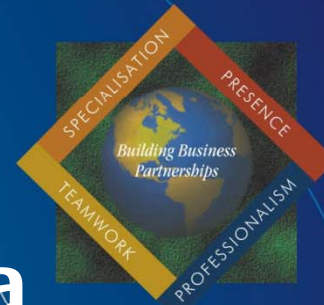


# Development in India

## An Outlook



Organiser  
**Japan External Trade Organisation (JETRO)**

March 08, 2010



*presented by*  
**Ajay Sethi** FCA - Managing Partner

## Present Focus

- ❑ Recovery – focus on infrastructure
- ❑ Control fiscal deficit
- ❑ Ease-out defunct laws, rationalise taxes
- ❑ Spreading opportunities across the rural belt
- ❑ Encourage Foreign Direct Investment

# **ON THE ANVIL**

## **Major Regulatory Changes**

## Understanding Regulatory Environment

- ❑ Most laws originate from British Laws
- ❑ Fine reading and interpretation is the norm
- ❑ Procedure Driven
- ❑ Failures to comply usually leads to penalty and sometimes prosecution

## Policy Framework – In the horizon

- ❑ Direct Tax Code **(April 1, 2011)**
- ❑ New Companies Law Amendment Bill **(awaited)**
- ❑ Indirect Taxes - Goods & Services Tax **(April 1, 2011)**
- ❑ International Financial Reporting Standards (IFRS) **(April 1, 2011)**
- ❑ Insurance Laws (Amendment) Bill
- ❑ Banking Regulations (Amendment) Bill

## Direct Tax Code (DTC)

- ❑ **Tax rates** rationalized - corporate to pay a reduced tax of 25 per cent
- ❑ Tax on **royalties** enhanced - 20 per cent on gross payment
- ❑ Domestic companies to still pay a *dividend distribution tax* at 15 per cent. Similarly, foreign companies to pay **branch profits tax** at 15 per cent of post tax profits
- ❑ Fresh tax **exemptions** to be 'investment linked' rather than 'profit linked'

## Direct Tax Code (DTC)

- Introduction of **General Anti Avoidance Rule** ('GAAR') wherein commercial expediency of international transactions can be challenged by the authorities; primarily to check contentious issues viz. check round trip financing, lifting of corporate veil etc
- Provisions of DTC to have overriding effect over past **tax treaties** signed by India

## New Companies Law Amendment Bill 2008

- Introduction of **One Person Company** (OPC)

OPC can be formed for charitable purpose as well

- Companies can be struck off if **business not commenced** within 180 days of incorporation
- One **Resident Director** mandatory for all companies
- A **Whole-Time Director** not to hold office in more than one company unless permitted by the company

