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Report of the Committee for Reforming the Regulatory Environment for Doing Business in India

Ministry of Corporate Affairs
Government of India

Index

Preface

If all you have is a hammer, everything looks like a nail! Such are the concerns relating to raising economic growth that everything in the business environment seems to be a candidate for reforms. Reforming the business environment has proved to be a Sisyphean construct that governments across the globe, including India, are rolling up the hill.

In the Indian context, the landscape of regulatory environment is primarily an outcome of the division of subjects, where the Union and the State governments could frame laws, as provided in the Seventh Schedule of the Constitution of India. This maze is further thickened by the plethora of laws and regulation therein, which have simply failed to keep pace with time. Therefore, the Committee took a serious note of the problem of 'stock' and 'flow' of the regulations, which are overdue now for review and consequential amendments, wherever required. The Committee also observed that a large part of problem emanates from the way the appointments in the regulatory agencies, and also the organizational structure, are made and held. On this count infusing professionalization through right selection and capacity building are the key issues, the Committee chose to focus on.

The Committee also felt that the use of information technology (IT) can be one possible solution wherever information asymmetry adversely impacts the regulatory environment. More effective use of IT can address multiple problems such as access to correct information, exchange of best practices and so on.

While enterprises above a threshold may have the wherewithal to deal with the complex business environment, the Committee looked into the issues of small and medium enterprises and felt that greater

coordination amongst ministries and the policy makers is the need of the hour.

The Committee was set up in response to the 'Doing Business Report, 2012 (DBR)' of the World Bank. The Report placed India at low ranks in almost all parameters. Incidentally, the DBR has now covered full circle - after it started with the original paper published by Djankov et al[1] in 2002. In the original paper Djankov et al remarked that "*Countries with heavier regulation of entry have higher corruption and larger unofficial economies, but no better quality of public or private goods. Countries with more democratic and limited governments have lighter regulation of entry*." What started as measurement of 'regulation of entry' assumed the shape of a comprehensive ranking of nations reflecting the 'ease of doing business' in due course. This led to several countries raising questions regarding the usefulness of the report. It so happened that World Bank itself appointed a panel to review the report, which recommended discontinuing the cumulative ranking of countries and retaining publication of the individual parameters. This is a major turning point in the decade old journey of 'Doing Business Report'. Be that as it may, what is beyond debate is that the issues relating to India's business environment are real and need to be resolved.

This Report is directed towards the issues of structural significance. It is hoped the recommendations of the Committee will prove to be an important milestone in the journey of reforming India's regulatory environment for doing business.

[1] Djankov S, Rafael La Porta, Florencio Lopez-de-Silanes and Andrei Shleifer (2002), "Regulation of entry", Quarterly Journal of Economics.

Finally, I wish to place on record my sincere appreciation to all the members of the Committee for sharing their comments on an earlier draft of this report. It is a matter of regret that some suggestions arising out of the draft report came in after the report was finalised. I also wish to thank the Indian Institute of Corporate Affairs (IICA) for providing the Committee the required support in conducting the business of the Committee. This preface would be incomplete if I do not acknowledge the significant contribution of Prof. Navneet Sharma of IICA.

New Delhi
September 2, 2013

M. Damodaran
Chairperson
Committee for Reforming
the Regulatory Environment
for Doing Business in India

Executive Summary and Recommendations

Executive Summary

In August 2012, the Ministry of Corporate Affairs set up the Committee for Reforming the Regulatory Environment for Doing Business in India. The proximate cause of the establishment of the Committee was the Word Bank's Doing Business Report which ranked India amongst the countries ranked at the bottom of various sub-indices. The Committee was subsequently expanded to bring in representation from State Governments, Public Sector Enterprises and Regulatory Bodies. The Committee was tasked to look into various parameters which affect the regulatory environment for doing business in India and make appropriate recommendations.

The Committee held two meetings and sought inputs from the members. The deliberations of the Committee have been crystallized in six thematic chapters covering

the dispute resolution, architecture of the regulatory space, measures to boost efficacy of regulatory process, improving business environment for micro, small and medium enterprises, addressing issues at the state level and revisiting the report of the World Bank Review Panel on Doing Business Report.

Recommendations

The Section presents the recommendations made by the Committee. The Recommendations are classified in various headings, namely, (a) legal reforms (b) regulatory architecture (c) boosting efficacy of regulatory process (d) enabling MSMEs, and (e) addressing state level issues.

Legal Reforms

1) ***Review of laws and regulations***: It is recommended that the Government of India as also the State Governments examine the content of all laws and rules which impact on the ease of

doing business, and cause appropriate changes therein to reflect the requirements of modern day trade and commerce.

2) ***Encouraging arbitration to resolve contractual disputes***: It is important that the judicial authorities are appreciative of the need for quick resolution of disputes that are brought up before them. Therefore, it is recommended that there should be a mechanism to dis-incentivise use of civil courts for resolving contractual disputes, so as to encourage arbitration as a preferred manner of resolution. Further, it is also recommended that appropriate measure may be taken up to create a large pool of persons trained in the process of arbitration who could be approached by contending parties to take up their matter.

Regulatory Architecture

3) ***Carving out clear mandate for a new regulatory authority***: Before setting up a new

regulatory organisation, adequate thought should go into the need for such an organisation, the ability to man that organisation appropriately and to invest it with functional autonomy. Setting up a new regulatory organisation should not be a knee-jerk response to a specific situation or context, but a well thought-out disengagement plan of the Ministry or Department concerned to move away from writing out and implementing regulations.

4) ***Appointments in and supervision of regulatory authorities***: The appointment of persons to head regulatory organisations should be attempted in a far more transparent manner. It is recommended that there should be a transparent system in which the Head of the regulatory organisation and his Board level colleagues appear before an appropriate Parliamentary Committee once in six months to report on the developments of the previous six months and the broad plan of action for the next six months.

5) ***Autonomy of regulatory authorities***: Genuine functional autonomy would also have to be reinforced with financial autonomy by putting in place a system where regulatory organisations are not dependent on government departments for financial support by way of handouts.

6) ***Self evaluation by regulatory organizations:*** The Committee recommends that each regulatory organization should undertake a self-evaluation of itself once in three years, and put-out the conclusions in the public domain for informed discussion and debate.

Boosting Efficacy of Regulatory Process

7) ***Ensuring effective consultation through a two-stage process***: It is recommended that each government organisation/ department which has the responsibility of writing regulations should undertake a two-stage process of consultation, wherein a revised draft is put up for consultation after the first round of stakeholder consultation.

This would ensure that the avoidable situations of misinterpretation of the regulations do not exist.

8) ***Allocating priority to systemic issues***: To boost the effectiveness of regulatory apparatus, it is recommended that enforcement bandwidth of a regulatory body need to be optimally used to deal with cases of systemic importance on a priority basis.

9) ***Putting in place consent mechanism for matters of low significance***: It is recommended that regulatory authority may put in place a settlement or consent mechanism, with adequate safeguards, where cases which have no systemic impact are dealt in a summary manner. This would help in dealing with large volume of matters of systemically unimportant matters.

10) ***Drafting regulation***: It is necessary to ensure that simplicity and clarity should inform the content of regulation, leaving no part of it open to different interpretations by different persons.

11) ***System of advance ruling***: It has been noticed that in a number of cases different authorities have written different, often conflicting, rules and Regulations governing identical activities, thus creating avoidable confusion in the regulated space. Therefore, it is recommended that every organisation tasked with the writing of regulations should have a provision for an advance authority for rulings.

12) ***Setting up regulatory review authority***: It is necessary to address the existing body of regulations (the stock) in terms of contemporary relevance, clarity and continuity. This task is best accomplished by creating a Regulation Review Authority in each organisation that is empowered to write rules and regulations. Every organisation, which writes regulations or other forms of supporting legislation, should have a Regulation Review Authority to continuously examine the stock of existing regulations and to weed out those that do not have any continuing use. The

Regulation Review Authority should be within the organisation that writes regulations in order to have a better sense of understanding the context.

13) ***Reviewing the proposed regulations***: The internal Regulation Review Authority can also be given the task of reviewing draft regulations that are in the pipeline in order to ensure that unnecessary regulations are not given effect to. Every regulatory authority, ministry or department of the Central or State Government involved in the writing of regulations should have within it a Regulation Review Authority also tasked with the preview of intended regulations. Such a body is best equipped to undertake the regulatory impact assessment, which should be a condition precedent to the writing of regulations.

14) ***Regulatory Impact Assessment (RIA)***: A regulatory impact assessment of every proposed regulation should precede the public consultation process.

