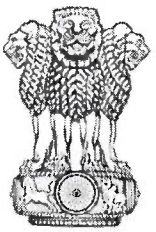

Report of the Expert Committee on Prior Permissions and Regulatory Mechanism

Government of India
Ministry of Commerce & Industry
Department of Industrial Policy & Promotion

Table of Contents

Preface

The Expert Committee was constituted by DIPP to examine the possibility of replacing multiple prior permissions with a pre-existing regulatory mechanism with adequate safeguards. A copy of the O.M. No. 4(1)/2015-BE-I, dated 6th April, 2015 is at **Annexure I**.

2. The Committee requested Industry Associations, including country specific Chambers, prominent Industry leaders and key stakeholders for suggestions and advice. The Industry Associations especially the CII, FICCI and PHD Chamber as well as country specific Chambers provided valuable suggestions and facilitated in depth discussions with key stakeholders on major issues. The Secretaries of all Ministries of the Government of India and Chief Secretaries of States were requested for their advice and inputs. Discussions with State Governments were held in small groups.

3. Ministries and State Governments were requested for an enumeration of the clearances granted by them and their agencies. The inventory of clearances that this Committee has been able to compile is at **Annexure II**. However, this is a work in progress. Completing this in an open source fashion has been recommended in Chapter IV.

4. The way forward for creating an investor friendly pre-existing regulatory framework replacing multiple prior permissions with adequate safeguards for making India one of the most attractive investment destinations has been spelt out in the recommendations contained in Chapters III to IX of the

Report. The recommendations relating to start-ups in chapter – IX had been submitted earlier on 27th November, 2015 for consideration for the Start-ups India Action Plan unveiled by the Prime Minister on 16th January, 2016.

5. The Committee would like to place on record its appreciation to all those who gave their advice and inputs and also engaged in long discussions on many complex issues. Special thanks are due the Industry Associations, their members and staff, for their invaluable assistance to the work of the Committee.

Ajay Shankar 4/2/2016

Ajay Shankar
Chairman

Chapter I

Executive Summary

Regulatory Impact Assessment: Continuing Process.

1. There is need for a standing institutional mechanism within government for an Independent Regulatory Impact Assessment on an on-going basis of the existing regulatory requirements and proposed new ones across the entire range of economic activities. This process should take a fair and balanced view regarding what is good for business and consequently wealth creation and employment generation on the one hand, and public welfare considerations such as consumer protection, safety, preservation of the environment and interests of labour, on the other. On specific regulatory requirements, this would generate only recommendations, as a super regulator with over-riding powers over sectoral regulators is neither feasible nor desirable. Such advice should be considered by sectoral regulators, and where necessary by government at the highest levels to enable the political executive to take a view on matters where a consensus with the sectoral regulators does not emerge.

2. This advisory function may be performed by a Standing Committee on Regulatory Affairs. A similar mechanism needs to be created in the State Governments with the same objective of

ensuring that actual costs of regulation especially for growth of enterprises and consequent job creation do not outweigh the intended benefits.

[Chapter – III]

Inventory of Clearances.

3. The listing of clearances at the level of the Central Government and the State Governments is a work in progress. It is recommended that this inventory should be evolved in an open source Wikipedia type of process in which all concerned stakeholders can participate. Once the inventory is in position, a Net-based help facility with Q&As and response capability for specific queries should be created.

[Chapter - IV]

Standards.

4. There should be greater willingness to adopt the standards that are in force in developed mature markets as this would enhance global competitiveness for 'Make in India'. The BIS Act has an enabling provision for adoption of standards in force elsewhere. The process of doing so needs re-engineering to ensure that decisions in this regard can be taken in a few months.

5. CODEX Food Standards should be made automatically applicable in India from the date of notification by CODEX and firms should not need any permission to introduce food products in the Indian market conforming to the relevant CODEX Standard. Where for good reasons, a CODEX Standard is modified and an appropriate Indian Standard is created, food products would need to conform to these.

6. The medical device industry has high growth potential. An efficient system of regulatory approval of conformity to standards is essential for new products to be acceptable to doctors and patients. The gaps in this regard need to be taken care of quickly.

7. For food and cosmetics where standards do not exist, permissible limits of ingredients as prescribed in the U.S or the E.U should be made mandatory to take care of health and safety concerns.

[Chapter V]

Third Party Certification.

8. Credible Third Party Certification may be introduced in most areas of regulation jointly with sectoral regulators in a planned and phased manner from prospective dates. From the date of the regulatory decision for Third Party Certification, multiple players could emerge in about a year's time.

9. For better compliance and credibility of the process, some percentage of Third Party Certification would need to be subject to random concurrent audit with stiff penalties cumulatively leading up to even withdrawal of accreditation for laxity.

10. In designated Industrial Parks/Zones, standards can be clearly laid down in advance relating to the
    (a) The Environment,
    (b) Building bye-laws,
    (c) Safety and other norms.

    With such a pre-determined regulatory framework an effective system of Third Party Certification could actually lead to the doing away with multiple prior permissions altogether.

[Chapter - VI]

Environment Clearance.

11. India should seek to adopt global Best Practices in setting up standards and norms for emissions, effluents and solid waste for different categories of Industries. Older plants would need a special dispensation along with an Environment Certificate Trading Scheme.

12. Promoters of Industrial Parks, Zones and Areas may be allowed to obtain Environment Approval for their whole Area for setting up of identified

environmentally homogeneous or similar industries with a specified level of final gross annual production and environmental load. Based on this pre-existing environmental regulatory frame work, individual units conforming to specified plant level emission standards should be allowed to come up without having to seek Environment Approval. The units should also not need Consent to Establish, or, Consent to Operate.

13. A system of real time sensor based monitoring of emissions for plants above a certain size, to a Control Room of the Regional / State Pollution Control Board at the cost of the industrial plant, along with prescribed system of Third Party Certification would ensure full compliance with Environment Standards.

14. For globally mature Industries such as Steel, Cement, Power, etc. for which international environment standards exist, environmental appraisal need not go into the internal plant processes by which prescribed norms would be complied with.

Geographical Planning.

15. The Ministries of environmentally sensitive sectors such as Power, Petrochemicals & Chemicals, Pharmaceuticals, and Steel, should, jointly with the MoEFCC, work out a 20 year perspective geographical Plan indicating preferred locations in prioritised categories for

their anticipated projects, so that the negative impact on the environment is minimized. Plants in these locations should be able to get speedy environment clearance.

[Chapter - VII]

Forest Clearance.

16. A GIS-Digital map based inventory of the forest cover in the country has now been created. It is, therefore, recommended that this database be used for taking decisions regarding approval of proposals for diversion of forest land for a project, as well as for determining the NPV of the forest cover on the land proposed for diversion as well as the cost of compensatory afforestation.

17. MoEFCC in partnership with State Governments may create Land Banks for compensatory afforestation. The project developer may be spared the burden of putting together land for compensatory afforestation and should be only required to pay the Net Present Value (NPV) of the forest cover of the land being diverted for non-forest use, the cost of the land to be used for compensatory afforestation and the cost of compensatory afforestation. The time for getting Forest Clearance would be considerably reduced and compensatory afforestation would also be done speedily. With this, it should be possible to do away with the present system of two stage Forest Clearance and just give Forest Clearance on obtaining full payment.

18. The Ministries of sectors such as Coal, Mines, Steel and Power, whose projects need diversion of forest land should, jointly with the MoEFCC, work out a 20 year perspective geographical Plan indicating preferred locations in prioritised categories for their anticipated projects, so that the negative impact on forests is minimized. For projects proposed in these locations, permission for diversion of Forest Law could be given quickly.

[Chapter - VIII]

Start-ups.

