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**DOING BUSINESS IN INDIA**

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<b>INTRODUCTION.....</b>	<b>2</b>
<b>FOREIGN DIRECT INVESTMENT POLICY.....</b>	<b>2</b>
<b>ENTRY INTO INDIA.....</b>	<b>6</b>
<b>TAKEOVERS AND ACQUISITIONS .....</b>	<b>12</b>
<b>TAXATION.....</b>	<b>15</b>
<b>EMPLOYMENT LAWS .....</b>	<b>23</b>
<b>INTELLECTUAL PROPERTY LAWS.....</b>	<b>32</b>
<b>CONTRACTS .....</b>	<b>34</b>
<b>INSOLVENCY RESOLUTION AND DEBT RECOVERY.....</b>	<b>35</b>
<b>COMPETITION LAWS .....</b>	<b>36</b>
<b>REAL ESTATE.....</b>	<b>38</b>
<b>DATA PROTECTION .....</b>	<b>38</b>
<b>THE INDIAN JUDICIAL SYSTEM.....</b>	<b>40</b>
<b>DISCLAIMER.....</b>	<b>42</b>
<b>FIRM PROFILE .....</b>	<b>43</b>

## INTRODUCTION

India is one of the fastest growing economies in the world, and the business and regulatory environment is rapidly evolving and improving. Various policy changes and initiatives have transformed India from a closed economy to a liberal one. The days of the “*licence raj*” have given way to a spate of reforms that are encouraging foreign investment in almost every sector. Draconian regulations and restrictions have been replaced with statutes and policies that are far better suited to the global business model. The message is loud and clear - India sees itself as a global player in the race for economic supremacy and is no longer just a bystander.

India recorded an inflow of foreign direct investment (“**FDI**”) of US\$80,615,000,000 (US Dollars Eighty Billion Six Hundred and Fifteen Million) in the financial year 2024-25, marking a 13% increase from 2023-2024. From April to September 2025, the total FDI inflow in India was US\$48,934,000,000 (US Dollars Forty-eight Billion Nine Hundred and Thirty-four Million).

India’s diverse socio-economic milieu presents a challenge to foreign investors seeking to establish a relationship with its burgeoning middle-class population that is rapidly growing and eager to spend. Thus, there is a growing need for investors to understand how India works, the intricacies of dealing with the various regulatory/government entities in India, and how to survive the ever-increasing competition from large, well-capitalized Indian conglomerates.

This report attempts to give a broad overview of the various laws, regulations and strategies that a foreign investor should consider while investing in India.

## FOREIGN DIRECT INVESTMENT POLICY

Over the last decade, the Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, Government of India (the “**DPIIT**”), has announced numerous changes to India’s foreign investment policy that have left very few entry barriers for doing business in India.

### Procedure for Investment

#### *Sectoral Policies*

100% FDI is now permitted in most sectors. However, a handful of sectors that remain closed to foreign investment are: (i) atomic energy, (ii) railway operations (other than railway infrastructure), (iii) lottery business, (iv) gambling and betting, (v) chit funds, (vi) Nidhi companies, (vii) trading in transferable development rights, (viii) real estate business or construction of farmhouses, and (ix) manufacturing of cigars, cheroots, cigarillos and cigarettes of tobacco or of tobacco substitutes. No foreign technology collaborations of any kind, including license agreements for trademarks or brand names, franchise agreements or management contracts, are permitted for the lottery business, and gambling and betting activities. In some other sectors, the Indian government has permitted foreign

investment up to a ceiling, as for example, 74% in the private banking sector.

### *Indirect Foreign Investment*

Any downstream investment by an Indian company which is not “owned” (i.e., where more than 50% of the capital is not beneficially owned by Indian companies/resident Indian citizens) or “controlled” (i.e., where Indian companies/resident Indian citizens do not have the right to appoint a majority of the directors or to control the management and policy decisions) by resident entities is considered as indirect foreign investment and is subject to the foreign investment-related sectoral policies for the sector in which the downstream investment is taking place.

### *Automatic Approval*

Companies that qualify under the automatic route of foreign investment do not require clearances from any government authority prior to making the investment. In such a case, an investee company must simply file a reporting form with the Reserve Bank of India (the “RBI”) within thirty (30) days of allotment of securities. Therefore, a foreign investor undertaking a primary investment under the automatic route only needs to incorporate a company before commencing operations. In case of a secondary sale of securities of an Indian company operating in a sector under the automatic route by an Indian resident to a foreign investor, the Indian resident must file a reporting form with the RBI within sixty (60) days of transfer of securities.

### *Approval Route*

The Indian government’s approval through the administrative departments under its ministries in accordance with the standard operating procedures issued by the DPIIT is required for items or activities that do not come under the automatic route for FDI, such as:

- (i) proposals that require an industrial licence under the Industries (Development and Regulation) Act, 1951 (the period of validity of which has been extended to fifteen (15) years from three (3) years);
- (ii) proposals relating to the acquisition of shares in an existing Indian company which does not carry on any operations, but merely holds investments in other companies and proposes to undertake activities which do not come under the automatic route for FDI;
- (iii) proposals that exceed notified sectoral limits or proposals for which government approval is mandatorily required;
- (iv) proposals for investments in sectors in which foreign investment is not under the automatic route for FDI, and either more than 50% of the investee company’s shares are held by non-residents or non-residents have the right to appoint more than half of the investee company’s board or to control the management and policy

decisions;

- (v) proposals by Indian companies engaged in activities falling under the approval route for issuance of equity shares against import of capital goods, machinery, equipment and/or against pre-operative or pre-incorporation expenses; and
- (vi) proposals with total foreign equity inflow of more than INR50,000,000,000 (Indian Rupees Fifty Billion) (approx. US\$556,500,000) require the approval of the Cabinet Committee on Economic Affairs.

### *FDI from Border Sharing Countries*

In April 2020, the Indian government announced fresh approval requirements, scrutinizing investments in Indian companies from entities in any country sharing a land border with India. Under the new notification, any FDI coming into India, directly or indirectly, from an entity in China, Pakistan, Bangladesh, Nepal, Bhutan, Myanmar and Afghanistan (the “**Border Sharing Countries**”) requires the prior approval of the Indian government.

Potential investors should note that even indirect investments by entities having beneficial ownership traceable to the Border Sharing Countries will be examined. Neither has the Indian government provided a *de minimis* threshold for beneficial ownership of, or indirect investment by, an entity or a citizen of a Border Sharing Country, nor has it provided any guidance on how listed investors should assess and address the requirements of this rule. Therefore, entities from Border Sharing Countries seeking to invest in India must be cognizant of the approval process. Lately, as India is keen to promote manufacturing, especially of electronic components, the Indian government is taking a somewhat liberal view on a case-to-case basis and is permitting Chinese companies seeking to manufacture hi-tech parts in India to enter into minority joint ventures with Indian partners with ownership and control in the hands of the Indian partners.

To ensure that the approval process mentioned above is adhered to, the Indian government has amended several rules under the Companies Act, 2013 (the “**Companies Act**”), pertaining to share subscription, share issuance, share transfer, compromise, arrangement, merger and demerger, and appointment of directors in Indian companies. In addition, a declaration is sought from the Indian company, subscriber, transferee or director (as the case may be) that the transaction it is entering into is not with a company from Border Sharing Countries.

### **Repatriation**

Profits from investments in India can be repatriated in the form of dividends as per the foreign exchange regulations. Exits in the form of share transfers are also permitted. A sale of shares by a non-resident (including, a non-resident Indian (“**NRI**”) or an erstwhile overseas corporate body) to another non-resident (including NRIs) or a gift of shares by a non-resident (other than NRIs or an erstwhile overseas corporate body holding shares on a non-repatriable basis) to another non-resident (including NRIs) does not require prior government or RBI approval in sectors which are under the automatic route. However, a

gift of shares by an NRI to a non-resident (other than an NRI) requires prior permission of the RBI if the NRI holds the shares on a non-repatriable basis. Further, the sale of shares by a foreign investor to a resident or by a resident to a foreign investor does not require prior government or RBI approval under the automatic route. However, such a sale of shares must comply with certain provisions regarding pricing and reporting. Additionally, branch offices can remit profits earned in India to the parent company outside India.

### **Technology Transfer Agreements and Royalty Payments**

Foreign technology can be licensed to Indian companies under foreign technology collaboration agreements. Currently, there is no limit on the amount of royalty that can be paid by an Indian company to a foreign technology provider either in the form of an annual percentage or as a lumpsum payment. However, consultancy fee payouts have been capped at US\$1,000,000 (US Dollars One Million) per project, except in the case of infrastructure projects, where the cap is US\$10,000,000 (US Dollars Ten Million) per project. If these thresholds are exceeded, the payout will be subject to prior approval from the RBI.

### **Changes in the Overseas Investment Regime of India**

In August 2022, the Indian government announced a new overseas investment regime and notified the Foreign Exchange Management (Overseas Investment) Rules, 2022 (the “**OI Rules**”). We have summarized below a few key changes.

#### *Employees’ Stock Options (ESOP) and Sweat Equity Shares*

An overseas entity can issue, without limit, shares or interests under an ESOP or employee benefits scheme, or sweat equity shares, to an employee who is resident in India, subject to the following conditions specified in the OI Rules:

- (i) The resident individual should be an employee or a director of: (a) an Indian office or branch of the overseas entity; (b) an Indian subsidiary of the overseas entity; or (c) an Indian entity in which the overseas entity has direct or indirect equity holding through a special purpose vehicle or step-down subsidiary; and
- (ii) The shares or interests under the ESOP or employee benefits scheme are offered by the issuing overseas entity globally on a uniform basis.

Although the shares or interests are issued by the foreign holding company, the onus of reporting the issuance to the RBI is on the Indian subsidiary or office. Further, under the Liberalized Remittance Scheme (the “**LRS**”), resident individuals can remit funds abroad up to a limit of US\$250,000 (US Dollars Two Hundred and Fifty Thousand) per financial year (April 1 to March 31) for any permitted current or capital account transaction or a combination of both. Therefore, while a resident individual is permitted to acquire foreign shares or interest under an ESOP or employee benefits scheme, or sweat equity shares, without limit, the value of such shares/interests will count towards such individual’s annual LRS limit of US\$250,000 (US Dollars Two Hundred and Fifty Thousand).

### *Round Tripping*

Prior to August 2022, an Indian entity was neither allowed to set up an Indian subsidiary through its foreign wholly owned subsidiary or foreign joint venture, nor allowed to acquire a wholly owned subsidiary or invest in a joint venture that already had direct or indirect investment in India under the automatic route. This prohibition on round tripping has now been relaxed, and the OI Rules permit such a structure; provided, that such a structure is limited to two (2) layers of subsidiaries.

### *Swap of securities*

Prior to August 2022, an Indian entity acquiring shares of an overseas entity without paying cash consideration could only do so by issuing its own equity shares. Indian entities are now permitted to invest in overseas entities by way of swap of securities of its equity shares, including convertible securities, as well as securities of other companies held by the Indian company. Pursuant to further amendments introduced in 2024, the Indian foreign exchange regulations have also expressly permitted secondary transfers through a swap of equity instruments. Accordingly, subject to compliance with the applicable conditions, the following transactions are now permitted: (i) an Indian company can issue equity instruments against a swap of equity instruments of another Indian company; (ii) an Indian company can issue equity instruments against a swap of equity capital of a foreign company; (iii) transfer of equity instruments of an Indian company between an Indian resident and a non-resident against a swap of equity instruments of another Indian company; and (iii) transfer of equity instruments of an Indian company between an Indian resident and a non-resident against a swap of equity capital of a foreign company.