Enabling MSMEs

15) ***Setting up a overarching body to enable policy and process coordination for MSMEs***: To address the problem of lack of coordination in terms of policy formulation and statutory enforcements among various Central and State Governments, an overarching body can be set up at the highest level to identify and address key issues impeding business facilitation and to interface with relevant Ministries and Departments in order to address identified key impediments in a time-bound manner.

16) ***Single window mechanism***: It is necessary to have single window channels of compliance to help small business entities and also a hassle free tax payment regime. As regards the new entrants to the business environment, there should be facilitation centres to help deal with the complexities of filling cumbersome forms and dealing with other procedural issues.

17) ***Time bound decision making***: The granting of permissions or the decision not to grant permissions should be taken within a prescribed time period failing which there should be a provision for deemed permission. It is necessary that for every approval to be accorded there should be an outside time limit, with stipulation that if an approval is not accorded or a final decision of rejection is not communicated during that time period, there will be a presumption of approval.

Addressing State Level Issues

18) ***Information facilitation through nodal point***: It is recommended that each State Government appoints a nodal person and a nodal office, which can be the single point contact for persons intending to obtain information on the procedural and substantive conditions to be fulfilled for setting up a business.

19) ***Incentivising regulatory reforms amongst states***: With an urgent need being felt to accelerate the process of simplification of regulations and consequently expediting the necessary approvals, the Committee recommends that State Governments that make significant progress in this matter should be appropriately incentivised.

20) ***Building in appellate process by design***: There should be built into the system an appellate process where a person aggrieved by an order of rejection may, as a matter of right, approach a superior authority for reconsideration of the matter on merits.

Chapter One

Introduction

1. Introduction

1.1 It has often been said, not without reason, that doing business in India is like taking part in an obstacle race, with one material difference. In an obstacle race, the number of obstacles, the nature of obstacles and the location of the obstacles are known in advance.

1.2 This uncomfortable realisation has not led to a concerted effort to identify the difficulties that are encountered by persons attempting to do business in India. The fact that setting up a business enterprise in India necessitates successfully overcoming several substantive and procedural hurdles is not a secret. In the recent past, there have been attempts, too few and far between, to make a worthwhile impact on improving the ease of doing business in India. At the same time, several other countries, faced with similar problems

and keen to attract both domestic and foreign investments, have dismantled cumbersome regulatory structures and eliminated, from the Statute Books, the Acts, Rules and Regulations which have outlived their utility. The result is that India's ranking for the ease of doing business is at a dismally low level which does not reflect the enormous potential that India has as an investment destination. The annual ranking of nations with regard to the ease of doing business is an exercise that the World Bank has been attempting for some time. India's very low ranking in the recent reports has been the proximate cause for setting up this Committee to review the regulatory environment to improve the business climate in India. A copy of the Notification constituting the Committee is at Annexe-I to this report.

1.3 The present Committee was initially constituted with a preponderance of representatives from the private sector. Recognizing that a comprehensive view of the issues arising from the terms of reference could

be had only with the State Governments and the Public Sector Undertaking being represented in the Committee, the Ministry of Corporate Affairs was requested to enlarge the composition of the Committee. The members subsequently added to the Committee are listed in Annexure-II of this report.

1.4 Substantive and procedural matters which adversely impact the growing of business in India can be attributed to a number of factors. Chief among them are the multiplicity of authorities, the plethora of regulations, the lack of clarity and the absence of continuity. The problem is further compounded by competing and often conflicting postures adopted by those tasked with the ensuring of orderly and non-discriminative conduct in the matter of enforcement. A Judicial system that has not crowned itself with glory in the matter of speed of disposals, and an alternate dispute resolution mechanism which does not seem to have delivered, have only added to the complexity of the problem. This Committee has been tasked to

unravel the regulatory maze and to address issues that are sector-neutral but have a significant bearing on the ease of doing business.

1.5 When the Committee set out on its task it was felt that if the views of all stakeholders were to be obtained in a participative environment, it would be necessary to hold a number of meetings in different locations and with representative associations of different categories of persons.

1.6 Given the time constraint of the members of the Committee, this approach and the alternative of constituting sub-groups of the committee to address specific aspects of the Terms of Reference could not be pursued. The Committee held two meetings subsequent to which the Members of the Committee were requested to send their considered views in writing to the Committee. This was felt to be a better alternative to having a large number of meetings which, given the size and the composition of the Committee, was leading

to suboptimal attendance. It was felt that the written views of the Members could capture the essential concerns relatable to the doing of business in India and appropriate solutions thereto. The near-total absence of responses from the Committee Members has given rise to the inconvenient conclusion that the regulatory environment either does not cause the kind of problems that it is believed to cause or, the more uncomfortable conclusion, that the prescriptive arrangements in the regulatory environment, while being adversely commented on, are being got round by the corporates concerned.

1.7 It is recognized that there have been some attempts in the past to look at sector specific issues that impact on the doing of business. While recommendations arising from such efforts might have been accepted in whole or in part, the rolling out of the recommendations has not been to the desired extent and at the desired pace. In this report, we have taken note of some of the work already done while revisiting

those recommendations in the context of their current relevance. This report is founded on the belief that recommendations informed by pragmatism and grounded in contextual reality have the best chance of finding acceptance and being implemented.

Chapter Two

Legal Reforms

2.1 One of the areas of concern identified by the World Bank Report on doing Business in India is the undue delay in the enforcement of contracts. While the Report focuses on the delayed enforcement of contracts as a specific area of concern, it is considered appropriate to view this as one symptom of a larger problem. It is widely acknowledged that the reform process which got underway in the early 1990s did not embrace legal reforms. It does no credit to a country of India's size and standing that she is ranked 183 out of 184 countries in the area of contract enforcement. It is no secret that Courts in India suffer from a huge backlog and a seemingly limitless inflow of new cases. That, combined with somewhat dated processes involving multiple levels of appeal, results in an extraordinary long time being taken for resolution of simple commercial disputes. A major part of the problem is the fact that legal enactments which are several decades old do not address the requirements of

modern day trade and commerce. The setting up of special courts or exclusive courts is a necessary but not a sufficient condition for improvement. It will be necessary for the Government of India as also the State Governments to examine the content of all laws and rules which impact on the ease of doing business, and cause appropriate changes therein to reflect the requirements of modern day trade and commerce.

It will be necessary for the Government of India as also the State Governments to examine the content of all laws and rules which impact on the ease of doing business, and cause appropriate changes therein to reflect the requirements of modern day trade and commerce.

2.2 Equally important is the need for Judicial authorities to be appreciative of the need for quick resolution of disputes that are brought up before them. A case in point is the large number of pending cases under Section 138 of the Negotiable Instruments Act. The sheer volume of such pendency ensures that cases take years to be decided when the fact in issue is relatively simple. A large number of these cases arise from the dishonouring of post-dated cheques as and when they

are presented for payment. A post-dated cheque is an important instrument in business and the seemingly casual manner in which such cheques are not honoured after they become due tends to reduce the legitimacy of the instrument. As it is, an offence under the Negotiable Instruments Act is complete only when the drawer of the cheque after being put on notice regarding the dishonouring of the cheque, refuses to make good the amount during a period of 15 days. In most other countries the offence is complete if a cheque is issued without adequate funds to enable its being honoured. It is easy to appreciate that disputes, even after a notice period of a fortnight, will seriously obstruct the smooth flow of trade and commerce. It is very heartening to note that the present Chief Justice of India in his first week in office has identified the pendency of such cases as a major contributor to the overall backlog of cases in the Indian judicial system and has resolved to address it expeditiously.

2.3 It is imperative that persons involved in commercial disputes should be encouraged to look at alternate dispute resolution as the preferred instrument for settlement of such disputes. Notwithstanding the relatively simpler processes of arbitration and conciliation, parties to commercial disputes are even now prone to approach civil courts for dispute resolution. Since a contract between parties is an agreed commercial relationship, it might not be appropriate to mandate that all disputes should be settled by way of alternate dispute resolution. However, there should be a mechanism to dis-incentivise such persons from approaching courts so that they are persuaded over time to include arbitration as an element of their contract.

There should be a mechanism to dis-incentivise use of civil courts for resolving contractual disputes, so as to encourage arbitration as a preferred manner of resolution.

2.4 It is relevant to note that while, in theory, arbitration is expected to result in quicker resolution,

the reality is often different. Arbitrators, once appointed, seem to believe that arbitration is a timeless never ending process and as a result it has been noticed, in some cases, that arbitration proceedings take longer than the determination of identical issues by a Civil Court. There ought to be a large pool of persons trained in the process of arbitration who could be approached by contending parties to take up their matter. The present crop of arbitrators comprising largely of retired Judges and superannuated CEOs is hardly an adequate instrument for speedier arbitration.

