THE "EMPTY CHAIR" CRISIS: HARMONISING THE VACANCY FILLING NORMS IN CORPORATE INDIA

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ABSTRACT

*Continuity and effective management are the backbones of corporate governance, and Key Managerial Personnel ("**KMP**") play a crucial role in steering the strategic direction of a company. The Companies Act, 2013, is still the main regulator of such appointments. However, since 2015, the Securities and Exchange Board of India ("**SEBI**") has actively enforced compliance by listed companies with the provisions of the law, as part of its initiative for investor protection. This paper highlights the major legislative clash caused by different timelines for filling casual vacancies of KMPs, where Section 203 of the Companies Act gives a generous six-month period, but Regulation 17(1E) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations ("**LODR**") imposes a strict three-month limit. The inconsistency has put listed entities in a dilemma, having to decide either to sacrifice "quality" of leadership for "speed" of appointment or vice versa. The paper discusses whether the principle of lex specialis can be a ground for the superiority of SEBI's regulations over a parliamentary statute and looks into the real consequences, such as the emergence of "Interim KMPs" who are appointed merely to stop the regulatory clock. Correspondingly, it suggests the urgent need for an amendment in Section 203 to explicitly recognise the stringent norms for listed entities, thus harmonising the statute with the dynamic needs of the capital markets and resolving the current ambiguity that plagues corporate boardrooms.*

INTRODUCTION

In the Companies Act, a company is an artificial person, an entity distinct from its members yet incapable of acting on its own motion.[502]

To function, this "corporate body" requires a "human brain." The Companies Act, 2013 refers to this mind as the KMP, which, among others, includes the Chief Executive

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[502] Salomon v. Salomon & Co., [1897] AC 22 (HL) (Eng.).

Officer ("**CEO**"), Company Secretary ("**CS**"), and Chief Financial Officer ("**CFO**").[503] The Supreme Court of India has stated that, in general, the de jure management of a corporate entity is with its Board of Directors and these key officers.[504] Similarly, the law assumes that these persons are running the company's affairs.[505] It is a well-settled legal principle that the 'brain' of a corporate entity is located wherever its directors meet to control and dictate company policy.[506] Hence, they are not just ordinary employees; they are the command-and-control nerve centre.[507] Their presence is so crucial that regulatory bodies have recognised that a sudden change in KMP usually results in an immediate change in stock price volatility as the market correlates leadership stability with financial well-being.[508]

Nonetheless, the corporate world is dynamic. There can be changes in these key positions caused by resignation, death, or removal; thus, a situation is created which is called a "casual vacancy".[509] Although the Companies Act does not specify the meaning of this term for KMP, the law writers, such as Henochsberg, explain it as any vacancy that arises other than the normal end of a term.[510] Knowing that appointing a successor to a "C-Suite" position is a process of rigorous vetting, headhunting, with notice periods, Parliament has allowed under Section 203(4) of the Companies Act, 2013, a generous time limit.[511] The legislative intent, as reflected in contemporary legal discourse, was to ensure that companies had sufficient time, specifically six months, to fill these vacancies without compromising on the quality of the appointment.[512] Recently, the Supreme Court has reiterated the sanctity of such statutory timelines in

503 Companies Act, 2013, § 2(51).
504 ArcelorMittal (India) (P) Ltd. v. Satish Kumar Gupta, (2019) 2 SCC 1 (India).
505 N. Rangachari v. BSNL, (2007) 5 SCC 108 (India).
506 De Beers Consolidated Mines Ltd v Howe, [1906] AC 455 (HL).
507 Corporate Powers of Board of Directors, (2011) 161 Comp. Cas. (JRN) 86.
508 Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, Regulation 30 *read with* Sched. III, pt. A, ¶ 7 (India).
509 Companies Act, 2013, § 161(4).
510 *See* EDGAR S. HENOCHSBERG, HENOCHSBERG ON THE COMPANIES ACT 71 (5th ed. 1994).
511 Companies Act, 2013, § 203(4).
512 Standing Comm. On Fin., 57th Report on the Companies Bill, 2011 (2012) (India).

corporate insolvency and management disputes.[513] The underlying principle is that governance requires continuity, but not at the cost of hasty, ill-suited appointments.

This statutory comfort of six months, however, has been disrupted for listed entities. After 2017, in line with the recommendations of the Uday Kotak Committee on Corporate Governance, the SEBI sought to significantly improve the effectiveness of boards.[514] The Committee believed that leaving key positions empty for a long time would be harmful to the interests of investors. [515]As a result, SEBI has changed the LODR to require that any vacancy in the office of a KMP be filled at the earliest, and in any case, within three months. This regulatory divergence creates a legislative antinomy: the "Main Act" (Companies Act) allows six months, whereas the "Delegated Legislation" (SEBI LODR) limits it to three. [516]Recent research indicates that different market actors have interpreted these contradictory provisions in very different ways, resulting in an absence of standard disclosures and a state of confusion among regulators. [517]Such divergence raises a core question: Did the regulators push for speed at the expense of the letter of the law that allowed for due diligence?

