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Research

Global Capability Centers

Legal, Regulatory and Tax Issues

May 2025

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Contact

For any help or assistance please email us on **concierge@nishithdesai.com**
or visit us at **www.nishithdesai.com**.

Acknowledgements

Ankit Mishra
ankit.mishra@nishithdesai.com

Pradyumn Sharma
pradyumn.sharma@nishithdesai.com

Morvi Chaturvedi
morvi.chaturvedi@nishithdesai.com

Varsha Rajesh
varsha.rajesh@nishithdesai.com

Santosh Gangavati
santosh.gangavati@nishithdesai.com

Hetal Pandya
hetal.pandya@nishithdesai.com

Aaron Kamath
aaron.kamath@nishithdesai.com

Huzefa Tavawalla
huzefa.tavawalla@nishithdesai.com

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Introduction

In today's interconnected and globalised world, where businesses aspire to be location-agnostic, there is an increasing trend of entities developing multinational, cross-border capabilities, operating round-the-clock and generating value across time zones. This paradigm shift has led to the rise of Global Capability Centres **("GCC")**, especially in emerging economies, which have helped drive business operations worldwide.

India has played a pivotal role in the growth and evolution of GCCs. Early breakthroughs in IT services, offshoring, and R&D hubs earned the trust of leading global corporations, paving the way for Indian GCCs to evolve into strategic nerve centres at the forefront of innovation, digital transformation, and enterprise growth. Currently, GCCs contribute over 1% of India's GDP and are projected to generate more than USD 100 billion in annual revenue by 2030.[1]

With strategic investments in infrastructure, digital capabilities, and a growing pool of highly skilled professionals, India is increasingly being seen as a global epicentre for technological and R&D services. The country's advantage is further enhanced by its rich ecosystem of start-ups, government-backed initiatives like "Make in India" and "Digital India," and a time-zone benefit that facilitates 24/7 operations.[2] As GCCs have transitioned from performing basic functions like customer support and payroll processing to advanced roles in digital transformation, artificial intelligence, machine learning, and R&D, their impact on MNCs has shifted. GCCs now serve as integral parts of their parent organizations' strategic goals, driving innovation, reducing operational inefficiencies, and contributing to their growth in key areas such as life sciences, healthcare, and technology.

However, as the number and scope of GCCs grow, it becomes increasingly important to examine the legal, regulatory, and policy landscape that governs these entities and their operations. Structuring and contracting GCCs in India involves navigating a complex web of laws, including corporate compliance, tax regulations, intellectual property rights, environmental laws, labour laws, and data protection frameworks. These legal considerations often present challenges, both for foreign companies establishing GCCs in India and for existing entities seeking to expand their operations.

This paper aims to provide a detailed overview of the GCC ecosystem in India, with a focus on the structural, contractual, and legal frameworks that impact their operations. It analyses the key legal areas and the obligations these regulations impose on GCCs. It further examines how these challenges can be addressed through targeted policy measures that encourage the continued development of GCCs in India.

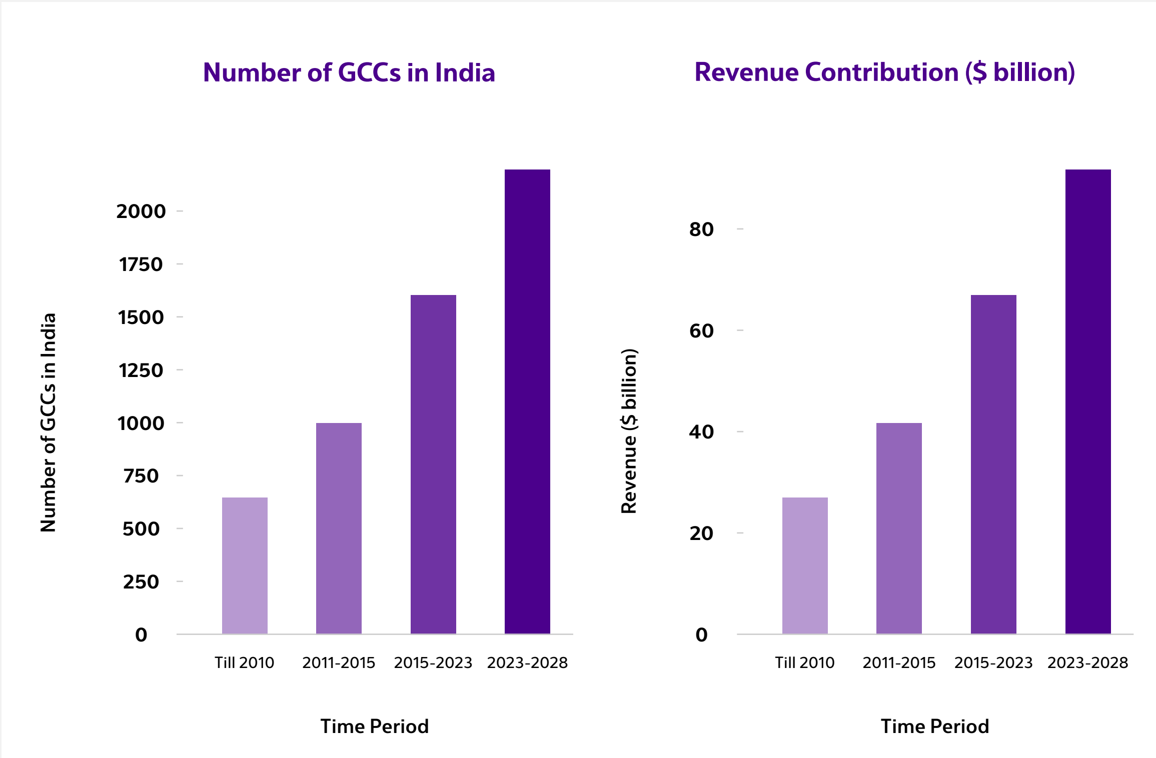
GCCs in India

India has become a strategic hub for GCCs, playing a crucial role in digital transformation, innovation, and business process optimisation for multinational corporations. It is projected that the number of GCCs in India will rise to between 2,100 - 2,200 by 2030, boosting the workforce to approximately 2.5 to 2.8 million. The projected growth of India's GCC ecosystem is outlined below:[3]

1 Available here: https://economictimes.indiatimes.com/tech/technology/indias-gcc-ecosystem-set-to-hit-100-billion-by-2030-report/articleshow/115415387.cms?from=mdr.

2 Available here: https://www2.deloitte.com/in/en/pages/risk/solutions/global-in-house-centers.html.

3 https://economictimes.indiatimes.com/tech/technology/indias-tech-chops-help-gccs-to-look-within-for-solutions/articleshow/105763664.cms?from=mdr.



Benefits for Setting up GCC in India

Setting up a GCC in India offers numerous advantages, making it an attractive investment destination. India's rapidly growing market potential, supported by a large population of 1.3 billion and a rising per capita income, presents ample opportunities for products and services. Key reasons for preferring India as a place for setting up GCCs include:

Effective Workforce	India's talent pool is unmatched in terms of age demographics and skills. India is home to the highest number of STEM graduates, lowest demand – supply gap among leading tech nations and second largest population with English language proficiency.
Economic Resilience and Political Stability	India's strong economic resilience and stable political environment make it a prime destination for GCCs. The country's consistent economic growth, despite the global challenges posed by the COVID-19 pandemic, has enhanced India's reputation as a reliable and stable business hub. This stability draws MNCs as it minimizes uncertainty and creates confidence for a foundation to expand operations.
Government Initiatives	Indian government's incentives are aimed at increasing ease of doing business in India, up-skilling India's young demographic and easing taxation policies. Thus, creating a favourable environment for GCCs.
Cost-Effective Infrastructure & Workforce	India offers a competitive combination of affordable labour, real estate, and internet connectivity. Labor costs in India are among the lowest globally for skilled professionals, and the cost of office space and real estate is significantly lower than in other global tech hubs. Further, India provides highly affordable and reliable internet and communication services, ensuring seamless operations at a fraction of the cost found in other countries.

Opportunities for Technology Outsourcing	India is a leader in technology outsourcing, offering a wide range of services from software development and IT support to data analytics and AI solutions. Foreign entities can leverage India's outsourcing potential to access world-class technology expertise at competitive rates.
Robust Business Ecosystem	India boasts significant advancements in infrastructure, including modern office spaces, airports, transportation networks, and utilities. The availability of dedicated IT parks and business hubs further enhances the efficiency and scalability of GCCs in India, supporting both the operational and logistical needs of businesses.

Factors to be Considered While Setting Up GCCs in India

Whether a GCC Can Support the Global Business	Understand the Legal and Regulatory Ecosystem
Infrastructure and Technology Setup	Acquiring Right Talent for the Workforce
Utilize Government Initiatives	Addressing Cultural Considerations
Developing a Risk Management Strategy	Scalability and Expansion Plans

Government Policies for the Promotion of GCCs

i. **Union Government:** India currently lacks a nationwide policy for promoting GCCs. While the Ministry of Electronics and Information Technology **("MeitY")** is working on a comprehensive policy framework to provide incentives for GCCs and emphasise a long-term strategy to develop talent in emerging technologies such as AI, healthcare, and financial intelligence, this policy remains in its nascent stages and is yet to be implemented.

