India Update: January – March, 2011

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Job security for salesmen on the cards

Amendment to Sales Promotion Act to provide better work conditions

Over three lakh[1] salesmen in sectors such as FMCG, automobiles and apparel will now be covered under a new law providing higher job security, pay parity and better working conditions.

Sales and marketing personnel, excluding managers, in 10 sectors will be covered under the amended Sales Promotion Employees (SPE) Act. Employers in these sectors will have to give appointment letters to all sales employees besides offering benefits such as earned, medical, extraordinary, study and casual leaves.

At present the said act covers medical representatives. The law will now also cover companies in businesses such as cosmetics, soaps and disinfectants; readymade garments; soft drink manufacturing; biscuits and confectionary; automobiles (including accessories); electronics, computers, electrical appliances and paints. Other sectors whose employers will be part of the amended law include ayurvedic, unani and homeopathic medicines; surgical equipment, artificial prosthesis and diagnostics besides paints and varnishes.

At present, sales personnel in most sectors are covered under either the Factories Act or the Shops & Establishments Act of the respective state. Employers in the identified sectors will now have to comply with the uniform SPE Act once the labour ministry notifies its decision. Moreover, they will automatically have to comply with six other central labour laws such as the Industrial Disputes Act, 1947.
These employers will have to change recruitment and compensation policies besides terms of employment, which will initially push up operational cost marginally.

Companies have found ways to circumvent SPE Act even in the pharmaceuticals sector. Some firms have designated their medical representatives as a supervisor or manager without much change in compensation or work condition as managers are not covered under the SPE Act.

The move to extending the SPE Act was driven by a petition submitted by the Federation of Medical and Sales Representatives' Association (FMRAI), a trade union of the country's medical representatives. While the petition was focused on problems faced by medical representatives, FMRAI had sought extension of the law to 40 sectors. The union had also called for penal provisions such as imprisonment of employers in violation cases, along with a longer maternity leave from three to six months.

Foreign banks to reduce exposure to private equity

Foreign banks may downsize their investments in private equity or propriety investments, paving the way for pure play private equity firms to become more active in the country.

The development follows the restriction imposed by the Paul Volcker Rule, approved by the US government last year. According to the said rule, banks operating in the US cannot hold more than 20% stake or 3% of their total net worth in private equity arms and hedge funds worldwide.

Citibank, JP Morgan Chase and Bank of America Merrill Lynch plan to cut down their exposure in such asset class.

Tata Coffee brings Starbucks to India

Agreement includes opening cafes, bean sourcing and roasting

Starbucks has announced that it has entered into an agreement with Tata Coffee for a strategic alliance. Under a non-binding memorandum of understanding (MoU), Starbucks will explore setting up stores in the Tata group's retail outlets and hotels, besides sourcing and roasting coffee beans at Tata Coffee's Kodagu facility.

Tata Coffee, one of the biggest suppliers of Arabica coffee beans, has shipped coffee beans to

[1] *1 lakh = 100,000*

Starbucks in the past and is now building a structure for a long-term relationship.

According to the MoU, the two companies will collaborate on providing training to local farmers, technicians and agronomists to improve coffee-growing and milling skills. The two companies will also explore social projects in the coffee-growing regions Tata Coffee operates.

The first Starbucks outlet could open in the next six to seven months. Tata Coffee does not have an exclusive arrangement with Starbucks at the moment.

In the areas of sourcing and roasting, Starbucks will explore procuring green coffee from Tata Coffee estates and roasting at the Indian company's existing facilities. At a later phase, Tata Coffee and Starbucks will consider jointly investing in additional facilities and roasting green coffee for export, the release said.

Starbucks needs to address pricing issues for India, since demand is highly elastic. Though there are several competitors in the segment — Barista (200 outlets), Cafe Coffee Day (1,040 outlets) and Costa Coffee and others (100) – the market is far from saturated. The entry of more players means the market will grow. India can absorb up to an estimated 5,400 outlets; at the moment, the number is over 1,300.

Defence production policy aims to bring in private sector

The Ministry of Defence (MoD) has unveiled a Defence Production Policy that, in an implicit admission of public sector inadequacy, seeks "to build up a robust indigenous defence industrial base by proactively encouraging larger involvement of the Indian private sector".

The policy aims at achieving "substantive self-reliance in the design, development and production of (equipment) required for defence in as early a time frame as possible" by creating "an ecosystem conducive for the private industry to take an active role, particularly for small and medium enterprises (SMEs)."

The MoD — which traditionally shelters its public sector units from private sector competition — has long feared labour union protests against any level playing field to the private sector.

The MoD is also challenged in having to balance the Defence Production Policy between its key objectives of indigenisation on the one hand; and on the other, having to keep the forces supplied with high-tech weaponry, little of which is produced in India.

"Preference will be given to indigenous design, development and manufacture of defence equipment," states the policy. But, "wherever the Indian industry is not in a position to make and deliver the equipment as per the required specifications, within the required timelines, procurement from foreign sources would be resorted to."

The new policy pledges to simplify the "Make" category of the DPP, which makes Indian companies/consortiums compete against each other to develop complex defence systems. So far the 'Make' category has seen just one project launched: to indigenously build a Future Infantry Combat Vehicle (FICV) for the army. A second 'Make' project, to build a Tactical Communications System, is now on the anvil.

Physician samples attract excise

Drugs manufacturers will now have to pay appropriate excise duty on promotional samples supplied to doctors, the Supreme Court has ruled.

"Excise duty is payable even in case of free supply since sale is not a necessary condition for charging duty under the act (Central Excise Act, 1944)," a bench comprising Justice DK Jain and Justice HL Dattu said in its judgement.
The court dismissed two appeals of Medley Pharmaceuticals which had said that physician samples were not excisable goods because they were statutorily prohibited from being sold under the Drugs and Cosmetics Act 1940 and Rule 65 (18) of the Drugs Rules.

The bench argued that the companies made the products for selling them in the market and then chose to give away some units as free samples; they were simply advertising their goods, it was their choice.

"The choice made by them in terms of Rule 96 (1)(ix) of the Drugs Rules by overprinting words "physician's sample— not to be sold" on the label will not come in the way of the revenue (department) from levying excise duty," the court said.

"It has been shown by research that the market of a pharmaceutical company is enhanced substantially by the distribution of free physician samples; ...their distribution serves as a marketing tool in the hands of the pharmaceutical companies," the court said.

The court, however, allowed a separate appeal of Medley, challenging order of the Customs Excise and Service Tax Appellate Tribunal (CESTAT) on valuation of physician samples for the purpose of levy of duty. The court remitted the matter to the adjudicating authority, directing it to value such goods on a pro-rata basis for the relevant period.

Trademark, patent seekers get access to database

Patent and trademark seekers will no longer have to wait for weeks to get the go-ahead for their applications from the government's patent registrar. The commerce and industry ministry has thrown open the entire trademark and patent database for free online searches.

Till now, prospective applicants for patents and trademarks were required to get an official search report from the patents office, which certified that no similar patent has been granted, before submitting an application. Applicants had to pay Rs. 500 for every single search subject and the process took two to three weeks.

While free search facility would help patent seekers cut costs and time involved prior to filing an application, this will also put India on par with the developed countries that have well-equipped online trademark search systems.
The new search facility also allows users to look for pictures and logos, under the Vienna Classification Code adopted by the World Intellectual Property Organisation (WIPO). The Vienna Code breaks down visual images into categories and sections so as to enable any applicant to crosscheck if similar designs, logos or images are registered in another entity's name.

