Investing in India: An Overview of Legal Considerations – 2026 Checklist

India has received total foreign direct investment ("**FDI**") inflow of USD 1.14 trillion since April 2000 until December 2025. FDI received during April 2024-March 2025 (USD 50.02 billion – the highest in last three financial years) and April-December 2025 (USD 47.87 billion) represent year-on-year increases of 13% and 18%, respectively (as per provisional figures released by the Government of India). The top five investing countries in the year 2025 were the same as in the year 2024 – Mauritius, Singapore, United States, The Netherlands and Japan. The top five FDI-receiving sectors also remained the same – services, computer software and hardware, trading, telecommunications and automobiles.

This note discusses certain key matters which a prospective foreign investor should consider while investing in India.

MODES OF INVESTMENT

Foreign direct investment (FDI)

FDI is defined as the investment by a non-resident into equity instruments of (i) an unlisted Indian entity; or (ii) listed Indian company amounting to 10% or more of the listed company's equity capital. FDI is the most common mode of foreign investment in India.

The framework for FDI in India is provided by the Consolidated FDI Policy framed by the Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry ("**DPIIT**") (which contemplates two routes of FDI: (i) automatic route; and (ii) approval route) and the Foreign Exchange Management (Non-Debt Instrument) Rules, 2019 issued by the Ministry of Finance ("**NDI Rules**"), each as amended from time to time. The applicable route depends on the sector in which the proposed investment is contemplated and the extent of shareholding to be acquired. While 100%

FDI is allowed in several sectors, others prescribe a cap on foreign shareholding or apply conditions for FDI. FDI is entirely prohibited in certain specified sectors such as 'Lottery Business,' 'Trading in Transferable Development Rights' and 'Real Estate Business' (not including development of townships, construction of residential /commercial premises, roads or bridges and Real Estate Investment Trusts). Accordingly, as a preliminary matter, a potential investor needs to determine the route and the sectoral limit of their proposed investment.

Press Note 3 issued by Government of India in 2020 was a key development in the Indian FDI regime. It brought an amendment to the FDI policy requiring prior government approval for all investments (whether by subscription or transfer) in India by entities incorporated in a country sharing land borders with India or whose beneficial owners are situated in or are citizens of such a country. The countries which share a land border with India are Afghanistan, Bangladesh, Bhutan, China (including Hong Kong), Myanmar, Nepal and Pakistan ("**Bordering Countries**"). In January 2025, an exception for multilateral banks or funds of which India is a member was included. Effective May 1, 2026, the Government of India has brought a significant amendment to: (a) provide a clear threshold to determine beneficial ownership at the level of the investor entity consistent with the rules prescribed under the Prevention of Money Laundering Act, 2002 – i.e., ownership of, or entitlement to, more than 10% of shares or capital or profits, or the ability of a citizen or entity from a Bordering Country to exercise control over the investor entity or ultimate effective control over the investee entity; and (b) permit investments with non-controlling ownership of up to 10% under the automatic route (subject to prior reporting by the investee entity to the DPIIT). Further, an expedited timeline of 60 days has been prescribed to decide applications under the approval route in the following "specified sectors" in cases where the Bordering Country investor seeks to acquire and hold up to 49% of the capital or voting rights and the majority shareholding and control of the Indian investee entity remains with resident Indian citizens and/or resident Indian entities owned and controlled by resident citizens: manufacturing in capital goods; electronic capital goods / components; polysilicon and ingot wafers; advanced battery components; rare earth permanent magnets; and rare earth processing (collectively, the "**Focus Sectors**"). Accordingly, in addition to the sectoral caps, a potential investor will also need to confirm compliance with the FDI policy stipulations on investment / beneficial ownership from a Bordering Country to determine whether FDI will be permissible without government approval.

Foreign portfolio investment (FPI)

Foreign portfolio investment ("**FPI**") is defined as an investment made by a non-resident into equity instruments of a listed Indian company where such investment is less than 10% of the listed company's paid-up share capital. Given the lower threshold of shareholding acquired through FPI compared to FDI, FPIs are generally made as shorter-term financial investments rather than strategic long-term investment. Typically, a portfolio investor does not have control over the company and does not participate in its management.