However, the Union Government has introduced numerous schemes to attract foreign entities into India, and some of these schemes that also promote GCCs, these include:

a. Special Economic Zone ("**SEZs**"):SEZs is a designated area within a country where the trade and business laws are different from the laws applicable to other parts of the country. The Central Government passed the Special Economic Zones Act, 2005 and notified the Special Economic Zone Rules, 2006. Under these laws, various State Governments (such as Maharashtra, Karnataka and Uttar Pradesh) have issued incentives to any unit operating in the SEZ within their respective states. Some of the key incentives are as follows:

   i) Exemption from state levies and duties such as stamp duty.

   ii) Exemption from electricity duty or taxes on sale of self-generated or purchased electric power.

   iii) Single window clearance system to all entities operating in the SEZ.

   iv) Zero-rated supply treatment on supplies for authorised operations made to SEZ units. This means that no GST is charged on such supplies despite being taxable. The supplier can avail this benefit either by (i) supplying under a Letter of Undertaking and claiming a refund of unutilized input tax credit; or (ii) supplying with IGST payment and claiming a refund of the tax paid.

   Moreover, the Central Government also provides incentives to SEZs such as exemption from any duty of customs under the applicable customs law.

b. Foreign Investments: The FDI policy permits up – to 100% investment under the automatic route in most sectors which GCCs operate including IT/ITeS, research and development and outsourcing activities.[4]

c. Software Technology Parks of India ("**STPI**") Scheme: This initiative is aimed at promoting the development and export of computer software, including professional services offered through communication links or physical media. It integrates concepts from Export-Oriented Units, Export Processing Zones, and Science/Technology Parks that exist globally, combining them into a unique framework for the software industry. The central feature of the STPI Scheme is its provision of a single-point contact service for businesses, enabling them to manage their export operations efficiently and in line with international standards.

d. Union Budget 2025: The Government has introduced key policy measures to boost the number of GCCs in India, including the development of a National Framework for promoting GCCs in Tier-II cities and the establishment of National Centres of Excellence to skill the youth with global expertise and partnerships, ensuring they are equipped with the necessary skills.[5]

4 Available here: https://www.meity.gov.in/writereaddata/files/FDI-PolicyCircular-2020-29October2020_0.pdf.

5 Available here: https://www.thehindubusinessline.com/economy/budget/union-budget-2025-national-framework-to-boost-gccs-in-tier-ii-cities/article69167900.ece.

ii. **Telangana:** Telangana is slowly rising to be the GCC hub of India. With over 355 GCCs employing more than 300,000 professionals, the city accounts for nearly 15% of India's 2,000+ GCC ecosystem.[6] The state has taken various initiatives to promote GCCs, these are as follows:[7]

Incentive/Policy	Details
Streamlined Regulatory Frameworks	Provision of a simplified, single-window clearance process for setting up a GCC.
Infrastructure Development	Development of the Hyderabad Information Technology and Engineering Consultancy City (HITEC City) and Cyberabad offers essential facilities for IT/ITeS companies. Knowledge Parks and Genome Valley support innovation in life sciences and biotechnology.
Proactive Skill Development	Government entities partner with existing GCCs to upskill local talent in areas such as artificial intelligence, blockchain, and data analytics.

iii. **Karnataka:** Karnataka launched the Karnataka GCC Policy 2024-2029[8] . This policy outlines the state's vision of establishing 1,000 GCC by 2029 with a projected economic output of US$50 billion. The policy aims to promote incentives to move and set up GCCs in regions other than Bangalore, these include:

Incentive	Details
Establishing Innovation Labs/ Centres of Excellence	Funding up to 40% of capital expenditure up to USD 500,000 in Beyond Bengaluru clusters
Property Tax	Reimbursement of 30% property tax for 3 years incurred by GCCs for a period of three years from the commencement of their operations.
Intellectual Property Incentive	50% reimbursement of patent filing fees (up to USD 3,500)
Quality Certification Financial Assistance	80% reimbursement of certification fees (up to USD 9,500)

In addition, the Karnataka GCC Policy aims to position Karnataka as a global leader in AI by fostering an ecosystem for AI research and development. To achieve this, it proposes the establishment of a Centre of Excellence for AI in Bengaluru. The policy also envisions collaboration with academic institutions across the state to develop compute capacity, curate datasets, provide training on ethical AI principles, and facilitate startup acceleration initiatives.

iv. **Gujarat:** Gujarat has launched Gujarat Global Capability Centre Policy (2025–2030) which aims to establish Gujarat as a premier destination for GCCs, aligning with the Union Budget (discussed below). The policy is designed to foster a thriving GCC ecosystem by encouraging high-value investment, infrastructure growth, research and development, and employment generation while enhancing ease of doing business.[9] Gujarat's business-friendly environment, complemented by well-defined sectoral policies, is expected to attract multinational investments and support the Union Government's vision of positioning India as a global GCC leader. Some of the key incentives are as follows:[10]

6 Available here: https://www.newindianexpress.com/good-news/2025/Feb/16/from-cultural-cradle-to-global-innovation-hub-how-hyderabad-is-leading-indias-gcc-revolution.

7 Available here: https://www.thehindu.com/news/national/telangana/telangana-govt-to-form-joint-consultative-committee-on-industries-with-cii/article68897912.ece.

8 Available here: https://itbtst.karnataka.gov.in/storage/pdf-files/Draft-KarnatakaGCCPolicy2024-2029-.pdf.

9 Available here: https://dst.gujarat.gov.in/Home/GujaratGlobalCapabilityCenter.

10 Available here: https://dst.gujarat.gov.in/ViewFile?fileName=zU7WwESTeG0he0duCuKbgPRJUE%E2%9C%A4XgOPEL22sUfyZwllSdLKuSkuKV-1C596ysGMxsxVFfls35Q4IPiHxkhgglsg5mYD3vAmSHMLCFPSpUy6aOytelm%E2%9C%BFTZvBBuN%E2%9C%BF%E2%9C%A4U9nXqgLDO3v-FO17%E2%9C%A4fYSiWJxTjPQ%E2%99%AC%E2%99%AC.

Incentive	Details
Employment Generative Incentives	A one-time support is available for every new and unique job created in the State. This incentive applies to new local employees who are hired and retained for a minimum period of one year. The support is provided at 50 percent of one month's cost to company (CTC), subject to a cap of around USD 600 per month for each local male employee and around USD 700 per month for each local female employee.
Electricity Duty Incentives	The entire amount of electricity charges paid by the GCC to the Government of Gujarat can be claimed for a period of 5 years from the date of commencement of operations.
Atmanirbhar Gujarat Rojgar Sahay	Contribution made by the GCC under the Employees Provident Fund for the employees can be reimbursed for a period of five years from the date of the commence of operations.
Interest Assistance	GCC is entitled to an interest subsidy of 7 percent on the term loan, or the actual interest paid, whichever is lower, subject to a ceiling of around USD 120,000.

Gujarat also has also developed the Gujarat International Finance Tec-City **("GIFT City")** – India's first International Financial Services Centre **("IFSC")**. GIFT City offers a 10-year tax exemption under Section 80 - LA of the Income Tax Act, 1961 **("ITA")**, reduced stamp duty, discounted power tariff, and provident fund reimbursement of up to 100 percent for women, which has helped in attracting GCCs in the Ahmedabad–Gandhinagar–GIFT City belt.[11] Under Section 80LA of the ITA, units established in IFSCs are eligible for a 100% deduction on specified income for any 10 consecutive years within a 15-year period, starting from the year they obtain the required regulatory approval or registration. However, units located in IFSC earning income exclusively in convertible foreign exchange are subject to Minimum Alternate Tax **("MAT")** at a reduced rate of 9% (plus surcharge and cess) on book profits. In such cases, they are eligible to claim MAT credit under Section 115JAA, which can be carried forward and set off against future tax liabilities under normal provisions for up to 15 years[12] .

Comparative Analysis of GCC Setups Across Cities

Different cities in India offer distinct advantages and value propositions for setting up a GCC, making location selection a critical strategic decision. The following table outlines key factors to be evaluated when establishing a GCC in India.

11 Available here: https://timesofindia.indiatimes.com/city/ahmedabad/ahmedabad-gift-city-zone-emerges-as-tier-ii-magnet-for-global-capability-centres/articleshow/120802118.cms.

12 MAT is not applicable if the IFSC units are opting for concessional tax regime u/s. 115BAA / 115BAB of the ITA.

City	Key Advantages	Talent Pool	Operational Costs
Bengaluru	India's largest tech talent pool; strong startup ecosystem.	Highest Number of GCCs in India; strong STEM education via IIT/IISc.	High-tier costs; expensive office rents and salaries.
Hyderabad	Modern IT infrastructure, presence of HITEC City.	Large skilled workforce in IT, BFSI, and life sciences; pan-India talent.	Lower than Bengaluru.
Mumbai	Strong finance talent pool (HQs of RBI, NSE, and top global BFSIs).	Highly experienced finance, legal, and management professionals.	Most expensive real estate; high salaries.
Delhi NCR	Central government support.	Diverse talent in IT, finance, and law; numerous MNC and startup HQs.	Varies (Gurugram is expensive, while Noida, Greater Noida is more affordable).
Pune	Lower costs; proximity to Mumbai.	Educated workforce (engineering, MBA); strong IT and automotive engineering talent.	Lower than Mumbai/ Bengaluru.
Chennai	Stable operational environment; low attrition.	Large pool of engineers and domain experts in manufacturing and IT; strong STEM education base.	Lower than Bengaluru; stable wages.
Ahmedabad	Proximity to GIFT City	Diverse talent in the field of finance, management and trade.	Lower than Bengaluru/ Mumbai; stable wages

Foreign Direct Investment (“FDI”) For Setting Up Gccs

Foreign investments in GCC in India requires conformity with India’s foreign exchange regulations, specifically, the regulations governing FDI. Investments in, and acquisitions (complete and partial) of, Indian companies including setting up of GCCs by non-resident entities and individuals, are governed by the terms of the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 and the provisions of the annual Consolidated Foreign Direct Investment Policy Circular **(“FDI Policy”).**[1]

The FDI policy permits up to 100% investment under the automatic route in most sectors where GCCs operate including IT/ITeS, research and development and outsourcing activities.

