



Project Finance

in 34 jurisdictions worldwide

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Collateral

1 What types of collateral are available?

All forms of property, whether tangible or intangible, including immoveable property, shares and other securities, bank accounts, moveable properties, contractual rights, receivables and intellectual property, can be used as collateral in India, subject to applicable laws and contractual arrangements.

Perfection and priority

2 How is a security interest in each type of collateral perfected and how is its priority established? Are any fees or taxes payable to perfect a security interest and, if so, are there lawful techniques to minimise such fees or taxes?

Security over immoveable property, including leasehold rights over such properties, is created by an act of mortgage. Common forms of mortgage followed are the English mortgage and the equitable mortgage. An English mortgage must be executed in writing and compulsorily registered with the relevant land registry. An equitable mortgage is created and perfected by deposit of title deeds with the lender. The choice between the two forms of mortgage depends, inter alia, on stamp duty considerations in the state where the property is situated and where the security documents are being executed.

A security interest may be created in a moveable property by means of a pledge or hypothecation with a fixed or floating charge. A pledge is perfected by actual or constructive delivery of the pledged asset to the lender. For a hypothecation, a deed of hypothecation needs to be executed in writing. A floating charge in the same manner can also be created on trading stock.

Intangibles such as receivables, debts and rights under contracts can be secured by way of assignment, which must be in writing. The perfection requirements would be in accordance with the right which is being assigned. A fixed or floating charge can be created over such properties in the manner prescribed above.

Collateral over shares and securities is undertaken by a pledge over such shares and securities. A pledge agreement in writing is executed for the same along with delivery of the certificates evidencing such shares and securities. If the pledge is over dematerialised shares and securities, the process as prescribed by the rules of the relevant depository is to be followed.

Security can be created over intellectual property such as copyrights and patents by an assignment in writing. Security created over registered intellectual property can be perfected by communicating the same to the patent office. Trademarks are normally assigned by way of security with notice to the trademark registry. There are no particular requirements as far as creating a security over unregistered intellectual property is concerned.

Further, if the collateral provider is a company, the Companies Act, 1956 of India requires that all security over its assets, other than

pledges, be registered with the Registrar of Companies by filing a form 8 with such registrar.

Creation of security is normally evidenced through formal documents. Execution of formal documentation requires payment of stamp duty as per local state laws in India. Stamp duty rates may be at a fixed rate or ad valorem rates.

Determination of priority of securities is dealt with in question 3.

Existing liens

3 How can a creditor assure itself as to the absence of liens with priority to the creditor's lien?

If the debtor is a company in India, there is a mandatory requirement that every company file a form 8 with the Registrar of Companies, in respect of any security created on any of the assets of the company, other than pledges. This, however, needs to be done within 30 days (extendible by another 30 days) of creation of the relevant security, and hence that window of risk needs to be taken into account. A company is also statutorily required to maintain a register of charges, which should contain the details of any encumbrances on any assets of the company, which could also be as a tool to verify absence of prior encumbrances. For any charges over immoveable properties, where the mortgage is by deposit of title deeds, then the absence of the original title deeds could presume the existence of some encumbrance on the property and if the title deeds are available, a search can be done at the office of the relevant land registry, which will reveal any encumbrance in the nature of any registered mortgages on any immoveable property. However, currently there is a period of four months, which is allowed for making the office of the registrar aware in respect of any encumbrance created on an immoveable property and this period needs to be factored in while analysing the risks.

In certain states, prior interest in any cooperative society property can also be checked with the register of such cooperative society.

For identifying the priority of any encumbrances over any shares or securities, and to the extent they are in physical form, the possession of the same needs to be transferred for pledging them. The absence of the original certificates could lead to a presumption of an existence of some encumbrance on the property to be pledged. In the case of shares in the dematerialised form, the pledgor of these shares needs to inform the relevant depository about pledging the same, and hence, such pledges can also be traced by making an enquiry with the depository.

Mortgages in respect of ships and vessels registered under the Merchant Shipping Act have to be registered with the registrar of the port of registry of such ship. Such registers could also be used to check for any prior interest created on such property.

However, statutory liens and priority of claims in respect of existing lenders exist and are recognised in India.

Foreign exchange

- 4** What are the restrictions, controls, fees and taxes on foreign currency exchange?

Foreign exchange transactions in India are subject to the Foreign Exchange Management Act, 1999 and various rules, regulations, notifications and guidelines issued by the Reserve Bank of India (the central bank of India and hereinafter the RBI), from time to time.