## **ENTRY INTO INDIA**

Previously, foreign investors used a distribution or agency business model to enter India. Today, however, an investor has the flexibility of choosing from a variety of business strategies to best suit its needs.

### **Liaison/Representative Office**

A foreign company may establish a liaison office with the prior approval of the designated authorized dealer bank; however, such an office is subject to several restrictions, as for example:

- (i) the company establishing a liaison office in India must have a profit making track record during the immediately preceding three (3) financial years in its home country and net worth of not less than US\$50,000 (US Dollars Fifty Thousand) or its equivalent;
- (ii) the liaison office shall be established for an initial period of three (3) years, which may be extended for a further period of three (3) years with the approval of the authorised dealer bank;

- (iii) all expenses of a liaison office must be exclusively funded by the parent company;
- (iv) a liaison office is prohibited from undertaking any business activity in India and cannot earn any income in India;
- (v) a liaison office can undertake only liaison activities, i.e., it can act as a channel of communication between the foreign head office and parties in India; and
- (vi) a liaison office cannot enter into any business contracts in its own name.

If a liaison office performs any such prohibited activities, then not only does it risk constituting a permanent establishment for the foreign enterprise from a tax standpoint, but it can also attract penal action under Indian exchange control regulations. A liaison office is required to file a statement in a prescribed form providing details of activities carried out by it in a financial year in India.

In October 2025, the Reserve Bank of India issued draft regulations to replace the current framework governing liaison offices (the “**2025 Draft Foreign Office Regulations**”). The 2025 Draft Foreign Office Regulations propose a comprehensive restructuring of the existing framework. They consolidate all categories of foreign offices into two broad classifications, “Branch” and “Office”, with an “Office” effectively subsuming the current liaison office structure. Key eligibility requirements, such as the three (3) year profitability track record and minimum net-worth thresholds for establishing an office, are proposed to be removed, and the existing three (3) year validity cap for liaison offices is eliminated. The draft regulations also simplify procedural requirements by permitting additional offices to be opened through mere intimation to the authorised dealer bank, introduce clearer closure and compliance triggers (including stricter consequences for non-submission of annual activity reports), and adopt a more principle-based approach to defining permissible activities while continuing to prohibit commercial revenue generating operations. These changes, once notified, would substantially liberalize and modernize the regulatory regime for foreign offices in India.

### **Branch Office**

A foreign company may establish a branch office in India with the prior approval of the RBI, which can be obtained through an authorized dealer bank. A branch office can provide consulting services, import or export goods, coordinate with local sellers and buyers, research and develop software, or provide technical support for products sold in India. However, a branch office cannot undertake retail trading activities and manufacturing or processing activities in India, directly or indirectly. A branch office is required to file a declaration with the RBI within ninety (90) days of acquiring any immovable property in India, and it also required to file an annual statement in a prescribed form providing details of activities carried out by it in a financial year. The foreign parent company is liable for the activities of its branch office in India at all times.

A branch office is treated as a fixed place of business of the foreign parent and construed as a permanent establishment from a tax standpoint, which subjects it to very high taxes,



as follows:

- (i) If the income is less than INR10,000,000 (Indian Rupees Ten Million) (approx. US\$111,300), the tax rate is 36.40%;
- (ii) If the income is between INR10,000,000 (Indian Rupees Ten Million) (approx. US\$111,300) and INR100,000,000 (Indian Rupees One Hundred Million) (approx. US\$1,113,000), the tax rate is 37.12%; and
- (iii) If the income is more than INR100,000,000 (Indian Rupees One Hundred Million) (approx. US\$1,113,000), the tax rate is 38.22%.

Due to the foregoing limitations, a branch office is not the most popular entry route into India.

The 2025 Draft Foreign Office Regulations once notified shall apply the same strengthened eligibility, activity restrictions, and compliance requirements to branch offices as well (as mentioned above).

### **Project Office**

A foreign entity can set up a project office in India without any prior approval if it secures contracts to execute projects in India from an Indian company, subject to the project: (i) having been granted the necessary regulatory clearances; (ii) being funded out of remittances into India from overseas or by a bilateral or multilateral international finance agency; or (iii) having been granted a term loan by a public financial institution or bank in India for the project. In all other cases, project offices require prior RBI approval, which can be obtained through an authorized dealer bank. A project office gives a foreign company the flexibility to undertake activities relating and incidental to the execution of the project in India, such as opening and operating a foreign currency account. Subject to certain conditions, project offices can also remit surplus funds on winding up or completing their projects through authorized dealer banks. Lastly, project offices are subject to the same tax rates as branch offices (mentioned above).

The 2025 Draft Foreign Office Regulations once notified shall apply the same strengthened eligibility, activity restrictions, and compliance requirements to project offices as well (as mentioned above).

### **Joint Venture/Wholly Owned Subsidiary**

One of the most common entry routes for a foreign company is by establishing a joint venture (“JV”) with an Indian company. Having an Indian business partner brings considerable advantages to a foreign company, such as expertise in the local market and an existing distribution network. A foreign company may have a minority or majority stake in a JV depending on the sectoral caps and its control requirements. Shareholders in JVs can enter into pooling agreements *inter se* to vote on corporate issues in a certain manner.



Alternatively, a foreign investor may set up a wholly owned subsidiary (“**WOS**”) with 100% equity ownership in sectors having no FDI restrictions. The WOS approach provides greater flexibility for foreign investors in the operation and management of the Indian subsidiary while also providing better protection of technology and intellectual property rights in the absence of a JV partner.

A JV or WOS may be incorporated as a company under the Companies Act or as a limited liability partnership (“**LLP**”) under the Limited Liability Partnership Act, 2008 (the “**LLP Act**”). Foreign investment in an LLP is permitted only in sectors where 100% FDI is allowed through the automatic route and where there are no FDI-linked performance conditions.

### **Types of Companies**

A company may be incorporated either as a public or private company. In India, fewer restrictions and compliance requirements are placed on the functioning of a private company, as compared to a public company. The company’s shareholders have wide powers and their decisions are recorded in the form of resolutions. Lower tax rates, coupled with a greater degree of management control, make JVs and WOSs the most desirable routes to enter India for long-term operations.

With effect from December 1, 2025, a private limited company whose paid-up capital does not exceed INR100,000,000 (Indian Rupees One Hundred Million) (approx. US\$1,113,000) and topline (also called turnover in India) does not exceed INR1,000,000,000 (Indian Rupees One Billion) (approx. US\$11,130,000) is classified as a “small company.” Small companies are eligible for certain exemptions from the compliance requirements of the Companies Act. However, the exemptions are not applicable if a small company is a “holding company,” a “subsidiary company” or a not-for-profit company under the Companies Act.

The Companies Act also permits a one-person company, i.e., a private limited company with a single shareholder. With effect from April 1, 2021, a natural person who is an Indian citizen, whether a resident in India or otherwise, can make an application to set up a one-person company. A one-person company may be converted into a private or public company, other than a not-for-profit company, after increasing the minimum number of members, directors and the minimum paid-up capital as per the requirements of the Companies Act applicable to such classes of companies and by complying with the provisions of the Companies Act for such conversion. One-person companies are subject to simpler compliances under the Companies Act.

Establishing a private company in India requires a minimum of two (2) shareholders and two (2) directors. A private company may have as many as two hundred (200) members (excluding employees). A public company must have at least seven (7) members (there is no maximum limit on the number of members that such a company can have) and three (3) directors. The authorized and paid-up share capital of a company can be as per business requirements. The Companies Act requires that all companies must have at least one (1) director who stays in India for at least one hundred and eighty-two (182) days during the

financial year.

Every company incorporated in India is required to have a memorandum of association (“MOA”) and articles of association (“AOA”). The MOA is the charter document of the company, which contains the company’s business objectives. The AOA contains the policy and functioning guidelines that the company sets for itself. The promoters and subscribers of a company’s MOA must pay a registration fee. This fee varies depending on the authorized capital of the company.

State governments also levy a stamp duty on a company’s MOA and AOA. The amount of stamp duty depends on the authorized share capital of the company and the prevailing duty rates prescribed by the State in which the registered office of the company is proposed to be situated.

### *Procedure to Incorporate a Company*

The steps for company incorporation can be completed through a single filing process. Under this process, the director’s identification number for the directors and the name approval for the company is first obtained. Thereafter, the MOA and AOA are filed, and subsequently, the Registrar, Central Registration Centre (“CRC”), issues a certificate of incorporation. In addition, new companies have to make applications to obtain the permanent account number (PAN), tax deduction account number (TAN), and goods and service tax (“GST”) registrations, and also register with the Employees’ Provident Fund Organization and the Employees’ State Insurance Corporation in the application filed for formation of the company.

On incorporation, a company may operate anywhere in India, irrespective of where its registered office is situated. It may also set up branches in any part of the country without needing separate registrations under the Companies Act.

### *Tax Rates Applicable to a Company*

Indian companies that: (i) are set up after October 1, 2019; (ii) are engaged only in the business of manufacture or production of articles or things (including generation of electricity); and (iii) commence manufacturing/production before March 31, 2024, have the option of being taxed at the rate of 15% (with a surcharge of 10% and cess at 4%), aggregating to 17.16%, provided, that (i) the business of such company is not formed by splitting up, or the reconstruction, of a business already in existence; (ii) the company does not use any machinery or plant previously used for any purpose; and (iii) the company does not claim any other specified benefits or deductions.

Indian companies (that are not engaged in manufacturing or production) may at their option be taxed at the rate of 22% (with a surcharge at 10% and a cess at 4%) aggregating to 25.168%, provided they do not claim any other specified benefits or deductions.

Indian companies that are not covered under the points mentioned above are taxable as follows:

- (i) If the income is less than INR10,000,000 (Indian Rupees Ten Million) (approx. US\$111,300), the tax rate is 31.20%.
- (ii) If the income is between INR10,000,000 (Indian Rupees Ten Million) (approx. US\$113,000) and INR100,000,000 (Indian Rupees One Hundred Million) (approx. US\$1,113,000), the tax rate is 33.38%.
- (iii) If the income is more than INR100,000,000 (Indian Rupees One Hundred Million) (approx. US\$1,113,000), the tax rate is 34.94%.

Foreign companies are subject to a corporate income tax rate of 35%, excluding applicable surcharge and cess.

### **LLP**

In 2008, India enacted the LLP Act. This is in addition to the traditional system under which general partnerships with unlimited liability were permitted. There is no upper limit on the number of partners an LLP can have. Any individual or body corporate (including a body corporate incorporated abroad) may become a partner of an LLP. LLPs are not burdened with cumbersome compliances such as quarterly meetings and maintenance of statutory records. However, an LLP must mandatorily have at least two (2) “designated partners,” one of whom has to be resident in India. FDI without prior government approval has been allowed in LLPs operating in sectors where 100% FDI is permitted under the automatic route and there are no FDI-linked performance conditions. LLPs having foreign investment are also permitted to make downstream investments in other companies or LLPs in sectors in which 100% FDI is allowed under the automatic route and where there are no FDI-linked performance conditions.

#### *Procedure to Incorporate an LLP*

A single application can be filed to form an LLP. Under this application which is to be filed along with the incorporation document (usually, an LLP agreement), a name approval certificate and a designated partner identification number is first obtained, following which the CRC grants a certificate of incorporation. Under the LLP Act, it is possible for a company to convert into an LLP, and the Companies Act enables an LLP that has at least two (2) partners to convert or register as a company.

#### *Tax Rates Applicable to an LLP*

The effective income tax rate applicable to an LLP is 30% and can increase to 31.20%, 33.38% or 34.94% (with applicable surcharge and in cases where income exceeds INR10,000,000 (Indian Rupees Ten Million) (approx. US\$111,300). From April 1, 2012, LLPs have been made subject to an alternate minimum tax (“AMT”) at the rate of 18.5% (plus surcharge and education cess) of the adjusted total income if the regular income tax payable by the LLP is lower than the AMT. An LLP is not taxed on profits distributed by it to its partners.