There ought to be a large pool of persons trained in the process of arbitration who could be approached by contending parties to take up their matter.

2.5 Another welcome development in recent times is the effort being made by the higher Judiciary and the apex Judicial training academy to promote the understanding of recent commercial enactments by the Presiding Officers of the lower courts. There is

increasing evidence that the lower courts are better equipped today to deal with contentious commercial disputes than they were in the past. It is important to build on this aspect.

Chapter Three

Regulatory Architecture

3.1 No discussion on the improvement of the regulatory climate in India can afford to ignore the content and structure of regulatory organisations. Unfortunately, much of the debate and discussion on regulatory organisations has tended to focus on the background and personality of the head of the regulatory organisation. Such a sterile debate does not enable the understanding of the organisation's regulatory philosophy which significantly influences the content and scope of regulations. India's regulatory architecture is getting increasingly complex with the setting up of new regulatory bodies which are inadequately empowered, and insufficiently manned in terms of both numbers and skills. While it is beyond the province of this report to address the specifics of manning regulatory organizations, the committee is strongly of the view that before setting up a new regulatory organisation, adequate thought should go

into the need for such an organisation, the ability to man that organisation appropriately and to invest it with functional autonomy. The experience of some regulatory authorities has been that in the guise of administrative accountability, functional autonomy tends to get impeded and consequently regulatory organisations sometimes began to resemble subordinate offices of the Government Ministries and Departments.

3.2 Setting up a new regulatory organisation should not be a knee-jerk response to a specific situation or context, but a well thought-out disengagement plan of the Ministry or Department concerned to move away from writing out and implementing regulations.

3.3 In order to reinforce the confidence of the regulated universe and other stakeholders, regulatory organisations should undertake a self-evaluation of themselves once in three years, and put out the

conclusions in the public domain for informed discussion and debate.

3.4 Genuine functional autonomy would also have to be reinforced with financial autonomy by putting in place a system where regulatory organisations are not dependent on government departments for financial support by way of handouts. A strong and sustainable regulatory organisation should generate its own funds in the form of fees and penalties, subject to such safeguards as may be prescribed to ensure that there is no unjust enrichment of the regulatory organisation.

There should be a transparent system in which the Head of the regulatory organisation and his Board level colleagues appear before an appropriate Parliamentary Committee once in six months to report on the developments of the previous six months and the broad plan of action for the next six months.

3.5 Functional autonomy without corresponding accountability is a sure recipe for chaos. Such accountability should not be on a continuing basis to

the administrative Ministry because of the perception, often matched by reality, that the regulatory organisation is articulating the viewpoint of the concerned Ministry or Department. Instead, there should be a transparent system in which the Head of the regulatory organisation and his Board level colleagues appear before an appropriate Parliamentary Committee once in six months to report on the developments of the previous six months and the broad plan of action for the next six months. Such evidence as would be given by the senior functionaries of the regulatory organisation should be in the public domain, unless special circumstances require any part of such evidence to be kept outside the public domain.

The appointment of persons to head regulatory organisations should be attempted in a far more transparent manner.

3.6 Functional autonomy ensures the availability of a level playing field for all entities, irrespective of ownership. This will ensure that Public Sector

Organisations which compete for business with private sector organisations do not have the advantage of a more liberal prescriptive regime.

3.7 The appointment of persons to head regulatory organisations should be attempted in a far more transparent manner than is the case at present. The practice of inviting applications, from interested candidates and subjecting them to a process of interviews by a panel comprising persons with no familiarity with the regulatory organisation, is the surest way to cause loss of public confidence not only in the process but also in the organisation. The responsibility attached to such positions would seem to necessitate that persons considered suitable by an appropriately empowered high level committee should be invited to head the organisations. The entire process should be transparent and should over time replicate the process followed in some developed countries where the suitability of the candidate concerned is the subject matter of informed public discussions before the

appointment is finalised. To appoint an applicant or a supplicant to head a regulatory organisation is to ensure the suboptimal performance of the organisation and its resultant loss of credibility.

Chapter Four

Boosting Efficacy of Regulatory Process

4.1 For a long time, the belief had prevailed that regulators alone should decide the scope and content of regulation. Over the years, experience had shown that a non-consultative process adopted by regulatory bodies led to regulations which were either impracticable of implementation or had no relevance to the rapidly changing environment of the regulated universe. As inadequacies on this account began to surface, it was felt that the writing of regulations should be preceded by a process of effective consultation with all stakeholders. As a consequence, barring a few exceptions, the practice of prior consultation through approach papers or the putting out of draft regulations has become the universal practice. Notwithstanding the process of consultation as presently practised, it has been found that regulations often fall short of the desired objective or are misdirected and give rise to unintended consequences with negative implications.

The present practice invariably is to put out a consultation paper setting out, in considerable detail, the new regulatory ground proposed to be covered or the changes proposed to be made in the existing body of regulations. During the time available for the consultative process, the stakeholders are expected to respond with their observations on any inadequacies that they might perceive or any overreach that they might apprehend. After the comments and objections are received and considered, the regulatory body proceeds to finalize the new set of regulations and to bring them into effect.

4.2 The consultation process, as described in the preceding paragraph, often falls short of the intended objective of ascertaining the views of the stakeholders and appropriately incorporating in the regulations such views as are consistent with the stated objective of the proposed regulation. More often than not, it is noticed that different sets of stakeholders with different interests in mind respond in diametrically opposite

fashion to the proposed regulations. In such an event, it is not possible for the regulatory body to incorporate all the suggestions received and in the process, it may be appropriate to attempt some harmonious construction of seemingly conflicting view points, without losing sight of the objective of the regulation concerned.

4.3 In order to make consultation more meaningful, it is necessary that after the first round of consultations takes place, the regulatory body should attempt a revised approach paper accompanied, wherever possible, by a revised draft of the proposed regulations and then put out the revised proposal for public comment. While such a two-stage proposal might take time and might be counter-productive in an emergent situation, it allows those that have commented on the first proposal to take note of how many, if any, of their suggestions are likely to find

A two-stage process of consultation would ensure that the avoidable situations of misinterpretation of the regulations do not exist.

place in the revised regulations. In the absence of a two-stage process, the stakeholders that send in their suggestions are often not aware whether their suggestions have been taken into consideration, though not necessarily accepted. A two-stage process of consultation would ensure that the avoidable situations of misinterpretation of the regulations do not exist. In emergent cases, nothing would prevent the regulatory body from giving effect to regulations to address the problem on hand and simultaneously seeking comments by way of a post-decisional consultation process. Feedback obtained from regulators would seem to indicate that there is at best lukewarm response to the draft proposals put out in the public domain for consultation. It would be incumbent on the stakeholders to respond to the draft regulations while the process of consultation is on rather than to complain about the inadequacies or the overreach of the regulations once they are given effect to.

4.4 The effectiveness of a regulatory process depends to a large extent on the enforcement of regulations. With the economy growing at a reasonable rate and with newer and newer activities and instruments having to be dealt with by regulatory organisations, it is entirely likely that the number of enforcement actions would be far too many for any organisation to handle expeditiously. It is also well-known that the disincentivisation of inappropriate conduct by regulatory entities should involve both timely and effective action. It is beyond the capability of most organisations to dispense quick and effective justice, having regard to the large number of cases that they are obliged to deal with. This is compounded by the fact that in an atmosphere of distrust and lack of confidence, regulatory organisations often take up matters in a chronological order with the result that smaller transgressions often get precedence over instances of larger misconduct. This is further compounded by the fact that whenever an investigation is commenced, regulatory authorities are somewhat

hesitant to drop the investigation for fear that some external agency, often with the benefit of hindsight, would decide that the bona fide error of judgment is a mala fide decision. This can be partially addressed by the existence of a settlement or consent mechanism, with adequate safeguards where cases which have no systemic impact are dealt with in a summary manner. The experience already available in regard to the consent scheme with one of the sectoral regulations in the area of finance should be studied so that similar schemes with adequate safeguards can be introduced to deal with the large volume of systemically unimportant matters. This in turn would lead to the possibility of quick, and hopefully deterrent, punishment in proven cases that are of systemic importance, with the signalling effect that is needed for the regulated universe.

