

International Business Lawyer

Harmful Tax Competition and the EU Code of Conduct

- Belgian Coordination Centre and Dutch Group Financing Company
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Legal Aspects of Acquiring a Publicly Traded Danish Company



International
Bar Association

**Section on
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Books

Doing Business in India

Bhasin & Co

Juris Publishing, New York
(1999); 1020 pp; US\$225
(hardback); ISBN 1 57823 074 8.

India is the seventh largest country in the world in terms of size and the tenth largest industrialised country in the world. After adopting a process of economic liberalisation in 1991, India became a major business centre in the South Asian region for foreign investors.

Bhasin & Co, one of the premier law firms in India in the field of international business law, through this book *Doing Business in India*, aims to provide detailed analysis of law, policy and procedures relating to business laws of India. *Doing Business in India* is a comprehensive book containing all the legal information as well as full text of various relevant statutory laws and rules, which are required while doing business in India. Moreover, the author has illustrated various significant judgments of the High Courts and the Supreme Court of India.

The book contains 18 chapters, which give detailed information on the following areas: (1) general information about India; (2) incorporation of a company in India; (3) the opening of branch offices; (4) New Industrial Policy; (5) foreign direct investment (general); (6) foreign direct investment (policies and procedures); (7) import/export policy; (8) taxation; (9)

employment and labour laws; (10) the law of contract; (11) arbitration law; (12) the Monopolies and Restrictive Trade Practices Act; (13) banking and finance; (14) product liability and consumer protection; (15) copyright; (16) trademarks; (17) environment protection; and (18) real property.

Each chapter gives detailed illustrations on the relevant aspects of the law. Chapter 2 deals with incorporation and operation of a company while Chapter 3 focuses on the opening of branch offices in India. For business lawyers and investors, the most useful chapters of the book are Chapters 4, 5 and 6. Chapter 4 covers, in detail, the aspects of the New Industrial Policy (NIP), which was enforced in 1991. The NIP, also known as the revolutionary industrial policy of India, made sweeping reforms in order to attract foreign investment into India. Chapter 4 illustrates the salient features of the NIP and industrial licensing policy. Chapters 5 and 6 focus on the policies and procedures relating to foreign direct investment (FDI) which cover the different types of approval process, categorisation of industries permitting FDI, guidelines for the consideration of FDI, repatriation and other relevant issues.

Chapter 9 deals with labour laws and covers conditions of employment, payment of wages and other facilities of employment, termination of employment, safety measures,

labour disputes settlement procedures, etc. Chapter 10 focuses on enforceability, performance and remedy for a breach of contract. The author, in this Chapter, illustrates case law in India. Chapter 11 deals with arbitration law covering composition, jurisdiction, conduct of proceedings, governing law and other relevant issues. In Chapter 12, the author focuses on India's antitrust law – monopolies and unfair trade practice activities, while Chapter 14 focuses on product liability and also covers various cases of the High Courts and the Supreme Court of India. Chapter 13 focuses exclusively on the banking system and banking and non-banking financial companies. In this detailed Chapter, the author illustrates the role and functions of banks, banking operations and transactions, the banking ombudsman, recovery of debts and non-banking financial activities. Chapters 15 and 16 cover various aspects of intellectual property rights (copyright, patents and trademarks) including registration and terms, assignment, infringement, passing off, remedies for infringement, and so on.

Apart from the above topics, the book contains the full texts of several Acts and Rules, relevant to doing business in India: the Consumer Protection Act and Rules, the Foreign Exchange Regulation Act and Rules, the Trade and Merchandise Marks Act and Rules, the Copyright Act

and Rules, the Industrial Disputes Act and Rules, the Patent Act and Rules, the Arbitration and Conciliation Act and Rules, the Monopolies and Restrictive Trade Practice Act, the Contract Act and the Sale of Goods Act. With access to these full texts, the reader has a handy reference tool for deeper understanding and knowledge of Indian laws.

Doing Business in India is a well-written, organised and comprehensive book that covers every aspect of commercial law – from setting up a company to import/export and other commercial activities. Anyone who reads this book will get a clear picture of the policies and procedures relevant for doing business in India. Nevertheless, the book does not aim to be a substitute for hiring an Indian lawyer – law and procedures are always complex, especially when running a business entity in a different jurisdiction to one's own. One of the significant features of this book is the simplicity of language. The book will appeal to international business lawyers, business people, corporate counsel and to all other people who are interested in doing business in India. In a nutshell, the members of Bhasin & Co have written a pioneering work.

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The European Commission's Jurisdiction to Scrutinise Mergers

Morten Broberg
Kluwer Law International (1998);
394 pp; £51 (paperback);
ISBN 9041105492.

The fundamental legal challenge presented by the European Merger Control Regulation (MCR) is twofold: ascertaining the jurisdiction of the Commission and ascertaining the potential effect of the transaction on competition. Two factors make the first prong of this challenge of critical importance. First, the Commission has exclusive jurisdiction *vis-à-vis* the Member States over transactions which fall under the MCR. Secondly, the Commission's authority to intervene against a transaction is commensurate with the jurisdiction of the MCR. This is contrary to the situation in some other countries such as the United States where the authority of the antitrust agencies to scrutinise a merger from a substantive perspective is not limited by their authority to review transactions under the pre-merger notification regime. Therefore, the parties to a concentration can prevent the Commission from examining the anti-competitive impact of the transaction if it falls outside the jurisdiction of the European pre-merger notification regime. Viewed in this light, an understanding of the Commission's jurisdiction under the MCR is essential for lawyers practising in this field.

Morten Broberg has written an extensive book addressing the Commission's jurisdiction under the MCR. The book is part of the European Monographs series

published by Kluwer and edited by K J M Mortelmans. It is divided into ten chapters and contains an extensive bibliography of the literature relating to the MCR. Although the book was published in 1998, it is based on the state of the law as of 1 August 1997. It does, however, incorporate the changes made to the MCR which came into effect on 1 March 1998 by Council Regulation 1310/97. Unfortunately, the author did not have the benefit of the subsequent application and revised guidance notices issued by the Commission.

The work presents an engaging and useful analysis of the nuances and complexities of European merger control. On one level, the jurisdiction of the Commission under the MCR is quite simple; it extends only to concentrations with a 'Community dimension'. However, a good deal of effort goes into determining which transactions have a Community dimension. In reference to the relevant legislation and decisional practice of the Commission, Mr Broberg devotes a significant amount of the book to a descriptive analysis of this concept. The book is replete with footnotes which, from a practical perspective, are of tremendous usefulness.

The book also presents a normative argument regarding the delineation of the Commission's jurisdiction under the MCR. The author focuses on an inherent shortcoming of the MCR: the criteria relied on to determine which concentrations have a Community dimension. Although the MCR is directed at anti-competitive concentrations of market power, the Commission's authority is not