

SUBMISSION OF MEMORANDUM TO SUB-COMMITTEE ON EASE OF DOING BUSINESS OF DEPARTMENT-RELATED STANDING COMMITTEE ON COMMERCE, RAJYA SABHA

From : CUTS International, Jaipur
 To : The Hon’ble Chairman, Sub-Committee on Ease of Doing Business of Department Related Standing Committee on Commerce, Rajya Sabha
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 Sub : Ease of Doing Business

This memorandum is based on a recent working paper - ‘[Un]ease of Doing Business in India’ produced by CUTS International, accessible @ - <http://circ.in/pdf/Doing-Business-in-India.pdf>

Fixing the last few first

India is today contended with the urgent need to improve its business climate, both in perception and spirit. The bureaucratic overdrive to repair the situation is fuelled by the latest World Bank rankings on one hand and the urgent need to support the ambitious national slogan-‘Make in India’, on the other. Most of the entire business life cycle right from starting a business, running it and to exit is indeed bothered by inefficient and lengthy procedures, lack of information and weak accountability that make it cumbersome and expensive to conduct business in India. The World Bank report scores India as follows:

<i>India</i>	2014	2015
Doing Business Rank	140	142
Distance to Frontier	52.8	54.0

While the urgency shown by the current government to bring about necessary reforms to help businesses is promising, the success on ground will be contingent on how well these measures are conceived and implemented both at a National and State level. Much will also depend on the areas selected for interventions, for example- while India improved considerably on protecting minority investors (from rank 21 in 2014 to 7 in 2015), it did little to suggest an improvement in the overall business environment. *A possible approach could be to concentrate on the most distressing points, say all those that are ranked in the last quarter of all the countries ranked i.e. beyond 150, and map these across comparable economies, say BRICS.* As against targeting a particular rank for India, such an approach can help draw useful lessons and inform the policies on incremental reforms/steps taken by select countries overtime on the specific indicators. Within the overall country ranking for 2015 and 2014, the weakest or worst ranked indicators for India (ranked lower than 150) are:

Enforcing Contracts (186)

Within the total 189 countries ranked, India is hopelessly low at 186 and the worst among the BRICS. Drawing a broad comparative, it takes about three years and ten months to get a contract enforced in India as against one year and two months in China and less than a year (267 days) in

Russia. At the same time, the attorney costs in India is as high as about 31% of the claim; standing in stark contrast to about 8-10% in case of China and about 10-15% in case of Russia. In case of South Africa, the attorney cost is about 23%. Indian courts are clogged and government cases contribute to this hugely. Institutional arbitration is yet to emerge as a preferred means of dispute resolution among Indian companies.

Some relevant reforms undertaken by BRICS countries overtime:

1990-2000
<ul style="list-style-type: none"> • Russia - Conception of Judicial Reforms; Law on Jury Trial for all regional court cases; Donor intervention (Legal Reform Project) for legal reforms
2000-2010
<ul style="list-style-type: none"> • Brazil - Updated Civil Procedure Code • Russia - Principles of reciprocity for foreign judgments • China - Tightened rules on contract enforcement
2010-2014
<ul style="list-style-type: none"> • Brazil - Electronic filing at Sao Paulo District Court • Russia - Electronic case filing • China - Amended Civil Procedure Code to speed up court proceedings • South Africa - Amended monetary jurisdiction of lower courts

Source: doingbusiness.org; Legal Reform Project-World Bank Implementation Completion Report, 2006

India: Update and way forward

The Law Commission has recently submitted its 253rd report to the Ministry of Law and Justice, recommending a new law¹ to set up exclusive commercial courts and commercial divisions in the high courts across the country to ensure speedy disposal of high value commercial suits. The law commission has also suggested changes in the Civil Procedure Code, 1908. Recent amendments to the Arbitration and Conciliation Act recommend setting up fast track courts to speed up commercial dispute resolution. While most of the reforms currently being considered by the Govt. are in line with international experience, one of the most important interventions to do with electronic case filing has been inadequate and superficial. As against mechanically introducing few computers, what is required is comprehensive redesign of processes that can leverage latest technology to reduce manual effort and thereby cost and time. Technology should flow even to lower courts. In addition, all Central and State Government contracts should specify mandated arbitration institutions, which should be set up in each State. It is also important to enhance system capacity and build accountability - the National Mission on Justice Delivery and Legal Reforms needs to be accelerated.

