



Shardul Amarchand Mangaldas

A DECADE YOUNG, A CENTURY STRONG



**GUIDE TO
DOING
BUSINESS
IN INDIA - 2026**

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Forewords



India today occupies a distinctive position in the global economic landscape. As the world's fourth-largest economy and one of the fastest-growing major markets, it offers a powerful combination of scale, entrepreneurial energy and institutional evolution. For global businesses and investors seeking long-term growth, India represents not merely a market opportunity but an ecosystem that continues to deepen in sophistication and resilience.

Over the past decade, India's policy environment has undergone significant transformation. Reforms across corporate regulation, insolvency and bankruptcy frameworks, foreign investment policy, financial markets and digital governance have strengthened institutional capacity and improved transparency. Parallel to these developments, rapid advancements in digital infrastructure, innovation-driven sectors and a young and skilled workforce have reinforced India's position as a strategic destination for global capital.

The country's regulatory architecture has simultaneously evolved to keep pace with the expanding scale and complexity of economic activity. From competition regulation and dispute resolution to data protection, cybersecurity and emerging technology governance, the legal and policy frameworks guiding commercial activity are becoming increasingly robust and aligned with global standards.

Against this backdrop, the Guide to Doing Business in India seeks to provide a comprehensive overview of the

legal and regulatory considerations relevant to businesses engaging with the Indian economy. Drawing on the collective expertise of Shardul Amarchand Mangaldas & Co.'s practitioners across diverse practice areas, this publication brings together perspectives on corporate structuring, foreign investment, private equity, mergers and acquisitions, restructuring, dispute resolution, employment law, taxation and emerging regulatory domains.

The objective of this guide is not only to present the legal architecture underpinning business activity in India, but also to provide a structured understanding of the broader policy and regulatory environment shaping commercial engagement with the country.

As a firm that is a "Decade Young, Century Strong," Shardul Amarchand Mangaldas & Co. remains committed to contributing meaningfully to conversations around India's economic development and regulatory evolution. Thought-leadership initiatives such as this guide reflect our endeavour to share insights that support informed engagement with one of the world's most dynamic economies.

We trust this publication serves as a useful reference for investors, businesses, policymakers and professionals seeking to understand the contours of doing business in India.

Dr. Shardul S. Shroff
Executive Chairman
Shardul Amarchand Mangaldas & Co.



The country's growth story continues to attract sustained global attention. With its expanding consumer market, technology-driven economy and reform-oriented policy framework, the country has emerged as a key destination for international investment and enterprise. For businesses evaluating opportunities across Asia and other growth markets, India today represents a strategic combination of scale, innovation and regulatory development.

Recent years have seen the continued strengthening of India's economic and institutional frameworks. Structural reforms in areas such as insolvency and bankruptcy, foreign investment, financial market regulation and corporate governance have enhanced confidence in the country's business environment. At the same time, India's digital transformation, deep talent pool and expanding entrepreneurial ecosystem are reshaping how businesses operate and grow within the economy.

These developments are accompanied by a rapidly evolving regulatory landscape. Legal and policy frameworks governing corporate activity, private equity investments, mergers and acquisitions, competition law, dispute resolution, employment law and taxation continue to mature in response to India's expanding economic footprint. In parallel, emerging domains such as data protection, privacy and cybersecurity are becoming increasingly central to the regulatory environment for modern enterprises.

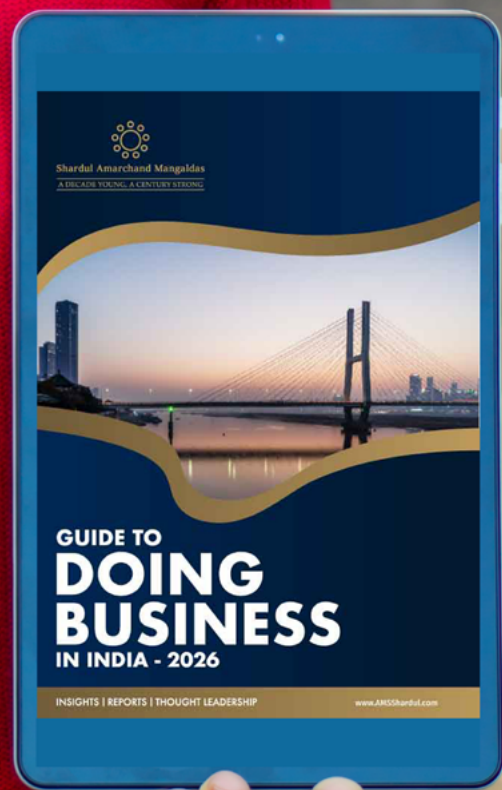
In this context, a clear understanding of the legal architecture governing commercial activity is essential for investors and businesses engaging with the Indian market.

This Guide to Doing Business in India brings together insights from practitioners across Shardul Amarchand Mangaldas & Co.'s practice areas who regularly advise on complex transactions, regulatory matters and disputes involving domestic and international stakeholders. The report provides an overview of key legal and regulatory frameworks relevant to establishing, operating and expanding businesses in India.

Through chapters covering corporate structures, foreign investment regimes, private equity and venture capital, restructuring and insolvency, dispute resolution, intellectual property, taxation, real estate and emerging regulatory domains, the guide aims to offer a structured introduction to India's business environment.

As India continues to deepen its engagement with global markets, informed dialogue and knowledge-sharing remain critical to enabling sustainable growth. We hope this publication contributes to that dialogue and serves as a practical reference for business leaders, investors, policymakers and professionals seeking to navigate the opportunities and regulatory frameworks shaping India's economic future.

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Managing Partners
Shardul Amarchand Mangaldas & Co.



Introduction

India represents a priority market for global businesses seeking scale and long-term growth. Positioned as the world's fourth-largest economy, it offers a compelling mix of a growing consumer market, competitive talent pool and increasingly business friendly policy reforms. The implementation of key structural, fiscal and rural reforms has positioned the year 2025 as a critical inflection point in India's trajectory under *Viksit Bharat 2047*, the national vision to transform India into a developed economy by its centenary year of independence.

Economic Growth and Investment Flows

In 2025, economic growth remained robust with Real GDP estimated to grow by 7.4%, accelerating from 6.5% in FY 2024-2025, while nominal GDP growth is projected at 8%.¹ Foreign Direct Investment ("FDI") acted as a critical engine of economic growth. FDI equity inflows for FY 2026 (April-September 2025) increased by 18% year-on-year (in USD

terms) to INR 3,03,402 crore (US\$ 35.18 billion), with services, computer software and hardware attracting significant capital. Total FDI inflows during the same period stood at Rs. 4,44,641 crore (US\$ 50.36 billion). According to the Department for Promotion of Industry and Internal Trade, cumulative FDI inflows reached INR 9,08,749 crore (US\$ 1.12 trillion) between April 2000 and September 2025, fueled by policy efforts aimed at improving ease of doing business and progressively liberalizing FDI norms.²

In 2025-2026, the Government of India continued its calibrated liberalization of FDI policy to attract global capital. A significant reform was the increase of the FDI limit in the insurance sector from 74% to 100%, with the enhanced limit available on the condition that the entire premium is invested domestically.³ Beyond equity capital, private credit emerged as a critical source of growth financing, particularly in capital-intensive sectors. In H1

1 Press Note on First Advance Estimates of Gross Domestic Product for 2025-26 (7 January 2026) https://www.mospi.gov.in/uploads/release_calendar/1767783068644_GDP_Press_Note_on_FAE_2025-26.pdf

2 India Brand Equity Foundation, Foreign Direct Investment (January 2026) <https://www.ibef.org/economy/foreign-direct-investment>

3 Ministry of Finance, FDI Limit for Insurance Sector Raised From 74 To 100 Per Cent (1 February 2025) <https://www.pib.gov.in/PressReleasePage.aspx?PRID=2098394®=3&lang=2>

2025, private credit investment reached US \$ 9 billion across 79 deals. Global funds dominated the private credit market while domestic funds concentrated on mid-market and opportunistic deals. The infrastructure sector attracted the largest share of private credit, followed by real estate and healthcare.⁴

Despite a challenging macro and policy environment, India's M&A market in 2025 displayed notable resilience recording 963 transactions with an aggregate deal value of USD 60.2 billion, the strongest performance in the last three years. From a sectoral perspective, manufacturing led deal volumes with 144 deals accounting for 15% of the total activity while banking and financial services dominated deal value, contributing over 26% of total value. Domestic M&A dominated volumes, with 713 transactions, representing 74% of total deal count, signaling consolidation within the Indian market. Outbound M&A remained steady with Indian corporates investing USD 18.2 billion overseas. Inbound M&A, though limited to 88 deals, contributed 35% of total deal value, driven by a small number of large, control-seeking foreign investments. India's private equity and venture capital market also recorded a strong performance in 2025 closing 1,506 deals valued at USD 36.8 billion, reflecting 16% growth in volumes and 15% in values over 2024.⁵ Dealmaking trends also demonstrated the role of artificial intelligence influencing the largest deals globally, that is a predictable future for India.⁶

Capital Markets

India's equity markets delivered a strong performance in 2025. The Nifty 50 and the BSE Sensex recorded gains of approximately 11.1% and 10.1% respectively, during

April-December 2025. Primary market activity remained resilient and globally competitive, with India emerging as a leading jurisdiction for initial public offerings ("IPOs"). IPO volumes in 2025 (up to December 2025) were 20% higher than 2024. A notable feature of the IPO issuance was the increased prevalence of 'Offer for Sale' structure, indicating monetization by existing shareholders. The SME segment also witnessed significant expansion, with the number of SME listings increasing to 217 in 2025 (up to December 2025) compared to 190 listings in 2024.⁷

GIFT City demonstrated similar performance by improving its position by nine places in the Global Financial Centres Index, reaching a rank of 43 out of 120 financial centers and advancing by 10 places in the fintech-specific ranking.⁸

Infrastructure Development

Infrastructure development was a key national focus in 2025. Major transport projects such as the Delhi-Mumbai Expressway and the Mumbai-Ahmedabad high-speed rail corridor advanced significantly, improving inter-city connectivity. In response to the rising demand from India's largest urban hubs, two new airports were launched in Noida and Navi Mumbai through public-private partnership models.⁹

In the energy sector, large-scale renewable projects such as the Khavda Renewable Energy Park that is proposed as the world's largest solar park.¹⁰ The Finance Bill 2026 (also known as the "Union Budget") announced further infrastructure initiatives, including the development of seven high-speed rail corridors between several cities as

4 Dinkar Venkatasubramaniam, Onwards and upwards: A positive outlook for private credit in India (19 August 2025) https://www.ev.com/en_in/insights/strategy-transactions/onwards-and-upwards-a-positive-outlook-for-private-credit-in-india

5 Grant Thornton, Annual Dealtracker 2026 <https://www.grantthornton.in/en/insights/thought-leadership/annual-dealtracker-2026/#download>

6 PwC, 2026 Outlook: Global M&A industry trends <https://www.pwc.com/gx/en/services/deals/trends.html>

7 Amidst Continuous Shifts in Trade Policies and Global Uncertainties, India's Equity Markets Exhibited Measured Yet Resilient Performance: Economic Survey 2025-26 (29 January 2026) <https://www.pib.gov.in/PressReleasePage.aspx?PRID=2219998®=3&lang=2#:text=Nifty%2050%20and%20BSE%20Sensex%20registered%20gains%20of%20approximately%2011.1,sophistication%20of%20India's%20capital%20markets>.

8 Amidst Continuous Shifts in Trade Policies and Global Uncertainties, India's Equity Markets Exhibited Measured Yet Resilient Performance: Economic Survey 2025-26 (29 January 2026) <https://www.pib.gov.in/PressReleasePage.aspx?PRID=2219998®=3&lang=2#:text=Nifty%2050%20and%20BSE%20Sensex%20registered%20gains%20of%20approximately%2011.1,sophistication%20of%20India's%20capital%20markets>.

9 Two new mega airports to be inaugurated in India in October (3 October 2025) <https://www.newindianexpress.com/business/2025/Oct/03/two-new-mega-airports-to-be-inaugurated-in-india-in-october>

10 CM Shri Bhupendra Patel visits the Khavda Renewable Energy Park and reviews the progress of ongoing work (28 June 2025) <https://cmogujarat.gov.in/en/latest-news/khavda-renewable-energy-park-gujarat-green-electricity>

‘growth connectors’, the establishment of an Infrastructure Risk Guarantee Fund to provide prudently calibrated partial credit guarantees to lenders.¹¹

Manufacturing, Technology and Innovation

Manufacturing and technology capability building remain at the core of India’s long-term growth model. Since the launch of the India Semiconductor Mission (“ISM”) in 2021, India’s semiconductor strategy has progressed from policy vision to on-ground execution. The government announced a INR 76,000 crore Production Linked Incentive (PLI) scheme of which nearly INR 65,000 crore has already been committed. In May 2025, two state-of-the-art semiconductor design facilities were inaugurated in Noida and Bengaluru, making them India’s first facilities to focus on advanced 3-nanometer chip design, marking a significant step in the country’s semiconductor innovation trajectory.¹² Building on this progress, the Union Budget announced the launch of ISM 2.0 with a focus on production of equipment and materials, development of full stack Indian IP, supply chain resilience, and industry-led research and training. An allocation of INR 10,000 crore has been provided for FY 2026-2027 to support these initiatives.¹³

India’s space sector continued to progress in 2025. The Indian Space Research Organization’s SPADEX mission successfully positioned India as the fourth country to achieve in-space docking capabilities. Among the ten missions undertaken during the year, seven were successful, demonstrating the country’s advanced efforts in this sector.¹⁴

India’s digital and technology ecosystem also received increasing global recognition. A June 2025 report of the

International Monetary Fund on retail digital payments recognized India’s Unified Payments Interface (“UPI”) as the world’s largest retail fast-payment system by transaction volume.¹⁵ In parallel, initiatives such as the IndiaAI Mission and the establishment of Centres of Excellence in AI are supporting the development of the domestic artificial intelligence ecosystem. Global benchmarks such as the Stanford AI Index placed India among the top four countries in AI skills, capabilities, and policies. Supported by a strong STEM workforce, an expanding research ecosystem and growing digital infrastructure, India continues to position itself to leverage artificial intelligence for economic growth, societal outcomes and the long-term *Viksit Bharat* vision.¹⁶

Regulatory and Legal Reforms

Growth initiatives were accompanied by sustained reforms in India’s regulatory and legal framework. On the corporate growth and investment front, the Insolvency and Bankruptcy (Amendment) Bill 2025 proposed the introduction of a long-awaited cross-border insolvency regime. This is in addition to ongoing reforms to the domestic insolvency regime aimed at easier exits, improved recoveries and reduced litigation. The Reserve Bank of India eased acquisition financing constraints by permitting banks to fund up to 70% of the acquisition value for domestic and overseas mergers and acquisitions, thereby supporting growth strategies.¹⁷ Sector-specific reforms have further broadened investment opportunities. The Sustainable Harnessing and Advancement of Nuclear Energy for Transforming India (SHANTI) Act, 2025, introduced in December 2025, replaced the legacy 1962 framework and opened private participation in building and operating nuclear power plants.¹⁸

11 Speech of Nirmala Sitharaman, Minister of Finance, Budget 2026-2027 (1 February 2026) https://www.indiabudget.gov.in/doc/budget_speech.pdf

12 SEMICON 2025: Building the Next Semiconductor Powerhouse (1 September 2025) <https://www.pib.gov.in/PressNoteDetails.aspx?Noteld=155130&ModuleId=3®=3&lang=2>

13 Budget 2026-27 announces the launch of India Semiconductor Mission (ISM) 2.0 (1 February 2026) <https://www.pib.gov.in/PressReleasePage.aspx?PRID=2221522®=3&lang=2#:~:text=The%20focus%20will%20be%20on,will%20build%20on%20the%20same>

14 Achievements of Department of Space – 2025 (29 January 2026), https://www.isro.gov.in/ISRO_HINDI/Achievements_Department_of_Space_2025.html?utm_source=chatgpt.com

15 UPI Recognized as World’s Largest Real-Time Payment System by IMF; Accounts for 49% of Global Transactions (8 December 2025) <https://www.pib.gov.in/PressReleasePage.aspx?PRID=2200569®=3&lang=2>

16 Transforming India with AI (12 October 2025) <https://www.pib.gov.in/PressReleasePage.aspx?PRID=2178092®=3&lang=2>

17 Lifting of curbs on bank acquisition financing to aid economy, says RBI chief (November 2025) <https://www.thehindu.com/business/Economy/lifting-of-curbs-on-bank-acquisition-financing-to-aid-economy-says-rbi-chief/article70251698.ece>

18 The Sustainable Harnessing and Advancement of Nuclear Energy for Transforming India (SHANTI) Bill, 2025 (19 December 2025) <https://static.pib.gov.in/WriteReadData/specifcdocs/documents/2025/dec/doc20251222741701.pdf>

Compliance requirements for businesses have been progressively streamlined. A major step in this direction has been the consolidation of 29 labour laws into four comprehensive Labour Codes, which are expected to materially simplify compliance for businesses, while simultaneously modernizing outdated laws.¹⁹ In addition, the Digital Personal Data Protection Rules 2025 were officially notified by the Ministry of Electronics and Information Technology in November 2025, establishing a structured framework for data protection and privacy. By embedding data protection obligations into business operations, companies can now build digital trust, achieve global compliance and mitigate reputational and financial risks.²⁰

Tax policy has also moved towards greater simplicity. Goods and Services Tax reforms rationalized the rate structure into two principal slabs of 5% and 18%, accompanied by rate reductions across a wide range of consumer goods, vehicles, industrial inputs and everyday essentials. These measures have broadened affordability by reducing the tax burden for households and businesses.²¹ Building on this approach, the Union Budget also introduced several measures to further its ease-of-doing business objective and move away from its perception as a tax-aggressive jurisdiction. Notably, the validity of advance rulings under the Customs Act, 1962 was extended from three years to five years (or until a change in law or facts), providing businesses with greater long-term certainty on the valuation and classification of exports and imports. The Union Budget also rationalized tax treatment of share buybacks by making them less tax-friendly for

promoters through higher effective tax rates. This step will encourage promoter businesses to rethink payout strategies and align capital returns with economic objectives rather than tax arbitrage.

International Trade Agreements and Strategic Partnerships

On the international front, free-trade agreements (“**FTA**”) and strategic partnerships became a significant part of India’s geo-economic toolkit. In July 2025, India and the United Kingdom (“**UK**”) entered into a Comprehensive Economic and Trade Agreement (“**CETA**”), granting an unprecedented duty-free access to 99% of India’s exports to the UK and covering nearly 100% of the trade value.²² The CETA is expected to support economic growth and job creation in both nations, particularly in India’s labor-intensive sectors and in the UK’s high-growth sectors like manufacturing and clean energy.²³ In January 2026, the European Union (“**EU**”) and India concluded negotiations for a commercially significant FTA. The deal between India and the 27-nation EU spans across a combined market of two billion people and represents a market of nearly \$27 trillion and about 25% of the global GDP.²⁴ This was followed by the India-United States of America (“**USA**”) trade deal in February 2026 whereby US tariffs on Indian imports were reduced from 50% to 18%.²⁵ Strategic cooperation also deepened beyond trade deals, with India and the USA signing a new ten-year defense partnership providing a unified policy direction for deeper defense cooperation, technology transfer and industrial collaboration.²⁶

19 India’s Labour Reforms: Simplification, Security, and Sustainable Growth (21 November 2025) <https://www.pib.gov.in/PressReleasePage.aspx?PRID=2192524®=3&lang=2>

20 India’s data privacy shift: Steering the DPDP compliance and readiness (27 January 2026) https://www.ey.com/en_in/insights/cybersecurity/india-s-data-privacy-shift-steering-the-dpdp-compliance-and-readiness

21 GST Reforms 2025: Relief for the common man, a boost for businesses (4 September 2025) https://www.pib.gov.in/PressNoteDetails.aspx?ModuleId=3&NotId=155152&lang=2®=3&utm_source=chatgpt.com

22 India-UK CETA, 99% Tariff Elimination, Stronger Bilateral Trade, Catalyst for Inclusive Growth (27 July 2025) <https://www.pib.gov.in/PressNoteDetails.aspx?NotId=154945&ModuleId=3®=3&lang=2>

23 EY, India-UK Comprehensive Economic and Trade Agreement (CETA) Alert (July 2025) <https://www.ey.com/content/dam/ey-unified-site/ey-com/en-in/alerts-hub/2025/07/india-uk-comprehensive-economic-and-trade-agreement.pdf>

24 ‘Mother of all deals’: How India-EU trade deal creates \$27 trillion market (27 January 2026) <https://www.aljazeera.com/economy/2026/1/27/mother-of-all-deals-how-india-eu-trade-deal-creates-27-trillion-market>

25 End in sight: On the U.S.-India trade deal, America’s tariffs (4 February 2026) <https://www.thehindu.com/opinion/editorial/end-in-sight-on-the-us-india-trade-deal-americas-tariffs/article70587750.ece>

26 Raksha Mantri & US Secretary of War meet on the margins of 12th ADMM-Plus in Kuala Lumpur (31 October 2025) <https://www.pib.gov.in/PressReleasePage.aspx?PRID=2184622®=3&lang=2>

Micro, Small and Medium Enterprises

Micro, small and medium enterprises (“**MSMEs**”) continue to be regarded as a structural growth engine accounting for 35.4% of manufacturing output, 48.45% of exports and 31.1% of the GDP in the country. The MSME sector also emerged as the second-largest employer after agriculture.²⁷ In 2025, several compliance and credit-oriented measures were introduced to reduce operational friction for MSMEs. On the financing front, reforms included external benchmark-linked lending with shorter reset periods, expansion of the Mutual Credit Guarantee Scheme up to INR 100 crore for equipment and machinery.²⁸ Key measures announced for MSMEs include the establishment of a INR 10,000 crore SME Growth Fund in the Union Budget.

Outlook 2026

India’s business and regulatory landscape in 2025-2026 reflects an economy that is systematically building the foundations for sustained long-term growth. The policy environment continues to evolve in favor of ease of doing business and reforms across insolvency, taxation, labor regulation and data protection are streamlining compliance and reducing friction for enterprises. As India aggressively moves towards its *Viksit Bharat* vision, it offers businesses a unique combination of scale, growth potential and increasingly predictable regulatory framework.

27 Micro, Small, and Medium Enterprises form the Backbone of India’s Industrial Economy: Economic Survey 2025-26 (29 January 2026) <https://www.pib.gov.in/PressReleasePage.aspx?PRID=2219984®=3&lang=2>

28 2025 Economic Reforms, Building a Future-Ready India (30 December 2025) <https://www.pib.gov.in/PressNoteDetails.aspx?NoteId=156784&ModuleId=3®=3&lang=1>



1. Overview

Q1. What is the legal system in India?

India is a federal, parliamentary democracy with a written constitution. The Constitution of India ('Constitution') contains a well-defined mechanism for separation of powers between: (a) the executive; (b) the legislature; and (c) the judiciary, both at the central (federal) level, and the state level. Despite the federal set-up, the Indian judiciary is unified, with one Supreme Court of India at New Delhi, High Courts for states, and district courts for districts within

the states. Indian courts follow precedent, adhere to the rule of law, are independent, and have ardently protected the Constitution. At several instances, the Supreme Court and the High Courts have quashed government decisions and legislation that violate the Constitution. The Indian legal system is based on the common law model, with several British era statutes still in effect, notable amongst them is the Indian Contract Act, 1872.

Q2. How are powers shared between the Centre and States?

The Constitution contains three lists: (a) the 'union list' contains matters for which only the central legislature can make laws; (b) the 'state list' contains matters for which only the state legislatures can make laws; and (c) the 'concurrent list' contains matters for which both the central legislature and the state legislatures can make laws, but generally the central laws take primacy. Laws made by a state operate within the territory of the state.

Business related laws pertaining to companies, foreign

investment, contracts, income tax, anti-trust (competition), and arbitration fall in the union list, and do not vary from state to state. Matters such as local permits, land and building codes fall in the state list and may vary from state to state.

In addition to the central and the state legislatures, other governmental bodies such as Reserve Bank of India ('RBI') and Securities and Exchange Board of India ('SEBI') are empowered by specific central laws to issue delegated legislations, including rules, regulations, and notifications.

Q3. What are the business-related laws in India?

Business related laws in India may be divided into the following categories: (a) foreign investment laws; (b) laws that apply to all businesses irrespective of foreign investment; and (c) laws that are specific to certain businesses. Statutes are supplemented by policy pronouncements, press notes, notifications, regulations, and rules by governmental ministries, departments and regulators.

The key business related legislations in India are:

- The Companies Act, 2013, which governs the incorporation, management, restructuring and dissolution of companies;
- The Limited Liability Partnership Act, 2008 ('LLP Act'), which governs the incorporation and dissolution of limited liability partnerships ('LLP(s)');
- The Indian Contract Act, 1872, which lays down general principles relating to the formation and enforceability of contracts;
- The Foreign Exchange Management Act, 1999, the principal legislation governing foreign investment into India;
- The Securities and Exchange Board of India Act, 1992, which governs the functions and powers of India's securities market regulator;
- The Securities Contracts (Regulation) Act, 1956, which governs the listing and trading of securities on stock exchanges in India;
- The Insolvency and Bankruptcy Code, 2016, which governs the reorganisation and insolvency resolution of corporate persons, partnership firms and individuals;
- The Goods and Services Tax laws, comprising the Central Goods and Services Tax Act, 2017, the Integrated Goods and Services Tax Act, 2017, the Union Territory Goods and Services Tax Act, 2017, and the respective State Goods and Services Tax Acts, which subsume several existing indirect taxes into a single tax, removing multiplicity of taxes and compliances;
- The Income Tax Act, 1961, which prescribes the income tax treatment on the income of individuals and corporations;
- The Special Economic Zones Act, 2005, which provides for the establishment, development and management of special economic zones ('SEZs') for the promotion of exports;
- Foreign Trade (Development and Regulation) Act, 1992, which provides for the development and regulation of foreign trade by facilitating imports into, and augmenting exports from, India;
- The Competition Act, 2002, which regulates combinations (merger control) and anticompetitive behaviour;
- Intellectual property laws, including the Copyright Act, 1957, the Trade Marks Act, 1999, the Patents Act, 1970, etc., which protect and govern the creation, ownership, exploitation and enforcement of intellectual property in India; and
- The Digital Personal Data Protection Act, 2023 ('DPDPA') read with the Digital Personal Data Protection Rules, 2025, which regulate the processing of digital personal data.¹

In addition, there are several sector specific legislations (e.g. the Banking Regulation Act, 1949, the Insurance Act, 1938, the Telecommunications Act, 2023,² the Drugs and Cosmetics Act, 1940, the Food Safety and Standards Act, 2006, the Information Technology Act, 2000, the Public Gambling Act, 1867, read with state specific legislation on betting and gambling, the Promotion and Regulation of Online Gaming Act, 2025, and various labour legislations that are now intended to be consolidated under the labour codes, i.e., the Code on Wages, 2019, the Industrial Relations Code, 2020, the Code on Social Security, 2020, and the Occupational Safety, Health and Working Conditions Code, 2020) that apply depending on the nature and type of activity being undertaken.³

1 The Government of India notified the Digital Personal Data Protection (DPDP) Rules on 14 November 2025. [See Chapter 19](#) for further details.

2 The Telecommunications Act, 2023 has repealed the erstwhile Indian Telegraph Act, 1885, and the Indian Wireless Telegraphy Act, 1933.

3 The Government notified the implementation of the aforementioned Codes on 21 November 2025. The notification by the Government can be accessed [here](#).

Q4. What are the types of business entities that can be set up in India?

Business ventures can be carried on in India through a sole proprietorship, a partnership (with unlimited or limited liability) or through an incorporated company. In addition, non-residents can carry on certain limited business activities through branch office ('BO'), liaison office ('LO') or a project office ('PO').

Sole Proprietorship

This is the simplest form of business establishment, and is typically used by individuals to carry out their businesses. The owner of a sole proprietorship is personally entitled to all profits and responsible for all losses arising from the business. Sole proprietorship is typically a small scale operation, and is not well suited for large scale operation or for foreign investment.

Partnership

Partnerships in India are of two kinds: (a) those which are regulated under the Partnership Act, 1932, and where partners have unlimited liability; and (b) LLPs which are regulated under the LLP Act, and where the liability of the partners is limited. Unlimited partnerships are generally not the preferred business entity, and are typically used by professional services firms on account of regulatory reasons. LLPs are increasingly becoming common because of limitation of liability, and characteristics that are similar to that of a company, such as incorporation, and perpetual succession. The partners in LLPs need not be individuals, and can be corporate entities. Both unlimited partnerships and LLPs require registration.

Company

A company may be incorporated in India either as a private company (including a one-person company (OPC)) or a public company. A public company can be listed or unlisted. A company may be incorporated without any minimum capitalisation requirements. However, foreign investment regulations require minimum capitalisation for investment in certain businesses. Please see [Chapter 2 \(Companies\)](#) for further details on the incorporation and management of companies⁴.

Branch offices, Liaison offices and Project offices

BO, LO or PO could be established by a non-resident as an extension of the non-resident entity, and do not have a separate legal identity. Each of BO, LO, and PO can undertake only specifically permitted activities. A LO can conduct only liaison activities, and not undertake commercial activities. Generally, a BO should be engaged in the activity in which the parent company is engaged. A PO can undertake only a specific project, for example, construction of a road project.

Establishing BO, LO or PO requires prior approval which is generally granted by a bank designated as an 'authorised dealer' by the RBI. However, the authorised dealer banks require the prior approval of RBI in certain cases. Illustratively, such cases include: (a) where the principal business of the applicant is in the defence, telecom, private security or information and broadcasting sectors, and the applicant has not already obtained requisite approval from the relevant Ministry of the Government of India or the sectoral regulator; (b) where the applicant is a citizen of, or is registered or incorporated in Bangladesh, Sri Lanka, Afghanistan, Iran, China, Hong Kong or Macau, and/or, the application is for Jammu and Kashmir, the north east region, or the Andaman and Nicobar Islands; or (c) where the applicant is a non-government organisation, or is a not for profit, which is not registered under the Foreign Contribution (Regulation) Act, 2010. In case of BO or LO by foreign banks or insurance companies, application is required to be made directly to the RBI and the Insurance Regulatory and Development Authority of India (IRDAI), respectively.

An approval of RBI is not required for foreign companies to establish BOs in SEZs in order to undertake manufacturing and service activities, subject to satisfaction of certain conditions, including that the BO must be functioning in sectors where 100% foreign direct investment is allowed and is able to function on a standalone basis.

⁴ Increasingly, multi-national corporations are looking to incorporate subsidiary companies in India as global capability centers to undertake specific functions. Please see [Chapter 2 \(Companies\)](#) for further details on incorporation and management of companies (including as global capability centers).

Q5. Are there any restrictions on the kind of business activities that can be carried on by business organizations in India?

Yes, the kind of business activity that can be carried on by a business organisation depends on how it is set up in India, and whether the business organization has received foreign investment.

A BO may enter into contracts on behalf of the non-resident parent and may generate income. However, the activities of BOs are restricted to those in which the parent company is engaged in, and can extend to only the following activities:

- exporting and importing goods;
- rendering professional or consultancy services, other than practice of legal profession;
- carrying on research work in which the parent company is engaged;
- promoting technical or financial collaborations between Indian companies and the parent or overseas group company;
- representing the parent company in India and acting as buying or selling agent in India;
- rendering services in information technology and development of software in India and rendering technical support to the products supplied by parent or group companies; and
- representing a foreign airline or shipping company.

An LO is not permitted to carry on business in India. Its activities are restricted to:

- representing the parent company or group companies;
- promoting export/import from or to India;
- promoting technical or financial collaborations between parent or group companies and companies in India; and
- acting as a communication channel between the parent company and Indian companies.

An Indian company generally has no restrictions on its business activities, except as may be set out in its Memorandum of Association (*i.e.* its charter document). However, if the Indian company has received foreign investment, then it must engage only in those activities which are open for foreign investment. Foreign direct investment is prohibited in lottery business (including government/private lotteries and online lotteries), gambling and betting (including casinos), Chit funds, Nidhi companies, trading in transferable development rights (TDRs), real estate business or construction of farmhouses⁵, tobacco manufacturing activities, and activities or sectors not open to private investment⁶.

5 'Real estate business' means dealing in land and immovable property with a view to earning profit. This prohibition does not extend to development of townships, construction of residential or commercial premises, roads or bridges, educational institutions, recreational facilities, city and regional level infrastructure, townships, real estate broking services and Real Estate Investment Trusts (REITs) registered and regulated under the SEBI (REITs) Regulations 2014 and earning of rent or income on lease of the property, not amounting to transfer.

6 These include atomic energy and railway operations.



2. Companies

Q1. How are companies regulated in India?

The Companies Act, 2013 is the primary legislation governing companies in India. The provisions of the Companies Act have been notified and implemented by the Government of India in a phased manner and have replaced the provisions of the Companies Act, 1956. As of date, the Companies Act, 2013 has been fully implemented. It governs the incorporation, responsibilities, and dissolution of companies and includes the following key aspects:

- *Incorporation and Types of Companies:* Defines the process for incorporating different types of companies (private, public, one-person companies, etc.).
- *Corporate Governance:* Sets out the roles and responsibilities of directors (including independent directors) and officers, including requirements for board meetings, audits, corporate social responsibility, mandatory valuation for a private placement of securities, cross-border mergers (including the merger of Indian companies into foreign companies), class action suits and financial disclosures.
- *Compliance and Reporting:* Mandates regular filing of

financial statements, annual returns, and other documents with the Registrar of Companies (“RoC”).

- *Penalties and Enforcement:* Specifies penalties for non-compliance and the powers of the Ministry of Corporate Affairs (MCA) to enforce the Act.

The central government is empowered to prescribe additional requirements via subordinate rules, which are ancillary to and have to be read together with the provisions of the Companies Act.

The Companies Act has been amended multiple times since the date of its notification, including the most recent amendment in 2025. Notably, it was amended by the Companies (Amendment) Act, 2020 (“**Amendment Act**”), which received the assent of the President of India on September 28, 2020 and the sections of the Amendment Act have been notified on various dates including December 21, 2020, January 22, 2021, February 11, 2021. The notified sections of the Amendment Act, amongst others, (a) remove the penalty for certain offences,

(b) remove imprisonment for certain offences, (c) reduce the amount of fine payable for certain offences, (d) establish additional benches of the NCLAT, (e) permit certain classes of public companies to list certain classes of securities in foreign jurisdictions, (f) make provisions for payment of adequate remuneration to non-executive directors, and (g) revise provisions related to CSR.

In addition to the Companies Act, listed companies or to-be-listed companies are also governed and required to ensure compliance with the provisions of the SEBI Act and rules, regulations, notifications, guidelines and circulars issued thereunder, including the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 (“**SEBI ICDR Regulations**”) and the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“**SEBI Listing Regulations**”), as amended from time to time. SEBI oversees:

- *Stock Exchanges*: Regulates the functioning of stock exchanges and ensures fair trading practices.
- *Listed Companies*: Enforces compliance with listing agreements, disclosure requirements, and corporate governance norms for publicly traded companies.
- *Investor Protection*: Implements measures to protect

investors and ensure transparency in the securities market.

In addition, the Reserve Bank of India (“**RBI**”) regulates financial institutions and non-banking financial companies (NBFCs). Its responsibilities include:

- *Monetary Policy*: Formulating and implementing monetary policy to ensure economic stability.
- *Banking Regulation*: Supervising and regulating banks to ensure their soundness and stability.
- *Foreign Exchange Management*: Administering the Foreign Exchange Management Act (FEMA) and rules thereunder to regulate foreign exchange transactions.

Further, depending upon the business activity undertaken or proposed to be undertaken by the company, various other legislations may apply which regulate such companies (in addition to the Companies Act). For instance, insurance companies are also governed by the Insurance Act, 1938 and the Insurance Regulatory and Development Authority Act, 1999, banking companies are regulated by the Banking Regulation Act, 1949 and companies engaged in the business of generation or supply of electricity are also regulated by the Electricity Act, 2003.

Q2. What are the different types of companies that can be incorporated in India?

Under the Companies Act, companies may be incorporated in India as:

- private companies having two or more members, or with one member to be formed as a One Person Company (“**OPC**”); or
- public companies having seven or more members (which are not the same as companies which are publicly held or which are publicly traded).

a public company is that private companies have greater operational flexibility (see response to [question 15](#)). However, private companies cannot have more than 200 members. Additionally, the Articles of Association (“**AoA**”) of a private company must contain restrictions on the transfer of its shares. The shares of a public company, on the other hand, are freely transferable and such companies can have any number of members above the requisite minimum.

The primary difference between a private company and

S No.	Point of Distinction / Comparison	Private Limited Company	Public Limited Company	Source
1.	Suffix to be used	A private limited company is mandatorily required to add the words “Private Limited” as a suffix to its name.	A public limited company is mandatorily required to add the words “Limited” as a suffix to its name.	Section 4 of the Companies Act, 2013

S No.	Point of Distinction / Comparison	Private Limited Company	Public Limited Company	Source
2.	Minimum and maximum number of members	A private limited company is required to have a minimum of 2 members	A public limited company is required to have a minimum of 7 members.	Section 3 of the Companies Act, 2013
3.	Maximum number of members	A private limited company is permitted have a maximum of 200 members.	There are no restrictions on the number of members a public limited company can have.	Section 2(68) of the Companies Act, 2013
4.	Minimum number of directors	A private limited company is required to have a minimum of 2 directors.	A public limited company is required to have a minimum of 3 directors.	Section 149 of the Companies Act, 2013
5.	Transferability of shares	The shares of a private limited company are not freely transferrable and the Articles of Association must contain restrictions on transfer of shares.	The shares of a public limited company are freely transferrable.	Section 2(68) of the Companies Act, 2013
6.	Public issue of securities	A private limited company is not permitted to make a public issue of securities.	A public limited company can invite the public to subscribe to its securities.	Section 23 of the Companies Act, 2013
7.	Payment of managerial remuneration	Payment of managerial remuneration by a private limited company to its key managerial personnel is not subject to any limits or restrictions.	Payment of managerial remuneration by a public limited company to its key managerial personnel is subject to certain prescribed limits or restrictions.	Section 197 of the Companies Act, 2013

The concept of an OPC has been introduced under the Companies Act, and allows a natural person who is an Indian citizen whether resident in India or otherwise to set up a company. Such a person cannot be a member of more than one OPC at any point in time. The concept has been introduced with the aim of benefitting small entrepreneurs, since these companies are, exempt from certain filing requirements and requirements in relation to meetings, etc.

While a private company is required to have a minimum of two directors, a public company is required to have a minimum of three directors. An OPC can be incorporated only with one person acting as the member and director of the company. Every company can have a maximum of 15 directors, unless its shareholders approve a higher number (through the passing of a special resolution at a general meeting of shareholders).

Companies may be:

- limited by shares;
- limited by guarantee (in which case, the company may or may not have share capital); or
- unlimited (i.e. a company which has no limit on the liability of the members).

Further, a company may be a listed company (where its securities are listed on a recognized stock exchange in India), or an unlisted company. A company listed in the equity segment would also be a public company as that is one of the criteria to be eligible to seek listing. Such companies are often referred to as being “publicly held” or “listed public companies” and are distinct from unlisted public companies.

Based on control and holding structure, a company (in connection with another company) may be categorized as

a holding company, a subsidiary company or an associate company. Other types of companies that receive mention in the Companies Act are foreign companies, not-for-profit companies, small companies, government companies, banking companies, producer companies, nidhi companies and dormant companies.

The most commonly used form of company in India is a company limited by shares. Unlisted private companies have greater flexibility and less stringent rules in respect of various matters including the composition of the Board, holding of shareholders meetings, number of directors, determination of kinds of share capital and voting rights, determination of managerial remuneration, internal approvals etc.

Q3. What is the incorporation process?

Indian companies (whether private or public, limited or unlimited) are incorporated by making an application for registration with the appropriate Registrar of Companies (“**RoC**”). The relevant documents, in respect of such application, can be filed online.

Under the web service SPICe+ (Simplified Proforma for Incorporating Company Electronically Plus: INC-32), applicants can make a single application for availing the following services simultaneously:

- reservation of name of a new company;
- incorporation of a new company;
- allotment of DIN for up to three directors of the new company;
- obtaining PAN for the company;
- obtaining TAN for the company;
- allotment of Goods and Service Tax Identification Number (GSTIN);
- registration with the Employee State Insurance Corporation;
- registration with the Employee Provident Fund Organization;
- opening of bank account of the company; and
- obtaining profession tax registration for the new company (currently available for the states of Maharashtra, Karnataka and West Bengal in India).

Relevant information and documents are required to be submitted along with such application, such as, details of directors and subscribers, Memorandum of Association (“**MoA**”) and AoA.

Once the application is approved, the company would be registered, and a corporate identification number would be allocated to it.

The MoA and AoA are the constitutional or charter documents of a company. The MoA sets out the name, place of registered office, objects, scope of activity and liability of the company, along with its authorized share capital. The AoA sets out the rules and regulations of the company in respect of its management and the rights of the members inter se and vis-à-vis the company.

A company is required to, within 30 days of its incorporation and at all times thereafter, have a registered office capable of receiving and acknowledging all communications and notices addressed to it, failing which the RoC may initiate action for the removal of the name of the company from the register of companies pursuant to a physical verification of the registered office and after notifying the company and its directors.

A company incorporated after November 2, 2018 having share capital, is not permitted to commence any business or exercise any borrowing powers unless:

- a declaration is filed by a director, within a period of 180 days of the date of incorporation of the company (in such form as may be prescribed), with the RoC, that every subscriber to the MoA has paid the value of the shares agreed to be taken by him on the date of making of such declaration; and
- the company has filed the verification of its registered office with the RoC.

Q4. What is significant beneficial ownership and who is a significant beneficial owner?

Sections 89 and 90 of the Companies Act read with the Companies (Significant Beneficial Owners) Rules, 2018 (“SBOR”) prescribe disclosure requirements for individuals who hold ‘ultimate’ control over a company. The SBOR has been introduced with the objective of promoting corporate transparency and preventing the misuse of corporate entities for illicit purposes such as money laundering, tax evasion, corruption and other illegal activities.

A “significant beneficial owner” under Section 90 of the Companies Act read with Rule 2(1)(h) of the SBOR, refers to an individual who, either by himself or with others, directly or indirectly through persons (resident or non-resident) including trusts, possesses one or more of the following rights or entitlements in such reporting company, namely:

- holds indirectly, or together with any direct holdings, not less than ten per cent. of the shares;
- holds indirectly, or together with any direct holdings, not less than ten per cent. of the voting rights in the shares;
- has right to receive or participate in not less than ten per cent. of the total distributable dividend, or any other distribution, in a financial year through indirect holdings alone, or together with any direct holdings;
- has right to exercise, or actually exercises, significant influence or control, in any manner other than through direct-holdings alone.

Section 89(10) of the Companies Act defines ‘Beneficial Interest’ in a share as including, directly or indirectly, through any contract, arrangement or otherwise, the right or entitlement of a person alone or together with any other person to: (a) exercise or cause to be exercised any or all of the rights attached to such share; or (b) receive or participate in any dividend or other distribution in respect of such share. The SBOR prescribes various requirements for identifying individuals as SBOs and filing requirements such as:

- an individual shall be considered to hold a right or entitlement indirectly in the reporting company if he satisfies any of the following criteria in respect of a member of the reporting company, namely:

- where the member of the reporting company is a body corporate (whether incorporated or registered in India or abroad), other than a limited liability partnership, and the individual (a) holds majority stake in that member; or (b) holds majority stake in the ultimate holding company (whether incorporated or registered in India or abroad) of that member;
- where the member of the reporting company is a HUF (through karta), and the individual is the karta of the HUF;
- where the member of the reporting company is a partnership entity, either under the Partnership Act or LLP Act, (through itself or a partner) and the individual (a) is a partner; or (b) holds majority stake in the body corporate which is a partner of the partnership entity; or (c) holds majority stake in the ultimate holding company of the body corporate which is a partner of the partnership entity;
- where the member of the reporting company is a trust (through trustee) and the individual (a) is a trustee in case of a discretionary trust or a charitable trust; (b) is a beneficiary in case of a specific trust; (c) is the author or settlor in case of a revocable trust;
- where the member of the reporting company is (a) a pooled investment vehicle; or (b) an entity controlled by the pooled investment vehicle, based in member state of the Financial Action Task Force on Money Laundering and the regulator of the securities market in such member state is a member of the International Organization of Securities Commissions, and the individual in relation to the pooled investment vehicle, is a general partner; or is an investment manager; or is a Chief Executive Officer where the investment manager of such pooled vehicle is a body corporate or a partnership entity.
- The related filing requirements are as follows:
 - Every SBO is required to file a declaration with the company in which he holds the SBO;
 - Every reporting company shall find out any SBO and cause him to file a declaration;

- Every company which receives any declaration as mentioned above, is required to file a return with the RoC in respect of such declaration;
- Each company is required to maintain a register of SBOs which shall be available for inspection to the shareholders.
- Following are exempt from the application of SBOR:
 - the authority constituted under sub-section (5) of Section 125 of the Companies Act (for administration of the Investor Education and Protection Fund);
 - its holding reporting company (subject to the requirement that the details of such holding reporting company are reported in prescribed form);
 - the central government, state government or any local authority;
 - a reporting company or a body corporate or an entity controlled by the central government or by any state government(s), or partly by the central government and partly by one or more state government(s);
 - SEBI registered investment vehicles such as mutual funds, alternative investment funds, real estate investment trusts and infrastructure, investment trusts;
 - Investment Vehicles regulated by RBI, or IRDA, or Pension Fund Regulatory and Development Authority.

Further, SBOs who do not make relevant disclosures and companies that do not comply as per the SBOR and other requirements under the Companies Act, are subject to penalties as per the provisions under the Companies Act, ranging from INR 50 thousand (approx. USD 568) to a maximum

of INR 5 lakhs (approx. USD 5682).

Further, the MCA has also introduced the Limited Liability Partnership (Significant Beneficial Owner) Rules, 2023 (“**SBO Rules**”), effective from 14 November 2023. These rules, issued under section 90 of the Companies Act, mandate LLPs to identify and report significant beneficial owners (SBOs) to enhance transparency in ownership structures. An SBO is defined as “*an individual who, directly or indirectly, holds at least 10% of the contribution, voting rights, or distributable profits in an LLP, or exercises significant influence or control over the LLP*”. The rules outline specific criteria for determining SBOs based on the nature of the partner, such as body corporates, Hindu Undivided Families, partnerships, trusts, and pooled investment vehicles. LLPs are required to notify potential SBOs and ensure they file declarations in the prescribed forms within stipulated timeframes.

The SBO Rules impose several obligations on both LLPs and SBOs. LLPs must identify SBOs, issue notices to non-individual partners holding significant stakes, and report identified SBOs to the RoC in the prescribed form. They must also maintain a register of SBOs in prescribed form, on their part, and must file required declarations within 90 days of the commencement of the rules or within 30 days of any change in their significant beneficial ownership. Certain entities, such as those controlled by the government or regulated investment vehicles, are excluded from these rules. The MCA aims to align LLPs’ reporting obligations with those of companies, thereby strengthening the regulatory framework and ensuring greater compliance and transparency.

Q5. Are companies required to issue/ hold securities in dematerialized form?

Yes, almost all types of companies, with a few exceptions, are required to hold or issue shares in dematerialized form.

An unlisted public company is required to issue the securities only in dematerialized form and facilitate dematerialization of all its existing securities. Further, any unlisted public company seeking to issue shares (including bonus and rights issues), or to undertake buy-back of its securities, is required to ensure that the shares held by its directors, promoters and key

managerial personnel are in demat form before undertaking any such action. In addition, post October 2, 2018, transfers of shares of unlisted public companies held by any person can no longer be made in physical form. In other words, existing holders of shares (who are not promoters, directors or key managerial personnel) may continue to hold such shares in physical form provided they do not seek to transfer such shares while promoters, directors or key managerial personnel who hold shares in physical form would in addition

need to convert their shares into dematerialized form if and when the company seeks to issue shares irrespective of their intention to transfer. Additionally, every holder of securities of an unlisted public company who intends to subscribe to securities of an unlisted public company, after October 2, 2018, must ensure that all his existing securities are held in dematerialized form before such subscription.

In case of such class(es) of unlisted companies as may be prescribed, securities shall be held or transferred only in dematerialized form as per the provisions of the Depositories Act, 1996 and regulations framed under it.

This dematerialization requirement does not apply to unlisted public companies that are: (a) Nidhi companies; (b) government companies; or (c) wholly owned subsidiaries.

For listed companies, the shares of the promoters and members of the promoter group are required to be in dematerialized form. In addition, SEBI Listing Regulations provide that any person holding physical shares of a listed company will only be able to transfer such shares after they are converted

into dematerialized form with a depository. Transmission or transposition of securities held in physical or dematerialized form shall also be effected only in dematerialized form.

In addition, private companies (other than 'small companies') are also now required to facilitate dematerialization of their securities and to issue and transfer only in dematerialized form, in accordance with Rule 9B of the Companies (Prospectus and Allotment of Securities) Rules, as inserted in 2023. This requirement mandates companies to facilitate the process within prescribed timelines. The compliance deadline was extended until June 30, 2025, for companies not classified as small companies based on their balance sheet dated March 31, 2023. For private companies within scope, holders who propose to transfer, subscribe to, or receive corporate actions (including bonus/rights, buy backs or preferential issues) after the applicable compliance date must hold their securities in dematerialized form. The company must ensure that its promoters, directors and key managerial personnel hold their securities in demat form prior to undertaking such actions.

Q6. Can a non-resident be the first shareholder of a company?

Yes, a non-resident may be the first shareholder of a company, in the relevant permitted sectors, subject to compliance with the norms on foreign investment. The entire share capital of an Indian company may be held by non-resident shareholders, subject to compliance with the norms on foreign investment. In case of a private company, a non-resident may be the first shareholder of the company together with another person

(whether resident or non-resident) to satisfy the requirement of a private company to have at least two shareholders. In case of a public company, a non-resident may be the first shareholder of such company together with six other shareholders. Please see [Chapter 3 \(Foreign Investment\)](#) for further details.

Q7. How are minority shareholders protected under Indian law?

The term 'minority shareholders' is not defined under the Companies Act. However, the Companies Act contains various provisions relating to the protection of minority shareholders. The Companies Act refers to shareholders as members. There are various rights available to shareholders under the Companies Act (discussed in further detail below).

The Companies Act protects minority shareholders from oppression and mismanagement by the majority shareholders. Chapter XVI of the Companies Act contains the relevant provisions relating to the prevention of oppression and mismanagement. Under Section 241 of the Companies Act, read with Section 244 of the Companies Act, (i) 100 members of the company or 10% of the number of members of the company, whichever is less, or any

member(s) holding not less than 10% of the issued share capital or (ii) 20% of the number of members, in case of a company not having a share capital, may apply to the NCLT in relation to situations wherein (a) the affairs of the company have been or are being conducted in a manner prejudicial to public interest or in a manner prejudicial or oppressive to him or any other member or members or

in a manner prejudicial to the interests of the company; or (b) a material change (not brought about by or in the interests of any creditors, including debenture holders or any class of shareholders of the company) has taken place in the management or control of the company, whether by an alteration in the Board, or manager, or in the ownership of the company's shares (or if it has no shares, in its membership) or in any other manner whatsoever, and that by reason of such change, it is likely that the affairs of the company will be conducted in a manner prejudicial to its interests or its members or any class of members. The NCLT may, upon application, dispense with the requirements set out in (i) and (ii) above.

In addition, the central government has also been empowered to apply to the NCLT in case it is of the opinion that the affairs of a company are being conducted in a manner prejudicial to public interest. The central government has also been empowered to initiate case(s) against specified person(s) in certain circumstances and refer the same to NCLT.

Further, various other provisions of the Companies Act have the aim of protecting the rights of the minority shareholders, including the following:

- Shareholders holding more than 25% of the voting capital of a company are also be protected from actions of majority shareholders to the extent that they can block resolutions on matters which require special resolutions. Please refer to [question 8](#) for further details in this regard.
- If an acquirer becomes a registered holder of 90% or more of the issued equity share capital of a company

(upon amalgamation, share exchange, conversion of securities or for any other reason), the minority shareholder is permitted to offer its shares to the acquirer at a price determined on the basis of a valuation of a registered valuer.

- The Companies Act permits class action suits that may be instituted against the company if the minority shareholders are of the opinion that the management and/or the conduct of affairs of the company is prejudicial to the company, members and/or depositors. Such class action suits also allow direct claims to be made against third parties (such as experts, advisors or consultants) for incorrect statements made to the company or for damages or compensation for any fraudulent, unlawful or wrongful act or conduct or any likely act or conduct on its part.
- Provisions relating to appointment of a small shareholder director, in a listed company, by the prescribed threshold of shareholders.

Certain provisions under the SEBI Listing Regulations and the SEBI Takeover Regulations, such as, the requirement to obtain the approval of the majority of the minority shareholders for matters involving the payment of royalty or for brand usage of more than 5% of the annual consolidated turnover of the listed entity (as per the last audited financial statements) to its related party(ies) and the obligation of persons, together with PACs (defined below), acquiring shares or voting rights of a listed entity beyond the minimum thresholds prescribed (please refer to our response to [Question 1 under [Chapter 7](#) (Takeovers)]) to make mandatory open offers to the shareholders of such entity, are also aimed at protecting the interest of minority shareholders.

In case of joint holdings such as JVs, interests of the minority partners may be protected through provisions in the shareholders or 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.

Q8. What are the rights of a shareholder holding more than 75% and 50% shares?

The approval of the shareholders by way of a special resolution (i.e. resolutions requiring the approval of 3/4th majority of the shareholders of the company entitled to and voting at any general meeting) is required for various matters including but not limited to:

- alteration of the AoA;
- further issue of share capital by an offer of shares to persons other than the existing shareholders or employees by the company;
- reduction of share capital;
- disposal of undertaking or borrowing above a certain threshold (except in case of private companies).

Where the share capital of the company is divided into different classes of shares, the rights attached to the shares of any particular class may be varied only with the consent in writing of 3/4th majority of the holders of that class of shares or by means of a special resolution passed at a separate meeting of the holders of the issued shares of that class.

The shareholders of a company may approve several matters of business by way of an ordinary resolution (i.e. requiring approval of over 50% of the shareholders entitled and voting), including:

- alteration of the capital clause of the MoA;
- declaration of dividend;
- approval of audited financial statements;
- appointment and fixing of remuneration of auditors.

Accordingly, shareholders holding 75% or more of a company's voting rights are able to control the approval of proposals which are required to be approved by a special resolution, and the shareholders holding more than 50% of the company's voting rights have the ability to control decisions regarding proposals which are required to be approved by an ordinary resolution. However, as stated earlier, shareholders may contractually provide for affirmative voting rights / veto rights to ensure that resolutions are not passed by the majority shareholders without the affirmative vote of the minority shareholders.

Q9. How does one fund a subsidiary in India?

A foreign / non-resident may fund an Indian company, in the following manner (subject to the exchange control regulations discussed in [Chapter 3 \(Foreign Investment\)](#)):

- By subscribing to instruments such as:
 - equity shares;
 - fully, compulsorily and mandatorily convertible debentures;
 - fully, compulsorily and mandatorily convertible preference shares;
 - share warrants;
 - convertible notes, in the context of startup companies (i.e., a private company incorporated under the Companies Act shall be eligible for recognition as a startup company if it: (i) has not completed 10 years

- from the date of its incorporation; (ii) has a turnover not exceeding INR 100 crores (approx. USD 11 million) for any of the financial years since incorporation; and (iii) is working towards innovation, development or improvement of products or processes or services, or is a scalable business model with a high potential of employment generation or wealth creation);
- depository receipts; and/or
- By subscribing to other types of preference shares and/or debentures i.e. redeemable, non-convertible, optionally convertible or partially convertible and/or borrowings from foreign shareholders subject to compliance with norms relating to external commercial borrowings.

Q10. What types of shares can a company issue?

Under the Companies Act, a company limited by shares may issue the following types of shares:

- Equity shares: with voting rights, or with differential rights as to dividend, voting or otherwise subject to fulfilment of conditions under the Share Capital Rules; and
- Preference shares: which carry a preferential right in respect of (a) payment of dividend; and (b) repayment, in case of winding up. Preference shares do not carry voting rights, except in certain circumstances. However, a private company may provide that the preference shares shall carry voting rights.

SEBI also has an approved framework in place for issuance of differential voting rights shares / superior voting rights shares (SR Shares) by public listed companies. This framework, can be found in the relevant SEBI regulations (such as the SEBI Listing Regulations, the SEBI ICDR Regulations, and the SEBI Takeover Regulations).

Some of the key requirements in relation to SR Shares under the SEBI Listing Regulations are as follows:

- If a listed entity has outstanding SR Shares, at least half of its Board should comprise independent directors;
 - If a listed entity has outstanding SR shares, its audit committee should comprise only of independent directors and the stakeholders relationship committee and the risk management committee should have at least two thirds independent directors. Additionally, the nomination and remuneration committee of all listed entities, including a listed entity that has outstanding SR shares, should have at least two-thirds independent directors.
 - A listed entity cannot issue shares in any manner that may confer on any person; superior or inferior rights as to dividend vis-à-vis the rights on equity shares that are already listed or inferior voting rights vis-à-vis the rights on equity shares that are already listed. However, a listed entity having SR Shares issued to its promoters or founders can issue SR shares to its SR shareholders only through a bonus, split or rights issue in accordance with the SEBI ICDR Regulations and the Companies Act;
 - SR equity shares should be treated at par with ordinary equity shares in all respects (including dividends), except in case of voting on resolutions;
- The total voting rights of SR shareholders (including ordinary shares) in the issuer upon listing, pursuant to an initial public offer, should not exceed 74% at any point of time;
 - SR equity shares should be treated like ordinary equity shares in terms of voting rights in certain prescribed circumstances, for e.g., appointment and removal of independent directors or auditors; related party transactions involving a shareholder holding SR Shares, etc.;
 - SR Shares should be converted to equity shares having voting rights at par with ordinary shares on the fifth anniversary of the listing of ordinary shares of the listed entity. Conversion prior to this period is also permitted at the option of the SR shareholder. SR Shares may be valid for an additional period five years if a resolution to that effect is passed, where SR shareholders have not been permitted to vote;
 - SR Shares will be compulsory converted to equity shares having voting rights at par with ordinary shares on the occurrence of any of the following events: (a) demise of the promoter(s) or founders holding such shares; (b) resignation of an SR shareholder from the executive position in the listed entity; (c) merger or acquisition of the listed entity having SR shareholder(s), where the control would no longer remain with the SR shareholders; and (d) the SR equity shares are sold by an SR shareholder who continues to hold such shares after the lock-in period but prior to the lapse of validity of such SR Shares.

One of the key provisions in the SEBI Takeover Regulations is that an increase in the voting rights of any shareholder beyond the threshold limits stipulated in sub-regulations (1) and (2) of Regulation 3 of the SEBI Takeover Regulations, without the acquisition of control, pursuant to the conversion of equity shares with superior voting rights into ordinary equity shares, shall be exempted from the obligation to make an open offer under Regulation 3.

Q11. Who can be appointed as a director of a company in India? Can a non-resident be appointed as a director of an Indian company?

Under the Companies Act, only an individual can be appointed as a director of a company in India. A person proposed to be appointed as a director of a company is required to give his consent to hold the office as a director. Such a person is also required to obtain and maintain a DIN. In case such person is a national of a country which shares land border with India, necessary security clearance from the Ministry of Home Affairs, Government of India would be necessary for obtaining the DIN and such security clearance shall also be attached along with the consent. A person cannot hold office as a director, including alternate directorship, in more than 20 companies at the same time. The maximum number of public companies in which a person can be appointed as a director is 10.

However, it is pertinent to note that in case of listed companies, the Listing Regulations provide that a person is not permitted to be a director or serve as an independent director in more than seven listed entities, and a whole-time director / managing director in any listed entity is not permitted to serve as an independent director in more than three listed entities.

A non-resident can also be appointed as a director of an Indian company. However, under the Companies Act, at least one director of the Board is required to stay in India for a total period of at least 182 days during the financial year. In case of a newly incorporated company, such a requirement would apply proportionately at the end of the financial year in which such company is incorporated.

Q12. What are the liabilities and obligations of a director under Indian law?

The Companies Act has codified the duties of directors, which include:

- the duty to act in accordance with the AoA;
- the duty to act in good faith to promote the objects of the company for the benefit of the members as a whole, and in
- the best interests of the company, its employees, the shareholders, the community and the protection of the environment;
- the exercise of his duties with reasonable care, skill and diligence;
- the duty to exercise independent judgment; and
- the duty not to be involved in a situation of conflicting interests with the company and the duty not to achieve any undue gain or advantage.

Independent directors have additional duties which have been codified under Schedule IV of the Companies Act.

Other than the fiduciary duties, a director has other duties

including attending Board meetings and disclosing any conflict of interest. Any director who commits a breach of his duties may be liable for both civil and criminal consequences depending upon the nature of the breach and the statutory provisions.

The director of a listed company *inter alia* is also required to:

- comply with the code of conduct established for all members of the Board and senior management of the company;
- disclose his or her directorship, committee membership on the Board of other companies and substantial shareholding in other companies to the Board of the listed company on an ongoing basis and ensure that their number of directorships and membership of committees across companies is within prescribed limits;
- ensure disclosure of information to stock exchanges and shareholders as required under the SEBI Listing Regulations; and
- monitor corporate governance practices.

Q13. Are there any corporate social responsibility norms in India?

Yes, the Companies Act requires every company, having during the immediately preceding financial year:

- a net worth of at least INR 500 crores (approx. USD 57 million) or
- a turnover of at least INR 1,000 crores (approx. USD 114 million); or
- a net profit of at least INR 5 crores (approx. USD 568,182),

to constitute a CSR committee of the Board consisting of three or more directors, out of which at least one director is an independent director. Companies that are not required to appoint an independent director under the Companies Act (such as private companies) are required to have at least two or more directors in its CSR committee.

Companies meeting the thresholds mentioned above are required to spend at least 2% of their average net profits made during the three immediately preceding financial years, in pursuance of its 'CSR Policy'. In case companies which meet such thresholds have not completed three years since their incorporation, they can calculate the 2% amount based on the average net profits of such immediately preceding financial years. Reporting on CSR spending is mandatory. Unspent amounts are subject to transfer obligations and non-compliance attracts penalties under the Act and rules.

In case the CSR amount remaining unspent relates to an ongoing project fulfilling such conditions as may be prescribed, the company is required to transfer any unspent CSR amount in a financial year to a specified account within 30 days from the end of the financial year and spend the same within three financial years from the date of transfer, failing which, such amount should be transferred to a specified fund under Schedule VII of the Companies Act. Furthermore, in case a company fails to contribute toward CSR and the amount does not relate to a project as specified above, the amount is required to be transferred to a fund specified under Schedule VII of the Companies Act within a period of 6 months from the end of the financial year. The Amendment Act also provides penal consequences for non-compliance with the CSR obligations by a company.

In light of the Covid-19 pandemic, contributions made toward Covid-19 related activities will also be considered toward CSR contribution of companies. Additionally, as per the Amendment Act, when a company spends an amount in excess of the requirement of at least 2% average profits then such an excess amount may be set off against the requirement to spend in up to 3 immediately succeeding financial years subject to conditions as prescribed.

Q14. Are there any corporate governance norms?

Yes, the Companies Act provides for an elaborate mechanism for companies to comply with, in relation to corporate governance. These include:

- mandatory appointment of independent directors and a woman director on the Board of certain classes of companies, as well as an obligation to ensure that at least one independent director of the company is also on the Boards of the material unlisted subsidiaries;
- appointment of small shareholders' directors on Boards of listed companies;
- constitution of nomination and remuneration committee, stakeholders relationship committee, and audit committee for certain classes of companies;
- mandatory vigil mechanism systems have been prescribed for certain companies which allow directors and employees to report genuine concerns and adequate safeguards against victimization;
- mandatory appointment of key managerial personnel such as managing director, chief executive officer and chief financial officer for certain classes of companies;
- stringent policy for related party transactions and inter-corporate transactions;
- certain prescribed accounting standards;
- mandatory rotation of independent directors and auditors;
- secretarial audits (for the company and its material unlisted subsidiaries); and

- various minority protection measures (such as those described in our response to [question 7](#) above).

Further, companies which are listed on the main board of the stock exchanges, as well as subsidiaries of such companies, are also required to comply with the requirements prescribed by the SEBI Listing Regulations. Accordingly, listed public companies are required to maintain a specified number of independent, non-executive directors on their Board and constitute separate committees for functions such as for audit, stakeholders, risk assessment and strategy formulation on risk aversion/ minimization. Additional corporate governance requirements for listed public companies include (but are not limited to) the following:

- *Reporting requirements*, such as reporting outcomes of Board meetings where they pertain to specified items, reporting the occurrence of a prescribed category of events to the stock exchanges as and when they occur and submission of quarterly corporate governance compliance reports;

- *Monitoring requirements*, such as requiring periodic review of the policy on related party transactions, requiring prior approval of the audit committee (whether in omnibus form or otherwise) for related party transactions and requiring material related party transactions (i.e. those crossing specified thresholds) to be approved by a shareholders resolution;
- *Internal control requirements*, including requiring the audit committee to review financial statements of subsidiaries and requiring reporting of deficiencies in internal controls to the audit committee by the chief executive officer and compliance officer.
- *Board composition*, requiring the board of directors of a listed entity to have an optimum combination of executive and non-executive directors with at least one woman director and not less than fifty per cent. of the board of directors comprising of non-executive directors. Furthermore, the Board of directors of the top 1,000 listed entities are also required to have at least one independent woman director.

Q15. Are there any exemptions available for private companies under the Companies Act?

Certain key exemptions available to private companies are as follows:

- The holding company, subsidiary company or associate company of a private company, or the subsidiary of a holding company to which a private company is a subsidiary, are not considered as related parties of such private company – thereby ensuring that they are exempt from restrictions on related party transactions.
- A private company can issue shares with differential voting rights without compliance with the Share Capital Rules if it is allowed to do so under its charter documents.
- A private company can issue further shares to employees under an employee stock option plan by passing an ordinary resolution at a meeting of its shareholders and is not required to obtain a special resolution for the same.
- Provisions under the Companies Act on giving of notice of general meetings, statements to be annexed to such notice, quorum for general meetings, chairman, proxies, restrictions on voting rights, voting by show of hands and demand for poll are not applicable to a private company

(if so specified in its AoA).

- Certain provisions under the Companies Act which require the Board of a company to take actions only with the approval of the company by a special resolution do not apply to private companies.
- Certain compliance requirements under the Companies Act in relation to acceptance of deposits from members, such as issuance of circulars to members, filings with the ROC, maintaining a deposit repayment reserve account, are not applicable to private companies: (i) accepting from their members monies not exceeding 100% of aggregate of their paid up share capital, free reserves and securities premium account; or (ii) which are startups, for five years from the date of incorporation; or (iii) which fulfil the following conditions – (a) not being an associate or a subsidiary company of any other company, (b) borrowings of such a company from banks or financial institutions or any body corporate being less than twice its paid up share capital or INR 50 crores (approx. USD 6 million), whichever is lower, and (c) not having defaulted in the repayment

of such borrowings subsisting at the time of accepting deposits.

Q16. Can voting rights be exercised by proxy?

A member of a company who is entitled to attend and vote at a meeting of the company can appoint another person (whether or not a member) as his/her proxy to attend and vote at a meeting (instead of him/her), subject to certain compliances. However, in case of companies having a share

capital (other than private companies whose articles provide otherwise), a proxy is not entitled to speak at the meeting and vote, except on a poll. In case of companies without a share capital, the AoA may prescribe restrictions that may be applicable to proxies.

Q17. Can statutory meetings be held through electronic means?

Under the Companies Act, a company is permitted to conduct a Board meeting through video conferencing or other audio-visual means, provided the procedure prescribed in the Companies Act is complied with. Vide an amendment dated June 15, 2021, the MCA has completely omitted the rules made by it restricting certain matters from being dealt with by the Board in a meeting conducted through video conferencing and therefore, all matters can be dealt with, by means of video conferencing.

Further, the Companies Act requires that certain kinds of business, such as buy-back of shares, giving loans or extending guarantee or providing security in excess of specified limits, may only be transacted by means of voting through a postal ballot. This requirement does not apply to OPCs or companies having up to 200 members.

Additionally, in order to ensure wider shareholder participation in the decision making process of companies, every listed company or a company having not less than 1,000 shareholders, must provide to its members, a facility to

exercise their right to vote at general meetings by electronic means.

A 'virtual meeting' of the shareholders, that is, a meeting without any physical venue, is not permissible under the Companies Act, as minimum quorum requirements, which are applicable to shareholders' meetings of public and private companies, require the requisite number of members to be personally present at the venue of the meeting. However, in light of the Covid-19 pandemic, companies were permitted to convene their extra-ordinary general meetings through video-conferencing or other audio-visual means till September 30, 2024, subject to compliance with certain specified conditions. Similarly, companies were permitted to convene their annual general meetings through video-conferencing or other audio-visual means till September 30, 2024, subject to compliance with certain specified conditions. Subsequently, both timelines have been extended until further until further orders by the Ministry of Corporate Affairs (MCA).

Q18. What are the restrictions on distribution of profit in India?

The Companies Act regulates the declaration and distribution of dividend and prescribes that dividend for any financial year may be paid out of undistributed profits of the company for that year or previous financial years arrived at after providing for depreciation in the prescribed manner. A company may also declare dividends out of accumulated profits earned by it in previous years and transferred to the free reserves, subject to certain conditions including that the amount so

drawn should first be utilized to set off losses incurred in the financial year in which dividend is declared before any dividend in respect of equity shares is declared.

A company is not permitted to declare or pay dividends:

- from reserves other than free reserves; and
- unless carried over previous losses and depreciation not provided in previous years are set off against profits of the company for the current year.

Further, in case of a company having preference share capital, such preference share capital is required to carry a preferential right with respect to payment of dividend over the equity share capital of such company.

The Companies Act also prohibits the payment of dividend on equity shares by a company in case it has failed to comply with provisions relating to acceptance or repayment of deposits.

The Board is also permitted to declare an interim dividend during any financial year, or any time between the closure of a financial year and holding of the annual general meeting for such financial year, out of surplus and profits of the financial year in which such interim dividend is sought to be declared or out of profits generated in the financial year till the quarter preceding the date of declaration of the interim dividend. Where the company has incurred losses during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend, then

the rate of interim dividend declared cannot be higher than the average dividends declared by the company during the immediately preceding three financial years.

Under FEMA, dividends are freely repatriable (outside India) without any restrictions (net after tax deduction at source or dividend distribution tax, if any, as the case may be).

SEBI Listing Regulations provide that a listed company must declare and disclose the dividend on a per share basis only. The top 1,000 listed entities based on market capitalization (calculated as on March 31 of every financial year) are required to formulate a dividend distribution policy which is required to be disclosed as a web-link in their annual reports and on their websites. In case a listed entity proposes to declare dividend on the basis of parameters in addition to what has been prescribed in its dividend distribution policy or proposes to change such additional parameters, it is required to disclose such changes, along with the rationale for the same, in its annual report and on its website.

Q19. How can a company be listed in India?

Equity shares or securities convertibles into equity shares (together, referred to as specified securities) can be listed through an IPO, by way of a public issue or an offer for sale to the public in accordance with the requirements specified under the SEBI ICDR Regulations. The issuer can further choose to undertake the IPO of its specified securities at a price determined by the issuer (in case of convertible securities, the coupon rate and the conversion price), in consultation with the lead manager or through the book building process, i.e., the process of generating demand for the issuer's specified securities to determine the quantum or value such specified securities in accordance with the SEBI ICDR Regulations.

Companies proposing to be listed in India are required to, in addition to compliance with the Companies Act and the SEBI ICDR Regulations, comply with the SEBI Act, Securities Contracts (Regulation) Act, 1956, Securities Contracts (Regulation) Rules, 1957 and various regulations including the SEBI Listing Regulations, and guidelines issued by SEBI thereunder.

A company is eligible to undertake an IPO only if:

- the company, its directors or promoters, members of the promoter group and any selling shareholders in the IPO are not debarred from accessing the capital markets by SEBI;
- its promoters and directors are not promoters or directors of a company which is debarred from accessing the capital markets by SEBI, are not willful defaulters, fraudulent borrowers and are not fugitive economic offenders;
- there are no outstanding convertible securities or any rights entitling any person any option to receive equity shares of the company after the IPO (other than stock options and fully paid-up convertibles which will convert prior to the filing of the red herring prospectus);
- it meets the following criteria:
 - It has net tangible assets of at least INR 3 crores (approx. USD 340,909), calculated on a restated and consolidated basis, in each of the preceding three full years, of which not more than 50% is held in monetary assets (unless the IPO is entirely through an offer for sale). Where more than 50% of the net tangible assets

are held in monetary assets, the company needs to have either utilized or made firm commitments to utilize the excess monetary assets in its business or project;

- It has an average operating profit of at least INR 15 crores (approx. USD 1.7 million), calculated on a restated and consolidated basis, during the preceding three years with operating profit in each year;
- It has a net worth of at least INR 1 crore (approx. USD 113,636) in each of the preceding three years, calculated on a restated and consolidated basis;
- If it has changed its name within the last one year, at least 50% of the revenue, calculated on a restated and consolidated basis, for the preceding one full year has been earned by it from the activity indicated by its new name.
- Where a company does not satisfy the conditions set out above, it is eligible to undertake an IPO only if the issue is made through the book building process and the company undertakes to allot at least 75% of the net offer to qualified institutional buyers and to refund the full subscription money if it fails to do so. It is clarified that 75% of the net offer to qualified institutional buyers, cannot be underwritten.

If a company has issued SR equity shares (i.e., equity shares of a company having superior voting rights compared to all other equity shares issued by that company) to its promoters/founders, then such company will be allowed to do an IPO of only ordinary shares for listing on the main board, subject to compliance with the relevant provisions of the SEBI ICDR Regulations. Further, if a company has issued SR equity shares and is seeking listing of its ordinary shares, it is mandatorily required to list its SR equity shares on the same stock exchange along with the ordinary shares being offered to the public.

