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CCI
Building Business Partnerships

CORPORATE CATALYST (INDIA) PVT LTD
(in joint Venture with SCS Global)

KEY TO INDIA INVESTMENT

This investment guide will help demystify issues surrounding your India business plans. It is aimed at investors and/or their consultants, accountants, legal advisors. It first examines the India economic situation and the administrative mechanism and then moves on to India's regulatory environment vis-à-vis foreign investment, mode of investing, recurring compliances likely to be faced by your India operations and an overview of key commercial laws.

This guide is backed both by knowledge and the practical experience which the firm regularly brings to bear on their clients' India entry strategy. The firm is a well established multi-disciplinary, multi location practice, focusing on Set-up Advisory, M&A, Market Research, Assurance, Compliance and Taxation.

The information contained in the book has been updated till April 2015

This guide has been prepared by ASA & Associates LLP, chartered accountants, in collaboration with Corporate Catalyst (India) Private Limited (CCI), a consulting firm, with an intention of providing an overview of the India investment climate.

ASA & Associates LLP
chartered accountants *(A member firm of NIS Global)*

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As accountants, consultants and advisors, we understand the need for precise and clear information. Over the years, we have developed a knack to bring forth what is relevant from our vast knowledge and experience; and, more importantly, to put this across san any jargon which we are sometimes tempted to use. This skill to appreciate the client perspective, further honed by our working with international corporate, is reflected in this book.

Each section has been carefully thought through, both in terms of utility and content. Each paragraph has been adequately debated to ensure accuracy and simplicity. Legal aspects have been manipulated in only as much, so as to state matters in simple terms without losing the essence. At the same time, the experience we have gained through years of working on India entry strategies for a multitude of clients, comes across through practical tips spread inside.

This is a book for those wanting a perspective before they commit to a business plan for India. It touches every aspect which is relevant and needs to be appreciated in advance. Besides, it brings into focus most, if not all the compliance matters which would require your attention post an India entry. Treat this for what it is has been created i.e a guide. It is advisable that once you have understood the nuances, you seek professional guidance on specific matters. A well chartered route will ensure smooth sailing!

We wish you success in India.

Ajay Sethi FCA

Managing Partner - ASA & Associates LLP Chartered Accountants
Founder & Group President - Corporate Catalyst (India) Pvt Ltd
Director - SCS Global
Board Member - Steering Committee, NIS

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Abbreviations	Full Form
ACD	Additional Custom Duty
ALP	Arm’s Length Price
AoA	Articles of Association
BCD	Basic Custom Duty
BTP	Bio-Technology Parks
CCI	Competition Commission of India
CST	Central Sales Tax
DDT	Dividend Distribution Tax
DGFT	Directorate General of Foreign Trade.
DIN	Director Identification Number
DIP	Disclosure and Investor Protection
DSC	Digital Signature Certificate
DTA	Domestic Tariff Area
DTAA	Double Taxation Avoidance Agreement
EHTP	Electronics Hardware Technology Parks
EOU	Export Oriented Units
EPZ	Export Processing Zones
FBT	Fringe Benefit Tax
FDI	Foreign Direct Investment
FEMA	Foreign Exchange Management Act
FII	Foreign Institutional Investor
FIPB	Foreign Investment Promotion Board
FTS	Fee for Technical Services
GAAP	Generally Accepted Accounting Principles
GDP	Gross Domestic Product
GST	Goods and Service Tax
IAS	Indian Administrative Service
IMF	International Monetary Fund
INR	Indian Rupee
PR	Intellectual Property Right
ITI	Industrial Training Institute
JV	Joint Venture
MAT	Minimum Alternate Tax
MoA	Memorandum of Association
MRTP	Monopolies and Restrictive Trade Practices Act, 1969
NIC	National Industrial Classification
NOC	No Objection Certificate
NOR	Not Ordinarily Resident
NRI	Non-Resident Indian
PAB	Project Approval Board
PE	Permanent Establishment
PPP	Purchasing Power Parity
PSM	Profit Split Method
RBI	Reserve Bank of India
ROC	Registrar of Companies
Rs	Rupees
SAD	Special Additional Duty
SEBI	Securities and Exchange Board of India
SEZ	Special Economic Zone
SIA	Secretariat for Industrial Assistance
STP	Software Technology Park
USD	US Dollar *
VAT	Value Added Tax
WOS	Wholly Owned Subsidiary
WPI	Wholesale Price Index

*(1 USD = 61.86 INR)

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INDIA MAP

AFGHANISTAN
PAKISTAN
CHINA
TIBET
NEPAL
BHUTAN
BANGLADESH
MYANMAR
SRI LANKA
COLOMBO
JAMMU & KASHMIR
HIMACHAL PRADESH
PUNJAB
HARYANA
UTTARANCHAL
DELHI
RAJASTHAN
UTTAR PRADESH
BIHAR
SIKKIM
ARUNACHAL PRADESH
ASSAM
NAGALAND
MEGHALAYA
MANIPUR
TRIPURA
MIZORAM
GUJARAT
MADHYA PRADESH
JHARKHAND
WEST BENGAL
CHHATTISGARH
ORISSA
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ANDHRA PRADESH
KARNATAKA
GOA
TAMIL NADU
KERALA
INDIA
ARABIAN SEA
BAY OF BENGAL
INDIAN OCEAN
ANDAMAN SEA
LAKSHADWEEP IS.
ANDAMAN & NICOBAR ISLANDS (INDIA)
New Moore Island (INDIA)
Coco Islands (MYANMAR)
Narcondam Island (INDIA)
Barren Island (INDIA)
Andamans
Nicobars
Indira Point
PORT BLAIR
KAVARATTI
LEGEND
International Boundary
State Boundary
Country Capital
State/U.T. Capital
Tourist Places
International Airport
National Parks
N

1

ABOUT INDIA

1.1 Geographical Profile

India's mainland has an area of 3.29 million square kilometres (1.3 million square miles) and a coastline of 7,516 km (4,670 miles). It comprises four broad geographical areas (1) the Himalaya Range, (2) the Gangetic Plain, (3) the Deccan Peninsula and (4) the Coastal Strip.

India's climate is mainly tropical. However, due to altitudinal variations, almost all climatic conditions exist. There are four seasons: (i) winter (December-February), (ii) summer (March-June), (iii) south-west monsoon season (June-September) and (iv) post monsoon season (October-November). Temperatures during December and January average around 10-15 °C (50-59 °F) in the north and west, while they are around 20–25 °C (68-77 °F) in south and east. During summer or pre-monsoon season, lasting from March to June, temperatures average around 32-40 °C (90-104 °F) in most parts of the plains.

India Snapshot

Time zone : GMT+5 ½ hours. Government offices are open from 9.30 am to 5.30 pm, Monday to Friday. Banks are open from 10 am to 2 pm Monday to Friday and 10 am to 12 noon on Saturday.

Languages : The Constitution of India recognises 22 different languages that are prevalent in the country, of which Hindi is the official language. It is spoken in most urban cities. Besides, there are hundreds of dialects.

Religions : The religions prevalent in the country are Hinduism, Islam, Christianity, Sikhism, Buddhism and Jainism. Citizens are free to practice any religion. Around 83 per cent of the population is Hindu, 11 per cent Muslims, 2.5 per cent Christians, 2 per cent Sikhs, 1.5 per cent Buddhists, Jains and others.

Figure 1

1.2 General Life

1.2.1 Standard of Living

The standard of living in India is modest but constantly improving. The single most common indicator used to quantify standard of living is the per capita PPP adjusted GDP. According to IMF figures for 2014, (estimated) the per capita PPP adjusted GDPfor India is US$ 5,777 . Comparable figures for other countries are Japan - US$ 37,683, China - US$ 12,893 and USA- US$ 54,678.

1.2.2 Education system

The education system in India is divided into schools (primary, secondary and higher education), colleges (higher secondary and undergraduate in technical and non technical fields), and post graduate (technical and professional education institutes).

Higher education in India has evolved in distinct and divergent streams with each stream monitored by an apex body, indirectly controlled by the Ministry of Human Resource Development and funded by the state governments. Besides numerous autonomous universities, there are 25 key universities called central universities, which are maintained by the Union Government, offering various courses in science, engineering, medicine and liberal arts. Vocational training is offered through public Industrial Training Institutes.

1.2.3 Manpower Availability and Labour Relations

The abundant availability of trained manpower in scientific, technical and managerial fields is one of the strong factors helping India's rapid development and an attraction to foreign investors. The Industrial Relations Division within the Ministry of Labour deals with the various labour legislations that are applicable to organisations in India.

1.3 Civil Administration

The Constitution of India, 1950 provides for a Parliamentary system of government with a bicameral parliament and three independent branches - executive, legislature and judiciary.

India Snapshot-Civil Administration

Country Name	**Republic of India**
Government Type	Sovereign Secular Socialist Democratic Republic with a Parliamentary system of Government
Capital	New Delhi
Administrative Divisions	29 States and 6 Union Territories
Independence	August 15th, 1947 (from the British Colonial rule)
Constitution	The Constitution of India came into force on January 26th, 1950
Legal System	The Constitution of India is the fountain source of the legal system in the Country
Executive Branch	The President of India is the head of the state, while the Prime Minister is the head of the government and runs office with the support of the council of ministers who form the Cabinet
Legislature	The Indian Legislature comprises of the Lok Sabha (House of the People) and the Rajya Sabha (Council of States) forming both the Houses of the Parliament
Judiciary	The Supreme Court of India is the apex body of the Indian legal system, followed by state specific High Courts and subordinate Courts
Flag Description	The National Flag is a horizontal tricolour of deep saffron (kesaria) at the top, white in the middle, and dark green at the bottom in equal proportion. At the centre of the white band is a navy blue wheel, which is a representation of the Ashoka Chakra at Sarnath
National Days	January 26th (Republic Day) August 15th (Independence Day) October 2nd (Gandhi Jayanti - Mahatma Gandhi's Birthday)
Public Holidays	Idu'l zuha; Republic Day; Muharram; Mahavir Jayanti; Id-e-Milad (Birthday of Prophet Mohammad); Good Friday; Buddha Purnima; Independence Day; Mahatma Gandhi's birthday; Dussehra; Deepawali; Id-ul-Fitr; Guru Nanak's birthday; Christmas. Most holidays follow either the Indian lunar calendar or the Islamic calendar and therefore, festival dates change from year to year according to the calendar

Figure 2

1.3.1 The Administrative System

The administrative system is implemented and supervised by a cadre of officials called the Indian Administrative Service, selected on the basis of performance in a public examination every year. The officials of the IAS are involved in civil administration, policy making and managing conflicts - internal and external.

1.3.2 Legislative and Political Parties

The country has a federal structure with elected governments in states. There are 29 states and 6 union territories. Parliament is the supreme legislative body of India which comprises the President and the two Houses-Lok Sabha (House of the People) and Rajya Sabha (Council of States). The President has the power to summon and prorogue either House of Parliament and to dissolve the Lok Sabha.

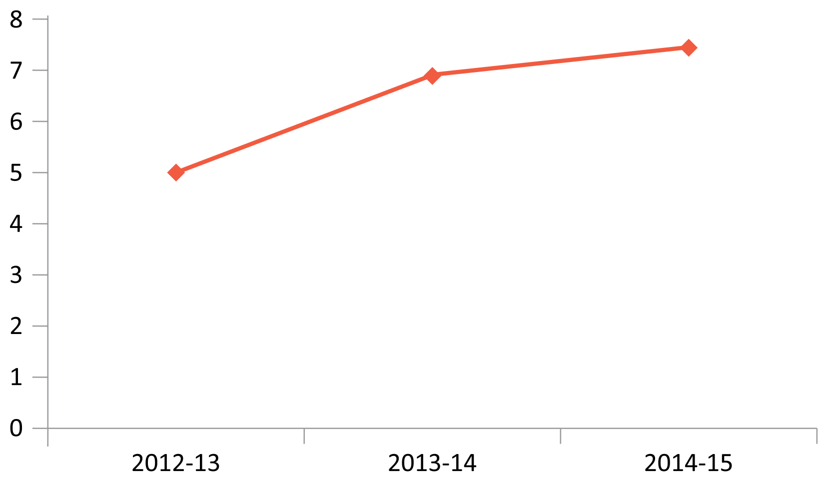
1.3.3 Judicial System - Courts & Tribunals

At the apex of India's judiciary is the Supreme Court that has a Chief Justice and up to 25 judges appointed by the President. There are 18 High Courts, subordinate to but not under the control of the Supreme Court. The High Court stands at the head of a State's judicial administration.

