Nishith Desai Associates
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DOING BUSINESS IN INDIA

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Nishith Desai Associates (NDA) is a research based international law firm with offices in Mumbai – Nariman Point, Bangalore, Silicon Valley, Singapore, New Delhi and Mumbai – Bandra Kurla Complex. We specialize in strategic legal, regulatory and tax advice coupled with industry expertise in an integrated manner. We focus on niche areas in which we provide significant value and are invariably involved in select highly complex, innovative transactions. Our key clients include marquee repeat Fortune 500 clientele.

Core practice areas include International Tax, International Tax Litigation, Litigation & Dispute Resolution, Fund Formation, Fund Investments, Capital Markets, Employment and HR, Intellectual Property, Corporate & Securities Law, Competition Law, Mergers & Acquisitions, JVs & Restructuring, General Commercial Law and Succession and Estate Planning. Our specialized industry niches include financial services, IT and telecom, education, pharma and life sciences, media and entertainment, real estate and infrastructure.

We have been ranked as the best performing Indian law firm of the year by the RSG India Consulting in its client satisfaction report (2011). We have been named an ASIAN-MENA COUNSEL 'IN-HOUSE COMMUNITY FIRM OF THE YEAR' in India for International Arbitration (2011).For the second consecutive year, International Financial Law Review (a Euromoney publication) has recognized us as the Indian "Firm of the Year" (2011) for our Technology - Media - Telecom (TMT) practice. Our Tax, Investment Funds and TMT practices have also been consistently ranked in tier 1 by Legal 500, while Chambers & Partners have ranked us # 1 for Tax, TMT and Real Estate - FDI. We've received honorable mentions in Asian - Counsel Magazine for Alternative Investment Funds, International Arbitration, Real Estate and Taxation for the year 2010. We have been adjudged the winner of the Indian Law Firm of the Year 2010 for TMT by IFLR. We have won the prestigious "Asian-Counsel's Socially Responsible Deals of the Year 2009" by Pacific Business Press, in addition to being Asian-Counsel Firm of the Year 2009 for the practice areas of Private Equity and Taxation in India. Indian Business Law Journal listed our Tax, PE & VC and Technology-Media-Telecom (TMT) practices in the India Law Firm Awards 2009 as also Legal 500 (Asia-Pacific) that has ranked us #1 in these practices for 2009-2010. We have been ranked the highest for 'Quality' in the Financial Times – RSG Consulting ranking of Indian law firms in 2009. The Tax Directors Handbook, 2009 lauded us for our constant and innovative out-of-the-box ideas. Other past recognitions include being named the Indian Law Firm of the Year 2000 and Asian Law Firm of the Year (Pro Bono) 2001 by the International Financial Law Review, a Euromoney publication. In an Asia survey by International Tax Review (September 2003), we were voted as a top-ranking law firm and recognized for our cross-border structuring work.

Our research oriented approach has also led to the team members being recognized and felicitated for thought leadership. Consecutively for the fifth year in 2010, NDAites have won the global competition for dissertations at the International Bar Association. Nishith Desai, Founder of Nishith Desai Associates, has been voted 'External Counsel of the Year 2009' by Asian Counsel and Pacific Business Press and the 'Most in Demand Practitioners' by Chambers Asia 2009. He has also been ranked No. 28 in a global Top 50 "Gold List" by Tax Business, a UK-based journal for the international tax community. He is listed in the Lex Witness 'Hall of fame: Top 50' individuals who have helped shape the legal landscape of modern India. He is also the recipient of Prof. Yunus 'Social Business Pioneer of India' – 2010 award.

We believe strongly in constant knowledge expansion and have developed dynamic Knowledge Management ('KM') and Continuing Education ('CE') programs, conducted both in-house and for select invitees. KM and CE programs cover key events, global and national trends as they unfold and examine case studies, debate and analyze emerging legal, regulatory and tax issues, serving as an effective forum for cross pollination of ideas.

Our trust-based, non-hierarchical, democratically managed organization that leverages research and knowledge to deliver premium services, high value, and a unique employer proposition has now been developed into a global case study and published by John Wiley & Sons, USA in a feature titled 'Management by Trust in a Democratic Enterprise: A Law Firm Shapes Organizational Behavior to Create Competitive Advantage' in the September 2009 issue of Global Business and Organizational Excellence (GBOE).

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1. INTRODUCTION

The Republic of India is a vast country which has existed in one form or another for many millennia. Bound by cultural commonalities, independent India is the second largest country in the world — home to about a sixth of the human population — and the seventh largest country by sheer land mass. Following the liberalization of India's economy in 1991, India experienced unprecedented growth and has become an integral part of the global economy. India is now the world's fourth largest economy[1] and has been growing at an astounding annual rate of 7.8% since 2002.[2] India's growth has resulted in a quantum leap from a primarily agrarian society in the 1980s to an increasingly service and industry oriented economy at present.

India's resilient and growing domestic markets along with its robust and well-regulated banking and foreign exchange laws have ensured that the current global economic slowdown does not greatly affect the country's economy. In fact, the forecasts by The Economist (see the table below) indicate that India is likely to maintain a real annual GDP growth rate of 5-8% over the next five years.

INDIA – KEY ECONOMIC INDICATORS

KEY INDICATORS	2010 / PRESENT	2009
GROSS DOMESTIC PRODUCT (% GROWTH)	+8.8%	+7.4%
CONSUMER PRICE INFLATION (% GROWTH)	+11.0%	+11.9%
INDUSTRIAL PRODUCTION (% GROWTH)	+13.8%	
LENDING RATE – 3 MONTHS (%)	6.19%	
LENDING RATE – 10 YEAR GOVT BONDS (%)	8.14%	
TRADE BALANCE (US$ BN)	-121.8	
EXCHANGE RATE (Rs. : US$)	44.9	48.1
MARKET INDEX (BSE SENSEX INDEX)	20,292	17,465

SOURCES: The Economist (October 2, 2010); CNBC Money Control (October 8, 2010); Economic Survey of India, 2009-10

India is also the world's largest democracy with an overall free market economy. Having emerged as a global center for services and outsourcing, India is also becoming an attractive destination for outsourcing industrial production, specifically for specialty manufacturing. In addition, the expanding Indian middle class is about the same size as the population of the US. It has seen a significant rise in its ability to pay for and desire to buy high-quality consumer products, thereby providing a large domestic market for companies that choose to set up consumer manufacturing operations and sales centers in India. Further, it is expected that as India continues to grow, its need for development of its physical and human infrastructure will correspondingly increase. In this context, it is anticipated that India will require some USD 500 billion over the next five years in investments into the infrastructure sector.[3] All in all, there is little doubt that India is one of the world's most attractive investment destinations.

As a former British colony, India adopted a common law based legal system, under which India's basic commercial laws are similar to those of other Commonwealth jurisdictions (including the UK, Canada, Australia, New Zealand, Singapore and Hong Kong). The Indian legal system is therefore based on a combination of legislation and judicial precedent (case law). India is a constitutional republic with a partly federal system of governance. The union and the states, both legislate on subjects as laid out in the Constitution, similar to that of the US. For this reason, there are plenty of legislations and authorities, which make the practice of Indian law both complex and well-laid out.

This paper attempts to introduce the basic legal regime governing the conduct of business in India and answer questions and issues commonly raised by foreign investors and merchants. It is intended to act as a broad legal guide for starting and carrying on operations in India. The laws discussed herein are subject to changes and may vary with time. We believe this paper will provide some clarity regarding India and its legal regime. However, it should not be used as a legal opinion on any specific matter. Please feel free to contact us in the event that you would like to invest in India or expand your operations into India. We are happy to be of assistance.

[1] 2008 Lists (adjusted for purchasing power parity) of the International Monetary Fund and World Bank.
[2] Sources: IMF-IFS, Madisson, Groningen University
[3] Source: http://www.financialexpress.com/news/scope-for-foreign-investment-in-indian-infrastructure/309999/

2. ENTERING INDIA

International companies or investors seeking to set up operations or make investments in India need to appraise and structure their activities on three pillars:

1. **Strategy:**
    - Observing the economic and political environment in India from the perspective of the investment;
    - Understanding the ability of the investor to carry out operations in India, the location of its customers, the quality and location of its workforce.
2. **Law:**
    - Exchange Control Laws: Primarily the Foreign Exchange Management Act, 1999 ("**FEMA**") and numerous circulars, notifications and press notes issued under the same;
    - Corporate Laws: Primarily the Companies Act, 1956 and the regulations laid down by the Securities and Exchanges Board of India ("**SEBI**");
    - Sector Specific Laws: Specific Laws relating to Financial Services (banking, non-banking financial services), Infrastructure (highways, airports) and other sectors.
3. **Tax:**
    - Domestic Taxation Laws: The Income Tax Act, 1961; indirect tax laws including laws relating to value added tax, service tax, customs, excise;
    - International Tax Treaties: Treaties with favorable jurisdictions such as Mauritius, Cyprus, Singapore and the Netherlands.

FOREIGN DIRECT INVESTMENT

Setting up India operations or investing in India requires conformity with India's foreign exchange regulations, specifically, the regulations governing foreign direct investment ("**FDI**"). Most aspects of currency transactions with India, including investments, are governed by FEMA and the delegated legislation thereunder.

FDI, up to 100%, is permitted in most sectors in India under the 'automatic route'. Under the automatic route, a company investing in India does not require the prior approval of India's central bank, the Reserve Bank of India ("**RBI**") or the approval of the Central Government (i.e. the Foreign Investment Promotion Board) from the FEMA perspective before making such an investment.

Certain sectors have caps on the amount of FDI allowed, including:

1. Banking-private sector (74 per cent)
2. Telecom Services (74 per cent)
3. Print Media (26 per cent)
4. Insurance (26 per cent)

There are some sectors where FDI is prohibited, including:

1. Atomic Energy
2. Lottery business
3. Gambling and betting
4. Manufacturing of cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes
5. Multi-brand retailing

There are some sectors where FDI is allowed only with the approval of the Central Government. Some of them are:

1. Banking-public sector
2. Broadcasting
3. Commodity Exchanges
4. Print Media
5. Single brand retail

Further, certain sectors and businesses in India have minimum capitalization norms for a foreign investor intending to invest in these sectors and the foreign investor must invest a certain minimum amount. These sectors include:

1. Non-Banking Financial Services
2. Development of townships, housing, built up infrastructure and construction development projects.

FDI norms apply to both direct and indirect foreign investments into an Indian company. Any investment by an Indian company into another Indian company is counted toward indirect foreign investment, if the investing Indian company is either owned or controlled by a non resident.

Companies are owned or controlled by foreign investors if more than 50 per cent of their shares are held by foreign investors or where the foreign investors have control over majority of the board of directors. However, companies owned *and* controlled by Indian promoters or entities (as per the same measure) are regarded as domestic companies.

Downstream investment by companies 'owned' or 'controlled' by non-resident entities will need to follow the same norms as a direct foreign investment. Such downstream companies will have to comply with relevant sectoral conditions on entry route, conditionalities and caps.

However, a 100% foreign owned non-banking financial company (which itself satisfies the minimum capitalization requirement), may make downstream investment in subsidiaries for specific non-banking financial activities without complying with the minimum capitalisation requirement for foreign investment in the non-banking financial services sector.

3. INCORPORATION

Once the foreign exchange regulations have been complied with, a foreign company must choose how it wishes to set up its operations in India. The entities that foreign companies may set up in India may either be unincorporated or incorporated.

UNINCORPORATED ENTITIES

Unincorporated entities permit a foreign company to do business in India via 'offices' of certain types. These options are as follows:

1. **Liaison Office:** Setting up a liaison office requires the prior consent of the RBI. A liaison office acts as a representative of the parent foreign company in India. However, a liaison office cannot undertake any commercial activities and must maintain itself from the remittances received from its parent foreign company. The approval for setting up a liaison office is valid for 3 years. It is an option usually preferred by foreign companies that wish to explore business opportunities in India.

2. **Branch Office:** The branch office of a foreign company in India must be set up with the prior consent of the RBI. It can represent the foreign parent company in India and act as its buying or selling agent in India. The branch office is permitted to remit surplus revenues to its foreign parent company subject to the taxes applicable. It is, however, limited to taking up specified activities. The tax on branch offices is 40 per cent *plus* applicable surcharges and the education cess. It is an option that is useful for companies that intend to undertake research and development activities in India.

3. **Project Office:** A foreign company may set up a project office in India under the automatic route subject to certain conditions being fulfilled. The activities of a project office must be related to or incidental to the execution of the relevant project. A project office is permitted to operate a bank account in India and may remit surplus revenue from the project to the foreign parent company. However, the tax on project offices is 40 per cent *plus* applicable surcharges and the education cess. Project offices are generally preferred by companies engaged in one-time turnkey or installation projects.

4. **Limited Liability Partnership:** A Limited Liability Partnership ("**LLP**") is a form of business entity which permits individual partners to be shielded from the liabilities created by another partner's business decision or misconduct. In India, LLPs are governed by The Limited Liability Partnership Act, 2008. The LLP is a body corporate and exists as a legal person separate from its partners. However, foreign investment is not permitted in LLPs.

5. **Partnership:** A partnership is a relationship created between persons who have agreed to share the profits of a business carried on by all of them, or any of them acting for all of them. A partnership is not a legal entity independent of its partners. The partners own the business assets together and are personally liable for business debts and taxes. In the absence of a partnership agreement, each partner has an equal right to participate in the management and control of the business and the profits/losses are shared equally amongst the partners. Any partner can bind the firm and the firm is liable for all the liabilities incurred by any partner on behalf of the firm. However, foreign investment is not permitted in Indian partnership firms.

