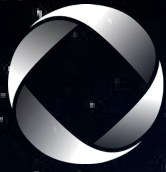

FORESIGHT 2023

Legal and regulatory trends redefining corporate India

Stephan's Quintet by JWST : Image: NASA, ESA, CSA, STScI

Foreword

2022 was a year of resilience, one that saw the world acclimatising to the new normal and moving forward. Even in the face of extraordinary challenges over the past couple of years, the collective commitment to progress, development, and innovation remains unshaken. One of the most remarkable examples here is the collaborative success of scientists across the globe to place the James Webb Space Telescope around 1.5 million kilometers away from the earth, where it is capturing images of some of the earliest galaxies of the universe.

It is this spirit of resilience and commitment to progress that continues to shape the India growth story. Whether it is a bold new policy for foreign investments into the country's promising space sector or ambitious laws to cover dynamic new areas such as metaverse, blockchain and non-fungible tokens (NFTs) – India is taking notable steps to usher in the next era of advancements, scale investment activity and provide a springboard to the economy.

Several sectors are looking ahead to green shoots and clear skies around the corner despite concerns of a slowdown seeping through into 2023. The insurance sector is prepared to see a flurry of activity after relaxation in foreign direct investment (FDI) rules and may see more licenses being granted to insurers. Public mergers and acquisitions (M&A) are looking up with recent regulatory moves supporting large and complex deals. Sustainability is a key focus, and the renewable energy space can see a tremendous boost as a result of several government initiatives especially on green hydrogen. Production linked incentive (PLI) schemes are expected to be rolled out to produce green hydrogen and manufacture electrolyzers, providing a significant opportunity to the industry.

New and revamped regulations in data privacy, information technology (IT), cybersecurity, insolvency & bankruptcy, transfer pricing etc. are also anticipated, and will provide much needed clarity to encourage ease of doing business in India. Active oversight and enforcement action from regulatory watchdogs will continue in 2023 as well. The Securities and Exchange Board of India (SEBI) has already introduced several measures in a bid to enhance regulatory compliance and improve disclosures; while the Competition Commission of India (CCI) may further crack down on companies to minimise anti-competitive practices by imposing heavy penalties.

In "*Foresight 2023*", the third edition in our Foresight series, our experts have compiled a legal and regulatory playbook of some of the most important themes that will play out in 2023. We hope you will find it a useful and engaging read.

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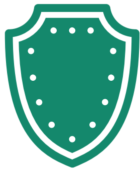
Foreign investment regulations: What to expect

Policies focusing on improving ease of doing business and continued reforms have been a major enabler for drawing foreign investments in the country. With India continuing to remain an attractive destination for global players looking to invest, the Indian government is expected to continue implementing key measures in order to invite global investors to participate in the India growth story.



India received FDI worth USD 3.21 million into the defence sector during April-September 2022

Change in regulatory frameworks

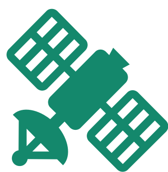
The government is expected to continue with a slew of reforms to ease foreign investment in India. One of the key ones include relaxation on cross-border transactions that permit overseas companies with underlying Indian investors to invest back into India, so long as the overseas structure is within two levels of subsidiaries.

"A fast-track process for an expedited security clearance and approval mechanism to process the pending or prospective FDI proposals under Press Note 3 may be established."

Moin Ladha, Partner, Regulatory

Press Note 3 clarifications

There is an expectation of clarifications being issued with respect to Press Note 3 (2020 Series) to ease issues being faced by institutional investors having minimal exposure to neighbouring countries. These restrictions were placed in 2020 during the initial stages of the pandemic to protect the Indian economy and avoid opportunistic takeovers and acquisitions.



The Indian government is looking to revise FDI policy to remove unreasonable constraints on investing in the space sector

Since April 2020, the Indian government has received 423 proposals from its land bordering countries (of which, it has approved 98 FDI proposals). The government may propose to set up an inter-ministerial panel to consider and expedite approvals in cases where acquirers have minor investments from entities situated in China, Hong Kong, and from other land bordering countries. A fast-track process for an expedited security clearance and approval mechanism to process pending or prospective FDI proposals may also be established. Further, with Indian bankers allowing investments from Taiwan under the automatic route, a formal clarification from the Reserve Bank of India (RBI) may be expected. That being said, in a few cases the regulators are closely examining existing investments made post the issuance of Press Note 3 of 2020 to ascertain compliance.

Sectoral reforms

The government is expected to open up new sectors for FDI, increase existing FDI

limits and relax sectoral conditionalities to diversify investing focus in India, and facilitate ease of doing business. The Department of Space is in the process of drafting a "National Space Policy", under the broad framework of which detailed guidelines on FDI in the space sector will also be made available. Further, the government is considering finalisation of the "National E-commerce Policy" to set up a stable policy, providing a clear-cut distinction between marketplace model and inventory-based models of e-commerce, clarifying enforcement mechanisms, and providing robust guidelines to promote ease in the e-commerce sector. It would also be exciting to see how the foreign investment space develops and if India's G20 presidency in 2023 also helps lay down the platform for introducing reforms in the FDI framework.

Public M&A to maintain its momentum

Public M&A in India has been a busy space and is expected to continue its bull run into the coming year. Robust deal activity coupled with strong regulatory initiatives are likely to support larger and more complex listed company deals. In 2023, we expect to see an increase in control and take private transactions. A brief analysis of certain recent regulatory changes is as follows.

Data from JM Financial states the total value of M&A deals in India stood at USD 152 billion in 2022 compared to USD 107 billion in 2021

Control Deal/ Take Private

The tender offer rules were recently revamped to provide greater flexibility to structure a control deal as a combined tender offer plus take private transaction. The first deal under the revised regulations was recently announced, with an acquirer launching a combined tender offer (conditional) and take private deal. In brief, the deal contemplates a control acquisition and take private of a listed company without the complications of a reverse book build process (typically seen as a key deterrent to the commercial viability of take private deals).

"Recent regulatory initiatives are likely to support larger and more complex listed company deals in 2023."

Abhishek Dadoo, Partner, Public M&A

It also weaves in the concept of a minimum uptake in the tender offer process that allows the acquirer to walk away from the deal completely unless there is a minimum degree of public tendering (ultimately determining the success or failure of the take private). This deal is a useful indicator on the efficacy of SEBI's revised regulations, and also provides an insight into the nature of Public M&A transactions and structures that may be expected in the coming years.

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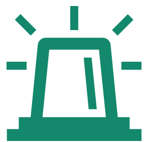
Recent regulatory initiatives are likely to support bigger, more complex M&A deals in 2023

Early Closing/ Bank Guarantee Option

The tender offer rules have been recently amended to permit early closure of the underlying transaction (prior to completion of the tender offer) by providing a bank guarantee covering 100% of the public tender consideration, subject to RBI approval. Previously, such early closures were permitted only by depositing 100% cash in escrow. This is a welcome change and will substantially ease cash-strap for early closings in Public M&A deals.

Corporate governance: A pressing priority

Improving ease of doing business has been one of the top priorities for the Indian government. Several steps have already been taken towards this goal and for 2023, we expect regulators to continue focus - boosting ease of business in India and ensuring better governance. Securities market regulator, SEBI released a consultation paper on 12 November 2022, proposing several key changes in order to enhance corporate governance standards.



12,903 complaints have been received pertaining to digital lending applications and against recovery agents between January 2021-November 2022

- *A quantifiable threshold to the "Materiality Policy":* SEBI is likely to introduce quantifiable minimum thresholds for listed companies to incorporate in their existing "Materiality Policy" (a requirement under law). This will eliminate the current subjective and discretionary policies that are being followed by companies to circumvent making various disclosures to its stakeholders. The Consultation Paper seeks to quantify the thresholds after taking into consideration the turnover, net worth and profit or loss after tax.

