INDIA

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A. General

1. What is the main legal framework applicable to companies in your jurisdiction?

The corporate ecosystem in India has a set of exhaustive commercial laws governing the various aspects of companies. The parliamentary statutes delegated legislations and by-laws offer a comprehensive legal framework that govern and regulates companies in India.

Some of the pivotal business regulations (as amended from time to time) in India are as follows:

(a) The Companies Act, 2013 ("**Companies Act**"): Companies incorporated in India and foreign corporations conducting business in India are regulated by the provisions of the Companies Act. It regulates the incorporation, management, governance, operation, dissolution or winding up of the companies. The Companies Act contains provisions applicable to public companies, private companies, and one-person companies.

(b) The Competition Act, 2002 ("**Competition Act**"): The Competition Act prescribes provisions to keep the market in check as it promotes fair competition in markets in India. It protects the interests of consumers and ensures freedom of trade for market participants. The Competition Act: (i) prohibits anti-competitive agreements; (ii) prohibits abuse of dominance; (iii) regulates acquisitions, mergers and amalgamations, exceeding the prescribed thresholds; (iv) establishes Competition Commission of India ("**CCI**") including its investigative wing i.e., Office of Director General and sets out their functions and powers; and (v) lays down the procedure for appeal against the order of the CCI. On April 3, 2023, the Indian Parliament passed the Competition Amendment Bill, 2023, which received Presidential

assent on April 11, 2023, becoming the Competition (Amendment) Act, 2023. The amendments aims to streamline legal provisions and bring the law into sync with international best practices and changing economic reality, including shorter merger timelines, deal value thresholds, and settlement options.

(c) The Foreign Exchange Management Act, 1999 ("**FEMA**"): FEMA and the rules thereunder govern foreign investment, capital flow, remittance, establishment of liaison, branch and project offices, loans and external commercial borrowing.

(d) The Consolidated Foreign Direct Investment ("**FDI**"): The latest FDI policy (issued vide Consolidated FDI Policy of 2020), effective from October 15, 2020 ("**Consolidated FDI Policy**"), read with the FEMA regulations reflects the current policy framework on FDI. In the event of any change in the foreign investment regime during the year, the Government of India issues FDI Press Notes which are incorporated in the subsequent Consolidated FDI Policy.

(e) The Securities and Exchange Board of India Act, 1992 ("**SEBI Act**"): SEBI Act and rules thereunder offer a framework for listed entities and govern the capital markets and securities transactions.

(f) Indian taxation laws: The principal taxes and duties that the Central Government is empowered to levy are income tax, customs duty, and central excise. The principal taxes levied by the state governments are value added tax, stamp duty, state excise duty, land revenue, entertainment tax and tax on professionals. Goods and Services Tax ("**GST**") is levied on supply of goods and services by both central government as well as state governments and proceeds are shared by them.

In addition to above legislations, the labour laws, the environment laws, the Contract Act, 1872 and the sector specific legislations also apply to entities running businesses in India.

2. What are the most common types of corporate entities (e.g., joint stock companies, limited liability companies, etc.) used in your jurisdiction? What are the main differences between them (including but not limited to with regard to the shareholders' liability)?

In India, corporates have the option to set-up their business operations either in the form of incorporated entities (*i.e., as a company or limited liability partnership ("***LLP***")*) or unincorporated entities (*i.e., as a branch/liaison office*).

Incorporated Entities: In India, the most popular forms of companies are: (i) a private limited company, and (ii) a public company. Apart from these two, the Companies Act also prescribes provisions for setting up one-person company.

A private limited company is a joint stock company. It is governed under the ambit of the Companies Act. It is formed by a voluntary association of persons. The maximum number of members cannot exceed 200 (two hundred). The transfer of shares of a private limited company is typically restricted. It prohibits the entry of the public through subscription of shares and debentures. A public company means a company which is not a private company. As such, a public limited company is also governed under the provisions of the Companies Act. There is no limit on the number of members, and it is formed by the association of persons voluntarily. The transferability of its shares is not restricted, and the company can invite the public for subscription of shares and debentures. Other differences between a private and public company include composition of its

board of directors ("**Board**"), constitution of committees including the audit committee, appointment of independent directors and retirement of directors by rotation.

Corporations also have the option to set up their business operations as a small company. A small company is a company, other than a public company, which has a paid-up share capital of not more than INR 10,00,00,000 and the turnover of which, as per its profit and loss account for the immediately preceding financial year, does not exceed INR 100,00,00,000.

In addition to the private and public companies, an LLP, which is a hybrid corporate business structure falling between a partnership firm and a corporate body, can be set up in accordance with the provisions of the LLP Act, 2008 ("**LLP Act**"). It provides the benefits of limited liability of a company but allows its members the flexibility of organizing their internal management on the basis of a mutually-arrived agreement, as is the case in a partnership firm. Following are certain requirements prescribed for setting up an LLP in India: (i) requirement to have minimum 2 (two) designated partners, which could be either individuals or corporate bodies; and (ii) out of the prescribed partners, at least 1 (one) partner should be a person resident in India.

