January 2025

DUA ASSOCIATES

IN BRIEF

EMERGENCE AND TRANSFORMATIVE EVOLUTION OF GCCs IN INDIA

Introduction

Global Capability Centres (GCCs) initially started as offshore global in-house centres in the Indian banking industry to help cut costs and provide operational support to the service offerings of various multi-national companies/ foreign entities. GCCs, however, in India have gradually evolved from being back offices and cost-arbitrage centres to centres of excellence and growth, becoming the emerging and potential alternative technological and development headquarters. In fact, the Indian GCC ecosystem has become a testing ground for multi-national companies to drive, develop, test and explore new organization-wide transformation initiatives. This is on account of the fact that India has significantly enhanced its infrastructural and technological capabilities, besides developing a superior talent pool which can be leveraged to support international business operations in a cost-effective manner.

In fact, India is being considered as "*The GCC Capital of the World*". According to Zinnov, approximately 23% of Global 2000 MNCs have their presence in India as GCCs. And 6500+ global roles are housed in Indian GCCs, which will cross 30,000+ over the next six years.

Brand India

- **120K+ AI Professionals working across GCC**
- **$ 70.95 Bil. + FDI inflow in 2023-24**
- **7.6% GDP growth rate in 2023-24**
- **$ 64.6 Bil.+ Indian GCC Revenue**
- **117 Unicorns (Only behind US & China)**
- **World's largest youth population**
- **120K+ AI Professionals working across GCC**
- **$151 Bil.+ raised funding since 2014**
- **Third largest startup ecosystem**

The massive success and impact of GCCs on the Indian economy, has led to a central push towards facilitating 'Ease of Doing Business' and a tried-and-tested environment. From directly providing regulatory exemptions to foreign entities to set up GCCs, to driving R&D and people development, India's multi-pronged approach to bolster the GCC ecosystem is a testament to its friendly regulatory, commercial and political environment. The fast expanding Indian GCC ecosystem and the appetite for accelerating this growth, is evidenced by the fact that the share of the Forbes 2000 global companies that have GCCs in India is set to grow from at least 20% in 2023 to 55% by 2030**.**

Key Legal and Regulatory Considerations for Establishing or Operating a GCC in India

A foreign entity looking to set up a GCC in India would need to comply with various central level and state level local laws. This includes compliance with corporate laws depending upon the type of legal entity to be set up for incorporating the GCC and contract laws for governing the GCC's contractual relationships (including intergroup agreements, vendor/ supplier contracts), corporate structuring, regulatory interventions, dispute mitigation strategies, etc.

The following are some key legal perspectives to consider when setting up and operating a GCC in India:

I. Corporate Structuring: The foreign entity would first have to choose the type of legal entity to incorporate the GCC in India. It could be a company, a joint venture, an office, a partnership, or a limited liability partnership. Next, it would have to choose the GCC's corporate structure. This could range between two extremes depending upon the degree of control and ownership the foreign entity exercises over the GCC in India: (1) The traditional or do-it-yourself model, i.e., the foreign entity sets up the GCC and retains complete control and ownership and outsources specialized tasks requiring local support/ advisory; or (2) The build-operate-transfer model, wherein, a third-party service provider either wholly or partly sets up (builds) the GCC, operates and gradually transfers ownership and control to the foreign entity.

Pre and post setup compliance requirements differ depending on how the GCC's has been set up in India. For instance, if incorporated as a company under the Companies Act, 2013, the GCC would also need to comply with various requirements including board structures and composition, directors' fiduciary duties, review and preparation of charter documents (i.e., Memorandum and Articles of Association) and company policies, routine and event-based statutory reporting/ filings, etc.

II. Location of GCC: Given that the location of the GCC plays a significant role in its long-term growth, sustainability and success, outside of looking for proximity to talent hubs, resource availability, operational costs, connectivity, cultural compatibility, etc., it is equally important to assess the regulatory and legal landscape. This is especially important for foreign entities that do not ordinarily operate out of the country where they are desirous of setting up a GCC.

Bearing in mind the immense impact that GCCs can have on the economy of a state, different states are now competing to become the 'destination of choice', by implementing different policies, including attractive regulatory exemptions, to facilitate ease of doing business, to directly/ indirectly invite GCCs and incentivize their growth and expansion. Some states have expressly recognized GCCs under their state-level regulations and policies to incentivize foreign entities to set up more GCCs in their respective territories.

III. Employment and Resourcing: Indian employment and/ or labour laws would govern individuals (irrespective of their citizenship) recruited/ hired to work with the GCC, as the GCC would be operating in India. Considering the fact that accessibility of diversified "human capital" is one of the key reasons why foreign entities establish GCCs in India, the GCC would have to ensure proactive compliance, including but not limited to establishing necessary policies and systems to prevent and redress employee-related grievances at the workplace. The GCC can employ both Indian citizens and foreign nationals, but it should carefully navigate the additional compliances related to recruiting foreign nationals.

