

# India

## International Estate Planning Guide

IBA Private Client Tax Committee

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Updated 8/2025

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## I. Introduction

Indian private client wealth planning is frequently shaped by regulatory considerations and, in some cases, by personal laws. While tax considerations are relevant, they are generally less material than in certain other jurisdictions, as there are currently no Indian taxes on inheritance, gifts between relatives or the settlement of trusts in favour of relatives. Against the backdrop of India's 1.4 billion strong population, its cultural and religious diversity and its rapidly expanding base of high-net-worth individuals, the personal wealth landscape is evolving at an unprecedented pace.

This guide provides an overview of the key themes that drive private client work in India, beginning with succession and incapacity planning and an outline of the personal laws applicable to different faiths. It goes on to examine the role and structuring of trusts and other wealth-holding vehicles, the personal taxation framework and the exchange control regime that governs cross-border transactions. It also explores the impact of evolving family dynamics and non-traditional relationships on estate planning and concludes with a review of elder law and the legal protections available to senior citizens.

## II. Succession and incapacity planning

India does not have a uniform civil law of succession. The transmission of estates is governed by religion-specific personal laws. In cross-border situations, Indian personal law is applicable if the relevant individual is domiciled in India. Hindus (including Buddhists, Jains and Sikhs) are governed by the Hindu Succession Act 1956 (HSA); Muslims are governed by uncodified Islamic law; and Christians, Parsis and others fall under the Indian Succession Act 1925 (ISA). The ISA also sets out the formal legal requirements for the execution, revocation and interpretation of wills, and governs intestate succession for communities not covered by other personal laws.

### A. *Wills and intestate succession*

#### 1. LEGAL FRAMEWORK FOR EXECUTING WILLS IN INDIA

As noted above, the execution of wills in India is principally governed by the ISA. A 'will' is defined as the legal declaration of a person's intention regarding the disposition of their property after their death. To be valid, a will must be in writing, signed by the testator and attested by at least two witnesses. The testator must, at the time of execution, be of sound mind, not a minor and must execute the will voluntarily: that is, free from coercion, fraud or undue influence.

Registration of a will under the Indian Registration Act 1908 is not mandatory but is advisable, as it strengthens the evidentiary value and reduces the likelihood of disputes.

#### 2. EXECUTION, REVOCATION, PROBATE AND ADMINISTRATION OF ESTATES

Upon the testator's death, the executor named in the will may be required to obtain probate, which is a court-issued certification that establishes the validity of the will and authorises the executor to administer the estate. Under the ISA, probate is not uniformly mandatory across the country. It is compulsory in cases where the will is executed within, or relates to immovable property situated within, the ordinary original civil jurisdiction of the High Courts of Mumbai, Chennai or Kolkata. In other parts of India, probate may not be legally required, but institutions such as banks or property registries may still insist on it before releasing the assets or effecting transfers.

An application for probate must be filed before a competent court and must be accompanied by the original will, the death certificate, an inventory or valuation of the estate and details of the beneficiaries. Public and personal notices are issued, and the court will grant probate upon being satisfied as to the authenticity of the will. Where no executor is named, the legal heirs may instead apply for letters of administration.

While the ISA sets out the procedural requirements, the substantive rules of succession are determined by community-specific personal laws. Under these laws, Hindus, Buddhists, Jains, Sikhs and Christians generally have testamentary freedom, whereas Muslims are governed by Islamic principles of inheritance, which limit testamentary freedom to one-third of the estate, unless all the heirs consent otherwise.

### 3. RECOGNITION OF FOREIGN WILLS

It is not mandatory for non-residents to execute an Indian will in regard to assets located in India. A foreign will (executed and proved in accordance with local law) can be recognised in India under Section 228 of the ISA and may be submitted for ancillary probate before an Indian court. That said, individuals with substantial Indian assets may find it administratively convenient to execute a local will to avoid procedural delays and simplify estate administration.

#### *B. Intestate succession: Hindus, Muslims and Christians*

As noted above, personal laws, including those governing intestate succession, are religion-specific. These laws also distinguish between the treatment of male and female intestates. In cross-border or interfaith marriages, additional complexities may arise due to the choice of law, under principles of private international law or the Special Marriage Act 1954 (explained below).

