Make it Simple and Sensible
Distilling Regulatory Principles to Make Doing Business Easy

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Running a business is not easy. When you decide the start a business you are not only risking your financial capital. Your family time, personal relations, hobbies and interests, and reputation are also at stake. Why do you take your chances? Perhaps because somewhere deep within yourself you believe that you have got one skill that will see you through. Maybe you believe that you can strike a deal better than anyone else or that you are you an expert in a particular technology. But surely, no one starts a business on the strength of his expertise in compliance with regulators. Unfortunately when you are actually running a business, you spend more than half the time on compliances. It is not that people have not been talking of reducing compliance burden. FSLRC recommended doing a detailed cost benefit analysis before introducing any regulation. Yet if we look at the volume of regulations, there has been an exponential increase over the past few decades and there is no stopping it. Is there a way out?

SEBI has been a regulator who is not shy of trying out new things and leveraging technology. There are two areas where SEBI has started the work of positively reducing the compliance burden. The first such area is Systems Driven Disclosure Regime. Regulation 29 of Takeover Code requires acquirers to disclose their shareholding to the company and Stock Exchange when their share holding crosses a level of 5% and after that any change amounting to 2% or more is also to be reported. There can be umpteen reasons for people failing to make these disclosures ranging from ignorance to plain laziness. A major change in shareholding is an information that is important to the investors. However, not making these disclosures does not have any direct benefit for the people who fail to disclose. Almost a third of the total adjudication orders passed by SEBI were on account of these disclosure violations. The penalties were rather modest but besides inconvenience, there is a stigma attached to regulatory actions. Now the question to consider was whether these disclosures were about something that was known to only to the concerned investors and only they could have made the disclosures. SEBI did realize that the Depositories and the Registrar and Share Transfer Agents held the required information and it could be culled out automatically from their records. In a phased implementation, SEBI introduced the system driven disclosure regime for promoters in 2015 and extended it to non-promoters in 2018. Though currently, the system driven disclosure is being made as a parallel run, yet in a foreseeable future there might be no need to burden investors to keep such records and make timely disclosures. There would be automatic compliance enabling SEBI to devote their Enforcement Resources to serious violations.

Another area where an initiative is being taken by SEBI is in respect of Annual Information Memorandum to be filed by the listed companies. The reasons for the same are explained well in a discussion paper put out by SEBI. Companies take great pains in putting all information about them while preparing an Offer Document for Initial Public Offer. An investor needs to look no farther than this single document if she wants to take an informed decision in the initial offering. SEBI has mandated many continuing disclosures for listed companies too. But all these disclosures are fragmented and a secondary market investor has to trawl through copious fragmented data before she can take a coherent view about the company. An Annual Information Memorandum attempted to fill in this gap.

Filing AIM could be seen as another burdensome regulatory requirement. Yet an innovative approach that is hidden beneath it needs to be appreciated. eXtensible Business Reporting Language (XBRL) is a technology that can turn this burden into positive help. XBRL allows each data element, even if it is not numerical, to contain all the needed contextual information. Imagine a company making its Offer Document in XBRL and then after having listed, it makes all disclosures too in XBRL. These disclosures can be allowed to amend the original Offer Document. With each new disclosure there would be automatic updating of the Offer Document on the web-site of the Stock Exchange. Besides, providing all information in one place to the investors, this updated document can be of immense help to the company itself. If the company wants to make a Rights Issue or an FPO, the considerable time it takes to prepare a fresh Offer Document can be saved. Besides, as the Offer Document has been under public scrutiny all the time, there is no need to give public any extra time to go through it and offer comments. Even SEBI need not spend time and resources in going through the newly prepared offer documents as the one appearing on the website of the

Stock Exchange has been subject of constant scrutiny over the years and any discrepancy is expected to have surfaced one way or the other. This constantly updated Offer Document can be used as Shelf Prospectus. This would make equity financing an always-available option before the CFO of the company rather than being a onetime major exercise.

The reason for discussing the above two initiatives is not to sing praises of my former employer but to distil a regulatory principle that can be of help to public, corporates and to regulators themselves. The principle is : ***Once I have a made a public disclosure I need not provide that information again to any authority.*** Any disclosure that is made to a public authority should be considered as public disclosure unless it is expressly confidential.