## Indirect Taxes

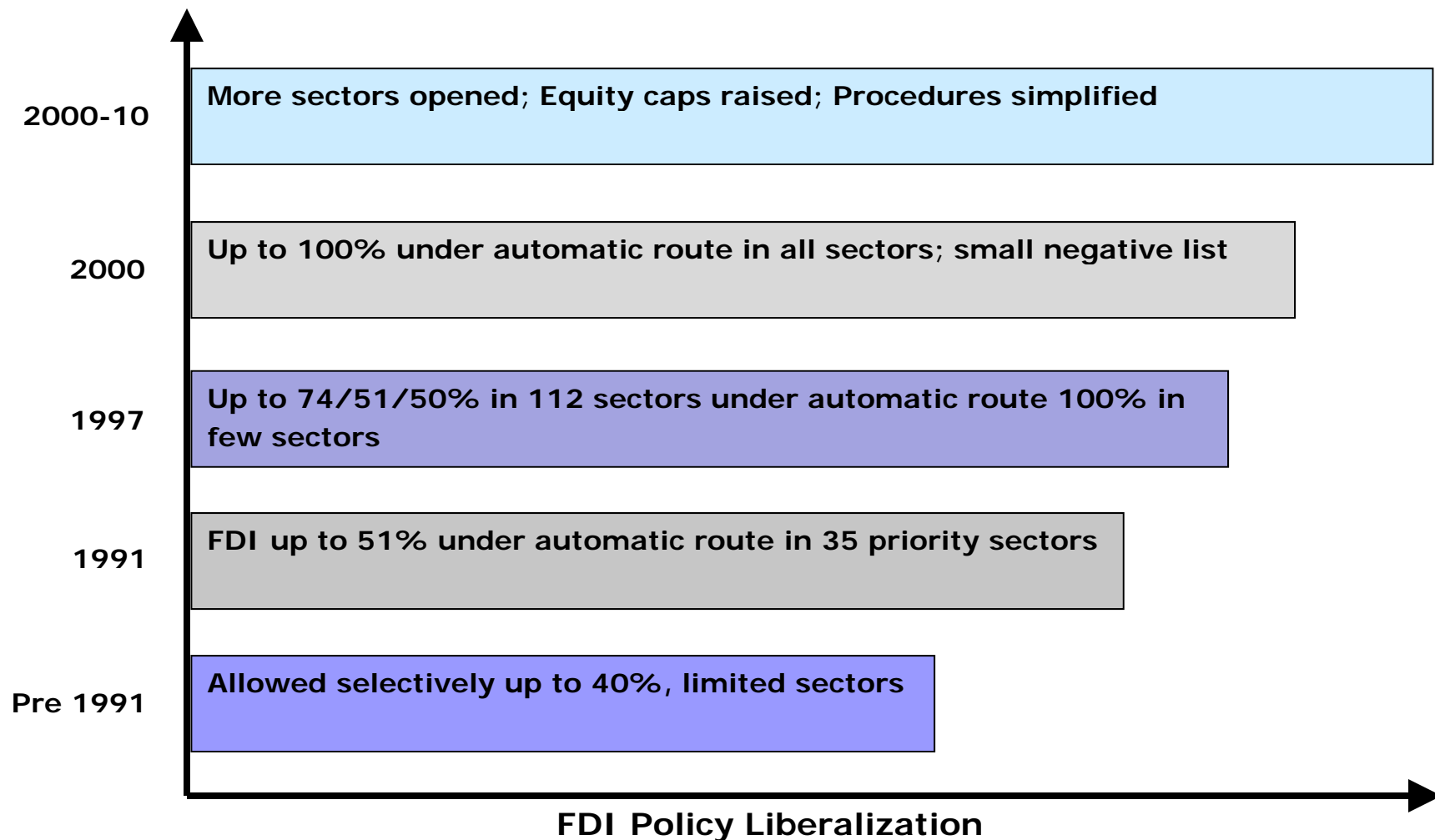
- Central Sales Tax/ VAT & Service Tax – to be merged into a single **Goods & Service Tax** ('GST') by April 1, 2011

## International Financial Reporting Standards (IFRS)

- India to fully converge with IFRS by **April 1, 2011**
  
- Will apply to all **public listed companies** and those with turnover exceeding USD 25 million
  
- Paradigm shift in the basis of recording transactions
  - Impresses substance over form
  - Adequacy of disclosures