19. Areas for start-ups through mixed land use re-development, or, greenfield development may be earmarked.

20. In these areas, for specifically identified activities from amongst the environmentally 'Green' categories of industries no Municipal licenses and Pollution Control Board permissions should be required for Start-ups.

21. Standard Building formats prescribing height, ground coverage and FAR may be notified. Start-ups may be exempted from the requirement of seeking Building Plan approvals. Only E-intimation of what they are planning to do/have done should suffice with Third Party Certification by an accredited architect.

22. Similarly, for Factories Act, fire safety etc., intimation with accredited Third Party Certification should suffice.

23. Start-ups may be given the special dispensation of complying with Labour Laws on their own without being subject to inspection and/or enforcement for a period of three years, or, till their work force exceeds one hundred, whichever is earlier.

24. Any inspection of a Start-up should be done only with the permission of an officer at a sufficiently higher level and that too, in cases of actionable complaints.

[Chapter - IX]

Chapter II
Introduction

1. The need for regulation of economic activity as well as for prior approvals has emerged over time in response to genuine public concerns at various points of time across the world. Standards for products, with the mandatory requirement for conformity to these, appeared out of the need to protect consumers. Building plan approvals and conformity to town planning norms emerged out of concerns for the quality of urban life as a result of the chaotic growth of cities in the period of rapid urbanization that accompanied the Industrial Revolution. The safety and health of workers became a critical issue in the early phases of industrialisation and this was reflected in the provisions of laws like the Factories Act. Fires led to the evolution of the regulatory regime for Fire Safety. The labour and socialist movements which grew in tandem with the Industrial Revolution led to State mandated measures for the welfare of workers and the protection of their rights. These national developments led to the creation of the ILO (International Labour Organization) and to an international consensus on labour issues reflected in the covenants of the ILO.

2. More recently, environment and sustainability have become critical issues for the survival of human

civilization itself. Stronger environmental laws and regulations have been the consequence across countries. So much so that in India, the judiciary often felt that legislative and executive action had been inadequate and behind the needs of the hour and, therefore, intervened to fill the gap. Environment and safety are the key areas where new standards and regulations are evolving internationally.

3. Before Independence, the British created regulatory regimes which mirrored their own. After Independence, India, as a developing country, has looked at global best practices, primarily, British in the earlier period after independence, and American, more recently, as it has been evolving its regulatory regime in different sectors.

4. New standards keep evolving. Standards are for products as well as processes. These embody essential information for market participants for increasingly complex products, thereby increasing the efficiency of markets. Many new standards become mandatory. As technology has been evolving, there has been a corresponding need for new regulations to address concerns regarding health, safety and the environment. Conceptually, where compliance needs to be fully ensured and there is the expectation that compliance would be weak, prior approvals get prescribed. Accordingly,

the issue of pre investment clearances has to be seen in the context of the overall regulatory framework.

5. It is useful to bear this perspective in mind in the context of the objective of reducing the regulatory burden on business enterprises and consequent transaction costs in terms of both time and money. With the increasingly rapid pace of globalization and connectivity especially through ICT, location of segments of global value chains have become more and more mobile. Hence, across the world, improving the Ease of Doing Business in recent decades has become more important as nations compete to attract investments and create jobs. Investors have the luxury of considerable choice among comparable locations. The burden of actual costs of regulatory compliance as well as related transactions are now a material factor in determining the choice of location for any new investment decision. The World Bank has, therefore, been ranking nations in terms of Ease of Doing Business. Investors and analysts look at these and other related rankings carefully. As nations compete to retain as well as attract investments and jobs, the need to improve the Ease of Doing Business and to reduce the Regulatory burden on enterprises have become key objectives across countries and political parties in open market economies.

6. However, if one looks at actual international experience, it is seen that improving the Ease of Doing Business and reducing the regulatory burden on enterprises has been a real and continuing challenge everywhere. The existing sectoral regulatory systems have evolved over time in response to a consensus on the requirements of public welfare and they do not easily see the need for any change. Further, there is a natural resistance to any external effort to push change in institutions. In addition, there is the historical suspicion of Business based on experience of the tendency of the profit motive to override all else. Such experiences lead to fresh regulations. The recent experience of the global financial crisis and the response of enhanced regulation of the financial sector is a good example.

7. It has been seen that only with strong political commitment at the highest levels, has it been possible for the process of liberalization and deregulation to be seriously pursued. In country after country, it has taken time and sustained political commitment to achieve significant progress. Political cultures which see business as the primary engine of growth, job creation and public welfare find this easier in comparison to those which are more statist and do not have much trust in business

which is consequently seen as being in need of greater regulation.

8. In this regard, the methodology of Regulatory Impact Assessment has evolved into a useful analytical tool and is being increasingly adopted. This involves an assessment of the risk posed by an unwanted outcome, its probability, and the cost to business of regulation to prevent the undesirable outcome, and then taking a view through a transparent process about where on balance, the public interest lies. To illustrate, for a high risk and low probability event such as an accident in a nuclear power plant, the cost to business would be of little consideration while deciding on additional safety regulations. At the other end of the spectrum, display in packaging of food product of calories through sugar, protein, fat and cholesterol has been mandated and is considered adequate, but cigarettes now need to prominently display health warnings and smoking is banned in public places in most countries.

9. In pursuance of the objective of achieving a fair balance between the need to reduce the regulatory burden on enterprise on the one hand and the public interest that leads to regulation in the first instance on the other, in the UK they have enacted the Business Regulation Act and created the Better Regulation Delivery Office to guide the regulatory

process. Their guidelines require that regulators should carry out their activities in a way that supports those they regulate to comply and grow. Further, regulators should base their regulatory activities on risk assessment. Given the inertia arising out of tradition, real progress in reducing the regulatory burden on enterprises required the adoption in U.K. of the "one in" and "two out" principle. The mandate was imposed on regulators that for every new regulatory requirement that they chose to impose, they had to get rid of two earlier ones. Before the last general election, it is understood that the Prime Minister and his office had to drive the process to achieve significant progress.

10. The U.S. has had a strong tradition of faith in free markets and distrust of big government and excessive regulation. The European Commission has been pursuing the unbundling of the functions of:-

    a. The setting of Standards for health, safety and the environment.
    b. Conformity assessment and certification, and
    c. Creation of National Accreditation Bodies.

    This experience is relevant in the context of the prevailing practice of the regulator setting standards as well as certifying compliance.

11. Since the commencement of economic liberalization in India in 1991, the reduction of the regulatory burden on enterprises has been an underlying objective of the entire reform process in India. However, India's ranking in the World Bank's annual Ease of Doing Business study 2015 is still at 142. This is broadly in consonance with the perceptions of investors, large as well as small, Indian as well as foreign. Notwithstanding this disappointing ranking, the fact that India has had high GDP growth rates and increasing FDI reflects the strong business case for investment and value addition in India. The attractiveness of the business proposition is the prime mover and creates the potential for investments, but better Ease of Doing Business enables greater realisation of this potential. The large difference between the potential and the actual for India has been a very real and avoidable loss in terms of higher growth rates, employment generation and poverty reduction. The difficulties and delays in getting clearances and the onerous nature of the Regulatory environment impose large transaction costs of both time and money. To this is the added uncertainty and unpredictability of outcomes. In recent years, a growing share of Indian investments overseas was due to the difficulties in investing in India. Many large corporates had occasionally said as much publicly. The bigger loss has, however, been on account of investments not made by potential start-ups and

Indian SMEs. SMEs from the mature developed economies have yet to invest in India on the scale they should be doing on account of their perceptions regarding difficulties of doing business in India. SMEs are the backbone of any industrial economy and job creation. Start-ups are the key to acquiring entrepreneurial depth and an innovation ecosystem. The real question is why in spite of the ongoing reform and liberalisation process since the commencement of economic reforms in 1991, improvement in the Ease of Doing Business had been inadequate and achieving the desired breakthrough is still seen as a real challenge.

