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1 The Fintech Landscape

1.1 Please describe the types of fintech businesses that are active in your jurisdiction and the state of the development of the market, including in response to the COVID-19 pandemic and ESG (Environmental, Social and Governance) objectives. Are there any notable fintech innovation trends of the past year within particular sub-sectors (e.g. payments, asset management, peer-to-peer lending or investment, insurance and blockchain applications)?

India has a range of active fintech businesses operating across areas such as lending (credit), payments (both peer-to-merchant (P2C) and peer-to-peer (P2P) transfers), investments and trading, personal finance and wealth, credit ratings, insurance, etc. Currently considered the third-largest fintech ecosystem, India is among the fastest growing fintech markets in the world, with the industry expected to be valued at around USD 150 billion by 2025. A lot of the development in this sector is fairly recent, with a significant majority of fintech businesses in India having been established in the last five years. While domestic players (some of which have foreign investment) dominate the fintech industry in India as of now, the last few years have seen several foreign players enter the field as well – a trend that is expected to continue. With increasing internet penetration among the Indian public and some (questionable) policy changes having indirect consequences for the sector, fintech in India is looking at a period of compounding growth over the coming years.

The Indian fintech space continued to accelerate through the global COVID-19 pandemic, albeit with a few initial hiccups that affected business in general at the onset of the pandemic. While the manufacturing sector took a hit for obvious reasons, the service sector rebounded and fintech in particular received a wider user base – with people looking for socially distanced payment methods, for instance, as well as digitally accessible health and insurance products.

While there are not many fintech products and services designed with ESG considerations in mind at the outset (with some exceptions), ESG objectives are becoming increasingly relevant for investors in terms of "where" to invest. This should also lead to a positive ESG impact on operations, with sustainable financing gaining traction and banks offering ESG-linked loans. Indian regulators are tapping into this trend as well, with "Business Responsibility and Sustainability Reports" becoming mandatory for the top 1,000 listed companies in India, and a framework for regulating ESG Ratings Providers being considered.

Popular offerings across the fintech sector in India include consumer credit, micro-financing and loans to small businesses, insurance distribution, digital payment solutions, investment products, and digital/e-wallets. Notable fintech trends that saw a definitive boom include BNPL (Buy Now, Pay Later) and other micro-credit options. Major e-commerce platforms such as Amazon and Flipkart jumped on the BNPL bandwagon in the wake of the pandemic, and BNPL is expected to continue growing in the years to come. Blockchain, open banking, increasing collaboration between fintech businesses and traditional banks, and neo-banks are other unmissable trends that showed – and are expected to continue to show – growth. The Indian Government's recent Budget of 2022–2023 also announced the setting up of 75 Digital Banking Units by Scheduled Commercial Banks as well as digital banking by post offices – financial inclusion will therefore be the trend to watch.

1.2 Are there any types of fintech business that are at present prohibited or restricted in your jurisdiction (for example cryptocurrency-based businesses)?

Regulations applicable to fintech businesses in India are complex and evolving. Possible restrictions or prohibitions on a fintech company may depend on the regulations that apply to the business being undertaken by that entity – for example, a fintech business engaged in the acceptance of deposits and lending cannot undertake such business without the appropriate banking or non-banking licence from the Reserve Bank of India (RBI; India's central bank and regulator).

The true legal status of cryptocurrency continues to be a grey area in India. As of now, there is no specific regulation governing cryptocurrency-based businesses. Back in April 2018, the RBI had prohibited all banks and non-banking financial companies regulated by it from dealing in virtual currencies or providing any services for facilitating dealings in or settling of virtual currencies. This was challenged before the Supreme Court of India, which overturned the prohibition, stating that the RBI cannot impose any restrictions on buying and selling of cryptocurrencies in the absence of a legislative bar.

The Government of India also recently introduced a draft Cryptocurrency and Regulation of Official Digital Currency Bill, 2021 (Cryptocurrency Bill), which provides for: (a) the creation of a framework for official digital currency to be issued by the RBI; and (b) the prohibition of all private cryptocurrencies in India – with certain exceptions, in order to promote the underlying technology of cryptocurrency and its uses. The Cryptocurrency Bill is yet to attain the status of law in India and is likely to undergo significant changes based on feedback from several stakeholders.

