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Doing Business in India in 2019: An Update

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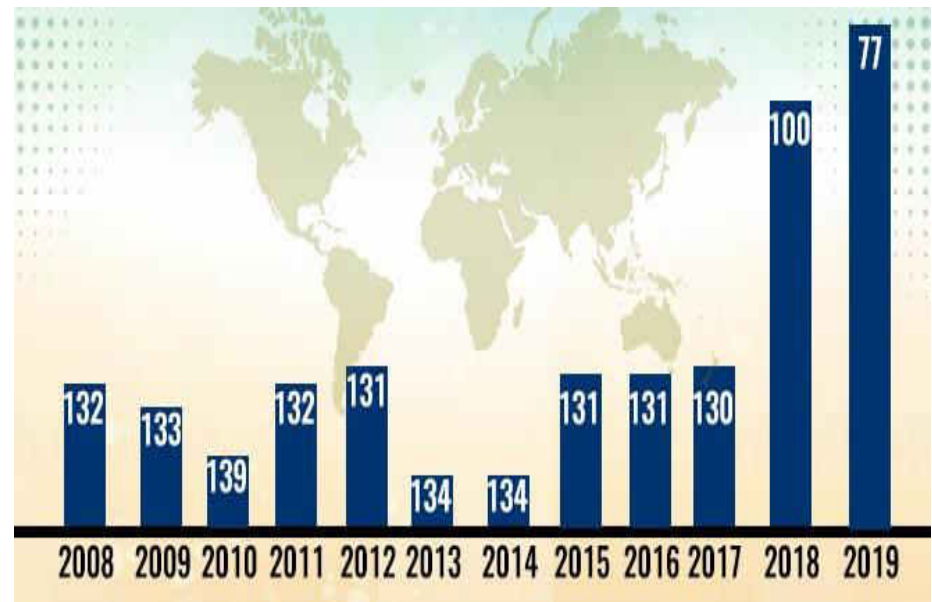
Character, Competence & Commitment

Doing Business in India

Ease of Doing Business in India

- World Bank Report 2019 - India ranked 77th
 - Leaped 23 ranks; one of the top 10 reformers, for 2 years consecutively
 - Rise and shine: GST, IBC, protecting minority investors, getting credit, e-biz portal, start up India

- Top 25 in:
 - Getting credit
 - Protecting minority investors
 - Getting electricity



Measures to Improve Ease Of Doing Business

- Parameters that the Government should work on to move up further in the rankings:
 - Enforcement of contracts and concerns with pendency
 - Registration of property, digitizing land records
 - Improvement in procedures to reduce time taken in starting businesses
- Launch of Prime Minister Modi's Ease of Doing Business Grand Challenge, addressing cross-section of Industry representatives (November 18th, 2019) Inviting innovative ideas from stakeholders to move up the World Bank Report ranks.
- Practical reality of such measures – will the next report show any improvement?

Some Trends and Challenges

- Concentration of FDI in a few states - Maharashtra, New Delhi, Tamil Nadu, Gujarat and Karnataka
- Sectors attracting FDI: Automobile, Drugs & Pharmaceuticals, Services Sector, Metallurgical Industries and Telecommunications
- Special incentives to Japanese Industrial Townships (JIT) proposed by some states - Rajasthan, Maharashtra, Gujarat, Madhya Pradesh, Haryana, Uttar Pradesh
- The 'Shinkansen' Project: Slow implementation and progress
- Regulatory / Entry Challenges faced by investors : Exit by Daiichi Sankyo and NTT Docomo

Trends in FDI

- FDI equity inflow in April - December 2018 worth USD 33.49 bn, April - December 2017 @ USD 35.94 bn*
- Fall of 7% from last year

- Singapore- largest source of FDI during April-December 2018-19, followed by Mauritius, Netherlands, USA, Japan, and UK
- Total FDI inflow in from 2000- December 2018 : 409.27 bn

- Key sectors: chemicals, services, computer software & hardware , trading, telecom
- USD 239 bn in FDI in last 5 years

- Moody's raise India's rating from grade BAA3 to BAA2 (stable to positive)
- AT Kearney FDI Confidence Index - India ranked at 11th position

*source: https://dipp.gov.in/sites/default/files/FDI_FactSheet_23August2018.pdf

What have some of our clients / investors said?

- Changing policy dynamics
 - Central Government's power to open up / restrict investment in sectors
 - Changing policy makes way for uncertainty, e.g. policy on multi-brand retail, e-commerce
- Multiplicity of regulators
 - For new investors, dealing with the framework consisting of RBI, SEBI, IRDA, ROC, etc. can be challenging
- Multiple registration requirements, bureaucratic processes at Central and State levels, e.g., permits to open and operate a factory, hiring and firing workmen, tax registrations and disputes

What have some of our clients / investors said?

