Embassy of India
Berlin, Germany

MAKE IN INDIA MITTELSTAND!

Rödl & Partner

NEWSLETTER

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Investment Support for German Mittelstand Enterprises

IN THIS ISSUE:

Article provided by:

Rödl & Partner

Economic Overview

The last weeks have been rather eventful ones, both globally as well as with a glance at India – and we are explicitly not referring to the extravagant Ambani-Merchant wedding celebrations here...

For one, Prime Minister Modi has been sworn in for a third term and has, more than a month into his new term, shown a certain continuity both in terms of personnel-related decisions as well as his foreign-policy priorities. It is certainly not a coincidence that this continuity attracts many foreign investors, including German companies. **The "German Indian Business Outlook 2024" survey by the Indo-German Chamber of Commerce (AHK India) and KPMG Germany**, conducted between 9th of April and 20th of May 2024 among 85 Indian subsidiaries of German companies as well as companies based in Germany with activities in India, has confirmed this positive outlook towards the country. The survey indicates that nearly **59 percent of German firms intend to invest in India this year.**

What's more, 78 percent expect higher sales, and 55 percent forecast increased profits for the current fiscal year. Looking ahead, 82 percent predict a higher turnover, and 74 percent anticipate greater profits over the next five years. By 2029, 37 percent expect sales to grow by over 20 percent, while 25 percent foresee profit growth exceeding 20 percent.

It is no wonder, then, that India's appeal as an investment destination for German companies is on the rise. The survey reveals that 78 percent plan new investments by 2029, a 19 percent increase from 2024. Additionally, 45 percent of firms plan to use India as a production hub for local and Asian markets by 2029, a 12 percent increase from 2024.

When asked for key factors making India attractive, company representatives named the low labor costs (54 percent), political stability (53 percent), and the availability of qualified specialists (47 percent). However, challenges such as bureaucratic hurdles (64 percent), corruption (39 percent), and the tax system (27 percent) remain.

Notably, India's role as a global competence or shared service center is growing. About 21 percent of companies have established such centers in India, and 35 percent plan to do so within the next five years, underscoring India's increasing relevance in regional production and global development.

With this positive outlook, the upcoming announcement of the full Union Budget for the current Financial Year 2024/25 is being greatly and eagerly anticipated. The budget announcement is scheduled for July 23rd, 2024, and it is against the background of the upcoming budget that the **Finance Minister, Mrs. Nirmala Sitharaman, has explained the government's vision "Viksit Bharat @ 2047",** i.e. the vision to transform India into a fully developed nation by 2047, the 100th year of independence. This vision encompasses diverse facets of development such as economic prosperity, social advancement, environmental sustainability, and effective governance or, with the words of the Finance Minister, "our vision for 'Viksit Bharat' is that of "Prosperous Bharat in harmony with nature, with modern infrastructure, and providing opportunities for all citizens and all regions to reach their potential".

There has also been renewed interest in the long-pending EU Free Trade Agreement, the importance of which has been emphasized during Prime Minister Modi's two-day visit to Austria. Both countries emphasized the agreement's significance and agreed on the need to expedite the discussions. Austrian Chancellor Karl Nehammer and Prime Minister Narendra Modi noted that stronger EU-India ties would be mutually beneficial and positively impact the global stage. They reaffirmed their support for the ongoing India-EU trade and investment negotiations and the early implementation of the EU-India Connectivity Partnership.

And, last but not least, **the Indian government reopened the application window for the PLI ('Production Linked Incentive') Scheme for white goods**, including ACs and LED lights. The application window will remain open for 90 days, starting on 15th of July, and thus giving the industry more opportunities to invest under the PLI scheme. Both new applicants as well as existing beneficiaries of the scheme who propose to invest more by way of switching over to higher target segment are eligible to apply.

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

Article provided by:

Deutsche Bank

Mittelstand In Focus
Sustainable Financing in India: Innovation and the Role of Financial Institutions

In recent years, sustainable financing has emerged as a critical component of the global financial landscape. This approach integrates Environmental, Social, and Governance (ESG) considerations into financial services, ensuring that investments generate economic returns and contribute to positive societal and environmental outcomes. As one of the leading financial institutions globally, Deutsche Bank has been at the forefront of this transformation. Deutsche Bank India is pivotal in the region's shift towards sustainable finance.