Further, according to a report by NASSCOM and Zinnov, around 60 percent of the new GCCs established in India have three functional areas – Engineering Research and Development, Information Technology and Business Process Management.[2] In the abovementioned sectors, FDI of up to 100 percent is permitted under the automatic route,[3] and therefore no government approval is required for such investments.

Further, the Government of India, through Press Note 3 (2020 Series) dated April 17, 2020,[4] and a subsequent notification dated April 22, 2020, mandated prior Government approval for investments from land bordering countries such as Bangladesh, China (including Hong Kong and Macau), Pakistan, Nepal, Myanmar, Bhutan, and Afghanistan—or where the beneficial owner (a term not defined in the FDI Policy) of the investment into India is situated in or is a citizen of any of the aforementioned countries. Therefore, any investment in India for establishing a GCC from the said countries would require Government approval.

1 The latest FDI Policy is the Consolidated FDI Policy Circular of 2020 which is effective from October 15, 2020. Available at: https://dpiit.gov.in/sites/default/files/FDI-PolicyCircular-2020-29October2020_0.pdf.

2 Available here: https://economictimes.indiatimes.com/tech/technology/the-rise-of-the-gcc-ecosystem-in-india/articleshow/109093662.cms?from=mdr.

3 Available here: https://psa.gov.in/CMS/web/sites/default/files/publication/FDI%20in%20R%26D.pdf and https://www.makeinindia.com/policy/foreign-direct-investment.

4 Available at: https://dpiit.gov.in/sites/default/files/pn3_2020.pdf.

Establishing a Presence in India and Funding of GCCs

Establishing a Presence in India

A GCC has to determine the appropriate type of entity for conducting its operations in India. Commonly preferred structures include the following:

i. **Limited Liability Partnership ("LLP"):** An LLP is an incorporated entity formed and registered under Limited Liability Partnership Act, 2008 (**"LLP Act"**).

ii. **Private Limited Company ("PLC"):** A PLC is an incorporated entity formed and registered under the provisions of the Companies Act, 2013 **("CA 2013")**.

iii. **Branch Office ("BO"):** A branch office is an extension of a parent company located outside India, set up to conduct business in India. A foreign company can establish a BO with the prior approval of an Authorised Dealer ("**AD**") Bank (i.e., a bank authorised by the Reserve Bank of India).

A GCC may take into consideration the following important features of each entity type before selecting the most suitable one to establish its presence in India:

Features	LLP	PLC	BO
Regulators and Governing Law	Registrar of Companies, Ministry of Corporate Affairs under the LLP Act	Registrar of Companies, Ministry of Corporate Affairs under the CA 2013,	Reserve Bank of India and AD Banks under the Foreign Exchange Management (Establishment in India of a branch office or a liaison office or a project office or any other place of business) Regulations, 2016
Localization	At least one designated partner should be of resident of India	At least one director should be of resident of India	BO is managed by the authorized representative who should be a resident in India.
Automatic or Approval Route	Automatic Route	Automatic Route	Approval Route
Repatriation of Capital	No financial thresholds on repatriation of capital.	Financial thresholds on repatriation of capital.	Not Applicable.
Loans & Borrowings	LLP can borrow money from Indian banks and financial institutions; however, an LLP cannot borrow loans from its partners or other lenders based outside India.	PLC can borrow money from Indian banks and financial institutions along with loans from its foreign parent and other lenders outside India.	BO cannot borrow money unless prior approval of the RBI is obtained.
Corporate Tax Rates	30% (plus surcharge and cess)	Between 22% to 30% (plus surcharge and cess)	Same as the Branch's main entity

Funding of GCCs

A GCC in India is usually funded by its foreign parent company through a few legal and regulated ways which are mentioned below:

i. **Share Capital Infusion:**Foreign parent company invest money into GCC in India as equity / capital contribution and such investments are treated as FDI. Such funding should comply with Non-Debt Instrument Rules, FDI Policy and reporting requirements with RBI.

ii. **Inter – Company Service Agreements:** This is the most common method of funding the day-to-day operational costs of the GCC, and it does not require approval of RBI. However, the monies by the GCC should be realized within nine months from the date of providing the services.

iii. **Advance against services:** Exchange Control regulations allow GCCs to receive advance payments for the services GCCs intends to provide to the overseas parent / affiliates. GCC must ensure that services are provided within one year from the date of receipt of advance and set off the advance received against the services provided.

iv. **Foreign Debt:** Exchange Control regulations allow GCCs in the form of PLCs only (not for LLPs) to raise foreign debt in the form of external commercial borrowings ("**ECB**") subject to ECB guidelines which includes minimum maturity period, interest rates, end use restrictions etc. Funding of GCCs by way of foreign debt is most suited for capital expenditures.

v. **Internal Accruals:** Once the GCC is operational, it may use its profits/retained earnings to fund the operations or future expansions.

Structuring and Contracting Models for GCCs in India

Structuring of GCCs in India

While setting up GCCs, organisations can select different operational models based on their objectives, capabilities, and resources. Each model comes with its own set of benefits and challenges, making it crucial for organisations to align their choice with their strategic goals. The decision should factor in the desired outcomes, the level of control required, and the resources available. Below is an overview of common GCC operating models, highlighting key considerations for comparison and providing guidance to help organisations choose the model best suited to their needs:

a. **Do – It – Yourself ("DIY") Model:** The parent entity independently establishes the GCC, which is 100 percent owned by them hence retaining complete control over the entity and its business operations.

b. **Build Operate Transfer ("BOT") Model:** The parent vendor hires a third-party contractor to design, develop, and operate a project or service for a specified period, after which control, and ownership are transferred back to the client. In the context of a GCC, the model allows the client to outsource the initial setup and operations to a third-party vendor. The said vendor is responsible for setting up the GCC, including infrastructure, recruitment, training, and IT systems, and operating the GCC for an agreed period. Subsequently, the GCC is transferred to the Indian entity of the client. This structure enables the client to benefit from the expertise and efficiency of the contractor during the initial phases while minimizing the upfront investment and operational burden

   This arrangement typically occurs through a BOT agreement which define the responsibilities, timelines, and expectations for all parties involved, ensuring a smooth transition of control and operations when the agreed-upon period concludes.

c. **Fusion/Hybrid Models:** These arrangements combine the features of DIY and a BOT model to cater to specific requirement and provide flexibility in operations and ownership, ensuring that the parent entity can adapt the structure according to its needs while maintaining control over core functions. There are two variants of this Model:

   i. Joint Venture: In this model, the third-party vendor from the BOT model, instead of completely transferring ownership of the GCC, retains a minority share in the GCC.

   ii. Virtual Captive: In this model, the third-party vendor manages the day-to-day operations of the GCC, while the business functions are carried out by the parent entity.

Contracting for BOT

a. **BOT Agreement:** The BOT Agreement outlines the responsibilities, rights, and obligations of the parent entity and the third-party vendor during the lifecycle of the project. This includes three phases: (a) engagement phase, (b) build and operation phase, and (c) transfer phase. The key consideration at each stage includes:

a. Engagement Phase

BOT Agreement Structure	The agreement should clearly define the roles and responsibilities of the third-party vendor throughout the process. It should also specify a clear timeline for the build and operation phases, after which the parent entity will take over the GCC.
Define Standards and Specifications	Both parties should define the technical, operational, and quality standards that must be adhered to when building the GCC.
Factoring Employment Misclassification	Both parties must ensure that role / responsibilities are adequately captured so as to minimize employee misclassification risks.

b. Build and Operational Phase

Acquisition of Assets	The parent entity must ensure that the GCC is built as per its requirements and all assets such as IT equipment, servers, fixtures etc., are owned by the third – party vendor so that it can be ultimately transferred at the end of the arrangement.
Performance and Service Levels	The parent entity should ensure that proper performance standards, service levels, and key performance indicators are clearly defined to monitor the progress of the project.
Risk and Liability Management	The parent entity should ensure that the third-party vendor assumes responsibility for any liabilities that may arise during this phase, such as gratuity, severance, and other related issues.
SEZ Compliances	Before commencing operations in SEZs, a GCC will be required to provide a Bond-cum-Legal Undertaking as well as an approval from the SEZ authorities to commence operations from the SEZ.

c. Transfer Phase

Transfer of Ownership	Due to Indian exchange control laws, a foreign entity may not be able to directly acquire the GCC and its assets. So, as a prerequisite for transfer, the parent company (a foreign entity) must incorporate an entity in India which will acquire the GCC and its assets. Further, if the GCC is located in an SEZ, then the transfer of the GCC's assets could be subject to de-bonding (payment of custom duties) and approval of the SEZ authorities.
Knowledge Transfer	The parent entity should ensure that the third-party vendor facilitates the transfer of knowledge to ensure a smooth transition and continuation of operations without disruption.
Employees	The hiring of employees from the third-party entity can be through an employee transfer or a resignation and rehire. In an employee transfer arrangement, employees are transferred directly from the third-party vendor to the Indian entity which will acquire the GCC. Whereas, under a resignation and rehire arrangement, employees resign from the third-party vendor and are then rehired by the Indian entity. Both arrangements impact employee benefits, liability of the parties, recognition of previous years of employment (for gratuity purposes) etc, hence must be carefully structured.
Risk and Liability Management	The parent entity should ensure that, before the transfer of ownership, all risks and liabilities related to the GCC are assumed by the third-party vendor

Data Protection and Cybersecurity

Cybersecurity and data laws have become increasingly important as businesses around the world rely heavily on digital infrastructure to store, process, and transmit personal information. With the rise of cyber threats, data breaches, and the growing complexity of digital ecosystems, governments have enacted robust laws to protect individuals and businesses. This section covers the key data law and cyber security obligations in India and impact to GCCs.

