KrayMan

Demystifying Complexities

Doing Business in India

November 2016

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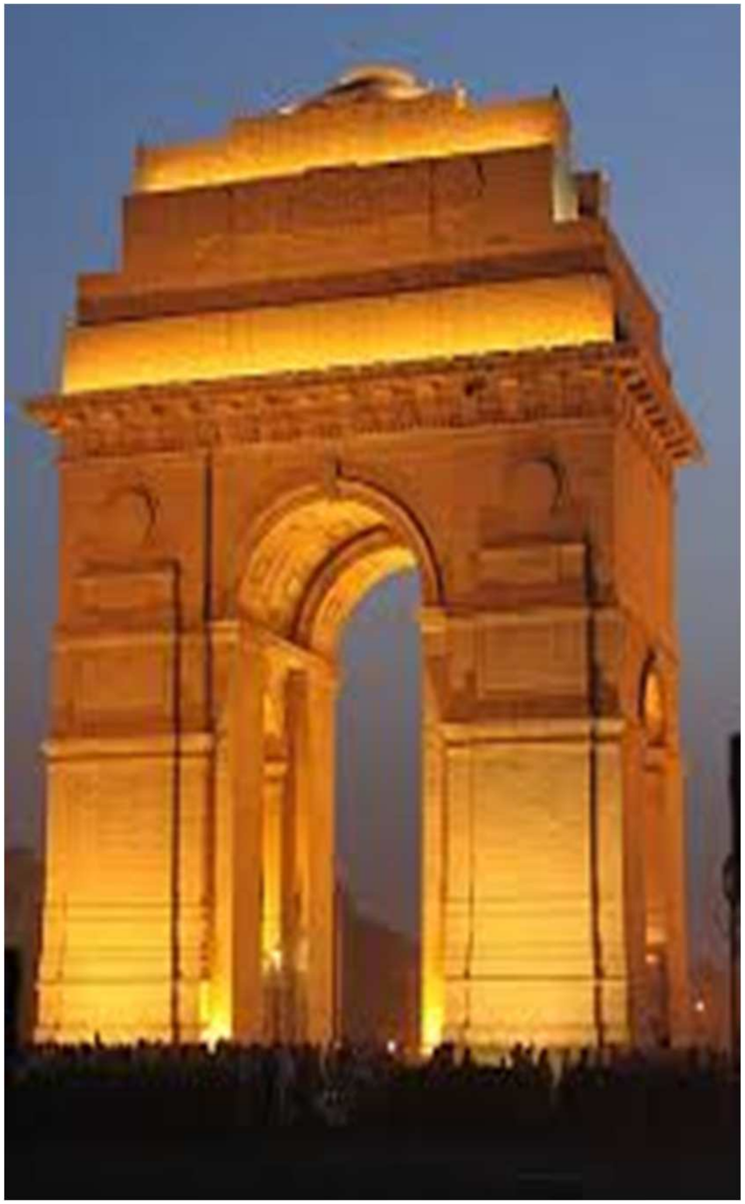
India at a glance

About India



- India is one of the oldest civilizations in the world, with a population of over 1.3 billion. It is the seventh largest country in terms of area. Rich cultural heritage, geographical diversity and numerous traditions make India stand unique among whole South Asian countries.

- India is not only the world's largest democracy, but also a secular country where different religions like Hinduism, Islam, Christianity, Sikhism, Jainism, Buddhism etc. flourish simultaneously.

- Literacy rate here is around 74.04%. There are 21 official languages in this country apart from Hindi and English. It has over 125 airports and one of the largest rail networks in the world. India has coastline of around 7,000 km.

- A peace loving nation, where advanced farming, unique handicrafts and modern industries go hand in hand. India's natural resources include coal, iron ore, manganese, mica, limestone etc.

- India has business relations with other countries since ancient times. Recent liberalization has further aided foreign investment in the country.

- ***Huge working population, supportive government policies and availability of a variety of resources prove to be a perfect blend for setting up of business in India***

Foreign investment in India

Foreign investments are a very vital part of any country's economy. Government of India has always shown keen interest in liberalizing the Foreign Direct Investment (FDI) Policy of the country and other investment regulations, with an intent to promote foreign investment in India, through a transparent and hassle free regulatory system. Over the past few years, the Indian Government's liberalized approach and robust business opportunities have strengthened the faith of foreign investors in India. Global brands have lined up to invest in India as the Government opened more sectors to foreign investment.

World Bank report on ease of doing business

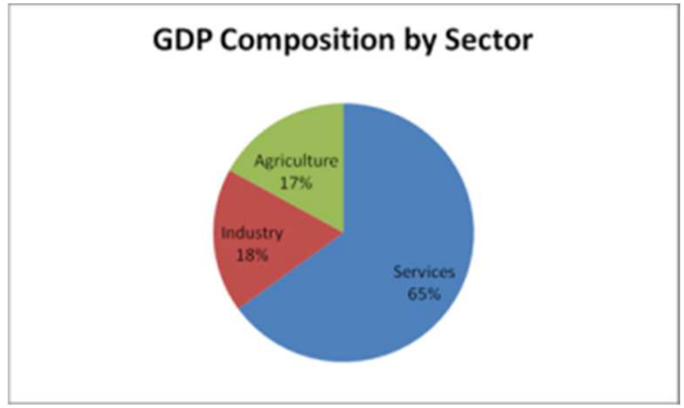
India is at 130th position among 189 countries, which is up by 4 positions since last year.

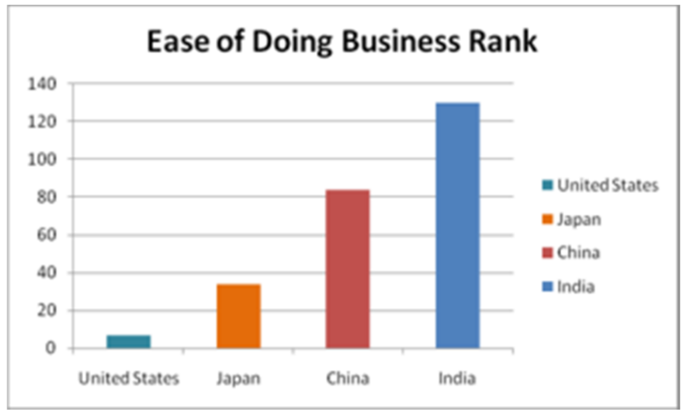
Expected growth rate of Indian economy for the financial year 2016-17 will be 7.6%, and 7.7% in the financial year 2017-18

Working age population (20-35 years age group) in India is expected to increase to over 64% by the year 2021

India is among leading exporters to countries like US, Germany, Japan, UAE, China, Thailand, Indonesia and European Union

India is also tapping newer markets in Africa and Latin America.

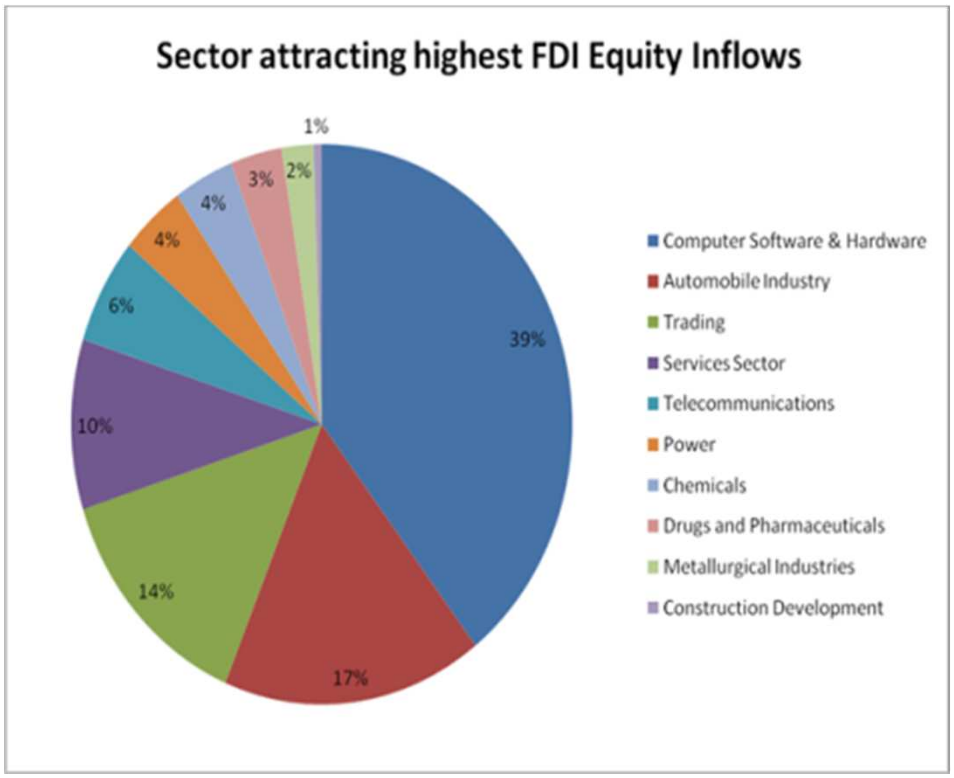




India a growing economy

The Industrial Policy of India was opened up in 1991 to promote foreign investment in the country. Since then, the Government has been trying to ease the regulatory and industrial policy framework of the country in a bid to make it investor friendly.