6. **Trust:** A trust arises when one person (the "**trustee**") holds legal title to property but is under an equitable duty to deal with the property for the benefit of some other person or class of persons called beneficiaries. Like a partnership, a business trust is not regarded as a legal entity. The trust, as such, does not incur rights or liabilities. The beneficiaries do not generally obtain rights against or incur liabilities to third parties because of the transactions or actions undertaken by the trustee in exercising its powers and carrying out its duties as a trustee. If the trustee of a business trust is a corporation, the participants may effectively limit their liability

to the assets of the corporate trustee and the assets held by the corporation on trust for the beneficiaries. A foreign resident may only be the beneficiary of a trust and only after receiving the prior consent of the Foreign Investment Promotion Board ("**FIPB**").

INCORPORATED ENTITIES

Incorporated entities in India are governed by the provisions of the Companies Act, 1956. The authority that oversees companies and their compliances is the Registrar of Companies ("**RoC**"). Companies may either be 'private limited companies' or 'public limited companies':

1. **Private Limited Company:** A private limited company must have a minimum paid-up share capital of INR 100,000 (approx. USD 2250[4]). It carries out business in accordance with its memorandum and articles of association. A private limited company has certain distinguishing characteristics. It must, in its articles of association, restrict the right to transfer shares; the number of members in a private limited company is limited to 50 members (excluding the present and past employees of the company); its Articles of Association must prohibit any invitation to the public to subscribe to the securities of the company; the Articles of Association must also prohibit the invitation or acceptance of deposits from persons other than members. About 3-4 weeks is required to incorporate a private limited company, but this may vary from state to state.

2. **Public Limited Company:** A public limited company must have a minimum paid-up share capital of INR 500,000 (approx. USD 11,250[5]). It is defined as a company which is not a private company (but includes a private company that is the subsidiary of a public company). A public company can only commence business after being issued a 'Certificate of Commencement of Business' by the RoC. A public limited company may have more than 50 shareholders and may invite deposits from the public. A public limited company may also list its shares on a recognized stock exchange by way of an initial public offering ("**IPO**").

ADVANTAGES AND DISADVANTAGES OF A PRIVATE COMPANY

- Not as stringently regulated as a public company
- More flexibility than public companies in conducting operations, including the management of the company, issuance of different types of securities and the payment of managerial remuneration
- Faster incorporation process

- Restrictions on invitation and acceptance of public deposits
- Limited exit options

INCORPORATION PROCESS

The process for incorporating a company in India is not exceptionally different from the processes in other Commonwealth nations. The important steps with an indicative time frame involved in the incorporation process are:

1. **Name Approval (7-10 days):**
   - The RoC must be provided with one preferred name and five alternate names which should not be similar to the names of any existing companies. A no-objection certificate must be obtained in the event that the word is not an 'invented word'.
   - The use of certain words in the name of the company requires minimum capitalization as outlined in the table below:

[4] As per the exchange rate on November 10, 2010
[5] As per the exchange rate on November 10, 2010

MINIMUM CAPITALIZATION

NO.	KEYWORDS	MINIMUM AUTHORIZED CAPITAL (INR)
1.	Corporation	50 million
2.	International, Globe, Universal, Continental, Inter-Continental, Asiatic, Asia, being the first word of the name	10 million
3.	If any of the words at (2) above is used within the name (with or without brackets)	5 million
4.	Hindustan, India, Bharat, being the first word of the name	5 million
5.	If any of the words at (4) above is used within the name (with or without brackets)	500,000
6.	Industries/ Udyog	10 million
7.	Enterprises, Products, Business, Manufacturing	1 million

Source: Circular No. 27/1/87-CL-III, dated 13 March, 1989

- The proposed name must not violate the provisions of the Emblems and Names (Prevention of Improper Use) Act, 1950.

2. Filing of Charter Documents (10-15 days):

- The Memorandum and Articles of the company will need to be prepared in accordance with the needs of the business and the same must be filed with the RoC.
- The RoC will need to be provided with certain information, such as the proposed first directors of the company and the proposed address of its registered office.
- The proposed directors of the company will have to obtain 'Director Identification Numbers' and, in order to hasten the incorporation process, should also obtain 'Digital Signature Certificates'.
- A private limited company must have at least 2 shareholders and 2 directors whereas a public limited company must have at least 7 shareholders and 3 directors.

3. Certificate of Incorporation:

- The Certificate of Incorporation provided by the RoC at the end of the incorporation process acts as conclusive proof of the incorporation of the company.
- A private company can commence business immediately upon receiving its Certificate of Incorporation, whereas a public company may only commence business once it has obtained a 'Certificate of Commencement of Business' from the RoC.
- The company should preferably be capitalized within a month of receiving the certificate of incorporation.

4. Post Incorporation:

Once a company is incorporated, it must undertake certain other actions in order to become fully functional:

- The company must hold its first board meeting.
- The company may appoint additional directors (if any).
- The company must apply for its 'Permanent Account Number' (PAN) and 'Tax Deduction Account Number' (TAN).
- The company must register itself with statutory authorities such as indirect tax authorities and employment law authorities.
- The company must open a bank account.
- The company must put in place the contracts with suppliers and customers that are essential to running the business.

TYPES OF SECURITIES

Indian companies may issue numerous types of securities. However, while private companies are free to create any number of classes of securities, public companies are required to comply with the Companies (Issue of Share Capital with Differential Voting Rights)

Rules, 2001. Further, it is more difficult for a public company to receive the necessary consent from its shareholders that are mandatory in order to issue different classes of securities. The primary types of securities used in foreign investments into India are:

1. **Equity Shares:** Equity shares are normal shares in the share capital of a company and typically come with voting rights and dividend rights. A private company may issue shares that have weighted voting rights or no voting rights at all.

2. **Preference Shares:** Preference shares are shares which carry a preferential right to receive dividends at a fixed rate as well as preferential rights during liquidation as compared to equity shares. Convertible preference shares are a popular investment option. Preference shares may be redeemable.

3. **Debentures:** Debentures are debt securities issued by a company, and typically represent a loan taken by the issuer company with an agreed rate of interest. Debentures may either be secured or unsecured. Like preference shares, debentures may also be convertible.

For the purposes of FDI, fully and compulsorily convertible preference shares and debentures are treated on par with equity and need not comply with the external commercial borrowings guidelines (“**ECB Guidelines**”).

The ECB Guidelines place certain restrictions and requirements on the use of ECBs. Indian companies may only use ECBs up to a limit of USD 500 million per company per year under the automatic route. In order to raise ECBs, the Indian company must be an eligible borrower and the foreign financier must be a recognized lender. Further, there remain restrictions on the permitted end-uses of foreign currency expenditure such as for the import of capital goods and for overseas investments.

Extracting earnings out of India can be done in numerous ways. However it is essential to consider the tax and regulatory issues around each exit:

1. **Dividend:** Companies in India, as in other jurisdictions, pay their shareholders dividends on their shares, usually a percentage of the nominal or face value of the share. For a foreign investor holding an equity interest, payment of dividend on equity shares is a straightforward way of extracting earnings. However, the dividend distribution tax borne by the company distributing such dividend may not necessarily receive credit against any direct tax payable by the foreign investor who receives such dividend in its home jurisdiction.

2. **Buyback:** Buyback of securities provides an investor the ability to extract earnings as capital gains and consequently take advantage of tax treaty benefits. However, buybacks in India have certain restrictions and thus need to be strategically planned. For instance, a company may not buy back more than 25% of its outstanding shares in a year.

3. **Redemption:** Preference shares and debentures can both be redeemed for cash. While redemption is perhaps the most convenient exit option for investors, optionally convertible securities, which are effectively redeemable, have been classified as ECB. This entails greater restrictions.

4. **IPO:** An IPO is the first offer for sale of the shares of a company to the public at large via listing the company’s stock on a stock exchange. While an initial public offering may usually be regarded as a long term exit option, it is also usually included as an exit option in transaction documents as it may provide investors with large returns. IPOs are discussed in further detail in the next chapter.

4. CAPITAL MARKETS IN INDIA

Like any other free-economy country, Indian companies are allowed to raise capital and access financial markets through public issues of shares and other instruments within the regulatory confines of the Securities and Exchange Board of India ("**SEBI**" or the "**Board**"). Once issued, the public issues are traded as securities on SEBI-approved stock exchanges in India, such as the Bombay Stock Exchange Limited ("**BSE**") and the National Stock Exchange of India Limited ("**NSE**"). The BSE is the world's largest stock exchange in terms of number of listed companies (over 4900) with a total market capitalization of USD 1,354.86 billion in March, 2010. In March 2010, average daily equity turnover was more than USD 1.04 billion through the trading of average daily 390 million shares.

PUBLIC ISSUES

Public issues in India can be classified into two types: an IPO or a further public offer ("**FPO**"). An IPO is the process through which an issuer company allots fresh securities or securities from its existing shareholders/ investors or both types of securities to the public for the first time. This paves the way for the listing and trading of the issuer company's securities on SEBI-approved stock exchanges in India. In the case of an FPO, an existing publicly listed company makes a fresh, additional issuance of its securities to the public or performs an offer for sale of its existing securities to the public, through an offer document.

The Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 ("**ICDR Regulations**") govern the process of making an IPO or an FPO by an Indian company, besides other offerings such as qualified institutions placement, preferential allotment, etc.

Besides the ICDR Regulations, the other important legislations that govern IPOs or FPOs include the Companies Act, 1956, the Securities Contracts (Regulation) Rules, 1957 and the listing agreements of the recognized stock exchanges where the securities are proposed to be listed. The ancillary legislations that may get applicable to an IPO are the FEMA and the various regulations, press releases and circulars issued thereunder from time to time by the RBI, the foreign direct investment policy of the Government of India, and the various industry specific laws and regulations.

ELIGIBILITY REQUIREMENTS

An unlisted company may do an IPO of its equity shares and any convertible securities only if it satisfies the following eligibility requirements:

- The issuer company has net tangible assets of at least INR 30 million in each of the 3 preceding years, of which not more than 50% is held in monetary assets;
- The issuer company has distributable profits in the context of section 205 of the Companies Act, 1956, for at least 3 out of immediately preceding 5 years;
- The issuer company has a net worth of at least INR 10 million in each of the 3 preceding full years;
- The proposed issue size and all previous issues in the same financial year does not exceed 5 times its pre-issue net worth as per the audited balance sheet of last financial year; and
- If the issuer company has changed its name within the last 1 year, at least 50% of the revenue for the preceding 1 year is earned from the activity indicated by the new name.

The unlisted company cannot perform an IPO, if the company has less than 1,000 prospective allottees and there are outstanding convertible securities or any other right which would entitle any person any option to receive equity shares after the initial public offer, amongst other such conditions.

MINIMUM OFFER REQUIREMENTS

The issuer company is required to offer at least 25% of each class or kind of securities to the public. If the said minimum offer requirement is not fulfilled then the issuer company has to comply with the rules under the Securities Contracts (Regulation) Rules, 1957 ("**SCRR**"). Rule 19(2)(b) of the SCRR stipulates that an issuer company may offer at least 10%, as opposed to the 25% stated earlier, of its total issued and subscribed share capital to the public provided:

a) It has offered a minimum of 2 million securities to the public;

b) The size of the offer is minimum INR 1 billion; and

c) The Issue is made only through the book building method with an allocation of 60% of the issue size to the QIBs.

The abovementioned minimum offer requirements do not apply to a government company or statutory authority or corporation or any special purpose vehicle set up and controlled by any one or more of them, which is engaged in infrastructure sector in accordance with the ICDR Regulations.

PROMOTERS' CONTRIBUTION

A promoter, under the ICDR Regulations, has been defined to be a person or persons who are in control of the issuer company and who are instrumental in the formulation of a plan or programme pursuant to which securities of the issuer company are offered to the public and those whose names are mentioned in the prospectus for the offering as a promoter of the issuer company.

As per the ICDR Regulations the promoters are required to contribute not less than 25% of the post-IPO share capital of an issuer company. The promoters have to bring the full amount of the promoters' contribution including premium at least one day prior to the issue opening date and such amount is to be kept in an escrow account specially opened for this purpose.

There are certain securities which by the nature of their existence are ineligible for the computation of the promoter contribution, including certain bonus shares, pledged securities and shares acquired for consideration other than cash.

LOCK-IN RESTRICTIONS

"Lock-in" means a freeze on dealing in the securities. The ICDR Regulations specify certain lock-in restrictions with respect to the holdings of the promoters as well as other shareholders in the issuer company. The lock-in applicable to securities held by promoters is necessary to ensure that the promoters retain some interest in the issuer company post-IPO and to avoid fly-by-night operators. The entire pre-issue capital of the issuer company (other than the securities locked-in for 3 years as minimum promoters' contribution) remains locked-in for a period of 1 year from the date of allotment. Certain exceptions include shares held by domestic and foreign venture capital investors (who have obtained the necessary registrations and consents) and pre-IPO employee stock options.

OFFER FOR SALE

Strategic investors, in order to participate in an offer for sale of the securities of an investee company, need have held the equity shares in the investee company for a period of at least 1 year prior to the date of filing of the draft prospectus with the Board.

The strategic investors are exempt from this pre-requisite 1 year holding period, if either one of the following conditions is met:

a) The IPO is to be performed by a government company or statutory authority or corporation or any special purpose vehicle set up and controlled by any one or more of them, which is engaged in infrastructure sector;

b) The investors had acquired shares pursuant to any scheme approved by the High Court under sections 391 to 394 of the Companies Act, 1956, in lieu of business and invested capital which had been in existence for a period of more than one year prior to such approval.