India does not allow complete capital account convertibility and any capital account transaction is undertaken only pursuant to a general or specific permission of the RBI. Borrowing of monies in foreign exchange is regulated and can only be performed subject to conditions prescribed by RBI, which currently, inter alia, relate to the cost of such borrowing, end use, duration and amount of such borrowing, class of lenders, etc. Undertaking of contingent liabilities, like guarantees, to foreign parties, is also restricted. Making investments into or from India is regulated and is undertaken subject to conditions imposed, from time to time, by the RBI or the government of India.

Current account convertibility is allowed and unless specifically restricted or regulated, foreign currency current account transactions are freely permitted through specific banks and institutions eligible to deal in foreign exchange (known as authorised dealers).

Remittances

- 5** What are the restrictions, controls, fees and taxes on remittances of investment returns or loan payments to parties in other jurisdictions?

Repatriation and realisation of loan and investment proceeds is a capital account transaction under Indian law and is subject to specific conditions imposed by the RBI from time to time. As noted in question 4, a loan from a foreign person needs to satisfy specific criterion laid down by the Reserve Bank of India. Repayments and interest payments under such loans currently do not require further approval.

Investments returns, whether as capital gains or business income or repatriation of principal investment amount, normally does not require any specific approval. However investments in certain sectors like real estate can be made only subject to a lock-in of a minimum investment for a specified period, currently three years. Similarly, investments made under certain government schemes are subject to restrictions.

All remittances, whether or not they require the prior approval of the RBI still require filing with, and notification to, the RBI.

Taxes on foreign exchange earnings are as per the applicable Indian Tax laws, including the Income Tax Act, 1961, of India, but subject at all times to any double tax avoidance agreements that India has executed with the jurisdiction from which the foreign investment or loans came.

Repatriation

- 6** Must project companies repatriate foreign earnings? If so, must they be converted to local currency and what further restrictions exist over their use?

An Indian project company normally has earnings in Indian currency and can usually repatriate such earnings, or use it in India for downstream investment. However, prior to making a downstream investment in India, it needs to obtain the approval to act as a holding company from the Foreign Investment Promotion Board, and then it can invest under the automatic route in companies whose activities fall under those under the automatic route.

Offshore and foreign currency accounts

- 7** May project companies establish and maintain foreign currency accounts in other jurisdictions and locally?

An Indian project company can establish foreign currency accounts only for specified purposes. Foreign currency accounts can be used, with the permission of the RBI, to keep share subscription amounts received from foreign investors.

A person resident in India, including an Indian company, can open, hold and maintain an Exchange Earner's Foreign Currency Account with an authorised dealer, subject to the terms and conditions laid down in the scheme for such accounts by the RBI. Persons operating in Special Economic Zones can open foreign currency accounts with an authorised dealer.

An Indian company or body corporate can open, hold and maintain in the name of its office or its branch outside India, or its representative posted outside India, foreign currency accounts with banks outside India by making remittances from India for the purpose of normal business operations of the branch or representative.

If a foreign company is executing a project contract that has been awarded to an Indian company, then such foreign company has a right to establish a project office in India subject to conditions laid down by the RBI. A project office can open a maximum of two foreign currency accounts with a category I authorised dealer in India. Such accounts can be used for payment of project related expenditure and receive amounts from the project sanctioning authority as well as from parent or group companies or bilateral or multilateral financing agency.

Foreign investment and ownership restrictions

- 8** What restrictions, fees and taxes exist on foreign investment in or ownership of a project and related companies? Do the restrictions also apply to foreign investors or creditors in the event of foreclosure on the project and related companies? Are there any bilateral investment treaties with key nation states or other international treaties that may afford relief from such restrictions? Would such activities require registration with any government authority?

In India, depending on the sector of operations, there may be restrictions on the amount of foreign investment in an Indian entity. Foreign investment may be made under the automatic route or under the approval route (ie, requiring the approval of the government). The government has prescribed certain sectors where investments can only be made with its approval, or have prescribed ceilings in such sectors. If foreign investment goes beyond such ceilings, approval of the government is required. The Foreign Investment Promotion Board is the body of the government that approves proposals for foreign investments.

Long-term foreign currency loans in India are called external commercial borrowings (ECB). ECBs can be availed under the automatic or the approval route. The government and the RBI have prescribed monetary and maturity limits and end-use restrictions for ECBs. ECBs cannot be used for on-lending in India, or for working capital requirements. Currently, Indian rupee expenditure from ECBs is permitted only under approval from RBI.