This paper aims to resolve this legal conundrum. It attempts to resolve the matter of whether the lex specialis principle that SEBI has applied is correct in giving it the last word on the timetable for compliance, or if it is an instance of regulatory overreach. Based on an examination of how Section 203 of the Companies Act and Regulation 17(1E) of the LODR work together, the paper shows that the present regulatory framework puts companies in a dilemma of either facing fines for non-compliance or facing the risk of governance by appointing "interim" placeholders. The subsequent

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[513] Visa Coke Ltd. v. Mesco Kalinga Steel Ltd., (2025) 9 SCC 461 (India).
[514] *See generally* Securities & Exchange Board of India, *Report of the Committee on Corporate Governance* (2017) (Chair: Uday Kotak).
[515] Akshita Pandey & Mincy Mathew, *Independent Directors and Kotak Committee Report: The Changing Dynamics*, 8 CNLU L. J. 291 (2018-19).
[516] Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, Regulation 17(1E).
[517] *See* CS Vinita Nair & CS Abhirup Ghosh, *SEBI Compliance Unveiled: Non-Standard Disclosures of KMP Resignation*, TAXMANN (Jan. 2024), https://www.taxmann.com/research/company-and-sebi/top-story/105010000000023597/sebi-compliance-unveiled-non-standard-disclosures-of-kmp-resignation-amid-sebis-regulatory-framework-experts-opinion.

sections will detail the statutory conflict, examine the "Standard Operating Procedures" for penalties, and propose a harmonious legislative amendment to bridge this gap. Specifically, this paper advocates for integrating the United Kingdom's ("**UK**") 'comply or explain' approach and formalising a 'search committee defence,' allowing companies to waive automated penalties by demonstrating active and transparent executive search efforts.

THE STATUTORY FRAMEWORK: A TALE OF TWO TIMELINES

The legal framework regulating the appointment of KMP in India is marked by a "dual regime. Firstly, the Companies Act, 2013 (the "**Act**") is the lex generalis, laying down the basic governance structure for corporate entities. Secondly, the LODR is the lex specialis, which sets the higher standard of care for listed companies that are under the public shareholders' protection.[518] This chapter explores the statutory divergence between these two regimes with a particular emphasis on the casual vacancy filling issue.

<u>The General Law: The Six-Month Window</u>

Section 203 is the foundation of managerial continuity in a company. It is a legal provision that requires listed companies and public companies with a share capital of 10 Crore or more that have been paid up to necessarily have a whole-time KMP.[519] Additionally, even the rules extend the KMP requirement in private companies of certain sizes.[520] The Act mandates that if a "casual vacancy" occurs due to the resignation, death or removal of a person, the Board of Directors is legally required to fill the vacancy at a meeting held within six months from the date of such vacancy.[521] The six-month period pointed out by the Standing Committee Report on the Companies Bill, 2011, is to allow sufficient time to these companies to identify,

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[518] Shreya Pandey & Himanshu Kaswa, *A Recurrent Quest for Corporate Governance in India: Revisiting the Imbalanced Scales of Shareholders' Protection in Tata - Mistry Case*, 4.2 J. CORP. L. & GOVERNANCE 121 (2021).
[519] *See* Companies Act, 2013, § 203(1).
[520] Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, Rule 8A.
[521] Companies Act, 2013, § 203(4).

interview, and select the best candidate capable of filling these top positions without breaking the chain of operation.[522]

The courts have taken a very strict approach in interpreting this provision; however, they also recognise the procedural flexibility. The National Company Law Tribunal ("**NCLT**") has recognised the appointment of a KMP as a must-do, also noted that the law grants a six-month transition period during which the company can be without a KMP, and the penalty can't be imposed.[523] In the same vein, the tribunal gave great weight to the fact that the offences for not appointing the officers can only be brought through the compounding system after the expiration of the clear period granted by the law.[524] Nevertheless, the consequences for non-compliance with the deadline are quite drastic. NCLT demonstrates how the non-filling of a vacancy beyond six months resulted in the issuance of a heavy penalty under Section 203(5) by the Registrar of Companies.[525]

The Special Law: The Three-Month Squeeze

Unlike the liberal stance of the Companies Act, the regulatory regime for listed entities has experienced a paradigm shift towards rapidity. The SEBI, being a market watchdog, has amended the LODR provisions, which became effective on June 14, 2023.[526] This section obliges a company to fill the vacancy of the KMP post not later than three months from the date of such vacancy.[527]

This change in regulation completely changed the landscape of compliance. Lawyers and practising CSs who have examined the Second Amendment pointed out that the aim was to stop listed companies from leaving key corporate governance positions

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[522] *Standing Committee on Finance, supra* note 512.
[523] Betul Wind Farms Limited v. Registrar of Companies, 2019 SCC OnLine NCLT 9406 (India).
[524] In re Castrol India Limited, 2017 SCC OnLine NCLT 10323 (India).
[525] In re Greif Flexibles India Private Limited, 2019 SCC OnLine NCLT 3570 (India).
[526] Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations, 2023 (June 14, 2023).
[527] *Id.*, Regulation 17(1E).

empty for long periods since it had become a frequent occurrence.[528] The strictness of this regime is evident in recent adjudications. The Securities Appellate Tribunal upheld the principle that KMPs are vital to the integrity of the market, and delays in their appointment directly impact investor confidence.[529] Similarly, SEBI has issued informal guidance reiterating that the timeline for governance compliance is rigid for listed entities, leaving little room for procedural delays.[530]

