TRILEGAL

Ease of Doing Business

Key Policy and Regulatory Developments

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Overview

- Plans announced and steps taken to streamline the process of investing and operating in India – mostly positive steps for the investor community, but implementation is key (and as yet untested)
- Key changes initiated/ planned in laws relating to land acquisition, labor & employment, dispute resolution, compliance filings, and financial sector regulation
- Pricing guidelines made more flexible to facilitate deals in unlisted space, and the RBI has recently indicated that full capital account convertibility is being considered
- Policy paralysis well tackled with efficient (and generally well-received) auction processes for telecom spectrum and coal
- Steps taken towards implementation of GST

Overview (contd.)

- Decision not to file appeals in certain tax cases (Vodafone, Shell, etc.) well received - However, recent issuance of tax notices to foreign investors indicative that tax regime continues to remain an issue

- Overleveraged corporate sector (especially in infra companies) could impact economic recovery

Investing in India: Listed Companies

- FPI regime, which replaces the earlier FII/ sub-account regime, provides for greater flexibility in the applicant pool – subject to KYC, almost any entity can get registered
- Delisting:
  - Inability to merge a tender offer and delisting offer under erstwhile regulations removed – an acquirer can effectively 'merge' the two offers now. 10% p.a. interest payable on tender offer price if delisting offer fails.
  - Erstwhile delisting process quite onerous, and most offers would fail – ability of single large shareholder to hold process hostage
  - Price discovery process for delisting has been streamlined and brought in line with reverse book building process for an IPO
- Insider Trading Regulations:
  - Due Diligence 'recognized' and regulatory framework provided for it – 'price sensitive information' to be made available 2 working days prior to transaction closing
  - Concept of a trading plan for 'insiders' recognized and regulatory framework provided for it

Investing in India: Real Estate

- Construction Development Sector:
  - Relaxation of entry conditions – minimum area requirements reduced, minimum capitalization removed for WOS and relaxed for JV (with extended timelines for investment, linked to commencement of project)
  - Relaxation of exit conditions – new exit event upon development of 'trunk infrastructure', and erstwhile lock-in of 3 years removed
  - 100% FDI allowed in completed projects for operation/ management of townships, malls, shopping complexes and business centers/ parks – trading in real estate continues to remain prohibited
- Real Estate Regulation Bill:
  - 50% proceeds from the sale of any under-construction project to be deposited in a separate account, and used for construction of that project
  - Promoter obligation to refund sale consideration (with interest) and pay compensation in case of failure to complete project by promised timelines
  - 2-yr defect liability provision, and penalties prescribed for failure to register with authorities, making false representations and/ or failing to file periodic updates on project construction status

Investing in India: Real Estate (contd.)

- REITS:
  - Requirement to allocate 80% REIT assets in completed 'rent generating' projects – stifles opportunities for capital gains in the under-construction sector
  - REITs have been given tax pass through status, however concerns may arise around a sponsor transferring assets to a REIT
  - Exchange control laws are yet to be amended to allow foreign investment in REITs
- Smart Cities:
  - GOI target of 100 smart cities in India – detailed policy expected in a month
  - Major infrastructure investments expected through PPP model – financing these investments will require innovative structures, and possibly, a new regulatory framework
  - Several countries (and investors from those countries) have stated plans of assisting with the smart cities project

Investing in India: Financial Services

- Significant push for wider and deeper financial services sector
- Focus on technology enabled solutions to lower transaction costs and enable financial inclusion
- RBI pursuing multi-pronged strategy
  - Liberalization – New private sector bank licenses granted last year, licensing approach stated as 'on tap'
  - Subsidiarisation – for foreign banks with significant presence, with RBI offering almost at-par treatment for branch licensing and ability to acquire domestic private banks
  - Differentiated banking licenses – Payment Banks and Small Finance Banks
  - Niche banking – media reports indicate in-principle approval to ABN Amro for diamond trade financing
- Establishment of "International Financial Service Centres" – New regulatory framework for stock exchanges, intermediaries and other financial institutions set up in these IFSCs
- Jan Dhan Yojana – ambitious financial inclusion scheme, with added benefit of cash subsidy transfers (which also injects deposits into these banks)

Investing in India: Financial Services (contd.)

