

FORESIGHT 2024

Traversing the legal and regulatory terrain amidst global headwinds



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Foreword

2023 was a year marked by recalibration and recovery across global markets. As we step into 2024, businesses across the globe are fast-tracking endeavours to not only seize the unique opportunities ahead but also strategising how to tackle the challenges that a rapidly evolving landscape is sure to present.

While geopolitical concerns in a world with volatility, uncertainty, complexity, and ambiguity (VUCA) continue to loom over global markets and make investors cautious, India remains largely insulated for now, with steady domestic growth and continued appeal for global players.

With this context, we attempt to gaze into the crystal ball and present some key themes expected to play out in the fourth edition of 'Foresight'.

Although most of India Inc is set to undergo a board reshuffle this year, deal activity seems poised for an uptick, with the technology space looking promising, especially as India continues its efforts to build a robust semiconductor ecosystem. The year ahead will see an exciting pipeline of initial public offerings (IPOs), emergence of the private credit market, and major legislation changes for the digital and emerging technologies.

A sharper focus on clean energy and battling the climate crisis is another key theme. India's efforts on the clean energy front are evident with its recent steps to bolster renewable energy, green hydrogen and electric vehicles (EVs) alongside an evolving environment, social and governance (ESG) regime.

We also expect to see significant strides in technology regulations, right from antitrust law to taxation levied on the online gaming sector to the proposed stringent action against deepfakes. The implementation of the brand new Digital Personal Data Protection Act and the introduction of the much-anticipated Digital India Act will also be pivotal areas to watch out for this year.

In the leap year of 2024, marked by the upcoming XXXIII Olympic Games, the resonating Olympic motto *Citius, Altius, Fortius - Communiter* (Faster, Higher, Stronger - Together) establishes the prevailing ethos for the year ahead.

I do hope you find this compilation of crucial developments for India Inc an interesting read and look forward to your feedback.

Rabindra Jhujhunwala
Partner

M&A in 2024: opportunities galore



Kalpana Unadkat and Abhishek Dadoo

India's mergers and acquisitions (M&A) outlook remains robust in 2024 despite global uncertainties. Strong growth in domestic companies, combined with foreign investor interest and a favourable regulatory environment, make it an attractive deal-making destination. The Government is expected to continue implementing reforms to bolster foreign investment and domestic M&A. Infrastructure development remains a priority, supporting smoother deal execution. An increase in control and take-private transactions is also expected in 2024. Proactive initiatives taken by the Securities and Exchange Board of India (SEBI) to introduce regulatory reforms and streamline processes are likely to support larger and more complex listed company deals. Efforts to enhance the ease of doing business and promote sustainable practices underline India's commitment to fostering a favourable environment for Indian and international business leaders.

Private M&A

Space and Defense Sectors

With established policies such as the Indian Space Policy 2023 and the presence of the Indian National Space Promotion and Authorisation Center (IN-SPACe), an autonomous governmental organisation for space regulation, the space industry is poised for substantial growth. A new foreign direct investment (FDI) policy tailored for the space sector is on the horizon, further solidifying India's position as a global space hub. Currently, 100% FDI is allowed in the space sector but only under the approval route for satellite establishment and operations.

PLI scheme and 'Make in India'

The Government's commitment to the performance-linked incentive (PLI) scheme and the 'Make in India' initiative will continue to drive M&A activities. Some sectors such as electronics and pharmaceuticals, have already seen significant interest due to the PLI scheme and this will continue as the companies expand their presence in India or consolidate their positions. Infrastructure development, including the improvement of transportation networks and logistics, can enhance the attractiveness of manufacturing in India. Improved infrastructure can facilitate M&A deals involving companies in logistics and supply chain sectors.



Government reforms are expected to bolster foreign investment and domestic M&A, and include streamlining regulatory approvals and providing sector-specific incentives to attract investors.

Kalpana Unadkat, Partner



Artificial intelligence

India is actively embracing global trends in artificial intelligence (AI). Initiatives like the Design Linked Incentive (DLI) Scheme, modified in 2023, aim to position India as a global hub for electronics system design and manufacturing (ESDM). Expect significant M&A activity in this sector as India strives to establish a vibrant semiconductor chip design ecosystem domestically. Apart from Government incentives, India's competitive advantage also includes skilled tech workforce, robust education system, cost effective labour, English proficiency, and a growing startup ecosystem.



Regulatory changes

Regulatory changes may be influenced by various factors, including the Government's economic policies, international trade dynamics, and domestic priorities.

Different sectors within the Indian economy may witness regulatory changes based on sector-specific developments, challenges, or opportunities. For example, emerging technologies such as AI and blockchain, along with a focus on EVs and environmental laws have prompted regulatory adjustments to accommodate the innovations and ensure their responsible integration into the market.

In the lead-up to 2024, it is essential to anticipate regulatory changes that may arise from shifts in the economic landscape, international trade dynamics, and industry-specific developments. Staying informed through Government announcements, industry reports, and expert analyses will be crucial for businesses and investors seeking to navigate the evolving regulatory environment in India.

Public M&A

Introduction of fixed price take-private offers

Under the current take-private regime, the offer price is determined through the reverse book building (RBB) process. This is typically seen as a key deterrent to its commercial viability as deals tend to fail due to non-alignment of price expectations. Take-private at a fixed price is proposed to be introduced as an alternative to the RBB process for frequently traded companies. Its adoption in voluntary take-private deals will streamline the process, and the options provided by the RBB and fixed price mechanism routes will provide great flexibility in deal making.



The proposed launch of a fixed-price mechanism as an alternative to the reverse book building process for take-private transactions will enhance flexibility in deal-making.

