Doing business in India

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"India looks to the future with confidence. We are confident of meeting the domestic and international challenges to fast and inclusive growth. We are also better placed than any time in the recent past to push the reform process forward. I believe we have a bright future if we make use of strengths and the opportunities that we get."

Manmohan Singh,
Prime Minister of India, at the India Economic Summit 2009,
New Delhi, 8 - 10 November 2009

"India has come through the crisis better than other countries. We have growth here. This is a big market and there is opportunity for firms to come in here…"

Lars H. Thunell,
Executive Vice-President and Chief Executive Officer,
International Finance Corporation, at the India Economic Summit 2009,
New Delhi, 8 - 10 November 2009

"Today India is changing and is becoming the land of opportunities. The pace at which India is growing, I can say with confidence that it will remain so for decades to come. India remains one of the top three investment destinations even in recessionary conditions and we are determined to maintain that position."

Anand Sharma,
Minister for Commerce and Industry, at the Pravasi Bharatiya Divas,
New Delhi, 7 - 9 January 2010

"Few nations have the growth potential that India already enjoys. India holds the promise of a most successful future…"

Klaus Schwab,
Founder and Executive Chairman, World Economic Forum, at the India Economic Summit 2009, New Delhi, 8 - 10 November 2009

This publication should be used as a research tool only. The information provided here should not be substituted for the tax professional's own research with respect to client matters.

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Preface

This book has been prepared by Ernst & Young India with the intention of providing busy executives a quick overview of the investment climate, taxation, forms of business organizations, and business and accounting practices in India. The complex decision-making process involved in undertaking foreign operations requires an intimate knowledge of a country's commercial climate as well as recognition of the fact that this climate is continuously evolving. Companies doing business in India, or planning to do so, would be well-advised to obtain current and detailed information from experienced professionals. The information presented in this book has been validated w.e.f. 1 January 2010.

Disclaimer: The information provided in this publication does not reflect the provisions proposed in the Finance Bill 2010.

Please note: All figures quoted in this book in US Dollars have been converted from Indian Rupees, assuming a standard conversion rate of USD1 = INR 50.


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Chapter A

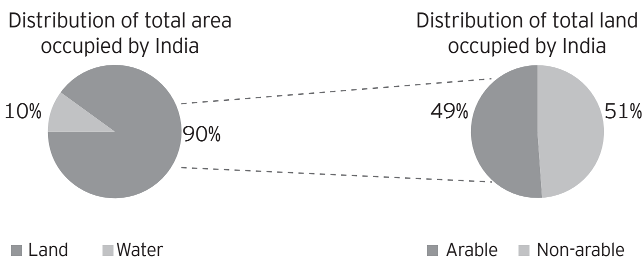
Introduction

India is the seventh-largest country in the world by area and the second-largest by population. Located in South Asia, the country supports over 16% of the world's population and more than 2.4% of the world's land.

India fact file	
Land area	3.29 million sq km
Capital	New Delhi
Population	1.16 billion
Languages	Hindi (official language of the Union), English (business language)
Major international airports	Ahmedabad, Amritsar, Bangalore, Chennai, Goa, Guwahati, Hyderabad, Kochi, Kolkata, Mumbai, New Delhi, Thiruvananthapuram
Major seaports	Mumbai, New Mangalore, Kolkata, Kandla, Kochi, Chennai, Ennore, Haldia, Mormugao, Paradip, Tuticorin, Vishakapatnam
Major cities	New Delhi, Mumbai, Kolkata, Chennai, Bangalore, Hyderabad, Pune, Lucknow, Kanpur
Time zone	5 hours 30 minutes ahead of Greenwich Mean Time (GMT)
Currency unit	Indian rupee (INR)

A.1 Geographic profile

Total area: 3.29 million sq km



Source: CIA The World Factbook:
"CIA website, https://www.cia.gov/library/publications/the-world-factbook/geos/in.html, accessed 22 December 2009)

Capital: New Delhi

Geographically, India consists of 29 states and six union territories.

Bordering countries: China, Nepal and Bhutan to the north, Afghanistan and Pakistan to the north-west, Myanmar and Bangladesh to the east and Sri Lanka to the south

A.1.1 Geological characteristics

Climate	Broadly, India's climate can be classified as tropical monsoon. The country has four seasons: summer (March-June), monsoon (June-September), post-monsoon (October-November) and winter (December- February)
Natural resources	Coal (fourth-largest reserves in the world), manganese, bauxite, iron ore, mica, chromites, diamond, limestone, titanium ore, natural gas, petroleum, arable land
Flora and fauna	Over 47,000 species (flora), more than 89,000 species (fauna)
Major rivers	Ganga, Yamuna, Brahmaputra, Godavari, Krishna, Cauvery, Narmada, Tapti
Coastline	7,517 Km encircling the mainland; the Andaman, Nicobar and Lakshadweep islands

A.1.2 Transportation

Railways	111,599 km
Roadways	3,316,452 km
Waterways	14,500 km
Number of airports	454

A.2 Demographic profile

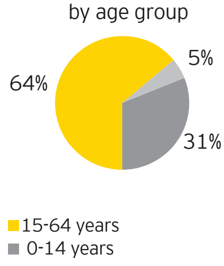
Population	1.16 billion (urban: 29%, rural: 71%)
Population growth rate	1.5%
Birth rate	21.7 (births/1,000 population)
Death rate	6.2 (deaths/1,000 population)
Life expectancy	70 years
Sex ratio	1.06 males per female
Households	240 million

A.2.1 Age structure

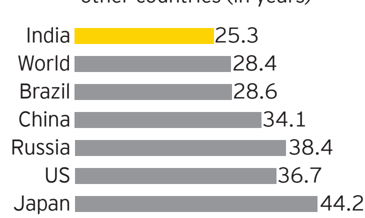
India has a young population with approximately 64% of its population in the age group of 15 to 64 years.

The median age in the country is around 25.3 years, which is lower than many countries in the world.

Distribution of population by age group



India's median age vis-à-vis other countries (in years)

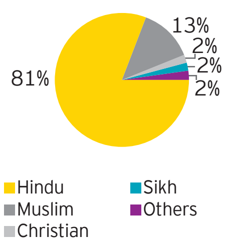


Source: CIA World Factbook

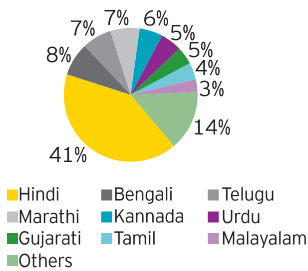
A.2.2 Cultural diversity

Religions	Hinduism, Islam, Christianity and Sikhism are the four main religions followed in India. Other religions include Buddhism, Jainism, Judaism and Zoroastrianism.
Languages	**Hindi** is the official language of India. Apart from Hindi, there are 21 official languages including Bengali, Telugu, Marathi, Tamil, Urdu, and Gujarati. **English** has the status of an associate language and is widely used in national, political and commercial communication.
Festivals	Deepawali, Holi, Guru Nanak Jayanti, Rakshabandhan, Christmas, Janamashtami, Id-ul-Zoha

Distribution of population by region



Distribution of population by language



Source: CIA World Factbook

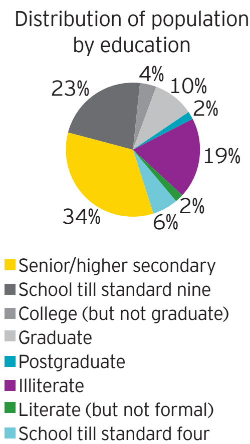
A.2.3 Education and labor force

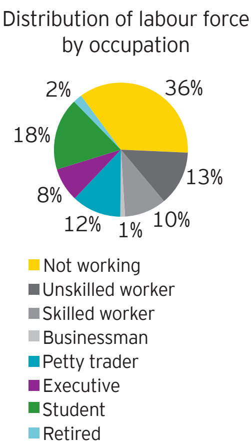
Literacy rate: 64.8% (male: 75.3%, female: 53.7%)

Education: India has the largest school-age population in the world. It has a well-established education system with more than one million schools enrolling over 130 million students.

For higher education, India has more than 400 universities, over 20,000 colleges and 7,000 technical institutions with approximately 13 million students.

Labor force: India's labor force stood at approximately 523.5 million in 2008. It is estimated that over 13 million people enter India's urban labor force every year.



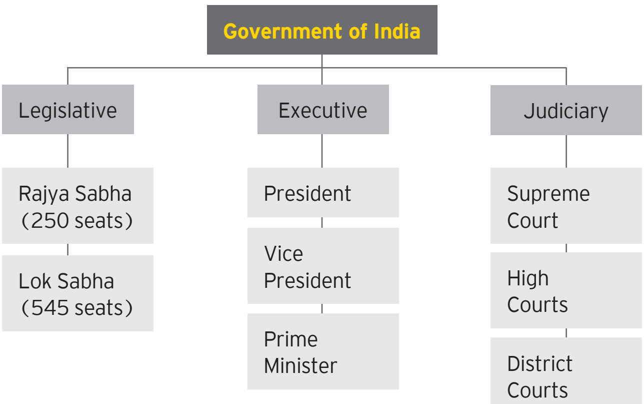


Source: CLSA research

A.3 Political profile

India is a secular state and the largest democracy in the world with a parliamentary form of government. The Government of India, officially known as the Union Government, was established by the Constitution of India in 1950.

The Government of India is divided into three distinct but interrelated branches: the legislative, executive and judiciary.



Legislative branch: At the central level, India has a bicameral parliament comprising the Rajya Sabha (Council of States) and the Lok Sabha (House of the People). The primary function of the Parliament is to pass laws on matters specified under its jurisdiction.

At the state level, some states operate through a single Legislative Assembly while others have a bicameral structure and operate through a Legislative Assembly and a Legislative Council.

Executive branch: The Executive arm comprises the President, the Vice President and the Council of Ministers headed by the Prime Minister.

The President: The President of India is the Head of the State and the Commander-in-Chief of the armed forces. The role of the President is primarily ceremonial in nature and he/she acts in accordance with the advice of the Council of Ministers.

The Vice President: The Vice President is the ex-officio Chairman of the Rajya Sabha and acts as the President when the latter is unable to discharge his duties.

The Prime Minister: The real executive power for running the central government lies in the hands of the Council of Ministers led by the Prime Minister of India (collectively known as the Union Cabinet). The Prime Minister is appointed by the President after the Lok Sabha elections, which take place every five years.

Judiciary branch: The Indian judiciary is independent of the Executive. The Supreme Court is the apex body in the judiciary branch and comprises the Chief Justice of India and 25 associate judges.

Apart from the Supreme Court, the judiciary consists of high courts at the state level and district courts at the district level.

Political parties of India: Major political parties in India include the Indian National Congress, the Bhartiya Janata Party, the Janta Dal, the Communist Party of India and the Samajwadi Party.

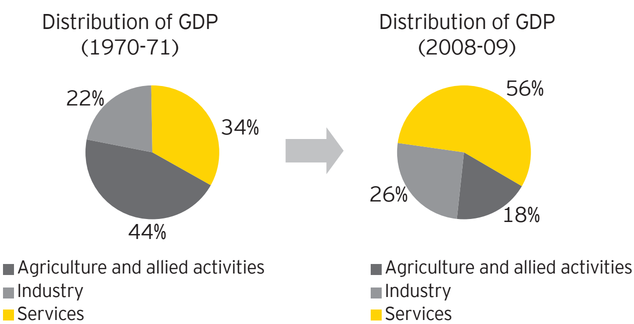
The Indian National Congress is the most prominent party and has been in power in the country for more than 45 years since Independence.

A.4 Economic profile

India has seen a systematic transition from being a closed to an open economy since the beginning of economic reforms in the country in 1991. These reforms have had a far-reaching impact and have unleashed its enormous growth potential. Today, the Indian economy is characterized by a liberalized foreign investment and trade policy, the larger role played by the private sector and deregulation.

India has grown to become a trillion dollar economy with a largely self-sufficient agricultural sector, a diversified industrial base and a stable financial and services sector.

Structural shift from an agrarian to a services-driven economy

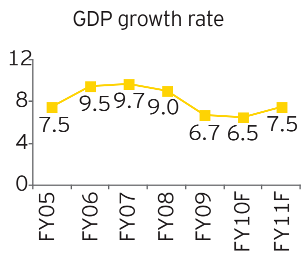


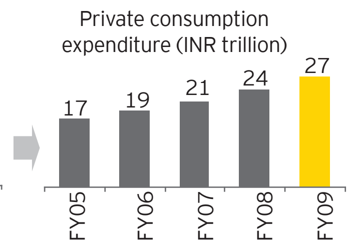
Source: CMIE

GDP: Among the growing economies of the world, India is second only to China. The country's GDP has been growing at an average rate of 8.5% for the last five years. Despite the global economic slowdown, its GDP is expected to increase by 7.5% in FY11.

Domestic consumption fuelling economic growth: As compared to other countries, India is relatively insulated to external shocks due to strong domestic consumption. Consequently, although the global recession affected the whole world in FY09, India recorded a GDP growth rate of 6.7% during this period.

Increasing urbanization and modern technology have brought about a remarkable change in the lifestyles and consumption pattern of Indians. Private domestic consumption accounts for more than 50% of the country's GDP and is one of the key factors driving overseas investments in the country.





Source: CMIE

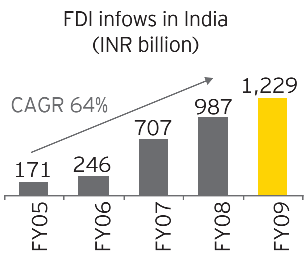
India's competitive position in the world[1]

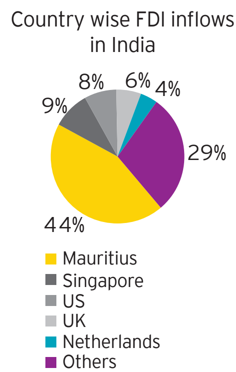
India's economy has strong fundamentals and is host to several eminent global corporate giants that are leaders in their respective fields; according to the Global Competitiveness Report 2009-10, India occupies the 49th place among 134 countries.

The country ranks higher than many advanced countries in key parameters such as domestic market (4th) and innovation (28th). It also has a sound financial market (16th) and a strong banking sector (25th).

FDIs in India: India ranks third among the most attractive destinations for FDI in the world. Indian markets have significant potential and offer prospects of high profitability and a favorable regulatory regime to pursue investors. Mauritius has been the largest source of FDI inflows into India for many years.

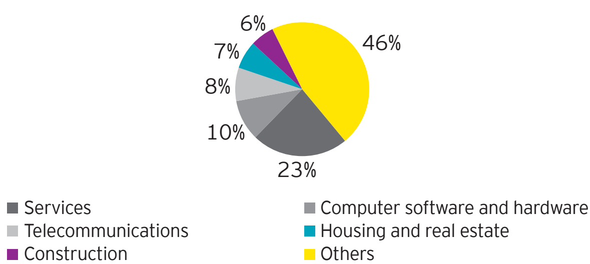
1 "The Global Competitiveness Report 2009-2010", World Economic Forum website, www.weforum.org/.../Global%20Competitiveness%20Report/index.htm, accessed 15 September 2009





Source: Department of Industrial Policy and Promotion

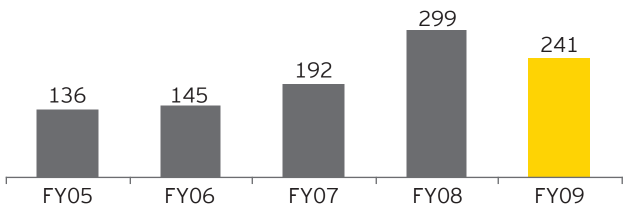
Top sectors attracting FDI equity inflows into India



Source: Department of Industrial Policy and Promotion

Sectors attracting highest FDI equity inflow: The services sector attracts the highest foreign capital in India.

Foreign exchange reserves in India (USD billion)



Source: CMIE

Foreign exchange reserves and industrial production: India's corporate sector has been resilient to the global slowdown and is expected to post a profit growth of 24% in FY10. The country's foreign exchange reserves stood at USD241 billion in FY09.

A.4.1 India's financial market

India has a robust, transparent and stable financial market, which has gradually transformed from being a highly controlled system to a liberalized one.

India's financial market

- Credit market
- Money market
- Foreign exchange market
- Capital market
  - Equity market
  - Debt market

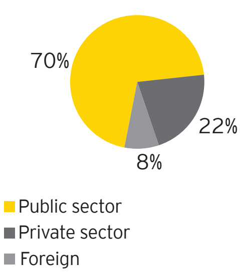
Credit market

India has a robust credit market with a wide range of financial institutions including commercial banks, regional rural banks, cooperative banks and NBFCs.

The country has approximately 80 Scheduled Commercial Banks[2] (SCBs), which operate through a network of 61,129 branches.[3]

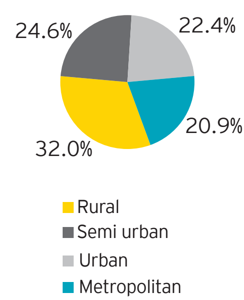
The State Bank of India, a PSB, is the largest bank in the country.

Market share of banks in India



Source: The Times of India

Distribution of branches of SCBs by location



Source: RBI

Money market

The money market is a marketplace for short-term funds. It includes financial instruments with maturities ranging from overnight to a year. India has an efficient, stable and liquid money market. The country's call money market recorded an average daily turnover of INR224.4 billion[3] in FY09.

2 Reserve Bank of India Annual report 2008-09
3 Report on Trends and Progress of Banking in India, 2007-08

Foreign exchange market

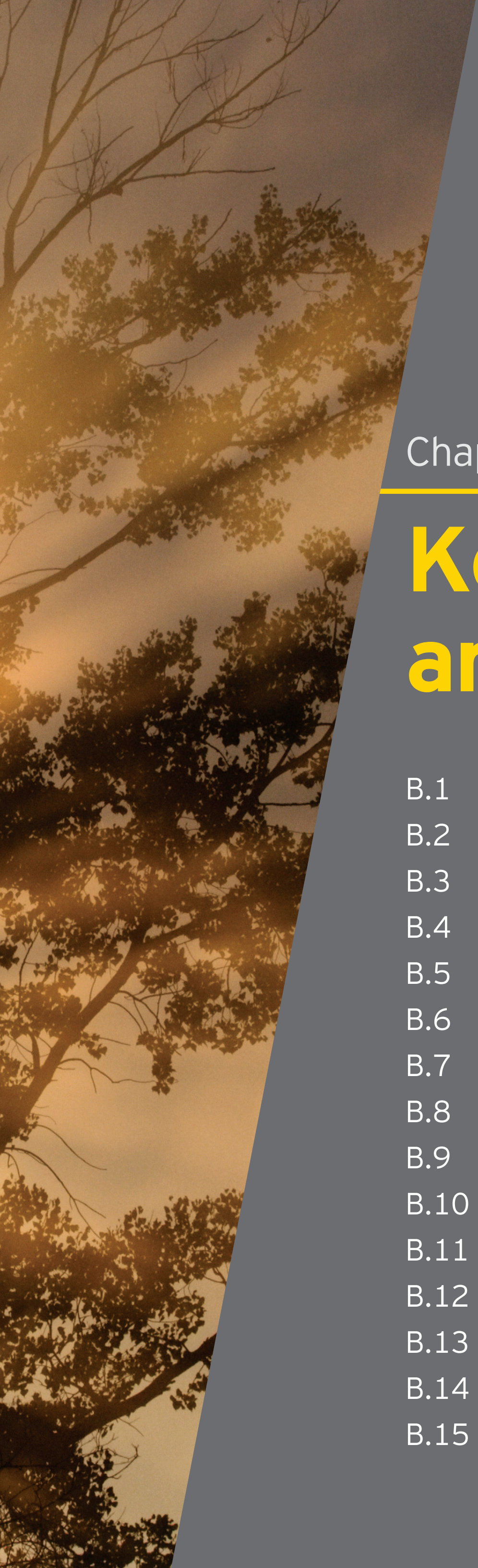
India's foreign exchange and derivatives market ranks 17th in the world. The average daily turnover of its foreign exchange market is approximately USD40 billion.[3]

Reserve Bank of India (RBI): RBI, established in 1935, is the central bank of India. It regulates the country's credit, money and foreign exchange markets. RBI formulates its monetary policies and issues currency, prescribes exchange control norms and acts as a banker to other banks.

Capital markets

India has 23 stock exchanges that constitute the market for securities issued by the government and the country's corporate entities. The National Stock Exchange (NSE) and the Bombay Stock Exchange (BSE) are the premier exchanges in the country. NSE, India's largest stock exchange, is also the third-largest in the world in terms of its quantum of trading in the equity market. The two exchanges together record an average daily turnover exceeding INR100 billion. However, the country's debt market is still relatively underdeveloped.

