



Tuesday, October 2, 2012

2:30 PM - 4:00 PM

606 – Investing and Doing Business in India: What Are the Critical Challenges?

Sunny Handa

Partner

Blake, Cassels & Graydon LLP

Alison Lazerwitz

Executive Vice President, General Counsel

Daniel Swarovski Corporation AG

Anuj Prasad

Partner

Amarchand Mangaldas (Lex Mundi)

Michael Yap

Chief Legal Officer, International Investments

Prudential Insurance Company of America

Faculty Biographies

Sunny Handa

Sunny Handa is a partner and co-head of Blake, Cassels & Graydon's (Blakes) Information Technology Group (across all ten Blakes offices) and co-head of the firm's India practice Group. Mr. Handa deals with information technology, intellectual property, communications (telecommunications and broadcasting) and electronic commerce matters and a range of corporate/commercial matters relating to technology and communications businesses, as well as a substantial practice in mergers and acquisitions of technology companies.

Mr. Handa has been named consistently by various ranking agencies as one of Canada's leading computer and IT lawyers and as one of Canada's leading technology lawyers.

Mr. Handa is a professor of law (adj.) at McGill University, where he has been teaching since 1994-95. He currently teaches courses on communications law and complex legal transactions (i.e. advanced corporate law) and has taught information technology law, copyright and trade-mark theory, copyright and information technology law, and mergers and acquisitions law in the recent past. He has published widely in legal literature and has also authored and co-authored a number of recent books on information technology, communications law, copyright law and business. His writings have been quoted and cited with approval by courts across Canada including by the Supreme Court of Canada.

He speaks frequently at conferences nationally and internationally, is frequently quoted by the media on information technology, intellectual property and communications issues, and acts as an expert witness on technology matters.

Alison Lazerwitz

Alison Lazerwitz is currently the executive vice president and general counsel of Daniel Swarovski Corporation AG, the global leading producer of cut crystal, genuine gemstones and created stones. Swarovski's world headquarters are located in Mannedorf, Switzerland.

Ms. Lazerwitz has over twenty five years of experience in international legal matters, including the development of corporate business integrity/compliance initiatives as well as cross border acquisitions and contracts. Prior to moving to Zurich, she spent nine years in Paris working for Sodexo, an international leader in outsourced services. Ms. Lazewitz was first the chief legal officer for Sodexo and then the senior vice president for international development.

In addition to living in Europe, Ms. Lazerwitz has strong ties to the U.S. She attended the University of Virginia for both her undergraduate and legal training, and practiced law in Philadelphia for the law firm Duane Morris. She has also been the assistant general counsel for ARAMARK, based in Philadelphia and the general counsel for the Wood Company, based in Allentown, PA.

Anuj Prasad*Partner*

Amarchand Mangaldas (Lex Mundi)

Michael Yap






Michael Yap is the chief legal officer of Prudential's international investments business. He manages the legal support for Prudential's investment management operations in Asia, Latin America and Europe. This business offers investment products and services to retail and institutional clients and manages over \$180 billion in assets. Previously, he was a vice president and corporate counsel in Prudential's global real estate investment management business, Prudential real estate investors, one of the largest in the industry with assets in the Americas, the Middle East, Asia and Europe. He served as counsel to the unit's global offices, strategic joint ventures, new initiatives and securities trading team.

Before joining Prudential, Mr. Yap was counsel to Automatic Data Processing's international business, a unit that then generated annual revenue of nearly \$1 billion from multinational clients in the Americas, Asia and Europe.


Mr. Yap served on the board of the Asian American Bar Association of New York and has been honored as one of the National Asian Pacific American Bar Association's Best Under 40. He is also a former chair of the diversity council for Prudential's law, compliance and business ethics division, a council that designs and implements initiatives to promote diversity and inclusive business practices.

Mr. Yap graduated from the University of Chicago and Rutgers University School of Law in Newark and began his legal career as a corporate lawyer at Kramer Levin Naftalis & Frankel in New York City.


ACC ANNUAL MEETING 2012 ORLANDO
SEPT 30-OCT 3
WHERE BUSINESS COUNSEL CONNECT



#ACCAM12








AM.ACC.COM




ACC Conference 2 October 2012 Doing Deals in India

Presented By
Alison R Lazerwitz
Executive Vice President and General Counsel
Daniel Swarovski Corporation


ACC ANNUAL MEETING 2012 ORLANDO
SEPT 30-OCT 3
WHERE BUSINESS COUNSEL CONNECT



#ACCAM12



AM.ACC.COM



Introduction


- Background and Experience
 - Strategic acquisition of service company
 - Family owned business [Buyer and Seller]
 - Financial investment [pre IPO]

ACC ANNUAL MEETING 2012 ORLANDO
SEPT. 30-OCT. 3
WHERE BUSINESS COUNSEL CONNECT

#ACCAM12 AM.ACC.COM

What to Delight In

- Cultural pride and richness
- Importance of relationships and connections
- Reliance on local partners: accountants, law firms, bankers, tax advisors
- Time expands to stretch the boundaries of patience

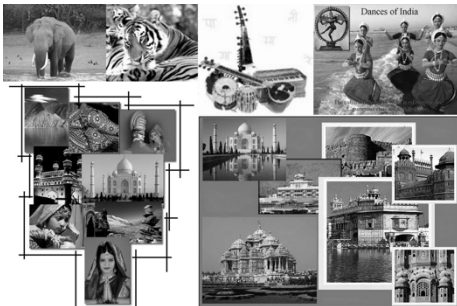


ACC ANNUAL MEETING 2012 ORLANDO
SEPT. 30-OCT. 3
WHERE BUSINESS COUNSEL CONNECT

#ACCAM12 AM.ACC.COM

The pervasiveness of the culture

- All acquisitions are first and foremost a question of cultural fit
- Misunderstanding or underestimating the differences in language, customs can be costly




ACC ANNUAL MEETING 2012 ORLANDO
SEPT. 30-OCT. 3
WHERE BUSINESS COUNSEL CONNECT

AM.ACC.COM

Local knowledge

- How things work can be more important to a successful deal than the finished product
- Process and procedure are often subordinated to who you know




ACC ANNUAL MEETING 2012 ORLANDO
SEPT. 30-OCT. 3
WHERE BUSINESS COUNSEL CONNECT

AM.ACC.COM

Reliance on local expertise

- Based on the importance of relationships on the ground, picking the right partners is KEY
- Inter-relationships of the various outside experts, finance, tax, legal are critical

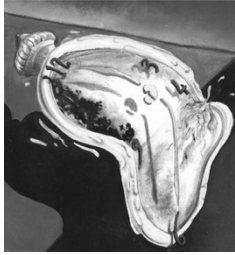



ACC ANNUAL MEETING 2012 ORLANDO
SEPT 30-OCT 3
WHERE BUSINESS COUNSEL CONNECT

#ACCAM12 AM.ACC.COM

Time

- There is a NY minute and a Mumbai minute: they are not the same
- A sense of urgency can be helpful and also counter productive



ACC ANNUAL MEETING 2012 ORLANDO
SEPT 30-OCT 3
WHERE BUSINESS COUNSEL CONNECT

#ACCAM12 AM.ACC.COM

What to Avoid


- Ignoring the local calendar
- Taking YES for an answer
- Minimizing the importance of local process and bureaucracy
- Thinking that tax is an afterthought and can be brought in after the deal is organized

ACC ANNUAL MEETING 2012 ORLANDO
SEPT 30-OCT 3
WHERE BUSINESS COUNSEL CONNECT

#ACCAM12 AM.ACC.COM

There is a holiday every week

- Revisiting the issue of time, recognizing local customs and work habits is essential to planning
- The entire idea of planning is a cultural shift



The image shows a calendar for the year 2012 with a central illustration of a swan on a lake. The calendar lists various Indian holidays for each month, such as Makar Sankranti, Pongal, Makar Visranti, and others.

ACC ANNUAL MEETING 2012 ORLANDO
SEPT 30-OCT 3
WHERE BUSINESS COUNSEL CONNECT

#ACCAM12 AM.ACC.COM

Taking YES as an answer

- There is a problem with understanding maybe, and yes of course, when the meaning is no
- How to clarify the terms of a deal without insulting your business partner is an art form


yes
= "no" or "maybe" or "yes"!

ACC ANNUAL MEETING 2012 ORLANDO
SEPT 30-OCT 3
WHERE BUSINESS COUNSEL CONNECT

AM.ACC.COM #ACCAM12

Local Process and Bureaucracy

- This is not a stereotype, this is how business is done
- When looking at closing a deal, the closing memo takes second place to lunch times and how long it takes to open a bank account




ACC ANNUAL MEETING 2012 ORLANDO
SEPT 30-OCT 3
WHERE BUSINESS COUNSEL CONNECT

AM.ACC.COM #ACCAM12

Tax planning

- The Kama Sutra of all Indian deals
- The start, the middle and the end
- The Vodafone example




ACC ANNUAL MEETING
2012 ORLANDO
SEPT 30-OCT 3
WHERE BUSINESS COUNSEL CONNECT

AM.ACC.COM

Conclusion

- Closing deals is an adventure and can be successful
- All deals are dramas, and deals in India can be Bollywood movies
- Create your own story!

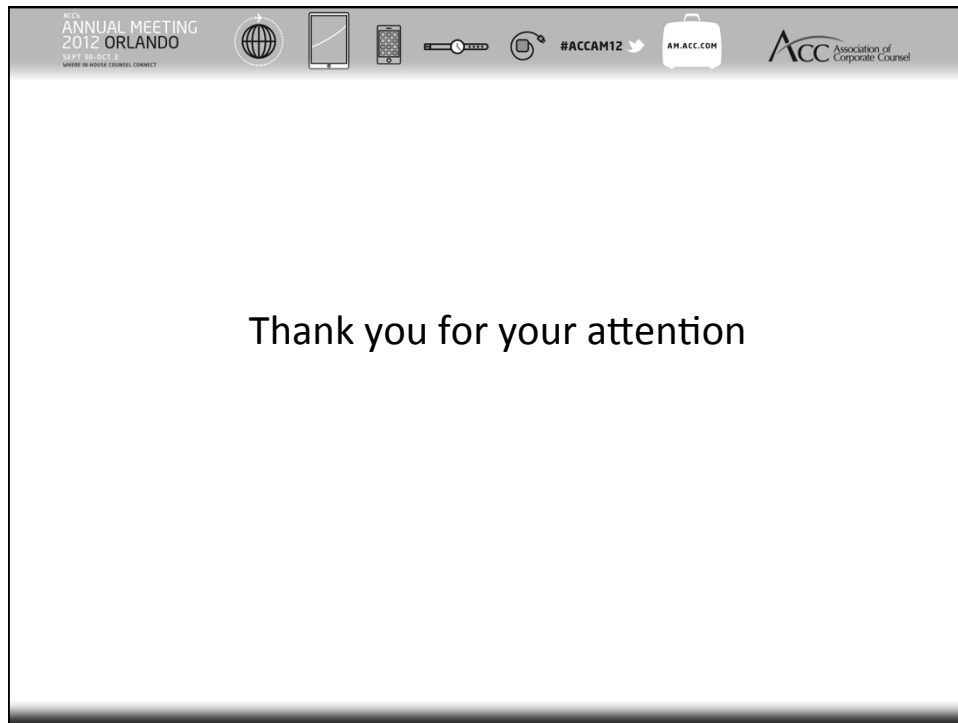


ACC ANNUAL MEETING
2012 ORLANDO
SEPT 30-OCT 3
WHERE BUSINESS COUNSEL CONNECT


AM.ACC.COM

Questions and Answers

- Q and A session



ACC ANNUAL MEETING 2012 ORLANDO
SEPT 30-OCT 3
WHERE CORPORATE COUNSEL CONNECT



#ACCAM12 AM.ACC.COM


Acc Association of Corporate Counsel

DOING BUSINESS IN INDIA

Association of Corporate Counsel
Annual Meeting 2012
October 2, 2012

Presented By
Dr. Sunny Handa
Blake, Cassels & Graydon LLP

ACC ANNUAL MEETING 2012 ORLANDO
SEPT 30-OCT 3
WHERE CORPORATE COUNSEL CONNECT








#ACCAM12 AM.ACC.COM

Acc Association of Corporate Counsel


Introduction

- Scope of talk today
 - Challenges of doing business in India
 - Legal
 - Cultural
 - Some experiences/observations


ACC ANNUAL MEETING
2012 ORLANDO
SEPT 30-OCT 3
WHERE BUSINESS COUNSEL CONNECT



#ACCAM12








AM.ACC.COM




Our Story

- Blakes India initiative
 - Our India initiative parallels that of many businesses looking at India regardless of industry
 - How we have executed
 - Challenges we have faced


ACC ANNUAL MEETING
2012 ORLANDO
SEPT 30-OCT 3
WHERE BUSINESS COUNSEL CONNECT



#ACCAM12








AM.ACC.COM




What India Offers

- Positives
 - Growing economy
 - Politically stable
 - Familiar federal system of government
 - Very western
 - English language
 - Common law
 - Similar deal culture
 - Good electronic communications


ACC ANNUAL MEETING
2012 ORLANDO
SEPT 30-OCT 3
WHERE BUSINESS COUNSEL CONNECT



#ACCAM12








AM.ACC.COM




What India Offers (Cont' d)

- Access to the Indian market/Asian market
- Fears and myths
 - Corruption
 - Private sector
 - Public sector


ACC ANNUAL MEETING
2012 ORLANDO
SEPT 30-OCT 3
WHERE BUSINESS COUNSEL CONNECT



#ACCAM12




AM.ACC.COM



What India Offers (Cont' d)

- Inability to do business quickly
 - World Bank Report
 - Regulatory clearances
 - Court process
 - Extreme formality by North American standards
 - Some legal uncertainty

ACC ANNUAL MEETING
2012 ORLANDO
SEPT 30-OCT 3
WHERE BUSINESS COUNSEL CONNECT




#ACCAM12 AM.ACC.COM

Acc Association of
Corporate Counsel

What India Offers (Cont' d)

- Fear of ceremony
- Rapidly changing environment
 - High inflation
 - Cost of doing business
 - High labour turnover
- Poor (but improving) infrastructure results in additional costs

ACC ANNUAL MEETING
2012 ORLANDO
SEPT 30-OCT 3
WHERE BUSINESS COUNSEL CONNECT








#ACCAM12 AM.ACC.COM

Acc Association of
Corporate Counsel


What India Offers (Cont' d)

- Travel difficulties
- Public utilities issues
 - Electricity
 - Roads
- The slow court system
- Complex tax regime


ACC ANNUAL MEETING
2012 ORLANDO
SEPT 30-OCT 3
WHERE BUSINESS COUNSEL CONNECT



#ACCAM12








AM.ACC.COM




What India Offers (Cont' d)

- Intellectual property issues
 - Leakage concerns
- Data security
- Indian counsel
 - Cost
 - Quality
- Differences in negotiating cultures


ACC ANNUAL MEETING
2012 ORLANDO
SEPT 30-OCT 3
WHERE BUSINESS COUNSEL CONNECT



#ACCAM12








AM.ACC.COM




What India Offers (Cont' d)

- Confidentiality concerns
- Navigating the regulatory system
 - Foreign investment restrictions
 - Sector specific regulation
 - Business licences


ACC ANNUAL MEETING
2012 ORLANDO
SEPT 30-OCT 3
WHERE BUSINESS COUNSEL CONNECT



#ACCAM12








AM.ACC.COM




What's Hot in the Indo – North American Business Corridor

- Hot sectors for Indian businesses looking to North America
 - Energy
 - Agri-food
 - Auto parts
 - Mining
 - Technology and communications
 - Financial services


ACC ANNUAL MEETING
2012 ORLANDO
SEPT 30-OCT 3
WHERE BUSINESS COUNSEL CONNECT



#ACCAM12




AM.ACC.COM



What's Hot in the Indo – North American Business Corridor (Cont' d)

- Hot sectors for North American businesses looking to India
 - Infrastructure and engineering
 - Manufacturing
 - Outsourcing various functions
 - Agri-food

ACC ANNUAL MEETING
2012 ORLANDO
SEPT 30-OCT 3
WHERE CORPORATE COUNSEL CONNECT



ACC Association of
Corporate Counsel

Common Business Models

- Services Agreements
- Purchase of goods
- Joint ventures and strategic alliances
- Acquisitions

Investing and Doing Business in India: What are the Critical Challenges?



Michael Yap
Chief Legal Officer
International Investments

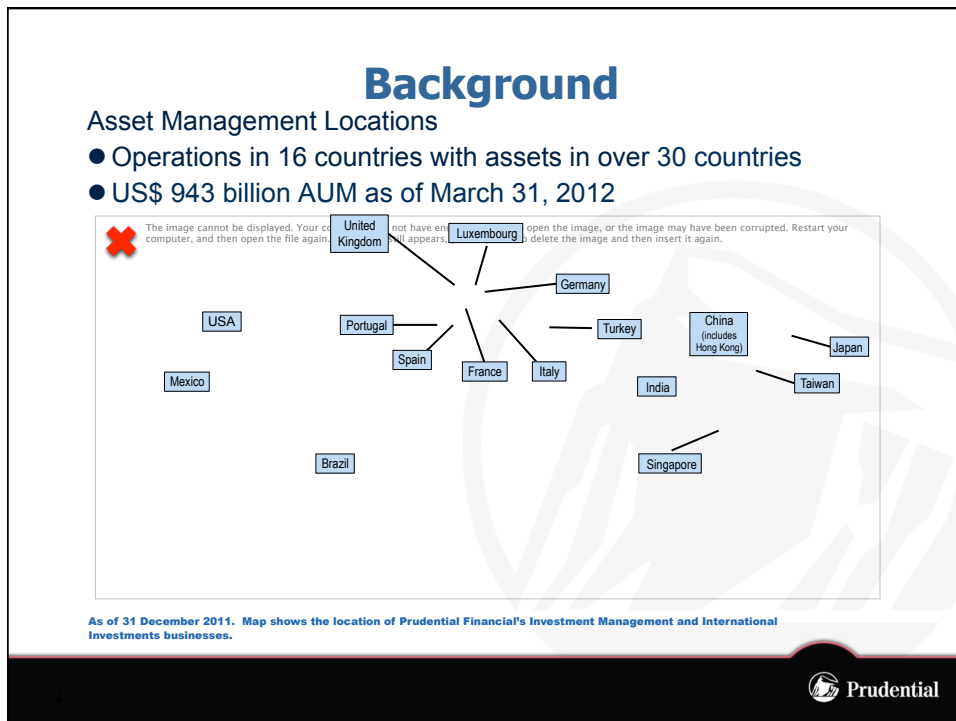
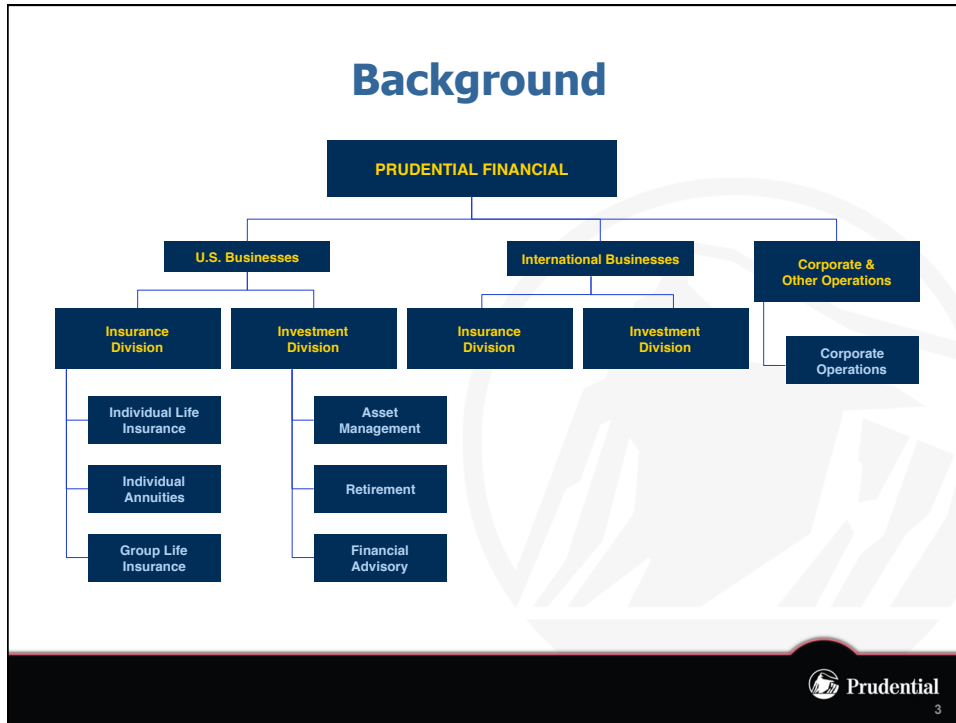
October 2, 2012



Agenda

- Background and Context
- Staffing
- Structure
 - What type of operation or investment is planned?
- Evolving Environments
 - Regulatory
 - Market Volatility
 - Industry and Cultural





Context - India's Opportunities

- **Favorable Demographics**

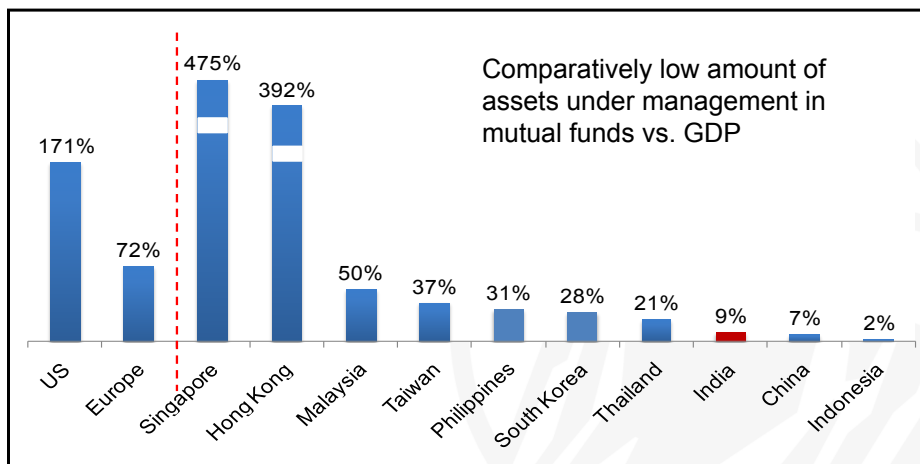
- About 70% of population is younger than 35
- Reserve Bank of India forecasts individual savings to GDP ratio of 33% forecast to rise to 38-39% in 2017

- **Rising Income Levels**

- Middle class estimated at 50 million currently is expected to grow to 260 million by 2025*

*National Council of Applied Economic Research (India)

Context - India's Opportunities



Staffing

- Hiring Internal Counsel
 - Experience is a combination of compliance and law
 - Greater compliance and regulatory focus
 - Less focus on strategy and contractual negotiations
 - Forfeiture of law firm license

Staffing

- Hiring External Counsel
 - Increase in experience with multinational clients
 - Premium on industry and regulator expertise
 - Rates rising
 - Capacity challenges as multinational client activity increases