PRICING

The issuer company may freely price its equity shares or any securities convertible into equity shares at a later date in consultation with the lead managers (i.e. the merchant bankers). This price can be different from the price at which the net offer to the public is made provided this price is higher than the price at which it is offered to public.

DISCLOSURE REQUIREMENTS

The ICDR Regulations stipulate the disclosure requirements in relation to promoters and members of the promoter group which has to be made in the offer documents that is to be filed with the Board. The offer documents include sections such as issue details, risk factors (internal and external), capital structure of the issuer company, objects of the offering, terms of the issue, interest of the directors, financial information of the issuer company, charter documents of the company, business of the issuer company, regulatory approvals, outstanding litigations, the issue procedure, *etc*.

FILING OF THE OFFER DOCUMENT

The issuer company has to file a draft red herring prospectus with the Board and stock exchanges prior to the filing of the prospectus with RoC. The Board and the recognised stock exchanges where the securities forming part of the IPO are to be listed can specify changes/observations on the draft red herring prospectus. At this stage, the issuer company also has to obtain in-principle approval from all the stock exchanges on which the issuer company intends to list the securities through the Prospectus. Thereafter, the issuer company has to carry out such changes or comply with such observations in the draft red herring prospectus before filing the prospectus with the ROC.

Overall, doing an IPO is not only a plausible but also a preferred option for exit for strategic investors in Indian companies. However, as mentioned above, they have to be mindful of certain regulatory requirements and accordingly plan in advance. In addition to the key pre-issue obligations discussed herein, issuer companies have to comply with a comprehensive list of post-issue obligations as well.

LISTING ON EXCHANGES OUTSIDE INDIA

Indian Companies are now permitted to list instruments linked to their securities on stock exchanges abroad. This may be achieved through the issue of depository receipts – known commonly as 'American Depository Receipts' or 'Global Depository Receipts' depending on the location where the Company chooses to list. The Company can only list outside India if it is:

a) Already listed on an Indian stock exchange; or

b) The Company is in the process of listing on an Indian stock exchange

FOREIGN COMPANIES LISTING IN INDIA

Similar to the ability of Indian Companies to raise capital abroad, foreign Companies are permitted to raise money on Indian capital markets by issuing 'Indian Depository Receipts' ("**IDRs**"). However, a foreign Company intending to issue IDRs must meet the following eligibility requirements to list in India:

a) Mandatory Listing in Home Country: The Company must be listed in its home country;

b) No Prohibition: The Company must not be prohibited from issuing securities by any regulatory body;

c) Net-worth and Capitalization Ceilings: The Company should have a pre-issue paid up capital and free reserves of at least USD 50 million with a minimum average market capitalization of at least USD 100 million, during the last 3 financial years preceding the issue;

d) Compliance Track Record: The Company must have a good track record of compliance with securities market regulations in its home country;

e) Trading Track Record: The Company is required to have a continuous trading record or history on a stock exchange in its home country for at least 3 years immediately preceding the issue; and

f) Profit Track Record: The Company should have had a track record of distributable profits for at least 3 out of the 5 years immediately preceding the proposed IDR listing.

A foreign Company must then comply with the provisions of the following statutes, rules and regulations after listing:

a) The Companies Act, 1956;

b) The Companies (Issue of Indian Depository Receipts) Rules, 2004; and

c) The SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009.

5. TAX & INVESTMENT STRUCTURING

REGULATORY ISSUES

While foreign investment is freely permitted in most sectors, an investor for certain sectors and depending on the quantum of investment, may be required to obtain prior approval from the FIPB or the RBI. Foreign Direct Investment can be made either through the "automatic route" or the "approval route". Under the "automatic route" neither the foreign investor nor the Indian company requires any approval from the FIPB or the RBI. The company in such cases is only required to file certain forms and declarations with the RBI. Under the "approval route" prior approval of the FIPB would be required before making the foreign investment.

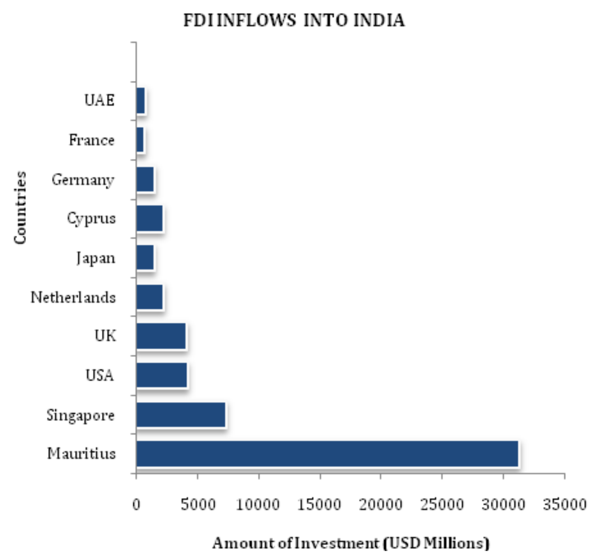
Foreign investment is usually in the form of subscription to or purchase of equity shares and/or convertible preference shares/debentures of the company. The investment amount is normally remitted through normal banking channels or into a Non-Resident External Rupee (NRE)/Foreign Currency Non-resident (FCNR) account of the Indian company with a registered Authorized Dealer (a designated bank authorized by the RBI to participate in foreign exchange transactions).

The company is required to report the details of the amount of consideration received for issuing its securities to the regional office of the RBI in the forms prescribed under the regulations relating to FDI together with copies of the Foreign Inward Remittance Certificate, arranged for by the Authorized Dealer evidencing the receipt of the remittance along with the submission of the "Know Your Customer" report of the non-resident investor. A certificate from the Statutory Auditors or Chartered Accountant indicating the manner of calculating the price of the shares also needs to be submitted. In the event that shares are being transferred or issued to a non-resident, the pricing of the shares will need to be in accordance with certain pricing guidelines. These guidelines are laid down by the RBI (in the case of companies not listed on a stock exchange) and by SEBI (in the case of listed companies) as the case may be. All of these documents must be submitted within 30 (thirty) days of the receipt of the foreign investment and must be acknowledged by the RBI's concerned regional office, which will subsequently allot a Unique Identification Number for the amount reported. The Indian company is required to issue its securities within 180 days from the date of receipt of foreign investment. Should the Indian company fail to do so, the investment so received would have to be returned to the person concerned within this time-frame.

While it is possible for a company to raise external debt, the same is governed by the ECB Guidelines prescribed by the RBI. These guidelines restrict both the source of funds as well as the use of such funds. Further, the ceilings on interest payable on the same may discourage foreign lenders from providing debt to Indian borrowers.

TREATY JURISDICTIONS

The following graph represents the investment received by India from various jurisdictions[6]:



Source: Ministry of Industry & Commerce, India.

It is quite apparent that Mauritius, a small island in the Indian Ocean, is India's largest foreign investor. The Double Taxation Avoidance Agreement ("**DTAA**") between Mauritius and India has made Mauritius a very attractive intermediary jurisdiction for investors from across the globe. The significant benefits of the most preferred intermediary jurisdictions for investing into India are described in the following table[7]:

[6] Cumulative FDI 2000-09 sourced from http://dipp.nic.in/fdi_statistics/india_FDI_March2009.pdf
[7] Nandan Nelivigi, 'India: International Investment Gateway to India', White & Case LLP, 4 March, 2006

COMPARISON OF INTERMEDIARY JURISDICTIONS

	MAURITIUS	CYPRUS	SINGAPORE
Indian tax payable on capital gains from sale of shares in Indian companies	Mauritius tax residents are exempt	Cyprus tax residents are exempt	Singapore tax residents are exempt, subject to certain conditions
Indian tax payable on interest received from Indian companies	20 percent (foreign currency borrowing) / 40 percent (Indian rupee borrowing)	10 percent	15 percent
Local tax on capital gains from the sale of shares in Indian companies	None	None	Generally none
Local tax on interest received from Indian companies	None for a business holding a global business license category one	10 percent	17 percent, however foreign tax credit may be available
Local tax on dividends received from Indian companies	None to 3 percent, subject to foreign tax credit in Mauritius	None, subject to foreign tax credit in Cyprus. Special defence contribution tax may be applicable in some circumstances	None, depending on circumstances of investment and possible foreign tax credit
Length of time needed to incorporate a company	Four to six weeks to assemble investor's due diligence information	Six weeks or more, however, off-the-shelf companies require one week	One to two weeks
Other advantages	• Strength in numbers: Mauritius is India's largest investor • Clarity in the process for establishing tax residency • Mauritius tax residency supported by legal precedent in India • Any amendment to the DTAA will face fierce opposition • Flexible corporate laws which offer both common law and civil law concepts	EU membership	• Clear-cut (albeit strict) process for establishing tax residency • International financial center with world-class business advisory services
Disadvantages	Time-consuming to assemble investor's due diligence information for corporate formation purposes	• Ambiguity in the process for establishing tax residency • DTAA may be vulnerable to changes • Slow incorporation process • Rigid corporate laws	• Capital gains exemption does not apply if the company was formed with the "primary purpose" of taking advantage of this exemption • Capital gains exemption will end if India and Mauritius take away the corresponding exemption from their DTAA • Strict requirements for establishing tax residency

Source: Nandan Nelivigi, White & Case LLP.

TAXATION IN INDIA

The levy of taxes in India is a constitutional power granted to the Union Government and the State Governments. Each tax levied or collected has to be backed by an accompanying law, passed either by the Parliament or the State Legislature. India, in terms of direct taxes (income tax) follows a system of progressive taxation wherein the rate of taxation increases as the income bracket increases.

Income tax in India is levied under the Income Tax Act, 1961. Domestic companies in India are taxed at 33.99 per cent while foreign companies are taxed at 42.23 per cent, both with a disallowance of expenses. Dividends distributed by Indian companies are taxed at 16.995 per cent, payable by the company. However, no further taxes are payable in India on such dividend income once dividend distribution tax (**"DDT"**) is paid. When exiting or restructuring, capital gains tax is payable up to 42.23 per cent contingent on whether the capital gains are long term or short term. Certain types of payments in India require the payer to withhold tax as 'tax deducted at source'. However, there remain many nagging issues with respect to these taxes. Minimum alternate tax (payable if a company's book profits are less than 15 per cent of the company's income due to exemptions etc.) is payable at 16.995 per cent for domestic companies and 15.836 per cent for foreign companies. Indirect taxes in India levied by the Union Government include Central Sales Tax, Central Excise, customs duty and service tax. States levy indirect taxes such as state level value added tax and stamp duty. Certain other taxes such as 'entertainment tax' and 'luxury tax' are also levied by certain states.

Wealth tax is applicable in India in a restricted manner and levied only on specified assets. However, the worldwide assets of a resident are subject to wealth tax in India. A company is liable to pay wealth tax at the rate of 1 percent on the amount of its net wealth that exceeds INR 1,500,000. Net wealth represents the total of prescribed assets minus any corresponding debts and obligations. Assets have been defined to include inter alia, motor cars, yachts, boats, aircrafts, urban land etc. The definition of the term 'assets', however, excludes shares and certain other securities. Commercial and business assets are also exempt from wealth tax.

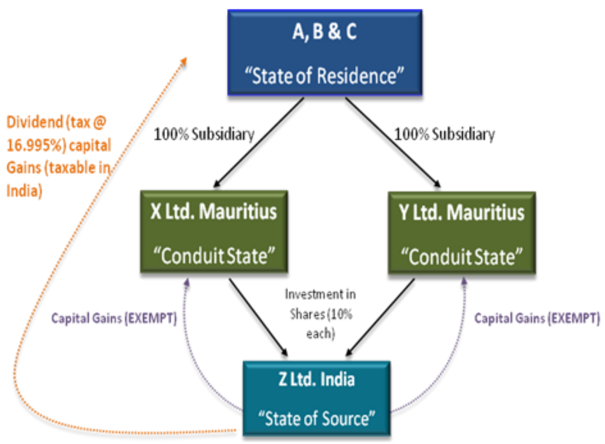
India currently does not impose any estate or death taxes. The erstwhile Estate Duty Act, 1953, which imposed an estate duty as high as 85 percent of the value of the assets of the deceased was abolished on March 16, 1985.

A new Direct Taxes Code is in the offing. It has recently been released for public comments and it is proposed to be placed in the 2009 winter session of the Indian Parliament. The Direct Taxes Code should be considered while structuring investments into India.

ADVANTAGES OF TREATY JURISDICTIONS

Income earned via dividend paid on shares held in an Indian company will be paid to a foreign investor with a withholding of DDT at the aforementioned rate. Capital gains too will be taxed at the aforementioned rate and, in the absence of treaty protection, will once again be taxed in the home jurisdiction of the investor. The structure below demonstrates the use of an intermediary treaty jurisdiction in structuring an investment into India.

SAMPLE STRUCTURE



DTAAs aim to prevent double taxation of income, including capital gains, for a person or entity resident in another state. For instance, according to the India Mauritius DTAA, capital gains earned on sale of Indian securities by a Mauritius company would be taxable in Mauritius. Further, currently the Mauritius domestic tax laws provide an exemption on most categories of capital gains. By investing through such a jurisdiction, a foreign investor need only pay capital gains tax in its home jurisdiction.

In utilizing a treaty jurisdiction, it is important for a foreign investor to analyze and determine the following:

1. **Appropriate Jurisdiction:** It is important for

a foreign investor investing in India to choose an intermediary jurisdiction that gives it the benefits it requires. For instance, while investing in debt and extracting returns in the form of interest, Cyprus proves to be better placed than Mauritius, even though the latter is generally the most popular jurisdiction.

