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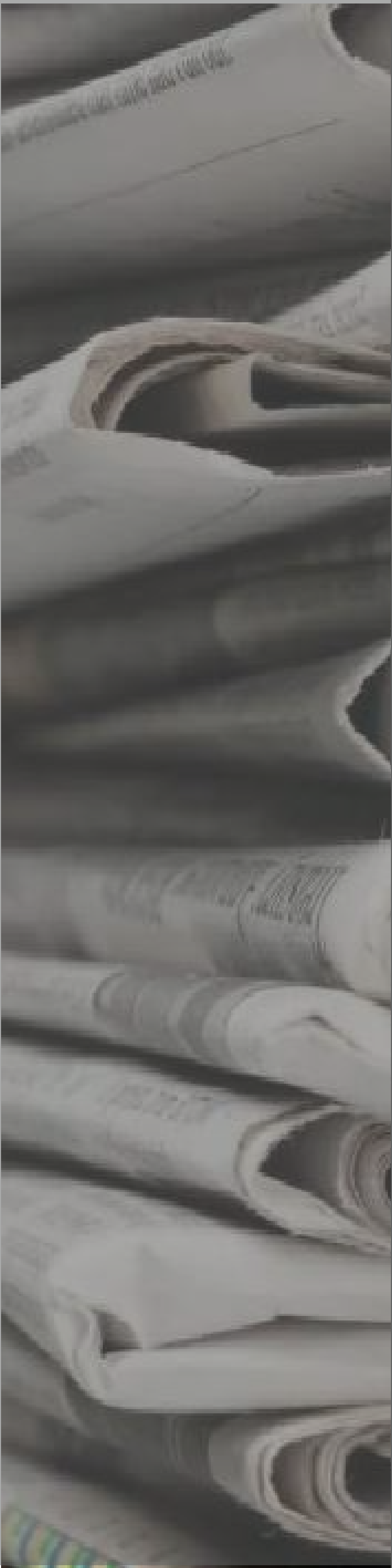
MAKE IN INDIA MITTELSTAND!

Rödl & Partner

NEWSLETTER

Investment Support for German Mittelstand Enterprises



IN THIS ISSUE:

Article provided by:

Rödl & Partner

Economic Overview

For the past six weeks, the whole world was looking to India with anticipation with the world's largest democratic elections underway. These elections have now come to a close as Prime Minister Narendra Modi is set to retain power for a third term. As the government reorganizes and forms itself, we turn to the latest economic developments in the country to give you a brief overview over the most important facts and figures:

The Indian economy finished FY24 on a high note according to the Indian government's Monthly Economic Review[1], exceeding market growth expectations despite significant external challenges. Early signs indicate that this economic momentum will continue into the first quarter of FY25. Strong trends in key growth indicators such as GST collections, e-way bills, electronic toll collections, vehicle sales, purchasing managers' indices, and digital transaction volumes and values reflect the economy's growing strength.

Industrial activity is on the rise, evidenced by increasing industrial capacity utilization and indicators like the Index of Industrial Production and the Purchasing Managers' Index (PMI) for manufacturing.

This also resonates with a survey recently published by the German Engineering Federation (VDMA), according to which Germany's mechanical engineering companies see India as an increasingly appealing market[2]. Nearly two-thirds (62 percent) of its member companies operating in India indicated they anticipate improved business in the coming months. According to the VDMA, about a third (36 percent) expect the business climate in India to remain strong, based on current favorable conditions. Over half (53 percent) of the more than 100 machinery and plant engineering subsidiaries surveyed in India foresee an increase in orders in the near future.

India's construction machinery industry is gaining from public infrastructure investments, which are expected to lower logistics costs for manufacturing firms in the long term. Approximately 59 percent of the respondents already have production operations in India, and of these, 72 percent plan to expand their production capacities. Among the 41 percent who do not yet have local production facilities, nearly a third (32 percent) are contemplating setting up local manufacturing. The report further notes that India is currently the 14th largest buyer of German machinery and equipment, with exports to India having grown significantly in recent years.