It is necessary to ensure that enforcement bandwidth of a regulatory body is optimally used to deal with cases of systemic importance on a priority basis

4.5 Experience has shown that on a number of occasions and across sectors, there has been disconnect between the intent of a proposed legislation and the manner in which it is understood by the regulated entity. This often happens because of the inelegant manner in which regulations are drafted. Unless this is addressed, there would be a plethora of unproductive litigation leading to loss to both the protagonists in the dispute. A plain reading of some of the regulations drafted in recent times would reinforce the view that "language was given to man to conceal his thought and not to express it." Notwithstanding every attempt to bring about simplicity and clarity in the content of regulation, it is still necessary to provide for a mechanism through which potential disputes in interpretations can be addressed. There are ministries and departments which have set up authorities for advance rulings which can

It is necessary to ensure that simplicity and clarity should inform the content of regulation, leaving no part of it open to different interpretations by different persons.

be approached by persons who are not clear about the applicability of a particular regulation, or a set of regulations to an activity, which they intend to undertake. In order to infuse confidence in the regulated universe, it is necessary that every organisation tasked with the writing of regulations should have a provision for an advance authority for rulings so that potential transgressions can be avoided and business ventures can be undertaken without a lingering doubt about the legality of any aspect of the proposed venture. The system of informed guidance, being not of a binding nature is a poor substitute and should be done away with. The setting up of an Advance Authority for Rulings is by itself not a complete solution. It should be incumbent on the Authority to give an opinion on the issue raised before it within a prescribed time. It should also be incumbent on the authority to give a clear indication of its view on the issue in question without prevarication

It is necessary that every organisation tasked with the writing of regulations should have a provision for an advance authority for rulings

or fence-sitting. Such rulings given by the Authority could be on a 'no name' basis so that when it is put out in the public domain for the information of all concerned, no confidential business information relating to the entity that sought a ruling will be made public.

Regulatory Review Authority

4.6 In an ideal world with unlimited resources and with all individuals and institutions behaving in a manner consistent with public interest, Acts, Rules and Regulations would be avoidable irritants. However, since the real world is as different from the ideal world as chalk is from cheese, it is necessary to have a body of statutory enactments and supporting legislation to regulate human and institutional conduct. In the absence of such determination of conduct, there will be a tendency to take avoidable shortcuts that serve private good at the expense of public interest and national goals and objectives. The number and complexity of regulations and the frequency with which newer and newer regulations are being sprung on an

unsuspecting public often leads to such a framework which is a part of the problem and not a part of the solution. The Indian experience clearly has been that there are more laws, rules and regulations than the country needs and the problem often lies in inadequate implementation, compounded by interpretational confusion. The experience of the last few decades has been that when confronted with a problem, the response of the Government or the regulator has been to either create a new institution or to write new regulations. Often these are knee jerk responses to some isolated occurrence that could have been solved within the existing framework of laws and regulations.

4.7 The facts of the Satyam Computers case illustrate the point. When the founder Chairman of the Company disclosed to the regulators and to the exchanges that the numbers that were put out in the public domain, quarter after quarter, did not reflect the correct state of affairs of the Company, the response of otherwise normally well-informed persons was that new

regulations should be written to address the issue that had surfaced. The demand for new regulations arose even from sections of corporate India normally averse to any additional regulations. The fact that the case in question manifested dishonesty and that there was no regulatory gap was lost sight of, as was the truth of the statement that no system can legislate for honesty.

4.8 At the other end of the spectrum is the interesting case of a large US Company which questioned the need for a new accounting treatment that the Securities and Exchange Commission (SEC) had sought to introduce through a consultative process. The Company contended that given its several strengths such as good lawyers, accountants, systems, processes and the like, it did not need a new regulation to determine its conduct. A few months later, the Company exploded, with poor governance identified as the single biggest contributor to its demise. This more than most other cases demonstrates the need for some regulations to guide human and institutional conduct.

4.9 Having regard to India's federal setup, there are a number of powers and functions vested with the State Government apart from those that reside with the Union Government. The exercise of these powers and functions necessitates the writing of Rules and Regulations as well as the enactment of laws. In addition, there are regulatory and administrative bodies empowered to write regulations, the right for which is derived from the legislature. It has been noticed that in a number of cases different authorities have written different, often conflicting, Rules and Regulations governing identical activities, thus creating avoidable confusion in the regulated space. Given this confusion and uncertainty, it becomes extremely difficult for individuals or institutions to take investment decisions. The fact that these regulations are revisited

It has been noticed that in a number of cases different authorities have written different, often conflicting, rules and Regulations governing identical activities, thus creating avoidable confusion in the regulated space.

and revised frequently creates a climate of uncertainty in which the investors and even advisors do not know what laws are in vogue. Added to this is the problem of clumsy drafting that creates doubts and difficulties leading to the establishment of an interpretation industry.

4.10 The problem of regulation is a problem of both stock and flow. It is necessary to address the existing body of regulations (the stock) in terms of contemporary relevance, clarity and continuity. This task is best accomplished by creating a Regulation Review Authority in each organisation that is empowered to write rules and regulations. It would be the primary responsibility of such an Authority to examine, in consultation with all stakeholders, whether an existing rule or regulation has outlived its utility. In the process, regulations re-written at different points of time, on

It is necessary to address the existing body of regulations (the stock) in terms of contemporary relevance, clarity and continuity. This task is best accomplished by creating a Regulation Review Authority in each organisation that is empowered to write rules and regulations.

different aspects of the same subject, can be collated with all previous regulations on the subject. This exercise would address the issue of multiplicity of regulations as well as contemporary irrelevance of some regulations.

4.11 It has been brought out earlier in this report that the explosive growth in the number of regulations is one of the major constraints to doing business in India. Rarely, if ever, do institutions and regulatory bodies tasked with the responsibility and endowed with the power to write regulations, revisit any regulations of the past to assess their continuing relevance. The experiment with the setting up of a Regulation Review Authority by the Reserve Bank of India in India and authorities elsewhere have yielded considerable benefits, both in terms of

The Committee is of the firm opinion that every organisation which writes regulations or other forms of supporting legislation should have a Regulation Review Authority to continuously examine the stock of existing regulations and to weed out those that do not have any continuing use.

weeding out regulations that are past their shelf-life and in refining regulations that continue to be relevant. The Committee is of the firm opinion that every organisation which writes regulations or other forms of supporting legislation should have a Regulation Review Authority to continuously examine the stock of existing regulations and to weed out those that do not have any continuing use. There have often been opinions expressed that such an Authority should be established outside of the institution that writes regulations in order to ensure objectivity. The Committee is, however, persuaded that the Regulation Review Authority should be within each organisation that writes regulations in order to have a better sense of understanding the context in which the regulations were written and to contextually assess their continuing relevance. Locating such a body outside regulatory organisations could result in a cavalier approach arising

The Regulation Review Authority should be within the organisation that writes regulations in order to have a better sense of understanding the context.

from a lack of ownership in regard to the regulations. An internal Regulation Review Authority can also be given the task of reviewing draft regulations that are in the pipeline in order to ensure that unnecessary regulations are not given effect to. Making the Regulations Review Authority also perform the function of reviewing prospective Regulations could ensure that unnecessary regulations do not come into being in order to crowd the already crowded regulatory landscape.

An internal Regulation Review Authority can also be given the task of reviewing draft regulations that are in the pipeline in order to ensure that unnecessary regulations are not given effect to.

4.12 The frequency with which regulations are amended and new regulations brought into effect has an unsettling effect on the conduct of business. It is legitimate to presume that persons who invest in business ventures would like to have a clear idea of the regulatory environment in which their businesses exist and function. As in the case of legislation, it is

important to ensure that there is continuity and clarity in the content of regulation. It has been noticed that very often regulations are brought into effect in order to address a single instance of transgression or misdemeanour, or even non-compliance, intentionally or otherwise, with the content or form of existing regulations. In some cases, it is entirely possible that a constructive interpretation of existing regulations could address the problem on hand. Yet, regulatory authorities worldwide have been known to write new regulations as a kneejerk reaction to some solitary instance of non-conformist behaviour.

Sunset Provisions in Regulation

4.13 A 'Sunset Provision' refers to statutory or regulatory or policy provision providing that a particular agency, benefit, or law will expire on a particular date, unless it is reauthorized by the appropriate authority.

4.14 Sunset provisions have been used in varying contexts and therefore differ greatly in their details, however, they share the common belief that it is useful to compel the legislature or the regulator to periodically re-examine its delegations of authority and to assess the utility of those delegations in the light of experience. There are two types of sunset provisions which have been observed in practice in different jurisdictions. In some instances the statute creating a particular Administrative/ Regulatory Agency contains a sunset provision applicable only to that agency. In other instances a state may enact a general sunset law that may eliminate any agency that is unable to demonstrate its effectiveness. In this light the Committee is of the view that the Central and State governments and Regulatory Bodies should consider a sunset provision while enacting a new law or creating a new agency or prescribing a new regulation.