India, with its vast range of industries and ample availability of skilled as well as unskilled manpower, has been successfully attracting foreign investment for past few years. Top investing countries in India include Mauritius, Singapore, UK, Japan, Netherlands, USA, Cyprus, Germany, France and Switzerland. Major sectors attracting highest FDI are Services Sector, Construction Development, Telecommunications, Computer Software and Hardware, Drugs and Pharmaceuticals, Automobile.



India, being one of the fastest growing economies in the world which has also sustained the downturn of 2008-09, offers huge potential and promising business opportunities for global investment community.

Liberalized policies, simplified regulatory norms and adoption of ‘best practices’ in production of goods and services have been the key factors in attracting foreign investment in the country.

Foreign Direct Investment (FDI) Policy In India

FDI policy in India

What is FDI Policy?

It is a policy framework on foreign investment in the country, set out by the Government of India. The framework is embodied in a consolidated circular, which is updated annually or as and when required to keep pace with the regulatory changes.

Setting up operations in India or investing in India by foreign investors requires conformity with India's foreign exchange regulations, which mainly comprises of the FDI policy, the Foreign Exchange Management Act and the Industrial Policy.

Routes for FDI in India

An entity may receive FDI via two routes:-

Automatic route

FDI is allowed under the automatic route without prior approval of the Government or the Reserve Bank of India (RBI) in most activities/sectors.

Government approval route

FDI in activities which are not covered under the automatic route require prior approval of the Government which are considered by the Foreign Investment Promotion Board (FIPB), Department of Economic Affairs, Ministry of Finance.

FDI policy in India

Various Sectors

Prohibited Sectors

Prohibited sectors (where FDI is not allowed):

- Atomic Energy
- Lottery business
- Gambling and betting
- Manufacturing of cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes
- Chit funds
- Nidhi company, etc.

Sectors under Automatic Route with Thresholds

Sectors under automatic route, i.e. where prior approval from the Government of India is not required.

FDI, up to 100%, is permitted in most sectors in India under the 'automatic route'. In few sectors, under the automatic route, foreign investment cannot exceed the specified limits. E.g. 100% FDI is allowed under automatic route in certain agricultural and mining activities including diamond, gold, silver and precious ores but excluding titanium bearing minerals and its ores

Sectors under Government Approval Route

Sectors under Government approval route, i.e. where FDI is allowed only with the approval of the Central Government.

FDI is allowed in Print Media, and Broadcasting services only under approval route.

Sectors with Partial Automatic Route and Partial Government Route

Sectors partly under automatic route and partly under Government route.

In certain sectors a foreign investor can invest upto a certain percentage of shareholding of an Indian company under the automatic route. Government approval is required for any investment beyond the specified percentage. This includes foreign investment in telesports, DTH services etc.

FDI policy in India

- Keeping in line with the commitment to boost investment environment in the country, the Government has brought major FDI related Reforms / liberalisation touching across 15 Sectors of the Economy.

- The objective of these reforms again, is to further simplify process and limits of foreign investments in the country and to put more FDI proposals on automatic route instead of Government route where time and energy of the investors goes.

- The changes introduced in the policy include increase in sectoral caps, bringing more activities under automatic route and easing of restrictions on foreign investment. Further, new sectors have also been opened to foreign investment.

Sector wise FDI limits

Sector wise FDI limits

Sector	FDI Limit	Entry Route & Remarks
Agriculture & Animal Husbandry •Floriculture, Horticulture, Apiculture and Cultivation of Vegetables & Mushrooms under controlled conditions •Development and Production of seeds and planting material •Animal Husbandry(including breeding of dogs), Pisciculture, Aquaculture •Services related to agro and allied sectors	100%	Automatic
Plantation Sector •Tea sector including tea plantations •Coffee plantations •Rubber plantations •Cardamom plantations •Palm oil tree plantations •Olive oil tree plantations	100%	Automatic
Mining •Mining and Exploration of metal and non-metal ores including diamond, gold, silver and precious ores but excluding titanium bearing minerals and its ores	100%	Automatic
Mining (Coal & Lignite)	100%	Automatic
Mining •Mining and mineral separation of titanium bearing minerals and ores, its value addition and integrated activities	100%	Government
Petroleum & Natural Gas •Exploration activities of oil and natural gas fields, infrastructure related to marketing of petroleum products and natural gas, marketing of natural gas and petroleum products etc.	100%	Automatic

Sector wise FDI limits

Sector	FDI Limit	Entry Route & Remarks
Petroleum & Natural Gas •Petroleum refining by the Public Sector Undertakings (PSU), without any disinvestment or dilution of domestic equity in the existing PSUs.	49%	Automatic
Defence Manufacturing	100%	Automatic up to 49% Above 49% under Government route in cases resulting in access to modern technology in the country
Broadcasting •Teleports(setting up of up-linking HUBs/Teleports) •Direct to Home (DTH) •Cable Networks (Multi System operators (MSOs) operating at National or State or District level and undertaking upgradation of networks towards digitalization and addressability •Mobile TV •Head end-in-the Sky Broadcasting Service(HITS)	100%	Automatic
Broadcasting •Cable Networks (Other MSOs not undertaking up gradation of networks towards digitalization and addressability and Local Cable Operators (LCOs)	100%	Automatic
Broadcasting Content Services •Terrestrial Broadcasting FM(FM Radio) •Up-linking of ‘News & Current Affairs’ TV Channels	49%	Government
Up-linking of Non-‘News & Current Affairs’ TV Channels/ Down-linking of TV Channels	100%	Automatic
Print Media •Publishing of newspaper and periodicals dealing with news and current affairs •Publication of Indian editions of foreign magazines dealing with news and current affairs	26%	Government

Sector wise FDI limits

Sector	FDI Limit	Entry Route & Remarks
Publishing/printing of scientific and technical magazines/specialty journals/ periodicals, subject to compliance with the legal framework as applicable and guidelines issued in this regard from time to time by Ministry of Information and Broadcasting.	100%	Government
Publication of facsimile edition of foreign newspapers	100%	Government
Civil Aviation – Airports •Green Field Projects & Existing Projects	100%	Automatic
Civil Aviation – Air Transport Services •Scheduled Air Transport Service/ Domestic Scheduled Passenger Airline •Regional Air Transport Service	100%	Automatic up to 49% Above 49% under Government route 100% Automatic for NRIs
Civil Aviation •Non-Scheduled Air Transport Service •Helicopter services/seaplane services requiring DGCA approval •Ground Handling Services subject to sectoral regulations and security clearance •Maintenance and Repair organizations; flying training institutes; and technical training institutions	100%	Automatic
Construction Development: Townships, Housing, Built-up Infrastructure	100%	Automatic
Industrial Parks	100%	Automatic
Satellites- establishment and operation, subject to the sectoral guidelines of Department of Space/ISRO	100%	Government
Private Security Agencies	74%	Automatic up to 49% Above 49% & up to 74% under Government route
Telecom Services	100%	Automatic up to 49% Above 49% under Government route

Sector wise FDI limits

Sector	FDI Limit	Entry Route & Remarks
Cash & Carry Wholesale Trading	100%	Automatic
E-commerce activities (e-commerce entities would engage only in Business to Business (B2B) e-commerce and not in Business to Consumer (B2C) e-commerce.)	100%	Automatic
Single Brand retail trading •Local sourcing norms will be relaxed up to three years and a relaxed sourcing regime for another five years for entities undertaking Single Brand Retail Trading of products having ‘state-of-art’ and ‘cutting edge’ technology.	100%	Automatic up to 49% Above 49% under Government route
Multi Brand Retail Trading	51%	Government
Duty Free Shops	100%	Automatic
Railway Infrastructure Construction, operation and maintenance of the following: •Suburban corridor projects through PPP •High speed train projects •Dedicated freight lines •Rolling stock including train sets, and locomotives/coaches manufacturing and maintenance facilities •Railway Electrification •Signaling systems •Freight terminals •Passenger terminals •Infrastructure in industrial park pertaining to railway line/sidings including electrified railway lines and connectivity’s to main railway line •Mass Rapid Transport Systems.	100%	Automatic
Asset Reconstruction Companies	100%	Automatic
Banking- Private Sector	74%	Automatic up to 49% Above 49% & up to 74% under Government route
Banking- Public Sector	20%	Government

Sector wise FDI limits

Sector	FDI Limit	Entry Route & Remarks
Credit Information Companies (CIC)	100%	Automatic
Infrastructure Company in the Securities Market	49%	Automatic
Insurance • Insurance Company • Insurance Brokers • Third Party Administrators • Surveyors and Loss Assessors • Other Insurance Intermediaries	49%	Automatic
Pension Sector	49%	Automatic
Power Exchanges	49%	Automatic
White Label ATM Operations	100%	Automatic
Non-Banking Finance Companies (NBFC)	100%	Automatic
Pharmaceuticals(Green Field)	100%	Automatic
Pharmaceuticals(Brown Field)	100%	Automatic up to 74% Above 74% under Government route
Food products manufactured or produced in India • Trading, including through e-commerce, in respect of food products manufactured or produced in India.	100%	Government

Prohibited Sectors

FDI is prohibited in the following sectors:

- Lottery Business including Government/private lottery, online lotteries, etc.
- Gambling and Betting including casinos etc.
- Chit funds
- Nidhi company
- Trading in Transferable Development Rights (TDRs)
- Real Estate Business or Construction of Farm Houses (Real estate business does not include development of townships, construction of residential /commercial premises, roads or bridges)
- Manufacturing of cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes
- Activities/sectors not open to private sector investment e.g. Atomic Energy and Railway operations (other than permitted activities).