There is a significant issue with confusing or contradictory regulations already in the LODR, as Regulation 17(E) requires filling a vacancy within three months, whereas the regulation also mandates the vacancy to be filled by the immediate next Board meeting or three months, whichever is later, for Independent Directors ("**IDs**"), in the case of vacancies.[531] This textual inconsistency suggests that SEBI views the absence of a KMP like a CEO or CS as a more immediate threat to the company's daily operations than the absence of an ID. Scholars have noted that this places an immense burden on the CS, who often functions as the Chief Governance Officer, to navigate these conflicting timelines.[532]

The Bridge: Section 24

The conflict of three months versus six months begs the question: How can a regulation override a statute? The answer lies in Section 24 of the Companies Act, 2013. This section explicitly delegates the administration of provisions regarding the issue and transfer of securities and non-payment of dividends in listed companies to SEBI.[533]

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[528] Tamanna Gaba, *Unraveling the SEBI LODR Second Amendment Regulations 2023*, TAXMANN (June 16, 2023), https://www.taxmann.com/research/company-and-sebi/top-story/105010000000022993/unraveling-the-sebi-lodr-second-amendment-regulations-2023-decoding-the-latest-reforms-experts-opinion.
[529] Advance Lifestyles Ltd. v. BSE Ltd., 2019 SCC OnLine SAT 252 (India).
[530] In re DCB Bank Ltd., 2025 SCC OnLine SEBI-IG 2 (India).
[531] Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, Regulation 25(6) (India).
[532] Nipun Ninad Naphade, *Company Secretaries as Chief Governance Officers in Indian Companies*, 4.2 J. CORP. L. & GOVERNANCE 138 (2021).
[533] Garima Srivastava, *Analysis of Chapter III (Prospectus and Allotment of Securities) of the Companies Act, 2013*, 183 CO. CASES (J.) 21 (2014).

THE LEGAL ANALYSIS: IMPOSSIBILITY, HARDSHIP, AND LEGISLATIVE INTENT

The divergence between the Act and delegated legislation is a great example of a baffling jurisprudential puzzle. At first glance, the resolution seems to be straightforward, as a listed company must follow the higher standard, but a deeper dive shows that the "higher standard" rule could unintentionally make a parliamentary provision violative of the fundamental principles of statutory interpretation.

Impossibility vs. Ability to Comply: The "Stricter Standard" Test

The dominant argument in favour of the supremacy of Regulation 17(1E) is that there is no direct "repugnancy" between these two provisions. Repugnancy is there only when compliance with one law necessitates the breach of another.[534] Section 203 of the Companies Act, on the one hand, provides a maximum period limit of six months and SEBI, on the other hand, provides a maximum period limit of three months.

As per the law, when there are two statutes that from time to time govern the same field, the statute stipulating a higher standard must be observed if it is physically possible to comply with both.[535] According to the Bombay High Court, the validity of a subordinate legislation is not affected if it merely imposes a stricter condition but does not contradict the parent act. The same idea, with the same words, is one of the cornerstones of the law worldwide.

The Supreme Court of Canada also confirmed that a conflict of laws situation exists only where there is an "impossibility of dual compliance."[536] On this basis, if the company appoints a KMP within 89 days, it will be simultaneously in compliance with SEBI (less than 3 months) as well as with the Companies Act (less than 6 months). So, legally, there is no impossibility. The Supreme Court, in a recent decision, has

[534] Deep Chand v. State of U.P., AIR 1959 SC 648 (India).
[535] Sophy Kelly v. State of Maharashtra, 1966 SCC OnLine Bom 55 (India).
[536] Government of Saskatchewan v. Rothmans, Benson & Hedges Inc., 2005 SCC OnLine Can SC 12 (Can.).

emphasised that the plea of impossibility cannot be invoked as a protection against strict compliance unless the performance of a statutory duty is "objectively impossible."[537]

Distinguishing "Real Impossibility" from "Business Hardship"

Corporate India's problem is not really about the physical impossibility of appointing a CEO in three months, but rather that such a process is commercially impractical. The law, however, makes a clear distinction between "impossibility" (*lex non cogit ad impossibilia*) and mere "difficulty". The court clarifies that financial or administrative hardship does not equate to legal impossibility.[538] Similarly, it is a principle that a statutory mandate cannot be ignored simply because it is burdensome and onerous.[539] SEBI's stance is in line with the "brightline test" discussed in recent legal scholarship: for a regulator, a fixed deadline is necessary to prevent vague excuses.[540]

The Supreme Court has further cemented this by ruling that when a specific code (like the Insolvency and Bankruptcy Code or SEBI regulations) sets a timeline, it overrides general pleas of hardship.[541] This contrasts with the older view, which allowed for a more flexible interpretation of repugnancy.[542] Consequently, while a company may argue that headhunting a CEO takes five months, SEBI views this delay not as an impossibility, but as a governance failure.