Though the search facility has been made free, the cost of patent and trademark applications has been raised from Rs. 2,500 to Rs. 3,500, effective from December 29, 2010.

About 100,000 applications are filed with the patent and trademarks registrar annually while the backlog of applications pending and oppositions to such applications filed by dissenting parties run into several lakhs.

India gets lion's share of global project finance

India accounted for $81.4 billion, or more than a fifth of the total and higher than any other country, through 163 projects, according to the Dealogic Global Project Finance Review for 2010. India was the most active market as deal volumes increased 73.9% to $53.6 bn from 131 completed loans. State Bank of India topped the chart of mandated arranger ranking with $25.3 bn from 69 deals.

The strong project finance activity in India comes amid rising concerns over headwinds to India's growth story, including the lack of reforms and policy inaction. Much of those concerns have been prompted by the sharp fluctuation in the production of capital goods, leading indicator of investment activity. The growth in the production of capital goods has ranged from 65% in July to negative 4.1% in September. A number of brokerages have cut their growth estimates for the next year citing difficult environment and waning industrial growth.

These projects will take a while to translate into on the ground investment, but a build up in the projects that have tied up finances bodes well for the future. India is largely a consumption driven economy and needs to step up investments significantly to attain a sustainable high growth. But fiscal constraints have made it difficult for the government to invest in physical infrastructure, making private investments necessary.

INDIA SHINING

RANK	Nationality	Value ($ m)	No. of Deals	% Change (2008)
1	India	81,411	163	50
2	USA	33,267	81	21
3	Saudi Arabia	25,917	7	427
4	Spain	25,423	106	40
5	Australia	19,400	43	16
6	UK	13,437	59	7
7	Taiwan	13,298	4	13,371
8	China	10,379	12	190
9	Canada	9,602	33	159
10	Russia	7,930	8	48
11	Portugal	7,414	17	46

Source: Dealogic

Booming private security agencies seek PE funding

As rapid economic expansion creates a booming market for private security services, small and mid-sized companies in the sector are seeking risk capital infusion to further expansion plans. Growing public infrastructure in the form of roads, airports, shopping malls and commercial complexes has triggered a boom in the market for security services that is expected to grow five-fold to reach a size of Rs. 30,000 crore[2] by 2015.

Delhi-based Security and Intelligence Services (India) is looking to raise nearly $100 million and is in talks with a slew of private equity firms. SIS had earlier raised capital in 2008 from DE Shaw & Co, a New York-based hedge fund to acquire the Australian arm of the guarding and mobile patrol business unit of United Technologies.

Globally too, the security services sector has been red hot for private equity funds. In India, PE firm ICICI Venture Funds Management invested $26.74 million in Topsgroup in 2007, while Standard Chartered Private Equity invested $33 million in Firepro Systems in late 2009.

The change in lifestyle of the last few years have boosted demand for private security services, with corporate offices, hotels, residential complexes as well as individuals becoming more concerned about security.

The sector has also seen a lot of mergers and acquisitions over the last few years. In August 2010, Goldman Sachs-owned Danish facility management firm International Service System acquired Chennai-based SDP Cisco for Rs. 200 crore.

G4S, the largest security services provider in the country, acquired real estate group DLF's security firm TerraForce in 2009. As per estimates of consultancy firm Grant Thornton, the sector has seen M&As over $400 million over the past two years.

As per analysts tracking the sector, investments in the security services space have reaped high returns. Expected consolidation in a largely fragmented industry, growth in physical demand for security services along with greater perceived need for security and evolving business models are seen as positives that are driving some of the private equity funds towards this sector.

India enters $1,000 per capita club

India's per capita income has either just about or will soon cross $1,000 mark. In rupee terms, this translates into an average annual income of roughly Rs. 45,000 for every Indian.

According to the consulting firm BCG, $1,000 income is the start of the take-off of a nation. It is around this number that a nation gets out of subsistence spending and moves more and more into higher quality branded products. China reached this threshold in 2003, and has since unleashed a consumption boom that the world is in awe of. Today its per capita income is at $3,400.

What's so significant about the figure of $1,000? After all, even countries such as Ghana and Afghanistan are close to achieving this statistic. The figure is significant if it is accompanied by a few other factors: an economy of the size of at least $500 billion, a healthy and sustainable growth rate in gross domestic product (GDP) and a large population. India has all the three pieces of this equation — and has them in plenty. The presence of all these factors together makes both India and Indonesia exciting, according to BCG.

Three aspects — the timing, the scale and the speed — of India reaching the $1,000 per capita mark make it out of the ordinary. The three will act as force multipliers for each other. The most obvious implication is for the nature and size of consumption. India, like China in recent years, will be a consumption powerhouse of the world. But the consumption curves could be markedly different from other countries that passed this threshold in the past. The companies decoding this unfolding pattern will make a fortune.

The development has huge implications for what Indians will consume in coming years and at what rate. Thanks to innovations in technology and business models, what consumers in the western world, or even in China, started to consume at the per capita income level of $2,000 or $3,000, Indians would begin to consume much earlier. The lower level of household debt will also influence the consumption pattern. For example, in 2003, entry-level digital cameras cost around Rs 12,000 as against Rs 5,000 today. According to Canon India, camera penetration in China moved from 3% to 15% between 2001 and 2010. India will

[2] *1 crore = 10,000,000*

make this transition in half the time — between 2010 and 2015.

MNCs' increasing focus on emerging markets and re-engineering of products will hasten the trend. In Japan and South Korea the per capita threshold at which car sales began to take off was around $3,500. But for India a similar inflection point for the car industry can come much earlier at around $2,500. Not surprising for the country of Nano. Indians are ahead of the curve vis-a-vis the Chinese on mobile phone penetration. At $1,000 income level, less than 25% Chinese had mobile phones. For India, the figure is over 50%.

The coming boom

The size of overall consumption boom is equally impressive. According to BCG estimates, in 2010 Americans - who comprise 5% of global consumers - had annual consumption of $10 trillion whereas Asia-Pacific, which accounts for 50% of global consumers, had a yearly consumption bill of just $7 trillion. But by 2020, Asia-Pacific will be billing annual consumption of $21 trillion as against the US' $14 trillion. India will be one of the major markets that will contribute to this shift. Of all Asian economies, India will see the fastest growth in discretionary spending in the next five years and the country's middle class (annual income of Rs 2-10 lakh) will grow from 7% of its population in 2007 to 41% by 2025. According to McKinsey, this is a resurgence of sorts - China and India were core to the world economy in the past, they are on their way back to that position.

The shift in pattern of consumption away from necessities (food and clothing) to discretionary items (entertainment, communication) will accelerate further. In 2007, a McKinsey report had predicted that discretionary spending as percentage of household consumption has been rising from 35% in 1985 to 52% in 2005, and would touch 70% by 2025.

This is getting a big boost by a visible rise in more earning members per household. This trend cuts across economic and social class and it pushes up disposable income dramatically.

A long-term bet

India's growth run has a greater staying power than most emerging economies because the share of country's working-age population will continue to rise until 2035. In fact, India is projected to be the only large country enjoying favourable demographics after 2010. Its age dependency ratio will fall from 60% (2006) to 52% (2015). In contrast, the developed world, including Japan and Europe, will grey significantly. From 2010 onwards, even China would begin to see a slide in its working-age population as the number of dependants rises.

Of course, the growth marathon for India has only just begun. Several countries, such as Brazil and South Africa, crossed the $1,000 per capita mark many years ago but have remained trapped as middle-income economies ever since. China, which has maintained a growth rate of 9%-plus over the past decade, holds out the hope for escaping the middle-income trap and leaping into a high-income economy.