While the Government of India recently decided to start taxing profits from the sale of virtual digital assets or "crypto" (with cryptoprofits being taxed at the same percentage rate as lottery winnings, which seems oddly telling in itself), India's Finance Minister was quick to clarify that this still does not give crypto "legal status" in India.

2 Funding For Fintech

2.1 Broadly, what types of funding are available for new and growing businesses in your jurisdiction (covering both equity and debt)?

Equity and debt funding are both available for growing businesses in India. For businesses in general, (fintech or otherwise), the most common type of funding comes from private investors (venture capitalists or private equity funds). Business loans from banks and other financial institutions are also available, but loans are not as popular owing to high interest rates and the need for proportionate collateral. Foreign investments, subject to the applicable laws, are also allowed in India. Indian companies have the option of raising funds by way of external commercial borrowings (ECB), which are foreign loans from recognised eligible lenders, such as foreign financial institutions, banks and foreign equity holders.

The past few years have also seen an upward trend in IPOs, particularly for tech companies. Per reports, Indian fintech companies raised around USD 9 billion in IPOs in 2021, with growth projected to continue in 2022.

The Government of India also brings out schemes and initiatives to bolster start-ups and growing businesses, from a funding perspective; some of which are listed below:

- Credit Guarantee Trust for Micro and Small Enterprise (which offers loans of up to INR 10 million without any collateral to micro and small enterprises).
- Start-up India Initiative (which offers funding and incentives to eligible start-ups).
- PRISM's Technopreneur Promotion Program (which provides financial aid to individual innovators).

2.2 Are there any special incentive schemes for investment in tech/fintech businesses, or in small/medium-sized businesses more generally, in your jurisdiction, e.g. tax incentive schemes for enterprise investment or venture capital investment?

Special incentives to promote investments are announced at the central as well as state level – either through longer-term policy announcements, or periodic schemes. Many of these incentives are available only to domestic investors, but there are some that are available to foreign investors as well.

Competitive tax rates levied on capital gains by investors is another way to attract investments. The Government develops specific schemes as well, independently and under the National Manufacturing Policy (2011) and Make in India Programme (2014), aimed at creating infrastructure for increased investments in particular sectors.

The Government also announces measures to specifically promote investments in tech/fintech/start-up businesses in India, or which have a positive impact on those sectors. For instance, this year, the Government announced:

Setting up of further "thematic funds": Setting up of "thematic funds" for channelising capital towards the development of sunrise sectors, including climate action, deep tech, digital economy, etc.

Lowering of the surcharge on long-term capital gains: The surcharge (tax) on long-term capital gains on listed equity and mutual funds has been capped at 15% (previously, this went as high up as 37%), reducing the tax burden on investors for start-ups.

2.3 In brief, what conditions need to be satisfied for a business to IPO in your jurisdiction?

Conditions that need to be satisfied for a business to IPO are set out as "eligibility norms" by the Securities and Exchange Board of India (SEBI). These norms are laid down under various "routes". First, there is the **Profitability Route** – which mandates, *inter alia*, the minimum net tangible assets as well as the minimum net worth of a business to be eligible to IPO. Second, there is the **Alternative Route** – which mandates that a majority of the net offer to the public be allotted to Qualified Institutional Buyers (QIBs).

Additionally, there are conditions for anchor investors/directors/promoters of a business that is looking to IPO set out by SEBI, which include: a mandatory minimum contribution of promoters as well as a lock-in period on the shares owned by them; and a clean track record with SEBI and other law enforcement agencies in terms of disciplinary actions/offences. These compliance requirements were recently revised to be made more stringent, to reduce post-listing price volatility. There are "pricing guidelines" as well, again issued by SEBI, that come into play. Apart from these, certain National Stock Exchange (NSE) rules also need to be complied with.

2.4 Have there been any notable exits (sale of business or IPO) by the founders of fintech businesses in your jurisdiction?

Per reports, 2021 was the year of "exits" – either via sales to strategic buyers or secondary sales. The last year saw IPOs of a few big names in the Indian fintech space, including PayTM and PolicyBazaar.