Unincorporated Entities: Foreign entities not opting to be incorporated in India are permitted to conduct their business operations through any of the following forms: (i) Branch Office ("**BO**"); (ii) Liaison Office ("**LO**"); and (iii) Project Office ("**PO**").

The Foreign Exchange Management (Establishment in India a branch office or a liaison office or a project office or any other place of business) Regulations, 2016 as amended from time to time and such other circulars issued by Reserve Bank of India ("**RBI**"), including the Master Direction on Establishment of BO/LO/PO or any other place of business in India by Foreign Entities, regulate the establishment of BO/LO/PO in India and the nature of activities permitted to be undertaken.

B. Foreign Investment

3. Are there any restrictions on foreign investors incorporating or acquiring the shares of a company in your jurisdiction?

The Indian economy offers open and equal market opportunities to foreign investors. An investor can invest through two modes: Government route and automatic route, subject to the thresholds set by the Consolidated FDI Policy. Under the Government route, an investor is required to take the approval from relevant government bodies, whereas the automatic route, investment is allowed to certain limits or up to 100%. However, for certain crucial sectors/activities, the Government of India has restricted foreign investment. These sectors/activities include (i) gambling and betting, including casinos, (ii) lottery business including government, private lottery and online lotteries, (iii) business of chit funds (except for investments made by Non-resident Indians ("**NRIs**") and Overseas Citizens of India ("**OCIs**") on a non-repatriation basis), (iv) real estate business or construction of farm houses, (v) trading in transferable development rights, (vi) manufacturing of cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes, (vii) activities/sectors not opened to private sector including atomic energy and railway operations (other than permitted activities), (viii) Nidhi company and (ix) foreign technology collaboration in any form including licensing for franchise, trademark, brand name, management contract is also prohibited for lottery business and gambling and betting activities.

Further to safeguard the Indian industries, the Department for Promotion of Industry and Internal Trade issued Press Note 3

(2020 Series) clarifying that an entity of a country, which shares land border with India or where the beneficial owner of an investment into India is situated in or is a citizen of any such country, can invest only after it obtains government approval.

4. Are there any foreign exchange restrictions or conditions applicable to companies such as restrictions on foreign currency shareholder loans?

The Foreign Exchange Management (Borrowing and Lending) Regulations, 2018 governs the cross-border lending and borrowing by Indian entities. In recent times, we have seen a rise in external commercial borrowings ("**ECB**"), being borrowed by an eligible resident entity from outside India. The loan can be in foreign currency or in Indian Rupees as well. Pursuant to the ECB framework, foreign shareholders are permitted to provide loans in the form of ECBs under the automatic route. The ECB liability-equity ratio for ECBs raised under the automatic route cannot exceed 7:1. However, this ratio will not be applicable if the outstanding amount of all ECBs, including the proposed one, is up to USD 5 million or its equivalent. Such ECBs may be provided in foreign currency or in Indian Rupees. The 'recognized lenders' must necessarily be residents of Financial Action Task Force (FATF) or International Organisation of Securities Commissions (IOSCO) compliant countries. Foreign equity holders will have to meet this criterion to be ECB lenders.

ECBs need to be routed via an Authorised Dealer-Category I Bank ("**AD Bank**") and must meet other prescribed aspects of the ECB framework, particularly the minimum average maturity periods, all-in-cost provisions and filing and reporting requirements with the AD Bank. The minimum average maturity of an ECB would vary depending on the purpose of the ECB. ECBs must have a minimum average maturity of 3 (three) years. However, for certain categories of ECBs, different minimum average maturity periods are prescribed which range from 1 (one) to 10 (ten) years.

Further, RBI on January 6, 2026, notified the Foreign Exchange Management (Guarantees) Regulations, 2026, which supersedes the Foreign Exchange Management (Guarantees) Regulations, 2000 and introduces a principle-based approach to cross-border guarantees. Provisions governing credit enhancement for domestic debt were deleted to simplify the regime. Under the new regulations parties must report guarantee issuance, modification, or invocation on a quarterly basis within 15 (fifteen) days of the quarter's end. Quarterly reporting on guarantees for trade credit was discontinued effective March 2026 to reduce compliance burdens.

In 2025, RBI issued draft ECB Regulations proposing, inter alia, to raise the borrowing cap to up to USD 1 billion or total outstanding borrowing (external and internal) up to 300% of the borrower's net worth. As these proposals are yet to be finalised, their eventual scope and implementation remain subject to regulatory confirmation.

5. Are there any specific considerations for employment of foreign employees in companies incorporated in your jurisdiction?

Indian entities are allowed to avail the services of foreign nationals. Short-term assignments with foreign nationals can be undertaken without prior approval of the RBI, subject to certain conditions, whereas for long-term engagements, prior RBI approval is required.

A foreign national who is:

(a) on a deputation in India is allowed to open, hold and maintain a foreign currency account with a bank outside India and may receive the entire salary payable to him in India by credit to such account abroad provided that the

income tax chargeable should be paid on the entire salary in India.

(b) employed by an Indian company in India is allowed to open, hold and maintain a foreign currency account with a bank outside India and remit the whole salary received in India in Indian Rupees subject to the payment of income tax in India.

