ACUITY LAW

Doing Business in India

2024

CONTENTS

BACKGROUND

In 2014, the Government of India launched 'Make in India', a campaign aimed at transforming India into a manufacturing hub and promoting innovation. In line with this objective, the Government has taken various measures to minimize bureaucratic hurdles to improve the ease of doing business in India. These measures have led to a significant improvement in India's rankings in the ease of doing business index published by the World Bank. In 2014, India was ranked at 143 among 193 countries. Currently, India ranks at the 63rd position in the index. Last year, the Union Budget 2023-24 highlighted that to simplify the legal and regulatory framework for businesses, more than 39,000 compliances have been reduced and more than 3,400 legal provisions have been decriminalized. This is supplemented by various initiatives such as the 'Start-up India' campaigns launched by the Government to promote entrepreneurship.

Given the efforts by the Indian Government to increase participation of global companies in India, it is relevant to understand the construct and framework of establishing a presence in India. In this note, we have provided an overview of the forms of business enterprises, funding routes, regulatory framework for doing business in India, foreign exchange laws and applicable tax regimes in India. You will appreciate that the structures / routes mentioned in the note are only illustrative to provide a high-level understanding of the regulatory regime in India.

CONDUCTING BUSINESS IN INDIA

Setting up presence in India

Operating as a Foreign company

- ***Liaison Office or Representative Office:*** A liaison office is a place of business which acts as a channel of communication between the head office of the foreign company and its Indian entities. Typically, a liaison office is set up to understand the business environment, promote awareness of the products of the parent entity and explore opportunities for business and investment.

  Key considerations: (i) Liaison office cannot undertake any commercial, trading, or industrial activity either directly or indirectly in India; (ii) it cannot earn any income in India; and (iii) the expenses of a liaison office are mandatorily required to be met out of inward remittance from the head office of the foreign company.

- ***Branch Office:*** Branch office is an extension of a foreign enterprise in India. The purpose of a branch office is to engage in the same activity as the parent company. A branch office may undertake the following permissible activities: (a) export / import of goods; (b) render professional or consultancy services; (c) carry out research work, in the areas in which the parent company is engaged; (d) promote technical and financial collaborations between the Indian companies and the parent or overseas group company; (e) represent the parent company in India and act as a buying / selling agent in India; and (f) render services.

- ***Project Office:*** Foreign enterprises that have secured a contract in India and are planning to execute specific projects through temporary sites/ offices are permitted to set up a project office. The validity period depends on the tenure of the project. A general permission is granted for setting up a project office subject to one of the following conditions: (a) project is funded directly by inward remittance from outside India; (b) project is funded by a bilateral or multilateral international financing agency; (c) the company or entity in India awarding the contract has been granted a term loan by a public financial institution or a bank in India for the project; or (d) project has been granted the necessary regulatory clearance.

Operating as an Indian company

- ***Subsidiary Company:*** Setting up a company in India (through incorporation or acquisition) is preferred for businesses having a long-term approach and for various legal, tax and regulatory reasons. Such companies (generally incorporated as a subsidiary of the overseas parent) are treated as 'person resident in India' for the purpose of Indian laws, despite being 100% foreign owned.
- ***Limited Liability Partnership (LLP)***: LLP is a body corporate, which is considered a separate legal entity, distinct from its partners. While an LLP provides benefits like that of a company, LLPs are comparatively easier to operate with fewer compliance requirements. In an LLP, liability of partners is restricted to their contribution to the LLP.

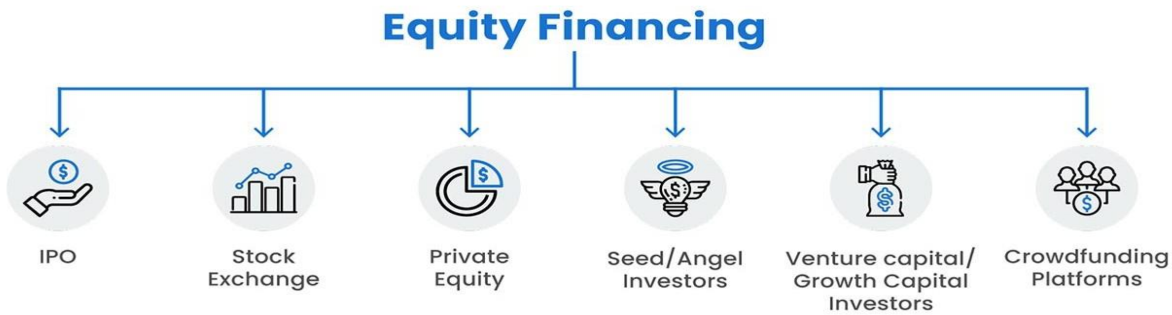
Key requirements under the Indian Companies Act, 2013 for incorporating a company are:

- Making an application for reservation of name
- Obtaining a Director Identification Number
- Filing an application for registration of the company
- Filing incorporation documents of the company such as articles of association and memorandum of association
- Filing of declarations for compliance with the requirements under Companies Act, 2013 Typically the time frame for incorporating a company in India is 8 to 12 weeks.

