Commercial law in India and doing

Commercial law in India and doing business

ENTRY OPTIONS

An appropriate entry strategy is a must for every foreign investor seeking to do business in India or with counterparties based in India. Entry strategy would usually vary depending upon the nature of business, the concerned sector, scale of operations and costs and other commercial objectives. Broadly, foreign investors can set up either a company, branch/liaison office or a limited liability partnership (LLP) in India. Indian companies are governed by the new company law, the Companies Act, 2013. LLPs are governed by a separate legislation, the Limited Liability Partnership Act, 2008. It may be pointed out that the Indian government has launched a series of initiatives aimed at enhancing the ease of doing business in India. For more information on market entry structures,

FOREIGN INVESTMENT POLICY

Foreign investments into India are governed by a comprehensive foreign direct investment (FDI) policy issued annually by the Department of Industrial Policy and Promotion, which works under the aegis of the Ministry of Commerce and Industry, Government of India. The FDI policy is supplemented by various press notes that are issued throughout the year as and when a policy change is announced. This policy framework is operationalized by rules, regulations and circulars issued by India's Central Bank, the Reserve Bank of India.

Most investment sectors are under the automatic route (i.e. no prior approval is required for investment); only a few sectors such as insurance, real estate, non-banking financial corporations are regulated. FDI into LLPs is also permitted, subject to certain conditions. The new Indian Government has announced its commitment to further liberalise India's FDI policy, with a view to attracting greater foreign capital. For more details on India's FDI policy

TAXATION

Income tax in India is governed by a Central legislation, the (Indian) Income tax Act, 1961, while indirect taxes such as value added tax, customs and excise duty are subject to both Central and State laws. Currently the corporate tax rate stands at 30% (excluding surcharge and cess), however, the Government has announced that this would be progressively reduced to 25% over the next 4 years. India also has transfer pricing rules that apply to related party transactions. On the indirect taxes front, a comprehensive Goods and Services Tax (GST) is likely to be introduced in India in 2016. This will go a long way in reducing complexity and eliminating multiple taxation.

EXIT STRATEGY AND DISPUTE SETTLEMENT IN INDIA

Since entering a new market is a major commitment for every investor, the exit strategy should also be planned in advance as the cost and barriers to exit can often determine the entry strategy. Maintaining a comprehensive exit strategy is important for the following reasons:

- Changes in business conditions or regulatory environment
- Cashing out on a venture that is successful
- If the goals and objectives of the company/partners involved change with time

- If one of the partners involved in an agreement is acquired or gets into financial trouble
- For settlement of disputes when a partnership isn't working out

Settlement of disputes in India

India follows the common law and has a single court system to administer both Central and State laws. The court system is broadly three tiered, comprising the lower District courts, the High Courts and the apex court – the Supreme Court of India. Court litigation in India is generally subject to delays, and owing to a backlog of cases before Indian courts, commercial disputes are being subject to alternative modes of dispute resolution, such as arbitration.

The choice of dispute resolution mechanism can have significant commercial, financial and legal consequences and investors should consider the advantages and disadvantages of each mode of dispute resolution, be it litigation before Indian courts or arbitration.

EMPLOYMENT LAWS

An investor should familiarise themself with Indian labour laws at the time of commencing operations in India. Though several labour laws are formulated by the Centre, there are State specific rules that the investor should take note of, and these would vary depending on the State where the investor commences operations. The investor should ensure that appropriate registrations are obtained and all HR records, files, documents and correspondences are maintained according to the requirements under Indian labour laws.

It is advisable to seek professional advice in areas such as drafting compliant policies and practice manuals, handling potential labour law issues, structuring of employment contracts and reducing risks of co-employment issues. Half-yearly or yearly audits of internal HR compliance policies may also be conducted to ensure compliance with all necessary statutory requirements. It may be pointed out that the Government plans to introduce several reforms with respect to labour and employment laws in order to make these laws industry friendly and reduce the burden of compliance for the private sector.

ANTI-TRUST REGULATION IN INDIA

India's Competition Act, 2002 (the Act) is the principal legislation dealing with anti-trust issues. The Act prohibits or regulates (a) anti-competitive agreements (b) abuse of a dominant position and (c) combinations.

Anti-competitive agreements are broadly defined as any agreement in respect of 'production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India'. Certain agreements such as tie-in arrangements or bid rigging are presumed to cause an appreciable adverse effect on competition.

Further, the Act prohibits any enterprise or group from abusing its 'dominant position'; an enterprise will be considered 'dominant' in a relevant market, in India, where it is able to operate independently of competitive forces prevailing in the relevant market or can affect competitors, consumers or the relevant market in its favour. Also, in terms of the Act, combinations (mergers, acquisitions, de-mergers) exceeding certain specified asset/turnover thresholds would require approval of the Competition Commission of India to ensure that they do not cause an appreciable adverse effect on competition within the relevant markets in India.

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