An employment visa is granted to foreigners desiring to come to India for the purpose of employment subject to the fulfilment of certain conditions, including:

(a) The applicant must be a highly skilled and/or qualified professional, who is being engaged or appointed by a company/organisation/industry/ undertaking in India on a contract or employment basis.

(b) The foreign national being sponsored for an employment visa in any sector should draw a minimum salary of "**INR**" 1,625,000 per annum. However, this condition of annual floor limit is exempt for certain classes of jobs.

C. Corporate Governance

6. What are the standard management structures (e.g., general assembly, board of directors, etc.) in a corporate entity governed in your jurisdiction and the key liability issues relating to these (e.g., liability of the board members and managers)?

The Board represents the shareholders and is obligated to protect the interest of all stakeholders. It is the key body monitoring the operation and management of a company with certain matters reserved for the shareholders. In India, the corporate governance legislations prescribe a one-tier Board structure that is collectively responsible for the affairs of the company. Generally, the authority is delegated to officers to manage the business on a day-to-day basis, under the overall supervision of the Board, with material matters requiring Board approval. The Board is supposed to exercise strategic oversight over business operations. Simultaneously the Board must ensure compliance with the legal framework, financial accounting and reporting systems and timely regulatory and general disclosures.

Every year, companies are required to hold a minimum of 4 (four) Board meetings in such a manner that not more than 120 (one hundred twenty) days must intervene between 2 (two) consecutive meetings and each year hold at least 1 (one) shareholders' meeting (*Annual General Meeting*).

The composition of the Board depends upon the nature of the company. A private limited company is required to have a minimum of 2 (two) directors whereas a public limited company can have a minimum of 3 (three) directors. A company can appoint a maximum of 15 (fifteen) directors, which can be extended by passing a special resolution. There is no restriction on appointing foreign nationals as directors. However, every company is required to have at all times at least 1 (one) resident director, who has stayed in India for a total period of minimum 182 (one hundred and eighty-two) days during the financial year. To maintain transparency and fair decision making, the Companies Act also provides for the appointment of independent directors to the Board. Every unlisted public company with a paid-up capital of INR 10,00,00,000 or having a turnover of INR 100,00,00,000 or having, in aggregate, outstanding loans and deposits exceeding INR 50,00,00,000 are required to appoint at least 2 (two) independent directors. Further, under the provisions of the Companies Act, certain classes of companies are required to have women directors on their Board. Companies are required to comply with the Secretarial Standards issued by the Institute of Company Secretaries of India, which provide for certain compliances to be undertaken by a company in relation to the meetings of its Board and the shareholders.

7. What are the audit requirements in corporate entities?

Recently, there has been some activism among corporate entities for statutory, financial, and secretarial audits as the Companies Act mandates that every company is required to appoint an individual or an audit firm as an auditor, to hold office for 5 (five) years. The process of audit checks a company's finances and analyses the operational efficiency. It boosts the stakeholders' confidence and results in statutory hygiene. The following companies are mandatorily required to have an audit committee consisting of a minimum of 3 (three) directors with independent directors forming a majority: (i) every listed company; (ii) all public companies having paid up capital of INR 10,00,00,000 or more; (iii) all public companies having turnover of INR 100,00,00,000 or more; and (iv) all public companies having in aggregate outstanding loans or warrants or debentures or deposits exceeding INR 50,00,00,000 or more.

In addition to the above, the following classes of companies are required to undertake secretarial audits: (i) listed entities; and (ii) public companies with, paid-up capital of INR 50,00,00,000 or more; or a turnover of INR 250,00,00,000 or more; or outstanding loans or borrowings from banks or public financial institutions of INR 100,00,00,000 or more.

D. Shareholder's rights

8. What are the privileges that can be granted to shareholders? In particular, is it possible to grant voting privileges to shareholders for appointment of board members?

Shareholders have a say in the constitution of the Board as the appointment of directors requires shareholders' approval in a general meeting , subject to the Companies Act and Articles of Association ("AoA"). A retiring director is also eligible for reappointment. In the case of a public company, if 2 (two) or more directors are to be appointed or elected by a single resolution, a motion to this effect must first be passed unanimously by all shareholders without a vote being cast against it. Alternatively, each director should be voted individually and not through a single resolution. The **AoA** may authorize the appointment of not less than 2/3rd directors of the Board in accordance with the principle of proportional representation.

Further, the appointment of independent directors is approved at a shareholders' meeting and is eligible for reappointment on passing of a special resolution by the shareholders and disclosure of the reappointment in the Board's report. The voting privileges of a shareholder depend on the kind of shares held. The shares issued by a company fall under two (2) categories: (i) equity shares; and (ii) preference shares.

Equity shareholders have voting rights proportionate to their holdings (one share = one vote). They can vote on matters such as appointment/removal of directors, approval of financials, dividends, and corporate resolutions. Further, as per Section 47 of the Companies Act, preference shareholders, in respect of such capital, have a right to vote only on resolutions placed before the company which directly affect the rights attached to their preference shares and, any resolution for the winding up of the company or for the repayment or reduction of its share capital and their voting right on a poll will be in proportion to his share in the paid-up preference share capital of the company. Further, where the dividend in respect of a class of preference shares has not been paid for a period of 2 (two) years or more, such class of preference shareholders will have a right to vote on all the resolutions placed before the company.