"While overall shorter disclosure timelines is an ambitious move, it may be somewhat challenging to implement."

Kalpana Unadkat, Partner, Corporate

- *Overall shorter timelines for disclosures:* SEBI has proposed to reduce the timeline for disclosures of certain events by listed entities to 12 hours from the existing 24 hours. This is an ambitious move and may be somewhat challenging to implement. This will be in addition to the existing disclosure requirement in

relation to decisions taken in board meetings, which must be disclosed within 30 minutes of the end of such meetings.

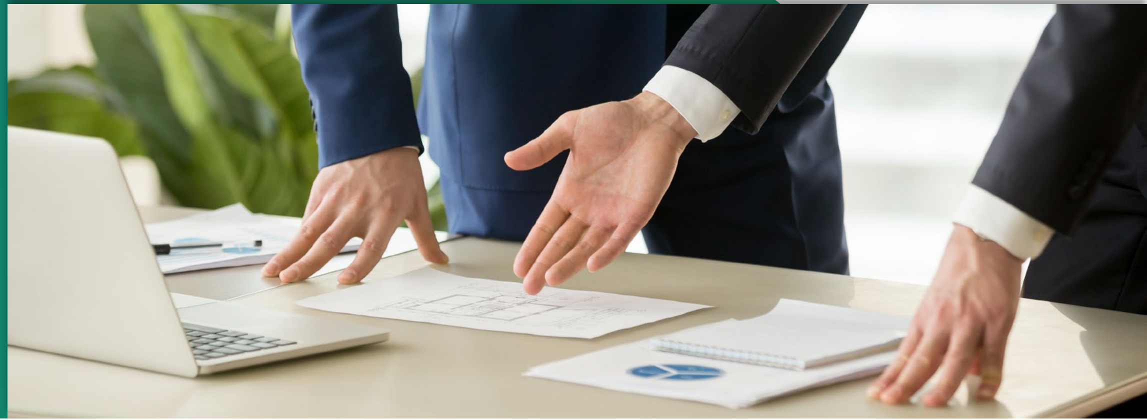
- *Dealing with market rumours and their impact on companies*: The last year witnessed market rumours significantly impacting the share prices of listed entities. To prevent this and as a bench test, SEBI intends to mandate verification of information by the top 250 listed entities (based on market capitalisation).
- *Disclosure of communication from authorities*: SEBI may mandate (currently discretionary) listed entities to disclose any communication they receive from any regulatory, statutory, enforcement, or judicial authority to enhance transparency and availability of information to stakeholders
- *Relaxation in disclosure about loans to wholly-owned subsidiaries*: The Consultation Paper proposes to remove the requirement of disclosure of loans by listed companies to its wholly-owned subsidiaries. This is a welcome move and will ease compliance for listed entities.
- *Disclosures of cybersecurity incidents*: Moving away from current requirement of making disclosures immediately after cyber-attacks - which is a period where companies are vulnerable to further attacks - SEBI is now planning to move to a quarterly requirement of disclosure of cyber-attacks to its stakeholders as part of its Corporate Governance report

Additionally, SEBI notified a dual approval appointment process of independent directors which is similar to the existing frameworks in jurisdictions such as Israel and the UK. This requires approval from shareholders and also the "majority of the minority" shareholders.

The amendment provides that where a special resolution fails to get the requisite 75% of the votes (but gets 50% of total votes cast in favour), and in such voting, the votes cast by the minority shareholders are higher than the votes cast against it, the independent director will be deemed to have been appointed (and can be removed also only in such manner). This dual approval is a positive move, aimed at ensuring that the independent directors can actually function independently while protecting interests of the minority shareholders.

Separately, India also saw an eruption of digital lenders in the last few years. While citizens are now able to avail loans digitally within hours or even minutes, certain risks have begun to surface. The RBI has released the Digital Lender Guidelines to streamline the digital lending ecosystem while insisting on a higher degree of accountability from all stakeholders, especially lenders. The Digital Lender Guidelines require a cooling-off period, specifies role of regulated entities, more disclosures to the borrowers, a comprehensive privacy policy, and adherence to the prescribed data storage norms.

RBI's recent rules also restricted granting of loans into e-wallets maintained by customers



Navigating India's disputes landscape

Reading the pulse of India's evolving disputes framework is a key consideration while investing in the country. Over the last few years, lawmakers and courts have made long strides to codify, streamline, and modernise dispute resolution in India. Set out below are a few noteworthy developments which may affect the way the world transacts in this rapidly developing nation.

India recently renamed the "New Delhi International Arbitration Centre" as the "India International Arbitration Centre", hoping to become a global hub for arbitration

Group of companies

Indian courts have formulated and used the "group of companies" doctrine to extend an arbitration agreement, under certain conditions, to non-signatories belonging to the same corporate group as a signatory. This year, in *Cox and Kings Limited v. SAP India Private Limited & Anr*[1], a three-judge bench of the Supreme Court of India expressed the need to reassess this doctrine and, therefore, has referred the matter to a five-judge bench. In the process, the larger bench will likely determine the scope of consent in arbitration as also the contours of a party "claiming through or under" a party to the arbitration. It is likely that the Supreme Court will decide to answer these fundamental questions sometime in 2023.

"With the Supreme Court's recent directions, the hope is that arbitrator appointments will speed up in India."

Kingshuk Banerjee, Partner, Dispute Resolution

The Supreme Court has reportedly remarked that India must improve its enforcement mechanism if the country aspires to be a hub of international arbitration

Insufficient stamping and arbitration agreements

Over the last decade, India has seen considerable debate over the extent to which insufficient stamp duty affects a party's right to commence arbitration. In 2019, the Supreme Court clarified in *Garware Wallropes*[2] that an arbitration clause contained in a contract can be enforced only if the latter is an agreement enforceable by law. Finding that an insufficiently stamped agreement is not enforceable, the Supreme Court held that an arbitration clause in such agreement cannot be used to seek appointment of an arbitrator. In 2020, this finding was confirmed by a three-judge bench of the Supreme Court in *Vidya Drolia v. Durga Trading Corporation*[3].

The next year, another three-judge bench in *N.N. Global Mercantile (P) Ltd. v. Indo Unique Flame Ltd.*[4] [2021 SCC OnLine SC 13] observed that non-payment of stamp duty should affect the enforceability of an arbitration agreement. Accordingly, the Supreme Court referred its earlier findings in Garware Wallropes and Vidya Drolia to a larger, five-judge bench. The larger bench is anticipated to answer a foundational

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issue of the Indian arbitration law - whether, and to what extent, is an arbitration agreement separable from the contract within which it is contained.

Expediting arbitrator appointments

Existing laws allow parties to approach courts for the appointment of arbitrators. However, an already overburdened Indian judiciary may be relatively slow in deciding these applications. The problem is exacerbated by the lack of a time limit for the appointment of arbitrators. This is a serious bottleneck delaying the adjudicatory process of arbitration in India. In 2022, taking formal note of this issue, the Supreme Court in *Shree Vishnu Constructions* v. *The Engineer in Chief, Military Engineering Service* [5] *[SLP (C) No. 5306/2022]* directed that all applications pending for more than a year must be decided within six months of the Supreme Court's order. Given the Court's directions, arbitrator appointments are expected to speed up in India.

Mediation Bill in the pipeline

In December 2021, the Rajya Sabha was presented with the Mediation Bill 2021, aimed at promoting and facilitating the use of mediation in India. Among other aspects, the Bill seeks to mandate mediation before litigation, protection of confidentiality, and enforceability of mediation outcomes. With the Parliamentary Standing Committee having submitted its report to the Rajya Sabha on 13 July 2022, the Bill is likely to make headway in 2023.