#### 1. HINDUS

To reiterate, the HSA governs intestate succession for Hindus, Buddhists, Jains and Sikhs. For Hindu men, the estate devolves first to Class I heirs (typically including the widow, sons, daughters and mother) who inherit in equal shares. If there are no Class I heirs, the estate passes to more remote classes of relatives in a defined order. For Hindu women, the rules differ. Her property first devolves to her children (including children of predeceased children) and husband. If none survive, the estate may pass to her husband's heirs, then to her own parents and other relatives, depending on the nature and source of the property (whether inherited from her natal or marital family).

Ancestral property is subject to different rules compared to self-acquired property. Prior to 2005, the rights of women in regard to ancestral property were limited. Pursuant to an amendment to the HSA, daughters are now on a par with sons in regard to joint family property.

#### 2. MUSLIMS

Muslim intestate succession follows classical Islamic jurisprudence, with separate doctrines for Sunni and Shia communities. Heirs are categorised into sharers (fixed share recipients), residuaries (who take the remainder) and distant kindred (who inherit in the absence of any heirs in the first two categories). Shares are fixed by law and take effect immediately upon death, leaving limited scope for estate planning.

The estate is distributed after settling any funeral expenses, debts and any valid bequests, restricted to one-third of the estate, unless the heirs agree otherwise.

### 3. CHRISTIANS

Intestate succession for Christians is governed by Chapter II of Part V of the ISA. The rules vary depending on the surviving relatives. If survived by a spouse and lineal descendants, the spouse receives one-third and the remainder is distributed among the descendants. If there are no descendants but kindred relatives exist, the spouse takes one-half. If no spouse survives, the entire estate devolves to the heirs based on a defined order of succession. Indian Christian law provides for equal inheritance rights regardless of gender, with succession based on the proximity of the relationship.

#### *C. Living wills and incapacity planning*

Incapacity planning typically involves two broad types of advanced decision-making: (1) healthcare-related decisions (such as life support, end-of-life treatment or organ donation); and (2) financial and legal decision-making (such as managing property or handling ongoing obligations during incapacity). India currently lacks a comprehensive statutory framework for either of these types of decisions.

On the healthcare side, certain types of advanced decision-making have been judicially recognised. In *Common Cause v. Union of India* [(2018) 5 SCC 1], the Supreme Court upheld an individual's constitutional right to die with dignity and permitted mentally competent adults to execute 'living wills', which are advanced directives to refuse life-sustaining treatment in cases of terminal illness. Initially, the Supreme Court prescribed an onerous protocol for such directives, including notarisation before a judicial magistrate and clearance by multiple medical panels, rendering the framework largely unworkable. In 2023, the Supreme Court revised the process to make it more practical. A living will can now be executed before a notary or gazetted officer and will require validation by a two-tier medical board (one at the hospital and another at the district level) prior to implementation. However, there are limited examples of this procedure being used thus far.

On the financial side, enduring or lasting powers of attorney are not recognised under Indian law. Powers of attorney (whether general or specific) automatically lapse upon the grantor's incapacity. There is also no formal legal mechanism to nominate a financial guardian in advance. As a result, families often resort to informal arrangements, including joint ownership, revocable living trusts or *inter vivos* transfers to preserve access and continuity. However, these methods have limitations and are not a substitute for a formal, durable delegation of authority.

### **III. Personal laws (Hindus, Muslims and Christians)**

India's family law system is a complex interplay of religion-based personal laws and secular statutory regimes. While matters such as marriage, divorce, custody and adoption are largely governed by religion-specific statutes, parallel secular frameworks offer alternatives for those who fall outside or opt out of personal law systems. This chapter outlines the key personal law regimes applicable to Hindus, Muslims and Christians, along with evolving jurisprudence and inclusive statutory developments.

#### *A. Marriage*

##### 1. HINDU LAW

Marriage under the Hindu Marriage Act 1955 (HMA) is treated as a sacrament. The law applies to Hindus, Buddhists, Jains and Sikhs. It mandates monogamy and prescribes a minimum age of 21 for men and 18 for women. Marriages within prohibited degrees are void unless permitted

by custom. Registration, although not compulsory nationwide, is mandatory in some states (for instance Maharashtra). Bigamy is a criminal offence.

## 2. MUSLIM LAW

Marriage (*nikah*) is considered a civil contract under Muslim personal law. A valid marriage requires offer and acceptance (*ijab-o-qubul*), witnesses (in Sunni practice), a dower (*mahr*) and the absence of prohibited relationships. Polygamy is permitted for men, up to four wives. The Prohibition of Child Marriage Act 2006 applies, rendering such marriages voidable at the minor's request. Registration is not compulsory, but is typically recorded in a *nikahnama*.