PayTM

PayTM's IPO reportedly witnessed its main investors, Antfin (Netherlands) Holding BV, SVF Panther (Cayman) Ltd., Alibaba.com Singapore ECommerce Pvt. Ltd., along with founder Mr. Vijay Shekhar Sharma, offloading their stake partially. Mr. Vijay Shekahar Sharma sold shares to the extent of USD 53 million.

PolicyBazaar

PolicyBazaar reportedly witnessed its founders selling shares worth INR 3.92 billion (approximately USD 52 million) in the IPO.

Another notable sale came in the form of PayU, a Netherlands-based payment services provider, acquiring the Indian payment gateway, BillDesk, paving the way for the exit of its investors.

3 Fintech Regulation

3.1 Please briefly describe the regulatory framework(s) for fintech businesses operating in your jurisdiction, and the type of fintech activities that are regulated.

Owing to the overlapping and non-linear business models of fintech businesses, there is no single all-encompassing regulatory legal framework for fintech in India. The applicable laws and rules governing a fintech business will generally depend on the nature of the business being conducted.

Key Regulators

Financial sector undertakings, including fintech businesses, are usually regulated by the RBI, SEBI, the Insurance Regulatory and Development Authority of India (IRDAI), and the Pension Fund Regulatory and Development Authority (PFRDA).

Aspects that are regulated by the aforementioned authorities include online payments and transactions, payment aggregators and gateways, data and privacy, lending and collection of deposits, trading of securities and derivatives, offering of insurance products and services, etc. For many financial offerings, prior approvals and licences need to be obtained from the RBI, SEBI, or IRDAI for a business to commence.

The laws and regulations that may apply to fintechs in India are listed below:

RBI

- Payment and Settlement Systems Act, 2007.
- Master Directions on Prepaid Payment Instruments (MD-PPIs), 2021.
- Framework for Scale Based Regulation for Non-Banking Financial Companies, 2021.
- Directions for opening and operation of Accounts and settlement of payments for electronic payment transactions involving intermediaries, 2009.
- Guidelines for Licensing of Payments Banks, 2014 and Operating Guidelines for Payments Banks, 2016.
- Framework for Recognition of a Self-Regulatory Organisation for Payment System Operators, 2020.
- Guidelines on Regulation of Payment Aggregators and Payment Gateways, 2020.
- Circular on Processing of e-mandate on cards for recurring transactions, 2019.
- Circular on Tokenisation – Card transactions, 2019.

National Payments Corporation of India (NPCI)

- Various circulars on Unified Payments Interface (UPI) payments.

SEBI

- Circular on Mutual Funds, 2021.

IRDAI

- Guidelines on Insurance Repositories and Electronic issuance of Insurance Policies, 2015.
- Guidelines on Insurance e-commerce, 2017.
- Insurance Regulatory and Development Authority of India (Issuance of e-Insurance Policies) Regulations, 2016.

3.2 Is there any regulation in your jurisdiction specifically directed at cryptocurrencies or cryptoassets?

There is currently no dedicated regulation directed at cryptocurrencies or cryptoassets.

Please refer to our response to question 1.2 on regulations relating to cryptocurrencies or cryptoassets.

3.3 Are financial regulators and policy-makers in your jurisdiction receptive to fintech innovation and technology-driven new entrants to regulated financial services markets, and if so how is this manifested? Are there any regulatory 'sandbox' options for fintechs in your jurisdiction?

Financial regulators and policy-makers in India are generally receptive to fintech innovation and technology-driven new entrants, as long as they fall within the purview of broadly established regulatory structures. However, things may not be as straightforward when dealing with disruptive innovation that does not fit neatly into existing regulatory frameworks.

That said, the establishment of the International Financial Services Centres Authority (IFSCA) under the International Financial Services Centres Authority Act, 2019 by the Government suggests a growing receptiveness to fintech innovation. The regulatory powers of the RBI, SEBI, IRDA and PFRDAI have been vested in IFSCA with respect to regulation of financial institutions, financial services and financial products in the International Financial Services Centre headquartered in Gandhinagar, Gujarat.

The primary market regulators have all come up with regulatory "sandbox" options for fintech businesses in India, with innovation being at the forefront of all of them:

RBI

In 2019, the RBI came up with an Enabling Framework for Regulatory Sandbox, under which the first cohort was announced later in the same year with the theme: "*Retail Payments*". In late 2021, it was reported that six entities had completed the test phase of the first cohort.