Securities and Exchange Board of India (SEBI): SEBI, established in 1992, is the regulatory authority for India's capital markets.



Chapter B

Key sectors: an overview

B.1 Automotive

The Indian automotive industry, comprising two segments, automobiles and auto component suppliers, is estimated to have ended FY09 with a total turnover of USD45 billion with automobile manufacturing comprising USD36 billion and auto component suppliers' after-markets and exports accounting for USD9 billion.

Segment	Current state	Sector drivers
Passenger vehicles (PV)	▸ During FY04–09, domestic sales increased at a CAGR of 11% (to 1.5 million units) while exports rose at a CAGR of 21% (to 0.3 million units). ▸ India is emerging as a manufacturing hub, especially for small cars (Hyundai Motors and Ford Motor export 36% and 58% of production, respectively). ▸ The country is emerging as a destination for automotive R&D (Renault-Nissan, Honda, Maruti Suzuki). ▸ The sector witnessed the launch of the USD2,500 PV, Nano (new, ultra-low cost segment).	▸ Rising disposable income ▸ Wider dealer/financiers network ▸ Better connectivity by roads across the country ▸ Reduction in average ownership period ▸ New product launches ▸ Growth in the services sector and need to transport employees
Commercial vehicles (CV)	▸ During FY04–09, domestic sales increased at a CAGR of 8% (to 0.4 million units) while exports grew at a CAGR of 20% (to 42,000 units). ▸ Sales witnessed steep declines (total sales falling by 22%) in FY09 due to slowdown in industrial activities and global financial crisis. ▸ The segment is undergoing a structural shift toward the smaller and light commercial vehicle category. ▸ The market is dominated by domestic players such as Tata, ALL and M&M. ▸ Foreign players are increasingly entering through the JV route (Volvo-Eicher, Nissan-ALL, Mahindra-Navistar)	▸ Growing economic activity ▸ Road and infrastructure development ▸ Increase in the overall freight and passenger movement, and in the share of road ▸ Growing acceptance of Indian CVsin the international market

Segment	Current state	Sector drivers
Two-wheelers	‣ During FY04-09, domestic sales increased at a CAGR of 7% (to 7.4 million units) while exports rose at a CAGR of 31% (to 1 million units). ‣ Scooter segment has started to pickup again after two decades on the back of launch of gearless scooters ‣ Two wheeler manufacturers are increasingly focusing on rural markets. ‣ Indian leader, Hero Honda is the world's largest two-wheeler company ‣ Over the past few years, there has been a marked shift toward performance driven two-wheelers.	‣ Rising disposable income ‣ Wider dealer/financiers network ‣ Wider choice of offerings ‣ Rural markets
Auto components	‣ During FY04-09, turnover grew at a CAGR of 23% (to USD19 billion) while exports grew at a CAGR of 24% (to USD3.8 billion in FY09). ‣ Domestic players are increasingly adopting the inorganic route to expand globally. ‣ Out of 2,500 players, 2000 players are part of unorganized sector forming 30% of the total turnover ‣ The segment is witnessing an increase in technical/production alliances with global players. ‣ Global OEMs and suppliers are increasingly outsourcing components (BMW, GM, Volkswagen, Volvo, Bosch).	‣ Growing domestic automobile market ‣ Increasing replacement demand ‣ Rising exports/ outsourcing demand for various processes by global OEMs
Outlook	‣ India is expected to become the world's seventh-largest automobile market by 2016 and the third-largest by 2030. ‣ Total sales are expected to reach USD120-160 billion by 2016 and the investment required is estimated to be USD35-40 billion. ‣ The country is expected to emerge as a low-cost manufacturing hub for small cars and auto components.	

Regulatory scenario

The barriers to entry into the automotive industry are relatively low and setting up operations fairly easy without the need for industrial licenses. An FDI of 100% is allowed under the automatic route. Moreover, most state governments offer additional incentives to players to set up units in their respective states.

In 2006, the Government of India drafted the 10 year Automotive Mission Plan 2016 (AMP), which is aimed at fueling the growth of the automotive industry. It estimates that by 2016, the automotive industry will attain a turnover of USD145 billion, contributing more than 10% of the country's GDP, and provide employment to more than 25 million people in the country. Implementation of AMP will require an investment of USD35–40 billion.

Recent developments and industry outlook

After a dream run of almost five years, FY08 and FY09 were years of correction if not a slowdown. However, considering India's low-cost-manufacturing capability and increasing R&D strength, the country's automobile market is poised to play a significant role in the world landscape with most of the global growth concentrated in China and India.

Almost all the major global players in the passenger vehicle segment are present in India and are expanding their capacities. Global commercial vehicle manufacturers are also entering the Indian market and are forming joint ventures with local players. India is the world's second-largest two-wheeler market and fourth-largest commercial vehicle market and is expected to be among the top five passenger vehicle-producing countries by 2014.

Component sourcing from India is slated to increase since most major global vehicle manufacturers are setting up their purchasing offices in the country. Over the last three years, Indian suppliers have also actively acquired companies overseas to gain access to technology and new customers.

India is expected to emerge as the world's seventh-largest automobile market by 2016 and third-largest by 2030, behind only the US and China.

B.2 Banking

The financial sector reforms initiated during the early 1990s had a far-reaching impact on the Indian banking sector, which moved from a totally administered sector into a more market driven one. The entry of new private sector banks has resulted in increased competition, although PSBs still continue to dominate the banking system.

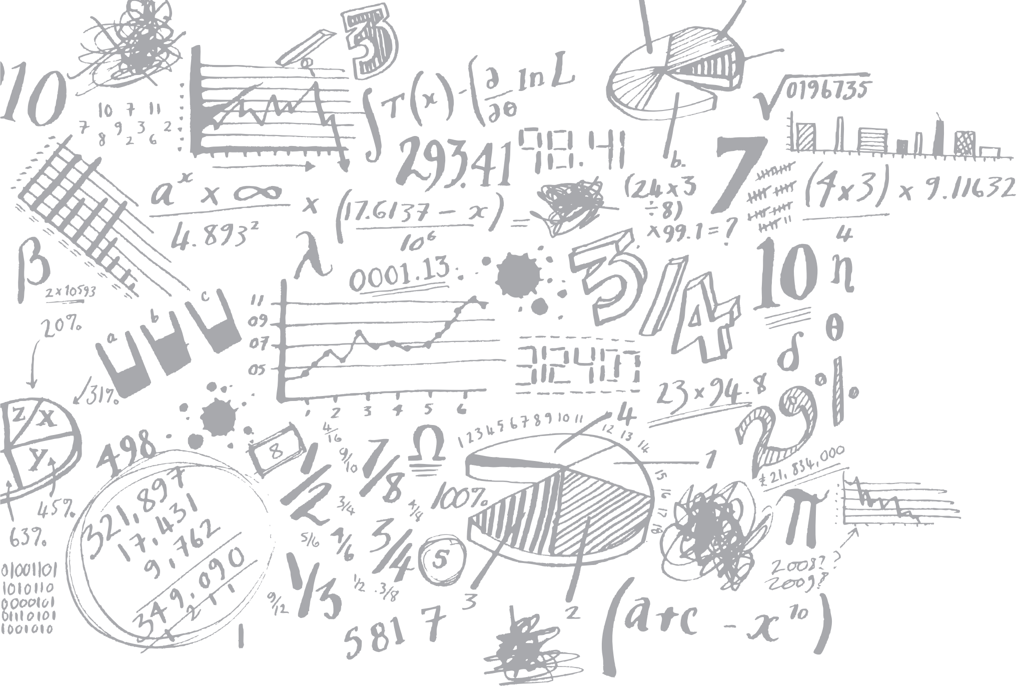
The RBI, the central bank in India, regulates the Indian banking sector. This sector broadly consists of three types of entities, based on their nature of ownership. These include public and private sector and foreign banks.

Regulatory scenario

Banking sector policy makers comprise the RBI and the MoF. The Banking Regulation Act, 1949; RBI Act, 1934; and Companies Act, 1956 are the key governing legislations that pertain to the banking sector.

Recent developments and industry outlook

The RBI has been reviewing and refining its regulatory and supervisory policies to ensure a strong capital base, effective risk management and best corporate governance standards in the banking sector. Of late, the focus has also been on improving credit delivery, customer service and promoting financial inclusion.



In private sector banks, foreign equity up to 74% is allowed under the automatic route, including FII investments (up to a maximum of 49%) and NRI investment (up to a maximum of 24%). Direct or indirect shareholding or control by a foreign entity or groups of related entities should not exceed 10% of the paid up capital of a private sector bank.

With a view to provide banks with additional options to raise capital funds to meet their increasing business requirements as well as Basel II requirements, Indian and foreign banks have been allowed to augment their capital funds by issuing certain hybrid instruments.

In 2005, the RBI announced a roadmap for setting up foreign banks in India. Phase 1 of the roadmap proposed that foreign banks could set up a Wholly Owned Subsidiary (WOS) or convert existing branches to subsidiaries between March 2005 to 2009. Phase 2, commencing from April 2009, proposed to accord full national acceptance to WOSs set up by foreign banks. This has however not become operational as yet and may take some time to do so.

B.3 Capital markets

Capital markets in India have witnessed a transformation over the last decade, and the country now ranks among the mature markets of the world.

Regulatory scenario

The SEBI was established as a statutory body in 1992 to achieve the following:

- Regulate and promote the development of the securities market and protect the interest of small retail investors
- Regulate the functioning of capital markets and issue detailed guidelines relating to capital markets, disclosures by public companies, and investor protection
- Formulate regulations to govern various intermediaries and regulate the mutual fund industry as well as investments by FIIs and venture capital investments

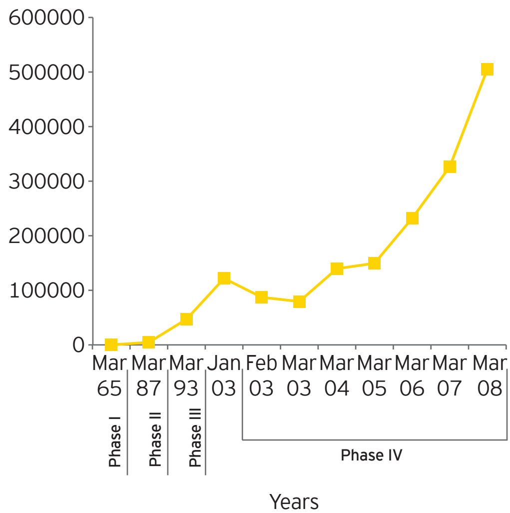
Dealings in securities are also governed by the provisions of The Securities Contracts (Regulation) Act, 1956.

Mutual funds

The entry of private sector funds in 1993 has given the Indian retail/corporate investor a wide choice of fund houses.

The chart below indicates the increase in Assets under Management (AUM) over the years:

Growth in Assets under Management (AUM)



SEBI recently issued guidelines permitting Real Estate Mutual Funds (REMFs).

FIIs

With the economic outlook improving worldwide, global majors are investing in India, which is ranked the most attractive country for retail investment among emerging markets. There are more than 1660 registered FIIs and the number of registered sub-accounts exceeds 5,000.

Net FII investment in 2007-08 amounted to approximately USD16,040 million as compared to USD9,950 million in 2003-04.

Venture Capital Funds (VCF)

VCF visibility has increased over the last couple of years with several large funds looking actively at investments in India.

As on 31 March 2008, there were 106 VCFs and 97 Foreign Venture Capital Investors (FVCIs) registered with SEBI. Investments by VCFs and FVCIs rose from INR149,030 million in 2006 to INR316,820 million in 2008.

FVCIs need to have firm commitment from their investors on the latter's contribution of at least USD1 million at the time registration is sought with SEBI.

Commodities markets

The commodities market is another rapidly growing market in India. There are three national exchanges in the country that enable the purchase and sale of commodities, futures and options. These include the following:

1. Multi-Commodity Exchange of India Ltd.
2. National Commodities and Derivatives Exchange Ltd.
3. National Multi-Commodity Exchange of India Ltd.

Future trading in commodities is regulated under the Forward Contracts (Regulation) Act, 1952. With a view to inculcate globally acceptable best practices and the latest technology, it has been decided to allow foreign investment in commodity exchanges. According to the guidelines laid down by the Government of India, a composite ceiling on foreign investment of 49% is allowed with prior government approval, subject to the condition that investment under the Portfolio Investment Scheme will be limited to 23% and under the FDI Scheme to 26%. Further, no foreign investor/entity, including persons acting in concert, will hold more than 5% of the equity in these companies.

B.4 Entertainment

The entertainment industry is one of the fastest growing sectors in India. The current size of the industry is estimated at INR564 billion and is expected to grow to INRI930 billion by 2013.

Regulatory scenario

The Ministry of Information and Broadcasting (MIB) is responsible for laws, rules and regulations related to information, broadcasting, the press and films. The TRAI is the regulator for broadcasting and cable services.

Figures in INR billion

Sector	Size (as of 2008) (inINRbillion)	Size (estimated for 2013) (inINRbillion)	CAGR (during 2009 – 2013)
Television	244.7	420	11.4%
Filmed entertainment	107	185	11.6%
Print media	162	213	5.6%
Radio advertising	8.3	19	18%
Animation and VFX	15.6	42.5	22%
Gaming (mobile, console, PC and online)	3.9	16.3	32.7%

The Cinematograph Act, 1952 and the Prasar Bharati (Broadcasting Corporation of India) Act, 1990 regulate the functioning of films as well as national television and radio. Cinema exhibition rules and entertainment tax regulations are state-specific and almost all states have enacted laws on these. The MIB has recently released a policy on Internet Protocol TV.

Presently, FDI up to 26% is allowed to uplink a news and current affairs channel, 100% to uplink a non-news and current affairs channel; 100% is allowed in the film, gaming and advertising industry, 100% in television broadcasting, 20% in FM broadcasting, 100% to publish facsimile editions of foreign newspapers and 26% to publish newspapers and periodicals relating to news and current affairs.

Recent developments and industry outlook

- **TV:** Conditional Access System expansion, growth in niche channels, the growing potential of regional TV channels, the Indian Premier League's (season 1 and 2) successful launch unleashing sports TV broadcasting potential, the emergence of Direct to Home entertainment (DTH) and Internet Protocol Television (IPTV) and the digitization of cable through Header in the Sky (HITS)
- **Print**: New guidelines for the publication of Indian editions of foreign magazines, the publication of facsimile editions of foreign newspapers allowed, e.g., The Wall Street Journal, and customs duty exemption for newsprint
- **Film**: Global players, e.g., Walt Disney, Warner Brothers, Fox Star Studios, entering the Indian film business; Indian filmmakers going global, e.g., Anil Ambani's association with Steven Spielberg's DreamWorks Studios; launching of 3-D screens; the strong growth of the home video market and exemption of entertainment tax for multiplexes
- **Radio**: Phase III FM expansion — MIB likely to roll out 600 licenses, R-ADAG radio station being launched in Singapore and radio audience measurement (RAM) getting acceptance

- **Others**: New music internet platforms, and significant growth of out-of-home (OOH) advertising, animation, gaming and VFX, sports entertainment industries

Industry outlook

- Digital technologies are likely to become increasingly pervasive across all segments of entertainment and media
- There is every likelihood of Indian players scaling up through consolidation/diversification across the value chain
- It is expected that there will be a steady increase in the average revenue per user (ARPU) through digital distribution platforms

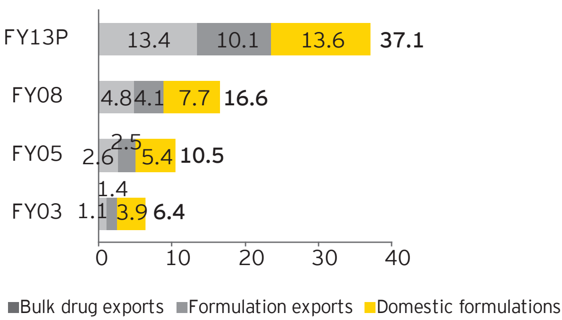
According to a CRISIL research, it is expected that the Indian M&E industry will fare well over the medium term. It is likely that this growth will be driven by the continued increase in advertising spend, spurred by economic growth, the fragmentation of media, the increasing penetration of media channels and changes in distribution modes, which should enable enhanced exploration of content.

B.5 Health sciences

The Indian pharmaceutical industry continues to evolve as a research-driven industry, one which has survived the recessionary phase and is expanding its global footprint with low-cost quality products. The Indian pharmaceutical market stood at approximately USD16.6 billion in 2008, with the domestic pharmaceutical market contributing around USD7.7 billion. Exports of pharmaceutical products have reached USD8.9 billion by the end of FY09.

The industry received FDI of INR21.41 billion from 36 countries between April 2007 and April 2009.[4]

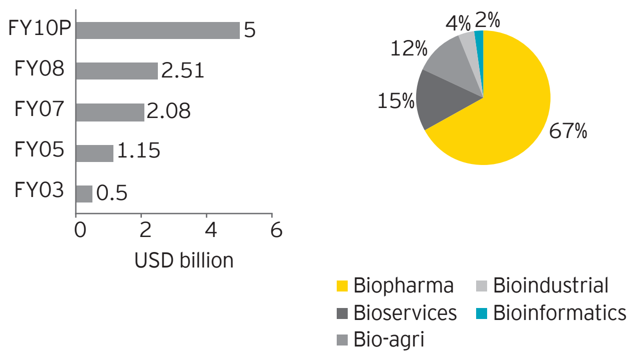
The Indian biotechnology sector registered a turnover of around USD2.5 billion in FY08, growing at a rate of approximately 21% from FY07. The industry is expected to grow at a CAGR of 29% to touch USD5 billion by 2010 and USD15 billion by 2015. A plethora of new opportunities that are better supported by government policies are likely to largely drive this growth.



Source: CRIS INFAC

4 "Indian pharma attracts INR21,410 millions FDI in 2007-09, majority from Mauritius," Pharmabiz.com website, http://www.pharmabiz.com/article/detnews.asp?articleid=51113&sectionid, accessed 10 August 2009.

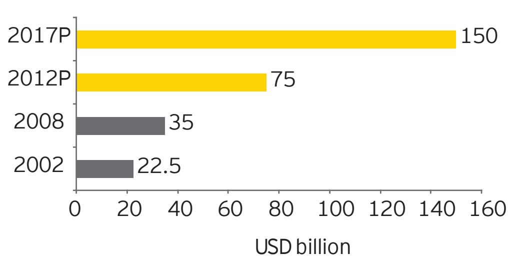
Growth and segmentation of the Indian biotechnology industry[5]



Source: CRIS INFAC

The estimated value of the Indian healthcare industry in 2008 was around USD35 billion, and is expected to increase to approximately USD75 billion by 2012 and USD150 billion by 2017.[6]

Indian healthcare industry



5 "Industry growth slides to 20 percent," Able Biospectrum Survey, July 2008.
6 "Indian healthcare industry to grow at 23%: ASSOCHAM," Biospectrum website, http://www.biospectrumasia.com/Content/141209IND11552.asp, 14 December 2009; "Industry Outlook - The Business Scenario," Xcellon Institute Website, http://www.xcelloninstitute.com/industryoutlook.html, accessed 22 December 2009

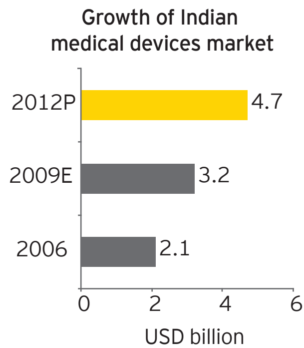
The following factors are likely to primarily catalyze growth in the Indian healthcare industry:

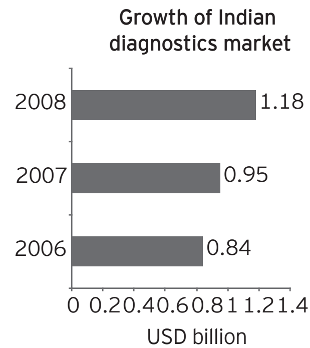
- **Boom in demand for healthcare infrastructure:** To reach the goal of two hospital beds per thousand population in line with other developing countries from 0.86 currently, an additional 1.75 million beds would need to be created by 2025. To achieve this, an estimated investment of USD86 billion would be required.[7]
- **Growing penetration of health insurance:** The health insurance industry is currently growing at around 50% and is poised to reach USD5.75 billion by 2010.
- **Increasing investments by private equity (PE) and venture capital (VC) firms:** PE and VC firms have invested around USD2 billion in the industry in the last five years. Healthcare is expected to contribute around 10% of total PE and VC investments over the next four to five years.[8]

The boom in medical tourism is complementing growth in the domestic healthcare industry. World-class healthcare services, offered at a fraction of the cost incurred in western countries, has ensured an annual growth of 25–30% for the sector, which is poised to reach USD2.2 billion by 2012.[5]

Further, increasing demand for healthcare is fueling healthy growth in other related segments such as medical equipment and diagnostic services.