## **TAKEOVERS AND ACQUISITIONS**

Acquiring an existing business is another avenue to enter the Indian market. An acquisition can be structured in India in any of the following ways subject to commercial and tax considerations.

### **Common Modes of Acquiring Existing Businesses**

#### *Share Acquisition*

In a share acquisition, the acquirer purchases the equity interest in the target entity from the seller and becomes the equity owner of the target entity. Lately, stock swap deals have also been used, particularly in transactions where the selling promoters intend to remain in the business or if the buyer is not cash rich. Typically, the acquirer and seller enter into a share purchase or transfer agreement setting out the details of the shares to be transferred, the consideration payable, conditions precedent to the transfer, representations, warranties and indemnities, etc. The stamp duty on a share purchase transaction in India is 0.015% of the purchase price irrespective of whether the shares are in physical or dematerialized form in addition to stamp duty payable on the share purchase agreement at the applicable State's stamp duty rate. Acquisition of an unlisted company will be subject to the restrictive provisions (if any) in the AOA and any pooling agreement between the target entity's shareholders.

#### *Asset Purchase*

What is commonly known as an asset purchase globally is categorized in India in two (2) modes: (i) a "*slump sale*" or the acquisition of the entire business of the target business, or (ii) an "*itemized sale*" in which the buyer can cherry pick the assets and liabilities proposed to be transferred. In case of a slump sale, the business undertaking is acquired as a whole, meaning that the assets and liabilities which together constitute a business activity are acquired for a lump sum consideration without values being assigned to the individual assets and liabilities. On the other hand, an itemized sale involves purchase of assets separately, not necessarily constituting the entire business undertaking of the target business.

Typically, the buyer and seller enter into a business transfer agreement or an asset purchase agreement setting out the details of the assets and liabilities to be transferred, the consideration payable, the mode of transfer of each component, conditions precedent to the transfer, representations, warranties and indemnities, etc. It must be noted that in order to undertake a business or asset transfer, a foreign investor will be required to setup an Indian entity to purchase the business or assets.

The tax consequences differ in both cases, and in most instances, subject to the prescribed valuation rules, a slump sale may work out to be more tax efficient as compared to an itemized sale. In addition, GST is not levied on a slump sale, but is required to be paid on the value of assets transferred in case of an itemized sale. The stamp duty payable for a

slump sale or for acquisition of itemized assets depends on the State stamp duty rates applicable at the location of the assets or undertaking, and the value ascribed to the assets or undertaking.

### *Mergers and Amalgamations*

In a merger, two (2) or more companies consolidate to form a single entity. Pursuant to a merger, all the assets and liabilities of the transferor entity, along with all employees, get transferred to the transferee entity, and the transferor entity is automatically dissolved. As a consideration for the merger, the transferee entity issues its shares to the shareholders of the transferor entity. Under the Companies Act, mergers are a court-driven process and require the approval of the jurisdictional National Company Law Tribunal (the “NCLT”) as well as the shareholders of both, the transferor and transferee entities. Mergers and amalgamations have certain tax benefits if the prescribed tax rules are followed.

Additionally, the Companies Act provides for a fast-track merger mechanism, which allows certain companies to merge through a simplified and quicker process without undergoing the full NCLT approval procedure. With amendments in 2025, this mechanism has been significantly liberalized to cover a wider range of companies. Specifically, unlisted companies whose aggregate outstanding borrowings, including loans, debentures, and deposits, do not exceed INR2,000,000,000 (Indian Rupees Two Billion) (approx. US\$ 22,260,000) and have no defaults are now eligible to undertake mergers via the fast-track route. The fast-track route also extends to holding-subsidary structures and fellow subsidiaries; a holding company, whether listed or unlisted, can merge with one (1) or more of its unlisted subsidiaries, even if they are not wholly owned, provided the transferor companies are unlisted. Similarly, unlisted fellow subsidiaries under the same parent may merge via fast-track, subject to the debt threshold and compliance requirements.

Cross-border mergers are permitted and regulated under Section 234 of the Companies Act and the Foreign Exchange Management (Cross Border Merger) Regulations, 2018. Prior RBI approval is required for a merger of a foreign company and an Indian company. Under these regulations, a cross-border merger where the resultant company is an Indian company is considered an “inbound merger” and a cross-border merger where the resultant company is a foreign company is considered an “outbound merger”. In an inbound merger, the resultant company can issue or transfer any security and/or a foreign security to a person resident outside India in accordance with the pricing guidelines, entry routes, sectoral caps, attendant conditions and reporting requirements for foreign investment under the foreign direct investment regime. In an outbound merger, an office in India of the Indian company, pursuant to sanction of the scheme of cross-border merger, may be deemed to be a branch office in India of the resultant company in accordance with the Foreign Exchange Management (Establishment in India of a branch office or a liaison office or a project office or any other place of business) Regulations, 2016. Accordingly, the resultant company may undertake any transaction as permitted to a branch office under the aforesaid regulations.

### *Demergers*

In a demerger, only the identified business undertaking gets transferred to the transferee entity and the transferor entity remains in existence post demerger. A demerger is an effective tool whereby a running business is hived into a separate company, so as to segregate core and non-core businesses, achieve management focus on core businesses, attract investors, or exit non-core businesses. A demerger also requires NCLT approval under which all the assets and liabilities, along with employees of the identified business undertaking, are transferred to the transferee entity on a going concern basis. As part of the demerger consideration, the transferee entity issues its shares to the shareholders of the transferor entity. Demergers have certain tax benefits if the prescribed tax rules are followed.

### *Acqui-hire Transactions*

Acqui-hire transactions have gained popularity in India, especially in the technology sector, as technically skilled employees are the most important assets of technology companies. In acqui-hire transactions, one (1) company primarily acquires the employees of another company without any transfer of the business undertaking of the seller or any other assets of the seller.

### *Private Equity and Venture Capital Investments*

In the last two (2) decades, India has seen a rise in private equity and venture capital investments, especially in the technology sector. Global private equity firms have set-up operations in India to tap into the Indian markets. India's foreign exchange regulations regulate private equity and venture capital investments from foreign funds. Further, the Securities and Exchange Board of India (the “SEBI”) has prescribed the SEBI (Alternative Investment Funds) Regulations, 2012 (as amended from time-to-time), which regulate investments by pooled investment vehicles.

### **Takeover of a Listed Company**

An investor may acquire a company listed on any Indian stock exchange by purchasing shares/voting rights directly from its shareholders. However, the provisions of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (the “**Takeover Regulations**”) must be followed when acquiring shares, voting rights and/or control of a listed company.

As per the Takeover Regulations, acquisition of 25% or more shares or voting rights of a public company requires the investor to make a public announcement to acquire an additional 26% of the shares from the target company's public shareholders at a price to be determined according to the Takeover Regulations. Additionally, if an acquirer already holds more than 25% of the shares or voting rights, any subsequent acquisition of more than 5% of the shares or voting rights in a financial year also triggers a mandatory open offer under the Takeover Regulations.

The Takeover Regulations lay down the parameters for determining the offer price and the process of undertaking the open offer. The criteria to determine the offer price depends on



whether the acquisition is direct or indirect, and whether the shares are frequently traded. To undertake an open offer, the acquirer is required to, *inter alia*, appoint a merchant banker, open an escrow account, prepare a draft letter of offer and seek the in-principle approval of the SEBI, and advertise the schedule of activities in the open offer process through newspapers. The process starts with issuance of a public announcement in a prescribed format, followed by publication of a detailed public statement in the newspapers, and filing of the draft letter of offer with the SEBI. The tendering is initiated after dispatch of the letter of offer to the shareholders post-receipt of comments from the SEBI.

However, certain transactions may be exempt from this obligation, such as *inter se* transfers of shares among various qualifying persons such as immediate relatives, promoters, etc., preferential issue of equity shares in a company having stressed assets, acquisition pursuant to a scheme of arrangement involving the target company as a transferor company or as a transferee company, and reconstruction of the target company (including amalgamation, merger or demerger pursuant to an order of a court or a competent authority under any domestic or foreign law). The SEBI may, *inter alia*, waive the open offer obligation if the investor applies for an exemption, but this is subject to such conditions that the SEBI may impose in the interests of retail investors and the securities market in general.

## **TAXATION**

The authority to levy taxes in India is, typically, either the Central or the State government. The Central government is responsible for direct taxes such as income tax, whereas the Central government along with the State governments administers indirect taxes such as GST.

### **Income Tax**

India's Income-tax Act, 1961 (the “IT Act”), provides a tax framework based on the residential status of foreign companies and foreign nationals. It covers dividends, interest, royalties, fees for technical services, capital gains, global income, and salary. Separately, with a view to provide impetus to start-ups and to facilitate their growth in the initial phase of their business, the IT Act provides a deduction of 100% of the profits and gains derived by an eligible start-up from a business involving innovation development, or deployment or commercialization of new products, processes or services driven by technology or intellectual property. Additionally, India has entered into double taxation avoidance agreements (“DTAAs”) with many countries to reduce foreign investors' tax liabilities. Currently, India has DTAAs with one hundred and twenty-two (122) countries, including the USA, Germany, the UK, Singapore, Mauritius, Spain and Japan.

The India-Mauritius DTAA (through which significant FDI was routed into India) was modified on March 7, 2024 by way of a protocol between the two (2) countries to strengthen anti-abuse measures by: (i) replacing the preamble to clarify that the treaty's purpose is to prevent tax evasion and treaty shopping; (ii) introducing a principal purpose test (PPT) that can deny benefits if obtaining treaty relief was a main purpose of a transaction; and (iii) emphasizing that treaty benefits require real commercial substance



rather than just a tax residency certificate.

Under this DTAA, India has the right to tax capital gains arising from the alienation of shares of an Indian resident company as follows:

- (i) For shares of Indian companies that have been acquired prior to April 1, 2017, a previously applicable exemption from capital gains tax will continue to apply even if the shares are sold after April 1, 2017, but subject to fulfillment of the commercial substance criteria.
- (ii) For share purchase and subsequent sale transactions that took place between April 1, 2017 and March 31, 2019, the capital gains tax rate will be limited to 50% of the domestic tax rate in India, subject to the fulfillment of the limitation of benefits article as introduced in the protocol.
- (iii) For share purchase transactions taking place any time after April 1, 2017 but the subsequent sale transactions taking place after April 1, 2019, the capital gains tax rate will be 100% of the domestic tax rate in India.

India has also renegotiated its treaties with Singapore and Cyprus in line with the Mauritius amendments. Moreover, effective on April 1, 2017, General Anti-Avoidance Rules (“GAAR”) have been brought into the IT Act. In light of these changes, funds and foreign companies should look at their India investments carefully. Currently, India’s tax treaty with Netherlands offers good structuring options from a capital gains tax perspective.

While an Indian company is taxed on its worldwide income, a foreign company is only taxed on income that is: (i) derived in India from Indian operations; (ii) deemed to have accrued or arisen in India; or (iii) received or deemed to be received in India.

The IT Act has also been amended to clarify that the source country (India) has the taxation right on the gains derived from offshore transactions where the value is attributable to underlying assets (whether tangible or intangible) located in India, if the value of such assets exceeds the amount of INR100,000,000 (Indian Rupees One Hundred Million) (approx. US\$1,113,000) and represents at least 50% of the value of all assets of the offshore transferor company. Separately, there are prescribed valuation requirements to be adhered to, and the Indian entity has reporting obligations on such indirect transfers to the tax authorities.

