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Navigating Legal Hurdles: Challenges for Multinational Corporations in India

Saumya Priyadarshini[a] Amruta Umbarkar[b]

[a]DES Shri Navalmal Firodia Law College, Pune, India [b]DES Shri Navalmal Firodia Law College, Pune, India

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A company expanding into a different country faces many legal hurdles and challenges in complying with the local laws, which may differ from those of its home country. The company has to be well-versed in the local market and understand the regulatory framework to ensure smoother operations. Multinational corporations (MNCs) operating in India must manage the complex legal framework that deals with foreign investments, corporate governance, taxation, labour laws, intellectual property rights, and financial disclosure. India's diverse market and growing economy provide great opportunities for MNCs, but strict adherence to the laws is also required. This article explores the major challenges multinational corporations face when establishing their presence in India and while complying with the local laws during their operations, with some case studies. This article further studies and highlights the strategies for overcoming these challenges to ensure successful establishment and expansion in the Indian business market.

Keywords: *multinational corporations, taxation, corporate governance, foreign investments.*

INTRODUCTION: WHAT IS A MULTINATIONAL CORPORATION?

A Multinational Corporation (or MNC) is a company that has a presence in more than one country. It operates in various countries, whereas its headquarters are situated in its home country. The two main characteristics of MNCs are their large size and their worldwide activities, which are centrally controlled by the parent companies. In this way, they generate income from abroad. According to the Report of the 22nd Congress of the International Chamber of Commerce held in Istanbul in 1969, a company is considered a multinational corporation only if it has generated 25% or more of its revenue from countries other than the home country.[1] Multinational Corporations are crucial for the growth and development of a country's economy. It increases the level of employment, investment, and revenue of the country. It makes the host country's market more competitive, leading to an increase in its skills. It helps in the rapid progress of the country by the transfer of technology and more exports, which also raises the economic growth of the country.

India can offer so much to a business as a host country. It is a promising country as it has had a stable economy and a democratic government for many years. Over the years, India has improved its position from being the 10th largest economy in 2014 to the 5th largest economy in the world by Nominal GDP.[2] It also has a highly skilled labour force, especially from the sectors of business management, engineering, and law. The country is home to many high-IQ students from prestigious institutions such as IITs, IIMs, NLUs, and other renowned private colleges, who can significantly contribute to the growth and development of multinational companies. India is an attractive destination for MNCs to expand their business operations due to its large consumer base, skilled labour force available at a lower cost, and developing infrastructure. The geographic location of India provides easy access to Asian markets for large companies to maximise their operations and profits. As India is a developing country, it is focusing more on technological advancement, which provides a platform for MNCs. India provides many

[1] 'The Significance and Influence of Multinational Corporations on the Global Economy' (*Rönesans Holdings*, 23 June 2023) <https://ronesans.com/en/news/the-significance-and-influence-of-multinational-corporations-on-the-global-economy> accessed 06 February 2025

[2] 'India Advanced from 10th Place in 2014 to Become 5th Largest Economy in 2019: Puri' *The Economic Times* (19 September 2024) <https://economictimes.indiatimes.com/news/india/india-advanced-from-10th-place-in-2014-to-become-5th-largest-economy-in-2019-puri/articleshow/113484475.cms?from=mdr> accessed 10 February 2025

opportunities, but MNCs also have to face various challenges in legal dynamics and regulatory framework that can affect their success if neglected or not dealt with wisely. In this article, we will discuss such legal challenges that MNCs might encounter and the ways of countering them.

ESSENTIAL REGULATORY GUIDELINES FOR MULTINATIONAL COMPANIES OPERATING IN INDIA

MNCs that decide to enter the Indian market for business purposes must follow rules and guidelines laid down by the Companies Act, 2013, the Companies (Registration of Foreign Companies) Rules, 2014, Reserve Bank of India (RBI) guidelines, and the Foreign Exchange Management Act (FEMA), 1999.

According to Section 2(42) in The Companies Act, 2013,[3] 'foreign company' means any company or body corporate incorporated outside India which—

a. has a place of business in India, whether by itself or through an agent, physically or through electronic means; and
b. conducts any business activity in India in any other manner.

A foreign national can incorporate a private limited company as a Joint Venture Company, Wholly-owned subsidiary, Liaison office, Project office, or Branch office. Each structure has different rules and procedures for establishment.