Staffing

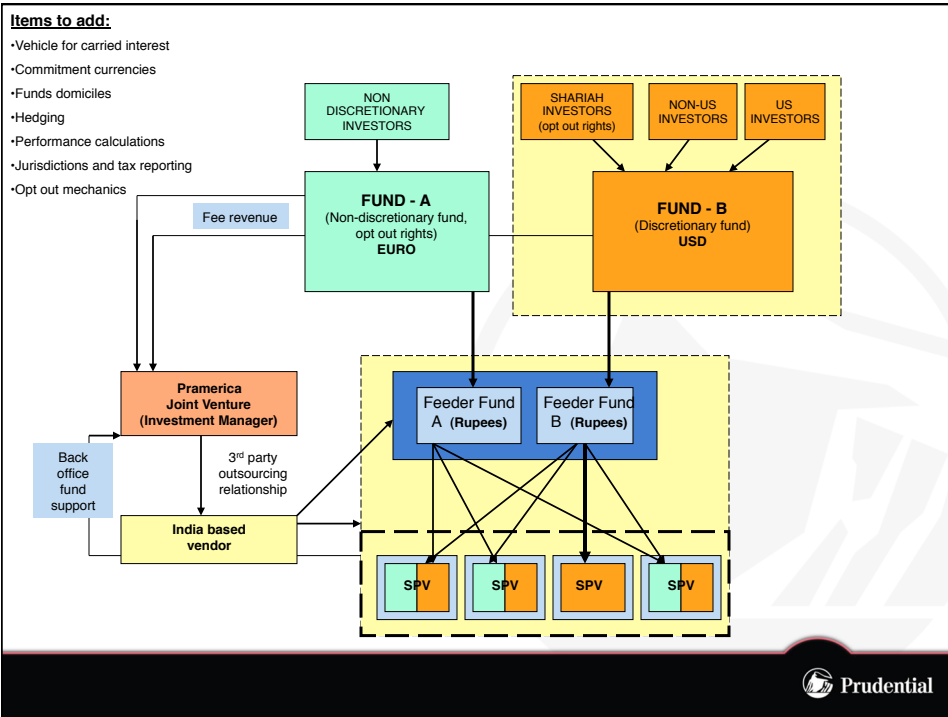
- Other Considerations
 - English proficient employees have leverage
 - Working hours – start late
 - Impact of holidays (bank holidays and religious observances: Hindu, Muslim, Christian, Sikh)
 - Relationship maintenance from US (video)
 - Geographic coverage (Prudential has 21 branches in India)
 - Terminations – discomfort with direct conflict

Structure

- What type of operation or investment is planned?
- Foreign Direct Investment Rules
 - Need a joint venture partner?
 - Industry specific
 - Insurance – maximum of 26% foreign ownership
 - Investment Management – 100% foreign ownership with minimum US\$50 million investment within 2 years

Structure

- Fund Formation Challenges
 - Investors (type, interests, location)
 - Paying portfolio managers – the carried interest
 - Tax – Mauritius, Cyprus and Singapore
 - Permanent establishment concerns – fund management decisions should be outside of India
 - Real estate considerations
 - mandatorily convertible debt
 - special economic zones



Evolving Environments

- India Regulatory
 - Reserve Bank of India
 - Industry regulator – Securities Exchange Board of India
 - Trade associations – Association of Mutual Funds in India
 - Labor laws
 - required minimum pay
 - government approval of terminations
 - less impact in non-manufacturing industries

Evolving Environments

- Regulatory Outside of India
 - Anti-corruption
 - US Foreign Corrupt Practices Act
 - UK Bribery Act
 - India ranks 95th with a corruption perception index of 3.1 (Transparency International)
 - US ranks 25th with a CPI of 7.1 behind most of the industrialized/developed world

Evolving Environments

- Anti-corruption (cont'd)
 - bribery/quid pro quo as standard business practice
 - competition with a sophisticated domestic market
 - transactions and joint ventures with state owned enterprises
 - competitors that are state owned
- Foreign Account Tax Compliance Act (FATCA)

Evolving Environments

- Market Volatility
 - Foreign currency fluctuations – As of August 2012, the rupee down 19% against the US dollar for the year*
 - Indian companies borrowed US\$37 billion from overseas investors in 2011*
 - Equity markets have been volatile, so India investors have turned to fixed income assets

*Reported in the Wall Street Journal, August 17, 2012, "Indian Companies Hide from Currency Troubles".

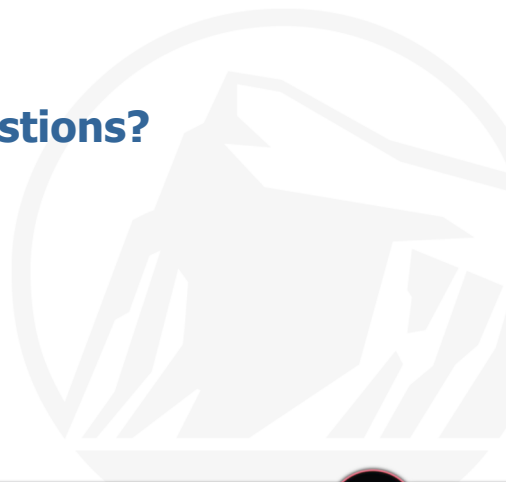
Evolving Environments

- Industry and Cultural
 - High expectations on rate of investment return
 - Established India-based businesses and SOEs have leverage advantage
 - Lower income classes dominate government politics
 - Hierarchy in social structure
 - Age and deference
 - Gender roles

Evolving Environments

- Industry and Cultural (cont'd)
 - Broad geographic range with limited infrastructure
 - Expect frequent interruption and being talked over
 - Varied English proficiency
 - High level of entrepreneurial spirit
 - Testing rules rewarded

Questions?



PRACTICAL PERSPECTIVES ON DOING BUSINESS IN INDIA

October 02, 2012

**Anuj Prasad
Partner**

**Amarchand & Mangaldas & Suresh A. Shroff &
Co.**

INDIA: RECENT TRENDS

- According to **UNCTAD's World Investment Report of 2012**, in South Asia
 - FDI **inflows to India** have posted an increase from US\$ 24.15 billion during 2010 to US\$ 31.55 billion with **growth of about 31%**
 - Third **Most Preferred Investment Destination** after China and U.S.
 - Growth rate of 5.3% despite the global economic turmoil.
 - One of the **largest exporter of services** amongst developing countries.
 - FDI **outflows from India rose by 12 per cent** to \$15 billion.

CURRENT ECONOMIC SCENARIO

- India has been largely insulated from the global economic crisis and the fundamentals of its economy continue to remain strong since its banking system is not directly exposed to the US sub-prime mortgage assets.
- Indian banks, both in public and private sector, remain financially sound, well capitalized and well regulated.
- However, the continuing global economic crisis has affected the Indian economy. Impacted:
 - Capital markets
 - Exports
 - Automobile Industry
 - Real Estate
 - Textiles

INDIA: RECENT TRENDS

- The Indian Government which was grappling with policy paralysis and charges of corruption is now taking concrete decisions to boost the economy.
- Boosted by these steps, the **Bombay Stock Exchange Sensex touched the 18,000 mark after 6 months** and hit a 52-week high of 18,715.03.

RESERVE BANK'S GROWTH STIMULUS MEASURES

In response to the downturn, RBI has initiated measures to augment liquidity and facilitate lending:

- Reduced cash reserve ratio of Scheduled Banks to 4.25%
- Reduced statutory liquidity ratio
- A special repo window under liquidity adjustment facility
- Reduction of the repo rate under the liquidity adjustment facility by 50 basis points from 8.5% to 8.0%
- Substantial relaxation of external commercial borrowing regime including refinancing of domestic debts by external commercial borrowings in certain sectors
- Permitting NBFCs and housing financial companies access to foreign borrowing

GOVERNMENT'S GROWTH STIMULUS MEASURES

- Diesel price hiked to reduce fiscal deficit
- Permits FDI in Multi Brand Retail
- Amends conditions on FDI in Single Brand Retail in response to investor concerns
- Reviews Policy on Foreign Investment in the Broadcasting Sector and Civil Aviation Sector
- Formulated policy on Foreign Investment in Power Trading Exchanges
- Decision to disinvest 4 Public Sector Undertakings

FOREIGN INVESTMENTS IN INDIA

REGULATORY FRAMEWORK

INVESTMENT REGULATIONS AND REGULATORS

- Foreign investment into India is governed by:
 - the **Foreign Exchange Management Act, 1999**;
 - the industrial policy; and
 - the policies framed by the Department of Industrial Policy & Promotion, Government of India from time to time.
- Foreign investment regulations are administered by:
 - the **Foreign Investment Promotion Board** (a department of the Ministry of Finance);
 - the **Reserve Bank of India** (RBI), India's central bank;
 - the **Securities and Exchanges Board of India**, India's securities market regulator;
 - the **Department of Industrial Policy & Promotion**.

SECTOR CONSIDERATIONS

- Foreign investment is **permitted in most** sectors.
- Foreign investments is **prohibited in certain sectors** such as lottery business, manufacture of tobacco and atomic energy.
- Various investments limits are also prescribed depending on the sector. For Instance, FDI is allowed up to:
 - **100%** in several sectors such as information technology, manufacturing, construction development and e-commerce
 - **74%** is permitted in telecommunications and private sector banking
 - **49%** in asset reconstruction and credit information companies
 - **26%** in defense and insurance

OTHER CONSIDERATIONS

- Foreign investors looking to invest in India can invest in following instruments issued by Indian companies:
 - **equity shares;**
 - **convertible** preference shares or debentures, which **mandatorily convert into equity shares**, after a prescribed period of time.
- Routes for entry:
 - **Approval:** with approval of Government or RBI
 - **Automatic:** without such prior approval;
- Entities into which foreign investments can be made are Indian Companies, Partnership Firms/Proprietary Concerns, SEBI registered Foreign Venture Capital Investor, Limited Liability Partnerships.
- Foreign companies can also open **Project Offices/ Branch/Liaison Offices.**

INVESTING INTO INDIA?
**RECENT DEVELOPMENTS THAT
EVERY INVESTOR SHOULD BE
AWARE OF**

**LIBERALIZATION OF THE FOREIGN
INVESTMENT REGIME**
**SINGLE BRAND, MULTI BRAND
PRODUCT RETAIL TRADING, CIVIL
AVIATION AND OTHERS**

KEY AMENDMENTS OF FDI POLICY ON SINGLE BRAND RETAIL

Old Conditions

- Foreign investor should be owner of brand.
- For FDI above 51%, 30% sourcing from SMEs/village and cottage industries artisans and craftsmen.

New Conditions

- Only one non-resident entity, whether owner of brand or otherwise permitted to invest for the specific brand through **agreement with brand owner.**
- For FDI above 51%, sourcing of 30% of value of goods purchased to be from India, **preferably MSMEs/village and cottage industries artisans and craftsmen, in all sectors, where feasible.**

FDI IN MULTI BRAND RETAIL ALLOWED

- FDI in Multi Brand Retail **allowed up to 51% under Approval Route**
- Minimum amount to be brought in, as FDI, would be **US \$ 100 million**
- Retails Sales Outlets may only be set up in **specified States and cities**
- Investors also required to make minimum investments in 'backend infrastructure' and procure specified levels of products from 'small industries'

FOREIGN INVESTMENT IN CIVIL AVIATION

- Foreign Airlines permitted to invest in capital of Operating Scheduled and non-Scheduled Air Transport Services **up to 49% under the Approval Route.**
- 49% includes FDI and FII investment.
- **Technical Equipment** imported as a result of investment **requires clearance** from Ministry of Civil Aviation
- **Foreign Nationals** associated with such Indian Air Transport Services as a result of investment **require security clearance** before deployment

OTHER KEY LIBERALIZATIONS

- Foreign Investment Limit increased from **49% to 74%** for activities such as **Teleports and Direct-to-Home.** Up to 49% permitted under the Automatic Route and thereafter up to 74% under the Approval Route
- **For Mobile TV**, foreign investment has been permitted up to 74%: 49% up to under the Automatic Route and thereafter up to 74% under the Approval Route
- FDI up to 26% under the Approval route and FII up to 23% under the Automatic Route allowed in **Power Trading Exchanges**

OTHER KEY CHANGES

- The DIPP reviewed its policy of 100% FDI under the automatic route in the pharma sector
- Announced new policy under which:
 - 100% FDI allowed under **Automatic Route in greenfield investments** in pharma
 - 100% FDI allowed under **Approval Route in brownfield investments (i.e. existing companies)** in pharma
- Government also considering **routing such acquisitions through the Competition Commission of India**

PUT AND CALL OPTIONS, ARBITRATION WITH AN INDIAN PARTY AND VODAFONE

SOME LESSONS IN PROTECTING YOUR
INDIAN INVESTMENTS

THE REGULATORY PERSPECTIVE ON OPTIONS WITH ASSURED RETURNS

- In 2011, DIPP outlawed 'in-built options of any type'
- Soon thereafter, it deleted the prohibition on options
- So do foreign investors have an exit 'option'?
- No, not in a public listed or public unlisted company
- Yes, if such options are exercised in a private company
- That being said, the RBI is likely to question a foreign investor's put option at a pre-determined price even in a private company. Such Options may be considered a loan.

THE VODAFONE JUDGMENT: A RETROSPECTIVE

- In January 2012, the Supreme Court of India in *Vodafone International Holdings B.V v. Union of India*, held that a **transfer of shares of a foreign company would not attract capital gains tax in India**, even where it entailed the indirect transfer of the company's underlying assets situated in India
- Income Tax Act, **retrospectively amended** to clarify that shares of a foreign company shall be deemed to be situated in India, where they **substantially derive their value from assets located in India**
- Government **considering implementation of GAAR** empowering tax authorities to regulate transactions lacking commercial substance

**INTERNATIONAL
COMMERCIAL ARBITRATIONS**

- Till recently international commercial arbitrations with an Indian party were open to interference by applications for interim relief in India courts
- By a recent decision of the Supreme Court:
 - No **application for interim relief** is maintainable in India in a foreign seated commercial arbitration
 - No **interim injunction in an inter-parte suit would be maintainable in India** with respect to an international commercial arbitration with a seat outside India
 - The **above will apply prospectively** to all arbitrations agreements executed hereafter

OTHER BUSINESS CONSIDERATIONS

**RECENT CHANGES THAT COULD
IMPACT YOUR INDIAN BUSINESSES**

SECURITIES MARKETS REVAMPED

- On August 16 2012, the Board of SEBI paved the way for significant changes:
 - Allowed promoters **more routes to achieve minimum public shareholding**: issue of rights and bonus shares to the public, with promoter foregoing rights and bonus
 - listed entities to also file a comprehensive annual disclosure statement on the lines of 20F filing prescribed by the US SEC
 - approved the SEBI (Investment Advisors) Regulations, 2012, providing a framework for registration and regulation of investment advisors

LEGISLATIVE REFORMS IN THE WINGS

- Endeavors to adopt **Goods and Service Tax (GST)** to replace the existing multiple tax structures of Centre and State level and create a single, unified Indian market to make the economy stronger.
- **Direct Taxes Code Bill, 2010** pending discussion in the Parliament. While some changes already enacted, further changes envisaged to change residency test to internationally recognized concept of place of effective management.
- **Companies Bill, 2011** is in the last stages of considerations before the Parliamentary Standing Committee. Proposes to tighten norms on fund raising, corporate social responsibility, insider trading etc.

LEGISLATIVE REFORMS IN THE WINGS

- Proposal to amend **Insurance and Pension Bills** to allow FDI up to **49%**
- Task Force on National Security has advised **increase in FDI limits in Defence from 26%**
- Expert Committee has submitted its Report on the **introduction of GAAR** recommending deferring the implementation by 3 years
- Government mulling passing of **amendments to Forward Contract Regulation Act** to allow for development of commodities futures market, strengthening the regulator, Forward Markets Commission, by providing financial autonomy, facilitating entry of institutional investors and introducing new products for trading

MOOD DAMPENERS

- **Rollback of position on FDI in Pharma** from 100% under the Automatic Route to 100% in Brownfield investments under the Approval Route
- **Retrospective Amendments** to Income Tax Act
- Proposals to introduce **GAAR** giving tax authorities power to re-characterise transactions
- Increasing scrutiny of divestments of Indian businesses through jurisdictions with tax treaty benefits. Law amended to provide that **benefits shall be available only where a tax residency certificate** is procured from authorities of relevant jurisdiction
- Coalition Politics
- **Reluctance to implement model Agriculture Produce Marketing Committee Act** which would have benefited both investors and farmers in the context of liberalized investment policy.

DESTINATION INDIA!

- Stable democratic environment with over 60 years of independence
- Rule of law and common law
- People power: Population of over 1 billion
- English speaking and tech-savvy workforce
- Large market size with increasing purchasing power
- Comparatively cheaper work force
- Large and diversified infrastructure spread across the country
- Well-developed R&D infrastructure, technical and marketing services
- Extensive and efficient banking system, commercial banking network of over 63,000 branches, supported by a number of national and state-level financial institutions and foreign banks

DESTINATION INDIA!

- Signatory to the World Trade Organization
- Foreign awards from reciprocating countries are easy to enforce
- Conducive foreign investment environment that provides freedom of entry in most sectors, location, choice of technology, import and export
- Vibrant capital market comprising 23 stock exchanges with over 9,000 listed companies (Main exchanges: BSE and NSE).
- Introduction of new instruments such as IDRs and FCEBs. FCCB Buyback permitted
- Established, independent judiciary with a hierarchy of courts

DESTINATION INDIA!

- Specialist regulators, for instance, the Securities and Exchange Board of India, the Reserve Bank of India, the Foreign Investment Promotion Board, etc.
- Moderate tax regime
- Increasing emphasis on principles of corporate governance
- Large reserves of natural resources

PRACTICAL LESSONS

- Understand the Indian psyche
- Turn off cultural preconceptions
- Prepare to learn through trial and error
- Be aware of India's diversity and culture
- The foreign passion for speed of conceptualization, quickness in execution and closing the transaction has to be realistically tuned to Indian circumstances
- The Indian multinational is emerging
- India is about knowing the problems, anticipating them and working around them

GENERAL PRINCIPLES AND CAUTIONS

- Conduct survey of Indian market and viability
- Prepare a versatile business plan with regular monitoring
- Select form of organization
- Conduct thorough due diligence
- Necessary to build relationships with government officials and policy makers
- Conduct regional survey of potential capability of introducing new products/ players
- Size the local and international competition
- Identify potential partners and ascertain their reputation
- Get yourself a wide array of advisors including consultants
- Ascertain if regulatory approvals would be required

GENERAL PRINCIPLES AND CAUTIONS

Get yourself legal, tax and investment advisors for:

- Tax advice on entry strategy
- Creating corporate forms for entry
- Avoiding impact of double taxation
- Use of tax havens vis-à-vis India
- Drafting joint venture and shareholders' agreement
- Drafting share purchase/ subscription agreement
- Drafting IP /know how/ technology/ confidentiality agreements
- Checking requirement for approval of foreign direct investment
- Exit option (valuation under RBI regulations)
- Dispute resolution
- Control in management



REGULATORY FRAMEWORK ON TRADING IN INDIA

By
Mr. Anuj Prasad
Partner

Amarchand & Mangaldas & Suresh A. Shroff & Co.
Amarchand Towers
216, Okhla Industrial Estate Phase 3
New Delhi 110020

FDI THRESHOLDS IN TRADING

Trading Sector	FDI	Prior (FIPB/DIPP) Approval requirement
Single brand product trading	100%	Yes
Multi-brand product trading	51%	Yes
Cash and carry wholesale trading/ wholesale trading	100%	No
Test Marketing of items licensed for manufacture	100%	Yes

SINGLE BRAND RETAIL

- FDI up to **100%** with **prior approval**
- Approval to be obtained from **DIPP** and **FIPB**
- Only **one** non-resident whether owner of the brand or not, shall be permitted to **undertake single brand retail** in India
- In case FDI is **beyond 51%**, sourcing of **30%**, of the value of goods purchased to be done from **India** preferably from MSMEs, village industries etc.

SINGLE BRAND RETAIL

- Single brand retail to be carried out by a non-resident through an agreement with the brand owner for the same
- Ambit of 'Single Brand' Retail Trading
 - Goods to be sold internationally under a 'single brand'
 - Multiple products or product categories under the same brand and trademark name, qualifies as single brand retail trading
 - Retailing goods of multiple brands (manufactured by the same manufacturer) does not qualify as single brand retailing
 - A single brand may represent one or more trademarks with suffixes or prefixes to or derivatives of the trademark

MULTI BRAND RETAIL

- 51% FDI permitted under Government Approval route
- Minimum amount to be brought in, as FDI, by the foreign investor, would be US \$ 100 million.
- At least 50% of total FDI brought in shall be invested in backend infrastructure within 3 years
- At least 30% of the procurement of manufactured/processed products shall be sourced from 'Indian small industries'.

MULTI BRAND RETAIL

- Outlets only in cities with **population** of more than **1 million** including 10 kms around the municipal urban limits of the same.
- States/union territories which do not have cities greater than 1 million in population have flexibility to allow Multi Brand retail in other cities.

MULTI BRAND RETAIL

- Fresh agricultural produce, including fruits, vegetables, flowers, grains, pulses, fresh poultry, fishery and meat products, may be unbranded and Government will have the **first right to procurement of agricultural products**
- Retail outlets may be setup only in those states which have agreed or will agree in future

CASH AND CARRY/ WHOLESALE TRADING

- Sale of goods/merchandise to retailers, industrial, commercial, institutional or other professional business users or to other wholesalers and related subordinated service providers
- FDI up to 100% without prior approval
- Total supply to group companies < 25% of turnover of the wholesale venture

CASH AND CARRY/ WHOLESALE TRADING

- Retail shops for direct sale to consumers prohibited

- Qualifications for Permitted Customers:
 - Entities holding sales tax/ VAT registration/service tax/excise duty registration/trade licenses/license for undertaking retail trade; or
 - Societies or Public Trusts for self consumption.



amarchand mangaldas
advocates & solicitors

VODAFONE: TAXATION ISSUES IN INDIA

Amarchand & Mangaldas & Suresh A. Shroff & Co.

Privileged & Confidential



amarchand mangaldas

Background

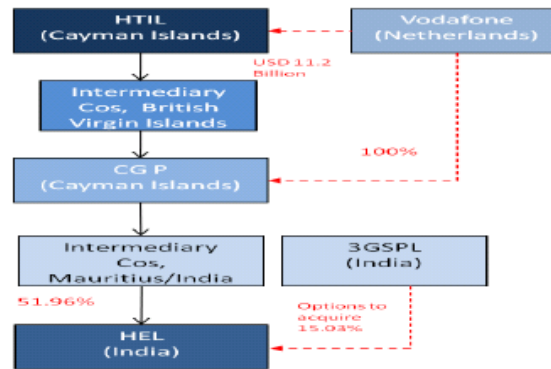
- In 2007, Vodafone International Holdings B.V., Netherlands (“**Vodafone**”) acquired a single share which represented the 100% shareholding in CGP (Holdings) Limited, a Cayman Is-lands company (“**CGP**”) for a consideration of USD 11.8 billion from Hutchison International, Cayman Islands (“**HIL**”).
- CGP effectively controlled a 67% stake in Hutchison Essar Ltd. (“**HEL**”) through intermediary Mauritius & Indian companies/ contractual arrangements. The acquisition resulted in Vodafone acquiring control over CGP and its downstream entities, including HEL.
- HEL was a joint venture between Hutchison and Essar group, for providing cellular telephony in India.
- Vodafone also filed an application with Foreign Investment Promotion Board (“**FIPB**”), and subsequent to the approval paid the consideration.

Privileged & Confidential | 2

Background



amarchand mangaldas



Privileged & Confidential | 3

Past Judicial Proceedings



amarchand mangaldas

- The Tax Authorities issued a notice to Vodafone contending that the transaction is taxable in India and Vodafone was required to withhold tax under Section 195 of the Indian Income-tax Act, 1961 (“IT Act”) on the purchase consideration.
- Vodafone filed a writ petition in the Bombay High Court, challenging the jurisdiction of the Tax Authorities. The High Court dismissed the writ petition, observing prima facie taxability of the transaction against which Vodafone filed Special Leave Petition (“SLP”) in the Supreme Court (“SC”).
- In January 2009, SC directed the Tax Authorities to first determine its jurisdiction over Vodafone. In May 2010, the Tax Authorities passed an order confirming that they had jurisdiction over Vodafone.
- (Vodafone then challenged the said order before the Bombay High Court by way of a writ petition. On September 8, 2010, the Bombay High Court ruled against Vodafone [329 ITR 126 (Bom HC)] and held that the consideration paid by Vodafone to HIL was for the acquisition of the CGP share together with various rights and entitlements in India. Further, withholding tax provisions were applicable to non-resident payers, provided there was a sufficient territorial connection or nexus between the non-resident and India.