Source:

[1] https://indiankanoon.org/doc/91853145/
[2] https://indiankanoon.org/doc/26596259/
[3] https://indiankanoon.org/doc/121987320/
[4] https://indiankanoon.org/doc/39641512/
[5] https://indiankanoon.org/doc/128306280/

White collar crime: Sharper regulatory focus

52% of Indian companies experienced fraud or economic crime over the past 24 months according to a PwC survey

One of the biggest challenges faced by India in being seen as a global economic powerhouse is the perception of having rampant fraud and corrupt practices. India's rank improved by one place to 85 in Transparency International's Corruption Perception Index 2021.

However, its position worsened to 86 (from 82 in 2021 and 77 in 2020) out of 194 countries in the TRACE Bribery Risk Matrix for 2022. Interestingly, this perception remains despite the Indian government taking a strict stance against corruption and introducing new laws to counter economic offences and amending laws to prosecute and penalise bribe givers, including corporate entities.

With a global slowdown being predicted in 2023 against the backdrop of the ongoing geopolitical instability in Ukraine and the rising cases of COVID-19 across the globe, we expect the following developments in 2023.

Increase in fraud

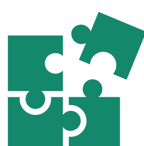
According to the Global Economic Crime and Fraud Survey 2022 conducted by PwC, 52% of Indian companies experienced fraud or economic crime over the past 24 months with a majority of this being triggered by external third parties. The expected economic pressures this year may exacerbate this trend due to limited oversight and due diligence on third parties and vendors.

It is possible that employees end up acting unethically and commit financial crimes at their workplaces fearing potential lay-offs. Individuals are also likely to fall prey to illegal lending schemes.

Greater focus on crypto and digital fraud schemes

While the last few years have already seen a growth in the number of fake investment websites and ponzi schemes, the previous year saw a number of fake crypto websites come up and the number of phishing scams rose as well. This trend is unfortunately expected to continue in 2023. The RBI has already taken a dim view of regulating cryptocurrencies and would prefer to ban their use in general.

The downfall of cryptocurrency exchange, FTX and the resultant volatility it has caused in global crypto markets may only strengthen that resolve and the RBI would hope to garner more appeal for its Central Bank Digital Currency or "Digital Rupee" initiative. The Ministry of Home Affairs has set up the Indian Cyber Crime Coordination Centre to provide a national platform for tackling cybercrime and to improve the operational architecture and coordination amongst various law enforcement agencies.



The Enforcement Directorate (ED) handled 11,420 foreign exchange law violation cases in just the last three years, compared to 13,473 in the previous seven years

Increased enforcement by the ED

The affirmation by the Supreme Court of India in the case of *Vijay Madanlal Choudhary v. Union of India* [1] of the ED's wide ranging powers of investigation (including the ability to attach properties of an accused without the start of formal proceedings) is likely to encourage the ED to be more active. While the conviction rate for past actions initiated by the ED under the Prevention of Money Laundering Act, 2002 and under the Foreign Exchange Management Act, 1999 have been low, a confirmation on the way they are allowed to carry out actions and the determination that provisions of the Code of Criminal Procedure, 1973 are not applicable to them will give them a free rein to pursue tainted funds.

Spotlight on Environmental Social and Governance (ESG)

SEBI has mandated the top 1000 listed companies by market capitalisation in India to include a Business Responsibility and Sustainability Reporting (BRSR) section in their annual reports starting from financial year 2022-2023. With this, it is possible that claims around "greenwashing" are initiated against some of these companies by its investors and members of the public towards the end of 2023. With increased attention being drawn to the United Kingdom's (UK) Modern Slavery Act, 2015, the German Supply Chains Act, 2023 and similar legislations coming up in other countries, it is likely that Indian companies would contractually need to provide the guarantees required under those legislations to their business partners.

"The ED is likely to be more active in its pursuit of "tainted funds" all through 2023."

Vinay Joy, Partner, White Collar Crime

Source:

[1] https://indiankanoon.org/doc/14485072/

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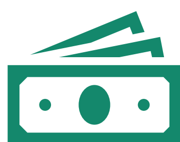
Capital markets: Regulatory fillip to IPOs

India's IPO market raised more than INR 57,000 crore in 2022



A Prime Database report says 54 companies have received SEBI approval to collectively raise INR 84,000 crore in 2023, another 33 companies are awaiting approval

India is taking powerful strides to enable companies launch initial public offerings (IPO) in a bid to boost economic growth. SEBI's recent decision to take a cue from jurisdictions such as the UK, Canada and the United States of America (USA) and move towards pre-filing of offer documents for an IPO is a major step in this direction. A consultation paper floated by SEBI in May 2022 introduced the concept of an IPO through a pre-filing mechanism, allowing for confidential filing of draft offer documents. With this new amendment, issuers now have an option to confidentially file the draft offer document with the regulator before making a public disclosure of its offer document.

This is a positive move, allowing issuers to keep their offer documents private until they are able to firm up their IPO plans, while allowing for limited marketing to institutional investors. Some of the concerns that issuers had with the standard process were managing investor sentiments around timing the issue along with the disclosure of sensitive information at the initial stage of filing a draft offer document which may turn out to be beneficial to the issuer's competitors.

The pre-filing mechanism comes in a series of crucial amendments introduced last year. It is aimed at protecting public investors with the introduction of disclosure requirement for key performance indicators (KPIs) for the period as the restated financial information included in the offer documents along with the disclosure of KPIs shared with investors. Additionally, SEBI has restricted the quantum of shares that can be offloaded by shareholders as part of the IPO by non-profitable companies.

"The pre-filing mechanism for IPOs is a welcome move and will ease the process for companies looking to make their market debut."

Gautham Srinivas, Partner, Capital Markets

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Competition law: Technology space in focus

The antitrust and competition law space saw several developments last year, with tweaks to existing regulations being announced in order to keep up with a rapidly changing business landscape.

CCI's growing confidence in the technology sector

Like 2022, 2023 is likely to witness active enforcement by the CCI in the technology space. Last year, the CCI not only imposed two penalties along with prescriptive behavioral remedies on Google, but also initiated three new investigations against it; Apple and Meta (WhatsApp) are currently under investigation too. The CCI has also imposed a hefty penalty on MakeMyTrip for imposing parity obligations on its hotel partners, among others. The number of complaints received by the CCI in the technology space has been on a steady rise – six out of 10 investigations ordered by the CCI since December 2021 being from the sector.

Six out of 10 investigations ordered by the CCI since December 2021 are in the technology space

Green Channel Route: a boon for financial sponsors

With a boost in foreign investments, the number of M&A filings by financial sponsors and private equity (PE) investors have also seen an incline. The Green Channel Route (GCR) which was introduced in 2019 for notifying transactions where parties do not exhibit business overlaps, deems a transaction approved upon filing. A hit among the financial sponsor community, FY22 saw at least 17 out of 23 GCR filings undertaken by PE funds.

In FY 22, at least 17 out of 23 Green Channel filings were undertaken by PE funds

"The CCI's sharp focus on the tech space in term of enforcement is expected to continue in 2023."

Anisha Chand, Partner, Competition/ Antitrust

Competition Act Amendments: Reforms in the offing

In August 2022, the Competition Amendment Bill was introduced in the Parliament to revamp the existing competition law framework. The Bill has been referred to a Standing Committee and will likely be promulgated by mid-2023.

The highlights of the Bill are as follows.

