

## World Bank Report on Doing Business-2017: Enforcing Contracts

The World Bank has been publishing its 'Doing Business Reports' every year since 2002. The Report seeks to measure regulations that enhance business activity and those that constrain it. In the 2017 Report of the World Bank, published in October 2016, India's overall rank has improved marginally from 131 in 2016 to 130 in 2017. The economies have been ranked on 10 broad measurable performance indicators such as time taken to start a business, time taken to get construction permits, paying taxes and enforcement of contracts.

Brunei Darussalam, Kazakhstan, Kenya, Belarus, Indonesia, Serbia, Georgia, Pakistan and the United Arab Emirates, and Bahrain were the most improved economies in 2015/16 in areas tracked by *Doing Business*.

The following table depicts the change in India's ranking across the different indicators specified in the Report:

Topic	DB 2017 Rank	DB 2016 Rank (revised)	Change in Rank
Overall	130	131	1
Starting a Business	155	151	-4
Construction Permits	185	184	-1
Getting Electricity	26	51	25
Registering Property	138	140	2
Getting Credit	44	42	-2
Protecting Minority Investors	13	10	-3
Paying Taxes	172	172	0
Trading across Borders	143	144	1
<b>Enforcing Contracts</b>	<b>172</b>	<b>178</b>	<b>6</b>
Resolving Insolvency	136	135	-1

- As can be seen from the table, the biggest improvement in the ranking has been in the 'Getting Electricity' indicator; there has been a 25 points change in the rank, from 51 in 2016 to 26 in 2017.
- There has been improvement in the 'Enforcing Contracts' indicator; i.e. the ranking has improved by 6 points, from 178 in 2016 to 172 in 2017. However, as is evident there is still considerable scope for improvement in the ranking.
- The other two main indicators where there is major scope for improvement is 'paying taxes' and 'construction permits'.

### Enforcing Contract indicator

As per the World Bank, the enforcing contracts indicator measures the time and cost for resolving a commercial dispute through a local first-instance court (competent court), and the quality of judicial processes index, evaluating whether the country has adopted a series of good practices that promote quality and efficiency in the court system. The Report highlights some of the major reforms initiated by different countries to make enforcement of contracts easier and more feasible. Some of the reforms mentioned in the Report are:

- Low-income and middle-income economies, predominantly in Sub-Saharan Africa and East Asia, focused their reform efforts on strengthening judicial infrastructures. Côte

d'Ivoire and Indonesia, for example, introduced dedicated simplified procedures for the resolution of small claims.

- Brunei Darussalam, Hungary, Norway and Spain introduced an electronic system to file initial complaints with the competent court.
- Rwanda implemented the Integrated Electronic Case Management System, a web-based application that integrates five main institutions of the justice sector throughout the courts. Among other features, the system allows for an automatic registration of lawsuits, electronic organization and scheduling of cases and automated claims processing.
- Many economies have concentrated their reform efforts on making complex revisions of their civil procedure laws. Nearly a third of reforms in 2015/16 entailed approvals of entirely new codes of civil procedures. Bolivia, Brazil, Ecuador, Kazakhstan, Niger and the Syrian Arab Republic are among the economies that implemented such reforms.

To assess the enforcement of contract indicator, the World Bank circulated a questionnaire on the basis of a standardised case study. As per the said case study, a seller delivers custom-made goods (the value of the goods is Rs. 3,06,959) to a buyer who refuses delivery, alleging that the goods are of inadequate quality. To enforce the sales agreement, the seller files a claim with a local court, which hears arguments on the merits of the case and the court decides in favour of the seller, and orders the buyer to pay the contract price. For the purpose of the questionnaire, the competent court means the court in Delhi and Mumbai with jurisdiction over commercial disputes similar to the one described in the case study. The questionnaire was circulated to a large number of stakeholders to elicit their views on the different questions primarily relating to the quality of judicial processes.