Sustainable financing aims to address global challenges such as climate change, resource scarcity, and social inequality by directing capital towards projects and initiatives that promote sustainable development. The goal is to create long-term value for stakeholders while fostering a more resilient and inclusive economy.

The Landscape of Sustainable Financing in India

Sustainable financing in India encompasses a broad spectrum of financial activities aimed at supporting Sustainable Development Goals (SDGs). These activities include the issuance of green bonds, sustainability-linked loans, impact investing, and ESG integration in asset management. The primary aim is to mobilise capital for projects that foster environmental protection, social equity, and economic resilience.

India's commitment to sustainable development is evident in its ambitious targets, such as achieving 450 GW of renewable energy capacity and reducing the carbon intensity of its GDP by 33-35% from 2005 levels by 2030. Financial institutions are critical in realising these targets by providing the necessary funding and expertise for sustainable projects.

Green Bonds: Financing a Greener Future

Green bonds have emerged as a powerful tool for financing projects with environmental benefits. These bonds are specifically earmarked to raise funds for initiatives such as renewable energy, energy efficiency, and pollution prevention.

India's green bond market has seen significant growth, with both public and private sector entities participating actively. For instance, the Indian Renewable Energy Development Agency (IREDA) and the National Thermal Power Corporation (NTPC) have issued green bonds to finance renewable energy projects. These bonds have attracted a vast range of investors, including international institutions seeking to align their portfolios with ESG principles.

In addition to public entities, private sector companies are also leveraging green bonds to finance their sustainability initiatives. Companies in sectors such as energy, real estate, and manufacturing are increasingly turning to green bonds to fund projects that reduce their environmental impact.

Sustainability-Linked Loans: Incentivising ESG Performance

Sustainability-Linked Loans (SLLs) are another innovative financing mechanism gaining traction in India. Unlike green bonds, which are tied to specific projects, SLLs link the loan's terms to the borrower's overall ESG performance. This means that if the borrower meets predefined sustainability targets, such as reducing carbon emissions or improving energy efficiency, they benefit from lower interest rates.

SLLs are proving to be an effective way to incentivise companies to enhance their ESG performance. By aligning financial incentives with sustainability outcomes, these loans encourage companies to lend to corporations that derive value from renewable sources.

Deutsche Bank: Driving Sustainable Financing in the Region

In 2020, Deutsche Bank launched its sustainable finance framework, which outlines the bank's approach to financing and advisory services that support sustainable development. Since then, the bank has issued several Green Bonds, underlining its commitment to the development of the sustainable finance market. The framework covers various areas, including renewable energy, energy efficiency, clean transportation, sustainable water management, and social infrastructure. By adhering to this framework, Deutsche Bank ensures that its financial activities contribute to the achievement of the United Nations Sustainable Development Goals (SDGs).

The bank’s updated Green Financing Framework aligns with the 2021 edition of the Green Bond Principles (GBP), administered by the International Capital Market Association (ICMA), and follows its four core components: Use of Proceeds, Process for Project Evaluation and Selection, Management of Proceeds, and Reporting. It also follows the GBP’s recommendation regarding an external review.

Deutsche Bank India has been instrumental in advancing the bank's global sustainability agenda at the regional level. As a key player in the Indian financial market, the bank leverages its extensive expertise and resources to support sustainable development initiatives across the country.

According to our Head of the International Private Bank, CEO EMEA, Deutsche Bank, Claudio de Sanctis: “Problems such as ocean degradation and biodiversity loss don’t just threaten our environment. They threaten our economy and the fabric of society itself. Solving them requires urgent action, investment and transformation, and we’re committed to playing our part – by shifting mindsets with our thought leadership and building a holistic ESG offering to help our clients achieve positive change.”

Green Finance: The Road Ahead to 2070

It is undeniable that Indian banks need to catch up, even if in recent years, increased awareness and policies have helped navigate the transition towards a greener tomorrow. Furthermore, a significant obstacle for banks in their transition to green finance would be maintaining low borrowing rates and confirming sustainability claims. The ability of banks to collaborate with international financial institutions to provide the necessary funds and frameworks, to develop fresh financing strategies pertinent to Indian issues, and to leverage technology to quicken the sustainability process may hold the key to solving these problems. For banks to function and cultivate this enduring ecology, the policy framework is critical.