1.4 Economic Overview

1.4.1 Trends in Economic Growth

India's GDP Growth 2009-2014 (per centage)

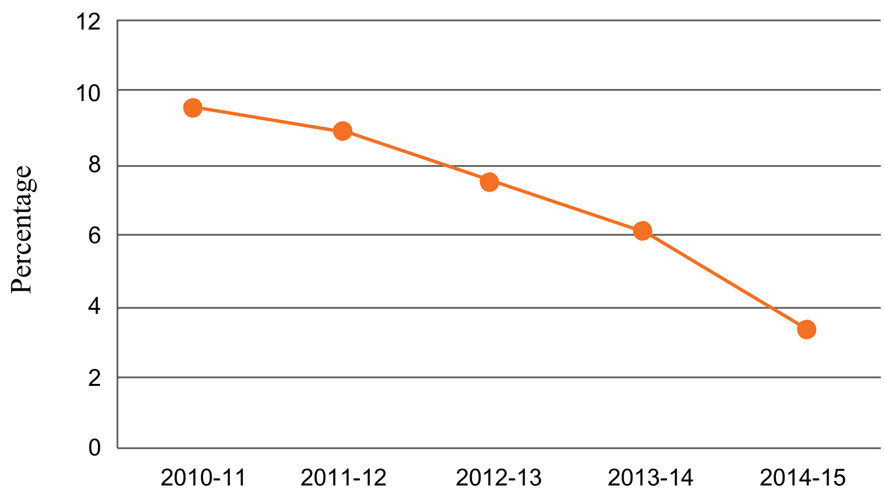


NOTE: 2014-15 Estimated

Figure 3

Source - Central Statistical Organisation

Inflation based on WPI (%)



WPI – Wholesale Price Index

NOTE: For 2014-15, data relates to April'13 - December'14 period

Figure 4

Source - indiabudget.nic.in

Regional dispersal of industrial activity

Industrial activity in India has traditionally centred around the places having access to raw material and transport infrastructure, particularly port facilities. Traditional industries such as textiles, engineering and chemicals thus grew in the western states of Gujarat and Maharashtra, Tamil Nadu in the south and some pockets in Bihar and Madhya Pradesh rich in mineral wealth and natural deposits. Over the years, manufacturing activity has got dispersed, with new generation industries such as automobiles, electronics and IT coming up all across India, in areas such as Bengaluru (Karnataka), Chennai (Tamil Nadu), Pune (Maharashtra) and Gurgaon (Haryana).

Figure 5

1.4.2 External Trade

Over the last ten years, India's merchandise trade (on customs basis) increased manifold from US$ 195.1 billion in 2004-05 to US$ 764.6 billion in 2013-14 helping India's share in global exports and imports improve from 0.8 per cent and 1.0 per cent respectively in 2004 to 1.7 per cent and 2.5 per cent in 2013. Its ranking amongst the leading exporters and importers improved from 30 and 23 in 2004 to 19 and 12 respectively in 2013.

1.4.3 FOREIGN TRADE

After growing by 4.7 per cent in 2013-14, India's merchandise exports growth moderated to 2.4 per cent to reach US$ 265 billion in 2014-15 (April-January). During 2013-14, India's merchandise imports contracted by 8.3 per cent to US$ 450.2 billion. In 2014-15 (April-January), imports grew by 2.2 per cent to US$ 383.4 billion as compared to US$ 450 billion in 2013-14.

NOTE: For 2013-14, data relates to April' 13 - December' 13 period
Figure 6
Source- Min of Commerce & Industry

1.4.4 Foreign Exchange Reserve

Foreign exchange reserves increased from ₹ 18.2 trillion ($ 304.2 billion at end-March 2014 to ₹19.7 trillion ($ 328.7 billion) at end -January 2015. The reserves have shown a steady growth during the year.

1.4.5 External Debt

India's external debt stood at US$ 349.5 billion as of June end 2012, representing an increase of US$ 3.9 billion or 1.1 per cent over the end-March 2012. This Increase was primarily on account of Non-resident external rupee ((NR(E) RA) Significantly, the stock of multilateral debt and ECB at the end of June 2012 was lower than that of the level at end of March 2012. The decline in the stock of ECB was mainly due to higher repayments during the quarter.

India's external debt has remained within manageable limits as indicated by the external debt to GDP ratio of 17.8 per cent and debt service ratio of 4.2 per cent in 2010-11.

FOREIGN INVESTMENT POLICY

2.1 Industrial Policy

The Industrial Policy Resolution of 1956 and the statement on Industrial Policy of 1991 provide the basic framework for the overall policy in regard to the manufacturing industries. In the initial stages, industrial growth was regulated through grant of licenses, approvals, etc. The industrial policy announced in 1991 substantially dispensed with industrial licensing, announced measures facilitating foreign investment and technology transfers, and threw open the areas so far reserved for the public sector.

The objective of this industrial policy is to:

(i) maintain a sustained growth in productivity
(ii) enhance gainful employment
(iii) achieve optimal utilization of human resources
(iv) attain international competitiveness
(v) transform India into a major partner and player in the global arena

With the objectives in focus, the government remains keen to deregulate Indian industry which will provide the freedom and flexibility in responding to market forces and alongside foster growth of the Indian industry.

2.2 Foreign Investment Policy

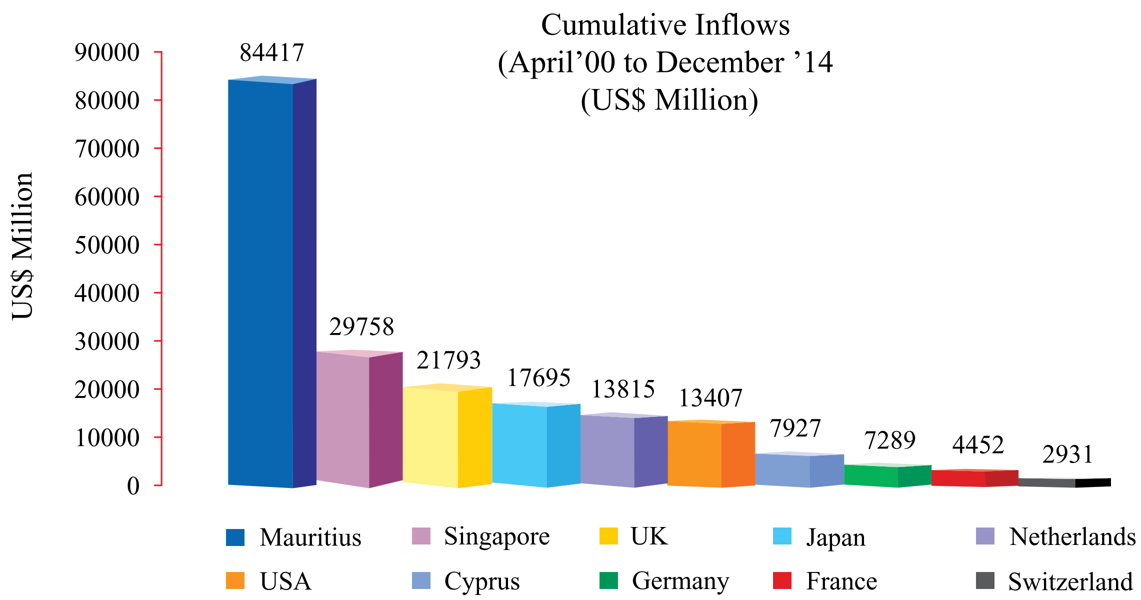


Figure 7
Source: Department of Industrial Policy & Promotion, Ministry of Commerce & Industry

India’s investment policies are designed to attract significant capital inflows into India on a sustained basis and to encourage technology collaborations between Indian and foreign entities. Policy initiatives taken over the last few years have resulted in inflows of foreign investments in diverse sectors of the economy.

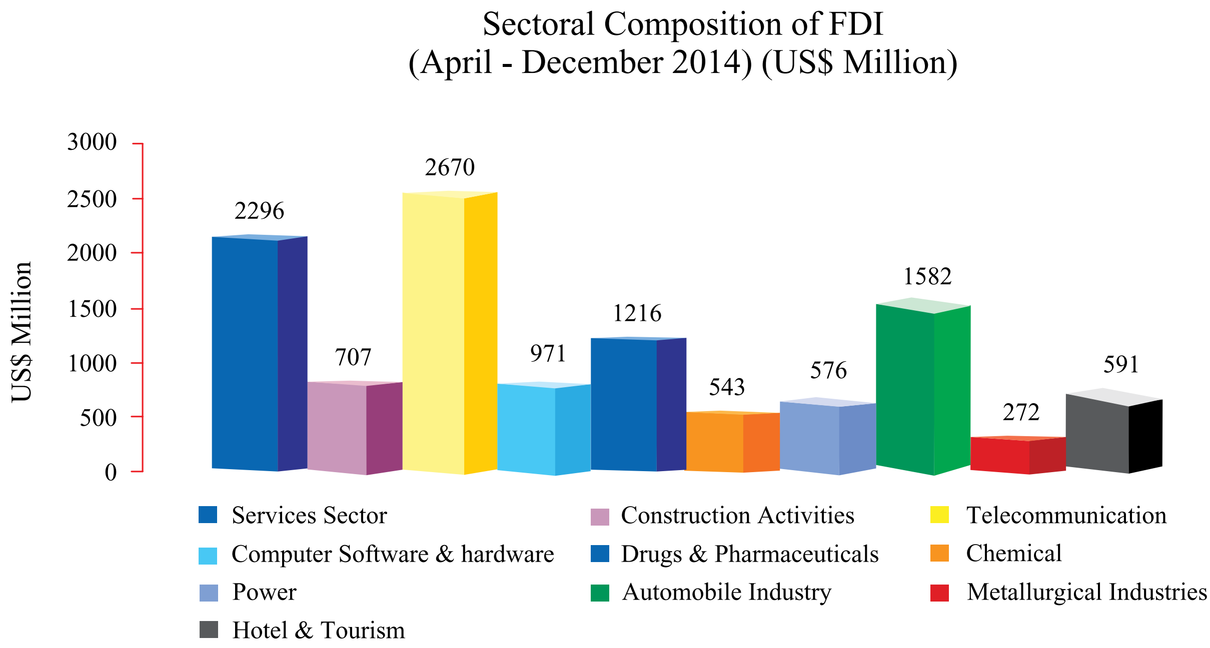


Figure 8

Source: Department of Industrial Policy & Promotion, Ministry of Commerce & Industry (April 2013 till November 2014)

2.2.1 Joint Ventures & Wholly Owned Subsidiaries

The FDI and all foreign exchange matters are regulated through the Foreign Exchange Management Act, 1999 FEMA. The National Industrial Classification 2008 is the basis for determining activities and classification for the purpose of FDI.

2.2.1.1 Automatic Route

Currently, FDI in all sectors or activities, except those specifically restricted, falls under the automatic route.

Automatic route does not require any prior approval either from the government or the RBI. The company is required to simply inform the concerned regional office of the RBI on receiving remittance towards share application and post issuing shares to the foreign investor1.

Investment in public sector units, as also for Export Oriented Units (EOU), Export Processing Zones (EPZ) and Software Technology Parks (STP) would be under the automatic route.

[1] *Refer section 3.1.5.4*

2.2.1.2 Restricted Areas for FDI

FDI is subject to an approval from the Government of India in the following cases

(i) Activities/items that require an Industrial License;
(ii) Proposals for acquisition of shares in an existing Indian company in financial services sector and where Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 is attracted
(iii) All proposals exceeding the sectoral caps or in sectors where FDI is not permitted[2]

There are ceilings on investment in certain sectors/activities. These limits are called **sectoral caps**[3] and FDI is not permitted beyond specified caps, unless an approval is obtained. For instance, activity of publishing newspapers and periodicals (print media sector) is restricted by a sectoral cap of 26 per cent. Effectively, a foreign investor would be allowed to invest up to 26 per cent equity in the proposed print media business.

FDI policy is reviewed on an ongoing basis and changes in sectoral cap are notified through press notes by the SIA, Department of Industrial Policy & Promotion. FDI policy is also notified by the RBI.