2. **Holding Company:** Treaty jurisdictions usually provide an investor with numerous options in terms of entities it can use to route an investment. It is important for an investor to choose an entity that is tailored to its objectives in making the investment. However, it is also important to keep in mind any sectoral caps that may exist under the FDI policy when setting up a holding structure.

3. **Administrative Expenses:** While set-up and administration costs in many jurisdictions tend to be reasonable it is important to keep the same in mind while structuring an investment into India. For instance, while Singapore may offer many advantages as an intermediary jurisdiction, it requires that an investor must spend at least SGD 200,000 per year in the two previous years in Singapore in order to establish tax residency for the purposes of treaty benefits.

INDIRECT TAXATION

India does not have a central value added tax regime in the conventional sense; although a Central Sales Tax ("**CST**") is levied on the movement of goods between states, and a Central Value Added Tax ("**CENVAT**") is levied on the production or manufacture of goods in India.

Efforts are being made to replace the existing indirect tax system which provides for separate levy for goods and services with a unified Goods and Services Tax system ("**GST**") by April 2010. The Finance Minister in his speech during the July Budget of 2009 has insinuated the introduction of the comprehensive Goods and Service tax regime by April 1, 2011 and steps have been undertaken by the Government to implement the same, the first being the introduction of a uniform Value Added Tax regime across all states in India with two main tax rates i.e. 4 per cent and 12.5 per cent.

1. **Central Sales Tax:** CST is imposed on the sale of goods in the course of inter-state trade or commerce. Sales of goods are deemed to take place in the course of inter-state trade if they result in the movement of goods from one state to another, or if such sales are effected by the transfer of documents of title to the goods during their movement from one state to another. No CST is levied on direct imports or exports or the purchase or sale effected in the course of imports or exports. The process of phasing out CST commenced with a reduction in the CST rate from 4 per cent earlier to 2 percent on April 1, 2008.

2. **Value Added Tax ("VAT"):** VAT is levied on the sale of goods within a particular state at the two main VAT rates of 4 per cent and 12.5 per cent. VAT is a state specific levy and most states in India have introduced specific legislations for VAT based on the Model VAT legislation circulated by the Empowered Committee of State Finance Ministers. Further, under the VAT regime, a system of tax credits on input goods procured by the dealer is also available, to avoid the cascading effect of taxes that was prevalent under the erstwhile sales tax regime.

3. **CENVAT:** CENVAT is a duty of excise which is levied on all goods that are produced or manufactured in India, marketable, movable and covered by the excise legislation. The peak duty rate was reduced from 16 per cent to 14 per cent by the Finance Act, 2008 and has further been reduced recently to 8 per cent, although there are other rates ranging upwards, or based on an ad valorem/quantity rate.

   In order to avoid the cascading of excise duty and double taxation, the CENVAT scheme has been framed under the Central Excise Act and the CENVAT Credit Rules. Under the CENVAT Credit Rules, a manufacturer of excisable goods can avail of credit of duty paid on certain inputs and capital goods barring certain inputs used in the specified manufacture of certain products. The credit can be utilized towards the duty payable on removal of the final product. It must also be noted that the CENVAT scheme also takes into account credits with respect to any service tax paid by the manufacturer on input services received.

4. **Service Tax:** Service tax is levied under the service tax legislation on specified taxable services and is generally required to be paid by the service provider. The threshold limit of service tax exemption was increased from INR 800,000 to INR 1,000,000 with effect from April 1, 2008. Currently the rate of service tax is 10.30 per cent (including the education and higher education cess of 3 per cent). This rate is computed on the 'gross amount' charged by the service provider for the taxable services rendered by him. Service tax is currently levied on more than 100 services. It is a consumption tax, which means that the levy is on consumption of taxable services.

   The service tax legislation and rules thereunder set out the conditions to be fulfilled for different services to be categorized as export of services. In the case a service is considered exported, the same would not be subject to service tax. In case of a service imported into India i.e. when a taxable service is provided by a person from outside India and is received by a person in India, the service rendered is chargeable to service tax in India. The Taxation of Services (Provided from Outside India and Received in India) Rules, 2006 set out the conditions that need to be satisfied for a service to be considered imported into India. Generally, it is the liability of the service provider to pay the service tax except in cases where the reverse charge mechanism is applicable i.e. in the case of an import of a taxable service, in which case the resident service recipient becomes liable to pay the service tax as if it were the service provider.

   Further, the CENVAT Credit Rules also provides for a service provider to take credit on the inputs and input services that are received by the service provider for providing the taxable service.

SPECIAL SCHEMES

In light of the liberalization of foreign trade and the opportunity for foreign investment into India, the Indian Government has implemented various special schemes that provide companies in certain industries and in certain locations various benefits.

1. Software Technology Parks

The Software Technology Parks Scheme ("**STP Scheme**") is a scheme directed towards 100 per cent export-oriented IT & ITES units. The benefits of being registered as a STP are as follows:

- 100 per cent Income Tax holiday for a period of 10 consecutive years (no tax benefits available from the assessment year beginning April 1, 2012);
- 100 per cent Customs Duty exemption on imports;
- 100 per cent excise duty exemption on indigenous procurement;
- Central Sales Tax reimbursement on indigenous procurement;
- Green Card enabling priority treatment for Government clearances and other services.

2. Special Economic Zones ("SEZ")

- 100 percent income tax exemption on export income derived from SEZ units for the first five years of manufacturing and thereon 50 percent income tax exemption for the next five years;
- Exemption from capital gains arising on transfer of capital assets in case of shifting of industrial undertaking from urban areas to any SEZ;
- 100 per cent customs duty exemption on the import of goods or services into the SEZ. However, any goods removed from the SEZ into a domestic tariff area will be subject to customs duty.

- 100 per cent excise duty exemption on goods brought from a domestic tariff area into the SEZ.
- 100 per cent service tax exemption.
- 100 per cent exemption from securities transaction tax.
- Exemption from the levy of taxes on the sale or purchase of goods other than newspapers under the Central Sales Tax Act, 1956 if such goods are meant to carry on the authorized operations by the Developer or entrepreneur.

6. TRADE WITH INDIA

While some may wish to do business in India, many manufacturers and service providers are interested in doing business with India. With a potential market of over 1 billion people, India is a lucrative export destination. The primary tax relevant to the import of goods into India is customs duty.

CUSTOMS DUTY

Customs duties are levied whenever there is trafficking of goods through an Indian customs barrier i.e. levied both for the export and import of goods. Export duties are competitively fixed so as to give advantage to the exporters. Consequently a large share of customs revenue is contributed by import duty.

Customs duty primarily has a '**Basic Customs Duty**' for all goods imported into India and the rates of duty for classes of goods are mentioned in the Customs Tariff Act, 1975 (the "**Tariff Act**"), which is based on the internationally accepted Harmonized System of Nomenclature ("**HSN**"). The general rules of interpretation with respect to tariff are mentioned in the Tariff Act. The rates are applied to the transaction value of goods (for transactions between unrelated parties) as provided under the Customs Act, 1962 (the "**Customs Act**") or by notification in the official gazette.

A further duty, known as Additional Customs Duty or the Countervailing Duty ("**CVD**") is imposed to countervail the appreciation of end price due to the excise duty imposed on similar goods produced indigenously. To bring the price of the imported goods to the level of locally produced goods which have already suffered a duty for manufacture in India (excise duty), the CVD is imposed at the same rate as excise duty on indigenous goods.

In addition to the above, there are also Additional Duties in lieu of State and local taxes ("**ACD**") which are also imposed as a countervailing duty against sales tax and value added tax imposed by States. The ACD is currently levied at the rate of 4 per cent.

Further, the Central Government, if satisfied that circumstances exist which render it necessary to take immediate action to provide for the protection of the interests of any industry, from a sudden upsurge in the import of goods of a particular class or classes, may provide for a Safeguard Duty. Safeguard Duty is levied on such goods as a temporary measure and the intention for the same is protection of a particular industry from the sudden rise in import.

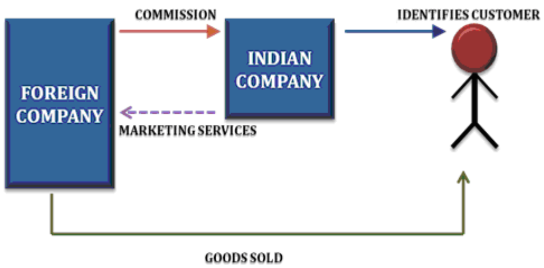
Under Section 9A of the Tariff Act, the Central Government can impose an Antidumping Duty on imported articles, if it is exported to India at a value less than the normal value of that article in other jurisdictions. Such duty is not to exceed the margin of dumping with respect to that article. The law in India with respect to anti-dumping is based on the 'Agreement on Anti-Dumping' pursuant to Article VI of the General Agreement on Tariffs and Trade, 1994.

TRADE MODELS

There are many ways in which one can trade with India. While setting up an operation in India and trading through it is one option, there are numerous ways of trading with India without actually setting up operations. Some of these are discussed below.

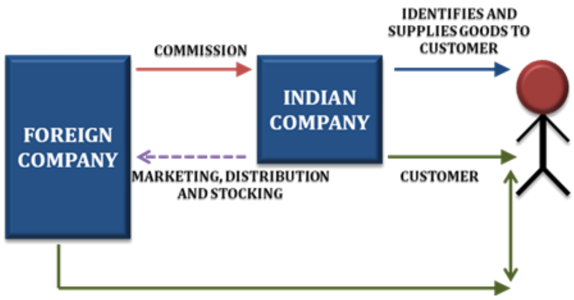
1. Marketing

Under this non-exclusive arrangement, a foreign company engages an Indian company to render marketing services on behalf of the foreign company. In the event a customer is identified, the Indian company informs the foreign company and the foreign company directly enters into an agreement and provides the goods to such customer. A commission is paid to the Indian company for the marketing services provided. All obligations to import the goods in India shall vest with the customer. Further, the Indian company does not have the right to conclude any agreements on behalf of the foreign company. A diagrammatic representation of the structure is contained below:



2. Marketing and Distribution

Under this arrangement, a foreign company engages an Indian company for rendering marketing and distribution services on behalf of the foreign company. Under such an arrangement the goods are already stocked with the Indian company and in the event a customer is identified, the Indian company supplies the goods to the customer. All rights and obligations, including payment obligations flow between the foreign company and the customer. A commission is paid to the Indian company for marketing, distribution and stocking of goods. A diagrammatic representation of the structure is contained below:

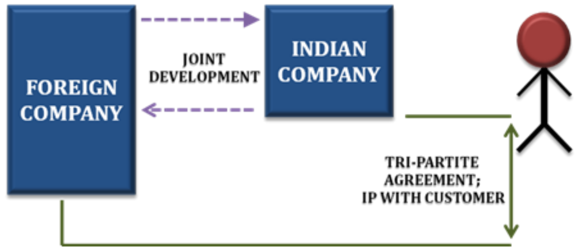


3. Agency

Under this arrangement, the foreign company appoints an Indian company to act as its agent in India. As the agent, the Indian company markets, stocks and distributes the goods and retains a part of the consideration paid by the customer as an agency fee. This structure is described in the diagram below:

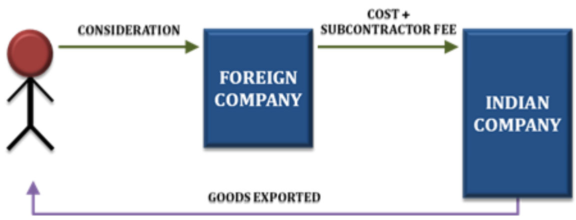
4. Teaming Agreements (Joint Development)

Under this arrangement, a foreign company and an Indian company team up for the development of products for an identified customer. In such situations the foreign company provides its technology, know-how and confidential information to the Indian company which in turn undertakes the manufacturing of the products in India and supplies the same to the customer. The rights and obligations, including payment obligations are mutually agreed between the foreign company, Indian company and the customer. A diagrammatic representation of the structure is contained below:



5. Subcontractor

Under this arrangement, a foreign company engages an Indian company to manufacture certain goods. The goods manufactured by the Indian company are in turn exported to the customers of the foreign company. Although all such exports would be done by the Indian company, the same shall be undertaken on behalf of the foreign company. The foreign company pays the Indian company on a cost-to-cost basis, along with a percentage as commission. The customers pay the foreign company for the goods received. A diagrammatic representation of the structure is contained below:



7. HUMAN RESOURCES

Human resources in India are abundant. With an increasingly educated middle class comprising almost 200-300 million individuals, there is no dearth of intellectual capital for any sort of business activities. Further, with a total population of over one billion, there is availability of skilled, semi-skilled and unskilled labour.