Additionally, fixed investment is accelerating[1], driven by the government's emphasis on capital spending, which is also spurring private investment. Reserve Bank surveys also show rising consumer confidence and an optimistic industrial outlook.

Macroeconomic indicators are improving as well. Retail inflation dropped to 4.83% in April 2024, the lowest in 11 months. Despite global challenges, India's foreign exchange reserves remain strong, and the Indian rupee has been one of the most stable currencies against the US dollar recently. On the fiscal front, strong trends in general government capital spending during April-February of FY24, along with fiscal consolidation plans in the FY25 Budget, have eased concerns about debt sustainability. Therefore, the key pillars of India's macroeconomic strength—growth, price stability, and fiscal management—are all positively aligned and reinforcing each other.

Despite ongoing geopolitical tensions and fluctuations in global commodity prices, particularly petroleum, which pose significant challenges, the expectation is that the macroeconomic buffers built and strengthened in the post-Covid economic management will help the Indian economy navigate these challenges effectively.

1. ***https://dea.gov.in/monthly-economic-report-table***
2. ***https://www.maschinenmarkt.vogel.de/deutsche-maschinenbauer-finden-indien-attraktiv-a-f5ae0835c39d85ad5e03506c91291999/***

Maja Yadu, MIIM Project Co-ordinator, Roedl & Partner

Labour Law Updates

Maharashtra Labour Welfare Fund (Amendment) Act, 2024

The Maharashtra Labour Welfare Fund (Amendment) Act, 2024 which came into effect on 18 March 2024, introduces revisions in the rate of contributions to be made by the employers and employee towards the Maharashtra Labour Welfare Fund.

In alignment with the same, all the establishments employing 5(five) or more employees are bound to make the revised contributions towards the Maharashtra Labor Welfare Fund. As per the revised rates every employee except those working in the managerial or supervisory capacity shall make half yearly contributions of INR 25 by 15th of July and January every year. The amendment further states that the employer shall pay thrice to the employee's contribution. In other words, for every INR 25 contributed by the employee, the employer shall contribute INR 75 for such employee.

Gujarat Shops and Establishments (Regulation of Employment and Conditions of Service) Act, 2019

The Labour, Skill Development & Employment Department of Gujarat passed a notification on 5 February 2024 in exercise of the powers conferred to it under the Gujarat Shops and Establishments (Regulation of Employment & Conditions of Service) Act, 2019. The said Act empowers the Gujarat State Government to declare that any provisions under this Act can be modified, altered, or exempted to any establishment or class of establishment or any class of workers.

Pursuant to the same, the Gujarat State Government has exempted the establishment of IT related services, IT enabled services and financial services from adhering to the provisions relating to fixed hours of work and spread over of working hours. The exemption granted to such establishments is valid for 2 years.

Karnataka Compulsory Gratuity Insurance Rules, 2024

On 10 January 2024, the Karnataka Government vide notification no. LD 397 LET 2023 had passed the Karnataka Compulsory Gratuity Rules, 2024 ("Gratuity Rules") under section 4A of Payment of Gratuity Act, 1972 ("Gratuity Act"). The Gratuity Act is applicable to all business establishments ranging from factories, mines, oil fields, plantations, ports, railways, motor transport undertakings, companies, and shops and commercial establishments where ten or more persons or/were employed on any day in the preceding 12 months. Section 4-A of the Gratuity Act prescribes requirements on employers to obtain an insurance for their liability to pay gratuity to their employees, and to obtain a registration in this regard.

As per the new Gratuity Rules, all the existing employers falling within the purview of the

Gratuity Act are mandated to obtain a valid Insurance Policy towards their gratuity liability within 60 days from the commencement of these rules i.e., 10 March 2024.

