

# LKS | In Focus

FARM TO FOOD: KEY TRENDS AND REGULATORY OUTLOOK IN AGRITECH

POLICY

## 7. Food business: Regulatory regime in India



**POLICY**

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# Food business: Regulatory regime in India

**Kunal Kishore**

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In recent years, food processing is seen as a sunrise sector in India. With a view to enhance private investment in the food processing sector, the Ministry of Food Processing Industries has been implementing several schemes for creation of infrastructure, expansion of processing capacity, and other supporting measures for healthy growth of the food processing industry. It is expected to leverage approximately US\$ 4 billion.<sup>1</sup> Currently, 100% FDI is allowed through the automatic route in the food processing sector. The regulatory regime has also been strengthened to improve its governance. Through this article the author seeks to explain the developments undertaken for strengthening the regulatory regime for the food sector in India and how an investor should approach the regulatory aspects of the food business in India.

## **Background of the development of food safety law in India**

Over the last few years, there have been significant changes in the national regulatory framework governing food standards and food safety. The enactment of Food Safety and Standards Act, 2006 (FSS Act) can be said to be the starting point of these changes. Prior to enactment of the FSS Act, food was regulated through Prevention of Food Adulteration Act, 1954 and various other orders issued by the Government. The FSS Act was enacted to consolidate the laws related to food and to regulate various aspects of food business. The FSS Act established the Food Safety and Standards Authority of India (FSSAI) for regulating the manufacture, storage, import, sale etc. of food articles. The FSS Act enabled the formation of the Central Advisory Committee, Scientific Committee and Scientific Panel for developing science-based standards. It definitely was a big step forward for ensuring safe and wholesome food for human consumption. However, the momentum that was built on the introduction of the FSS Act was somewhat derailed when the regulations were brought in. Primarily it was because the regulations were brought in after lapse of more than five years and even then, those were not up to the mark as they were not in sync with changed times. The new regulations were more of an eye-wash and that was reflected when the 'Nestle-Maggi' dispute erupted.

## **Development - post the 'Nestle-Maggi' dispute**

Though the 'Nestle-Maggi' dispute mostly revolved around credibility of the test reports and labelling violations, it ended up highlighting various other issues related to regulation of food in India. Post the 'Nestle-Maggi' dispute, the Government took note of the existing lacunae in law and the handling of the whole situation. The Government made necessary re-assessments in order to bring the momentum back on the right track. Thereafter,

the process of rebuilding started and since then the FSSAI has been moving in the right direction. Now, regulations covering almost all aspects of the food trade are in place. Standards of most of the products and additives are at par with international standards. Regulations have also been brought to grant prior approval to non-specified food and food ingredients. Separate regulations on advertising and claims provide a more structured way to permit substantiated claims on food products. Third party auditing systems have been developed to make a gradual shift from reliance on regulatory inspection to self-compliance by food businesses themselves. Moreover, the FSSAI has also put regulations in place for organic food labelling and certification. The FSSAI is a lot more proactive in taking care of the concerns of the industry. For example, it has upgraded its online Food Licensing and Registration System (FLRS) to a harmonised and more user-friendly Food Safety Compliance System (FoSCoS). FoSCoS will not be limited to licensing and registration only. It is being developed as a pan-India umbrella IT platform for all food safety regulatory needs including online annual return platform, food import clearing system and audit management system.

### **Work-in-progress**

Inconsistencies exist in various parts of the FSS Act and the regulations made thereunder. The inconsistencies exist probably because regulations were brought about in several phases and different sets of people worked in those different phases. Inconsistency can be seen sometimes in the stand taken by the FSSAI as well. For example, the FSSAI has changed its stand on registration/licensing of exporters and e-commerce portals without there being any change in the law. Another way to look at it is that the FSSAI is demonstrating flexibility in its stand provided convincing representations are made before it.

Challenges can be seen in implementation of laws which lie with the State food authorities - India is a union of States wherein there are 28 States and eight Union territories. The State food authorities are still not very well trained in the changed laws and regulations which at times leads to unnecessary inconvenience to food businesses. So, it is important to understand their shortcomings and handle the situation accordingly. Upgradation of state level laboratories is still a work in progress and may take some more time.

In addition, many amendments under the FSS Act and the regulations have been suggested which are pending before the Parliament for approval. Once these amendments come into force, the regulatory regime is expected to be a lot smoother.

### **Key considerations**

In the abovementioned background one can notice that in recent times the regulatory regime related to food business has vastly improved and it augurs well for investment in this sector. However, there are various important points that should be kept in mind by the investors.

*Points to be kept in mind by foreign investors:*

- Understand the regulatory regime which varies/deviates from that of other countries

due to India's unique federal structure.

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- Carry out due diligence regarding the following:

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    - » Status of the product to be manufactured or imported - standards are not fully aligned with Codex standards.
    - » Status of the new/innovative processes applied in the manufacturing of the product - many new generation products processes have not been specifically recognised.
    - » Packaging and labelling requirements which are yet to be fully aligned with Codex or any other recognised regulatory regime.
    - » Status/capability of compliance by the Indian counterpart.
  - Awareness about regulatory vacuums and their implications.
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*Points to be taken into consideration for Indian businesses:*

- Background check of product developed outside the country - liability will be of the importer/manufacturer and the person dealing with the product.
  - Must have copies of all the supporting documents to establish safety and eligibility of the product in India.
  - Determining the regulatory status of the product supplied.
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## Conclusion

India has come a long way in strengthening its regulatory regime related to the food business. In coming times, it is expected to be a lot better as efforts are being put in the right direction. This makes India a preferred destination for investment in the food sector. At the same time, it can also not be denied that inconsistencies certainly exist under the regulations due to the reasons explained above. There are issues which are open-ended as on date and there may not be a straight forward answer. Hence, it is advisable for investors in the food business to carry out the necessary due-diligence before investing in the sector. |

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## ENDNOTE

1 Ministry of Food Processing Industries, Government of India, *Annual Report 2019-20* (Delhi, 2020), [https://mofpinic.in/sites/default/files/english\\_2019-20\\_1.pdf](https://mofpinic.in/sites/default/files/english_2019-20_1.pdf).

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