Types of Financing

Post identifying the manner of establishing a presence in India, the next step is to determine the manner in which the Indian entity will be initially funded for set-up/ business operations. Foreign investment in an Indian company is regulated by the Reserve Bank of India (RBI) under Foreign Exchange Management Act, 1999 ("FEMA") and related regulations. These regulations provide for pricing guidelines, modes of investment and remittance, and the manner of receipt of funds.

Equity financing



An Indian company can be financed by issuing any of the following financial instruments:

- **Equity Share Capital:** Equity shares have: (a) voting rights which are given to equity shareholders in proportion to their shareholding; and (b) pay-out via dividend, buyback, capital reduction, etc. Further, FEMA requires that the issue of equityshares by an Indian company to foreign investors must be subject to sectoral caps and pricing guidelines. Indian businesses raise equity share capital primarily through the following two modes: (i) *Rights issue*: Issue of shares to existing shareholders in proportion of their shareholding; and (ii) *Private placement of shares*: Issue of shares to an identified group of persons/ entities.

- **Preference Share Capital:** Preference shareholders are entitled to preferential rights over equity shareholders with respect to dividends and repayment of capital. Compulsorily convertible preference shares into equity (CCPS) are treated as equity under the Foreign Direct Investment Policy of India (FDI Policy) and non-convertible or optionally convertible preference shares in equity (NCPS / OCPS) are treated as external commercial borrowings.

Debt financing

- **External Commercial Borrowings (ECBs):** ECBs are debts raised by an Indian company from foreign investors by way of commercial loans such as bank loans, buyer's credit, supplier's credit, loans from a foreign shareholder, securitized instruments (such as floating rate notes and fixed rate bonds), Foreign Currency Convertible Bonds (FCCBs), Foreign Currency Exchangeable Bonds (FCEBs), INR denominated bonds or a financial lease from non-resident lenders in any freely convertible foreign currency or Indian Rupee. ECBs must conform to the parameters such as minimum maturity, permitted and non-permitted end-uses, maximum all-in-cost ceiling, etc.

- **The framework for raising loans through ECB comprises of the following two options:** (i) Foreign currency dominated ECBs in any freely convertible foreign exchange; and (ii) Indian rupee dominated ECBs. The minimum average maturity period for an ECB is 3 years except for certain specified categories (such as ECBs raised for working capital purpose or general corporate purpose, ECB raised by manufacturing companies etc.), where the average maturity period can range between 1 year to 10 years. ECBs can be availed under two routes, namely, automatic route and approval route. As per RBI guidelines, all ECBs can be raised under the automatic route if they conform to the parameters prescribed under the ECB framework. Under the approval route, the prospective borrowers are required to send their requests to the RBI.

- **Debentures and Borrowings:** Companies can also raise funds by issuing debentures, bonds and other debt securities or by accepting deposits from the public. Debentures can be redeemable, bearer or registered, and convertible or non-convertible. Compulsorily fully convertible debentures (CCDs) are treated as equity under the foreign exchange laws. RBI requires that the conversion formula/ price of CCD is required to be decided upfront at the time of issuance of these instruments. NCDs/ OCDs are construed as ECBs and should conform to the ECB guidelines.

Repatriation of funds

Foreign capital invested in India is generally allowed to be repatriated along with capital appreciation, if any, after payment of the tax dues. Repatriation is allowed, provided the investment was made on a repatriation basis in terms of FEMA regulations, subject to any lock-in conditions that may be applicable under FEMA.

Modes of repatriation in an Indian company

Typically, capital is repatriated either through secondary sale or share buyback.

- **Secondary sale:** Sale or transfer of shares of an Indian company is governed by the Companies Act, 2013. Foreign shareholders of an Indian company are permitted to sell their shares by way of transfer to Indian residents and/ or non- residents. A person resident outside India can transfer, by way of sale (or gift), the shares or convertible debentures of an Indian company to any person resident outside India. However, transfer of shares between non-residents and Indian residents must comply with the pricing guidelines under FEMA.

- **Buy back:** Buy back of shares by an Indian company is governed by the Companies Act, 2013 which allows buy-back of up to 25% of the aggregate of paid-up capital and free reserves of the company, subject to additional compliance requirements. Companies who are buying back shares are liable to pay applicable tax on the consideration paid by the company on buyback, as reduced by the amount received by the company on the issue of such shares. Buy back of shares is also subject to pricing guidelines prescribed under the FEMA regulations in case of buyback from non-resident shareholders.

Some of the other modes of repatriation are:

- **Dividend**: Profits earned by an Indian company can be repatriated as dividend, subject to availability of sufficient free reserves without the RBI's permission. This mode of repatriation is also subject to compliance with other specified conditions.

