

DOING BUSINESS IN INDIA



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Indo-Australian Chamber of Commerce

ASA
Going The Extra Mile

SET-UP ADVISORY | M&A | ASSURANCE | ACCOUNTING | PAYROLL | TAXATION

This guide is backed by knowledge and the practical experience which the firm regularly brings to bear on clients' India entry strategy. We focus on Set-up Advisory, M&A, Assurance, Accounting & Payroll and Taxation.

*This Guide is for clients and firm personnel only
The information contained in the book is updated till July 2023*

DOING BUSINESS IN INDIA



Going The Extra Mile



Indo-Australian Chamber of Commerce



Ajay Sethi
Managing Partner
ASA

FOREWORD

A good 'Doing Business in India' guide should provide a broad overview of the business environment, economic opportunity, structuring your entry, and regulatory environment governing business operations. However, most guides tend to preach or are filled with technical jargon seemingly more aimed at fellow consultants than business people. This guide is different. It provides a factual overview with the right mix of information to set rolling your India plans. At the same time, it has been kept simple to read and refer. However, rest assured, all key ingredients relevant to your India entry strategy and regulatory norms have been flagged. We are confident this will be of immense benefit to Australian companies planning to do business in India.

In recent years, there has been a surge in high-level delegation visits and enhanced interest in bi-lateral trade and economic cooperation. The positive political and business mood led to the India-Australia Economic Cooperation and Trade Agreement (INDAUS ECTA), and we expect to soon have a Comprehensive Economic Cooperation Agreement (CECA). It now is clear that Australian and Indian businesses will forge deeper alliances, much of which will lead to Australian businesses investing or expanding in India. With the aim of supporting this trend, ASA together with IACC decided to bring out this guide as a one-point referral for Australian companies planning business in India. Besides the knowledge, we have brought to bear the practical insights of over 30 years of our firm's experience in assisting foreign corporate's India entry. These includes corporates from Japan, USA, UK, Europe and Australia.

From simple setup to finding partners, to setting up factories, to supporting an acquisition in India – we know what it takes to get it right. Once you get the basic nuances of your India plans in place, it is natural that specific issues would arise as are relevant to your matters. These need to be addressed by experts, all of whom have contributed to authoring this guide. They will be there to customize your India entry and mitigate any future risk of exposure.

We wish you the very best in your India business and remain eager to assist in converting that thought to profitable action.



Indo-Australian Chamber of Commerce

Petula Thomas
Chief Executive Officer
Indo-Australian Chamber of Commerce

FOREWORD

The Indo-Australian Chamber of Commerce is delighted to be partnering with ASA to release a 'Doing Business in India' guide for the first time.

This comprehensive yet simple guide is a useful starting point for Australian companies looking to access the diverse and lucrative India market and for those that are already operating in India. The topics covered in this guide range from the requirements of setting up a business in India - the regulatory environment and structuring market entry, to understanding the economic opportunities, investments and business activities in this market.

Australia and India share a trusted and strategic relationship that has significantly diversified and strengthened over the years. New Australian companies have successfully established operations in India and partnerships have grown across sectors - from Education, to Infrastructure, Healthcare, Agribusiness, Technology and Innovation, Maritime security and Energy.

In 2022, ten Indian Ministers, some accompanied by Indian companies, visited Australia. In May 2023, Shri Narendra Modi, Prime Minister of India visited Australia and also met with Australian business leaders to drive Australia's growing trade and investment relationship with India.

In March 2023 the Australian Prime Minister, The Hon Anthony Albanese MP visited India, accompanied by a few Australian Ministers and a high-level business delegation. September 2022, the Australian Trade and Investment Commission (Austrade) led a 100-member business delegation to India, with a focus on Education, Agribusiness, Critical Minerals, Infrastructure and Digital Health. In July 2022, the Deputy Premier of Western Australia led their largest ever business delegation to India, comprising over 100 delegates. There has been a steady stream of smaller focused delegations from other Australian states as well to India, across sectors including F&B and Agribusiness, Education, Resources & METS, Space tech and others.

With the India-Australia Economic Cooperation and Trade Agreement (INDAUS ECTA) coming into force and negotiations on for the Comprehensive Economic Cooperation Agreement (CECA), we expect that this trend of Australian businesses wanting to explore or expand in the India market will only get bigger.

In 2022, India was Australia's sixth-largest two-way goods and services trading partner and fourth-largest goods and services export market. Two-way goods and services trade with India was \$48.4 billion in 2022. Australia's exports to India totalled \$34.8 billion and imports from India totalled \$13.5 billion in 2022. Australia's stock of investment in India was \$17.6 billion at 2022 and India's total investment in Australia was \$34.5 billion (source: dfat.gov.au). It is expected that bilateral trade will scale up to \$100 billion in the coming years and that 1 million jobs will be created as a result of the trade agreement.

India is a rewarding market, however it is important for Australian companies to be prepared, patient and flexible in their approach. Careful research and commitment to a long-term strategy to understand the opportunities are paramount. We hope that this practical reference tool gives you much of the information you need to begin/expand your exciting journey in India.



Ambassador Anil Wadhwa

Vice-Chair

Indo-Australian Chamber of Commerce

EXECUTIVE SUMMARY

The India- Australia Economic relationship: opportunities abound

The Comprehensive Strategic Partnership between India and Australia rests on the pillars of trust and reliability. The political and strategic relationship between the two countries has progressed by leaps and bounds in recent year. They are partners in the Quad grouping, and have agreed on a “Resilient Supply Chains “initiative with Japan, and have entered into a Mutual Logistic Support Arrangement (MLSA) and a Defense Science and Technology Implementing Arrangement (DSTIA) in 2020 to aid interoperability and defense research in the light of changed geo-political circumstances in the Indo- Pacific. The India Australia economic cooperation and trade agreement (Ind Aus. ECTA), a natural corollary of this changed relationship was signed on April 2, 2022 and entered into force on 29th December 2022. This has resulted in duty free access to a large number of goods and relaxing norms to promote trade in services between the two countries. The Ind Aus ECTA will provide about 85 % of Australia’s exports zero duty access to the Indian market, including coal, sheep meat and wool, and lower duty access on Australian wines, almonds, lentils, and certain fruits like oranges, mandarins, pears, apricots and strawberries.

The agreement will facilitate student exchange, professionals and tourists. It envisages extended post study work visas for Indian STEM students, a programme to grant visas to 1000 young Indians to pursue working holidays in Australia and annual contract service providers for 1800 Indian traditional chefs and yoga teachers. Detailed provisions to pursue mutual recognition of professional services and other licensed/regulated occupations are in the form of an Annex on professional services annexed to the trade in services chapter. This has paved the way for initiating dialogues through specific working groups on Mutual Recognition Agreements (MRAs) in Nursing, Architecture and other professional services between the professional bodies of India and Australia.

There is substantive progress on increasing research collaboration between Indian and Australian universities, and dual degree programmes between universities subject to regulations being discussed by both countries which will be finalized by the end of 2023. New opportunities have opened up for Australian universities for opening of campuses in the light of the New Education Policy in India. There is also a commitment on the movement of professionals as intra corporate transferees.

Australia is a major exporter of key resources, some of which India needs to import to sustain its economic growth. The elimination of duties on coking coal is expected to boost the competitiveness of Indian steel exports. Zero duty access for Australia is set to increase to cover 91% of its exports by value and over 70% of India's tariff lines over 10 years. Australian LNG, alumina and metallic ores will also not attract any tariff while tariffs on Australian avocados, onions, pistachios, macadamia nuts, cashews in shell, blueberries, raspberries, and black berries will see tariffs eliminated over 7 years. India imports 54 % of its natural gas and Australian companies have an opportunity.

India is the world's largest democracy and is a market of 1.41 billion people. Its youthful population, diversified economy, and growth trajectory present significant opportunity for Australian businesses, including in education, agriculture, energy, resources, tourism, healthcare, financial services, infrastructure, science and innovation, and sport. The Australian government's goal is to lift India to its top three export markets by 2035, and to make India the third largest destination in Asia for outward Australian investment, thus creating trade diversification opportunities for Australian producers and service providers, valued at up to US\$ 15 billion each year.

The Morrison government had already unveiled plans to invest \$280 million to further the growing economic ties and support jobs and businesses in both countries. These include US\$ 7 million to support cooperation on research, production and commercialization of clean technologies, critical minerals and energy; US\$ 25.2 million to deepen space cooperation with India; and US\$ 28.1 million to launch a center for Australia India relations. Australia is taking in more immigrants, presenting an opportunity for the large population of the skilled younger generation in India. Australia is set to be a long-term supplier of critical minerals like lithium, Cobalt and Vanadium to India, all critical for the manufacturing of critical electronic components. A commitment has been made by Australia of Australian \$ 8 million to the three-year bilateral critical mineral's investment partnership with the aim of lowering emissions and boosting the use of renewable energy.

In the Australia India relationship, Investments are bound to play a big role because the growth trajectory of India will create new opportunities for Australian companies including in areas like water management and environmental services and critical minerals for its clean energy goals. Opportunities for Australian businesses are available under India's national monetization plan pipeline, which was launched by government with the purpose to monetize about US\$81 billion worth of brown-field

assets over the period of 2022-2025. Some interesting sectors for Australia are roads and railways, power, public warehouses, civil aviation and port infrastructure, sports stadia, and mining assets. Australia already has experience with a similar model of investments. Australia has A\$ 2.3 trillion pension fund sector that could be a regular source of investments in the India infrastructure and disinvestment story. Also, defense research organizations and private companies of India and Australia can now focus on the promising areas of cooperation which have already been identified in the defense and space sectors. The Production Linked Incentive (PLI) schemes unveiled by the Indian government in 17 sectors (and growing) have identified a number of areas for manufacturing incentives in India which offer a huge scope for Australian companies.

Under the Full CEPA, negotiations for which have got underway in New Delhi on 26th September 2022, the two sides are looking at government procurement, Investment, Energy and Resources, Intellectual property rights, trade and gender, Sustainability and Digital trade. Australia and India have both come up with economic strategies which identified the opportunities and the methodology. It is up to businesses on both sides to make use to the opportunities and the favorable circumstances between the two countries. Sectoral connects are important, and if in person meetings are not possible, the on-line methodology should be used for initial contacts and connections as much as possible.

In this context, the 'Doing Business in India' guide, a collaborative effort between the Indo-Australian Chamber of Commerce and ASA provides an excellent overview of the business and regulatory environment for business operations in India and will serve as a valuable guide for Australian Companies attempting to enter India, and in some cases, even for those already operating in India. India, like many other emerging economies has been liberalizing and opening up to the outside world on a continuous basis. The guide encapsulates these changes and offers guidance for market entry in a simple, easy to understand language, suggesting a way forward for companies who are serious about investing and doing business with India. This is in keeping with the reputation that the Indo-Australian Chamber of Commerce has gained in recent times as an important catalyst in increasing trade and investments between India and Australia.

- *Ambassador Anil Wadhwa has served as Secretary (East) in the Indian Ministry of External Affairs, and was the Indian Ambassador to Italy, Thailand, Oman and Poland. He chaired the CII's Australia Economic Strategy report commissioned by the Minister of Commerce and Industry of India. Ambassador Wadhwa heads the Northern India chapter, and is a Vice - Chair of the Indo-Australian Chamber of Commerce.*

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INDIA OPPORTUNITY

How does one evaluate the India opportunity? At one end is the large consumer base and at the other end the broad income disparity. A young employable work force pitted against skill development challenges. A focus on 'Make in India' but an infrastructure still coming to developed nations standards. And then we have diverse languages, religions, castes, food habits, tastes, etc. While this guide cannot answer all the questions which perplex the prospective investor, we try to give you a handle on the regulatory environment governing your India entry strategy and operating compliances thereafter. You will realise that the laws are no different than most English influenced jurisdictions. Once you have your India strategy in place, and that has to be carved out and not simply copied from an earlier experience, a knowledgeable consultant will aid your success in India.

1.1

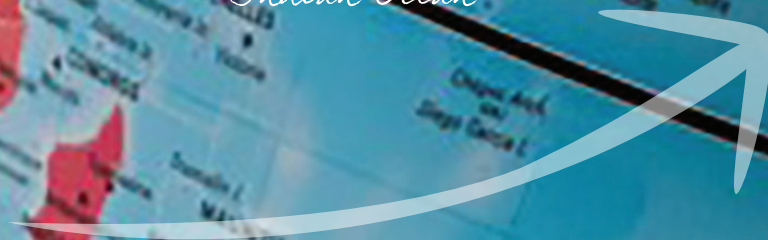
Geographic Profile

Mainland Area	3.29 million sq km / 1.3 million sq miles
Coastline	7,516 km / 4,670 miles
Timezone	GMT+ 5:30 hours
Climate	<p>India hosts six major climatic subtypes, ranging from arid desert in the west, alpine tundra and glaciers in the north, and humid tropical regions supporting rainforests in the southwest and the island territories. Winter (December-February), Summer (March-June), Monsoon (June-September) Post Monsoon (October-November)</p> <p>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.</p>
Daylight Saving Time	India does not follow daylight saving time
Oceans / Water Bodies	Arabian Sea on the West, Indian Ocean to the South and Bay of Bengal on the East

Arabian Sea

Indian Ocean

Bay of Bengal



STATES AND UNION TERRITORIES, AIRPORTS AND PORTS OF INDIA



Source: Ministry of External Affairs, Survey of India, Indian Ports Association, Airports Authority of India

Map not to scale

1.2 Demographic Profile¹



POPULATION
1.41 BILLION
(18% OF
GLOBAL
POPULATION)



RURAL/URBAN
69%
RURAL
31%
URBAN



AVERAGE AGE
29 YEARS



LIFE EXPECTANCY
70 YEARS



EMPLOYMENT
AGRICULTURE 42%
MANUFACTURING 26%
SERVICES 33%



LITERACY RATE
77.7%



(84.7% male and
70.3% female)

Rural literacy at
73.5% vs. 87.7%
in urban areas

RELIGION

Citizens are free to practice any religion and all major religions are present in India i.e.