FPIs in India are primarily regulated by the Reserve Bank of India ("**RBI**") and under the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2019 ("**SEBI FPI Regulations**"). An entity seeking to make FPI in India is required to be registered with the Securities and Exchange Board of India (the "**SEBI**") and meet the prescribed eligibility criteria.

Registered FPIs can also invest in non-convertible debentures issued by a listed Indian company – a foreign investor is otherwise permitted to invest in debt instruments issued by, or grant financing to, an Indian entity by complying with the External Commercial Borrowing framework prescribed by the RBI, which entails more stringent compliance requirements.

If an FPI breaches the 10% threshold, it is required to divest any excess holding or reclassify its entire holding within five trading days from the date of the settlement causing the breach. Once classified as FDI, if an FPI's holding falls below the 10% threshold, the holding will remain classified as FDI. Previously, FPI investment of up to 49% (or the sectoral cap, whichever is lower) was permitted without government approval provided that there was no transfer of ownership and control of the Indian company from an Indian resident to persons outside India. The 49% cap was removed pursuant to an amendment to the NDI Rules in August 2024, and accordingly, the cap for aggregate holding of all FPIs in an Indian company is now the sectoral cap. However, for sectors where FDI is prohibited, the aggregate cap stands at 24%.

Foreign venture capital investment (FVCI)

An entity incorporated outside India may choose to seek registration as a Foreign Venture Capital Investor under the Securities and Exchange Board of India (Foreign Venture Capital Investors) Regulations, 2000 ("**SEBI FVCI Regulations**") if it meets the eligibility criteria prescribed by the regulations. Pursuant to the Securities and Exchange Board of India (Foreign Venture Capital Investors) (Amendment) Regulations, 2024, entities are now required to apply for registration via a Designated Depository Participant ("**DDP**"). DDPs have the authority to issue registration

certificates on behalf of SEBI and are required to dispose of the application for grant of registration within 30 days.

An FVCI is required to invest at least two-thirds of its 'investible funds' (i.e., funds committed for investment in India net of administrative and management expenditure) in unlisted equity or equity linked instruments. This requirement is not applicable to FVCIs registered under the "SWAGAT-FI" framework introduced in January 2026 (namely government or government related investors and appropriately regulated mutual funds, unit trusts, insurance companies and pension funds). The NDI Rules currently prescribe 10 sectors in which FVCIs may invest, including infrastructure, biotechnology and IT related to hardware and software. Further, the FVCIs may invest in 'start-ups', as defined by the DPIIT pursuant to a notification dated February 4, 2026, irrespective of the sector.

Unlike the other modes of foreign investment, FVCIs are exempt from the pricing regulations with respect to both acquisition and sale of the securities in which they invest. Additionally, provided that an FVCI has held the securities in a company for a period of six months, it is exempt from the six-month post-initial public offer ("**IPO**") lock in period, which applies to other non-promoter shareholders.

Disinvestment

In the past decade, the Government of India has at various points announced its intention to disinvest all or a portion of its stake in various public sector companies. The union budget for the financial year ending March 31, 2027 has set a disinvestment target of INR 800 billion (substantially higher than the target of INR 470 billion that was set for the previous financial year ended March 31, 2026). Disinvestment includes sale of both minority stakes or strategic disinvestment of enterprises through a public tender process. The Department of Investment and Public Asset Management, the Ministry of Finance ("**DIPAM**") conducts the strategic disinvestment process on behalf of the Government of India. Significant privatizations which have been completed in recent years through a tender process include Air India and Neelanchal Ispat Nigam Limited.

Disinvestment is conducted in accordance with the procedure prescribed by DIPAM on a case-by-case basis and unless specifically prohibited and subject to compliance with the exchange control regulations, foreign investors may participate in the process to acquire stake or control in the target entities.

