

# DOING BUSINESS IN INDIA



Scan for a digital version

**ASA**  
Going The Extra Mile

 **bakertilly**  
NETWORK MEMBER

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 May 2025*

## 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 businesspeople. 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 sure this will be of immense benefit to anyone planning to do business in India.

Besides the knowledge, we have brought to bear practical insights of over 34 years of our firm's experience in assisting foreign corporates' India entry. These include corporates from Japan, USA, UK, Europe, Australia, etc. From simple set up, 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 we all remain eager to assist in converting that thought to action.

# CONTENTS

# 1

---

## INDIA OPPORTUNITY

|     |                                         |    |
|-----|-----------------------------------------|----|
| 1.1 | Geographic Profile .....                | 9  |
| 1.2 | Demographic Profile.....                | 11 |
| 1.3 | Political and Regulatory Landscape..... | 12 |
| 1.4 | Business Culture .....                  | 12 |
| 1.5 | Indian Industry.....                    | 13 |
| 1.6 | India and The World .....               | 15 |
| 1.7 | Indian Consumer .....                   | 17 |

# 2

---

## FOREIGN INVESTMENT POLICY

|       |                                           |    |
|-------|-------------------------------------------|----|
| 2.1   | Investment Norms.....                     | 20 |
| 2.2   | Technical Collaboration .....             | 20 |
| 2.3   | Intellectual Property Rights ('IPR')..... | 21 |
| 2.4   | Incentives.....                           | 22 |
| 2.4.1 | SEZ Policy .....                          | 22 |
| 2.4.2 | EOU, EHTP, STP, and BTP .....             | 23 |
| 2.4.3 | Production Linked Incentives .....        | 23 |
| 2.4.4 | Start-Ups.....                            | 25 |

# 3

---

## THE RIGHT STRUCTURE

|       |                                             |    |
|-------|---------------------------------------------|----|
| 3.1   | Wholly Owned Subsidiary .....               | 30 |
| 3.2   | Joint Venture (JV) .....                    | 30 |
| 3.3   | Temporary Structures.....                   | 32 |
| 3.3.1 | Liaison Office (LO) .....                   | 32 |
| 3.3.2 | Project Office (PO).....                    | 33 |
| 3.3.3 | Branch Office (BO) .....                    | 34 |
| 3.4   | Other .....                                 | 36 |
| 3.4.1 | Foreign Institutional Investors (FIIs)..... | 36 |
| 3.4.2 | Alternate Investment Funds (AIF).....       | 36 |
| 3.4.3 | Foreign Portfolio Investments (FBI).....    | 37 |

# 4

## TAXATION

---

|        |                                                             |    |
|--------|-------------------------------------------------------------|----|
| 4.1    | Corporate Taxation .....                                    | 39 |
| 4.1.1  | Tax Registration in India.....                              | 40 |
| 4.1.2  | Corporate Tax Structure.....                                | 40 |
| 4.1.3  | Beneficial Tax Regime for Specific Domestic Companies ..... | 40 |
| 4.1.4  | Minimum Alternate Tax (MAT) .....                           | 41 |
| 4.1.5  | Sector/Activity Specific Exemptions.....                    | 41 |
| 4.1.6  | Project Office/Branch Office Tax Structure .....            | 42 |
| 4.1.7  | Fund Repatriation .....                                     | 42 |
| 4.1.8  | Availing Beneficial Treaty Rates .....                      | 43 |
| 4.1.9  | Business Reorganizations.....                               | 44 |
| 4.1.10 | Transfer Pricing .....                                      | 44 |
| 4.2    | Expatriate Taxation .....                                   | 46 |
| 4.2.1  | Determining Tax Residential Status .....                    | 46 |
| 4.2.2  | Tax Registration in India .....                             | 46 |
| 4.2.3  | Taxable Income and Rates.....                               | 47 |
| 4.2.4  | Impact of Tax Equalisation .....                            | 48 |
| 4.2.5  | Deputation .....                                            | 48 |
| 4.2.6  | Claiming Foreign Tax Credit .....                           | 49 |
| 4.2.7  | Payment of Taxes.....                                       | 49 |
| 4.2.8  | Year End Reporting.....                                     | 50 |
| 4.2.9  | Departure Related .....                                     | 50 |
| 4.3    | Employee Stock Option Plans (ESOPs) .....                   | 50 |
| 4.4    | Customs Duty .....                                          | 51 |
| 4.5    | Goods and Services Tax (GST).....                           | 52 |
| 4.6    | Excise Duty .....                                           | 55 |
| 4.7    | Central Sales Tax (CST) / Value Added Tax (VAT) .....       | 55 |

# 5

---

## REGULATORY ENVIRONMENT

|       |                                                     |    |
|-------|-----------------------------------------------------|----|
| 5.1   | Initial Registrations .....                         | 57 |
| 5.1.1 | Business Entity.....                                | 58 |
| 5.1.2 | Directors.....                                      | 59 |
| 5.1.3 | Factory Set-Up .....                                | 60 |
| 5.2   | Records and Reporting.....                          | 64 |
| 5.2.1 | Accounting.....                                     | 64 |
| 5.2.2 | Audit .....                                         | 64 |
| 5.2.3 | Reporting.....                                      | 65 |
| 5.3   | Secretarial Records.....                            | 66 |
| 5.4   | Others .....                                        | 67 |
| 5.4.1 | Employment Laws.....                                | 67 |
| 5.4.2 | Competition Act.....                                | 74 |
| 5.4.3 | Foreign Exchange Management Act 1999 (FEMA).....    | 74 |
| 5.4.4 | Food Safety and Standards Authority Act, 2006 ..... | 75 |