The quality of judicial processes index covers a set of good practices across four areas, corresponding to the four components of the index: court structure and proceedings, case management, court automation and alternative dispute resolution. The index ranges from 0 to 18, with higher values indicating better and more efficient judicial processes. In the 2016 Report, India's Quality of Judicial Process had an overall score of 7.5 out of 18. In the 2017 Report, the score has improved to 9 out of 18. The following table provides the points assigned to the competent court in Delhi and Mumbai for each of the four components of the Quality of Judicial Process.

<b>Quality of Judicial Process (0-18)</b>	<b>Existing (Delhi and Mumbai) (9/18)</b>	<b>Proposed</b>
Court structure and proceedings (0-5) <sup>1</sup>	4.5	4.5
Case Management (0-6)	0.5	6
Court automation (0-4)	2	4
Alternative Dispute Resolution (0-3)	2	3

- As can be seen from the above table, the case management process has scored the least number of points.
- The increase in the points from 7.5 to 9 has primarily been due to the improved scoring in the court structure and proceedings index. Points have been given for the enactment

<sup>1</sup> The court structure and proceedings index includes the following indicators (a) Is there a court of division of a court dedicated solely to hearing commercial cases; (b) Is there a small claims court or a fast track procedure for small claims and whether self-representation is allowed; (c) whether pretrial attachment is available; (d) whether new cases are randomly assigned to judges.

of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 and for the amendment to the Arbitration and Conciliation Act, 1996.

A detailed breakup of the different indices is provided in **Annexure A**.

## **World Bank Observations and Present Status**

### **A. Competent Court and Case Management**

The case study provided by the World Bank was for an amount of Rs. 3,06,959 which would fall within the jurisdiction of the Delhi/Mumbai District Court and not the respective High Courts. Therefore, the measures introduced to streamline commercial disputes under the Commercial Courts Act has had no impact on the indicator's data.

As Delhi and Mumbai High Courts have original jurisdiction, commercial courts have not been established at the district level, rather commercial divisions of the High Courts have been established. In this regard, the High Courts of Delhi and Mumbai are being consulted and inputs from the Department of Legal Affairs has been sought. In this regard, the task force may consider and deliberate upon the following legislative measures.

#### **(a) Amendments to the Code of Civil Procedure, 1908**

- The Commercial Courts Act has by virtue of Section 16 read with Schedule 1 of the Act made amendments to the CPC for the purpose of proceeding with cases falling within the jurisdiction of the Act. These amendments make substantial changes to the CPC such as imposition of costs, disclosure and inspection norms, case management hearing, summary judgement and other provisions for time bound disposal of commercial cases.
- The CPC may be amended to extend the amendments specified in Schedule 1 of the Commercial Courts Act, to the extent necessary and feasible to all civil/commercial litigation in the country irrespective of the value of the dispute. This was also recommended by the Law Commission in its 253th Report on '**Commercial Division and Commercial Appellate Division of High Courts and Commercial Courts Bill, 2015**'

#### **(b) Amendment to the High Court Rules/Power of the High Court to notify commercial courts at district level for cases below Rs 1 crore**

- Section 122 of the CPC empowers the High Courts to frame rules for civil courts. The High Court may designate/notify certain district courts as commercial courts for the purpose of disposal of commercial cases below the value of Rs. 1 crore.
- The High Court may in this regard frame rules of procedure for adjudication of such commercial cases by the district court. The Department Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice in its 78<sup>th</sup> Report had recommended the High Courts should be responsible for laying down its own procedures of case and cost management.

#### **(c) Amendment to the Commercial Court Act to revise the specified value**

- Currently, the Commercial Court Act is only applicable to cases amounting to Rs. 1 crore and above. The Act may be amended to revise the amount of specified value.

## **B. ADR Mechanism**

The Enforcing Contract indicator looks at voluntary mediation/conciliation, i.e. in which the parties have an active role and voluntarily decide to initiate mediation. Mandatory mediation as covered Section 89 is not covered by the ADR sub-index of the quality of judicial processes index. Section 89 CPC deals with court referred ADR and the parties have a passive role rather than the active role.

In this regard, the task force may consider whether a standalone law on mediation to give statutory backing to voluntary mediation is required.