The Central and State governments and Regulatory Bodies should consider a sunset provision while enacting a new law or creating a new agency or prescribing a new regulation.

4.15 The basic philosophy in the regulatory environment ought to be not more regulations but better regulation. In other words, instead of writing out new regulations at every conceivable opportunity and creating confusion, there ought to be better enforcement of existing regulations.

4.16 In order to ensure that adequate thought goes into new regulations, it is reiterated that every ministry of the Central Government, every department of the State Government and every regulatory authority has within it a Regulation Review Authority. The task of the Regulation Review Authority would also extend to the scrutinizing of prospective regulations before they are given effect to. In doing so, the Regulation Review Authority would also function as a regulation preview authority. It would be for the authority to examine whether any existing regulation either in its present form, or with some modification, can address the objective sought to be attained through the proposed

new regulation. It is only when the authority is satisfied that the proposed objective cannot be met by any existing regulation that it should accord clearance to the bringing into effect of any new regulation. Such an arrangement will ensure that new regulations do not become a frequent feature of the regulatory environment.

REGULATORY IMPACT ASSESSMENT

4.17 The seemingly mindless explosion of regulations, impacting seriously on management time and cost has created a negative perception of the regulatory environment in which business is conducted. Most developed countries have put in place a formal system of regulatory impact assessment (RIA) in order to determine whether the effort involved and the costs required to be incurred are commensurate with the results sought to be achieved. The regulated universe is continuously changing in regard to participants, products/ instruments and processes, with the attendant attributes of size and the complexity that

they engender. This challenge is being addressed more often than not by increased frequency of regulations often resulting in regulatory overreach. Ambitious in scope and expansionist in effect, many regulations are a clear case of biting of more than one can chew. In such a situation it becomes imperative to put in place a formal system of regulatory impact assessment.

4.18 Elsewhere in this report, the Committee has recommended that every regulatory authority, ministry or department of the Central or State Government involved in the writing of regulations should have within it a Regulation Review Authority also tasked with the preview of intended regulations. Such a body is best equipped to undertake the regulatory impact assessment, which should be a condition precedent to the writing of regulations. Such an assessment will include inter alia a clearly articulated statement of the need for the action being proposed and the shortcomings in the system in the absence of such action. It will be required to address alternatives rather than to adopt a binary approach to a specific regulatory

proposal. One of the alternatives could also be that no action is required by way of fresh regulations.

4.19 It is useful to remember that regulations are sought to be justified in the name of the protection of the consumer whether she is an investor, policy holder, depositor or recipient of any service or product. Compliance with regulations is never cost-free. It would be futile to expect the providers of products or services to absorb the costs of regulation. Resultantly, such costs are met by the recipients of the product or service in whose name regulations are sought to be written. The fact that the person whose interest is sought to be protected is the one who, in the ultimate

Every regulatory authority, ministry or department of the Central or State Government involved in the writing of regulations should have within it a Regulation Review Authority also tasked with the preview of intended regulations. Such a body is best equipped to undertake the regulatory impact assessment (RIA), which should be a condition precedent to the writing of regulations.

analysis meets the cost is a sufficiently persuasive reason for undertaking a rigorous regulatory impact assessment.

4.20 It is sometimes argued that all benefits are not necessarily quantifiable and, therefore, regulatory impact assessment is an incomplete exercise. While recognizing that every benefit cannot be quantified, it is necessary to take the view that a proper appreciation of the non-quantitative benefit sought to be conferred on the protected class should lead to a sufficiently satisfactory regulatory impact assessment.

It must be recognized that self-regulation in the hands of an industry body or a professional membership body often results in no regulation being enforced.

4.21 It must also be recognized that the writing of regulations imposes an additional responsibility, and a consequent burden, on regulatory organisations. Writing out regulations is the easier part. Properly enforcing an increasing number of complex regulations

would necessitate capacity-building of a high order within regulatory organisations, such capacity-building being both in terms of more persons and better and more relevant skill-sets. The plethora of regulations that regulated entities have to contend with, often prompts the response that it is better to be free of all external regulations. The proponents of self-regulation often argue that it would be based on a better understanding of ground realities and would be better targeted to meet the needs of the concerned sector. It must be recognized that self-regulation in the hands of an industry body or a professional membership body often results in no regulation being enforced. The premise that regulations exist to protect the weaker party in a contractual relationship should not be lost sight of while making a case for self-regulation with attendant conflicts that are difficult to manage.

A regulatory impact assessment of every proposed regulation should precede the public consultation process

4.22 A regulatory impact assessment of every proposed regulation should precede the public consultation process which has been dealt with elsewhere in this report. This would lead to fewer regulations with more of them being more productive and purposeful than at present.

Chapter Five

Enabling MSMEs

5.1 MSMEs play a very significant role in the Indian economy. Unless their concerns are addressed, many of them would become uneconomic units and there would be very few persons willing to venture into this area of business.

5.2 The first problem that MSMEs face is a lack of coordination in terms of policy formulation and statutory enforcements among various Central Ministries and State Governments. This could be addressed by setting up an overarching body at the highest level to identify and address key issues impeding business facilitation and to interface with relevant Ministries and Departments in order to address identified key impediments in a time-bound manner. The State Governments and concerned Central Ministries as well as representatives of MSMEs could be the members of this over-arching body.

5.3 For a relatively small business unit the multiple channels of compliance impose not only a huge financial cost but also strain the management bandwidth available to such entities. It is necessary to have single window channels of compliance to help such small entities and also a hassle free tax payment regime.

5.4 Insolvency is yet another matter which needs to be addressed expeditiously. 97% of MSMEs are proprietorship firms or partnerships and do not have an adequate recourse for winding up the business under the Companies Act. Similarly, there are no bankruptcy laws akin to those prevailing in developed countries to facilitate the winding up of uneconomic units in an orderly fashion.

5.5 As far as a new entrant to the business environment is concerned, he or she would be best served if the websites of the appropriate nodal departments of the various Governments contain

detailed information regarding the number of clearances/approvals required, the authority which accords such clearances, the documentation and other procedural requirements necessary for obtaining the approvals the time likely to be taken for obtaining such approvals and the authorities who may be approached in the event of any grievance. There should also be facilitation Centres to help such applicants to deal with the complexities of filling cumbersome forms and dealing with other procedural issues. It would also be extremely helpful if every authority vested with the powers of granting approval puts on its website a comprehensive list of the reasons for which approvals are likely to be withheld. This would ensure that an applicant for setting up a business can address all identified procedural and substantive shortcomings in his or her proposal before submitting the application for approval. The granting of permissions or the decision

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not to grant permissions should be taken within a prescribed time period failing which there should be a provision for deemed permission. In some states 'Deemed Approval' provisions have been included in relevant rules and notified, while many others are yet to do so. Elsewhere in this report the Committee has remarked that there should be a nodal point to capture and share the state-level best practices with regard to improving business environment. Such a mechanism would facilitate swift adoption of best practices such as 'deemed approval' amongst the State Governments. On a related note, the e-biz portals already established to facilitate the doing of business in India could be the ideal platform for dissemination of information to persons seeking to undertake business.

Chapter Six

Addressing State Level Issues

6.1 In attempting to improve the regulatory environment in India, it is necessary to focus on the important role of the State Governments. A large number of regulations that impact the doing of business in India pertain to subjects or functional areas which are within the province of the State Governments as per the separation of powers provided for in the Constitution of India. Available information points to the fact that while some State Governments have devoted adequate attention to reducing the complexity of regulation and are moving in the direction of single window clearance mechanism, some others continue to have multiple authorities with overlapping functions leading to a large number of approvals being required for setting up a business. As is clearly the case in such a situation, the appropriate administrative authority that takes the longest time to accord approval or

clearance determines the ease, or the lack thereof, of doing business with that State.

The appropriate administrative authority that takes the longest time to accord approval or clearance determines the ease, or the lack thereof, of doing business with that State.

6.2 Further, there is no single source of information from which a person intending to set up business can ascertain the number and nature of approvals required. The limited sources of information that are available often do not reflect the current position. Outdated information causes as much difficulty as the absence of the information. Websites are often not updated and as a consequence, sometimes tend to mislead rather than inform. While the Committee is strongly of the view that a tendency to set up new organisations and institutions should be avoided, it is necessary for each State Government to have a nodal person and a nodal office which can be the single point contact for persons intending to obtain

information on the procedural and substantive conditions to be fulfilled for setting up a business.

It is necessary for each State Government to have a nodal person and a nodal office which can be the single point contact for persons intending to obtain information on the procedural and substantive conditions to be fulfilled for setting up a business.