- **Royalties and fee for technical services**: Indian companies are permitted to make payments to foreign entities under foreign collaboration agreements for (a) royalties and technical know-how; and (b) fees for technical services. Some of the key conditions required for collaboration agreements are: (i) companies need to substantiate the genuineness of such payments; (ii) payments made under collaboration agreements are subject to arm's length test in case the transaction is between associated enterprises; (iii) remittances to foreign companies in the nature of royalties and fees for technical services are subject to tax withholding, read with the beneficial tax rates prevailing in the applicable double taxation avoidance agreement (DTAA).

LEGAL AND REGULATORY FRAMEWORK

a. Foreign Exchange Laws

In India, RBI has issued guidelines relating to various aspects of foreign exchange management, through circulars, notifications and master directions under FEMA. Foreign exchange transactions can be categorized into the following types:

- **Capital account transactions**: Transactions that alter assets or liabilities outside India, of a person resident in India or those in India of a person resident outside India. Generally, capital account transactions are prohibited unless specifically permitted.

- **Current account transactions**: Transactions other than capital account transactions are current account transactions. Current account transactions generally do not require prior approval of the RBI, except in the following cases: (a) consultancy services procured from outside India of over USD 1 mn per project; and (b) reimbursement of pre-incorporation expenses subject to the higher of USD 0.1 mn and 5% investment brought into India.

Foreign Direct Investment

Foreign investors who wish to set up their operations in India are required to comply with the foreign exchange control laws of India. A consolidated FDI Policy has been issued by the Government of India, which undergoes amendment from time to time. FDI is allowed in most sectors through the 'automatic route' without requiring any prior government approval. On the other hand, in a few sectors, the existing and notified sectoral limits do not permit FDI beyond a specified ceiling or it is subject to prior Government approval.

Pricing guidelines

Subject to certain exceptions, guidelines with respect to the pricing of shares are as follows:

- **Fresh issue of shares**: In case of a listed Indian company, the price is worked out in accordance with the guidelines issued by the Indian securities market regulator, Securities and Exchange Board of India (SEBI). Whereas, in case of an unlisted Indian company, it should not be less than the fair value of shares determined by a SEBI registered merchant banker / chartered accountant / practicing cost accountant, as per internationally accepted pricing methodology on an arm's length basis.

- **Transfer of shares from resident to non-resident**: In case of a listed Indian company, the price should not be less than the price arrived at as per preferential allotment guidelines prescribed by SEBI, while in case of an unlisted Indian company, the price would be the same as the price applicable in case of fresh issue of shares.

- **Transfer of shares from non-resident to resident**: In case of listed Indian company, the price should not exceed the price worked out in accordance with SEBI guidelines or price as per preferential allotment guidelines prescribed by SEBI, while in case of an unlisted company, the price should not exceed the fair value of shares determined by a SEBI registered merchant banker / chartered accountant / practicing cost account, as per internationally accepted pricing methodology on an arm's length basis.

- **Deferred consideration**: In case of a transfer between a resident buyer and a non-resident seller, deferred consideration is permitted. The buyer can pay no more than 25% of the consideration on a deferred basis. Deferred payments need to be made within 18 months of the date of transfer. Further, it is permitted that deferred consideration is settled through an escrow arrangement or in the form of indemnity.

b. Taxation

Direct Tax

Tax laws in India are legislated by the Indian Parliament and administered by the Department of Revenue in the Ministry of Finance. In India, two forms of taxations are levied: (a) income tax or direct tax; and (b) indirect tax.

The law governing levy and collection of income tax in India is the Income Tax Act, 1961 (**Income Tax Act**). In India, the taxable period (fiscal year) is 01 April to 31 March, which is followed for all reporting purposes including accounting and book-keeping. Further, taxation in India is primarily based on the residential status of the person (which includes individuals and non-individual forms of entities) which is determined in the following manner:

- An Indian company is always considered a resident in India.

- A company other than an Indian company is said to be a resident of India for a particular fiscal year if its PoEM (Place of Effective Management) in that year is in India. The PoEM means a place where key management and commercial decisions that are necessary for the conduct of business are, in substance, made. Detailed guidelines have been prescribed to ascertain the PoEM of a company.

- For individuals, an individual is treated as a resident in India if:

  - the individual is physically present in India for a period of 182 days or more in the tax year (182-

day rule), or

- the individual is physically present in India for a period of 60 days or more during the relevant tax year and 365 days ormore in aggregate in four preceding tax years (60-day rule).

- Exceptions have been provided to the above rule, which needs to be analyzed for each specific fact pattern.

