THOMSON REUTERS
PRACTICAL LAW™

Consultancy Agreements (India)

by Nipasha Mahanta, Sayantani Saha and Vikram Shroff, Nishith Desai Associates

Status: **Law stated as at 01-Dec-2023** | Jurisdiction: **India**

This document is published by Practical Law and can be found at: **uk.practicallaw.tr.com/w-032-3063**
Request a free trial and demonstration at: **uk.practicallaw.tr.com/about/freetrial**

A Practice Note addressing the key considerations and legal issues when a foreign entity is considering engaging a consultant in India, including drafting guidance for the consultancy agreement.

Foreign or Indian entities may decide to enter into consultancy arrangements with consultants in India. There are a number of important legal issues that arise on any consultancy, which both parties should be aware of if the arrangement is to be successful. This Note provides an overview of the key aspects of a consultancy arrangement in India. This Note considers:

- The status of a consultant for employment law and tax purposes.
- The tax consequences if the consultant is deemed to be an employee.
- Issues surrounding consultancy arrangements, including the company's liability for the consultant and data protection.
- The common provisions included in the consultancy agreement governed by Indian law, such as duration, services, payment, intellectual property (IP) ownership, confidentiality, data protection, and termination.
- The governing law and jurisdiction of consultancy agreements.
- The execution formalities for consultancy agreements.

Status of the Consultant

In India, there is a risk that a consultant may be deemed to be an employee of the company (commonly known as the risk of misclassification).

Indian courts have held that the basic distinguishing factor between employees and independent contractors is the level of control and supervision exerted by the company engaging them. In an arrangement with:

- An employee, the company has greater or complete control over the employee.
- An independent contractor, the contractor has the freedom and flexibility to perform the services based on their expertise and experience, with minimal supervision and control by the company. An independent contractor can be instructed regarding the nature of the job or services to be performed, but cannot be directed regarding the manner in which they are to be performed.

The Supreme Court of India has held that the test distinguishing an independent contractor from an employee is the company's right and extent of control over how the work is to be done (*Dhrangadhara Chemical Works v State of Saurashtra, 1954 AIR 264*). As set out generally in *Lakshminarayan Ram Gopal & Sons Ltd v. Government of Hyderabad*:

- An employer can tell the employee what to do and how to do it.
- A contractor can be given instructions on what to do, but cannot be told how to carry them out.
- An employee is under more comprehensive control than a contractor.

(*1964 25 ITR 449 (SC).*)

The Court has set out various factors distinguishing an employee from a contractor, including:

- The level of control over the individual.
- The level of integration of the individual within the company's business.
- The power to appoint and dismiss.
- The responsibility to pay remuneration and deduct social security contributions.
- The responsibility to organise work and supply equipment.
- The nature of the mutual obligations between the parties.
- The terms of the contract between the parties.

(*Ram Singh v Union Territory of Chandigarh, 2004 1 CLR 81.*)

Factors Indicating a Genuine Consultancy Relationship

Factors that indicate a genuine consultancy relationship generally include:

- The contractual arrangement with a consultant is a contract for services (on a principal-to-principal basis), where the company pays fees to the consultant for providing the services.
- The company's level of control over the consultant is minimal. The consultant can be directed regarding what to do, but not how to do it.
- The arrangement with the consultant is non-exclusive. The consultant can also provide services to their other clients.
- Consultants are not entitled to typical employee benefits, such as leave, paid time off, holidays, bonus, perquisites, social security, insurance coverage, and allowances.
- The company is not required to reimburse expenses incurred by consultants. Fees typically include and cover all of the consultant's expenses.
- Consultants are not provided with any company equipment, business cards, or an email address (*Silver Jubilee Tailoring House v. Chief Inspector of Shops and Establishments, AIR 1974 SC 37*).
- Consultants are not bound to provide the services from company's premises and can provide services from any remote location (*Silver Jubilee Tailoring House, AIR 1974 SC 37*).
- Consultants are not required to adhere to the same specified times of work that apply to employees.
- Consultants may hire other resources for performing the contractually agreed work.

Factors Indicating an Employee Relationship

Factors indicating an employee relationship include:

- The employment relationship is a contract of services (on an employer-employee basis) where the company pays the employee a salary for their employment.
- The employer can exercise complete control over the activities of the employee. An employee can be directed regarding how to execute tasks, as well as what to do.
- An employment relationship is typically exclusive, and the employee must devote all of their working time and attention to the business of the company.
- Employees are entitled to benefits, such as leave, paid time off, holidays, bonus, perquisites, social security, insurance coverage, and allowances, under the applicable labour laws.
- Employees are provided with an employee ID, equipment, business cards, and an email address, among other things (*Silver Jubilee Tailoring House, AIR 1974 SC 37*).
- Employees must adhere to certain fixed times for their working day.

