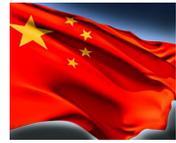




A Comparison of Indian and Chinese Trademark Law



This is an important study conducted after discussing with more than 100 business associates in China, Hongkong, India & London. Many publications, Press News were collected to compile this report.

The Indian legal system comes under frequent criticism for various reasons – systemic delays being among the top reasons, folloed by corruption in enforcement bodies and the lower judiciary. Delays particularly haunt those foreign entities that have not until recently had India on their map.

An outstanding aspect of India's legal system is that it affords the same protective rights to citizens and domestic legal entities as it does to foreign individuals or legal entities under its IP laws.

Evolution of the legal system

Indian courts have incorporated the principle of transborder reputation in trademark law jurisprudence and granted countless foreign trademark right owners wide protection for their brands, often in the absence of even a trademark registration in India, and frequently without use of the trademark in the Indian market. Indian courts have protected these trademarks on broad principles of equity and the desirability of upholding good business ethics under the law of torts.

There are adequate opportunities in India's legal system to remedy an incorrect decision or wrongly laid down law. The writ jurisdiction of the courts under the constitution is a powerful tool for any person to seek an effective remedy against acts of arbitrariness, inaction and/or negligence on the part of government authorities, and this has come to the aid of many foreign entities with a grievance against the authorities established under IP laws.

The primary legislation on trademarks in India is the Trade Marks Act, 1999, along with the Trade Mark Rules, 2002, which contain the rules and procedures for the implementation of the substantive law. There are other statutes that are relevant for trademarks and their application, such as the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007, under the Customs Act, 1962, which provides for the enforcement of trademark rights by customs authorities.

India completed its accession to the Madrid Protocol in July 2013, a move that is expected to greatly benefit brand owners and attract higher trademark filings in India through a simplified, consolidated application. India is also a signatory to the World Trade Organisation's Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) and a longstanding member country of several World Intellectual Property Organization – administered treaties.

The mark : Protecting of Challenging

Registrable marks

Words, logos, three-dimensional shapes, textures, colours and sounds are all capable of being protected as trademarks in India. For instance, the shapes of Gorbatschow Vodka bottles, Ferrero Rocher chocolates, the red sole signatures of Christian Louboutin footwear, the shape of the Zippo cigarette lighter and the Louis Vuitton Epi leather design were all found to meet the standards of distinctiveness under Indian trademark law, and recognised as trademarks.

Unregistered marks

Unregistered marks are entitled to protection under the tort of passing off. Passing off has also been statutorily recognized under section 27 (2) of the Trade Marks Act. Passing off is established through evidence of reputation and goodwill; priority in use and adoption form the criteria for ownership. A large number of foreign unregistered marks that have a transborder reputation in India have been protected by the courts.

Timeline of registration procedures

A registration process without objections from the Trade Marks Registry and opposition from any third parties can take 12-15 months for the stages of filing, examination, hearing, advertisement, and issuance of certificate. The procedure involves the following steps:

- a. Filing of application, where the applicant indicates its intention to register a mark for a specific class of goods or services;
- b. Examination – the examiner issues a report containing objections under grounds of absolute and relative refusal, if any, which can be contested by the applicant within one month of issuance of the report;
- c. Publication – after all objections are satisfactorily cleared by the applicant, the mark proceeds to publication in the Trade Marks Journal within six months of a written reply or hearing of the applicant;
- d. Opposition – within four months of such publication, any person may oppose the registration of the mark on grounds laid down in the statute. The Trade Marks Registry takes up the opposition for hearing, depending on its

- roster and backlog of pending cases;
- e. Registration/rejection – if the opposition is dismissed or the mark is unopposed, it proceeds towards registration. Alternatively, the application is rejected upon a successful opposition;
 - f. Rectification/cancellation – after grant, the mark can be challenged by an aggrieved party and/or cancelled by the registrar on the grounds of being wrongly granted or wrongly remaining on the register, or of non-use within a prescribed period under the statute.

All orders of the Registrar of Trade Marks are appealable to the Intellectual property Appellate Board.

