



ECONOMIC
LAWS
PRACTICE
ADVOCATES & SOLICITORS



DEFENCE & AEROSPACE

ABOUT US

Set up in 2001 with the aim of bringing together a diverse set of professionals to deliver effective solutions for clients, Economic Laws Practice (ELP) is today a leading full-service law firm in India with 200+ professionals – lawyers, chartered accountants, cost accountants, company secretaries, sector experts and economists – assisting clients on transactional, advisory, litigation, regulatory, and tax matters.

OUR JOURNEY

- 2001** Start of our journey in Mumbai
5 professionals
- 2003** New Delhi office is set up
17 professionals
- 2007** Office opens in Ahmedabad
36 professionals
- 2008** Office opens in Pune
52 professionals
- 2013** Bangalore and Chennai offices open
ELP crosses the 100 mark and is home to 108 professionals
- 2015** Ranked in top-10 Indian law firms
156 professionals
- 2019** 6 offices pan-India
200+ professionals
Full-service offering with 14 practice groups & sector-focused teams
India-based member firm for Taxand network

SETTING THE CONTEXT

India is the largest arms importer globally and spends close to 2% of its GDP on defence related expenditure, with its defence budget quadrupling from INR 58,587 crores in 2000 to INR 2,95,000 crores in 2018.

While India presents a huge opportunity to the global arms and equipment manufacturers, the following inherent issue often act as entry and operational barriers:

- This industry is extremely capital intensive with expensive No Cost No Commitment (NC NC) trials, which necessitate upfront capital and operational investment without any certainty of success.
 - The industry has to routinely contend with headwinds on account of long-drawn project cycles, 5-10-year time period from conceptualisation to delivery, another 15 years of product support (largely on account of bureaucratic and budgetary issues) with firm and fixed price contracts with no room for escalations from delays, with investors having to face the commercial consequences.
 - Constant Policy evolution needs an agile strategy to participate in this market – for instance, focus on indigenisation by Government of India leads to considerations of aspects such as technology transfer, capital investment, strategic partnerships, quality and delivery control rights, etc.
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The Government of India has gradually been introducing policies and practices that will give the necessary and much needed fillip to the Indian defence industrial base. These include, but are not limited to, the following:

- Formulation of a defence planning committee
 - Specifying a clear order of precedence (according priority to Indian vendors)
 - Indigenously Designed, Developed and Manufactured Products are now the most preferred procurement option under the rules
 - Introduction of Enhanced Performance Parameters – shift in focus from mere '*minimum technical compliance and minimum price*' to '*best available technical product and optimal price*'
 - Formal mechanisms to bring foreign OEMs with technology to Indian private industry
 - Focused initiatives on export promotion (Defence Attaches being called to give specific focus)
 - Increasing FDI to 49%, with an option to go up to 100% with government approval
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Various Government – to Government discussions to forge high-level strategic partnership on the way, however, operational issues still being ironed out – for instance, the swift progress of India-US Defence Technology & Trade Initiative (DTTI) is welcome, even though the lack of a mutually acceptable Classified Information Exchange framework between US and the Indian private sector is hampering the Transfer of Technology (ToT) discussions.

CHALLENGES & IMPLICATIONS FOR BUSINESSES

Inherent delays in award of contracts (most often resulting from multi-level decision making matrix at MoD); contracts are usually fixed with no clause for price escalation	➔	The onus of bearing the cost is on industry from inception to delivery (5-15 years).
Rights/Ownership (of product quality as well as control) on JVs/Tech transfers	➔	At present, given the lack of established offset guidelines and FDI limit of 49%, OEMs would find it difficult to exert control of the JVs in India even as the JV partner/GoI will expect the OEM to be provide product quality assurances.
Restructuring within a parent company	➔	Restructuring can have an impact on existing contracts with MoD, which often places restrictions on amendment of existing contracts. Aspects regarding Novation Agreements in case of change in control, Change in Shareholder's agreements of SPCs (in case of MAKE Programs), JVs Agreements etc. (especially in case of Strategic Partnership) now are being considered but need to evolve. It is critical to clearly understand the clauses which can trigger adverse implications for the OEM.
Tax structuring	➔	Tax inefficiencies – in operations, supply chain, royalty arrangements, profit repatriation, structural considerations – can impact costs heavily in an already cost-competitive sector (thanks to cost benchmarking and/or tendering in-built in the process).
Adherence to Licensing/Compliance requirements	➔	India now has liberalised its defence manufacturing licensing regime and also aligned its export regime (SCOMET) to Wassenaar Arrangement, which requires an appropriate mapping and compliance requirements.
Offset banking and availing offset credits	➔	In the context of large outstanding offset obligations leading to levy of penalties and risking dispute in a program – given the challenges in the offset implementation presently, India is considering opening up of new avenues in offset discharge.

