CIRC RegTracker

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RT.009, September-December 2012

RegTracker is a bi-monthly publication which will be tracking the current policy changes and proposals on economic regulation in the country, particularly on the dynamics of the same as and when a news report appears. It does not aim to provide an in depth analysis of the happenings, but raises some points to ponder, as food for thought and deeper analysis by policy makers and researchers.

1. Unorganised Property Agents to come under proposed Real Estate Regulator's ambit

Economic Times, September 13, 2012

The government plans to bring unorganised property agents and brokers under the ambit of the proposed real estate regulator, imposing stringent penalties including imprisonment on those who dupe buyers or operate without a valid registration. "We have added a chapter on real estate agents in the Real Estate (Regulation and Development) Bill. This will bring in the much needed order in the segment," a senior official in the Ministry of Housing and Urban Poverty Alleviation said on condition of anonymity. He said the bill will be sent to the Cabinet. The draft bill already includes a provision for imprisonment of up to three years, or a penalty of up to 10 percent of the cost of project, for builders selling projects without registration. "The imprisonment clause will be invoked in extreme and deliberate violations," the official said.

Real estate industry bodies have termed the bill draconian and made representations against the provisions of imprisonment and penalty, but the official said that the imprisonment clause has been retained. The bill has been prepared after several rounds of consultations with state governments and stakeholders like builder associations and consumer forums. The official said it has now been cleared by the Law Ministry and will be sent to the Cabinet. The government plans to table the bill in the winter session of Parliament.

http://articles.economictimes.indiatimes.com/2012-09-13/news/33816967_1_estate-agents-estate-regulator-property-agents

Points to Ponder

The real estate sector has been in crises for long now. The DLF judgment of Competition Commission of India (CCI) highlighting onerous clauses in the builder-buyer agreements and delay in completion of most of the projects, pending appeal before Competition Appellate Tribunal is testimony to the much needed regulation in the sector.

The industry must welcome the transparency that the proposed regulation seeks to bring in favour of the consumer. Introduction of licencing for fly-by-night operators in the real estate sector is a welcome move but caution must be held against ushering a license raj. The credibility of the licensing authority-cum-regulatory body must be decently established by manning the right people after due deliberation.

Importantly, the Bill is silent as to the constitution of the selection committee on whose recommendation the appropriate government shall appoint the chairperson and other persons of the regulatory body. One is always worried that such positions will be grabbed by retired IAS officers, rather than competent professionals.

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Further, the institution must not cater to the needs and demands of reputed builders only but must ensure that a level playing field prevails in the industry, not only amongst the builders but also various state housing development authorities. The possibility of cartelisation among builders, leading to high prices of homes in few areas has never been ruled out. Such issue needs significant attention of the legislature and a provision for ensuring at least preventive measures by the proposed regulatory body.

2. Pay up for Illegal Power use, Orissa tells Vedanta

Financial Express, September 27, 2012

The Orissa Electricity Regulatory Commission (OERC) has directed Vedanta Aluminium to pay ₹15 crore to Wesco, the Reliance Infra-owned and licensed distribution company, for "illegally" sourcing power from group company Sterlite Energy. Vedanta Aluminium's aluminium manufacturing unit at Jharsuguda in Orissa, which has been notified as a SEZ, was sourcing power directly form Sterlite Energy's Independent Power Plant (IPP) located next to the SEZ through a dedicated 400 KV double circuit transmission line.

According to OERC, Sterlite Energy directly supplied power to Vedanta Aluminium instead of supplying power to bulk supplier Gridco, who would have suppled to Wesco through transmission lines laid by the Orissa Power Transmission Corporation (OPTCL). It used its own 400 KV line, which actually should have been OPTCL's business, said OERC.

The Electricty Act of 2003 allows an entity to source power directly from a generating unit but it has to pay a cross-subsidy surcharge on the quantum of power availed of, something which Vedanta failed to pay. The case was first brought to OERC's notice by Wesco in 2011, and the OERC delivered its final judgment last week. Prior to the order, Vedanta appeared before the commission with two applications seeking approval for a power purchase agreement between Vedanta Aluminium and Sterlite Energy's IPP, and licence for Vedanta Aluminium to carry out power distribution inside the SEZ area. Vedanta claimed that the SEZ notification had given the promoter the deemed licence to distribute power.

http://www.financialexpress.com/news/pay-up-for-illegal-power-use-orissa-tells-vedanta/1008469/0

Points to Ponder

The State Electricity Commission's decision is difficult to hail as it symbolises stepping back instead of moving in sync with the repeated rational directives from the Ministry of Power to Central Electricity Regulatory Commission to take all necessary steps, including framing of appropriate regulations, to implement the provisions of 'open access' as contained in the Electricity Act, 2003.