For any MNCs operating in India:

a. The name of the company shall not be identical with or too nearly resemble the name of an existing company registered under The Companies Act, 2013, or any previous company law.[4]
b. The first step in the formation of a company is to prepare a document that is a Memorandum of Association and Articles of Association, which shall be signed by each subscriber to the Memorandum.[5]

[3] Companies Act 2013, s 2(42)
[4] Companies Act 2013, s 4(2)
[5] Companies Act 2013, s 7(1)(a)

c. The registrar issues a Certificate of Incorporation,[6] giving the company a legal identity and also allotting a corporate identity number, which shall be a distinct identity.[7]
d. Every company shall have at least one director who has stayed in India for a total period of not less than one hundred eighty-two days in the previous calendar year.[8]
e. Companies must file annual returns[9] and financial statements[10] with the Ministry of Corporate Affairs.

Under the Foreign Exchange Management Act (FEMA), 1999, the Reserve Bank of India regulates the inflow and outflow of foreign exchange[11], which directly impacts MNCs operating in India as they have to often deal with cross-border transactions such as remitting profits to their home country or making investments, that is why MNCs need to comply with FEMA guidelines to ensure smoother financial operations. RBI also manages foreign exchange reserves and works to stabilise the Indian rupee, which helps reduce the volatility of the currency.[12] For foreign investors, this stability is essential for managing risks related to exchange rates and planning their financial activities in India effectively.

The Securities and Exchange Board of India (SEBI) regulates the business in the stock exchanges and any other securities markets in India. It protects the interests of investors and ensures that the securities market functions efficiently and fairly while having transparency in its operations. It also registers and regulates the working of foreign institutional investors.[13] So, MNCs must ensure that their operations, such as investments, public offerings, and listing on stock exchanges, comply with SEBI's requirements to maintain investor confidence and transparency of the market.

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[6] Companies Act 2013, s 7(2)
[7] Companies Act 2013, s 7(3)
[8] Companies Act 2013, s 149(3)
[9] Companies Act 2013, s 92(1)
[10] Companies Act 2013, s 137(1)
[11] 'Evolution of the Role of Reserve Bank of India' (*Economic Laws Practice*, 19 September 2024) <https://elplaw.in/wp-content/uploads/2024/09/Evolution-of-the-Role-of-Reserve-Bank-of-India.pdf> accessed 11 February 2025
[12] *Ibid*
[13] Securities and Exchange Board of India Act 1992, s 11

Some challenges are faced by these companies in compliance, such as bureaucratic delays in obtaining necessary approvals, which lead to an increase in operational costs and delays in expansion. Some industries, such as defence, retail, or telecommunications, have specific Foreign Direct Investment (FDI) guidelines that differ from sector to sector. Non-compliance can lead to penalties or forced divestments. It is quite difficult for MNCs to adapt to Indian corporate culture, which may be slightly different from their home country. Sectoral cap, i.e., the maximum amount that can be invested by foreign investors in an entity, will include all types of foreign investments, direct and indirect. Total foreign investment in an Indian company will be the total of direct and indirect foreign investments.[14]. Certain sectors, such as insurance, media, telecommunication, etc, have limited foreign direct investment with caps.

INTELLECTUAL PROPERTY RIGHTS

Intellectual Property (hereinafter referred to as IP) protection is vital for foreign companies to protect their brand identity, which includes brand name, logo, symbols, slogans, etc. It is also important to safeguard their innovative designs, new inventions, trade secrets, confidential business information, and artistic, musical, or literary works. There are mainly eight types of Intellectual Property Rights (IPR) available in India, namely patents, trademarks, copyright, geographical indications, designs, trade secrets, semiconductor integrated circuit layouts, and plant varieties.[15] Each IP has its dedicated law or is governed by a set of different laws in India. Different IP protection laws that are relevant in this field are explained as follows:

Copyright: Companies mainly engaged in the IT sector, entertainment, and pharmaceutical industries rely on copyright protection for their software, films, music, and research work. Such enterprises usually protect their intellectual property and enforce their rights against infringement by licensing contracts and agreements, under the provisions of the Copyright Act, 1957. It is valid for the lifetime of the creator and 60 years afterwards.

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[14] Department of Industrial Policy & Promotion (FC Section), 'Guidelines for calculation of total foreign investment i.e. direct and indirect foreign investment in Indian companies' (*Manupatra*, 13 February 2009) <https://www.manupatra.com/manufeed/contents/PDF/633704642939377500.pdf> accessed 12 February 2025

[15] Tanya Nair, 'Types of Intellectual Property Rights in India' (*Lexology*, 19 September 2022) <https://www.lexology.com/library/detail.aspx?g=7045cf52-4a2c-465f-980b-b5af034e2064> accessed 12 February 2025

Trademarks: Trademark registration in India is an important step for foreign enterprises seeking to protect their brand identity and IP in the Indian market. The procedure involves deciding on the most suitable registration option, such as direct filing with the Indian Trademark Registry or through the Madrid Protocol, and going through the necessary legal steps.[16] It is regulated by the Trademarks Act, 1999, in India. It is valid for ten years and can be renewed. Registering a trademark provides the owner with exclusive rights to use it for the specified goods or services, offering legal protection against unauthorised use or infringement.[17] It plays a crucial role in building and maintaining brand identity and recognition in the Indian market. It also facilitates business expansion through opportunities like licensing or franchising agreements within India.

