



This edition is aimed at those businesses which have on-going arbitrations and litigations being adjudicated before Tribunals or Courts in India. We have compiled the latest developments as on date of this publication which could impact your arbitration or proceedings in Court.

Courts across India have taken strict measures to implement the concept of social distancing as per the advice cautioning against mass gathering issued by the Ministry of Health and Family Welfare, Government of India in an Office Memorandum dated 5 March, 2020 and the World Health Organisation.

Restricted Operations of Courts

- Several Courts have issued notifications to restrict the functioning of the Courts to urgent matters with a limited number of Benches. Routine matters are getting adjourned to later dates beyond March 2020. A brief summary of the restrictions is annexed.
- Whether a matter is urgent or not is subjective and dependent upon the nature of a matter and the reliefs sought. Ordinarily, only matters relating to life / liberty / imminent dispossession or demolition of property are considered urgent. Urgency in matters related to business transactions may have to be demonstrated prior to listing, where necessary. Imminent Injunctions may be bracketed under the urgent category, as will applications for extension of such injunctions. Condonation of delay in filings may be considered leniently keeping in view the extraordinary measures taken by most Courts to restrict public gatherings.
- Restricted entry procedure has been implemented in most Court premises across India and visit of private parties or litigants to Courts is discouraged, unless in unavoidable circumstances.

On-going Arbitration Proceedings

- The Ministry of Health and Family Welfare, Government of India, has notified Consolidated Travel Advisory for Novel Coronavirus Disease (COVID-19) on 11 March 2020, and subsequent office memorandum of Ministry of Home Affairs dated 13 March 2020, whereby all existing visas (except official) stand suspended until 15 April 2020. Travel of passengers to India from member countries of the European Union, the European Free Trade Association, Turkey, and United Kingdom is prohibited with effect from 18 March 2020. All passengers coming from/transiting through UAE, Qatar, Oman, and Kuwait will be quarantined for a minimum period of 14 days. These measures are in place until 31 March 2020 and subject to review thereafter.

- In light of the above stringent travel advisory issued by the Indian Government, there is a high likelihood that international commercial arbitrations seated in India are likely to get adjourned where either the witnesses, parties or Tribunal members are travelling from outside the country.
- The Indian Arbitration Forum on 12 March 2020 has appealed to all Arbitral Tribunals to adjourn any hearing scheduled in the ensuing 8 weeks and advised video conferencing, wherever necessary.
- Filings in Courts are ongoing and petitions seeking orders under various provisions of the Arbitration and Conciliation Act, 1996, may be filed. However, these may be listed and heard based on demonstrated urgency of a matter, in light of restrictions imposed due to COVID-19. Such matters may pertain to seeking urgent interim reliefs under the Arbitration and Conciliation Act, 1996, for e.g., petitions under Section 9 (or appeals therefrom under Section 37). Other petitions requiring adherence to deadlines, for e.g., petitions under Section 11 for appointment of arbitrators, under Section 34 for setting aside an award, under Section 36 and under Section 48 for enforcement of awards may be filed, but will be listed in due course considering the urgency.

Effect on timelines under Section 29A

The Act provides different timelines for the conclusion of arbitrations:

- International Commercial Arbitrations (where one party is a foreign party) would not be impacted by a delay of the proceedings since the obligation is to simply 'endeavour' to achieve the timeline.
- Domestic Arbitrations are to be completed within 1 year from close of pleadings. This timeline can be extended further by 6 months with the consent of the parties. Given the overall impact of COVID-19 on work at all fronts, it would be advisable for parties where necessary, to try and obtain this consent at the earliest.
- Additionally, should parties require an extension of the timelines under 29A by approaching the competent Court, a plea that the arbitration was delayed on account of COVID-19 is likely to be considered as acceptable as a sufficient cause by Courts considering such applications.

Limitation

- Given that the Court Registries are not completely closed (e.g.: the Delhi High Court Registry is fully functional and the Bombay High Court Registry is partially functional), there would be no effect on the period of limitation. Under



23 March 2020

the Limitation Act, should the time to file a particular proceeding expire on a particular date on which the Court is closed, the proceeding can be filed on the next date on which the Court is open again.

- Filings in arbitration proceedings would ideally not be

affected. Where Tribunals require signatures of parties, a request can be made to the Tribunal to accept filings with electronic signatures / without signatures with an undertaking that a filing in compliance with the directions would be made when the situation returns to normalcy.

ANNEXURE

Forum	Measures Enacted
Supreme Court of India	<ul style="list-style-type: none"> • The Supreme Court issued a notification on 13 March 2020 regarding the functioning of the Court from 16 March 2020 to be restricted to urgent matters with such number of Benches as may be found appropriate. Subsequently, the Court has notified a limited number of benches to take up urgent matters only. • The Supreme Court is also exploring measures to introduce court hearings through video conferencing in a bid to reduce 'people to people contact' and towards making all filings as e-filings or online filings in a bid to reduce reliance on paper in courtrooms.
High Court of Delhi	<ul style="list-style-type: none"> • The High Court of Delhi has issued notifications dated 13 March 2020 and 16 March 2020 restricting the functioning of the Court and adjourning cases listed until 20 March 2020 to April 2020. The High Court has encouraged appointment of local commissions to record evidence and to utilise video conferencing facilities for this purpose. • Only fresh urgent matters will be considered for hearing before the specially constituted benches. The urgency of a matter requested to be listed the following day will be determined by Joint Registrars (Judicial) from 10:30 am to 12:00 noon every day until 20 March 2020. However, the notification clarifies that the filing counters will remain open and limitation periods will run as normal.
High Court of Bombay	<ul style="list-style-type: none"> • The High Court of Bombay issued notification dated 14 March 2020 read-with Circular dated 16 March 2020 directing that the Court will hear only urgent matters. Interim and ad-interim orders expiring in this period would continue to operate. Further, the Court Registry will only be functional from 11:30 am to 3:30 pm. The Office of Registry will function from 11.30 am to 3.30 pm, however, the working strength has been reduced by 50% until further orders.
Other Courts	<ul style="list-style-type: none"> • All the subordinate Courts in Maharashtra will take up only urgent matters such as applications for urgent orders of injunctions, applications for grant of stay etc. Subordinate courts have been advised to endeavour to keep working hours up to 3 hours in a day and office working hours up to 4 hours. • All subordinate courts in Delhi are restricting the functioning of Courts to urgent bail or urgent injunction matters only. All final arguments are to be adjourned to after March 2020. Further, subordinate courts have been advised to utilize video conferencing to produce under trial prisoners where necessary. In final argument matters, as far as possible, written submissions are to be submitted in court to reduce the time of oral arguments as far as possible. Until the present situation persists, no adverse/default orders will be passed in matters where parties are found to be absent. Parties/Advocates/witnesses seeking an adjournment will be duly accommodated.

Disclaimer

This article is provided by Shardul Amarchand Mangaldas & Co for informational purposes only, and is not intended to provide, and does not constitute, legal advice.

© Shardul Amarchand Mangaldas & Co