Corporate insolvency resolution process

The Insolvency and Bankruptcy Code, 2016 ("**IBC**") was enacted to, *inter alia*, streamline the transfer of ownership of insolvent enterprises through the corporate

insolvency resolution process ("**CIRP**"). Subject to compliance with the sectoral limits and government approval with respect to foreign investment in specified sectors prescribed under the FDI Policy, a non-resident may participate in a CIRP and acquire an Indian company undergoing CIRP through a resolution plan. If the committee of creditors of the company, constituted pursuant to provisions of the IBC, approves and the National Company Law Tribunal sanctions the resolution plan submitted by a non-resident, such non-resident would be able to acquire ownership and control of the company, subject to the terms of the resolution plan.

Given that the liabilities of a company to its creditors are settled and discharged through CIRP under the IBC, it provides investors a significant opportunity for brownfield investments in India, allowing them to acquire distressed companies with a clean slate.

Foreign owned and controlled companies and indirect foreign investment

Investment made in an Indian entity by another Indian entity which is majority owned or controlled by non-residents ("**FOCC**") is considered to be 'Indirect Foreign Investment.' Pricing guidelines and reporting requirements are applicable to indirect foreign investments depending upon whether such transaction involves a non-resident, an Indian resident or another FOCC. FOCCs are treated akin to non-residents in certain circumstances under the FDI regime. Indirect Foreign Investment may be made by an FOCC only through either funds brought from abroad or internal accruals of the investor, where internal accruals mean net profits transferred to a reserve account.

Pursuant to clarifications issued in January 2025, arrangements available for direct FDI such as investment by way of swap of equity instruments and deferred consideration (see pricing guidelines below) are also available to downstream investments by FOCCs.

APPROVALS

Approval route for foreign investment

As mentioned above, foreign investment in certain sectors or by entities incorporated in a Bordering Country or whose beneficial owners are situated in or are citizens of a Bordering Country requires prior approval from the central Government. Additionally, foreign investment into an Indian company engaged in the activity of investing in the capital of other Indian company(ies) (regardless of ownership or control) will require government approval.

Investment through the approval route is permitted upon receipt of approval from the relevant government department or ministry (e.g., for the pharmaceutical sector, the Department of Pharmaceuticals and for the financial sector, the RBI) and, in certain cases, the Ministry of Home Affairs. Pursuant to the Standard Operating Procedure for Processing FDI Approvals issued by the DPIIT, the application is required to be processed within 12-14 weeks (recently, an expedited timeline of 60 days has been prescribed with respect to investment proposals from Bordering Countries in the Focus Sectors, as mentioned above). However, as a practical matter, the approval process could take longer.

Sector specific regulations

The FDI Policy prescribes certain additional conditions regarding foreign investment in certain sectors. For example, while 100% FDI is permitted in single brand retail, in cases of more than 51% foreign investment in the sector, certain domestic sourcing requirements are applicable, with at least 30% of the value of goods purchased to be acquired in India. Accordingly, an investor should be aware of any sectoral requirements prior to making an investment in India to determine any additional costs which such requirements may entail.

In recent years, FDI conditions applicable to certain sectors have been liberalized:

- In December 2020, FDI in the defense sector was permitted up to 74% under the automatic route for companies seeking new industrial licenses and up to 49% in an investee company which is not seeking an industrial license or has previously obtained government approval for FDI.

- In February 2024, FDI in the space sector was liberalized, with: (a) 100% FDI permitted under the automatic route for manufacturing of components and systems for satellites, ground segment and user segment; (b) 74% FDI permitted under the automatic route for satellites manufacturing and operation, satellite data products and ground segment and user segment; and (c) 49% FDI permitted under the automatic route for launch vehicles and creation of spaceports for launching and receiving spacecrafts.

- In December 2025, the FDI limit for the insurance sector has been increased from 74% to 100% (the limit for Life Insurance Corporation of India continues to be 20%). The Indian management norms have been relaxed to require only one among the chairperson of the board, managing director or chief executive officer of the insurance company to be a resident Indian citizen (the earlier norms required majority of the directors and key management persons to be resident Indian

citizens). Further, the threshold for seeking prior regulatory approval of the Insurance Regulatory and Development Authority of India in case of transfer of shares has been raised from 1% to 5% of the paid-up share capital of the insurance company.