- *Deal Value Threshold (DVT):* The Bill proposes to introduce a new threshold (in addition to the existing thresholds of asset value and turnover) of deal value exceeding INR 2,000 crores (approximately USD 245 million) for notifying

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for notifying transactions to the CCI. The DVT is sector agnostic in its application

- *Hub and spoke cartels*: Under the existing framework, only competitors can be penalised for cartel conduct. The Bill seeks to hold accountable entities which may not necessarily be competitors but act as a facilitator of the cartel.

- *Commitments and Settlements:* Under the "commitments" regime, the parties undergoing investigation will be allowed to offer "commitments" to the CCI which could bring an end to investigation. Similarly, post investigation, the parties may be allowed to enter into settlement negotiations with the CCI. Parties will not be able to appeal against the CCI's order accepting the commitment or settlement.

Insolvency & bankruptcy: The road ahead

2022 saw a flurry of activity in the stressed assets investing space as well as more headway being made in tackling Indian banking sector's non-performing assets (NPA) problem. Here are the key themes that are expected to play out in 2023.

Distressed investing in 2023

2022 was a busy year for distressed investments with JC Flowers and Advent investments in Yes Bank (one of India's largest private banks), sale of Air India (India's national airline), potential sale of Jaypee's cement assets to Dalmia and several others. With global headwinds coming out of the pandemic, credit slowdown, inflation and supply disruptions, the tide is out and is likely to come back in 2023.

As per RBI, gross NPAs reached a seven-year low of 5% in September 2022 are expected to further improve to 4.9% by September 2023

"There is a buzz in the market about potentially game-changing amendments to the IBC. This will provide great impetus to distressed investing in India."

Ashwin Bishnoi, Partner, Restructuring and Insolvency

Revamping India's Insolvency Laws

2022 saw some crests and troughs in the Insolvency and Bankruptcy Code (IBC). While there are several talks of IBC amendments to be effective, the changes need to include the following at minimum.

An overruling of the Supreme Court's decision in Vidarbha such that only debt and default need to be proved to speed up insolvency opening timelines. If insolvency

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Stakeholders await further changes to tackle the problem of long delays and low realisations

opening is delayed, then there should be an automatic moratorium similar to US Chapter 11. IBC should automatically recognise debt and default determined by an arbitration tribunal. Pre-packs should be operationalised for all insolvencies. Lastly, litigation needs to be reduced while exiting insolvency.

Opportunities in non-performing loans (NPLs)

The efforts over the last year saw record high NPLs coming down in the banking sector. However, the same improvement is yet to be seen in the shadow banking sector. We are likely to see increased capital raises here, whether in the form of equity or credit portfolio sales. PE and credit investors are very comfortable in this area and are expected to be prominent capital providers.

Re-focus on listed debt

The Indian private credit market has grown significantly in recent years. But with IBC resolutions taking time, we foresee that investors will want to protect their non-IBC enforcement options. 2023 can expect more listed debt and asset heavier collaterals.

Equity kickers

India's public markets are robust as the country is seen as a relative bright spot in Asia, with domestic demand remaining strong. We foresee that in convertible securities, loan-to-own plays, equity kickers, up-side sharing, partial debt-to-equity conversions, lending against shares could be used to bridge valuation gaps and make strong returns.

Renewable energy: The Indian outlook

The recently approved National Green Hydrogen Mission worth INR 19,744 crore can make India a global hub in production

India's renewable sector has shown tremendous resilience in the last couple of years to maintain a steady growth, despite challenges posed by the global pandemic. The sector has remarkably bounced back from various setbacks to charter on its course of achieving the target of 500 GW of installed electricity capacity from non-fossil sources by 2030.

As of 31 October 2022, India has installed a total of 172.2 GW capacity from non-fossil fuel-based energy, in which renewable energy constitutes 119.09 GW. The Central Electricity Authority has estimated that the share of renewable energy is likely to increase to 44% from 18% by 2029-30.

The government's proactive measures in introducing new policies to tap in the green shoots after the pandemic is a step in the right direction and would provide an upward trajectory to the sector. Some of the recent steps taken by the government for the burgeoning renewable energy space are as follows.

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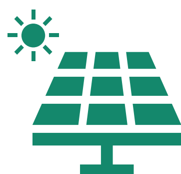

An International Energy Agency (IEA) report said India is on track to almost double its renewable power capacity over 2022-2027

Facilitating investments

The government, by allowing 100% FDI in the renewable sector under the automatic route, has been able to evince the interest of several foreign investors. The setting up of the Project Development Cell and issuing standard bidding guidelines for tariff based competitive bidding for procurement from grid connected solar photovoltaic (PV) and wind projects, have played a significant role in attracting and facilitating investments.

Project developers have also been granted waivers from the payment of Inter-State Transmission System (ISTS) charges for the inter-state sale of solar or wind power from projects commissioned by 30 June 2025. With the solar sector being heavily dependent on the import of solar PV modules, cells and inverters, the government has taken a number of initiatives to give a thrust to the domestic manufacturers in the form of PLI schemes for High Efficiency Solar PV Module, mandating domestic content to avail certain subsidies and through the implementation of "Public Procurement (Preference to Make in India) Order", wherein government has mandated procurement and use of domestically manufactured component used in solar PV projects.

National Green Hydrogen Mission

The Union Cabinet, with the advent of 2023, approved the much-awaited National Green Hydrogen Mission. With its roll out, the government aims to promote production, utilisation and export of green hydrogen and its derivatives in India and make the country a global hub for green hydrogen. Under the National Green Hydrogen Mission, the government has approved an initial outlay of INR 19,744 crore which includes an outlay of INR 17,490 crore for the Strategic Interventions for Green Hydrogen Transition (SIGHT) programme, INR 1,466 crore for pilot projects, INR 400 crore for research & development (R&D) and INR 388 crore for other mission components.

The guidelines for implementation of the Mission will be formulated by the Ministry of New and Renewable Energy and the government will be developing an enabling policy framework to support establishment of a robust green hydrogen ecosystem. The National Green Hydrogen Mission lays a roadmap for 2030, which includes developing at least 5 million metric tonne of green hydrogen per annum with a capacity addition of about 125 GW of associated renewable energy, entailing a total of INR 8 lac crore of total investments. To promote the domestic manufacturing of electrolysers and production of green hydrogen, the Mission would also be providing financial incentives under the SIGHT programme. The government also seeks to support pilot projects in emerging end-use sectors and production pathways pursuant to the Mission.

India's Green Hydrogen Policy

One of the key developments in 2022 was the announcement of the much-awaited Green Hydrogen Policy, in line with the National Green Hydrogen Mission, which aims to facilitate the production of 5 million tonnes of green hydrogen by 2030. Though named as the Green Hydrogen Policy, it also provides a framework for the production of green ammonia. With this, the government has set the wheels in motion towards India's big energy transition. The policy provides a bouquet of incentives and opportunities for developers to enter

"We expect to see more investment flow into the green hydrogen space with the government focusing on providing an impetus."

Dibyanshu Sinha, Partner,
Energy Infrastructure and Resources

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India ranks 4th globally for overall installed renewable energy capacity

opportunities for developers to enter the nascent green hydrogen and ammonia markets. Incentives include waiver of ISTS charges, earmarking lands in renewable energy parks for green hydrogen and ammonia plants, allowing developers to bank renewable energy with distribution companies, allowing setting up of bunkers for export in port areas, among others. Significantly, the Green Energy Rules also allow green hydrogen and ammonia to count towards the fulfilment Renewable Purchase Obligation (RPOs) of the obligated entities.

Introducing the Energy Conservation (Amendment) Bill, 2022

The Energy Conservation (Amendment) Bill, 2022 which was passed by the Parliament in December 2022, is a significant milestone for the creation of a vibrant carbon trade market in India. The Bill mandates certain establishments and industries such as mining, steel, cement, textile, chemicals, petrochemicals and transport to meet their minimum share of energy consumption from non-fossil sources. This will provide a boost in the coming years for India to meet its Nationally Determined Contribution (NDC) targets.