# Foreign Direct Investment (FDI) in India an overview

## The changing face of the FDI Policy



## FDI Inflow - Top Investing Countries

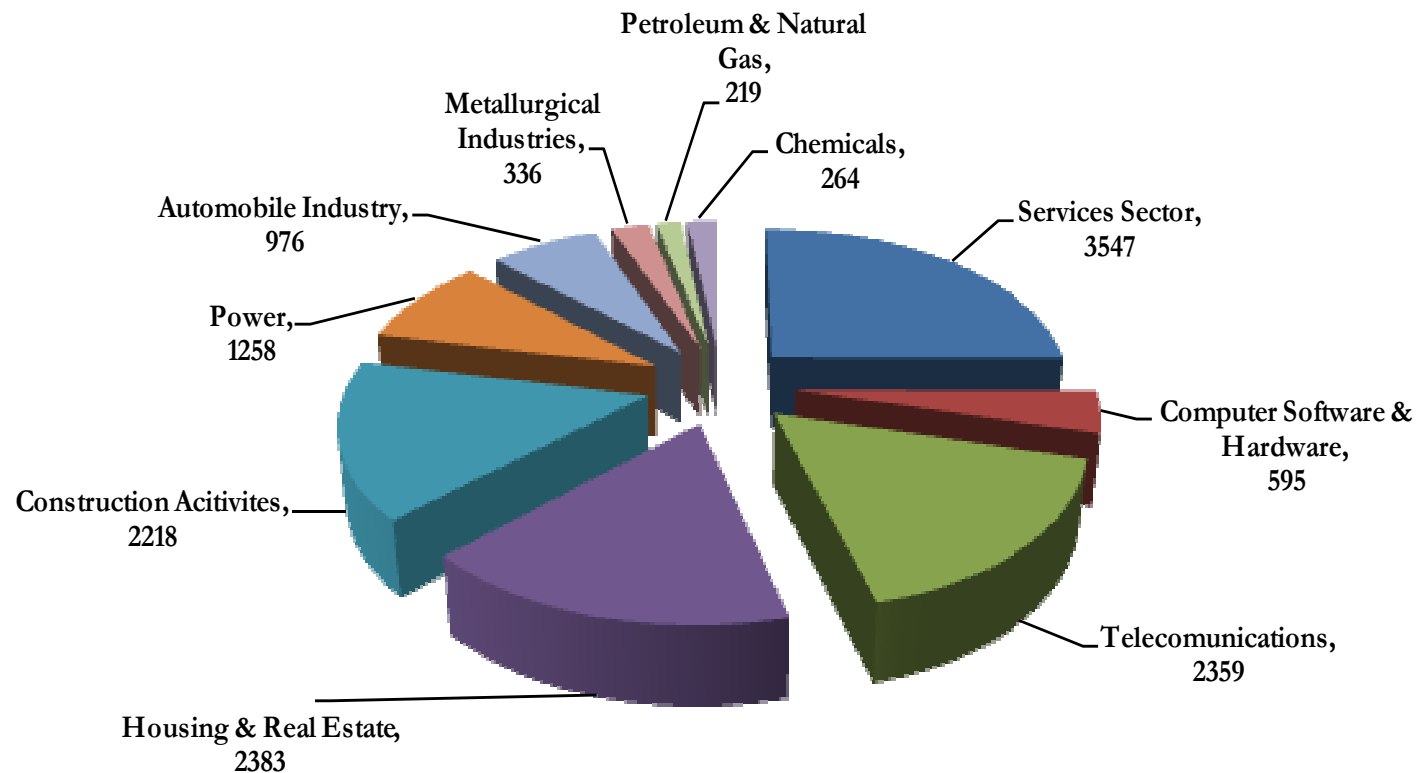
Ranks	Country	2006-07	2007-08	2008-09	USD Million	
					2009-10 (April-Dec 2009)	Cumulative
1	MAURITIUS	6,363	11,096	11,208	8,913	45,778
2	SINGAPORE	578	3,073	3,454	1,707	9,518
3	USA	856	1,089	1,802	1,584	7,919
4	UK	1,878	1,176	864	38	5,611
5	NETHERLANDS	644	695	883	769	4,359
6	CYPRUS	58	834	1,287	1,340	3,613
7	JAPAN	85	815	405	1,080	3,611
8	GERMANY	120	514	629	539	2,712
9	U.A.E.	260	258	257	587	1,507
10	FRANCE	117	145	467	242	1,469
	<b>Total</b>	<b>15,726</b>	<b>24,579</b>	<b>27,329</b>	<b>20,921</b>	<b>110,761</b>

Source – Department of Industrial Policy & Promotion

[www.cci.in](http://www.cci.in)