Current Data Protection Framework

Applicability

In India, data protection is governed by the Information Technology Act, 2000 **("IT Act")** and the Information Technology (Reasonable security practices and procedures and sensitive personal data or information) Rules, 2011 **("Data Protection Rules")**.

The IT Act governs two categories of information:

a. Personal Information **("PI")** is defined as any information that relates to a natural person, which, either directly or indirectly, in combination with other information available or likely to be available with a body corporate, and is capable of identifying such person; and

b. Sensitive Personal Data or Information **("SPDI")** is defined to mean such personal information which consists of information relating to:

   i. Passwords.

   ii. Financial information such as bank account or credit card or debit card or other payment instrument details.

   iii. Physical, physiological and mental health condition.

   iv. Sexual orientation.

   v. Medical records and history.

   vi. Biometric information.

The Data Protection Rules prescribe compliances for the collection, possessing, storing, dealing or handling of SPDI by body corporates in India. Among other requirements, compliances include taking consent, providing notice of collection, adoption of a privacy policy, appointment of a grievance officer, and implementation of reasonable security procedures and practices. These compliances are also detailed further below.

Therefore, to the extent the GCC in India collects and processing SPDI of individuals in India the compliances under the Data Protection Rules should be undertaken. There are no specific compliances for the collection, handing and processing of PI not amounting to SPDI.

Compliances for Collection and Processing of SPDI

Body corporates (including companies, firms, sole proprietorships, or other associations of individuals) that collect, possess, or handle SPDI are required to adopt the following compliances:

1. **Consent and Withdrawal:**

   Provide individuals with the option to withhold their SPDI or withdraw previously granted consent for its collection and use. Such withdrawal must be communicated in writing.

2. **Purpose Limitation:**

   Collect SPDI only for lawful purposes directly related to the functioning of the body corporate, and ensure that the data collected is necessary for that specific purpose.

3. **Informed Consent:**

   Obtain explicit and specific consent from the individual, either in writing or through electronic means, regarding the intended purpose of SPDI usage.

4. **Privacy Policy:**

   Maintain a clear and accessible privacy policy governing the handling of SPDI. This policy must be made available on the body corporate's website and should be easily accessible by data subjects.

5. **Data Retention:**

   Do not retain SPDI for longer than necessary to fulfill the purpose for which it was collected.

6. **Use Limitation:**

   Use the SPDI strictly for the purpose stated at the time of collection.

7. **Data Accuracy:**

   Allow individuals to review the SPDI provided and enable them to request corrections or updates to inaccurate or incomplete data, where feasible.

8. **Grievance Redressal:**

   Appoint a grievance officer and publish their name and contact details prominently on the corporate website to address data protection concerns.

9. **Data Transfers:**

   Ensure that SPDI is not transferred to third parties (within or outside India) without obtaining the individual's consent. The transferee must maintain the same level of data protection as followed by the transferor, in accordance with Indian data protection law.

10. **Security Standards:**

    Implement reasonable security practices and procedures such as those prescribed under IS/ISO/IEC 27001 or as mutually agreed between the body corporate and the data subject.

11. **Documented Security Policies:**

    Maintain comprehensive and up-to-date documented security policies that demonstrate compliance with the applicable data protection standards.

Processing under Contractual Obligation

Any Body Corporate providing services relating to collection, storage, dealing or handling of SPDI under a contractual obligation with any legal entity located within or outside India would need to comply with the Data Protection Rules. However, such body corporates are exempt from the compliances in relation to collection and disclosure of SPDI. These compliances would also apply to GCCs which process data on the basis of contracts with the parent entity.

New Data Protection Framework

In August 2023, the Indian Government enacted the Digital Personal Data Protection Act, 2023 **("DPDPA").** The provisions of the DPDPA are yet to be notified for enforcement. Once enforced, the DPDPA will effectively replace the Data Protection Rules.

Further rules on implementation aspects of the DPDPA are also awaited. In January 2025, the Indian Government issued draft rules under the DPDPA- Draft Digital Personal Data Protection Rules, 2025 for public consultation and feedback. It is anticipated that the finalized rules and the DPDPA will be notified for enforcement I the near future.

Applicability

The DPDPA applies to the processing of digital personal data in India, where the personal data is either (i) collected in digital form; or (ii) collected in a non-digitized format and subsequently digitized. The DPDPA shall not apply to processing of personal data in non-digitized form. The DPDPA defines "personal data" broadly to include any data about an individual who is identifiable by or in relation to such data. The DPDPA also introduces a definition of 'digital personal data,' defined to mean personal data in digital form.

The DPDPA prescribes compliance for 'data fiduciary' (akin to a data controller) which is defined as any person who alone or in conjunction with other persons determines the purpose and means of processing of personal data. The DPDPA also recognises the role of data processors who process personal data on behalf of data fiduciaries, however, data processors are not subject to any specific statutory compliances or liability.

To the extent the GCC acts as a data fiduciary i.e. determines the purposes of processing personal data, it has a statutory obligation to undertake the compliances under the DPDPA. However, where the GCC acts in the capacity of a data processor and collects, processes, or stores personal data on behalf of its parent or group entity, the obligations of the GCC in relation to such personal data shall largely be governed by the terms of the agreement executed between the GCC and the respective parent / group entity and limited compliances under the DPDPA.

Exemptions

The DPDPA prescribes limited exemptions from DPDPA compliances where personal data is collected or processed for enforcement of legal claims, judicial processes and functions, offence-related detection and investigations etc. One such exemption is when personal data is outsourced to India for processing. In instances where data belonging to individuals outside India is brought into India for processing —most compliance requirements under the DPDPA do not apply. However, appropriate security measures must be adopted to prevent personal data breaches. GCCs which act as global centres for data processing of the parent group may avail this exemption.

Our detailed analysis of the DPDPA is accessible **here**. The analysis of the draft rules under the DPDPA are accessible **here**.

Cyber Security Law

The Information Technology (The Indian Computer Emergency Response Team and Manner of Performing Functions and Duties) Rules, 2013 **("CERT-In Rules")** issued under the IT Act provides for certain compliance obligations for entities with respect to cyber security in India. The CERT-In Rules require affected service providers, intermediaries, data centres and body corporates to mandatorily report certain cyber security incidents to the CERT-In as soon as possible to leave scope for timely action. Other cyber security incidents which w ere not specifically identified in the CERT-In Rules could be reported voluntarily. The CERT-In Rules are administered by the Computer Emergency Response Team **("CERT-In")**. In 2022, the CERT-In issued directions which further supplement the compliances under the CERT-In Rules.

Among other compliances the key cybersecurity requirements which GCCs in India should comply with include:

i. **Designation of Point of Contact:** A point of contact should be designated to interface with the CERT-In.

ii. **Incident Reporting:** All individuals, organisations and corporate entities are mandatorily required to report certain identified cyber security incidents to the CERT-In as early as possible. Certain cyber security incidents meeting the severity threshold[1] should be reported with 6-hour timeline.

iii. **Maintenance of Logs:** Logs of all ICT systems to be enabled and maintained securely for a rolling period of 180 days.

1 The severity threshold is determined based on the following factors:

- incidents of severe nature (such as denial of service, distributed denial of service, intrusion, spread of computer contaminant including Ransomware) on any part of the public information infrastructure including backbone network infrastructure,.
- Data Breaches or Data Leaks,.
- large-scale or most frequent incidents such as intrusion into computer resource, websites etc.,
- incidents impacting safety of human beings.

iv. **Synchronization of ICT Clocks:** ICT systems may be connected to the Network Time Protocol (NTP) Server of National Informatics Centre (NIC) or National Physical Laboratory (NPL) or with NTP servers traceable to these NTP servers, for synchronisation of all ICT systems clocks. Alternatively, the ICT system clocks may be synchronized to a time source other than NTP servers of NPL and NIC and need not be in Indian Standard Time (IST).

v. **Maintenance of Records:** GCCs that operate data centres, virtual private servers, cloud service providers, and virtual private network service providers shall be required to maintain records of the details of customers/subscribers hiring their services for a period of 5 years, or longer if required by law. These records shall include the names of the customers/subscribers, the period of hire, email addresses, IP addresses used, and the purpose for which the services were hired.[2]

The detailed overview of the cyber security framework and compliances is accessible **here**.

2 A comprehensive list of information required to be maintained by data centres, VPN, cloud service providers and virtual private network includes:

- Validated names of subscribers/customers hiring the services.
- Period of hire including dates.
- IPs allotted to / being used by the members.
- Email address and IP address and time stamp used at the time of registration / on-boarding.
- Purpose for hiring services f. Validated address and contact numbers.
- Ownership pattern of the subscribers / customers hiring services.

Intellectual Property Law

The primary role of GCCs is to develop and manage solutions, technologies, and processes for its group entities. Intellectual Property **("IP")** is a critical asset for GCCs, as it underpins their strategic role in driving innovation, operational excellence, and value creation for the group. Hence protection of IP and ensuring the continued control of the parent entity over the IP is of paramount importance in the GCC ecosystem.