Patents: MNCs often develop new technologies, products, or processes and need patents to protect their innovations. In India, a patent is granted for inventions that are original, innovative, and have a practical application. It is governed by the Patents Act, 1970. It is valid for 20 years from the filing date.[18]

Designs: According to section 2(d) of The Design Act, 2000, 'Design' means only the features of shape, configuration, pattern, ornament or composition of lines or colours applied to any article, whether in two-dimensional or three-dimensional or in both forms.[19] It can be registered only if the design is new, unique, original, and has not been disclosed in public within or outside the domestic territory of India. The registered design cannot be copied or imitated and is valid for ten years and can be extended by five more years.[20]

Trade Secrets: Trade secrets are not registered under any specific law in India, but the confidential information of a company is protected through confidentiality agreements.[21] It is mainly governed by the Indian Contract Act, 1857.

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[16] *Ibid*
[17] *Ibid*
[18] 'Intellectual Property Rights (IPR) Registration Process in India' (*Bajaj Finserv,* 11 November 2024) <https://www.bajajfinserv.in/ipr-registration> accessed 12 February 2025
[19] The Designs Act 2000, s 2(d)
[20] Nair (n 15)
[21] Intellectual Property Rights (IPR) Registration Process in India (n 18)

To sum up, IPRs are critical for multinational corporations because they help safeguard their distinctive concepts, goods, and brand identities. Businesses can stop others from stealing their ideas or copying their work by protecting their designs, trade secrets, patents, trademarks, and copyrights. In markets like India, where they can expand their operations without worrying about intellectual property infringement or misuse, this protection enables MNCs to keep their competitive edge and function seamlessly.

LABOR LAWS

There are many laws that MNCs have to follow to have smooth business operations and long-term success. Laws evolve through amendments, and new laws are sometimes enacted to protect employee rights or to promote transparency. MNCs must have regulatory compliance with Indian laws. At the central and state levels, there are multiple labour laws. Managing labour laws is complex. MNCs have to comply with the Factories Act, Industrial Disputes Act, and Minimum Wages Act. As laws vary depending on the location, MNCs must have a deeper understanding of the labour laws to avoid penalties. The hiring and termination procedures for employees in MNCs can be complex because of cultural and legal variations. The Industrial Disputes Act of 1947 makes things difficult in case of termination of employees, as government approvals are mandatory in some cases. Employees' contracts should be drafted carefully to avoid legal disputes, ambiguous clauses, and unclear termination terms. It must clearly define the role of employees, probation, and compensation policies.[22]

MNCs should also be in regulatory compliance with the laws governing working hours and overtime. Section 51 of The Factories Act, 1948 restricts adult workers from working more than 48 hours a week.[23] Section 54 states that no adult worker should work more than 9 hours per day in a factory.[24] Overtime refers to any hours that exceed the regular working hours set by the government. The Factories Act and, specifically, the Shops and Establishments Acts both set limits on overtime that can vary by state. Companies have to pay wages for the work done by

[22] *Ibid*
[23] The Factories Act 1948, s 51
[24] The Factories Act 1948, s 54

workers' overtime. MNCs must set clear policies on the working hours of employees and ensure accurate wage rate calculations.

The wages that each employee receives might vary depending on skill, state, or industry. MNCs might face issues with healthcare insurance, pension plans, and other benefits that could come up, so companies have to create unique packages for the employees that suit regional needs. This necessitates a thorough awareness of the regional laws. Under the Maternity Benefit Act, 1961, an MNC must provide 26 weeks of paid maternity leave to female employees.[25] If the organisation has more than 10 women employees, it is mandatory to form a committee to address sexual harassment complaints.[26] MNCs must ensure a discrimination-free workplace as there are employees with different cultural backgrounds. To attract employees from other countries, there is a common strategy that is used by MNCs called international employee mobility.[27] The procedure is quite challenging as it includes immigration regulations, work visas, eligibility criteria, and tax compliance issues. Companies need to be diligent, flexible, and dedicated to compliance to successfully navigate India's labour laws effectively. Understanding and managing all these problems is crucial for the success and compliance of MNCs in the world.