- RBI focused on NPAs/ bad loans in banking sector, and banks are being encouraged to resolve positions increase provisioning to cover likely losses – RBI and GOI in discussions on options to provide capital to the banking sector
- Greater focus and emphasis on 'responsible' regulation for the non-banking financial services sector – 'systemically important' limit raised from INR 1 billion to INR 5 billion, and increased scrutiny for acquisitions of/ investments into NBFCs
- Foreign investment in the insurance sector now permissible up to 49% with government approval (compared to 26% earlier)
- Overhaul of regulatory framework applicable to 'systematically important' NBFCs, to bring them closer to banks
- Creation of separate categories of NCD issuances by NBFCs for retail and sophisticated investors, with relatively freedom for the latter

Operating in India

- Labor & Employees:
  - Push towards consolidation of myriad labor laws/ reporting requirements in India – government has announced its intent to consolidate various state laws on minimum wages into a single national wage code, and a move to consolidate various annual labor filings/ returns into a single online form
  - Greater flexibility for 'hire and fire' – no approvals required for lay-offs/ closures of industrial establishments with less than 300 workers (as compared to earlier limit of 100). Rajasthan has already approved amendments and other states expected to follow soon.
  - Reduced likelihood of multiple trade unions – minimum membership for recognition of trade unions doubled to 30% of workforce (Rajasthan has approved amendments, with other states expected to follow soon)
  - Easing compliance for smaller companies – thresholds for applicability of Factories Act and Contract Labor Regulation Act increased significantly (Rajasthan has approved amendments, with other states expected to follow soon)

Operating in India (contd.)

- Land Acquisition (bill passed by lower house and pending in upper house):
  - Projects in 5 categories (defence, rural infrastructure, affordable housing, industrial corridors and certain infrastructure projects) to be exempt from obtaining consent of affected families and (on a case-to-case basis) from conducting social impact assessments
  - Erstwhile obligation of ‘returning’ unutilized land after 5 years removed if an increased gestation/ construction period was indicated upfront
  - Compensation for land acquisition linked to highest of (a) average consideration for market transactions in the same area for the past 3 years, (b) stamp duty ‘ready reckoner’ rates and (c) mutually agreed compensation between the acquirer and the land owners

Dispute Resolution & Bankruptcy Code

- Commercial Courts (proposed)
  - Establishment of special courts/ divisions in High Courts to adjudicate 'commercial' disputes in excess of INR 10 million
  - Timelines set out for adjudication of these disputes by commercial courts (primary proceedings to be completed in ~1 year, and appellate proceedings are expected to be disposed of within 6 months)
  - Introduction of a 'costs follow the event' regime (a first in India)
- Law commission recommendations on changes to the Arbitration & Conciliation Act
  - Limitations in existing laws sought to be addressed – e.g. foreign seated arbitrations expected to have recourse to Indian courts for interim measures
  - Applications challenging an arbitral award to be disposed by an Indian court within 1 year – no automatic 'stay' of the award in the interim
  - Reduced scope of interference from Indian courts on grounds of 'public policy' – illegality under Indian law should not be a ground for setting aside foreign arbitral awards
  - Introduction of a 'costs follow the event' regime to discourage frivolous litigation, and empower arbitral tribunals to look into fraud, corruption and complicated questions of fact

Dispute Resolution & Bankruptcy Code (contd.)

- New Bankruptcy Code (Viswanathan committee recommendations)
  - Acknowledgment that automatic and blanket moratorium on legal action against 'sick' companies (as envisaged under current laws) is susceptible to misuse – recommendation that such moratoriums be granted by a judicial authority on a case-to-case basis, and may not be granted if 75% secured creditors oppose
  - Rescue financing – 'super priority' to be given to any rescue financing, to encourage white knight investors/ lenders
  - Priority of payments – debts due to secured creditors to be *pari passu* with workmen's dues, and ahead of payments due to the government (including tax)
  - Secured creditors should have the ability to appoint administrators with respect to the debtor's operations/ assets

Thank You

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