CIRC RegTracker

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Enhancing Knowledge, Strengthening Capacity

RT.010, January-March 2013

RegTracker is a quarterly 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. 'One Person Company' may soon become a reality

The Hindu Business Line, January 15, 2013

Setting up a one person company (OPC) will soon be allowed in India.

The Companies Bill 2012, when enacted into a law, would provide for floating an OPC – a concept prevalent in Europe, the US, Singapore and China.

The Companies Bill defines 'One Person Company' as one which is formed for any lawful purpose by only one person as member. Currently, at least two persons are required to float a private company in India.

Industry has been demanding that the government introduce the concept of OPC, which will have a limited liability.

The Companies Bill mandates that 'One Person Company' shall be mentioned in brackets below the name of such company, wherever its name is printed, affixed or engraved. The concept provides an opportunity to an entrepreneur to enter the corporate world without adding any of his family members for namesake.

"OPC will give greater flexibility to an individual or a professional to manage his business efficiently and at the same time enjoy the benefits of a company," said Lalit Kumar, Partner, J. Sagar Associates, a law firm.

The concept of OPC will also help many foreign companies, which need to appoint a minimum of two nominees now when they form a wholly-owned subsidiary. However, the government should restrict the concept of OPCs to smaller companies alone.

OPC will open the avenues for more favourable banking facilities, particularly loans, to such proprietors. Besides, the concept will boost flow of foreign funds in India as the requirement of nominee shareholder would be done away with.

www.thehindubusinessline.com/industry-and-economy/oneperson-companies-may-soon-become-a-reality/article4309971.ece

Points to Ponder

OPC was first introduced by Dr. J.J. Irani Expert Committee on Company Law way back in 2005. The Report succinctly expressed the laudable rationale of the move in the following words, "Economic activity may take place through the creation of an economic person in the form of a company. Yet it would not be reasonable to expect that every entrepreneur who is capable of developing his ideas and participating in the market place should do it through an association of persons. We feel that it is possible for individuals to operate in the economic domain and contribute effectively. To facilitate this, the Committee recommends that the law should recognize the formation of a single person economic entity in the form of OPC. Such an entity may be provided with a simpler regime through exemptions so that the single entrepreneur is not compelled to fritter away his time, energy and resources on procedural matters".

The move is in line with other jurisdictions which permit this kind of a corporate entity. China introduced it in October 2005 in which the promoting individual is both the director

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and the shareholder. The amended company law of Pakistan permits one person to form a single-member company by filing with registrar a nomination in the prescribed form indicating at least two individuals to act as nominee director and alternate nominee director.

In US, several states perm it the formation and operation of a single-member Limited Liability Company (LLC). The concept is also very popular in Singapore. Notably, since entrepreneurs in India are used to a plethora of compliance requirements and though they would welcome any relief on this front, they may not embrace a concept only because compliance provisions appear minimal.

The key challenge for OPC would be to ensure that supporting legislations also recognise such a company as an entity and not just an extension of a sole proprietorship. Further, in an era of collaboration and partnerships in every area, the number of persons willing to form an OPC can probably be counted on one's fingers as the concept of Limited Liability Partnerships (LLPs) ushered a couple of years back has served as a decent device for less procedural and cross functional incorporated collaborations with the benefit of limited liability.

2. Telecom: Mobile firms threaten to stop roaming service if forced to offer it free

The Hindu Business Line, January 22, 2013

Telecom companies have threatened to stop offering roaming services if the government forces through a policy to make national roaming free of charge. Mobile companies have told the telecom regulator that such a policy would wipe out 10 percent of their annual revenues, and this would be hard to sustain.

"If the incoming national roaming charges are made zero than either we will be forced to stop giving roaming services to our GSM subscribers or we would take a high financial hit. We would not be surprised if the incumbent operators will not provide the roaming service to smaller operators," Tata Teleservices said in a written communication to the Telecom Regulatory Authority of India (TRAI).

Telecom Minister Kapil Sibal had earlier announced that national roaming charges would be waived in 2013 as part of the New Telecom Policy. Once roaming charges are waived, mobile users can get incoming calls free of charge and make outgoing calls at local rates while travelling anywhere in the country.