HINDUISM (79.8%)
ISLAM (14.23%)
CHRISTIANITY (2.3%)
SIKHISM (1.72%)
BUDDHISM (0.7%)
JAINISM (0.4%)²



LANGUAGES

Hindi and English are widely spoken. However, the Constitution of India recognises 22 different languages that are prevalent in the country. Beside this, there are hundreds of local languages and dialects.

¹Sourced from Government of India Data

²Religion data from Indian Census Data 2011

1.3

Political and Regulatory Landscape

Civil Administration

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

The Administrative System

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

Legislative and Political Parties

The country has a federal structure with elected governments in states. There are 28 States and 8 Union Territories. Parliament is the supreme legislative body of India which comprises of the President and the two Houses - Lok Sabha (House of the People) and Rajya Sabha (Council of States). The President is the Constitutional Head of the Union of India, Commander-in-Chief of the Indian Armed Forces and Head of the Government. However, it is the Prime Minister who is the leader of the executive branch of the government and is the chief advisor to the President of India and the head of the Union Council of Ministers. The Prime Minister is the senior most member of the Cabinet and selects and can dismiss members of the Cabinet, allocate posts within the government and is the presiding member and chairperson of the Cabinet.

Judicial System - Courts & Tribunals

At the apex of India's judiciary is the Supreme Court that has a Chief Justice and up to 27 judges with a maximum of 31, 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

Business Culture

English is widely accepted as the language of communication both in legal and business matters. While the traditional Indian greeting is Namaste (palms together with fingers pointing upwards) a handshake is the more common business greeting.

Indian businesses, much like the rest of Asia, are generally hierarchically structured. During meetings, it is advisable to begin by greeting the senior most person, and then move through the hierarchy. Do not begin the meeting with the agenda as the opening point, small talk is the expected start.

While it is important to build a bond with your Indian partner, it is equally important to have a clear agenda and thrash out all critical business issues viz. senior management positions, treatment, and ownership of IPR, distribution and marketing plans, etc. Ensure that you build personal equations with vendors and business contacts as this will help in dire moments.

1.5 Indian Industry

India's largest industries are pharmaceuticals, IT & services, automobiles and engineering. Growing sectors include computer hardware & software, telecommunications, construction and power. To enhance and support growth in the Indian manufacturing sector, the government is putting in place Production Linked Incentive (PLI) schemes in specific sectors as a direct financial incentive.

The government's long-term ambition is to fuel growth in the manufacturing sector. Alongside this, development of a robust infrastructure, logistics and utility environment to support manufacturing is the primary focus. With this in mind, the government has announced infrastructure investments to expand the country's network of surface transportation with investments of USD 1.4 trillion over the next 5 years. Some of the fastest growing industries include advanced engineering, manufacturing digital innovation and renewable energy.

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 dispersed, with new generation industries such as automobiles, electronics and IT coming up all across India, but more so around Bengaluru (Karnataka), Chennai (Tamil Nadu), Pune (Maharashtra) and Gurgaon (Haryana).

INDUSTRIAL MAP OF INDIA



*Map not to Scale

Source: Department for Promotion of Industry and International Trade
Inland Waterways Authority of India

1.6
India and the World

Foreign Direct Investments flows³ (USD million)

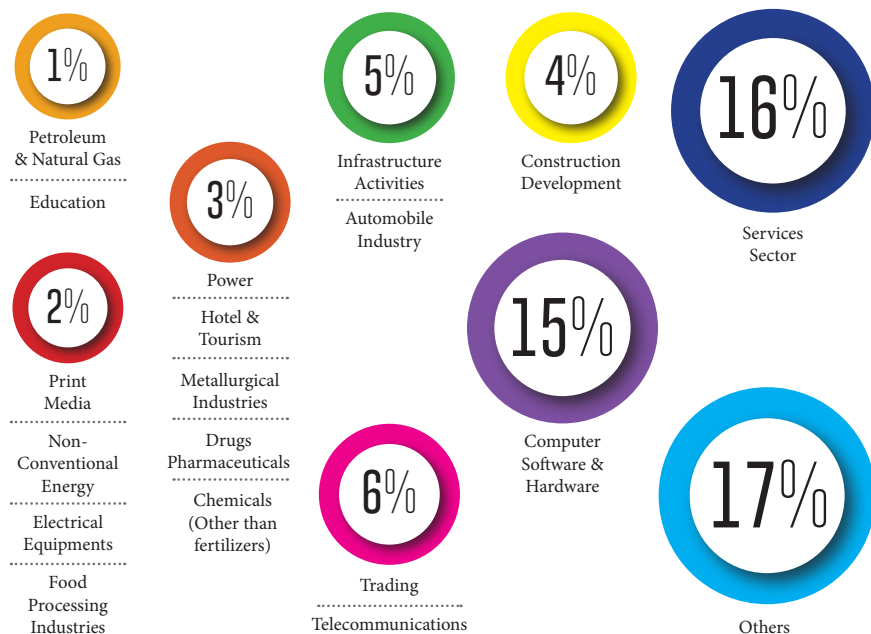
Rank	Country	2020-21 (April to March)	2021-22 (April to March)	2022-23 (April to March)	Cumulative inflows (April 00 to March 23)	Proportion of Total Inflows %
1	Mauritius	5,639	9,392	6,134	163,876	26
2	Singapore	17,419	15,878	17,203	148,169	23
3	USA	13,823	10,549	6,044	60,196	9
4	Netherlands	2,789	4,620	2,498	43,759	7
5	Japan	1,950	1,494	1,798	38,740	6
6	UK	2,116	1,657	1,738	33,875	5
7	UAE	4,203	1,032	3,353	15,578	2
8	Cayman Islands	2,799	3,818	772	14,924	2
9	Germany	667	728	547	14,138	2
10	Cyprus	386	233	1,277	12,644	2
	Total	59,636	58,773	46,034	634,562	-

Source: Department for Promotion of Industry and Internal Trade, Government of India, May 2023



³Government of India Ministry of Commerce and Industry Data (May 2023)

FDI Inflows by Sector⁴



Source: Department for Promotion of Industry and Internal Trade, Government of India, May 2023

Top Trade Partners

Top Exports To (in USD million)					Top Imports From (in USD million)				
Country	Apr 20 - Mar 21	Apr 21 - Mar 22	Apr 22 - Mar 23	Share %	Country	Apr 20 - Mar 21	Apr 21 - Mar 22	Apr 22 - Mar 23	Share %
USA	51,623	76,167	78,543	18%	China	65,212	94,571	98,506	15%
UAE	16,680	28,045	31,609	7%	UAE	26,623	44,833	53,232	7%
China	21,187	21,260	15,306	5%	USA	28,888	43,314	50,240	7%
Netherlands	6,473	12,544	21,618	3%	Saudi Arabia	16,187	34,101	42,035	5%
Bangladesh	9,692	16,156	12,204	3%	Iraq	14,287	31,927	34,386	5%
Singapore	8,676	11,151	11,993	3%	Russia	5,486	9,870	46,213	4%
Hong Kong	10,162	10,985	9,893	3%	Indonesia	12,470	17,703	28,820	3%
UK	8,158	10,461	11,406	3%	Switzerland	18,231	23,392	15,794	3%
Germany	8,125	9,883	10,135	2%	Singapore	13,305	18,962	23,595	3%
Saudi Arabia	5,857	8,759	10,728	2%	Hong Kong	15,173	19,097	18,275	3%

Source: Ministry of Commerce Data, Government of India (May 2023)

⁴Government of India Ministry of Commerce and Industry Data (May 2023)

Indian trades figures with Australia

Based on the data released by Department of Commerce, Indian trades figures with Australia from FY 2017-18 to 2021-22 stands as follow:



1.7 Indian Consumer

With a growing middle class, India is poised to become the third largest consumer market by 2030, just after the US and China⁵. Consumer spending in India is expected to grow to USD 6 trillion by 2030 with consumption accounting for more than half of total GDP. Interestingly, India's share-of-wallet is shifting from buying of basic necessities to discretionary spending. From 1995, when the Indian consumer's discretionary spending sat at 39%, it is expected to touch 70% by 2025. Clearly, the wallet size is dramatically increasing.

Indian consumer behaviour is strongly influenced by societal and cultural norms, with strong bonds between people from the same social group. As the consumer base is so diverse, it is advisable to treat each region as a separate market with varied tastes and habits.

Modern Indian consumers are digitally savvy and will research items before purchasing them, often looking at substitutes, reading reviews, checking and comparing quality, after sales service and gauging the value they get from it. Customisation and localisation are important and Indian

⁵Brookings Institution Research

customers will pay extra for customisation. Broader internet access too is driving growing demand for E-commerce and media services.

The nuclearization of the family unit is seeing small families move towards renting instead of buying, allowing customers to live a better life within their income. This is also visible in the exponential growth of the shared economy over the last few years. Across the country, in rural and urban markets, women are increasingly making purchasing decisions in Indian households. This has led to a change in purchasing trends across sectors like travel, automobiles, electronics, FMCG, education, etc.

International products that have discovered success in India have done so through a degree of localisation to suit local tastes, environmental factors, price points, etc.

1.8
Geographical split
foreign companies
operating in India

Based on the government’s statistics, the foreign investments are mapped state-wise. India received USD 1077 million inflows as FDI till December 2022. The investments from Australia ranked 29th spot out of 171 listed in the India’s FDI Index. The geographical split of foreign companies (including Australian companies in India) is as follows:

Sr. No.	State Name	FDI (USD Million)	%age
1	Maharashtra	49,930.32	27.89
2	Karnataka	42,804.04	23.91
3	Gujarat	31,328.09	17.50
4	Delhi	23,772.76	13.28
5	Tamil Nadu	8,222.96	4.59
6	Haryana	7,232.71	4.04
7	Telangana	4,522.93	2.53
8	Jharkhand	2,656.01	1.48
9	Rajasthan	1,932.88	1.08
10	West Bengal	1,272.40	0.71
11	Uttar Pradesh	1,250.36	0.70
12	Punjab	895.17	0.50

Sr. No.	State Name	FDI (USD Million)	%age
13	Kerala	759.98	0.42
14	Andhra Pradesh	759.91	0.42
15	Madhya Pradesh	521.36	0.29
16	Bihar	214.43	0.12
17	Himachal Pradesh	180.44	0.10
18	Dadra Daman & Diu	167.60	0.09
19	Odisha	156.53	0.09
20	Goa	130.10	0.07
21	Uttarakhand	126.81	0.07
22	Chandigarh	75.78	0.04
23	Puducherry	63.29	0.04
24	Assam	20.42	0.01
25	Arunachal Pradesh	5.55	0.00
26	Chhattisgarh	2.19	0.00
27	Meghalaya	1.09	0.00
28	Jammu And Kashmir	1.07	0.00
29	Tripura	0.56	0.00
30	Ladakh	0.22	0.00
31	Nagaland	0.00	-
32	State Not Indicated	28.26	0.02
	Gross-Total	1,79,036.38	



FOREIGN INVESTMENT POLICY

Foreign Direct Investment (FDI) is a major source of non-debt finance to fund economic development and has grown consistently since liberalization in 1991. Irrespective of political regime, promotion of FDI remains a priority to supplement domestic capital, technological advancement and skills development to achieve accelerated economic benefit.

Restricted Sectors (FDI disallowed)

- Gambling and Betting
- Lottery Business
- Chit funds
- Nidhi Company
- Trading in Transferable Development Rights (TDRs)
- Real Estate Business or construction of farm houses
- Manufacture of cigars, cigarettes, etc.
- Railways
- Atomic Energy
- Activities/sectors not open to private sector investment

Sectoral Caps on FDI in certain industries (illustrative list)

- Defence Production (100%) Govt approval needed beyond 74%
- Insurance company (49%)
- Telecommunication (100%)
- Airlines (100%) Govt approval needed beyond 49%
- Agriculture (100%)
- Single brand retail trading (100%)
- Multibrand retail trading (51%) Govt approval required
- Print Media (26%) Govt approval required

2.1 Investment Norms

FDI is freely permitted in all sectors except atomic energy, railways, lottery, tobacco, trading in development rights and the defence sector. In addition, there are certain sectors where sectoral caps apply on the investments viz. retail trading, telecom, media, insurance, etc.

