DOING BUSINESS IN INDIA

February 23, 2024 | For Private Circulation Only

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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 foreign direct investment ("**FDI**") inflow of US$71,355,000,000 (US Dollars seventy-one billion, three hundred and fifty-five million) in the financial year 2022-23, which is a 16% dip from the previous financial year's FDI. From April to September 2023, the total FDI inflow into India was US$20,488,000,000 (US Dollars twenty billion, four hundred and eighty-eight 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 the intricacies of dealing with the various regulatory/government entities in India to survive the ever-increasing economic competition.

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 (the "**DPIIT**"), Ministry of Commerce and Industry, Government of India, 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 few sectors still remain closed to foreign investment, i.e., (i) atomic energy, (ii) railway operations (other than railway infrastructure), (iii) lottery business, (iv) gambling and betting, (v) chit funds, (vi) nidhi company, (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 insurance sector.

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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 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 report with the Reserve Bank of India (the "**RBI**") within thirty (30) days of allotment of securities. Thus, a foreign company investing under the automatic route only needs to incorporate a company before commencing operations.

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 license 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 which are 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

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(vi) proposals with total foreign equity inflow of more than INR50,000,000,000 (Indian Rupees fifty billion (approx. US$603,143,500)) 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 ("**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. The Indian government has not provided a *de minimis* threshold yet for beneficial ownership of, or indirect investment by, an entity or a citizen of a Border Sharing Country. Further, the Indian government has not 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 and recommending that Chinese companies seeking to manufacture hi-tech parts in India should enter into joint ventures with Indian partners with a majority stake and some amount of 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 regarding the applicability of the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 is sought from the Indian company, subscriber, transferee or director (as the case may be) in respect of any of the foregoing transactions.

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,

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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 are no limits 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.

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 only up to a limit of US$250,000 (US Dollars two hundred and fifty thousand) per financial year (1 April to 31 March) 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 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

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investment in India under the automatic route. This prohibition on round tripping has now been relaxed, and the OI Rules now 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, which preferred to acquire 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 other than equity shares, including convertible securities and securities of other companies held by the Indian company.

ENTRY INTO INDIA

Traditionally, 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. For example, all expenses of a liaison office must be exclusively funded by the parent company. Also, a liaison office is prohibited from undertaking any business activity in India and cannot earn any income in India. 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. Moreover, a liaison office cannot enter into any business contracts in its own name. However, 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 laws. 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.

Branch Office

Alternatively, 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 is required to file an annual statement in a prescribed form providing details of activities carried out by it in a financial year in India. A branch office may 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. Further, a branch office is required to file a declaration with the RBI within ninety (90) days of acquiring any immovable property in India. The foreign parent company is liable for the activities of its branch office in India.

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Such an 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$120,629), the tax rate is 41.60%;

(ii) If the income is between INR10,000,000 (Indian Rupees ten million (approx. US$120,629))and INR100,000,000 (Indian Rupees one hundred million (approx. US$1,206,287)), the tax rate is 42.43%; and

(iii) If the income is more than INR100,000,000 (Indian Rupees one hundred million (approx. US$1,206,287)), the tax rate is 43.68%.

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

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, provided the project has secured the necessary regulatory clearances, is funded out of inward remittances from outside India, or by a bilateral or multilateral international finance agency, or a company or an entity in India awarding the contract has been granted a term loan by a public financial institution or bank in India for the project. In all other cases, project offices will require the prior approval of the RBI, 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 the surplus on winding up or completing projects through authorized dealer banks. Lastly, project offices are subject to the same tax rates as branch offices (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.

A JV or WOS may be incorporated as a company under the Companies Act or as a limited liability partnership ("**LLP**") under the LLP Act, 2008 (the "**LLP Act**").

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Types of Companies

A company may be incorporated either as a public or a 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.