9. Are there any specific statutory rights available to minority shareholders available in your jurisdiction?

The Companies Act provides companies with an option to adopt a proportional representation mechanism for director appointments, so as to enable the representation of minority shareholders on the Board. Indian law also permits minority shareholders to file claims of oppression and mismanagement against the company or the member/members. The key protections for minority shareholders can be broadly classified as below:

(a) protection against reconstruction and amalgamation (*squeeze out provisions*);

(b) protection against oppression and mismanagement;

(c) class action suit;

(d) other statutory rights under the Companies Act to minority shareholders**;**

(e) contractual rights under shareholder agreements; and

(f) judicial protection to minority shareholders.

10. Is it possible to impose restrictions on share transfers under the corporate documents (e.g., articles of association or its equivalent in your jurisdiction) of a company incorporated in your jurisdiction?

In terms of the provisions of the Companies Act, a private company may restrict the transfer of its shares through its AoA. It protects the core of a private company, thus, any restriction on transfer of shares as agreed under the shareholders agreement and duly incorporated in its AoA are binding and can be enforced against the shareholders of a private company. However, transferability of the shares is not restricted in a public company, and the company can invite the public for subscription of shares and debentures.

11. Are there any specific concerns or other considerations regarding the composition, technical bankruptcy and other insolvency cases in your jurisdiction?

There is no separate test for technical bankruptcy under the current legal and regulatory framework and a formal Corporate Insolvency Resolution process ("**CIRP**") of a corporate debtor prescribed under the insolvency law in India may be initiated based on the corporate debtor's inability to pay its debt. However, creditors have certain frameworks for restructuring defaulted loans of borrowers instead of resolving the borrower through a CIRP. We have outlined below a summary of the frameworks and the considerations for composition and re-organisation and insolvency.

Composition and Reorganisation:

A company that has defaulted on payments to banks and certain other categories of non-bank lenders can be reorganized/restructured under the Prudential Framework for Resolution of Stressed Assets Directions dated 7 June 2019 by the RBI (the "**Stressed Assets Framework**"), which prescribes the process that the lenders may follow after a default which includes formulating and implementing a resolution plan for resolution of stressed loans and giving incentives and disincentives by providing reduced provisioning for regulated lenders upon restructuring of the loan or additional provisioning based on the delay period. The process involves signing of an inter-creditor agreement and then any decision on the resolution to be agreed by lenders representing 75% by value of total outstanding credit facilities (fund-based and non-fund-based) and 60% of lenders by number, which shall be binding on the dissenting minority. Dissenting lenders are required to be paid a minimum

liquidation value i.e., the realizable value of the assets of the debtor if such borrower were to be liquidated. If the restructuring is not successful under the Stressed Assets Framework, the lenders may proceed with a formal CIRP under the IBC.

Separately the Companies Act, also provides for a mechanism of a scheme of compromise or arrangement including between a company and its creditors or a class of creditors. This requires the consent of three-quarters of the creditors in value and the majority being present and voting and is court supervised i.e., requires the sanction of the relevant National Company Law Tribunal ("**NCLT**"). This is not a popularly used route due to protracted timelines due to court supervision and debtor control on the process.

Additionally, out of court or informal work out or restructuring or settlement of debt can also be separately contractually agreed between the parties outside the abovementioned statutory and regulatory frameworks.

Formal Insolvency Resolution and Liquidation Proceedings:

The Insolvency and Bankruptcy Code, 2016 ("**IBC**") provides a comprehensive insolvency framework in India, which for a corporate entity contemplates a CIRP and in case of failure of CIRP, liquidation of the entity. Under the IBC, certain types of creditors - operational creditors or financial creditors, are permitted to file an application for CIRP against a company ("**Corporate Debtor**") which has defaulted in making a payment of INR 10,000,000 or more.

Once the application is admitted, the NCLT by order declares a moratorium prohibiting initiation of any proceeding against the Corporate Debtor and transfer/ disposal of and creation of encumbrance over any asset or any foreclosure, recovery or enforcement of any security interest on the assets of the Corporate Debtor. NCLT also appoints an interim insolvency resolution professional ("**IRP**"), who takes over the management of the Corporate Debtor and takes all actions on behalf of the Corporate Debtor. The IRP also forms a committee of creditors ("**COC**"), comprising only of financial creditors. The IRP may be confirmed as the resolution professional ("**RP**") by the COC or the COC may appoint another person or entity as a RP. After checking criteria requirements, the RP invites prospective applicants to submit plan or plans for the insolvency resolution of the Corporate Debtor as a going concern and then presents all resolution plans at the meetings of the COC. It is the duty of the RP to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.