Sebi frowns on E.Land's fee to exiting owners

Asks Korean company to justify non-compete fee

The Securities & Exchange Board of India (Sebi), has told South Korea's $7-billion textile chain E.Land to justify the payment of a non-compete fee of 25% to the promoters of Mumbai-based Mudra Lifestyle.

In a first-of-its-kind deal in the local textile sector, the South Korean fashion and garment conglomerate had agreed to acquire the promoter's stake in Mudra Lifestyle and also take management control.

The Korean firm has already acquired a 25% stake in the company and appointed directors on its board. It has also unveiled an open offer to buy a 20% equity from shareholders at 60 per share. It would pay Rs. 75 per share to the company's promoters for a controlling stake.

The differential pricing to the promoters is on account of a non-compete fee. The fee is paid by an acquirer to ensure the former promoter does not compete directly in the same line of business for a specified time period. An acquirer can pay a seller non-compete fee of up to 25% of the price offered to shareholders in an open offer. Anything more than 25% has to be included in the open offer price.

According to officials in investment banks, Sebi has asked SBI Caps, which is managing the open offer, to justify a higher or differential price in the form of non-compete fee to the promoters.

Payment of non-compete fee is increasingly turning out to be a contentious issue with the market regulator vetting several such cases. This may also have to do with the recent recommendation of a committee on takeovers, which said non-compete fees should be done away with as according to it promoters were the sole beneficiaries.

Some time ago, Sebi told the acquirers of Mysore Cements not to pay a differential price to the promoters at the expense of other shareholders. The regulator felt payment of non-compete fee was not justified in this case as the company was classified as a sick company.

Sebi is hostile towards non-compete fee as it is looking at reforming this aspect of companies' takeover. More often than not it short-changes minority shareholders. While Sebi allows this to go up to 25%, under the Indian Contract Act any fee that restrains somebody from doing a trade is considered invalid. However, there are certain exceptions

The Securities Appellate Tribunal has said that if the law allows it, then it is justified. In most cases, it is the control premium which is disguised as non-compete fee.

Sebi's mandate is to protect the interest of all investors. While the law is clear as to how much can be paid as non-compete fee, Sebi can decide how much of this fee is fair. It can question the bankers to justify the fee.

In 2006, Heidelberg offered to buy 8.48% of Mysore Cements from the promoters, the SK Birla Group. The offer price was Rs 58 a share but the promoters received a 25% higher consideration as non-compete fee. However, after shareholders complained, Sebi said the payment of non-compete fee to the promoters was not justified. The regulator advised the acquirer to revise the offer price after including the payment of non-compete fee. Heidelberg approached the Securities Appellate Tribunal, which ruled in its favour.

Other similar instances include that of Phoenix Lamps, where Actis had to increase the open offer price after Sebi said public investors should get the same price as promoters. Idea Cellular had to defer its open offer following a delay in approval from Sebi, when it offered a premium of 24.99%, just below the limit.

Tata Tea's acquisition of shares in Mount Everest also ran into trouble after Sebi told the company to include the non-compete fee that it paid the promoters of Mount Everest Mineral Water in its open offer to shareholders of the bottled water company.

However, in the acquisition of Gujarat Ambuja Cement, Indo Rama Textile and Micro Inks, Sebi has allowed payment of non-compete fee.

Morgan Stanley to invest $200 mn in Spanish infrastructure company subsidiary

Isolux funding is one of the largest PE Investments in road sector here

Morgan Stanley's Global Infrastructure Fund will invest $200 million for an equity stake in the Indian arm of closely-held Spanish construction major Isolux Corsan.

Isolux India builds roads in North India.
This will be the second investment here by the fund. Last year, it teamed up with Goldman Sachs' infra fund, General Atlantic, Norwest Venture Partners and Everstone Capital to invest $425 million in Asian Genco, a Singapore-headquartered firm which owns power plants here.

Morgan Stanley shut its proprietary investment desk in India in 2008 after the bank was hit by the credit crisis. The investment management arm globally manages several billion dollars. The Isolux funding is one of the largest private equity investments in the road sector here.

Isolux Corsan operates in engineering, construction, manufacturing, concessions and property development. The company has presence in more than 32 countries, including Spain.

Environment clearance for Posco, but with 61 conditions

Final forest clearance withheld pending FRA approval

In a major relief to South Korean steel major Pohang Steel Company (Posco) — and continuing a pattern of reconciling violations of environmental laws with additional conditions for clearance — the environment ministry has approved the firm's Rs 54,000-crore ($12-billion) steel plant. Seen as one of the largest foreign direct investments in India, the project has been in limbo for nearly six years.

Environment Minister Jairam Ramesh has imposed 61 additional conditions before giving approval to the project, which includes a port and steel plant. Among the conditions is setting aside 2 per cent of the company's profits for the area's development and a commitment to keep 25 per cent of the premises green.

In his much-awaited decision, the environment ministry has almost shut the door on protests by villagers in the area, who faced the loss of land on which they traditionally cultivated betel leaf by declaring that it was not a scheduled area and hence, did not have tribals. However, it has withheld final forest clearance on 1,253 hectares, pending final assurance from the state on compliance with the Forest Rights Act (FRA), 2006.

Whether withholding clearance pending FRA compliance would mean that the state government would have to hold public hearings in all the *gram sabhas* and obtain their consent is not clear. But the environment minister added in his statement that the state government has already issued a statement in March last year about there being no tribals in the area, thus ruling out the need for public hearings.

The Orissa government and Posco had signed an MoU on June 22, 2005 to set up an integrated steel plant with a total capacity of 12 million tonnes a year (with 4 million tonnes in the first phase) at Paradip in Jagatsinghpur district. The entire project complex requires about 1,621 hectares of land, of which about 1,253 hectares is forest land.

Banks to secure realty loans with escrow accounts

The Reserve Bank of India has asked banks to put in place an escrow mechanism that can ring fence their loans to real estate firms and keep a closer tab on the end use of funds.

The central bank has been looking to tighten the lending norms for the real estate sector after last year's bribery-for-loan scam involving LIC Housing Finance and some public sector banks. The scandal also exposed several unethical practices, such as diversion of funds.

RBI had asked the banks to set up an escrow mechanism at the time of providing project loans to real estate companies. An escrow account will help in safeguarding the interests of the lender from repayment risk and in monitoring the end use of funds.

The escrow arrangement suggested by RBI will be operationalised through a tripartite agreement between the developer, the banker and the homebuyer.

India ratifies double taxation avoidance pacts with SAARC

Move to boost efforts to track and unearth black money

India has ratified the new Double Taxation Avoidance Agreements with SAARC nations taking forward its efforts to track and unearth black money. The revised treaties will come into effect from April 1, 2011. The new agreement will apply to persons who are residents of one or more member states.

Members of the South Asian Association for

Regional Cooperation (SAARC) include Bangladesh, Maldives, Bhutan, Nepal, India, Afghanistan, Pakistan and Sri Lanka.

The SAARC limited multilateral agreement on avoidance of double taxation and mutual administrative assistance in tax matters shall be applicable only in the member states where an adequate direct tax structure is in place. In case of a member state where such a structure is not in place, this agreement shall become effective from the date on which such a member state introduces a proper direct tax structure and notifies the SAARC secretariat to this effect.

India is in the process of negotiating DTAAs with 65 countries. This is to broaden the scope of article concerning exchange of information, specifically regarding banking and taxpayers not covered earlier.