Privileged & Confidential | 4

Past Judicial Proceedings

(Contd.)



amarchand mangaldas

- Considering the overall facts of the case, Bombay High Court held that the transaction did have a nexus with India and directed the Tax Authorities to apportion the capital gains which resulted to HIL between the transfers of the various assets, as a result of such nexus with India.
- Aggrieved by the Bombay High Court judgment, Vodafone filed an SLP before the SC. SC admitted the SLP but directed Vodafone to de-posit an amount of USD 500 million (INR 25,000 million) and furnish a bank guarantee of USD 1,700 million (INR 85,000 million), for its alleged withholding tax liability in India.

Privileged & Confidential | 5

Key contentions by the Tax Authorities before Supreme Court

amarchand mangaldas

- Section 9 of the IT Act, which governs the taxation of transfers of capital assets situated in India by non-residents, should be given the widest possible interpretation and should be interpreted purposively. The words “situated in India” used in Section 9 should not be construed literally but construed “purposively” to mean that it must be traceable to a source in India.
- The Tax Authorities argued that the SC decision in Union of India vs. Azadi Bachao Andolan (2003) 132 Taxman 373 (SC) should be revisited in the light of the previous distinguishing decision in the case of McDowell and Co Ltd vs. Commercial Tax Officer (1985) 154 ITR 148 (SC). Heavy reliance was also placed on the “Ramsay principle” enunciated by the UK Courts which allows application of the “substance over form” approach.
- Situs of the CGP share can only be in India, as the entire business purpose of CGP was to have control over HEL, an Indian company. The sale of the CGP share was nothing but an “artificial tax avoidance scheme”. The transaction should be viewed as extinguishment of HTIL’s property rights in India and CGP share was merely used to transfer capital assets in India.

Privileged & Confidential | 6

Key contentions by the Tax Authorities before Supreme Court amarchand mangaldas

(Condt..)

- The CGP share had been interposed at the last minute to artificially remove HTIL from the Indian telecom business (reference was made to the Due Diligence Report of Ernst and Young).
- Section 195 refers to the term “person”, which is widely defined under Section 2 to include a foreign company. Even otherwise, Vodafone had presence in India on account of its share-holding and Joint Venture with Bharti Airtel and therefore, on the date of payment to Hutch, Section 195 was applicable to Vodafone. Alternatively, Vodafone could be treated as a “representative assessee” of HTIL.

Privileged & Confidential | 7

Supreme Court Judgment: Tax avoidance v. tax evasion amarchand mangaldas

- SC in the cases of McDowell and Azadi Bachao had laid down principles with respect to tax avoidance and tax evasion. Tax avoidance is planning which reduces or negates tax liability in legally permissible ways and has legal sanction. Tax evasion on the other hand is criminal and should be outlawed. The question that arose was whether tax planning is permissible under the Indian Income tax laws. In this regard, the SC held that there is no conflict between McDowell and Azadi Bachao. Tax planning is permissible and legitimate if it is within the four corners of law. However, artificial tax planning, while not amounting to evasion, may be struck down.
- It stated that genuine strategic tax planning had not been abandoned. Thus, it cannot be said that all tax planning is impermissible.
- Further, SC observed that the Tax Authorities read words into a statutory provision which are not there. Section 9, even read purposively, did not extend to indirect transfers of capital assets situated in India.

Privileged & Confidential | 8

Supreme Court Judgment:

Tax avoidance v. tax evasion

(Contd..)



amarchand mangaldas

- The Direct Tax Code Bill (“DTC”) proposes to tax income from transfer of shares of a foreign company by a non-resident, where at any time during 12 months preceding the transfer, the fair market value of the assets in India, owned directly or indirectly, by the company, represents at least 50% of the fair market value of all assets owned by the company. It specifically pro-vides for indirect transfer of a capital asset situated in India. SC noted that this indicates that indirect transfers are not covered by the existing Section 9(1) (i).
- (v) Every tax payer is entitled to arrange his affairs so that his taxes shall be as low as possible and that he is not bound to choose those patterns which replenish the treasury.

Privileged & Confidential | 9

Supreme Court Judgment: Corporate Holding Structures



amarchand mangaldas

- It is a common practice in international law, which is the basis of international taxation, for foreign investors to invest in Indian companies through an interposed foreign holding or operating company, such as Cayman Islands or Mauritius based company for both tax and regulatory purposes.
- A subsidiary and its parent are totally separate and distinct legal entities and should be treated as such for tax purposes unless there is evidence to suggest that the parent exercises more than persuasive power (as shareholder) over the subsidiary.
- In establishing foreign holding companies, foreign investors are able to avoid the lengthy approval and registration processes required for a direct transfer (i.e. without a foreign holding or operating company) of an equity interest in a foreign in-vested Indian company.

Privileged & Confidential | 10

Supreme Court Judgment: FDI to be seen in a holistic manner



amarchand mangaldas

- Every strategic foreign direct investment coming to India, as an investment destination, should be seen in a holistic manner.
- To test whether a transaction was preordained or if there was an investment to participate, the following factors should be taken into consideration: the concept of participation in investment, the duration of time during which the Holding Structure exists; the period of business operations in India; the generation of taxable revenues in India; the timing of the exit; the continuity of business on such exit.
- (SC further said that the onus will be on the Tax Authorities to identify the scheme and its dominant purpose. The corporate business purpose of a transaction is evidence of the fact that the impugned transaction is not undertaken as a colourable or artificial device. power (as shareholder) over the subsidiary.

Privileged & Confidential | 11

Supreme Court Judgment: 'Look at' approach and not 'Look through' approach



amarchand mangaldas

- The “**look at**” principle enunciated in Ram-say case: It is the task of the Tax Authorities/Court to ascertain the legal nature of the transaction and while doing so it has to look at the entire transaction as a whole and not to adopt a dissecting approach.
- The Tax Authorities cannot start with the question as to whether the impugned transaction is a tax deferment/saving device but that it should apply the “**look at**” test to ascertain its true legal nature.
- The Tax Authorities may invoke the “**substance over form**” principle or “piercing the corporate veil” test only after it is able to establish on the basis of the facts and circumstances surrounding the transaction that the impugned transaction is a sham or tax avoidant.
- The question of providing “**look through**” in the statute or in the treaty is a matter of policy and it has to be expressly provided for in the statute or in the treaty. Similarly, limitation of benefits has to be expressly provided for in the treaty.

Privileged & Confidential | 12

Supreme Court Judgment: Hutch structure was not created as a sham

amarchand mangaldas

- Referring to the test laid down with respect to “investment to participate”, SC observed that the Hutch structure had existed for a considerable length of time, generating taxable revenue in India from 1994.
- It cannot be said that HTIL or VIH were a “fly by night” operator/ short time investor and hence, the Hutch structure was not created or used as a sham or tax avoidance scheme.
- SC further went on to say that where the court is satisfied that the transaction satisfies all the parameters of “**participation in investment**” then in such a case the court need not go into the questions such as de facto control vs. legal control, legal rights vs. contractual rights.

Privileged & Confidential | 13

Supreme Court Judgment: No extinguishment of rights

amarchand mangaldas

- As a group holding company, HTIL had no legal right to direct its downstream companies in the matter of voting, nomination of directors and management rights, but it only occupied a persuasive position/influence.
- All rights flowed from the CGP share, which was the entire investment sold to Vodafone. There was no extinguishment of other rights as alleged by the Tax Authorities.
- A controlling interest is an incident of ownership of shares in a company, something which flows out of the holding of shares. It is not an identifiable or a distinct capital asset independent of the holding of shares. Shares and the rights which emanate from them flow together and cannot be dissected.
- SC observed that this transaction concerns an offshore transaction involving a structured investment. This case concerns “**a share sale**” and not an asset sale.

Privileged & Confidential | 14

Supreme Court Judgment: Role of CGP



amarchand mangaldas

- Vodafone could have either acquired the share of CGP or it could have acquired the shares other subsidiaries.
- The share in CGP was acquired not merely because it held shares in subsidiary companies but for a smooth transition of business on divestment by HTIL. The transaction was structured at an appropriate tier so that Vodafone acquired same degree of control as was hitherto exercised by HTIL in a straightforward manner by directly acquiring a single company.
- It could not be said that CGP had no business or commercial purpose.
- SC rejected the argument of the Tax Authorities that the situs of the CGP shares was situated in the place where the underlying assets were situated. The situs was the Cayman Islands.

Privileged & Confidential | 15

Supreme Court Judgment: Not a basis for taxation



amarchand mangaldas

- The Tax Authorities had argued that Vodafone paid US \$11.08 billion for 67% of the enterprise value of HEL plus its down-stream companies having operational licences. It bought an upstream company with the intention that rights flowing from the CGP share would enable it to gain control over the cluster of Indian operations or operating companies which owned telecom licences and other business assets.
- SC held that valuation cannot be the basis of taxation. The basis of taxation is profits or income or receipt which in this situation is capital gains from transfer of a capital asset.

Privileged & Confidential | 16

Supreme Court Judgment: India-Mauritius Tax Treaty



amarchand mangaldas

- In the absence of a “limitation of benefit” clause and the presence of Circular No. 789 of 2000 and tax residency certificate, on the residence and beneficial interest/ownership, at the time of sale/disinvestment/exit, the Tax Authorities cannot deny the treaty benefits to such Mauritius companies.
- Setting up of a wholly owned subsidiary with genuine substantial long term FDI in India from/through Mauritius, can never be considered to be set up for tax evasion.
- However, the SC also stated that tax residency certificate does not prevent enquiry into a tax fraud. For example, where an overseas corporate body is used by an Indian resident for round tripping or any other illegal activities, nothing prevents the Tax Authorities from looking into such special agreements, contracts or arrangements to treat it as tax evasion.

Privileged & Confidential | 17

Supreme Court Judgment: Withholding obligations for payments to Non-residents - Section 195 of the IT Act



amarchand mangaldas

- Section 195(1) imposes a duty upon the payer of any income specified therein to a non-resident to deduct tax at source unless such payer is himself liable to pay income-tax thereon as an agent of the payee. Thus, the person on whom the obligation to deduct tax at source is imposed is not the person who has earned the income. Assessment has to be done after liability to deduct tax at source has arisen. In the case of capital gains, the purchaser is required to deduct the tax from the sale price.
- SC noted that the present case concerns the transaction of “outright sale” between two non-residents of a capital asset (share) outside India and hence Vodafone was not obliged to withhold tax on the sale consideration paid to HTIL.

Privileged & Confidential | 18

Supreme Court Judgment: Vodafone cannot be treated as representative assessee - Section 163

amarchand mangaldas

- SC held that merely because a person is an agent or is to be treated as an agent, would not lead to an automatic conclusion that he becomes liable to pay taxes on behalf of the non-resident. It would only mean that he is to be treated as a “representative assessee”.
- Section 161 of the IT Act makes a “representative assessee” liable only as regards the income in respect of which he is a “representative assessee”.
- On facts of this case, SC held that since there is no transfer of a capital asset situated in India, Vodafone cannot be a representative assessee.

Privileged & Confidential | 19

Key points in Supreme Court Judgment



amarchand mangaldas

- **General rule-** capital gains arising as a result of transfer of shares of a non-resident company by one non-resident to another non-resident not chargeable to tax in India – no capital asset situated in India
- **However,** such capital gain is taxable in India if the transaction involves:
 - tax avoidance i.e. the use of colourable devices, dubious methods, artificial device, subterfuge, circular trading, round tripping
 - misuse of corporate holding structure i.e. the intermediary companies do not have a ‘mind of their own’ - directors are no more than puppets in the hands of the ultimate parent company
- Transaction documents like share purchase agreement/ term sheet or shareholders agreement cannot be dissected to re-characterize a transaction which in essence is a sale of shares

Privileged & Confidential | 20

Post Supreme Court Judgment: Amendments to Tax Laws – Finance Act, 2012



amarchand mangaldas

- **Source Rule of Taxation (Retrospective from 01-04-1962)**

Income from transfer of shares or interest in an entity incorporated outside India will be deemed to accrue in India where such shares or interest derive its value substantially from assets located in India

- **Definition of “transfer” (Retrospective from 01-04-1962)**

Definition of “transfer” amended to include disposing off or parting with an asset or any interest therein, or creating any interest in any asset in any manner, directly or indirectly, notwithstanding that such transfer has been characterized as being effected or dependent upon or flowing from the transfer of shares of a company incorporated outside India

- **Definition of “capital asset” (Retrospective from 01-04-1962)**

Definition of “capital asset” amended to include rights in or in relation to an Indian Company, including rights of management or control or any other rights whatsoever

Privileged & Confidential | 21

Post Supreme Court Judgment: Amendments to Tax Laws – Finance Act, 2012 (contd.)



amarchand mangaldas

- **Validation Clause**

This clause validates all the demands raised in past in respect of income accruing from transfer of a capital asset in India, in consequence of the transfer of shares of a company incorporated outside India

This clause will operate notwithstanding anything contained in any judgment, decree or order of any Court or Tribunal or any Authority

- **Withholding Tax Obligation (Retrospective from 01-04-1962)**

Non-resident payer is liable to withhold tax, irrespective of the fact that such non-resident does not have a permanent establishment, place of business or any presence in India

- **Fair market value regarded as “value of consideration”**

In cases where the consideration received for transfer of capital asset is not ascertainable, the fair market value of such capital asset on the date of transfer will be regarded as the value of consideration received.

Privileged & Confidential | 22

Thank You

am

amarchand mangaldas
advocates & solicitors

amarchand towers, 216, okhla industrial estate, phase iii, new delhi – 110020

tel: (91-11) 41590700, 40606060, 41000541, 26920500

fax: (91-11) 26924900, 26922900

other offices : mumbai bengaluru kolkata hyderabad ahmedabad chennai



amarchand mangaldas

AMARCHAND & MANGALDAS & SURESH A. SHROFF & COMPANY

DOING BUSINESS IN INDIA



AMARCHAND & MANGALDAS & SURESH A. SHROFF & CO.

Amarchand Towers
216, Okhla Industrial Estate, Phase III
New Delhi (India)
Ph: 91 11 4159 0700
Fax: 91 11 2692 4900





INDEX

INTRODUCTION	3
a. GENERAL	4
b. MODES OF BUSINESS OPERATIONS	4
c. COMPANIES	7
d. FOREIGN INVESTMENT	11
e. SPECIAL ECONOMIC ZONES	21
f. LICENSES	23
g. INTELLECTUAL PROPERTY	24
h. EMPLOYEES	27
i. CURRENCY CONTROLS	30
j. MERGERS AND ACQUISITIONS	31
k. COMPETITION AND ANTI-TRUST LAWS	39
l. TAXES	43
m. DIVESTMENT / WINDING UP	46
n. DISPUTE RESOLUTION	46
o. MISCELLANEOUS	48
p. GLOSSARY	50
q. AMARCHAND OFFICE ADDRESSES	54



Introduction

Liberalized economic policies have transformed India, the world's largest democracy, into a beacon of global investment. Beginning in the early '90s, the era of reforms has been very successful, evidenced by high GDP growth, comfortable foreign exchange reserves, improved short-term debt profile, moderate inflation and buoyant exports.

India offers to the world:

- Stable democratic environment
- Large market size with increasing purchasing power
- The Indian entrepreneurial spirit
- Developed banking system, commercial banking network of over 71,000 branches, supported by a number of national and state-level financial institutions
- Vibrant capital market comprising approximately 22 stock exchanges with over 9000 listed companies
- Conducive foreign investment environment that provides freedom of entry in most sectors, investment, location, choice of technology, import and export
- Current account convertibility
- Established, independent judiciary with a hierarchy of courts
- Legal protection for intellectual property rights
- Common Law based legal system
- Free Press
- English-speaking work-force

While the early years of liberalization witnessed the first phase of structural reforms in the industrial, financial and export sectors, the last few years have seen the beginning of the second phase of economic restructuring with major fiscal reforms in foreign investment and trade policy spheres.

The strengthening of legal, institutional and regulatory frameworks in the insurance, banking, capital markets, power, information technology and telecom is being undertaken for inducing greater private investment in the infrastructure and service sectors. The Government of India has announced various measures for further reforms in the capital markets and financial sector, and has also allowed private participation in the insurance sector. It is expected that such measures would enhance both the savings and investment rates for the economy.

The far-reaching and sweeping economic changes that have taken shape since 1991 have unleashed the growth potential of the Indian economy. The Government of India's current policies offer a more transparent economic environment and are geared towards promoting domestic and foreign private investment.

India has the distinction of being one of the fastest growing economies in the world.

The following is an overview of the systems and legal rules and regulations that are essential for business operations in India.

This booklet has been updated till September 2009. Some of the policy changes are not yet effective and could vary.

IMPORTANT NOTE: All information given in this handbook has been compiled from credible, reliable sources. Although reasonable care has been taken to ensure that the information in this handbook is true and accurate, such information is provided 'as is', without any warranty, express or implied as to the accuracy or completeness of any such information. Amarchand Mangaldas shall not be liable for any losses incurred by any person from any use of this publication or its contents. This book does not constitute legal or any other form of advice from Amarchand Mangaldas. Readers should consult their legal, tax and other advisors before making any investment or other decision with regard to any business in India.

New Delhi
September, 2009

a. General

1. What is the legal system of India?

After achieving Independence in 1947, India adopted its written Constitution in January 1950, providing for the establishment of 3 arms of State i.e. the legislature, the executive and the judiciary while simultaneously separating their powers by a series of checks and balances. The legislative body of the Union (Federal Government) is a bicameral legislature, the lower house being directly elected for a term of 5 years on the basis of adult franchise. The constitutional head of the government is the President of India, who exercises functions under the Constitution, on the advice of the Council of Ministers which is presided over by the Prime Minister. India continues to encourage foreign investment within the framework of its policies.

India is a secular society and has adopted common law concepts into its legal system. It has codified and uniform commercial codes that include contract law, corporate law, exchange control regulations and the like. The Industrial Policy, naturally, is colored by the political philosophy of the government in power and finds expression in the form of policy pronouncements, press notes and notifications under the Industries (Development and Regulation) Act and cognate legislations such as the FEMA, MRTP Act.

b. Modes of Business Operations

1. Is it necessary to set up a business organization to provide services or sell goods in India?

A non-resident can provide services or sell goods to persons resident in India without setting up a business organization in India. The same would constitute an import of goods or services, as the case may be, into India and would require the payment of applicable taxes and duties, including import/ customs duty (for goods) and service tax (for services). This is typically done, in case of goods, through the appointment of an agent, distributor or a franchisee in India. If such agent is a “dependant” agent, it would result in the non-resident operating through a permanent establishment in India. The business income attributable to such permanent establishment would be liable to income tax in India. Liability issues, including product liability and warranties, are typically addressed through contractual arrangements between the principal and agent in such cases. From an exchange control standpoint, payments for imported goods are required to be made within specified periods, which limit the “credit” period that can be provided by non-resident sellers to their Indian buyers.

However, if the non-resident entity proposes to locate its employee(s) in India for the provision of services or the sale of goods, it would be necessary to “house” such employee(s) in one of the business organizations and obtain the relevant registrations discussed in this chapter. The setting up of operations purely to sell goods manufactured overseas in India (as opposed to goods manufactured and sold in India) would constitute trading. Foreign investment is presently permitted only in companies carrying on cash and carry wholesale trading (i.e. the sale of goods in bulk to retailers with business registrations, on a carry basis as opposed to sales to the consumer directly) and ‘single brand retailing’ (explained in detail in the Chapter on Foreign Investments). Foreign investment is not permitted in any multi-brand retail trading. Franchisee arrangements are however permitted.

2. What are the popular forms of business organizations in India for foreign participation?

Sole Proprietorship

This is the simplest form of business. No business registration is required under Indian law. The owner of a sole proprietorship is personally entitled to all the profits and responsible for all the losses arising from the business.



Partnership

Partnerships in India are regulated under the Partnership Act. Partners of a firm are jointly entitled to all the profits and are also jointly and severally responsible for all the liabilities arising from the business. A partnership does not have a corporate character distinct from its members. A partnership may even have corporations as its members.

A written partnership deed registered with the Registrar of Firms is not required by law but is advisable for, amongst others, reasons set out hereinafter. In the case of an unregistered partnership, no suit to enforce a right under a contract or under the Partnership Act can be instituted by it against a third party. Similarly, no suit to enforce a right arising from a contract or conferred under the Partnership Act can be instituted in any court by any person suing as a partner in the firm unless the firm is registered and the person suing is or has been shown in the register of firms as a partner of the firm.

Recently, the Limited Liability Partnership Act has come into force. The Central Government has also enacted rules and regulations for the registration and other procedural matters in relation to the governance of limited liability partnerships. The Act provides for an alternative corporate business vehicle that offers the benefit of limited liability of a company but allows its members the liberty of organizing the internal management. However, the Act provides for strict disclosure requirement which may act as a disincentive for the existing entities shifting to the new model.

Company

A company may be incorporated in India either as a private company or a public company. The minimum paid-up capital for a private company is US \$ 2000 (approximately) and that of a public company is US \$ 10,000 (approximately). However, foreign investment in certain sectors such as NBFCs and permitted real estate activities are subject to minimum capitalization requirements.

The details regarding setting up and managing a company are set forth later in this handbook.

Branch / Liaison Office

Setting up branch offices and liaison offices requires prior approval of the Reserve Bank. General permission has been given by the Reserve Bank for the establishment of project offices that meet specified conditions. Foreign companies i.e. companies incorporated outside India, which establish a place of business in India through a branch office must be registered with the Registrar of Companies.

Time and costs for the formation of a sole proprietorship and a partnership are minimal. Formation of a company would typically take approximately 6 weeks and the expenses incurred include registration fees, stamp fees and other legal fees. Registration fees vary according to the name and the authorized capital of the company. Establishment of a branch or liaison office usually takes 6-8 weeks and the only costs incurred are with regard to obtaining the approval of the Reserve Bank. Subject to certain sectoral restrictions, foreign investments into companies is largely under the automatic route. Foreign investment through branch / liaison offices would always require the prior approval of the Reserve Bank.

3. Are there any fetters on the business activities that can be carried on by business organizations in India?

A branch office may enter into contracts on behalf of the non-resident and may generate income. However, the activities that can be undertaken by a branch office are restricted to representing the parent company, exporting/importing goods, rendering professional or consultancy services, carrying on research, promoting technical or financial collaboration, information technology and software services, technical support and foreign airlines/shipping companies. The scope of the activities may be further curtailed by conditions in the approval granted by the Reserve Bank.



A liaison office, on the other hand, is not permitted to carry on business in India. Its activities are restricted to representing the parent company/group companies, promoting export from/ to India, promoting technical/financial collaborations between parent/group companies and companies in India, gathering information for the parent company and acting as a communication channel between the parent company and Indian companies. The expenses of liaison offices are to be met by way of inward remittance from the non-resident. The advantage of a liaison office vis-à-vis a branch office is that, unlike a branch office, a liaison office may not constitute a permanent establishment for tax purposes.

A project office is usually set up for execution of large projects such as major construction, civil engineering and infrastructure projects.

An Indian company (even if wholly foreign owned) has no such fetters on account of status on its ability to carry on business that is specified in its Memorandum of Association.

4. What are the ongoing obligations in relation to each of the forms of business organizations referred in 2 above?

The owner is fully responsible for the business of a sole proprietorship. Although no central business registration is necessary for a sole proprietorship, certain registration requirements under local laws and foreign investment laws may apply depending on the nature of the business activity being undertaken by the sole proprietorship.