Other Status

In India, a consultant does not acquire any other status because of the consultancy agreement, aside from potentially being misclassified as an employee (see Status of the Consultant).

India has a unique law, the Contract Labour (Regulation and Abolition) Act 1970 (CLRA), which applies where the independent contractor (as a corporate legal entity whose business is to provide labour to perform services for the client) provides or deploys labour to perform services for the client at the client's premises (section 1(4), CLRA). The CLRA may be triggered depending on the number of individuals deployed at the client's premises. If it applies, a registration is required by the client and a license is required by the contractor (sections 7 and 12, CLRA).

Consultant Deemed an Employee: Tax Consequences

Tax Consequences for the Consultant

A consultant can deduct all business-related expenses from their gross income (sections 36 and 37, Income Tax Act, 1961 (Income Tax Act)).

Employees, however, can only offset certain specified deductions, such as:

- House rent allowance (a deduction allowed on amounts spent by employees on paying rent for their accommodations) (section 10(13A), Income Tax Act).
- Contributions to the public provident fund and life and medical insurance premiums, among other things (Chapter VI-A, Income Tax Act).

As part of the Finance Act, 2020 (Finance Act), the Indian government has introduced an alternative taxation regime for employees in lower tax bands (sections 115BAA and 115BAB, Income Tax Act). However, employees opting to use this regime can only do so if they forego all the deductions available to employees under the standard regime.

Tax Consequences for the Company

Income earned by a consultant falls under the heading "Income from Business or Profession" (with tax deducted at source (TDS) at the rate of 10% (exclusive of surcharge and cess)), while income earned by an

employee falls under the heading "salary" (with a TDS rate of 30% (exclusive of surcharge and cess) for the highest band) (sections 192 and 194J, Income Tax Act; First Schedule, Finance Act). (Surcharge and cess are both levies on high income; the rate of surcharge depends on income, while cess is an additional levy on income tax of 4% plus surcharge.)

If tax authorities conclude that the consultant is in substance an employee warranting a re-classification of the income (and therefore tax rate), they may initiate proceedings against the company under section 201 of the Income Tax Act, for short deduction of tax.

This may involve:

- The levy of simple interest at the rate of 1% per month for the period during which the tax was not deducted (section 201(1)(A)(i), Income Tax Act).
- Recovery proceedings against the company or the re-categorised consultant (section 222, Income Tax Act).
- Imposition of a penalty (up to 200%) for default on the company (section 270A, Income Tax Act). (However, if a good faith reason is established for the short deduction of TDS, it is possible to avoid a penalty.)

The tax authorities can re-open these issues up to ten years from the end of the relevant assessment year.

Consultancy Agreements Governed by Indian Law

Status and Liability

When determining the nature of the relationship between the parties, courts:

- Do not rely solely on the clauses or the terminology used for describing the relationship in the consultancy agreement.
- Assess the practical relationship focusing on the level of control exercised over the consultant's activities.

(*Balwant Rai Saluja & Anr. v. Air India Ltd. & Ors,* 9 SCC 407 (2014).)

To that extent, the company must also adopt adequate practical processes to mitigate any misclassification risk arising from the arrangement (see Status of the Consultant).

To reduce the risk of misclassification, a consultancy agreement can include a statement that:

- The relationship between the consultant and the company is not an employer-employee relationship, and that the consultant is an independent service provider and is entitled to a fee for the service provided.
- The consultant is not eligible to any benefits, allowances, or perquisites given by the company to its employees unless they are specifically extended to consultants.
- The consultant has the freedom to provide services for other clients. This helps to confirm the status of the relationship between the company and the consultant as one of contract-for-service.

Clauses that provide for the consultant to be given company equipment, business cards, or an email address, or to have their expenses reimbursed are likely to increase the risk of misclassification and therefore should be avoided (see Status of the Consultant).

If the consultant is a company the business of which is the provision of labour or manpower to perform services for the client, the arrangement may, subject to the number of individuals deployed at the client's premises, fall within the scope of the CLRA (see Other Status). If the CLRA applies, the agreement with the contractor can incorporate a covenant that the consultant is to:

- Assist the company in obtaining or updating its contract labour registration under the provisions of the CLRA.
- Obtain and validly retain the contract labour licence under the CLRA for provision of the services.
- Comply with all obligations under the provisions of the CLRA and the consultant's licence.