The Indian finance ministry had recently unveiled a five pronged strategy to check and curb black money in the country. DTAAs and Exchange of Taxation Information Agreements are two instruments under which information can be obtained and that the government has already amended pacts with 23 countries to get information from various banks.

Ministry agrees to no cap on number of channels

The information and broadcasting (I&B) ministry has accepted the recommendation of the Telecom Regulatory Authority of India (Trai) that no cap be placed on the number of private satellite channels that can be uplinked or downlinked for viewing in the country.

The ministry, however, reduced the net worth requirement of a company for operating news as well as non-news channels from the levels proposed by Trai.

Based on the capital cost requirement, the ministry has proposed the net worth requirement of non-news and current affairs channels be increased to Rs 5 crore from Rs 1.5 crore at present and be enhanced by Rs 2.5 crore for every additional channel.

These and other ministry reactions to Trai proposals have been returned to the latter, for comments before preparing the final guidelines for government approval.

For news channels, the ministry has proposed the net worth requirement be limited to Rs 15 crore for the first channel and thereafter Rs 5 crore for every additional channel.

To ensure companies make permitted channels functional within the stipulated one year, the ministry has suggested they deposit a performance bank guarantee (PBG) of Rs 1 crore, to be refunded on fulfilment of obligation. If the permission holder meets the roll-out obligation after one year but within two years of issuance of licence, half the PBG would be refunded. If the operator does not operationalise the channel within two years, the full PBG is to be forfeited.

The ministry turned down Trai's proposal to permit universities to uplink/downlink educational channels, but accepted the authority's recommendation that the period of permission for uplinking and downlinking of channels be made uniform at 10 years. The ministry also proposed the minimum experience requirement for top management of both news and non-news channels be restricted to three years, as the private television industry is hardly a decade old.

India has highest number of transfer pricing cases

India has the highest number of litigations over transfer pricing, where MNCs have been charged of reducing their tax liability by transferring profits to group companies abroad, E&Y said in a survey. The country has over 1,500 cases pending under transfer pricing, it said. The survey included 877 MNCs from 25 countries. A large number of companies are accused of selling goods and services to their subsidiaries at inflated prices under transfer pricing, to reduce profits and hence tax liabilities. The law requires that goods and services should be sold to subsidiary companies at arm's length price - the price at which goods are traded between unconnected companies.

LVMH to pick up stake in Gitanjali Gems' new arm

Branded jewellery, retail business under new subsidiary

LVMH, through its private equity arm L Capital, is set to acquire a significant minority stake in Gitanjali Gems' proposed subsidiary that will control its branded jewellery and retail businesses.

The deal worth $100-125 million is aimed at bringing the world's best know-how, expand aggressively in the domestic market and take Gitanjali Gems to global scale.

L Capital will pick up stake using money from its $500-million L Capital Asia Fund, which was raised in 2010.

Gitanjali Gems was looking for a strategic player who will bring synergy to the high-end retail business of the company. The company is in the process of hiving off two divisions — branded jewellery and retail business — into a new subsidiary in which L Capital will pick up a stake.

The two divisions currently contribute around 50% of the company's revenues. Gitanjali Gems has started restructuring its business and aggregating its 32 subsidiaries under four divisions — diamond, infratech, branded jewellery and retail.

One key reason to route the investment through a new subsidiary is to avoid an open offer. Under the takeover code, in case the acquirer buys more than a 15% stake in a listed firm, it has to buy an additional 20% from the open market, also called an open offer. LVMH is reportedly not willing to pick up stake in a company which has diamond as well as infrastructure businesses.

Second, the transaction in the listed firm would also have resulted in the dilution of the promoters' stake to below 50%. The promoters, who own 54% in the company, are not willing to dilute at the current market value.

Amendments to Press Act get cabinet approval

The Union cabinet has approved amendments in the Press and Registration of Books Act, 1867, that governs many aspects of verification and registration of print titles, definitions and other policy issues related to print media.

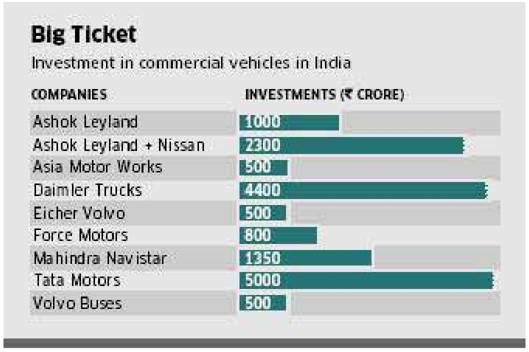
The proposed Press and Registration of Books and Publications Bill, 2010 will have provisions with respect to limits on foreign news content through syndication besides norms related to foreign investments and will ask publishers to file their annual statements. The Bill has provisions for title and circulation verification and seeks to prevent blocking of titles. It also mandates a publication will have to come out with its editions within one year of the allotment of the title among others. It brings under its ambit all existing guidelines that govern the print media sector.

Daimler India unveils BharatBenz

Daimler India Commercial Vehicles, a part of Germany-based automobile manufacturer Daimler AG, has unveiled its local brand, BharatBenz, as part of increasing its presence in Indian market. The company is expect to roll out medium and heavy duty trucks from its manufacturing plant at Oragadam, near here, by the third quarter of calendar year 2012.

The new brand would offer Indian customers the entire range of trucks from six to 49 tonnes across various applications. The company is also planning to increase its R&D strength. It already has a team of 500 R&D experts here and plans to double that number in next two years.

India has become the second largest market for medium and heavy duty trucks. By 2020, it is expected that truck industry will double.



BP, Reliance in $7.2bn deal

British firm to buy 30% in RIL's oil & gas fields, investment may touch $20 bn.

In the biggest foreign direct investment (FDI) into India, BP, the world's fourth-largest energy company, will pay $7.2 billion for a 30 per cent stake in 23 oil and gas blocks of Reliance Industries Ltd (RIL). The fields include the most prolific KG-D6 off the east coast.

BP would pay RIL $7.2 billion, and completion adjustments, for the interests it would acquire in the 23 production sharing contracts. Future performance payments up to $1.8 billion could be paid based on exploration success resulting in development of commercial discoveries. The two will also enter into a 50:50 joint venture for sourcing and marketing of gas. These payments and the combined investment could amount to $20 billion.

In the particular field that the companies have agreed to work together, it would be an exclusive arrangement.

The 23 oil and gas blocks cover approximately 270,000 square kilometres. This will make the partnership India's largest private sector holder of exploration acreage. Reliance will continue to be the operator under the production sharing contracts. The blocks lie in water depths ranging from 400 metres to over 3,000 metres and produce about 1.8 billion cubic feet gas per day, over 30 per cent of India's consumption and over 40 per cent production.

Railways invites private companies to connect mines with plants

The railways ministry has invited investment proposals from private companies in the country's power and steel sectors to build tracks connecting coal and iron ore mines with their plants, after failing to attract private capital in its earlier attempts.

The move forms part of the ministry's plan to attract private investment in rail connectivity between mineral-rich areas and industrial belts to support increasing demand for these key raw materials.

Called R2ci, the new policy will incentivise developers by offering to return their investment over a period of 10-25 years through a surcharge on freight. This is a substantial improvement over its earlier R3i policy for private sector participation in rail projects, which left out coal and iron ore mines out of its ambit.

The railways will also undertake the operations and maintenance of such lines after the ownership is transferred to it. Companies can apply for the scheme either through setting up special purpose vehicles or through a capital cost model where the cost of construction shall be borne by an individual company, partnership firm or a joint-venture between firms. To eliminate non-serious players, the railways will stipulate a lock-in period for investors.