- **Corporate *tax structure***: The present corporate tax rate structure in India is explained below:

  - Corporate Tax – Domestic Company:

    Concessional tax regime (introduced in 2019) reduced the tax rates to 22% generally (subject to conditions) and further to 15% for new manufacturing companies. A new manufacturing company is a company set up and registered on or after 1 October 2019, and having commenced manufacturing on or before 31 March 2024 with the use of new plant and machinery. While taxpayers have the option to opt between the new or the old tax regime, the data presented in the Union Budget revealed that every two out of five domestic manufacturing companies incorporated in FY 2019-20 opted for concessional tax regime. For domestic Indian companies, the tax rates are:

Particulars	**Resident company opting for concessional tax regime**		**Resident Company not opting for concessional tax regime**					
Category / income threshold (INR mn)	Any company	New company	Company with turnover up to 4,000 mn			**Other Companies**		
			Up to 10 mn	Above 10 mn up to 100 mn	Above 100 mn	Up to 10 mn	Above 10 mn up to 100 mn	Above 100 mn
Basic tax Rate	22	15	25	25	25	30	30	30
Surcharge	10	10	-	7	12	-	7	12
Cess	4	4	4	4	4	4	4	4
Effective Tax Rate	25.17	17.16	26	27.82	29.12	31.20	33.20	34.94

  - Corporate Tax – Foreign Company

(a) *Doing business in India*

Whilst doing business in India, a foreign enterprise should not only be cognizant of the regulatory regime, but it should also be aware of the attended tax consequences that may arise in India. Amongst many tax issues, one of the significant concerns arises when earning 'business income' through operations in India i.e., tax consequences arising on account of having a taxable presence in India. As a principle of international taxation, a foreign enterprise which earns business income, shall be taxable in another country i.e., India on account of such business income only if it has a permanent establishment (PE) in India. Only those profits, which can be attributable to a PE, are taxable in India. A PE may arise on account of various reasons such as having a place of business in India, presence of employees in India, an agent in India acting on behalf of the foreign enterprise, on account of a construction or assembly project in India, on account of having an office in India such as a branch office or a project office. A foreign company should accordingly evaluate the applicable tax implications which may arise on account of it doing business in India and the attached compliances which needs to be undertaken in India.

Tax rates which are applicable on account of having a PE in India are as follows:

Particulars	Income up to 10 mn	Income between 10 mn and 100 mn	Income above 100 mn
Basic tax rate	40%	40%	40%
Surcharge	-	2%	5%
Cess	4%	4%	4%
Effective tax rate	41.60%	42.43%	43.68%

(b) *Withholding tax*

Any payments made to a foreign company against purchase of goods or receipt of services, shall be subject to withholding tax at the applicable rate by the payer, provided the amount payable is chargeable to tax in India.

(c) *Investment in India*

A foreign company investing in India is required to be cognizant of the attendant income-tax issues which may arise at the time of exit as well as on receipt of payments while holding the investment.

(1) Capital gains

Depending upon the duration of the holding, taxation will arise on the gains earned on alienation of shares and securities at the applicable rates (10%/ 15%/ 40%). Such taxation is subject to any benefit which is available under the relevant DTAA. Payments made to a non-resident shall be subject to withholding tax in India.

(2) Dividends

Dividends paid to a non-resident shareholder by Indian companies is taxable in India at the applicable rates (20%). Such non-resident shareholders may claim the benefit of the reduced rate of tax under the relevant DTAA, if any. Payment of dividends made to a non-resident shall be subject to withholding tax in India.

(3) Interest

If the investment is in the nature of debt, any interest payable is taxable in India at the applicable rates (generally 20%). Taxation will again be subject to any benefit, if any, which is available under the DTAA. Payment of interest made to a non-resident shall be subject to withholding tax in India.

Indirect tax

In India, indirect taxes broadly comprise of (a) customs duty; and (b) goods and services tax (**GST**).

- **Customs Duty**

  Levy of customs duty is governed by the Customs Act, 1962 whereby the import of goods into India and export of specified goods from India attract customs duty. The rate of duty depends on its classification in the customs tariff, which is broadly aligned with the international Harmonized System of Nomenclature. The general rate of customs duty on imports is in the range of 0% to 28% of the transaction value. However, in certain specified cases, a higher rate of up to 200% has also been prescribed for the import of certain goods, depending upon the nature of the goods. Customs duty mostly is computed on an ad-valorem basis i.e. based on the value of goods. Specific rules have been prescribed to determine the appropriate value of goods, especially in related party transactions.

  As part of the 'Ease of Doing Business' initiative, the Indian customs authorities have implemented a 'Single Window' clearance facility. This permits importers and exporters to file documents (electronically) on a common portal and avoid approaching participating regulatory agencies to obtain no-objection certificates/ licenses. The key participating regulatoryagencies involved in the customs clearance process are Food Safety (FSSAI), Drug Controller, Plant Quarantine, Animal Quarantine, Textile Committee, etc.

  India is also a signatory to Trade Agreements with various countries such as Japan, Thailand, Malaysia, Australia, South Korea, Sri Lanka, etc. Such trade agreements are in the nature of (i) Free Trade agreements; (ii) Preferential Trade Agreements; (iii) Comprehensive Economic Cooperation Agreements; and (iv) Comprehensive Economic Partnership Agreements. These Trade Agreements allow faster and smoother cross-border movement of goods at a concessional duty and with minimal intervention.