As per the Act, 'Open Access' means 'The non-discriminatory provision for the use of transmission lines or distribution system or associated facilities with such lines or system by any licensee or consumer or a person engaged in generation of power in accordance with the regulations specified by the Appropriate Commission.' Further, the Act provides for open access of distribution networks to all bulk consumers. Bulk consumers are consumers with power requirement of 1 MW or above.

Open access mechanism provenly induces effective competition in the power sector by conferring rights upon the consumers of electricity to source their supplies from competing generators and corresponding obligations on transmission and distribution utilities to transport electricity in an efficient and non-discriminatory manner.

Cross subsidy surcharge is the single biggest roadblock to an open access regime. To ensure that domestic consumers receive power at affordable rates, cross subsidy surcharge is imposed upon commercial or industrial consumers when they purchase power from independent generator instead of a distribution licensee. In this way, the distribution licensee is prevented from passing the lost surcharge to the domestic consumers. Where the Electricity Act, 2003 stipulates progressively reducing and eliminating cross subsidy surcharge on open access consumers, the Commission's decision somehow hamstrings the legislature's intent to put in place a competitive regime in the Indian power sector so as to rationalise the price of power amongst both, industrial and domestic consumers. Relevantly, the provision will also result in reduced prices of few goods where electricity constitutes their major input costs.

Additional Readings:

EU approves new rules for open electricity.
http://www.bloomberg.com/apps/news?pid=newsarchive&sid=ahp_BpXYzsr4

Maharashtra allows open access for fossil fuel-based captive power plants
http://www.business-standard.com/india/news/maharashtra-allows-open-access-for-fossil-fuel-based-captive-power-plants-/478759/

3. AAI seeks Landing, Parking charges for Smaller Planes

Livemint, September 30, 2012

The Airports Authority of India (AAI) wants to levy landing and parking charges on planes with fewer than 80 seats to shore up revenues and invest in building infrastructure, according to executives of the state-run agency that manages most of the nation's airports, who declined to be named. This will further raise costs for airlines and increase fares after the airports manager in September requested permission from the Airport Economic Regulatory Authority (Aera) to charge a minimum landing fee of ₹5,000 from all small planes arriving at the Chennai and Kolkata airports. This excludes training flights operated by flying clubs. Currently, small aircraft such as ATR and Bombardier are exempt from paying landing fees, except in Delhi, and pay a fuel sales tax of only 4 percent as against

4 to 30 percent for bigger planes, as sales tax varies from state to state. Airlines say this decision will disrupt their business, including plans to fly to small cities.

Airlines misuse the exemption on charges for small planes, according to an executive at a private airport company. "Exemption of charges for smaller planes was aimed at promoting regional connectivity. But airlines are using this exemption to market other routes," he said on condition that neither he nor his firm be named. AAI's move runs counter to the aviation ministry's regional connectivity ambitions. On September 21, 2012, Aviation Minister Ajit Singh said providing affordable air connectivity to remote and interior areas, especially in the North-East, was a priority. Earlier in July, Singh had said his Ministry would soon modify guidelines for acquisition of aircraft so that Indian carriers would prefer buying small planes that are needed to connect to such areas.

http://www.livemint.com/Politics/fU9RZ7kBeb5542CTDZv62N/AAI-seeks-landing-parking-charges-for-smaller-planes.html

Points to Ponder

It was a move by erstwhile NDA government way back in February, 2004 which exempted domestic scheduled airlines operating small aircraft as well as helicopter operations from paying landing and other charges. The cherished objective has been to promote regional connectivity and encourage air travel from interior parts of the country.

Considering that eight years have passed by since the proposal has been in the execution mode, it may reasonably be presumed that the laudable motive has been fulfilled to a large extent. However, reports strongly suggest that the exemption has been distorting the 'economics of flying' since even in airports of cities where adequate infrastructure existed for large aircraft operations, airlines have been choosing to fly small aircrafts there with the ill-design to evade the landing/parking fee. Absolute recall of parking fee for small aircrafts at one go may seem bit harsh.