A company undertaking an IPO is required to ensure that:

- It has made an application to one or more stock exchanges seeking an in-principle approval for listing its specified securities on such stock exchanges and has chosen one of them as the designated stock exchange;
- It has entered into an agreement with a depository for dematerialization of the specified securities already issued

and proposed to be issued;

- All its specified securities held by the promoters are in dematerialized form prior to filing of the offer document;
- All its existing partly paid-up equity shares have either been fully paid up or have been forfeited;
- It has made firm arrangements of finance through verifiable means towards 75% of the stated means of finance for a specified project proposed to be funded from the issue proceeds, excluding the amount to be raised through the IPO or through existing identifiable internal accruals; and
- The amount for general corporate purposes, as mentioned in the objects of the issue in the draft offer document and the offer document shall not exceed 25% of the amount being raised by the company.

Additional conditions apply in case of an offer for sale as the selling shareholders need to have held the shares they are offering for at least a year prior to the filing of the draft offer document.

Further, under the SEBI ICDR Regulations, promoters of the company are required to continue to hold at least 20% of the post issue capital for a period of 18 months from the date of allotment in the IPO. In case the majority of the issue proceeds excluding the portion of offer for sale is proposed to be utilized for capital expenditure, the lock-in period will be 3 years from the date of allotment in the IPO. However, since the 20% lock-in requirement is required to be met out of a pool of eligible shares (which aren't pledged, or recently acquired or otherwise ineligible), promoters typically continue to hold more than just the 20% which is compulsorily locked-in. In addition, all other pre-IPO shareholders are also locked in for 6 months after the IPO barring a few exceptions such as venture capital funds, FVCIs and category I and II alternative investment funds (for whom the lock-in period of 6 months begins from their date of purchase) and employees who received equity shares under an ESOP.

IPO-bound companies typically undergo a fairly rigorous process to meet all requirements for seeking listing. This usually entails changes to the composition of their Board in accordance with the SEBI Listing Regulations and any other regulations or guidelines specified by any regulator which

governs the industry in which the issuer operates, amendments to their AoA, the constitution of committees, implementation of various policies, dematerialization of physical shares among other things including adhering to some restrictions on the kind of publicity they can undertake while in IPO-mode. SEBI registered merchant bankers are mandatorily required to be appointed by companies seeking to list and they, along with their counsel, guide companies through this process.

Any company coming out with an IPO is required to file a draft offer document (or draft red herring prospectus) along with prescribed fees with SEBI and the stock exchanges. SEBI may specify changes or issue observations to the draft offer document within 30 days of a prescribed number of events. Additionally, the stock exchanges may also issue observations on the draft offer document (or draft red herring prospectus), prior to issuing the in-principle approval. In case SEBI and/or stock exchanges specify any changes or issues observations on the draft offer document, the changes need to be carried out and an updated draft is required to be submitted to SEBI prior to filing the prospectus, red herring prospectus or shelf prospectus with the relevant RoC. Subsequent to filing the draft offer document, the issuer is required to obtain an in-principle approval from recognized stock exchanges (including at least one such stock exchange having nationwide terminals, in case of an IPO).

The draft red herring prospectus filed with SEBI is required to be made public, for comments, if any, for a period of at least 21 days from the date of such filing, by hosting it on the websites of SEBI, relevant stock exchanges and merchant bankers associated with the issue.

The final observations issued by SEBI are valid for a year i.e. the bidding period (as described later) should commence within a period of 12 months from the date of issuance of final observations by SEBI and if not, if a company still wants to proceed with an IPO, it will need to file a fresh draft offer document with SEBI. Thereafter, the issuer shall, before filing the red herring prospectus or prospectus with the relevant RoC, file a blackline draft red herring prospectus with SEBI through the lead merchant bankers, highlighting all changes made in

the draft red herring prospectus pursuant to any comments received from the public and observations received from SEBI.

After receiving an approval from SEBI and the in-principle approval from the stock exchanges, the red herring prospectus is required to be filed with the relevant RoC, specifying the period during which bids or applications for subscription to specified securities can be submitted by prospective investors or bidders and the details of the price band. In the event the price band is not included in the red herring prospectus, it should be advertised at least two working days prior to opening of the bidding period, in accordance with the SEBI ICDR Regulations.

The bidding period can extend for a minimum of three working days and a maximum of 10 working days, including in case of a revision in the price band. During the bidding period prospective investors will place their bids for the issuer's securities at different price points within the price band. Certain category of investors (retail bidders, eligible employees, etc.) can make their bids at the cut-off prices.

Once the bidding period is closed, the issuer, in consultation with the merchant bankers (and at times with the selling shareholders as well) and the relevant stock exchange, will determine the price at which the specified securities will be allotted to the successful bidders, using the book building process in accordance with the SEBI ICDR Regulations. Thereafter, the issuer is required to file a prospectus with the relevant RoC, including information pertaining to the number of securities issued or offered through the IPO and the price at which such specified securities are allotted. In case of a fresh issue (i.e., not being an offer for sale to the public), the issuer is required to obtain a minimum subscription of 90% of the issue size through the IPO (which if not met will trigger a refund of the entire bid amount to the bidders). Thereafter, the issuer will allot the specified securities to the successful bidders and apply to the relevant stock exchanges for obtaining the final listing and trading approvals.

Q20. What is the minimum level of public shareholding in a listed company? What are the consequences of the shareholding of the acquirer being in excess of the minimum level of public shareholding?

The SEBI Listing Regulations and the Securities Contract (Regulation) Rules, 1957 specify that a listed company is required to have a minimum public shareholding in its share capital (except for entities listed on institutional trading platform without making a public issue). Accordingly:

- Every listed company is required to maintain public shareholding of at least 25%; and
- Where the public shareholding in a listed company falls below 25% at any time, such company is required to bring the public shareholding to 25% within a maximum period of 12 months from the date of such fall in the manner specified by SEBI (discussed below).

Where the non-public shareholding of a listed company is in excess of the minimum public shareholding level, the company is required to undertake suitable actions to raise the public shareholding within the prescribed time, in order to keep the company's shares listed. The following methods have been prescribed by SEBI to comply with minimum public shareholding requirements:

- Issuance of shares to public through prospectus;
- Offer for sale of shares held by promoters to public through prospectus;
- Sale of shares held by promoters through the secondary market;
- Rights issue to public shareholders, with promoter or promoter group shareholders forgoing their entitlement to equity shares that may arise from such issue;
- Bonus issues to public shareholders, with promoter or promoter group shareholders forgoing their entitlement to equity shares that may arise from such issue;
- Allotment of equity shares under qualified institutions placement in terms of Chapter VI of the SEBI ICDR Regulations;
- Sale of shares held by promoter(s) / promoter group in the open market in any one of the following ways, subject to compliance with the conditions specified:
 - up to 2% of the total paid-up equity share capital of

the listed entity, subject to five times' average monthly trading volume of the shares of the listed entity, every financial year till the due date for minimum public shareholding compliance as per the Securities Contracts (Regulation) Rules, 1957 (or)

- up to 5% of the paid-up capital of the listed entity during a financial year, in a single tranche or in multiple tranches not exceeding a period of 12 months, subject to the condition that the public holding in the listed entity shall become 25% after completion of such sale and the amount of shares sold shall not exceed the trading volume of the shares of the listed entity during the preceding 12 months from the date of announcement.
- Exercise of options and allotment of shares under an employee stock option (ESOP) scheme up to 2% of the paid-up equity share capital of the listed entity, in compliance with the Securities and Exchange Board of India (Share Based Employee Benefits and Sweat Equity) Regulations, 2021 with the promoter or promoter group shareholders not being allotted any shares.
- Transfer of up to 5% of the paid-up equity share capital of the listed entity held by the promoter or promoter group shareholders to an Exchange Traded Fund (ETF) managed by a SEBI-registered mutual fund, subject to conditions specified. The promoter and promoter group shareholders shall not subscribe to the units of such ETF to which shares have been transferred for the purpose of compliance with minimum public shareholding requirements.
- Any other method as may be approved by SEBI on a case to case basis. In this regard, listed entities may approach SEBI with appropriate details.

Companies failing to comply with the minimum level of public shareholding within the time period set forth in the Securities Contract (Regulation) Rules, 1957 and the SEBI Listing Regulations can face penalties such as compulsory delisting, suspension of trading, monetary penalties, etc.



3. Foreign Investment

Q1. What is foreign investment?

Foreign investment means any investment made by a person resident outside India on a repatriable basis in “Equity Instruments” of an Indian company or in the capital of an LLP. Please see our response to [question 6](#) of this Chapter for a detailed description of Equity Instruments.

A beneficial interest of a non-resident in an Indian security legally held by a resident entity is also considered as foreign investment, if appropriate declarations of such interest under the Companies Act, 2013 have been made.

A person resident outside India may hold foreign investment

inter alia either as foreign direct investment (“**FDI**”) or as foreign portfolio investment (“**FPI**”) in an Indian company in accordance with the provisions of the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 (“**NDI Rules**”).

The NDI Rules define FDI to mean the investment through Equity Instruments by a person resident outside India (i) in an unlisted Indian company, or (ii) in 10% or more of the post issue paid-up equity capital on a fully diluted basis of a listed Indian company.

- 1 A person resident outside India means a person who is not resident in India. A person resident in India means:
- (i) a person residing in India for more than 182 days during the course of the preceding financial year but does not include –
 - (A) a person who has gone out of India or who stays outside India, in either case –
 - (a) for or on taking up employment outside India, or
 - (b) for carrying on outside India a business or vocation outside India, or
 - (c) for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period;
 - (B) a person who has come to or stays in India, in either case, otherwise than –
 - (a) for or on taking up employment in India, or;
 - (b) for carrying on in India a business or vocation in India, or;
 - (c) for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period;
 - (ii) any person or body corporate registered or incorporated in India,
 - (iii) an office, branch or agency in India owned or controlled by a person resident outside India,
 - (iv) an office, branch or agency outside India owned or controlled by a person resident in India.

If the existing investment of a person resident outside India in Equity Instruments of a listed Indian company subsequently falls below the aforesaid 10% threshold, such investment is continued to be treated as FDI.

FPI refers to any investment made by a person resident outside India in Equity Instruments where such investment is (i) less than 10% of the post issue paid-up equity capital on a fully diluted basis of a listed Indian company, or (ii) less than 10% of the paid-up value of each series of Equity Instruments of a listed Indian company. An Indian company which has any of its equity instruments or debt instruments listed on a recognized stock exchange in India is considered a listed company, in this context.

Downstream investments by Indian entities which are majority owned or controlled by persons resident outside India are

considered indirect foreign investment and are governed in substantially the same manner as a foreign investment. Therefore, downstream investment is subject to the same norms applicable to direct investment on certain aspects such as swap of equity instruments and payment arrangements / mechanisms such as the ability to pay some portion of the consideration on a deferred basis, have post-closing indemnity arrangements and escrow mechanisms, (each as described further in the response to [question 12](#)). Similarly, the restrictions on direct foreign investments, including entry routes, sectoral caps and attendant conditionalities, also apply to downstream investment. The NDI Rules sets out further detailed provisions regarding downstream investments. It is also worth noting that funds borrowed from the domestic market cannot be used to make downstream investment. However, internal accruals and funds brought from abroad can be brought to fund downstream investment.

Q2. How is foreign investment regulated in India?

Foreign investment in India is primarily regulated by:

- The Foreign Exchange Management Act, 1999 (“**FEMA**”), and the rules, regulations and directions issued by way of notifications and circulars, thereunder, including, the
- NDI Rules;
- FDI Policy issued by the DPIIT (formerly known as DIPP) from time to time.

Q3. Who are the key regulators that monitor foreign investment in India?

The key regulators that monitor foreign investment in India include:

- Central Government
 - which specifies permissible capital account transactions not involving debt instruments and frames rules in relation to the same in accordance with the provisions of FEMA, in consultation with the Reserve Bank of India (“**RBI**”).
- RBI:
 - which classifies permissible capital account transactions involving debt instruments and frames regulations in relation to the same in accordance with the provisions of FEMA, in consultation with the Central Government; and
 - which is empowered to administer the NDI Rules, and interpret and issue directions, circulars, instructions, and clarifications to implement the NDI Rules.
- DPIIT, which is:
 - responsible for making policy pronouncements on foreign investment;
 - instrumental in administering the applications falling under the approval route, including referring these to the competent Administrative Ministry or Department of the Government of India (Competent Authority), and holding joint reviews on pending proposals. To this end, DPIIT has established the National Single Window System. Previously, the proposals for foreign investment requiring approval of the Government of India (“**GOI**”) were administered through the Foreign Investment Facilitation Portal;
 - DPIIT’s concurrence is mandatory for a Competent

Authority to reject applications made under the Approval Route, and for imposing additional conditions not provided in the FDI Policy or sectoral laws or regulations; and

- Please see our response to question 4 of this Chapter for a detailed discussion on automatic and approval route.
- Competent Authority:
 - which considers applications for approval of foreign investment in the sectors over which it exercises oversight and monitors foreign investment in such sectors, in accordance with the FDI Policy, such as Ministry of Defense for defense sector related approvals, Ministry of Information and Broadcasting for broadcasting sector, Ministry of Civil Aviation for the civil aviation sector and Department of Economic Affairs for the financial sector.
- Ministry of Home Affairs (“MHA”)
 - which considers all applications for approval of foreign investment requiring security clearance. All proposal for foreign investment in broadcasting, telecommunication, satellites - establishment and operation, private security agencies, defence, civil aviation and mining and mineral separation of titanium bearing minerals and ores, and its value addition and integrated as well as investment proposals from neighbouring countries require a security clearance from MHA. Please see our response to question 5 of this Chapter for details on restrictions on investments from neighbouring countries.
- Ministry of External Affairs (“MEA”)
 - to whom all applications for approval of foreign investment are forwarded for its comments and wherever necessary, MEA provides its comments to the Competent Authority.

Q4. What are the different routes through which a foreign investor may invest in India?

A foreign investor may invest in India *inter alia* through the following routes, namely:

- FDI, either under the automatic route or the approval route:
 - under the automatic route, the foreign investor or the Indian company does not require any approval from the GOI or RBI to make or receive the FDI, and
 - under the approval route, with prior approval of the GOI (that is, the Competent Authority) and/or RBI, to be obtained by the foreign investor or the Indian company, as applicable.
 - it is pertinent to note that while foreign investors do not require any prior registration with a regulatory authority in India for undertaking FDI, due to requirements under the Companies Act, 2013 and the rules framed thereunder made effective from July 1, 2025, securities of companies in India can only be issued and transferred in dematerialized form. For this purpose the foreign investor will need to have a demat account with the depository participant in India prior to making its first investment in India, for which the applicant needs to have a permanent account number issued by the income tax department.
- Investment as a foreign portfolio investor, subject to prior registration with a designated depository participant (“DDP”), an intermediary authorized by SEBI to grant registrations under the SEBI FPI Regulations, 2019 (as amended from time to time) (“**SEBI FPI Regulations**”);
- Investment as a foreign venture capital investor (“FVCI”), subject to prior registration with a DDP, an intermediary authorized by SEBI to grant registrations under the SEBI FVCI Regulations, 2000 (as amended from time to time) (“**SEBI FVCI Regulations**”);
- Investment as: (i) a non-resident Indian (“NRI”) or an overseas citizen of India (“OCI”) on a recognized stock exchange on repatriation basis, or (ii) an NRI or OCI, including a company, a trust and a partnership firm incorporated outside India and owned and controlled by NRIs or OCIs, on a non-repatriation basis. Such investment is deemed to be domestic investment at par with the investment made by residents;
- Investment in the units of an entity registered and regulated under relevant regulations framed by SEBI

such as an Alternative Investment Fund (“AIF”), Real Estate Investment Trust (“REIT”) or Infrastructure

Investment Fund (“InvIT”) (each, an “Investment Vehicle”);

Q5. What are the restrictions on the neighbouring countries to invest in India?

On April 17, 2020, the DPIIT issued Press Note 3 of 2020 (commonly referred to as “PN3”) to curb opportunistic takeovers / acquisitions of Indian companies. The NDI Rules were then amended on April 22, 2020, to incorporate PN3 into the rules. Prior to the Amendment, the restrictions only applied to investments from Bangladesh and Pakistan. After the amendment, any foreign investment by or from an entity of any country sharing land borders with India or where the beneficial owner of an investment into India is situated in or is a citizen of any such country, requires prior approval from GOI. Further any subsequent changes in beneficial ownership (by way of direct or indirect transfers) of any existing or future FDI that would result

in such beneficial ownership falling within the purview of aforesaid restriction would require prior approval from GOI. It is however clarified that a Multilateral Bank or Fund, of which India is a member, shall not be treated as an entity of a particular country nor shall any country be treated as the beneficial owner of the investments of such Bank or Fund in India.

The terms ‘beneficial owner’ and ‘land bordering country’ are not defined. However, ‘land bordering country’ is commonly understood to refer to Afghanistan, Bangladesh, Myanmar, Pakistan, Nepal, Bhutan, China (including HKSAR but excluding Taiwan).

Q6. What are the different instruments available for investment in India under the foreign direct investment regime?

- In accordance with the NDI Rules, a foreign investor can invest in the following instruments (Equity Instruments):
 - equity shares (including partly paid equity shares);
 - fully, compulsorily and mandatorily convertible preference shares;
 - fully, compulsorily and mandatorily convertible debentures;
 - share warrants
- Partly paid shares issued to non-residents should be fully called-up within 12 months of such issue except in certain limited cases. Furthermore, 25% of the total consideration amount (including share premium, if any) in respect of partly paid shares should be received upfront. In the case of share warrants at least 25% of the consideration should be received upfront and the remainder should be received within 18 months of issuance of share warrants. Note that under the NDI Rules, preference shares cannot be issued on a partly paid basis.
- For convertible instruments the price or conversion formula should be determined upfront at the time of issue of the said instruments. Further, the conversion cannot be at a price which is less than the fair value at the time of issuance of the instruments.
- Issuance of preference shares or debentures that are non-convertible, optionally convertible or partially convertible is considered as external commercial borrowing (“ECB”) and would be subject to compliance with extant regulations pertaining to ECB, discussed at [question 22](#) of this Chapter.
- Equity Instruments can contain an optionality clause subject to a minimum lock-in period of 1 year or as prescribed for the specific sector, whichever is higher, but without any option or right to exit at an assured price.
- An eligible foreign investor may invest in the units of Investment Vehicles such as REITs, InvITs, and AIFs.
- A foreign investor, not being a foreign portfolio investor or an FVCI, may make a capital contribution or acquire the profit share of an LLP in which FDI up to 100% is permitted under the automatic route and there are no FDI linked performance conditions attached, in accordance with FDI Policy and NDI Rules.

Q7. Is foreign investment prohibited in any sector or business?

Foreign direct investment is prohibited in the following sectors:

- Lottery business including government or private lottery, online lotteries;
- Gambling and betting including casinos. In relation to lottery, gambling and betting activities, foreign technology collaboration in any form (including licensing for franchise, trademark, brand name, management contract) is also prohibited;
- Chit funds;
- Nidhi companies;
- Trading in transferable development rights;
- Real estate business or construction of farm houses; however, 'real estate business' does not include development of townships, construction of residential / commercial premises, roads or bridges and REITs registered and regulated under the SEBI (REITs) Regulations 2014 and earning of rent or income on lease of the property, not amounting to transfer;
- Manufacturing of cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes;
- Activities or sectors not open to private sector investment for example atomic energy and railway operations (that is, other than the permitted railway infrastructure);
- Agriculture sector or activity except as specifically permitted (such as floriculture, horticulture and cultivation of vegetables and mushrooms under controlled conditions, development and production of seed and planting material, animal husbandry (including breeding of dogs), pisciculture, aquaculture, apiculture, and services related to agro and allied sectors).
- Plantation sector or activity except as specifically permitted (such as tea sector including tea plantations, coffee plantations, rubber plantations, cardamom plantations, palm oil tree plantations and olive oil tree plantation).

Q8. Are there any limits or caps on foreign investment depending upon the business of the Indian Company?

Yes, the maximum permissible limit for foreign investment in an Indian company or sectoral cap (the extent of a specified percentage of the total capital of an entity) is determined by the sector in which the company is operating. The NDI Rules

also prescribe certain conditions for specific sectors such as retail trading, e-commerce, construction and development and the like.

Q9. Are there any restrictions on foreign investment in an Indian company engaged only in the activity of further investing into Indian companies?

Foreign investment in investing companies not registered as non-banking financial companies ("NBFCs") with RBI and in Core Investment Companies ("CICs"), engaged in the activity of investing in the capital of other Indian entities, requires prior government approval. CICs additionally need to comply with the regulatory framework prescribed for such companies as NBFCs under the Reserve Bank of India Act, 1934 and

regulations framed thereunder.

Foreign investment in investing companies registered as NBFC with RBI, is permitted up to 100% under the automatic route (*i.e.*, without the prior government approval), since they are being regulated, overall, by RBI.

Q10. What are the ways for a foreign investor to invest in an Indian company?

Foreign investment in India can be undertaken through the following ways:

Issuance of permissible instruments by a company:

Subject to compliance with the FDI Policy and NDI Rules, an

Indian company may issue Equity Instruments under the FDI Policy to a non-resident investor. For sectors under the automatic route, subject to compliance with the conditions prescribed by the GOI and/or RBI from time to time, issue

of equity shares against swap of existing equity instruments or equity capital of a foreign company (subject to rules prescribed by the GOI and RBI including the Foreign Exchange Management (Overseas Investment) Rules 2022), import of capital goods, machinery or equipment (excluding second-hand machinery) and pre-operative or pre-incorporation expenses (including payment of rent) is permitted, subject to certain reporting requirements. Issue of equity shares against such swap, import or expenses by companies in sectors requiring government approval, is allowed under the approval route.

An Indian company may issue equity shares against any funds payable by it to a person resident outside India, the remittance of which is permitted under FEMA and the rules/regulations thereunder or does not require prior permission of the GOI or RBI.

Acquisition by way of transfer of existing shares:

Subject to compliance with the FDI Policy and NDI Rules, non-resident investors can also invest in Indian companies by purchasing or acquiring existing permissible instruments from Indian shareholders or from other non-resident shareholders in the following manner:

- Non-resident to Non-resident: A person resident outside India (other than an NRI or an OCI or an erstwhile overseas corporate body) can transfer, by way of sale or gift, the Equity Instruments of an Indian company or units of an Investment Vehicle to any person resident outside India, provided that prior government approval shall be obtained for such transfer in case the company is engaged in a sector requiring government approval.
- Transfer of Equity Instruments (held on a non-repatriation basis) from a non-resident to a non-resident, by way of sale where the Equity Instruments are intended to be held on a repatriable basis, should be in compliance with the NDI Rules and the FDI policy (including sectoral caps, pricing guidelines (see question 11), documentation and reporting requirements).
- Non-resident to Resident: A person resident outside India can transfer, by way of sale or gift, Equity Instruments or units of an Investment Vehicle to a person resident in India, subject to compliance with the conditions stipulated under NDI Rules and the FDI Policy (including sectoral

caps, pricing guidelines, documentation and reporting requirements). Further, a person resident outside India can transfer equity instruments of an Indian company to a person resident in India by way of swap of equity instruments or equity capital of a foreign company (subject to rules prescribed by the GOI and RBI including the Foreign Exchange Management (Overseas Investment) Rules 2022), provided that GOI approval is obtained wherever such approval is applicable.

- Resident to Non-resident: A person resident in India can transfer, by way of sale, Equity Instruments or units of an Investment Vehicle to a person resident outside India, subject to compliance with the conditions stipulated under NDI Rules and the FDI Policy (including sectoral caps, pricing guidelines, documentation and reporting requirements). Gift of such instruments by a resident to a person resident outside India will require the prior approval of RBI. Further, a person resident in India can transfer equity instruments of an Indian company to a person resident outside India by way of swap of equity instruments or equity capital of a foreign company (subject to rules prescribed by the GOI and RBI including the Foreign Exchange Management (Overseas Investment) Rules 2022), provided that GOI approval is obtained wherever such approval is applicable.
- Non-resident on the Stock Exchange: A person resident outside India can sell the Equity Instruments of an Indian company or units of Investment Vehicles (in case the same are listed) held by it on a repatriable basis, on a recognized stock exchange in India in the manner prescribed by SEBI.
- Further, a non-resident investor who has already acquired and continues to hold the control of an Indian company, in accordance with SEBI Takeover Regulations, can acquire shares of the listed Indian company on the stock exchange, subject to FDI Policy and NDI Rules.
- Purchase and sale of Equity Instruments of an Indian Company, capital of an LLP, convertible notes issued by start-ups or units of Investment Vehicles, by an NRI or an OCI, on non-repatriation basis, under NDI Rules, is deemed to be domestic investment at par with the investment made by residents. Further, a company, trust, and partnership firm incorporated outside India and owned and controlled by NRIs can invest in India under the special dispensation available to NRIs or OCIs under

the FDI Policy and NDI Rules. However, a NRI or an OCI including a company, a trust and a partnership firm incorporated outside India and owned and controlled by NRIs or OCIs, cannot make any investment in equity instruments or units of a Nidhi company or a company engaged in agricultural or plantation activities or real estate business or construction of farm houses or dealing in transfer of development rights.

- An NRI or OCI holding equity instruments or units of

an Indian investee entity on a non-repatriation basis requires the RBI's approval to gift such securities to a person resident outside India. The following additional conditions apply to such gift: (i) the donee is eligible to hold them under the relevant Schedule; and (ii) the gift does not exceed 5% of the company's paid-up capital or of each mutual fund scheme, calculated cumulatively from a single donor to a single donee.

Q11. Are there any pricing guidelines that a foreign investor has to comply with while investing into any of the instruments of an Indian entity?

NDI Rules prescribe the pricing guidelines for both the subscription to, and the acquisition of, Equity Instruments by non-residents.

- Issue of Equity Instruments – the price of Equity Instruments issued to a person resident outside India should not be less than:
 - In case of an Indian company listed on a recognised stock exchange in India – the price worked out in accordance with the SEBI guidelines.
 - In case of an Indian company going through a delisting process, the price worked out in accordance with the delisting regulations.
 - In case of an Indian company not listed on a recognised stock exchange in India – the price of Equity Instruments issued to a non-resident cannot be less than the value of Equity Instruments determined as per any internationally accepted pricing methodology for valuation on an arm's length basis duly certified by a merchant banker (registered with SEBI) or a chartered accountant or a practicing cost accountant ("**Specified Price**").
 - Where the issue of instruments is pursuant to a rights issue:
 - of a listed company, the issue price, subject to SEBI ICDR Regulations, is the price determined by the company;
 - where the investee company is not listed, the issue price cannot be less than the price offered to resident shareholders; and
 - after renunciation of rights from a person resident

outside India or allotment of unsubscribed shares to a non-resident, in accordance with the pricing guidelines for issuance of equity instruments (other than share warrants) – i.e., the Specified Price.

- In the case of convertible equity instruments, the price or conversion formula of the instrument is required to be determined upfront at the time of issue of the instrument. The price at the time of conversion should not in any case be lower than the fair value worked out, at the time of issuance of such instruments, in accordance with NDI Rules.
- However, where non-residents (including NRIs) are making investments in an Indian company by way of subscription to its memorandum of association (subject to such non-resident's eligibility to invest under the FDI Policy), such investments may be made at face value.

Transfer of Equity Instruments by a Resident to a Non-resident

The price of Equity Instruments of an Indian company transferred by a person resident in India to a person resident outside India should not be less than:

- In case of an Indian company listed on a recognised stock exchange in India, the price worked out in accordance with the relevant SEBI guidelines or in case of a sale under a private arrangement, the price at which a preferential allotment of shares can be made under the SEBI guidelines, as applicable.

- In case of an Indian company that is going through delisting, the price worked out in accordance the SEBI Delisting Regulations.
- In case of an Indian company not listed on a recognised stock exchange in India, the value of the shares determined pursuant to any internationally accepted pricing methodology for valuation on arm's length basis duly certified by a merchant banker (registered with SEBI) or a chartered accountant or a practicing cost accountant (i.e., the Specified Price).

Transfer of Equity Instruments by a Non-Resident to a Resident

The price of Equity Instruments of an Indian company transferred by a person resident outside India to a person resident in India should not exceed:

- In case of an Indian company listed on a recognised stock exchange in India, the price worked out in accordance with the relevant SEBI guidelines or in case of a sale under a private arrangement, the price at which a preferential allotment of shares can be made under the SEBI guidelines, as applicable, provided that the price is determined for such duration as specified in SEBI guidelines, preceding the relevant date, which shall be the date of purchase or sale of shares.
- In case of an Indian company that is going through delisting, the price worked out in accordance with the SEBI Delisting Regulations.
- In case of an Indian company not listed on a recognised stock exchange in India, the value of the shares determined pursuant to any internationally accepted pricing methodology for valuation on arm's length basis duly certified by a merchant banker (registered with SEBI) or a chartered accountant or a practicing cost accountant (i.e., the Specified Price).

The guiding principle is that the person resident outside India is not guaranteed any assured exit price at the time of making such investment or agreement and will exit at the price prevailing at the time of exit.

Pricing for Swap of equity instruments

- In case of swap of equity instruments, valuation will have to be determined by a Merchant Banker registered with SEBI or an investment banker outside India registered with

the appropriate regulatory authority in the host country.

Pricing of optionality clauses

- Agreements with foreign investors having optionality clauses in respect of Equity Instruments, are considered permissible under the extant FDI Policy and NDI Rules.
- However certain prescribed conditions would have to be satisfied, including the following:
 - The exercise of the optionality or exit is subject to completion of, the higher of, the minimum lock-in period of 1 year or minimum lock-in period as prescribed under the FDI Policy for the concerned sector;
 - Pricing guidelines have been prescribed for exit by the foreign investor, and where the non-resident investor is not guaranteed any assured exit price at the time of making such investment, the non-resident investor will exit at the fair price determined at the time of exit in accordance with such pricing guidelines.

Pricing for LLPs

- Investments by foreign investors in LLPs are also subject to the applicable pricing guidelines as provided in Schedule 6 of NDI Rules.
- Investment in an LLP either by way of capital contribution or by way of acquisition or transfer of profit shares, should not be less than the fair price worked out in accordance with any valuation norm which is internationally accepted or adopted in accordance with market practice and a valuation certificate to that effect should be issued by a chartered accountant or by a practicing cost accountant or by an approved valuer from the panel maintained by the central government.
- In case of transfer of capital contribution or profit share of an LLP:
 - from a person resident in India to a person resident outside India, the transfer should be for a consideration not less than the fair price of capital contribution/profit share of an LLP.
 - from a person resident outside India to a person resident in India, the transfer should be for a consideration which is not more than the fair price of the capital contribution/profit share of an LLP.

Pricing of partly paid shares and share warrants

The pricing of partly paid equity shares must be determined upfront. Similarly, in case of share warrants, the pricing and the price / conversion formula must be determined upfront.

For warrants, the price at the time of conversion should not, in any case, be lower than the fair value worked out, at the time of issuance of such warrants.

Q12. Are there any instances of transfer by way of sale which require prior approval from the RBI or the GOI?

Indicative instances where prior permission of RBI is required for transfers, by way of sale of Equity Instruments from residents to non-residents are as follows:

- In cases where the transfer is to take place at a price that is not determined in accordance with the pricing guidelines prescribed under the NDI Rules and does not fall under the exceptions that have been provided in this regard, such as where capital instruments are held by the person resident outside India on a non-repatriable basis.
- In cases where the non-resident investor proposes to defer payment of the amount of consideration or seeks indemnity from the seller, otherwise than as permitted under NDI Rules and deposit regulations. In this regard, the NDI Rules allows (i) deferred payment of consideration amounting to a maximum of 25% of the total consideration within 18 months from the date of the share transfer agreement; (ii) indemnity payments amounting to a maximum of 25% of the total consideration (provided the full consideration has been paid) can be made up to 18 months from the date of payment of the consideration; and (iii) up to 25% of the total consideration may be settled through an escrow arrangement between the buyer and the seller for a period not exceeding 18 months from the date of the share transfer agreement. However, if a transaction involves deferred consideration, indemnity provisions, or escrow arrangements, such arrangements should be specifically captured in the share purchase /

transfer agreement.

The following indicative instances of transfer of shares from residents to non-residents, by way of sale or otherwise, requires prior permission of the Competent Authority, or RBI, as the case may be:

- Transfer of Equity Instruments of companies engaged in sectors falling under the approval route including where such transfer *inter alia* results in change or transfer of control or ownership of the existing Indian company from resident Indian citizens and Indian companies (that are owned and/or controlled by resident Indian citizens), to non-residents;
- A transfer of Equity Instruments resulting in foreign investments (in such Indian company) breaching applicable sectoral cap under the exchange control regulations or any other conditions specified under NDI Rules and FDI Policy; and
- Transfer of Equity Instruments from an NRI/OCI or eligible investors under NDI Rules, to a non-resident who is not an NRI/OCI/eligible investor under NDI Rules, where such Equity Instruments are held on non-repatriation basis in approval route sector.
- A resident Indian gifting Equity Instruments or units of an Indian company to a non-resident needs prior RBI approval and is subject to certain conditions prescribed under the NDI Rules.

Q13. Is there any reporting to the RBI in case of issuance of shares or transfer of shares?

- The RBI issued the Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019 which sets out the mode of payment and attendant conditions for investment in India by a person resident outside India.
- An Indian company, having received FDI for issue of

Equity Instruments either under the automatic route or the approval route, within 30 days of issue of the Equity Instruments to investor person resident outside India, must report such issuance in Form FC-GPR. With effect from September 1, 2018, RBI has introduced a single master form (SMF) and as a result, the reporting of FDI, which was

previously a two-step procedure viz., ARF and FC-GPR is merged into a single revised FC-GPR.

- The reporting of transfer of shares from a person resident in India to a person resident outside India and vice versa has to be made in Form FC-TRS, which should be submitted by the transferor/ transferee who is resident in India, within 60 days of transfer of Equity Instruments or receipt or remittance funds whichever is earlier. The onus of reporting is on the resident transferor/transferee or the person resident outside India holding Equity Instruments on a non-repatriable basis, as the case may be.
- SMF had been made effective from September 1, 2018 for filing five forms, including Form FC-GPR, Form FC-TRS, Form LLP-I, Form LLP-II and Form CN, for facilitating the ease

of doing business in India. Other four forms viz., ESOP, DI, DRR and InVi have now been made available for filing subsequently.

- The Indian company receiving FDI is required to file an annual return - the Foreign Liabilities and Assets (“FLA”) return. Indian companies have to report the current financial year’s FLA as well as the previous year(s) assets and liabilities to RBI on or before the 15th day of July of each year. For this purpose, a year shall be reckoned as April to March.
- In the event there is any delay in such reporting, the person/entity responsible for such reporting will be liable for payment of late submission fee, as prescribed by the RBI.

Q14. Can a non-resident investor pledge shares of an Indian company?

The NDI Rules permit the pledge of equity instruments of an Indian company or units of an investment vehicle subject to a few procedural requirements / safeguards. A promoter of an Indian borrowing company that has raised external commercial borrowings in compliance with the Foreign Exchange Management (Borrowing and Lending in Foreign Exchange) Regulations, 2000 may pledge shares of the borrowing company or its associate resident companies to secure that ECB, provided that: the pledge tenure is co-terminous with the ECB maturity; any transfer on invocation complies with the NDI Rules; the statutory auditor certifies that ECB proceeds are (or were) used only for permitted end-uses; and an authorised dealer (AD) bank issues a no-objection confirming compliance with these conditions before the pledge is created.

A person resident outside India holding equity instruments or units may pledge them: in favour of a bank in India to secure bona fide credit to the Indian company; in favour of an overseas bank to secure credit to the non-resident pledgor, a non-resident promoter of the Indian company, or its overseas group company; or in favour of an RBI-registered NBFC to secure bona fide credit to the Indian company—each case being subject to the AD bank’s satisfaction that RBI-stipulated conditions are met. Upon invocation of the pledge, any resultant transfer must comply with the entry route, sectoral caps/investment limits, pricing guidelines and other applicable conditions prevailing at the time the pledge was created.

Q15. Who can be registered as a Foreign Portfolio Investor?

FPI means an investor incorporated and established outside India, who is registered under the SEBI FPI Regulations, undertakes investment in accordance with such regulations and is deemed to be an intermediary in terms of the SEBI Act, 1992. Like for FVCI registrations, SEBI has delegated its powers under the SEBI FPI Regulations, to DDPs for providing registration to an FPI.

A person who is a non-resident and is not an NRI or an OCI,

and is a resident of a country whose security market regulator is a signatory to the International Organization of Securities Commission’s Multilateral Memorandum of Understanding or a signatory to a bilateral memorandum of understanding with SEBI, and who satisfies the eligibility criteria prescribed under the SEBI FPI Regulations (which have replaced the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2014) is eligible to be registered as a foreign portfolio investor.

The foreign portfolio investor needs to have a valid registration as long as it continues to hold securities or derivatives in India. NRIs, OCIs, and resident Indians may be the constituents of the applicant to the foreign portfolio investor license, provided they meet the conditions specified by SEBI.

Eligible people may seek registration, subject to fulfilment of additional requirements of the SEBI FPI Regulations, under the following categories:

- As Category I foreign portfolio investors, if such persons are:
 - Government and government related investors such as central banks, sovereign wealth funds, international or multilateral organizations or agencies including entities controlled or at least 75% directly or indirectly owned by such government and government related investor(s);
 - Pension funds and university funds;
 - Appropriately regulated entities such as insurance or reinsurance entities, banks, asset management companies, investment managers, investment advisors, portfolio managers, broker dealers and swap dealers;
 - Entities from the financial action task force member countries or from any country specified by the central government by way of any order or an agreement or treat with other sovereign governments, which are
 - appropriately regulated funds; unregulated funds whose investment manager is appropriately regulated and registered as a Category I foreign portfolio investor (provided that the investment manager undertakes the responsibility of all the acts of commission or omission of such unregulated fund); and university related endowments of such universities that have been in existence for more than 5 years;
- An entity (A) whose investment manager is from the financial action task force member country and such an investment manager is registered as a Category I foreign portfolio investor; or (B) which is at least 75% owned, directly or indirectly by another entity, eligible under the aforementioned sub-clauses of Category I foreign portfolio investors, and such an eligible entity is from a financial action task force member country: (Provided that such an investment manager or eligible entity undertakes the responsibility of all the acts of commission or omission of the applicants seeking registration under this criteria.)
- As Category II foreign portfolio investors, if such persons are not eligible under Category I foreign portfolio investors such as appropriately regulated funds not eligible as Category-I foreign portfolio investor, endowments and foundations, charitable organisations, corporate bodies, family offices, Individuals, appropriately regulated entities investing on behalf of their client, as per conditions specified by the board from time to time, and unregulated funds in the form of limited partnership and trusts.
- An applicant incorporated or established in an international financial services center is deemed to be appropriately regulated for the purposes of the SEBI FPI Regulations.

Q16. What are the advantages of investing as a foreign portfolio investor?

Investing as an FPI is typically the preferred route for portfolio investments for *inter alia* the following reasons:

- The ability to buy and sell securities on the stock exchanges without prior regulatory approval, and pricing restrictions that are applicable to FDI investors; and
- Being a more efficient mode of acquisition for secondary

investments in listed securities compared to FDI.

Additionally, FPIs are also eligible to subscribe to debt instruments issued by Indian companies, outside of the ECB framework.

Q17. Are there any restrictions or investment norms for foreign portfolio investors?

A registered FPI may, subject to the pricing and ownership restrictions discussed below, freely buy and sell securities

issued by any Indian company, realise 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.

Some of the limitations which apply to investments by FPIs include, *inter alia*, the following:

- All transactions of the FPI are subject to process restrictions and specifications prescribed by SEBI and must necessarily be through stock brokers registered with SEBI, except in certain cases.
- The total holding by each FPI or an investor group (as referred to in the SEBI FPI Regulations), should be less than 10% of the total paid up equity capital on a fully diluted basis in an Indian company listed or to be listed on a recognized stock exchange in India, or less than 10% of the paid up value of each series of debentures and preference shares or warrants issued by an Indian company.
- From April 1, 2020, the aggregate limit of holdings by all FPIs put together in an investee Indian company (including any direct or indirect foreign investment held by such FPIs other than through the FPI route) is the sectoral caps contained in the FDI Policy and NDI Rules, with respect to the paid-up equity capital on a fully diluted basis or such same sectoral cap percentage of paid-up value of each series of debentures or preference shares or share warrants.
- Further, an Indian company that has decreased the aggregate limit to 24%, 49% or 74%, may increase it to 49% or 74% or the sectoral cap or statutory ceiling respectively, as deemed fit, by a resolution by its Board followed by a special resolution to that effect by its general body.
- An Indian company cannot reduce the limit to a lower threshold, once such aggregate limit has been increased to a higher threshold.
- Aggregate limit with respect to an Indian company in a sector where FDI is prohibited would be 24%.
- Further, where the total investment under the SEBI FPI Regulations by a FPI including its investor group exceeds the threshold of ten per cent of the total paid up equity capital in a listed or to be listed company, the foreign portfolio investor is required to divest the excess holding within five trading days from the date of settlement of the trades resulting in such a breach.
- In case the FPI chooses not to divest, the entire investment so made by the FPI will be re-classified as FDI subject to the terms and conditions as specified by SEBI and RBI and the FPI and its investor group cannot make further portfolio investment in the company concerned. Further in such a scenario, the investee company and the investor would be required to comply with the applicable reporting requirements. The RBI (on November 11, 2024) has released an operational framework for reclassification of FDI holdings into FPI holdings, which details the procedure and other applicable conditions for such reclassification.
- For investments in debt securities and instruments other than the Equity Instruments, FPIs must also comply with terms, conditions or directions, specified or issued by SEBI or RBI.
- An FPI is required to deal with securities only in the dematerialized form. However, if any shares held in physical form, before September 23, 2019, the FPI Regulations permit such shares to be continued to be held in physical form, if such shares cannot be dematerialized. Furthermore, all the rights entitlements may be held or transferred in non-dematerialized form.

Q18. Who is an FVCI?

FVCI means an investor incorporated and established outside India, who is registered under the SEBI FVCI Regulations, undertakes investment in accordance with such regulations and is deemed to be an intermediary in terms of the SEBI Act, 1992. SEBI has delegated its powers under the SEBI FVCI Regulations to DDPs for providing registration to an FVCI.

An applicant for FVCI registration must be an entity incorporated

or established outside India or in an International Financial Services Centre, and be a resident of a jurisdiction that is signatory to the International Organization of Securities Commission's Multilateral Memorandum of Understanding or a signatory to a bilateral Memorandum of Understanding with SEBI. Government or government-related investors may qualify if resident in a country approved by the GOI.

Where the applicant is a bank, it must be resident in a country whose central bank is a BIS member; however, a central bank applicant need not be a BIS member, and the BIS-membership condition does not apply if the bank is regulated by its home banking regulator even where its central bank is not a BIS member.

The applicant and its beneficial owners identified under Rule 9 of the PML (Maintenance of Records) Rules, 2005 must not

be on the UN Security Council Sanctions List and must not be resident in a jurisdiction identified by the FATF as subject to countermeasures or as having material AML/CFT deficiencies without sufficient progress or commitment to an action plan. The applicant must also satisfy the “fit and proper” criteria under Schedule II of the SEBI (Intermediaries) Regulations, 2008, and comply with any other eligibility criteria that SEBI may specify from time to time.

Q19. What are the advantages of investing using the FVCI route?

The FVCI route is generally preferred for investments in unlisted Indian companies, although in certain cases investments are also made in listed Indian companies. Investment through the FVCI route offers the following primary benefits:

- An FVCI can make and dispose of investments at negotiated prices that are not subject to RBI’s pricing regulations and is therefore not subject to any limit on returns unlike other foreign investors.
- Pre-IPO share capital held by an FVCI would not be subject to a lock-in period of 6 months post the date of allotment in an IPO subject to the FVCI having held the shares for a minimum period of 6 months (from the date of purchase by the FVCI), unlike most of the other pre-IPO share capital of such Indian companies. Further, in case such equity shares have resulted pursuant to conversion of fully paid-up compulsorily convertible securities, the holding period of such convertible securities as well as that of resultant equity shares together shall be considered for the purpose of calculation of 6 months period and convertible securities shall be deemed to be fully paid-up,

if the entire consideration payable thereon has been paid and no further consideration is payable at the time of their conversion.

- Certain open offer obligations contained in the SEBI Takeover Regulations are not applicable to a transfer of shares from an FVCI to the promoters of the target company pursuant to an agreement between the FVCI and such promoters.
- FVCIs registered with SEBI have been accorded Qualified Institutional Buyer status and would accordingly be eligible for subscribing to securities at the IPO of a venture capital undertaking (“VCU”) through the book- building route.
- FVCIs can invest in equity or equity linked instrument or debt instrument issued by an Indian ‘start-up’ irrespective of the sector in which the start-up is engaged. A start-up is an entity (that is a private limited company, a registered partnership firm or an LLP) which complies with the definition and conditions laid down in Gazette notifications issued by the DPIIT.

Q20. Are there any restrictions or investment norms for FVCIs?

FVCI investments are subject to the SEBI FVCI Regulations and the other regulations on foreign investment. The limitations which apply to FVCI investments at present include the following:

- An FVCI is required to disclose the duration of its life cycle and designate its investible funds for investment into India at the time of seeking registration. Accordingly, the investment conditions and restrictions would be applicable with respect to such investible funds. The

conditions concerning investible funds are required to be satisfied by the end of its life cycle;

- A registered FVCI must maintain a prescribed asset composition of its investible funds:
 - where at least 66.67% of its investible funds must be invested in unlisted equity shares or equity linked instruments (i.e. instruments convertible into equity shares or share warrants, preference shares, debentures compulsorily or optionally convertible into

- equity) of VCUs (i.e. Indian companies whose shares are not listed on any recognised stock exchange in India and which are not engaged in certain specified business) or investee companies;
- whilst not more than 33.33% of its investible funds may be invested, inter alia, by way of subscription to an IPO of a VCU or investee company, (a) whose shares are proposed to be listed or (b) debt or debt instruments of VCU or investee company in which FVCI already has investment by way of equity or (c) through preferential allotment of equity shares of a listed company (subject to a lock-in period of 1 year) or through special purpose vehicles which are created for the purpose of facilitating or promoting investment in accordance with the SEBI FVCI Regulations.
 - An FVCI can invest its total funds committed in one VCF or Category I AIF or units of a scheme or of a fund set up by a VCF or by a Cat-I AIF.
 - An FVCI may, however, not invest in securities of a VCU engaged in NBFCs (excluding Core Investment Companies (CICs) in the infrastructure sector, Asset Finance Companies (AFCs), and Infrastructure Finance Companies (IFCs) registered with RBI), gold financing activities, or any other activity not permitted under the industrial policy of the GOI. Presently, FVCIs are permitted to invest in securities of companies which are not listed on stock exchanges at the time of issuance and which are engaged in any sector out of a list of 10 prescribed sectors. These are biotechnology, IT related to hardware and software development, nanotechnology, seed research and development, research and development of new chemical entities in pharmaceutical sector, dairy industry, poultry industry, production of bio-fuels, hotel-cum-convention centres with seating capacity of more than 3,000, and infrastructure sector as given in the Harmonised Master List of Infrastructure sub-sectors approved by GOI.

Q21. Has any relaxation been provided to start-ups to attract foreign investment?

Pursuant to the GOI's stated objective of promoting the ease of doing business and contributing to an eco-system conducive for growth of entrepreneurship, RBI has brought about necessary amendments to enable start-up initiatives, irrespective of the sector in which they are engaged, to receive foreign venture capital investment. FVCIs registered under the SEBI FVCI Regulations have now been permitted to invest in equity, equity linked instruments or debt instruments issued by eligible start-ups, irrespective of the sector in which such start-up is engaged provided that if the investment is in equity instruments, then the sectoral caps, entry routes and attendant conditions apply. Further, FVCIs have been permitted to acquire from, or transfer any security or instrument held by them to, any resident or non-resident at a price mutually acceptable to the parties.

Further, NDI Rules enables foreign investors (not being entities or persons who are registered in or are citizens, as applicable, of Pakistan and Bangladesh) to purchase convertible notes

issued by eligible start-up companies (that is, duly formed private companies recognized as start-ups by the DPIIT) for an amount of INR 25 lakhs (USD 28,409) or more in a single tranche. A convertible note is an instrument issued by a startup company acknowledging receipt of money initially as debt, repayable at the option of the holder, or which is convertible into such number of equity shares of that company (in either case, within 10 years from issuance). The issue of shares against such convertible notes would have to be in accordance with Schedule I of NDI Rules. Acquisition or transfer by way of sale of convertible notes by a person resident outside India to or from another person resident in or outside India, would take place in accordance with pricing guidelines prescribed by RBI. If such eligible start-up companies are engaged in sectors which are under the approval route, prior approval from the GOI would have to be obtained for such issuance or transfer of convertible notes. A NRI or an OCI may acquire convertible notes on a non-repatriation basis, in accordance with Schedule IV of the NDI Rules.

Q22. What are the ECB norms in India?

In terms of the 'Master Direction - External Commercial Borrowings, Trade Credits and Structured Obligations' issued by the RBI on 26 March 2019 (as amended from time to time) ("**ECB Master Directions**"), ECBs are commercial loans in the form of bank loans, floating/fixed rate notes, bonds, debentures (other than fully and compulsorily convertible instruments), trade credits beyond 3 years, foreign currency convertible bonds, foreign currency exchangeable bonds and financial lease raised by 'eligible resident entities' from 'recognized non-resident entities'. All borrowings in the form of ECB should conform to parameters such as *inter alia* minimum average maturity period ("**MAMP**"), permitted and non-permitted end-uses, maximum all-in-cost ceiling, etc. As per the FDI policy circular dated 15 October 2020, non-convertible debentures, optionally convertible debentures or partially convertible debentures for issue of which funds have been received on or after May 1, 2007 are considered as 'debt'. The only exclusion to the ECB regime is the issuance of fully and compulsorily convertible debentures.

ECBs are governed by ECB Master Directions and various other regulations issued under FEMA, including the 'Foreign Exchange Management (Borrowing and Lending) Regulations, 2018' dated December 17, 2018 and the 'Foreign Exchange Management (Guarantees) Regulations, 2000' dated May 03, 2000. The parameters apply in totality and not on a standalone basis. The RBI has also issued the 'Foreign Exchange Management (Debt Instruments) Regulations, 2019' on October 17, 2019, which governs investments by FPIs, NRIs and OCIs in debt instruments such as government securities, treasury bills, non-convertible debentures/bonds issued by an Indian company, security receipts issued by asset reconstruction companies, debt instruments issued by banks that are eligible for inclusion in regulatory capital, bonds issued by PSUs, amongst others.

The ECB Master Directions enable 'eligible resident entities' to borrow from 'recognized non-resident entities' in the following forms:

- Loans including bank loans;
- Floating / fixed rate notes / bonds / debentures (other

than fully and compulsorily convertible instruments);

- Trade credits beyond 3 years;
- Foreign Currency Convertible Bonds ("**FCCBs**");
- Financial Lease; and
- Foreign Currency Exchangeable Bonds ("**FCEBs**").
- Preference shares (other than fully and compulsorily convertible preference shares which are in the form of Rupee denominated ECBs).
- Plain vanilla rupee denominated bonds issued overseas, which can be either placed privately or listed on exchanges as per the host country regulations (can only be in the form of Rupee denominated ECBs).

ECBs may be availed under two routes:

- Automatic route, in respect of which the cases are examined by authorised dealer category- I banks; and
- Approval route, in respect of which applications made through authorised dealer banks are examined by RBI.

The framework for raising loans through ECB comprises of following two options:

- Foreign currency denominated ECB; and
- Rupee Denominated ECB.

Under the ECB Master Directions, all entities eligible to receive FDI are considered as 'eligible borrowers'. Further, the following entities are also eligible to raise ECB:

- Port Trusts;
- Units in SEZ;
- SIDBI;
- EXIM Bank; and
- Registered entities engaged in micro-finance activities, viz., registered Not for Profit companies, registered societies/trusts/cooperatives and non-government organisations (permitted only to raise INR ECB).

Recognized non-resident entities / lenders and investors under the ECB Master Directions should be resident of FATF or IOSCO compliant country, including on transfer of ECBs. However,

- Multilateral and Regional Financial Institutions where India

is a member country will also be considered as recognised lenders;

- Individuals as lenders can only be permitted if they are foreign equity holders or for subscription to bonds/debentures listed abroad; and
- Foreign branches / subsidiaries of Indian banks are permitted as recognised lenders only for foreign currency denominated ECB (except FCCBs and FCEBs). Foreign branches / subsidiaries of Indian banks, subject to applicable prudential norms, can participate as arrangers/underwriters/market-makers/traders for Rupee denominated Bonds issued overseas. However, underwriting by foreign branches/subsidiaries of Indian banks for issuances by Indian banks is not allowed.

The ECB Master Directions provide a ceiling in terms of the interest rate/ 'all-in cost ceiling' that can be charged in relation to an ECB and it is: Benchmark Rate (which, in case of foreign currency, is any widely accepted interbank rate or Alternate Reference Rate ("ARR") of 6 month tenor, applicable to the currency of borrowing) (a) plus 550 bps spread (for the existing foreign currency ECBs as of 8 December, 2021 whose Benchmark Rate is linked to LIBOR) and (b) plus 500 bps spread for all other foreign currency ECBs and Benchmark Rate (which, in case of Rupee denominated ECBs, is prevailing yield of the GOI securities of corresponding maturity) plus 450 bps spread.

Some of the newly established ARR are: (a) Secured Overnight Financing Rate for USD-denominated loans; (b) Sterling Overnight Index Average for GBP-denominated loans; and (c) Tokyo Overnight Average Rate for JPY-denominated loans. ARR are Alternative Reference Rates used as benchmark rates to calculate the all-in-cost for foreign currency ECBs. They were adopted vide RBI A.P. (DIR Series) Circular No. 19, dated December 8, 2021, after the discontinuation of the LIBOR as the benchmark rate. RBI has authorized the use of any widely accepted ARR as the benchmark rate for this purpose.

As per the ECB Master Directions, all-in cost includes rate of interest, other fees, expenses, charges, guarantee fees, Export Credit Agency (ECA) charges, whether paid in foreign currency

or Indian rupees but will not include commitment fees and withholding tax payable in Indian rupees.

RBI has stipulated the MAMP as 3 years. However: (a) manufacturing sector companies may raise ECBs with MAMP of 1 year for ECB up to USD 50 million or its equivalent per financial year; (b) if the ECB is raised from foreign equity holder and utilised for working capital purposes, general corporate purposes or repayment of Rupee loans, MAMP would be 5 years; (c) ECBs with a MAMP of 10 years can be raised for working capital purposes and general corporate purposes. Borrowings by NBFCs for the above maturity for on-lending in relation to the above purposes are also permitted; (d) ECBs with a MAMP of 7 years can be availed for repayment of Rupee loans obtained domestically for capital expenditure; as also by NBFCs for on-lending for the same purpose; (e) For repayment of Rupee loans availed domestically for purposes other than capital expenditure and for on-lending by NBFCs for the same, the MAMP is required to be 10 years. For the categories mentioned at (b) to (e) above, ECB cannot be raised from foreign branches / subsidiaries of Indian banks.

The call and put option, if any, shall not be exercisable prior to completion of MAMP.

ECB proceeds cannot be utilized for (i) real estate activities, (ii) investment in capital market, (iii) equity investment, (iv) working capital and general corporate purposes, except in case of ECB raised for the purpose as mentioned at (b) and (c) above, (v) repayment of Rupee loans, except in case of ECB raised for the purpose as mentioned at (d) and (e) above, and (vi) On-lending to entities for the above activities, except in case of ECB raised by NBFCs as given at (c), (d) and (e) above.

ECB proceeds are permitted to be parked abroad as well as domestically. ECB proceeds meant only for foreign currency expenditure can be parked abroad till utilisation and can be invested in certain liquid assets. ECB proceeds meant for rupee expenditure should be repatriated immediately for credit to their rupee accounts with AD Category-I banks in India and may be parked in term deposits for a maximum period of 12 months which term deposits should be kept unencumbered.

ECB for Start-Ups

Eligible start-ups (entities recognised as a start-up by the GOI), have been permitted to raise ECB under automatic route as per a separate framework. The salient features under this framework include the following:

- Recognised Lender**
 Eligible start-ups may raise ECB under this framework from recognised lenders who are residents of a FATF compliant country. However, foreign branches/subsidiaries of Indian banks and overseas entity in which Indian entity has made overseas direct investment as per the extant Overseas Direct Investment Policy will not be considered as recognized lenders under this framework.
- Amount, All-in-Costs, End-Use Restrictions**
 ECB raised under this framework should not exceed USD 3

million per financial year and may be raised in any freely convertible currency or INR or combination of both. In case of borrowing in INR, the non-resident lender, should mobilise INR through swaps/outright sale undertaken through an AD Category-I bank in India. No all-in-cost ceiling has been prescribed and can be mutually agreed upon between the lender and the borrower and ECB under this framework may be raised for any expenditure in connection with the business of the borrower.

- Forms of ECB**
 The borrowing can be in form of loans or non-convertible, optionally convertible or partially convertible preference shares. Conversion of such ECBs into equity is freely permitted subject relevant applicable regulations for foreign investment in Startups.

Q23. Are there any limitations on repatriation of dividend or royalty or 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, 2013 and the Companies (Declaration and Payment of Dividend) Rules, 2014. The dividends (net of applicable taxes) declared on foreign investments can be remitted freely through normal banking channels.

Non-convertible or optionally convertible preference shares and bonds are treated as an ECB and the rate of interest has to be within the limits provided in the ECB policy.

All remittances for royalty fall under the automatic route. Remittances of consultancy fees exceeding USD 1 million per project for any consultancy services procured by an Indian entity from outside India (other than consultancy services rendered in respect of infrastructure projects, where the limit is USD 10 million per project) requires the prior approval of RBI. However, this rule does not apply if payments are made out of funds held in a resident foreign currency account of the remitter or exchange earners' foreign currency account of the remitter.



4. Overseas Investments

Q1. How are overseas investments regulated?

The regime for overseas investment in India has undergone significant changes in August 2022 with the implementation of a new regulatory framework that is set out in:

- the Foreign Exchange Management (Overseas Investment) Rules, 2022 (“**OI Rules**”) notified by the Central Government on August 22, 2022;
- the Foreign Exchange Management (Overseas Investment) Regulations, 2022 (“**OI Regulations**”) issued by the Reserve Bank of India (“**RBI**”) on August 22, 2022;

and

- the Foreign Exchange Management (Overseas Investment) Directions, 2022, (“**OI Directions**”) issued by the RBI on August 22, 2022.

The OI Rules, OI Regulations and OI Directions (as amended from time to time) are collectively referred to as the OI Framework.

Q2. What are the investment routes available for overseas investment by a person resident in India?

The OI Framework prescribes for two categories of overseas investments, namely:

- overseas portfolio investment (“**OPI**”); and
- financial commitment, which includes overseas direct investment (“**ODI**”).

Overseas investments may be made through the following two routes:

- the automatic route (i.e., without requiring the prior approval of the Reserve Bank of India (“**RBI**”)); or
- the approval route (i.e., with the prior approval of the RBI or the Central Government, as the case may be).

Q3. What is direct investment outside India?

Overseas investment may be in the form of ODI or OPI.

ODI has been defined to mean investment: (i) by way of acquisition of any unlisted equity capital of a foreign entity or subscription as a part of the memorandum of association of a foreign entity; (ii) an investment in 10% or more of the paid up equity capital of a listed foreign entity; or (iii) investment with control where investment is less than 10% of the paid up equity capital of a listed foreign entity. For this purpose, 'control', has been defined in the OI Rules as the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding

or management rights or shareholders' agreements or voting agreements that entitle them to 10% or more of voting rights or in any other manner in the entity. Once an investment in a foreign entity is classified as ODI, the investment will continue to be treated as ODI even if such investment falls below 10% of the paid-up equity capital or the investor loses control in the foreign entity.

OPI on the other hand means investments, other than ODI, in foreign securities, except in (i) unlisted debt securities; (ii) securities issued by a person resident in India who is not in an International Financial Services Centre ("IFSC"); (iii) any derivatives unless otherwise permitted by the RBI; or (iv) any commodities including Bullion Depository Receipts.

Q4. Who is eligible to make overseas investment from India under the automatic route?

Overseas investment can be made by any of the following persons:

- a company incorporated in India;
- a body corporate incorporated under any law for the time being in force;
- a partnership firm registered under the Indian Partnership Act, 1932;

- a limited liability partnership ("LLP") registered under the Limited Liability Partnership Act, 2008.

Resident individuals ("RI(s)") have also been permitted to undertake overseas investment, and such investments are subject to other prescribed conditions, as detailed under our response to [question 21](#) of this Chapter.

Q5. In which sectors is overseas investment permitted?

Overseas investment is generally permitted in a foreign entity that is engaged in a *bona fide* business activity, i.e., any business activity permissible under any law in force in India and the host country or host jurisdiction, as the case may be.

However, a person resident in India is not permitted to make ODI in a foreign entity engaged in (i) 'real estate activity'; (ii) gambling in any form; and (iii) dealing with financial products linked to the Indian rupee without specific approval of the RBI. 'Real estate activity' means buying and selling of real estate or trading in transferable development rights, but does not include development of townships, construction of residential or commercial premises, roads or bridges for selling or leasing. 'Financial products linked

to Indian Rupee' include non-deliverable trades involving foreign currency-INR exchange rates, stock indices linked to Indian market, etc.

In addition, special conditions are applicable to investment by Indian entities in a foreign entity engaged in financial services activity:

- Where the Indian entity making such investment is engaged in the financial services sector:
 - the Indian entity should have posted net profits during the preceding 3 financial years;
 - the Indian entity should be registered with or regulated by a financial services regulator in India; and
 - the Indian entity should have obtained approval,

as may be required, from the regulators of such financial services activity, both in India and the host

country or host jurisdiction, for engaging in such financial sector activities.

Q6. What are the terms and conditions applicable to ODI by an Indian Party under the automatic route?

In terms of the OI Framework, ODI made by an Indian entity is subject to, *inter alia*, the following conditions:

- The 'total financial commitment' of the Indian entity in all the foreign entities taken together at the time of making the financial commitment must not exceed the eligible limit, i.e., 400% of the net worth of the Indian entity as on the date of the last audited balance sheet. However, any financial commitment in excess of USD 1 billion, or its equivalent, in a financial year, would require prior approval of RBI even when the total financial commitment is within the eligible limit under the automatic route. The ceiling of 400% of the net worth also applies to:
 - amount raised by issue of American Depository Receipts ("ADR") or Global Depository Receipts ("GDR") and stock-swap of such receipts; (ii)
 - proceeds from External Commercial Borrowings ("ECB") that have been utilized towards making the financial commitment which exceeds the amount of the corresponding pledge or creation of charge on assets which has already been counted towards the financial commitment limit. However, utilization of balances held in the Exchange Earners' Foreign Currency account or the amounts raised by issue of ADR or GDR issues and stock-swap of such receipts prior to the date of notification of the OI Framework will not be reckoned towards the 400% ceiling.
- ODI should be made in an overseas foreign entity having limited liability and engaged in a bona fide business activity. The restriction of limited liability structure of

the foreign entity is not applicable to an entity with core activity in a strategic sector (which includes energy and natural resources sectors such as oil, gas, coal, mineral ores, submarine cable systems and start-ups and any other sector or sub-sector as deemed fit by the Central Government).

- ODI should not be in companies engaged in real estate or gambling or dealing with financial products linked to the Indian rupee in any form, as explained above.
- The overseas investment or transfer of such investment (including swap of securities) by Indian entities in foreign entities registered or incorporated in Pakistan, or any other countries notified by the Central Government, from time to time, are permissible with prior approval from the Central Government.
- An Indian entity may lend or invest in any debt instrument issued by a foreign entity or extend non-fund based commitment to or on behalf of a foreign entity, including overseas step down subsidiary ("SDS") of such Indian entity only if such Indian entity is eligible to make ODI, has made ODI in the foreign entity and the Indian entity has acquired control in such foreign entity at the time of making such financial commitment.
- Additionally, the OI Framework also prohibits financial commitment by an Indian entity in a foreign entity that has invested or invests into India, at the time of making such commitment, or thereafter which, either directly or indirectly, results in a structure with more than two layers of subsidiaries.

Q7. How is 'total financial commitment' reckoned for the purposes of ODI? How is net worth calculated for the purposes of ODI?

The 'total financial commitment' of the Indian entity in all the foreign entities taken together at the time of making the financial commitment must not exceed the eligible limit, i.e., 400% of the 'net worth' of the Indian entity as on the date of the last audited balance sheet or as directed by the RBI in

consultation with the Central Government from time to time. For companies, the OI Framework has adopted the concept of 'net worth' under the Companies Act, 2013. For LLPs and a registered partnership, net worth is the sum of the capital contribution of partners and undistributed profits of the

partners after deducting therefrom the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the last audited balance sheet.

Q8. Does the entire investment abroad have to be made in a single tranche?

The investment abroad may be made in multiple tranches. However, the Indian entity should ensure that the sum of all tranches and all ODIs, that is, the total financial commitment, does not exceed 400% of its net worth at the time of making the relevant tranche of investment.

Q9. What are the sources of funds from which ODI may be made?

A person resident in India may use the following sources of funds for making ODI:

- by remittance made through banking channels;
- from funds held in an account maintained in accordance with the provisions of the Foreign Exchange Management Act, 1999 (“FEMA”);
- by swap of securities;
- by using the proceeds of ADR or GDR or stock-swap of such receipts or ECBs raised in accordance with the provisions of FEMA and the rules and regulations made thereunder for making ODI or financial commitment by way of debt by an Indian entity.
- Any ODI in start-ups is not permitted to be made out of funds borrowed from others.

Q10. Are there any valuation requirements in relation to the shares through which ODI is made?

The issue or transfer of equity capital of a foreign entity from a person resident outside India or a person resident in India to a person resident in India who is eligible to make such investment or from a person resident in India to a person resident outside India is subject to a price arrived on an arm’s length basis. The authorised dealer bank (“AD Bank”), before facilitating a transaction is required to ensure compliance with arm’s length pricing taking into consideration the valuation as per any internationally accepted pricing methodology for valuation.

Q11. Are Indian Parties permitted to remit funds for the purpose of participation in the bidding process for the acquisition of a foreign company?

A person resident in India who is eligible to make ODI may make remittance towards earnest money deposit or obtain a bid bond guarantee from an AD Bank for participation in bidding or tender procedure for the acquisition of a foreign entity. In case of an open-ended bid bond guarantee, it is required to be converted into a close-ended guarantee within 3 months from the date of award of the contract.

Q12. Are there any general considerations which the RBI may take into account while granting approval to Indian entities not generally permitted to make ODI?

RBI may, *inter alia*, take into account the following factors while considering an application for approval of ODI under the approval route:

- Background and brief details of the transaction;
- Reason(s) for seeking approval mentioning the extant FEMA provisions;
- Observations of the designated AD Bank with respect to the following:
 - prima facie viability of the foreign entity;
 - benefits which may accrue to India through such

- investment;
- financial position and business track record of the Indian entity and the foreign entity;
- any other material observation.
- Recommendations of the designated AD Bank with confirmation that the applicant's board resolution or resolution from an equivalent body, as applicable, for the proposed transaction(s) is in place.
- Diagrammatic representation of the organisational structure indicating all the subsidiaries of the Indian entity horizontally and vertically with their stake (direct and indirect) and status.
- Valuation certificate for the foreign entity (if applicable).
- Other relevant documents properly numbered, indexed and flagged.

Q13. Can an Indian Party issue guarantees in favour of its offshore subsidiary? Is the RBI's approval required at the time of the enforcement of a guarantee?

Indian entities are permitted to issue guarantees to or on behalf of its offshore subsidiary or SDS in which the Indian entity has obtained control through the foreign entity.

Guarantees may also be provided by a group entity of such Indian entity in India, being a holding company (which holds at least 51% stake in the Indian entity) or a subsidiary company (in which the Indian entity holds at least 51% stake) or a promoter group company, which is a body corporate. RI promoters of an Indian entity may also provide guarantees on behalf of an Indian entity, which will be reckoned towards the total financial commitment limit of such Indian entity.

However, no guarantee can be 'open ended'. In case of a performance guarantee, 50% of the amount of guarantee is to be reckoned towards the financial commitment limit, and

the time specified for the completion of the contract shall be the validity period. Where the invocation of performance guarantee breaches the prescribed limit of financial commitment in force, prior permission of RBI is required to be obtained before remitting beyond the prescribed limit. Where a guarantee has been extended jointly and severally by two or more Indian entities, 100% of the amount of such guarantee will be reckoned towards the individual limits of each of such Indian entities and in case of a performance guarantee, 50% of the amount of the guarantee will be reckoned towards the financial commitment limit. Roll-over of guarantee is not to be treated as fresh financial commitment where the amount on account of such roll-over does not exceed the amount of the original guarantee. Such roll-over is required to be reported in terms of the OI Regulations.

Q14. Can an acquirer borrow funds for the purposes of overseas investment?

Indian banks are permitted to extend financial assistance to Indian companies for acquisition of foreign securities of foreign entities. Indian acquirers also have the option of funding overseas acquisitions through ECBs subject to compliance with the regulations governing ECB and satisfaction of the conditions applicable to Overseas Investment under the automatic route.

However, any ODI in start-ups recognised under the laws of the host country or host jurisdiction as the case may be, can only be made by an Indian entity from the internal accruals whether from the Indian entity or group or associate companies in India and in case of resident individuals, from own funds of such an individual.

Q15. Is an Indian entity permitted to pledge its shares in the offshore subsidiary or SDS, or create a charge over its assets in India or those of the offshore subsidiary or SDS?

An Indian entity which has made ODI by way of investment in equity capital in a foreign entity is permitted to:

- pledge the equity capital of the foreign entity in which it has made ODI or of its or SDS in favour of an AD Bank or a

public financial institution in India or an overseas lender, for availing fund based or non-fund based facilities for itself or for any foreign entity in which it has made ODI or its SDS outside India or in favour of a debenture trustee registered with SEBI for availing fund based facilities for itself; or

- create a charge by way of mortgage, pledge, hypothecation or any other identical mode over (i) its Indian assets in favour of an AD bank or a public financial institution in India or an overseas lender as security for availing of the fund based or non-fund based facility or both, for any foreign entity in which it has made ODI or for its SDS outside India; or (ii) the assets outside India of the foreign entity in which it has made ODI or SDS in favour of an AD

bank in India or a public financial institution in India as security for availing of the fund based or non-fund based facility or both, for itself or any foreign entity in which it has made ODI or for its SDS outside India or in favour of a debenture trustee registered with SEBI in India for availing fund based facilities for itself.

Further the value of the pledge or charge or the amount of the facility, whichever is less, will be reckoned as financial commitment, unless the facility has been availed by the Indian entity for itself. Additionally, loans from an overseas lender is not permitted to be from any country or jurisdiction in which financial commitment is not permissible under the OI Rules.

Q16. Can an Indian entity make overseas investment by way of exchange or swap of shares of an Indian company?

Yes, depending on the transaction structure, an Indian entity may make overseas investment by way of exchange or swap of shares of an Indian company and subject to the inward leg of the transaction also being in compliance with rules governing foreign direct investment. However, where swap of equity capital results in acquisition of any equity capital

which is not in conformity with the OI Rules/ OI Regulations, e.g., ODI in foreign entity engaged in financial services activity, foreign entity having a subsidiary/SDS, etc., such equity capital must be disinvested within a period of 6 months from the date of such acquisition.

Q17. What are the reporting requirements incumbent on the investor under the OI Framework?

The investor is required to make an application for remittance of foreign exchange to the AD Bank under the automatic route in the prescribed form. The investor who has made ODI or OPI, or making financial commitment or undertaking disinvestment in a foreign entity is required to report the same within the prescribed timelines under the OI Regulations.

A person acquiring equity capital in a foreign entity through ODI is also required to submit an Annual Performance Return (“APR”) to RBI through the AD Bank, every year on or before December 31, based on the audited financial statements of the foreign entity.

Where the person resident in India does not have control in the foreign entity and the law of the host country does not mandatorily require auditing of the books of account of the foreign entity, the APR may be submitted based on the un-

audited financial statements of the foreign entity provided the same is certified by the statutory auditors of the Indian entity or by a chartered accountant where the statutory audit is not applicable. In addition, the person resident in India is required to report the details regarding acquisition or setting up or winding up or transfer of a SDS or alteration in the shareholding pattern in the foreign entity during the reporting year in the APR. No APR is required to be filed if (i) a person resident in India is holding less than 10% of the equity capital without control in the foreign entity and there is no other financial commitment other than by way of equity capital; or (ii) the foreign entity is under liquidation. In case more than one person resident in India have made ODI in the same foreign entity, the person holding the highest stake is required to submit the APR, and if their holdings are equal, the APR may be filed by jointly by such persons.

An Indian entity which has made ODI is additionally required to submit an Annual Return on Foreign Liabilities and Assets to the RBI by July 15th of every year.

Q18. Apart from the reporting and approval requirements, are there any other obligations which an Indian Party needs to fulfil in relation to ODI?

An Indian entity which has made ODI is required to:

- Receive and submit to the AD Bank, share certificates or any other document as per the applicable laws of the host country or the host jurisdiction, as an evidence of investment in the foreign entity within 6 months from the date of effecting remittance or the date on which the amount to be capitalised became due to the Indian entity or on the date on which the amount due was allowed to be capitalised;
- Realize and repatriate to India all dues receivable from the foreign entity the amount of consideration received on account of transfer or disinvestment of such ODI and the net realisable value of the assets on account of the liquidation of the foreign entity as per the laws of the host country or the host jurisdiction, as the case may be, within 90 days from the date when such receivables fall due or the date of such transfer or disinvestment or the date of the actual distribution of assets made by the official liquidator;
- Submit the APR to the AD Bank, based on the financial statements of each foreign entity for the preceding year;
- Submit an annual return on foreign liabilities and assets to RBI; and
- In addition, an Indian entity which has made ODI is permitted to transfer/ disinvest such investment only after a period of 1 year from the date of such investment.