If the contractor is engaging its employees to perform services, the agreement with the contractor can also include a covenant that the consultant is to:

- Be responsible for payment of all:
  - wages, salary, or other benefits to all contract employees assigned to the company under the agreement; and
  - payroll, social security, insurance premiums, and all statutory and contractual benefits including but not limited to salary, allowances, perquisites, bonuses, overtime, leave, holidays, maternity benefits (including crèche, if applicable), provident fund contributions, employees' state insurance contribution, labour welfare fund contribution, profession tax, retrenchment compensation, gratuity, notice pay, and so on.
- Ensure that the wages paid to all contract employees are not less than the minimum wages provided under the Minimum Wages Act, 1948, as revised from time to time. In the case of revision of minimum wages during the term of the agreement, this revision is to be implemented from the effective date of notification.

- Be responsible and liable to provide to the company, on a monthly basis, sufficient details (with all supporting documents) evidencing these payments to all contract employees.
- Indemnify the company and keep it indemnified for non-payment of any amounts to the contract employees.

Appointment of a Substitute

It is not common to include a clause in the consultancy agreement allowing the consultant to appoint a substitute. In fact, the typical practice is to state that the agreement is not assignable by the consultant. This is largely because the consultant may have been engaged by the service recipient based on an assessment of a certain level of expertise and experience, which a substitute may not possess.

Duration

There are no limitations or legal requirements regarding the duration of consultancy agreements. However, a company should limit the duration of consultancy agreements to minimise misclassification risks. The maximum time period for which companies enter into a consultancy arrangement is typically 18 to 24 months.

Even with a shorter duration consultancy arrangement, if the initial period is extended several times, it may increase the risk of misclassification.

Services

It is standard practice to include specific clauses in a consultancy agreement regarding the consultant's duties, including that the consultant:

- Agrees and undertakes to perform certain services as may be required by the company.
- Will perform their services consistently with the standards as may be expected, required, or specified by the company from time to time.
- Agrees to comply with all applicable policies of the company as introduced, replaced, amended, or varied from time to time.
- Will not:
  - represent themselves to any person as an employee or agent of the company; or
  - enter into any contract, agreement, or arrangement with any person that binds the company or creates any liability or obligation on the company.

Payments

Payment by a Foreign Company to a Consultant in India

Under Indian foreign exchange laws, proceeds for export of services must be realised and repatriated to India within nine months from the date of export (regulation 9(1), Foreign Exchange Management (Export of Goods and Services) Regulations, 2015). In the context of a consultancy agreement, this means the consultancy fees must be realised and repatriated to India within nine months from the date of provision of services.

There are no specific restrictions on a foreign entity to remit fees to an India-based consultant. Fees paid in foreign currency are converted to INR through normal banking channels when they are received by the India-based consultant.

Deductions from Payments

It is common to include a clause in the consultancy agreement providing for any sums due to the company to be deducted from the amounts owed to the consultant. The consultancy arrangement is purely contractual in nature and parties can include any obligations they choose, including one on recovery of sums due to the company from the amounts owed to the consultant (similar to Standard document, Consultancy agreement (short form): International: clause 3.4).

Tax and Social Security

Consultant

The fees received by a consultant under a consultancy agreement are subject to a TDS rate of 10% of the fees (exclusive of surcharge and cess) (section 194J, Income Tax Act) (see Consultant Deemed an Employee: Tax Consequences). The remainder of the taxes (based on the rates in force) must be paid by the consultant in advance (section 207, Income Tax Act).

As the fees earned by a consultant fall under the heading, "Profits and Gains from Business and Profession," the consultant can make business-related deductions under the Income Tax Act.

If the Central Goods and Services Tax Act, 2017 applies to the services performed, the consultant must pay goods and services tax (GST) to the relevant tax authorities on the fees received under the consultancy agreement. The consultant usually adds the GST to their invoice to the company, collects the GST from the company, and then pays it to the relevant tax

authorities. If the supply of services constitutes "export of service," the rate of tax on the supply of services is zero (sections 2(6) and 16, Integrated Goods and Services Tax Act, 2017).

Regarding social security, in a consultancy arrangement, there is no legal obligation on a company to provide social security benefits to a consultant. Extending any social security benefit contributions to consultants increases the risk of misclassification.

