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# TOWARDS AN OPTIMAL BUSINESS REGULATORY FRAMEWORK IN INDIA

*Report of the Implementation Group*

XII Five Year Plan



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## FOREWORD

India is widely accepted as a difficult place to do business, particularly manufacturing. Given the national objective of increasing the rate of growth of the Manufacturing sector substantially to increase employment and reduce the country's trade imbalance, a concerted effort is required to improve the overall business regulatory framework.

Several studies have been made in the past comparing the attractiveness of countries, and states within, for business investment and growth. Needless to remind that India has fared very poorly in all. Government has a responsibility to provide both encouragement as well as oversight to business, which it provides through a set of policies, laws, and practices, and the institutions that administer these laws. However, a host of policy and/or law induced impediments, contra-indications, and distortions continue to exist and adversely impact manufacturing sector competitiveness of India. These point to the urgent need of improving the overall interface between government, industry as also other stakeholders so as to enable each to perform their appropriate functions, and contribute to national competitiveness and prosperity.

The objective of the present study, undertaken by the Planning Commission, was to determine what can be done to make these improvements in a practical manner. Many agencies are involved, and moreover many stakeholders' needs must be met while 'tuning up' the regulatory frameworks. Booz & Company assisted the Planning Commission in this exercise, the objective of which was to create a process and to point to paths for implementation of the improvements most necessary at this time. The resulting report contained here specifically builds on the past work done by the Working Group that had been set up for examining the Business Regulatory Framework, as part of the 12<sup>th</sup> Plan, as well as other committees of the Government of India. The formulation of this report was also marked by a series of wide ranging consultations undertaken with the various stakeholders, including government, academia, industry associations as well as various companies in order to sharpen the areas of focus and lay out an implementation process.

In addition to recommending some specific themes and actions, care has been taken to include *institutional strengthening* mechanisms, so as to enhance capabilities of undertaking continuous improvement of the overall business climate at a systemic level

We hope this exercise provides not just a useful roadmap to undertake an overall improvement in the business regulatory framework, but also a useful template for similar such exercises in other areas of intervention.

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## 1. TOWARDS OPTIMAL BUSINESS REGULATORY GOVERNANCE IN INDIA

### **Context**

Manufacturing and Industrial Strategy is a key area of focus in XII FYP for the Government of India. In this regard, the Planning Commission is focused on a number of cross sectoral issues of core importance, of which the business regulatory framework is an important part.

A regulatory environment is essential to ensure just and sustained business development. As a first step to engineer a robust regulation, its objective should be well defined along with timelines to deploy an agenda driven approach. To simulate and institutionalize the same, requisite policies should be laid out with the establishment of empowered institutions, having clarity and objectivity in their approach. Policies so formulated should furnish unambiguous rules to ensure seamless execution of the entire process. Once government formalizes a regulation, a) step-by-step procedures, requiring adherence and b) practices, requiring compliance, should be detailed out. A good Business Regulatory Framework (BRF), so deployed, should be collectively relevant, mutually consistent and independently efficient to realize the set goals so envisioned. Such a process for tuning up the business regulatory environment is required in the States, as well as the Center.

### **Components and Description**

The business regulatory framework of any jurisdiction typically consists of six elements:

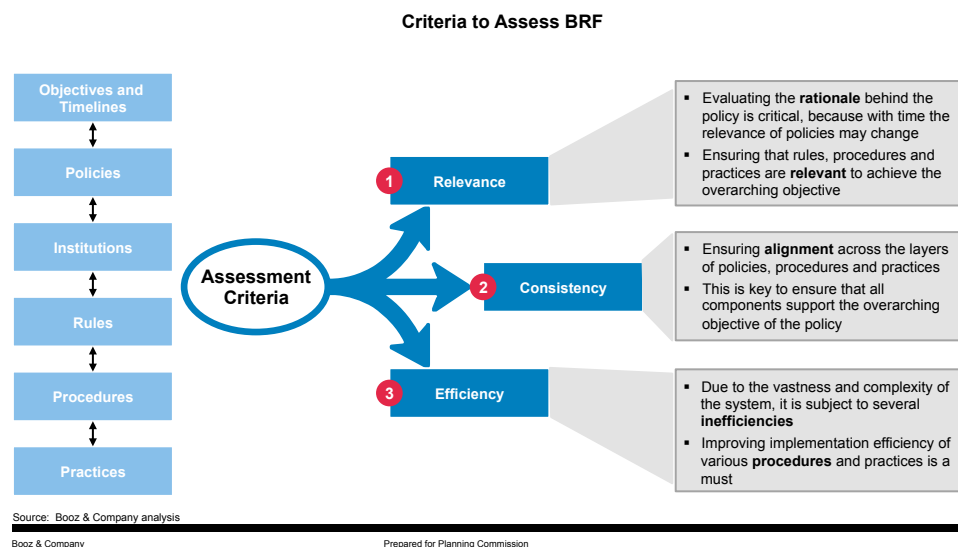
- Objectives and timelines i.e. the ambition/ vision
- Policies, which are articulated to drive the objective(s)
- Institutions tasked to formulate and administer the rules required to implement the policy
- Rules, formulated to implement the policy
- Procedures/ guidelines laid out to adhere to the rules
- Practices adopted by the governing institution to monitor implementation of the rules

A good business regulatory framework is one which is consistent (both horizontally- how consistent are the various objectives and policies; as well as vertically- spanning the six components); relevant to the times and the intent; and efficient (Exhibit 1)

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## Exhibit 1: Business Regulatory Framework

**BRF consists of six components, all of which must be consistent, relevant and efficient**



### Methodology & Areas of Analysis

The criticality of improving the BRF, given its role in improving the overall manufacturing ecosystem, was recommended by the Working Group of the Planning Commission as a part of the formulation of the XII FYP. The Planning Commission, in partnership with Booz & Company, subsequently undertook to develop the main areas of focus, and the implementation plan for the selected focus areas

Measures of regulatory burden on industry are widely studied, both in India as well as overseas. However, these at times may not be completely relevant to the Indian context, or refer to symptoms as opposed to root causes. In order to highlight the areas of fundamental importance within the context of the Indian situation, the Planning Commission undertook a three step process to select the focus areas as well as derive the approach and the institutional framework to drive the improvements

- The long list of areas (~ 20) was selected based on a number of empirical studies and which span across all three stages of an enterprise- incorporation and set-up, ongoing operations, and exit;
- The list was further evaluated on the following criteria:
  - relevant to manufacturing, in particular small enterprises; consistent with the intent to promote manufacturing
  - have noticeable impact, in terms of current compliance efforts and any change has a material difference to the overall costs and perception
  - quantifiable, such that the impact could be measured

