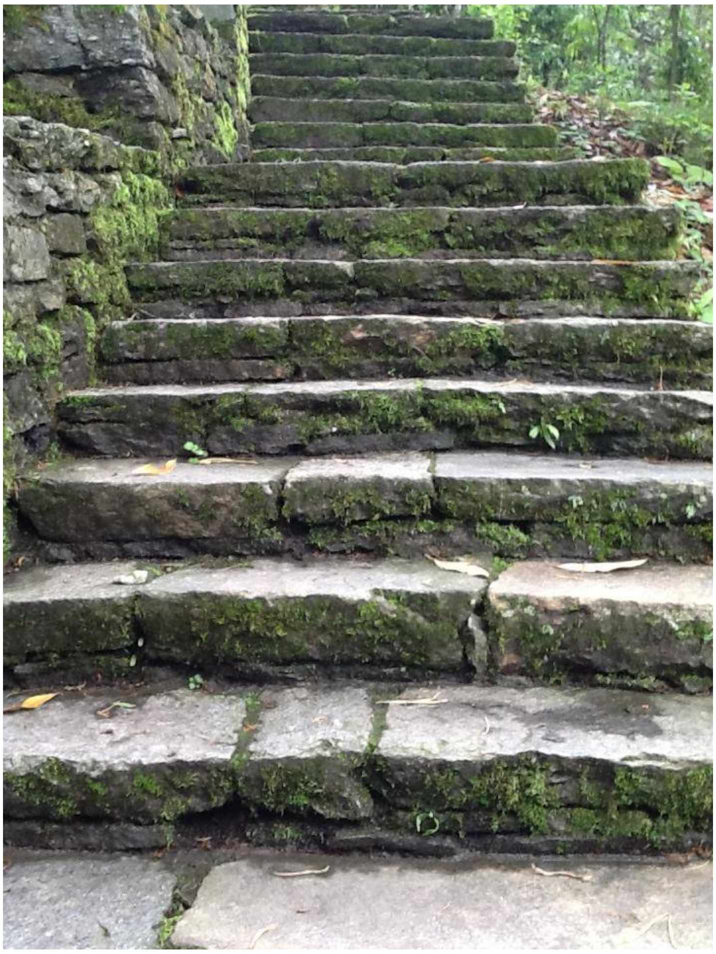
BUSINESS REGULATIONS



B D Jokhakar & Co.

Chartered Accountants

www.bdjokhakar.com

1. Registration and Licensing

The easing of administrative restrictions on licensing and related remittances has led to an increase in the number of international licensing agreements in India. British, US, French and German firms have had the most success in forging successful joint ventures with Indian companies.

Many foreign companies involved in India structure their presence either through a wholly owned subsidiary or a joint venture with an Indian partner, or through technical collaboration or a suitable combination thereof. Most companies set up a liaison office before taking a final decision to establish a commercial legal presence.

According to the International Intellectual Property Alliance, India's intellectual-property (IP) laws are strong, but the country still suffers from high piracy rates.

Authorised Dealers appointed by the Reserve Bank (RBI, the Central bank of India) may permit drawal of foreign exchange by person for purchase of trademark or franchise in India without approval of the Reserve Bank. Earlier the payment of royalty and lump sum fees for technical collaboration and royalty for the use of trade mark and brand name of the foreign collaborator were subject to certain limits. In 2009, The Government of India reviewed the extant policy for foreign technology agreements/ collaboration and it decided to permit payments for royalty, lumpsum fee for transfer of technology and payments for use of trademark/brand name on the automatic route i.e. without any approval of the Government of India. All such payments being subject to Foreign Exchange Management (Current Account Transactions) Rules, 2000 as amended from time to time.

The removal of caps on the outflow of royalty has led to a sharp rise in the flow of royalties from multinationals in India to their parent companies. The remedy that could be brought about by the government for this could be the reintroduction of the said caps, but in January 2015 the Finance Ministry turned down a proposal from the Department of Industrial Policy and Promotion for the same. The Ministry was of the view that imposing restrictions on royalty payments would not be in sync with the liberalized Foreign Direct Investment Policy of India especially with the 'Make in India' Campaign in place.

Royalty payments are generally calculated on the basis of the product's factory sales price, i.e. gross sales less agents'/dealers' commission, transport cost, including ocean freight, insurance, duties, taxes and other charges, and the cost of raw materials, parts and components imported from the foreign licensor or its subsidiary/affiliated company.

Generally, no special controls apply to agreements between a foreign parent and a local subsidiary.

