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JANUARY 16, 2020 / 10:44 AM / UPDATED A DAY AGO

Exclusive: India plans new law to protect foreign investment - sources

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NEW DELHI (Reuters) - India is planning a new law to safeguard foreign investment by speeding up dispute resolution, aiming to attract more capital from overseas to boost stuttering domestic growth, two officials with direct knowledge of the matter told Reuters.

In a 40-page initial draft, India's finance ministry has proposed appointing a mediator and setting up fast-track courts to settle disputes between investors and the government, one of the sources said.

"The idea is to attract and promote foreign investment, but a major issue for investors is enforcement of contracts and speedy dispute resolution," said the official.

The draft proposal is aimed at diffusing investor mistrust around the sanctity of agreements, which has worsened recently after some state governments decided to review approved projects, or threatened to cancel contracts.

Both officials declined to be named as the proposal is not public, and is still being assessed by different ministries and regulators.

A spokesman for the finance ministry did not respond to a request for comment.

Foreign investors have highlighted the enforcement of contracts as one of their biggest concerns, said the second official, adding that improving on this front would also reduce litigation for the government.

While investors can still rely on the existing legal system to settle disputes, it often takes several years for cases to be decided or settled.

Investors previously had an option to take India to international arbitration courts under bilateral investment treaties (BITs) the government had agreed with dozens of nations. But, after suffering setbacks in overseas arbitration matters, India has allowed most of its treaties to lapse, giving investors little to fall back on in case of major disputes.

BITs are agreements between two countries that give foreign investors protections, and among other things, legal recourse via international arbitration in disputes with a government.

India is entangled in more than 20 such overseas arbitration cases - the most against any country - brought by companies including Vodafone, Deutsche Telekom and Nissan Motor Co for disputes over retrospective tax claims and breach of contracts.

If India loses these cases, brought before most of its BITs lapsed, it could end up paying billions of dollars in damages.

The government's thinking is that India may not need to sign investment treaties with other nations if the new law, which is modelled on a BIT, can give confidence to investors, said the first source. A domestic law, however, cannot be a substitute for a BIT as its scope cannot allow investors to take their case to international arbitration, the sources said.

CONTRACT WRANGLES

Though India’s overall ranking in the World Bank’s ease of doing business report has improved to 63 from 142 in 2014, it still ranks poorly - 163 out of 190 - when it comes to enforcement of contracts.

The latest example of a contract wrangle is a dispute between the Andhra Pradesh state government in southern India and renewable energy companies. The state has been curtailing power procurement from the companies, citing high prices, and has pushed to renegotiate its supply contracts with them.

Investors including Goldman Sachs, Japan’s SoftBank Group, Singapore’s GIC Holdings, the Abu Dhabi Investment Authority and France’s Engie have invested in renewable projects in the state.

The draft proposal for the new law includes a plan to set up an investment tribunal in state high courts that will take up cases as a matter of priority, or will see if the National Company Law Tribunal (NCLT), which also handles insolvency and corporate matters, can handle it.

“We are yet to evaluate what the risks of bringing such a law are and if it would do more harm than good,” said the second source, adding that discussions were at an early stage.

The finance ministry has held several meetings with other ministries to discuss the draft law, said the official.

The most recent meeting in December was attended by officials from the ministries of commerce, external affairs and law, as well as the banking and stock market regulators, all of whom have been asked to submit their comments, said the first source.

It was not immediately clear when the deadline to submit comments is, or when the next meeting will be held. The ministries and regulators did not respond to requests for comment.

Pratibha Jain, a partner at law firm Nishith Desai Associates who advises foreign investors, welcomed the government plans.

“The idea is good and the government should consider broadening the scope to private disputes between foreign investors and domestic companies, as well as arbitrary rule changes by regulators, central bank decisions, and white collar crime cases that impact overseas investment,” she added.

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