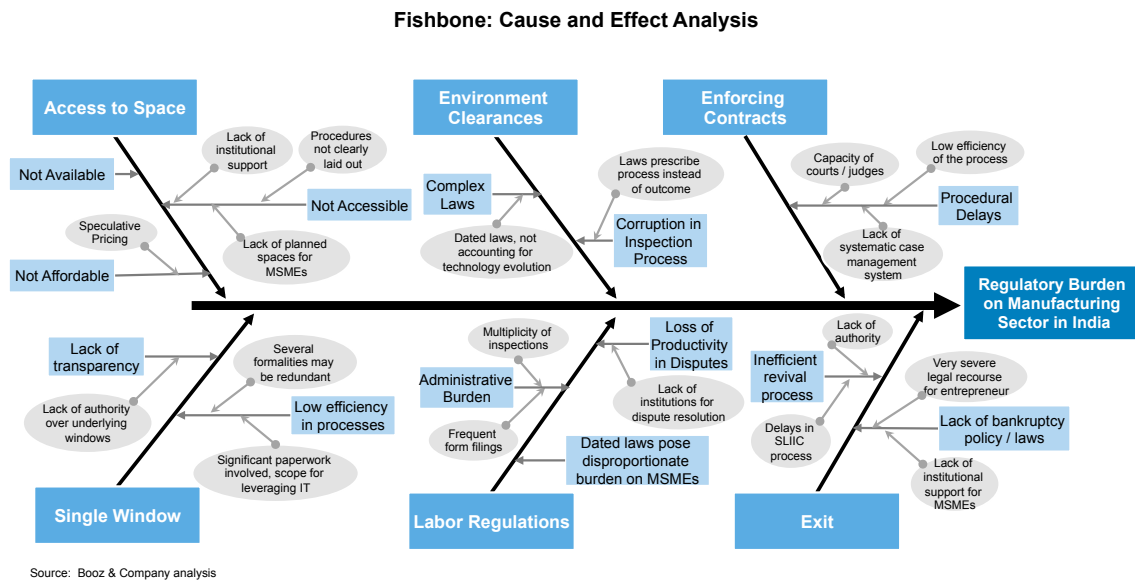
- measurable, in as much that they were already being tracked on a regular basis by existing agencies, such that there is independent and verifiable time series data available to measure progress/ change over time
- In parallel, an extensive interaction process was undertaken with multiple stakeholders, spanning government, industry associations, research institutions, etc as well as industry directly, in order to ensure that the areas of focus were adequately representative

Arising out of the above interactions, six focus areas which impose the maximum regulatory burden on business, spanning across its stages of incorporation, ongoing operations, as well as exit, were selected (Exhibit 2), as well as four themes which we believe should form the basis of the overall review

The six focus areas consist of

1. Access to space/ land
2. Single window clearance
3. Environmental clearances
4. Labour
5. Enforcing contracts
6. Exit

**Exhibit 2: Six areas were found to impose the maximum burden**



## Themes

Any revision of the regulatory framework, and drawing up of any future regulation, may wish to consider adhering to the following four themes:

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- **Quality:** Regulations must be clearly articulated and analyzed for intended benefits vs. perceived costs to reduce the regulatory burden on business entities. A widely accepted measure to assess the quality of a proposed (or existing) regulation is Regulatory Impact Analysis (RIA). As an example, Mexico in 1995 launched “The Agreement for Deregulation of Business Activity” which assessed existing legislation for legal and economic justification, positive and negative outcomes, as well as the human and budgetary requirements for implementation. The exercise resulted in review and revision of nearly 95% of the regulations, with an estimated ~ 40% reduction in either their scope or mandate. RIA as a tool has also been recommended by a number of government studies, including most recently the XII FYP Working Group
  - **Quantity:** or reduction thereof. Regulations build up over time and frequently outlive their utility, and a periodic culling exercise offers immediate and significant scope for improvement. As a trivial example, hotels in India are subject to the Innkeepers’ Act, which requires till today a bucket of water and hay to be “readily available” at all times! To address such issues, South Korea in 1998 introduced the Presidential Regulatory reforms Commission, and each Ministry was given a guillotine mandate of reducing their existing regulations by 50%. The RRC, in consultation with the ministries, was tasked to eliminate any regulations which hindered market access or competition, while simultaneously strengthening those relating to environment, health and public safety. The exercise resulted in scrapping of an estimated 35% of all regulations and is seen to have contributed significantly to South Korea’s industrial and innovation progress over the last decade
  - **Avoiding numeric thresholds:** institution of numeric thresholds in application of law, while perhaps impossible to completely eliminate, has had noticeable unintended social and industrial consequences. Numerous studies, by both Indian and American academia, have attested to the tendency of Indian industry to “start small and remain small”, unlike even similar economies such as Mexico and Brazil, where firms largely either exit or grow with time. This is estimated to have a direct link to the SME thresholds which define the eligibility of various incentives and offers a perverse incentive to remain small; and are perceived to negatively impact capital formation, technology intensity and competitiveness. Similarly, thresholds for applicability of taxation, and occupational safety and health provisions based on number of people employed, to cite two additional instances, is widely perceived to have contributed to the widespread existence of the “informal” sector. As a result, an overwhelming majority of the labour continues to work in unsafe conditions and with no social security net or other social safety features of the government

Removing numeric thresholds completely may be neither possible nor desirable, as there is a legitimate need to offer growth incentives to infant industries. As an alternate, there may be a strong case to have “secular” thresholds such as time, or initial investment quanta, which are easily verifiable. Incentives may be offered for a limited period of time and/or based on initial capital investment, rather than linking it to cumulative capital invested, turnover or employment

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numbers. That would serve the purpose of offering shelter/ beneficial terms to infant industries while removing any perverse incentive to continue remaining small and beyond the application of any social laws.

We also recommend that there be no exemption from adherence or even oversight for any social or tax measures, as these are universal in nature, and any exemption represents dilution of the social compact of the state to those employed in such establishments

- **Transparency and consistency:** More than any specific requirement, unpredictability of regulation, or changing of policies mid-way, has a more deleterious impact on the perception of ease of doing business. This can be addressed by taking steps to increase level of transparency in public governance, both in terms of policy making (i.e. avoiding retrospective changes or application of law) as well as in terms of governance, by making procedures transparent and uniformly applicable. Not just business, but also citizens, should be able to get upfront and accurate information of the various requirements, documentation, and procedures of the applicable regulations. Various e-gov initiatives already exist and should be implemented uniformly to ensure such transparency. Successful but isolated/ incomplete examples in the business sphere already exist in India, such as Maharashtra's Maha-e-biz portal

### **Metrics**

Measuring progress in improvement of both the processes, by which these regulations are administered as well as the outcomes, requires both input and output metrics. Further, in order for the exercise to be sustainable, and the results for which are to be visible, the process of selection of the metrics for each of the six focus areas was subject to the following four criteria:

- **Easy to understand:** Quantitative, easy to compute and well defined metrics (i.e. the components of which are easily understandable and traceable) lend themselves to widespread acceptability and remembrance
  - **Widely accepted:** the requirement for change, as well as the progress thereof, is easier to accept and for monitoring progress if the metrics are widely accepted as relevant and legitimate
  - **Uses existing indicators:** Using existing indicators minimizes the cost (time and money) associated with gathering data for a new metric or using a new methodology; further, it maintains focus on interpretation and action, rather than computing the indicator itself
  - **Available in chronological time series:** To enable measuring improvement over time, it is important that the assessment be periodic, which can be achieved by deriving the metrics using periodically reported metrics
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Arising out of the above exercise, the metrics for each focus area are proposed as follows:

#	Focus Areas	Input Metric(s)	Output Metric(s)	Description
1	Access to land/ space	Amount of industrial space (in sq m) including flatted factories available in urban areas	Change in number of unorganized manufacturing establishment as estimated by NSS	As a significant majority of enterprises are estimated to be in the informal sector, growth in the number of enterprises registered would indicate the ease of registration, which is a derivative of available "industrial" space
2	Single Window Clearance	"Time taken to start a business" as measured by the World Bank- <i>Ease of Doing Business</i> survey	Change in number of unorganized manufacturing establishments as estimated by NSS	SWC is primarily aimed at reducing the start-up time for businesses by provisioning the required approvals and licenses over a single window
3	Environment			
	One time	Longest time taken for NOC		State PCBs are meant to issue Environment NOC to enterprises not on the sensitive list, which should cover a majority of enterprises, which are supposed to be tracked and published on the relevant PCB's websites. This may also be monitored by the proposed NEAMA. Further, tracking of the longest time rather than average will allow for the worst performances to be improved
	Ongoing		Ambient Air and water Quality	Currently, the Environment Act defines the process of pollution control, which hinders any improved process and allows for harassment. Focus should instead shift to making the PCBs responsible for overall air and water quality, which should be tracked by independent accredited

				third parties and through social audits
4	Labour	“Difficulty in hiring and removing workers” as reported by the World Bank’s <i>Ease of Doing Business</i>	Increase in absolute number of employed workers as reported by Annual Survey of Industries, Government of India	Increasing employment is one of the key objectives of the XII FYP, and the two metrics proposed herein would allow for both improvement in the process of hiring as well as the outcome
5	Enforcing Contracts	Time taken to resolve a commercial dispute through courts, as measured by World Bank’s <i>Ease of Doing Business</i>	Contract enforcement cost as % of claim value, as reported by World Bank’s <i>Ease of Doing Business</i>	
6	Exit	Time taken to recover debt, as reported by World Bank’s <i>Ease of Doing Business</i>	Productivity of Capital, as based on the survey done by Annual Survey of Industries, Government of India	<ul style="list-style-type: none"> <li>• Recovery of debt is a critical indicator in the freedom of creditors to seek windup of a non-performing company, and ensuring that business remains competitive</li> <li>• If the exit mechanism is effective, productivity of capital should show an increase</li> </ul>

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## **Focus Areas**

In making the recommendations for each focus area, the Planning Commission has consciously eschewed any specific subject matter perspective or recommendation. The work in each of the focus areas has been limited to making the initial case for change in the context of the overall XII FYP vision as and if required, specifying the institutional framework(s) to drive change on a sustained basis in each area, and mapping the stakeholders necessary for driving this change. In addition, an indicative draft timeline and sequence of interactions to commence the change process has been included to help initiate the process

The succeeding pages lay out the detailed case for change, the stakeholders involved in each focus area, as well as the suggested sequence of interactions and timelines for implementation, for each of the six focus areas:

- *Access to Land/ Space*
  - *Single Window Clearance(SWC)*
  - *Environment*
  - *Labour*
  - *Enforcing Contracts*
  - *Exit*
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## 2. BUILDING A POSITIVE BUSINESS REGULATORY FRAMEWORK FOR SPACE / LAND

### Context

BRF spans multiple aspects of entry, operations and exit step of the businesses. Particularly, land / space regulations affect the entry phase and are perceived as most complex and nontransparent. Industry can acquire land either directly from a land owner or from the state government (SIDCs). Former should be kept independent of the state government, driven entirely by the willingness of landowner to sell the land as per the prices offered by a private player. However, it is rare to get a contiguous set of land for acquisition; hence, industry seeks assistance from the government. Government acquires land from multiple sources under the land acquisition act and allots them further for industrial or other public purposes. However, acquisition has faced multiple resistances due to unattractive resettlement proposition offered to the land owners. Hence, the process in itself suffered many blows, both by, as perceived, controversial acquisitions and inefficient allotments.

Acquiring land / space is a challenge for manufacturing units, barring them to get access to legal operating space, evident from the fact that bulk of the units are under unorganized category (~99% were classified as unorganized units in 2005-06 as per ASI). A third of the 11 million civil cases (2010) are on land disputes and industrial projects worth \$100 B are held up due to these conflicts<sup>1</sup>. The fundamental problems in space / land could be classified as:

- Land Availability – Unclear land ownership / title
- Land Accessibility – Inflexible land use and resistance in transfer / conversion of land
- Land Affordability – High transaction cost in the form of stamp duties and speculative pricing

### Key Challenges:

Critical challenges inflicted on the private players, as diagnosed under the ambit of a good BRF are:

- Ineffective functioning of SIDCs (state government):
    - Procedural delays in acquisitions and subsequent land allotments
    - Unavailability of accurate and exhaustive land data
    - Limited role in facilitating acquisition for industry
  - Ineffective procedures & practices
    - Complicated land allotment procedure and non-transparent pricing mechanism
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In totality, land availability, accessibility and affordability issues must be addressed and relevant regulatory pillar must be restructured to institutionalize the same, without comprising any benefits to the landowners.

Exercising institutional reforms could wipe out the procedural delays and non-institutional recommendations could facilitate regulatory and processes restructuring.

### **Institutional Recommendations:**

#### **I) Governance & Transparency in SIDCs – Resolving Land Allotment Issues**

Post land acquisition, SIDCs should work towards accelerating the allotment process by keeping it transparent under well-defined timelines.

- Well-defined roles and responsibilities – Roles and timelines should be well defined to ensure unambiguous functioning of the authority. Also, to enable other functioning such as a facilitator when industry acquires a land, ensure smooth land conversion, resolve any other land disputes proactively whenever an industry is involved, keeping in mind the “value for owners” philosophy. GIDC defines its role as the only acquirer of land for industrial use. Outside “specified lands”, no state support while procuring private land for industry
- Resolving titling issues upfront & Creation of land banks – Respective SIDCs should conduct land surveys in their respective states to record the land data exhaustively and remove ambiguity around titles along with the help of ULBs (Urban Local Bodies). GIDC maintains a comprehensive land database for industry called Investor Support System (ISS) and drives a strong thrust in identifying dry, waste and idle land for acquisition upfront.

A nationwide rollout of UPOR (Urban Property Ownership Record), as implemented by ULBs in Karnataka (Mysore, Shimoga, Bellary, Mangalore, Hubli-Dharwad, Bengaluru), could provide a robust framework in addressing this problem. *Bhu Bharti* is another initiative undertaken by NISG in Andhra Pradesh to come up with a comprehensive land management system.

- Transparent land pricing mechanism – An independent body should be assigned for designing the pricing mechanism for both acquisitions and allotments under “value for owners” philosophy. Center for Environment Planning and Technology University (CEPT) is an independent body assigned by GIDC to decide the land pricing. Also, LARR 2011 proposes Collector to be responsible for estimating land value per market prices.

### **Non-institutional Recommendations:**

#### **I) Policy Levers – Resolving Land Acquisition Challenges**

- Provision to allow private players to create their own industrial estates as per “value for owners” philosophy

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- Center to pass directives for building flatted factories over acquired industrial estates in urban areas for MSMEs and a provision for private players to build the same by facilitating them with resources such as electricity and water

## **II) Single Window Clearance – Speedier Land Allotment Process**

- Post consent of landowners, the acquisition process must be completed under defined timelines (~1 week or so)
- Post land acquisitions, single window clearance should be enabled to provide a one stop shop for furnishing all the clearances / certificates facilitating the allotment process.

## **III) Quick Wins – Resolving Land Issues for MSMEs**

Due to cumbersome regulations and land unavailability, MSMEs resort to unauthorized areas. Government can support them by facilitating building flatted factories in the urban estates.

- Post directives from the center, state should take up infrastructural and administrative responsibilities to build such flatted factories along with providing basic resources such as water and electricity
- A dedicated monitoring office to ensure effective execution and to provide support for on-going processes

As an example, China established MSME oriented industrial zones. The key features of the initiative were- providing cheap & abundant land in the form of factory shells/ flatted factories, necessary resource supply such as water & electricity, housing accommodation for the workers and a dedicated government institution for managing the same. The critical factors that made this initiative a nationwide success were- dedicated policy for supporting such zones & special incentives for local government for executing the same.

