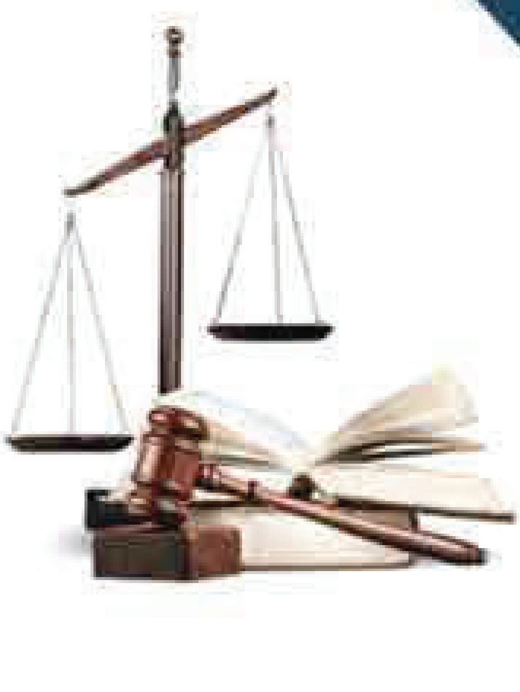
CLASIS LAW

DOING BUSINESS IN INDIA

2026



June, 2026

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This publication is updated as of March 31, 2026

It is neither a legal opinion nor does it set out a comprehensive review of all developments in the law and practice or to cover all aspects of the matters referred to. Clasis Law assumes no responsibility or obligation to update this publication.

This publication intends to give the reader an overview of the various aspects of doing business in India including but not limited to the applicable legislations, compliances and processes. It is not intended and cannot be construed as a comprehensive and detailed analysis of Indian Law or, under any circumstances, as legal advice from Clasis Law.

Contents

Glossary

S.No.	Term	Definition
1.	**Act**	Companies Act, 2013
2.	**AD Bank**	Authorized Dealer of a Category I Bank
3.	**AI**	Artificial Intelligence
4.	**AoA**	Articles of Association of a Company
5.	**Company**	An Indian company incorporated in terms of the Companies Act, 2013or the erstwhile Companies Act, 1956
6.	**Constitution**	Constitution of India
7.	**Director**	A director on the board of a Company
8.	**DPIIT**	Department for Promotion of Industry and Internal Trade under theMinistry of Commerce and Industry
9.	**FDI**	Foreign Direct Investment
10.	**FDI Policy**	Foreign Direct Investment Policy issued by DPIIT from time to time
11.	**FEMA**	Foreign Exchange Management Act, 1999
12.	**FVCI**	Persons residents outside India who are registered with foreign venture capital investors registered with SEBI in accordance with the SEBI (Foreign Venture Capital Investors) Regulations, 2000
13.	**GDP**	Gross Domestic Product
14.	**GDPR**	The General Data Protection Regulation implemented on May 25, 2018which is applicable to all companies processing and holding the personal data of data subjects residing in the European Union and the United Kingdom, regardless of the company's location
15.	**Government**	Government of India
16.	**IFSC**	International Financial Services Centres
17.	**INR**	Indian Rupees
18.	**IT Act**	Income Tax Act, 2025
19.	**JV**	Joint Venture Company
20.	**LLP**	Limited Liability Partnership
21.	**MCA**	Ministry of Corporate Affairs
22.	**MoA**	Memorandum of Association of a Company
23.	**NCLAT**	National Company Law Appellate Tribunal
24.	**NCLT**	National Company Law Tribunal
25.	**NR**	Non-Resident
26.	**NRI**	A non-resident Indian who is an individual resident outside India but who is a citizen of India.
27.	**OCI**	An overseas citizen of India who is an individual resident outside Indiaand who is registered as an overseas citizen of India cardholder under section 7(A) of the Citizenship Act, 1955
28.	**ODI**	Overseas Direct Investment
29.	**OPI**	Investment, other than ODI, in foreign securities, but not in any unlisted debt instruments or any security issued by a person resident in India who is not in an IFSC
30.	**RBI**	Reserve Bank of India
31.	**Restricted Territory**	A country sharing a land border with India
32.	**SEBI**	Securities and Exchange Board of India
33.	**Supreme Court/**	The Supreme Court of India

34.	**USD**	United States Dollar
35.	**WoS**	Wholly owned subsidiary

1.
INDIA AT A GLANCE

1. INDIA AT A GLANCE

1.1 Indian Economy

India is known for its rich and diverse cultural heritage having plethora of languages, traditions and beliefs. Indian economy is one of the fastest growing economies in the world and it is expected that it will be ranked amongst the top 3 economic powers of the world in the coming years. It is the 7th largest country by area and the most populous country having a population of over 1.45 billion.

Over the years, India has adapted itself to the global competitive environment and hence has become an emerging marketplace for strategic investments by international investors. Availability of skilled manpower, lower cost of production due to low labour costs, increase in domestic consumption by growing middle class population, vast range of industries, investment-friendly policies and close proximity to South-East Asia, Middle East and Europe are strong drivers of foreign investments in India. Hence, many global majors are pitching for joint ventures and other collaborations with Indian Companies.

Increase in FDI inflow over the years indicates a positive impact of ease of doing business and changes in FDI norms in the economy. The services sector (which includes financial, banking, insurance, non-financial outsourcing, research and development, courier, technological testing and analysis and other) followed by the trading sector took the next two spots amongst the top 3 sectors attracting the highest FDI equity inflows.[1]

GDP is the broadest quantitative measure of a nation's total economic activity and represents the monetary value of all goods and services produced within a nation's geographic borders over a specified period of time. A rising GDP signifies the progress of the economy of a particular country. Thus, higher the GDP, greater the growth prospects of a country.

1.2 India's Economic Renaissance: A Transformational Journey

In the dynamic world of global economics, India is carving out a remarkable narrative of growth, innovation, and inclusivity. Once primarily seen as a follower in the race with China, India is now emerging as a formidable economic force. The Annual India Leadership Summit held recently in New Delhi underscored this shift, showcasing the nation's growing prominence on the global stage.

India's economic ascent is reflected in its robust GDP growth rates. While the World Bank projects a 6.5% growth in 2026 citing strong consumption and the positive effects of GST reforms, Moody's expects India to remain a growing G-20 economy through 2026 with a growth rate of 6.4% and 6.7% in 2027. These estimates reflect a broad international confidence in India's economic fundamentals and its ability to sustain strong, domestically driven growth despite evolving global challenges. The real GDP at Constant Prices for the period October-December (Q3) of FY 2025-26 is estimated at INR 84.54 trillion, marking a robust growth of 7.8%. This growth has progressively accelerated from 7.1% in Q3 of FY 2023-24 and 7.4% in Q3 of FY 2024-25, underscoring the sustained resilience and strengthening of the Indian economy.

The transformation is equally evident in India's financial markets. Ananth Narayan G, Whole-time Member of SEBI, highlighted this during the Investor Awareness Week at the National Stock Exchange (NSE). Over the past five years, India's markets have consistently delivered a 15% compound annual growth rate. The fiscal year 2023-24 was particularly remarkable, with benchmark indices rising by 28% amidst low volatility-an achievement Narayan aptly described as a golden period of high returns paired with low risks.
Underpinning this economic momentum is the revolutionary impact of the Digital India initiative, launched in 2015. Far from being a mere slogan, Digital India has reshaped the nation's economic and social fabric.

[1] https://www.dpiit.gov.in/static/uploads/2026/02/6dc3e8a9fe52d5a412d8e5f41d7b921f.pdf

Nowhere is this more evident than in the dramatic rise of the Unified Payments Interface (UPI) used by the consumers, vendors including the small vendors for their everyday activities. Since its launch on 11 April, 2016, UPI has completed a decade of remarkable growth and innovation. Over these ten years, UPI has achieved unprecedented scale, with annual transaction volumes increasing from merely 20 million transactions in FY 2016-17 to over 241,620 million transactions in FY 2025–26 (i.e., an extraordinary nearly 12,000-fold increase). During the same period, the total transaction value surged from INR 70,000 million to approximately INR 314 trillion, reflecting a more than 4,000-fold rise. These figures underscore not only the rapid adoption of digital payments in India, but also the broader success of Digital India in fostering financial inclusion, technological advancement, and a digitally empowered economy. [2]

Digital India's reach goes further still, influencing sectors such as healthcare and transportation. Initiatives like Ayushman Bharat have brought healthcare to millions, with over 435 million Ayushman Cards issued as on 28 February, 2026. Meanwhile, more than 118.6 million FASTags have revolutionized highway travel, mirroring the annual global production of vehicles in scale. These milestones are a testament to the breadth and depth of India's digital transformation, which is steadily paving the way for sustainable and inclusive growth.

Artificial Intelligence (AI) is playing a transformative role in India's healthcare sector by improving accessibility, affordability and quality of medical services, particularly in rural and underserved areas.[3] AI-powered diagnostics, telemedicine, surveillance systems and clinical decision-support tools are being increasingly integrated into both public and private healthcare ecosystems. AI-enabled tools within the National TB Elimination Programme have contributed to a 27% decline in adverse TB outcomes, while the Media Disease Surveillance System has generated over 4,500 outbreak alerts for early disease monitoring. Additionally, between April 2023 and November 2025, India recorded 282 million telemedicine consultations supported by AI-assisted diagnoses, helping nearly 12 million patients access remote healthcare services. Through initiatives such as the IndiaAI Mission and AI-driven digital health platforms, India is leveraging technology to strengthen Universal Health Coverage and promote patient-centric healthcare delivery.

Equally transformative has been the rise of India's startup ecosystem, now the world's third largest. In less than a decade, the number of recognized startups has crossed 223,000 as on 31 March 2026, thanks to initiatives like Startup India. This surge in entrepreneurial activity has created over 2.33 million direct jobs, underscoring the power of innovation and policy alignment in driving economic expansion.

In the realm of technology, India is making bold strides in AI. Initiatives such as "AI for India 2.0" and the Global India AI Summit have positioned the country as a global AI hub. By convening over 12,000 global experts, these efforts signal India's intent to harness AI not just for technological advancement but as a cornerstone for future economic growth and workforce development.

India's economic rise is not only confined to top-line growth; it is equally a story of inclusivity. Programs like the Pradhan Mantri Jan Dhan Yojana (PMJDY) have brought millions into the financial system, with over 582 million bank accounts opened in the past decade. Similarly, housing initiatives under the Pradhan Mantri Awas Yojana-Urban (PMAY-U) have sanctioned over 1.36 million homes, to ensure access to dignified and affordable housing for urban families belonging to Economically Weaker Section (EWS), Low Income Group (LIG) and Middle-Income Group (MIG). These efforts illustrate a commitment to ensuring that the benefits of economic progress reach every segment of society.

As India looks to the future, the foundation laid over the past decade offers a blueprint for sustained growth. From its thriving markets to its digital and technological advancements, the nation is poised to redefine its role on the global stage.

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[2] https://www.pib.gov.in/PressReleasePage.aspx?PRID=2257087&reg=3&lang=2

[3] https://www.pib.gov.in/PressReleasePage.aspx?PRID=2227410&reg=3&lang=1

India's rise is not merely an economic phenomenon-it is a testament to resilience, vision, and the power of collective ambition. With its focus on inclusivity, innovation, and sustainable growth, India is scripting a new chapter in global economic history, one that promises to shape the century ahead.

1.3 Shaping Tomorrow: How India is Attracting Global Investments

India has emerged as a prominent hub for FDI over recent years, driven by its improving global rankings, innovative strides, and robust economic growth. The country's climb from 81st position in 2015 to 38th in the Global Innovation Index 2025 reflects a dynamic transformation. This advancement, along with conducive Government policies and a rapidly growing economy, have significantly enhanced its appeal to investors worldwide.

Notable developments include the ambitious vision of Mr. K. V. Subramanian, India's Executive Director at the International Monetary Fund, who foresees India evolving into a USD 55 trillion economy by 2047. Similarly, Maharashtra aims to double its GDP to $1 trillion by the end of the decade, potentially outpacing the economies of nations such as Singapore and the UAE. To achieve this, the state has set a compound annual growth rate (CAGR) target of 14%.

India is among the world's fastest-growing major economies and is well-positioned to sustain this growth trajectory. With the ambition of attaining high middle-income status by 2047 (the centenary year of independence) the country continues to build on a strong foundation of economic expansion, structural reforms and social development.

The resilience of the Indian economy was evident in 2025, when it emerged as the world's fourth-largest economy and is projected to become the third-largest within the next 2.5 to 3 years, with GDP expected to reach USD 7.3 trillion by 2030. Growth momentum has also remained robust, with GDP expanding to a six-quarter high in Q2 of 2025–26, underscoring India's ability to withstand global trade uncertainties. This expansion has been primarily driven by strong domestic fundamentals, particularly robust private consumption, which continues to anchor overall demand.

Global players, have committed to make significant investments in India. India also continues to shine in the tech and innovation sector. Startups have also thrived, with many raising substantial funds to fuel their expansion. Moreover, initiatives like Karnataka's digital skilling and Gujarat's robust FDI policy demonstrate a commitment to fostering growth in emerging industries.

India's overarching goal of attracting USD 100 billion annually in FDI reflects its determination to sustain its upward economic trajectory. Through policy reforms, technological advancement, and a focus on innovation, India is set to remain an attractive investment destination for years to come.

For 2027, India is positioning itself as a key destination for global investments, driven by its political stability, regulatory reforms, and rapidly expanding sectors. The positive outlook for deal-making is supported by favorable market conditions, such as high investor confidence, a growing IPO market, and increased investments in technology and innovation. While challenges remain, India's evolving regulatory landscape is set to continue driving opportunities in merger and acquisitions across a variety of sectors.

2.

BUSINESS STRUCTURES IN INDIA

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2.1 Business Structures/Forms of Entities in India

It is crucial to determine an appropriate legal entity to match the exact needs of a business. The entity should, amongst other aspects, be relevant from a fund-raising perspective, taxation perspective and the FDI norms in light of the nature of business and the activities it proposes to conduct. For instance, certain relaxations are offered to LLPs which are not provided to a Company and vice versa. Such factors should be deliberated and considered before setting up a business entity in India. The following are the forms of entities for doing business in India:

(i) Company (private or public)

A Company can be a private limited company or a public limited company. However, the most common form of entity used for doing business in India is a private limited Company, set up as a subsidiary or a JV.

(ii) Limited Liability Partnership

LLP is a body corporate and a legal person separate from its partners. FDI is permitted in LLPs operating in sectors/activities where 100% FDI is allowed through the automatic route and there are no FDI – linked performance conditions.

(iii) Offices (branch office, project office, liaison office)

A foreign company can open a branch office or project office or liaison office in India. The scope of operations of such offices is typically limited to activities and functions such as sourcing, technical and/or marketing support, import and export, executing a specific project, and representative office.

The establishment of a branch office or liaison office is a two-pronged process and involves seeking RBI approval (through an AD Bank) and registration of the branch/liaison office with the relevant Registrar of Companies.

Further, a foreign company may open project office/s in India provided it has secured from a Company a contract to execute a project in India (subject to the fulfilment of certain conditions) without any prior approval from RBI.

The obligations of a foreign company are briefly discussed in Chapter 4.

(iv) Distribution Agreement/Agency/ Franchise Agreement

A foreign company, subject to the nature of its business, can proceed with doing business in India through an unincorporated presence. A foreign company may choose to appoint a distributor for the whole of India, or for a certain defined territory by way of entering into a detailed distribution agreement. Further, a foreign company may choose to appoint an agent wherein the foreign company is the principal and would retain control over the product sale and price. The agent only represents the foreign company in India.

Another form of doing business in India is the franchise model. A foreign company may adopt a franchise arrangement to distribute its products in India. The said arrangement is generally adopted where sharing of technical know-how and business methods is required. In India many foreign companies have adopted the franchise model to sell their products.

2.2 Incorporation of Companies

There are various means to establish a legal presence in order to carry out business in India, however, the most commonly used structure for setting up presence in India is a company incorporated in accordance with the provisions of the Act. Following are the types of Companies which can be incorporated in India:-

(i) Public Company with a minimum of 3 Directors (who are individuals) and 7 shareholders; and

(ii) Private Company with a minimum of 2 Directors (who are individuals) and 2 shareholders.

The pre-requisites to set up a Company are identifying the proposed name, principal/registered office premises in India, the Directors, shareholders of the Company and the corpus of investment.

The charter documents of the Company comprising of the MoA and the AoA are also required to be prepared. The MoA, inter alia, includes the name, registered office, object, liability and authorized capital clauses of a Company. The AoA are the bye-laws of a Company. The Act provides flexibility to the Indian Companies to alter their MoA and AoA, when required, after following the process as prescribed under the Act.

The process of incorporation involves submitting the requisite application(s) along with the supporting documents with the MCA. If the application is complete in all respects, the Company is registered and a Corporate Identity Number ("**CIN**") is allotted by the MCA. As soon as a Company is registered, its information such as name, authorized share capital, paid-up share capital, registered office address and directors is available on the website of MCA against its CIN.

Depending on the requirements of the investors, the WoS or JV can be set up as private or public limited Companies. The private limited companies are subject to lesser compliances under the Act as compared to a public limited companies.

3.

FOREIGN DIRECT INVESTMENT IN INDIA AND OVERSEAS DIRECT INVESTMENT

3. FOREIGN DIRECT INVESTMENTS IN INDIA AND OVERSEAS DIRECT INVESTMENT

3.1 Foreign Investment in India

Persons resident outside India[4] can invest in permitted non-debt instruments[5] and permitted debt instruments[6].

While foreign investment in non-debt instruments is regulated by the Foreign Exchange Management (Non-debt Instrument) Rules, 2019 (**"Non-debt Instrument Rules"**), any foreign investment in debt instruments is regulated by the Foreign Exchange Management (Debt Instruments) Regulations, 2019 (**"Debt Instrument Regulations"**).

In terms of the Non-debt Instrument Rules, persons resident outside India can invest in permitted equity instruments either through the FDI route, the Portfolio Investment Scheme (“**PIS**”)[7] route, or the foreign venture capital investment route.

Any investment in debt instruments needs to comply with the provisions of the Debt Instrument Regulations. Only Foreign Portfolio Investors (**"FPI"**), NRI, OCI, foreign central banks, multilateral development banks or any other entity permitted by the Reserve Bank of India (**"RBI"**) can invest in debt instruments.

FDI route

India has one of the most transparent and liberal FDI regimes amongst the emerging and developing economies.

The acquisition of securities of an Indian company, either by way of subscription or purchase, by a person resident outside India is regulated primarily through FEMA read with the Non-debt Instrument Rules and the consolidated FDI Policy issued by the DPIIT (collectively referred to as the **"FDI Norms"**).

FDI is permitted in all sectors except the prohibited sectors/activities[8] either under the 'automatic route' or the 'government/approval route'.

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[4] Body corporate(s) incorporated or registered outside India are covered within the meaning of person resident outside India. Residential status of a foreign individual as a person resident outside India or a person resident in India would depend on the purpose and period of stay in India. If a foreign individual stays in India for a period of 182 days or more during the preceding financial year for employment, carrying out business or other purpose, then, such foreign individual would become a person resident in India.

[5] Non-debt instruments means (a) all investments in equity instruments in incorporated entities: public, private, listed and unlisted; (b) capital participation in LLP; (c) all instruments of investment recognised in the FDI Policy notified from time to time; (d) investment in units of Alternative Investment Funds (AIFs), Real Estate Investment Trust and Infrastructure Investment Trusts; (e) investment in units of mutual funds or Exchange-Traded Fund which invest more than 50% in equity; (f) junior-most layer (i.e. equity tranche) of securitisation structure; (g) acquisition, sale or dealing directly in immovable property; (h) contribution to trusts; and (i) depository receipts issued against equity instruments.

[6] debentures; (i) securitised debt instruments, including any certificate or instrument issued by a special purpose vehicle set up for securitisation of asset/s with banks, financial institutions or NBFCs as originators; (j) rupee denominated bonds/ units issued by infrastructure debt funds; and (k) debt securities issued by (i) Infrastructure Investment Trusts and (ii) Real Estate Investment Trusts.

[7] While FDI deals with the acquisition of listed and/or unlisted shares (either by way of subscription and/or purchase) by way of a private arrangement, PIS covers acquisitions of listed shares through stock market purchase. While any person, other than those who are residents in prohibited / restricted countries, can invest under the FDI route, the PIS route is limited to investments by foreign portfolio investors and non-resident Indians.

[8] Prohibited sectors/activities include lottery business, gambling and betting, manufacturing of cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes, real estate business (other than development of townships, construction of residential/commercial premises, roads or bridges and real estate investment trusts), chit funds and Nidhi companies.

Automatic route

Most sectors now provide for foreign investment under the automatic route[9]. Any investment under this route does not require any prior Government approval specifically for the foreign investment. However, sector specific approvals for investment may still be required.