Investments from tax havens may be blocked

India could restrict investments from tax havens such as Panama and Liechtenstein that are reluctant to enter into tax information exchange agreements as it looks to stop the flow of black money back into the country.

India has signed tax information treaties with Bahamas, Bermuda, British Virgin Islands and Isle of Man. It has completed negotiations with Cayman Islands, Jersey, Monaco, Saint Kitts & Nevis, Argentina and Marshall Islands out of 22 identified countries or jurisdictions. Some jurisdictions, however, have not responded to India's request or are insisting on double taxation avoidance agreements, which could take time to conclude. India is not keen on entering such treaties with tax havens where there is little direct Indian investment. DTAAs are pacts between two countries to avoid both taxing an income earned in one country. Measures could be taken to restrict investments from such places to put pressure on them to enter into formal information sharing treaties.

Provisions identical to general anti-avoidance rule, or GAAR, proposed in the direct taxes code could be invoked against investments from these countries. As per the provisions of GAAR, a commissioner of income tax is empowered to declare an arrangement as impermissible if it has been entered into with the objective of obtaining a tax benefit and lacks commercial substance.

Such investments would be presumed to be for the purpose of availing tax benefits, even if the main purpose of a part or step was to avail tax benefits. The onus is on the tax payer to demonstrate that availing tax benefits was not the main objective of the arrangement. Income-tax commissioners are empowered to determine the tax consequences, when GAAR is invoked.

Buffett takes insurance route to India

Berkshire Hathaway, owned by Warren Buffett, one of the world's most successful investors, will distribute general insurance products in India through its online portal and tele-marketing arm.

The $100-billion Berkshire, which will operate in India through Berkshire India, has become a "corporate agent" of Bajaj Allianz General Insurance.

Berkshire will invest around $10 million and put in place a call centre. Though the company's India debut is low-key, it is being seen as a preamble to a much larger presence. If the market was receptive, Berkshire would expand products to include health, life and travel insurance and other personal lines as well.

To start with, the company, based in Nebraska, US, will focus on motor insurance. It plans to diversify into segments such as property and casualty insurance and reinsurance, utilities and energy, and freight rail transportation and finance.

Insurance and re-insurance are the main businesses of Berkshire Hathaway. There are 18 private general insurance companies in the country and most of them have foreign partners.

Apart from the foreign direct investment (FDI) route, corporate agency is another way to enter the Indian insurance market. With higher margins, it is an attractive option for foreign players to start with.

The FDI limit in the insurance sector is 26 per cent. However, the government is trying to push the long-pending Insurance Amendment Bill, which seeks to raise this to 49 per cent.

Social riders for new bank licences

Prospective bank licence seekers, be it industrial houses or finance companies, will have to prove their commitment to the government's social agenda of 'financial inclusion' if they are to stand any chance of getting one.

Foreign banks that want to expand in India may have to mandatorily set up subsidiaries if they are serious about reaping the fruits of Indian growth, although the new rules are yet to be finalised.

The central bank, which will be issuing an undisclosed number of licences in the next few months, is expected to lean towards taking banking to the poor rather than let a few be housed in cities and become trading power houses instead of aiding real economy.

Forty per cent of the Indian population does not have bank accounts and less than 10% has life insurance cover. Although nationalisation has led to more branches being opened in rural areas, the reach has lagged behind. Private banks, which were given licences in the early 90s, and foreign banks concentrate in metro regions where wealth has been growing since the beginning of economic reforms in 1991.

Many industrial houses such as Anil Dhirubhai Ambani Group's Reliance Capital, and finance companies such as Shriram Transport Finance and Religare Enterprises are expected to seek licences to benefit from the rise in middle-class income. But the financial inclusion condition may deter some as it could be a drag on profitability.

RBI had circulated draft norms on increasing the role of foreign banks in India that allow them to set up branches at their will in smaller cities, barring some security-sensitive regions, and list on stock exchanges with at least a 25% Indian holding. They will have a minimum capital adequacy ratio of 10% and a lower priority sector lending target than domestic private peers. The thrust on a domestic subsidiary model comes after the 2008 credit crisis forced many global banks to cut operations in developing countries.

Banking laws amendment bill gets nod

The government has cleared the Banking Laws Amendment Bill that seeks to align the voting rights in banks in proportion with the equity holding. The amendment will also give the central bank powers to inspect books of financial conglomerates and vet mergers and acquisitions in the banking sector.

At present, the voting rights of a shareholder are limited to 1% in state-owned banks and 10% in private banks irrespective of the equity holding.

The finance ministry in its proposal to remove the voting rights had said that removing the cap will encourage foreign promoters and investors to invest higher amounts if they are allowed to exercise voting rights in accordance with the extent of their shareholding.

The changes in the law will help the aspirants for new banking licences. The Reserve Bank of India is planning to issue the guidelines for banking licences shortly.

The proposed amendment, once passed by lawmakers, can change investors' interest in bank stocks and even increase M&A deals in the banking industry. The takeover code, which is triggered when an investor buys 15% or more in a stock, does not currently apply to private banks due to the 10% cap. Once the cap goes, buying into private bank stocks beyond 15% has to be followed with an open offer.

The banking regulator had earlier opposed the move to put M&A activity under the purview of Competition Commission of India (CCI) and the amendment will ensure that that all bank mergers are kept away from the scrutiny of the CCI. Earlier, a government panel had favoured that only crisis mergers between banks should be exempted from the CCCI's oversight.

Currently, a private bank has to take RBI's permission if investor buys 5% or more shares. There have been cases where the RBI has turned down proposals, forcing investor to offload the extra shares.

The latest amendments, however, will not have any impact on public sector banks that are governed by other Acts as well such as the State Bank of India Act and Banking Companies (Acquisition and Transfer of Undertakings) Act.

CCI gets power to approve big M&As

The Competition Commission of India (CCI) will now be able to vet and approve big mergers and acquisitions in the country, with the government notifying the key provisions of the Competition Act relating to merger control.

RBI forms panel to rework NBFC rules

The Reserve Bank of India aims to revamp regulations for non-banking finance companies (NBFCs) for the first time in 15 years, an industry which reaches out to even the remote parts of the country that banks don't.

The central bank has formed a 15-member committee under former deputy governor Usha Thorat to address issues and complexities relating to finance companies and suggest changes to the legislative framework.

The working group will focus on the definition and classification of finance companies and address regulatory gaps and regulatory arbitrage. It would focus on maintaining standards of governance in the sector and appropriate approach to the supervision of NBFCs.

Non-banking finance companies do lend money and some even take deposits from investors, but have differential treatment when it comes to regulation. The capital and reserve requirements differ and some are not allowed to take deposits. There are benefits and drawbacks for finance companies.

The total share of NBFCs in the financial sector is 9.1%. And the total assets managed as on June 2009 is Rs. 95,727 crore.

Transfer pricing norms: More power to Finance Ministry

Budget 2011-12 has proposed to give more teeth to the finance ministry in matters relating to pricing of goods and services in cross-border transactions between a parent company and its subsidiary.

The additional power with regards to 'transfer pricing' (as it is commonly known) is expected to help the government scrutinise transactions with companies in low-tax jurisdictions and protect its revenues.

It has proposed amendments to Section 92C of the Income Tax Act to allow a transfer pricing officer (TPO) assess international transactions which, in its existing form, may be considered outside his jurisdiction.

To determine the Arm's Length Price (ALP), at which two unrelated parties would do a transaction, the TPO may also get additional powers to summon or call people to enquire or investigate into a matter. At present, these powers are available to officers assessing a transfer pricing case.