Upon the foreclosure of a loan, foreign lenders can enjoy security rights over assets that were encumbered for their benefit, provided that the actual enforcement or sale, that is, alienation of the secured property may be subject to the guidelines of the RBI from time to time, including in relation to ownership of the property in question.

Government approvals

- 9** What government approvals are required for typical project finance transactions? What fees and other charges apply?

Typically, project finance in India is seen across different sectors, some of which are specifically regulated or organised by the government such as telecoms, ports, roads and highways, power, etc, and others, like the general industrial and manufacturing sectors, have no specific regulator.

Even sectors with regulators may or may not have entry barriers – generation activity in the power sector is de-licensed but transmission and distribution requires licences from electricity regulatory commissions.

In manufacturing sectors, there is no specific sectoral licence or approval required, but certain other statutory approvals such as environmental approvals and permissions from local authorities might be required.

For roads and highways, concessions are required from the National Highways Authority of India or municipal bodies prior to establishing them.

There are no specific fees and charges which are payable but tender documents or concession arrangements prescribe any fees or charges, including revenue share which may be applicable. For obtaining approvals or permits, legislation may or may not require payment of fees.

Foreign insurance

- 10** What restrictions, fees and taxes exist on insurance policies over project assets provided or guaranteed by foreign insurance companies? May such policies be payable to foreign secured creditors?

Assets in India cannot be insured by a foreign insurer without the permission of the central government. The General Insurance Business (Nationalisation) Act, 1972 defines a foreign insurance company as an existing insurer incorporated under the law of any country outside India. Section 25 of the said Act specifically lays down that no person shall take out or renew any policy of insurance in respect of any property in India or any ship or other vessel or aircraft registered in India with an insurer whose principal place of business is outside India, save with the prior permission of the central government. The law also imposes a penalty of imprisonment, which may be up to one year, or a fine of up to 1,000 rupees (approximately US\$21.50), or both.

The laws in India do permit Indian insurers to obtain reinsurance cover from foreign insurers, however, the conditions laid down in this regard are that the foreign reinsurer should have a at least a BBB rating by Standard and Poor's or any equivalent rating for the past five years preceding the year before the reinsurance is to be placed, or should be a member of Lloyd's Syndicate. In case of any other insurer, prior permission of the Insurance Regulatory and Development Authority of India (IRDA) is required. Nevertheless, Indian insurers are mandatorily required by the IRDA to reinsure a specified percentage of the risk with an Indian reinsurer. This percentage requirement is liable to change from time to time.

The creditor can be made a beneficiary of an insurance policy by negotiating the insertion of 'loss payee clause' in the policy of insurance taken. Thereby, any claim in respect of any loss or damage caused to a secured asset will be paid to the creditor. Any payment of insurance monies to a foreign lender would be subject to exchange control regulations prescribed by RBI at such time and from time to time.

Foreign employee restrictions

- 11** What restrictions exist on bringing in foreign workers, technicians or executives to work on a project?

For employment of foreigners, an employment visa or a work permit to work in India is required. If the employment is expected to be for more than 180 days, registration with the Foreign Regional Registration Officer within 14 days of arrival in India is mandated.

In the event that the foreigner is an employee of the Indian entity, he or she will benefit from Indian labour welfare laws and the employer will be liable in the same in respect for such foreigner. If the foreigner is not an employee but seconded or otherwise engaged with the Indian entity, then labour laws will not be strictly applicable.

Equipment import restrictions

- 12** What restrictions exist on the importation of project equipment?

Imports into India are governed by the foreign trade policy prescribed by the government from time to time. Customs duty exemptions are granted from time to time for imports for specified projects or purposes. Similarly, the government may prescribe restrictions on different items of imports. The government also has the power to impose anti-dumping duties.

The RBI requires that remittances for import of goods should be made no later than six months from the date of shipment, subject to certain exceptions for amounts withheld towards guarantee of performance or due to any disputes between the parties to the transaction. Advance remittance for imports are also regulated and may only be made subject to strict compliance with the conditions imposed by the RBI.

Nationalisation and expropriation

- 13** What laws exist regarding the nationalisation or expropriation of project companies and assets? Are any forms of investment specially protected?