Eventually, a phase-wise total recall is rudimentary in few cases while in others, fiscal incentives for the aircrafts facing total recall at once may be offered for some or considerable time to recoup the loss. The move is welcome where it provides a level playing field to the large and small aircrafts; but with a caveat that it is ensured that charges are not excessively passed on to the consumers.

4. FSLRC moots new model for Financial Sector to ensure consumer protection

Economic Times, October 02, 2012

A panel set up by the government to rewrite the country's financial architecture has backed the setting up of an independent office to manage government debt, limiting the central bank's role to monetary policy and banking supervision, and having a single financial sector regulator. In an approach paper, the Justice BN Srikrishna-headed Financial Sector Legislative Reforms Commission (FSLRC) has mooted a seven-agency model to regulate and develop the financial sector and ensure consumer protection. The FSLRC was setup in March 2011 to rewrite and streamline the financial sector laws, and regulations and bring them in harmony with modern requirements. It was given 24 months to submit its report.

The FSLRC's mandate was to construct a set of financial laws that will lay a strong legal foundation for the Indian financial system over the next 25-30 years. The committee, which will submit a four-part draft report to outline its ideas, said it is aware that the country's economy is likely to grow eight-fold over this period. It has deliberated both a single agency and two-agency structure for financial regulations, but seemed more inclined towards the latter. In either case, RBI's role will be restricted.

"It is proposed that RBI will perform three functions: monetary policy, regulation and supervision of banking in enforcing the proposed consumer protection law and the proposed micro-prudential law, and regulation and supervision of payment systems in enforcing these two laws," the approach paper noted. The RBI will house these three functions in distinct boards to minimise conflicts of interest and to develop specialised skills.

It also suggested the setting up of a Unified Financial Agency to enforce consumer protection law and micro-prudential law in all sectors other than banking and payments. This would subsume the role of market watchdog Sebi, insurance regulator IRDA, Forward Markets Commission and pensions regulator PFRDA. The commission feels this structure will yield economies of scope and ensure that regulatory agencies are not closely identified with one sector.

http://articles.economictimes.indiatimes.com/2012-10-02/news/34218076_1_financial-sector-regulator-indian-financial-system

Points to Ponder

Hammering widespread regulatory arbitrage, streamlining regulatory architecture of financial markets in India and protecting consumers from fraudulent practises have been the chief objectives forming the ground/motivation for the approach paper released by FSLRC. Constitution of a single unified agency, besides ensuring full disclosure and adequate redressal by financial companies, has been the flagship proposal put forth by the Commission. Albeit being a well-intentioned draft, the paper speaks little about the cost, risk and benefit analysis of the proposals and its implementation at the grassroot.

Further, the Deepak Parekh Advisory group and Y V Reddy have earlier strongly favoured mandatory regulatory coordination rather than unification, since the former is bound to beget enhanced accountability. The argument falls in sync with the fact that the idea of a single regulator is yet to pick up pace, with only two major economies- the UK and Japan- being among the 15 odd countries that have one. Though, a unified regulator for cognate sectors is something which will help it to maintain some independence from the line ministry.

Notably, the approach paper does not address ethical and corporate governance issues, operational issues of

merging the regulatory bodies', viz, SEBI, IRDA, PFRDA and FMC and perhaps most importantly, modus of resolving conflicts amongst the regulatory bodies with varied underlying regulatory agenda. Meticulous analysis leads us to the realisation that continuing with the existing framework of supervision by separate agencies, while directing efforts towards effective regulatory coordination, is more convincing with the objective of achieving an enabling financial regulatory framework.

Additional Reading:
CUTS International - Comments on the Approach Paper of the Financial Sector Legislative Reforms Commission (FSLRC)
http://www.cuts-ccier.org/pdf/CUTS-Comments_on_the_Approach_Paper_of_the_Financial_Sector_Legislative_Reforms_Commission.pdf

5. Telecom Regulator cracks the whip on Bulk SMSes

Business Standard, November 06, 2012

If you are into heavy texting from your mobile phone, you may have to pay more in another two weeks. The latest directive by the Telecom Regulatory Authority of India (TRAI), to be implemented by then, has set the limit for concessional SMS at 100 a day. There is no ceiling, but consumers will be charged not less than 50p an SMS once it crosses 100 a day.