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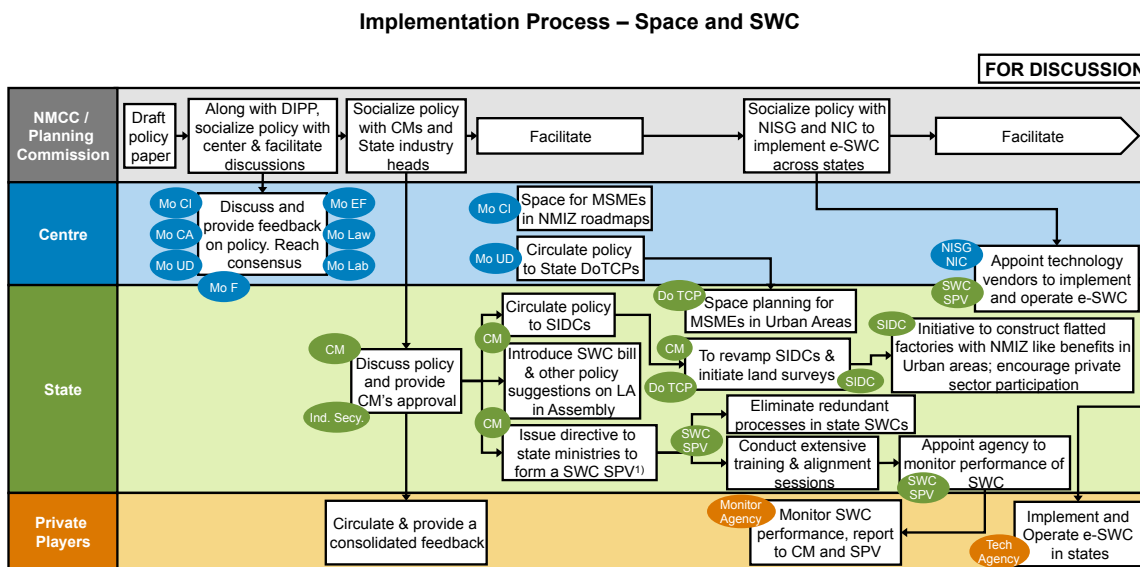
**Next Steps:**

The objective of the document is to escalate the above said potential solution theme amongst the stakeholders and obtain their feedback.

Potential stakeholder map to be leveraged during this exercise (Exhibit 3 below):

- Stakeholders at Center – NISG/NIC/DIT, Ministry of Corporate Affairs, Ministry of Commerce & Industry, Ministry of Finance, Ministry of Urban Development, Ministry of Law, Ministry of Labor, Ministry of Environment & Forests, Ministry of MSME, DIPP and CLE
- Stakeholders at State – Chief Ministers, Industry Secretaries, SIDCs, Department of Town & Country Planning, State Departments (e.g. Public Health, Fire, Electricity Board), NAC and State Planning Boards
- Stakeholders at Industrial Associations – FISME

**Exhibit 3: Stakeholder Engagement Map for Space and SWC**



1) SWC SPV will be a CM empowered body with representation from various clearance departments and with legal authority to enforce timelines and model practices across all departments  
Source: Booz & Company analysis

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### 3. STREAMLINING BUSINESS REGULATORY FRAMEWORK VIA SINGLE WINDOW CLEARANCE

#### **Context**

A regulatory environment is essential to ensure just and sustained business development. As a first step to engineer a robust regulation, its objective should be well defined along with timelines to deploy an agenda driven approach. To simulate and institutionalize the same, requisite policies should be laid out with the establishment of empowered institutions, having clarity and objectivity in their approach. Policies so formulated should furnish unambiguous rules to ensure seamless execution of the entire process. Once government formalizes a regulation, a) step-by-step procedures, requiring adherence and b) practices, requiring compliance, should be detailed out. A good Business Regulatory Framework (BRF), so deployed, should be collectively relevant, mutually consistent and independently efficient to realize the set goals so envisioned.

In India, business regulations are negatively perceived due to the cumbersome processes and longtime taking procedures. In the same light, concept of single window is considered as a potential solution to provide a single stop shop to furnish all the relevant certificates / clearances. Single Window Clearance (SWC), as the name signifies, furnishes all necessary “paper work” required at the time of setting up an establishment through a “single window”. The idea behind SWC is to enhance efficiency of government agencies, minimize red tape and provide speedy treatment to the industries. Many states such as Rajasthan, Andhra Pradesh and Tamil Nadu have supported and institutionalized SWC by a strong policy framework; however, implementation has been challenging and the existing SWCs are regarded as the *additional* window that gives information of other underlying windows.

#### **Key Challenges faced by SWC**

SWC confronts with following key challenges when reviewed under the ambit of a good BRF:

- Institutions that executes Single Window Clearance mechanism are not adequately empowered, hence inconsistent with the overall objective of ensuring a one stop shop
- Even with Single Windows Act in-place, industries has to visit the underlying windows, hence lack of consistency between rules and actual procedures and moreover, driving inefficiency due to additional step in-place

#### **Proposed Roadmap**

Globally, many countries such as Singapore, Hong Kong, Mexico, Finland and Germany have adopted single window facilities to streamline the complex processes to drive efficiency. Singapore’s single window trade interface is considered as a best-in-class example where Government’s concerted effort helped in executing the concept in true spirits. The key enablers were- commitment at the high level (Minister of Trade & Industry), multi-agency steering committee & sub-committees for its tight

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implementation, competitive selection of the technical services provider and phased implementation approach to ensure successful nationwide coverage.

In India too, many states such as Andhra Pradesh (AP) and Rajasthan have passed SWC Acts to institutionalize the concept but failed to implement it seamlessly, leaving significant room for improvement. Going forward, Government must act to drive successful implementation of SWC mechanism to gain traction with investors and provide an apt platform for entrepreneurs to grow and drive domestic capabilities. Firstly, it is imperative to reinforce the implementation of SWC where it is currently under practice and secondly, to introduce and implement it effectively in rest of the states. The key to set a functional SWC mechanism is to drive transparency in the governance and commitment from high level empowered body to lead and implement the effort end-to-end. Few enablers that were exercised by the state government of Rajasthan and AP while implementing the single window concept were:

- State government enacted the laws to enforce SWC framework
- Defined timelines enabled by strong inter-department coordination and departmental penalties
- Extensive training to build capabilities in the people, multiple alignment sessions for early buy-in and enhancing usability of the new processes

For the successful implementation, each state CM should commit to, a) cut the number of regulations, b) SWC and c) facilitate SWC body (SWC SPV) directly under his office (CMO).

Following five pillars could guide for building a robust solution theme:

- **Commitment at the Highest Level**
  - **Cutting the Number of Regulations** – Center (Ministries)/State (CMs) should commit to cut the number of regulations, e.g. South Korea conducted a comprehensive regulatory reforms in 8 ministries & eliminated 33.17% of regulations
  - **Institutionalizing SWC** – Facilitate SWC body such as SWC SPV, directly under an empowered body (Ministry/CMO) to manage and drive the entire implementation; also, to build a tiered single windows to cater to industries of all sizes
- **Stakeholder Coordination**, sessions from CMO and a dedicated department managing and tracking the success
  - To organize extensive training and stakeholder sessions to obtain early buy-in
  - To involve industry bodies while formulating the framework
- **Legal framework** for enforcing SWC
  - To address critical issues such as data protection, archiving, access authority, etc.

