July 2025

DUA ASSOCIATES

IN BRIEF

ESTABLISHING AND OPERATING GCCs IN INDIA: A LEGAL AND REGULATORY OVERVIEW

Introduction

Global Capability Centres (GCCs) have evolved far beyond their original role as operational extensions or outsourcing hubs for multinational corporations. While initially established to capitalize on cost efficiencies for back-office operations, GCCs today are critical pillars of MNCs, driving core business operations with specialized capabilities in IT, finance, analytics, payroll, customer support, legal services, research and development and innovation. They play a key role in driving innovation, enhancing operational efficiency and delivering high-value services across multiple functions.

India has become a preferred destination for GCCs owing to its skilled workforce, English speaking population, cost efficiency and robust infrastructure. As a result, today India hosts over 1,700 GCCs, employing millions and contributing significantly to the global value chain. Key sectors include technology, healthcare and financial services, where these centres play an indispensable role in global operations.

While the rise of GCCs of foreign corporations poses a competitive challenge to large IT outsourcing companies such as GCCs enable internal housing of strategic functions thereby reducing dependency on third-party service providers, it is also opening new opportunities to such outsourcing entities to collaborate with such foreign corporations. The emerging trend is therefore, that several Indian IT service providers are now increasingly adapting by partnering with foreign firms to build, operate and manage their GCCs in India.

GCC Operation Models

GCCs can operate through a variety of models, each providing distinct benefits, enabling organizations to select the most suitable structure based on strategic priorities, cost considerations, regulatory requirements and the desired level of control and flexibility.

The key models are:

(a) Captive Centers - These are entirely owned and managed by the parent company. It offers complete control over governance, operations, pricing strategies, processes and quality standards. This model is particularly beneficial for organizations handling sensitive data or operating in highly regulated industries such as finance and health care, where stringent control is paramount.

(b) Hybrid – This is a blend of captive centers and third-party outsourcing arrangements. In this model, control is retained over core business functions while non-core or peripheral functions are outsourced to third-party service providers. The structure allows organizations to leverage external expertise while achieving an optimal balance of control, cost efficiency and scalability.

(c) Joint Ventures – A collaboration between the foreign parent company and local player, such JV models have the inbuilt advantages of shared risk and investment, besides offering access to local market knowledge and enhanced resource pooling. Through local players, it enables foreign companies to navigate regulatory complexities effectively.

(d) Turnkey or Transfer of Ownership Model or Build-Operate-Transfer – Under this, a third party sets up and manages the center initially (like large IT outsourcing companies in India), transitioning ownership to the parent company over a period of time. It offers reduced initial risk and investment, accelerated market entry and a seamless transition, while providing access to local expertise.

Depending upon the model opted for, establishing and operating a GCC in India requires careful navigation of the country's complex legal and regulatory framework. From choosing the right entity structure to complying with taxation, labour, data protection and sector-specific laws, legal considerations are central to the success and sustainability of any GCC.

The focus here is on providing an overview of the key legal aspects that foreign companies must evaluate while setting up their GCC operations in India (more particularly their captive centers).

The Structuring Process

For a foreign entity planning to establish a GCC in India, the first step is to register an entity in India for which various structures are available including a company, branch office, or a limited liability partnership (LLP), each governed by different legal frameworks, disclosure norms, set-up requirements, tax regimes and compliance requirements. Each structure comes with its own set of regulatory considerations, including registration processes, specific approvals, compliance requirements and tax obligations.

The Companies Act, 2013, is the cornerstone for incorporating entities such as wholly owned subsidiaries, joint ventures and branch offices, providing a comprehensive framework for management and compliance. Alternatively, the Limited Liability Partnership Act, 2008, allows GCCs to operate as LLPs, offering a flexible structure with limited liability. For branch offices, 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, also becomes relevant as the prior approval of the authorized dealer bank/ Reserve Bank of India (RBI) is required for setting up a branch office by a foreign company.

Businesses desirous of operating in specially regulated areas like Special Economic Zones (SEZs) or International Financial Service Centers (IFSCs) are subject to the Special Economic Zones Act, 2005, or the International Financial Services Centers Authority (Banking) Regulations, 2020, respectively, which mandate prior approvals and compliance with specific requirements.