The directive came as part of the regulator's endeavour to curb unsolicited SMS and calls, a major problem even after the regulator imposed the SMS Spam Guidelines. "Normal mobile users will not be affected with this measure. On an average, a mobile user sends about 47 SMS in a month and not more than two per day, as revealed by an internal study," said a TRAI official. This is the first stream of measures TRAI has taken; there could be more if required, he added.

The regulator is also in process of simplifying the complaint procedure. From tomorrow, a complaint can be registered through SMS by forwarding the spam SMS to 1909, after appending the telephone number and date of receipt of the SMS. Mobile operators have been asked to set-up a web-based complaint registering system and a dedicated e-mail address to receive such complaints on spam messages and calls.

http://www.business-standard.com/india/news/telecom-regulator-crackswhipbulk-smses/491816/

Points to Ponder

The Telecom Regulatory Authority of India (TRAI) has issued "The Telecom Commercial Communications Customer Preference (Tenth Amendment) Regulations, 2012" on November 05, 2012 prescribing measures to tighten the framework for controlling the menace of unsolicited commercial communications (UCC). In September 2011, TRAI had directed all access providers to limit sending of more than one hundred SMS per day per SIM or three thousand SMS per month per SIM and ensure that any commercial communication including SMS, other than transactional messages, is sent to a customer only between 0900 Hrs to 2100 Hrs. TRAI had also relaxed 100 SMS per day restriction for e-tickets, social networks, directories, DTH & More. In November 2011, TRAI had extended the daily SMS limit from the existing 100 SMS to 200 SMS and had imposed an additional 5 paise charge on Promotional SMS. In July 2012, the Delhi High Court removed the 200 SMS/day limit through a mobile phone SIM for personal communications, stating that the current SMS spam guidelines infringe the freedom of speech of the citizens, and the conditions imposed upon citizens are not reasonable.

Until now, when someone bought SIM as an individual subscriber, no undertaking was mandated to be received by the Service Provider that the SIM purchased by him shall not be used for telemarketing. Taking the advantage of this, several telemarketers have been found to misuse SMS Tariff packs for spamming, especially using the MODEM. Instant amendment makes all the subscribers liable for misuse of SIM for telemarketing (SPAM) purpose. To circumvent the restrictions, telemarketers are urging clients to switch to email marketing; but until then the regulation is sure to help penalize the businesses which spam using SIM and Modem.

Notable, however, is the fact that 'subscription based communication' has not been able to catch hold of the attention of TRAI to an appreciable extent until now. It appears that today, the Indian Customer has to exercise his option at the extreme levels only- either to receive promotional SMS or not to receive them at all. An enabling mechanism where the consumer is allowed to receive promotional SMS of a company of his choice and with whom he has subscribed for such service is bound to act as pro-customer as well as pro- industry measure.

6. Transparency, not regulation in airfares

Economic Times, December 05, 2012

Civil Aviation Minister Ajit Singh denied any move to regulate airfares, saying all that the government intends to do is make the pricing mechanism more transparent.

"No, we are not going to regulate airfares," Singh told journalists after meeting Petroleum and Natural Gas Minister, M Veerappa Moily in Delhi. "What we are trying to do is make the system for deciding the fares transparent. Public should know what is the bucket system and the range they have been given should be reasonable." Raising doubts over the pricing of jet fuel by state oil marketing firms, Singh said he has urged the petroleum minister to bring in more transparency in fixing aviation turbine fuel (ATF) rates.

Airfares are high mainly because ATF and airport charges have soared, he said. Singh said he has sought Moily's intervention in allowing airlines to use airport infrastructure of state oil companies for importing ATF. Indian Oil Corporation, Bharat Petroleum Corporation and Hindustan Petroleum Corporation say they have made huge investments in the airport infrastructure and cannot share it free with private carriers. "They (the oil companies) have

raised some concerns, which officials will resolve after discussions," Singh said. The minister also asked his cabinet colleague to direct oil firms to offer discounts on fuel purchases to state-run Air India. "They (state oil firms) offer discounts to international airlines. Why can't they offer the same to Air India as long as we pay," he said.

http://articles.economictimes.indiatimes.com/2012-12-05/news/35620357_1_aviation-minister-ajit-singh-oil-firms-state-oil

Additional Reading:
Petroleum Minister agrees to put ATF under PNRGB which will help monitor prices and take corrective measure in case of cartelisation.
http://www.thehindubusinessline.com/industry-and-economy/logistics/aviation-petroleum-ministries-to-pitch-for-reclassification-of-jet-fuel/article4164523.ece

Points to Ponder

The Civil Aviation Minister and the Petroleum Minister plan to jointly approach the Finance Ministry to convince it on the need to notify ATF as a "decleared good". Ajit Singh denied any move to regulate airfares, saying all that the Government intends to do is to make pricing mechanism more transparent. Public should know what is the bucket system and the range that they have been given should be reasonable.

