

BRIEFING PAPER

CUTS Centre for Competition,
Investment & Economic Regulation
CUTS C-CIER



4/2013

Business Regulatory Framework Towards Optimal Business Regulatory Governance

The Planning Commission of India has developed the Twelfth Five Year Plan (2012-17) which has been approved by the National Development Council (NDC) in December 2012. It had formed a Steering Committee on Industry to look into various ways of creating an enabling business ecosystem for sustainable and inclusive business development and for exploring alternatives that could boost industrial performance, in general, and manufacturing sector, in particular. The Steering Committee divided its work into cross cutting as well as sectoral Working Groups.

This briefing paper discusses the Working Group on Business Regulatory Framework (WG BRF) – a cross cutting Working Group in which CUTS served as a Knowledge Partner. It summarises the report framed by the Working Group in the year 2011.

Introduction

Planning is important in determining optimal utilisation of resources, both human and material, for realising the desired growth and development trajectory of the country. Over the years, the Indian planning process has become more decentralised to achieve raised levels of inclusiveness through people's participation. The Approach Paper on Industry for the 12th Five Year Plan (XII FYP) had kept the following as suggested targets:

- achieve manufacturing sector growth rate at 2-4 percent more than the gross domestic product (GDP);
- increase share of the manufacturing sector to about 25 percent of the overall GDP by the year 2025 up from the existing 15.5 percent;
- create 100 million additional jobs in the manufacturing sector by 2025;
- increase 'depth' in the sector with a focus on the level of domestic value addition;
- enhance global competitiveness of Indian manufacturing through appropriate policy support; and
- ensure sustainability of growth particularly with regard to the environment.

Major Findings

Significance of Business Ecosystem for Economic Growth and Development

The overlapping relationships among business regulations, business procedures, dispute resolution mechanisms, investment facilitation measures, policy environment, trade commitments, infrastructure development, competition promotion, competitiveness, interface among formal-informal sector, etc. constitute the larger "Business Ecosystem" of the country.

There is no or very little inter-link between the various components of business ecosystem to improve the quality of the business regulatory environment and better performance by the businesses. Countries that have performed better than the others is on account of quality of business regulatory environment.

Ambiguous Nature and Vast Scope of Business Regulations

Given the large number of business regulations and their vast and ambiguous scope, there is a no or very little effort to consolidate them at pan-India level.

Box 1: Current Status of the Manufacturing Sector

India has seen a decrease in share of agriculture and a rise in share of services during the last 40 years. However, the manufacturing sector has never taken off. Over the last decade, the Indian Manufacturing sector has grown at an average rate of 6.8 percent and its share in the GDP remains at an insignificant 15 percent as against 40 percent in Thailand and 34 percent in China. The sector engages around 64 million people, i.e. 12 percent of the total Indian workforce.

According to a study conducted by PwC and FICCI in 2009, direct and indirect costs are correlated with competitiveness and 55-80 and 5-12 percent of the cost of production in the manufacturing sector is impacted by the cost of raw material and labour respectively. Additionally, the import duties have as high as 31.7 percent impact on the manufacturing cost. These systemic barriers have a direct adverse impact on the manufacturing competitiveness.

Further, a major part of the manufacturing employment and output comes from small scale establishments. Therefore, although the small firm's share in manufacturing employment is almost 90 percent, they produce only about 1/3rd of the manufacturing output. Additionally, globally, Indian is places in top 10 manufacturer countries of the world. Though manufacturing sector constitutes 50 percent of Indian exports, its global share in manufacturing is very dismal at around 2 percent when compared to China, US, Japan and Germany.

Secondly, there is difficulty in tracing the current/updated status of regulations in light of constant amendments made in the laws/policies. Thirdly, there is a presence of contradictory as well as overlapping business regulations on account of these being administered by different tiers as well as layers of government.

There is no single point of interaction between business and government leading to non-coherence among different government bodies, creating difficulties for business at all levels.