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- To pass a legislation to institutionalize the concept – Single Window Act
  - **Implementation model** with detailed phased approach
    - To ensure time bound actions / approvals and well-defined accountabilities with a penalty linked system
    - To reduce number of application forms by a Common Application Form (CAF) where the over-lapping information is combined, facilitating SWC mechanism
    - To constitute a single window committee, headed by the empowered institution, comprising of representatives from different departments, accountable for any delay / actions by respective department
    - To organize weekly / fort night SW committee to process the applications and to track the progress along with a monthly steering committee with the senior board
  - **Technology Deployment** to enable SWC implementation and effectively handle the data, application processing, etc.
    - To assign a technical vendor competitively for building the entire system
    - To build sufficient IT infrastructure, both material and people

Implementing this key regulator will have a potential widespread impact on the entire Business Regulator Framework (BRF). With this one stop shop concept in-place – land acquisition, labor & environmental regulations and other permits / certificates will be simpler to furnish. Hence, will drive efficiency and create a positive environment amongst investors.

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**Next Steps:**

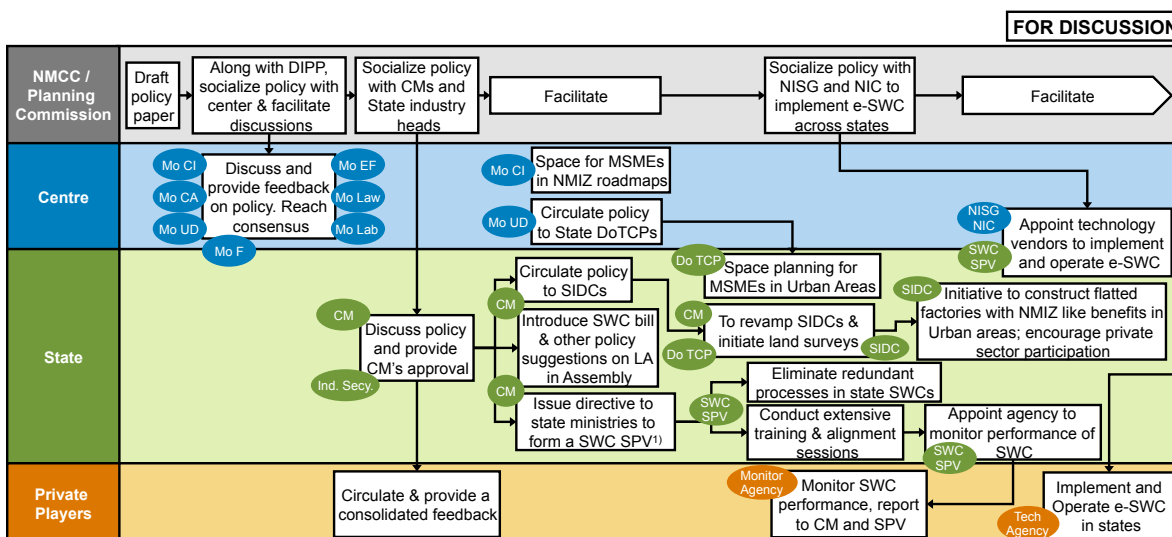
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Potential stakeholder map to be leveraged during this exercise (Exhibit 4 below):

- Stakeholders at Center – NISG/NIC/DIT, Ministry of Corporate Affairs, Ministry of Commerce & Industry, Ministry of Finance, Ministry of Urban Development, Ministry of Law, Ministry of Labor, Ministry of Environment & Forests, Ministry of MSME, DIPP and CLE
- Stakeholders at State – Chief Ministers, Industry Secretaries, SIDCs, Department of Town & Country Planning, State Departments (e.g. Public Health, Fire, Electricity Board), NAC and State Planning Boards
- Stakeholders at Industrial Associations – FISME

Stakeholder engagement for SWC should happen in tandem with Land.

**Exhibit 4: Stakeholder Engagement Map for Space and SWC**



1) SWC SPV will be a CM empowered body with representation from various clearance departments and with legal authority to enforce timelines and model practices across all departments  
Source: Booz & Company analysis

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## 4. STREAMLINING ENVIRONMENT REGULATIONS

### **Context**

BRF spans multiple aspects covering various processes at entry, operations and exit step of the businesses. Environmental regulations impacts both entry and operations and are considered critical for achieving sustainable development. It is the joint coordination between industry and government that ensures seamless functioning of the entire machinery. Despite having plethora of legislations and regulations, enforcement remains a key concern. Hence, it is essential to build a balanced approach while designing a regulation to ensure least disruptive effects and unconstrained growth of the targeted industry.

### **Critical Challenges Inflicted by Environment Regulations**

While environmental regulations were envisioned to build a healthier environment and a growing economy, industry had faced multiple obstacles owing to an ineffective framework in place. The problem is twofold – a) nontransparent approval mechanism, and b) nontransparent and ineffective monitoring mechanism. Overall, the entire regulatory structure imposes following challenges:

- Complicated and subjective-in-nature regulations opened for multiple interpretations
- Ineffective and negatively perceived Inspection and Monitoring processes (I&M) due to high interference, potential disruption in business lines and overall unfriendly experience
- Complicated and ambiguous procedure while obtaining an EC (environment clearance) certificate at the time of establishment
- Lack of education and clarity while communicating the regulatory steps that are to be followed while furnishing clearance
- Ineffective organization role, not well-defined roles & responsibilities in SPCBs/PCCs

### **Proposed Roadmap**

On a positive note, Government is aware of the limitations posed by the current regulations. Some of the inefficiencies present in the administrative processes were targeted in the 11<sup>th</sup> five year plan. NMP 2010 also discussed multiple recommendations to simplify the clearance processes; however, only few were adopted under National Manufacturing Policy, applicable to new manufacturing units in NMIZs. Currently, a working group on Environment and Forest under Planning Commission has also highlighted the critical challenges afresh and suggested few potential steps going forward.

Some relevant recommendations from National Manufacturing Policy for units in NMIZs were third party agencies for conducting I&M processes, web enabled clearances, priority basis clearances with defined timelines and 25% grant or maximum of 1 lac for SMEs for environmental and water audits.

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Below are few recommendations from the sub-group report on “Environment” for 12<sup>th</sup> Five Year Plan:

- To exercise key levers such as upward revision in the penalties and a provision of bank guarantee towards any environmental violations
- To build up sufficient infrastructure and IT-based clearance system to drive efficiency
- To up-grade existing laboratories to improve their technical competency
- SPCBs/PCCs to be supplemented by third party auditors for timeliness procedure and eradicating unnecessary delays
- To develop template for audits – simpler one for MSMEs and more exhaustive one for larger units; auditing could be outsourced to empanelled consultants
- To create awareness about environmental regulations amongst key stakeholders

Going forward, there is a need to collate and drive targeted recommendations with a robust metric to assess the effectiveness. Also, there is a need to list out the specific Acts which could be amended to institutionalize the change.