India's renewable sector is one of the most attractive energy markets in the world and the recent large inflow of foreign investment in the sector is a testimony of the same. The economics of the renewable market over the last decade has seen a dynamic change and is likely to see more changes, with the proactive measures of the government towards adopting a clean and sustainable future.

Insurance: The growth story continues

India's insurance industry is poised to become the sixth largest insurance market globally

2022 was an inflection point for India's insurance sector. The Insurance Regulatory and Development Authority of India (IRDAI) appointed a new chairperson with a clear mandate to accelerate the growth of the sector. Staying true to the mandate, the IRDAI announced a flurry of reforms through the year, some of which have been set out below.

Ease of investment

The IRDAI has recently modified the framework for investment in insurance companies. Some of the major changes include.

- "Investor" shareholder limit increased to 25% (from <10%) and "promoter" shareholder limit increased to 25% or more (from >10%)
- Lock-in on shareholders linked to age of the insurer (earlier shareholders holding >10% stake were locked-in for five years)

All eyes are currently on proposed amendments to the Insurance Act and impending IRDAI Regulations, especially the possibility of composite licenses

- PE investors no longer need to set up an Indian Special Purpose Vehicle (SPV) to hold >10% stake
- Clear conditions laid out for PE investors to hold "promoter" stake (>25%)
- Investment in multiple insurers of the same class permitted for stake <10% and investment in two insurers of the same class permitted for stake between 10% - 25%
- No prior approval required for issuing subordinated debt or preference shares with limits for such capital being raised to 50% of the paid-up capital and premium (from 25%)

These changes will attract further investments, both from PE and strategic players, and also enable insurers to raise capital in a timely manner.

Ease of doing business

With the proposal to directly link commission limits to expenses of management, the IRDAI is taking pragmatic steps towards limiting their regulation over insurers and intermediaries. This change will give insurers flexibility in paying commissions as the commission rates will be unbundled and not solely linked to the product.

Additionally, the Insurance Act is proposed to be amended to permit the issuance of composite licenses for multiple classes of insurance business to be undertaken by an insurer – this will also permit existing insurers to venture into other lines of insurance business.

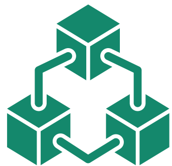
Increase in the tie-up limits for intermediaries: For policyholders to have wider choice and access to insurance through various distribution channels, the maximum number of tie-ups for corporate agents and insurance marketing firms have been increased from three to nine for each class of insurance.

More insurer registrations

2022 saw the first general insurance license being granted since 2017. For life insurers, the last license was granted over a decade ago. With the aim of increasing insurance penetration and permitting specialised and micro-insurers, the IRDAI has proposed to remove the requirement of an insurer having a minimum paid-up share capital of INR 1 billion. There are currently 19 applications pending with the IRDAI and we expect to see a lot more applications and licenses being granted in 2023.

Regulatory tailwinds will propel the insurance sector towards further growth in 2023 and ultimately lead to making the Indian insurance sector globally attractive.

Data privacy: Key legislative changes ahead



India's ambitious new Digital India Bill aims to regulate social media companies, over-the-top (OTT) platforms, metaverse, blockchain etc.

In 2023, ground-breaking developments are anticipated in the IT, data protection and cybersecurity laws space in India. After years of deliberation and stakeholder consultations, it is expected that this year will usher in a new data protection regime in India. With the release of the Digital Personal Data Protection Bill 2022 in November for public comments, there is wide expectation that the Bill will be placed in Parliament in the first half of 2023 for further debate and passage. Unlike its earlier drafts, the Bill appears to be quite lean and focused, and does not apply on the processing of non-personal data.

It covers compliance obligations around cross border data flows, rights of information providers, grievance redressal mechanism and data breach reporting, some of which may be fine-tuned or bolstered further. Significant financial penalties for non-compliance have also been provided.

"The tighter regulatory approach towards cybersecurity is expected to continue in 2023 as well, with greater vigour."

Supratim Chakraborty, Partner, Privacy and Data Protection

Unveiling the Digital India Act

Another landmark development to watch out for is the proposed Digital India Act (DIA), a draft of which is expected to be released for public comments in early 2023. The DIA is expected to replace and update concepts that have been enshrined under the dated Information Technology Act 2000 (IT Act).

Devised at a stage when technology regulation was nascent, the IT Act has not kept pace with recent developments in technology. Therefore, the objective of the DIA appears to be to develop a regime to regulate technology, intermediaries and other aspects such as electronic signatures, to further India's Digital India Mission. It will be interesting to see the approach taken for this legislation, considering the lack of dynamism that has plagued the present IT Act.

The revised data protection law does away with data localisation requirements, allowing data transfers to specified "trusted geographies"

Increased regulatory focus

The extensive focus placed on regulating technology has also led to major developments in the sphere of cybersecurity regulations and are expected to continue in 2023. There has been an aggressive shift in the approach of the Indian Computer Emergency Response Team (CERT-In) towards cybersecurity matters. This includes a direction issued last year that requires cybersecurity incident reporting within six hours. This tighter regulatory approach towards cybersecurity is expected to continue this year as well, with greater vigour.

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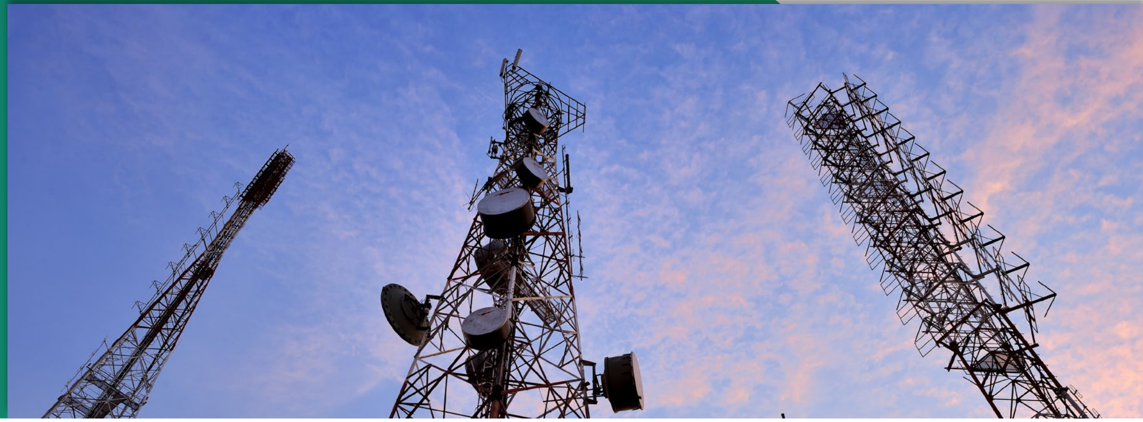

Regulatory changes powering technology, media and telecommunications

As India prepares to introduce brand new laws in order to stay abreast with the rapid advancements in the technology space, we expect several positive changes to trickle in the technology, media and telecommunications sectors. Here are some of the key regulatory and legislative changes that will have a significant impact on these sectors.

A new IT law on the anvil

A new modern-day legislation, superseding the two-decade old Information Technology Act, 2000 (IT Act) is slated to be enacted in 2023. It is expected that this new law will galvanise the regulation aspect pertaining to the effervescent emerging technologies such as blockchain and metaverse, thus providing impetus to technological innovations in India. Further, it is possible that a new regulator for online space may be imminent, revolutionising the concept of intermediaries' monitoring in the Indian jurisdiction.

