

Legal risks and exposure for Japanese businesses

8 February 2021

India is ranked 63rd in the 2019 World Bank Global Ease of Doing Business Index. The complexity of laws, and lack of certainty and uniformity in their implementation, are challenging for traditionally conservative and risk averse Japanese companies.

The government has taken numerous steps to liberalize the economy and to introduce reforms to promote an investment friendly environment for Japanese and other foreign investors. The cordial ties between India and Japan have encouraged a closer economic partnership between them. While the economic, legal and policy reforms are encouraging, India continues to be a difficult terrain due to many challenges. Japanese companies regularly face problems relating to corruption, especially at lower police and government levels, direct and indirect taxation, labour laws, intellectual property rights, land acquisition, and contract enforcement.



Rohit Kochhar
*Founding member and managing
partner*
Kochhar & Co

One distressing issue has been the harassment of law-abiding and honest Japanese nationals by the police. In recent years, in purely civil disputes, criminal complaints were mischievously filed by Indian parties, and Japanese expatriates suffered the ignominy of being summoned, intimidated and questioned by the local police. In other cases, Japanese companies were blatantly cheated and defrauded, and even specialized agencies such as the Economic

Offences Wing took no action for months. Such experiences have shaken the confidence of Japanese investors, making them feel that the rule of law is absent. There is an urgent need for the government to reform the police force, and inject efficiency, honesty and reliability into the system.

Land acquisition remains complex, and India was ranked as low as 154 among 190 nations surveyed by the World Bank in 2019 for the registration of property ownership. Illustratively, the dedicated freight corridor railways project, which is primarily funded by the Japan International Cooperation Agency, has faced major hurdles with more than 5,000 land acquisition court and arbitration cases filed. This has increased land acquisition costs from US\$115 million to US\$200 million.

India ranks in the lowest quadrant of countries in enforcing contracts. According to a 2019 World Bank survey, a dispute in India is resolved on an average in 1,445 days compared to 165 days in Singapore. A consequent lack of faith in the judicial system has had a deleterious effect on Japanese investments in India.

Myriad employment laws at central and state levels are also challenging for Japanese companies, increasing the burden of compliance. The termination of lower level employees can be troublesome with trade unions adopting aggressive positions and protracted litigation in labour courts. A welcome step however is the recent consolidation of 29 statutes into four labour codes in an attempt to overhaul employment laws and address the concerns of stakeholders.

India's tax structure is also complex, with many direct and indirect tax laws including those governing the **goods and services tax** (GST). Although efforts have been made to simplify income tax provisions impacting foreign companies, the expanded definition of "business connection" with the introduction of the concept of significant economic presence requires greater clarity for foreign investors. An equalization levy imposed by the Finance Act, 2020, on non-resident e-commerce operators engaged in e-commerce supply or services is concerning for this rapidly expanding sector. Although more than three years have passed since the introduction of the GST, procedures are not fully streamlined and grey areas remain in the interpretation of regulations. An issue for Japanese subsidiaries is whether their services to their parent companies in Japan are zero-rated export services or a taxable supply, liable to GST. The lack of certainty in the quantum of taxes is also an obstacle for Japanese investors in the financial planning of their Indian operations.

However, these challenges have not deterred Japanese companies, and for the past five years, the Japan Bank for International Cooperation has rated India as one of the most attractive investment destinations for Japanese manufacturing companies. A large customer base and

relatively low manufacturing costs offer much promise for Japanese companies. If the government continues to engage proactively with, and address the concerns of Japanese investors, India could well overtake China in attracting large scale Japanese investments.

*Rohit Kochhar is the founding member and managing partner of **Kochhar & Co***



Kochhar & Co

New Delhi (head office):

Suite # 1120 -21, 11th Floor, Tower – A

DLF Towers, Jasola District Center

Jasola – 110 025, India

India offices:

New Delhi, Mumbai, Bengaluru, Chennai, Gurugram and Hyderabad

Overseas offices:

Dubai, Singapore, Atlanta and Jeddah

Contact details:

Tel: +91 11 4111 5222, +91 11 4312 9300

Fax: +91 11 4056 3813

Email: delhi@kochhar.com, info@kochhar.com