Overview of Intellectual Property Protection

I. Copyright

A copyright grants the author/owner of a work exclusive rights to enjoy and commercially exploit their creation, such as literary, artistic, dramatic, musical, and architectural works. In India, copyright is regulated under the Indian Copyright Act, 1957 and the Copyright Rules, 2013. The term of a copyright lasts for the lifetime of the creator plus 60 years thereafter [1].The Indian Copyright Act recognises a 'computer programme'[2] under the scope of copyright as a literary work.[3] Hence, research and development in relation to software created by any GCC is protected as a literary work under the Copyright Act. Registration is not a mandatory requirement for creation of rights in a copyright. However, registration may be beneficial, as a registered copyright serves as prima facie evidence in a court of law with reference to any dispute relating to the ownership of the copyright.

As per Section 17 of the Copyright Act, any work created by an employee in course of an employment vests with the employer and the employer is deemed to be the first owner of such work, unless there is a contract to the contrary. However, this does not extend to copyright works created by vendors and contractors. Thus, for vendor, contractors and third-party service providers an assignment of copyright is not valid unless it is in writing and signed by the assignor. Further, the territorial extent, and the duration of the assignment needs to be clearly specified otherwise it will be limited to India and for a period five years.

II. Trademark

Trademarks are unique identifiers for products or services and may comprise words, phrases, logos, designs, or even sounds. The Trademarks Act, 1999 **("TM Act")**, along with the rules framed thereunder, governs the law of trademarks in India. Under the TM Act, the term mark is defined to include *"a device, brand, heading, label, ticket, name, signature, word, letter, numeral, shape of goods, packaging, or combination of colours, or any combination thereof."*

Trademarks are protected under both statutory law and common law. While protection exists even for unregistered marks under the common law principles of *passing off*, registering a trademark offers significant advantages as it serves as prima facie ownership evidence in legal disputes along with providing the right

1 Section 22, Copyiright Act, 1957.

2 2(ffc) of the Copyright Act.

3 Section 2(o) r/w Section 13, Copyright Act.

to sue for infringement. Moreover, once a trademark is registered, the proprietor enjoys exclusive rights over the use of that trademark within the territorial jurisdiction of India. Further, a registered trademark protection is granted for a period of 10 years and can be renewed for successive 10-year periods.

III. Patent

Patents are legal rights granted for novel inventions that possess technical advancement and practical application. The patent holder enjoys exclusive rights to manufacture, use, sell, offer for sale, or import the patented invention within the country of patent grant. In India, the Patent Act, 1970 and the Patent Rules, 2003 govern patents in India. To secure a patent, an invention must meet the following criteria[4] :

a. **Novelty:** It must not be publicly known or used anywhere in the world before the filing date.

b. **Inventive Step:** It must involve a significant technical advancement over existing knowledge and not be obvious to a person skilled in the art.

c. **Industrial Applicability:** It must be capable of being manufactured or used in an industry.

d. **Patentability:** It must not fall under the exclusions listed in Sections 3 and 4 of the Patent Act, such as trivial inventions, discoveries of natural principles, or processes for medical treatment.

Registration is a pre-requisite for patent protection in India; unregistered patents/inventions are not protected. India grants patent rights on a first-to-apply basis. The application can be made by either (i) the inventor or (ii) the assignee or legal representative of the inventor.

The time period of a patent is 20 years from the date of filing of application.

Key Intellectual Property Considerations for GCCs

Every company needs to ensure that it fully leverages the intellectual property developed by it as IP is a critical asset for the valuation of the company. In case of a GCC, IP is even more significant since GCCs typically focus on research and development. In other instances, GCCs or support the company group processes utilizing the group IP. To this end, there are various considerations from an IP structuring perspective which would need to be considered by the company group and the GCC in India:

a. Inter-Group IP Transfers

IP rights are financially valuable to companies and therefore, depending upon the type of IP, its purpose and other commercial reasons, transfers of IP ownership within the company group are common.

Depending upon the commercial structuring and the IP flows within the company group, the following key considerations for assignment of IP from the GCC to the parent company may be taken into consideration:

4 Under Section 3 and 4 includes cases that are excluded from patentability. This includes inventions that are trivial, violate natural laws, contravene public morals or health standards, excludes discoveries of natural principles, new forms of known substances without enhanced efficacy, simple mixtures or arrangements of existing devices, processes for treating humans or animals, various forms of intellectual and artistic works, and relates to the invention of radioactive elements such as Uranium, Radium, Graphite, etc. mentioned under Section 1 (2) of the Atomic Energy Act, 1962.

- *Assignment of Copyright:* Copyright assignment is perhaps the most common IP outflow from a GCC. Documentation, computer programme and software created by a GCC could be treated as a literary work and hence protected under the Copyright Act. As mentioned above, any work created by an employee in course of an employment vests with the employer and the employer is deemed to be the first owner of such work, unless there is a contract to the contrary. However, this does not extend to copyright works created by GCC for the parent entity. Thus, assignment of copyright by the GCC to the the parent entity is not valid unless it is in writing and signed by the GCC. Further, the assignment must identify the territorial extent, and the duration of the assignment otherwise the assignment will only be limited to India and for a period five years.
- *Assignment of Patent:* Indian GCCs witnessed a 42% year-on-year increase in patents filed, particularly in biotech, automation, and deep-tech.[5] Under the Patents Act, the owner of a patent may assign the whole or part of a patent or license the patent by executing appropriate documentation. Any assignment or license in a patent needs to be in writing and registered and brought on record with the patent office.
- *Assignment of Trademark:* If the GCC is the registered proprietor of a trademark in India, it has the power to assign the trademark to its parent entity. However, as per the Trademarks Act such assignment needs to be brought on record and filed with the trademark office.

b. Assignment from Employees, Contractors and Vendors

The assignment of IP rights from employees/vendors/contractors to the GCC is critically important, particularly if the company group is relying on the GCC for innovation, creativity, or creation of proprietary information.

As per Section 17 of the Copyright Act, any work created by an employee in course of an employment vests with the employer and the employer is deemed to be the first owner of such work, unless there is a contract to the contrary. However, this does not extend to copyright works created by vendors and contractors. Furthermore, similar provisions are not found in other IP laws.

Hence, to ensure that the intellectual property rights (other than copyright) from employees are adequately vested in favour of the GCC, and all intellectual property rights from non-employees (like consultants, contractors, vendors, service providers etc.) are adequately vested with the GCC, it is crucial to execute relevant assignment agreements so as ensure that the GCC is the sole and absolute owner of all IP created.

5 Available here: https://community.nasscom.in/index.php/communities/global-capability-centers/global-capability-centres-powering-innovation-job-creation#:~:text=Indian%20GCCs%20witnessed%20a%2042,shaping%20global%20intellectual%20property%20portfolios.

Labour and Employment Laws

Brief Overview

The legal landscape of India is highly fragmented. Instead of having an omnibus legislation to regulate the labour industry there are around 40 central legislation and over 70 state laws regulating various aspects including conditions of employment, social security, health, welfare, trade unions, industrial disputes, etc.[1] The following table highlights some of India's key employment legislations:[2]

Statute	Scope
Factories Act, 1948 ("Factories Act")	Regulates labour in factories, focusing on health, safety, welfare, working hours, and conditions for workers employed in manufacturing processes
Industrial Employment (Standing Orders) Act, 1946 ("Standing Orders Act")	Requires employers to define employment conditions and rules of conduct clearly for industrial workers through standing orders certified by authorities.
Shops and Commercial Establishments Acts ("S&E Acts")	Governs working conditions, hours of work, wages, overtime, holidays, and employment of children and women in shops and commercial establishments.
Maternity Benefit Act, 1961 ("Maternity Benefit Act")	Provides for maternity leave, nursing breaks, and other benefits to women employees before and after childbirth to ensure their health and wellbeing.
Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 ("POSH Act")	Protects women from sexual harassment at workplaces and mandates the establishment of grievance redressal mechanisms like the Internal Complaints Committee.
Minimum Wages Act, 1948 ("Minimum Wages Act")	Ensures that employees are paid a minimum wage as determined by the government for their specific industry, skill level, and region
Payment of Wages Act, 1936 ("Payment of Wages Act")	Regulates the timely payment of wages to employees and prevents unlawful deductions from their wages by employers.
Equal Remuneration Act, 1976 ("Remuneration Act")	Mandates equal pay for men and women performing the same or similar work and prevents gender discrimination in employment matters.
The Payment of Gratuity Act, 1972 ("Gratuity Act")	Entitles employees to receive a gratuity payment upon retirement, resignation, or death after completing at least five years of continuous service.
Industrial Disputes Act, 1947 ("ID Act")	Provides mechanisms for resolving industrial disputes between employers and employees, including conciliation, arbitration, and adjudication.
Trade Unions Act, 1926 ("Trade Unions' Act")	Regulates the registration, functioning, and rights of trade unions and protects their members from civil or criminal liabilities for acts done in furtherance of union objectives.

1 Available here: https://prsindia.org/billtrack/prs-products/issues-for-consideration-labour-codes-3580#:~:text=Labour%20falls%20under%20the%20Concurrent,archaic%20provisions%20and%20inconsistent%20definitions.

2 The list of employment laws is not exhaustive and does not reflect labour laws specific to certain industries and/or activities. The list also does not provide the details of compliances to be undertaken by the employer for each applicable labour law.