Competition

Pursuant to the Competition Act, 2002, mergers and acquisitions where turnover or assets of the parties to the transaction or the value of the transaction exceed certain thresholds are required to be notified to, and approved by, the Competition Commission of India (the "**CCI**") prior to completion. For instance,

a. subject to certain conditions, if the parties to an acquisition jointly have assets or turnover in India of exceeding INR 25 billion and INR 75 billion respectively, the CCI's approval would be required for the transaction (the global thresholds for assets and turnover respectively is USD 1.25 billion, including at least INR 12.5 billion in India and USD 3.75 billion including at least INR 37.5 billion in India); or

b. the total consideration payable for a transaction exceeds INR 20 billion, and the enterprise being acquired, merged or amalgamated has substantial business operations in India.

The CCI has also prescribed a *de minimis* exemption to transactions where the value of the assets, or the turnover of the target in a transaction is lower than certain prescribed thresholds ("**De Minimis Exemption**"). However, the De Minimis Exemption would not be available if the criteria at (b) above is satisfied.

Additionally, the CCI has prescribed exemptions for certain transactions which are not likely to cause an appreciable adverse effect on competition in India and would accordingly not require the prior approval of the CCI. For example, minority acquisitions of shares or voting rights of up to 25% of share capital or voting rights, and acquisition of assets or a merger or amalgamation within the same group is exempt subject to fulfilment of certain conditions.

Further, open offers (and acquisitions of shares or securities on a regulated stock exchange) are permitted to be completed without prior CCI approval, subject to certain conditions.

A "green-channel" route for transactions is available where the parties to a transaction, their respective group entities and their affiliates do not overlap horizontally or vertically in respect of any product or service, and do not provide complementary products or

services. Such transactions are "deemed" to be approved upon filing a notification with the CCI.

PERMISSIBLE INSTRUMENTS

Equity instruments

Foreign investment is permitted in equity shares, share warrants and fully and mandatorily convertible securities of Indian companies. While the equity shares may be fully or partly paid, allotment of partly paid shares to a foreign investor entails certain additional compliance requirements. The investor is required to pay at least 25% of the consideration up-front for subscription to partly paid shares and share warrants and the balance within 12 and 18 months for partly paid shares and share warrants, respectively. In case of investment in a listed company, the balance consideration for partly paid shares may be paid after 12 months if the company has appointed a monitoring agency for the issue of such shares in compliance with the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018.

A foreign investor may invest in compulsorily convertible preference shares ("**CCPS**") or compulsorily convertible debentures ("**CCD**") under the FDI route. Investment in equity linked instruments such as CCPS and CCDs provides preferential dividend and liquidation rights. The Indian investee company is required to ensure that the price / conversion formula of convertible equity instruments is determined upfront at the time of issue of such instruments – the price at the time of conversion cannot be lower than the fair value determined at the time of issuance of the instruments. Additionally, subject to the pricing restrictions under the FDI policy, such instruments also allow investors to convert at a price linked to the achievement by the investee company of an agreed performance milestone.

Cross border share swap transactions involving a swap of equity instruments of an Indian entity or swap of equity capital of a foreign entity have now been permitted. A swap of equity capital of a foreign company is also required to comply with the Foreign Exchange Management (Overseas Investment) Rules, 2022.

Debt instruments

Foreign investors may also invest in debt instruments including non-convertible or optionally convertible debentures and external commercial borrowings ("**ECB**"). Certain requirements for investment in equity instruments such as pricing requirements are not applicable to debt instruments. Further, pursuant to provisions of

the IBC, debt instruments are accorded preferential repayment rights over equity instruments in a CIRP.