Q19. Is Portfolio investment overseas by a listed Indian entity permitted?

A listed Indian entity may make OPI not exceeding 50% of its net worth as on the date of its last audited balance sheet, in accordance with the provisions of the OI Framework.

OPI by a person resident in India in the listed equity capital of a listed entity, even after its delisting, is to continue to be

treated as OPI until any further investment is made in the entity, i.e., any further investment made in the equity capital of the foreign entity after its delisting is required to be made as ODI. An Indian listed company may also make OPI by way of reinvestment.

Q20. Is investment in equity/ equity linked instruments of offshore venture capital undertakings permitted?

Yes, investments in equity/ equity linked instruments of offshore venture capital undertakings is permitted, subject to such venture capital undertaking being duly regulated by the

regulator for the financial sector in the host jurisdiction. Such overseas investment is considered as OPI.

Q21. What are the stipulations regarding overseas investment by individuals resident in India?

RBI has given general permission to RIs to acquire foreign securities subject to the limits prescribed under the Liberalized Remittance Scheme (“LRS”), unless specified otherwise as detailed below. Under the LRS, RIs are permitted to remit up to USD 250,000 per financial year (April to March) outside India to undertake any permitted current or capital account transaction or a combination of both which includes

acquisition of debt and non-debt instruments of overseas listed companies or otherwise.

An RI may acquire or hold overseas investment by way of the following, in accordance with the provisions of the OI Framework:

- ODI in an operating foreign entity not engaged in financial

services activity and which does not have subsidiary or SDS where the RI has control in the foreign entity;

- OPI, including by way of reinvestment;
- ODI or OPI, as the case may be, by way of:
 - capitalisation, within the time period, if any, specified for realisation of any amount due from the foreign entity the remittance of which is permitted under FEMA or does not require prior permission of the Central Government or the RBI;
 - swap of securities on account of a merger, demerger, amalgamation or liquidation;
 - acquisition of equity capital through rights issue or allotment of bonus shares;
 - gift from a person resident outside India in accordance with the provisions of the Foreign Contribution (Regulation) Act, 2010 and the rules and regulations

made thereunder;

- gift from a RI, without any limit;
- inheritance from a person who may or may not be a resident in India, without any limit; and
- qualification shares for holding a management post in the foreign entity;
- issuance by a foreign entity of shares or interest under Employee Stock Ownership Plan or Employee Benefits Scheme or sweat equity shares offered by such overseas entity, without any limits, provided that the issue of Employee Stock Ownership Plan or Employee Benefits Scheme are offered by the issuing overseas entity globally on a uniform basis.

However, RIs are not permitted to make any financial commitment to a foreign entity by way of debt.

Q22. Can a person resident in India make overseas investment in an IFSC in India?

A person resident in India may make overseas investment in an IFSC inter alia subject to the following conditions:

- in the case of an ODI made in an IFSC, the approval by the financial services regulator concerned, wherever applicable, is required to be decided within 45 days from the date of application;
- an Indian entity not engaged in financial services activity in India, making ODI in a foreign entity, which is directly or indirectly engaged in financial services activity, except banking or insurance, who does not meet the net profit condition (as discussed above), may make ODI in an IFSC;
- a person resident in India may make an investment (including sponsor contribution) in the units or any other instrument (by whatever name called) issued by an investment fund overseas, duly regulated by the regulator for the financial sector in the host jurisdiction, or issued by an investment fund or vehicle set up in an IFSC, as OPI;
- a RI may make ODI in a foreign entity, including an entity engaged in financial services activity, (except in banking and insurance), in IFSC if such entity does not have subsidiary or SDS outside IFSC where the RI has control in the foreign entity.



5. Private Equity

Q1. Are foreign PE investors recognized as a separate class of foreign investors?

No, foreign private equity (“PE”) investors are not recognized as a separate class of foreign investors. Investment routes and other conditions that apply to foreign investment in India, apply to investment by foreign PE investors as well.

Q2. What entry routes are available for foreign PE investors to invest in India?

Foreign PE investors may invest through Foreign Direct Investment (“FDI”), Foreign Portfolio Investment (“FPI”) or Foreign Venture Capital Investor (“FVCI”) routes in various types of non-debt instruments. Please see [\[Chapter 3\]](#) (Foreign Investment) for further details.

Q3. Does a foreign PE investor need to be registered with any regulatory authority in India?

This depends on the entry route (please see [\[Chapter 3\]](#) (Foreign Investment) for further details). Foreign PE investors are not required to be registered with a regulatory authority in India for investment through the FDI route. However, foreign PE investors need to be registered with Securities and Exchange Board of India (“SEBI”) for investment through the FPI and FVCI routes.

Q4. Is it possible to raise funds, and form a PE fund in India?

Yes, it is possible to raise funds and form a PE fund in India, by registering the fund as an ‘alternative investment fund’ (“AIF”) with the SEBI, under the SEBI (Alternate Investment Fund) Regulations, 2012 (“AIF Regulations”). A

fund registered in India as an AIF can collect funds from resident as well as non-resident investors, for investing in accordance with its defined investment policy.

AIFs are categorized as follows:

- **Category I AIFs:** Funds which invest in start-ups, early-stage ventures, social ventures, small or medium enterprises, infrastructure or other sectors / areas which the government or regulators consider as socially or economically desirable. These include venture capital funds, SME funds, angel funds, social impact funds, special situation funds and infrastructure funds.
- **Category II AIFs:** Funds which do not fall within Category I or Category III, and which do not undertake leverage

or borrowing other than as permitted under the AIF Regulations. PE funds and debt funds for which no specific incentives or concessions are given by the government or any regulator, typically fall within this category.

- **Category III AIFs:** Funds which employ diverse or complex trading strategies and may employ leverage including through investment in listed or unlisted derivatives. These include hedge funds, funds which trade with a view to make short term returns or funds that are open-ended and for which no specific incentives or concessions are given by the government or any regulator.

For further information on the set up of an AIF in India and the associated conditions, please refer to Part B below.

Q5. Is it true that India prohibits foreign investors from having an 'assured return' on their investment?

This depends on the route of investment chosen by the foreign investor. Indian foreign exchange laws prohibit foreign investors from having an 'assured return' under

the FDI route for equity instruments (such as equity shares and mandatorily convertible preference shares and debentures).

Q6. What factors are typically taken into consideration when determining PE deal structures in India?

The primary factors that are typically considered for PE deals are tax efficiency (and, for this reason several investments are routed through jurisdictions that have beneficial tax treaties with India), exchange control restrictions (in case of investment by a foreign PE investor), securities laws

restrictions (in case of investment in a listed company) and regulatory approvals (including exchange control related approvals, anti-trust approvals, and other sector specific approvals). Regulatory approvals can impact deal timelines.

Q7. Can foreign PE investors acquire interest in Indian companies by way of share swap?

Subject to compliance with prescribed conditions for FDI and overseas investment (where applicable), Indian companies (including listed Indian companies) are permitted to issue equity instruments to foreign investors against swap of equity instruments of another Indian company. In case of transfer of shares of an Indian company by a foreign investor to an Indian listed company by way of a share swap arrangement, such transaction, in addition to the prescribed conditions relating to FDI and overseas investments, shall also be subject to, *inter alia*, SEBI regulations including

SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

Further, the equity instruments of an Indian company may be transferred between a foreign investor and a person resident in India against swap of equity instruments of another Indian company, or the equity capital of a foreign company.

Q8. Is there an issue with a PE investor acquiring 'control' over an Indian company?

There is no legal restriction with a PE investor acquiring 'control' over an Indian company. However, in certain situations, legal implications often drive investors to curtail their rights over the company's management and operations so as to ensure that they do not exercise 'control' over the company. Some of these common situations are:

- investment in a listed company, where the PE Investor does not want to trigger an "open offer." Please see [\[Chapter 7 \(Takeovers\)\]](#) for further details;
- investment in a company, where the sectoral

regulations require such company to be Indian owned and controlled (relevant for a 'foreign' PE investor); and

- where the PE Investor does not want to become a 'promoter' of an Indian company as this has certain obligations and liabilities under law.

While 'control' has a statutory definition, it is widely worded, and there are no identified set of rights that do or do not confer control. This is presently a matter of interpretation, with limited guidance through judicial decisions.

Q9. What rights can a PE investor typically expect in a minority acquisition?

While the spectrum of rights available to a PE investor may vary, based on deal specific considerations, the typical gamut of rights in a minority acquisition includes:

- right to appoint nominee directors on the board of directors and their committees (whose presence is essential to constitute quorum);
- limited affirmative voting rights on certain (non-operational) reserved matters (see [Question 11](#));
- anti-dilution rights, to prevent dilution of the investor's shareholding;
- liquidation preference, where the investor is given payout in preference to other shareholders;
- pre-emptive rights in case of fresh issuance of shares

by the investee company;

- lock-in on the shareholding of the founder / promoter, with a limited liquidity pool and consent rights on any share transfer by the founder / promoter in excess of such liquidity pool;
- right of first offer or the right of first refusal (investors usually prefer a right of first refusal) and tag-along rights on transfer of shares by other non-investor shareholders, including the founders / promoters;
- a pre-decided exit mechanism which can include an initial public offer ("IPO") and a strategic sale;
- most favored nation rights; and
- information and inspection rights.

Q10. What rights can a PE investor typically expect in a majority acquisition?

While the spectrum of rights available to a PE investor may vary, based on deal specific considerations, the typical gamut of rights in a majority acquisition includes:

- right to appoint majority of board of directors and their committees (whose presence is essential to constitute quorum);
- right to appoint a chairman to the board of directors (with or without casting vote);
- right to appoint the key employees of a company;
- extensive affirmative voting rights including on operational matters (see [Question 11](#));
- anti-dilution rights, to prevent the dilution of controlling interest of the investor;

- liquidation preference, where the investor is given payout in preference to other shareholders;
- pre-emptive rights in case of fresh issuance of shares by investee company;
- right of first offer or the right of first refusal (investors usually prefer a right of first refusal) and tag-along and drag-along rights on transfer of shares by other non-investor shareholders, including the founders / promoters;
- a pre-decided exit mechanism which can include IPO and strategic sale;
- most favored nation rights; and
- extensive information and inspection rights.

Q11. What affirmative veto rights does a PE investor typically have?

Typically, a PE investor acquiring majority stake has extensive affirmative vote rights which include operational matters, whereas a minority investor's affirmative vote rights may be relatively limited and only be linked to matters which affects its shareholding and/or the value of its shareholding and are typically limited to non-operational matters.

These rights may include the following:

- *Share Capital*: Issuance of securities; variation of share capital and classes of securities; employee stock options, declaration of dividend;
- *Indebtedness*: Incurrence of material indebtedness; creation of security over the company's assets; redemption of securities;
- *Disposal of assets*: Sale, lease, license or disposal of material assets, intellectual property, undertakings, businesses or subsidiaries;
- *Acquisitions*: Undertaking acquisitions, joint ventures or material assets;
- *Commencement of new businesses*: Commencement or acquisition of any new line of business, substantially changing the business, or shutting down of any existing line of business;
- *Restructuring*: Listing, merger, demerger, scheme of arrangement, voluntary liquidation, winding-up, composition with creditors or other similar forms of restructuring;
- *Key employees*: Appointment or termination of the employment of any key employees or any change in the terms of their employment;
- *Audit, tax related*: Appointment, change in terms of appointment or termination of auditors or change in the accounting, tax or revenue recognition practices;
- *Alteration of charter documents*: Amendment or restatement of the articles of association or memorandum of association;
- *Litigation*: Commencement or settlement of any material litigation, claim or proceeding;
- *Material contracts*: Entering into, amendments to, and termination of, any of material contracts; and
- *Related party transactions*: Entering into new transactions, or amending terms of existing transactions, between the investee company and its related parties.

Generally, these rights extend to activities of the investee company and its subsidiaries.

Q12. Are there any limitations on enforceability of negative covenants in a shareholder's agreement?

Negative covenants in a shareholder's agreement typically include non-compete, non-solicitation, anti-disparagement and confidentiality obligations.

Under Indian contract law, agreements that are 'in restraint of trade' are void and unenforceable. Non-compete contracts are questionably in restraint of trade. As an exception, non-compete contracts involving sale

of goodwill are expressly enforceable, but are subject to limitations in terms of geography, time and scope.

Even though a non-compete clause has limited enforceability in India, having a non-compete restriction is standard in shareholders' agreements in PE investments to restrict the promoter group from indulging in competing business.

Q13. What are the exit options available to a PE investor?

There are several considerations that determine the exit route selected by investors such as the performance of the target, valuation, pricing considerations, tax considerations and guaranteed returns. Exit options which are typically

available to a PE investor include an IPO, a third-party sale, a strategic sale, financial sale or exercise of a put option. (see, 'Acquisition of Shares' and 'Foreign Investment').

Q14. What pricing guidelines and valuation rules apply to foreign PE investments in India?

Under India's extant foreign exchange regulations, issuances and transfers of equity instruments to or from a foreign investor are subject to prescribed pricing guidelines. For instance, any issuance of equity instruments by an Indian company to a foreign investor, the price must be at or above the fair market value determined in accordance with an internationally accepted pricing methodology certified by a SEBI-registered merchant banker or chartered accountant.

Similarly, for a transfer of equity instruments:

- from a resident to a non-resident, the price must be at or above the fair market value; and
- from a non-resident to a resident, the price must be at or below the fair market value.

In addition to the aforesaid, additional rules apply to listed companies, where SEBI pricing norms typically govern the minimum/maximum price.



6. Alternative Investment Funds

Q1. What are the principal legal structures used for AIFs?

Under the Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012 (“**AIF Regulations**”), an alternative investment fund (“**AIF**”) can be set up as a trust, company, limited liability partnership or a body corporate. Typically, the preference in India is to have

the AIF set up structured as a trust. Trusts are preferred due to comparatively lighter statutory compliance, operational ease, investor confidentiality, ease of liquidation / winding up, and tax transparency.

Q2. What are the different categories of AIFs in India?

Under the AIF Regulations, AIFs are categorised into 3 (Three) different categories: (i) Category I AIFs, which include funds that target venture capital, infrastructure, social impact enterprises, small and medium businesses, and angel investments; (ii) Category II AIFs, which includes

funds that do not fall under Category I or Category III; and (iii) Category III AIFs, which includes funds that employ diverse or complex trading strategies, including the use of leverage, as well as listed focused funds.

Q3. What are the requirements for the tenure of the AIF? Can all categories be either open ended or close ended?

Category I and II AIFs must be close-ended with a minimum tenure of 3 (Three) years, while Category III AIFs may be either open-ended or close-ended. The tenure of a

close-ended scheme must be set before filing the private placement memorandum (“**PPM**”) with the Securities and Exchange Board of India (“**SEBI**”). Close-ended schemes

may be extended by up to 2 (Two) years with the consent of investors holding at least two-thirds of the units by

value; for accredited-investor-only funds¹, the term may be extended by up to 5 (Five) years.

Q4. Who is a manager? Are managers or advisers to Alternative Investment Funds required to be licensed, authorised or regulated by a regulatory body?

A manager is a person or an entity who has been appointed as the manager of the AIF for the purpose of managing its investments. In terms of the AIF Regulations, every AIF is required to have a manager. The manager is not required to obtain a separate registration from SEBI. However, at the time of registration of the AIF with SEBI, the manager is required to submit certain information, including a confirmation as to their capacity to undertake the required managerial activities, their status as a fit and proper person per the criteria specified under Schedule II of the SEBI (Intermediaries) Regulations, 2008 (“**Intermediaries Regulations**”), and details of their key investment team.

Investment managers of AIFs who wish to offer co-investment opportunities to investors through the portfolio management route are required to register with SEBI as Co-Investment Portfolio Managers under the SEBI (Portfolio Managers) Regulations, 2020 (“**PM Regulations**”). Please see [question 14](#) for more details on co-investment opportunities to investors.

Further, note that an investment manager seeking to manage an AIF in the GIFT City, is required to seek registration as a fund management entity under the IFSCA (Fund Management) Regulations, 2025 (“**FM Regulations**”). Please see [questions 15 and 18](#) for more details.

Q5. Who is a sponsor of the AIF? Are there any obligations of a sponsor under AIF Regulations?

A sponsor is any person who sets up the AIF and includes the promoters in case of an AIF which is set up as a company and the designated partners in case the AIF is set up as a limited liability partnership.

In case of Category I and II AIFs, the sponsor (or the manager) of the AIF is required to maintain a continuing interest in the AIF of at least 2.5% (Two-point Five Percent) of the corpus or INR 5 crore (approx. USD 568,182) whichever is lower, in the form of investment in the AIF. Such investment

cannot be through the waiver of the management fees.

In case of a Category III AIF, the continuing interest shall be not less than 5% (Five Percent) of the corpus or INR 10 crore (approx. USD 1.14 million) whichever is lower.

The sponsor is also obligated to submit a declaration regarding their status as a fit and proper person per the criteria specified under Schedule II of the Intermediaries Regulations.

Q6. Whether the manager and the sponsor of an AIF can be the same?

Yes, the manager of the AIF can also act as the sponsor. However, it is not mandatory, and the manager, and sponsor can be different entities.

¹ The AIF Regulations define as ‘Accredited Investors only fund’ to mean an AIF or scheme of an AIF in which each investor other than the Manager, Sponsor, employees or directors of the Alternative Investment Fund or employees or directors of the Manager, is an Accredited Investor. The AIF Regulations define “accredited investor” as any person who is granted a certificate of accreditation by an accreditation agency and meets certain income / net worth requirements prescribed in the AIF Regulations. An “accreditation agency” is defined as a subsidiary of a recognized stock exchange or a subsidiary of a depository or any other entity as may be specified by SEBI from time to time.

Q7. What are the regulatory limits in relation to corpus of an AIF, number of investors and minimum investment by investors?

The AIF Regulations require each scheme of an AIF to have a minimum corpus of INR 20 crore (approx. USD 2.27 million). For social impact funds, each scheme must have a minimum corpus of INR 5 crore (approx. USD 568,182). An AIF shall raise funds solely by way of private placement.

Under the AIF Regulations, investors (other than accredited investors) are required to invest a minimum of INR 1 crore (approx. USD 113,636). However, investors who are employees or directors of either the AIF or the manager are required to invest a minimum of INR 25 Lakh (approx. USD 28,409). Large value funds for accredited investors require each investor (other than the sponsor/manager and their

personnel) to be an accredited investor and to commit not less than INR 25 crore (approx. USD 2.84 million).

The AIF Regulations further provide that AIFs shall not have more than 1,000 (One Thousand) investors. However, accredited investors are to be excluded while computing the number of investors in a scheme of an Alternative Investment Fund. Where an AIF is set up as a private company, the AIF will be required to comply with the private placement norms sets out under the Companies Act, 2013, including the cap on the number of offerees (which, at present, is not more than 200 (Two Hundred) persons).

Q8. What are the broad restrictions on investments? Are there any diversification requirements?

Category I and II AIFs are restricted from investing more than 25% (Twenty Five Percent) of their investable funds in a single investee company. However, if the AIF is a large value fund for accredited investors (“LVF”)², the fund may invest up to 50% (Fifty Percent) of the investable funds in a single investee company. Category III AIFs may invest up to 10% (Ten Percent) of the investable funds (or net asset value (“NAV”)) per investee company. Category III LVFs may invest up to 20% (Twenty Percent) of the investable funds (or NAV) in a single investee company. Pertinently, these restrictions apply to both direct investments in portfolio entities as well as indirect investments through other AIFs.

AIFs are restricted from (i) investing in associates and in units of AIFs managed or sponsored by their manager, sponsor or their associates, and (ii) buying or selling investments to/from associates, schemes of AIFs managed by the manager, sponsor or their associates, or any investor that has committed at least 50% (Fifty Percent) of the scheme’s corpus, except with the approval of at least 75% (Seventy Five Percent) of investors by value. Where the counterparty to such transaction is an investor who has committed to invest at least 50% (Fifty Percent) of the corpus of the fund, such investor is excluded from the aforementioned voting process.

Q9. What are the restrictions on borrowing by AIFs?

Category I and II AIFs may not borrow or use leverage except for temporary funding purposes and day-to-day operational needs, for not more than 30 (Thirty) days, on no more than 4 (Four) occasions per year, and not exceeding 10% (Ten Percent) of its investable funds.

Additionally, Category I and II AIFs are permitted to borrow

to cover a shortfall in investor drawdowns, after the issuance of the drawdown notice and at the time of making an investment, only in emergencies and as a last recourse, and subject to a cap at the lower of (a) 20% (Twenty Percent) of the proposed investment, (b) 10% (Ten Percent) of investable funds, or (c) the undrawn commitments of nondefaulting investors. Category I and II AIFs are required

² The AIF Regulations define “large value funds for accredited investors” as an Alternative Investment Fund or scheme of an Alternative Investment Fund in which each investor (other than the Manager, Sponsor, employees or directors of the Alternative Investment Fund or employees or directors of the Manager) is an accredited investor and has invested not less than INR 25 crore, (approximately USD 2.84 million).

to have a 30 (Thirty) day coolingoff period between 2 (Two) borrowing periods (measured from repayment).

Category III AIFs may employ leverage (including borrowing

and derivatives) subject to a maximum exposure of 2 (Two) times NAV, daily endofday leverage reporting to the custodian, breach rectification timelines, and the prudential, risk and liquidity controls as prescribed.

Q10. What restrictions are there on marketing Alternative Investment Funds?

AIFs can only raise money on a private placement basis through the issue of a PPM (offering document equivalent to a marketing memorandum) per the AIF Regulations.

The PPM is required to contain all material information relating to the AIF, the manager, the key investment team,

targeted investors, fees and all other expenses proposed to be charged, investment strategy, risk management tools, the manner of winding up of the AIF, and other information that would be necessary for potential investors to make an informed decision on whether to invest in the AIF.

Q11. Are there any restrictions on transfers of investors' interests?

While the AIF Regulations do not specifically prohibit the transfer of an investor's interest in the AIF, the transfer of interests in the AIF are generally governed by the fund documents (i.e. the constitutional documents of the AIF, the contribution agreement executed by the investor, and the PPM). The fund documents typically require the manager's consent prior to a transfer of an investor's interests and would need to be reviewed on a case by case basis to identify specific restrictions with respect to

such transfers. Fund documents may also prescribe certain eligibility requirements that a transferee must satisfy (for example: compliance with KYC norms, and minimum capital commitment requirements).

Transfers will also be subject to the cap on the number of investors and any investor eligibility requirements (which are typically set out in the fund documents).

Q12. Is the use of "side letters" restricted? What are the most common side letter terms?

Side letters are agreements entered into between the manager and an investor, to provide such investors with certain rights over and above those agreed upon in the in common form agreement relating to all investors basis commercial negotiations.

SEBI has prescribed a list of specific differential rights that AIFs may offer to investors which include: (a) fund expense; (b) management fees; (c) hurdle rate of return;

(d) carried interest; (e) co-investment rights; (f) reporting and information rights; (g) representation on committees constituted by the AIF / the scheme; (h) most favoured nation; (i) confidentiality of investors' details / information; and (j) representation and warranties.

However, the above limitation with respect to differential rights does not apply in case of an LVF.

Q13. What are the valuation requirements for the fund?

Category I and II AIFs need to undertake valuation of the assets of the AIF on a half-yearly basis, which may be relaxed to on yearly basis, with the consent of 75% (Seventy Five) of investors by value of their investment in the fund.

Category III AIFs need to undertake the valuation of the assets on a quarterly basis (for close ended funds) and on a monthly basis (for open ended funds).

Q14. How can co-investment opportunities be offered to investors?

The manager may offer co-investment opportunities to the investors by either (i) taking a license as a co-investment portfolio manager under the PM Regulations or (ii) launching a co-investment scheme (“**CIV**”) under the same trust. There are considerations for both options, as taking an additional licence leads to additional compliance checks

which the manager will need to undertake. Further, under a CIV, the maximum co-investment opportunity which can be taken by an investor is 3 (Three) times of the amount of capital contribution of such investor utilised towards that portfolio entity.

Q15. What is GIFT City? Are AIFs registered in GIFT City required to register under different regulations? How are funds typically structured in GIFT City

GIFT City is India’s International Financial Services Centre (“**IFSC**”), a special zone between Ahmedabad and Gandhinagar that operates in foreign currency and is treated as “offshore” for many financial activities. Any financial institution or branch of a financial institution set up in the IFSC and permitted/recognised as such by the Government of India or a Regulatory Authority (as defined under the relevant regulations) shall be treated as a person resident

outside India. Accordingly, there are no foreign exchange considerations while investing in AIFs set-up in GIFT City, and which are registered under the FM Regulations.

AIFs in GIFT City may be structured as a company, LLP or trust under applicable Indian law. For reasons similar to those set out at [question 1](#) above, AIFs in GIFT City are primarily structured as trusts.

Q16. What are the categories of AIFs in GIFT City?

AIFs in the GIFT City can be launched by FMEs as restricted schemes (non-retail schemes), i.e. similar to those under

the AIF Regulations. Please see [question 2](#) above for more details.

Q17. What are the tenure requirements for GIFT Funds?

Restricted schemes launched as Category III AIFs may be open-ended or closed-ended, and restricted schemes launched as either Category I AIFs or Category II AIFs are required to be close-ended.

1 (One) year, which may be extended by up to 2 (Two) years with approval of at least two-thirds of investors by value. A further extension in the tenure, beyond the 2 (Two) year period, requires the express consent of investors willing to continue in the fund, while providing an exit to the dissenting investors.

In case of close-ended funds, the placement memorandum must state the amount to be raised and a tenure of at least

Q18. What is a fund management entity and what are the eligibility requirements applicable to fund management entities?

The fund management entity (“**FME**”) is a person or an entity who has been appointed as the manager of the restricted scheme for the purpose of managing its investments. The FME is required to get a licence from IFSC Authority (“**IFSCA**”) before undertaking any fund management activity.

FMEs must appoint a principal officer, who will be responsible for fund management, risk management and compliance. Additionally, registered FMEs (retail and non-retail), are required to appoint a compliance officer for ensuring compliance with applicable laws, implementation

of risk management policies and practices at the FME. FMEs having assets under management exceeding USD 1 Billion, are required to appoint an additional key management personnel member tasked with fund management.

FMEs are also required to meet certain net worth

requirements, i.e. USD 75,000 (United States Dollars Seventy Five Thousand) in case of an authorised FME, USD 500,000 (United States Dollars Five Hundred Thousand) in case of a Registered FME (non-retail), and USD 1000,000 (United States Dollars One Million) in case of a Registered FME (retail).

Q19. Does the FME need to maintain a continuing interest in the Restricted scheme?

Yes, please see below:

- Close-ended restricted schemes (targeted corpus up to USD 30,000,000 (United States Dollars Thirty Million)): The FME or its associate must invest at least 2.5% (Two point Five Percent) of the targeted corpus, capped at 10% (Ten Percent).
- Close-ended restricted schemes (targeted corpus over USD 30,000,000 (United States Dollars Thirty Million)): The FME or its associate must invest at least USD 750,000 (United States Dollars Seven Hundred Fifty Thousand), capped at 10% (Ten Percent) of the targeted corpus.
- Open-ended restricted schemes (targeted corpus under USD 30,000,000 (United States Dollars Thirty Million)):

The FME or its associate must invest at least 5% (Five Percent) of the targeted corpus, capped at 10% (Ten Percent).

- Open-ended restricted schemes (targeted corpus over USD 30,000,000 (United States Dollars Thirty Million)): The FME or its associate must invest at least USD 1,500,000 (United States Dollars One Million Five Hundred Thousand), capped at 10% (Ten Percent) of the targeted corpus.

The requirement for maintaining the continuing interest may be waived subject to the conditions provided under the FM Regulations.

Q20. What are the regulatory limits in relation to corpus of a restricted scheme, number of investors and minimum investment by investors?

Minimum corpus for restricted Schemes is USD 3,000,000 (United States Dollars Three Million). However, an open-ended fund may start investing once it has raised at least USD 1,000,000 (United States Dollars One Million) and must reach the USD 3,000,000 (United States Dollars Three Million) minimum within 12 (Twelve) months from the Authority's confirmation that its placement memorandum has been taken on record.

Accredited investors and investors investing above USD 150,000 (United States Dollars One Hundred Fifty Thousand) may invest in restricted schemes. Employees, directors and partners of the FME may invest USD 40,000 (United States Dollars Forty Thousand) in Restricted schemes.

A single Restricted Scheme may have at max, 1000 (One Thousand) investors.

Q21. What are the broad restrictions on investments by restricted schemes? Are there any diversification requirements?

There are no diversification requirements for close ended restricted schemes.

With respect to open-ended restricted schemes, such schemes are restricted from investing more than 25% (Twenty Five Percent) of the corpus in unlisted securities ("**Unlisted Securities Cap**"). This restriction does not apply to open-ended

fund-of-funds that in turn invest in open-ended schemes which comply with the Unlisted Securities Cap.

Restricted schemes may invest in an associate, subject to the prior approval of at least 75% (Seventy Five Percent) of the investors by value.

Restricted schemes are not permitted to buy / sell securities to / from associates, other schemes of the FME or its associates, or a “major investor” (i.e. an investor who has committed to invest at least 50% (Fifty Percent) of the corpus, unless 75% (Seventy Five Percent) of the investors, excluding the major investor, in the scheme approve such investment.

Q22. Are there any restrictions on transfers of investors’ interests?

There are no regulatory restrictions on the transfer of interests of an investor in GIFT City AIFs. However, there may be contractual restrictions on transfers, similar to those applicable to AIFs registered with SEBI. Please see [question 11](#) for more details.

Q23. Is the use of “side letters” restricted? What are the most common side letter terms?

Unlike AIFs registered with SEBI, the IFSCA does not place restrictions on the terms of side letters entered into with investors of restricted schemes.

Q24. What are the restrictions on borrowing by GIFT Funds?

Restricted schemes may borrow or use leverage if: (a) the placement memorandum discloses the maximum leverage by the scheme and the calculation methodology for such leverage; (b) the leverage is used strictly in line with the disclosures set out in the placement memorandum. Any deviation from such disclosures would require the approval of at least 2/3rd (two-thirds) of investors by value; and (c) the FME maintains a robust risk management framework proportionate to the fund’s size, complexity, and risk profile.

Q25. What are the valuation requirements for the fund?

Restricted schemes are required to follow the valuation norms provided under the FM Regulations, with assets valued by an independent service provider (e.g., fund administrator, custodian, IFSCA-registered CRA, IBBI-registered valuer, or as otherwise specified), except fund-of-funds that invest in schemes regulated by a financial sector regulator and already independently valued. The FME is required to compute NAV at least monthly (at least half-yearly for close-ended restricted schemes), and keep a fully documented NAV methodology that is regularly reviewed and updated as needed.

Q26. How can co-investment opportunities be offered to investors?

A restricted scheme may offer co-invest opportunities in permissible investments either: (i) through a special purpose vehicle in accordance with the framework specified by IFSCA; or (ii) via a segregated portfolio by issuing a separate class of units.

7. Takeovers

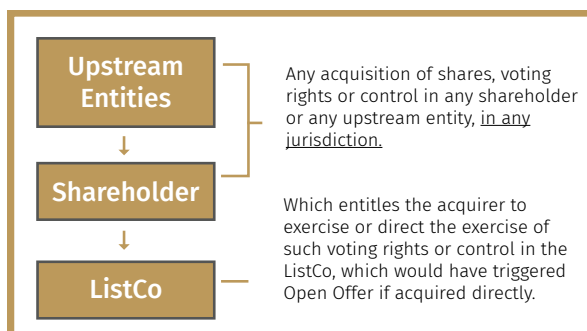
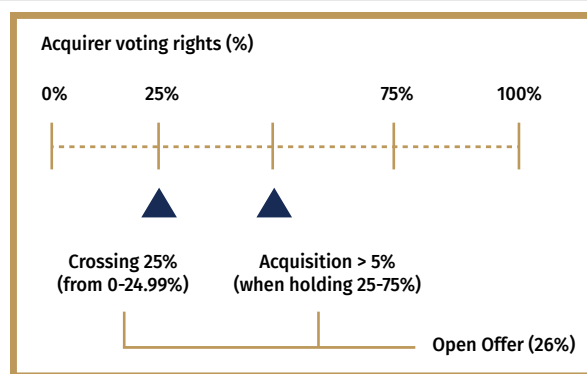
A direct or indirect acquisition of voting rights above specified thresholds and/or control in an Indian listed company (the “ListCo”) requires a mandatory open offer

(the “Open Offer”) for at least 26% of the shareholding of the ListCo, unless any general or specific exemption from an Open Offer is available.

Q1. What triggers an Open Offer in India?

A direct Open Offer is triggered in the following scenarios:

- Crossing the 25% threshold**
 If an acquirer holds 0-24.99% voting rights, Open Offer is triggered for crossing 25% voting rights.
- Incremental acquisition >5%.**
 If an acquirer holds more than 25% but less maximum permissible non-public shareholding (75%) voting rights, Open Offer is triggered for an acquisition of more than 5% voting rights in a financial year (April-March).
- Acquisition of control.** Irrespective of acquisition of voting rights, if an acquirer acquires control over the ListCo.
- Any acquisition of shareholding, voting rights or control over any upstream entity, may also trigger an Open Offer in India, as illustrated in the box.
- For this purpose, the calculation is not pro-rata and is absolute.



- For example: if shareholder holds 51% in the ListCo, and an acquirer acquires 35% of such shareholder, the acquirer's indirect shareholding is not 51% of 35%, but an absolute 51% of the ListCo, triggering an Open Offer. Different rules apply to direct and indirect open offers. The responses below are for direct open offer, and please see Q6 for the variations in case of an indirect open offer, and Q16 for variations for Innovators Growth Platform.

Q2. How is the acquirer's shareholding calculated, and who are persons acting in concert?

In calculating the thresholds for determining the Open Offer triggers, the shareholding of the acquirer and the persons acting in concert ("PAC") is aggregated. The obligations of the acquirer and PAC with respect to the Open Offer are joint and several.

PAC is any person who, with a common objective or purpose of acquisition of shares or voting rights in, or exercising control over the ListCo, pursuant to an agreement or understanding

(whether formal or informal), directly or indirectly co-operates for the acquisition of shares or voting rights in, or exercise of control over, the ListCo.

One of the early steps in Open Offer transactions is determining if there are any PAC with the acquirer. Certain categories of persons are deemed to be PAC, as a rebuttable presumption, such as immediate relatives, and companies under the same management.

Q3. How is control defined?

The definition of 'Control' has two independent tests, an objective test and a subjective test, either of which confer control.

- **Objective test.** Control includes the right to appoint majority of the directors on the board of the ListCo.
- **Subjective test.** Control includes the right to control the

management or policy decisions.

Each of the tests is applied to persons individually or acting in concert, directly or indirectly, or by virtue of shareholding, management rights, shareholders/voting agreements or in any other manner. For this purpose, a director or officer of the ListCo is not in control solely on account of their position.

Q4. When should the Open Offer be made, and can the underlying transaction be completed first?

If the underlying transaction is pursuant to an agreement, the public announcement for the Open Offer (the "PA") must be issued on the date of signing of the agreement. Similar requirements apply to other kinds of underlying transactions, for example, in case of a primary issuance, the public announcement must be issued on the date of the board meeting of the ListCo where the primary issuance is approved.

The format of PA is prescribed by the Securities and Exchange

Board of India ("SEBI"), and it is a short form document that provides a brief overview of the underlying transaction that triggered the Open Offer, the particulars of the Open Offer, and the particulars of the parties to the underlying transaction.

The underlying transaction can be completed only after the Open Offer is completed, unless certain early closing conditions are met, as set out in Q5.

Q5. What are the key milestones in the Open Offer process?

The key milestones for an Open Offer process are set out below, where all references to days are to SEBI prescribed working days.

- **Preparatory Stage.** Any binding document, even if it's

a term sheet, may trigger an Open Offer. Accordingly, any document that triggers an Open Offer ought to be executed only after the preparatory steps are completed. Key preparatory steps for the acquirer include:

- appointment of a merchant banker registered with SEBI, who would act as the ‘manager to the Open Offer’;
- making firm arrangements of funds through verifiable means to meet the Open Offer payment obligations; and
- discussions with a bank to act as escrow bank, to receive mandatory escrow payments within 3 days of the trigger.
- **Trigger.** On the trigger date, the PA is issued to all the stock exchanges where the ListCo is listed, and this marks the commencement of the Open Offer process followed by submission of PA to SEBI and the ListCo within 1 working day of the trigger date.
- **Escrow Funding.** Within three days of the trigger, the acquirer needs to fund an escrow account with cash or collateral equal to:
 - 25% of the open offer consideration on the first INR 500 crores (~USD 56 million at 1 USD = INR 89) + 10% of the balance open offer consideration; or
 - where an open offer is conditional upon minimum level of acceptance, the higher of 100% of the consideration payable in respect of the minimum level of acceptance or 50% of the consideration payable under the Open Offer.

The collaterals may be a bank guarantee (in which case, at least 1% must be in cash), or frequently traded and freely transferable equity shares or other freely transferable securities with appropriate margin of a value equivalent to the escrow amount.

- **Detailed Public Statement.** The format of a detailed public statement (“DPS”) is prescribed by SEBI, and it is more detailed than a PA, and contains additional information regarding the parties, including the financial information of the acquirer, background to the Open Offer and calculation of the offer price, financial arrangements, statutory and other approvals and tentative schedule of activities. The DPS must be issued within 5 days of the trigger, and published in newspapers, and submitted to SEBI and stock exchanges, and the ListCo.
 - **Draft Letter of Offer.** The draft letter of offer (“DLOF”) is more detailed than PA and DPS, and once approved, becomes the letter of offer (“LOF”) that is sent to the
- shareholders for them to participate in the Open Offer. The DLOF is submitted to SEBI, along with a non-refundable filing fee, and to the stock exchanges, within 10 days of the trigger and within 5 days of the DPS.
- **Review Period.** SEBI reviews and provides comments on the DLOF and is required to provide comments within 15 days of receipt of the DLOF. Practically, the review period is longer as the 15 days clock stops if SEBI has sought clarifications or additional information.
 - **Independent director recommendation.** Upon receipt of DPS, the Board of the ListCo is required to constitute a committee of independent directors to provide reasoned recommendations on the Open Offer, which must be published before tendering commences for the Open Offer.
 - **Dispatch, tendering and closing of the open offer.** Once comments from SEBI on the DLOF have been received and suitably incorporated, the LOF is sent to the shareholders of the ListCo, and the tendering process commences and closes in a time-bound manner. The payment for the tendered shares must also be made within a time-bound manner.
 - **Closing of underlying transaction.** The underlying transaction may close once the Open Offer is completed and the offer period is over, but no later than 26 weeks from the expiry of the offer period.
 - **Early closing.** An early closure of the underlying transaction requires the following conditions to be met:
 - 21 days must have elapsed since the DPS; and
 - the acquirer, assuming full acceptance, must have deposited the entire amount payable for the Open Offer in escrow (in cash, or through bank guarantee); or
 - only in the case of a preferential issuance or exchange settlement process, the shares are kept in an escrow account and the acquirer does not exercise any voting rights over such shares (and in the event it wishes to exercise the voting rights and receive the shares in the acquirer account, it must fulfil the 21 days and escrow funding condition).

Q6. How are the steps different for an indirect open offer?

As set out in Q1, an indirect acquisition in any jurisdiction may also trigger an Open Offer in India. The first step for determining the steps for an indirect Open Offer is ascertaining if the Open Offer will qualify as a deemed direct acquisition or an indirect acquisition.

- **Deemed Direct Acquisition.** If the proportionate net asset value or proportionate sales turnover or proportionate market capitalisation of the indirectly acquired ListCo, represented as a percentage of the consolidated net asset value or the consolidated sales turnover or the enterprise value of the entity or the business being acquired, is in excess of 80%, on the basis of the most recent audited annual financial statements, such an indirect acquisition is considered to be a deemed direct acquisition.
- **Indirect Acquisition.** Any indirect acquisition which is not deemed direct acquisition is an indirect acquisition.

The key difference between a deemed direct acquisition and an indirect acquisition are:

- in the case of an indirect acquisition, the Open Offer process is permitted to be 'paused' after the issuance of the PA until the underlying/primary acquisition is completed, and thereafter the DPS must be issued within 5 working days of completion of the primary acquisition, and the process and timelines resume. Interest is added to the offer price for the paused period. In the event the primary acquisition does not consummate, an indirect open offer is permitted to be withdrawn as a matter of right. A deemed direct acquisition is treated as a direct acquisition for the purposes of process and timelines.
- In the case of indirect acquisitions (which are not deemed direct acquisitions), (a) an amount equivalent to 100% of the consideration payable in the open offer needs to be deposited in the escrow account; and (b) deposit of securities as mentioned in point (c) above is not permitted.
- Please see Q12 regarding calculation of offer price in case of an indirect acquisition.

Q7. Can an acquirer make a voluntary open offer?

Even when there is no trigger, an acquirer may make a voluntary open offer, which in case of the acquirer being:

- a shareholder holding at least 25% but less than maximum permissible non-public shareholding, must be for at least

an additional 10% of the shareholding (subject to the maximum permissible non-public shareholding); or

- in other cases, for 26% of the shareholding.

Q8. Can an unsolicited or hostile offer be made?

Yes, unsolicited or hostile offers are allowed, and any person can make an Open Offer subject to the offer size

and other requirements.

Q9. Can a competitive offer be made?

Yes, a competitive offer (by way of making a PA) can be made by any person within 15 working days of the date of issuance of the DPS by the acquirer who has made the first public announcement.

acquirer who has made the first public announcement; and (b) number of shares proposed to be acquired by the first acquirer under the underlying transaction that triggered the Open Offer; and (c) the number of shares proposed to be acquired in the Open Offer.

Typically, competing offers are not always possible, as the offer size must be equal to the aggregate of: (a) holding of the

If a competing offer is possible, and is made, there is an

opportunity for the first acquirer to revise the offer price, and for the competitor to further revise the offer price, in each case, subject to certain conditions.

Other terms, as applicable to the first Open Offer, also apply to a competing offer.

Q10. Can the ListCo be delisted as part of the Open Offer process?

It is possible for an acquirer to initiate a delisting process simultaneously with the Open Offer process, subject to certain eligibility conditions. Generally, delisting requires a high threshold, and if the delisting process is not successful, the Open Offer process is required to continue.

The acquirer must declare an intent to delist the ListCo in the PA and the DPS. For an indirect acquisition (which is not a deemed direct open offer), such intention may not be disclosed in the PA but must be disclosed in the DPS. In addition, the acquirer is required to offer 'suitable premium,' along with the rationale and justification for the indicative price for delisting.

An acquirer can simultaneously proceed with the Open Offer and delisting process pursuant to a common set of

documentation which sets out both the Open Offer (along with the open offer price) as well as the intention to delist (along with the indicative delisting price). There is a common tendering period for the Open Offer and the delisting process and at the end of such common tendering period, either the delisting process is successful in the event the acquirer manages to get to the threshold of 90% of the total issued shares of the ListCo (the delisting threshold) or the delisting process fails (in the event the acquirer does not manage to get to the threshold of 90% of the total issued capital) and the tendered shares are then accepted towards the Open Offer (after providing a prescribed time period for withdrawal of such tendered shares in the event the concerned shareholder does not wish to participate in the open offer that remains post failure of delisting attempt).

Q11. Are there any exemptions from Open Offer Requirements?

Exemptions from Open Offer fall in two categories.

- **Specific Exemption from SEBI.** SEBI may grant a specific exemption upon an application being made in writing for a specific case, in its discretion, and not as a matter of right.
- **General Exemptions.** Certain cases are exempt from Open Offer, and these include, as a non-exhaustive list:
 - transfer amongst qualifying persons (such as transfer amongst immediate relatives, persons named as promoters in the shareholding pattern filed by the ListCo for certain minimum period);
 - acquisition by way of transmission, succession and inheritance;
 - increase in voting rights in a ListCo pursuant to corporate actions (such as rights issues and buy-backs) subject to certain conditions;
 - acquisition pursuant to an approved resolution plan under the IBC;
 - acquisition of shares by lenders pursuant to conversion of their debt as part of a debt restructuring implemented in accordance with the guidelines specified by the RBI, where lenders are narrowly defined;
 - acquisition of shares or voting rights or control of a ListCo that has stressed assets by way of preferential issue in compliance with certain prescribed conditions;
 - increase in the voting rights in the ListCo without any acquisition of control pursuant to conversion of equity shares with superior voting rights of the ListCo into ordinary equity shares; and
 - acquisition pursuant to schemes of arrangement, including amalgamation, merger or demerger, pursuant to an order of a court or a tribunal under any law or regulation, Indian or foreign.

Q12. How is the 'offer price' calculated?

Floor Price Calculation. Floor price for a direct acquisition and an indirect acquisition which is a deemed direct (see, Q6), is the higher of:

- the highest negotiated price per share for any acquisition under the agreement attracting the obligation to make the open offer;
- the volume weighted average price paid or payable for acquisitions by the acquirer or PACs during the 52 weeks immediately prior to the date of the public announcement;
- the highest price paid or payable for any acquisition by the acquirer or PACs during the 26 weeks immediately prior to the date of the public announcement;
- the volume weighted average market price of the shares for a period of 60 trading days immediately prior to the date of the public announcement as traded on the stock exchange where the maximum volume of trading in the shares of the ListCo is recorded during such period (for frequently traded shares);
- for infrequently traded shares, the price determined by the acquirer and the manager to the open offer taking into account valuation parameters, including book value, comparable trading multiples and such other parameters as are customary for valuation of shares of such companies; and
- the per share value of the ListCo considered for an indirect acquisition of the ListCo (in cases of indirect acquisitions which are deemed direct acquisitions), if applicable.

Interest for Indirect acquisition. In case of indirect acquisitions (which is not a deemed direct acquisition), the offer price stands enhanced by an amount equal to a sum determined at the rate of 10% per annum for the period between the earlier of the date on which the primary acquisition is contracted or the date on which the intention or decision to make the primary acquisition is announced in the public domain, and

the date of the DPS, provided such period between the above two events is more than 5 working days.

Price attribution. Indirect acquisitions also mandate a "price attribution" where the proportionate net asset value or sales turnover or market capitalisation of the underlying listed company represents, is in excess of 15% of the directly acquired entity on the basis of the most recent audited annual financial statements. In such cases, the acquirer is required to compute and disclose, in the letter of offer, the per share value of the ListCo taken into account for the acquisition, along with a detailed description of the methodology adopted for such computation.

All payments to be aggregated. The price calculation must be made taking into account all payments, irrespective of their categorisation and control premium or as non-compete fees are also aggregated with the sale price.

26 Weeks forward looking period. If, within 26 weeks after the tendering period, and subject to certain exceptions, the acquirer or PAC acquire any shares in the ListCo at a price that is higher than the Open Offer price, they must pay the incremental difference to those shareholders who tendered in the Open Offer, within 60 days from the date of such acquisition.

Interest for delay. In case the acquirer is unable to make payment to the shareholders who have accepted the open offer within the prescribed time period, the acquirer needs to pay interest at the rate of 10% per annum for the period of delay. However, if such delay was not attributable to any act or omission or commission of the acquirer, or due to reasons or circumstances beyond the control of the acquirer, the SEBI may grant waiver from the payment of such interest.

Q13. What is the mandatory offer size?

The offer size is 26% of the total shares of the ListCo. If the tendering is more than the offer size, the shares are accepted on a proportionate basis. The offer size is calculated as of the

10th working day from the closure of the tendering period, taking into account any potential increase in the number of outstanding shares during the offer period contemplated as

of the date of the public announcement. Please see Q7 for the offer size for a voluntary Open Offer.

Scale Down Option. Subject to certain conditions, in open offers, where the acquirer has expressly disclosed its intention to retain the listing of the ListCo, the acquirer is entitled to undertake a proportionate reduction of the shares or voting rights to be acquired pursuant to the underlying agreement

for acquisition/subscription of shares or voting rights (that triggered the open offer) and the purchase of shares so tendered in the open offer, upon the completion of the open offer process to ensure that the resulting shareholding of the acquirer (along with its PACs) in the ListCo does not exceed the maximum permissible non-public shareholding thresholds as applicable to such ListCo.

Q14. What are the modes of payment under the open offer?

Consideration for the open offer may be paid through:

- cash;
- issue, exchange or transfer of listed shares, or listed debt instruments (with specified minimum ratings), in each case of the acquirer or of any PAC;
- issue, exchange or transfer of convertible debt securities entitling the holder to acquire listed shares of the acquirer or
- of any PAC; or
- a combination of the above.

If the acquirer or its PACs acquire or agree to acquire shares during the 52 week period prior to the public announcement of the Open Offer constituting more than 10% of the voting rights in the ListCo and the consideration is paid in cash, the Open Offer must provide an option to the tendering shareholders to receive payment in cash and a shareholder who has not exercised such option is deemed to have opted for receiving the offer price in cash. In case of revision in the offer price, the mode of payment may be altered, subject to the condition that the component of the offer price to be paid in cash before such revision has not been reduced.

Q15. What are the key obligations imposed on the ListCo and its board of directors?

The board of directors of the ListCo are required to:

- once PA is issued, conduct the business in the ordinary course, consistent with past practices;
- upon receipt of DPS, constitute a committee of independent directors to provide reasoned recommendations on the Open Offer, as described in Q5;
- facilitate the acquirer in verification of the shares tendered upon acceptance of the open offer; and
- make available to all acquirers making competing offers any information and co-operation provided to any acquirer who has made a competing offer.

During the offer period, the ListCo or its subsidiaries are not permitted to undertake certain actions without the approval of the shareholders by way of a special resolution through postal ballot. These actions, subject to certain exceptions, include (i) alienation of any material assets (whether by way of sale, lease, encumbrance or otherwise) or entering into any agreement outside the ordinary course of business; (ii)

effecting any material borrowings outside the ordinary course of business; (iii) issuance or allotment of any authorised but unissued securities entitling the holder to voting rights; (iv) implementing any buyback of shares or effecting any other change to the capital structure of the ListCo; or (v) entering into, amending or terminating any material contracts to which the ListCo or any of its subsidiaries is a party, outside the ordinary course of business (whether such contract is with a related party); or (vi) accelerating any contingent vesting of a right of any person to whom the ListCo or any of its subsidiaries may have an obligation, whether such obligation is to acquire shares of the ListCo by way of employee stock options or otherwise. In addition, during the offer period, no person representing the acquirer or any PAC can be appointed as a director of the ListCo (unless 15 working days have passed since issuance of DPS and the acquirer has fully funded in cash the open offer escrow account with an amount equivalent to the entire consideration that will be payable assuming full acceptance of the open offer). If the acquirer or any PAC is

already represented by a director on the board of the ListCo, such director cannot participate in any deliberations of the board of directors of the ListCo or vote on any matter in relation to the open offer.

The ListCo is prohibited from fixing any record date for a corporate action on or after the 3rd working day prior to the commencement of the tendering period and until the expiry of the tendering period.

Q16. What is innovator growth platform, and how are they treated differently?

An innovator growth platform is a carve-out within the main board of the stock exchange, and for companies listed on the innovator growth platform, the thresholds apply with the following key modifications:

- The 25% trigger threshold referenced in Q1 is revised to

49%.

- The 5% cliff threshold referenced in Q18 is revised to 10%.
- The 2% change threshold referenced in Q18 is revised to 5%.

Q17. In what circumstances can an acquirer withdraw a mandatory or voluntary tender offer?

A mandatory or voluntary open offer may be withdrawn only in the event of: final refusal of a statutory approval (provided such requirement was specifically disclosed in the DPS and the letter of offer);

- the acquirer, being a natural person, has died;
- failure to meet the conditions stipulated in the underlying agreement triggering the open offer for reasons outside the

reasonable control of the acquirer and such agreement is rescinded (subject to specific disclosure of such conditions in the DPS and the letter of offer).

In addition, SEBI can permit the withdrawal of an open offer in such circumstances which, in its opinion, merit withdrawal.

Q18. What are the other key disclosure requirements for acquiring shares of a listed company?

Disclosure is required in the following cases, where the thresholds are applied to the aggregate shareholding of the acquirer and PAC. This is not an exhaustive list.

- **Crossing 5% shareholding.** A disclosure is required by an acquirer upon acquiring 5% or more shareholding.
- **Incremental 2% change.** An acquirer who holds 5% or more shareholding is required to disclose every 2% change in shareholding, reckoned from the last disclosure, on an aggregate basis.
- **Encumbrances.** A direct or indirect encumbrance, which is

widely defined and also includes any restriction, such as, but not limited to, pledge, lien, negative lien, non-disposal undertaking, is also required to be disclosed if the shares covered by the encumbrance meet the 5% cliff or 2% change thresholds described above.

- **Disclosure by promoters.** Promoters and their PAC are required to disclose any encumbrance, irrespective of thresholds, and also provide an annual confirmation that except as disclosed no encumbrance has been created.



Delisted

8. Delisting

Delisting of securities means removal of securities of a listed company from a stock exchange. As a consequence of delisting, the securities of that company would no longer be traded on that stock exchange. The process of delisting is governed by:

- The Securities and Exchange Board of India (“SEBI”) (Delisting of Equity Shares) Regulations, 2021 (as

amended up to 3 September 2025) (“**Delisting Regulations**”) for delisting of equity shares; and

- The SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“**LODR Regulations**”) for delisting of Non-Convertible Debt Securities (“**NCDS**”) and Non-Convertible Redeemable Preference Shares (“**NCRPS**”).

Q1. What are the kinds of delisting that may be effected?

There are six kinds of delisting permitted under the Delisting Regulations:

- voluntary delisting;
- compulsory delisting;
- delisting by operation of law (involving delisting in case of winding up proceedings of a listed company, proceedings
- under the Insolvency and Bankruptcy Code, 2016 (“**IBC**”),

de-recognition or refusal of renewal of registration of stock

- exchanges where shares of companies are listed, etc.);
- delisting of Small Companies (*as defined below*);
- delisting of Investment Holding Companies (*as defined below*); and,
- delisting of Public Sector Undertakings.

Q2. What are the circumstances under which voluntary delisting is not permitted?

Voluntary delisting of equity shares is not permissible in certain circumstances. The Delisting Regulations do not allow any company to apply for, and a recognised stock

exchange to permit, delisting of equity shares where it is:

- prior to expiry of three years from the listing of that class of equity shares on any recognised stock exchange; or

- if any instruments issued by the company, which are convertible into the same class of equity shares that are sought to be delisted, are outstanding; or
- pursuant to buyback of equity shares by the company, including a buyback pursuant to consolidation or division of all or part of the equity share capital of the company, unless a period of six months has elapsed from the completion of the buyback; or
- pursuant to preferential allotment made by the company, unless a period of six months has elapsed from such allotment; or
- if the Acquirer (where ‘Acquirer’ includes a person who decides to make an offer for delisting of equity shares or any entity belonging to the promoter(s) or promoter group along with the persons acting in concert) has

sold equity shares of the company during a period of six months prior to the date of the initial public announcement.

In addition, in the event that an Acquirer’s delisting offer fails, they are barred from making another delisting offer until the expiry of six months from:

- the date of disclosure of the outcome of the reverse book building process or the fixed price process, if the minimum number of shares are not tendered / offered;
- the date of making the public announcement for failure of the delisting offer, if the price discovered through the book building process is rejected by the acquirer;
- the date of making public announcement for the failure of a counter offer.

Q3. When and how can a voluntary delisting be effected?

A company may delist its equity shares from all the recognised stock exchanges where they are listed by providing all the public shareholders, holding equity shares of the class which are sought to be delisted, an exit opportunity in accordance with the Chapter IV of the Delisting Regulations.

In addition, a company may also delist its equity shares from some of the recognised stock exchanges where they are listed. In case if the shares are proposed to be delisted from some exchanges but continue to remain listed on any recognised stock exchange with a nationwide trading terminal (i.e., BSE Limited, National Stock Exchange of India Limited or any other recognised stock exchange which may be specified by SEBI in this regard), an exit opportunity need not be given to the public shareholders.

In the event, where the equity shares are delisted from some exchanges, but continue to remain listed on any recognised stock exchange and no exit opportunity is necessary, in order to delist the shares, the company’s board of directors need to:

- pass an resolution to such effect;
- the company needs to publish a public notice of the proposed delisting in at least one English national daily with wide circulation, one Hindi national daily with wide

circulation and one regional language newspaper of the region where the concerned stock exchanges are located. This public notice should include the names of recognised stock exchanges from which the equity shares are intended to be delisted, the reasons for such delisting and the fact of continuation of listing of equity shares on recognised stock exchange having nationwide trading terminals;

- apply to the recognised stock exchanges from which the delisting is sought (the application must be disposed of by the stock exchange within thirty days from the date of receipt of such application, complete in all respects); and
- disclose the fact of delisting in the first annual report of the company prepared after the delisting.

In the event where the equity shares are to be delisted from all the recognised stock exchanges where they are listed by providing the public shareholders with an exit opportunity, the following process needs to be followed by the Acquirer and the company:

I. Process to be followed by the Acquirer:

- Appoint a merchant banker as manager to the exit offer;¹
- make an initial public announcement which should include, *inter alia*, reasons for delisting and an

¹ The manager should not be an “associate” of the Acquirer.

undertaking from the Acquirer that they have not sold shares of the company during the preceding six months from the date of the public announcement and that it would not engage in any deceptive, fraudulent or manipulative practices with respect to the delisting, to all the stock exchanges on which the shares of the company are listed which the stock exchanges will disseminate to the public, and send a copy of the same to the company's registered office no later than one working day from the date of initial public announcement;

- obtain approval from the board of directors of the company in respect of the Acquirer's proposal to delist the equity shares of the company within twenty-one days from the initial public announcement;
- on receipt of the in-principle approval from the recognised stock exchange, the Acquirer needs to make a detailed public announcement in at least one English national newspaper with wide circulation, one Hindi national newspaper with wide circulation in their all India editions and one vernacular newspaper of the region where the relevant recognised stock exchange is located followed by dispatch of letters of offer to the public shareholders not later than two working days from the date of public announcement;
- the delisting price should be computed either by the reverse book building process ("RBB") or the fixed price process² (together referred as "**Delisting Price Computation Process(es)**") and individually referred as "**Delisting Price Computation Process**";
- the floor price (irrespective of which Delisting Price Computation Process is elected by the Acquirer) will be the higher of: (a) volume weighted average price paid or payable for acquisitions by the Acquirer along with persons acting in concert, during the 52 weeks immediately preceding the reference date;³ (b) the highest price paid or payable for any acquisition by the Acquirer along with persons acting in concert during the 26 weeks immediately preceding the reference date; (c) adjusted book value (considering consolidated financials) as determined by an independent registered valuer; (d) the volume weighted average market price for a period of 60 trading days immediately preceding the reference date on the stock exchange where the maximum trading volume of the equity shares is recorded, provided such shares are frequently traded; or (e) the price determined by an independent registered valuer taking into account valuation parameters such as the book value, comparable trading multiples and any other customary valuation metrics for valuation of shares of companies in the same industry where the shares are not frequently traded;
- after fixation of the floor price, if the Acquirer chooses to delist through the RBB process, then: (a) the discovered price is determined through the RBB and the manager discloses it in the detailed public announcement and the letter of offer; and (b) the Acquirer has the option to: (i) provide an indicative price in respect of the delisting offer higher than the floor price; (ii) revise the indicative price upwards before the start of the bidding period disclosing it to the shareholders; and (iii) pay a price higher than the discovered price;
- after fixation of the floor price, if the Acquirer chooses to delist through the fixed price process, the decision will be subject to: (a) the shares of the company to be delisted being "frequently traded" as set out under the Delisting Regulations to avail the option of the fixed price mechanism for delisting. The Delisting Regulations refer us to the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ("**Takeover Regulations**") to understand what qualifies as "frequently traded"; and (b) the 'fixed price' being at least 15% more than the floor price calculated in terms of the Delisting Regulations;
- the bidding period for either of the two Delisting Price Computation Processes will open within seven working days of the public announcement, and the offer will remain open for five working days for public shareholders to submit their tender;
- the Acquirer shall facilitate tendering of shares by the

² Fixed price process has been introduced under the Securities and Exchange Board of India (Delisting of Equity Shares) (Amendment) Regulations, 2024.

³ The reference date to determine the floor price means: (a) the date of initial public announcement made by the Acquirer, if such an announcement was made before the close of market hours; or (b) the trading day next to the date of the initial public announcement, if such an announcement was made after the close of market hours or on a non-trading day.

shareholders and settlement of the same, through the stock exchange mechanism as specified by the SEBI following which the manager to the offer needs to announce the outcome of either of the two Delisting Price Computation Processes, as applicable, within two hours of the closure of the bidding period;

- within two working days from the closure of the bidding period, through the manager to the offer, make a public announcement in the same newspapers in which the detailed public announcement disclosing the success or failure of the Delisting Price Computation Process, and in case it is the RBB process which is successful, then the disclosure must include the discovered price accepted by the Acquirer.
- the public shareholders holding the equity shares of the company, which are sought to be delisted, are entitled to participate in the Delisting Price Computation Process;
- the offer shall be deemed to be successful if the post offer shareholding of the Acquirer along with the shares accepted through the eligible bids at the final price determined reached 90% of the total issued shares of that class excluding: (a) the shares which were held custodian and against which depository receipts have been issued overseas; (b) shares held by a trust for employee benefit scheme; and (c) shares held by inactive shareholders such as vanishing companies and struck off companies, shares transferred to the Investor Education and Protection Fund's account and shares held in terms of the LODR Regulations;
- in case the Delisting Price Computation Process is the RBB process:
 - the Acquirer is bound to accept the equity shares: (i) tendered or offered in the delisting offer, if the discovered price is equal to the floor price or the indicative price, if any, offered by the Acquirer; and (ii) at the indicative price, if any offered by the Acquirer, is higher than the floor price but less than the indicative price, (i) and (ii) set out in this paragraph does not apply if the discovered price pursuant to the RBB is higher than the indicative price;
- the Acquirer has the ability to make a counteroffer, and the price of such counter offer will need to be the higher of: (i) volume weighted average price of the shares tendered/offered in the RBB process; or (ii) the indicative price, if any, offered by the Acquirer⁴. Such counteroffer needs to be made within 2 working days from post the closure of the bidding period. However, this counteroffer may be made only if: (i) the post-offer shareholding of the Acquirer, along with the shares tendered by public shareholders, is 75% of the total shareholding of the company; and (ii) not less than 50% of the public shareholding has been tendered;
- 25% of the total consideration to be paid by the Acquirer under the delisting offer needs to be deposited in an interest-bearing escrow account within 7 working days from the date of obtaining the shareholders' approval for the delisting process (*obligation on the company set out below*). Such total consideration will be the number of equity shares outstanding with the public shareholders multiplied with the floor price or the indicative price, whichever is higher; and
- the delisting will fail if: (i) the discovered price is not accepted by the Acquirer and no counter offer is made by the Acquirer within two working days of the price discovery; or (ii) if minimum number of shares are not tendered;
- in case the Delisting Price Computation Process is the fixed price process:
 - 25% of the total consideration to be paid by the Acquirer under the delisting offer needs to be deposited in an interest-bearing escrow account within 7 working days from the date of obtaining the shareholders' approval for the delisting process (*obligation on the company set out below*). Such total consideration is calculated on the basis of the number of equity shares outstanding with the public shareholders multiplied with the fixed delisting price offered. The pending 75% consideration needs to be deposited in the escrow account before

⁴ If the cumulative shareholding of the Acquirer, along with the shares tendered or offered by the public shareholders is less than 90%, the volume weighted average price will be calculated taking into account all the shares tendered or offered and if the cumulative shareholding is equal to or higher than 90%, the volume weighted average price will be calculated taking into account the shares tendered or offered up to 90%.

making the detailed public announcement (which needs to be issued by the Acquirer within 1 working day from the receipt of the in-principle approval from the stock exchanges on which the respective company is listed); and

- the delisting will fail if the minimum number of shares are not tendered. The equity shares tendered/offered shall be returned or released.

II Process to be followed by the Company:

The board of directors, before considering the proposal for delisting, shall appoint a peer review company secretary to carry out due diligence. The company secretary shall carry out the due diligence and submit a report to the board of directors of the company certifying that the buying, selling, and dealing in the equity shares of the company carried out by the Acquirer and the top twenty-five shareholders is in compliance with the applicable provisions of securities laws:

- the board of directors, while considering the proposal for delisting, need to certify that: (a) the company and the Acquirer are in compliance with applicable laws; and (b) delisting, in their opinion, is in the interest of the shareholders of the company;
- the company shall communicate the decision of the board of directors to the stock exchanges along with: (a) the due diligence report; and (b) the audit report in respect of the equity shares sought to be delisted, covering a period of six months prior to the date of the application after which the stock exchanges need to

disseminate this information to the public;

- the company needs to obtain prior approval of shareholders of the company by a special resolution passed through postal ballot/e-voting, after disclosure of all material facts in the explanatory statement sent to the shareholders in relation to such resolution (with votes in favor of the resolution being at least two times the votes cast against it);
- the company needs to apply to the recognised stock exchanges concerned for in-principle approval in the form specified by such recognised stock exchanges; and
- the application seeking in-principle approval for delisting shall be disposed of by the concerned recognised stock exchange within a period not exceeding fifteen working days from the date of receipt of such application complete in all respects.

If the offer is successful i.e., the requisite number of shares have been tendered in the delisting offer and the Acquirer has either accepted the discovered price or is obligated to accept the discovered price (on account of it being either equal to the floor price, or less than/equal to the indicated price), an application needs to be made to the stock exchanges for delisting the shares of the company. The remaining shareholders i.e., who did not participate in the offer, of the company will be entitled to tender their shares to the Acquirer for a period of one year from the date of delisting at the price at which the delisting was undertaken.

Q4. How is the voluntary delisting of Small Companies regulated?

Chapter 4 of the Delisting Regulations (above noted procedure) does not apply to voluntary delisting by a Small Company.

A Small Company is –

- a company with paid up capital not exceeding INR 10 crores (approx. USD 1.14 million) and net worth not exceeding INR 25 crores (approx. USD 2.84 million);
- a company whose number of equity shares traded on all the recognised stock exchanges on which the equity shares of the company are listed, during the twelve

calendar months immediately preceding the date of the board meeting in which the proposal for delisting is considered is less than 10% of the total number of shares; and

- which company has not been suspended for any non-compliance from any of the recognised stock exchanges having nationwide trading terminals in the preceding one year (**“Small Company”**).

In such cases, the communication made to the public

shareholders needs to contain justification for the offer price with particular reference to the applicable parameters and specifically mention that consent for the proposal would include consent for dispensing with the exit price discovery through RBB method. The Acquirer of Small Company can decide the exit price in consultation with the manager. The exit price cannot be less than the floor price determined as per the relevant provisions of the Takeover Regulations.

The Acquirer(s) is required to individually write to all public shareholders informing them of the proposal for delisting, stating the exit price and its justification and seeking consent of such public shareholders for the delisting. The public

shareholders, irrespective of their numbers, holding 90% or more of the public shareholding, give their consent in writing to the proposal and have consented to either sell their equity shares at the offered price or to remain holders of the equity shares even if they are delisted. The positive consents in this regard should be received within 75 working days from the date of first communication. Once the requisite consents of shareholders are received in writing, the Acquirer needs to make the payment of consideration in cash within 15 working days from the date of expiry of the 75 working days. Upon receiving the approval of the recognised stock exchange concerned, the shareholders can exit, and the delisting process is completed.

Q5. How is the RBB process effected?

RBB is a process used for efficient price discovery wherein offers are collected from the shareholders at a price equal to or above the floor price determined in accordance with the Takeover Regulations. The final offer price is one that takes the shareholding of Acquirer to 90% of total issued shares of that class⁵⁶ (excluding: (a) the shares which were held by a custodian and against which depository receipts have been issued overseas; (b) shares held by a trust for employee benefit scheme; and (c) shares held by inactive shareholders such as vanishing companies and struck off companies, shares transferred to the Investor Education and Protection Fund's account and shares held in terms of the LODR Regulations). The shareholders may withdraw or revise their bids upwards not later than one day before the closure of the bidding period. However, downward revision

of bids is not permitted.

The Acquirer has the option to accept the discovered price or reject the same. The Acquirer is required to accept the equity shares tendered or offered in the delisting offer, if the discovered price determined through the RBB process is: (a) equal to the floor price or the indicative price; and (b) higher than the floor price but less than the indicative price. The Acquirer has the option to accept the discovered price or reject the same. If the discovery price is not acceptable to the Acquirer, a counter offer may also be made (*as set out above*). Those investors who do not participate in the RBB process have an option to offer their shares for sale to the Acquirer at the same exit price for a period of one year from the date of delisting.

Q6. When is the delisting offer successful?

Except in cases where no counteroffer has been made by the Acquirer under the Delisting Regulations, a voluntary delisting offer is deemed to be successful only if:

- the post-offer Acquirer shareholding taken together with the shares accepted through eligible bids at the discovered price or the counter-offer price or the fixed price, as the case may be, reaches 90% of the total

issued shares of that class (excluding: (a) the shares which were held by a custodian and against which depository receipts have been issued overseas; (b) shares held by a trust for employee benefit scheme; and (c) shares held by inactive shareholders such as vanishing companies and struck off companies, shares transferred to the Investor Education and Protection

⁵ Illustration: Assuming floor price of INR 550 (approx. USD 6) per share, shareholding of the Acquirer at 75% and number of shares required for successful delisting as 1,500,000, the discovered price would be the price at which the Acquirer reaches the threshold of 90%, i.e., it would be INR 600 (approx. USD 7) per share.

Fund's account and shares held in terms of the LODR Regulations); and

- it is to be noted that in case of a delisting offer under the provisions of Takeover Regulations, the threshold limit of 90% for a successful delisting offer is calculated by taking into consideration the post offer shareholding of the Acquirer taken together with the existing shareholding (excluding: (a) the shares which were held by a custodian and against which depository receipts have been issued overseas; (b) shares held by a trust for employee benefit scheme; and (c) shares held by inactive shareholders such as vanishing companies and struck off companies, shares transferred to the Investor Education and Protection Fund's account and shares held in terms of the LODR Regulations), shares to be acquired which attracted the obligation to make an

open offer and shares accepted through eligible bidding at the final price determined under the provisions of the Delisting Regulations; or

- if a counter-offer is made by Acquirer, the offer is deemed to be successful only if post offer Acquirer shareholding taken together with the shares accepted at the counter-offer price reaches 90%, of the total issued shares of that (excluding: (a) the shares which were held by a custodian and against which depository receipts have been issued overseas; (b) shares held by a trust for employee benefit scheme; and (c) shares held by inactive shareholders such as vanishing companies and struck off companies, shares transferred to the Investor Education and Protection Fund's account and shares held in terms of the LODR Regulations).

Q7. How is a company compulsorily delisted?

A recognised stock exchange may order the delisting of shares of a company for reasons including losses incurred by the company during the preceding three years and a negative net worth; suspension of trading of the company's securities for more than six months; infrequent trading of the company's shares during the preceding three years; public shareholding falls below 25%; and the company has failed to raise public holding to the required level within the timelines prescribed by the stock exchange after providing a reasonable opportunity to the company to explain.

The decision of delisting is required to be taken by a panel constituted by the stock exchange. Prior to making an order for delisting, the stock exchange is required to issue a notice of delisting in one English national daily, one Hindi national newspaper with wide circulation in their all-India editions and one regional language newspaper where the concerned stock exchange is located, to provide an opportunity to persons aggrieved by the proposed delisting to make representations before the stock exchange. The stock exchange will consider the representations (received within a period of fifteen days), if any, made by the company and other aggrieved persons pursuant to the aforesaid

notices while passing the order for delisting of the equity shares of the company.

In addition, the stock exchange needs to undertake the following:

- Take steps to trace the promoter(s) of the company whose equity shares are proposed to be delisted to ensure purchase of equity shares by them from the public shareholders;
- consider the nature and extent of the non-compliance of the company (including verification of the status of compliance with the Registrar of Companies) and the number and percentage of shareholders who may be affected due to delisting;
- displaying the names of the company and its promoter(s) on the website of the stock exchange;
- filing of prosecution proceedings, if appropriate, against identifiable promoter(s) and directors of the company for non-compliance; and/or
- if appropriate, filing of a winding up petition against the company or making a request to the RoC to strike off the name of the company from the Registrar of Companies.

Subsequent to passing of the order of delisting the shares of a company, the stock exchange is required to:

- Appoint an independent valuer to determine the fair value of the delisted equity shares and such valuation shall be
- done in the same manner as in case of voluntary delisting;
- publish a notice in one English national daily, one Hindi national newspaper with wide circulation in their all India
- editions and one regional language newspaper where the stock exchange concerned is located, of such delisting along
- with disclosure of the name and address of the company, the fair value of the delisted equity shares determined by the
- valuer, and the names and addresses of the promoter(s) of the company who would be liable to purchase shares from
- the public shareholders;
- inform all other stock exchanges where the equity

shares sought to be delisted are listed, about such delisting; and

- upload a copy of this order on their website.

The promoter(s) of the company are required to acquire the delisted equity shares from the public shareholders upon payment of the value determined within three months of the date of delisting from the recognised stock exchange, subject to the option of promoter retaining the shares.

As a consequence of compulsory delisting of a company, whose fair value is positive:

- No transfer by way of sale, pledge etc. may be effected of the shares held by the promoter/promoter group;
- all the corporate benefits for all delisted shares held by promoter/promoter group will be frozen; and
- the promoter(s) and whole-time directors of such delisted company will be ineligible to become directors of any listed company until the promoters of such company provide an exit option to the public shareholders.

Q8. What is the process involved in the delisting of a company by operation of law?

In case of winding up proceedings of a company whose equity shares are listed on a recognised stock exchange, a necessary corollary is delisting such company.