The policy was approved by the Union Cabinet in May 2012.

Comments sought

TRAI has floated a consultation paper to seek the comments of operators. Currently, operators are free to fix mobile tariffs, including for roaming services, without any regulatory intervention.

"We suggest that the roaming tariff under the prevalent hyper-competitive market conditions should continue to be kept under the time-tested policy of forbearance," Airtel said in its response to the TRAI paper. Mobile players said that they would be forced to increase overall tariffs to make up for the loss in revenue as a result of the government policy.

"Any attempt to regulate the roaming tariffs for the benefit of small fraction of users is likely to compel operators to revise their general tariffs and that will invariably affect the masses," said Idea Cellular.

However, officials in the Department of Telecom (DoT) said that the government will push through with the policy despite opposition from the operators.

"The government has to look at the consumer's interest. Threats by the industry may only be posturing as no operator can afford not to give roaming services," said a senior DoT official.

http://www.thehindubusinessline.com/government-and-policy/mobile-firms-threaten-to-stop-roaming-services-if-forced-to-give-it-free/article4332900.ece

Points to Ponder

The National Telecom Policy 2012 which aims at abolishing roaming charges was cleared by the Cabinet in May 2012. TRAI thereafter floated a consultation paper to get an opinion from the telecom sector on the proposed Telecom Policy. The proposal to scrap roaming charges has met with stiff opposition from Telecom operators as 10 percent of their net revenue will allegedly be wiped out by this move. Another major hurdle the Telecom industry is mentioning to oppose this proposal is the resultant need to also lower STD call charges to equalise rates. The operators argue that if customers on roaming are allowed to make calls on local rates, it is likely that customers will import sim cards from different states so as to make STD calls at local rates.

The rationale behind charging for roaming in the past was that no operator had either the license or the spectrum to operate within each of the 22 telecom circles. Hence, for a customer to enjoy seamless connectivity while travelling, service operators used each other's network and paid each other the interconnection and carriage charges, the burden of which was transferred to the customers as roaming charges. Though the situation has now changed, and with almost all the operators having the license and spectrum in each telecom circle, these roaming charges are redundant and should not be charged from customers.

The Telecom Ministry is right in finally bringing in a socially conscientious policy which will foster communication and mobility for the consumers of the second biggest telecom market in the world. Though it is unlikely that the operators will stop roaming facility all together as is being threatened by them, it is necessary to ensure that the basic rates charged as of now are not hiked, which will have detrimental effects on all the nationwide consumers.

3. Govt mulls setting up regulator for roads sector

Business Standard, February 10, 2013

The Road Ministry is looking at setting up a road and transport regulator to address issues, such as delays in development of projects and work on ways to remove the hurdles in the sector.

"This proposal is being re-looked. We had thought about it a couple of years back, we are again thinking about it. It is a long process but we shall start deliberating on the matter soon," a Road Ministry official told PTI.

The Ministry is likely to discuss the matter soon and commence the process for the same. This move may be linked to the recent move by some private companies exiting the projects on account of delay in various clearances.

"Right now National Highways Authority of India (NHAI) along with the (Road) Ministry awards the project and the developer executes it. But if there is any problem where should the aggrieved party go?" he said.

According to sources, NHAI is opposing the move.

The Planning Commission, Government of India has also suggested setting up an independent regulatory authority for the road sector for determining toll tariffs and service quality, but not the model as envisaged by the Road Ministry.

It has advised that the key functions of the regulator should include tariff setting, regulation of service quality, assessment of concessionaire claims, collection and dissemination of sector information, service-level benchmarks and monitoring compliance of concession agreements.

www.business-standard.com/article/economy-policy/govt-mulls-setting-up-regulator-for-roads-sector-113021000558_1.html

Points to Ponder

The need for an independent road sector regulator has been felt due to the change in the nature of projects and hence disputes in the sector. However, nowhere in the world there is an exclusive regulator for roads.

The contracts for highway projects are executed on a public-private partnership (PPP) mode armed with an excellent model concession agreement prepared by the Planning Commission. Developers sign contracts with either the Road Transport & Highways Ministry or the NHAI as these government bodies manage the policy framework and guidelines for implementing these projects. The dispute-heavy road sector needs an exclusive tribunal of the last resort with appeals to the Supreme Court as the concessionaires, investor and users need to have.

