



Doing Business in India

The new fiscal dawned on an optimistic note for the Indian economy. The double-digit GDP growth of 10.4% in the third quarter of 2003-04 has shown that India is the fastest growing economy in the world. This trend is even more encouraging as it follows two good quarters of 5.7% and 8.4% in the first and second quarters of 2003-04 respectively.

Clearly, a host of cyclical and structural factors have contributed to a broad-based economic recovery. Factors such as low monsoons, low interest rates fuelling consumer demand, rising exports, better capacity utilisation by companies stemming from cost cutting and restructuring in the lean years, and an emerging global mindset have combined to bring sheen to the economy.

Government's view on Foreign Investment

New Indian government keeps very positive attitude towards the foreign investment, due to which India is going through a lot of liberalisation and is one of the best choice of foreign investors. Indian government is committed towards economic development of the country and for which foreign investment is required.

Corporate Laws – Developments

There are important and recent legal developments in this practice area (including policy changes, case law and legislative amendments) are set out below.

Company law Directors of government companies exempted from disqualification norms

The Department of Company Affairs (DCA) has granted immunity to directors of state-owned companies from disqualification from election as a director in case of defaults by such

companies.

Sitting fee for directors increased

Companies with a paid-up share capital and free reserves of 100m Indian rupees and above or turnover of 500m Indian rupees and above can pay a maximum sitting fee of 20,000 Indian rupees by way of remuneration/fee for each meeting of the board of directors or its committee thereof.

Companies (Disqualification of Directors) Rules

The government has passed the Companies (Disqualification of Directors) Rules applicable to all public limited companies other than government companies.

Companies (Appointment and Qualification of Secretary) Amendment Rules 2003

There has been an amendment in the Rules for appointment of company secretary, which has now been based on locational population criteria.

Companies Bill withdrawn

The government has decided to withdraw the Companies (Amendment) Bill 2003 and a fresh bill with corporate-friendly provisions would be introduced at the earliest.

Intellectual Property Laws – Developments

There are important and recent legal developments in this practice area (including policy changes, case law and legislative amendments) are set out below.

The Trade Marks Act 1999

The Trade Marks Act 1999 has come into force. Some of the salient features of the new Trade Marks Act are:

- The provision for registration of service marks, including telecom, transportation, insurance, real estate, legal services, etc.
- Definition of trademarks widened to include a mark capable of being

represented graphically and to include shape of goods, packaging and combination of colours.

Geographical Indications of Goods (Registration and Protection) Act 1999

The Geographical Indications of Goods (Registration and Protection) Act 1999 has come into force.

TMT (Technology, Media and Telecoms Laws – Developments)

There are important and recent legal developments in this segment (including policy changes, case law and legislative amendments) are set out below.

Telecoms and media Telecoms Unified telecom license regime

The proposal of India's telecoms regulator, the Telecom Regulatory Authority of India (TRAI) to unify telecoms licences was approved by the Group of Ministers of the government of India.

Guidelines for intra-circle merger of access-services licences issued

The government of India recently issued guidelines for the merger of licences for access services in a given service area.

Foreign direct investment

The government has proposed a hike in sectoral cap on FDI in the telecoms sector to 74%, subject to approval on a case-by-case basis.

Media

The government of India had announced the guidelines for foreign direct investment (FDI) in both news and non-news category of the print media.

Technology and outsourcing Taxability of global profits of

non-residents from outsourcing activities in India

The Central Board of Direct Taxes (CBDT), India's apex direct taxes authority, has issued a clarification on determining the extent of global profits attributable to the activities of a Business Processing Outsourcing (BPO)/Outsourcing unit in India. The manner and extent of such attribution of profits would depend on the facts of each case and the nature of services rendered by the BPO unit, and the same has to be determined in accordance with the provisions of the treaty applicable and the Indian income tax law.

The CBDT has later clarified that, if outsourced services are ancillary and auxiliary in nature and adequate remuneration is paid to the Indian entity, then there shall be no tax on such foreign company that has outsourced its activity to India. This policy is on the lines of OECD norms and Double Taxation Avoidance Agreements.

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