The Doctrine of Surplusage and the Limits of Harmonious Construction

The strongest counterargument against SEBI's three-month rule lies in the **doctrine of surplusage.** This canon of interpretation posits that the legislature does not use words in vain; every timeline and provision has a specific purpose.[543] The Supreme Court held that statutes must be interpreted to give effect to every word, and courts should avoid

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[537] State of M.P. v. Narmada Bachao Andolan, (2011) 7 SCC 639 (India).
[538] Rajadhani Rythu Parirakshnana Samithi v. State of A.P., 2022 SCC OnLine AP 490 (India).
[539] Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal, (2020) 7 SCC 1 (India).
[540] Anurag Gupta & Sushma Reddy, *SEBI's Brightline Test: The Right Way to Move Forward?*, 2.2 J. CORP. L. & GOVERNANCE 50 (2017).
[541] Innoventive Industries Ltd. v. ICICI Bank, (2018) 1 SCC 407 (India).
[542] Tika Ramji v. State of U.P., (1956) 1 SCC 624 (India).
[543] *See* 4 A. RAMAIYA, GUIDE TO THE COMPANIES ACT, COMMENTARY ON SEBI (LODR) REGULATIONS (19th ed. LexisNexis 2020).

constructions that render statutory text redundant.[544] If SEBI's three-month rule is accepted as the absolute standard for all listed companies, which constitute the bulk of economic activity, then the six-month provision in Section 203(4) of the Companies Act is effectively rendered dead letter for this class of companies.

However, it must be acknowledged that a court's first instinct will not be to declare a provision surplusage. The rule of harmonious construction provides that where two provisions contravene each other, they should be reconciled in a way that they both can be given full effect, and a contradiction is to be found only where reconciliation is impossible.[545] Applying this reasoning, a Court would argue that Section 203(4) sets a ceiling for all companies, while Regulation 17(1E) simply sets a higher bar for listed companies (a sui generis carve-out), and affirms the six-month period for unlisted public/private companies. Significantly, there is no direct repugnancy; a listed company complying with the strict three-month timeline under Regulation 17(1E) automatically satisfies the broader six-month allowance under Section 203(4), meaning it is entirely possible to obey both mandates simultaneously. In such a construction, the six-month period remains meaningful, neutralising the doctrine of surplusage.

Even the tribunals have consistently held that the legislature is presumed not to waste words. The Income Tax Appellate Tribunal emphasised that if a specific time limit is provided in the statute, it cannot be arbitrarily curtailed by a lower authority.[546] Nonetheless, this rebuttal exposes the very weakness of the harmonious construction argument. In practice, the effort to "save" the six-month rule by limiting it to unlisted companies is a concession that Parliament's time frame does not apply to the most economically significant category of companies in India. Listing is the pinnacle of corporate growth; the entities Parliament had most in mind when legislating on KMP governance are precisely those that SEBI has now placed on a fundamentally different footing. Ultimately, this harmonisation achieves a hollow reconciliation. Rather than

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[544] Shilpa Mittal v. State (NCT of Delhi), (2020) 2 SCC 787 (India).

[545] Commissioner of Income Tax v. Hindustan Bulk Carriers, (2003) 3 SCC 57, 21–22 (India).

[546] Rockline Developers P. Ltd. v. CIT, 2018 SCC OnLine ITAT 23698 (India); Gee City Builders P. Ltd. v. CIT, 2019 SCC OnLine ITAT 9352 (India).

preserving the statutory time frames through a dual mandate, this approach effectively abolishes the six-month allowance for the very companies that drive the market. Although having persuasive value, by enforcing a three-month cut-off, SEBI is arguably engaging in "legislative overreach," treating the Parliament's six-month allowance as surplusage. This violates a laid-down principle where the court warned against delegated legislation overriding the parent act's intent.[547]

The "Field Occupied" Theory and Regulatory Primacy

Despite the surplusage argument, SEBI often prevails due to the "Field Occupied" theory. Section 24 of the Act delegates the administration of listed companies to SEBI.[548] The National Company Law Appellate Tribunal (hereinafter "NCLAT") recognised that listed companies operate in a dual-jurisdiction zone where SEBI's regulations on governance are paramount.[549] SEBI's aggressive enforcement is evident where the adjudicator prioritised the regulator's circulars over general statutory defences.[550] This is further supported by the Standard Operating Procedure ("**SOP**") circulars, which impose automated fines for non-compliance, effectively bypassing the judicial discretion of the NCLT.[551] Recent penalties levied on companies like Topsun Energy Limited and Top Telemedia Limited for delay in KMP appointments confirm that the regulatory machinery does not wait for the six-month statutory window to expire.[552]

The Delegated Legislation Problem

However, classifying the appointment of a CEO under the 'issue and transfer of securities' presents a significant interpretive challenge. The SEBI has argued that its jurisdiction extends to all aspects of corporate governance that affect the interests of

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547 Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd. v. Custodian of Vested Forests, 1990 Supp SCC 785 (India).
548 Companies Act, 2013, § 24(1) (India).
549 Cyrus Investments (P) Ltd. v. Tata Sons Ltd., (2018) 211 Comp Cas 481 (NCLAT).
550 In re Urban Infrastructure Venture Capital Fund, 2022 SCC OnLine SEBI-OCM 229 (India).
551 *See* Securities and Exchange Board of India, Circular No. SEBI/HO/CFD/CMD/CIR/P/2020/12 (issued Jan. 22, 2020).
552 *See* In re Topsun Energy Limited, Order of Adjudication of Penalty under Section 454 (ROC Ahmedabad, Dec. 2, 2025); In re Top Telemedia Limited, Order of Adjudication (ROC Pune, Dec. 4, 2023).