Company

The company must withhold tax at source at the rate of 10% (exclusive of surcharge and cess) of the fees payable to the consultant (section 194J, Income Tax Act).

Where a consultant located in India is engaged by a company located outside of India, the company runs a high risk of having a permanent establishment (PE) for tax purposes in India through that consultant if they are later deemed misclassified.

If a PE is established, the profits attributable to a PE in India are, in principle, subject to tax in India at the rate of 40% (exclusive of surcharge and cess) (First Schedule, Finance Act). However, the exact tax position for that PE depends on the tax treaty in place between India and the jurisdiction in which the company is incorporated.

Regarding social security, see Consultant.

Data Protection

Data Privacy

Under the Information Technology Act, 2000 (IT Act) and Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011 (Sensitive Personal Data Rules), a company that collects, receives, possesses, stores, deals, or handles information provided by a person must provide a privacy policy for its handling of or dealing in personal information (including sensitive personal data or information (SPDI)). The company must also ensure that this policy is available for review by the person providing that information under lawful contract, including by publishing it on the company's website. (Rule 4, Sensitive Personal Data Rules.)

An individual must expressly consent to any collection, handling, processing, or transfer of their SPDI. SPDI is defined under the Sensitive Personal Data Rules to include information relating to:

- Passwords.
- Financial information, such as bank account or debit and credit card details.
- Physical and mental health condition.
- Sexual orientation.
- Biometric information.
- Medical records and history.

Under the law, the company must ensure that the consultant has consented, in writing, to the collection, handling, processing, or transfer of any of their SPDI (rule 5, Sensitive Personal Data Rules).

Where collected data constitutes SPDI, the company must ensure that certain conditions are satisfied as set out by the Sensitive Personal Data Rules, including:

- Keeping the information secure and complying with reasonable security practices and procedures under the comprehensive documented information security policy that the company should have in place.
- Not retaining the information for longer than is required for the purposes for which it can lawfully be used or is otherwise required under any other law in force at the time.
- Only using the information for the purpose for which it has been collected.

(Rule 5, Sensitive Personal Data Rules.)

The same provisions apply to any handling of data collected by the consultant as part of the services provided.

A new data protection law, the Digital Personal Data Protection Act, 2023 has been enacted in India, which provides for stricter data protection related obligations in non-employment related matters. However, provisions of the law are yet to be made effective.

It is sufficient to adopt a clause for these purposes (see, for example, Standard document, Consultancy agreement (short form): International: clause 6).

Data Transfer

If the data being transferred constitutes SPDI, it can only be legally transferred if:

- The entity to whom the data is being transferred (whether based in India or abroad) ensures the same level of data protection adhered to by the transferor.
- The transfer is necessary for the performance of a lawful contract between the recipient of the data (or any person on its behalf) and the provider of the information.
- The person whose data is being transferred has consented to the data transfer.

(Rule 7, Sensitive Personal Data Rules.)

Intellectual Property (IP)

Unlike an employer-employee relationship, in a consultancy arrangement, the intellectual property (IP) rights in relation to any IP conceived and generated by the consultant during the consultancy agreement must be specifically assigned in favour of the company. In the absence of a specific assignment, those IP rights continue to vest with the consultant.

For this reason, an extensive clause on IP should be included in the consultancy agreement to protect the company's rights regarding the IP rights created by the consultant. This clause should include:

- A list of IP already created by the consultant that is excluded from the scope of the consultancy agreement.
- A statement that:
  - the consultant agrees that the exclusive ownership of all content or part of any IP, or both, that is not protected under copyright laws or other IP law, or both, or that is not patentable, is to be automatically and irrevocably transferred and irrevocably, absolutely and perpetually assigned to the company from date of creation;
  - the consultant agrees to provide cooperation and assistance to secure and maintain the company's rights, carry out the intent of the consultancy agreement for vesting the company with full title of the IP at issue, and all rights, titles, and interests, and will sign, execute, and affirm all documents, including, without limitation, all applications, forms, instruments of assignment, and supporting documents and perform all other acts as may be required for the abovementioned purposes; and
  - any assignment in so far as it relates to copyrightable material will not lapse nor the rights transferred therein revert to the consultant, even if the company does not exercise the rights under the assignment within a period of one year from the date of assignment (in accordance with the provisions of section 19(4) of the Copyright Act, 1957).

Indemnities

The Indian Contract Act, 1872 (Indian Contract Act) contains provisions that recognise indemnity, which are triggered if the parties include an indemnity clause in a contract. Indemnity is where one party promises to indemnify the other party from loss caused to them by:

- The action or conduct of the indemnifying party.
- The action or conduct of any other person caused by the fault, breach, or negligence of the indemnifying party.