Abhishek Dadoo, Partner



New framework for investment holding companies

Current regulations do not provide a separate framework for take-private deals involving investment holding companies (IHC). Typically, IHCs are traded at a significant discount and are subject to various pricing and valuation complexities – which in turn renders any attempts at take-private offers highly impractical. To enable such deals, it is proposed that in certain cases, underlying listed stocks held by the IHCs will be transferred to the public shareholders and their shareholding in the IHC will be extinguished pursuant to court approved scheme.

SEBI is currently in the process of evaluating these proposals and examining additional data on the subject. Once introduced, the proposed changes are expected to streamline the process for public M&A and take-private deals in India.

Foreign investment regulations to fuel India's growth story



Moin Ladha

Policies focusing on improving the 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 Government is expected to continue in the same spirit, implementing key measures to invite global investors to participate in the India growth story.

According to the Department for Promotion of Industry and Internal Trade (DPIIT), FDI in India declined 22% to USD 48.98 billion in the period January to September 2023, due to the global recession. The inflow was at USD 62.66 billion in the year-ago period. However, India is broadly in line with the overall trends of FDI growth. With the view of ease of doing business, better structural reforms in both financial and securities market in India can be expected.

Changes in the regulatory framework

Considering the year of general elections, the Government is expected to continue a slew of reforms to ease foreign investment in India. Currently, 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 is permitted. However, such cross-border transaction is expected to be further liberalised to attract foreign investments into India.

Press Note 3 clarifications

There is an expectation of clarifications being issued with respect to Press Note 3 (2020 Series). This is to ease issues being faced by institutional investors having minimal exposure to neighbouring countries, particularly for transactions involving industries that the Government wishes to promote, and which brings in new technological advancement. These restrictions were placed in 2020 towards the initial stages of the pandemic to protect the Indian economy and avoid opportunistic takeovers and acquisitions. A fast-track process for an expedited security clearance and approval mechanism to process the pending or prospective FDI proposals may also be established.



Clarifications with respect to Press Note 3 and liberalisation are expected to ease issues faced by foreign investors including institutional investors with minimal exposure to neighbouring countries.

Moin Ladha, Partner



Sectoral reforms

The Government is expected to further liberalise sectors for FDI, increase existing FDI limits and relax sectoral conditionalities to diversify investing focus in India, and facilitate ease of doing business. Sectors such as pharma, food processing and medical appliances could see a jump in FDI due to the PLI scheme in place.

As the financial landscape continues to evolve, the Reserve Bank of India's (RBI) proactive approach ensures that the financial services sector remains well-updated. Accordingly, the RBI introduced a new scale-based approach for classifying non-banking financial companies (NBFC) and has consolidated the laws applicable to non-systematically important and systematically important NBFCs. Further liberalisation of NBFCs investing in financial services activities abroad can also be expected especially those spaces that facilitate new age fintech services.

Bolstering the Digital India vision



Supratim Chakraborty

Ramping up data protection measures

As we gear towards the 2024 general elections, India may witness stricter regulation of deep fakes and misinformation. Early this year, we may witness the enforcement of India's first omnibus data protection law, i.e., the Digital Personal Data Protection (DPDP) Act, 2023, through the notification of the rules as a first step. Businesses will have to begin the process of aligning existing compliance postures with this new law. Consent requests and privacy notices may become more granular. Businesses categorised as significant data fiduciaries may have to watch out for additional compliances including regular data protection impact assessments, audits, and data protection officer appointments. The looming threat of high penalties for non-compliances that could exceed INR 2.5 billion (approx. USD 24 million) in certain cases will cause data protection to rise on the priority list for the first time in India, making it a corporate governance concern.

2024 may also witness a convergence of consumer protection law and data protection in regulating the data collection practices. While the lawfulness of data processing will be scrutinised through the lens of the DPDP Act, the fairness of such practices is likely to be scrutinised through the lens of the recently notified Guidelines for Prevention and Regulation of Dark Patterns, 2023. Accordingly, existing marketing practices and online user interfaces may begin implementing privacy by design, not only from the perspective of lawfulness but also considering *fairness* under consumer protection law as a driving principle.



2024 may witness regulation that require due consideration in the very thought-process of designing emerging tech, reconfiguring a new balance between fundamental freedoms and innovation.

Supratim Chakraborty, Partner



Coming soon: The Digital India Act

Soon after the elections, the Digital India Act (DIA) may be unveiled, for public comments. The DIA will replace the Information Technology Act 2000 to create a self-contained mechanism for enforcement. Based on principles of openness, trust, accountability and safety, the DIA may also envision a range of user harms that have been experienced in digital India. Instead of a one-size-fits-all approach, the DIA may classify intermediaries considering risk and size, permitting tailored regulation. Platforms responsible for content moderation may be subject to stricter scrutiny on moderating unlawful content online. The DIA may instil a more proactive approach to data and platform governance in India. Emerging technologies may need to prioritise user-centric harms in their *very design*. The DIA may also define 'no go areas' to preclude the development and design of harmful emerging technologies such as deepfake-generating AI. Furthermore, the DIA may impose requirements on the involvement of human oversight in the use of AI systems to ensure human involvement in the use of AI systems, as well as requirements to ensure that AI systems are transparent, fair, unbiased and accountable.

The bull run continues for the EV industry



Kartikeya Prakash

Over the past few years, the Indian EV industry has witnessed rapid growth and is expected to continue its momentum in 2024. This growth story is credited to a combination of factors, including Government initiatives, a dedicated industry focus, and growing public adoption of EVs. Incentives such as Faster Adoption and Manufacturing of Hybrid and Electric Vehicles in India (FAME India), the PLI scheme for auto and auto components, and advanced chemistry cell batteries have been instrumental in fostering local production and boosting EV adoption. Several states have shown keen interest in fostering the industry and embracing EVs by providing local incentives and quick adoptions. These have enhanced the unit economics and made it a very lucrative sector for investors.