Even though the Finance Minister is in strong favour of setting up the road sector regulatory authority, there is speculation that there will be considerable delays in the regulator becoming a reality. The Planning Commission has voiced its reservations regarding the kind and extent of powers to be granted to the regulator, such as the power to change the highway contracts or alter the way the contracts are implemented. Till these issues are not satisfactorily resolved, the regulator will not be composed.

With the setting up of an independent body as the road sector regulator, policy issues which directly affect the consumers such as toll charges will be resolved fairly with a degree of transparency. The regulator will also facilitate development of the road sector and rid the sector of administrative bottlenecks which are hampering the growth of the infrastructure of the country. The regulator cannot be used to resolve disputes, because legal disputes need to be resolved through an adjudicatory forum. The setting up of an exclusive disputes resolution body will greatly benefit developers who have an approximate of Rs. 11,000 crore tied up in over 1600 claims pending in courts, arbitration tribunals and dispute resolution boards.

However, another valid thought is to establish a PPPs regulator, which can deal with not only roads but several other infra sectors, where PPPs are being used to implement projects. Cross learning and arm's length relationship with a particular line ministry will make it more effective.

4. Health insurance claims

Financial Express, January 15, 2013

The Insurance Regulatory Development Authority's (IRDA) latest exposure draft, which calls for greater standardisation, has sought to remove ambiguity in settlement of health insurance claims

To standardise health insurance products, the insurance regulator has come out with an exposure draft to set standard definitions of terminology, procedures for critical illness, pre-authorisation and claims form and even standard excluded expenses in hospitalisation indemnity policies.

There will be standard file-and-use application form, database sheet and customer information sheet and even standard agreement between third-party administrators (TPA), insurers, provider and insurer.

The IRDA has said that standard terms would reduce ambiguity and enable all stakeholders to provide better services and enable customers to interact more effectively with insurers, TPA and the providers.

Right dose

- IRDA's exposure draft has sought standard definitions of terminology, procedures for critical illness, pre-authorisation and claims form and even standard excluded expenses in hospitalisation indemnity policies
- There will be standard file-and-use application form, database sheet and customer information sheet and even standard agreement between TPA, insurers, provider and insurer
- Standard terms would reduce ambiguity and enable all stakeholders to provide better services and enable customers to interact more effectively with insurers, TPA and the providers
- Common industry wide pre-authorisation and claim form will significantly streamline processes at all stages and will enhance the ability of providers to obtain a timely prior authorisation
- Moreover, the data will have to be presented in an optical character format, which will go directly into the IT system and reduce the data entry issues for TPAs and the insurers.

www.financialexpress.com/news/one-size-fits-all/1059247/0

Points to Ponder

Generally, in India we view insurance as a tax saving instrument and not as a need for risk cover of life and property. Most of the people have no idea about insurance policies and their advantages and the same time some of them have entered into the insurance contract without understanding the basic idea on that policy and cheated by the company, agent etc.

Insurance sector in India used to be tightly regulated and monopolised by the state-run insurers. The IRDA was established by an act of the parliament: IRDA Act 1999 which deregulated the insurance sector and curtailed the monopoly of Life Insurance Corporation of India and General Insurance Corporation of India with its four subsidiaries. Of these, health insurance services were provided by general insurance companies.

Earlier, the role of the IRDA was not so effective to maintain a discipline in the health insurance sector. As a result, selling of health insurance was one of the profitable businesses among the agents, brokers, banks and insurance companies.

The IRDA's new positive guideline on standardization of health seems better for the consumer and insurance companies' perspectives. This guideline will provide standardise definition of 46 terms used in health insurance policies and focus on uniformity in sales, claims and settlement process by different health insurance company. The main objectives of the guideline is to reduce ambiguity and enable all stakeholders to provide better services and enable customers to interact more effectively with insurers, third-party administrators and providers, which is one of the welcome step by the IRDA.