5 Please refer to footnote on pge 40
7 "Fostering Quality Healthcare for All," EY FICCI healthcare report 2008.
8 "Private equity, venture capital cos turning to healthcare: Report," Business Line (The Hindu), 16 July 2009, via Dow Jones Factiva.





The regulatory environment

The main regulatory body for the Indian pharmaceutical industry is the Central Drugs Standard Control Organization (CDSCO), which falls under the ambit of the Ministry of Health and Family Welfare. The Drug Controller General of India (DCGI) is the controlling body for the CDSCO and is responsible for the approval of new drugs and clinical trials as well the establishment of quality standards. The regulator also monitors state drug authorities, which are mainly responsible for granting drug manufacturing and retailing licenses. Drug prices for essential drugs defined under Drug Price Control Order (DPCO) are regulated by the government through the National Pharmaceutical Pricing Authority (NPPA).

The Department of Pharmaceuticals was promulgated on 2 July 2008 under the Ministry of Chemicals and Fertilisers. The department was established with the objective of providing greater focus on the development of the pharmaceutical sector in India and to regulate complex issues related to the affordability and availability of medicines, R&D, the protection of intellectual property (IP) rights and international commitments related to the pharmaceutical sector, all of which require integrating work with other ministries.

A range of regulatory reforms are underway to improve the current regulatory environment and make it comparable to global standards. The Central Government approved the formation of the Central Drug Authority (CDA), on similar lines to the US Food and Drug Administration (USFDA), in January 2007. The agency is expected to replace the national drug regulator and will ensure uniformity and speed of licensing while enacting stringent enforcement of various improved drug regulations. In order to meet the differentiated regulatory needs of various sub-segments of the pharmaceutical industry, the DCGI recently defined separate guidelines for the import of narcotic drugs both for clinical trial and for personal use.[9]

The Department of Biotechnology is the nodal agency for policy formulation, the promotion of R&D, international cooperation and manufacturing activities pertaining to biotechnology in India.

The government is also establishing a new regulator for biotech products, the National Biotechnology Regulatory Authority (NBRA), to ensure a single-window clearance for all segments within this industry.

Healthcare services come under the purview of the Union Ministry of Health and Family Welfare. The National Accreditation Board for Hospitals & Healthcare Providers (NABH) has developed guidelines for accrediting hospitals, which is currently a voluntary process. The NABH is in the process of evolving a process of accreditation for healthcare facilities.

The Clinical Establishment Bill, mandating the registration of all establishments offering healthcare delivery, has also been presented in Parliament. This bill is yet to be approved.

9 "DCGI issues guidelines to port officers on imports, exports of drugs," Pharmabiz.com website, www.pharmabiz.com/article/detnews.asp?articleid=50882&sectionid, accessed 27 July 2009.

Recent trends and industry outlook

Macro healthcare numbers indicate a bias for near-certain growth. While India accounts for 16% of the world's population and 20% of its disease burden, it accounts for only 6% of the world's beds and 0.9% of drugs sold by value.[10]

While growth in the North American and European markets is expected to slow down to 1-2% and 2-5%, respectively, during 2008–2013, the growth of the emerging markets is expected to be in the range of 11–14%. The rising influence of the emerging markets will position India at the forefront of the markets that are driving growth in the pharmaceutical industry. The improving regulatory and IP framework, along with the significant growth opportunity that the Indian healthcare market offers, has attracted the interest of many large global pharmaceutical and healthcare services companies. The Indian pharmaceutical industry is gradually distancing itself from being associated with copycat formulations and working toward a perception of a commercially attractive, low-cost and research-driven industry. As the world's third-largest producer of drugs by volume and with the third-largest drug R&D workforce, India is a major player in the pharmaceutical industry.

The rural pharmaceutical market is currently estimated to be growing at 24% annually, and is expected to contribute around 27% of the total Indian pharmaceutical market by 2015.[11] Owing to its growing potential, the rural market is becoming an area of increased focus for MNCs looking to enhance their sales and their brand image.

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10 WHO Statistical Information Systems 2008, WHO 2002 DALY estimates, EY primary research

11 'Pharma'ing in rural areas," DNA - Daily News & Analysis, 8 July 2009, via Dow Jones Factiva, © 2009 Diligent Media Corporation Ltd.; "Elder Pharma sets up division to tap rural Indian market," *BioSpectrum website*, http://www.biospectrumasia.com/content/090709IND9909.asp, accessed 13 July 2009.

With the advent of the product patent regime in 2005, India's patent infrastructure has been appreciably upgraded over the past few years to support new laws. Further complementing this improvement is the addition of patent examiners, the decentralization of the filing process and the digitization of records. Patent-protected products have the potential to capture a market share of up to 8–10% by 2015, implying a market size of USD2 billion.

The Indian pharmaceutical industry has been abuzz with M&A activity for the past few years. While the M&A activity was initially limited to outbound deals, large in-bound deals such as Daiichi-Ranbaxy, Sanofi Aventis-Shantha Biotech, Abbot-Wockhardt (Nutrition) and Mylan-Matrix have made M&A a two-way street. With a high level of fragmentation, a high degree of consolidation is both expected and a pre-requisite for sustainability. With MNCs focusing more on the Indian market, the acquisition of domestic companies by MNCs is expected.

India is also fast emerging as a growing custom manufacturing outsourcing destination, with a growth rate of 43% [12] that is thrice the global market rate. This is primarily driven by country's ability to create a differentiating cost value proposition, powered by its lower manufacturing costs, global reach, skilled manpower and strong technical capabilities. India is emerging as a hub in drug discovery and development services as well, growing at approximately 65%,[12] or more than three and half times the global growth rate. Strong capabilities in the realm of chemistry, skilled manpower and a sound cost-value proposition are the key drivers of this trend. Further, India is among the fastest-growing clinical research destinations, with a growth rate two and a half times the overall market growth rate. The country also participates in 7% [13] of global Phase III and 3.2% [13] of

12 India Pharmaceuticals In-Depth – Global Outsourcing – Best Ideas, Morgan Stanley Report
13 www.clinicaltrials.gov

Phase II trials, with industry-sponsored trials demonstrating a CAGR of 39% between 2004 and 2008. The number of industry-sponsored Phase II and Phase III sites in India has risen by 116% [14] over the past 15 months, and the country has ascended from rank 18 to 12 across the 60 most active countries. India ranks second in Asia after Japan in its number of industry-sponsored Phase II and Phase III clinical trial study sites and accounts for nearly 20% of all Asian study sites. To harness India's innovation capability, the government is also embarking upon a major multi-billion dollar initiative, with 50% public funding through a public-private partnership （PPP） model. The vision is to catapult India to one of the top five pharmaceutical innovation hubs by 2020, with 1 out of every 5-10 drugs discovered worldwide by 2020 originating from India. The government plans focused action aimed at building infrastructure for talent and research; encouraging PPPs in infrastructure development for discovery and clinical research; offering financial incentives to encourage and incubate innovation and shaping a favorable regulatory environment.

The maturity of the global pharmaceutical markets coupled with intense generic market competition in the high-potential markets is encouraging domestic companies to diversify their businesses into high-potential domains such as biogenerics and vaccines. The focus is gradually shifting to the biotechnology industry, which holds significant potential in the wake of encouraging government policies. Further, the significant potential of niche segments such as agri-biotech is likely to ensure rapid growth in this segment.

Growing healthcare awareness, improving infrastructure, the rising incidence of lifestyle diseases and the increased penetration of health insurance offer the healthcare services sector a vast growth opportunity. This is further

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14 Uninterrupted globalization of industry sponsored clinical trials – Johan Karlberg – Clinical Trial Magnifier Vol. 2:2 February 2009.

facilitated by increased government focus and investment and the introduction of schemes such as Rashtriya Gramin Swasthya Bima Yojana (RGSBY) and National Rural Health Mission (NRHM). Driven by these factors, public spending on healthcare is expected to double to 2% of GDP from 0.9% currently, translating into a lucrative opportunity for various players in the healthcare segment.

B.6 Information Technology (IT)

In the backdrop of the current global economic scenario, the Indian IT industry has been able to achieve sustainable growth in 2008-09, and continues to contribute substantially to India's GDP, employment and export performance.

According to the IT Annual Report 2008-09 issued by the Department of Telecommunications (DIT), it was estimated that the IT industry's contribution to India's GDP would increase from 5.5% in 2007-08 to 5.8% in 2008 09. It was also forecasted that Indian software and services exports (including ITES-BPO exports) would amount to USD47 billion in 2008-09 and reach USD60 billion by 2010–11. Although the IT sector is export-driven, its revenues from the domestic market have also been substantial – the sector was expected to grow to around USD24.3 billion in 2008-09, as compared to USD23.1 billion in 2007-08, a growth of 5.3% (according to NASSCOM reports).

Regulatory scenario

The government continues to encourage foreign investment in the IT-ITES sector, with its conducive and facilitative trade policies and continued fiscal incentives (including export-related incentives under the SEZ Scheme, which have given a significant fillip to investments in the IT sector). However, the government proposes to phase out certain export-related incentives (currently enjoyed by the IT-ITES sector) under the new Direct Tax Code proposals that are to be introduced in 2011.

Further, the much-awaited IT (Amendment) Act has recently received the assent of the President of India and has been notified in the official gazette. It upgrades the existing legal framework in the area of IT, to deal with new forms of cyber crimes, e.g., cyber terrorism, breach of confidentiality, leakage of data by intermediaries and e-commerce fraud.

Recent developments and industry outlook

The IT sector in India continues to hold its position among the most promising segments of the country's economy. The enhanced focus of organizations on cost and operational efficiencies in the current recessionary environment is expected to enhance India's role as a key IT/outsourcing destination. Further, significant growth opportunities in the domestic IT market and increased government expenditure on IT infrastructure/projects are providing new growth opportunities for this sector. Moreover, the service offerings of the IT industry have steadily expanded in their scope, offering a wide repertoire of value-based services such as Knowledge Process Outsourcing, R&D Outsourcing, Legal Process Outsourcing, etc.

The government has identified electronics and IT hardware as a thrust area in India's IT hardware segment, given the country's significant potential to garner a substantially larger global market share in this space and also meet its domestic requirements. The government is also taking significant measures, including the provision of infrastructure and financial support for IT investment initiatives, grants to R&D units, innovation-focused start-ups, etc., to ramp up the country's hardware sector. With regard to the semi-conductor space, the government is providing various special incentives (including the release of the Special Incentive Package Scheme and its guidelines) to encourage investments in setting up semi-conductor fabrication and micro/nano technology ventures.

B.7 Insurance

The Indian insurance industry has grown to be the fifth largest insurance market (in terms of premium) among emerging global insurance economies.

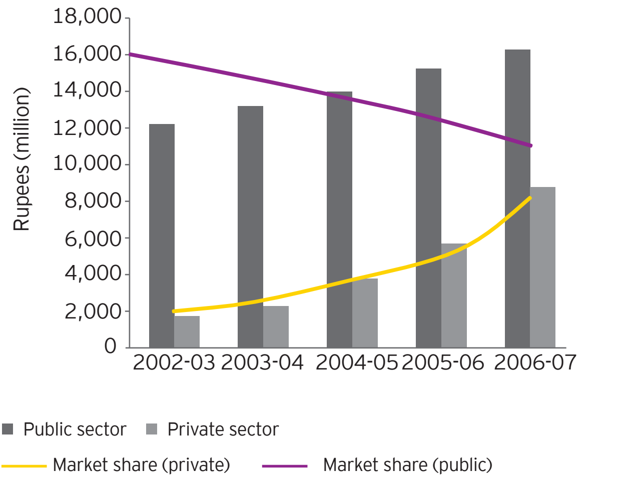
The market share of the private sector has been steadily growing despite the fact that public sector companies have been in existence longer. The chart below depicts this trend over the last five years.

Regulatory scenario

The IRDA regulates the insurance and reinsurance business in India.

FDI (including FII and NRI investments) of up to 26% is allowed under the automatic route, subject a license being granted by the IRDA.

Premium and volume, public versus private



Recent developments and industry outlook

The much-awaited Insurance Laws Amendment Bill, 2008, has been referred to the standing committee on finance for its report, after which the Bill will be enacted by the government. The key amendments proposed in the Bill are:

- Increasing FDI limits in insurance from 26% to 49%
- Introducing "Health insurance business" as a separate category of insurance (separate from life and general insurance); minimum paid-up capital of INR500 million (USD10 million approximately) prescribed for standalone health insurance companies
- Allowing foreign reinsurance companies to set up their branches in India, which will require prior approval from the IRDA and minimum net owned funds of INR50 billion (USD1 billion approximately)

The IRDA has recently prescribed corporate governance guidelines for insurance companies, which, inter alia, outline the structure, responsibilities and functions of the Board of Directors/senior management of insurance companies as well as the minimum lock-in period for the promoters of an insurance company.

B.8 Mining

India is endowed with huge reserves of several metallic and non-metallic minerals. The country produces as many as 86 minerals including 4 kinds of fuels, 10 metallic minerals, 46 non-metallic minerals, 3 atomic minerals and 23 minor minerals (including building and other materials).

However, thorough survey and exploration activities have not been carried out as yet to adjudge the full potential of the country's vast resources. Moreover, despite India's favorable FDI regime, foreign investment in the country is considerably below desired levels due to policy and procedural issues.

Regulatory scenario

The Ministry of Mines regulates the mining sector, with the exception of coal and atomic minerals. State governments own the minerals in their respective states. The Mines and Minerals (Development and Regulation) Act 1957 (MMDR Act) is the governing legislation in this sector.

FDI up to 100% is allowed under the automatic route for exploration and mining of minerals, including diamond and precious stones. However, no FDI/private investment is permitted in coal mining, except for captive consumption by power, cement, iron and steel companies.

Recent developments and industry outlook

The National Minerals Policy, 2008 (NMP) for non-fuel and non-coal minerals was approved on 13 March 2008. The NMP aims at achieving the twin goals of large-scale prospecting with optimal mining and attracting investments with the latest technology.

The 100 day agenda announced by the Ministry of Mines on 22 June 2009 aims to implement NMP and rationalize the existing royalty system by moving to the ad-valorem principle for the computation of royalty. The Indian government has introduced new mining royalty rates for 50 minerals with effect from 13 August 2009. The new rate structure prescribes ad valorem rates.

To implement the comprehensive reforms stated in the NMP, the Indian government proposes to introduce a new legislation and amend the existing MMDR Act. This legislation is expected to enhance the country's regulatory environment, making it transparent and simple; inculcate clarity on grants of mineral concessions and help to build a sustainable development framework for the Indian mining sector. Significant investments/transactions can take place once the NMP is legislated.

As compared to INR300 per tonne at the beginning of 2008, export duty on iron ore was revised to 15% ad-valorem in June 2008. This duty was reduced to 5% ad-valorem in December 2008.

B.9 Oil and natural gas

India is the world's fifth-largest consumer of primary energy, with its primary energy consumption growing at a CAGR of 4.3% between 1998 and 2008 as compared to a global average of 2.2%.[15] The country's primary energy requirement is expected to more than double over the next two decades. Oil and gas currently accounts for 40%[15] of its primary commercial energy consumption, and this share is projected to increase marginally over the next two decades.[16]

During the last decade, the demand for oil and gas has risen sharply (at a CAGR of 3.5% and 4.9%, respectively, during 1998–2008)[15] in the country. This has resulted in increasing reliance on crude imports to meet domestic demand requirements, with approximately 75%[17] of the demand for crude oil being met through imports during 2008-09.

The Indian oil and gas industry has been traditionally dominated by national oil companies. Private companies such as Reliance Industries Ltd., Essar Oil Ltd, Gujarat Adani Energy Ltd and Gujarat Gas Corporation Ltd. have emerged as prominent players across the country's industry segments over the past decade. Foreign players with a significant presence in the Indian oil and gas sector include BG, BP, Cairn Energy and Royal Dutch Shell.

Regulatory scenario

The industry is under the administrative ambit of the MoPNG. FDI up to 100% under the automatic route (subject to sectoral policy regulations) is permitted in all activities except in the case of refineries owned by national oil companies.

The Petroleum and Natural Gas Regulatory Board (PNGRB) has been constituted as an independent regulator for the midstream and downstream segments of the industry. In the upstream segment, the Directorate General of Hydrocarbons continues to function as a quasi-regulator under the aegis of the MoPNG.

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15 BP Statistical Review 2009
16 Hydrocarbons Vision 2025
17 Economic Survey of India 2009-10

Recent developments and industry outlook

In the upstream segment, the NELP has given a boost to private investment and an added impetus to exploration and production (E&P) activity, Production Sharing Contracts (PSC) have been signed for 203 blocks during the first seven rounds of NELP, in which exploration investments of USD10 billion are expected to be made. Increased E&P activity under NELP has also facilitated some world-class discoveries, among which, the Krishna-Godavari basin gas discoveries of Gujarat State Petroleum Corporation and Reliance Industries Limited are the most noteworthy. In the downstream refining segment, India's capacity has more than doubled between 1998 and 2008,[18] making the country a net exporter of petroleum products, with net exports of 12.4 million tonnes (MT) during 2007–08.[18] India's growing petroleum product surplus (expected to reach 60 MT by 2011–12) will also provide it with the opportunity to emerge as a regional refining hub. Further, increased availability of gas has ramped up its consumption, particularly in the industrial and city gas distribution (CGD) segments.

In the future, the demand-supply gap in the oil and gas segment is projected to increase even further, due to the high growth in demand (projected to grow at 6% and 7%, respectively, from 2007–08 to 2024–25).[18] Significant investments are expected to be undertaken to capitalize on the opportunities created by this growing demand.

In the upstream segment, the launch of NELP VIII/CBM IV and increased E&P activity in other NELP blocks are expected to result in large investments and new opportunities for upstream companies and service providers.

In the natural gas segment, significant investment is expected to take place to set up new gas transmission and distribution pipelines and CGD networks.

18 BP Statistical Review 2009

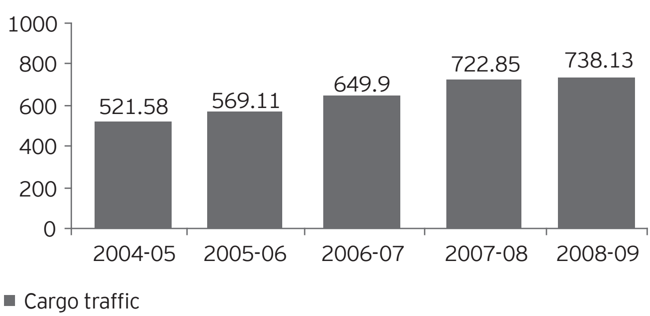
B.10 Ports

India has 12 major ports and around 200 non-major ports, accounting for 95% of the country's total trade in terms of volume and approximately 70% in terms of value. In FY08, major ports accounted for approximately 72% of the total cargo traffic, while the remaining traffic was handled by the non-major ports. Indian ports are currently operating at 90% utilization.[19] Cargo traffic at Indian ports has increased at a CAGR of 9.1% during the past four years.

Regulatory environment

In India, ports are under the purview of the concurrent list of the Indian constitution. The major ports are governed by the Union Government while non-major ports are administered by the state governments. Some of the key legislations formulated to govern Indian ports include the Indian Ports Act, 1908, The Major Port Trusts Act, 1963 and The Major Ports Regulatory Authority Act, 2009.

Total cargo traffic (in million tonnes)



Source: "Sector focus - Ports and shipping," India Infrastructure, June 2009

19 Sector focus - Ports and shipping, India Infrastructure, June 2009, p.26

Recent developments and industry outlook

The government has launched the National Maritime Development Programme (NMDP), worth INR1,010.68 billion, to enhance private investment and improve the service quality in the maritime sector.

Further, the Union Government has granted powers to all port authorities to provide contracts to the final bidders under the PPP mode. Several greenfield ports, including the Gangavaram and Krishnapatnam ports in Andhra Pradesh, became operational in 2008. Additionally, new projects are on the anvil at the major ports of Chennai, Cochin, Ennore, Mumbai, Paradip and Vishakhapatnam.