Absence of National Repository of Business Regulations

There are no single stop-shops of business regulations and procedures at Union and State level that are reflective of the *updated status* of the existing regulations in the light of amendments made, if any. Nor are the change making entities obliged to share revisions or any actions relating to the State-specific regulations within a stipulated time frame. Despite the advancements in ICT, there is no dedicated online repository of all the business regulations and procedures.

Prevalence of Low Levels of Coherence in Business Regulatory Governance

There is a lack of coherence in efforts of business facilitation at national as well as state levels and as a result, such efforts fail to sufficiently reflect the aspirations of target constituencies. There are wide variations in government-business transactions in different locations of the country mainly due to lack of predictability and standardisation in terms of timelines as well as process adopted by different state governments.

For example, obtaining construction permits require 37 procedures in Mumbai, whereas the same formality requires 15 procedures in Ahmedabad, Bengaluru and Chennai. Similarly, it takes 126 days to register property in Bhubaneswar and 24 days in Jaipur.

Inherent Limitations with Business Regulatory System of the Country

Regulations in India lack periodic review clauses and the reviews whenever undertaken are not systemic and comprehensive. The Indian system of regulations also lack provisions on Regulatory Impact Analysis.

Further, the regulations also lack a "Sunset Clause", as a result of which once a regulation comes into being, it remains in the statute books till it is not formally repelled. Burdensome regulations act as obstacles to business development in the country.

Constraints with Delivery System of Regulatory Reforms

Several efforts have been undertaken in past by the government, industry and other agencies to identify bottlenecks with business regulations, business facilitation, etc. and detailed recommendations and action points have been given but most of the recommendations given by the expert bodies are of advisory nature only and on their own, have no authoritative bearing on the targeted regulations and procedures.

Furthermore, there is no single dedicated agency for keeping track of the extent to which the previously given recommendations related to regulatory reforms got implemented. The fate of regulatory reform is determined on the basis of the discretion of political and administrative leadership.

Weak Institutional Architecture for Business Regulatory Governance

Despite business regulatory reform agenda placed high in the country, there is also no dedicated authority that could guide the whole process of reform in a structured, planned, cogent and systematic manner.

Effective Competition Regime

The competition regime in India is in its nascent stage. Despite the bold steps undertaken by the country through economic liberalisation reforms a dedicated legislation dealing with competition promotion in the markets was adopted only in 2002, in the form of Competition Act. The competition legislation, in itself, is not sufficient to establish a well-functioning competition regime and it has to be complemented with a dedicated National Competition Policy (NCP), which India is yet to have.

India also lacks any dedicated body to systematically identify competition distorting policies, regulation and praxis and demand suitable rectifications there in.

Mainstreaming Business Responsibilities: The Quest Ahead

In line with the global trend, in India there is a growing recognition of the role to be played by businesses in India for achieving national goal of wholesome growth and inclusive development. However, the terrain of business responsibility is unexplored by a large majority of business enterprises and most of initiatives of this nature have been taken up by large companies whose activities are more visible. There is also dearth of institutions that can spread awareness among all factions of business community in a systematic and structured way. Also, there is a dearth of literature, case studies, and suggestive models related to the subject.

Indian Business Performance vis-à-vis other Countries

India ranks very low in the rankings given by renowned international bodies over their business regulatory and responsibility environment showing India's low place *vis-à-vis* other countries of the world as favourable and responsible business destination on a global scale.

Specific Recommendations

Establishing Effective Competition Regime in India

Adoption and operationalisation of NCP; establishing a National Competition Policy Council (NCPC) to deal with competition distorting policies and regulations in a comprehensive manner and institutionalisation of incentive-disincentive mechanism for implementing the NCP are needed (Box 2).