In case of new employers, such insurance is to be obtained within 30 days from the day the Payment of Gratuity Act,1972 becomes applicable to them. After procurement of gratuity insurance all the employers are required to submit an application to the authorized Labour Commissioner or Controlling Authority under the Payment of Gratuity Act within 30 days from obtaining such insurance, thereby intimating that compliance under the rules are carried out.

Under the Gratuity Act, the term “appropriate government” who is empowered to notify the Gratuity Rules is the Central Government for establishments : (a) belonging to or under the control of the Central Government, (b) having branches in more than 1(one)state; (c) that are factories belonging to or under the control of the Central Government; and (d) that are a major port, mine, oilfield or railway company. In all other cases, the ‘appropriate government’ would be the State Government. Since the State of Karnataka is the ‘appropriate government’ empowered to notify the new Gratuity Rules under section 4-A of the Gratuity Act, it follows that establishments solely operating within Karnataka must comply with the new Insurance Rules. However, establishments in Karnataka with offices or branches in other states are presently exempt from fulfilling the requirements outlined in the Insurance Rules.

All the employers should ensure that the premiums are paid on time and policy is renewed on regular basis and intimate the Controlling Authority of the renewal within 15(fifteen) days from the date of renewal of the insurance policy.

The New Gratuity Rules exempt employers who are solely based in Karnataka-

- who have established an approved Gratuity Fund and intend to continue with such arrangement or;
- who have employed 500 or more persons and who establish an approved Gratuity Fund, from taking compulsory gratuity insurance provided that:
    - the exempt employers as referenced hereinabove, are required to submit an application in the prescribed form (Form II);
    - the existing approved Gratuity Fund shall cover the entire liability of all the employees of the establish¬ment and
    - exempt employers as referenced hereinabove will be required to register a gratuity trust with five re¬pre¬sen¬ta¬ti¬ves, a mix of employers and employees, with the with the registration authority notified under the Indian Trust Act, 1882.

The Karnataka Compulsory Gratuity Insurance Rules, 2024, established on 10 January 2024, creates a robust mechanism for employers. In addition to obliging appropriate insurance coverage, these rules place a strong emphasis on accountability and transparency by requiring establishments to register and submit employee details.

Employers, both new and existing, must diligently manage premium payments, ensuring timely policy renewals, and promptly notifying the Controlling Authority of any changes.

The authority, appointed under the Payment of Gratuity Act, also holds the power to recover gratuity from the insurance provider.

Tamil Nadu Labor and Skill Development Department on public utility service.

The Labour Welfare and Skill Development Department of Tamil Nadu vide a notification G.O. (Rt) No. 36 on 6 March 2024 declared that the automobile manufacturing industry of Tamil Nadu to be a public utility service in exercise of the powers conferred under Section 2(n)(vi) of the Industrial Disputes Act, 1947. As per the said section the appropriate Government can declare any industry specified in the first schedule of the Act to be a public utility service for a period of 6 months, if in the opinion of such appropriate Government there is a public emergency or in public interest.

Pursuant to the same, the employers of all the automobile industries in Tamil Nadu are now required to provide their services without any kind discrimination and at a reasonable price. Further, they are prohibited from inflating their prices and indulging into unfair trade practices.

Article provided by:

Deutsche Bank

Mittelstand In Focus
Unlocking Value through Merchanting Trade Transactions

In the endeavour to further economic collaboration between Germany and India, the Make in India Mittelstand, seamlessly integrates a range of support services tailored for German mid-sized companies entering the Indian market. This collaborative effort, facilitated by the Government of India and the Reserve Bank of India (RBI), has given rise to various initiatives aimed at enhancing the ease of conducting business for global entities within the country. In this edition of the Mittelstand in Focus series, we delve into Merchanting Trade Transactions (MTT).

Merchanting Trade Transactions (MTT)

Merchanting Trade Transactions (MTT) refer to trade activities where a company based in one country (the 'merchant') buys goods from another country to sell directly to a third country, without the goods ever entering the merchant's home country. This type of trade is prevalent in global commerce, enabling merchants to act as intermediaries while capitalising on international market discrepancies. MTTs are complex, involving multiple currencies, compliance with international laws, and intricate logistical processes.