Subsequent themes for the second (announced in December 2020), third (announced in September 2021) and fourth cohorts (announced in October 2021) under the regulatory sandbox are "*cross border payments*", "*MSME Lending*" and "*Prevention and Mitigation of Financial Frauds*", respectively.

In late 2020, the RBI also announced the setting up of the Reserve Bank Innovation Hub (RBIH) to promote innovation across the financial sector, by leveraging technology and creating an environment that would facilitate and foster innovation.

SEBI

SEBI came up with the Framework for Regulatory Sandbox in 2020, with the objective to promote innovation in the securities market and to grant facilities and flexibility to the entities regulated by SEBI to experiment with fintech solutions. SEBI has launched an online initiative called "Innovation Sandbox" to promote innovation in the fintech sector.

IRDAI

To promotive innovation in the insurance space, IRDAI created a regulatory sandbox and notified the IRDAI (Regulatory Sandbox) Regulations in 2019. One of the main objectives of this sandbox is to strike a balance between orderly development of the insurance sector on the one hand and protection of the interests of policyholders on the other, while facilitating innovation.

Additionally, India also saw the setting up of mechanisms other than regulatory sandboxes to bolster innovation in the fintech industry. For instance, the Government set up Joint Working Groups with countries like the UK and Singapore.

3.4 What, if any, regulatory hurdles must fintech businesses (or financial services businesses offering fintech products and services) which are established outside your jurisdiction overcome in order to access new customers in your jurisdiction?

The biggest regulatory hurdle that a fintech business *established* outside India would face is the requirement for certain businesses to have a "local" presence in India. Additionally, foreign companies wishing to set up a business in India will have to comply with the applicable foreign exchange control regulations, including restrictions (if any) relating to the maximum permissible foreign ownership in an Indian entity/subsidiary. Other concerns could emanate from issues such as cross-border transactions and payments – for instance, a fintech business engaged in lending/credit may find itself facing regulatory restrictions around borrowing/lending in foreign exchange. Another example of a foreign fintech player doing business in India is PayPal, which recently announced that it is winding up its domestic payments business in India (already a highly competitive market) and instead focusing on international sales for Indian businesses.

Data storage could be another hurdle to navigate. For instance, the RBI mandates that all data related to payment systems be stored within India, which applies to businesses that are part of the payments ecosystem. This significantly impacts multinationals that transfer global payments data to centralised locations for storage and processing by default, or to locations outside India, at any rate. Indeed, there are a few marquee names in the financial services sector whose Indian business operations have been halted for non-compliance with data storage regulations.

4 Other Regulatory Regimes / Non-Financial Regulation

4.1 Does your jurisdiction regulate the collection/use/transmission of personal data, and if yes, what is the legal basis for such regulation and how does this apply to fintech businesses operating in your jurisdiction?

There is currently no dedicated data protection legislation in India, although a proposed legislation has been in the pipeline for some years and draft bills have already gone through several revisions. As things stand, the collection, use, transmission, storage and processing of sensitive personal data of natural persons is governed by the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules 2011 (SPDI Rules) formulated under the Information Technology Act, 2000.

The SPDI Rules prescribe certain restrictions with respect to the collection, storage, transfer, processing and disclosure of Sensitive Personal Data and Information (SPDI) – which has been defined to include: passwords; financial information such as bank account, credit card, debit card or other payment instrument details; physical, physiological and mental health data; sexual orientation data; medical records and history; and biometric information, etc.

The SPDI Rules mandate that any corporate body collecting SPDI from any person must obtain the prior written consent of the data subject. Consent should be obtained in relation to the fact of collection of SPDI, the purpose of such collection, the proposed recipients of the data, etc. Also, consent must be obtained prior to the transfer or disclosure of SPDI, unless such transfer is part of a lawful contract between the parties. Further, the SPDI Rules require all corporate bodies that collect, store, use or transfer SPDI to maintain reasonable security practices and procedures, in line with International Standard IS/ISO/IEC 27001 on "Information Technology – Security Techniques – Information Security Management System – Requirements", or other standards duly approved and notified by the Central Government.

Under the SPDI Rules, every company that collects SPDI must appoint a Grievance Officer to address/redress grievances of data subjects. A company handling SPDI must also post its privacy policy on its website, which should comply with the SPDI Rules and should list, among other things, the kinds of SPDI being collected and the purpose and manner in which SPDI will be used.