Obligations on use of a trademark

Section 47 of the Trade Marks Act provides for the removal of the trademark from the register of trademarks on the ground of continuous non-use of the mark for a period of five years from the date of the issuance of the registration certificate up to three months before the filing of an action for removal or rectification of the mark.

After years of fumbling, adapting, learning and accumulating experience, especially since its reform and opening up, China is finally managing to set up a complete legal system for the protection of intellectual property (IP) rights.

In order to bring its legislation up to an international standard, China has participated in most of the international treaties on trademarks, including the Paris Convention for the Protection of Intellectual Property, the World Trade Organization's Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), the Madrid Agreement Concerning the International Registration of Marks, etc.

Evolution of the legal system

The Trademark Law is the backbone to the system, and needs to be construed with the Implementing Regulation of the Trademark Law, the Regulations for Recognition and Protection of Well Known Trademarks, the Measures for the Implementation of the Madrid Agreement Concerning the International Registration of Marks, etc.

Apart from these, the Supreme People's Court (SPC) has issued several judicial interpretations on issues concerning the trial of trademark cases. The volume of trademark cases filed in China has increased, year after year.

Recently, China enacted the third revision of its Trademark Law, which entered into effect on 1 May 2014. This article, based on the new Trademark Law, addresses the major points on the registration and protection of a trademark in China.

The mark : Protecting or challenging

Registrable marks

The revised PRC Trademark Law removes the restriction of the word "visual" and gives an example of a non-visual sign: sounds. This word is followed by "etc." which implies that the door is theoretically open for other non-visual signs.

Prohibition of registration and use in bad faith

The law introduces 'good faith' as a general principle in article 7.1: "The application for registration and the use of a trademark shall be made in good faith." Article 15.2 provides a practical example of bad faith: "Where the applicant has contractual or business contacts, or other relations other than (being the agent) with the prior trademark user, so that the applicant definitely knows the existence of this person's trademark, if this person files opposition, the applied trademark shall not be registered."

Time limits for CTMO and TRAB procedures

In order to shorten the registration process and the various trademark-related procedures before the China Trademark Office (CTMO) and the Trademark Review and Adjudication Board (TRAB), the law introduces time limits, such as nine months for the examination of a trademark, nine months – plus a possible extension of three months – for the TRAB to review the decision, or 12 months – plus a possible extension of six months – for deciding on an opposition.

Opposition procedure

In order to limit the number of oppositions, the law provides that oppositions may only be raised by "a prior right owner or interested party" if based on relative grounds. However if an opposition is raised on absolute grounds, it may be raised by "any person".

The main change introduced by the law is that when an opposition is rejected by the CTMO, the trademark is immediately approved for registration and the only recourse is to file an application to declare the trademark invalid with the TRAB. Before the recent revision, the opponent could appeal to the TRAB for revision of the decision. This is now not possible.

This is not without serious concern, in particular in view of the SPC opinions regarding the assessment of the similarity between two marks. According to the SPC, when assessing the similarity of two trademarks the judge should take into account the reputation of both trademarks: the "senior" registered trademark and the "junior" trademark. Therefore,

even through the junior trademark is subject to invalidation, it is allowed during the procedure to develop a reputation, which the judge will take into account in the decision.

Reputation gained overseas

Whether the reputation gained overseas can be considered to support an opposition is still not clear, as the law does not specify. In a 2005 case (Ferrero), the SPC admitted that reputation gained outside of China could support a case based on the reputation of a product (under the Anti-unfair Competition Law).

Ownership changes and rights transfers

Both registered and unregistered marks can be assigned and transmitted on the condition that they do not create multiple exclusive rights, and all such transactions are governed broadly by the Indian Contract Act and the Specific Relief Act. A registered trademark is assignable in respect of all or a part of the goods or services for which the mark is registered.

Related rights

In India, a single object/good/service can be the subject matter of multiple forms of IP protection, subject to the following express exclusions for overlapping subject matter:

- a. The definition of design excludes trademarks and copyright in artistic works;
- b. If an object is a registered design or is mass produced, the copyright in the design is extinguished.