A partnership that is not registered has no filing or other compliance requirements under the Partnership Act, save those specific to the business activity being undertaken by the partnership.

A registered partnership may notify the Registrar of Firms of any change in its registered details such as address, composition of the firm, additional places of business or change in place of business. Such notification is not obligatory but is advisable.

Companies must comply with various requirements for filing documents and forms with the Registrar of Companies. These include annual returns, a list of directors, a notice of the creation of charge on its assets or of an increase in its nominal share capital and copies of notices for shareholder meetings and certain shareholder resolutions. In addition, a company needs to maintain certain registers including that of its members, directors, managing directors and contracts in which the directors have an interest.

Listed public companies are subject to corporate governance requirements as well as additional disclosure requirements, such as reports/notifications that have to be filed with the stock exchanges on which the shares of that company are listed.

The corporate governance requirements for a listed company include the appointment of independent directors on the boards of directors of such listed company as well as any of its material subsidiaries (even if such subsidiaries are unlisted), and the constitution of board committees including an audit committee. The periodic disclosure requirements pertain to any major corporate actions taken (including the approval of an issuance or cancellation or sub-division of capital, etc.) and intimations under the Takeover Code and adherence to the formats prescribed by the Indian stock exchanges for periodic reporting of shareholding pattern and financial results, amongst other requirements.

5. Are there any restrictions on foreign ownership of land?

A non-resident is not permitted to acquire immovable property in India (other than through a lease for a term of less than 5 years) without the prior permission of the Reserve Bank. However, a person who has established a branch office or other place of business (other than a liaison office) for carrying on any activity in India can acquire immovable property in India which is necessary for or incidental to the carrying on of such activity. A declaration in the prescribed form has to be filed with the Reserve Bank within 90 days of such acquisition. An

Indian subsidiary set up by a company resident outside India would be an Indian resident and is permitted to acquire movable and immovable property incidental to its business. Foreign investment in real estate related businesses, however is regulated as described in part d below.

The creation of a charge/security over immovable property in India in favor of a non-resident would require prior Reserve Bank approval.

c. Companies

1. What are the different types of companies recognized in India?

Companies may be incorporated as private companies or public companies.

Private companies must have a minimum paid up capital of US \$ 2000 (approximately). The Articles of Association of private companies must restrict the transferability of shares and the number of members to 50 (not including employees), prohibit the company from making any invitation to the public to subscribe for shares or debentures and any invitation or acceptance of deposits except from members, directors or their relatives. A private company is required to have a minimum of 2 members and 2 directors.

Private companies have greater flexibility and less stringent rules in respect of various matters including holding of members' meetings, issue of further capital, commencement of business, number of directors, determination of kinds of share capital and voting rights, determination of managerial remuneration, inter-corporate loans and investments, etc.

The shares of a public company are freely transferable and there is no limit on the number of members that it may have. The minimum paid-up capital for a public company is US \$ 10,000 (approximately). A public company is required to have a minimum of 7 members and 3 directors. A private company, which is a subsidiary of a public company, is considered to be a public company.

A private company, which is a subsidiary of a foreign company, which if incorporated in India would be a public company for the purposes of Indian law, would also be deemed to be a subsidiary of a public company, except where all the shares of such private company are held by foreign companies outside India.

2. What is the process for incorporation of a company?

Indian companies (whether private or public, limited or unlimited) are incorporated by registration with the appropriate Registrar of Companies of the State in which the registered office of the company is to be located. The documents filed are available for public inspection.

The first step towards incorporation is the approval of the name of the company by the Registrar of Companies. An application for name approval is made in Form 1A, wherein various details regarding the proposed new company, viz. alternative choice of names, information regarding first directors, details of the promoters etc. need to be disclosed. Subsequent to the receipt of such name approval, Forms 1 (application and declaration for incorporation of new company), 18 (notice of situation of registered office) and 32 (particulars of directors) along with the constitutional documents of the proposed company need to be filed. It may be noted that before any of the aforesaid filings are made, each of the proposed directors will need to obtain a DIN. Further to the initiation of e-filing of forms by the Registrar of Companies in India, digital signature certificates will also have to be obtained from certain designated authorities.

Once the constitutional documents are approved by the Registrar of Companies and a certificate of registration is issued, a private company can commence business activities. In addition to the said certificate of registration, a public company is required to obtain a certificate of Commencement of business from the Registrar of Companies prior to commencing its business activities.

The constitutional (charter) documents of a company comprise the Memorandum of Association and the Articles of Association. The Memorandum of Association sets out the objects and scope of activity of the company and the authorized share capital of the company. The Articles of Association set out the rules and regulations of the company in respect of its management and the rights of the members/shareholders *inter se* and *vis-a-vis* the company.

3. How does one fund a subsidiary established in India?

A subsidiary may be funded by:

- subscribing to equity or compulsorily convertible preference share capital;
- extending an ECB including through subscription of RPS and OCDs. (subject to having the minimum equity contribution and maintaining the debt equity ratio stipulated under the extant regulations) and which would require compliance with the permitted end-use requirements;

4. Can a non-resident be the first shareholder of a company in India?

Subject to the sectoral policy on foreign investments and non-resident holding limits applicable to an Indian company, the entire share capital of a company may be held by non-residents. While there is no restriction on a non-resident being a subscriber to the Memorandum of Association, in such a case the charter documents of the company will have to be notarized and then consularised by the Indian consulate in the country of the non-resident subscriber and duly notarised by the appropriate authority.

5. What are the advantages of owning 75% as opposed to 51% of the equity?

Shareholders holding 75% of a company's equity will be able to authorize certain proposals which are required to be approved by a special resolution, i.e. a 3/4th majority of the shareholders of the company present and voting at any meeting such as:

- alteration of the Memorandum and Articles of Association of the company;
- reduction of capital, issue of shares to persons other than existing shareholders;
- mergers and amalgamations;
- variation of the rights of a class of shareholders; and
- winding-up of the company.

Most other resolutions, including for appointment of directors, declaration of dividend, approval of audited financial statements require an ordinary resolution, i.e. a 51% majority of the shareholders present and voting at any meeting. Subject, of course, to quorum requirements being satisfied. Further, listed companies are required to pass certain shareholder resolutions only by postal ballot and not at a shareholders meeting.

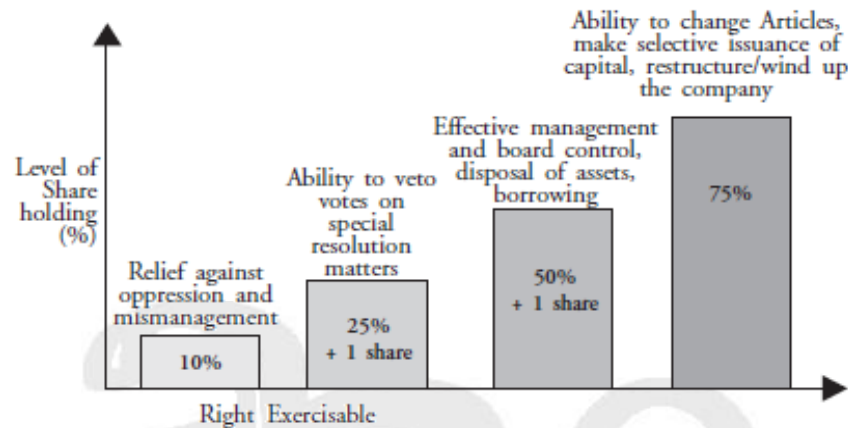
6. How can a minority shareholder protect his interests?

Certain limited rights are available to a shareholder owning at least 10% of the voting capital, such as the right to requisition an extra-ordinary general meeting of the company.

Remedy is also available to a shareholder holding 10% or more to approach the Company Law Board for oppression of the minority and for mismanagement of the company by the persons in control of the company or the majority shareholders. However, the burden of proving oppression or mismanagement would be on the shareholder alleging the same and the process may take several years.

Shareholders holding more than 25% of the voting capital may block resolutions on matters requiring a special resolution as stated in the preceding discussion. Matters required to be passed by special resolution include amendments to the Memorandum of Association and Articles of Association, reduction of the share capital, winding up, etc.

The following graph is an indicative representation of the rights associated with different shareholding thresholds:



In case of joint ventures, interests of the minority partners may be protected through provisions in the shareholder/joint venture agreements, which increase the threshold required for the passage of certain resolutions (therefore providing for “veto” rights) and provide for special quorum requirements. Interests of parties are also protected through restrictions on the ability of parties to transfer shares held by them in the joint venture company.

7. Are there any corporate governance norms?

Yes. These have been introduced over the last few years by amendments made to the Companies Act and the listing agreements that companies are required to enter into with stock exchanges, on which they are listed. The Companies Act requires every company with a paid up share capital of more than US \$ 1 million (approximately) to set up an audit committee and enables every public company with a share capital of more than US \$ 1 million (approximately) and more than 1000 small shareholders to appoint a director elected by such small shareholders.

The listing agreements require public listed companies to appoint a specified number of independent non-executive directors and constitute separate sub-committees of the board of directors for functions like audit and remuneration.

8. When can shares be listed?

Shares can be listed through a public issue (including an offer for sale, if applicable) in accordance with the detailed requirements specified under the SEBI (ICDR) Regulations.

In the case of a public issue (including an offer for sale, if applicable), the minimum offer to the public and minimum public shareholding required is not less than 10% of the issue size, subject to compliance with the Securities (Contracts) Regulation Rules, 1957, which provide, *inter alia*, that such offer be made through the book building route, with minimum allocation of 60% of the issue size to qualified institutional buyers. However, if the said requirements are not complied with, the minimum public shareholding threshold would be increased to 25%.

9. Can a non resident set up an unlimited liability company?

Yes.

10. Are there any norms for sharing of profits?

Dividends can be declared or paid by a company only out of its distributable profits after providing for depreciation in the manner specified under the Companies Act. The dividend has to first be proposed by the board of directors of a company and is then subsequently approved by its shareholders. The shareholders however, cannot approve a dividend that is greater than the amount proposed by the board of directors. The board may however declare and pay interim dividends without shareholder approval.

Further, dividends can be paid only in cash, except in the case of the issue of bonus shares.

11. Are there any restrictions on the repatriation of dividends/royalties/consultancy fees?

There are no restrictions specific to non-residents on the remittance of dividends. However, as noted above, restrictions do exist on the ability of a company to declare a dividend under the Companies Act.

If the royalties payable under technical collaboration agreements exceed 5% on local sales and 8% on exports and the lump sum fee/royalty payment exceeds US \$ 2 million, approval of the Central Government is required for remitting the same. Higher limits have been specified for management agreements in the hotel sector. All remittances of royalty or lump-sum fees under a technical collaboration agreement exceeding the above limits requires the prior approval of the Reserve Bank.

Remittances of consultancy fees exceeding US \$ 1 million for any consultancy services procured by an Indian entity from outside India require the prior approval of the Reserve Bank. However, this rule does not apply if payments are made out of funds held in an RFC account of the remitter.

12. What type of shares can a company issue?

Shares can only be of 2 kinds:

- Equity shares - These shares have voting rights or differential rights as to dividend, voting or otherwise, and
- Preference shares - Such shares do not carry voting rights, except in certain circumstances. Preference shareholders have a preferential right over the equity shareholders to dividends and to assets of the company in case of a winding up. These shares may be redeemable or convertible into equity shares although now foreigners can only subscribe to the latter under the FDI route.

13. Can an Indian company have foreign directors?

Yes, provided that the terms of appointment of a foreign national as a full-time/executive director of an Indian public company or a private company which is a subsidiary of a public company, have been approved by the Central Government if his period of stay in India, prior to being appointed full-time director, is less than 12 months. However, such prior approval is not required for private companies.

14. What responsibilities do a company's directors have?

A director is required to act with reasonable diligence and care in the best interest of the company, and has a fiduciary duty towards all the shareholders of the company.

The duties of a director include attending the board meetings, disclosing any conflicting interest and acting in accordance with the Articles of Association of the company.



15. What are the liabilities of directors of a company?

A director who commits a breach may be liable for both civil and criminal consequences, depending upon the nature of the breach and the statutory provisions. The liabilities can be summarized as follows:

- Directors will be liable for civil consequences by way of monetary penalties and/or claim for damages for breaches of fiduciary duties.
- In respect of breach of certain statutory provisions, directors would be liable for monetary penalties and/or imprisonment. However, in such case, usually a director will not be liable if he can prove that the breach was committed without his knowledge and/or that he had exercised all due diligence to prevent the commission of the breach.

16. Are there any requirements in relation to the frequency and mode of holding board meetings?

In terms of the Companies Act, a meeting of the board of directors of a company is required to be held at least once in every 3 months, and at least 4 meetings of the board of directors are required to be held annually. Currently, a meeting of the board of directors is required to be a physical meeting and telephonic meetings or meetings by video conference are not recognized under Indian law. However, there are no restrictions relating to the venue of board meetings, which may even be held outside India.

Resolutions of the board of directors of a company may be passed by circulation if the draft resolution, together with all the necessary papers has been circulated to all the directors resident in India. However, certain powers of the board cannot be exercised by circulation and must be exercised at a meeting of the board. For instance, powers for making calls on shareholders in respect of unpaid money on shares, authorizing a buyback of securities, issuance of debentures, borrowing money, investing funds of the company and making loans can only be exercised at a board meeting.

17. What does the new Companies Bill, 2009 propose?

The Indian Parliament is in the process of re-vamping the entire corporate structure in order to streamline the functioning and regulation of companies in India. The Government has introduced the Companies Bill, 2009 in the Lok Sabha (the lower house of the Parliament) and it intends to replace the Companies Act, which presently governs the operation of companies in India. Some of the significant highlights of the Companies Bill, 2009 (in its present form) include the following: (a) concept of 1 Person Company has been introduced; (b) small companies have been defined (as companies having maximum paid-up share capital not exceeding US \$ 1 million) and have been subjected to a less stringent regulatory framework; (c) registration process has been made faster and compatible with e-governance; (d) concept of key managerial personnel has been introduced and corresponding liabilities have been set out in case of breach of their obligations; (e) concept of independent directors has been introduced for the first time under the Company Law; (f) besides the Audit Committee, the constitution of Remuneration Committee has also been made mandatory in the case of listed companies and such other class or description of companies as may be prescribed; (g) in order to encourage wider participation of shareholders at general meetings, the members have been permitted to exercise their vote at meetings by electronic means; (h) various investor protection measures have been introduced; and (e) corporate governance issues have been addressed in detail in light of the corporate failures and growing investor protection concerns.

d. Foreign Investment

1. How is foreign investment regulated in India?

Foreign investment is primarily regulated by the industrial policy, the press notes issued by the Ministry of Commerce and Industry, Government of India, the FEMA and the regulations and notifications issued by the

Reserve Bank. These prescribe the relevant terms and conditions on which the foreign investment may be made, prohibited sectors for foreign investment and the limit (or sectoral caps) on foreign investment in certain permitted sectors.

2. Who are the key regulators who monitor foreign investors in India?

The FIPB, a department of the Ministry of Finance, is the regulatory body responsible for regulating foreign investment in accordance with the industrial policy. The DIPP, under the Ministry of Commerce & Industry, is the regulatory body entrusted with the function of not only regulating the industrial sector, but also facilitating investment and technology inflow into India. In addition, the Reserve Bank also regulates foreign investment for the purposes of exchange control in accordance with the provisions of the FEMA.

3. What are the different routes through which a foreign investor may invest in India?

There are 3 routes through which a foreign investor may invest in India, namely:

- Foreign Direct Investment (FDI), either under the automatic route or after seeking prior regulatory approval. Investors coming in through the FDI route, in both cases, do not require any prior registration with any regulatory authority in India; but are subject to the FDI policy.
- Investment as a Foreign Institutional Investor (FII) or a sub-account of an FII, duly registered with the SEBI and the Reserve Bank; and
- Investment as a Foreign Venture Capital Investor (FVCI) registered with the SEBI and the Reserve Bank.

4. What is meant by the ‘automatic route’?

Foreign investment in a wide range of sectors does not require the approval of either the Reserve Bank or the FIPB, provided the level of foreign investment does not exceed specified percentages, the pricing restrictions (explained later in this chapter) are complied with and the foreign investor does not have an existing joint venture or technology transfer/ trademark agreement in the same field in India (barring certain exceptions).

Such foreign investment which does not require the approval of the FIPB or the Reserve Bank falls under the “automatic route” of foreign investment. For example, foreign investment in information technology and manufacturing (with the exception of items reserved for micro and small enterprises) is permitted under the automatic route up to 100%.

5. Are there any sectors in which FDI is prohibited?

Yes. FDI is prohibited in certain reserved sectors, including retail trading (except single brand retail), atomic energy, and lottery business.

6. What are the sectors in which FDI requires prior approval from FIPB?

Sectors where approval from the FIPB is required for new foreign direct investments include:

- All proposals for investment in certain industries specified by the government, such as atomic minerals, defence, single brand retailing and broadcasting.
- Foreign investment where more than 24% foreign equity is proposed to be inducted for manufacture of items reserved for the micro and small enterprises.
- Any activity requiring an industrial license under the provisions of the Industrial (Development and Regulation) Act.



- All proposals for investment in certain specified industries where the proposed investment is in excess of a specified maximum limit under the automatic route. For example, investment in excess of 49% in telecommunications or investment in excess of 26% in insurance sector.

All proposals in which a foreign collaborator had an existing joint venture or technology transfer/ trademark agreement in the same field in India as the proposed target company on January 12, 2005 would require the approval of the FIPB (barring certain exceptions).

7. How long would regulatory approvals take?

Approval from the FIPB is normally received within 6-8 weeks from the date of the application, whilst approval from the Reserve Bank can normally take 2-4 months.

8. What are the different instruments available for investment in India?

Depending upon the nature of the investee company and the investor, the investor may invest through:

- shares (equity or preference);
- instruments convertible into shares (convertible preference shares/ debentures/bonds, warrants, depository receipts);
- redeemable instruments (redeemable preference shares, debt securities);
- derivative instruments (participatory notes, options);
- units of mutual funds / venture capital funds.

In case of foreign investors, redeemable instruments such as redeemable preference shares of partially / optionally convertible debt constitute an ECB and would be subject to the ECB Guidelines.

The ECB Guidelines prescribe certain requirements as to eligible borrowers, recognized lenders, minimum average loan maturities, all-in-cost ceilings for ECBs that must be complied with in order to proceed under the automatic route.

The ECB Guidelines also specify end-use restrictions on the amounts received as an ECB. The permitted uses include, *inter alia*, the import of capital goods (as classified by the Directorate General of Foreign Trade in the Foreign Trade Policy) and the implementation of new projects. ECBs are not permitted to be raised for (i) on-lending or investment in capital markets or acquiring a company (or a part thereof) in India by a corporate; or (ii) use in real estate (as defined and qualified by the ECB Guidelines); or (iii) working capital, general corporate purposes and repayment of existing Indian rupee loans.

9. What is the procedure for acquiring existing shares of an Indian company?

The transfer of listed shares of an Indian company by an Indian resident to a person resident outside India does not require prior permission of the FIPB and the Reserve Bank in most cases provided certain conditions relating to sectoral caps, pricing, etc. are complied with. However, the transfer of shares (of an Indian company operating in a sector which is subject to sectoral caps) by an Indian resident to a person resident outside India will require a prior approval from the FIPB in cases where by virtue of such transfer the person resident outside India obtains control/ ownership of the Indian company.

The approval of the Reserve Bank for such transfers is required in the following cases:

- The Indian company whose shares are being sold is engaged in the financial services sector (i.e. insurance, asset reconstruction, NBFC, etc.);
- The transaction attracts the provisions of the Takeover Code; and / or
- The price at which the transfer takes place is not in accordance with the pricing guidelines prescribed by the SEBI and / or the Reserve Bank as applicable.



The approval of both FIPB and the Reserve Bank is required in the following cases:

- The activities of the investee company are not under the automatic route, and need prior approval of the FIPB; and
- The non-resident shareholding after the transfer exceeds the sectoral limits under the FDI policy.
- The non-resident investor holds, as on January 12, 2005, a 3% or higher stake in an existing venture in India in the same field as the investee company.

Further, shares of a listed company may only be acquired by way of a private arrangement off the stock exchange. Acquisition of shares on the stock exchange under the FDI route requires the prior approval of the Reserve Bank. However, a person resident outside India is permitted to sell the shares and convertible debentures of an Indian company without a prior approval from the RBI on a stock exchange in India through a stock broker registered with a stock exchange or a merchant banker registered with SEBI (subject to pricing and reporting norms).

A person resident outside India may transfer shares of an Indian company to another person resident outside India at a price determined by the seller and the buyer, without having to seek any prior Indian regulatory approvals, subject to the buyer not having an existing or previous venture, tie-up or collaboration (entered into prior to January 12, 2005) in the same field of business as the Indian company.

10. Are there any pricing restrictions applicable on the subscription / secondary acquisition of shares by persons resident outside India?

Yes. A brief summary of these is set out below:

Pricing Guidelines

The Reserve Bank has prescribed pricing guidelines for both the subscription to, and the acquisition of, shares by non residents.

In the case of listed companies:

- the subscription to a fresh issue of shares by a non resident must be made at a price computed in accordance with the SEBI regulations (i.e. at a price which is not lower than the 2 weekly or 6 monthly average of the closing price of the shares on a recognized stock exchange in India)
- the acquisition of shares by a non resident must be at the market price.

In the case of unlisted companies both the subscription to a fresh issue of shares, or the acquisition of shares must be at a price which is not lower than the price computed in accordance with the pricing guidelines issued by the erstwhile Controller of Capital Issues (as certified by an Indian chartered accountant).

The prior approval of the Reserve Bank is required in cases where the pricing guidelines are not complied with.

Manner of Payment

The acquisition of shares must be made by way of inward remittance through normal banking channels and prior regulatory approval is generally required in cases where the consideration for acquisition of the shares by non-residents is other than by way of cash (barring certain exceptions).

Refund of Remittances

Equity instruments must be issued to foreign investors within 180 days of receipt of consideration and in the event shares are not issued within this time frame, the consideration may be refunded.

11. How is investment in Depository Receipts regulated?

Indian companies are permitted to issue ADRs and GDRs. Investors in these can subsequently convert their receipts into the underlying shares without having to seek approval of the FIPB or the Reserve Bank. The current guidelines also permit:

- 2 way fungibility of ADRs/GDRs whereby shareholders may seek to convert equity shares into ADRs/GDRs subject to certain conditions; and
- sponsored ADR programs whereby the company can sponsor an ADR/GDR programs by issuance of depository receipts out of existing shares to be divested by the shareholders.

Generally, Indian companies are not required to obtain the approval of the Ministry of Finance, the FIPB or the Reserve Bank for the issue of ADRs/GDRs. However, this is subject to certain exceptions which are applicable to FDI (as set out above) in which case, permission from the FIPB is required. Indian companies issuing ADRs/GDRs also have to comply with the 1993 Scheme. The issue of ADRs/GDRs under the 1993 Scheme also gives holders of ADRs/GDRs certain tax benefits under the provisions of the Indian Income Tax Act.

The 1993 Scheme sets forth certain eligibility criteria for a company desirous of issuing convertible bonds or depository receipts backed by underlying ordinary shares or convertible bonds. These requirements include compliance with India's FDI Policy and other applicable provisions of the regulations and notifications issued under FEMA, the appointment of appropriately registered or approved investment bankers, and the taking of certain "effective steps" such as completion of due diligence and filing an offering circular with, or otherwise obtaining approval of the relevant overseas exchanges on which bonds or depository receipts are proposed to be listed, under the 1993 Scheme.

FII Investments

12. Who can be registered as an FII? What are the investment norms for FIIs?

Registration:

Pension funds, mutual funds, investment trusts, insurance or reinsurance companies, international or multilateral organizations or an agency thereof, foreign governmental agencies, sovereign wealth funds, foreign central banks, endowment funds, university funds, foundation or charitable trusts or charitable societies, who propose to invest on their own behalf, and asset management companies, institutional portfolio managers, trustees, power of attorney holders, banks, who propose to invest their proprietary funds or on behalf of 'broad based' funds or on behalf of foreign corporates and individuals, may register with the SEBI as an FII.