Generally, such proceedings are governed by the Companies Act, the Sick Industrial Companies Act or the IBC. In case of delisting of securities pursuant to a scheme sanctioned by Board of Industrial and Financial Reconstruction or the National Company Law Tribunal or a resolution plan approved under the IBC, such schemes and/or resolution plan typically lay down the specific procedure for delisting and the exit option to the existing public shareholders at a specified rate. In the absence of such a procedure and exit

option being provided, the delisting of such company will be done in accordance with the provisions of the Delisting Regulations.

In the event SEBI withdraws the recognition granted to a stock exchange, or refuses renewal of recognition to it, SEBI may pass appropriate orders in respect of the status of equity shares of the companies listed on such a stock exchange. In cases where stock exchanges have been derecognised, SEBI has issued circulars: (a) prescribing the mechanism for listing of shares of such companies on other stock exchanges; and (b) providing for voluntary delisting by such company and exit to their shareholders.

Q9. Can SEBI relax strict enforcement of the Delisting Regulations?

According to Regulation 42 of the Delisting Regulations, SEBI may relax the strict enforcement of the Delisting Regulations in case: (a) the requirement is procedural in nature; (b) any

disclosure requirement is not relevant for a particular class of industry or company; (c) the non-compliance was caused due to factors beyond the control of the Acquirer; and (d)

exempt any person or class of persons from the operation of all or any of the provisions of the Delisting Regulations for periods not exceeding 12 months, for furthering innovation in technological aspects through testing new products, processes, services, business models, etc. in live environment of regulatory sandbox in the securities markets. Further, any exemption granted by SEBI shall be subject to the applicant satisfying conditions specified by SEBI including conditions to be complied with on a continuous basis⁷⁸.

In recent times, the delisting of ICICI Securities Limited

has exhibited SEBI's ability to exercise discretion with the enforcement of the Delisting Regulations. In this instance, ICICI Bank Limited proposed delisting its subsidiary via a share swap under a scheme of arrangement, as opposed to a cash-based exit opportunity, but faced a conflict with Regulation 37 of the Delisting Regulations as the entities did not strictly meet the "same line of business" requirement. SEBI granted an exemption on 20 June 2023, which exemption was later confirmed by the National Company Law Tribunal, National Company Law Appellate Tribunal and the Supreme Court.

Q10. Can a delisted company re-list its shares?

Upon voluntary delisting of its equity shares, a company cannot seek listing of any of its delisted equity shares for a period of three years from the date of such delisting.

In case a company has been compulsorily delisted, the company cannot seek to list their delisted equity shares or access the securities market, directly or indirectly, for a period of ten years from the date of such delisting. Similar restrictions are imposed on all the whole-time directors and promoter(s) (including any companies promoted by any of them) of the company whose shares have been

compulsorily delisted.

An application for listing of delisted equity shares may be made without any tenure restriction if:

- A Small Company is seeking to re-list its delisted shares;
- the equity shares are listed and traded on the innovator's growth platform pursuant to an initial public offer and which is delisted from the platform; or
- the equity shares have been delisted pursuant to a resolution plan under the IBC.

Q11. Delisting investment holding companies

- An Investment Holding Company means a company which holds investments in listed or unlisted companies or holding assets other than such investment. As an alternate mechanism to the Delisting Price Computation Processes, the Delisting Regulations permits the delisting of Investment Holding Companies through schemes of arrangement by an order of a court or tribunal through: (a) transfer of underlying shares held by the Investment Holding Companies to public shareholders in proportion to their shareholding; and (b) cash payments to public shareholders for investments made in unlisted companies and other assets. The public shareholding in the Investment

Holding Company upon conclusion of the scheme of arrangement stands extinguished via a court-approved selective capital reduction scheme.

- This alternate mechanism to the Delisting Price Computation Processes will be subject to *inter alia*: (a) the listed Investment Holding Companies having at least 75% of its total value comprising investments in other listed companies; (b) voting by shareholders of such listed Investment Holding Companies wherein votes cast by public shareholders of the listed Investment Holding Companies in favour of the proposal are not less than twice the number of votes cast against it; (c) the joint valuation report obtained by two independent

⁷⁸ Regulatory sandbox means a live testing environment where new products, processes, services, business models, etc. may be deployed on a limited set of eligible customers for a specified period of time, for furthering innovation in the securities market, subject to such conditions as may be specified by SEBI.

registered valuers will be submitted to the stock exchanges along with draft scheme for disclosure to public; (d) the report from a chartered accountant or merchant banker confirming the entitlement ratio is obtained; (e) the shares of the listed Investment Holding Companies should have been listed for not less than 3 years and will not be suspended at the time

of taking this route; (f) no adverse orders have been passed by the board against the listed Investment Holding Companies and their promoters or promoter group in the last 3 years; and (g) the equity shares of the listed Investment Holding Companies so delisted, will not be permitted to seek relisting for a period of three years from the date of delisting.

Q12. Delisting of public sector undertakings

- In order to address concerns in relation to Public Sector Undertakings having thin public float and / or poor financials, the Delisting Regulations now provide special provisions with respect to the delisting of equity shares of Public Sector Undertakings, wherein the aggregate shareholding of the Acquirer (along with the holding of other Public Sector Undertakings in the Public Sector Undertaking sought to be delisted) equals or exceeds ninety per cent of the total issued shares of that class. The introduced framework permits the Government to elect a fixed price process instead of the RBB process.
- Under this alternate mechanism for Public Sector Undertakings, delisting offers will be subject to *inter alia*: (a) the delisting price being a fixed price offered by the Acquirer which must be at least a 15% (fifteen percent) premium over the floor price; and (b) the floor price being determined as the highest of (i) the volume weighted average price paid or payable by the Acquirer and the persons acting in concert for 52 weeks preceding the reference date as set out in footnote 3; (ii) highest price paid or payable by the Acquirer and the persons acting in concert in the preceding 26 weeks preceding the reference date as set out in footnote 3; or (iii) value derived from a joint valuation report by two independent registered valuers. The strict requirement for the number of votes cast by the public shareholders in favour to be at least two times the votes cast against is dispensed for eligible Public Sector Undertakings. This route is not available for delisting of public sector banks, public sector insurance companies or public sector finance companies.
- In the event that a Public Sector Undertaking delisted through the mechanism described above undertakes a

voluntary strike-off between 12 or 13 months from the date of delisting, such strike off would only be valid if the amount due to remaining public shareholders of such Public Sector Undertaking, who did not tender their shares are required to be transferred to a specified account of the designated stock exchange, to be held for seven years in order to process any investor claims, post which the funds are to be transferred to the Investor Education and Protection Fund under the Companies Act, 2013 (or if such transfer is not possible, then to the Investor Education and Protection Fund of SEBI). Even after such transfer, investors retain the right to claim their due amounts from the designated Stock Exchange, which can seek reimbursements from the concerned Investor Education and Protection Fund.

Reforms in delisting process

The SEBI board, on 28 September 2021, approved the proposal to amend the existing regulatory framework for delisting of equity shares pursuant to an open offer, as provided under the then existing Regulation 5A of the Takeover Regulations. Under the same, if an open offer was triggered, compliance with Takeover Regulations would take the incoming Acquirer's holding to above 75% or perhaps even 90%. However, to ensure compliance with Securities Contract (Regulation) Rules, 1957 ("**SCRR**") the Acquirer would be forced to first bring his stake down to 75%. This would create an anomalous situation where if the Acquirer ended up holding shares above 75% but less than 90%, the delisting would fail and the Acquirer would have violated the minimum public shareholding norms under the SCRR.

This increased the complexity in the takeover of listed

companies, especially where the Acquirer desired to get the company delisted pursuant to over the takeover. The proposed framework aimed to overcome this challenge.

Accordingly, amendments were introduced to the Takeover Regulations under Regulations 5A and 7 which set out the following:

- The framework would be made available in the case of open offers under the Takeover Regulations for an incoming
- Acquirer who sought to acquire control under Regulation 3(1) (substantial acquisition of shares or voting rights) or
- Regulation 4 (acquisition of control) or Regulation 5 (indirect acquisition of shares or *control*)⁹;
- if the Acquirer was desirous of delisting the target company, the Acquirer had to propose a higher price for delisting with suitable premium¹⁰ over open offer price;
- if the response to the open offer leads to the delisting threshold of 90% being met, all shareholders who tendered their shares would be paid the same delisting price and if the response to the offer leads to the delisting threshold of 90% not being met, all shareholders who tendered their shares would be paid the same takeover price;
- if a company did not get delisted pursuant to the open offer under this framework, and the Acquirer crossed 75% due
- to the open offer, a period of 12 months from the date of completion of the open offer would be provided to the Acquirer to make further attempts to delist the company under the Delisting Regulations. If delisting during this extended 12-month period was unsuccessful, the Acquirer then would have to comply with the minimum public shareholding norm within 12 months from the end of such period;
- if the Acquirer at the time of open offer, stated upfront that it would opt for remaining listed and the total stake at the
- end of the tendering period reaches above 75%, then the Acquirer could opt for either proportionately scaling down purchases made under both, i.e., the underlying share purchase agreement and the shares tendered under open offer, such that the 75% threshold was never crossed or, alternatively, the Acquirer would have to become compliant with minimum public shareholding within the time stipulated under SCRR;
- while undertaking delisting under this proposed framework, all the provisions of the Delisting Regulations would be
- applicable *mutatis-mutandis*;
- an Acquirer cannot be a promoter, promoter group, a person(s) in control; directly/indirectly associated with the promoter/person(s) in control; or hold more than 25% share or voting rights. An Acquirer also cannot acquire joint control with existing promoters/persons in control; and
- the indicative price for delisting must be in accordance with the Delisting Regulations and specify the floor price for further delisting attempts by the Acquirer.

Salient features of the framework for voluntary delisting of non-convertible debentures (“NCDS”) and non-convertible redeemable preference shares (“NCRPS”) under LODR Regulations (as amended on 20 September 2023):

- **In-principle approval:** Under this framework, the listed entity is mandated to make an application to the relevant stock exchange for seeking in-principle approval for the proposed delisting of NCDS and NCRPS within 15 working days from the date of passing of the board resolution to that effect.
- **Notice of delisting:** Within 3 working days from the date of receipt of the in-principle approval, the listed entity shall send the notice of delisting to the holders of NCDS and NCRPS.
- **No-objection letter:** Within 15 working days from the date of the notice of delisting, the listed entity shall

⁹ Please note that Acquirer making an open offer under Regulation 3(2) of the Takeover Regulations is not covered here. Under Regulation 3(2) of the Takeover Regulations, an Acquirer holding 25% or more may acquire more than 5% in a financial year and trigger an open offer for acquiring 26%.

¹⁰ The expression “suitable premium” under Regulation 5A of the Takeover Regulations (which is otherwise not defined or clarified) has been indirectly or by way of implication clarified under the Delisting Regulations to mean that the price for delisting (in an open offer and delisting) should be at least 15% more than the open offer price (that will be calculated for the open offer limb of the hybrid transaction) in terms of the Takeover Regulations and this may aid in being a justifiable benchmark for determining the premium for the delisting price in an “open offer and delisting” scenario.

obtain approval from all the holders NCDS and NCRPS and obtain the No-Objection Letter from the debenture trustee in case of delisting of NCDS.

- **Failure of delisting:** The delisting shall be deemed to have failed on account of: (a) non-receipt of in-principle approval from any of the stock exchanges; or (b) non-receipt of requisite approval from the holders of NCDS and NCRPS; or (c) non-receipt of No-Objection Letter from the debenture trustee in case of proposal for delisting NCDS. In case of failure of the delisting proposal, the listed entity shall intimate the same to the stock exchanges within 1 working day of the date of event of failure.
- **Final application to the stock exchange:** Within 5 working days from the date of obtaining the requisite approval from the holders of NCDS and NCRPS, the listed entity shall make the final application for delisting to the stock exchange. Such final application for delisting shall be disposed of by the stock exchange within 15 working days from the date of receipt of such application that is complete in all respects.
- **Delisting from stock exchanges:** Upon disposal of the final application for delisting by the stock exchange NCDS and NCRPS of the listed entity shall be delisted from the stock exchange.
- **Delisting when NCDS are listed on more than one stock exchange:** Where the NCDS and NCRPS are listed on more than one stock exchanges, the listed entity may choose to delist such securities or shares from all stock exchanges except one such stock exchange having nationwide trading terminals. In such a situation, the requirements of in-principle approval, notice of delisting, approval and no-objection letter, failure of delisting, final application to stock exchanges, etc., under Chapter VIA will not be applicable. For the same, a separate procedure has been specified under Regulation 64H which is to be followed by the listed entities. Such application for delisting shall be disposed of by the stock exchange within 30 days of receipt of such application.

Q13. What are some recent instances of delisting in the Indian market, and the trends associated with it?

- Largely, delisting in 2025 has been on account of penal actions on listed companies, i.e. compulsory delisting.
- The Securities Appellate Tribunal has however, in certain cases of compulsory delisting (such as the case of Manpasand Beverages Limited) advised that delisting is only a measure of last resort, and that exchanges must balance strict enforcement with investor interest, signalling a cautious judicial pushback against automatic deference to exchange-drive delisting decisions.
- With the operationalisation of the Fixed Price mechanism in late 2024, 2025 saw a marked preference for this route amongst mid-cap companies.



9. Business and Asset Transfers

Q1. What is the difference between a business transfer and an asset sale?

In India, acquisitions often take the form of either an **asset sale** (also called an *itemised sale*) or a **business transfer** (commonly referred to as a *slump sale*).

The key distinction lies in the scope of what is acquired:

- In a **business transfer**, the purchaser acquires the seller's entire undertaking as a going concern. This includes all assets, liabilities, contracts, employees, and goodwill, transferred on an "as-is-where-is" basis.
- In an **asset sale**, the purchaser selectively acquires specific assets and/or liabilities as agreed with the seller.

An asset sale is thus essentially a piece meal sale of assets by a seller, allowing the buyer to cherry-pick individual assets while choosing whether or not to assume liabilities. This flexibility is a major advantage, as the buyer can tailor the acquisition to their needs.

By contrast, a business transfer is a sale of an undertaking, which typically involves a lump-sum consideration for the sale, without assigning any values to individual assets and liabilities (save and except, the determination of value of assets and liabilities, as applicable for the purpose of payment of stamp duty, registration fee and similar purposes). In an asset sale, however, each asset proposed to be transferred is separately valued and priced, depending on its nature, classification and valuation. A single price can also be identified for the entire basket of assets, being sold in an asset sale, and the sale concluded on such single price. In case of an asset sale involving goods which have capitalized and input credit taken on the same, care should be taken that fair market value assigned to such goods is not less than the amount of input credit that can be attributed for the remaining useful life of such goods.

Q2. What are the transaction costs that would typically accrue to a business transfer and an asset sale?

The cost-effectiveness of both kinds of transactions depends upon various factors, including the nature of assets which are proposed to be transferred between the parties. A business transfer (which qualifies as a 'slump sale' for the purpose of the Income-Tax Act, 1961 ("IT Act")) is more cost efficient than an asset sale on account of the following:

Direct Taxes:

- The gains arising from a business transfer which falls within the definition of a 'slump sale' under the IT Act are taxed as long term or short term capital gains depending on the period for which the seller held the undertaking, as a whole, prior to disposition, irrespective of the period for which each constituent asset was held. On the other hand, in case of an asset sale, tax on capital gains or business income is to be paid by the seller on the income arising from the transfer of each asset independently, depending on the nature of the assets and period for which such assets were held.
- Also, generally in case of a business transfer, subject to the provisions of the relevant tax holiday scheme, it may be possible to argue that a tax holiday period attached to the eligible business undertaking should be allowed to be carried forward. However, such an interpretation would not be plausible where the assets of the eligible business undertaking are transferred individually/separately.

Indirect Taxes:

- The transfer of a business on a going concern basis (i.e. a 'slump sale') is outside the purview of GST levy. However, the itemized sale of assets in India is exposed to GST levy in India. The rate of tax is dependent on the nature of assets/ goods proposed to be transferred and the classification is determined by their Harmonized Nomenclature (HSN). In case a single price is allocated for the entire transfer of assets, the highest rate of GST applicable on any asset will be applicable on the single price determined as sale consideration.
- In case of a slump sale, unutilized input tax credits of the seller (pertaining to the business which is being

transferred) can be transferred to the buyer subject to fulfilment of procedural formalities. In case of asset sale, the GST charged on the assets by the seller can be contractually recovered from the buyer. The buyer can take input tax credit of such GST paid to the seller, subject to restrictions and fulfilment of routine compliances enshrined under the GST laws.

Stamp duty:

- In India, stamp duty becomes applicable, whenever (a) an instrument (document) is executed in India, or, (b) an instrument that is executed outside India is brought into India and such instrument relates to a property situated, or, to a matter or thing done or to be done in India, an obligation to make certain revenue payments known as "stamp duty" is attracted, under the relevant legislations. Stamp duty is chargeable on the instrument that is executed and not the underlying transaction. The rate of stamp duty, generally, depends on the State in which the document is executed, the instrument being executed, and the place where the property or asset that is proposed to be transferred is situated, as applicable. Accordingly, instruments that are executed in relation to the business transfer and asset sale, become chargeable to relevant stamp duties.
- Typically, the master document governing a business transfer or asset sale would record the transfer of components thereof and would be chargeable to stamp duty, in accordance with the Stamp Act applicable in the State of its execution. The component assets, i.e.: (a) immovable properties under a registered deed of conveyance; (b) movables by delivery of possession; and (c) intellectual property comprising trademark, copyright etc. by deeds of assignment or novation would be transferred in a similar manner for both business transfer as well as asset sale.
- A deed of conveyance for the transfer of immoveable properties in respect of both slump sale and asset transfer will attract payment of stamp duty, in the State in which the property is situated. Where moveable property (except intellectual property) is transferred by delivery of

possession (without a specific deed of conveyance), no stamp duty would ordinarily be payable. Subject to the local stamp duty law requirements, such transfers are usually effected through physical delivery, which is evidenced by exchange of a delivery and possession receipt.

Registration Fees:

Instruments (documents) effecting the transfer of immoveable property are required to be registered with the relevant authority upon payment of fees, which may vary from State to State.

Q3. What approvals are required for affecting a slump sale or an asset sale?

Where a company (including a foreign-owned and controlled company) proposes to undertake a 'slump sale' or an 'asset sale', the following corporate approvals are generally required (subject to any additional requirements prescribed in the company's constitutional documents):

- In a **private company**, a 'slump sale' or an 'asset sale' may be undertaken by way of an approval of its board of directors ("**Board**").
- In case of a **public company**, the approvals required for a 'slump sale' or an 'asset sale' depend on the level of investment in the undertaking proposed to be transferred.
 - If the investment in the undertaking is less than the net worth thresholds prescribed under the Companies Act (the "**Materiality Thresholds**"), only a resolution of the Board is required.
 - If investment in the undertaking exceeds the Materiality Thresholds, in addition to the approval of the Board, an approval of the shareholders by way of a special resolution is also required. Further, for **listed public companies**, the special resolution can only be acted upon only if the votes cast by the public shareholders in favour of the resolution exceeding the votes cast by such public shareholders against the resolution. Any public shareholder, who is party to such sale (directly or indirectly) cannot vote on the resolution for such sale of undertaking.

Specific approvals from the lenders, employees, third parties and regulatory authorities may be required, for undertaking the transfers by way of 'slump sale' and 'asset sale', as applicable. Care should also be taken to ensure that the assets are not being disposed of to escape any tax demand or liability imposed by the revenue authorities.

Additionally, in the event of transfer of an undertaking,

Indian labour laws also provide protection for 'workers' working in such undertaking. Such transfer normally attracts a retrenchment compensation and prior notice obligations, as prescribed, unless: (a) the workers are absorbed in the transferred undertaking and the services of the workers are not interrupted for such transfer; (b) the terms of employment in the transferred undertaking are not less favourable than those applicable to the transferred workers at the time of their employment with the transferor and (c) under the terms of transfer, in the event of retrenchment of a worker, the new employer is liable to pay to the worker, compensation on the basis that his service has been continuous and has not been interrupted by the transfer.

For such employees who do not qualify as 'worker', when they are transferred as part of a "slump sale", such transfer is generally on the basis of their consent, continuity of service and the terms of engagement at the transferee which are no less favorable than those applicable to them in the original employment. The cessation of employment of such non-workers are generally governed by their respective employment agreements and the Shops & Establishments Act applicable to the State in which such persons are employed.

In addition, a report that the sale is bona fide, for adequate consideration, and is not intended to dispose of assets or property pending any charge or liability on the same is taken under Section 81 of the Central Goods and Service Tax Act, 2017 and Section 281 of the Income Tax Act, 1961. As a market practice, this report is issued by a reputed chartered accountant firm or statutory auditors as a condition of the sale transaction.

Q4. How long does it take to complete a business or asset transfer by private arrangement?

The process of business transfer or asset transfer could take between 4 (four) to 6 (six) weeks or more (depending on the due diligence, approvals and consents that may be required, and duration of the negotiation between the

parties involved). Where the transaction involves the transfer of immovable property, employees, intellectual property, or other assets requiring additional approvals, the timeline may be extended beyond the aforesaid period.

Q5. Are there any disadvantages of a private arrangement over a scheme of arrangement approved by National Company Law Tribunal (“NCLT”)?

A business transfer may be carried out through a private arrangement by executing a business transfer agreement; or through a scheme of arrangement (“**Scheme**”) which shall be subject to approval of the applicable NCLT bench (provided *inter alia*, other eligibility conditions as prescribed in relation to schemes under the IT Act and other applicable laws are satisfied).

Despite the fact that a business transfer through a Scheme is a time-consuming process (often taking between nine to twelve months to complete) and has certain limitations, it offers noticeable advantages. It is binding on the minority creditors as well as the shareholders, thereby ensuring

uniformity and reducing disputes. Furthermore, while regulatory approvals and third party consents (where contractually agreed) are required both in the case of a Scheme as well as a private arrangement, the sanction of the Scheme by the NCLT facilitate transfer of all the approvals providing greater certainty to the parties involved.

In contrast, a private arrangement requires separate and independent approvals of the shareholders, creditors, regulatory authorities and third parties. This can make the process more fragmented and potentially less predictable compared to the Scheme sanctioned by NCLT.



10. Court Based Restructuring

Q1. What are the various forms of restructuring that are recognized under Indian law?

Chapter XV of the Companies Act, 2013 (“**Companies Act**”) contains provisions for a company to enter into a compromise or arrangement with its creditors and/or members. The terms compromise and arrangement have been interpreted judicially to be very broad so as to encompass any sort of contractual arrangement with creditors and/or members involving give and take. Accordingly, several types of restructuring, whether of the business (including mergers, demergers spin-offs or slump sales), capital reorganisations (including reduction of capital, buy back of securities, consolidation of shares of different class or division of shares into different classes) and corporate debt restructuring can be achieved through a process involving sanction by the National Company Law Tribunal (“**NCLT/Tribunal**”) under the provisions as contained in Chapter XV of the Companies Act. The restructuring of business and capital reorganisation can be achieved in a composite manner. The basic process involves the filing of a scheme of arrangement setting out the terms of the reorganisation with the NCLT and seeking

the NCLT’s sanction. The legal process before the NCLT also involves obtaining the approval of the shareholders and the creditors (secured and unsecured), as required in each type of restructuring. The NCLT will examine (after seeking the representation of the Central Government, relevant sectoral regulators including the Competition Commission of India (if applicable) and the Income Tax Department), whether the proposed restructuring is procedurally as well as substantively fair and compliant with the terms of the Companies Act and rules and regulations framed thereunder.

As regards restructurings by Government Companies, the powers of the NCLT stand delegated to the Ministry of Corporate Affairs, Government of India.

In addition, Section 233 of the Companies Act permits, through the Central Government without requiring the approval of the NCLT, a merger between two or more small companies or between a holding company and its

wholly owned subsidiary (“**WOS**”) and such other classes of companies as has been prescribed. Section 233 of the Companies Act also permits schemes for matters pertaining to division or transfer of undertaking between such classes of companies as has been prescribed. A scheme under Section 233 of the Companies Act is presented before the jurisdictional Regional Director (“**RD**”), Ministry of Corporate Affairs (“**MCA**”) and the Official Liquidator (applicable in cases of merger). Further, in case of a company regulated by a sectoral regulator such as Reserve Bank of India, Securities and Exchange Board, Insurance Regulatory and Development Authority of India or Pension Fund Regulatory and Development Authority, notice of the scheme is to be issued to such sectoral regulators, as the case may be. This process also involves the approval of the shareholders and/or creditors. The RD is vested with the power to transfer the matter to the NCLT to consider the Scheme if the RD is of the opinion that the Scheme is not in the public interest or the interest of creditors.

Rule 25(1A) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (“**2016 Rules**”), prescribes for a scheme of merger or amalgamation and for matters pertaining to division or transfer of undertaking under Section 233 of the Companies Act between: (i) two or more start-up companies; or (ii) one or more start-up company with one or more small company. In September 2025, Rule 25(1A) made the following additional classes of companies eligible under Section 233 of the Companies Act, namely, (i) one or more unlisted company with one or more unlisted company where every company involved in the scheme has in aggregate outstanding loans, debentures or deposits not exceeding INR 200 crores (approx. USD 23 million), and has no default in such repayments; (ii) a holding company (listed or unlisted) and a subsidiary company (listed or unlisted) where the transferor company(s) is not listed; (iii) one or more subsidiary company of a holding company with one or more other subsidiary company of the same holding company, where the transferor company is not listed; and (iv) merger of a transferor foreign holding company with its wholly owned subsidiary being the transferee company incorporated in India.

The basic process under Section 233 of the Companies Act involves approval of the scheme of arrangement/ amalgamation by shareholders holding at least 90% of the total number of shares and by majority of creditors representing 9/10th in value of the creditors or class of creditors of the respective companies.

In May 2023, Rule 25(5) and Rule 25(6) of the 2016 Rules were amended to introduce timelines for the Registrar of Companies (“**ROC**”) and Official Liquidator to provide objections or suggestions in relation to the scheme. Once the ROC and the Official Liquidator receive the scheme, they are required to object or provide suggestions to the Central Government within 30 days from the receipt of the scheme. Where objections/suggestions are not received within the 30 day period and the Central Government is of the view that the scheme is in the interest of the public or creditors, the Central Government is empowered to issue a confirmation order on such scheme within 15 days of the expiry of the 30 day period.

In addition, the proviso to amended Rule 25(5) of the 2016 Rules has introduced deemed approval in case the Central Government does not provide any confirmation order or file an application to the Tribunal within 60 days of the receipt of the scheme, then the Central Government will be deemed to have no objection to the scheme and be obliged to issue the confirmation order. Further, under the amended Rule 25(6) of the 2016 Rules, if the Central Government is of the view that the objections/suggestions received from the ROC and Official Liquidator (as mentioned above are not sustainable and that the scheme is in the interest of public or creditors, then it may issue the confirmation order within a period of 30 days from the expiry of 30 day period referred to above. However, if the Central Government believes that the scheme is not in the interest of the public or the creditors, (whether on the basis of such objections or otherwise), then it may file an application before the Tribunal, within 60 days of the receipt of the scheme, requesting the Tribunal to consider the scheme under section 232 of Companies Act and not under section 233.

Separately, Section 234 of the Companies Act read with Rule 25A of the 2016 Rules, provide for the mergers and amalgamations of foreign companies with Indian companies and *vice versa*.

The MCA amended Rule 25A of the 2016 Rules on 9

September 2024 (effective from 17 September 2024) to provide a fast-track route for reverse flip mergers (i.e., a merger between a foreign holding company with its Indian WOS). The application for such fast-track merger will need to be made by the Indian transferee entity to the Central Government.

Q2. Are any special rules applicable to schemes of arrangement involving listed companies?

Under the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“**SEBI Listing Regulations**”) and the master circular issued by SEBI dated 20 June 2023 (which subsumes the earlier circulars on the topic) (“**SEBI Circular**”), any scheme proposed to be filed by a listed company before the NCLT under Sections 230 to 232 or other relevant provisions of the Companies Act including section 66 of the Companies Act, needs to be filed before the designated stock exchange for approval before it is presented to the NCLT. However, schemes which provide for merger of a WOS with the parent company or for demerger/hive-off of a division of a WOS with its parent company do not require approval of the relevant stock exchanges. Such schemes are, however, required to be filed with relevant stock exchanges for the limited purpose of disclosures.

In addition, pursuant to the Securities Exchange Board of India (“**SEBI**”) circular dated 29 July 2022 (updated on 1 December 2022) read with circular dated 17th November 2022 and Chapter XII of the SEBI Master Circular dated 21st May, 2024, entities having debt securities listed on stock exchanges proposing to undertake a scheme of arrangement or amalgamation also need to obtain approval of the designated stock exchanges in accordance with the requirements prescribed under the circular prior to filing the scheme with the NCLT. SEBI has clarified that schemes involving a debt listed entity with its unlisted WOS will also benefit from the exemption of not seeking prior approval of the stock exchanges provided that the prescribed disclosures of the scheme are made on the stock exchanges and company websites.

The filings of the Scheme with the stock exchange(s) are required to be made electronically, with complete

application submitted within 15 (fifteen) working days from the date of approval of the proposed scheme by the Board of the listed entity. The designated stock exchange is mandated to process complete application within 7 (seven) working days. Further, stringent timelines have been provided with respect to: (a) forwarding the complete application by the designated stock exchange to SEBI, (b) raising queries with the company; (c) responding to the queries of the designated stock exchange by the company; (d) reviewing of the response from the company; and (e) coordinating with other stock exchange. After receipt of the observation letter from SEBI, the designated stock exchange further issues its observation letter to the Company.

The SEBI Listing Regulations read with the SEBI Circular also require listed companies to obtain fairness opinions and valuation reports (where issuance of fresh shares is involved as consideration under the arrangement) in relation to the scheme. In certain circumstances (for example, schemes between the listed company and its promoter/promoter group, schemes resulting in augmenting of shareholding of promoter/promoter group, schemes resulting in a decrease in the public shareholding by 5% or more or hive off of a substantial business undertaking of the listed company to an unlisted entity), the scheme would need to be approved by the majority of the non-interested/public shareholders of the listed company, which requirement is in addition to the thresholds for approval as set out under the Companies Act.

A scheme involving corporate debt restructuring also requires the obtaining of a valuation report in respect of the shares, assets and properties of the company from a registered valuer.

Where the transferor entity is listed and the transferee entity is unlisted, then the latter's shares may be listed without making an IPO subject to the satisfaction of various conditions, approaching SEBI and stock exchanges for approval and complying with all listing requirements. Such conditions would typically, inter alia, include, (i) that the listing will be in accordance with the terms of the scheme sanctioned by the NCLT; (ii) the percentage of shareholding of pre-scheme public shareholders of the transferor entity and the qualified institutional buyers of the transferee entity (i.e. the company seeking listing), in the post scheme shareholding pattern of the transferee entity on a fully diluted basis should not be less than 25%; (iii) the transferor entity should provide information with regard to the transferee entity in the format specified for abridged prospectus in the explanatory statement or notice sent to the shareholders while seeking their approval for the scheme and such disclosures should be certified by a SEBI registered merchant banker after carrying out the necessary due diligence. Further such disclosures must be submitted to the stock exchanges for uploading on their websites; and (iv) if the shareholders of the transferor company (i.e. the company which is listed) decide to opt out of the transferee company (i.e. the company seeking listing), an exit opportunity is required to be provided to such shareholders and a provision is required to be made

for payment of the value of shares held by them and other benefits in accordance with a pre-determined price formula, which cannot be less than the price specified by the regulations of SEBI.

It is pertinent to highlight that the shares of the transferee entity issued in lieu of the locked-in shares of the transferor entity are subjected to lock-in for the remaining period. In case of a scheme involving a hiving-off of a division of a listed entity into an unlisted entity or merger of a listed entity with an unlisted entity and its subsequent listing, the promoters' shares will be locked-in to the extent of 20% of the post-merger paid-up capital of the transferee company, for a period of three years from the date of listing of the shares of the transferee company. The balance of the entire pre-merger capital of the transferee company shall also be locked-in for a period of one year from the date of listing of the shares of the transferee company. However, no additional lock-in will be required if the post-scheme shareholding of the transferee entity is the same as that of the transferor entity. 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.

Q3. What are the advantages and disadvantages of following a restructuring scheme under the orders of the National Company Law Tribunal?

The following are the main advantages of adopting the route of a NCLT sanctioned scheme of arrangement:

- **Beneficial Tax Treatment:** 'Amalgamations' and 'demergers' are specifically defined under the Income Tax Act, 1961 ("**IT Act**") and if implemented in accordance with the specified conditions would, inter alia, provide the following benefits:
 - **Tax Neutrality:** Compliant amalgamations and demergers do not give rise to any capital gains tax incidence in the hands of the transferor/demerged company or its shareholders (who are issued shares in consideration for the merger or demerger), provided the resulting company is an

Indian company. Such tax neutrality is not extended to outbound mergers.

- **Carry forward and set-off of losses & unabsorbed depreciation to amalgamated / demerged company:** In case of amalgamation or demerger of companies carrying out specified businesses (such as banking, shipping, hotels, and industrial undertakings), subject to meeting specified conditions (such as relating to de-minimis period holding of assets and continuation of the specified business of the amalgamating/demerged company by the amalgamated/ resulting company), the accumulated tax losses of the amalgamating/demerged entity can

be carried forward and set-off against the income of the amalgamated/resulting company for a period of 8 years. Similarly, unabsorbed depreciation can be carried forward and set-off against the income of the amalgamated/ resulting company indefinitely.

- That said, the Finance Act 2025 has inserted amendments to the IT Act, to prevent evergreening of losses through amalgamations and demergers,.
- **Transfer of MAT Credit:** Any credit of minimum alternate taxes available in the hands of the amalgamating/demerged entity can be transferred and utilised by the amalgamated/ resulting company.
- **Other benefits:**
 - Companies can amortize one-fifth of the expenses relating to the amalgamation/ demerger over a period of 5 years from the date of amalgamation/demerger;
 - Deduction for bad debts of amalgamating company that are written-off by the amalgamated company can be claimed by the amalgamated company;
 - Generally, tax holidays (under section 80 of the IT Act, for instance) or other tax benefits available to the amalgamating/demerged company(ies) as of the date of amalgamation/ demerger will be available to the amalgamated/ resulting company.
- **Single window clearance:** Reduces multiplicity of approvals for matters separately provided for in the Companies Act.
- **Exemption from mandatory tender offer requirements:** Acquisition of shares under a scheme of arrangement/ amalgamation are exempt from the mandatory tender offer requirements under the SEBI Takeover Regulations subject to compliance with the conditions set out in the SEBI Takeover Regulations.
- **Transaction Costs:** In certain states within India, there

is a cap on the stamp duty charges that are payable for a transfer implemented under an NCLT sanctioned scheme of arrangement/amalgamation. However, in certain other states, transfer of properties would be stamped separately as a conveyance, unless a specific entry is made in the relevant state Stamp Act.

The main disadvantages in this process are:

- **Timelines:** The current time period for completion by the NCLT is typically 7 to 12 months and can be further delayed because of objections raised by statutory authorities, shareholders or creditors before the NCLT. However, objections by shareholders or creditors to a scheme can be made only by persons holding not less than 10% of the shareholding or having outstanding debt amounting to not less than 5% of the total outstanding debt in accordance with the latest audited financial statements of the company. Further, in the case of a listed company, obtaining clearances from the designated stock exchange (pre-filing) may have an impact on the overall timelines for sanction of the scheme;
- **Note - Faster timelines, reduced procedural steps and costs are available under the RD route in terms of Section 233 of the Companies Act:** Section 233 of the Companies Act read with Rule 25 of the 2016 Rules sets out a broadened scope of eligible companies, enabling a shorter period for sanctioning, which in practice is around 3-4 months.
- **Disclosures:** Particularly in the case of unlisted and listed companies undertaking court based restructurings, the nature of disclosures are akin to an abridged prospectus and may seem onerous; and
- The NCLT also has the power to modify the scheme prior to sanctioning it, which changes may not be commercially desirable. The parties, however, have the ability to withdraw the scheme and are not obliged to implement the scheme in the event that the modifications are not commercially feasible or acceptable.

Q4. What is the role of the National Company Law Tribunal when approving a scheme of restructuring?

The NCLT will not sanction a scheme merely because shareholders and creditors have accorded their consent to

it. When sanctioning the scheme, the NCLT is required to examine that:

- the scheme is fair, reasonable and not a tool to defeat the provisions of the law including payment of stamp duty or other taxes;
- the statutory provisions have been complied with;
- the scheme is backed up by the requisite majority vote or consents as required under the Companies Act;
- the concerned meetings had the relevant material for the shareholders or creditors to make an informed decision;
- the scheme is not patently unfair or grossly prejudicial to the shareholders or creditors; and
- the scheme is not violative of any provision of law or contrary to public policy.

Typically, the NCLT will not examine the commercial rationale behind the scheme, including valuation, and rely upon the expertise of the accountants who have issued the valuation and the merchant banker who has provided the fairness opinion.

Q5. How are classes of shareholders and creditors determined?

Under the Companies Act, companies are required to convene separate class meetings of shareholders and creditors to approve the scheme. It is now jurisprudentially settled that persons who have a commonality of interests, and to whom the company has offered the same

compromise and/or arrangement would be considered as persons within the same class. If persons are offered different rights and are subject to different terms within the same class, such persons would not be considered as being within the same class.

Q6. Are there any special provisions for schemes of arrangement in relation to banks?

Voluntary amalgamations between two banking companies are governed by the Banking Regulation Act, 1949 and are administered by the Reserve Bank of India ("RBI"). In brief, the process would be as follows:

- the draft scheme of amalgamation needs to be approved individually by the boards of directors of the two banking companies by a two-thirds majority of the total strength of the board of directors (and not just those present at the meeting);
- the scheme of amalgamation would then have to be approved by the shareholders of each banking company by a resolution passed by a majority in number representing two-thirds in value of the shareholders, present in person or by proxy, at a meeting called for that purpose;
- after the scheme of amalgamation is approved by the requisite majority of shareholders, it must be submitted to the RBI for its sanction, together with certain other information, including a valuation report (with a detailed computation), details of the price of the shares, where the amalgamated company is listed and such other information as the RBI may request; and
- in the event of the scheme being sanctioned by the RBI, a dissenting shareholder is entitled to make a claim on the concerned banking company with respect to the shares held by him, on the basis of their value as determined by the RBI when sanctioning the scheme.

Q7. What are the broad procedural requirements that need to be complied with in an NCLT based restructuring?

- The board of directors have to approve the scheme of the arrangement including consideration payable, whether in the form of cash or shares (i.e., consideration other than cash). The board of directors also have to approve the report explaining the effect of the scheme on each class of shareholders, key managerial personnel, promoters and non-promoter shareholders, laying out in particular, the share exchange ratio (if applicable), and specifying

any special valuation difficulties.

- Stock exchanges (in case of a listed company) need to accord their 'no-objection' to the filing of the scheme. A draft of the scheme of arrangement has to be submitted to the stock exchanges prior to the scheme being filed with the NCLT. However, schemes which provide for merger of a WOS with the parent company or for demerger/ hive-off of a division of a WOS with its parent company will not require approval of the relevant stock exchanges. Such schemes, however, need to be filed with relevant stock exchanges for the limited purpose of disclosures. In addition, entities having debt securities listed on stock exchanges proposing to undertake a scheme of arrangement or amalgamation also need to obtain approval of the designated stock exchanges prior to filing the scheme with the NCLT.
- The NCLT will direct that meetings of the various classes of shareholders and creditors be convened to approve the scheme. However, the NCLT may dispense with meeting of creditors, if creditors holding 90% value agree to the scheme by way of a consent affidavit. The NCLT in terms of its inherent powers may also dispense with the shareholder meeting if all shareholders consent in writing. Based on the facts of a particular case, the NCLT has also dispensed with class meetings in cases of arrangements between a holding company and its wholly-owned subsidiary.
- After the majority in number and three-fourth in value of the voting shareholders and / or creditors (in their respective class meetings) have approved the scheme (if dispensation of class meetings is not granted), the petition for sanction of the scheme is filed with the NCLT.
- Mandatory notification of the scheme is made to multiple regulatory authorities, including Central Government, income tax authorities, and relevant sectoral regulators. Such authorities are provided 30 days to make their representations on the proposed scheme, failing which, it is presumed that they have no representation to make.
- The sanction order of the NCLT must be filed with the ROC within 30 days of receipt of order from the NCLT. However, the notification of August 2019 of the Central Government permits companies upon filing of the sanction order with the ROC, to postpone the effectiveness of the Scheme in case further statutory approvals to the arrangement or conditions precedent set out in the scheme are forthcoming or yet to be completed.

Q8. Are cross border mergers allowed in India?

The merger of a foreign company into an Indian company and vice versa is permitted under Section 234 of the Companies Act, subject to prior approval of the RBI and provided that the foreign company is incorporated in territories notified by the Central Government for this purpose. Further, any cross-border merger under Section 234 will have to comply with the requirements as laid down in Sections 230 to 232 of the Companies Act (requirements applicable to domestic mergers). This includes procedural requirements such as filing an application before the NCLT, conducting meetings of shareholders/ creditors,

notification to statutory and income tax authorities, approvals from SEBI (for listed companies), other sectoral regulators etc. The RBI issued the Cross Border Regulations on 20 March 2018 which provide the framework for mergers, amalgamations and arrangements between Indian and foreign companies, covering both, inbound and outbound investments. Separately, as stated above, the process of reverse flip mergers has been allowed through the fast-track process set out in Section 233 of the Companies Act (refer to responses to Query 1 for additional information).



11. Litigation

Q1. What is the role of the Judiciary under the scheme of the Constitution of India?

Under the Indian Constitution, there is separation of powers. While the power to legislate and implement the law is vested in the legislature (at the federal and state levels) and the executive respectively, the higher judiciary (the Supreme Court and the High Courts) is constitutionally vested with the power to interpret the law. The Indian

judiciary functions independently of the legislature and the executive. The independence of the judiciary has been held to be part of the basic structure of the Indian Constitution which cannot be abrogated or taken away even by way of a constitutional amendment.

Q2. What is the system and hierarchy of courts in India?

The Indian Constitution provides for an integrated system of administration of justice, as opposed to separate hierarchies of federal and state judiciary prevalent in certain countries. The Supreme Court is the highest court of the land and has its seat in New Delhi, India's capital. Immediately subordinate to the Supreme Court in the judicial hierarchy are the High Courts of various states, which in turn exercise administrative and judicial control over the district or sessions courts constituted at the state

level. Further, subordinate to the district or sessions courts are the courts of the civil or sub-judges and magistrates of first or second class. The Indian Constitution also provides for the establishment of specialized tribunals for adjudicating certain categories of disputes or grievances, such as in the areas of public employment, employment in armed forces, telecom sector, consumer rights, airport operations and company matters.

Q3. What is the scheme of functioning of the Supreme Court of India?

Articles 124 to 147 of the Indian Constitution provide for the constitution, composition and jurisdiction of the Supreme Court. The Supreme Court has a sanctioned strength of 34 (thirty four) judges, who can sit singly or in benches of 2 (two) or more judges. Matters involving a substantial question of law as to the interpretation of the Constitution are heard by larger benches comprising 5 (five) or more judges (up to even 13 (thirteen) judges).

The Supreme Court possesses the power to exercise original jurisdiction, appellate jurisdiction (civil and criminal), writ jurisdiction and jurisdiction to grant special leave to appeal. Additionally, the Supreme Court exercises original jurisdiction in respect of any dispute (a) between

the Government of India (“GOI”) and one or more states; or (b) between the GOI and any state or states on one side and one or more other states on the other; or (c) between two or more states. The Supreme Court is also vested with the extraordinary jurisdiction to entertain writ petitions in cases involving violation of fundamental rights arising out of legislative or executive actions by issuing directions, orders, or writs (including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto, and certiorari). Further, under Article 143 of the Constitution, the President of India may refer to the Supreme Court, a question of law or fact which, the President of India thinks to be of public importance.

Q4. What is the scheme of functioning of the High Courts in various states?

Article 214 of the Indian Constitution provides for the establishment of a High Court for each state of the country (barring few exceptions, where a High Court exercises jurisdiction over more than one state). The High Courts are the highest courts in the judicial hierarchy of a state and exercise appellate, revisional and writ jurisdictions (civil and criminal). There are currently 25 (twenty five) High Courts in the country, established under Article 214 of the

Constitution of India. Certain High Courts, including the High Courts of Delhi, Bombay, Calcutta and Madras, have also been vested with original jurisdiction over civil and commercial matters above a specified pecuniary value. The High Courts are also vested with the constitutional power of superintendence over all courts and tribunals throughout the territories in relation to which they exercise jurisdiction.

Q5. What is the scheme of functioning of the District or Sessions and other subordinate courts in India?

The district, sessions and subordinate courts are the courts of first instance and their constitution or structure is determined by the respective states or union territories on the basis of population density and other myriad range of factors. Within the hierarchy of district, sessions and

subordinate courts, there are further sub-divisions for civil, criminal and revenue cases. The district / sessions courts additionally exercise appellate jurisdiction over the subordinate courts under certain statutes.

Q6. What is scheme of functioning of various tribunals in India?

Certain statutes exclude the jurisdiction of civil courts while also rendering specific subject matter non-arbitrable, instead conferring exclusive jurisdiction on statutorily constituted tribunals or quasi-judicial bodies. Consequently, such disputes may also fall outside the scope of arbitration. Some of the key tribunals and quasi-

judicial bodies that exercise exclusive jurisdiction over specific subject matters are discussed below:

- **National Company Law Tribunal (“NCLT”) and National Company Law Appellate Tribunal (“NCLAT”)**

The NCLT and NCLAT were constituted under the Indian Companies Act, 2013, replacing the erstwhile Company

Law Board with effect from 01 June 2016. The NCLT and NCLAT consolidate corporate jurisdiction under a single forum, eliminating the multiplicity of proceedings before bodies such as High Courts, the Company Law Board, the Board for Industrial and Financial Reconstruction, and the Appellate Authority for Industrial and Financial Reconstruction. The NCLT has exclusive jurisdiction over matters such as schemes of compromise, arrangement, amalgamation, and reconstruction, as well as insolvency and bankruptcy proceedings and shareholder disputes involving oppression and mismanagement. Appeals from NCLT's decisions lie before the NCLAT instead of the High Court. The Companies Act, 2013, expressly bars the jurisdiction of civil courts in matters within the purview of the NCLT and NCLAT. This framework not only streamlines corporate adjudication but also reduces the burden on High Courts and District Courts, allowing them to focus on other matters.

- **Debt Recovery Tribunals (“DRT”) and Debt Recovery Appellate Tribunals (“DRAT”)**

The DRT and DRAT were established under the Recovery of Debts and Bankruptcy Act, 1993 to facilitate the expeditious adjudication and recovery of debts owed to banks and financial institutions. The DRT possesses jurisdiction over applications submitted by or against defaulting borrowers, mortgagors, or guarantors concerning actions taken by secured creditors, such as banks and financial institutions. These actions are initiated under the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002, aimed at enforcing security interests, which include mortgages or charges on immovable properties provided for the repayment of loans. Appeals against orders of the DRT may be filed before the DRAT.

- **Competition Commission of India (“CCI”)**

The CCI, constituted under the Indian Competition Act, 2002, is responsible for regulating anti-competitive agreements, abuse of dominant positions, and merger control. The CCI has the authority to investigate complaints and issue orders prohibiting agreements it deems anti-competitive or constituting an abuse of dominance. Mergers and amalgamations that meet specified thresholds under the Indian Competition Act, 2002 must be mandatorily notified to the CCI, which has the power to modify transaction terms if they are likely to have an appreciable adverse effect on competition in India. It may also impose penalties on violating entities.

- **Telecom Regulatory Authority of India (“TRAI”) and Telecom Disputes Settlement and Appellate Tribunal (“TDSAT”)**

The TRAI was established to regulate telecom services, including the fixation and revision of tariffs, which were previously determined by the Central Government. TRAI issues directions, orders, and regulations covering various aspects, including tariffs, interconnection, and service quality. It also has the authority to issue binding directions to service providers. Appeals against TRAI's orders lie before the TDSAT, which also adjudicates disputes between licensors and licensees, between service providers, and between service providers and consumer groups.

Further, other adjudicatory bodies, including but not limited to the Securities Appellate Tribunal, the Real Estate Regulatory Authority, Consumer Dispute Forums and Commissions, the Central Electricity Regulatory Commission, the Appellate Tribunal for Electricity, and the National Green Tribunal, are endowed with exclusive jurisdiction. This jurisdiction is meticulously crafted to ensure expedited resolution and specialized adjudication of disputes, thereby addressing distinct domains of law with precision and expertise.

Q7. Do the courts in India follow the rule of precedents?

Article 141 of the Indian Constitution provides that the law declared by the Supreme Court shall be binding on all courts within the territory of India. The Indian legal system also recognizes the well-known doctrine of stare decisis and precedents, which renders a judgment or decision of a higher court binding on a sub-ordinate court. Only the legal

principle that forms the basis of a case's decision, the ratio decidendi, is considered binding. In contrast, other remarks made in the judgment, the obiter dicta, are typically context-specific and do not carry the same authoritative weight. Where there is a conflict between the decisions of two benches of the Supreme Court of different strengths,

the decision of the larger bench would prevail. Further, in case of conflict between judgments of coordinate benches of the Supreme Court, the bench noticing the conflict

ordinarily refers the matter to the Chief Justice of India for constitution of a larger bench.

Q8. What is the sanctity of commercial bargains in India?

The Indian legal system recognises and upholds the sanctity of contractual provisions, unless they are contrary to Indian law. Further, the courts rarely rewrite or ignore the express terms of a contract. Even the Indian law of evidence provides that when the terms of a contract have been reduced into writing, oral and other contemporaneous

evidence cannot be admitted to contradict or vary the terms of such a contract, except in certain narrow circumstances. Further, while specific performance of contracts is now the general rule in case of breach of contract (and not a mere discretionary relief), damages for breach can be claimed in addition or in the alternative.

Q9. What is the law of limitation for filing a case in India?

The Indian Limitation Act, 1963 ("**Limitation Act**") generally governs and provides for the limitation period for the filing of civil cases in India. Certain special enactments and statutes prescribe their own limitation period, which would override the Limitation Act. The period of limitation is computed from the date of accrual of the cause of action, or in the case of a continuing cause of action, from each such day on which it accrues. The limitation period for civil actions and suits for which no period of limitation is prescribed is generally 3 (three) years and for claims on tortious liability is generally 1 (one) year. Limitation for filing an appeal varies between 30 (thirty) days to 90 (ninety) days.

Under the Limitation Act, delay in filing a civil action cannot

be condoned by the courts if such action is otherwise time barred. However, many other statutes provide for their own period of limitation and in many instances, the courts are vested with the power to condone delay under certain specified circumstances, upon sufficient cause being shown.

In criminal cases, limitations are generally provided for in cases where an offence is punishable with imprisonment for up to three years. However, no limitation is provided for taking action on an offence punishable with imprisonment exceeding three years. Having said that, the delay in instituting a criminal case may be a relevant fact in certain circumstances.

Q10. Do courts have the power to grant interim relief(s) to parties?

In order to secure the ends of justice, courts in India have the power to grant interim relief(s), pending final adjudication of the main dispute. The grant of interim relief depends upon the discretion of the court. For grant of interim relief in civil cases, a court will have to be satisfied that: (1) there is a strong *prima facie* case in favour of the

applicant, (2) the balance of convenience is in favour of the applicant, and (3) irreparable loss would be caused to the applicant if interim relief is not granted. In case of disobedience of any injunction order(s), courts have the power to order attachment of property of the person guilty of disobedience, or to commit such person to civil prison.

Q11. Is there any different mechanism for resolution of commercial disputes?

The Indian Commercial Courts Act, 2015 ("**Commercial Courts Act**") is a path-breaking legislation enacted for

adjudication of commercial disputes. Commercial courts, commercial divisions and commercial appellate divisions

of High Courts have been designated in almost all parts of the country and judges with special expertise in commercial disputes preside over these courts. This act provides for strict timelines for various steps of litigation to ensure that the process of adjudication is expedited. Recent amendments in the Commercial Courts Act have also made it mandatory for the parties to undergo pre-institution mediation process in cases where no urgent interim relief is contemplated or sought.

As a step towards modernizing the legal framework and expediting the resolution of civil and commercial disputes, the Government of India has passed the Mediation Act, 2023. The main objective of this act is to promote and facilitate

mediation as a means of dispute resolution (commercial or otherwise), to ensure enforcement of mediated settlement agreements, and to provide for a body for registration of qualified mediators. This legislation marks a seminal shift by elevating mediation as a voluntary option for dispute resolution, prior to resorting to traditional court processes.

Indian judicial system is also making efforts to adopt and promote mediation as an efficacious dispute resolution remedy. On such recent attempts by the Delhi High Court is the 'Special Mediation Drive- Mediation for the Nation; aimed at promoting settling of pending cases in the District Courts and High Courts of India through mediation.'

Q12. Are Court fees payable in India?

In certain categories of cases, court fees are payable by a party filing a case before the court. The quantum of court fees payable may vary from state to state. Court fees are

generally determined on the basis of valuation of the claim raised by the party filing a case. Court fees are also payable on counter claims and set-offs.

Q13. Are actual litigation costs awarded to a winning litigant?

Usually, courts in India do not award actual litigation costs. Under certain statutes like the Indian Commercial Courts Act, 2015, the courts are vested with the power to award costs where claims or defences are found to be vexatious

or frivolous. The Indian Arbitration and Conciliation Act, 1996 ("**Arbitration Act**") also allows arbitral tribunals to award reasonable costs to the successful party.

Q14. How are judgments or decrees enforced in India?

In respect of civil cases, the Code of Civil Procedure, 1908 ("**CPC**") provides the mode and manner of execution of decrees. In case of disobedience of a decree, the executing courts have the power to order attachment and sale of

property and arrest of a judgment debtor, amongst others. Further, in certain cases, the courts have also invoked contempt jurisdiction as against errant parties where solemn undertakings given before a court have been breached.

Q15. How are foreign judgments enforced in India?

Section 44A of the CPC permits certain classes of foreign decrees passed by a superior court of any reciprocating territory (as notified by the Central Government) to be executed in India as if the said decree has been passed by a court in India, subject to certain specified conditions. Where a foreign decree or judgment, under which a sum of money is payable, has been rendered by a superior court in

any country or territory outside India which the GOI 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 a court in India. Various countries including the United Kingdom, UAE and the Republic of Singapore have been declared by the GOI to be reciprocating territories. Under Section 44A of the CPC, where

a 'certified copy of decree' of any of the superior courts of any reciprocating territory has been filed in a district court, the decree may be executed in India as if it had been passed by the district court. For proceeding with the execution, the certified copy of the decree shall be filed along with a 'certificate' from such superior court stating the extent, if any, to which the decree has been satisfied or adjusted. Such certificate shall be deemed as the conclusive proof of the extent of such satisfaction or adjustment.

In case of a judgment of a court in a jurisdiction which is not a reciprocating territory (for example, Courts in United States of America), a fresh suit has to be filed upon the foreign judgment instead of the original cause of action and in such a case, the foreign judgment will merely have evidentiary value. Such a suit must be filed in India within 3 (three) years from the date of the judgment in the same manner as any other suit filed to enforce a civil liability in India.

Section 13 of the CPC provides that a foreign judgment may operate as *res judicata* by being conclusive with respect to any matter adjudicated upon thereby (which does not include the reasons laid down in the foreign judgment). However, this shall not be applicable where:

- the judgment has not been pronounced by a court of competent jurisdiction;
- the judgment has not been given on the merits of the case;
- 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;
- the proceedings in which the judgment was obtained are opposed to natural justice;
- the judgment has been obtained by fraud; and
- the judgement sustains a claim founded on a breach of any law in force in India.

Q16. Do the courts in India have the power to punish for contempt of court?

A contempt of court action can be initiated if a party fails to comply with an order or direction of a court or otherwise tries to lower the sanctity of the court or for breach of an undertaking given to the court. Article 129 of the Indian Constitution vests the power with the Supreme Court to punish for its contempt. Similarly, Article 215 of the Indian Constitution recognizes the power of the High Court to

punish for its contempt. Further, Section 10 of the Contempt of Courts Act, 1971 confers the power on the High Courts to exercise the same jurisdiction, powers and authority in respect of contempt of the courts subordinate to it. The Supreme Court and the High Court can initiate contempt of court action either on a motion filed by a party or *suo motu*, i.e. of its own.

Q17. What are some of the recent significant judgments aimed at promotion of ease of doing business in India?

The Supreme Court and the High Courts have recently passed some noteworthy judgments which accord primacy to the contractual bargain between commercial parties and promote the ease of doing business in India. Some illustrative judgments are as under:

- **Gayatri Balasamy v. ISG Novasoft Technologies Ltd.**¹: In this landmark decision, a Constitution Bench of the Supreme Court revisited the contours of judicial review of arbitral awards under Sections 34 and 37 of the Arbitration Act. The Court held that while finality of arbitral awards is central to the scheme of the Act,

courts have a narrow, carefully circumscribed power to modify an arbitral award in exceptional circumstances where the award is unsustainable but does not require setting aside. Modification under Section 34 of the Arbitration Act could be exercised in the following circumstances enumerated: (i) by severing the invalid portion of a severable award; (ii) by correcting any clerical, computational, or typographical errors that appear erroneous on the face of the record; (iii) by modifying the post-award interest in certain circumstances; and (iv) by exercising great care and

¹ 2025 SCC OnLine 986

caution while utilising the powers under Article 142 of the Constitution, within its constitutional limits. The ruling significantly enhances enforcement certainty for commercial parties by reducing the risk of protracted post-award litigation and by preventing unnecessary remands or fresh arbitrations.

- **ASF Buildtech Private Limited v. Shapoorji Pallonji & Company Private Limited²:** The Supreme Court held that an arbitral tribunal has the power to implead non-signatories to arbitration proceedings on its own, even if those non-signatories were not part of the original referral under Section 11 of the Arbitration Act or did not receive a Section 21 notice. The Court reiterated that where the conduct of a non-signatory shows a clear intention to be bound by the arbitration agreement (such as involvement in contract performance, negotiations, or composite transactions), the tribunal may include them under Section 16 of the Arbitration Act. It reaffirmed that tribunals, and not just courts, are the preferred forum to decide party-joinder issues, applying the doctrine of *kompetenz-kompetenz* and the principles in *Cox & Kings Ltd. v. SAP India Pvt. Ltd.* regarding the “Group of Companies” doctrine. This decision strengthens tribunal autonomy, reduces procedural hurdles, and improves the ability to resolve complex multi-party disputes in a single arbitration, thereby enhancing contractual certainty and efficiency in commercial dispute resolution.
- **BPL Limited vs. Morgan Securities³:** The Supreme Court held that the rate of interest agreed upon in the contract cannot be reduced under Section 31(7) of the Arbitration Act on the grounds that the awarded interest was unconscionable and contrary to public policy. Emphasizing on “party autonomy” it was held that commercial contracts, being products of negotiation between parties with complete understanding of their obligations, must be interpreted to give effect to their commercial intent rather than be invalidated on broad notions of public policy. The Court held that the import
- of the words / terms mutually agreed upon cannot be subjected to judicial interference unless proven to be arbitrary or discriminatory.
- **Vodafone Idea Ltd. v. Union of India⁴:** The Supreme Court permitted the Union Government to re-evaluate aspects of the AGR (Adjusted Gross Revenue) dues payable by Vodafone Idea, observing that economic policy determination, particularly those involving public interest and complex, long-running fiscal structures, must be granted appropriate consideration. Rather than enforcing the earlier demand mechanically, the Court allowed the Union to reformulate or reconsider its position, signalling a flexible and pragmatic approach to commercial regulatory disputes. The orders emphasise that judicial interference in specialised economic policy matters must remain minimal unless there is manifest arbitrariness or illegality.
- **M/S Patil Automation Pvt. Ltd. v. Rakheja Engineers Pvt Ltd⁵:** In the said judgment, the Supreme Court, while dealing with the issue of whether Section 12A of the Indian Commercial Courts Act, 2015 is mandatory in nature, held that the requirement of pre-litigation mediation is mandatory because of the usage of the word “shall” appearing in Section 12A and that non-compliance with the said requirement shall result in rejection of plaints. The Supreme Court also noted that the Commercial Courts Act, 2015 was enacted to promote speedy settlement of commercial disputes and to facilitate ease of doing business and that, the mandatory nature of Section 12A was in line with this objective.
- **Inox Renewables Ltd. v. Jayesh Electricals Ltd⁶:** The Supreme Court while upholding the supremacy of party autonomy held that it is open for parties to an arbitration agreement to change the seat/venue of arbitration by mutual agreement. Further, such an agreement, even if not in writing, would be considered valid if it is recorded in the award and not challenged by either party.

2 2025 SCC OnLine SC 1016

3 2025 INSC 1380

4 Order dated 27 October 2025, WP (C) No. 882 OF 2025

5 (2022) 10 SCC 1

6 (2023) 3 SCC 73

- **Global Music Junction Pvt. Ltd. v. Shatrughan Kumar Aka Khesari Lal Yadav and Others**⁷: The Delhi High Court observed that the 2018 amendments in the Indian Specific Relief Act, 1963 deleted the provision which prescribed that those contracts for the non-performance of which compensation in money was an adequate relief may not be specifically enforced. Consequently, the amendment act does away with the primacy given to damages as a relief over specific performance and has changed the nature of specific performance from an equitable, discretionary remedy to a statutory remedy. The Delhi High Court observed that the intention behind this amendment was to promote 'ease of doing business' and to provide an effective remedy to parties who have suffered loss due to breach or non-fulfilment of a contract as also to ensure that the non-defaulting party can obtain due performance of the contract.
- **Department of Transport, GNCTD v. Star Bus Services Pvt. Ltd**⁸: The Delhi High Court observed that the underlying principle and policy of law that arbitration proceedings should not be unduly prolonged and delayed, remains intact and embodied. The Delhi High Court held that awards passed after an inordinate, substantial and unexplained delay would be "*contrary to justice and would defeat justice*" and would be in conflict with the public policy of India and would be amenable to challenge. The court further observed that a large time gap between hearing of the oral submissions/submission of pleadings and rendering the decision would, in effect, debilitate the purpose of resorting to arbitration for expeditious adjudication of the disputes.

7 2023 SCC OnLine Del 5479

8 2023 SCC OnLine Del 2980



12. Arbitration

Q1. How is commercial arbitration used in India and what are the recent trends?

The increase in international trade and vulnerable economic norms have played the role of a catalyst in growth of cross border commercial disputes. Given the need for an efficient dispute resolution mechanism, international commercial arbitration has emerged as the preferred option for resolving cross-border commercial disputes and preserving business relationships through a speedy resolution mechanism. India is actively taking steps to make the country a hub for international arbitration and move up the ladder in the ease of doing business index. The Draft Arbitration and Conciliation (Amendment) Bill, 2024 introduced in late 2024, seeks to promote institutional arbitration, further reduce

court intervention, and facilitate the timely conclusion of arbitration proceedings in India. It also contemplates a statutory recognition of emergency arbitrators, an optional appellate arbitral tribunal for challenging arbitral awards, defines timelines for court referrals (including a 60 days' timeline for disposing applications under Section 8 of the Arbitration and Conciliation Act, 1996 (**Arbitration Act**)), and provides for mandatory award particulars aimed at narrowing challenges to arbitration awards. Further, the conduct of arbitral proceedings by audio-video means has facilitated the increased use of both India-seated and foreign-seated arbitrations by Indian parties.

Q2. What is the law applicable to arbitration in India?

The Arbitration and Conciliation Act, 1996 (**Arbitration Act**) based on the UNCITRAL Model Law, is the key law governing arbitration in India. The Arbitration Act has been divided into four parts:

- Part I sets out general provisions on arbitrations seated in India. Certain provisions of Part I are applicable to
- arbitrations seated outside India as well: Section 9 (interim measures by court etc.), Section 27 (court assistance in taking evidence), Section 37 (1)(a) and Section 37 (3) (appealable orders);
- Part II deals with the enforcement of foreign awards under the Convention on the Recognition and

Enforcement of Foreign Arbitral Awards, 1958 ('New York Convention') or the Geneva Convention on the Execution of Foreign Arbitral Awards, 1927 (Geneva Convention);

- Part III deals with conciliation [amended by the

Mediation Act, 2023 ('Mediation Act') as discussed below]; and

- Part IV sets out certain supplementary provisions.

Q3. What is conciliation and how does it differ from arbitration?

Conciliation is a method of resolving a dispute, wherein an independent person, (i.e., a conciliator, helps the parties to arrive at a negotiated amicable settlement). It is a process where parties try to settle their dispute with help from a neutral conciliator. He assists them but does not make any decision for them.

The concept of conciliation is included in the definition of mediation as per the Mediation Act. Section 3(h) of the Mediation Act defines mediation to include a process, whether referred to by the expression mediation, pre-litigation mediation, online mediation, community mediation, conciliation or an expression of similar import, whereby parties attempt to reach an amicable settlement of their dispute with the assistance of a third person referred to as mediator, who does not have the authority to impose a settlement upon the parties to the dispute.

As per the Mediation Act, any provision, in any other enactment for the time being in force, providing for resolution of disputes through conciliation in accordance with the provisions of Arbitration Act, shall be construed as reference to mediation as provided under the Mediation

Act; and any conciliation proceeding initiated in pursuance of Part II of the Arbitration Act as in force before the commencement of the Mediation Act, shall be continued as such, as if the Mediation Act, had not been enacted.

Conciliation is different from arbitration as in an arbitration, the appointed arbitrator arrives at a decision which is binding on both parties. Arbitration is a more formal and elaborate procedure than conciliation. The arbitrator or the arbitral tribunal hears both sides, takes evidence, holds meetings, and makes a final decision called an arbitral award. The award is binding between the parties and can be enforced by courts like a court order. It can be challenged only on limited grounds provided under Section 34 of the Arbitration Act. Courts can enforce arbitration agreements by referring parties to arbitration, however, they have no power to compel or refer parties to conciliation. Further, conciliation is a voluntary process by which the conciliator can only assist the parties, and the parties must agree to a settlement agreement of their own volition, which agreement, which would then have to be enforced.

Q4. What is an international commercial arbitration?

For the purpose of Part I of the Arbitration Act, an 'international commercial arbitration' is defined in a party-centric manner in Section 2(1)(f) of the Arbitration Act, as an arbitration where at least one of the parties is:

- an individual who is a national of, or habitually resident in, any country other than India;
- a body corporate which is incorporated in any country other than India;
- an association or a body of individuals whose central

management and control is exercised in any country other than India; or

- the government of a foreign country.

However, for the purpose of Part II, an 'international commercial arbitration' is party-neutral and place-centric, and means an arbitration which takes place between two parties outside India, in a New York Convention country [PASL Wind Solutions Pvt. Ltd. v. GE Power Conversion India (2021)].

Q5. Can a company incorporated in India but controlled by a foreign company or entity be considered a foreign party for the purpose of determining whether an arbitration is an international commercial arbitration?

The place of incorporation is the only deciding factor in determining the nationality of a company. A company incorporated in India but whose central management and control is exercised outside India, will not be considered to be a foreign party for the purpose of determining whether an

arbitration is an international commercial arbitration. This is because foreign control does not alter the nationality of an Indian-incorporated company for the purpose of international commercial arbitration [TDM Infrastructure Private Limited v. UE Development India Private Limited (2008)].

Q6. What kind of foreign arbitral awards can be enforced in India?

Part II of the Arbitration Act deals with enforcement of foreign arbitral awards, i.e., arbitral awards rendered outside India which are considered as commercial under the law in force in India. In order to be enforceable under the Arbitration Act, the award has to be made in a country which is: (a) a party to the New York Convention or the Geneva Convention, and (b) has been notified in the official gazette of India as a reciprocating territory. Once the court is satisfied that the award is enforceable and it rejects any objections that can be made to the enforcement of the award, the award shall be deemed to be a decree of an Indian court and enforced accordingly. Awards rendered in arbitrations between two Indian parties at

a foreign seat are also foreign awards, and are enforceable in India under Part II of the Arbitration Act [PASIL Wind Solutions Pvt. Ltd. v. GE Power Conversion India (2021)].

When it comes to payment under the foreign awards, recently in *GPE (India) Ltd. v. Twarit Consultancy Services Private Limited (Order dated 26 August 2025 in SLP (C) No. 6856/2023)* it was clarified that parties do not need to obtain prior approval from the Reserve Bank of India before making payments in satisfaction of a foreign arbitral award. Such payments are treated as permissible current account transactions under the foreign exchange regulatory framework.

Q7. What are the kinds of objections that can be made to the enforcement of foreign arbitral awards? What is the extent of court interference in enforcement of foreign awards?

Indian courts have time and again upheld a high threshold for refusal to enforce a foreign award. Sections 48 and 57 of the Arbitration Act enumerates the grounds of objections which a party may take against the enforcement of a foreign award passed under the New York Convention or the Geneva Convention, respectively. Under Section 48(1), enforcement of the foreign award may be refused, at the request of the party against whom it is invoked if a party was under some incapacity; the arbitration agreement was not valid under the applicable law; proper notice was not given to the party for appointment of an arbitrator or of the arbitral proceedings; the party was unable to present its case; the award passed was out of the scope of the submissions to arbitration; the composition of the arbitral tribunal or the arbitral procedure was not according to the agreement or failing such agreement, was not in accordance with the law of the court where the arbitration took place; or if the award has not yet become

binding on the parties; or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

Further, the sections provide two additional grounds when enforcement of an award may be refused if the Court finds that, (a) the subject-matter is not capable of settlement by arbitration; or (b) if the award is in conflict with the public policy of India. An award is said to be in conflict with public policy of India only in limited circumstances. These circumstances are: the making of the award was induced or affected by fraud or corruption, or was in violation of Section 75 or Section 81 of the Arbitration Act (which deal with confidentiality of and admissibility of evidence relating to conciliation proceedings respectively); the award is in contravention with the fundamental policy of Indian law; or the award is in conflict with the most basic notions of morality or justice. It

has been clarified that, a contravention of the fundamental policy of Indian law shall not entail a review on the merits of the dispute. An enforcement court cannot correct an award, review the award on merits, or set aside the award even if any of the conditions in Section 48 are made out because setting aside of the award falls solely in the domain of the seat court [Government of India v. Vedanta (2020)].

The enforcement of foreign awards may be refused on grounds of arbitral bias only in exceptional circumstances, and the objections to enforcement under Section 48 of the Arbitration Act, must be narrowly construed. [Avitel Post Studios Limited & Ors. v. HSBC PI Holdings (Mauritius) Limited (2024)].

Notably, courts may exercise their discretion to enforce a foreign award even where some of the grounds to refuse enforcement are made out. However, this discretion can only be exercised where the grounds are linked to party interest alone; for example, where a party has been unable to present

its case, and which right has been abandoned or waived by the party in question, or whether no prejudice has been caused to the party even if such ground is made out. The discretion cannot, however, be exercised in cases where the enforcement of the award is contrary to the public policy of India, or the arbitration was conducted without jurisdiction. [Vijay Karia & Ors. v. Prysmian Cavi e Sistemi S.r.l.]

The Supreme Court of India has reinforced the fact that the 'public policy' ground for challenge cannot be used as a back-door to reopen the merits of a matter or case management by the tribunal, but is limited to the narrow import of whether enforcement of the award violates the 'fundamental policy of Indian law'. The Supreme Court has also stressed that bona fide challenges to arbitral appointments have to be made in a timely fashion and cannot be used to strategically delay the enforcement process. [Avitel Post Studios Ltd. v. HSBC PI Holdings (Mauritius) Ltd.,(2024)].

Q8. What is the difference between an 'ad hoc arbitration' and an institutional arbitration?

Section 19 of the Arbitration Act provides that the parties are free to agree on the procedure to be followed by the arbitral tribunal in conduct of the arbitral proceedings. The two main ways in which parties determine the procedure is by either appointing an institution to administer the arbitration proceedings or making their own arrangements in an 'ad hoc' manner.

An 'ad hoc' arbitration is a proceeding that is not administered by any institution and requires the parties to make their own arrangements for selection of arbitrators and for designation of rules, applicable law, procedures and administrative support.

An institutional arbitration is one in which a specialized institution with a permanent character intervenes and assumes the functions of aiding and administering the arbitral process, as provided by the rules of that institution. It promotes procedural efficiency and good case management. The 2019 Amendment seeks to establish the Arbitration Council of India ('ACI') and one of objectives of the ACI is to promote institutional arbitration in India. The ACI will also be

responsible to grade and strengthen the arbitral institutions in India.

In practice, ad hoc arbitration is administered by the parties and the tribunal, and the parties are responsible for managing procedure and logistics. On the other hand, institutional arbitration is run by institution's rules with professional administrative assist, which usually speeds up the process and keeps the court out of appointment and procedural issues.

Examples of arbitral institutions include the International Chamber of Commerce ('ICC'), the London Court of International Arbitration ('LCIA'), the Singapore International Arbitration Centre ('SIAC'), the Delhi International Arbitration Centre ('DIAC'), the Mumbai Centre For International Arbitration ('MCIA'), the International Arbitration and Mediation Centre, Hyderabad ('IAMC'), the Indian Council of Arbitration ('ICA'), the India International Arbitration Centre ('IIAC'), the Nani Palkhivala Arbitration Centre ('NPAC') and the International Centre for Alternative Dispute Resolution ('ICDAR').

Q9. At what point are arbitral proceedings deemed to commence?

A party to an arbitration agreement which intends to initiate arbitration has to send a notice to the other party against which the proceedings are to be commenced. Section 21 of the Arbitration Act provides that unless otherwise agreed by the parties, the arbitral proceedings commence on the day on which a request for that dispute to be referred to arbitration is received by the respondent.

In an institutional arbitration, the notice is usually given to the relevant arbitration institution in the form of a “request of arbitration” or a similar document. The institution thereafter notifies the respondent(s) [Redfern and Hunter (2023)]. When parties have agreed for an institutional arbitration in the arbitration agreement, the invocation of notice should be in accordance with the rules of the institution.

Q10. What is the process of appointment and composition of the arbitral tribunal?

