

Financial Sector Legislative Reforms Commission

I) Background

Indian financial sector is governed by multiple Acts, Rules and Regulations. There are around 60 Acts that govern the financial sector. Many of the financial sector laws date back several decades. For example, the RBI Act and the Insurance Act are of 1934 and 1938 vintage respectively. The Securities Contract Regulation Act was enacted in 1956, when derivatives and statutory regulators were unknown. A Large number of amendments were, therefore, made in these Acts and regulations at different points of time to address various needs. Consequently, financial sector is affected by gaps and overlaps in the regulatory framework alongwith fragmentation, ambiguity and complexity of regulations in the financial sector. Hence, existing financial architecture is not able to address issues of an increasingly dynamic, complex and inter-connected financial world

The establishment of the Financial Sector Legislative Reforms Commission (FSLRC) is the result of a realisation that the institutional foundation (laws and organizations) of the financial sector in India needs to be looked at afresh to assesses its soundness for addressing the emerging requirements in a rapidly changing world. There is a need to tune it with the times when Indian economy is growing rapidly. There is also a need of restructuring institutional structure capability for addressing issues emanating from financial globalisation, full of 'adventurous entrepreneurs' and awash with huge pools of liquidity.

The Finance Minister announced the formation of the Financial Sector Legislative Reforms Commission (FSLRC) during his Budget speech of 2010-2011. The Resolution notifying the FSLRC was issued by the Government on 24 March 2011.

II) The Terms of Reference of the Commission:

- (i) Examining the architecture of the legislative and regulatory system governing the Financial sector in India,
- (ii) Examine if legislation should mandate statement of principles of legislative intent behind every piece of subordinate legislation in order to make the purposive intent of the legislation clear and transparent to users of the law and to the Courts.
- (iii) Examine if public feedback for draft subordinate legislation should be made mandatory, with exception for emergency measures.
- (iv) Examine prescription of parameters for invocation of emergency powers where regulatory action may be taken on ex parte basis.
- (v) Examine the interplay of exchange controls under FEMA and FDI Policy with other regulatory regimes within the financial sector.

- (vi) Examine the most appropriate means of oversight over regulators and their autonomy from government.
- (vii) Examine the need for re-statement of the law and immediate repeal of any out-dated legislation on the basis of judicial decisions and policy shifts in the last two decades of the financial sector post-liberalisation.
- (viii) Examination of issues of data privacy and protection of consumer of financial services in the Indian market.
- (ix) Examination of legislation relating to the role of information technology in the delivery of financial services in India, and their effectiveness.
- (x) Examination of all recommendations already made by various expert committees set up by the government and by regulators and to implement measures that can be easily accepted.
- (xi) Examine the role of state governments and legislatures in ensuring a smooth inter-state financial services infrastructure in India.

- (xii) Examination of any other related issues.

III) Report of FSLRC

- The report of the Commission is in two volumes.
 - **Volume-I** provides cohesive explanation and arguments that led up to the key decisions embedded in the Draft Code for financial sector.
 - **Volume-II** contains the main outcome of the Commission's work - a **Draft 'Indian Financial Code'**.

IV) Work process of the Commission

The Commission started an intense two year process in April 2011. Three elements were emphasized by the commission in its work process.

- a) A consultative approach, reaching out into knowledge and perspective across all elements of Indian finance.
- b) A multi-disciplinary approach, drawing on the fields of public economics, law, finance, macroeconomics and public administration.
- c) Availed the experiences of emerging markets and developed jurisdictions in understanding how financial law and agencies have been constructed worldwide.

The Commission deliberated relevant issues, through regular Meetings supported by extensive research, and interacted with some stakeholders, experts and industry associations. These include the FSDC Sub Committee, Chairman, CCI, Secretaries of Department of Economic Affairs, Consumer Affairs, former Chief Economic Advisers, Chairpersons of recent expert committees on financial sector reforms, renowned academic experts, senior financial sector practitioners, FICCI and PHD Chamber.

In order to study sector-specific issues in detail, the Commission set up five Working Groups were formed:

- i. Working Group on Banking, chaired by Smt KJ Udeshi
- ii. Working Group on Insurance, Pension and Small Savings, chaired by Shri D Swarup
- iii. Working Group on Payments, chaired by Dr PJ Nayak
- iv. Working Group on Public Debt Management, chaired by Dr MG Rao
- v. Working Group on Securities, chaired by Prof Jayant Varma

On 22 March 2013, the Commission submitted its Report to the Government.

V) FSLRC Cell

Government is committed to examining the recommendations of FSLRC and acting on the same so that our financial sector stands on sound legal foundations and remains well-regulated, efficient and internationally competitive. A Cell has been created in the Capital Market Division, Department of Economic Affairs, Ministry of Finance, North Block, New Delhi, to firm up views of the Government on the recommendations of the FSLRC following a due consultative process with all the concerned stakeholders, Regulators/Ministries/State Govt./UTs/Stakeholders and public at large.

The report of the FSLRC has been put in public domain since 2 April 2013 for inviting comments. The report of the FSLRC has also been translated into Hindi and both the English as well as Hindi versions of the FSLRC report may be accessed at <http://www.finmin.nic.in/index.asp> website. Online comments on the report can be submitted at the dedicated e-mail: feedback-fslrc@nic.in. Views/Comments received from all stakeholders are being collated in the department for further processing/examination.

Discussions and Seminars/Workshops on FSLRC: National Seminars/workshops and focussed discussions on the Indian Financial Code are being held with participation of eminent experts/practitioners.

Recommendations of FSLRC: The recommendations of the Commission, broadly, can be divided into two parts, legislative and non-legislative. The non-legislative recommendations are in the nature of governance enhancing principles which do not require legislative changes and relate to

improvement of regulatory governance, transparency, predictable method of regulatory intervention, regulatory cost benefit analysis etc. which can mostly be implemented in the existing regulatory framework. However, the legislative recommendations may require a longer horizon and wider & deeper consultation with all the stakeholders that would finally lead to finalization of the proposed Indian Financial Code and enactment of the same by the legislature.

Discussion on FSLRC in FSDC: In the 7th Financial Stability and Development Council (FSDC), the Council also took note of the recommendations of the Financial Sector Legislative Reforms Commission (FSLRC). The Council felt that while some of the major legal and institutional reforms suggested by the Commission would take time to be examined and taken forward, action on other recommendations could be taken up separately in consultation with various stakeholders. In 8th meeting of FSDC, held on 24th October 2013, the Council deliberated on the implementation of the recommendations of the FSLRC.

The Council took stock of the progress in examining the Report of the FSLRC, in pursuance to the decisions taken in the Seventh Meeting of the FSDC held on June 03, 2013. Based on the deliberations made today, it has been decided that all the financial sector regulators (including FMC) will finalise an action plan for implementation of all the FSLRC principles relating to regulatory governance, transparency and improved operational efficiency that do not require legislative action. A guidance handbook on adoption of governance enhancing and non-legislative elements of the draft Indian Financial Code has been prepared and circulated amongst the financial sector regulator which is available at the website of Ministry of Finance. As regards legislative recommendations, it was decided to analyze the public comments and feedback to further fine tune the draft Indian Financial Code. It has been decided to set up Task Forces with a project approach to lay the roadmap for the setting up of the Unified Resolution Corporation (URC), Financial Sector Appellate Tribunal (FSAT), Public Debt Management Agency (PDMA) and Financial Data Management Centre (FDMC).