Another focus area for the government has been the development of inland container depots and container freight stations to facilitate cargo distribution at Indian ports. Container traffic has increased at a CAGR of 13.5% during 1999–2009 and is expected to increase from the current 7.7 million 20-feet equivalent units (TEUs) to 20 million TEUs by 2020.[20]

According to the estimates of the Planning Commission, the investment in the port sector during the Eleventh Five Year Plan is expected to be approximately USD22 billion, of which around 62% is expected to be contributed by the private sector.[21]

20 Sector focus - Ports and shipping, India Infrastructure, June 2009, p.27
21 "Development of Infrastructure: Eleventh Five Year Plan, volume I, chapter 12," Planning Commission website, www.planningcommission.gov.in, accessed 11 September 2009

B.11 Power

India's power generation capacity, as on 30 September 2009 (according to the MoP, Government of India) is estimated at around 152.4GW, with the private sector contributing just over 13% of the installed capacity. Coal, gas and diesel fuel based thermal power plants form a major portion (~64%) of the installed capacity, accounting for nearly 98GW of the total installed capacity in the country.[22]

The total quantum of power generated in the country has increased from 587billion unit (BU) in FY04 to 723.6BU in FY09, recording a CAGR of 5.3% in the last five years. India's current inter-regional (national grid) power transmission capacity stands at 20.75GW (March 2009) and has registered a CAGR of 21.3% in the last two years.[23]

However, the increase in power generation capacity and transmission networks has not kept pace with the growth in demand, which has resulted in a shortage in power supply in the country. At the end of FY09, the total electricity peak demand met was only 96,600MW, resulting in a peak deficit of 12%, while the electricity energy availability was 689BU, which has resulted in an energy deficit of 11%.[24] This is the situation, in spite of the stated aim of the government to achieve "power for all" by 2012.

By recognizing the need to bridge the supply deficit, the government has initiated a phased investment program to increase generation, transmission and distribution capacities over the course of the Eleventh Five Year Plan period (2007–2012). It aims to increase the country's generation

22 Website of Ministry of Power, Government of India, http://www.powermin.nic.in/
23 The opportunity framework: private equity in Indian infrastructure, Ernst & Young and Assocham Publication, 2009
24 Power Scenario at a Glance, Central Electricity Authority, July 2009

capacity by 79GW and inter-regional power transmission capacity by around 21GW during the period.[25] The Planning Commission has estimated that the investment required in the power sector during the Eleventh Five Year Plan will be around USD166 billion, of which 28% will be contributed by the private sector.

Lured by the prospect of selling power at the prevailing high short-term rates, which results in higher than normal profitability, a number of developers have announced their plans of setting up merchant power plants (MPPs). MPPs are power plants that are not tied up by the terms of long-term power purchase agreements. Consistent with the risk-return framework, these projects have inherently higher risks as compared to traditional power plants, which results in several challenges in developing and financing such projects.

Regulatory scenario

The policies of the central and state governments are supportive of MPPs. Typically, states enter MoUs with developers, through which developers agree to set up MPPs in a particular state. State governments, in turn, agree to provide support to developers to acquire land, secure water linkage, recommend coal-linkage allocation to the central government, and grant environment and other clearances. In return for its support, the state expects supply of electricity to them at subsidized rates. For instance, the states of Chhattisgarh and Madhya Pradesh require that developers will supply 5% (7.5% for coal block-based projects) of the total generation at a variable cost and another 30% of the power at cost plus tariff (which provides an equity IRR of around 13% to 14% on the sale to states) in the case of coal-linkage projects.

FDI up to 100% is permissible in the power sector under the automatic route. This includes power generation (except

25 The opportunity framework: private equity in Indian infrastructure, Ernst & Young and Assocham Publication, 2009

atomic energy), transmission, distribution, power trading and other activities, subject to the provisions of the Electricity Act, 2003.

In the case of coal and lignite mining for captive consumption by power projects, iron and steel, cement production and other activities permitted under the Coal Mines (Nationalisation) Act, 1973, 100% FDI is permitted under the automatic route. However, this is subject to the provisions of the Coal Mines (Nationalisation) Act, 197.

Recent developments and industry outlook

During 2006–1H09, power has emerged as the most active sector in the country in terms of PE deal activity with announced PE investments of USD971 million (a total of 14 deals) and an average deal size of USD74.7 million. Several global PE houses, including the 3i Group and Citigroup Venture Capital, have been taking advantage of increasing private sector participation opportunities and have acquired stakes in power sector companies during the past few years.

Top five PE deals in the power sector (2006–1H09)

Date	Target	PE investor	Value (USD m)	Stake (%)
February 2008	Sophia Power	Farallon Capital Management and LNM Internet Ventures	404	38
October 2007	Adani Power	3i Group	230	8
June 2007	Ind-Barath Power Infra	Citigroup Venture Capital International and UTI Venture Funds	72	30
March 2009	Essar Power	IDFC Project Equity	68	2
November 2008	Orient Green Power	Bessemer Venture Partners, Olympus Capital Holdings and Shriram EPC	55	-

Source: "India: private equity investments," The Asian Venture Capital Journal, AVCJ Research, 2006–1H09 and Ernst & Young research

From the table on 'five PE deals in the power sector (page 59)' , it is evident that power in India presents a wide range of opportunities in emerging segments such as renewable energy as well as the maturing conventional fuel-based power segment. Further, unlike most other sectors, which have been impacted by the global economic crisis, the economics of the power sector are almost entirely driven by the domestic market and its attractive demand-supply dynamics. However, opportunities in the power sector are characterized by a large number of greenfield projects, most of which are undergoing various stages of planning.

The Indian power sector is an attractive investment destination with planned capacity addition of almost 160GW by FY17 under the Eleventh and Twelfth Five Year plans. It is estimated that approximately 25–28% of the planned capacity addition in the segment (around 40–50GW) will be from private sources.

The likelihood of high returns from merchant power plants present an attractive investment opportunity to private developers as compared to the sale of power on a long-term PPA basis. However, the higher risk profile of these projects presents challenges in financing them and in their development.

To mitigate these risks, some developers have adopted a hybrid model, i.e., tying up 60–70% of the power through long-term sale arrangements with distributing or trading companies or industrial consumers, and selling the balance on a short-term merchant basis. This improves the bankability of projects and facilitates the process of funds being raised on a non-recourse basis. Some of the larger developers have chosen to absorb the risks involved on their balance sheets and have either developed or are developing their capacities on a pure merchant basis.

With the demand-supply deficit expected to continue in the short to medium term, and the “off take” of the power generated a near certainty, we expect that private developers will continue to favor the merchant power model to develop their power plants.

B.12 Real estate

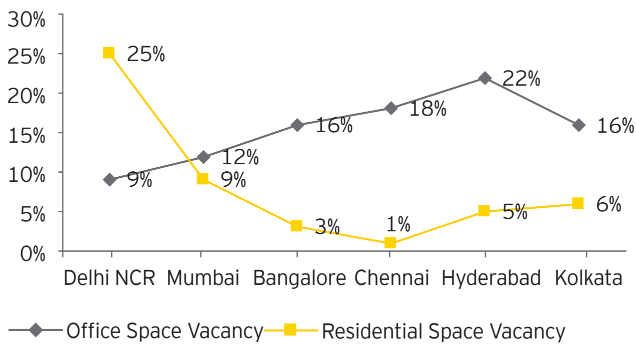
The year 2008 witnessed a significant downturn in the Indian real estate industry, which has been on a high growth path since 2005. The industry saw a decline in 2008, characterized by high interest rates, declining sales and a severe liquidity crunch. The economic slowdown has negatively affected the demand and investors' interest in all the segments of the real estate sector.

In the commercial segment, absorption of commercial and retail real estate also declined, resulting in high vacancy levels as corporate organizations and retailers reduced their spending and deferred their expansion plans.

Rental values in prime business districts have also declined due to the low demand.

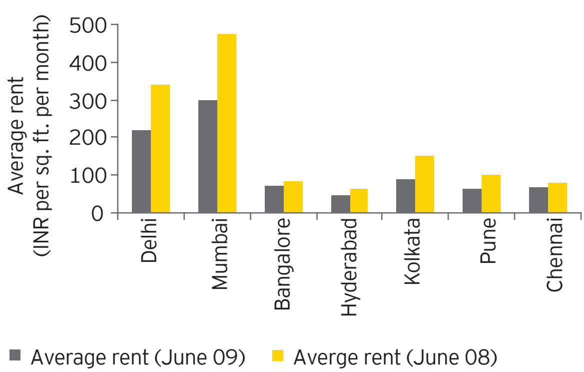
In the residential segment, low/mid segment houses continued to drive the demand in the residential market across the country. This situation is likely to improve in the future as prices stabilize and buyers who were anticipating a further decline in rates eventually decide to buy properties.

Vacancy levels across cities (FY2009)



Source: Eye on real estate, June 2009

Rental market indicator: central business district grade A



Source: CBRE quarter 2 report (June 2008/ 2009)

Regulatory scenario

FDI up to 100% is permitted under the automatic route in the following areas:

- Township, housing, built-up infrastructure and construction-development projects
- Hotels and tourism
- Setting up/development of industrial parks/SEZs
- Construction and related engineering services

Liberalization of External Commercial Borrowings (ECBs)

Earlier, ECB was not permitted in the real estate sector. However, in view of the global economic meltdown and liquidity crisis, the following measures have been taken on ECB in the real estate sector:

- Real estate developers have been allowed to access ECBs for integrated townships under the approval route (and prescribed conditions) until 31 December 2009 (extended from the earlier limit of June 2009, and expected to be extended even further).
- ECBs can also be accessed to develop SEZs under the approval route. This will be covered under infrastructure facilities. However, ECB will not be permissible for the development of integrated townships and commercial real estate within SEZs.
- Corporate tax exemptions of up to 100% will be available for projects, including industrial parks, SEZs and hotel projects that meet certain conditions.

Recent developments and industry outlook

Some key policy measures initiated by the government with relation to the real estate industry:

- Increased outlay under NNURM for housing and the provision of basic amenities to the urban poor; allocation of the scheme amounting to INR128.9 billion in the Union budget 2009-10

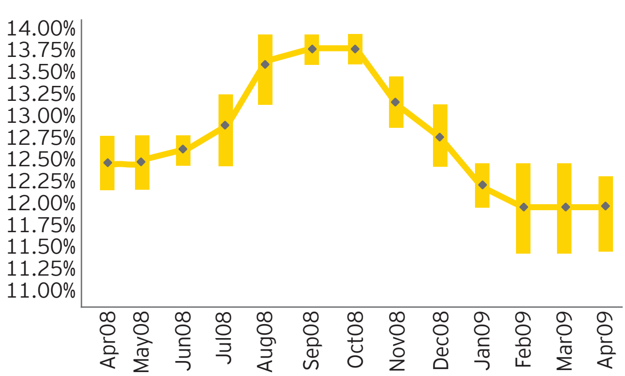
- Allocation of INR20 billion made for Rural Housing Fund to National Housing Bank
- A housing program to create 100,000 dwelling units for Central para-military force personnel launched
- Interest subvention of 1% on all housing loans taken by individuals (up to INR1million), provided the cost of a house does not exceed INR2 million.

During 2008-09, the government also made a concerted effort to relax benchmark interest rates, reserve ratios and increase the demand in the real estate segment due to increased liquidity in the economy.

RBI also reduced the risk weight age on loans for commercial real estate development from 150% to 100% and enabled initial restructuring of such loans. This helped to ease the immediate pressure of repayment on developers.

Loans to commercial real estate companies continued to be high during the FY09 and increased at the rate of 44.6% as compared to the previous year. The outstanding gross bank

Range of interest rate structures of scheduled commercial banks



Source: RBI

credit to real estate increased from INR538.9 billion in FY08 to INR915.8 billion in FY09.

To survive the slowdown, developers tried to improve their liquidity and focused on developing self-funded projects, e.g., affordable housing. The launch of affordable housing projects, coupled with interest rate cuts, has helped to revive demand in the residential real estate segment recently. Moreover, as developers delay their commercial and retail projects, vacancy levels in these segments are expected to reduce in the future, thereby closing the demand-supply gap. Further, since business activities gain momentum in the country, the demand for high-end housing is also expected to revive.

Despite the slowdown in the sector, FDI inflows has increased by over 44% from USD2.17 billion in FY08 to USD2.8 billion in FY09.

In the past couple of months, some developers have successfully raised funds through the QIP mode, which has helped to improve their liquidity position further (by approximately USD1.6 billion). Consequently, there have been some instances of investors moving back to the real estate sector.

However, overall growth in the sector is dependent on the economic scenario in general, e.g., improved job markets, increase in disposable income, availability of easy loans, etc. Although the government is making a concerted effort to give a thrust to the sector, it still needs to be seen how investors react to such measures.

B.13 Retail

With an estimated market size of USD330 billion in 2008, India's retail sector is at the peak of its appeal for international and Indian players. Being the second-largest employer after agriculture, this sector is expected to grow to USD475 billion by 2012, ensuring that the retail sector continues to be one of the mainstays of the Indian economy. Modern retail accounts for approximately 5% of the total retail market in India. This share is expected to increase to approximately 8-9% with the entry of a number of corporate organizations into the segment.

Regulatory scenario

FDI up to 100% is allowed under the automatic route in cash-and-carry wholesale trading and export trading. FDI up to 51%, with prior government approval, has also been recently permitted in retailing of "single-brand" products. The government is likely to adopt a calibrated approach, spread over a period of two to three years, to further open up the industry to foreign investment.

Recent developments and industry outlook

Many large Indian conglomerates and business houses are showing a strong interest or making a significant headway in the retail sector. It is estimated that the organized retail segment is growing at 20-25% annually to reach a market size of approximately USD40 billion by 2012. The demand for luxury brands in India is showing a healthy uptrend, with many international retailers such as Gucci, Chanel, Louis Vuitton, Versace, Fendi and Valentino, among others, who have already established their presence in the country.

Changing lifestyles, strong income growth and favorable demographic patterns have resulted in huge expansion in

Indian retail. In 2008, India was served by more than 440 operational malls offering retail space of 138 million square feet. By 2012, the total retail space available in India is estimated to reach 262 million square feet. It is forecasted that a large portion of this development will take place in tier II and tier III cities.

The rural revolution in India is also proliferating rapidly, driven by rising purchasing power, changing consumption patterns, easy access to information and communication technology, as well as improved infrastructure and government initiatives to boost the rural economy.

B.14 Roads and highways

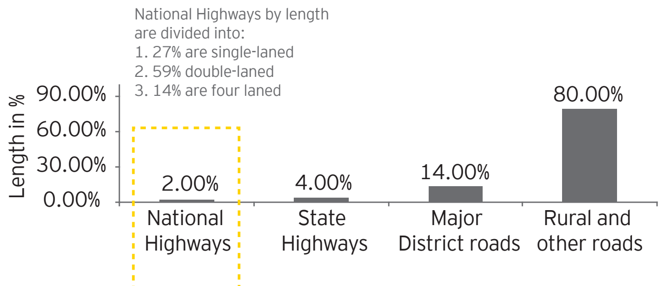
India has the second-largest road network in the world, spreading across approximately 3.3 million km.[26] Roads are the preferred mode of transportation in the country and account for 85% of passenger traffic and 65% of freight traffic. National highways, which account for only 2% of the country's total road length, bear about 40% of the total traffic. In the past five years, the number of vehicles in the country has grown at 10.16% annually.

Regulatory environment

In India, National Highways are administered by the Ministry of Shipping, Road Transport and Highways (MOSRTH) and the National Highway Authority of India (NHAI). State highways and major district roads are governed by state public works departments and road development corporations. Rural roads are monitored and maintained by the Ministry of Rural Development (MoRD).

26 Sector focus - Roads & bridges, India Infrastructure, November 2008, p 32-33

Road network (FY09)



Source: NHAI

As roads form an integral part of the economic and social development of a country, the Government of India has made concerted efforts to improve road connectivity in India. It has announced policy measures to attract foreign and domestic private investment for road development. Some of these policy measures include permission for up to 100% FDI and provision of capital grants of up to 40% of the project cost to enhance the viability of projects.

Additionally, the government has also announced policy measures to create substantial opportunities for private investors and increase the scope of public-private partnership (PPP) on road projects. Private investment in the sector has increased from INR234 billion in September 2006 to INR520billion in August 2009.

Recent developments and industry outlook

The government has launched the National Highway Development Programme (NHDP) to improve and maintain the road network in the country. The primary objective of the NHDP is to develop and upgrade over 50,000 kms of National Highways, in seven phases, with an investment of INR3,000 billion.

At present, the NHDP is being implemented in four phases: I, II, III and V.

The funds for the program are being arranged through budgetary allocation, a central road fund as well as external assistance and market borrowing.

Additionally, the government has also launched the Pradhan Mantri Gram Sadak Yojana (PMGSY) to provide connectivity to isolated rural habitations in the country. The PMGSY scheme involves the construction of 146,185 kms of road to provide connectivity to 66,802 habitations. In 2008-09, the government spent INR151billion on rural roads under this scheme.

In early 2009, the government announced its target of constructing 20 kms of highway per day with an investment of USD70 billion over the next three years.

Status of NHDP and NHAI projects as on 31 July 2009

	NHDP Phase I		NHDP Phase I and II				
Projects	Golden Quadri-lateral	Port Connec-tivity	Others	North South East West Corridor	NHDP Phase III	NHDP Phase V	Total by NHAI
Total length (km)	5,846	380	962	7,300	12,109	6,500	**33,097**
Already four laned (km)	5,729	236	828	4,014	937	131	**11,875**
Under implementation (km)	117	139	121	2,396	2,155	903	**5,831**
Contracts under implementation (No.)	15	6	12	122	27	3	**185**
Balance length for award (km)	Nil	6	20	732	9,017	5,466	**15,241**

Source: NHAI

According to the estimates of the Planning Commission, total investment in the road sector during the Eleventh Five Year Plan (2007–2012) will amount to around USD78.5 billion, of which 34% is expected to be contributed by the private sector. [27]

B.15 Telecommunications

Indian telecom continues to register a significant growth, with the total subscriber base crossing the 500 million mark in September 2009. Today, India has become the second-largest wireless network in the world and has surpassed the US. This has been due to the positive impact of the government's economic reforms and pro-active policies. The industry is at a crucial point with rural India accounting for over 50% of wireless net additions. With one of the lowest ARPUs worldwide, volume growth is likely to be the revenue driver for the industry.

The wireless industry in India is set to witness a large number of new entrants/network expansion of existing small players, resulting in 10–12 players in each circle. With the backing of experienced global/regional players, the new entrants seem confident of rolling out their initial plans. Although it has had a strong run in the last few years, the Indian wireless market still offers significant opportunities for expansion, driven by a favorable demographic profile, improving coverage, the sharp decline in the cost of ownership and low rural penetration.

While globally, the industry appears to be adversely impacted by the financial meltdown, the Indian telecom industry is still largely insulated from the effects of the slowdown, and, in fact, continues to attract substantial investments (USD5.5–6.0 billion). Among the major transactions in the telecom space, Japan's NTT DoCoMo acquired a 26% stake in Tata Teleservices

27 "Development of Infrastructure: Eleventh Five Year Plan- volume I, chapter 12," Planning Commission website, www.planningcommission.gov.in, accessed 11 September 2009

for USD2.7 billion, Etisalat picked up a 45% stake in Swan for USD900 million, while Telenor acquired a 67% stake in Unitech Wireless for USD1.23 billion.

Regulatory scenario

The dynamism of the sector seems as strong as ever. The government has recently announced the following key policy initiatives:

Auction and allotment of spectrum for Broadband Wireless Access (BWA) License:

The key features of the guidelines issued by the Department of Telecommunications (DoT):

- Unified Access Service (UAS) licensee, Internet Service Provider (ISP) holding Category A and B and companies eligible for UAS license are eligible for the bidding process.
- Biding will take place service area-wise and the reserve price of a BWA spectrum license for different service areas will be 25% of the reserve price of a 3G spectrum license.
- Licensees will be required to pay an annual spectrum charge of 1% of their Adjusted Gross Revenue after a period of one year.
- A license will be granted for a period of 15 years.

Auction and allotment of spectrum for 3G telecom services in India The key features of the guidelines issued by DoT:

- Existing UAS licensees and companies that fulfill the eligibility criteria for a UAS license, with previous experience in providing 3G services, are eligible for the bidding process.
- A separate entry fee will be payable (in addition to the 3G auction fee) by new entrants to obtain a UAS license.

- Biding will take place service area-wise and the auction amount will be payable upfront.
- Licensees will be required to pay an annual spectrum charge of 1% of their adjusted gross revenue after a period of one year.
- A license will be granted for a period of 20 years.