Section 10 of the Arbitration Act provides that the parties to an arbitration agreement are free to determine the number of arbitrators provided that such number is not an even number, and upon their failure to do so, the arbitral tribunal should consist of a sole arbitrator. Further, Section 11 of the Arbitration Act provides that the parties are free to agree on the procedure for appointing arbitrators. However, in the context of arbitral appointment clauses in case of public-private contracts, a clause that allows a party to unilaterally appoint a sole arbitrator raises concerns about the party equality, and independence and impartiality of the arbitrator, making such clauses liable to be struck down. [Perkins Eastman Architects DPC v HSCC (India) Ltd. (2019)] Further, the Supreme Court also clarified that mandating a party to choose an arbitrator from a panel of arbitrators curated by the other party is also against the principle of equal treatment and in violation of Article 14 of the Constitution of India. [Central Organization for Railway Electrification v. ECI SPIC SMO MCML (2024)]. Additionally, the Supreme Court has clarified that any inoperability of the procedure of appointment of arbitrators due to subsequent changes in statutory provisions does not render the entire arbitration mechanism nugatory. Instead, in such cases, parties are entitled to seek appointment of an arbitrator by filing an application under Section 11(6) of the Arbitration Act before the relevant court. The Supreme Court also reinforced the principle that arbitration clauses should be interpreted purposively and not literally so as to give effect to the parties’ intention to proceed in arbitration rather than to defeat arbitration. [Offshore Infrastructures Limited v. Bharat Petroleum Corporation (2025)].

If the parties fail to agree on a procedure, the appointment process prescribed under Section 11(3) applies and each party is required to appoint an arbitrator, following which the two party-appointed arbitrators will appoint the presiding arbitrator. In international commercial arbitrations where the parties fail to appoint an arbitrator within 30 days from the receipt of the request to do so, or the two appointed arbitrators fail to agree on the third arbitrator within 30 days from the date of their appointment, either party may request an arbitral institution designated by the Supreme Court to make the appointment. In the case of domestic arbitrations, any arbitral institution designated by the High Court will have the power to make the appointment upon a request made by either party.

Similarly, in an arbitration with a sole arbitrator, if the parties fail to mutually agree on a sole arbitrator within 30 days from the receipt of request from the other party, the arbitral institution designated by the Supreme Court or the High Court, as applicable, will appoint the sole arbitrator upon a request (made by way of filing an application) made by either party.

Moreover, in an institutional arbitration, a procedure for appointment is usually prescribed by the rules of the relevant institution. Section 11(13) of the Arbitration Act, as amended by the 2019 Amendment Act, also prescribes that an application for appointment of an arbitrator must be disposed of by the arbitral institution within a period of thirty days from the date of service of notice on the opposite

party. Once an unconditional withdrawal of an application has been made for the appointment of an arbitrator under Section 11(6) of the Arbitration Act, another application

cannot subsequently be made for the appointment of an arbitrator under the same cause of action [M/S HPCL Bio-Fuels Ltd. versus M/S Shahaji Bhanudas Bhad (2024)]

Q11. Does the law of limitation apply to arbitration proceedings?

In accordance with Section 43 of the Arbitration Act, the Limitation Act, 1963 ('Limitation Act') applies to arbitrations as it applies to proceedings in court.

In recent judgments, the Supreme Court has clarified that under Article 137 of the Limitation Act, the period of limitation for filing a petition for the enforcement of a foreign award would be 3 years from when the right to apply accrues [Government of India v. Vedanta (2020)], and for a

Section 11 application would be three years from either: (a) the date of refusal of appointment of an arbitrator; or (b) the expiry of 30 days from the date of issuance of the notice of arbitration, whichever is earlier [BSNL v. Nortel Networks (2021)]. The time spent in bona fide proceedings in the wrong forum will be excluded when calculating the limitation period, thereby extending the applicability of the principle under Section 14 of the Limitation Act to the Arbitration Act. [Kirpal Singh v. Government of India (2024)].

Q12. When is the arbitral tribunal deemed to have entered upon the reference?

Under the explanation to Section 29-A of the Arbitration Act, the arbitral tribunal is deemed to have entered upon the reference on the day on which the sole arbitrator, or all

the arbitrators, as the case may be, have received notice, in writing, of their appointment.

Q13. What are the requirements for an arbitration agreement to be enforceable under the Arbitration Act?

Section 7 of the Arbitration Act enumerates the requisites for a valid arbitration agreement. It provides that the parties are required to agree (in writing) to submit to arbitration all or certain disputes which have arisen or which may arise between them. The agreement will only be considered to be in the form of writing if it is contained in:

- A document signed by the parties;
- Any form of communication which provides a record of the agreement (such as an exchange of letters, telex, telegrams or other means of telecommunication); or
- An exchange of statement of claims and defence in which the existence of the agreement is alleged by one and not denied by the other.

In N.N. Global Mercantile (P) Ltd. v. Indo Unique Flame Ltd. (2024), a seven-judge bench of the Supreme Court considered the issue of whether that an arbitration agreement or clause would be enforceable under Indian

contract law, if the instrument containing the arbitration agreement is not stamped in terms of the Indian Stamp Act, 1899 ('Stamp Act'). It was held that an instrument which is unstamped or inadequately stamped, while being inadmissible in evidence till the requisite stamp duty is paid, would not render the agreements void, void ab initio or unenforceable. Accordingly, an arbitration can continue while this defect is being cured.

The Supreme Court has also recently clarified that arbitration agreements which state that disputes "may" be sought to be resolved through arbitration do not satisfy Section 7 because such agreements are merely permissive and contingent on the future mutual consent of the parties [BGM and M-RPL-JMCT (JV) v. Eastern Coalfields Limited (2025)]. Arbitration agreements must therefore show clear, unequivocal and binding intent to arbitrate, in order to be valid and enforceable.

Q14. What procedural rules are arbitrators bound by? Can the parties determine the procedural rules that apply? Does the law provide any default rules governing procedure?

Parties can determine the procedural rules to govern the arbitration. If no such procedure is agreed upon, the tribunal may conduct the proceedings in such manner as it considers appropriate. However, parties cannot agree to a procedure in contravention of the mandatory provisions of Indian law. If it is an institutional arbitration, the arbitrator will also be bound by the procedural rules of the arbitral institution. In any event, the procedures applicable to court proceedings and admissibility of evidence in court proceedings do not apply to an arbitration. That said, it is well established that arbitral tribunals may draw guidance

from fundamental principles underlying the Code of Civil Procedure, 1908 and the Bharatiya Sakshya Adhinyam, 2023 (or the erstwhile Indian Evidence Act, 1872).

As per the second proviso to Section 24(1), the arbitral tribunal is required to, as far as possible, hold oral hearings for the presentation of evidence or for oral argument on a day-to-day basis, and not grant adjournments unless sufficient cause is provided. The tribunal may also impose exemplary costs on the party seeking frivolous adjournments.

Q15. What powers does a court have to intervene and assist arbitration proceedings?

The Arbitration Act provides in Section 5 that in matters governed by Part I of the Arbitration Act, no judicial authority shall intervene except where so provided in Part I. Part I of the Arbitration Act gives the courts power to intervene and assist arbitration proceedings only in limited situations:

- Under Section 8 of the Arbitration Act to refer the parties to arbitration;
- Under Section 9 of the Arbitration Act, a party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced, apply to a Court for interim measures. However, according to Section 9(3), once the arbitral tribunal has been constituted, the Court shall not entertain an application for interim measures, unless the Court finds that circumstances exist which may not render the remedy provided under Section 17 (interim measures ordered by arbitral tribunal) efficacious. [ArcelorMittal Nippon Steel (India) Ltd. v. Essar Bulk Terminal Ltd. (2022)] Section 9(2) also makes it mandatory for parties to commence arbitration proceedings within 90 days (or within such further time as the court may determine) if the court passes an order for any interim measure of protection;
- Under Section 11 of the Arbitration Act for appointment if the parties are unable to appoint an arbitrator on their own.
- The courts can also decide on termination of the

mandate of the arbitrator if he becomes *de jure* or *de facto* unable to perform his functions or for other reasons fails to act without undue delay under Section 14 of the Arbitration Act;

- During the arbitration proceedings, the parties can take the court's assistance in taking evidence by way of production of documents and/or examination of witnesses under Section 27 of the Arbitration Act;
- Once the proceedings are over, the parties can file applications to set aside the award in court under Section 34 of the Arbitration Act. Any order of the court whether setting aside or refusing to set aside the award can be appealed under Section 37 of the Arbitration Act. Once the objections to the award are dismissed, the court enforces the award in the same manner as a decree of the court; and
- As noted above, the provisions of Section 9 (interim measures by court etc.), Section 27 (court assistance in taking evidence), Section 37 (1)(a) and Section 37 (3) (appealable orders) are also available in international commercial arbitrations seated outside India.

Under Part II of the Arbitration Act, courts have power to intervene and assist arbitration proceedings only in the following situations:

- Under Sections 45 and 54 of the Arbitration Act, the court can refer parties to arbitration;

- Under Sections 49 and 58 of the Arbitration Act, the court may enforce a foreign arbitral award as if it were a decree of the court. Also, the court may refuse to enforce an award as per Sections 48 and 57 of the Arbitration Act respectively; and
- Under Sections 50 and 59 of the Arbitration Act, the court can hear appeals from the orders of a court

refusing to refer parties to arbitration under Sections 45 and 54 respectively, or refusing to enforce a foreign award under Sections 48 and 57 of the Arbitration Act respectively. Pertinently, no appeal would lie from a decision enforcing a foreign award or referring parties to arbitration under Section 45.

Q16. What is the risk of a court intervening to frustrate an arbitration seated in its jurisdiction? Can a party delay proceedings by frequent court applications?

The parties may approach the court at different stages of the proceedings, as explained above. However, the situations in which the court can be approached during the arbitration proceedings are limited. As the scope of court intervention

is limited, the risk of delaying the arbitration proceedings by frequent court applications is low. Courts have also begun to increasingly respond to frivolous applications or delay tactics with exemplary costs.

Q17. What interim remedies are available from an arbitral tribunal?

Section 17 of the Arbitration Act empowers the arbitral tribunal to grant interim measures necessary to preserve the subject matter of the dispute. Interim measures granted by the arbitral tribunal may relate to securing the amount in dispute in the arbitration, the detention, preservation or inspection of any property or thing which is the subject matter of the dispute in the arbitration, etc. Orders of the arbitral tribunal granting interim measures are enforceable as if they are orders of the court. Breach of an arbitral tribunal's order could result in contempt proceedings. [Alka Chandewar v. Shamshul Ishar Khan (2017)]

The judgment of the Supreme Court in Amazon.com NV Investment Holdings LLC v. Future Retail Limited (2021) also upheld the right of parties to India-seated arbitrations to approach the tribunal for emergency relief under Section 17(1). Such emergency awards are

enforceable under Section 17(2) by the courts.

The High Court of Calcutta in Uphealth Holdings INC. v. Glocal Healthcare Systems (P) Ltd. (2023) has held that the Arbitration Act does not provide for enforcement of orders passed by an emergency arbitrator ('EA') in cases of a foreign seated arbitration, and that there is no *pari materia* provision under Part II of the Arbitration Act similar to Section 17(2) of the Arbitration Act. However, the High Court also held that a foreign-seated EA's order is an additional factor which can be taken into account while considering an application for grant of interim relief by the Court under Section 9 of the Arbitration Act. Where, however, a party has been unsuccessful in obtaining relief from an emergency arbitrator in a foreign seated tribunal, it cannot take a second bite at the cherry and seek the same relief from Indian courts under Section 9. [Ashwani Minda & Anr. v. U-Shin Ltd. & Anr. (2020)]

Q18. What remedies are available where a party starts court proceedings in breach of an arbitration agreement or initiates arbitration in breach of a valid jurisdiction clause?

If one of the parties to an arbitration agreement initiates court proceedings in contravention of the arbitration clause, the other party can object to the same on the ground that there is an arbitration agreement between the parties. The

court may then refer the parties to arbitration under Section 8 or Section 45 of the Arbitration Act. However, such objection should be made no later than the date of filing the first statement on the substance of the dispute in the arbitration.

If arbitration is invoked where there is either no arbitration clause or where the dispute is not arbitrable, the other side can make a preliminary objection to the validity of the arbitration. There can be no arbitration in breach of a valid jurisdiction clause.

The limited judicial review under Section 8 and Section 45 of the Act is to protect the parties from being forced to arbitrate when the subject matter of the dispute is clearly non-arbitrable [Sorin Group Italia S.r.l. v. Neeraj Garg (2022)].

Q19. Will Indian courts grant an injunction to restrain proceedings started overseas in breach of an arbitration agreement?

There have been cases where Indian courts have granted injunctions restraining proceedings started overseas in breach of an arbitration agreement. The approach of the Indian courts has been to draw a balance between protecting interest of parties. Recently, the Delhi High Court in Honasa Consumer Limited vs RSM General Trading

LLC (2024), took note of the clear agreement to arbitrate disputes arising under the contract and the fact that the respondent had sought to claim remedies for a potential breach of the contract, which was within the ambit of the arbitration agreement, and enjoined the respondent from executing the decree issued by the court of Dubai.

Q20. If there is no express agreement, can the arbitrator order disclosure of documents and attendance of witnesses (factual or expert)?

The arbitral tribunal can order for disclosure of documents or attendance of witnesses (factual or expert) upon an application filed by one of the parties. It is also open for the arbitral tribunal or any party involved in arbitration with the approval of the arbitral tribunal, to apply to the court for assistance in taking evidence. The application should include the details of the parties and the arbitrator along with the evidence or the details of the witness whom

the parties want to produce. The requirement of involving the arbitral tribunal in taking assistance of the court is not a mere formality. It puts an obligation on the tribunal to apply its mind before itself making, or allowing any application to be made, before the court. Once a summons has been issued, any disobedience is punishable in the same manner as contempt of court.

Q21. What final remedies are available from the tribunal?

The arbitral tribunal has broad powers to pass a final award, depending on the prayer of the parties which may range from seeking an injunction, a declaratory relief, specific performance, recovery of dues, damages, costs etc., depending on the merits of the case. The tribunal also has the discretion to award costs and interest, at rates it deems reasonable, in accordance with the provisions of the Arbitration Act.

The tribunal, within 30 days from the date of the award, correct and interpret certain portions of the award.

An arbitral tribunal retains limited jurisdiction to clarify or correct any errors in its award under Section 33 of the

Arbitration Act, even after becoming functus officio (after the mandate of the arbitral tribunal has ended). This ensures that ambiguities or clerical mistakes in the award do not hinder its enforcement [North Delhi Municipal Corporation v. M/s S.A. Builders Ltd. (2024)].

The decision by the Supreme Court in Gayatri Balasamy v. ISG Novasoft Technologies Ltd. (2025) further clarifies the limited remedial space around an award that the tribunal has once the tribunal has exhausted its Section 33 powers. While reaffirming that a tribunal cannot, under Section 33, reopen the merits or make any “material” alteration to the substance of the award, the Supreme Court recognised that purely computational, clerical,

typographical or other manifest errors can be corrected by the tribunal, whereas more substantive tailoring of the award (such as severing offending portions or recalibrating

post-award interest) lies within the court's domain under Sections 34 and 37 in strictly circumscribed situations.

Q22. Is there any time limit specified for the arbitral tribunal to pass an award?

The arbitral tribunal in a domestic arbitration is required under Section 29A of the Arbitration Act to complete all arbitrations within 12 months from the date of completion of the parties' pleadings. The 2019 Amendment requires the parties to submit their pleadings within a period of six months from the date of appointment of all the arbitrators. Prior to the 2019 Amendment, the 12-month limit for issuing the arbitral award ran from the date of appointment of all the arbitrators.

The 12-month period can be extended for a further 6 months by agreement of the parties. However, in the event an award has not been rendered within the extended period, the parties may approach the appropriate court seeking an extension. The Court may grant an extension if it is satisfied that the delay is on account of a sufficient cause, failing which the mandate of the arbitrators is terminated. The 2019 Amendment has clarified that the mandate of the arbitrator continues during the pendency

of the application for extension.

The 12-month time limit is not mandatory for international commercial arbitrations, but the arbitrators are encouraged to act expeditiously and endeavor to dispose of the matter within the prescribed time-period of 12 months.

The Supreme Court clarified that time extensions under Section 29A of the Arbitration Act are maintainable even after statutory periods have lapsed, ensuring continuity in arbitration underscored the importance of extending arbitration timelines under Section 29A to facilitate effective dispute resolution [Rohan Builders v. Berger Paints (2024)]. In another recent decision, the Supreme Court observed that the expression "sufficient cause" in Section 29A must be interpreted liberally to uphold the purpose of arbitration [M/s Ajay Protech Pvt. Ltd. v. General Manager & Anr. (2024)].

Q23. What remedies are available where one party denies that the tribunal has jurisdiction to determine the dispute(s)? Does India recognise the concept of kompetenz-kompetenz?

The principle of Kompetenz – Kompetenz is recognised in India and enshrined in Section 16 of the Arbitration Act. It vests the power with the arbitral tribunal to rule on its own jurisdiction, including ruling on any objections, with respect to the existence or validity of the arbitration agreement. Therefore, the arbitral tribunal has the power to define the contours of its jurisdiction. If the arbitral

tribunal decides that it does not have jurisdiction, the parties can file an appeal against such an order before the court under Section 37(2)(a) of the Arbitration Act. However, if the arbitral tribunal holds that it has jurisdiction, the parties will have to wait till the award is given and then challenge the award under Section 34 of the Arbitration Act.

Q24. What is the process to appeal or challenge arbitration proceedings?

Section 34 of the Arbitration Act provides for circumstances in which an application to set aside the arbitral award can be made to a court. An award may be set aside if a party was under some incapacity, the arbitration agreement was not valid under the subjected law, notice was not given to the

party for appointment of an arbitrator, the party was not given the opportunity to present its case, the award passed was out of the scope of the submissions to arbitration, or the composition of the arbitral tribunal or the procedure was not according to the agreement.

Further, Section 34 provides two additional grounds when the court can set aside the award, i.e., the subject-matter is not capable of settlement by arbitration under the law for the time being in force, or if the award is in conflict with the public policy of India. An award is said to be in conflict with public policy of India, only in limited circumstances. These circumstances are: (a) the making of the award was induced or affected by fraud or corruption, or was in violation of Section 75 or Section 81 of the Arbitration Act (which deal with confidentiality of, and admissibility of evidence relating to conciliation proceedings, respectively); (b) the award is in contravention with the fundamental policy of Indian law; or (c) the award is in conflict with the most basic notions of morality or justice. It has been clarified that, a contravention of the fundamental policy of Indian law shall not entail a review on the merits of the dispute. Arbitral awards arising out of arbitrations other than international commercial arbitrations may also be set aside on the ground of conflict with public policy of India if the court finds that the award is vitiated by patent illegality appearing on the face of the award.

The procedure under Section 34 of the Arbitration Act requires a party to file an application to set aside an award under one of the grounds mentioned above. Such an application has to be filed within three months from the date of receipt of the signed copy of the arbitral award by the parties [Dakshin Haryana Bijli Vitran Nigam Ltd. v. Navigant Technologies (2021)]. An extended period of 30 days can be granted by the court, if the court is satisfied that there was sufficient reason for the delay.

An order of the court refusing to condone delay in filing the Section 34 application is appealable under Section 37(1)(c) [Chintels India Ltd. v. Bhayana Builders (2021)]. An advance notice of the Section 34 application has to be mandatorily given to the opposing party.

If the party filing the application also seeks a stay of the enforcement of the arbitral award, a separate application will have to be filed. The court may order a stay, subject to conditions as it may deem fit. Very often, Indian courts may order deposit of the award amount or a part thereof.

A court exercising its powers under Section 34 can only either: (a) set aside the award; or (b) remand the award to the tribunal to eliminate the grounds for setting aside the award. The Supreme Court, in *NHAI v. M. Hakeem* (2021) held that a court does not have the power to modify arbitral awards. However, in February 2024, The Supreme Court referred two questions to a five judge bench: First, whether a court's power to hear challenges to an award under Sections 34 and 37 of the Arbitration Act includes the power to revise or modify the award. Second, if the court does possess such a power, then what would the extent of such power be. With this reference, the five-judge bench of the Supreme Court will decide whether a court, while considering a challenge to an arbitral award can only annul, refuse to annul, or remand an arbitral award to the tribunal, or whether it also has the power to modify the award.

Q25. Can the appointment of an arbitrator be challenged? What are the grounds to challenge the appointment of an arbitrator?

The appointment of the arbitrator can be challenged under Section 13 of the Arbitration Act if circumstances exist that give rise to justifiable doubts as to his/her independence or impartiality, or he/she does not possess the qualifications agreed to by the parties. If the challenge is not successful, the arbitral tribunal shall continue the arbitral proceedings and make an arbitral award and thereafter the party challenging the arbitrator may make an application for

setting aside such an arbitral award in accordance with Section 34 of the Arbitration Act.

The grounds which give rise to justifiable doubts as to the independence or impartiality of an arbitrator are enumerated in the Fifth Schedule of the Arbitration Act, whereas relationships that make a person ineligible for appointment as an arbitrator are enumerated in the Seventh Schedule.

Section 14 of the Arbitration Act further provides that the mandate of the arbitrator shall be terminated if he/she becomes *de jure* or *de facto* unable to perform his/her functions or fails to act without undue delay. The arbitrator may also withdraw from the office or the parties may agree to end his/her mandate.

A challenge arising due to allegations of perceived bias against the tribunal does not fall within the ambit of

Section 14 of the Arbitration Act. With respect to issues of perceived bias, the same would axiomatically be required to be established by facts and is specifically dealt with under Sections 12 and 13 of the Arbitration Act. Hence, in such scenarios, the requisite approach would be to proceed before the arbitral tribunal in terms of Section 13 of the Arbitration Act, and an identical enquiry cannot be undertaken by the court under Section 14 of the Arbitration Act [Union of India v. Reliance Industries Ltd. & Ors. (2022)].

Q26. How is an arbitral award enforced?

An arbitral award is final and binding on the parties. An arbitral award issued in an India seated arbitration can be enforced, as if it were a decree of the court, under Section 36 of the Arbitration Act as follows:

- After the expiry of three months from the date of receipt of the arbitral award, if no application has been filed under Section 34 of the Arbitration Act for setting aside the arbitral award; or
- If an application for setting aside the arbitral award under Section 34 of the Arbitration Act has been filed along with an application seeking stay of the operation of the arbitral award under Section 36 of the Arbitration

Act, and no stay is granted by the court.

The 2021 Amendments to the Arbitration Act provide that a court shall unconditionally stay an award pending disposal of the challenge under Section 34, if the Court is satisfied that a *prima facie* case is made out that the arbitration agreement, or the contract forming the basis of the award, or the making of the award, was induced or effected by fraud or corruption [Second proviso to Section 36(3)].

The arbitral award is enforced like a decree of a civil court under the Code of Civil Procedure, 1908.

Q27. What legal fee structures can be used to remunerate an arbitral tribunal? Are fees fixed by law?

The 2019 Amendment requires arbitral institutions to determine the fees and manner of payment of the arbitral tribunals based on the Fourth Schedule to the Arbitration Act [Section 11(14)]. However, this provision does not apply to international commercial arbitration or in situations where the parties choose to follow an arbitral institution's framework on fees.

The Fourth Schedule is not mandatory and it is open to parties to agree and specify the fees payable to the arbitrator(s) or the modalities for determination of arbitrators' fees. Further, when an arbitral tribunal fixes the fee in terms of the Fourth Schedule (which is a model fee schedule), the parties should not be permitted to object the fee fixation. Fourth Schedule is not applicable to international commercial arbitrations and arbitrations where the parties have agreed that the fees are to be

determined in accordance with rules of arbitral institutions [ONGC v. Afcons Gunanusa JV (2022)].

A single-judge bench of the High Court of Delhi has ruled that an arbitrator cannot unilaterally issue binding and enforceable orders determining their own fees [SPML Infra Ltd. v. Power Grid Corporation of India Ltd. (2024)]. This decision echoes the doctrine of prohibition of *in rem suam* decisions, which means that an arbitrator cannot adjudicate matters related to their own remuneration [ONGC v. Afcons Gunansua (2022)]. The High Court further clarified that if an objection is not raised during an order passed on an enhancement of the fees, it does not amount to giving consent for the increase in fees. In doing so, the court has distinguished "no objection" from real consent in relation to proposed fees by arbitrator.

Q28. Does the unsuccessful party have to pay the successful party's costs? How does the tribunal usually calculate any costs award and what factors does it consider?

Section 31A (2) of the Arbitration Act provides that the general rule is that the unsuccessful party shall pay the costs of the successful party. However, the court or arbitral tribunal may decide otherwise for reasons to be recorded in writing.

The 'costs' include the fees and expenses of the arbitrator, court and witnesses; legal fees and expenses; administration

fees of the institution or any other expenses in connection with the arbitral award. While awarding these costs, the arbitral tribunal considers the conduct of the parties, whether the parties have made any frivolous claims, whether the party made any reasonable offer to settle the dispute which was refused by the other party and whether a party has partly succeeded in the case.

Q29. In what circumstances can a party that is not a party to an arbitration agreement be joined to the arbitration proceedings?

The Arbitration Act grants no powers to a tribunal to enjoin a third party to pending arbitration proceedings. Non-signatories to the arbitration agreement can be bound to the arbitration agreement under the 'groups of companies' doctrine, where a clear intent to bind such non-signatories can be established. This doctrine was established by the Supreme Court in *Chloro Controls (I) P. Ltd. v. Severn Trent Water Purification Inc. and Ors.* (2013) which held that 'under the Group of Companies Doctrine, an arbitration agreement entered into by a company within a group of companies can bind its non-signatory affiliates, if the circumstances demonstrate that the mutual intention of the parties was to bind both the signatory as well as the non-signatory parties'. Further, in *GMR Energy Limited v. Doosan Power Systems India Private Limited* (2017) the High Court of Delhi ruled that a non-party to the arbitration agreement could be made part of the arbitral proceedings on the grounds that it acted as an alter ego to the contracting party.

However, in *Reckitt Benckiser India Private Limited v. Reynders Label Printing India* (2019), the Supreme Court refused to apply the 'group of companies' doctrine because it found that there was no mutual intention to bind the non-signatory and refused to extend the arbitration agreement.

Further, the High Court of Delhi in *Shapoorji Pallonji v. Rattan India Power* (2021) applied the 'group of companies' doctrine along with principles of alter ego and lifting of

the corporate veil, to hold that non-signatory affiliates of a parent company could be bound by an arbitration agreement.

The Supreme Court in *Oil and Natural Gas Corporation Ltd. v. Discovery Enterprises* (2022) analysed the 'group of companies' doctrine and laid down the following factors to determine whether a company within a group of companies, which is not a signatory to an arbitration agreement, would nonetheless be bound by it:

- Mutual intent of the parties;
- Relationship of the non-signatory to a party, which is a signatory to the agreement;
- Commonality of the subject matter;
- Composite nature of the transaction; and
- Performance of the contract.

The Supreme Court noted that although party autonomy is recorded under Section 7 of the Arbitration Act, a non-signatory may be held to be bound under a consensual theory, founded on the principles of agency and assignment, or on a non-consensual basis such as estoppel or alter ego. Pursuant to this judgment, the Supreme Court in *Cox & Kings Ltd. v. SAP India (P) Ltd.* (2022) referred the aspect of interpretation of "claiming through or under" as occurring in amended Section 8 of the Arbitration Act (power to refer parties to arbitration where there is an arbitration agreement) qua the doctrine of group of companies to a

larger bench to provide clarity on this aspect.

The Supreme Court in *Cox and Kings Ltd. v SAP India Pvt. Ltd.* (2024) answered the question referred to it above by observing that the phrase “claiming through or under” only applies to entities acting in a derivative capacity, the Court in *Cox & Kings* has altered the basis for invoking the Group of Companies doctrine. Consequently, a party invoking the Doctrine must now prove that the non-signatory sought to be bound by the arbitration agreement is a “party” under Section 2(1)(h) read with Section 7 of the Arbitration Act which, the Court clarified, includes non-signatories. The Court further observed that the mere requirement of a written arbitration agreement under Section 7 of the

Arbitration Act does not exclude possibility of binding non-signatories. By doing so, the Court adopted a contemporary approach, in line with international practices. The Court’s observations to the effect that the concepts of ‘*alter ego*’ and ‘*piercing the corporate veil*’ and ‘*single economic unit*’ cannot be the basis for invoking the Group of Companies doctrine also reduces the scope and possibility of abuse of the Doctrine.

In *Ajay Madhusudan Patel v. Jyotindra S. Patel* (2024) the Supreme Court observed that non-signatory parties may be bound by arbitration agreements if their conduct or relationship with signatory parties demonstrates an intention to arbitrate.

Q30. In what circumstances can a party that is not a party to an arbitration agreement compel a party to the arbitration agreement to arbitrate disputes under the arbitration agreement?

Section 8 of the Arbitration Act empowers parties to the arbitration agreement, to apply to a judicial authority to refer the matter to arbitration. The Arbitration Act now also allows any person claiming through or under a party that is a party to the arbitration to apply to a judicial

authority to refer the matter to arbitration. Therefore, non-signatories who are claiming through or under a party to the arbitration agreement can apply to the court to refer parties to arbitration.

Q31. Are there any requirements relating to arbitrators’ independence and/or impartiality?

The arbitrator appointed is duty bound to disclose the existence of circumstances that give rise to justifiable doubt as to his/her independence and impartiality under Section 12 of the Arbitration Act. These circumstances are listed in the Fifth Schedule of the Arbitration Act and are broadly based on the IBA Guidelines on Conflict of Interest

in Arbitration. If the disclosures are of those circumstances, which are listed in the Seventh Schedule of the Arbitration Act, the person will not be eligible for appointment as an arbitrator, unless the parties expressly decide to waive the conflict after the dispute has arisen.

Q32. Does the law prohibit any types of disputes from being resolved through arbitration?

The Arbitration Act does not explicitly exclude any category of disputes as non-arbitrable. However, the courts have held that the following disputes are generally treated as non-arbitrable:

- Disputes falling within the exclusive jurisdiction of a special court under a special statute excluding the jurisdiction of an ordinary civil court; and
- Disputes which are generally considered by the courts

as appropriate for decision by public fora, for instance, disputes pertaining to rights *in rem*.

Examples of such disputes are as follows:

- patent, trademarks and copyright;
- antitrust or competition laws;
- insolvency or winding up;
- intra-company disputes;

- claims covered by the DRT Act;
- trust deeds;
- bribery or corruption;
- eviction and tenancy matters covered by special enactments such as rent control legislations;
- guardianship and matrimonial matters; and
- criminal matters.

Supreme Court in *Vidya Drolia v. Durga Trading Corporation* (2020) laid down a four-fold test for determining when the subject matter of a dispute is not arbitrable:

- When cause of action and subject matter of the dispute relates to actions *in rem*, that do not pertain to subordinate rights *in personam* that arise from rights *in rem*;
- When cause of action and subject matter of the dispute affects third party rights; have *erga omnes* effect; require centralised adjudication, and mutual adjudication would not be appropriate and enforceable;
- When cause of action and subject matter of the dispute relates to inalienable sovereign and public interest functions of the State and hence mutual adjudication

would be unenforceable; and

- When the subject-matter of the dispute is expressly or by necessary implication non-arbitrable as per mandatory statute(s).

With regards to the arbitrability of fraud, the Supreme Court in *Vidya Drolia* (supra) and *Avitel Post Studios Ltd. v. HSBC PI Holdings (Mauritius)* (2020) held that only “serious allegations of fraud”, as opposed to “simple allegations of fraud” are non-arbitrable. Serious allegations of fraud occur when: (a) the plea of fraud permeates the entire contract, and particularly the arbitration agreement; or (b) where the allegations of fraud have an implication on the public domain.

Certain matters such as consumer disputes are arbitrable at the option of the aggrieved party. In *Emaar MGF Land v. Aftab Singh* (2019), the Supreme Court held that the aggrieved party may elect to approach the courts or choose to arbitrate in the first instance, if a valid arbitration agreement exists.

Q33. Is arbitration confidential? If so, what is the scope of that confidentiality and who is subject to the obligation (parties, arbitrators, institutions and so on)?

Prior to the 2019 Amendment, confidentiality of the arbitral proceedings was not expressly recognized under the Arbitration Act and it was common practice to include a confidentiality clause in the arbitration agreement. The 2019 Amendment imposes a statutory obligation upon

the parties, the arbitrators and the arbitral institution to maintain the confidentiality of the arbitral proceedings. However, the confidentiality requirement is waived during the implementation and enforcement of the arbitral award.

Q34. What is the effect on the arbitration of pending insolvency of one or more of the parties to the arbitration?

IBC is the governing legislation for all the insolvency proceedings initiated in India. As per Section 14 of the Indian Insolvency and Bankruptcy Code, 2016, (‘IBC’) upon commencement of the insolvency proceedings, the adjudicating authority has the power to suspend proceedings against the insolvent company. This suspension will persist till such time the corporate insolvency resolution process is completed.

As per this provision, all arbitrations that are commenced

after the moratorium is imposed are rendered *non est* in law, as was held by the Supreme Court in *Alchemist Asset Reconstruction Company Ltd. v. Hotel Gaudavan Pvt. Ltd. & Ors.* (2018). In *P. Mohanraj v. Shah Brothers Ispat* (2021), the Supreme Court clarified that the Section 14 moratorium would apply to Section 34 proceedings under the Arbitration Act as well, as the Section 34 proceedings may result in the arbitral award being upheld resulting in monies being payable to the corporate debtor.

The Supreme Court in *Indus Biotech Pvt. Ltd. v. Kotak India Venture* (2021) held that where the NCLT determines the existence of a default and that a debt is payable in an IBC Section 7 application, the proceedings would become an *in*

rem proceedings. Therefore, there could be no reference to arbitration in such a circumstance. If the NCLT is satisfied that there is no default, the parties would be free to seek appoint of arbitrators.

Q35. Which arbitral institutions are commonly used to resolve commercial disputes in India?

The following foreign arbitral institutions are commonly used to resolve commercial disputes in India:

- SIAC
- ICC
- LCIA

Further, the following Indian arbitral institutions are commonly used to resolve commercial disputes:

- Delhi International Arbitration Centre (DIAC)

- Mumbai Centre For International Arbitration (MCIA)
- International Arbitration and Mediation Centre, Hyderabad (IAMC)
- India International Arbitration Centre (IIAC)
- Indian Council of Arbitration (ICA)
- Construction Industry Arbitration Council (CIAC)
- The International Centre for Alternative Dispute Resolution (ICADR)
- Nani Palkhivala Arbitration Centre (NPAC)

Q36. What are the recent changes that have been brought to the Indian Arbitration and Conciliation Act, 1996?

The Arbitration and Conciliation (Amendment) Act, 2021 received Presidential assent on 11 March 2021, and is deemed to have come into force from 4 November 2020.

The key changes brought about by the Amendment are:

- As detailed above, the unconditional staying of an award pending Section 34 proceedings, on grounds of fraud or corruption.
- The deletion of Section 43J and Eighth Schedule introduced by the 2019 Amendments, which provided minimum qualifications, experience, and norms for arbitrators.

Further, the Draft Arbitration and Conciliation (Amendment) Bill, 2024 which has recently been introduced proposes several key changes including, but not limited to:

- Introduction of provisions expressly dealing with emergency arbitrations and providing for enforcement of emergency arbitration awards;
- Prohibiting parties from approaching courts for interim relief once the arbitral tribunal has been constituted;
- Providing parties with the option of challenging awards before an appellate arbitral tribunal, in cases of institutional arbitrations, instead of challenges before courts.



13. Competition Law

Q1. What are the laws governing competition/ anti-trust in India?

Competition law in India is governed by the Competition Act, 2002 (**Competition Act**) together with associated rules, regulations and guidance notes.¹ The Competition Act aims

to prevent anti-competitive practices, promote and sustain competition, protect the interests of consumers and ensure freedom of trade in markets in India.

Q2. What is the scope of the Competition Act?

The Competition Act prohibits anti-competitive practices, which cause or are likely to cause an appreciable adverse effect on competition (**AAEC**) in India. It primarily seeks to regulate the following:

- anti-competitive agreements (under Section 3);
- abuse of dominance (under Section 4); and
- combinations (under Sections 5 and 6).

Q3. What is the institutional framework under the Competition Act?

The Competition Act provides for the establishment of the Competition Commission of India (**CCI**), the nodal authority for the monitoring, enforcement and implementation of competition law in India. The CCI and its investigative wing, the Office of the Director General (**DG**), are entrusted with extensive powers of investigation with respect to anti-

competitive practices, including the power to summon and enforce the attendance of any person, examine them on oath and receive evidence on affidavit. Orders passed by the CCI may be appealed to the National Company Law Appellate Tribunal (**NCLAT**)² and the final orders passed by the NCLAT may be appealed to the Supreme Court of India.

¹ Note that significant changes to the Competition Act were made by the Competition (Amendment) Act, 2023. This section reflects these changes.

² Orders of the CCI were initially appealable to the Competition Appellate Tribunal (**COMPAT**). On 26 May 2017, the appellate functions of the COMPAT were conferred upon the NCLAT.

Q4. What is meant by “relevant market” under the Competition Act?

The Competition Act defines the relevant market as the market which the CCI may determine with reference to the “relevant product market” and/ or the “relevant geographic market”. A “relevant product market” is defined as a market comprising all those products or services: (i) which are regarded as interchangeable or substitutable by the consumer, by reason of the characteristics of the products or services, their prices and intended use; or (ii) the production or supply of which are regarded as interchangeable or substitutable by the supplier, by reason

of the ease of switching production between such products and services and marketing them in the short term without incurring significant additional costs or risks in response to small and permanent changes in relative prices. A “relevant geographic market” is defined as a market comprising the area in which the conditions of competition for supply/ demand of goods or services are distinctly homogenous and can be distinguished from the conditions prevailing in the neighbouring areas.

Q5. What are “anti-competitive agreements”?

Section 3 of the Competition Act prohibits and renders void agreements entered into between enterprises or persons or associations of persons with respect to the production, supply, distribution, storage, acquisition or control of goods or the provision of services which cause or are likely to cause an AAEC in India. Under the Competition Act, certain categories of agreements between competitors (horizontal agreements, including cartels) are, once proven to exist, presumed to have an AAEC. Efficiency enhancing joint ventures (**JV**) form an exception to this AAEC presumption,

if the parties are able to establish efficiency. An enterprise or association of enterprises or a person or association of persons though not engaged in identical or similar trade shall also be presumed to be part of the agreement if it participates or intends to participate in the furtherance of an agreement. This presumption is rebuttable. There is no presumption of an AAEC in relation to vertical agreements (i.e., agreements between enterprises which are engaged at different levels of the production or supply chain).

Q6. What is an abuse of a dominant position?

Section 4 of the Competition Act prohibits the abuse of a dominant position by an enterprise or a group. A “dominant position” is defined to mean a position of strength, enjoyed by an enterprise in the relevant market in India, which enables it to: (i) operate independently of competitive forces prevailing in the relevant market; or (ii) affect its competitors or consumers or the relevant market in its favour.

An enterprise or group will have abused its dominant position if it:

- imposes unfair or discriminatory prices (including

predatory prices) or conditions in the sale or purchase of goods or services;

- limits or restricts the production of goods or the provision of services or the market therefor, or technical development to the prejudice of consumers;
- denies market access to other players in the market;
- makes the conclusion of contracts subject to the acceptance of supplementary obligations which have no connection with the subject of such contracts; or
- uses its dominant position in one relevant market to enter into, or protect, another relevant market.

Q7. What are the factors that the CCI may take into consideration while determining the AAEC in cases involving anti-competitive agreements and abuse of dominant position?

Section 19(3) of the Competition Act sets out factors to which the CCI is to have due regard while determining whether an agreement has an AAEC under Section 3 of the Competition Act. These factors are: (i) creation of entry barriers; (ii) driving competitors out of the market; (iii) foreclosure of competition; (iv) benefits or harm to consumers; (v) improvements in the production or distribution of goods or the provision of services; and (vi) the promotion of technical, scientific, and economic development. The CCI may consider any or all of these factors in its analysis.

Section 19(4) of the Competition Act sets out certain factors to which the CCI is required to have due regard while determining whether an enterprise enjoys a dominant position under Section 4 of the Competition Act. These

factors are: (i) market share of the enterprise; (ii) size and resources of the enterprise; (iii) size and importance of its competitors; (iv) economic power including commercial advantages over competitors; (v) extent of vertical integration or the sale or service network; (vi) dependence of consumers; (vii) monopoly or dominant position; (viii) entry barriers (regulatory and otherwise); (ix) countervailing buyer power; (x) market structure and size; (xi) social obligations and social costs; (xii) relative advantage, by way of the contribution to economic development, by the dominant enterprise having or likely to have an AAEC; and (xiii) any other factor that the CCI may consider relevant for its inquiry. The CCI may consider any or all of these factors in its analysis.

Q8. What are the penalties for contravention of the antitrust provisions of the Competition Act?

Liability of an Enterprise

Section 3 of the Competition Act

If an enterprise is found to be in breach of Section 3 of the Competition Act (i.e., engaging in anti-competitive agreements), the CCI may impose a number of remedies. These include requiring the enterprises concerned to “cease and desist” from the illegal activity and imposing penalties. The “standard” penalty is up to 10% of the average global turnover of the enterprise for the last three financial years (**FYs**). In the case of cartels, the CCI may alternatively impose upon each cartel participant a penalty of up to three times of its profit or 10% of its global turnover (whichever is higher) for each year of continuance of the cartel.

Section 4 of the Competition Act

If an enterprise is found to be in breach of Section 4 of the Competition Act (i.e., engaging in abuse of dominance), the CCI may order the enterprise to discontinue the abuse and impose a penalty which may be up to 10% of its average global turnover for the last three FYs. The CCI may also order a division of the

dominant enterprise found to be in breach of Section 4 of the Competition Act to ensure that the enterprise does not abuse its dominant position (this has not yet occurred).

Determination of Penalty

Turnover is defined in the Competition Act as global turnover derived from all the products and services by a person or enterprise. Penalty guidelines introduced in March 2024 set out the guiding factors in determining penalty and clarify that turnover relating to the product/s or services/s covered by the breach (relevant turnover) will be used to calculate the “base” turnover, with global turnover only used where it is not possible to determine relevant turnover. The CCI may impose higher penalties, and the base amount may be adjusted on the basis of aggravating and mitigating factors, subject to the maximum cap under the Competition Act. The CCI’s approach is consistent with the approach taken by a judgment of the Supreme Court of India in May 2017 generally requiring the “relevant turnover” as opposed to the “total turnover” of the enterprise in breach to be considered while determining the level of penalties.³

3 Excel Crop Care Ltd. v. Competition Commission India (2017) 8 SCC 47.

Individual Liability

Individuals may also be fined where a company has breached the provisions of the Competition Act.

A person who, at the time of the contravention, was in charge of, and was responsible to, the company for the conduct of its business, shall be deemed to be in breach and punished accordingly. However, there will be no liability where it is proven that the contravention was committed without his/ her knowledge or that he/ she had exercised all due diligence to prevent the breach. In addition, where any director, manager, secretary or other officer of the company has connived in or consented to the breach, or the breach is attributable to his/ her neglect, such person shall also be deemed guilty of the contravention and be punished accordingly.

Leniency

Section 46 of the Competition Act provides for the imposition of a lesser penalty on a member of a cartel that makes full, true and vital disclosure in respect of the cartel. Under the Competition Commission of India (Lesser Penalty) Regulations, 2024 the first party to make such disclosure to the CCI can benefit from a reduction in penalty of up to 100%, if the disclosure enables the CCI either to: (i) form a *prima facie*

opinion regarding the existence of cartel; or (ii) establish the existence of a cartel in the matter under investigation, where the DG or the CCI did not have sufficient evidence to do so at the time of the application.

The second applicant can gain up to a 50% reduction in fines. There is no upper limit on the number of subsequent applicants and each of them can gain up to a 30% reduction in fines, if they disclose evidence that provides significant incremental value to the evidence already in possession of the CCI or DG.

Individuals, including employees or ex-employees, can also benefit from the lesser penalty provisions, by either: (i) themselves applying for lesser penalty; or (ii) being included in the leniency application filed by their employer.

A leniency applicant must co-operate until the completion of the proceedings before the CCI or DG in order to secure a reduction in penalty.

A “leniency plus” mechanism has been introduced, enabling an applicant for leniency for one cartel to report another cartel to the CCI and receive a reduction in penalty for both cartels.

Q9. What are the key highlights in relation to the introduction of commitments and settlements procedures?

The Competition Act provides for a mechanism for an enterprise under investigation to offer commitments or seek a settlement to address competition concerns. The detailed procedures for such commitments and settlements and commitments are set out in regulations issued in March 2024. These provisions apply only to cases of anti-competitive vertical agreements and abuse of dominant position; they are not available to cases involving horizontal agreements, including cartels.

Under the commitment provisions, an application offering

commitments to address the CCI’s competition concerns may be filed within 45 days of receipt of the CCI’s *prima facie* order. Under the settlement provisions, an entity against whom an investigation has been concluded can offer a settlement (including the payment of a settlement amount) within 45 days of receipt of the DG report.

CCI commitment and settlement orders are not construed as a finding of contravention by the applicants. Orders passed by the CCI accepting or rejecting commitment and settlement applications are not appealable.

Q10. What is the merger control regime in India?

Any acquisition, merger or amalgamation, where the parties or their groups cross certain thresholds (based on assets or turnover) specified in the Competition Act or satisfy a newly

introduced deal value threshold (**DVT**), must be notified to the CCI, unless it can benefit from applicable exemptions. These transactions – referred to as “combinations” - are

subject to Sections 5 and 6 of the Competition Act, which prohibit a combination which causes or is likely to cause an AAEC in the relevant market in India. The merger control regime in India is generally mandatory and suspensory, with a limited exception for open market purchases (see Q.20), and transactions subject to review by the CCI cannot be concluded until: (i) merger clearance in India has been obtained; or (ii) a review period of 150 calendar days, from

the date of notification of the combination (taking account of various “stops to the clock”) has passed; or (iii) a prima facie opinion is not formed by the CCI within 30 days of receipt of notice, whichever is earlier. The CCI has made it clear that even global transactions with an Indian element qualifying as a combination cannot be concluded without obtaining prior clearance from the CCI.

Q11. What are the transactions that require notification to the CCI?

Some examples of such transactions are:

- the acquisition by one or more people of control, shares (including convertible instruments), voting rights or assets of one or more enterprises, where the parties or the group to which the target will belong post-acquisition meet specified assets or turnover thresholds (see Q12). It should be stressed that even acquisitions not involving a change of control may need to be notified by the CCI;
- the acquisition by a person of control over an enterprise where the person concerned already has direct or indirect control over another enterprise engaged in the production, distribution or trading of similar or identical or substitutable goods, or in the provision of a similar or identical or substitutable service, where the parties, or the group to which the target will belong post-acquisition, meet specified assets or turnover (see Q12);
- the acquisition of any control, shares, voting rights

or assets or an enterprise where the value of the transactions exceeds INR 2,000 crores (approx. USD 227 million) and the target enterprise has “substantial business operations” in India (see Q12);

- mergers or amalgamations, where the enterprise remaining, or enterprise created, or the group to which the enterprise will belong after the merger or amalgamation, meets specified assets or turnover (see Q12).

Substance over form

The CCI seeks to capture innovative structuring of transactions designed to avoid notifications to the CCI. The Competition Commission of India (Combinations) Regulations, 2024 (**Combination Regulations**) provide that a notification requirement must be assessed with respect to the substance of the transaction and that any transaction structure which has the effect of avoiding notification will be disregarded by the CCI.

Q12. What are the jurisdictional thresholds under the Competition Act?

The jurisdictional thresholds are prescribed under Section 5 of the Competition Act for the relevant parties and the group and are set out in detail below:

Thresholds

Parties test:

- the parties have combined assets in India of INR 2,500 crores (approx. USD 284 million)⁴ or combined turnover in India of INR 7,500 crores (approx. USD 852 million); or

- the parties have combined worldwide assets of USD 1,250 million, including combined assets in India of INR 1,250 crores (approx. USD 142 million) or combined worldwide turnover of USD 3,750 million, including combined turnover in India of INR 3,750 crores (approx. USD 426 million);

OR

Group test:

- the group has assets in India of INR 10,000 crores

⁴ Conversion rates are based on the average spot rate of the last six months as on 3 November 2025 quoted by the RBI and will therefore change over time.

(approx. USD 1,136 million) or turnover in India of INR 30,000 crores (approx. USD 3,409 million); or

- the group has worldwide assets of USD 5,000 million including assets in India of INR 1,250 crores (approx. USD 142 million); or worldwide turnover of USD 15,000 million, including turnover in India of INR 3,750 crores (approx. USD 426 million).

The Competition Act provides for *de minimis* assets and turnover thresholds for the target below which an acquisition or merger will not constitute a combination. Rules made by the Government of India (**GoI**) in September 2024 specify assets in India INR 450 crores (approx. USD 51 million) and turnover in India of INR 1,250 crores (approx. USD 142 million). If either of these thresholds is not met, there will be no combination. These provisions substantially replace the earlier target exemption. They do not apply to cases covered by the Deal Value Threshold (see below).

For the purposes of assessing the *de minimis* assets and turnover thresholds, only the value of assets of and turnover attributable to the portion, division or business being transferred is considered as regards the target, and not the entire assets or turnover of the selling entity.

The CCI has clarified that a de-merger of assets or a business undertaking, which takes place through a court-approved scheme, will be treated as an acquisition under Section 5(a) of the Competition Act, and the *de minimis* rules would apply in such cases.

Deal Value Threshold (DVT)

In addition to the standard jurisdictional thresholds outlined above, transactions with a deal value exceeding INR 2,000 crores (approx. USD 227 million) and where the target enterprise has “substantial business operations” in India will need to be notified. If this DVT test is met, it will not be eligible for the target-based exclusion (see above).

The Combination Regulations provide that the value of a transaction must include every valuable consideration, whether direct or indirect or current or future and list several elements to be included. If the precise value of a transaction cannot be established with reasonable certainty, the transaction may be considered to exceed the prescribed deal value.

The target will have “substantial business operations” in India where:

- the target’s gross merchandise value (**GMV**) in India in the 12 months preceding the trigger event is 10% or more of the global GMV and more than INR 500 crores (approx. USD 57 million); or
- the target’s turnover in India in the preceding financial year is 10% or more of its global turnover and more than INR 500 crores (approx. USD 57 million); or
- in the case of broadly defined digital services⁵ (a) 10% or more of the target’s business users or end users are in India, or (b) the target’s GMV in India in the 12 months preceding the trigger event is 10% or more of its global GMV, or (c) the target’s turnover in India in the preceding financial year is 10% or more of its global turnover.

Q13. Is there any time period within which the CCI must be notified?

There is no specified time period within which the CCI must be notified. Subject to a limited exception for open market purchases (see Q.20), the parties are required only to notify and seek approval of the CCI after the occurrence of the

relevant “trigger event” and before the consummation of the transaction.

⁵ Digital service means the provision of a service or one or more pieces of digital content, or any other activity by means of an internet whether for consideration or otherwise to the end user or business user. As further clarified in the Combination FAQs 2025, mere use of internet as a distribution channel is not enough to classify any offline product/ service as a digital service.

Q14. What is the “trigger event” that requires a filing?

Under Section 6 of the Competition Act, the trigger event for the notification of a proposed transaction to the CCI is the: (i) final approval of a proposed merger or amalgamation by the boards of the enterprises concerned; or (ii) the execution of any agreement or “other document” for an acquisition.

The Competition Act clarifies that the term “other document” refers to any binding document (regardless of what it is

called) conveying an agreement or decision to acquire control, shares, voting rights or assets. In the event of a hostile acquisition, “other document” means any document executed by the acquirer conveying a decision to acquire, or, where a public announcement has been made under the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, such public document.

Q15. Are internal restructurings notifiable?

Among the various types of transactions that are ordinarily exempt under the Exemption Rules ([see Q19](#)), an acquisition of shares/voting rights where the acquirer or its group entities already have more than a 50% share will be exempt from notification except where there is a change of control. Intra-

group acquisitions of assets will be exempt in the absence of a change of control.

A merger or acquisition of enterprises within the same group will also be exempt provided that the transaction does not result in a change of control.

Q16. What is the process of merger filing?

The Combination Regulations prescribe two forms for filing a merger notification:

- **Form I** (i.e., short form) – All notifications are ordinarily required to be filed in a Form I. The parties are required to provide basic information in relation to the combination, with a filing fee of INR 30 lakhs (approx. USD 34,091).
- **Form II** (i.e., long form) – The parties may file the merger notification in Form II along with a filing fee of INR 90 lakhs (approx. USD 102,273). The Combination Regulations recommend that Form II be filed for transactions where:
 - the parties to the combination are competitors and have a combined market share in the same market of more than 15%; or
 - the parties to the combination are active in vertically linked markets and the combined or individual market share in any of these markets is greater than 25%.

Where parties have filed Form I and the CCI believe that it requires detailed information in Form II, it may require parties to file the notice in Form II. In such a case, the review time periods mentioned in the Competition Act and the Combination Regulations will restart.

The CCI also has the power to invalidate a notification form if it is of the opinion that the notification form is not complete or in conformity with the requirements of the Combination Regulations. Parties can also withdraw their notification form with the permission of the CCI at any time prior to the end of the Phase I investigation ([as discussed in Q18](#)) and refile.

The obligation to notify the CCI lies with the acquiring company in the case of an acquisition and jointly with the parties in the case of a merger or amalgamation.

Q17. Is there a “Green Channel” for non-problematic transactions?

A “Green Channel” route is available if the parties, their respective group entities and their “affiliates” have

no horizontal overlaps, no actual or potential vertical relationships and no complementarity between the products and/ or services in India. An “affiliate” is broadly defined to cover shareholdings/voting rights of 10% or more, the right or ability to be represented on the board as director or observer, or the right or ability to access

commercially sensitive information.

Such transactions will, subject to certain safeguards, be deemed to be approved upon the acknowledgment by the CCI of filing of the notification form.

Q18. How long will the CCI review process take?

Phase I Investigation

On receipt of a notification, the CCI is required to form a *prima facie* opinion on whether a combination causes or is likely to cause an AAEC within the relevant market in India within a period of 30 calendar days. If the CCI requires the parties to remove defects in the notification or to provide additional information, it must do so within 10 working days and “stops the clock” until the additional information is provided. The CCI can also reach out to third parties or other statutory authorities during the Phase I investigation, and, in such cases, the time period for them to respond will be excluded. This means that the CCI can take much longer than 30 days for the CCI to form a *prima facie* opinion. In case the CCI does not form a *prima facie* opinion within 30 calendar days of receipt of a notification, taking account of any clock stops, no separate final order will be passed and such transactions will be deemed approved by the CCI. The CCI may accept appropriate modifications offered by the parties to the combination or itself propose modifications before forming a *prima facie* opinion.

Show Cause Notice

If the CCI forms a *prima facie* opinion that a combination is likely to cause an AAEC, it will issue a show cause notice (**SCN**) for the parties to explain why a detailed investigation should not be initiated. The parties have 15 calendar days

to respond. If the CCI is satisfied with the parties’ response to the SCN, it approves the transaction.

Phase II Investigation

If the AAEC concerns persist after receipt of the parties’ response to the SCN, the CCI may order the DG to investigate and submit its report. The CCI can, within 7 calendar days of receipt of the response to the SCN or report of the DG, whichever is later, directs the parties to publish the details of the combination inviting comments from the public.

If competition concerns continue, the CCI issues a statement of objections. The parties then have 25 calendar days to respond to the statement of objections, where they can offer modifications they believe may remedy the concerns. If the CCI is not satisfied with the parties’ modifications, within 7 calendar days of receipt of such modifications, it can communicate its concerns and allow for revised modifications. The CCI may also propose certain modifications to the parties.

The CCI has an outer limit of period of 150 calendar days, from the date of notification (taking account of “stops to the clock”), to approve or block a transaction. If no order is passed in 150 days, the transaction is deemed approved.

Q19. Are there any exemptions from mandatory pre-notification?

In addition to transactions that can avail of the Target Exemption (see above), transactions falling under the following three categories are exempt from prior

notification under the Competition Act.

- **Transactions expressly exempt under the Competition Act:** acquisitions, share subscriptions or financing

facilities entered into by public financial institutions, registered foreign portfolio investors, banks or Category 1 alternative investment funds, under a covenant in a loan agreement or an investment agreement, are exempted from obtaining prior clearance from the CCI.

- **Transactions implemented through open offers:** acquisitions through open offers can be implemented without a pre-notification to the CCI subject to compliance with certain conditions (see response to Query 20 below).
- **Transactions that are exempt under the 2024 Exemption Rules:** these Rules replace Schedule 1 of the earlier Combination Regulations and set out the categories of combinations which are exempt from notification:
 - an acquisition of shares in the ordinary course of business by underwriters, stockbrokers and mutual funds, where the total share/voting rights does not exceed 25% for underwriters and stockbrokers and 10% for mutual funds;
 - an acquisition of shares or voting rights solely as an investment, where the total share/voting rights does not exceed 25% and there is no acquisition of control. The acquisition will be regarded as solely as an investment only where: (i) the acquirer does not gain the right or ability to appoint a director or observer to the board; (ii) the acquirer does not gain the right to access commercially sensitive information of any enterprise; and (c) save where the acquirer holds less than 10% of the shares/voting rights after the acquisition, the transaction will not lead to horizontal overlaps, or vertical or complementary relationships;
 - an acquisition of additional shares/voting rights where the shareholder holds less than 25% before and after the acquisition provided that there is no acquisition of control, the acquirer does not gain the right or ability to appoint a director or observer to the board for the first time and the acquirer does not gain the right or ability to access commercially sensitive information for the first time. Where there are horizontal overlaps or vertical or complementary relationships, the exemption will not apply where the incremental shareholding/voting rights in a single acquisition or interconnected transactions exceeds 5% and this results in the shareholding/voting rights increasing from less than 10% to 10% or more;
 - an acquisition of shares/voting rights by the acquirer or its group entities where they already have more than a 25% share but do not hold more than 50% before or after the acquisition, except where there is a change in control;
 - an acquisition of shares/voting rights by the acquirer or its group entities where they already have more than a 50% share, except where there is a change in control;
 - an acquisition of assets of an enterprise in the ordinary course of business. This will be the case where the acquisition is of stock-in-trade, raw materials, stores and parts, trade receivables or other similar current assets that do not constitute business;
 - an acquisition of assets not directly related to the business activity of the acquirer or made solely as an investment, not leading to control except where the assets represent substantial business operations in a particular location or for a particular product or service of the transferring enterprise;
 - an acquisition of shares pursuant to a bonus issue, stock splits, consolidation of face value of shares, buy back of shares or subscription to a rights issue, not leading to a change of control;
 - an acquisition by one person or enterprises of assets of another person or enterprise within the same group, not leading to a change of control;
 - a merger or amalgamation of enterprises within the same group provided that the transaction does not result in change of control;
 - an acquisition of shares, control, voting rights or assets by a purchaser approved by the CCI under Section 31 of the Competition Act; and
 - a demerger of a company and the issue of shares by the resulting company in consideration of the demerger, either to the demerged company or to its shareholders in the proportion of their shareholding in the demerged company prior to the

demerger (except for discharge of consideration for fractional shares).

- **Sectoral Exemptions:** certain regional rural banks and nationalised banks are exempt from notification requirements.

Foreign to foreign transactions satisfying the standard asset and turnover thresholds under the Competition Act and not covered by any of the above exemptions will have to be notified even if there is no local nexus and effect on markets in India.

Q20. What is the position for open offers and other on-market purchases?

Acquirers now enjoy a derogation from standstill obligations for open offers and other on-market purchases provided a notification form is filed within 30 days of the acquisition. In such cases, the acquirer can avail of economic benefits such as dividends and exercise voting

rights in relation to matters relating to liquidation and/or insolvency proceedings. However, the acquirer may not directly or indirectly influence the target enterprise in any way until the CCI has approved the transaction.

Q21. Is it possible to have pre-filing discussions with the CCI?

Parties to proposed transactions may have substantive and procedural pre-filing consultations (*PFC*) with the CCI. They may also avail of the CCI's assistance to fill-up the relevant notification form. However, such consultations are oral and non-binding on the CCI. An effective PFC could substantially

reduce the overall Phase I or II timelines. In case of 'green channel' filings, a PFC is recommended to determine whether the transaction may be able to avail of the 'green channel' route.

Q22. What are the factors that the CCI may take into consideration while determining the AAEC of a combination in India?

Section 20 of the Competition Act sets out certain factors that the CCI shall consider while determining if a combination causes or is likely to cause an AAEC in the "relevant market" in India. These factors are:

- the actual and potential level of competition through imports in the market;
- the extent of barriers to entry into the market;
- the level of concentration in the market;
- the degree of countervailing power in the market;
- the likelihood that the parties to the combination would be able to significantly and sustainably increase prices or profit margins;
- the extent of effective competition likely to sustain in a market;
- the extent to which substitutes are available or likely to be available in the market;
- the market share, in the relevant market, of the parties to the combination, individually and as a combination;
- the likelihood that the combination would result in the removal of a vigorous and effective competitor or competitors in the market;
- the nature and extent of vertical integration in the market;
- the possibility of a failing business;
- the nature and extent of innovation;
- the relative advantage, by way of the contribution to economic development, by any combination having or likely to an AAEC; and
- whether the benefits of the combination outweigh the adverse impact of the combination, if any.

Q23. What orders can be passed by the CCI in relation to combinations?

The CCI can pass an order approving the combination if the combination does not cause an AAEC in the relevant market in India. If the CCI considers that the combination results in an AAEC, it may block such a combination and/or it can propose suitable modifications (remedies) (see Q24). The CCI may also issue interim orders (by way of a temporary injunction) restraining any party from carrying out any act which is or is likely to be in contravention of Section 6 of the Competition Act.

It should be noted that the CCI has not to date blocked any combination.

Q24. What remedies can be offered to secure clearance?

The CCI can clear problematic transactions on the basis of modifications (remedies) designed to remove any risk of an AAEC. Such modifications may be structural (including divestment), behavioural or a combination of the two.

The parties to the combination may propose modifications during the Phase I review period. They can also voluntarily propose modifications in response to a “show cause” notice issued by the CCI, to show why a detailed Phase II investigation should not be conducted in respect of the notified combination. The CCI retains the discretion to accept the proposed remedy.

Once the CCI has initiated its Phase II review, only the CCI can propose modifications. The parties can suggest amendments to the modification. If the CCI accepts the suggestion, it can approve the combination on this basis. However, if it does not do so, the parties are given time to accept the modifications proposed by the CCI. If the parties then fail to accept the modifications proposed by the CCI, the combination is deemed to have an AAEC and will be blocked by the CCI.

Q25. What are the penalties for failure to notify a notifiable transaction with the CCI?

In the case of failure notifying a notifiable transaction and consummation of the transaction (or a part of it) without the prior approval from the CCI, the CCI can impose a penalty up to 1% of the total turnover or assets or the value of the transaction, whichever is higher, of the combination. The CCI has taken a strong approach to failures to notify and gun jumping.



INSOLVENCY

14. Insolvency and Bankruptcy

Overview of the insolvency and bankruptcy regime in India

The Insolvency and Bankruptcy Code, 2016 (“**IBC**”) has overhauled the legal regime in relation to the insolvency of all companies, limited liability partnerships, partnership firms and individuals in India. The provisions of the IBC relating to the insolvency of corporate entities, personal guarantors, and notified financial service providers are in force.

The IBC provides a framework for the time bound resolution of financially distressed companies, while also opening up avenues for their acquisition as going concerns. The IBC is a significant legislative reform that has improved the “ease of doing business” in India by providing distressed companies a time-bound and efficient exit route.

Q1. What processes have been prescribed under the IBC for corporates in distress?

IBC prescribes a:

- Corporate Insolvency Resolution Process (“**CIR Process**”) whereby a committee of creditors (usually comprising unrelated financial creditors of the debtor) explore and finalize a resolution plan for the rescue of incorporated entities in distress (corporate debtor) as a going concern.
- Liquidation process which provides for *inter alia*, piecemeal sale of assets of the debtor. There is no direct entry into liquidation under the IBC and a CIR Process mandatorily precedes the liquidation process of a corporate debtor. The liquidation process only commences if the CIR Process does not culminate in approval of a resolution plan or if no resolution plan is proposed during the defined timelines of the CIR Process.
- The company may also be liquidated if the committee of creditors resolves to liquidate the company during the CIR Process before the confirmation of the resolution plan; or if the company contravenes the terms of an approved resolution plan.
- Pre-packaged Insolvency Resolution Process (“**PRIR**”

Process) for a speedier and more cost-effective rescue of Micro, Small and Medium Enterprises (**MSMEs**) as a going concern. This allows the corporate debtor to remain in possession while a committee of creditors selects a resolution plan for the rescue of the MSME

debtor. The resolution plan chosen may be a pre-negotiated plan proposed by the debtor itself.

- A Fast-track CIR Process designed for smaller companies with simpler financial structures. This is largely similar to the general CIR Process but with shortened timelines.

Q2. Who can initiate the CIR process under the IBC, and when?

The CIR process may be initiated by:

- Financial creditors- those creditors who have disbursed debt against the time value of money;
- Operational creditors- those creditors who have provided goods and services to the corporate debtor in exchange for money and include workmen, employees, trade creditors or statutory creditors; or
- the corporate debtor itself,

by filing an application before the National Company Law Tribunal (**NCLT**) (also known as the Adjudicating Authority), which is a quasi-judicial authority empowered to *inter alia* admit an application for initiation of a CIR Process, pass an order accepting the resolution plan approved by the committee of creditors if it meets the minimum requirements provided under the IBC or pass an order liquidating the corporate debtor.

The CIR Process may be initiated against a corporate debtor if there is a default of INR 1 crore (approx. USD 113,636) or more, on payment of debt.

- A financial creditor must demonstrate default of the

requisite amount in respect of a debt owed to itself or any other financial creditor. If financial creditors are 'creditors in a class' (such as bondholders), an application for initiation of the CIR Process must be filed by at least 100 members of such a class or 10% of the creditors of such a class, whichever is less.

- On the other hand, an operational creditor is first required to issue a demand notice seeking payment. An operational creditor may only initiate a CIR Process if the company fails to pay the amounts due within a period of 10 days from the demand notice, and only if no dispute, suit or arbitration claim is pending with respect to the demand, prior to the issuance of the demand notice or on the date of filing of the application under the IBC. 'Dispute' does not need to be a formal dispute before a court or an arbitrator.
- A company can itself file an application with the NCLT to initiate the CIR Process with respect to itself along with proof of default. However, at least three-fourths of the shareholders of such company must pass a resolution approving the filing of the application to initiate the CIR Process with respect to itself.

Q3. Which authority adjudicates upon the proceedings under the IBC?

The Adjudicating Authority for the processes relating to incorporated entities is the NCLT. Appeals from orders of the NCLTs lie with the Appellate Authority, which is the National Company Law Appellate Tribunal (**NCLAT**). The Adjudicating Authority for the personal insolvency

processes is the Debt Recovery Tribunal. Appeals from the orders of the Debt Recovery Tribunal lie with the Debt Recovery Appellate Tribunal, which is the Appellate Authority.

Q4. What is the process upon admission of the insolvency application?

Once an application initiating the CIR Process is admitted, a moratorium is declared. This moratorium prohibits:

- the institution or continuation of pending suits or

proceedings against the company;

- any actions for foreclosure, recovery or enforcement of any security interest created by the company in respect

- of its property;
- transferring, encumbering, alienating, or disposing of any of its assets or any legal or beneficial interest in such assets by the company;
- recovery of any property by an owner or lessee where such property is owned by or in possession of the company;
- termination or suspension of a license, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period;
- termination, suspension or interruption of supply of essential goods and services (which includes electricity, water, telecommunication and information technology services to the extent that these are essential services for the company.); and
- termination, suspension or interruption of supply of goods and services critical to the preservation of the value of the company and its management as a going concern (as determined by the resolution professional), except if they are not paid for during the moratorium period or in such other circumstances as may be specified.

An insolvency professional is also appointed as the interim resolution professional who is tasked with the management of the corporate debtor as a going concern. The powers of the board of directors are suspended and vests with the interim resolution professional (“**IRP**”). The IRP constitutes a committee of creditors comprising unrelated financial creditors of the corporate debtor. The committee of creditors appoints the IRP as the resolution professional (“**RP**”) or appoints another insolvency professional as the RP, assesses the viability of the corporate debtor and approves a resolution plan for the rehabilitation of the corporate debtor. A resolution plan may, *inter alia*, provide for the following:

- substantial acquisition of the shares of the company by one or more persons;
- restructuring of the company through a merger, amalgamation or demerger;
- debt restructuring, change in the goods or services provided by the company or change in the technology used by the company;
- issuance of securities of the company for cash, property, claims or other appropriate purposes; or
- corporate restructuring measures, such as merger or de-merger and sale of assets.

The resolution plan is required to contain all relevant terms of the proposed reorganization and its proposed effect on the rights of relevant stakeholders. At the minimum, the resolution plan must:

- provide for payment of insolvency resolution process costs in priority to payment of other debts;
- provide for payment to operational creditors (of amounts equal to at least the payments such operational creditors would have received during a liquidation process or the payment they would have received if the resolution plan value was distributed according to the waterfall in liquidation, whichever is higher) in priority over financial creditors;
- provide for payment to dissenting financial creditors (of amounts equal to at least the payments such dissenting financial creditors would have received during a liquidation process) in priority to any payments to assenting financial creditors; and in case of deferred consideration, dissenting financial creditors to be paid at least *pro rata* and in priority to assenting financial creditors;
- provide for management of the affairs of the company after approval of the resolution plan;
- provide for the term and implementation of the resolution plan;
- provide for adequate means for supervision of implementation of the resolution plan;
- provide for a statement as to how the resolution plan has dealt with the interests of all stakeholders of the company;
- provide for a statement giving details if the resolution applicant or any of its related parties has failed to implement or contributed to the failure of

- implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past;
- not contravene any law in force; and
 - demonstrate that it addresses the cause of default, is feasible and viable, has provisions for effective

implementation, has provisions for approvals required (and timelines for the same) and that the resolution applicant has the capability to implement the resolution plan.

A brief diagrammatic summary of the timeline for the CIR Process has been highlighted below:

Particulars	Indicative Timeline
Admission of application, appointment of interim Resolution Professional and declaration of moratorium	T (Insolvency Commencement Date)
Public Announcement	T + 3
Submission of creditors' claims	T + 14
Verification of Creditors' Claims by the interim IRP	T + 21
Constitution of the Committee of Creditors by the IRP	T + 23
1st meetings of the Committee of Creditors and resolution to appoint the RP by the Committee of Creditors	T + 30
Appointment of registered valuer to determine fair value and liquidation value of the corporate debtor	on or before T + 47
Determination of avoidance transactions and application to the NCLT	Within T + 75 (opinion on avoidance transactions) Within T + 115 (determination on avoidance transactions) Within T+130 (application to NCLT for appropriate relief)
Preparation and submission of information memorandum to the committee of creditors	T + 95
Invitation of Expressions of Interests	T + 60
Submission of Expressions of Interest	T + 75 T + 85 (Provisional List of Resolution Applicants) T + 100 (Final List of Resolution Applicants)
Issue of Request for Resolution Plans including the Evaluation Matrix and Information Memorandum	T + 105
Submission of Resolution Plans by Resolution Applicants	T + 135
Submission of Resolution Plan approved by the Committee of the Creditors to the NCLT	T + 165
Approval / Rejection of the Resolution Plan	T +180 (with an upper limit of T + 330, including delays due to litigation)

Q5. Are actors in the insolvency and bankruptcy processes regulated?

The Insolvency and Bankruptcy Board of India ("IBBI") regulates insolvency professionals, insolvency professional agencies (which are frontline regulators for insolvency professionals) and information utilities (which must accept, record, verify and authenticate information relevant to the insolvency processes under the IBC). The IBBI also frames regulations

and guidelines on matters relating to all insolvency and bankruptcy processes as required under the IBC.

Q6. When is a Corporate Debtor liable to be liquidated under the provisions of the IBC?

Under the IBC, a corporate debtor is liable to be liquidated following the CIR Process if no resolution plan is presented for approval within the specified timelines, or if a resolution plan is rejected by the Adjudicating Authority or if the corporate debtor contravenes the terms of a resolution plan approved by the Adjudicating Authority. The corporate debtor may also be liquidated if the committee of creditors resolves to liquidate the corporate debtor during the CIR Process before the confirmation of a resolution plan.

Following the PPIR Process, liquidation may be ordered in

exceptional circumstances, i.e. if (a) the corporate debtor contravenes the terms of an approved resolution plan, or (b) the corporate debtor has been divested of possession and either no resolution plan is approved by the committee of creditors, the financial creditors resolve to terminate the PPIR Process, the time-period of 90 days from the commencement of the PPIR Process has elapsed without approval of a resolution plan by the financial creditors or the NCLT rejects the resolution plan for not resulting in change in management or control.

Q7. What is the process of liquidation under the IBC?

Once an order of liquidation is passed by the Adjudicating Authority, the RP appointed during the CIR Process is appointed as a liquidator unless otherwise decided by Adjudicating Authority. Subject to the directions of the Adjudicating Authority, the liquidator is required to control and carry out the liquidation process and the powers of the Board and key managerial personnel of the corporate debtor vest with the liquidator. The liquidator has extensive powers to carry out the process, including the power to conduct the business of the corporate debtor for its beneficial liquidation, settle claims of creditors and sell assets of the corporate debtor.

The liquidation process under the IBC requires the liquidator to collect or update claims of creditors, constitute the liquidation estate, attempt the sale of the assets of the corporate debtor and distribute the proceeds of the sale according to the statutory waterfall discussed below. The liquidator also constitutes a stakeholders' consultation

committee ("**SCC**") consisting of all creditors of the corporate debtor within sixty days of the commencement of the liquidation process, and until then, the committee of creditors acting in the CIR Process of the corporate debtor acts as the SCC in the liquidation process. The liquidator is required to consult with the SCC on several aspects such as sale of assets in liquidation, fee of the liquidator, manner of pursuing avoidance transactions, etc. The SCC's decisions are not binding on the liquidator; however, the liquidator is required to record reasons in writing for deviating from the SCC's decisions and submit the same to the Adjudicating Authority and the IBBI. Further, the SCC may approach the NCLT to request the replacement of the liquidator with another eligible insolvency professional.