12. In this context, it is necessary to recognise that India being a developing country has real challenges in terms of attitudes, awareness and work-ethic, as far as actual compliance with regulatory requirements is concerned. To illustrate, the number of casualties in road accidents, or, at construction sites are even now very high. This is clearly unacceptable and indefensible. When things go wrong, there is an understandable public outcry and demand for both additional as well as tougher regulations. Impulses for regulating the fee structure, or, admissions in private educational institutions which do not receive funds from government are an example of additional regulation. Legislating criminal liability with provisions making breaches a cognizable offence with prison

sentences and fines has been happening, with increasing frequency. The recently enacted new Company Law has far too many provisions which impose criminal liability and these are seen as a negative factor inhibiting the 'animal spirits' of free enterprise. There has been an on-going process of addition of layer after layer of regulations which tend to be increasingly stringent.

13. Paradoxically, according to many, the experience in India has been that a more stringent law does not necessarily lead to better compliance given the weaknesses in governance across enforcement agencies. Very often, it only leads to greater harassment and rent seeking by those who get enhanced powers through stronger legislation. The situation is further compounded by the political economy that has evolved around economic regulation in terms of increasing rent seeking. This, in turn, creates very powerful forces that resist change as liberalisation and deregulation would reduce the potential of rent seeking which is considerable. The challenge for India is to reduce the regulatory burden for enterprises and at the same time enhance compliance. It is naturally better to have high compliance to milder regulation than weak compliance to more stringent regulation.

14. The Government of India has now been making determined efforts to achieve a breakthrough in

Ease of Doing Business and to make India one of the most business friendly investment destinations in the world. To achieve this objective, it has been taking many initiatives aimed at improving the Ease of Doing Business. These have been aimed at reducing the regulatory burden, simplification and rationalization of the Rules and Procedures, introducing online system of delivery of services, etc. Some of the major initiatives are as follows:

- Sharing of Best Practices of granting clearances by states for peer evaluation and emulation.
- Assessment of States' Implementation of Business Reforms on the basis of "98–point Action Plan" and ranking their performance in order to create competition among them to undertake business reform (**Annexure-III**).
- Preparation of a comprehensive "Business Reform 340-point Action Plan" for States/UTs-Implementation Guide (**Annexure-IV**). It is divided into the following 10 major areas of intended business reform:
    I. Access to Information and Transparency Enablers.
    II. Single Window System of Clearances including online system.
    III. System of Land Availability, Allotment, Property registration.
    IV. Construction Permits' Enablers, Building Plan Approval, NOC for Tree Felling, Fire Safety.

V. Environmental Approvals under Water Act 1974, Air Act 1981 and Authorization under Hazardous Waste (Management and Handling) Rules 1989.

VI. Registrations/Approvals/Renewals on Labour Related Matters and establishment of Shops and Establishments.

VII. Electricity and Water Connection.

VIII. Online system of Registration for Taxes, filing returns, making Payments.

IX. Inspection related issues.

X. Commercial Dispute Resolution and introduction of paper-less e-courts.

- e-Biz Project under the Digital India Programme envisaging setting up a G2B portal to serve as a one stop shop for delivery of services to investors and address their needs during the entire life cycle of business.

States are partnering the Government of India in these initiatives and these have begun to pay dividends and considerable progress has been achieved. Ranking of the country in the World Bank Ease of Doing Business Report has also started improving.

15. Recognizing the critical importance of creating an investor friendly environment in India, attempts had been made from time to time to address the matter in a holistic fashion. Three major exercises were

undertaken in the last decade and a half. These are:-

A. The Inter-Ministerial Committee on Reforming Investment Approval & Implementation Procedures convened by Sri V. Govindarajan, Secretary, DIPP in 2002. It, inter alia, recommended the need for the following:

- Re-engineering of the Regulatory processes prescribed under various legislations, regulations, etc. both at Central and State levels, in order to simplify the procedures for grant of approvals, reduce delays and simplify the regulation of projects during their operational phase.
- Introduction of self-regulation in possible areas.
- Simplification of the procedures relating to the approval of primary resources, viz. land, electricity, water, building plans, change of land use, etc.
- Need for conferring the building plan approval powers to architects registered under the Architects Act, 1972.
- Streamlining of environment and forest clearances.
- Introduction of Single Window system and Single Composite Application Form for various approvals/clearances.
- Prescribing and adhering to the time limits for various approvals.
- Reducing the multiplicity of inspections including the provision for inspections by accredited certifying agencies.

- Incentivizing States for regulatory reforms aimed at improving the ease of doing business.
- Setting up of facilitation and dispute resolution mechanism for investors facing difficulties.
- A net-enabled system for easy availability of information on procedural and documentation requirements, time frame and authority responsible for various approvals, status of pending applications along with reasons for delay beyond the prescribed time.
- Sensitization and awareness generation among public about best practices in India and elsewhere and initiatives taken by Central and State Governments.
- Periodic ranking of States on the basis of critical parameters of performance in undertaking reforms in order to incentivize them and promote healthy competition.
- Greater use of Information Technology tools for promoting e-governance in regulatory processes.

(Copy of the report is at **Annexure-V**.)

B. Later in 2005, a Committee under the Chairmanship of Shri Anwarul Hoda, the then Member (Industry), Planning Commission went into "Streamlining the Requirement of Inspection of Industrial Units under different Acts". It, inter alia, recommended the following:

- Special Dispensation for Small Enterprises in terms of labour laws and inspections

- Development of a mechanism of an alternative credible third party inspection for ensuring regulatory compliance.
- As a general rule, exemption of ISO 14001 certified Enterprises from routine inspections under environmental laws during the validity of certification. The certified units should only keep the Regulatory Agencies informed about the results of monitoring carried out by the certified agencies.
- For highly polluting industries as identified by Ministry of Environment & Forest (MoEF), the ISO 14001 certification along with additional requirement of verification by Government agencies of adherence to environmental laws during two successive inspections jointly undertaken by Central Pollution Control Board (CPCB), State Pollution Control Board (SPCB) and Regional Office of MoEF may constitute adequate safeguards and would justify the exemption from routine inspections.
- Development of national standards for occupational health, safety and labour laws along with putting in place, a system of third-party certification and accreditation agencies.
- Development of Infrastructure for Third Party Inspection and strengthening of the existing accreditation system like the Quality Council of India (QCI) by way of capacity building, laying down of standards and developing inspection manuals.
- Third Party Inspection in respect of non-health and safety labour laws may also be considered in parallel.

- Inspections to be held only on the basis of credible complaints and with the Authority of Head of Department concerned.
- Introduction of Schemes for self-certification whereby the enterprises that furnish such certificates would be liable for inspections only once in five years. A detailed system of self-certification be developed providing for specific aspects of compliance under various legislations and regulations, instead of expecting the enterprises to submit a blanket certificate under all provisions.
- In respect of taxation matters, a description of the broad basis on which the scrutiny of Income Tax returns of the assesses is undertaken, should be disclosed from time to time. Similarly, the basis for selection of cases for audit for excise and service tax purposes should be disseminated for the information of assesses from time to time.

(Copy of the report is at **Annexure-VI**.)

C. In 2013, Shri M. Damodaran Committee on Reforming the Regulatory Environment for Doing Business in India also submitted its Recommendations. It, inter alia, recommended the following:

- Review of all laws and regulations at Central and State levels having their impact on the Ease of Doing Business and to incorporate required changes as per the needs of the time.
- Encouraging arbitration to resolve contractual disputes.