# FDI - Sectoral Composition

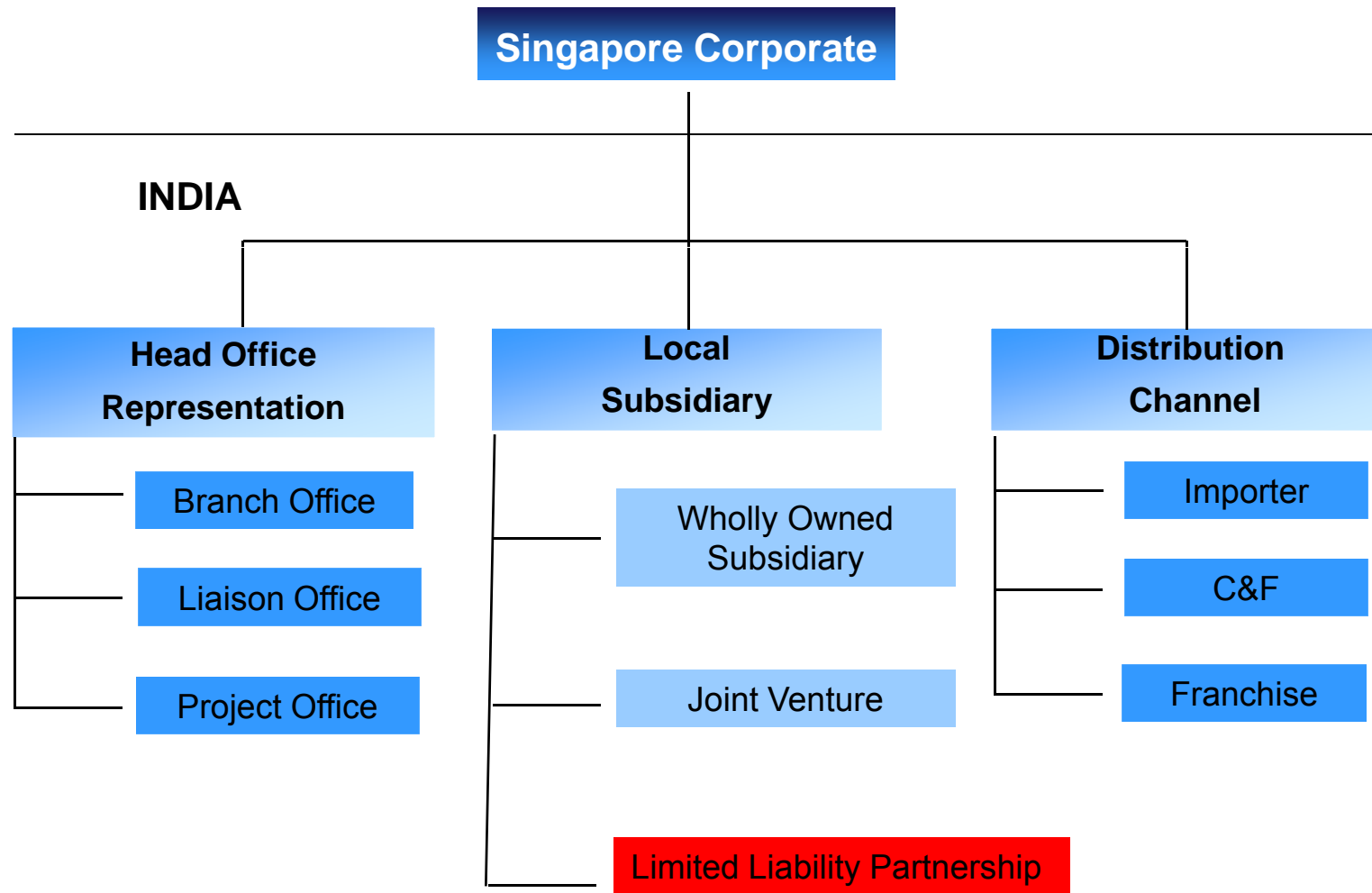
**Sectoral Composition of FDI 2009-10 (USD million)**



# **INDIA ENTRY**

## **Mode of Investment**

# INDIA ENTRY - Mode of Investment



## INVESTMENT STRATEGY – Corporate

- ❑ Green field project (*Wholly Owned Subsidiary*)
- ❑ Brown field project (*Acquisition*)
- ❑ Joint Venture