## 3. CHRISTIAN LAW

The Indian Christian Marriage Act 1872 governs Christian marriages. At least one party must identify as a Christian to be married under this law. The marriage must be solemnised before a licensed minister or registrar in the presence of two witnesses. Registration post-solemnisation is mandatory. Monogamy is mandated, and bigamy is a criminal offence.

## 4. SPECIAL MARRIAGE ACT 1954 (SMA)

The SMA provides a secular legal framework for civil and interfaith marriages. It mandates a 30-day public notice before solemnisation and prohibits bigamy. Religious rites are not required to be performed under the SMA, which provides a uniform legal framework that governs the rights and responsibilities within a marriage. The SMA offers an inclusive mechanism for those opting out of personal laws.

## 5. JUDICIAL RECOGNITION OF COHABITATION AND SAME-SEX MARRIAGE

While live-in relationships are not formally recognised, Indian courts have in certain cases presumed marriage stemming from long-term cohabitation to protect women and children. Same-sex marriages, however, are not legally recognised. In *Supriyo Chakraborty v Union of India* [2023 INSC 920], the Supreme Court declined to judicially enforce the right to same-sex marriage, leaving the issue to the legislature.

### B. Divorce

#### 1. HINDU AND CIVIL LAW

Under the HMA and SMA, divorce may be fault based or by mutual consent. Grounds include cruelty, desertion (two-plus years), conversion, mental illness, communicable disease and presumed death. Women are granted additional grounds, such as bigamy. Mutual consent divorce requires separation for one year and a six-month cooling-off period, which courts may waive in certain cases. While 'irretrievable breakdown' is not codified, the Supreme Court has invoked the principle in exceptional cases.

#### 2. MUSLIM LAW

Muslim men may divorce via a process called *talaq*. The practice of instant *triple talaq* has been declared void and criminalised by the Muslim Women (Protection of Rights on Marriage) Act 2019. Other valid forms, such as *talaq-e-ahsan* and *talaq-e-hasan*, remain permissible. Women may initiate divorce through *khula* (with consent) or *mubarat* (mutual). Judicial divorce is also available under the Dissolution of Muslim Marriages Act 1939, based on specified grounds.

### 3. CHRISTIAN LAW

The Indian Divorce Act 1869 governs Christian divorce. Grounds include adultery, cruelty, desertion and mental disorder. Mutual consent divorce was introduced in 2001. Women may seek divorce on additional grounds, such as sodomy by the husband.

#### *C. Custody and guardianship*

Custody decisions are made with the child's welfare as the paramount consideration, regardless of personal law. Courts often rely on the Guardians and Wards Act 1890 (GAWA), a secular statute, to determine custody and guardianship.

#### 1. HINDU LAW

The Hindu Minority and Guardianship Act 1956 designates the father as the natural guardian, followed by the mother. However, *Githa Hariharan v RBI* [1999 AIR SCW 811] clarified that mothers may act as guardians even during the father's lifetime.

#### 2. MUSLIM LAW

A distinction is drawn between *guardianship* (legal authority) and *custody* (*hizanat*). Mothers typically have custodial rights until the child reaches a specified age (seven for boys; puberty for girls), while fathers remain natural guardians.

#### 3. CHRISTIAN LAW

Courts may issue custody orders under the Divorce Act. GAWA is applied in guardianship matters, with considerations such as the child's age, preferences, emotional bonds and educational continuity.

#### 4. CUSTODY VERSUS GUARDIANSHIP

Custody pertains to daily care; guardianship confers legal rights over the child and/or property. In *ABC v State (NCT of Delhi)* [2015 AIR SCW 3999], the Supreme Court affirmed the right of an unwed mother to be the child's sole guardian without involving the biological father.

#### 5. VISITATION AND CROSS-BORDER ISSUES

Non-custodial parents may be granted visitation or joint custody. India is not a signatory to the Hague Convention on Civil Aspects of International Child Abduction. In *Nilanjan Bhattacharya v State of Karnataka* [2020 INSC 562], the Supreme Court directed repatriation of a minor based on their habitual residence and the child's best interests.