The liquidator should endeavor to complete the liquidation process within one year from its initiation. A diagrammatic summary of the key stages of the liquidation process is given below:

Particulars	Indicative Timeline
Commencement of liquidation and appointment of liquidator	T Commencement date
Public announcement	T + 5
Appointment of registered valuers and first meeting of the SCC	T + 7
Submission of claims and intimation of decision on relinquishment of security interest by secured creditors	T + 30
Withdrawal or modification of claim	T + 44
Verification of claims	T + 60
Constitution of SCC	T + 60

Particulars	Indicative Timeline
Intimation of the decision of acceptance / rejection of claim	T + 67
Filing of the list of stakeholders, filing of the preliminary report with the NCLT and filing of the asset memorandum with the NCLT	T + 75
Submission of Progress Reports by the Liquidator	End of quarter + 15
Distribution of the proceeds to the stakeholders	Date of realisation + 90
Application to the NCLT for disclaimer of onerous property	T + 6 months
Completion of the liquidation of the corporate debtor	T + 365

Q8. Can a secured creditor stand outside liquidation process under the IBC?

The IBC duly recognizes the rights of secured creditors to stand outside the liquidation process and realize their security interest for recovery of its dues irrespective of the commencement of the liquidation process. During a liquidation process, secured creditor(s) may either choose to relinquish their security interest to the liquidation estate and receive proceeds from the sale of assets by the liquidator as per the waterfall mechanism set out in the

IBC or stand outside of the liquidation process and enforce, realize, settle, compromise or deal with the secured assets in accordance with ordinary civil remedies, subject to verification of the security interest by the liquidator, payment of CIR Process costs due as well as payment of liquidation costs and workmen's dues as they would have shared had they relinquished their security interest.

Q9. What is the distribution waterfall under the IBC?

Section 53 of the IBC puts in place a waterfall mechanism for distribution of proceeds in liquidation which is as follows:

- the insolvency resolution process costs and the liquidation costs to be paid in full;
- debts owed to a secured creditor in the event such secured creditor has relinquished security and workmen's dues for the period of 24 months before liquidation;
- wages and any unpaid dues owed to employees other than workmen for the period of 12 months before liquidation;
- financial debts owed to unsecured creditors;
- dues to the governments and debts owed to secured creditors for unpaid amounts following the enforcement of security interest outside liquidation;
- any remaining debts;
- preference shareholders, if any; and
- equity shareholders or partners, as the case may be.

Q10. What are the avoidance rules under the IBC?

The IBC provides for avoidance or setting aside of four kinds of pre-insolvency transactions during the CIR Process, PPIR Process or liquidation process:

- preferential transactions: transfers on account of antecedent liabilities that put a person in a better position than they would have been if the distribution

of assets was made in accordance with the liquidation waterfall and which are not in ordinary course of business and do not secure new value;

- undervalued transactions: transactions in which the debtor has gifted or transferred property to a person for a value which is significantly less than the value of consideration provided by that person, and this transaction has not taken place in the ordinary course of business;
- extortionate credit transactions: this is intended to cover transactions where credit has been received by the Corporate Debtor on extortionate terms although the transactions where debt has been extended by a

person providing financial services in compliance with law, have been exempted; and

- transactions defrauding creditors: undervalued transactions that were deliberately entered into to keep assets beyond the reach of any person entitled to claim against the Corporate Debtor, or adversely affect the interest of such a claimant.

The Adjudicating Authority is vested with wide powers to remedy the effect of such transactions including the power to reverse the transactions, supplant obligations and direct payment of adequate consideration.

Q11. Does the IBC provide for Cross Border Insolvency issues?

The IBC contains enabling provisions for the Central Government to enter into bilateral / reciprocal arrangements for recognition and enforcement of provisions of the IBC. The IBC also provides that in cases where a debtor's assets are located in a country with which there are reciprocal arrangements, the RP, liquidator and / or the bankruptcy trustee may make an application to the Adjudicating Authority, which may then issue a letter of request to the relevant foreign court or authority for necessary assistance. Bilateral arrangements are the only basis for granting assistance or recognition to foreign insolvency processes under the IBC. However, no such arrangements have been made yet.

Despite this, in the case of *Jet Airways v State Bank of India*

(Comp, App. (AT)(Insolvency) No. 707 of 2019), the Appellate Authority gave access to a foreign insolvency representative who was appointed as the administrator in Dutch insolvency proceedings against the Corporate Debtor, and directed the RP appointed in the corporate debtor's CIR Process to enter into a Cross-Border Insolvency Protocol with the Dutch administrator for the purposes of coordination of the two insolvency proceedings. The Appellate Authority also recognised the Cross Border Insolvency Protocol entered into between the Dutch Administrator and the RP and directed that the Protocol should be treated as the directions of the NCLAT. As such, it may be possible for NCLTs to grant recognition or assistance to foreign insolvency professionals in future cases based on this precedent.

Q12. Is group insolvency allowed under the IBC?

While the IBC does not have an extensive framework to deal with the issues that arise in the insolvency of group companies, judicial precedents have developed regarding dealing with the insolvency of companies in corporate groups. Most significantly, in the matter of *Venugopal N. Dhoot v. State Bank of India* (CA-1022(PB)/2018), first, NCLT, Delhi ordered that different CIR Processes of different Videocon group companies be heard by the same bench of the NCLT, Mumbai in order to ensure procedural coordination.

Thereafter, in *State Bank of India v. Videocon Industries Limited and Others* (MA 1306/2018 in CP No. 02/2018), the NCLT, Mumbai ordered the substantive consolidation of the assets of 13 out of 15 companies and observed that on a case to case basis, substantive consolidation of group entities could be considered *inter alia* basis the following parameters i.e. common control, common directors, common assets, common liabilities, interdependence, interlacing of finance, co-existence for survival, pooling of resources, intertwined

accounts, interloping of debts, singleness of economics of units, common financial creditors and common group of corporate debtors.

Since then, in various cases, the Adjudicating and Appellate Authorities have ordered the initiation of 'group insolvency' proceedings or consolidation of different group entities undergoing insolvency resolution.

Recent challenges in implementation of the IBC and consequential amendments

The IBC has garnered a lot of debate and uncertainty over well-established principles of law governing the treatment of secured creditors both at the stages of resolution as well as liquidation. The Apex Court, in the *Committee of Creditors of Essar Steel Limited vs. Satish Kumar Gupta and Ors.* (Civil Appeal No. 8766-67 of 2019) ("**Essar Steel**") gave a clear verdict which upheld the principle of equitable treatment of different classes of creditors in reference to the value and priority of their inter-se security interest and the amendments brought *vide* Insolvency and Bankruptcy Code (Amendment) Act, 2019 ("**2019 Amendment Act**") where the order of priority and value of security was clarified to be a determining factor for distribution of proceeds under a resolution plan. However, recent jurisprudence under the IBC has given rise to various issues regarding the consideration of value and priority of secured creditors while making distributions under the resolution plan to both assenting and dissenting financial creditors.

In the midst of this controversy is the Supreme Court's decision in the case of *India Resurgence ARC Private Limited v. M/S Amit Metaliks Limited* (Civil Appeal No. 1700 of 2021) ("**India Resurgence**") which *inter alia* held that distribution of proceeds in a resolution plan falls within the realm of commercial wisdom of the committee of creditors and could not be subjected to judicial review. The interpretation adopted by the Apex Court effectively enables the committee of creditors to completely ignore *inter-se* priority amongst creditors and value of security interest of individual creditors while approving a resolution plan. This judgment has also been relied on in *Small Industries Development Bank of India v. Vivek Raheja, RP, M/s. Gupta Exim (India) Pvt. Ltd.* (Comp. App. (AT) (Ins.) No.

570 of 2022) where the NCLAT *inter alia* refused to interfere with the decision of the committee of creditors to distribute the resolution proceeds in proportion to outstanding debt, divorced from *inter-se* priority amongst secured creditors and security structure. In another case of *Union Bank of India v. Mr. Rajender Kumar Jain, RP of M/s Kudos Chemie Ltd. & Ors.* (Comp. App. (AT) (Ins.) No. 665 of 2022), the NCLAT relied on *India Resurgence* and held *inter alia* that a dissenting secured creditor cannot demand a higher amount to be paid to it under a resolution plan based on the value of security interest held by it.

Subsequently, the Supreme Court in *DBS Bank Ltd. Singapore v. Ruchi Soya Industries Ltd. and Anr.* (Civil Appeal No. 9133 of 2019 with 787 of 2020) differed from its decision in *India Resurgence* and held that a dissenting financial creditors is entitled to value of its security interest under a resolution plan. Given that both *India Resurgence* and *Ruchi Soya* cases are delivered by two-judge benches of the Supreme Court, the issue involved in the *Ruchi Soya* case has been referred to a larger bench of the Supreme Court. Meanwhile, a three-judge bench of the Supreme Court in *Paridhi Finvest Private Limited v. Value Infracon Buyers Association and Anr.* (Diary No. 14065 of 2024) summarily dismissed an appeal against an order of the NCLAT which held that dissenting financial creditors cannot insist that their payment under a resolution plan be calculated on the basis of the value of the security interest they hold. The Supreme Court held that the said appeal does not involve any substantial questions of law and hence, did not require interference. Notably, the Supreme Court did not get into the conflicting positions taken in the *India Resurgence* and *Ruchi Soya* cases or the reference made to the larger bench.

Further even during liquidation, inter-se priorities amongst secured creditors under the liquidation waterfall in Section 53 of the IBC have not been recognised once the secured creditor has elected to forego their right of enforcement the security interest. In *Technology Development Board v. Mr. Anil Goel & Ors.* (Comp. App. (AT) (Ins.) No. 731 of 2020), the NCLAT held that during liquidation, the secured creditors upon relinquishment of their security interest lose their *inter-se* priority and, therefore, all secured creditors are to be treated as one class ranking equally for distribution of

proceeds in the order of priority specified, second only to payment of process costs. Any inter-se priorities amongst the secured creditors cannot be sustained once the secured creditor has elected to forgo its right to enforce the security interest. This was followed by the case of *Oriental Bank of Commerce v. Anil Anchalia, Liquidator of M/s. Bala Techno Industries Ltd.* (Comp. App. (AT) (Ins.) No. 547 of 2022), which reiterated a similar interpretation of Section 53 of the IBC. Although these decisions of the NCLAT have been stayed by the Supreme Court of India, in the absence of a final judgment, the position remains unclear.

However, the Supreme Court has also provided clarity on various legal issues which has improved certainty and predictability in insolvency jurisprudence. For instance, in *EPC Constructions India Limited v. M/s Matix Fertilizers and Chemicals Limited* (2025 INSC 1259), the Apex Court held that preference share is not 'financial debt' and therefore, a preference shareholder cannot file an application under section 7 of the IBC. In *Independent Sugar Corporation Ltd. v. Girish Sriram Juneja* (2025 INSC 124), the Supreme Court clarified that prior approval from the Competition Commission of India is mandatory before approval by the

Committee of Creditors as per section 31(4). In [*Piramal Capital & Housing Finance Ltd. v. 63 Moons Technologies Ltd.*](#) (2025 INSC 421), the Supreme Court conclusively addressed the debate surrounding the treatment of section 66 recoveries by holding that the Committee of Creditors in its commercial wisdom can allocate or assign these proceeds as it deems fit, provided such treatment is disclosed and forms part of the approved plan.

The government has also been extremely proactive in improving the jurisprudential clarity under IBC. In August 2025, it introduced the Insolvency and Bankruptcy Code (Amendment) Bill 2025 in the Lok Sabha which seeks to bring in various reforms to improve the efficiency of the insolvency framework including clarification regarding mandatory admission of insolvency applications, stricter condition for withdrawal, empowering the Committee of Creditors to supervise liquidation, clarification that 'security interest' excludes security interest created by virtue of legal provisions etc. Many of these amendments would be instrumental in avoiding protracted litigation and vastly improve the legal clarity under the corporate insolvency framework.



15. Intellectual Property

Q1. What is the law relating to protection of intellectual property rights in India?

Intellectual property is protected under various legislations in India as well as at common law. 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, such as the introduction of the Patents (Amendment) Act, 2005 and the Patents (Amendment) Rules, 2016 and a new trade mark law regime.

The important legislations governing intellectual property in India are:

- Patents
 - The Patents Act, 1970
 - The Patent Rules, 2003, as amended by the Patents (Amendment) Rules, 2024
- Designs
 - The Designs Act, 2000
 - The Designs Rules, 2001 as amended by Designs (Amendment) Rules, 2021
- Trademarks
 - The Trade Marks Act, 1999 as amended by Trade Marks (Amendment) Act, 2010
 - The Trade Marks Rules, 2017
- Copyright
 - The Copyright Act, 1957 as amended by the Copyright (Amendment) Act, 2012
 - The Copyright Rules, 2013 as amended by the Copyright (Amendment) Rules, 2021
- Geographical Indications
 - The Geographical Indications of Goods (Registration & Protection) Act, 1999
 - The Geographical Indications of Goods (Registration & Protection) Rules, 2002
- Plant Varieties
 - The Protection of Plant Varieties and Farmers' Rights Act, 2001 (Act No, 53 of 2001 as amended upto Act No. 33 of 2021)
 - The Protection of Plant Varieties and Farmers' Rights Rules, 2003 as amended by Protection of Plant Varieties and Farmers' Rights (Third Amendment) Rules, 2009
- Semiconductor Integrated Circuits

- The Semiconductor Integrated Circuits Layout- Design Act, 2000
- The Semiconductor Integrated Circuits Layout- Design Rules, 2001
- Biodiversity
 - The Biological Diversity Act, 2002 as amended by Biodiversity Protection (Amendment) Act 2023
 - The Biological Diversity Rules, 2004

Q2. How are computer software and programmes protected in India?

India recognises and protects computer programmes, tables and compilations including computer databases as 'literary works' under the Copyright Act, 1957. Both the object and the source codes can be protected as literary works under the Copyright Act. The protection provides for right to, *inter alia*, reproduce the work in any material form, including the storing of it in any medium by electronic means, to issue copies of the work to the public, to communicate the work to the public, to sell or offer to sell, to give on commercial rental any copy of the computer programme provided the programme itself is an essential object of the rental. Also, under the Copyright Act, the owner of a copyright work is entitled to protect his work against unauthorised use and misappropriation of the whole of his work or a substantial part thereof and secure relief from a court of law, including injunction, damages and rendition of accounts of profits. Criminal remedies for infringement of copyright in a computer software or programme are also available and the punishment includes imprisonment for not less than six months but which may extend to three years with

a fine, not less than INR 50,000 (approx. USD 568) but which may extend to INR 2,00,000 (approx. USD 2273).

The Patents Act, 1970 prohibits patentability of "computer programmes per se" under Section 3(k), which the Patent Office had historically treated as an absolute preclusion on computer implemented method claims. However, pursuant to the 2019 judgement of the Hon'ble Delhi High Court, in *Ferid Allani v. Union of India & Ors.*, 2019 SCC Online Del 11867 and multiple subsequent decisions, it has been clarified that the words 'per se' are used in Section 3(k) to ensure that patent applications concerning genuine inventions, based on computer programmes, are not refused. As per current interpretation, inventions based on computer programmes are considered patentable if they demonstrate a 'technical effect' or a 'technical contribution'. Examples of 'technical effect' include faster operating speed, shorter hard-disk access time, economical memory use, efficient search strategies, compression techniques and user interfaces, etc.

Q3. What patent protection is available to a biotechnology company?

Inventions in the field of biotechnology are subject to the same criteria as any other invention relating to product and process. Patents may not, however, be secured in respect of plants and animals in whole or part, including seeds, varieties and species and essentially biological processes for production or propagation of plants and animals (some of which are presently protectable under other legislations such as the Protection of Plant Varieties and Farmers' Rights Act, 2001.) The preclusion in patentability of plants and animals does not however

extend to microorganisms that are subjected to modification. However, microorganisms that are naturally occurring are statutorily precluded from patentability. Genes and nucleic acid sequences manufactured with human intervention are not considered parts of plants or animals, and are accordingly patentable as products. Similarly, processes for manufacturing or producing transgenic plants or animals are not considered essentially biological processes, and are patentable.

Q4. How are trademarks and service marks protected in India?

The foundations of trade marks law in India is set by the Trade Marks Act, 1999, and the underlying Trade Marks Rules, 2017. The Trade Marks Act, 1999, is spread out over 14 chapters,

contains 167 sections, and one schedule. The preamble of the Act sets out the objective, i.e. to amend and consolidate the law relating to trade marks, to provide for registration and

better protection of trade marks for the goods and services and for the prevention of the use of fraudulent marks.

Under the Trade Marks Act, 1999, a trade mark is defined as a mark that is capable of both: a) a graphical representation, and b) distinguishing the goods or services of one undertaking from that of another. The definition of a mark includes a device, brand, heading, label, ticket, name, signature, word, letter, numeral, shape of goods, packaging or combination of colours or any combination thereof.

With enactment of the Trade Mark Rules, 2017, the requirement for representation of the trade mark was pertinently widened to include sound marks, and three-dimensional marks in the form of an MP3 file, and picture/graphic respectively. Olfactory marks are also considered registrable, provided that they can meet the threshold of graphical representation and distinctiveness. Thus, non-conventional marks have also brought into the scope of protection. Notably, the rules also enabled any person to apply to the Registrar for recognition of their mark as “well-known” as per The Trade Marks Act, 1999, subject to the discretion of Registrar, and third-party objections.

Registration under the Trade Marks Act, 1999, confers exclusive rights to use the mark in respect of goods or services, subject to any conditions imposed, and if these rights are infringed, to take action to restrain unauthorised use. A trade mark is infringed by a person, who, not being a permitted user, uses an identical or deceptively similar mark to the registered trade mark, without the authorization of the registered proprietor of the trade mark. Indian trade mark law, however, protects the vested rights of a prior user of a trade mark against an action by a registered proprietor.

Apart from or in addition to registration, a person can also secure rights in an unregistered mark. By virtue of use of a

trade mark, a proprietor acquires goodwill which is protectable at common law by way of a passing off action. The protection also extends to unauthorised use in relation to trade names and domain names.

Under the Trade Marks Act, 1999, both civil and criminal remedies are simultaneously available against infringement and passing off. Registration of a trade mark is not a pre-requisite for sustaining a civil or criminal action against violation of trade marks in India.

Civil remedies or reliefs available to trade mark owners, amongst others, include permanent or temporary injunctions, damages or rendition of account of profits with or without any order of delivery-up of the infringing labels and marks for destruction and erasure, including costs. Apart from the final relief(s), the proprietor of a trade mark may also seek interim relief(s) such as an order of interim injunction and/or appointment of a local commissioner, which is akin to an “Anton Pillar Order”, for search, seizure and preservation of infringing goods, account books and preparation of inventory, etc.

Criminal proceedings involve filing of a complaint in the court of a magistrate against unknown persons with a view to secure directions to the police to register a case and investigate the activity complained of (including a search and seizure operation). Alternatively, one can also file a complaint with the police directly and if it is satisfied that the named entity is committing any of the offences complained of, it may, without the order of the court, carry out a raid/search & seizure operation. In case the infringer is found guilty of any of the aforementioned offences, he is punishable with imprisonment for a term between six months to three years and with fine of INR 50,000 (approx. USD 568) which may extend to INR 2,00,000 (approx. USD 2273). Enhanced punishment for subsequent conviction(s) is also envisaged in the Act.

Q5. How does one protect confidential information and trade secrets in India?

Confidential information and trade secrets are protected in India under the law of contracts, copyright law, common law action of breach of confidence, as well as the Information

Technology Act 2000. The protected information must be such, the release of which would be injurious to its proprietor or of advantage to third parties, it must be confidential or

secret, that is, it is not already within the public domain, and the proprietor should have taken reasonable steps to maintain its secrecy or confidentiality. The methods usually used to protect confidential information are confidentiality clauses in employee contracts, non-disclosure agreements with third parties in the course of a business venture, and internal security mechanisms to restrict access and dissemination of trade secrets and confidential information

within an organization.

Available legal recourse includes injunctions restraining disclosure or use of information, return of confidential proprietary information on termination of a contract, and damages and account of profits arising out of unauthorized disclosure or use.

Q6. Can the employees of an Indian company be required to sign confidentiality agreements?

Yes. Confidentiality provisions may be included in the employment terms to bind the employee to keep the information received during the course of employment confidential. Such terms may also include requirements to return all confidential information and materials to

the employer at the time of termination of employment. Additionally, requirements preventing such personnel from utilising the confidential information in their new job may also be imposed.

Q7. What is the protection available in case of infringement of intellectual property rights?

All the relevant statutes on intellectual property have provisions relating to remedies and reliefs available to an owner in case of infringement including injunction, damages or rendition of accounts. In addition to civil remedies, the

owner is also, in some cases, entitled to criminal remedies for infringement of copyright and trademarks. There are detailed provisions relating to such offences, which are punishable with imprisonment and fine.

Q8. Does Indian law recognise transactions carried out electronically?

The Information Technology Act, 2000 provides for, *inter alia*, legal recognition of transactions carried out by means of electronic data interchange and other means of electronic communication, commonly referred to as "electronic commerce". Such communication may be an alternative to paper-based methods of communication and storage of information, to facilitate electronic filing of documents with the government agencies and for connected or incidental matters.

The Information Technology Act, 2000, provides legal recognition to electronic records if the information or matter is (a) rendered or made available in an electronic form, and (b) accessible to be usable for a subsequent reference. The Information Technology Act, 2000 also provides legal recognition for electronic signatures where information or matter is authenticated by means of digital signature affixed in such manner as may be prescribed by the Central Government.

Q9. How can a company outsourcing its activities to India safeguard intellectual property which is created in the course of performance of an outsourcing contract?

Indian law permits for assignment of rights in intellectual property, either partially or wholly and, in cases of some intellectual property such as copyright, for whole or any part of the duration of protection granted under the relevant legislation. In a case where a company outsources its work

to a third party contractor or vendor, it is essential to ensure that the contract mentions ownership and terms of use of intellectual property. The Copyright Act envisages that an assignment or license agreement must be in writing and must specify the term and territory of the assignment or license.

In case of intellectual property created by a party generally ownership lies with the party who created it, however, the law prescribes exceptions to this rule, including the presence of an employer-employee relationship, in which case the employer is the first owner of copyright. A third-party contractor or vendor may be afforded rights to use the intellectual property through a license agreement during the course of the engagement. The license agreement should contain appropriate terms of use and may be exclusive or non-exclusive. In the case of a newly created intellectual property, it is essential to identify

who will have ownership of the intellectual property in the contract itself, and whether the vendor will have certain rights regarding its use. Appropriate mechanisms should also be put in place to ensure that the chain of titles has been perfected. The intellectual property related terms and conditions must comply with the requirements and provisions as laid down under the respective intellectual property legislations. Additional provisions seeking documentation to perfect title or seeking statutory protection should also be sought as part of the assignment deeds.

Q10. What are the relevant data protection laws in India?

The Information Technology Act, 2000, contains provisions relating to data protection and imposes civil liability for negligent handling of “sensitive personal data or information” and criminal liability in cases of disclosure of information in breach of a lawful contract. The Information Technology (Reasonable security practices and procedures and sensitive personal data or information) Rules, 2011 (“SPDI Rules”) under Section 43A of the Information Technology Act, 2000, prescribe the procedure to be followed by a body corporate for the protection of personal information including sensitive personal information or data, procedure to be followed for collection of such data and further disclosure of such collected data. The SPDI Rules are applicable to body corporates, or any person located within India.

Notably, India’s data protection regime is currently undergoing significant changes, with the enactment of a new Digital Personal Data Protection Act, 2023. Under the new law, personal data is defined broadly as data about an individual who is identifiable by or in relation to such data. This law regulated ‘digital’ personal data, i.e., any personal data maintained in digital form. It introduces the concept of a ‘data fiduciary’ (which is similar to a data controller under the European General Data Protection Regulation (GDPR)) as the primary entity responsible for ensuring compliance with the law in respect of any data processing undertaken by it or by a data processor on its behalf. Personal data of data principals (akin to ‘data subjects’ under the GDPR) may be processed

based on their consent or for other legitimate uses as set out under the law, including for medical emergency, employment, etc. The Digital Personal Data Protection Act empowers the Central Government to establish a Data Protection Board of India as an adjudicatory authority, and also introduces the concept of Consent Managers, who may act as a single point of contact to enable the data principal to give, manage, review and withdraw consent on behalf of data principals. It also empowers the Central Government to restrict cross border transfer of personal data to certain countries or territories. The new law imposes incremental obligations such as appointment of data protection officer and data auditor on “significant data fiduciaries” that are notified as such by the Central Government, based on the volume of personal data processed, the risks to data principals, etc. The Digital Personal Data Protection Act, 2023 envisages a civil liability regime in case of non-compliance and the maximum penalties for contravention of the law being INR 250 crores (USD 28 million approx.), with the Central Government being empowered to increase such penalties to INR 500 crores (USD 57 million approx.).

The Digital Personal Data Protection Act, 2023 is being enforced in phases, with substantive provisions coming into effect in May, 2027. Until such time, relevant provisions of the Information Technology Act read with the SPDI Rules continue to be the applicable law for data protection in India.



16. Employment Law

Q1. What is the general framework of employment laws in India?

Labour and employment laws in India comprise of both Central and State laws and can be broadly categorized into (i) laws on wages; (ii) laws on industrial relations; (iii) laws on social security and welfare benefits; and (iv) laws on working conditions, health and safety.

The Government of India has recently announced the implementation of the four labour codes (collectively, “**Codes**”), namely, the Code on Wages, 2019 (“**Wages Code**”), the Industrial Relations Code, 2020 (“**IR Code**”), the Code on Social Security, 2020 (“**SS Code**”) and the Occupational Safety, Health and Working Conditions Code, 2020 (“**OSH Code**”) (collectively referred to as “**Codes**”), with effect from November 21, 2025. The Codes have been introduced with the objective to overhaul India’s employment law framework by consolidating 29 Central labour laws into a unified framework.

While the Centre and most States and Union Territories have already formulated and published draft rules, the final Central rules are expected to be notified with the commencement of the financial year 2026-2027, with the final notified State rules expected in due course. Provisions of the Codes that are not

rule-dependent came into immediate effect from November 21, 2025. That said, until the corresponding rules are notified, the existing labour legislations and their respective rules will continue to be operative for provisions that are rule-dependent. Once the final rules under the Codes are notified, the Codes will come into full force.

An overview of the 4 labour codes is as follows:

- The Wages Code is applicable to all employees, except in the case of provisions relating to bonus which are applicable only to employees drawing wages less than the limit to be prescribed on a later date. The Wages Code has introduced a new definition of wages which has undergone a substantial change. The concept of floor wage has been introduced wherein the Central Government shall have the power to fix a ‘floor wage’ which can be different for different geographical areas. The Wages Code provides for inspectors-cum-facilitators with powers of inquiry, investigation and advising employers and workers regarding effective means of complying with the law.
- The IR Code increases the threshold for the applicability of standing orders and permission for retrenchment, closure,

lay off from 100 to 300. The concept of a sole negotiating union has been introduced which means where there is more than one registered trade union of workers, the trade union having more than 51% of the workers as members would be recognized as the sole negotiating union. The IR Code specifically provides for 'fixed term employment' which will give flexibility to employers, but it also prescribes protection to such employees by prescribing the obligation to provide all the statutory benefits available to a regular worker in proportion to the period of service rendered.

- The OSH Code will be applicable to establishments that employ 10 or more workers. It proposes one registration for an establishment instead of multiple registrations. Presently, 6 labour legislations out of 13 provide for separate registration of the establishment. This will create a centralized database and promote ease of doing business.
- The SS Code is applicable to (a) workers that are employed by any entity; (b) worker who may also be the owner or the proprietor of an entity or a self-employed unit; (c)

international workers; and (d) an Indian citizen, working outside the territory of India, who opts to become a member of social security schemes under the SS Code. It extends to both organized as well as unorganized sectors. The SS Code provides for universal social security including pension, sickness benefit, maternity benefit, disablement benefit, invalidity benefit, dependent's benefit, medical benefit, group insurance benefit, provident fund, gratuity, unemployment benefit and international worker's pension benefit. It also provides for the constitution of a National Social Security Council of India for reviewing and monitoring the implementation of the SS Code.

The labour laws in India provide for matters such as obligations of employers, rights of employees, benefits payable to the employees, health and safety obligations, and separation-related requirements. Therefore, it is important to understand the labour laws in India since they are indispensable for the running of business or trade operations.

Q2. What are the registrations which are required under labour laws for starting up a business?

- An employer is required to apply for registration of its commercial establishment or shop as applicable under the state specific shops and establishments acts ("**S&E Acts**") within a specified number of days (ranging from 30 to 90 days, depending on the state) of commencement of business / work. With effect from July 02, 2024, it is mandatory to register new establishments (and intimate in case of existing establishments) under the S&E Act applicable in Tamil Nadu. In this regard, it is pertinent to highlight that the Governments of Karnataka, Andhra Pradesh, Kerala, Madhya Pradesh, Rajasthan, Chhattisgarh, Maharashtra, Odisha, Telangana, Gujarat, Haryana, Punjab, Uttar Pradesh and West Bengal have discontinued the requirement of renewing the registration obtained under the respective S&E Acts. There is no requirement for employers to register shops and establishments in Tripura under the Tripura Shops and Establishments Act, 1970. Further, the following States have revised or introduced thresholds for applicability: 5 employees in Meghalaya; 10 employees in Rajasthan; and 20 employees in Maharashtra, Gujarat, Haryana, and Punjab. Additionally,

the Government of Delhi has integrated the registration portal under the Delhi Shops & Establishments Act, 1954 with the portal maintained by the Ministry of Corporate Affairs, Government of India. As a result, any new company intending to register under the Companies Act, 2013 and undertaking first time registration under the Delhi Shops & Establishments Act, 1954 will now be required to register only on the SPICe+ portal of Ministry of Corporate Affairs, Government of India.

- The Codes, particularly the OSH Code and SS Code, governs registration and licensing requirements in relation to factories, establishments, social security, engagement of contract labour, and construction activities undertaken by an establishment. The Codes have consolidated and simplified compliances across the 20 Central laws to further the objective of "Single Registration, Single License and Single Return". Further, the OSH Code introduces the concept of deemed registration, whereby an establishment is treated as registered if the registering authority does not grant registration within the prescribed timelines. The OSH Code also provides that an employer without

a valid registration will not be permitted to engage any employees. While the substantive provisions of the Codes have been brought into force with effect from November 21,

2025, the procedural provisions pertaining to registration will become operational only upon notification of the rules framed thereunder.

Q3. What are the different categories of workers or employees which are protected under labour and employment laws? How are such workers or employees distinguished?

Different legislations aim to protect the rights of different categories of employees or workers depending upon the nature of work undertaken by them, the type of industry, location and the remuneration received by them. The major categories under which employees or workers can be distinguished are: permanent employees, fixed term employees, part term employees, casual workers, contract workers, inter-state migrant workers and apprentices. A few of the major labor legislations dealing with the rights of such workers or employees are as follows:

- The Codes define a “worker” to mean any person employed in any establishment to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and includes working journalists and sales promotion employees. It excludes persons employed in a managerial or administrative capacity, or in a supervisory capacity with wages exceeding Rs 18,000.
- The definition of “employee” across the Codes are largely uniform and refers to the person employed on wages by an establishment to do any skilled, semi-skilled, unskilled, manual, operational, supervisory, managerial, administrative, technical, clerical or any other work, whether the terms of employment be express or implied. Certain exclusions and carve-outs have been provided under the SS Code, particularly in relation to the applicability of the Employees’ Provident Funds Scheme, 1952, the scheme formulated under the Employees’ State Insurance Act, 1948, and employee compensation provisions.
- An “employee” has been defined more broadly across the Codes, and the “workers” would be a subset within that broader category. “Workers” are exclusively entitled to protection under the IR Code, and leave and overtime benefits under the OSH Code. The Wages Code has broadly used the term “employee” guaranteeing rights and benefits to a larger set.
- Contract workers and Inter-state migrant workers are provided protection under the OSH Code. It deals with licensing of contractors, payment of wages, facilities to be provided to contract workers / inter-state migrant workers etc. the definition of an inter-State migrant worker under the OSH Code has been expanded to include a worker hired in one State, either directly by the employer or through a contractor to work in an establishment in another State; or a worker who travels on their own from one State to another, then gets an employment (or later changes the establishment within that destination State) under an agreement or arrangement for such work, and does not earn more than INR 18,000 (approx. USD 205) per month (or a higher limit, as may be prescribed by the Central Government).
- The OSH Code has expanded the definition of “contract labour” vis-à-vis the previous law by including inter-state migrant workers within its purview, but excluding from it, workers who are regularly employed by the contractor for any activity of his establishment, based on mutually accepted standards of employment. The OSH Code also prohibits employment of contract labour in core activities of any establishment. However, the engagement of contract labour through a contractor in respect of a core activity is permitted if: (a) the normal functioning of the establishment is such that they do not require full time workers for the major portion of the working hours in a day or for longer periods; (b) the activities are such that they do not require full-time workers for the major portion of the working hours or longer periods; (c) or there is a sudden increase in volume of work in the core activity which needs to be accomplished in a specified time.
- The respective state S&E Acts are applicable to employees or workers employed in the shops and commercial establishments located in such state. These legislations aim to regulate the service conditions of such persons including hours of work, holidays and leaves etc., and further lays down the standards for regulating the health

and safety of such persons. In certain states, persons holding positions of management are excluded from protections available under the S&E Act.

- In view of the overlaps between the OSH Code and the S&E Acts, particularly regarding leave entitlements, hours of work, and related matters, in the event of any inconsistency between the two legislations, the more beneficial provision in favor of employees will apply.

Apart from the above, companies in India also engage other categories of workforce such as consultants, trainees/ interns, apprentices and/or fixed term employees. Typically, consultants are engaged for specific services which regular employees do not carry out. Further, the SS Code and IR Code now expressly recognizes fixed term employment in all industries. The fixed term employees are entitled to parity in wages, working hours, statutory benefits in proportion to their period of employment and any other benefit made available to permanent employees along with entitlement to gratuity after completion of one year in service on a pro-rata basis.

In addition to the said categories of workforce, Indian economy is leaning heavily towards non-conventional workforce such as 'gig-workers' and 'platform workers'. In the code pertaining to welfare benefits, i.e. SS Code, gig-workers have been defined to mean "a person who performs work or participates in a work arrangement and earns from such activities outside of

traditional employer-employee relationship" and the term 'platform work' has been defined to mean as "an employment form in which organizations or individuals use an online platform to access other organizations or individuals to solve specific problems or to provide specific services in exchange for payment". Further, the SS Code proposes to formulate social security schemes for gig and platform workers with regard to: (a) life and disability cover; (b) health and maternity benefits; (c) old age protection; and (d) any other benefits as may be determined by the Government. Recent trends indicate that various organisations are exploring gig work models and are actively hiring gig workers, with startups being the front-runners. The gig work model is considered to provide more job flexibility and a focus on tailored roles with specialised skills. Some States in India such as , Bihar, Karnataka, Jharkhand, Telangana and Rajasthan have also introduced bills / legislations for the registration, social security and welfare of gig workers. The Government of Tamil Nadu has extended the applicability of the Tamil Nadu Manual Workers (Regulation of Employment and Conditions of Service) Act, 1982 to platform-based gig workers. Further, the Ministry of Labour and Employment has launched the e-Shram portal, a national database of unorganized workers (including gig and platform workers) for facilitating their skilling, employment and social security coverage. The Labour Ministry has also encouraged platform aggregators to register themselves and their workers on the e-Shram portal.

Q4. Are there any restrictions on employment of foreign nationals in India?

Employment of foreign nationals is permitted in India subject to possession of a valid employment visa by such foreign national. Employment visa is not granted for jobs for which qualified Indians are available or for routine, ordinary, secretarial or clerical jobs. It is granted to highly skilled/ qualified professionals or to persons engaged or appointed on contractual or employment basis.

A foreign national being sponsored for an employment visa in any sector should draw a salary in excess of USD 25,000 per annum. However, this condition of an annual floor limit on income will not apply to: (i) ethnic cooks, (ii) language teachers (other than English language teachers) or translators, (iii) staff working for the concerned Embassy or High Commission

in India, and (iv) foreigners, eligible for 'E' visa for honorary work with non-governmental organisations registered in the country, without salary.

Foreign nationals are eligible for an employment visa if they are coming to India: (i) as consultants on a contract for which the Indian company pays a fixed remuneration, (ii) as self-employed foreign nationals coming to India for providing skilled services as independent consultants, (iii) to provide technical support or services, transfer of know-how or for which the Indian company pays fees or royalty to the foreign company, (iv) as engineers or technicians coming to install and commission equipment, machines or tools in terms of a contract for the supply of such equipment, machines or tools.

If the employment visa is issued for a period of more than 180 days, a registration with the concerned 'Foreigners Regional Registration Office (FRRO)' is required within 14 days of arrival.

The duration for which an employment visa is granted varies from two to five years, depending upon the purpose for which the foreign national is coming to India.

No change of employer shall be permitted during the term

of the employment visa. In cases where the foreign national desires to change employment to another company or organisation, he or she will have to leave the country and apply for a fresh employment visa. However, in case of transfer within group companies, there is no requirement of leaving the country or applying for a fresh employment visa. In this case, the foreign national would need to seek prior approval of FRRO and submit documents in support of the application.

Q5. Can the foreign nationals be granted business visa?

Yes, business visa can be granted to foreign nationals. However, foreign nationals on business visa are not allowed to take full time employment in India.

Furthermore, foreign nationals will be granted business visa only under specific conditions such as that the foreign national should be a person of assured financial standing and have expertise in the field of his business. A business visa is granted in case the foreign national is coming to India, *inter alia*: (i) to explore the possibility of setting up or actually establishing a business venture in India, (ii) to transact business related to the purchase or sale of goods, (iii) for attending meeting or Board meetings or other general meetings for providing business service support, (iv) for coming to recruit manpower,

(v) to participate or for consultations in exhibitions, trade fairs or business fairs, (vi) who are partners in the business and / or functioning as directors of a company, (vii) to transact business with suppliers / potential suppliers in India relating to goods and services procured from India, (viii) as experts / specialists for a short duration in connection with an ongoing project, (ix) for pre-sales or post-sales activity not amounting to actual execution of any contract or project, (x) as trainees of multinational companies, for in house training in regional hubs of such companies in India, (xi) as tour conductors and travel agents and / or conducting business tours of foreigners or business relating to it, or (xii) to participate in cultural events/ activities with remuneration.

Q6. Is the employer obligated to put down the terms and conditions of the employment in writing?

The S&E Acts of a few states in India mandate that the employer issues an appointment letter setting out the basic information with regard to employee details such as remuneration, employers address, etc. However, as a matter of practice most employers issue employment letters and

execute employment contracts capturing the terms and conditions of the employment in detail. The OSH Code requires employers to issue appointment letters to every employee of the establishment with the minimum information prescribed by the appropriate Government.

Q7. Can there be any implied terms under the employer and employee relationship?

es, certain terms and conditions can be considered as implied due to custom, usage and practice prevalent in the relevant industry or business. Few courts in India have acknowledged the obligations of an employee with regard to confidentiality and non-disclosure towards the employer as part of implied terms of an employer-employee relationship. Therefore, it is

recommended that all terms and conditions of employment are encapsulated in the employment contract. It is pertinent to note that under certain legislations the employer needs to comply with certain procedural requirements before changing the terms of employment.

Q8. Does the law prescribe any minimum employment terms and conditions which the employer has to necessarily comply with?

Yes, labour legislations such as the OSH Code, IR Code and S&E Acts, lay down the minimum standards with regard to the employment terms such as the working hours, wages, leaves, notice and termination.

Q9. What are the statutory working hours prescribed and is there a requirement to pay overtime wages?

Under the recently implemented OSH Code, a maximum of 8 hours of work each day has been prescribed and the appropriate Governments have been given the power to prescribe requirements in relation to weekly hours, spread over and rest interval. Further, under the Wages Code, the appropriate government may fix the number of hours which shall constitute a normal working day along with specific intervals. The S&E Acts typically provide for a maximum of 8 - 9 hours of working each day and 48 hours a week.

The OSH Code allows women to be employed for all types of work in all the covered establishments during night hours, subject to their consent and such conditions relating to safety, holidays and working hours or any such other condition as may be prescribed.

Most States / Union Territories (“UTs”) such as Andhra Pradesh, Delhi, Gujarat, Haryana, Karnataka, Kerala, Maharashtra, Punjab, Rajasthan, Telangana, Uttar Pradesh, Goa, Tamil Nadu, Madhya Pradesh, Meghalaya, Puducherry, Bihar, Chhattisgarh, and Assam have made exemptions permitting women employees to work during night hours in shops and commercial establishments subject to compliance with the prescribed conditions including provision of transport facilities, obtaining consent and obtaining prior government approval in certain States. Additionally, special exemptions have been made

available to Information Technology / Information Technology Enabled Services (“IT/ITES”) industries. IT/ITES companies are also permitted to have 24 x 7 operations subject to the satisfaction of the conditions prescribed by the respective state government.

Several States /UTs including Punjab, Gujarat, Maharashtra, Rajasthan, Tamil Nadu, Tripura, West Bengal, Karnataka, Haryana, Chandigarh, Andhra Pradesh, Chhattisgarh, Meghalaya, Assam, Bihar, Goa, and Puducherry have allowed the shops and commercial establishments to open 365 days a year, subject to certain conditions like providing security and transportation facilities, providing weekly day of rest to employees on rotation basis, limiting working hours etc.

Employees who work in excess of the normal working hours are entitled to over-time wages, typically at the rate of twice the ordinary rate of wages. Further, in some States, employees working on national holidays are provided compensatory off in lieu of or in addition to overtime payment. Under the OSH Code, overtime wages is payable in respect of overtime work done in excess of such daily / weekly hours as the appropriate Governments may prescribe under the rules. Further, under the OSH Code, it is mandatory for an employer to obtain prior written consent of the worker before requiring him / her to work overtime

Q10. What are the statutory requirements for grant of leave or public holidays?

The OSH Code and the State-specific S&E Acts provide for certain number of days as annual leave with wages that the employees are entitled to. Unavailed annual leaves are typically allowed to be carried forward to the next year subject to a prescribed cap. Some of the state-specific S&E Acts also provide for sick and casual leaves.

Currently, 240 days is typically the period of work required to determine eligibility of a worker for annual leave with wages under the S&E Acts. This threshold has been reduced to 180 days under the OSH Code. With respect to unavailed accumulated leaves, Indian labour laws provides for encashment typically in case of cessation of employment for

various reasons. However, under the OSH Code, the workers will be entitled for on-demand and automatic encashment of leave at the end of calendar year .

In addition to the weekly holidays and compensatory holidays prescribed under the respective state specific national and festival holidays legislations and the S&E Act of the relevant State, the employees are also entitled to national holidays

such as Republic Day (January 26), Independence Day (August 15) and Gandhi Jayanti (October 2). Employees are further entitled to 3 to 10 holidays from a list of holidays notified by the respective State Governments for each calendar year under the Negotiable Instruments Act, 1881 and / or as mutually agreed between the employer and the employees, depending on the State.

Q11. Are employees entitled to maternity/paternity leave?

As per the SS Code, women are entitled to 26 weeks of paid maternity leave, if they have worked for at least 80 days in the 12 months preceding the expected delivery date.

Paternity leaves are not statutorily recognised in India.

Although, the industry practice in India, especially in the IT/ITES sector, is to give a paternity leave of five to seven days, it can be solely up to the discretion of the employer and may be granted in accordance with its policies.

Q12. Do foreign nationals have to make social security contributions while working in India?

The Government of India has extended the applicability of EPF Act and the EPS Scheme to all international workers. The definition of international workers covers all those employees who work in an establishment in India covered under the EPF Act and hold other than an Indian passport besides Indian employees working overseas.

Every employer who is covered under the EPF Act is required to contribute 24% (12% each for the employer and the employee's share) of the employee's monthly pay towards the provident fund and pension scheme. The employee's share of such contribution can be recovered by the employer from the employee.

However, international workers who are contributing to a social security program in their home country with whom India has entered into an SSA are not required to contribute to the provident fund in India on the satisfaction of specified conditions set out in such SSAs.

An international worker can withdraw the full amount in his or her provident fund account only at the time of retirement or when reaching the age of 58 years, whichever is later, or on account of permanent and total incapacity. However, with respect to members covered under an SSA, the withdrawal from provident fund is possible on the termination of assignment in India, subject to the conditions of the SSA.

While the Karnataka High Court in *Stone Hill Education Foundation v. Union of India and Ors.*, WP. No. 18486 of 2012, struck down Paragraph 83 of the EPF Scheme and Paragraph 43A of the EPS, which contain special provisions for social security contributions with respect to international workers, as unconstitutional, the Delhi High Court in *Spice Jet Ltd vs. Union of India and Anr.*, W.P.(C) 2941/2012; *LG Electronic India Private Limited vs. Union of India and Other*, W.P. (C) 6330/2021 & CM APPL. 19949/2021, recently upheld the validity of Paragraph 83 of the EPF Scheme, which contain special provisions for social security contributions with respect to international workers.

Q13. Can employees of the Indian company be granted employee stock options in a foreign company?

In keeping with the spirit of liberalisation and to promote ease of doing business, the Central Government and the Reserve Bank of India have been progressively simplifying the

procedures and rationalising the rules and regulations under the Foreign Exchange Management Act, 1999. In this direction, a significant step has been taken with operationalisation of

a new Overseas Investment regime. The Foreign Exchange Management (Overseas Investment) Directions, 2022 (**OI Directions**), notified in August 2022, provide for the new overseas investment regime for India and supersede the erstwhile Master Direction – Direct Investment by Residents in Joint Venture (JV) / Wholly Owned Subsidiary (WOS) Abroad read with the Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2004. Further, Foreign Exchange Management (Overseas Investment) Rules, 2022 (**OI Rules**) and Foreign Exchange Management (Overseas Investment) Regulations, 2022 (**OI Regulations**) have also been notified by the Reserve Bank on August 22, 2022, in supersession of the earlier laws.

Under the OI Directions read with OI Rules and OI Regulations, a foreign company can issue employee stock options (“**ESOPs**”) to employees of (i) its office or branch in India, (ii) its subsidiary in India, and (iii) an Indian company in which it has equity, direct or indirect (through a special purpose vehicle or step-down subsidiary), provided that the benefits under the ESOP scheme are offered on a globally uniform basis. Further, with the new OI Directions, OI Rules and OI Regulations, the ambit of participation by Indian employees in equity based incentive plans of foreign entities has been further expanded with introduction of the words “employee benefits scheme”. “Employee Benefits Scheme” has been defined to mean any compensation or incentive given to the directors or employees of any entity which gives such directors or employees ownership interest in an overseas entity through ESOP or any similar scheme. Thus, now incentives such as Stock Appreciation Rights or Restricted Stock Units or any other incentives which provide ownership

interests to Indian employees in a foreign entity can also be awarded.

Further, as per the new regime, if an investment by way of shares/interest under ESOP/Employee Benefit Schemes does not exceed 10 per cent of the paid-up capital/stock of the foreign entity and does not lead to control in such foreign entity, such investment is categorised as Overseas Portfolio Investment (“**OPI**”). For such an investment which qualifies as an OPI, the employer (i.e. the employer entity in India) is required to make a reporting to the authorities in Form OPI (Section A.(B)). However, where the investment does not qualify as OPI, the resident individual concerned is required to report the transaction in Form FC.

As regards the Indian market, ESOPs have evolved over time with detailed regulations and jurisprudence on administration of ESOPs provided both under the Companies Act, 2013 as well as the Securities and Exchange Board of India (Share Based Employee Benefits and Sweat Equity) Regulations, 2021 (“**SBEB Regulations**”). The issuance of ESOPs of a publicly listed company is regulated by the provisions of the SBEB Regulations, while privately held unlisted companies are governed by the Companies Act, 2012. When a company grants ESOPs to its employees, it has the potential to ensure continued investment by employees, reduce employee turnover, enhance job stability, and bolster employee retention. Companies that genuinely prioritize their workforce tend to experience heightened productivity, leading to increased profitability and accelerated growth. Moreover, they may also attract and onboard exceptionally qualified candidates through this incentive.

Q14. Can employment contracts contain restrictive covenants like non-compete?

Any agreement in restraint of trade is void under the provisions of the Indian Contract Act, 1872 (“**Contract Act**”). Restrictive covenants operative during the period of the contract of employment when an employee is bound to serve his or her employer exclusively are generally not regarded as restraint of trade and therefore do not fall under Section 27 of the Contract Act. A restrictive or negative covenant that the employee would not engage himself in

a trade or business or would not get himself employed in any other manner, or perform similar or substantially similar duties for another, is not therefore a restraint of trade unless the contract as aforesaid is unconscionable or excessively harsh or unreasonable or one-sided. However, any such restraint which extends beyond the terms of this contract is void and not enforceable. The Supreme Court has held that agreements restraining an employee from

carrying on the activities that are similar to that of his or her employer upon the termination of such employment would be void and unenforceable, whereas agreements that impose a restraint during the course of employment could be enforceable. While non-compete restrictions in an employment agreement during the term of the employment is valid, however, such restrictions extending beyond the term of employment are invalid and unenforceable under Indian laws. Any agreement, clause or covenant that restricts employee to engage in a business similar to or competitive with that of the employer after the termination of his contract of employment is unenforceable as per Section 27 of the Contract Act as the same is also violative of fundamental rights of an individual enshrined under Article 19(1)(g) of the Constitution of India, 1950.

On the other hand, non-solicitation clauses which extend beyond term of the employment agreement are common in employment agreements in India. It has been held to be reasonable to restrain an ex-employee from soliciting employees and customers of the previous employer. However, the practical enforceability of such clauses varies and depends on the facts and circumstances of each case. It is pertinent to note that while moving an action for breach of non-solicitation clause, the party alleging breach of the non-solicitation clause will have to discharge the burden of proof, prove active solicitation, and establish the breach committed by the defendant and prove damage caused to it by the defendant.

Q15. Can the employer carry out pre-employment background checks on prospective employees?

Yes, the employer is allowed to carry out such verification checks provided the employer takes express consent from the prospective employee in this regard. Also, if the employer collects or deals with employee's sensitive personal data or information in conducting such checks then it has to mandatorily comply with the requirements laid down under the relevant data privacy laws in India. The Government of India recently notified the Digital Personal Data Protection Rules, 2025 with an eighteen-month phased implementation, under the Digital Personal Data Protection Act, 2023 ("DPDP Act"). As per the DPDP Act, an employer may process the personal data of a worker only in accordance with the provisions of the DPDP Act and for a lawful purpose i.e., any purpose that is not

expressly forbidden by law. Before processing any personal data, the employer is required to issue a notice to and obtain the consent of the concerned worker. Such data can only be processed for the specific purposes for which the data was collected. In the event, consent of the worker is not obtained, personal data can only be processed for specified reasons which include, *inter alia*, where the employee voluntarily provided the data, where the data is required to fulfil a legal obligation to disclose any information or for complying with any judgement or decree or where the data is required for the purposes of employment or those related to safeguarding the employer from loss or liability.

Q16. How can the services of an employee be terminated?

The applicability of labour legislations pertaining to termination in India are dependent on various factors which *inter alia* include the nature of the establishment, the category of employees (whether worker or non-worker), and the location of the establishment. While the IR Code provides for the termination of worker category employees, the termination of non-worker category is regulated by the state-specific S&E Acts, along with the terms of his or her employment contract and company policies. The relevant laws prescribe the minimum notice period, payment in lieu of

notice and severance payments to be given to the employee at the time of termination. Termination for misconduct or gross misconduct will need to be preceded by a domestic enquiry following the principles of natural justice. A full and final settlement will have to be done by the employer within the prescribed timelines by making payment of all the statutory and contractual dues to the employee.

Ordinarily, termination of employment of a 'worker' for reasons other than on account of a disciplinary action,

voluntary retirement, retirement upon reaching the age of superannuation, resignation, expiry of a fixed term contract or on grounds of continued ill-health would amount to a 'retrenchment' within the meaning of the IR Code, thereby giving rise to the obligation of paying retrenchment compensation to the workers, amongst other requirements. Retrenchment is merely the discharge of surplus staff or labour in a running or continuing business or industry, for certain reasons. Thus, where the reason for termination of employment is a 'cause', such termination is a 'termination for cause' and not retrenchment. The process for retrenchment depends upon the nature of establishment. Retrenchment of workers shall be subject to compliance of applicable requirements under the IR Code, which includes providing an employee that may be retrenched a prior notice of 1 to 3 months as applicable or pay in lieu thereof. In an industrial establishment having 300 or more workers, prior permission from competent authority shall be required to be obtained for retrenchment. Before deciding to grant or refuse to grant

permission, the appropriate government shall make an inquiry on the manner of retrenchment and also give an opportunity of hearing to the worker.

Where there are unionized employees or wage settlement agreements in place between the workers and the employer, there could be consultation requirements with the trade unions/employee representatives before effecting any retrenchment. The risk of challenge of retrenchment is higher where there are unionized employees. In such cases, entering into a settlement with the employees as to their severance packages in consideration of them supporting the retrenchment process mitigates the risk of push back from these employees.

Further, there are certain intimations required under the labour laws such as the S&E Acts (depending on the State) in case of termination.

Q17. Are severance payments statutorily required to be paid in India?

Termination of employees and the associated severance payments would depend on whether such employees are classified as worker or non-worker. Under the provisions of the IR Code, a worker with at least one year of continuous service is entitled to compensation equal to 15 days average pay for every completed year of continuous service or part thereof in excess of six months, if his or 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. Statutory compensation is also payable to workers in the event of lay off or closure of an undertaking. The IR Code has introduced a re-skilling fund for training of retrenched workers. The fund will consist of the contribution of the employer of an amount equal to 15 days' wages last drawn by the worker immediately before the retrenchment or such other number of days, as may be notified, and contribution from such other sources as may be prescribed by the appropriate Government.

The retrenched worker would be paid from the fund within 45 days from the date of retrenchment. This amount of 15 days' wages is in addition to the retrenchment compensation.

The S&E Acts in certain States also provide for payment of severance compensation to employees covered under the legislation on termination of their employment. The SS Code entitles an employee to a gratuity payment upon termination of his or her service, after the completion of five years of continuous employment and upon expiry of fixed-term contract upon completion of at least one year in service, of an amount equivalent to 15 days' wages for each completed year of service subject to a maximum of INR 20 lakhs (approx. USD 22,727) calculated at the rate of last drawn wages. The ceiling limit of INR 20 lakhs (approx. USD 22,727) may have to be revisited upon any subsequent notification by the Government under the SS Code.

Q18. Is there a mandatory requirement to engage apprentices?

As per the Apprentices Act, 1961 (“**Apprentices Act**”) and the rules framed thereunder, an employer is required to engage apprentices in the band of 2.5-15% of its total strength of ‘workers’ within a financial year. The term ‘worker’ has been defined under the Apprentices Act to include any person working in the premises of the employer, who is employed for wages in any kind of work either directly or through any agency. The requirement to engage apprentices has been made mandatory for an establishment where the number of workers exceeds 30. The employer has an option to engage the prescribed number of apprentices either under the notified designated trades or optional trades. The recent Apprenticeship Amendment Rules, 2025, among other things, creates a new category of ‘degree apprentices’, enabling companies to partner with universities for integrated apprenticeship programs. It also provides for reservations for persons with benchmark disabilities, mandatory one-year gap between apprenticeship, revised standard form contracts etc.

Lately, active steps are being taken by regulatory authorities to promote and enforce engagement of apprentices. The Board of Apprentices Training (“**BOAT**”), which is the nodal agency, has been issuing notices to organisations which are non-compliant to ensure that they take active steps to comply with the Apprentices Act. Where organisations are found to be in non-compliance, in addition to the penal consequences

under the Apprentices Act, it is possible that the regulatory authorities could share the list of defaulters with various other departments under the Government of India for imposing further sanctions on the defaulters. While there are practical challenges in some industries where the operations are highly technical in nature, the expectation is compliance. To this end, the BOAT is open to providing guidance and support so as to facilitate compliance with the Apprentices Act.

Many organizations have understood the value of investing in apprentices to bridge the skill gaps and create a sustainable talent supply chain. Recent trends indicate that industrial sectors such as manufacturing, electrical/electronics, NBFCs, retail, e-commerce, FMCG are actively engaging apprentices and providing tailored training to them to address the shortage of skilled labour across the sectors. Further, the IT/ITeS and BFSI sectors are also considered to be the top industries involved in apprentice engagement, considering the high return on investment these sectors provide. Though this is an added cost to business, shifting focus to capacity building, upskilling, re-skilling with the new aged tools of artificial intelligence, cyber security and professional skills such as out of the box thinking, leadership skills, multi-tasking and good communication power can be a lucrative investment for the future of the economy.

Q19. What are the recent significant labour law developments in India?

Employees’ State Insurance Act, 1948

- The Employees State Insurance Corporation (“**ESIC**”) has introduced the Amnesty Scheme with effect from October 01, 2025 to September 30, 2026. Under this scheme, the registered employers will be provided an opportunity to settle disputes through out-of-court settlement; cases older than five years in which no notice has been issued can be withdrawn; and damages and interest can also be waived off in eligible cases.
- The ESIC has also introduced the SPREE Scheme, 2025 with effect from July 01, 2025 to January 31, 2026 with an aim to promote registration of employers / employees under

the social security net of ESI. If the establishments register within the new timeframe, there won’t be any inspection, or requirement of past records.

Employees’ Provident Funds and Miscellaneous Provisions Act, 1952

- On October 29, 2025, the Employees’ Provident Fund Organisation (“**EPFO**”) has issued a circular regarding the Employees’ Enrolment Campaign, 2025 which shall commence on November 01, 2025 and cease on April 30, 2026. The aim of the scheme is to provide a special window for employers to voluntarily enrol eligible employees, who

were left out from EPF coverage during the period of July 01, 2017 to October 31, 2025.

- The Kerala High Court in *Malabar Dazzle India Private Limited vs. Employees' provident Fund Appellate Tribunal and Ors.*, Writ Petition Civil Number 30357 of 2021, 29166 of 2014 and 7245 of 2014, held that trainees performing the same functions and responsibilities as regular employees should be treated as "employees" and provided coverage under the EPF Act.
- The Kochi Bench of the National Company Law Tribunal ("NCLT") in *Regional Provident Fund Commissioner vs. CA Mahalingam Suresh Kumar, Liquidator of M/s Raihan Healthcare Private Limited*, IA(IBC)/57/KOB/2024 IN IBA/240/KOB/2019, recently held that the proceedings under the EPF Act are quasi-judicial and cannot continue after a liquidation has been initiated under the Insolvency and Bankruptcy Code, 2016. Once EPF dues for a period have been assessed and a claim is filed with the Liquidator, any re-assessment for the same period after the moratorium/ liquidation starts is not permissible.

Other Key Developments

- On May 30, 2025, The SHE-Box portal, has been made the primary control centre for POSH compliance. All private sector employers are mandatorily required to register, enabling female employees to lodge complaints online and allowing authorities to monitor compliance in real time.
- The Government of Karnataka took a major step towards gender-sensitive labour reform by notifying a mandatory 12 day paid menstrual leave annually for all working women. The validity of the notification is currently sub-judice before the Karnataka High Court in *Management of Avirata AFL Connectivity Systems Ltd. vs. State of Karnataka*, Writ Petition No. 36659 / 2025.
- The Supreme Court in *Vijaya Bank and Another vs. Prashant B. Narnaware*, Civil Appeal No. 11708 of 2016 held that if the employment contracts require employees to serve a minimum period, and impose a financial consequence for early departure, such clauses are not considered a restraint of trade, provided they operate only during the employment period.
- The Delhi High Court in *Abhijit Mishra vs. Wipro Limited*, CS (OS) 31/2021, held that using terms like "malicious

conduct" or "complete loss of trust" without documented evidence can be defamatory and expose employers to legal action. The Court recognized that employees often need to share termination letters with future employers, increasing the risk of republishing any defamatory content. Employers must ensure any reasons for termination are factual, objective, and well-supported, as lack of evidence removes any valid defence.

- The Union Cabinet approved the Employee Linked Incentive Scheme ("**ELI Scheme**"), under which employers can receive incentives of up to INR 3000 (approx. USD 34) per month for each new employee (earning monthly salary up to USD 1136) who is retained on their payrolls for at least six months. This incentive is available for a period to two years, with extended benefits for another two years for the manufacturing sector. The benefits of the ELI Scheme would be applicable to jobs created between August 01, 2025 and July 31, 2027.
- On July 24, 2025, India and the United Kingdom have entered into a landmark agreement on social security. The social security arrangement eliminates double contributions for short-term assignments. Under this new 'Double Contribution Convention', Indian employees on assignments in the UK (and vice versa) are exempt for up to 36 months from contributing to the host country's social security system.
- The Immigration and Foreigners Act, 2025 came into effect on September 01, 2025 and is a consolidation of four erstwhile laws: (a) Passport (Entry into India) Act, 1920; (b) Registration of Foreigners Act, 1939; (c) Foreigners Act, 1946; and (d) Immigration (Carriers' Liability) Act, 2000. It modernises India's immigration framework by providing for a digital immigration system and further regulating registration and exit procedures through the Bureau of Immigration and designated authorities. It largely governs the whereabouts of a foreigner, not the conditions for grant of visa.

Several states have adjusted thresholds and compliance requirements under their respective S&E Acts, largely easing registration and applicability for smaller establishments. Some of these changes are; (i) establishments employing up to 10 workers are exempt from registration under the Rajasthan Shops And establishments Act, 1958; (ii) establishments with

up to 10 workers are exempt from select provisions of the Telangana Shops and Establishments Act, 1988, including rules on opening/closing hours, employment of young persons, and pay during leave and holidays; (iii) Mandatory registration under the Meghalaya Shops and Establishment Act, 2003 now applies to establishments with 5 or more employees; (iv) the Government of Haryana has introduced a bill to amend the S&E Act applicable in the State of Haryana to apply its provisions to establishments with 20 or more workers, and increase the

limits on daily working hours and permissible overtime; (v) the Punjab Shops and Commercial Establishments (Amendment) Act, 2025 extends all the provisions to establishments with 20 or more workers, except for the new requirement to intimate commencement of business; and (vi) the Draft Maharashtra Shops and Establishments (Regulation of Employment and Conditions of Service) Amendment Rules, 2025 has increased the employee headcount threshold to 20 for certain compliance relaxation which was earlier 10 or more.

Q20. What are the recent trends in labour laws in India?

Diversity, Equality and Inclusion (“DEI”): Indian workplaces are encouraging diversity by recognising the need to hire consciously, make accommodations to enable a diverse workforce to work without hassles and implement measures to increase inclusivity eventually leading to increased productivity. Recent trends indicate that Indian companies are exhibiting higher levels of inclusivity, in terms of gender diversity and inclusion of persons with disabilities, in permanent, managerial and administrative roles as compared to lower ranks. The evolving laws and emerging trends further indicate an attention to DEI by implementing internal policies which lay down compliances on diversity and inclusivity along with measures to redress any breach of such policies - such as the equal opportunity policies for transgender employees and employees with disabilities, HIV & AIDS policy and anti-sexual harassment policies. In addition, Companies are making infrastructural changes to the premises, such as setting up of gender-neutral washrooms, availability of assisted devices and overhauling of the software and hardware to enable employees with disabilities. Companies are also conducting sensitisation sessions on focused topics as a part of their orientation program for new joiners and refresher sessions on what amounts to sexual harassment, how to address unconscious bias at workplaces, allyship etc. Enabling employees to express their identity through their preferred pronouns in employee on-boarding forms. Setting up of support groups for LGBTQ+ employees and those with disabilities. Appointment of officers and committees to oversee compliances and address any complaints, specifically, the increased trend of hiring for the position of ‘chief diversity officer’ in India demonstrates that DEI is a priority.

- Regarding the evolving trends with the framework of the Rights of Persons with Disabilities Act, 2016 (“**RPWD Act**”),

the Central Government has amended the Rules under the RPWD Act to insert the accessibility standards for various industries such as healthcare industry including government, private and other healthcare institutions and centres, cultural sector, rural sector, sports complex and residential facilities for sports persons with disabilities, civil aviation, information and communication technology based public facilities and services, inclusive piped water supply, community toilets, port sector, Indian railway stations and facilities, educational institutions, Ministry of Home Affairs specific built infrastructure, educational institutions and universities and banking sector. Furthermore, the government has also substituted the standard for public buildings as specified in the Harmonised Guidelines and Space Standards for Barrier Free Built Environment for Persons With Disabilities and Elderly Persons as issued by the Ministry of Urban Development in March 2016 with standard for public buildings as specified in the Harmonised Guidelines and Standards for Universal Accessibility in India, 2021.

- With regards to the Transgender Persons (Protection of Rights) Act, 2019 (“**TP Act**”) which requires every employer to implement all measures for providing a safe working environment for transgender persons and to ensure that no transgender person is discriminated in any matter relating to employment, including recruitment, promotion, infrastructural adjustments and employment benefits, many organisations have started implementing anti-discriminatory policies, conducting sessions to create awareness, etc. The Wage Code prohibits gender discrimination in wage or recruitment related matters for the same or similar worker across all genders (this was limited to between men and

women under the erstwhile law)

- Market practice also indicates an upward trend in the adoption of personalised and flexible HR policies and benefits by companies in India to cater to the diverse needs of a growing multigenerational workforce. Several companies provide for mental health and wellness leaves, period / menstrual leaves, unlimited paid time-off and parental leaves (irrespective of sex, gender, relationship status etc.) to their employees. Some employers have also opted to provide work from home options to the menstruating employees instead of additional leaves.
- The Courts in India have time and again paved the way for equality at workplaces through various judgements such as; equal pay for equal work is a constitutional goal, it is a right of women to be safe and protected at the workplace, women being retired on account of first pregnancy is unlawful, career of women in armed forces cannot end at short service commission, transgender persons are a recognised gender, and decriminalization of homosexuality thereby giving persons with different sexual orientation the right to freely express themselves.

Flexible Work: While employers are firm with their decision to require employees to work from office, they remain open to flexible work arrangements depending on the needs of employees. Some companies are opting for flexible office spaces like co-working spaces, to maintain proximity to their workforce and provide convenience and flexibility for employees. Other advantages of flexible office spaces seemingly include ability to scale up / down business requirements, reduce costs and long-term commitment. Shorter work weeks are also gaining momentum globally, with some employers also considering 'flexible Fridays'. Some reasons include resistance to return to office, increased productivity during a shorter work-week facilitated by AI, reduced employee burnout, improved work-life balance and mental health etc.

Skilling: Recent trends indicate a growing shift in hiring practices, with employers prioritizing demonstrable job readiness and practical skills over traditional academic qualifications. Companies in India are focussing on reskilling/ upskilling their workforce and providing learning and development programmes, with emphasis on technical and soft skills, especially with the rapid advancement in

technologies like AI, automation etc. This is considered important for employers to stay relevant and competitive in the global market, while increasing the productivity and job satisfaction of the employees.

Mental Health: Companies are making strides towards actively destigmatising mental health-related issues and promote mental wellness of their employees, including by encouraging safe and open dialogues about mental health, offering mental health support services like therapy / counselling, encouraging breaks and work-life balance, developing employee assistance programmes, mental health apps and wellness platforms, training and sensitisation programmes for all employees (including senior-level management), offering flexible work arrangements, setting up resource groups, wellness leave without requiring proof of mental health issues etc.

Employee Compensation and Benefits: With the increasing participation of Gen Z in the workforce, organisations are reassessing their approach to employee benefits and rewards, offering new-age benefits beyond traditional compensation. Companies are embracing the role of the digital space / social media in engaging and motivating the younger workforce. Companies are introducing digital rewards and gamification of rewards including through badges, leaderboards, redeemable points, notes, passports etc. Some employers are integrating health goals into performance metrics, affecting employees' variable pay / bonus.

Specialised Workforce: Market trend indicates that gig work is shifting from broad, undifferentiated roles to highly specialised, tech-enabled tasks as platforms use algorithms and logistics optimisation to boost efficiency and reduce costs. Further, Indian companies in retail, manufacturing, industrial, life sciences, automotive, oil and gas, aluminium, smart infrastructure, enterprise solutions, semiconductors and renewables are increasingly hiring expats for short periods (typically 6 months to 2 years) to provide expertise in technology, operation and leadership expansion.

Artificial Intelligence: Recent trends indicate that employers are experimenting with AI-driven practices in recruitment practices by combining data-driven insights with human judgment.



17. Direct Tax

Q1. What is the law relating to taxation in India?

The Constitution empowers the Central, State and local authorities to levy taxes over specified subject matters. Presently, the Central Government levies direct taxes – personal income tax, corporate tax, and indirect taxes – customs duty, central goods and services tax, integrated goods and services tax, central excise duty and central sales tax (CST) (for certain specified products such as petroleum crude, high speed diesel, petrol, aviation turbine fuel etc.). Indian States are empowered to levy state goods and services tax, value added tax (VAT) (on specified products such as alcoholic liquor for human consumption, petroleum crude, etc.). Some local

authorities are also empowered to levy municipal taxes on entertainment and amusement.

The Central Government and the State Governments enact their respective 'Finance Acts' annually to establish modified tax rates for the particular fiscal year. At the Central Government level, taxes are administered through the Ministry of Finance and at the state and local levels, taxes are administered by the state or local authorities comprising state tax commissions and revenue departments.

Q2. What is the legislation which governs the levy of income tax in India?

The law relating to income tax is incorporated under the Income-tax Act, 1961 (IT Act). The IT Act undergoes changes every year with amendments brought out through an annual Finance Act passed by the Indian Parliament. In 2025, one of the biggest change that has been announced is the introduction of new Income Tax Act, 2025, effective from April 1, 2026. The Indian financial year runs from April 1 to March 31. Under IT

Act, the said period is commonly referred to as 'Financial Year' (FY) or 'Previous Year'. The year following the Previous Year is known as 'Assessment Year' (AY). However, under the new Income Tax Act, 2025 the term 'Previous Year' has been replaced with the term 'Tax Year' and the term 'Assessment Year' will be discontinued.

Q3. What are the income tax rates in force for individuals in India?

Taxability in India is governed by tax residency of an individual during a fiscal year, which is based on the number of days an individual is physically present in India in a fiscal year and previous fiscal years. Tax residency can be categorised as Ordinarily Resident (ROR), Not Ordinarily Resident (NOR) and Non-Resident (NR). Subject to any tax treaty benefits, NOR and NR are generally taxed on Indian sourced income. ROR are taxed on their worldwide income in India.

The following table provides the default income tax rates (as per new regime) applicable for individuals in relation to FY 2025-2026 (relevant to AY 2026-27). The effective tax rates in case of individuals are as under:

Total Income	Tax Rate	Surcharge	Health and education cess ("Cess")	Marginal Effective Tax Rate	
Upto INR 400,000	Nil	Nil	Nil	Nil	
INR 400,000 to INR 800,000	5% of (total income minus INR 400,000)*		5.20%		
INR 800,001 to INR 1,200,000	INR 20,000 + 10% of (total income minus INR 800,000)*		10.40%		
INR 1,200,001 to INR 1,600,000	INR 60,000 + 15% of (total income minus INR 1,200,000)		15.60%		
INR 1,600,000 to INR 2,000,000	INR 120,000 + 20% of (total income minus INR 1,600,000)		20.8%		
INR 2,000,001 to INR 2,400,000	INR 200,000 + 25% of (total income minus INR 2,000,000)		26%		
INR 2,400,000 to INR 5,000,000	INR 300,000 + 30% of (total income minus INR 2,400,000)	4% of income tax	4% of income tax	31.2%	
INR 5,000,001 to INR 10,000,000	INR 1,080,000 + 30% of (total income minus INR 5,000,000)			10% of income tax	34.32%
INR 10,000,001 to INR 20,000,000	INR 2,580,000 + 30% of (total income minus INR 10,000,000)			15% of income tax	35.88%
Above INR 20,000,000	INR 5,580,000 + 30% of (total income minus INR 20,000,000)	25% of income tax		39%	

Note:

* The effective rates are inclusive of health & education cess, which is 4% and applicable surcharge. The surcharge is subject to a marginal relief, which provides that incremental tax payable on account of surcharge shall not be more than such income exceeding the slab rate on account of which surcharge/ incremental surcharge is levied. Under this tax regime, an Indian resident whose total income does not exceed INR 1,200,000 (approx. USD 13,636 where 1 USD = INR 88) is

eligible for a rebate of 100% of income tax, subject to a maximum amount of INR 60,000 (approx. USD 682). Further, while most allowances and deductions will not be available under the new default tax regime, a standard deduction on salary income of up to INR 75,000 (approx. USD 852) or the actual salary received, whichever is less, in lieu of deductions for instance on account of transport allowance (except in the case of differently abled persons) and reimbursement of medical expenses will continue to be available.

Q4. How are corporations taxed in India?

A Corporation is regarded as a resident in India if:

- It is incorporated in India; or
- It is not incorporated in India but its place of effective management (“**POEM**”) (*i.e.* a place where the key management and commercial decisions that are necessary for the conduct of the business of any entity as a whole are, in substance, made), during the relevant fiscal year, is in India.

In the context of implementation of the concept of POEM based residence rule, the Central Board of Direct Taxes (“**CBDT**”) has issued guidance to determine POEM of a foreign company. Corporations that are resident in India are taxed on their worldwide income arising from all sources.

Dividends distributed by a company are taxable in the hands of the recipient shareholders at the tax rates applicable to them. In the case of NR shareholders, the IT Act provides for a tax rate of 20% (plus applicable surcharge and Cess) on dividend income. However, NR shareholders may avail the benefit of a lower withholding rate on dividends under

the applicable tax treaty, if any (as discussed below).

As regards the buyback of shares, consideration received by shareholders upon buyback of shares is taxable in the hands of shareholders as deemed dividend at the tax rates applicable to them.