Online issues

India has formulated a specific ".in" domain name dispute resolution policy, which enumerates the terms and conditions applying to disputes pertaining to ".in" and ".co.in" domain names. Indian courts have recognized and innovatively tackled issues of domain name trafficking, hyperlinking, metatagging, framing, phishing, etc., by the creative intersection of domain name policy and the law of trademarks.

Trans-border reputation

The concept of trans-border or spillover reputation of foreign trademarks was recognized by Indian courts in the early stages of the development of Indian trademark law, as far back as the 1980s.

The essence of the concept is captured in section 35 of the Trade Marks Act, and serves to highlight that brand goodwill and reputation are adequately protected.

Well known trademarks

When a mark is recognized as "well known" in India, it enjoys protection against deceptively similar or confusing marks that may be applied for across all classes of goods and services. The criteria for a mark to be recognized as well known by a court of law have been laid down in section 11 (6) of the Trade Marks Act. The Trade Marks Registry provides a register of well known marks on its website.

Enforcement : Where authorities step in

Administrative procedures

There are no procedures where the Ministry of Commerce and Industry may take an action to fight against trademark infringement ex officio at the request of a trademark owner or an interested party. The office of the Controller General of Patents, Designs and Trademarks comes under the purview of the Department of Industrial Policy and Promotion, within the Ministry of Commerce and Industry. Infringement and passing off actions can only be instituted before law courts.

Criminal procedures

Falsifying a mark is an offence under section 103 of the Trade Marks Act, and a criminal action may be instituted against the infringer or counterfeiter. Criminal actions may be instituted in the following ways:

- a. Police complaint – after the complainant lodges a complaint, the police must obtain a clearance from the Registrar of Trade Marks. After clearance, the police may raid the premises of the infringer and seize goods, following procedures under the criminal code to finally convict the infringer;
- b. Complaint before a magistrate's court – upon a complaint being entertained by the magistrate's court, the judge may order search, seizure and/or investigation of the alleged infringer. Thereafter, charges are framed and the matter proceeds to trial for conviction of the infringer.

Border enforcement

The Intellectual Property Rights (Imported Goods) Enforcement Rules were promulgated by the central government in 2007. Under these rules, a right holder can register its work, invention, trademark, etc., with the customs authorities and request that the authorities seize any goods deemed to be infringing. The authorities must ensure that the infringer is given sufficient notice to defend itself. Upon a determination that the goods detained or seized have infringed IP rights, the customs authority is authorized to destroy the goods.

The courts: How they work

India's courts are witnessing a significant rise in lawsuits for infringement of IP rights. India has four high courts with original side jurisdiction - namely Delhi, Mumbai, Kolkata and Madras – that can entertain infringement lawsuits in the first instance, in addition to district courts.

On average, Delhi High Court handles 600-800 lawsuits a year, which is 70% of the IP-related litigation in India.

Special IP tribunals

Infringement actions are heard by general law courts and there are no special IP courts in India. The Intellectual Property Appellate Board, however, hears and decides appeals from the order or decision of the Registrar of Trade Marks, which until 2003 was under the jurisdiction of the high courts. The appellate board can also entertain rectification petitions seeking cancellation of trademarks.

E-courts

Key functions of courts – such as case filing, allocation, registration, case workflow, orders and judgments – are now IT-enabled. Cause lists, case status, orders and judgments are available on the Internet and accessible to litigants, advocates and the public. Delhi High Court has also begun digitizing entire case records and documents for easy access by judges and litigants.

Fast track trials

Measures such as “fast track trials” and recording of evidence by way of videoconferencing are hallmarks of IP litigation at Delhi High Court. Fast track trials envisage completion of various stages of a suit within a prescribed period of time, which is fixed by the court. There have been instances where strict timelines have been ordered at the stage of admission of the suit in the very first hearing.

Well known trademark

For recognition of the well-known status of a trademark, the law adds a condition: it may only be determined “where the recognition decision is a necessary fact of the case”. The reason behind this restriction needs to be clarified. It seems that well known trademarks should be recognized on a case-by-case basis and follows the “principle of passive protection”.