Mobile Number Portability (MNP) service license

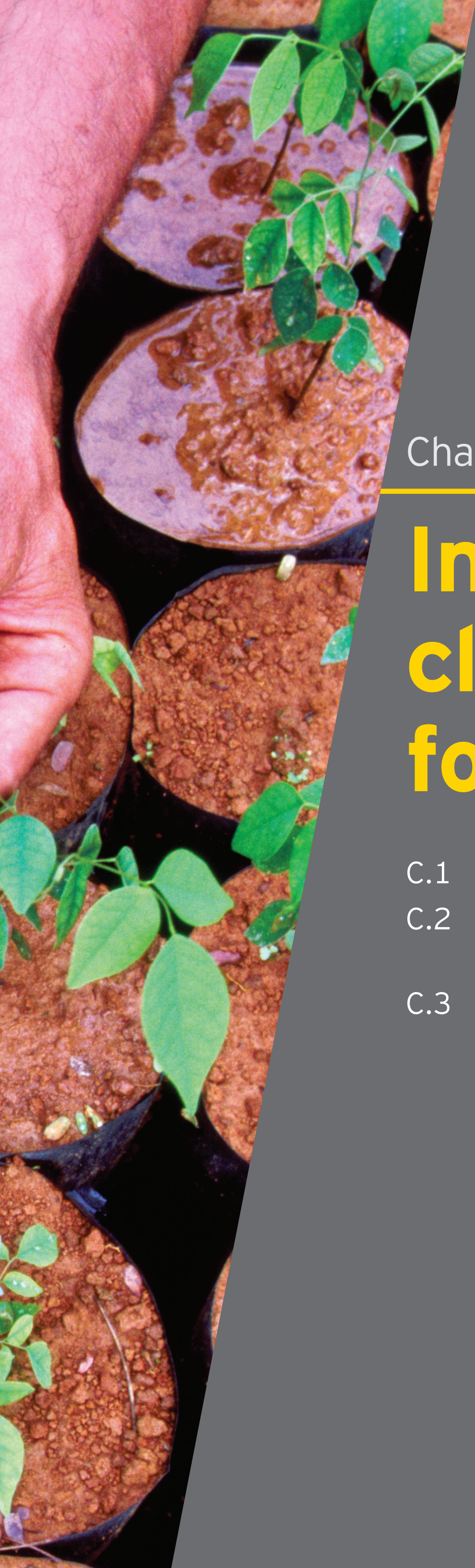
MNP allows customers to retain their existing telephone numbers when they transfer from one service provider to another or from one technology to another with the same service provider. Pursuant to its guidelines, the DoT has already issued licenses for MNP services and MNP is expected to be launched by 30 June 2010.

Resale of International Private Leased Circuit services (IPLC)

Licenses will be issued for a period of 10 years and licensees must be Indian companies with net worth and paid up capital of INR25 million. FDI of up to 74% (up to 49% in the licensee company) is permitted under the automatic route; above 49% will require the approval of the FIPB.

Mobile Virtual Network Operators (MVNO)

The DoT has accepted the recommendation of TRAI for the introduction of MVNOs. Detailed guidelines relating to MVNO will also be issued by the DoT.



Chapter C

Investment climate and foreign trade

C.1 Foreign investment framework

The FDI regime has been progressively liberalized during the course of the 1990s (particularly after 2000), with most restrictions on foreign investment being removed and procedures simplified. With limited exceptions, foreigners can invest directly in India, either on their own or as a joint venture.

Today, there are very few industries where foreign investment is prohibited. Moreover, investment ceilings, which are applicable in certain cases, are gradually being removed/ phased out.

Features of the government's foreign investment policies and incentives offered by it:

- No government approval is required for FDI in virtually all the sectors/activities, except for a small negative list formulated by the government.
- The government has formulated "Sector Specific Guidelines for FDI," wherein investments up to specified sectoral caps are covered under the automatic route, with a few exceptions.
- FIPB considers proposals for foreign participation that do not qualify for automatic approval.
- Decisions on all foreign investment proposals are usually taken within 30 days of submitting an application.
- Free repatriation of capital investment is permitted, provided the original investment (on a repatriable basis) was made in convertible foreign exchange. Further, free repatriation of profits on capital investment is permitted, subject to payment of taxes and other specified conditions

- Use of foreign brand names/trademarks is permitted for the sale of goods in India.
- Indian capital markets are open to FIIs.
- Indian companies are permitted to raise funds from international capital markets.
- Special investment and tax incentives are given for exports and sectors, including power, electronics, software and food processing.
- "Single window" clearance facilities and "investor escort services" are available in various states to simplify the approval process for new ventures.

C.1.1 FDI

The government permits FDI on an automatic basis, except with respect to a small negative list which includes the following:

- Proposals involving a foreign collaborator who has an existing venture/tie-up in India in the same field (except in the IT and mining sector), and investments made by international financial institutions, including the Asian Development Bank, International Finance Corporation, Commonwealth Development Corporation and Deutsche Entwicklungs Gesselschaft
- Proposals outside the ambit notified sectoral policy/caps
- Proposals for investment in PSUs as well as for EOU/EPZ/EHTP/STP units for the automatic approval route, subject to compliance with certain prescribed parameters
- Proposals for foreign investment, not covered under the automatic approval route, considered for approval by the government

Revised guidelines for downstream investments

In February 2009, the DIPP issued clarifying guidelines to calculate foreign investment in Indian companies.[28] These guidelines were issued with the objective of bringing clarity, uniformity and consistency into the methodology of calculating direct and indirect FDI . Under the new norms, indirect foreign investment through an investing Indian company that is owned and controlled by Indian citizens or Indian companies (which are owned or controlled by Indian citizens) is not considered for FDI. Where the investing Indian company does not meet any one of the conditions mentioned above, its entire investment is considered as FDI. However, in the event the company is a wholly owned subsidiary of the investing Indian company, the indirect FDI is limited to the FDI in the investing Indian company.

The guidelines above seem to be investor-friendly and to a certain extent rationalize the methodology of calculation of indirect FDI. The guidelines are likely to increase foreign capital inflow and send positive signals to the international community.

For a list of the sectors in which 100% FDI is allowed, see Appendix 3.

C.1.2 FIPB

The FIPB is specially empowered and chaired by the Secretary of the MoF. It has been specifically set up to expedite the approval process for foreign investment proposals.

Proposals for FDI may be sent to the FIPB, the Department of Economic Affairs, the MoF or through any of India's diplomatic missions abroad. The FIPB has the flexibility to examine all the proposals in their totality, free from predetermined parameters or procedures.

28 Press Note 2, 3 and 4 of 2009

The recommendations of the FIPB with respect to proposals under the ambit of the non-automatic route, involving an investment of USD150 million (equivalent to INR6 billion) or less, are considered and approved by the Finance Minister. Projects with an investment that is greater than this value are submitted by the FIPB to the Cabinet Committee on Economic Affairs for further approval.

Foreign technology agreements

Foreign technology collaborations include the following:

- Technical know-how fees
- Payment for designs and drawings
- Payment for engineering services
- Other royalty payments

Foreign portfolio investment

FIIs must register themselves with SEBI and comply with RBI's exchange control regulations.

Foreign pension funds, mutual funds, investment trusts, asset management companies, insurance or reinsurance companies, nominee companies and incorporated/institutional portfolio managers (or their power of attorney holders) are allowed to register as FIIs. FIIs can invest in securities traded in primary and secondary capital markets in India under the portfolio investment scheme. These securities include shares, debentures, warrants, units of mutual funds, government securities, treasury bills and derivative instruments.

Certain investment limits are prescribed in FII guidelines and RBI's regulations to regulate investments made by FIIs. However, these restrictions do not apply to the investments made by an FII through offshore funds, GDRs or Euro-convertible bonds.

Registration eligibility

FII guidelines require FIIs to meet certain qualifying conditions for registration. SEBI also examines whether the grant of registration is in the interest of the development of the Indian securities market.

Registration of sub-accounts

Apart from entities that are entitled to be FIIs, other foreign investors are also eligible for registration as sub-accounts. The sub-accounts can be categorized as (i) collective investment funds and institutions, (ii) proprietary funds or (iii) foreign corporations and nationals.

Foreign venture capital investment route

A SEBI-registered FVCI with specific approval from RBI under FEMA regulations can invest in Indian Venture Capital Undertaking (IVCU) or Indian Venture Capital Fund (IVCF) or in a scheme floated by such IVCFs, subject to the condition that the VCF should also be registered with SEBI.

FVCIs can purchase equity/equity-linked instruments/debt/ debt instruments, the debentures of an IVCU, or of a VCF, through an IPO or private placement in units of schemes/ funds set up by a VCF.

Investment by NRIs

NRIs can invest in the shares or convertible debentures of an Indian company on a non-repatriable basis. These investments do not require FIPB approval and are not construed as FDI. NRIs cannot invest in companies that are engaged in certain financial service or agricultural/plantation activities. While the capital is non-repatriable, the dividends and interest income can be remitted as current account transactions.

C.1.3 Foreign exchange controls

Foreign exchange policy

Since 1991, the country's foreign exchange reserves have surged from USD2 billion to approximately USD271 billion in August 2009.

Prior to 1999, India had stringent exchange control regulations under the Foreign Exchange Regulation Act, 1973 (FERA). In 1999, the government replaced controls under FERA with regulations under the FEMA.

With the introduction of FEMA in 1999, the objective of the government shifted from the conservation of foreign exchange to promoting orderly development and management of the foreign exchange market in India.

Current account transactions

The rupee is fully convertible for trade and current account purposes. Except for certain specified restrictions where RBI approval is required, foreign currency may be freely purchased for trade and current account purposes.

Capital account transactions

These transactions are not permitted unless they are specifically allowed and prescribed conditions satisfied. Transactions specifically allowed include the following:

- Investment in India by a person resident outside India
- Acquisition and transfer of immovable property in India, other than a lease not exceeding five years, by a person resident outside the country
- Guarantee by a person resident outside India in favor of or on behalf of a person resident in India

- Import and export of currency/currency notes into/from India by a person resident outside India
- Deposits made by a person resident in India and a person resident outside India
- Foreign currency accounts in India of a person resident outside the country
- Remittance outside India of the capital assets (in the country) of a person resident outside India
- Remittances abroad that require prior approval arrangements, including joint ventures and technical collaboration agreements
- Remittance of interest, dividends, service fees, royalties, repayment of overseas loans, and so forth

C.2 Regional and international trade agreements and associations

Over the years, India has entered various bilateral and regional trading agreements with other countries. Apart from offering preferential tariff rates on the trade of goods among member countries, these agreements also enable wider economic cooperation in the fields of trade in services as well as investment and intellectual property, resulting in greater trade liberalization.

C.2.1 Existing trade agreements and regulatory scenario

Some of the existing key trade agreements entered by India under which a preferential tariff rate is provided for specified goods traded between the countries:

- Comprehensive Economic Co-operation Agreement (CECA) with Singapore
- Framework Agreement with Thailand
- Asia Pacific Trade Agreement with Bangladesh, Republic of Korea, China and Sri Lanka
- SAARC Preferential Trade Agreement
- South Asian Free Trade Agreement executed by India, Bangladesh, Bhutan, Maldives, Nepal, Pakistan and Sri Lanka
- India Sri Lanka Free Trade Treaty
- Preferential Trade Agreement with Afghanistan
- Global System of Trade Preference with 48 countries
- Preferential Trade Agreements with MERCOSUR countries
- Preferential Trade Agreement with Chile

The trade agreements are monitored and regulated by the Central Government through the Directorate General of Foreign Trade.

C.2.2 Recent developments and outlook

A joint study group/task force has been constituted for the purpose of trade agreements with the following countries:

- **Asian countries:** Indonesia, China, Thailand, Malaysia, Japan, Sri Lanka, South Korea, India Gulf Cooperation Council, BIMSTEC, Mauritius and SACU

- **Other countries:** Australia, New Zealand, European Union, European Free Trade Association and Chile

In the coming year, India and Sri Lanka expect to expand their existing Free Trade Agreement to include trade in services under a Comprehensive Economic Partnership Agreement (CEPA). Negotiations with South Korea on CEPA are also expected to be completed shortly. Further, India proposes to enter CEPAs with Nepal and Mauritius.

India has also entered framework agreements with ASEAN, Chile, GCC states and Thailand. Apart from free trade agreements, it has also entered trade arrangements with Pakistan, Mongolia, Maldives, Korea, the EU, Sri Lanka, Bangladesh and the US.

C.3 Major trading partners and leading imports and exports

Foreign trade in India

India accounts for 1.64% [29] of the global trade in goods and services worldwide. Foreign trade in the country is regulated by the Foreign Trade (Development and Regulation) Act, 1992. The Ministry of Commerce and Industry is the foremost body responsible for promoting and regulating foreign trade in India.

C.3.1 FTP

India's FTP covers policies related to fiscal incentives, rationalized procedures, institutional changes, increased access to global markets and diversification of its export market.

29 "Foreign Trade Policy 2009-14", Directorate General of Foreign Trade website, http://dgft.gov.in, accessed 15 September 2009

To generate employment opportunities and increase India's share in global trade, the FTP lays special emphasis on key sectors including agriculture, handicrafts, leather, gems and jewelry, marine products, handlooms, electronics, IT hardware, sports goods and toys.

The policy focuses on market expansion and diversification to new markets in Africa, Oceania, Latin America and some parts of Asia.

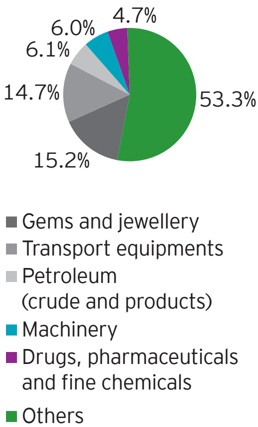
C.3.2 Exports: USD167 billion (FY09)

Most goods can be freely exported from India, except for a small number of prohibited items. Its key exports include gems and jewelry, petroleum, transport equipment, machinery, and drugs and pharmaceuticals. The country also accounts for approximately 3% of the global export of commercial services.

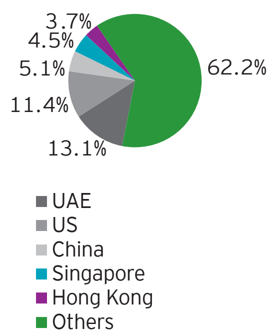
Principal destinations of exports

The UAE has surpassed the US in FY09 to become the top-most export destination for India's products. Other countries include the US, China, Singapore, Germany and Hong Kong.

Top commodities among India's exports (FY09)



Top destinations for India's exports (FY09)



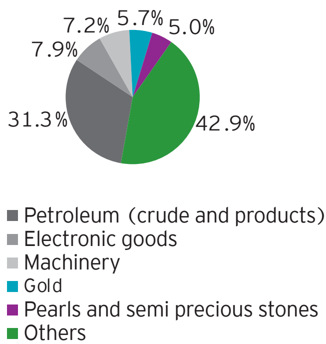
Source: Directorate General of Foreign Trade (DGFT)

C.3.3 Imports: USD284 billion (FY09)

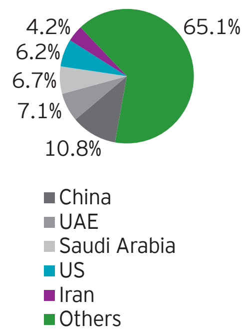
Import of all commodities is free in India, except for items regulated by any law or policy in force. Some items in the prohibited list, such as the fat or oils of any animal as well as ivory, cannot be imported into India. The country's key imports include petroleum, electronic goods, machinery, gold, pearls and semi-precious stones.

Principal countries from which India imports: China has the largest share in India's imports. Other countries include the UAE, Saudi Arabia, the US and Iran.

Top commodities among India's imports (FY09)



Top countries for India's imports (FY09)



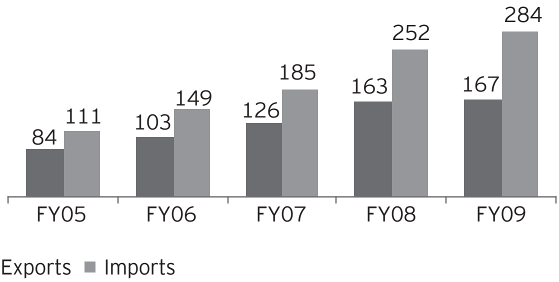
Source: Directorate General of Foreign Trade (DGFT)

C.3.4 Balance of trade

India's trade deficit stood at USD117 billion in FY09. Due to rapid industrialization, imports to the country are increasing rapidly and recorded a CAGR of 26% during the period FY05-09.

Exports from the country are also rising and recorded a CAGR of 19% during the period FY05-09. India's export-to-GDP ratio stood at 14% in FY09.

Balance of trade (USD billion)



Source: CMIE

C.3.5 Tariff liberalization

India's tariff regime has seen a considerable decline in rates over a period of time. Tariffs have fallen from the peak rate of 350% in 1991 to 10% in 2009. Non-oil imports to the country are levied an average import tariff of 7.5%. All machinery and parts imported for industrial/mining/power/irrigation purposes attract tariff duty of 7.5-10% per kg.

Targets of the FTP 2009-2014:

- Export growth of 15% annually till FY11 with the aim to achieve exports worth USD200 billion in FY11
- Export growth of 25% annually between FY12 to FY14
- Doubling India's current share in global trade by 2020

Chapter D

Entry options in India

This section covers structures typically used by foreign investors in India.

D.1 Liaison office

Foreign corporations are permitted to open liaison/ representative offices in India (subject to obtaining specific approval) by RBI, to undertake liaison activities on their behalf. These offices act as a communication channel between the foreign corporations and Indian customers. Such offices are normally established by foreign corporations to promote their business interests by spreading awareness about their products and also to explore opportunities for setting up a more permanent presence in the country.

A liaison office in India is permitted by RBI to undertake the following activities:

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

Foreign Insurance companies can establish liaison offices in India after obtaining approval from the IRDA, without a specific approval from the RBI.

D.2 Branch office

Foreign corporations may open branch offices to conduct business in India, and this requires a specific approval from RBI. A foreign corporation cannot undertake any activity in India that is not specifically permitted by RBI.

A branch office is permitted by RBI to undertake the following activities:

- Export/import of goods
- Rendering professional or consultancy services
- Carrying out research work in which the parent company is engaged
- Promoting technical or financial collaboration between Indian companies and the parent or overseas group company
- Representing the parent company in India and acting as a buying/selling agent in the country
- Providing IT services and developing software in India
- Tendering technical support for the products supplied by parent/group companies
- Undertaking activities for foreign airline/shipping companies

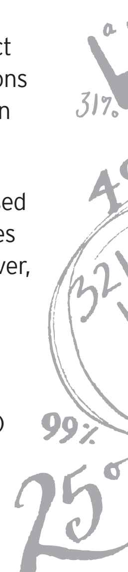
A branch office is not allowed to carry out retail trading, manufacturing (except within SEZs) or processing activities in India. Branch offices are allowed to be set up in SEZs to carry out manufacturing and service activities in the country without specific approval from RBI, subject to prescribed conditions.

A branch office provides the advantage of ease of operation and an uncomplicated closure. However, since such operations are strictly regulated by exchange control guidelines, a branch may not provide a foreign corporation with the optimum structure required for its expansion/ diversification plans.

For income tax purposes, a branch office is treated as an extension of the foreign corporation in India and is taxed at the rate applicable for foreign companies.

D.3 Local Indian subsidiary companies

Foreign corporations can set up wholly owned subsidiary companies in India in the form of private companies, subject to the prescribed FDI guidelines. Further, foreign corporations can set up a joint venture company with an Indian or foreign partner.



As compared to branch, liaison and project offices (discussed in the following paragraphs), a subsidiary company provides the maximum flexibility to conduct business in India. However, the exit procedure norms of such companies are relatively more cumbersome. Given below are some of the salient features of a subsidiary company:

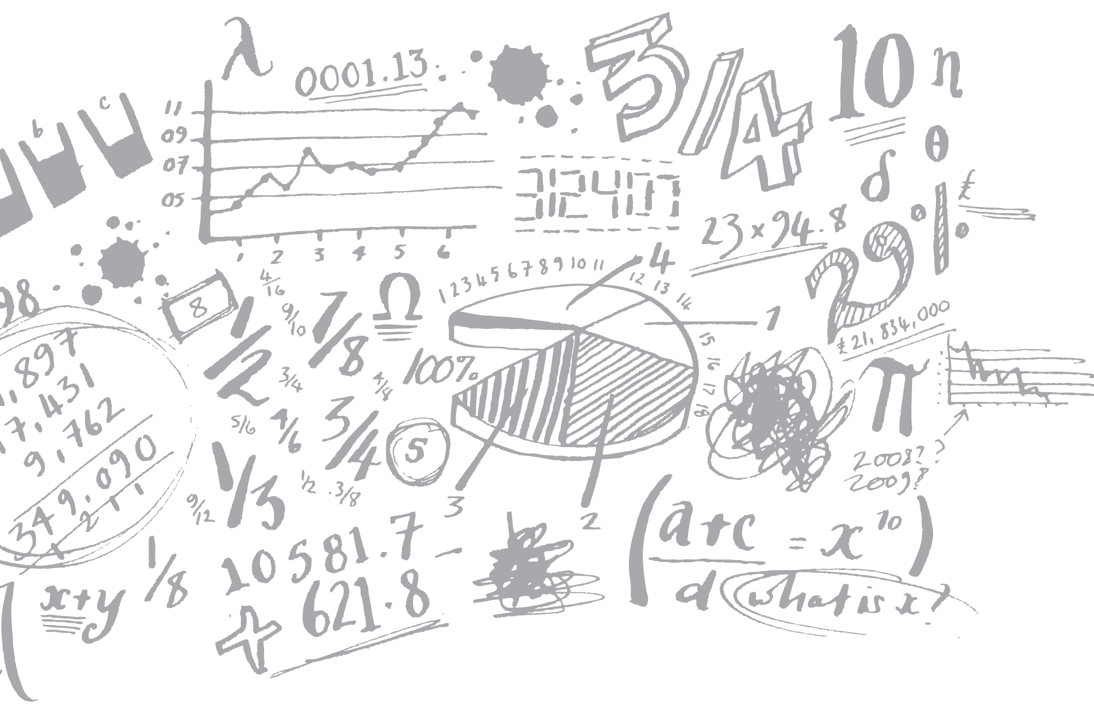
- Funding can be via equity, debt (both foreign and local) and internal accruals
- Indian transfer pricing regulations apply
- No approval is required for repatriation of dividend

The subsidiary company, incorporated under the laws of India, is treated as a domestic company for tax purposes.

