DOING BUSINESS IN INDIA

BY

ADVAYA LEGAL

FREQUENTLY ASKED QUESTIONS

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About Us :

Advaya Legal is a full service commercial law firm with three offices located strategically in India: two offices in Mumbai and one in Delhi National Capital Region. The firm has associate offices in other major cities of India.

Being a full service law firm, Advaya provides a host of services including corporate, commercial and transactional law, M&A, intellectual property, employment, dispute resolution and real estate. The firm has helped several foreign companies establish their business presence in India and provides them 'complete handholding' support in the initial phase.

Advaya has a varied clientele of Indian and international companies. The firm is particularly regarded by clients for its high quality legal work, business oriented approach and accessibility.

More information is available at www.advayalegal.com.

TABLE OF CONTENTS

A. India – Constitutional and Legal Framework **6**

B. Investing in India **6**

C. Entry Options **7**

D. Investment Instruments **9**

E. Labour and Employment Laws **11**

F. Intellectual Property Rights (IPR)..... **13**

G. Immovable Property In India **15**

H. Taxation **15**

I. Other Laws Impacting Mergers and Acquisitions and Business Operations in India..... **16**

J. Exit Strategies **17**

K. Dispute Resolution **18**

FAQs On Doing Business In India

The world's largest democracy with a population of over 1.3 billion people occupying the world's seventh largest country (by area), India is presently one of the world's fastest growing economies. The World Bank reports that India is the third largest economy of the world in terms of purchasing power parity with a GDP of over USD 2.1 trillion since 2015.

Ever since India rolled out the red carpet for foreign investment in 1991, the country has been making slow yet steady strides in the global economy. The present national government led by Prime Minister Mr. Narendra Modi has been pursuing a pro-development agenda taking steps to reform the regulatory framework to facilitate the ease of doing business in India.

There are several factors contributing to the India buzz, notable among them being:

- simplification of tax procedures;
- a young demographic profile of the country (over 55% of the population in the working age group of 15-59 years) forming a large pool of skilled manpower conversant in English;
- a stable political environment and responsive administrative set up supported by a well established judiciary;
- labour force of nearly 530 million and low labour costs;
- robust banking and financial institutions.

While most of the economies in the world are grappling with economic slowdown, India has been able to grow at 7.56% in 2015-16 and the GDP growth is projected to be around 7% in 2016-17. The sectors where India is set to become one of the world's leading markets are outlined below:

- **Aviation:** India is one of the fastest growing aviation markets and currently the 9th largest civil aviation market in the world. It is projected to become the 3rd largest aviation market by 2020.
- **Information Technology (IT):** The IT- Business Process Management sector in India accounts for 56% of the total global outsourcing market and is expected to be a USD 300 billion industry by 2020.

- **Start-ups and e-commerce:** India is one of the world's fastest growing start-up hubs recording a 40% growth in the number of start-ups year-on-year, besides being a 3rd largest tech-based start-up hub in the world with over 4200 tech-based start-ups in the country. With increasing internet penetration and the digitization initiatives taken by the Government of India, the Indian B2B e-commerce market is poised to touch USD 700 billion by 2020.

- **Telecommunications:** India is the world's 2nd largest market in terms of subscribers, with more then 1 billion telephone subscribers. The mobile phone industry in India, currently contributing 6.5% (USD 140 billion) to India's GDP, is projected to increase its contribution to 8.2% by 2020.

- **Media & Entertainment:** India is the 2nd largest television (TV) market in the world (after China), with 168 million TV households. The industry is expected to register a CAGR of 13.9%, reaching USD 30 billion in 2019.

- **Electrical Machinery:** The Indian electrical equipment industry was worth USD 24 billion in 2012-13. The market expanded at a CAGR of 10.5% over 2007-12. The estimated output of the industry by 2022 is expected to be USD 100 billion.

- **Electronic System Design and Manufacturing (ESDM):** The Indian ESDM sector is projected to grow at a CAGR of 24% from USD 70 billion in 2014 to USD 400 billion by 2020.