The Constitution of India provides that no person shall be deprived of his or her property save by authority of law. However, the Constitution empowers the union and each of the states to acquire and requisition property. Such acquisition and requisition of property need not necessarily be for a public purpose. The relevant legislature would have to frame a specific law to nationalise any private property.

India has codified land acquisition procedures under the Land Acquisition Act and all acquisition of lands is normally undertaken pursuant to such Act. The Act has been amended in several states in its application to their territories.

Fiscal treatment of foreign investment

- 14** What tax incentives or other incentives are provided preferentially to foreign investors or creditors? What taxes apply to foreign investments, loans, mortgages or other security documents, either for the purposes of effectiveness or registration?

Tax incentives can be understood from both the perspective of the tax liability on the income of the foreigner as well as the tax benefits available to companies operating in certain spheres of activity.

The taxability of a foreign investor would depend on the characterisation of the income earned and the tax residency of the foreign investor. In addition to the generic tax liability, if the foreign investor is a foreign venture capital investor (FVCI) or a foreign institutional investor (FII) registered with the Securities and Exchange Board of India (SEBI), then he or she might be entitled to tax benefits, subject to the satisfaction of prescribed regulations.

In order to promote infrastructure development, tax incentives are occasionally made available either to the project or to the entity

owning the project. An entity engaged in the projects related to specified infrastructure facilities can claim certain tax incentives for a specified period in respect of its profits and gains.

There is no specific tax exemption available for a foreign creditor. An FVCI can have a pass-through status and the shareholders may be subject to pay tax on the basis of their individual tax position.

If the foreign investor is from a jurisdiction with which India has signed a double taxation avoidance agreement (DTAA), there might be certain benefits available to the foreign investors depending on the specific provisions of the concerned DTAA. A foreign company that is a tax resident of Mauritius, Cyprus or Singapore may not be required to pay tax on the capital gains accruing or arising to it from the sale of shares of Indian entities.

Every document executed in India needs to be stamped as per the provisions of various stamp laws, in force from time to time in India or any state of India. The stamp duty rates vary from nominal rates to ad valorem rates linked to the value of the transaction. Registration of documents with any governmental authority is not mandatory in India, except in the case of certain specific transactions, including transactions dealing with immoveable property. Registration can be performed by paying a prescribed fee, which is not normally linked to the value of the transaction.

Government authorities

15 What are the relevant government agencies or departments with authority over projects in the typical project sectors? What is the nature and extent of their authority? What is the history of state ownership in these sectors?

Industrial sectors in India do not necessarily have sector-specific regulators. However, some sectors in India are regulated by certain regulatory or governmental agencies. Telecommunication is regulated by the Telecom Regulatory Authority of India and the Department of Telecommunications; power is regulated by the Ministry of Power and the Central and State Electricity Regulatory Commissions; national highways are governed by the Ministry of Surface Transport and the National Highways Authority of India; and civil aviation and airports are jointly regulated by the Ministry of Civil Aviation and the Airports Authority of India.

Industry in India, including oil and gas, steel, mineral extractions and most infrastructure facilities, has historically been dominated by state-owned public-sector enterprises. However, since the 1990s, periodically the government has liberalised different sectors and opened them for private participation. Sectors such as power generation and distribution, oil and gas exploration and distribution, ports, airports, telecommunications have all become open to private sector investment.

International arbitration

16 How are international arbitration contractual provisions and awards recognised by local courts? Is the jurisdiction a member of the ICSID Convention or other prominent dispute resolution conventions? Are any types of disputes not arbitrable? Are any types of disputes subject to automatic domestic arbitration?

The law relating to domestic arbitration, international commercial arbitration, enforcement of foreign arbitral awards, conciliation and other matters connected therewith or incidental thereto is set out in the Arbitration and Conciliation Act, 1996 (the Arbitration Act). The Arbitration Act is based on the Model UNCITRAL Law on International Commercial Arbitration.

As per the Arbitration Act, reciprocity is granted for enforcement of arbitral awards passed under the New York Convention and Geneva Convention, subject to certain other conditions. Therefore, the

seat of arbitration should be in a country that is signatory to the New York Convention or Geneva Convention. There are certain conditions precedent to the enforcement of such awards in India, the primary one being that the matter decided in such arbitration should be one capable of being decided by arbitration according to the laws of India. The general principle is that any dispute that can be decided by a civil court, involving private rights, can be referred to arbitration. Matters that cannot be decided by means of arbitration include antitrust and insolvency. Other possible reasons for non-enforceability of a foreign arbitral award could be, inter alia, fraud or misrepresentation in the course of arbitration, or improper representation of one of the parties in the arbitration, or where the award has been suspended or rejected by a competent authority in the country where it was awarded. Arbitration is a matter of voluntary submission.