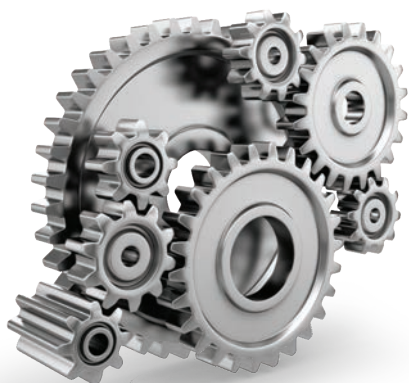
Subject to FDI policy, foreign investors can invest in:

- (i) Equity listed or unlisted, public or private company Limited Liability Partnerships ('LLP')
- (ii) Investment in units of Alternative Investment Funds ('AIF'), Real Estate Investment Trust (REITs) and Infrastructure Investment Trusts ('InvIts')
- (iii) Acquisition, dealing in immoveable property

While permitting FDI applications, the regulatory bodies specifically verify the beneficial ownership of the proposed investment into India. Any beneficial owner arising out of the country sharing a land border with India or where the beneficial owner of the proposed investment is situated in or is a citizen of any such country, requires specific government approval.

2.2 Technical Collaboration

Technical collaboration and technical tie-up with an Indian corporate is a common approach for doing business in India whereby the foreign and technical assistance agreements between an Indian and foreign companies ensures transfer or licenced usage of technology to the Indian venture for manufacture and trade of final products. FDI investments are often supplemented by foreign technical collaboration agreements. At times, certain cross-border technical collaborations necessitate setting up of cross-border subsidiaries.



2.3 Intellectual Property Rights (‘IPR’)

Intellectual Property (‘IP’) allows the creators or owners to have the benefits from their works when these are used commercially. The IP is classified into seven categories

- Patent
- Industrial Design
- Trademarks
- Copyright
- Geographical Indications
- Lay out designs of integrated circuits
- Protection of undisclosed information/Trade Secret according to TRIPs agreements.

India is a member of World Trade Organisation (WTO) wherein certain IP protections are ensured. IP protection in India is also ensured through various international IP agreements India has signed namely the Berne Convention, Budapest, Madrid Protocol, Paris Convention and Patent Cooperation Treaty (PCT). However, India is not a signatory to the Hague Agreement.

IPR Protection

Though India is a signatory to various conventions, it is advisable to take the following measures:

- Copyrights should be registered with the Copyright Office under the Department for Promotion of Industry and Internal Trade (DPIIT), Ministry of Commerce and Industry.
- Patents are registered under the Patents Act 1970, Patents Act 2003, Patent Rules and Patent Amendment Rules 2016 under the Office of the Controller General of Patents, Designs and Trademarks Ministry of Commerce and Industry.
- Designs should be registered under the Designs Act 2000 and the Design Rules, 2001.
- Trademarks should be registered under Trade Marks Act 1999 and Trade Marks Rules, 2002 and 2017 under Controller General of Patents, Designs and Trade Marks, DIPP.



2.4 Incentives

The Government of India is keen to create knowledge centres and dedicated clusters for quality manufacturing in India. There are sectoral incentives to encourage entrepreneurs to explore opportunities in India.

2.4.1 SEZ Policy

Special Economic Zones (SEZ) can boost manufacturing within India, augment exports and generate employment. The developers of SEZs as well as units in SEZs can benefit from hassle-free operational regime backed by good infrastructure and support services. The SEZs and units in SEZs have fiscal concessions under the Income Tax and Customs Act and can be suitable for export-oriented industries. The manufacturers located in SEZs can avail good infrastructure, easy access to ports and airports, transportation, tax free imports and exports and cheaper but talented manpower to manufacture their products in India.

Special Economic Zones (SEZs) policy was designed to encourage exports so that we might gain significant foreign cash. The current SEZ policy has clearly helped the Indian IT industry, which has greatly contributed to the growth of our foreign currency reserves. However, the manufacturing sector has not been able to harness SEZs to generate the desired level of export-based economic advantage. The government is keen to revamp of the SEZ policy and replace it with the DESH (Development of Enterprise and Service Hubs) Bill, 2022 ('DESH'). The DESH once approved by the Parliament of India will supersede the SEZ regulations.

The DESH Bill encourages the development of two types of hubs, one for services and one for other businesses respectively. Some of the Key features of the bill are as follows:

- a. Development Hubs: These hubs will no longer be needed to be net foreign exchange positive cumulatively in five years (i.e., export more than they import), as required under the SEZ system, and will be able to sell more readily in the local market.
- b. Online Approval Gateway: The DESH Bill includes an online single-window portal for the award of time-bound permissions for the establishment and operation of the hubs.

- c. **Increase Domestic Market:** Companies can sell in the domestic market by paying tariffs only on imported inputs and raw materials rather than the completed product. When a product is sold in the domestic market under the existing SEZ framework, duty is paid to the end product. Furthermore, unlike SEZs, there is no required payment need in currency.

States will play a Larger Role: State boards will be established to oversee the operation of the hubs. They would be able to authorize imports or acquire items, as well as supervise the use of commodities or services, storage, and trade in the development hub.

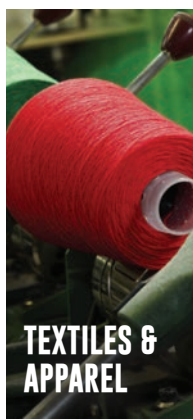
2.4.2 EOU, EHTP, STP, and BTP

Units planning to export their entire production of goods and services (except permissible sales in domestic market), can set up under the Export Oriented Unit ('EOU') Scheme, Electronics Hardware Technology Park ('EHTP') Scheme, Software Technology Park ('STP') Scheme or Bio-Technology Park ('BTP') Scheme for manufacture of goods, including repair, re-making, reconditioning, re-engineering and rendering of services.

2.4.3 Production Linked Incentives

The Government of India has introduced a comprehensive fiscal incentives regime under the Production Linked Incentive ('PLI') Scheme which offers transparent and direct incentives based on incremental sales. These are designed to boost domestic manufacturing and attract large investments in target sectors. The scheme encourages investment from within and outside India. The hallmark of the scheme is self-certification and calculation of incentives, by a simple formula and defined conditions. The incentive ranges from 4-15% of incremental sales with a defined base year.

SECTORS COVERED UNDER PLI SCHEME



2.4.4 Start-ups



Start-ups are entities in the initial stages of operation, usually to develop a product or service for which there can be demand in the future. These companies generally start with high costs and have limited or no revenue, wherein initial support and capital is crucial for a test run and to improve their business plan, hire key personnel and work out equity stakes for partners and investors.

Start-up India is a flagship initiative of the Government of India intended to build a strong ecosystem that is conducive for the growth of future-ready businesses, to drive sustainable economic growth and to generate large scale employment opportunities.

Eligibility as a Start-up:

- Up to a period of ten years from the date of incorporation
- Turnover of the entity for any of the financial years since incorporation/ registration has not exceeded INR 1 billion.
- The entity is working towards innovation, development or improvement of products, processes or services, or if it is a scalable business model with a high potential of employment generation or wealth creation.

An entity formed by splitting up or reconstruction of an existing business shall not be considered a 'Start-up'.

Benefits for Starts-ups

- Self-certification of compliances under various laws
- No labour law related inspection to be conducted for a period of 5 years
- Income Tax exemption for a period of 3 consecutive years, exemption on capital gain tax and relaxation in provisions of carry forward of losses
- Consideration of shares received by eligible startups shall be exempt up to an aggregate limit of Rs. 250 million
- IPR Protection, through fast-track patent application with 80% rebate in filing fee
- Exemption from earnest money deposit, prior turnover and prior experience in government tenders
- Investment through Alternate Investment Funds
- Easy winding within 90 days under Insolvency & Bankruptcy Code, 2016

For availing these benefits, an entity would be required to be recognized by the Department for Promotion of Industry and Internal Trade (DPIIT) as a start-up.



The Indian government has implemented various incentives and schemes to support the growth and development of Small and Medium Enterprises (SMEs) and Micro, Small, and Medium Enterprises (MSMEs) in the service sector which play a vital role in the growth and development of the Indian economy. Some of the major schemes and initiatives are:

- Prime Minister's Employment Generation Programme (PMEGP): This is a credit-linked subsidy scheme aimed at generating self-employment opportunities by promoting micro-enterprises in the service sector.
- Credit Guarantee Fund Trust for Micro and Small Enterprises (CGTMSE): This scheme provides collateral-free credit to SMEs and MSMEs in the service sector by offering a credit guarantee cover to the lending institutions.
- Skill India Mission: This initiative aims to provide skill training to the youth of the country to enhance their employability in the service sector.
- National Small Industries Corporation (NSIC) Single Point Registration Scheme: This scheme offers a single-point registration for SMEs and MSMEs in the service sector to participate in government tenders.
- Stand-Up India Scheme: This scheme is aimed at promoting entrepreneurship among women and underprivileged sections of society by providing loans for starting and growing businesses in the service sector.
- Technology Upgradation Fund Scheme (TUFS): This scheme provides financial assistance to SMEs and MSMEs in the service sector for the upgradation of their technology to enhance their competitiveness.
- Micro and Small Enterprises - Cluster Development Programme (MSE-CDP): This initiative aims to enhance the productivity and competitiveness of SMEs and MSMEs in the service sector by promoting the development of clusters.
- National Manufacturing Competitiveness Programme (NMCP): This scheme provides support to SMEs and MSMEs in the service sector for the development of technology, quality, marketing, and human resources to enhance their competitiveness.



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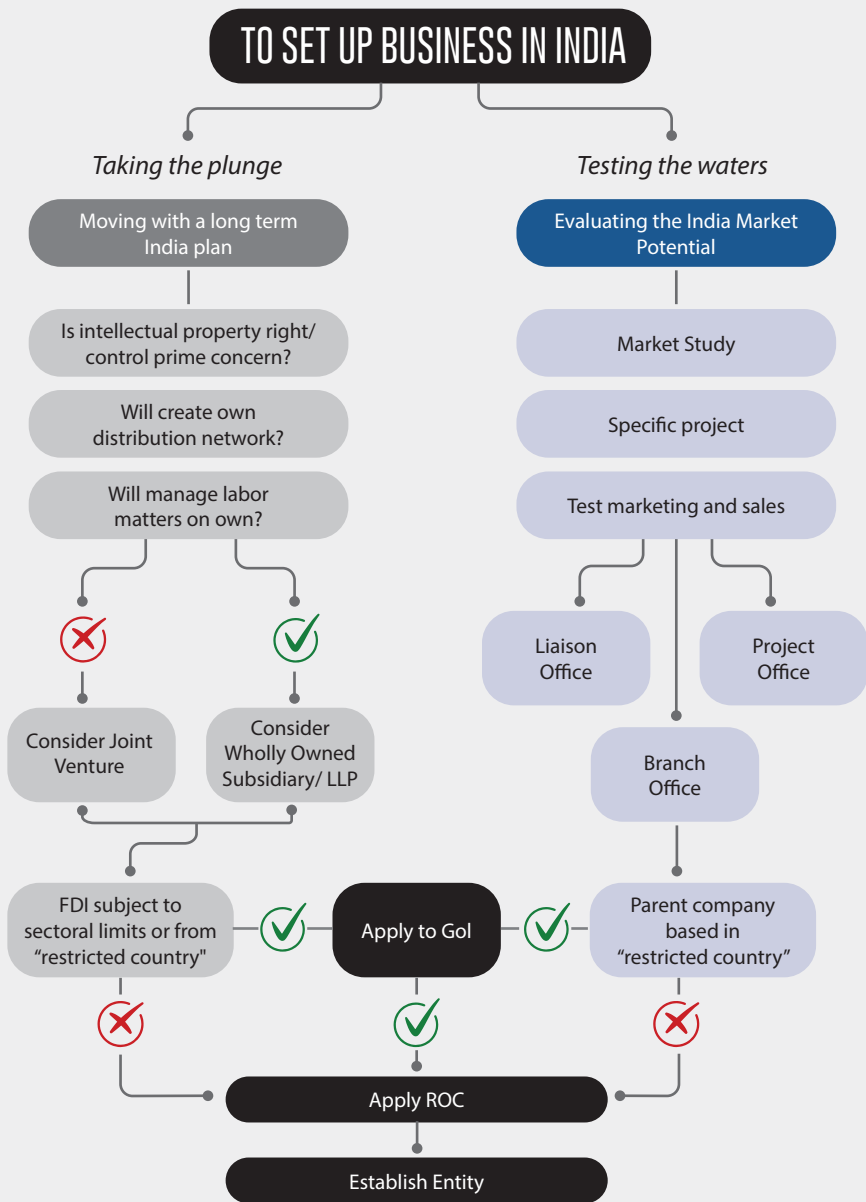


THE RIGHT STRUCTURE

The right mode of doing business in the Indian market can be evaluated through short and long-term business plans, nature of business activity, size of investment, tax and legal liabilities.