The IT Act has also been amended to clarify that no tax demand will be raised on any indirect transfer of Indian assets if the transaction was undertaken before May 28, 2012. Further, tax demands already raised on an indirect transfer of Indian assets made before May 28, 2012 will be nullified subject to certain conditions being met, such as withdrawal of pending litigation or execution of an undertaking that pending litigation is in the process of being withdrawn and that no claim for costs, damages, interest, etc., will be filed.

The Income-tax Act, 2025 proposes to overhaul India’s income-tax law (replacing the old Income-tax Act, 1961 with effect from April 1, 2026) with a simpler, more structured

framework designed to restructure the law into shorter, principle-based provisions. Among other changes, it will replace the twin concepts of “Previous Year” and “Assessment Year” with a unified “Tax Year,” clarifying the period for which income is taxed. It will retain existing tax rates and general principles of taxation, but will reorganize definitions, eliminate obsolete provisions, and consolidate chapters and schedules for better readability.

### *Virtual digital assets*

The Indian government has announced the taxation scheme for virtual digital assets (like cryptocurrencies and NFTs). Any income arising from the transfer (sale) of any virtual digital asset is now taxed at the rate of 30% with applicable surcharge and education cess. No deduction in respect of any expenditure (other than the cost of acquisition) is allowed. Further, no allowance or set-off of any loss is allowed while computing the income from the transfer of such assets. Furthermore, loss from such a transfer is not allowed to be carried forward to subsequent assessment years.

A “virtual digital asset” has been defined to mean any information, code, number or token (not being an Indian currency or any foreign currency) generated through cryptographic means or otherwise providing a digital representation of value which is exchanged with or without consideration, with the promise or representation of having inherent value, or functions as a store of value or a unit of account and includes its use in any financial transaction or investment, including, but not limited to, investment schemes, and can be transferred, stored or traded electronically. Non-fungible tokens and all other tokens of similar nature are included in the definition.

A gift of virtual digital assets is taxed in the hands of the recipient according to the applicable tax slab with applicable surcharge and education cess.

The buyer of the virtual digital asset is required to withhold tax at the rate of 1% on payments made to a resident Indian seller. In addition, in cases where the payment for such a transfer is: (i) wholly in kind or in exchange of another virtual digital asset where no cash is involved; or (ii) partly in cash and partly in kind but the cash portion is insufficient to meet the tax deduction liability in respect of whole of such transfer, before making the payment, the buyer is required to ensure that the taxes have been paid in respect of such consideration. The tax deduction compliance requirement has become effective from July 1, 2022.

### *Advance Pricing Agreements*

The IT Act enables an Advance Pricing Agreement (“APA”) between taxpayers and the Central Board of Direct Taxes (the “CBDT”). The APA rules provide detailed guidelines on the process along with the information, data, fee details, forms that need to be filed, etc. A taxpayer may first undertake pre-filing consultations, which can be done on an anonymous basis before filing a formal APA application. The taxpayer’s associated enterprise may initiate an APA process with the competent authority in the other country in case of a bilateral/multilateral APA. The taxpayer is required to file an annual compliance report during the applicability of the APA. As multinational corporations

grapple with the effects of OECD's Base Erosion and Profit Shifting project, as well as domestic legislative changes, transfer pricing is becoming increasingly challenging. A pre-emptive approach through APAs to manage global transfer pricing disputes can enhance both, efficiency and effectiveness. The IT Act has also notified APA rollback rules which provide an option to the taxpayer to roll back the APA for four (4) prior years in respect of the same international transaction, subject to certain conditions. The Central Board of Direct Taxes has entered into one hundred and seventy-four (174) APAs in the financial year 2024-25.

### *Safe Harbour Rules*

On March 25, 2025, the CBDT issued a notification to amend and extend the applicability of the safe harbour rates to the assessment years 2025-26 and 2026-27 for determining the arm's length rates for certain specified international transactions. This amendment is effective from March 25, 2025, and has prospective effect. In case a taxpayer undertakes certain specific international transactions at the specified safe harbour rates, they will be accepted by the income tax authorities and no further transfer pricing audit or adjustment will be made for those international transactions.

### *Equalization Levy*

With the expansion of the information and communication technology sector, the supply and procurement of goods and services digitally has undergone an exponential expansion in India. These new business models have created new tax challenges, namely, the difficulty in characterizing the nature of payment and establishing a nexus or link between a taxable transaction or activity and a taxing jurisdiction, as also the difficulty of locating the transaction or activity and identifying the taxpayer for income tax purposes.

India introduced an equalization levy (EL) in 2016, of 6% on non-residents engaged in online advertisement and related activities with Indian customers (Finance Act, 2016). This levy was on certain specified services such as online advertisement services, the provision of digital advertising space or facilities for online advertisement and thus was limited in scope. However, this 6% levy was withdrawn by the Finance Act, 2025, and is no longer applicable on or after April 1, 2025.

With effect from April 1, 2020, an equalization levy of 2% had to be paid by an e-commerce operator on consideration received or receivable by it under an e-commerce supply or service delivered (generated from a broad range of digital services offered in India, including digital platform services, digital content sales, digital sales of a company's own goods, data-related services, software-as-a-service, and several other categories of digital services) made, provided, or facilitated by it to: (i) an Indian resident, (ii) a non-resident in specified circumstances, or (iii) a person who buys such goods, services, or both, via an internet address located in India. The digital tax was originally introduced to target technology giants operating in India. .

India is a party to the two (2) pillar solution introduced by the OECD and the G20 Inclusive Framework on Base Erosion and Profit Shifting. Pillar One requires all member countries

to withdraw their existing digital services taxes. However, on November 24, 2021, the Indian government announced that a transitional approach of 2% equalization levy on e-commerce supply or services has been agreed with the United States of America and the applicable interim period was from April 1, 2022 until March 31, 2024. The Indian government on July 23, 2024, decided to withdraw the 2% equalization levy on e-commerce supply of goods and services with effect from August 1, 2024, in line with the transitional approach worked out with the US to deal with the levy affecting non-resident digital companies including American entities.

### *Significant Economic Presence*

The IT Act has introduced rules on “significant economic presence” under the “business connection concept” for a non-resident. A non-resident can have a taxable presence in India if the non-resident’s digital enterprise has a significant economic presence in India on the basis of factors that evidence a purposeful and sustained interaction with the Indian economy via technology or other automated tools.

A non-resident will be considered to have “Significant Economic Presence” when : (i) the amount of aggregate of payments arising from transaction or transactions in respect of any goods (including digital goods), services (including digital services) or property carried out by a non-resident with any person in India, including providing download of data or software in India during the previous year, exceeds INR20,000,000 (Indian Rupees Twenty Million) (approx.US\$222,600); or (ii) the number of users with whom systematic and continuous business activities are solicited or who are engaged in interaction exceeds three hundred thousand (300,000).

### *Faceless Assessments*

In September 2020, the Indian government has implemented faceless assessment, appeal and penalty schemes, under which the Indian tax assessment proceedings will be completed without physical hearings and in a faceless manner. The CBDT has issued detailed operating guidelines in this regard.

### *Income from Capital Gains*

Income earned from the transfer of capital assets is taxed under the head “capital gains.” The tax rates depend on the whether the gains are short-term or long-term capital gains. “Short term capital asset” means a capital asset held by a taxpayer for not more than twenty-four (24) months immediately prior to its date of transfer. However, in the case of listed equity shares and units of equity-oriented mutual funds, the period is twelve (12) months. An asset other than a short term capital asset is regarded as a long term capital asset. With effect from July 23, 2024, the rate of long term capital gains tax without indexation benefits for both Indian residents and non-residents is 12.5% (for listed shares) excluding surcharge and education cess, and the rate of short term capital gains tax is 20% (for listed shares) and at applicable rates for taxpayers (for unlisted shares), excluding surcharge and education cess.

### *Tax Avoidance Rules*

With the introduction of GAAR, it is now imperative to demonstrate that there is a commercial reason, other than to obtain a tax advantage, for structuring investments from tax friendly jurisdictions. GAAR can be used to challenge arrangements whose main purpose is to obtain a tax benefit and deny benefits otherwise available under a DTAA. Income arising from the transfer of investments acquired before April 1, 2017 have been “grandfathered” from the applicability of GAAR. However, the income tax authorities continue to examine the “commercial substance” criteria in some detail before granting tax benefits.

### *Buyback of Shares*

With effect from October 1, 2024 amounts paid by a domestic company on buy-back of shares shall be treated as dividends and shall be chargeable in the hands of shareholders at applicable tax rates. No buyback tax will be applicable in the hands of the domestic company. The buy-back consideration paid to an Indian resident will be subject to a tax withholding at 10%.

### *Dividend*

Dividend income in the hands of a non-resident person (including Foreign Portfolio Investors and NRIs) is taxable at the rate of 20% (excluding surcharge and education cess). The Indian company distributing the dividends is required to withhold tax on such dividend income paid to beneficial owners either at the rate of 20% (excluding surcharge and education cess) or at a beneficial withholding tax rate provided under the DTAA that could either be 5%, 10% or 15% of the gross amount of the dividend.

### *Royalties and Fees for Technical Services*

Under the IT Act, payments made by an Indian company to a non-resident that are in the nature of royalties and fees for technical services are taxable in India at the rate of 20% (excluding surcharge and education cess), and the company is liable to withhold tax on such payments, subject to any tax reliefs available under the applicable DTAA.

### *Thin Capitalization Rules*

Interest expenses paid to an associated enterprise are restricted to 30% of earnings before interest, taxes, depreciation and amortization or to the actual amount of interest paid to an associated enterprise, whichever is less.

### *Permanent Account Number*

Any person who makes a payment to a non-resident or a resident that is chargeable to tax in India is liable to withhold taxes at source from such payments in accordance with the relevant provision of the IT Act. If the permanent account number is not available, a higher tax withholding rate of 20% is applicable. However, this provision is relaxed if certain

prescribed information is provided to the payer.

### *Real Estate Transfer Taxation*

Real estate transactions, typically, involve payments of stamp duty, registration charges, and GST (depending on the nature of the transaction). For sale of an immovable property that is held as an investment, the profits or gains arising from the transfer or disposal of real estate is subject to capital gains tax in the hands of the transferor. Similarly, in the event of a share transfer arrangement wherein the seller sells shares (which are held as investment) of a land-holding company to a purchaser, the profits or gains arising from such transfer will be subject to capital gains tax in the hands of the seller unless a specific exemption applies. Any development rights arrangement, joint development arrangement or revenue-sharing arrangement will involve a levy of GST. The GST law categorises construction and work contract activities as “services,” with a tax rate of 18%.

### *Tax Incentives for Companies Located in the International Financial Services Centre*

The Indian government has established a world class financial services centre in Gandhinagar, Gujarat. Units located in the International Financial Services Centre (the “IFSC”) are eligible for tax concessions. Non-resident entities which are not required to obtain a PAN and do not earn any income other than income from investment in a ‘specified fund,’ being Alternate Investment Fund Category III located in the International Financial Services Centres (IFSC) or GIFT City are not required to file income tax returns.

In order to further incentivize operations from the IFSC, the following additional benefits will be available: (i) an extension of the date for transfer of assets of the original fund, or of its wholly owned special purpose vehicle, to a resultant fund, in case of relocation, from the current date of March 31, 2025 to March 31, 2030; and (ii) a tax exemption on incomes distributed on offshore derivative instruments that fulfil certain conditions (to be prescribed in due course) so as to avoid double taxation.

### *Advance Rulings*

For non-resident corporations and individuals seeking to do business in India, or for Indian entities having tie-ups with non-resident entities, a special authority called the Authority for Advance Rulings (“AAR”) used to provide advance rulings with respect to the tax liability arising from proposed transactions. On September 1, 2021, the Indian government replaced the AAR with the Board for Advanced Rulings and specified that all pending applications with the AAR would be transferred to the Board for Advance Rulings.

