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Doing Business In... 2022

India: Trends & Developments
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Trends and Developments

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Introduction

India has always witnessed investment, both domestic and international, into traditional and new-generation businesses, and the growth of larger companies and their diversification. Similarly, post-liberalisation, overseas companies have been accessing India for manpower. Towards the latter part of the last decade, this recruitment focused on low-cost skilled services in the information technology sector. However, many industries have subsequently come to understand the consumption potential of the Indian marketplace.

Apart from the consumption aspect, one of the things that makes India particularly attractive from an investment standpoint is the country's very large and untapped potential as a market, and that even well-established Indian companies with organised consumer-facing businesses cater to only a very small percentage of the Indian population. This leaves room for significant opportunities.

India allows foreign investment in most sectors. Although there have been federal- and state-level initiatives to ease doing business in India, it is advisable to carry out due diligence on sector-specific, state-specific and culture-specific practical and legal aspects prior to making investment decisions, to avoid unwelcome surprises.

As regards recent trends, India has been witnessing a surge of entrepreneurial action and start-ups across all sectors. These range from businesses supporting rural India and agriculture to urban-facing solutions for well-being, as well as technology-related businesses. The legal,

regulatory and taxation regimes are also largely supportive of such initiatives.

For instance, the government has adopted the strategy of simplifying compliance through self-certification and deemed approvals; eliminating the compliance burden, wherever possible; bringing in transparency through digitalisation; and decriminalising minor offences.

Commercial Real Estate

The real estate sector generates the second-highest employment opportunities in India after the agriculture sector. Real estate has witnessed high growth after the pandemic due to the increased demand for residential and office properties. The sector is expected to reach USD1 trillion in market size by 2030, from USD200 billion in 2021, and contribute 13% to the country's GDP by 2025.

India's market regulator, the Securities and Exchange Board of India, lowered the minimum application value for real estate investment trusts from INR50,000 to INR10,000–15,000 in July 2021 to make the market more conducive to small and retail investors.

According to government data, construction is the third-largest sector in terms of foreign direct investment (FDI) inflow.

The Education Sector

The sector witnessed revolutionary changes during the pandemic, with the migration of decades-old physical infrastructure to online platforms. Even after the pandemic, online education platforms continue to flourish, and they attract significant foreign investment.

As India has a population of 580 million between the ages of 5 and 24, the online education industry has great potential. It is estimated that the online education industry will grow by USD11.6 billion by 2026. The USD4 billion funding that the industry received between January and August 2021, and three unicorns created in the past two to three years, is a clear indication that the edtech ecosystem has been thriving in India.

Media and Entertainment

The Indian media and entertainment sector grew to USD21.5 billion in 2021, and it is expected to reach USD25.2 billion in 2022.

Digital media grew to be the second-largest segment in the sector.

The increased commercial participation of over-the-top platforms triggered by the pandemic has given a major boost to this sector.

One of the most serious legal concerns is that the media and social media companies operating in India have been debating the various compliance requirements relating to encryption, accountability, the need for local management, etc, recently introduced by the Indian government under the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.

The Ministry of Information and Broadcasting recently announced two schemes at the 2022 Cannes Film Festival to incentivise global collaborations with India and attract investments from foreign film-makers in India.

Under the scheme for the shooting of foreign films in India, an international producer can claim a reimbursement of 30% of their qualifying production expenditure and an extra 5% bonus for employing more than 15% manpower from India.

Under the second scheme, official Indian co-productions can claim up to a 30% reimbursement, up to USD2.6 million.

Employment

Indian employment law and jurisprudence have undergone a significant evolution over recent years.

A major development is the codification of nearly 44 archaic laws into four pieces of legislation:

- the Code on Wages;
- the Occupational Safety, Health and Working Conditions Code, 2019;
- the Code on Social Security, 2019; and
- the Industrial Relations Code, 2019.

A significant number of changes have been introduced by these yet-to-be-implemented labour codes.