**Detailed recommendations related to one-time processes:**

Success Metric: Longest Time taken to get NOC & EIA

Guiding Principle: To ensure independent regulator with transparent procedures

- Each SPCB, in consultation with NEAMA (explained below), to make available standardized procedures online. Online process should be held as the authorized process. (*Section 17 & Section 3, EPA, 1986*)
- Online clearance system via Single Window Clearance Mechanism (Single Window Clearance Act / *Section 3, EPA, 1986*)
- Defined timelines for issuing the clearance. If violated, should be taken to the higher level with a well-defined SOP (*Section 5, EPA, 1986*)
- To detail out “Category B 1” and “B 2” for unambiguous categorization while issuing EIA certificates (*EIA Notification, 2006 under Section 5, EPA, 1986*)
- To exempt non-polluting establishments (of all sizes) from ECs and introduce flexible certification processes for small businesses (*Section 5, EPA, 1986*)
- To exempt Prospecting License from ECs (*Section 5 & 25, EPA, 1986*)

**Detailed recommendations related to on-going processes:**

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Success Metric: Ambient Air Quality and River Water Quality

Guiding Principle: Harnessing civil society – to enable third party audits, right of appeal and to strengthen both government and private sector to build monitoring and certification capabilities

- Creation of independent National Environmental Appraisal and Monitoring Agency (NEAMA) as a recommendatory body to CPCB/SPCBs/MoEF (*Section 5 & 25, EPA, 1986*)
- NEAMA should work with all SPCBs to develop consistent rules and procedures (*Section 3, EPA, 1986*)
- To include self-monitoring and representing verification (MRV) and an associated third party audit (*Section 5 & 25, EPA, 1986*)
- NEAMA to act as ombudsman in case of conflict between authorized third party and SPCB audits (*Section 5, EPA, 1986*)
- To develop template for annual audits (differentiated for MSMEs and large enterprises) with an outsourced auditing functioning (*Section 5 & 25, EPA, 1986*)
- To upgrade and revise monetary penalties to drive effective enforcement per listed standards<sup>1</sup> (*Section 16, EPA, 1986*)
- To deploy a process, if possible, to measure pollution rejected from a manufacturing unit rather than checking the entire process step by step (*Section 12, EPA, 1986*)

**Other recommendations:**

Success Metric: Regular Surveys and Industry Polls

- Strengthening existing technical capabilities of CPCBs/SPCBs –infrastructure and manpower (*Section 3, EPA, 1986*)
- To create awareness and remove ambiguity towards environment regulatory framework amongst key stakeholders (*Section 10, EPA, 1986*)
- To provide opportunity to small entities to participate in the development of certain regulations directly impacting their operations and growth (*Section 3, EPA, 1986*)

The above recommendations focus on driving institutional and processes reforms.

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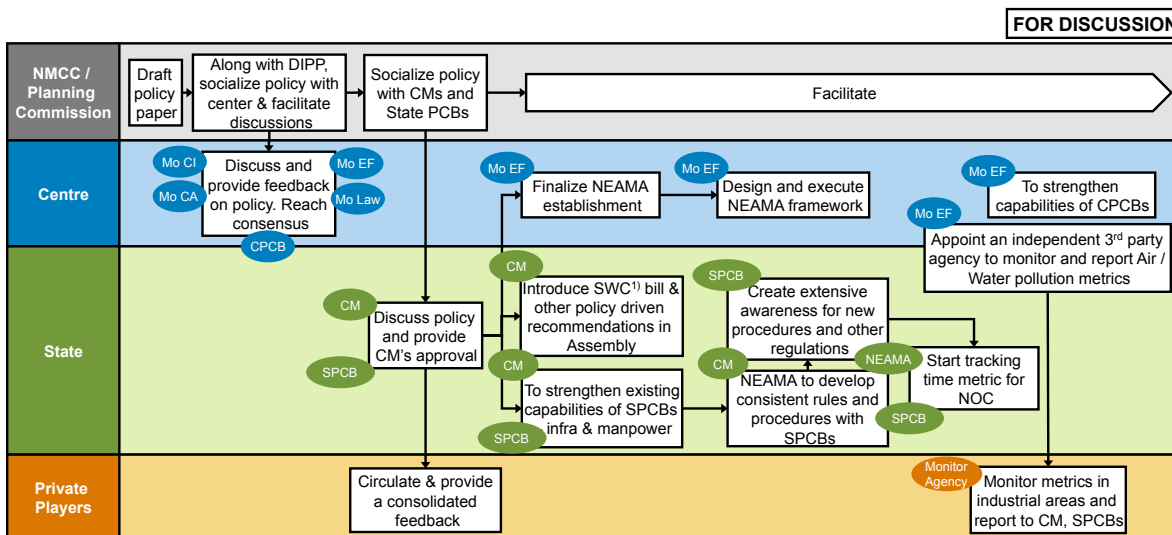
**Next Steps:**

The objective of the document is to escalate the above said potential solution theme amongst the stakeholders and obtain their feedback.

Potential stakeholder map to be leveraged during this exercise (Exhibit 5 below):

- Stakeholders at Center – Ministry of Corporate Affairs, Ministry of Commerce & Industry, Ministry of Environment and Forests, Central Pollution Control Board, Ministry of Law, Ministry of MSME and Ministry of Labor
  - Stakeholders at State – Chief Ministers, State Pollution Control Board, Policing Agency, NEAMA
- 1) Other recommendations such as fast-tracking levy of penalty, provisions for bank guarantee, etc. could put financial stress to financially weak set-ups. To drive effectiveness, this type of action should be linked to the size of an establishment

**Exhibit 5: Stakeholder Engagement Map for Environment**



1) Follow the similar procedure for setting up an SWC as laid out in Space / Land and SWC Implementation plan  
Source: Booz & Company analysis

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## 5. STREAMLINING LABOR REGULATIONS

### Context

BRF spans multiple aspects covering various processes at entry, operations and exit step of the businesses. Labor regulations affect the operations and are critical as they encompass a huge labor force constituting a significant chunk of the population, near about 460 million individuals employed in various sectors and industries. However, the entire labor regulatory system is perceived as a hindrance to the growth in formal employment as well as social welfare, owing to its complicated structure and multiple formal procedures to be followed for compliance. Our labour framework has resulted in potentially the “worst of both worlds” with us having neither widespread employment nor adequate labour welfare. Importance of amending this situation should be the foremost priority if India is to reap the demographic dividend and not turn it into a demographic disaster

### Key Challenges

Under the ambit of a good BRF, labor regulations inflict two critical challenges on the industry pertaining to its rules and procedures:

- Problems inflicted by the rules so formulated with an objective to ensure compliance are:
  - Various disparities in labor regulations such as differences in the basic definitions of wages, workmen, etc. hence being inconsistent
  - Labour laws impose restrictions on hiring / firing, working and overtime hours of workers; hence, laws are indirectly counterproductive and the numeric thresholds limits their universal applicability
- Procedural requirements, multiple & highly frequent paper filings as well as unpredictable & large number of inspections further worsens the situation and make the entire machinery inefficient

Hence, encouragement of business- to ensure employment generation, wealth creation and tax revenue increase, leading to overall societal prosperity- requires a facilitative business regulatory framework (BRF) and concrete steps towards designing and implementing solutions to the problems discussed above. A good BRF requires for laws to be limited in number, consistent and comprehensive. In the same light, the next section discusses the overall solution theme to drive the change followed by the specific recommendations.

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## **Proposed Roadmap**

Going forward, there are three clear imperatives that could bring a step change in this direction:

- **Consistency and Comprehensiveness**

As already recommended in numerous past studies, including most recently the Ministry's Working Group on Labor Laws and Other Regulations for the Twelfth Five Year Plan, the various disparate labor regulations should be consolidated to ensure consistency in terms of definitions and coverage. There should be one overarching legislation, or a limited number of overarching legislations, covering (a) payment of wages and social security, (b) occupational safety and health/ working conditions and welfare, and (c) representation and industrial relations. This will not only ensure consistency but also result in fewer regulations, as currently there are over 15 acts covering the above, with their own disparate and at times conflicting definitions and mandates

- **OSHA Provisions**

Occupational Safety and Health Administration is essential for the manufacturing sector and should be made watertight to ensure seamless support to the employees. Two recommendations could assist in making the processes universal while ensuring no misuse.