# 6

---

## CLOSING OPERATIONS

|     |                                                 |    |
|-----|-------------------------------------------------|----|
| 6.1 | Voluntary Liquidation .....                     | 77 |
| 6.2 | Compulsory Liquidation.....                     | 78 |
| 6.3 | Closure of Liaison/ Branch/ Project Office..... | 78 |



## 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

|                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Mainland Area</b>         | 3.29 million sq km / 1.3 million sq miles                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <b>Coastline</b>             | 7,516 km / 4,670 miles                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <b>Timezone</b>              | GMT+ 5:30 hours                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <b>Climate</b>               | 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)<br><br>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. |
| <b>Daylight Saving Time</b>  | India does not follow daylight saving time                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>Oceans / Water Bodies</b> | 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 SEAPORTS OF INDIA



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

Map not to scale

## LEGEND

- Major Ports of India
- International Airport
- Domestic Airport

## 1.2 Demographic Profile



**POPULATION**  
**1.46 BILLION**  
**(17.7% OF**  
**GLOBAL**  
**POPULATION)**



**RURAL/URBAN**  
**63%**  
**RURAL**  
**37%**  
**URBAN**



**MEDIAN AGE**  
**28.8 YEARS**



**LIFE EXPECTANCY**  
**72.5 YEARS**



**EMPLOYMENT**  
**AGRICULTURE 46.1%**  
**MANUFACTURING 11.4%**  
**SERVICES 29.7%**



**LITERACY RATE**  
**80%**



(86% male and  
74% female)

Rural literacy at  
77% vs. 79% 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%)**



### 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.

## 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, which currently consists of the Chief Justice of India (CJI) and a sanctioned strength of 33 other judges, making a total of 34 judges. These judges are appointed by the President of India.

There are currently 25 High Courts in India. Each High Court stands at the apex of the judicial administration of its respective state(s) or union territory(ies), and is subordinate to the Supreme Court but not under its administrative control.

## 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. 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: Dedicated Freight Corridor Corporation of India Limited  
Department for Promotion of Industry and International Trade  
Inland Waterways Authority of India  
National High Speed Rail Corporation Limited

## 1.6 India and the World

### Foreign Direct Investments flows<sup>3</sup>

(USD million)

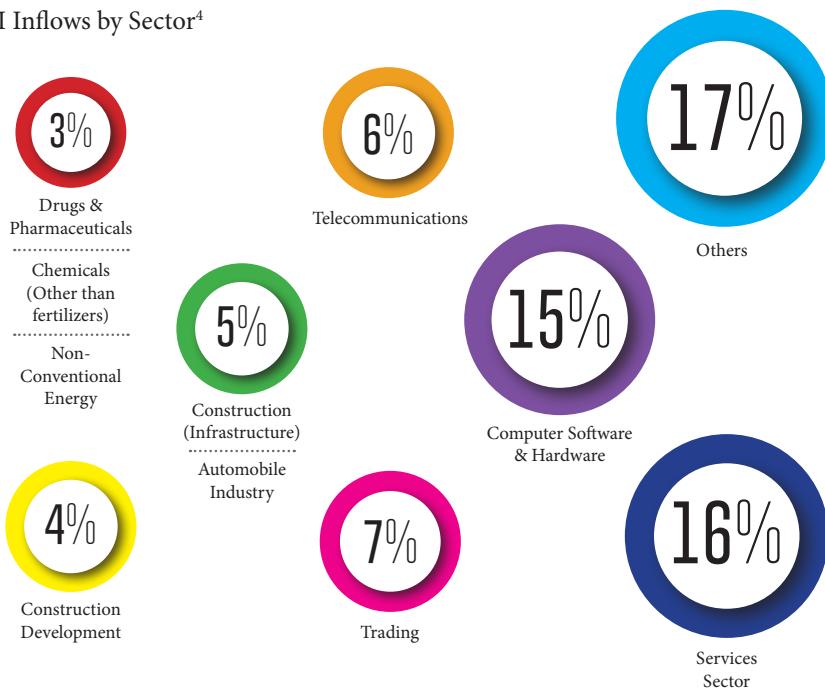
| Rank | Country        | 2022-23<br>(April to<br>March) | 2023-24<br>(April to<br>March) | 2024-25<br>(April to<br>March) | Cumulative<br>inflows (April<br>00 to March 25) | Porportion<br>of Total<br>Inflows % |
|------|----------------|--------------------------------|--------------------------------|--------------------------------|-------------------------------------------------|-------------------------------------|
| 1    | Mauritius      | 6,134                          | 7,970                          | 8,344                          | 1,80,191                                        | 25%                                 |
| 2    | Singapore      | 17,203                         | 11,774                         | 14,942                         | 1,74,886                                        | 24%                                 |
| 3    | USA            | 6,044                          | 4,998                          | 5,457                          | 70,650                                          | 10%                                 |
| 4    | Netherlands    | 2,498                          | 4,924                          | 4,620                          | 53,302                                          | 7%                                  |
| 5    | Japan          | 1,798                          | 3,177                          | 2,478                          | 44,396                                          | 6%                                  |
| 6    | UK             | 1,738                          | 1,216                          | 795                            | 35,887                                          | 5%                                  |
| 7    | UAE            | 3,353                          | 2,924                          | 4,345                          | 22,848                                          | 3%                                  |
| 8    | Cayman Islands | 772                            | 342                            | 371                            | 15,637                                          | 2%                                  |
| 9    | Germany        | 547                            | 505                            | 469                            | 15,112                                          | 2%                                  |
| 10   | Cyprus         | 1,277                          | 806                            | 1,203                          | 14,653                                          | 2%                                  |
|      | TOTAL          | 59,636                         | 58,773                         | 50,018                         | 728,882                                         | -                                   |

