

to organize a continuing education programme. Sadly, there was little interest. "When you are arguing before a judge, you have to talk on your toes," he says. "You need to know how the court will react. You need to know how a jurisdiction clause should be worded."

Top of the pile when it comes to litigators are the country's senior counsel. Many observers complain, however, that senior counsel's flair for winning cases does not justify their exorbitant fees. "Branded counsel can dictate any price, charging more than Queen's Counsel in England," says Sumeet Kachwaha, the managing partner of Kachwaha & Partners. Although his firm handles most of its disputes work in-house, Kachwaha says there are times when you have no choice but to engage them. "Sometimes the feeling is that if a senior isn't present, the matter just isn't important enough," he says.

Anand Desai, the managing partner of DSK Legal, accuses senior counsel of unethical behaviour. "Senior counsel need to get sued and a firm needs to get sued," he says, pointing to what he calls a "drop in quality" at larger law firms. "Some of the advice is so blatantly wrong. There is no ethics and no

responsibility. Senior counsel don't read. They appear once for you and the next day they appear for your opposition. It's chaotic. They think they're above the law."

For parties seeking to steer clear of India's courts and dependence on senior counsel, arbitration is gaining traction as a popular method of resolving disputes. Although costly in some cases, arbitration is favoured for its confidentiality and relative speed.

"We see joint ventures getting sour and going into arbitration," says Shardul Thacker, a partner at Mulla & Mulla & Craigie Blunt & Caroe. "Mid-cap companies want to put an end to their marriages."

Another forum for dispute settlement is the specialized tribunal, of which a number, such as the Electricity Tribunal, the National Green Tribunal and the Telecom Disputes Settlement & Appellate Tribunal (TDSAT), have been established. The challenge, according to some lawyers, will be to succinctly and coherently present a case in these niche areas. "When you deal with a tribunal, far more specialized knowledge is required than what is presented to a

Opening the floodgates

The government frequently teases foreign investors with hints of liberalization in insurance, retail and defence. But will foreign investment caps ever be raised?

India may be a land of opportunity for some, but for many investors, the decision to invest is complicated by restrictive caps on foreign ownership. The retail sector is a case in point.

"International big fashion brands want to capitalize," says Ashish Razdan, a senior associate at Khaitan & Co. But "they aren't happy with the franchise model."

"This government must have the courage to liberalize retail," says Premnath Rai, the managing partner of PRA Law Offices. "I'm in favour, but it won't be easy."

Smaller independent stores could suffer if India allows foreign retailers to exercise a greater degree of control and this could damage the Congress Party's image. "How will they face the BJP states who favour merchants and mom-and-pop stores?" asks Vikram Nankani, a partner at Economic Laws Practice. "That is their vote bank."

Those familiar with the government's mindset believe the private sector must be more sensitive to the circumstances faced by the administration. "When dealing with the government, you have to understand the compulsions of law and policy from the government's perspective," explains Sharad Bhansali, the managing partner of APJ-SLG Law Offices in New Delhi. "The private sector cannot quite understand the government. That ability is missing." Bhansali, who worked at the Ministry of Commerce for almost 20 years, adds that "building synergy is the biggest challenge – being friendly to the policy process and ensuring that industry is happy and comfortable."

Foreign investors are certainly not comfortable with their offset obligations in the Indian defence sector. The country may have tantalized the global defence industry by increasing its defence budget to US\$33 billion this

year. However, foreign players are disappointed by the obligation to produce 30-40% of their products locally. "International defence players are not able to find the right partner," says Kaviraj Singh, the managing partner of Trustman & Co. "There are very few names that can make more than nuts and bolts."

Insurance is another area foreign investors are watching carefully. The industry is pinning its hopes on the Insurance (Amendment) Bill, which, if passed, will increase the foreign investment limit in the insurance sector from 26% to 49%.

There are over 40 private insurers in India – most of them joint ventures between Indian and international companies. This proliferation of providers has widened the range of insurance products on offer in the Indian market, but in order to exercise greater strategic control, international companies want more than 26% of the pie. "It will be a sea change if the bill comes about with M&A opportunities and IPOs in the offing as some insurers reach the 10-year mark," says Celia Jenkins, a partner at Tuli & Co.

Those interested in capitalizing on new areas say investors should focus on research, technology and the environment. "Space, biotech, nanotech, stem cells research, etc. ... These are critical areas," says Suman Khaitan, the managing partner at Suman Khaitan & Co. "The future will be in hi-tech areas, in defence, waste disposal, water recycling, garbage disposal, hybrid cars and clean energy."

KV Singh, a senior partner at Kochhar & Co, agrees: "The environment is one area where India needs foreign direct investment," he says. "Most states don't have common effluent treatment plants or hazardous waste disposal sites and we need these solutions."