6.3 During the Committee's deliberations, the question arose whether State Governments should be incentivised for simplifying the regulatory structure, reducing the number of regulations and rewriting them in simpler language than at present. One view, which is not without merit, is that the additional business that a State Government would attract by revamping the regulatory environment should itself incentivise the State Government to move in that direction. However, with an urgent need being felt to accelerate the process of simplification of regulations and consequently expediting the necessary approvals, the Committee is of the view that State Governments that make significant progress in this matter should be

appropriately incentivised. The Committee would leave it to the Union Government to determine the manner and the instrumentality of such incentivisation.

With an urgent need being felt to accelerate the process of simplifications of regulations and consequently expediting the necessary approvals, the Committee is of the view that State Governments that make significant progress in this matter should be appropriately incentivised.

6.4 It is also necessary for the Union Government to designate an appropriate Central Ministry or Department as a clearing house for information on the practices being adopted by different State Governments. This would enable all State Governments to ascertain the best practices being followed in Governments in respect of the regulations relating to each sector within the sphere of responsibility of the State Governments and to adopt or, where necessary, adapt the best practices that are in vogue elsewhere. It is not necessary to reinvent the

wheel in regard to practices and procedures that already exist in some other States.

6.5 One area which needs to be addressed is the delay caused by approving authorities by resorting to a time tested method of sequential querying. This involves the phenomenon of raising one query at a time so as to delay the process of granting approval, and in the process increase the chances of speed money changing hands. In order to address this pernicious practice, it is necessary that for every approval to be accorded there should be an outside time limit, with stipulation that if an approval is not accorded or a final decision of rejection is not communicated during that time period, there will be a presumption of approval. The example of building plans can be cited to illustrate the point. If a local authority does not accord approval

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for a building plan within a reasonable period, as may be prescribed by the State Government concerned, it would be presumed on the expiry of that period that approval has been accorded. At the same time, it should be incumbent on all authorities vested with the powers of granting approvals to record in writing as to why the proposal is not accepted and cannot be approved. There should be built into the system an appellate process where a person aggrieved by an order of rejection may, as a matter of right, approach a superior authority for reconsideration of the matter on merits. Such a system would strike at the root of enormous powers vested in individuals and would create a climate of confidence, and the persons seeking to do business would be encouraged to do so.

There should be built into the system an appellate process where a person aggrieved by an order of rejection may, as a matter of right, approach a superior authority for reconsideration of the matter on merits.

Chapter Seven

Action on the World Bank Report

7.1 The Central theme of this Committee's report has been to take a sector-neutral view of the approach to regulation in order to attempt a long overdue simplification of the regulatory regime. However, it would be useful not to lose sight of the specifics of the World Bank Report which over the last ten years has become a reference point for persons seeking to do business.

7.2 Before addressing the specific parameters on the basis of which the World Bank report attempts the ranking of various countries it is significant to take note of the fact that the World Bank had appointed an independent review panel in October 2012 to review a broad range of issues surrounding the "doing business report". After a process of extensive consultations with all stakeholders, the independent review panel made a series of recommendations, the chief of which is that

while the doing business report should be retained, the aggregate rankings should be removed. A number of other correctives were suggested in order to make the report more useful to those interested in the subject.

7.3 Taking advantage of the shortcomings highlighted and the concerns expressed by the panel it is perhaps tempting to ignore the report in its entirety and to continue doing "business as usual". This would be a retrograde step. It is possible to address the issues raised in the report, while factoring in the limitations of the report and to improve the content and process of the regulatory environment in India. Therefore, while, as already stated, the focus of this report is on the general issues that need to be addressed across sectors, some attention needs to be given to the some of the ten indicators on the basis of which the countries have been ranked by the World Bank.

7.4 The first indicator is a measure of the procedures, time, cost and minimum capital required to start a new

business. This is a parameter in respect of which India has received a very poor ranking. The large number of approvals, the difficulty in getting land, the time taken in getting electricity and water connections and a number of other factors make it a daunting task for any person contemplating to set up a business in India. The fact that some of these approval processes run sequentially and not parallely also adds to the total time taken for a person to set up a new enterprise. While single window mechanisms have often been talked about, the implementation of this instrumentality has not kept pace. Further, wherever single window authorities have been set up inadequate empowerment of such authorities has turned out to be a major stumbling block in granting expeditious approvals.

7.5 The second parameter is the delay in obtaining construction permits. Here again, time taking procedures and multiplicity of approvals, not to mention the difficulties in regard to land add up to a discouragingly long period of delay. While there are

state wise variations in the time taken for construction permits it is necessary to put in place, as a first step, a compilation of the best practices in different states so that some of the delay can be eliminated. Simultaneously the necessity for and the relevance of some of the permissions needs to be revisited with a view to removing them from the complex procedural framework.

7.6 A peculiar point to highlight the limited usefulness of the 'Doing Business Report' is access to credit. The report suggests that on this parameter India is performing well. However, the truth on the ground suggests a contrary picture, particularly for the small and medium enterprises. This flaw in the report arises primarily because of its methodology. The 'Doing Business Report' measures the legal rights of borrowers and lenders with respect to secured transaction through one set of indicators and sharing credit information through another. The first set of indicators measures whether certain features that facilitate landing, exists

within the applicable collateral and bankruptcy laws. The second set measure the coverage, scope and accessibility of credit information available through public credit registries and private credit bureaus. This clearly fails to capture the actual difficulty on the ground which is experienced by Indian SMEs despite schemes such as priority landing. There are numerous methodological infirmities which either limit or present an unintended picture of the country vis-à-vis the DBR parameters.

7.7 Accessing credit is particularly significant in the case of small and medium enterprises. Notwithstanding the nationalisation of banks and the resultant shift expected from the creditworthiness of the person to the creditworthiness of the purpose, the Indian banking system still fights shy of extending credit to persons who are unable to provide adequate collateral. Yet another credit-related problem which business is faced is that credit is sometimes not available to the desired extent and at the right time. Inadequate and delayed

credit often leads to credit for productive purposes being applied to consumption purposes resulting in deteriorating asset quality. The absence of a Lender's Liability Act further compounds the problem of existing and potential borrowers.

7.8 Yet another important parameter is the ease with which, and the timing which tax returns can be prepared and taxes paid. Indian authorities have often claimed that payment of taxes is far simpler than before especially with the introduction of the electronic filing system. While there is no doubt that the filing of returns and the payment of taxes has been significantly simplified, the same cannot be said about the post filing issues that the average tax payer often has to contend with. Despite protestations of an improvement in mindset, the needless adversary relationship between assessing authorities and the taxpayers continues to be a fact of life. This is further compounded by a perverse incentivisation system in which gross tax collections are treated as a major indicator of good performance. It

has also been noticed that there are a number of proceedings pending in respect of matters the principles of which have already been decided by a higher forum such as the Income Tax Appellate Tribunal. In an attempt to increase the annual collection of taxes, assessing authorities do not take cognizance of rulings by higher authorities in matters where the facts in issue and the principles of law are identical. This has the further drawback of crowding the system with matters which should have been decided at the level of the assessing authority. While it is appreciated that the judgement of the assessing authority cannot be substituted by the directions of higher authorities there would be no harm in the issuance of a general circular to the effect that assessing authorities would be obliged to take note of rulings of higher authorities in identical matters.

7.9 While the World Bank report does not specifically address the problem of retrospective taxation it is considered necessary to touch on the subject. It has often been said that death and taxes are equally

undesirable aspects of human life. Yet, it can be said in favour of death that it is never retrospective. Retrospective taxation has the undesirable effect of creating major uncertainties in the business environment and constituting a significant disincentive for persons wishing to do business in India. While the legal powers of a Government extend to giving retrospective effect to taxation proposals, it might not pass the test of certainty and continuity. This is a major area where improvements should be attempted sooner rather than later since business cannot take corrective action retrospectively.

General Circular no. 26/2012

No.11/08/2012-CL.V
Government of India
Ministry of Corporate Affairs'

Shastri Bhavan, New Delhi
Dated: 23rd August, 2012

OFFICE MEMORANDUM

Subject:-Constitution of a Committee for Reforming the Regulatory Environment for doing Business in India.

The undersigned is directed to state as under:-

1. The report of The World Bank and the International Finance Corporation, entitled "Doing Business 2012: Doing business in a very Transparent World", India has been ranked at a low of 132 amongst a sample of 183 countries. Although, there is a seven – point improvement over 2010 ranking of 139. However, India continues to lag behind even the BRIC and SAARC countries on most of the parameters.