The Indian government sold spectrum worth INR 1,50,173 crore in the first-ever 5G spectrum auction

Enhanced user-protections measures to be implemented by intermediaries

In the foreseeable future, the recently issued amendment to the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 is expected to amount to an enhanced compliance and cost-burden for intermediaries to ensure accessibility of services to the users, respect user's rights, and implement efficient grievance redressal mechanisms. Grievance Appellate Committees will also be constituted by the government to hear appeals against decisions of grievance officers of intermediaries, with a view to create a secure yet accountable internet regime in India.

"India's new IT law will galvanise the regulation pertaining to the effervescent emerging technologies such as blockchain and metaverse."

Harsh Walia, Partner, Technology Media and Telecom

Overhaul of the decade-old telecom laws

A new telecommunications law is anticipated to supplant the existing laws and is touted to considerably expand the scope of "telecommunication services", to include inter alia the machine-to-machine (M2M) service, e-mail, and other OTT communication service, for which a telecom license is mandated. Additionally, the meaning of "telecommunications infrastructure" is likely to include elements such as submarine cables, conduits, etc., in respect of which a registration has been proposed. Further, the new law can potentially pave the way to revamp the existing licenses and

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2023 will see continued government impetus to tap the benefits of the socio-economic applications of 5G

and a layer-wise distinction (network and services) could also be introduced.

Much-needed clarity likely to emerge on the computation of AGR

The issue of calculation of "Adjusted Gross Revenue" (AGR) (which is currently the basis for computing license fees payable by the telecom service providers) has been a bone of contention for more than two decades. Although some relief was granted to the telecom service providers with the removal of non-telecom revenue from the scope of AGR through an amendment issued by the Department of Telecommunications (DoT), questions continue to soar regarding the ambit of "non-telecom revenue" and how such distinctions may be carved out practically. In this light, it is likely that DoT may issue a formal guidance in 2023 clarifying the scope and definition of AGR and "Applicable Gross Revenue" (ApGR), including the contours of "telecom" and "non-telecom operations".

Expected regulatory oversight over the entities providing content delivery network services, internet exchange providers, and incentives for setting up data centres

A light-touch framework, which may fill gaps relating to establishment of "Content Delivery Networks" (CDNs) in India, is proposed. This will subject CDN providers to DoT's regulatory oversight compliances, including submitting the customer agreements to DoT and ensuring the delivery of content in a non-discriminatory manner. Entities that own CDNs for captive use may also be regulated under the proposed framework.

Similarly, internet exchange providers (IXPs) are expected to be brought under the telecom licensing framework. This includes obligations such as complying with blocking orders issued by the government and providing reports to the DoT, indicating details of the IXP's network.

Additionally, to promote ease of doing business, certain fiscal and non-fiscal incentives, such as a national single window clearance system for the establishment of data centres, may be rolled out. Provision of data centre services may also be deemed as an "essential service" by the government. This may ensure a seamless functioning of the data centres in case of emergency situations, like the pandemic.

New license for the establishment of Satellite Earth Station Gateways

The DoT may soon roll out a separate license framework for Satellite Earth Station Gateways (SESG). With the existing regulatory uncertainty around the establishment of SESG in India, which served as a deterrent to the players to explore this domain in India, it is expected that this new licensing framework will soon open doors for many such entities looking to enter into the satellite-communication services space.

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Enhancing India's intellectual property proposition

In October 2022, the Controller General of Patents, Design and Trade Marks (CGPDTM) in collaboration with the Department for Promotion of Industry and Internal Trade and Capacity Building Commission held the National IP Conference 2022 discussing future challenges in the Indian intellectual property (IP) ecosystem. Some of the key takeaways, themes and developments anticipated in 2023 emerging from the discussions include as follows.

- Creation of a patent and innovation ecosystem as well as an IP awareness and outreach programme at the grassroot level
- Need for an IP Division in all High Courts in India
- Need for a charter of ethics to be followed by IP offices
- IP insurance for start-ups
- Fast tracking the examination processes and simpler practices when approaching Copyright Societies

The India-US Trade Policy Forum (TPF), set up to resolve trade and investment issues held a meeting in early January where innovation and creativity (intellectual property rights) was one of the five focus areas

"There is enhanced focus today on increasing the strength of Indian IP offices to tackle existing backlogs, and to also reduce timeline for registration process."

Shailendra Bhandare, Partner, Intellectual Property

The government is likely to take multiple strides to achieve these goals in 2023. In line with this, the new CGPDTM has taken several steps to increase transparency in processes and consider the inputs from all stakeholders by holding regular meetings. In its collaboration with the Capacity Building Commission, which has been formed to improve government performance and bring in reforms aimed at civil servants, the office of the CGPDTM clarified its intentions to focus on increasing the strength of Indian IP offices in order to reduce the existing backlog.

A report on the patent opposition system was recently submitted to the government; some announcements on streamlining this may be likely

All eyes are on the outcomes of the discussions that were kickstarted at the National IP conference, with stakeholders hoping to see updates on some long overdue and important changes to the IP regime in India.

A number of revisions to the Indian IP Acts (including the Trade Marks Act 1999 and the Copyright Act 1957) have been held up since the pandemic despite comments being sought from the stakeholders in the last few years. However, there has been some movement on this front recently, especially on amending the Trade Marks Act. Some of the changes to it may include expediting the registration process (by reducing the opposition timelines), changes to the provisions relating to the Madrid Protocol,

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and changes to the appeal process or provisions arising from the decisions of the Trade Marks Registry.

It remains to be seen if similar steps will be taken in 2023 with respect to revisions to the Copyright Act.

Refinements expected in employment and labour laws

The key developments in India's legal and regulatory landscape in the space of employment, labour and benefits can be viewed through three lenses – firstly, the impact of a global economic slowdown, secondly, the rise in moonlighting by employees in the post-pandemic world and finally, the implementation of India's 4 labour codes that seek to consolidate and simplify existing labour laws.

Recent data from Indeed showed 43% of employees in the IT space found moonlighting favourable

Impact of the global recession

Mass redundancies (primarily in the IT/ITeS, edu-tech sector) because of the global recession in the last quarter of 2022 are likely to continue through the first quarter of 2023, albeit at a slower pace. Currently, India's labour laws primarily prescribe conditions and procedures for termination of employment of only non-managerial employees who have completed at least 240 days of service with the establishment (eligible workmen). Termination of services of other employees is subject to their employment agreements and the establishment's policies.

"Mass redundancies (primarily in the IT/ITeS, edu-tech sector) are likely to continue through the first quarter of 2023, albeit at a slower pace"

Anshul Prakash, Partner, Employment Labour and Benefits

While formulating a redundancy plan, employers will have to bear in mind that prior government approval would be required while terminating services of eligible workmen engaged at factories, mines or plantations engaging 100 or more eligible workmen (in some states the threshold is 50 or 300) in the preceding 12 months. The impacted eligible workmen at such establishments will be entitled to at least three months' prior notice (or salary in lieu of such notice), and statutory severance compensation.

Media reports suggest opposition to the 4 labour codes from certain unions and states

Prior government approval is not required for effectuating a mass redundancy at establishments not falling within the categories mentioned above— the employer will only have to notify the appropriate authority of such a redundancy exercise. Impacted eligible workmen at such establishments will be entitled to at least one months' notice

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(or salary in lieu of such notice) and statutory severance compensation. Such procedural requirements will only be relevant if the employer terminates the services of eligible workmen, and not if the eligible workmen prefer an amicable exit through resignation. Employers will also have to factor in the costs of other exit payments such as gratuity, leave encashment and any other contractual payments due to the employees.