On the other hand, the law introduces a very welcome prohibition concerning well known trademarks: “The manufacturer or operator is not allowed to use the ‘well known trademark’ expression on the commodities, the commodity packages, the containers, or in advertisement, exhibitions or other commercial activities”. This should discourage lots of applications and might facilitate a little the recognition of foreign trademarks that used to account for around 1% of the well known trademarks recognized by the Chinese authorities.

Trademark licence recordal

Where a registered trademark is licensed, the licensor should record the trademark licence with the CTMO, and the trademark office will make publication. It is not compulsory, but if the licence is not recorded, it cannot be claimed against a third party of good faith. In this respect, the new law has clarified that the licence itself, and not the entire agreement, needs to be recorded.

Enforcement : Where authorities step in

Administrative enforcement

The law aims to raise the level of penalties against infringers, with a special mention, for the first time, concerning repeat offenders.

Criminal procedures

Criminal procedure only applies in cases of counterfeiting. i.e. where the trademark is identical, or almost identical. In addition, a certain threshold needs to be reached – RMB 50,000 (US\$8,000) for one trademark or RMB 30,000 if several trademarks are counterfeited. The procedure usually starts with an investigation and a raid conducted by the Public Security Bureau (police). Customs and the Administration for industry and Commerce will also transfer cases to the Public Security Bureau for investigation when large quantities are involved.

After the first investigation by the police, the case is transferred to the People's Procuratorate for public prosecution. All along, the trademark owner needs to be active and assist the police with all the necessary information gathered through its own prior investigation. It is then advisable to follow up the case before the People's Procuratorate, and be present during the criminal hearing before the court.

Trademark holders can also directly initiate criminal proceedings before a court without the involvement of the public security organs (police) or the People's Procuratorate. However, this direct procedure is extremely rare and, in any

event, when the case is considered as presenting serious danger to public order and state interest, it should be initiated by the People's Procuratorate.

The Penalties for trademark crimes include fixed-term imprisonment of less than three years and/or a fine where conditions are "serious" or the sale are "large" or imprisonment of three to seven years where the conditions are deemed "extremely serious" or the sales are "huge".

Customs protection

In China, customs controls the flow of goods for the protection of IP rights, during both import and export. There are two ways to obtain protection – supply all relevant information in advance and ask customs to detain a suspicious shipment, or record one's right with the General Administration of Customs in order to benefit from the ex officio action of customs.

One of the most controversial issues is the situation of original equipment manufacturers. i.e. where the entire production of goods made in China is exported. In recent years, some jurisdictions have decided that with goods bearing a trademark that belongs to a third party in China, the fact that they are exported and therefore not sold on the Chinese market means there is no infringement committed in China.

If such decisions were to be confirmed – the SPC is preparing an analysis of this issue and is expected to deliver a decision in the near future, in the Petul case – customs might lose the power to protect IP rights on export.

The courts : How they work

Special IP tribunals

Civil trademark disputes are heard at the first instance level by IP tribunals of the intermediate people's courts, or in some jurisdictions by basic courts designated by the SPC. Administrative litigation – appeals from decisions made by the TRAB – is handled by the IP tribunal of the intermediate people's court in Beijing.

The SPC is conducting research and will, in the near future, decide whether and how specialized IP courts could be set up with total jurisdiction over all IP rights matters.

Pre-trial measures

Injunctions and pre-trial property preservation

An IP rights owner who can prove that failure to stop an infringement promptly would cause irreparable damage to his/her legitimate rights and interests may file, before instituting legal proceedings, an application with the people's court to obtain an order for immediate cessation of the infringing activity. The IP rights owner may also apply for property preservation before filing a lawsuit, subject to paying a bond.

Pre-trial evidence preservation: Where the evidence risks being destroyed, or it would be impossible to obtain it later, the trademark registrant or any interested party may.

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Pre-trial evidence preservation

Where the evidence risks being destroyed or it would be impossible to obtain it later, the trademark registrant or any interested party may.