FAME expiry and expected extension

The current FAME scheme nears its expiration on 31 March 2024. However, it is anticipated to see further extension along with continued policy innovations and a larger budget outlay. The sector may see the introduction of objective compliance conditions, possibly under the banner to emphasise genuine localised manufacturing and conditionalities around domestic value additions for being eligible to claim FAME subsidies.

Continued vigilance

2024 would continue to witness Government scrutiny on original EV equipment manufacturers for compliance with FAME conditionalities and meeting the localisation norms or bundling of chargers, software and essential accessories in the true spirit.

Wider adoption of EVs

The Government of Himachal Pradesh issued a directive instructing Government departments to refrain from purchasing diesel and petrol vehicles starting January 1, 2024. Several other states and Government bodies are expected to follow suit and push for wider adoption of EVs.



Government and industry bodies are actively evaluating possibilities for battery standardisation and battery swapping to enhance efficiencies and we can expect more progress on this front. Perhaps, a regulatory framework or guidelines are around the corner.

Kartikeya Prakash, Partner



Impetus to battery manufacturing

Battery manufacturing activities, another key driver of the EV industry, have seen exceptional momentum. With revelation of abundant lithium-ion deposits in India, this is likely to be a very busy space for deal making in the coming year.

Improvement in the charging infrastructure landscape is expected with both the Government and private players investing in setting up public charging stations across the country to foster widespread EV adoption. There may be incentives and push in certain sectors such as logistics for decarbonisation and adoption of EV fleets. As such, deal making in the entire EV ecosystem would gain substantial traction in the coming year.

Exit possibilities

2024 may also witness exits or secondaries for financial sponsors and early-stage backers in this sector. Adding to the excitement are the potential IPOs on the anvil, with Ola Electric leading the charge. Exit possibilities affirm the maturation of this industry and potential for well measured growth ahead.



Family businesses streamlining succession planning



Aditi Sharma

Annual wealth reports continue to remain optimistic on India's contribution to the global high net worth (HNI) in the coming year. While strong statistics indicate a noticeable upward trend in wealth creation, wealth preservation now assumes centre stage. Given the universality of the concept of succession planning for family businesses globally and more specifically the inherently complex succession laws in India, there is an overwhelming preference for family businesses to structure the ownership and management to avoid friction amongst the multiple generations in business. This trend is likely to continue and is agnostic to the region, sector, turnover of business or the composition or beliefs of the family.

Focus on succession of wealth and leadership

There is a strong inclination to plan for the NextGen's arrival in a calibrated manner with clearly defined roles and responsibilities through family charters and constitutions.

Asset protection remains key

The introduction of India's Insolvency and Bankruptcy Code, 2016 (IBC) and developing jurisprudence on its applicability to individual promoters, has prompted leading business houses to ringfence assets from claims and liabilities - both business and creditors alike. This trend to adopt asset protection strategies when forming trusts and finalising a succession plan to prevent the economic erosion of wealth and the family business is set to grow stronger in the coming years.



Family businesses are spending significant time, effort and money in streamlining their ownership and management strategies to ensure a seamless transfer of wealth across generations.

Aditi Sharma, Partner



Tax is no longer a driver

Clarity in planning succession of assets, balancing cross-border legal implications, transparency in reporting information as well as providing for a governance mechanism that suitably addresses the needs of the family as well as the business now drives the succession plan. Milestones such as liquidity events and pre-listing catalyse the planning process. Marginal changes can be expected to the tax regime given the focus on the upcoming elections in 2024 to reverse this outlook.

Pre-immigration planning now popular

According to recent data from the Ministry of External Affairs as well as from Knight Frank's The Wealth Report, 2023, there is a growing trend of mobility of personnel - both inbound and outbound and the numbers of Indians relinquishing their citizenship. Coupled with this, the timing of the succession plan to attain optimum efficiency from an Indian exchange control is important. Efficiently navigating Indian and cross-border tax rules applicable to trusts, individual remittances etc is no longer optional.



Setting up family offices

Landmark changes brought about to the regulatory framework in 2022, including the offshore investment opportunities via the Gujarat International Finance Tec-City (GIFT City) route has led to streamlining family office structures. This has enabled Indian promoter families to build offshore capital in an informed manner.

Law and succession planning

With talk of a uniform civil code to harmonise varied personal laws on aspects of succession and inheritance – one may expect a paradigm shift in the manner in which the structuring as well as planning of wealth transfers is undertaken.

Matrimonial disputes

With the increased acceptability of matrimonial separations in society, families are forward planning either with respect to pre-nuptial trusts, pre-nuptial agreements or for that matter, filing divorce only under consent terms to ensure that time and money is saved in long protracted acrimonious separation suits in courts.

March of private credit in India



Rajeev Vidhani

The Indian private credit landscape has seen unprecedented growth driven by myriad factors, including positive economic projections, an expansive yet underserved mid-market, need for non-traditional debt solutions, Insolvency and Bankruptcy Code (IBC) as a reliable deterrent and lending gaps created by banks and NBFCs. The distressed debt market remains substantial, further contributing to the sector's expansion alongside revival of private capital expenditure (capex) and an increasingly conducive regulatory regime. While gradually rising, the private credit assets under management (AUM) are expected to leap beyond USD 60 billion in next five years according to a recent report by Praxis Global Alliance and Indian Venture and Alternate Capital Association (IVCA).

Some recent developments in the space that will see play out in the near future are set out below.

Special Situations Funds

Special Situations Funds (SSF) were introduced in 2022 by SEBI as a sub-set of Category I Alternative Investment Funds (AIF) to acquire stressed assets including stressed loans to supplement Asset Reconstruction Companies. However, SSFs do not yet feature as 'permitted transferees' under the RBI guidelines governing transfer of loan exposure by banks or systemically important or deposit taking and NBFCs etc. Regulatory coordination with RBI has led to a SEBI consultation paper proposing certain amendments to the AIF regulations. The amendments include revising the definition of SSFs, incorporating the related party definition from Companies Act, extending the net of Section 29 A of IBC which bars certain individuals from submitting resolution plans or participating in the insolvency resolution process of the company, introducing a minimum holding period and regulating down-selling or related party investments.