Government / Approval route

Prior Government approval[10] is required in the following:

(i) for investment in sectors which fall within the approval route (such as terrestrial broadcasting FM (FM Radio), print media, and private security agencies);

(ii) where the investment sought to be made is in excess of the sectoral cap specified under the automatic route or where as a result of the investment the aggregate of foreign investment limit permitted under the automatic route will be exceeded[11];

(iii) where the investment does not comply with the requirements/conditions for investment under the automatic route; and/or

(iv) the beneficial owner[11]of the investment is a citizen of a Restricted Territory;

(v) any transfer of shares of an Indian company which, directly or indirectly, results in a citizen of Restricted Territory becoming the beneficial owners of the shares is below 10% and such persons do not exercise control over the investing entity; and/or

(iv) where shares/permitted equity instruments are being acquired or purchased by a nonresident for non-cash consideration, except in the following cases:

(a) an Indian subsidiary which is wholly owned by a non-resident entity and which operates in a sector in which 100% FDI is permitted without any conditions can issue shares (up to a maximum of 5% of its authorised capital or USD 500,000 whichever is less) to the overseas parent company against the pre-incorporation expenses;

(b) an Indian company engaged in a sector in which FDI is permitted under the automatic route can issue shares against a swap of equity instruments of an Indian company or equity capital of a foreign company or import of capital goods/machinery/equipment (excluding second hand machinery); and

(c) an Indian company may issue shares to a person resident outside India against any funds payable by the Indian company to the person resident outside India and the remittance of which is permitted under FEMA and any rules or regulations framed under FEMA[12].

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[9] Sectors under the automatic route include – manufacturing, agriculture & animal husbandry, mining, broadcasting carriage services, cable networks, airports, non-scheduled air transport services, construction-development projects, cash & carry wholesale trading, E-commerce, single brand retail trading, duty free shops, telecom services and railway infrastructure.

[10] Prior to its abolition in May 2017, the relevant authority was the Foreign Investment Promotion Board (FIPB). Post the abolition of the FIPB, the relevant authority to grant approval for foreign investment is the relevant department/ministry which is concerned with the sector in which the relevant Indian company, in which foreign investment is proposed to be made, is engaged. In case of applications involving investments from an entity of a Restricted Territory or where the beneficial owner of an investment into India is situated in or is a citizen of any Restricted Territory, DPIIT will identify the relevant department/ministry for processing of such applications.

[11] Certain sectors (such as defence, space and pharmaceuticals) provide for a specific level of foreign investment under the automatic route, and any investment (either on an individual basis or on an aggregate basis) above this threshold requires Government approval.

[12] This would include issuance of shares in lieu of outstanding dues payable by a person resident in India to a person resident outsideIndia.

Permitted equity instruments

Indian companies are allowed to issue the following types of equity instruments to a person resident outside India:

(i) equity shares (including partly paid shares);

(ii) fully and mandatorily convertible debentures;

(iii) fully and mandatorily convertible preference shares; and/or

(iv) share warrants.

In addition to the above, Indian startup companies[13] are permitted to issue convertible notes[14], subject to compliance with certain conditions.

Any instrument which is non-convertible, optionally convertible or partially convertible is considered as foreign debt and not treated as FDI. Accordingly, all restrictions applicable to raising of foreign debt, under India's external commercial borrowing regulations, apply to such instruments[15].

Pricing guidelines

The FDI Norms regulate the price at which a person resident outside India can:

(i) acquire permitted equity instruments of an Indian company, either by way of subscription or by way of purchase from resident sellers; and/ or

(ii) sell the permitted equity instruments of an Indian company to resident purchasers. The

pricing guidelines provide for:

(a) a floor price in case of acquisition of permitted equity instruments (either by way of subscription or by way of purchase from resident shareholders) by a non-resident investor, and

(b) a ceiling in case of sale of permitted equity instruments by a non-resident seller to a resident purchaser.

Transfer of equity instruments

The FDI Norms generally permit transfer of equity instruments of an Indian company by a person resident outside India to a person resident in India and vice-versa without any approval.

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13 Startup company has been defined to mean a private company incorporated under the Companies Act, 2013 (18 of 2013) and identified as "startup" under the notification of the Government of India number G.S.R. 180(E), dated the February 04, 2026 issued by the Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry. As per the definition set out in the Gazette of India Notification G.S.R. 180(E) dated February 04, 2026, an entity shall be considered as a "start-up":

(a) up to 10 years from the date of its incorporation/registration,

(b) if its turnover for any of the financial years has not exceeded INR 2,000,000,000, and

(c) it is working towards innovation, development, or improvement of new products, processes or services or if it is a scalable business model with a high potential of employment generation or wealth creation.

(d) "Deep Tech Startup" means a startup engaged in innovation driven by advanced scientific or technological research and eligible for recognition for up to 20 years from the date of incorporation or registration, subject to a turnover threshold of INR 3,000,000,000.

14 Convertible notes are defined as instruments which evidence receipt of money initially as debt and which at the option of the holder is either repayable or can be converted into equity shares, within a period of 10 years from the date of issue.

15 The Non Debt Instrument Rules have introduced the concept of "Hybrid Securities", which term means, hybrid instruments such as optionally or partially convertible preference shares or debentures and other such instruments as specified by the Central Government from time to time, which can be issued by an Indian company or trust to a person resident outside India. However, Non debt Instrument Rules currently do not provide for permissibility of, and/or mechanism for, issuance of hybrid securities by Indian companies.

(i) Sale of equity instruments of an Indian company by a person resident in India to a person resident outside India has to be in compliance with entry routes, sectoral caps/ investment limits, pricing guidelines and other applicable conditions and reporting requirements prescribed by the RBI.

(ii) Transfer of equity instruments of an Indian company by a person resident in India to a person resident outside India by way of gift is permitted with the prior approval of the RBI and subject to certain prescribed conditions such as the gift does not exceed 5% of the paid up capital of the Indian company.

(iii) No approval of the RBI is required for transfer of equity instruments of an Indian company by person resident outside India to person resident in India by way of gift.

(iv) Sale of equity instruments of an Indian company by a person resident outside India to a person resident in India has to be in compliance with the pricing guidelines and other applicable conditions and reporting requirements prescribed by the RBI.

Reporting and filing requirements

Reporting and filing requirements with respect to foreign investment in non-debt instruments have been set out under the Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019 (**"Reporting Regulations"**).

As per the Reporting Regulations, every Indian company issuing equity instruments to a person resident outside India under the FDI route is required to file Form FC-GPR (in the Single Master Form[16]) within a period not exceeding 30 days from the date of issue of the equity instruments. Further, every transfer of equity instrument(s) between a person resident outside India and a person resident in India and vice versa is required to be reported in Form FC-TRS.

Every Indian company which has received FDI in the previous year(s) including the current year is required to furnish an annual return on foreign assets and liabilities to the RBI on or before the 15th day of July of each year.

Certain key issues

Deferred Payment Consideration

The FDI Norms currently permit deferred payment of consideration with respect to share transfer/purchase transaction between resident buyer and a non-resident seller or vice-versa. However, the amount of deferred consideration can not exceed 25% of the total consideration and needs to be paid within a period not exceeding 18 months from the date of the share transfer agreement.

In the event that the total amount of consideration has been paid by the buyer to the seller, then the seller may furnish, for a period not exceeding 18 months, an indemnity to the buyer for an amount not exceeding 25% of the total consideration.

The buyer and seller can also settle an amount not exceeding 25% of the total consideration through an escrow arrangement for a period not exceeding 18 months from the date of the transfer agreement.

In all the 3 scenarios above, the total consideration finally paid for the shares is required to be in compliance with the applicable pricing guidelines.

Repatriation of contractual claim amounts

Repatriation of any contractual claim amount requires prior approval of RBI. In practice, while RBI does usually permit repatriation of any amounts awarded to a person resident outside India pursuant to

[16] Every Indian company, which has received or expects to receive foreign investment or indirect foreign investment is required to file the Entity Master on the FIRMS (Foreign Investment Reporting and Management System) platform at https://firms.rbi.org.in.

a court order or arbitral award, it usually does not permit the repatriation of amounts pursuant to a mutual settlement agreed between the parties.

Portfolio Investment Scheme (PIS) route

Eligible investors

The PIS route permits the following categories of non-resident investors to acquire listed shares

directly through the Indian stock markets:

(i) NRI;

(ii) OCI; and

(iii) FPIs.

Conditions for investments

(i) Investments by NRIs and/or by OCIs:

(a) The purchase and sale must be done through a designated AD Bank branch.

(b) The total holding of an individual NRI/OCI should not exceed 5% of the total paid up equity shares (on fully diluted basis) of the relevant Indian company or of the total value of the series of debentures/ preference shares/ warrants issued by the Indian company, as the case may be.

(c) The aggregate consolidated holdings of all NRIs/OCIs should not exceed 10% of total paid up equity shares (on fully diluted basis) of the relevant Indian company or of the paid up value of each series of debentures/ preference shares/ warrants. This 10% limit can be raised to 24% by way of a special resolution passed by the shareholders of the relevant Indian company.

(d) The consideration should be received as inward remittance through banking channels or out of funds held in a Non Resident External (NRE) Account.

(ii) Investments by FPIs:

(a) Total holding of each FPI or an investor group should be less than 10% of the total paid up equity capital (on a fully diluted basis) of the relevant Indian company or the paid up value of each series of debentures/preference shares/ warrants issued by the relevant Indian company, as the case may be. In case the total holding of an FPI in any Indian company increases upto 10% of the total paid up equity capital (on a fully diluted basis) or paid up value of each series of debentures/preference shares/warrants, as the case may be, then, the total investment made by the FPI shall be re-classified as FDI.

The aggregate consolidated holding of all FPIs in the Indian company cannot exceed the sectoral caps as applicable to such Indian company in relation to the FDI.

(b) FPIs can invest in an Indian company upto the sectoral caps applicable to the relevant Indian company, a lower threshold would apply in case the relevant Indian company had decreased the limit for FPI investment to a lower threshold of 24% or 49% with the approval of its board of directors and shareholders before March 31, 2020. Such an Indian company may, however, increase this limit for FPI investment subsequently which would require board approval and shareholders' approval.

Once the aggregate limit has been increased to a higher threshold, the Indian company cannot reduce the same to a lower threshold.

(d) In case of an Indian company engaged in a prohibited sector, the aggregate limit for FPI investment shall be 24%.

FVCI route

This option is limited to such person(s) resident outside India who are registered as foreign venture capital investors (**"FVCIs"**) with SEBI in accordance with the SEBI (Foreign Venture Capital Investors) Regulations, 2000.

FVCIs are permitted to invest in the securities issued by an unlisted Indian company engaged in certain specified sectors[17] or an Indian start-up or in the units issued by the venture capital funds or alternate investment funds[18].

The benefit of investing under this option is that the person resident outside India can buy and/or sell shares of an Indian company at any price which is mutually agreeable between the buyer and seller.

3.2 Overseas Direct Investment from India

Any investment outside India (**"Overseas Investment"**) by a person resident in India has to comply with the Foreign Exchange Management (Overseas Investment) Rules, 2022, Foreign Exchange Management (Overseas Investment) Regulations, 2022 and the Foreign Exchange Management (Overseas Investment) Directions, 2022 (collectively referred to as the **"ODI Norms"**).

Modes of Overseas Direct Investment by an Indian entity[19]

An Indian entity is permitted make Overseas Direct Investment (**"ODI"**) by way of investment in equity capital[20] for the purpose of undertaking any business activity. ODI can be made by an Indian entity by way of:

(i) subscription to the charter documents;

(ii) purchase of equity capital;

(iii) acquisition through bidding or tender procedure;

(iv) rights issue;

(v) bonus issue;

(vi) capitalisation of exports[21];

(vii) the swap of securities; or

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[17] Foreign Venture Capital Investor is allowed to invest in (a) Biotechnology; (b) IT related to hardware and software development; (c) Nanotechnology; (d) Seed research and development; (e) Research and development of new chemical entities in pharmaceutical sector; (f) Dairy industry; (g) Poultry industry; (h) Production of bio-fuels; (i) Hotel-cum-convention centres with seating capacity of more than 3000; and (j) Infrastructure sector.

[18] Every Indian company, which has received or expects to receive foreign investment or indirect foreign investment is required to file the Entity Master on the FIRMS (Foreign Investment Reporting and Management System) platform at https://firms.rbi.org.in.

[19] "Indian Entity" means a company defined under the Companies Act, 2013 or a body corporate created under an Act of Parliament or a partnership firm registered under the Indian Partnership Act, 1932 or a Limited Liability Partnership (LLP) registered under the Limited Liability Partnership Act, 2008.

[20] "Equity Capital" means equity shares or perpetual capital or instruments that are irredeemable or contribution to non-debt capital of a foreign entity, which is in the nature of fully and compulsorily convertible instruments.

[21] Indian companies are permitted to capitalize the payments due from the foreign entity provided that prior permission of the Central Government or the RBI is not required for remittance of such amount

(viii) merger, demerger, amalgamation or any scheme of arrangement as per the applicable laws in India or laws of the host country or the host jurisdiction, as the case may be.

Overseas Investment in 10% or more of the paid-up equity capital of a listed foreign entity or investment with control[22] where investment is less than 10% of the paid-up equity capital of a listed foreign entity is considered as ODI.

Investment in Financial Services Sector

An Indian entity engaged in financial service sector in India can make ODI in a foreign entity engaged in financial services activity provided that the Indian entity fulfils the following conditions:

(i) it has posted net profits during the preceding 3 financial years[23];

(ii) it is registered with or regulated by a financial services regulator in India; and

(iii) it has obtained required approval from the regulators of such financial services activity, both in India and the host country.

An Indian entity not engaged in financial service sector in India can make ODI in a foreign entity engaged in financial services activity (except banking or insurance) provided that the Indian entity has posted net profits during the preceding 3 financial years.

Portfolio Investment[24]

Indian entities are allowed to make Overseas Portfolio Investment (**"OPI"**) subject to certain conditions. Any OPI by a person resident in India in the equity capital of a listed entity, even after its delisting shall continue to be treated as OPI until any further investment is made in the entity.

However, OPI cannot be made in:

(i) any unlisted debt instruments;

(ii) any security which is issued by a person resident in India who is not in an **IFSC**;

(iii) any derivatives unless otherwise permitted by RBI; and

(iv) any commodities including bullion depository receipts

Modes of Overseas Investment[25] by resident Individual

A resident individual may also make ODI and/or OPI subject to the overall limit of USD 250,000 per financial year prescribed by the RBI under the provisions of liberalised remittance scheme. The limit of USD 250,000 is the aggregate limit and is applicable for all permitted capital account and/or current account transactions which may be undertaken by a resident individual in a financial year.

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[22] "Control" has been defined to mean the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders' agreements or voting agreements that entitle them to ten percent or more of voting rights or in any other manner in the entity.

[23] If the investing Indian entity does not meet the net profits requirement due to the impact of Covid-19 during the period from 2020-2021 to 2021-2022, then the financial results of such period may be excluded for considering the profitability period of 3 (three) years.

[24] "Overseas Portfolio Investment" or "OPI" means investment, other than ODI, in foreign securities, but not in any unlisted debt instruments or any security issued by a person resident in India who is not in an IFSC

[25] Overseas Investment" means financial commitment and Overseas Portfolio Investment by a person resident in India.

A resident individual is permitted to make ODI in an operating foreign entity provided that such entity is not engaged in financial services activity.

In case the resident individual has acquired control in the foreign entity, then such foreign entity cannot have a subsidiary or a step-down subsidiary. Further, where a resident individual has made ODI without control in a foreign entity that subsequently acquires or sets-up a subsidiary/SDS, such resident individual shall not acquire control in such foreign entity.

A resident individual can make overseas investment by way of capitalisation of export proceeds, swap of securities on account of a merger, demerger, amalgamation or liquidation, gift, inheritance, sweat equity shares, minimum qualification shares and acquisition of shares or interest under Employee Stock Ownership Plan (ESOP)/Employee Benefits Scheme (EBS).

However, where the investment, whether listed or unlisted, by way of sweat equity shares, minimum qualification shares and shares/interest under ESOP/EBS does not exceed 10% of the paid-up capital/stock of the foreign entity and does not lead to control, such Investment shall be categorised as OPI.

Investment Routes

ODI can be made by an Indian party through the automatic route or the approval route.

(i) **Automatic route** - Under the automatic route, the investing Indian entity does not require any approval from the RBI provided that the amount of investment made by such Indian investor is within the prescribed ceiling which is as follows:

(a) the total financial commitment[26] of the investing Indian entity should not exceed 400% of the net worth of the Indian entity as per its last audited balance sheet; and

(b) annual financial commitment of the Indian entity should not exceed USD 1 Billion.

(iii) **Approval route** – Any Overseas Direct Investment not falling under the automatic route would require prior approval of the RBI. However, overseas investment/financial commitment in Pakistan/other jurisdiction as may be advised by the Government from time to time or in strategic sectors[27]/specific geographies as may be advised by the Government shall required prior approval of the Government.

Source of investment

The Overseas Direct Investment (or financial commitment) in an overseas JV/ WoS may be funded out of one or more of the following sources:

(i) drawal of foreign exchange;

(ii) capitalisation of exports[28];

(iii) swap of shares[29];

[26] "Financial Commitment" means the aggregate amount of investment made by a person resident in India by way of Overseas Direct Investment, debt other than Overseas Portfolio Investment in a foreign entity or entities in which the Overseas Direct Investment is made and shall include the non fund- based facilities extended by such person to or on behalf of such foreign entity or entities.

[27] "strategic sector" shall include energy and natural resources sectors such as oil, gas, coal, mineral ores, submarine cable system and start-ups and any other sector or sub-sector as deemed necessary by the Government

[28] "Overseas Portfolio Investment" or "OPI" means investment, other than ODI, in foreign securities, but not in any unlisted debt instruments or any security issued by a person resident in India who is not in an IFSC.

[29] In cases of investment by way of swap of shares, irrespective of the amount both the legs of the transaction shall comply with applicable provisions of the foreign exchange regulations of India

(iv) proceeds of external commercial borrowings (ECBs)/foreign currency convertible bonds (FCCBs);

(v) in exchange of American depository receipts (ADR)/global depository receipts (GDR);

(vi) balances held in EEFC account of the Indian party; and/or

(vii) proceeds of foreign currency funds raised through ADR/GDR issues.

Pledge of shares

An Indian entity can pledge the equity capital of the foreign entity in which it has made ODI or its overseas stepdown subsidiary, in favour of:

(i) an AD bank or a public financial institution in India or an overseas lender, for availing fund based or non-fund based facilities for itself or for any foreign entity in which it has made ODI or its step down subsidiaries outside India, or

(ii) a debenture trustee registered with SEBI for availing fund based facilities for itself.

Creation of Charge

An Indian entity is permitted to create charge on:

(i) its assets in India (including the assets of its group company or associate company, promoter and/or director) in favour of:

a) an AD bank or a public financial institution in India or an overseas lender for availing fund/non-fund based facility for any foreign entity/its step down subsidiary outside India;

b) Overseas or Indian lender for availing fund/non-fund based facility for itself.

(ii) the assets outside India of the foreign entity/ its step-down subsidiary outside India in favour of:

a) an AD bank or a public financial institution in India for availing fund/non-fund based facility for any foreign entity/its step-down subsidiary outside India;

b) a debenture trustee registered in India for availing fund based facility for itself.

Acquisition or transfer by way of deferred payment

Sale or purchase of equity capital in an overseas entity by a person resident in India to a person resident outside India or vice-versa on a deferred payment basis is permitted, provided that:

(i) the payment of the sale consideration may be deferred for such definite period as set out in the agreement between the parties;

(ii) foreign securities equivalent to the amount of total consideration shall be transferred or issued upfront by the seller to the buyer; and

(iii) full consideration finally paid shall be compliant with the applicable pricing guidelines.

Guarantees

An Indian entity may issue guarantees to or on behalf of a foreign entity or any step down subsidiary in which it has acquired control through the foreign entity.

The following types of guarantees can be issued:

(i) corporate or performance guarantees;

(ii) corporate or performance guarantee by a group company of such Indian entity in India, being a holding company (which holds at least 51%. stake in the Indian entity) or a subsidiary company (in which the Indian entity holds at least 51%. stake) or a promoter group company;

(iii) personal guarantee by the resident individual promoter of such an Indian entity;

(iv) bank guarantee, which is backed by a counter-guarantee or a collateral by the Indian entity or its group company by a bank in India.

The guarantee, to the extent of the amount invoked, shall cease to be a part of the non-fund based commitment but be considered lending.

Pricing Guidelines

The issue or transfer of equity capital of a foreign entity from:

(i) person resident outside India or person resident in India to a person resident in India eligible to make such investment, or

(ii) a person resident in India to a person resident outside India, shall be subject to a price arrived on an arm's length basis.