NR corporations are essentially taxed on the income earned from a business connection in India or from other Indian sources. If a tax treaty exists between India and the country of residence of the taxpayer, the provisions of the IT Act or the tax treaty, whichever is more beneficial, will apply. Accordingly, the taxability of NRs in India, if any, under the IT Act, may be restricted or modified and lower tax rates may apply, having regard to beneficial provisions of a tax treaty.

In general, India’s tax treaties provide that residents of other countries are subject to Indian tax on business profits derived from a business in India only if the NR has a permanent establishment (“**PE**”) in India.

Q5. What are the income tax rates in force for Corporations in India?

The effective tax rates applicable to corporations have been summarised below:

Particulars	Tax Rate	Effective Tax Rate*
Corporate Tax Rate		
Domestic Company	30% if turnover exceeds INR 4 billion in FY 2022-23 ¹ .	31.20%
Taxable income up to INR 10 million		
Taxable income above INR 10 million	Lower tax rates are applicable subject to certain conditions (discussed separately below this table)	33.38%
Taxable income above INR 100 million		34.94%
Foreign Company	35% in all cases	
Taxable income up to INR 10 million		36.40%
Taxable income above INR 10 million		37.13%
Taxable income above INR 100 million		38.22%
Minimum Alternative Tax (“ MAT ”) ^{***}		

¹ The base corporate tax rate shall be 25% in case of domestic companies with turnover up to INR 4 billion (approx. USD 45.45 million) in FY 2025-26.

Particulars	Tax Rate	Effective Tax Rate*
Corporate Tax Rate		
Domestic Company	15% in all cases	
Taxable income upto INR 10 million		15.6% of the book profits
Taxable income above INR 10 million		16.69% of the book profits
Taxable income above INR 100 million		17.47% of the book profits
Foreign Company	15% in all cases	
Taxable income upto INR 10 million		15.6% of the book profits
Taxable income above INR 10 million		15.91% of the book profits
Taxable income above INR 100 million		16.38% of the book profits

Note:

- Including applicable surcharge and Cess. Domestic companies with total income in excess of INR 100 million (approx. USD 1.14 million) are subject to a surcharge at the rate of 12% of income tax. In case the total income of the domestic company is in excess of INR 10 million (approx. USD 113,636) but less than INR 100 million (approx. USD 1.14 million), a surcharge of 7% of the income tax is levied. Foreign companies with total income in excess of INR 100 million (approx. USD 1.14 million) are subject to a surcharge at the rate of 5% of income tax. In case the total income of the domestic company is in excess of INR 10 million (approx. USD 113,636) but less than INR 100 million (approx. USD 1.14 million), a surcharge of 2% of the income tax is levied.
- Under the MAT regime, corporations are subject to a presumptive tax on their book profits i.e., profits shown in their financial statements), if the tax payable as per the regular provisions of the IT Act is less than 15% of

the corporation's book profits. MAT provisions do not apply to the foreign companies which do not have a PE in India, in terms of the tax treaty. The taxpayer can carry forward the MAT credit for 15 AYS. MAT provisions are not applicable to foreign companies whose taxable income in India comprises solely of business profits taxable under specified presumptive taxation regimes (relating to operations of ships and aircrafts, and production of mineral oils) and such income has been offered to tax under such regimes.

Reduced corporate tax rates

All domestic companies now also have the option to pay a lower tax rate of 25.17 %² with no requirement to pay MAT by opting to forego its claims to existing tax holidays. Generally, at present, all domestic companies are opting for this reduced rate of taxation.

Q6. What are the withholding tax rates applicable to non-resident corporations in India?

NRs are taxed on their business income if they have a PE in India to the extent the income is attributable to the PE. In addition, NRs are taxed on interest, royalties and fee for technical services (“**FTS**”) sourced in India on a gross basis, at specified rates. However, where royalties and FTS are attributable to the NR's PE in India, the same are subject

to tax as business profits on a net basis under the IT Act. The applicable withholding tax rates for foreign companies as per the IT Act are as follows. The tax rates are subject to any beneficial rates available under the applicable tax treaty.

² Inclusive of flat surcharge of 10% and Cess of 4%.

Particulars	Tax Rates	Effective Tax Rates
Dividends	20%	
Taxable income up to INR 10 million		20.80%
Taxable income above INR 10 million		21.22%
Taxable income above INR 100 million		21.84%
Interest*		36.40% or 20.8%
Taxable income up to INR 10 million	35% or 20% in all cases	37.13% or 21.22%
Taxable income above INR 10 million		38.22% or 21.84%
Taxable income above INR 100 million		
Royalties and FTS**		
Taxable income up to INR 10 million	20% on gross basis in all cases	20.80%
Taxable income above INR 10 million		21.22%
Taxable income above INR 100 million		21.84%

Note:

- The tax rate applicable to interest income depends on the currency in which the debt is denominated.
- Royalties and FTS, received by an NR who carries on business in India through a PE in India (in case of a foreign company) or performs professional services from a fixed place of profession in India (in case of an NR other than foreign company), and the right, property or contract in respect of which such royalty or FTS is paid is effectively connected with such PE or fixed place of profession, the royalty or FTS is taxable as business income on a net income basis (instead of gross basis) at the normal rates applicable to such NR.

Q7. How are Capital Gains taxed in India?

Capital gains earned by the seller of a capital asset (being the sale consideration less the cost of acquisition, cost of improvement and sale-related expenses), are subject to capital gains tax. Capital gains can be classified into (a) short term or (b) long term, depending on the period of holding.

Nature of Gains	Period of Holding security (other than a unit) listed on a recognised stock exchange in India, unit of the Unit Trust of India, unit of an equity oriented fund or a zero coupon bond	Period of Holding (unlisted shares of a company and any immovable property and all other assets)	Applicable Rates# (excluding applicable surcharge and cess)**
Long Term	>1 year	> 2 years	12.5%*
Short Term	≤ 1 year	≤ 2 years	20-30% in case of a domestic company 35% in case of foreign company

Note:

- Long term capital gain on listed securities, unit of the Unit Trust of India, unit of an equity oriented fund or a zero coupon bond, exceeding INR 1,25,000/- (approx. USD 1420) is taxed at the rate of 12.5% (without giving effect to the benefits of indexation and neutralization of foreign exchange fluctuation). For such rate to apply, the sale of shares must be on the stock exchange and such shares should have been acquired pursuant to a transaction which was subject

to Securities Transaction Tax (“STT”) or such transaction must be a notified transaction. Similarly, in case of units of equity oriented funds and units of business trusts, the 12.5% rate will apply only if such transaction of sale is subject to STT. Long term capital gains on such shares/ units of mutual funds/ units of business trust upto 31 January 2018 have been grandfathered and are exempt. Short term capital gains tax on such transfers is 20% (plus applicable surcharge and cess). The requirement of payment of STT is done away with in case the transaction is undertaken on recognised stock exchange located in any International Financial Services Centre (IFSC) and where the consideration for such transaction is in foreign currency. Further, to boost inflow of foreign funds in Indian capital markets, the increased surcharge rates of 25% and 37% are not applicable in case of capital gains income earned on (i) long term capital gains; (ii) short term capital gains on transfers subject to STT and (iii) The sale of any security, including derivatives, in the hands of Foreign Portfolio Investors (“FPI”). Further, in case of an NR, long term capital gains on unlisted securities or shares of a closely held company is taxable at the rate of 12.5% subject to conditions. Short Term Capital Gains on any transfer, apart from the sale of shares on stock exchange chargeable to STT or unit of equity oriented

fund or unit of business trust will be chargeable to tax at the normal tax rates.

- Domestic companies with total income in excess of INR 10 crores (approx. USD 1.14 million) are subject to a surcharge at the rate of 12% of income tax. In case the total income of the domestic company is in excess of INR 1 crore (approx. USD 113,636) but less than INR 10 crores (approx. USD 1.14 million), a surcharge of 7% of the income tax is levied. Moreover, in all cases, domestic companies are subject to a Cess of 4% on the amount of income tax as increased by the surcharge payable by such company. In case of a foreign company with total income in excess of INR 10 crores (approx. USD 1.14 million), a surcharge at the rate of 5% of income tax will be levied. A surcharge of 2% will continue to be levied on foreign companies with total income in excess of INR 1 crore (approx. USD 113,636) but which does not exceed INR 10 crores (approx. USD 1.14 million). In all cases, a Cess of 4% on the amount of income tax as increased by the surcharge will be payable by such company.
- The stated tax rates in the case of NRs are subject to benefit/exemption provided under the relevant tax treaty, to the extent that the tax treaty is more beneficial.

Q8. Does India have General Anti Avoidance Rules?

The IT Act contains General Anti-Avoidance Rules (“GAAR”), which codify the ‘substance over form’ doctrine. With a view to check tax evasion and avoidance, anti-avoidance provisions in the form of GAAR were introduced by Finance Act 2013, as Chapter X-A of the IT Act. The implementation of GAAR was repeatedly postponed after its introduction; however, the rules have finally been made effective from FY 2017-18 onwards. GAAR empowers the Income Tax Authorities to determine the tax consequences for a taxpayer, after disregarding or re-characterising an arrangement or transaction, including any step therein (by declaring the same as ‘impermissible avoidance arrangement’), if such arrangement or transaction or a step therein, has been entered into by the taxpayer for the main purpose of obtaining tax benefit and lacks commercial substance, amongst others. GAAR provisions apply on domestic as

well as cross-border transactions and have an overriding effect on all the other provisions of the IT Act. In case of an abuse of a tax treaty, GAAR provisions can also override the provisions of the tax treaty

GAAR provisions do not apply to the following transactions or taxpayers:

- Transactions where tax benefit does not exceed INR 3 crores (approx. USD 340,909);
- Foreign Institutional Investor (“FII”) or Foreign Portfolio Investor (“FPI”) who is an assessee under the IT Act, and does not seek tax treaty benefit and who has invested in listed or unlisted securities with prior approval of competent authority;
- NR who has made investment in the FII or FPI by way of offshore derivative instruments;

- Income arising to any person from transfer of investments made before April 1, 2017;
- Transactions where tax benefit is obtained prior to April 1, 2017.

The onus of proving that a transaction falls within the purview of GAAR is on the income tax authorities.

Q9. Are there transfer pricing restrictions in India?

Under India's transfer pricing regulations, any international transaction and/ or a specified domestic transaction between two or more Associated Enterprises ("AEs"), including PEs, must be at an arm's length price. Transfer pricing regulations require the application of the most appropriate amongst the following prescribed methods, for determination of the arm's length price:

- Comparable uncontrolled price method;
- Resale price method;
- Cost plus method;
- Profit split method;
- Transactional and net margin method; or
- Any other method as may be prescribed by the CBDT³.

Taxpayers, who enter into international transactions and / or specified domestic transactions⁴, are required to maintain prescribed documents and furnish an accountant's report, which includes prescribed details. Under the transfer pricing regulations, if the international transaction or specified domestic transaction is not at arm's length, the difference between the arm's length price and the actual

transfer price or transaction price is taxed in the hands of the taxpayer. Further, Indian transfer pricing regulations allow for a 'Secondary Transfer Pricing adjustment', in addition to the primary transfer pricing adjustment in the hands of the taxpayer. Secondary adjustment means an adjustment in the books of accounts of the taxpayer and its AE to reflect that the actual allocation of profits between the two are consistent with the transfer price determined as a result of primary adjustment. Where a primary transfer pricing adjustment results in an increase in total income or reduction in loss of the taxpayer, the excess money (difference between arm's length price determined in the primary transfer pricing adjustment and actual price at which international transaction has been undertaken) which is available with the AE will be deemed to be an advance made by the taxpayer to the AE. If such excess money is not repatriated to India within the prescribed time then interest on such advance will be computed. The primary adjustment not exceeding INR 1 crore (approx. USD 113,636) would not be subject to secondary transfer pricing adjustment.

Q10. What precautions should be taken to avoid transfer pricing disputes in India?

Advance Pricing Arrangement (APA)

The IT Act empowers the CBDT to enter into an APA to determine the arm's length price or the manner of determining the arm's length price in relation to international transactions to be entered into by a person for a period specified in such APA, not exceeding five consecutive years. There is also a roll-back mechanism under which an APA may also apply up to four previous years prior to the first effective year of such APA.

Safe Harbour Rules

In addition to APAs, the IT Act also provides for safe-harbour rules, which broadly cover the following business transactions:

- Software development services;
- Knowledge Process Outsourcing ("KPO") services;
- Contract research and development services;
- Manufacture and export of core and non-core auto components;
- Intra group loans; and
- Corporate guarantees.

³ CBDT has prescribed a sixth method for determination of arm's length price. The sixth method allows the taxpayer to adopt any method which takes into account the price which has been charged or paid, or would have been charged or paid, for the same or similar uncontrolled transaction between unrelated parties, under similar circumstances.

⁴ The domestic transfer pricing rules will only apply in situations where one of the parties is claiming specified tax incentives.

Transfer pricing documentation and Base Erosion and Profit Shifting (“BEPS”)

India has been an active member of BEPS initiative by Organisation for Economic Co-operation and Development (“OECD”). The BEPS Report by the OECD recommends that countries should adopt a standardised approach to transfer pricing documentation. A three-tiered structure has been mandated which comprises:

- A master file containing standardised information relevant for all multinational enterprises (MNE) group members;
- A local file referring specifically to material transactions of the local taxpayer;
- A Country-by-Country (CbC) report containing specific information regarding global allocation of MNE’s income in accordance with the economic activity of the MNE.

In line with OECD report on Action 13 of BEPS, Section 286 of the IT Act lays down the provisions for a specific reporting

regime in respect of CbC reporting and also the master file. The reporting regime requires furnishing of exhaustive information pertaining to the multinational group and the information is required to be furnished in the prescribed manner

either by the overseas parent company of the multinational group or an Indian entity which is part of the group and designated to provide such information in this regard. It is further provided that CbC guidelines will not be applicable to an international group for an accounting year if total consolidated group revenue, based on consolidated financial statements, does not exceed the amount as may be prescribed.

In order to strengthen the CbC framework and to reduce compliance burden of reporting, following provisions have been inserted with effect from AY 2017-18:

- The time limit for furnishing the CbC report, in the case of parent entity or the alternate reporting entity (“ARE”), resident in India will be 12 months from the end of reporting accounting year;
- A constituent entity resident in India, having a non-resident parent, will also furnish CbC report in case its parent entity outside India has no obligation to file the report in its country within 12 months from the end of reporting accounting year;
- The due date for furnishing of CbC report by the ARE of an international group, the parent entity of which is outside India, with the tax authority of the country of which it is resident, will be the due date specified by that country.

Q11. Does India have Thin Capitalisation Norms?

‘Thin Capitalisation Norms’ have been introduced in India with effect from FY 2018-19 in line with recommendation of OECD BEPS Action Plan 4. It is now proposed that where an Indian company or a PE of a foreign company in India pays interest in respect of any debt issued by an NR AE exceeding INR 1 crore (approx. USD 113,636), which is otherwise a deductible business expenditure, the interest expense so deductible will be restricted to 30% of its earnings before interest, taxes, depreciation and amortization or actual interest whichever is less.

Further, in case of debt provided by a lender (other than an AE) will also de facto be considered as debt provided by an AE if such debt is implicitly or explicitly guaranteed by the AE or the AE deposits corresponding and matching amount

of funds with the lender. However, thin capitalization shall not apply on interest paid in respect of debt provided by a lender which is a PE in India of a foreign company which is engaged in the business of banking.

The carry forward of the aforementioned disallowed interest expense is permitted up to eight AYS immediately succeeding the AY for which the disallowance was first made and is allowed as a deduction against the profits and gains, if any, of any business or profession carried on by the taxpayer to the extent of maximum allowable interest expenditure.

It is relevant to note that the thin capitalisation norms will not apply to an Indian company or a PE of a foreign company which is engaged in the business of banking or insurance.

Q12. What are some direct tax incentives available in India?

To give an impetus to India's economy, the IT Act provides tax incentives such as, tax holidays, deductions and rebates. These incentives are aimed at encouraging exports and research activities, setting up of new industrial undertakings, development of infrastructural facilities, software industry, research activities and development of backward areas. Examples of some tax incentives follow.

Investment-linked incentives

Investment linked incentives are provided on:

- specified businesses; and
- research and development.

The investment-linked tax incentives for specified business are provided by way of allowing 100% deduction in respect of the expenditure of capital nature incurred wholly and exclusively, for the purposes of such 'specified businesses'. 'Specified businesses' includes setting up of cold chain facility, warehousing facility, building and operating of hotels, hospitals (as prescribed by Central Government), laying and operating a cross-country natural gas or crude or petroleum pipeline, developing and building housing project, developing or maintaining and operating or developing, maintaining and operating a new infrastructure facility etc. This deduction is provided in the FY in which such expenditure is incurred and is provided subject to satisfaction of certain conditions provided in the IT Act, including that the asset in respect of which the deduction is provided is used only for the purpose of 'specified business' and is used for eight years beginning from the year in which such asset was acquired or constructed.

Similarly, investment-linked tax incentives for research & development are provided by way of allowing 100% deduction in respect of the expenditure of capital nature incurred wholly and exclusively, for the purposes of certain 'research & development' during the FY in which such expenditure is incurred. Such investment linked

tax incentives are also provided if the payment is made to a research association/university, college or other institution for scientific research; or payment is made to an Indian company to be used for scientific research and development that fulfills certain conditions etc. Currently, the IT Act provides for an additional depreciation of 20% (over and above the general depreciation) on the cost of plant and machinery acquired and installed.

Tax Incentives

- A 100% deduction was provided to farm producer companies having a turnover up to INR 100 crores (approx. USD 11.4 million) earning profits from marketing of agricultural produce grown by its members or the purchase and supply of agricultural implements, seeds, livestock or other articles for agriculture or processing of the agricultural produce of its members up to FY 2024-25. However, this benefit has not been extended post FY 2024-25. Currently, a tax exemption has been provided to any income earned by a foreign company from (a) the storage of crude oil in an Indian facility and the sale of crude oil therefrom to an Indian resident, pursuant to a notified agreement with the Central Government; and (b) income arising from sale of leftover stock of crude oil, from the Indian facility, after the expiry of such an agreement. This tax exemption has been extended to income arising from sale of leftover stock of crude oil, from the Indian facility, even if the arrangement is terminated in accordance with the terms mentioned in such agreement.

The income received by a non-resident in the form of royalty or fees for technical services rendered in or outside India to National Technical Research Organisation ("**NTRO**") will be exempt from tax. Accordingly, an NTRO will not be required to withhold tax on such payments.

Q13. Does India provide any special tax incentives to start-ups?

The IT Act provides tax incentives for start-ups, incorporated either as a company or as an LLP, on or after April 1, 2016 but before April 1, 2030 and engaged in a business involving in innovation, development or improvement of products or processes or services, or a scalable business model with a high potential of employment generation or wealth creation, subject to satisfaction of prescribed conditions. The start-ups which qualify for the tax incentive are as follows:

- Whose total turnover (of the business) does not exceed INR 100 crores (approx. USD 11.4 million) in any of the previous years for which such tax incentive/ deduction is claimed; and
- Which hold a certificate of eligible business from the Inter-Ministerial Board of Certification as notified in the Official Gazette by the Central Government.

Subject to satisfaction of the certain conditions provided under the IT Act, the following tax incentives are provided:

- Deduction of 100% from business profits of such start-ups for any three consecutive AYs out of ten AYs beginning from the year in which such start-up is incorporated.
- Exemption from long term capital gains tax if the gains

arising from transfer of the long-term capital asset are invested in units of such specified fund issued before April 1, 2019 (as may be notified by the Central Government in this behalf) subject to the condition that the amount remains invested for three years, failing which the exemption will be withdrawn. The investment in the units of the specified fund are allowed up to INR 50 lakhs (approx. USD 56,818);

- Exemption from long term capital gains in case of an individual or a Hindu Undivided Family (“**HUF**”) in respect of sale of a long term asset, being residential property, if the net sale proceeds are invested in at least 25% shares of a ‘start-up’ on or before the due date of filing of return of income by the investor and such ‘start-up’ utilises such investment amount to purchase new prescribed asset(s) within one year of subscription of shares. The exemption is provided subject to certain conditions, including, inter alia, that the transfer of residential property occurs on or before March 31, 2022.
- Additionally, an eligible start-up can carry forward previous years’ losses for a period of ten years from its incorporation, even where there is a change in its shareholding (whether or not in excess of 49%) provided that the old shareholders continue in the company.

Q14. What tax incentives does India give to IFSCs?

With a view to incentivize the growth of IFSCs, the IT Act contains the following tax incentives:

- IFSC units can avail an exemption of 100% of the income for its approved business for any 10 consecutive assessment years commencing from the year in which permission from relevant regulatory authorities is obtained, out of a block of 15 assessment years.
- A unit located in IFSC and deriving its income solely in convertible foreign exchange, is chargeable to MAT at the reduced rate of 9%. An alternative minimum tax at par with the lower 9% MAT rate has been extended to non-corporate tax payers .
- A specified fund in IFSC is exempt from tax on capital

gains income arising *inter alia* from:

- transfer of specified assets on recognized stock exchange located in IFSC and consideration paid in foreign exchange; or
- transfer of securities other than Indian shares; or
- transfer of securities issued by non-resident.
- An IFSC unit primarily engaged in the business of leasing of an aircraft or ship is exempt from tax on dividend income from another IFSC company engaged in the same business.
- A non-resident is exempt from capital gains tax on the transactions in foreign currency with respect to transfer of specified assets on a recognized stock exchange

located in any IFSC *inter alia* being:

- bond or Global Depository Receipt,
- rupee denominated bond of an Indian company;
- derivatives.
- In other non-exempt cases, long-term capital gains tax in excess of INR 1,25,000 (approx. USD 1420) arising from transaction undertaken in foreign currency on a recognised stock exchange located in IFSC are subject to tax at the concessional rate of 12.5% irrespective of payment of STT on the same.
- Concessional short-term capital gains tax rate of 20% on capital assets being equity shares, units of equity-oriented funds and units of business trust will be available to the transactions undertaken in foreign currency through a recognised stock exchange located in an IFSC, irrespective of payment of STT on the same.
- Any interest payable to a non-resident by units located in IFSC in respect of monies borrowed by it on or after September 01, 2019 will be tax exempt.
- Any interest payable by an Indian company to unit in IFSC in respect of money borrowed by an Indian company by way of long term bonds and Rupee denominated bonds listed on IFSC exchanges shall be subject to withholding tax of 9%.
- A non-resident is exempt from tax if its income has accrued or arisen as a result of:
 - transfer of non-deliverable forward contracts or offshore derivative instruments or over-the-counter derivatives; or
 - distribution of income on offshore derivative instruments, entered into with an offshore banking unit of an IFSC or with an FPI being a unit of an IFSC.
- A non-resident is exempt from tax on its royalty/ interest income paid by IFSC unit for lease of an aircraft or a ship if IFSC unit has commenced its operations on or before March 31, 2030.
- A non-resident is exempt from tax on income from a portfolio of securities or financial products or funds, managed or administered by any portfolio manager in an account maintained with an Offshore Banking Unit in any IFSC.
- A non-resident or a unit in IFSC (engaged primarily in the business of leasing of an aircraft or a ship) is exempt from capital gains tax on transfer of equity shares of IFSC unit engaged in same business which has commenced operations on or before March 31, 2030.
- Any shareholder, unit holder, interest holder is exempt from tax on transfer of a capital asset being a share or unit or interest in the original fund (registered outside India) in a relocation, in consideration for the share or unit or interest in the resultant fund i.e. AIFs/ Exchange Traded Fund located in IFSC.

Q15. Does India tax capital gains arising on the indirect transfer of underlying assets situated in India?

Where a NR earns capital gains from the transfer of shares or interest of a NR company or a NR entity incorporated or registered outside India, such capital gains will be taxable in India if such shares or interest, derive their value substantially, whether directly or indirectly, from assets located in India.⁵

A share or interest will be deemed to derive its value “substantially” from assets (whether tangible or intangible) located in India, if on the specified date, the value of Indian assets, exceeds the amount of INR 10 crores (approx. USD 1.14 million) and represents at least 50% of the value of all

the assets owned by the company or entity, as the case may be. The following may be noted in this respect:

- Value of an asset means the fair market value of such asset without reduction of liabilities, if any, in respect of the asset.
- The specified date of valuation means the date on which the accounting period of the company or entity, as the case may be, ends preceding the date of transfer. However, if the book value of the assets of the company on the date of transfer exceeds by at least 15% of the book value of the assets as on the last balance sheet date preceding the date of transfer, then instead of the

⁵ NRs will not be subject to capital gains tax on the transfer (whether by way of sale or redemption) of investment, held directly or indirectly, in SEBI registered Category-I and Category-II foreign portfolio investments. Further, it also provides that transfer of rupee denominated bonds issued outside India from an NR to another NR outside India will also be exempt from capital gains tax.

date mentioned above, the date of transfer will be the specified date of valuation.

- The manner of determination of fair market value of the Indian assets and the global assets of the foreign company has been prescribed in the IT Rules.
- The taxation of gains arising on transfer of a share or interest deriving, directly or indirectly, its value substantially from
- assets located in India will be on proportionate basis. The method for determination of proportionality has been prescribed in the IT Rules.

Further, the following exemptions have been provided in respect of taxation of indirect transfers:

- Exemption to transferor in case company or entity, whose share or interests are transferred, directly owns Indian assets: An exemption is available to the transferor of a share of, or interest in, a foreign entity if he along with his AEs, at any time in the 12 months preceding the date of transfer - (i) neither holds the right of control or

management; (ii) nor holds voting power or share capital or interest exceeding 5% of the total voting power or total share capital, in the foreign company.

- Exemption to transferor in case company, whose share or interests are transferred, indirectly owns Indian assets: An exemption is available to the transferor if he along with his AEs, at any time in the 12 months preceding the date of transfer - (i) neither holds the right of management or control in relation to such company or the entity; (ii) nor holds any rights in such company which would entitle it to either exercise control or management in the company or entity that directly holds Indian assets or entitle it to voting power exceeding 5% in the company or entity that directly holds Indian assets.

An exemption has also been provided for transfer of shares in an offshore amalgamation or demerger subject to certain conditions.⁶

Q16. What are the advantages of the India's Double Taxation Avoidance Agreements (DTAAs) with Mauritius, Singapore, etc.? Do NRs require a tax residency certificate to avail of any tax treaty benefits?

Typically, investments into India are routed through an intermediate holding company set up in such tax jurisdictions which have a tax friendly regime under the respective DTAA with India. The India-Mauritius DTAA, up to FY 2016-17, provided an exemption from tax in India on capital gains earned by a tax resident of Mauritius from the alienation of shares of an Indian company. However, after protracted negotiations, the governments of India and Mauritius have signed a protocol amending the India-Mauritius DTAA which now provides for phasing out of the aforesaid capital gains tax exemption in India, in the following manner:

Particulars	Tax Consequences in India under the India-Mauritius DTAA
Investments in shares prior to April 1, 2017	Capital gains exemptions will continue for shares acquired before April 1, 2017, irrespective of their date of transfer.
Concessional tax rate from April 1, 2017 to March 31, 2019	Capital gains from shares (acquired after April 1, 2017) transferred before March 31, 2019, will be taxed at 50% of the domestic tax rate of India subject to fulfilling the conditions stipulated in the LOB clause. The concessional tax rate will, however, be subject to GAAR.
Transfer of shares (acquired after April 1, 2017) after March 31, 2019	Taxable in India at full domestic tax rate

Similarly, India has also renegotiated the India-Singapore

⁶ The cost of acquisition and period of holding of the shares of the Indian company in the hands of the resulting foreign company will be the same as the demerged foreign company.

DTAA bringing the DTAA at par with the India-Mauritius DTAA providing for capital gains tax on capital gains from shares acquired after April 1, 2017.

Both India-Mauritius and India-Singapore DTAA provide for a limitation of benefit (“LOB”) clause which contains certain conditions for conferring the benefits of the respective DTAs on tax residents of Mauritius and Singapore.

The Indian Government has also entered into a revised DTAA with Cyprus which has replaced the existing India-Cyprus DTAA signed between the two countries on June 13, 1994. The new India-Cyprus DTAA provides for source based taxation of capital gains arising from the alienation of shares (similar to the India-Mauritius DTAA), instead of residence based taxation provided under the previous India-Cyprus DTAA. For investments made prior to April 1, 2017, a grandfathering clause has been introduced according to which all the investments prior to April 1, 2017 will be taxed only in the country in which the taxpayer is a resident.

Multilateral Agreement (“MLI”) was created by the

Organization for Economic Co-operation and Development (“OECD”) to prevent Base Erosion and Profit Shifting (“BEPS”). The India-Singapore and India-Cyprus DTAA has incorporated anti abuse provisions i.e. the Principal Purpose Test (“PPT”) from MLI into its tax treaties. Separately, a protocol has been signed between India and Mauritius on 7 March 2024 to incorporate such anti abuse provisions, but the same is yet to be notified. CBDT on 21 January 2025 issued a circular clarifying that the PPT will not be applicable to grandfathering provisions i.e. in respect of shares of Indian company purchased prior to April 1, 2017 of India-Singapore, India-Mauritius and India-Cyprus DTAs. Recently, there are judgments rendered by Tax Tribunals holding that MLI provisions adopted in a DTAA are inapplicable in the absence of issuance of a specific notification. However, these are subject to review by higher judicial forums.

In order to avail tax treaty benefit, NR taxpayers are required to furnish a TRC and a self-declaration in the prescribed form 10F to be filed electronically, in some cases (if necessary information is not provided in TRC). Income tax authorities may ask a taxpayer for additional documents to substantiate a claim for tax treaty benefits.

Q17. Is prior permission of Indian income tax authorities required before transferring assets?

Section 281 of the IT Act states that where a taxpayer during the pendency of any proceeding under the IT Act or after the completion thereof, but before the service of notice of recovery, transfers any of his assets in favour of another person, such transfer is void as against any claim in respect of any tax or any other sum payable by such taxpayer as result of the completion of the said proceeding or otherwise. However, such a transfer will not be void if:

- the transfer is for an adequate consideration and the transferee does not have notice of the pendency of any

proceeding or, as the case maybe, of such tax or other sum payable by the assessee; or

- it is undertaken with the previous permission of the Assessing Officer.

This section only applies to cases where the amount of tax or other sum payable or likely to be payable exceeds INR 5,000 (approx. USD 57) and the assets charged or transferred exceed INR 10,000 (approx. USD 114) in value.

Q18. What are the major tax registrations and compliances to be followed by corporations in India?

A company doing business in India must obtain a PAN and a TAN.

It is mandatory to quote PAN on returns of income and all correspondence with any income tax authority. For enforcing

the requirement to obtain PAN registrations, the IT Act provides that in case the taxpayer does not provide PAN, the deductor will withhold tax at the higher of, rates in force (including treaty rates) or at the rate of 20%. As per recent amendments to the IT Act, an NR deductee is not subject to higher tax in

respect for payments for interest, royalty, FTS, and transfer of capital assets, where the NR deductee has furnished TRC and tax identification number in the country of residence along with the name and address of the NR deductee.

Furthermore, the provisions of the IT Act make it mandatory to quote TAN in all tax deducted at source, tax collection at source, or annual information returns, payment challans and certificates to be issued by persons under an obligation to deduct tax at source.

The key compliances to be followed by corporations under the IT Act are as follows:

Filing of corporate tax return	October 31/ November 30*
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Filing of tax audit report	September 30/ October 31*
Filing of transfer pricing report	November 30
Filing of tax deducted at source return	Quarterly

*These due dates are applicable if the company is subject to Indian transfer pricing regulations.

Corporate tax liability is required to be estimated and discharged by way of advance tax in four instalments on June 15, September 15, December 15 and March 15. In case a taxpayer fails to file a timely return, the assessee will be ineligible to avail any tax holidays and incentives set out under chapter VIA of the IT Act.

Q19. What is the ordinary appellate dispute resolution channel in India?

The ordinary appellate dispute resolution procedure in India includes the following forums:

Commissioner of Income Tax (Appeals)

A taxpayer may file an appeal before the Commissioner Income Tax (Appeals) within a period of 30 days against any order passed against such taxpayer by the Assessing Officer in the course of assessment proceedings.

Dispute Resolution Mechanism (DRP)

The IT Act has constituted a DRP for eligible taxpayers viz. taxpayers with transfer pricing disputes and all foreign companies, irrespective of the nature of their dispute. The assessing officer is required to forward a copy of the draft assessment order to the eligible taxpayer if it is proposed to make a variation in the income/loss of the eligible taxpayer, which is prejudicial to such taxpayer.

Income Tax Appellate Tribunal (ITAT)

An appeal may be filed against the order of the Commissioner of Income Tax (Appeals) or the final assessment order after directions from DRP are issued before the ITAT on any question of fact or law both. The ITAT is a fact-finding authority.

High Court

An appeal may be filed before the High Court against the order of the ITAT within 120 days, where the same relates to a substantial question of law.

Supreme Court

The Supreme Court is the final appellate authority. An appeal may be filed before the Supreme Court against an order of the High Court.

Q20. What are other dispute resolution alternatives available to taxpayers?

Board for Advance Rulings

In order to address queries relating to taxability of transactions proposed to be undertaken by an eligible assessee (which include non-residents), an Authority for Advance Rulings was constituted by Central Government by the Finance Act, 1993. However vide Finance Act, 2021, this

now will be replaced by a Board for Advance Ruling, which will carry out the same function. An advance ruling, which is issued by Board for Advance Ruling will be appealable before the High Court of India. Furthermore, the scope of the Board for Advance Ruling includes applications made by residents and NRs on questions relating to GAAR. The

Advance Ruling scheme is also available to residents in respect of their own tax liability for transactions with value in excess of INR 100 crores (approx. USD 11.4 million).

Dispute Resolution Committee

The Dispute Resolution Committee ('DRC') is a statutory body introduced by the Finance Act, 2021 which deals with settlement applications filed by taxpayers/ assessee under the IT Act. An eligible assessee can approach the DRC at any stage of the proceedings for assessment pending before an assessing officer, subject to certain prescribed conditions. The DRC has the power to grant immunity from prosecution from any offence and imposition of penalty under IT Act, in cases where the applicant makes a full and true disclosure of their income or wealth and fulfils certain other prescribed conditions. A taxpayer can approach the DRC only if the income disclosed in the return of income is upto INR 50 lakh (approx. USD 56,818) and proposed variation during assessment proceedings is upto INR 10 lakh (approx. USD 11,364)

Mutual Agreement Procedure (MAP)

MAP is a dispute resolution mechanism provided for under

the DTAA's.

MAP can be invoked by the taxpayers where an action of any one of the contracting states to the DTAA results in or will result for him in taxation, which is not in accordance with the DTAA. Further, recourse to MAP does not deprive the taxpayer of ordinary legal remedies available under the domestic law. There is no time limit prescribed within which the competent authorities of the DTAA are to arrive at a conclusion in respect of the MAP application.

Bilateral Investment Protection Agreements (BIPA)

The objective of BIPA is to promote and protect the interests of investors of either country in the other country. Such agreements increase the comfort level of investors by assuring a minimum standard of treatment in all matters and provide for justifiability of disputes with the host country. Of late, foreign investors have been invoking BIPAs to resolve their disputes with the Indian Government in the sphere of income tax. In the budget 2025, the government has proposed to revamp bilateral treaties and make it more investor friendly.

Q21. What is Black Money Law? What are its tax implications?

The Black Money Act, levies tax on undisclosed assets held aboard by a person who is resident of India at a rate of 30% of the value of such assets, provides for a penalty of 90% of the value of such assets, and also provides for rigorous imprisonment of 3 to 10 years for willful attempt to evade tax in relation to undisclosed foreign income or asset. The residency of a person, for the purpose of the Black Money

Act, is to be determined in accordance with the provisions of the IT Act.



18. Indirect Tax

Goods and Service tax (“GST”) has been introduced in India with effect from 1 July 2017. GST is a unified indirect tax, levied on the supply of manufactured products, provision of services, or both. All goods and services are covered under GST except alcohol for human consumption and specified petroleum products. The taxable event under the GST laws is the supply of goods/services.

In case of intrastate supply of goods and services, GST in India is dually administered by both the state governments and the Federal (Central) government. For taxing intrastate supply of goods and services, the Federal government levies a Central GST (“CGST”) while the state governments and union territories levy GST through their individual state GST Acts or Union Territory GST Acts (“SGST” or “UTGST”). While each state has a separate GST Act, at present, all states have adopted uniform tax rates for the purpose of GST [e.g., for intra-state transactions in Maharashtra, provisions of the Maharashtra Goods and Services Tax Act, 2017 are applicable, along with the CGST legislation]. The tax on inter-state supply transaction is levied in terms of the Integrated Goods and Services Tax Act, 2017 (“IGST Act”)

as (“IGST”) and is administered by the Central Government. The mechanics of taxation are explained in the sections below.

GST has revamped the complicated and multi-layered indirect tax regime in India by subsuming and consolidating most central and state indirect taxes into a single ‘Goods and Services Tax’. Till the introduction of GST, different taxable events in the Indian supply chain attracted different taxes. For instance, manufacture of goods attracted excise duty, sale of goods attracted Value Added Tax (“VAT”) or Central Sales Tax (“CST”), depending upon situs of sale, whereas provision of services attracted Service tax. Most of such taxes could not be cross-utilized to offset tax liability of other central or state taxes thereby leading to cascading effect of taxes i.e., payment of tax on tax.

GST is envisaged as a destination-based tax, where the consolidation of taxes with a seamless flow of credits and cross-utilizations have allowed for greater supply chain efficiency and has facilitated the creation of a single market across the country. Such credits are available

against prescribed documents, such as tax invoice (issued in terms of GST laws which contain specified information), GST returns filed, reconciliation of electronic filings, and any other statutory conditions that may be mandated. The Government of India has made electronic invoices mandatory w.e.f. 1 October 2020 for certain classes of registered persons viz. B2B suppliers having an annual aggregate turnover of 5 crore in any financial year [from 1 August 2023]

Electronic invoices primarily involve generation of an

invoice in a standard format, after the submission of data in a prescribed template, which is reported to an Invoice Registration Portal, for the purpose generating a unique invoice reference number (“IRN”) and QR code (i.e., Quick Response code) which are then printed on the invoice.

The GST laws also specifically provide for certain other documents that are required to be maintained for undertaking supplies e.g., filing statutory returns, as mentioned above, e-way bills (required for movement of goods) etc.

Q1. What are the GST legislations passed by the Parliament in India?

The Parliament has passed the following legislations in order to implement GST in India:

- Central Goods and Service Tax Act, 2017 (CGST Act)
- Integrated Goods and Service Tax Act, 2017 (IGST Act)

- Goods and Services Compensation to States Act, 2017
- Further, as mentioned above, all states and UTs have also passed their respective GST legislation (SGST Acts/ UTGST Acts).

Q2. What are the indirect taxes applicable in India?

GST

As mentioned above, under the GST regime, both the federal government and the state government have concurrent powers to levy tax on supply of goods as well as services except certain specified goods viz. petroleum crude, high speed diesel, motor spirit, natural gas, aviation turbine fuel and alcohol for human consumption. Depending upon the place of supply of goods or services, including imports and exports, the supplies under GST laws are taxed either as intra-state supply or inter-state supply.

Intra-State GST/ CGST, SGST and UTGST

GST

Intra-State supply of most goods and services attracts CGST and SGST or UTGST. A transaction is treated as an intra-state transaction when the supplier and the place of supply are in the same state or union territory in India. Detailed rules have been prescribed under the GST laws for determining place of supply and location of supplier in respect of goods and services.

Inter-State GST/ IGST

Inter-State supply of most goods and services attracts IGST. IGST is a sum total of the Central GST and State GST, which would have been applicable on the intra-state supply of such goods or services. A transaction is treated as an inter-state transaction when the supplier and the place of supply are in different states. Detailed rules have been prescribed under the IGST Act for determining place of supply and location of the supplier in respect of goods and services.

Certain supplies like performance based services, online supply of content etc. have specific place of supply parameters notified specifically under the IGST Act. Certain supplies have been deemed to be an inter-state supply e.g., imports, supply of goods and services to a Special Economic Zone (“SEZ”) unit, etc.

In addition to the above, certain supplies of goods and services also attract a GST Compensation Cess which has been levied specifically to fund the compensation payable to states on account of any losses which the states may suffer post the implementation of GST. Such GST Compensation

Cess is applicable on select goods such as motor vehicles, tobacco, coal *etc.* This has now been extended till 31 March 2026 when the levy will be reviewed by the GST Council – the apex decision making body for Goods and Service Tax in India.

Customs Duty

Customs duty is imposed on the import of goods into India and the export of certain goods outside India. Every person proposing to engage in import of goods into India or export of goods from India is required to obtain an Import Export Code (“IEC”) from the Directorate General of Foreign Trade, Ministry of Commerce and Industry (“DGFT”).

Customs duty is levied in terms of the Customs Act, 1962 and Customs Tariff Act, 1975, on the transaction value of goods. The transaction value of the goods is the price actually paid or payable for the goods, when sold for export, where the buyer and seller are not related, and price is the sole consideration for the sale, subject to other conditions as may be prescribed in the valuation rules for customs.

In case the buyer and seller are related, special valuation measures and procedures are prescribed to determine whether the transaction value of goods are at arm’s length at the time of import (i.e., not influenced by any factors), as per the Customs Valuation (Determination of Price of Imported Goods) Rules, 2007 (“Customs Valuation Rules”).

The export and import policy in India are also specified under the Indian Trade Classification (Harmonized System) Code (“ITC (HS)”). All goods imported into, or exported out of India, must follow the specific export or import policy for such goods. The export and import policy of goods are regularly updated by the DGFT, on a need basis. In addition, there may be additional permissions or conditions imposed on the import or export of goods, as per applicable laws, depending on the nature and classification of the goods.

Under the present law in addition to Basic Customs Duty, IGST, Social Welfare Surcharge; other levies such as GST Compensation Cess (applicable only on specified products), Road and Infrastructure Cess (applicable on motor spirits and high speed diesel), Agricultural and Infrastructural

Development Cess (“AIDC”) on specific goods (for promoting infrastructure in India), Countervailing Duty (“CVD”) (applicable only on specified products) and Special Additional Duty (“SAD”) (applicable only on specified products) may also be levied at applicable rates. Customs duty structures undergo constant rationalization and certain duties or surcharges are often removed as notified by the Central Government (for example: in the 2025- 2026 Union Budget it has been proposed to remove SWS from 82-line items). It is further important to note that the IGST that is applicable on import of goods, is collected as a duty of customs. However, the same is creditable against domestic output GST liability.

The effective rate of customs duty in case of most non-agricultural products ranges from 16.55% to 42.08% (approximately) depending upon the classification of products. However, taking a mean rate of 18% IGST, and a Basic Customs Duty of 10% with a Social Welfare Cess of 10% on Basic Customs Duty [as is applicable on most goods], the effective rate stands around 30.98%.

The rate of customs duty for each item is specified under the Customs Tariff Act, 1975 and is dependent on the classification of the goods under their respective Customs Tariff Head [“CTH”] determined under the First Schedule of the Customs Tariff Act, 1975. The CTH(s) are aligned with the Harmonized System of Nomenclature, provided by the World Customs Organization.

In order to encourage exports, export duty is levied on very few items, mentioned under the Second Schedule of the Customs Tariff Act, 1975.

Excise Duty

Excise duty is imposed on the manufacture of specified goods in India. The power to levy excise duty primarily remains with the Central Government, though the power to levy excise duty on alcoholic products and other intoxicants has been conferred upon state governments. With the introduction of GST, the power to levy central excise duty has been restricted to specified products *viz.* petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas, and aviation turbine fuel.

Central Excise Duty

Central excise duty is levied on the specified goods manufactured in India under provisions of the Central Excise Act, 1944 and the Central Excise Tariff Act, 1985. Central excise duty is a modified VAT (also known as Cenvat) wherein a manufacturer is allowed to take credit of the excise duty paid on locally sourced goods, and CVD and SAD on imported goods. The Cenvat credit so availed can be utilized for payment of excise duty on the clearance of dutiable final specified products manufactured in India, if any, applicable in accordance with the Cenvat Credit Rules, 2017.

State Excise Duty

State governments have the power to regulate movement of liquor and other intoxicants and to levy tax on manufacture or production of liquor and other intoxicants by virtue of the Constitution of India, 1950. As a result, movement and sale of liquor and other intoxicants is dependent upon the excise policy of respective states, which is usually revised annually by the state governments.

The scope of the state excise policies and regulations includes inter alia regulating import, export, transport, possession and sale of liquor within the concerned state. State excise legislations also empower the state governments to issue licenses by way of tender, auction, and tender-cum-auction or by any other prescribed mechanism. State excise policies often contain rules governing filing of statutory returns and other compliances which vary from state to state.

VAT and CST

With the introduction of the GST in India, state levy of VAT has been significantly curtailed. From 1 July 2017, VAT is levied only on the sale, within a state, of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), alcohol for human consumption, natural gas, aviation turbine fuel. CST is levied on the interstate sale of the above goods. VAT rates may vary from 0% to 15%, although there may be further variations depending on the state, as this is a state specific levy. VAT laws are specific to the states in India, and each state has their individual VAT laws.

The VAT or CST on sale of the above goods may be imposed by the Central Government or the state government depending upon the situs of the sale. In case a business is engaged in the above transactions, it has to take a registration under the respective legislation and perform appropriate compliances.

Sale of specified moveable goods viz. petroleum crude, high speed diesel, motor spirit, natural gas, aviation turbine fuel, and alcohol for human consumption in India is chargeable to a levy of VAT or CST. Import of these goods into or export of goods outside India or sale in the course of import or export of goods are not eligible to State VAT or CST. Under the federal structure of India, tax on sale of goods may be imposed by the Central Government or the state government depending upon the situs of the sale.

Intra-state Sales Tax: VAT

The power to levy sales tax on intra-state sale of specified moveable goods viz. petroleum crude, high speed diesel, motor spirit, natural gas, aviation turbine fuel, alcohol for human consumption, is conferred upon state governments under the Constitution of India, 1950. In the event that a sale takes place within a particular state of India, the same would qualify as a local sale or intra-state sale, and would be chargeable to VAT at the applicable rates under the relevant state VAT legislation.

Under the VAT regime, the VAT paid on goods purchased from within the state is typically eligible for input VAT credit. The input VAT credit can be utilized against the VAT or CST [paid on interstate sales] payable on the sale of goods subject to fulfilment of conditions in this regard. It is, thus, ensured that cascading effect of taxes is avoided and value addition alone is taxed.

VAT rates are dependent on the relevant state VAT Legislation. Every dealer engaged in sale or purchase of specified goods over and above the specified threshold limit in a particular state is required to obtain VAT or CST registration in each of such states and undertake necessary compliances in this regard.

Rules concerning registration, filing of VAT returns, etc. vary from state to state. Statutory returns are normally filed on a yearly, quarterly or monthly basis (depending upon the taxable turnover of the dealer). These returns are filed with the jurisdictional VAT officer.

CST

CST is levied on inter-state sale of goods of specified moveable goods *viz.* petroleum crude, high speed diesel, motor spirit, natural gas, aviation turbine fuel, and alcohol for human consumption. Where goods move from one state to another pursuant to a contract of sale, or a sale is affected by the transfer of documents of title during the movement of goods from one state to another, such a sale is known as an inter- state sale.

The power to levy CST is conferred on the Central Government by the Constitution. The levy of CST is governed by the Central Sales Tax Act, 1956 ("CST Act"). CST is chargeable at the concessional rate of 2% on submission of requisite statutory form (Form C), in specified cases *viz.* telecommunication, mining, generation or distribution of electricity, resale or manufacture of goods for sale. In case Form C cannot be furnished, then CST would be levied at the applicable VAT rate.

The CST Act further provides that amongst others, the provisions relating to returns, provisional assessment, advance payment of tax, registration and penalties etc. under the local VAT law in a particular state shall also be applicable for compliances under the CST Act.

Professional Tax

Certain states in India also levy a tax on every person engaged in any profession, trade, calling or employment in the said state. Every person liable to pay professional tax is required to obtain an enrolment certificate under the professional tax laws and undertake necessary compliance under the appropriate state laws.

Further, every company is also required to withhold professional tax on behalf of its employees and deposit the same with the government exchequer. The rate of tax is dependent on the number of employees and their monthly salaries. Every such company is also required to obtain a registration certificate in its capacity as an employer and also obtain an enrolment certificate. The rate slabs of professional tax varies from state to state, subject to the maximum of INR 2,500 (approx. USD 28) per employee per annum [this is consistent in the state legislations]

Q3. What is the concept of 'supply' under GST?

The taxable event under GST is 'supply' of goods or services. The term 'supply' has been defined broadly to cover all forms of supply of goods or services or both and includes sale, transfer, barter, exchange, license, rental, lease *etc.* As a general rule, such supplies should be made for a consideration and must be made in the course or furtherance of business. However, in certain exceptional cases, such as supplies between related parties or distinct persons without consideration, free supplies where credit has been availed on goods supplied, *etc.* have also been made taxable. Such supplies have been enumerated

in Schedule I of the CGST Act. In view of the deeming provisions, self-supplies of goods or services inter-se between two offices of the same company may also be exposed to GST liability.

All taxes paid on procurement of inputs, input services and capital goods are allowed to be offset against output liabilities subject to routine compliance except in so far as the credit on particular goods and services is restricted under the GST laws.

Q4. What is the rate structure under GST?

Inter-state supply or intra-state supply of goods and services attracts GST at a uniform rate on a pan-India

basis. While in terms of GST laws, the maximum rate of GST (excluding GST compensation cess) on goods can go up to

40%, the two GST rate slabs prescribed currently are – 5% and 18%. Certain essential goods are now classified under a 0% (exempt) category. The GST rate of 40% is prescribed for certain luxury goods. Additionally, GST Compensation

Cess may also levied at prescribed rates, on certain notified goods. The GST rate for services is 18% unless a specific rate or exemption is specially notified for any service.

Q5. Who is a 'taxable person' under GST?

Under GST laws, a taxable person is any person who is registered or liable to be registered in terms of CGST Act. This includes a person with aggregate turnover above the prescribed threshold and also persons who are mandatorily required to obtain registration such as persons engaging in

interstate sale of goods, persons liable to pay tax under reverse charge (for import of service), certain overseas suppliers like suppliers of certain online services to individuals etc.

Q6. What is the registration requirement under GST?

The GST laws require businesses to take a registration and undertake compliances in each state from where supply of taxable goods or services is made.

compliance, if they supply services, to individual non-GST registered consumers in India.

As a general rule, a taxable person supplying goods or/and services is required to be mandatorily registered with the authorities if the aggregate turnover of such taxable person on a pan-India basis exceeds INR 20 lakhs (approx. USD 22,727) or INR 10 lakhs (approx. USD 11,364), in case of certain special category states (Manipur, Mizoram, Nagaland and Tripura). For exclusive supplier of goods in the states of Assam and Jammu Kashmir, the threshold has been kept at INR 40 lakhs. Certain exceptions are available to this rule in the GST laws depending on the supply and state of operation. .

Suppliers of online money gaming services [where online games are played for stakes on an electronic platform] from outside India to any individual in India are also required to take special registration in India and perform appropriate GST compliances. In case these suppliers fail to do so, the GST laws mandate the blocking of the online platform from providing services in India, among other consequences. However, currently online money gaming has been placed under legal restrictions and operations significantly curtailed under appropriate legislation.

Further, certain additional category of persons such as persons liable for paying tax under reverse charge, persons engaged in interstate supply of goods etc., are mandatorily required to obtain registration irrespective of the prescribed threshold criterion.

As a general rule, GST laws also allow certain taxpayers having turnover of less than INR 1.5 crores (approx. USD 170,455) (with respect to supply of goods) to register under the composition scheme which allows such taxpayer to discharge GST at a reduced rate, ranging from 1% to 5% (in North eastern states, Himachal Pradesh and Uttarakhand this limit is INR 75 Lakh (USD 85227 approx). However, the said scheme is subject to various statutory restrictions, *for e.g.* composition scheme disallows the taxpayer to avail and utilize input tax credit of the GST discharged on inward supplies of goods and services, among other restrictions.

Certain specific service providers, like suppliers of online content based outside the territory of India, also are mandated to take a special GST registration to perform

Q7. What is the concept of anti-profiteering under GST?

GST laws mandate that every business must pass on the benefits to its customers that may accrue to it on account of reduced rate of GST, or increase in input credit, in comparison with the erstwhile tax rates. Such benefit is recommended to be passed on to customers by way of proportionate reduction in prices. An authority was constituted for the said purposes in accordance with GST

laws, to ensure that businesses pass on the benefits of GST to the end customer. However, the said authority has stopped taking complaints on anti-profiteering from 1 April 2025. Presently, while the anti-profiteering clauses are still valid and require businesses to comply, appropriate authorities can take suo-motto cognizance and action, if the same is not complied with.

Q8. What are the compliances which are required to be undertaken under GST laws?

GST laws mandates a taxpayer to undertake the prescribed compliances, including the following:

Returns

GST laws are based on a self-assessment mechanism where a taxpayer is required to ascertain its own tax liability and

discharge the same to the governmental authorities. In support of such self-assessments, the taxpayer is required to file periodical returns with the concerned authorities. Some of the returns which are required to be (electronically) filed by the taxpayer, under the GST laws, are as follows:

Form	Period	Details	Last date*
GSTR-1	Monthly	Details of outward supplies of goods or services	11 th day of the succeeding month
GSTR-3B	Monthly	A summary of all outward and inward supplies of goods and services	20 th day of the succeeding month
GSTR-9	Annually	Annual return GSTR-9 is an annual compilation of outward supplies, inward supplies, tax liability and input tax credit availed during a financial year	31 st December of the year following the end of the financial year
ITC-02**	-	Details of eligible tax credit claimed by a taxpayer on its registration under GST laws	Within 30 days of becoming eligible to avail input tax credit

& Taxpayers whose aggregate turnover in a financial year is up to INR 2 Crore (USD 227,273 approx) are exempted from filing annual GST return 9, for the said financial year

* The last dates so provided are subject to any extension that may be provided by the concerned authorities.

** Please note that the said form is filed for the transfer of credit in the event of sale, merger, de-merger, amalgamation, lease or transfer or change in the ownership of business for any reason.

In addition to the above, taxpayers having turnover of business from INR 2 crore (approx. USD 227,273) to INR 5 crore (approx. USD 568,182) need to file a self-certified reconciliation with their audited financial statements in a **Form GSTR 9C**. The GSTR-9C has been modified to be a self-certified return for taxpayers from FY 2020-21 onwards. GSTR 9C is exempted for taxpayers with turnover less than INR 2 crore (approx. USD 227,273). If the turnover of the businesses exceeds the turnover of INR 5 crore (approx. USD 568,182), then both the GSTR 9 and GSTR 9C returns are

required to be filed in the prescribed form. The last date of filing a GSTR 9C is 31 December of the year following the end of the financial year

E-way bills

As highlighted above, GST laws mandates a taxpayer to generate an e-way bill before undertaking supplies of goods from one place to another. In this regard, it is pertinent to note that e-way bills are required to be generated by every registered person who causes movement of goods

having 'consignment value' exceeding INR 50 thousand (approx. USD 568). Detailed rules and regulations have

been provided under GST laws with respect to e-way bills.

Q9. What are some the indirect tax incentives available in India?

Customs Laws:

There are various schemes and incentives available under customs laws for various sectors including power, oil and gas, transportation, fertilizers, renewable sources of energy etc. Further, India has also signed Free Trade Agreements with various countries which provide for exemptions from import duty on various specified goods, depending on their CTH and country of origin.

Other illustrative schemes are highlighted below:

For manufacture of goods in a warehouse, a Manufacture and Other Operations in Warehouse Scheme ["MooWR"] scheme has been introduced which provides for a deferment of Basic Customs Duties and Social Welfare Surcharge, if goods are imported into a bonded warehouse and manufacturing activity takes place of such goods

Project Import Scheme:

Project imports are the imports of machinery, instruments, spares (up to 10 percent of the value of machinery), apparatus etc., required for the initial setting up of a manufacturing unit or for substantial expansion of an existing unit. The Central Board of Indirect Taxes and Customs ("CBIC"), pursuant to the power conferred under the Customs Act, has rolled out the Project Import Regulations, 1986 which regulate the Project Import Scheme ("PIS") for import of goods in India.

The advantages of importing the goods under PIS is that all the machinery, appliances, instruments etc., imported are charged to duty at a flat concessional rate of duty under an uniform Customs Tariff heading of 98.01 of the Customs Tariff Act, 1975, instead of being classified separately under different tariff headings and liable to different duty structures, at the time of import and clearance.

The primary requirement for being eligible for concessional rate of duty under PIS is that the project should be sponsored by a specified sponsoring authority as designated in the PIS

with a detailed itemized list of goods to be imported, duly attested by such sponsoring authority.

GST

Under GST laws, exports of goods and service and deemed exports are zero rated. There is no output tax subject to the fulfilment of routine conditions and suppliers are entitled to claim refund of GST discharged on inputs and input services, subject to fulfilment of conditions and compliances.

Foreign Trade Policy, 2015-2020 ("FTP")

The current FTP provides for a suite of export promotion schemes. These include:

Reward schemes like the Remission of Duties and Taxes on Exported Products, ["RoDTEP Scheme"] from 1 January 2021 [to claim refund of various central, state and local duties, taxes, and levies, on goods & services, which remain un-refunded, but are used in production and distribution of the exported product],

Export Promotion Capital Goods Scheme [import of capital goods for set up without import duty, subject to fulfilment of export obligation],

Authorized economic operation ("AEO") scheme for enhanced and prioritized clearance, recognition of Star Export Houses as 'Status Holders' etc.

The Advance Authorization Scheme allows duty-free import of raw materials and inputs (like fuel, catalysts) needed to manufacture export products, subject to fulfilment of export obligations to sell finished goods abroad

Incentives are also extended to Exported Oriented Units, Software Technology Parks under the FTP.

The current FTP has come into force from April 2023 and is valid until a replacement is notified by the Government

SEZ:

Subject to conditions prescribed in this regard, developers of an SEZ and units established in an SEZ are entitled to various indirect tax benefits, for use in their permitted authorized operations, *inter-alia* including:

- Exemption from payment of import duties on imported goods;
- Supplies to SEZ are zero rated under GST laws; Import of service into SEZ is not liable to GST on reverse charge
- Exemption from excise duty on goods manufactured by an SEZ;
- Drawback or such other benefits as may be admissible from time to time on goods brought or services provided from the domestic tariff area into an SEZ or unit;
- Exemption from CST on the sale or purchase of goods if such goods are meant to carry on the authorized operations; and
- Exemption from VAT on supply of goods to an SEZ developer or unit. This is subject to the respective sales tax/VAT legislation of the state in which the SEZ is set up.

Investment based incentives:

The state governments also provide for various fiscal and non-fiscal incentives (including indirect tax incentives) on account of any investments made in any specified areas of the state.

The state industrial policies can provide refund of state GST, paid, refund / exemption of other state taxes like stamp duty, etc., depending on the capacity of investment being done for setting up units in the relevant state. The availability, eligibility and quantum of avail incentives under the state industrial policies depends on the factors such as the sector involved, proposed investment, proposed revenue generation horizon, creation of job opportunities for local residents, area where the investment is proposed, sustainable practices to protect the environment, past records and history of the investing company etc.

State Industrial Policies also take into account total Fixed Capital Investment (“FCI”), employment capacity etc. As per the specific state policy and subject to certain factors (importance to the state’s growth, overall revenue for the state etc.) tailor-made package scheme of incentives are considered for investors looking to set up units in the relevant state.

For e.g., in the state of Uttar Pradesh, the state government has issued Uttar Pradesh Electronics Manufacturing Policy, 2017 which provides for the following illustrative incentives for setting up a unit in the specified area which has been designated as ‘Electronics Manufacturing Zone’. Incentive for setting up such unit is illustratively as follows:

- Reimbursement of SGST, electricity duty, employee provident fund, employee state insurance discharged;
- Exemption from applicable stamp duty and other state specific taxes, as applicable.

Many states in India are now also introducing policies like state Global Capability Centre (“GCC”) policies to invite setting up of GCC / Back Office in the state. States like Uttar Pradesh, Gujarat, Karnataka, Maharashtra, Tamil Nadu are some states which have established GCC policies. The GCC policies provide state level incentives to set-ups depending on their capital investment and job opportunities created.

Please note that the incentives available under any such incentive schemes is primarily based on the quantum of investments along with the employment opportunities created. Further, the incentives may also be dependent on the structure of the proposed unit.

Performance Linked Incentive [“PLI”] Schemes:

The Central Government also announces PLI schemes for certain industries from time to time, such as textiles, auto industry, electronic components and systems, food processing [Ready to Cook / Ready to Eat], renewable energy [Solar PV Modules], white goods [like air conditioner and LED], pharmaceuticals etc.

These schemes provide financial incentive to boost domestic manufacturing and attract large investments in

the relevant sector, for businesses having / setting up units in the manufacturing value chain. The prime objectives of a PLI scheme includes removing sectoral disabilities, creating economies of scale, enhancing exports, creating

a robust manufacturing ecosystem and providing means of employment generation. Scheme outlays, for incentives on a yearly basis, depending on the investment proposed, are regularly announced by the Government of India.

Q10. What is the ordinary appellate dispute resolution channel for indirect taxes in India?

Customs and Disputes Related to the Erstwhile Service Tax and Central Excise Laws

The ordinary appellate dispute resolution procedure in India includes the following forums:

- At the first stage of adjudication, an order in original (“OIO”) is passed by the jurisdictional authorities.
- Appeals to Commissioner of Customs / Central Excise (Appeals): This is the first level of appellate mechanism. An appeal in this regard can be filed within 60 days from the date of receipt of the order passed by an adjudicating authority lower than the rank of Commissioner.
- Appeal to the Appellate Tribunal – Customs Excise and Service Tax Appellate Tribunal: (“CESTAT”): An appeal to CESTAT can be filed against an order of the Commissioner (Adjudication) or Commissioner (Appeals). Such appeals have to be filed within three months from the date of receipt of the order.
- High Court - An appeal may be filed before the High Court against the order of the CESTAT within 180 days, where the appeal relates to a substantial question of law. However, appeals against a CESTAT order on the issues of classification or valuation are not admissible before High Court and are required to be filed directly before Supreme Court.
- Supreme Court - The Supreme Court is the final appellate authority. An appeal may be filed before the Supreme Court against the order of the CESTAT (only in matters of valuation and classification) or against the order of High Court.

VAT Laws:

The ordinary appellate dispute resolution channel with respect to VAT and other local levies depend on local VAT legislation which may vary from state to state.

GST Laws:

The ordinary appellate dispute resolution procedure in India includes the following forums:

- Appeals to Appellate Authority: This is the first level of appellate mechanism. An appeal in this regard can be filed within three months from the date of communication of the OIO passed by an adjudicating authority.
- Appeal to the Appellate Tribunal: The GST Appellate Tribunal is also being set up to be the second Appellate Authority for GST laws. Orders from the Commissioner Appeals are appealed in the GSTAT. The principal bench of the GSTAT is functional presently from September 2025 in New Delhi and other state level benches are expected to start functioning at the earliest.
- An appeal to Appellate Tribunal can be filed against an order of the appellate authority or order in revision passed by revisionary authority, by any person aggrieved by such an order. There are two tiers of tribunals that are envisaged under the GST laws – National or Regional Bench and the State Bench or Area Bench. Such appeals have to be filed within three months from the date of receipt of the order. Appeals are being allowed to be filed in a structured manner before the Principal Bench in New Delhi.
- High Court - An appeal may be filed before the High Court against the order of State Bench or Area Bench of the Appellate Tribunal within 180 days from the date of receipt of order where the same relates to a substantial question of law.
- Supreme Court - The Supreme Court is the final appellate authority. An appeal may be filed before the Supreme Court against the order of the National Bench or Regional Bench or against the order of High Court.

Q11. What are other dispute resolution alternatives available to indirect taxpayers?

Apart from the above, with respect to central levies *i.e.* customs, GST and excise laws, the following dispute resolution alternatives are available:

Settlement Commission:

The basic objective of setting up of the Settlement Commission was to expedite payments of disputed customs duty, erstwhile Service tax etc., involved in disputes by avoiding costly and time consuming litigation process and to give an opportunity to taxpayers to come out clean. Eligible taxpayers could make an application in such form and in such manner as may be prescribed by the Commission and containing “full and true” disclosure of their duty liability, subject to fulfilment of conditions prescribed in the regard.

The Settlement Commission then hears the matter and after considering reports from the revenue authorities, can settle the matter by quantifying the amount of duty, tax and interest to be paid. Penalties can also be waived by the Settlement Commission subject to the payment of settlement dues quantified. Note that the Settlement Commission mechanism will undergo significant changes in 2025 including the formation of an Interim Board to hear

matters expeditiously and the Settlement Commission is ultimately expected to be phased out in a gradual manner going forward.

Authority for Advance Ruling (“AAR”) and Appellate Authority for Advance Ruling for GST and Customs:

Custom Laws:

The central legislations governing levy of customs duty provide for a scheme of Advance Ruling, where any person holding an IEC or exporting goods to India etc., may approach the authority on issues such as ascertaining their duty liability, CTH etc. in relation to customs duty.

GST:

The AAR constituted under the GST laws provides rulings on the GST implications of any ongoing transactions or activities that are proposed to be undertaken, subject to prescribed legislation under the GST act(s). These rulings are binding only on both the applicant and the GST authorities. However, appeals can be made against the decisions of the authority to the Appellate AAR. Further appeals are possible to the jurisdictional High Court.



19. Privacy, Data Protection and Cybersecurity

Q1. What is the legislative framework governing Privacy and Data Protection in India?

Currently, the Information Technology Act, 2000 (“**IT Act**”) and the Information Technology (Reasonable security practices and procedures and sensitive personal data or information) Rules, 2011 (“**Privacy Rules**”) regulate the processing of “personal information” and “sensitive personal data or information” (“**SPDI**”). Please see below the key provisions of the Privacy Rules:

- **Notice and consent:**
 - Rule 4 and 5 of the Privacy Rules require body corporate (or any person on its behalf) to provide information to users by way of a privacy policy, provide notice to users and obtain their consent before collecting SPDI.
- **Disclosure of information:** Rule 6 does not allow disclosure of SPDI to third parties without the prior permission of the information provider, unless the disclosure is:
 - in terms of a contract between the body corporate and the information provider;
 - necessary for compliance with a legal obligation; or
 - to government agencies mandated under law to obtain information for the purposes of verification of identity, prevention, detection, investigation of cyber

incidents, prosecution and punishment of offenses; or

- made to a third party by an order under law.

- **Transfer of information:** Rule 7 permits cross border transfer of information only if: (a) it is necessary for the performance of contract between the body corporate and a person, or (b) if the information provider has specifically consented to such transfer.

On August 11, 2023, the President of India gave assent to the Digital Personal Data Protection Act, 2023 (“**DPDP Act**”), which proposes to repeal Section 43A and Section 87(2)(b) of the IT Act, and would also result in the replacement of the Privacy Rules. On November 14, 2025, the Government published various notifications – which brought into force the DPDP Act and the Digital Personal Data Protection Rules, 2025 (“**DPDP Rules**”) with staggered timelines for implementation. The Government also established the Data Protection Board (“**Board**”) in the National Capital Region of India with 4 members. The Government notified three sets of dates (i.e., November 14, 2025, November 13, 2026, and May 13, 2027) for the enforcement of the provisions of the DPDP

Act, along with the corresponding provision under the DPDP Rules. Specifically:

- The provisions related to the establishment of the Board, and amendments to the Right to Information Act, 2005 and the Telecom Regulatory Authority of India, 1997 came into effect immediately i.e., on November 14, 2025.
- The provisions related to registration of consent managers and the Board's powers to inquire into breach of conditions of registration of consent manager will come into effect on November 13, 2026.
- The substantive provisions related to notice and consent requirements for processing personal data ("PD"), reporting PD breaches, requirement to obtain verifiable consent for processing PD of children and persons with disabilities, obligations of Significant Data Fiduciaries ("SDF"), rights of Data Principals, cross-border transfer of personal data, powers and functions of the Board will come into effect on May 13, 2027. Section 43A of the IT Act will also stand repealed on this date.

Under the DPDP Act: (a) a Data Principal is the individual to whom the PD relates (and includes the parent or lawful guardian of a child, and the lawful guardian of a person with disability); (b) the Data Fiduciary is the person / entity determining the purposes and means of processing¹ PD; and (c) the Data Processor is the person / entity which processes the PD on behalf of the Data Fiduciary. The DPDP Act also provides for an adjudicatory body in the form of the Board. The DPDP Rules provides more details on the obligations of the Data Fiduciaries and how the DPDP Act's framework will operate. Please see below the key provisions of the DPDP Act and the corresponding DPDP Rules:

- **Notice for consent**

- Section 5(1) of the DPDP Act requires that every request for consent by Data Fiduciary should be accompanied with a notice to Data Principal, which shall contain:
 - a description of the PD sought to be collected;
 - the purpose of processing such PD;
 - information on how Data Principal may

- I. exercise their right to withdraw consent,
- II. avail of the grievance redressal mechanism, and

- the manner in which the Data Principal may make a complaint to the Board.
- Section 5(2) of the DPDP Act requires Data Fiduciaries to provide Data Principal with a notice in respect of consent obtained by the Data Fiduciary *prior* to the commencement of the DPDP Act. This has to be done as soon as it is 'reasonably practicable', and no specific timeline has been prescribed. Such a notice must be provided in the same manner as prescribed under Section 5(1).
- Section 6(3) of the DPDP Act also requires that every request for consent should (a) give the Data Principal option to access the request in English or any of the languages in Schedule of the Constitution of India, 1950 and (b) provide the contact details of the Data Protection Officer ("**DPO**") if applicable, or any person authorised by the Data Fiduciary to respond to any communication from Data Principal, for the purpose of exercising their rights.
- Rule 3 of the DPDP Rules required the notice provided by the Data Fiduciary to:
 - be understandable independent of other information made available by the Data Fiduciary;
 - be in clear and plain language, which includes details necessary for Data Principal to give specific and informed consent – and include at the minimum an itemised description of PD and specific purposes to be enabled by processing;
 - provide a communication link for accessing the website and / or app, using which the Data Principal may
 - I. withdraw her consent;
 - II. exercise her rights; and
 - III. make a complaint to the Board.

- **Obligations of Data Fiduciary**

- Section 8(1) of the DPDP Act requires Data Fiduciaries to ensure compliance with the law in respect of any

¹ Please note that Section 2(x) of the DPDP Act defines 'processing' as "in relation to personal data, means a wholly or partly automated operation or set of operations performed on digital personal data, and includes operations such as collection, recording, organisation, structuring, storage, adaptation, retrieval, use, alignment or combination, indexing, sharing, disclosure by transmission, dissemination or otherwise making available, restriction, erasure or destruction." Further, 'automated' has been defined under Section 2(b) of the DPDP Act as "any digital process capable of operating automatically in response to instructions given or otherwise for the purpose of processing data".

processing undertaken by it or by a Data Processor on its behalf.

- Section 8(3) of the DPDP Act requires Data Fiduciaries to ensure completeness, accuracy and consistency of PD when such data is likely to be (a) used to make a decision that affects the Data Principal, or (b) disclosed to another Data Fiduciary.
 - Section 8(4) requires a Data Fiduciary to implement appropriate technical and organisational measures to ensure effective observations of the provisions of the DPDP Act.
 - Section 8(5) of the DPDP Act requires a Data Fiduciary to protect PD in its possession or under its control, including in respect of processing undertaken by it or the Data Processor on its behalf, by taking reasonable security safeguards to prevent PD breach, including at the minimum the following safeguards prescribed under Rule 6 of the DPDP Rules:
 - appropriate data security measures such as securing PD through encryption, obfuscation, masking or use of virtual tokens mapped to the PD;
 - appropriate measures to control access to computer resources used by Data Fiduciary or Data Processor, wherever applicable;
 - visibility on the accessing of PD, through appropriate logs, monitoring and review, for enabling detection of unauthorised access, its investigation and remediation to prevent recurrence;
 - reasonable measures for continued processing in the event of confidentiality, integrity or availability of PD being compromised as a result of destruction or loss of access to PD, such as by data-backups;
 - for enabling detection of unauthorised access, its investigation, remediation to prevent recurrence and continued processing in the event of such a compromise, retain such logs and PD for 1 year;
 - appropriate provision in the contract between Data Fiduciary and Data Processor, wherever applicable, for taking reasonable security safeguards; and
 - appropriate technical and organisational measures to ensure effective observance of security safeguards.
 - Section 8(6) of the DPDP Act read with Rule 7 of the DPDP Rules requires Data Fiduciary to give the Board and each affected Data Principal intimation of any PD breach in the prescribed manner (see response to [Question 4](#) for details).
 - Section 8(7) of the DPDP Act requires Data Fiduciary to ensure erasure of PD by itself and the Data Processor upon the Data Principal withdrawing consent or as soon as it is reasonable to assume that the specified purpose is no longer being served, whichever is earlier.
 - Section 8(9) of the DPDP Act provides that a Data Fiduciary must publish, the contact information of a DPO, if applicable, or a person who is able to answer the Data Principal's questions about processing of PD on behalf of the Data Fiduciary. Under Rule 9 of the DPDP Rules this information has to be prominently published on the website or app, and mentioned in every response to communication by the Data Principal for exercise of her rights.
 - Section 8(10) of the DPDP Act provides that Data Fiduciary shall establish an effective mechanism to redress the grievances of Data Principals. Rule 14(3) of the DPDP Rules requires Data Fiduciaries to resolve grievances within a reasonable period, but no later than 90 days.
 - Rule 13 of the DPDP Rules prescribe additional obligations on SDF, as detailed in the response to [Question 6](#).
- **Cross-Border Data Transfers**
 - Section 16 of the DPDP Act read with Rule 15 of the DPDP Rules permit the processing of PD outside India, except to any countries or territories notified by the Central Government. Accordingly, this provision allows cross border data transfers by default to all jurisdictions except a specified list of countries where such transfers would be restricted.
 - Section 16 of the DPDP Act also clarifies that if any other existing law provides a higher degree of protection or restriction in terms of transfer of PD

outside India will supersede the DPDP Act.