AIF investment by regulated entities: RBI's move to curb ever-greening

In December 2023, the RBI mandated regulated entities to refrain from investing in AIF units with exposure to their borrowers. If AIFs make downstream investments in such borrowers, the relevant entity is mandated to liquidate its AIF investments within 30 days. This is in line with the RBI's 2019 framework for resolution of stressed assets. With global capital moderating in the Indian credit space and limited investment ability of HNIs and family offices, curbs on regulated entities would further impact fund raising.



For SSFs, issues such as clarity on acquisition of stressed assets through IBC resolution, absence of full cover under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI), and inability to acquire single loan still need resolution and we could expect some further developments.

Rajeev Vidhani, Partner





Treatment of hybrid instruments

The treatment of hybrid instruments as 'financial debt' under the IBC has been a matter of contention as financial creditors enjoy voting rights in the resolution process. Judicial decisions in late 2023, including the Supreme Court's ruling in *IFCI v Sutanu Sinha* on compulsorily convertible debentures and the National Company Law Appellate Tribunal's (NCLAT) decision in *Sanjay Kakade v HDFC Ventures* vis-à-vis compulsorily convertible preference shares have introduced some guidance. These decisions emphasise the overarching principle that 'substance prevails over form' in determining debt classification. Going forward, the significance of careful structuring and documentation when dealing with upside instruments will become even more pronounced.

A basket full of amendments: may IBC shine again

2023 saw a slew of IBC amendments proposed to re-imbibe creditor confidence and some certainty in India's insolvency regime. These include clarifying the non-discretionary nature of judicial power in admitting insolvency, prioritising secured financial creditors' dues over even Government dues, formalising group insolvency and project wise resolution for real estate companies. This could not come to the fore in 2023, but considering the criticality, some of these amendments are likely in 2024. With the Government determined to increase resolution rate and address the procedural delays, 2024 is expected to witness bolstering of capacity at the tribunals.

White collar crime: expect more investigations and prosecutions



Vinay Joy

The trend of the Government pursuing white collar crime investigations and prosecutions under the Prevention of Money Laundering Act, 2002 under the Foreign Exchange Management Act, 1999 on a war footing is expected to continue in 2024. This comes on the back of the 'Delhi Declaration' issued at the end of the G20 Summit in New Delhi in September 2023 which affirmed 'zero tolerance for corruption' and the support to 'enhance global efforts to seize, confiscate and return criminal proceeds to victims and states' including through support to the Financial Action Task Force (FATF).

New criminal laws

December 2023 brought a major reform to India's criminal law framework with The Bharatiya Nyaya Sanhita, 2023, the Bharatiya Nagarik Suraksha Sanhita, 2023 and the Bharatiya Sakshya Adhinyam, 2023 set to replace the Indian Penal Code, 1860, the Code of Criminal Procedure, 1973, and the Indian Evidence Act, 1872, respectively with the aim of modernising and updating the criminal justice system. One major change brought about in the Bharatiya Nyaya Sanhita is the concept of an 'organised crime syndicate' which looks to penalise any syndicate or gang indulging in an 'continuing unlawful activity' which includes an 'economic offence', a new term that includes the offences of cheating, criminal breach of trust, forgery and mass-marketing frauds amongst others.

Rise in financial scams

While India's ascendancy into a digital economy continued unabated through 2023, this brought along a rise in sophisticated scams using technologies - whether it was unified payments interface (UPI) - related scams, bank frauds, identity theft or online schemes inviting persons to invest in stocks or cryptocurrencies. As digital transactions are only going to increase in the coming year, this trend is expected to continue into 2024 and the new criminal laws will likely be pressed into action immediately as a result. One positive development is that the cyber cell units of the police across states have become more efficient and have had a greater degree of success in pursuing reported incidents.



2024 being an election year, stringent action against corruption, bribery and other white collar crimes are likely to be key themes in the Indian landscape.

Vinay Joy, Partner



Heightened focus by the Enforcement Directorate

2023 brought about a record number of enforcement case information reports being filed by the Enforcement Directorate (ED) and increased instances of prosecution. Given the time it will take for the review petition to be considered and determined, it is likely that the ED will continue its aggressive approach in the short term.

Increased prosecution under the Prevention of Corruption Act, 1988

While the main focus of the Prevention of Corruption Act, 1988 (PCA) was to penalize corruption by 'public servants', ever since the 2018 amendments to allow for the prosecution of bribe givers as well, instances of prosecution under the PCA have increased as well. While this is a positive development, companies and their managements continue to await clarity from the Government on what may constitute 'adequate procedures' to be implemented by a company so as to constitute a defence for its senior management against penalties on account of violations by employees.

Intensified regulatory spotlight on ESG

Jyoti Sinha



As India experiences rapid economic growth, urbanisation, and industrialisation, ESG concerns have become a key area of focus. Reflecting global trends, a regulatory and legislative push can be seen towards greater transparency, accountability and corporate responsibility in the ESG space. ESG investments in India are expected to grow significantly over the next few years with key sectors, being banking, financial services, insurance, information technology, and healthcare expected to be the driving force.

Renewed focus on ESG reporting

Market regulator, SEBI had earlier mandated the top 1,000 listed companies (by market capitalisation) to make mandatory ESG disclosures under the Business Responsibility and Sustainability Report (BRSR). SEBI now requires the top 250 entities to undertake reasonable assurance of the BRSR Core and provide assurances for nine key performance indicators in their value chain. Such requirements are operational on a comply-or-explain basis from FY 2024-25. BRSR requirements will be expanded in a phased manner to companies across the board and require businesses to develop clear processes to ensure accurate reporting.