Operationalisation of National Voluntary Guidelines (NVG) on Social, Environmental and Economic Responsibilities on Business

Inclusion of Business Responsibility as distinct subject under the Government of India (Allocation of Business) Rules 1961 for developing a holistic governmental perspective on the subject; mandating the disclosure framework for adoption of NVG principles; establishing National Foundation for Business Responsibility to undertake awareness, training and capacity building of relevant stakeholders and mandating the alignment of public-private-partnership projects with NVG principles are called for.

Enhancing Manufacturing Sector Competitiveness of India

To enhance the sectors competitiveness, it is recommended that the National Manufacturing

Box 2: Success of the Competition Regime in Australia

Australia adopted its NCP and constituted National Competition Council (NCC) in the year 1995 and the NCP reforms have been hailed internationally as successful examples of nationally coordinated reforms.

The NCP was given effect by way of an agreement among different Australian governments to update Legislative Review Programme (LRP) for all jurisdictions to review their regulations with respect to their impact on competition. The NCP LRP identified around 1800 laws regulating areas of economic activity for review under NCP.

The NCC serves as a research and advisory body for all Australian governments. Its main function is to periodically ascertain if the different Australian governments have adopted the agreed upon measures or not and to recommend on the regulation of third party access to services provided by monopoly infrastructure.

Box 3: National and Sub-National Manufacturing Promotion Initiatives/Institutions Globally

S.No.	Country	Initiative
1.	USA	National: National Manufacturing Strategy Act, 2010; A Framework for Revitalising American Manufacturing, 2009
2.	UK	National: Growth Review Framework for Advanced Manufacturing, 2010, the Government's Manufacturing Strategy, 2002 Sub-National: <i>England and Scotland:</i> Manufacturing Advisory Services (MAS)- 9 in England and 1 in Scotland <i>East of England:</i> Regional Strategic Framework for Manufacturing (2007-12) <i>North-West:</i> Manufacturing Strategy and Action Plan for North West, 2009
3.	Canada	Sub-National: <i>Quebec:</i> Action Plan to Support the Quebec Manufacturing Sector (2007-12) <i>Ontario:</i> Ontario Manufacturing Council <i>Great Lakes:</i> Great Lakes Manufacturing Council
4.	Australia	Sub-National: <i>Queensland:</i> Queensland Advanced Manufacturing Sector Action Plan, 2008 <i>Victoria:</i> Building Our Industries for the Future: Action Plans for Victorian Industry and Manufacturing, 2008; Victorian Industry Manufacturing Council <i>South Australia:</i> South Australia Manufacturing Consultative Council

Policy (NMP), adopted in 2011 is operationalised. Additionally, State Manufacturing Action Plans (SMAPs) need to be developed in alignment with the NMP together with setting up of State Councils on manufacturing competitiveness and competition reforms. Such Councils have already been set up by Tamil Nadu and Andhra Pradesh (Box 3).

Policy and Legislative Framework for Business Development and Regulation

In order to lay down the foundation of optimal business regulatory governance system in the country, the creation of requisite policy and legislative framework is strongly recommended by developing a National Policy on Business Development and Regulation; drafting and enacting National Business Development and Regulation Bill and enacting National (Infrastructure) Regulatory Reforms Bill (Box 4).

Box 4: Regulatory Reform Policy Initiatives in Select Countries

United Kingdom

White Paper - *Lifting the Burden*, 1985;
Building Business - Not Barriers, 1986

Coalition Government Strategy Statement -
Reducing Regulation Made Simple, 2010

Canada

Government of Canada
Regulatory Policy, 1999

Cabinet Directive on Streamlining
Regulation, 2007

Ireland

White Paper - *Regulating Better*,
2004

European Commission

Communication - *Better Regulation for
Growth and Jobs in the European
Union*, 2005;

*Smart Regulation in the European
Union*, 2010

Building Institutional Architecture for Business Regulatory Governance

Dedicated institutions such as a National and State Business Development and Regulation Commissions are recommended to address the institutional deficits with business regulatory governance in the country and will take forward the agenda of regulatory reforms in a systematic manner. These institutions will derive their authority from the aforementioned Policy and Act.