# INVESTMENT STRATEGY - Greenfield Project

Wholly Owned Subsidiary

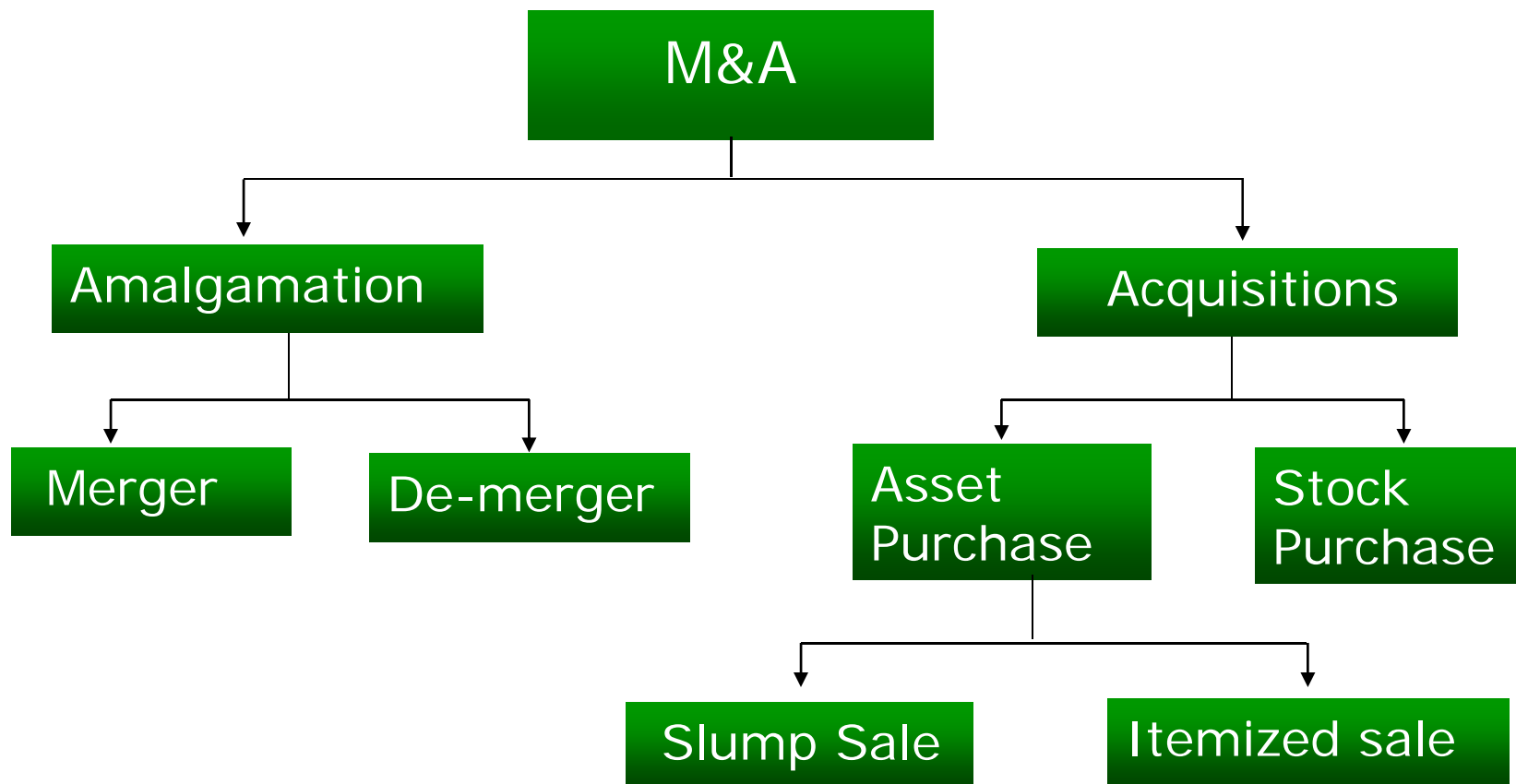
Automatic Route

Approval Route

No Prior Government  
Approval Required

- ❑ Prior approval required from Foreign Investment Promotion Board ('FIPB') if Foreign investment exceeds specified sectoral caps
- ❑ Applicability of Press Note 1

# INVESTMENT STRATEGY - Brownfield Project



# INVESTMENT STRATEGY

## Term Sheet and Shareholder's Agreement

Management control issues viz.

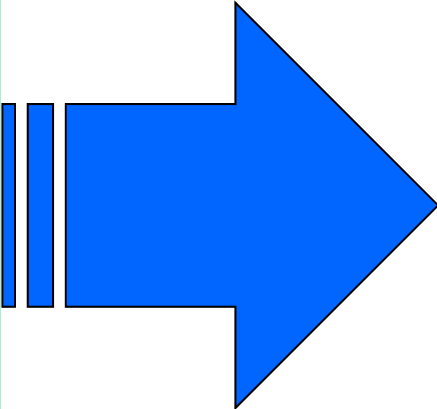
- ❑ appointment to the board of directors and chairman of the board
- ❑ appointment of CEO, MD, CFO
- ❑ issues arising from future change of control, non-compete, etc.
- ❑ implications of 26, 51 and 75 percent shareholding

Operational issues viz.

- ❑ Labour handling
- ❑ Government Liaisoning
- ❑ Appointing head of sales, manufacturing, etc

# **Significant Issues & Changes Planning India Investment**

## LO/BO – Change in Regulatory Compliance

Permission	Existing Rules		New Policy
<b>Applications for Setting-up a BO/LO In India</b>	Submit with RBI		submit with your banker who shall verify, recommend and forward to the RBI.
<b>Extension of LO</b>	LO which are initially allowed for a period of 3 years, to seek RBI approval for further extension.		Your banker can verify and directly permit an extension.
<b>Closure of LO/BO</b>	Approval from RBI to repatriate funds		Your banker can permit repatriation of funds
<b>Activity Report</b>	submitted with RBI		submitted with your banker <b>and</b> with Directorate General of Income Tax (International Taxation)

## INVESTMENT STRATEGY

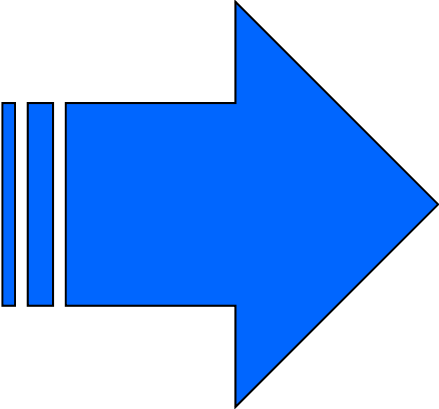
### Existing Collaboration(s) in India can restrict your entry plans

- ❑ Do you have an existing joint venture with an Indian partner for the very field in which you now intend to set-up business in India?
- ❑ Do you have an existing technology collaboration with an Indian partner for the same field in which you intend to do business in India?