5. Why the Railways need a Tariff Regulator

Business Standard, February 25, 2013

In a market-driven economy, a statutory regulatory authority to determine tariffs on objective economic criteria, ensure free competition and remove barriers to entry and exit through an appropriate policy framework is essential. If it has to retain its pre-eminent position in the national transport infrastructure, the Railways has to adapt itself to the market forces unleashed by the macro-economic policy initiatives launched since the early nineties.

The concept is not new to the Railways and, even before Independence, the Railway Board was discharging this function in relation to the private and state-owned railway companies operating in the country. The Indian Railway Act, 1890, which remained in force for almost a century after its enactment, had adopted the spirit of the Carrier's Act, 1865 by accepting the carrier's liability across the rail network in India.

Under the Indian Railway Board Act, 1905, the tariff regulation function was assigned to the Railway Board. In its capacity as a "regulator", the Railway Board was fixing "maxima" and "minima" rates, and within this band, the Railway administrations were free to fix their tariffs. The rationale for fixing "maxima" rates was to basically protect the interests of rail users from a monopolistic service provider, whereas "minima" rates were fixed to ensure that the service providers did not engage each other in destructive competitive activity that could affect their financial viability.

The roles of policy, regulatory and management functions in relation to the Railways were concentrated in the Railway Board, or the Railway Ministry. On the matter of rate fixation, the tariff structure based on the classification of commodities by class rates fixed by the Railway Board/the Central government was introduced, and all discretion available to the zonal railway administrations to quote their own specific rates was withdrawn. Even specific station-to-station rates could be quoted with the concurrence of the Railway Board.

As the competition from other modes of transport intensified, a review of the Railway Act, 1879 was undertaken and the amended Act of 1989 came into force, which made two important modifications in the area of tariff fixation.

The structural weakness of the Railway Board's functioning as an apex executive body and a regulatory body needs correction urgently by setting up an independent tariff regulatory authority.

www.business-standard.com/article/opinion/shanti-narain-why-the-railways-needs-a-tariff-regulator-113022500526_1.html

Points to Ponder

The Railways as one of the basic infrastructure sectors, delivery of railway services is intrinsically involved with the economic agenda. But, the railways operated by the government have lost its objectivity in many ways; especially the tariff structure has lost its conceptual framework because of monopolistic power and frequent political interference. The enactment of Railway Act 1989, the moot role of Railways Rate Tribunal and parliamentary interventions made it difficult to achieve the basic purpose and objectives of the Indian Railway.

According to the Indian Railway Board Act, 1905, the Railway Board function as the highest authority to fix the tariffs, and its main aim was to protect the interest of the consumer/user. The Railway Rates Tribunal was also set up to safeguard the consumer's interest by its oversight in the railway administration and prevent undue discrimination or unreasonableness in quotation of tariffs. But, the Railway (Amendment) Act of 1989, has made important changes in the area of tariff fixation.

According to the new Act, the Central government was empowered to fix the rates directly and powers were conferred on zonal railway administrations to quote contractual "lump sum" rates. Fixing lump sum rates was also kept outside the purview of the Railway Rates Tribunal resulting in the defeat of the basic purpose of the establishment of Railway Rates Tribunal. The tariff policy has been totally politicised and all instruments of control provided in the Act regulating railway operations have been rendered infructuous, which totally ignores the social obligation to provide transport at affordable cost to economically weaker sections.

After several suggestions from time to time from the Planning Commission, Finance Ministry and other social *organisations to set up an independent tariff regulator, the Railway Ministry rejected the suggestions and argued in favour of the existing mechanism of regulation in which Rail Ministry has full power to fix tariff stating that railways is facing stiff competition from both road as well as aviation sectors, warranting a flexible and competitive pricing policy. Also, the coalition governments at the Centre and intervention by way of scrutiny by various parliamentary committees have ignored the larger interest of the nation. The weakness of the Railway Board is clearly visible in its services, passenger safety, maintenance and price fixing. The structural inefficiency of the Railway Board's functioning as an apex executive body and regulatory body requires urgent attention by setting up an independent tariff regulatory authority, which should be at an arm's length from the Railways Ministry.*

6. Housing ministry seeks single window clearance for real estate projects

The Economic Times, March 21, 2013

A Committee under the Housing Ministry has recommended a technology-enabled single-window portal for streamlining the process of approvals for real estate projects that may help developers bring down home prices.