Source: Department for Promotion of Industry and Internal Trade, Government of India, May 2025



<sup>3</sup>Government of India Ministry of Commerce and Industry Data (May 2024)

## FDI Inflows by Sector<sup>4</sup>



<https://dpiit.gov.in/sites/default/files/FDI%20Factsheet%20September%202024.pdf>

## Top Trade Partners (over the last 3 years)

| Top Exports To (in USD million) |               |               |               |         | Top Imports From (in USD million) |               |               |               |         |
|---------------------------------|---------------|---------------|---------------|---------|-----------------------------------|---------------|---------------|---------------|---------|
| Country                         | Apr 21-Mar 22 | Apr 22-Mar 23 | Apr 23-Mar 24 | Share % | Country                           | Apr 21-Mar 22 | Apr 22-Mar 23 | Apr 23-Mar 24 | Share % |
| USA                             | 76,167        | 78,542        | 78,543        | 17      | China P RP                        | 94,571        | 98,505        | 98,505        | 13      |
| U Arab Emnts                    | 28,045        | 31,609        | 31,610        | 7       | U Arab Emnts                      | 44,833        | 53,231        | 53,232        | 7       |
| Netherlands                     | 12,544        | 21,618        | 21,618        | 4       | USA                               | 43,314        | 50,863        | 50,863        | 7       |
| China P RP                      | 21,260        | 15,307        | 16,660        | 3       | Russia                            | 9,870         | 46,212        | 46,212        | 6       |
| Singapore                       | 11,151        | 11,993        | 11,993        | 2       | Saudi Arabia                      | 34,100        | 42,035        | 42,035        | 5       |
| UK                              | 10,461        | 11,406        | 11,405        | 2       | Iraq                              | 31,927        | 34,385        | 34,385        | 4       |
| Bangladesh Pr                   | 16,156        | 12,216        | 11,065        | 2.      | Indonesia                         | 17,702        | 28,820        | 28,820        | 4       |
| Saudi Arabia                    | 8,760         | 10,728        | 10,727        | 2       | Singapore                         | 18,962        | 23,595        | 23,595        | 3       |
| Germany                         | 9,883         | 10,134        | 10,134        | 2       | Korea RP                          | 17,477        | 21,227        | 21,227        | 2       |
| Indonesia                       | 8,471         | 10,024        | 10,024        | 2       | Hong Kong                         | 19,097        | 18,275        | 18,275        | 2       |

Source: Ministry of Commerce Data, Government of India (May 2025)

## 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 China. 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. Expansion of private spending would lead to greater share of discretionary spending in India's consumption basket. Estimates suggest that aggregate discretionary consumption could almost triple from \$657 billion in 2022 to as much as \$2,000 billion by 2030. 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 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.

---

<sup>1</sup> *Brookings Institution Research*



# 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 (74%) Govt approval needed beyond 74%
- Insurance company (100%)
- Telecommunication (100%)
- Airlines (100%) Govt approval needed beyond 49%
- Agriculture (100%)
- Single brand retail trading (51%) Govt approval required
- Multibrand retail trading (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
- (ii) Limited Liability Partnerships ('LLP')
- (iii) Investment in units of Alternative Investment Funds ('AIF'), Real Estate Investment Trust (REITs) and Infrastructure Investment Trusts ('InvITs')
- (iv) Acquisition, dealing in immovable 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

