INFRASTRUCTURE LAWS IN INDIA

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Infrastructure is the foundation on which the fort of economic success is built. It is like a mother to any economy that not only ensures the evolution of it but also ensures consistency in its growth. India, which has recently risen to the 'economic realities', is trying to attain 'economic nirvana' through consistent focus on infrastructure growth.

India is posed to embark on a new journey of economic liberalisation and revolutionary growth. The backbone of economic development (infrastructure) has been put into focus and the government is making committed efforts to make the best of it. The recently published Goldman Sachs report *Dreaming with BRICs: The path to 2050* counts India as one of the four economies (Brazil, Russia, India and China) that, as a result of their expansion, are expected to play an integral part in global economic realignment over the next 40 years.

The infrastructure sector in India has undergone major reforms with the aim of achieving planned and consistent economic development. There has been a gradual shift from a controlled to an open market economy where private players, including foreign investors, have assumed a role.

The infrastructure sector is governed by specific statutes governing the specific sectors it encompasses. These statutes clearly provide the modes and means of private participation. Generally private participation is allowed through grant of licences to the private developer or through contractual relationship. The scope and extent of private participation is determined by the state government concerned and can be of varying degrees, such as on a build, own and operate (BOO) or build, operate and transfer (BOT) or build, lease and transfer (BLT) basis. These are just a few of the popular modes.

In brief, the legal framework within which the infrastructure sectors operate is described below.

Power

India has taken radical steps towards the restructuring of its power sector. The entire legal framework governing this sector has undergone change with the passing of the Electricity Act 2003 in June. The new act replaced the prevailing legislations, namely the Indian Electricity Act 1910, the Electricity (Supply) Act 1948 and the Electricity Regulatory Commission Act 1998.

The act has laid a foundation for the rapid development of the electricity industry by: promoting competition; decreasing the amount of regulatory approvals necessary; introducing uniform licensing for electricity distribution, transmission and trading; rationalising electricity tariffs; and providing transparent policies regarding subsidies. It provides statutory basis for the restructuring of state electricity boards.

Private participation in generating companies and captive generating plants is allowed without a licence. However, **[private participation in???]** activities pertaining to transmission, distribution and trading of electrical energy is subject to the possession of a licence from the appropriate electricity regulatory commission (ERC). The licence can be procured subject to fulfilment of certain terms and conditions and is valid for 25 years.

The regulatory functions have been delegated to the Central ERC, State ERC, the Joint Commission and Appellate Tribunal constituted under the act. There are also monitoring agencies and agencies for governing operational aspects of the electricity system.

Total foreign direct investment (FDI) is permitted for hydroelectric power plants, coal/lignite-based thermal power plants and oil and gas-based thermal power plants projects.

Fiscal incentives like a 100% tax holiday for new power projects in any block of 10 years within the first 15 years of operations, tax exemption for interest/dividend, long-term capital gains, concession rates of import duties and deemed export benefits are available.

Airports

The government's Policy on Airport Infrastructure 1997 contemplates preparation of detailed masterplans for the development and upgrading of all selected airports in line with the standards and recommended practices of the International Civil Aviation Organisation. Greenfield airports projects may be permitted in the public or private sector or as a joint venture without the approval of the government. However, for other categories of airports run by private operators, the approval of the director general of civil aviation is required.

The policy recognises the importance of private participation for a sustained development of airport infrastructure. It seeks to achieve this by corporatising airports with the aim of divesting the government holding in the future. The airports can be owned by the central or state governments, public sector units, urban local bodies, private companies and individuals or through joint ventures. The management of airports or parts of airports can be on BOT, BLT, BOO, LDO **[what does this stand for?]**, joint venture, management contract or on a wrap-around addition basis.

Establishment of private airports and leasing out of airports to private entities is now permitted subject to approval of the central government. FDI, in joint ventures relating to airport infrastructure, is permitted up to 74% under the automatic route and up to 100% with prior approval. The equity participation can be made by foreign airport authorities.

Airports are governed by the Airports Authority of India Act 1994, the Aircraft Act 1934 and the Aircraft Rules 1937. The above legislations allow private participation through issuance of license for an airport other than those owned by the Central Government and formation of joint ventures with the Airports Authority of India.

Fiscal incentives like 100% deduction in profits for the first five years followed by 30% deduction for next five, full deduction to run for a continuous 10 out of 20 fiscal years of the assessor's choice and deduction of 40% of the profit to financial institutions from long-term financing of infrastructure projects is available.

Roads

National highways are governed by the National Highways Act 1956 and the National Highways Authority of India Act 1988. The functions relating to development, maintenance and management of national highways are carried out by the National Highways Authority of India.

FDI up to 100% (with total foreign equity up to 1500 crore) is permitted in construction and maintenance of roads, highways, toll roads, vehicular tunnels, rail beds, non-vehicular bridges, non-vehicular tunnels, pipelines, ropeways and runways.

Fiscal incentives include duty free imports, 10 years of corporate tax holiday within 20 years of commissioning the project, exemption on profits of financing institutions, exemption on long-term capital gains of investors, concession period up to 30 years and toll rates indexed to the wholesale price index.

Water

The government of India has massive plans to utilise its large rivers for providing less expensive, pollution free and relatively more efficient methods of transport. The National Water Policy 2002 encourages private sector participation in planning, development and management of water resources projects for diverse uses, wherever feasible. With ambitious plans to connect rivers within the country, this sector offers major investment opportunities.

Railways

Railways are the principal mode of transport in India. Railway transport is covered in the list of industries reserved for the public sector and is therefore not exempt from industrial licensing requirements. However, several railway components have had licences removed. FDI in the railway sector has been allowed with sectoral caps. FDI up to 51% is permitted for the manufacture of railway containers used in container traffic. FDI up to 74% is permitted in construction and maintenance of railbeds, bridges and tunnels under automatic route.

Ports

Both the central and state governments have taken several incentives to encourage private investment in this sector through open competitive bidding.

Ports are governed by the Major Ports Trusts Act 1963 and amendments thereof. FDI up to 100% is allowed. A tax holiday is provided for the first five years followed by a 30% rebate on the earnings in the next five, which may be used within 12 years of the commissioning of the project.

Oil and natural gas

Natural gas is projected to be a critical component of India's energy market in the near future. In exploration and production, Indian oil and gas fields are open to the private sector and for foreign participation up to the prescribed limit under production sharing contracts. In the refining sector, 100% FDI is allowed under the automatic route in the private sector. However, FDI up to 26% is permitted where the joint venture is with public sector undertaking. FDI up to 51% is permitted for petroleum products and the pipeline sector.

Fiscal incentives like corporate tax deductions and allowances, seven-year tax holidays and deduction of expenses are allowed. Divestment of government holding in the oil sector has further enhanced the scope in the sector.

And finally

Besides, the above-mentioned key infrastructure sectors, telecom has also been accorded the status of infrastructure by the government. Its new telecom policy has brought a revolution in the telecom industry.

The reforms, and the large number of projects being undertaken, confirm that the infrastructure sector is booming in India. A phenomenal growth has been projected making it an opportune time to invest in this sector. The irreversible process of economic liberalisation has entered into its third and most critical phase. There could hardly be scope for doubt when the world has started swearing by economic development in India.

The leader is laying foundations; everybody eligible is cordially invited to join. The spiritual leader of the world is evolving itself, this time economically. Undeterred faith shall be rewarded, this time with the attainment of 'economic nirvana'. **ALB**

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