- **Automobile:** India's auto industry is projected to become the world's third largest auto market by 2020. As of FY 2014-15, around 31% of the small cars sold globally were manufactured in India.

We, at **Advaya Legal**, have attempted to provide a snapshot of the basics of doing business in India in an easy FAQ format. This touches upon the many aspects of interest and relevance to foreign investors proposing to set up, operate, scale up or close down a business in India.

A. INDIA–CONSTITUTIONAL AND LEGAL FRAMEWORK

India is a federal parliamentary constitutional republic comprising 29 states and 7 union territories. There is a national government at the centre and state government for each state.

The Constitution of India sets out the distribution of law making powers between the central and state governments in 3 lists. Union List contains the items on which the centre has exclusive power to legislate, State List contains the items on which states have exclusive power to legislate and Concurrent List contains the items on which both the centre and the states can legislate. The residual law-making powers vest with the centre.

The Indian judiciary has a three-tiered structure with the Supreme Court of India being the apex court of the country based in New Delhi, followed by the State High Courts and the District and Session courts. A separate civil and criminal judicial system also exists in each district.

The Indian legal system is based on the common law system, thanks to the British colonial rule. The common law system gives weightage to precedents, with the decisions of the appellate courts binding the lower courts.

B. INVESTING IN INDIA

1. How can a foreign entity invest in India?

A foreign national/entity can invest in India in accordance with the Foreign Direct Investment (FDI) policy of the Government of India. Foreign investment upto 100% is permitted in a majority of sectors without any prior approvals.

FDI into India can be broadly classified as follows:

- **Automatic route:**

— With 100% FDI permitted in most sectors including information technology, greenfield (new) airport projects, industrial parks, cash & carry wholesale trading, e-commerce and greenfield pharmaceuticals, medical devices and railway sector (construction, maintenance and operation of specified activities) .

— With a cap on percentage of foreign investment. For example, upto 49% in insurance, upto 49% in power exchanges.

- **Approval route:**

— With prior approval of the Foreign Investment Promotion Board (FIPB). For example, upto 100% in defence (49% under automatic route, beyond 49% approval route) for manufacturing of small arms and ammunitions, upto 100% in brownfield (upgradation/modification) pharmaceuticals (74% under automatic route, beyond 74% approval route), upto 51% in multi-brand retail trading.

- **Blanket prohibition:**

— In lottery business, gambling and betting including casinos, real estate business, construction of farm houses, manufacture of tobacco or cigarettes, and sectors not open to private sector investment like atomic energy.

There has been a steady liberalization process over the last few years with many sectors increasingly brought under the automatic route for FDI purposes.

2. Are there any other conditions imposed on FDI into India?

All FDI into India is subject to sector specific regulations and exchange control laws that may specify certain entry conditions, end-use restrictions, lock-in period, etc. There has been considerable relaxation of these norms across various sectors to facilitate the inflow of FDI into India.

3. What are the other routes for foreign investment into India?

Foreign investors may also invest by way of foreign venture capital investment and foreign portfolio investment as per applicable securities and exchange control laws.

C. ENTRY OPTIONS

1. What are the entry options for setting up business in India?

A foreign investor may set up its business in India either as an unincorporated or incorporated entity.

Unincorporated entities may be in the form of liaison office, branch office or project office. This requires the prior approval of the Authorised Dealer bank or the Reserve Bank of India (RBI) in specific circumstances (if the business is in defence, telecom, private security or the information and broadcasting sector).

Incorporated entities may be in the form of a private limited company, public limited company or limited liability partnership (LLP).

2. What is the preferred investment route for most businesses?

Most foreign entities set up a private limited company as their subsidiary in India. Sometimes, a foreign investor may enter into a joint venture with a local partner, with the foreign investor bringing in technical know-how and the local partner bringing in the market access. The franchise option is also increasingly popular with many established foreign brands looking to tap India's vast market opportunity.