Sector Analysis Report

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Information Technology

Introduction

India is the world's largest sourcing destination for the information technology (IT) industry, accounting for approximately 67 per cent of the US$ 124-130 billion market. More importantly, the industry has led the economic transformation of the country. India's cost competitiveness in providing IT services, which is approximately 3-4 times cheaper than the US, continues to be the mainstay of its Unique Selling Proposition (USP) in the global sourcing market.

Software and services exports (including ITeS-BPO), excluding hardware exports, were estimated at USD 59 billion in 2010–11, as per NASSCOM, India's premier association in the IT sector

Current Scenario Vis-à-vis foreign Investment

- Indian IT's core competencies and strengths have attracted significant investments from major countries. The computer software and hardware sector in India attracted cumulative Foreign
- Direct Investment (FDI) inflows worth US$ 21.02 billion between April 2000 and March 2016, according to data released by the Department of Industrial Policy and Promotion (DIPP).

Investment Opportunities

- Setting up of IT services, BPM, software product companies, shared service centers.
- Fast-growing sectors within the BPM domain – knowledge services, data analytics, legal services, Business Process as a Service (BPaaS), cloud-based services.
- IT Services and fast-growing sectors within it such as solutions and services around SMAC, IS outsourcing, IT consulting, software testing.

Reason to Invest

- IT - BPM sector constitutes ~ 9.3% of the country's GDP.
- India's IT – BPM industry amounts for 56% of the global outsourcing market size.
- Rapidly growing urban infrastructure has fostered several IT centers in the country.

FDI Policy

In the electronics and IT sector, 100% FDI is permitted under the automatic route.

Road ahead

- The Indian information technology sector continues to be one of the sunshine sectors of the Indian economy. According to NASSCOM, the Indian IT industry is poised to become a USD 225 billion industry by 2020.
- The exports component of the Indian IT industry is expected to reach USD 175 billion in revenue by 2020
- Revival in demand for IT services from US and Europe
- The government's Digital India Campaign envisages a USD 20 Billion investment covering mobile connectivity throughout the country, re-engineering of government process via technology and enabling e-delivery of citizen services.
- The sector accounts for 45% share in total services export from the country.

E-Commerce

Introduction

India is a shopper's paradise now, albeit, online. The unrivalled population in India armed with smart gadgets is spoilt for a choice. Aided by declining broadband subscription prices and launch of 3G and 4G services, consumers have become the driving force of e-Commerce in the country. From buying groceries to furniture, movie tickets, trains tickets to steel, coal and tea – e-Commerce has empowered the consumers. As per reports, India will see more people come online than any other country in the next 15 years. With digital device and social media, online sellers are getting unprecedented opportunity for growth and have thus become continuously more attractive for investors.

However, the tax laws in the country lead to a fair bit of complication but for that one vital reform the introduction of GST (Goods and Services Tax) will bring in much awaited relief for the e-Commerce sector.

Current Scenario Vis-à-vis foreign Investment

The Indian retail trading has received Foreign Direct Investment (FDI) equity inflows totaling US$ 537.61 million during April 2000–March 2016, according to the Department of Industrial Policies and Promotion (DIPP).

Investment Opportunities

- Looking further into the future, overall retail sales in India are projected to double to $1 trillion by 2020 from $600 billion last year, according to the Boston Consulting Group, which adds that e-commerce sales there are projected to quadruple in the next five years, to $60 billion or $70 billion.
- Around 12% of all Internet users in India are online shoppers, according to the Economic Times. Analysts believe that online shopper penetration could grow to 20% by 2017.

Reason to Invest

- Since the e-Commerce industry is fast rising, changes can be seen over a year. The sector in India has grown by 34% (CAGR) since 2009 to touch 16.4 billion USD.
- Around 75% of Indian internet users are in the age group of 15 to 34 years. This category shops more than the remaining population. Peer pressure, rising aspirations with career growth, fashion and trends encourage this segment to shop more than any other category and India, therefore, clearly enjoys a demographic dividend that favors the growth of e-Commerce.
- In coming years, as internet presence increases in rural areas, rural India will yield more e-Commerce business.

FDI Policy

100% FDI under Automatic route is allowed for entity engaged exclusively in Business to Business (B2B) activity

Road ahead

- With the new government being elected, business confidence has significantly improved
- The long-term outlook for the industry is positive, supported by rising incomes, favorable demographics, entry of foreign players, and increasing urbanization.
- Several of India's firms operating through Permanent Establishment, which previously avoided investing in E-Commerce, are now looking for opportunities in the sector.

Automobile

Introduction

The industry accounts for 7.1 per cent of the country's Gross Domestic Product (GDP). The Two Wheelers segment with 81 per cent market share is the leader of the Indian Automobile market owing to a growing middle class and a young population.

India is also a prominent auto exporter and has strong export growth expectations for the near future. In April-January 2016, exports of Commercial Vehicles registered a growth of 18.36 per cent over April-January 2015.

Current Scenario Vis-à-vis foreign Investment

In order to keep up with the growing demand, several auto makers have started investing heavily in various segments of the industry during the last few months. The industry has attracted Foreign Direct Investment (FDI) worth US$ 15.06 billion during the period April 2000 to March 2016, according to data released by Department of Industrial Policy and Promotion (DIPP), India.

Investment Opportunities

- New technological changes like turbochargers and common rail systems.
- Replacement market share in sub-segments such as clutches is likely to grow due to rising traffic density.
- The entry of global players is expected to intensify competition in sub-segments such as gears and clutches.
- Manufacturers are expected to benefit from the growing demand for sheet metal parts, body & chassis, fan belts, pressure die castings, hydraulic pneumatic instruments in the two-wheeler segment.

Reason to Invest

- An emerging global hub for sourcing auto components.
- Geographically closer to key automotive markets like the ASEAN, Japan, Korea and Europe.
- 6th Largest vehicles manufacturer in the world that produced 23.9 million vehicles in FY 2016.
- Favorable trade policy with no restrictions on Export-Import
- Establishment of automotive training institutes and auto design centers, special auto parks and virtual SEZs for auto components

FDI Policy

100% Foreign Direct investment (FDI) is allowed under the automatic route in the auto sector, subject to the applicable regulations and laws.

Road ahead

- Third largest automotive market by volume, by 2016-17.
- Six Million-plus hybrid and electric vehicles to be sold annually, by 2020.
- By 2026, India is expected to be the third largest automotive market by volume in the world
- Global car majors have been ramping up investments in India to cater to growing domestic demand. These manufacturers plan to leverage India's competitive advantage to set up export-oriented production hubs.

Infrastructure

Introduction

Infrastructure sector is a key driver for the Indian economy. The sector is highly responsible for propelling India's overall development and enjoys intense focus from Government for initiating policies that would ensure time-bound creation of world class infrastructure in the country.

Infrastructure sector includes power, bridges, dams, roads and urban infrastructure development.

Current Scenario Vis-à-vis foreign Investment

Foreign Direct Investment (FDI) received in construction development sector from April 2000 to March 2016 stood at USD 113.936 Million.

Investment Opportunities

- Technologies and solutions for smart sustainable cities and integrated townships.
- Technologies for the promotion of low cost and affordable housing.
- Green building solutions.
- Sustainable and environmentally friendly building materials.
- Training and skill development of construction sector workers.
- Smart cities.
- Urban water supply, urban sewerage and sewage treatment.

Reason to Invest

- Construction sector in India will remain buoyant due to increased demand from real estate and infrastructure projects.
- Construction activities contribute more than 8% of India's GDP.
- USD 650 Billion will be required for urban infrastructure over the next 20 years

FDI Policy

100% Foreign Direct investment (FDI) is allowed under the automatic route in the Construction Development: Townships, Housing, and Built-up Infrastructure.

Road ahead

- The Indian power sector itself has an investment potential of US$ 250 billion in the next 4-5 years, providing immense opportunities in power generation, distribution, transmission and equipment, according to Mr Piyush Goyal, Union minister of coal, power and renewable energy.
- India needs Rs 31 trillion (US$ 454.83 billion) to be spent on infrastructure development over the next five years, with 70 per cent of funds needed for power, roads and urban infrastructure segments.

Food Processing

Introduction

The Indian food industry is poised for huge growth, increasing its contribution to world food trade every year. In India, the food sector has emerged as a high-growth and high-profit sector due to its immense potential for value addition, particularly within the food processing industry. Food and grocery account for around 31 per cent of India's consumption basket

The government through the Ministry of Food Processing Industries (MoFPI) is making all efforts to encourage investments in the business. It has approved proposals for joint ventures (JV), foreign collaborations; industrial licenses and 100 per cent export oriented units.