- **Universally Followed** – Applicable independent to the size of establishment. This drive will cover all commercial establishments under regular monitoring and inspection per OSHA standards
- **Third Party Auditors** – Usually, labor inspectors conduct detailed monitoring. Allowing third party auditors could drive efficiency in the process.

- **Minimizing Onerous Documentation**

Labor regulations are perceived as complex due to multiple forms and registers to be maintained in compliance with the labor regulations. A Common Application Form (CAF) should be introduced to eliminate redundant entries, hence reducing the time spent while complying with labor regulations and also facilitating Single Window Clearances.

Hence, there is a need to drive consistency in basic definitions and their interpretations in the laws, to ensure universal applicability and an effort to reduce the load of documentation, required for compliance, from the industry. Set of specific recommendations could drive the immediate impact. Under the same light, next section demonstrates the key levers that could be exercised to propel this change

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### **Specific Recommendations:**

#### **I) Wages and Benefit's Provisions:**

Section 51 of the Factories Act 1948 specifies maximum number of permissible hours for factory workers in a week and Section 54 of the Factories Act 1948 specify the similar metric for a day. Section 64 of the Factories Act 1948 specifies maximum number of working hours (including overtime) permissible under state amendments.

Above provisions should be amended along with the feasibility to include other considerations to drive better value proposition for both employee and employer. In totality, we envisage universal coverage of social benefits irrespective of the size and nature of employment.

- i) **Non-restrictive Working Hours** – Weekly, daily and quarterly working hour restrictions could be aligned with international best practices e.g. 10 - 12 hours, subject to overall existing weekly caps
- ii) **Single Account Linkage** – Any employer, irrespective of nature of contract, must deposit contributions under all labour schemes (EPF, ESI, Wages, Disability Allowance, Health Insurance & Other Payments) under different sub-accounts which are linked to single AADHAR account
- iii) **Self-Declaration** – Employer and employee to self-declare the accounts that they are paying into or receiving benefits into respectively

#### **II) Layoff Provisions:**

Section 25 M of Industrial Disputes Act of 1947 covers the provisions regarding prohibition of lay-offs for factory workers, detailed in sub-section 1. Also, its sub-section 3 specifies a bureaucratic process to be followed for the lay-offs, allowed as per sub-section 1. Moreover, Section 25 G of Industrial Disputes Act of 1947 allows for legal action against lay-offs unless based on “last come first go” principle

These provisions pose significant challenges for manufacturing units, which need relatively more flexibility around the workforce planning to adjust per business requirement. Going forward, lay-off provision needs to be flexible with no quantitative restrictions, without compromising employee welfare (EWB, see below). The recommendations below should be valid independent of the nature of employment e.g. permanent, temporary, contract, etc.

- i) **Lay-off with Reason<sup>1)</sup>** – No obligation on the employer and the problem to be resolved in the labour court, if need be.
- ii) **Lay-off without Reason** – Employer to provide standardized benefits to the employee linked to the tenure in the firm

1. Legal reasons should be exhaustively defined to prevent any foul play

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### III) Unionization Provisions:

Trade Unions Act of 1926 provides a comprehensive framework for unionization in India. However, to strengthen the manufacturing sector further, without jeopardizing the objective of Trade Unions, few amendments and new considerations could enable further traction between the employee-employer relationship driving healthy interactions.

- i) **Employee Welfare Board** – Every employer should have a labour welfare board on which representatives of management and that of labour are present
- ii) **Work Stoppage Provisions** – No work stoppage unless 70% of employees vote using secret ballot
- iii) **Wage Disputes** – Wage disputes will be effective from demand date

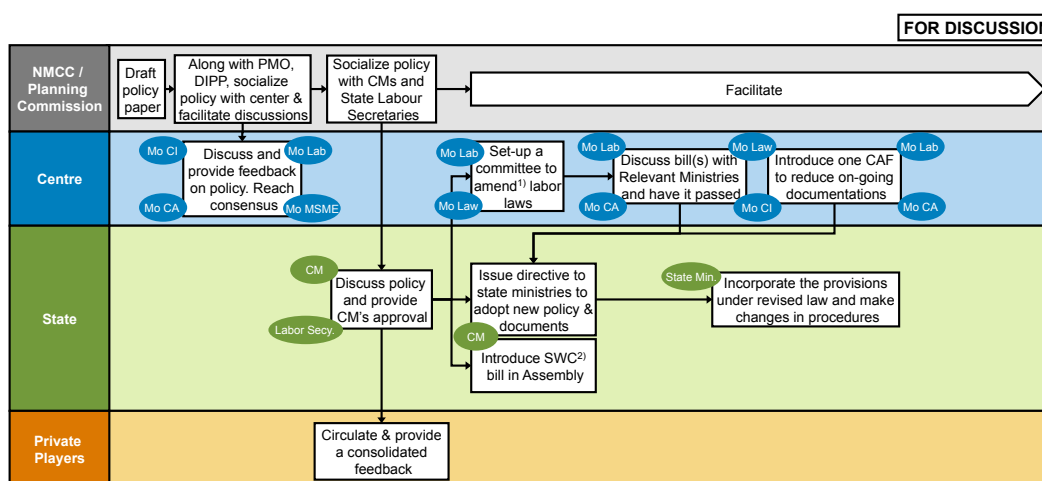
#### Next Steps:

The objective of the document is to escalate the above said potential recommendations amongst the stakeholders and obtain their feedback.

Following is the potential stakeholder map which will be leveraged during this exercise:

- Stakeholders at Center – Ministry of Corporate Affairs, Ministry of Commerce & Industry, Ministry of Law, Ministry of Labor, Ministry of MSME and Employee’s State Insurance Corporation
- Stakeholders at State – Chief Ministers, State Labor Ministry, Labor Secretaries, Department for Employment and Training
- Stakeholders at Industrial Associations – Trade Unions and Employers Association

**Exhibit 6: Stakeholder Engagement Map for Labour**



1) Amendments – consistent definitions, single account linkage, lay-off provisions, establishment of employee welfare board, sensitization towards profession, etc., 2) Proceed as explained in "Land & SWC"  
Source: Booz & Company analysis

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## 6. STREAMLINING CONTRACT ENFORCEMENT

### Context

BRF spans multiple aspects covering various processes at entry, operations and exit step of the businesses. Contract enforcement is critical to ensure smooth business operations. However, if a fraudulent transaction or other misrepresentation is intended under a contract, then the contract in totality stands “void ab initio”, which makes it an invalid document for any legal recourse. Enforcing any contract, be it supplier oriented, consumer oriented, employee oriented or government oriented, an effective and dedicated judicial system is a pre-requisite.

### Key Challenges

As per the recent Ease of Doing Business Report, 2011, India is ranked 183 of 184 countries in the contract enforcement category owing to a) large number of days taken by the judiciary in resolving a dispute, estimated to be 1,420 days (least being 150 days in Singapore - ranked 1 as the easiest place for doing a business), b) high cost incurred via attorney, court and enforcement costs building to about 39.6% (25.8% in Singapore) of the total claim, and c) high number of procedural steps, 46 (21 in Singapore).