A foreign enterprise can consider the following routes for doing business in India

Corporate Entity	Non-Corporate Entity
Joint Venture with a partner (JV)	Project Office (PO)
Wholly Owned Subsidiary (WOS)	Liaison Office (LO)
Limited Liability Partnership (LLP)	Branch Office (BO)

Corporate entities enjoy certainty in managing compliances and can control exposure to the headquarters. However, if a foreign company hasn't yet decided to register a local corporate entity, it can have an on-the-ground presence through an extension of the headquarters by way of a Liaison Office, Branch Office or Project Office or through another transactional arrangement i.e. appointing an agent or wholesaler.

Companies in India can either be public or private. A private company can be limited by shares or guarantee. In the former, the personal liability of the members is limited to the amount remaining unpaid on the share subscription, while in the latter the liability is upto a pre-decided nominated amount. One could also set up an unlimited liability company, though this is rarely done. The limited liability company by shares is the most common form.

Private Limited Company VS Public Limited Company

Details	Private Limited	Public Limited
Number of Members	Minimum 2 and Maximum 200	Minimum 7 and no Maximum cap
Number of Directors	Minimum 2 Maximum 15	Minimum 3 Maximum - No Limit
Authorised Capital	No Minimum Cap	No Minimum Cap
Share Subscription	Cannot Invite Public to subscribe to shares	Can invite general Public to subscribe to shares
Transferability of Shares	Right to Transfer is restricted by Articles of Association	Freely transferable
Quorum	Minimum 2 members be personally present. In case of corporate shareholders, their nominated representatives can attend	<p>To be personally present:</p> <ul style="list-style-type: none"> • 5 for companies having less than 1000 shareholders • 15 for companies having less than 5000 shareholders • 30 for companies having more than 5000 shareholders <p>In case of corporate shareholders their nominated representatives can attend</p>

Limited Liability Partnership (LLP)

An LLP provides a hybrid mode of investment i.e., it is a corporate business entity between partners with limited liability. LLP 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% FDI is permitted.

3.1 Wholly Owned Subsidiary (WOS)

A Wholly Owned Subsidiary (WOS) is where the entire share capital is held by a Parent Company. However, per legal procedures you need at least 2 shareholders to set-up a WOS, even if the second holds negligible value.

A Private Limited Company (Pvt Ltd) has the benefits of lesser compliances as compared to a Public Limited Company. At the same time, this structure provides a foreign investor with the highest degree of control and supervision of the Indian operations. A WOS of a foreign company, incorporated as Pvt Ltd. is treated at par with a domestic company or LLP and all regulations and benefits as be applicable to an Indian entity would equally apply to a WOS.

The set-up can be under the automatic route, except where prior approval is required on account of sectoral caps or specific restrictions.

3.2 Joint Venture (JV)

JV is a preferred form of entry by foreign investors who are interested in having access to know-how or distribution channels, shared financial resources and business contacts of an Indian partner. While evaluating a JV some key issues need to be assessed:

- Terms of Collaboration
- Shareholding pattern
- Management and Board composition
- Transfer and change of control
- Terms of Termination
- Technical know how
- IP creation and ownership

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

Understanding your prospective Indian partner

Keep in mind that an Indian partner looks at a business horizon of 3-5 years to measure the returns on investment.

The Indian partner may look for a quick return on investment instead of continuously ploughing back profits.

The Indian partner will aim for faster turnaround in negotiations. Since India works on 'a top-down/management' approach the Indian partner is ready to take a decision immediately and cannot comprehend the 'down-up' approach of certain countries.

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.



An investor wishing to move factory or take benefit of existing market share, reputation or supply chain of existing Indian business can opt for an acquisition through the issue of fresh capital or transfer of equity shares by an existing shareholder. Though RBI permits freedom in transferring shares by an existing shareholder to a foreign company, certain conditions are to be adhered to as are usual in most jurisdictions. In addition, for specific sectors, acquiring shares in a Public Limited Company, prior approval from the regulatory authority may also be required. Over the years, restrictive provisions that regulated the expansions, mergers, amalgamation and takeovers of domestic companies have been removed to a large extent.

3.3 Temporary Structures

In case an investor is looking at testing the Indian market or carrying out a one-off project, other temporary and flexible entry options are to set up a **Liaison, Project or Branch Office**. All these are regarded as an extension of the foreign company in India.

3.3.1 Liaison Office (LO)



It is a place of business acting as a channel of communication with the Head Office (HO). Do note that an LO is strictly not allowed to undertake any commercial/trading/industrial activity, directly or indirectly, and must maintain itself out of inward remittances received from HO. For establishment of a liaison office a profit-making track record during the immediately preceding three financial years in the home country and net worth of not less than USD 50,000 is usually required.

Scope of Activities

- Representing the parent company/group companies in India.
- Promoting export/import with India.
- Promoting technical or financial collaborations between parent/group companies and companies in India.
- Acting as a communication channel between the parent company and Indian companies

Set-Up Process

LO is generally allowed under the automatic route but in specific cases 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 Registrar of Companies (ROC) and reporting to the Director General of Police in the State of registration. The set-up usually take 4~6 weeks from the date of application, depending upon the specifics of the case.

An LO, unless it breaches the permitted activities, is non-taxable India. An LO is normally given permission for 3 years and at the best extendable by another 3 years. One reports to the RBI/ROC on an annual basis and the authorities critically examine if the LO has breached the permitted activities.

3.3.2 Project Office (PO)



A PO is a place of business in India to represent the interests of the foreign company executing a project in India but excludes a Liaison Office. A foreign company may open project office/s in India provided it has secured from an Indian company, a contract to execute a project in India and:

- The project is funded directly by inward remittance from abroad; or
- The project is funded by a bilateral or multilateral International Financing Agency; or
- The project has been cleared by an appropriate authority; or
- A company or entity in India awarding the contract has been granted a term loan by a Public Financial Institution or a bank in India for the project

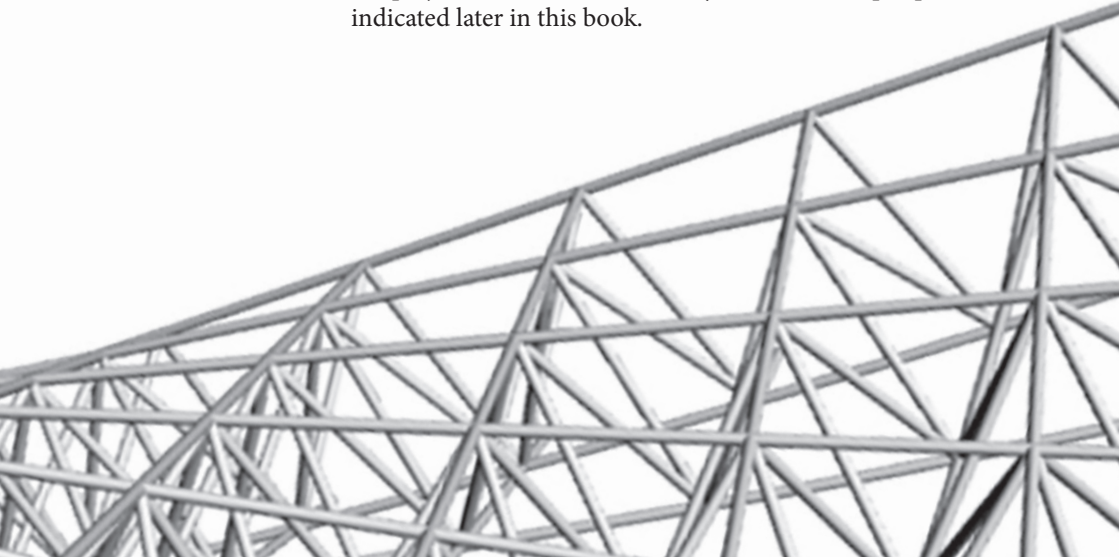
Scope of Activities

A PO is allowed only activities in respect of the specified project.

Set-Up Process

A PO is generally allowed under the automatic route but in specific cases 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. The set-up usually takes 4~6 weeks from the date of application, depending upon the specifics of the case.

A PO is considered an extension of the foreign company in India and is taxable at rates higher than those for a domestic corporate. A PO remains in existence for the duration of the project and is then necessarily shut down as per process indicated later in this book.



3.3.3 Branch Office (BO)



A foreign company can establish a BO provided it has a profit-making track record during the immediately preceding five financial years in the home country and a net worth of at least USD 100,000. A foreign company may consider establishing a branch to carry out trading, business dealing, etc. on behalf of the head office.

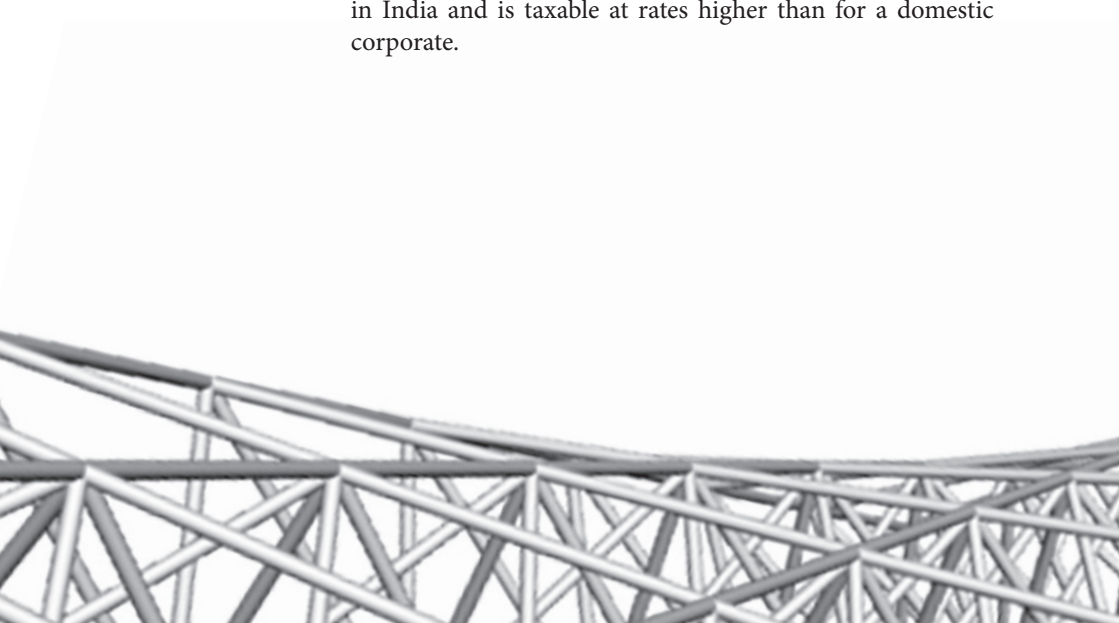
Scope of Activities

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

Set-Up Process

Set-up of a BO requires 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 the Director General of Police in the state of registration. The set-up usually takes 4~6 weeks from the date of application, depending upon the specifics of the case.

A BO is considered an extension of the foreign company in India and is taxable at rates higher than for a domestic corporate.



ENTITY STRUCTURE COMPARISON

	WHOLLY OWNED SUBSIDIARY	JOINT VENTURE COMPANY	LIAISON OFFICE	PROJECT OFFICE	BRANCH OFFICE	LIMITED LIABILITY PARTNERSHIP
Characteristic	Company with entire share capital held by foreign investor	Company where two or more parties hold the share capital	Representative office with no right to undertake commercial activities	Temporary site office for a specific project only	Commercial activities on behalf of the Head Office	Limited liability & flexibility of a partnership structure
Ownership	Foreign company directly or through holding company structures	Joint Ownership with other partners	Extension of the overseas Parent Company			With partners
Control	Board of Directors	As determined per shareholders agreement	With the overseas Parent Company			With partners
Corporate Liability	Parent not generally liable. Liability limited to shareholding in subsidiary	Liability limited to shareholding	Parent Company fully liable			Liability of each partner limited to agreed contribution
Tax on Profits	15/25% ++	15/25% ++	Non-Taxable	40% ++	40% ++	30% ++
Key set up requirements	Prior Approval/ Automatic Route	Prior Approval/ Automatic route	Prior Approval from RBI/ AD Bank	Automatic route/ Prior Approval from RBI or AD Bank	Prior Approval from RBI / AD Bank	Approval/ Automatic Route
	Indian Office Address					
	Appoint Directors (1 director to be a resident in India)	Representative to be identified		Resident		2 Persons to be nominated (1 partner to be a resident in India)
Timeline	4 – 6 weeks					3 – 4 weeks

RBI – Reserve Bank of India, AD Bank – Authorised Dealer Bank

3.4
Other

3.4.1
Foreign
Institutional
Investors (FIIs)

FII is a term commonly used for foreign companies investing in the financial markets of India. FIIs include 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 can 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.