In 2019, the Central Government introduced 4 codes to consolidate and amend 29 central laws. Once implemented it will help in homogenising the labour laws in India.[3] These 4 codes are as follows:

Statute	Scope
Occupational Safety, Health and Working Conditions Code, 2020	Consolidates and amends laws relating to occupational safety, health, and working conditions.
Code on Social Security, 2020	Consolidates and amends laws relating to social security benefits, including provident fund, pension, insurance, and maternity benefits.
Code on Wages, 2019	Consolidates and amends laws relating to minimum wages, payment of wages, and bonus.
Industrial Relations Code, 2020	Consolidates and amends the laws relating to trade unions, conditions of employment, investigation and settlement of industrial disputes.

Employment Documentation

Documentation of pertinent information, such as terms and conditions of employment, remuneration, and benefits, is important as it not only helps to record the employee's duties and employer's expectations but also tag employees to a particular state-specific legislation determining leaves to be given, number of working hours, notice requirements etc. It further aids in the proper maintenance of records for due diligence and any possible litigation. GCCs may therefore want to document information such as offer letter, employment agreement, non – disclosure and confidentiality agreement, intellectual property assignment agreement and training bonds.

Employment Agreements

This outlines the terms and conditions of employment including probationary period, renumeration, role and duties, employment conditions, leaves, and termination of employment. While drafting an employment agreement, the GCC must take into consideration the following clauses:

Key Contractual Clauses	About	Key Consideration for GCC
Term of Employment	Specifies the employment duration. This is usually indefinite unless the employment is for a fixed term.	Clearly define the period of employment, as where this is a fixed term contract, the end date should be pre decided.
Designation, Probation Period, Transfer, etc	Outlines the employee's role, conditions of probation, and the employer's right to transfer the employee within the organisation.	Retain discretion to change roles or locations as per organisational needs. Specify probation and termination clauses clearly.

3 Available here: https://labour.gov.in/sites/default/files/labour_code_eng.pdf.

Key Contractual Clauses	About	Key Consideration for GCC
Remuneration and Benefits	Details salary, incentives, allowances, and benefits such as health insurance and bonuses.	Define variable pay structures to align with performance metrics and ensure clarity on non-statutory benefits to avoid disputes. Lay down the employer's ability to make deductions for tax and social security obligations.
Duties and Responsibilities of the Employee	Lists the tasks and responsibilities expected from the employee in their role.	Draft the scope of duties to be clear. Include a clause requiring employees to take on additional responsibilities or accommodate evolving business needs.
Work Location / Remote Work	Specifies the primary work location the employee is tagged to and also provisions for remote work, if applicable.	Include flexibility to change work locations and define conditions for remote work to ensure business continuity and legal compliance to state specific labour laws that the employee is tagged to.
Conflict of Interest	Prohibits the employee from engaging in activities that conflict with the employer's interests during their employment	Clearly define what constitutes a conflict and include reporting obligations for employees to disclose potential conflicts.
Confidentiality and Non-Disclosure	Obligates employees to protect and not disclose the employer's confidential information during and after employment	Ensure the clause is specific about what is considered confidential information and include a duration for post-employment obligations.
Intellectual Property and Assignment	Assigns ownership of any intellectual property created by the employee during employment to the employer	Define the scope of work-related creations and explicitly assign ownership to employer to avoid disputes over proprietary rights.
Termination of Employment	Specifies conditions under which employment may be terminated, including notice periods, what may constate 'for cause' and includes, death, disability and abandonment.	In India, employment can only be terminated for a reasonable "cause" or misconduct and not at will. Hence, GCC must ensure that they retain flexibility for termination without cause, by clearly defining it and ensuring that its scope is broad
Non-Compete and Non-Solicitation Obligations	Restricts employees from joining competitors or soliciting clients/employees for a defined period post-employment	Draft reasonable time and geographical limits to enhance enforceability while protecting the business's interests. Keep in mind that courts generally do not enforce non-compete clauses that are post the termination of employment. (add garden leave)
Governing Law and Jurisdiction	Specifies the legal framework and jurisdiction under which disputes will be resolved	Choose laws and jurisdiction that are where the office location is as it is easier to defend and where the cause of action usually arises.
Dispute Resolution	Outlines the mechanisms for resolving disputes, such as arbitration or mediation, instead of court proceedings	Prefer arbitration or mediation clauses to save time and costs. Specify the location of proceedings and choice of arbitrator to the employer's benefit. Moreover, the clause should also specify that the employer has the right to approach any other court for any interim relief/injunction especially for intellectual property or data protection related matters.

Reliance on Employer on Record ("EOR")

An EOR is a specialized third-party organization that takes care of all the legal and operational requirements involved in building a global workforce for its client companies. This includes major EOR services such as managing payroll, taxation, employee benefits, and other administrative and legal obligations associated with employment.[4] Using an EOR offers several advantages for a GCC. It simplifies global expansion by handling complex HR and compliance matters in foreign countries. EORs provide access to a pool of skilled talent and streamline the hiring process. By outsourcing these tasks, GCCs can focus on their core business operations. Additionally, EORs can help GCCs manage risks associated with labour law violations and ensure compliance with local regulations.

While relying on an EOR, it is imperative for a GCC to consider the following aspects:

i. Relying on an EOR might be considered a form of direct employment, potentially violating Indian foreign exchange laws. Hence, the EOR arrangement should be carefully structured so as to ensure that the Indian employees are not viewed as direct employees of the foreign entity.

ii. Similar to the abovementioned, the EOR may be considered as an entity employed by the foreign entity and it could be liable to pay tax in India through being deemed as a "permanent establishment".[5] In order to avoid this, it is necessary for GCC to ensure that it has no control over the operations of the EOR which operates independently.

iii. Engaging an EOR may lead to the creation of intellectual property. To ensure that the GCC retains ownership of such IP, the contractual arrangement with the EOR should explicitly specify the assignment of IP rights from the EOR to the GCC.

iv. In cases where the GCC has employed a foreign national as the EOR, it will be responsible for ensuring that the EOR obtains a valid business or employment visa.

Employee Stock Options ("ESOP")

ESOPs are designed to give an employee ability to be involved in the equity of the company. A GCC may want to grant ESOPs to the resident Indian employees for attracting and retaining talent. Under the Foreign Exchange Management (Overseas Investment) Rules, 2022, a GCC may grant ESOPs to Indian employees subject to the following conditions:

i. The individuals are employees or directors of the Indian office, branch, or subsidiary of the foreign entity, or of an Indian entity in which the foreign entity holds direct or indirect equity interests; and

ii. The ESOPs must be offered by the issuing foreign entity (in this case the GCC) "globally on a uniform basis". Hence, there should be a comprehensive global scheme applied uniformly across all jurisdictions where the issuing foreign entity and its affiliates operate.[6]

4 Available here: https://ansr.com/blog/what-is-employer-of-record-and-why-do-you-need-one/.

5 Section 92F(iiia) of Income Tax Act, 1961.

6 Available here: https://incometaxindia.gov.in/Documents/Provisions%20for%20NR/FEM-Overseas-Investment-Rules-2022.htm.

An Indian entity can also be given ESOPs in the foreign parent entity of the GCC subject to the condition that he falls under the definition of an "Employee" as provided under Section 62 (1)(b) of the Companies Act, 2013[7] read with Rule 12 of the Companies (Share Capital and Debenture) Rules, 2014, this includes:

i. A permanent employee of the company who has been working in India or outside India; or

ii. A director of the company, whether a whole-time director or not but excluding an independent director; or

iii. An employee as defined in clause (a) or (b) of a subsidiary, in India or outside India, or of a holding company of the company but does not include: an employee who is a who is a promoter or a person belonging to the promoter group or through anybody corporate, directly or indirectly, holds more than ten per cent of the outstanding equity shares of the company

7 Under Section 62(1)(b) of the Companies Act where at any time, a company having share capital proposes to increase its subscribed capital by the issue of further share, such share shall be offered to the employees under a scheme of employees' stock option, subject a special resolution passed by company and subject to such conditions as may be prescribed.

Environment Law

Brief Overview

Adherence to environmental regulations helps safeguard public health and ensures the GCC's long-term sustainability. Compliance with these regulations fosters a positive corporate image, attracts environmentally conscious investors, and enhances brand reputation. Conversely, non-compliance may lead to severe penalties, including fines, legal action, and damage to the GCCs/parent entity's reputation. The following table highlights some of India's key environmental regulations relevant to GCCs:

Regulations	About	Key Obligations
E-waste (Management) Rules, 2022	To collect, recycle and ensure an environmentally sound disposal of e – waste generated.	▪ Collect, recycle, or dispose of e-waste generated during production. ▪ Maintain records of e-waste and submit annual returns by 30th June each year.
The Battery Waste Management Rules, 2022	To ensure the responsible collection, treatment and recycling of battery waste to prevent landfilling and minimize environmental pollution.	▪ Develop an Extended Producer Responsibility ("EPR") policy for the collection, recycling, and refurbishment of waste batteries introduced into the market. ▪ Ensure that battery waste is not disposed of through landfilling or incineration, and that it is instead sent for recycling or refurbishment.
Plastic Waste Management Rules, 2016	Promoting recyclability of plastic products, phasing out single – use plastic items and promoting eco – friendly alternatives to plastic.	▪ Minimise and segregate plastic waste at source, ensuring it is not littered and is stored for proper disposal. ▪ Establish a waste collection system within six months of starting plastic product production.
Hazardous and Other Wastes (Management and Trans-boundary Movement) Rules, 2016	To regulate management, transit, treatment, storage, disposal, packing, labelling and transporting of hazardous waste.	▪ Ensure proper mechanisms to prevent, minimise, reuse, recycle, and safely dispose of hazardous and other wastes. ▪ Obtain authorisation from the State Pollution Control Board before producing any hazardous waste. ▪ Take precautions and carefully store hazardous waste with a warning sign on the storage vessel. ▪ Comply with the relevant Ministry of Environment guidelines for exporting or importing hazardous waste into India.