Press Note 1 (2005 Series)

If yes, a 'No Objection Certificate' is mandatory from the existing Indian Partner and prior approval is required from the Foreign Investment Promotion Board of India

## Prior Approval For Foreign Investment

Foreign Investment	Existing Rules		New Policy
Where total project cost < / = Rs 6 billion and sectoral caps apply	Foreign Investment Promotion Bureau ('FIPB') approval		FIPB Approval still needed
Where total project cost > Rs 6 billion upto Rs 12 billion	Cabinet Committee on Economic Affairs ('CECA') approval		Only FIPB Approval would be required upto USD 261 million
Investment in any sector / activity earlier under approval route and approval granted	Further investment required FIPB / CECA approval		No approval from FIPB / CECA
Investment in sector / activity where prior approval (Press Note 18/98 or 1/2005 obtained) granted	Further investment still required prior approval from FIPB / CECA		No further approval to be obtained from FIPB/ CCEA for undertaking new ventures in the same field

## TRANSFER PRICING

### □ Arm's Length price ('ALP')

Any income arising from an international transaction between associated parties to be computed having regard to ALP

ALP means a price which is applied in a transaction between persons other than associated enterprises

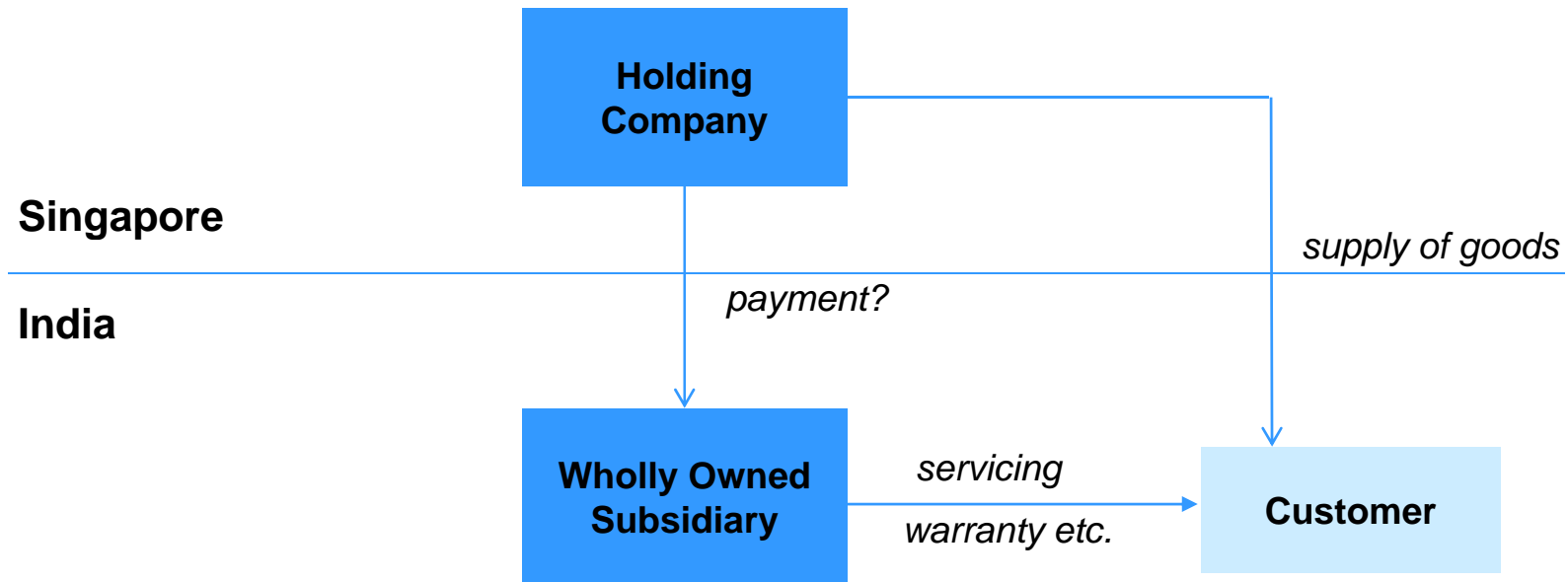
### □ Associated Enterprise ('AE')