investors in the securities market.[553] This broad interpretation is supported by the Supreme Court's ruling, which held that the Act and the SEBI (Debenture Trustees) Regulations,1993 must be read harmoniously, and in fields occupied by SEBI for the protection of investors, its regulations hold primacy.[554]

Critics argue that this creates a delegated legislation problem. As observed, a delegate cannot frame regulations that are inconsistent with the parent act unless explicitly authorised.[555] Yet, the apex court, reaffirming SEBI's domain expertise, has suggested that courts should be slow to interfere with the regulator's assessment of market needs.[556] Consequently, while the Companies Act remains the de jure parent, SEBI has effectively become the de facto governance arbiter for listed entities, enforcing a stricter timeline under the threat of penalties cited in the New Delhi Television Ltd. case [557] and the stringent oversight seen in the Zee Entertainment Enterprises case[558]

PRACTICAL IMPLICATIONS AND THE WAY FORWARD

Legal theories of lex specialis offer cold comfort to a boardroom staring down a regulatory deadline. Currently, the inconsistency between Section 203 of the Act and Regulation 17(1E) of the LODR has led to a defensive compliance culture. Instead of spending three months searching for the best candidate, Companies are taking almost the whole ninety days, eighty-nine days, to find just one candidate so that they may merely stop the regulatory clock.

The "Interim" Loophole: Compliance in Form, Failure in Substance

In 2023, with the LODR Second Amendment Regulations, the market regulator's aim was quite evident: to prevent companies from running without a proper management

[553] In re Birla Power Solutions Ltd., 2021 SCC OnLine SEBI-AO 207 (India).
[554] SEBI v. Rajkumar Nagpal, (2023) 8 SCC 274 (India).
[555] Mahesh Ratilal Shah v. Union of India, (2010) 2 SCC 706 (India).
[556] Vishal Tiwari (Adani Group Investigation) v. Union of India, (2024) 4 SCC 115 (India).
[557] *New Delhi Television Ltd. v. SEBI*, (2019) 216 Comp Cas 415 (SAT).
[558] *Zee Entertainment Enterprises v. Invesco Dev.*, (2021) 229 Comp Cas 540 (Bom.).

team.[559] Yet, the practical reality of executive headhunting, negotiating garden leaves, non-competes, and cultural fits simply cannot be compressed into ninety days.[560]

The result is the alarming rise of the "Interim KMPs." Terrified of penalties, listed entities frequently elevate underqualified, mid-level employees to the C-suite on a temporary basis. This satisfies the letter of Regulation 17(1E) while utterly destroying its spirit. Legal commentators have sharply criticised this "tick-box" approach to corporate governance.[561] History, in fact, provides a stark warning through the Satyam and IL&FS scandals' post-mortem analyses. These examinations demonstrated that the practice of putting compliant placeholders in positions of key management roles ultimately results in regressive regulation and corporate fraud.[562]

SEBI has not been completely unaware of this masquerade. It has been disciplining such sham appointments only to use them as a tool for compliance evasion in some recent adjudications by the regulator.[563] However, if the scheduling is kept strictly rigid, companies will definitely be prioritising regulatory appeasement over genuine governance.

The Financial Guillotine: Analysing the SOP Fines

The panic driving these interim appointments stems from SEBI's ruthless enforcement mechanism. Non-compliance with Regulation 17 is not met with a gentle show-cause notice; it triggers a financial guillotine. Under the SOP Circular issued in January 2020,

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[559] Anand Jayachandran & Supriya Aakulu, *SEBI Amendments to the LODR – An Overview of Key Changes*, CYRIL AMARCHAND MANGALDAS BLOG (July 4, 2023), https://corporate.cyrilamarchandblogs.com/2023/07/sebi-amendments-to-the-lodr-an-overview-of-key-changes/.

[560] KPMG India, *Voices on Reporting: SEBI LODR Amendments* (July 2023), https://assets.kpmg.com/content/dam/kpmg/in/pdf/2023/07/voices-on-reporting-sebi-lodr-amendments-issb-30-june.pdf.

[561] Prachi Dutta, *Importance of Keeping the Corporate House in Order and Going Beyond Just Ticking the Box*, 2025 SCC OnLine Blog OpEd 62.

[562] Rajdev Mishra, *Corporate Frauds and Regulatory Failures: An Analysis of the IL&FS and Satyam Scams*, 5.4 J. CORP. L. & JURISPRUDENCE 739 (2025).

[563] In re Quest Financial Services Ltd., 2022 SCC OnLine SEBI-OCM 12 (India); In re Binny Ltd., 2025 SCC OnLine SEBI-AO 115 (India). See also In re Money Market Manthan Financial Services, 2023 SCC OnLine SEBI-OCM 251 (India).

missing the three-month deadline attracts an automated fine of ₹1,000 to ₹2,000 per day.[564]

This automated penalty system is draconian. It strips the NCLT and adjudicating officers of their discretionary power to assess why a delay occurred.[565] Worse still is the "nuclear option." If a company fails to pay these automated fines, the stock exchanges are mandated to freeze the demat accounts of the promoters.[566]

This creates a disproportionate collateral damage scenario. Passive promoters who may have completely distanced themselves from the daily management of the company suddenly find their personal assets frozen because the Nomination and Remuneration Committee could not finalise a CFO in time.[567] The Securities Appellate Tribunal has occasionally had to intervene to thaw these freezes, but the threat remains a hanging sword over corporate India.[568]

<u>The Governance Ripple Effect</u>

The collateral damage of a rushed KMP appointment does not stop at the promoter level; it severely compromises the IDs. The CS functions as the Chief Governance Officer, the vital bridge between the Board and the law.[569]

If the CS or CFO position is vacant, or occupied by a frightened interim appointee, the IDs are left navigating a minefield blindfolded. Without competent KMPs to certify the financial results or confirm legal compliances, the personal liability of skyrockets.[570] The

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[564] Securities and Exchange Board of India, Circular No. SEBI/HO/CFD/CMD/CIR/P/2020/12, *Standard Operating Procedure for Suspension and Revocation of Trading* (Jan. 22, 2020).

