



## Cross-Border Restructurings in INDIA

India has faced dynamic economic developments over the last couple of years with double-digit growth rates. Even if the GDP growth is still relatively strong (6.9 % in 2013/14), certain industries are losing steam. This might lead to restructuring needs for international companies being active in India. Karan Singh (Trilegal Mumbai) and Dr. Ruediger Theiselmann (WELLENSIEK) give more color on how to master these challenges.

*Why do you expect restructuring needs for international companies to gain importance in the near future in India?*

**Theiselmann:** India offers attractive growth opportunities for international companies. Most recently, prime minister Narendra Modi promoted the huge infrastructure project called “100 smart cities” and launched various initiatives to foster the GDP growth. However, the weakness of the global economy is likely to put pressure particularly on manufacturing and services. Moreover, bureaucracy and regulatory unpredictability are still challenging.

*What major challenges exist for international companies in terms of restructurings in India?*

**Theiselmann:** The process of liquidating a distressed Indian company – be it a voluntary or be it a forced winding up by creditors – is time consuming. The average time taken for a voluntary winding up could vary from 3-7 years and a creditors’ winding up can take even longer.

*Which specific risks and obstacles should international companies be aware of when their Indian affiliates get distressed?*

**Singh:** The shareholders of a distressed Indian company stand last in line, after all creditors, statutory and employees’ dues and administrative expenses related to the

proceedings are cleared. Even in cases where there is any residuary capital, the approval of an authorized dealer bank will be required to repatriate such capital to the foreign shareholder and will involve further procedural formalities.

*Does labor law play a role during restructurings in India?*

**Singh:** Of course. As India is a welfare economy, special protection against retrenchment is provided to blue collar workers. Even in the winding up of a company, the company must interact with trade unions and seek prior authorization from the relevant governmental authority before the retrenching such workers. This process can be quite burdensome and lengthy and can cause delay in shutting down the operations of the company being wound up.

*Have you also been confronted with insolvency issues related to businesses of international companies in India?*

**Theiselmann:** Recently, we advised a German holding company in its financial restructuring negotiations with its creditors. The banks were insisting on a legal opinion, to be included in the restructuring plan, about the need for the Indian subsidiary to file for bankruptcy. Our part was to coordinate the information exchange between the holding and its advisers setting up the restructuring

plan and the Indian lawyers and accountants assessing a potential insolvency situation for the Indian subsidiary.

*What are the major hurdles that exist for distressed international companies in terms of taxation in India?*

**Singh:** The Indian government has introduced a rule to tax non-residents on the transfer of foreign securities, the value of which are substantially (directly or indirectly) derived from assets situated in India. Such tax will be levied subject to the underlying transaction meeting certain prescribed conditions (such as the underlying Indian assets should exceed INR 100 million and represent 50% of the value of all the assets owned by the foreign entity). As a result, a sale of shares by an international company in any jurisdiction could potentially lead to an obligation to pay capital gains tax in India, if the prescribed conditions are met.

*Speaking of complexity, business in India is said to be quite difficult, when it comes to tax issues...*

**Singh:** Specifically, from a tax perspective, India being a federal state, the right to tax subjects is distributed between the central and state level. This leads to a wide gamut of taxing legislations and multiplicity of taxes. Moreover, the tax authorities have wide discretion in levying taxes and have in the recent past behaved whimsically.

*Many thanks for the interesting discussion, Mr. Singh and Mr. Theiselmann.*

Karan Singh is one of the founding partners of Trilegal and is based at the Mumbai office. He regularly engages with domestic and foreign clients on their strategic growth plans as well as restructurings in India. He has advised on several high profile cross-border and domestic acquisitions, representing buyers, vendors, lenders, investors and financial advisors.



Dr. Ruediger Theiselmann is attorney and executive partner at WELLENSIEK in Frankfurt am Main. He heads the cross-border team and has advised in and coordinated international restructuring projects in terms of both legal and financial aspects. He focuses on advising management, supervisory board members, creditors and investors in corporate and insolvency law related transactions.