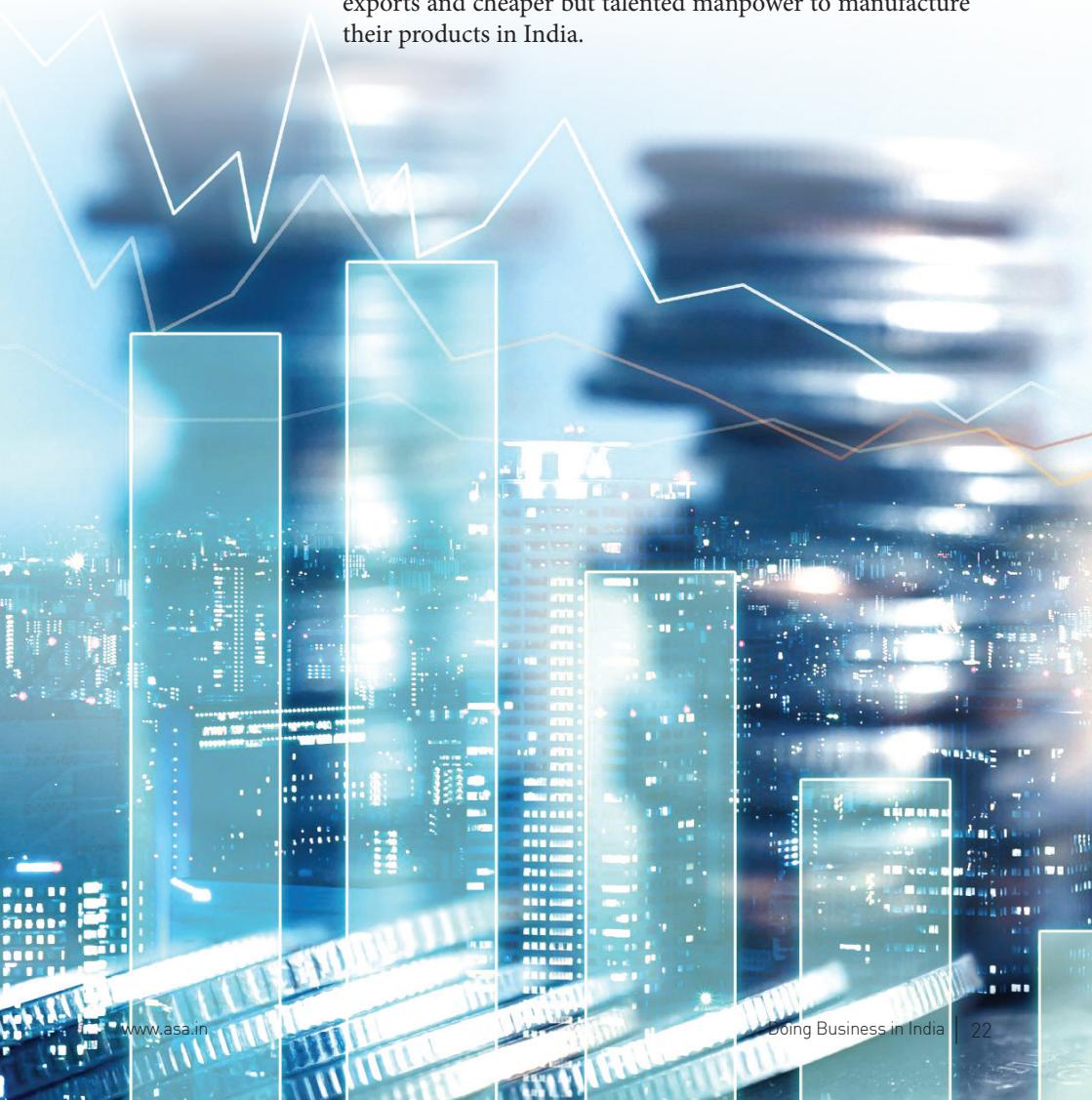
---

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.



#### 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.

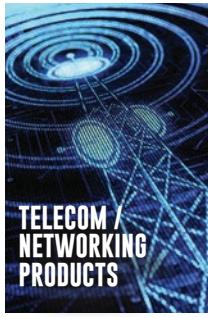
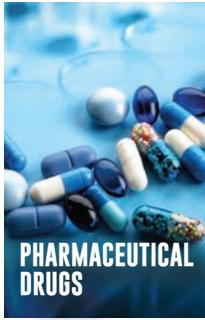
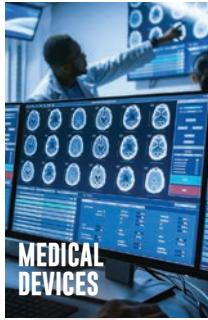
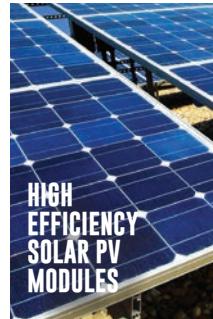
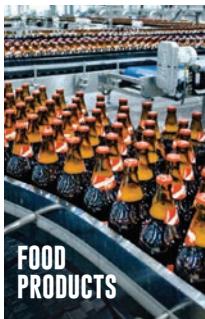
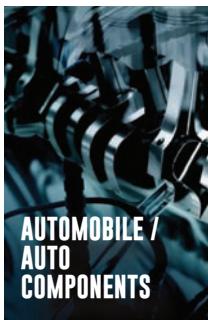
#### 2.4.3 Production Linked Incentives

---

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
- IPR Protection, through fast-track patent application with 80% rebate in filing fee
- Consideration of shares received by eligible startups shall be exempt up to an aggregate limit of Rs. 250 million
- 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.