However, the AD bank may dispense with the requirement of valuation in certain cases such as (i) transfer on account of merger, amalgamation or demerger or liquidation, where the price has been approved by the competent Court/Tribunal as per the laws in India and/or the host jurisdiction or (ii) price is readily available on a recognised stock exchange, etc.

Prohibited investment

(i) An Indian party is prohibited from making any ODI in a foreign entity engaged in real estate activity[30], gambling in any form or dealing with financial products linked to the Indian rupee.

(ii) No Indian resident shall make a financial commitment in a foreign entity which has invested into India, either directly or indirectly, resulting in a structure of more than two layers of subsidiaries.

Requirement for No-Objection Certificate

A person resident in India would need to obtain a No-Objection Certificate from the lender bank, regulatory body or investigative agency before making financial commitment or undertaking disinvestment if such person:

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[30] "Real estate activity" means buying and selling of real estate or trading in Transferable Development Rights but does not include the development of townships, construction of residential or commercial premises, roads or bridges for selling or leasing.

(i) has an account appearing as a non-performing asset;

(ii) is classified as a wilful defaulter by any bank; or

(iii) is under investigation by a financial service regulator or by investigative agencies in India, namely, the Central Bureau of Investigation or Directorate of Enforcement or Serious Frauds Investigation Office.

Disinvestment[31] by way of sale

Disinvestment of shares or security pertaining to ODI by an Indian party by way of sale to (i) another Indian party; or (ii) to a non-resident is also permitted subject to certain conditions including the following:

(i) the transferor shall not have any dues outstanding for receipt, which he is entitled to receive from the foreign entity as an investor in equity capital and debt; and

(ii) the transferor must have stayed invested for at least one year from the date of making ODI.

The Indian party is required to submit details of such disinvestment within 30 days from the date of receipt of disinvestment proceeds.

[31] "Disinvestment" means partial or full extinguishment of right, title or possession of equity capital acquired pursuant to ODI framework.

4.

LAWS GOVERNING COMPANIES AND LIMITED LIABILITY PARTNERSHIP IN INDIA

4. LAWS GOVERNING COMPANIES AND LIMITED LIABILITY PARTNERSHIPS IN INDIA

4.1 Overview of the Act

The Act is the primary legislation which governs the Companies established in India during their lifecycle. It encompasses a wide set of provisions related to governance of Companies including those related to incorporation of Companies, capital infusion in Companies, management and administration of Companies, borrowings and investment by Companies, audit and accountability, restructuring of Companies and investor protection. The Act provides for various regular and event-based compliances which have to be adhered to by the Companies.

4.2 Modes of Funding

In order to successfully run a business, funding in an efficient manner with a right combination of capital and debt is the most essential requirement. The funding options available are:

(i) **Share Capital**: The share capital of a Company comprises of equity and preference share capital. Equity shareholders have the right to participate and vote in the shareholder's meeting along with the prospects of sharing the profits of the Company through dividends or share value appreciation. However, a preference shareholder is entitled to preferential rights with respect to dividends and repayment of capital at the time of closure of the Company. In certain circumstances, preference shareholders are also entitled to voting rights.

(ii) **Debt**: Subject to the requisite compliances under the Act, a Company can borrow funds in the form of term or working capital loan from banks/financial institutions or unsecured/secured loans from other Companies, investors (who are risk averse) and Directors. In lieu of the debt, depending on the requirements of the lending party, a Company may issue instruments such as bonds, debentures, convertible notes etc.

4.3 Directors

Every Company is required to have a board of directors comprising of such number of individuals as prescribed under the Act. Every individual to be appointed as a director on the board of a Company is required to have a director identification number and a digital signature certificate. Further, the individuals who are nationals of a country sharing the land border with India, would need to obtain security clearance from the office of the Ministry of Home Affairs of India, before getting appointed as director.

The categories of Director include: Executive Director, Non-Executive Director, Independent Director, Nominee Director and Small Shareholders' Director. There are certain requirements in relation to the composition of the board of directors of a Company, such as, every Indian Company is required to have at least 1 resident Director (that is an individual who has stayed in India for a period of 182 days or more during the financial year).

The Directors of the Company have a fiduciary position since they act as agents appointed by the shareholders who are charged with the responsibility of management of the Company. The Act has specific provisions prescribing the duties to be adhered to by the Directors of the Company. Any breach of such duties shall attract penal provisions under the Act.

Besides the above, the Act prescribes the maximum number of directorships that an individual can hold, disclosure of interest by a Director in case he/she is interested in a contract or arrangement to be entered into by the Company, remuneration to be drawn by the Directors, loan to Directors, resignation / removal of an individual from the office of Director, grounds of disqualification of a Director and consequent vacation of the office of Director, constitution of committees of the board of directors (for specified class of Companies).

The Act mandates the Directors of a Company to meet at regular intervals to transact the business related to the Company and clearly lays down the procedure to be followed for convening the meetings of the board including the quorum requirements, manner of circulation of notice, minutes, etc. The Company(ies) can convene the board meeting either physically or through video conference or other audio-visual means.

4.4 Shareholder and Member

A person acquiring shares in the Company becomes a **shareholder** and a person whose name is entered in the register of members acquires the status of a **member.** Any person whether an individual or a body corporate can be a member/shareholder of a Company. The member of a Company is entitled to receive dividends, notice of the general meetings and vote at such meetings.

There could be instances where the person whose name appears in the register of members may be holding shares on behalf of or for the benefit of other person(s) (**"Beneficial Interest"**). The Act mandates disclosure requirements in case the Beneficial Interest is held by a person other than the member of the Company.

Every Company is also required to provide the details of significant beneficial owner (that is the individual, directly or indirectly, controlling or having stake in the Company) to the Registrar of Companies and maintain the register of significant beneficial owners.

A Company is required to convene a meeting of its members within 6 months from the close of a financial year, such meeting is called annual general meeting **("AGM")**. Any meeting of the members other than AGM is called an extra ordinary general meeting **("EGM").** A Company can conduct an EGM, whenever there is a requirement to obtain the approval of the members for matters requiring such approval under the Act. The Act prescribes the process to be followed for convening the AGM and EGM including the quorum requirements, manner of voting, postal ballot, convening meetings at shorter notice, etc.

4.5 Auditors

Every Company is required to appoint a chartered accountant or a firm of chartered accountants registered in India to audit its books of accounts.

The first auditor is required to be appointed within a maximum period of 90 days from the date of incorporation to hold office till the conclusion of the first AGM. Thereafter, the auditor is appointed for a 5 year term, in accordance with the provisions of the Act. The Act also prescribes the process for removal or resignation of the auditors during their prescribed tenure of 5 years.

The auditors are required to conduct the statutory audit of a Company and submit a report along with the audited financials for each of the financial year to the members of the Company.

4.6 Statutory Records and Books

Every Company is required to maintain statutory registers, books, documents etc. as per the provisions of the Act. Some of the key statutory records to be maintained include register of members/security holders of the Company, register of significant beneficial owners, annual returns, books of accounts, minutes of the proceedings of the board and general meetings and register of Directors and KMP.

The Act primarily mandates that the statutory records should be maintained at the registered office of the Company. However, subject to the provisions of the Act, certain statutory records can be maintained at a place other than the registered office of the Company.

4.7 Intercorporate Loans and Investments

Subject to obtaining requisite board and/or shareholders' (in case the limits prescribed under the Act are breached) approval, the Companies are allowed to:

(i) give loan(s) to any person or other body corporate;

(ii) make investment(s) in the securities of any other body corporate; and

(iii) provide security or give guarantee in connection with a loan to any person or body corporate.

However, Companies are not allowed to make investment through more than 2 layers of investment companies except in certain cases as prescribed under the Act.

4.8 Corporate Social Responsibility ("CSR")

Every Company which meets the prescribed criteria in a particular financial year is required to spend at least 2% of its average profits (*as calculated in accordance with the provisions of the Act*) made during the 3 immediately preceding financial years towards CSR activities. For this purpose, the Act mandates constitution of a CSR committee (*comprising of the Directors of the Company*) for the Companies having CSR expenditure above INR 5 million and in case of an unspent amount in relation to any ongoing project, formulation of the CSR policy and recommendation of the CSR committee to the board on annual action plan.

The Companies are allowed to offset any excess CSR expenditure spent in any financial year. They are also allowed to transfer the unspent CSR amount, pursuant to any ongoing project, in a special bank account and to utilize the said amount within 3 financial years from the date of transfer.

Further, the board's report of a Company shall include an annual report on CSR containing the detailed information on CSR expenditure during the financial year and reason for not spending prescribed CSR amount, if any.

4.9 Related Party Transactions

The Act prescribes that the following types of contracts and arrangements (not in the ordinary course of business and at arm's length price) with related party[32] can be entered into by the Company only upon approval from the board of directors at a board meeting:

(i) sale, purchase or supply of any goods or materials;

(ii) selling or otherwise disposing of or buying property of any kind;

(iii) leasing of property of any kind;

(iv) availing or rendering of any services;

(v) appointment of any agent for purchase or sale of goods, materials, services or property;

(vi) related party's appointment to any office or place of profit in the Company, its subsidiary company or associate company; and

[32] The term '***related party***', *inter alia,* includes directors of a company, its key managerial personnel, their relatives, holding, subsidiary or associate company(s) of the Company.

(vii) underwriting the subscription of any securities or derivatives thereof, of the Company.

In the event the value of contracts or arrangements to be entered with related party exceeds the prescribed limits, a prior approval from the members of the Company is required.

4.10. Restructuring

The Act provides various modes through which the existing structure of Companies can be altered. Some of the common methods of restructuring adopted by Companies, basis the underlying requirement, are as under:

(i) Conversion of one form of a Company to another, such as conversion of a Company from private limited to public limited and vice versa.

(ii) Alteration of existing share capital of a Company through increase in authorised share capital, reduction of existing share capital, buy back of shares from existing shareholders, consolidation and sub division of all or any of the share capital of a Company into shares of larger amount than the existing shares, sub-division of existing shares into shares of smaller amount, conversion of fully paid shares into stock and vice versa.

(iii) Merger or amalgamation of Companies with other companies.

(iv) Demerger/hiving off of businesses of existing Companies.

The Act provides for specific provisions/compliances which need to be followed for undertaking any of the aforesaid restructuring processes. In many cases, such as in case of merger/amalgamation/demerger, specific approval of the Government through designated regulatory bodies is required to be obtained prior to proceeding with the restructuring process. The Act provides ample flexibility to investors to structure/restructure Companies in India depending upon their requirements.

Further, a company can enter into compromise, arrangement, merger or demerger with a company or body corporate which is incorporated in a country which shares land border with India subject to prior approval from the Government.

A foreign company incorporated outside India and Indian company, can enter into merger or amalgamation by obtaining prior approval of RBI and complying with the requirements specified under the Act.

4.11. Foreign Companies Doing Business in India

A foreign company (*that is a company or body corporate incorporated outside India*) having a place of business in India either by itself or through an agent, physically or through electronic mode and conducting any business activity in India is required to register itself with the MCA after furnishing the documents as prescribed under the Act.

Further, the Act casts various obligations on foreign companies, such as having the books of accounts prepared and submitted with the MCA, delivering documents with respect to alteration in the prescribed information and having the charges created on their property in India registered with the MCA

4.12. Closure of Business in India

A Company can be closed by following methods after complying with the requirements as prescribed under the applicable law:

(i) winding up by the NCLT; or

(ii) voluntarily by the members; or

(iii) by creditors of the Company; or

(iv) striking off the name of the Company from the register of the relevant Registrar of Companies.

The mode of closure to be adopted largely depends on the status of operations of the Company and the position of its assets and liabilities.

4.13.Laws Governing Listed Companies in India

A company whose securities (shares or shares and debt both) are publicly traded on recognised stock exchanges in India, apart from the provisions of the Act, is also governed by the provisions of the Securities and Exchange Board of India Act, 1992 (**"SEBI Act"**) and the Securities Contracts (Regulations) Act, 1956 ("**SCRA**"). SEBI is the statutory body which is entrusted with the powers of regulating and governing the functioning of listed companies in India. SEBI, under the SEBI Act and the SCRA, has issued various rules and regulations which are required to be followed by listed companies in India. Some of the important regulations issued by SEBI are those related to listing of equity shares by companies, listing of debt instruments/securities by companies, takeover of listed companies, issue of capital and disclosure requirements and listing obligation and disclosure requirements. These regulations have been briefly discussed in Chapter 5.

As per the recent amendment, MCA has permitted unlisted public Companies and listed public Companies to issue securities for the purposes of listing on permitted stock exchanges in permissible jurisdictions subject to certain conditions under the Act and in accordance with the regulations framed or directions issued by SEBI or the International Financial Services Centres Authority.

4.14.Laws Governing Limited Liability Partnership in India

(i) **Overview**: The Limited Liability Partnership Act, 2008 ('LLP Act') is the primary legislation that governs LLPs registered in India. It encompasses a wide set of provisions related to governance of LLPs including incorporation of LLPs, requirement of partners and designated partners, capital contribution, audit and accountability, and restructuring of LLPs.

(ii) **Structure and Governance**: Two or more persons to carry on a lawful business with a view to make profits can incorporate LLP in India. Therefore, a LLP cannot be a not for profit organisation. LLP allows a partnership structure where the liability of the partners is limited to the capital contributed by them in LLP. The inter-se rights and duties of the partners and those towards the LLP are governed by the LLP agreement terms and conditions that are mutually agreed by all the partners of the LLP. With an intention to create a class of LLPs that are subject to lesser compliance requirements, lower fees, etc. MCA has allowed incorporation of small LLPs.

(iii) **Partners and Designated Partners**: An LLP can be incorporated by two or more persons (individual or body corporate) as partners. Further, every LLP is required to appoint two individuals as designated partners and at least one of them should be a resident in India (that is an individual who has stayed in India for a period of 120 days during the financial year). Every individual to be appointed as designated partner is required to have a director identification number and a digital signature certificate. In case the partner of LLP is a body corporate, nominee of such body corporate can act as a designated partner. The designated partners are responsible for complying with the provisions of the LLP Act.

The LLPs are also required to maintain register of partners from its incorporation and the register is to be maintained at the registered office of the LLP. Further, any beneficial interest in contribution of LLP is held by a person other than whose name is entered in register of partners is required to be declared to the requisite Registrar.

As per the recent amendment in LLP Rules, every LLP is required to report to the Registrar regarding the significant beneficial ownership in the LLP and maintain the register of significant beneficial owners of the LLP.

(iv) **Closure**: A LLP can be closed by any of the methods-voluntarily by its partners or winding up by the NCLT or by striking off the name of the LLP from the register of the respective Registrar of Companies, after complying with the requirements as prescribed under LLP Act.

5.

BANKING AND SECURITIES LAWS

5. BANKING AND SECURITIES LAWS

5.1 Overview of the Banking and Financial Sector

The Indian banking and finance sector predominantly comprises of banks which can be classified into scheduled and non-scheduled banks (based on certain factors), and further into public sector banks, private sector banks and foreign banks (depending upon their ownership).

Each public sector bank is constituted under a specific enactment of the Parliament and is regulated by the Banking Regulation Act, 1949 ("**Banking Regulation Act**") in addition to the provisions of the specific enactment. Private sector banks and foreign banks are also regulated by the Banking Regulation Act.

Every bank has to obtain a licence from the RBI to carry on the banking business in India.

The operation, governance and management of banks as well as other aspects such as capital adequacy requirements are regulated by the RBI. The RBI strictly regulates all aspects, including change in shareholding (acquisition of 5% or more of paid-up share capital of, or voting rights in, a bank requires prior approval of the RBI), opening of new branches and termination, appointment as well as remuneration of chairman and key managerial personnel.

Apart from banks, several non-banking entities offer an alternative to the traditional banking system. Such non-banking entities are called non-banking financial companies ("**NBFCs**")[33] which are regulated by the RBI in terms of the powers entrusted upon the RBI under the Reserve Bank of India Act, 1934.

NBFCs are broadly categorised into deposit accepting NBFCs and non-deposit accepting NBFCs. Within the broad categorisation, NBFCs can further be categorised into systemically important and non-systemically important. Additionally, basis their activities, NBFCs can further be sub-classified as NBFC-Peer to Peer Lending Platform, NBFC-Account Aggregator, deposit taking NBFCs, NBFC-Infrastructure Finance Company, Core Investment Company, Housing Finance Company, Standalone Primary Dealer, Infrastructure Debt Fund- NBFC, NBFC-Investment and Credit Companies, NBFC-Micro Finance Institutions, NBFC-Factors and Mortgage Guarantee Companies.

Under the revised framework for NBFCs notified by the RBI, the regulatory structure for NBFCs shall comprise of four layers based on their size, activity, and perceived riskiness. The four layers are: Base layer (NBFCs-BL), Middle layer (NBFCs-ML), Upper layer (NBFCs-UL) and Top Layer (NBFCs-TL).

In order to provide additional avenues of fund raising, the Government has permitted Indian entities to access overseas markets and raise external commercial borrowings ("**ECB**") at a relatively lesser cost, subject to fulfilment of certain conditions.

ECB refers to commercial borrowing by eligible borrowers from recognised lenders in any which involves payment of agreed interest (in any form) and repayment of principal debentures/ preference shares (other than fully and compulsorily convertible instruments), trade credits beyond 3 years, foreign currency convertible bonds, foreign currency exchangeable bonds.

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[33] The term "**non-banking financial company**" is defined to mean:

(a) a financial institution which is a company;

(b) a non-banking institution which is a company and which has as its principal business the receiving of deposits, under any scheme or arrangement or in any other manner, or lending in any manner;

(c) such other non-banking institution or class of such institutions, as the Bank may, with the previous approval of the Central Government and by notification in the Official Gazette, specify.

The ECB framework comprises of the Foreign Exchange Management (Borrowing and Lending) Regulations, 2018 as notified by the RBI under FEMA and amended from time to time.

The ECB framework sets out certain parameters (such as minimum average maturity, permitted end-uses and all-in-cost ceiling) all of which are required to be complied with in order to raise an ECB.

Any person resident in India (other than individuals) that is incorporated or registered under a Central or State Act, can receive ECB either in any freely convertible foreign currency or Indian currency, subject to certain conditions. As in the case of FDI, ECB can be raised either under the automatic route or the approval route.

The following conditions need to be met in order to raise ECB under the automatic route:

(i) **Recognised Lenders:** An eligible borrower may raise ECB from a person resident outside India, a branch outside India of an entity whose lending business is regulated by the Reserve Bank, and a financial institution [34] or a branch of a financial institution set up in IFSC.

(ii) **Minimum maturity:** The minimum average maturity period for ECB is generally 3 years. However, an eligible borrower engaged in manufacturing sector may also raise ECB up to USD 150 million with an average maturity period between 1 year and 3 years. .

(iii) **Ceiling on cost of ECB:** The cost of borrowing should be aligned with the benchmark of widely accepted interbank rate or Alternative Reference Rate (ARR) of 6-month tenor in case of foreign currency ECB and prevailing yield of the Government of India security of corresponding maturity in case of Indian Rupees denominated ECB. However, the all-in-cost should be in line with prevailing market conditions.

(iv) **Permissible Limits:** An eligible borrower can raise ECB up to the higher of USD 1 billion or up to 300 per cent of net worth as per the last audited standalone balance sheet of the borrower.

(v) **End use of ECB:** Except for Chit Funds, Nidhi Company, real estate activities, agriculture, trading in transferrable development rights and other activities prescribed by the RBI, ECB proceeds can generally be utilised for all purposes.

The ECB framework permits creation of security in favour of non-resident lender by way of: (a) creation of charge on immovable assets, movable assets, financial assets, and intangible assets, (b) issuance of corporate and/or personal guarantees in favour of overseas lender / security trustee.

5.2 Overview of Securities Law Framework

The securities and capital market in India is regulated by SEBI which was established under the provisions of the SEBI Act, 1992. SEBI regulates all activities in securities and capital markets as well as the various market participants (such as depository participants, merchant bankers, foreign portfolio investors, and registrar and share transfer agents). In order to safeguard the interest of investors, SEBI issues various regulations, notifications, guidelines and circulars from time to time.

Some of the key areas of supervision of SEBI are: (i) raising of capital by way of public offering, and (ii) investment and dealing in listed securities. Every listed company and every company proposing to

[34] "financial institution' includes a company, a firm, an association of persons or a body of individuals, whether incorporated or not, banks, non-banking financial companies, insurance companies, brokerage firms, merchant banks, investment banks, pension funds, mutual funds, trusts, exchanges, clearing houses, and any other entity that may be specified by the Government of India or a Financial Regulatory Authority.

undertake a public offering is required to comply with the ICDR Regulations [35] as well as the Listing Regulations [36]. Additionally, in order to regulate investment, and dealing in public securities, SEBI has issued the Takeover Code [37] and Insider Trading Regulations [38], amongst other regulations.

