



AGENCY COMPLIANCE

Issues:

- Foreign suppliers can only hire Indian agents who are registered with MOD and/or FinMin.
- Disclosures need to be made on the details of the engagement of the Indian agent, including commissions or fees paid.
- Integrity pacts in the procurement contracts typically contain conditions on the engagement of any person in the capacity of an agent and his/her scope of involvement. These conditions are non - negotiable.
- Use your agents as consultants and advisors so they can offer valuable background assistance to you in responding to SQRs, clarifying MOD communication, formulating responses to tender documentation etc. Do not involve them in any way in interactions with the tenderer as part of the tender process.



ANTI BRIBERY AND CORRUPTION

Issues:

- Involvement of agents in the tender process as the go between (prohibited under law) leads to higher corruption risks.
- Corruption under Indian laws is benchmarked against the concept of "undue influence", which is interpreted widely and includes monetary and non-monetary bribes/influence.
- Investigations for such offences are slow and tedious, with the involvement of multiple enforcement authorities for different offences.
- Senior management of the foreign vendor whose agent is implicated in a corruption offence is at a risk of prosecution unless they can prove that: (i) they were not aware of it despite being proactive; and (ii) they took all measures to prevent it.
- Your local regulations on anti bribery and corruption may be triggered due to corruption in India.

WHAT WE CAN DO FOR YOU

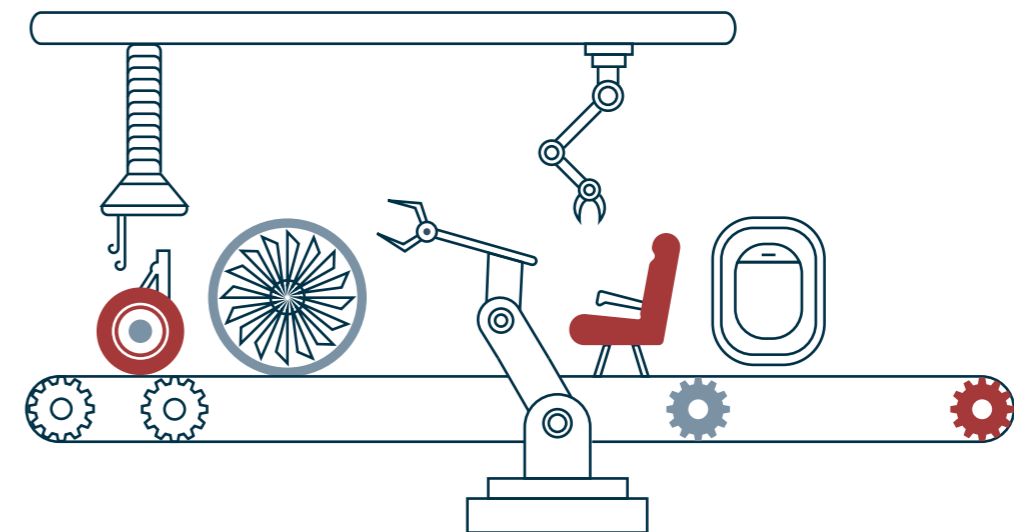
1. We guide you on how to structure your operations in India.
2. We work with you on defining the roles/profiles of your Indian partners.
3. We counsel you on preventing corruption in your projects and build checks and balances to protect your directors and officers from liability.
4. We provide legal advice on the tender process.



JOINT VENTURES AND TECHNOLOGY TRANSFER

Issues:

- While offsets and FDI rules encourage joint ventures and licensed production, finding a partner that has the necessary technical capability is a challenge.
- Licensed production may make the Indian manufacturer (and the end customer) overly dependent on the licensor for updates and upgrades.
- Control of the JV and control of the technology/ production quality are inter-connected, but need to be structured to meet both parties' interests.
- Dispute resolution in case of any conflict between the partners can be a long drawn out process, thereby diluting the value of the JV and affecting production. Protection of technology and the IP of the technology is key in any tech transfer scenario, including JVs.



WHAT WE CAN DO FOR YOU

1. Structure your licensed production or supply agreements
2. Structure your joint venture or collaboration
3. Advise you on strategies to protect your IP