WHAT WE OFFER

ELP combines its deep knowledge of the aerospace, defence and security sectors, along with its experience in helping companies navigate the legal and regulatory landscape in India, to help foreign and domestic companies develop bespoke, commercially-sustainable, risk-minimised solutions, across the lifecycle of the business in the Defence & Aerospace sector.

Business Strategy

- Market entry and business planning support (risk & opportunity assessment, investment and risk analysis, local project sourcing, etc.) in the Defence & Aerospace sector
- Program-specific strategy & tactical consulting
- Decoding the Defence Procurement Procedure (DPP) and Policies and understanding program categorisation and its impact on the Business Strategy
- Defence business valuation, due diligence and attendant transaction support

Regulatory & Compliance

- Drafting of Defence Policy/ Procedures recommendations and proposals
- Expertise in Foreign Direct Investment (FDI), Reserve Bank of India (RBI) & Securities Exchange Board of India (SEBI) regulations
- Due Diligence on Indian Offset Partners legal eligibility (licensing requirements, blacklisting, credit-worthiness etc).
- Minimise cost of capital investment in R&D and infrastructure by availing Government schemes and subsidies
- Maximising incentives offered by Central/ State governments and Defence Industrial Corridors
- Review, advise, draft representations/ opinions on implications (risks and potential opportunities) of the impending new policies which are presently in draft stage such as DPP 2018, Offsets Policy, Telecom PMA Policy.
- Review, advise, draft representations on SCOMET, Industrial Licensing for Defence products/technology, etc.
- Policy-level engagement with the Government, including representation of affected stakeholders before relevant authorities
- Defence Industrial Licensing and other licensing support

Dispute Resolution

- Strategies to avoid long-drawn litigation on a case-by-case basis
- Representation for disputes arising out of past, present or future projects across fora, tribunals and courts
- Advise on methods to resolve pending litigation and blacklisting
- Strategies to mitigate risk of potential litigation
- Advisory and representation support for white collar crime

Taxation

- Optimised tax structuring to avail maximum incentives available
- Permanent Establishment (PE) creation; profit repatriation; structuring tax efficient ToT agreements in relation to royalties, fees for technical services, etc.
- Expertise in understanding and interpretation of Double Taxation Avoidance Agreements (DTAA) with various countries with India
- Transfer pricing support
- Tax implications on subsidy/grants availed from the Government

Corporate & Commercial

- End-to-end M&A and Joint Venture advisory
- FDI consulting for Defence sector and support in JV planning and incorporation
- Advise on JV/ToT agreements to ensure appropriate rights (even with minority shareholding) to demarcate responsibility
- Operational issues such as Contract amendment of existing contracts with MoD, Novation Agreements with MoD in case of change of corporate structure, Change in Shareholder's agreements of SPCs (in case of MAKE Programs), JVs Agreements etc (especially in case of Strategic Partnership)
- Support for Agreements pertaining to Transfer of Technology covering provisions of export control, tax, Intellectual Property Rights, Indigenous Content requirements as per prevailing DPP, Contractual and Legal provisions on Dispute Resolution etc.
- Contract negotiations that enable cash-flows adaptable to investment plans
- Legal and Commercial Support for non-standard contracts and offset contracts negotiations

Export Control

- Advisory and enforcement matters involving trade controls, including export controls and economic sanctions
- Drafting of documents and filings before the Ministry of Commerce, Ministry of External Affairs and other allied Ministries
- Providing export compliance support, including guidance on anti-bribery laws and international trade sanctions
- Export compliance and comprehensive risk assessment for equipment being imported / exported for TEC / Proto Development / Field Trials
- Representation regarding import and export transactions and acquisitions of all kinds

Real Estate

- Mapping location trends in order to identify the optimal locations and sites for operations
- Land acquisition support, including title search, diligence, etc.
- Advise on project development & construction contracts
- Negotiating and securing business incentives from the concerned authorities
- RERA compliance

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