Tax Laws

As GCCs continue to grow in India, it is essential for multinational corporations to carefully navigate the Indian tax landscape. This requires considering both domestic and international tax laws to devise the most optimal tax strategy, ultimately reducing tax liabilities and ensuring efficient tax management.

Corporate Tax

A GCC established in India will be subject to corporate income tax as per the applicable provisions under the Income-tax Act, 1961 **("ITA")**. If the GCC is set up as a domestic company, the tax rate ranges between approximately 25% and 30%, plus applicable surcharge and cess.[1] Generally, a tax rate of 25% plus applicable surcharge and cess is levied on companies with a turnover of less than around USD 48 million,[2] while a 30% tax rate plus applicable surcharge and cess is levied on companies with a turnover exceeding around USD 48 million.

Additionally, domestic companies may choose to be taxed at a rate of 22%, plus a 10% surcharge and applicable cess, under Section 115BAA of the ITA, subject to certain conditions. These conditions include (i) computation of total income without claiming certain specified deductions and exemptions under the ITA **("Deductions")**; (ii) the company shall not be allowed to set off any carried forward losses or unabsorbed depreciation from earlier assessment years if such loss is attributable to the Deductions; (iii) the company claims depreciation in the manner prescribed barring any depreciation in respect of plant and machinery; (iv) once exercised, the option to be taxed under this provision cannot be withdrawn and will continue to apply for subsequent assessment years, etc.

If the GCC is structured as a Limited Liability Partnership **("LLP")**, the applicable corporate income tax rate is 30%, plus applicable surcharge and cess.[3]

Capital Gains

A GCC may be subject to capital gains tax on the transfer of its assets, including the transfer of intellectual property within the multinational group. Under the ITA, the tax rate on capital gains depends on the holding period of the capital asset. The Finance Act 2024 has simplified this regime. Generally, short-term capital gains arise if the asset is held for up to 24 months,[4] while long-term capital gains arise if the asset is held for more than 24 months. For shares and securities listed on a recognised stock exchange in India, gains from their sale are considered long-term if held for more than 12 months. However, for other securities, the holding period required to qualify for long-term capital gains treatment is more than 24 months.

1 For resident companies, surcharge shall be applicable at the rate of 7%, (if total income is in the range of INR 1 Crore – 10 Crore) or 12% (if total income exceeds INR 10 Crore). Further, health and education cess shall be levied at the rate of 4% on tax and surcharge, irrespective of amount of total income.

2 For the assessment year ("AY") 2024-25, the turnover from the previous financial year, 2021-22, will be considered. Similarly, for AY 2025-26, the turnover from 2022-23 will be considered, and so on.

3 For LLPs surcharge shall be applicable at the rate of 12%, (if total income is above INR 1 Crore). Further, health and education cess shall be levied at the rate of 4% on tax and surcharge, irrespective of amount of total income.

4 Section 2(42A) of the ITA.

For transactions occurring on or after July 23, 2024, a unified long-term capital gains tax rate of 12.5% is applicable under the ITA[5]. Short-term capital gains are taxed at 20% for equity transfers on which Securities Transaction Tax **("STT")** has been paid,[6] and at the applicable corporate income tax rates in all other cases.

The Finance Act 2024 has also abolished the benefit of indexation, which previously adjusted the cost of acquisition of capital assets for inflation when computing capital gains.

Dividends

Dividends distributed by Indian companies were previously subject to a dividend distribution tax **("DDT")** payable by the PLC. However, starting from 1st April 2020, DDT has been abolished and the ITA has reverted to the classical system of taxation of dividends in the hands of the shareholders at the applicable corporate income tax rates. Further, the PLC is required to withhold tax at the rate of 10% (plus surcharge and cess) for resident shareholders and 20% (plus applicable surcharge and cess) for non-resident shareholders, subject to relief under the applicable Double Taxation Avoidance Agreement **("DTAA")**. Accordingly, the PLC paying dividends will now withhold tax at the time of payment to the shareholder and in turn the shareholders can take a credit of the taxes so withheld.

Once the LLPs are taxed, the distributions of profits to partners of the LLP is specifically exempt from tax and hence, there is no tax (equivalent to DDT) in India when the LLP distributes profits to its partners.[7]

Royalties & Fees for Technical Services

The applicability of royalty and fees for technical services **("FTS")** to a GCC in India depends on the nature of the services provided and the tax laws governing cross-border transactions. If a GCC pays royalty for the use of intellectual property to non-Indian companies, such payments are subject to withholding tax in India subject to any relief available under relevant DTAAs. Similarly, a GCC, typically set up by multinational corporations, may provide a range of services such as back-office operations, IT support, research and development, and other technical services within the group. The withholding tax in such cases will be as per the jurisdiction of the payer entity and subject to availability of benefit under the applicable DTAA.

Transfer Pricing and Global Capability Centres

A GCC often operates as part of the same corporate group of multinational entity. In such cases, all dealings, including the delivery of services with its associated enterprises outside India, may constitute an international transaction and be subject to transfer pricing provisions under the ITA. This is to ensure that the prices for intercompany transactions between GCCs and related associated enterprises are consistent with the arm's length principle, meaning they should reflect the prices that would be charged between unrelated parties in comparable circumstances.

5 Sections 112 and 112A of the ITA.

6 Section 111A of the ITA.

7 Section 10(2A) of the ITA.

GCCs engaged in international transactions with associated enterprises will be required to maintain detailed, contemporaneous records justifying compliance with the arm's length principle[8] and make annual filings with the tax department. This documentation must include critical details such as the ownership structure of the enterprise, profiles of associated enterprises, the nature and value of the transactions, and a comprehensive evaluation of functions performed, the assets utilized, and the risks undertaken, of the parties to the transaction, colloquially known as a "FAR Analysis". Additionally, it should cover the comparability analysis, and justification for the chosen transfer pricing method, such as the comparable uncontrolled price, cost-plus, resale price, etc, including supporting calculations and adjustments for any differences with uncontrolled transactions.

Non-compliance with these requirements attracts penalties in the form of a fine equivalent to 2% of the value of the international transaction for failure to maintain documentation, report such transactions, or for providing inaccurate information[9].

Accordingly, it's essential for GCCs to ensure all arrangements and agreements with its associated enterprises are in place and are in line with the arm's length pricing, to avoid potential litigation.

Advance Pricing Agreements

In order to have certainties in transfer pricing mechanisms and to avoid potential litigation, GCCs may also consider entering into advance pricing agreements[10] **("APAs")**. An APA is an agreement between the Central Board of Direct Taxes **("CBDT")** and a taxpayer, aimed at determining the Arm's Length Price **("ALP")** or the methodology for computing the ALP for specific international transactions, in advance. The ALP ensures that transactions between related entities, such as subsidiaries and parent companies, are priced fairly, comparable to transactions between unrelated parties under similar conditions. Once an APA is executed, the ALP for the covered transactions during the specified period is determined strictly in accordance with the terms of the agreement, providing clarity and certainty to both taxpayers and tax authorities. APAs may be unilateral, bilateral or multilateral APAs provide certainty for a period up to 5 years.[11]

Indirect Taxes

Indirect taxes, such as Goods and Services Tax **("GST")**, will apply to GCCs in India with respect to all the taxable supplies made by them. Additionally, all import and export activities of GCCs in India, as well as any goods or services involved in their cross-border operations, will be governed by Customs laws and regulations.

However, if a GCC operates within a Special Economic Zone **("SEZ")** in India, it may be eligible for a range of indirect tax benefits and incentives designed to promote business activities within such zone under both the GST and Customs laws. These benefits can significantly reduce the tax burden for the GCC, making it more cost-effective for multinational companies to set up and operate in India.

8 Section 92D of the ITA, read with Rule 10D of the Income Tax Rules.

9 Section 271AA of the ITA.

10 Section 92CC of the ITA.

11 Section 92CC(4) of the ITA.

Goods and Services Tax

GST is a destination based tax which is governed by: (i) the Central Goods and Services Tax Act, 2017 **("CGST Act")**, which gives the Central government the power to tax goods and services; (ii) The individual state and union territory GST Acts ("SGST Act" and "UTGST Act" respectively), which give each state and union territory the power to tax goods and services; and (iii) The Integrated Goods and Services Tax Act, 2017 **("IGST Act")**, which gives the central government the right to tax inter-state supplies. While IGST is applicable to taxable inter-state supplies, CGST and SGST / UTGST is applicable to taxable intra-state supply. A supply is considered inter-state or intra-state depending on the "place of supply" provisions set out under the IGST Act.

GST is generally charged at rate of 18% but may extend to 28% depending on the nature of supply. The suppliers are also eligible to claim input tax credit on inward supplies received by them subject to satisfaction of certain conditions.

With respect to cross-border supplies, a general rule is that goods and services imported into India are considered taxable inter-state supplies subject to IGST, whilst goods and services exported from India are considered zero-rated supplies exempt from GST, subject to satisfaction of certain conditions.

Accordingly, GCCs providing such taxable supplies in the taxable territory may be subject to GST in India.