- Setting up of a new regulatory authority should be a well thought out process rather than a knee jerk response to a specific situation or context.
- Each Government organization / department which has the responsibility of writing regulations should undertake a two-stage process of consultation, wherein a revised draft is put up for consultation after the first round of stakeholder consultation in order to avoid situations of misinterpretation of the regulations.
- Every organization tasked with writing of regulations should have a provision for an advance authority for rulings, to avoid confusion created by different authorities having written different, often conflicting, rules and regulations governing identical activities.
- In every organization, there should be a Regulation Review Authority to continuously examine the stock of existing regulations and to weed out those not having any continuing use. These authorities may review the draft regulations in the pipeline in order to ensure that unnecessary regulations are not given effect to.
- A Regulatory Impact Assessment (RIA) of every proposed regulation should precede the public consultation process.
- To enable the development of MSMEs, there should be an overarching body for policy and process coordination at Central and State levels, mechanism of single window for facilitation of clearances and compliance.

- To address State level issues, there should be information facilitation through a nodal point in each State.
- State Governments making significant progress in simplification of regulations and expediting approvals need to be incentivized to promote healthy competition among States for regulatory reforms.

(Copy of the report is at **Annexure-VII**.)

Chapter III

Regulatory Impact Assessment: Continuing Process

1. The relevant question is, why in spite of good intentions as well as clear analysis and recommendations in these three Reports, progress in actual implementation in the past was so modest. Part of the problem lies in the manner in which the powers of the government are vested in the line Ministries to whom different subjects are allotted in the Allocation of Business Rules. Economic liberalization efforts have generally been driven by the Prime Minister's Office, the Finance Ministry, the Department of Industrial Policy & Promotion and the erstwhile Planning Commission and now Niti Aayog. However, the sustained effort with enough attention to detail for actually doing away with, or, easing a particular regulatory requirement and for making it business friendly was not seen. The expectation was that line Ministries would be doing this on a continuing basis. In practice this did not happen to the extent needed. Line Ministries did not usually interiorise adequately the need for liberalization. The earlier statist mind-set of having greater wisdom about what is needed and the duty to prescribe and enforce with the presumption that voluntary compliance need not be expected without the powers of strict enforcement, continued to persist. This also seemed to get reflected in legislation going by the frequency with which harsh criminal provisions with punitive powers to enforcement agencies got incorporated in new laws. In the members of the political and administrative elites, the recognition of the benefits from genuine

reduction in the powers and the role of state agencies remained modest.

2. There has in recent years been genuine progress in terms of transparency and stakeholder consultation. A new proposed regulation is now usually made public in a draft form and stakeholder consultations are held before final notification. However, the regulator proposing the new regulation takes the final decision after taking into account the views of the stakeholders. It is only natural that he would be inclined to see greater merit in his initial draft proposal and less in the objections and reservations received from stakeholders. Further, making things easier for business enterprises is not perceived to be part of the regulator's mandate. The business point of view has no institutional constituency on an on-going basis within the government system. Neither, the PMO nor the Cabinet Secretariat can, or, perhaps should assume this responsibility at a micro level. It is not an explicit mandate for any Ministry in terms of the present Allocation of Business Rules.

3. There is, therefore, the need for a standing mechanism within government which takes a fair and balanced view regarding what is good for business and consequently wealth creation and employment generation on the one hand, and public welfare considerations such as consumer protection, safety, preservation of the environment and interests of labour, on the other. An assessment of tangible and intangible costs to business and benefits to society from any particular

regulation and the trade-offs between the two is intrinsic to such a process. Such a view needs to be taken on an on-going basis regarding existing regulatory requirements as well as proposed new ones. Such Regulatory Impact Assessments undertaken in a transparent manner would have greater weight with the sectoral regulators who have the legal authority and would and should continue to have it, given the increasing complexity of modern economic activity. In most cases, it can reasonably be expected that a fair consensus would emerge with the regulators taking better decisions. However, in some matters, differences would persist. In such cases, the issues need to be considered by the political executive from a larger public welfare perspective. The regulator could be persuaded, directed and, if necessary, changes in Rules and even Laws could be considered. This overriding power has to be necessarily exercised by the political executive which has the mandate of the people and is accountable to them. This cannot be delegated to some super regulator with actual authority over sectoral regulators.

4. What is needed is the creation of an advisory role on regulatory issues similar to that being traditionally performed by the Ministry of Finance on financial matters and the Law Ministry on legal matters. The OECD in its 2012 Recommendation on Regulatory Policy has clearly come out in favour of such an approach. (A copy of the Recommendation is at **Annexure-VIII**.) It, inter alia, recommends the establishment of an institutional mechanism for oversight of regulatory activity. Regulatory Impact

Assessment with analysis of direct and indirect costs and benefits in a fair and transparent manner should drive the process.

5. This advisory function could be located either in the Department of Industrial Policy & Promotion (DIPP) whose charter could be accordingly expanded. In this case, the DIPP could also, perhaps, be renamed as the Department of Industrial & Enterprise Promotion (DIEP). Alternatively, this function could be located in the NITI Aayog.

6. For the discharge of this function, the options would be of :-

   (a) The creation of an independent organization on a statutory basis with legislation. Legislation is, however, not recommended due to the following considerations:
      - It is a time consuming process whereas it is necessary to try and achieve progress quickly.
      - As the function envisaged is purely advisory, legislation is not required.
      - Legislation is really required only if it is intended to confer powers along with responsibilities which is not the case for giving advice.

   (b) The creation of a separate autonomous organisation. A separate organisation with emphasis on autonomy is generally preferred. However, this would take some time to set up. Further, such bodies usually tend to have the disadvantage of distance from government

and correspondingly weaker ownership in government of their advice which in this case would be assessment and advice on specific regulatory issues.

(c) Making this a core line function. This is, for instance, the case with the Expert Committees which consider individual cases of Environment and Forest Clearances and where their recommendations are by convention normally accepted. Real effectiveness for advice on regulatory issues would lie in the seriousness and speed with which such advice is considered by sectoral regulators, Ministries and the highest levels of government, namely, the Cabinet Committee on Economic Affairs (CCEA) after going through the Committee of Secretaries and PMO. It is critical to establish the credibility of the mechanism at the outset. This would happen better when the line Institution, i.e. DIPP, or, NITI Aayog, has the authority and the commitment to drive the process and seek speedy outcomes.

7. On balance, it is felt that option (c) would be preferable as it is the most likely to give desired outcomes speedily. A Standing Expert Committee on Regulatory Affairs of eminent persons with the ability to consult and induct domain experts across sectors may be constituted. It may also be easier to get sufficiently eminent persons to serve on a Committee. This Committee would undertake independent Regulatory Impact Assessment, engage with sectoral regulators, and where necessary, advise government to address

specific issues with the regulators. This would need a modest dedicated secretarial support group to service the Expert Committee. However, it would need the necessary financial empowerment for using expertise of both individuals as well as institutions including consultants in a flexible manner depending on need. The Expert Committee on Regulatory Affairs should first of all address specific concerns raised by investors through Industry Associations as well as individually across the entire range of economic activities. It should also take up issues suo moto. The objective should be to go into matters in sufficient detail on specifics and generate a broad consensus for precise changes. These should cumulatively make India one of the friendliest places in the world to invest and do business in.

8. Regulatory functions in India are performed by the Central Government and the State Governments. The approach recommended above is relevant for both the Central as well as the State Governments. The business perception is that the real work which needs to be done in reducing the regulatory burden is mostly at the level of State Governments. Hence, the State Governments also need to create a similar mechanism of an Expert Committee on Regulatory Affairs of eminent persons along the lines recommended above for the Central Government. This can provide independent advice on regulatory matters on an ongoing basis across all sectors with the objective of ensuring that actual costs of regulation especially in terms of growth of enterprises and consequent job creation do not outweigh the intended benefits.

