Entity-specific legislations are not needed

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The leadership and the officials working on the initial public offer (IPO) of the Life Insurance Corporation (LIC) of India deserve kudos for their extraordinary efforts. A public sector giant, iron-clad with a special legislation, the Life Insurance Corporation Act, 1956, is about to be a listed entity.

But for a black swan event in the form of a far-away war, LIC would have been listed by now; something even the most optimistic would not have thought of a year back. But for the special legislation, probably the task could have been completed well before the Ukraine war and escaped the recent market gyrations.

Changing institutional pre-conditions

Look at what all had to be done to take LIC to the market. It required extensive amendments to the Act to provide for: creation and issue of transferable shares along with register of members and deeming such shares as securities; management by a board of directors supplemented by governance norms like audit committee, nomination and remuneration committee, independent directors and transactions with related parties; provisions for financial statements such as balance sheet, profit and loss account, cash-flow statement and consolidated statements; details of internal and external audit and auditors; declaration and disbursement of interim dividend and final dividend; etc.

Corresponding changes had to be made in the Life Insurance Corporation Rules, 1956. These amendments essentially grafted listing related provisions from the company and securities laws to enable listing of LIC. They did not convert LIC into a company; merely provided the cloak of a company. If LIC were made a company, it would be doing business like any other insurance company, and raising money from the market — domestic and overseas — like any other listed entity.

The listing related provisions would have followed automatically, as they apply to any company intending to be listed. However, 'grafting' of listing related provisions would create legal rigidities and frictions when either the company law or securities laws get amended. Continuation of provisions like sovereign guarantee for sum assured under policies even though the shareholders have limited liability, inapplicability of the provision of company law relating to winding up, etc. ,would perpetuate an uneven playing field at the marketplace.

An ambiguous approach

There are several other business entities operating under special legislation: State Bank of India and General Insurance Corporation are prominent examples. Such legislation and business entities were inventions of an era when the underlying philosophy was business in slow-motion, public-sector dominance, and when no modern statutory regulators were in position. The economic landscape of the times was also quite different. Probably in those days, such business entities could be in tune with the times.

It is heartening that several special pieces of legislation have been repealed or modified in sync with the contemporary economic policy, withdrawing statutory status and privileges from business entities. It is, however, difficult to fathom the continued existence of many other special legislation for business entities, and to appreciate enactment of special legislation to set up new business entities like the National Bank for Financing Infrastructure Development [NaBFID] in March 2021, in a hybrid form of statutory body and company.

Repealing some such laws and adding new ones reflect policy incoherence, a failure to capture the full dynamics of the corporate-financial sector, including the changes in the financial sector regulatory landscape.

Distorting regulatory ground levels

The RBI became the banking regulator with the enactment of the Banking Regulation Act, 1949. SEBI (1988), IRDAI (1999) and PFRDA (2004) were set up as securities market, insurance and pension regulators, respectively. IBBI for insolvency and bankruptcy and NFRA for financial reporting/auditing were created in 2016 and 2018, respectively.

The *de jure* mandate of these regulatory authorities covers the activities of the statutory companies just like any other entity operating in the corporate-financial sector. Even government departments engaged in business activities are subject to competition regulation. However, regulatory authorities' *de facto* powers over them get diluted because of the special legislation.

Lower threshold of public shareholding, non-compliance with normal corporate governance norms, board structure, investment norms, statutory filings. Timely disclosure is a casualty because "very high-powered board consisting of important people could not meet in time to approve the necessary disclosures", as pleaded by one such entity before a Tribunal. This anecdote tells the constraints under which such entities function; not only in late compliances but also for late/constrained business decisions.

While special legislation appear to be empowering the business entities, in effect, the associated rigidities work against them. Pampering business entities with special legislation have often hampered their flexibility and growth, failing them to flourish in an open market. For entities operating in highly competitive financial services business, nimbleness and speed are indispensable for survival. Market and technological dynamics underscore the need for acting fast as time and market do not wait.

The corporate-finance sector is undergoing drastic changes; technology is leading that disruption. Decisions relating to merger, acquisition, listing, valuation all need to be done extremely fast. The solidity and comfort, perhaps warranted and provided to some of the public sector entities in the past through the statutory route, cripples fast decision-making in these dynamic contexts.

This is not about government entities doing business or not, or having special legislation to govern specific businesses; sanctity of ownership and control are embedded in a company form, irrespective of who owns it. It is about the process overload which work against their business growth and the need to follow ownership neutrality in regulation. Realisation of this basic governance principle and converting the statutory business entities as companies is perhaps the way to remove the stranglehold or *Dhritarashtra aalingans,* over them.

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