All FIIs in India must register with the Securities and Exchange Board of India (SEBI) to participate in the market. SEBI, while granting registration to the FII, will take into account the track record of the FII, its professional competence, financial soundness, experience, etc. FIIs seeking registration with 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.

3.4.2
Alternate
Investment Fund
(AIF)

AIFs differ from regular conventional investments like stocks, debt securities, etc. An AIF is a privately pooled investment vehicle that collects money from sophisticated private investors.

An AIF in India can be established as a company, Limited Liability Partnership (LLP), corporate body or trust. Securities and Exchange Board of India (SEBI) categorises Alternative Investment Funds into three broad categories.

Category I	Category II	Category III
Venture Capital Funds	Private Equity (PE) Funds	Hedge Funds
Angel Funds	Real Estate Funds	Private Investment in Public
SME Funds	Funds for Distressed Assets	Equity Funds (PIPE)
Social Venture Capital Funds	Debt Funds	
Infrastructure Funds	Funds of Funds	



3.4.3 Foreign Portfolio Investments (FPI)

FPI is a form of investment wherein investors hold assets and securities outside their country. These investments could include stocks, bonds, Exchange Traded Funds (ETFs) or mutual funds. It is one way in which an investor can participate in a foreign economy. In India, foreign portfolio investment is regulated by the SEBI.

Investment allowed (listed securities only permitted; Infra bonds allowed in unlisted also)



Equity,
Mutual
Funds



Debt
(Government,
Corporate)



Alternative
Investment
Funds



Equity, Currency
and Interest Rate
Derivatives

Investment Limits

- Investment in the equity shares of a company by a Single FPI or a Group of FPIs shall be < 10% of the Issued Capital of the company.
- Total holdings of all FPIs put together should not exceed 24% in one company
- Government Securities – 6% of outstanding stock
- Corporate Bonds – 15% of outstanding stock.
- Separate position limits in Derivatives



TAXATION



4.1

Corporate Taxation

Under the present income tax regime, taxes are levied on the basis of the residential status of the taxpayer. While residents are taxed on global income, non-residents are taxed in respect of India linked or sourced income.

Presently, the Indian tax year is April 1 to March 31st. The financial year in which income is earned is referred to as the Previous Year whereas the financial year following such financial year i.e. in which the income is reported for verification, is referred to as the Assessment Year.

4.1.1 Tax registration In India

A company doing business in India is required to obtain tax registration i.e., a 'PAN' or Permanent Account Number. PAN is quoted in all high value transactions and is thus essential. It also entitles taxpayers (both residents and non-residents) entering into business transactions with customers in India to avoid higher rates of withholding tax.

Besides a PAN, businesses may need to obtain a Tax Deduction Account Number ("TAN") in order to comply with the requirement of tax withholding on specific payments.

4.1.2 Corporate Tax Structure

Existing Tax Rates on Income of Corporates

(Rates in %)

Income*	Turnover does not exceed INR 4 billion in FY 2019/20		For other domestic companies		Foreign companies	
	Basic	Effective**	Basic	Effective**	Basic	Effective**
Less than 10 million	25	26	30	31.20	40	41.60
More than INR 10 million but less than INR 100 million	25	27.82	30	33.38	40	42.43
More than INR 100 million	25	29.12	30	34.94	40	43.68

*Surcharge is payable only where total taxable income exceeds INR 10 million

** Effective tax rates include surcharge and health and education cess

4.1.3 Beneficial Tax Regime for Specific Domestic Companies

Domestic companies engaged in manufacturing (set up after October 1, 2019 has commenced manufacturing or production by March 31, 2024 upon satisfaction of certain conditions) are eligible to choose the 15% as basic rate of tax. Similarly, domestic companies not engaged in manufacturing can opt for a 22% concessional rate of tax. To be eligible for the beneficial tax regime, it is essential that these companies do not avail any tax incentives or other similar benefits. Also, in addition to the above mentioned rate of tax, the rate of surcharge shall be 10% irrespective of amount of total income. Further, health and education cess continue to be imposed.

4.1.4

Minimum
Alternate Tax
(MAT)

MAT regime is aimed at ensuring that profit making entities pay a minimum amount of corporate tax to the government. Thus, as a concept, MAT provisions are only applied when the tax payable under regular tax provisions is less than 15% of adjusted profits as per books of accounts.



All categories of taxpayers, including companies, whether resident or non-resident PEs, are covered under the MAT regime



Where a company has opted for beneficial rate of base tax at 15/22%, the provisions of MAT does not apply



MAT at lower rate of 9% applies to a unit located in International Financial Services Centre ('IFSC') and derives its income solely in convertible foreign exchange.

4.1.5

Sector/Activity
Specific
Exemptions

Various tax incentives are available for existing and newly set up business units in India. These incentives provide absolute/partial tax holidays based on the following broad categories.

Location Based Units in	Specific Activity Linked	Promotion of Industries such as
<ul style="list-style-type: none"> Special Economic Zones Specified locations, viz., the northeast region of India 	<ul style="list-style-type: none"> Benefit for qualified R&D expenditure Employment of new workmen Business of collecting and processing bio-degradable waste 	<ul style="list-style-type: none"> Infrastructure and power facilities Oil and gas Cold chain and warehousing Hospitals Fertilizer production Affordable housing project schemes Hospitality and tourism, etc.

The eligibility criterias are specific in each case and are often subject to meeting compliances including internal/external certification.

4.1.6
Project Office/
Branch Office
Tax Structure

Project and Branch Office (PO/BO) structures are an extension of an overseas business entity into India. Accordingly, for tax purposes, PO and BO are considered as a Permanent Establishment (PE) of the overseas entity they represent and are taxed on rates as applicable to a foreign company.

4.1.7
Fund
Repatriation

While dividends and share buybacks are essentially meant to distribute surplus funds of business, other avenues such as royalties, technical services fee and interest are items of expense to the Indian entity and thus examined closely for substantive commercial considerations, expected to be backed by robust documentation.

In terms of tax impact, both dividend distribution as well as gain on share buyback are taxed at a base rate of 20% in the hands of non-resident shareholders. However, dividend distribution is preferred as it may be subjected to beneficial tax rates under the respective tax treaty or by importing the benefit of the Most Favoured Nation (MFN) clause. For instance, dividend income of Dutch shareholders is subjected to lower tax rate of 5% (as against 10% in the Indo-Netherlands treaty) due to the MFN status awarded to the Netherlands.

Interest payments are tax deductible and are subjected to a base rate of 20% or the rate as per respective treaty, whichever is lower. Interest paid on specified foreign currency loans is taxed at a reduced base rate of 5% subject to satisfaction of certain conditions.



Royalties and Fee for Technical Services (FTS) are also tax-deductible items in the hands of the payer entity. While royalty is a payment towards use of intangible properties like patents, copyrighted works, natural resources or franchises to the licensor, FTS is a consideration towards consulting, management, IT, training and similar services. Royalty/FTS that are utilised in India are subjected to tax at a base tax rate of 10%. The scope, coverage and the rate of tax in respect to both Royalty/FTS may be restricted under the tax treaty, specifically in cases where MFN status has been granted.

For reference, India has signed tax treaties with over 85 countries.

Indicative rates (normal) under specific tax treaties

(Rates in %)

Country	Dividend	Interest	Royalty/ FTS
China	10	10	10
France	10	10	10
Germany	10	10	10
Japan	10	10	10
Korea	15	10	10
Netherlands	10	10	10
Singapore	10/15	10/15	10
UAE	10	5/12.5	10
UK	15/10	10/15	10/15
USA	15/25	10/15	10/15

4.1.8
 Availing
 Beneficial Treaty
 Rates

The non-resident payee can avail the benefits under the tax treaty both in terms of the scope of taxation as well as reduced rates of tax. As indicated above, such benefit is typically relevant for incomes in the nature of royalties, interest and FTS earned by a non-resident in India. In such cases, the non-resident is required to establish tax residency in its home country by way of a Tax Residency Certificate (TRC) issued by the local tax office along with equally Form 10F, an India specific requirement, that seeks details of tax registration of non-resident in its country of residence. Although not prescribed under the Indian law, the payer expects the non-resident payee to furnish a declaration that they have not set up a PE in India.

4.1.9 Business Reorganizations

Internal group reorganisations are undertaken by businesses for several reasons, such as consolidation of similar businesses, divestment of non-core assets/business, re-alignment of promoter holding, family settlement, succession planning, etc. Any form of business reorganisation (except the ones that are tax neutral), where Indian assets of the overseas group, change hands directly or indirectly, can result in capital gains and thus attract tax in India. Even routine shareholding reorganisations, such as among group companies, having a common parent or transfer of shares held by companies to trusts to achieve family settlements, not resulting into real profit or income to the transferer entity, can be subjected to capital gains tax in India.

In respect of unlisted companies, capital gains is computed using the Fair Market Valuation (FMV) of shares that get transferred directly or indirectly as a result of the internal reorganisation of business. Such FMV is an anti-abuse measure that ensures that the unquoted shares are not valued below the Net Asset Value (NAV) for computing the capital gain.

A change in ownership that holds substantial voting power in a closely held Indian entity can also restrict the amount of business losses that can be carried forward against future profits.

4.1.10 Transfer Pricing

The law of Transfer Pricing (TP) applies to all categories of taxpayers i.e. corporates, non-corporates, residents as well as non-residents, who earn taxable income in India. The framework of the Indian TP law is based on the guidelines issued by the Organisation for Economic Co-operation and Development (OECD) on the subject.

Essentially, the law covers transactions undertaken between related entities, where either one or both parties to the transaction are non-residents, deemed transactions with third parties and specified domestic transactions. The scope of covered transactions is rather exhaustive and specifically covers

- Sale, purchase or lease of tangible or intangible property
- The provision of services
- Cost-sharing arrangements

- Lending or borrowing money
- Any other transaction having a bearing on the profits, income, losses or assets of such enterprises

The primary onus to establish the Arm's Length Price (ALP) in respect of a transaction is on taxpayers. Such onus is effectively discharged by maintaining documentation prescribed under the TP regulations (where the related party transaction aggregates exceed INR 10 million or more). Such documentation must be contemporaneous and presented to the tax authorities on request, at the time of audit, assessment or dispute resolution stage. Stringent penalties are attached to non-maintenance, delayed maintenance or inaccuracies in the prescribed documentation.

Prior to submitting the annual tax return, the taxpayers are required to furnish an accountant's report for all international transactions or specified domestic transactions between associated enterprises. This report certifies the value of intercompany transactions as per books of accounts and states the arm's-length price based on the documentation and supporting information maintained by the taxpayer.

Additionally, there is a requirement to furnish the master file and a country-by-country report (CbCR) in line with recommendations of Action 13 of the OECD Base Erosion and Profit Shifting (BEPS) Action Plan. There are thresholds prescribed in respect of such filings.

The TP regulations also provides avenues for obtaining certainty in TP through safe-harbour rules and Advance Pricing Agreements (APAs). Specific rules apply with respect to approaching each such avenue.



4.2 Expatriate Taxation

Taxation of expatriates in India is peculiar and merits special attention. Besides an inherent understanding of the domestic laws, an understanding of the concerned tax treaty is essential. As such, the extent of income that is subjected to tax and related disclosures are based on the tax residential status that the expatriate maintains during the financial year. Thus, where an Ordinary Resident (OR) is taxed on global income, a Non-Resident (NR) or Not Ordinarily Resident (NOR) is taxed only in respect of India sourced or linked income.

4.2.1 Determining Tax Residential Status

As it happens across various tax jurisdictions, days spent in India during the relevant financial year is the primary condition to decide between a resident and a NR. Where such stay is 182 days or more, the individual is deemed as resident and otherwise, a NR. The secondary conditions that decide whether a resident individual is an Ordinary Resident (OR) or a Not Ordinary Resident (NOR). The purpose of stay in India is irrelevant.

The understanding of correct residential status is critical since it defines the scope of taxation and the extent of disclosures that are required in the annual tax filings.

4.2.2 Tax Registration in India

An expatriate who earns income that is taxable in India or otherwise holds a director position with an Indian company, is required to obtain PAN in India. An application for PAN can be made online or through physical submission and must be accompanied by proof of residence and identity, apostilled/notarized if the address is outside of India. PAN is usually allotted within 15 days of application.



4.2.3 Taxable Income and Rates

Remuneration received or income earned in respect of services rendered in India is taxable in India. In respect of expatriates who have spent less than 183 days during the relevant financial year, an exemption from Indian taxes may be available under the relevant treaty provided the salary is not claimed as an expense by an Indian entity or the PE of an overseas employer in India.

In case of expatriates, remuneration in India is generally derived in the form of salary, that includes a basic component, allowance (hardship, house rental, leave travel etc.) and benefits or perquisites in the form of accommodation, car, club facilities. All cash components are taxed in the hands of the individual while specific perquisites (such as accommodation, car with driver etc.) are taxed on deemed values.

The tax rates are based on slabs of taxable income. The rates and slabs are rationalized where the taxpayer chooses to give up exemptions or deductions that are ordinarily available to individuals.