2.2.1.3 Approval Route

FDI in activities not covered under the automatic route requires prior government approval. Applications are considered by the FIPB which is a specially empowered board chaired by the Secretary, Ministry of Finance. Composite proposals involving foreign investment and foreign technical collaboration are also considered by the FIPB. Application for FDI cases, except NRI investments and EOUs, are to be submitted with the FIPB Unit, Department of Economic Affairs, Ministry of Finance situated at New Delhi.

Once an Indian company has the foreign investment approval from the FIPB, they do not require any further clearance from the RBI to receive inward remittance or to issue shares to the foreign investors. The company is simply required to inform the concerned regional office of the RBI on receiving remittance towards share application and issuing shares to the foreign investor[4].

[2]Schedule 3
[3]Schedule 3
[4]Refer section 3.1.5

2.2.2 Technology Agreements

For promoting technological competitiveness of the Indian industry, acquisition of foreign technology is encouraged. Foreign technology includes technical know-how, design and drawing, engineering service and royalty.

Payments for royalty and lump sum fee for transfer of technology are permitted under automatic route i.e. without any approval of the Government of India, subject to Foreign Exchange Management (Current Account Transactions) Rules, 2000 as amended from time to time.

The royalty payments are 'net of taxes' and are calculated on the basis of the net ex-factory sale price i.e. sale price of the product less excise duties, cost of the standard bought-out components and the landed cost of imported components (irrespective of the source of procurement) including ocean freight, insurance and custom duties.

2.2.3 Use of Trademarks and Brand Name

Payment of royalty for use of trademarks and brand name are also allowed under automatic route without any ceiling. Royalty on brand name or trade mark is to be calculated on net sales i.e. gross sales less agent/dealer commission, transport cost including ocean freight, insurance, duties, taxes and other charges, and cost of raw materials, parts and components imported from the foreign licensor or its subsidiary/affiliated company.

[5]Refer section 2.2.1.3

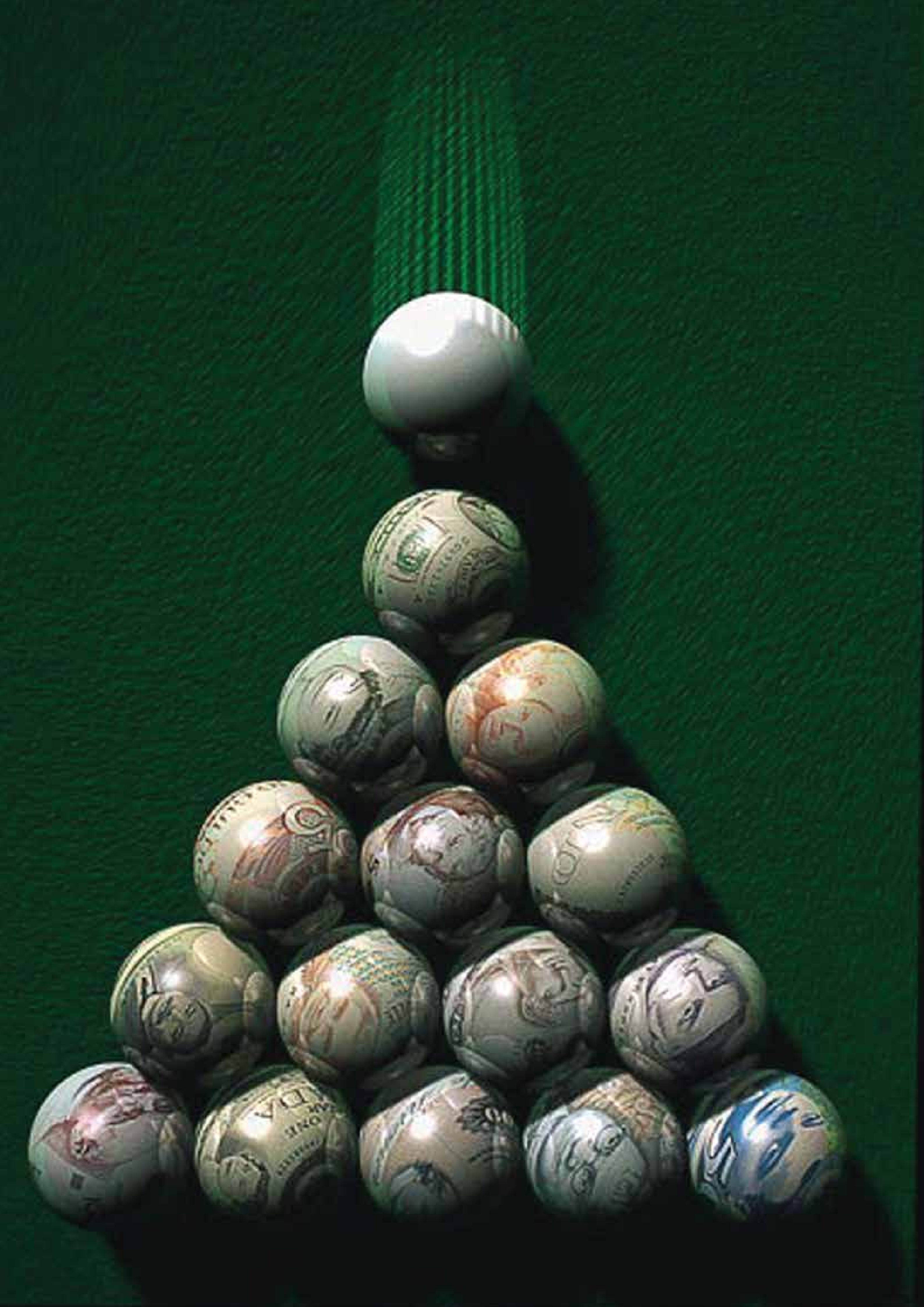
2.3 SEZ Policy

The Special Economic Zones scheme seeks to provide an internationally competitive and free environment for exports. These zones are designated duty-free enclaves and are treated like foreign territories for the purpose of trade operations, duties and tariffs. The SEZ policy offers several fiscal and regulatory incentives to developers of the SEZs as well as units operating within these zones.

2.4 EOU/EHTP/STP and BTP

The government encourages units to set-up as an EOU or in Electronics Hardware Technology Parks (EHTP), Software Technology Parks (STP) and Bio-Technology Parks (BTP). Units undertaking to export their entire production of goods and services except permissible sales in the DTA, may be set-up as an EOU or in EHTP, STP or BTP for manufacturing goods, including repair, re-making, reconditioning, re-engineering and rendering of services.

In case of EOUs the minimum investment limit in plant and machinery is ₹ 10 million.



3

ENTRY OPTIONS

Indian regulations allow investment in all industries expect those in the negative list[6]. Additionally, there are sectoral caps[7] for investing in certain industries. FDI is not permitted beyond these caps. FDI can be brought into India through the automatic approval route and, for certain activities, on obtaining prior government approval. A foreign enterprise can consider the following routes for doing business in India

1. Corporate entity
   - Joint Venture with an Indian partner (JV)
   - Wholly Owned Subsidiary (WOS)
   - Limited Liability Partnership (LLP)
2. Non-corporate entity
   - Project Office (PO)
   - Liaison Office (LO)
   - Branch Office (BO)
3. Foreign Institutional Investors (FII)

3.1 Corporate Entity

Companies in India can either be public or private. Further, a private company can be limited by shares or by guarantee. In the former, the personal liability of members is limited to the amount unpaid on the share subscription, while in the latter the personal liability is limited by a pre-decided nominated amount.

3.1.1 Private vs Public

Private vs Public Limited Company

S No	Detail	Private Limited Company	Public Limited Company
1	Commencement of Business	After obtaining the certificate of commencement of business	After obtaining certificate of commencement of business
2	Number of Members	Minimum 2 and Maximum 200	Minimum 7 with no Maximum cap
3	Number of Directors	Maximum 2	Minimum 3
4	Authorized Capital	Minimum ₹ 100,000 (US$ 1617 approx)	Minimum ₹ 500,000 (US$ 8083)

[6] *Schedule 3*
[7] *Schedule 3*

S No	Detail	Minimum 2	Minimum 3
5	Share subscription	Cannot invite public to subscribe its shares or debentures	Can invite general public to subscribe its shares
6	Transferability of shares	Right to transfer is restricted by its Articles of Association	Freely transferable
7	Quorum	Minimum 2 members be personally present. In case of corporate shareholders, their nominated representatives	Minimum 5 members to be personally present. In case of corporate shareholders, their nominated representatives

Figure 9

3.1.2 Wholly Owned Subsidiary

A foreign corporate can invest and start its operations in India by incorporating a WOS company under the provisions of the Indian Companies Act, 2013. It is treated at par with a domestic company and all regulations applicable to an Indian company equally apply to the WOS.

The set-up can be under the automatic route[8], wherein no prior approval of the government is required. One needs to take into consideration the business activities proposed for India as well as the sector of operation. In case restrictions apply, prior approval is required from the FIPB - Ministry of Finance.

3.1.3 Joint Ventures

There are no separate laws for Joint Ventures (JV) in India and laws governing domestic companies equally apply to JVs. Typically, as in any other country, a JV is where two parties (individual or companies) incorporate a company in India. The management and running the JV is influenced by the terms decided in the shareholders agreement.

Understanding your prospective Indian partner

(i) Keep in mind that he looks at a business horizon of 3-5 years to measure the returns on investment unlike the Japanese feasibility analysis of 15-20 years.

(ii) He may be keen on quick return on investment instead of continuously ploughing back profits.

(iii) The Indian partner will aim for faster turnaround in negotiations. Since India works on 'top-down' management approach, the Indian partner is ready to take a decision immediately and cannot comprehend the 'down-up' approach of the Japanese side.

(iv) Discuss in detail management control issues viz. appointment to the board of directors and chairman of board, appointment of CEO, MD and CFO, issues arising from future change of control, non-compete, etc.

Figure 10

[8] *Refer section 2.2.1.2*

3.1.4 Limited Liability Partnership (LLP)

The recently introduced concept of LLP provides an alternate mode of investment i.e. a corporate business entity along with the benefits o f limited liability. At the same time, it allows the members the flexibility of organising their internal structure as a partnership based on mutually agreed terms. Like a private limited company, LLP is a body corporate having a distinct legal entity. The LLPs are governed by Limited Liability Partnership Act 2008. FDI in LLPs is allowed only in sectors where 100 per cent FDI is permitted. FDI in LLP can be received post obtaining FIPB approval.

3.1.5 Set-up Process – Private Company

The set-up process for a private limited company can essentially be divided into 4 stages.

3.1.5.1 Exchange Control

After deciding to set up a company in India, the immediate question which has a bearing is the proposed investment in a restricted industry or sector or subject to sectoral caps?

Most industrial activities now fall within the automatic route whereby only an intimation is to be made to the RBI post incorporating the company. In case the above issues have a bearing on the proposed investment, it will require clearance from the FIPB which normally takes 4-6 weeks.

3.1.5.2 Industrial License

With progressive liberalization and deregulation of the economy, the requirement of industrial licensing has been substantially reduced. At present, industrial license is required only for industries retained under compulsory licensing (e.g. liquor), manufacture of items reserved for small scale sector (e.g. textiles) and where the proposed location faces any restriction.

3.1.5.4 Intimation to the RBI

(i) Within 30 days of receiving the application money, intimation is to be made to the concerned regional office of RBI in respect of the inward bank remittance received as share application money.

(ii) The company is required to intimate the RBI within 30 days of issuing shares to the foreign investor.

(iii) RBI will issue a registration number to the company which is to be mentioned for future correspondence with the RBI i.e. while repatriating funds, etc.

3.1.6 Mergers and Acquisitions

Acquisition can be through issue of fresh capital or transfer of equity shares by an existing Indian holder. Though RBI permits freedom in transferring shares by an Indian shareholder to a foreign company, certain conditions are to be adhered whereas in certain cases a prior approval from the FIPB may be required. Over the years, restrictive provisions that regulated the expansions, mergers, amalgamations and takeovers of domestic companies have been removed to a large extent. However, certain regulations continue to govern the acquisitions of substantial interest in the company.