Companies generally include an indemnity clause for the consultant to indemnify the company for any losses that it may incur due to the consultant's negligence (similar to Standard document, Consultancy agreement (short form): International: clause 10.4).

Confidentiality

A consultancy agreement can include a confidentiality clause that continues after termination of the agreement. The consultant may have access to confidential information of the company while rendering their services, which, if disclosed by the consultant after termination of the consultancy agreement, may cause substantial damage or loss to the company. The company can therefore rightfully and legally bind the consultant with confidentiality restrictions even after termination of the consultancy agreement.

The inclusion of this clause does not lead to a misclassification risk.

The consultancy agreement can also include a definition of "Confidential Information," stating that confidential information:

- Means and includes information that is confidential and proprietary to and disclosed to or obtained by the consultant from:
  - the company;
  - the company's affiliates; and
  - certain third parties with which the company or affiliates, or both, have relationships.
- Includes the above-described information regardless of:
  - its format, which may be (without limitation) in graphic, written, electronic, or machine-readable form on any media, or oral; and
  - whether the information is expressly stated to be confidential or marked as confidential.
- Is not limited to information of value or significance to the company, affiliates, or the company's competitors (present or potential).
- Does not include information that:
  - is in the public domain other than by the consultant's breach of the agreement or of any other agreement by which the consultant is bound, or both;
  - was previously known by the consultant, as established by written records of the consultant before receipt of that information from the company; or
  - was lawfully obtained by the consultant from a third party without any obligations of confidentiality to the company.

Restrictive Covenants

Restrictive covenants can be included in the consultancy agreement. It is typical to include a clause providing for non-solicitation of employees, clients, and customers.

The non-solicitation clause can apply during the term of the agreement and for a reasonable period after its termination. What is reasonable depends on the circumstances, but it is usually three to six months and in some cases up to two years.

For example, parties can include a non-solicitation clause stating that:

> " The Consultant hereby agrees and undertakes that during the term of the agreement with the Company and for a period of [•] years following the date of termination of agreement, the Consultant shall not, directly or indirectly, solicit and/or attempt to solicit employment of or advise any of the Company's existing employees or any person who was employed by the Company within six months prior to such solicitation or any person or organisation providing services to or through Company and/or its affiliates to terminate his/her contract or relationship with Company or to accept any contract (directly or indirectly) or other arrangement for providing services to any other person or organisation."

Termination

Mandatory Notice Periods and Payments

Indian law does not stipulate any mandatory notice period or payments to be made to the consultant on termination of the consultancy agreement. In this regard, the arrangement between a company and a consultant is purely governed by the parties' agreement under the contract.

Without Notice Termination for Other Causes

There are no statutory provisions regarding when consultancy agreements can be terminated without notice by either party. However, contractually, parties can agree to circumstances in which without notice termination can occur. These may include:

- Breach of any of the material conditions or terms of the agreement.
- The following behaviour by either the company or the consultant:
  - fraud;
  - negligence;
  - misrepresentation;
  - dishonesty; or
  - misconduct.

Procedure

Indian law does not define a particular procedure for terminating a consultancy agreement. This is normally governed by the terms of the consultancy agreement.

Governing Law and Jurisdiction

The parties to the agreement can decide the governing law and jurisdiction that applies to the agreement.

However, if the agreement is between two Indian parties, it is most practical for the governing law to be Indian law and jurisdiction to be that of an Indian court.

Arbitration

The agreement can include an arbitration clause as an alternative to court litigation as a dispute resolution mechanism. The clause can include that:

- The agreement is to be governed by and construed under the laws of India.
- Any dispute arising out of or related to the agreement, including any question regarding its existence, validity, or termination, is to be referred to and finally resolved by:
  - arbitration under the Arbitration and Conciliation Act, 1996; and
  - the rules of the Mumbai Centre for International Arbitration (MCIA), which are deemed to be incorporated by reference in this clause.
- The seat and venue of the arbitration is to be in a particular city.
- There is to be a sole arbitrator appointed as per the MCIA rules.
- The language of the arbitration is to be in English.
- The law governing the arbitration is to be Indian law.

Mediation

While the parties to the agreement can decide contractually on a dispute resolution mechanism, mediation is not a common preferred mode of dispute resolution in India. The dispute resolution mechanisms typically used in the context of consultancy agreements are arbitration or litigation.