Tax Rates (FY 2022-23)

Income Range (INR)	Regular Regime (%)	Optional Regime (%)
Upto 2,50,000	Nil	Nil
2,50,001-500,000	5	5
5,00,001-7,50,000	20	10
7,50,001-10,00,000		15
10,00,001-12,50,000	30	20
12,50,001-15,00,000		25
15,00,001 and above		30

The tax so computed is enhanced by a surcharge based on the slab of aggregate taxable income as under:

- Total Income is more than INR 5 million but less than INR 10 million: 10%
- Total Income is more than INR 10 million but less than INR 20 million: 15%
- Total Income is more than INR 20 million but less than INR 50 million: 25%
- Total Income is more than INR 50 million: 37%

In addition to the above, a cess at 4% will be levied.

No tax is payable by an individual having aggregate income up to INR 0.5 million.

4.2.4 Impact of Tax Equalisation

Tax equalization is a policy widely used by international companies in respect of their international staff members. It is a mechanism to ensure that the employee is not worse off when deputed to a relatively higher tax jurisdiction. The tax liability could be higher on account of tax rates or taxability of additional components of income (such as perquisites). The employer 'equalises' the remuneration by offering an additional compensation to bridge the differential tax as well as the 'tax on tax' arising on such additional compensation. Perfect equalisation is achieved when the employee's net salary (take home) is identical in both home and host jurisdictions. Depending on the terms of arrangement between employer and employee, tax equalisation can be absolute or partial.

While it is easier to compute the impact of known items of taxability such as monetary and non-monetary components of income, income from non-routine items such as Employee Stock Options (ESOPs) or Restricted Stock Units (RSUs) is difficult to envisage at the time of negotiating the equalized remuneration between the employer and employee. Generally, the deputation or employment agreement provides for such items separately.

4.2.5 Deputation

Global entities often depute their employees overseas to perform specific assigned activities primarily with a view to standardising the group's practices and policies at the Indian arm. These personnel work under the control and management of the Indian arm in the capacity of senior management. For the services rendered in India, they receive remuneration locally but continue to retain their lien on employment (for social security purposes or otherwise) with the principal employer overseas. For administrative reasons, payment of remuneration to such foreign employees is made by the overseas corporate, which, in turn, may or may not be reimbursed by the Indian arm.

In the recent past, deputation arrangements, specifically those lacking substance and inadequate documentation, have been viewed adversely by the Indian tax authorities. The arrangements have either been viewed as that of rendering services, or one that results into a Permanent Establishment (PE) for the overseas parent, eventually giving rise to substantial tax demands and litigation in India.

Although there are multiple elements in play, the risk on account of known factors can be mitigated by maintaining robust paper trails to establish that the employees, although retaining principal employment with the overseas parent, are not reporting to or working on behalf of the overseas corporate during the term of deputation. This can be demonstrated by letter of assignment/deputation, secondment arrangement between the Indian arm and the overseas parent, and the employment agreement between the Indian arm and the deputed employee.

4.2.6 Claiming Foreign Tax Credit

An individual who is a resident of a country with which India has entered into a Double Taxation Avoidance Agreement (DTAA) can avail the treaty benefits to either eliminate taxation in one of the countries or avail credit of taxes paid in the country of residence. Resident taxpayers may claim a tax credit on foreign-source income equal to the lower of the tax imposed by the foreign country or the tax imposed by India on the foreign income.

In case no DTAA exists between India and the country of residence of the expatriate, the relief on account of double taxation is available up to the amount of foreign income taxed at the average rate of tax in India.

4.2.7 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, taxpayer estimates the entire year's tax liability and deposits through in 4 quarterly instalments i.e. June 15th (15%), September 15th (45%), December 15th (75%) and March 15th (100%). This method applies to freelancers and consultants where the responsibility to ascertain and deposit tax rests with the expatriate.

The tax withholding mechanism applies to an expatriate in employment. Here, the employer, instead of the expatriate himself, is required to withhold the tax and deposit this into the government treasury on monthly basis. In India, this is commonly referred to as Tax Deduction at Source or TDS.

4.2.8 Year End Reporting

The amount which has been earned and taxable in India during a financial year needs to be reported to the Indian tax authorities through a return of income.

4.2.9 Departure Related

Before leaving India, an expatriate is required to obtain a No Objection Certificate (NOC) from the tax authority stating that he does not have any outstanding tax liability. Such a certificate is required in case the continuous presence in India exceeds 120 days.

4.3 ESOPs

Employee Stock Option Plans (ESOP) is a benefit plan that gives employees ownership interest in the company in a systematic manner. It enables employees to buy company shares at a discounted price. Plans such as Employee Stock Purchase Plan (ESPP) and Restricted Stock Units (RSUs) are similar forms of ESOPs that are offered in different jurisdictions. As per existing tax laws, there are two trigger points in taxing the ESOPs. These are

- Tax as income from salary on exercising the option. At this stage, difference between the market price (on exercise date) and the exercise price is taxed as employment benefit to the employee
- Subsequently, when the options are sold, difference between the sale price and exercise price is taxed as capital gain. The rate of capital gain tax is essentially dependent on the period of holding and whether the shares are listed or not



4.4 Equalisation Levy

Equalisation Levy is India's version of the global Digital Services Tax (DST). This levy was introduced in 2016 as an interim measure to tax digital transactions accruing to non-resident online advertisement companies on B2B transactions exceeding INR 100,000. The rate of levy on online advertisements and related facilities is 6% which is payable by the service receiver in India.

The scope was widened in the year 2020 when the levy was extended at 2% to e-commerce operators with respect to online supply or service or both. An e-commerce operator is a non-resident that owns, operates or manages a digital or electronic facility or platform for online sale of goods or online provision of services. A gross revenue threshold level of INR 20 million is applied to an e-commerce operator each financial year.

Where the supply or service is connected to the non-residents' PE in India or where these are characterized as either a royalty or a fee for technical services, the levy does not apply.

4.5 Customs Duty

Customs Duty is levied on commodities imported into India. Customs duty is also imposed on certain exports. Duty Drawback is permitted on re-export of duty paid goods and on imported materials used in the manufacturing of goods which are subsequently exported.

The rates are prescribed under the Customs Tariff Act, 1975, and are revised from time to time by the annual Finance Act or specific notifications. Peak rate of Customs Duty is at 10%. While Education Cess and Higher Education Cess have been abolished, Social Welfare Surcharge at 10% has been introduced in the Finance Act 2018. The surcharge will be leviable on the Basic Customs Duty. Additionally, on import of petrol and high-speed diesel, a Road and Infrastructure Cess will be applicable. In the Finance Act 2021, Agriculture Infrastructure and Development Cess has been introduced on import of certain goods.

Customs duty on imports may be a significant cost factor in an Indian project as they are not permitted to be set-off against other taxes and become a cost. Any duty drawbacks, as available, offset such costs to some extent.

GST was implemented from July 1, 2017. It brought in a unified scheme of taxation across the country and subsumed many of the erstwhile indirect tax laws at the Central and State level. These erstwhile taxes included Central Excise duty, Customs Duty except for Basic Customs Duty, Service Tax, VAT, CST, Luxury Tax, Entry Tax and Entertainment Tax. The Government also introduced a Goods and Services Tax Compensation Cess which is levied only on few specified goods and services.

However, a few items have, as of now, been kept out of the purview of GST. These are Petrol, High Speed Diesel, Aviation Turbine Fuel, Natural Gas, and Alcoholic liquor for human consumption. Real Estate has also been kept out of the purview of GST subject to conditions.

It is a destination-based tax i.e. supply of goods and services will be taxed at the place where they are consumed and not at the origin. The State where the goods and services are consumed will have the right to collect GST. Specific provisions exist for determining the place of consumption, technically termed as “Place of Supply”. At each stage in the supply chain, GST is paid on the value addition made. Moreover, input tax credit set-off mechanism has been simplified and, barring a few exceptions, all eligible input tax paid on inward supplies can be utilized to set-off against the output tax liability.

Registration under GST is based on aggregate turnover threshold in a financial year. In case of sale of goods, the registration requirement arises if aggregate turnover in a financial year exceeds INR 4 million, while for services, the registration threshold is kept at INR 2 million. For the purposes of registration, the aggregate turnover of the entity is considered. However, there are specified cases where registration is required mandatorily irrespective of the threshold. Further, registration is required in each State of operations, leading to multiple registrations for the same entity.



GST Framework

CGST Tax	collected by the Central government on an Intra-State supply.
SGST Tax	collected by a State government on an Intra-State supply.
IGST Tax	collected by the Central Government for an Inter-State supply which will then be shared with the destination State.

Specific provisions in the GST Act lay down the methodology to determine whether the supply is Intra-State or Inter-State and consequently, the type of tax viz. IGST or CGST + SGST. Inter-State supplies also include cross border supplies. Import of goods and services also attract IGST at specified rates.

Tax Rates

Basically, there are 5 tax slabs. These range from Nil rate to 28% being the highest slab rate for luxury goods. There are 3 rates in between, 5, 12 and 18%. In case of intra-state supply, the rates of tax are equally divided between CGST and SGST. Detailed classification of goods and services along with their tax rates have been notified by the Government based on the Harmonized System of Nomenclature (HSN) Codes.

Key Compliances & Processes



Payment of taxes and filing of returns have to be done on a monthly basis. However, for small tax payers, specific relaxations have been provided.



E-invoicing is mandatory for businesses where aggregate turnover exceeds INR 100 million, however this limit is further reduced to 50 million from August 01, 2023.



The annual reconciliation statement can be self-certified by the management



4.7
Excise Duty

Excise Duty is levied on the manufacture of goods and is collected at the time of removal of goods from the factory. After the introduction of GST, excise duty has been largely subsumed into the new law. However, certain goods like Petrol, High Speed Diesel, Aviation Turbine Fuel, Liquified Natural Gas, natural gas other than compressed natural gas, are still subject to Central Excise duty. Further, Excise duty on alcohol for human consumption, is within the scope of the respective States and State Excise duty is leviable thereon.

4.8
Central Sales Tax
(CST) / Value
Added Tax (VAT)

VAT is a consumption tax on goods whenever value is added at different stages in the supply chain. Each State has its own VAT laws which governed the transaction in goods within that state. While Intra-state sales was subject to VAT, sales outside the state were subject to CST.


With the introduction of GST in India, CST and VAT have been subsumed into GST. However, certain goods like Petrol, Petroleum Crude, High Speed Diesel, Natural Gas, Aviation Turbine Fuel and alcoholic liquor for human consumption are still outside the scope of GST and CST/VAT continues to be applicable on them.





REGULATORY ENVIRONMENT





5.1 Initial Registrations

Prior to commencement of business operations, several approvals are required from various authorities. These licenses and approvals may be broadly classified into Central and State governmental approvals. While the central government approvals are entity specific, the state government approvals are premise or branch specific.

Registered Office

Companies and LLPs in India are required to designate a specific premise as their registered office which will act as the official address for receipt of communications and notices that may flow from various government authorities or other stakeholders. The registered office should have the company name clearly painted or affixed outside the premises in a conspicuous position.

Permanent Account Number ('PAN')

PAN is a ten-digit alphanumeric number, issued by the Income Tax Department. It is mandatory to quote PAN on return of income and against all correspondences with income tax authorities. Every entity in India having financial transactions greater than INR 250,000 in a financial year must obtain a PAN.

Tax Deduction and Collection Account Number ('TAN')

TAN is required to be obtained by all persons who are responsible for withholding tax.

Importer-Exporter Code ('IEC')

IEC is unique 10-digit code issued by DGFT – Director General of Foreign Trade, Ministry of Commerce and is mandatory to import or export from India.

Goods & Services Tax ('GST')

GST is a destination-based tax on consumption of goods and services and levied at all stages right from manufacture up to final consumption with credit of taxes paid at previous stages available for set-off.

Shops and Establishment Act Registration

Every business premises, including branches of a company, would require registration under the respective State's Shops & Establishments ('SE') Act. The legislation regulates the conditions of service of employees i.e. hours of work, rest hours, opening and closing hours, weekly holidays and maintenance of records by the employers.

Professional Tax

Certain states require companies to register themselves under Professional Tax depending on the applicability of threshold limits. Under this mechanism, companies are required to deduct certain sums as professional tax at time of payments of wages and salaries.

5.1.2 Directors

Permanent Account Number ('PAN')

Every Director of an India company is required to obtain a PAN regardless of the person's tax residency status.

Digital Signature Certificate ('DSC')

Every Director and authorised signatory is required to obtain a DSC for routine online reporting including for secure email and web-based transactions, signing web forms, e-tendering documents, income tax returns, etc.

Director Identification Number ('DIN')

Every Director of a company and Partner of LLP are required to have a DIN.