Navigating Legal Frameworks for MTT

Historically, the regulatory landscape for MTT in India was stringent, governed by the RBI under the Foreign Exchange Management Act (FEMA) 1999. Previous guidelines-imposed restrictions, constraining the scope of MTTs due to apprehensions regarding their potential misuse for money laundering and other fraudulent activities. The lack of clarity and cumbersome procedural requirements often deterred Indian traders from engaging in MTT.

Acknowledging the potential of MTT in boosting India's trade figures and foreign exchange earnings, the RBI has progressively liberalised regulations. The most significant change came through the RBI circular, dated July 7, 2021, which eased many previous restrictions. Key amendments included:

- Enhanced Monitoring: Despite liberalisation, the RBI has put in place robust mechanisms for monitoring and reporting MTT, to prevent misuse of the liberalised framework for illicit activities.

While the new regulatory framework represents a significant improvement, merchants engaging in MTT face several challenges:

- Global Regulatory Compliance: Merchants must navigate the legal and regulatory

- frameworks of three different countries (seller’s, buyer’s, and their own), which can be daunting and require significant expertise.
- Risk Management: Currency fluctuation, political instability, and default risks are heightened in MTT, given the cross-border nature of transactions.
- Logistical Complexities: Ensuring timely delivery from the seller to the ultimate buyer, without the goods entering the merchant's home country, demands meticulous logistical planning.
- Technology and Infrastructure: Adequate technology and infrastructure are crucial for tracking transactions and managing the complex documentation involved in MTT, which can be a barrier for smaller traders.

General Guidelines for MTT

Authorised Dealer banks may handle the Merchanting Trade Transactions (MTT) subject to the following guidelines:

- For a trade to be classified as merchanting trade, goods acquired shall not enter the Domestic Tariff Area of the Merchant’s country.
- Considering that in some cases, the goods acquired may require certain specific processing/ value-addition, the state of goods so acquired may be allowed transformation subject to the Authorised Dealer bank being satisfied with the documentary evidence and bonafides of the transaction.
- The MTT shall be undertaken for the goods that are permitted for exports/ imports under the prevailing Foreign Trade Policy (FTP) of India as of the date of shipment.
- Authorised Dealer bank shall satisfy itself with the bonafides of the transactions. Further, KYC and AML guidelines shall be strictly adhered to by the Authorised Dealer bank while handling such transactions.
- The entire merchanting trade is to be routed through the same Authorised Dealer bank. The Authorised Dealer bank shall verify the documents like invoices, packing lists, transport documents and insurance documents (if originals are not available, non-negotiable copies, duly authenticated by the bank handling documents, may be taken) and satisfy itself about the genuineness of the trade.
- The entire MTT shall be completed within an overall period of nine months and there shall be no outlay of foreign exchange beyond four months.
- Short-term credit, either by way of suppliers' credit or buyers' credit, may be extended for MTT to the extent that it is not backed by advance remittance for the export leg.

The liberalisation of regulations around Merchanting Trade Transactions by the RBI, marks a positive step towards enhancing India's participation in global trade. However, realising the full potential of MTT requires overcoming the inherent challenges through continued regulatory refinement, technological advancements, and capacity building among merchants. As India moves towards a more open economy, the success of MTT will significantly contribute to the country's trade objectives and economic growth.

Deutsche Bank's Support for Clients

Deutsche Bank stands as a dependable partner for firms willing to invest in the Indian economy. Well, regarded for its unwavering dedication towards the Indian market, robust client relationships, advanced product technology, and global linkage underpinned by stringent governance, Deutsche Bank offers tailored solutions for cross-border transactions in India and automated tools for effective liquidity management and foreign currency risk mitigation.