- **GST**

  GST is a destination based, consumption tax levied on the supply of goods and/ or services. GST was introduced on 01 July 2017 and the erstwhile laws i.e., Service Tax, Valued Added Tax, Excise Duty and several other indirect tax laws were subsumed. Currently, alcohol for human consumption, petroleum products (viz. petroleum crude, motor spirit (petrol), high speed diesel, natural gas, aviation turbine fuel) and electricity are outside the purview of GST. GST is levied at each stage of the value chain i.e. manufacturing, distribution to final consumption. GST paid at one stage of the transaction (by the supplier) is available as credit (to the recipient) while computing GST liability in the subsequent stage. The overall GST outflow is reduced on account of such credit of input taxes made available at each state of the value chain.

  India adopted a dual GST model i.e., the taxation is administered by both the Central and State governments, and both the Central and State governments levy GST on a common tax base. On an intra-state transaction, GST levied by the Centre is called the Central GST (CGST) and that levied by the State is called the State GST (SGST). On an inter-state transaction, the GST levy is called the Integrated GST (IGST), to be administered by the Indian Government but shared with the States. Businesses are required to obtain separate GST registration in each Indian State or Union Territory where they have business operations and are liable to pay GST.

  The existing GST rate structure is: (i) 0% for essential goods and services; (ii) 0.25% to 3% for precious stones, gold etc.; (iii) 5% and 12% for common use goods and services; (iv) 18% as the standard rate; and (v) 28% for luxury and sin goods, plus a compensation cess up to 15%. The threshold limit to apply for GST registration is INR 2 mn for services and INR 4 mn for goods. GST liability is required to be discharged on a monthly basis and the filing of returns is either monthly or quarterly, depending on the status of the taxpayer.

Key Incentive Schemes for Tax

- **Tax benefits available for entities set up in International Financial Services Centre (IFSC) such as**:

  - Tax Holiday – 100% profit-linked deduction for 10 consecutive years, at the option of the taxpayer, out of 15 years commencing from the year in which the regulatory approval is received.

  - Lower base Minimum Alternate Tax rate of 9% (plus applicable surcharge and education cess) for units set up on or after 01 April 2016 and earning income in foreign currency.

  - No Securities Transaction Tax and Commodities Transaction Tax on transactions in securities/ commodities undertaken on the IFSC stock exchange.

  - Transactions in the following assets, entered on or after 01 April 2018, on a recognized stock exchange in the IFSC, by a non-resident would not be regarded as a transfer and hence not taxable, provided the consideration is paid or payable in foreign currency: (a) bond or specified GDRs; (b) rupee denominated bond of an Indian company; (c) derivatives; (d) securities notified by the Central Government that issued a notification dated 05 March 2020 to include – foreign currency dominated bonds, units of a mutual fund / AIFs / Business Trust and foreign currency denominated equity share of a company.

  - Income by way of interest payable to a non-resident by a company / unit located in IFSC in respect of monies borrowed on or after 01 September 2019 to be exempt from tax.

- **Production Linked Incentive Scheme**

  - Performance linked scheme granting incentives on incremental sales of products manufactured in India.

  - The scheme is currently extended to 14 key sectors such as pharmaceuticals, electronics, automobiles, telecom, textiles, renewable energy, steel, etc.

  - Incentives of up to 7% on incremental sales are available under the scheme, encouraging large-scale manufacturing.

- **Remission of Duties and Taxes on Exported Products Scheme**

  - The scheme is aimed at easing the process of exports for Indian products by granting rebates and refunds of duties paid by exporters in the manufacturing and distribution of such exported goods.

  - Under this scheme, a rebate/ refund is provided for any central, state and local duties or taxes embedded in the cost of exported goods, which have not been refunded previously through any existing mechanism.

- **Incentives for Special Economic Zones (SEZs) in India**
  - SEZs are specifically delineated duty-free enclaves deemed to be a foreign territory for the limited purpose of trade operations, duties/ tariffs.
  - With the SEZ scheme, the government aims to create hassle-free environment for exports, supported by an integrated simplified infrastructure and a package of incentives to attract foreign and domestic investment.
  - The quantum of deduction available to units setup in SEZ engaged in the manufacture or production / provision of services is:

    (a) 100% deduction in respect of export profits for first 5 years;
    (b) 50% deduction in respect of export profits for the next 5 years;
    (c) 50% of export profits, provided that the profits are transferred to SEZ reinvestment reserve account for the purpose of acquiring plant or machinery within 3 years.

- **100% Export-Oriented Units (100% EOU) Scheme**
  - 100% EOUs are extended a host of incentives and facilities, including duty-free imports of capital goods, raw material, and consumables as well as tax deductions against export income.
  - These units are permitted to be set up for a varied range of business activities including manufacture, services, software development, agriculture, aquaculture, animal husbandry, floriculture, horticulture and sericulture, without any restrictions of location.
  - Trading activities are not covered for the purpose of the benefits extended to these units.