Sometimes the submission, instead of being voluntary, is imposed by statute. Such arbitrations are called statutory arbitrations. For example, under the Electricity Act, 2003, arbitration is provided for statutorily.

Applicable law

17 Which jurisdiction's law typically governs project agreements? Which jurisdiction's law typically governs financing agreements? Which matters are governed by domestic law?

Assuming one of the parties to the contract is a foreign party, the parties are free to choose the law governing the contract. Indian courts usually respect the choice of law made by such parties provided the intention expressed is bona fide, legal and not contrary to public policy. Typically financing documents with foreign lenders are governed by foreign laws.

However, Indian law normally governs security documents relating to Indian assets. This is because the security will ultimately be enforced in India, through the Indian courts. An interest over immoveable property in India is normally governed by Indian law.

Jurisdiction and waiver of immunity

18 Is a submission to a foreign jurisdiction and a waiver of immunity effective and enforceable?

Parties to a contract, assuming one of the parties to the contract is a foreign party, may agree to have their disputes resolved by a foreign court, conferring exclusive or non-exclusive jurisdiction on it. However, this does not exclude the jurisdiction of the Indian courts from any dispute where it would have also had jurisdiction.

Private enterprise in India normally does not enjoy immunity from any proceedings and usually even the government when acting in commercial or contractual spheres is not entitled to immunity.

Bankruptcy

19 What entities are excluded from bankruptcy proceedings and what legislation applies to them? What processes are available to seize the assets of a business outside of court proceedings?

Insolvency law in India can be divided into personal insolvency, corporate insolvency and pre-insolvency workouts. Personal insolvency applies to individuals and partnership firms and is governed by the Provisional Insolvency Act of 1920 and the Presidency Towns Insolvency Act, 1908. Corporate insolvency law involves winding up of companies, banking companies and other body corporates set up by acts of Parliament. The companies are governed by the Companies Act, 1956, the banking companies are governed the Banking Regulation Act, 1949 and the Companies Act. Other corporates set up by the acts of parliament are governed by the incorporating acts and the memorandum of association under which they were constituted. Typically, no entity is excluded from bankruptcy proceedings.

The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) empowers certain categories of secured creditors to recover their non-performing assets without the intervention of the court. Non-performing assets should be backed by securities charged to the creditors by way of hypothecation, mortgage, assignment, etc. Creditors can, inter alia, take possession and management of the secured asset without requiring the court's intervention.

With respect to the right to recover the money owed or the right to enforce the underlying security, the claims of both foreign and Indian lenders are treated equally. However, the definition of a secured creditor under the SARFAESI does not include a foreign lender. Hence a foreign lender despite having a right *pari passu* over the secured assets of a debtor, may not be able to enforce the same using the aforesaid mechanism. However, the International Finance Corporation and Asian Development Bank are recognised as secured creditors. The central government has the power to notify other institutions as a secured creditor.

The RBI has formulated a corporate debt restructuring scheme wherein lenders can, in consultation with the borrower, undertake a restructuring of their exposure and rights against corporate borrowers. The scheme is voluntary for lenders to participate in and the RBI does not oversee its implementation. The implementation is managed by the premier banks of India.

Title to natural resources

20 Who has title to natural resources? What rights may private parties acquire to these resources and what obligations does the holder have? May foreign parties acquire such rights?

Natural resources are not privately held unless the state has actually given such natural resource for private ownership. Consequently, the right to exploit natural resources is a sovereign right, and title vests in the state. The rights of aboriginal persons are secured by the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, which lays down specific forest rights for the native inhabitants of forest land, which, inter alia, include the right to minor forest produce and right to the other resources that they have been conserving for sustainable use.

The government periodically licenses specifically identified natural resources for private exploitation upon payment of prescribed royalties. The government has granted private mining rights for coal for captive usage. Private enterprises have been granted rights to explore for and utilise oil and gas reserves on both onshore and offshore blocks.