STATUTES

India has myriad of employment related legislations at both the central (federal) and state levels which are applicable to large cross-sections of establishments and its employees. Some of the important employment and labour laws are discussed hereunder:

IMPORTANT HR STATUTES*

STATUTES	APPLICABILITY
TRAINING, RECRUITMENT AND SCREENING	
THE APPRENTICES ACT,1961	The Apprentices Act provides for the practical training of technically qualified persons and the regulation and control thereof.
EMPLOYMENT EXCHANGES (COMPULSORY NOTIFICATION OF VACANCIES) ACT, 1959 (THE "EECNV ACT")	The EECNV Act seeks to inform job seekers about vacancies in various employment sectors and requires the establishments to notify to the employment exchanges of any vacancy in employment positions, prior to filling up such vacancy. The EECNV Act is applicable to every public establishmentss and notified private establishment having a minimum of 25 employees.
CONTRACT LABOUR (REGULATION AND ABOLITION) ACT, 1970 ("CLRA ACT")	The CLRA Act regulates the conditions of employment of contract labour and inter alia requires the principle employer and the contractor to obtain certain registrations / licenses prior to engaging contract labour.
CHILD LABOUR (PROHIBITION AND REGULATION) ACT, 1986	The Child Labour Act prohibits the engagement of children (persons below the age of 14) in certain employments and regulates the conditions of work of children in certain other employments.
PAY, SALARY AND BONUS	
MINIMUM WAGES ACT, 1948	The Minimum Wages Act provides for the fixing of minimum rate of wages by the state government in various industries.
PAYMENT OF WAGES ACT, 1936	The Payment of Wages Act governs the payment of wages to persons employed in any factory. The enactment governs the manner and timing of the payment of wages.
EQUAL REMUNERATION ACT, 1976	The object of the Equal Remuneration Act is to prohibit discrimination by providing for the payment of equal remuneration to men and women employees and for the prevention of discrimination, on the ground of sex, against women in the matter of employment or otherwise.
PAYMENT OF BONUS ACT,1965	The Payment of Bonus Act governs the payment of an annual bonus to persons employed in certain establishments and for matters connected therewith. The Act is applicable to every factory and every other establishment in which twenty or more persons are employed on any day during an accounting year. The act provides the mode and method for calculating the bonus payable.
THE PAYMENT OF GRATUITY ACT, 1972	The Payment of Gratuity Act provides for and governs the scheme for the payment of gratuity, an amount payable to an employee on the termination of employment after such employee has rendered service for at least five years. The enactment becomes applicable to establishments where ten or more persons are employed, or were employed, on any day of the preceding twelve months.
EMPLOYMENT TERMS, CONDITIONS AND BENEFITS	
FACTORIES ACT, 1948	The Factories Act is the applicable law regulating labour in factories, and provides for various measures relating to working conditions, health and safety with respect to factories. The Factories Act also regulates aspects such as working hours, rest intervals, overtime, holidays, leave, termination of service, employment of children, young persons and women and other rights and certain other obligations of an employer and its employees.
SHOPS AND COMMERCIAL ESTABLISHMENTS ACTS	Most of the Indian states have their own enactment relating to shops and establishments (non-factories). The state-specific shops and commercial establishments acts regulate the working and employment conditions of workers employed in shops and establishments including commercial establishments. The statutes regulate aspects such as working hours, rest intervals, overtime, holidays, leave, termination of service, employment of children, young persons and women and other rights and certain other obligations of an employer and its employees.
INDUSTRIAL EMPLOYMENT	The Industrial Employment (Standing Orders) Act requires employers in industrial

(STANDING ORDERS) ACT, 1946	establishments to define the broad conditions of employment.
MATERNITY BENEFIT ACT, 1961	The Maternity Benefit Act regulates the employment of women for certain periods before and after child-birth and provides for maternity benefit and certain other benefits.
SOCIAL SECURITY, INSURANCE AND COMPENSATION	
EMPLOYEES' PROVIDENT FUNDS AND MISCELLANEOUS PROVISIONS ACT, 1952 ("EPF ACT")	The EPF Act is possibly the most important social security legislation in India and provides for the institution of provident funds, family pension funds and deposit linked insurance fund for the employees.
EMPLOYEES' STATE INSURANCE ACT, 1948 ("ESI ACT")	The ESI Act provides for the establishment of the Employees' State Insurance Corporation to which both employers and employees are required to contributions so as to insure the employee against accidents, injuries and diseases.
WORKMEN'S COMPENSATION ACT, 1923	The Workmens' Compensation Act provides for the payment of compensation for injury by accident by certain classes of employers to their employees.
DISPUTES AND LIABILITIES	
INDUSTRIAL DISPUTES ACT, 1947	The Industrial Disputes Act, one of India's the most important labour legislation, essentially provides for the investigation and settlement of industrial disputes, connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person. The enactment also deals with strikes, lock-outs, lay-offs, retrenchments, transfer of undertaking, closure of business etc..
EMPLOYER'S LIABILITY ACT, 1938	The Employers' Liability Act bars the use of certain defences by an employer in case of injury to employees.
LABOUR UNIONS / COLLECTIVE BARGAINING	
TRADE UNIONS ACT, 1926	The Trade Unions Act provides for the registration of labour unions and lays down the law relating to registered labour unions in certain respects.

** The list of employment and labour laws does not reflect labour laws specific to certain industries and/or activities. The list also does not provide the details of compliances to be undertaken by the employer for each applicable labour law. Further, the applicability of each labour law (for the employer as well as its employees) needs to be determined based on various aspects including the exact nature of activities, number of employees, role and responsibilities of the employees, amount of salary / compensation, etc. Finally, it must be noted that Indian states have the right to amend the labour laws enacted by the central (federal) government and accordingly it is important to check for any state-specific amendments that may be relevant to a central (federal) labour law.*

HR DOCUMENTATION

While formal employment contracts are not mandatory, when recruitment employees in India, it is recommended that appropriate documentation be put in place to secure the company's workforce and assure that it stay within the desired boundaries.

1. Employment Agreements:

An employer typically provides a prospective new employee with an offer letter, which includes the basic terms of employment. Many employers seem to stop at this stage. However, this is often in ignorance of the fact that in the event that no subsequent employment agreement is signed, the offer letter becomes the only document governing the terms of employment. For certain types of business activities, a detailed employment agreement is generally recommended. The employment agreement lays out the terms of employment and provides suitable enforcement mechanisms as well as terms and conditions of termination.

Typically, employment agreements contain clauses in relation to:

- Term of employment and termination of employment;
- Compensation structure – Remuneration and bonuses;

- Duties and Responsibilities of the employee;
- Confidentiality and non-disclosure;
- Intellectual property;
- Non-compete and non-solicitation obligations; and
- Dispute Resolution.

2. Confidentiality & Non-Disclosure:

A confidentiality and non-disclosure agreement ("**CNDA**") is a contract between at least two parties that outlines confidential materials or knowledge the parties wish to share with one another for certain purposes, but wish to restrict access to or its disclosure. It is a contract through which a party agrees not to disclose information covered by the agreement. As such, a CNDA protects non-public business or the employer's proprietary information and trade secrets. As no data protection laws exist in India, these agreements assume greater significance.

Some common clauses in CNDAs include:

- The definition of what is confidential, i.e. the information to be held confidential.
- The exclusions from what must be kept confidential.
- The term, if any, for keeping the information confidential.
- The obligations regarding the use / disclosure of confidential information:
  - To use the information only for restricted purposes.
  - To disclose it only to persons with a need to know the information for the specified purposes.
  - To adhere to a standard of care relating to confidential information.
  - To ensure that anyone to whom the information is disclosed further abides by the recipient's obligations.

3. Non-Compete & Non-Solicit

Companies may choose to enter into non-competition and non-solicitation agreements with their employees. These obligations may alternatively be included in the employment agreement. The obligation not to complete prevents an employee from actively competing with the employer. Non-solicit clauses prevent the employee from soliciting other employees or customers of the employer.

A post-termination non-compete clause may not be enforceable in Indian courts as section 27 of the Indian Contract Act declares any agreements in restraint of trade as void.

4. HR Policy

It is recommended that the company should clearly set out the various policies and procedures applicable to its employees. The policy manual or employee handbook assists in defining the role of the employees of the company and limits its liability in the event of breach. Many subjects covered in a company's HR policy handbook are governed by specific laws. Such laws may be specific to the state in which the workplace is located.

Aspects covered typically include (but is not limited to):

- Employee benefits
- Leave policies, including paid leave, casual leave, sick leave, maternity leave etc.
- Compensation policies
- Code of conduct and behaviour policies
- Anti-harassment policies (mandatory in the Indian context)
- Immigration law policies
- Complaint procedures and resolution of internal disputes
- Internet, email and computer use policies
- Accident and emergency policies
- Prohibition from insider trading (mandatory for listed companies)

5. Structuring of Compensation

With compensation packages paid to employees ever on the increase, it becomes important to structure the package in a tax effective and efficient manner. The Income Tax Act, 1961 provides for certain deductions and allowances that may be considered. Some of the allowances / perquisites include house rent allowance, medical reimbursement, leave travel allowance, conveyance allowance, child education allowance, etc. It must be noted that there are certain limits specified with respect to the allowances.

STOCK OPTIONS

Employee stock option plans ("**ESOPs**") are designed to give an employee participation in the equity of the company. ESOPs may be granted upon joining the company or thereafter, and continue to be an important tool for attracting and retaining talent. This is a popular strategy with companies that may not be able to afford larger or more competitive compensation packages in order to attract the right level of employee.

An ESOP is a right but not an obligation of an employee to apply for the shares in the company in the future at a predetermined price. These options may be converted into shares upon fulfillment of certain conditions. Such conditions are either performance-based or time-based. All plans or schemes introduced by listed companies are required to comply with the guidelines issued by SEBI. Further, it is also possible to grant ESOPs in foreign companies to employees of the Indian subsidiaries of such foreign companies subject to certain guidelines as per FEMA. Therefore, the company would have to structure its ESOP in a manner that complies within the regulatory environment.

Pursuant to the Finance Act, 2009, ESOPs will be taxable as perquisites in the hands of the recipient employee at the rate of 30%. The value of the taxable perquisite is the difference between the fair market value of an equivalent share of the company and the exercise price of the option. When the employee sells the shares, such sale would attract capital gains tax at the applicable rate. It may be noted that ESOPs were earlier covered under the 'fringe benefit tax' regime which imposed a tax at the rate of approximately 34% on the company granting the ESOP.

8. INTELLECTUAL PROPERTY

With the advent of the knowledge and information technology era, intellectual capital has gained substantial importance. Consequently, Intellectual Property and the Rights attached thereto ("**IPRs**") have become precious commodities and are being fiercely protected. Well-established statutory, administrative, and judicial frameworks for safeguarding IPRs exist in India. It becomes pertinent to mention here that India has complied with its obligations under the Agreement on Trade Related Intellectual Property Rights ("**TRIPS**") by enacting the necessary statutes and amending its existing statues.

Well-known international trademarks have been afforded protection in India in the past by the Indian courts despite the fact that these trademarks were not registered in India. Computer databases and software programs have been protected under the copyright laws in India, thereby allowing software companies to successfully curtail piracy through police and judicial intervention. Although trade secrets and know-how are not protected by any specific statutory law in India, they are protected under the common law and through contractual obligations.

INTERNATIONAL CONVENTIONS

India is a signatory to the following international conventions:

CONVENTION	DATE
Berne Convention	April 1, 1928 (Party to convention)
Universal Copyright Convention	January 7,1988 (Ratification)
Paris Convention	December 7,1998 (Entry into force)
Convention on Biological Diversity	June 5,1992 (Signature and ratification)
Patent Cooperation Treaty	December 7,1998 (Entry into force)
Budapest Treaty on the International Recognition of Microorganisms for the Purposes of Patent Procedure 1977	December 17, 2001(Party to treaty)

By virtue of such membership, convention applications for the registration of trademarks, patents, and designs are accepted with the priority date claim; copyright infringement suits can be instituted in India based on copyright created in the convention countries.

PATENTS

Patent rights protect workable ideas or creations known as inventions. A patent is a statutory right to exclude others, from making, using, selling, and importing a patented product or process without the consent of the patentee, for a limited period of time. Such rights are granted in exchange of full disclosure of an inventor's invention.

The term "invention" is defined under Section 2(1)(j) of the Patents Act as "*a new product or process involving an inventive step and capable of industrial application*." Thus, if the invention fulfills the requirements of novelty, non-obviousness, and utility then it would be considered a patentable invention.

India grants patent rights on a first-to-apply basis. The application can be made by either (i) the inventor or (ii) the assignee or legal representative of the inventor.

The inventor, in order to obtain registration of a patent, has to file an application with the Patent Office in the prescribed form along with the necessary documents as required. A patent application usually contains the following documents: (a) an Application Form in Form 1 (b) a Provisional or Complete Specification in Form 2 (c) a Declaration as to Inventorship in Form 5 (d) Abstracts (e) Drawings, if any (f) Claims, (g) a Power of Attorney in Form 26, if a patent agent is appointed. Once the application has been filed, it will be published in the patent journal after 18 months of the priority date, and would then be examined by the patent office, upon the office receiving a request for such examination. After such examination and subject to any objections, the patent may be granted or refused by the patent office. Once a patent is granted, it is published in the patent journal. With enhanced fees the publication and examination of the application may be expedited.

Once a Patent is granted, it gives the inventor the exclusive right to use and exploit the new invention and the inventor can authorize any other person for the use of such patented invention. In the event someone uses the a patented invention without the permission or consent of the patent owner, then the same would amount to patent infringement and the owner of the patent can approach the court of law for obtaining remedies not limited to injunctions, damages etc. For infringement of a patent, only civil remedies are available.

COPYRIGHTS

The Copyright Act, 1957 ("**Copyright Act**"), supported by the Copyright Rules, 1958 ("**Copyright Rules**"), is the law governing copyright protection in India. The Copyright Act provides that a copyright subsists in an original literary, dramatic, musical or artistic work, cinematograph films, and sound recordings.

A copyright grants protection to the creator and his representatives to certain works and prevents such works from being copied or reproduced without his/their consent. The term of copyright in India is, in most cases, the lifetime of the creator plus 60 years thereafter.