- **Electronics Hardware Technology Park (EHTP) Scheme and Software Technology Parks of India (STP) Scheme**
  - These schemes offer a package of incentives and facilities like duty-free imports in line with the 100% EOU scheme, as well as deemed export benefits and tax holidays.
  - Export-oriented IT-enabled services like call center services, data processing, medical transcriptions etc. are also eligible to be registered under the STP scheme.

c. Employment law

Key labour laws applicable to employers and employees in India have been outlined below:

- **The Industrial Disputes Act, 1947**: It provides for the investigation and settlement of industrial disputes.
- **Trade Unions Act, 1962**: It provides for the registration of trade union of employers and workers and is administered by the state governments. It confers legal and corporate status on registered trade unions.
- **Payment of Bonus Act, 1965**: It provides for the payment of bonuses to persons employed in certain establishments based on profits or on production or productivity, as well as matters connected therewith.
- **The Payment of Gratuity Act, 1972**: It provides for the payment of gratuity to all employees earning wages to do any skilled, semi-skilled, unskilled, manual, supervisory, technical or clerical work, whether the terms of such employment are express or implied, and whether or not such employees

are employed in managerial or administrative capacity.

- **The Workmen's Compensation Act, 1923**: It provides for compensation to employees or his / her survivors in the event of industrial accidents or occupational diseases, resulting in disablement or death during the course of the person's employment.

- **Factories Act, 1948**: It is the principal act which governs the health, safety and welfare of factory workers.

- **Employees Provident Fund and Miscellaneous Provisions Act, 1952**: It seeks to ensure the financial security of employees in an establishment by providing a system of compulsory savings.

- **The Maternity Benefit Act, 1961**: It regulates the employment of women in certain establishments for prescribed periods before and after childbirth.

- **Employees State Insurance Act, 1948**: It provides for healthcare and cash benefits to employees in case of sickness,maternity or injury suffered during the employment, whether they are working in a factory, establishment or elsewhere, orthey are directly employed by the principal employee or through an intermediate agency, if the employment is incidental or inconnection with the factory or establishment.

SECTOR INFORMATION

A series of targeted government initiatives in specified sectors is giving impetus to strengthening India's position as a hub for setting up new businesses, especially in the manufacturing and pharmaceutical sectors. We have provided an overview of these sectors below.

a. Manufacturing

In India, the manufacturing sector remains a core focus, and is experiencing an influx of capital expenditures and an increase in mergers and acquisitions, resulting in a surge in manufacturing output and an increase in its contribution to exports. During FY23, manufacturing exports reached an all-time high of USD 447.46 billion, a 6.03% increase over the previous year's (FY22) record exports of USD 422 billion.

Manufacturing activities may be either self-manufacturing by the investee entity or contract manufacturing in India through a legally tenable contract, whether on principal to principal or principal to agent basis. Subject to the provisions of FDI Policy, foreign investment in 'manufacturing' sector is under automatic route. A manufacturer is permitted to sell its products manufactured in India through wholesale and/ or retail market, including through e-commerce, without government approval. Further, in the trading sector, 100% FDI under government approval route is allowed for retail trading, including through e-commerce, in respect of food products manufactured and/ or produced in India.

The Government has introduced multiple initiatives to further develop this sector. Some of the initiatives are listed below:

- Income tax rate for new co-operative societies engaged in manufacturing have been reduced from 22% to 15%. Launch of a 'National Single Window System' (NSWS) was announced in Union Budget 2020-21. NSWS provides ‘end to end' facilitation to investors in relation to pre-investment advisory, information related to banking system and approvals required for making investments in India. Post the launch of NSWS, the process of seeking various approvals and services by investors will be made easier.

- The Production Linked Incentive (PLI) initiative for Large Scale Electronics Manufacturing in India has been notified. Assembly, Testing, Marking, and Packaging (ATMP) facilities, as well as automotive, mobile phone manufacturing and specified electronic components, are targeted by the program. The PLI schemes are expected to significantly improve production, skills, employment, economic growth and exports over the next 5 years.

- The 'Make in India' initiative was launched by the Government of India on 25th September 2014 and is being implemented nationally to facilitate investment and foster innovation in infrastructure and manufacturing sector to make India a hub for manufacturing, design and innovation.

- The manufacturing sector benefits from a robust logistics network. In view of this, the Government launched a National Logistics Policy (NLP) on 17th September 2022. NLP primarily aims to reduce the cost involved in logistics by developing a logistics ecosystem in India comparable to advanced economies.

Building on the favorable approach by the Government, India has witnessed an increase in foreign investment in various manufacturing industries. For instance, there has been an FDI inflow of USD 33.77 billion in the automotive industry from April 2000 till September 2022 which is around 5.48% of the total FDI inflows in India during the same period. With an emphasis on developing industrial corridors and smart cities, the government intends to integrate, monitor, and create a conducive environment for industrial development, and promote innovative manufacturing practices. With respect to future trends in the industry, several mobile phone, luxury, and automobile manufacturers, among others, have established or are establishing manufacturing bases in the country.

b. Pharmaceuticals

India is one of the largest provider of generic medicines globally, occupying a 20% share in global supply by volume, with its pharmaceutical industry having a valuation of USD 50 billion currently. This sector also meets 50% of the global demand for vaccines. India ranks 3rd in the world for production of pharmaceuticals by volume and 14th by value thereby accounting for around 10% of world's production by volume and 1.5% by value.

