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WHEN REGULATORS MEASURE UP

A number of well articulated thoughts have come out in recent times from regulatory organisations. Hope dwells eternal in the human breast.

There was a time when Regulators steadfastly refused to communicate. In the process, the regulatory philosophy that informed the working of their organisations remained largely unknown to the regulated universe. Lip reading was the best that one could do in the circumstances.

Indescribably good progress has been made, especially in the last few years. Financial sector Regulators are communicating more frequently, and more clearly, enabling those that are interested, to understand the context in which regulations are being written, and the objectives sought to be achieved. There is much more that needs to be done, but the ground covered so far promises hope.

The tenth annual 2-day Corporate Governance Summit, Gatekeepers of Governance, organised by Excellence Enablers on 6-7 November, 2025 was a platform that brought together very senior persons, including Chairpersons, from all the financial sector Regulators. The first sessions on both days had financial sector Regulators. The first day, which saw the participation of Mr. Tuhin Kanta Pandey, Chairperson, SEBI, Mr. M. Nagaraju, Secretary, Department of Financial Services, Ministry of Finance, GoI, Mr. Amitabh Kant, Former Sherpa, GOI, witnessed some plain speaking, while the subject of “Regulation – Shield or Sword?” was being grappled with. In the first session on the second day, the audience was regaled by Mr. Ajay Seth, Chairperson, IRDAI, Mr. J. Swaminathan, Deputy Governor, RBI, Mr. S. Ramann, Chairperson, PFRDA and Mr. Kamlesh C. Varshney, Whole-time member, SEBI, addressing the topic “Regulatory Gaps and Overlaps - Do they Exist?”

Chairperson Pandey set the tone for the deliberations by stating that governance must transcend regulatory checklists to become an internal conviction. For those of us who have for years argued that compliance, comprising checklists, was not the same as governance, which is an article of faith, the Chairperson’s statement was both encouraging, and validating. After setting out the specific governance reforms that SEBI had set in motion in recent times, Chairperson Pandey highlighted the need for smart, cost-effective and innovation friendly regulation. This is critical since innovation as a matter to be encouraged did not appear to have figured in the thinking of most financial sector Regulators in the past. He also focussed on the importance of ethics and the promotion of governance literacy in areas like cyber risk.

Mr. Amitabh Kant emphasised a number of points, some of which had been made in the past, but had not gained traction. He spoke of the need to shift the role of Government and Regulators from control to facilitation and empowerment. It is useful to remember that

SEBI's predecessor in capital market regulation was called the Controller of Capital Issues. Regulatory Impact Assessment, a concept that Excellence Enablers has been advocating for quite some time, was advocated by Mr. Kant, who also argued that rule-making, enforcement and adjudication, when they reside in the same entity, will tend to give rise to conflicts of interest. He recommended that we should follow the "one-in two-out" regulatory approach of the United Kingdom. In our view, the better option would be to have sunset clauses, which will help to take out of the regulatory universe, the prescriptions that are past their sell by date. The Financial Stability and Development Council (FSDC) has decided that all regulations should be reviewed every 5-7 years. Why not have 3-5 years sunset clauses?

Mr. Nagaraju highlighted the improved performance of the public sector banks, and argued that smart risk-based regulations, emphasising enforcement against violators, rather than excessive rules, was the need of the hour. A kneejerk approach to regulation, based on isolated individual episodes of transgression, has been seen to be counterproductive in the conduct of business. Excellence Enablers has argued for long that "better regulation and not more regulations" is the need of the hour.

Chairperson Seth set out, in detail, the objectives of inter-regulatory coordination, while addressing the topic of gaps and overlaps in financial sector regulations. He referred to the good work being done by FSDC, which, it may be added, itself was a creature of inter-regulatory disputes, with the then Finance Minister, Mr. Pranab Mukherjee saying that it had to be set up to resolve the quarrels between 2 financial sector Regulators. Of such episodes are some structural and institutional initiatives born.