Deutsche Bank supports our clients through a fully automated platform with a paperless processing workflow - 'Trade Pay'. It is a single dashboard with real-time status updates of all invoices at various stages of the transaction life cycle e.g., SB certifications, export bill settlement, Electronic Bank Realization Certificate (e-BRC) issuance, etc. Trade Pay provides a secured platform for our clients to manage the entire trade workflow online, including invoice details submission in line with local regulations, discrepancy resolution, payment authorization, and reconciliation MIS. It provides full flexibility to customize the transaction workflow as per our client's requirement/ setup.

For more information refer to: A.P. (DIR Series) Circular Nos.106

Manish Singh, Deutsche Bank AG
Rahul Malhotra, Deutsche Bank AG

A multi-pronged approach to improving the dispute resolution ecosystem

Disputes are inevitable in modern-day businesses, and consequently, their effective resolution is crucial to ensure business continuity. India has made significant strides to improve its dispute resolution ecosystem. This follows from a consolidated effort from various parts of the ecosystem such as the Government forming an expert committee to reform arbitration legislation, pro-arbitration judgments, promotion of arbitration institutions, and offering mediation as an alternative to arbitration.

Revamping the arbitration regime

In June 2023, the Government constituted an expert committee comprising legal and industry experts to examine the extant arbitration regime in the country and recommend reforms to the Arbitration and Conciliation Act, 1996 (Arbitration Act).

Significant modifications to the existing laws and even a complete overhaul of the existing arbitration regime are up for consideration. The committee is tasked with analysing the current framework in the country vis-à-vis other developed arbitration foreign jurisdictions and make appropriate recommendations to establish a cost-effective and efficient arbitration regime. The committee will also assess the need for a new legislation as well as feasibility of enactment of separate and independent laws pertaining to domestic arbitration, international arbitration and enforcement of foreign awards. To this end, comments and suggestions have been invited from various stakeholders and a detailed consultative process is underway.

Significant changes are expected in India's arbitration regime in 2024. These are likely to result in lesser judicial intervention in the process and promote faster and more efficient arbitrations.

India International Arbitration Centre (Conduct of Arbitration) Regulations, 2023

On 1 September 2023, the India International Arbitration Centre (IIAC) notified the India International Arbitration Centre (Conduct of Arbitration) Regulations, 2023. These regulations set out in detail the procedure for initiating arbitration under the purview of IIAC, the selection of arbitrators, and the mechanisms for resolving disputes.

Notably, the regulations envisage and provide for conducting emergency arbitration proceedings in cases of extreme urgency. They also offer an option to the parties to have their dispute resolved through a fast-track procedure. Here, the award is to be made within six months from the date of intimation by the Registrar of IIAC to the parties, of the constitution of the arbitral tribunal.

The notification of the arbitration regulations is a significant development in furthering

India's objective of promoting and strengthening its institutional arbitration regime to bring it at par with other international arbitration institutions such as Singapore International Arbitration Centre, London Court of International Arbitration etc.

2024 is set to be a witness to many arbitration proceedings being administered by IIAC. This is likely as Indian business are increasingly recognising the value of institutionally administered arbitrations as they almost always result in faster resolution of a dispute andconsequently result lower time-related costs.

Validity of Unstamped or Insufficiently Stamped Arbitration Agreements

On 13 December 2023, the Supreme Court rendered a landmark and much awaited ruling on the enforceability of arbitration clauses in unstamped or insufficiently stamped documents. It held that an arbitration clause embedded in such a document is not rendered void and unenforceable since non stamping or insufficient stamping is merely a curable defect. Further, an objection as to stamping does not fall for determination of a referral court under sections 8 or 11 of the Arbitration Act. The concerned court must examine whether the arbitration agreement prima facie exists. If the issue is answered in the affirmative, the concerned judicial authority or court is required to refer parties to arbitration or appoint an arbitrator/s, as the case may be.