### **Goods and Services Tax**

The introduction of GST with effect from July 1, 2017 has been a significant step in the field of indirect tax reforms in India.

GST replaced the following taxes: (i) taxes levied and collected by the Central government, such as central excise duty, special additional duties of excise, additional duties of customs,



special additional duties of customs, service tax, central surcharges, and cess in so far as they related to the supply of goods and services; and (ii) taxes levied and collected by the State governments, such as value added tax, central sales tax, luxury tax, entry tax, octroi, entertainment and amusement tax (except when levied by local bodies), taxes on advertisements, purchase tax, tax on lotteries, betting and gambling, and State surcharges and cess in so far as they related to supply of goods and services. Alcohol for human consumption, petroleum products, viz., petroleum crude, motor spirit (petrol), high speed diesel, natural gas, aviation turbine fuel, and electricity, have been kept out of the purview of GST.

GST is applicable on the “supply” of goods or services and not on the manufacture of goods, sale of goods or the provision of services, which was the earlier concept. GST is based on the principle of destination-based consumption taxation as opposed to origin-based taxation. In other words, GST is a value added tax levied at all points in the supply chain with credit allowed for any tax paid on inputs acquired for use in making the supply.

GST has been implemented in a dual manner such that the Central government and the State governments simultaneously levy GST on a common tax base. The GST levied by the Central government on intra-state supply of goods or services is called Central GST (“CGST”) and that levied by the State governments is called State GST (“SGST”). Similarly, Integrated GST is levied and administered by the Central government on exports (which are considered as a zero-rated supply) and the inter-state supply of goods and services.

A common threshold exemption applies to both, CGST and SGST. The threshold limits for obtaining a GST registration with effect from April 1, 2019 are as follows:

- (i) for sale of goods, INR4,000,000 (Indian Rupees Four Million) (approx. US\$44,520);
- (ii) for sale of goods in specified states, INR2,000,000 (Indian Rupees Two Million) (approx. US\$22,260);
- (iii) for supply of services, INR2,000,000 (Indian Rupees Two Million) (approx. US\$22,260);
- (iv) for supply of services in specified states, INR1,000,000 (Indian Rupees One Million) (approx. US\$11,130); and
- (v) a compounding option (i.e., to pay tax at a flat rate without input tax credits) is available to small taxpayers (including to a specified category of manufacturers and service providers) having an annual turnover of up to INR15,000,000 (Indian Rupees Fifteen Million) (approx. US\$166,950) in states other than specified states and INR7,500,000 (Indian Rupees Seven Million and Five Hundred Thousand) (approx. US\$83,475) for specified states.

The GST Council comprising of the Union Finance Minister (who is the Chairman of the



GST Council), the Minister of State (Revenue) and the State Finance/Taxation Ministers are responsible for making recommendations to the Indian government and the States, *inter alia*, on the taxes, surcharge, principles of levy, apportionment of taxes, etc., levied by the Central government, the State governments and the local bodies, which may be subsumed under GST.

Further, the Goods and Services Tax Network (“GSTN”) has been set up by the Indian government as a not for profit company under Section 8 of the Companies Act. The GSTN provides three (3) front-end services to taxpayers, namely, assistance in GST registrations, payment of taxes, and filing of tax returns. The GSTN will also be developing back-end IT modules for various States and the Union Territories who have opted for such modules.

GST, being a multi-point taxation system extending up to the retail level, arrests tax cascading to a great extent. Further, with most of the indirect taxes removed and with the introduction of a common law, common tax returns and common tax assessment procedures, GST has created a national common market. Uniform administration and collective enforcement are resulting in more compliance and lesser leakage of tax revenue.

Reforms brought in 2025 to the GST framework simplify the multi-tier tax slabs by introducing two core slabs 5% (merit rate) and 18% (standard rate). A 40% tax slab has also been introduced for sin and demerit goods like tobacco products, pan masala, gutkha, carbonated beverages, caffeinated drinks, and aerated waters.

## **EMPLOYMENT LAWS**

Companies investing in India need to be cognizant of India’s employment laws. Employment is a subject of the Concurrent List of the Constitution of India, which gives power to both the Central and State Governments to legislate on the subject. Many State governments have included amendments to the labour laws passed by the Central government. State governments have also enacted labour laws specific to their own States. Some key employment statutes have been summarized below.

Indian labour and employment law has often been criticized to be complex, unpredictable, and ridden with regulatory uncertainty. However, various reforms are being undertaken in line with the Central Government’s vision to promote the Ease of Doing Business in India. The Union (through the Shram Suvidha Portal) and some State governments have also undertaken digitization and permitting compliance with these laws on a self-certification basis. Most importantly, twenty-nine (29) major central labour & employment laws have been simplified and consolidated into four (4) labour codes.

### **Industrial Disputes Act, 1947**

The Industrial Disputes Act, 1947 (the “IDA”), is a central legislation, which provides for the investigation and settlement of industrial disputes between an employer and its workers. The IDA defines the various authorities that have jurisdiction regarding industrial disputes, and the parties that are required to comply with its provisions.

Further, the IDA provides for the legal obligations of the employer in situations relating to lay-offs, retrenchment, closure, strikes, lockouts and other employment disputes. Different procedures have been prescribed depending on the number of workers employed in an establishment.

Furthermore, various states have passed their own amendments to the IDA and some even have their own Industrial Disputes Act. Companies have to abide by the law applicable in the state(s) where they conduct business. The IDA has been subsumed by the IR Code (*as defined below*).

### **Factories Act, 1948**

The Factories Act, 1948 (“FA”), regulates the law relating to labour in factories. It defines which premises may be called a factory, which is the premises where manufacturing processes are carried on. The FA provides for the duties and powers of authorities such as the ‘occupier’ of a factory, the inspector of factories, and various governmental authorities. The FA also contains provisions relating to health, safety, working hours of adults, employment of young persons, etc. The Act also lays down the penalties for non-compliance and the procedure for dispute resolution for offences listed under the FA. The FA has been subsumed by the OSHWC Code.

### **Contract Labour (Regulation and Abolition) Act, 1970**

The Contract Labour (Regulation and Abolition) Act, 1970 (the “CLA”), applies to establishments or contractors who have employed twenty (20) or more contract workers at any time during the preceding year. The CLA applies to all establishments, i.e., any place where an industry, trade, business, manufacturing or occupation is conducted. The CLA defines a contractor and a principal employer, and also details their respective responsibilities pertaining to contract workers. Notably, the principal employer has the ultimate responsibility and liability for payment of wages and statutory benefits if the contractor fails to make such payments. Also, the CLA contains various provisions for improving the working conditions of contract labour. The CLA has been subsumed by the OSHWC Code (*as defined below*).

### **Payment of Gratuity Act, 1972**

Under the Payment of Gratuity Act, 1972 (the “Gratuity Act”), any shop or establishment (among others) that employs ten (10) or more persons at any time in the past twelve (12) months and any factory is required to pay gratuity to employees who have rendered continuous service for over five (5) years. The amount of gratuity payable is calculated as per the last drawn wages of such employee, at the rate of fifteen (15) days of wages payable for every continuous year of service. This amount is payable to the employee upon his or her retirement, resignation, superannuation or death. However, an employer does not have to pay any gratuity to an employee whose service has been terminated due to circumstances such as misconduct, acts of moral turpitude, etc. In 2018, the Indian government doubled the maximum gratuity limit to INR2,000,000 (Indian Rupees Two Million) (approx. US\$22,260). The Gratuity Act also specifies the powers and functions of State authorities

and prescribes penalties for violations. Some states have also notified the provision of the Gratuity Act that requires all covered establishments to obtain insurance for their gratuity funds. The Gratuity Act has now been subsumed by the Social Security Code (*as defined below*).

### **Employees' Provident Funds and Miscellaneous Provisions Act, 1952**

The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (the “**EPF Act**”), is a key social welfare legislation in India aimed at ensuring financial security for employees in the organized sector. Under the EPF Act, an employer and its employees are required to make contributions to the provident fund, the benefits of which accrue to the employee. The Act covers establishments employing twenty (20) or more workers and contains the Employees' Pension Scheme (EPS) and the Employees' Deposit Linked Insurance Scheme (EDLI). EPS provides a pension after retirement or financial assistance to the family in case of the employee's death, while EDLI offers life insurance coverage linked to the provident fund. The EPF Act is administered by the Employees' Provident Fund Organization (EPFO), which is responsible for managing the funds and ensuring compliance with the Act. Further, this legislation also covers any “international workers,” i.e., employees holding non-Indian passports. The only exception is for nationals of countries with whom India has entered into social security equalization agreements. The EPF Act has been subsumed by the Social Security Code (*as defined below*).

### **Payment of Bonus Act, 1965**

The Payment of Bonus Act, 1965 (the “**Payment of Bonus Act**”) provides for payment of bonus to persons employed in every factory and every establishment which employs twenty (20) or more persons on any day during an accounting year. The Act mandates employers to pay an annual bonus to employees, which ranges from a minimum of 8.33% to a maximum of 20% of their salary or wages, depending on the profits of the establishment. The Payment of Bonus Act was amended in 2015 and the scope of employees eligible for payment of bonus has increased to those drawing a salary or wage not exceeding INR21,000 (Indian Rupees Twenty-one Thousand) (approx. US\$234) per month. The amendment has also increased the ceiling of calculation of bonus to INR7,000 (Indian Rupees Seven Thousand) (approx. US\$78) per month or the minimum wage for the scheduled employment as fixed by the government, whichever is higher. The Payment of Bonus Act has been subsumed by the Wage Code (*as defined below*).

### **Shops and Establishments Act**

Each State has its own Shops and Establishments Act (the “**SEA**”) and rules that it frames under the SEA. The SEA mandates registration for a wide variety of establishments and covers employees' and employers' statutory obligations and rights. Any business office falling under the SEA's definition of a shop or establishment must be registered. The SEA also provides for other requirements and guidelines pertaining to the work environment, working hours per day and week, rest intervals, opening and closing hours, holidays, rules for employment and termination. It also covers matters like health and safety, cleanliness, and record-keeping of employee registers. Typically, management employees do not fall

under the purview of the SEA. Additionally, factories are generally excluded from the purview of the SEA as they are governed by the Factories Act.

### **Apprentices Act, 1961**

The Apprentices Act, 1961 (the “**Apprentices Act**”) regulates and promotes the training of apprentices in industry and prescribes the terms and conditions for being appointed as an apprentice, and also the mandatory requirement of entering into a contract of apprenticeship. The Act applies to establishments engaging in trade, business, or manufacturing, both in the public and private sectors. In 2014, the Apprentices Act was amended to include conditions such as, (i) minimum age requirements for an apprentice hired in a hazardous industry, and (ii) the working hours and leave entitlement of apprentices (which will be as per the discretion of the employer (earlier determined by the Apprenticeship Rules, 1992)).

### **Labour Codes**

The Indian government has passed legislation seeking to streamline various labour laws under four (4) comprehensive labour codes. Each labour code will simplify compliance requirements for employers and aims to ensure greater efficiency in licensing and periodic reporting. The labour codes are being implemented in a phased manner, and will fully enter into force once the Central and state governments notify corresponding rules under the labour codes.