Decisions are taken by the COC by 51%, 66% or 90% majority of financial creditors depending on the decision taken. The COC by a vote of 66% or more of the total financial debt may approve a resolution plan submitted by a resolution applicant. Therefore, for creditors who constitute less than 66% of the financial debt, the approval of other financial creditors will be required to accept a resolution plan. Operational creditors have to be paid in priority to the financial creditors of the Corporate Debtor as part of the resolution plan.

If the resolution plan is not viable/ sustainable or if it is not approved by the COC or the NCLT, the COC can choose to liquidate the Corporate Debtor. The waterfall mechanism setting out the priority of various classes of creditors is set out under the IBC which is required to be adhered to for distribution of liquidation proceeds. A secured creditor will have an option to realise its security and receive proceeds from the sale of the secured assets as a priority. In case of any shortfall

in recovery, the secured creditors will rank junior to the unsecured creditors to the extent of the shortfall.

The CIRP is required to be completed within a period of 180 (one hundred eighty) days from the date of admission of application to initiate CIRP, which may be extended if approved by the NCLT by a period of 90 (ninety) days. The CIRP (except for the implementation of the resolution plan) must be completed within a period of 330 (three hundred thirty) days from the commencement date.

E. Acquisition

12. Which methods are commonly used to acquire a company, e.g., share transfer, asset transfer, etc.?

Subject to the objective and purpose of acquisition, a transaction can be structured in different ways such as share purchase, asset purchase, tribunal-based amalgamation/merger and slump sale. Share purchase is a type of acquisition in which the buyer takes over the target entity by purchasing all the shares or majority shares of a target entity. Interestingly, the entire liability of the seller is taken over by the buyer in a share transfer.

A slump sale is a term commonly used to denote the transfer of business as a going concern (assets and liabilities are transferred). Another way of looking at it would be the sale of an undertaking or a business for a lump sum price. Notably, a 'slump sale' is defined under the Income Tax Act, 1961, as a sale of any one or more undertakings for a lump sum consideration, without values being assigned to the individual assets and liabilities of the undertaking being transferred.

On the other hand, an asset sale is an itemised sale involving transfer by way of sale of the constituent assets of a business, division or unit of an undertaking. The sale price is ascertained for each asset and there is no transfer of liabilities of the business.

A tribunal-based merger/amalgamation is carried out through a scheme of arrangement under the Companies Act. This method of acquisition requires the approval of the shareholders and creditors (as applicable) and sanction by the NCLT and the Regional Director ("**RD**") as applicable. Upon sanction by the NCLT/ RD, the assets and liabilities of the transferor company vest in the transferee company in accordance with the terms of the approved scheme. The prerequisite for this acquisition method requires that the AoA of both the transferor company and the transferee company must permit such a merger.

The method of acquisition really depends on what the buyer is actually seeking to gain from acquiring the target as that will be a large influencer to decide the method of transaction.

13. What are the advantages and disadvantages of a share purchase as opposed to other methods?

As discussed in the response above, the mode of acquiring a company depends on several factors including the transactional requirements and business understanding among the parties. Often, the share purchase option is opted when the parties don't look forward to entering fresh contracts, licenses and are comfortable with the losses, liabilities and other tax credits to be carried forward. Share purchase can be time efficient, subject to regulatory or third-party approvals, if any. Also, it provides availability of double tax treatment benefits. Similarly, one of the major advantages of asset purchase and slump sale transactions over a share purchase is that it offers buyer an opportunity to pick and choose the assets and liabilities which are to be acquired. In an asset purchase, the buyer may also choose not to take over any

India Thresholds				
Alternative	**Entity**	**Assets**		**Turnover**
1.	Acquirer and target, together	INR 2500 crores (USD 288 million)	Or	INR 7500 crores (USD 864 million)
2.	Acquirer's group and target, together	INR 10000 crores (USD 1152 million)	Or	INR 30000 crores (USD 3456 million)
World-Wide Thresholds				
Alternative	**Entity**	**Assets**		**Turnover**
3.	Acquirer and target, together	USD 1250 million (USD 1.25 billion) (INR 10847 crores)	Or	USD 3750 million (USD 3.75 billion) (INR 21648 crores)
	Of which in India	INR 1250 crores (USD 144 million)		INR 3750 crores (USD 432 million)
4.	Acquirer's group and target, together	USD 5000 million (USD 5 billion) (INR 28864 crores)	Or	USD 15000 million (USD 15 billion) (INR 86592 crores)
	Of which in India	INR 1250 crores (USD 144 million)		INR 3750 crores (USD 432 million)

liabilities but purchase only the handpicked assets. Acquirers enjoy a step-up in tax basis for the purchased assets, leading to enhanced depreciation and amortization deductions under the Indian Income Tax laws. From a seller's perspective, offloading underperforming divisions becomes possible while retaining unwanted obligations, whereas the slump sale offers comfort to the purchaser to acquire any arm or vertical of the company as per the business and transactional objectives.

14. What are the approvals and consents typically required (e.g., corporate, regulatory, sector based and third-party approvals) for private acquisitions in your jurisdiction?