- Thus, sectoral laws that impose restrictions on cross border data transfers may prevail over the DPDP Act. For example, RBI's directive on '[Storage of Payment System Data](#)' and the [Frequently Asked Questions](#) issued in April 2018 and June 2019 requires regulated entities to store 'payments' data in India, will continue to be applicable.

- **Children's data**

- Section 2(f) of the DPDP Act defines 'child' as "*an individual who has not completed the age of eighteen years*".
- Section 2(j) of the DPDP Act provides that if PD pertains to a child, the parent or lawful guardian of the child would be included in the definition of Data Principal.
- Section 9(1) of the DPDP Act requires Data Fiduciaries to obtain verifiable parental or guardian consent *prior* to processing of PD of a child. Sections 9(2) and (3) of the DPDP Act prohibit Data Fiduciaries from undertaking (i) the processing of PD that is likely to cause any detrimental effect on the well-being of a child, or (ii) tracking or behavioural monitoring of a child, or targeted advertising directed at children.
- Section 9(5) of the DPDP Act empowers the Central Government to notify the age above which certain Data Fiduciaries will be exempt from these obligations, if it is satisfied that the processing of children's PD is carried out by a Data Fiduciary in a 'verifiably safe' manner.
- Under Rule 10 of the DPDP Rules, the Data Fiduciary has to (i) adopt appropriate technical and organisational measures to ensure that verifiable parental consent is obtained before processing a child's PD, and (ii) observe due diligence for checking that the parent is an adult, identifiable if required, by reference to either reliable identity and age details available with the Data Fiduciary or provided voluntarily (by the individual or through a virtual token issued by an authorised entity and mapped to such details).

- **Data Principal Rights**

- Section 11 of the DPDP Act gives Data Principals the right to access information about their PD processed

by a Data Fiduciary to whom consent has been given or where consent is assumed.

- Section 12 of the DPDP Act gives Data Principals the right to correction, completion, updating and erasure of their PD.
- Section 13 of the DPDP Act gives Data Principals the right to avail grievance redressal mechanism within timelines prescribed by the Central Government, including escalating complaints to the Board. Under Rule 14(3), Data Fiduciary has to resolve grievances of Data Principals within a period of 90 days, and implement appropriate technical and organisational measures to ensure effectiveness of the grievance redressal system for responding to the Data Principal within this period.
- Section 14 of the DPDP Act gives Data Principals the right to nominate another individual, who shall, in the event of death or incapacity of the Data Principal, exercise the rights of the Data Principal.
- Under Rule 14(1), to enable Data Principal to exercise her rights, the Data Fiduciary has to prominently publish the details of the means that Data Principal may use to make a request for exercise of her rights, and particulars (including username and identifier of Data Principal) required to identify her in terms of the service.

- **Retention Period**

- Under Section 8(7) of the DPDP Act, a Data Fiduciary is required to erase PD and cause its Data Processor to erase such PD as well, unless retention is necessary for legal compliance:
 - upon withdrawal of the Data Principal's consent or
 - as soon as it is reasonable to assume that the specified purpose is no longer being served (whichever is earlier).
 - Accordingly, under Section 8(7), a Data Fiduciary may retain PD for compliance with any law for the time being in force even if the Data Principal has requested erasure of such data. Therefore, different retention periods prescribed under various sectoral laws may be applicable to PD under the DPDP Act.
- Rule 8(1) prescribes when the time period will deemed as no longer being served, i.e. (i) when data retention is no longer legally required, and (ii)

timelines prescribed under Third Schedule, DPDP Rules if the Data Principal has not approached the Data Fiduciary for the performance of specified purpose nor exercises her rights in relation to such processing for the past 3 years. Once these conditions are met, Data Fiduciaries have to erase the relevant PD. The timelines prescribed under Third Schedule are provided for specific entities and specific purposes. For example, e-commerce entities with more than 2 crore registered Indian users can continue to retain PD for 3 years from when the Data Principal last approached them, or from when the DPDP Rules commence, for enabling access to user account and /or access virtual tokens on their platform which are used for getting money, goods or services.

- Under Rule 8(2), the Data Fiduciary has to inform the Data principal of the erasure of the PD unless the

Data Principal logs into the user account or otherwise contacts the Data Fiduciary for the performance of the specified purpose or exercise her rights, at least 48 hours prior to the erasure of PD.

- Under Rule 8(3), all Data Fiduciaries have to retain PD, associated traffic data, and other logs of processing the PD (whether processed by them or a Data Processor), for a minimum period of 1 year from the date of processing for the following purposes:
 - use by the State or its instrumentalities in the interest of sovereignty and integrity of India or security of the State; for performance of any function under applicable law; or disclosure of any information for fulfilling any obligation under applicable law; or
 - carrying out assessment for notifying a particular or class of Data Fiduciaries as SDF.

Q2. What are the liabilities under the framework governing Privacy and Data Protection in India?

The DPDP Act envisages a civil liability regime in case of non-compliance. Penalties have been stipulated in a Schedule under the DPDP Act, and range from INR 10,000 (approx. USD 114) to INR 250 crores (approx. USD 28.4 million).

- Data Fiduciaries are obligated to maintain reasonable security practices to prevent PD breach under Section 8(5) of the DPDP Act. Non-compliance with this requirement may result in a penalty extending to INR 250 crores (approx. USD 28.4 million).
- Not complying with the obligation to give the Board and affected Data Principal notice of a PD breach under Section 8(6) of the DPDP Act may result in a penalty extending to INR 200 crores (approx. USD 22.7 million)
- Tracking or behaviourally monitoring children or directing targeted advertising at them by the Data Fiduciary among other things may result in a penalty extending to INR 200 crores (approx. USD 22.7 million).
- As per Section 10 of the DPDP Act, there are additional obligations on SDF a sub-category of Data Fiduciaries (discussed in detail in Question 6). Non-compliance with prescribed obligations including carrying out periodic audits and appointing a DPO may result in a penalty extending to INR 150 crores (approx. USD 17 million).
- Section 15 of the DPDP Act imposes certain obligations on the Data Principal as well. Non-compliance with prescribed requirements such as impersonating another person may result in a penalty extending to INR 10,000 (approx. USD 114).
- The DPDP Act specifies that a breach of a voluntary undertaking (discussed in detail in [Question 6](#)) will be deemed to be a breach of the law itself.
- Breach of any other provision of the DPDP Act will be punishable with a penalty extending to INR 50 crores (approx. USD 5.7 million).

Q3. What are the agencies/ administrative authorities that enforce the Privacy and Data Protection framework in India?

As per the Section 18 of the DPDP Act, the Central Government will establish the Board. The Board's functions include: (a) inquiring into PD breaches and directing urgent remedial

or mitigation measures in such cases; (b) inquiring into and imposing penalties in case of a person's non-compliance with the law; and (c) issuing binding directions to any person

for the effective discharge of its functions under the law.

The DPDP Act under Section 29 contains a detailed mechanism on appeals. Persons who are aggrieved by any order or direction passed by the Board may file an appeal before the Telecom Disputes Settlement and Appellate Tribunal, and thereafter to the Supreme Court within specific timelines.

The Government has the power to issue notifications and prescribe rules. These include the following instances. Notably, the Government has already prescribed requirements for some of these cases in the DPDP Rules.

- the manner of providing notice for consent to the Data

Principals [prescribed under DPDP Rules],

- the manner of intimating the Data Principal and the Board in case of a PD breach [prescribed under DPDP Rules],
- the manner in which the Data Principal may make requests for enforcement of their rights such as the right of erasure of their data and the right to nominate [broadly prescribed under DPDP Rules].
- notifying certain Data Fiduciaries (or classes of Data Fiduciaries), including start-ups, as exempt from certain provisions of the law;
- restricting the transfer of PD by a Data Fiduciary to any country or territory outside India.

Q4. What are the requirements with regard to notifying individuals or the administrative authority about security breaches in relation to personal data?

Section 2(u) of the DPDP Act defines ‘personal data breach’ as *“any unauthorised processing of personal data or accidental disclosure, acquisition, sharing, use, alteration, destruction or loss of access to personal data, that compromises the confidentiality, integrity or availability of personal data”*.

Reporting Data Breaches under the DPDP Act and DPDP Rules

- Section 8(6) of the DPDP Act requires PD breaches to be intimated by the Data Fiduciary, to the Board and all affected Data Principals in the form and manner prescribed under Rule 7 of the DPDP Rules.
 - Data Fiduciary has to intimate the affected Data Principal in a concise, clean and plain manner and without delay through the user account or communication mode registered with the Data Fiduciary the following information:
 - description of breach including nature, extent and timing of occurrence,
 - consequences likely to arise from the breach and relevant to the Data Principal,
 - measures implemented by Data Fiduciary to mitigate risk,
 - safety measures that Data Principal may take to protect her interests, and
 - business contact information of a person who can respond to any queries.

- Data Fiduciary has to intimate the Board
 - without delay, and with a description of the breach (including nature, extent, timing, location and likely impact of occurrence), and
 - within 72 hours or any longer period allowed by the Board provide information including the updated and detailed information regarding the breach; broad facts related to the events, circumstances, and reasons leading to breach; measures implemented or proposed to mitigate risk; findings regarding person who caused the breach; remedial measures to prevent recurrence of breach; and report regarding intimations given to affected Data Principals.
- Section 8(5) of the DPDP Act requires Data Fiduciaries to prevent PD breaches by maintaining reasonable security safeguards. Non-compliance of this requirement may result in a penalty extending to INR 250 crores (approx. USD 28.4 million).
- Section 27(1)(a) of the DPDP Act empowers the Board, in the event of a PD breach, to direct the Data Fiduciary to adopt any urgent remedial or mitigation measures, and to inquire into such PD breach and impose penalty as mentioned above.

[Reporting Requirements to the Indian Computer Emergency Response Team](#)

Additionally, cybersecurity incidents² must be reported to the Indian Computer Emergency Response Team (“**CERT-In**”) under the IT Act. The Information Technology (the Indian Computer Emergency Response Team and Manner of Performing Functions and Duties) Rules, 2013 (“**CERT-In Rules**”) and the CERT-In directions on reporting of cybersecurity incidents released on 28 April, 2022 (**CERT-In Directions**), provide a list of cyber-security incidents which have to be mandatorily reported³ to the CERT-In within 6 hours of noticing such an incident. These incidents include data breach⁴, unauthorized access of IT systems/data and data leak among others. The Frequently Asked Questions (“**FAQs**”) on the CERT-In Directions clarify that except for certain cyber security incidents specified in the FAQ 30⁵, entities may provide information to the extent available at the time of reporting and any additional information may be reported later within reasonable time to CERT-In. To the extent that any of the mandatorily reportable incidents relate to PD, reporting requirements under CERT- In Rules and CERT-In Directions, along with the requirements under the DPDP Act will be required to be fulfilled. Rule 3(1)(l) of the Information Technology (Intermediaries guidelines and Digital Media Ethics Code) Rules, 2021, also requires intermediaries to report cybersecurity incidents and share information related to such incidents with CERT-In.

Reporting Requirements under other Sectoral Regulations

Similarly, certain sectoral laws such as the Reserve Bank of India’s (“**RBI**”) circular on Cyber Security Framework in Banks,

the Insurance Regulatory and Development Authority of India’s (“**IRDAI**”) Information and Cyber Security Guidelines, 2023, and Telecommunications (Telecom Cyber Security) Rules, 2024 (“**Telecom Rules**”), require banks, insurance companies, and telecommunication entities to report broad category of ‘cyber security incidents’ and ‘security incidents’ to RBI, the IRDAI, and the Central Government respectively. Regulated entities under such frameworks are likely to have to additionally comply with reporting requirements under sectoral laws in the prescribed timelines and manner.

Additionally, the Security Exchange Board of India (Listing Obligation and Disclosure Requirements) Regulations, 2015 (“**SEBI LODR Regulations**”), requires every listed entity to make disclosures of event or information to stock exchanges which:

- is material in the opinion of the Board of Directors;
- are specified in Para A of Part A of Schedule III of the SEBI LODR Regulations (these have to be mandatorily disclosed); or
- are specified in Para B of Part A of Schedule III of the SEBI LODR Regulations based on application of the guidelines of materiality (laid down in Regulation 30(4) of the SEBI LODR Regulations).

Separately, the listed company has to disclose details of cyber security incidents or breaches or loss of data or documents along with the quarterly compliance report on corporate governance to the recognised stock exchange

2 “Cyber security incident” has been defined as “any real or suspected adverse event in relation to cyber security that violates an explicitly or implicitly applicable security policy resulting in unauthorized access, denial of service or disruption, unauthorized use of a computer resource for processing or storage of information or changes to data, information without authorization”

3 Mandatorily reportable cybersecurity incidents under the CERT-In Directions are as follows: (i) Targeted scanning/probing of critical networks/systems (ii) Compromise of critical systems/information (iii) Unauthorised access of IT systems/data (iv) Defacement of website or intrusion into a website and unauthorised changes such as inserting malicious code, links to external websites etc. (v) Malicious code attacks such as spreading of virus/worm/Trojan/Bots/ Spyware/Ransomware/Cryptominers (vi) Attack on servers such as Database, Mail and DNS and network devices such as Routers (vii) Identity Theft, spoofing and phishing attacks (viii) Denial of Service (DoS) and Distributed Denial of Service (DDoS) attacks (ix) Attacks on Critical infrastructure, SCADA and operational technology systems and Wireless networks (x) Attacks on Application such as E-Governance, E-Commerce etc. (xi) Data Breach (xii) Data Leak (xiii) Attacks on Internet of Things (IoT) devices and associated systems, networks, software, servers (xiv) Attacks or incident affecting Digital Payment systems (xv) Attacks through Malicious mobile Apps (xvi) Fake mobile Apps (xvii) Unauthorised access to social media accounts (xviii) Attacks or malicious/ suspicious activities affecting Cloud computing systems/servers/software/applications (xix) Attacks or malicious/suspicious activities affecting systems/ servers/ networks/ software/ applications related to Big Data, Block chain, virtual assets, virtual asset exchanges, custodian wallets, Robotics, 3D and 4D Printing, additive manufacturing, Drones and (xx) Attacks or malicious/suspicious activities affecting systems/ servers/software/ applications related to Artificial Intelligence and Machine Learning.

4 ‘data breach’ has also been described under the CERT-In Directions: “A Data Breach is a cyber-incident where information is stolen or taken from a system without the knowledge or authorization of the system’s owner. Stolen data may involve sensitive, proprietary, or confidential information such as credit card numbers, customer data, trade secrets, or theft of Intellectual property etc. Most data breaches are caused due to un-plugged vulnerabilities, hacking or malware attacks. Data Breaches primarily results in loss of confidentiality of the information”.

5 The cyber security incidents that have to be reported within the stipulated 6 hours are: (a) cyber incidents and cyber security incidents of severe nature (such as denial of service, distributed denial of service, intrusion, spread of computer contaminant including Ransomware) on any part of the public information infrastructure including backbone network infrastructure; (b) Data Breaches or Data Leaks; (c) large-scale or most frequent incidents such as intrusion into computer resource, websites etc.; (d) cyber incidents impacting safety of human beings

[Regulation 27(2) of the SEBI LODR Regulations].

Q5. What are the recent developments with respect to Privacy and Data Protection in India?

The Supreme Court of India in *Justice K.S. Puttaswamy (Retd.) v. Union of India*⁶ (“Puttaswamy Judgment”) declared that the right to privacy is protected as an intrinsic part of the fundamental rights guaranteed under the Constitution of India.

The DPDP Act is an updated version of the draft Digital Data Protection Bill, 2022 which was released by the MeitY for public consultation in November 2022. Both these draft laws were earlier preceded by the Data Protection Bill, 2021 contained in the Report of the Joint Parliamentary Committee on the Personal Data Protection Bill, 2019, as well as the Personal Data Protection Bill, 2019 itself, which was withdrawn from

the Parliament in August 2022. The Personal Data Protection Bill, 2019 itself was preceded by the Report submitted by the Justice Srikrishna Committee along with a Draft Personal Data Protection Bill, 2018. The enactment of the DPDP Act comes 6 years after Puttaswamy Judgment recognized the need for a robust legal framework for data protection.

The President of India gave her assent to the DPDP Act, after it was passed by both Houses of the Parliament. The DPDP Act, thereafter, published in the Official Gazette. The Government has released the DPDP Rules as well as the timelines within which the provisions of the DPDP Act and the DPDP Rules will come into force.

Q6. What are the proposed changes that the DPDP Act seeks to bring about?

The DPDP Act will overhaul the data protection regime in India by introducing a new framework for data protection. Please refer to our response to [Question 1](#) for the key provisions of the DPDP Act. Please also see below some of the notable changes in the DPDP Act as compared to the Privacy Rules:

Expanded Scope of Application

Unlike the Privacy Rules, the DPDP Act focuses on governing PD without creating tiered categories of PD (such as sensitive PD). The DPDP Act applies to the processing of digital PD (defined as PD in digital form). Specifically, the DPDP Act will govern certain processing activities that take place within India.

It will also govern extra-territorial processing of digital PD, if such processing is in connection with any activity of offering goods or services to Data Principals within India.

This means that foreign-based service providers providing goods and services to the Indian market or consumer-base in relation to commerce or profiling activities will be covered under the framework.

The DPDP Act will not apply when PD is made or caused

to be made publicly available either by the Data Principal themselves, or by any other person who does so on account of a legal obligation and where processing of PD is only undertaken for personal or domestic purposes.

New Category of Data Fiduciaries

Some Data Fiduciaries may be categorised as SDFs based on certain factors such as the volume and sensitivity of personal data processed and risk to the rights of Data Principal. Entities that are designated as SDFs will be required to undertake several mandatory compliances including appointment of a DPO, conducting Data Protection Impact Assessments (“DPIA”) and audits to ensure effective observation of the provisions of the DPDP Act and DPDP Rules once in every 12 months.

The DPDP Rules impose certain additional obligations on SDFs under Rule 13:

- Cause the person carrying out the DPIA and audit to furnish a report containing significant observations to the Board;
- Observe due diligence to verify that technical measures including algorithmic software adopted by it for hosting,

⁶ (2017) 10 SCC 1.

display, uploading, modification, publishing, transmission, storage, updating or sharing of PD processed by it are not likely to pose a risk to the rights of Data Principals;

- undertake measures to ensure that PD specified by the Government is processed subject to the restriction that the PD and the traffic data pertaining to its flow is not transferred outside India.

Consent managers

The DPDP Act introduces the concept of ‘consent managers’, which are envisaged as a single point of contact for Data Principals to give, withdraw and otherwise manage their consent through an ‘accessible, transparent and interoperable’ platform. A consent manager is required to be registered with the Board and be accountable to the Data Principal. Consent managers can also make complaints to the Board on behalf of the Data Principal and may themselves be subject to inquiry by the Board in the event of a breach of any of their registration conditions.

Voluntary Undertaking

Any person subject to proceedings before the Board relating to non-observance with the DPDP Act can provide a voluntary undertaking to remedy the same. Acceptance of a voluntary undertaking by the Board creates a bar on further proceedings under the DPDP Act regarding the contents of such undertaking.

Verifiable consent for processing PD of children and persons with disabilities (“PWD”)

The DPDP Act requires Data Fiduciaries to take verifiable consent of (i) the parent in case of processing a child’s PD, and (ii) lawful guardian in case of processing PD of a PWD. The DPDP Act and DPDP Rules prescribes the manner in which the consent of the parent / lawful guardian has to be obtained.

Exemptions

The DPDP Rules provides for certain exemptions from compliance with the obligations under DPDP Act and DPDP Rules. Specifically,

- It exempts application of the DPDP Act on processing of PD necessary for research, archiving or statistical purposes if it is carried on in accordance with the standards prescribed in the DPDP Rules (Rules 16 read with Second Schedule of the DPDP Rules)
- It provides for certain exemptions for certain classes of Data Fiduciaries from obtaining verifiable parental consent while processing PD of children and from the prohibition of tracking, targeting advertisements at, or behaviourally monitoring children (which are prohibited under Section 9(1) and 9(3) of the DPDP Act) (Rule 12 read with Fourth Schedule of the DPDP Rules).



20. Venture Capital

Q1. Are foreign venture capital (VC) investors recognized as a separate class of foreign investors?

No, foreign VC investors are not recognized as a separate class of foreign investors. Investment routes and other conditions that apply to foreign investment in India, apply to investment by foreign VC investors as well.

Q2. What entry routes are available for foreign VC investors to invest in India?

While foreign VC investors can invest through foreign direct investment (FDI) and FVCI routes in various types of non-debt instruments (which are equity linked instruments/instruments that convert into equity), typically foreign VC investments are under the FDI route. [Chapter \[4\]](#) sets out the conditionalities applicable to investment under FDI route and the same are applicable for investment by a VC fund under FDI route.

Q3. Does a foreign VC investor need to be registered with any regulatory authority in India?

This depends on the entry route (please see [Chapter 3](#) (Foreign Investment) for further details). Foreign VC investors are not required to be registered in India for investment through the FDI route. However, foreign VC investors need to be registered with SEBI for investment through the FVCI route.

Q4. Is it possible to raise funds, and form a VC fund in India?

Yes, it is possible to raise funds and form a VC fund in India, by registering the fund as an 'Alternative Investment Fund' ("AIF") with SEBI, under the SEBI (Alternate Investment Fund) Regulations, 2012, subject to minimum corpus and other investment requirements. Further, it is also possible to set up a venture capital fund in GIFT city.

[Chapter 6] provides further details relating to the conditions as applicable to investment into and investment

by an AIF and a VC fund set up in GIFT city]

Q5. What factors are typically taken into consideration when determining VC deal structures in India?

The primary factors that are typically considered for VC deals are tax efficiency (and, for this reason several investments are routed through jurisdictions that have beneficial tax treaties with India), exchange control restrictions (in case of investment by a foreign VC investor), and regulatory approvals (including exchange control related approvals,

anti-trust approvals if the target entity does not enjoy the threshold based exemption, and other sector specific approvals especially in regulated sectors such as financial services and insurance). Regulatory approvals can impact deal timelines.

Q6. What rights can a VC investor typically expect in an investment transaction?

While the spectrum of rights available to a VC investor may vary, based on deal specific considerations, the typical gamut of rights in an investment that does not result in a minority acquisition includes:

- right to appoint nominee directors on the board of directors and their committees (whose presence is essential to constitute quorum);
- limited affirmative voting rights on certain reserved matters (see Q7);
- anti-dilution rights, to prevent dilution of the investor's shareholding.
- liquidation preference, where the investor is given payout in preference to other shareholders.
- pre-emptive rights, right of first offer or the right of first refusal (investors usually prefer a right of first offer), tag-along rights.
- a pre-decided exit mechanism which can include IPO,

strategic sale, buyback; and

- information and inspection rights.

Do note that, if the cap table of the investee company is diversified with multiple investors, then certain rights such as right to appoint nominee director; right to vote on reserved matters; right of first offer; right of first refusal; right to participate in the decision making process in relation to exit; inspection rights may be subject to the investor holding a contractually agreed minimum shareholding (Qualifying Investors). Also, deals would be structured in such a way that, an individual investor may not have absolute right in relation to reserved matters or exit process and such decisions are based on the approval of the majority (or such other identified shareholding threshold) inter-se Qualifying Investors.

Q7. What affirmative veto rights does a VC investor typically have?

Typically, a VC investor would seek affirmative vote rights on both strategic and limited operational matters (not being day to day management), as indicated below. However, once the investee company moves into a growth stage) or where a PE investor acquires a large stake, the affirmative vote matters of a VC investor may be limited to strategic matters only.

These rights may include the following:

- *Share Capital*: Issuance of securities; variation of share capital and classes of securities; declaration of dividend;
- *Indebtedness*: Incurrence of material indebtedness; creation of security over the target's assets; redemption of preference shares;
- *Disposal of assets*: Sale, lease, license or disposal

of material assets, undertakings, businesses or subsidiaries;

- *Acquisitions*: Undertaking acquisitions, joint ventures or material assets;
- *Commencement of new businesses*: Commencement or acquisition of any new line of business, substantially changing the business, or shutting down of any existing line of business;
- *Restructuring*: Listing, merger, merger, demerger, scheme of arrangement, voluntary liquidation, winding-up, composition with creditors or other similar forms of restructuring;
- *Key employees*: Appointment or termination of the employment of any key employees;
- *Audit, tax related*: Appointment, change in terms of appointment or termination of auditors or change in

the accounting, tax or revenue recognition practices;

- *Alteration of charter documents*: Amendment or restatement of the articles of association or memorandum of association.
- *Litigation*: Commencement or settlement of any material litigation, claim or proceeding;
- *Material*: Entering into, amendments to, and termination of, any of material contracts; and
- *Related party transactions*: Entering new transactions, or amending terms of existing transactions, between the target and its *contracts* related parties.

Generally, these rights extend to activities of the investee company and its subsidiaries (depending on whether the subsidiary is a regulated entity).

Q8. What are the exit options available to a VC investor?

There are several considerations that determine the exit route selected by investors such as the performance of the target, valuation, pricing considerations, tax considerations and guaranteed returns. Exit options which are typically

available to an early-stage VC investor are through a secondary sale during follow on rounds. We also see many instances of VC investors staying invested until IPO or a strategic sale, and exit in such IPO or strategic sale.

Q9. Any other key aspects that may have a bearing on any VC deal structuring?

Under the Indian Companies Act, 2013, the promoters of a company (other than a registered start up) are not eligible to get employee stock options. So any commercial understanding with respect to stock options to promoters (whether milestone linked or towards dilution compensation) will have to be structured and implemented owing to the restriction specified hereinbefore and keeping in mind the tax considerations.

Also, irrespective of a the size of the investment, under the Indian Companies Act, 2013, it is now mandatory for the target company to issue securities in dematerialized form (barring certain exceptions like small companies and time related exemptions). This necessitates the VC investor to open a demat account in India.



21. Real Estate

India has attracted large-scale investment in its real estate sector in the last few decades. In the year 2005, the Government of India opened up the Indian real estate market to foreign direct investment, which has led to an

increase in interest amongst foreign investors to invest in India. In this chapter, we aim to bring clarity and render guidance on key aspects of the legal regime regulating the Indian real estate sector.

Q1. What are the key legislations that govern real estate in India?

The laws in relation to real estate in India are governed by a combination of both central and state specific laws, and a snapshot of some of the key legislations governing the real estate sector of India is set out below:

- **Transfer of Property Act, 1882 (“TP Act, 1882”):** The TP Act, 1882 is a central legislation. A transfer of property can be effectuated by an act of two or more parties or by operation of law. The TP Act, 1882 is applicable primarily on the transfer of immovable property from one party to another (including companies) and deals with transfer of immovable property by way of sale, lease, exchange, gifts, mortgages and actionable claims.
- It is also pertinent to note that the essentials of contract for its validity, as mentioned in the Indian Contract Act, 1882, should be fulfilled in real estate related contracts.
- **Real Estate (Regulation and Development) Act, 2016 (“RERA, 2016”):** The RERA, 2016 was primarily enacted to:
 - Safeguard the interests of buyers of apartments, buildings, and other residential or commercial projects; and
 - Boost investment in the real estate sector.

Key Provisions for Transparency and Accountability

To enhance transparency and accountability among promoters and developers, RERA, 2016 includes several important provisions:

- Ensuring timely completion and delivery of projects to buyers;
- Requiring promoters to provide comprehensive

details about the project, including layout plans, land status, approvals, schedule of completion, and financial details;

- Requiring the consent of two-thirds of the allottees for any alterations or additions to the project or transfer of the project to new promoter; and
- Implementing a defect liability period, amongst other measures.

State-Specific Implementation

Although RERA, 2016 is a central legislation, it mandates that each State Government and Union Territory notify their own rules in accordance with the RERA, 2016. Each State is required to establish its own 'Real Estate Regulatory Authority', which will administer the State's specific rules in conjunction with and in accordance with RERA, 2016. Consequently, certain rules and regulations may differ from one State to another.

- **The Registration Act, 1908 ("Registration Act"):** The Registration Act was enacted to provide a system for registration of documents so as to give information to people regarding the legal title to property. Registration

of a document is the process of recording a document at the office of the jurisdictional Sub-Registrar.

The Registration Act provides the procedure for registration of a document, the documents which are compulsorily registrable and optionally registrable and the time period within which the registration of the documents, with the jurisdictional Sub-Registrar, is required to be undertaken, amongst others. Further, it also sets out the consequences of nonregistration (including that an unregistered instrument which is mandatorily registrable under the Registration Act does not affect the immovable property and cannot be received as evidence).

- **Indian Stamp Act, 1899:** The Indian Stamp Act, 1899 was enacted to provide and prescribe the proper stamp duty to be levied on a document, which is based on the chargeability of the instrument. Further, in the event a document is not appropriately stamped, as per the relevant State's stamp duty schedules, the document may be impounded with a penalty up to ten times the deficit stamp duty.

Q2. Given the complexity and variability of real estate laws across different States in India, what steps should an investor take to verify that the land title is clear and marketable?

It is recommended that, prior to acquisition of any land/property in India, a title due diligence exercise should be undertaken by the purchaser of such land/property. A typical process of conducting a title due diligence exercise is as below:

Steps for conducting title due diligence (may differ from State to State)

- **Obtain property details:** The exact details of the property are required to be provided by the owner such as its size, the area in which it is located, the land description, whether the property is government-owned or privately-owned, etc.;
- **Review of documents:** Depending on the location of the property, either all documents in relation to the property are provided by the owner of the property or the title documents in relation to the property are procured at the office of the jurisdictional Sub-Registrar, for the said review;
- **Title and ownership verification:** Based on the current use of the property and area in which the property is situated, the title documents and searches in relation to the property are undertaken at the revenue/municipal department and the office of the jurisdictional Sub-Registrar, to confirm the title of the current owner of the property;
- **Review of construction and land use related approvals:** The applicable approvals as provided by the owner of the property for the construction on the property (whether under construction or constructed) and land use are reviewed by the legal and technical advisors to ascertain whether the construction on the property is in compliance with the applicable laws;
- **Assessment of other aspects:** In addition, searches for

encumbrances, pending litigations, statutory dues, and verification of access are commonly undertaken. For leasehold or government-allotted land, compliance with

allotment/lease conditions and transfer restrictions are verified.

Q3. What is the typical duration for conducting title searches for properties in India?

Title searches with respect to properties in India are generally conducted for a period ranging between 12 (twelve) years or 30 (thirty) years. However, upon request from the investor/ buyer such title search may be conducted for a longer period of time. Further, title searches in respect

of land allotted by the Government are usually conducted for a period commencing from the allotment of the land by the Government, as in most cases the land that is allotted by the Government is free from any encumbrances.

Q4. What are the typical ways in which real estate can be acquired in India?

Acquisition of land in India: Typically, real estate in India may be acquired in the following ways:

- **Acquisition of land by way of sale:** Freehold title in property is the most common form of property ownership in India where the buyer has absolute legal ownership rights over the property. The buyer can possess, sell, assign and transfer the ownership to another party without any consents and permissions, from any other entity or person. In order for a transaction to qualify as a sale under the TP Act, 1882, the conditions required to be met include the following:
 - the parties to the sale or conveyance deed should be competent to contract under applicable Indian laws;
 - the subject matter of the sale should be transferrable immovable property (which should be identifiable);
 - the transfer should entail transfer of all the rights in the property; and
 - a valid consideration should be paid for such sale.
- **Transfer by way of lease:** The TP Act, 1882 deals with the concept of a lease along with the rights and liabilities of lessees and lessors.

A lease only permits a lessee to enjoy the property for a pre-determined period of time (or perpetually, in case of a perpetual lease deed). The acquisition of right in immovable property by way of a lease is not absolute, unlike in case of acquisition by sale, as set out above. In a lease, the right to possession is transferred, but not a

right to ownership of the property.

- **Government Leases:** The Government, in certain States, leases land in favour of various developers/ entities, for such land to be utilised for a specific purpose.

Government leases are governed by the restrictions/ conditions that are:

- imposed by the local government authority granting the lease, under the lease agreement and other land related documentation; and
- stipulated under applicable local laws of the specific State and regulations made by the local authority or the relevant State government.

These leases are typically long-term leases, ranging from 30 (thirty) years to 99 (ninety-nine) years, which may have the option for renewal based on the policy of the Government authority and terms of the lease deed. Further, these leases may impose restrictions on transfer, expansion, sub-lease and prior consent/intimation requirements for change in control/ management/ constitution (in case the lessee is a company/firm) under the lease agreement and other related documents.

In certain cases, the lessee may have the option to get the leasehold land converted to freehold land (i.e. with ownership) on the payment of the prescribed conversion charges in accordance with the prescribed terms and conditions.

Q5. What are the key regulations and policies governing foreign direct investment (“FDI”) in India, and what are the different routes through which FDI can be made?

Foreign investment in India by a person resident outside India is governed and regulated by the following:

- Foreign Exchange Management Act, 1999 and the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 (“**Non-Debt Rules**”) thereunder issued by the Department of Economic Affairs, Ministry of Finance; and
- the Consolidated FDI Policy, 2020, issued by the Department for Promotion of Industry and Internal

Trade, Ministry of Commerce and Industry, as issued and amended from time to time.

FDI in India is permitted under two routes:

- Automatic route (where no prior approval of the Central Government or the Reserve Bank of India is required); and
- Government route (where prior approval of the Central Government is required).

Q6. What are the restrictions on FDI in the real estate sector in India, and what specific activities are prohibited or allowed under these regulations?

While most sectors are now open to foreign investment, FDI in certain sectors are specifically prohibited which includes ‘Real estate businesses’.

The Non-Debt Rules clarify that foreign investment is not permitted in an entity which is engaged or proposes to engage in real estate business, construction of farm houses and trading in transferable development rights. As per the Non-Debt Rules, the term ‘real estate business’ means *“dealing in land and immovable property with a view to earning profit therefrom and does not include development of townships, construction of residential/ commercial premises, roads or bridges, educational institutions, recreational facilities, city and regional level infrastructure, townships;*

Explanation:

- Investment in units of Real Estate Investment Trusts (REITs) registered and regulated under the Securities

and Exchange Board of India (REITs) regulations, 2014 shall also be excluded from the definition of “real estate business”.

- *Earning of rent income on lease of the property, not amounting to transfer, shall not amount to real estate business.*
- *Transfer in relation to real estate includes: (i) the sale, exchange or relinquishment of the asset; or (ii) the extinguishment of any rights therein; or (iii) the compulsory acquisition thereof under any law; or (iv) any transaction involving the allowing of the possession of any immovable property to be taken or retained in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882 (4 of 1882); or (v) any transaction, by acquiring capital instruments in a company or by way of any agreement or any arrangement or in any other manner whatsoever, which has the effect of transferring, or enabling the enjoyment of, any immovable property.”*

Q7. What are the regulations regarding foreign investment in the Construction-Development Sector in India?

Foreign investment up to 100% is permitted under the automatic route for undertaking construction-development projects (which shall include development of townships, construction of residential/ commercial premises, roads or bridges, hotels, resorts, hospitals, educational institutions,

recreational facilities, city and regional level infrastructure, townships) (“**Construction-Development Sector**”). However, investment in the Construction-Development Sector is subject to certain conditions, as set out in the Non-Debt Rules.

Additionally, foreign investment up to 100% under the automatic route is also permitted in completed projects for operating and managing townships, malls/ shopping complexes and business centres. Consequent to such

foreign investment, transfer of ownership and/or control of the investee company from persons resident in India to persons resident outside India is also permitted, subject to certain conditions set out in the Non-Debt Rules.

Q8. What are some of the key specific conditions that must be met for investment in the Construction-Development Sector?

Foreign investment in the Construction-Development Sector is subject to certain conditions such as:

- The investor is permitted to exit on completion of the project or after development of trunk infrastructure i.e. roads, water supply, street lighting, drainage and sewerage;
- Each phase of the construction development project shall be considered as a separate project;
- The project is required to conform to the norms and standards, including land use requirements and provision of community amenities and common facilities, as laid down in the applicable building control

regulations, byelaws, rules, and other regulations of the State Government or Municipal or Local Body concerned;

- A foreign investor is permitted to exit and repatriate foreign investment before the completion of the project under the automatic route, provided that a lock-in-period of three years, calculated with reference to each tranche of foreign investment has been completed. This condition of lock-in period does not apply to hotels and tourist resorts, hospitals, special economic zones, educational institutions, old age homes and investment by non-resident Indians or overseas citizens of India.

Q9. What are the key regulations and permissions required for the development and construction of real estate projects?

In order to carry out construction and development of real estate projects, certain pre and post constructions approvals and licenses are required to be obtained by the developer. Most of the approvals, permissions and licenses required to be obtained for the construction and development of real estate projects are governed by State specific laws. The main authorities that govern building activities in States include the Town and Country Planning Department and Municipal Corporation/ development authority. Building plans are to be approved by the relevant Municipal Authority. Approvals and consents may also be required from various other departments, such as the local fire department and the Archaeological Survey of India, amongst others. Where a project meets the thresholds set out in RERA, 2016, registration under RERA is required before advertising, marketing, booking, selling or offering for sale, or inviting persons to purchase in any manner any plot, apartment or building, as the case may be, in the real estate project or part thereof.

Local Municipal Authorities in urban areas are empowered to enforce compliances under applicable local laws for various aspects of development and construction, including approval of building plan, issuance of commencement completion and occupancy certificates, FAR or FSI that provides the basis for determining the maximum permissible floor area construction among other aspects.

Further, there are certain permissions such as environmental clearance under the Environment (Protection) Act, 1986 and the Environmental Impact Assessment notification, 2006, no objection for height clearance issued by the Airports Authority of India, railway no objection certificate among others that are required to be obtained by way of Central legislations. Therefore, while Statelevel processes vary, these centrally driven approvals apply uniformly where the project's location, height or scale triggers them, and must be obtained by the developers.

Q10. What is a license of immovable property and the key distinctions between a lease and a license under the Indian Easements Act, 1882?

The Indian Easements Act, 1882 defines the term ‘license’ as “Where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement

or an interest in the property, the right is called a license.”

Unlike a lease, a license is merely the right to use the property granted by the licensor to the licensee for the purpose as agreed upon and does not create a right in the immovable property.

Q11. What are the definitions of ‘promoter’ and ‘real estate project’ under RERA, 2016, and is a license required to sell properties under the current applicable laws in India?

Firstly, it is important to discuss the definitions of a ‘promoter’ and ‘real estate project’, as defined under the RERA, 2016 so as to understand whether a license to sell properties is required under the current applicable laws in India.

The term ‘Promoter’ has been defined under the RERA, 2016 and includes persons (*the term person includes individuals, companies, HUFs, amongst others*), development authorities, public bodies who construct real estate projects for the purpose of sale and includes persons who act as builders, colonisers, contractors, or act as holder of power of attorney from the land owner on who’s land the project is being constructed for sale.

Further, real estate project is defined under RERA, 2016 as “*the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartments, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements*

and structures thereon, and all easement, rights and appurtenances belonging thereto”.

A real estate project (that is, residential or commercial) is required to be registered under RERA, 2016 in the event such real estate project is proposed to be developed on a land area exceeding five hundred square meters or the number of apartments proposed is more than eight inclusive of all phases. The process for registration involves submission of various details/information in relation to the real estate project, such as, details of the promoter, details of the projects previously launched by the promoter, approvals in relation to the real estate project, among others. Further, a promoter is not permitted to advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building without registering the real estate project with the Real Estate Regulatory Authority established under the RERA, 2016. No separate “license to sell” is required under law; however, real estate agents facilitating the sale of units in registered projects must obtain registration under RERA, 2016.

Q12. What are some of the key obligations and liabilities of a promoter under the RERA, 2016?

Under RERA, 2016, some of the key obligations and liabilities of the promoter are:

- a promoter cannot accept more than 10% (ten percent) of the cost of the apartment, plot or building as advance
- payment or application fee without first executing and registering an agreement for sale;
- the promoter is required to rectify any structural defect in the development of the real estate project brought to the

notice of the promoter within a period of five years from the date of handing over the possession of the unit, free of charge within a reasonable period of time;

- the promoter is required to complete the real estate project in accordance with the plans, designs and specifications approved by the concerned authorities;
- the promoter cannot transfer or assign its majority rights and liabilities in a real estate project to a third party without obtaining prior written consent from two - third

allottees and without prior written approval of the Real Estate Regulatory Authority; and

- the promoter is required to deposit 70% (seventy percent) of the amounts realised from the allottees of the real estate project in a separate account maintained in a scheduled bank to cover the cost of construction and the land cost which shall be used for that purpose only. Withdrawal of these amounts shall be in proportion to the percentage of completion of the project.



22. Insurance

Q1. What kinds of insurance activities or business in India require prior license or registration?

All insurance companies, reinsurance companies and insurance intermediaries, can commence business activities in India, only after obtaining the requisite registration from the Insurance Regulatory and Development Authority of India (IRDAI), i.e. the Indian insurance regulator.

Foreign reinsurers can undertake reinsurance business in India through a branch office established in India. Further, syndicates of Lloyd's of London can carry on reinsurance business through Lloyd's India, while acting through service companies incorporated in India, after obtaining due registration from the IRDAI.

Q2. What is the current FDI Limit on Insurance Companies and Insurance Intermediaries in India? What are the rules that apply to investors or beneficial owners from countries sharing a land border with India?

Recently, the Sabka Bima Sabki Raksha (Amendment of Insurance Laws) Act, 2025 ("Amendment Act") was passed by the Indian Parliament, amending key provisions of the Insurance Act, 1938 ("Act"), including the removal of the existing 74% FDI cap to permit 100% FDI under the automatic route. However, such relaxation is not without conditions – the newly introduced Section 3AA of the Amendment Act requires that any such increase in foreign investment shall be in the manner and subject to such conditions as may be prescribed, by the Central Government. Shortly

after the Amendment Act came into force, the Central Government notified the Indian Insurance Companies (Foreign Investment) Amendment Rules, 2025 ("Foreign Investment Amendment Rules"), which provide that at least one individual amongst the: (a) chairperson of the board; (b) managing director; or (c) chief executive officer, in any Indian insurance company having foreign investment, must be a resident Indian citizen. No other conditions have been prescribed, and the Foreign Investment Amendment Rules dispensed with the residency requirements which applied

previously when the FDI limit was increased to 49%, i.e, the requirement for Indian insurance companies carrying any level of foreign investment to ensure that: (i) a majority of the members of its board of directors; and (ii) a majority of its key managerial personnel, are resident Indian citizens.

Further, an Indian insurance company with foreign investment exceeding 49% is no longer required to have (a) at least 50% of its directors as independent directors. Insurers now need to have a minimum of 3 independent directors – a requirement applicable uniformly to all insurers irrespective of their level of foreign investment; or (b) to retain net profit in the general reserve, where the insurer has paid dividend on its equity shares in a financial year and its solvency margin falls below 1.2 times the required control level during that year.

For the Amendment Act to take effect, the Central Government will have to amend the Foreign Exchange Management (Non-debt Instruments) Rules, 2019. Amendments will also be required in the corresponding regulations of the Insurance Regulatory and Development Authority of India (IRDAI), i.e. the Indian insurance regulator. Prior to the Amendment Act, aggregate foreign equity holdings (foreign investors including portfolio investors) in an Indian insurance company were capped at 74% of the

paid-up equity share capital of the company.

Since 2021, insurance intermediaries in India are also permitted to have up to 100% FDI subject to certain conditions, which were recently relaxed significantly by the Central Government. The Foreign Investment Amendment Rules have done away with the following requirements earlier applicable to insurance intermediaries having majority shareholding of foreign investors: (a) requirement for prior permission of the IRDAI to repatriate dividend; (b) restriction on making payments to the foreign group or promoter or subsidiary or interconnected or associate entities beyond what is necessary or permitted by the IRDAI; and (c) requirement for the composition of the board of directors and key management persons to be as specified by the concerned regulators.

If any foreign investment in an Indian company is from an entity based in a country which shares a land border with India or where the beneficial owner of the investment is situated in or is a citizen of any such country, then such entity/ owner can invest in India only with prior approval of the Government of India. These restrictions may apply even if the beneficial owner (and not the immediate shareholder to which shares are being issued) is from a restricted country.

Q3. What are the eligibility criteria and requirements for promoters?

Indian Promoter: The promoter of an insurer may be an Indian promoter or a foreign promoter or both. An Indian promoter can be a company under the Companies Act, 2013 (Companies Act) which is not a subsidiary¹ or certain other forms of entities.² Notably, an individual cannot be an Indian promoter of an insurance company, unless express IRDAI approval is obtained, which is not easily forthcoming.

Foreign Promoter: A foreign promoter is a foreign investor

(excluding an individual) which meets one or more of the following conditions: (a) who has been named as such in a prospectus or is identified by the company in the annual return referred to in Section 92 of the Companies Act; (b) who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or (c) in accordance with whose advice, directions or instructions, the board of directors of the company is accustomed to act except a person acting merely in a professional capacity.

¹ A subsidiary company may be allowed to be a promoter if it meets the following conditions: (a) it is listed on a stock exchange in India; (b) it has its own source of funds, independent from its holding company; (c) it has a net worth of at least INR 500 Crore (approx. USD 56.8 million) as at the end of the financial year preceding the date of application; and (d) the holding company of the said company is not a subsidiary of any other company.

² There can also be other forms of entities, for instance, regulated entities such as a banking company under the Banking Regulation Act, 1949 (not including a foreign bank set up as a wholly owned subsidiary or a branch in India) or a 'core investment company' or a registered non-operative financial holding company as understood under RBI regulations or a public financial institution under the Companies Act or a cooperative society or LLP under Indian laws.

Requirements applicable to investment by Promoters:

- A person holding 25% or more of the share capital of an insurance company will be considered as a promoter.
- The minimum shareholding of all promoters collectively needs to be maintained at above 50% of the paid-up equity share capital of the insurer. The promoters can dilute their stake below 50% but not below 26% only in certain instances.
- The investment must be made entirely out of own funds and not from borrowed funds.
- A person cannot be a promoter of more than 1 (one)

life insurance company, 1 (one) general insurance company, 1 (one) health insurance company and 1 (one) reinsurance company. However, the IRDAI's Competent Authority may permit a person to be the promoter of more than 1 insurer engaged in the same class of insurance business, on a temporary basis, as part of a scheme for amalgamation and transfer of insurance business filed with the IRDAI.

- The promoter is required to submit an undertaking to infuse capital in the insurer to meet its solvency and business requirements, if any, in future.

Q4. What is the criteria for investment by investors?

Foreign Investor and Indian Investor: Foreign investors in an Indian insurance company are all eligible non-resident entities or persons resident outside India investing in the equity shares of an Indian insurance company, as permitted to invest through foreign investment under the Indian foreign exchange laws. An Indian investor is an investor other than a foreign investor.³

Requirements applicable to investment by Investors

A person holding less than 25% of the paid-up equity share capital of the insurance company will be considered as an 'investor'.

The investment by all investors collectively should be less than 50% of the share capital of the insurance company, except in case the equity shares of the insurance company are listed on a stock exchange in India.

An investor holding not more than 10% of the paid up capital

of the insurance company can invest in as many insurers, however, it will not be entitled to nominate a director on the board of such insurers unless its shareholding in such insurer exceeds 10%.

Investors holding more than 10% but less than 25% of the paid-up capital of the insurance company cannot invest in more than 2 (two) insurers in each class of insurance business.

In case of a one-time investment by an investor in an unlisted insurer, the investor must make an upfront disclosure to this effect to the insurer and the promoter must submit an undertaking to the IRDAI to infuse capital in the insurer to meet its solvency and/ or business requirements, if any, in future.

The investment must be made entirely out of own funds and not from borrowed funds.

Q5. What is the share capital requirements for insurance companies in India?

Under the Act, the capital of insurance companies must consist of: (a) equity shares of the same face value; or (b) 'such other forms of capital' as may be specified by the IRDAI, provided that the voting rights of shareholders are restricted to equity shares. The minimum paid-up equity

capital requirement is INR 100 Crores (approx. USD 11.4 million) for each of life insurance, general insurance and health insurance business and INR 200 Crores (approx. USD 22.7 million) for a reinsurance company.

³ Rule 2(1)(g) of the Indian Insurance Companies (Foreign Investment) Rules, 2015 read with the Registration Regulations.

Q6. Are there any lock-in or encumbrance restrictions for promoter or investors of insurance companies?

The investment made in the equity shares of an insurer by a promoter or an investor is subject to lock-in depending on the age of the insurer – the lock-in period is as specified below. Shareholders cannot create any encumbrance on the equity shares during the lock-in period. Post the lock-in period, any encumbrance requires the prior written approval of the IRDAI.

Lock-In Period for Investment in an Indian Insurance Company*

S. No.	Particulars	Investment in the capacity of	Lock-in period
1.	Investment at the time of or before grant of certificate of registration (R3)	Promoter or investor	5 years from the date of grant of R3
2.	Investment during 5 years post grant of R3: In case of change in shareholding pattern	Promoter or investor	Earlier of: 5 years from the date of investment; or 8 years from the grant of R3.
3.	Investment after 5 years but before 10 years post grant of R3: In case of change in shareholding pattern	Promoter	Earlier of: 3 years from the date of investment; or 12 years from the grant of R3.
		Investor	Earlier of: 2 years from the date of investment; or 11 years from the grant of R3.
4.	Investment after 10 years but before 15 years post grant of R3: In case of change in shareholding pattern	Promoter	2 years from the date of investment
		Investor	1 year from the date of investment
5.	Investment after 15 years post grant of R3	Promoter	1 year from the date of investment
		Investor	Nil

* The Competent Authority may relax the lock-in period: (i) to enable the insurer to list its shares on the stock exchange(s) in India; or (ii) under circumstances of distressed financial position, amalgamation or reorganization pursuant to change in applicable law of any insurer or its shareholder(s).

** Further, the lock-in period will not be applicable in case of investor holding less than 1% of the equity shares of the insurer.

Q7. Whether any prior approvals are required for the transfer / issuance of shares:

Prior approval of the IRDAI is required for transfer of shares/ issue of equity capital of an insurer in the following situations: (a) where, after a transfer or issuance of shares, the paid-up equity capital holding of the transferee in the shares of the insurer is likely to exceed 5% of the insurer's paid-up equity capital and any subsequent transfers where the shareholding of the transferee exceeds 5% of the insurer's paid-up equity capital, in a financial year; or (b) where the transfer or issuance of shares exceeds 1% (now relaxed to 5% by the Amendment Act, however, corresponding regulations are yet to amended) of the paid-up equity capital of the insurer and for any subsequent transfers by the transferor, where the paid-up equity capital of the insurer exceeds 1% of the paid-up equity capital, in a financial year.

Q8. What is the fit and proper criteria for promoters and investors?

Fit and Proper: The promoters and investors of an insurance company must be 'fit and proper' on a continuous basis. The IRDAI may take into account all relevant factors for determining whether the promoters and investors are fit and proper including the following requirements:

Fit and Proper Criteria

- The entity's integrity, reputation, track record:
 - the financial strength of the promoter or investor;
 - ability to infuse capital to meet business, solvency and regulatory requirements;
 - compliance with all applicable laws in India including the Prevention of Money Laundering Act, 2002, Foreign Exchange Management Act, 1999 and taxation law;
 - ability to access capital or financial markets to source funds that may be needed for any future capital infusion; and
 - business record, business and financial position of the entity.
- Due-diligence:
 - approval or no objection certificate by other regulatory bodies in India and/ or outside India, as applicable;
 - insider trading, fraudulent or unfair trade practices or market manipulation by the promoters, investors or group entities; and
 - proceedings including conviction against the individual or entity or any of its promoter or group entities or any of its key managerial personnel, by any regulatory or statutory or judicial bodies in India or outside India.
- Interest of policyholders and general public at large.
- Impact on the management and governance structure.
- Agreement between shareholders and impact on control or management.
- Shareholding pattern and capital structure of the promoter or investor.
- Source of funds for investment.
- Beneficial ownership of shares of the insurer and the investors or promoters of the insurer.

Q9. What is the minimum solvency requirement to be met by the insurance companies?

All insurance companies are required to maintain a minimum solvency ratio of 150% at all times.⁴ Typically, shareholders of insurance companies are required to infuse

capital to ensure compliance with solvency requirements at all times.

Q10. Is it possible to insure or reinsure risks in your jurisdiction without licence or registration?

India is a regulated insurance market, and only insurers registered with the IRDAI are permitted to conduct insurance business within the country. Moreover, no person may procure insurance for property situated in India, or for an Indian-registered ship, vessel, or aircraft, from an overseas insurer without obtaining prior IRDAI approval. Where an individual or entity resident in India seeks any other class of general insurance from an offshore insurer, prior approval of the Central Government is required. Similarly, a person resident in India may not obtain a life

insurance policy from an offshore insurer without prior approval from the Reserve Bank of India (RBI). That said, an individual resident in India may take out or continue a health insurance policy with an offshore insurer, provided the premium remittances are made within the limits prescribed by the RBI.

Offshore reinsurers may participate in the Indian reinsurance market if they are recognised by the IRDAI as cross-border reinsurers (CBRs). Alternatively, they

⁴ IRDAI (Actuarial, Finance and Investment Functions of Insurers) Regulations, 2024.

may establish a branch office in India (an FRB) subject to IRDAI registration. Offshore reinsurers may also establish International Financial Services Centre Insurance Offices (IIOs) in the GIFT City IFSC, Gandhinagar, which is a special economic zone regulated by the International Financial Services Centres Authority (IFSCA).

Before a CBR may reinsure Indian risks, the relevant Indian insurer must submit the prescribed information to the IRDAI

on the CBR's behalf. Further, Indian insurers are required to comply with a stipulated order of preference for both non-life facultative and treaty reinsurance placements, offering participation first to Indian reinsurers, FRBs and IIOs, before approaching CBRs or other Indian insurers.

Additionally, Lloyd's of London syndicates may register with the IRDAI and conduct business in India through service companies incorporated locally under the Lloyd's India framework.

Q11. Are insurance brokers regulated?

Insurance brokers are required to be licensed pursuant to Section 42D of the Act and the IRDAI (Insurance Brokers) Regulations 2018 ("Regulations") before soliciting insurance business. Under the Regulations, an insurance broker can obtain a certificate of registration for any one of the following categories: (a) Direct Broker (Life); (b) Direct Broker (General); (c) Direct Broker (Life & General); (d) Reinsurance Broker; and (e) Composite Broker (i.e. both Direct & Reinsurance).

The Regulations specify that an applicant or its group entities will ordinarily be granted only one certificate of

registration, provided that the group does not have any other entity carrying on insurance intermediation.

Recently, the Amendment Act has also introduced the concept of perpetual registration for all insurance intermediaries, including insurance brokers, in place of requiring the insurance intermediaries to apply to the IRDAI for renewals of their registration every three years. Distributing insurance without registration, or engaging unlicensed persons or entities in India for such distribution, is a punishable offence under the Act.



Glossary

AAEC	Appreciable adverse effect on competition in India
AAI	Airports Authority of India
AAR	Authority for Advance Rulings
Accidents Act	Fatal Accidents Act, 1855
ACI	Arbitration Council of India
AD Bank	Authorised Dealer Bank
ADR	American Depository Receipt
AE	Associated Enterprise
AEO	Authorized Economic Operation
AIDC	Agricultural and Infrastructural Development Cess
AIF	Alternative Investment Fund
AJP	Artificial Juridical Person
Amendment Act	Companies (Amendment) Act, 2020
Anti-Dumping Rules	Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995
Anton Pillar Order	It is a powerful, ex parte (without notice) court order allowing a plaintiff to enter a defendant's premises, inspect, and seize evidence.

AoA	Articles of Association
AOP	Association of Persons
APA	Advance Pricing Arrangement
Apprentices Act	Apprentices Act, 1961
APR	Annual Performance Report
Arbitration Act	Arbitration and Conciliation Act, 1996
ARE	Alternative Reporting Entity
ARR	Alternative Reference Rate
ASI	Archaeological Survey of India
AY	Assessment Year
Banking Regulation Act	Banking Regulation Act, 1949
BEPS	Base Erosion and Profit Sharing
BIPA	Bilateral Investment Protection Agreements
Black Money Act	Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015
BO	Branch Office
Board	Board of Directors
BOAT	Board of Apprentices Training
BOI	Body of Individuals
Bonus Act	Payment of Bonus Act, 1965

BSE	Bombay Stock Exchange	Companies Act	Companies Act, 2013
CAA 2023	Competition (Amendment) Act, 2023	Companies Registered Valuers Rules, 2017	Companies (Registered Valuers and Valuation) Rules, 2017
CbC	Country by Country	COMPAT	Competition Law Appellate Tribunal
CBDC	Central Bank Digital Currency	Compensation Act	Employees' Compensation Act, 1923
CBDT	Central Board of Direct Taxes	Competition Act	Competition Act, 2002
CBIC	Central Board of Indirect Taxes and Customs	Constitution	Constitution of India, 1950
CCI	Competition Commission of India	Contract Act	Indian Contract Act, 1872
CEPA	Comprehensive Economic Partnership Agreement	Copyright Act	Copyright Act, 1957
CENVAT	Central Value Added Tax	CPC	Code of Civil Procedure, 1908
CERT-In	Computer Emergency Response Team	CRA	Credit Rating Agencies
CETA	Comprehensive Economic and Trade Agreement	CSR	Corporate Social Responsibility
CERT-In Rules	(The Indian Computer Emergency Response Team and Manner of Performing Functions and Duties) Rules, 2013	CST	Central Sales Tax
CESTAT	Customs Excise and Service Tax Appellate Tribunal	CST Act	Central Sales Tax Act, 1956
CGST	Central GST	CTH	Customs Tariff Head
CGST Act	Central Goods and Services Tax Act, 2017	Customs Tariff Act	Customs Tariff Act, 1975
CIAC	Construction Industry Arbitration Council	CVD	Countervailing duty
CIC	Core Investment Company	DDoS	Distributed Denial of Service
CIR Process	Corporate Insolvency Resolution Process	DDP	Designated depository participants
CIV Scheme	A CIV scheme is a dedicated scheme that allows investors of a Category I or Category II Alternative Investment Fund (AIF) to make additional co-investments in the same unlisted securities as the main AIF scheme.	DDT	Dividend Distribution Tax
CLRA Act	Contract Labour (Regulation and Abolition) Act, 1970	DEA	Department of Economic Affairs
CoC	Committee of Creditors	DEI	Diversity, Equality and Inclusion
Code on Social Security	the Code on Social Security, 2020	Delisting Regulations	Delisting of Equity Shares Regulations, 2021
Combination Regulations	CCI (Procedure in regard to the transaction of Business relating to Combinations) Regulations, 2011	DESH	Development of Enterprise and Service Hub
Commercial Courts Act	The Indian Commercial Courts Act, 2015	DG	Director General
		DGFT	Directorate General of Foreign Trade
		DIAC	Delhi International Arbitration Centre
		DIN	Director Identification Number
		DIPP	Department of Industrial Policy & Promotion
		DOS	Denial of Service
		DPA	Data Protection Authority of India
		DPBI	Data Protection Board of India
		DPDP Act	Digital Personal Data Protection Act

DPI	Digital Public Infrastructure
DPIA	Data Protection Impact Assessments
DPIIT	Department for Promotion of Industry and Internal Trade
DPO	Data Protection Officer
DPS	Detailed Public Statement
DRAT	Debts Recovery Appellate Tribunal
DRC	Dispute Resolution Committee
DRP	Dispute Resolution Process
DRT	Debts Recovery Tribunal
Drugs and Cosmetics Act	Drugs and Cosmetics Act, 1940
DTAA	Double Taxation Avoidance Agreements
DVT	Deal Value Threshold
EA	Emergency Arbitrator
ECB	External Commercial Borrowing
EEFC	Exchange Earners' Foreign Currency
Environment Act	Environment (Protection) Act, 1986
EPF Act	Employees' Provident Funds and Miscellaneous Provisions Act, 1952
EPCG	Export Promotion Capital Goods (Scheme)
EPF Amendment	Employees' Provident Funds and Miscellaneous Provisions (Amendment) Bill, 2019
EPFO	Employees' Provident Fund Organization
EPS	Employees Pension Scheme, 1995
Equal Remuneration Act	Equal Remuneration Act, 1976
ESG	Environmental, Social and Governance
ESI Act	Employees' State Insurance Act, 1948
ESIC	Employees' State Insurance Corporation
ESOP	Employee Stock Ownership Plan
ETCDs	Exchange Traded Commodity Derivatives
ETF	Exchange Traded Fund
EURIBOR	Euro Interbank Offered Rate
Factories Act	Factories Act, 1948
FAQs	Frequently Asked Questions

FAR	Floor Area Ratio
FATF	Financial Action Task Force
FCCB	Foreign Currency Convertible Bond
FCEB	Foreign Currency Exchangeable Bond
FC-GPR	Foreign Currency Gross Provisional Return
FCI	Fixed Capital Investment
FDI	Foreign Direct Investment
GOI	Government of India
FDI Policy	Consolidated Foreign Direct Investment Policy
FEMA	Foreign Exchange Management Act, 1999
FEMA 120	Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2004
FEMA 20(R)	Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017
FEMA Rules	Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 (Non-Debt Rules)
FII	Foreign Institutional Investor
FLA	Foreign Liabilities and Assets
FLDG	First Loss Default Guarantee
FOCC	Foreign Owned And Controlled Company
Food Safety and Standards Act	Food Safety and Standards Act, 2006
Foreign Contribution (Regulation) Act	Foreign Contribution (Regulation) Act, 2010
FPI	Foreign Portfolio Investor
FRO	Foreigners Registration Office
FRRO	Foreigners Regional Registration Office
FSI	Floor Space Index
FT Act	Foreign Trade (Development and Regulation) Act, 1992
FTA	Free Trade Agreement
FTP	Foreign Trade Policy 2015-2020
FTS	Fees for Technical Services
FVCI	Foreign Venture Capital Investor

Fund Management Regulations 2025	The IFSCA (Fund Management) Regulations, 2025 is a comprehensive regulatory framework implemented by the International Financial Services Centres Authority (IFSCA) to govern all fund management activities within the GIFT International Financial Services Centre (GIFT-IFSC) in India.	IFSCA	International Financial Services Centre Authority
FY	Financial Year	IGST	Integrated GST
GAAR	General Anti Avoidance Rules	IGST Act	Integrated Goods and Services Tax Act, 2017
GCC	Global Capability Centre	IHC	Investment Holding Companies
GDPR	General Data Protection Regulation	IIAC	India International Arbitration Centre
GDR	Global Depository Receipt	Indian Stamp Act	Indian Stamp Act, 1899
GIFT City	Gujarat International Finance Tec-City	Indian Easements Act	Indian Easements Act, 1882
GMV	Gross merchandise value	Industrial Disputes Act	Industrial Disputes Act, 1947
Gratuity Act	Payment of Gratuity Act, 1972	Information Technology Act	Information Technology Act, 2000
GST	Goods and Services Tax	INR	Indian Rupee
GSTAT	Goods and Services Tax Appellate Tribunal	Inter Alia	Among other things.
GSTC Cess Act	Goods and Services Tax Compensation Cess Act, 2017	Insurance Act	Insurance Act, 1938
GSTIN	Goods and Service Tax Identification Number	InVIT	Infrastructure Investment Trust
HSN	Harmonised System of Nomenclature	IOSCO	International Organization of Securities Commissions
HUF	Hindu Undivided Family	IPAB	Intellectual Property Appellate Board
I&B Ordinance	Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017	IPO	Initial Public Offering
IAMC	International Arbitration and Mediation Centre, Hyderabad	IR Code	the Industrial Relations Code, 2020
IBA	International Bar Association	IRDAI	Insurance Regulatory and Development Authority of India
IBBI	Insolvency and Bankruptcy Board of India	IRN	Invoice Reference Number
IBC	Insolvency and Bankruptcy Code, 2016	IRP	Interim Resolution Professional
ICA	Indian Council of Arbitration	ISD	Issue Summary Document
ICADR	The International Centre for Alternative Dispute Resolution	ISIN	International Securities Identification Number
ICC	International Chamber of Commerce	ISM	India Semiconductor Mission
ICDR	Issue of Capital and Disclosure Regulations	IT Act	Income Tax Act, 1961
IEC	Importer Exporter Code	IT Act	Information Technology Act, 2000
IFSC	International Financial Services Centre	IT Rules	Income Tax Rules, 1962
		IT/ITeS	Information Technology / Information Technology Enabled Services
		ITAT	Income Tax Appellate Tribunal
		ITC (HS)	Indian Trade Classification (Harmonized System) Code
		JPC	Joint Committee of Parliament

JV	Joint Venture	MB Act	Maternity Benefits Act, 1961
KPIs	Key Performance Indicators	MCA	Ministry of Corporate Affairs
KPO	Knowledge Process Outsourcing	MCIA	Mumbai Centre for International Arbitration
LCIA	London Court of International Arbitration	MEA	Ministry of External Affairs
Liability Act	Employer's Liability Act, 1938	MH	National Single Window System
LIC	Life Insurance Company of India	MHA	Ministry of Home Affairs
Limitation Act	Limitation Act, 1963	Minimum Wages Act	Minimum Wages Act, 1948
LLP	Limited Liability Partnership	MLI	Multilateral Instrument
LLP Act	Limited Liability Partnership Act, 2008	MNE	Multinational Enterprises
Leniency plus	Mechanism introduced, enabling an applicant for leniency for one cartel to report another cartel to the CCI and receive a reduction in penalty for both cartels.	MoA	Memorandum of Association
LO	Liaison Office	MoEF	Ministry of Environment and Forests
LOB	Limitation of Benefits	MoF	Ministry of Finance
LODR	Listing Obligations and Disclosure Requirements	MoLE	Ministry of Labour and Employment
LODR Regulations	Listing Obligations and Disclosure Requirements Regulations, 2015	MooWR	Manufacture and Other Operations in Warehouse Scheme
LPAC	Limited Partners Agreement	MSME	Micro, Small and Medium Enterprise
LRS	Liberalised Remittance Scheme	N&F Holidays Act	State-specific Industrial Establishments (National and Festival Holidays and Other Holidays) Act
LWF Acts	State-specific Labour and Welfare Fund Acts	NBFC	Non-Banking Financial Company
Maharashtra Shops Act	Maharashtra Shops and Establishments (Regulation of Employment and Conditions of Service) Act, 2017	NCDS	Non-Convertible Debt Securities
MAMP	Minimum Average Maturity Period	NCLAT	National Company Law Appellate Tribunal
MAP	Mutual Agreement Procedure	NCLT	National Company Law Tribunal
Master Directions on ECB	Master Direction on External Commercial Borrowings, Trade Credits and Structured Obligations dated March 26, 2019 (as amended from time to time)	NCR	National Capital Region
Master Directions on Foreign Investments	Master Directions on Foreign Investments in India dated January 4, 2018 (as amended from time to time)	NCRPS	Non-Convertible Redeemable Preference Shares
MAT	Minimum Alternative Tax	NDHM	National Digital Health Mission
Materiality Thresholds	Critical points used to determine if information, typically financial or sustainability-related	NDI Rules	(Non-Debt Instrument) Rules, 2019
		NHAI	National Highways Authority of India
		NIP	National Infrastructure Pipeline
		NOR	Not Ordinarily Resident
		Nidhi Company	Non-Banking Financial Company
		NPAC	Nani Palkhivala Arbitration Centre
		NR	Non Resident
		NRI	Non-resident Indian
		NTRO	National Technical Research Organisation
		OCB	Overseas Corporate Body

OCI	Overseas Citizen of India	PM Regulations	PM Regulations refers to the SEBI (Portfolio Managers) Regulations, 2020, which govern individuals or entities (Portfolio Managers) providing investment management and advisory services to clients.
Occupational Safety, Health and Working Conditions Code	Occupational Safety, Health and Working Conditions Code, 2020	PPT	Principal Purpose Test
ODI	Overseas Direct Investment	Previous Companies Act	Companies Act, 1956
OECD	Organisation for Economic and Co-operation Development	Promotion and Regulation of Online Gaming Act	Promotion and Regulation of Online Gaming Act, 2025
OFS	Offer for Sale	PRIR	Pre-packaged Insolvency Resolution Process
OI	Overseas Investment	Public Gambling Act	Public Gambling Act, 1867
OI Directions	(Overseas Investment) Directions, 2022	Protection of Plant Varieties and Farmers' Rights Act	Provides legal protection for new plant varieties, recognizes breeders' innovations, and crucially, protects the traditional rights of farmers and communities for conserving, using, and sharing farm-saved seeds, balancing intellectual property with agricultural sustainability
OIO	Order in Original	QIB	Qualified Institutional Buyers
OI Regulations	(Overseas Investment) Regulations, 2022	QR Code	Quick Response Code
OI Rules	(Overseas Investment) Rules, 2022	RBB	Reverse Book Building Process
ONGC	Oil and Natural Gas Corporation	RBI	Reserve Bank of India
OPC	One-Person Company	RDDDB Act	Recovery of Debts Due to Banks and Financial Institutions Act, 1993
OPI	Overseas Portfolio Investment	Registration Act	The Registration Act, 1908
OSH Code	Code on Occupational Safety, Health and Working Conditions Bill	REITs	Real Estate Investment Trusts
PA	Public Announcement	RERA Act	Real Estate (Regulation and Development) Act, 2016
PAC	Persons acting in concert	RERA Authority	Real Estate Regulatory Authority
PAN	Permanent Account Number	RFC	Resident Foreign Currency
Partnership Act	Partnership Act, 1932	RI	Resident individuals
Patents Act	Patents Act, 1970	RoC	Registrar of Companies
Paternity Bill	Paternity Bill, 2017	RoDTEP	Remission of Duties and Taxes on Exported Products
PD	Personal Data	ROR	Ordinarily Resident
PDP Bill	Personal Data Protection Bill, 2019	RP	Resolution Professional
PE	Permanent Establishment		
PE	Private Equity		
PFC	Pre Filing Consultation		
PFI	Public Financial Institution		
PI	Personal Information		
PIS	Project Import Scheme		
PLI	Performance Linked Incentive		
PO	Project Office		
POEM	Place of Effective Management		
PPIR	Pre-packaged Insolvency Resolution Process		
PPM	Private placement memorandum		

RPWD Act	Rights of Persons with Disabilities Act	SEBI ND Regulations	Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2019
S&E Acts	Shops and Establishment Acts	SEBI Takeover Regulations	Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 2011
SAD	Special Additional Duty paid	Sexual Harassment Act	Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013
SARFAESI	Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002	SEZ Act	Special Economic Zones Act, 2005
SBEB	Share Based Employee Benefits and Sweat Equity	SEZ	Special Economic Zone
SBO	Significant Beneficial Owner	SGST	State GST
SBOR	Companies (Significant Beneficial Owners) Rules, 2018	SGST Acts	State GST legislations
SC	Supreme Court	Share Capital Rules	Companies (Share Capital and Debentures) Rules, 2014
SCA	Securities Contracts (Regulation) Act, 1956	SIAC	Singapore International Arbitration Centre
SCN	Show Cause Notice	Shanti Act 2025	Sustainable Harnessing and Advancement of Nuclear Energy for Transforming India Act
SCC	Stakeholders' Consultation Committee	SICA	Sick Industrial Companies (Special Provisions) Act, 1985
Scheme	Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019	SME	Small and Medium Enterprises
SCRR	Securities Contract (Regulation) Rules, 1957	SMF	Single Master Form
SDF	Significant Data Fiduciaries	SPAC	Special Purpose Acquisition Companies
SDS	Step Down Subsidiary	SPADEX	India Space Research Organisation
SEBI	Securities and Exchange Board of India	SPD	Sensitive Personal Data
SEBI Act	Securities and Exchange Board of India Act, 1992	SPDI Rules	Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011
SEBI Delisting Regulations	Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009	SPICe	Simplified Proforma for Incorporating Companies electronically
SEBI FII Regulations	Securities and Exchange Board of India (Foreign Institutional Investors) Regulations, 1995	SPV	Special Purpose Vehicle
SEBI FVCI Regulations	Securities and Exchange Board of India (Foreign Venture Capital Investors) Regulations 2000	SR Equity Shares	Superior Voting Rights
SEBI ICDR Regulations	Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018	SS Code	Social Security Code, 2020
SEBI Insider Trading) Regulations	SEBI (Prohibition of Insider Trading) Regulations, 2015	SSA	Social Security Agreement
SEBI Listing Regulations	Securities and Exchange Board of India (Listing Obligations and Disclosure Requirement) Regulations, 2015	SSEs	Social Stock Exchanges
		Standing Orders Act	Industrial Employment (Standing Orders) Act, 1946
		STT	Securities transaction tax

SWS	Social Welfare Surcharge
TAN	Tax deduction and collection account number
TDRs	Transferable Development Rights
TDSAT	Telecom Regulatory Authority Of India
Telecommunications Act	Telecommunications Act, 2023
Telecom Rules	Information and Cyber Security Guidelines, 2023, and Telecommunications (Telecom Cyber Security) Rules, 2024
TP Act	Transgender Persons Act
TP Ac	Transfer of Property Act, 1882
Trade Marks Act	Trade Marks Act, 1999
Trade Union Act	Trade Union Act, 1926
TRC	Tax Residency Certificate
TRAI	Telecom Regulatory Authority of India
TRIPs Agreement	Agreement on Trade-Related Aspects of Intellectual Property Rights
UNCITRAL	United Nations Commission On International Trade Law

UPSI	Unpublished Price Sensitive Information
USD	United States Dollar
UTGST	Union territory GST
UTGST Act	Union Territory Goods and Services Tax Act, 2017
UTs	Union Territories
VAT	Value Added Tax
VC	Venture Capital
VCF	Venture Capital Funds
Viksit Bharat	Developed India
VCU	Venture Capital Undertaking
Wages Act	Payment of Wages Act, 1936
Wages Bill	Labour Code on Wages Bill
Wages Code	Code on Wages, 2019
WD	Working Days
WOS	Wholly Owned Subsidiary

[The foreign exchange rate used in this Guide is 1 USD = INR 88, which is the average spot rate of the last six months as on 31 Dec 2025, as provided by the Reserve Bank of India].

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