Existing contract enforcement framework lacks relevance at the institutional level and struggles with inefficiency in the procedures so adopted:

- Majority of the commercial dispute plaintiffs resort to litigation and do not consider alternate dispute resolving systems such as mediation / arbitration
- Inefficient system as it takes long time to solve a dispute due to insufficient infrastructure, in terms of number of courts, judges and advocates

It is critical to design a robust dispute resolving procedures / bodies based on two fundamentals:

- Relevant institutions to address the specific needs (mediation/arbitration/specialized courts)
- Efficient body to ensure speedy disposition of cases

### Potential Solution Themes

Government has been trying to introduce relevant changes, evident from the publishing of 188<sup>th</sup> Report on *Proposals for Constitution of Hi-tech Fast-track Commercial Division in High Courts* in December, 2003, that introduced the concept of specialized courts. Also, the Indian Contract Act of 1872 provides a comprehensive legal structure with eleven chapters with 266 sections, addressing pertinent contract violations. We can focus on creating specialized courts, a draft bill of which is already in place:

- **Creation of Specialized Courts:**
-

Bill titled *The Commercial Division of High Courts Bill (Bill No. 139)* was passed by Lok Sabha in 2009 and revised once by Rajya Sabha in 2010. The bill focuses on creating specialized courts in the premises of existing High Courts to address and provide fast-track treatment to all the commercial disputes as defined under Section 2(a) of the bill of specified value<sup>1)</sup>. The bill, so drafted, should be encouraged and passed after reconciling any potential opposition prior to its implementation.

Following recommendations could ensure effective implementation of the proposed courts:

- **Mandating Alternate Dispute Resolution (ADR) Systems:** To mandate that a commercial dispute filed under the specialized courts, must be redirected to the assigned third parties first, if considered appropriate, (by respective High Courts) for Mediation / Arbitration prior to reappearing in the court
- **Building Capabilities & Capacity in ADR:** Arbitration and mediation are two critical modes. It is essential to set-up multiple and good arbitration units which could inspire confidence. Hence, a need to establish institutions across India to build expert arbitrators to handle such disputes. Also, more mediation units should be built and made available to the masses. Recommended mediation and arbitration capabilities are established parallel to entry levels of judiciary (city court) nationwide in a phased manner. Further, this should not be restricted to only retired judges but should be open to anyone with a basic law degree and specialized certificate which should be made available online by Indian Council of Arbitration.

Government can also explore other potential solutions, which are successfully implemented elsewhere.

- **Channelizing Small Claim Units** (*e.g. Zimbabwe, Zambia*) : To set a flexible limit on the threshold of claims filed under specified commercial divisions (suggested above as a part of Commercial Division of High Courts), subject to annual revision, for driving efficiency and speediness
- **Utilizing Active Case Management** (*Ghana, Japan, Malaysia, Sri Lanka*) : To establish an online case management system for better and quick access to the relevant case / data
- **e-Complaint Filing** (*Australia, Czech Republic, UAE, US*) : To introduce online case filing mechanism to speed up the pre-hearing processes (*currently 20 days compared to 6 days in Singapore*)
- **Measuring Court's or Individual Performances** (*Australia, Singapore, US, Netherlands*) : To assess performances so as to institutionalize performance driven culture

1) To create a two tier commercial divisions: <1 Cr. Commercial disputes and >1 Cr. disputes

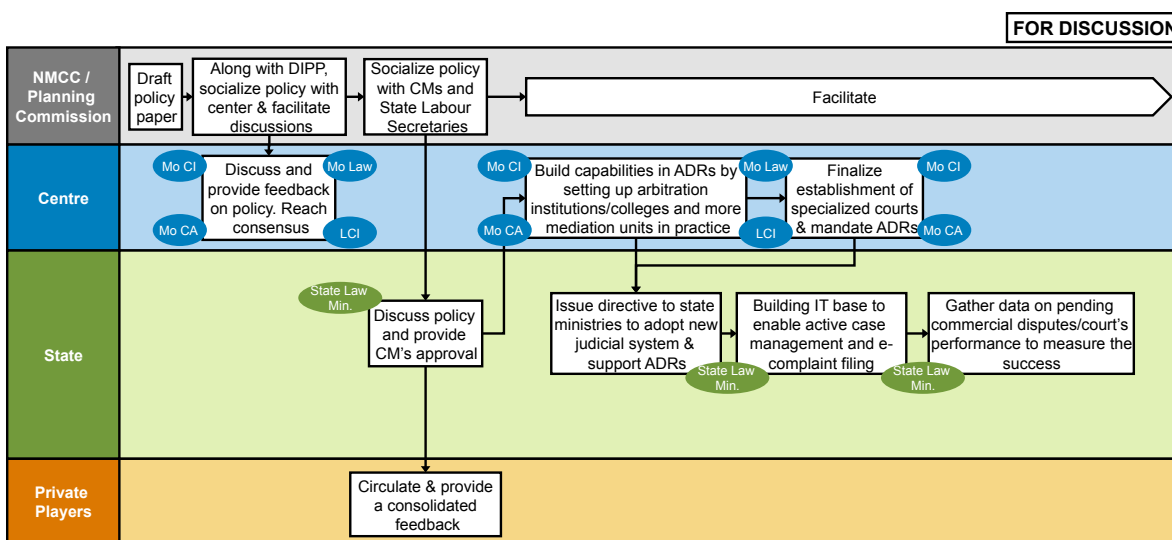
**Next Steps:**

The objective of the document is to escalate the above said potential recommendations amongst the stakeholders and obtain their feedback.

Following is the potential stakeholder map which will be leveraged during this exercise:

- Stakeholders at Center – Ministry of Corporate Affairs, Ministry of Commerce & Industry, Ministry of Law and Law Commission of India
- Stakeholders at State – State Law Ministries

**Exhibit 7: Stakeholder Engagement Map for Contract Enforcement**



Source: Booz & Company analysis

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## 7. EXIT FRAMEWORK IN INDIA

Exit framework is expected to be robust going forward given comprehensive laws in-place and upcoming dedicated tribunal – NCLT

It has traditionally taken nearly seven years for wind-up proceedings in the Indian courts (as evidenced by the Law Ministry's own admission). However, the recent clearance granted by the Madras High Court in December 2011 to the establishment of the National Company Law Tribunal and the Appellate Tribunals (NCLT/ NCLAT) as well as the wind-up provisions contained in the revised Companies Act, establish a strong institutional framework for speedy exit.

Exit policy seems to be now comprehensively laid out in the legislative process, in terms of specific acts / sections / clauses addressing both reconstruction and winding up (exit) of the registered companies (The Companies Act, 1956: Section 424A-L). Also, there is a dedicated chapter that facilitates the winding up of unregistered companies as well (The Companies Act, 1956: Section 583).

Moreover, NCLT and NCLAT, a new tribunal, will be addressing these issues which were earlier taken up by CLB. NCLT is expected to be up and running by the end of this year (2012-13).

The Planning Commission may wish to monitor the progress of the establishment and proper functioning of the proposed NCLT and NCLAT by the Ministry of Company Affairs and the Ministry of Law, and render all help in ensuring the speedy establishment of the same

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## CONCLUSION

The above report lays out the six focus areas, representing the potentially disproportionate burden which regulation imposes on manufacturing in India, particularly from the perspective of the Micro, Small, and Medium manufacturing enterprises. In addition, care has been taken to incorporate past studies conducted by various government and industry institutions, so as to ensure continuity and consistency.

The hallmark of any analysis is the degree to which the recommendations are actually implemented. In furtherance of this desired outcome, a detailed stakeholder interaction plan has also been developed for each focus area, which we hope will prove useful to the coordinating agency and the various other stakeholders. Further, while some specific recommendations have been unavoidably made, there is a conscious emphasis on specific thematic principles which guide good regulation, and for institutional strengthening in each focus area.

We hope that this will result in an enhanced degree of ownership and an improvement of “systemic” capabilities to analyze and engage in ongoing continuous improvement, and result in an improvement in the overall business regulatory framework of the country not just in the immediate period but also for the times to come.

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