Issue of debt instruments to foreign investors must comply with the regulations framed by the RBI with respect to ECBs and adhere to prescribed parameters, including a negative list of prohibited end-uses, pricing, minimum average maturity period (“**MAMP**”) and borrowing limits. These parameters have recently been liberalized pursuant to an amendment issued by the RBI in February 2026, including:

1. expansion of the pool of eligible borrowers to cover any persons resident in India that are incorporated or registered under any central or state legislation (these no longer need to be entities eligible to receive FDI), subject to them being permitted to raise ECBs in terms of their governing statutes;

2. end-use relaxations permitting ECBs to finance: (i) transactions for acquisition of control in a target company; and (ii) real estate development projects and industrial parks meeting specified conditions (including purchase, sale or lease of land for such projects);

3. standardized MAMP requirement of three years (in place of the erstwhile multi-tiered MAMP structure based on end-uses), with exceptions in certain specified situations such as repayment of ECB from proceeds of equity instruments issued to foreign investors or for undertaking corporate actions such as merger, demerger, acquisition of control, etc. (the MAMP requirement will not apply in such situations); and

4. increase in borrowing limit to the higher of (i) outstanding ECB up to USD 1 billion and (ii) total outstanding borrowing (external and domestic) up to 300% of the borrower’s net worth as per its last audited balance sheet.

Investment trusts

Infrastructure Investment Trusts (“**InvITs**”) and Real Estate Investment Trusts (“**REITs**”, and together with InvITs, “**Investment Trusts**”) are private trusts settled in India, regulated under the Securities and Exchange Board of India (Infrastructure Investment Trusts) Regulations, 2014 (“**InvIT Regulations**”) and Securities and Exchange Board of India (Real Estate Investment Trusts) Regulations, 2014 (“**REIT Regulations**”) respectively. Units of Investment Trusts are required to be listed and the unitholders are eligible to receive distributions declared by Investment Trusts.

Subject to compliance with the InvIT Regulations, the REIT Regulations and Indian exchange control regulations, foreign investors, other than citizens of or entities

incorporated in, Pakistan or Bangladesh are eligible to invest in units of InvITs and REITs. Further, investment in an Indian entity by an Investment Trust whose sponsor or investment manager / manager is FOCC is considered to be indirect foreign investment for the underlying Indian entity and requires compliance with relevant regulations and disclosure requirements. Listed Investment Trusts are also permitted to issue listed debt securities, in which foreign investment in accordance with the Indian exchange control regulations is permissible.

PRICING REGULATIONS

Under the Indian exchange control regulations, pricing of securities in case of a fresh issue by an Indian entity to a non-resident, or the sale of an Indian entity's securities by a resident to a non-resident, the price paid by the non-resident must be at least:

1. in case of listed securities, the price at which preferential allotments may be made under the relevant regulations framed by the SEBI (which is linked to the trading price of the securities); and
2. in case of unlisted securities, the "fair value" of such securities calculated in accordance with any internationally accepted pricing method on an arm's length basis.

In the event of sale of securities of an Indian entity by a non-resident to a resident, the consideration paid by the resident must not exceed the minimum price specified above. Pricing restrictions do not apply in case of transfer of shares of an Indian entity between two non-residents.

In the case of convertible instruments, the price or conversion formula should be determined upfront at the time of issue of the relevant securities. The conversion price may not, in any event, be lower than the price determined at the time of issue of such securities in the manner specified above.

Indian exchange control regulations do not allow a foreign investor to have an assured rate of return with respect to its investment in India. Accordingly, while rights such as put options may be contractually agreed between an Indian promoter and a foreign entity, there may be difficulties in enforcement of such options which provide an assured rate of return.

In case of transfer of equity instruments between a resident and a non-resident, the Indian exchange control regulations permit up to 25% of the consideration amount to be paid on a deferred basis within a maximum period of 18 months from the date of

the share purchase agreement. A longer hold-back period or variation in the 25% deferred consideration requirement would require prior approval from the RBI.

DISCLOSURE REQUIREMENTS

FDI/ ECB disclosures and downstream investment

Allotment of equity securities by an Indian investee to a foreign investor and the transfer of equity securities between a person resident in India and a non-resident is required to be reported through prescribed forms. Separately, indirect foreign investments by FOCCs are required to be reported to the RBI. ECBs availed by Indian borrowers are also required to be reported. The Indian transferor, investee or borrower is responsible under the applicable regulations for filing the forms within the specified time frames.