Once information is in public domain, it should be the job of the concerned authorities to cull out information from public domain and not demand it time and again. Imagine how many times you would have put information regarding your name, father's name, spouse's name, address and so on in countless forms ranging from making a airline booking to opening a bank account or buying mutual fund units or insurance. Why couldn't you simply give your CKYC number (We are not talking of Aadhar here, as its use can be a subject of some discussion)? Similarly, companies spend countless hours in giving information about their financial position to various authorities when all such authorities could cull out information from the MCA website where the company would have filed financial statements in an XBRL format. It is only a question of establishing connections between the various authorities. Filling in forms could be a matter of minutes or seconds.

If doing all this would have benefitted regulated entities and individuals alone, there could have been a reason, howsoever unjustified, for authorities to be callous. A closer examination would reveal that the authorities would also benefit immensely from such initiatives. One, there would be huge savings if the need to separately maintain humongous data bases by each authority is obviated. They will be having much slimmer data bases even as they have up-to-date and comprehensive information. Secondly, the regulated entities will have to give consistent information to every authority. No one could choose to present different information to different authorities. Thirdly, the administrative burden of ensuring timely filings will be reduced greatly. For example, at present both MCA and SEBI have to make rigorous follow up with their regulated entities to ensure that they make timely filings. In the system driven disclosure regime, timely filing is to be ensured by one single regulator once. Last, but not the least, consistent and timely availability of information will reduce the burden of Enforcement allowing authorities to devote their time and resources to more serious matters.

Having tasted blood, should we stop at one principle only viz. disclosures? Let us consider the case of capital. Today most people would think that capital as a percentage of risk weighted assets has been followed by banks since time immemorial. As a matter of fact it is just thirty years since it is recognised internationally. Capital as a percentage of assets was mooted for the first time in a 1941 paper by Ronald I. Robinson[1]. It was extended from Credit Risk to other risks in the Basle II accord. The concept of risk sensitive capital can be extended. Entities should have enough capital to have a reasonable expectation of surviving the coming year against all possible risks.

Consider the case of a Stock Broker or an AMC. How much capital should they have? Put the number too low, it becomes a laughing matter. Put the number too high, the regulator is criticised for favouring big boys to the detriment of the smaller players. Some even argue that securities market entities are basically pass-through entities and don't require capital at all (though it is true that after some fat finger errors, such articulation has become less vociferous). It is obvious that even as securities market entities are pass-through entities and not subject to credit or market risk, which are borne by investor, they are still subject to operational and other risks. They should have enough capital to reasonably survive adverse situations. **The principle of having a risk sensitive capital has much wider applicability than we might think.** The principle can be applied easily if we want to reach a reasonable figure for Security Deposit demanded in several situations. Having correct security deposit figure could actually boost commercial transactions.

There are still other things that make life for business people difficult. Theoretically, having a registration with a regulator should be a simple matter. The regulator lays down the eligibility criteria and if one fulfils the criteria, registration should be a matter of routine. Yet anyone who has ever tried to get himself registered with any regulator would realise how cumbersome it can be to file an application and usually one ends up going to a 'consultant' to do the filing. If one looks at various application forms for registration with various regulators, financial as well as non-financial, one would realise that basically they are asking for the same information. There is no reason why registration documentation cannot be made common across all categories of registrants across all regulatory authorities. Coupled with compulsory use by regulators of information available in public systems, the registration procedures can be extremely quick and business friendly. Studies can be made as to what is the essential information that a regulator must have before registering an entity.

Similarly, regulatory action if and when a violation takes place could be made common across regulators with a clear emphasis on correcting the deviant behaviour rather than making examples by high profile pubic cases. Sir Robert Peele who laid foundation of London Metropolitan Police famously said **that it is the certainty of punishment and not the severity of it that is**

deterrent to crime. This could be the defining principle of enforcement.

Clear enunciation of principles will not only bring consistency in regulations, but can obviate the need of having intractable tomes put out by scores of regulators. Hopefully, regulation will be studied as an academic discipline in near future where such principles and common procedures can be worked out. This would free up business people to do what they know how to do best and not waste their time in regulatory labyrinths

[1] http://www.jstor.org/stable/1824346?readnow=1&loggedin=true&seq=17#page_scan_tab_contents