Chapter IV

Inventory of Clearances

1. The need for any pre investment clearance arises from some basic Statute and its Rules and Regulations. Guidelines and forms are prescribed. Procedures for processing are laid down by the relevant regulatory authority. This regulatory authority could be a Ministry, its Department and its field formations, or sectoral regulators. This is also the case with State level clearances. The work of listing of clearances has proceeded considerably. The inventory that has emerged is at **Annexure II**. However, from an investor's point of view, it is still a work in progress. Ideally, the website of DIPP, or, its promotional institution, Invest India, should have a comprehensive list of clearances needed for any economic activity anywhere in the country. The list should cover clearances at the Central Level, State level as well as the local Municipal/Authority level along with the relevant statutory provision, Rules, Regulations, forms and procedures. Each State Government should have a similar list on their website with links to the Central website and vice versa.

Open Source Wikipedia Process on Inventory of Clearances

2. It is recommended that this inventory should be evolved in an open source Wikipedia type of process in which all concerned stakeholders can participate. Individual firms, small and large, which have recently been through the regulatory process and have got clearances, or, are in the process of doing so for any particular project, are in the best position to contribute to the evolution of such an inventory. The challenge of preparing the inventory is heightened by the information asymmetry between top management and functional levels both within government as well as in the private sector. It is felt that a Wikipedia type open source process of evolving the inventory of clearances across different segments of economic activity would be the best way forward. This will need sustained effort from all stakeholders.

Help Facility

3. Once such an inventory has been created, it should be continuously updated to incorporate additions, changes and deletions. A net based help facility with standard Q&As and response capability for specific queries should be the logical

next step. It should be possible to have this functioning within six months.

Chapter V
Standards

1. Standards are at the core of the Regulatory process. Pre investment clearances, inspection and certification as well as renewals all flow from the need for compliance with Standards. Standards cover both products and processes. There is an elaborate process of development of new Standards through Expert Committees across the world. This process naturally takes time.

2. In India, the Bureau of Indian Standards (BIS) has a system for setting Standards as well as for Testing and Certification for compliance with their standards. The BIS Standards are voluntary. However, when a Quality Control Order is issued, these become mandatory. The line Ministry has the responsibility for issuing Quality Control Orders.

3. For Cosmetics, Drugs, Foods and Nutritional Supplements and Medical Devices, there are separate regulatory regimes with the Drug Controller, Food Safety and Standards Authority of India (FSSAI), Atomic Energy Regulatory Board, etc.

4. The line Ministries need to assume greater responsibility and play a more proactive role with stakeholder consultations on a continuing basis to ensure that strategic decisions on Standards; setting a new Standard, or, adopting one, and whether these need to be voluntary or mandatory, are taken promptly. This is critical for the success of Make in India.

5. In the interest of transparency and fairness, it is felt that mandatory compliance with any Standard should be prescribed after stakeholder consultations and from a prospective date, giving Industry reasonable time to make the necessary adjustments for compliance. The BEE (Bureau of Energy Efficiency) has evolved a good set of practices of a collaborative process with industry and these could be emulated by others.

Adoption of International Standards

6. The Bureau of Indian Standards (BIS) Act has an enabling provision for adoption of Standards in force elsewhere. The adoption of an existing Standard, with suitable adjustments for Indian conditions, as well as creating a separate Indian Standard, are other options. The creation of an Indian Standard has been the normal practice. As technology is evolving

rapidly, there should be greater willingness to adopt the Standards that are in force in developed mature markets like the US, Europe and Japan. This would enhance global competitiveness for 'Make in India'. The process of adoption of an existing International Standard takes considerable time. This process needs re-engineering to ensure that this can be done within a few months.

Acceptance of International Tests

7. The non-acceptance of laboratory tests of the mature developed markets of the US, Europe and Japan was raised as a major concern of foreign investors before the Committee. It was felt that the effort should be to move towards a regime where tests from the mature markets are normally accepted straight away. To the extent this can be done in different segments without legislative changes, this may be done and where legislative changes are essential, enabling amendments need to be pursued.

Adoption of CODEX Food Standards:

8. Acceptance of CODEX standards for food would take care of consumer protection concerns and facilitate the growth of the Processed Food Industry. The CODEX

Alimentarius, or, the "Food Code", is the international system established by FAO and WHO to develop, inter alia, harmonised International Food Standards. A brief summary of CODEX is at **Annexure IX**. India is an active participant of the CODEX process. CODEX Standards are being continuously evolved on the basis of available scientific knowledge and consensus amongst technical experts from across the world and through a transparent process. The U.N. General Assembly, as early as 1985, resolved that ".....Governments should.....as far as possible, adopt standards from CODEX."

9. In view of the above, CODEX Standards should be made automatically applicable in India from the date of notification by CODEX. A general notification to this effect should be issued. As a result, a case by case adoption of each CODEX Standard by India which is a time consuming process, would no longer be required.

10. Firms should not need any permission to introduce any product in the Indian market conforming to the relevant CODEX Standard.

11. The expert technical scrutiny process of FSSAI may examine CODEX standards in an on-going

process and, if it comes to the conclusion in a transparent manner and with good reasons that any particular CODEX Standard needs to be modified, then an appropriate Indian Standard suitable for Indian conditions may be notified and made applicable from a prospective date. Food products in the market would then naturally need to conform to the relevant Indian Standard.

12. Where CODEX Standards are yet to be set, it is recommended that adoption of Standards of permissible limits of ingredients as prescribed in the US, or, EU should take care of both consumer health and safety concerns as well as the need for speedy investments and entry of products in the market.

13. The requirement of product approval should be put in place only for those classes of products, clearly and narrowly defined, where CODEX Standards do not exist and approvals on a product by product basis are required in the US, or, the EU because of high risks and uncertainties regarding impact on human health and safety.

Cosmetics

14. For Cosmetics, it is recommended that permissible limits of ingredients as prescribed in the U.S., or, the E.U. should be made mandatory to take care of consumer health and safety concerns.

Medical Devices

15. There is need for greater clarity regarding the regulatory framework for medical devices. For any new medical device to succeed in the market, regulatory approval of conformity to accepted standards is essential for the product to be acceptable to doctors and patients. The gaps in this regard need to be identified and taken care of quickly as this is a necessary pre-requisite for India to begin achieving the very high growth potential that this sector has. Innovation and Start-ups can succeed in making India a significant global hub for the development and production of medical devices.

Help Facility

16. A 'Help' facility for Industry in clarifying the position regarding Standards would facilitate the success of Make in India. This may be

done on the net by DIPP through Invest India in collaboration with the sectoral Regulators. An open source Wikipedia process to begin with would help in preparing the initial inventory.

Chapter VI
Third Party Certification

1. Where regulation of any aspect of economic activity was considered necessary in the public interest, traditionally governments would put in place a Regulatory Agency which would set standards and enforce these through inspections for approvals and compliance.

2. Often a pre investment clearance is prescribed where the regulatory requirement is itself unclear and a case by case determination is deemed necessary. This is the practice that has recently evolved for Environment and Forest clearances in the Country.

3. Sometimes the need is for information and what is essentially a reporting requirement becomes in effect a clearance requirement. For this category of clearances, electronic intimation should replace registration or approval.

4. A pre investment clearance is conceptually necessary and, therefore, prescribed when there is the apprehension that regulatory compliance without prior clearance would be weak. The same lack of trust also led to the system of periodic renewals. Such clearances are embedded in the overall regulatory framework which needs to be seen in its totality. Where full compliance can be

reasonably expected, self-certification and intimation should suffice.

