

## India

### Information Technology and Software Development Companies in India Categorized as 'Factories'

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Creation or development of software is a manufacturing process and the premises where computers are used in the manufacturing process is a 'factory' for the purpose of the Employees' State Insurance Act, 1948 (ESI Act), one of India's social security enactments, the Bombay High Court held<sup>1</sup> in July 2012. The decision affects establishments in the information technology (IT) and information technology enabled services (ITeS) sectors in India, which would require such establishments to *inter alia* comply with the provisions of the ESI Act and make insurance contributions on behalf of its eligible employees.

The key issues before the Bombay High Court were (i) whether creation of software or development of software itself is a manufacturing process; and (ii) whether the premises where computers are involved in a manufacturing process is a factory under the ESI Act.

The Bombay High Court, after taking into consideration the definition of the term 'factory' under the ESI Act and the Factories Act, 1948 (Factories Act), observed that the definition of 'factory' under the ESI Act has a wider meaning as compared to the definition of same term under the Factories Act. The court further held that (i) creation software or development of software itself is a manufacturing process; and (ii) the premises where computers are involved in a manufacturing process, i.e., creation or development of software, is a factory under the ESI Act.

<sup>1</sup>Joint Appeal: The Assistant Director Employees' State Insurance Corporation Marol vs. M/s. Western Outdoor Interactive Private Limited (First Appeal No. 143 of 2012) and M/s. Reliable Software Systems Private Limited vs. Employees' State Insurance Corporation Regional Office, Marol (First Appeal No. 307 of 2012). Judgment pronounced on July 11, 2012.