Moonlighting by employees

The COVID-19 pandemic and the flexibility offered by working from home brought along the challenge of moonlighting (particularly in the IT sector), where employees were pursuing second or multiple jobs (as freelancers, consultants, gig workers, part-time or full-time employees) while being actively employed in another organisation. Existing labour laws do not prohibit moonlighting, and only prescribe restrictions on the number of hours that an employee can work in a day and the number of entities that a person can be "employed" with (an individual can take up secondary engagements in a non-employee capacity). While India Inc. is divided on whether moonlighting should be allowed and the debate continues, employers may restrict moonlighting by contractually providing for exclusivity of employment and non-compete restrictions during their tenure, in the employment agreement or its policies.

Implementation status of the 4 labour codes

One of the biggest structural reforms undertaken in relation to Indian labour laws are the 4 new labour codes, aimed at consolidating and consequently replacing 29 central labour laws. These, however, are yet to be brought into force, barring a few provisions. Frequent news reports and statements are being made by lawmakers on the implementation status of the labour codes; some states and worker unions have also voiced their opposition on certain aspects. However, currently, there is little clarity or visibility on the implementation of these labour codes.

Direct tax: Clarity and simplification

The direct tax space in India has been abuzz with several topics demanding greater understanding and transparency for taxpayers. Some of these include transfer-pricing issues, digital tax provisions and gaps in the interpretation of tax treaties. These concerns are likely to carry through on stakeholders' minds into 2023.

As per government data, India's gross direct tax collections for FY 22-23 have grown 25.90%

Transfer Pricing issues plaguing advertising, marketing and promotional expenses (AMP)

It is quite common in the current competitive environment to see multinational companies (MNC) incurring advertisement expenses to increase their visibility to boost sales, However, tax authorities are viewing this as a tool used by the taxpayer to accrue benefit to its foreign related party in promotion of its brand in India by incurring expenditures which such foreign related party should have incurred.

It is also debated that the Indian entity is providing marketing/brand building services to its foreign related party who is the owner or the brand. A key question here is

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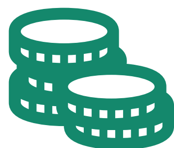

Questions on a possible estate duty have been raised; stakeholders will keep an eye on any developments on this front through 2023

whether such AMP can be subject to tax under Indian transfer pricing regulations even if the Indian entity does not charge any amount to its foreign related party.

This issue has now come up before the Supreme Court of India and is one of the most contentious issues under transfer pricing law.

Conundrum on the rate of tax on dividend distributed by an Indian domestic company to non-resident shareholders

Until 2020, dividends declared by Indian companies was taxed in the same company at the rate of approximately 20% (a "dividend distribution tax" (DDT)). Notably, the shareholder was exempt from tax on such dividend. An issue which arose was whether in relation to dividend declared towards a non-resident shareholder, whether any beneficial treaty rate can be applied in the company's hands for computation of DDT. This issue has been heavily litigated and now a special bench of the Income Tax Appellate Tribunal has been constituted to decide the issue.

While from 2020, the tax regime has been changed to tax the shareholders instead of the company, the outcome of the special bench will have a widespread impact on several MNCs which have taken a contrary view in the past.

Most Favoured Nation (MFN) clause: Interpretational issues

Since the abolishment of DDT (in the hands of the dividend paying company) and reversion of tax in the shareholders' hands, a unique issue has arisen in relation to application of beneficial tax treaty rate for shareholders who are tax residents of countries like Switzerland and Netherlands. This concerns the Most Favoured Nation (MFN) clause contained in the protocol to India-Switzerland and India-Netherlands Tax Treaty. MFN clause allows for a lower tax rate on dividend income of a Switzerland/Netherlands resident (lower than the 10% rate provided in the respective tax treaty), in case India, after the date of signature of the tax treaty, enters into a tax treaty with another Organisation for Economic Co-operation and Development (OECD) member country which contains such lower rate. Interestingly, while India's tax treaties with countries like Lithuania and Columbia were entered prior to signature to India's tax treaty with Switzerland/Netherlands, both Lithuania and Columbia became OECD members after the signature to Switzerland and Netherlands tax treaty. Therefore, an issue arises as to whether the 5% rate cap for tax on dividend income under the India-Lithuania/ Columbia tax treaty can be extended to India-Switzerland/Netherlands tax treaty by virtue of the MFN clause contained therein.

Recently, the Delhi High Court in some writ petitions allowed the application of 5% rate in both India-Netherlands/Switzerland tax treaty. These High Court orders are now challenged before the Hon'ble Supreme Court and are fixed for final hearing. The outcome of the same will have a far-reaching impact on the interpretation of the MFN clause.

Let us now take a look at the key legislative changes that may lie ahead in 2023.

Digital economy and taxation

As a part of the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS), India agreed to the Pillar One and Two Solution to address the tax challenges arising from the digitalisation of the economy. Under Pillar One, market jurisdictions will be accorded the right to receive tax on profits of large MNCs based on the market nexus.

"It is likely that 2023 will see India remove the equalisation levy as well as abolish the buy-back tax, which should appeal to foreign investors"

Sanjay Sanghvi, Partner, Direct Tax

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Notably, implementation of Pillar One requires countries to remove their unilateral digital taxation services measures. In the Indian context, it is expected that the 2% equalisation levy (EL) which applies to "e-commerce supply of goods or services" by non-residents, shall be removed in line with this commitment. One can expect an amendment to this effect in the upcoming 2023 Budget. India has also agreed with USA to provide credit of EL collected from 1 April 2022 against the Amount A tax determined to be receivable by India as per Pillar One in the first year in which Pillar One applies to the concerned foreign entity (with a carry forward mechanism for un-utilised credits).

Addressing the buy-back tax issue

Since 2013, India has a unique taxation regime for buy-back of shares, wherein, instead of the shareholders participating in the buy-back, the company undertaking buy-back is taxed at the rate of approximately 23%. As this is a tax on the company undertaking buy-back, the shareholder's income from the same is exempt from tax. As the shareholder does not pay tax on buy-back, it continues to be subjected to tax in its home country without credit of the buy-back tax paid in India, thereby resulting in double taxation. Until 2020, even dividends were subjected to a similar DDT in the hands of the Indian company declaring dividend. However, in 2020, DDT was abolished and the common method of dividend taxation in the shareholders' hands was reintroduced. The stated purpose for such reversion was to move away from an iniquitous and regressive methodology.

While the dividend tax regime was fixed in 2020, there is a growing need and demand from foreign investors to remove buy-back tax and reintroduce capital gains tax in the hands of the shareholders.

It is likely that 2023 will see India remove the equalisation levy as well as abolish the buy-back tax, which will simply the process further and will surely be a welcome move for all stakeholders.

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GST on cryptocurrency and NFTs

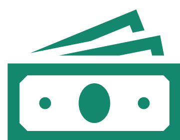
The regulatory regime with respect to cryptocurrencies and NFTs has been uncertain, despite a significant number of transactions done and tremendous interest in India. This ambiguity permeates the realm of Indian tax laws too, especially under GST. While under Indian Income tax laws, a specific regime for "virtual digital assets" was introduced recently, no such clarity has emerged under GST.

Typically, when a new technology or business model emerges, it needs to be evaluated from a tax policy perspective if the existing categories cover such new development. The relevant existing conceptual categories from an Indian GST perspective have been outlined below.