2. Price controls

The Essential Commodities Act, 1955, amended by The Essential Commodities (Amendment) Act, 2006, gives power to control the production, supply, distribution, etc, of essential commodities for maintaining or increasing supplies and for securing their equitable distribution and availability at fair prices. Domestic price and marketing arrangements apply to some agricultural commodities, such as sugar and certain cereals. Fully administered prices apply only to electricity, some petroleum products and certain types of coal.

The government is moving towards the liberalization of prices and has lifted price controls on many products.

3. Monopolies and Restraint of Trade

The Competition Commission of India (CCI), though established in 2003, became fully functional in May 2009. It is responsible for enforcing The Competition Act, 2002 (which replaced the Monopolies and Restrictive Trade Practices Act, 1969) throughout India The Competition Act, 2002, as amended by the Competition (Amendment) Act, 2007, follows the philosophy of modern competition laws. The objectives of the Act are to prevent anti-competitive practices, promote and sustain competition, protect the interests of consumers and ensure freedom of trade. Certain procedural provisions have been made effective

The Competition Act requires that the CCI be notified of acquisitions or mergers exceeding combined assets in India of Rs 15bn or combined turnover in India of Rs 45bn or exceeding combined worldwide assets of US$0.75bn (including at least Rs 7.5bn in India) and combined worldwide turnover of US$2.25bn (including at least Rs 22.5bn in India). Enterprises that are being acquired , having assets of the value of not more than Rs 2.5bn or turnover of not more than Rs 7.5bn are exempted from these provisions for a period of 5 years as per notification dated 4th March, 2011.

The limit at group level that would require approval by the CCI is:

- Group assets in India of Rs 60bn; or
- Group turnover of Rs180bn; or
- Group world assets of more than US$3bn (including at least Rs 7.5bn in India) and group worldwide turnover of more than US$9bn (including at least Rs. 22.5bn in India).
- Groups exercising less than 50% voting rights in other enterprise are exempted from these provisions for a period of 5 years as per notification dated 04th March, 2011.

The Act also allows the CCI to scrutinize mergers after they are announced and to recommend that the government reverse the merger or order a break-up of dominant undertakings. The CCI has authority to launch an investigation on its own initiative or in response to complaints from a government body or a consumer organisation.

4. Intellectual property

The importance of Intellectual Property (IP) in India is well established at all levels—statutory, administrative and judicial. India ratified the agreement establishing the World Trade Organisation (WTO). This agreement, inter alia, contains an Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs), which came into force in 1995. It lays down minimum standards for the protection and enforcement of IP rights in member countries, with a view to reducing distortions and impediments to international trade. The obligations under the TRIPs agreement relate to the provision of minimum standards of protection within the member countries' legal systems and practices.

Indian legislation covers patents, copyrights, trademarks and designs and geographical indications. Prosecutors may win injunctions and the payment of damages, as well as the delivery or destruction of all infringing articles in the defendant's possession. Licensees may sue alleged infringers.

India continues to come under international pressure to improve the legislation and administration of IP rights. The country had a transition period for strengthening such rights in line with its commitments to the WTO. As a signatory to the General Agreement on Tariffs and Trade (GATT) and TRIPs, India must set minimum norms and standards with respect to patents, trademarks and copyright.

Patent protection- As parts of its TRIPs obligations, India has increased the term of a patent to 20 years from the date an application was filed and passed the Patents (Amendment) Act, 2005 mainly to introduce product patent protection in all fields of technology. The Act provides for the granting of product patents in all fields of technology. It also more strictly defines "inventive steps" and "new inventions". Patents are not allowed on a new use of an already discovered drug or on the "mere discovery of a new form of a known substance, which does not result in the enhancement of the known efficacy of that substance".

India acceded to the Patent Co-operation Treaty (PCT) in 1998 and extends reciprocal property arrangements to all countries party to the convention. Hence an application for a patent in India may be filed in any of the international receiving offices of the PCT. Under the treaty, by the time an international application reaches the Indian patent office, it has been searched by the international patent office, which provides its Indian counterpart with the necessary search reports. The government also checks patent data on industrial innovations worldwide before clearing domestic requests for product or process patents. The convention also makes India eligible for the Trademark Law Treaty and the Madrid Agreement on Trademarks.

India also is a signatory to the Washington Treaty of 1989, which is administered by the World Intellectual Property Organisation (WIPO). The main obligations of this international agreement concern original layout designs of **integrated circuits.** Parliament enacted legislation protecting designs in September 2000 and the New Designs Act of 2000 created a more detailed classification of industrial designs and models.