Current Scenario Vis-à-vis foreign Investment

According to the data provided by the Department of Industrial Policies and Promotion (DIPP), the food processing sector in India has received around US$ 6.70 billion worth of Foreign Direct Investment (FDI) during the period April 2000-December 2015.

The Confederation of Indian Industry (CII) estimates that the food processing sectors have the potential to attract as much as US$ 33 billion of investment over the next 10 years.

Investment Opportunities

- Food preservation by fermentation: wine, beer, vinegar, yeast preparation, alcoholic beverages.
- Beverages: fruit-based, cereal-based.
- Food preservation and packaging: metal cans aseptic packs.
- Consumer food: packaged food, aerated soft drinks and packaged drinking water.
- This niche has investment potential in food processing infrastructure, the government's main focus is on supply chain related infrastructure like cold storage, abattoirs and food parks.
- Fish, seafood and fish processing – processing and freezing units.

Reason to Invest

- A rich agriculture resource base-India was ranked No. I in the world in 2013 in terms of production of many food products
- The Country's gross cropped area amounts to 194.39 Million Hectares, with cropping intensity of 139%. The net irrigated area is 66.10 Million Hectare in 2012- 13.
- A total of 127 agro-climatic zones have been identified in India.
- Strategic geographic location and proximity to food-importing nations makes India favorable for the export of processed foods.

FDI Policy

100% FDI is permitted under the automatic route in food processing industries

100% FDI is allowed through approval route for trading, including through e-commerce in respect of food products manufactured and/or produced in India.

Road ahead

- Attractive fiscal incentives have been instated by central and state governments and these include capital subsidies, tax rebates, depreciation benefits, as well as reduced custom and excise duties for processed food and machinery.
- With a population size of 1.22 billion of which 604 million were under the age of 24 in 2011, this rising youth population is likely to increase India's overall food consumption.
- Increased desire for branded food as well as increased spending power.
- Consumption in India is driven towards packaged and ready-to-eat foods.

Retail

Introduction

The Indian retail industry has emerged as one of the most dynamic and fast-paced industries due to the entry of several new players. It accounts for over 10 per cent of the country's Gross Domestic Product (GDP) and around 8 per cent of the employment. India is the world's fifth-largest global destination in the retail space.

Current Scenario Vis-à-vis foreign Investment

The Indian retail trading has received Foreign Direct Investment (FDI) equity inflows totaling US$ 537.61 million during April 2000–March 2016, according to the Department of Industrial Policies and Promotion (DIPP).

With the rising need for consumer goods in different sectors including consumer electronics and home appliances, many companies have invested in the Indian retail space in the past few months.

- 100% FDI under automatic route allowed for Single brand retail.
- 51% allowed from approval route Under Multi brand retail.
- 100% FDI is allowed in retail is allowed under E-commerce in following cases:
  - A manufacturer is permitted to sell its products manufactured in India.
  - A Single brand retail trading entity operating through brick and mortar stores.
  - An Indian manufacturer is permitted to sell its own single brand product.

However, inventory based model of E-commerce is not permitted.

Investment Opportunities

- The new policy also permitted global retailers to acquire from small and medium businesses which have initial investment in plant & machinery of not more than $2 million up from the earlier limit of $1 million in order to make sure that small Indian organizations will benefit from the arrival of foreign firms.
- In 2004, the total retail sales were $206 billion. Out of these $206 billion, organized Retail was just 3% of total retail sales that is $6.4 billion p.a. Organized retail is however picking up very fast and it is growing with an average growth rate of over 20% p.a. in the last 5 years
- The sector also provides opportunity to the investors to invest in a supply chain infrastructure. India is also emerging as one of the important sourcing base for a wide variety of goods for international retail companies.

Reason to Invest

- In the next ten years, India would be among the top 5 retail markets in the world
- The domestic retail sector will grow due to increase of high income population, increasing urbanization, Increasing use of credit cards by the consumers, rising Population especially between the 20 to 49 years age band.
- In the next ten years, India would be among the top 5 retail markets in the world

Road ahead

- Being presence of healthy middle class population ensures huge prospect in the growth of retail sector.
- This sector is opened recently by the government of India for the foreign players.
- Keeping the size of India in mind, the organized retail sector is not very developed and there are huge prospects for its growth and development. India is one of the ten largest retail markets in the world.
- Nevertheless, the long-term outlook for the industry is positive, supported by rising incomes, favorable demographics, entry of foreign players, and increasing urbanization

Defence

Introduction

India enjoys a strategic location with reference to continental Asia and the Indian Ocean Region. The Indian peninsular landmass covers an area of 3.3 million square km and its population of over 1 billion people encompasses a vast range of ethnic, religious, cultural and linguistic diversities. India's geographical area, strategic location, trade links and its exclusive economic zone (EEZ) connect, its security environment directly with its extensive neighborhood are some factors which involve concomitant security concerns, responsibilities and challenges in an increasingly global environment.

The country's defence services include three Armed Forces (i.e., the Army, the Navy and the Air Force), and other Departments, primarily Defence Research and Development Organisation (DRDO) and Defence Ordnance Factories.

Current Scenario Vis-à-vis foreign Investment

Defence sector has received an inflow USD 5.2 million from April 2000 to March 2016 as per the data released by the Department of Industry Policy & Promotion (DIPP).

Investment Opportunities

- Defence products manufacturing.
- Supply chain sourcing opportunity.
- Defence offsets.
- With stronger focus on IT, high-tech engineering and research and design capabilities. India can leverage its IT infrastructure and manufacturing potential to be one of the key global sourcing destinations for defence systems and equipment.

Reason to Invest

- India's current requirements on defence are catered largely by imports. The opening of the strategic defence sector for private sector participation will help foreign original equipment manufacturers to enter into strategic partnerships with Indian companies and leverage the domestic markets and also aim at global business.
- The government policy of promoting self-reliance, indigenization, technology up gradation and achieving economies of scale and developing capabilities for exports in the defence sector.
- The country's extensive modernization plans, an increased focus on homeland security and India's growing attractiveness as a defence sourcing hub.

FDI Policy

100% FDI in defence sector, Up to 49%, automatic route; FDI above 49%, through Government route where it is likely to result in access to modern technology or for other reasons to be recorded.

Road ahead

❖Provision of INR 2244.56 Billion for defense services in the FY 2016-17 Union Budget

❖While geo-strategic imperatives play a defining role in our security paradigm, economic and social imperatives also shape our security concerns and objectives. The economy is growing rapidly and is among the fastest rising in the region and the world.

❖Similarly, from the technological and industrial point of view, India lags far behind advanced countries in the 'technology standing index'. FDI, if channeled properly, could prove to be a catalyst for stimulating India's overall technological and manufacturing capability.

Textile

Introduction

India's textiles sector is one of the oldest industries in Indian economy dating back several centuries. Even today, textiles sector is one of the largest contributors to India's exports with approximately 11 per cent of total exports.

The Indian textile industry has two broad segments. First, the unorganized sector consists of handloom, handicrafts and sericulture, which are operated on a small scale and through traditional tools and methods. The second is the organized sector consisting of spinning, apparel and garments segment which apply modern machinery and techniques such as economies of scale.

Current Scenario Vis-à-vis foreign Investment

The textiles sector has witnessed a spurt in investment during the last five years. The industry (including dyed and printed) attracted Foreign Direct Investment (FDI) worth US$ 1.85 billion during April 2000 to March 2016 as per the data released by the Department of Industry Policy & Promotion (DIPP).

Investment Opportunities

- Entire value chain of synthetics.
- Fabric processing set-ups for all kind of natural and synthetic textile.
- Apparel and retail brands.

Reason to Invest

- The close linkage of the textile industry to agriculture (for raw materials such as cotton) and the ancient culture and traditions of the country in terms of textiles make the Indian textiles sector unique in comparison to the industries of other countries.
- The Indian textile industry has the potential to reach US$ 500 billion in size#. The growth implies domestic sales to rise to US$ 315 billion from currently US$ 68 billion. At the same time, exports are implied to increase to US$ 185 billion from approximately US$ 41 billion currently.
- The Indian Textile Industry contributes approximately 5 per cent to India's Gross Domestic Product (GDP), and 14 per cent to overall Index of Industrial Production (IIP).

FDI Policy

100% FDI is allowed under the automatic route in the textile sector; investment is subject to all applicable regulations and laws.

Road ahead

- The future for the Indian textile industry looks promising, buoyed by both strong domestic consumption as well as export demand.
- With consumerism and disposable income on the rise, the retail sector has experienced a rapid growth in the past decade with the entry of several international players.
- The organized apparel segment is expected to grow at a Compound Annual Growth Rate (CAGR) of more than 13 per cent over a 10-year period.

Chemical

Introduction

The chemical industry, which includes basic chemicals and its products, petrochemicals, fertilizers, paints & varnishes, gases, soaps, perfumes & toiletries and pharmaceuticals is one of the most diversified of all industrial sectors covering thousands of commercial products. It contributes about 3 per cent in the GDP of the country.

The chemical sector has witnessed growth of 13-14% in the last 5 years while petrochemicals have registered a growth of 8-9% over the same period. According to the United Nations Industrial Development Organization (UNIDO), in terms of value added at constant 2000 prices, the Indian chemical Industry is 6th in the world and 3rd in Asia.