- In strategic situations, finding the right local partner can be challenging
- Roadblocks for land acquisition to be addressed; Difficulty in investment in real estate
- Inordinate judicial delay in court / NCLT proceedings
 - Making enforcement of contracts challenging – investors have difficulty in enforcing their contractual rights or look outside India e.g. Singapore
 - IBC cases choking the NCLT system - Company law cases on a back burner
- Work in progress: Political and macroeconomic stability; cutting the red tape

Investments & Exits by Japanese Investors

Japanese Investment in India

- Japan: third largest contributor of FDI in India
 - Contributed USD 29.51 bn during 2000-2018 (7% of total FDI during the period)
 - Japanese investment in India increased exponentially USD 4,706 mn in 2016-2017
- Steady rise of Japanese companies in India @ ~5% per year
 - 1441 Japanese companies registered in India as of October 2018
 - Major investments:
 - Softbank's investments in Oyo and Policy Bazaar worth USD 800 mn and USD 238 mn
 - THK to invest USD 200 mn in manufacturing facility in Andhra Pradesh

Learnings from the Tata Sons-Docomo JV

- JVA signed in March 2009
- FIPB approval received for the investment
- JVA contained a structured ‘put-option’ giving Docomo an exit at a guaranteed floor price equal to 50% of the original investment
- Put option could be exercised by Docomo if certain KPI requirements not met by the JV company
- JV company failed to meet the KPI’s
- Docomo exercised their put option in June 2014
- Tata sought RBI approval for remittance of money at the contractually agreed price
- RBI rejected the permission as the sale price of the shares was significantly lower than FMV

Learnings from the Tata Sons-Docomo JV

- Docomo invoked arbitration in London
- Arbitration award in favour of Docomo
- Tata applied to the RBI for the second time for remittance of money in terms of the arbitral award
- RBI once again declined the application of Tata
- Docomo approached the Delhi High Court for enforcement of the arbitral award
- Tata-Docomo filed consent terms with the Delhi High Court
- Tata remitted money to Docomo basis the order of the Delhi High Court

Lessons Learnt

- Non-interference with arbitral award by judiciary and agreed contractual terms – negotiate contracts better
- FEMA violations \neq violation of public policy
- How will RBI react – RBI approval required for payment of damages
- Disguising assured returns as “downside protection” – legally impermissible.
- Being mindful of the representations and warranties while drafting of the shareholders agreement

Daiichi Sankyo –Ranbaxy Dispute

2008

- Daiichi Sankyo Co. Ltd. acquired a controlling stake in Ranbaxy Laboratories Ltd., from the promoters (the Singh Family)
- USFDA banned various drugs produced by Ranbaxy for violation of manufacturing norms and falsification of test results
- The US Department of Justice also framed charges against them

2012

- Daiichi initiated arbitration against the Singh Family claiming damages for concealing and misrepresenting critical information concerning USFDA and Department of Justice investigations from Daiichi

2013

- Ranbaxy pleaded guilty with the Department of Justice, agreeing to pay USD 500 million in settlement of the civil and criminal charges levelled against it

Daiichi Sankyo –Ranbaxy Dispute

2016

- The arbitral tribunal granted Daiichi damages of USD 525 million (approx. JPY 53 billion)
- Daiichi applied for enforcement of the award in the Delhi High Court. Injunction / security was refused on the assurances of the Singh Family that assets sufficient to pay the award amount would be maintained. The Court also asked for details of all assets to be disclosed on affidavit

2018

- After witnessing a year-long legal battle between Daiichi and Singh brothers, the verdict was reversed in September whereby Daiichi was allowed to enforce a foreign arbitral award
- The Singh Brothers filed an appeal before the Singapore High Court : Appeal rejected by Singapore HC December 2018

Lessons
to learn

- Trust but verify
- Choose a partner wisely
- Be careful in defining the purpose of your business
- Fit for purpose
- Sunk cost fallacy

Significant Legal Changes

Regulatory round up

Companies Act Amendments

- Companies Ordinance, 2019
- Companies (Significant Beneficial Owners) Amendment Rules, 2019
- Managerial Remuneration decontrolled under the Companies Act

Foreign Exchange Regulation

- New E-Commerce Policy Introduced – but highly controversial
- Liberalisation of ECB Framework