SEBI has further mandated ESG rating providers to provide assurances on specified ESG parameters in the BRSR Report, from such date as will be prescribed, along with the requirement for registration of ESG rating providers with SEBI – provisioning for greater accountability.

Instituting an Indian Carbon Market

The recently introduced Carbon Credit Trading Scheme, 2023 provides for setting up an Indian Carbon Market along global lines and signals that carbon emission concerns have taken prominence in the Indian context. The operationalisation of detailed procedures is anticipated in 2024.



Regulatory emphasis on ESG is expected to bring in greater transparency and accountability in businesses, thereby attracting global investment.

Jyoti Sinha, Partner



Market rumour verification requirements

The mandatory requirement for verification of market rumours for the top 100 and 250 listed companies is finally expected to come into force in a phased manner. However, resolution to fundamental questions such as whether the materiality requirement should be considered in terms of price movement and whether key management personnel (KMP) should also be obligated, remains awaited.

Transparency in Limited Liability Partnerships

The recently introduced Limited Liability Partnership Significant Beneficial Owners (SBO) Rules, 2023 require Limited Liability Partnerships (LLP) to identify SBOs and ensure related compliances, akin to companies, in a bid to enhance transparency. Clarifications could, however be expected given practical implications and the very nature of nature of LLPs as well as ambiguity regarding terms such as 'significant influence'.

Mandatory push for dematerialisation

In a move expected to improve the ease of doing business in India, the Ministry of Corporate Affairs MCA has mandated private companies other than small companies to ensure that all their shares are held in dematerialised form by September 2024. As a result, companies may have to enhance engagement with depositories and depository participants and overtly demonstrate compliance with transfer restrictions, which could present operational challenges.

Bracing for Competition Law 2.0

Anisha Chand



2024 is expected to be significant for India's competition law regime. Not only will the amended Competition Act be fully enforced, but the year will also witness developments around legislating a specific statute regulating competition in the digital sector on an ex-ante basis. Merger control scrutiny will continue to remain heightened in complex M&As and financial sponsor deals.

Ex- ante Digital Competition Law

The MCA is likely to introduce the draft statute for *ex-ante* regulation of competition in digital market in India for public consultation. In December 2022, the Standing Committee on Finance of the MCA submitted a report titled 'Anti-Competitive Practices by Big-Tech Companies' before the Parliament. It identified 10 anti-competitive practices in digital markets and recommended the framing of a digital sector-specific *ex ante* legislation. In February 2023, the Committee on Digital Competition Law (CDCL) was set up to deliberate on the need for an *ex-ante* framework for the digital sector. CDCL's deliberations are underway, and its report is yet to be published.

Establishment of a Digital Unit

India's antitrust watchdog, the Competition Commission of India (CCI) has set-up the Digital Markets and Data Unit - touted as a specialised centre of expertise to regulate digital markets. This is a milestone step towards CCI's capacity building for tackling novel challenges in digital markets. Its effectiveness is expected to be more visible in 2024.



With the enforcement of the complete suite of amendments, the Indian competition regime is set for an upgrade to match pace with quickly evolving markets particularly in the technology sector.

Anisha Chand, Partner



Key enforcement decisions awaited

The first half of 2024 is likely to witness final decisions in significant matters, including the technology sector. The appeals before the appellate forums may also achieve finality in a few cases, which will go a long way in shaping the jurisprudence on critical substantive and procedural facets including private damage claims.

Heightened scrutiny in green channel cases

According to the CCI, while 23 of the 75 merger filings in 2023 were deemed approved under the green channel, latest experience indicates an in-depth scrutiny by the CCI before accepting green channel filings. This trend will continue in 2024 - the CCI, in fact, has started to scrutinise older green channel filings and is raising queries on a post facto basis. This emerging trend signals a cautious approach while pursuing green channel filings, particularly by financial sponsors that often look to leverage this fast-track approval route.

Overhaul of the Competition Act

While the Competition Act was amended in 2023 to bring in major changes such as introduction of Deal Value Threshold for notifiable mergers, hub-and-spoke cartels, and commitment and settlement regime, the majority of these amendments have not been enforced. This is due to the absence of attendant regulations that would render more operational clarity on the amendments. In the last quarter of 2023, the CCI carried out extensive public consultation on the draft regulations and it is now expected that the statutory amendments along with the attendant regulations will be enforced in a staggered manner in the first half of 2024.



A multi-pronged approach to improving the dispute resolution ecosystem



Kingshuk Banerjee and Kartikey Mahajan

Disputes are inevitable in modern-day businesses, and consequently their effective resolution is crucial to ensure business continuity. India has made significant strides to improve its dispute resolution ecosystem. This follows from a consolidated effort from various parts of the ecosystem such as the Government forming an expert committee to reform arbitration legislation, pro-arbitration judgements, promotion of arbitration institutions and offering mediation as an alternative to arbitration.

Revamping the arbitration regime

In June 2023, the Government constituted an expert committee comprising legal and industry experts to examine the extant arbitration regime in the country and recommend reforms to the Arbitration and Conciliation Act, 1996 (Arbitration Act).

Significant modifications to the existing laws and even a complete overhaul of the existing arbitration regime are up for consideration. The committee is tasked with analysing the current framework in the country vis-à-vis other developed arbitration foreign jurisdictions and make appropriate recommendations to establish a cost-effective and efficient arbitration regime. The committee will also assess the need for a new legislation as well as feasibility of enactment of separate and independent laws pertaining to domestic arbitration, international arbitration and enforcement of foreign awards. To this end, comments and suggestions have been invited from various stakeholders and a detailed consultative process is underway.