3.1.5.3 Company Incorporation

Private Company Incorporation - Graphical Overview

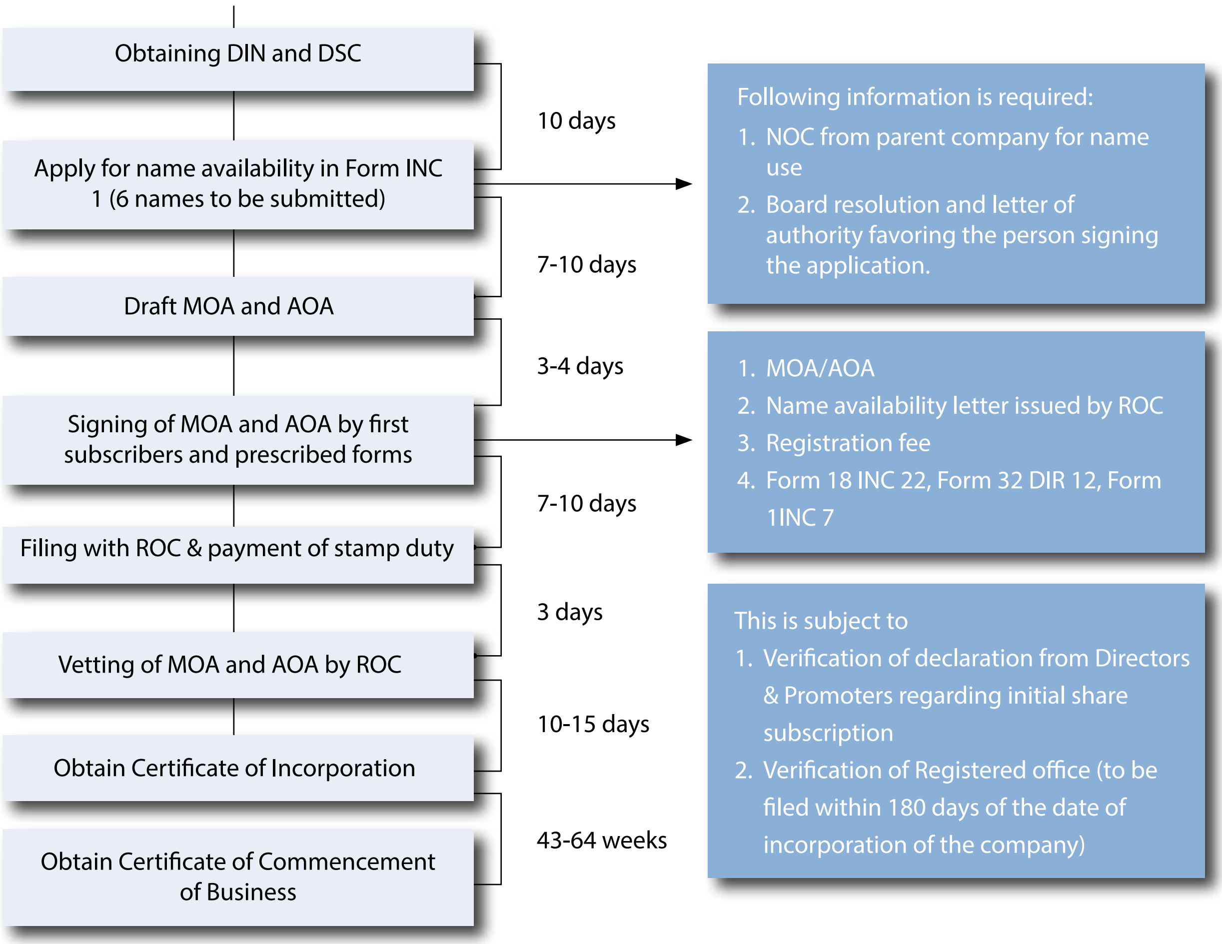


Figure 11

Note: A company to be incorporated as a private company must have a minimum paid up capital of ₹ 100,000 (US$ 1,616 approximately) and a public company must have a minimum paid up capital of ₹ 500,000 (US$ 8,082 approximately).

The SEBI (Substantial Acquisitions of Shares and Takeovers) Regulations, 2011 (the takeover code) seeks to protect the interest of small investors and to strengthen the regulatory framework for takeovers. Essentially, the takeover code is triggered if the acquisition in the shares of the target company, together with the shares already held, result in the investor holding 25 per cent or more of the voting capital or effectively changing the management control.

The takeover code requires that the acquirer makes a public offer to the remaining shareholders to acquire at least 26 per cent of the voting capital, at the offer price.

3.2 Other Entry Options

A foreign company may also enter the Indian markets by establishing a non-corporate entity which operates as an extension of the foreign company. These are

3.2.1 Liaison Office (LO)

LO is in the nature of a representative office set-up primarily to understand the business and investment climate. It acts as a channel of communication for the head office. However, it cannot directly undertake any commercial activity. All running expenses are to be met only through inward remittances by the head office.

Scope of Activities

a. Representing the parent company and group companies in India
b. Promoting trade with India
c. Exploring technical or financial collaborations between parent and Indian companies
d. Acting as a communication channel between the parent company and Indian companies

Set-up Process

Setting up a LO requires prior approval from RBI, the apex foreign exchange management authority in India. Approval is usually granted for a period of three years and can be renewed thereafter. Subsequently, one is required to obtain a certificate of establishing a place of business in India from the ROC and reporting to Director General of Police in the State of registration.

Compliance

As the LO does not undertake any commercial activity, it is not taxable in India. However, the LO is required to meet compliance requirements viz. tax withholding, audit, etc.

Closure

To close the LO, an application is to be submitted with the Authorised Dealer Bank along with a tax clearance certificate from the Income tax authorities and an Auditor's certificate computing the amount repatriable. Besides, intimation is to be made to the ROC.

3.2.2 Project Office (PO)

Foreign companies planning to execute a project in India can set-up temporary project / site offices. Generally, POs are set-up for turnkey or installation projects.

Scope of Activities

(i) Activities restricted to those incidental to the project
(ii) Permitted to operate a bank account in India
(iii) The project can be funded by bilateral / multilateral / international financing agencies

Set-up Process

In specified cases, a PO is allowed to be set-up under the automatic route, otherwise a prior approval is required from the RBI. Subsequently, one is required to obtain a certificate of establishing a place of business in India from the ROC and reporting to Director General of Police in the State of registration.

Compliance

PO may remit the surplus revenue from the project subject to payment of applicable taxes in India. PO is considered an extension of the foreign company and taxed at 40 per cent (plus surcharge and cess). Surcharge will be 2% if income exceeds of Rs 10 Million).Besides, it is required to meet compliance requirements viz. income tax, tax withholding, audit, etc.

Closure

On completion of the project and to repatriate balance funds, an application is to be submitted with the Authorised Dealer Bank. The application is to be accompanied with a tax clearance certificate from the Income tax authority which is issued only once the entire verification process, namely assessments, is completed.

3.2.3 Branch Office (BO)

A foreign company may consider establishing a branch to carry out trading, business dealing, etc. on behalf of the head office.

Scope of Activities

(i) Export / import of goods
(ii) Rendering professional or consultancy services
(iii) Research work linked to activities of the parent
(iv) Promoting technical or financial collaborations between Indian companies and parent and group companies
(v) Representing the parent company in India and acting as buying/selling agents in India
(vi) Rendering services in information technology including software development
(vii) Technical support in respect of products supplied by the parent or group companies
(vii) Foreign airline / shipping company

Set-up Process

Set-up of a BO requires a prior permission from the RBI which will closely examine the proposed activities to be carried out in India. Subsequently, one is required to obtain a certificate of establishing a place of business in India from the ROC and reporting to Director General of Police in the State of registration.

Compliance

BO may remit the surplus revenue from the project subject to payment of applicable taxes in India. BO is considered an extension of the foreign company and taxed at 40 per cent (plus surcharge and cess). Surcharge will be 2% if income exceeds of Rs 10 Million. Besides, it is required to meet compliance requirements viz. Income tax, tax withholding, audit, etc.

Closure

To close a BO and to repatriate balance funds (net of tax), an application is to be submitted with the Authorised Dealer Bank. The application is to be accompanied with a tax clearance certificate from the Income tax authorities which are issued only once the entire verification process, namely assessments, is completed.

3.3 Foreign Institutional Investors (FIIs)

FIIs is a term commonly used in India to refer to outside companies investing in the financial markets of India. FIIs include institutions such as pension funds, mutual funds, investment trusts, asset management companies or their power of attorney holders (providing discretionary and non-discretionary portfolio management services). The FIIs are invited to invest in all the securities traded in the primary and secondary markets, including the equity and other instruments of companies which are listed or are to be listed on the stock exchanges in India.

The FIIs are required to register with SEBI, which shall, while granting registration to the FII, take into account the track record of the FII, its professional competence, financial soundness, experience, etc. FIIs seeking registration with the SEBI should hold a registration from the securities commission or the regulatory organisation for the stock market in its own country of domicile. SEBI's registration and RBI's general permission to an FII will be for five years, renewable for further five year periods later on.

4

BUSINESS OPERATIONS – COMPLIANCE MATTERS

Once a business entity has been registered in India, it is important to handle various regulatory compliances. These can be initial registrations, record keeping, tax matters etc. This chapter looks at these matters.

4.1 Immediate on Set-Up

4.1.1 Registrations

Generally, the following registrations need to be considered for a company.

(i) Permanent Account Number (PAN) - All tax payers are required to obtain an income tax registration i.e. PAN, which is a unique number of 10 characters allotted by the Income tax authorities. Besides quoting this for tax issues, it is required for various transactions viz. asset acquisition, etc.

(ii) Tax Deduction Account Number (TAN) - While running a business, certain payment will require the payer to withhold tax[9]. A new business is required to obtain a TAN from the Income Tax authorities It is mandatory to quote the TAN in all tax withholding documents viz. challans, certificates, quarterly returns, etc.

(iii) Service Tax - Is an indirect tax imposed on specified services. A person liable to service tax needs to register within 30 days of providing the services. Registration with department is necessary in case value of services in a financial year exceeds 9 lacs.

(iv) Value Added Tax (VAT) - VAT is levied on sale of goods. Any business proposing to carry out a works contract or trade in goods needs to register for VAT.

(v) Excise Registration - Excise duty is an indirect tax levy on manufacture, storage and import of goods. Payment of excise duty arises on removable of goods from the factory.

(vi) Foreigners Regional Registration Officer (FRRO) - Foreigners coming to India on employment need to register with the FRRO within 14 days of their arrival in India.

(vii) Import Export Code (IEC) - Prior to carrying out any export or import activities from India, it is mandatory to obtain an IEC number from the Directorate General of Foreign Trade.

(viii) Shops and Commercial Establishments Act - The conditions of service of employees employed in a commercial establishment are regulated and reported to the State Labour Commissioner.

(ix) Professional Tax Act - States may provide for deduction from salaries of employees employed in a commercial establishment.

4.1.2 Registration for Directors.

(i) DIN - Every individual, intending to be appointed as a director of a company has to make an application for allotment of Director Identification Number (DIN) to the Central Government.

(ii) PAN based DSC - In order to meet the regulatory and legal compliances, all statutory documents are required to be filed with the Central Government. To do so, the Authorized Signatory of

[9] *Refer Section 4.6.1.1*

the company has to obtain a Digital Signature Certificate (DSC), having encrypted value of his Permanent Account Number (PAN) from the certifying authority.

4.1.3 Business Premises

Factory Land

While setting up a factory, acquiring industrial land with a clear title is the key step. State governments have identified industrial corporations which develop land for industrial use. These industrial corporations require that an application be submitted specifying the desired area size along with the proposed business plan. Applications are reviewed and merits considered before land is allotted. The process is not time bound and is subject to availability.

Office Space

At the time of the incorporation of the company, it is mandatory to submit particulars of the registered office. Business entities are free to buy or lease office space. The common practice is to use real estate agents, who charge a fee of 1 to 2 per cent of the sale value and, in case of lease, 1 to 2 months rental.

Taking business premises on lease

(i) Agree terms with the real estate agent, if involved
(ii) Always carry out a due diligence of the title deed.
(iii) Ensure the lease agreement is vetted by a lawyer
(iv) Register the agreement with the regional sub-registrar/ judicial authorities
(v) Ensure clear clauses on termination, payment of utilities, repairs, etc

Figure 12

4.1.4 Factory Construction

Once the land is identified and before commencing construction, the company has to submit a factory plan which will normally require an approval by the concerned industrial corporation. Each state industrial corporation has their own building bye-laws. In addition, there are other clearances or approvals[10]. Once construction is complete, an industrial corporation normally requires the company to obtain a completion certificate. Construction of factory and commencement of operation require prior permission from State Pollution Control Board as well as Ministry of Environmental and Forest

4.2 Human Resources – Hiring & Management

The working population of India consists of three categories: organized work force, unorganized work force and self-employed individuals. The organized sector accounts for a tenth of India's labor force but earns a fourth of the nation's total wages and income.