#	Existing conceptual categories under Indian GST laws	Applicability with respect to cryptocurrency	Applicability with respect to NFTs	Impact
1	"Goods"	Yes, intangibles can fall under "goods"		GST at 18% may become applicable on the value of supply or sale (as well as payments through cryptocurrency)
2	"Services"	While supply of cryptocurrencies and NFTs may qualify as supply of "goods", ancillary services of support or facilitation can qualify as "services"		GST at 18% may apply on the service fees
3	"Actionable claims" *(legally enforceable claims to unsecured debts or beneficial interest in a moveable property not in possession)*	Unlikely, since there is no centralised issuing authority or a legally enforceable claim to any debt	In certain use cases for NFTs, when they represent rights to a valuable tangible property, they may qualify as "actionable claims" or "securities"	No GST will be leviable if the NFT in question qualifies as "actionable claims" or "securities"
4	"Securities"			

Even though, technically speaking, cryptocurrencies as well as NFTs could qualify as "goods" under GST and thus attract 18% tax, practically, GST authorities in India are not enforcing such tax demands at this juncture. The emphasis has been to ensure that GST gets paid by exchanges or other stakeholders on the ancillary services of support or facilitation apropos transactions in cryptocurrencies and NFTs.

Digital payments companies are hoping for rationalisation of input tax credit mechanism under GST in 2023



Research by Esya Centre states that over USD 3.8 billion was moved by Indians in trading volume from local to international crypto exchanges after crypto tax rules were announced in February 2022

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However, without definitive guidance from the government, players in the cryptocurrency and NFT space continue to be exposed to uncertainty vis-a-vis the potential demand of back-taxes at 18% GST on the value of supplies or sales (and even payments through cryptocurrency). In order to boost the Web 3.0 ecosystem in India, it is imperative that further clarity gets provided soon.

In December 2022, the fitment committee of the GST Council deferred finalisation of its recommended GST treatment on virtual digital assets. As per news reports, the finance ministers of the states of Haryana and Karnataka will submit a report in early 2023 on the crypto ecosystem and the tax treatment of cryptocurrencies; the GST Council will then deliberate on the issue.

One of the options available with the GST Council is to specifically exempt (retrospectively, from 2017 onwards) transactions of supplies or sales (as well as payments through cryptocurrency) from GST. This will be in line with global precedents, including European Union (EU) VAT and Australian GST laws and will eliminate avoidable GST litigations for the past period.

In light of all the above, we foresee greater clarity emerging under Indian GST in 2023 when it comes to the treatment of cryptocurrency and/or NFT transactions.

"We foresee greater clarity emerging under Indian GST in 2023 when it comes to the treatment of cryptocurrency and/or NFT transactions."

Sudipta Bhattacharjee, Partner, Indirect Tax

Global headwinds to impact foreign trade and policy

According to the Director General of Foreign Trade, Indian merchandise exports are expected to touch USD 450 billion in FY 23 and are likely to maintain similar levels in FY 24

As the headwinds faced by the global economy grow stronger, India seeks to protect itself by staying the course on augmenting the manufacturing sector with respect to renewable energy, semiconductors, electric vehicles, specialty metals, pharmaceuticals, electronics and defence manufacturing. The focus will also be on building resilient trade relationships with Australia, UK, Saudi Arabia and the EU, and increasing domestic tax revenues. We expect the regulatory, industrial and taxation policies to build on these themes through 2023. It would be, however, interesting to observe how the policies accommodate the challenges thrown by an ever-changing macro-economic environment.

Trade developments

The ratification of the preferential trade agreements with the United Arab Emirates (UAE) and Australia, and finalisation of trade agreements with Canada, EU and UK, is expected to significantly bolster exports from labor-intensive sectors such as IT, gems

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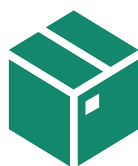
& jewelry, textile, leather, footwear, agriculture & wood, engineering goods, medical, etc. We also expect the regulatory burden with respect to imports from these countries to be simplified.

India is likely to continue with its policy of curbing imports from China and extending enforcement measures to goods being transshipped and routed through other countries, with minimal local value addition.

Further, the domestic industry is expected to continue seeking trade remedial measures, through imposition of anti-dumping, safeguard, countervailing duties. Rate rationalisation will continue to remain the most used tool for the government to balance and safeguard the needs of the domestic industry.



As per Global Trade Research Initiative data, India's merchandise imports are likely to touch USD 725 billion in 2022, higher than USD 573 billion in 2021

Foreign Trade Policy

The Foreign Trade Policy 2015 – 2020 has already been extended by two years, and the updated policy is expected to be announced during the course of the year. The export community is keen to extend the policy for another year, but the government seems hesitant to delay.

Special Economic Zones Act 2005

We expect the old Special Economic Zones Act 2005 to be replaced with the Development of Enterprise and Service Hubs (DESH) Bill, which was announced in Budget 2022. The latter is yet to be introduced in Parliament. The DESH Bill seeks to provide a significantly simplified regime and involve the state government in facilitating exports. However, the central government's think tank, Niti Ayog, has expressed reservations with respect to de-linking the incentives from the obligations of units to meet net foreign exchange earning requirement. It is likely that the Bill would be presented and passed in the Parliament during the Budget or Monsoon Sessions.

GST

India's tax revenues from GST have steadily increased through improved compliance and enforcement. The taxation policy also evolved through 2022 and the GST laws are being calibrated to better fit industries. Further, certain structural reforms were also set in motion and in 2023, it is expected that the GST Appellate Tribunal would be constituted, administrative process for claiming refunds would be simplified and streamlined. Most significantly, the GST Council during its 48th meeting has decided to,

- Allow unregistered suppliers and composition taxpayers to make intra-state supply of goods through e-commerce operators
- Decriminalisation of certain offences (failure to supply information, tampering with evidence, obstruction or prevention of officers from discharging its functions)
- Change in minimum threshold for prosecution and compounding range
- Amendment of definition of "non-taxable online recipient" and "online information and database access or retrieval services (OIDAR)."

It is expected that all pending litigations vis-à-vis refund by unregistered persons, GST applicability on liquidated damages, compensation, contractual or statutory penalty, and residential leases, will also stand exhausted.

"We expect the PLI scheme to be rolled out to green hydrogen and electrolyzer players as well."

Kabir Bogra, Partner, Indirect Tax

The friction between federal and state governments on the issue of compensation cess is expected to ease as the time for collection of GST compensation cess has been extended up to 31 March 2026. The federal government has released the amounts due to the states, as GST compensation, up to June 2022.

For casinos, race-courses and the online gaming industry, 2023 will be a critical year as the government may levy GST on the entire buy-in amount. Though this imposition is likely to undergo immediate judicial scrutiny, the gaming and online betting industry will be posed with heavy financial implications till the litigations conclude. Similar to this sector, the digital currency sector will also be keen to watch how the changes in GST unfold vis-à-vis taxability of digital currencies.

Schemes and policies

- *PLI schemes*: Starting 2019, the government issued several PLI schemes to augment domestic manufacturing in key sectors such as electronics, mobile devices, pharmaceuticals and which has been extended to more sophisticated technology products (semiconductors, advanced chemical cells and batteries) in strategic sectors. Disbursements under individual programmes have started rolling out to manufacturers in September 2022. We expect the PLI scheme to be rolled out to green hydrogen and electrolyzer players also, which would provide a significant opportunity to the industry.

- *Make in India*: With completion of approximately five years since introduction, the purchase preference policy under Make in India is likely to become more stringent, especially in case of exemptions. So far, the trend has been to grant exemption to a wide range of products for an extended period. However, going forward, only tender-specific exemptions will be granted for a maximum period of one year. The nodal Ministries and Departments are also likely to issue a consolidated list of items for which manufacturing facilities are not available in the country and which are being sourced from foreign sources. Therefore, public procurement in India is expected to get operationally more complex to navigate.

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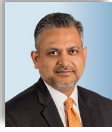

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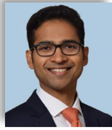

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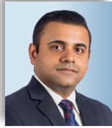

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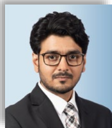

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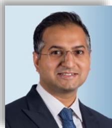

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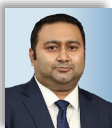

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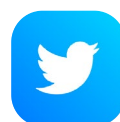

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