Project office

A foreign corporation that has secured a contract from an Indian company to execute a project in India may set up a project office in the country without obtaining the prior permission of RBI, subject to prescribed reporting compliances.

Like a branch office, a project office is also treated as an extension of a foreign corporation in India and taxed at the rate applicable to foreign corporations.



D.4 Comparative summary of entry options in India

Particulars	Liasion office	Project office/ Branch office	Subsidiary/Joint venture
Setting up requirements	Prior approval of RBI (except in the case of insurance companies)	Prior approval of RBI for branches (other than SEZs) Prior approval not required to set up project office if certain conditions are fulfilled	If activities/sectors fall under the ambit of the automatic route, no prior approval but only post facto filings with RBI required Otherwise, government/FIPB approval and thereafter compliance with post facto filings required
Permitted activities	Only liaison/ representation/ communication role permitted No commercial or business activities allowed to be undertaken	Activities listed/ permitted by RBI allowed to be undertaken Manufacturing, (except in SEZ units) not permitted	Any activity specified in the memorandum of association of the company Wide range of activities permitted, subject to FDI guidelines
Funding of local operations	Local expenses to be met out of inward remittances received from abroad from Head Office through normal banking channels	Local expenses to be met through inward remittances from Head Office or from earnings from permitted operations	Funding to be through equity or other forms of permitted capital infusion or borrowings (local as well as overseas as per prescribed norms) or internal accruals
Limitation of liability	Unlimited liability	Unlimited liability	Liability limited to the extent of equity participation in the Indian company
Compliance requirements under Companies Act	Registration and periodical filing of accounts/other documents required	Registration and periodical filing of accounts/other documents required	Compliance needed with substantial higher statutory compliance and filing requirements

Particulars	Liasion office	Project office/ Branch office	Subsidiary/Joint venture
Compliance requirements under foreign exchange management regulations	Required to file an annual compliance certificate (from auditors in India) with RBI	Required to file an annual activity/ compliance certificate (from auditors in India) with RBI	Required to file periodic and annual filings relating to receipt of capital and issue of shares to foreign investors
Compliance requirements under IT Act	Generally, no tax liability, since it cannot carry out any commercial or income earning activities May be advisable to file an IT return	Company obliged to pay tax on income earned and required to file returns of income in India No further tax on repatriation of profits, which are permissible in both cases, required	Liable to be taxed on global income on a net basis Dividend declared freely remittable but subject to distribution tax of 16.995% on dividends declared/distributed/ paid, pursuant to which dividend is tax free for all shareholders – limited inter-corporate dividend setoff applicable
Permanent Establishment (PE)	LOs generally not having PE/taxable presence under Double Taxation Avoidance Agreements (DTAA) due to limited scope of activities in India	Generally constituting a PE and being a taxable presence under DTAA and domestic IT provisions	An independent taxable entity and not a PE of the foreign company unless it is subject to the provisions of the DTAA

Chapter E

Funding of Indian businesses

This section discusses the various options through which a foreign corporation can fund its Indian subsidiary.

E.1 Equity share capital

Issuing equity shares is the conventional means of funding a local Indian subsidiary.

The amount of equity capital a company can issue is limited by the authorized capital specified in its Memorandum of Association. A company can increase its authorized capital only if permitted by its Articles of Association.

Equity capital can be repatriated on liquidation or on transfer of shares.

E.2 Preference share capital

Another way to invest in India is through the issue of preference share capital. Foreign investments through convertible preference shares, which are mandatorily convertible into equity shares, are treated as FDI. Preference shares that are not mandatorily convertible into equity shares are construed as ECBs and hence do not need to conform to ECB guidelines. The following guidelines are relevant:

- According to Indian Company Law, preference shares have to be redeemed within a period of 20 years, and issue of preference shares is permissible only as a rupee denominated instrument.
- The dividend rate should not exceed the limit prescribed by the MoF (currently fixed at 300 basis points above State Bank of India's prime lending rate).

- Equity shares, mandatorily convertible preference shares and mandatorily convertible debentures need to be issued by the Indian company within 180 days of receipt of funds from the foreign investor.

E.3 Debentures and borrowings

Companies can raise funds by issuing debentures, bonds and other debt securities. They can also raise funds by accepting deposits from the public. Debentures can be redeemable; perpetual, bearer or registered; and convertible or non-convertible. Foreign investments through convertible debentures, which are convertible into equity shares, are treated as FDI. Debentures that are not mandatorily convertible into equity shares are construed as ECBs and hence need to conform to ECB guidelines.

E.3.1 ECBs

Debts raised in foreign currency (from internationally recognized sources) fall within the purview of the definition of ECBs, and are regulated by the MoF and RBI. ECB can be accessed under two routes, the automatic route and the approval route.

ECBs up to USD500 million for rupee and foreign currency expenditure fall under the ambit of the automatic route, subject to compliance with ECB policy. ECBs can be availed by corporate organizations registered under the Companies Act, except in the case of financial intermediaries, and must be availed from internationally recognised sources such as international banks and capital markets, multilateral financial institutions, export credit agencies, suppliers of equipment, foreign collaborators and foreign equity holders (subject to certain minimum equity holding requirements in the borrower's company). ECB proceeds are subject to end-use restriction and can under no circumstances be used for on-lending, investment in a capital market, acquiring a company, working capital, general corporate purposes, repayment of existing rupee loan and real estate (excluding development of integrated township as defined by Ministry of Commerce and Industry, DIPP and SIA, subject to prescribed conditions). In this context, redeemable preference shares/optionally convertible shares, partially convertible preference shares and debentures are considered as ECBs, and hence also need to conform with ECB guidelines.

The minimum average maturity period of the loan will be three years for a loan amount of up to USD20 million, and for ECBs above USD20 million, the minimum average maturity period will be five years.

The following are the all-in-cost ceilings for ECBs:

Average maturity period	All-in-cost ceiling over six months London Interbank Offered Rate (LIBOR)
Three years and up to five years	300 basis points
More than five years	500 basis points

Proceeds from ECBs are allowed to be retained outside India or bring into rupee accounts in India pending their utilization. An empowered committee of RBI decides all the cases outside the purview of the automatic route.

E.4 ADRs/GDRs/FCCBs

Qualifying Indian companies are allowed to raise equity capital overseas through the issue of ADRs/GDRs/FCCBs. Where the issue of ADRs, GDRs or FCCBs by a company is likely to increase the permissible investment limits of FDI under the automatic route, or where such an investment is made in the form of a project that requires government approval, the company must seek the approval of the FIPB.

Investments through the mediums mentioned above may be made through the automatic route or the approval route according to the relevant sectoral policy/guidelines.

Chapter F

Repatriation of funds

F.1 Repatriation of capital

Foreign capital invested in India is generally allowed to be repatriated along with capital appreciation, if any, after payment of taxes due on them, provided the investment was made on a repatriation basis.

F.1.1 Royalties and technical know-how

Indian companies that enter technology transfer agreements with foreign companies are permitted to remit payments for know-how and royalty under the terms of the foreign collaboration agreement. According to FDI guidelines, an Indian company can pay royalty (for the use of the trademarks and brand name of the foreign collaborator without technology transfer) under the automatic route (with no prior approval) to the extent of 2% on export sales and 1% on domestic sales. Further, in the case of technology transfer, an Indian company can pay royalty up to 5% on domestic sales and 8% on export sales or a lump sum payment of up to USD2 million.

Technical service fees

Companies can hire the services of foreign technicians and make remittances for technical service fees, subject to certain conditions, regardless of the duration of the engagement of a foreign national in any calendar year.

F.2 Dividends

Profits and dividends earned in India are repatriable after payment of taxes due on them. Permission of RBI is not required to effect remittances, subject to compliance with certain specified conditions.

F.2.1 Consultancy services and pre-incorporation expenses

Consultancy services

Remittance of up to USD1 million per project for any consultancy service procured from outside India can be made without prior RBI approval. Further, for entities in the power, telecommunications, railways, roads including bridges, sea ports and airports, industrial parks, urban infrastructure (water supply, sanitation and sewage projects) sector, this limit is extended to USD10 million per project.

Pre-incorporation expenses

Remittance on the reimbursement of pre-incorporation expenses incurred in India amounting to up to 5% of the investment brought into the country or USD100,000, whichever is higher, on the basis of certification from statutory auditors is permitted without RBI approval.

F.3 Other remittances

No prior approval is required to remit profits earned by Indian branches of companies (other than banks) incorporated outside India to their Head Offices outside the country. Remittances from the winding-up proceeds of a branch of a foreign company in India are permitted, subject to RBI's approval. In addition, sundry remittances are allowed for certain items, including gifts, repair charges for imported machinery, maintenance and legal expenses, subject to prescribed limits.

Chapter G

Forms of enterprise

G.1 Sole proprietorship

Sole proprietorship is the oldest and most common forms of business. It is a one-man organization where a single individual owns, manages and controls the whole business. Sole proprietorship has the following features:

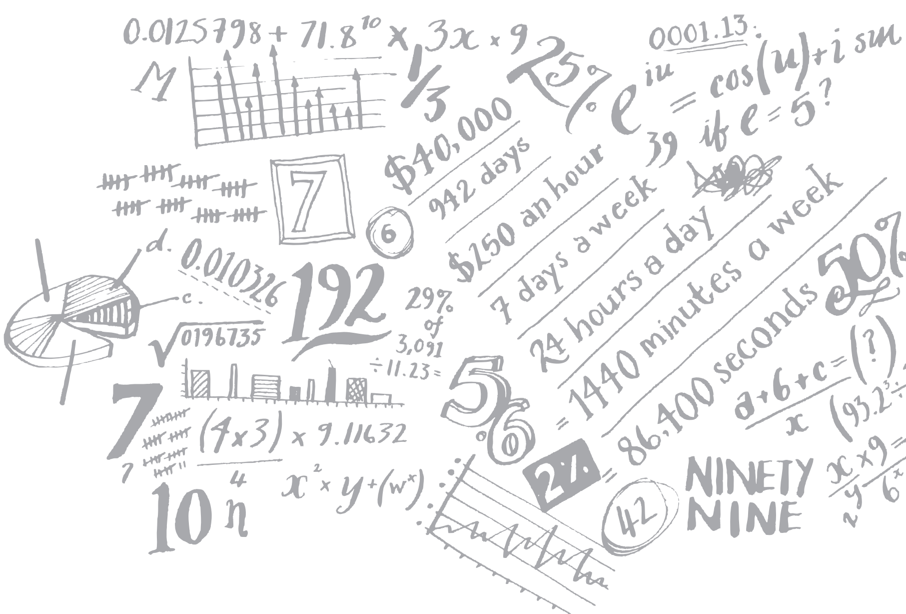
- There is ease of formation because it does not require elaborate legal formalities. There is no formal agreement required since it is a one-man show. In addition, it is not necessary to register such a firm. However, the owner may be required to obtain a license from the local administration that is specific to the line of business.
- The owner has complete control over all the aspects of the business and takes all the decisions although he/she may hire employees/support staff for assistance in day-to-day activities.
- Profit or loss from the operation is borne solely by the proprietor.
- There is no legal existence separate from the owner of the business.
- The liability of the proprietor is unlimited, i.e., it extends beyond the capital invested.

G.2 Partnerships

A partnership is defined as a relation between two or more persons who have agreed to share the profits of a business carried on by them or any of them acting for all. The owners of a partnership business are individually known as partners and collectively as a firm. Its main features include the following:

- A partnership is easy to form as no cumbersome legal formalities are required — registration is also not essential. However, if the firm is not registered, it is deprived of certain legal benefits. The Registrar of Firms is responsible for registering partnership firms.
- The minimum number of partners in a partnership must be 2, while the maximum number can be 10 in the case of banking and 20 in all other types of businesses. Further, specific regulatory approvals may be required for partnerships engaged in banking operations.
- The firm has no separate legal existence of its own, i.e., the firm and the partners are one in the eyes of the law.
- In the absence of any agreement to the contrary, all the partners have a right to participate in the activities of the business.

- Ownership of property usually carries with it the right of management. Every partner, therefore, has a right to share in the management of the business.
- The liability of the partners is unlimited. Legally, the partners are said to be jointly and severally liable for the liabilities of the firm. This means that if the assets and property of the firm are insufficient to meet its debts, the creditors can recover their loans from the personal property of the individual partners.
- There are restrictions on transfer of interest, i.e., none of the partners can transfer his/her interest in the firm to any other person (except to the existing partners) without the unanimous consent of all the partners.
- The firm has a limited span of life, i.e., legally the firm must be dissolved on the retirement, bankruptcy or death of any partner or in the event one of the partners becomes insane.



G.3 Limited Liability Partnership (LLP)

The government has passed the LLP Act, 2008 in January 2009. This Act proposes LLP as a new corporate form of business to provide an alternative to the traditional partnership business, with unlimited personal liability on one hand, and the statute-based governance structure of the limited liability company on the other, for businesses to organize and operate in a flexible, innovative and efficient manner.

The key features of the LLP Act, 2008 are as follows:

- LLP is an alternative corporate business vehicle that aims to provide the benefits of limited liability to a company but allows its members the flexibility of organizing their internal management on the basis of a mutually arrived at agreement, as in the case in a partnership firm.
- LLP is a body corporate and legal entity, which has perpetual succession and is separate from its partners. The liability of the partners is limited to their agreed contribution to the LLP. Further, the concept of joint liability is done away with as no partner is liable on account of the independent or unauthorized actions of the other partners.
- The LLP Act also has provisions pertaining to the maintenance of annual accounts, corporate actions (such as mergers), winding up, etc.
- LLP Rules, 2009 have also come into force. These rules inter alia comprise provisions and procedures pertaining to incorporation, financial disclosures, conversion into an LLP, foreign LLPs, compromise and arrangement or reconstruction of LLPs.

Chapter H

Companies

Companies incorporated in India and foreign corporations with a presence in India are regulated by the provisions of the Companies Act. The Registrar of Companies (RoC) and the Company Law Board (CLB), both working under the Ministry of Company Affairs (MCA), have been entrusted with the responsibility of ensuring compliance with the provisions of the Companies Act. An amendment was passed under the Companies Act, through which it is proposed to set up a National Company Law Tribunal (NCLT) to take over the functions hitherto performed by the CLB as well as to discharge various other functions under the Companies Act.

H.1 Types of companies

Companies in India may be broadly classified as public and private companies. A company can be registered with its liability as limited or unlimited. In the former case, the personal liability of the members is limited to the amount unpaid on their shares, while in the latter case their personal liability is unlimited by a pre-decided nominated amount. A company can also be registered as a guarantee company.

A company established for a charitable purpose is allowed to be formed under the provisions of Section 25 of the Companies Act. The profit generated from the activities of such a corporation is not allowed to be distributed to its shareholders, but must be used for the purpose for which it was established.

Private companies

A private company incorporated under the Companies Act has the following characteristics and is therefore popular in the case of small and medium-sized businesses.

- In a private company, the right to transfer shares is restricted.
- The maximum number of shareholders is limited to 50.
- No offer can be made to the public to subscribe to its shares and debentures.
- No invitation or acceptance of deposits from persons other than members, directors or relatives is allowed.

A private company is required to have a minimum paid-up capital of USD2,000 (equivalent to INR0.1 million) with a minimum of two directors and two shareholders.

Public companies

A public company is defined as one that is not a private company. A subsidiary of a public company is also treated as a public company. A public company is required to have a minimum paid-up capital of USD10,000 (equivalent to INR 0.5 million) with a minimum of seven members and three directors.

Note: There are certain requirements with regard to the name of an Indian subsidiary. In the event the subsidiary's name contains the word "India" within its name, the minimum authorized capital needs to be USD10,000 (equivalent to INR0.5 million). Similarly, there are certain restrictions for some other specific names used to incorporate an Indian subsidiary.

A comparative analysis of private and public companies

S. no.	Particulars	Private company	Public company
1.	Minimum number of shareholders	2	7
2.	Maximum number of shareholders	50	Unlimited
3.	Minimum number of directors	2	3
4.	Maximum number of directors	7	12 (can be increased with government's approval)
5.	Minimum paid-up capital requirement in general	INR100,000	INR500,000
6	Managerial remuneration	Payable without Central Government approval	Approval of Central Government required if remuneration is beyond the limits prescribed under the Act

H.1.1 Share capital

The Companies Act, 1956 permits companies to issue two kinds of shares to its shareholders: equity shares (common stock) and preference shares (preferred stock).

Capital issued by public listed companies needs to comply with the guidelines issued by SEBI, a body that regulates companies that have a public interest and are functioning in Indian stock markets.

H.1.2 Board of Directors, Directors

Board of Directors

The management of a company is entrusted to its Board of Directors (Board). The board acts on behalf of its shareholders and has an overall responsibility for the company's business activities. It acts on behalf of the shareholders for the company's day-to-day operations and seeks the confirmation/approval of the shareholders on major decisions. However, shareholders can restrict the powers of the board by passing specific resolutions. The board may also delegate its powers to the committee of directors or managing directors by passing board resolutions to this effect.

Directors

A company can appoint Executive, Non-Executive and Independent Directors. An Executive Director can be a Managing Director or a Whole Time Director.

Whole time/Managing directors

- Every public or private company which is a subsidiary of a public company with a paid-up share capital of INR50 million is required to appoint a managing director or whole time director. The Companies Act prescribes certain conditions that need to be fulfilled for the appointment of a managing director or a whole time director. In the event the conditions are not adhered to, the company has an option to seek the approval of the Central Government.

  There is no such requirement in the case of a private limited company.

Independent directors/Non-Executive directors

The government has introduced the concept of independent directors for public listed companies. The limits prescribed for these independent directors ranges from half to one-third, depending on whether the company has an Executive Chairman. The concept of independent directors has been enabled to create an external control on the operations of a company and safeguard the interest of the public.

H.1.3 Audit committee, DIN, meetings and e-Filling

Audit committee

Every public company with a paid-up capital of INR50 million or more should have an audit committee to ensure the integrity of the company's financial management. Other than the management's nominees, a company's auditor also needs to be present during committee meetings.

Director Identification Number (DIN)

DIN is a unique identification number allotted to an existing director of a company or to an individual who is to be appointed as a director in the organization. DIN is now mandatory in the case of any individual, who is an existing director of a company or is to be appointed on the board of a company as director.

The process of allotment of DIN has been simplified by the Ministry of Corporate Affairs and can be performed online, followed by the filing of manual copies within the specified days and paying a nominal fee.

Meetings

The Companies Act, 1956, requires companies to hold meetings at regular intervals and pass resolutions, ordinary or special, according to requirements. The company is required to hold a minimum of four board meetings in a calendar year and at least one shareholders' meeting as an Annual General Meeting (AGM). Any specific shareholder meeting is known as an extraordinary general meeting.

e-Filing and digital signature

The MCA has amended the provisions of filing documents with the RoC and now accepts filings through electronic media. It also provides authentication in the forms by authorized signatories using digital signatures to affix their signatures, issued by authorized agents and registered with the Ministry. This process has eliminated the need for manual filings and also reduced the paper load in RoC offices.

H.2 Financial reporting and auditing

The Institute of Chartered Accountants of India (ICAI) issues accounting standards that are to be followed by all entities engaged in commercial, industrial or business activities. The Government of India communicates the accounting standards issued by the ICAI under the Companies (Accounting Standards) Rules, with a view to provide legal status to accounting standards. Till date, the ICAI has issued 32 accounting standards of which one, AS 8 Accounting for Research and Development, has already been withdrawn. Of the remaining 31 accounting standards, 28 have been notified under the Companies (accounting standards) Rules and are mandatory.