This was a welcome judgment as in multiple cases prior to the decision, counter parties would try and avoid arbitration at the threshold on the basis that the underlying arbitration agreement was unstamped or insufficiently stamped. This became a regular practice in various proceedings filed under sections 8 or 11 of the Arbitration Act.

An immediate and desirable consequence of this judgment is speedier disposals of applications preferred under sections 8 and 11 of the Arbitration Act. In turn, this would help in decongesting courts and also promote minimum judicial interference by courts and judicial authority.

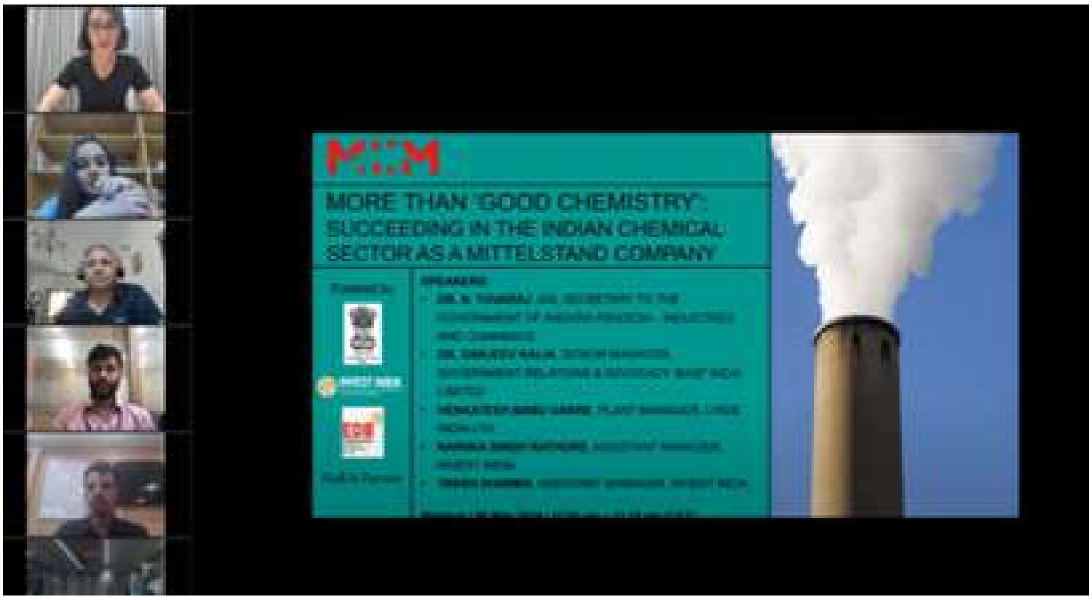
Implementation of the Mediation Act, 2023

In a significant move last year, the Mediation Act, 2023 was enacted to standardise and institutionalise mediations in India which, at present, are largely informal and ad-hoc. More importantly, the law attempts to render finality to mediated settlement agreements by providing for enforcement of the same.

Once the Mediation Act 2023 is implemented, mediated settlement agreements will be enforceable in the same manner as a court decree or arbitration award. This is likely to inspire greater confidence among parties to opt for mediation to resolve disputes as the end-result of the mediation will have the sanction of law. The draft rules and regulations submitted by the Working Group are reported to be currently under inter-ministerial and stakeholder consultations. Further, provisions pertaining to the establishment of the Mediation Council of India, i.e., the regulatory body envisaged under the Act have also been notified.

Kartikey Mahajan, Partner, Khaitan & Co
Kingshuk Banerjee, Partner, Khaitan & Co

Webinar Recap:
More than ‘Good Chemistry’: Succeeding in the Indian Chemical Sector as a Mittelstand Company



On 8th of May 2024, the Make in India Mittelstand Team conducted the webinar “More than ‘Good Chemistry’: Succeeding in the Indian Chemical Sector as a Mittelstand Company” with speakers from Invest India and BASF India Ltd. The webinar also entailed a special focus on the state of Andhra Pradesh.