The Patents Act is administered through the head office situated in Kolkata and branch offices situated in New Delhi (the capital), Mumbai (Bombay) and Chennai, which have territorial jurisdiction on a zonal basis.

Trademarks can be registered under the Trademarks Act, 1999, which provides for a broad definition of trademarks and simplifies procedures. Trademarks consist of a device, brand, heading, label, ticket, name, signature, word, letter, numeral, shape of goods, packaging or combination of colours or any combination thereof that are capable of being represented graphically and capable of distinguishing the goods or services of one person from those of others, and include shape of goods, their packaging and combination of colours. The Act provides for exclusive registration of service marks, based on international classification of services, in addition to goods. It also includes a provision for registering collective marks. It prohibits the registration of certain marks that are mere reproductions or imitations of a "well-known" mark and provides for a single registration application in more than one class of goods and services. With the Trade Marks (Amendment) Act, 2010, national as well as international trademarks have come within its purview, through International Registration under the Madrid Protocol. The registration period for a trademark is ten years and there is a six-month grace period for the payment of renewal fees. Trademarks may be assigned to another entity. Non-use of a trademark for five years is one of the grounds for cancelling registration.

Registration of a trademark is not compulsory, but without registration the owner of a trademark may not bring an action for infringement to protect the mark if others use it. Suing for infringement of a registered trademark is much simpler than launching a common law action to protect an unregistered trademark, in that the owner of a registered trademark can base a case simply upon the fact that the mark has been registered.

Trademark protection continues to evolve in India.

The Trademarks Act is administered through the head office situated in Mumbai and branch offices situated in New Delhi, Kolkata (Calcutta), Chennai and Ahmedabad, which have territorial jurisdiction on a zonal basis.

Copyright is protected on published and unpublished literary, dramatic, musical, artistic works and cinematograph films and sound recordings under the Copyright Act, 1957. India's copyright law, as amended by the Copyright (Amendment) Act, 2012, fully reflects the Berne Convention on Copyrights, to which India is a party. In the case of any literary, dramatic, musical or artistic work published within the lifetime of the author, the term of copyright shall be lifetime of the author and sixty years from the beginning of the calendar year next following the year in which the author dies. In case of anonymous, pseudonymous, posthumous works, cinematographs, sound records, Government work, works of public undertakings or international organizations, copyright shall subsist until sixty years from the beginning of the calendar year next following the year in which the work is first published.

5. Mergers and Acquisitions

The acquisition of a business can be accomplished in various ways. These include, for example, acquisition of shares of a target company, acquisition of assets with or without liabilities and work force, and acquisition of business as a going concern.

Acquisition of distressed financial assets has gathered momentum after enactment of the "SARFAESI" Act, which provides an opportunity for lender banks to transfer their exposures to specialized asset reconstruction/securitization companies (ARCs). ARCs have legal power to sell the business or effect a change in management/ownership of companies or cause the sale of assets to recover dues.

The Regional Director, Ministry of Company Affairs (DCA), administers the directives on mergers, monitors market activity and can disallow tie-ups it deems harmful to the public.

Mergers and acquisitions of companies in India are primarily regulated by sections 230 and 232 of the Companies Act, 2013. National Company Law Tribunal deals with matters related to Merger & Acquisition. The tribunal will then order a meeting of shareholders and creditors of the company where the scheme is to be approved by a majority representing three-fourths in value of each stake holder in person, proxy or postal ballot. The merger comes into effect on filing with the Registrar of Companies. Fast Track merger or quick form merger is the new provision which is added in Companies Act, 2013 for merger between two or more small companies, holding company and its wholly own subsidiary and such other company as may be prescribed. Also, where the transferor company is a listed company and the transferee company is an unlisted company, the transferee company shall remain an unlisted company until it becomes a listed company. In the case of an **acquisition** or change in control of a listed company by an unlisted company, shareholders of listed Company have the option to exit on payment of value of their shares. The payment to such shareholders willing to exit shall be made on pre-determined price formula or after valuation. The government has been liberal in policing mergers in recent years, easing the conditions for carrying forward and setting off accumulated losses and unabsorbed depreciation allowance in mergers and de-mergers. However, to make use of certain tax benefits related to mergers, a company must retain at least 75% of the book value of fixed assets of the absorbed unit.

The government can order the amalgamation of two or more companies if it believes this to be in the public interest. The Board for Industrial and Financial Reconstruction can issue an order under the Sick Industrial Companies (Special Provisions) Act, 1985, for the amalgamation of a sick industrial company with another company.