Additionally, the majority of India's white-collar workforce has been working from home since the start of the pandemic. Some of the legal issues regarding working from home include:

- the interpretation of what amounts to "course of employment" for the purposes of various statutes;
- whether inappropriate virtual sexual conduct can trigger the anti-sexual harassment laws; and
- whether injury to the employee while working from home amounts to an accident in the course of employment subject to compensation.

The absence of any major legal requirements or statutory compliance requirements specific to working from home has been a major support for businesses. However, many employers have been preparing policies specific to working from home.

Intellectual Property

The filing trends of intellectual property applications in India indicate steep growth. The number of patent filings climbed from 42,763 in 2014–15 to 66,440 in 2021–22 due to the government's efforts to strengthen the country's intellectual property rights framework. India proposes to grant 30,074 patents in 2021–22, up from 5,978 in 2014–15. Furthermore, the number of domestic patent filings in India surpassed the number of international patent filings for the first time in 11 years. Other intellectual property applications such as trade marks, industrial designs and geographical indications also show an upward filing trend.

The Indian intellectual property office has recently appointed a large pool of officials, which will significantly bring down the backlog. The pendency was impacted during the pandemic due to restricted functioning.

E-commerce and Data Protection

India's e-commerce industry has been on a growth curve, while contributing to the growth of the country's technology and logistics infrastructure. The government's initiatives on interoperability of payments, support for the growth of digital payment systems, and an increase of FDI limits have been supportive for the sector.

The growth of the e-commerce sector has also opened up a large amount of intellectual property disputes and domain disputes. India has adequate laws and a well-developed legal system to address such concerns.

Similarly, non-compliance and breach of data privacy obligations have been a major concern. While India is in the process of implementing its new data privacy law, the current legal regime also has necessary provisions regarding the collection, processing, use and storage of data. However, various stakeholders still lack aware-

ness, resulting in poor compliance. Notwithstanding this, many Indian entities' international business relationships and corresponding obligations help to ensure data privacy compliance in relevant sectors. Please refer to the India Law & Practice chapter in Chambers' Data Protection & Privacy 2022 guide for further details.

India's nodal agency for cybersecurity (Cert-In) has recently introduced directions for all intermediaries, service providers and body corporates mandating cyber breach reporting and other compliance matters, including data localisation, conducting KYC of clients, data storage, and appointing a point of contact for cybersecurity incidents.

Although the majority of the corporates are bringing in compliance with the Cert-In directions, certain service providers have also exited Indian business due to the compliance burden.

Judicial Intervention and Policies

The Indian courts – including the Supreme Court, the High Courts and district courts – proactively addressed the potential delays caused by the pandemic and have enabled online filing of documents and virtual hearings, including remote screen sharing by judges and lawyers. Following this, courts across India have implemented online filing systems. Furthermore, the Indian courts allow service of documents on the opposite parties through email, SMS and WhatsApp.

Furthermore, the government and the judiciary are working together to address the pendency issue by appointing more judges and creating more courts across the country.

Conclusion

The Indian market appears to be on a long-term growth curve. The stock market indications have been encouraging. In addition, the legal and reg-

ulatory regime has been adopting measures to ease doing business.

Although India has seen a lot of development and both Indian and international business initiatives in recent decades, there remains significant untapped opportunities. Furthermore, the demographic peculiarities of the nation (ie, a large part of the population is available to work, earn and spend) and domestic consumption patterns make it an attractive market for all kinds of businesses. Finally, in the background of other geopolitical considerations, India's democracy, internationally aligned commercial policies and a well-developed legal system may continue to position India as a preferred destination for global businesses.

INDIA TRENDS AND DEVELOPMENTS

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ANA Law Group is a full-service law firm based in Mumbai with a team of experienced and committed professionals who have broad industry knowledge and that specialises in a wide spectrum of laws. Founded on traditional values, with prominent cross-border exposure and a solution-oriented approach, the firm provides significant value to clients internationally, each client receiving the required attention to provide practical legal solutions. The firm has sig-

nificant experience in counselling international clients in India and its attorneys have acted for a variety of businesses on a number of complicated transactions, thereby attaining in-depth knowledge of how different industries operate. Some key practice areas include commercial contracts, IT and outsourcing transactions, employment law, data privacy, intellectual property and digital media.

AUTHORS



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