Significant changes are expected in India's arbitration regime in 2024. These are likely to result in lesser judicial intervention in the process and promote faster and more efficient arbitrations.

India International Arbitration Centre (Conduct of Arbitration) Regulations, 2023

On 1 September 2023, the India International Arbitration Centre (IIAC) notified the India International Arbitration Centre (Conduct of Arbitration) Regulations, 2023. These regulations set out in detail the procedure for initiating arbitration under the purview of IIAC, the selection of arbitrators, and the mechanisms for resolving disputes.

Notably, the regulations envisage and provide for conducting emergency arbitration proceedings in cases of extreme urgency. They also offer an option to the parties to have their dispute resolved through a fast-track procedure. Here, the award is to be made within six months from the date of intimation by the Registrar of IIAC to the parties, of the constitution of the arbitral tribunal.

The notification of the arbitration regulations is a significant development in furthering India's objective of promoting and strengthening its institutional arbitration regime to bring it at par with other international arbitration institutions such as Singapore International Arbitration Centre, London Court of International Arbitration etc.

2024 is set to be a witness to many arbitration proceedings being administered by IIAC. This is likely as Indian business are increasingly recognising the value of institutionally administered arbitrations as they almost always result in faster resolution of a dispute and consequently result lower time-related costs.



Validity of Unstamped or Insufficiently Stamped Arbitration Agreements

On 13 December 2023, the Supreme Court rendered a landmark and much awaited ruling on the enforceability of arbitration clauses in unstamped or insufficiently stamped documents. It held that an arbitration clause embedded in such a document is not rendered void and unenforceable since non stamping or insufficient stamping is merely a curable defect. Further, an objection as to stamping does not fall for determination of a referral court under sections 8 or 11 of the Arbitration Act. The concerned court must examine whether the arbitration agreement prima facie exists. If the issue is answered in the affirmative, the concerned judicial authority or court is required to refer parties to arbitration or appoint an arbitrator/s, as the case may be.

This was a welcome judgment as in multiple cases prior to the decision, counter parties would try and avoid arbitration at the threshold on the basis that the underlying arbitration agreement was unstamped or insufficiently stamped. This became a regular practice in various proceedings filed under sections 8 or 11 of the Arbitration Act.

An immediate and desirable consequence of this judgment is speedier disposals of applications preferred under sections 8 and 11 of the Arbitration Act. In turn, this would help in decongesting courts and also promote minimum judicial interference by courts and judicial authority.



India's arbitration regime is set to undergo significant changes through 2024. Steps to reduce judicial intervention in the arbitration process and enhance the speed and efficiency of arbitrations are likely.

Kartikey Mahajan, Partner



Implementation of the Mediation Act, 2023

In a significant move last year, the Mediation Act, 2023 was enacted to standardise and institutionalise mediations in India which, at present, are largely informal and ad-hoc. More importantly, the law attempts to render finality to mediated settlement agreements by providing for enforcement of the same.

Once the Mediation Act 2023 is implemented, mediated settlement agreements will be enforceable in the same manner as a court decree or arbitration award. This is likely to inspire greater confidence among parties to opt for mediation to resolve disputes as the end-result of the mediation will have the sanction of law. The draft rules and regulations submitted by the Working Group are reported to be currently under inter-ministerial and stakeholder consultations. Further, provisions pertaining to the establishment of the Mediation Council of India, i.e., the regulatory body envisaged under the Act have also been notified.



The establishment of necessary infrastructure and implementation of the proposed Mediation framework is expected to make significant progress this year.

Kingshuk Banerjee, Partner



India's IPO frenzy set to continue



Gautham Srinivas

According to SEBI's annual report, 2022-23 saw the Indian capital markets facilitating resource mobilisation of INR 9.8 trillion, a rise of 4.6% over the previous year. The Bombay Stock Exchange reported IPOs of 120 companies, out of which 59 were on the main board and six were on the small and medium enterprise (SME) segment, during the 2023 calendar year. This momentum is expected to gather further steam going into 2024. As the IPO market hots up globally, a similar uptick can be seen closer home as well. Many stakeholders anticipate a doubling of volume in 2024 from last year and a significant rise in the average deal value as well.

Confidential filing of draft red herring prospectus

As a consequence of legal developments in the previous year, TATA Play and Oravel Stays filed their draft offer documents under the confidential filing mechanism. Considering the potential benefits involved, an increasing number of companies utilising this mechanism to file their draft offer documents is anticipated in 2024.

Same-day settlement cycle for share trades

With a view to develop the securities markets and ensure investor protection, SEBI had shortened the settlement cycle for clearing and settlement of funds and securities to three days from five days in 2002, to two days in 2003, and to a one-day settlement cycle in 2021 (introduced in a phased manner and fully implemented from January 2023). SEBI has now proposed to introduce a facility for clearing and settlement of funds and securities on the same day.



The instant settlement cycle for share trades will be in action in the near future and is likely to help bring India on par with other advanced securities markets.

Gautham Srinivas, Partner



Online resolution of disputes

SEBI has recently introduced a framework for settlement of disputes arising out of activities of registered intermediaries, and for disputes between investors or clients and listed companies or such intermediaries. These have to be resolved either by harnessing online conciliation and/or arbitration infrastructure provided by SEBI, or by harnessing any independent institutional mediation, conciliation and/or arbitration in India. The framework introduces an end-to-end online experience for investors, intermediaries, conciliators and arbitrators in conducting the conciliation and arbitration process.

Reduction of timeline for listing of shares in public issues

With a view to enable faster access to the capital raised by issuers, SEBI's 9 August 2023 circular reduced the timeline for listing of shares in public issues from six days to three days from the date of issue closure. Accordingly, the time taken for various activities involved in the public issue process from the date of issue closure till the date of listing of shares, such as submission of applications by investors, modification of bids, reconciliation of UPI mandate transactions, among others, have also been revised. The reduced timelines are mandatory for all public issues opening from 1 December 2023.