An innovative feature of fast track trials is the appointment of court commissioners, usually retired judges or other senior officers of the court, who are assigned the responsibility to record evidence within the prescribed period, which may be as short as three to six months. Recording of evidence by court commissioners allows parties to conduct the trial at their convenience, instead of relying on the roster of sitting judges for available dates.

Recording evidence via videoconferencing

Delhi High Court has also allowed recording of evidence primarily the process of cross-examination – by videoconferencing. This is especially relevant and useful for foreign litigants and/or rights holders who are unable to travel to India to depose their evidence. The court has developed a robust set of guidelines to safeguard the interests of both litigating entities. In effect, a right holder today can reasonably expect its lawsuit to conclude within three years.

Jurisdictional advantages

Certain IP statutes have given due recognition to the predicament of a right holder chasing after pirates. Section 62(2) of the Copyright Act, 1957, and section 134 (2) of the Trade Marks Act provide the right holder/plaintiff can institute the suit in the place where the plaintiff actually and voluntarily resides, carries on business, or works for gain. These provisions are crucial given the nature of counterfeiters, who often escape detection or flee upon the institution of an infringement action.

Quia timet jurisdiction

Courts in India may entertain suits based on the “reasonable apprehension of injury or harm” held by a right holder. As recently as November 2013, Delhi High Court held that the degree of apprehension necessary to grant a permanent injunction in a suit based on such apprehension can only be determined after a trial has been conducted in the matter.

In the meantime, in patent suits, where there is no presumption of validity and the defendants are yet to commence their infringing activity, a status quo order has been granted on numerous occasions. In trademark matters, Delhi High Court has passed numerous orders granting interim injunctions restraining any possible infringing activity of the defendants during the pendency of the suit.

Game-changing jurisprudence

Indian courts are poised to explore new paradigms of protection. As pirates get more creative, colours, shapes, celebrity rights and internet service provider liability regarding sponsored “adwords” have come under the scanner.

Damages and compensation

Damages awarded in India are usually compensatory, but can also be punitive or exemplary. The culture of awarding damages began to be seen in 2005, and now damages to the equivalent of up to US\$100,000 have been awarded.

Preliminary injunctions

Indian courts are inclined to grant preliminary injunctions against alleged infringers or counterfeiters in lawsuits for infringement and/or passing off, upon being satisfied that there is a prima facie case, balance of convenience in favour of the plaintiff, and the likelihood of irreparable injury if such a relief was denied.

Anton Piller orders

These orders were first introduced in India in the context of piracy of broadcasts by unnamed cable operators, gradually including the rampant piracy of software and counterfeiting of luxury brand products, until the present, where courts issue commissions for search and seizure of infringing goods belonging to named and/or unnamed defendants for a variety of infringement actions.

Over the years, tangible successes have been achieved in the anti-counterfeiting campaigns of brands such as Louis Vuitton, Hermes, Chanel, Cartier, Microsoft, etc., leading to timely seizures of goods of unnamed counterfeiters and sending a strong message to the market, categorically indicating low tolerance of counterfeits.

John Doe orders

Popularized as Ashok Kumar orders in India, Indian courts have gradually come to pass interim injunctions against unnamed defendants in recognition of the rampant counterfeiting prevalent in the country. They have allowed right holders the flexibility to tackle even the covert infringers who would escape detection in the absence of such blanket protection.

Writs and other constitutional remedies

Orders of various governmental authorities under the Indian Intellectual Property Office can be challenged before a writ court seeking extraordinary remedies such as writs of mandamus and certiorari. The high courts in India, capable of entertaining such petitions, have over the years recognized the urgency and importance of IP to the business of the rights holder. Numerous writs filed by rights holders have yielded results, in that government authorities have been directed to remedy and arbitrary, unreasoned or capricious orders.

Alternative dispute resolution

Alternative dispute resolution (ADR) mechanisms such as mediation, conciliation, etc., have received statutory recognition under India’s Code of Civil Procedure, 1908, under section 89 and order 10 rule 1, after the code underwent dramatic amendments in 2002. These provisions cast a duty on the court to encourage settlement between

parties by means of ADR methods. In 2006, judges were trained and exposed to progressive models of early neutral evaluation, plea bargaining and mediation.