CASE STUDIES

Danone: A French multinational food company that operates in over 200 countries, failed in India. Even though India is the largest producer and consumer of milk and milk products, the company's dairy arm struggled to scale up for about seven years and had to shut down its operation. They entered India with flavoured yoghurt and smoothies, but restricted their business to single-flavoured yoghurt. They only made a little impact on the urban market because of their high prices and had to face tough competitors such as AMUL, Mother Dairy,

[25] The Maternity Benefit Act, 1961
[26] Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013
[27] 'Employment Law Challenges for Multinational Organizations' (*European Business Magazine*, 08 November 2023) <https://europeanbusinessmagazine.com/uncategorized/employment-law-challenges-for-multinational-organizations/> accessed 12 February 2025

and Nestle Ltd.,[28] who were already deeply ingrained in the Indian Dairy market. They were not able to build a reliable supply chain as Indian dairy brands rely on small milk cooperatives for milk collection, which was quite different and difficult for their business model. They also wrongly mapped the consumer profile. They assumed that Indian consumers were not aware of yoghurt and smoothies. So, they did not offer a wide range of products. Hence, this MNC, which is leading in many countries, badly failed in India. Achieving success in the Indian business market requires companies to learn from this case and focus on understanding the local market while aligning their business models accordingly. Other companies should take lessons from this case and focus on understanding the local market and aligning their business model accordingly to achieve success in the Indian business market. They should work on building reliable supply chains and offering products that resonate with their target market.

Nestlé: Nestlé is a Swiss multinational company that has Nestlé India Limited as its Indian subsidiary. It mainly produces chocolate, noodles, beverages, food, infant formula, and many more.[29] It has established the company as a trusted and quality brand in India, but Nestle also had to face serious consequences when their famous instant noodles, Maggi's production, were banned in 2015 as it didn't comply with the Food Safety and Standards Authority of India (FSSAI) guidelines.[30] The company suffered from extreme losses worth over rupees 500 crores.[31] So, the companies operating in the country have to be well aware of all the existing guidelines related to the products they manufacture or sell and make sure that they comply with every guideline, or else they might face serious consequences.

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[28] Sharleen Dsouza, 'Why Danone Shut Its Dairy Arm In World's Largest Milk Consuming Nation' *NDTV Profit* (16 January 2018) <https://www.ndtvprofit.com/business/why-danone-shut-its-dairy-arm-in-worlds-largest-milk-consuming-nation> accessed 15 February 2025

[29] *Ibid*

[30] 'Maggi Got Banned & Sales Dropped To Lowest Ever, How Suresh Narayanan, Chairman Of Nestle India, Saved India's Most Popular Noodles Brand' *Zee News* (21 October 2023) <https://zeenews.india.com/companies/maggi-got-banned-sales-dropped-to-lowest-ever-how-suresh-narayanan-chairman-of-nestle-india-saved-india-s-most-popular-noodles-brand-2678180.html> accessed 16 February 2025

[31] *Ibid*

CONTRACTUAL AGREEMENTS AND DISPUTE RESOLUTION

Contractual Agreements or Contracts are very crucial for MNCs as they form the foundation of their business operations in India. The contracts must comply with the Indian Contract Law. MNCs must ensure that contracts are carefully drafted, which safeguards their interests and ensures smooth business operations. MNCs must be prepared for the risks and disputes that arise. Companies should have a strong legal team.

Resolving the disputes can be challenging as MNCs must comply with Indian laws. MNCs should preferably include the clause of arbitration, mediation, and litigation, properly specifying the jurisdiction, which can resolve the complexities. They can also use alternative means such as negotiation and settlement. There are even more evolving choices available for dispute resolution in India, such as Online Dispute Resolution (ODR) platforms, whose clauses could either be included while drafting the necessary documents or could be chosen by the consent of both or all the parties involved in the dispute. MNCs can get the help of local legal experts to understand the specific regulations and regional nuances. Arbitration and Mediation are often more efficient than litigation, as these procedures can lead to quicker resolutions of conflicts and lower costs. The contract should be periodically reviewed by the company and updated. Any changes or amendments that are made in contracts should be documented formally with the mutual consent of all the parties present.