### **Code on Wages**

The Code on Wages, 2019 (the “**Wage Code**”) will subsume the laws on payment of wages and bonus. The Wage Code will consistently apply across establishments in India, including those of the unorganized sector, ensuring greater coverage of minimum wage and payment of wage rights. The Wage Code requires an employer to pay wages to the employee within seven (7) days of the wage period, in case payment is made on a monthly basis. Additionally, the Wage Code will set floor wages for different geographical areas, that will function as markers for the minimum wages payable to employees in these areas. Employees who work overtime will be paid at least twice the rate of the normal wages. The Wage Code prohibits discrimination between employees on the grounds of gender in respect of same or similar work by any employee. Certain categories of employees (to be prescribed) who have worked for thirty (30) days in an accounting year will be eligible to a minimum annual bonus of 8.33% of the wages earned by the employee or INR100 (Indian Rupees One Hundred) (approx. US\$1), whichever is higher. The Wage Code simplifies compliance requirements by requiring combined registers to be maintained for the record-keeping of an establishment.

### **Code on Social Security**

The Code on Social Security, 2020 (the “**Social Security Code**”) will subsume social security laws in India relating to employee compensation, employees’ provident fund and state insurance, maternity benefits, and payment of gratuity. The Code introduces a

framework for the formation of social security funds, with the goal of streamlining and universalizing social security provisions in India, ensuring financial protection for all workers. The Social Security Code introduces potential social security schemes for gig workers and digital intermediary platform workers, empowering the Indian government to announce these schemes. The Social Security Code relies on each worker's unique Aadhar number issued by the Indian government to avail benefits and receive payments under the Social Security Code. The Social Security Code increases compliance regarding payment of gratuity for fixed term employees, now payable on a *pro rata* basis upon the expiry of their term. The major social security frameworks of the employees' provident fund and state insurance, and maternity benefits, remain substantially unchanged. However, the amalgamation of nine (9) legislations under the Social Security Code benefits employers and cuts down on compliance requirements, namely, maintaining separate registers, records and notices.

### ***Industrial Relations Code***

The Industrial Relations Code, 2020 (the “**IR Code**”) will subsume laws relating to trade unions, industrial disputes, and standing orders to be maintained by industrial establishments. The IR Code provides for mechanisms for registration of trade unions, resolution of industrial disputes, and provisions for retrenchment compensation, lay-offs and closures of industrial establishments. The substantive legal aspects of transferring employees pursuant to a business transfer agreement remain unchanged. However, the threshold for industrial establishments for standing orders, and taking permission from the Indian government for lay-offs, retrenchment and closure has been increased from one hundred (100) to three hundred (300) employees. This will allow companies to expand up to the newer threshold with lesser compliance burdens and will promote the growth of industry in India. The Code focuses on promoting harmonious industrial relations by establishing processes for grievance redressal, dispute resolution, and collective bargaining. It provides guidelines for strikes, lockouts, layoffs, and retrenchment, aiming to balance the rights of employers and employees. The Code seeks to modernize labour laws while ensuring industrial peace, enhancing ease of doing business, and promoting efficient conflict resolution in the workplace.

### ***Occupational Safety, Health and Working Conditions Code***

The Occupational Safety, Health and Working Conditions Code, 2020 (the “**OSHWC Code**”) will subsume thirteen (13) existing laws regulating the working conditions of various workers, including the Factories Act, 1948 and the CLA. The OSHWC Code requires employers to provide hazard-free establishments to employees, conduct regular health checkups, and maintain occupation safety and health standards set by the Indian government. Manufacturers and importers handling goods must reasonably ensure that the goods are safe and do not pose health risks to workers in the course of proper use. The Code also includes regulations on working hours, overtime, and welfare facilities, while establishing specific safety norms for hazardous industries. The OSHWC Code prescribes a maximum of eight (8) hours of daily work and one (1) day of rest per week. The OSHWC Code also regulates inter-state migrant workers, plantation workers, and construction workers.



## **HIRING PERSONNEL**

Primarily, there are three (3) recognizable forms of hiring personnel in India. These three (3) arrangements differ in terms of control, costs, risks, and legal obligations, making it essential for businesses to choose the most appropriate one based on their needs and the nature of work involved.

### **Employment Arrangement**

An Indian entity may employ persons as its employees by entering into a contract of service or an employment contract. An employment arrangement creates a direct employer-employee relationship, wherein the employer has significant control over the work, working hours, and the methods used to complete tasks. Further, the Indian entity is responsible for the actions of the employee and may be required to comply with employment laws. If the employee falls within the definition of and is considered to be a “worker,” the employee will get statutory protections under certain employment statutes of India, including social security benefits, various forms of leave, job security, and protections concerning health and safety at the workplace.

### **Independent Contractor Arrangement**

An Indian entity (principal) may hire persons to perform work on its behalf by entering into a contract for service or an independent contractor or a retainer contract that details the scope of work, payment terms, and duration. In this case, the independent contractor relationship is comparable to a principal-agent relationship and not an employer-employee relationship. The principal is not responsible for the actions of the independent contractor and is not required to comply with Indian employment statutes. Independent contractors also do not have any statutory protection under employment laws. Contractors enjoy flexibility in their work but are not entitled to employee benefits like provident fund or (statutory) paid leave. They are also responsible for their business expenses, taxes, and insurance, and do not have a high-degree of job security.

### **Outsourcing Arrangement**

An Indian entity may also enter into an outsourcing contract with an agent or a contractor who provides personnel to the Indian entity. Such personnel are employed by the service provider, not the company that outsources the work. In this case, the Indian entity will only have a contract with the agency and not with the personnel, and therefore, the personnel will not have any statutory protection under employment statutes vis-à-vis the Indian entity. There will be no employer-employee relationship between the Indian entity and the personnel. The terms of this arrangement are governed by a Service-Level Agreement (SLA), which specifies the scope of services, performance standards, and penalties for non-compliance. In such a case, the Indian entity may be required to comply with certain procedural requirements under the provisions of the OSHWC Code.

## **APPOINTMENT OF KEY EXECUTIVES**

While setting up an entity in India, a foreign investor may wish to appoint a managing director and/or a manager for the investee company. In India, a manager is an individual who, subject to the superintendence, control and direction of the board, has the management of the whole, or substantially the whole, of the affairs of the company. An individual serving this role in the company will be the manager, regardless of whether he or she is a director serving on the board. On the other hand, a managing director in a company must be a director of that company and entrusted with substantial powers of management of the affairs of the company. The company need not designate a director as a managing director. A managing director's role is determined by their position in the company. The manager or the managing director serve for a maximum period of five (5) years at a time, which can be renewed for further terms of five (5) years each in the last year of their term.

The duties of the manager or the managing director in a company are determined by resolutions passed by the board of directors, the AOA of the company and through employment agreements. Additionally, a managing director serves fiduciary duties under the Companies Act as part of their director duties, including, *inter alia*, duties to act in good faith, assist the jurisdictional Registrar of Companies and file financial statements.

### **EMPLOYMENT OF A FOREIGN NATIONAL**

If any Indian entity seeks to employ a foreign national, such a person will require an employment visa in India. In this regard, please note that the Indian government provides employment visas for a period of two (2) years/ three (3) years/ five (5) years (depending on the nature of work) or the period of contract, whichever is lesser, and the visa is extendable beyond the initial visa validity period, up to a total period of five (5) years from the date of issue of the initial employment visa, on a year-to-year basis.

Please note that the pre-conditions for obtaining an employment visa are as follows: (i) the person must be a skilled or qualified professional being employed for a job for which qualified Indians are not available, (ii) the gross salary should exceed US\$25,000 (US Dollars Twenty-five Thousand) per year, and (iii) there should be an employment contract issued by the Indian company. If the employment visa is valid for a period of more than one hundred and eighty (180) days, the foreign national will be required to register with the jurisdictional Foreigners Regional Registration Office within fourteen (14) days of his or her arrival in India. This registration is critical as it establishes the legal status of the foreign national in India and is a prerequisite for obtaining certain services, such as opening a bank account. Failure to register within the stipulated time can result in fines, deportation, and blacklisting, which would prevent future entry into India. Additionally, the foreign national's continued stay in India is subject to compliance with visa conditions, and any breach, such as engaging in activities not permitted under the visa category, can lead to visa cancellation and legal action.

### **TERMINATING PERSONNEL**

Previously, the IDA and the SEA used to, typically, regulate termination of personnel.



Upon enforcement of the IR Code, the provisions of the IR Code and the SEA will apply. The applicability of the provisions of the IR Code and the SEA depend on the type of establishment, nature of employment of the employee, the period of continuous employment with the employer, the notice and other compensation requirements under the contract between the employer and the employee, and the reasons for the termination. Therefore, employers in India have to carefully assess the applicability of the provisions of the IR Code and/or the SEA and comply with them in order to mitigate potential claims of permanency and back wages from workers. Non-compliance with these laws can result in legal disputes, reinstatement orders, and financial liabilities for employers.

### **Termination Provisions under the IR Code**

The IR Code provides implications for termination of workers in case of retrenchment, closure of the establishment, lay-off and transfer of undertakings. The term “worker” means any person employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment are express or implied, but does not include, *inter alia*, any person: (i) employed mainly in a managerial or administrative capacity, or (ii) employed in a supervisory capacity and drawing wages exceeding INR18,000 (Indian Rupees Eighteen Thousand) (approx. US\$200) per month or exercises either by the nature of the duties attached to the office or by reason of the powers vested in him or her, functions mainly of a managerial nature. Therefore, whether an employee is a “worker” is a functional test and is of a subjective nature. This distinction is crucial, as it determines the application of IR Code protections and procedures. Misclassification can lead to significant legal risks, including wrongful termination claims.

#### *Retrenchment*

Retrenchment of a workers means termination other than on account of: (i) punishment inflicted by way of disciplinary action, (ii) voluntary retirement or superannuation, (iii) continued ill-health, (iv) non-renewal of the contract or termination of contract based on its provisions, and completion of a worker’s fixed term employment. Under the IR Code, a work who has completed at least one (1) year of continuous service can be retrenched after being given a one (1) month notice or payment in lieu, and payment of fifteen (15) days’ average pay for every completed year of continuous service or part thereof in excess of six (6) months. Failure to adhere to these retrenchment procedures can result in penalties, including reinstatement of the worker with back wages or payment of damages. Further, depending on the nature of the employer (i.e., factory, mine, commercial establishment) and the number of workers employed by the employer, the IR Code prescribes notification or consent requirements for retrenchment of workers. Therefore, Indian entities have to comply with the foregoing requirements while terminating employees. Additionally, certain states impose additional requirements for retrenchment, such as obtaining government approval, which, if overlooked, can invalidate the termination process.

#### *Closure of Establishment*

Closure of the establishment means the permanent closing down of a place of employment or a part thereof. In case of closure of an establishment, the workers have to be given the same notice and compensation benefits as in the case of retrenchment (described above). However, if an establishment is closed on account of unavoidable circumstances beyond the control of the employer, but not including financial difficulties or losses, accumulation of undisposed of stocks, expiry of the lease or license of the premises or exhaustion of minerals in the area of operation (in case of mines), the compensation payable will not exceed three (3) months' average pay of the worker. In addition to the IR Code requirements, employers may also need to comply with state-specific laws and union agreements that could impose additional obligations or procedural steps in the event of a closure. Further, depending on the nature of the employer (i.e., factory, mine, commercial establishment) and the number of workers employed by the employer, the IR Code prescribes notification or consent requirements for closure of the undertaking. Therefore, Indian entities have to comply with the foregoing requirements while closing operations. Non-compliance with closure procedures can lead to legal disputes and financial liabilities, including compensation beyond the statutory minimums.

### *Lay-off*

Under the IR Code, the term “lay-offs” is defined to mean failure, refusal or inability of an employer on account of: (i) shortage of coal, power or raw materials; (ii) accumulation of stocks; (iii) breakdown of machinery; or (iv) natural calamity, to give employment to a worker whose name is on the rolls of the employer and who has not been retrenched. Therefore, lay-off of employees bears a different meaning in India as compared to most other jurisdictions. The IR Code prescribes compensation requirements in case of lay-off of workers, consent requirements depending on the nature of the establishment and number of workers employed by the employer, and fulfillment of various conditions. Employers are also required to maintain proper documentation of the reasons for lay-offs and the compensation paid to avoid potential disputes or legal challenges. Moreover, certain states have additional regulations concerning lay-offs, which must be complied with to ensure legal validity.