The Committee on streamlining approval procedures for real estate projects, headed by former Chairman of the Competition Commission of India, Dhanendra Kumar, has recommended setting up of a nodal agency that will act as a single-window and coordinate approvals from different authorities.

In its report, the Committee said that the Ministry of Environment & Forests might relax the threshold for environment clearances for affordable housing projects from 20,000 sq metre to 50,000 sq metre and automatic clearance for such affordable housing projects that have obtained green certification under LEED of Griha environment rating systems.

Along with clearances from the Airports Authority of India, environment clearances for large real estate projects are the most time consuming, delaying projects and escalating costs.

Developers lament that large housing projects in the metros require them to take approvals from about 50 different authorities in the Central and state governments, local authorities including the Environment Ministry, National Monuments Authority, Aviation Ministry, besides departments such as forest, water, pollution, fire, revenue and town planning. This process can take up to three and a half years in Mumbai and between two to three years in Bangalore, Chennai and Gurgaon, escalating the cost of homes by up to 40 percent.

To protect consumer interest and bring in more transparency, it has recommended that a list of all approved projects should be uploaded on the websites of local authorities and information provided online on the status of applications for building approvals. Buyers will, therefore, be able to check the status of a particular project and not become prey to unscrupulous builders who start pre-sales of projects without having all approvals in place.

http://articles.economictimes.indiatimes.com/2013-03-21/news/37903304_1_single-window-clearance-real-estate-projects-environment-clearances

Points to Ponder

Indeed the proposed Real Estate (Regulation and Development) Bill is in the right direction and a welcome move favouring consumers and the real estate sector. Provisions of the bill stipulating single-window nodal agency for obtaining clearance of the requisite authorities, creation and maintenance of a separate fund for a particular project, uploading list of approved projects on the website of local authorities are particularly praiseworthy. However, relevantly, the Ministry of Housing and Urban Poverty Alleviation has decided to keep commercial offices and shops/malls out of the purview of the bill which will only regulate the housing sector, which constitutes a potent lacuna.

The real-estate sector comprises of four key participants: developers, consumers, financial institutions and the government. Thus a 'composite regulator' ensuring an overall regulation of all the key participants is crucial to heal the ill health of the sector. In the wake of the recent decision of abuse of dominance by DLF, pending before Competition Appellate Tribunal (COMPAT), introducing mandatory exit clause in case buyer-investor is unhappy with the development of the project in which he has invested and wishes to some other one would be a pro-consumer measure. Shield must be built round the proposed mechanism to keep the Licence Raj at bay as this would result in shooting up the cost of compliance, eventually passing the burden on the end-consumer by the builder. The concern of builders is also well founded when they argue that the Bill must also keep their interests protected in case of ad hoc policy-induced rise in the price of raw materials used in construction. Such move can help keep the real estate business profitable, while ensuring integrity and ethical practises in the sector.

Albeit it strongly appears that the Bill is taking serious note of performance standards of the developers, there is formidable apprehension that the provisions of the proposed Central Bill might come in polar conflicts with the parallel legislations and authority proposed at the state levels.

For example, the state legislature last July approved a Bill to set up the Maharashtra Housing Authority, which will too require registration of project with the instant authority and purports to regulate the housing sector with stringent provisions. Any attempt to ensue such a consequence which puts the harmonious existence of the state and central level regulatory authorities in danger or multiplies the existing time framework for obtaining approvals from central and state level authorities must be vehemently discouraged. Lessons can be taken from the Real Estate Council of British Columbia which also regulates entry qualifications of the builders in the sector and periodically publishes sector study reports.

However, the sluggish attitude of the Centre in pushing forward the Bill, in the making for about 5 years now, is the most congruous instance of how delays blight even the most legitimate and well-intentioned legislation. Since the benefits anticipated are grounded more in belief than in evidence, outcomes can be accurately measured only when the bill sees the light of the day.