Current Scenario Vis-à-vis foreign Investment

Over the last decade, the Indian Chemical industry has evolved from being a basic chemical producer to becoming an innovative industry with investments in R&D.

As per the FDI Stats released by Department of Industrial Policy & Promotion (DIPP), cumulative FDI of USD 59,555 million has been received during 2000-2016, which comprises 4% of the total FDI inflow.

FDI Policy

100% Foreign Direct Investment (FDI) is allowed under the automatic route in the chemicals sector, subject to all the applicable regulations and laws.

Investment Opportunities

- India is the fourth largest producer of agro-chemicals globally.
- India exports about 50% of its current production and exports are likely to remain a key component of the industry.
- The specialty chemicals market has witnessed a growth of 14% in the last five years; the market size is expected to reach USD 70 Billion by 2020.
- India is currently the world's third largest consumer of polymers and growth in plastic demand will drive up consumption further.
- The Indian colorant industry is valued at USD 6.8 Billion, with exports accounting for nearly 75%.

Reason to Invest

- India is the third largest producer of chemicals in Asia and sixth by output, in the world.
- The chemicals industry is a key constituent of the Indian economy, accounting for about 1.38% of the nation's GDP.
- India is currently the world's third largest consumer of polymers and fourth largest producer of agro-chemicals.
- India's proximity to the Middle East, the world's source of petrochemical feedstock, makes for economies of scale.
- Chemical Sector is de-licensed except for few hazardous chemicals.
- Strong government support for R&D.

Road ahead

- A global shift towards Asia as the world's chemicals manufacturing hub. With a growing market and purchasing power, the domestic industry is likely to growth at over 10-13% in the coming years
- Chemical companies can invest in exploring strategic energy management and strategic water management to cut down their energy costs and contain water availability concerns.
- The chemicals industry in India is the largest consumer of its own products, consuming 33% of its output. With promising growth trends in the chemicals industry, this internal consumption is also set to rise.

Establishing Presence in India

Choosing the right form of Business

Foreign investment can come into the country in various forms and entities. Each form has its own set of merits and demerits. The key is to balance the advantages and disadvantages of various forms of business. A prospective foreign investor will have to keep in mind various aspects before entering into the Indian market, including regulatory requirements, sources of financing, setting up of infrastructure etc.

Key factors on which choosing the form of business depends:

Nature of business

Nature of business for which the foreign entity is desirous of making investment in India is one of the crucial factors. There are certain sectors where foreign investment is either partially allowed or completely prohibited by the Indian Government. A Joint Venture might be most suitable form if the foreign company is willing to provide technical know-how to an already established Indian entity and in turn Indian company may contribute in terms of infrastructural set up, manpower etc. Similarly, a Liaison Office might be set up in India to spread awareness about the foreign company, explore new markets or to promote its business interests.

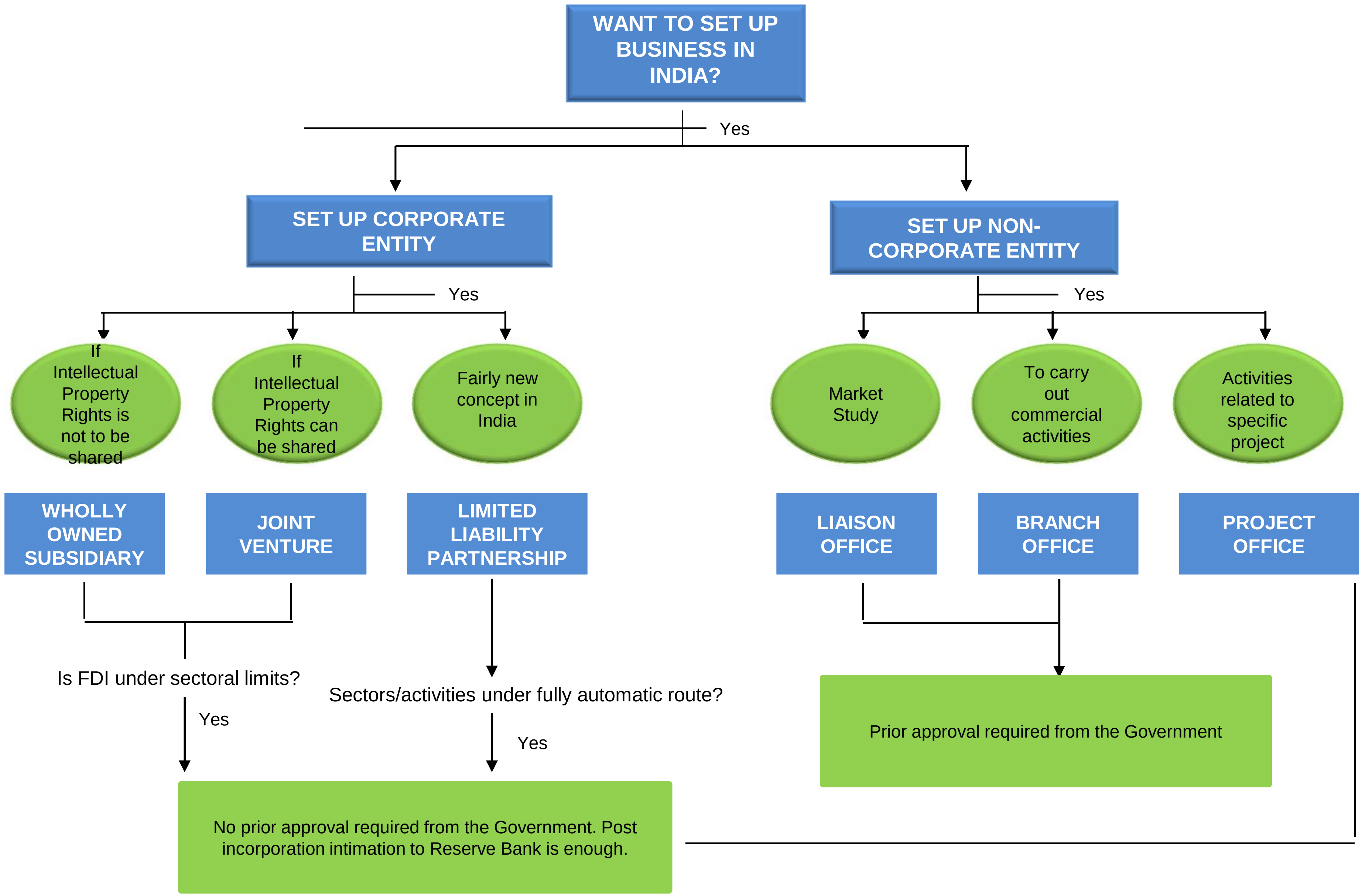
Scale of Operations

Another key factor in choosing the right form of setting up business in India is the scale of operations with which the foreign company is willing to start its business. If the volume of proposed operations is large then it is preferable to set up a wholly owned subsidiary company (Private or Public). If the foreign investor intends to invest for short duration or for a specific project in India, then a Liaison Office can be set up. Foreign companies engaged in the business of manufacturing and trading activities outside India, may set up a Branch Office to facilitate import/ export of their goods or for providing services to their customers in India. Similarly, a Limited Liability Partnership is suitable for small and medium scale business.

Amount of capital to be invested

One of the major concerns before setting up a business entity in India by a foreign investor is the amount of capital proposed to be invested. Setting up of and complying with regulatory norms in case of a Branch Office or a Liaison Office requires less capital as compared to incorporating a wholly owned private or public subsidiary. Moreover, complying with the statutory requirements in case of a wholly owned subsidiary is also a costly affair.

Entry routes available to Foreign Investor



Different Forms of Doing Business in India

Formation of Non- Corporate Entity

Liaison Office / Representation Office

Foreign entity may not be keen to invest a huge amount of capital in India during its initial stage. It might simply be interested in evaluating business opportunities and explore markets in India. In such a case, it may form a non-corporate entity in India.
Here, we shall discuss some common entry routes for the foreign investor:-

A.Liaison Office ('LO') / Representation Office

What is an LO

- A body corporate incorporated outside India, including a firm or association of persons, may open a Liaison Office (LO) in India. As the name suggests, it can only take up liaison activities in India and thus, act as a channel for communication between its head office abroad and Indian parties.
- This form of business is best suited if the proposed foreign investor intends to mark its presence in India, explore the market and spread awareness about its products and services among Indian customers.
- However, a major drawback of establishing a LO is that the foreign entity cannot carry any business activities through LO.

Activities permitted to be undertaken by an LO

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

Liaison Office / Representation Office

Steps for Incorporation: **Approving Authority: Reserve Bank of India (RBI)**

Permission from RBI

Application in Form FNC is required to be submitted, along with other required documents, to the Foreign Exchange Department, through Authorised Dealer.

There are two routes under which application in Form FNC is considered by RBI:

1. Reserve Bank Route

This route is followed where the principal business of the foreign entity falls under sectors where 100 per cent Foreign Direct Investment (FDI) is permissible under the automatic route.

2. Government Route

The application is considered under this route where principal business of the foreign entity falls under the sectors where 100 per cent FDI is not permissible under the automatic route.

Additional criteria

There are few additional criteria which are considered by RBI on case to case basis. These are mentioned below:-

1. a profit making track record of the foreign company during the immediately preceding three financial years in the home country.
2. Net Worth* of foreign company not less than USD 50,000 or its equivalent.

