



case in point



cyril amarchand mangaldas
ahead of the curve

Special Edition | August 04 2021

The Enforcing Contracts Portal: its impact on the Ease of Doing Business

The World Bank, as part of its *Doing Business* project, publishes the ease of doing business scores and rankings each year. The ease of doing business rankings provide objective measures of business regulations, reforms and their enforcement across 190 economies.¹ Each economy's performance is measured on 10 *Doing Business* topics – starting a business, dealing with construction permits, getting electricity, registering property, getting credit, protecting minority investors, paying taxes, trading across borders, enforcing contracts and resolving insolvency.²

Since its launch in 2003, the World Bank's annual report on ease of doing business has received widespread coverage. By comparing and ranking economies over a range of business regulation parameters, the ease of doing business rankings encourage economies to compete towards more efficient regulation, offer a measurable benchmark for reform and provide an objective basis for understanding and improving the regulatory environment for business around the world.³ Apart from its utility to governments and researchers, the rankings also provide useful guidance to investors and private sector organisations in understanding

different business climates and identifying suitable economies for investment.

National governments view improvement in ease of doing business rankings as a sign of economic progress and a catalyst for foreign investment. India's case is no different. Since 2014, in its bid to become a global manufacturing hub, Prime Minister Narendra Modi too has placed great emphasis on improving its ease of doing business rankings and introduced various reforms.

In the latest move, on June 28, 2021, the Department of Justice, Ministry of Law and Justice, has launched a one of a kind "Enforcing Contracts Portal" to improve India's position in the 'enforcing contracts' category under the ease of doing business index. The portal can be accessed at <https://doj.gov.in/eodb/index.html>.

We look at some of the key reforms introduced by the Indian government over the past few years and particularly discuss the recent launch of the "Enforcing Contracts Portal" and its significance in improving India's score on the ease of doing business rankings.

¹ <https://www.doingbusiness.org/en/about-us>

² <https://www.doingbusiness.org/en/methodology>

³ <https://www.doingbusiness.org/en/about-us>

India's remarkable rise in the ease of doing business rankings – key reforms

In its 2014 election manifesto, the Bhartiya Janata Party had promised to create a conducive, enabling environment, which would make “doing business” in India easy. Since then, the government has introduced various reforms to improve India’s score on the ease of doing business rankings, as a result of which, India made significant improvement in the World Bank rankings. Over the past six years, India has gained 79 places in the ease of doing business rankings and moved from 142nd in 2014 to 63rd in 2020.⁴ For the past three years, India has also been among the top 10 improvers in the world in ease of doing business. Some of India’s significant reforms have pushed it up this ladder.

Starting a business has become easier, cheaper and quicker. Over the past few years, India has considerably reduced registration fees for new businesses, eliminated minimum capital requirement for private companies, removed the need to obtain a business commencement certificate, integrated multiple application forms into a general incorporation form, improved the online application system and abolished registration fees for new companies with authorised capital up to INR 1.5 million.⁵

The introduction of the Commercial Courts Act, 2015 marked the establishment of dedicated commercial courts for speedy and time bound resolution of commercial disputes having a minimum value of INR 0.3 million or above by judges experienced in dealing with commercial matters. It also encourages and provides for parties to attempt mediation before instituting a case.⁶ The Commercial Courts Act is a step in the right direction, which could pave the way for workable, meaningful changes in the Indian judicial system.

The Insolvency and Bankruptcy Code, 2016, enacted to simplify, consolidate and amend laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner was a major overhaul of the earlier regime. As a result, India’s ranking in terms of resolving insolvency jumped 56 places from 108 in



2018 to 52 in 2019 and it is now the best performer in South Asia on this count - the overall recovery rate for creditors has increased from 26.5% to 71.6% and the time taken for resolving insolvency has reduced from 4.3 to 1.6 years.⁷

The development of Gujarat International Finance Tec-City (“**GIFT City**”), India’s first smart city and international financial services centre (“**IFSC**”), is set to provide further impetus to India’s ambition of becoming a global financial services centre and attracting foreign investment. Set in a Special Economic Zone, investors can invest in businesses located within the IFSC without having to comply with India’s foreign exchange regime.⁸ The International Financial Services Centres Authority will act as a single window of clearance for regulating activities within the IFSC. To boost investor confidence and attract foreign investment, GIFT City also offers a host of other regulatory and tax incentives to investors.