Under Indian law, registration is not a prerequisite for acquiring a copyright in a work. A copyright in a work is vested when the work is created and given a material form, provided it is original. Unlike the U.S. law, the Indian law registration does not confer any special rights or privileges with respect to the registered copyrighted work. India is also a member to the Berne and Universal Copyright Convention, which protects copyrights beyond the territorial boundaries of a nation. Further, any work first published in any country - which is a member of any of the above conventions - is granted the same treatment as if it was first published in India.

Copyright Infringement and Remediation: A copyright is infringed if a person without an appropriate license does anything that the owner of the copyright has an exclusive right to do. However, there are certain exceptions to the above rule (e.g., fair dealing). The Copyright Act provides for both civil and criminal remedies for copyright infringement. In the event of infringement, the copyright owner is entitled to remedies by way of injunction, damages, and order for seizure and destruction of infringing articles. Certain amendments are proposed to the Copyright Act.

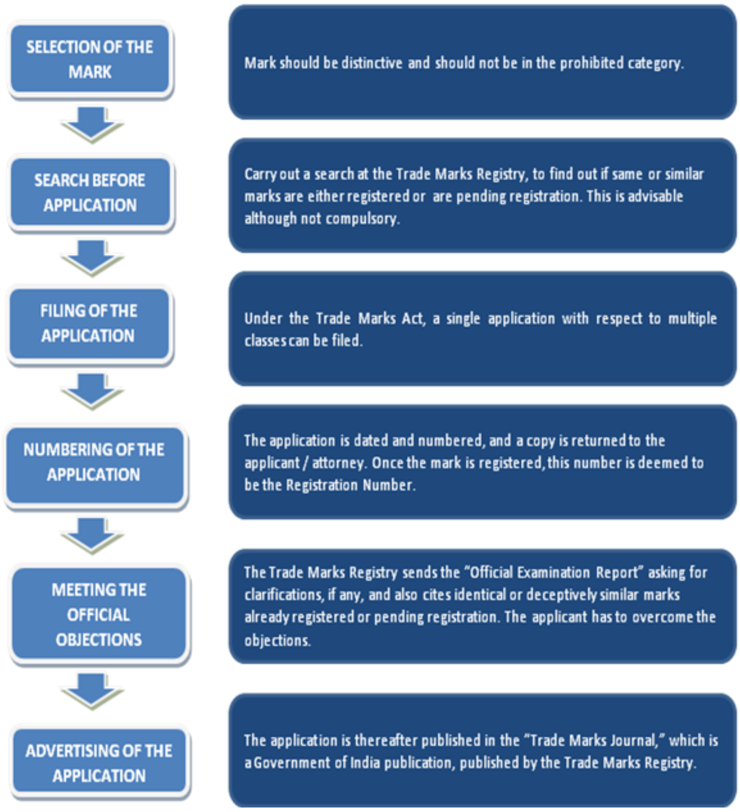
TRADEMARKS

Trademarks are protected both under statutory law and common law. The Trade Marks Act, 1999 ("**TM Act**") along with the rules thereunder govern the law of trademarks in India.

Under the TM Act the term 'mark' is defined to include 'a device, brand, heading, label, ticket, name, signature, word, letter, numeral, shape of goods, packaging or, combination of colors, or any combination thereof.' Thus, the list of instances of marks is inclusive and not exhaustive. Any mark capable of being 'graphically represented' and indicative of a trade connection with the proprietor is entitled to registration under the Act. This interpretation opens the scope of trademark protection to unconventional trademarks like sound marks. Also, India follows the NICE Classification of goods and services, which is incorporated in the Schedule to the rules under the TM Act. The flowchart below describes the method of obtaining a trademark in India:

DIAGRAM ON FOLLOWING PAGE

OBTAINING A TRADEMARK IN INDIA



Recently, India's first "sound mark" registration was granted to Yahoo Inc's three-note Yahoo yodel.

Internet Domain Names: Indian courts have been proactive in granting orders against the use of infringing domain names. Some of the cases in which injunctions against the use of conflicting domain names have been granted are: www.yahoo.com v. www.yahooindia.com and www.rediff.com v. www.radiff.com. In the www.yahoo.com case it has been held that "the domain name serves the same function as a trademark, and is not a mere address or like finding number on the internet, and therefore, it is entitled to equal protection as a trademark".

Assignment of Trademarks: A registered or unregistered trademark can be assigned or transmitted with or without the goodwill of the business concerned, and in respect of either or all of the goods or services in respect of which the trademark is registered. However, the assignment of trademarks (registered or unregistered) without goodwill requires the fulfillment of certain statutory procedures including publishing an advertisement of the proposed assignment in newspapers.

Recognition of Foreign Well-Known Marks & Trans-border Reputation: The courts in India have recognized the trans-border reputation of foreign trademarks and trade names and the importance of their protection. Thus, international trademarks, having no commercial presence in India could, be enforced in India if a trans-border reputation with respect to such trademarks can be shown to exist.

Marks such as Whirlpool, Volvo, Caterpillar, and Ocuflox, have received protection through judicial decisions.

Further, infringement actions for a registered trademark along with the claims for passing off for an unregistered mark are recognized by Indian courts. The courts not only grant injunctions but also award damages or an order for account of profits along with the delivery of the infringing marks, for destruction or erasure. In addition to the civil remedies, the TM Act contains stringent criminal penalties.

The Madrid Protocol

The Madrid System, administered by the International Bureau of World Intellectual Property Organization (WIPO), Geneva, permits the filing, registration and maintenance of trademark rights in more than one jurisdiction on a global basis. This system comprises two treaties; the Madrid Agreement concerning the International Registration of Marks, which was concluded in 1891 and came into force in 1892, and the Protocol relating to the Madrid Agreement, which came into operation on April 1, 1996. India acceded to the relevant treaties in 2005 and in 2007. The new Trademarks (Amendment) Bill was introduced in Parliament. In 2009, the same received the assent of the Lok Sabha (the Lower House) and it is now only a matter of time before the same comes into force.

TRADE SECRETS

It deals with rights on private knowledge that gives its owner a competitive business advantage. Confidential information and trade secrets are protected under common law and there are no statutes that specifically govern the protection of the same. In order to protect trade secrets and confidential information, watertight agreements should be agreed upon, and they should be supported by sound policies and procedures.

DESIGNS

Industrial designs in India are protected under the Designs Act, 2000 ("**Designs Act**"), which replaced the Designs Act, 1911. The Designs Act incorporates the minimum standards for the protection of industrial designs, in accordance with the TRIPS agreement. It also provides for the introduction of an international system of classification, as per the Locarno Classification.

As per the Designs Act, "design" means only the features of shape, configuration, pattern, ornament or composition of lines or colors applied to any "*article*" whether in two dimensional or three dimensional or in both forms, by any industrial process or means, whether manual mechanical or chemical, separate or combined, which in the finished article appeal to and are judged solely by the eye.

The Designs Act provides for civil remedies in cases of infringement of copyright in a design, but does not provide for criminal actions. The civil remedies available in such cases are injunctions, damages, compensation, or delivery-up of the infringing articles.

A company in India needs to ensure that it fully leverages the intellectual property developed by it as this may often be the keystone of its valuation. Further, it needs to establish systems to ensure that such intellectual property is adequately recorded, registered, protected and enforced. It needs to conduct IPR audits to ensure that any intellectual property developed by the company is not going unnoticed or unprotected. The company also needs to ensure that its employees do not violate any third party's intellectual property rights knowingly or unknowingly. A company must ensure that its intellectual property is not only protected in India, but also in the country where it carries on its business, where its products are exported, or where it anticipates competition.

9. MERGERS AND ACQUISITIONS

The financial year 2007-08 witnessed a slew of acquisitions across diverse sectors of the economy in India. Steel was the most dominant in terms of stake sales as deals valuing $ 3.862 billion took place. Whether a Merger or an Acquisition is that of an Indian entity or it is an Indian entity acquiring a foreign entity, such a transaction would be governed by Indian domestic law.

The term 'merger' is not defined under the Companies Act, 1956 (the "**Companies Act**"), the Income Tax Act, 1961 (the "**ITA**") or any other Indian law. In simple words merger means a combination of two or more entities into one. Sections 390 to 394 of the Companies Act deal with the analogous concept of schemes of arrangement or compromise between a company, its shareholders and/or its creditors.

An acquisition or takeover is the purchase by one company of controlling interest in the share capital, or all or substantially all of the assets and/or liabilities, of another company. A takeover may be friendly or hostile, depending on the offeror company's approach, and may be affected through agreements between the offeror and the majority shareholders, purchase of shares from the open market, or by making an offer for acquisition of the offeree's shares to the entire body of shareholders. Acquisitions may be by way of acquisition of shares of the target, or acquisition of assets and liabilities of the target.

COMPANIES ACT, 1956.

Sections 390 to 394 (the "**Merger Provisions**") of the Companies Act govern a merger of two or more companies under Indian law.

Procedure under the Merger Provisions: Since a merger essentially involves an arrangement between the merging companies and their respective shareholders, each of the companies involved in a merger, must make an application to the High Court (the "**Court**") having jurisdiction over such company for calling meetings of its respective shareholders and/or creditors The Court may then order a meeting of the creditors/shareholders of the company. If the majority in number representing 3/4th in value of the creditors and shareholders present and voting at such meeting agree to the merger, then the merger, if sanctioned by the Court, is binding on all creditors and shareholders of the company. The Court will not approve a merger or any other corporate restructuring, unless it is satisfied that all material facts have been disclosed by the company. The order of the Court approving a merger does not take effect until a certified copy of the same is filed by the company with the Registrar of Companies. Merger Provisions recognize and permit a merger/reconstruction where a foreign company merges into an Indian company. But the reverse is not permitted, and an Indian company cannot merge into a foreign company.

SECURITIES AND EXCHANGE BOARD OF INDIA

1. **Takeover Code:** The Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (the "**Takeover Code**") restricts and regulates the acquisition of shares / control in listed companies. Generally, if an acquirer acquires 15% or more of the shares or voting rights of a listed company, the acquirer would be required to make an offer to the public to acquire at least 20% of the voting capital of the company. However, Regulation 3 (1) (j) of the Takeover Code provides that Regulations 10, 11 and 12 would not apply to any transfer or acquisition of shares or voting rights pursuant to a scheme of arrangement or reconstruction, including amalgamation or merger or demerger, under any law or regulation, whether Indian or foreign.

   It must be noted that Regulations 7 and 8 of the Takeover Code would continue to be applicable to a merger involving a listed company. Regulation 7 requires an acquirer to make disclosures of the aggregate of his shareholding if the acquirer acquires more than 5%, 10%, 14%, 54% or 74% of the shares / voting rights of a company. Such disclosures must be made at each stage of acquisition and are to be made to the company and to the stock exchanges on which the shares of the company are listed. Regulation 8 requires a person holding more than 15% of the shares / voting rights of a company to make annual disclosures to the company (within 21 days from the financial year ending March 31)in respect of his holdings as on March 31.

2. **Pricing of the offer:** The merchant banker appointed by the acquirer will determine the price for the offer on the basis of the parameters laid down in the Takeover Code. Further, Clause 40A of the listing agreement entered into by a company with the stock exchange on which its shares are listed, requires the company to maintain a public shareholding of at least 25% or 10%, as the case may be, on a continuous basis.

3. **Listing Agreement:** The listing agreement entered into by a company with a stock exchange for the purpose of listing its shares with the stock exchange. The listing agreement requires that a scheme of merger / amalgamation / reconstruction must be filed with the stock exchange at least one month prior to filing with the Court. The scheme cannot violate or override the provisions of any securities law / stock exchange requirements. The pre and post merger shareholding must be disclosed to the shareholders.

LEGAL REQUIREMENTS

1. Companies Act, 1956.

The Companies Act does not make a reference to the term 'acquisition' per se. The modes most commonly adopted are a share acquisition or an asset purchase.

Acquisition of Shares: A share acquisition may take place by purchase of all existing shares of the target by the acquirer, or by way of subscription to new shares in the target so as to acquire a controlling stake in the target.

New share issuance: If the acquisition of a public company involves the issue of new shares or securities to the acquirer, then it would be necessary for the shareholders of the company to pass a special resolution under the provisions of Section 81(1A) of the Companies Act. A special resolution is one that is passed by at least 3/4ths of the shareholders present and voting at a meeting of the shareholders. A private company is not required to pass a special resolution for the issue of shares, and a simple resolution of the board of directors should suffice.

Asset Purchase: An asset purchase involves the sale of the whole or part of the assets of the target to the acquirer. The board of directors of a public company or a private company which is a subsidiary of a public company, cannot sell, lease or dispose all, substantially all, or any undertaking of the company without the approval of the shareholders in a shareholders meeting.

2. Securities and Exchange Board of India

On August 26, 2009, SEBI notified the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 ("**ICDR Regulations**") replacing the erstwhile Securities and Exchange Board of India (Disclosure and Investor Protection) Guidelines, 2000.

Pricing of the issue: Where the equity shares of the target have been listed on a stock exchange for a period of 6 months or more prior to the relevant date, the price of the equity shares issued on a preferential basis must be not less than the price that is the higher of, (a) the average of the weekly high and low of the closing prices of the related equity shares quoted on the stock exchange during the six months preceding the relevant date, or (b) the average of the weekly high and low of the closing prices of the related equity shares quoted on a stock exchange during the two weeks preceding the relevant date.