Participation in management or control or capital of other enterprise

Directly through intermediaries

# TRANSFER PRICING

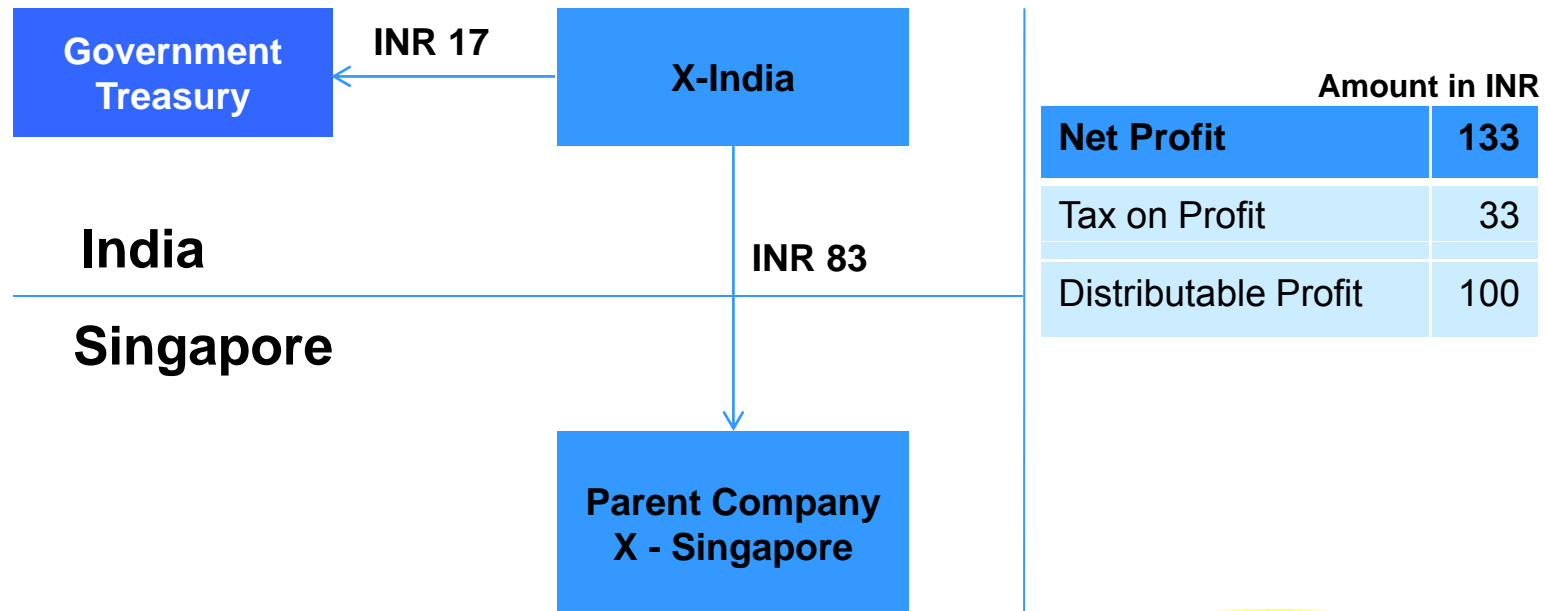
Determining the appropriate pricing for intra - group transactions



Transfer Pricing Issue –  
what should be the profit  
margin of the Wholly  
Owned Subsidiary?

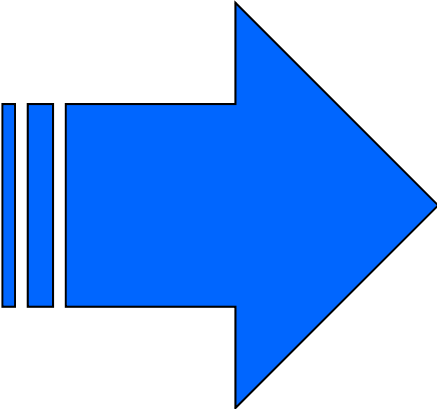
# REPATRIATING PROFITS

## The menace of Dividend Distribution Tax



Whether the credit in respect of Dividend Distribution Tax (DDT) of INR 17 is available in the Parent Country?