5. For more traditional clearances, the underlying premise has been a lack of trust. For these areas, as the Indian economy has grown, the inspecting staff and hence the capacity for genuine inspection and certification has actually been declining. The result has been increasing delays, tendency for higher rent seeking, and lower confidence regarding actual compliance.

6. Markets rely on credible Third Party Certification. Financial markets rely upon Third Party Certification through Chartered Accountants. This is the basis on which financial markets work. Similarly, global supply chains have created their own systems of independent Third Party Certification. Their range includes testing of products, quality assurance system of vendors, compliance with safety and environmental standards, certification of organic farm produce, etc. In the globalised economy, credible Third Party Certification has emerged as a robust system for meeting the need of market participants to handle information asymmetry.

7. The recent trend internationally has been towards unbundling of the Regulatory functions. This involves the Regulator setting standards, Accreditation of certifying agencies with due

oversight, and actual certification by accredited Third Party agencies following standard prescribed protocols. As indicated earlier, the European Union is moving towards the unbundling of the regulatory function into:

(a) Setting Standards for health, safety and the environment,

(b) Accreditation of certifying agencies, and

(c) Inspection and certification by accredited agencies.

(A copy of the E.U. Process is at **Annexure-X**.)

This appears to be the practical way forward in reducing the regulatory burden on enterprises while at the same time enhancing compliance. India needs to move towards the system of Third Party Certification with accredited certifying agencies and regulatory oversight over these agencies to ensure the integrity of the certifying process. This would, in reality, lead to greater adherence to prescribed standards and norms.

8. It is therefore recommended that credible Third Party Certification be introduced in most areas of regulation jointly with sectoral Regulators in a planned and phased manner. The Petroleum and Natural Gas Regulatory Board (PNGRB) has in partnership with the Quality Council of India (QCI), created such an architecture for safety in laying and maintaining of gas pipelines. The trigger for the emergence of Third Party Certification agencies with adequate capacities is the regulatory decision

for putting in place the system of Third Party Certification from a prospective date.

9. The challenge in India would be to create the supply of credible Third Party Certifying agencies. Third Party Certification, therefore, needs to be introduced from a prospective date giving sufficient time for supply side capacities to emerge. The recent experience of introduction of Third Party Certification for boilers should be studied and appropriate lessons drawn. The process would need to be evolved for the regulatory requirements for each sector carefully, with sufficient stakeholder consultations and Standard Operating Procedures (SOPs) for inspection and certification.

10. Given the current state of evolution of the system globally, adequate capacity for Third Party Certification with multiple players could emerge in any segment in about a year's time in India from the date of the regulatory decision. The major task would be to get individual regulatory decisions across the range of regulatory requirements.

11. Some percentage of Third Party Certificates would need to be subject to random concurrent audit with stiff penalties cumulatively leading up to even withdrawal of accreditation for laxity. The percentage in each case would need to be worked out by the concerned regulators. With improving compliance, the percentage to be subject to concurrent audit, that is, review inspection and certification, could be gradually reduced.

12. The Third Party Certification business is naturally a regulated one. The certification fee structure could also be laid down by the accreditation agencies and should be reasonable enough for good quality inspection and certification. Further, in order to improve governance and credibility some restriction may be imposed on the time period for which a firm could go to a particular Third Party Certifying agency. This would be similar to the practice now put in place for the use of the services of Chartered Accountancy firms.

13. For each regulatory requirement, it would need to be seen whether the statutory framework permits Third Party Certification. As the inventory of clearances evolves with the relevant statutory provision, Rules and Regulations, it can also be seen through the same open source Wikipedia process for each statutory clearance and compliance requirement, what change is required for introducing Third Party Certification. Where a change in Rules/Regulation would suffice, then the necessary changes can be initiated and completed with executive action with amendments in the Rules being laid on the table of the legislature. A time bound programme with target dates for introduction of Third Party Certification may be drawn up for implementation and progress reviewed to ensure timely progress..

14. Where legislative changes are required, the necessary amendments in the concerned laws can be initiated. If the Law Ministry agrees, the amendments identified in different statutes can be clubbed together and introduced in Parliament as one single piece of reform legislation for enabling Third Party Certification.

15. For instance, there is an enabling provision under the Factories Act for the declaration of competent persons, for the purposes of carrying out the tests, examinations and inspections to be done in the Factories Act. This provision could be used for introduction of Third Party Inspection and Certification by issuing appropriate notifications. It is recommended that this may be done. The introduction of credible third party inspection and certification would both improve compliance and also stream line and speed up clearances.

16. Further, compliance on an on-going basis would be better with an effective Third Party Certification system especially for Environment, Safety and Labour related matters. It is recommended that Ministries of Environment and Forest (MoEF) and Labour may initiate with the Quality Council of India (QCI) the process of putting in place Third Party Certification for ensuring better compliance with prescribed environment, safety and labour norms.

17. Where a system of periodic Third Party Certification for compliance is in position, prescribed periodic intimation should suffice and the requirement of renewals of permissions could be done away with altogether.

18. The objective should be to gradually reduce the regulatory burden on enterprises by increasing the number of compliance requirements where intimation on the basis of self-certification alone would suffice. For the rest, reporting compliance through Third Party Certification should in most cases suffice. In this process, the need for prior permissions and periodic inspections would decline except for random audit of Third Party Inspections to ensure effectiveness and credibility of the system of Third Party inspections.

19. In designated Industrial Parks/Zones, standards can be clearly laid down in advance relating to the
    (a) The Environment,
    (b) Building bye-laws, and
    (c) Safety norms.

    With such a pre-determined regulatory framework an effective system of Third Party Certification could actually lead to the doing away with multiple prior permissions altogether.

Chapter VII
Environment Clearance

1. The process of grant of Environment clearance has been taking time in India and has been flagged as a major concern. However, it is important that India continues to make progress towards greater environmental responsibility and sustainability. Being recognised as a green hub for manufacturing and value addition would add to India's competitive advantage in this century. While pursuing this objective, it should still be possible to re-engineer the regulatory process so that investments can be speedily undertaken with adequate safeguards. At the same time could India still be moving towards the global frontier in being green and environmentally friendly.

Environment Standards

2. India should seek to adopt global Best Practices in setting up standards and norms for emissions, effluents and solid waste for different categories of Industries. These, however, should apply to new plants. In addition to the concerned Industry Associations, the line Ministries should also be pro-active participants in the process of setting of new norms.

3. In the case of older plants, an Industry specific balanced view after stakeholder consultation would need to be taken after considering the technical feasibility as well as the costs needed to comply

with the new environment standards on the appropriate dispensation for older units. Apart from giving reasonable time for compliance, a softer norm for the balance useful life of the earlier generation plants may need to be considered.

Environment Certificate Trading Scheme

4. An Environment Certificate trading scheme may also be introduced along the lines of the Renewable Energy Certificates trading scheme that has been working for some years in the country now. Older plants which have to achieve a new set of prescribed environmental norms can meet the mandatory requirement partially or even fully by buying Certificates from those who have over achieved beyond the prescribed norm. This would have the advantage of introducing a market based mechanism for up gradation of environmental standards in older plants.

5. For globally mature Industries like Steel, Cement, Power, etc. for which international environment standards exist, Environmental appraisal need not go into the internal plant processes by which norms would be complied with. Compliance with the prescribed norms should be prescribed and should suffice. Given the capital intensity of such projects investors would not take risks regarding compliance with environmental standards if compliance is enforced. A system of real time sensor based monitoring of emissions for plants above a certain size, to a Control Room of the Regional / State Pollution Control Board at the cost of the industrial

plant, would ensure full compliance with the Environment Standards.