IV. Intellectual Property (IP), Data and Technology: The GCC would invariably provide some services for its foreign entity that would be abroad. Hence, it is critical to process the transfer, use, and control of IP and data that it has created or shares with the GCC in India in accordance with the IP, data, and technology laws of India and the host jurisdictions. This includes designing and reviewing intra group arrangements for technology, data and IP, licensing arrangements, and on acquisition of title to, and protection of IP belonging to the foreign entity (to the extent it is used in India) and the GCC. From a data and privacy perspective, it is crucial to ensure compliance on cross-border data transfers, and adopting necessary policies for the data generated/ stored/ transferred in India. Besides complying with Indian laws, the GCC needs to comply with the laws of the originating country with regard to the use, storage, and processing of any data that originates outside India and is subject to the originating country's data privacy regulations/ laws.

V. Taxation: Because of India's robust taxation regime and the GCC's global-servicing model, it is important to seek ongoing advice on transfer pricing, GST-related matters, and taxation (including employee incentives, property, etc.) to evaluate different corporate proposals. The foreign entity should also take precautions to prevent any risks from being classified as a "permanent establishment" considering the Indian tax department would review/ assess the GCC in terms of its control, supervision, and management by the foreign entity, specifically on how employees in India report to the employee at the foreign entity.

GCC Business Models - A Snapshot

While there have been different forms of classification in terms of which the business and working models of GCC could be selected by the entities setting up a GCC, however, from the practical/ feasibility standpoints, the following classification covers the ambit of the GCC business model quite comprehensively:

I. Traditional or Do-it-yourself Model

The traditional or do-it-yourself model, as mentioned above, is a business model where the foreign entity set-up the GCC and retains complete control and ownership of the GCC entity with limited outsourcing of the specialised tasks requiring local support, advisory, etc. This business model has been preferred when the parent entity intends to have full control over the operations of the GCC entity due to various factors including the alignment with its corporate strategy, protection of its intellectual property, nature of its data warranting more focus on the data security, etc.

The setting up of GCC entity under this model would entail incorporation of a legal entity with necessary permits and licenses, developing and implementing the standard operating procedures (SOPs) which needs to be aligned with global standards, migration and integration of systems and data, hiring the local resources, management set-up etc., coupled with training employees with respect to company culture, ethic, code of conducts, values, policies, and processes to ensure the smooth functioning of the GCC entity with its parent and other group entities.

II. Build-Operate-Transfer (BOT) Model

In the Build-Operate-Transfer (BOT) model, a third-party service provider establishes (either wholly or partly) and initially operates the GCC entity. After a specified period (which could be open ended) and when it becomes self-sustainable, the ownership, control including the management and operations of the GCC entity are transferred to the parent entity and/or the group entity.

As this model involves a third-party service provider, it becomes imperative to tactfully prepare and negotiate the terms and conditions, compliance requirements etc., under the service agreements. It would be the responsibility of the service provider to set up the GCC entity including the office space, infrastructure, to develop and ensure the implementation of the initial processes and systems, recruitment, on-going support, training of the local team and management of the daily operations and to ensure the legal and other compliances by the GCC entity.

It would be equally important to chalk-out a detailed transition plan for the transfer of operations of the GCC entity to the parent entity and/ or group entity as per the mutually agreed terms and conditions, timelines, etc., and to ensure its effective implementation for the smooth continuity of the GCC entity.

III. Hybrid Model

The hybrid model does not have any fixed contours, and as the name suggests, is the hybrid/ amalgamation of the above two models with the flexibility to have variation as per the business needs, objectives, resource availability, etc., of the organization willing to establish GCC, thus, making a very wide ambit for GCC structures under this model.

The recent trends have revealed a shift towards hybrid model for setting-up of a GCC which is driven by the need for flexibility and organizations recognizing the value brought by integrating the in-house and third-party services to create a robust and versatile operations. The hybrid model offers a strategic advantage, enabling organizations to optimize costs, leverage specialized expertise and drive business growth.

Conclusion

The GCC landscape in India has undergone significant transformation, driven by technological advancements, changing business needs, and government initiatives. India has emerged as a preferred destination for GCCs, offering a unique blend of cost-effectiveness, talent pool, and supportive ecosystem. The evolution of GCCs in India has significant implications from Indian as well as international law perspective and as India continues to emerge as a preferred destination for GCCs, the legal frameworks must adapt to address emerging challenges and opportunities including in relation to Indian corporate laws, taxation, intellectual property regulations, contractual arrangements between GCCs and parent organizations, more specifically on issues relating to jurisdiction, choice of law, dispute resolution, data protection and risk management strategies.

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