FIIs are required to be registered with the SEBI and to simultaneously obtain general permission from the Reserve Bank. However, as the SEBI provides a single window clearance, a single application must be made to the SEBI.

Regulations:

Investments by FIIs are governed by: (a) the SEBI FII Regulations; (b) the FEMA 20 Regulations, including the Portfolio Investment Scheme published thereunder as Schedule 2; and (c) the guidelines issued vide a press note dated September 14, 1992 by the Ministry of Finance, Government of India.

Investment:

A registered FII may, subject to the pricing and ownership restrictions discussed below, freely buy and sell securities issued by any Indian company, realize capital gains on investments made through the initial amount invested in India, appoint a domestic custodian for custody of investments made and repatriate any capital, capital gains and dividends that they may make or receive.

FII's and sub-accounts are permitted to invest only in listed debt securities of companies. Investments in debt are subject to overall limits for FII debt investments prescribed by the SEBI. The allocation of unutilized / unallocated limits for such investments is on a first-come-first-serve basis.

The prescribed limit for investment in corporate debt is US \$ 15 billion.

Limitations on Investment:

The following limitations apply to investments by (non-100% debt) FII's:

- Primary market acquisition of listed securities, and acquisitions of shares that are unlisted by FII's may be subject to the FDI Policy;
- All transactions of the FII are subject to process restrictions and specifications prescribed by the SEBI;
- An FII is not permitted to hold more than 10% of the total issued capital of an Indian company; a corporate/ individual sub-account of the FII is not permitted to hold more than 5% of the total issued capital of an Indian company;
- The total holding of all FII's in an Indian company is subject to a cap of 24% of the total issued capital of the company which may be increased up to the relevant sectoral cap for FDI by a special resolution of the shareholders of the company in a general meeting.

FVCI Investments

13. Who is qualified to act as an FVCI and what is the procedure for registration?

An investor incorporated or established outside India, who proposes to make investments in India under the venture capital route is required to register with the SEBI as an FVCI in accordance with the SEBI FVCI Regulations.

Registration of an entity as a FVCI with the SEBI in accordance with the FVCI Regulations involves the filing of a prescribed application form in duplicate with the SEBI, along with the prescribed application fee. The SEBI simultaneously forwards 1 copy of the application to the RBI for its approval. The SEBI acts as the nodal agency for providing registration and such registration constitutes approval in terms of the FVCI Regulations as well as exchange control and tax laws. In examining the application for registration, the SEBI would generally examine whether the applicant is a "fit and proper" person to be registered as a FVCI. Various factors are considered, including the applicant's track record and competence, whether its constitutional documents permit it to carry on venture capital investment activities, and whether the applicant is regulated by an appropriate foreign regulatory authority or is a registered income tax payer or has submitted a certificate from either its banks or its promoters where it is neither a regulated entity nor an income tax payer.

14. What are the advantages and limitations of structuring the acquisition under the FVCI route?

The FVCI route is generally preferred for investment in unlisted Indian companies, although in certain cases investment in listed Indian companies by such entities is also permitted.

Investment through the FVCI route offers 3 important benefits:

- An FVCI can make and dispose of investments at negotiated prices that are not subject to the Reserve Bank's pricing regulations discussed and is therefore not subject to any limit on returns unlike other foreign investors;
- Pre-IPO share capital held by an FVCI is not subject to a lock-in period of 1 year from the date of allotment in an initial public offering provided that the FVCI has held the shares for a minimum period of 1 year at the time of filing the draft prospectus with the SEBI, unlike the remaining pre-IPO share capital of a company;

- The tender offer obligations contained in the SEBI Takeover Regulations are not applicable to a transfer of shares from an FVCI to the promoters of a venture capital undertaking or the venture capital undertaking pursuant to an agreement between the FVCI with such promoters or the venture capital undertaking.

However, the following limitations apply to FVCI investments:

- A registered FVCI must maintain a prescribed asset composition of its investible funds - 66.67% of its investible funds must be invested in unlisted equity shares or equity linked instruments of venture capital undertakings (Indian unlisted companies) whilst 33.33% of its investible funds may be invested, amongst others, by way of subscription to an initial public offer of a venture capital undertaking whose shares are proposed to be listed or through preferential allotment of equity shares of a listed company.
- An FVCI may, however, not invest in securities of most categories of NBFCs, companies in the print media sector or companies engaged in gold financing or any other activity in which foreign investment is not permitted under the FDI Policy of the Government of India. The Reserve Bank has recently started imposing a restriction on FVCIs permitting investments only in 10 (ten) specified sectors.
- An FVCI is not permitted to invest more than 25% of the funds committed for investments in India in 1 venture capital undertaking.

Summary of Norms for foreign direct investment in certain cases

Civil Aviation

The policy for foreign investment in the civil aviation sector has been liberalized recently and is summarized below:

- **Airports:** FDI up to 100% is allowed under the automatic route for Greenfield projects. FDI up to 100% is allowed with prior approval of the Government for FDI beyond 74% for existing projects.
- **Scheduled air transport services/ domestic scheduled passenger airlines:** FDI up to 49% and investment by NRIs is permitted under the automatic route. Under the Domestic Air Transport Policy issued by the MCA, foreign investors may nominate up to 1/3rd of the Board of Directors of a company providing scheduled air transport services (2/3rd members must be citizens of India) and the substantive ownership and effective control of such a company should vest in Indian nationals.
- **Non-scheduled air transport service/ non-scheduled airlines, chartered airlines, and cargo airlines:** FDI up to 74% and investment by NRIs up to 100% is permitted.
- **Helicopter services/ seaplane services requiring approval from the Directorate General of Civil Aviation:** FDI up to 100% is allowed.
- **Ground handling services:** FDI up to 74% and investment by NRIs up to 100% is allowed subject to sectoral regulations and security clearance.
- **Maintenance and repair organizations, flying training institutes, and technical training institutions in the civil aviation sector:** FDI up to 100% is allowed.

Foreign airlines (i.e. aircraft companies registered abroad) are not allowed to participate in the equity of an air transport undertaking engaged in operating scheduled, non-scheduled and chartered airlines. However, participation by foreign airlines in the equity of companies operating cargo airlines, helicopter and seaplane services is permitted.

Real Estate

Until March 3, 2005, foreign investment in real estate activities in India was prohibited with some limited exceptions. However, in March 2005 the Government notified significant liberalizations to the norms governing foreign investment in the real estate sector, which are summarized below:

- FDI is permitted up to 100% under the automatic route (i.e. no prior approvals required from either the FIPB or the Reserve Bank) in townships, housing, built up infrastructure and construction-development projects.



- “Construction development” projects have been defined to include (with an express statement that such definition is not meant to be exhaustive) housing, commercial premises, resorts, educational institutions, recreational facilities, city and regional level infrastructure.
- The minimum area to be developed in case of services housing plots is 10 hectares and 50,000 square meters in case of construction development projects. For projects which are a combination of the aforesaid, compliance with either of the aforesaid minimum area conditions would suffice.
- Foreign investment would be subject to a minimum capitalization of US\$ 10 million where the project company is set up as a wholly owned subsidiary and US\$ 5 million when set up as a joint venture with Indian partners. Capital is required to be brought in within 6 months of commencement of business and the investment would be “locked in” (i.e. cannot be repatriated) for a period of 3 years from completing capitalization.
- At least 50% of the project is required to be developed within 5 years of all statutory clearances (the responsibility for the obtaining of which is cast on the foreign investor) being received. The sale of undeveloped plots is prohibited, with undeveloped plots being defined where the plots sold are not supported by necessary infrastructure like water, roads, street lighting, drainage, sewage etc. as specified under the relevant regulations and a completion certificate in this behalf has not been obtained. FDI is however permitted in the sale of serviced housing plots supported by completed infrastructure as aforesaid.
- Local laws and regulations in relation to development and constructions (including obtaining necessary permits, consents and clearances) have to be complied with.

Petroleum and Natural Gas

In relation to petroleum (other than refining), the following FDI norms apply:

- Under the exploration policy, FDI up to 100% is allowed in both small and medium sized fields under the automatic route through competitive bidding.
- For petroleum products pipeline, FDI is permitted up to 100% under the automatic route.
- For petroleum products marketing and trading, FDI up to 100% is permitted under the automatic route.
- For petroleum product pipelines, 100% FDI is permitted under the automatic route.
- 100% FDI is permitted for the purposes of market study and formulation, investment/financing and / or setting up of infrastructure for marketing.

In relation to the petroleum refining sector, the norms are as follows:

- FDI is permitted up to 49% in the case of public sector units with prior FIPB approval subject to the condition that there is no divestment or dilution of domestic equity in the existing public sector units.
- FDI is permitted up to 100% under the automatic route in case of private Indian companies.

Banking

FDI up to 74% in private sector banks is permitted under the automatic route subject to compliance with guidelines issued by the Reserve Bank from time to time.

The following sub limits are also applicable:

- FIIs: Individual FII holding is restricted to 10% and aggregate holding of FIIs is restricted to 24%.
- NRIs: Individual holding is restricted to 5%. Aggregate holding of NRIs is restricted to 10%, which may be raised to 24% by a special resolution of the shareholders of the company.

The Reserve Bank, in 2005 issued a regulatory roadmap (“**Roadmap**”) for a gradual enhancement of the presence of foreign banks in India in a synchronized manner. The Roadmap sets out the following:

- The roadmap for presence of foreign banks in India along with the annex for setting up of wholly owned subsidiaries; and
- The guidelines on ownership and governance in private sector banks (the “**Guidelines**”).



Pursuant to the Roadmap, foreign banks may operate in India through only 1 of 3 channels, namely (i) branch (es); (ii) a WOS; or (iii) a subsidiary with an aggregate foreign investment up to a maximum of 74 % in a private bank. The Roadmap divides the process of subsidiarisation into 2 phases. Phase I covers the time period between March 2005 and March 2009, during which period foreign banks wishing to establish a presence in India for the first time would be permitted to set up a WOS or a branch office. Existing foreign banks are permitted to convert their existing branches into a WOS. During Phase I, foreign banks may only acquire, in a phased manner, shareholding in Indian private sector banks identified by the Reserve Bank for restructuring. All the above routes require prior approval from the Reserve Bank, which in addition to specifying minimum eligibility, start-up capital, etc. requirements has retained a fair amount of discretion and control over the acquisition of shareholding by foreign banks in an Indian private bank. Phase II was set to commence in April 2009 after a review of the experience gained and after due consultation with all the stakeholders in the banking sector.

In relation to shareholding of private sector banks, the Guidelines lay emphasis on diversified ownership. The stated objective of the Guidelines is to ensure that no single entity or group of related entities has shareholding or control, directly or indirectly, in any bank in excess of 10%. Any higher level of acquisition would require Reserve Bank approval. The Guidelines also provide that banks (including foreign banks having a branch presence in India)/Financial Institutions should not acquire any fresh stake in a bank's equity shares, if by such acquisition, the investing bank's/financial institution's holding exceeds 5% of the investee bank's capital. The Guidelines require any existing shareholding of any individual entity/ group of related entities in excess of 10% be reduced to 'permissible' levels in a phased manner.

Further, any bank having a shareholding in excess of 5% in any other bank in India is required to indicate a timetable in which such shareholding would be reduced to permissible levels. The parent of any foreign bank having a presence in India and having a shareholding directly or indirectly through any other entity in the banking group in any bank in India in excess of 5% will be required to reduce such shareholding to 5%.

NBFCs

FDI/NRI investments are allowed in the following 18 NBFC activities as per levels indicated below: (i) Merchant banking; (ii) Underwriting; (iii) Portfolio Management Services; (iv) Investment Advisory Services; (v) Financial Consultancy; (vi) Stock Broking; (vii) Asset Management; (viii) Venture Capital; (ix) Custodial Services; (x) Factoring; (xi) Credit rating agencies; (xii) Leasing & Finance; (xiii) Housing Finance; (xiv) Forex Broking; (xv) Credit card business; (xvi) Money changing Business; (xvii) Micro Credit; and (xviii) Rural Credit.

The following minimum capitalisation norms are applicable for fund based NBFCs:

- For FDI up to 51% - US \$ 0.5 million to be brought upfront;
- For FDI above 51% and up to 75% - US \$ 5 million to be brought upfront;
- For FDI above 75% and up to 100% - US \$ 50 million out of which US \$ 7.5 million to be brought upfront and the balance in 24 months.

A minimum capitalization norm of US \$ 0.5 million is applicable in respect of all permitted non-fund based NBFCs with foreign investment.

Further, foreign investors can set up 100% operating subsidiaries without the condition to disinvest a minimum of 25% of its equity to Indian entities, subject to bringing in US \$ 50 million as at (ii) above, without any restriction on number of operating subsidiaries in the NBFC sector undertaking the 19 permitted activities. (without bringing in additional capital)

Joint Venture operating NBFC's that have a maximum of 75% foreign investment will also be allowed to set up subsidiaries for undertaking other NBFC activities, subject to the subsidiaries also complying with the applicable minimum capital inflow as mentioned in (i) and (ii) above.



FDI, by way of subscription to fresh shares of companies operating in the NBFC sector in the 19 permitted activities is under the automatic route subject to compliance with guidelines issued by the Reserve Bank. A sale of the existing shares of a company engaged in the 19 permitted activities from a resident shareholder to a person resident outside India requires prior approval of the Reserve Bank.

Asset Reconstruction Companies

Persons resident outside India (other than FIIs) can invest in up to 49% of the paid up equity share capital of an ARC registered with the Reserve Bank with the prior approval from the FIPB.

FIIs are not permitted to invest in the equity share capital of an ARC and can only invest in the Security Receipts issued by RBI registered ARCs. FIIs can invest in up to 49% of each tranche of scheme of Security Receipts provided that the investment by a single FII in each tranche does not exceed 10% of the issue.

No person is permitted to hold a controlling stake in an ARC and all persons who have a 10% or more stake are designated as 'sponsors' of the ARC under the SARFAESI Act. The sponsor, along with its subsidiaries cannot appoint, or be associated with more than half the strength of the board of directors of the ARC.

Trading

Prior to February 2006, foreign investment in the trading sector was subject to several restrictions. However, the Government has thereafter liberalized the norms governing foreign investment in trading companies which are summarized below:

- FDI up to 100% is permitted under the automatic route in wholesale cash and carry trading and trading for exports;
- FDI up to 100% is permitted in trading of items sourced from the small scale sector with the prior approval of the FIPB;
- FDI up to 100% is permitted in test-marketing of items for which a company has an approval for manufacture with the prior approval of the FIPB;
- FDI up to 51% is permitted in single-brand retailing with the prior approval of the FIPB subject to the following conditions:
 - the products sold are of a single brand only and are sold under the same brand internationally; and
 - the products sold are those that are branded during manufacturing.

FDI is not permitted in retail trading, except single-brand retailing as aforesaid.

FDI up to 100% is permitted for e-commerce activities subject to the condition that investee company would engage only in business to business (B2B) e-commerce and not in retail trading.

Telecom

The regulations governing FDI in companies engaged in the telecom sector have been modified from time to time in the recent past. The present position with respect to FDI in the telecom sector is set out below:

- FDI up to 74% is permitted in basic, cellular mobile, Unified Access Services, national / international long distance, Public Mobile Radio Trunked Services, Global Mobile Personal Communications Services, V-Sat and other value added services subject to, amongst others, the following restrictions :
- Investments up to 49% are permitted under the automatic route and investments beyond 49%, i.e. between 49% and 74% require prior approval from the FIPB;
- 26% of the investee company should be owned by resident Indian citizens or an Indian company; and
- The Chief Officer Incharge of technical network operations and the Chief Security Officer should be a resident Indian citizen; the majority Directors on the Board of the company shall be Indian citizens; the positions of the Chairman, Managing Director, Chief Executive Officer (CEO) and/or Chief Financial

Officer (CFO), if held by foreign nationals, would require to be security vetted by Ministry of Home Affairs (MHA).

FDI up to 74% is permitted in ISPs with gateways, radio-paging and end-to-end bandwidth subject to licensing and security requirements. Investments above 49% require prior FIPB approval.

FDI up to 100% is permitted under the automatic route in (a) ISPs not providing gateways (b) Infrastructure providers providing dark fibre right of way, duct space, tower (Category -I) (c) electronic mail, and (d) voice mail subject to the condition that investee companies divest 26% of their equity in favor of the Indian public in 5 years if the foreign company is listed in other parts of the world. FDI up to 49% is permitted under the automatic route and FIPB permission is required for investments beyond 49%.

All investments in the telecom sector are subject to compliance with the licensing and security requirements (as applicable) notified by the Department of Telecommunications.

Print Media

Foreign participation in Indian entities publishing newspapers and periodicals is permitted with prior MIB and FIPB approval and subject to the following limits:

- FDI up to 100% in publishing scientific magazines/ specialty journals/ periodicals;
- FDI up to 26% in publishing newspapers and periodicals dealing with news and current affairs subject to verification of antecedents of foreign investor, retention of editorial and management control in the hands of resident Indians and safeguards against dispersal of Indian equity.
- FDI up to 100% is permitted with prior approval of the Government in publication of facsimile edition of foreign newspapers provided the FDI is by the owner of the original foreign newspaper(s) whose facsimile edition is proposed to be brought into India and publication of facsimile edition of foreign newspapers can be undertaken only by an entity incorporated or registered in India under the provisions of the Companies Act.
- Foreign investment in publication of India editions of foreign magazine dealing with news and current affairs including FDI and investment by NRIs/PIOs/FIIs up to 26% is permitted with prior approval of the Government.

Detailed guidelines in this behalf have been issued by the MIB.

e. Special Economic Zones

1. How may a special economic zone (SEZ) be established?

Under the SEZ Act and the SEZ Rules, which provide for a single window clearance, an SEZ can be established by any person for manufacture of goods or rendering of services or for both or as a Free Trade and Warehousing Zone by making a proposal to either the State Government or the Board of Approval constituted by the Central Government, who may then reject/approve the same and forward the proposal to the Central Government for the rejection/issuance of the Letter of Approval respectively. The person/entity granted a letter of approval by the Central Government would be a developer or co-developer and is required to hold at least 26% of the equity in the entity proposing to create business, recreational or residential facilities in the SEZ. According to the Ministry of Commerce and Industry there are more than 98 functional SEZs and around 335 SEZs notified across India, as of August 2009

2. What are the minimum requirements to establish an SEZ?

The minimum requirements to establish an SEZ include requirements with respect to minimum area, allocation of area within the SEZ, minimum built up area in the SEZ and minimum investment by/net worth of the promoter company and group/flagship companies.

The minimum land area, allocation etc. requirements vary depending on the class of the SEZ and the State in which the SEZ is to be established. For example, a multi-product SEZ must have a contiguous area of at least 1 thousand hectare with a maximum area limit of 5000 hectare. The minimum contiguous area for multi-product SEZs in certain States, most of which are relatively smaller by area, is 200 hectares. Of the total area of a multi-product SEZ, at least 50% has to be earmarked for developing the processing area for establishing units for manufacture of goods. The remaining 50% can be used for other business and social purposes such as recreation and entertainment facilities, developing residential and business complexes, hospitals, hotels, etc.

In addition, the promoter company seeking to establish an SEZ, together with its group / flagship companies must also satisfy the following minimum investment / net worth criteria:

- for sector-specific SEZs – Minimum investment of US \$50 million (approximately) or net worth of US \$ 10 million (approximately).
- for multi-product SEZs – Minimum investment of US \$ 200 million (approximately) or net worth of US \$ 50 million (approximately).

Proposals that do not meet the above minimum investment/net worth requirements may nonetheless be considered for approval on merits if there is sufficient justification for the same.

3. How is a unit established in an SEZ?

Any person, referred to as 'entrepreneur' under the SEZ Act may submit a proposal (in the prescribed form with the prescribed filing fees) for setting up a unit in an SEZ to the Development Commissioner, with a copy of the proposal to the developer of the SEZ. The proposal may then be approved, with or without modifications or rejected by the Approval Committee. Under the SEZ Act and SEZ Rules, the approval of a proposal is subject to, inter alia:

- availability of space and infrastructure being confirmed by the developer of the SEZ;
- the proposal meeting with the requirement for the unit to have Positive Net Foreign Exchange earnings;
- the proposal satisfying any sector-specific requirements that may be applicable, etc.

An SEZ unit may only undertake operations that have been authorized under the Letter of Approval granted to the unit by the Development Commissioner. The permissible activities for an SEZ unit include manufacture of goods, rendering of services and trading.

4. What are the benefits available to SEZs and units established in SEZs?

The Developer of an SEZ is entitled to a deduction of 100% of the profits and gains derived from the business of developing an SEZ, from the Developer's total income for any 10 consecutive assessment years out of a period of 15 years, beginning with the year in which the SEZ is notified by the Central Government. Further, domestic Indian companies that are Developers of SEZs or are engaged in developing, operating and / or maintaining an SEZ are also exempt from the payment of dividend distribution tax.

Entrepreneurs establishing Units in SEZs are eligible to claim exemptions under Section 10AA of the Income Tax Act for a tax holiday of 15 years (in a phased manner) for:

- 100% of the profits and gains derived from the export of goods / services provided by the Unit for 5 consecutive years beginning with the assessment year relevant for the previous year in which the Unit begins production / services;



- 50% of such profits and gains for a further 5 years; and
- thereafter, for the next 5 consecutive assessment years, so much of the amount not exceeding 50% of the profit as is debited to the profit and loss account of the previous year in respect of which the deduction is to be allowed and credited to a reserve account (called the 'Special Economic Zone re-investment Reserve Account') to be utilized for certain specified business purposes.

Further, subject to certain conditions there is an exemption from capital gains tax on transfer of assets in cases of shifting of industrial undertaking from an urban area to any SEZ.

Units/SEZ are also entitled to exemptions or such other benefits as may be admissible from time to time on goods or services brought into the SEZ/Unit from the DTA or services provided in an SEZ/Unit by service providers located outside India provided such goods and/or services are for carrying on the authorized operations;

The developers and entrepreneurs are also exempt from paying:

- MAT under Section 115JB of the Income Tax Act;
- Import duties on import/procurement of goods;
- Export duties on goods exported/services provided from an SEZ or a Unit to any place outside India;
- Excise duty on goods brought into an SEZ/Unit to carry on authorized operations;
- Central Sales Tax on goods required for authorized operations;
- Service Tax on taxable services provided to carry on authorized operations in an SEZ;
- Securities Transaction Tax in case the taxable securities transactions are entered into by a non-resident through the International Financial Services Centre.

Thus, SEZ developers/units may import or procure all their requirements of capital goods, raw materials, consumables, spares, etc. for implementation of their projects in an SEZ duty-free from domestic sources without any license or specific approval.

These incentives and exemptions are, however, subject to terms and conditions prescribed by the Central Government.

f. Licenses

1. Do companies require an industrial license?

Except for the industries falling within the following categories, all industrial undertakings are exempt from obtaining an industrial license:

- industries retained under compulsory licensing. These include distillation and brewing of alcohol, hazardous chemicals, etc.;
- items reserved for the small-scale sector; and
- where the industry attracts locational restrictions.

2. Are there any industry-specific licenses that are necessary?

Yes. Examples of industry-specific licenses are:

- license from the Department of Telecommunications for telecom (basic and cellular) operating companies;
- license from the Insurance Regulatory Development Authority for insurance companies; and
- registration with the SEBI for mutual funds and venture capital funds.



3. Are there any registrations required for activities not falling under the industries specified above?

The requirements for other registrations depend on the nature and type of activity proposed to be carried on and the location of the industry.