There are several factors which determine the requirement for obtaining approvals and consents/ licenses, such as the sector in which the company operates, the nature of the acquisition, nature of company (whether listed or unlisted) and resident status of the acquirer. The Companies Act and rules thereunder provide for general framework for issuance and transfer of shares. The basic and primary corporate approvals that are required for the completion of the transaction includes board and shareholder level approval, as applicable; depending on the nature of the transaction. Such transactions require sector specific compliances from the following regulators:

(a) RBI in case of banking and NBFC companies;

(b) Ministry of Defence in case of defence sector;

(c) Department of Telecommunication for telecom companies;

(d) Insurance Regulatory Development Authority for insurance companies;

(e) The Securities and Exchange Board of India ("**SEBI**") for listed entities, mutual and venture capital funds; and

(f) Ministry of Civil Aviation for aviation. The CCI requires mandatory prior approval for mergers and acquisitions if the assets and turnover of the parties to the combination exceed the prescribed thresholds, as detailed below. Further: (i) a distressed acquisition under the IBC requires the approval of the resolution plan by the NCLT and; (ii) a court-based merger also requires the approval of the relevant scheme by the NCLT/ RD.

15. What are the regulatory competition law requirements applicable to private acquisitions in your jurisdiction?

The acquisition of shares/voting rights/ assets/control of an enterprise requires prior clearance from the CCI if it exceeds the assets or turnover threshold prescribed in the Competition Act. The Competition Act prohibits:

(a) Anti-Competitive Agreements: it includes contracts (horizontal and vertical) for production, supply, distribution, storage, acquisition or control of goods, or provision of services, which cause or are likely to cause an appreciable adverse effect on competition.

(b) Abuse of dominant position: abuse of dominance by an enterprise or a group. Establishing abuse of its dominant position according to the scheme of the Competition Act involves a three-stage process: (i) determination of the relevant market which is determined on the basis of relevant product and geographical market; (ii) determination of dominance in that relevant market; and (iii) determination of an abuse committed by the dominant enterprise in the relevant market.

(c) Combination: If any of the below *(assets or turnover threshold)* is exceeded, prior approval of the CCI is required.

16. Are there any specific rules applicable for acquisition of public companies in your jurisdiction?

In India, mergers and acquisitions of entities are the subject matter of the Companies Act. The NCLT approves amalgamations, mergers, and de-mergers for listed and unlisted companies. The provisions of the Companies Act and the Foreign Exchange Management (Cross Border Merger) Regulations, 2018, permit cross-border mergers in India. Thus mergers, amalgamations of foreign companies with Indian companies and Indian companies with foreign companies are permissible. Prior RBI approval is required when a foreign company wishes to merge with an Indian company.

SEBI through the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ("**Takeover Code**") governs any direct or indirect acquisition of shares, voting rights or control of public companies listed on recognized stock exchanges in India. It is the obligation of the acquirer to make an open offer under the Takeover Code in case the acquisition exceeds the thresholds specified under the Takeover Code, and the obligation of the promoters and shareholders to make disclosures related to the shareholding beyond certain thresholds.

The SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015 ("**LODR Regulations**") prescribe the regulatory approval, shareholder voting, disclosure and other compliance requirements in relation to the scheme of arrangement

involving publicly listed companies. In addition, LODR Regulations, together with the Takeover Code and the SEBI (Prohibition of Insider Trading) Regulations, 2015, contain certain disclosure requirements for business combinations involving publicly listed companies. Publicly listed companies are also the subject matter of the Competition Act and subordinate legislations, which set out the merger control regime in India. Further, many sectors are subject to a sector-specific regulatory regime, with a dedicated regulatory body. In addition, under the FEMA and rules/ regulations made thereunder, although foreign investment is freely permitted in most sectors, in other sectors, it is either prohibited entirely, sector such as atomic energy, lotteries and gambling or permitted up to a certain cap or permitted beyond the specified caps but only with prior approval of the government. In addition, in certain sectors, there are also additional conditions and operating obligations.

17. Is there a requirement to disclose a deal, for instance to regulatory authorities? Is it possible to keep a deal confidential?

The initial negotiation can be kept confidential, however, as the deal is concluded, companies are required to fulfil certain obligations of regulatory filings and corporate compliances. The filings under the FEMA, SEBI rules and Competition Act and intimation to the Registrar of Companies and shareholders under the Companies Act make it difficult to keep a deal confidential. Interestingly, in case of an open offer, the acquirer itself is required to make the public announcement and disclose all vital information in the newspaper advertisement**.**

18. Can sellers be restricted from shopping around during a negotiation process? Is it possible to include break fee or other penalty clauses in acquisition documents to procure deal exclusivity?

Indian laws do not restrict the inclusion of contractual clauses prohibiting the sellers from accepting higher bids from third parties during the diligence or negotiation process. Usually, the purchasers prefer to add no-shop clause in the term sheet/ letter of intent and break fee clause in the share purchase/ subscription agreements. On the other hand, the seller may negotiate hard to bring the monetary value down under the break fee clause or add a reduced timeframe proviso in a no-shop clause while exploring for a better value of its stocks.

19. What are the conditions precedent in a typical acquisition document? Is it common to have conditions to closing such as no material adverse change?