Dealing with Construction Permits (184)

In India, complying with building regulations to obtain construction permits is excessively costly, complicated and time-consuming. India here also ranks very close to the bottom at 184. Quite notably though, China, Brazil and Russia don't seem to be doing too well here either; number of days it takes for construction permits in these three countries is even higher than India. But getting construction permits in India is far too costly @28% of the construction value as against an average of less than 3% for the rest.

Some relevant reforms undertaken by BRICS countries overtime:

¹ The Commercial Division and Commercial Appellate Division of High Courts and Commercial Courts Bill, 2015

2008-10
<ul style="list-style-type: none"> • Russia – Increased the cost for permits but brought laws to cut down on procedures and time • China – Reduced delays by electronic processing of applications, and online safety certificates for builders
2010-12
<ul style="list-style-type: none"> • Russia - Single window for all procedures related to land use
2012-14
<ul style="list-style-type: none"> • Russia - Eliminated many pre-construction approvals, streamlined project approvals and reduced time to register a new building • China – Centralised pre-construction approvals

Source: doingbusiness.org

India: Update and way forward

Any improvement should be on bringing about linearity in processes, with enhanced inter-departmental coordination, predictability and transparency; speed will be critical. India has recently established strict time limits for preconstruction approvals at the municipal level. Certain States have also experimented with single window solution with mixed results, but this needs to be encouraged. As experience above shows, there is a need to reduce number of approvals, club processes and facilitate concurrent application processing rather than sequential. Also construction risk grading parameters need to be formulated - low-risk structures should ideally need less documentation and approved much faster. It is also time to significantly invest in capacity building and training of personnel, particularly at municipal levels.

Starting a Business (158)

Starting a business in India is beset with multitude of procedures that are often extremely time consuming involving different agencies and offices such as the Ministry of Corporate Affairs, Income Tax Department, Employees Provident Fund Organisation among others. The Doing Business report ranks the indicator at a discouraging 158 primarily for the high cost and paid-in minimum capital requirement in India. India has recently withdrawn the minimum paid-up capital requirements for public and private companies.

Some relevant reforms undertaken by BRCS countries overtime:

2008-10
<ul style="list-style-type: none"> • Brazil – Getting operating permit made easier by eliminating need for fire brigade license and inspection • Russia – Increased the cost for permits but brought laws to cut down on procedures and time • China – Reduced delays by electronic processing of applications, and online safety certificates for builders • South Africa - Simplified procedures and eliminated the need for hiring a lawyer,
2010-12
<ul style="list-style-type: none"> • Brazil – electronic synchronization between federal and state authorities • South Africa – new company law that simplified incorporation documents
2012-14
<ul style="list-style-type: none"> • Russia – reduced legal formalities for opening a company bank account, eliminated the

requirement to deposit charter capital before registration

- China – eliminated minimum capital requirement

Source: doingbusiness.org

India: Update and way forward

Fortunately, this aspect is expected to show considerable progress by next year or so given the govt's understandable priority to work on this first step in doing business. India has made some improvements in the past to ease business start-ups and reduce administrative burden - establishing an online VAT registration system and replacing the physical stamp previously required with an online version, abolishing the fringe benefit tax and improving electronic payment. The Government is now taking a big leap and planning to facilitate about 200 permits online. The minimum capital requirements, which were as high as 111.2% of the income per capita, have been eliminated. Requirement of having a common seal of the company upon incorporation has also been made non-mandatory. Along with this, a domestic good practice introduced by some states in using a combined application form that is accepted by all departments can be institutionalized at the national level.

Paying Taxes (156)

Tax regime in India has so far followed what is internationally termed as 'adversarial approach' even as the world is moving towards a 'collaborative' or 'co-operative' approach. According to a recent report submitted by the Tax Administration Reform Commission (TARC), many provisions in Indian tax laws suffer from poor drafting and are amendable to multiple interpretations. Characterised by high tax rates, complex structure, piling tax disputes, India fares poorly on the paying taxes indicator - ranking 156 in terms of overall ease in tax payment. The number of tax payments (33) is significantly high in case of India vis-à-vis rest of the BRICS nations.