Locational Advantages

The location of GCCs plays a crucial role as it may offer diverse advantages. Metropolitan hubs such as Bengaluru, Hyderabad and Pune boast of robust IT ecosystems, availability of premium commercial spaces and access to a highly skilled workforce. Emerging cities like Noida, Chennai and Ahmedabad are also gaining prominence due to their cost-efficiency, growing infrastructure and proactive State policies aimed at attracting GCC investments. States like Karnataka, Telangana, Andhra Pradesh and Uttar Pradesh have introduced targeted policies to promote and incentivize GCC setups.

SEZs and IFSCs, such as GIFT City in Gujarat, also offer fiscal benefits and regulatory ease such as single window clearance, exemption from customs duty and goods and services tax for procuring goods or services. Direct tax/ income-tax benefits are however currently restricted only to ‘financial services’ units set up in GIFT City.

Taxation of GCCs

Taxation of GCCs in India is governed by a combination of direct and indirect tax laws. The income-tax rates (direct tax) vary significantly across different structures for GCCs in India, affecting their operational costs. A company incorporated in India, even if 100% foreign owned, is treated as a resident entity and taxed on its worldwide income at rates ranging from 25% to 30% depending upon the activities being pursued, turnover and the exemptions and deductions being availed, while also attracting an additional surcharge of 7% or 12% depending upon the income, besides a 4% health and education cess.

A beneficial rate of 22% (plus surcharge of 10% and applicable health and education cess of 4%) can be availed, subject to fulfilment of prescribed conditions. Companies opting for the special taxation regime are exempt from Minimum Alternate Tax (MAT), which is otherwise applicable at 15% of book profits.

Dividends distributed by the company are taxed in the hands of non-resident shareholders at the rate of 20% (plus: (a) applicable surcharge on income-tax – 2% or 5 % depending upon the income slab; and (b) health and education cess of 4% on income-tax and surcharge), with concessional rates available under relevant Double Taxation Avoidance Agreements (DTAA).

An LLP faces a flat income tax rate of 30%, with an additional surcharge of 12% for income exceeding INR 10 million and 4% health and education cess on tax. Profit distributions, however, to partners are tax-exempt, offering a significant advantage, while remuneration to partners is deductible within prescribed limits. In contrast, a branch office is taxed as a foreign company at a higher rate of 35%, with an additional surcharge of 2 to 5 % and health and education cess of 4%, making it a costlier option in terms of tax liability. These distinctions in taxation underscore the importance of selecting an appropriate structure based on strategic and financial considerations.

As GCCs typically engage in cross-border transactions with the related parties/ associated enterprises, transfer pricing requirements also become applicable which ensure that transactions between the GCC and its parent entity are conducted at arm’s length to prevent tax avoidance. Indirect taxes also significantly impact the operations and cash flows of GCCs in India, influencing their cost structures and compliance obligations. These are taxes levied on goods and services rather than on income or profits. Goods and Services Tax (GST) is the primary indirect tax. Other forms of indirect taxes include customs duties, levied on imports and exports and excise duties, applicable to specific goods like petroleum. GST applies to the supply of goods and services and accordingly affects the cost for procurement of goods and services.

GCCs need to efficiently handle input tax credits to reduce tax costs and avoid paying taxes on the same value multiple times. Customs duties applicable on imported equipment or goods can also affect operational costs, particularly for GCCs which heavily require IT equipment and infrastructures. The Customs Act, 1962, offers certain exemptions on import duties for equipment and goods used in export-oriented activities. Further, GCCs, delivering export services, such as ITeS, certain benefits like zero-rated supplies under GST may also be available.

To fully leverage the direct and indirect tax benefits, GCCs must thoroughly understand and effectively manage their indirect tax obligations, ensuring proper utilization of exemptions and correct and timely filing of returns and undertaking other compliances.

Labour and Employment Laws

Labour and employment laws are pivotal for the successful operation of GCCs in India, as they govern workforce management and compliance. Four labour codes namely the Code on Wages; the Industrial Relations Code; the Code on Social

Security and the Occupational Safety, Health and Working Conditions Code have been enacted by the Government of India with the objective of simplifying, standardizing, digitalizing and modernizing Indian labour laws by consolidating twenty-nine (29) Central labour laws.

These Codes, however, are not yet in force as the Central and several State Governments have not completed the process of finalizing and notifying the rules required for their implementation. Hence, presently, GCCs must adhere to the existing labour law regime such as the Industrial Disputes Act, 1947, which regulates *inter alia* investigation and settlement of industrial disputes involving employees of the workmen category and the Shops and Establishments Act (varies from State to State) read with the Industrial Employment (Standing Orders) Act, 1946 (wherever applicable), which oversees working conditions, leave policies and employee welfare.

