

Proposed amendments to the Finance Bill, 2017

The Finance Bill, 2017 was introduced in Lok Sabha on February 1, 2017. Amendments to the Finance Bill have been circulated. Key changes proposed under the amendments are summarised below:

- **Aadhaar mandatory for PAN and Income Tax:** It has been mandatory for every person to quote their Aadhaar number after July 1, 2017 when: (i) applying for a Permanent Account Number (PAN), or (ii) filing their Income Tax returns.

In case a person does not have an Aadhaar, he will be required to quote their Aadhaar enrolment number, indicating that an application to obtain Aadhaar has been filed.
- Every person holding a PAN on July 1, 2017 and who is eligible to hold an Aadhaar, will be required to provide the authorities his Aadhaar number, by a date and in a manner notified by the central government. A failure to provide this number would result in the PAN number being invalidated, and the person would be treated at par with anyone who has not applied for a PAN. The government may exempt persons from this provision through a notification.
- **Tribunals, Appellate Tribunals and other authorities:** Certain Tribunals are proposed to be replaced, and their functions are proposed to be taken over by existing Tribunals under other Acts (details can be found in Table 1).
- **Issue:** The rationale behind replacing certain Tribunals is unclear. For example, the TDSAT may not have the expertise to adjudicate matters related to the pricing of airport services. Similarly, it is unclear if the NCLAT which deals with matters related to company disputes and governance, will have the expertise to deal with matters related to anti-competitive practices, which are currently managed by the Competition Appellate Tribunal.

Table 1: Tribunals proposed to be merged by amendments to the Finance Bill, 2017

Act	Tribunal being replaced	Tribunal to take over functions
Competition Act, 2002	Competition Appellate Tribunal	National Company Law Appellate Tribunal (under Companies Act, 2013)
Airports Economic Regulatory Authority of India Act, 2008	Airports Economic Regulatory Authority Appellate Tribunal	Telecom Disputes Settlement and Appellate Tribunal (under the TRAI Act, 1997)
Information Technology Act, 2000	Cyber Appellate Tribunal	
Control of National Highways (Land and Traffic) Act, 2002	National Highways Tribunal	Airport Appellate Tribunal (under the Airport Authority of India Act, 1994)
Employees Provident Funds and Miscellaneous Provisions Act, 1952	Employees Provident Fund Appellate Tribunal	Industrial Tribunal (under the Industrial Disputes Act, 1947)
Copyright Act, 1957	Copyright Board	Intellectual Property Appellate Board (under the Trade Marks Act, 1999)
Railways Act, 1989	Railways Rates Tribunal	Railway Claims Tribunal (under the Railways Claims Tribunal Act, 1987)
Foreign Exchange Management Act, 1999	Appellate Tribunal for Foreign Exchange	Appellate Tribunal (under the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976)

- **Transitional provisions for Tribunals being replaced:** The Chairpersons, Vice-Chairpersons, Chairmen, or other members who are currently occupying posts with Tribunals to be merged, will be entitled to receive up to three months' pay and allowances for premature termination of their office term. Officers and other authorities of Tribunals that will cease to exist after the merger will stand reverted to their parent cadre, ministry or department.
- **Terms of service:** Currently, terms of service of Chairpersons and other members of Tribunals, Appellate Tribunals and other authorities are specified in their respective Acts. Amendments to the Finance Bill, 2017 propose that the central government may make rules to provide for the (i) qualifications, (ii) appointments, (iii) term of office, (iv) salaries and allowances, (v) resignation, (vi) removal, and (vii) other conditions of service for these members.
- These rules will be applicable to members which include the Chairperson, Vice-Chairpersons and members, among others, of specified Tribunals, Appellate Tribunals, and other Authorities. The amendments state that the term of office for these persons will not exceed five years, and that they will be eligible for reappointment. Further, the age of retirement for these persons has been specified, such as (i) 70 years for Chairpersons, Chairmen or Presidents, and (ii) 67 years for Vice-Chairpersons, Vice-Chairmen, Vice-Presidents, and Presiding Officers.
- **Issue:** Allowing the executive to determine appointment, reappointment and removal of members could affect the independent functioning of the Tribunal. There would be conflict of interest if the government were to be a litigant before a Tribunal, as well as determine appointment of its members.
- Note that the Supreme Court in 2014, while examining a case related to the National Tax Tribunal had held that Appellate Tribunals have similar powers and functions as that of High Courts and hence matters related to appointment and reappointment and tenure must be free from executive involvement.¹ The list of Tribunals in this amendment includes several Tribunals in which the central government would normally be a party to disputes, such as those related to income tax, customs, railways, and administrative Tribunals, and the armed forces Tribunal.
- The above provisions will apply to Tribunals, Appellate Tribunals, Boards and Authorities under the 17 Acts mentioned in Table 2 below. The amendments also state that the central government will have the power to amend this list of Tribunals, through a notification. That is, prior Parliamentary approval is not needed to bring other Tribunals into this scheme.

Table 2: Acts and relevant Tribunals being changed by the Finance Bill, 2017 amendments

Industrial Disputes Act, 1947	Airport Authority of India Act, 1994
Income Tax Act, 1961	Telecom Regulatory Authority of India Act, 1997
Customs Act, 1962	Trade Marks Act, 1999
Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976	Companies Act, 2013
Administrative Tribunals Act, 1985	Cinematograph Act, 1952
Railway Claims Tribunal Act, 1987	Consumer Protection Act, 1986
Securities and Exchange Board of India Act, 1992	Electricity Act, 2003
Recovery of Debts due to Banks and Financial Institutions Act, 1993	Armed Force Act, 2007
National Green Tribunal Act, 2010	

- **Donations to political parties by companies:** Currently, a company may contribute up to 7.5% of the average of its net profits in the last three financial years, to political parties. The company is required to disclose the amount of contributions made to political parties in its profit and loss account, along with the name of the political parties to which such contribution was made.

The amendments to the Finance Bill, 2017 propose to remove: (i) the limit of 7.5% of net profit of the last three financial years, for contributions that a company may make to political parties, (ii) the requirement of a company to disclose the name of the political parties to which a contribution has been made.

In addition, contributions to political parties will have to be made only through a cheque, bank draft, electronic means, or any other scheme notified by the government to make contributions to political parties. Note that Finance Bill, 2017 contains provisions to introduce electoral bonds to make contributions to political parties. Electoral bonds will be bonds issued by notified banks, for an amount paid through cheque or electronic means.

- **Lowering limit on cash transactions:** Under Finance Bill, 2017, cash transactions above three lakh rupees will not be permitted: (i) to a single person in one day, (ii) for a single transaction (irrespective of number of payments), and (iii) for any transactions relating to a single event. Amendments to the Finance Bill, 2017 propose to lower this limit from three lakh rupees to two lakh rupees.
- **Power to impose penalty by officers:** The Securities Contracts (Regulation) Act, 1956 and the Depositories Act, 1996 were amended in 2004 to empower the adjudicating officer to impose penalties on offenders for various offences including their failure to furnish information, documents or returns. Amendments to the Finance Bill, 2017 propose to clarify that the adjudicating officer will always be deemed to have had this power.

¹ Madras Bar Association vs. Union of India, Transfer Case No. 150 of 2006, Supreme Court of India, September 25, 2014 (para 89).

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