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## Commercial Courts – a major policy shift in dispute resolution

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In an attempt to promote ease of doing business and remove inefficiencies in the legal system, the government finally gave the nod to creating special courts for adjudicating disputes of commercial nature of a specified value. On October 23, 2015, the President of India signed the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Bill, 2015 ("**Commercial Court Ordinance**") for the creation of Commercial Courts, Commercial Division and Commercial Appellate Division in High Courts.

Until now, the lawsuits involving commercial disputes were being tried by the regular Civil Courts and judges taking up all civil cases. The Commercial Courts have been created to address the concerns related to pendency of law suits and slow disposal of commercial matters which include disputes related to intellectual property rights (IPRs). As per the Section 2(c)(xvii) of the Ordinance, the IPR's would include unregistered and registered trademarks, patents, copyrights, designs, geographical indications, domain names and semiconductor integrated circuits. The Commercial Courts will have jurisdiction to try all suits and applications pertaining to commercial disputes of a specified value (subject matter of which is not less than INR 10 million (approx. USD 160,000) or such higher value as may be notified by the Central government). Thus, a significant amount of higher court fees will be now be payable for an IP case to be tried by the Commercial Court but it comes with many advantages as discussed below.

### **What's next:**

The Ordinance provides for establishment of Commercial Courts by the State government (total 29 states) and comes into effect immediately. The territories where High Court acts as the court of first instance e.g. Delhi, Chennai, Mumbai, Kolkata and J&K commercial division will be established at the High courts. Further Commercial Appellate Division will be constituted to hear appeals from the Commercial Courts/Commercial Division. The Ordinance requires that all concerned suits and applications qualifying the specified value pending in a Civil Court/High Court be transferred to the Commercial Courts/Commercial Division.

The ordinance has not only created special Commercial Courts with an objective of speedy and effective resolution of commercial disputes but also brought amendments into the Civil Procedure Code (CPC) of India to speed up the trial process for such disputes. The following amendments in particular are aimed at controlling undue delays and simplifying the procedures resultantly curbing the practice of seeking adjournment of hearing without any tangible basis.

**1. Strict time lines have been provided for the following activities:**

- Arguments to be concluded not later than six (6) months from the date of first case management hearing;
- Written arguments to be submitted before four (4) weeks of the oral hearing following revised written arguments, if any post oral hearing within one (1) week.
- Judgment to be pronounced within ninety (90) days of the conclusion of arguments;
- Recording of evidence on a day to day basis;
- Six (6) month period for disposal of appeals;
- No Adjournments permitted on account of appearing advocate not being present.

**2. Global Best practices adopted such as:**

- **Case management hearing** - Court to mandatorily hold a meeting between the parties where the Court will decide upon a timeline for most important stages in a proceeding like recording of evidence, filing of written arguments, commencement and conclusion of oral arguments. The court is further authorized to pass a wide variety of orders at such case management hearing to ensure smooth and effective disposal of the suit.
- **Disclosure, discovery and inspection of documents** - The Ordinance has provided detailed procedures regarding disclosure, discovery, inspection, admission and denial of documents. Also provided for verification of, with a view to bring forth greater clarity, objectivity and efficiency in the proceedings. Such procedures are likely to curtail the current practice of bald denials of even basic pleadings and documents or further having the pleadings amended at any stage and without proper reasons.
- **Summary Judgements** - Elaborate procedures have been laid down for summary disposal of cases. Any party can request for such summary judgment at any stage prior to framing of issues. The grounds on the basis of which summary judgement can be granted by the court have also been set out. The Ordinance following the principals of natural justice require both parties to provide their individual explanations including documentary evidence as to why a summary judgment should or should not be passed.
- **Costs as deterrent-** The ordinance empower payment of costs against the defaulting party in case of procedural delays in the suit. The parameters reflecting the manner of determination of costs payable by one party to other have been clearly laid down. The Ordinance has specifically provided that "*legal fees*" and "*fees and expenses of witnesses*" are to be taken into consideration while awarding costs to the successful party. Thus, bringing in the culture of actual cost to be imposed on the party.

**Way forward:** The implementation of the new ordinance would require the four High Courts (Delhi, Bombay, Kolkata, Chennai) that hear bulk of IP cases, exercising original jurisdiction or

acting as a court of First Instance, to designate benches to hear commercial matters, to be constituted as Commercial Division and Commercial Appellate Division. The old cases that do not fall within the specified value that is INR 10 million (approx US \$ 160,000) thus will be transferred to district court unless of course the Plaintiff amends the prayer and pays the additional court fees (of approx. Us \$ 1500) to take advantage of the new procedure.

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