Financial information, which is usually collected by fintech businesses, would fall under the definition of SPDI, and would thus be subject to the SPDI Rules. In addition to the SPDI Rules, several privacy focused regulations have been framed by regulators in India to ensure protection of financial information. For instance, IRDAI has framed several regulations, which require: (i) insurers to maintain confidentiality of insurance policyholders; (ii) that insurance records be held in data centres located in India; and (iii) that all data provided by insurance service providers to their outsourced service providers be retrieved immediately after provision of the services. There are specific regulations for insurance intermediaries and third-party administrators (commonly known as TPAs), including insurance brokers, insurance web aggregators, common service centres and insurance surveyors, regarding confidentiality and protection of insurance-related data received by them for servicing of insurance policies.

As mentioned previously, the RBI has also mandated that all Payment System Operators in the payment ecosystem ensure that the entire data relating to payment systems operated by them are stored on systems and data centres only in India. There is no prohibition on overseas *processing* of payments related data, but data processed outside India should be deleted from the overseas systems and brought back to India no later than the one business day or 24 hours from payment processing. Additionally, the data should include full end-to-end transaction details – details of information collected, carried and processed as part of the payment instruction. For the foreign leg of the transaction, if any, a copy of the data can also be stored in the foreign country, if required.

Furthermore, as per the Guidelines on Regulation of Payment Aggregators and Payment Gateways of the RBI, authorised non-bank payment aggregators and merchants on-boarded by them will be prohibited from storing actual card data effective from June 30, 2022 – except the last four digits of card numbers, which can be stored for reconciliation purposes.

4.2 Do your data privacy laws apply to organisations established outside of your jurisdiction? Do your data privacy laws restrict international transfers of data?

The SDPI Rules and other data protection laws *per se* do not expressly apply to foreign establishments, although the IT Act (under which the SPDI Rules are framed) does contain provisions that extend its application beyond India in certain cases. India's proposed data protection legislation, if/when it becomes law, will likely expand this scope further to include foreign data controllers handling data in connection with businesses conducted in India. That said, as things stand, foreign organisations may still have to indirectly comply with certain aspects of Indian privacy laws by virtue of being service providers to Indian fintechs. For example, as per the SDPI Rules, an Indian entity cannot transfer SPDI to a foreign entity that does not adhere to the same level of data protection and security standards as that of the Indian entity (the transferor).

The SDPI Rules do not impose a blanket prohibition on the transfer of data outside India. Instead, cross-border transfers are allowed subject to certain conditions, namely: (a) that the transferee foreign entity ensures the same level of data protection that is adhered to by the transferor entity in India; **and** (b) express consent of the data subject has been obtained, unless the data transfer is part of a lawful contract between the data subject and the transferor.

However, there are other sectoral regulations that do restrict the cross-border transfer of data, or specify data storage, in certain cases. For instance, as mentioned earlier, IRDAI requires that insurance records are held in data centres located in India. Similarly, the RBI requires that all Payment System Operators in the payment ecosystem ensure that the entire data relating to payment systems operated by them are stored on systems and data centres in India.

4.3 Please briefly describe the sanctions that apply for failing to comply with your data privacy laws.

Breach of data privacy laws resulting in a violation of provisions of the IT Act may entail civil claims and criminal prosecution.

For instance, if entities that are in possession of, handle or deal in SPDI are found to be negligent in their implementation and maintenance of reasonable security practices and procedures resulting in wrongful loss or gain to any person, they are liable to pay compensatory damages. The IT Act also penalises disclosure of information that is in breach of a lawful contract – by imprisonment and/or monetary fines.

Under the Information Technology (The Indian Computer Emergency Response Team and Manner of Performing Functions and Duties) Rules, 2013 (the "**CERT Rules**") framed under the IT Act, service providers, intermediaries, data centres and other entities are required to report cyber incidents to CERT-In (i.e., the authority that deals with cyber incidents) within a reasonable timeframe so that CERT-In can take timely action. Any failure to comply with this will attract a penalty of up to INR 5,000 for every day such failure continues. Furthermore, CERT-In has the power to call for information and give directions for the purpose of carrying out its functions. Any person who fails to provide the information called for, or comply with the direction of CERT-in, may be punished with imprisonment for a period up to one year or a fine of up to INR 10 million, or both.