4.2.1 Legislative Provisions

The laws governing labor in India, listed below, are somewhat complex. In general, the employment legislation normally addresses concerns of the blue collared staff. Employers are commonly required to provide employees with written terms and conditions of employment. The agreement should detail salary, hours of work, disciplinary rules and complaint procedures, the notice period

[10] *Schedule 4*

for termination, holidays, the provident fund, pensions, gratuities and other employee related details. Violation of labor law is viewed with strictness.

- The Factories Act, 1948
- The Minimum Wages Act, 1948
- The Payment of Wages Act, 1936
- Workmen's Compensation Act, 1923
- Payment of Bonus Act, 1965
- Maternity Benefit Act, 1961
- Shops and Commercial Establishments Act
- Professional Tax
- Contract Labor (Regulation and Abolition) Act, 1970

4.2.2 Working Hours and Holidays

State government laws set minimum wages, hours of work, and safety and health standards. The Factories Act mandates an 8 hour workday, a 48-hour workweek and minimum standards of working conditions. These standards are generally enforced and accepted in the modern industrial sector; however, not observed in economically lesser viable industries.

Where an employee works for more than 8 hours in a day or for more than 48 hours in any week, he is entitled to overtime wages at twice the basic wage rate (or 1.5 times his salary as per the business model). Overtime is generally paid to non-managerial staff i.e. blue collared.

4.3 Social Security

4.3.1 Employee Provident Fund and Miscellaneous Provisions Act, 1952

This is a retirement benefit akin to a pension plan, which requires a monthly contribution to be made by the employer with a matching contribution from an employee. At present, the monthly contribution is 12 per cent of basic salary. The enterprise can either register with the government provident fund department or form and manage its own trust. Monthly deposit of contribution and furnishing of returns are mandatory in either case.

This Act applies should the number of employees exceed 20 at any point of time during the year. Employees with basic salary in excess of ₹ 6,500 (US$ 105 approx) per month can opt out of the scheme.

4.3.2 Payment of Gratuity Act, 1972

This provides for gratuity to employees in factories, plantations, shops, establishments and mines. Gratuity is payable in any of the following circumstances

(i) on employee's retirement ; or
(ii) on his becoming incapacitated prior to such retirement ; or
(iii) on termination of his employment ; or
(iv) on the employee's death (gratuity is paid to legal heirs of the employee)

Except in the case of death or disablement, gratuity is payable only if the employee has rendered at least five years of continuous service.
The employee is paid 15 days of wages on the wages last drawn, for every completed year of service in excess of six months. The maximum amount of gratuity is limited to ₹ 10,00,000 (US$ 12,215 approx)

4.3.3 Employees State Insurance Act, 1948

The Employee State Insurance (ESI) scheme provides protection to workers and their dependents in contingencies such as sickness disablement due to employment, injury or occupational hazard.

Under the ESI Scheme the employee contribution is 1.75 per cent of the wages and that of employer is 4.75 per cent of the wages. Employees earning a daily average wage of ₹ 50 are exempted from making any contribution. Employees whose gross salary/wages are in excess of 15,000 pm can opt out of the scheme.

Labour Laws - Key Issues

1	Restriction on hours worked by employees	48 hours per week maximum
2	Number of Indian employees which triggers employer obligation to provide employees state insurance	10
3	Number of Indian employees which triggers employer obligation under provident fund scheme, bonus act	20
4	Number of years of continuous service which makes an employee eligible for gratuity	5 years
5	Minimum bonus to be paid to an employee drawing a basic wage of ₹ 10,000 or less	8.33 per cent
6	Prohibited age of employing young children in factories	14 years
7	In case of retrenchment due to / or closure, number of employees which triggers employer obligation to seek prior government approval	100
8	On retrenchment / lay off / closure	Compensation is payable to employee

Figure 13

4.4 Disputes

There are various labour laws and each may vary from state to state. Specifically, the statutes requiring payment of gratuity, bonus, provident fund contributions, etc. need strict adherence, as non-compliance would entail penal consequences and may even result in prosecution.

4.4.1 Industrial Dispute Act, 1947

The Act aims for amicable settlement of conflicts between the employer and the employee and also contains provisions in respect of issues that may arise in an industrial or commercial undertaking.

4.4.2 Trade Unions

As per current regulations, trade unions are to be registered under the Trade Unions Act with a minimum of seven members.

4.4.3 Dismissal and Layoff

An employer can remove an employee on ground of misconduct or fraud. Such misconduct can include a criminal charge on that employee or his continuous absence from duty.

Layoff, on the other hand is termination of service of an employee for any reason other than disciplinary action.

4.5 Records & Reporting

4.5.1 Accounting

Accounting is classifying and recording business transactions that have a financial impact.

4.5.1.1 Methods of Accounting

There are two methods of accounting

(i) Accrual or mercantile basis - Where the financial impact of the transaction, events and circumstances of an enterprise is recorded in respect of the period in which they occur, rather than in the period in which cash is received or paid by the enterprise

(ii) Cash basis - This is the method of recording the transactions i.e. revenues, expenses, assets and liabilities, in the period in which actual receipts or payment occurs.

It is mandatory for a company to keep its books of accounts on Accrual basis Books of Accounts include cash book, bank book, general ledger, day book.

4.5.2 Audit

4.5.2.1 Statutory Audit

The Indian Companies Act mandates that businesses have their accounts audited by an Indian firm of Chartered Accountants. These audited accounts are to be filed with the Registrar of Companies and in some cases, with the RBI. In case of manufacturing companies, excise authorities and state VAT authorities can ask for audited financials.

4.5.2.2 Internal Audit

Companies where the paid-up capital and reserves exceeds ₹ 5 million (US$ 79,872 approx) at the begning of the year or average turnover during the preceding three previous years exceeds ₹ 50 million (US$ 7,98,722 approx), need to have their internal controls certified. The company may out source this function to a Chartered Accountancy firm or set-up their own team, the latter being more common in case of large companies.

4.5.2.3 Cost Audit Order

Final product based industries are required to mandatory have it cost audit records audited by a cost accountant. These industries will be covered only if they fulfill certain threshold limits with respect to net worth, turnover and listing in stock exchanges.

4.5.2.4 Cost Compliance Order

Other Companies not covered by cost audit order and engaged in manufacturing, processing, mining and production and fulfilling threshold limits mentioned above will have to submit a cost compliance report duly certified by a cost accountant.

4.5.2.5 Tax Audit

Businesses with turnover exceeding ₹ 10 million (US$ 1,59,745 approx) need to additionally have accounts audited under specific provisions of the Indian income tax laws and certified by an Indian firm of Chartered Accountants.

4.5.3 Reporting Requirements

Every Company is required to file the following documents with the ROC:

(i) Annual Return - Companies are required to prepare and file annual return with the ROC within 60 days from the date of the holding their AGM. The annual return has details of shareholders, directors and any changes there of from the date of the previous AGM. From Financial Year 2014-15, Annual Return shall contain the details upto the end of Financial Year instead of Annual General Meeting.

(ii) Financial Statement - Companies are required to file with the ROC copies of the audited balance sheet, profit and loss account together with the director's report and the auditor's report within 30 days of the AGM. Following Companies falling in Phase-1 are required to file their Balance Sheet and Profit & Loss Account in XBRL mode from the year 2010-11

- All Companies listed in India and their Indian Subsidiary.
- All Companies having paid up capital of ₹ 5 crore or more and turnover of ₹ 100 crore and more

The audited financial statements are also filed with the income tax, VAT authorities and excise department.

Indian Regulatory Environment - Key Dates

REGULATORY MATTER	DUE DATE
Corporate Law	
Board Meeting	4 meetings in a year Gap between two meetings should not be more than 120 days
Annual General Meeting ('AGM') (adoption of financials)	Within 6 months from the end of Financial Year
Annual Return with the ROC	Within 60 days from the date of AGM
Tax	
Corporate Tax Return	September 30th & November 30th*
Tax Audit Report	September 30th & November 30th*
Transfer Pricing Report	November 30th
TDS Returns (Tax Withholding)	Quarterly
Individual tax return	July 31st
Service tax return	Half- yearly
Compliance	
Deposit of TDS	7th of every month
Deposit of Service Tax: • In case of Individuals/proprietary concerns and Partnership • In case of others	Quarterly** Monthly

* In case where the transfer pricing report is required

** 5th – deposited manually 6th – deposited electronically

Figure 14

4.5.4 Secretarial Matters

4.5.4.1 Constitutional Documents

A Company's primary constitutional documents are the MOA and AOA. A MOA contains the basic and primary objectives along with the objectives incidental to the primary objectives for which the company is formed. An AOA is a document which states the rights and duties of the members among themselves as well as towards the company. It is essentially a document containing the bye-laws of the company.

4.5.4.2 Board Meeting

The decision in the board meeting will not be considered valid unless the meeting is properly convened and duly constituted. The board meeting must therefore be convened by proper authority, through a proper notice, proper person as chair and have the requisite quorum i.e.

(i) Frequency - Pursuant to Companies Act, 2013 at least 4 Board Meetings must be held in a year, and gap between two meetings should not be more than 120 days

(ii) Notice - Pursuant to Companies Act, 2013 atleast 7 days notice is required to be given for Board Meeting to each Director of the Company.

(iii) Time and Place of Board Meeting - Board meetings may be held at any place (outside India also) and outside business hours, as per the mutual convenience of the directors.

(iv) Quorum - The required quorum for a board meeting is one-third of its total strength or two directors, whichever is higher.

Board Meeting can be held through electronic mode means through video conferencing i.e. audio visual electronic communication facility employed which enables all persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate effectively in the meeting. Following matters shall not be considered in the meeting held through video conferencing:

- Approval of annual financial statements
- Approval of Boards' Report
- Approval of the prospectus
- Audit committee meeting for consideration of accounts
- the approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover

4.5.4.3 Annual General Meeting (AGM)

AGM is the annual meeting of the shareholders who meet to discuss the state of affairs of the company. AGM should be called during 9.00 a.m. to 6 p.m. and the day shall not be national holiday. Moreover, AGM is to be held only at the registered office or nearby area. The principal agenda of the AGM is to review the audited financials, appoint auditors, appointment/ reappointment of rotational directors and to declare dividends, if any. Notice of AGM is required to be send to auditors along with shareholders.

4.5.4.4 Minutes

Minutes are the records of the business conducted by the company and directors in their meetings. Every company shall maintain a record of all proceedings in each meeting of its board of directors or shareholders. The minutes are to be prepared within 30 days of the conclusion of every such meeting. Each page of the minute book should be initialled and last page should be signed and dated. Minutes of the board meetings may be maintained in loose-leaf form. However, they should be bound at the end of each financial year of the company and shall be kept at the place where the registered office of the Company is situated.

4.5.4.5 Statutory Records

A Company is required to maintain certain registers which records specific transactions like mortgage of charges, contracts in which Directors are interested.

List of key statutory records

	Statutory Register	Details covered therein
1	Allotment of Shares	Description of shares as and when allotted to the members of the Company
2	Register of Members	Details of the existing and new members in brief
3	Transfer of Shares	Particulars of shares as and when transferred
4	Mortgages and charges	al the charges specifically affecting the property of the company
5	Contracts	particulars of contracts or arrangements with the companies or firms in which directors are interested
6	Loan, investment, guarantee or security	particulars of loan, investment, guarantee or security provided in relation to a body corporate
7	Investments held in the names of nominees	[1] particulars as may be necessary to identify the shares or securities. [2] the name of person or bank in whose name or custody the shares or securities are standing
8	Directors, managing director, manager & secretary	record of the names, addresses and other relevant particulars of the managing director, directors, manager and secretary of the company.
9	Shareholding of directors	the description of shares, other securities in the company or its subsidiary.

Figure 15

4.6 Direct Taxes

Under the present income tax regime, taxes are levied on the basis of residential status of the tax payer. While residents are taxed on global income, non-resident are responsible for India linked or sourced income.

The financial year in which income is earned is referred to as the previous year whereas the financial year following i.e. in which the income is reported for verification is referred as the assessment year.

4.6.1 Tax on Companies (Corporate Tax)

A company is considered as a resident in India if it is incorporated in India or its control and management lies effectively in India. Companies resident in India (whether owned by Indians or non-Indians) are taxed on their worldwide income. On the other hand, non-resident companies are taxed on income earned from a business connection in India or from other Indian sources.