The mediation centres in India are generally affiliated with the High Courts of Delhi and Chennai. There are also certain international mediation centres that administer mediation in India, such as the Singapore

International Mediation Centre (SIMC). While India is a signatory to the Singapore Convention on Mediation, it has not yet ratified it, and therefore mediation settlements entered into abroad are not currently enforceable in India. However, domestic legislation in this area is expected shortly.

Representations and Warranties

Common representations and warranties include that:

- The consultant has been provided with a copy of the agreement for review before signing it.
- The consultant has reviewed the agreement and understands the terms, purposes, and effects of the agreement.
- The consultant has had the opportunity to seek clarifications before signing the agreement.
- The consultant has not been subjected to duress or undue influence of any kind to execute the agreement and the agreement does not impose an undue hardship on the consultant.
- The consultant has executed the agreement of the consultant's own free will and without relying on any statements made by the company or any of its representatives, agents, or employees.
- The agreement is in all respects reasonable and necessary to protect the legitimate business interests of the company.
- The consultant has all requisite power and authority and does not require the consent of any third party to enter into the agreement and grant the rights provided in the agreement.
- The execution, delivery, and performance of the agreement by the consultant does not and will not conflict with, breach, violate, or cause a default under:
  - any agreement, contract, or instrument to which the consultant is a party; or
  - any judgment, order, or decree to which the consultant is subject.
- The consultant is not a party to or bound by any agreement with another person that is or is similar to:
  - an employment agreement;
  - a consulting agreement that may lead to a conflict of interest for the consultant;
  - a non-compete agreement; or
  - a confidentiality agreement.
- The consultant's services and all items or materials, or both, furnished by or related to or as a result of these services shall not infringe on or violate any right or property of any person or entity, including:
  - personal, civil, or property rights;
  - privacy rights;
  - common law right;
  - copyright;
  - trademark;
  - trade name; or
  - patent.
- The consultant's services and all items or materials, or both, furnished by or related to or as a result of these services shall not constitute against any person or entity:
  - libel;
  - slander; or
  - unfair competition.
- The consultant will not execute any instrument or grant or transfer any rights, titles, or interests inconsistent with the terms and conditions of the agreement.

Execution and Other Formalities

The agreement must be signed by both parties "on a consensus" (sections 10 and 13, Indian Contract Act). Either original or digital or electronic signatures are acceptable.

An instrument (document) creating rights and obligations for the parties must be stamped under the local stamp duty law on or before the date of execution, to be admissible as evidence in an Indian court. Depending on the state in which stamping is done, it can be achieved by:

- Purchasing stamp paper.
- Franking the agreement.
- Obtaining an e-stamp online.

(Section 3, Indian Stamp Act, 1899.)

The agreement does not need to be registered with any authority in India.

Language

The agreement does not have to be in any language other than English to be valid and enforceable.

Company's Liability for the Consultant

While Indian courts recognise the doctrine of vicarious liability, it is largely limited to employer-employee relationships and does not extend to independent contractor relationships. As a result, in general, the company is not held vicariously responsible for the consultant's acts and behaviour.

Consultancy agreements generally contain an indemnity clause regarding any losses or damages that the company may incur because of the consultant's negligence.

Discrimination

In India, the following anti-discrimination and harassment laws apply to private establishments:

- The Equal Remuneration Act, 1976 (ERA).
- The Rights of Persons with Disabilities Act, 2016 (RPDA).
- The Transgender Persons (Protection of Rights) Act, 2019 (TPA).
- The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (SHA).

While the ERA applies only to an employer-employee relationship, the TPA and RPDA are broader in scope and prohibit discrimination against any disabled or transgender person (not just an employee).

The SHA includes sexual harassment of any woman in the workplace (including a consultant or independent contractor) within its scope.

If the company's policies extend the applicability of other anti-discrimination provisions to consultants and independent contractors, these may also need to be considered when assessing the risk of the consultant bringing discrimination claims against the company.

It is not common practice to include any clauses pertaining to discrimination or attempting to mitigate the risk of it in a consultancy agreement. However, they may legally be included.

Anti-Bribery and Corruption

The consultant may need to comply with India's anti-bribery and anti-corruption law, the Prevention of Corruption Act 1988 (POCA). POCA does not have extra-territorial applicability and therefore does not apply to corruption and bribery occurring outside the Indian jurisdiction.

In addition to POCA, in the consultancy agreement it is common to refer to the US Foreign Corrupt Practices Act 1977 and the UK Bribery Act 2010, both of which have extraterritorial application.