### **Case Management and court automation**

The World Bank only acknowledges the availability of reports/publications when it can be generated specifically for each court. These reports pertain to (a) age of pending cases report; (b) clearance rate report; (c) time to disposition of a case; and (d) single case progress report. Out of these 4 reports, two reports namely, the age of pending cases report and the single case progress report are available for each court.

The World Bank also observed that though there is a law specifying the maximum number of adjournments that can be granted, the law/rule is respected in less than 50% of the cases. Further, the adjournments are not limited to unforeseen and exceptional circumstances. In this regard, advisory have been issued to the Chief Justices of all High Courts to seek strict enforcement of Order XVII Rule 1 of CPC (which limits the number of adjournments to 3).

The World Bank further observed that there is no electronic case management system for lawyers and judges in the competent court (i.e. the Delhi/Mumbai District Court) and that there is no provision for pre-trial conference. In addition, as the complaints cannot be filed electronically before the competent court and the documents cannot be served electronically, we were not given any points on that front.

As can be seen a majority of the reforms pertain to electronic case management and therefore, successful implementation of these measures will help in improving our rankings.

### **Conclusion**

The Department of Justice has been appointed as the nodal department for the 'Enforcing Contract' parameter. The DoJ is expected to ensure that all necessary reforms are undertaken to ensure that India's ranking in this parameter comes within the top 50 by next year.

## Annexure A

The details of the Quality of Judicial Processes on the four indices are provided below:

### A. Case Management

	Case Management (0-6)	Answer (Mumbai)	Score (Mumbai)	Answer (Delhi)	Score (Delhi)
	Case Management (overall score)		0.5		0.5
1	Time Standards	Yes	0.5	Yes	0.5
1.a	Are there laws setting overall time standards for key court events in a civil case	Yes	-	Yes	-
1.b.	If yes, are the time standards set for at least 3 court events	Yes	-	Yes	-
1.c.	Are these time standards respected in more than 50% of cases	No	-	No	-
2	Adjournments		0		0
2.a.	Does the law regulate the maximum number that can be granted	Yes	-	Yes	-
2.b.	Are adjournments limited to unforeseen and exceptional circumstances	No	-	No	-
2.c.	Are the rules on adjournments respected in more than 50% of cases	No	-	No	-
3	Can 2 of the 4 reports be generated about the competent court: (i) time to disposition report; (ii) clearance rate report; (iii) age of pending cases report; and (iv) single case progress report)	No	-	No	-
4	Is a pretrial conference among the case management techniques used before the competent court	No	0	No	0
5	Are there any electronic case management tools in place within competent court for use by the judges and lawyers	No	0	No	0

### B. Court Automation

	Court Automation (0-4)	Answer (Mumbai)	Score (Mumbai)	Answer (Delhi)	Score (Delhi)
	Court Automation (overall score)		2		2
1	Can the initial complaint be filed electronically through a dedicated platform within the competent	No	0	No	0

	court				
2	Is it possible to carry out service of process electronically for claims filed before the competent court	No	0	No	0
3	Can court fees be paid electronically within the competent court	Yes	1	Yes	1
4	Publication of judgements	Yes	1	Yes	1
4.a.	Are judgements rendered in commercial cases at all levels made available to the general level	Yes	-	Yes	-

### C. Alternative Dispute Resolution

	Alternative Dispute Resolution (0-3)	Answer (Mumbai)	Score (Mumbai)	Answer (Delhi)	Score (Delhi)
	Alternative Dispute Resolution (overall score)		2		2
1	Arbitration		1		1
1.a.	Is domestic commercial arbitration governed by a consolidated law or consolidated chapter	Yes	-	Yes	-
1.b.	Are there any commercial disputes-aside from those that deal with public order or public policy that cannot be submitted to arbitration?	Yes	-	Yes	
1.c.	Are valid arbitration clauses or agreements usually enforced by the courts	Yes	-	Yes	-
2	Mediation/Conciliation		1		1
2.a.	Is voluntary mediation or conciliation available?	Yes	-	Yes	-
2.b.	Are mediation, conciliation or both governed by a consolidated law or consolidated chapter	Yes	-	Yes	-
2.c.	Are there financial incentives for parties to attempt mediation or conciliation	No	-	No	-