ICDR Regulations

The ICDR Regulations lay down the framework governing the raising of funds by companies by way of issuance of securities on the stock exchange such as initial public offer, rights offer, qualified institutional placement and preferential issue/private placement. The ICDR Regulations further prescribe certain mandatory disclosure requirements at the time of raising funds by way of capital issue. These regulations seek to bring transparency in the working of listed companies and at the same time, protect the interest of public shareholders of listed companies by ensuring fair disclosures of the necessary information about the listed companies which might affect the decision of the public shareholders to invest in such listed company.

Insider Trading Regulations

The Insider Trading Regulations lay down the governing law for insider trading offences. Under these regulations, it is an offence for a person to deal in a company's shares in certain circumstances if he is in possession of unpublished price-sensitive information in relation to those shares. Where the acquirer receives unpublished information about the target company, advice needs to be taken as to whether that information is price-sensitive.

The acquirer, the directors of the target company and any persons connected with either of them, need to be especially mindful of the fact that they do not trigger the Insider Trading Regulations while acquiring price sensitive information during due diligence on the target company. Since there is ambiguity surrounding the interpretation of several aspects of the regulations, whether any information is price sensitive in relation to a particular transaction or not, is a question of fact to be answered having regard to the circumstances of each case. Further, since breach of the law can lead to criminal action, caution must be exercised.

Takeover Code

The Takeover Code regulates the substantial acquisition of shares of or voting rights in, or control of, public listed companies. The primary trigger point is the acquisition of, directly or indirectly, (i) control[39] of the listed public company, (ii) 25%[40] or more of the equity shares of, or voting rights in, the listed target company, or (iii) additional equity shares of, or voting rights in, the target company entitling it to exercise more than 5% of the voting rights in any financial year by an acquirer who, together with Persons Acting in Concert (PAC)[41], already holds 25%[42] or more of shares of, or the voting rights in, the target company but less than 75% (which is the maximum permissible non-public shareholding). In each of these cases, the acquirer has to give an open offer to public shareholders for acquiring at least 26% shares of the listed target company. The open offer has to be made by the acquirer at a price not less than the price determined as per the pricing guidelines given in the Takeover Code.

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[35] The Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018

[36] The Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015

[37] The Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011

[38] The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015

[39] "**control**" includes the right to appoint a majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner.

[40] In case of a listed entity which has listed its specified securities on Innovators Growth Platform (**IGP Listed Entity**), this threshold is 49%.

[41] "**Persons acting in concert**" or "**PAC**" means the persons who, with a common objective or purpose of acquisition of shares or voting rights in, or exercising control over a target company, pursuant to an agreement or understanding, formal or informal, directly or indirectly co-operate for acquisition of shares or voting rights in, or exercise of control over the target company. In addition to the wide definition of PACs, certain persons, like promoter and promoter groups, group companies, companies with common directors and others, are de to be PACs subject to evidence to the contrary.

[42] In case of IGP Listed Entity, this threshold is 49%.

SEBI has also announced an exemption from the mandatory open offer norms in case of investment in eligible stressed companies[43] by the non-promoter investors by way of preferential allotment pursuant to the relaxed pricing norms under ICDR Regulations notified by SEBI.

Further, the Takeover Code has set out certain disclosure requirements. In case of acquisition by an acquirer together with PAC with him of 5% or more of the equity shares of, or voting rights in, a target company, such acquirer shall disclose his aggregate shareholding and voting rights in such target company[44]. Also, the sale or purchase of more than 2%[45] of equity shares of, or voting rights in, the target company by an acquirer who, together with PAC with him, already holds 5%[46] or more of the equity shares of, or voting rights in, a target company has to be disclosed.

[43] A listed company would be considered an eligible stressed company if it satisfies any two of the conditions set out below:

(a) Such listed company has made disclosure of defaults on payment of interest/ repayment of principal amount on loans from banks financial institutions/Systemically Important Non-Deposit taking Non-banking financial companies/ Deposit taking Non financial companies and /or listed or unlisted debt securities (*in terms of SEBI Circular dated 21 November 2019*) in last 90 days;

(b) There is an inter-creditor agreement in terms of Reserve Bank of India (Prudential Framework for Resolution of Stressed Assets) Directions 2019 dated 7 June 2019; and

(c) The credit rating of the financial instruments (listed or unlisted), and credit instruments / borrowings (listed or unlisted) company has been downgraded to “D”.

[44] In case of IGP Listed Entity, this threshold is 10%.

[45] In case of IGP Listed Entity, this threshold is 5%.

[46] In case of IGP Listed Entity, this threshold is 10%.

6.

LABOUR AND EMPLOYMENT

6. LABOUR AND EMPLOYMENT

6.1. Overview of the Legal Framework of Employment Laws

The Constitution empowers both, the Central and the State Government, to legislate on labour related matters. Both the Central Government and the State Government have legislated extensively on labour and employment issues. Further, the State Governments have the power to enact State specific rules under central laws. The State Governments have also enacted labour laws which apply to the employers and employees based in that particular State. Hence, employers need to ensure compliance with Central and State specific labour laws as applicable to them.

The applicability of labour and employment laws depends on a variety of factors, which primarily include number of employees, location of office, nature of business activity and if there are any exemptions available to an employer.

The sheer volume of labour legislations in India posed complexities in compliance and was often seen as a hindrance in doing business in India. Therefore, with an objective to simplify the existing labour laws framework, the Government has consolidated the various Central labour legislations into 4 labour codes - the Code on Wages, 2019 (the "**COW**"); Industrial Relations Code, 2020 (the "**IR Code**"); Code on Social Security, 2020 (the "**COSS**") and Occupational Safety, Health and Working Conditions Code, 2020 (the "**OSH Code**") (collectively, the "**Codes**"), which has resulted in the repealing of 29 old labour legislations. The Codes have been enforced by the Central Government with effect from November 21, 2025, along with the corresponding Central Rules framed thereunder with effect from May 8, 2026. Further, State governments are in the process of finalizing their respective rules under the Codes and during this implementation process, the Ministry of Labour and Employment, Government of India, vide FAQs published on December 30, 2025, has clarified that as per the provisions of Section 6 of General Clauses Act, 1897, the existing State specific rules framed under the earlier labour laws should continue to operate to the extent they do not contradict the provisions of the Codes, until the relevant rules are made effective.

6.2. General Categorisation of Employer Organisation

Classifications of establishments in India is based on various factors such as the nature of business activities, workforce strength and sector-specific operations. The categorisation of employer organisations are to be considered under the Codes as well as the respective State Shops and Commercial Establishments Acts ("**S&E Acts**"). The Codes prescribe varying thresholds, obligations, registrations, and employee protections for different categories of employers and establishments.

The Codes broadly categories employer organisations into commercial establishments , factories, mines, etc.

While the term 'commercial establishments' is not specifically defined under the Codes, the term 'establishment' has been defined under the Codes to mean places where trade, business, manufacturing activities, or occupations are carried. The obligations under the Codes arise based on the number of employees and the subject matter that each Codes provides for. For instance various social security benefits to be provided is determined based on prescribed number of employees in the COSS. The scope may also extend to motor transport undertakings, newspaper establishments, audio-visual productions, building and construction activities, plantations, mines, and ports, aggregators (digital intermediary or marketplace which connects buyers or users of a service with sellers or service providers).

An employer organization engaged in manufacturing process with workers with or without power (subject to State-specific thresholds) is categorized as a 'factory'. The obligations under the Codes differ-based on the number of employees and power used and the subject matter that each Codes provides for.

Under the State specific S&E Acts, an employer organisation engaged in any trade or providing services could be an 'establishment' or 'commercial establishment'.

Depending on the nature of business activities, some industries may have their own sector specific labour provisions, such as for workers employed in mines, port, plantation, building construction, motor transport, cinemas, newspapers etc. An employer is required to obtain applicable registrations or licenses under the Codes (or as required in any other applicable law) based on their eligibility, maintain statutory registers and records and ensure periodic filings with labour authorities.

6.3. General Categorisation of Employees

Employees' have been defined under the S&E Acts and across the Codes. The Employees in India are generally categorised into worker and non-worker. The worker category employees have certain special protections under the labour laws.

The IR Code, a legislation dealing with the investigation and settlement of industrial disputes, defines the concept of "worker", which has been largely borrowed in other labour laws also. Under the IR Code, briefly a "worker" is defined to include persons employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical work or supervisory (other than those drawing wages exceeding eighteen thousand rupees per month). However, employees working mainly in a managerial capacity who exercise (either by the nature of the duties attached to the office or by reason of the powers vested in them) functions mainly of a managerial nature, do not fall under the definition of worker.

In considering whether or not an employee would qualify as worker or not, the designation and remuneration of an employee is not conclusive. It would depend on the nature of his or her employment and whether or not his/her job duties are managerial or supervisory in nature. The concept of worker has been a subject matter of litigation and the legal position has evolved over the years through judicial precedents.

All other employees not falling under the ambit of worker essentially form the non-worker category. The Employees in the non-worker category are primarily governed by the terms of their employment contract, the S&E Acts, and the Codes as applicable.

The COSS recognises categories such as gig workers, platform workers, and home-based workers, and provides social security benefits based on such classification.

6.4. Employment Contracts and HR Handbook

Issuance of employment agreements is a legal requirement and the same should set out the terms and conditions of employment in accordance with the local S&E Acts and the Codes, as may be applicable. Employees are generally required to serve a probation period of 3 to 6 months although the concept of probation is not expressly provided for under Indian labour laws. Employers generally have a HR handbook or employee related policies and procedures in place, which lay down the common workplace rules and regulations and ensures uniform practices and procedures within the organisation. The employers should ensure that the adoption of any global policies and procedures and the HR handbook is in compliance with applicable labour and employment laws of India.

6.5. Working Hours

The legally permissible working hours are 8 hours in a day and 48 hours in a week, with a minimum of 1 day given as a weekly off. However, the same may vary in light of local S&E Acts. Overtime is permissible up to limits specified under the OSH Code and the local S&E Act, as applicable. The employers are required to pay extra for overtime hours worked by an employee, which is usually paid at the rate of twice the normal rate of wages.

6.6. Wages and Salaries

An employer is required to pay at least the minimum wage as per applicable local law. The aspects relating to wage period, timely payment of wages, permissible deductions from wages and components constituting wages are governed by the COW. The minimum wages are prescribed by the State Government and are revised periodically.

The term "wages" has now been defined uniformly across all the Codes, and broadly includes all remuneration paid to an employee in terms of money, subject to certain specified inclusions and exclusions. Further, the Codes introduce the 50% rule, whereby excluded components exceeding 50% of the total remuneration are deemed to form part of wages, and also recognise remuneration paid in kind, subject to prescribed limits.

The break-up of wages/ salaries into different heads of payment such as basic pay, dearness allowance and other allowances should be structured keeping in mind tax considerations and implications under Codes.

6.7. Leaves and Holidays

The leaves and holidays are generally governed by the local S&E Act and the OSH Code. The leave entitlements and prescribed public holidays vary from State to State. The leaves are generally categorised as privilege or earned annual leave, sick leave and casual leave. The law allows accumulation and encashment of privilege or earned annual leave. Employers adopting global policies or uniform policies across offices should ensure that the leave policies are compliant with applicable local law requirements.

6.8. Hiring Contract Labour

The contract labour system refers to workers engaged through an intermediary (typically a contractor/manpower supply agency) and is based on a triangular relationship between the principal employer of an establishment, the contractor and the workers employed as contract labour. Therefore, a workman is deemed to be a contract labour when he/she is hired in connection with the work, or "contract for service" of an establishment by or through a contractor. They are indirect employees; persons who are hired, supervised and remunerated by a contractor who, in turn is compensated by the principal employer.

The contract labour system in India is governed by the OSH Code. An establishment engaging contract labour and covered under the OSH Code is required to obtain a single unified registration under the OSH Code, while the contractor is required to obtain a license from the competent authority constituted under the OSH Code.

6.9. Restrictive Covenants in Employment Agreements

A distinction has been drawn in Indian law between a restrictive condition in a contract of employment which is operative during the period of employment and one which is to operate after the termination of the employment. A negative covenant enforced by the employer during the subsistence of employment is generally considered valid and not regarded as a restraint of trade.

The legal position in India is settled that non-compete restrictions are not enforceable post the termination of employment contracts. The courts have consistently taken a view that a covenant which restricts the employee from taking up work of his/her own choice after termination of service is void.

6.10. Health and Safety

The OSH Code stipulate provisions relating to health, safety and welfare of the employees at the workplace. The OSH Code imposes a statutory duty on employers that the workplace is maintained in a manner that is safe and without risks to the health of employees. Employers are required to comply, to the extent applicable based on the nature of the establishment and the relevant provisions of the OSH Code along with relevant rules, with the minimum standards and obligations including those relating to working conditions, cleanliness, ventilation, welfare facilities, occupational safety measures, hazard management, and the provision of necessary safety equipment and safeguards.

6.11. Social Security Benefits

In India, the major Central social security legislations have now been consolidated under the COSS, and include:

i. Employees’ Provident Fund - Chapter III of COSS;
ii. Employees’ State Insurance Corporation - Chapter IV of COSS; and
iii. Gratuity - Chapter V of COSS.

The Provident Fund is a social security and welfare mechanism, which provides for provident fund, family pension and insurance to employees working in factories and other commercial establishments. It covers 3 schemes, that is, the employee provident fund scheme, pension scheme and employees deposit linked insurance scheme. In terms of the COSS, both employer and employee are required to contribute a prescribed percentage of the monthly salary of each covered employee towards the employees' provident fund and other schemes. It is a central law and administered by the Government, through the Employees Provident Fund Organization.

The Employee State Insurance, inter alia, provides for certain benefits to the employees in contingencies such as maternity, temporary or permanent physical disablement due to employment injury resulting in loss of wages or earning capacity, death due to employment injury, as well as medical care to employee and their immediate dependants. An Employees State Insurance Fund (**“ESI Fund”**) has been created under the COSS. The contribution to the ESI Fund is required to be paid at a prescribed percentage of the employee’s “wages” by the employer as well as the employee. The employer is liable to pay, in respect of each eligible employee, the employers’ contribution as well as the employees’ contribution (as deducted from the employees’ monthly wages), into the ESI Fund on a monthly basis.

The Gratuity is a scheme of payment of a certain sum, by the employer, as gratitude in lieu of a person’s continuous employment. It is the statutory liability of the employer to pay gratuity which is capped at a prescribed amount. Gratuity is payable to an employee after he/she has rendered continuous service for not less than five (5) years (other than fixed term employee) and the gratuity becomes payable on the termination of employment, or on the occurrence of either of the following: (i) superannuation; (ii) retirement or resignation; (iii) death or disablement due to accident or disease; (iv) on termination of his contract period under fixed term employment; (v) on happening of any such event as may be notified by the Central Government.

The COSS provides that a fixed-term employee shall be eligible for payment of gratuity upon rendering continuous service for a period of one (1) year under a fixed-term employment contract.

6.12.Maternity Benefit

The maternity benefit in India is regulated under the COSS, according to which eligible female employees are entitled to maternity leave for a period of 26 weeks. In addition to the said benefit, the female employees are also entitled to receive other benefits such as medical bonus, paid leave in case of miscarriage or medical termination of pregnancy, additional paid leave in case of illness arising out of pregnancy, etc.

Further, commissioning mothers and adopting mothers are also entitled to receive 12 weeks of maternity leave.

Establishments having 50 or more employees are required to have a crèche facility within the prescribed distance, either separately or along with other common facilities.

Indian law presently does not provide for paternity leave. However, establishments are free to provide such benefits to male employees as per their internal policies.

6.13.Workplace Harassment

Although the Indian labour laws deal with unfair labour practices, there is no specific law to provide for issues pertaining to victimisation, discrimination or harassment at workplace, except for the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (“**POSH”),** which specifically deals with the issue of sexual harassment of women at workplace.

POSH is a Central law applicable to all establishments/employers and covers all employees. It lays down several duties for the employer and amongst other things requires the employer to constitute an internal committee to inquire into complaints of sexual harassment and provide redressal to aggrieved woman; conduct awareness and sensitisation training for employees.

6.14.Industrial Relations and Trade Unions

Indian laws recognise trade unions, the spirit of collective bargaining and seek to ensure stability of industrial relations. The IR Codes empowers the employees to form and register a trade union subject certain conditions.

The IR Code is the main legislation which provides the framework for resolution of industrial disputes and aims to promote amity between employer and workers.

6.15. Lay Off, Retrenchment, Transfer and Termination of Employment

The concept of “hire and fire at will” is not entirely recognised under Indian law. The S&E Acts typically provide for at least 1 months’ notice or payment in lieu for termination of employment by either party. Some S&E Acts specifically provide that termination has to be for a reasonable cause. Termination on grounds of misconduct is recognised, however misconduct must be established on record and the employer should have conducted the inquiry in accordance with the principles of natural justice.

Termination of worker category employee is regulated under the IR Code and requires the employer to give reasons for dismissal. The IR Code permits “retrenchment” which means termination of services of a worker by the employer for any reason, except the retirement, termination on grounds specified in a fixed term-contract (or the non-renewal of a fixed term contract), and/or termination on grounds of continued ill health, subject to the employer following prescribed procedure.

The IR Code also deals with matters pertaining to lay-offs, transfer or closure of undertaking, transfer of employees, labour disputes, unfair labour practices, changes to conditions of service, etc. and prescribes certain conditions and procedural aspects which an employer needs to comply with while dealing with the aforesaid matters.

In case of wrongful termination, an aggrieved employee can bring an action against the employer and there could be instances where the Indian courts may order reinstatement of an employee with/ without back wages etc., or otherwise allow damages or compensation to the employee.

It is important for employers to bear in mind the legal requirements governing dismissal and payment of full and final settlement dues and have proper documentation in place with respect to termination of employees with or without cause.

6.16.Concept of International Worker and Immigration Issues

International mobility of workforce for short term or long-term assignments need to be ensured in compliance with laws of the home and host country of employment. Secondment of expatriate employees to India needs to be structured keeping in mind the Indian legal requirements. First and foremost, depending on the duration and nature of assignment, an expat would need to obtain an employment visa or in some cases a business visa for India.

One of the key conditions is that the foreign national being sponsored for an employment visa in India should draw a salary in excess of USD 25,000 per annum. Employment visa shall not be granted for jobs for which qualified Indians are available or for routine, ordinary or secretarial/clerical jobs. If an expat intends to stay in India for a duration of more than 180 days, registration with the Foreigners Regional Registration Office (FRRO) is required.

With respect to the social security coverage of an expat employee, the COSS facilitates the continuation of the social security contribution by the expat in his home country subject to there being a social security agreement between India and the expatriate's home country. In the absence of a social security agreement, the Indian employer is required to contribute to a provident fund for international workers.