Airfares are high mainly because ATF and airport charges have soared. There should be more transparency in fixing ATF prices. DGCA has made it clear that in order to allow them fly again, they have to satisfy with their operational and financial plans. Safety of passengers comes before the interest of lenders and suppliers. But in addition to this, Airlines has to pay its employees, oil companies and Airport operators its' dues.

The government's move towards not regulating airfares but rather adopting a transparent pricing mechanism is welcome. This shall control the opaque pricing activities that the state owned oil firms are indicated to indulge in fixing the ATF pricing.

Moreover representation to notify jet fuel as a 'declared good', enabling levying of a flat 4 percent tax on ATF which at present ranges from 4 to 35 percent, varying from State to State; would pave a way to overall reduce the operating cost of the airlines. Factors considered while pricing the airfares beyond ATF's and Airport charges, political economy behind it must be taken into consideration.

7. Top FMCG firms put on notice for misleading ads

Financial Express, December 03, 2012

Food regulator tells companies to back claims on products with scientific proof or face action. FMCG firms that make tall claims to embellish their brands will now have to back such promotional assertions with scientific proof or temper the tone. This is because the government is planning to tighten the noose around firms that have been making exaggerated claims in their ad-campaigns. The food regulator — Food Safety and Standards Authority of India — has sent notices to leading companies such as Hindustan Unilever, Britannia Industries, Marico, GSK Consumer Healthcare, Heinz India, Dabur India, Emami Biotech, Kelloggs India, Cadbury India — accusing them of making inflated claims about their products.

These, the regulator feels, violates law (Section 24 of FSS Act). It has also begun prosecution proceedings against select companies in this matter. For instance, HUL has been pulled up by the government for claiming that its product Kissan creamy spread has 'three times more essential nutrients than sadharan butter'. Also under scanner are Britannia Vita Marie for claims such as 'heart-friendly' and 'helps reduce cholesterol' and Britannia Nutrichoice biscuits for declarations of 'no added sugar', 'complex carbohydrates' and 'diabetics-friendly'.

Similarly, GSK Consumer Healthcare, the government has alleged, violates law by a 'misleading' claim' on its product Boost that it 'provides three times more stamina than 'sadharan chocolate drink', adding that the producer (GSK) has not submitted any specific study on this product to substantiate its claims. Another flagship GSK product, Horlicks, has also been red-marked by the government which states that a claim that the product makes children 'taller, stronger and sharper' is deceptive. GSK Healthcare has played down the charge. The firm said it had responded to the notice with all the required studies and excerpts of their published research for both brands.

http://www.financialexpress.com/news/top-fmcg-firms-put-on-notice-for-misleading-ads/1039374/0

Points to Ponder

FMCG firms that make tall claims to embellish their brands will now have to back such promotional assertions with scientific proof or temper the tone. Several big FMCG firms such as Hindustan Unilever, Britannia Industries, Marico, GSK Consumer Healthcare, Heinz India, Dabur India, Emami Biotech, Kellogg's India, Cadbury India have been pulled up for making exaggerated claims about their products. The country's top food watchdog is ready to crack the whip at all those food and health supplement manufacturers who have been exaggerating claims about their products through advertisements and "consequently cheating consumers".

The regulator says these firms violate law (Section 24 of FSS Act). It has also begun prosecution proceedings against some companies. This is because the government is planning to tighten the noose around firms that have been making exaggerated claims in their ad campaigns. The Food Safety and Standards Authority of India has sent notices to leading companies accusing them of making inflated claims about their products. The move follows the recently notified new FSS Act, which empowers the FSSAI to impose penalty of ₹10 lakh on such manufacturers who give misleading ads.