Securities Regulation

- Corporate Governance Reform
- ICDR Regulations, 2018; Insider Trading Regulations simplified
- Committee for listing of equity shares of Indian companies on foreign exchanges and vice versa

Regulatory round up

Insolvency Code

- Evolution of the IBC from December 2016 to January 2019: Key Amendments
- NCLT Orders and SC Judgement in Bhushan Power, Swiss Ribbons and Vijay Kumar Jain
- Current Trends

Trends in Merger Control

- Amendments to the Combination Regulations
- IBC cases approved
- Recent Trends: Leniency Regime, Supreme Court Jurisprudence

Dispute Resolution Regulation

- Arbitration and Conciliation (Amendment) Bill, 2018
- Commercial Courts (Amendment) Act, 2018
- Specific Relief (Amendment) Act, 2018

Constitutional Validity of the IBC

Swiss Ribbons Pvt. Ltd. v. Union of India and Ors. (Writ Petition (Civil) No. 99 of 2012, judgement dated 25 January 2019)

- Government's firm resolve to tackle the non-performing assets.
- Displacement of the promoter or the management of a company in default can now be done relatively quickly to protect the company and its assets.
- The Supreme Court has imported fair and equitable treatment for operational creditors as a requirement for the approval of resolution plans.
- The judgment also provides clarity on the role of resolution professionals and balances their roles and responsibilities and considers them as exercising administrative functions and subject to judicial supervision of the NCLT.

Right to Privacy

Current Framework

- The IT Act; Right to Privacy Bill; SPDI Rules

Justice K.S. Puttaswamy (Retd) v. Union of India W.P. (Civil) No. 494 of 2012

- Unanimously upheld the right to privacy as a fundamental right guaranteed under Part III of the Constitution of India.
- Fundamental Right to Privacy must satisfy three requirements, namely: (i) the existence of a valid law creating such restraint; (ii) need, defined in terms of a legitimate state aim, for such restraint; and (iii) that the restraint in question is not disproportionate to the need in question.
- Court recognized need for the state collection of data.
- Need for robust data protection laws in India; draft data protection bill.

Questions?

Who we are

Cyril Amarchand Mangaldas

• India's Largest and Leading Law Firm

- Founded to continue the legacy of the 100-year old **Amarchand & Mangaldas & Suresh A. Shroff & Co.** (“AMSS”), whose **pre-eminence**, **experience** and **reputation** of almost a century has been unparalleled in the Indian legal fraternity.
- Providing **nationwide**, **seamless**, **integrated**, **full-service** offerings.
- **Largest** Indian law firm with over **700** lawyers, including **120** partners.
- Pan-India presence with **offices** in **6 major cities** – Mumbai, New Delhi, Bengaluru, Hyderabad, Chennai and Ahmedabad.
- Leading clients include domestic and foreign commercial enterprises, financial institutions, private equity funds, venture capital funds, start-ups and governmental and regulatory bodies.



Asian Legal Business
Employer of Choice for 2017, 2016 & 2015

Recent Credentials of the Firm

CHAMBERS
AND PARTNERS

**Chambers Asia Pacific
Awards 2018**

**India: National Law
Firm of the Year**



**Most Innovative Firm of the
Year 2018: India
M&A Deal of the Year 2018**

**INDIA BUSINESS
LAW JOURNAL**
— 2017-18 —
**BEST OVERALL
LAW FIRMS**



**IDEX Legal Awards
2017
India Law Firm of
the Year**



**ALB SE Asia Awards
India Deal Firm
of the Year 2016 & 2015**



Recent Credentials of The Firm (contd.)



2016 | The Asian Lawyer Emerging Markets Awards
M&A Deal of the Year for
1. Energy, 2. Pharmaceuticals &
3. Other sectors
Capital Markets Deal of the Year:
Debt



Corporate Law Firm of
the Year 2017
M&A Law Firm of the
Year 2016 & 2015



Emerging Markets M&A
Review **Ranked #1 in India**
for M&A in H1 2016
(by deal value)



Who's Who Legal Awards
2014
Indian Law Firm of the
Year



2016 | **Ranked no. 1** by
deal value in India for
M&A



ALM's The Asian Lawyer -
Asia Legal Awards
M&A Deal of the Year -
South East Asia, 2016 & 2015



2016 | **Ranked no. 1** in
India for Equity IPO
Issuer Advisers by deal
value and deal count

Dedicated Practice Groups

- | | | | |
|--------------------------------------|------------------|----------------|----------------|
| ▪ Corporate | Competition | Intellectual | TMT |
| ▪ Banking and Finance | Employment | Property | Bankruptcy |
| ▪ Capital Markets | Financial | Private Client | Investigations |
| ▪ Infrastructure and Project Finance | Regulatory | Real Estate | |
| ▪ Dispute Resolution | Investment Funds | Tax | |

Specialist industry groups: **Life Sciences, Oil & Gas, Financial Services, Corporate Advisory** and cutting edge regulatory advice

Dedicated International Desks servicing **Japan, Korea, China, USA, UK** and **Europe**.