Sanctions under specific laws (implemented and enforced by the sectoral regulators such as the RBI, SEBI or IRDAI) are mostly in the form of fines/penalties but may also include imprisonment. The RBI and IRDAI also have clarificatory provisions for sanctions for offences committed by companies, which bring into their purview every individual who (at the time of any contravention by a company) was in charge of/responsible to the company for the conduct of business of the company – if the person had knowledge of the contravention and they did not exercise due diligence to prevent that contravention. In certain cases, the RBI and IRDAI may also order partial or full suspension of business activities due to violation of data localisation requirements, or data security lapses, or non-compliance with the prescribed security standards.

4.4 Does your jurisdiction have cyber security laws or regulations that may apply to fintech businesses operating in your jurisdiction?

The IT Act and rules formed thereunder (such as, amongst others: the Information Technology (Information Security Practices and Procedures for Protected System) Rules, 2018; the Information Technology (Guidelines for Intermediaries and Digital Media Ethics Code) Rules, 2021; the Information Technology (Electronic Service Delivery) Rules, 2011; and CERT Rules, which also provide for the creation of CERT-in, an administrative body responsible for collecting and analysing information on cyber security incidents) may have some bearing on issues pertaining to cyber security in the fintech space.

Beyond the IT Act, the RBI has also issued a comprehensive framework on cyber security that is currently applicable only to banks and non-banking financial institutions. Other circulars implemented by the RBI, for instance its MD-PPIs, have directions for PPIs to "establish a mechanism for monitoring, handling and follow-up of cyber security incidents and cyber security breaches", and for non-bank PPIs to submit a System Audit Report (SAR), including a cyber security audit conducted by a CERT-IN empanelled auditor, within two months of the close of its financial year.

SEBI has issued circulars on "Cyber Security Resilience framework for Stockbrokers/Depository Participants" and "Cyber Security Resilience framework for Mutual Funds/Asset Management Companies (AMCs)", which may also have some impact on fintech businesses.

IRDAI has issued Information and Cyber Security Guidelines containing a comprehensive cyber security framework for the insurance sector for implementing appropriate mechanisms to mitigate cyber risks.

Additionally, the Credit Information Companies (Regulation) Act 2005, the Credit Information Companies Regulations 2006, and Aadhaar (Targeted Delivery of Financial and Other Subsidiaries, Benefits, and Services) Act 2016 contain regulations on issues related to cyber security.

4.5 Please describe any AML and other financial crime requirements that may apply to fintech businesses in your jurisdiction.

The Prevention of Money Laundering Act, 2002 (PMLA) (along with the rules framed thereunder) is the primary anti-money laundering legislation in India. India is also a member of the Financial Action Task Force (FATF) and a signatory to various conventions that deal with anti-money laundering and countering financing of terrorism. Pursuant to the PMLA, and India's obligations as a member of the FATF and as a signatory to anti-money laundering conventions, an obligation has been cast on banking companies, financial institutions and intermediaries to maintain a record of financial transactions of a prescribed nature and value, furnish information relating to those transactions for verification, and maintain identity records of all its clients in the prescribed manner. Accordingly, financial regulators such as the RBI, SEBI and IRDA have specific regulations and guidelines regarding maintenance of records of financial transactions and verification of customers; for example: (i) SEBI's Guidelines on Anti-Money Laundering (AML) Standards and Combating the Financing of Terrorism (CFT)/Obligations of Securities Market Intermediaries; (ii) RBI's Master Direction - Know Your Customer (KYC) Direction, 2016; and (iii) IRDA's guidelines on Anti Money Laundering/Counter-Financing of Terrorism (AML/CFT) for the insurance sector.

4.6 Are there any other regulatory regimes that may apply to fintech businesses operating in your jurisdiction?

Apart from what has already been mentioned, there are no other regulatory regimes that may apply to fintech businesses operating in India.

5 Accessing Talent

5.1 In broad terms, what is the legal framework around the hiring and dismissal of staff in your jurisdiction? Are there any particularly onerous requirements or restrictions that are frequently encountered by businesses?