6.17. Compliance and Enforcement under Labour Laws

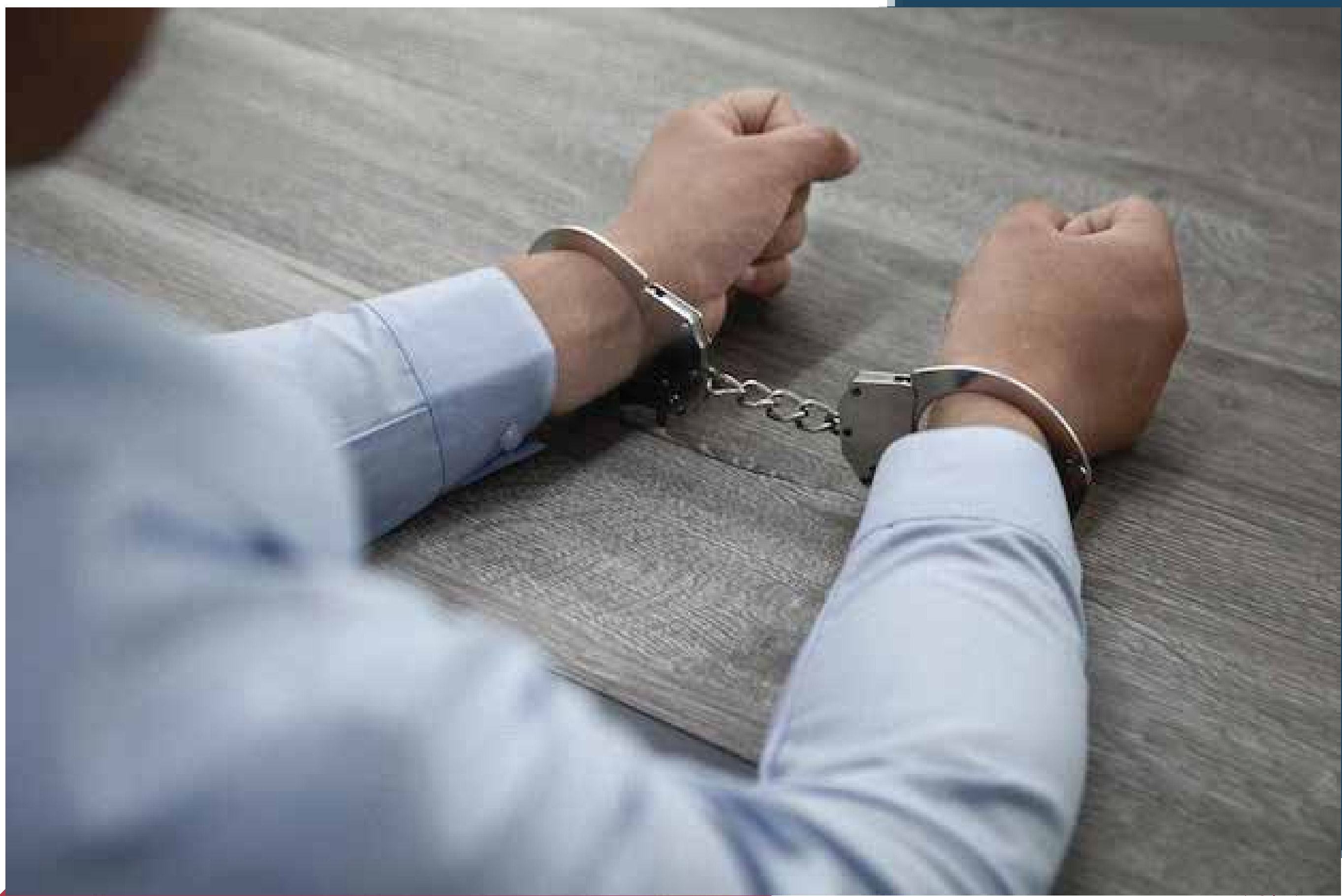
From a compliance and enforcement perspective, Indian labour authorities conduct routine inspections, inspections based on computerised systems in place and in response to any complaints made to the labour authorities. The Indian labour authorities at the State level have often been considered lax in implementing and enforcing labour laws, however with the ongoing labour reforms and digitisation of systems, the labour authorities have become significantly active, especially in metropolitan cities.

The Central labour laws, especially the social security laws, are enforced rigorously and authorities such as the provident fund and ESI authorities are known to be proactive and strict.

The Codes have introduced the concept of an "Inspector-cum-Facilitator" in place of the traditional inspector mechanism existing under the earlier labour law framework. The role of the Inspector-cum-Facilitator is not limited to conduct inspections, examine records, and initiate appropriate actions in cases of non-compliance, but also extends to providing guidance and facilitating compliance by establishments and employers under the applicable labour laws. This concept was introduced with the objective of promoting transparency, accountability, and ease of compliance, while reducing excessive inspector-driven interference under the previous regime.

7.

WHITE COLLAR CRIME



7. WHITE COLLAR CRIME

7.1 Meaning of "White Collar Crime"

"White Collar Crime" is essentially an economic offence or an offence committed in order to illegally gain monetarily or materially therefrom. It covers offences/crimes which are non- violent in nature, generally committed by persons from the upper strata of society in the course of their business, occupation or profession through deceptive illegal acts in an attempt to amassvast amounts of money. In India, the term "White Collar Crime' has not been defined specifically, but there are various legislations which deal with offences/crimes covered under the concept of "White Collar Crime". Some of such legislations are discussed in this chapter.

7.2 Legislations Involving White Collar Crimes

The legislations in India which cover white collar crimes/offences are as under:

(i) **Bharatiya Nyaya Sanhita, 2023 (repealed and replaced the "Indian Penal Code, 1860") -** The Bharatiya Nyaya Sanhita defines an "economic offence" within the definition of "organised crime", which did not exist earlier in the Indian Penal Code. It states that "economic offence" includes criminal breach of trust, forgery, counterfeiting of currency-notes, bank-notes and Government stamps, hawala transaction, mass-marketing fraud or running any scheme to defraud several persons or doing any act in any manner with a view to defraud any bank or financial institution or any other institution or organisation for obtaining monetary benefits in any form. It imposes penalty in the form of imprisonment and/or fineon a person/company/association/body of persons, involved in generating revenue illegally, through their illegal activities that may, *inter alia*, involve extortion, cheating,forgery, breach of trust, counterfeiting, etc.

(ii) **Prevention of Corruption Act, 1988 -** It imposes criminal liability on a public servant,who obtains or accepts or attempts to obtain from any person, an undue advantage or reward or who in anticipation of such illegal gratification in the future commits or abstains from an act in his duty. Even a third person, who accepts or obtains or attemptsto obtain from another person any undue advantage for himself or for any other publicservant is covered under the legislation. It also imposes fine on a commercial organization/partnership/association of persons that (a) is incorporated in India but carries on business outside India, and (b) any other body incorporated outside India butcarrying on its business in India.

The bribe giver is also liable for prosecution unless (a) he was compelled to give the bribe and subsequently informs the law enforcement agencies of the same within 7 days ofthe incident, and (b) he informs the law enforcement/investigating agency of his proposed act to give a bribe to a public servant in order to assist such law enforcement/investigating agency in its investigation of the offence alleged against such public servant.

(iii) **The Whistle Blowers Protection Act, 2014 -** It was enacted to establish a mechanism to receive complaints relating to disclosure on any allegation of corruption or willful misuse of power or willful misuse of discretion against any public servant and to inquireor cause an inquiry into such disclosure and to provide adequate safeguards against victimization of the person making such complaint.However, the substantive provisions of the Whistle Blowers Protection Act, 2014 have not yet been brought into force by the Central Government.

(iv) **Prevention of Money Laundering Act, 2002 ("ML Act") -** Money laundering is a process of converting money illegally obtained through various socio-economic crimes/criminal activity into legal money thereby projecting the same to have been generated from a legitimate source. The ML Act was introduced to prevent money laundering and confiscation of property derived from money laundering. The ML Act imposes an obligation on the banking companies, financial institutions and other intermediaries to verify the identity of their clients, to maintain records and to furnish information in prescribed form.

It is invoked in cases such as bank frauds where loans taken for a specific purpose are laundered for other purposes or where a builder laundersthe money collected from prospective home buyers for the purpose of construction of ahousing project or where money is collected for purported investment schemes but is illegally laundered to the disadvantage/loss of the investor.

(v) **Income Tax Act, 2025 ("IT Act")** - The IT Act prescribes penalties and prosecution for persons who wilfully evade payment of income-tax which is otherwise payable under the IT Act. Indian jurisprudence continues to recognize a distinction between lawful tax avoidance and unlawful tax evasion. Tax avoidance, such as availing deductions or investing through legally permissible channels, is permissible under law, whereas tax evasion involves concealment, falsification, or other unlawful means to avoid tax liability. The IT Act applies to individuals, companies, partnerships, associations of persons, and non-residents having income taxable in India.

(vi) **Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 -** These regulations restrict providing/procuring/allowing access or communication of any unpublished price sensitive information (including insider information about a company or investment trades) relating to a company, to any personincluding other insiders, except when it is in furtherance of legitimate purposes, performance of duties or discharge of legal obligations.

(vii) **Prohibition of Benami Property Transactions Act, 1988 -** It has been enacted to prohibit benami (anonymous) transactions and the right to recover property held anonymously. A benami transaction means any transaction in which property is transferred to one person for a consideration paid or provided by another person. Property means property of any kind, whether movable or immovable, tangible or intangible, and includes any right or interest in such property.

(vi) **Information Technology Act, 2000 -** It prescribes punishment for those offenders/cybercriminals who indulge in illegal computer activities including hacking,electronic money laundering, internet frauds, unauthorized copy of an extract from anydata, stealing of industrial secrets and copyright infringements.

(vii) **Negotiable Instrument Act, 1881 -** It prescribes punishment against the drawer of a cheque in case the cheque gets dishonoured, *inter alia*, on account of insufficient funds. If the drawer of the dishonoured cheque is a company, then every person, who was in-charge and responsible for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence.

8.
ANTI-TRUST LAWS

8. ANTI-TRUST LAWS

8.1. Overview of Anti-Trust Laws in India

The primary legislation governing antitrust laws in India is the Competition Act, 2002 ("**Competition Act**") and the rules and regulations made thereunder. The intent of the Competition Act is to promote competition, protect the interest of consumers, ensure freedom of trade and prevent practices / arrangements having an appreciable adverse effect on competition ("**AAEC**").

The Competition Act contains specific provisions for anti-competitive agreements (whether vertical or horizontal agreements), abuse of dominant position as well as combinations (which include acquisition, merger, amalgamation and joint venture).

The Competition Commission of India ("**CCI**") is the primary authority responsible for the enforcement of the provisions of the Competition Act. The CCI has the power to take *suo moto* action or act on receipt of information against any person (which term is defined to include individual, company, body corporate incorporated outside India, association of persons or body of individuals and any government authority).

8.2. Anti-Competitive Agreements

An agreement (whether horizontal or vertical) is considered to be anti-competitive if such agreement causes or is likely to cause an AAEC in India.

Horizontal Agreements

Horizontal agreements refer to agreements / arrangements entered between persons operating at the same stage of the production chain.

Horizontal agreements entered between the parties, engaged in identical or similar trade of goods or services, for the purposes of determining prices, limiting production or supply of goods or services, sharing the market by allocating geographical area of market or types of goods / services or number of customers, bid rigging or collusive bidding are deemed or presumed to have an AAEC in India.

The only exception is a joint venture arrangement if such arrangement increases efficiency in production, supply, distribution, storage, acquisition or control of goods or services.

Vertical Agreements

Vertical agreements are agreements / arrangements entered between 2 or more persons at different levels of production or distribution chain.

The Competition Act contains an inclusive list of vertical agreements which would be prohibited if the CCI finds that such agreements cause or are likely to cause an AAEC in India. The list of agreements provided in the Competition Act includes tie-in arrangement, exclusive supply agreement, exclusive distribution agreement, refusal to deal and resale price maintenance.

While determining whether an agreement (whether horizontal or vertical) has an AAEC, the CCI is required to take into account certain factors such as whether the arrangement / agreement will result in creation of barriers to new entrants in the market, drive out existing competition, and/or foreclose competition. These factors are then required to be weighed against potential benefit to the consumers, improvements in production or distribution of the relevant goods or services, and/or technical, scientific and economic development.

8.3. Abuse of Dominant Position

The Competition Act prohibits abuse of dominant position by an enterprise or a group holding a dominant position in the relevant market in India. The Competition Act defines 'dominant position' as a position of strength enjoyed by an enterprise in the relevant market in India which enables it to operate independently of competitive forces or affect its competitors or consumers or the relevant market in its favour.

It is not holding / having a dominant position which is prohibited under the Competition Act, but the abuse of such position of dominance within the relevant market.

There would be an abuse of dominant position if an enterprise or group, directly or indirectly, imposes unfair or discriminatory trading conditions or prices, or engages in predatory pricing, or limits or restricts the production of goods or services in the market, or limits or restricts technical or scientific development relating to goods or services to the prejudice of consumers, or denies market access, or concludes contracts subject to acceptance by other parties of supplementary obligations having no connection with the subject of such contracts, or uses the position of dominance in one market to enter into or protect another relevant market.

Dominant position of an enterprise is assessed by taking into account various factors, such as market share of the enterprise, economic power, size and resources of the enterprise, importance of the competitors, consumer dependence on the enterprise, vertical integration and entry barriers.

8.4 Combinations

As per the Competition Act any combination, unless it is specifically exempted, which exceeds the prescribed asset or turnover thresholds (considered on a stand-alone and/or on a consolidated / group basis, in India and abroad) requires prior approval of the CCI.

The Competition Act covers the following 3 broad categories of combinations:

(i) any acquisition of control, shares, voting rights or assets of an enterprise, where the parties to the acquisition (being the acquirer and enterprise) or the group to which the target enterprise will belong post-acquisition meet specified assets or turnover thresholds (in India or outside India).

(ii) any acquisition of control of an enterprise by a person who already, directly or indirectly, controls another enterprise (the "existing enterprise") which is engaged in the business of (a) the production, distribution or trading of goods which are similar or identical to or substitutable with goods of the existing enterprise, or (b) provision of services which are similar or identical to or substitutable with services provided by the existing enterprise, if the target enterprise along with the existing enterprise jointly have turnover or assets (in India or abroad) above the specified threshold or the group to which the target company would belong to after the acquisition has assets or turnover (in India or abroad) above the specified threshold.

(iii) any merger or amalgamation where (a) either the enterprise remaining after the merger or the enterprise being created as a result of the amalgamation, or (b) the group to which the enterprise will belong after the merger or amalgamation, meets the specified assets or turnover thresholds (within India or abroad).

However, there are certain specific and general exemptions (the general exemption is based on the turnover or assets of the target enterprise).

The Indian Ministry of Corporate Affairs has notified (a) the Competition (Amendment) Act, 2023 ("**CA Act, 2023**") to amend the Competition Act, 2002 (**Competition Act**), (b) the

Competition (Criteria of Combination) Rules, 2024 (“**Green Channel Rules”**), (c) the Competition (Minimum Value of Assets or Turnover) Rules, 2024 (**“De-minimis Rules”**), and (d) the Competition (Criteria for Exemption of Combinations) Rules, 2024 (**Exemption Rules**). CCI notified the CCI (Combination) Regulations, 2014 (**Combination Regulations**). The revised framework came into force with effect from September 10, 2024.

The Green Channel Rules continue to provide the green channel mechanism that was introduced by the CCI in August 2019 for the deemed approval of certain combinations for ease of doing business in India. As per the green channel mechanism, which is available to the parties only if they do not have any horizontal, vertical or complementary overlaps, a relevant combination will be deemed to be approved upon receipt of an acknowledgement of filing.

The key features of the CA Act, 2023 are as follows:

(a) The provision of “deal value threshold (“**DVT**”) has been added to the relevant section of the Competition Act, 2002, which states that any deal value in connection with the acquisition of any control, shares, voting rights or assets of an enterprise, merger or amalgamation of more than INR 20 billion (approximately USD 210 million) needs to get an approval of Competition Commission of India (CCI) before heading towards the combination. Provided that the target entity has substantial business operations in India. The DVT transaction is not subjected to de-minimis / small target exemption. Also, the outer time frame for the CCI to pass orders has been decreased from 210 days to 150 days.

(b) The CA Act, 2023 has amended the definition of “control” and defined it as “the ability to exercise material influence over the management, affairs, or strategic commercial decisions”.

(c) The CA Act, 2023 extends the Director General’s (DG) powers to investigate defilements under the Act. This includes the DG’s power to seek information and papers from legal advisors appointed by the parties.

(d) The provision for “settlement and commitment” has been modified. Any concerned party against whom enquiry has been initiated for the contravention of the provisions of the Competition Act, 2002, after the receipt of the report of the Director General, can approach the Competition Commission of India for settlement, however, before the passing of the final order. The concerned party may also undertake commitments for modification after the enquiry has been initiated, however, before the issuance/submission of the report by the Director General.

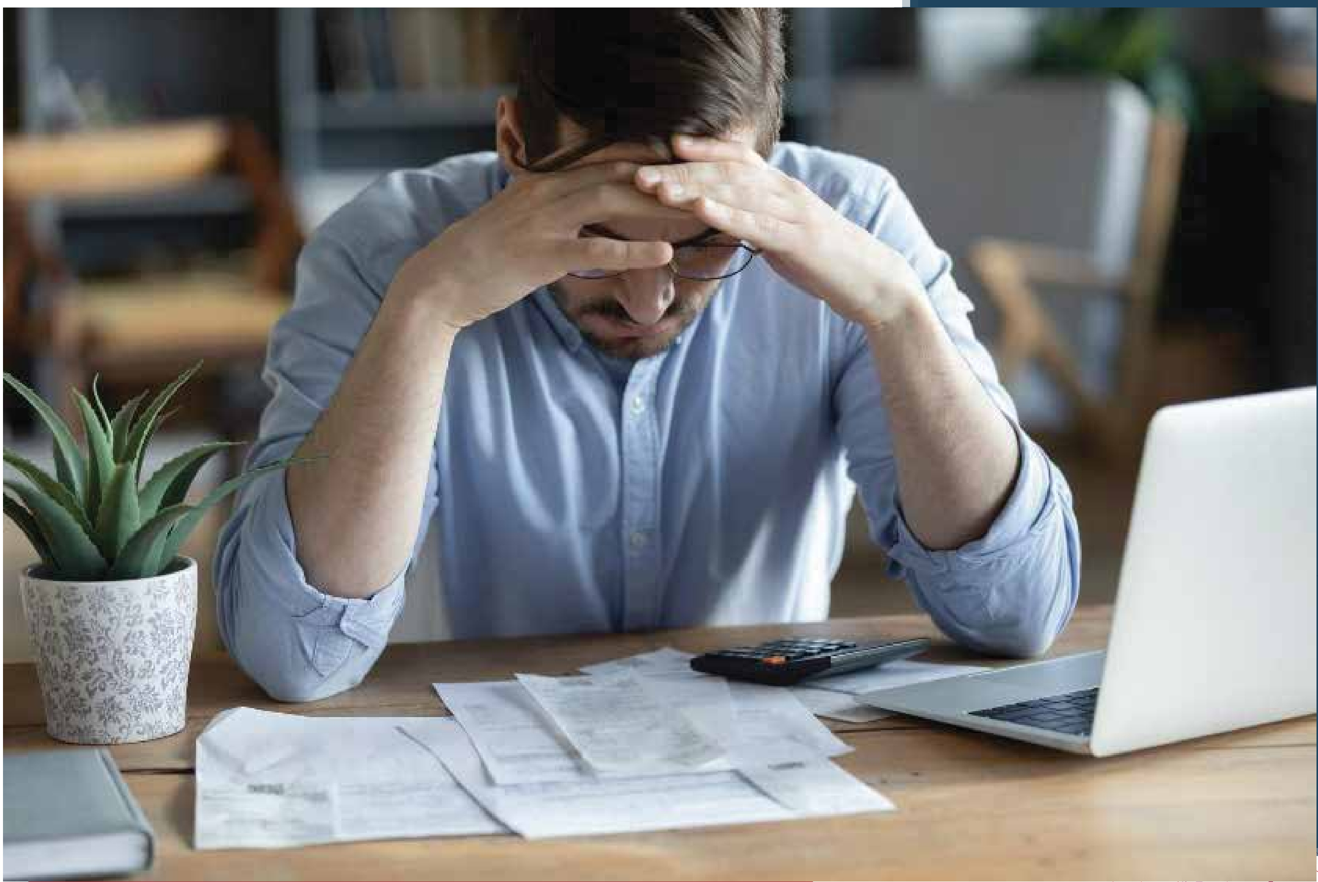
(e) The CA Act, 2023 has recognized a “hub and spoke” arrangement in the Competition Act, 2002, which means that the parties who are not actively involved in cartel formation but merely intend to participate in its furtherance can also be penalised for such formation, as they act as a “hub” and facilitate/coordinate the cartelisation amongst competitors.

(f) The CA Act, 2023 further widens the ambit of “relevant market” as defined in the Competition Act, 2002 by expanding its definition and including the production of services or goods as substitutable by suppliers

(g) Additionally, the CA Act, 2023 has also brought change in the nature of punishment of certain offences including failing to comply with CCI orders on entering into anti-competitive agreements and abusing its dominant position, from fine to penalty. Further, under the CA Act, 2023, the penalties can be imposed upon the global turnover derived from products and services by the Competition Commission of India.

9.

INSOLVENCY AND BANKRUPTCY LAWS



9. INSOLVENCY AND BANKRUPTCY LAWS

9.1 Insolvency and Bankruptcy Code

The Insolvency and Bankruptcy Code, 2016 ("**Insolvency Code or IBC**") is a one stop solution for resolving insolvencies which previously was a long process and which did not offer an economically viable arrangement. The Insolvency Code aims to protect the interests of Indian and overseas investors and make the process of doing business less cumbersome. The threshold amount to kick start insolvency proceedings originally envisaged in the Insolvency Code was INR 100,000 (Indian Rupees One Hundred Thousand).

However, vide Notification dated March 24, 2020, the Central Government increased the pecuniary threshold for initiation of proceedings under the IBC to INR 10,000,000 (Indian Rupees 10 Million) as the minimum amount of default.

Such an amendment was introduced with a view to provide protection to the corporate persons experiencing distress on account of unprecedented situation of COVID-19 pandemic.

Key Features

Insolvency Resolution: The Insolvency Code outlines the insolvency resolution process to be pursued against companies, limited liability partnership or any other person incorporated with limited liability as per the applicable law who owe money to its creditors (together defined as "**Corporate Debtor**"). A maximum time limit has been set for completion of the insolvency resolution process. As per the Insolvency Code, the process has to be completed in an overall time period of 330 days.