Insider Trading Regulations: Securities and Exchange Board of India (Insider Trading) Regulations, 1992 regulates insider trading and a person in violation of these regulations is punishable under Section 24 and Section 15G of the SEBI Act, 1992. These regulations were considerably amended in 2002 and renamed as Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as the "**SEBI Insider Regulations**"). The SEBI Insider Regulations are intended to prevent insider trading in securities of Indian listed company.

Continual Disclosures: Any person holding more than 5% shares or voting rights in any listed company is required to disclose to the company within two (2) working days from receipt of intimation of allotment of shares; or acquisition or sale of shares or voting rights in Form C40, the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below 5%, if there has been any change in such holdings from the last disclosure made under Regulation 13(1) of SEBI Insider Regulations or under this sub-regulation and such change exceeds 2% of total shareholding or voting rights in the company. Any person, who is a director or officer of a listed company, shall disclose to the company in Form D41, the change in shareholding or voting rights held by him and his dependents, if the change exceeds INR 5 lakhs in value or 25,000 shares or 1% to total shareholding or voting rights, whichever is lower. The disclosure shall be made within two (2) working days from receipt of intimation of allotment of shares or acquisition or sale of shares or voting rights.

COMPETITION LAW

The Government of India enacted the Competition Act, 2002 ("**Competition Act**") to replace the existing Monopolies and Restrictive Trade Practices Act, 1969. The Competition Act takes a new look at competition altogether and contains specific provisions on anti competition agreements, abuse of dominance, mergers, amalgamations and takeovers and competition advocacy. The Competition Commission of India ("**CCI**") has been established to control anti-competitive agreements, abuse of dominant position by an enterprise and for regulating certain combinations. The substantive provisions of the Competition Act relating to anti competitive agreements (Section 3) and abuse of dominance (Section 4) have been notified and have come into effect.

EXCHANGE CONTROL

1. FOREIGN DIRECT INVESTMENT

Investments in, and acquisitions (complete and partial) of, Indian companies by foreign entities, are governed by the terms of the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 (the "**FDI Regulations**") and the provisions of the Industrial Policy and Procedures issued by the Secretariat for Industrial Assistance (SIA) in the Ministry of Commerce and Industry, Government of India.

Indirect Foreign Investment: Foreign direct investment may be direct or indirect. If an Indian investing company is "owned" or "controlled" by "non-resident entities", then the entire investment by the investing company into the subject downstream Indian investee company would be considered as indirect foreign investment. Provided that, as an exception, the indirect foreign investment in wholly owned subsidiaries of operating-cum-investing/ investing companies will be limited to the foreign investment in the operating-cum-investing/ investing company.

Foreign Technology Collaborations.

Payments for foreign technology collaboration by Indian companies are allowed under the automatic route subject to compliance without any limits. An Indian company importing any technology or know is, however, required to pay a research and development cess of about 5% under the Research and Development Cess Act, 1986.

2. OVERSEAS DIRECT INVESTMENT.

An Indian company that wishes to acquire or invest in a foreign company outside India must comply with the Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2004 (the "**ODI Regulations**"). Such an investment can be made by Indian Companies in overseas joint ventures/ wholly owned subsidiaries, with an investment of up to 400% of the net worth of the Indian company.

TAXES AND DUTIES

1. INCOME TAX ACT, 1961.

The ITA contemplates and recognizes the following types of mergers and acquisitions activities:

- Amalgamation (i.e. a merger which satisfies the conditions mentioned below)
- Slump sale/asset sale;
- Transfer of shares; and
- Demerger or spin-off.

Computation of capital gains tax: Income chargeable to tax as capital gains is computed by deducting the following from the value of the consideration received – (a) expenditure incurred wholly and exclusively with such transfer, and (b) cost of acquisition of the capital asset and any cost of improvement of the capital asset. Section 49 (2) provides that the cost of acquisition for a shareholder, of shares of the amalgamated company,is deemed to be the cost of acquisition of the shares of the amalgamating company.

Capital gains tax implications for a slump sale: A slump sale is a transaction in which restructuring takes place as a result of which the transferor transfers one or more of its undertakings on a going concern basis for a lump sum consideration, without assigning values to the individual assets and liabilities of the undertaking.

Capital gains tax implications for an asset sale (itemized sale): In an asset sale, the acquirer only purchases the assets of the seller. This does not amount to the transfer of the business as a going concern and specific values are attributed to each of the assets. The capital gains tax payable by the seller will depend on the period that the seller has held each of the assets that are transferred.

Tax on business income: Carry forward of losses. Section 72A of the ITA provides that in case of amalgamation of a company owning an industrial undertaking with another company, the accumulated loss and the unabsorbed depreciation of the amalgamating company is deemed to be the loss / allowance for depreciation, of the amalgamated company. The amalgamated company would then be entitled to carry forward such loss and depreciation, and set off such amounts against its future profits.

2. SERVICE TAX.

In an asset purchase or a slump sale, where the object is to acquire the business of the seller, there may be a covenant in the asset purchase agreement that the seller will procure that its employees accept offers of employment with the acquirer. Part of the consideration payable to the seller may be contingent on the number of employees who join the acquirer. It is possible that such a covenant could amount to the provision of manpower recruitment services by the seller on which service tax at the rate of 10.30 per cent (including education cess) may be payable.

3. VALUE ADDED TAX/SALES TAX.

Value added tax ("**VAT**") or sales tax, as the case may be, may be payable on a purchase of movable assets or goods of the target by the acquirer. Most Indian states have in the last few years replaced their state sales tax laws with laws levying VAT on the sale of goods.

4. STAMP DUTY.

Stamp duty is a duty payable on certain specified instruments / documents. When there is a conveyance or transfer of any movable or immovable property, the instrument or document effecting the transfer is liable to payment of stamp duty.

Stamp duty on court order for mergers/demergers: Since the order of the Court merging two or more companies, or approving a demerger, has the effect of transferring property to the surviving /resulting company, the order of the Court may be required to be stamped. The stamp laws of most states require the stamping of such orders. The amount of the stamp duty payable would depend on the state specific stamp law.

Stamp duty on share transfers: The stamp duty payable on a share transfer form executed in connection with a transfer of shares is 0.25% of the value of, or the consideration paid for, the shares. Stamp duty on shareholder agreements/joint venture agreements. Stamp duty will be payable as per the state specific stamp law.

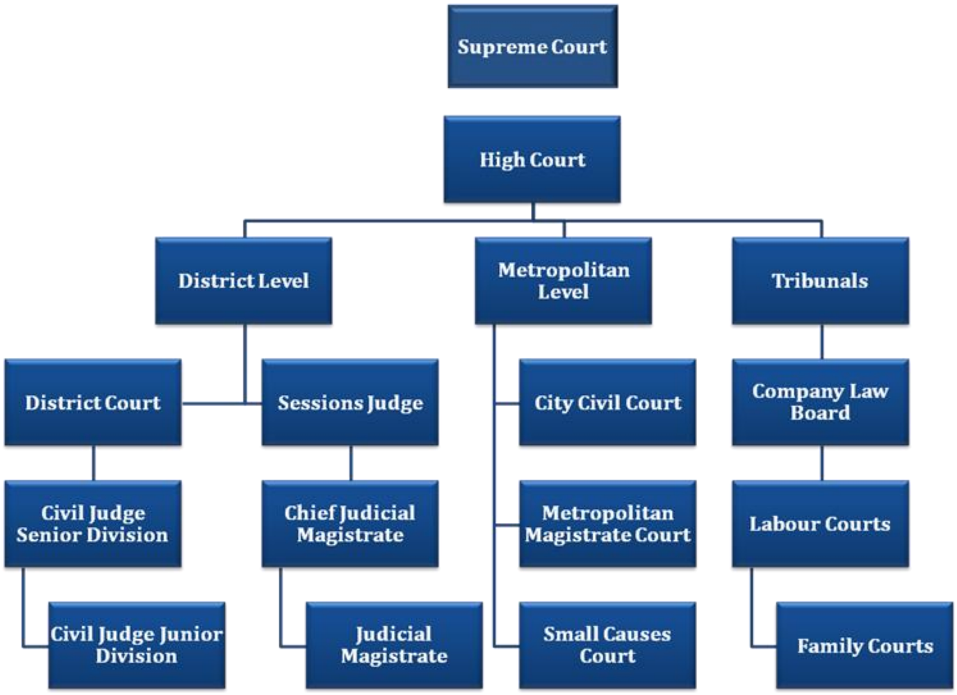
Stamp duty on share purchase agreements. Stamp duty may be payable on an agreement that records the purchase of shares/debentures of a company. This stamp duty is payable in addition to the stamp duty on the share transfer form.

10. DISPUTE RESOLUTION

COURTS AND TRIBUNALS

The Supreme Court of India is the apex judicial authority in India. The Supreme Court generally receives appeals from 21 High Courts that occupy the tier below it. Most States have a High Court which has jurisdiction in the state in which it is situated, with a few exceptions such as Bombay and Guwahati. Beneath the High Courts are the civil and criminal courts that are classified according to whether they are located in rural or urban areas and by the value of disputes such courts are qualified to adjudicate upon. The following diagram represents the structure of the courts in India:

HEIRARCHY OF INDIAN COURTS



Certain important areas of law have dedicated tribunals in order to facilitate the speedy dissemination of justice by individuals qualified in the specific fields. These include the Company Law Board, the Income Tax Appellate Tribunal, the Labour Appellate Tribunal, the Copyright Board and others.

Certain disputes may be referred to in-house dispute redressal systems within certain government bodies and government companies.

JURISDICTION

Jurisdiction may be defined as the power or authority of a court to hear and determine a cause, to adjudicate and exercise any judicial power in relation to it. The jurisdiction of a court, tribunal or authority may depend upon fulfillment of certain conditions or upon the existence of a particular fact. If such a condition is satisfied, only then does the authority or Court, as the case may be, have the jurisdiction to entertain and try the matter. Jurisdiction of the courts may be classified under the following categories:

1. **Territorial or Local Jurisdiction**: Every court has its own local or territorial limits beyond which it cannot exercise its jurisdiction. The Government fixes these limits.

2. **Pecuniary Jurisdiction**: The Code of Civil Procedure provides that a court will have jurisdiction only over those suits the amount or value of the subject matter of which does not exceed the pecuniary limits of its jurisdiction. Some courts have unlimited pecuniary jurisdiction i.e. High Courts and District Courts in certain states have no pecuniary limitations; however, there are other courts that have jurisdiction to try suits up to

a particular amount.

3. **Jurisdiction as to Subject Matter**: Different courts have been empowered to decide different types of suits. Certain courts are precluded from entertaining certain suits. For example, the Presidency Small Causes Courts has no jurisdiction to try suits for specific performance of contract, partition of immovable property etc. Similarly, matters pertaining to the laws relating to tenancy are assigned to the Presidency Small Causes Court and therefore, no other Court would have jurisdiction to entertain and try such matters.

4. **Original and Appellate Jurisdiction**: The jurisdiction of a court may be classified as original and appellate. In the exercise of original jurisdiction, a court entertains and decides suits and in exercise of its appellate jurisdiction, it entertains and decides appeals from lower courts. Munsiff's Courts, Courts of Civil Judge and Small Cause Courts possess original jurisdiction only, while District Courts and High Courts have original as well as appellate jurisdictions, subject to certain exceptions.

Indian courts generally have jurisdiction over a specific suit in the following circumstances:

- Where the cause of action (the act or omission that triggered the dispute) arose in the territorial jurisdiction of the court.
- Where the defendant resides within the territorial jurisdiction of the court.
- Where the subject of the suit is immovable property (real property and items permanently affixed thereto), where such immovable property is situated within the jurisdiction of the Court.

INTERIM RELIEF

As suits filed in Indian courts can often take inordinate amounts of time, the plaintiff may apply for urgent relief to seek an injunction restraining the opposite party from disturbing the status quo. Interim orders are those orders passed by the court during the pendency of a suit or proceeding which do not determine finally the substantive rights and liabilities of the parties in respect of the subject matter of the suit or proceeding. Interim orders are necessary to deal with and protect rights of the parties in the interval between the commencement of the proceedings and final adjudication. They enable the court to grant such relief or pass such order as may be necessary, just or equitable. Hence, interim proceedings play a crucial role in the conduct of litigation between the parties. Interim reliefs or injunctions are issued during the pendency of the proceedings. Injunctions are a popular form of interim relief.

Injunctions may be temporary (granted for any time period up to the conclusion of the suit) or permanent. The grant of injunction is a discretionary remedy and in the exercise of judicial discretion in granting or refusing to grant, the court will take into consideration the following guidelines:

1. **Prima Facie Case**: The applicant must make out a prima facie case in support of the right claimed by him and should be able to convince the court that there is a bonafide dispute raised by the applicant - that there is a strong case for trial which needs investigation and a decision on merits and on the facts before the court there is a probability of the applicant being entitled to the relief claimed by him.

2. **Irreparable Injury**: The applicant must further satisfy the court that he will suffer irreparable injury if the injunction as prayed is not granted, and that there is no other remedy open to him by which he can be protected from the consequences of apprehended injury.

3. **Balance of Convenience**: In addition to the above two conditions, the court must also be satisfied that the balance of convenience must be in favor of the applicant. In order to determine the same the court needs to look into the factors such as

    - whether it could cause greater inconvenience to the plaintiff if the injunction was not granted.
    - whether the party seeking injunction could be adequately compensated by awarding damages and the defendant would be in a financial position to pay them.

SPECIFIC RELIEF

The Specific Relief Act, 1963 provides for specific relief for the purpose of enforcing individual civil rights and not for the mere purpose of enforcing civil law and includes all the cases where the Court can order specific performance of an enforceable contract.