#### *D. Adoption*

#### 1. HINDU LAW

The Hindu Adoptions and Maintenance Act 1956 (HAMA) governs adoption for Hindus, Buddhists, Jains and Sikhs. Adoption under HAMA confers full legal parentage. Consent of the spouse is mandatory for married adopters. Gender-based restrictions apply, for instance, a male cannot adopt a female child without special permission. The adopted child must be under 15 years, unless custom provides otherwise.

## 2. SECULAR FRAMEWORK

The Juvenile Justice (Care and Protection of Children) Act 2015 (the 'JJ Act') offers a religion-neutral mechanism for adoption. The Central Adoption Resource Authority (CARA) regulates the process. All Indian citizens may adopt under this law, including single persons and non-traditional families. Court approval is necessary for finalisation.

## 3. JUDICIAL PRECEDENTS

In *Shabnam Hashmi v Union of India* [2014 AIR SCW 1329], the Supreme Court affirmed that the JJ Act allows individuals from all faiths, including those whose personal law prohibits adoption, to adopt under secular law.

## 4. INTER-COUNTRY ADOPTION

The CARA oversees international adoptions in accordance with the Hague Convention. Non-resident Indians and foreign citizens must follow additional safeguards to ensure the child's welfare and prevent trafficking.

## 5. SAME-SEX COUPLES

Joint adoption by same-sex couples is not permitted due to the non-recognition of their legal status. However, single LGBTQ+ individuals are not barred from adoption. Under the CARA guidelines, single women may adopt children of any gender, while single men may adopt only boys.

## IV. Trusts and wealth-holding structures

### A. *Types of trusts*

Trusts in India may be broadly categorised as public or private trusts, depending on their purpose and beneficiaries. Within private trusts (which are typically used by families for succession, asset protection or incapacity planning) further classifications arise based on their structure and mode of operation. These include revocable or irrevocable trusts (based on the settlor's right to modify or revoke the trust), and determinate or discretionary trusts (based on whether beneficiaries and their entitlements are fixed or subject to trustee discretion). There are also specialised trusts, such as business trusts and securitisation trusts, although these serve regulatory or commercial objectives rather than personal estate planning purposes.

### 1. PRIVATE TRUSTS VERSUS PUBLIC TRUSTS

Private trusts are governed by the Indian Trusts Act 1882 and are established for the benefit of identified individuals. They are commonly used for succession planning, asset protection, incapacity planning and other purposes. Private trusts may be either determinate (where the share of each beneficiary is fixed) or discretionary (where distributions are left to the trustee's discretion).

Public trusts are purpose-based trusts set up for charitable and religious reasons. They are either governed by state-specific legislation or, in some states, they are uncodified and are governed by general principles of trust law. These trusts are subject to more rigorous registration, governance and compliance requirements.

### 2. REVOCABLE VERSUS IRREVOCABLE TRUSTS

A trust may be revocable or irrevocable, depending on the settlor's intention and the terms of the trust deed. Revocable trusts allow the settlor to revoke the trust during their lifetime and are typically disregarded for income tax purposes, with income taxed in the settlor's hands under Section 61 of the Income Tax Act 1961 (ITA). In contrast, irrevocable trusts are recognised as separate taxable entities. Irrevocable discretionary trusts, in particular, are used for family governance and asset protection.

## *B. Taxation of trusts*

### 1. DOMESTIC TAX TREATMENT

The taxation of private trusts in India is governed by Sections 161–164 of the ITA and depends on the nature of the trust and its beneficiaries. The trustee is responsible for filing the trust's income tax return and ensuring compliance with the procedural obligations. Trusts are taxed at a single level (either in the hands of the settlor, trustee or beneficiaries).

Revocable trusts are treated as transparent structures, with all income taxed directly in the hands of the settlor. Irrevocable determinate trusts, where the beneficiaries and their respective shares are clearly defined, are taxed in the hands of the trustee as a representative assessee, at rates applicable to each beneficiary. In contrast, irrevocable discretionary trusts, where beneficiary shares are not specified, are generally taxed at the maximum marginal rate.

Public charitable trusts follow a separate tax regime. If they are exempt from registration, they are not taxable on their income subject to conditions regarding the use of funds. Donations to such trusts are also partially deductible.

### 2. CROSS-BORDER TRUSTS

Where private trusts involve offshore elements (such as non-resident settlors or beneficiaries, or foreign assets) additional Indian tax and regulatory considerations apply. Indian resident individuals who are trustees, beneficiaries, settlors or signatories of foreign trusts need to disclose such roles as part of their annual tax filings.