Tax Rates on Taxable Income of Corporates

Status of Companies	Basic Rate (per cent)	Surcharge * (per cent)	Education Cess (per cent)	Effective Rate (per cent)
Resident	30[1]	5	3	32.45
Non resident	40[2]	2	3	42.02

Figure 16

[1] *Surcharge at 5 per cent and 10 per cent where income exceeds ₹10 million and ₹100 million respectively.*

[2] *Surcharge at 2 per cent and 5 per cent where income exceeds ₹10 million and ₹100 million respectively.*

- Education cess at 2 per cent and Secondary and Higher Education cess at 1 per cent remain unchanged.

4.6.1.1 Permanent Establishment (PE)

India's tax treaty with other countries usually follows the UN model and provides that even residents of another country can get subjected to Indian tax on profits derived from their business in India, if, the non-resident company has a PE in India. A PE is generally understood as a fixed place of business. Therefore, when a foreign enterprise carries a business in India through a branch, dependent agent, installation agent or group entities, it may amount to having a substantial presence through a PE and hence taxability can arise in India. A subsidiary is specifically excluded from the scope of PE, unless proved to be a dependent agent.

Even though the country where the income originates (referred to as *country of source*) has the primary right to tax profits attributable to a PE, the same profits may also be taxed in the hands of the head office in the parent country. However, credit is generally allowed by the parent country for taxes paid in the *country of source.*

4.6.1.2 Business Profits

Business profits signify income from any trade or business including income derived by an enterprise from the performance of personal services. The Indian tax laws have elaborate provisions, which need to be adhered while computing business profits. The general principles for determining chargeability of business profits are

(i) There must exist a business or profession;
(ii) The business or profession should be carried on by the tax payer; and
(iii) The business or profession should be carried on for some time during the tax year.

[11] *Refer section 4.5.1.1*
[12] *group of assets falling within the class of assets entitled to the same rate of depreciation*

The business profits are computed under the mercantile or cash system of accounting[11]. Business expense is allowed as deductions as well as amortization of capital expenditure.

4.6.1.3 Depreciation

Depreciation or amortization included in the financial statements, as determined under the Indian Companies Act, is not considered as a tax-deductible charge. Depreciation on assets, for tax purposes, is to be calculated on the block of assets[12] on a reducing balance method as per prescribed rates. The following be noted

(i) Depreciation is allowed only once the asset is actually put to use for business

(ii) In the event assets are purchased during the year and used for less than 180 days, only half of the admissible depreciation is allowable

(iii) The charge for depreciation is computed on the amount of depreciable asset after adding the cost of assets purchased during the year to the block of assets at the beginning of the year and reducing the sale proceeds from assets sold during the year.

4.6.1.4 Minimum Alternate Tax (MAT)

The Indian tax law provides for a MAT which is to be paid by a company on the basis of profits disclosed in the financial statements. A company has to pay MAT on *book profits at* 18.5 per cent applicable surcharge and 3 per cent education cess. However, MAT provisions are only applied when the tax payable under regular tax provisions is less than 18.5 per cent of its *book profits*[13].

4.6.1.5 Transfer Pricing

Businesses having cross border dealings with related concerns fall within ambit of Indian *transfer pricing* regulations. Primarily, this requires maintenance of documentation and certification by an Indian firm of chartered accountants confirming that dealings with related concern were at Arm's Length and the profit is appropriately reported by the Indian business entity.

Where two group companies are dealing with each other, *transfer pricing* will attempt to verify that the dealings have been done at Arm's Length Price. The purpose is to see whether independent person would have transacted at similar prices. In case transaction appears under / overvalued, transfer pricing adjusts the prices of cross-border transactions as adopted by related parties.

4.6.1.6 Royalty / Fee for Technical Services (FTS)

Royalty includes payments for use or right to use any copyright, equipment, etc. Similarly, FTS includes payments in consideration of rendering any technical or consultancy service. The definition of Royalty or FTS is different in many countries, which affects the scope of taxability. Even the tax rate may vary depending on the nature of the transaction. Therefore, appropriate classification of the transaction becomes important. The prime issue which normally arises is, whether a particular income will be taxable as business income / as Royalty / FTS. The following will play a role

(i) Terms of agreement as entered into with the Indian party

(ii) Definition provided in the local laws of India and the relevant DTAA

(iii) Business income is taxable in the *country of source* only in case of a PE[14]

(iv) Royalty / FTS are generally taxable in the country of source.

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[13] Book profits for this purpose are computed by making prescribed adjustments to the net profit disclosed in the financial statement

[14] Refer section 4.6.1.1

4.6.1.7 Dividend

Dividend paid by a domestic company is exempt in the hands of the recipient. However, the company has to pay Dividend Distribution Tax (DDT) currently at 15 per cent (*plus* applicable surcharge and education cess).

4.6.1.8 Business Losses

A company doing business in India may have net business losses. There are specific guidelines on carry forward of these losses

(i) Business losses, other than unabsorbed depreciation, can be carried forward for the subsequent eight years and set off against taxable business income

(ii) It is mandatory to submit the annual return of income within time in order to claim carry forward benefit

(iii) Losses of closely held companies can be carried forward for set-off, provided at least 51 per cent of the share capital continues to be beneficially held by the same person(s)

4.6.1.9 Withholding Tax

Businesses need to withhold tax on specified payments viz salary, contractual, brokerage, commission, professional fees, etc.
To illustrate

Payee	When	Tax Withholding Rate (per cent)*	Date of Deposit	Report-ing
Employee	If salary is taxable	per prescribed slabs Refer Para 4.6.2.4	Within 7 days of the month following the month in which payment is made	Quarterly
Contractor	Annual payment exceeds ₹ 75,000 (US$ 1,212 approx) or, single payment exceeds ₹ 30,000 US$ 485	2 (1 for individual payee)	With in 7 days of the month following the month in which the payment is accrued or paid, whichever is earlier	Quarterly
Landlord	Annual rental exceeds ₹ 180,000 (US$ 2909)	10 (2 for plant, machinery or equipments)	With in 7 days of the month following the month in which the payment is accrued or paid, whichever is earlier	Quarterly
Profession	Annual payment ex-ceeds ₹ 30,000 (US$ 485 approx)	10		

Figure 17

** Further enhanced by applicable surcharge and education cess if payment is made to non-residents.*

Note: Higher TDS rate of 20% for not furnishing correct PAN: Requirement to furnish PAN to deductor is compulsory to deductor otherwise TDS shall be deducted @20% with effect from April 1, 2010

4.6.2 Expatriate Taxation

Taxation of expatriates in India certainly merits special attention. Besides an inherent understanding of the domestic laws, an understanding of the concerned tax treaty is essential. The matter cannot be classified as always clear, since case rulings and emerging legal provisions have constant bearing .Normally an expatriate is taxed on his total income if he is a resident of India. A non resident is taxed on his income arising to him in India.

4.6.2.1 Residential Status

A foreign national deputed to work in India normally attains the status of a Resident but Not Ordinarily Residents (NOR). This status generally runs for 2-3 years from the initial year the person comes to India. Furthermore, where the stay of such a person gets restricted to less than 182 days in India during a particular tax year, in normal course such person would get classified as a non resident. As long as one retains the status of NOR or non resident, he will not be required to report his global income in India except that as is earned in India.

4.6.2.2 Taxability under DTAA

India has signed DTAA with virtually most developed countries and many developing countries. Provisions of DTAA have an inherent advantage that they override domestic law provisions i.e. the expatriate may choose to be governed by DTAA provisions if found more favorable compared to domestic law provisions.

4.6.2.3 Taxable Income

Remuneration received that is attributable to services rendered in India is taxable in India. Any holiday period which precedes or succeeds the period of service in India, is considered part of the service contract of employment for India. Let us examine some components of remuneration and their taxability

(i) Basic salary, hardship allowance and bonus
are fully taxable in India.

(ii) Perquisites - Perquisites like free accommodation, provision of car, club facilities, leave travel allowance are subject to income tax in the hands of the employee as per prescribed values.

4.6.2.4 Rates of Individual Taxation

Personal tax rates are on a slab rate basis, the highest slab rate and that which normally effects expatriate is 30 percent on taxable remuneration.

Rate of Taxes - Individual

Income Range (₹)	Rate (₹)
Upto 2,50,000[1]	Nil
2,50,001 - 500,000	10
500,001 - 1,00,000	20
1,00,001 and above[2]	30

Figure 18

[1]Exemption limit for senior citizens enhanced to ₹ 300,000 and ₹ 500,000 respectively

[2]Surcharge enhanced from 10 to 12 per cent on income exceeding ₹ 10 million.

4.6.2.5 Payment of Taxes

Tax liability in India can either be discharged through the advance tax mechanism or the tax withholding mechanism. Under the advance tax mechanism, one estimates the entire year's tax liability and deposits through 3 annual installments i.e. September 15th (30 per cent), December 15th (30 per cent) and March 15th (40 per cent). This method applies to free lancers and consultants where the responsibility to ascertain and deposit tax lies with the expatriate.

The tax withholding mechanism applies to expatriate employees where the employer, instead of the expatriate himself, is required to deduct the tax and deposit this into the government treasury on a monthly basis. In India, this is commonly referred to as tax deduction at source or TDS.

4.6.2.6 Tax Reporting In India

Remuneration, as is attributable to and taxable in India during a financial year needs to be reported to the Indian tax authorities through a return of income. This is to be submitted in prescribed Form by July 31st of the following financial year.

4.6.2.7 Other Issues

A few other issues as may have bearing are

(i) Visa - An expatriate employed to India needs to secure an employment visa from the Indian High Commission. Change over to another visa type or extending the visa from within India is not a difficult process.

(ii) Registration - All foreigners working in India need to do a one time registration with the FRRO. A booklet is then issued by the FRRO. Each state of India has an office of the FRRO which operates under the Ministry of Home Affairs.

(iii) Exchange Control Norms - Current exchange control norms provides that an expatriate may receive 100 per cent of his salary outside India provided that his income is liable to tax in India as per the provisions of Income Tax Act, 1961..

(iv) End of Deputation - All foreign nationals on work deputation to India are required to obtain a No Objection Certificate (NOC) from the Income tax office prior to their departure. This NOC is to be produced at time of immigration.

4.7 Indirect Taxes

Indirect taxes are levied on goods and services and are different from direct taxes which are levied on profits. Indirect taxes are primarily classified into

(i) Customs duty
(ii) Excise duty
(iii) Service tax
(iv) Central Sales Tax (CST)/Value Added Tax (VAT)
(v) Works Contract Tax
(vi) R&D cess

It has been announced by the Finance Minister that by April 01, 2016 a scheme of Goods and Service Tax will be implemented. With the implementation of GST it is a expected that there will be a unified taxation regime and excise duty, VAT and service tax will be merged to a single scheme of GST. Keeping this in view, the CST is already started to be phased out.

4.7.1 Customs Duty

Customs duty is levied on commodities imported into India. Duty drawbacks are possible if the imported items are re-exported or used in manufacture for export. Customs duty is also imposed on the value of certain exports. Peak rate of Customs Duty and Education Cess maintained at 10 and 3 per cent respectively in case of non- agricultural products.

The rates are prescribed under the Customs Tariff Act, 1975 and are revised from time to time by the annual Finance Act or through various notifications. Customs duties, particularly on imports, may be a significant cost factor in an Indian project due to the generally high rates of duties, unless corresponding drawbacks are available upon export.

An overview of the Custom Tariff Act is given below

(i) Three types of customs duties are levied on imported goods i.e.
- Basic custom duty (BCD)
- Additional custom duty (ACD) and
- Special additional duty (SAD)

In addition to the above, countervailing duty and/or anti dumping duty may be levied by the Central Government by notifying in the official gazette.

4.7.2 Excise Duty

Excise duty is imposed on the manufacturer of products and is levied on a variety of commodities. This duty is an important source of revenue for the central government. Rates vary depending on the type of commodity. Even in case of similar commodities, the rates often vary depending on circumstances such as end-use. Although generally ad-valorem[15], the rates may also be specific or a combination of ad-valorem and specific, based on the value of goods. The rates are prescribed under the Central Excise Tariff Act and are revised from time to time by the annual Finance Bill or through notifications.

Cenvat rate and Education cess maintained at 12.50% consolidated rate.