Other reforms such as amendments to arbitration laws, replacement of value added tax with GST (Goods and Services Tax), creation of National Judicial Data Grid, setting up of Customs Electronic Commerce Interchange Gateway portal for simplifying import and export procedures and online system to streamline the process of obtaining building permits, have also contributed to India’s climb in the ease of doing business rankings.

⁴ World Bank’s Doing Business Report for 2020, available at <https://openknowledge.worldbank.org/bitstream/handle/10986/32436/9781464814402.pdf>

⁵ Business Reforms in India, available at <https://www.doingbusiness.org/en/reforms/overview/economy/india> Major Reforms & Initiatives, Starting a Business, available at <https://www.mca.gov.in/MinistryV2/easeofdoingbusiness.html>

⁶ Section 12A, Commercial Courts Act, 2015

⁷ Moving up in ‘ease of resolving insolvency’ - <https://www.ibbi.gov.in/uploads/whatsnew/faf3af70524e6c7ccf0b6762ab70216c.pdf>

⁸ GIFT City – New incentives to set up AIFs in India’s first International Financial-Tec City, available at <https://www.nishithdesai.com/information/news-storage/news-details/article/gift-city-new-incentives-to-set-up-aifs-in-indias-first-international-financial-centre.html>

Enforcing Contracts Portal – An Overview⁹



Source: <https://pib.gov.in/PressReleasePage.aspx?PRID=1731090>

India achieved its best-ever overall ranking of 63rd position in the 2020 ease of doing business rankings. It has however struggled to improve its performance in “contract enforcement”, being ranked 163rd out of 190 countries, and lagging behind other developed economies on this parameter.¹⁰

In a renewed effort to improve India’s performance in the “contract enforcement” category in the ease of doing business index, the Department of Justice, Ministry of Law and Justice, which is the nodal department for monitoring policy reforms to strengthen the contract enforcement regime, has recently launched a one of a kind “Enforcing Contracts Portal”. The new portal is designed as a one-stop-shop for all information pertaining to legislative and policy reforms being undertaken on the enforcing contracts parameter¹¹. It aims to provide the much-needed transparency in this aspect. The portal hosts a vast multitude of information regarding relevant commercial laws, functioning of commercial courts, disposal of commercial disputes, reforms implemented to ease contract enforcement, monitoring mechanism for assessing the progress.

Some of the key highlights of the Enforcing Contracts Portal are:

▮ **Information on Commercial Courts:** The portal sets out information regarding the commercial courts set up in New Delhi, Mumbai, Kolkata

and Bengaluru and navigation directions for accessing the websites of these courts. It explains the eSeva Kendras set up by commercial courts at Mumbai and New Delhi to facilitate e-filing, and online purchase of stamp papers. The eSeva Kendras will also answer litigants’ queries about their case status, next date of hearing and provide information about other aspects of court proceedings.

▮ **Implementation of Reforms:** This section contains details of various reforms implemented for easing contract enforcement. These reforms pertain to reducing the time taken for trial and judgment, cost reduction, automatic and random allocation of cases to promote transparency and a credible method of case assignment, adoption of case management tools, conducting case management hearings, promoting mediation as a viable method of dispute resolution and making e-filing and e-summons the norm. Details of committees set up to simplify processes and promote e-filing are also provided.

The portal contains guidance on enforcing the three-adjudgments rule while entertaining requests for adjournment of cases and publishes data on adjournments granted by various courts. Data regarding the dates on which case management hearings are conducted by various courts is also published, which would help monitor case progress.

⁹ The Enforcing Contracts Portal can be accessed at <https://doj.gov.in/eodb/index.html>

¹⁰ <https://www.doingbusiness.org/en/data/exploretopics/enforcing-contracts>

¹¹ Justice Department launches “Enforcing Contracts Portal”, available at <https://pib.gov.in/PressReleasePage.aspx?PRID=1731090>

Guidance is provided for e-filing of new cases and registration of advocates on the e-filing portal. Further, instruction manuals for effectively operating case management tools such as eCourt Services application for lawyers and JustIS application for judges are published. Finally, information regarding training sessions for judges and lawyers on topics such as e-filing, easing contract enforcement is also provided.

- ▮ **Reporting:** The portal publishes comprehensive monthly data for commercial courts at the main commercial centres of Mumbai, New Delhi and Kolkata, regarding filing of fresh cases, pending and disposed matters, cases submitted for mediation, payment of court fees, electronic service of summons, random allocation of cases and case management hearings held. Monthly reporting of days taken to dispose cases and execute decrees provided is also published. This data can help monitor the workload across courts and the relative progress of court proceedings.