The Income Tax Act says that a TPO can determine ALP in case of an international transaction referred to him by the assessing officer. As per the Finance Bill, the jurisdiction of the TPO should be extended to transactions which are noticed by him subsequently in the course of proceedings. To enable the TPO carry out an on-the-spot enquiry and verification, he may be allowed to exercise power of survey.

The Budget has also proposed to change the fixed margin of five per cent for computing ALP. At present, if the variation between the actual price of the transaction and the ALP does not exceed five per cent of the actual price then no adjustment is made by the tax department and the actual price is treated as ALP.

The finance ministry has argued that a fixed margin of five per cent across all segments of business activity and range of international transactions has out-lived its utility. The government will not notify a new variation, which will come into effect from April 1, 2012.

The new range could be higher or lower based on suggestions from TPOs, said a finance ministry official.

In some relief to corporate assesses subject to transfer pricing, the finance ministry has proposed to extend the due date for filing of returns to 30 November from 30 September. This will help the tax department get comparable data on international transactions of companies.

Government raises tax litigation bar for officials

Tightening expected to lead to 25% fewer case filings a month

Litigation in the revenue department is set to fall by about 25 per cent, as the finance ministry has raised the monetary limits for tax officials to approach courts for dispute resolution.

At present, around 2,000 cases are filed every month. The move could bring the number to 1,500 a month.

The new limits for filing appeals by the Income Tax department before the Income Tax Appellate Tribunal (ITAT), high courts and the Supreme Court have been revised to Rs 3 lakh, Rs 10 lakh and Rs 25 lakh, respectively, from Rs 2 lakh, Rs 4 lakh and Rs 10 lakh.

The limits for the Central Board of Excise and Customs (CBEC) have been set at Rs 1 lakh for the Customs, Excise and Service Tax Appellate Tribunal (CESTAT), Rs 2 lakh for high courts and Rs 5 lakh for the Supreme Court.

This means if the verdict goes against the revenue department, it will not be able to approach a judicial body unless the tax or the total revenue involved, including fine and penalty, is more than these limits. The assessee is, of course, free to move higher courts in case of an adverse verdict. The measures are expected to cut litigation by 13 per cent in the case of ITAT and 25-30 per cent each in the case of high courts and the Supreme Court.

At present, a little over 60,000 cases are pending before ITAT, high courts and the Supreme Court. Of these, about 50,000 were filed by the I-T department. At the end of June 2010, the department had filed 20,270 cases in ITAT, 28,457 cases in high courts and 3,916 cases in the Supreme Court. Income tax assesses have filed 11,218 cases in these fora.

Goldman set to buy Benchmark Asset Management

To get 3,000-crore assets management & a ready platform to expand ETF business

Goldman Sachs Group Inc, the world's biggest securities firm that lagged peers Morgan Stanley and Merrill Lynch in India, has agreed to buy exchange-traded fund (ETF) specialist Benchmark Asset Management for Rs. 160 crore to benefit from rising affluence among millions of middleclass people.

The acquisition will give it Rs. 3,000 crore in assets under management, at the bottom of the industry table, but a platform to expand quickly in cities where ETFs are gaining currency because of their ease of investing and low cost.

Goldman, which was idling its licence since September 2008, will be entering an industry that has seen assets fall nearly a fifth since its peak in November 2009 due to regulatory curbs on entry load and commissions to distributors.

The valuation Goldman has paid appears steeper than what other buyers paid in recent transactions. The deal values Benchmark at 4.1% of assets under management. The industry's assets under exchange-traded funds stood at Rs 5,979 crore.

Last year, L&T Finance, the financial services arm of engineering major Larsen and Toubro, bought DBS Cholamandalam Asset Management for Rs 45 crore, valuing it at 1.55% of assets. In 2009, Japan's Nomura bought a stake in LIC Mutual Fund for about 2.5% of assets, and IDFC bought Standard Chartered Bank's fund business for 5.7% of assets.

Proposal allowing FDI in LLPs put on fast track

The government has fast-tracked a proposal to allow foreigners to invest in limited liability partnerships, benefiting sectors such as manufacturing, IT, hospitality, advertising and consultancy where this business structure is popular among investors.

The government had allowed limited liability partnerships or LLPs, which combine features of companies and partnerships, in April 2009. It had, however, failed to build a consensus on a foreign direct investment regime for such firms.

The DIPP had put out a discussion paper in September 2010 for public comments on whether 100% FDI should be allowed in LLPs. The finance ministry has suggested that foreign investment in LLPs should be consistent with the sector-specific rules. This will mean that if in a particular sector only 49% foreign direct investment is allowed then an LLP in that sector will be subject to the same ceiling.

Such alignment will mean that FDI of up to 100% may be allowed, as the current policy opens some sectors to full foreign investment either on the automatic approval route or with prior government approval. However, LLPs with foreign investment would not be prohibited from making downstream investments, says the note.

This is to ensure that LLPs are not used to invest in sectors such as multi-brand retail, where foreign investment is not allowed. These restrictions are consistent with the regime in many countries where LLPs face certain restrictions. In some countries, for instance, they are not allowed to make investments in sensitive sectors such as aviation. The discussion on a liberal foreign investment regime for LLPs comes in the backdrop of the UPA government's decision to have a simpler regulatory framework to attract FDI inflows, which declined by 25% in the first 10 months of the current financial year to $17 billion.

The move to allow foreign investment in LLPs would allow foreign investors the flexibility of using this form of business structure, where business organisations face less stringent norms on meetings and maintenance of statutory records.

It would also help Indian partnership firms, especially in consultancy business, to corporatise and bring in professional practices. Currently, FDI is not permitted in partnerships firms, but is allowed in companies depending on the sectoral cap. In some sectors such as manufacturing, 100% automatic FDI is allowed. Sole proprietorships can get non-resident investment on a non-repatriable basis.

- LLPs were allowed in India in April 2009
- The LLP Act in India is broadly modelled on UK LLP Act 2000 and Singapore LLP Act 2005
- At present, no FDI is allowed in LLPs. The current policy allows up to 100% FDI in companies in most sectors, but none in partnerships
- So far 4,085 LLPs have been registered

Charities, trusts to come under one law for more transparency

Central law expected to enable better monitoring of fund flows, ensure smooth operations in India & overseas

Charities and trusts across religions are set to come under a single law to ring in more transparency and smoothen their running in India and overseas, but with strict checks on the flow of tainted money.

C Achuthan, part-time Member of the Law Commission, has been entrusted with the job of drafting a model law that will replace myriad central and state laws on societies, trusts, endowments and charitable institutions. At present, charities and trusts are in the concurrent list. There are separate laws governing charitable institutions, societies, not-for-profit companies, religious endowments and Wakf. The diverse laws inhibit uniform management practices. An institution registered in one state that wants to expand activities in another has to comply with varied set of legal requirements. A uniform legal framework or a central law will make the management of voluntary organisations easier.

Poor regulation of some voluntary organisations also makes them a preferred channel to launder money, reckons the financial action task force, an inter-governmental body to combat money laundering. The perceived misuse of voluntary organisations for tax evasion has led the finance ministry to curtail huge tax incentives.

Many voluntary organisations that receive foreign donations are registered under the Foreign (Contribution) Regulation Act. A central law is expected to enable better monitoring of the fund flows.

The suggestion to have a uniform law for charities and trusts was mooted by the Second Administrative Reforms Commission. The law ministry is now acting on this recommendation. The idea is to codify the law in a way that monitoring these organisations becomes simpler. Achuthan is understood to be examining the Bombay Public Trusts Act to prepare a discussion paper on the model law.