*Means total of paid-up capital and free reserves, less intangible assets as per the latest Audited Balance Sheet or Account Statement certified by a Certified Public Accountant or any Registered Accounts Practitioner by whatever name.

Initially, the permission is granted by RBI for a period of 3 (Three) years, which can later be extended by the Authorised Dealer.

Foreign Insurance companies and Foreign banks

Foreign Insurance companies can establish Liaison Offices in India only after obtaining approval from the Insurance Regulatory and Development Authority (IRDA).

Similarly, foreign banks can establish Liaison Offices in India only after obtaining approval from the Department of Banking Operations and Development (DBOD), Reserve Bank of India.

Liaison Office / Representation Office

Post establishment compliances (immediately after establishment)

After establishment, LO is required to intimate to Registrar of Companies (RoC) in Form FC-1, within 30 days of establishment.

Foreign entity setting up LO is required to submit a report containing information in prescribed format, within 5 (five) working days of the LO becoming functional to the Director General of Police (DGP) of the state concerned in which LO has established its office;

Branch Office

B. Branch Office ('BO')

What is a BO	• If the foreign investor company is engaged in the business of manufacturing and trading, and it wishes to undertake certain business activities in India as well, then it can set up a Branch Office (BO) with specific approval of Reserve Bank of India.
Purpose of a BO	• Export / Import of goods (only on wholesale basis). • Rendering professional or consultancy services. • Carrying out research work, in areas in which the parent company is engaged. • Promoting technical or financial collaborations between Indian companies and parent or overseas group company. • Representing the parent company in India and acting as buying / selling agent in India. • Rendering services in information technology and development of software in India. • Rendering technical support to the products supplied by parent/group companies. • Foreign airline / shipping company.
Things to be kept in mind before incorporation	• A BO set up in India is not allowed to carry any kind of retail trading in India. • A BO is also not allowed to carry out manufacturing or processing activities in India, directly or indirectly. • Profits earned by the BO are freely remittable from India, subject to payment of applicable taxes.

Branch Office

Steps for Incorporation: **Approving Authority:** Reserve Bank of India (RBI)

Permission from RBI

The manner and procedure for making application to RBI seeking permission to set up a Branch Office in India is similar to that of setting up a LO. Application is to be made in Form FNC.

Additional criteria

As in case of a LO, there are few additional criteria for BO also, which are considered by RBI on case to case basis. These are mentioned below:-

1. a profit making track record of the foreign company during the immediately preceding five financial years in the home country.
2. Net Worth* of foreign company not less than USD 100,000 or its equivalent.

*Means total of paid-up capital and free reserves, less intangible assets as per the latest Audited Balance Sheet or Account Statement certified by a Certified Public Accountant or any Registered Accounts Practitioner by whatever name.

Branches of Foreign banks

Foreign banks are required to obtain necessary approval under the provisions of the Banking Regulation Act, 1949, from Department of Banking Operations & Development, Reserve Bank, to open a branch office in India.

Branch Office in Special Economic Zones (SEZs)

Foreign companies can establish its branch in Special Economic Zones (SEZs) to undertake manufacturing and service activities. The general permission is granted by RBI and is subject to the following conditions:-

1. such branches/units are functioning in those sectors where 100 per cent FDI is permitted;
2. such units comply with the provisions of the Companies Act as applicable to the companies incorporated outside India;
3. such units function on a stand-alone basis.

Post establishment compliances (immediately after establishment): The post establishment compliances of a Branch Office are similar to that as in case of a Liaison Office.

Project Office

C. Project Office ('PO')

What is a PO

- A Project Office (PO) is essentially a Branch Office, but for a limited period of time and limited purpose. If a foreign company has secured a project from an Indian company, then in order to carry out such project conveniently and efficiently, it may open a PO in India. However, it must be borne in mind that a PO cannot carry out any other activity other than those which are incidental to or related to the project.

Steps for incorporation

No prior approval is required from RBI to set up a Project Office. Reserve Bank has granted general permission to foreign companies to set up a PO, subject to following conditions:-

1. Foreign entity has secured a project from an Indian company; and
2. the project is funded directly by inward remittance from abroad; or
3. the project is funded by a bilateral or multilateral International Financing Agency; or
4. the project has been cleared by an appropriate authority; or
5. a company or entity in India awarding the contract has been granted Term Loan by a Public Financial Institution or a bank in India for the project.

Here, the condition as mentioned in point no. (i) is mandatory and out of rest of the three conditions, any one or more conditions can be fulfilled.

However, if the above criteria are not met, the foreign entity has to approach the Reserve Bank of India for approval.

Project Office

Setting up of Project Offices by foreign Non-Government Organisations/Non-Profit Organisations/Foreign Government Bodies/Departments	• If any of the above foreign entities intends to set up a PO in India, then such entities are required to apply to the Reserve Bank for prior permission to establish an office in India, whether Project Office or otherwise. This is because it falls under the Government Route
Post establishment compliances (immediately after establishment)	The post establishment compliances of a Project Office are similar to that as in case of a Liaison Office or Branch Office. Additionally, the foreign company establishing a Project Office in India is to furnish report through the concerned AD branch, to the Reserve Bank of India, containing required information, within two months of its establishment.

Formation of Corporate Entity

Wholly Owned Subsidiaries

If a foreign investor chooses to enter the Indian market through this route, then following choices are available:-

A.Wholly Owned Subsidiaries

Foreign investors may set up wholly owned subsidiaries (either public or private company) under the Companies Act, 2013. This will ensure an independent legal status, different from its parent foreign company, limited liability and a separate existence if its own.

Things to be kept in mind before incorporation:

Activities allowed by the Government

There are certain activities in which foreign investment is allowed completely and in some activities it is partially allowed. Also, some commercial sectors are open to foreign investment under automatic route, which means no prior approval from government is required, while others require prior approval from Government.

There is also a list of activities in which foreign investment is completely prohibited. Therefore, this is an important aspect to be kept in mind before setting up of a wholly owned subsidiary in India.

Requirement of minimum number of directors and shareholders

There is a minimum requirement of directors and shareholders, as mentioned below:-

- Private Limited Company
  - ✓ Minimum Shareholders: 2 (Two);
  - ✓ Minimum Directors: 2 (Two)

- Public Limited Company
  - ✓ Minimum Shareholders: 7 (Seven)
  - ✓ Minimum Directors: 3 (Three)

It must be noted here that while only individuals can become directors, a shareholder can also be a company (including foreign company). Also, at least one of the directors on the Board of the company must be resident in India.

Statutory compliances

A wholly owned subsidiary, either public or private limited, will have to comply with all the laws, rules and regulations as applicable, including but not limited to Companies Act, 2013, Foreign Exchange Management Act, 1999, Shops and Establishment Act, Income Tax Act etc., failing to which may result in heavy penalties.

This might result in increase in the running expenses of the Indian subsidiary as professional guidance shall be mandatorily required to stay compliant with all the applicable laws.

Wholly Owned Subsidiaries

Steps for Incorporation: ***Approving Authority: Registrar of Companies (RoC) and Reserve Bank of India (RBI)***

1. **Obtaining approval from FIPB (Foreign Investment Promotion Board), if required**
   If the activities of the Indian wholly owned subsidiary fall under Government approval route, then the approval from FIPB has to be obtained.

2. **Obtaining DSC (Digital Signature Certificate) of proposed directors**
   Digital Signature Certificates (DSC) are the digital equivalent (that is electronic format) of physical or paper certificates. DSC is required to sign any electronic document like e forms. DSC can be obtained from any licensed Certifying Authority.

3. **Drafting of Memorandum of Association (MoA) & Articles of Association (AoA)**
   Memorandum of Association (MoA) is the charter of the company and it sets out its scope of activities. Articles of Association (AoA), on the other hand, regulates the internal working of the company. Both these documents are very crucial to the company and hence be drafted with caution.

4. **DIN (Director Identification Number) of proposed directors, Applying for availability of name and Filing incorporation documents can now be done online through a single form**

Wholly Owned Subsidiaries

Post incorporation compliances (immediately after incorporation)

Foreign Exchange Management Act (FEMA), 1999

1. **Obtaining FIRC (Foreign Inward Remittance Certificate)**

As soon as the subscription amount from foreign subscriber is received in India, Authorised Dealer Bank will issue FIRC.

2. **Reporting to the Reserve Bank of India (RBI)**

The company is required to report to RBI in Form FC-GPR, along with other documents, within 30 days of issue of shares. Shares have to be allotted within 180 days of the receipt of subscription amount.

Companies Act, 2013

In case of a wholly owned subsidiary, 100% shares of the Indian company are held by the foreign entity (in its own name as well as through a nominee).

Therefore, declarations from registered shareholder & beneficial shareholder have to be filed in Form MGT-6, within 30 days of receipt of such declarations.

Limited Liability Partnership

B. Limited Liability Partnership

Limited Liability Partnership or LLP is a fairly new concept in India. A LLP is a corporate entity formed under the Limited Liability Partnership Act, 2008 and one of its important characteristics is that its partners have limited liability (unlike partnership firms registered under the Indian Partnership Act, 1932).