Key Practice Groups

Corporate

- The Firm's largest practice group and one of the oldest most reputed corporate groups in India, and advises corporations through all stages of the business life cycle
- A pioneer and innovator in the M&A sphere
- External counsel to some of the world's biggest and most prestigious private equity firms
- Handling all legal needs of joint venture partners and collaborators

Dispute Resolution

- Highly experienced dispute resolution practice group – advises on the best dispute resolution strategy that fulfils business goals
- Expertise in litigation as well as alternative dispute methods such as arbitration, conciliation and mediation, and capability to handle complex domestic and international commercial cases
- Extensively advised and represented large domestic and multinational companies, in disputes pertaining to Oil and Gas, Construction Projects, Real Estate, Mining, Power, Shipping, and Engineering projects

Capital Markets

- Widely regarded as the best securities law and capital markets team in the country
- At the forefront of every innovation in the market – be it on the equity, debt or commodities side
- Capital markets offerings, include IPOs, FPOs, rights and preferential issues, ADRs/ GDRs, convertible securities, PIPEs, tender offers, bulk and block deals, Rule 144A/ Reg. S bonds, medium term notes, FCCBs, AIM products, REITs, business trusts and other types of products and listings

Key Practice Groups

Banking & Finance

- India's premier banking and finance practice group
- Advises across the banking and finance spectrum, including on, financing, banking regulation, debt restructuring, bankruptcy and recovery proceedings, security creation and enforcement, structured credit, securitisation, derivatives and consumer banking

Infrastructure and Project Finance

- One of the pioneers in this practice area – involved in nearly all the major infrastructural projects in the ports, telecom, airports, roads, power, oil and gas, natural gas, energy, renewables, and other sectors in India
- Helps clients find innovative financing solutions and also advises them on investments and transactions involving infrastructure assets
- Clientele includes various stakeholders, including sponsors, host governments, and domestic and foreign financial institutions

Mr. Bharat Vasani



Mr. Bharat Vasani

Partner

- Mr. Bharat Vasani is a Corporate Partner at Cyril Amarchand Mangaldas' Mumbai Office. Prior to joining Cyril Amarchand Mangaldas, Mr. Vasani was Legal Advisor to Tata Group Chairman, having also in his earlier role been Chief Legal & Group General Counsel of Tata Sons Ltd, the holding company of Tata Group.
- Mr. Vasani has over 30 years of experience at senior management level, and has successfully built and managed the in-house legal departments of large multinationals. He has been at the helm of and steered several large key M&A transactions pursued by the Tata Group in the last 17 years. Mr. Vasani is highly regarded in Government circles and in various industry organizations for his proactive approach on public policy issues.
- Mr. Vasani is a keen public speaker and is a regular in television debates on corporate law issues. He has addressed several national and international seminars on various subjects, including corporate governance, insider trading, takeover code, constitutional law issues, etc. He was selected to speak on India's Competition Act at the reputed Chatham House, London. He is also a prolific writer and has written several articles on corporate law and governance.

Mr. Rishabh Shroff



Mr. Rishabh Shroff

Partner

- Rishabh joined the Firm in 2007, after completing his LL.B from the London School of Economics in London, England. He was admitted as an advocate in the Bar Council of Maharashtra & Goa in 2007, and is also a Solicitor, Supreme Court of England and Wales. He is based in the Mumbai office of the Firm.
- Rishabh is a Partner in the Firm's Corporate team, and has been involved in a number of cross-border & domestic transactions. He specializes in foreign investments into India, private mergers & acquisitions, domestic and foreign joint ventures. He has also worked in the Firm's projects & projects finance team for 2 years (2007–2009).
- He is the Co-Head of the Firm's Japan Desk, and works very closely with Japanese clients on a full-time basis. He has acted for some of the largest Japanese investors in India, on a range of complex transactions. He regularly travels to Japan for India focused seminars and Japan – India transactions.
- Rishabh is also Co-Head of the Firm's Private Client Team, specializing in family settlements / constitutions, trusts, wills, philanthropy & succession planning. He works closely with India's largest family businesses and promoter run companies.

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