ICAI also issues guidance notes as well as auditing and assurance standards, which are primarily designed to guide auditors on matters during the course of their professional work. In addition, certain statutes and regulatory bodies also prescribe accounting treatments that need to be complied with by the respective entities. For e.g.,, Schedule VI to the Companies Act includes requirements relating to the presentation of financial statements by companies. Similarly, RBI has issued various circulars that deal with the specific aspects of accounting by banks.

Statutes/Bodies governing reporting requirements

The ICAI, the National Advisory Committee on Accounting Standards (NACAS), SEBI, the Companies Act and the IT Act primarily govern the financial reporting requirements of companies in India. In addition, the Central Government, through special Acts and orders, also governs financial reporting requirements. The ICAI has clarified in the Preface to the Statements of Accounting Standards that if it is found that a particular accounting standard is not in conformity with the law, the provisions of the said law will prevail and the financial statements will need to be prepared in conformity with the law.

H.2.1 Sources of accounting standards and convergence with IFRS

India's accounting standards have been sourced from International Accounting Standards (IAS), now renamed International Financial Reporting Standards (IFRS). However, it should be noted that there are several differences between Indian accounting standards and IFRS.

With a view to enable Indian entities to present IFRS-compliant financial statements, the ICAI and the MCA as well as the Government of India, have announced their commitment to achieving complete convergence with IFRS for accounting periods commencing on or after 1 April 2011. ICAI is taking various steps to ensure that IFRS is effectively adopted from 1 April 2011. To ensure smooth transition to IFRS in India, the MCA has recently set up a high-powered group comprising various stakeholders such as NACAS, SEBI, RBI, IRDA, ICAI, IBA and CFOs from the industry.

To give sufficient time to listed entities to be prepared for IFRS, SEBI is also considering whether all or only listed entities with significant foreign operations should be given the option for voluntary and early adoption of IFRS for consolidated financial statements (CFS).

H.2.2 Significant fundamental concepts

Accounting methodology

The fundamental accounting assumptions of efficiently operating businesses and the consistency and accrual of income and expenses need not be disclosed in financial statements. Departures from these basic concepts, however, must be disclosed.

All significant accounting policies should be disclosed in one separate statement or schedule to financial statements.

Inflation accounting is not used in India; accounts are prepared by using traditional cost accounting conventions.

Change in accounting policy

An entity may change an accounting policy to comply with a statute or accounting standard, or if it is felt that the change would result in a more appropriate presentation of the financial statements of the entity. The new policy should be followed consistently. A description of the change and the reasons for it should be disclosed in the financial statements during the year of the change.

H.2.3 Disclosure, reporting and filing requirements

Disclosure requirements

General requirements: Financial statements should consist of the following:

- Balance sheet
- Profit and loss account
- Notes to the financial statement
- Auditor's report
- Cash-flow statement (not required for small and medium-sized entities)

The balance sheet and the profit and loss account should provide all the disclosures required to provide a true and fair view of the entity's financial position and the results of its operations.

Companies are also required to disclose their basic and diluted earnings per share along with their with the accounting policy and method of computation. However, organizations classified as small and medium-sized enterprises are not required to disclose their diluted earning per share.

Financial statements must be signed and dated by the secretary, if any, and by at least two directors, including a managing director, if any, apart from the statutory auditor.

Directors' report: The directors' report must accompany each set of financial statements and must contain certain prescribed information, including a separate section on corporate governance with a detailed compliance report on corporate governance (for listed companies). Non-compliance with any mandatory requirement with reasons thereof, and the extent to which the non-mandatory requirements have been adopted, should be specifically highlighted.

Auditors' report: The auditors' report must include an opinion on the financial statements of the company and must state whether the company and (its branches) have maintained its books of account as required by law, and whether these books agree with its balance sheet and profit and loss account.

In addition to the above, the auditors are also required to report on matters stated in the Companies (auditor's report) Order, 2003 issued by the Central Government, which includes inter alia reporting on various specific aspects of internal control, inventory valuation, payment of statutory dues, description of contingent/contested liabilities or fraudulent transactions by or on the company and utilization of long-term/short-term funds.

Interim financial reporting requirement of listed entities

Quarterly financial statement: Each listed entity is required to provide its unaudited financial results on a quarterly basis, within one month from the end of a quarter, in the specified format, announce this in the newspapers and subject the results to a limited review by its statutory auditors.

If the sum total of the first, second, third, and fourth quarterly results, with respect to any item provided in the format, varies by 10% as compared to the audited results for the full year, the entity must explain the reasons to the stock exchange.

Secretarial audit: Issuer companies are to subject themselves to a secretarial audit that is to be undertaken by a qualified chartered accountant or a company secretary for the purpose of reconciliation of the total admitted capital with the depositories and the total issued and listed capital.

The issuer companies are to submit the audit report on a quarterly basis to the stock exchange/s where they are listed. Any difference observed in the admitted, issued and listed capital shall immediately be brought to the notice of SEBI and both the depositories by the stock exchanges.

Annual reporting requirements

Reporting: Companies are required to comply with various reporting requirements, which are higher for public companies than for private organizations. Significant documents that need to be filed include the annual return, balance sheet, profit and loss account, as well as the auditor's and directors' reports and charges. The formats of the balance sheet and the profit and loss account are prescribed by the Companies Act.

Annual financial statements must be sent to all shareholders and debentures holders at least 21 days before the AGM. Listed companies must send annual financial statements to their stock exchange. In addition, they need to publish their quarterly financial statements.

Dividend payment: Companies with shares are allowed to pay dividends only out of their profits after providing for depreciation on fixed assets in the manner prescribed and certain minimum amounts have been transferred to the company's reserves. Further, payment of dividends is permitted from the company's accumulated reserves, subject to its compliance with certain prescribed rules.

Dividends can only be recommended by the Board of Directors and require shareholder approval — dividends are declared in percentage terms and can be declared more than once a year.

Filing requirements

After the annual financial statements have been presented at the AGM, three certified copies must be filed with the Registrar of Companies within 30 days of their adoption by the shareholders.

Requirement for different industries

The government requires certain manufacturers to maintain their cost accounts and may order an audit by a qualified cost auditor to conduct this procedure.

Banking, electricity and insurance companies are governed by special Acts apart from the Companies Act.

Audit requirements

All companies, banks, and financial institutions must have their accounts audited by an auditor who is a practicing member of ICAI. The branches of a company also need to be audited.

The first auditor of the company is usually appointed by its directors. The shareholders appoint subsequent auditors at every AGM and fix their remuneration. The Companies Act, 1956 sets out the matters on which an auditor has to report.

All companies with gross revenues in excess of USD0.08 million must get their accounts audited under the IT Act, 1961. The Companies Act, 1956 also grants the government the power to order other audits, including cost audits and investigations. In addition, every listed company or company with paid-up capital and reserves exceeding USD0.10 million at the commencement of the FY, or average annual sales above USD1 million for three consecutive FYs immediately preceding the relevant FY, is required to have an appropriate internal audit system.

VAT audit

VAT legislation requires a VAT audit certificate/report issued by a chartered accountant in a prescribed format. The format for each state is different, but generally has the same requirements. The due date for signing the VAT audit report/certificate varies from state to state and ranges between the months of September and December.

Generally, VAT audit is applicable to all dealers who are liable to pay VAT provided their turnover of either sale or purchase exceeds a specified limit. Further, VAT audit is also mandatory for specified categories of dealers, as prescribed by state legislation.

Chapter I

Economic laws and regulations

Key economic laws

- Indian Contract Act, 1872
- Copyright Act, 1957
- Trademarks Act, 1999
- Geographical Indications of Goods Act, 1999
- Indian Patents Act, 1970
- Designs Act, 2000
- The Industrial Disputes Act, 1947
- The Trade Union Act, 1926
- The Plantation Labour Act, 1951
- The Payment of Bonus Act, 1965
- The Payment of Gratuity Act, 1972
- The Workmen's Compensation Act, 1923
- The Industrial Employment (Standing Orders) Act, 1946
- The Minimum Wages Act, 1948
- The Payment of Wages Act, 1936
- The Factories Act, 1948
- The Employees Provident Fund and Miscellaneous Provisions Act, 1952
- The Maternity Benefit Act, 1961
- Employees State Insurance Act, 1948
- The Contract Labour (Regulation and Abolition) Act, 1970
- The Monopolies and Restrictive Trade Practices Act, 1969
- The Competition Act, 2002
- The Consumer Protection Act, 1986
- The Negotiable Instruments Act, 1881
- The Sale of Goods Act, 1930
- The Arbitration and Conciliation Act, 1996

I.1 Indian Contract Act, 1872 (ICA)

The Indian law that governs contracts is codified as the ICA, which encapsulates provisions governing the entire life of a contract from its formation to its implementation and conclusion. ICA also provides remedies for breach of contract. Through subsequent amendments, the provisions relating to certain specific forms of contract, including contract of partnership, contract of carriage and contract for sale of goods, have been removed from the ICA and been enacted in a separate legislation.

I.2 Protection of intellectual property rights

Laws relating to intellectual property are still in the process of transition in India and are becoming harmonized with corresponding laws in developed countries.

As a signatory to the GATT and trade-related aspects of intellectual property rights (TRIPS) agreements, and in its capacity of being a member of WTO, India is required to lay down minimum norms and standards with respect to the following areas of intellectual property:

- Copyrights and other related rights
- Trademarks
- Geographical indications
- Patents
- Industrial designs

I.2.1 Copyrights

India's copyright law, laid down in the Indian Copyright Act, 1957 and amended by the Copyright (Amendment) Act, 1999, fully reflects the Berne Convention on Copyrights to which India is a party.

Additionally, India is also party to the Geneva Convention for the Protection of Rights of Producers of Phonograms and to the Universal Copyright Convention. It is also an active member of the World Intellectual Property Organisation (WIPO) at Geneva.

According to the Copyright Act, 1957, copyright subsists in original literary, dramatic, musical and artistic work, a cinematographic film or a sound recording.

India's copyright law has been amended from time to time to keep pace with changing requirements. The amendments made to its copyright laws have resulted in comprehensive changes and brought them in line with new developments in satellite broadcasting, computer software and digital technology.

Several measures have been adopted to strengthen and streamline the enforcement of copyright protection. These include setting up a Copyright Enforcement Advisory Council, conducting training programs for enforcement officers and setting up special police cells to deal with cases related to infringement of copyright.

I.2.2 Trademarks

The Trade Marks Act, 1999 (TM Act) and the Trade Marks Rules, 2002 governs the law relating to trademarks in India. The TM Act provides for the registration of trademarks for services and goods, including collective marks, and for the assignment and transmission of trademarks. Under the

TM Act, a trademark is a mark that can be represented graphically and can distinguish the goods or services of one person from those of others.

There is a provision for an appellate board for speedy disposal of appeals, rectification of applications and simplification of procedures to register a user. This provision also enables extension of the scope of the permitted use of trademarks as well as prohibition on the use of another entity's trademarks as a part of a corporate name or the name of a business facility.

The TM Act also provides for the incorporation of other provisions, for instance, the amendment in the definition of "marks", provision for filing a single application for registration in more than one class, a 10 year period for the registration and renewal of trademarks as well as for making the trademarks offence cognisable. Trademarks Rules were implemented on 26 February 2002.

The Controller General of Patents, Trademarks and Designs has been appointed by the government to administer the various provisions of the Trademarks Act. According to the provisions of the TM Act, and with the object of fulfilling the obligations of WTO agreements and the other treaties entered by India, the Act grants the holder of a foreign trademark the right to register a trademark in India.

I.2.3 Geographical Indications of Goods (Registration and Protection) Act, 1999

The Geographical Indications of Goods (Registration and Protection) Act, 1999 (GI Act) was implemented in December 1999 and the Geographical Indications of Goods (Registration and Protection) Rules under the GI Act was put in effect in March 2002.

The GI Act has been introduced to ensure compliance with the TRIPS regime. It seeks to provide for the registration and enhanced protection of geographical indications related to goods in India, is designed to protect the use of such geographical indications from infringement by others, and to protect consumers from deception. The Central Government has established the Geographical Indications Registry, with all-India jurisdiction, at Chennai in Tamil Nadu, where right-holders can register their geographical indications.

I.2.4 Patents

The Indian Patents Act, 1970 provides for the grant, revocation, registration, license, assignment and infringement of patents in India. Any infringement of a patent is punishable under the terms of this Act.

The Indian Patents Act, 1970 and the Patent Rules, 1972 were amended by the Patents (Amendment) Act and Rules, 1999. The main objective of these amendments was to grant product patents for inventions related to drugs and medicines and to outline the procedure to deal with claims made in applications filed on or after 1 January 1995. The Indian Patents Act, 1970 was amended through the amendment of 2005, resulting in India recognizing products as well as process as patentable property.

It is pertinent to note that India also recognizes the concept of "compulsory licensing" of patents under which the Controller of Patents can permit an interested party to commercially exploit the patent after a period of three years from having been granted.

To harmonize the law pertaining to patents and other forms of intellectual property, and to fulfil its obligations under the WTO agreement, India has become an active party to the International Convention for the Protection of Industrial Property (Paris Convention) and the GATT and TRIPS agreements.

I.2.5 Designs Act, 2000

The Designs Act, 2000, passed to provide recognition to obligations under WTO agreements, encourages and protects those who produce new and original designs and seeks to enhance industrial development and competitive progress. The purpose of the Designs Act and the Design Rules, 2001 is to protect novel designs formulated with the object of applying them to specific articles, to be manufactured and marketed commercially for a specific period of time, from the date of registration.

Under the Designs Act, designs are protected by two legal rights, registered designs and artistic copyright. Design registration in India gives the owner a monopoly on his/her product, i.e., the right (for a limited period) to stop others from making, using or selling the product without the owner's permission. This is in addition to any design right or copyright protection that may exist automatically in the design.

The Controller General of Patents, Designs and Trademarks, appointed under the Trade and Merchandise Marks Act, 1958, is the Controller of Designs and is responsible for administering the various provisions of the Act.

I.3 Labor laws

India is a member of the International Labour Organisation and complies with the conventions it has ratified. It has enacted comprehensive legislations to provide a good working environment for labor and protect their interests.

In the following paragraphs, the key labor laws applicable to employers and employees in India have been outlined.

I.3.1 Industrial Disputes Act, 1947

The Industrial Disputes Act, 1947 (IDA) is the main legislation in India that provides for the investigation and settlement of industrial disputes. Disputes or differences between employers and employers, employers and employees or employees and employees, which relate to the employment or non-employment, the terms of employment or conditions of labor of any person have been defined as industrial disputes. IDA is administered by the Ministry of Labour and Employment through its Industrial Relations Division.

IDA provides the conditions for laying off, retrenching, discharging or dismissing an employee, circumstances under which an industrial unit can be closed down, situations when a lock-out can be lawfully resorted to and when it can be declared as unlawful. Additionally, IDA prescribes penalties for any person who indulges in unfair labor practices.

I.3.2 Trade Unions Act

The Trade Unions Act, 1926 (TUA) provides for the registration of trade unions of employers and workers, and is administered by state governments. It confers legal and corporate status on registered trade unions.

TUA was amended in 2001, bringing about some critical changes in the original legislation. Pursuant to the amendment, no trade union of workmen can be registered unless at least 10% or 100, whichever is less, subject to a minimum of seven workmen engaged or employed in the establishment or industry with which it is connected, are the members of such a trade union on the date of making an application for registration. Additionally, to promote the civil and political interest of its members, unions are now authorized to set up separate political funds.

I.3.3 Plantation Labour Act, 1951

The Plantation Labour Act, 1951 (PLA) provides for the welfare of plantation labor and regulates the condition of work in plantations. PLA is administered by state governments and is applied to any land used as plantations which measures five hectares or more in which 15 or more persons are working. The state governments are, however, free to declare any plantation land less than five hectares or with less than 15 persons working on it to be covered by the PLA.

I.3.4 Payment of Bonus Act, 1965

The Payment of Bonus Act, 1965 (PBA) provides for the payment of bonus to persons employed in certain establishments on the basis of profits or on production or productivity, as well as for matters connected therewith. PBA is applicable to every factory and other establishments in which 20 or more persons are employed on any day during an accounting year, excluding some categories of employees enumerated therein. PBA mandates payment of bonus to every employee in an accounting year, in accordance with the provisions of this legislation, provided that he or she has worked in the establishment for not less than 30 days.

PBA provides for the appointment of inspectors by the government by notification. These inspectors can ask the employer to furnish any information that may be considered necessary by them. They can also ask the employer to submit books and registers and other documents related to the employment of persons or relating to the payment of salaries, wages or bonus.

Penalties are prescribed for contravention of the provisions of PBA rules or failure to comply with the directions or requisitions made under PBA.

I.3.5 Payment of Gratuity Act, 1972

The Payment of Gratuity Act, 1972 (PGA) provides a scheme for the payment of gratuity to all employees earning wages to do any skilled, semi-skilled, unskilled, manual, supervisory, technical or clerical work, whether the terms of such employment are express or implied, and whether or not such employees are employed in a managerial or administrative capacity.

Gratuity is payable to an employee on his/her retirement/ resignation, termination of service on account of death or disablement due to accident or illness. Gratuity is payable at the rate of 15 days' wages for every completed year of service, or part thereof, in excess of six months. There is a wage ceiling for coverage under PGA.

PGA lays down conditions under which an employer can deny payment or forfeit the gratuity of an employee. It also prescribes penalties and prosecutions for contravention of the provisions of PGA.

I.3.6 Workmen's Compensation Act, 1923

The object of the Workmen's Compensation Act, 1923 (WCA) is to compensate an employee or his/her survivors in the event of industrial accidents or occupational diseases, resulting in disablement or death during the course of the person's employment.

The WCA also prescribes conditions under which compensation may be denied to an employee.

I.3.7 Industrial Employment (Standing Orders) Act, 1946

The Industrial Employment (Standing Orders) Act, 1946 (IEA) requires employers in industrial establishments to clearly define the conditions of employment to their workers by issuing standing orders or implementing service rules related to matters set out in the schedule of IEA. The standing orders are certified by the certifying officer appointed under IEA.

The Industrial Employment (Standing Orders) Central Rules, 1946 provides model standing orders with respect to the classification of workmen, holidays, shifts, payment of wages, leave, termination of service, etc.

I.3.8 Minimum Wages Act, 1948

The Minimum Wages Act, 1948 (MWA) seeks to determine the minimum rates of wages in certain employments, a list of which is contained in the legislation. The MWA applies to any person who is employed for hire or reward to do any work in a scheduled employment, and includes an outdoor worker to whom any articles or materials are given for doing work either at home or at any other premises.

I.3.9 Payment of Wages Act, 1936

The Payment of Wages Act, 1936 (PWA) seeks to regulate the payment of wages to certain classes of employees in an industry. It seeks to ensure that the wages payable to the employees covered under the PWA are disbursed by the employers within the prescribed time limit without any unauthorized deductions.

The PWA lays down that a wage period exceeding one month should not be fixed and payment of wages must be made on a specific day after the last day of the wage period. All wages must be paid in current legal tender, but it can also be paid by cheque or credited to the bank account of the employed persons. The main beneficiaries of the PWA are, however, those who earn wages below the prescribed limit per month.

Under the PWA, defaulting employers are advised to pay full wages in time, and in the event of non-adherence to this advice, there are provisions of prosecutions as well.

I.3.10 Factories Act, 1948

The Factories Act, 1948 (FA) extends to the whole of India, and it is the principal legislation that governs the health, safety and welfare of factory workers. Many amendments have been made with the aim of keeping the FA in tune with developments in the field of health and safety. However, it was not until 1987 that the elements of occupational health, safety, as well as the prevention and protection of workers employed in hazardous processes, were fully incorporated in the FA.

The FA also comprises regulations for the functioning of factories and detailed procedures related to the inspection, registration and licensing of factories.

The FA is enforced by state governments through their factory inspectors. The Directorate General Factory Advice Service & Labour Institute functions as a technical arm of the Ministry of Labour and Employment to co-ordinate matters relating to the safety, health and welfare of workers in factories with state governments.

I.3.11 Employees Provident Fund and Miscellaneous Provisions Act, 1952

The Employees Provident Fund and Miscellaneous Provisions Act, 1952 (EPFMPA) seeks to ensure the financial security of employees in an establishment by providing a system of compulsory savings. A provident fund, required to be established under the EPFMPA, is a contributory fund created to secure the future of employees after their retirement. Employees are also allowed to withdraw a part of their provident fund before retirement for certain specified purposes.