Though a partnership, a LLP has perpetual succession and separate legal existence from its members. Thus, a LLP is a corporate structure that combines benefits of both, a company and a partnership firm.

As the compliance cost for a LLP is much lower than other forms of business and because of its greater flexibility, LLP can be a good option for foreign entities to start business in India. This form of business is best suited to service industry, as well as small and medium scale enterprises.

Limited Liability Partnership

Steps for Incorporation: ***Approving Authority: Registrar of Companies (RoC) and Reserve Bank of India (RBI)***

1. **Foreign investment through automatic route**
   Foreign investment in LLP is allowed through automatic route only in sectors where 100% foreign investment is permitted under automatic route. There are several other conditions also, as specified by Government, which needs to be fulfilled

2. **Obtaining DSC (Digital Signature Certificate) of proposed partners**
   As mentioned in case of wholly owned subsidiary, DSC can be obtained from any licensed Certifying Authority

3. **DIN (Director Identification Number)/ DPIN (Designated Partner Identification Number) of proposed partners**
   It is mandatory for proposed partners to obtain DIN/ DPIN under the Companies Act, 2013. DIN/ DPIN can be applied electronically in Form DIR-3 on the website of Ministry of Corporate Affairs (MCA), along with required documents and filing fee.

4. **Applying for availability of name**
   The fore most step in formation of a LLP is to apply for availability of name of the proposed LLP. Care must be taken to comply with the naming guidelines in this regard. Form 1 has to be filed with MCA for reservation of name of the proposed LLP.

5. **Filing of incorporation document**
   Once the name of proposed LLP has been approved, incorporation documents, which includes subscriber's statement, details of partners and registered office etc. are required to be filed in e Form 2.

6. **Drafting and execution of LLP Agreement**
   LLP Agreement is one of the most crucial document as it governs the rights and duties of partners. It may be drafted as per the convenience and mutual understanding among partners of LLP. Various aspects covered under the agreement may include amount and manner of contribution, rights and duties of partners, description of business of proposed LLP etc.

7. **Filing of LLP Agreement**
   LLP is formed once the Form 2 is approved by the Ministry. LLP Agreement shall be then filed within 30 days of incorporation of LLP in Form 3.

Limited Liability Partnership

Post incorporation compliances (immediately after incorporation)

Foreign Exchange Management Act (FEMA), 1999

1. **Obtaining FIRC (Foreign Inward Remittance Certificate)**

As soon as the amount of consideration from foreign investor is received in India, Authorised Dealer Bank will issue FIRC

2. **Reporting to the Reserve Bank of India (RBI)**

LLP is then required to report to RBI (through its Authorised Dealer) in Form FOREIGN DIRECT INVESTMENT-LLP(I), along with other documents, within 30 days of the receipt of amount of consideration.

Joint Venture Company

C. Joint Venture Company

Another option available for foreign entity to invest in India is to set up a joint venture company, which means collaboration with an Indian company and contributing in terms of capital, infrastructure, knowledge, technology etc. It may involve an entirely new business, or an existing business that is expected to significantly benefit from the introduction of the new participant. A Joint Venture company can be set up as a separate legal entity, distinct from both, the foreign entity and Indian entity.

Setting up of a joint venture

A joint venture may mean either to set up an entirely new company (public or private) in India with an Indian partner or it may involve investing in an already existing company in India.

Joint Venture Company

Steps for incorporation: Approving Authority: Registrar of Companies (RoC)

A new joint venture company

Procedure for incorporation and post incorporation statutory compliances of a new joint venture company will be similar to that of incorporation of a wholly owned subsidiary (public or private) in India, with only difference in its shareholding pattern.

In this case, both Indian and foreign partners shall have their agreed percentage of stakes in the joint venture company.

Investment in an existing Indian company

A foreign investor company may subscribe a percentage of shares of an existing Indian company by way of allotment or transfer of shares already allotted. This will help saving the initial cost of incorporation and other infrastructures. It will also save time of both the partners and the business can be started immediately once the initial formalities are completed.

In this case, if shares are allotted to the foreign investor, then the details of the same shall be reported by the Indian company to the Reserve Bank of India (RBI) in Form FC-GPR, within 30 days of allotment, through its Authorised Dealer.

On the other hand, if the shares are transferred from an existing shareholder (Transferor) to the foreign investor, then Form FC-TRS shall be filed with RBI, through its Authorised Dealer, within 60 days of receipt of full and final amount of consideration. Fling of Form FC-TRS is the responsibility of the Transferor, if he is resident in India.

Comparison

Comparison in brief

Particulars	Wholly Owned Subsidiary	Joint Venture	Limited Liability Partnership	Liaison Office	Branch Office	Project Office
Activities allowed	All commercial activities as per Company's Charter documents			To function only as a Communication channel; commercial activities not allowed	Commercial activities allowed	Activities as required for specific project
Ownership	Foreign company directly through holding	Foreign company in joint ownership	Foreign owned LLP	Treated as an extension of the Foreign company		
Approving authority	RBI & ROC			RBI		
Control	Board of Directors		Partners	foreign company		
Closure	Application to ROC and Court		Application to ROC	Application to RBI		

Taxation

Existing Taxation System in India

Taxation - Summary

Gamut of Taxes

- DIRECT TAX
  - Income Tax
  - Dividend Distribution Tax
  - Transfer Pricing
  - Double Taxation Avoidance Agreement
- INDIRECT TAX
  - Excise Duty
  - Service Tax
  - Value Added Tax (VAT)
  - Customs Duty

Existing Taxation System in India

Corporate Tax

The Corporate Tax rate in India depends on the origin of the company. A company resident in India is taxed @ 30 percent of its profits. Foreign companies including BO and PO are taxed at 40 per cent of profits.

Companies residents in India are taxed on worldwide income. Non-resident companies are taxed on the income earned / sourced from India. Income of Non-resident companies may not be taxable or may be taxable on gross basis at a lower rate of tax if they do not have a business connection or permanent establishment in India. Permanent establishment is a fixed place through which the business of the enterprise is wholly or partly carried on. A Branch office constitutes Permanent establishment in India. A subsidiary (generally) does not. A Liaison Office will not constitute Permanent establishment provided its activities are limited to liaisoning between head office and India parties as per approval granted by Reserve Bank of India.

Dividend Distribution Tax

Dividend Distribution Tax (DDT), as the name suggests, is a charge on the dividend payable to the shareholders. The dividend thereafter is not taxable in the hands of recipient. At present, dividend distribution tax is 15 per cent.

Double Taxation Avoidance Agreements (DTAA)

The objective of Double Tax Avoidance Agreements (DTAA) is that the same income earned by a foreign company is not taxed both, in host country as well as home country. In case of countries with which India has Double tax Avoidance Agreement, the tax rates are determined by such agreements. The Government of India has tax agreements with around ninety countries, including US, UK, most European countries, Mauritius, Japan, Singapore etc.

Existing Taxation System in India

Transfer Pricing

Transfer Pricing provisions require commercial outcomes arising from transactions between related enterprises to be consistent with the arm's length principle. "Arm's length principle" refers to the conditions that exist between two independent entities dealing independently with each other. The purpose is to see whether independent persons would have transacted at similar prices. In case transaction appears under / over valued, transfer pricing laws require adjustment of prices of cross-border transactions as adopted by related parties.

Excise Duty (on manufacture)

Excise duty is charged on manufacturing in India. The duty varies between products. A detailed stock record and accounts in respect of the duty payable is required to be maintained by the manufacturing unit.

Service Tax (on services)

Service tax is levied on most services. The responsibility to pay the tax is on the service provider. In some cases (also called reverse charge), it is the responsibility of the service recipient. Currently the prevailing rate of service tax is 15 percent (subject to reduction / abatement in some cases)

Value Added Tax (VAT)/ Central Sales Tax (CST) (on goods)

Trading between states is subject to CST, whereas trading within the state is subject to state VAT. The rate of CST / VAT varies across products & states. Besides, certain states in India levy entry / octroi tax on movement of goods.
The Goods & Service tax law (GST) is yet to be implemented by the Government. Once implemented, it is likely to be a comprehensive tax on manufacture, sale and consumption of goods & services at an India (country) level.

Goods & Services Tax (GST)

Overview on GST

GST is proposed to be implemented in India from April 2017. Introduction of GST is the most significant indirect tax reform in India's legislative industry.