India's chemical industry is experiencing unprecedented growth, presenting lucrative opportunities for international investors. This webinar provided insights tailored specifically for German Mittelstand companies looking to explore the Indian market.
Specialty chemicals, in particular, are driving significant growth within India's chemical sector. With a focus on niche applications and high value-addition, specialty chemicals offer a unique avenue for collaboration and investment.

The webinar highlighted the dynamics of India's specialty chemical market, explored key trends, regulatory frameworks, investment opportunities, along with an explanation of Andhra Pradesh’s state investment policies. It also pointed out potential complexities of operating within the Indian chemical landscape. The webinar also entailed a study from BASF India Ltd. and highlighted their successful and long-standing journey in the Indian market.

Would you like to know more about the Indian (specialty) chemical sector? Do you have remaining questions? Watch the recording of the webinar **here**, reach out to us for the slides that have been presented or simply contact the MIIM Team for more information – we are happy to help.

Upcoming Event

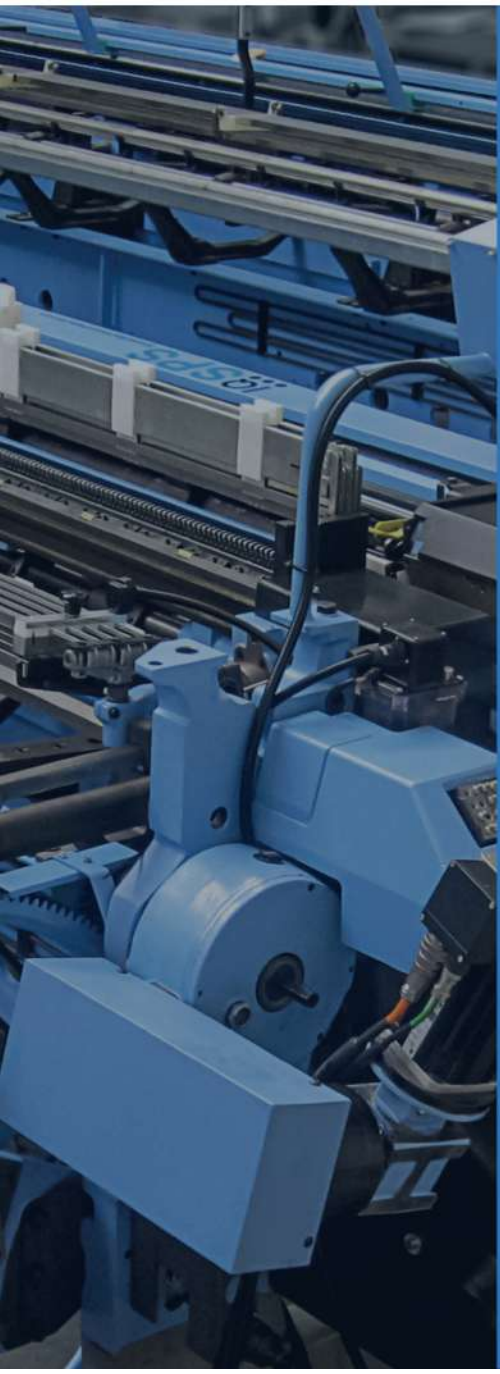
Asia-Pacific Conference of German Business 2024

24 - 26 October 2024, New Delhi

Register here!

Stay tuned for many more events!

We are proud to introduce our new MIIM-member



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Our customers are our priority. We are honored to become part of the MIIM-Program and look forward to deepening our bond with the Indian market.