Illustratively, some of the standard registrations for an establishment proposing to undertake business activities would include:

- Income Tax registration;
- VAT / Central Sales Tax registration;
- Service Tax registration;
- Professional Tax registration; and
- license under the Shops and Establishment Act of the relevant State in which the establishment is located.

A manufacturing unit would ordinarily also require registration/license/consents under the Central Excise laws, Factories Act, the different environmental protection legislations, etc. depending on the nature and location of the unit.

g. Intellectual Property

1. Are intellectual property rights protected in India?

India has a robust IP regime with legislations in place to protect Copyright, Designs, Patents, Trademarks, Topographies of Integrated Circuits and Semiconductors (mask works), Geographical Indications, and Plant Varieties and Farmers Rights. Legislations relating to Integrated Circuits and Semi-conductors, have not yet been enforced. In addition, protection for business goodwill is afforded under common law and precedents from other common law jurisdictions are accepted as precedents in a judicial determination.

As a signatory to the TRIPs Agreement and keeping in line with India's obligations, amendments have been made in the existing legislations for compliance. Copyright protection for computer programs and protection for service marks are a few examples of such new provisions since signing of the TRIPs Agreement. The Patents (Amendment) Act, 2005 and Patents (Amendment) Rules, 2006 introduced product patents from January 1, 2005 in line with India's obligations under the TRIPs Agreement.

2. How are computer software and programs protected in India?

India recognizes and protects computer programs, tables and compilations including computer databases as literary works under the Copyright Act. Both the object and source codes can be protected as literary works under the said Act and the term of protection extends to 60 years.

Patent law also provides protection to computer implemented inventions and claims to methods are allowed. The Patent Office is deliberating on the approach that it would take in deciding applications. Whilst at present the jurisprudence from the European Patent Office is more acceptable, the U.S. position at times also finds favor.

Indian IP laws are largely TRIPS compliant and the rights provided by patent law bestow on the patentee the exclusive right to prevent third parties from the acts of using, offering for sale, selling or importing for those purposes, the patent article.

3. What patent protection is available to a biotechnology company?

With the Patents (Amendment) Act, 2005 in place and notification of the Patents (Amendment) Rules, 2005 and the Patents (Amendment) Rules, 2006, inventions in the field of biotechnology would be subject to the same criteria as any other invention relating to product and process. Certain exceptions to the rule, however, may be noteworthy, for e.g. an invention, the primary or intended use whereof would be contrary to public order or morality or which causes serious prejudice to human, animal or plant life or health or to the environment, or forms a part of traditional knowledge.

4. Are trademarks and service marks protected in India?

The Trade marks Act grants protection to service marks, trademarks and shape marks.

Remedies for infringement of registered trademark/service marks are also provided under the Trademarks Act. In the case of unregistered trademarks/service marks, civil remedies in the form of an action for passing-off, injunction and damages are also available.

5. How can a company outsourcing its activities to India safeguard IP, which is created in the course of performance of an outsourcing contract?

Under the Copyright Act, the creator of a work is treated as its author and an author remains such throughout. The Copyright Act also provides that the ownership of copyright arising in the course of employment will vest with the employer and not the employee. Therefore, a captive IT/ITES company shall have automatic claim over intellectual property arising out of the performance of the outsourcing contract which can then be assigned to the purchaser.

Further, copyright ownership in any work (except a photograph, painting, portrait, engraving or cinematograph film) created for valuable consideration at the instance of another person under a "contract for service" vests with the author only. However, an author can assign all or any of his rights in the works to a third party and make the third party the owner thereof. Therefore, where a company outsources its work through a third-party contractor/vendor, it is advisable for them to ensure that the third party contractor has entered into employee contracts stating that intellectual property rights created on the job will vest with the third party contractor who will subsequently assign the same to the company.

Under the Copyright Act, the moral rights of the author cannot be assigned.

6. How does one protect confidential information and trade secrets?

The protection of confidential information is governed by common law principles and contract law. The manner and extent to which information may be treated confidential may be covenanted.

7. Can the employees of an Indian company be required to sign confidentiality agreements?

Yes. Confidentiality provisions including requirements for personnel to return all confidential information and material to their employer at the time of termination of their employment are standard provisions enforceable under Indian law. Additionally, requirements preventing such personnel from utilizing such confidential information in their new job may also be imposed.

8. What are the relevant data protection laws in India?

Currently, there is no specific legislation dealing with Data Protection in India. However, the Information Technology Act, 2000 (“IT Act”) has been amended recently to introduce certain aspects of data protection. These provisions provide for compensation to the affected person for failure to protect his personal data and information. Anybody corporate dealing with or processing sensitive personal data or information is negligent in implementing and maintaining reasonable security practices and procedures causing wrongful loss or wrongful gain, shall be liable to pay damages as compensation to the affected person.

Another provision provides that any person including an intermediary, who while providing services under the terms of a lawful contract, has secured access to any material containing personal information about another person and with intent to cause or knowing that he is likely to cause wrongful loss or wrongful gain, discloses the material to another person without the consent of the person concerned or in breach of a contract, then the person disclosing such information can be punished with imprisonment for up to 3 years and/or can be fined up to US \$ 10,000 or both.

With introduction of these provisions in IT Act, it gives statutory protection against abuse of personal data and leaves it open for parties to provide detailed contractual obligations for the same.

In addition to the aforesaid provisions in the IT Act, the right to privacy has been well-recognized by various decisions of the Supreme Court of India and High Courts as part of the Fundamental Rights enshrined under Article 21 of Constitution of India.

Various other Indian statutes such as, (i) Indian Contract Act, 1872; (ii) Indian Penal Code, 1860; (iii) Consumer Protection Act, 1986; (iv) Specific Relief Act, 1963; (v) Copyright Act etc. also contain provisions, which directly or indirectly protect the breach of confidentially and unauthorised disclosure of the personal data.

9. What is the protection available in case of infringement of IP rights? Specifically, what are the options available to a foreign investor whose name, trademark or other IP right is already registered in India?

The owner of the IP is entitled to civil remedies in the nature of injunctions, damages or accounts. In addition to civil remedies, the owner is also, in some cases, entitled to criminal remedies for infringement of copyright. Under the Copyright Act, infringement of a copyright is an offence and is punishable with imprisonment and fine.

In addition, contractual remedies providing for indemnity against IP infringement, replacement of infringing portion of software or other material with non-infringing material, etc. are common practices in India.

10. What are the offences provided for under the IT Act?

The regulatory framework of the IT Act provides for the offences relating to hacking the computer system, tampering with computer source code, breaching confidentiality of electronic documents to which a person has access, publishing digital signature certificates with false particulars and creating, publishing or making available a digital signature certificate for any fraudulent or unlawful purpose. The liability of network service providers has also been laid down.

11. What are the offences provided for under the Information Technology Act?

The regulatory framework of the IT Act provides for the offences relating to hacking the computer system, tampering with computer source code, breaching confidentiality of electronic documents to which a person has access, publishing digital signature certificates with false particulars and creating, publishing or making

available a digital signature certificate for any fraudulent or unlawful purpose. The liability of network service providers has also been laid down.

h. Employees

1. What are the principal regulations governing the rights and obligations of employees in India?

There are both central as well as states legislations in relation to the regulation of employment matters in India. As a general principle, the framework of Indian labor law differentiates between an employee, a workman (persons falling below the specified income level) and an apprentice with most labor legislations focusing on workmen. The relationship between an employer and employee is generally regulated by contract law. The provisions relating to working conditions also vary depending upon whether the establishment in question is a factory, a shop or other kind of industrial/ commercial establishment.

The broad areas that are covered by a host of special legislations include:

(i) Industrial Relations

- The Industrial Disputes Act, provides for the procedure for investigation and settlement of industrial disputes.
- The Industrial Employment (Standing Orders) Act requires the employers in industrial establishments to define with sufficient precision the conditions of employment and to communicate such conditions to the employees.
- The Trade Unions Act provides for the registration and protection of trade unions, formed to regulate relations between employer and employees.

(ii) Working Conditions

Depending on the nature of the industrial establishment, i.e. a shop, a factory undertaking manufacturing activities, etc. working conditions of workmen are regulated by the Factories Act, 1948 or the Shops and Establishments Act in force in the relevant State. The working conditions covered include hours of work, leave, condition and maintenance of place of work, etc.

(iii) Remuneration

- The Payment of Wages Act regulates the payment of wages to persons employed in an establishment.
- The Payment of Bonus Act provides for payment of bonus to persons employed in establishments.
- The Minimum Wages Act provides for the legal minimum amount of wages to be paid in certain sectors that are generally unorganized.
- The Equal Remuneration Act provides for 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

(iv) Social Security

- The Employees Provident Fund Act provides for the institution of provident funds, pension fund and deposit linked insurance funds for employees in establishments.
- The Employees State Insurance Act provides certain benefits in the case of sickness, maternity and employee related injury.
- The Payment of Gratuity Act provides for a scheme for payment of gratuity

Some of the legislations under the heads 'Remuneration' and 'Social Security' above do not apply to employees who earn a salary that exceeds certain prescribed amounts. The amounts prescribed are usually low

(approximately US \$ 130 to US \$ 2000) and typically employers offer these benefits to the employees irrespective of whether they are statutorily mandated.

2. Are there any severance payments statutorily required in India?

In addition to the gratuity and provident fund benefits that become payable at the time of termination of employment, a workman may be entitled to receive retrenchment compensation equal to fifteen (15) days average pay for every completed year of continuous service if his / her services are terminated for any reason, except on account of disciplinary proceedings, voluntary retirement, superannuation, nonrenewal of employment contracts or on the ground of continued ill health. The amount of retrenchment compensation is calculated on the basis of the facts of each case and the relevant criteria include the nature of the undertaking in which the employee is employed, the salary of the employee and length of service.

3. Are there any mandatory working hours prescribed for employees?

The working hours for employees / workmen in most establishments are governed by the Factories Act or the Shops and Establishments Act of the relevant States. As a general matter, adult employees can work for a maximum of 9 hours a day and 48 hours in a week.

4. How can the services of an employee be terminated?

Employees may be taken on probation for a period of 6 months. Such probationary employees may be terminated with appropriate notice without providing any reason.

In case the employment has been confirmed, then the termination of such employee would have to be made in accordance with the provisions of the Industrial Disputes Act which provides for a minimum notice period and for retrenchment compensation which equals 15 days average pay for every completed year of continuous service. This will not be applicable to managerial and supervisory employees.

5. Are there mandatory requirements for grant of leave or public holidays?

Employees/workmen are entitled to leave in accordance with the provisions of the relevant Shops and Establishments Act or the Factories Act. For instance, in Karnataka, an employee is entitled to leave with wages calculated at the rate of 1 day for every 20 days of work performed by him / her.

In addition to the above, employees / workmen are also entitled to leave with wages on grounds of sickness, accident or other reasonable cause.

Further, there are other mandatory holiday requirements. On prescribed holidays, being Republic Day (26th January), Independence Day (15th August) and Gandhi Jayanti (2nd October), all establishments are required to remain closed. In addition to this, employees need to be given 5 to 7 holidays from amongst the specified list of holidays.

6. Can employment contracts contain restrictive covenants like non-compete?

The Indian Contract Act provides that any agreement in restraint of trade is void. The law makes a distinction between non-compete covenants that operate during the course of employment and those that operate after cessation of employment. The Indian Supreme Court has held that agreements restraining an employee from carrying on the activities that are similar to that of his/her employer upon the termination of such employee would except in special circumstances, be void and unenforceable.

7. Can the employment contract compel employees to work with an establishment for a minimum period of time?

No. Provisions requiring an employee to work with an establishment for a minimum period of time are unenforceable under Indian law. However, it would be possible to introduce monetary disincentives against the employee's termination from services. For instance, in case an employee were to terminate his service after undergoing specialized training, the employment contract may provide that the employee be required to reimburse the employer the costs incurred in such specialized training.

8. Are women employees entitled to maternity leave?

Women employees are entitled to 12 weeks of paid maternity leave. Some states also provide for additional benefits such as free medical aid, maternity bonus, provision of crèches, additional rest intervals etc. If the employee does not avail of 6 weeks of leave preceding the date of delivery, she can take that leave following her delivery provided that the total leave period does not exceed 12 weeks.

9. Are male employees entitled to paternity leave?

No. Paternity leave is not statutorily recognized in India but may be contractually provided.

10. What are the requirements for issue of shares by an Indian company to its employees/directors?

There are no regulations applicable to the issue of employee stock options or shares by an unlisted company to its employees/directors and therefore, issue of stock options/shares by these companies is freely permissible. However, such issue of options may be done in accordance with regulations provided for listed companies to facilitate regulatory review at the time of an IPO.

The value of shares (specified security) allotted or transferred directly or indirectly, by the employer is taxable as perquisites in the hands of the employee.

For the purpose of taxation of perquisites, the fair market value of the shares (or specified security) on the exercise date as reduced by the exercise price, shall be considered as value of the share (or specified security).

In the case of a listed Indian company, permanent employees (working in India or abroad), directors and employees of a subsidiary or holding company may be granted stock options / shares subject to certain restriction prescribed from time to time. Directors who hold more than 10% of the equity shares of the company shall not be eligible to participate in the plan. There are no requirements as regards pricing of the options / shares, however, the pricing should conform to the accounting policies specified in the applicable guidelines. Further, certain other requirements such as a minimum period of 1 year between the grant of the option and the vesting of the option, and in case of grant of a share, a minimum lock-in period of 1 year from the date of allotment, are required to be complied with.

11. Can employees of the Indian company be granted employee stock options in a foreign company?

Yes. As per the foreign exchange regulations, a foreign company can issue its equity shares to employees/directors of:

- its office or branch in India,
- its wholly owned subsidiary in India,
- an Indian company in which foreign equity holding is not less than 51%. It has recently been clarified that such foreign equity holding may also be indirect.



Further, the employees/ directors can sell the shares so acquired, without obtaining the prior approval of the Reserve Bank, provided the proceeds thereof are repatriated to India.

Indian employees are permitted to subscribe to equity shares of the foreign parent company under a cashless employee stock option scheme without any prior approval of the Reserve Bank and without limit provided that there is no remittance from India.

Further, Indian residents are permitted to acquire foreign securities for becoming a director of a company outside India provided it does not exceed 1% of the paid-up capital of the overseas company and the consideration for the acquisition does not exceed US \$ 20,000 in a calendar year.

An employee of an Indian company may be permitted to purchase foreign securities in certain other cases with the prior permission of the Reserve Bank.

i. Currency controls

1. Are there any restrictions on the amount of local currency that can be brought into or taken out of India?

The regulations issued by the Reserve Bank prohibit export or import of local currency by foreigners. However, persons resident in India may take out, or bring into India other than to/from Nepal and Bhutan, up to US \$ 100.

2. Are there any restrictions on the amount of foreign currency that may be brought into India?

There are no restrictions on the amount of foreign exchange that can be brought into India provided that the foreign exchange is in any form other than currency notes, bank notes, travellers' cheques and unissued notes.

In case of foreign exchange in the form of currency notes, bank notes and travellers' cheques, foreign exchange aggregating up to US \$ 10,000 (or its equivalent) in value and / or foreign currency notes up to US \$ 5000 (or its equivalent) may be brought into India without any restrictions. Bringing in of foreign exchange in excess of the limits specified above is permitted subject to condition that the person bringing in the foreign exchange makes a declaration of the same to Indian customs authority upon arriving in India.

3. Are there any restrictions on the amount of foreign currency that may be taken out of India?

A person may send/ take out of India: (a) cheques drawn on foreign currency accounts maintained in accordance with applicable regulations; (b) foreign exchange obtained legitimately through an authorised dealer; and (c) currency in the safes of vessels or aircrafts that has been brought into India or taken on board of the vessel or aircraft with the permission of the Reserve Bank.

In addition, a person may take outside India foreign exchange possessed by such person in accordance with relevant regulations, which in the case of persons resident in India includes unspent foreign exchange brought back to India while returning from travel abroad. Such foreign exchange should be in the form of currency notes, bank notes and travellers' cheques that do not exceed, in aggregate, US \$ 2000 in value. There is no limit prescribed for the foreign currency that may be possessed, and hence, sent / taken out of India by a person who is not permanently resident in India, i.e. is in India only for a specified duration or for a specific job or assignment for not more than 3 years if the foreign currency was acquired by such person while residing outside India and was brought into India in accordance with the regulations specified above.

A person resident outside India may take out of India unspent foreign exchange that does not exceed the amount brought in by him, and if required, declared as specified above.

4. Are there any restrictions on inflow and outflow of foreign exchange?

Any transaction that alters the assets or liabilities (including contingent liabilities) outside India of persons resident in India or assets and liabilities in India of persons resident outside India requires the permission of the Reserve Bank.

These transactions broadly include, subject to certain exceptions:

- transfer or issue of any foreign security;
- transfer or issue of any security by a person resident outside India;
- any borrowing or lending in foreign exchange;
- any borrowing or lending in rupees between a person resident in India and a person resident outside India;
- transfer of immovable property outside India.

There are no restrictions on the sale or withdrawal of foreign exchange if such withdrawal does not fall under the restricted categories. Hence, payments due in connection with foreign trade, other current business services, short-term banking and credit facilities in the ordinary course of business, payments due as interest on loans, etc., do not require prior permission.

j. Mergers and Acquisitions

GENERAL

1. What are the various methods of mergers and acquisitions available in India?

The methods of mergers and acquisitions available under Indian law are broadly classified into acquisitions by private arrangement and court based restructurings. Acquisitions by private arrangement are contractual agreements between the parties and typically take the form of: (i) share acquisitions; (ii) asset transfers; or (iii) spin offs or “slump sales”. Court based restructurings involve the formulation of a scheme of restructuring primarily for the purpose of merger, amalgamation, demerger or slump sale.

2. What is the process and timing for each method?

A share acquisition involves an agreement for share purchase between the parties. An asset transfer involves a contract to transfer the various assets of a company, as separate assets, to another company. A slump sale or spin-off, involves the transfer of an undertaking or business unit as a going concern to another company. Each process typically involves due diligence of the company whose shares/assets/business is being acquired and negotiation of the contractual documentation. The timing for each of these methods would largely be determined by the parties and may be completed expeditiously depending upon the duration of the due diligence exercise and the time period for obtaining the relevant regulatory or contractual approvals.

Restructuring through the court requires a scheme of arrangement formulated pursuant to the Companies Act. The requisite majority of each class of shareholders and creditors of the companies involved in the restructuring must approve the scheme by way of a special resolution and the relevant high court in India (based on the location of the registered office of the companies involved) must sanction it. It usually takes approximately 4 to 6 months for the scheme to become effective, but this could vary owing to the court process and would also depend on whether any objections to the scheme are raised in the court.

3. Are the above forms of restructuring also available to foreign companies?

A foreign company is permitted to enter into a restructuring or acquisition transaction in India subject to compliance with various regulatory requirements such as the exchange control restrictions on pricing and payments, the need for prior consents and waivers and in many cases, obtaining the approval(s) of the Reserve Bank and the FIPB. Further, in a court based restructuring, while the transferor company may be a foreign company the Companies Act does not specifically contemplate a foreign company as the transferee company.

4. What are the usual transaction costs and taxes that are attracted?

The transaction costs and taxes vary with each method of acquisition. For example, an asset transfer, as compared to a slump sale, may result in higher income tax (for the seller) and VAT/sales tax (for the buyer) liability. Further, the restructuring through the court route often entails benefits under the Income Tax Act / stamp duty laws but the same may take a longer duration of time in comparison to the private arrangements.

5. What are the stages that Indian companies typically seek to access capital?

A company may seek to access capital at various stages of its growth cycle, including at the time of:

- Incorporation and initial set-up;
- Placements during establishment phase where the company may seek:
 - a. Strategic placements
 - b. Private Equity placements
 - c. Venture Capital placements;
- IPO and pre-IPO placements; and
- Follow On Offerings:
 - a. Domestic: Follow on Public Offers (FPOs), Rights Issues, Qualified Institutional Placements (QIPs), Preferential Allotment
 - b. International: GDRs, ADRs, FCCBs

6. What are the factors pertaining to the Target and its business that should be considered while structuring the transaction?

The nature of the target significantly impacts the structure of the transaction. The relevant factors to be borne in mind include:

- whether the target is a company, partnership, sole proprietorship;
- where the target is a company, whether it is a private company, unlisted public company, listed public company or a subsidiary of a public company;
- the business undertaken by the company and its classification under the National Industrial Classification Code 1987, and the foreign investment restrictions governing the sector;
- whether the business undertaken by the target is highly regulated and license intensive;
- whether any material licenses or contracts of the target have any conditions requiring prior consent of the relevant regulator/ contracting party for the change of control;
- whether the transfer of shares requires the prior consent of the sector specific regulator; and
- whether the acquisition of shares of the target would result in the direct or indirect acquisition of shares or control of a listed company.

7. Can an acquirer undertake a Leveraged Acquisition in India?

Practically, an acquirer may find it difficult to undertake a domestic leveraged acquisition in India because of:



- The rules against financial assistance which restrict Indian target companies from making available its assets as security for the acquisition of its own shares;
- Resources and liquidity of domestic banks and the limits on capital market exposure imposed upon domestic Banks by the Reserve Bank;
- Press Note 4 of 2009 Series issued by the DIPP bars investing companies with foreign investment / foreign owned operating cum investing companies from leveraging funds from domestic market for making downstream investments in India.
- Prohibition on the use of foreign debt for investment in the capital markets under the 'end use' restrictions imposed by the ECB Guidelines; and
- strict exchange control restrictions by the Reserve Bank on the creation of pledge of shares/ assets of the investee company in favor of non-residents except for external commercial funds borrowed by an India borrower from an overseas tender;

Subject to the rules against financial assistance and the limitations on the ability to pledge shares of an Indian company, a non-resident acquirer may leverage overseas to fund the acquisition of shares in India.

ACQUISITION OF LISTED COMPANIES

8. Are there restrictions of insider trading applicable to the acquisition of shares of listed companies?

Under the Insider Trading Regulations, an 'insider' (i.e. a person who is in possession of or has had access to unpublished price sensitive information) is prohibited from dealing in securities when in possession of such unpublished price sensitive information in relation to a listed company or communicating, counselling, or procuring to convey such information to another person. Price sensitive information is information which if published, is likely to materially effect the price of that company's shares. However, there is no offence of insider trading where communication of unpublished price sensitive information is required in the ordinary course of business or profession, or employment or under any law.

9. Can the acquirer undertake a due diligence exercise prior to the investment? Are there any restrictions on conducting such exercises with respect to a listed company?

It is common practice to conduct a legal, financial and/or tax due diligence prior to investing in private companies or public unlisted companies. Due diligence exercises may also be undertaken on listed companies, subject to the provisions of the Insider Trading Regulations and limitations on access to unpublished price sensitive information. Certain matters in relation to any company would form part of public record and may be accessed by applying to the appropriate authority (such as the Registrar of Companies or the stock exchanges) on the payment of the necessary fees. Specific documents and records of information are also required to be maintained by companies at their registered offices and can be reviewed by shareholders. Needless to say, the quantum and quality of publicly available information is more extensive in relation to publicly listed companies than private companies. A potential investor cannot however claim any right to information from the target company.

