Scrap FIPB to energise investment

There is a flurry of activity in the debate about one of the most discussed subjects in the world –the deceleration of India's economic growth. Rating agencies downgraded India's creditworthiness last month. A few days ago, the world's most visible political leader and US President Barrack Obama publicly spoke about how India needs to pull up its socks and open her doors wider to welcome foreign investment. A couple of days ago, the International Monetary Fund cut projections of India's economic growth from 6.5% to 6.1%.

Meanwhile, the Prime Minister's office is busy creating a buzz about how we are all set to hear about a slew of new measures that would stimulate economic growth, and more importantly, positive sentiment about investing in India. One hopes the newly reinvigorated Prime Minister ensures his team does not create high expectations with the talk, and falls short with the walk. By all appearances, the Prime Minister seems to be reinvigorated – he has not sounded more positive and confident in recent times, and regardless of whether one could put it down entirely to the Finance Minister's office falling vacant, both the Prime Minister and incoming Finance Minister have their task cut out.

In circumstances where every man on the street has a theory on how to run the country, this column will fall prey to the temptation of proffering advice on one single measure that the government should undertake to change sentiment about the Indian economy and its stance towards foreign investment into India. Indeed, akin to cricket and politics, governance of foreign investment policy is the newest subject on which everyone has a view.

The measure proposed is a simple one. The government should disband the Foreign Investment Promotion Board ("FIPB"). This is a body without any statutory regime governing it. It is an extra-legislative agency. It does not have any mandate from Parliament to make law. It does not have to suffer any statutory check and balance on its functioning. The FIPB was meant to be a doorman for those investing into India, to help a foreign investor get a single-window clearance in respect of various approvals that an investor has to take when entering India. It hardly plays that role. Every investor has to separately deal with sectoral ministries and regulators over and above having to deal with the FIPB.

Worse, the doorman has forgotten how to smile and welcome guests. Instead, the FIPB has pretensions of being a fearsome gatekeeper who is protecting India from unwanted foreign investors. With a few years of economic growth of more than 8%, the unstated policy assumption being made seems to be world capital needs India more than India needs the world's capital.

Although there are still a number of sectors into which a foreign investment needs FIPB's approval, there is a complete absence of any standard published criteria prescribed by the FIPB for granting an approval. In short, when applying to the FIPB, one does not have any clue of what exactly the government is looking for when it asks you to apply to the FIPB for approval. It is like dealing with a capricious potential partner at the very start to yearning for a long-lasting relationship with India – hardly a seductive attraction to doing business with India. Even the ubiquitous remedy of approaching a writ court for challenging the misdeeds of a state agency, could effectively be unavailable to someone who has not even set foot into India from abroad.

The FIPB is also not bound by any statutory time periods within which it would consider and approve investments. Being a multi-agency body, even authorities whose permission is not at all needed for a person investing into India, find a place at the FIPB table.

For example, the revenue authorities are known to raise issues at the FIPB approval stage i.e. well in advance even before a potential taxable event can arise out of the investor making a profitable investment into India. All sorts of questions are asked of a potential investor and informal signals of the government not having very clear intentions to honour its sovereign treaty obligations are sent out.

The only barometer of performance for the FIPB is the size of foreign direct investment into India. By that metric alone, it would be abundantly clear that the FIPB does not have much of a claim to fame.

The effectiveness of state agencies tends to have a short shelf life. Like with restaurants, unless they are re-branded and refurbished, the menus they serve up tend to be perceived as stale, and the staff that serves the food gets jaded and boring.

For example, the Competition Commission of India looks very attractive and effective just now, enjoying its glow during its honeymoon period. If the state agency is not even a statutorily-organized institution, the erosion of effectiveness gets very stark, with no incentive to improvise and improve.

The Foreign Investment Promotion Board is fast getting regarded as the Foreign Investment Prevention Board. It is time for the newly-energized government to go into a huddle and see how best to clean up the process of making India look investment-worthy to investors, both foreign and domestic.

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