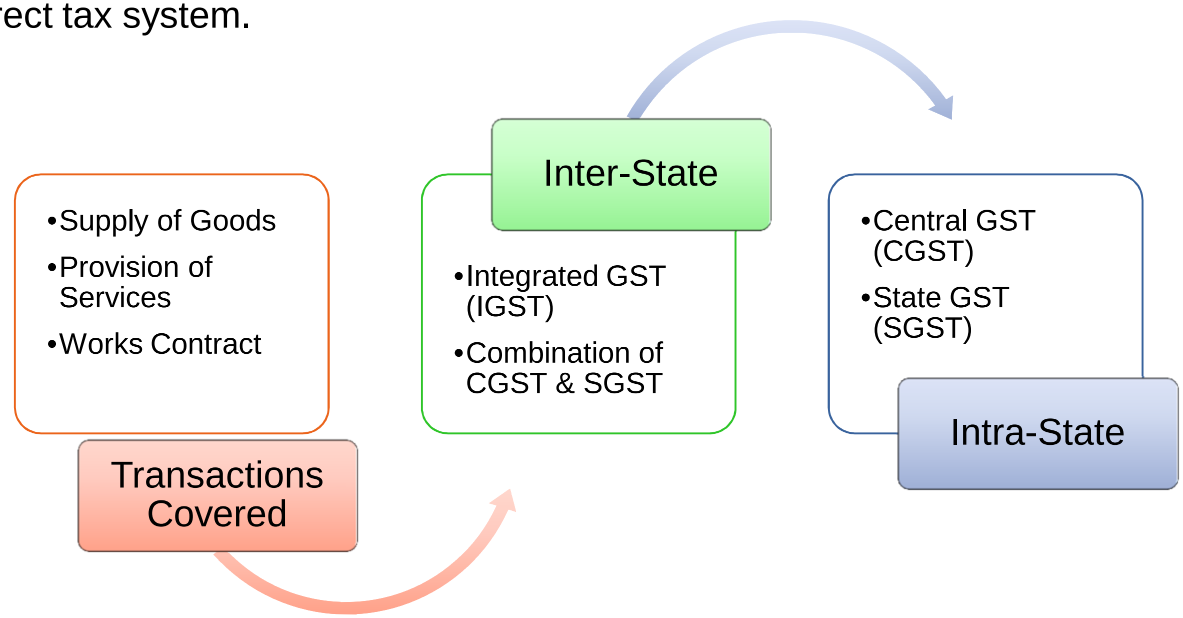
GST will be a game changing reform for the Indian economy by creating a common Indian market and reducing the cascading effect of tax on the cost of goods and services.

It will impact the tax structure, tax incidence, tax computation, tax payment, compliance, credit utilization and reporting, leading to a complete overhaul of the current indirect tax system.

Comprehensive multi stage destination based consumption tax on all Goods and Services

Single tax for efficient and extensive tax collection & administration of indirect taxes

Center and States to levy GST on common base



Present Modular Taxes in India

Taxes in India

- **Indirect Taxes**
  - **Central Levies**
    - Basic Customs Duty
    - Countervailing Duty
    - Special Additional Duty
    - Service Tax
    - Excise Duty
    - Surcharge & Cess
  - **State Levies**
    - Value Added Tax
    - Entry Tax
    - State cesses
    - Stamp Duty
    - Electricity Duty
    - Professional Tax
- **Direct Taxes**
  - **Income Tax**
    - Transfer Pricing
    - Minimum Alternate Tax
    - Dividend Distribution Tax
    - Capital Gains Tax

Not to be subsumed by GST

To be subsumed by GST

Compliances for a Foreign Company in India

Annual Compliances for Foreign Company

Accounting / Book-keeping & Payroll management

A foreign company is required to maintain books of accounts in India as per India accounting norms, along with supporting documentation. Further, it is required to implement monthly payroll processing system for its employees and adhere with the employment based / labour regulations in India.

Tax compliance

- ***Annual Income-tax return:*** As per India tax laws, foreign company is required to file its annual Income-tax return within the stipulated time limit. (due date: 30 Sep / 30 Nov)
- ***Form 49C (for LO):*** Foreign company having its presence in India in the form of LO, is required to report in Form 49C. (due date: 30 May)
- ***Withholding tax compliance:*** As per India Income-tax laws, foreign company is required to withhold tax (‘WHT’) on certain categories of payments. The taxes withheld are required to be deposited with the India Government within the stipulated time limit. Reporting of taxes withheld and deposited is done by way of filing quarterly WHT returns. Further, WHT certificates are required to be generated and issued to the payees.
- ***Personal Income-tax:*** As per the India Income-tax laws, the expatriate & local staff of the foreign company would be required to report their income and pay Income-tax in India, and file Income-tax Return with the tax authorities on an annual basis (due date: 31 July)
- ***Transfer Pricing:*** As per Indian Transfer pricing regulations, an annual report in Form 3CEB may have to be obtained by foreign company from a Chartered Accountant, in relation to ‘International transactions’ entered into by it during the year, if applicable (due date: 30 Nov)
- ***Service-tax:*** Considering the Service-tax laws of India, foreign company may be required to deposit Service-tax with the India Government depending on the taxable services received / provided by it. Reporting of Service-tax deposited is done by way of filing half-yearly Service-tax returns.

Annual Compliances for Foreign Company

Shops and Establishments Act

A foreign company may be required to obtain registration under the relevant Shops & Establishments Act. Shops & Establishment Act deals mainly with employment related regulations.

Statutory Audit

In respect of statutory audit, the Auditor being an Indian Chartered Accountant firm has the responsibility to report by expressing an opinion on whether the annual financial statements prepared comply with the accounting standards issued by the Institute of Chartered Accountants of India (‘ICAI’). The Auditor’s deliverable is in the nature of an audit report as per provisions of Indian Companies law and applicable auditing standards.

Foreign Exchange law

For LO/BO/PO

- ***Annual Activity Certificate*** **:** As per the exchange control regulations of India, the India Branch Office/ Liaison Office/ Project Office has to obtain an Annual Activity Certificate (‘AAC’) from the Auditor to certify that its activities during the year were in consonance with the terms and conditions stipulated by RBI. The AAC so obtained has to be filed before RBI (through AD Bank), Director-General of Police & Director-General of Income-tax (DGIT) on annual basis.
- ***Police Report :*** As per RBI regulations, certain information regarding the India Branch Office/ Liaison Office/ Project Office and its activities during the year has to be reported in a prescribed format before the RBI and India Police Authority on an annual basis.

For corporate entities

Wholly Owned Subsidiary/ Joint Venture company shall file Statement of Assets & Liabilities with Reserve Bank of India annually. In case of any transfer of shares to or from any non-resident person or entity, the same has to be reported to RBI. If any fresh allotment is made to any non-resident entity, then also reporting has to be done to RBI.

Annual Compliances for Foreign Company

Company Law compliance

As per the Companies law, Office/ Liaison Office/ Project Office has to file an Annual Form FC-3 with the Registrar of Companies in India, to report its annual accounts, consolidated financials of parent company, & list of places of business in India (due date: 30 Sep).

Wholly Owned Subsidiary/ Joint Venture company has to comply with norms as prescribed under Companies Act. Annual accounts, consolidated financials etc. has to be filed in Form AOC-4 and MGT-7 annually. Other compliances include conducting meetings, maintaining of statutory registers etc., which is either on regular basis or event based.

A LLP is required to file Form 8 and form 11 on annual basis. Meetings among the Partners / Management and other requirements are governed by the LLP Agreement

How We Can Assist

Services

Services	Description
Optimum organization structure-Assessment of Legal Entity Options:	❖ Discussions with Client to understand the work being done / planned to be done in India and the region. ❖ Understanding Clients organization structure globally. ❖ Assessing and devising the entry level/setting up strategies. Preparing, reviewing, and presenting a report on entry options/strategies. This would include an analysis of various options to set up legal entity and assisting the Client to consider and evaluate various legal entity options from legal, tax and regulatory perspective. Our deliverable would consist of a report analyzing the various options available under the present legal and tax laws with recommendation for the most suitable legal entity structure for the Client in India.
Assistance in establishment of the Indian Presence	Once a suitable presence is identified, we assist the Client in legally establishing such presence in India under the applicable laws/regulations. Further, we assist in obtaining tax & other Registrations and opening of bank account in India.
Book-keeping, Assurance & Tax compliance services	❖ Accounting Services ❖ Assurance & Financial Reportings ❖ Provision/Management of end to end outsource support for compliance management under tax and other applicable laws ❖ Assistance in preparation and filing of Annual/Quarterly Returns under Tax Laws: – Income tax – Withholding taxes – Service tax / Value Added Tax as applicable

Services

Services	Description
Advisory Services - Strategic, Governance, & Management Advisory to enhance the Clients Profile and Organizational Effectiveness	❖ Developing the Governing Board and assisting the organisation in designing and implementing a best practice framework for organizational development and governance. ❖ Assistance in developing and implementing organizational policies, systems and procedures aligned to the Clients frameworks and Indian law and regulation. ❖ Assisting the Client in India in designing and implementing a robust, efficient and effective Planning, Budgeting and Reporting systems. ❖ Designing and implementing robust and workable solutions for risk identification and risk management. ❖ Business Development Advisory - Assisting in identification and conversion of business opportunities. ❖ Assisting the Client in developing strategic and operational alliances and in becoming affiliated to/member of key institutions.
Other on-going Legal, Tax and Regulatory Advisory / Representation Services	❖ Management counsel for providing legal, tax and regulatory advisory services ❖ Drafting, reviewing and assistance in negotiation of contracts, agreements, employment contracts, leases, sub-contract agreements and other documents ❖ Review and modification of organizational policies and procedures ❖ Litigation Management Support ❖ Due diligence on partners/grantees ❖ Review of organizational policies and procedures - Legal Risk Assessment ❖ Contract Management and Compliance Services ❖ Assurance function- Internal (policies, systems and procedures) and external (compliance with tax/legal/regulatory regime) ❖ Need based representation before judicial and quasi judicial authorities and Ministries/Departments of the Government of India/State Governments

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