10. What is the basic framework and obligations relating to acquisition of shares in a listed company?

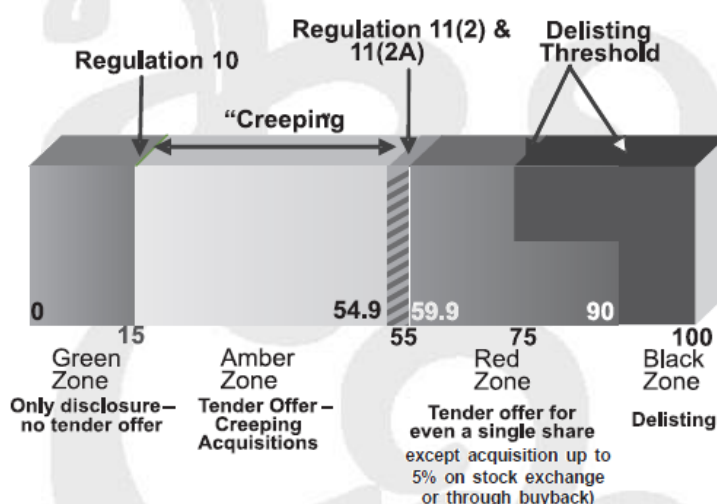
Takeover Code lays down the framework for direct and indirect acquisition of shares, voting rights and control of a company listed on any of the recognized stock exchanges in India. The objective of the Takeover Code is to protect interests of the shareholders of the target company (listed company whose shares, voting rights and control is acquired or proposed to be acquired), and to provide them a timely exit option.

Provisions of Takeover Code require an acquirer (along with persons acting in concert) who directly or indirectly acquires or agrees to acquire securities of the target company beyond certain prescribed thresholds to make a mandatory open offer to the other shareholders of the target company.

Further upon acquisition of shares beyond specified thresholds, appropriate disclosures to the company and the stock exchanges are also required to be made even if the obligation to make an open offer does not get triggered.

11. When is an open offer triggered under the Takeover Code?

In terms of the Takeover Code, the acquisition, whether direct or indirect, of a 'substantial number of voting rights' of a public listed company triggers the obligation to make an open offer to the shareholders of such company.



Acquisition of such shares or voting rights which trigger a mandatory open offer are generally referred to as trigger points which can be broadly classified into the following categories:

- Acquisition (together with persons acting in concert) of 15% or more of the voting rights of the target company.
- Where the acquirer holding more than 15% but less than 55% shares in the target company acquires or proposes to acquire additional shares which entitle it to exercise more than 5% voting rights of the target company during a financial year;
- Where the acquirer holding 55% or more but less than 75% or 90% (depending upon the applicable minimum public shareholding threshold of the target company) acquires any additional shares or voting rights. An exception in this scenario is available in the cases of acquisition of shares up to 5% provided that the acquisition is made through open market purchases in normal segment on the stock exchange.
- Where the acquirer acquires or proposes to acquire control over the target company in any manner irrespective of whether any shares have been acquired or not. 'Control' includes the right to appoint directly or indirectly or by virtue of agreements or in any other manner, the majority of the directors on the board of the target company or to control management or policy decisions affecting the target company.

12. What are the features of an open offer that is made under the Takeover Code?

Provisions of the Takeover Code prescribe that no person shall acquire shares of a company where the aforesaid points will be triggered unless the acquirer makes a public announcement to the public shareholders to acquire up to 20% of the total share capital of the target company. The size of the public offer can be enhanced by the acquirer as long as the same does not breach the minimum public shareholding requirements of the company.

The aforesaid offer is required to be made to all the shareholders of the target company other than the acquirer, the persons acting in concert and any party with whom the acquirer has contracted with for the initial acquisition. Where the number of shares tendered in the public offer exceeds the offer size, the acquirer is under an obligation to accept the shares tendered by various shareholders on a proportionate basis.

The Takeover Code also prescribed the minimum price at which the mandatory open offer is required to be made to the shareholders to tender their shares. Such minimum offer price is usually determined based on a number of factors such as historical trading price of the shares of the company, negotiated price paid or agreed to be paid by the acquirer etc. The Takeover Code also prescribes that any payment made to persons other than the target company in respect of a non-compete agreement in excess of 25% of the offer price is to be added to the offer price.

The open offer process involves a series of activities. These activities begin with making a public announcement which contains the salient details of the underlying transactions and the object and purpose of the acquisition of the shares and the future plans, if any, of the acquirer for the target company. Subsequent to the public announcement, within a period of 14 days from the date of public announcement, a draft letter of offer is required to be submitted to the SEBI for its comments. This draft letter of offer is then finalised after incorporating comments and clarifications made by the SEBI and is sent to shareholders. The purpose of the letter of offer is to provide the requisite information about the acquirer(s)/offer so as to enable the shareholders to make an informed decision of either continuing with the target company or to exit from the target company.

It has been observed that the entire process of completion of the public offer takes approximately 3 months.

Additionally, an open offer once made cannot be withdrawn except in the cases where the required statutory approvals have been refused or the sole acquirer being a natural person dies or with the consent of SEBI.

13. Are there any exemptions from/exceptions to the obligations under the Takeover Code?

While there are no exemptions from the disclosure requirements under the Takeover Code, in certain cases the acquirer is exempt from making an open offer. Illustratively, acquisitions of shares or voting rights by allotment in a public or a rights issue, pursuant to: (a) an underwriting agreement; (b) a scheme of reconstruction or amalgamation under Indian or foreign law; or (c) pursuant to a scheme under the SICA are exempt from the open offer requirements under the Takeover Code. Similarly, transfers of promoter holdings inter se and between the promoters and foreign collaborators are also exempt provided certain conditions are met.

Further, the Takeover Panel established under the Takeover Code has the right to exempt acquirers from the obligation to make an open offer on a case-by-case basis, depending on the merits of each case.

14. What are the recent amendments in the Takeover Code?

As discussed above, SEBI by amending the provisions of Regulation 11 of the Takeover Code in October 2008 has permitted one-time acquisition of additional shares or voting rights up to 5% if the existing shareholding of the acquirer is within the 55-75% bracket. However, such acquisition should be through open market purchase in normal segment on the stock exchange and the acquisition should not result in the breach of 75% cap

prescribed above. The aforesaid amendment was brought in the wake of recessionary trends in the stock market with a view to boost the investor confidence.

Another significant change to the Takeover Code was made by SEBI in February, 2009 primarily with a view to facilitate the takeover of listed companies in order to avert corporate failures. The amendment has enabled SEBI to grant exemptions from the applicable provisions of Chapter III of the Takeover Code where its provision is likely to act as impediments to the implementation of the plan of the target company. However, such relaxations may be granted by SEBI only in cases where any regulatory authority has removed the board of directors of the target company and has appointed other persons to hold office as directors for orderly conduct of the affairs of the target company. Following the above amendment, SEBI has inserted a new regulation which prohibits any competitive bid in the cases where the public announcement for the public offer has already been made in light of the above amendment.

Another significant amendment made by SEBI in January 2009 obligates promoters of the company or the persons forming part of the promoter group to make appropriate disclosures in relation to pledge of shares of the listed company held by such promoter or promoter group.

15. Can a conditional open offer be made under the Takeover Code?

Under the Takeover Code, the only condition that an acquirer may attach to an open offer (other than receipt of regulatory approvals in relation to the offer) is to make the offer conditional upon minimum level of acceptance. Such minimum level of acceptance set by the acquirer may be less or more than 20%. The requirement for minimum level of acceptance imposed by the acquirer is only a 'condition' to complete its obligations under the open offer and the open offer would nevertheless have to be for at least 20%.

16. What are the consequences of the shareholding of the acquirer being in excess of the minimum public shareholding requirement as per the listing agreement?

Where the shareholding of the acquirer is in excess of the delisting threshold, the company will have to undertake suitable action in accordance with applicable regulations to raise the public shareholding to the minimum specified level within such time periods as may be specified by the stock exchanges in order to keep the company's shares listed or the acquirer would have to make a voluntary delisting offer to public shareholders of the company. In the event the company remains in continuous violation of the minimum public shareholding for an extended period, the stock exchanges may at its discretion, require a compulsory delisting of the shares of the company from the stock exchanges.

17. When and how can a delisting be effected?

The shares of a listed company may be voluntarily delisted from some or all of the stock exchanges, on which they are listed, only in accordance with the provisions of the SEBI (Delisting of Equity Shares) Regulations, 2009. Prior to commencement of a delisting offer, in-principle approval of the stock exchanges would be required for the same. A delisting offer can be commenced by the acquirer only when the same is approved by 2/3rd of the public shareholders of the target company who choose to vote in the shareholders meeting. Pursuant to the approval of the shareholders, the acquirer company would be required to publish a public announcement and dispatch bid letters to the shareholders of the target company which would contain the detailed terms and conditions of the delisting offer and the procedure for making a bid in the reverse book building process. The acquirer would be required to set a floor price of the bidding process over and above which the public shareholders can place their bids for the delisting offer. The reverse book building process remains open for a minimum of 3 days and a maximum of 5 days. The price at which the maximum number of shares are tendered in the reverse book building process is the discovered price. The acquirer would have the discretion to accept or reject the discovered price or offer a price higher than the discovered price (final price). Post delisting of the

company, the public shareholder will have a period of 12 months within which they can tender their shares at the same delisting price.

A delisting offer would be deemed to be successful if post the offer, the shareholding of the promoter taken together with the shares accepted through eligible bids at the discovered price reaches the higher of (i) 90% of the total issued shares of that class, excluding the share which are held by a custodian and against which depository receipts have been issued overseas; or (ii) the aggregate percentage of pre-offer promoter shareholding and 50% of the offer size. If the delisting offer is successful and the acquirer accepts the discovered price or the final price, an announcement to this effect is required to be made by the acquirer post which the acquirer would be required to accept all such shares tendered at or below the discovered price/final price. If the public shareholding in the target company is below the minimum specified levels and the delisting offer fails, the promoter of the company shall be required to take all necessary steps to ensure that the public shareholding is brought up to the minimum specified levels within a period of 6 months from the date of closure of the reverse book building process.

Following this, the acquirer is required to make an application to the relevant stock exchanges for the delisting of the securities. On receipt of the approval from the stock exchanges, the acquirer would be required to give an opportunity to all the shareholders of the target company to tender their shares at the discovered price/final price for a period of 12 months from the effective date of delisting of the target company.

COURT BASED RESTRUCTURING

18. What are the various forms of court based restructuring that are recognized under Indian Law?

Under the Companies Act, subject to the sanction of the relevant High Court(s), companies may amalgamate, demerge existing businesses into other new or existing companies, rearrange their share capital or otherwise effect compromises or arrangements between the company and its creditors or members. Schemes for mergers, demergers and slump sales, or combinations of the 3 are the most common.

19. Are any special rules applicable to schemes of arrangement involving listed companies?

In the case of a scheme of arrangement involving a listed company, in addition to the approval of the relevant High Court(s) the scheme is required to be filed with the stock exchanges at which the shares of such company are listed at least a month before the scheme is presented to a Court. In addition, the prescribed requirements for disclosures to the stock exchange at various stages and issues relating to compliance with the Insider Trading Regulations are to be kept in mind.

There are also different rules that are applicable depending on whether it is the transferor or the transferee company whose shares are listed. If the transferee entity is unlisted, then its shares may be listed under the scheme without making an initial public offer subject to the satisfaction of various conditions. Such conditions would include the requirement that the listing is in accordance with the terms of the scheme sanctioned by the court, at least 25% of the share capital of the company seeking listing has been allotted to the public shareholders of the merging company, or demerging entity, the entire post merger capital of the promoters is locked in for a period of 3 years, while the balance of the pre merger capital is locked in for a year.

In case the transferee entity is a listed company, the stock exchange often imposes certain lock-in requirements in relation to the shares being issued by the transferee company as a condition of listing the freshly issued shares.

20. What are the advantages of following a court based restructuring process?

The court based restructuring is a 'single window clearance' mechanism whereby all licences, registrations and permits, and rights and liabilities (contractual or otherwise) of the merging company, or demerging entity, are transferred automatically to the merged company or the demerged entity respectively. The scheme of arrangement once sanctioned is binding on the shareholders and creditors of the company. The acquisition of shares or control pursuant to a court based scheme of merger, demerger or amalgamation may also be eligible for exemption from the open offer obligations under the Takeover Code.

21. What are the disadvantages of the court based restructuring route?

The court process is public, and all key aspects of the transaction are required to be disclosed. This may be a drawback in cases where confidentiality is desired. A court based restructuring is also time consuming and typically takes a minimum of 4-6 months. Further, since the process is public and inclusive, various interested parties have a forum to air grievances, and this may result in further delays. The court also has the power to modify a scheme during sanction, which may not be commercially desirable. The parties however, may withdraw the scheme and are not obliged to implement the scheme in the event the modifications are not acceptable.

22. Are cross border mergers permissible under Indian law?

The merger of a foreign company into an Indian company, or the demerger of the business of a foreign company into an Indian company has been provided for under the Companies Act. However a merger or demerger where the foreign company is the resultant entity is not contemplated.

Due to lack of capital account convertibility, dual listing is not possible currently.

OVERSEAS INVESTMENT

23. Which are the sectors in which Indian residents can make direct investment outside India?

Indian residents can make direct investment outside India in a JV or WOS to undertake a bonafide activity subject to applicable regulations. There are no restrictions on entities having JVs/WOSs abroad setting up step-down subsidiaries within the overall limits applicable for investments under the automatic route as discussed below subject to compliance with the Reserve Bank reporting requirements. Some overseas investments, such as investments by Indian entities (other than individuals) in foreign entities engaged in the real estate business or banking business however require prior approval from the Reserve Bank.

24. What are the important criteria prescribed for direct investment under the automatic route?

Proportion to net worth and valuation are the most important criteria for direct investments under automatic route. The total 'financial commitment' of the Indian Party in all JV's/ WOS' (taken collectively) in any country (other than Pakistan) cannot exceed 400% of its net worth (as per the date of the last audited balance sheet of the Indian Party). This ceiling is not applicable where the investment is made out of balances held in Exchange Earners' Foreign Currency account of the Indian party or out of funds raised through ADR / GDR offerings.

Where the value of the investment is greater than US \$ 5 million, or where the investment is in the nature of a share swap, the valuation of the shares of the company outside India is to be done by an investment banker/merchant banker registered with the SEBI (if in India) or with the appropriate regulatory authority in the



host country. However, any share swap referred to above will require a prior approval from the FIPB. In all other cases, valuation has to be done by a chartered accountant or a certified public accountant. Other considerations include confirmation that the Indian Party is not on the Reserve Bank's exporters caution list / list of defaulters to the banking system.

25. Is Portfolio Investment overseas by an Indian entity permitted?

Only resident individuals and Indian listed companies are currently permitted to make portfolio investments overseas. While resident individuals are governed by the terms and conditions as applicable to them under the Liberalised Remittance Scheme (as discussed below), the Reserve Bank has stipulated the following conditions for Indian listed companies:

- The investment should not exceed 50% of its net worth as on the date of its last audited balance sheet;
- The investments should be in (a) shares and, (b) rated bonds / fixed income securities issued by listed overseas companies, rated not below investment grade by accredited/registered credit rating agencies.

26. Can an Indian Party provide credit support to its overseas JV/WOS under the automatic route?

Yes, the Indian Party may provide guarantees on behalf of its overseas JV/WOS. However, the entire value of these guarantees and any existing overseas investments is included to calculate the aforementioned 400% net worth limit of the Indian party. Further, the Indian party may also pledge the shares of its overseas JV/WOS with any Authorized Dealer category-I Bank or a public financial institution in India. An Indian party is also allowed to transfer such shares by way of pledge to an overseas lender provided the lender is regulated and supervised as a bank and the total financial commitment of the Indian party remains within the limits stipulated by the Reserve Bank.

27. What are the stipulations regarding overseas investment by individuals resident in India?

The Liberalized Remittance Scheme formulated by the Reserve Bank applies to resident individuals seeking to make overseas investment. Under the said Scheme, general permission up to a limit of US \$ 200,000 per financial year has been given for any permissible capital and current account transaction or both. Resident individuals are free to acquire and hold immovable property or shares or any other asset outside India without prior approval of the Reserve Bank and to open, maintain and hold foreign currency accounts with a bank outside India subject to the said limit of US \$ 200,000. Eligibility criteria under the Scheme include the resident individual having maintained a resident bank account through which all remittances are routed for over a year. An individual resident in India may also, subject to the stipulated regulations, acquire a foreign security by way of gift, inheritance, employee stock options scheme, or for meeting directorial qualification requirements. An individual may further acquire shares by way of rights issue made in regard to shares already held by the individual in any overseas company.

k. Competition /Anti-trust laws in India

1. What are the Competitive/ Anti-trust laws in India?

It regulates:

- Anti-Competitive Agreements (Section 3);
- Abuse of Dominant Position (Section 4) and
- Combinations (Sections 5 and 6).



The Competition Act, although enacted in 2002, is being brought into force in a phased manner. Sections 3 and 4 of the Competition Act (relating to anti-competitive agreements and abuse of dominance) were brought into force as recently as May 15, 2009 and CCI became operational from May 20, 2009. Sections 5 and 6 (dealing with combinations, mergers and acquisitions) are yet to be notified, although the expectation is that they will be brought into force by end 2009.

On September 1, 2009, the MRTP Act was repealed. However, for a two year sunset period, the erstwhile authority, the MRTPC, will continue to deal with any pending cases, before being dissolved. The Competition Act further provides for the eventual transfer/ transition of the cases and investigations pending before the MRTPC to the CCI and the Competition Appellate Tribunal.

2. What are anti-competitive agreements?

- Section 3 provides that an agreement which restricts the production, supply, distribution, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India would be prohibited and any agreement entered into in contravention of the above shall be void.
- The Competition Act further classifies anti-competitive agreements into vertical and horizontal agreements.
 - Vertical Agreements: Vertical Agreements are covered by Section 3(4) of the Competition Act and include tying arrangements, exclusive supply agreements, exclusive distribution agreements, refusals to deal, and resale price maintenance etc.
 - Horizontal agreements: Horizontal agreements between competing enterprises on prices, market allocation or other aspects of their competitive interaction, such as cartels and bid-rigging are also covered by the Competition Act.
- The Competition Act treats horizontal agreements more harshly than vertical agreements. There is a presumption under the Competition Act that, agreements which:
 - directly or indirectly determine purchase or sales prices;
 - limit or control production, supply, markets, technical development, investment or the provision of services;
 - share the market or source of production or provision of services by way of allocation of the geographical area of the market, type of goods or services, or number of customers in the market or any other similar way; or
 - directly or indirectly result in bid rigging or collusive bidding, cause an appreciable adverse effects on competition in India.
- In other words, such agreements are presumed to be anti-competitive and the burden of proof is on the defendant to rebut such presumption by proving that the agreement in question does not cause an appreciable adverse effect on competition within the relevant market in India.
- The presumptive rule is not applicable to vertical agreements, which are subject to the rule of reason analysis i.e. the positive as well as the negative impact of such agreements on competition will have to be taken into account before coming to any conclusion. This also applies to agreements entered into by way of joint ventures between competitors that increase efficiency in production, supply, distribution, storage etc.
- It is to be noted that the Competition Act recognizes and protects intellectual property rights, permitting imposition of reasonable restrictions by their owners. Also, agreements relating to exports to the extent to which they relate exclusively to the production, supply, distribution or control of goods or services are exempted.

Sanctions

- Under the Competition Act, the CCI has the power to :
 - order any enterprise or person to discontinue and not re-enter into an anti-competitive agreement, which is also known as 'cease and desist' order;
 - impose a penalty not exceeding 10 % of the average turnover for the last 3 financial years on each enterprise that is party to such agreement. In case of cartels, the penalty is higher and can be up to, 3 times of the profit or 10 % of the turnover, of each participating enterprise for each year of continuance of such agreement, whichever is higher.
 - modify any agreement; and
 - direct an enterprise to abide by its orders, including the payment of costs.



- Contravention of CCI's orders can invite further penalties and the CCI can even file a criminal complaint against such contravention, which in turn, could lead to imposition of additional fines or even imprisonment if up to three years.
- Further, the CCI has the power to impose lesser penalties on cartel members in case a full, true and vital disclosure in respect of the alleged violations has been made by participants of the cartel. The CCI has also recently notified the Competition Commission of India (Lesser Penalty) Regulations, 2009 on August 13, 2009, which specifically prescribe the manner and degree to which the CCI can reduce the penalties for members of a cartel that make vital disclosures to it, helping it to investigate and establish a cartel.

3. What is 'Abuse of Dominant Position'?

- Section 4 of the Competition Act prohibits all enterprises who are dominant, from abusing their dominant position.
- Under the Competition Act, a "dominant position" is a position of strength enjoyed by an enterprise in the relevant market which enables it to operate independently of competitive forces prevailing in the market or affects its competitors or consumers or the relevant market in its favour.
- A dominant enterprise is considered to be abusing its dominance when there is an appreciable adverse effect on competition due to its conduct. For example, by the direct or indirect imposition of unfair or discriminatory conditions in purchase or sale of goods or services or in the price in purchase or sale of goods or services, leveraging its position on the dominant market to protect its position on other markets, denying market access, imposing tying and bundling obligations, indulging in predatory pricing tactics etc.

Sanctions

- Under the Competition Act, the CCI has the power to :
 - impose all such sanctions that can be imposed in case of anti-competitive agreements as discussed earlier. However, in case of abuse of dominance, the penalty cannot exceed 10 % of the infringing dominant enterprise's average turnover for the preceding 3 years; and/or
 - order division of an enterprise which enjoys dominant position, in order to prevent abuse of such position.

4. What are combinations?

- Sections 5 and 6 of the Competition Act deal with combinations which include acquisitions, mergers, joint ventures, takeovers and amalgamations.
- The Competition Act prohibits a combination which causes or is likely to cause an appreciable adverse effect on competition within the relevant market in India and treats such combinations as void.
- Once the merger control provisions are notified, enterprises that propose to enter into a combination that crosses the thresholds specified in the table below, will have to mandatorily notify such merger to the CCI pursuant to Section 6. A valid notification is required to be made within 30 days of approval of the proposal relating to merger or amalgamation by the board of directors of the enterprises concerned [or] execution of any agreement or other document for acquisition of control, shares, voting rights or assets.
- The thresholds specified by the Competition Act are as follows:

	For The Parties (Combined)	For The Group (Combined)
In India	Assets US \$ 200 million (approximately) or Turnover US \$ 600 million (approximately)	Assets of US \$ 800 million (approximately) or Turnover of US \$ 2.4 billion (approximately)
OR		
Worldwide	Assets of US \$ 500 million or Turnover of US \$ 1.5 billion; INCLUDING <u>In India:</u> Assets of at least US \$ 100 million (approximately) or Turnover of US \$ 300 million (approximately)	Assets of US \$ 2 billion or Turnover of US \$ 6 billion; INCLUDING <u>In India:</u> Assets of US \$ 100 million (approximately) or Turnover of US \$ 300 million (approximately)

- Further, the draft regulations on combinations (Combinations Regulations) provide that each of at least two parties to the combination must have US \$ 40 million (approximately) of turnover or US \$ 120 million (approximately) worth of assets in India. Please note that the Combinations Regulations are still in draft format and may change when the CCI finally adopts them.
- Further, the Competition Act provides that a notifiable combination shall not be effective until 210 days have lapsed from the valid notification or if an order has been passed by the CCI in relation to the notified combination, whichever is earlier.
- Importantly, the operation of the Competition Act is not confined to transactions strictly within the boundaries of India but also covers such transactions involving entities existing and/or established overseas (for example, two overseas enterprises) so long as there is an appreciable adverse effect on competition in India. This is known as the “effects doctrine” and by application of this doctrine, the Competition Act has been given extraterritorial jurisdiction.
- As mentioned earlier, the provisions of the Competition Act regulating combinations have not been brought into force yet. At present, in the absence of the implementing regulations, it is not clear whether, transactions that have signed but not closed at the time the notification of sections 5 and 6, would be notifiable under the Competition Act. Also, at present it is not known whether the implementing regulations will contain any exempt transactions or local carve-outs enabling parties to close transactions in other jurisdictions subject to receipt of competition clearance in India, as the draft Combination Regulations are subject to change prior to notification.

Sanctions

- Where the CCI forms an opinion that a combination has caused or is likely to cause an appreciable adverse effect on competition in India, it can direct for the combination to not take effect. The CCI also has the power to approve a combination with modifications, as it deems appropriate.
- Where there is failure to notify a combination, the CCI can impose a penalty which may extend to 1% of the total turnover or the assets, whichever is higher, of the combination in question.
- In addition, the CCI has the power to initiate an inquiry into a combination within 1 year from the date from which such combination takes effect.

