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New Delhi, May 29

# Ease of doing business: Still a job half done

INDIA HAS IMPROVED its ranking in the global sweepstakes for ease of doing business in recent years, but a lot needs to be done for it to be at the top of the pecking order.

By 2021, India had jumped to 63rd position from 142nd in 2014. This performance was a major highlight of the pitch the government made for investments. Many reforms have taken place since 2021 and now the effort is to take India to top 50 in the first Business Ready report.

According to official sources, the new government at the Centre is likely to undertake a few "quick reforms" in the run-up to the survey for the World Bank's Business Ready report, which replaces the Doing Business Report that was discontinued in 2021 due to manipulation of data.

The key focus of ease of doing business initiatives, which are coordinated by the department for promotion of industry and internal trade (DPIIT), is to make businesses more competitive and make it easier to invest and operate in the country. It works with the ministries of the central government and states to reduce compliance burden on business activities by simplifying, rationalising and digitising the process. The focus is also on easing government-to-business interface and decriminalising laws related to industrial regulations.

Officials have talked of a relook at the foreign direct investment (FDI) policy. Also, areas have been identified for greater liberalisation. The last burst of FDI liberalisation came in March when all the activities of the "space sector", considered strategic

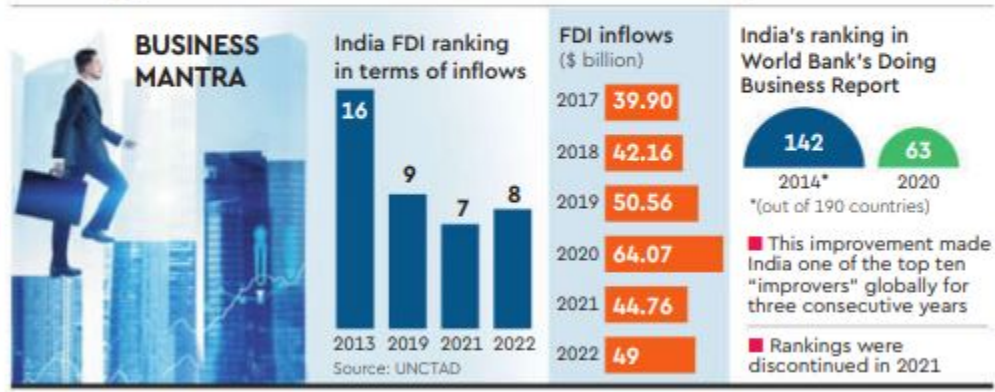
so far, were thrown open to foreign ownership.

Simplification of procedures related to applications, renewals, inspections and filing of records have been done to a large extent. Many state governments, on their part, have put in place single-window clearance mechanisms and composite licensing. Rationalisation of legal provisions, by repealing, amending or omission of redundant laws, digitisation of government processes by creating online interfaces and decriminalisation of minor, technical or procedural defaults are the other reforms underway.

Last year, the government amended 42 Acts administered by 19 ministries through Jan Vishwas Act at one go. Within these Acts that deal with different areas of business, 183 provisions were amended to decriminalise offences that are minor, procedural and technical in nature. Now work on the another round of Jan Vishwas Bill is on and inputs are being taken from the industry on areas that need attention.

"Decriminalisation of offences in the Companies Act was successful. The business fraternity waits to see similar robust efforts in other Indian laws as well, on parameters such as increasing the thresholds or jurisdiction for invoking prosecution, omission of offences that can be dealt with under other common laws, alignment of state and central laws on punishments, to help build a trust-based economy," said Sandeep Jhunjhunwala, M&A tax partner, Nangia Andersen.

Some of the Acts that were amended through the Bill are the



Press and Registration of Books Act, the Boilers Act, the Indian Forest Act, the Drugs and Cosmetics Act, the Deposit Insurance and Credit Guarantee Corporation Act, the Warehousing Corporations Act, the Food Corporations Act, the Patents Act, the Prevention of Money-laundering Act, and the Food Safety and Standards Act.

The DPIIT also has plans to handhold states who want to replicate Jan Vishwas Bill at the state level and reduce compliance burden and decriminalise offences. The Centre has also cut down more than 39,000 compliances and decriminalised 3,500 legal provisions. It has also repealed 1,562 obsolete Acts.