The Delhi High Court Mediation Centre is estimated to have a 70% success rate with a significant number of matters being referred to it daily. The experience of rights holders has been that as the courts' awareness and expertise increase, defendants are increasingly unwilling to suffer damages or adverse decrees.

Before instituting legal proceedings, request the people's court to take measures to preserve evidence.

Plaintiff's burden of proof

The new law prescribes in article 63.2 that the judge may order the defendant to submit elements of evidence, such as account books, that are in his or her possession and "where the infringer refuses to provide such information or provides false information, the people's court may determine the amount of compensation at its discretion by taking into account the claims and the evidence submitted by the infringer."

Expert witness and survey evidence

The revised Civil Procedure Law introduces the concept of "person with expertise" in article 79, which provides that upon request of a party, the people's court may notify a "person with expertise" – commonly called as an "expert", an "expert assessor", or a "judicial expert" – to appear in court and offer an opinion regarding an "identification opinion" issued by an "identifier", or regarding a technical issue.

In a recent guideline, the Beijing Higher People's Court provides that in order to bring evidence of likelihood of confusion between two marks, both parties may submit survey reports concerning their position in the market.

Damages and compensation

The new Trademark Law increases the financial compensation for trademark infringement by specifying, in article 63, the calculation standards for civil compensation in trademark infringement cases. Article 63 is a three-part system:

1. The calculation methods are in the following order:
 - the actual damages that the right holder has suffered from the infringement.
 - the profit that the infringer has earned through the infringement;
 - a reasonable multiple of the royalty that the infringed registered trademark might have earned, which is a welcome new provision;
2. When the circumstances are serious, a amount of compensation not more than three times but not less than the amount calculated by the preceding approaches; and
3. A statutory damage, when no calculation is possible with a maximum of RMB3 million.

Strengthen the obligation to use

The new law adds to the definition of use a reference to distinguishing the origin of the commodities "affixing trademarks to commodities, commodity packages or containers, as well as commodity exchange documents or using trademarks in advertisement, exhibitions and other commercial activities to distinguish the origin of the commodities."

Consequences of non-use

Revocation

If a trademark is not used for "three consecutive years without proper reason, any entity or individual may file an application with the Trademark Office for the revocation of the registered trademark."

No Compensation

If the trademark owner cannot prove having used the trademark within the last three years "the accused infringer shall not be held liable for compensation"

Risk Evaluation requires an understanding of the changing situations and circumstances in which company conduct business

In June 2013, exceptionally heavy rain in the northern India state of Uttarakhand washed away roads and bridges. Around 5,000 fatalities occurred, many thousands were left stranded, and the cost to the local economy was colossal.

As most commentators pointed out, this was a disaster waiting to happen. Yet no steps had been taken to prevent it. Worse still, as the events unfolded it was evident that the state machinery had no quick response plan in place.

Recent evidence

Uttarakhand has significant investments in both hydro-electric power and tourism. Companies operating in these areas needed to have in place sufficient risk mitigation measures to deal with all eventualities, but most report suggest that they didn't.

One study calculated the loss to Uttarakhand's tourism industry on account of the floods in 2013 at around 12 billion (US \$200 million). It appears that the state economy will take years to recover. While in past years tens of thousands of pilgrims travelled to the main temples each May for ceremonies to mark the beginning of the pilgrim season, there were reports that only around a hundred pilgrims would travel this year to the opening of the temple at Kedarnath, which is one of four major Hindu sites in Uttarakhand.

While the state and central governments shoulder some of the responsibility in cases such as this, companies – particularly those that are answerable to shareholders – need to do their best to secure their business against risks posed by natural disasters and other untoward incidents.

This article discusses how to identify risks and how to prevent and mitigate the risks identified for the benefit of all concerned, in terms of employees (human capital), material resources, inventory, infrastructure, etc.

Emerging risks

In today's environment businesses are often exposed to previously unknown risks that know no national boundaries and may be difficult, if not impossible, to protect against. In addition to risks posed by environmental disasters as described above, companies need to focus on so-called emerging risks such as terrorism, fluctuations and downturns in the global economy, fast-spreading infectious diseases, cyber warfare, business espionage, etc.