These issues become particularly important where Indian families settle offshore trusts or act as protectors or beneficiaries in cross-border structures. Given the heightened regulatory scrutiny and complexity involved, such structures require careful tax planning and periodic compliance reviews.

## *C. Rights and responsibilities of parties to a trust*

Trustees in India are fiduciaries, bound by both the terms of the trust deed and the general law set out in the Trusts Act. They are bound by obligations of no conflict and no profit vis-à-vis trust property, which includes a duty to act loyally and impartially, manage the trust prudently and not derive personal benefit from the trust unless expressly authorised. Trustees must act jointly unless the deed provides otherwise. In case of ambiguity or dispute, trustees may seek guidance from civil courts under Section 34 of the Trusts Act.

Beneficiaries are entitled to be informed of the existence and terms of the trust, to receive distributions (where applicable) and to hold trustees accountable for compliance with the trust deed. In the case of determinate trusts, beneficiaries may compel specific performance. In regard to discretionary trusts, beneficiaries do not have a fixed entitlement, but may still challenge trustee actions that are arbitrary or *mala fide*.

It is important to note that Indian trust law does not recognise the common law principle of dual ownership. Legal ownership, as per Indian trust jurisprudence, vests exclusively with the

trustee, and beneficiaries have only *in personam* rights against the trustee and not *in rem* rights over trust property. This is a key conceptual difference from many common law jurisdictions.

Once a trust is validly constituted and the trust property has vested in the trustee, the settlor generally relinquishes legal control. However, settlors may reserve certain powers (such as the ability to replace trustees or provide investment guidance), subject to regulatory and tax considerations. Excessive retention of control, such as unilateral powers to amend or revoke the trust, can impact the legal characterisation of the trust and may attract adverse tax consequences, although there is limited case law in this regard.

## **V. Personal taxation framework**

### *A. Overview of Indian tax regime*

India does not currently impose estate duty or inheritance tax. Consequently, income tax forms the most significant fiscal consideration for private clients. The income tax regime is governed by the ITA, which adopts a head-of-income approach. Income is classified under five heads, as follows:

- salaries;
- income from house property;
- profits and gains from a business or profession;
- capital gains; and
- income from other sources.

### *B. Rates and key features*

India's individual tax regime offers two options. Under the old tax regime, individuals are subject to a maximum marginal rate of approximately 30 per cent, with a surcharge ranging from 10 to 37 per cent depending on income levels. This leads to an effective peak rate of around 42.74 per cent for income exceeding US\$600,000. A health and education cess of four per cent is also levied on the tax and surcharge. The new regime, which is now the default, caps the surcharge at 25 per cent, reducing the effective peak rate to approximately 39 per cent. Capital gains are taxed at different rates, depending on the nature of the asset and the holding period.

As of 23 July 2024, long-term capital gains on listed securities exceeding US\$1,500 (approx) are taxed at 12.5 per cent without indexation, while short-term gains on such securities are taxed at 20 per cent. Gains from the sale of real estate and other non-equity assets are taxed at 20 per cent with indexation if held long-term and at applicable slab rates if held short-term. For individuals and Hindu Undivided Families (HUFs), there is an option to pay tax at 12.5 per cent without indexation or 20 per cent with indexation. For all other taxpayers, the applicable rate is 12.5 per cent without indexation. Dividends from Indian companies are taxed in the hands of shareholders at applicable slab rates, but the surcharge on such income is capped at 15 per cent.

Tax rates for companies vary based on their structure and eligibility. New manufacturing companies under Section 115BAB of the ITA are taxed at 15 per cent, while companies opting out of exemptions under Section 115BAA of the ITA are taxed at 22 per cent. In other cases, domestic companies may be taxed up to 30 per cent. Foreign companies are taxed at 40 per cent and partnerships and limited liability partnerships (LLPs) are taxed at 30 per cent, in each case with applicable surcharge and cess.

### *C. Tax residency and its implications*

Residency for tax purposes in India is generally determined based on the number of days an individual is physically present in the country during a financial year. The ITA classifies individuals into the following three categories for tax purposes:

- resident and ordinarily resident (ROR),
- resident but not ordinarily resident (RNOR); and
- non-resident (NR).