Insolvency regulator: The Insolvency Code has established the Insolvency and Bankruptcy Board of India ("**IBBI**"), to oversee the insolvency proceedings in the country and regulate the entities registered under it. The IBBI has 10 Board members, including representatives from the Ministries of Corporate Affairs and Law and the Reserve Bank of India.

Service Provider: Insolvency professional, insolvency professional agency, information utility, registered valuer and any person falling within the category of persons rendering services in relation to insolvency and bankruptcy processes and registered with the Board are referred to as service providers as per the Insolvency and Bankruptcy (Amendment) Act, 2026 ("2026 Amendment Act").

Insolvency Professionals: The insolvency process is managed by licensed professionals. These professionals also control the assets of the Corporate Debtor during the insolvency process.

National Company Law Tribunal ("**NCLT/Adjudicating Authority**") is the adjudicating authority for insolvency resolution process of Corporate Debtors under the Insolvency Code.

The NCLT has 16 benches with the principal bench being in New Delhi. The order/judgments of NCLT may be appealed before the National Company Law Appellate Tribunal ("**NCLAT**") and the orders/judgments of the NCLAT may further be appealed to the Supreme Court of India.

Its relevant to note that the jurisdiction of the civil courts has been ousted in respect of any matter which the NCLT or the NCLAT is empowered to determine by or under the Insolvency Code or any other law for the time being in force. As such, no injunction can be granted by any court or other authority in respect of any action taken or to be taken by NCLT or NCLAT in pursuance of any power conferred by or under the Insolvency Code or any other law for the time being in force.

Creditors and Nature of Debts

The Insolvency Code has introduced new and distinct concepts of 'Financial Creditor' and 'Operational Creditor' as opposed to the Companies Act, 1956 which merely used the term 'creditor', without any classification thereof. As per the Insolvency Code, a Financial Creditor means "*any person to whom financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to"*. In order to ascertain whether a person is a Financial Creditor, the debt owed to such a person must fall within the ambit of 'Financial Debt' which has been defined under the Insolvency Code to mean:

"*a debt along with interest, if any, which is disbursed against the consideration for time value of money and includes-*

(a) Money borrowed against payment of interest;
(b) Any amount raised by acceptance under any acceptance credit facility or its dematerialized equivalent;
(c) Any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
(d) The amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;
(e) Receivable sold or discounted other than any receivable sold on non-recourse basis;
(f) Any amount raised under any other transaction, including, any forward sale or purchase agreement, having the commercial effect of borrowing;
Explanation" For the purposes of this sub- clause, -
(i) any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of borrowing; and
(ii) the expression "allottee" and "real estate project" shall have the meanings respectively assigned to them in clauses (d) and (zn) of Section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);
(g) Any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only market value of such transaction shall be taken into account;
(h) Any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;
(i) The amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause".

Further, an Operational Creditor is defined under the Insolvency Code to mean:

"*a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred*".

In order to ascertain whether a person would fall within the definition of an Operational Creditor, the debt owed to such a person must fall within the definition of an operational debt which has been defined under the Insolvency Code to mean:

"*a claim in respect of the provisions of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority"*

The Bankruptcy Law Reforms Committee in its final report differentiated between the Financial Creditor and Operational Creditor as under:

"Here, the Code differentiates between financial creditors and operational creditors. Financial creditors are those whose relationship with the entity is a pure financial contract, such as a loan or debt security. Operational creditors are those whose liabilities from the entity comes from a transaction on operations...The Code also provides for cases where a creditor has both a solely financial

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transaction as well as an operational transaction with the entity. In such a case, the creditor can be considered a financial creditor to the extent of the financial debt and an operational creditor to the extent of the operational debt

Procedure

In relation to the Operational Creditors, the insolvency proceedings are kick started by either serving a statutory demand notice at the registered address of the Corporate Debtor or emailing the said notice to the Corporate Debtor. The Corporate Debtor is then obligated to respond within 10 days from the date of the receipt of the statutory demand notice and bring to the notice of the Operational Creditor either that there is a "pre-existing" dispute or the fact that the claim amount has already been paid.

A "pre-existing" dispute includes pendency of any suit or arbitration between the parties or any correspondence that captures the dispute which the Corporate Debtor may have raised prior to receiving of the statutory demand notice. The Supreme Court of India has clarified that a defence of pendency of "pre-existing" dispute cannot be a moonshine or bald assertion and needs to be supported with evidence.

The 2026 Amendment Act further ensures that an operational creditor does not misuse insolvency proceedings by concealing the existence of a genuine dispute regarding the debt or the fact that the payment has already been settled. If the creditor deliberately suppresses such information, the Adjudicating Authority may impose a substantial penalty ranging from INR 1 lakh to INR 2 crore. The penalty may also extend to persons who authorised, permitted, or acted in furtherance of such concealment.

As far as Financial Creditors are concerned, there is no requirement of issuing a statutory demand notice and they can directly approach the NCLT upon occurrence of default. Further, in such cases, the defence of existence of "pre-existing" dispute is not available to the Corporate Debtors.

It has been clarified through the 2026 Amendment Act that when a default with respect to financial debt is recorded with the information utility, such record would be sufficient for the Adjudicating Authority to ascertain the default.

The procedure applicable before the NCLT in relation to the Financial Creditor or the Operational Creditor is substantially similar. A plea for insolvency is submitted before the NCLT by the Financial or Operational Creditors. The insolvency pleas shall lie before the NCLT Bench within whose territorial jurisdiction the registered office of the Corporate Debtor is situated. The maximum time allowed to either accept or reject the plea is 14 days, however, at times this may be extended. If the plea is accepted, the NCLT appoints an Interim Resolution Professional ("**IRP**") for initiating the Corporate Insolvency Resolution Process ("**CIRP**") which has to be completed within a time period of 330 days. For the said period, the board of directors of the Corporate Debtor stand suspended, and the promoters do not have a say in the management of the company. The IRP, if required, can seek the support of the company's management for day-to-day operations. If the CIRP fails in reviving the company, the liquidation process is initiated.

CIRP

CIRP once initiated has to be completed within a time period of 330 days. Pursuant to the order of the Adjudicating Authority for initiating CIRP, an order imposing moratorium and public announcement shall also be passed with respect to prohibition of instituting a fresh suit or continuation of pending suits or proceedings against the Corporate Debtor which also includes execution of any (domestic or foreign) judgment, decree or order in any court of law or tribunal. Such a restraining order of the Adjudicating Authority also restrains the representatives of the Corporate Debtor to transfer, alienate or dispose of any asset or any legal right/beneficial interest of the Corporate Debtor. However, it is important to note that such order of moratorium shall not terminate or suspend the regular supply of essential goods and services that are required by the Corporate Debtor to perform its usual functions. Additionally, such moratorium order shall not be applicable to any surety in a contract of guarantee to a Corporate Debtor. The order of moratorium shall remain effective till the completion of the CIRP. In the meantime, the IRP appointed pursuant to the order of the Adjudicating Authority is duty bound to make a public announcement and invite claims from other creditors of different categories (secured/unsecured creditors) that are due and payable by the Corporate Debtor.

However, in the 2026 Amendment Act, an additional explanation has been introduced regarding moratorium which states that the moratorium shall also apply where the surety seeks to initiate or continue any action or proceedings against the corporate debtor pursuant to a contract of guarantee.

IRP and Committee of Creditors

After the order of moratorium and public announcement, the IRP is empowered to constitute a Committee of Creditors ("**CoC**") upon receiving the claims from all the creditors either within the limited time period as fixed by IRP or the maximum time period of 90 days from the date of commencement of CIRP. It is important to note that such CoC plays a vital role in taking decisions in terms of revival or winding up of the Corporate Debtor since all the decision-making powers of that of the Board of Directors are deviated to the CoC and all the actions pertaining to management of the Corporate Debtor have to be first approved by CoC with a majority of up to 66% of the total number of members of CoC. The decision-making powers with respect to the CoC is duly divided amongst creditors depending upon the percentage of debt they owe towards the Corporate Debtor and every decision with respect to either approval of resolution plan or winding up of Corporate Debtor has to be taken after considering the voting percentage of the CoC.

Further, in the 2026 Amendment Act, the CoC is also bestowed with the power to supervise the conduct of liquidation process by the Liquidator.

Resolution Professional and Resolution Applicant

Pursuant to the formation of CoC, a joint decision is taken by all the members of CoC with respect to either appointment of a fresh resolution professional ("**Resolution Professional**") or appointing the IRP as the Resolution Professional. Once the decision with respect to finalization of Resolution Professional is taken by the CoC, the Resolution Professional further conducts the CIRP. He is also entitled to collect the information with respect to the Corporate Debtor that may include collecting information regarding the business operations for the previous two years of the Corporate Debtor, its tangible and intangible assets and all other information pertaining to the interest of Corporate Debtor in order to prepare its complete account for analyzing the financial health of Corporate Debtor. Thereafter, the Resolution Professional invites bidders interested to participate in a bid for appointment of resolution applicant who shall prepare a resolution plan for reviving the Corporate Debtor ("**Resolution Applicant**"). Such Resolution Applicant is required to prepare a suitable resolution plan for the revival of the Corporate Debtor within the maximum time period permitted under provisions of the Insolvency Code and present it before CoC and Adjudicating Authority for its approval.

In case either the CoC or the Adjudicating Authority rejects such resolution plan or the Resolution Applicant fails to provide a plan within the given time period, then the Adjudicating Authority may pass an order directing the liquidation of the Corporate Debtor. Once the order of liquidation is passed by the Adjudicating Authority, the Resolution Professional is substituted/ appointed as a liquidator and all the powers and managerial functions of the Resolution Professional are deviated to such liquidator in order to expedite the process of liquidation of the Corporate Debtor. The liquidator in order to initiate the process of liquidation of the Corporate Debtor is required to make a fresh public announcement for receiving all the claims of creditors against the Corporate Debtor and upon receipt of such claims, the liquidator is authorized to verify the claims and accordingly either admit or reject them. Post verification of claims by the liquidator, the process of liquidation is initiated by distributing the assets of Corporate Debtor in a preferential manner as envisaged under the provision of the Insolvency Code.

However, under the 2026 Amendment Act, certain recourses have been introduced allowing the CoC to approach the Adjudicating Authority in the prescribed manner to seek the restoration of CIRP prior to the Adjudicating Authority passing the liquidation order.

Voluntary Liquidation

Independent of the procedure laid down under the Insolvency Code for liquidation of any corporate entity in case of a default, the corporate entity can also voluntarily liquidate itself as envisaged under the Insolvency Code. The corporate entity is required to meet the conditions and procedural requirements that include declaration from majority of the Board of Directors of the corporate entity verifying on affidavit that the assets of the corporate entity are sufficient to meet the total debt amount owed to its creditors and the corporate entity is not liquidated to defraud any person. Such declaration is to be accompanied by the audited financial statements of the previous two years along with a valuation report of the assets of the corporate entity. In furtherance to the said declaration, a special resolution is also required to be passed by the corporate entity in a general meeting wherein a liquidator shall be appointed for the purposes of performing the actions for the liquidation of the corporate entity.

The 2026 Amendment Act, allows the withdrawal of the Voluntary Liquidation process as per the procedure prescribed. However, an application seeking for withdrawal must be filed prior to the application seeking dissolution of the company and the affairs of the Company being completely wound up.

Group Insolvency and Cross-Border Insolvency

The 2026 Amendment Act also introduced provisions for streamlining the insolvency procedure for group companies through group insolvency. Further, the 2026 Amendment Act also laid down the foundation stone for introducing cross-border insolvency. However, 2026 Amendment Act received the assent of the President on the April 6, 2026. The relevant regulations to operationalise the aforesaid Act and give practical effect to the amendments are expected to be introduced in due course.

10.

DISPUTE RESOLUTION

10. DISPUTE RESOLUTION

10.1 Litigation

Civil Procedure

India is a common law jurisdiction. The civil procedure in India is guided by the Code of Civil Procedure, 1908 ("**CPC**"). The objective of the CPC is to consolidate and amend the laws relating to procedure of the Courts of Civil Judicature. In 2016, with the passing and introduction of the Commercial Courts Act, 2015 ("**CCA 2015**"), the CPC was amended to set up specialized commercial courts to hear commercial disputes of a specified value (as defined under the CCA 2015). The objective behind introduction of CCA 2015 was to simplify the manner and procedure to be followed in adjudication of commercial disputes, with the emphasis being on speedy and time bound adjudication.

Hierarchy of Courts

A single unified judicial structure is a unique feature of the Indian judicial system. The Supreme Court is at the apex of the entire judicial system, followed by High Courts in each State or group of States and/or Union Territories having appellate, supervisory and administrative jurisdiction over their respective States, group of States and Union Territories. Below each State's High Court lies a hierarchy of subordinate courts. Further, specialized tribunals such as the National Company Law Appellate Tribunal ("**NCLAT**"), National Company Law Tribunals ("**NCLT**"), National Consumer Disputes Redressal Commission ("**NCDRC**"), the Debt Recovery Tribunals ("**DRT**") and others have been established under various enactments. Appeals from the orders of these tribunals/appellate tribunals lie to the Supreme Court and/or the High Court, as may be prescribed by the relevant statute.

Jurisdiction

The jurisdiction of a court or tribunal is dependent upon meeting of certain parameters or upon the existence of a particular fact. The courts would have the jurisdiction to entertain and adjudicate the matter only once such parameters are met. Jurisdiction of the courts may be classified under the following categories:

(i) **Territorial Jurisdiction**: Every court has its own territorial limits beyond which it cannot exercise its jurisdiction. In terms of the CPC, every suit must be instituted within the local limits of whose jurisdiction:

(a) the defendant(s), at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendant(s), at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain. However, in such a case, either the leave of the court must be taken, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.

(ii) **Pecuniary Jurisdiction**: The CPC envisages that a court will have jurisdiction only over those suits in which the amount or value of the subject matter does not exceed the pecuniary limits of its jurisdiction.

(iii) Jurisdiction as to subject matter: Different courts and tribunals have been established and empowered to try and entertain the matters of a specific nature. For instance, in relation to commercial disputes, the same shall be tried and entertained by the Commercial Courts and Commercial Divisions provided the value of the dispute is above the specified limit. Further, matters in relation to violation of fundamental rights can be tried and entertained only by the High Courts and the Supreme Court. Similarly, NCLT has been established for dealing with insolvency and bankruptcy, Consumer Disputes Resolution Forums have been established for dealing with consumer disputes etc. The Court/Tribunals having any or all of the aforementioned jurisdictions is generally known as the courts of first instance.

Pre- Institution Mediation

With the intent of efficacious and effective disposal of commercial disputes, the Indian Government has amended the CCA 2015 and introduced the process of 'Pre-Institution Mediation' into the CCA 2015. The Act now stipulates that a commercial suit which does not contemplate any urgent interim relief shall not be instituted unless the Plaintiff exhausts the remedy of pre-institution mediation in accordance with prescribed Rules. It is important to note that this is a mandatory provision, and unless a party is seeking an urgent interim relief, the parties have to go through the mediation process. CCA 2015 stipulates that the entire mediation process has to be completed within a period of three (3) months which may be extended further to a maximum period of two (2) months with the consent of the parties. If the parties arrive at a settlement, the same shall be reduced into writing. Such a settlement agreement shall have the same status as an arbitral award on agreed terms as defined under the Arbitration and Conciliation Act, 1996. For the purposes of effective and smooth functioning of the mediation, the Indian Government has also enacted the Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018 ("**Mediation Rules**") which prescribes the manner and procedure for conducting the mediation.

Suit Proceedings:

There are various kinds of suits (such as suit for declaration, suit for mandatory injunction, suit for specific performance etc.) that may be filed by a party.

(i) **Institution of a suit:** The CPC envisages that every suit shall be instituted by the presentation of a plaint in the court of first instance. A plaint is the plaintiff's statement of claim wherein he sets out his entire case and is also accompanied with all relevant documents which the plaintiff would be relying upon. All parties who are considered necessary and proper parties have to be arrayed as parties to the suit.

(ii) **Court Fees:** The Court Fees Act, 1870 is the central legislation for the purposes of determining the court fees, which is usually dependent upon the subject matter of the litigation. However, certain States have also enacted separate statutes for determining the court fees.

(iii) **Written Statement**: This is the reply (statement of defence) which is filed by the defendant once the court has issued summons/notice to the defendant (opposite party). As per the CPC, the defendant is required to file the written statement within 30 days from the date of receipt of the summons, which can be further extended to 90 days subject to the court being satisfied of the reasons provided by the defendant of not being able to file it within 30 days.

(iv) **Limitation**: The Limitation Act, 1963 is generally applicable to suits, applications and appeals. In the case of suit proceedings, the limitation period to file a suit is 3 years from the date of cause of action, failing which, the court may dismiss the suit as being barred by limitation.

Enforcement: Indian and Foreign Judgments/Decrees

The decree passed by the court has to be enforced in the manner provided under the CPC. While enforcing a decree, the execution court usually does not go into the merits of the dispute and/or re-appreciate the evidence presented before the court which passed the decree. For the purposes of execution of the decree, the court has the power to seize the property (movable and immovable) of the judgment debtor until the decree is satisfied. In case, the judgment debtor is unable to satisfy the decree, the court can also dispose of/sell the assets of the judgment debtor.

The Indian courts are also empowered to enforce a foreign decree. A decree passed by a court of a foreign country which has been recognized as a reciprocating territory by the Government and the decree has been passed by the superior court of the said reciprocating territory can be enforced by filing of an enforcement-cum-execution petition before the Indian courts having appropriate jurisdiction. Such decrees shall then be enforced in the same manner as a decree passed by an Indian court. In relation to a judgment/decree passed by a court of a non-reciprocating territory and/or by a foreign court which is not a superior court, a fresh suit would have to be instituted wherein the foreign judgment/decree shall hold evidentiary value.

Appeal

Whoever is dissatisfied with the decree of the (Indian) court can file an appeal before the Appellate Court within the stipulated time (as recognized by CPC and/or the relevant statute). The Appellate Court may either reject the appeal, or allow the appeal and set aside the decree passed by the court of first instance or may remand the case back to the court of first instance for its re-consideration.

10.2 Arbitration

India is taking active steps to make itself an international arbitration hub. The principal statute governing the law on arbitration and conciliation in India is the Indian Arbitration and Conciliation Act, 1996 (“**Indian Arbitration Act**”). In the recent years, India has seen a phenomenal growth in the disputes being referred to arbitration. Even during the pandemic, India had seen several notable developments in the arbitration landscape.

The Indian Arbitration Act is based upon the UNCITRAL Model Law on International Commercial Arbitration, 1985. The objective of the Indian Arbitration Act is to facilitate domestic and international commercial arbitrations and to make provisions for an arbitral procedure which is fair, efficient and capable of meeting the needs of the specific arbitration. The Indian Arbitration Act defines an “international commercial arbitration” to mean an arbitration arising from a legal relationship which must be considered commercial where either of the parties is a foreign national or resident or is a foreign body corporate, is a company, association, or body of individuals whose central management or control is in foreign hands or the Government of a foreign country.

There are following two (2) modes of conducting arbitrations that the parties may adopt:

(a) **Ad hoc Arbitration**: In such a proceeding the parties make their own arrangements for selection of arbitrators. The parties have the discretion to choose designation of rules, applicable law, procedures and administrative support.

(b) **Institutional Arbitration**: It is a method of arbitration where the entire arbitration is conducted by an established arbitral institution or organization. The arbitration agreement itself provides for appointment of an arbitral institution for conducting the arbitration. The parties are also at liberty to approach the High Court or Supreme Court for appointment of an arbitration institution.

In the recent years, India has seen a push towards arbitral institutions and several institutions have been established all across India, such as Delhi International Arbitration Centre (DIAC), Mumbai Centre for International Arbitration (MCIA), Indian Council of Arbitration (ICA), International Centre for Alternative Dispute Resolution (ICADR) etc. Additionally, in 2019 the Indian legislature has brought in extensive amendments to the Indian Arbitration Act, with the intention of promoting institutional arbitration in India.

Interim Relief

The parties can approach the Indian courts to seek interim reliefs under section 9 of the Indian Arbitration Act in domestic as well as foreign arbitrations. While in domestic arbitrations, the provision for interim relief is automatically applicable, in a foreign arbitration, the parties have the discretion to exclude its applicability. In order to grant relief under section 9, the court considers factors such as, balance of convenience, prima facie cases, irreparable injury, and the concept of just and convenient. Further, under Section 9 of the Indian Arbitration Act, if the court passes an interim relief before commencement of arbitral proceedings, then the arbitral proceedings shall have to commence within a period of ninety (90) days from the date of such order or within such time as the Court may determine.Once the arbitral tribunal has been constituted, in an arbitration having seat in India, a party can seek interim relief from the arbitral tribunal under section 17 of the Indian Arbitration Act. Under section 17, the arbitral power has been granted significant powers to grant interim relief. The section also clarifies that the arbitral tribunal shall have the same power for making order as the court of the purposes of any proceedings before it. Post the constitution of the arbitral tribunal, the Court usually does not entertain any application for interim relief unless it finds that circumstances exist which may not render the remedy under section 17 (of the Indian Arbitration Act) efficacious.