### *Transfer of Undertakings*

As per the IR Code, in case of change of ownership or management of an undertaking, whether by agreement or operation of law, the workers have to be given the same notice and compensation benefits as in the case of retrenchment (described above) unless, (i) the service of the workers continues without any interruption, (ii) the new terms and conditions of the service are not less favorable than the prevailing terms and conditions, and (iii) the new employer takes on the liability to pay compensation to the workers in case of retrenchment in future on the basis that there has been no interruption in the service. This provision ensures that employees' rights are protected during mergers, acquisitions, and other forms of business transfers. Non-compliance can result in disputes or claims against both the transferor and transferee companies. This provision is important from an M&A standpoint as it is applicable in case of business acquisitions (slump sales) and asset transfers, where employees are transferred. Further, failure to meet these requirements can result in the transferee being held liable for any statutory dues owed to the employees,

including back wages, bonuses, and gratuities.

### **Termination Provisions under the SEA**

While the SEA provisions on termination of employees vary from one State to another, generally, a notice of at least thirty (30) days or payment in lieu is mandatory if termination is without cause. If the termination is on account of misconduct or disciplinary grounds, such a requirement may not be applicable. State SEAs may also mandate specific procedures for domestic inquiries and disciplinary actions, which employers must follow to avoid legal challenges. Moreover, some states require the approval of labour authorities before terminating certain categories of employees. Therefore, in case of mass termination of employees by an Indian entity having offices in various States, it is imperative to assess the requirements under each applicable SEA. Failure to comply with state-specific termination provisions can lead to legal repercussions, including reinstatement orders, compensation claims, and penalties.

## **INTELLECTUAL PROPERTY LAWS**

Intellectual property (“IP”) laws in India have been evolving over the last two (2) decades. After becoming a signatory to the Agreement on Trade Related Aspects of Intellectual Property Rights, India has made various amendments to its IP laws in consonance with international standards. IP disputes and appeals from decisions of the trademark, patent and copyright offices are now heard by the High Courts and their commercial divisions post the abolition of the Intellectual Property Appellate Board by the Tribunal Reforms Act, 2021.

### **Patents Act, 1970**

The Patents Act, 1970 (the “**Patents Act**”) defines patentable inventions and provides for the registration, licensing and assignment of patents, as well as remedies for infringement. Patent offices have been setup in Mumbai, Delhi and Chennai, and the headquarters are at Kolkata. The Patents Act has been amended to allow for product and process patents. A patent is granted for a period of twenty (20) years. An opposition application may be made before or after the patent is granted. The Patents Act must be read along with the Patents Rules, 2003 (as amended from time-to-time). On November 25, 2025, the Indian government notified the Patent (Amendment) Rules, 2025 (the “**DP Rules**”). The DP Rules mainly seek to streamline patent filing and examination by revising timelines, fee structures, and electronic communication processes, while enhancing procedural flexibility for applicants.

Additionally, India is also a signatory to the Patent Cooperation Treaty. An international application for a patent must be made within twelve (12) months from the date of the basic application.

### **Trade Marks Act, 1999**

Indian trademark law is based on the concepts of distinctiveness and deceptive similarity,

and provides for criminal action against infringers fraudulently copying a third party's trademark under the Trade Marks Act, 1999 (the "**TM Act**"). The law relating to passing off in India is based solely on case law. Trademark registries have been setup in Delhi, Kolkata, Chennai and Ahmedabad, and the head office is in Mumbai. The registration procedure requires filing an application, having the mark examined by the Registrar and advertising the mark. If there are no successful objections from third parties, the mark is registered. Registration is for a period of ten (10) years and can be further renewed on an ongoing basis by paying a renewal fee. Indian trademark law recognizes the licensing of trademarks and their regulated use by the licensee. India has joined the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (the "**Madrid Protocol**") on July 8, 2013. Trademark owners can now designate India as part of an international trademark application under the Madrid Protocol.

On August 11, 2023 the Indian government passed the Jan Vishwas (Amendment of Provisions) Act, 2023 (the "**Jan Vishwas Act**"), which omits certain sections of the TM Act relating to penalties for improperly describing a place of business as connected with the Trade Marks Office, for falsification of entries in the register, and also changes to the penalties for certain other offences. In addition, the Indian government on August 16, 2024, has notified the Trade Marks (Holding Inquiry and Appeal) Rules, 2024, which introduces definitions of terms like "adjudicating officer" and "appellant," adjudication of certain penalties under Jan Vishwas Act, and certain additional provisions related to summary proceedings and appeals.

### **Copyright Act, 1957**

Under the Copyright Act, 1957 (the "**Copyright Act**"), the term of a copyright depends on the nature of the work and its author. Copyright in literary or dramatic works published during the author's lifetime subsists during his or her lifetime and for sixty (60) years after his or her death. The Copyright Act's provisions relating to software and video piracy have been strengthened so that infringers can be prosecuted under criminal law. Further, India is a signatory to the Berne Convention and the Universal Copyright Convention.

### **Designs Act, 2000**

The Designs Act, 2000 (the "**Designs Act**"), grants a monopoly over an industrial design, which is somewhat similar to the monopoly given under the Patents Act over an invention. Only new and original designs may be registered. Further, a design cannot be registered if it has been disclosed to the public before filing the application. When a design is registered under the Designs Act, the registration is called a "copyright." However, this design registration is different from a copyright registration, and thus, the design is not eligible for protection under the Copyright Act. The patents office in Kolkata undertakes design registration. Registration is valid for a period of ten (10) years, which can be extended by five (5) years.

### **Geographical Indications Law**

The Geographical Indications of Goods (Registration & Protection) Act, 1999, grants a

right to exclusively use the geographical indication for goods, in respect of which it is registered. Geographical indications in relation to certain products are defined as indications, which refer to a country, or to a place situated therein, as being the country or place of origin of that product. Typically, such a name conveys an assurance of quality and distinctiveness, which is attributable to the fact of its origin in that defined geographical locality, region, or country. Registration is valid for a period of ten (10) years and can be renewed. On November 3, 2025, the Indian government notified the Geographical Indications of Goods (Registration and Protection) (Amendment) Rules, 2025 (the “**GI Rules**”). The GI Rules mainly focus on reducing the amount payable on application for registration of a geographical indication.

## **CONTRACTS**

The Indian Contract Act, 1872, regulates all provisions relating to contracts in India. There are no statutory restrictions regarding choice of law of the contract, and if one of the contracting parties is a foreign national or entity, then the parties may expressly agree to any governing law, as long as the choice of foreign law does not violate India’s public policy. However, foreign law must be proved in Indian courts in the same manner as any other evidence. Therefore, if parties agree to have foreign law govern a contract, then that law must be proved before an Indian court at the time of enforcement of the contract in India.

### **Non-Compete Clauses**

Any agreement which restricts a person from carrying out a lawful profession, trade or business of any kind, is void to that extent under Indian law. A negative covenant which restricts an employee’s right to engage in any business after employment that is similar to, or competitive with, his or her former employer is also unenforceable. Some firms have sought to compensate their employees for relinquishing their right to join a competing firm, while others have entered into non-poaching agreements with competitors.

### **Confidentiality Clauses**

Although there is no specific law in India which protects trade secrets or confidential information, Indian courts have granted injunctions to protect confidential information on the principles of equity and common law. Courts have held that disclosure of confidential information constitutes a breach of confidence. Thus, employers can include confidentiality clauses in employment agreements to restrict employees from disclosing information that is accessible while performing employment duties. Ideally, an employer should specify what information is confidential and the consequences of disclosing such information.

### **Legal Rights and Remedies**

An employer can obtain an injunction to prevent an employee from disclosing any trade secrets or confidential information that he or she may have been privy to during the course of his or her employment. Also, an employer can ask for all confidential and proprietary

information to be returned. Moreover, an employer can seek compensation for any losses suffered due to an employee's disclosure. However, there is no legal right against any ex-employee who starts a competitive business or joins a competing firm.

## **INSOLVENCY RESOLUTION AND DEBT RECOVERY**

Until 2016, the Indian legal framework for insolvency resolution, debt recovery and restructuring of stressed assets was ineffective in ensuring satisfactory repair of credit default mainly due to the fact that insolvency and debt recovery were governed by different overlapping statutes having conflicting objectives. In 2016, the Indian government notified the Insolvency and Bankruptcy Code, 2016 (the “**Insolvency Code**”). The Insolvency Code has put in place a more robust and efficient insolvency resolution mechanism, which takes into account the interests of various stakeholders and attempts to arrive at a more holistic solution. Under the Insolvency Code, there are two (2) stages of corporate insolvency: (i) insolvency resolution process, and (ii) liquidation.

The Indian government has approved changes to the Insolvency Code in recent years, keeping up with the global and domestic markets. In March 2020, the minimum default threshold that could trigger a petition under the Insolvency Code was increased from INR100,000 (Indian Rupees One Hundred Thousand) (approx. US\$1,113) to INR10,000,000 (Indian Rupees Ten Million) (approx. US\$111,300). Furthermore, on May 26, 2025, the IBBI (Insolvency Resolution Process for Corporate Persons) (Fourth Amendment) Regulations, 2025 have been introduced which, among others, allows part-wise resolution of a corporate debtor, provides for harmonizing timelines for payment under the resolution plan, and ensures all plans are presented with relevant details to the committee of creditors.

This increase has come as a relief for companies, who could otherwise be trapped in corporate insolvency proceedings for minor defaults, and has boosted market confidence for Indian entities. The Insolvency Code also provides for a “Pre-packaged Insolvency Resolution Process,” wherein the debtors and creditors negotiate a repayment plan, which is implemented under the supervision of a resolution professional.

The Central government has introduced the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 (“**IBC Bill**”), which proposes a comprehensive recalibration of India's insolvency framework with a clear focus on speed, predictability, and creditor confidence. A key change is the move from discretionary to mandatory admission of insolvency applications once default and procedural completeness are established, significantly reducing delays at the threshold stage. The IBC Bill also introduces new creditor-initiated and hybrid resolution mechanisms, including processes with greater scope for out-of-court restructuring and limited retention of management under supervision. These reforms are aimed at enabling earlier intervention in financial distress, preserving enterprise value, and reducing the burden on adjudicatory forums.

Equally significant are the structural reforms strengthening creditor oversight and aligning India's regime with global best practices. The IBC Bill facilitates the introduction of group and cross-border insolvency frameworks through delegated legislation, addressing



complexities arising from conglomerate structures and international assets. It further clarifies the treatment of government dues, enhances the role of the committee of creditors during liquidation, tightens withdrawal norms post-admission, and introduces deterrents against frivolous or abusive filings. Taken together, the proposed amendments signal India's intent to offer a more robust, time-bound, and internationally credible insolvency ecosystem, all of which are important considerations for foreign investors, lenders, and counterparties evaluating risk and enforceability when doing business in India.

## **COMPETITION LAWS**

Historically, India followed the Monopolies and Restrictive Trade Practices Act, 1969 (the “**MRTP Act**”) for more than three (3) decades. However, in 2002, the Indian government enacted the Competition Act, 2002 (the “**Competition Act**”) which replaced the MRTP Act.