Specific performance is an order of the court which requires a party to perform a specific act, usually what is stated in a contract. While specific performance can be in the form of any type of forced action, it is usually used to complete a previously established transaction, thus being the most effective remedy in protecting the expectation interest of the innocent party to a contract. The aggrieved party may approach a Court for specific performance of a contract. The Court will direct the offender party to fulfill his part of obligations as per the enforceable contract.

DAMAGES

Under the common law, the primary remedy upon breach of contract is that of damages. The goal of damages in tort actions is to make the injured party whole through the remedy of money to compensate for tangible and intangible losses caused by the tort.

In general, a tort consists of some act done by a person who causes injury to another, for which damages are claimed by the latter against the former. The word damage is used in the ordinary sense of injury or loss or deprivation of some kind, whereas damages mean the compensation claimed by the injured party and awarded by the court. Damages are claimed and awarded by the court to the parties. The word injury is strictly limited to an actionable wrong, while damage means loss or harm occurring in fact, whether actionable as an injury or not.

Under the Indian Contract Act 1872, the remedy of damages is laid down in Section 73 and 74. Section 73 states that where a contract is broken, the party suffering from the breach of contract is entitled to receive compensation from the party who has broken the contract. However, no compensation is payable for any remote or indirect loss or damage.

Section 74 deals with liquidated damages and provides for the measure of damages in two classes: (i) where the contract names a sum to be paid in case of breach; and (ii) where the contract contains any other stipulation by way of penalty. In both classes, the measure of damages is as per Section 74, reasonable compensation not exceeding the amount or penalty stipulated for.

ARBITRATION

Due to the huge pendency of cases in courts in India, there was a dire need for effective means of alternative dispute resolution. India's first arbitration enactment was The Arbitration Act, 1940. Other complementary legislations were formed in the Arbitration (Protocol and Convention) Act of 1937 and the Foreign Awards Act of 1961. Arbitration under these laws was never effective and led to further litigation as a result of the rampant challenge of awards. The legislature enacted the current Arbitration & Conciliation Act, 1996 (the "**A&C Act**") to make arbitration, domestic and international, more effective in India. The A&C Act is based on the UNCITRAL Model Law (as recommended by the U.N. General Assembly) and facilitates International Commercial Arbitration as well as domestic arbitration and conciliation. Under the A&C Act, an arbitral award can be challenged only on limited grounds and in the manner prescribed. India is party to the New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards. As the name of the A&C Act suggests, it also covers conciliation, which is a form of mediation.

The A&C Act covers the following recognized forms of arbitration:

1. **Ad-hoc Arbitration:** Ad-hoc arbitration is where no institution administers the arbitration. The parties agree to appoint the arbitrators and either set out the rules which will govern the arbitration or leave it to the arbitrators to frame the rules. Ad-hoc arbitration is quite common in domestic arbitration in India. The absence of any reputed arbitral institution in India has allowed ad-hoc arbitration to continue to be popular. In cross border transactions it is quite common for parties to spend time negotiating the arbitration clause, since the Indian party would be more comfortable with ad-hoc arbitration whereas foreign parties tend to be more comfortable with institutional arbitration.

2. **Institutional Arbitration**: As stated above, institutional arbitration refers to arbitrations administered by an arbitral institution. Institutions such as the International Court of Arbitration attached to the International Chamber of

Commerce in Paris (ICC), the London Court of International Arbitration (LCIA) and the American Arbitration Association (AAA) are well known world over and often selected as institutions by parties from various countries. Within Asia, greater impetus has been taken by institutions such as the Singapore International Arbitration Centre (SIAC), the Hong Kong International Arbitration Centre (HKIAC) and China International Economic and Trade Arbitration Commission (CIETAC). The Dubai International Arbitration Centre is also evolving into a good center for arbitration. While Indian institutions such as the Indian Council of Arbitration attached to the Federation of Indian Chambers of Commerce and Industry (FICCI), the International Centre for Alternative Dispute Resolution under the Ministry of Law & Justice (ICADR), and the Court of Arbitration attached to the Indian Merchants' Chamber (IMC) are in the process of spreading awareness and encouraging institutional arbitration, it would still take time for them to achieve the popularity enjoyed by international institutions.

3. **Statutory Arbitration**: Statutory arbitration refers to scenarios where the law mandates arbitration. In such cases the parties have no option but to abide by the law of land. It is apparent that statutory arbitration differs from the above types of arbitration because (i) the consent of parties is unnecessary; (ii) it is compulsory Arbitration; and (iii) it is binding on the Parties as the law of land. Sections 24, 31 and 32 of the Defence of India Act, 1971, Section 43(c) of The Indian Trusts Act, 1882 and Section 7A of the Indian Telegraph Act, 1885 are the statutory provisions which deal with statutory arbitration.

4. **Foreign Arbitration**: When arbitration proceedings are conducted in a place outside India and the Award is required to be enforced *in* India, such a proceeding is termed as a Foreign Arbitration. The Foreign award can be enforced either by the Geneva Convention or the New York Convention and is made in one of such territories where reciprocal provisions provide for the enforcement of awards. Reciprocity is only in relation to the place where the award is made and does not bear any real relation to the nationality of the parties or whether the nations to which each of the parties belong have signed or ratified the Conventions. As long as the award is made in a territory where reciprocal provisions exists (as in India) the award is automatically enforceable.

ENFORCEMENT OF ARBITRAL AWARDS

A Foreign Award is defined in Section 44 and Section 53 of the A&C Act, 1996. India is a signatory to the New York Convention on The Recognition and Enforcement of Foreign Arbitral Awards, 1958 ("**NYC**") as well as the Convention on the Execution of Foreign Awards, 1923 ("**Geneva Convention**"). Thus, if a party receives a binding award from another country which is a signatory to the NYC or the Geneva Convention and is notified as a reciprocating country by India, the award would be automatically enforceable in India. The condition of reciprocity applies only to the country where the award is made. Certain important jurisdictions including Australia, China, Brazil and South Africa are not reciprocating territories. This condition is only applicable for enforcement in India and a US Court may still enforce an award rendered in India although India would have not extended it the same privilege. Section 48 of the A&C Act deals with the conditions to be met for the enforcement of foreign awards made in countries party to the New York Convention. It stipulates that the only cases where enforcement can be refused are when one party is able to show that:

- the parties were under some incapacity as per the applicable law or that the agreement was not valid under the law of the country where the award was made or the law which the parties have elected;
- that the party against whom the award has been made was not given adequate notice of appointment of arbitrators, arbitration proceedings or was otherwise unable to present his case;
- the award addresses issues outside the scope of the arbitration agreement, and if separable, any issue which is within the ambit of the agreement would remain to be enforceable;
- the composition of the tribunal or the procedure were not in accordance with the

agreement of the parties or if there was no such agreement with the law of the country where the arbitration took place; and

- lastly, the award has been set aside or suspended by a competent authority in the country in which it was made or has otherwise not yet become binding on the parties.

Additionally, enforcement may also be refused if the subject matter of the award is not capable of settlement by arbitration under the laws of India or if the enforcement of the award would be contrary to the public policy of India. Most of the protections afforded to awards which are made in countries that are party to the NYC are also applicable to those made in countries party to the Geneva Convention. The A&C Act also provides one appeal from any decision where a court has refused to enforce an award, and while no provision for second appeal has been provided, a party retains the right to approach the Supreme Court.

ENFORCEMENT OF FOREIGN JUDGMENTS

The definition of judgment as given in Section 2(9) of the Code of Civil Procedure, 1908 ("**CPC**") is inapplicable to foreign judgments'. A foreign judgment must be understood to mean "an adjudication by a foreign court upon a matter before it" and not the reasons for the order made by it. The foreign Court must be competent to try the suit, not only with respect to pecuniary limits of its jurisdiction and the subject matter of the suit, but also with reference to its territorial jurisdiction. In addition, the competency of the jurisdiction of the foreign court is not be judged by the territorial law of the foreign state, but rater, by the rule of Private International Law.

A foreign judgment may be enforced by filing a suit upon judgment under Section 13 of CPC or if the judgment is rendered by a court in a "reciprocating territory", by proceedings in execution under Section 44A of the CPC. A "reciprocating territory" is one, which is notified by the Government of India as a "reciprocating territory" under Section 44A of the CPC. For instance, U.K. has been notified by the Government of India as a "reciprocating territory" but the U.S. has not. The judgment of a foreign court is enforced on the principal that where a court of competent jurisdiction has adjudicated upon a claim, a legal obligation arises to satisfy the claim. Judgments of specified courts in reciprocating countries can be enforced directly by execution proceedings as if these foreign judgments are decrees of the Indian courts. Foreign judgments of non-reciprocating countries can be enforced in India only by filing a suit based on the judgment. A foreign judgment is usually recognized by Indian courts unless it is proved that:

- it was pronounced by a court which did not have jurisdiction over the matter;
- it was not given on the merits of the case;
- it appeared on the face of the proceeding to be founded on an incorrect view of international law or a refusal to recognize Indian law (where applicable);
- principles of natural justice were ignored by the foreign court;
- the judgment was obtained by fraud; or
- the judgment sustained a claim founded on a breach of Indian law.

The jurisdiction of foreign courts is decided by applying rules of conflict of laws. Even if the court did not have jurisdiction over the defendant, its judgment can be enforced if the defendant has appeared before the foreign court and not disputed its jurisdiction. While a decision of a foreign court must be based on the merits of a case, the mere fact that it was *ex-parte* (in the absence of a party) does not preclude enforcement. The test is whether it was passed as a mere formality or penalty or whether it was based on a consideration of the truth and of the parties' claim and defense. For applying the third exception, the mistake or incorrectness must be apparent on the face of the proceedings. Merely because a particular judgment does not conform to Indian law when it is under no obligation to take cognizance of the same does not preclude enforcement. The term 'natural justice' in the fourth exception to enforcement refers to the procedure rather than to the merits of the case. There must be something which is repugnant to natural justice in the procedure prior to the judgment. The fifth exception of a judgment being obtained by fraud applies as much to domestic judgments as to foreign judgments. The last exception for instance would ensure that a judgment regarding a gambling debt cannot be enforced in India.

Where any judgment from a 'reciprocating' territory is in question, a party may directly apply for execution under Section 44A. A judgment from a non-reciprocating country cannot be enforced under this section. A party approaching the Indian court must supply a certified copy of the decree together with a certificate from the foreign court stating the extent to which the decree has been satisfied or adjusted, this being treated as conclusive proof of the satisfaction or adjustment. Execution of the foreign judgment is then treated as if it was passed by a District Court in India. However, the parties may still challenge the enforcement under the provisions of Section 13 of the CPC.

The courts may refuse enforcement of a foreign award in India on the grounds mentioned above. Further the claims may be barred under the Limitation Act, 1963, if the suit is instituted after the expiry of the limitation period, which is, in general, a period of 3 years. The Limitation Act will be applicable if the suit is instituted in India on the contracts entered in a foreign country.

11. CONCLUSION

Historically, India has had a poor track record with its 'Hindu' rate of growth subsisting through much of the period from independence until 1991. For decades, India was a semi-socialist state. Various restrictions were placed on internal production under the 'permit-license-quota raj.' Many industrial sectors were put under unwieldy and unproductive public sector undertakings, which effectively had a monopoly over their respective sectors. Bureaucracy was rampant and the polity highly corrupt; even the private sector was largely subject to their whims and vagaries causing huge inefficiencies in business operations.

Furthermore, some aspects of the legal system in India are archaic. For example, Indian labour laws find their origin in the British laws of the early 20th century and have undergone only minor amendments since, even though the same laws in Britain have changed significantly. As a result, sectors such as manufacturing have been dogged by strikes and lock outs. Additionally, it is very difficult to terminate an employee in India due to extensive protections under various laws. These laws are unlikely to change soon as the country's political class still originates from labour and other unions. India's import policies, while relaxed a bit recently, continue to remain unfriendly with very high duties charged on many imported goods. India's tax and corporate laws are complex and outdated, though both are proposed to be amended in the near future with the new Companies Bill and Direct Taxes Code having been introduced in Parliament.

India liberalized its economy in 1991 with a sweep of reforms to the country's financial and trade policies. These changes have had a positive impact on the sizable Indian populace. India's middle class, its prime consumer market and responsible for over half the Indian economy's GDP in the form of private spending, has been estimated to have crossed 400 million in number, more than the population of the United States. Furthermore, India's population remains largely of working age and relatively young, unlike China, who's 'one-child' policy has resulted in a smaller working population supporting a growing mass of retirees.

The entrepreneurial spirit of India's people has found a new lease of life after years of being stifled. For instance, the IT/ITES field is one of few which finds a large number of friendly policies that have permitted the sector to grow by leaps and bounds in the last two decades and made India a global hub for both front and back-end operations in the sector.

While corruption still exists, the computerization of numerous public bodies has led to an increased level of efficiency and institutions such as the RBI and SEBI have become increasingly proactive and professional in dealing with foreign investment into India. Furthermore, some state governments have taken proactive steps at their level to improve efficiency in public offices such as the registrar of companies. While caution exercised by them may seem draconian; it has helped India tremendously in avoiding any major internal impact of the ongoing financial crisis. Despite the recessionary global economic state, India posted a growth rate of over 6 per cent in 2008-09 while most developed nations have faced negative or severely limited growth patterns.

To conclude, while it is apparent that India still needs to clean up its act, it is and will continue to be an attractive destination for investment and trade. Its expanding level of intellectual capital and large English-speaking population are likely to make it a global hub for services. And its significant internal market makes it an attractive destination for investments in services and manufacturing.

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