The choice to set up a subsidiary or go the joint venture or the franchise route with a local partner depends on factors such as nature of business, business plan for the Indian market, brand value of the products, etc. For example, a foreign party with technical know-how and a global brand may consider a joint venture with a local Indian party who has market access rather than setting up a new entity in India. The foreign investor can license the technical know-how and brand usage in exchange for royalty and brand name usage fees to be paid by the Indian party.

3. What are the requirements to set up a company in India?

A company may be incorporated as a private or a public limited company.

Shareholding: While there is no minimum paid up share capital requirement for incorporating a private or a public limited company, a private limited company must have at least 2 shareholders and a public limited company must have at least 7 shareholders. The foreign investor setting up a private company can meet the minimum shareholder requirement by giving 1 share to another person, who will hold the share as a nominee of the investor. While the nominee will be the legal owner of the share, the beneficial ownership/actual ownership right over the share will be with the investor.

Directors : A private limited company must have at least 2 directors and a public limited company must have at least 3 directors. While foreign nationals can be appointed to the board of a company in India, the law mandates the presence of at least 1 resident director, i.e. a director who has stayed in India for at least 182 days in the previous year.

4. What is the process to set up a company in India and how long does it take?

A company can be formed by filing the incorporation documents online on the website of the Ministry of Corporate Affairs. The form will require the details of the new company such as proposed name, registered office, initial subscribers and directors and the draft charter documents. Once these details have been processed, the Certificate of Incorporation is issued by the jurisdictional Registrar of Companies (RoC). The incorporation process takes anywhere between 10 to 20 days.

5. What are the post-incorporation compliances to be taken care of?

The company needs to obtain one-time statutory registrations such as the Permanent Account Number, Tax Deduction Account Number, indirect tax registrations and labour law registrations depending on the nature of business proposed to be undertaken, number of employees and other related factors.

6. What are the ongoing compliances to be undertaken by an Indian company?

Board Meetings: A minimum of 4 Board meetings must be held, one in each quarter of the year. There should not be a gap of more than 120 days between 2 consecutive Board meetings.

Shareholders'/general meetings: One general meeting has to be held every year at the registered office of the company.

The company has to make periodic company secretarial filings with the RoC and maintain various statutory registers in compliance with Indian company law.

D. INVESTMENT INSTRUMENTS

1. What are the different kinds of instruments that can be issued by a company to its investors?

Indian companies can issue equity shares, preference shares or debentures to foreign investors subject to pricing and valuation norms prescribed under exchange control laws. Increasingly, hybrid instruments like fully and compulsorily convertible debentures and compulsorily convertible preference shares (i.e., debentures or preference shares that will completely convert into equity shares after a fixed period) have been gaining popularity.

2. Can an Indian company avail a foreign currency loan?

Yes, an Indian company is permitted to obtain a foreign currency loan through authorized banking channels for specific purposes (like meeting working capital requirements). These loans are subject to certain minimum average maturity periods. Further, such financial assistance can also be availed by issue of instruments like foreign currency convertible bonds, foreign currency exchangeable bonds, etc. Such loans can be obtained by eligible borrowers under the automatic route and under the approval route in certain cases with the prior approval of the RBI. There are specific conditions and compliances to be adhered to on such loans such as end use requirements, ceiling of interest rates, etc.

3. Can a shareholder or a director provide a loan to the company?

Yes, a shareholder of a company can provide a loan to a company provided upto a specific threshold and related compliance formalities. For example, upto 25% of the aggregate of the paid-up share capital and free reserves of the company for public companies and upto 100% of its paid-up share capital, free reserves and securities premium account for private limited company.

A loan from a foreign shareholder can be availed if such shareholder holds a minimum 25% direct shareholding in the borrowing company or 51% indirect shareholding in the borrowing company subject to certain conditions pertaining to minimum maturity period, repayment conditions, etc.