## Royalty / Fee for Technology / Trademark

Royalty Payment	Under existing rules, prior approval required		New Policy
Recurring royalty payments	in excess of 5% on domestic sales and 8% on exports		No approval required for one time lumpsum fee or recurring royalty payments
Lumpsum fee for transfer of technology	in excess of USD 2 million		Subject to FEMA (Current Account Transaction) Rules, 2000; Post-reporting system
Payments for use of trademark/brand name	in excess of 1% on domestic sales and 2% on exports		

## About Us

# Corporate Catalyst India

*(in joint venture with SCS Global)*

&

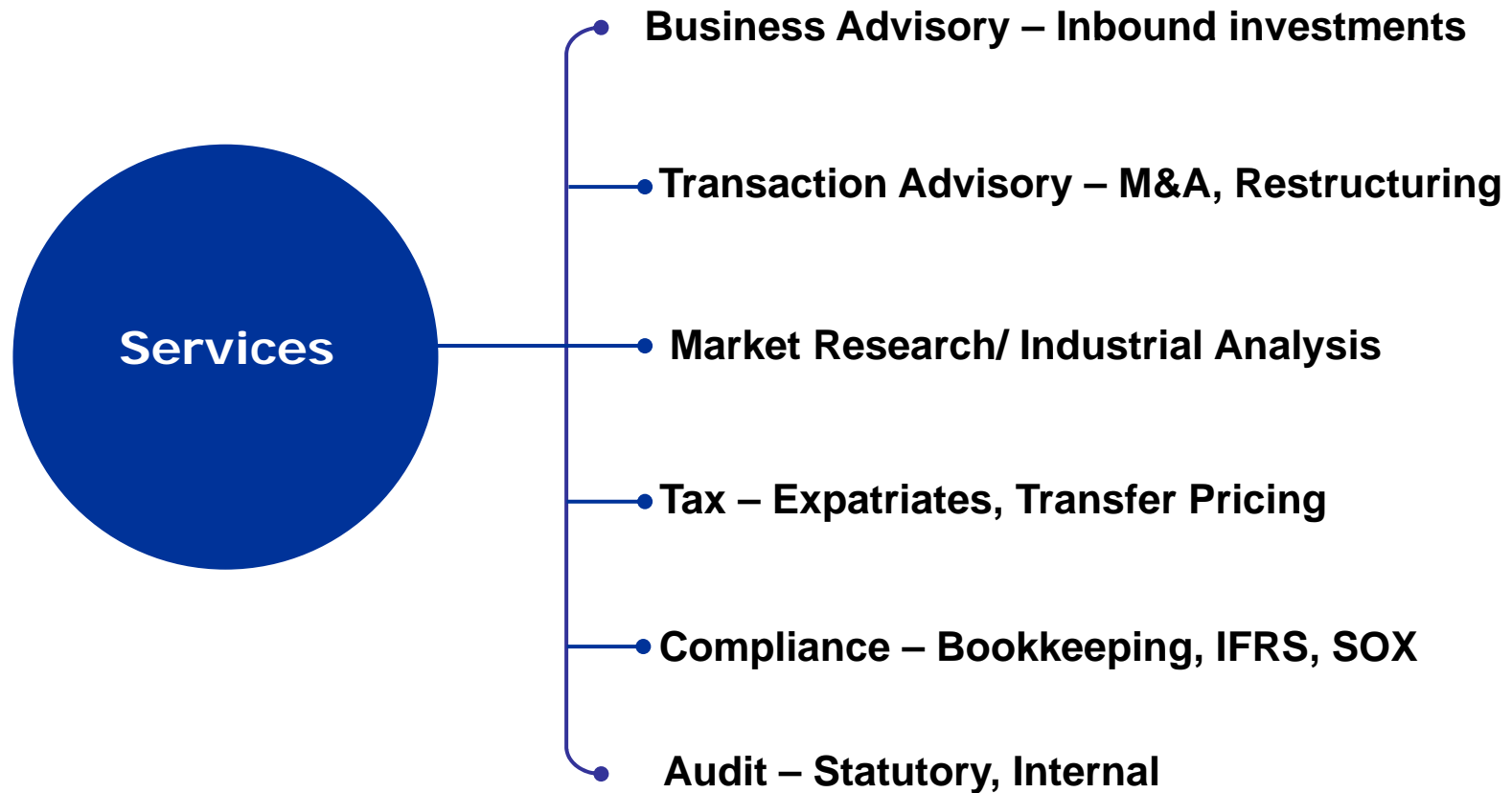
**ASA & Associates** chartered accountants

*(a member firm of NIS Global)*

## Our Strengths

- ❑ **CCI** – joint venture with **SCS Global**
- ❑ **ASA** (sister firm of CCI) - member of **NIS Global**, an international association of independent accounting firms
- ❑ Approximately 70 per cent are **Japanese Corporates**
- ❑ Offices across India
- ❑ More than 20 years **work experience**
- ❑ Professional **staff strength** of over 150 in India & 1500 through associate network

## Our Services



**Thank You**