Separately, with effect from 15 September 2022, a private limited company whose paid-up capital does not exceed INR40,000,000 (Indian Rupees forty million (approx. US$482,515) and topline (also called turnover in India) does not exceed INR400,000,000 (Indian Rupees four hundred million) (approx. US$4,825,148) is classified as a "small company." Small companies are eligible for certain exemptions from compliance requirements under 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 1 April 2021, a natural person who is an Indian citizen, whether a resident in India or otherwise, can make an application to setup 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.

Starting 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 share capital of a company can be as per the 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.

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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 1 October 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 31 March 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 they do 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$120,629)), the tax rate is 31.20%.

(ii) If the income is between INR10,000,000 (Indian Rupees ten million (approx. US$120,629)) and INR100,000,000 (Indian Rupees one hundred million (approx. US$1,206,287)), the tax rate is 33.38%.

(iii) If the income is more than INR100,000,000 (Indian Rupees one hundred million (approx. US$1,206,287)), the tax rate is 34.94%).

LLP

In 2008, India enacted the LLP Act. This is in addition to the traditional system under which only partnerships with unlimited liability were permitted. There is no upper limit on the number of partners in an LLP. Any individual or body corporate (including a body

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corporate incorporated abroad) may become a partner of an LLP. LLPs are not burdened with cumbersome compliances such as 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 allowed 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 for formation of an LLP. Under this application, a name approval certificate and a designated partner identification number can be obtained. In this application, the incorporation document must also be filed, following which the CRC grants a certificate of incorporation and the LLP can commence operations in India. 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

Currently, LLPs are liable to pay income tax at the rate of 31.20% (for income not exceeding INR10,000,000 (Indian Rupees ten million (approx. US$120,629))). From 1 April 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 in case of shares in physical form in addition to stamp duty payable on the share purchase agreement at the applicable State's stamp duty rate. Acquisition of

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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, a slump sale works 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.

Cross-border mergers are permitted and regulated under 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

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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.

Acquihire Transactions

Acquihire transactions have gained popularity in India, especially in the technology sector, as technically skilled employees are the most important assets of technology companies. In acquihire 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 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

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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.

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.

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Currently, India has DTAAs with one hundred and twenty-two (122) countries, including the USA, Germany, the UK, Singapore, Mauritius, Spain and Japan.

The Mauritius DTAA (through which significant FDI was routed into India) was modified on 10 May 2016 by way of a protocol between the two (2) countries after which India now 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 1 April 2017, the exemption from capital gains tax will continue to apply even if the shares are sold after 1 April 2017, but subject to fulfillment of the commercial substance criteria.

(ii) For share purchase and subsequent sale transactions taking place between 1 April 2017 and 31 March 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 1 April 2017 but the subsequent sale transactions taking place after 1 April 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 1 April 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 The 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 in India, if the value of such assets exceeds the amount of INR100,000,000 (Indian Rupees one hundred million (approx. US$1,206,287)) 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 28 May 2012. Further, tax demands already raised on an indirect transfer of Indian assets made before 28 May 2012 will be nullified subject to certain conditions being met, such as withdrawal of pending ligation 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.

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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 at the rate of 30% with applicable surcharge and education cess in the hands of the recipient.

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 1 July 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

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Direct Taxes has entered into one hundred and twenty-seven (127) APAs in the financial year 2022-23.

Safe Harbour Rules

On 9 August 2023, the CBDT issued a notification to extend the applicability of the safe harbour rates to the assessment year 2023-24 (relevant to the previous year 2022-23), for determining the arm's length rates for certain specified international transactions. This amendment is effective from 1 April 2023 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.

With effect from 1 April 2020, an equalization levy of 2% has 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. However, the law is very widely worded and covers a large base of taxpayers.

India is a party to the two-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 24 November 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 will be from 1 April 2022 until the implementation of Pillar One or 31 March 2024, whichever is earlier.