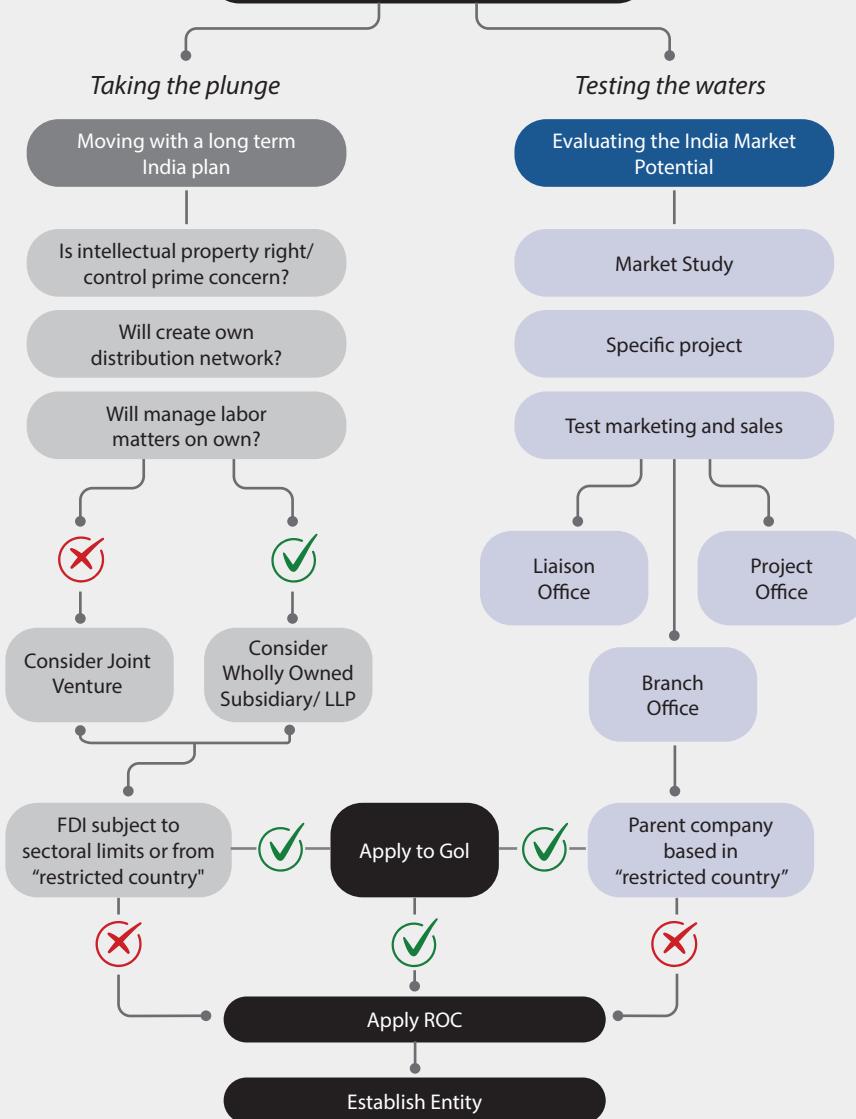
# THE RIGHT STRUCTURE

---

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.



# TO SET UP BUSINESS IN INDIA



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.<br>In case of corporate shareholders, their nominated representatives can attend | To be personally present: <ul style="list-style-type: none"> <li>• 5 for companies having less than 1000 shareholders</li> <li>• 15 for companies having less than 5000 shareholders</li> <li>• 30 for companies having more than 5000 shareholders</li> </ul> In case of corporate shareholders their nominated representatives can attend |

## **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.

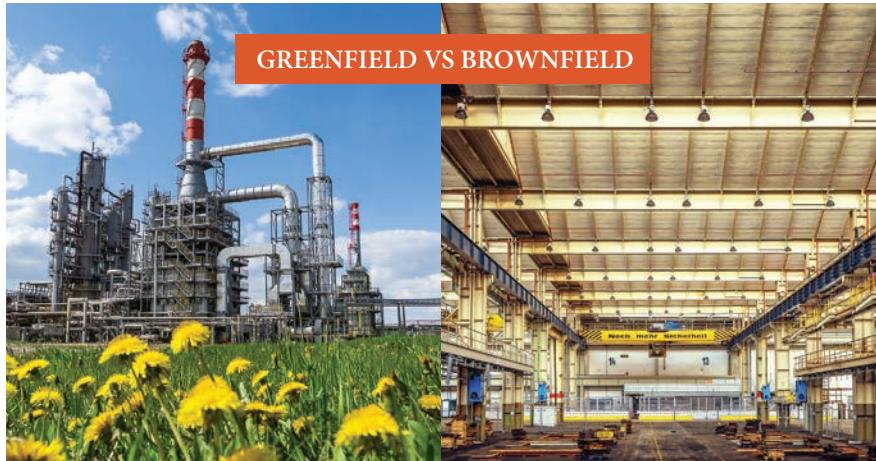
## Understanding your prospective Indian partner

Keep in mind that he looks at a business horizon of 3-5 years to measure the returns on investment unlike say a Japanese feasibility analysis of 10-20 years.