Disclosures regarding beneficial ownership

Pursuant to the Companies Act, 2013 ("**Companies Act**") and the Companies (Significant Beneficial Ownership) Rules, 2014 ("**SBO Rules**"), if an individual, acting alone or together with other persons, directly or indirectly, exercises or has the right to exercise "significant influence" or "control" over an Indian company or holds the beneficial ownership of 10% or more of the company's shareholding, such individual is considered a significant beneficial owner with respect to the company and is required to disclose its interest in the company. All companies are required to maintain a register of significant beneficial owners and disclose their details to the Registrar of Companies. Such disclosures made by the companies are publicly accessible on the website of the Ministry of Corporate Affairs.

LISTED COMPANIES

Certain additional considerations which may be relevant for a foreign investor while investing in a listed Indian company are set out below.

Disclosure requirements

Listed companies in India are subject to extensive disclosure requirements under regulations framed by the SEBI, including with respect to actions of their promoters and shareholders. A person or entity is considered a promoter of a company if: (i) they have been named as a promoter in a draft offer document, offer document or annual return of the company; (ii) they directly or indirectly have control over the affairs of the company; or (iii) the company or its board of directors is accustomed to act in accordance with their advice, directions or instructions.

Separately, pursuant to the SEBI FPI Regulations, DDPs are required to conduct a KYC with respect to an applicant seeking registration as an FPI. The information required to be furnished by the applicant includes details of the applicant's ultimate beneficial ownership. Under the SEBI FVCI Regulations, registered FVCIs are required to make quarterly disclosure of their investments to the SEBI.

The SEBI has mandated additional disclosure requirements regarding individuals with any ownership, economic interest or control (without the application of any threshold) over (A) FPIs holding more than 50% of their Indian equity Assets Under Management (AUM) in a single Indian corporate group; and (B) FPIs that individually or along with their investor group, hold more than INR 500 billion of equity AUM in the Indian markets. Certain FPIs such as government and government related investors and public retail funds have been exempted from the additional disclosure requirements.

Due diligence in the context of prohibition of insider trading regulations

It is advisable to carry out a legal, accounting and financial diligence exercise in relation to the Indian investee company prior to making an investment, including in relation to assets and liabilities, statutory records, litigation, contracts and agreements, local regulatory compliance and, where relevant, compliance with any laws of the jurisdiction of the foreign entity in relation to anti-corruption. Certain laws, such as those in relation to employment, land and real estate, include state legislations and may require the engagement of local consultants.

The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 ("**PIT Regulations**") prohibits communication of unpublished price sensitive information (UPSI) to any person except where it is in furtherance of legitimate purposes, performance of duties or discharge of legal obligations. The boards of listed companies are required to define their own policy relating to "legitimate purposes" and determine if sharing of UPSI for due diligence (instead of the proposed transaction itself) is in the company's best interest. "Legitimate purposes" is defined as including sharing of UPSI in the ordinary course of business with, *inter alia*, lenders, customers and legal advisors.

Upon the receipt of an UPSI pursuant to a legitimate purpose, the recipient would be considered an "insider" with respect to the listed company and is required to adhere to the PIT Regulations. As a practical matter, the listed Indian company may require a potential investor to enter into a non-disclosure and standstill agreement, undertaking on its own and its advisors behalf to comply with the provisions of the PIT Regulations, only use any UPSI received during the course of its diligence for purposes of

evaluating a proposed transaction and not execute any other transactions with respect to the company's shares during a pre-agreed period.

Takeover Code considerations

The Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (the "**Takeover Code**") requires that an acquirer is required to make a mandatory open offer for at least 26% of the total shares of the target listed company if it acquires: (a) 25% or more shares or voting rights of the listed company; or (b) control of the listed company (whether directly or indirectly).

"Control" has been defined under the Takeover Code as follows: "*control*" *includes the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner: Provided that a director or officer of a target company shall not be considered to be in control over such target company, merely by virtue of holding such position"*.

There is no definitive pronouncement of the Supreme Court of India on whether particular rights in a target listed company will constitute "control" in terms of the Takeover Code. In the absence of bright line tests to determine acquisition of control, any special rights sought to be made available to an acquirer will need to be carefully considered from a Takeover Code perspective.