A loan from an Indian director can be availed by the company so long as it is out of such director's own funds; however, loans from foreign directors are not permitted under exchange control laws.

4. What are the various modes of return on investment or exit for a foreign investor?

Typically, return on investment in the case of equity shares would be through dividends paid by the company to its shareholders from time to time. Sometimes, the company may also offer to buy-back the securities. Recently, the regulators have allowed issue of shares/debentures with a built-in option (like a put or call option) to foreign investors so long as there is no right to exit at an assured return and the share price determination is as per the conditions laid down by the RBI.

E. LABOUR & EMPLOYMENT LAWS

1. What are the labour laws applicable to a new company or a manufacturing unit?

Different labour laws would apply to a company depending on the nature of its business and employee strength. There are a number of central and state laws governing the running of commercial establishments, factories, industrial disputes, contract labour, child labour, payment of wages, minimum wages, maternity benefit, provident fund, payment of gratuity, etc.

Broadly, labour laws require companies to maintain specific registers for attendance, wages, leave, etc. and carry out periodic filings.

2. Do labour laws govern employment of the company's employees?

Yes, laws such as the Shops and Establishments Acts and the Factories law regulate employment conditions of commercial establishments and factories respectively. Typically, such statutes set out minimum standards for working conditions, safety of workers, health and hygiene conditions,

maximum working hours (daily and weekly) for employees, overtime, weekly holiday and such other provisions to protect the welfare of the employees.

3. What are the standard terms of an HR policy adopted by an Indian company for its employees?

An HR policy includes policies relating to recruitment, promotion and termination of employees, employee benefits, leave and travel, use of electronic communications, confidentiality, anti-harassment, anti-bribery, disciplinary process, prohibition from insider trading (mandatory for Indian listed companies), etc. A company having more than 10 workers has to have an anti-harassment policy as mandated under law for the prevention and redressal of sexual harassment of women at the workplace.

4. Is hiring and firing of employees at will permitted?

Employment in India is generally at will. As a general industry practice, an employee may be terminated from employment after providing notice or payment in lieu of notice.

5. Is a non-compete obligation of an employee enforceable in India?

It is common practice for employers in India to impose non-compete obligations on their employees by including it in the employment contract or entering into a separate non-competition agreement with the employee. A non-compete clause is enforceable in India only during the term of employment and cannot be enforced after termination of the employee's employment as it is prohibited by law.

6. Would Indian employees be eligible to participate in the stock option plans of the parent company outside India?

Yes, employees of the Indian company are allowed to participate in the stock options of the overseas parent company. However, such participation is subject to applicable corporate, tax and exchange control laws including restriction on the quantum of money that may be remitted towards such participation.

7. Can foreign nationals be employed in India? Are there any specific conditions and compliances?

A foreign national can be hired to work for an Indian company subject to such person obtaining an employment visa issued by the Government of India. The foreign national has to be paid a minimum salary of USD 25,000 per annum for most professionals except for ethnic cooks, non-

English language teachers, and diplomatic staff. The Indian employer has to adhere to applicable tax and provident fund deductions and related compliances. No change of employer is permitted under normal circumstances in India.

F. Intellectual Property Rights (IPR)

1. What are the IPRs recognized in India?

IPR refers to the rights given to the creator over the original/unique work or technology created using intellect or creativity. Indian laws recognise copyright, patent, design and trademark.

2. Should IPR be registered in India if one's IPR is already registered in another country?

Yes, typically it is advisable to register all IPR in India even if they are registered in a different country. The only exception is copyright and internationally well known and reputed trademarks.

In the case of copyright, the author becomes the owner immediately upon the creation of the work anywhere in the world.

As regards an internationally known trademark, the trademark law of India has granted recognition to the same without requiring registration in India.

India is a signatory to the Madrid Protocol that provides for international registration of trademarks through a single-window filing in the home country. Therefore, an international applicant seeking trademark protection of an international trademark in India can do so through the Madrid Protocol in its home country.