An individual is considered resident if they are present in India for 182 days or more in a financial year, or 60 days in the year and 365 days in the preceding four years. For Indian citizens or persons of Indian origin (PIOs) visiting India, the threshold is generally 182 days, unless their Indian income exceeds approximately US\$17,000, in which case a reduced 120-day rule may apply. A resident qualifies as a RNOR if they have been non-resident in nine out of the ten preceding years or have spent 729 days or less in India during the preceding seven years.

RORs are taxed on their global income. RNORs are taxed only on Indian income and foreign income arising from a business controlled or profession set up in India. Non-residents are taxed solely on income that accrues or arises in India.

India's push for greater tax transparency has, in recent years, placed a strong focus on the reporting of offshore assets and income. Residents are required to disclose details of all foreign assets and financial interests in the prescribed Schedule FA of their annual income tax return. This includes bank accounts, financial interests in entities, immovable property, trusts and any other specified foreign holdings. Failure to make a full and accurate disclosure can attract significant consequences under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act 2015, including a flat 30 per cent tax on the value of the undisclosed asset, steep penalties and potential prosecution.

#### *D. Estate, inheritance and gift tax*

India does not levy estate duty or inheritance tax, having abolished estate duty in 1985. Inheritances are not taxable in the hands of the recipient. However, income derived from inherited assets, such as rent or gains on sale, is taxable.

Gifts between specified relatives are not taxable. Gifts from non-relatives without consideration are taxable as income under Section 56(2)(x) if their aggregate value exceeds approximately US\$600 in a financial year. Exceptions apply for gifts received under a will, by inheritance or on the occasion of marriage. Courts have held that foreign gifts without adequate documentation may be taxed as unexplained income, whereas documented gifts from donors with proven capacity have been upheld, such as in *DCIT v Lalita Devi Agarwal*.

Cross-border gifting raises additional tax and regulatory issues. For tax purposes, gifts from Indian residents to non-residents are deemed to accrue in India and may be taxable in the recipient's hands, unless a specific exemption applies under the ITA. Conversely, gifts from foreign relatives to Indian residents are generally exempt from Indian income tax, but adequate documentation and proof of the donor's capacity remain essential to withstand scrutiny.

Separately, gifts from abroad may fall within the scope of the Foreign Contribution (Regulation) Act 2010 (FCRA), which imposes registration, reporting and utilisation requirements on the recipient. Non-compliance with the FCRA can result in severe penalties, including cancellation of the recipient's ability to receive foreign funds.

#### *E. Taxation of real estate owned by non-residents*

Under the Foreign Exchange Management Act 1999 (FEMA), non-residents are generally permitted to acquire residential and commercial property in India, but cannot purchase agricultural land, plantation property or farmhouses. Such acquisitions must be funded through permissible channels, typically via inward remittance or funds held in a non-resident account in India.

From a tax perspective, both rental income and capital gains from immovable property situated in India are taxable in India, irrespective of the owner's residency status. Most Indian tax treaties allocate primary taxing rights over such income to India, both for rentals and capital gains. Relief in the form of a foreign tax credit (FTC) may be available in the non-resident's home country, subject to domestic laws and treaty provisions, and should be evaluated before a transaction.

#### *F. Transparency and global reporting*

India is a participant to the Organisation for Economic Co-operation and Development's (OECD) Common Reporting Standard and has expanded its network of tax information exchange agreements. Residents must disclose foreign assets in Schedule FA, and non-compliance attracts penal consequences under the Black Money Act.

The ITA also contains specific and general anti-avoidance provisions, including thin capitalisation rules under Section 94B and the General Anti-Avoidance Rule (GAAR) under Section 96. Indian tax policy increasingly prioritises economic substance and is in alignment with global transparency norms.

## **VI. Exchange control regime in India**

India's rules on cross-border movement of money and assets are governed by the FEMA and the regulations issued by the Reserve Bank of India (RBI). FEMA draws a distinction between current account transactions, which generally relate to day-to-day expenses, such as payment for travel, education or imports of goods and services, and capital account transactions, which involve a change in the ownership of assets, such as buying property abroad, making foreign investments or borrowing and lending internationally. The starting rule is that current account transactions are generally permitted unless specifically restricted, while capital account transactions are generally prohibited unless expressly allowed.