In parallel, the Planning Commission has also set up a task force to recommend a central law to regulate voluntary organisations in India. It has recommended offering a distinct identity to these organisations, allowing them to operate within India or overseas and setting up a voluntary sector commission.

Renewable energy trading commences

Certificates from 15 registered generators to be traded at power exchanges; CERC specifies price bands

The 108 renewable energy certificates (RECs), from 15 registered renewable energy (RE) generators, would be traded at power exchanges from March 30 and on the last Wednesday of every month thereafter. These RECs have been approved by the Central Electricity Regulatory Commission (CERC).

REC is a tradable receipt, representing a value of one megawatt hour (MWh) of power injected into the grid through renewable resources. This would be issued to a generator of RE upon complying with conditions. Currently, 108 RECs issued represent 140 MW of power. All registered RE generators are either wind or biomass, not solar. Trading is important since all states have to buy a certain proportion of their total power purchase from renewable resources. This purchase of RE power can only be done through power exchanges.

Policies framed under the Electricity Act, 2003, and also the National Action Plan on Climate Change provide for a road map for increasing the share of RE in total generation capacity in the country. Due to uneven spread of RE resources across the country, states have not been able to mandate a fixed renewable energy purchase obligation (RPO) for all states.

To begin with, all states have been advised RPO in the range of one to five per cent of total energy consumption, depending on the availability of RE power. It is one per cent for places like Delhi, which have no renewable resource. States like Gujarat or Tamil Nadu, with abundant wind energy, have a stipulated RPO of five per cent.

Meanwhile, availing power through RECs would push up incremental cost of power by 1.50 paise per unit in the short-term. But from 2015, the incremental cost will be zero considering the fact that the cost of conventional power will also go up in the meantime, a study by CERC estimated.

CERC has specified a price band of Rs 1,200-1,500 per MWh for trading of non-solar RECs while solar RECs will be traded in a band of Rs 1500-3,900 per MWh. The band, called floor and forbearance price band for REC trading, has been prescribed by CERC to avoid wide fluctuation, given the high cost of RE generation compared to conventional power.

While 16 states have already notified their guidelines for meeting RPO, seven have drafted the regulation for final approval. Delhi, the largest power consumer in India has not drafted any guidelines yet, nor have West Bengal or Andhra Pradesh.

Banking M&A to be under purview of central bank

The government, for now, has sought to put to rest the issue of who is to regulate mergers and acquisitions (M&A) in the banking sector, by conferring the power on the Reserve Bank of India (RBI).

The Banking Laws (Amendment) Bill, 2011, tabled in the Lok Sabha recently, comes in the wake of pressure from RBI to clarify the matter.

The Competition Act empowers the government to allow such exemptions. Under the Competition Act, 2002, CCI has the power to regulate combinations (M&A) which cause or are likely to cause an appreciable adverse effect on competition within the relevant market in India. The Act also allows the government to make exceptions in the larger public interest if a particular industrial segment needs to be out of its purview.

The Banking Bill proposes to insert a new section, 2A, in the Banking Regulation Act, 1949, to exempt mergers of banking companies from applicability of the Competition Act. The RBI had expressed reservations about putting bank M&A under the purview of the CCI. It felt any other watchdog would not be able to appreciate the complexities in banks' mergers.

Online bidding for highway projects

With corruption charges flying high, the government has decided to move to electronic bidding of highway projects. For the first time since its inception, the National Highways Authority of India (NHAI) will start e-tendering of projects from April.

NHAI awards projects worth Rs 20,000 crore every year. E-bidding is expected to make the process more transparent. There is no timeline for the transition to the electronic system but will happen as soon as possible.

NHAI has approached the National Informatics Centre to build the platform for electronic bidding and are hopeful that NIC will create the new portal soon.

NHAI has also recently decided to make the bidding process less complex by making one Request for Qualification document valid for a year, instead of submitting the document every time one bids for the project.

Pension bill tabled in Parliament

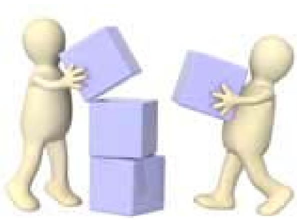
In line with promises made in the budget, the govt is set to notify the Financial Sector Legislative Reforms Commission

The government has moved a step closer to initiating the financial sector reforms it promised in the budget with the introduction of the pension bill in Parliament.

The Pension Fund Regulatory and Development Authority Bill, 2011 will give a greater legal authority to the pension regulator that has been set up through an executive order, and lacks the legislative sanction it needs to develop the pension sector through greater private participation.

The interim regulator currently oversees the New Pension Scheme, or the NPS, which the government hopes will become the flagship scheme for building a retirement corpus. So far, the scheme has failed to make a dent in the non-government sector. It manages the retirement savings of central government and many state employees who are on a defined contribution scheme.

The bill had failed to get parliamentary approval in the previous term of Prime Minister Manmohan Singh's government due to strong opposition from its then Left allies. This time the government has decided to play safe and keep the foreign investment issue outside the bill.



PE biggies get together to set up India NBFC

Goldman Sachs, UK's Ashmore Group, private equity fund Everstone, and a few other funds are coming together to set up a finance house in India.

The new company will focus on corporate lending, structured and mezzanine finance, promoter funding, and debt exposures to industries like real estate and infrastructure.

For the first time, a string of private equity firms will join hands to float a non-banking finance company (NBFC). Till now, MNC banks and international financial services groups have entered the non-banking finance space in India by floating wholly-owned subsidiaries. Besides large foreign banks such as Citibank and Standard Chartered that run NBFC arms, groups such as KKR, Nomura and Temasek (through another entity in Singapore) have set up non-banking subsidiaries in India.

Goldman Sachs, which already has an NBFC subsidiary in the country, will invest in the new firm through one of its private equity funds. Baer Capital and ACP are among other PE funds to participate. The company is likely to begin with an equity capital of around 1,000 crore.

Offshore institutional investors and PE funds have traditionally considered the NBFC route an easier option to step into the Indian financial services sector - be it in retail loans or wholesale assets. Such investors face regulatory hurdles in obtaining banking licences; even if they buy into a bank, there are restrictions to ownership and voting rights (currently capped at 10%). However, a foreign institution can have 100% control in an NBFC.

Despite tighter rules, the scope for regulatory arbitrage between banks and NBFCs continues to exist. Activities such as funding a promoter raising stake through creeping acquisition, buying out partners, or going for new acquisitions are usually done by NBFCs since banks are constrained by caps on capital market exposure and the total amount they can lend to a company or a business group. Moreover, for sectors such as real estate, where many banks are reluctant to increase their exposure, NBFCs have emerged as preferred financiers in recent years. NBFCs subscribe to quasi-debt securities (which are different from convertible debentures) issued by realty and unlisted firms. These are instruments with various structures, linked to interest coupons and tenors that give NBFCs a right to convert into shares at a later date. Often NBFCs sell these securities from their books to wealthy investors and assign the right to underlying securities, which could be a mix of shares and properties, to these investors.

BlackBerry to set up production unit in India

Research in Motion, the manufacturer of BlackBerry handsets, may set up a manufacturing facility in India. The company plans to develop the country into an export hub. If fructified, this would be RIM's first manufacturing facility in the Asia-Pacific region, comprising 18 countries in which BlackBerry has a presence and is growing significantly.