- In pharmaceuticals sector, FDI is permitted up to 100% in greenfield projects and up to 74% in brownfield projects under automatic route, and beyond 74% in such projects that require government approval. Other conditions under brownfield investments include:

    - ‘Non-compete' clause would not be allowed in automatic or government approval route except in special circumstances with the approval of the Government.

    - The prospective investor and the investee are required to provide a certificate along with the application for foreign investment.

    - Government may incorporate appropriate conditions for FDI in brownfield cases, at the time of granting approval.

    - FDI in brownfield pharmaceuticals, under both automatic and government approval routes, is further subject to more compliance with certain conditions.

    - FDI up to 100%, under the automatic route is permitted for manufacturing of medical devices. The above-mentioned conditions will, therefore, not be applicable to greenfield as well as brownfield projects of this industry.

- The Government has also been taking various measures to bolster the pharma industry, as under:

    - PLI Scheme for Key Starting Materials (KSMs)/ Drug Intermediates (DIs) and Active

Pharmaceutical Ingredients (APIs).

- Assistance to existing pharma clusters and MSMEs through 'Strengthening of Pharmaceutical Industry' (SPI) program, with a total budget of USD 60.9 million.

- The Union Cabinet has also approved the National Medical Devices Policy, 2023, on 26 April 2023. It is anticipated that the National Medical Devices Policy will facilitate the orderly growth of the medical device sector to meet the public health objectives of access, affordability, quality, and innovation.

The Indian pharmaceuticals sector is also benefiting from investments from various countries. Japanese firms are especially encouraged to invest in the Indian pharmaceutical and medical device industries. The collaboration between Pharmaceutical Traders Association and the Japan Federation of Medical Devices Associations is an example of the same. With respect to future trends in the industry, in the next five years, India's expenditure on medicines is projected to increase by 9% to 12%, propelling it into the top 10 countries in terms of medicine expenditure. The pharmaceutical industry in India is expected to reach USD 65 billion by 2024 and to USD 130 billion by 2030.

c. Automobile

The Indian automobile sector holds significant importance, ranking as the world's 3rd largest market. It plays a crucial role, contributing 49% to India's manufacturing GDP and 7.1% to the overall GDP. Notably, India stands as one of the world's largest manufacturer of two-wheelers, producing over 21 million products annually. As of November 2023, passenger vehicle sales soared to 3 lakh vehicles marking a 3.7% growth compared to the same period in 2022. In the year 2022-2023, India witnessed a substantial boost in automobile exports, reaching a total of 47,61,487 units. The automotive sector's contribution to the national GDP has surged from 2.77% in 1992-1993 to 7.1% today. This thriving industry is a significant employer, supporting around 19 million individuals directly and indirectly.

FDI is actively encouraged in the automobile industry, acting as a catalyst for Indian economic growth. 100% FDI through the automatic route is allowed. For the fiscal years 2015-2023, the FDI equity inflow for the automobile sector amounted to USD 118 billion, constituting 5.41% of the total FDI inflow as of September 2023. To foster development, the government has implemented various initiatives:

- The automobile industries have been included within the Guidelines for Production Link Incentive Scheme for automobile industry. It offers incentives to companies engaged in manufacturing Advanced Automotive Technology (AAT) products.

- National Automotive Testing and R&D Infrastructure Project (NATRiP) seeks to boost India's standing in the global automotive sector by seamlessly connecting the country's automotive industry with the rest of the world. The plan involves creating state-of-the-art facilities for automotive testing, homologation, and R&D, including the upgrading of two existing facilities with the latest technology and equipment. The ultimate goal is to enhance India's core competencies in the international automotive landscape.

- The Faster Adoption & Manufacturing of Electric Vehicles (FAME) Scheme provides demand incentives to boost the production of hybrid and electric vehicles, covering two-wheelers, three-wheelers, four-wheelers, and buses. FAME Scheme was introduced under National Mission for Electric Mobility 2020, the aim of which is to achieve sale of 6-7 million hybrid and electric vehicles (EV) yearly from 2020 onwards.

- The Automotive Mission Plan 2016-26 aims to create a favorable environment for expansion and progress in electric and shared mobility.

- The government actively promotes electric and ethanol-based vehicles to reduce dependence on traditional fuel sources.

- Battery Swapping Policy promotes battery swapping which involves replacing a discharged battery with a charged one. This process saves time by charging the discharged batteries separately. The aim is to reduce inefficiencies in the EV sector caused by traditional "fixed" batteries.