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

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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$241,257)); 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. An asset other than a short term capital asset is regarded as a long term capital asset. The rate of long term capital gains tax for Indian residents is 10% (for listed shares) and 20% (for unlisted shares), excluding surcharge and education cess, and the rate of short term capital gains tax is 15% (for listed shares) and 30% (for unlisted shares), excluding surcharge and education cess. It is 40% for non-residents, 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 1 April 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

An additional tax of 23.296% (including surcharge and education cess) is payable by an Indian company buying back shares from its shareholders. This tax is payable by the company on the difference between the amount paid for the buyback and the issue price of the shares. The buyback amount received is exempt from tax in the hands of the recipient.

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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.

Income from Other Sources

Any income that is not covered under any of the specific heads of income is liable to tax under the head income from other sources. Expenditure that is incurred wholly and exclusively for earning such income is generally allowed as a tax deductible expenditure.

The IT Act provides that where a company, not being a company in which the public are substantially interested, receives, in any previous year, from any person being a resident, any consideration for issue of shares that exceeds the fair market value of such shares, the aggregate consideration received for such shares as exceeds the fair market value of the shares shall be chargeable to income-tax under the head "income from other sources." With effect from 1 April 2023, this provision will become applicable to non-residents too. Separately, issuance of shares by an Indian company to a non-resident at a price which is less than the fair market value of the shares (to be calculated as per the prescribed tax rules) will be subject to tax on the differential value as "income from other sources" at the rate of 43.68%.

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.

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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 ranging between 12% to 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 31 March 2023 to 31 March 2025; 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 used to provide advance rulings with respect to the tax liability arising from proposed transactions. On 1 September 2022, the Indian government replaced the Authority for Advance Rulings 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 1 July 2017 has been a significant step in the field of indirect tax reforms in India.

GST has 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

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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 1 April 2019 are as follows:

(i) for sale of goods, INR4,000,000 (Indian Rupees four million (approx. US$48,252)),

(ii) for sale of goods in specified states, INR2,000,000 (Indian Rupees two million (approx. US$24,126)),

(iii) for supply of services,INR2,000,000 (Indian Rupees two million (approx. US$24,126)), and

(iv) for supply of services in specified states, INR1,000,000 (Indian Rupees one million (approx. US$12,063)).

(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$180,943))in states other than specified states and INR7,500,000 (Indian Rupees seven million five hundred thousand (approx. US$90,472)) for specified states.

The GST Council comprising of the Union Finance Minister (who will be 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

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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 thirty-one (31) 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.

EMPLOYMENT LAWS

Companies investing in India need to be cognizant of India's employment laws. Many State governments have included amendments to the labour laws passed by the Central government. The State governments have also enacted labour laws specific to their own States. Some key employment statutes have been summarized below. Some State governments have also started permitting compliance with these laws on a self-certification basis.

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, companies have to abide by the law applicable in the State where they conduct business.

Factories Act, 1948

The Factories Act, 1948, regulates the law relating to labour in factories. It defines which premises may be called a factory, and also contains provisions relating to health, safety, working hours of adults, employment of young persons, etc.

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Contract Labour (Regulation and Abolition) Act, 1970

The Contract Labour (Regulation and Abolition) Act, 1970 (the "**CLA**"), applies to establishments where twenty (20) or more contract workers are employed, or have been employed at any time in the preceding twelve (12) months or to any contractor who employs or has employed twenty (20) or more workers in the preceding twelve (12) months. An establishment is 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. 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.

Payment of Gratuity Act, 1972

Under the Payment of Gratuity Act, 1972 (the "**Gratuity Act**"), any shop or establishment 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 such of its 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$27,295)).

Employees' Provident Funds and Miscellaneous Provisions Act, 1952

Under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (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. 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. India has signed and operationalized agreements with Brazil, Quebec, Belgium, Germany, Switzerland, France, The Netherlands, Czech Republic, Denmark, Hungary, Norway, Luxembourg, South Korea, Finland, Sweden, Austria, Australia, Japan, Canada and Portugal, as of date.

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 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$286)) per month. The amendment has also increased the

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ceiling of calculation of bonus to INR7,000 (Indian Rupees seven thousand (approx. US$95)) per month or the minimum wage for the scheduled employment as fixed by the government, whichever is higher.