[565] *Streamlining Fines for Non-Compliance with LODR: SEBI SOP*, TAXGURU (2023), https://taxguru.in/sebi/streamlining-fines-non-compliance-lodr-sebi-sop.html.

[566] *See* AZB & PARTNERS, *Revised Fines and SOP in Case of Non-Compliance with SEBI LODR* (Feb. 2020), https://www.azbpartners.com/bank/revised-fines-and-sop-in-case-of-non-compliance-with-sebi-lodr/.

[567] Namita Shetty & Divyansh Sharma, *Cease the Demat Freeze! Passive Promoters Caught in the Crossfire of Regulatory Actions*, 10 SCC J-20 (2024).

[568] LML Ltd. v. SEBI, 2023 SCC OnLine SAT 550. *See also* Karvy Stock Broking Ltd. v. National Securities Depository Ltd., 2021 SCC OnLine Bom 6705 (discussing the severe implications of demat freezes).

[569] Ankit Porwal & Maulin Salvi, *How Company Secretaries Shape Corporate Governance*, NISHITH DESAI ASSOCIATES (2025), https://www.nishithdesai.com/fileadmin/user_upload/pdfs/nda%20In%20The%20Media/News%20Articles/How-Company-Secretaries-Shape-Corporate-Governance-Taxsutra.pdf.

[570] NSE Clearing, *Terms and Conditions for Appointment of Independent Director* (2025), https://www.nseclearing.in/sites/default/files/disclosure-doc/2025-04/Terms%20and%20Conditions%20for%20Appointment%20of%20Independent%20Director.pdf.

market regulator expects IDs to act as the ultimate gatekeepers, yet the rigid timelines often deny them the very personnel required to execute that mandate effectively.[571]

The UK vs. Indian Governance Models: A Comparative Analysis

(i) The Philosophy of "Comply or Explain": Trusting Shareholders, or Trusting the Wrong Structure?

The United Kingdom Corporate Governance Code ("**UK CG**") is based on principles that emphasise the importance of the underlying spirit of the rules rather than adhering strictly to compliance. If a company does not adhere to a standard procedure, for example if it takes longer than is typical to appoint someone to a C-suite position, the board is only required to provide an explanation for the delay, outline the associated risks, and establish a timeline for when it will achieve compliance.[572] There is no automatic penalty if the market and shareholders are satisfied with the explanation; disclosure and conversation are what make accountability work.[573]

India's LODR framework takes the opposite approach. There is a strict three-month deadline for filling KMP positions, and failing to meet it triggers automatic financial penalties. The board is given no room to explain the delay to its shareholders; SEBI substitutes the regulator's judgment for the markets.[574] This legal absolutism often produces a box-ticking culture that treats every executive vacancy identically, rather than allowing for context-driven governance.

The difference, however, is not about one jurisdiction being more advanced than the other. It shows a difference in the types of shareholders that each Code expects. The UK's comply-or-explain model functions because it relies on a basic requirement. This

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[571] Bhumesh Verma & Utkarsh Mishra, *Online Proficiency Assessment Test for Independent Directors*, (2019) PL (CL) DEC. 72; *See also* In re Gretex Corporate Services Ltd., 2026 SCC OnLine SEBI-AO 14 (India).

[572] Andrew Keay, *Comply or Explain in Corporate Governance Codes: In Need of Greater Regulatory Oversight?*, 34 LEGAL STUD. 279, 281–83 (2014).

[573] Financial Reporting Council, UK Corporate Governance Code 2024 4 (Jan. 2024), https://www.frc.org.uk/library/standards-codes-policy/corporate-governance/uk-corporate-governance-code/.

[574] Santosh Paul, *Ensuring Market Integrity: SEBI's Role and the Need for Consistent Enforcement*, COURTS COMMERCE AND THE CONSTITUTION (Aug. 9, 2023, 4:02 PM), https://timesofindia.indiatimes.com/blogs/courts-commerce-and-the-constitution/ensuring-market-integrity-sebis-role-and-the-need-for-consistent-enforcement/.

requirement is a wide-ranging shareholder base made up of institutional investors who keep an eye on boards and consider their voting rights as a real way to hold management accountable. No single shareholder typically commands a controlling stake, and fund managers routinely vote against boards they find wanting. The "explanation" in comply-or-explain is meaningful because it is addressed to an audience with both the incentive and the power to reject it.