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

The Indian partner will aim for faster turnaround in negotiations. Since India works on 'top-down' management approach the Indian partner is ready to take a decision immediately and cannot comprehend the 'down-up' approach of the 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 basics 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                                                            | 35% ++                                              | 35% ++                                                          | 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

\* 35% proposed vide Union Budget July 2024

### 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.

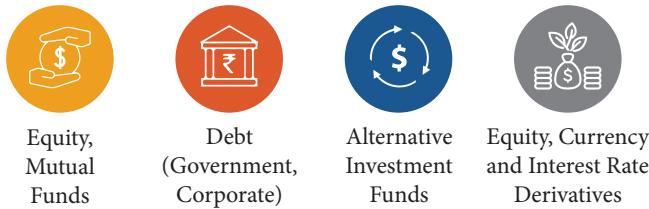
| Category I                   | Category II                 | Category III                 |
|------------------------------|-----------------------------|------------------------------|
| Venture Capital Funds        | Private Equity (PE) Funds   | Hedge Funds                  |
| Angel Funds                  | 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)



#### 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 31. 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 2022/23 |             | For other domestic companies |             | Foreign companies |             |
|--------------------------------------------------------|------------------------------------------------------|-------------|------------------------------|-------------|-------------------|-------------|
|                                                        | Basic                                                | Effective** | Basic                        | Effective** | Basic             | Effective** |
| Less than 10 million                                   | 25                                                   | 26          | 30                           | 31.20       | 35                | 36.4        |
| More than INR 10 million but less than INR 100 million | 25                                                   | 27.82       | 30                           | 33.38       | 35                | 37.13       |
| More than INR 100 million                              | 25                                                   | 29.12       | 30                           | 34.94       | 35                | 38.22       |

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

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

\*\*\*35% vide Finance Act 2024

#### 4.1.3 Beneficial Tax Regime for Specific Domestic Companies

---

Domestic companies engaged in manufacturing (set up on or after October 1, 2019 and 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 into manufacturing can opt for 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 abovementioned 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. Furthermore,



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"><li>• Special Economic Zones</li><li>• Specified locations, viz., the northeast region of India</li></ul> | <ul style="list-style-type: none"><li>• Benefit for qualified R&amp;D expenditure</li><li>• Employment of new workmen</li><li>• Business of collecting and processing bio-degradable waste</li></ul> | <ul style="list-style-type: none"><li>• Infrastructure and power facilities</li><li>• Oil and gas</li><li>• Cold chain and warehousing</li><li>• Hospitals</li><li>• Fertilizer production</li><li>• Affordable housing project schemes</li><li>• Hospitality and tourism, etc.</li></ul> |

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 is 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, dividend distribution 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.

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 20%. 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 under specific tax treaties

| Country     | Dividend | Interest | Royalty/ FTS | (Rates in %) |
|-------------|----------|----------|--------------|--------------|
| 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    | 15/20        |              |

#### 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 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

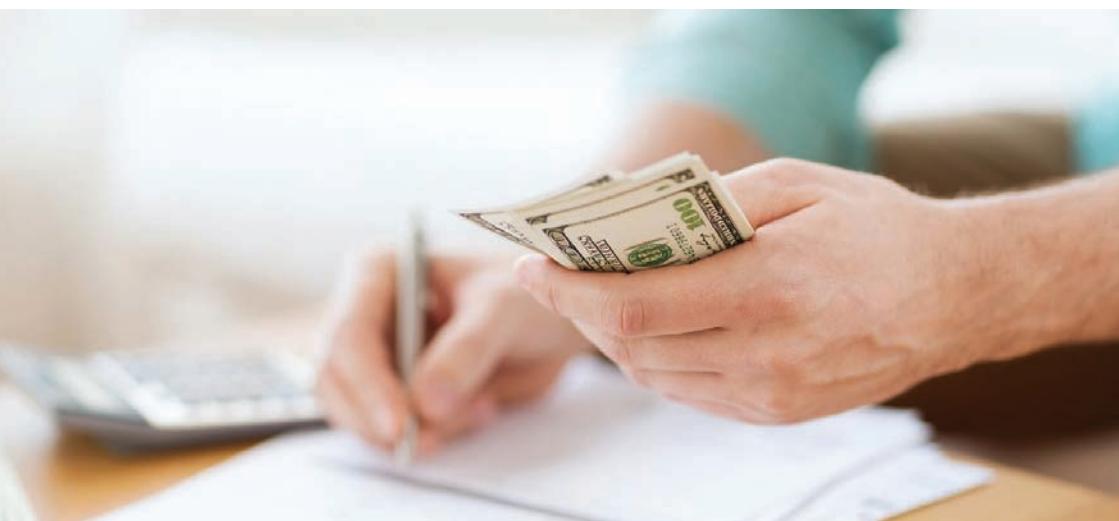
- Lending or borrowing money
- Any other transaction having a bearing on the profits, income, losses or assets of such enterprises

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 (OR) or a (NOR). It is important to note that the purpose of the stay is not a relevant factor, it's the number of days stayed in India which matters.