Shops and Establishments Act

Each State has its own Shops and Establishments Act (the "**SEA**"). The SEA 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. 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. Finally, each State frames its own rules under the SEA.

Apprentices Act, 1961

The Apprentices Act, 1961 (the "**Apprentices Act**") regulates the training of apprentices in industry and prescribes the terms and conditions for being appointed as an apprentice, as also the mandatory requirement of entering into a contract of apprenticeship. 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. While there is no clarity on the exact date and timeline for the implementation of these codes, a vast majority of states have already formulated draft rules on the basis of these codes and their implementation will be forthcoming soon.

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, 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

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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$1.2)), 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 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 employing over three hundred (300) employees in any given year. 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.

Occupational Safety, Health and Working Conditions Code

The Occupational Safety, Health and Working Conditions Code, 2020 (the "**OCHWC Code**") will subsume thirteen (13) existing laws regulating the working conditions of various workers, including the Factories Act, 1948 and the CLA. The OCHWC Code requires employers to provide hazard-free establishments to employees, 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 OCHWC Code prescribes a maximum of eight (8) hours of daily work and one (1) day of rest per week. The OCHWC Code also regulates inter-state migrant workers, plantation workers, and construction workers.

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HIRING PERSONNEL

Primarily, there are three (3) recognizable forms of hiring personnel in India.

Employment Arrangement

An Indian entity may employ persons as its employees by entering into a contract of service or an employment contract. In this case, the employer-employee relationship is comparable with a master-servant relationship. Further, the Indian entity is responsible for the actions of the employee and may be required to comply with employment laws such as the EPF Act, the Gratuity Act and the Employees State Insurance Act, 1948. If the employee falls within the definition of and is considered to be a "workman," the employee will get statutory protections under certain employment statutes of India.

Independent Contractor Arrangement

An Indian entity may hire persons to perform work on its behalf by entering into a contract for service or an independent contractor or a retainer contract. In this case, the independent contractor relationship is comparable to a principal-agent relationship and not an employer-employee relationship. The Indian entity (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.

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. 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. In such a case, the Indian entity may be required to comply with certain procedural requirements under the provisions of the CLA.

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.

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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 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.

TERMINATING PERSONNEL

Typically, the IDA and the SEA regulate termination of personnel. The applicability of the provisions of the IDA and the SEA depend on the scope 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 IDA and/or the SEA and comply with them in order to mitigate claims of permanency and back wages from the workman.

Termination Provisions under the IDA

The IDA provides implications for termination of workmen in case of retrenchment, closure of the establishment, lay-off and transfer of undertakings. The term “workman” 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 INR10,000 (Indian Rupees ten thousand (approx. US$121)) 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 “workman” is a functional test and is of a subjective nature.

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Retrenchment

Retrenchment of a workman means termination other than on account of: (i) punishment inflicted by way of disciplinary action, (ii) voluntary retirement or superannuation, (iii) continued ill-health, and (iv) non-renewal of the contract or termination of contract based on its provisions. Under the IDA, a workman 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. Further, depending on the nature of the employer (i.e., factory, mine, commercial establishment) and the number of workmen employed by the employer, the IDA prescribes notification or consent requirements for retrenchment of workmen. Therefore, Indian entities have to comply with the foregoing requirements while terminating employees.

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 workmen 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 workman. Further, depending on the nature of the employer (i.e., factory, mine, commercial establishment) and the number of workmen employed by the employer, the IDA prescribes notification or consent requirements for closure of the undertaking. Therefore, Indian entities have to comply with the foregoing requirements while closing operations.

Lay-off

Under the IDA, 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, (iv) discontinuance or reduction of the supply of power due to contravention of the provisions of the Bombay Electricity (Special Powers) Act, 1946, or (v) natural calamity, to give employment to a workman 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 IDA prescribes compensation requirements in case of lay-off of workmen, consent requirements depending on the nature of the establishment and number of workmen employed by the employer, and fulfillment of various conditions.