Royalties on the extraction of natural resources

21 What royalties and taxes are payable on the extraction of natural resources, and are they revenue- or profit-based?

The rates of royalty depend on current government policy, and may be fixed, or revenue- or profit-based. The Mines and Minerals (Development and Regulation) Act, 1957, lays down the rates of royalty payable in respect of various minerals. Rates of royalty are specified for specific minerals, predominantly as a percentage of the sale price of the minerals. However, in respect of some minerals, royalty is also payable on a tonnage basis.

Export of natural resources

22 What restrictions, fees or taxes exist on the export of natural resources?

Export of natural resources is a subject that may be subject to governmental control. Section 11(2)(m) of the Customs Act, 1962, lays down that the central government can, by notification, restrict or

Update and trends

In India, infrastructure development and project financing are showing tremendous growth. Opportunities for large amounts of domestic and foreign investment, whether as debt or equity, exist. Public-private partnerships are being undertaken in sectors varying from township development to airports to ports.

Power generation is seeing tremendous activity, with several ultra-mega power projects being developed across the country. Several hydroelectricity generating units are also being developed. Wind generation has also been growing at a rapid pace.

Logistics and transportation are being opened up for private participation. Hyderabad and Bangalore have seen greenfield airports established by the private sector whereas New Delhi's and Mumbai's airports have been licensed for private operations. Huge investments are being made in the development of ports and port services. Mass rapid transit systems are being planned and developed for all major cities.

Oil and gas exploration is witnessing substantial investment. Refining capacities are also being expanded both in the private sector and the public sector.

In the telecommunications sector, new revenue streams and independent sustainability have been created by the unbundling and sharing of telecom towers. This has resulted in significant cost savings for the operators and lower costs for the consumers. Sharing infrastructure should result in greater rural penetration and better services. Independent companies providing only shared infrastructure are rapidly expanding.

prohibit the export of any natural resources that are exhaustible in nature. The government may either absolutely ban the export or may allow it subject to certain restrictions. The customs duty applicable on the export of these natural resources can be determined in accordance with the provisions of the Customs Tariff Act, 1975. The rates of duty are based either on the tonnage or an *ad valorem* rate. These rates are subject to change from time to time.

Environmental, health and safety laws

23 What laws or regulations apply to typical project sectors? What regulatory bodies administer those laws?

Ensuring environmental safety in India is covered by various statutory enactments that require governments, both at state and union level, to establish authorities for implementation of environmental laws and safety.

The environmental authorities in each state are the state pollution control boards, from which a certificate of approval is required certifying that the project satisfies the norms of air, water and noise pollution. The norms vary on the basis of the nature of the project envisaged. Site approval for projects from an environmental angle is given by the Ministry of Environment and Forests, the government of India or state ministries, for specified industries, and for other industries from the State Pollution Control Board.

Projects in coastal regions also need to ensure that they are not in violation of any coastal zone regulations that may be in force in any coastal region across the country, in addition to any local or state-level coastal regulations, which may be in force from time to time or have obtained sufficient approvals from such authorities with regard to their activities in any coastal areas.

The quality of treated effluent, solid waste, emissions from boilers and noise level from diesel generators, etc., must conform to the standards laid down by the competent authorities including the Central or State Pollution Control Board and the Union Ministry of Environment and Forests under the Environment (Protection) Act, 1986. The proponent has to obtain the requisite consents for discharge of effluent and emissions under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and control of Pollution) Act, 1981 from the respective State Pollution Control Board.

Health and safety of employees is governed by numerous enactments by both central and state legislatures. These govern aspects including minimum wages, work environment, work hours, social security in the form of provident funds and pensions, mandatory insurance, etc. Organisations are required to have preventive measures against sexual harassment at work places. Gender equality laws have been enacted. Mandatory maternity leave is prescribed by law.

Project companies

- 24** What are the principal business structures of project companies?
What are the principal sources of financing available to project companies?

The preferred business structure of a project company would be a limited liability company under the provisions of the Companies Act, 1956, of India.

The company could be incorporated either as a private or a public limited company. A private company restricts the number of shareholders to fewer than 50, but consequently has greater flexibility in management and compliance. A public company has a stricter compliance regimen and can have unlimited membership.

There are no restrictions on sources of funding and the manner of raising such funding for a project company in India. Sources of financing available for project companies include foreign Direct investment, debt availed from foreign and domestic lenders, monies raised as either equity or debt from the Indian public through the primary securities market or through offshore placements. Funds can also be raised from FVCIs and FIIs who are registered with the SEBI. However, all foreign investments are subject to various guidelines of the RBI and the government, including guidelines on end use and nature of instruments.

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