Letter of Undertaking ("LUT")

Any GCC that is engaged in the export of services/goods may rely on a LUT. LUT allows exporters to export services/goods without paying the IGST upfront if exporter assures the government that it will fulfil all GAT compliance requirements. LUT allows smooth cash flow as without a LUT, the exporter would be required to pay the IGST, claim a refund which can be subject to delays and may hinder operations. The key features of a LUT are as follows:

i. Any exporter of goods or services, including companies engaged in exporting services is eligible to file an LUT. The LUT is valid for a period of one year and needs to be renewed.

ii. Exporters must ensure that the export proceeds (in convertible foreign exchange or otherwise as per RBI guidelines) are received within the prescribed time frame. Failure to comply with LUT conditions can result in penalties or the need to pay IGST along with interest.

iii. A foreign subsidiary (including GCCs) may apply for LUT subject to the following conditions:

   a. It is registered under GST in India.

   b. It is exporting goods/services or making supplies to a SEZ.

   c. It has not been prosecuted for any offense involving tax evasion exceeding USD 2 million under GST or any previous law.

   d. It complies with all relevant conditions of export laid under the GST regulations and the applicable RBI guidelines.

Customs Duty

Customs duty is a tax imposed on products imported into and exported from India. The Customs Act of 1962 establishes the imposition and collection of duties on imports and exports, outlines import/export processes, stipulates bans on the importing and exportation of products, and defines penalties and offences. The rates of customs duty are delineated in the Customs Tariff Act of 1975. As discussed above, customs duty is exempted for assets imported by a unit in a SEZ.

Policy Recommendations for Boosting GCCs in India

National Level

a. **Development of a National Policy Framework:** Despite being a significant contributor to India's GDP, the lack of a cohesive national level policy is hampering proliferation of GCCs at a large scale. There is a need to harmonize as well as provide a roadmap for state-level efforts, while ensuring ecosystem-driven growth. Further harmonization of regulatory frameworks across states, with basic guidelines, best practices and recommended incentive structures will ensure creation of a seamless business environment.

b. **Sector Focused Approach:** Many sector-specific hubs have already emerged in various Indian states in areas such as IT, automotive, life sciences and defence. It is paramount to recognize the same for their high growth potential, and position India as a global leader in these sectors. Further, by creating a single-window, fast-tracked approval process for GCCs established in such hubs, India could emerge as a favoured destination in a competitive international landscape. Showcasing emerging hubs and success stories of established Indian GCCs in global forums may also attract foreign investments and partnerships.

c. **National Level Plan for GCC Talent Development:** A comprehensive nationwide skill gap analysis is imperative for identification of workforce deficiencies in status quo. Proactive measures are needed to anticipate and address the talent requirements of emerging sectors such as AI, renewable energy, biotechnology, and advanced manufacturing. Initiatives like the Skill India Mission have significantly contributed to building competencies within India's young workforce. Tailored policies focusing on specialized talent development for GCCs should be introduced to implement long-term training and human resource development programs.

   A secondary objective would be establishment of Centres of Excellence within universities to focus on advanced research and skill development in niche domains. This initiative can be enriched further by encouraging industry participation for co-creation of talent pipelines.

State Level

a. **Supporting R&D focused GCCs:** R&D efforts are long term endeavours and may take decades to reflect positively on a company's balance sheet. States may incentivize such operations by offering long term tax benefits for GCCs working on long term R&D projects in sectors such as aerospace, healthcare, and technology IP development. States may further support establishment of innovation funds and incubation programs supporting R&D as well as ancillary talent development.

b. **Nano GCCs:** In the draft Karnataka GCC Policy 2024-2029[1], the State Government introduced the concept of Nano GCCs, with flexible operations and staffing ranging from 5 to 50 employees. These Nano GCCs shall also benefit from a range of incentives without being subject to minimum employment or investment thresholds. A similar business-friendly environment tailored to the needs of emerging and niche players can be created at the state level for supporting establishment of agile teams focused on specialized functions.

1 Available here:https://eitbt.karnataka.gov.in/startup/public/uploads/media_to_upload1727711381.pdf.

c. **Sustainable and ESG-Compliant Operations:** Adherence to leading ESG standards such as adoption of green infrastructure, renewable energy solutions, and sustainable business practices will ensure global competitiveness of Indian GCCs. States may create policy frameworks supporting sustainable GCCs with the collaboration of central and state level regulators alongside industry stakeholders.

Comprehensive Policy Approach Across Levels

a. **Skill Development:** A strong emphasis on skill development is crucial to ensure that India has a workforce equipped with the necessary technical and managerial skills to support the operations of GCCs. Policies should focus on upskilling existing talent and fostering new capabilities through partnerships between educational institutions, industry, and government. Specialized training programs, certification courses, and industry-driven curriculums in areas such as data science, AI, cybersecurity, and leadership will enhance the employability of India's workforce, making it an attractive destination for global companies to set up GCCs.

b. **Incubation Hubs for Innovation:** Innovation is key to the success of GCCs, and setting up incubation hubs can drive R&D efforts within the centres. These hubs would act as collaborative spaces for startups, technology developers, and corporate R&D teams to engage in product development, technological advancements, and business model innovation. Policy support for these hubs could include funding, mentorship, tax breaks, and access to global networks, fostering an ecosystem where GCCs can thrive by developing cutting-edge solutions for their parent companies.

c. **GCC Sandbox:** A GCC sandbox is a regulatory framework that allows companies to test innovative business models, products, and services in a controlled environment without facing the full regulatory burden. This initiative can be especially beneficial for GCCs, which often require flexibility to experiment with new technologies and services. By providing a sandbox environment, the government can allow GCCs to scale innovations faster, test new processes, and build disruptive technologies, while ensuring that they comply with regulations and industry standards.

d. **Export Initiative and Incentives:** Encouraging GCCs to export their services, solutions, and products globally can significantly contribute to India's economic growth. Policies should provide incentives for GCCs to develop export-oriented operations, such as tax rebates, financial incentives, and access to global markets. Supporting export initiatives could include helping GCCs expand their footprint in international markets, creating opportunities for trade, and fostering business connections through government-sponsored trade missions or collaborations with foreign partners.

e. **Simplifying Approvals for Foreign Investment and Setting Up Entities:** To attract more foreign direct investment (FDI) and multinational companies (MNCs) to establish GCCs in India, it is essential to streamline the approval processes. The government should implement a one-stop digital platform for foreign investors to ease the process of setting up entities, obtaining required licenses, and fulfilling compliance obligations. Reducing bureaucratic delays and simplifying the regulatory framework will make it easier for companies to establish GCCs, thereby boosting India's appeal as a destination for global business operations.

National

- Developing a National Level Policy Framework
- Sector Focused Approach
- National Level Plan for GCC Talent Development

State

- Supporting R&D focused GCCs
- Nano GCCs
- Sustainable and ESG-Compliant Operations

Across Levels

- Skill Development
- Incubation Hub for Innovation
- GCC Sandbox
- Export Initiatives and Incentives
- Simplifying Approvals for Foreign Investment and MNCs

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We are a research and strategy driven international firm with offices in Mumbai, Palo Alto (Silicon Valley), Bengaluru, Singapore, New Delhi, Munich, and New York. Our team comprises of specialists who provide strategic advice on legal, regulatory, and tax related matters in an integrated manner basis key insights carefully culled from the allied industries.

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Research@NDA

Research is the DNA of NDA. In early 1980s, our firm emerged from an extensive, and then pioneering, research by Nishith M. Desai on the taxation of cross-border transactions. The research book written by him provided the foundation for our international tax practice. Since then, we have relied upon research to be the cornerstone of our practice development. Today, research is fully ingrained in the firm's culture.

Over the years, we have produced some outstanding research papers, reports and articles. Almost on a daily basis, we analyze and offer our perspective on latest legal developments through our "Hotlines". These Hotlines provide immediate awareness and quick reference, and have been eagerly received. We also provide expanded commentary on issues through detailed articles for publication in newspapers and periodicals for dissemination to wider audience. Our NDA Labs dissect and analyze a published, distinctive legal transaction using multiple lenses and offer various perspectives, including some even overlooked by the executors of the transaction. We regularly write extensive research papers and disseminate them through our website. Our ThinkTank discourses on Taxation of eCommerce, Arbitration, and Direct Tax Code have been widely acknowledged.

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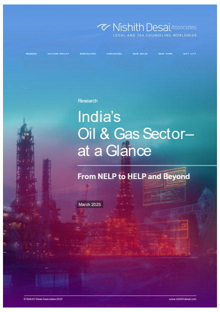

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Nishith Desai Associates
LEGAL AND TAX COUNSELING WORLDWIDE

MUMBAI

93 B, Mittal Court, Nariman Point
Mumbai 400 021, India

Tel +91 22 6669 5000

SILICON VALLEY

220 S California Ave., Suite 201
Palo Alto, California 94306, USA

Tel +1 650 325 7100

BENGALURU

Prestige Loka, G01, 7/1 Brunton Rd
Bengaluru 560 025, India

Tel +91 80 6693 5000

SINGAPORE

Level 24, CapitaGreen
138 Market St
Singapore 048 946

Tel +65 6550 9855

MUMBAI BKC

3, North Avenue, Maker Maxity
Bandra–Kurla Complex
Mumbai 400 051, India

Tel +91 22 6159 5000

NEW DELHI

13-H, Hansalaya Building, 15
Barakhamba Road, Connaught Place
New Delhi 110 001, India

Tel +91 11 4906 5000

NEW YORK

1185 6th Avenue, Suite 326
New York, NY 10036, USA

Tel +1 212 464 7050

GIFT CITY

408, 4th Floor, Pragya Towers
GIFT City, Gandhinagar
Gujarat 382 355, India

Global Capability Centers
Legal, Regulatory and Tax Issues

concierge@nishithdesai.com