To offer comfort to the parties in a transaction, a conditions precedent clause is inserted in the transactional documents. Generally, it details all the authorizations, permissions, novation and permits which are necessary before closing the deal. It also provides for the execution of certain agreements, settlement and fulfilling of obligations etc. in relation to the transaction.

In India, material adverse clauses are generally made a part of the acquisition documents where there is a time gap between signing and closing of the deal. This contractual mechanism averts the risks for the parties. Material adverse clauses give the buyer the right to walk away from the acquisition before closing if intervening events have a material adverse effect on the target.

20. What are the typical warranties and limitations in acquisition documents? Is it common to obtain warranty insurance?

Traditionally, the warranties in the acquisition documents cover title, capacity and authority, absence of conflicts and other similar matters. In addition to these, there are business warranties as well including those relating to assets, indebtedness, tax related liabilities, litigation etc. In order to safeguard their interests, sellers usually negotiate a cap on their liabilities through a limitation of liability clause in the acquisition documents through de minimis provisions, thresholds limit etc. Recently, warranty insurance has gained significance in share transactions as it offers comfort to the parties involved in the transaction.

21. Is there a requirement to set a minimum pricing for shares of a target company in an acquisition?

The RBI prescribes the pricing guidelines for subscription and sale of shares to non-residents:

(a) Listed entity: the price of shares must not be less than the price at which a preferential allotment can be made. The price per share must be certified by a SEBI registered merchant banker or a chartered banker.

(b) Non listed entity: the price of a share must be at the fair value of the shares as determined by a merchant banker or a chartered accountant by following the internationally accepted pricing methodology.

(c) Rights issue allotment: for listed shares, the shares price must be determined as per the SEBI regulations; and for unlisted shares, the share price must not be less than the price at which shares are issued to resident shareholders.

22. What types of acquisition financing are available for potential buyers in your jurisdiction? Can a company provide financial assistance to a potential buyer of shares in the target company?

A company is not authorised to provide financial assistance to a potential buyer of shares in the target company as the Companies Act prohibits a company from giving any financial assistance, whether directly or indirectly and whether by means of a loan, guarantee or provision of security or otherwise, to any person to purchase or subscribe for any shares in such company or its holding company.

23. What are the formalities and procedures for share transfers and how is a share transfer perfected?

In a share purchase transaction, the seller and purchaser are required to agree to the terms of such transfer, *inter-alia*, the share purchase consideration, the title of shares, conditions precedent to transfer, conditions after transfer, relevant support and assurances, and adequate protection mechanism through representations, warranties and indemnities. In case shares are held in physical form, the executed share transfer deed (duly stamped), is required to be delivered to the company whose shares are being transferred along with the share certificates. Subsequently, the company approves the transfer of shares and records the transfer in its registers. It endorses the transferee details on the share certificate and returns it to the transferee. Where shares are held in dematerialized form, the delivery instruction slips relating to shares, signed by the transferor, is required to be deposited with the depository participant where the transferee is maintaining his/her demat account. Thereafter, shares will be credited in the demat account of the transferee.

24. Are there any incentives (such as tax exemptions) available for acquisitions in your jurisdiction?

The Indian jurisdiction offers a favourable business environment to conduct business, there are a lot of incentive schemes for promoting business, however there is no tax incentive or exemption available in India for acquisitions.

F. Enforceability

25. Can acquisition documents be executed in a foreign language?

It is preferred to execute an agreement in a language which offers comfort to all parties involved as some of the key principles of Indian contract regime are:

(a) *consensus ad idem* i.e., meeting of minds. It means that two or more persons agree on the same thing in the same sense; and

(b) free will and consent, without any undue influence, coercion, misrepresentation etc.

Thus, for a contract to be enforceable in India, there should be meeting of minds and the consensus among the parties must be a result of free will. In line with these principles, it is clear that parties executing acquisition documents in a foreign language need to understand the terms and sign/execute the same so as to not affect its validity.

26. Can acquisition documents be governed by a foreign law?

When a foreign company enters in a contract with an Indian company, it often prefers that the agreement is governed by a foreign law, and enforceable in a foreign court. As such, there is no established practice for international contracts since it is subject to negotiations among the contracting parties. The parties are free to choose the law governing their contract.

However, insertion of this clause does not bar the Indian courts to investigate and identify the stated/unstated objective for inserting a foreign jurisdiction clause. The Indian courts may not enforce a choice of law clause and strike down the same if:

- it is not aligned to Indian public policy;
- it is intended to evade the indispensable Indian legal provisions.

27. Are arbitration clauses legally permissible or generally included in acquisition documents?

The Arbitration and Conciliation Act, 1996 ("**Arbitration Act**") was introduced to offer a quick and cost-effective resolution of domestic and transnational business and commercial disputes. The arbitration clause forms an intrinsic part of commercial contracts as the Alternative Dispute Resolution mechanism has become a sought-after option among parties to resolve disputes. Commercial entities often prefer institutional arbitration in contracts.