Setting-up a Factory can be planned in 3 stages

Pre-Construction
Feasibility Study
Location Study
Industrial land search
Industrial building/shed search
Commercial & Administrative Management
Financial administration
Interim project administration
Legal Compliances
Legal permissions/ Licenses & registrations
Technical Project Management
Land search & acquisition
Project planning
Preparation of engineering brief
Selection of architect, design consultants & consulting cum site management company
Selection of civil, PEB, electrical, plumbing, HVAC and other contractors

It is important to visualise and build up operating processes at the initial stages of factory set up itself, viz

- Establishing protocols
- Planning and budgeting
- Documentation processing
- On-site/off-site control
- Local coordination
- Regular reporting



Stage I –

- *Location Study*
- *State Support Agreement*

Feasibility Study

A feasibility study includes location study i.e. finalising the potential location to start the factory. It covers regulatory, geographical and demographical research which are vital to the long-term growth and sustenance.

Location Study

The following factors are critical prior to finalising the location:

- Infrastructure/surroundings: utilities, transport, social, supplier, industries
- Human resource availability: blue collar, white collar, management and prevalent, attrition rates
- Cost: land, utilities, human resources
- Proximity: customers, suppliers
- Political stability: ease of doing business

State Support Agreement

In case the project is an anchor project or part of an anchor project for which the State has the intention to attract manufacturing in the sector, the company can seek certain incentives viz.

- State duty exemption
- Investment subsidy in lieu of GST
- Interest subsidy
- Power tariff and electricity rebates
- Employment rebates
- Financial support packages

Stage II – Investment and Construction

- *Land Acquisition*
- *Industrial License*
- *Industrial Entrepreneur Memorandum ('IEM')*

Land Acquisition

Prior to proceeding with land acquisition, the following are significant:

- Site visits, surveys
- Land measurement
- Verifying title, charges and encumbrances on land
- Procedure of land registration

Industrial License

All manufacturing entities are exempted from obtaining an industrial License except following sector:

- *Industrial Entrepreneur Memorandum ('IEM')*
- *Principal Employer Registration*
- *Environmental Approvals*
- *Approvals*
- *Factory Map Approval*
- *Explosive License*
- *Diesel Generator Registration*

- Aerospace
- Defense Equipment
- Industrial explosives
- Hazardous chemicals
- Cigars, Cigarettes, Tobacco substitutes

Further, certain items are reserved for Micro Small and Medium Enterprises ('MSME'), wherein an Industrial License would be required for a non-MSME enterprise.

Industrial Entrepreneur Memorandum ('IEM')

All non-MSME category industrial undertakings exempt from obtaining an industrial license are required to file an Industrial Entrepreneur Memorandum (IEM) with the Secretariat for Industrial Assistance (SIA), DPIIT.

Principal Employer Registration

The company needs to register with the Labour Department of the respective state as the 'Principal Employer' to be able to hire contractual labor.

Environmental Approvals

Every manufacturing company is required to obtain environmental approvals before commencement of construction activities. Major environmental laws under which compliances are required:

- The Environment Protection Act, 1986
- The Water (Prevention and Control of Pollution) Act, 1974
- The Environment Protection Act, 1986
- The Air (Prevention and Control of Pollution) Amendment Act, 1987
- The Coastal Regulation Zone Notification 2011
- The Hazardous and Other Waste (Management and Transboundary Movement) Rules, 2016

Specific undertakings (textile processing, sugar, tanneries etc.,) require approvals directly from the Central Ministry of Environment, Forest, and Climate Change ('MOEF'). Other projects, require environmental clearances from the Central Pollution Control Board (CPCB) or the respective State Pollution Control Board (SPCB), depending on the location of their unit.

Approvals

- Consent to Establish: required before start of construction
- Consent to Operate: required before start of operation

All disputes concerning the environmental approvals process are referred to the National Green Tribunal (NGT) headquartered in New Delhi, with divisions in Pune, Kolkata, Bhopal, and Chennai.

Factory Map Approval

Before starting construction, approval of plans of building and layout of plant and machineries is required from Directorate of Industrial Safety & Health under The Factories Act, 1948.

Explosive License

An Explosive License is required to be obtained from Petroleum and Explosives Safety Organization ('PESO') for manufacture, possession, use, transport of explosives, for safety procedures and methods. The Explosives Rules, 2008 state special provisions for possession, sale and use of explosives.

Diesel Generator Registration

DG Sets proposed to be installed at the establishment must be registered with the Electrical Inspector. In addition, the Diesel Generator is required to be registered with State Pollution Control Board.

Stage III – Commencement of operations

- *Factory License*
- *Municipal Clearances*

Factory License

Prior to commencement of manufacturing activities registration needs to be done with the Factories and Boilers Inspection Department. A detailed factory layout, showing the positioning of various plant & machinery, production process flow chart, etc., needs to be submitted to register the establishment as a factory.

Municipal Clearances

- Fire clearance
- Water connection
- Power connection

5.2 Records and Reporting



5.2.1 Accounting

There are two methods of accounting

Accrual or Mercantile Basis	Cash 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	This is the method of recording 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 an Accrual basis.

5.2.2 Audit

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 ROC and in some cases, with the RBI. In case of manufacturing companies, excise authorities and state VAT authorities can ask for audited financials.

Internal Audit

Prescribed class of companies, need to have their internal controls certified. The company may outsource this function to a Chartered Accountancy firm or set-up their own team, the latter being more common in large companies.

Cost Audit Order

Final product-based industries are required to mandatorily have their cost audit records audited by a cost accountant. These industries will be covered only if they fulfil certain

threshold limits with respect to net worth, turnover and listings in stock exchanges.

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.

Tax Audit

Businesses with turnover exceeding INR 100 million need to additionally have accounts audited under specific provisions of the Indian income tax laws and be certified by an Indian firm of Chartered Accountants.

5.2.3 Reporting

Every Company is required to file the following documents:

- Annual Returns - Companies are required to prepare and file their annual returns with the ROC within 60 days from the date of holding their AGM. The annual return has details of shareholders, directors, and any changes thereof from the date of the previous AGM.
- 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.
- Corporate Tax Return - an annual submission is to be made to the tax authorities along with a certified tax audit report and transfer pricing report, if applicable.
- For manufacturing units, there are various interim and annual reports to be submitted in respect of operations (usage of machines, storage of fuel and explosives etc.) and labour management (time, holidays, shift timings, compensation, accidents, wages etc.)



Key Dates

Corporate Law	Due Date
Board Meeting →	4 meetings in a year. The gap between two meetings should not be more than 120 days Annual General Meeting ('AGM')
Annual General Meeting →	Within 6 months from the end of the financial year
Annual Return with the ROC →	Within 60 days from the date of AGM
Tax	
Corporate Tax Return →	October 31st / November 30th *
Tax Audit Report →	September 30th / October 31st *
Transfer Pricing Report →	October 31st
TDS Returns (Tax Withholding) →	Quarterly (by 31st of subsequent month)
Individual tax return →	July 31st
Deposit of TDS →	7th of every month
GSTR-1 (Outward Supplies) →	11th of subsequent month
GSTR-3B →	20th, 22nd, 24th of subsequent month (based on turnover and state list)
GSTR-9 (Annual Return) →	Annually by 31st December after year end
Deposit of GST →	With return

* In case where the transfer pricing report is required

5.3 Secretarial Records

All companies (whether public or private) must maintain secretarial records and registers.

Registers

Registers and Records which are required to be maintained include

- Register of Members
- Register of Directors
- Register of Contracts
- Register of Charges, etc.
- Register of Deposits
- Register of Debenture-Holders
- Register of Renewed and Duplicate Share Certificates
- Register of Sweat Equity Shares

- Register of Charges and Instrument of Charges
- Register of Bought Back Securities
- Register of Directors and Key Managerial Personnel ('KMP')
- Register of loans, guarantees given, security and investments

Minutes

The companies are required to conduct various meetings of directors, shareholders, committees (if any) etc at regular intervals. The minutes of such meetings must be recorded and kept at the registered office of the company, including

- Board meetings
- Shareholder's meetings
- Creditor's meetings
- Independent Directors

Intimation and Approvals

Specific events are to be intimated to ROC, including

- Appointment and Resignation of directors, Managing Directors
- Change in the statutory auditors
- Change in registered office of the company
- Alteration of Memorandum of Association, Article of Association
- Capital restructuring
- Winding-up
- As per other sections of Companies Act 2013

5.4 Others

The New Labour Codes will replace all scattered employment laws into four codes, namely

5.4.1 Employment Laws

- Code On Social Security, 2020 - covers issues such as employee provident fund, employee state insurance, employee compensation, gratuity, maternity benefits, etc.
- The Industrial Relations Code, 2020 - relates to Trade Unions, conditions of employment in industrial establishment or undertaking, investigation and settlement of industrial disputes and for matters connected therewith or incidental thereto.



- Occupational Safety, Health and Working Conditions Code, 2020 - regulates the occupational safety, health and working conditions of the persons employed in an establishment and for matters connected therewith or incidental thereto.
- Code On Wages, 2019 - relates to wages and bonus, minimum wages, payment of dues.

These Labour Codes await notification by the government. In the meanwhile, we give an overview of key provisions under existing laws as have bearing and how they would be impacted under the new Labour Codes.



Digitalization	Uniformity	Trade Union	Governance, Accountability
Centralization of all related information on Shram Suvidha Portal. Digital Inspection.	No discrimination based on gender, equal and fair treatment to all workers	Registration, administration, bargaining, dispute resolution, protection of trade unions	1 registration 1 license 1 return for all codes

Employees Provident Fund and Miscellaneous Provisions Act

The Employee Provident Fund (EPF) is a retirement benefits scheme in which employees of an organisation contribute a portion of their basic pay monthly. The employer matches the contribution on their behalf towards the scheme.

All organisations with more than 20 employees are required to register with the EPFO. When an individual starts working in an establishment with more than 20 employees, both the individual, i.e. the employee, and the employer are required to contribute 12% of the basic pay to the EPF account.

Notable changes proposed under the new codes:

The general rate at which the employer contributes the PF has been reduced to 10% instead of 12%, while certain employers have been allowed to seek exemption.

Social Security/SSA

Social Security Agreements are a bilateral instrument to recognise social security contribution of workers who are posted to another country. Employees, posted in other countries by their employers, on secondment i.e. without termination of employment contract in home country, continue to make social security contribution in home country. Due to the overseas assignment, they may also be required to make social security contribution under the host country's social security laws. In the absence of SSA, contributions made outside the home country face restrictions on withdrawal at the time of departure from host country. SSA provides exemption of dual coverage i.e., coverage under the social security laws of both the home and host countries.

SSAs Cover Three Aspects:



Detachment
avoidance
of double
social security
contributions
by the workers



Exportability
permission to
remit social
security
benefits



Totalisation
aggregating
contribution
periods (in two
countries)

India has bilateral Social Security Agreements (SSAs) with 18 countries to protect the interests of professionals and skilled workers working abroad for short durations.

Payment of Gratuity Act

The Act is applicable to all factories, companies and other establishments employing 10 or more workers. The Act provides for payment of gratuity at the rate of 15 days wages for each completed year of service subject to a maximum of Rs. 1 million (10 lakhs). In the case of seasonal establishment, gratuity is payable at the rate of seven days wages for each season.

Notable changes proposed under the new codes:

The gratuity coverage has been extended to fixed term employees, and where the employment period is less than 5 years, it shall be paid on a pro-rata basis. The Code permits employers to have gratuity funds managed by any insurance company of choice.

Employees State Insurance Act (ESI)

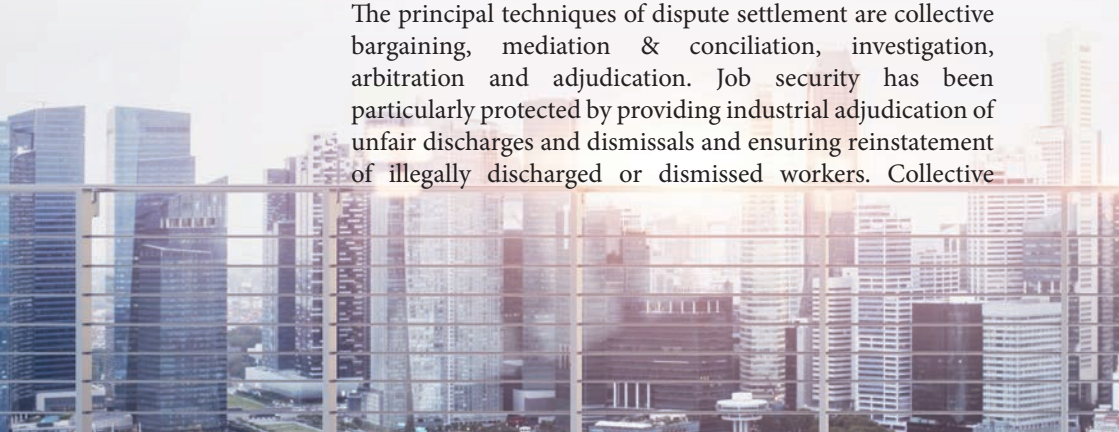
The ESI scheme is a self-financed comprehensive social security scheme devised to protect the employees covered under the scheme against financial distress arising out of events of sickness, disablement or death due to employment injuries. The ESI scheme is applicable to all factories and other establishments as defined in the Act with 10 or more persons employed in such establishments and the beneficiaries' monthly wage does not exceed Rs 21,000 are covered under the scheme.