Fiscal initiatives that encourage better lending and lower transaction costs include tax policies that boost green financing. In addition, India requires green infrastructure investment trusts to support the development of green finance instruments and deeper green bond markets. The industry needs to step-up for this. A small push in one direction might not be sufficient because all sectors are interdependent. The main priority should be to create a comprehensive impact. A transformation can only take place through increased public knowledge, information sharing, and ongoing research and development.

For more details refer to the below links:

Green-Financing-Instruments-Report-2021-2022.pdf (db.com)
Financing for Sustainable Development Report 2023 | DESA Publications (un.org)

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

Overview of Foreign Assignments for Employees in India

The recent elections in India give a reason to believe that the era of stability and strong economic growth will continue over the next five years. In conjunction with the increasing desire for diversification and security in supply chains, many German SMEs are planning or have already established their presence in India.

India is a growing economy and among the most preferred business destination for many countries. German Companies have been steadily increasing their investments and expanding their business in India.

Whether market entry, service, repair, assembly or sales: almost every type of entrepreneurial activity in India requires the deployment of personnel. In most cases, this is achieved through trusted local partners or through the company's own employees. India will therefore continue to expect an influx of employees sent from Germany, so-called expatriates. Indian nationals who work for a German company and want to return but continue to work for their German employer are also becoming increasingly common, as the following case study shows:

The employee of a German company is an Indian citizen, has a work visa for Germany and has been living and working in Germany for several years. For family reasons, the employee would now like to return to India. She could work from home in India and therefore does not want to leave her German employer. The German company would also like to hold on to the long-serving employee, which is why the question arises as to whether it is possible to continue to employ her from India.

The relocation of the place of work to India touches on a wide range of issues, which are summarised in this article.

There are different variants of foreign assignments, each of which differs in terms of duration and organisation.

All variants have implications under labour law, social security law and tax law, the advantages and disadvantages of which should be weighed up before the start of the foreign assignment. Decisive aspects may include:

- The duration of the foreign assignment,
- Control and instruction rights,
- the amount and type of remuneration,
- internal company transactions

Legal and tax structuring of the foreign assignment is therefore essential.

Type and duration of stay

The first step is to differentiate what type of stay is involved. A distinction is made between secondment, business trip, posting and transfer. However, these are not rigid legal terms, but merely the terminology that has become widely established in the context of foreign assignments. The boundaries are sometimes fluid and the distinction is generally based on the duration of the stay: Short stays of less than six months (183-day rule) fall under the term secondment or business trip. These are stays where the employee is seconded to India for a limited and short period of time under the German employment contract for the purpose of training, to impart specialist knowledge or for assembly. In most cases, there are no major social security or tax implications for the employee. The tax residency of the employee will generally remain in Germany. However, on the employer's side, there may be withholding of taxes that may be incurred if invoices are sent to India for training or assembly (fees for technical services). This would not be the case in the example above, which is why a short stay harbours few legal risks.

Assignments abroad that last longer than six months fall under the term secondment.

There are more legal and tax pitfalls with secondments and transfers, which is why this article focusses on them.

Posting and transfer

In the case of an employee secondment, the employer remains in Germany and the employee is posted to India for a limited period (usually over six months) under a secondment agreement. After the posting, the employee would return to Germany and resume work as usual in the German company. Accordingly, the German company remains the legal employer and the general right to issue instructions and give directions remains in Germany. Salary and social security benefits are paid in Germany. This would be the constellation in the above case study in the event of a longer stay. However, the economic employer, i.e. the employer who bears the salary for the work performed, not legally but economically, can also transfer to India (depending on the individual case).

In the event of a transfer, the employee concludes a new employment contract abroad (usually with the Indian subsidiary) and the German employment contract is either suspended or terminated. The right to issue instructions and give directions is transferred to India and all working conditions are handled via the local contract in India. The legal employer therefore moves to India. Whether this is also the case in economic terms requires a case-by-case assessment.