India does not recognise the concept of at-will employment. As per the Industrial Disputes Act, 1948 (ID Act) and shops and establishment legislation of certain states, termination of employment should be undertaken for a reasonable cause.

Employees in India are broadly categorised into two groups: workmen; and non-workmen. The ID Act deals with industrial disputes and provides statutory protection to workmen in certain matters, such as termination, transfers and closure of establishments.

The ID Act defines a "workman" as any person who is employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, regardless of whether the terms of employment are express or implied. The following categories of employees are excluded from the definition of workmen:

- persons employed in an administrative or managerial capacity; and
- persons employed for supervisory work and earning more than INR 10,000 per month.

The definition of a workman is broad enough to cover most employees, except those performing managerial or supervisory functions. It is common for an employee to be performing (a) managerial or supervisory work, as well as (b) work that may be technical, skilled, unskilled or operational in nature. Several courts have ruled that where an employee performs multiple roles, the dominant nature of work performed by such a person in the usual course of business should be considered when deciding whether the employee is a workman or a non-workman. All employees other than workmen, namely employees performing managerial and supervisory functions, will fall under the category of non-workmen.

As per the ID Act, employment of a workman, who has been in continuous employment for not less than one year, may be terminated without any cause only after issuing a notice of one month (or payment of wages instead of the notice) and payment of compensation equivalent to 15 days' average pay for every completed year of continuous service. In certain cases, such as a manufacturing facility employing more than 100 workmen, the length of the termination notice is three months.

Unlike in the case of workmen, employment of a non-workman should be terminated in accordance with the employment agreement as well as the prevailing "shops and establishment legislation" of the jurisdiction where the relevant employee is employed. In many states, the applicable shops and establishment legislation requires that reasonable cause be established for termination of the services of an employee who has worked for a certain prescribed tenure.

The restrictions prescribed under the ID Act, employment contracts and the applicable shops and establishment legislation are always taken into consideration when dealing with cases of termination of employment.

5.2 What, if any, mandatory employment benefits must be provided to staff?

In India, employees are entitled to a host of mandatory benefits, some of which depend on factors such as tenure of employment and employee headcount. Some of the key benefits are mentioned below.

As per the Minimum Wages Act, 1948, salaries to employees should not be less than the minimum wages fixed by the respective state Government for a job. The shops and establishment legislation provides for: (i) paid (or earned), sick, casual and certain special leaves to employees; (ii) payment of overtime wages; and (iii) a safe and secure work environment. The Maternity Benefit Act, 1961, which is applicable to establishments employing at least 10 employees, provides for paid maternity leave and other benefits to female employees who have worked for at least 80 days in the 12 months immediately preceding their delivery date.

The Payment of Gratuity Act, which is applicable to establishments in which 10 or more employees are employed, mandates payment of gratuity benefits to employees who have been in continuous service for more than five years. Gratuity benefits are to be computed at the rate of 15 days' wages (at the rate of the last paid wages) for every year of continuous service, subject to a maximum prescribed cap.

The Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (EPF Act) is a social security legislation that requires all establishments in India employing a minimum of 20 employees to make contributions towards provident fund schemes, pension schemes and deposit-linked insurance schemes in respect of all eligible employees (i.e., employees who earn less than INR 15,000 per month). Establishments employing fewer than 20 persons may voluntarily register under the EPF Act. Employers may even extend the benefits of the EPF Act to excluded employees (employees earning more than INR 15,000 per month).

The Employees' State Insurance Act, 1948 (ESI Act) is a social security legislation that (a) applies to employers having 10 or more employees overall, and (b) covers employees earning up to INR 21,000 per month (Covered Employees). The ESI Act mandates employers as well as Covered Employees to make contributions towards insurance and other schemes. Every month, employers are required to deposit with the Employees' State Insurance Corporation their prescribed employer contributions in respect of every Covered Employee.

5.3 What, if any, hurdles must businesses overcome to bring employees from outside your jurisdiction into your jurisdiction? Is there a special route for obtaining permission for individuals who wish to work for fintech businesses?

There are detailed requirements that need to be met for obtaining a work visa in India. Among others, these include the following: (i) the applicant should be a highly skilled or qualified professional; (ii) an employment visa will not be granted for jobs for which qualified Indians are available, or for routine, ordinary or clerical jobs; and (iii) the applicant being sponsored for an employment visa in any sector should draw a salary in excess of USD 25,000 *per annum*, except in certain limited, permitted cases.