Monthly Supreme Court e-committee newsletters are made available, which provide useful insight into the various ongoing initiatives across courts in India, pertaining to setting up of virtual courts, promoting use of technology in dispute resolution, easy dissemination of information, digitisation of old records, etc. The monthly newsletter released by the Department for Promotion of Industry and Internal Trade to update stakeholders about new initiatives and best practices adopted by various ministries and departments to improve ease of doing business is also published.

- ▮ **Monitoring Framework:** This section provides information on the task force on enforcement of contracts set up by the Department of Justice and Niti Aayog for monitoring and taking steps to improve the pace and quality of resolving commercial disputes across the country. Minutes of these task force meetings and other fortnightly review meetings are published to update stakeholders on the progress being made.

Significance of the Enforcing Contracts Portal in Improving India's Contract Enforcement Score

As noted above, 'enforcing contracts' is one of the 10 parameters used by the World Bank in arriving at a country's ease of doing business score. This

criteria measures the time and cost for resolving a commercial dispute through a local first-instance court and the quality of judicial processes index, evaluating whether each economy has adopted a series of good practices that promote quality and efficiency in the court system.¹²

It is hoped that the portal will build investor confidence and improve India's reputation as a contract enforcement jurisdiction by providing easy, transparent access to information regarding the Indian judicial system.

While it can be argued that the portal is simply a repository of data pertaining to various commercial courts and the initiatives in place for easing contract enforcement, the availability of such vast information will help track the progress and efficacy of reforms being implemented. Proper analysis and use of this data will also serve useful in identifying issues and areas of development for streamlining and improving the efficiency of the Indian judicial system. This will ultimately lead to reduction in time and costs associated with dispute resolution and attract further foreign investment.

The onset of the Covid-19 pandemic has accelerated the adoption and use of technology by courts for conducting proceedings. Amidst this, the launch of the Enforcing Contracts Portal, which encourages and aims to create awareness around e-filing, e-service of summons and case management tools, will provide further impetus for the adoption of these simplified processes, which are likely to become the norm going forward and help further improve the quality and efficiency of the Indian court system.

Ultimately, therefore, the easy access and availability of various pieces of information on the portal would inform stakeholders, including foreign investors, about the continuous progress being made by India towards easing its contract enforcement regime.

Conclusion

There are obvious benefits to the Enforcing Contracts Portal, which have been outlined here. This is a welcome step towards streamlining and improving the quality of judicial system in India. It is a useful starting point, but there is plenty of work to be done in terms of bringing about policy reforms and ensuring their effective implementation if India is to continue its upward rise in the ease of doing business rankings, particularly on the front of easing contract enforcement.

¹² Enforcing Contracts Methodology, available at <https://www.doingbusiness.org/en/methodology/enforcing-contracts>

Contributors:



Shaneen Parikh

Partner

(Head - International Arbitration)
shaneen.parikh@cyrilshroff.com



Purav Shah

Senior Associate

purav.shah@cyrilshroff.com

Disclaimer

This newsletter has been sent to you for informational purposes only and is intended merely to highlight issues. The information and/or observations contained in this newsletter do not constitute legal advice and should not be acted upon in any specific situation without appropriate legal advice.

The views expressed in this newsletter do not necessarily constitute the final opinion of Cyril Amarchand Mangaldas on the issues reported herein and should you have any queries in relation to any of the issues reported herein or on other areas of law, please feel free to contact at cam.publications@cyrilshroff.com.

This newsletter is provided free of charge to subscribers. If you or anybody you know would like to subscribe to Insight please send an e-mail to cam.publications@cyrilshroff.com, include the name, title, organization or company, e-mail address, postal address, telephone and fax numbers of the interested person.

If you are already a recipient of this service and would like to discontinue it or have any suggestions and comments on how we can make the newsletter more useful for your business, please email us at unsubscribe@cyrilshroff.com.

Cyril Amarchand Mangaldas
Advocates & Solicitors

100 years of legacy

750+ Lawyers

Over 150 Partners

Peninsula Chambers, Peninsula Corporate Park, GK Marg, Lower Parel, Mumbai 400 013, India
T +91 22 2496 4455 F +91 22 2496 3666 E cam.mumbai@cyrilshroff.com W www.cyrilshroff.com
Presence in Delhi-NCR | Bengaluru | Ahmedabad | Hyderabad | Chennai | GIFT City | Singapore