Furthermore, compliance with social security legislations such as the Employees' Provident Fund Act, 1952, and the Employees' State Insurance Act, 1948, is mandatory for providing benefits to employees drawing salaries below a certain minimum cap. GCCs need to further comply with the prevalent legislations and notifications which strive to provide safety and better work environment and conditions to its women employees. With the rise of hybrid and flexible work models, GCCs must keep pace with evolving legal interpretations concerning remote work and employee data protection.

Data Protection

For GCCs in India, data privacy compliance is a critical aspect of its operations as they typically process volumes of employee, customer and client data. At present, data protection in India 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, framed thereunder, which impose obligations relating to the collection, storage and transfer of sensitive personal data or information. GCCs are required to implement reasonable security practices, obtain consent before processing sensitive personal data and maintain clear privacy policies. In the event of non-compliance, particularly in cases of data breaches resulting from negligence, the IT Act includes provisions for compensation and penalties. While these requirements are currently in force, the legal framework is undergoing a significant transition with the enactment of the Digital Personal Data Protection Act, 2023 (DPDPA), which is expected to come into effect shortly. The DPDPA will fundamentally reshape the Indian regulatory regime on how digital personal data is to be processed.

In addition to domestic requirements, GCCs that handle, or process personal data of individuals based in the European Union or other jurisdictions must also ensure compliance with the General Data Protection Regulation (GDPR). This is particularly relevant where global data flows are involved, such as in shared service models or cross-border outsourcing arrangements. Therefore, GCCs in India must ensure that their data governance frameworks are aligned not only with Indian data protection laws while dealing with Indian data but also with international standards whilst dealing with overseas data.

As the regulatory landscape continues to evolve, it is imperative for GCCs to proactively review internal policies, vendor contracts, data handling practices including mechanism for secured and restricted access to sensitive and confidential personal data and employee training to ensure comprehensive and future-ready compliance.

Intellectual Property (IP) Laws

IP laws such as the Patents Act, 1970, the Copyright Act, 1957, and the Trademarks Act, 1999, play a pivotal role in protecting the innovations, proprietary technologies, software and branding of GCCs.

Given that many GCCs function as hubs for product development or improvement, digital transformation and business process innovation, securing IP is essential. Further, GCCs must ensure that the IP created by their employees or contractors is properly assigned to the parent or group entity through clear and enforceable contractual arrangements. Periodic audits of IP usage and ownership, implementation of confidentiality standards and licensing frameworks are advisable to mitigate risks and align with the global IP strategy of the parent entity.

Foreign Exchange Laws

Foreign Exchange Management Act, 1999 (FEMA) regulates cross-border transactions, including fund transfers, investments, external commercial borrowings and profit repatriation. GCCs must comply with FEMA requirements when receiving funding from their parent company, remitting service fees or royalties abroad, or engaging in intra-group transactions. Non-compliance can lead to penalties, delays in transactions and regulatory scrutiny.

Telecom Laws

GCCs involved in voice-based operations must comply with the Department of Telecommunications' revised guidelines on Other Service Provider (OSP), even though registration is no longer required. OSPs must maintain call detail records (CDRs), usage detail records (UDRs), system logs and configuration details in a prescribed manner and for a prescribed period for audit and compliance purposes.

Shared infrastructure, including EPABX (whether located in India or outside India) and data networks, is permitted, provided security conditions are met. The telephony structure and outlay adopted by OSPs should not result into toll bypass and Public Switched Telephone Network PSTN / PLMN (Public Switched Mobile Network) interconnection in India. While the revised guidelines encourage work from home and work from anywhere culture, OSPs need to ensure that employee operations from remote locations are in compliance with the revised guidelines. While the OSP guidelines have been progressively liberalized to allow OSPs to self-regulate their operations to a great extent, ambiguities in interpretation and the lack of alignment with evolving technologies continue to pose compliance challenges.

Conclusion

As foreign companies continue to outsource their global requirements into India, establishing and managing a GCC in India requires a sound understanding of the legal, regulatory and compliance landscape. From choosing the appropriate legal structure and navigating tax implications to ensuring compliance with employment laws, data protection standards, intellectual property rights and foreign exchange regulations — each aspect plays a critical role in ensuring seamless and compliant operations. Foreign companies must therefore adopt a proactive, well-informed and legally sound approach.

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