The code also points out that the advertisements should not undermine the role of parental care and guidance when children make food choices. The firms cannot take people for a ride with misleading advertisements. They need to have scientific evidence before making claims about the health

benefits and the products being a substitute for fresh fruits, vegetables or meals. The move aims to restrict them from adopting such marketing tactics "which are enough to influence the consumers at the cost of their health as is being done in the developed countries".

For instance, in 2008, the UK's Advertising Standards Agency had upheld complaints against two 'misleading and inaccurate' adverts for Nestlé's Maggi noodles and GlaxoSmithKline's Horlicks which made unsubstantiated health claims. Advertising Standards Council of India (ASCI) which makes necessary request to withdraw such ads, it has remained a toothless body in ensuring implementation of the rules.

On a related note, misleading advertisements were actionable under the Monopolies & Restrictive Trade Practices Act, 1969. After its repeal only the Consumer Protection Act (COPRA) covers such unfair trade practices, but COPRA is an adversorial law and its institutions do not have the machinery to carry out investigations. There is a proposal to amend COPRA to allow its bodies to have investigating arms, but that day is far off.

8. Lok Sabha approves Companies Bill

The Hindu Business Line, December 19, 2012

The Lok Sabha gave its approval for the Companies Bill 2011, paving the way for a new modern company law. The proposed legislation will replace the existing Companies Act 1956, which was enacted 56 years ago. The Companies Bill 2011 was passed by a voice vote in Lok Sabha in a marathon late night sitting. Besides making independent directors more accountable and improving the corporate governance practices, the Bill seeks to make corporate social responsibility mandatory for certain companies.

Corporate frauds

Replying to the discussions on the Bill, Corporate Affairs Minister Sachin Pilot said that more powers are being conferred upon Serious Fraud Investigation Office to tackle the issue of corporate frauds. "When the current Companies Act of 1956 was made, there were only 30,000 registered companies in India. In 2012, there are over 8,50,000 companies," Pilot said.

SFIO will be given more statutory powers in the new Bill. Moreover, there will be better co-ordination between investigative agencies at the State and Centre, I-T Department and the Information Technology Ministry with SFIO. The Minister also sought more cooperation from the state investigative agencies in this regard.

Corporate social responsibility

The Companies Bill proposes that profit-making companies that meet certain conditions will be required to set aside 2 percent of the net profit towards CSR. Companies should voluntarily undertake CSR and should not see this as return of "inspector raj'', Pilot said.

http://www.thehindubusinessline.com/industry-and-economy/economy/lok-sabha-approves-companies-bill/article4216378.ece

Additional Reading:
Centre Tightens noose on Corporates
http://www.business-standard.com/india/news/kumkum-sen-centre-tightens-noosecorporates/496532/

Points to Ponder

On December 18, 2012, after 7 years of discussions, drafting and delays, 2 referrals to the parliamentary standing committee and 5 different ministers shepherding it - the Companies Bill finally kept its date with the Lok Sabha. But it ran out of time in Rajya Sabha and is now expected to come up for voting in the upper house in the Budget session. The proposed legislation will replace the existing Companies Act 1956, which was enacted 56 years ago.

Besides making Independent Directors more accountable and improving the corporate governance practices, the Bill seeks to make corporate social responsibility mandatory for certain companies. Interestingly, the amendment proposed by the Union Cabinet omits the words "make every endeavor" from the original clause relating to CSR as provided in the Companies Bill, 2011. This effectively ends the debate as to whether CSR initiatives are mandatory or voluntary. Now, the board of directors has to ensure (and not just to make every endeavour) that the company(beyond a particular turnover) contributes a portion of its profit towards CSR activities. If the board fails to comply, it will have to give reasons for non-implementation or non-compliance. Further, it has been provided that the company, for its CSR activities, should give preference to the areas where it operates, meaning richer states with more corporate houses will get more benefits than those which lack them.

Whether making it mandatory is good or bad is certainly a matter of debate. Those who support the move argue that all corporate houses owe their existence to society. So, if they give some portion back to it, then it is a socially beneficial reform. Those who oppose mandatory and strictly outlined CSR initiatives argue that corporate houses should not and cannot be forced to take social responsibility because that is the state's responsibility - businesses should focus on earning and delivering profits to the owners of capital, leaving it to the state to be the agent of social and environmental development. The state, in any case, taxes corporate houses to use the proceeds thereof for such initiatives. Hence the mandatory CSR clause remains a debatable issue; whether the corporations would be provided with tax rebates up to the amount contributed that again has to be looked into.

