in the company. It is the custodian of the interests of all stakeholders. It is also the Board which ensures that management functions in a manner that does not cause any harm, intended or unintended, to any category of stakeholders. The present stipulations of laws and regulations place an extra ordinarily high compliance burden on the Board of Directors as a collective identity, and on Independent Directors, in the matter of ensuring that the company complies with all applicable laws, rules and regulations. Instead of detailing the responsibilities of directors, it would have been preferable to recognise that the directors are, in a manner of speaking, the first level regulators who should be given the flexibility to devise the checks and balances specific to the requirements of a particular company. The one size fits all approach is far from being ideal. Smaller companies that face a burden disproportionate to their size are likely to look for shortcuts or to delist in order to ensure that their compliance load becomes less.

It is also necessary to ensure that the authorities including the Government do not prescribe something that they are unable to deal with because of their own constraints in terms of either non-availability of manpower or the absence of skillsets. There is as much of an overload as a result of the Companies Act, 2013 on the Registrar of Companies, as there is on Boards, directors, and Key Managerial Personnel (KMPs). The prescribed activities including reporting activities that cannot be quickly and meaningfully enforced is only likely to promote a culture of non-compliance.

It is necessary to revisit the enter gamut of laws and regulations through the medium of a Regulatory Review Authority to weed out dated or irrelevant provisions and to write laws that are simple, easy to understand and easy to comply with. The ease of compliance is directly proportional to the extent of compliance. If this truth is not kept in mind along with the twin objectives of promoting the ease of doing business and ensuring stakeholder democracy, the law and the regulations would soon be recognised as counterproductive.

EXCELLENCE ENABLERS PRIVATE LIMITED

Excellence Enablers Private Limited (EEPL) is an initiative that focuses on implementation of better corporate governance practices, improvement of Board performance, including audit and evaluation, training of directors and engagement with stakeholders of governance. It is founded on the firm belief that the gap between performance and potential can, and must, be bridged. Consistent with that belief, all our offerings are tailor-made to the specific needs of the organisation or the individuals concerned.

Given that our founder, Mr. M. Damodaran, introduced Clause 49 of the Listing Agreement, dealing with corporate governance in India, and has been a part of both public sector and private sector Boards, as well as performing and underperforming Boards, we offer experience based consultancy and courses on the journey from compliance through governance to performance. Further, given his success in turning around organisations that had been written off, we are uniquely positioned to offer courses on leadership, organisational transformation, and building winning teams.

EEPL has a number of highly experienced and renowned consultants and faculty members who have, and continue to, help us deliver programmes that have been well received.