Experts Review The Impact Of India's Regulatory Changes On Biz & Investments

Soumya Sehgal Bhutani | Dec 17, 2024

By addressing implementation bottlenecks and fostering collaboration, India can sustain its position as a preferred destination for businesses and investors, they suggest

India, as one of the world's fastest-growing economies, has undergone significant regulatory transformations in recent years. These changes reflect the government's intent to modernise the economy, improve the ease of doing business, attract foreign investment, and ensure sustainable development. However, while these regulatory reforms have created growth opportunities, they have also presented challenges for businesses and investors.

Giving us an overview of how the liberalisation of FDI, with respect to the China route, has impacted businesses in India, Mukesh Butani, Managing Partner, BMR Legal, talks about the famous Press Note 3, which was issued when we slipped into Covid. This includes the investments made by all countries that share their borders with India, subject to the approval, even if those companies fell in the automatic list.

“Clearly, this impacted the Chinese investment. Apart from India, the USA also took a view of this but in a fairly calibrated manner. It restricted FDI in sensitive sectors such as telecom.

India, on the other hand, took a view that one needs an approval that resulted in significant arrest in FDI coming from China. I also recall that there were a few funding options available that got blocked.

It has been over four years since this Press Note came into effect. There is a fair bit of rationale for us to relook at it because we chocked the investment that was coming,” he explains.

Butani further shares that the cross-border trade between China and India has not shown any material change. “I see very little rationale in continuing the Press Note 3. Restrictions, if any, should be for sectors that are sensitive,” he suggests.

Vaibhav Kakkar, Senior Partner, Saraf and Partners, furthers that Press Note 3 is an unintended irritant for a lot of people. "One of the issues is that any direct/indirect beneficial or legal ownership of land border countries will require prior approval of the government, irrespective of the sector. The biggest consequence of this is private equity funds and direct investment funds.

In India, we ought to have a calibrated approach. Perhaps the sensitive sectors are what should be kept out of the purview," he advises.

Informing about the critical legal and tax considerations for businesses involved, Sumes Dewan, Managing Partner, Lex Favios, mentions, "In terms of joint ventures and investments, the key challenge is where you are investing, the country. It is imperative to understand where the investment is coming in from because that will determine the dividend, payment, royalty or tech know-how fee, etc. In terms of the tax aspect, they differ country-wise, depending on the double taxation avoidance agreement.

For the challenges that come in terms of regulatory issues, they decide the quantum of further investment permissible."

Ease Of Doing Business

India's climb in the World Bank's Ease of Doing Business rankings, from 142 in 2014 to 63 in 2019, highlights the success of these initiatives. GST, for instance, replaced a cumbersome web of indirect taxes, creating a unified national market and reducing compliance burdens for businesses. This reform simplified tax structures, boosted efficiency, and increased the formalisation of sectors such as manufacturing and retail.

Sharing insights on the steps needed to make Ease of Business a reality, CA Manish Dubey, Founder Partner at Corpacumen Advisors, comments, "I see the beginning of homecoming because of the access to capital. Businesses were earlier going outside India because of the Ease of Business, primarily due to their tax reforms. For example, the non-resident investors are not still willing to take a permanent account number in India to avoid the tax net of the country. I feel our systems must be diverse, and processes must be simplified."

Assessing the challenges associated with GST regimes, Dubey adds, "My first submission is to make processes faceless, especially GST registrations, along with a single-point compliance window. Next, all departments are flooded with litigation, especially due to mismatches. Most of this can be resolved by structural changes at the root level."

Digital and Tech-driven Policies

India has embraced a digital-first approach, implementing regulatory frameworks for fintech, ecommerce, and data protection. Initiatives like the Unified Payments Interface (UPI) and rules for foreign ecommerce players have boosted the digital economy. However, challenges in compliance, particularly for global giants, underscore the complexities of adapting to evolving regulations.

Deevanshu Shrivastava, Associate Dean at School of Law, GD Goenka University supports that the Ease of Business by the Indian government is the best example of a policy drift. Speaking on the challenges for businesses to make data privacy more localised, he says, "One of the challenges is that there is no regular mechanism. The other challenge is about how things are arising and the response towards the same. ”

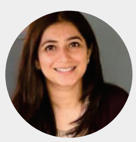
Legislative Reforms For The Financial Services Sector

Recently, RBI came down heavily on 3-4 microfinance companies, asking them to stop new loans overnight. This overnight decision came as a surprise for the entire industry. “When that happened, we heard that one of the NBFCs was out of the woods and others will follow soon .

About ten years back, the Financial Services Legislative Commission advocated for a Financial Sector Appellate Tribunal (FSAT). They wanted a statutory right to appeal. As far as RBI is concerned, they spotted a regulatory gap and suggested this reform. It is about time that the RBI is also brought at par with other regulators,” asserts Viral Mehta, Lead, Private Equity and Financial Services Regulatory, Nishith Desai Associates.

With this came two advantages, shares Mehta, “First, the party was granted a statutory right to appeal. Second, if one looks at the penal provisions that SEBI has at its disposal, some of it can also be translated into RBI’s space. You don’t need to shut down businesses altogether.”

India’s regulatory changes reflect a progressive shift towards modernisation and inclusivity, paving the way for robust economic growth. While challenges persist, the overall impact has been transformative, driving innovation, attracting investments, and empowering businesses to thrive in an increasingly competitive global environment. By addressing implementation bottlenecks and fostering collaboration, India can sustain its position as a preferred destination for businesses and investors.



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