The arbitration clause offers comfort to foreign parties as Indian law also recognises the severability of an arbitration clause from the entire contract. It allows the parties to elect the substantive law governing the dispute to be different from the law governing the arbitration agreement. For convenience, the law also allows parties to choose a different venue for the arbitration as compared to the judicial seat.

The Arbitration Act makes it mandatory for pleadings to be completed within a period of 6 (six) months and the award to be passed within 12 (twelve) months from the completion of pleadings, which may be extended for a further period of 6 (six) months. An arbitral award is amenable to challenge before courts in India, however, the court's powers to interfere with arbitral awards are very limited.

Enforcement of a foreign award made by countries to which the New York Convention or the Geneva Convention applies and has a reciprocal arrangement with India is enforceable in India. Such enforceability is subject to compliance with certain conditions prescribed under Part II of the Arbitration Act.

28. Are there any specific formalities for the execution of acquisition documents? Is it possible to sign documents remotely/digitally?

To make any agreement enforceable, it is required to be stamped adequately along with attestation by at least 2 (two) witnesses for each signing party. Further, if a foreign company is authorising a third party to execute documents on its behalf in India, it will have to pass a board resolution approving the same. In case certain documents are required to be filled with registrar of companies in India.

The primary law governing e-signatures and their validity in India is the Information Technology Act, 2000 ("**IT Act**"). The IT Act eliminated the need for signatures to necessarily be made by hand to be considered credible thereby ushering more technologically-advanced era of e-signatures. It drew its inspiration from the Model Law on Electronic Commerce adopted by the United Nations Commission on International Trade Law ("**UNCITRAL**"). Subsequently, UNCITRAL also adopted the Model Law on Electronic Signatures to enable and facilitate the use of e-signatures. The IT Act was amended to substitute the word 'digital signature' with the word 'electronic signature' in several places thereby recognising digital signature as a part of the wider scope of electronic signatures. Pursuant to amending the IT Act, amendments were made to the Indian Evidence Act, 1972 in view of the evidentiary value of electronic records, e-signatures and e-contracts. By these amendments, digitally signing a document is recognised as a legally-compliant manner of signing a document. However, there are certain documents which specifically require a notarial process with a physical signature and are required to be registered in order to be legally enforceable. And hence, a digital signature will not be valid on such agreements.

G. Trends and Projections

29. What are the main current trends in M&A in your jurisdiction?

M&A activities in 2025 recorded robust growth with a rise in deal volume and value, rebounding from 2024. Interestingly, due to geopolitical uncertainty and the ongoing tariff war, the mergers and acquisitions sector is shifting towards more strategic deals. The sectors like technology, banking, service sector, energy, FinTech, and healthcare are showing promising signs. The recent steps by the Government of India have eased doing business in India by reducing several compliances. Indian startups also offer the promising scenario for the foreign investors.

An emerging trend in India's M&A and startup ecosystem is the increasing use of reverse flip structure, where companies shift their overseas holding entity back to India. Traditionally, many Indian startups set up holding companies in jurisdictions like Delaware or Singapore to access global capital, flexible regulations and international investor pools. However, several macro and policy developments have led to a growing preference for Indian shores. These include improved access to domestic capital markets, a more mature regulatory framework, easing Initial Public Offering (IPO) norms and rising investor demand for Indian – domiciled assets.

In the evolving Indian M&A landscape, deferred consideration mechanisms, including earn-outs and instalment-based

payments, have gained significant traction. These structures offer pragmatic solution for bridging valuation gaps, especially in transactions where business performance and post-closing synergies play a critical role, a key development in 2025 has been the clarification issued under the RBI's updated master direction on forign investment, confirming that foreign-owned or controlled Indian companies (FOCC) in the event of transfer of equity instruments between a resident and a non-resident can undertake deferred consideration structures as foreign acquirers within a period not exceeding 18 (eighteen) months from the date of the transfer agreement.

30. Are any significant developments or changes expected in the near future in relation to M&A in your jurisdiction?

India's M&A environment is poised for continued strength in the near term underpinned by robust Gross Domestic Product (GDP) growth, resilient domestic demand, and strong investor confidence, but is also being shaped by several regulatory and compliance shifts that are likely to influence deal dynamics. The recent decriminalisation of minor offences, overhaul of 29 (twenty nine) labour laws into 4 (four) unified labour codes are going to positively impact the deal timelines, valuations, and diligence approaches as buyers reassess workforce classification, severance and social security liabilities, and compliance risks, and these impacts are expected to stabilise as state-level rules roll out fully. The implementation of the Digital Personal Data Protection Act, 2023 and its rules with clear operational obligations adds a data compliance dimension to due diligence and post-transaction integration planning. Corporate law reforms are advancing too, including expanded definition of small companies, fast-track merger routes for unlisted companies and provisions facilitating intra-group consolidations, which together aim to streamline restructuring and reduce dependency on tribunal approvals. At the same time, wider policy initiatives such as production linked incentive schemes, Global Capability Centre (GCC) policies, infrastructure push aimed at boosting job creation and reinforcing governance and risk considerations for investors. These developments, together with evolving tax and competition law landscapes, are expected to make M&A execution more structured, compliance-centric and strategically nuanced in the coming months.