3. What happens if one has filed an application for IPR registration in a foreign country before filing it in India?

If one has filed an application for IPR registration in a different country before filing it in India, the application for registration in India will get a priority right, i.e., the application and registration of such IPR in India will be considered from the date of first application in the foreign country. The priority right can be availed only if the foreign country is a party to the Madrid Protocol and the IPR application is filed in India within a specified period from the date of its application in the foreign country.

4. How long does it generally take to obtain registration and how long is the registration valid?

The time taken will vary depending on the uniqueness and other characteristics of the IPR. Some timelines for registration (indicative) and validity period are as follows:

IPR	Registration Timeline	Validity Period
Copyright	Around 6 months	Entire lifetime of the author plus 60 years after the death of the author.
Patent	24 to 36 months	20 years from the date of filing of application for registration.
Trademark	Around 18 months	10 years from the date of application for registration.
Industrial Design	Around 6 months	10 years from the date of application for registration and can be extended for 5 years.

5. Do the IPR laws also provide for data protection and protection of trade secrets?

While the copyright laws provide protection for computer database, there are no specific laws for protection of trade secrets. However, trade secrets can be protected under common law and through contractual arrangements.

6. What are the challenges in enforcing IPR in India?

Copyright, trademark and designs can be enforced in India through civil and criminal proceedings as per the procedure set out in the relevant IPR legislation. Patent can be enforced only through civil proceedings.

Dispute resolution through litigation is highly time-consuming and expensive due to the large number of cases pending in all the courts across the country. Also, Indian courts are highly conservative in awarding damages. Hence, chances of recovering large damages in civil litigation are very low and grant of penal damages is extremely rare.

7. How to mitigate enforcement challenges?

- The best way to mitigate enforcement challenges would be to register your IPR with the competent authority after seeking professional counsel.
- When creating marks for your business, avoid identical, similar and deceptively alike marks.
- Execute strict confidentiality agreements with all persons having direct or indirect access to your IPR.

- In the case of infringement, send cease and desist notices, take immediate civil action and, where available, file a criminal complaint. In the case of civil action, as a first step try to obtain a temporary order from the court to prevent the infringer from using the IPR while the case is going on. It is also advisable to initiate criminal action (where applicable), as the risk of imprisonment might act as a deterrent against continuing / fresh infringement.

G. IMMOVABLE PROPERTY IN INDIA

1. Are foreign companies having a business presence in India permitted to lease or acquire immovable property in India?

Foreign companies having a business presence in India are permitted to lease or acquire immovable property in India depending on the nature of the entity/presence they have in India.

Typically, Indian operations of most foreign companies take immovable property on lease basis for their business operations in India.

2. Can the immovable property acquired in India be sold and the proceeds repatriated outside India?

Yes, a foreign owned Indian company/entity can sell the immovable property it has acquired in India as part of their legitimate business operations and repatriate the sale proceeds outside India as per exchange control laws and with the prior permission of the Reserve Bank of India.

However, speculative investment in real estate for profit is not permissible.

H. TAXATION

1. What are the taxes to be paid by a company in India?

Companies are subject to Indian income tax on the income accrued/received from Indian sources or deemed to be derived in India. Corporate tax, dividend distribution tax, capital gains tax, minimum alternate tax, etc. are examples of direct taxes. Indirect taxes include excise duty, custom duty, value added tax, service tax, etc. payable on goods manufactured / exported or services rendered.

2. What are the prevailing rates of corporate tax in India?

As per Indian tax laws, income is taxed at a flat rate of around 30% for Indian companies. Foreign companies pay income tax at the rate of 40%. A surcharge and an education cess of 3% (on both the tax and the surcharge) are payable. Corporate tax filings have to be done electronically.

3. Is it possible to know the tax implications of a particular transaction in India?

Non-residents and certain classes of residents can obtain 'rulings' (a binding opinion) from the Authority for Advance Rulings on questions of law or fact arising from any transaction/proposed transaction. However, this process takes several months.