Excise duty is to be paid as the goods are cleared from the factory. Small-scale Industries (SSI) enjoy exemption from excise duty up to the specified value of goods cleared. All industries irrespective of their investment or number of employees are eligible for concession. In fact, even a large industry will be eligible for the concession for annual turnover upto ₹ 40 million. The SSI unit need not be registered with any authority. SSI units availing this benefit are denied cenvat credit although a federal tax, the state governments are also empowered to levy excise duty on certain commodities, such as liquor. Furthermore, in case of goods manufactured and exported, there is provision for duty drawback of the excise duty paid on such goods.

4.7.3 Service Tax

Service tax is levied at 12 per cent[16] (plus an education cess of 3 per cent) on the value of taxable services. The new service tax rate 14 percent would come into effect from a date to be

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[15]Duty which is payable, based on the value of goods
[16]Applicable for the Financial Year 2012-13

notified by the central government after the enactment of the Finance Bill 2015. The service provider will charge this to the service receiver. On collection, this is to be deposited into the government treasury. Prior to depositing the tax, the service provider can reduce the service tax paid to others, if any i.e. take credit for input tax.

All person providing taxable services should register with the central excise department of the concerned jurisdiction. Only a single registration is required even if services are provided from more than one premises, provided that the invoices are raised from one place. If invoices are raised from different premises, the registration should be obtained for each such premise where the billing is done. Even if the service provider offers more than one taxable service, multiple registration is not required. In certain cases , liability to deposit service tax to the Government also rests on the service receiver , either fully or in part (Partial Reverse Charge Mechanism). Besides, new Service Tax Rules to determine the service tax liability based on Place of Provision of service have also come into force.

In the case of proprietary concern or partnership firm, the service tax is required to be deposited on a quarterly basis. The payment should be made by 5th of the month following the quarter. In case of companies, the service tax is to be deposited into the government treasury on a monthly basis by 5th of the following month. In case of online deposit , service tax can be deposited by the 6th of the following month.

4.7.4 Central Sales Tax (CST)/Value Added Tax (VAT)

Since April 1, 2005, all states in India have progressively replaced local sales tax with VAT. VAT is not much different from local sales tax regime, except that it considers tax on value addition at each level of the distribution network. The state VAT is essentially a tax on sale of goods and does not apply to services. There are five slab rates ie 0 per cent, 1 per cent, 5 per cent 12.5 per cent and 20 per cent.

VAT is levied on sale of goods within the state. If the sale is outside the state of origin, Central Sales Tax (CST) is levied. The standard rate of CST is 2 per cent provided both the seller and buyer are registered dealers. Else, the rate is as per VAT, as applicable in the state of the seller. CST/VAT is neither imposed on import of goods into, nor export of goods out of India.

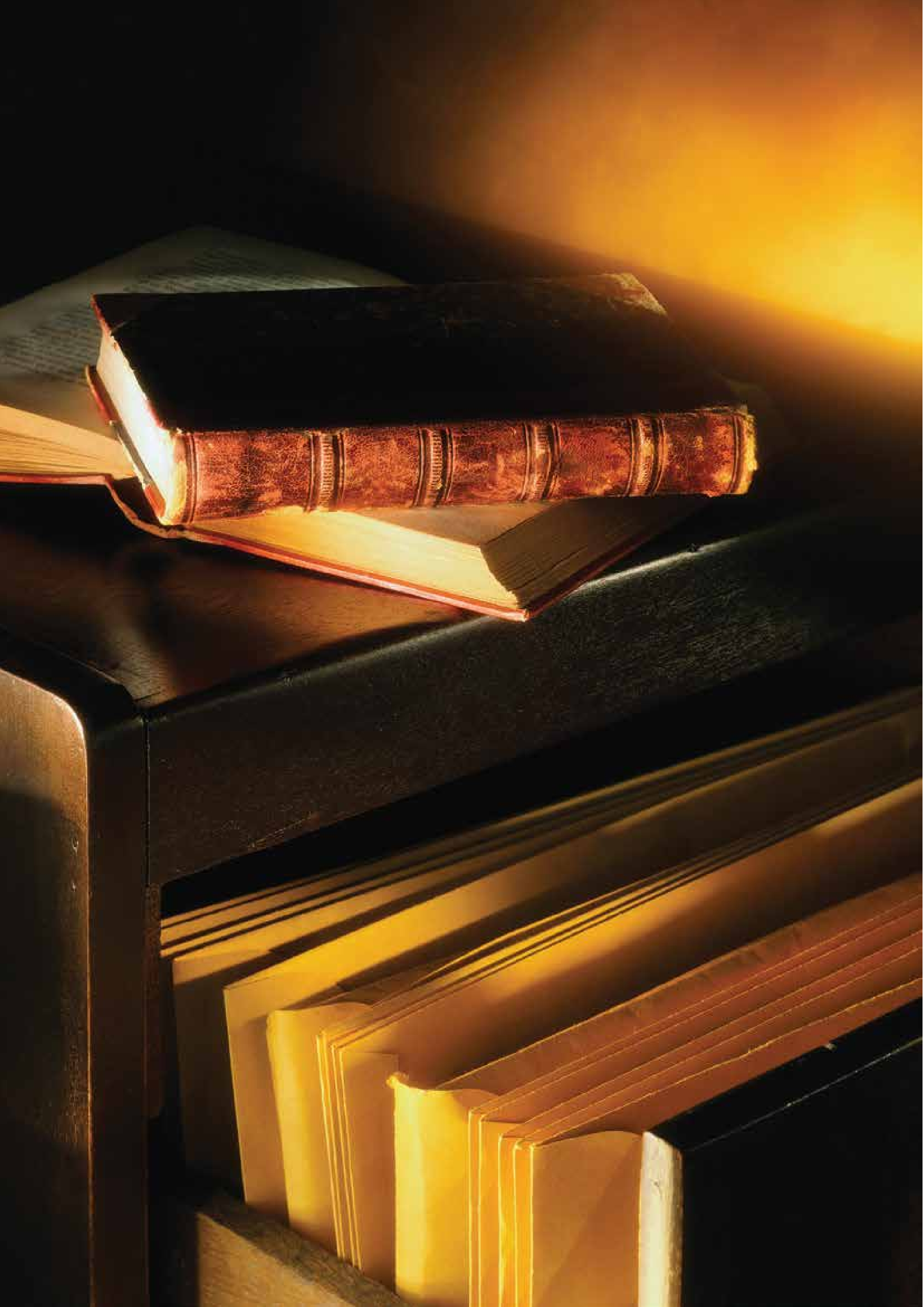
4.7.5 Taxation of Works Contracts

The taxation of works contracts is governed through the provisions of VAT. A works contract is a composite contract involving both supply of material and labour. The tax is payable on any transfer of property in materials during the course of execution of the contract. Tax is to be deducted from the payments made to the contractor. The rate at which the tax is to be deducted varies from state to state.

4.7.6 Research & Development Cess

Research & Development Cess Act, 1986 levies a cess on all payments made by an industrial concern for imported technology. At present, the cess is levied at 5 per cent on payment towards technology imports. The R&D cess has to be deposited before the payment for technology import can be made and proof of deposit in respect of R&D cess may be submitted with the RBI through whom the technology related payment is being made.

R&D cess can be deposited with any designated bank. Credit for R&D cess is available against the service tax charged on services related to intellectual property rights and technology transfers.



5. OTHER LAWS & REGULATIONS

5.1 Intellectual Property Rights (IPR)

IPR is a collective term and includes the following

- Patents
- Copyrights
- Trade Marks
- Registered Industrial Design
- Protection of Integrated Intellectual Design
- Geographical Indications

The IPR regime in India is essentially regulated through the following laws:

- The Patents Act, 1970
- The Patents (Amendment) Act, 1999
- Patents (Amendment) Act, 2002
- The Patents (Amendment) Ordinance 2004
- Patents (Amendment) Act, 2005
- The Patents (Amendment) Rules, 2006
- Copyright Act, 1957
- The Trade Marks Act, 1999
- The Design Act, 2000
- The Design Rules, 2001
- The Geographical Indication of Goods (Registration and Protection) Act, 1999
- Geographical Indications of Goods (Registration and Protection) Rules, 2002

Patents, designs, trademarks and geographical indications are administered by the Controller General of Patents, Designs and Trade Marks which is under the control of the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, Government of India.

5.2 Competition Act

The MRTP Act dealt with some issues of competition, antitrust and merger, but was too limited in the present scenario of liberalization and globalization. The main focus of the MRTP Act was to check the concentration of economic power with a few controlling monopolies and prohibit monopolistic and restrictive trade practices. The government of India enacted a modern competition law in the form of the Competition Act, 2002 and established the Competition Commission of India (CCI) to carry out the objectives of the Act. Once the Competition Act is enforced in totality, it would repeal the MRTP Act and would dissolve the MRTP Commission established under the MRTP Act.


RECORD

6. COMPANY CLOSURE

Closure of a company or as is more commonly referred, winding up of a company, is a process whereby all the affairs of the company are wound up, all assets sold, liabilities paid off and the balance, if any, is distributed to its shareholders in proportion to their holding in the company. An administrator, called a liquidator, is appointed; he collects the debts of the company and distributes any surplus among the members in accordance with their rights.

6.1 Modes of Winding Up

A Company may be wound up in any of the following modes

- Compulsory winding up by the court
- Voluntary winding up i.e.
  - members' voluntary winding up
  - creditors' voluntary winding up

Schedule 1

India Country wise Import

Values in US$ Millions

Rank	Country	2013-2014	%Share	2014-2015 (Apr-Dec)	%Share
1.	CHINA P RP	51,034.62	11.33	45,984.92	13.10
2.	SWITZERLAND	19,311.01	4.28	17,163.67	4.90
3.	SAUDI ARAB	36,403.65	8.08	23,180.42	6.60
4.	U ARAB EMTS	29,019.82	6.44	21,078.08	6.00
5.	U S A	22,505.08	5.01	16,226.79	4.63
6.	QATAR	15,707.99	3.48	12,004.89	3.42
7.	IRAQ	18,520.86	4.11	11,840.66	3.40
8.	NIGERIA	14,097.84	3.13	11,718.30	3.34
9.	KUWAIT	17,153.55	3.81	11,418.05	3.25
10.	INDONESIA	14,748.30	3.27	11,612.17	3.31
11.	KOREA RP	12,470.60	2.77	10,338.32	2.95
12.	VENEZUELA	13,940.13	3.09	9,913.00	2.82
13.	GERMANY	12,932.41	2.87	9,702.24	2.76
14.	MALAYSIA	9,229.88	2.05	8,540.50	2.43
15.	JAPAN	9,480.75	2.10	7,819.83	2.23
16.	IRAN	10,307.16	2.28	7,814.06	2.23
17.	BELGIUM	10,752.04	2.38	8,595.23	2.45
18.	SINGAPORE	6,762.49	1.50	5,356.04	1.52
19.	SOUTH AFRICA	6,075.26	1.34	4,875.07	1.39
20.	BRAZIL	3,720.94	0.82	4,471.88	1.27
21.	THAILAND	5,340.20	1.18	4,437.63	1.26
22.	HONG KONG	7,322.20	1.62	4,040.28	1.15
23.	RUSSIA	3,894.40	0.86	3,310.30	0.94
24.	ITALY	4,156.61	0.92	3,228.59	0.92
25.	TAIWAN	4,040.88	0.89	3,089.54	0.88
26.	ANGOLA	5,992.31	1.33	3,830.77	1.09
27.	CANADA	3,148.25	0.69	2,879.96	0.80
28.	FRANCE	3,691.89	0.82	2,755.10	0.78
29.	MEXICO	3,672.43	0.81	2,562.31	0.73
30.	AUSTRALIA	9,822.52	2.18	7,641.85	2.18
	India's Total Import	**450,199.79**		**350,365.46**	