Effects under labour law

Depending on whether a posting or a transfer is planned, the employment contract must be adapted, terminated or paused.

An adjustment is possible for a posting: the employer and employee conclude a so-called posting agreement, which regulates the modalities of the posting in addition to the existing German employment contract. This can regulate, for example, how travel expenses are to be settled, e.g. as reimbursement of costs or via a so-called "travel allowance". Both options can have tax implications and should therefore be defined in advance in a travel policy. The salary can also be adjusted to the purchasing power in the secondment agreement or a "hardship allowance" can be granted for particularly adverse living conditions.

In the event of a transfer, the legal and usually the economic employer changes to India, which is why the employment relationship in Germany is terminated or a dormancy agreement is agreed upon.

The change of employer can take place in two different ways: either via the Employer of Record model (EoR) or via employment of the employee by the Indian (subsidiary) company.

The EoR is essentially an external agency/third party organisation that is commissioned to recruit individuals on behalf of its clients. The EoR acts as the legal employer for these individuals.

In the case of employment with the EoR as well as an independent company, the legal employer is in India. Whether the economic employer, i.e. the party that bears the employee's costs in economic terms, is also located in India depends on the circumstances of the individual case. In the EoR model, the German company usually remains the economic employer, which harbours a permanent establishment risk under tax law. You can find out more about the legal permissibility of the EoR model here:

https://www.roedl.com/insights/employer-of-record/india

In order for the Indian tax authorities to recognise the legal transfer to the new Indian employer, it must be ensured that there is no longer any connection ("lien") with the former German employer in the event of a retirement. Against this background, return guarantees or salary guarantees in the retirement agreement must be examined with particular care. In order to make the change of legal and economic employer to the Indian company transparent for the tax authorities, an intercompany agreement must be concluded between the German dismissing company and the Indian receiving company on the occasion of the transfer. The intercompany agreement serves the purpose of clarification and reflects the transfer of all rights and obligations to the new Indian employer. The content of an intercompany agreement must be drafted in such a way that it is clear that the former employer no longer has any connection with its former employee. This ensures that the tax authorities do not consider the presence of the transferred employee to be a permanent establishment of the German company. Finally, the employee must also be employed by the Indian company, which requires an employment contract from the Indian employer.

In the case of both a secondment and a transfer, it is possible that salary payments will continue to be made in Germany or that there will be a transfer to Germany.

Particular care is required here when it comes to explaining to the Indian tax authorities who the beneficial employer is. The provisions of Indian foreign exchange law under the Foreign Exchange Management Act, 1999 must also be taken into account.

You can find out more about employment contracts for expats here:

https://www.roedl.com/insights/india-employment-contracts-expats

Effects under social security law

There may also be special social security implications. There is a social security agreement under international law between Germany and India, which allows employees transferred to India to remain in the German pension insurance scheme for up to 48 months.

You can read more about this here:

https://www.deutsche-rentenversicherung.de/SharedDocs/Downloads/DE/Broschueren/international/weitere_abkommen_fremdsprachig/arbeiten_deutschland_indien_englische%20_fassung.html

A popular constellation in consulting practice is that social security contributions continue to be paid in Germany in the event of a transfer, as the expat does not want to lose their German pension entitlements in the event of a return. However, as the employee transfers completely to the Indian company, it would have to be agreed between the companies that the German company only makes the payments for the Indian company and the cost is reimbursed accordingly. Similar to a salary payment in Germany, it has to be ensured that this does not come into conflict with the Indian employer's status as an economic employer and that the intercompany agreement addresses this aspect so that the tax authorities do not see this as a cost of services.

Tax implications

It should also be noted that income tax must be withheld and paid on the total income in India.

A consequence of the foreign assignment is usually a change in the tax residency of the employee. This results from Section 6 of the Income Tax Act, 1961 (ITA). A basic distinction is made between "resident and ordinarily resident", "resident but not ordinarily resident" and "non-resident". These categorisations are linked to certain requirements such as nationality, length of stay and the amount of income generated in India. Ultimately, however, it often comes down to physical presence in India. If an employee is sent to India, this means that they are tax resident in India from day one. For example, someone who is predominantly resident in India during the Indian financial year, which runs from April to March of the following year, and at the same time maintains their residence in Germany, can be treated as a resident of both countries.