Systematisation of Business Regulatory Governance

Mapping and Classification of Business Regulations and Procedures to serve as a baseline for all future attempts at enhancing the quality of the Business Regulatory Framework and a country-wide repository of all business regulations and procedures together with developing a National Business Facilitation Grid to serve as an online one-stop-shop for all business regulation and procedures and developing a Business Regulatory Governance Catalogue are recommended. Standardisation and operationalisation of Single Window Systems with an assured level of predictability at different locations in the country has also been recommended.

Adoption of Regulatory Impact Analysis (RIA)

RIA has to be adopted for improving the quality of business regulatory governance in India and it will

help with the identification of unreasonable burdens on business and in devising ways through which such burdens are kept to a minimum, if not eliminated altogether. An action plan for application of RIA for Union as well as State administered regulatory instruments, in accordance with the mapping and classification exercise, needs to be developed (Box 5).

Paradigm Shift towards ‘Optimal’ Business Regulatory Governance

Benchmarking for Optimal Business Regulatory Governance against clearly defined dimensions like time, volume, cost, frequency, jurisdiction, etc. and adoption of benchmarked model have also been suggested.

Capacity Building Framework for Business Regulatory Governance

Such framework will also be imperative from the point of creating awareness and generating ownership among the implementers as well as target constituencies. Such resources may take form of modules, guidelines, methodologies, reference manuals, checklists, case studies etc.

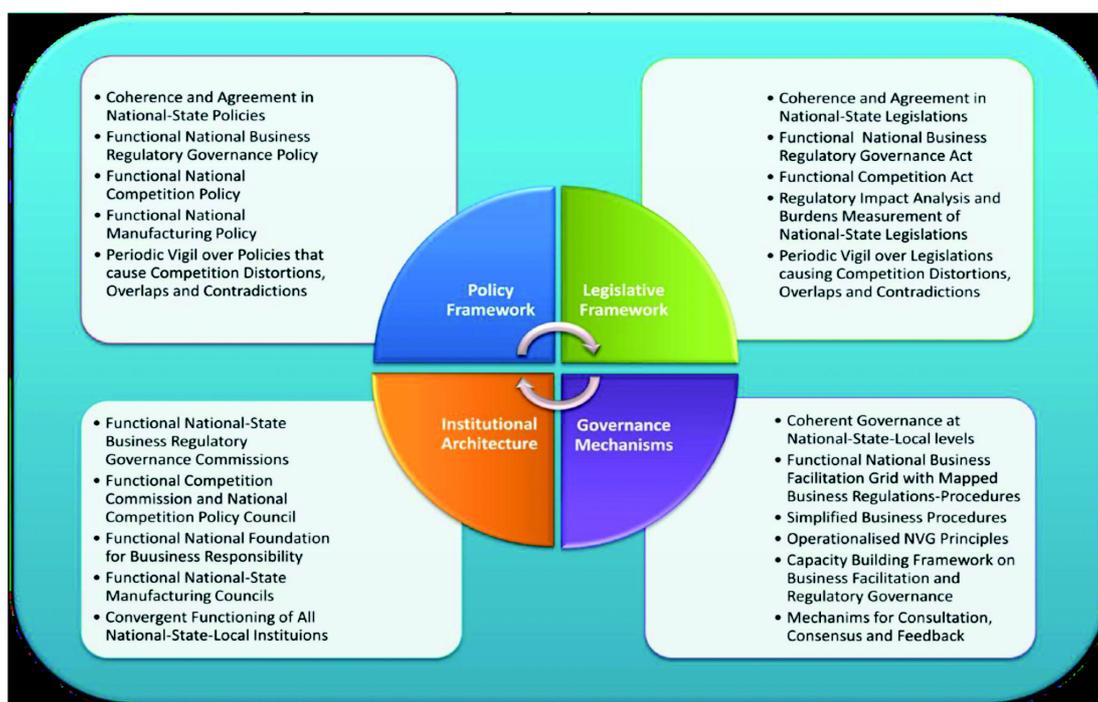
Follow-up over Previous Administrative and Regulatory Reform Endeavours