Even for exports and imports, border compliances have been reduced by half. The documentation for exports has gone down by 37% and imports by 26%.

Now the stage is being set up for

the second stage of ease of doing business reforms. DPIIT is working with Ficci, Federation of Indian Micro and Small & Medium Enterprises (FISME) and Institute of Chartered Accountants of India (ICAI) to assess time and cost impact of various regulations through the Cost of Regulations (CoR) framework. The assessment would form the basis of the reforms to bring those costs down.

A draft framework for assessing CoR has been developed by DPIIT considering the ground challenges mentioned during a series of consultations with states and union territories. Stakeholder consultation is now proposed with the industry to discuss the framework and receive their suggestions. The framework deals with CoR in areas like time cost of regulations, intermediary cost (professional fee), delay cost and statutory cost (fee payable to government).



Various other reforms have been implemented by the ministries and states to reduce the compliance burden. The consumer affairs department has permitted businesses to choose between third-party NABL-accredited laboratories or state government legal metrology offices for verification of weights and measures.

In Gujarat, Madhya Pradesh, Rajasthan and Punjab, MSMEs are allowed to set up their units based on self-certification and operate for three years without state-level approvals. Inspection procedures for sanction of incentives by Andhra Pradesh for self-financed units have been replaced by a certificate from chartered accountant.

Assam has an Ease of Doing Business (Amendment) Act, 2020, that enables auto renewal of clearances based on self-declaration and upon payment of prescribed fees through an online portal.

All states are being assessed by the DPIIT under Business Reform Action Plan (BRAP) that measures

progress of reforms in investment enablers, access to information and transparency, online single window system, land allotment, construction permits and other sector-specific reforms.

The National Single Window System is being continuously expanded. This system simplifies processes by providing a single platform for clearances across various ministries and departments, reducing duplication by auto-populating form fields based on investor profiles. It currently offers approvals from 32 central ministries/departments and 25 states.

While the emphasis has been on business entry and operations, reforms are also required in the rules and regulations around closure and winding up of businesses.

"Expedition business closure is another crucial facet. A streamlined process facilitated by a single-window system that orchestrates approvals across various departments would significantly expedite winding-up procedures," Jhunjhunwala said. Over the past five years, the ministry of corporate affairs (MCA) has also had a bunch of hits and misses as far as ease of doing business is concerned.

Take the case of NCLT (National Company Law Tribunal), which has a total strength of 63 members, but the majority of the attention is diverted towards the IBC (insolvency and bankruptcy code) cases. Experts said that since 2016, when IBC nominated NCLT as adjudicating authority under the code, an inordinate amount of time is being spent on IBC matters against the handling of various cases under the Companies Act.

As a result, the company law matters, particularly those relating to mergers and acquisitions (M&As), were shifted to the last row.

GP Madaan, founder at Madaan Law Offices, said that the NCLT never had the full strength throughout its existence. "Looking at the number of companies (1.7 million), NCLT must have at least 200 members. There should be either dedicated benches of NCLT to entertain M&A petitions or M&A jurisdiction should be given to regional director of MCA," he said.

Experts said that the decriminalisation of offences by MCA was a step in the right direction but it has created a whole lot of problems for the corporates. For instance, the Registrar of Companies (RoC) has started levying exorbitant penalties on companies and its directors even for petty technical offences. "RoC should be given discretionary powers while levying penalties, which should be levied only in those cases when the offence is backed by some malafide intent. The transfer of unfettered powers to RoC to adjudicate the offence may be counter-productive," said a corporate lawyer.

Even though the MCA, in the recent past, has launched a V3 portal to simplify the compliance and e-filing of forms, the portal is prone to technical errors and glitches and the stakeholders face issue while making relevant filing on it.

"Likewise, MCA has recently established a central processing centre (CPC) for processing and disposal of e-forms. This was done to ensure processing of e-forms in a time-bound manner and faceless manner. However, stakeholders have experienced that the timelines for processing of e-forms have been increased," said Harish Kumar, partner at Luthra and Luthra Law Offices India.