Rising India all but locks out labour unrest

Worker-management disputes falling steadily as equations change in the corporate world

2010 was the most peaceful for India Inc. in over four decades, at least officially. Labour strikes and management lockouts were at their lowest in more than 40 years, government data show.

The trend points to a shift in worker-employer relationship that cuts productivity loss and growing preference among employers in offering contractual jobs that help minimise labour strikes and give businesses room to negotiate.

Labour-management disputes have dropped significantly over the years. The number of strikes and lockouts involving at least 10 workers (excluding political and sympathetic strikes) in the 70s was as high as 2,794 a year, or over seven disputes a day. This fell to around six daily in the 80s, four in the 90s, and to less than two a day during 2000 to 2009. Only 191 disputes were recorded in calendar 2010, or around one every two days.

Last year was also quiet in terms of lockouts, or instances where firms had to prevent employees from working. Labour strikes fell by a fifth. This was despite consumer inflation, or the rise in retail prices for industrial workers, at just over 12% on an average for 2010 being the highest since 1998, when it was pegged at over 13%.

While manufacturing and the mining and quarrying sectors dominated industrial disputes in the 70s and 80s, over the past few years, financial services and other service sector areas have become a bigger source of labour-management unrest. Manufacturing, however, continues to be the single-largest source of disputes. Some of the big strikes over the past few years included those at Jet Airways, auto component maker Rico Auto, Honda Motorcycle and Scooter India, and MRF. Hyundai Motor's India plant at Sriperumbudur has also witnessed minor agitations in the past two years.

According to labour historian Rana Behal, there will be more new sectors where contract labour with peripheral rights dominates and there may be a noticeable decline in the organised sector's bargaining power. The existence of two sets of high-skilled, high-wage employees and low-skilled, low-wage workers may progressively weaken the democratic empowerment of the working-class movement and the pattern of industrial relations.

A S Watson Group eyes India entry

The A S Watson Group, the Hong Kong-based international retail and consumer division of the highly-diversified Hutchison Whampoa Group, is understood to be in talks to have a presence in India. The Group, better known for its Watsons pharmacy retail chain across Asian and European markets, is said to be in discussion with some retailers who specialise in the neighbourhood convenience store format. The Group may invest in the backend of the Indian chains until foreign direct investment (FDI) in retail is opened up.

India among top 10 industrial nations, but behind China

India is now one of the top 10 industrial nations in the world and has also withstood the financial recession with a growing trend of productivity in its manufacturing industries, according to a report by the United Nations Industrial Development Organisation (Unido).

It is, however, far below China, which has secured the second position after the US, says the report, titled 'International Yearbook of Industrial Statistics - 2011'.

During the global economic downturn, the share of industrialised nations such as the US, Japan, Germany and the UK fell sharply, while that of developing countries such as China, India and Brazil has increased, said the report.

The India section, titled 'Performance of Manufacturing Industries of India', notes that the country is now a leader among developing countries in some high energy-intensive segments. In chemical products, basic metals and textiles, the size of Indian manufacturing as a proportion of all developing countries put together is 22.2 per cent, 25 per cent and 16.8 per cent, respectively.

These sectors are also responsible for consuming high-energy resources when compared to global leaders such as Japan, says Unido.

According to the report, some of the manufacturing industries in India that fall under the high energy category were textile manufacturing, paper products, refined petroleum products, chemicals, basic metals and non-mineral items.

India's high growth of industrial production has made significant impact on improvement of various indicators of industrial performance. Higher output growth rates have allowed Indian industry to improve major performance indicators such as labour productivity, structural change (e.g. share of medium and high technology industries in the overall output has gone up), and increase in exports.

Some low-energy manufacturing sectors were tobacco, machinery, motor vehicles and electrical machinery.

The report says India considerably lags behind Thailand, Bangladesh, Taiwan, Malaysia, Vietnam and the Philippines in some sectors such as apparel, office and computing equipment and radio and television.

In India and Indonesia, manufactured exports have recently started growing, whereas in China, Japan and Korea, this had been happening for a while. There has been significant growth in the share of manufactured goods in India's exports. India's manufactured export can still grow fast, because it is not high as compared to other major Asian economies.

Malaysia pact done, India targets deals with Thailand and Indonesia

India is looking to wrap up comprehensive trade pacts with Thailand and Indonesia, eyeing the lucrative health, education and accountancy sectors in the two Asean nations.

While talks with Thailand have started, Indonesia is yet to put a negotiations team in place, despite President Susilo Bambang Yudhoyono announcing in January that talks would start soon. Earlier this year, India signed a comprehensive trade pact with Malaysia.

These pacts could allow Indian professionals longer duration visas, easier renewals and relaxation of criteria such as the economic needs test, wherein a firm hiring a foreigner must prove there is an economic need for it, which can't be fulfilled by domestic workers. Malaysia has offered similar concessions to the country.

India's services negotiations with the 10-member Asean are moving at a slow pace. Singapore was the first Asean country to sign a CEPA with India in 2006. This was followed by the Malaysian CEPA earlier this year, which will be implemented in July.

Australia, New Zealand and China have preferential access to the two markets through comprehensive trade deals. India too can compete once it signs its bilateral pacts. India's negotiations with the Asean on a services and investments pact is moving at a slow pace, with the next round scheduled for May. India and the Asean implemented a free-trade agreement in goods earlier this year, which is yet to be ratified by Vietnam and the Philippines.

New Consolidated FDI Policy announced

Circular 1 of 2011, is the third edition of the Consolidated FDI Policy, has been released. The policy is effective from April 1, 2011The following major changes have been incorporated in the latest consolidation:

(i) Pricing of Convertible instruments

Instead of specifying the price of convertible instruments upfront, companies will now have the option of prescribing a conversion formula, subject to the FEMA/ SEBI guidelines on pricing. This would help the recipient companies in obtaining a better valuation based upon their performance.

(ii) Inclusion of fresh items for issue of shares against non-cash considerations

The existing policy provides for conversion of only ECB/lump-sum fee/Royalty into equity. A discussion paper on the possibility and need for inclusion of additional items into equity had been released by DIPP in September, 2010. After stakeholder consultations, Government has now decided to permit issue of equity, under the Government route, in the following cases, subject to specific conditions:

(a) import of capital goods/ machinery/ equipment (including second-hand machinery);
(b) pre-operative/ pre-incorporation expenses (including payments of rent etc.)

This measure, which liberalises conditions for conversion of non-cash items into equity, is expected to ease the conduct of business.

(iii) Removal of the condition of prior approval in case of existing joint ventures/ technical collaborations in the 'same field"

A discussion paper had been released by DIPP last year on the need for review of this condition. There is a felt need to attract fresh investment and technology inflows into the country, as also to reduce the levels of State intervention in the commercial sphere. Keeping in view the above, Government has decided to abolish this condition. This is expected to promote India as an investment destination and be instrumental in attracting higher levels of FDI and technology inflows into the country.

(iv) Guidelines relating to down-stream investments

The guidelines have been comprehensively simplified and rationalised. Companies have now been classified into only two categories – 'companies owned or controlled by foreign investors' and 'companies owned and controlled by Indian residents'. The earlier categorisation of 'investing companies', 'operating companies' and 'investing-cum-operating companies' has been done away with.

(v) Development of Seeds

In the agriculture sector, FDI will now be permitted in the development and production of seeds and planting material, without the stipulation of having to do so under 'controlled conditions'.

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About Chadha & Co.

Chadha & Co. is a law firm based in New Delhi, India, with a strong Corporate and Commercial practice. The Firm has a specialized inbound practice in advising domestic and foreign corporations doing business in India on all Indian laws and regulations that are relevant to their business.

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