There should be a comprehensive and all-encompassing follow-up over actions taken on the

Box 5: RIA Enabling Regulations in Select Countries

S. No.	Country	RIA Enabling Regulation
1.	US	President Ford Executive Order 11821 – <i>Inflation Impact Statements, 1974</i> ; President Carter Executive Order 12044 – <i>Improving Government Regulations, 1978</i> ; <i>Paperwork Reduction Act, 1980</i> ; President Reagan Executive Order 12291 – <i>Federal Regulation, 1981</i> ; President Reagan Executive Order 12498 – <i>Regulatory Planning Process, 1985</i> ; President Clinton Executive Order 12866 – <i>Regulatory Planning and Review, 1993</i> ; <i>Regulatory Flexibility Act, 1980</i> ; <i>Unfunded Mandates Reform Act, 1995</i> ; <i>Small Business Regulatory Enforcement Fairness Act, 1996</i> ; <i>Congressional Review Act, 1996</i> ; President Obama Executive Order 13563 – <i>Improving Regulation and Regulatory Review, 2011</i> ; President Obama Executive Order 13579 – <i>Regulation and Independent Regulatory Agencies, 2011</i>
2.	Canada	Statutory Instruments Act, 1985
3.	Germany	Act on the Establishment of the National Regulatory Control Council, 2006
4.	UK	Regulatory Reform Act, 2001; Legislative and Regulatory Reform Act, 2006; Regulatory Enforcement and Sanctions Act, 2008
5.	Australia	Legislative Instruments Act, 2003
6.	Korea	Basic Law on Administrative Regulations and Application, 1994; Administrative Procedures Act, 1996; Basic Act on Administrative Regulations, 1997

Box 6: Design of Business Regulatory Framework of India



basis of previous administrative and regulatory reform endeavours. A dedicated single repository has to be created for storing all such documents.

Though, as presented in Box 6, BRF is not rigid and will be duly reflective of the changes taking place in the overall ‘Business Ecosystem’ of the country, that in turn get influenced by the changes taking place in the external environment of the country. This overarching and dynamic system consists of various drivers, determinants, catalysts and impediments, such as governance reforms and integrity pacts, infrastructure development and sector regulations, judicial and quasi-judicial dispute resolution, human resource development, macro-economic stability and fiscal policies, etc. that together defines or defies, business performance in any given setting.

Under the BRF, a bridge is constructed with government-stakeholder-business crossed together, with following virtues:

1. **Government:** communication, accessibility, responsiveness, transparency, accountability, consensus, coherence, coordination
2. **Stakeholders:** inclusivity, representation, authenticity, collectivisation, vigilance, evidencing feedback, advocacy

3. **Business:** Self-regulation, fair play, mutualism, convergence, acceptance, initiative, innovation, compliance.

Conclusion

Finally, it is understood that the government plays an important role in developing and maintaining an environment conducive for enhancing productivity and competitiveness of business enterprises. It also comes out with various policies and legislative means to meet the expectations from the business as articulated by the society. The role of government is thus, multi-pronged – as articulator, enabler, facilitator, regulator, gap-filler and buffer.

For assuming such role, government will be required to develop policy frameworks, pass legislations, enact rules and monitor compliance with these. Such actions should be able to provide due inputs into a thriving business environment. It is necessary to examine the actions of the government to avoid any counterproductive result or failure to match with the exigencies of the time. Amidst celebrating two decades of economic liberalisation reforms, this is an opportune time to undertake such systemic examination and unleash a new wave of reforms.

This Briefing Paper is written by Tanushree Bhatnagar, Executive Assistant to Secretary General, CUTS International