TRILEGAL

EASE OF DOING BUSINESS IN INDIA[1]

Introduction

When the British-raj was replaced with a post-Independence License-raj, the focus for India was to create a socialist economy. Most businesses were state owned enterprises and the economy was closed to foreign investments resulting in sluggish growth and productivity. In 1991, facing an impending economic collapse, the Government decided to pave the way for liberalization and reduced tariffs and interest rates and did away with public monopolies, allowing automatic foreign direct investment in several sectors. Today, India has transformed into a free market economy and with the opening of the retail, defence, telecom, and insurance sectors amongst various others, and the sea of change brought about by the shift to the Goods and Services Tax (GST) regime, promises to further boost the business environment in India.

As a testament to the enormity of the changes, in October 2017, India jumped up thirty places to take the 100th rank in the World Bank's Ease of Doing Business Index (the Report). The Report focuses on the various parameters relating to undertaking a business - procedures required to start a business, construction permits, ease of obtaining electricity, registration of property, taxation, enforceability of contracts, and insolvency.

Regulatory Reforms and Improved Rankings

The Report indicates that India has seen a surge in rankings primarily due to the measures it has taken in insolvency resolution, protection of minority investors, and by providing increased access to credit. The following is a snap shot of these developments:

(a) **The Insolvency and Bankruptcy Code, 2016** - several fragmented and inconsistent legislations and regulations have been assimilated to provide a cogent framework providing certainty to the process of liquidation of a company and individuals in a timely manner. In case of a default in payments by a company, creditors can now apply to the recently established National Company Law Tribunal. The law, if implemented correctly, will increase investor confidence in the recovery process for creditors.

(b) **Extensive relaxation in the foreign direct investment (FDI) regime** - in the past year this has taken place in key sectors such as defence, retail, pharmaceuticals and broadcasting.

- 100% FDI has been allowed in defence with a view to bring large global players to 'Make in India'.
- 100% FDI is allowed for single brand retail trading in food products. Companies such as Amazon Retail, Grofers India and Supermarket Grocery Supplies have been given 100% FDI approval from government for multi brand retail trading of food products.

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- 100% FDI in brownfield pharmaceutical projects, where up to 74% FDI is permitted under the automatic route and beyond 74% is permitted under the government route, subject to prescribed conditions.

- 100% FDI under the automatic route has also been allowed in broadcasting carriage services and cable networks.

After the abolition of the Foreign Investment Promotion Board, the Department of Industrial Policy and Promotion has released a standard operating procedure streamlining the process for obtaining approvals from sectoral ministries of the Government.

(c) Other key reforms that played a role in the surge in rankings include:

(i) **Reforms in foreign investment in limited liability partnerships** (LLPs) - there is now no requirement for obtaining government approval for conversion of certain companies to LLPs. The explicit prohibition on LLPs availing external commercial borrowings was also removed. The new FDI Policy now allows conversion of an FDI funded LLP operating in sectors/activities where: (i) 100% FDI is allowed through the automatic route; and (ii) there are no FDI linked performance conditions, into a company, under the automatic route.

(ii) **Reforms in maternity laws** - the Government has increased the paid maternity leave to 26 weeks amongst other changes.

(iii) **Increasing remedies available to minority investors in case of prejudicial transactions between interested parties** - the Securities and Exchange Board of India (SEBI) has enhanced norms in the area of governance in order to protect minority investors. It has mandated companies to formulate and disclose a dividend distribution policy and has extended the applicability of business responsibility reporting (BRR) to the top 500 listed companies. Under BRR, companies have to disclose their performance in areas such as social, environmental and economic responsibilities. SEBI also asked companies to disclose and obtain minority shareholders' approval on profit-sharing agreements between private equity funds and promoters, directors or key managerial personnel of listed investee companies. These measures have been implemented to ensure protection of the interests of minority shareholders and provide minority shareholders with enhanced transparency in the operations of a company.

(iv) **Increased ease of access to credit** - the Government strengthened access to credit by amending the rules on priority of secured creditors outside reorganization proceedings and by adopting a new law on insolvency that provides a time limit and clear grounds for relief to the automatic stay for secured creditors during reorganization proceedings.

(v) **Electronic payment of taxation** - the Government made paying taxes easier by allowing payments to be made electronically by using a digital signature certificate. Additional facility of e-payment through SBI e-Pay and Government Revenue Accounting System has been made available to the taxpayers thereby easing tax compliance on businesses.

(vi) **Improvements in port infrastructure and reduced border compliance** - border compliance cost required for export and import of goods were reduced in both Delhi and Mumbai by eliminating merchant overtime fees and secondly, through the increased use of electronic and mobile platforms, allowed importers to clear cargo faster through simplified customs procedures.

Conclusion

The present Indian Government, emboldened with the response from the global community and with the aim of breaking into the top 50, has proposed a slew of further reforms in the taxation, labour laws, corporate governance and foreign investment space. The future does look good for doing business in India.