6 Technology

6.1 Please briefly describe how innovations and inventions are protected in your jurisdiction.

While there are multiple pieces of IP legislation in India, the ones that protect innovations and inventions are, amongst others: the Patents Act, 1970; the Copyrights Act, 1957; the Semiconductor Integrated Circuits Layout-Design Act, 2000; and the Designs Act. In terms of "technology", computer programs are *per se* not patentable in India unless they are tied to some hardware; software is typically protected through copyright law (through their underlying code). Products based on emerging technology, such as blockchain, NFTs and the metaverse, may find their home either in the Patents Act, 1970 or the Copyrights Act, 1957 – with the brands they are marketed under being protected through the Trademarks Act, 1999. The protection of innovations and inventions pertaining to AI is still being debated and discussed in India. Recently, "AI and IP Rights" was one of the subject matters of a paper presented by a Standing Committee in Parliament, where it was suggested that the patents regime in India needs a review and revisions to be able to handle questions of AI innovations and inventions.

6.2 Please briefly describe how ownership of IP operates in your jurisdiction.

Please refer to our response to question 6.1 above for the various pieces of legislation under which IP may be protected in India.

While ownership may be recorded with the Indian IP office under any of the aforementioned pieces of legislation, actual ownership itself is a matter of fact and often flows from a contract. For instance, the inventor of a patentable innovation may assign their rights to an "applicant" for patent registration, or license them to a manufacturer for mass production. In case of software, a company may commission a third-party developer to code a software product, and choose to retain all or part of the copyright in that code, depending on the nature of the parties. In the absence of an agreement to the contrary, however, that copyright will, by default, rest with the party commissioning the work – such as in the case of a company whose employees create IP as part of their employment, in return for a salary or other remuneration. Most IP rights are assignable – with exceptions such as moral rights – with transfer of ownership flowing from contractual terms as well.

6.3 In order to protect or enforce IP rights in your jurisdiction, do you need to own local/national rights or are you able to enforce other rights (for example, do any treaties or multi-jurisdictional rights apply)?

While statutory rights in India undoubtedly provide the strongest protection and enforcement potential in most disputes, the absence of specific statutory rights may not preclude the option of enforcement entirely. In the case of trademarks, for instance, common law rights are also available in India – which accrue by local *use* of the mark, or by spill-over reputation. In case of copyrights as well, registration with the relevant authority is not mandatory and unregistered rights may be enforced as well. India is also a signatory to the Berne Convention for the Protection of Literary and Artistic Works and the Universal Copyright Convention, through which copyrights from signatory countries may be given protection in India, as well as the Agreement on Trade-Related Aspects of Intellectual Property Rights.

In terms of seeking statutory protection, the Madrid Protocol (for trademarks) and the Patent Cooperation Treaty (for patents) provide simplified application procedures through which parties can seek protection for their IP in multiple jurisdictions simultaneously, including in India.

6.4 How do you exploit/monetise IP in your jurisdiction and are there any particular rules or restrictions regarding such exploitation/monetisation?

IP can be monetised by way of a straightforward sale of IP (which may entail a valuation exercise to arrive at a fair sale value), or by way of licensing or franchising to third parties in return for royalties or licence fees. Other options like securitisation and sale-leaseback arrangements may also be available.

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Arjun's practice traverses: Privacy and Data Protection; Technology and Emerging Issues; Advertising and Marketing; IP; and Digital Ventures. He currently sits on INTA's Data Protection Committee and is a member the International Association of Privacy Professionals. Arjun advises Fortune 500 companies as well as SMEs at the intersection of emerging tech and the law; guides clients through the changing data protection and privacy regime in India and allied regulatory frameworks; acts on complex cross-border technology transactions; and represents clients in commercial disputes. He has significant experience helping international businesses navigate the Indian legal landscape. Notably, Arjun represents one of the world's largest media networks in high-value litigation; advises an internet giant in connection with its AdTech business in India; counsels a global tech and consulting powerhouse on all aspects of its digital ventures vertical in India; advised a tech pioneer in connection with surveillance implications; and helps multiple multinationals steer through Indian digital payment regulations.

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