Area Based Environmental Clearance

6. Promoters of Industrial Parks, Zones and Areas should, after following due process of conducting Environment Impact Assessment (EIA) studies, Public Hearing etc., obtain Environment Approval for the whole Area for setting up of identified environmentally homogeneous or similar industries with a specified level of final gross annual production and Environmental load.

7. For Parks and Zones for orange or, red categories of industries, the Environmental Approval should include the nature of the Common Effluent Treatment Plant (CETP) to be put up, and the norms for treated effluents from the CETP, as well as the plant level norm where primary treatment at the plant level is mandatory.

8. Total emissions permissible for the area as well as emission norms from individual units should also be specified in the Environment Approval.

9. Solid waste management systems of the Area Developer should also be appraised and its system parameters should be part of the Environment Approval.

10. Based on the above pre-existing regulatory framework, individual industrial units which are permissible in the area and commit to restricting

emissions, effluents and solid waste within permissible norms for per unit production, should be allowed to come up without having to seek Environment Approval at all. The unit should also not need Consent to Establish, or, Consent to Operate.

11. Further, increase in capacity and production of such individual units should also not need any permission as long as the overall Environmental Load approved for the Area remains within the ceiling of the Environment Approval granted.

12. Compliance should be ensured through real time sensor based monitoring with data flowing to the dedicated Control Rooms of the Industrial Area as well as the State and Regional Pollution Control Boards. A fair system of escalating fines and mandatory closure for prolonged period of breach would ensure full compliance with Environment norms. It is felt that compliance with environmental norms would be better in planned industrial areas through this approach. Scattered industrial units coming up in rural areas have genuine difficulties in handling liquid and solid wastes. Further, enforcement of compliance by dispersed units poses natural difficulties.

13. Once the full Emission Load approved for the area is reached, then a fresh process of Environmental Appraisal, Public Hearing etc. would need to be undertaken for the grant of Environment Approval for additional production and Environmental load from the Area. The environment appraisal process

would naturally go into the carrying capacity of the Area.

14. The above would need appropriate changes in the Environment Notification of the MoEFCC as well as in the Air and Water Acts.

Geographical Planning:

15. Environmentally sensitive sectors such as Power, Petrochemicals & Chemicals, Pharmaceuticals, and Steel, have projects, both in the private as well as public sector. These need Environment Approvals, and the process is presently time consuming. The Ministries for these sectors should, jointly with the MoEFCC, work out a 20 year perspective geographical Plan indicating preferred locations for their anticipated projects, so that the negative impact on the Environment is minimized. To illustrate, the perspective geographical plan of the Steel Ministry should indicate sites for production of 400 million tons of steel per annum and the Power Ministry for coal fired power generation of 800,000 MW.

16. The list of such locations should be prepared in prioritized categories of A, B and C from the perspective of least adverse impact on the Environment. This should be done through a transparent consultative process. Detailed mapping of flora, fauna, etc. along with public hearing should be undertaken during this process. Use of high resolution satellite imagery should enable this exercise to be completed in a short period of time.

Accordingly, category A sites should be taken up for projects before category B, and B before C.

17. For these sites, it should be possible to grant Environment Clearance quickly and work on new projects could commence soon after project conception and the decision to invest is taken. With standards for emission norms for individual plants already laid down, the process of environment approval should become fairly simple and straight forward in these cases.

18. Such a geographical planning exercise should also identify locations for coastal Power, Steel and Ship Building Plants as well as other manufacturing zones within the framework of CRZ regulations.

Chapter VIII
Forest Clearances

1. Given the high and increasing population density in the country, preserving the forest cover which had been earlier declining has been a major national goal. The achievements in this regard in the last few decades have been impressive. This naturally required stringent regulation. As a result forest clearances in India take considerable time. The commencement of natural resource based investments in mining and processing industries which use mineral resources takes years and has been flagged as a major concern by investors in these areas. While remaining committed to the national goal of forest preservation and enhancing tree cover, it should still be possible to speed up the process of taking decisions on requests for forest clearances and with this perspective recommendations have been made in the following paras.

GIS-Digital Database

2. In a landmark achievement, using satellite imagery, a GIS-Digital map based inventory of the forest cover in the country has now been created. This is a breakthrough which now obviates the need for field visits to physically determine the

extent and the nature of the forest cover in any piece of forest land.

3. It is, therefore, recommended that this database be used for taking decisions regarding approval of proposals for diversion of forest land for a project, as well as for determining the NPV of the forest cover on the land proposed for diversion as well as the cost of compensatory afforestation. For this, access as well as capacity building for using this database would need to be provided in the field offices of the Forest Departments across the country. This should permit both a reduction in the levels of scrutiny as well as the time needed for taking decisions on requests for Forest Clearance for projects.

Compensatory Afforestation Land Bank

4. At present, the project developer is required to provide land for compensatory afforestation and this is a pre-condition for final Forest Clearance. Identifying and acquiring land for compensatory afforestation is normally not the core competence of any project developer. The process of putting together land for compensatory afforestation takes considerable time. As a result, Forest Clearance and project commencement is considerably delayed.

5. It was noted that recently a special provision for central government projects has been made. It was felt that it would be more efficient if the project proponent were only required to fully pay for compensatory afforestation. MoEFCC in partnership with State Governments may have Land Banks created for compensatory afforestation. The Land Banks should be continuously augmented so as to have enough land available for the compensatory afforestation requirements of the next few years. In addition institutional mechanisms and capacities for speedy works for compensatory afforestation utilizing the funds being received from project developers should also be created. The advantage of this approach would be that on the one hand, the project proponent would get Forest Clearance quickly and be able to start the project, and, on the other, compensatory afforestation would be carried out speedily and efficiently. The project proponent would still pay, as at present, the Net Present Value (NPV) of the forest cover of the land being diverted for non-forest use, the cost of the land to be used for compensatory afforestation and the cost of compensatory afforestation. Only the time and transaction costs for getting Forest Clearance would be reduced and compensatory afforestation would be done better and more speedily. In states where forest cover is already very high and land for

compensatory afforestation may not be available, MoEFCC may work out a mechanism for the use of Land Banks in other states where land is more readily available.

6. With this, it should also be possible to do away with the present system of two stage Forest Clearance. Once the basic decision to grant Forest Clearance is taken, it can be granted straight away after obtaining payment for NPV of the forest cover being diverted and the cost of compensatory afforestation, including the cost of land.

Geographical Planning

7. Sensitive sectors such as Coal, Mines, Steel and Power have projects, both in the private as well as public sector which need Forest Clearances. The Ministries for these sectors should jointly with the MoEFCC work out a 20 year perspective geographical plan indicating preferred locations for their anticipated projects so that the negative effects of diversion of forest land is minimized. The list of locations should be prepared in prioritized categories of A, B and C from the perspective of least adverse impact on forests. This should be done through a transparent consultative process. In this process, it would also

be seen whether natural resource based processing investments in steel, power, cement, etc. can be viably located outside forest areas. Accordingly, category A sites should be taken up for projects before category B, and B before C. The Mines and Coal Ministries should work out perspective geographical plans for mine development and subsequent re-forestation of exhausted mines.

8. For the sites earmarked in forest areas in the geographical planning exercise, Forest Clearances should be speedier as mainly computation of NPV of forest cover being diverted and cost of compensatory afforestation, including cost of land, should be required.

Mine Development

9. It was brought to the attention of the Committee that mines, after exploration, are being auctioned and the mine developers have to then obtain forest clearance which is an uncertain time consuming process. It was felt that forest clearance should be obtained prior to the auction process by mine specific SPVs. It was felt that the bids from the auction process would be higher if Forest Clearance for mine development was obtained prior to the auction. This would reduce the risk perception of the bidder regarding the

time and cost of obtaining Forest Clearance and, therefore, result in a better auction price. After auction, actual investment and mining would commence much faster if Forest Clearance had already been obtained. To implement this, mine specific Special Purpose Vehicles (SPVs) would need to be created. These would obtain Forest Clearance and would be taken over for mining by the successful bidder in the auction process.

