THE UNFAILING RISE OF DEPENDABLE INDIA INC

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Since 1990s India has adopted the Liberalization Privatization and Globalization (LPG) model of development and has now ushered in the second wave of reforms aimed at further and faster integration of Indian economy with the global economy.

As a result of the various policy initiatives taken so far, India has been rapidly changing from a restrictive regime to a liberal one. A relaxed Foreign Direct Investment policy has helped India carve out a distinct place for itself in the global business map.

Foreign Investment Policy

Foreign Direct Investments policy introduced has played a critical role in upgrading the country's technology, skills and managerial capabilities. The legal framework for FDI in India is one of the most forward-looking regulations of the financial market and remains consistent with the international treaties on trade ratified by the Government of India.

The current FDI policy which came into effect on October 1st, 2011, has relaxed many of the provisions of the previous policy. More sectors have been opened up to foreign investment under the automatic route, where prior authorization does not have to be sought from the Reserve Bank of India (RBI) or the Government, and in other sectors, the threshold of foreign investment has been raised from the old limits.

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The Foreign Investment Promotion Board (FIPB) has also been set up as a competent body to consider and recommend foreign direct investments (FDI) which do not come under the automatic route.

Bilateral Investment Treaties

With the opening up of the economy in 1991, India has tried to attract the foreign capital through liberalised investment policies. Negotiations have been undertaken with a number of countries to enter into Bilateral Investment Promotion & Protection Agreement (BIPAs) in order to promote and protect on reciprocal basis investment of the investors.

These bilateral agreements provide a legal basis for enforcing the rights of the investors in the countries involved. They give assurance to the investors that their foreign investments will be guaranteed fair and equitable treatment, full and constant legal security and dispute resolution through an international mechanism. Since the liberalisation, India has undertaken negotiations with a number of countries and entered into Bilateral Investment Promotion Protection Agreements with as many as 80 of them. Of these, 70 BIPAs have already come into force and the remaining are in the process of being enforced. In addition, many agreements are also in the negotiation stage with a number of countries.

Protection to Intellectual Property

India is a signatory to the agreement concluding the Uruguay round of the GATT negotiations and establishing the World Trade Organization. This agreement also contains the provisions of the agreement on Trade-Related Aspects of Intellectual Property Rights which lays down minimum standards for protection and enforcement of Intellectual Property Rights in member countries. They are required to promote effective and adequate protection of Intellectual Property Rights with a view to reducing distortions and impediments to international trade. The obligations under the TRIPS Agreement relate to provision of minimum standards of protection within the member country's legal systems and practices.

With the view of keeping up with the provisions of the Agreement, the Government of India has legislated several laws in various areas of intellectual property like the Trademarks Act, 1999, Geographical Indications of Goods (Registration & Protection) Act, 1999 Designs Act, 2000 and amendments to the Patents Act, all replacing older laws and providing adequate protection to trade-related intellectual property.

Any commercial dispute in India can be resolved either through civil courts or through alternate dispute resolution mechanism recognised under Indian Laws.

Judicial System

A single unified judicial system is a unique feature of the Indian judicial system. Broadly, there is a three tier structure consisting of District Courts, High Courts and Supreme Court. Besides the broad three tier structure there are various specialized tribunals – the more prominent ones being the Company Law Board; Competition Commission; Consumer Protection Forum; Debts Recovery Tribunal; Tax Tribunal.

The Indian judiciary is characterised by its independence and extensive powers. The High Court or the Supreme Court has the power under writ jurisdiction to strike down legislation on the ground of unconstitutionality. The Constitution of India grants each individual the fundamental right to carry on any occupation, trade or business. Further, Article 301 provide trade, commerce and intercourse throughout the territory of India, subject to reasonable restrictions, shall be free. In other words there is sufficient protection for an atmosphere of free and fair trade in India and the judiciary has been upholding it.

In recent time Alternative Dispute Resolution (ADR) mechanism has also been introduced. ADR, in India, is governed by the Arbitration & Conciliation Act, 1996. The Act is based on the UNCITRAL Model Law (as recommended by the U.N. General Assembly) and facilitates International Commercial Arbitration as well as domestic arbitration and conciliation. For commercial transactions, there are mainly two types of ADR.

Business Model for foreign entities

Any foreign entity in order to conduct any business in India can undertake do such business as an Indian entity or as a foreign entity.

Doing business as an Indian Entity

If any foreign entity chooses to do business in Indian as an Indian entity, it can choose any of following alternatives -

1. Joint Venture

   Under this route any foreign entity can set up their operations in India by fostering strategic alliances with any Indian partner(s).

2. Wholly owned subsidiary

Any foreign entity can also opt to set up wholly owned subsidiary for the purpose of undertaking any business activity.

3. Acquisition Of Existing Companies:

Any foreign entity can acquire any existing Indian company subject to Foreign Exchange Management Act, 1999 and rules made there under, FDI Policy and special and general permissions granted by RBI.

4. Limited Liability Partnership (LLP)

The LLP Act, 2008 allows foreign nationals including foreign companies and LLPs to incorporate a LLP in India provided at least one designated partner is resident in India.

*Doing business as a Foreign Entity***.**

If a foreign entity chooses to do business in India, as foreign entity it can opt for any of the following alternatives;

a) Liaison Office/Representative Office (Limited Transactions permitted)

A Liaison Office is in the nature of a representative office set up primarily to explore and understand the business and investment climate. Liaison office acts as a channel of communication between the principal place of business or head office and entities in India. It is pertinent to note that a Liaison office cannot undertake any commercial activity directly or indirectly and cannot, therefore, earn any income in India.

b) Project Office

Foreign companies can set up temporary offices in India to execute specific projects in. RBI has now granted general permission to foreign entities to establish Project Offices subject to specified conditions. Such offices cannot undertake or carry on any activity other than the activity relating and incidental to execution of the project. However project offices are treated as a permanent establishment of a foreign entity, so taxed at the rate applicable to foreign entities in India.

c) Branch Office

A branch office is allowed to undertake a wide variety of activities on behalf of parent foreign entity except manufacturing. However such branch office can sub-contract manufacturing activities to an Indian manufacturer. A Branch Offices in India is permitted to generate income.

With so many changes in policies introduced since Indian adopted LPG model of development Indian economy has come a long way and in the years to come is poised to become the second largest in the world. In 2010, the Gross Domestic Product of India grew by 8.5% which is second only to China among Asian countries. Undoubtedly, India Inc has emerged as the most favourable investment destination for investors looking for credible and secure returns.