7. Firms selling medicines below government-set price won't get match rate

The Economic Times, March 22, 2013

Firms currently selling essential medicines at less than government-mandated price caps will have to freeze rates at existing levels and will not be given the option of matching the higher ceiling price, according to the upcoming drug pricing policy.

This will constitute a setback to companies that sell essential drugs at rates below the government-set price and put them at a disadvantage against new entrants who will able to able to sell products at the ceiling price.

But this move will address a major concern of health activists and the World Health Organisation, which had expressed the fear that a market-based ceiling price would encourage drug makers selling medicines below this level to raise prices.

The prices prevailing in May 2012, six months before the drug pricing policy was notified, will be taken as the reference point. Drug producers will be permitted an annual increase in the retail price in sync with the wholesale price index.

Spate of Litigation Likely

The number of essential or life-saving drugs has been increased to 348, and in all, the prices of around 650 dosages will now be fixed by the government. The Department of Pharmaceuticals has sent the new Drug Pricing Control Order, 2013, to the Law Ministry for clearance and it is likely to be notified in early April.

The government had, in November, decided to fix individual ceiling prices of all the 348 essential drugs by taking the simple average of all drug brands that command a market share of one percent or more in a category.

At present, the government fixes price of medicines through a cost-based formula, which determines prices by factoring in input costs. Health activists and the Health Ministry had been in favour of continuing with this formula and did not want the Department of Pharmaceuticals to switch to the market price-linked method.

But the pharma department had repeatedly said it would build enough checks to ensure the new policy would not lead to a spike in prices in the Rs 70,000-crore domestic market and that the interest of consumers would be protected. The change in the ceiling price concept could, however, lead to litigation as existing players will allege discrimination *vis-a-vis* new entrants who would be free to enter the market.

http://articles.economictimes.indiatimes.com/2013-03-22/news/37936850_1_price-control-government-fixes-price-life-saving-drugs

Points to Ponder

Price control over drugs was first introduced in the country through the Drugs (Display of Prices) Order 1962 and the Drugs (Control of Prices) Order 1963. The outgoing drug policy of 1994, which covered 74 bulk drugs, was implemented through Drugs Price Control Order (DPCO) 1995. The Drug Policy of 1994 used the cost-based pricing to fix the price of essential drugs. This approach took into account the cost of raw material, cost of conversion and maximum allowable post manufacturing expenses of 100 percent.

The draft National Pharmaceutical Pricing Policy 2011 introduced market-based pricing. According to this, the ceiling price would be fixed after calculating the weighted average price of 'three top-selling brands' of an essential medicine. The 2012 draft has retained the market-based pricing approach, but changed the formula. Prices would be fixed after taking the average price of 'all brands that have market share of one per cent or more'.

The new price control policy is applicable to imported medicines also, if these drugs fall in the list of essential drugs. The fact is irrefutable that since the ceiling price of a drug will be based on 'simple average of all the drugs of the manufacturers in a particular segment with minimum one percent market share', under this dispensation the ceiling price 'thus arrived' would be lower than the 'maximum price' currently charged in that segment. A welcome move under the new policy for the pharma companies is that they can increase drug prices by up to 10 percent after a year of notification of the new order to factor in the inflation.

New drug launches are free to enter at the ceiling price or below it. Here, few pharmaceutical companies allege discrimination when they are not allowed to revise the prices of their existing drugs to the prescribed celling limits under the new policy. However, considering that the new regime will, no doubt, bring down the cost of medicines, but it will still be unreachable for the common man because the brands that sell the most are also the ones that are usually most expensive, it is ponderable whether the allegation is largely justified.

Media reports have highlighted alarm among public healthcare activists as well as a few arms of the government due to the apprehension that pharma companies may exit regulated drugs and migrate to marketing alternatives outside the scope of the price regime.

A significant concern which has skipped the attention of most consumers is that the organisation which has been entrusted with the task of supplying the database of the price of regulated drugs of the pharmaceutical companies with at least 1 per cent market share for the purpose of arriving at the simple average price of all the drugs in the market is IMS health, which is a US-based, healthcare information company. The fact is certainly not a glorifying one that there is no parallel nodal research agency in our home country which enjoys the confidence of the government to undertake the exercise of providing readily monitorable market based data. A monopoly provider of information on drugs may not be a good precedent. A monopoly provider of information on drugs may not be a good precedent.