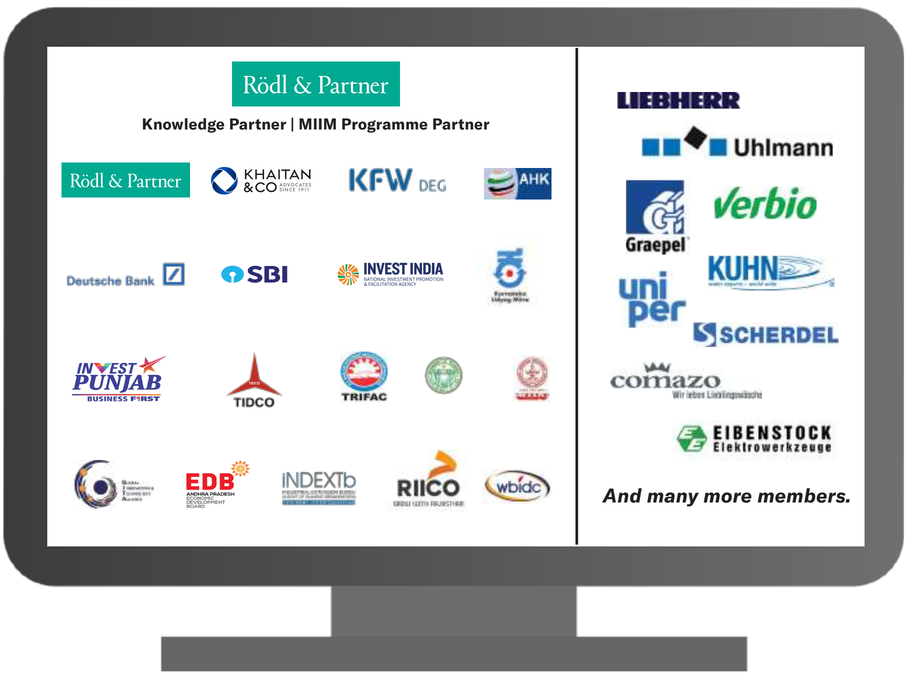
About MIIM

MIIM is a market-entry support programme for German Mittelstand and family-owned enterprises launched by Embassy of India Berlin, Germany in 2015; driven by Government of India's national programme, 'MAKE IN INDIA'.

The objective of MIIM programme is to facilitate investments by German Mittelstand and family-owned companies in India and to provide market entry related services.

The MIIM program has enrolled 209 companies which represent a cumulative declared investment of 1.75 bn EUR to India. MIIM has supported and facilitated the establishment of approximately 114 new manufacturing sites and expansions, along with 54 new subsidiaries. The program also offers numerous workshops—both physical and virtual—and networking events that facilitate knowledge exchange, while also serving as catalysts for meaningful partnerships that drive innovation and growth.

As a part of MIIM program members are exposed to a wide range of business support services under a single platform. The program is being implemented with the support of its Knowledge Partner – Rödl & Partner, Facilitation Partners including Central and State Government Ministries in India and also key industry partners who can support the companies in various aspects of market entry into India. Offered services includes Strategy consulting, M&A, operational market entry support, tax & legal support, financial services and other services.



MAKE IN INDIA MITTELSTAND!

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Investment support for German Mittelstand Enterprises

MIIM Team

MRS. RACHITA BHANDARI
Head MIIM Project Team
Deputy Chief of Mission
Embassy of India, Berlin

DR. DINESH ANTIL
Deputy Head - MIIM Project Team
First Secretary
Embassy of India, Berlin

MR. MARTIN WOERLEIN
MIIM Project Team
Head of India Practice
Rödl & Partner

MIIM Hotline:

Email: miim@indianembassy.de | Phone: +49 30-25795514 | Fax: +49-30-25795520

MIIM Team

www.makeinindiamittelstand.de

www.facebook.com/IndiaInGermany

www.twitter.com/eoiberlin

www.linkedin.com/in/miim-make-in-india-mittelstand

Herausgeber/Editors:
Embassy of India

Embassy of India
Tiergartenstraße 17
10785 Berlin
Deutschland/Germany
https://indianembassyberlin.gov.in/
miim@indanembassy.de

Verantwortlich für Inhalt, Layout, Satz / Responsible for content and layout :

Embassy of India
Tiergartenstraße 17
10785 Berlin
Deutschland/Germany
https://indianembassyberlin.gov.in/
miim@indanembassy.de