

# Easing business

The new arbitration norms will help

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**T**he recent Cabinet decision to amend the Arbitration and Conciliation Act 1996 is one of the boldest reform measures; it will go a long way in facilitating the ease of doing business in India.

One of the key factors impacting India's low ranking in the World Bank's report on Ease of Doing Business is to do with legal structures and the arbitration process.

India's judicial system takes an average of 1,420 days to resolve a commercial dispute. On the other hand, countries with a high ranking take only 4 to 6 months.

The proposal to bring in a new Bill seeks to address this issue by introducing fixed time-lines for resolution of arbitration cases. The imposition of a 12-month cap to settle disputes, extendable by a maximum of six months, will immediately reduce the long list of pending cases in the courts.

Simultaneously, the government is planning to increase the number of courts with commercial courts being set up separately to look at dispute resolution. These measures will come as a major boost to industry and will help India improve its position in the ranking order.

## Dispute settlements

This decision comes at a time when several projects across crucial infrastructure sectors are stuck midway with unsettled claims running into thousands. The twin approach of introducing caps on the time-line and the fee for arbitrators will ensure speedy settlement of disputes and will also act as a deterrent to prolonging cases.

Early dispute resolution will help cash flows of companies, thus helping them to ensure timely payment to banks, undertake new projects, and avoid projects turning into NPAs.

The new norms will provide for faster dispute resolution by put-

ting a cap on time limit of 1 year, extendable by six months on consent of the parties. This process currently takes approximately 6-8 years.

Amendment of section 34 will restrict the conditions to challenge the arbitral award under

Public policy guidelines and amendment to section 36 will ensure that mere filing of application for challenging the arbitration will not be enough to stay the execution of the award.

The cap on fee of the arbitrators proposed in the new norms will save the companies from paying huge amounts as fees for arbitration; earlier the arbitrators were paid based on number of sittings which encouraged them to prolong the settlement process impacting both time and cost.

## Empowering the tribunal

The amendment to the Arbitration Act will empower the arbitral tribunals further and enable them to grant all kinds of enforceable interim measures; currently only the courts have the power to do this. Moreover, this will prevent obvious cases to be appealed further.

Some additional amendments that will further streamline ease of doing business could possibly include: provision of a fast track mechanism subject to mutual consent; any further legal challenge to be made only after arbitration award is paid/deposited in court; removal of pre-defined nominations of potential members.

While the effect of the amendment may be seen only two or three years after of enactment, this reform would certainly enable India to attract foreign investments and help revive sectors crucial for rebooting India's growth story. Going forward, India can aim to be a global centre for arbitration like Singapore, Dubai and London.

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