POLITICAL CHALLENGES

The political uncertainties remain a challenge for multinational companies operating in India. Understanding factors such as policy changes, economic fluctuations, and social unrest is a key strategy for MNCs to maintain their compliance and stability. For example, there are no big industries in Bihar, and no foreign company has been established there because of its political history and problems with compliance with laws. One of the main problems in establishing industries in the state is acquiring land. As a result, major industrial projects are either delayed or cancelled.[32] The government had announced Industrial Policy, 2006, wherein various incentives were promised to attract investment in the State of Bihar. The Industrial Incentive Policy, 2006, was published in the official gazette of the State Government.[33] Some industries even came and established their factory, but the promised subsidy was not given to them, and they had to approach the court, which again took a lot of time and money. Some policies of India encourage domestic manufacturing, due to which fewer foreign companies get opportunities to enroll in different sectors. Indian regulations and laws can change frequently, requiring MNCs to adapt quickly. Businesses often face delays due to the long procedures required to approve decisions by various departments of the Indian government. Regulations may vary across states because of India's federal structure, which requires companies to adapt strategies accordingly.

ECONOMICAL CHALLENGES

The companies should also be aware of the changes taking place through the Union Budget and State Budget each year. There is a probability of revision of different types of taxes levied as corporate tax, property tax, taxes paid on profits, customs duties, etc, from year to year. The companies that fail to meet the present requirements might end up facing serious consequences. There is often a delay in obtaining permits or approvals for various business activities, which might lead to an increase in operating costs. Exchange rate fluctuations can also have a significant impact on the profitability of the MNC if the MNC is not able to take advantage of the rate change.[34] In India, there is a greater percentage of people who are price-centric.[35] Indian customers are brand loyal, but at the same time, they are also affected by changes in the price of goods and services. MNCs have to find a way that control their cost without affecting the

[32] Pranava Kumar Chaudhary, 'Land acquisition a major hurdle' *The Times of India* (27 June 2015) <https://timesofindia.indiatimes.com/city/patna/land-acquisition-a-major-hurdle/articleshow/48701848.cms> accessed 15 February 2025

[33] 'Patna HC directs Authority to grant Subsidy to petitioner under Industrial Incentive Policy, 2006, in respect of payments made towards admitted Tax' (*Tax Scan*, 28 September 2020) <https://www.taxscan.in/patna-hc-directs-authority-to-grant-subsidy-to-petitioner-under-industrial-incentive-policy-2006-on-payments-made-towards-admitted-tax/76309/> accessed 15 February 2025

[34] *Ibid*

[35] Sandeep Sharma, '10 Major Challenges Faced By Multinational Companies (MNCs) in 2024' (*The Office Pass*) <https://www.theofficepass.com/toppings/challenges-faced-by-multinational-companies-in-india.html#7> accessed 15 February 2025

quality. Many times, MNCs prefer to lease office spaces. Getting the right office space at a beneficial cost is one of the biggest challenges for MNCs operating in India.

CONCLUSION

Surely, the legal maze in India presents a severe test in terms of regulatory hurdles for multinationals, yet in an equally emerging way, the opportunities present to emerging MNCs should make a successful entry. In this context, I want to propose solutions for redressing regulatory bottlenecks in India as follows:

Thorough Legal Research: MNCS needs to understand local laws, particularly concerning taxation, corporate governance, and labour regulations. Local attorneys who specialise in these areas offer the local intelligence necessary to avoid costly mistakes.

Be Culturally Conscious: An understanding of the rich cultural and socio-economic environment of India is required. Multinational companies must embrace the challenge of cultural sensitivity in building an organisational climate respectful of the traditions and practices upheld by the local stakeholders. Good employee relations would thereby be celebrated and, in turn, also help build an excellent brand in the community.

Setting up Strong Compliance Structures: For smooth operations, there is a compelling need for compliance structures to be in place. Companies must ensure that all employees are made aware of the local laws and compliance systems that can be infused into training.

Using Technology to Their Advantage: With rapid technological advances in the country, MNCs should optimally use digital means to make their operations smoother. Such means would enable transparency and ease the monitoring of compliance with cross-border transactions.

Linkages with Public-Private Partnerships: In collaboration with local governments and industry associations, MNCs would get the much-needed assistance and the insight required to understand the regulatory landscape. Such partnerships would also boost Corporate Social Responsibility (CSR) initiatives, further binding the company into the Indian market.

Networking Help: Relationships among different companies, local stakeholders, and industry leaders will make essential contributions. Networking helps in knowledge sharing regarding market entry and expansion.

To summarise, there are numerous legal and other problems for the MNCs to face in India; however, opportunities increase their chances of success if they wish to go proactive in understanding local culture, establishing compliance systems, and encouraging stakeholder engagement. It is not just about complying, it is about building relationships and getting to know the communities they are targeting. It is with these suggestions, if acted upon, that MNCs can create forward-looking ways to positively impact the Indian economy by aiding their business objectives. It also provides certain protections and assurances that their rights will not be violated. The win-win situation for MNCs and the host nation strikes a balance through a well-considered and respectful approach.