### **Competition Act**

The Competition Act shifts the focus of competition enforcement in India from restricting monopolies to promoting fair competition by prohibiting anti-competitive agreements, abuse of dominant position, and regulating combinations. The Competition Commission of India (the “**CCI**”) was established in 2003 under the Competition Act but started hearing cases from 2009. The CCI regulates anti-competitive practices and has the power to pass orders to rectify any situations that harm competition. Further, with effect from May 26, 2017, the National Company Law Appellate Tribunal hears appeals against orders passed by the CCI. The Competition Act also excludes the jurisdiction of civil courts from all matters which the CCI is empowered to determine.

The Indian government notified the merger control provisions of the Competition Act, thereby empowering the CCI to scrutinize large combinations having an appreciable adverse effect on competition with effect from June 1, 2011. The notified sections prescribe minimum thresholds for a transaction (M&A or otherwise) to be reckoned as a “combination,” and all combinations have to be notified to the CCI prior to their taking effect or closing. Further, combinations cannot take effect before the expiry of two hundred and ten (210) days from the date when notice of the transaction is served on the CCI or approval of the CCI, whichever is earlier. However, these requirements do not apply to investments by venture capital funds, foreign institutional investors registered with the SEBI and public financial institutions, and such investments are only required to be notified to the CCI within seven (7) days of the date of acquisition.

To avoid the time-consuming approval processes for combinations that do not impact competition in a market, in 2019, the CCI introduced a “green channel” provision for parties to conditionally self-declare that their combination poses no adverse threat to competition. The deemed approval process is valid for prospective combination entities that, together with their respective group entities and any related entities in which they hold shares, do not produce or provide similar or substitutable products or services, are not involved in the products or services offered by the other party at any level of supply, production, distribution, sale, or storage, and are not engaged in any activities relating to



the production, supply, distribution, storage, or sale of the products or services complementary to each other. This declaration acts as a deemed approval by the CCI. However, the CCI retains the power to review the combination and declare this deemed approval void *ab initio* for any defects or misrepresentations by the transacting parties in the declaration. Parties seeking to avoid the approval timelines through the green channel provision must, therefore, carefully review their respective business practices to ensure that this relaxation can be used.

The Indian Parliament has passed the Competition (Amendment) Act, 2023 and introduced certain key changes to the Competition Act. The key features of this Act are as follows:

- (i) The presumption of liability has been extended to active participants in anti-competitive agreements that are neither strictly vertical nor horizontal agreements, as also in cases where entities are not engaged in identical or similar trade as the other parties with whom such agreements are undertaken.
- (ii) Under the current regime, the applicability of the law is triggered if certain conditions (specified under the Competition Act) are met. The Act has introduced a deal value threshold, where transactions that would not otherwise trigger the applicability of the law under the extant regime, would be brought under the scrutiny of the Competition Act if the value of the deal crosses a threshold of INR20,000,000,000 (Indian Rupees Twenty Billion) (approx. US\$222,600,000).
- (iii) The period to approve or reject merger transactions has been reduced to a period of one hundred and fifty (150) days, which can be extended to a maximum of one hundred and eighty (180) days.
- (iv) Settlement and commitment mechanisms have been introduced, which will provide an option to avoid time consuming investigations and procedures.
- (v) Parties currently under investigation for cartelization will be liable to pay lesser penalties if they disclose information about cartel(s) other than the one under investigation.

In 2025, the CCI introduced two (2) major regulatory reforms to strengthen its antitrust enforcement. First, it rolled out the Determination of Cost of Production Regulations, 2025 overhauling how “cost” is calculated for predatory-pricing cases, making the framework more flexible and economically robust. Second, it replaced the Competition Commission of India (Manner of Recovery of Monetary Penalty) Regulations 2011, with the Manner of Recovery of Monetary Penalty Regulations 2025, which streamline the recovery process by giving companies more time to pay, and reducing the interest rate for late payment.

Further, the CCI also issued frequently asked questions (“FAQs”) on combinations in May 2025. The CCI’s revised FAQs modernize India’s merger control regime with clear, dealmaker-oriented guidance on when to notify, how to calculate thresholds, and how to adhere to standstill obligations. They operationalize the “material influence” standard of control by distinguishing control-conferring rights (for example, vetoes over budgets,

business plans, senior management, or core operating parameters) from investor protection rights (such as information, tag-along or anti-dilution), and confirm that changes in the quality or degree of influence can be a change in control even without shareholding shifts. The FAQs detail how to compute deal value, including aggregation of inter-connected steps, prior acquisitions by the acquirer group or affiliates within two (2) years, earn-outs to continuing KMP, inclusion of assumed debt, and treatment of share swaps and call/put options.

## **REAL ESTATE**

Subsidiaries of foreign entities operating in India primarily rely on commercial lease arrangements or acquisition of land by the Indian subsidiary entity. Under Indian law, lease agreements exceeding twelve (12) months must mandatorily be registered with the local sub-registrar's office within four (4) months from their date of execution.

Entities seeking to purchase land in India must conduct a land title search exercise. This exercise traces the title of the land historically and can identify any potential claims, threats or encumbrances to a good title. A deed of conveyance of immovable property must be registered with the local sub-registrar's office. Interested entities must also keep in mind the laws regulating development of any acquired land, which involves various approvals under local town planning, municipal and environmental laws.

Branch offices, project offices and liaison offices set up by foreign entities in India are permitted to carry out their operations from leased premises, subject to a maximum lease term of five (5) years. India's foreign exchange laws also permit foreign entities that have established a branch office or a project office in India to acquire immovable property for the purposes of carrying out their stated activity. However, FDI is prohibited for any entities seeking to deal in the "real estate business," which comprises of dealing in land and immovable properties to earn profits.

## **DATA PROTECTION**

India's data protection framework, governed under the Information Technology Act, 2000 ("**IT Act**"), primarily addresses data protection through the IT (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011 ("**SPDI Rules**"). These rules focus on the protection of "sensitive personal data or information" ("**SPDI**"), which includes information like passwords, financial information, health conditions, sexual orientation, biometrics, and other prescribed details. Organizations collecting, storing, or processing SPDI are required to implement reasonable security practices to protect this data and must adhere to guidelines set by recognized industry standards.

Under the IT Act, companies must obtain explicit consent from individuals before collecting their SPDI, ensuring that the consent is informed and specific. The collected data must be used for the purpose for which it was obtained, and organizations are required to notify individuals regarding the purpose, intended recipients, and the name and address of the agency collecting the data. Additionally, the SPDI Rules mandate that organizations

provide individuals the ability to review and correct any inaccuracies in their data.

Organizations are also obliged to implement comprehensive data security measures, including following "reasonable security practices" which involve the implementation of documented information security programs and policies. These must be in alignment with IS/ISO/IEC 27001 or an equivalent standard.

Under the SPDI Rules, entities receiving personal information must maintain a privacy policy that sets out the purpose of data collection, potential disclosures to any third party, and the security practices being adopted. The IT Act requires body corporates possessing or handling sensitive personal data to pay compensation to any affected person if it is negligent in implementing or maintaining security practices under the SPDI Rules. The SPDI Rules permit transfer of data to another country that ensures the same standards of data protection as India. However, the persons providing the data must consent to this transfer. Moreover, sectoral regulators such as the RBI have issued data localization norms and prevented transfer of digital payment data to foreign jurisdictions. Further, any data breaches must be reported to the affected individuals and relevant authorities, with non-compliance leading to penalties under the IT Act.

The Indian government has notified the Digital Personal Data Protection Act, 2023 (the **"DPDP Act"**) keeping up with the need to introduce a law relating to protection of personal data in consonance with the right to privacy. The DPDP Act will fully enter into force in a staggered manner, with provisions regarding notice and consent, rights of data principals, cross-border data transfers, etc. entering into force on May 14, 2027. Further, the SPDI Rules will continue into force until May 13, 2027, after which they will be repealed and replaced with the DPDP Act and the DPDP Rules.

The DPDP Act applies in relation to processing of digital personal data. The DPDP Act chiefly focuses on obligations of data fiduciaries, rights of data principals, establishment of the Data Protection Board of India and consent obligations for processing data. It does not apply to processing of personal data by an individual for any personal or domestic purpose or publicly available personal data. The scope of the DPDP Act extends beyond India if processing is in relation to offering of goods or services to data principals within the territory of India.

The DPDP Act has also removed the classification of personal data in various categories, such as sensitive personal data and critical personal data. Some of the other notable changes include the introduction of legitimate uses as a ground of processing personal data without requiring explicit consent, restrictions on the transfer of personal data outside India and enhanced penalty provisions. While provisions relating to the constitution of the Data Protection Board of India (**"DPBI"**) have been brought into force, other provisions of the DPDP Act are yet to be enforced.

Further, the Indian government also notified the Digital Personal Data Protection Rules, 2025 (**"DPDP Rules"**) on November 14, 2025. Furthermore, the Indian government has notified the establishment of the DPBI as an adjudicatory and supervisory body under the DPDP Act. The DPDP Rules operationalize the DPDP Act, 2023 by specifying detailed

notice, consent, and security requirements for Data Fiduciaries. They mandate clear, plain-language notices, reasonable security safeguards (including encryption, access controls, logging, backups, and one-year minimum log retention), and prompt breach intimations both to affected data principals and the DPBI (with a seventy-two (72) hour window for detailed updates). They create a formal consent manager regime with registration conditions, conflict-of-interest controls, audit obligations, and seven (7) year record retention. Special rules govern verifiable consent for children and persons with disabilities with lawful guardians and provide targeted exemptions for child data in defined contexts (education, healthcare, transport, real-time safety tracking, and certain state functions).

Significant data fiduciaries face annual data protection impact assessments and audit obligations, due-diligence over algorithmic risks, and potential processing restrictions (including limits on transferring certain personal and traffic data outside India when designated. Institutional provisions establish a digital-first DPBI (meetings, quorum, casting vote, emergency actions, six-month inquiry timeline), terms of service for DPBI members and staff, and digital appeals to the appellate tribunal.

## **THE INDIAN JUDICIAL SYSTEM**

### **Courts in India**

The Supreme Court in New Delhi is the apex court in India, followed by the State High Courts. The lowest level of the judiciary comprises various district courts and small causes courts located throughout the country. Additionally, tribunals like the Income Tax Appellate Tribunal (tax cases), and the NCLT have been set-up to decide matters on particular subjects. Depending on the applicable legal provision, appeals may lie either to an appellate board or to the High Court (or, in the case of appeals from decisions of the NCLT or the CCI, to the National Company Law Appellate Tribunal). In some cases, an appeal may lie directly to the Supreme Court, if the decision being appealed is from a tribunal or a board with a status equal to that of a High Court.

Most foreign judgments are not enforceable in India unless a fresh suit is filed upon the judgment in an Indian court. However, India recognizes decrees passed by superior courts of certain countries, and decrees passed by superior courts of such countries are enforceable, provided that they are not against India's public policy.

### **Alternate Dispute Resolution**

The Arbitration and Conciliation Act, 1996, as amended, is the governing law for arbitration in India. India is also a signatory to the New York Convention and the Geneva Convention (the “**Conventions**”). Arbitration agreements in India may be governed by a foreign law provided that one party to the agreement is a foreign national or entity. Additionally, an award passed in a dispute arising from a commercial legal relationship in a territory notified by the Indian government under either of the Conventions is considered a foreign award. As such, foreign awards are enforceable in India, and many foreign firms contracting with Indian companies incorporate clauses specifying that arbitration will be

governed under the laws of their country. However, a foreign award may be challenged on the grounds that it is against India's public policy, although Indian courts have curtailed this exception.

Further, courts and arbitrators encourage parties to settle their disputes through conciliation. A conciliation agreement is reached only after consultation and discussions between both the parties. Such an agreement is binding on the parties and not appealable. However, the parties have the right to leave conciliation proceedings at any time and invoke the arbitration clause in an agreement, if any, or file a suit (in the absence of an arbitration clause) in any court having jurisdiction.

**DISCLAIMER**

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