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 2025-26)

| Income Range (INR)  | Old Regime (%) | Income Range (INR)    | New Regime (%) |
|---------------------|----------------|-----------------------|----------------|
| Upto 2,50,000       | Nil            | Upto 400,000          | Nil            |
| 2,50,001-500,000    | 5              | 400,001 – 800,000     | 5              |
| 5,00,001-10,00,000  | 20             | 800,001 – 1,200,000   | 10             |
|                     |                | 1,200,001 – 1,600,000 | 15             |
| 10,00,001 and above | 30             | 1,600,001 – 2,000,000 | 20             |
|                     |                | 2,000,001 – 2,400,000 | 25             |
|                     |                | 2,400,001 and above   | 30             |

*The tax so computed is enhanced by a surcharge i.e. 10 per cent on income exceeding Rs. 5 to 10 million; 15 per cent on income exceeding Rs. 10 to 20 million; 25 per cent on income exceeding Rs. 20 to 50 million and 37 per cent on income exceeding Rs. 50 million. However, surcharge remains capped at 25 per cent on income exceeding Rs. 50 million under the new regime.*

*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 1.2 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, taxpayers estimate the entire year's tax liability and deposits 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 a monthly basis. In India, this is commonly referred to as Tax Deduction at Source or TDS.

#### 4.2.8 Year End Reporting

---

Any income earned and taxable in India during a financial year must be reported to the Indian tax authorities through the filing of a return of income. For an expatriate with Ordinary Resident (OR) status, there is an obligation to report not only income earned within India but also global income and assets in their tax return.

#### 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 Fair Market Value (FMV) as 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 (FMV) 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

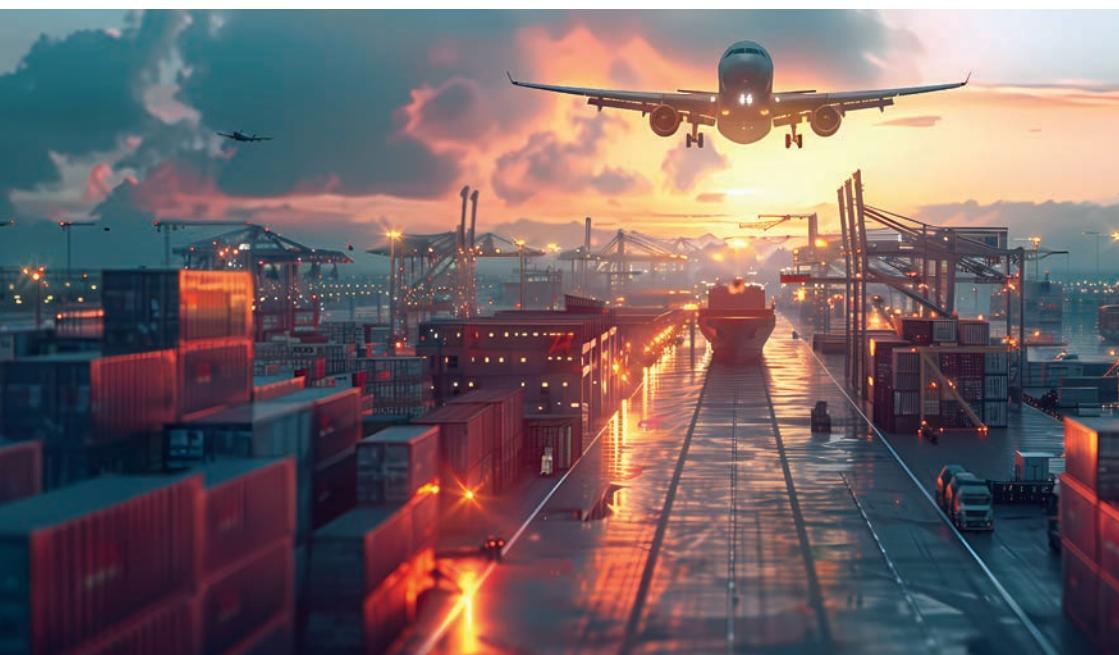
#### 4.4 Customs Duty

---

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. The normal rate of Customs Duty is at 10%. While Education Cess and Higher Education Cess have been abolished, Social Welfare Surcharge at 10% was introduced in the Finance Act 2018. The surcharge is 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.



#### 4.5 Goods and Services Tax (GST)

---

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

|                     |                                                                                                                     |
|---------------------|---------------------------------------------------------------------------------------------------------------------|
| <b>CGST<br/>Tax</b> | collected by the Central government on an Intra-State supply.                                                       |
| <b>SGST<br/>Tax</b> | collected by a State government on an Intra-State supply.                                                           |
| <b>IGST<br/>Tax</b> | 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 50 million.
- The annual reconciliation statement can be self-certified by the management



#### 4.6 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.

#### 4.7 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.

## 5.1.2 Directors

---

### **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.

### **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.



### 5.1.3 Factory Set-up

#### 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

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

##### Cash Basis

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 →        | Within 6 months from the end of the financial year                                  |
| Annual Return with the ROC →    | Within 60 days from the date of AGM                                                 |
| <b>Tax</b>                      |                                                                                     |
| 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<br>1 license<br>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<br>Semi-Skilled - 11,500<br>Skilled - 12,500<br>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)**