As pointed out by Pinkerton and the Federation of Indian Chambers of Commerce and Industry (FICCI) in India Risk Survey 2014: "there is a growing need for acknowledging the risks that find their way into the corporate sector owing to advancement in technology and rise of competition. These risks are apparent through the failures of some of India's popular brands and the multitude of scams that have caused losses amounting to billions."

The Pinkerton – FICCI survey shows that perceptions about the relative importance of specific risks are constantly changing. Among 12 prominent risks, "corruption, bribery and corporate frauds" emerged as number one in 2014, up from number four in the 2013 survey.

The change is attributed to the unraveling of scams and frauds in both the public and private sectors.

At number two, "strikes, closures and unrest", the number one risk in 2013, continues to command serious concern. "Political and governance instability" was the number three risk in 2014, down from number two a year earlier, suggesting that the current elections are of ongoing concern to corporate India.

Monitoring risks & trends

It is necessary to monitor risk and trends on a regular basis and to amend risk management strategies regularly to address significant changes in the business landscape.

Risk entails uncertainty and unless the factors that trigger the risk are understood, analyzed and given proper attention by companies' financial loss or physical injury can result. The failure to appreciate risk can also impact the company's reputation and competitive position.

Managing a company's risk is about applying policies and procedures in order to: (a) identify, analyse and assess risks, including identifying the source of the risk and anticipating its impact; (b) determine the degree of exposure to risk that the company can accommodate; (c) formulate a plan to mitigate the risks; (d) identify and implement strategies to avoid the risks and any resultant litigation, loss of reputation or injury; and (e) regularly reassess and adjust strategies to deal with changes in risk levels.

Strategies devised need to consider risks that are relevant to the particular sector in which the company operates.

Continuing Process

Risk management must be ongoing to be effective. Communication with those in the field and at the management level is vital, as is periodic training on risk management trends and compliance for all concerned.

The following pointers can assist companies to put together an effective risk management regime:

- Build the annual risk assessment exercise into the company's compliance programme.
- Put in place stringent protocols for screening all new business partners and third party agents.
- Update policies, procedures and training material based on changes in risk perceptions.
- Establish a regular monitoring system to spot problems and address them.

All of this entails inherent challenges. A Global Emerging Risks Survey published by the Financial Times states: "It is difficult to identify and analyze emerging risks, in large part because of their inherent characteristics".

The survey found that while decision makers perceive emerging risks as potentially significant, these risks may not be fully understood. In addition, while the consequence of such risks cannot be clearly defined in monetary terms, "conventional approaches to projecting their relative frequencies, their probability distributions over time, as well as the severity of the resulting losses and other consequences may be ineffective." The survey also points out that the challenge is to establish causality between the source of the emerging risk and its consequences.

New Millennium has changed business style, if we compare last few centuries will observe that every century has its own opportunities, risks, disasters and only people who have been careful observant could make their mark.

About Author

Mr. Arvind Sinha is B.Tech from Bhiwani and MMS from Bombay University have been involved with various industries in India and abroad for last thirty years. He has been very actively involved with **World Bank and IMF** for last many years for various projects and received many Appreciation and merit Certificates for his involvement his studies and project work.

He is currently Chief Advisor and CEO of Business Advisors Group which is a leading sourcing company for Relief Supplies globally and also the content creator and provider for critical studies and management issues. His study on human rights in jails, was widely appreciated and heading for a Doctorate consideration by leading UK Management Institute.

He has presented more than 150 papers so far in various leading conference all over the world and more than 11 subjects including Art History, Defense Forces, Critical Management, Disaster Management, effective Relief supplies etc. He deal in Camouflage Fabrics and very actively involved in developing and designing and procuring Camouflage Fabrics for various defense forces all over the world.

He is an Art and Antique collector and three of his records are listed in **Guinness World Record**.

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This is an important study conducted after discussing with more than 100 business associates in China, Hongkong, India & London. Many publications, Press News were collected to compile this report.