Transfer of Undertakings

As per the IDA, in case of change of ownership or management of an undertaking, whether by agreement or operation of law, the workmen have to be given the same notice and compensation benefits as in the case of retrenchment (described above) unless, (i) the

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service of the workmen 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 workmen in case of retrenchment in future on the basis that there has been no interruption in the service. 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.

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. 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.

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. Separate tribunals for registration and opposition of grant of IP have been setup to ensure smooth and efficient regulation, including the Intellectual Property Appellate Board, which hears appeals against the decisions of the Registrar under the Trade Marks Act, 1999, the Geographical Indications of Goods (Registration and Protection) Act, 1999, and the Patents Act, 1970.

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 22 August 2023, the Indian government introduced the Draft Patent (Amendment) Rules, 2023 (the "**DP Rules**") seeking suggestions and objections. The DP Rules mainly seek to amend the timelines and the fee structure relating to patent filing and examination.

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,

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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 8 July 2013. Trademark owners can now designate India as part of an international trademark application under the Madrid Protocol.

On 11 August 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 has also invited suggestions and objections to the Draft Trade Marks (1st Amendment) 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

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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 27 October, 2023 the Indian government introduced the Draft Geographical Indications of Goods (Registration and Protection) (Amendment) Rules, 2023 (the "**GI Rules**") to seek objections and suggestions on the amendments to the Geographical Indications of Goods (Registration and Protection) Rules, 2002. 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

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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$1,206)) to INR10,000,000 (Indian Rupees ten million (approx. US$120,629)). Furthermore, in September 2023, the IBBI (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2023 have been introduced which, among others, increase the timelines to file claims and enhance the responsibilities of authorised representatives.

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.

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

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orders to rectify any situations that harm competition. Further, with effect from 26 May 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 1 June 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$241,257,400)).

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(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.

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

The Information Technology Act, 2000, as amended from time-to-time (the "**Information Technology Act**"), regulates electronic transaction and data protection in India. Further, the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011 (the "**SPDI Rules**") prescribe the safety standards to be maintained by corporate entities. 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 Information Technology 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.

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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.

The Indian government has passed 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 chiefly focuses on obligations of data fiduciaries, rights of data principals, establishment of a Data Protection Board 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 the activity is related 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 concept of "deemed consent" (i.e., consent that is deemed to have been given by the data principal for specified reasons including, a medical emergency, for employment purposes, to comply with any judgment or order issued under any law, or in public interest), restrictions on the transfer of personal data outside India and enhanced penalty provisions. The DPDP Act is yet to be enforced.

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

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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.

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FIRM PROFILE

Majmudar & Partners (formerly Majmudar & Co.), established in 1943, has evolved into one of India's premier law firms representing the who's who of banks, companies, and financial institutions. Inbound investments into India, corporate/M&A, restructuring, competition, securities, banking and corporate finance, private equity and venture capital, fund structuring, tax, technology, media and telecommunications, employment, projects, infrastructure and energy, biotechnology, outsourcing, IP, distribution, real property and disputes are the main practice areas of the firm.

We are one of the few Indian law firms to have created an industry focus. We specialize in the following industries: (i) financial services and insurance; (ii) pharmaceuticals and life sciences; (iii) technology; (iv) manufacturing and industrial; and (v) consumer and retail. This coupled with senior partner led delivery and extreme responsiveness has made us a sought after firm for clients who need high quality and high value services in tight timeframes.

We have a national team of close to one hundred (100) lawyers. Most of our lawyers have international work experience and have been recognized as leaders in their field. We are structured on the lines of an international law firm, where each lawyer is on a partnership track.

LOCATIONS

96 Free Press House,
Free Press Journal Road,
Nariman Point,
Mumbai 400 021, INDIA
T: +91 22 6123-7272
F: +91 22 6123-7252
mailbox@majmudarindia.com

104, Prestige Meridian - 1
No. 29 M.G. Road
Bangalore 560 001, INDIA
T: +91 80 4147-0000
F: +91 80 4147-0010
mailbox@majmudarindia.com

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