Time Period

The Indian Arbitration Act envisages that an award would have to be made within a period of twelve (12) months from the date of completion of pleadings and such period may be extended by a maximum period of six (6) months by the parties. The statement of claim and defence shall be completed within a period of six (6) months from the date the arbitrator or all the arbitrators, as the case may be, received notice, in writing, of their appointment. This time limit does not apply to international commercial arbitrations; however, endeavor may be made to dispose of the matter within a period of twelve (12) months from the date of completion of pleadings.

Fast Track Arbitration

The Parties can, before or at the time of constitution of the arbitral tribunal, agree in writing to conduct arbitration under a fast-track procedure. Under the fast-track procedure, unless the parties otherwise make a request for oral hearing or if the arbitral tribunal considers it necessary to have an oral hearing, the arbitral tribunal shall decide the dispute on the basis of written pleadings, documents, and submissions filed by the parties without any oral hearing. Here, the award under this procedure must be made within six (6) months from the date the arbitral tribunal enters reference.

Challenge to Award

In relation to a domestic award, the aggrieved party has a statutory right to challenge the award before the Indian courts and thereafter, may also appeal to the Appellate Court. However, in relation to a foreign award, no such right is available to the aggrieved party and in such a case, the party who succeeded before the arbitral tribunal can directly file a consolidated petition for enforcement-cum-execution of the foreign award. The Indian Arbitration Act does provide for grounds of objection/challenge to the execution of the award, however, the grounds for challenge are narrower in a foreign arbitration as against the domestic arbitration.

Enforcement: Foreign Award

A foreign arbitral award, in relation to an arbitration which has its seat in a country which is a contracting State under the New York Convention and which has also been recognized as a convention country by the Government of India can be enforced by filing of a consolidated petition of enforcement-cum-execution under the provisions of the Indian Arbitration Act. The award becomes enforceable as a decree passed by the Civil Court if the party succeeds in satisfying the court about the enforceability of the award.

10.3 Mediation

Over the years, mediation as a mechanism for dispute resolution has grown in India. The courts in India have realized the importance of mediation as an effective dispute resolution mechanism and have been frequently referring matters for mediation to give an opportunity to parties to amicably settle their disputes. While court referred mediations have been the most popular form of mediation, however, in the recent years, several mediation centers have also been opened across India which conduct private mediations. Taking a step forward, the Indian legislature has also been bringing in amendments to existing statutes adopting mediation as a preferred form of dispute resolution. A new chapter has been inserted in the CCA 2015 and the Consumer Protection Act, 2019 for mandatory pre-institution mediation and settlement in certain category of cases. Additionally, on August 7, 2019, India also became a signatory to the United Nations Convention on International Settlement Agreements Resulting from Mediation (Singapore Convention on Mediation).

The Indian legislature has recently passed the Mediation Act, 2023 ("**Mediation Act**") with the intent to promote and facilitate mediation, especially institutional mediation, for resolution of dispute, commercial or otherwise. While the Mediation Act has been passed, many of the sections of the Act are yet to be notified. Be that as it may, the Mediation Act is a critical step in the advancement of alternate dispute resolution mechanisms in India.

Definition

The Mediation Act defines mediation to include a process, whether referred to by the expression mediation, pre-litigation mediation, online mediation, community mediation, conciliation or an expression of similar import, whereby the parties attempt to reach an amicable settlement of their dispute with the assistance of a third person referred to as mediator, who does not have the authority to impose a settlement upon the parties to the dispute. Further, the Mediation Act goes a step further to provide an indicative list of the kind of disputes which are not deemed fit to be resolved through mediation such as, disputes involving prosecution for criminal offences, disputes which have an effect on third parties who are not party to the dispute except in matrimonial cases etc.

Pre – Litigation Mediation

The Mediation Act also provides for "Pre-Litigation Mediation" prior to filing of any suit or proceedings of civil or commercial nature. It stipulates that whether any agreement exists or not, the parties before filing any suit or proceedings of civil or commercial nature in any court, may voluntarily and with mutual consent take steps to settle the disputes by pre-litigation mediation in accordance with the Act. However, the pre-litigation mediation of commercial disputes of a specified value shall be taken as per the provisions of CCA 2015 and rules. Additionally, the courts and tribunals have also been given the power to refer the parties to undertake mediation. In case the courts or tribunals do refer the matter to mediation, it also has the power to pass suitable interim order to protect the interest of any party if deemed appropriate. In addition to the above, the Mediation Act also provides for online and community mediation as a time and cost-effective mechanism.

Mediation Proceedings

Under the Mediation Act, mediation shall take place within the territorial jurisdiction of the court or tribunal of competent jurisdiction to decide the subject matter of the dispute or at any other place with the mutual consent of the parties. Further, it provides the entire procedure for conducting mediations including time line for completion of the mediation i.e., within a period of one hundred and twenty (120) days from the date of first appearance with an additional period not exceeding sixty (60) days.

The mediation shall commence on the date on which a party receives notice from the other party initiating mediation pursuant to their agreement. In other cases, where the parties have agreed to appoint a mediator of their choice, the date when the mediator provides his consent to appointment or where one of the parties applies to a mediation service provider, the date of appointment of the mediator.

The mediator shall at all times be guided by the principles of objectivity and fairness and protect the voluntariness, confidentiality and self-determination of the parties, and the standards for professional and ethical conduct as may be specified by the Mediation Council of India ("**MCI**"). Similarly, the mediation process shall be conducted in the manner as may be specified by the MCI. The Mediation Act also provides for confidentiality and, amongst others, mandates that no party to the mediation shall in any proceedings before a court or tribunal including arbitral tribunal rely on or introduce as evidence any information or communication including in electronic form or verbal communication received during the mediation.

The settlement arrived at between parties will be reduced in writing, signed by the parties and authenticated by the mediator ("**Settlement Agreement**"). The Settlement Agreements (other than those arrived at in court or tribunals) will also have to be registered in the manner prescribed by the Central Government within a period of one hundred and eighty (180) days from the date of receipt of authenticated copy of the Settlement Agreement.

Mediation Council of India

The Mediation Act provides for the establishment of the MCI, which is a body corporate with its head office at Delhi, India. The MCI has been entrusted with several duties which includes but is not limited to promotion of domestic and international mediation in India, provide the manner of conduct of mediation proceedings, manner of registration of mediators, lay down the standards for professional and ethical conduct of mediators, specify the criteria for recognition of mediation institutes etc. The provisions pertaining to the MCI have been notified by the Central Government.

Amendment of existing statutes

With the enactment of the Mediation Act, several corresponding amendments have also been brought in to the existing statutes such as the Arbitration and Conciliation Act, 1996, Code of Civil Procedure, 1908, the Companies Act, 2015, the CCA 2015 etc.

11.
REAL ESTATE

11. REAL ESTATE

11.1 FDI in Real Estate

As per the prevailing FDI Policy, FDI is prohibited in an entity which is engaged or proposes to engage in real estate business, construction of farm houses or trading in transferable development rights. In this regard, "**real estate business**" means dealing in land and immovable property with a view to earning profit therefrom and does not include development of townships, construction of residential/ commercial premises, roads or bridges, educational institutions, recreational facilities, city, regional level infrastructure, townships and Real Estate Investment Trusts (**REITs**) registered and regulated under the SEBI (REITs) Regulations, 2014. Further, earning of rent/ income on lease of the property, not amounting to transfer, also does not amount to real estate business.

However, FDI up to 100% is permitted under the automatic route in construction-development projects which would include development of townships, construction of residential/ commercial premises, roads or bridges, hotels, resorts, hospitals, educational institutions, recreational facilities, city and regional level infrastructure and townships. Such FDI is permitted subject to compliance with certain conditions including exit related conditions.

Further, real estate broking services has also been excluded from the definition of "real estate business" and 100% foreign investment is allowed in real estate broking services under the automatic route.

11.2 Acquisition of Immovable Property by Non-Residents

Acquisition or transfer of immovable property by a person resident outside India is governed by the rules and regulations issued under FEMA and except as may be permitted, no person resident outside India can acquire or transfer immovable property in India.

An NRI or an OCI is permitted to acquire immovable property in India, other than agricultural land or farmhouse or plantation property if the consideration is paid out of funds received in India through banking channels by way of inward remittance from any place outside India or funds held in any non-resident account maintained in India in accordance with the provisions of FEMA. Further, an NRI or an OCI may also transfer any immovable property held in India to a person resident in India and if such property is not agricultural land or farmhouse or plantation property, to another NRI or OCI.

A person resident outside India (not being an NRI or an OCI) is not permitted to acquire immoveable property in India. However, a foreign national who is residing in India for more than 182 days during the course of the preceding financial year for taking up employment or carrying on business/ vocation or for any other purpose indicating his intention to stay for an uncertain period can acquire immovable property in India as, in such as case, he would be treated as a person resident in India.

Further, a branch or office or any other place of business in India, other than a liaison office, established by a person resident outside India in accordance with the applicable FEMA regulations, may acquire immovable property in India which is necessary for or incidental to the activity carried out in India by such branch or office. In addition, branch offices, project office and liaison offices have general permission to carry out permitted/ incidental activities from leased property subject to the lease period not exceeding 5 years.

Notwithstanding the above, citizens of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal, Bhutan, Hong Kong, Macau or Democratic People's Republic of Korea (including a branch or office or any other place of business in India established by persons of such countries) cannot acquire or transfer immovable property in India (except for lease not exceeding 5 years) without the prior approval of the RBI.

11.3 Key Aspects

In India, all transactions that involve sale and purchase of immovable property for a value exceeding INR 100 should be made by way of a registered instrument. Additionally, all transactions involving gift of immovable property as well as lease for a period exceeding 1 year are also mandatorily required to be registered. Registration of instruments/ documents pertaining to the transfer of immovable properties is to be undertaken by the parties at the office of the Sub-Registrar of Assurances within whose jurisdiction the property is situated.

Instruments/ documents that are required to be mandatorily registered should ordinarily be presented for registration within 4 months from the date of their execution, along with the requisite registration fee and stamp duty. Stamp duty charges are governed by the Indian Stamp Act, 1899 and the corresponding stamp acts adopted by different States in India. Accordingly, stamp duty on a particular transaction varies from State to State.

Even though it is not a legal obligation, it is always recommended for the proposed buyer or lessee to undertake a due diligence of the property prior to purchasing or leasing a particular property (whether for residential, commercial or industrial use). This process has the potential of not only impacting the commercials but also determining the feasibility of the transaction itself. Typically, a due diligence exercise includes ascertainment of title, permitted use, completeness of registrations and approvals for construction and occupancy, encumbrances, litigations and easements etc.

11.4 Key Sectoral Developments

In 2016, the Government enacted the Real Estate (Regulation and Development) Act, 2016 ("**RERA**"). RERA has been enacted to establish the Real Estate Regulatory Authority ("**Authority**") for the regulation and promotion of the real estate sector and to ensure sale of plot, apartment, building or a real estate project in an efficient and transparent manner, to protect the interests of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal. The RERA is considered to be one of the landmark legislations enacted by the Government with the objective of bringing transparency and accountability in the real estate sector.

In the recent past, the concept of co-working office spaces has become extremely popular in India, particularly in the metros and tier-II cities. Co-working office spaces provide an alternative option to companies in view of the high costs involved in setting up personal offices and the challenges faced in negotiating long term leases at preferred locations.

12.

INTELLECTUAL PROPERTY RIGHTS

12. INTELLECTUAL PROPERTY RIGHTS

12.1 Overview of Intellectual Property Law in India

Intellectual Property Rights ("**IPR**") provide a secure environment for investors, inventors, scientists, artists, designers, traders etc. to foster innovation and a scientific temperament. Such innovations often have the potential to yield astronomical returns and rewards to creators and users. The Indian IPR regime aims to strike a balance between public and private rights and provide a stable environment for domestic and foreign investments.

The twenty-first century witnessed the emergence of "Intellectual Capital" as a key wealth driver of international trade between countries across the world, and India is no exception. IPR has become an indispensable element of India's business fraternity. India has a modern IPR legal system and has adhered to all major international IP treaties including the Paris Convention, the Berne Convention, the TRIPS Agreement and the Madrid Agreement and Protocol.

Since 2015, India has also established dedicated commercial courts for adjudicating 'commercial disputes' which specifically includes disputes related to intellectual properties. These courts are equipped to provide efficient and quick adjudication of disputes which is vital for IPR owners.

12.2 Intellectual Property Rights Recognised Under Indian Law

Trademarks

In India, trademark rights are regulated under the provisions of the Trade Marks Act, 1999 ("**TM Act**"). An application for trademark registration is filed before the Registrar of Trademarks by any person claiming to be the proprietor of a trademark.

Trademarks are registered for a period of 10 years and can be renewed for subsequent term of 10 years at a time. Trademark renewal application must be filed within 1 year prior to the expiration date. Registration of trademark gives a trademark proprietor the exclusive right to use the trademark in the course of trade. If a third party uses an identical or deceptively similar trademark, the registered proprietor of the trademark can institute proceedings before the Courts for seeking permanent injunction against the ongoing infringement and payment of damages.

In addition to the above, despite the fact that the TM Act does not define "Passing Off", the law denies the registration of any trademark if the use of the mark is prevented by virtue of the law of passing off. It enables an individual to claim his rights under law, even if the mark is unregistered. Therefore, an action for passing off can also be filed by a person who does not have a registered trademark.

India is also a member of the Madrid System (or the Madrid Protocol) which is administered by the International Bureau of the World Intellectual Property Organization. The Madrid System facilitates international registration of trademarks by filing a single application through which an applicant may designate any member state for the purpose of registering its trademark in that country. Accordingly, a foreign entity may register its trademarks in India under the provisions of the Madrid System.

Geographical Indications

Geographical Indications ("**GI**") in India are regulated under the provisions of the Geographical Indications of Goods (Registration and Protection) Act, 1999. A GI mark is a standardized and unique mark that can only be used after receiving GI registration vis-à-vis agricultural, natural or manufactured products that have a specific geographical origin and possess qualities or reputation that are quintessentially linked to that geographic origin alone. In order to use the aforesaid GI mark, an applicant must satisfy the registry that its product possesses unique qualities and characteristics which are fundamentally attributable to the place of origin of the product. A GI mark registration enables those who have the right to use the GI indication to prevent its use by a third party whose products do not conform to the applicable standards. A registered GI is valid for 10 years from the date of application and can be renewed for subsequent periods of 10 years on payment of renewal fees.

Designs

In compliance of the provisions of the TRIPS Agreement, India has already amended its national legislation, that is The Designs Act, 2000 to provide for the minimal standards under the TRIPS Agreement. India has also achieved a mature status in the field of industrial designs and in view of globalization of the economy, the present legislation is aligned with the changed technical and commercial scenarios and made to conform to international trends in design administration.

The requirements for registering a design are that the design should be new and original, should not have been disclosed to the public and should be distinguishable from other known designs. The period of protection is 10 years from the date of registration. The right holder can renew the period of protection for a second term of 5 years from the expiration of the original period of 10 years. Further, Indian law only protects registered designs. In case of infringement of a registered design, the owner can claim damages from the infringer and may also seek an injunction on further use of the design.

Copyrights

Copyrights are regulated by The Copyright Act, 1957. Copyright means the exclusive right to do or authorize the doing of any act(s) in respect of literary, dramatic, musical and artistic works, cinematograph films and sound recordings (“**Work**”).

Acquisition of copyright is automatic and does not require any formality of registration. Copyright comes into existence as soon as a Work is created. However, a certificate of registration of a copyright and the entries made therein, serve as prima facie evidence in a court of law with reference to disputes relating to the ownership of a copyright. In the case of original literary, dramatic, musical and artistic works, the duration of copyright is the lifetime of the author/ artist plus 60 years counted from the year following the death of the author/ artist. In the event of copyright infringement, the true copyright holder is entitled to remedies under civil and criminal law.

Further, the Indian copyright regime also acknowledges and recognizes moral rights that may subsist in literary, dramatic, musical or artistic works.
Copyright in works originating in any foreign country which is listed as a member of the International Copyright Order are protected in India, as if such works are Indian works. In such cases, the term of copyright in a work shall not exceed that which is enjoyed by it in its country of origin.

Patents

The object of patent law is to encourage scientific research, new technology and industrial progress. The price of the grant of the monopoly is the disclosure of the invention at the Patent Office, which, after the expiry of the fixed period (20 years) of the monopoly, passes into the public domain. The fundamental principle of Indian patent law is that a patent is granted only for inventions which are novel, involve an inventive step and are capable of industrial application. It is essential for the validity of a patent that it must be the inventor’s own discovery as opposed to mere verification of what was already known before the date of the patent. A patentable invention, apart from being a new invention, must also be useful.

Patents are governed by The Patents Act, 1970. A patent granted shall confer upon the patentee (a) where the subject matter of the patent is a product, the exclusive right to prevent third parties, who do not have the patentee’s consent, from the act of making, using, offering for sale, selling or importing for those purposes that product in India; (b) where the subject matter of the patent is a process, the exclusive right to prevent third parties, who do not have the patentee's consent, from the act of using that process, and from the act of using, offering for sale, selling or importing for those purposes the product obtained directly by that process in India.

The term of a patent granted in India is 20 years from the date of filing of the application for patent registration. These rights can be assigned and licensed to third parties as per the discretion of the patent holder. If a third party makes use of a patented product or process (without consent) the patent holder can institute a suit for infringement of patent.

As patents are territorial rights, foreign patent holders are not entitled to file a suit for infringement against a person/ entity holding a similar/ identical patent in India. However, as India is signatory to the Paris Convention, the rights of a foreign patent holder as the inventor are recognized in India and the patent holder may institute appropriate opposition or revocation proceedings against a similar/ identical Indian patent application or registered patent respectively.

Further, foreign entities may file convention applications in India for claiming a priority date based on the same or substantially similar application filed in any of the convention countries by the said entity. Furthermore, as India is a member of the Patent Corporation Treaty (PCT), foreign entities desirous of registering their patent in India may do so by filing a PCT or e-PCT application whilst designating India as a contracting party, and conversely, Indian entities may use the same process for submitting international applications.

Semiconductors and Integrated Circuits Layout

The registration of circuits and designs related thereto are governed by The Semiconductor Integrated Circuits Layout Design Act, 2000, which was enacted to provide protection of IPR in the area of semiconductors and integrated circuits and for matters connected therewith or incidental thereto. A layout design can be registered if it is original, has not been commercially exploited anywhere in India or in a convention country and is inherently distinctive. Other information like any idea, procedure, process, system, programme stored in the integrated circuit or a method of operation cannot be registered in India. The said legislation empowers the registered proprietor of the layout-design with an inherent right to use the layout-design, commercially exploit it and obtain relief in case of any infringement.

Trade Secrets and Know-How

Although trade secrets and know-how are not protected by any specific statutory law in India, they are protected under common law. The courts, under the doctrine of breach of confidentiality, have granted protection to trade secrets.

12.3 Characteristics of IPR under Indian Law

The following table identifies the main characteristics of IPR under Indian law. This information is not comprehensive and is for reference purposes only:

	Trademark	Copyright	Design	Patent
Subject Matter	- Wordmarks - Service marks - Logos & symbols - Series marks - Collective marks - Certification marks - Colour marks - Sounds marks - Shapes of goods - Geographical Indications	- Literary work - Dramatic work - Musical work - Artistic work - CinematographFilm - Sound Recording - Moral rights	New and original features of new shape, configuration, surface pattern, ornamentations and composition of lines or colours applied to articles which in the finished state appeal to and are judged solely by the eye.	A new product or process involving an inventive step and which is capable of industrial application.
Registration pre-requisites	Distinctiveness and non-descriptive	Original and independent creation	Novelty and distinctiveness	Novelty, inventive & non-obvious and capable of industrial application and use.
Duration of protection	10 years	Generally throughout the life of the author + 60 years after the author's death	Initial term of 10 years	20 years
Renewable	Renewable for subsequent terms of 10 years on payment of renewal fees	No	Renewable for an additional term of 5 years on payment of renewal fees	No

13.
TAXATION LAWS

13. TAXATION LAWS

13.1 Overview of the Taxation Regime in India

A person doing business in India should take into account various applicable direct and indirect taxes. The direct taxes are payable on the income earned by individuals and/or corporates whereas indirect taxes are levied on the production and sale of goods and provision of services. Taxes in India are levied by the Central Government as well as the State Governments. Further, local authorities such as municipalities are also empowered to levy minor taxes.