2. Easing of business environment mandates extensive examination of regulations in different areas of root functioning such as financial reforms, governance reforms, liberalized policy framework, process reforms, etc.,. Thus there is a need to conduct an in-depth study into the entire gamut of regulatory framework and come out with a detailed road-map for improving the climate of business in India in a time bound manner. Such an exercise needs to be undertaken for periodical improvement in the ranking, leading to a situation where India gradually moves towards upward position with almost zero hassles.

3. Accordingly, to achieve this, it has been decided to constitute a Committee to conduct this study and prepare a detailed report within a period of six months. The Committee shall consist of following persons:

I. Mr. M. Damodaran - **Chairman**

II. **Members:**

1. Shri Y.C Deveshwar, Chairman, ITC
2. Shri Ishaat Hussain, Director, Tata Sons Limited

3. Shri K.V. Kamath, Chairman, Infosys
4. Shri Madhu Tandon,
5. Shri Anand Mahindra, Chairman, Mahindra Group
6. Shri Kumar Mangalam Birla, Chairman, Aditya Birla Group
7. Chairman, SEBI or his nominee
8. A representative of Reserve Bank of India
9. Shri R.K. Pachauri, Vice-Chairman, TERI
10. Shri Vijai Sharma, Ex. MoEF Secretary
11. Shri Subas Pani, former Secretary, M/o Rural Development
12. A representative not below the rank of Joint Secretary from M/o Power
13. A representative not below the rank of Joint Secretary from M/o Petroleum
14. A representative not below the rank of Joint Secretary from M/o Highways
15. A representative not below the rank of Joint Secretary from M/o Urban Development
16. A representative not below the rank of Joint Secretary from M/o Commerce & Industry
17. A representative not below the rank of Joint Secretary from M/o Economic Affairs
18. Shri Amitabh Choudhary, CEO, HDFC Standard Life
19. Shri Anil Bharadwaj, Secretary General, FISME
20. Shri P.R. Ramesh, Chairman, Deloitte India

The Indian Institute of Corporate Affairs (IICA) will render the necessary secretarial assistance and logistic support to the Committee which shall submit its report to the Ministry of Corporate Affairs not later than six months from the date of holding of its first meeting. Further, the committee is free to hold its meeting at anywhere in India as decided by its chairman. The Chairman of the Committee shall be free to make its own procedure for conducting the meeting of the Committee.

4. In carrying out its task the Committee may,

(a) Elicit opinions about the policy action initiatives required and the changes in the statute required for meeting the objective of conducive business environment.

(b) Hold wide consultations with all the stakeholders in the corporate sector, academics and members of public;

(c) Issue questionnaires and invite written comments through public advertisements; and

(d) Take such other steps as may be considered necessary to suggest a comprehensive policy framework to enable regulatory environment for doing business in India.

This issues with the approval of Hon'ble Corporate Affair Minister.

(Sanjay Shorey)
Joint Director
011-23389622

Copy forwarded for information and necessary action to:

1. Shri M. Damodaran, Former Chairman, SEBI
2. Shri Y.C Deveshwar, Chairman, ITC
3. Shri Ishad Hussain, TATA
4. Shri K.V. Kamath, Chairman, Infosys
5. Shri Madhu Tandon
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21. Shri P.R. Ramesh, Chairman, Deloitte India
22. DG, IICA
23. PS to Hon'ble Minister of Corporate Affairs
24. PS to Hon'ble Minister of State for Corporate Affairs.
25. Sr. PPS to Secretary/ Special Secretary, Ministry of Corporate Affairs.
26. PPS to Addl. Secretary & Financial Adviser, MCA.
27. PS to Joint Secretary(A),Joint Secretary (R), PS to Joint Secretary (M).
28. All Regional Directors of MCA.
29. All Registrar of Companies.

Circular No 27/2012

No. 11/08/2012-CL-V
Government of India
Ministry of Corporate Affairs

5th floor, 'A' Wing, Shastri Bhawan,
Dr. Rajendra Prasad Road, New Delhi
Dated: 29th August, 2012

CORRIGENDUM

Sub:- Constitution of a Committee for Reforming the Regulatory Environment for doing Business in India.

In continuation of this office O.M. of even number dated 23.08.2012 the undersigned is directed to say that Special Secretary/Additional Secretary of this Ministry shall be the nominee of the Ministry of Corporate Affairs in the Committee for Reforming the Regulatory Environment for doing Business in India.

Further, the name 'Shri Madhu Tandon' referred in the said Committee may be read as "Shri Madhu Kannan, Head Business Development, Tata Sons Limited"

Lastly, Director General & CEO, Indian Institute of Corporate Affairs will be the convenor of the Committee.

Sanjay Shorey
(Joint Director)

Copy forwarded for information and necessary action to:

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23. PS to Hon'ble Minister of Corporate Affairs
24. PS to Hon'ble Minister of State for Corporate Affairs.
25. Sr. PPS to Secretary/ Special Secretary, Ministry of Corporate Affairs.
26. PPS to Addl. Secretary & Financial Adviser, MCA.
27. PS to Joint Secretary(A),Joint Secretary (R), PS to Joint Secretary (M).
28. All Regional Directors of MCA.
29. All Registrar of Companies.

GENERAL CIRCULAR NO.32/2012

No. 11/08/2012-CL-V
Government of India
Ministry of Corporate Affairs

5th floor, 'A' Wing, Shastri Bhawan,
Dr. Rajendra Prasad Road, New Delhi
Dated: 15.10.2012

CORRIGENDUM

Sub:- Constitution of a Committee for Reforming the Regulatory Environment for doing Business in India.

In continuation to this Ministry vide circular no. 26/2012 dated 23.08.2012 wherein a Committee has been constituted for Reforming the Regulatory Environment for doing business in India.

In this regard, the 1st meeting of the said committee held on 10.10.2012, thereafter it has been decided to include representatives from PSU Banks/from NTPC and BHEL so as to make the Committee more broad based.

Accordingly, the following persons are made members of the above committee:

a) Shri Pratip Chaudhuri, Chairman, State Bank of India
b) Shri Arup Roy Choudhury, Chairman & Managing Director, NTPC
c) Shri B.P. Rao, Chairman & Managing Director, BHEL

Sanjay Shorey
(Joint Director)

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8. Chairman, SEBI
9. Shri G Padmanabhan, Executive Director, Reserve Bank of India
10. Dr. R.K. Pachauri, Director-General, TERI

11. Shri Vijai Sharma, Ex. MoEF Secretary
12. Shri Subas Pani, former Secretary, M/o Rural Development
13. Ms. Jyoti Arora, Joint Secretary(Reforms & Restructuring) from M/o Power
14. Shri Sudhir Bhargava, Additional Secretary from M/o Petroleum
15. Shri S. Bandopadhayaya, Joint Secretary from M/o Road Transport & Highways (Vigilance section)
16. Shri A.S Bhal, Economic Advisor from M/o Urban Development
17. Shri J. S Deepak, Additional Secretary from M/o Commerce & Industry
18. Joint Secretary, Capital Market from M/o Economic Affairs
19. Shri Amitabh Choudhary, CEO, HDFC Standard Life
20. Shri Anil Bharadwaj, Secretary General, FISME
21. Shri P.R. Ramesh, Chairman, Deloitte India
22. Shri Pratip Chaudhuri, Chairman, State Bank of India
23. Shri Arup Roy Choudhury, Chairman & Managing Director, NTPC
24. Shri B.P. Rao, Chairman & Managing Director, BHEL
25. DG, IICA
26. PS to Hon'ble Minister of Corporate Affairs
27. PS to Hon'ble Minister of State for Corporate Affairs.
28. Sr. PPS to Secretary/ Special Secretary, Ministry of Corporate Affairs.
29. PPS to Addl. Secretary & Financial Adviser, MCA.
30. PS to Joint Secretary(A),Joint Secretary (R), PS to Joint Secretary (M).
31. All Regional Directors of MCA.
32. All Registrar of Companies.
33. Secretary, Department of Financial Services
34. Secretary, Ministry of Power

Independent Panel Review of the Doing Business report

EXECUTIVE SUMMARY

In October 2012, the President of the World Bank Group appointed an independent panel of experts ("the Panel") to review a broad range of issues surrounding the Doing Business report, which is now in its tenth year of publication.

The Doing Business report attempts to provide a wide-ranging assessment of the business climate in 185 countries, primarily through the lens of formal regulations and procedures. It focuses on de jure (according to law) aspects of the business environment as they apply to small and medium-sized enterprises, with limited attention paid to implementation and customary practice.

The report ranks economies on 10 areas of regulation, which the report calls "topics" – starting a business, dealing with construction permits, getting electricity, registering property, getting credit, protecting investors, paying taxes, trading across borders, enforcing contracts and resolving insolvency. There is no other comparable project in terms of scale or scope.

