SEARCH IE
Search
IE ARCHIVE
Search by Date
INSIDE IE
Home
Front Page RSS 2.0
Analysis
Edits
Columns
Sport
National Network
International
Business
All Headlines
Letters to the Editor
Crosswords
SERVICES
Register & Win a Car
Matrimonials
NRIs! Get 100% service 0% cost! New
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Express Formula One
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CITY NEWS
Cities Home
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Chandigarh
Delhi
Kolkata
Lucknow
Ludhiana
Mumbai
Pune
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Expressindia
The Financial Express
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Kashmir Live
Latest News
Express Cricket
Loksatta
Lokprabha
Express Computer
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Home > Columns

CHEQUES & BALANCES

Investor protection: Irani panel lacks focus

SUCHETA DALAL

FEEDBACK EMAIL PRINT

Posted online: Monday, June 13, 2005 at 0009 hours IST

An interesting feature of the J.J. Irani Committee's recommendations on revamping the Companies Act is its detailed focus on investors and investor protection. Chapter VII, which deals with investor protection says, "The Committee noted that the growth in the numbers of investors in India was encouraging."

Unfortunately, statistics tell a different story. India's investor population has remained embarrassingly stagnant at two crore for over a decade and there is a good chance that this number itself has been exaggerated. All that has happened in the current Bull Run is that a few lakh passive investors have opened depository accounts and re-entered the market.

It is of course encouraging that the Irani Committee recognised the imperative of rebuilding investor confidence through better investor protection. It has talked about the need for class action suits, for investors to be allowed to approach consumer courts and for the Investor Ombudsman, proposed by the Securities and Exchange Board of India (Sebi) to be 'strengthened'. All these recommendations, including deposit insurance are well meaning, if a little airy (insurance companies find deposit insurance unfeasible).

However, what it says about the Investor Education and Protection Fund (IEPF) seems to be entirely dictated by the Ministry of Company Affairs (MCA). Five years ago, the IEPF was created (under Section 205 C) by asking companies to credit unclaimed dividends and matured deposits that were lying unclaimed with them for over seven years. This was investors' money and it was to be used for investor protection by putting it in a separate corpus and administering it through a committee, headed by the MCA Secretary.

Unfortunately, as always, the government decreed that the money be credited to the Consolidated Fund of India (CFI) and the IEPF could only draw as much as it could hope to spend in a given year on investor programmes. The first two years of the Fund were spent evolving a mechanism for collecting the money from companies, fighting the finance ministry's attempt to 'expropriate' the money (the Irani Committee's expression) and writing rules for administration and utilisation.

The committee says transferring money to the CFI "constitutes a cumbersome mechanism" and wants the "expropriated amounts to be credited back to the IEPF in their entirety through a direct transfer of unclaimed amounts directly to a separate statutory fund under the control, supervision and management of an

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Administrator, without routing it through Consolidated Fund of India (CFI)''.

It also wants the government to ''augment the corpus of the fund through grants which may be properly deployed and managed" and ''returns from such a Fund should be available to be utilised for a comprehensive programme of education of small investors.''

This view seems to have been dictated by the MCA. The Committee has obviously made no assessment of the IEPF's working or its constraints; and it either does not know or has ignored the fact that the Joint Parliamentary Committee (JPC) has asked for the Fund to be transferred to the administration of Sebi.

Secondly, companies have already transferred a whopping sum of over Rs 325 crore that has been 'expropriated' by the CFI. It hardly needs further augmentation.

In fact, the IEPF struggles to spend even Rs 2 crore per year that it claims from the CFI for its investor protection activities. The main reason why IEPF has done so little in five years is the restrictions and limited interest of MCA officials; this has stifled any meaningful attempt at building new investor protection groups, conducting research (there is one study by Dr L.C. Gupta, which has not been released to the public for two months) or creating information tools (apart from the successful watchoutinvestors.com).

On the other hand, almost every industry association and professional bodies representing Chartered Accountants and Company Secretaries are constantly lobbying for a slice of these funds. Ironically enough, investors usually need to be educated and protected from the machinations of these very groups who are active collaborators in all corporate shenanigans.

Yet, there have been at least two attempts by the MCA to co-opt these professional bodies as permanent invitees to the IEPF meetings and it is very keen to fund their 'investor protection' activities, despite the opposition and misgivings of independent members of the IEPF.

IEPF provides representation to Sebi, RBI, the Ministry of Finance and the Company Law Board (CLB) and has five independent members appointed by the government. Of these, ironically, there has been no meaningful participation by RBI and Sebi.

Under Chairman G.N. Bajpai, Sebi frequently made demands for large sums of money to fund advertisements, the office of the ombudsman or for holding national conventions. These requests have always been turned down, because Sebi is not only duty bound to conduct these activities on its own, but it can always seek assistance from major stock exchanges, who also have a large corpus of funds for investor protection, that is carved out of listing fees.

As for the independent members, the attendance records of IEPF meetings would show their level of interest. Instead of studying these issues, the Irani committee apparently spent time debating and discussing how the IEPF should spend its money. Having done that, it hasn't come up with a single suggestion that has not already been discussed by the IEPF and it hasn't bothered to find out why the committee has made no progress either.

As a member of the IEPF since its inception, I have been connected with the Fund longer than anyone in the MCA; and at the cost of upsetting the officials there, a lot more ought to have been done to cut the red-tape, interact with investor groups and use the money more effectively. But problems and solutions like these have bypassed the Irani Committee.

Investor associations spend a lot of time demanding better regulation and supervision, even while they survive on government grants. Yet, such associations, along with educational institutions, are best placed to handle investor education and training programmes. It would be a cruel joke to hand over investors' money to self-serving industry associations and professional bodies to conduct investor education activities.

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Unfortunately, IEPF has never managed to surface from the myriad constraints imposed by government regulation. Clearly, the scope and structure of the IEPF as well its operational limitations need serious examination. But the Irani Committee has clearly missed an excellent opportunity to do so.

suchetadalal@yahoo.com

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