This precondition is not present in India. Companies that are listed in India are mostly based on promoters, with a family or a controlling group usually holding a large, often majority, share. The concept of "shareholder democracy" as seen in the UK is mostly theoretical in this situation. When a promoter has control over the board, the requirement to "explain" does not provide much safety for minority public shareholders, since the promoter is basically explaining things to themselves.[575] Regulatory discretion in such a market is not a neutral space for accountability; it is a space that concentrated ownership can dominate without resistance. Seen this way, SEBI's paternalism is not an arbitrary regulatory reflex but a structural response to a market in which the very precondition for self-regulation, a shareholder base capable of enforcing accountability, does not yet exist. The regulator intervenes precisely because the shareholder cannot.

This concession, though, does not vindicate SEBI's current design. Recognising that India needs stricter rules than the UK is not the same as endorsing a rigid, non-negotiable three-month deadline. Even within a rules-based framework built to protect minority investors, there is room for a measured comply-or-explain hybrid one that requires public disclosure and board accountability to stock exchanges within three months, while permitting a documented extension where the board can show the delay serves shareholder value. The flaw in the current regime is not that SEBI intervenes; it is that the intervention lacks nuance. The UK trusts its shareholders because they can

[575] *See* Afra Afsharipour, *Corporate Governance Convergence: Lessons from the Indian Experience*, 29 NW. J. INT'L L. & BUS. 335, 362–65 (2009) (noting that in India's promoter-dominated market, imported disclosure-based regimes often devolve into meaningless rubber-stamping exercises, as promoters possess the voting majority to unilaterally accept their own explanations without facing actual pushback from minority public shareholders).

be trusted to hold boards accountable. India distrusts boards because its shareholders often cannot. While both are internally consistent reactions to their respective ownership structures, neither one currently strikes the proper balance of trust to rigidity.

(ii) Commercial Reality: Quality Over Haste

SEBI's rigid three-month deadline fails to account for the commercial realities and protracted timelines inherent in executive search and recruitment at the C-suite level. Finding a transformative CEO or CFO takes an average of four to six months around the world. Non-compete agreements and long notice periods often make this process even longer. The UK model easily takes these business facts into account, so boards can explain a seven-month search if it means finding the best candidate. On the other hand, India's rigid system creates a strange incentive: companies are scared of automated fines, so they have to rush appointments, lower their standards, or use a revolving door of temporary "interim" placeholders. By putting speed ahead of the quality of the hire, the Indian government puts investors' interests at a much greater risk.

RECOMMENDATION: HARMONISING THROUGH DISCLOSURE AND DEMOCRACY

This paper proposes four new, disclosure-driven mechanisms to fix the legal conflict between the Companies Act and SEBI rules and to change Indian corporate governance from a punitive system to one that helps businesses. These suggestions are based on the UK's "comply or explain" philosophy. They aim to keep regulatory accountability while also taking into account the realities of hiring executives.

The "Structured Explanation Window" for Tier-I KMPs

Rather than requiring a three-month compliance period for all KMPs, SEBI can institute a graduated vacancy scheme for Tier-I KMPs, which includes the CEO, MD and CFO. Under the proposed graduated scheme, the established three-month deadline remains the norm. However, if three months are about to elapse without the vacancy being filled, the board can file a "Vacancy Continuation Disclosure" with the Stock

Exchanges. Among other things, this disclosure should specify (a) the reason that the vacancy cannot be filled, (b) information about the review of candidates, (c) the expected date of filling and (d) the name of the interim custodian.[576] Filing this disclosure would automatically suspend penalties for a period of 90 days, subject to new disclosures being made every thirty days, with the shareholders subsequently giving retrospective approval at the next general meeting.

The practical integration of this suspension into SEBI's automated penalty infrastructure does not need manual intervention from the NCLT or adjudicating officers. When a Vacancy Continuation Disclosure is submitted through the existing compliance portals of Bombay Stock Exchange or National Stock Exchange, which already connect to SEBI's surveillance systems, this filing should create a rule-based "Penalty Hold" flag that tells the automated pipeline to ignore the penalty trigger for the 90-day period. If there is a missed thirty-day renewal, this would automatically cancel the Hold, which would then reactivate penalties starting from the original breach date and would close any option for indefinite postponement. To make this work, only a SEBI circular and an amendment to the SOP under Section 11 of the Act[577] are needed, and there is no requirement for any statutory change to the Companies Act or LODR Regulations.

The "Formal Search Process Certificate" and Good Faith Defence

As per the UK CG, the Board is responsible on behalf of the company for succession planning, and it must report and explain to the shareholders in such an event.[578] In order to institutionalise this active board role in India, SEBI should adopt the provisions of the UK CG Code by way of Modification to Regulation 17 so as to provide for a "Formal Search Process Certificate" ("**FSPC**"), which at the Board level state that within a period of 30 days after the vacancy, a "Formed Search Process" (a

[576] Parveen Sayyed, *Exemptions from Disclosure of Information under Right to Information Act, 2005: A Methodical Review*, BHARATI L. REV. 230 (Oct.-Dec. 2016).
[577] Securities and Exchange Board of India Act, 1992, § 11.
[578] KPMG Board Leadership Centre, *UK Corporate Governance Code – Guidance for Boards* (Jan.2024), *https://assets.kpmg.com/content/dam/kpmgsites/uk/pdf/2024/01/uk-corporate-governance-code-guidance-for-boards.pdf*.