In such cases, the agreement on the avoidance of double taxation between the Federal Republic of Germany and the Republic of India (DTA) determines the countries' right of residence and taxation. The DTAs also aim to avoid double taxation of the same income by either providing for corresponding tax exemptions or tax credits. The applicability of the DTA provisions is particularly important in the year of departure and the year of return, as there is usually a risk of double taxation. These aspects should therefore be checked and planned in advance in order to avoid double taxation.

A so-called tax equalisation policy can also be introduced at group level, which - if necessary - provides for tax equalisation for the employee to ensure that the posting abroad does not result in a tax disadvantage for the employee. It is important to note that expats coming to India may come for secondment, dual employment or non-resident employment, which would have serious consequences from a tax perspective.

Migration law/nationality law

Migration law is also affected: In addition to valid residence permits in India, it must be ensured that entry is also guaranteed in the event of a potential return to Germany. In the above example, entry into India would not be a problem due to the Indian citizenship. However, in the event of a return, it has to be ensured that the Indian employee's German residence permit has not expired.

You can find a detailed overview of the entry requirements and other migration law issues here:
https://www.roedl.de/themen/immigration/indien-einwanderung-beschaeftigung-gesetze

Conclusion

The Indian financial administration is well organised and is working more meticulously than ever. Nevertheless, precise structuring remains essential. A short-term stay is usually uncomplicated and can be managed by means of an additional agreement with the employee. Here too, however, one has to check whether a permanent establishment is created. In practice, there is a trade-off between simple implementation and the associated tax and legal risks. However, anyone planning a long-term presence in India will often not be able to avoid setting up a company. Even supposedly simple cases can turn out to be risky from a tax perspective, which is why a case-by-case assessment is always recommended.

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Upcoming Events

India Meets NRW

20.08.2024
More details will follow shortly

India's Economic Horizon: Investment and Manufacturing Opportunities:

11.09.2024 | Munich
Register here!

Asia-Pacific Conference of German Business 2024

24 - 26 October 2024 | New Delhi
Register here!

Upcoming Webinars

Decoding the Union Budget 2024

01.08.2024, 11:00 – 12:30 CET / 14:30 – 16:00 IST
Registration Link will follow shortly

India's Pharmaceutical Sector: Exploring Opportunities for German Mittelstand Companies