Chapter IX
Start-ups

1. For India to begin achieving its growth potential and to create sufficient number of productive jobs in the modern globalized economy for its huge young population and to eliminate poverty, a favourable ecosystem for Start-ups is essential. The Committee took note of the Start-ups policy framework in place in the U.S.A. & U.K. which are at **Annexure XI** and **XII,** respectively and suggested the following.

Start-up Definition

2. For the purpose of special dispensations and benefits, an enterprise may be treated as a Start-up for a period of three years from the date of commencement of its activity, or, till it crosses any one of the following thresholds:

   (a) Work force of one hundred workers,

   (b) Investment of Rs.20 crores,

   (c) Turnover of Rs.30 crores,

   (d) Profit of Rs.10 crores.

   A simple, objective parameters based definition is required so that a case by case determination of eligibility for benefits is not needed.

3. It is felt that it would be best if professional Fund Managers and Investment Committees take commercial decisions regarding the likely success

in the market of a Start-up. Success in the market place should be the sole objective of financing decisions. What is really needed is the emergence of the eco system for Start-ups where they keep emerging in large numbers across the full spectrum of economic activities with the normal mix of successes and failures comparable to the best in the world.

Work Space for setting up an enterprise and its growth

4. Getting premises and then obtaining necessary approvals for land use, building plans, municipal licenses etc. are time consuming and a daunting process for most start-ups. The following measures would mitigate the situation substantially:

(A) Incubation Centres

i. These may be promoted with plug and play facilities for different categories of Start-ups. These Incubation centres should obtain the requisite clearances and the start-ups should be able to use the facilities on rent and not need any approvals.

ii. These could be located in, or, near Educational Campuses such as IITs and Engineering Colleges and in Common Facility Centers in Industrial Clusters.

iii. Plug and Play facilities for Start-ups should also be set up in sectoral Industrial Parks, such as

for Apparel and Leather. The setting-up of Incubation centres may be made integral to such industrial park and cluster schemes of the Central Ministries as well as State Governments.

iv. In these Incubation Centers, a new entrepreneur should be able to get work space on a nominal rent for the initial phase. With success, the entrepreneur should be able to pay fully for the rent of the premises which should be back-ended. After a specified period, the start-up should move on to make space for the next entrepreneur. In mature sectors like apparel, standard stitching machines may also be provided on a rental basis to be converted into hire-purchase and/or outright sale with the success of the enterprise. In case of failure, of which there would be a significant percentage, rent and other dues may need to be written off. These write offs may be made up through higher realisation from the successes.

v. Such Incubation Centers would need to be professionally managed in a PPP mode. Mentoring support from experts including successful entrepreneurs should be integral to such Incubation Centers. A panel of Mentors may be set up for each Incubation Centre. Mentors having domain specific technological knowledge, strength in marketing, finance and management would be of enormous benefit for

start-ups and could make all the difference between success and failure of a start-up.

(B) Smart and AMRUT Cities

i. Under the upcoming Smart Cities and AMRUT Cities, Ministry of Urban Development should get cities to earmark some areas for mixed land use redevelopment, as well as land for green-field development for Start-ups. In these areas, for specifically identified activities from amongst the environmentally 'Green' categories of industries as notified by the Central and State Governments, no Municipal licenses and Pollution Control Board permissions should be required for Start-ups.

ii. Standard Building formats prescribing height, ground coverage and FAR may be notified. Start-ups may be exempted from the requirement of seeking Building Plan approval. Only E-intimation of what they are planning to do/have done should suffice with third party certification by an accredited architect.

iii. Similarly, for Factories Act, fire safety etc., intimation with accredited Third Party Certification should suffice.

Environment and other Regulatory Clearances / Approvals

5. Start-ups undertaking specifically identified industrial activities from amongst environmentally 'Green' categories of industries as notified by the Central and State Governments may be exempted from the requirement of 'Environment Clearance', Pollution Control Board Clearances for consent to establish and consent to operate, and other Municipal licenses.

Labour related Regulatory Framework

6. In India, the biggest barrier to entry and growth of industrial enterprises are the forty four labour laws of the Central Government and additional State specific laws. The multiple record keeping, compliance and inspection related transaction costs have brought about the sharp divergence between India's lack of success in start-ups in manufacturing and the remarkable success in having a start-up and their growth in the services sector starting with software in the nineties and now, most strikingly, in E-Commerce.

7. Labour Ministry's initiative of replacing all existing labour laws with four Codes is critical for start-ups and employment generation. This needs to be pursued and brought to completion through a national consensus at the earliest.

8. States, like Rajasthan and MP, are making state specific legislative changes for raising the threshold of the number of workers over which the requirement for regulatory compliance commences in a particular Labour Law. This process of state specific legislative changes needs to be encouraged.

9. Start-ups may be given the special dispensation of complying with Labour Laws on their own without being subject to inspection and/or enforcement for a period of three years, or, till their work force exceeds one hundred, whichever is earlier.

Financing

10. **Equity.** To encourage the emergence and growth of start-ups, it would be necessary to incentivize the growth of professionally managed dedicated Start-up Funds. Individual investors may be allowed a deduction of up to Rs.1 lakh in their taxable income for investments made in such start-up Funds.

11. **Debt.** Banks are likely to remain somewhat conservative with regard to financing start-ups in view of greater risk perception associated with start-ups. While banks may be encouraged to support start-ups, dedicated NBFCs for start-ups are needed as the appraisal skill set for start-ups are somewhat different from those needed for normal banking. It may be recalled how HDFC as a housing dedicated NBFC led the transformation

of the housing industry in India. Such dedicated NBFCs for start-ups may be given special dispensation of (a) access to cheaper funds through tax free bonds and (b) exemption from tax on profits for ten years from commencement of operation.

Priority Areas

12. A few areas of national priority such as IT Hardware, or, Medical Devices, need sector specific additional support for Start-ups. These could include:
    i. A dedicated Equity Fund fully funded by government where Professional Fund Managers get normal incentives for a much lower rate of return on capital. After initial success in the post incubation stage, these ventures could get funding for scaling up from normal channels of funding for all Start-ups.
    ii. Incubation Centers with publicly funded facilities for prototyping and testing with nominal user fees.
    iii. Subsidized mentoring by domain Experts including NRIs from across the world.

Taxation

13. **Income Tax.** To incentivize start-ups, they should be exempted from Tax on profits for three years from commencement of operations or till their profit exceeds Rs.10 crore, whichever is earlier.

14. **Excise Duty / VAT.** For Excise Duty and VAT (later GST), start-ups should be exempted from scrutiny for three years from date of commencement, or, when their turnover exceeds Rs.30 crores whichever is earlier.

15. **Service Tax.** Cost of doing business for start-ups would be considerably reduced in case they were able to take buildings/factory sheds on rent, lease capital equipment and get design, technology, marketing, HR and other services from established competent firms. For this to happen and be viable, the services provided to the start-ups should be exempted fully from the Service Tax.

16. **Exit.** A friendly legal framework for exit for the promoter in case of lack of success of a start-up is essential. As in the U.S. and other developed economies, an entrepreneur should be able to have quite a few failures and then still be able to achieve national and even global success with a fresh start-up.

17. **Inspections.** An inspection of a Start-up should be done only with the permission of an officer at a sufficiently higher level and that too, in cases of actionable complaints. An actionable complaint will not be an anonymous/pseudonymous complaint. Further, the complaint must contain details and verifiable facts and should not be vague or contain sweeping general allegations.