Search Committee or Nomination and Remuneration Committee)was formed and either a Search Firm has been appointed or a "Documented Internal Search Process" has been implemented. Such a Certificate would constitute the exemption of a "good faith compliance" and reduce or eliminate the penalty of non-compliance within the three months, indicating the difference between the Penalty for inaction versus the Penalty of Action.

"Regulatory Glide Path" for Vacancy Resolution

SEBI has already perceived the importance of flexible compliance for other areas. In the context of Environmental, Social, and Governance ("**ESG**") reporting, regulators often utilise a 'glide path' approach for core disclosure protocols. Rather than imposing a strict mandate that penalises companies for initial data gaps, a glide path allows for phased implementation. This framework recognises that establishing robust ESG tracking mechanisms takes time and capital, permitting companies to progressively refine the quality of their disclosures and transition toward strict regulatory standards, rather than demanding immediate perfection.[579] The same logic should be adopted for KMP vacancies by instituting a "Vacancy Resolution Glide Path," in which Months 1-3 would be the benchmark compliance window, Months 4-6 would be the "extended" window (only activated by filing a VCD), during which SOP penalties would be halved, with complete penalties only applied from Month 7 onward. This would explicitly post KMP governance within the same paradigm as SEBI's disclosure-led glide path, for effective accountability without compromising enterprise value.

The "Shareholder Ratification Safe Harbour"

This core critique of SEBI's prescriptive three-month rule, which replaces the regulator's approach with the shareholder's, is addressed by reinstating the shareholder as the final judge of governance. To prevent it from being exploited in the way that the KMP vacancy window was, the paper suggests the development of a "Post-Facto

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[579] SEBI, *BRSR Core – Framework for Assurance and ESG Disclosures for Value Chain*, Circular No. SEBI/HO/CFD/CFD-SEC-2/P/CIR/2023/122 (July 12, 2023), *https://www.sebi.gov.in/legal/circulars/jul-2023/brsr-core-framework-for-assurance-and-esg-disclosures-for-value-chain_73854.html*.

Shareholder Ratification Safe Harbour". After a KMP vacancy window is exceeded, companies can seek shareholder approval via an ordinary resolution at a general meeting ratifying the board's extended timeline. A special resolution will include a requirement for a detailed passing-board statement setting out the reasons for the delay.[580] If the resolution received the majority support of the total votes cast, then the penalties should be waived or turned into a disclosure obligation. If the resolution received majority opposition, then the penalties must have been imposed. This doctrinally settled application of principal-agent theory apparently stands for the reinstatement of shareholder default methods of accountability that form the essence of the UK model of truly shareholder democracy.

CONCLUSION

The Indian corporate ecosystem is mired in a jurisdictional tug-of-war between the qualitative, measured succession timeframe sought by Parliament and the quantitative, aggressive deadline set by SEBI. Although the Supreme Court has renewed SEBI's jurisdictional domain expertise in conducting listed entities out of a 'headless' vacuum, the existing regulatory architecture suffers from a fundamental flaw: it naively presumes pace to be synonymous with good governance.[581]

This paradox actually works against investors by forcing companies to appoint the wrong executives.[582] Regulatory rigidity, embodied in harsh deadlines, can simply reinforce defensive compliance by the companies. A previously undocumented pattern of disclosures, which emerges from analysis of recent filings, is that there is an abnormal spike in casual "Interim CEO" or "Additional director" appointment on the eighty-ninth day. A pattern emerging from those filings is that unexpected KMP removals on

[580] Companies Act, 2013, § 114.
[581] Vishal Tiwari (Adani Group Investigation) v. Union of India, (2024) 4 SCC 115 (India).
[582] Mobis Philipose, *Corporate Governance Rules are Good; Now for Some Shareholder Activism*, (Sep. 18, 2014), *https://www.livemint.com/Money/11IRpRoqLnUMzx99WbXYGK/Corporate-governance-rules-are-good-now-for-some-sharebolde.html* (arguing that rigid legislative timelines often fail to translate into substantive governance).

flimsy grounds of "personal reasons" are followed by hasty elevations of underqualified employees.[583]

The regulatory clock is divorced from HR realities. Finding, assessing and inducting outstanding executives typically takes six to nine months, given non-compete agreements, garden leaves and equity negotiations.[584] SEBI's inability to accommodate this commercial reality has created a compliance trap, criminalising the inevitable friction of executive transitions. True market integrity would recognize that firms need lead time to identify visionary leaders. Until the law makes a clear distinction between a conscientious scan and a negligent wait, the three-month rule will be a bureaucratic guillotine and not a check for fine corporate governance.

[583] See *Prima Industries Ltd. Disclosure under Regulation 30 SEBI (LODR) – Change in Management*, (Nov. 18, 2025), *https://bsmedia.business-standard.com/_media/bs/data/announcements/bse/18112025/fe885521-a54d-48a4-b7df-c179870d9b3c.pdf* (last visited Apr. 21, 2026) (highlighting the trend of citing "personal reasons" for sudden governance vacancies that trigger the 90-day compliance rush).

[584] *See generally* Securities & Exchange Board of India, *Report of the Expert Committee for Facilitating Ease of Doing Business and Harmonization of the Provisions of ICDR and LODR Regulations* (June 2024), https://www.sebi.gov.in/sebi_data/commondocs/jun-2024/Expert%20Committee%20report%20on%20ICDR%20and%20LODR-new_p.pdf.