Special rights in listed companies

Investors often have special rights in unlisted companies in India in the nature of board appointment rights, affirmative votes on certain agreed matters and information and inspection rights. However, pursuant to an amendment by the SEBI in the year 2023 to the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, any special rights granted to any shareholder in a listed company are required to be ratified by the shareholders of the company through a special resolution, once in every five years. Failing such ratification, the special rights will cease. Further, as a practical matter, the SEBI generally requires the termination of any special shareholders' rights in the company before it is listed pursuant to an IPO. Accordingly, in the event an existing investor in an unlisted company wishes to retain its special rights in the company upon its listing, it will have to agree such rights with the company after it is listed and request them to be incorporated in the articles of association of the listed company, which will require the approval of the listed company's shareholders through a special resolution (i.e., a 75% vote).

Delisting or take private transactions

A potential investor may consider making a delisting offer for the shares of a listed Indian company if the company is eligible for delisting pursuant to the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2021 ("**SEBI Delisting Regulations**"). A delisting offer may be made for a company only if three years have elapsed since it has been listed and at least six months have elapsed since a preferential allotment or buy-back of shares by the company.

A delisting offer requires the approval of the board of directors of the company and the shareholders through a special resolution where votes cast by the public shareholders in favor of the proposal are at least two times the number of votes cast by the public shareholders against it. A committee of independent directors of the company is required to provide reasoned recommendations with respect to the delisting offer and an approval of the stock exchanges where the company's shares were listed is required.

The delisting offer price was earlier required to be determined only through a reverse book-building ("**RBB**") process prescribed under the SEBI Delisting Regulations, after the approvals set out above have been procured. If the price discovered through the RBB process is higher than the indicative price offered by the acquirer in its public announcement for the delisting offer, the acquirer may choose to withdraw the offer. As an alternative to the RBB process, SEBI has introduced a fixed price mechanism for delisting of listed companies whose shares are frequently traded. In a delisting by fixed price method, the price tendered by the acquirer needs to be at least 15% higher than the floor price determined as per the SEBI Delisting Regulations.

In order for a delisting offer to be successful, the post-offer shareholding of the acquirer is required to reach at least 90% and the company may not be delisted if the acquirer is unable to reach this threshold. Following a successful delisting, the remaining public shareholders who did not tender their shares or whose shares were not accepted during the bidding period would have the right to tender their shares for a period of one year from the date of delisting.

Note that delisting pursuant to an acquisition under the IBC is exempt from the requirements of the SEBI Delisting Regulations, subject to satisfaction of certain specified conditions.

RIGHTS AND OBLIGATIONS OF THE INVESTOR

Shareholder rights

Rights of a foreign investor will vary based on the shareholding structure (majority versus minority interest) and the agreement among shareholders. The Companies Act provides for certain statutory rights based on shareholding. Certain matters are to be approved by ordinary resolutions of the shareholders (i.e., a 50% vote) and certain matters are to be approved by special resolutions (i.e., a 75% vote). Matters requiring special resolutions include: preferential allotments, issue of sweat equity shares, issue of global depository receipts, a reduction of capital, related party transactions in excess of specified thresholds and actions for voluntary winding-up.

Contractually agreed rights (such as rights of first refusal, drag along rights and tag along rights) available to the investor are in addition to the statutory rights and safeguards. The parties may also consider put and call options over shares of the Indian investee company. While such options are enforceable under Indian law (subject to constraints on pricing discussed above), certain regulatory restrictions such as a lock-in period apply with respect to securities of listed companies.

Indemnity

With respect to indemnity under an agreement between a resident and a non-resident for transfer of securities of an Indian company, the Indian exchange control regulations permit a maximum indemnity payment of 25% of the purchase consideration, up to a maximum of 18 months from the date of payment of the full consideration without prior RBI approval. A higher indemnity payment, or payment after the expiry of the 18 months would require the prior approval of the RBI. As a general matter, it is understood that enforcement of such contractually agreed indemnities are likely to require prior approval of the RBI.