I. Taxes

1. What determines the extent of an entity's liability to pay Income tax in India?

Taxable income is a function of a person's 'residential status' and the source of the income. Resident companies (Indian company or company whose control and management wholly lies in India) are liable to pay tax in India on their global profits unless exempted under the relevant DTAA. Non-resident companies (companies other than resident companies) are essentially taxed on the income deemed to be accruing arising in India.

An individual resident in India for:

- a period of 182 days or more; or
- a period of 60 days or more in an year, if in the 4 years preceding that year he/she has been in India for an aggregate period of 365 days or more

is treated as a person resident in India.

2. What is the corporate tax rate and how is it applied?

Resident companies are subject to tax on the net taxable income (gross revenue less the admissible expenditure) earned during the financial year at a rate of 33.99% (inclusive of 10% surcharge as well as 3% education cess) where the taxable income exceeds US \$ 208122 (and at the rate of 30.90% where the taxable income is up to US \$ 208122).

In case a company's taxable profit is less than 10% of its book profit, then it may be subject to a MAT at the rate of 16.995% (inclusive of education cess) where such profit exceeds US \$ 208122 and at the rate of 15.45% (inclusive of education cess) where the taxable profit is less than US \$ 208122.

3. What is the tax rate applicable to foreign companies on their income earned in India?

Foreign companies with total income up to US \$ 208122 are taxed at an effective rate of 41.20%, inclusive of education cess. Foreign companies with total income above US \$ 208122 are taxed at an effective rate of 42.23% (including surcharge and education cess). However, if the company has no permanent establishment in India, the tax rate depends on the nature of the income (capital gains, royalty, etc.) and the provisions of the relevant DTAA.

4. What other taxes are payable in India?

In addition to income tax, an assessee may be liable to pay other direct taxes such as Wealth Tax (leviable on specified assets @ 1% of the value of the assets held by the assessee. In excess of basic exemption of approx US \$ 31000). Securities Transaction Tax is payable on transactions completed on the stock exchanges (being 0.125% of the transaction value).

An entity may also be subject to indirect taxes levied by the State/ Central Government, such as: (i) customs duty imposed on the import and export of goods from India. The rate at which custom duty is leviable depends on the classification of the goods under the Customs Tariff (which is aligned with the HSN provided by the World Customs Organisation). The median rate of custom duty on import of most non agricultural product is 24.42%; (ii) excise duty payable on the manufacture of goods. Most goods are charged to excise duty at the rate of 8.24% (inclusive of the education cess); (iii) service tax payable on certain identified taxable services provided in India by specified service providers payable by the service recipient at an effective rate of 10.3% (including education cess) which may be exempt for the export of taxable services from India but payable for

taxable services provided from outside India and received in India; (iv) sales tax (central sales tax / value added tax) payable on the sale of movable goods at rates which is dependent on the nature of transaction and situs of sale; (v) entry tax/octroi may also be levied by the State Government and municipal authorities for the entry or transport of goods through such territorial jurisdiction.

Please note that the Government also has the power to exempt the whole/ part of the duty/ tax payable subject to certain condition that may be specified in this regard.

5. Is there tax on dividend?

Dividends are taxed in the hands of the distributing domestic companies at an effective rate of 16.99% in addition to the normal tax on its income. Dividends are not taxable in the hands of the recipient.

An Indian holding company, which is not itself a subsidiary of any other company shall be entitled to DDT credit whilst declaring dividend, to the extent DDT is already paid by its Indian subsidiary on dividend paid to such holding company.

6. Is there any capitals gains tax payable in India?

Yes, Capital gains (being the sale consideration less the cost of acquisition and related expenses) incurred by the seller of a capital asset, are subject to tax which, depending upon the duration for which the asset is held, may be long term capital gains tax or short term capital gains tax. Capital gains tax, if payable, is not withheld at the source by the buyer of the asset, if seller is resident of India.

Long-term capital gains arise when a capital asset (not being securities) has been held for more than 36 months, and short term capital gains relate to a capital asset (not being securities) held by an assessee for not more than 36 months, immediately preceding the date of its transfer. In case of securities, long terms capital gains would be attracted in relation to the transfer of all securities held for a period in excess of 12 months and short term capital gains would be attracted in relation to securities held for less than 12 months, from the date of acquisition. Further, in case of long-term capital gains, the cost of acquisition and cost of improvement is subject to indexation, subject, however, to the residential status of the seller and the nature of asset being alienated.

Tax incidence is generally higher in the case of short term capital gains as compared to long term capital gains. Detailed below are the present long term and short term effective tax rates on capital gain (including applicable surcharge and education cess) for non-resident and resident assesseees:

*Non-resident (Foreign Company)**

Particulars	Listed Securities		Unlisted Securities	Assets other than Securities
	On Market#	Off Market		
Long-term Capital Gains	0%	10.5575%^	21.115%	21.115%
Short-term Capital Gains	15.836%	42.23%	42.23%	42.23%

*Resident (Domestic Company)*

Particulars	Listed Securities		Unlisted Securities	Assets other than Securities
	On Market#	Off Market		
Long-term Capital Gains	0%	11.33% [^]	22.66%	22.66%
Short-term Capital Gains	16.995%	33.99%	33.99%	33.99%

Note:

*The stated tax rates are subject to rates provided under the relevant tax treaty between India and the country of residence of such Non-resident.

[^] Provided securities transacted are listed securities or units or zero coupon bonds. However, the assessee has an option to pay the capital gains tax at the rate of 21.115% (in case of foreign company) or 22.66 (in case of resident company) after availing the benefits of indexation.

Where Securities Transaction Tax has been paid.

7. Would royalties and/or fees for technical services received by a foreign company be liable to tax?

Yes, income tax of 10% (exclusive of a surcharge of 2.5%, educational cess of 2% plus 1% higher secondary education cess) would be payable on royalties/ fees for technical services received by a foreign company which is typically withheld at the time of making the relevant payment. This is however subject to any concessional treatment available under the tax treaty between India and the country of residence of the nonresident.

8. Is there a withholding tax on payments?

Tax is withheld on variety of payments at different rates, depending on the status of the recipient and the nature of payments like royalties, capital gains, fee for technical services etc. The rates may vary from 2% to 40% (excluding surcharge and educational cess) and may be subject to availability of DTAA benefits.

9. Are there transfer pricing restrictions in India? What are the precautions to be taken to avoid transfer pricing issues between a parent and its subsidiary in India?

Yes, in terms of the Transfer Pricing Regulations (as introduced into the Income Tax Act, in 2001) any income arising from an international transaction (being between 2 or more associated or related enterprises, either or both of whom are non-residents) would have to be computed having regard to an arm's length price. Therefore, contracts for services between the parent and subsidiary must be determined on an arm's length basis in accordance with the prescribed method.

10. What are the advantages of the DTAA between India and Mauritius?

Under the Indo-Mauritian DTAA, no tax is payable on capital gains arising to a Mauritian resident from the transfer of a capital asset in India. To avail of the benefit under this treaty, the transferor must be issued a certificate of tax residence by the Mauritian Revenue Authorities. The Mauritian Revenue Authorities have, in October 2006, issued a circular stating that in order to qualify as a tax resident in Mauritius, an assessee company must fulfill the following conditions:

- At least 2 directors, capable of exercising independent mind and judgment, must be resident in Mauritius;
- All meetings of the board of directors must be held, chaired, and minuted in Mauritius;



- Accounting records must be maintained in Mauritius; and
- All banking transactions are routed through a bank account in Mauritius.

11. What does the Direct Tax Code Bill, 2009 propose?

The Code unveiled on August 12, 2009 is a bold attempt to create a robust tax system in India. The Code, open for public comment, is expected to be implemented from April 1, 2011. The basic objective of the Code is to consolidate and amend the laws relating to all direct taxes, namely, income tax, dividend distribution tax and wealth tax, so as to simplify the direct tax system and thereby reduce the litigation.

The Code proposes a substantial reduction in the rates of tax on corporate income, near-removal of the difference in the tax treatment of domestic and foreign companies and a shift in the base of minimum alternate tax from book profits to value of gross assets. It also envisages abolishment of distinction between long-term and short-term capital assets, in addition to doing away with a large number of exemptions and deductions, except a new set of investment linked incentives. The Code has for the first time in the Indian tax system, has proposed to introduce detailed provisions regarding “General Anti-Avoidance Rules” and “Thin Capitalization”.

m. Divestment/Winding up

1. What are the different ways in which one can exit from equity investment?

By sale of shares owned in the Indian company (including a sale pursuant to a scheme of buy-back) or by winding up of the company.

2. Are there any restrictions on the divestment of shares?

Subject to the restrictions mentioned in the chapter on Foreign Investment for transfer of shares, no prior approval of the Reserve Bank or the FIPB is required for the sale of shares or an Indian company by a non-resident to an Indian resident provided the pricing guidelines prescribed in this regard are complied with. Approvals from sector-specific regulators, if any required, will however have to be obtained.

3. Are there any restrictions on winding up of the company?

A company can be wound up voluntarily by its members or creditors subject to the provisions of the Companies Act. The process may take up to 1 year to complete.

n. Dispute Resolution

1. What is the judicial set up in India?

An elaborate and extensive judicial and quasi-judicial system exists in India with courts being the judicial authority, and regulators like the SEBI (for the securities market) being quasi-judicial authorities. A separate civil and criminal system exists in each state with the highest court for each state being the High Court. Appeals from the High Courts lie with the Supreme Court of India in appropriate cases, which is the apex judicial authority in India. Constitution of India also provides for special leave to appeal from the judgment of the High Court to the Supreme Court of India. However, the grant of the said leave is discretionary.

2. How are foreign judgments enforced in India?

A judgment rendered by a court outside India is conclusive as to any matter thereby directly adjudicated upon, except:

- where the judgment has not been pronounced by a court of competent jurisdiction;



- where the judgment has not been given on the merits of the case;
- where the judgment appears on the face of it to be founded on an incorrect view of international law or that there has been a refusal to recognize the law of India in cases in which such law is applicable;
- where the proceedings in which the judgment was obtained are opposed to natural justice;
- where the judgment has been obtained by fraud; and
- where the judgment sustains a claim founded on a breach of any law in force in India.

Where a foreign judgment has been rendered by a superior court in any country or territory outside India which the Government of India has by notification declared to be a reciprocating territory, it may be enforced in India by proceedings in execution as if the judgment had been rendered by the relevant court in India. Various countries including the United Kingdom and the Republic of Singapore have been declared by the Government of India to be reciprocating territories, but the United States of America has not been so declared. A judgment of a court in a jurisdiction which is not a reciprocating territory may be enforced only by a new suit upon the judgment and not by proceedings in execution. The suit must be brought in India within 3 years from the date of the judgment in the same manner as any other suit filed to enforce a civil liability in India.

3. What are the alternative methods of dispute resolution available in India?

Alternative methods of dispute resolution may be adopted by the parties to a contract. These may include resolution of disputes through appointment of experts, conciliation or arbitration.

The Arbitration and Conciliation Act governs certain types of arbitration and conciliation. This legislation brings Indian law in tune with international principles on arbitration and also provides for enforcement and recognition of foreign awards.

4. Does the law prescribe the procedure to be followed for the appointment of the arbitral tribunal, situs, or the rules of procedure applied by the arbitral tribunal?

Although the Arbitration and Conciliation Act does prescribe for all of the above, parties are free to formulate the procedure for the appointment of the arbitral tribunal, situs of the arbitration and rules of procedure acceptable to them.

5. How are arbitral awards enforced in India?

Where the situs of the arbitration is in India, the arbitral award is a domestic award and is directly enforceable in the same manner as a decree of a court. Thus, only an execution proceedings needs to be initiated for the enforcement of such awards.

Foreign awards under the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and under the Geneva Protocol on Arbitration Clauses are enforceable in India, as if they were decrees of an Indian Court. All other foreign awards will need to be ratified by the courts and a decree passed by the court, which will then become enforceable.

6. What are the grounds on which an arbitration award can be challenged in courts in India?

The grounds on which an arbitration award can be challenged in the courts are limited to the following:

- The party challenging the award was under some incapacity to perform an obligation;
- The arbitration agreement is invalid under the governing law;
- The applicant establishes that it did not receive adequate notice of the appointment of the arbitrator or of the arbitral proceedings or to present his case;
- The dispute is outside the scope of the arbitration agreement;



- Composition of the arbitral tribunal was not in accordance with the provisions of the arbitration agreement;
- If the court finds that the subject matter of dispute is not capable of arbitration;
- The arbitral award is in conflict with public policy of India; or
- The arbitral tribunal granting such award was beyond the scope of its jurisdiction in doing so.

o. Miscellaneous

1. What are the anti-money laundering standards applicable in India?

Pursuant to the Prevention of Money Laundering Act, 2002 (which was brought into effect on July 1, 2005, the SEBI and the Reserve Bank have issued detailed guidelines on Anti-Money Laundering Standards which apply to every banking company, financial institution and other intermediaries (including merchant bankers, underwriters, portfolio managers, trustees and other such entities registered with the SEBI).

The detailed guidelines are in line with international requirements in relation to prevention of anti-money laundering. The requirements include maintaining detailed records of all cash transactions of the value of more than US \$ 20000 or the equivalent in foreign currency. All suspicious transactions (whether or not in cash) have to be recorded and reported.

2. Can foreign companies or businesses be listed on an Indian stock exchange?

Pursuant to the recent amendments to the Companies Act and the SEBI (ICDR) Regulations, companies incorporated outside India may be allowed to issue Indian Depository Receipts subject to the rules prescribed by the Central Government. Indian investors may now acquire interest in foreign securities akin to the acquisition of ADRs/GDRs by non-resident investors.

As mentioned above, there are several stock exchanges in India and besides being listed on the national stock exchange(s) i.e., the Bombay Stock Exchange and/or the National Stock Exchange (which have the highest volumes of trading), companies may also list their shares on a regional stock exchange.

3. Are there any insolvency laws applicable to companies established in India?

Courts in India can order a company to be wound up if it is unable to pay its debts, or the number of shareholders falls below 2, in case of a private company and 7 in case of a public company or if the court believes that it is just and equitable to do so.

4. Is limitation of liability clause in a software contract valid and enforceable in India?

A limitation of liability clause is valid and enforceable under Indian law except that limitations on liability caused on account of death or personal injury, fraud or gross negligence would not be enforceable. Additionally the limitation of liability clause should be reasonable and not amount to a penalty to be enforceable.

Further the ability of a party to claim damages for a breach of contract is limited to the actual damages or losses suffered by such party on account of such breach. Indirect or consequential losses would, even if provided for under the contract, will not be enforceable under Indian law.

5. Do Indian courts recognize choice of law and jurisdiction clauses?

Indian courts do recognize and enforce a choice of law and jurisdiction made by parties subject to such choice being bona fide and not being opposed to public policy. However, Indian courts may refuse to enforce a



stipulation as to the choice of forum where it is of the opinion that such choice is oppressive, unfair or inequitable and does not bear any real or substantial connection to the subject matter of the dispute.

6. Are there any restrictions on engagement of foreign technicians in Indian companies and on the repatriation of the earnings of foreign technicians?

There are no restrictions on engagement of foreign technicians. However, payments made to such technicians are subject to certain sanctions.

As regards repatriation of their earnings, up to 75% of the net salary can be remitted abroad to a foreign technician.

Save in certain exceptional cases, approval of the Reserve Bank has to be obtained for any remittance above the specified percentage.

7. Is it possible for an Indian company to avail of ECBs?

Yes. Borrowing in foreign exchange is governed by regulations framed by the Reserve Bank under the FEMA and the Guidelines on external commercial borrowings issued by the Ministry of Finance, Government of India. Pursuant to recent regulatory amendments, redeemable and optionally convertible preference shares or debentures are also subject to the ECB Guidelines.

ECB's may be accessed under 2 routes: (a) automatic route; and (b) approval route and their end-use (availed under both automatic and approval route) are subject to certain restrictions. ECBs are subject to various conditions including limits on interest and other cost ceilings, etc. If any of the prescribed conditions are not complied with, the automatic route is not available, and prior approval of the Reserve Bank is required for the ECB under the approval route.

8. In the case of an unlisted company, what are the various restrictions, which would be placed on such company in the event that it proposes to go public through an IPO?

A listed company is subject to far greater regulatory requirements than an unlisted company, and an unlisted company which proposes to go public is required to comply with such requirements prior to making an IPO.

These typically include:

- Removing any restrictions on transferability of its shares agreed between principal shareholders through shareholder agreements. Whilst it may be possible to retain transfer restrictions inter-se shareholders through pooling arrangements, as regards third parties, transfer restrictions are typically not enforceable in a public company. Management related understandings (for e.g. nomination of a specified number of directors) between the shareholders may also require dilution post the IPO;
- Converting and/or extinguishing all instruments convertible into equity which have been issued by the company, or removing the conversion rights associated with such instruments;
- Complying with various corporate governance requirements as set out in the Listing Agreement prescribed by the stock exchanges;
- Making any partly paid up shares which form part of the share capital of the company fully paid up; and
- The pre issue capital is subject to a 1-year lock-in, post the IPO (3 years in case of pre issue capital held by promoters). This lock-in does not apply to venture capital investors registered with the SEBI provided that such venture capital investors have/held the shares for a minimum period of one year.

p. Glossary

1993 Scheme	Issue of Foreign Currency Convertible Bonds and Ordinary Shares Scheme, 1993
ARC	Asset Reconstruction Company
ADRs	American Depository Receipts
Arbitration and Conciliation Act	Arbitration and Conciliation Act, 1996
BPO	Business Processing Outsourcing
CBDT	Central Board of Direct Taxes
CCI	Competition Commission of India
Copyright Act	Copyright Act, 1957
Companies Act	Companies Act, 1956
Competition Act	Competition Act, 2002 as amended by Competition (Amendment) Act, 2005
Delisting Guidelines	Securities and Exchange Board of India (Delisting of Securities) Guidelines, 2003
DDT	Dividend Distribution Tax
DIN	Director Identification Number
DIPP	Department of Industrial Policy & Promotions
DTA	Domestic Tariff Area
DTAA	Double Taxation Avoidance Agreement
ECBs	External Commercial Borrowings
ECB Guidelines	Master Circular on External Commercial Borrowings and Trade Credits dated July 2, 2007
Employees Provident Fund Act	Employees Provident Fund Act, 1952
Employees State Insurance Act	Employees State Insurance Act, 1948
Employees' Provident Funds and Equal Remuneration Act	Employees' Provident Funds and Miscellaneous Provisions Act, 1952 Equal Remuneration Act, 1976
ESI Corporation	Employees State Insurance Corporation



ESI Fund	Employees' State Insurance Fund
EXIM Policy	Export Import Policy 2008
Factories Act	Factories Act, 1976
FCCB	Foreign Currency Convertible Bonds
FEMA	Foreign Exchange Management Act, 1999
FEMA 20 Regulations	Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000
FII Regulations	Securities and Exchange Board of India (Foreign Institutional Investors) Regulations, 1995
FII	Foreign Institutional Investor
Finance Act	Finance Act, 2008
FIPB	Foreign Investment Promotion Board
FVCI	Foreign Venture Capital Investor
FVCI Regulations	Securities and Exchange Board of India (Foreign Venture Capital Investors) Regulations, 2000
GDP	Gross Domestic Product
GDRs	Global Depository Receipts
Geographical Indication of Goods (Registration and Protection) Act	Geographical Indication of Goods (Registration and Protection) Act, 1999
Income Tax Act	Income Tax Act, 1961
Indian Contracts Act	Indian Contracts Act, 1872
Industrial Disputes Act	Industrial Disputes Act, 1947
Industrial Employment (Standing Orders) Act	Industrial Employment (Standing Orders) Act, 1946
Industrial Park Scheme	Industrial Park Scheme, 2002
Industries (Development and Regulation) Act	Industries (Development and Regulation) Act, 1951
Insider Trading Regulations	Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992
IP	Intellectual Property

IPO	Initial Public Offering
IT	Information Technology
IT Act	Information Technology Act, 2000
ITES	Information Technology Enabled Products and Services
MAT	Minimum Alternate Tax
Maternity Benefits Act	Maternity Benefits Act, 1961
MCA	Ministry of Civil Aviation, Government of India
Minimum Wages Act	Minimum Wages Act, 1948
MRTP Act	Monopolies and Restrictive Trade Practices Act, 1969
MRTPC	Monopolies and Restrictive Trade Practices Commission
MIB	Ministry of Information and Broadcasting
NBFC	Non-banking Finance Company
New Industrial Policy	New Industrial Policy, 1991 of the Government of India
NRI	Non Resident Indian
OCB	Overseas Corporate Body
OCD	Optionally Convertible Debentures
P-Notes	Participatory Notes
Partnership Act	Indian Partnership Act, 1932
Payment of Bonus Act	Payment of Bonus Act, 1965
Payment of Gratuity Act	Payment of Gratuity Act, 1972
Payment of Wages Act	Payment of Wages Act, 1936
R&D	Research and Development
RFC account	Resident Foreign Currency account
RPS	Redeemable Preference Shares
Registrar of Companies	Registrar of Companies of the relevant State under the companies act
Registrar of Firms	Registrar of Firms under the Partnership Act 1932
Reserve Bank	Reserve Bank of India



Reserve Bank of India Act	Reserve Bank of India Act, 1934
SARFAESI Act	Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002
SEBI	Securities and Exchange Board of India
STP	Software Technology Park
SEZ	Special Economic Zone
SEZ Act	Special Economic Zones Act, 2005
SEZ Rules	Special Economic Zones Rules, 2006
SEBI (ICDR) Regulations	Security and Exchange Board of India (Issues of Capital and Disclosure Requirements) Regulations, 2000
SICA	Sick Industrial Companies (Special Provisions) Act, 1985
Takeover Code	Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997
TRIPS	Trade Related Intellectual Property Rights
TRIPs Agreement	Agreement on Trade Related Aspects of Intellectual Property Rights
Trademarks Act	The Trade Marks Act, 1999
Trade Unions Act	Trade Unions Act, 1926
VAT	Value Added Tax
WOS	Wholly Owned Subsidiary

Lex Mundi Contact

Mr. Shardul S Shroff

Amarchand Towers
216, Okhla Industrial Estate, Phase III
New Delhi 110 020

Mob.: 9810098800

Tel.: (91-11) 41590700, 26920427 – 28

Fax: (91-11) 26924900, 26922900

Email: shardul.shroff@amarchand.com



q. Offices of Amarchand Mangaldas

Delhi

Amarchand Towers
216, Okhla Industrial Estate,
Phase III
New Delhi 110 020
Tel.: (91-11) 41590700, 26920427 – 28
Fax: (91-11) 26924900, 26922900
Email: am.delhi_corp@amarchand.com

Mumbai

Peninsula Chambers
Peninsula Corporate Park
Ganpatrao Kadam Marg
Lower Parel
Mumbai 400 013
Tel.: (91-22) 24964455/66604455
Fax: (91-22) 24963666/66628466
Email: am.mumbai@amarchand.com

Kolkata

Anand Lok
227, A.J.C. Bose Road
Calcutta 700 020
Tel.: (91-33) 28650268
Fax: (91-33) 22472349
Email: amsscal@amarchand.com

Bengaluru

201, Midford House
Midford Garden
Off M.G. Road
Bengaluru 560 001
Tel.: (91-80) 41124950 - 51
Fax: (91-80) 25584266
Email: am.bangalore@amarchand.com

Hyderabad

1-10-20/2B, 4th floor
Pooja Edifice, Chickoti Gardens, Begumpet
Hyderabad 500 016
Tel.: (91-40) 66336622 / 66337666 / 66338666
Fax: (91-40) 66492727
Email: am.hyd@amarchand.com