Another proposed amendment which is a welcome change is with regard to independent directors. Independent directors will not be entitled to stock options and also to any remuneration other than sitting fees, profit-related commission, reimbursement which would ensure their independence. He is to hold separate meeting once a year without the presence of non-independent directors & management which be evaluated by the entire Board of Directors. Moreover he will be Labile only for those acts of omission or commission which occurred with his knowledge

and where he didn't act diligently. Schedule IV lays down the code of independent directors. The important aspect to be appreciated is it makes responsible independent directors alone, not the rest of the Board for certain very important governance issues. The other is a specific provision there which requires independent directors to balance the interest of all stakeholders. In other words to treat fairly and equally, not only the shareholders but employees, customers, vendor, etc. This will make them much more vigilant and also valuable. Another important reform which it seeks to bring; is statutory recognition of the Serious Fraud Investigation Office (SFIO), which was set up by a Gazette Notification in 2005, at the time of investigation of the Satyam Scam. Here the ambit of powers given has been enhanced; which includes public interest as in contrast to powers of inspectors under the 1956 Act. We can hope that the Bill when implemented in its full form would go a long way in overhauling the corporate structure of our country which has already been marred by constant scams and scandals.

9. Oil regulator moots futures trading in pipeline capacity

Economic Times, October 05, 2012

The downstream oil and gas sector regulator has proposed an innovative concept of trading in gas pipeline capacities in commodities exchanges, creating a spot market for surplus capacity of firms such as Gail India, Reliance Gas Transportation Infrastructure Ltd and Gujarat State Petronet Ltd. Experts in commodities trading said futures in pipeline capacity would benefit both consumers and pipeline companies despite the monopolistic hold of Gail. "Success of trading in pipeline capacity in India is doubtful unless Gail's monopoly in gas marketing and transportation is broken," a senior executive working with a commodity exchange said requesting anonymity.

The Petroleum & Natural Gas Regulatory Board (PNGRB) has initiated the process to segregate gas-marketing businesses from monopolistic transportation ventures and has sought public comments on this matter by Oct 15, a notice issued by the board said. The regulator has planned to unbundle marketing and transporting activities of gas utilities in three steps. First, accounting of the two activities will be separated by 2013-14, which will be followed by legal unbundling by 2015-16 and finally, ownership and management would be separated, it said.

"During the period prior to completion of legal unbundling, board should proactively take up initiatives towards development of trading in pipeline capacities and in natural gas with NCDEX/MCX and the stakeholders," it said. Former chairman of Gail, UD Choubey, said gas transportation business is a capital-intensive venture and therefore, have limited players. "Transportation companies create excess capacity and allow third parties to transport gas for a fee. So, trading in capacity is practiced worldwide. Trading through exchanges is new," he said. "Capacity trading platform can be created," a technical expert working in a commodity exchange said requesting anonymity. In India, natural gas is traded in MCX but the exchange does not have any capacity trading platform.

http://articles.economictimes.indiatimes.com/2012-10-05/news/34279529_1_gas-transportation-business-natural-gas-pipeline

Points to Ponder

India's oil and gas sector faces the dual challenge of catering to growing energy needs in an affordable manner, and developing requisite infrastructure. The downstream oil and gas sector regulator has proposed an innovative concept of trading in gas pipeline capacities in commodities exchanges, creating a spot market for surplus capacity of firms such as Gail India, Reliance Gas Transportation Infrastructure Ltd and Gujarat State Petronet Ltd. India can attract more than US$50 billion investments including oil and gas sector, and the oil ministry's priority is to create conducive environment to tap investors through expeditious decisions on policy matters.

The regulatory board was instrumental in developing the downstream gas segment. While these initiatives have been successful, the regulatory framework should evolve to resolve new challenges and promote growth. More recently, there were issues related to the regulatory board's order on marketing margin and network tariff during the pre-notification period. A new set of regulations is expected for city gas distribution bidding and authorisation, which could set the stage for further development.

Single window clearance: As hydrocarbon projects require clearances from different departments, single window clearance could potentially reduce time and cost overrun.

Upstream: Recent NELP bidding rounds have witnessed dwindling interest among global players. Changes in product sharing contracts and licensing policy, such as 'open acreage licensing', have been under consideration to revive interest in the exploration sector.