Mr. J. Swaminathan was of the view that regulatory gaps and overlaps arise due to rapid changes in business models, technology and vendor chains. While he did set out the reasons that could lead to gaps and overlaps, one which seemed to have been missed out by way of a specific mention was that institutional egos sometimes translated to turf battles. Coordination and cooperation, rather than conflict, is clearly the way to go.

Chairperson Ramann referred to specific instances of regulatory overlaps, and warned about regulatory gaps leading to consumer harm such as mis-selling and procedural weaknesses in provident fund withdrawals. He referred to the regulatory gap in coverage, especially for the vast unserved population, in the area of pensions. One significant omission appears to have been the proliferation of collective investment schemes in the second half of the 1990s, with no Regulator specifically tasked to address them.

Mr. Varshney highlighted overlaps between the SEBI Regulations, and the Companies Act, 2013. For quite some time, commentators have pointed out to specific differences in the provisions in the Companies Act, 2013 and SEBI LODR Regulations. Considering that SEBI deals with only listed entities, there should be no eyebrows raised when the listing requirements propose higher threshold levels as compared to the Companies Act, 2013. One very significant point made by him was that there should be mechanisms to review the performance of the Boards and Regulators to enhance accountability. While a robust Board evaluation process will help to assess the performance of the Boards, it is perhaps time to think in terms of the accountability of Regulators, and the manner in which their performance could be assessed. It is useful to recall that while pointing fingers at the judiciary, it is often said that disproportionate powers reside in unelected persons. Regulators could perhaps take a cue from this, and put in place, evaluation processes to mitigate that criticism as and when it arises.

In the preceding paragraphs, note has been taken of some of the many points made by the Regulators across the financial sector. The story will not be complete if cognisance is not taken of the points made by Governor Sanjay Malhotra on 20th November, 2025, while delivering the second VKRV Rao Memorial Lecture at the Delhi School of Economics. This lecture should be made prescribed reading for students of financial sector regulation. It captures the fundamentally different framework in which financial sector regulation operates, as compared to other sectoral regulations. One important point is that weaknesses in the financial sector very quickly translate into weaknesses in the real sector, causing a setback to the economy as a whole. Against this background, he argues that the foremost priority and the key objective of RBI is to ensure financial stability in the system. He has set out 5 principles in order to lead to “optimal simplicity”, “regulation that is as simple as possible, but no simpler, to paraphrase Einstein”.

It is not proposed in this newsletter to examine all the 5 principles. The third principle, namely, consultation, is something that merits comment. In his speech, there is an admission, long overdue, that Regulators do not have the monopoly for knowledge. Having made out a case for consultative regulation, he concludes by saying that every major regulation is proposed in draft form for public consultation. Whether draft regulations should be the first point of consultation, or whether the proposed content/ idea of regulation should itself be exposed to public comment, is a matter deserving of attention. He has also touched on the subject of regulatory forbearance versus strict enforcement, and explained that “forbearance should be exceptional, time bound, and transparent. It should not become a substitute for addressing underlying problems.” While this approach cannot be questioned, it is useful to remember that such an approach could, over time, translate to rigidity and dissuade Regulators, for good and stated reasons, from resorting to forbearance in the larger national interest, as opposed to individual interest. Balancing the costs and the benefits of regulations is critical. Why not operationalise Regulatory Impact Assessment?

Towards the end of his lecture he states “Effective regulation certainly requires technical expertise, but also judgment, humility about what Regulators can and cannot achieve, and constant learning”. While this is to be welcomed, one wishes he had also spoken about what Regulators should seek to achieve, rather than what Regulators can achieve.

Sceptics often say that even well-intentioned Regulators do not often walk the talk. The current leadership of financial Regulators will almost certainly prove them wrong.

*To read a summary of discussions at the 10th Gatekeepers of Governance, please **click here***

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