Director liability

As a general matter, liabilities of directors of companies under Indian laws would apply to executive directors; however, they may extend to non-executive directors as well. Such liabilities may include penalties for non-compliance by the investee company with Indian company law requirements (e.g., relating to maintenance of accounts and other records and filing obligations), vicarious liability for actions of the Indian company and potential criminal liability under certain laws, including under Indian employment laws. The duties of directors have been codified by the Companies Act and include duties to exercise due and reasonable care, skill and diligence and promoting the success of the company in the collective best interest of the shareholders. Nominee directors (who

are typically appointed as non-executive directors) of a foreign investor should exercise independent judgement in relation to their decisions and seek independent legal and financial advice, if required. To mitigate the risk of liability, foreign investors could consider procuring, or requiring the Indian investee company to procure, D&O insurance in respect of any persons nominated to the board of the investee company.

Dispute resolution

Litigation in Indian courts is a time-consuming process. In relation to agreements entered into by foreign investors, arbitration under an institutional framework (such as under the rules of the London Court of International Arbitration, Singapore International Arbitration Centre or UNCITRAL) could be considered as a dispute resolution mechanism. From a foreign investor’s perspective, in particular situations, there may be certain advantages in the seat of arbitration being outside India. However, under the Indian Arbitration and Conciliation Act, 1996 even where the seat of arbitration is outside India, Indian courts have the power to grant interim relief to parties, unless otherwise agreed by the parties to the arbitration agreement. Where the parties to the agreement include at least one non-Indian party, the choice of law governing the agreement could be the law of a country other than India.

TAXATION

When considering an investment in India, it is essential to assess potential implications of such investment under Indian tax laws. Notably, the Government of India has enacted the Income-tax Act, 2025 (“**New Tax Act**”), which replaces the Income-tax Act, 1961 (“**Old Tax Act**”) — a law that had been in place for over six decades. The New Tax Act has come into effect on April 1, 2026, and applies from financial year 2026–27. Although the structure and drafting of the Old Tax Act have been streamlined, the core framework and fundamental principles of the Old Tax Act remain substantially preserved under the New Tax Act. Additionally, the Central Board of Direct Taxes has notified the Income-tax Rules, 2026, which set out detailed procedural and compliance requirements.

In case of a subscription for shares of an unlisted or private Indian company, the investee company must prove the investor’s identity, creditworthiness, and the genuineness of the subscription, failing which the investee company could be made liable to pay tax in respect of the entire subscription amount as income.

In case of a transfer of shares, the seller may be liable to pay capital gains tax at a rate that is based on the period for which the seller held such shares. Also, the purchaser in such a transaction may be subject to withholding tax obligations where the seller is a non-resident. Depending on the quantum of consideration and certain

other conditions, withholding tax obligations may also arise if the seller is an Indian resident.

In addition, Indian tax law prescribes a valuation method to establish a tax benchmark for share transfers. If the actual sale price falls below this benchmark, the tax benchmark value becomes the deemed consideration for tax purposes, triggering potentially unfavorable tax consequences for both seller and purchaser.

Further, stamp duty is also payable in case of an issue or transfer of shares. In case of an issue of shares, this is typically borne by the investee company and in case of a transfer of shares, by the purchaser, although this could be a matter of negotiation. Stamp duty on the underlying transaction documentation is payable separately.

*This insight has been authored by **Rajat Sethi** (Partner), **Prateek Sharma** (Partner) and **Suhani Utpal Raiji** (Associate). They can be reached on rsethi@snrlaw.in, psharma@snrlaw.in and sraiji@snrlaw.in, respectively, for any questions. **Pratichi Mishra** (Partner) contributed inputs on InvIT and REIT related matters, **Akshat Kulshrestha** (Partner) contributed inputs on competition law matters and **Taranjeet Singh** (Principal Associate) contributed inputs on tax matters.* *This insight is intended only as a general discussion of issues and is not intended for any solicitation of work. It should not be regarded as legal advice and no legal or business decision should be based on its content.*
© 2026 S&R Associates

S&R ASSOCIATES ADVOCATES

NEW DELHI
Max House
Tower C, 4th Floor
Okhla Industrial Estate Phase III
New Delhi 110 020
Tel: +91 11 4069 8000

MUMBAI
One World Center
1403 Tower 2 B
841 Senapati Bapat Marg, Lower Parel
Mumbai 400 013
Tel: +91 22 4302 8000