Some relevant reforms undertaken by BRCS countries overtime:

2008-10
<ul style="list-style-type: none">• Brazil – reduced taxes• Russia – reduced corporate income tax rate• China – reduced corporate income tax rate• South Africa – abolished stamp duty, abolished regional levies
2010-12
<ul style="list-style-type: none">• China – new corporate income tax law to unify domestic and foreign taxation, enhanced calculation clarity
2012-14
<ul style="list-style-type: none">• Russia – eased administrative burden by simplifying VAT procedures and promoting accounting software• China – reduced social security contribution rate and electronic filing and tax payment• South Africa – replaced secondary tax on companies with a dividend tax borne by shareholders

Source: doingbusiness.org

India: Update and way forward

India is continually trying to improve on the most common feature of tax reforms - enhancement of electronic systems for filing and paying taxes. There is still lot of catching up to do on the structural complexity and the tax rate intensity. Hopefully, the long pending Goods and Services Tax (GST) and Direct Tax Code (DTC) will usher in next set of institutional reforms and address many

business concerns. While these happen, India should make e-filing and e-payment mandatory for all categories of assesses/tax payers. It should unify tax regimes for domestic and foreign companies. India should also work on improving information - making tax calculation easier and less error prone.

Concluding remarks

While it may be difficult to argue on a particular rank for India to achieve in the short term, a guided movement along workable reforms or good practices in its weakest ranked areas can surely advance it towards the frontier. As such, the distance-to-frontier (DTF) indicator introduced by the World Bank since 2014 is a more reliable measure to assess how far an economy is from the most preferred business destination. An internal assessment by the Department of Industrial Policy and Promotion (DIPP) to rank Indian states² on the ease of doing business is expected to yield useful insights as well as opportunity for cross sharing home grown lessons.

As efforts to bring about a more business friendly regulatory environment are made, equally important will be to use this as an opportunity to reduce the regulatory burden. The burden manifests as costs that are imposed on the economy thereby reducing the overall welfare. It is imperative that regulations are both effective (in meeting objectives) and efficient (imposing least cost). Regulatory Impact Assessment (RIA) as a tool is increasingly being adopted as a practical measure of systematically assessing the benefits and costs of new or existing regulations, to improve the quality of regulatory policy. Mexico launched The Agreement for Deregulation of Business Activity in 1995. The exercise led to review and revision of 95% of regulations, with an estimated 40% reduction in either the scope or mandate. Similarly, South Korea introduced the Presidential Regulatory Reforms Commission in 1998. Regulations that hindered market access or competition were to be eliminated, while strengthening those relating to environment, health or safety. Consequently, 35% of all regulations were removed which contributed significantly to its industrial growth.

Most OECD countries have carried out regulatory reforms and showed huge economic gains translating into lower costs for businesses and lower prices for consumers. India should also launch regulatory reforms through regulatory impact analysis to ensure that we only adopt regulations with a net benefit effect, while easing doing business. Indisputably, states need to be brought on board.

To summarize the discussion on the four indicators in sections above, the following is presented:

Indicators	Recommendations
<i>Enforcing Contracts</i>	<ul style="list-style-type: none"> • Process of e-filing of proceedings initiated by Supreme Court and some high courts, needs to flow even to lower courts • Setup independent enforcement bureaus within courts • Adopt case management practice system • All Central and State Government contracts should specify mandated arbitration institutions, to be set up in each State
<i>Dealing with Construction permits</i>	<ul style="list-style-type: none"> • Less documentation and approved much faster

² States will be assessed on seven parameters, including setting up of a business, allotment of land and obtaining construction permit, complying with labour regulations and environment procedures and obtaining infrastructure-related utilities.

Starting a Business

- Simplify procedures: a combined application form accepted by all departments
- Expand the scope and scale of single window clearance systems - expedite the govt. plan to facilitate 200 permits online
- Single Unique ID for TAN and PAN

Paying Taxes

- Make tax calculation easier for firms - user-friendly manuals and online tools etc
- E-payment and e-filing to be mandatory for all categories of assessee/tax payers
- Reduce the no of taxes and tax rate intensity to improve country attractiveness
- Unify tax regimes for domestic and foreign companies

Fixing the laggards first would do much to help India improve its business climate, both in letter and spirit.