En route to cleaner energy



Dibyanshu Sinha

2023 saw India doubling down on its commitment to boost renewable energy in order to battle the climate crisis. With ambitious targets and pioneering policies, India not only captured global attention but also established itself as a trailblazer. The year ahead is expected to see several transformative trends to redefine India's clean energy trajectory.

Renewable Expansion Acceleration

India's relentless momentum towards a renewable future remains steadfast. The nation's trajectory aims at installing 500 GW of non-fossil fuel capacity by 2030, propelled by competitive tariffs, technological leaps, and robust Government incentives. The projected tendering spree, targeting 50 GW annually over the next five years, promises a monumental leap in solar and wind capacities, attracting substantial investment from both domestic as well as foreign investors.

Promotion of Carbon and Green Credit

The Green Credit Rules, 2023 are intended to incentivise environmentally positive actions through a market-based mechanism and generate green credit, that would be tradable on a domestic market platform.

Similarly, introduction of the Carbon Credit Trading Scheme, 2023 for the first time provides for setting up an Indian Carbon Market along global lines and signals that carbon emission concerns have taken prominence in the Indian context as well.



Aligned with global agendas, India's collaboration on climate goals and sustainable energy transitions accentuates its commitment to a greener future.

Dibyanshu Sinha, Partner



Green Hydrogen Mission

The National Green Hydrogen Mission has ushered in a new era of development and deployment of a new alternative clean energy source in India. Recently, the Solar Energy Corporation of India concluded its request for proposal for setting up of green hydrogen facilities which saw a massive response from stakeholders. In 2024, this sector is likely to witness more tenders and substantial advancements driven by regulatory interventions, increased investment, and strategic partnerships.

Stepping on the gas

The Government has set a target to increase the share of natural gas in the energy mix share from 6% to 15% by 2030. This increase in the share of natural gas by 2030 is intended through proposed expansions of the National Gas Grid Pipeline, city gas distribution (CGD) network, and liquefied natural gas (LNG) terminals. In the coming years, we may see substantial thrust from the Government, attracting more private participation. Recently the Petroleum and Natural Gas Regulatory Board launched its twelfth round of bidding for CGD networks which is likely to be concluded in 2024.

As 2024 unfolds, it promises groundbreaking strides in clean energy adoption, policy evolution, and international partnerships, illuminating the path towards India's greener and more sustainable energy landscape, making India's energy sector the preferred destination for investment.



Expected changes to India Inc's talent pool and potential industrial relations issues



Anshul Prakash



The key developments in India's employment, labour and benefits space can be viewed through three lenses. Firstly, the increased importance of diversity, equity and inclusion (DEI) initiatives, secondly, the impact of AI on human workforce and finally, the implementation of India's four new labour codes that seek to consolidate and simplify existing labour laws.

Increased importance of DEI initiatives

Recognising the positive impact on financial returns and organisational performance, DEI initiatives at the workplace have become essential for employers across the globe. Currently, India has only a few DEI-related laws that prohibit and prevent discrimination of employees in the private sector. Accordingly, the implementation of DEI measures and policies is largely at the discretion of the employers. Many Indian corporates have begun prioritising their DEI initiatives and policies to attract and retain talent, and have adopted policies such as paid menstrual leaves for women and transgender persons, allowing employees to add any partner as a health insurance beneficiary (and not just a spouse), additional training programmes for persons with disabilities and support for the LGBTQIA+ communities, etc. While organisations are stabilising after the 2022-2023 slowdown, it is expected that more organisations will pay attention to improving their DEI measures in 2024.

Adapting and tackling the introduction of AI in the workplace

The tech layoffs in 2023 juxtaposed with the advancement of AI in the last couple of years has enhanced concerns that the introduction of AI and automation would necessarily have an adverse impact on the human workforce. 2024 would potentially see employers and human resources professionals dedicating significant time to understand the impact of AI on how they do business and how to balance the efficiency of AI with the human qualities that are still essential for the business. On the one hand, this could mean further workforce reductions in 2024, while on the other hand, it reinforces the need for employers to upskill or reskill the workforce for the AI age, to ensure that AI augments the indispensable human qualities of strategic and creative thinking, emotional intelligence, etc.



Many organisations have already begun conducting an impact assessment of their operations to ascertain any adverse financial implications of the four new labour codes.

Anshul Prakash, Partner



Implementation status of the four labour codes

One of the biggest structural reforms undertaken in relation to Indian labour laws are the four new labour codes, namely Code on Wages, 2019, Code on Social Security, 2020, Industrial Relations Code, 2020 and Occupational Safety, Health and Working Conditions Code, 2020, aimed at consolidating and consequently replacing 29 central labour laws. These, however, are yet to be brought into force, barring a few provisions. While frequent news reports and statements are being made by lawmakers on the implementation status of the labour codes, some states and worker unions have voiced their opposition on certain aspects. However, there is no movement in the implementation status of these codes and there is little clarity or visibility on the roadmap for implementation going forward. Once the codes are fully implemented, the relevant state governments will be required to issue rules, schemes and notifications for on-ground implementation, which would provide employers sufficient time to review their extant practices and align them with the new codes.

Direct tax: towards greater clarity



Sanjay Sanghvi

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, domestic tax issues and digital tax provisions. These concerns are likely to carry through on stakeholders' minds into 2024.

Digital economy and its taxation challenges

The ambitious Pillar One project of the Organisation for Economic Co-operation and Development (OECD) saw the publication of 'Amount A Multi-Lateral Convention' (MLC) in October 2023. The Pillar One project seeks to re-allocate tax revenues, generated by some of the largest and most profitable enterprises in the world, to jurisdictions from where they source such income.