Several major reforms in the tax regime have been made in India recently and in the past few years for ease of doing business such as reduction of corporate tax rates and introduction of the Goods and Services Tax ("**GST**"). Introduction of GST in 2017 was one of the biggest reforms to simplify the complex multiple indirect tax system of India. GST has subsumed most of the indirect taxes which were applicable in India and is now considered as the unified indirect tax system. Furthermore, recently the Government replaced the erstwhile Income Tax Act, 1961 with the Income Tax Act, 2025 ("**IT Act**") with the objective of modernizing and simplifying India's direct tax framework.

13.2 Direct Taxes

Income Tax

The primary legislation in India applicable in relation to tax payable on income whether of individuals or corporates is the IT Act replacing the erstwhile Income Tax Act, 1961 from 1st April, 2026. The IT Act prescribes the thresholds for payment of tax and percentages of tax payable by an individual and corporates on their income. The prescribed thresholds and percentages of applicable taxes are usually amended every year. The income tax is payable for a financial year (which runs from April 1 to March 31) in the year following such financial year (known as the 'assessment year'). However, pursuant to the IT Act, the terms "Financial Year" and "Assessment Year" have been done away with and a new term "Tax Year" has been introduced in order to simplify tax administration and improve clarity in tax compliance.

The liability of tax depends on the residential status of the individuals and corporates. The residential status of an individual is determined based upon the number of days (prescribed under the IT Act) such individual is physically present in India in a financial year and previous financial years. Based upon the residential status, an individual is categorised as 'resident', 'not ordinarily resident' or 'non-resident'. While a resident is taxed on his / her worldwide income in India, not ordinarily resident or non-resident is generally taxed on income sourced in India (subject to the benefits of Double Taxation Avoidance Agreement ("**DTAA**") with the country of residence of such individual).

A corporate is considered to be a resident of India if (i) it is incorporated in India, or (ii) it is not incorporated in India but has a place of effective management ("**POEM**") during the relevant financial year in India ("**Resident Company**") whereas a corporate incorporated outside India and having POEM outside India in the relevant financial year is considered as a non-resident company ("**Non-Resident Company**"). Similar to individuals, a Resident Company is taxed on its worldwide income in India whereas a Non-Resident Company is generally taxed on income sourced in India (subject to the benefits of DTAA with the country of incorporation of such company).

For the financial year 2025-26, the provisions of Income Tax Act, 1961 would apply and therefore the income tax rate for a Resident Company shall be 30%, however, in cases where the total turnover or gross receipt during the previous year does not exceed INR 4000 Million then the tax rate shall be 25% of the total income. However, the option to opt for taxation under section 115BA, section 115BAA and section 115BAB of the Income Tax Act, 1961, also exists wherein the tax rate shall be 25%, 22% and 15% respectively. Section 115BA, section 115BAA and section 115BAB of the Income Tax Act, 1961 were inserted in order to give benefit of reduced tax rates to domestic companies subject to fulfilment of certain conditions.

Along with the income tax an additional amount of surcharge shall also be added to the income tax. In cases wherein the company has a total income of more than INR 10 Million but which does not exceed INR 100 Million then the surcharge shall be 7% but wherein the company's total income exceeds INR 100 Million then the surcharge shall be 12%. However, in a situation wherein the company opts to get taxed under Section 115BAA or Section 115BAB of the Income Tax Act, 1961, then the rate of surcharge shall be 10% irrespective of the amount of total income.

For the financial year 2025-26, the income tax rate for a Non-Resident Company shall be 35%. In addition, a surcharge amount will be added that is the amount of income-tax shall be increased by a surcharge at the rate of 2% of such tax, where total income exceeds INR 10 Million but not exceeding INR 100 Million and at the rate of 5% of such tax, where total income exceeds INR 100 Million. Further, health and education cess at the rate of 4% shall be applicable on the amount of income tax and surcharge. However, the surcharge shall be subject to marginal relief, which shall be as under:

(i) Where income exceeds INR 10 Million but not exceeding INR 100 Million, the total amount payable as income-tax and surcharge shall not exceed total amount payable as income-tax on total income of INR 10 Million by more than the amount of income that exceeds INR 10 Million.

(ii) Where income exceeds INR 100 Million, the total amount payable as income-tax and surcharge shall not exceed total amount payable as income-tax on total income of INR 100 Million by more than the amount of income that exceeds INR 100 Million.

Double Taxation Avoidance Agreements

India has executed DTAAs with approximately 90 countries for avoidance of double taxation. Typically, most of the investment into India is routed through an intermediate holding company set up in a jurisdiction having tax friendly regime with India under the respective DTAA.

A non-resident tax payer may be taxed either in accordance with the IT Act or the DTAA whichever is more beneficial. DTAAs generally provide that non-residents are subject to Indian tax on business profits earned from a business in India only if such non-residents have a permanent establishment in India. The term 'permanent establishment' is defined in the DTAAs entered by India.

Transfer Pricing

Transfer pricing refers to the rules and methods of pricing international transactions and / or specified domestic transactions between associated enterprises. According to the IT Act, any such transaction must be at an arm's length price. The terms 'international transaction', 'specified domestic transactions', 'associated enterprises' and 'arm's length price' are defined in the IT Act.

There are several methods prescribed under the IT Act for determination of the arm's length price such as comparable uncontrolled price method, resale price method, cost plus method, profit split method, transactional net margin method, etc.

Further, the IT Act also permits Advance Pricing Arrangements ("**APAs**") which is an agreement between the tax payer and the tax authority to determine the arm's length price or the manner of determining the arm's length price in relation to international transactions for a specified period not exceeding 5 consecutive years. APAs are not applicable on specified domestic transactions.

In addition to APAs, the IT Act also provides for safe harbour rules pursuant to which the tax authorities accept a transfer price declared by the tax payer to be at arm's length price for transacting with its associated enterprises.

13.3 Indirect Taxes

Goods and Services Tax

As mentioned above, in 2017, GST was implemented in India which has subsumed most of the indirect taxes which were applicable in India (whether imposed by the Central Government or any State Government) such as value added tax, excise duty, service tax, octroi, entry tax and luxury tax. However, certain goods such as petrol and petroleum products and alcoholic liquor for human consumption are not yet within the ambit of GST. Value added tax and excise duty is still levied on such products.

GST is a destination-based tax and the Central Government and State Governments have the power to levy taxes. The Central Government has the power to levy taxes pursuant to the Central Goods and Services Tax Act, 2017, and to tax inter-state commerce pursuant to the Integrated Goods and Services Tax Act, 2017. Further, each State and Union Territory of India has the power to levy taxes pursuant to State Goods and Services Tax Act, 2017 and Union Territory Goods and Services Tax Act, 2017 respectively.

GST is levied at the rate of 5%, 12%, 18% and 40% depending on the rate schedule applicable to goods / services in question. Further, certain goods and services also attract cess in addition to GST. However, there are several goods and services which are exempt from GST.

Customs Duty

Customs duty is the duty levied by the Central Government on the goods imported into India and exported from India. However, in order to encourage exports, export duty is levied on very few items. Customs duty is levied in accordance with the Customs Act, 1962 and the Customs Tariff Act, 1975 on the value of transaction and it is typically payable by the importer of goods (in case of imports). The rates of custom duty payable and classification of goods are provided in the Customs Tariff Act, 1975. The classification of goods is aligned with the Harmonised System of Nomenclature (HSN) developed by the World Customs Organisation.

In addition to GST and customs duty, there are few other indirect taxes applicable in India such as stamp duty, profession tax and property tax.

14.

DATA PROTECTION LAW

14. DATA PROTECTION LAW

14.1 Data Protection Law in India

The concept of data protection and privacy had not been addressed in any exclusive and comprehensive legislation in India until recently. Indian laws related to data privacy are found under the Information Technology Act, 2000 ("Information Technology Act") and Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011 ("SPDI Rules"), which provides very basic protection of 'sensitive personal data or information' ("SPDI") and deals with compensation for negligence in implementing and maintaining reasonable security practices and procedures in relation to SPDI.

After rounds of deliberations, India implemented the Digital Personal Data Protection Act, 2023 (the "DPDP Act") along with the implementation framework operationalised through the Digital Personal Data Protection Rules ("Rules"), which were notified on November 13, 2025, marking the first dedicated framework governing digital personal data in India.

The DPDP Act is built on a consent-based regime, requiring data fiduciaries to process personal data only for lawful purposes and with clear, informed consent of data principals, and it establishes the Data Protection Board of India, empowered to inquire into violations and impose penalties for non-compliance.

The DPDP Act is in the process of being implemented in a phased manner and all provisions are to be made effective by May 12, 2027. On implementation of all provisions, the existing data privacy regime, under the Information Technology Act would stand omitted. However, at presentuntil, the current legal framework pertaining to data privacy and protection is governed by a combination of the DPDP Act (in phased implementation) and Information Technology Act read with the SPDI Rules.

14.2 Data protection under the Information Technology Act and SPDI Rules

What is SPDI?

Before analyzing the Rules, we must take a look at what constitutes SPDI. SPDI includes passwords, financial information, such as bank account or credit card details, physical, physiological and mental health condition, sexual orientation, medical records and history, and biometric information.

Applicability and analysis of the Rules

The Rules relate to SPDI and are applicable to a body corporate or to any person located within India. Outsourcing companies/ intermediaries located within or outside India are exempt from the provisions of collection and disclosure as set out under the Rules, however, a body corporate providing services to an information provider directly under a contractual obligation is not exempt from these provisions of collection and disclosure as set out under the Rules.

To sum up, the Rules broadly regulate the: (a) collection, receipt, possession, use, storage, dealing or handling of SPDI; (b) transfer or disclosure of SPDI; (c) security procedures for protecting SPDI; (d) transfer of SPDI outside India; and (e) disclosure of SPDI to the Government. Further, in terms of the Rules, each body corporate is required to comply with certain obligations to ensure data is processed properly.

Key obligations of companies:

i. Implement reasonable security practices and procedures, including appropriate technical, operational, and managerial safeguards for protection of SPDI.
ii. Collect SPDI only for lawful and necessary purposes connected with the functions or activities of the body corporate and retain such information only for as long as required.
iii. Obtain prior consent before collection of SPDI and provide notice regarding the purpose of collection, intended recipients, and details of the collecting entity.
iv. Allow data subjects to review, correct, amend, and withdraw consent relating to their SPDI.
v. Transfer SPDI to third parties, including outside India, only where equivalent data protection standards are maintained and the transfer is contractually necessary or consented to by the data subject.
vi. Disclose SPDI to third parties only in accordance with law, contractual requirements, and with the consent of the data subject.
vii. Publish and maintain a privacy policy containing clear and accessible details regarding collection, usage, disclosure, and security practices relating to SPDI.
viii. Appoint a grievance officer and address complaints relating to SPDI within the prescribed timeline.

14.3 Digital Personal Data Protection Act, 2023

At present, provisions relating to definitions, establishment and functioning of the Data Protection Board of India, rule-making powers of the Central Government, and other enabling and procedural provisions under the DPDP Act and Rules have been brought into force.

By November 12, 2026, provisions relating to registration requirements and obligations of Consent Managers, along with the jurisdiction of the Data Protection Board in relation to such entities, are scheduled to become operational and by May 12, 2027, all remaining substantive and operational provisions of the DPDP Act and Rules, including notice and consent requirements, obligations of Data Fiduciaries and Significant Data Fiduciaries, processing of children's data, rights and duties of Data Principals, personal data breach notification requirements, cross-border data transfer restrictions, exemptions, enforcement powers, and appellate mechanisms, are expected to come into effect.

Applicability of the DPDP Act

The objective of the DPDP Act is to regulate the processing of digital personal data (i.e. personal data in digital form) within the territory of India where the personal data (i.e. any data about an individual who is identifiable by or in relation to such data) is collected (a) in digital form; or (b) in non-digital form and digitised subsequently.

The DPDP Act also proposes to regulate the processing of digital personal data outside the territory of India provided that such processing is in connection with any activity related to offering of goods or services to data principals within the territory of India.

Classification under the DPDP Framework

Under the DPDP Act, entities are classified based on the nature of their involvement in the processing of personal data, and such classification determines the extent of compliance obligations applicable to them.

The framework primarily categorises a "person" (including an individual, company, firm, association of persons, State, or other juridical entity) as a "Data Fiduciary", being an entity that determines the purpose and means of processing personal data, and a "Data Processor", being any person who processes personal data on behalf of a Data Fiduciary. The framework also recognises "Significant Data Fiduciaries", being certain Data Fiduciaries specifically notified by the Central Government having regard to factors such as the volume and sensitivity of personal data processed, the risk posedto the rights of Data Principals, and the potential impact on the sovereignty and integrity of India, security of the State, electoral democracy, and public order.

Processing of Personal Data

The DPDP Act permits processing of personal data only for lawful purposes (i.e. any purpose which is not expressly forbidden by law). Such processing must either be based on (i) the consent of the Data Principal or (ii) fall within certain legitimate uses specifically recognised under the DPDP Act.

(i) Consent: The consent shall be obtained through a clear affirmative action and shall be free, specific, informed, unconditional, and unambiguous. The consent mechanism shall be supported by a notice presented in clear and plain language in a standalone form to enable the Data Principal to make an informed decision. Such notice shall, at a minimum, include an itemised description of the personal data being collected and the specified purposes of processing, including the goods or services to be provided or uses to be enabled. It shall further ensure that clear and accessible means are provided for withdrawal of consent with comparable ease, as well as for the exercise of rights under the DPDP Act and for making complaints to the appropriate authority. Where consent was obtained prior to the DPDP Act coming into force, the Data Fiduciary shall inform the Data Principal of the personal data processed and the purpose of such processing. Where consent was obtained before the commencement of the DPDP Act, the Data Fiduciary shall, as soon as reasonably practicable, inform the Data Principal of the personal data processed, its purpose, and the manner of exercising rights and making complaints, and may continue processing until consent is withdrawn.

(ii) Legitimate uses: Personal data may be processed without consent for specified legitimate uses recognised under the DPDP Act, including where the processing is initiated voluntarily by the Data Principal, for the provision of State-provided services or benefits, performance of statutory functions, compliance with legal obligations or court orders, medical emergencies, public health situations, disaster response, and certain employment-related purposes.

Obligations of Data Fiduciaries

The DPDP Act and Rules impose obligations on Data Fiduciaries to ensure that personal data is processed in a lawful, transparent, and secure manner. The key obligations include:

i. **Information to Data Principals:** They must enable Data Principals to obtain information regarding processing of their personal data, including a summary of processing activities and details of personal data shared with other Data Fiduciaries or Data Processors, along with their identities.
ii. **Modification of Data:** They must also enable correction, updation or completion of personal data, provide for erasure of personal data where applicable, and establish mechanisms for filing and timely resolution of grievances or complaints within the prescribed timelines.
iii. **Contract with Data Processor:** They may engage, appoint, use or otherwise involve a Data Processor to process personal data on their behalf for activities relating to the offering of goods or services to Data Principals only under a valid contract.
iv. **Reasonable Security Measures:** They must implement reasonable security measures to protect personal data, including encryption or masking, access controls, and maintenance of logs to detect and respond to unauthorised access, ensure data backups for continuity, retain logs for at least one year unless otherwise required by law, and include appropriate security provisions in contracts with Data Processors supported by technical and organisational measures.

v. **Data Breach Notification:** They must, upon becoming aware of a personal data breach, promptly notify affected Data Principals through registered communication channels with clear details of the breach and mitigation steps, and also inform the Data Protection Board without delay, followed by a detailed report within 72 hours covering the nature, impact, causes, remedial measures, and intimations issued to affected Data Principals.
vi. **Data Retention:** They must retain personal data only for the specified purpose and delete it thereafter, with large Data Fiduciaries (large online platforms) required to erase data after three years of user inactivity (with prior notice) and all other Data Fiduciaries required to retain data, logs, and related information for at least one year unless otherwise required by law.
vii. **Data Protection Officer:** They must prominently publish the contact details of their Data Protection Officer (DPO) or designated representative on their website or app and include the same in communications with Data Principals to facilitate queries and exercise of rights under the Act.
viii. **Verifiable Parental Consent:** They must obtain verifiable parental consent for processing children's personal data and verify guardianship for persons with disabilities through prescribed legal documents, with limited exemptions for specified purposes and entities.

Obligations of Significant Data Fiduciaries (SDFs)

SDFs are subject to additional obligations under the DPDP Act, over and above the general obligations applicable to Data Fiduciaries, as follows:

i. DPO: Appoint a Data Protection Officer (DPO) based in India, who reports to the Board or equivalent governing body and serves as the point of contact for grievance redressal.
ii. Data Auditor: Appoint an independent Data Auditor to assess compliance with the DPDP Act through periodic audits.
iii. Data Protection Impact Assessment: Conduct a data protection impact assessment and a data audit at least once every 12 months from the date of notification or inclusion as an SDF to ensure ongoing compliance.
iv. Due Diligence: Exercise due diligence to ensure that all technical systems, including algorithmic tools used for processing personal data, do not pose likely risks to the rights of Data Principals.

Obligations of Data Processors

The DPDP Act and Rules does not impose direct statutory obligations on Data Processors. Their responsibilities arise primarily through contracts with Data Fiduciaries, who remain responsible for ensuring compliant processing of personal data undertaken on their behalf. The key obligations of Data Processors may be summarised as follows:

i. Processing is carried out strictly in accordance with the instructions of the Data Fiduciary, without determining the purpose or means of processing.
ii. Engagement is governed by a valid contract that sets out the scope, nature, and manner of processing.
iii. Appropriate security safeguards are implemented to protect personal data against unauthorised access, loss, or breach.
iv. Personal data is ceased to be processed and is deleted or returned upon instructions of the Data Fiduciary, including upon withdrawal of consent or completion of the stated purpose.
v. Personal data is not used or disclosed for any purpose other than that authorised by the Data Fiduciary.
vi. Any sub-processing is undertaken only with prior authorisation of the Data Fiduciary in accordance with the governing contract.

Cross-border transfer of data

The DPDP Act restricts the transfer of personal data by a data fiduciary for processing to such country or territory outside India as may be notified by the government. Thus, Indian government may notify the list of countries to which the data fiduciary cannot transfer the personal data of data principals for processing purpose.

Enforcement mechanism

i. The Indian government has established a data protection board of India for effective enforcement of the provisions of the DPDP Act. The board has power to direct any urgent remedial or mitigation measures in the event of a personal data breach.
ii. The board is empowered to, on conclusion of an inquiry, impose penalties after taking into account various factors including (i) the nature, gravity and duration of breach, (ii) the type and nature of personal data affected by such breach, and (iii) whether the person has realised any gain or avoided any loss as a result of such breach. Stringent penalties have been prescribed as a deterrent for non-compliance. Penalties range from upto INR 10,000 (approx. USD 105) to up to INR 2500 Million (approx. USD 26.53 million) for different offences.
iii. If the board is of the opinion that any complaint may be resolved by mediation, it may direct the parties to attempt resolution of the dispute through such mediation by such mediator as the parties may decide.
iv. The DPDP Act empowers the Indian government to block for access by the public any information generated, transmitted, received, stored or hosted, in any computer resource which enables a data fiduciary to carry out any activity related to offering of goods or services in India if (i) the board has imposed monetary penalties on such data fiduciary in two or more instances, and (ii) the board has advised the Indian government that it is in the interest of the general public to block access to such information.

Implementation Phase

Practically speaking, the framework under the DPDP Act is still evolving, as several substantive procedural provisions remain contingent upon further operationalisation by the Government. While the implementation process is presently underway, the effective enforcement of the statutory framework is phased over a period of time, taking into account the timelines prescribed under the Rules, institutional preparedness, and broader administrative and compliance-related considerations. However, recent developments indicate that the Government is actively reconsidering certain timelines prescribed under the Rules.

For the time being, companies are advised to continue complying with the provisions of the Information Technology Act and the SPDI Rules, while simultaneously aligning their internal governance and data-handling practices with the broader principles envisaged under the DPDP Act and Rules, to the extent currently feasible, with a view to progressively integrating them as and when practicable. In parallel, organisations should closely monitor implementation developments and, as more concrete details emerge, assess and determine the manner in which compliance mechanisms may be operationalised under the DPDP Act and Rules.

Further, considering the anticipated implementation timelines under the evolving framework, organisations should adopt a two-pronged preparatory approach. First, companies should initiate foundational compliance measures such as data mapping, data flow assessments, consent reviews, vendor assessments, and policy evaluations under the DPDP Act and Rules. Second, for projects likely to continue beyond the final applicability of the DPDP Act and Rules, organisations should align their implementation and operational readiness plans with the anticipated compliance requirements under the DPDP Act and Rules.

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