

# Article

## Will we see policies that are not impulsive law making?

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- Damodaran committee report makes recommendations



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20<sup>th</sup> September, 2013

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## *Damodaran Committee Report-Impact Article*

If you have already not had enough of ever changing regulations you probably have been outpaced by the speed with which regulations are changing. It may have also, so to speak become a trend with policy makers to act on impulses and come running behind slightest hint of things going out of control. As if the common man's hue and cry was not enough, it was certified in the Doing Business Report of World Bank where India ranked 183 out of 184 countries on ease of doing business.

In this pretext, the Damodaran Committee was set up by the Ministry of Corporate Affairs to make recommendations for reforming the regulatory environment for doing business in India. The report<sup>1</sup> of the Committee was submitted to the Ministry on 2<sup>nd</sup> September, 2013 and is available in the public domain.

The report is classified into 6 chapters and relates to a) dispute resolution/ legal reforms, b) architecture of regulatory space, c) measures to boost efficacy of regulatory process, d) improving business for MSMEs, e) addressing issues at state level and f) reviewing World Bank's Doing Business Report. The report makes several recommendations which are very relevant in the present day context. The crux of the report is to provide such regulatory environment facilitating easy doing business in India and the highlights of the recommendation are as below:

- a. **Dis-incentivising civil courts and encouraging arbitration.** Commercial dispute resolution in India takes a long time, a large number of cases are pending under section 138 of the Negotiable Instruments Act as well. The Committee recommends to create a pooled of trained arbitrators for facilitating easy dispute resolution.
- b. **Need for Regulatory Review Authority.** The Committee rightly states that new regulations should not be knee-jerk response to specific situation or context. The Committee recommends that as in developed nations, a regulatory review authority should be set up which would carry out a regulatory impact assessment and should determine the effort and the cost involved and review the need for the regulation and cost thereof. The regulatory review authority should also be the internal regulation review authority for proposed regulations as well. The Committee mentions that owing to the non-consultative approach, regulations formed sometimes are impractical and lose relevance in the rapidly changing environment.
- c. **Consultative approach for law making.** For law writing there should be two levels of consultation process to be carried out, one, stakeholders' consultation process and two, revised draft consultation. The regulatory impact assessment should precede the public consultation process. Matters

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<sup>1</sup> [http://www.mca.gov.in/Ministry/annual\\_reports/DamodaranCommitteeReport.pdf](http://www.mca.gov.in/Ministry/annual_reports/DamodaranCommitteeReport.pdf)



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- of systemic risk to get priority and non-systemic matters to be dealt in a summary manner. The draft regulations should be simple and should not leave any scope for ambiguity. Also that every organisation given the task of writing regulations should have a provision of advance authority for rulings.
- d. **Regulatory Autonomy.** The Committee recommends that there should be regulatory autonomy and that the regulatory organisations should do a self-evaluation once every 3 years and put it on public domain. Also a Parliamentary Committee should review the work of the head of the regulatory organisation every six months wherein the developments of the previous six months will be reviewed.
  - e. **Improving business for MSMEs.** In the present day, policies for MSMEs are not co-ordinated at the Central and the State level. Hence the Committee recommends that there should be an over-arching body set up for addressing the key business issues for MSMEs and acting as an interface with the relevant Ministries and Departments to address the impediments. According to the report 97% of the MSMEs are proprietorship or partnership firms and face several compliance issues which are huge cost burden and strain management bandwidth. The recommendation is to set up a single window clearance mechanism for MSMEs and an appellate process for persons aggrieved by an order of rejection.
  - f. **Incentivising States.** The Committee recommends that there should be nodal contact for persons intending to obtain information on the procedural and substantive conditions to be fulfilled while setting up business. The States should be incentivised for simplifying regulations and to expedite approvals. Also at the Central level there should be a clearing house set up for providing information on the practices adopted by different state governments.

As per the World Bank Doing Business Report, the first indicators of doing business are the measure of time, cost, minimum capital required to start a new business, where India ranked low. In India, enforcement of contracts is a problem, resolution of commercial disputes take long, India's regulatory architecture is getting increasing complex, insolvency takes lot of time, absence of bankruptcy and lenders' liability laws are some of the problems of the many. On the business side more and more entities are offering themselves for corporate debt restructuring, NPA levels are constantly soaring in the country. The near absence of policies towards corporate insolvency and problem loans have been a major stumbling block in India and the problems remain exactly who they are.



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As India faces an uphill task with escalating problem of corporate debt restructuring, much of which may turn bad over a period of time, the country cannot afford to have knee-jerk solutions to a problem which is clear by-product of the liberalized, globalised financial system and the current day practice.

Companies Act 2013 is recently enacted, and is currently going through enforcement in a phased manner. The new Act makes some effort to streamlining and speeding the winding up process. However, provisions about revival of sick companies have been made creditor-driven, rather than debtor-motivated. Revival of sick companies is more like survival instinct, which has to come from the person facing sickness rather than the creditors. True, sickness cannot be used as a ploy to keep creditors at bay; at the same time, the social costs of creditor-driven enforcement are huge. There has to be a balance between creditor needs and debtor concerns – the balance is missing at the current time.

As regards asset reconstruction companies, India is the only country which allows ARCs as a business model, and that too, equipped with statutory powers. Recently, the foreign investment regime was relaxed to permit upto 74% investment in “security receipts”. Presumably, there will be lot of traction on this front as loans go non-performing over time.

In short, the country seems to be moving about impulsively on a subject which requires a balanced policy decision. The complex mesh of regulations and ever changing regulations along with the uncertainty that they bring about are not just deterrent but are also having a tremendous negative impact on doing business in India. In this background, the 70 pager Report on the Committee’s recommendations felt like dab of cold water amidst heat waves! The recommendations are welcomed and if implemented would surely have impact on our ‘doing business’ in India.