Notable changes proposed under the new codes:

Remains same and part of Social Security Code 2020

Disputes

The principal techniques of dispute settlement are collective bargaining, mediation & conciliation, investigation, arbitration and adjudication. Job security has been particularly protected by providing industrial adjudication of unfair discharges and dismissals and ensuring reinstatement of illegally discharged or dismissed workers. Collective



bargaining is the primary technique by which disputes of employment are resolved amicably, peacefully and voluntarily by settlement between labour unions and management.

Industrial Disputes Act

The Industrial Disputes Act, 1947 ('ID Act') covers investigation and settlement of industrial disputes in any industrial establishment. The ID Act provides for the constitution of the Works Committee, consisting of employers and workmen, to promote measures for securing and preserving amity and good relations between the employer and the workmen and, to that end, endeavours to resolve any material difference of opinion in respect of such matters. An employer who intends to close down an industrial establishment shall obtain prior permission at least 90 days before the date on which he intends to close down the industrial establishment, giving the reasons thereof.

Notable changes proposed under the new codes:

- **Focus on amicable settlement**

The Code encourages internal settlement of dispute within prescribed timelines. Industrial establishment with 100+ workers are required to constitute a Workers Committee and every establishment employing 20 or more workers shall constitute Grievance Redressal Committees (GRC), which should have proportionate women representation.

- **Time Bound procedures**

An aggrieved worker can file an application before the GRC within 1 year of the dispute arising and the proceedings should be completed in 30 days, failing which an application can be filed to the conciliation officer. In case an employee is discharged, retrenched, or otherwise terminated, an application can be made to the Tribunal before expiry of 2 years.

- **Standing Orders**

For uniformity, the model standing orders would apply on every industrial establishment where 300+ workers are employed.





Trade Unions

The Trade Unions Act, 1926 seeks to provide for the registration of Trade Unions in India and for the protection of the same. Further, the Trade Unions Act also in certain respects, defines the law relating to registered Trade Unions like mode of registration, application for registration, provisions to be contained in the rules of a Trade Union, minimum requirement for membership of a Trade Union and the rights and liabilities of registered Trade Unions, etc.

Notable changes proposed under the new codes:

The Code introduces a concept of sole negotiating union ('SNU') or negotiating council ('NC'). Where there are multiple trade unions, a Trade Union which is represented by 51% of the workers would be recognised as the SNU. In absence of SNU, an NC shall be constituted, comprising of representatives from each union that has at least 20% workers. Where an agreement is concluded by SNU or NC it is binding on the workers.

Human Resource – Hiring & Management



	Regulations under existing laws	Proposed Regulations under new Labour Codes
Standard workday	9 hours	8 hours
Severance pay for redundancy dismissal of employee with 5-year tenure	10.7-week salary	15 days salary
Severance pay for redundancy dismissal of employee with 1-year tenure	2.1-week salary	15 days salary
Premium pay for overtime	100%	100%
Minimum wage (INR/month)*	2500	Unskilled - 11,000
		Semi-Skilled - 11,500
		Skilled - 12,500
		Highly Skilled - 13,500
Minimum rest while at work	30 minutes per 5-hour	1 hour per workday
Maximum overtime limit	200 hours per year	125 hour per quarter
Government approval for retrenchment dismissal granted	Establishments with 100+ workers need prior approval	Establishments with 300+ workers need prior approval
Dismissal due to redundancy allowed?	Yes, subject to approval by government	Yes, subject to approval by government

* While it is a constant in existing laws, under proposed Labour codes the minimum wages vary per industry and skill set. The given figures depict an average

Dismissal and Layoff

While hiring and firing is governed by the employment contract, the ID Act prohibits unfair labour practices covering illegal strikes and lockouts and unfair labour practices and provisions regarding lay off and retrenchment as well as compensation payable thereof.

Notable changes proposed under the new codes:

- **Closure, lay-off and retrenchment**

Earlier, an industrial establishment would need prior government approval if it employed 100+ workers. The limit has now been enhanced to 300.

- **Strikes and lockouts**

- Workers need to give the employer 60 days of notice before going on strike
- Workers cannot go on strike during the pendency of any conciliation, Tribunal or Arbitration proceedings
- Strike includes a concerted refusal to work or casual leave by 50% or more workers on a given day
- Employers too need to give 60 days' notice of a lock-out

5.4.2 Competition Act

The Competition Act, 2002 governs competition laws in India and provides a legal framework and tools to ensure free and fair competition, prevent and punish anti-competition practices business practices.

The objectives of the Act are sought to be achieved through the Competition Commission of India ('CCI').

5.4.3 Foreign Exchange Management Act 1999 (FEMA)

India is governed by exchange control regulations. The Foreign Exchange Management Act 1999 (FEMA) is the principal act to govern external trade and the payments and the foreign exchange market in India. It prescribes procedures for dealing in foreign exchange, current account transactions, export of goods and services, realization and repatriation of foreign exchange, authorised persons to deal with foreign exchange or in foreign securities etc.

5.4.4 Food Safety and Standards Authority Act, 2006 (FSSAI)

Food Safety and Standards Authority Act aims to establish a single reference point for all matters relating to food safety and standards, by moving from multi-level, multi-departmental control to a single line of command. The Act establishes an independent statutory authority, the Food Safety and Standards Authority of India (FSSAI) for laying down scientific standards for articles of food and to regulate their manufacture, storage, distribution, sale and import. The FSSAI mandates a license for any kind of food business in India.



5.4.5

India's talents and Labor force

India with 1.3 billion population make it the second most populous country in the world, but with an average age of 29 years, the country has one of the youngest populations globally. The young pool entering the workforce, have created a 'demographic dividend' i.e., economic growth resulting from a shift in a population's age structure, mainly when the working age population is larger than the number of dependents.

According to World Bank, World Development Indicators database, following estimates based on data obtained from International Labour Organization and United Nations Population Division, can be useful insight on the labour force potential of India.

Labor force (age 15 & older)	Total (Millions)		Female % (of labour force)		Growth (%)
Year	2015	2021	2015	2021	2015-21
Australia	12.60	13.80	46.10	47.20	1.60
India	476.70	507.70	22.80	23.00	1.10
Canada	19.70	20.50	47.20	47.10	0.80
World	3,320.50	3,462.60	39.40	39.70	0.70
Brazil	101.30	105.40	42.60	43.10	0.70
Japan	66.10	68.90	43.00	44.60	0.70
United States	160.60	166.10	46.00	46.10	0.60
United Kingdom	33.60	34.50	46.60	47.90	0.40
France	30.50	31.30	48.10	48.80	0.40
South Africa	23.10	23.60	46.20	46.50	0.40
Germany	42.70	43.40	46.40	46.70	0.30
China	780.70	780.40	44.70	45.20	-
Russian Federation	75.10	73.40	48.40	48.60	-0.40

Source: <http://wdi.worldbank.org/table/2.2>

As per Youth in India, 2022, National Statistical Office, Ministry of Statistics and Programme Implementation, Government of India, New Delhi, the demographic dividend

in terms of youth population is a key factor that is expected to propel economic growth. India's youth power is a big thrust factor economic trigger. It would certainly need educational infrastructure and skill-based learning together with measures to promote health, education, training and opportunities. The demographic dividend is at the base of the India's ambitious target to become a \$5 trillion economy.

The employment in the organised manufacturing sector is on an upward trend. In terms of share of employment (total persons engaged), the food products industry (11.1 per cent) remained the largest employer, followed by wearing apparel (7.6 per cent), basic metals (7.3 per cent), and motor vehicles, (6.5 per cent).

The total enrolment in higher education has increased to nearly 41 million, while female enrolment has increased to 20 million in FY21. The infrastructure for higher education has also been enhanced overtime. The higher education ecosystem incubates largest populations in the world. It would remain a big challenge yet be utmost important measure to address various development challenges viz. access to education, gainful employment, gender inequality, youth friendly health services etc.

The investments in the youth and empowering them through their participation and incubating them to take up leadership roles, India can surely play an important role in the Asian Century.





CLOSING OPERATIONS

A Company or an LLP is an artificial judicial person and needs to be wound up if it is no longer active or viable to operate. Liquidation/Winding-up is the chosen route in case of severe non-compliances, erosion of net-worth or other similar circumstances. The liquidation process involves the settlement of claims, realisation of all assets including receivables, and the payment of all liabilities such as commercial dues, statutory dues, employment dues, etc. Once the company is liquidated it is formally dissolved and it ceases to exist.

6.1

Voluntary Liquidation

The shareholders of the Company can initiate the winding up of the company after passing necessary resolution in the Board Meeting and Shareholders Meeting. The process is administered by a licensed professional called Insolvency Professional.

The resolution for Voluntary Liquidation under the Insolvency and Bankruptcy Code 2016 can be passed only when the company can settle its liability and is not liquidating to defraud its creditors and there are no fraud investigations pending.

After settlement of all dues and liabilities, all commercial registrations are cancelled and the surplus remaining in the bank account is distributed to shareholders. Thereafter, a petition is filed with the National Company Law Tribunal ("Tribunal") for passing an order for dissolution of the company or LLP.

The process normally takes 12~18 months subject to specifics of the case



CLOSED

6.2 Compulsory Liquidation

A company can be wound-up by the Tribunal, on a petition filed by:

- The company by passing a resolution for winding-up
- Any shareholder
- Registrar of Companies
- Any person authorised by the Government,

The petition can be filed in any of the following cases

- If the company has passed a special resolution
- If the company has acted against the interests of the sovereignty and integrity of India
- If the Tribunal is of the opinion that the affairs of the company have been conducted in a fraudulent manner
- If the company has made a default in filing its financial statements or annual returns for the immediately preceding five consecutive financial years;
- If the Tribunal is of the opinion that the company be wound up

In Compulsory Liquidation, since the Liquidator is appointed by the Government, the company and its management have no power or control over the time and process. There are no defined timelines for the governmental nominee to close the company.

The process may take 2~4 years subject to specifics of the case.

6.3 Closure of Liaison/ Branch/ Project Office

For foreign companies, it is advisable to ensure complete closure formalities. This would add to credentials while evaluating any future application to start new offices in India.

- **Approval from Ministry of Corporate Affairs (MCA)**

The entities are granted a Certificate for Establishment of Place of Business in India by the MCA. Prior to closure, the entity must comply with the necessary compliances and make an application for closure of office. The MCA would approve the closure application if all past compliances and reporting are in order and have been regularly filed with the MCA.

- **Cancellation of all commercial registration**

All commercial registrations i.e. Goods and Services Tax, Professional Tax, Shops and Establishment Act

registration, Provident Fund registration etc should be cancelled. The dues and liabilities should be settled, and a closure letter must be obtained.

- **Approval from AD Bank**

The Authorised Dealer Bank would verify all past compliances such as Annual Returns, Annual Activity Certificate and would require certain certification from the Auditors.

- **No Dues Certificate from Income Tax**

In case of Branch office and Project offices, the AD Bank would insist on the No Dues Certificate from the Income Tax Department. Therefore, such process must be completed prior to approaching the AD Bank.

- **Remittance of Proceed**

The balance surplus in the bank account is repatriated to the Head Office and the bank account is closed.

- **Closure Letter**

Upon completion of all such actions, the AD Bank/ Reserve Bank of India would issue a letter of closure of office in India.



GLOSSARY

APA

Advance Pricing Agreements

AGM

Annual General Meeting

BEPS

Base Erosion and Profit Shifting

BO

Branch Office

CbCr

Country-by-Country report

DSC

Digital Signature Certificate

DGFT

Director General of Foreign Trade

DIN

Director Identification Number

DTAA

Double Taxation Avoidance Agreement

EPF

Employee Provident Fund

ESOPs

Employee Stock Options

ESI

Employees State Insurance

EOU

Export Oriented Unit

FTS

Fee for Technical Services

FSSAI

Food Safety and Standards Authority of India

FDI

Foreign Direct Investment

FEMA

Foreign Exchange Management Act

FII

Foreign Institutional Investor

FPI

Foreign Portfolio Investments

GST

Goods and Services Tax

HSN

Harmonized System of Nomenclature

IEC

Importer-Exporter Code

INR

Indian Rupee

IPR

Intellectual Property Rights

JV

Joint Venture

LO

Liaison Office

LLP

Limited Liability Partnership

MAT

Minimum Alternate Tax

MCA

Ministry of Corporate Affairs

MFN

Most Favoured Nation

OECD

Organisation for Economic Co-operation and Development

PAN

Permanent Account Number

PE

Permanent Establishment

PLI

Production Linked Incentive

PO

Project Office

ROC

Registrar of Companies

RBI

Reserve Bank of India

SEBI

Securities and Exchange Board of India

SEZ

Special Economic Zone

TAN

Tax Deduction Account Number

TDS

Tax Deduction at Source

TP

Transfer Pricing

WOS

Wholly Owned Subsidiary

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