For Indian residents, one of the key routes for moving funds overseas is the Liberalised Remittance Scheme (LRS), which allows up to US\$250,000 per financial year to be remitted for permitted capital and current account purposes. These include investments in foreign securities, the acquisition of immovable property outside India or the establishment of offshore companies and joint ventures, subject to sector-specific rules and general restrictions under the FEMA. Non-residents are subject to parallel rules when acquiring assets in India, such as real estate or securities, with certain categories, like agricultural land, prohibited altogether.

In 2022, the overseas investment framework was comprehensively overhauled through the introduction of the Foreign Exchange Management (Overseas Investment) Rules and Regulations 2022 (together, the 'OI Framework'). This regime simplifies and liberalises outbound investment rules for Indian residents. It permits most overseas investments under the automatic route. However, where the financial commitment by an Indian entity exceeds US\$1bn in a financial year, prior RBI approval is required, even if the investment is otherwise within the permissible limit.

The OI Rules also require prior approval from the central government for investments in specified restricted sectors or geographies. Notably, the OI Framework permits round-tripping structures (ie, scenarios where funds flow from India to another jurisdiction and are reinvested

back into India), so long as they involve only two layers of subsidiaries. This enables Indian businesses to expand globally, while maintaining linkages with Indian operations.

Inbound investments by non-residents are regulated under the Foreign Exchange Management (Non-Debt Instruments) Rules 2019 (the 'NDI Rules'), which govern both listed and unlisted equity investments. Foreign direct investment (FDI) refers to investments in an unlisted Indian company or a ten per cent stake or more in a listed company. The current framework for FDI, articulated by the Department for Promotion of Industry and Internal Trade (DPIIT) through the Consolidated FDI Policy, allows investment either through the automatic or approval route, depending on the sector.

Sectors such as atomic energy, real estate business (excluding construction development) and gambling are entirely prohibited. If neither the NDI Rules nor the FDI Policy imposes any restrictions, 100 per cent FDI is typically permitted under the automatic route. In April 2020, Press Note 3 introduced additional restrictions, mandating prior government approval for any FDI originating from countries that share a land border with India (such as China, Pakistan and others).

Foreign portfolio investment (FPI) is defined as investment below ten per cent in the paid-up equity capital of a listed Indian company. FPIs are typically short-term and governed by both the Securities and Exchange Board of India (SEBI) (Foreign Portfolio Investors) Regulations 2019 and the RBI's master directions. Non-resident entities seeking to invest in unlisted Indian startups or early stage ventures may register as foreign venture capital investors (FVCIs) under the SEBI (Foreign Venture Capital Investor) Regulations 2000. FVCIs must invest at least two-thirds of their investible corpus in unlisted equity or equity-linked instruments and are permitted in sectors like infrastructure, biotechnology and IT hardware/software.

Foreign investors can also participate in India's debt market through instruments such as non-convertible debentures, optionally convertible debentures and external commercial borrowings (ECBs). ECBs allow Indian entities to access foreign debt capital with fewer pricing constraints compared to equity. However, these instruments are subject to minimum maturity periods, end-use restrictions and caps on interest costs. In insolvency situations, debt holders typically enjoy seniority over equity holders under the Insolvency and Bankruptcy Code 2016.

From a private client perspective, cross-border trust structures raise nuanced FEMA considerations, especially as more families hold assets both in India and abroad. While there are no specific FEMA provisions dealing with private family trusts involving non-resident beneficiaries, the RBI has issued clarifications that if a transaction is not permitted under FEMA directly, it cannot be achieved indirectly through a trust. For example, residents may only remit US\$250,000 annually under LRS; repatriation from non-resident ordinary bank accounts by non-residents is capped at US\$1m annually; and gifting shares of Indian companies to non-residents is limited to US\$50,000 per year per donor, subject to approval by the RBI. Trust structures must remain within the four corners of these substantive limits.

## **VII. Evolving family dynamics and non-traditional relationships**

The notion of family in India is undergoing a quiet transformation. While marriage remains the primary basis for legal recognition of domestic relationships, the judiciary and legislature have gradually expanded the ambit to include non-traditional family structures.

One such evolution has been the legal acknowledgement of live-in relationships. Although there is no national legislation specifically governing such arrangements, Indian courts have extended certain protections (particularly under domestic violence laws) to individuals in such relationships. Children born from live-in relationships may be regarded as legitimate and may inherit from their parents. The recent enactment of the Uniform Civil Code in the state of

Uttarakhand has formalised the requirement of registering live-in relationships, thereby granting them a measure of legal visibility and access to certain statutory benefits. Nevertheless, live-in partners remain outside the scope of full marital entitlements in areas such as succession, tax treatment or social security, resulting in a somewhat piecemeal and incomplete legal framework.