The Doing Business report is a flagship knowledge product of the World Bank (the Bank). As such, it needs to be an authoritative, scientifically rigorous and well-crafted publication that provides meaningful input into policy discussions on how to improve the legal and regulatory climate for business around the world.

The Panel has analysed the publication's contents over time and suggests that the Bank should continue publishing it, but that certain key considerations around its reliability and validity should be revisited.

While the Doing Business report has played a role in conveying new information relevant to monitoring aspects of the business climate on a timely and internationally comparable basis, there are many challenges associated with it. Key among these are the relevance of the information gathered, the aspects being measured, the spectrum of businesses being analysed (currently only small and medium-sized enterprises), and the basis of its comparability across economies with different needs and at differing stages of development.

The Panel is concerned about the following:

- The Doing Business report has the potential to be misinterpreted. It should not be viewed as providing a one-size-fits-all template for development. Empirical evidence on the results of business-regulation reforms captured by the report is mixed and suggestive at best. Correlations between the report's topics and developmental outcomes often do point to a negative association between the regulatory burden and economic development and growth. However, such correlations do not justify a causal interpretation: it is notoriously difficult to establish a causal relationship between such variables at country level. Moreover, any correlation would only point to what is true "on average". The evidence in favour of specific country reforms is contingent on many auxiliary factors not captured by Doing Business report topics.

• The report relies on a narrow information source. While there is no obvious alternative to the report among existing global data-collection exercises and its results are generally in line with other business-environment studies that survey firms and experts, it makes far-reaching observations based on data gathered from sources with a relatively narrow perspective on the business environment. The abiding question is whether the experts – primarily lawyers – are the best source for the requisite primary data. A related consideration is whether the questions posed are appropriate given what they are intended to measure.

• The report only measures regulations applicable to categories of business that can be captured through its methodology. The representativeness of such businesses, and the relevance of these regulations, varies greatly from country to country. The report does not indicate how far its conclusions extend to firms outside its frame of reference. In addition, the real business world is very different to the one "on paper". Triangulation of the investment/climate survey may provide a better starting point for measurement and comparison.

• The report's data-collection methodology can be improved. Some of these improvements require additional resources, while others – like revisiting the Independent Evaluation Group's recommendation to focus the measure of taxes on the administrative burden of paying taxes rather than the tax rates – can be implemented at little cost. This review identifies these improvements without making detailed recommendations, because this would require a governance process that draws on lessons learnt and considers feedback and criticism from various sources.

• The report's ability to enable countries to respond appropriately. For example, India's government has focused on the small and medium-sized enterprises sector to stimulate industrial growth and employment. Several grassroots studies in India have revealed that companies of this size struggle with the availability and cost of credit. However, the Doing Business report ranks India 23rd on the Getting Credit indicator (but 132nd in the world overall). This provides an obscure picture of the real constraints faced by small and medium-sized enterprises in India. If the Indian government were to be guided by Doing Business rankings, it would focus on constraints that pull down the country's overall ranking and not on the availability of credit. The report is therefore not an accurate instrument for broader policy considerations.

• The perspectives offered by the Paying Taxes and Employing Workers topics. The latter has already been excluded from the report's rankings. While there is a persuasive case for paying attention to these aspects of doing business, the Bank will need to carefully consider the correct way to assess the regulation and legal environment of these areas if these indicators are to be retained.

• The governance of the project. There is no regular formal external review of the Doing Business report and internal communication between the Bank's different units could be strengthened.

• The use of aggregate rankings. The aggregation of indicators to produce the "Ease of Doing Business" rankings table has been a contentious issue since the Doing Business report started carrying them in 2006. Rankings are challenging

because they involve aggregating across indicators (topics) – a process that explicitly or implicitly involves a value judgment of what is "better" for doing business and how much better it is – and because small revisions or inaccuracies in primary data can significantly change a country's rankings.

The report's role and reputation

The World Bank's views on the objectives of economic growth and development, and the best way to attain these objectives, are continuously evolving. For example, in its World Development Report 2013, the Bank puts forward a nuanced view on labour regulations, suggesting that governments should strive for a balanced combination of labour regulation and management practice that is unique to their country's stage of development. This message differs markedly from the perspective associated with the report in its earlier years.

Ideally, the Bank's various knowledge products should align with its stated objectives and each other. The Doing Business report's aim should therefore be to provide each country with the ability to measure itself against its own stated "ease of doing business" and economic growth objectives.

Doing Business users should fully understand the report's sphere of relevance and, importantly, its limitations. These caveats, which do appear in the small print on page 17 of the 2013 Doing Business report, should be emphasised more prominently within the first few pages, and throughout the supporting communication strategy.

Furthermore, the report's title, Doing Business, implies that it provides a comprehensive measure of the business environment, rather than just a measure of business regulations. Changing the report's name would go some way towards addressing this problem and signalling a commitment to transparency. One simple option would be to revert to the 2004 title, Doing Business: Understanding Regulations, and brand it as such.

Recommendations

1. Retain the Doing Business Report. The Panel recommends that the Doing Business report be retained as an annual flagship report.

2. Remove the aggregate rankings. The decision to retain or drop the aggregate rankings table is the most important decision the Bank faces with regard to the Doing Business report. Removing it would defuse many of the criticisms levelled against the report, but would diminish the report's influence on policy and public discussion in the short term. In the long term, however, doing so may improve focus on underlying substantive issues and enhance the report's value. It is important to remember that the report is intended to be a pure knowledge project. As such, its role is to inform policy, not to prescribe it or outline a normative position, which the rankings to some extent do. The Panel recommends that the Bank continue to publish the report but without the overall aggregate rankings (the Ease of Doing Business index). Rather, the scores (cardinal values) for each of the indicators should be emphasised. The country rankings (ordinal values) for each indicator could be maintained, although the Panel regards the

cardinal scores as being more informative. Scores have the advantage of showing where a country is located in the world distribution of an indicator. Ordinal rankings cannot signal such absolute performance. Moreover, there is no strong justification for the current simple averaging across indicators to produce the Ease of Doing Business index. Even without the aggregate ranking, reform-minded countries would still be able to benefit from the primary data collected in the report. Parties interested in the rankings would still be able to use the report's primary data to generate their own rankings without exposing the report to criticism, because such rankings would not implicitly be endorsed by the Bank.

3. Group by topic or shift to categories. The Bank should explore either grouping the "doing business" aspects into core topical areas, or shifting to categories of business endeavour as an alternative to ranking.

4. Change the report's title. This is one way the report can clarify its limitations and be more clearly understood.

5. Implement a peer-review process. This would improve the report's quality and provide a much-needed safety net. The Panel recommends forming a single body with external representation in this regard.

6. Increase the report's level of transparency. Publishing all related information online, including contributors' submissions, would increase the validity of the data and the credibility of the Doing Business project. It would also allow for possibly calculating a measure of uncertainty in scoring. Measurement

errors are an enormous concern and the report would benefit if it was clear about the quality of the data, especially since the Doing Business data has been used for conditional lending practices (for example, the Millennium Challenge account) and for measuring the performance of various ministries.

7. Reform the report's methodology. This review makes suggestions to improve the methodology used in compiling the report, with the understanding that it is the role of a robust governance process to remain responsive to new methods and feedback.

8. Align the report with the World Bank's mandate and other flagship publications. Moving the report team to the Research Department would optimise use of the Bank's economic analysis and research capacity, and help ensure that the message contained in the report synchronises with the Bank's other flagship products.

9. Relocate the Doing Business report in the World Bank. The Panel recommends transferring the report team to the Bank's Research Department and tasking the Development Economics Vice-Presidency with overseeing the methods and analysis used in compiling the report. The Panel also recommends improving the report's governance framework, specifically with regard to operational design. It recommends that a senior Bank management group be tasked with approving the report before it is publicly released and ensuring that all necessary risk-mitigation steps have been taken.

10. Improve the report's communication strategy. The Bank should consider whether to include a "health warning" about its limitations at the beginning of the report, rather than later in the publication, and whether to include a formal definition of the Ease of Doing Business index (if it is maintained despite the Panel's recommendation to drop it).

11. Ensure the use of complementary information available in enterprise surveys. Doing Business currently measures only the regulation of the "formal" economy. The gap between the written law and the day-to-day practice can be significant, especially in developing countries with large informal sectors. The Doing Business report may benefit from supplementing its information with other sources, such as the enterprise surveys, to better guide readers about the need to strengthen how the law is implemented or to signal which regulations in a given country are poorly designed.

The Bank is urged to consider these points when deciding on the path ahead.