Gas infrastructure: Capacity building in gas infrastructure is needed to increase gas penetration in the country. While the gas transmission segment has been unbundled, the market is dominated by a few players. A 'true unbundling' is likely to lead to the development of the gas distribution sector with enhanced competition.

Gas transportation business is a capital intensive venture and therefore, has limited players. Transportation companies create excess capacity and allow third parties to transport gas for a fee. So, trading in capacity is practiced worldwide. The oil and gas market has evolved over the years in tune with the local market structure and economic conditions. While there is no one 'fit-for-all' framework, appropriate empowerment of the regulator is critical for the sector's development.

10. IRDA puts reforms on fast-track mode

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The Insurance Regulatory and Development Authority (IRDA) is moving quickly on the directions of the finance minister. The regulator sent out six draft regulations on standardisation of products, product design, investment norms, bancassurance and reinsurance. The draft guidelines

on bancassurance is up on Irda's website, but the remaining drafts are with the industry, which is expected to give its feedback in three week's time.

We discuss four major reforms in product structure that should matter to you.

Product classification

Products with cost caps: The good news is that the new product category called index-linked insurance plan, or Ilip, has been replaced by variable-linked insurance plan. A variable-linked insurance plan (VIP) is an investment plus insurance product that guarantees a minimum rate of return also called the floor rate and pegs the additional return to an index in case of a variable-linked insurance plan.

Products without cost caps: Other categories of products, namely traditional participating and non-participating plans, exist but with no cost caps. A typical traditional participating plan will guarantee you the sum assured or the death benefit either on maturity or on death. Additionally, the plan will declare a bonus depending upon the performance of the participating fund. This bonus gets added to your sum assured.

Product standardisation

The industry fears that in standardising the product, Irda may have tariffed it. "The draft says that pricing of the standard product should be based on the target market and not on a company's individual assessment of its adequacy and underwriting experience. That implies that the pricing assumptions for a standard product will have to be the same for the target customer set. In other words if we are to offer standard products we will have to offer a fixed premium regardless of our individual underwriting and price assessment of a product, quite similar to a tariff regime," says Viswanand.

Commissions

Irda has also reduced commissions on short-term policies. In case of individual insurance policies, the maximum commissions on a single premium policy stays at 2 percent of the premium. For regular premium policies, a policy with a premium paying term of five years will not pay more than 15 percent in the first year, 7.5 percent in the second and third year and 5 percent subsequently. As the premium paying term increases, the commissions payable in the first year increases up to 35 percent if the company is more than 10 years old and 40 percent if the company is less than 10 years old. This maximum commission is applicable on policy terms of 12 years and above.

Surrender charges

The draft guidelines for individual non-linked insurance products have also altered the guaranteed surrender value (GSV). As per the previous draft, you will be eligible for a GSV after two years if the policy tenor is less than 10 years and three years if the policy tenor is above 10 years. However, the benefit has reduced.

http://www.livemint.com/Money/3YtFePuWjj5ev1eFK3R3BK/Irda-puts-reforms-on-fasttrack-mode.html

Points to Ponder

IRDA, approvals would now become faster, since the product structures would be clearly defined by the new regulations. The IRDA board approved the product guidelines and these guidelines have proposed changes in the product structure, including the surrender charges and commission rates, to make traditional products more transparent.

On an average, there is an approval of 20 products in a month. Post the issuance of the guidelines, we are hoping it would lead to quicker approvals for traditional products. This would be due to the fact that the products would be clearer in their features. Usually, product approvals may take time due to on-going discussions between the insurance company and the regulator over clarity in a particular product.

This was seen in the unit-linked insurance (Ulip) products after the new guidelines were issued. After the September 2010 norms were announced for Ulips, insurers could clearly understand what could be a product feature and what could not be. Hence, approvals came in at a much quicker pace for these Ulip products. "We hope there will be a similar case with traditional products, too, post new norms come out".

The guidelines for traditional products of life insurers will have a deadline of April 1 for re-filing group products and July 1 for re-filing other traditional products. The most recent draft on traditional product norms says policy holders will get back as much as 50 percent of their premiums if a policy is active for three years, meaning the policy has a minimum guaranteed surrender value (GSV) of 50 percent. Minimum GSV is a sum of guaranteed surrender value and the surrender value of the any subsisting bonus already attached to the policy.