Indian succession law has also witnessed progressive developments to safeguard the rights of children born outside of wedlock. Under Hindu law, such children are treated as legitimate for the purpose of inheriting from their biological parents. In the recent decision in *Revanasiddappa v Mallikarjun* [2023 INSC 783], the Supreme Court reaffirmed that children born outside of a legally recognised marriage are entitled to inherit both self-acquired and separate property from their parents. However, they do not have automatic coparcenary rights in Hindu joint family property and cannot claim a share in ancestral assets unless the property is first partitioned and converted into a parent's separate share. Their rights, therefore, remain confined to the estate of their individual parent and do not extend to the larger joint family.

The legal framework around assisted reproductive technologies (ART) and surrogacy has recently been codified through the Surrogacy (Regulation) Act 2021 and the Assisted Reproductive Technology (Regulation) Act 2021 ('ART Act'). These statutes govern medical and ethical standards, licensing and eligibility criteria for clinics, gamete banks and prospective parents. The current law permits only altruistic surrogacy and restricts eligibility to Indian nationals who are either married or single women (widows or divorcees) within defined age brackets. Commercial surrogacy remains prohibited. Following the 2024 amendments of the abovementioned legislation, donor gametes are permitted under certain conditions, as long as one gamete is sourced from the intending parent(s).

The ART Act imposes strict licensing and compliance standards on fertility clinics, aimed at protecting the rights of all parties and preventing unethical practices. That said, access to ART remains limited for unmarried individuals, single men and LGBTQ+ persons, raising concerns around inclusivity and the right to reproductive choice. Indian jurisprudence increasingly acknowledges reproductive autonomy as an extension of personal liberty and privacy, notably in the context of the Medical Termination of Pregnancy Act 1971 (the 'MTP Act'). The amendments introduced in 2021 broadened the category of persons eligible to seek an abortion and increased gestational limits in select cases. Safeguards were simultaneously strengthened to ensure that access to a termination is medically regulated, but not arbitrarily denied.

## **VIII. Elder law and the protection of senior citizens**

India's legal framework for safeguarding the rights and wellbeing of the elderly is anchored in the Maintenance and Welfare of Parents and Senior Citizens Act 2007 (the 'Seniors Act'), enacted in response to the increasing marginalisation of the elderly in modern family structures. The Seniors Act guarantees the right of individuals aged 60 years and above, including adoptive and step-parents, to claim maintenance from their children or legal heirs. This obligation extends beyond financial support to encompass essential needs such as food, shelter, healthcare and dignity in old age. An important substantive protection under the Seniors Act is the ability to void transfers of property made by senior citizens with the expectation of care, where such care is not provided.

These guarantees are enforced through a procedural framework, requiring the establishment of maintenance tribunals at the sub-divisional level. These quasi-judicial forums are empowered to adjudicate claims summarily and direct monthly maintenance, capped by statute, where neglect or refusal to provide care is established. The law also criminalises the abandonment of elderly persons, treating it as a punishable offence. States are required to

supplement the central framework by establishing at least one old age home per district and enacting operational rules to implement the Seniors Act locally.

Judicial interpretation has played a key role in defining the scope of the Act's protections. In *Sudesh Chhikara v Ramti Devi* [MANU/SC/1581/2022], the Supreme Court clarified that for Section 23 to apply, the transfer must be conditional upon the transferee providing basic amenities and needs: a failure to do so would render the transfer void. This principle was further reinforced in *Urmila Dixit v Sunil Sharan Dixit* [MANU/SC/0016/2025], where the Supreme Court held that such conditions must be interpreted liberally to uphold the welfare intent of the legislation, allowing for the cancellation of gift deeds in cases where the transferee fails to ensure the wellbeing of the transferor.

Beyond the Seniors Act, senior citizens are afforded broader legal protections against abuse and exploitation through constitutional principles, criminal law provisions and personal laws. Indian courts have, in some cases, recognised elder neglect as a form of domestic violence. In parallel, the government promotes long-term financial security through targeted savings instruments, such as the Senior Citizens Savings Scheme, which offers assured returns and tax benefits under the ITA. Such schemes aim to support retirement planning and economic independence, complementing the statutory protections for the elderly.