I. OTHER LAWS IMPACTING MERGERS AND ACQUISITIONS & BUSINESS OPERATIONS IN INDIA

1. The **securities law** covers issues such as insider trading, listing, disclosure norms and takeovers, which are relevant to listed companies, investors and market intermediaries. The capital market is regulated by the Securities and Exchange Board of India (SEBI).

2. The **competition law** prohibits anti-competition agreements and abuse of dominant position by an enterprise. Competition Commission of India has been proactively regulating certain transactions in India.

3. Companies engaged in industrial and manufacturing activities have to comply with various **environmental laws** regulating water and air pollution levels, coastal zone regulations, etc.

4. There is a broad based **consumer law** for the protection and promotion of consumer interest in India in terms of which the consumer has the right to complain of defective goods/services and obtain compensation from specialized fora.

5. There is an **information technology law** that deals with online transactions, data privacy and related aspects.

J. EXIT STRATEGIES

1. How can one close /shut down the Indian business?

Voluntary winding up: A solvent Indian company can be wound up by its shareholders. Depending on the assets and liabilities of the company, this process can take around 5 to 6 months.

Sale of Shares: A shareholder can exit from the company by sale of shares to the other shareholders or a third party or the company itself. The price of shares being sold will have to be determined keeping in mind the pricing guidelines set out in exchange control laws, in the case of sale of shares of an Indian company from a non-resident seller to a resident buyer or from a resident seller to a non-resident buyer.

Company buy-back: The purchase of shares of a shareholder by the company itself is known as buy-back. Buy-back is subject to various conditions imposed by the companies law including the number of shares that can be bought back at a time, valuation of such shares and the funds of the company that can be used for such purchase.

2. What is the law governing bankruptcy and insolvency in India?

The recently enacted Insolvency and Bankruptcy Code stipulates a time bound process for insolvency resolution of companies, partnerships and individuals in India. This is expected to streamline the insolvency process by making it simpler and time effective.

3. Once the business is closed, can one take the money out of India? If yes, what is the timeline and procedure?

Yes, once the Indian business is closed or the shares are sold, the repatriation of the sale proceeds is permitted subject to payment of applicable taxes and completion of certain exchange control compliances. The time taken to fulfill prior compliances depends on the company's assets and liabilities at the time of winding up and generally takes around 12 to 24 months.

4. Does one have to pay tax before sending the money out of India?

Yes, the thumb rule is that any repatriation of money out of India after a business wind-up would be subject to payment of applicable taxes in India. For the purpose of determining the tax liability, the provisions of any existing double taxation avoidance agreement (DTAA) that India may have with the resident country of the foreign national may have to be considered.

K. DISPUTE RESOLUTION

1. What are the various modes of dispute resolution in India?

Conciliation, mediation, arbitration and litigation are some of the popular methods of dispute resolution in India.

2. What is the most effective way to resolve commercial disputes?

Arbitration appears to be the most preferred option for resolution of commercial disputes. However, the costs of arbitration can sometimes be as expensive as the litigation costs, if not more.

Pursuing legal action in Indian courts is a slow and expensive process, which is best avoided. A normal civil suit for recovery or damages can take anywhere between 7 to 12 years in Indian courts for the first verdict whereas an arbitration award can be rendered in 12 to 18 months. A new law to address faster resolution of commercial disputes has been recently brought in place and is expected to significantly improve the dispute resolution process for commercial matters.

Conciliation and mediation mechanisms are slowly gaining acceptability in India. Since these are non-binding in nature, they have not been very popular.

3. Are the parties to a contract free to choose the governing law of the contract and arbitration?

If both the parties to a contract are Indian, the governing law of contract and arbitration can only be the laws of India. This would also include an Indian company that is a wholly owned subsidiary of a foreign company. However, if one of the parties to the contract is a foreign entity, parties are free to choose the governing law of the contract and arbitration. Further, this choice must also be genuine and not be made to simply circumvent Indian law. The courts in India will not enforce any choice of law that is not genuine or opposed to Indian public policy.