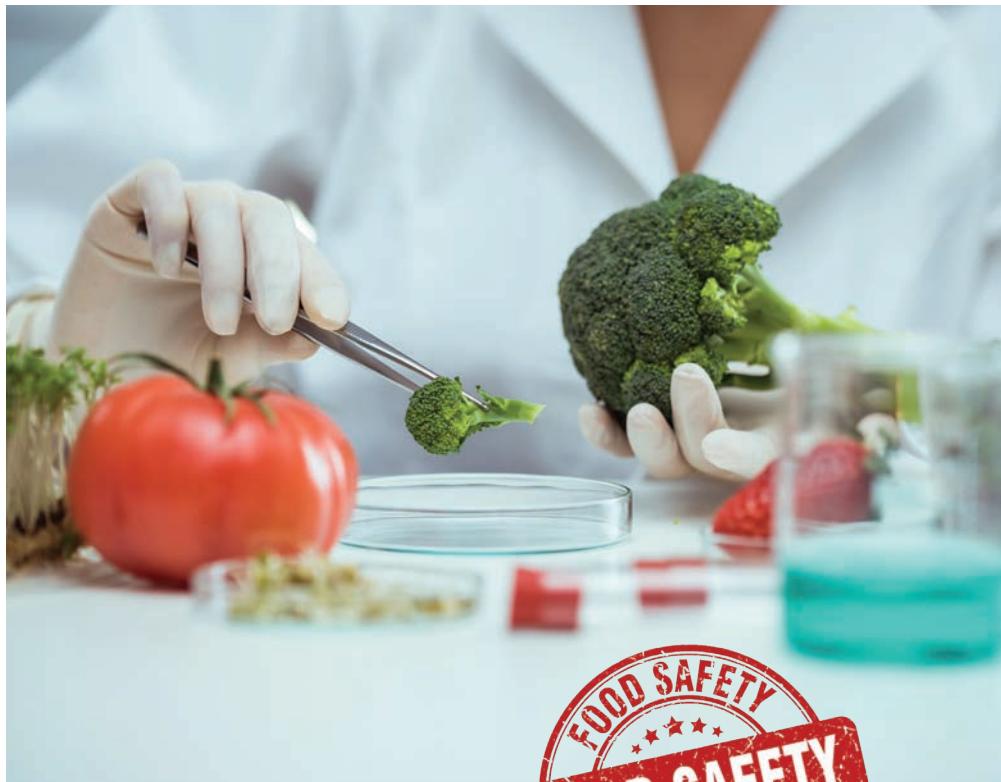
---

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 (FSSA)

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.





# 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



## 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

# CONTRIBUTING AUTHORS

---



Himanshu Srivastava

*Partner*

Business Advisory Services

himanshu.srivastava@bakertilly.in



Sundeep Gupta

*Partner*

Accounting and Business Support

sundeep.gupta@bakertilly.in



Sunil Arora

*National Head*

Taxation

sunil.arora@asa.in



Kim Collaco

*Executive Director*

Enterprise Strategy

kim.collaco@bakertilly.in





# ABOUT US



A full services firm of corporate strategists, accountants, tax advisory experts and financial and marketing analysts.

## SERVICES

- Accounting and Business Support
- Assurance
- Business Advisory
- Cyber Security
- Global Offshoring Services
- Risk Advisory
- Taxation
- Transaction Advisory

## PRESENTLY POSITIONED IN THE TOP 10 ACCOUNTING & CONSULTING FIRMS

Well structured teams with domain specialization are guided by leaders who possess expertise and experience and are present PAN India to ensure excellent client service.



18  
Locations

70 Partners/  
Directors

6000+  
Clients

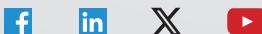
1200+  
In-house  
Professionals

## GLOBAL PRESENCE

43,000  
Staff

700  
Offices

143  
Territories



*Disclaimer: We have taken all steps to ensure that the information in this document has been obtained from reliable sources and is accurate. However, this document is not intended to give legal, tax, accounting or other professional guidance. We recommend appropriate advice be taken prior to initiating action on specific issues.*

## ASA Corporate Catalyst India

### New Delhi (Corporate Office)

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

### Ahmedabad

306 - B, Pinnacle Business Park  
Corporate Road, Prahlad Nagar  
Ahmedabad, 380 015, INDIA  
T +91 79 4891 5409

### Bengaluru

53/B, LOLS Citadel Level 2 & 3  
1st Main Road, 3rd Phase  
Saralki Industrial Layout  
J P Nagar, Bengaluru 560078, INDIA  
T +91 80 4907 9600

### Chennai

Unit No. 709 & 710,  
7th Floor 'Beta Wing'  
Raheja Towers, New Number 177  
Anna Salai, Chennai 600 002, INDIA  
T +91 44 4904 8200

### Gurgaon

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

### Hyderabad

Vasavi's MPM Grand  
11th Floor, Unit No 1204  
Yella Reddy Guda Road, Ameerpet  
Hyderabad Telangana 500 073, INDIA  
T +91 40 2776 0423

### Kochi

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

### Mumbai

Lotus Corporate Park  
G-1801 CTS No.185/A  
Graham Firth Compound  
Western Express Highway,  
Goregaon East  
Mumbai 400 063, INDIA  
T +91 22 4921 4000

### National Affiliates

Bhubaneswar, Chandigarh, Pune and  
Vishakhapatnam