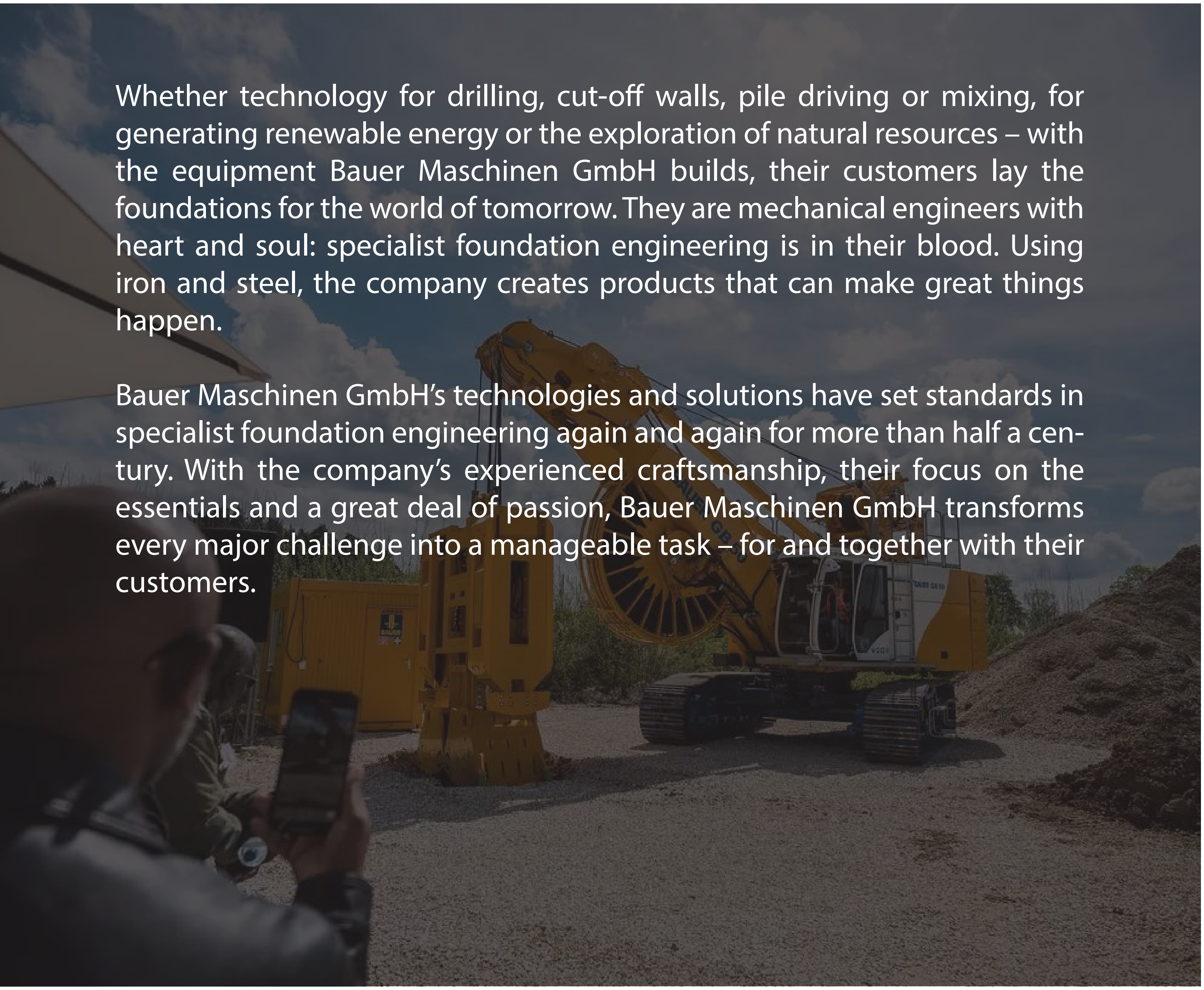
More details will follow shortly

We are proud to introduce our new MIIM-member

BAUER MASCHINEN

Whether technology for drilling, cut-off walls, pile driving or mixing, for generating renewable energy or the exploration of natural resources – with the equipment Bauer Maschinen GmbH builds, their customers lay the foundations for the world of tomorrow. They are mechanical engineers with heart and soul: specialist foundation engineering is in their blood. Using iron and steel, the company creates products that can make great things happen.

Bauer Maschinen GmbH's technologies and solutions have set standards in specialist foundation engineering again and again for more than half a century. With the company's experienced craftsmanship, their focus on the essentials and a great deal of passion, Bauer Maschinen GmbH transforms every major challenge into a manageable task – for and together with their customers.



We are proud to introduce our new MIIM-member

Founded in 2017 and headquartered in Munich, PG Capman GmbH is a consultancy firm specializing in international business development, particularly in real estate and hospitality. Led by Philipp Gertzen, the firm has quickly become a trusted partner across various sectors.

PG Capman GmbH works with notable entities like condoreal SL, ColibriLiving GmbH, and TWE Immobilien, demonstrating its strong capabilities in international business. The firm's core strengths are its profound experience and dedication, delivering exceptional results for clients.

Its track record in real estate projects in cities like Munich and Madrid highlights its expertise in managing complex ventures and driving growth. Recently, PG Capman GmbH has collaborated with Naix Promotora de Inversiones SA de SV and Ernesto Canales y Socios in Mexico on a food fortification project in Maharashtra, India, aimed at improving nutrition and public health.

PG Capman GmbH focuses on long-term partnerships and bespoke solutions to help clients achieve their business goals, leveraging deep industry knowledge and strategic connections to empower businesses in navigating new markets and optimizing operations.

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 211 companies which represent a cumulative declared investment of 2.1 bn EUR to India. MIIM has supported and facilitated the establishment of approximately 119 new manufacturing sites and expansions, along with 61 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!

Rödl & Partner - Exclusive Knowledge Partner

Investment support for German Mittelstand Enterprises

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