4. Should the venue of arbitration be India or overseas?

Parties are free to agree on the venue of arbitration. Generally, a neutral venue for arbitration is preferred by the foreign counterparty when contracting with an Indian party. Singapore and London are two of the preferred venues in such situations. A foreign governing law and arbitration outside India have generally been preferred by foreign counterparties in order to minimize interference from Indian courts.

5. What are the commonly used modes of arbitration in India?

The two commonly followed modes of arbitration in India are ad-hoc arbitration and institutionalized arbitration. Arbitration arranged by parties themselves, without recourse to an arbitral institution, is referred to as ad-hoc arbitration. Arbitration conducted by an arbitral institution, in accordance with the prescribed rules of the institution, is referred to as an institutionalized arbitration. The latter is generally the preferred mode of arbitration for commercial disputes. Some of the more popular institutions are Singapore International Arbitration Centre (SIAC), ICC International Court of Arbitration (ICC) and the London Court of International Arbitration (LCIA). While Indian industry bodies such as FICCI and CII also have institutional arbitration mechanisms, the Mumbai Centre for International Arbitration has been recently set up to act as a regional arbitration institution.

6. Can foreign arbitral awards be enforced in India?

Foreign awards under the New York Convention and the Geneva Protocol are enforceable in India and are treated as decrees of an Indian Court. The other condition to be satisfied is that the award should be rendered in a country notified by the Government of India. All other foreign awards will need to be ratified by the Indian courts and a decree passed by the court, which will then become enforceable.

7. Can the foreign arbitral award be challenged?

The grounds on which an arbitration award can be challenged are limited to the following:

- the party challenging the award was under some incapacity to perform an obligation;
- the arbitration agreement is invalid under the governing law;
- the party challenging the award did not receive adequate notice of the appointment of the arbitrator or of the arbitral proceedings or to present his case;
- the dispute is outside the scope of the arbitration agreement;
- composition of the arbitral tribunal was not in accordance with the provisions of the arbitration agreement;
- if the court finds that the subject matter of dispute is not capable of arbitration; or
- the arbitral award is in conflict with public policy of India.

8. If a court judgment (instead of an arbitration award) is obtained from a court outside India, is it enforceable in India?

Where a foreign judgment has been rendered by a superior court outside India, which the Government of India has by notification declared to be a reciprocating territory, it may be enforced in India by proceedings in execution as if the relevant court in India had rendered the judgment.

Courts in various countries including the United Kingdom and Singapore have been declared by the Government of India to be reciprocating territories. A judgment of a court in a jurisdiction, which is not a reciprocating territory, has only evidentiary value and may be enforced only by a new suit upon the judgment. The suit must be brought in India within three (3) years from the date of the judgment in the same manner as any other suit filed to enforce a civil liability in India.

As a further requirement, a judgment rendered by a court outside India as above is conclusive and enforceable except where the judgment:

- has not been pronounced by a court of competent jurisdiction;
- has not been given on the merits of the case;
- appears on the face of it to be founded on an incorrect view of international law or that there has been a refusal to recognize the law of India in cases in which such law is applicable;
- was obtained without observing the principles of natural justice;
- has been obtained by fraud; or
- sustains a claim founded on a breach of any law in force in India.

This document is only a business guide and not to be construed as legal advice. It is not meant to be exhaustive and does not necessarily deal with every relevant aspect of the issues being discussed. Hope you find it useful. Please feel free to write to us at contact@advayalegal.com for further clarifications or assistance.

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CONTACT US

Mr. Ramesh Vaidyanathan:	ramesh@advayalegal.com	**022 61237800**
Ms. Meenakshi Iyer:	meenakshi@advayalegal.com	**022 22650908**
Ms. Sharanya Ranga:	sharanya@advayalegal.com	**022 61237800**

ADVAYALEGAL

Mumbai | Delhi NCR

Associate Offices across India

www.advayalegal.com