Further, substantial growth in the EV market is anticipated, with a projected growth rate of 49% between 2022-2030, reaching USD 50 billion by 2030. The EV industry is expected to generate 5 million direct and indirect jobs by 2030. India is poised to become the largest EV market by 2030, presenting a substantial investment opportunity exceeding USD 200 billion over the next 8-10 years.

This is in line with the commitment taken by Indian government to ensure that 30% of new vehicle sales comprise of EVs. Overall, the Indian automobile sector is witnessing dynamic growth, driven by government initiatives and the increasing demand for electric vehicles, positioning the country as one of the giants in the global automotive landscape.

CONCLUSION

India offers significant potential for foreign companies looking to expand their business operations. However, it is important for businesses to navigate the legal, regulatory, and cultural landscape effectively. To successfully conduct business in India, foreign companies should carefully consider the available options for establishing their presence, such as liaison offices, branch offices, project offices or subsidiary companies. Each option has its own set of requirements and benefits. Understanding the financing options, including equity financing and debt financing is crucial for sustaining and growing business operations in India. Additionally, complying with exchange control and investment regulations, as well as adhering to FDI guidelines, is essential for compliance with the laws of India.

Businesses should also be aware of India's tax laws, employment laws, and intellectual property rights protection measures. Complying with these regulations will help ensure legal compliance and protect the interests of the business.

Overall, thorough research, seeking professional advice, and building strong relationships with local partners are key factors in successfully doing business in India. By carefully navigating the legal and regulatory framework, foreign companies can tap into India's vast market potential and contribute to the country's economic growth while achieving their own business objectives.

LEADERSHIP

SOUVIK GANGULY

MANAGING PARTNER & HEAD - CORPORATE PRACTICE

DENI SHAH

PARTNER- INDIRECT TAX & GLOBAL TRADE

VIDUSHI MAHESHWARI

PARTNER - DIRECT TAX

RENJITH NAIR

PARTNER - DISPUTES

For any queries, please feel free to contact us at al@acuitylaw.co.in

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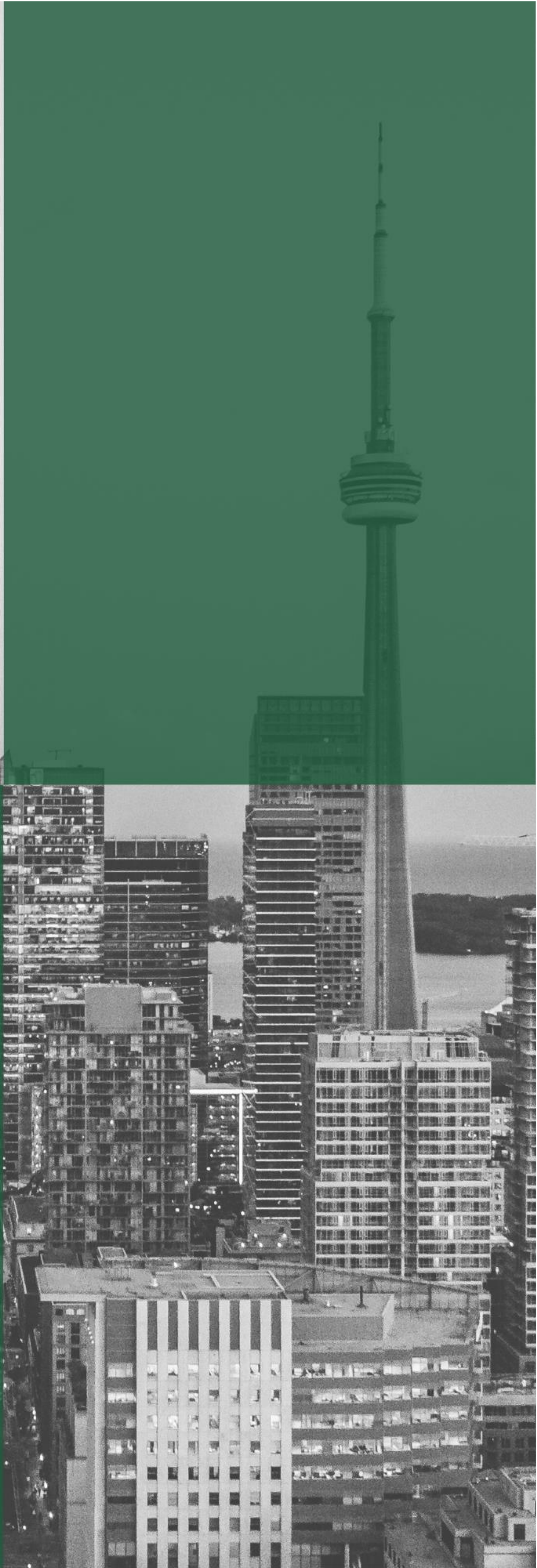

Contact Us

Website

www.acuitylaw.co.in

Email

al@acuitylaw.co.in

Address

Marathon Icon, Off Ganpatrao Kadam Marg Lower Parel, Mumbai, India