8. New financial watchdog

The Hindu Business Line, February 12, 2013

The accounting community should work with the government in framing procedures for inquiry into professional misconduct.

Corporate Affairs Minister Sachin Pilot was perhaps stating the obvious when he said that the National Financial

Reporting Authority (NFRA) as an overarching body to oversee the accounting profession is here to stay.

The Companies Bill 2012, after all, has already been passed by the Lok Sabha and should see a smooth passage in the Rajya Sabha, subject, of course, to the vicissitudes of parliamentary functioning that has become the 'new normal'. But what he perhaps left unsaid is that in the government's view at least, the regulation of the accounting profession, and in particular the quality of services that they render to the business community, cannot be left entirely to the profession itself.

The heartburn within the accounting fraternity over usurpation of the privilege of self-regulation is understandable. After all, the notion that 'thou-shall-be-judged-at-the-bar-of-fellow-professionals' has long been regarded as a salutary principle, going back in time to the formation of guilds of masons, carpenters and the like. Historically, accreditation and regulation went hand in hand. In the case of accountants, the pain has been made worse by the fact that the community of medical professionals and those engaged in the practice of law have, at least till now, managed to preserve their privileges.

But as with everything else, times and mores of the world are changing. The principle of self-regulation is fraying at the edges as misconduct in the rendering of professional service keeps tumbling forth at regular intervals. The medical profession has already begun to feel the heat with the law requiring clinical establishments to register themselves.

The day perhaps is not too far off when lawyers too, would be subject to the searching glare of independent third party evaluation of their conduct. In that sense, accountants are fighting against a tide. More so, when in their case the audit work impinges on valuation of financial assets and billions of dollars of international capital are riding on such valuations.

www.thehindubusinessline.com/opinion/editorial/new-watchdog/article4408015.ece

Points to Ponder

The New Companies Bill, which is presently awaiting clearance from one of the two houses of Parliament, proposes the setting up of a National Financial Reporting Authority (NFRA) "to provide for matters relating to accounting and auditing standards", and details the NFRA's jurisdiction, functions, powers, penalties and staffing, among other things.

Although the Companies Bill does not state so explicitly, the reading of accounting professionals is that the NFRA will supersede ICAI. In the policymaking and regulatory domains, the ICAI currently pertains to three functions. One, Institute of Chartered Accountants of India (ICAI) drafts accounting standards. It sends these to the National Advisory Committee on Accounting and Auditing Standards (NACAAS), a body that resides in the MCA and notifies these standards. Two, ICAI sets internal auditing standards. Three, ICAI regulates its members. In all these three domains, NFRA could supersede ICAI or NACAAS, as the case might be.

Notably, the NFRA will have the power to act against audit firms. In contrast, the ICAI can suspend individuals, but not a firm. This is a serious shortcoming. What would be the fate of ICAI/ NACAAS is unclear, but in all probabilities, their powers would be suppressed as the Bill culminated into an Act.

The move is in sync with similar appropriation of powers which happened in the US in 2002, in the wake of the accounting failings at WorldCom and Enron. The US drafted the Sarbanes-Oxley Act, which set new and enhanced standards for all US public company boards, management and public accounting firms. The following year, the US also formed the Public Company Accounting Oversight Board (PCAOB) to oversee auditors of public companies.

The major fault-line in the functioning of ICAI came into open in accounting fraud - 2008 Satyam Computer case, where the company's promoter over-stated cash balances by about US$1bn and revenues by about US$1.1bn due to lack of an effective periodic supervision over the auditing firms, which has hitherto been on paper only. Given this observation, the fears of the third-party regulator as not being fearless or being impartial are not well grounded.

Moreover, there seems to be a case in having two independent efficient arms regulating accounting profession, one focussing on ex-ante regulation of the profession by laying down right accounting standards and determining entry qualifications of the profession and the other focussing on ex-post regulation by enforcing the penal provisions in case of non-compliance or adoption of unethical practices by its members. Regulation needs to be exercised in a manner which facilitates best practices rather than in a bureaucratic manner.

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