Schedule 2

India Country wise Export

Values in US$ Millions

S.No.	Country	2013-2014	%Share	2014-2015 (Apr-Dec)	%Share
1.	U S A	39,142.10	12.44	32,440.47	13.64
2.	U ARAB EMTS	30,520.42	9.70	25,111.57	10.56
3.	HONG KONG	12,731.74	4.04	10,120.17	4.25
4.	SAUDI ARAB	12,218.95	3.88	9,396.48	3.95
5.	CHINA P RP	14,824.36	4.71	9,199.03	3.86
6.	SINGAPORE	12,510.54	3.97	8,200.09	3.44
7.	U K	9,779.07	3.11	7,034.91	2.95
8.	GERMANY	7,515.81	2.39	5,689.17	2.39
9.	BRAZIL	5,552.47	1.76	5,021.22	2.11
10.	VIETNAM SOC REP	5,441.94	1.73	5,012.53	2.10
11.	NETHERLAND	7,995.59	2.54	4,942.26	2.07
12.	SOUTH AFRICA	5,074.29	1.61	4,364.17	1.83
13.	JAPAN	6,814.07	2.16	4,291.88	1.80
14.	BELGIUM	6,377.32	2.02	4,145.39	1.74
15.	TURKEY	4,433.75	1.41	3,950.99	1.66
16.	ITALY	5,272.75	1.67	3,937.28	1.65
17.	MALAYSIA	4,197.93	1.33	3,868.65	1.62
18.	KOREA RP	4,208.69	1.33	3,634.66	1.52
19.	KENYA	3,882.15	1.23	3,402.28	1.43
20.	FRANCE	5,108.29	1.62	3,642.32	1.53
21.	NEPAL	3,592.30	1.14	3,374.90	1.41
22.	INDONESIA	4,850.20	1.54	3,221.41	1.35
23.	IRAN	4,971.35	1.58	3,162.04	1.33
24.	ISRAEL	3,746.94	1.19	2,612.72	1.09
25.	THAILAND	3,703.27	1.17	2,518.11	1.05
26.	NIGERIA	2,667.75	0.84	2,160.59	0.90
27.	EGYPT A RP	2,562.16	0.81	2,453.78	1.03
28.	SPAIN	2,884.41	0.91	2,333.03	0.98
29.	TANZANIA REP	3,400.76	1.08	2,187.26	0.92
30.	MEXICO	2,227.44	0.70	2,136.79	0.89
	India's Total Export	**314,405.30**		**237,735.33**	

S.No.	Sectors
1	Lottery Business
2	Gambling and Betting
3	Business of chit fund
4	Nidhi Company
5	Trading in Transferable Development Rights (TDRs)
6	Activities/sectors not open to private sector investment e.g. Atomic Energy and Railway Transport (other than permitted activities).
7	Real estate business, or construction of farm houses
8	Manufacturing of Cigars, cheroots, cigarillos and Cigarettes, of tobacco or of tobacco substitutes

Sectors where prior approval of Government is required

S.No.	
1	Mining and mineral separation of titanium bearing minerals and ores, its value addition and integrated activities
2	Pharmaceuticals (Brownfield)
3	Defence
4	Print Media
5	Broadcasting (Terrestrial Broadcasting FM (FM Radio)
6	Broadcasting (Up-linking of 'News & Current Affairs' TV Channels)
7	Broadcasting (Up-linking of Non-'News & Current Affairs' TV Channels/ Down-linking of TV Channels)
8	Tea Sector
9	Satellites- establishment and operation
10	Banking - Public Sector
11	Multi Brand Product retailing
12	Security Agencies in Private Sector

Sectors Attracting FDI (Illustrative)

S. No.	Sector/Activity	FDI Cap/Equity	Entry route
1.	Civil aviation		
1.1	Airports		
	a. Greenfield projects b. Existing projects	100% 100%	Automatic FIPB beyond 74%
1.2.	Air transport Services including Domestic Scheduled Passenger Airlines; Non-Scheduled Airline and Seaplane Services		
	a. Scheduled Air Transport Services / Domestic Scheduled Passenger Airline	49%-FDI 100% for NRIs investment	Automatic
	b. Non-scheduled Air Transport %.FIPB route beyond 49% and upto 74% Services/ Non- Scheduled airlines, Chartered airlines and Cargo airlines	74%- FDI 100% for NRIs investment	Automatic upto 49
	c. Helicopter services/ Seaplane services requiring DGCA approval	100%	Automatic
1.3.	Other services under Civil Aviation Sector a. Ground Handling Services	74%-FDI 100% for NRIs investment	Automatic
	b. Maintenance and Repair organizations; flying training institutions; and technical training institutions	100%	Automatic
2.	Alcohol Distillation and Brewing	100%	Automatic
3.	Assets Reconstruction Companies	100%of paid up capital of ARC	Automatic upto 49%
4.	Mining and mineral separation of titanium bearing minerals and ores, its value addition and integrated activities. FDI will not be allowed in mining of "prescribed substances" listed in Government of India notification No. S.O. 61(E) dt. 18.1.2006 issued by the Department of Atomic Energy.	100%	FIPB
5.	Banking – Private sector	74% (FDI + FII)	Automatic upto 49%.FIPB route beyond 49% and upto 74%
6.	Broadcasting		
(i)	a. Teleports (setting up of uplinking HUBs/Teleports);	74%	Automatic up to 49%
	b. Direct to Home (DTH);		
	c. Cable Networks (Multi System operators (MSOs) operating at National or State or District level and undertaking upgradation of networks towards digitalization and addressability);		Approval route beyond 49% and up to 74%
	d. Mobile TV;		
	e. Headend-in-the Sky Broadcasting Service (HITS)		
(ii)	Cable Networks (Other MSOs not undertaking upgradation of networks towards digitalization and addressability and Local Cable Operators (LCOs))	49%	Automatic

S. No.	Sector/Activity	FDI Cap/Equity	Entry route
7.	Broadcasting Content Services		
(i)	Terrestrial Broadcasting FM (FM Radio),	26%	Approval
	subject to such terms and conditions, as specified from time to time, by Ministry of Information & Broadcasting, for grant of permission for setting up of FM Radio stations		
(ii)	Up-linking of 'News & Current Affairs' TV Channels	26%	Approval
(iii)	Up-linking of Non-'News & Current Affairs TV Channels/ Down-linking of TV Channels	100%	Approval
8.	Power		
	Coal and Lignite mining for captive consumption by power projects and iron and steel, cement production and other eligible activities permitted under the coal mines (Nationlisation) Act, 1973 Power Exchanges registered under the central Electricity Regulatory Commission (Power Market) Regulations 2010	100%	Automatic
9.	Coffee and rubber processing and warehousing	100%	Automatic
10.	Commodity exchanges	49% (FDI+FII) Investment by Registered FII under PIS will be limited to 23% and investment under FDI Scheme limited to 26%	Automatic
11.	Construction development projects, which includes residential, commercial premises, roads or bridges, hotels, resorts, hospitals, educational institutions, recreational facilities, city and regional level infrastructure, townships	100%	Automatic
12.	Courier services for carrying packages, parcels and other items which do not come within the ambit of the Indian Post Office Act,1898	100%	Automatic
13.	Defence production	49%	Government route upto 49% above 49% to Cabinet Committee on Security (CCS)
14.	Floriculture, Horticulture, Apiculture, Development and Production of seeds, and planting material, Animal Husbandry, Pisciculture, Aqua-culture and Cultivation of Vegetables and Mushrooms, under controlled conditions and services related to agro and allied sectors	100%	Automatic
15.	Financial infrastructure in securities markets		
	a. Stock exchanges b. Depositories c. Clearing corporations	49%(FDI+FII) (FDI limit of 26% and an FII limit of 23% of the paid up capital)	Automatic
16.	Credit Information Companies	74%(FDI+FII)	Automatic

S. No	Sector/Activity	FDI Cap/Equity	Entry route
17.	Telecom Services	100%	Automatic upto 49%
18.	Retail		
19.	Industrial explosives Manufacture	100%	Automatic
20.	Industrial parks both setting up and	100%	Automatic in established Industrial Parks
21.	Insurance	49%	Automatic upto 26 %
22.	Investing companies in infrastructure / ervices sector (except telecom sector)	100%	FIPB
23.	Mining covering exploration and mining of diamonds and precious stones; gold, silver and minerals.	100%	Automatic
24.	Non Banking Finance Companies		
	a. Merchant banking	100%	Automatic
	b. Underwriting		
	c. Portfolio Management services		
	d. Investment Advisory Services		
	e. Financial Consultancy		
	f. Stock Broking		
	g. Assets Management		
	h. Venture Capital		
	i. Leasing and Finance		
	j. Factoring		
	k. Credit Rating Agencies		
	l. Custodian Services		
	m. Housing Finance		
	n. Forex Broking		
	o. Credit Card Business		
	p. Money Changing Business		
	q. Micro credit		
	r. Rural credit		
25.	Petroleum and natural gas sector		
	a. Other than refining and including market study and formulation; investment/ financing; setting up infrastructure for marketing in petroleum and natural gas sector.	100%	Automatic
	b. Refining	49% in case of PSUs and 100 % in case of private companies	FIPB (in case of PSUs) Automatic (in case of private companies)
26.	Trading		
(a)	Cash and carry wholesale trading	100%	Automatic
(b)	E-commerce	100%	Automatic

General List of approvals & clearances

S.No.	Details	Registration/Approving Authority
1	Building Plan	State Land Authority
2	Factory Drawing	Chief Inspector of Factories.
3	Application for factory license	Chief Inspector of Factories
4	Contractual Labor	Registration with Labor Commissioner under Contract Labor (Regulation & Abolition) Act, 1970
5	Consent to Establish	State Pollution Control Board
6	Consent to Operate	State Pollution Control Board
7	Central Ground Water Authority Approval	Ministry of Environ ment and Forest
8	Pollution Control Certificate	State Pollution Control Board.
9	Genset Used during construction	Electrical Department and State Pollution Control Board
10	Importer Exporter Code Number	Directorate General of Foreign Trade
11	Factory Employing More than 20 employees	Registration with Provident fund
12	Factory Employing More than 10 employees	Registration under ESI
13	Central excise	Central Board of Excise & Customs
14	LPG/Petrol installed in the factory	Petroleum and Explosive Safety Organisation
15	Boiler License	Central Boilers Board
16	Generator Installation	State Pollution Control Board
17	Power Connection	Electrical Department
18	Factory Occupation Certificate	Inspector of factories of respective states
19	Sewer connection/Water connection	State Municipal Authority

Note

ASA & ASSOCIATES LLP
CHARTERED ACCOUNTANTS

CCI
Building Business Partnerships

CORPORATE CATALYST INDIA PVT LTD
(in joint Venture with SCS Global)

CIN: U74140DL1996PTC078668

New Delhi
Aurobindo Tower
81/1 Third Floor, Adchini
Aurobindo Marg
New Delhi 110 017
T +91 11 4100 9999

Ahmedabad
A/1 Second Floor Safal Profitaire
Corporate Road Prahladnagar
Ahmedabad 380 015 INDIA
T +91 79 4005 4985

Bengaluru
Level - 2, Park Square
No.150, 36th Cross
Jayanagar 7th Block
Bengaluru 560 082 INDIA
T +91 80 4151 0751
F +91 80 4113 5109

Chennai
New Number 39
First Main Road RA Puram
Chennai 600 028 INDIA
T +91 44 4904 8200
F +91 44 4904 8222

Gurgaon
Times Square Fourth Floor
Block B, Sushant Lok 1
Gurgaon 122 002 INDIA
T +91 124 4333 100
F +91 124 4333 101

Hyderabad
Ammaram Unnathasan Reddy Tower, H
No 1-11-301/3 Ground Floor,
Gagan Vihar Begumpet,
Hyderabad 500 016 INDIA
T +91 40 2776 0423

Kochi
Pioneer Tower, 207-208
Second Floor, Marine Drive,
Kochi 682 031 INDIA
T +91 484 410 9999
F +91 484 410 9990

Mumbai
68 Filmcenter C-34 Third Floor
J Dadaji Road Tardeo
Mumbai 400 034 INDIA
T +91 22 4921 4000
F +91 22 4921 4099

Singapore
No 13-13 A International Plaza
10 Anson Road
SINGAPORE 079 903
T +65 6334 8018
F +65 6334 0646

Tokyo
Fourth Floor 2-2-5
Toranomon Minato-ku
Tokyo 105-0001 JAPAN
T +81 3 6441 3248
F +81 3 6441 3247

National Affiliates
Chandigarh, Jaipur, Jammu, Kolkata, Lucknow, Ludhiana, Pune

International Affiliates
Australia, Austria, Belgium, Canada, China, Denmark, Egypt, France, Finland, Germany, Hongkong, Hungary, Indonesia, Ireland, Israel, Italy, Japan, Luxembourg, Malaysia, Mauritius, Myanmar, Netherlands, Norway, Philippines, Poland, Portugal, Russia, South Korea, Singapore, Slovenia, Spain, Switzerland, Sweden, Thailand, Turkey, UAE, UK, USA, Vietnam