While this is a significant step forward in the implementation of Pillar One, large economies such as India continues to disagree with certain provisions of Pillar One. To resolve these disagreements, the original signing date for the MLC has been deferred to June 2024.

Conundrum on the timelines for cases under the Dispute Resolution Panel route

Indian income tax law provides for a general time frame of 24-36 months from the end of relevant financial year to complete the tax assessment (general timeline). In the case of certain specified taxpayers, the law requires the tax officer to pass a draft assessment order against which the taxpayers have an option to file objections before the dispute resolution panel (DRP). The tax officer, after considering DRP's directions (if opted) is then required to pass the final assessment order within a specified timeline for such taxpayers.

Recently, several High Courts have ruled that the final assessment order for such specified taxpayers needs to be passed within the general timeline, in the absence of which, such orders are invalid. Accordingly, various taxpayers have contested the validity of final assessment orders passed beyond the general timeline and the issue is now pending before the Supreme Court. It would be interesting to see if the apex court resonates with the High Court findings. Given that the issue has far-reaching impact, a retroactive amendment nullifying these positive rulings cannot be ruled out.



Re-allocation of tax revenues to jurisdictions from where they are sourced is a significant step and it will be interesting to watch further developments and assess implications.

Sanjay Sanghvi, Partner



Addressing the buy-back tax issue

India has a unique taxation regime for the buy-back of shares. Gains arising to the shareholders on the buy-back are taxed approx. 23% in the hands of the company undertaking such buy-back, and the shareholder is exempt from tax. As the tax is paid by the company, the non-resident shareholders are unable to claim credit of such taxes in their home country, thereby resulting in double taxation.

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. Greater clarity is expected if the Government will provide any relaxation to taxpayers.



GST: key areas to watch out for



Sudipta Bhattacharjee

In 2024, a significant amount of tax disputes are expected on various aspects of the Goods and Services Tax (GST). There is also hope for certainty of a tax position emerging on at least a couple of these areas by the end of 2024. This being an election year, no major amendments are expected in GST laws.

GST issues vis a vis 'real money' based online games

The online 'real money' gaming sector in India has been in the eye of a GST storm with close to 100 notices having been issued for a cumulative GST demand of close to USD 20 billion - an amount several times higher than the cumulative revenue earned by the entire Indian online 'real money' gaming sector. Tax disputes here are likely to reach a crescendo in 2024, both at a Supreme Court level as well as across several High Courts. This will hopefully be followed by a long-term certainty of India's tax position.

GST demands arising out of shareholder activities and related party transactions

There have been heightened GST investigations on shareholder activities such as corporate guarantees between group companies as well as issuance of employee stock ownership (ESOP) in the character of a holding company's shares for employees of subsidiary companies. Corporate guarantees especially, have been a subject matter of intense scrutiny and this has led to the introduction of a new valuation rule for levying GST on corporate guarantees. While the industry position had been there is no 'supply' in such cases, the GST department is adamant in its position, and we may see several tax disputes arising on this in 2024.

Another burning issue in the last few months has been with respect to GST investigations and demands on arrangements between multinational companies and their Indian subsidiaries where expatriate employees are being sent to the Indian subsidiaries on secondments. A few cases challenging the validity of such notices are already pending before various High Courts. It can be expected that 2024 will see many more tax disputes emerge from this issue.



From taxation of online games which use real money to a sharper lens on arrangement between multinational companies and their subsidiaries, 2024 is likely to see an increase in tax disputes at the High Court and Supreme Court levels.

Sudipta Bhattacharjee, Partner



GST Appellate Tribunal to be operational

The GST Appellate Tribunal is finally expected to be operational from September 2024. To that extent, necessary amendments in GST laws have been introduced and notifications have been issued for operationalising these tribunals in each state.

However, one has to be mindful of the fact that there is already a huge backlog of appeals which would be filed once the tribunal is operationalised. Therefore, to expect early and smooth resolution of pending GST appeals may be unrealistic. It will take a couple of years for the appellate tribunal to commence functioning effectively.

Intellectual property: on the fast track



Shailendra Bhandare

The Controller General of Patents, Design and Trade Marks (CGPDTM) held the National IP Conference 2023 with the theme, 'Nurturing Growth of IP for Knowledge Economy', where a few significant changes were indicated to be on the anvil.

- Doubling of manpower for processing intellectual property (IP) applications and streamlining of processes with emphasis on transparency
- Plans for a 100% digitalisation of the office of the CGPDTM for enhanced efficiency
- Reduced fees for applicants, particularly for women entrepreneurs, micro and small units, and academic institutions

Depending on the effect of the crucial elections this year, the IP ecosystem is likely to see several developments.

- The Draft Patent (Amendment) Rules, 2023 released for stakeholders' comments last year, may come into effect. These touch upon the working statement requirements, pre-grant oppositions, and information about foreign applications.
- The Calcutta High Court and the Bombay High Court may set up their own IP division. In 2023, the Madras High Court (after the Delhi High Court) formed its IP division and the Calcutta High Court invited comments from stakeholders for the draft rules of its proposed IP division.
- Revisions to the Indian IP Acts (including the Trade Marks Act 1999 and the Copyright Act 1957) could be finalised since they have been held up despite comments being provided by stakeholders in the last few years. As an indication, changes to the Trade Marks Act 1999 may include expediting the registration process (by reducing the opposition timelines), changes to the provisions relating to the Madrid Protocol, and changes to the appeal process and provisions arising from the decisions of the Trade Marks Registry.
- Evolution of IP jurisprudence on newer technologies such as AI - 2023 saw the Delhi High Court utilising live transcription in recording evidence for a patent-related suit for the first time. Similarly, the Delhi High Court rejected the reliance on ChatGPT-filed responses, observing that AI tools could not substitute human intelligence.



The Union Budget could see further increase in the allocation of funds to the IP domain.

Shailendra Bhandare, Partner





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