The EPFMPA is regulated by the Ministry of Labour and Employment, but is administered by a representative body called the Central Board of Trustees, Employees' Provident Fund.

The government has prescribed various penalties for any default, which the employer may make with relation to payments including contributions, arrears, accumulation and administrative charges to the fund and/or also prescribes imprisonment.

The latest amendment of 1 October 2008 has extended the applicability of the EPFMPA and the schemes therein for an additional category of employees, i.e., international workers. mandating the compulsory participation of such employees.

I.3.12 Maternity Benefit Act, 1961

The Maternity Benefit Act, 1961 (MBA) regulates the employment of women in certain establishments for a prescribed period before and after childbirth and provides certain other benefits, including leave, to a woman who has undergone miscarriage, illness arising from pregnancy, and delivery and/or premature birth of a child.

The MBA prescribes penalties for contravention of its provisions by employers.

I.3.13 Employees State Insurance Act, 1948

The Employees State Insurance Act, 1948 (ESI) is another social welfare legislation in India that is jointly administered by the Central Government and state governments. The ESI provides healthcare and cash benefits to employees in the event of sickness, maternity or injury suffered during employment, whether they are working in a factory, establishment or elsewhere, or they are directly employed by the principal employee or through an intermediate agency, if the employment is incidental or in connection with a factory or establishment.

I.3.14 Contract Labour (Regulation and Abolition) Act, 1970

The Contract Labour (Regulation and Abolition) Act, 1970 (CLRA) was promulgated to regulate the employment of contract labor in certain establishments and to provide for its abolition in certain circumstances as well as for matters connected therewith. A workman is deemed to be employed as contract labor when he is hired in connection with the work of an establishment by or through a contractor.

The establishments covered under the CLRA are required to be registered as principal employers with the appropriate authorities. Every contractor is required to obtain a licence and not to undertake or execute any work through contract labour except in accordance with the license issued by the licensing officer.

In addition to the legislations mentioned above, several states have enacted Shops and Establishment Acts, which regulate working hours, prescribe minimum standards of working conditions and make overtime and leave salary payments to workers in certain categories of shops and other establishments.

Recent years have seen many companies successfully using the voluntary retirement scheme in an effort to restructure their operations or to exit from a particular line of business. Retraining schemes for workers have also been used to increase their productivity and competitiveness.

I.4 Anti-trust regulations

In line with global norms and to prevent monopolies from creating restraints on trade or commerce and reducing competition in India, the government has evolved an anti-trust regulatory framework that principally relates to the following legislations:

- The Monopolies and Restrictive Trade Practices Act, 1969, which is in the process of being replaced by the Competition Act, 2002 (No. XII of 2003)
- Certain provisions under the Companies Act, 1956
- The Consumer Protection Act, 1986

I.4.1 Monopolies and Restrictive Trade Practices Act, 1969

The Monopolies and Restrictive Trade Practices Act, 1969 (MRTP Act) governs the activities/practices of all industrial undertakings that are engaged in the production, storage, supply or distribution of articles/goods either directly or indirectly through any of their units or divisions. However, government undertakings do not come under the purview of the MRTP Act. It encompasses within its ambit certain prohibited trade practices such as restrictive trade practices, unfair trade practices and monopolistic trade practice.

The regulatory body under the ambit of the MRTP Act is the Monopolies and Restrictive Trade Practices Commission. The Commission is assisted by the Director General of Investigation and Registration, who is responsible for providing assistance to it in carrying out investigations and maintaining a register of agreements, which are required to be regulated under the Act as well as to carry out proceedings during the enquiry before the Commission.

There are certain provisions in Part IV of the Companies Act, 1956 that regulate the acquisition and transfer of shares of a body corporate owning any undertaking to which the provisions of Part A of Chapter III of the MRTP Act would be applicable. These provisions are aimed at preventing the acquisition or takeover of companies to avoid concentration of economic power. Accordingly, the provisions stipulate that certain types of acquisitions require the prior approval of the Central Government.

The primary objective of the MRTP Act is to curb monopolies and not to promote competition. In light of this, the Indian Government appointed a committee in October 1999 to examine the existing MRTP Act, to remove this deficiency and formulate a modern competition law. Pursuant to the recommendation of this committee, the Competition Act, 2002 was enacted on 13 January 2003 to succeed the MRTP Act.

As of date, no substantive provision of the Competition Act is in force. It will come into force as and when notified by the Central Government. Although the Competition Act provides for the repeal of the MRTP Act, the provision dealing with the repeal is yet to be notified and hence the MRTP Act is still in effect.

I.4.2 The Competition Act, 2002 (Competition Act)

The Competition Act, which will replace the MRTP Act, seeks to achieve the following objectives:

- Promote and sustain competition in markets
- Protect the interest of consumers
- Ensure freedom of trade
- Provide for the establishment of the CCI and Competition

Appellate Tribunals to hear and dispose off appeals against the orders of the CCI and also to adjudicate on the claims of compensation that may arise from the findings of the CCI or the orders of the Appellate Tribunal.

The major provisions of the Competition Act relate to prohibition of anti-competitive agreements and abuse of a dominant position, regulation of combinations, establishment, powers, and the functions and duties of the CCI. The provisions of the Competition Act aiming to provide for the prohibition of anti-competitive agreements, abuse of dominant positions, establishment of the CCI (their duties, powers and functions) and if the Appellate Tribunals to which appeals from the decision of the CCI will be directed have been notified.

I.4.3 Consumer Protection Act

The Consumer Protection Act (CP Act) is a legislation, which has been enacted for the protection of consumer interest. It provides for the establishment of consumer councils and other authorities to settle consumer disputes. Under the terms of the CP Act, an entity that provides any goods or services in India is required to avoid any trade practice that may be classified as "unfair" or "restrictive", as defined under the Act.

The CP Act aims to regulate the activities of a manufacturer or service provider to ensure that the consumer does not suffer due to defective goods and/or deficient services.

The Act includes provisions for district, state and national consumer disputes, redressal forums to adjudicate over claims as well as complaints and disputes.

I.5 Negotiable Instruments Act, 1881

The law related to promissory notes, bills of exchange, cheques and other negotiable instruments is codified in India under the Negotiable Instruments Act, 1881 (NI Act). The main object of the NI Act is to legalize the system by which the instruments contemplated by it could pass from hand to hand through negotiations like in the case of any other goods.

The NI Act provides for the liability of an agent, legal representative, drawer, drawee, maker and acceptor of a bill, an endorser and a holder in due course and surety. Detailed provisions have been made in the Act relating to presentation, payment, interest, discharge from liability, notice of dishonor, noting and protest, reasonable time for payment, acceptance and payment for honor and reference in the event of need, compensation, special rules of evidence, providing for certain presumptions and estoppels, cross cheques, bills in sets, etc.

Additionally, it provides a speedy mechanism in cases when cheques are dishonoured, and criminal and punitive punishment in such cases.

I.6 Sale of Goods Act, 1930

The Sale of Goods Act, 1930 (SG Act) is complementary to the Indian Contract Act, 1872 (ICA). The basic provisions of the ICA also apply to the contract of sale of goods. The basic requirements of a contract include offer and acceptance, legally enforceable agreement, mutual consent, parties competent to contract, free consent, lawful object and considerations that apply to the contract of sale of goods.

In a contract of sale of goods the seller transfers or agrees to transfer the property (ownership) of the goods to the buyer for a price. A sale is an executed contract, i.e., there is a contract as well as a conveyance. In other words, the property of the goods is transferred from the seller to the buyer.

Certain stipulations are essential for the main purpose of a contract of sale of goods. These are the root of the contract and non-fulfilment means loss of the foundation of contract. These are known as conditions. Other stipulations, which are not essential, are known as warranty. These are collateral to the contract of sale of goods. A contract cannot be avoided for breach of warranty, but the aggrieved party can claim damages.

The SG Act requires that goods transferred by the seller to the buyer must be ascertained and it should be an intention of the seller to pass such goods to the buyer. The SG Act also deals with transfer of the title of the goods by a person who is not the owner of the goods.

The Act entrusts various duties and grants certain rights to both the buyer and the seller, e.g., it is the duty of the seller to deliver the goods and of the buyer to accept and pay for them in accordance with the terms of the contract of sale.

If goods are sold and property transferred to the buyer and he/she refuses to pay for them, the only remedy available to the seller is to approach the court. The seller does not have the right to take forceful possession of the goods from the buyer once the property of goods is transferred to him. However, some rights have been given to the buyer.

I.7 Arbitration and Conciliation Act, 1996

The Arbitration and Conciliation Act, 1996 (A&C Act) has been enacted to replace three previous laws dealing with the various aspects of arbitration. This legislation is based on the Model Law on International Commercial Arbitration adopted by the United Nations Commission on International Trade Law (UNCITRAL) in 1985. The A&C Act has been consolidated into one statute, the law relating to domestic arbitration, international commercial arbitration, enforcement of foreign arbitral awards and conciliation. It allows the contracting parties to decide on the venue and procedure of the arbitration proceedings.

The application of the A&C Act is mandatory for all arbitrations that take place in India. Where a party to the dispute, which has been referred for arbitration, is Indian and the venue of arbitration is outside the country, the provision of the A&C Act applies, unless the parties have expressly or impliedly rejected its applicability or the rules that govern such arbitration are contrary to its provisions. Under the mandate of the Act, there is limited scope for an appeal being made to an arbitrator.

Chapter J

Mergers and acquisitions

India is emerging as a vibrant player in the world of Mergers and Acquisitions (M&As). M&As continue to be an important tool for inorganic growth, which is evident from the plethora of deals Indian companies have entered into the recent past.

J.1 Reorganization and mergers

Reorganization of a company by a compromise (sacrifice by shareholders, creditors and others on their claims and entitlements to resurrect the company) or by an arrangement between the company and its shareholders or creditors requires the sanction of the jurisdictional High Court, shareholders, creditors and other regulatory authorities. The power to approve reorganization and mergers has recently been shifted from the High Courts to the National Company Law Tribunal (NCLT). However, the NCLT is still in the process of being formed.

J.2 Acquisitions

Acquisition entails gaining control over the management of another company, typically by acquiring shares carrying voting rights. Thus, in case the shares of the company are closely held by a small number of persons, an acquisition may be effected in agreement with the shareholders. However, where the shares of the company are largely held by the general public, provisions of the Substantial Acquisition of Shares and Takeovers (SEBI) Regulations, 1997 (the Takeover Code) as well as other relevant regulations issued by SEBI need to be complied with.

J.3 Demergers

A demerger is a reorganization tool that is increasingly being used by companies to segregate their core and non-core businesses. Similar to mergers, demergers are also a court-driven process, which require the sanction of jurisdictional High Courts/the NCLT, along with the approval of shareholders, creditors and other regulatory authorities.

J.4 Slump sale

A slump sale involves the transfer of an identified business from one company to another for a lump sum consideration without assigning values to individual assets/liabilities. Unlike a demerger, a slump sale is not a court-driven process and can be achieved through a simple shareholders' resolution and legal agreements.

J.5 Buy-back of shares

The Companies Act permits a company to buy-back its share capital up to a ceiling of 10% of the paid-up equity capital and free reserves, provided this is sanctioned in the company's board meeting. A company may also buy-back 25% of its paid-up capital and free reserves, provided the buy-back is sanctioned by a special resolution of shareholders.

The Companies Act also prescribes certain conditions relating to reserves, as well as a bar on the company issuing further shares of the same class for a period of six months, and debt equity ratios, etc., for a company to be eligible to buy-back shares. The procedure for affecting a buy-back is relatively simple and does not require a court process. Companies listed on a stock exchange in India are subject to the guidelines prescribed by SEBI in this regard.

J.6 Capital reduction

Capital reduction is a court-regulated process whereby a company can pay off its shareholders by cancelling or reducing their capital or cancelling their share capital against accumulated losses.

Capital reduction requires the sanction of the jurisdictional High Court/NCLT and other regulatory authorities. The process also requires the company to obtain the sanction of various parties whose interest is likely to be affected as a result of the capital reduction scheme.

J.7 A comparative study of mergers, demergers, slump sale and acquisitions

Regulations/ provisions	Merger	Demerger	Slump sale	Acquisition
Companies Act	Section 391 – 394 procedure	Section 391 – 394 procedure	Section 293 approval	Section 372A (for acquirer)
IT Act Taxability	Tax neutral[i]	Tax neutral[i]	Not applicable	Taxable
‣ Shareholders	Tax neutral[i]	Tax neutral[i]	Taxable[iii]	Not applicable
‣ Company C/f of losses	Available[i]	Available[i]	Not available	Available[vi]
The Takeover Code (open offer)[ii]	Specific exemption	Specific exemption	May be triggered[iv]	May be triggered[vii]
Exchange control regulations FDI guidelines	Intimation to RBI[v]	Intimation to RBI[v]	Guidelines for issue of shares to be followed[v]	Approval from RBI and FIPB[viii]
Typical time frame	4-5 months	3-4 months	1-2 months	1-2 months

i. Subject to fulfilment of certain prescribed conditions
ii. Only applicable for listed entities
iii. Specific computational methodology prescribed
iv. If shares are issued as a consideration
v. Subject to sectoral caps
vi. In the case of widely held companies – certain conditions to be complied with in the case of closely held companies,
vii. If prescribed limits are exceeded
viii. Subject to sectoral caps and declarations in prescribed form

Chapter K

Individuals

K.1 Visa and registration requirements

K.1.1 Visa on arrival

There is no provision for "Visa on Arrival" in India and no fee is charged for immigration facilities at Indian airports. Foreign passengers should ensure that they have a valid Indian visa before they start on their journey to India, except in the case of nationals of Nepal and Bhutan who do not require a visa to enter India, as well as nationals of Maldives who do not require a visa for entry into the country for a period of up to 90 days. There is a separate visa regime for diplomatic/official passport holders.

K.1.2 Temporary Landing Facility/Permit (TLP/TLF)

There is provision to grant a Temporary Landing Facility (TLF)/Temporary Landing Permit (TLP) to allow the entry of foreigners arriving in emergent situations without an Indian visa, for instance, death or serious illness in the family, on cash payment of USD40. This facility can also be extended to transiting foreigners who have acquired confirmed onward journey tickets within 72 hours. Apart from this, foreign tourists in groups of four or more arriving by air or sea, sponsored by recognized Indian travel agencies, with a pre-drawn-up itinerary can be granted a collective landing permit for a specified period of time. This needs a written request from a travel agency to the Immigration Officer, giving the complete personal and passport details of the group members and undertaking to conduct the group according to the itinerary, with an assurance that no individual will be allowed to drop out from the group at any place. The provisions of TLF/TLP are however not available for nationals of Sri Lanka, Bangladesh, Pakistan, Iran, Afghanistan, Somalia, Nigeria, Ethiopia and Algeria.

K.1.3 Tourist visas

Visitors to India need visas to enter the country unless they are Indian citizens. 10 year visas are only available for US citizens under a bilateral arrangement. Non-resident Indians holding the citizenship of another country are also required to obtain visas before arriving in India unless they hold a PIO card issued by the Indian government. Visas should be obtained from the Indian embassy or consulate in the applicant's home country. Special permits are required to visit the Andaman and Nicobar Islands, Bhutan, Lakshadweep, remote North Eastern states and Sikkim.

Tourist visas are valid for one to six months, usually beginning on the date it was issued and not on the date of entry into India. Tourist visas are usually multiple-entry visas; however, this option should be specifically requested at the time of application.

K.1.4 Business and employment visas and self-employment

Business visas: Multiple-entry business visas for short-term visits are issued to those visiting India on business for a period not exceeding six months. Multiple-entry business visas for long-term visits are issued to individuals visiting India on business for extended periods. This type of visa enables foreign nationals to travel in and out of the country without having to reapply for visas every six months. A letter from the sponsoring organization, indicating the nature of the applicant's business, his/her probable duration of stay, the validity of visa, places and organizations to be visited, as well as a guarantee to meet maintenance expenses should accompany the application.

Employment visas: Employment visas are issued to individuals entering India for the purpose of employment. These multiple-entry visas are valid from one to five years. An employment visa may be obtained in the home country or in the country where the foreigner is currently a resident. An appointment and a contract letter, the applicant's CV and proof that the organization is registered in India are required. The duration of the visa depends on the period of the contract.

Self-employment: Foreign nationals seeking to practice their professions or engage in an occupation, trade or business in India must register with the RBI.

Project visa: Along with an employment visa, the government is considering a "Project Visa" for individuals coming to India to execute special projects. Currently, this visa is at the discussion stage within the government.

Journalist visa: This is given to professional journalists and photographers. Journalists are required to be accredited members of the Press Information Bureau and should be full-time personnel of a newspaper, magazine or journal. (If the professional intends to make a documentary in India, he or she may contact the Press and Information wing in the Embassy/Consulate General of India.)

Other visas: Issued in India include student visas, yoga visas, research visas, missionary visas and conference visas, among others.

K.2 Foreign exchange regulations

Under prevailing foreign-exchange rules, salaries earned locally may be repatriated only by individuals holding employment visas. Foreign nationals who are not permanent residents of India, but are regular employees of Indian firms or companies on a monthly salary, are permitted to remit their salaries (net of retirement plan contributions and Indian taxes) to their home countries for the maintenance of close relatives abroad. The definition of the residential status of individuals under the exchange control law differs from the definition under the IT Act.

An expatriate worker, who is employed by a foreign company, but who is either a resident (but not a permanent resident) or citizen of India employed by a foreign company outside India, may open and maintain a foreign currency account with a foreign bank while assigned to a corporate entity of the foreign company in India. The salary received for services provided in India may be paid into such an employee's account by the foreign company, if the following conditions are satisfied:

- The amount paid into the foreign bank account may not exceed 75% of the person's salary. This implies that 25% of the salary must be received in India. An employee who wishes to receive more than 75% outside India must file a request for approval to do so with the RBI.
- The remainder of the salary must be paid in rupees in India.
- Income tax must be paid on the entire salary amount in India, regardless of the bank account into which the salary is paid.

India regulates holding, transferring, borrowing or lending of foreign exchange or the acquisition of foreign security or immovable property located outside India by persons resident in India. However, such a person may hold, own, transfer or invest in foreign currency and security or an immovable property located outside India if the person has acquired, held or owned such currency, security or property when he or she was resident outside India, or that such a person has inherited the currency, security or property from a person who resided outside India.

Under a liberalized remittance scheme for resident individuals, which has been notified, total remittances of up to USD200,000 per FY are allowed for permissible current account and permissible capital account transactions, except in the case of certain exceptions. The scheme allows individuals to acquire and hold immovable property or shares, maintain foreign-currency accounts or other assets outside India without RBI's approval, subject to the fulfilment of specified conditions.

K.3 Residential permit

All foreign nationals are required to register with police authorities at the local registration office within two weeks from their date of arrival if their visas are valid for longer than six months (or if the visa stamp specifically requires this registration). A foreign national holding a visa valid for six months or less, who wishes to stay back in India beyond the period of validity, must register within two weeks after 180 days from the time of his/her arrival in India. A PIO card holder, whose continuous stay in India exceeds 180 days, is required to register within 30 days after the 180 days from his/her arrival in the country. The following documents need to be presented to register with the local registration office:

- Online application form — to be filled in person at the Foreigner's Regional Registration Office (FRRO)
- Photocopy of the passport and initial visa
- Four photographs of the applicant
- Details of residence/Proof of residential address in India
- Notarized documents submitted to the President of India by a guarantor willing to reimburse the government if the individual continues to reside in India or if he or she is being supported by the government
- Copy of the marriage certificate in the case of those seeking extension of stay on grounds of being married to an Indian national
- Accreditation certificate from the Press Information Bureau in the case of a visitor with a journalist visa-level appointees in public limited companies
- Two copies of the approval of the Government of India in the case of a joint venture/collaboration
- Copy of permission from the RBI in the case of a business/ joint venture
- Terms and conditions of appointments and copy of contract or agreements in the case of an employment visa
- Undertaking from the concerned Indian company (typically specifying the nature of work, etc.) in the case of employment/business visa
- Copy of the passport of an individual signing the undertaking mentioned above (Please note that only an Indian passport holder can provide such an undertaking.)
- Copy of the Certificate of Incorporation, Articles of Association and Memorandum of Association
- In the case of a student visa, bonafide certificate from school/college

- In the case of a research visa, bonafide certificate and letter from the nodal agency/ministry sponsoring the research

The original passport and visa are also required at the time of filing for verification with the authorities.

Registration is valid for the term of the visa and may be extended upon application. Failure to register may result in the immigration authority's refusal to allow the foreign national to leave the country.

K.3.1 Formalities to be observed by registered foreigners

A registered foreigner is issued a registration booklet containing his latest photograph, details of residence and other requirements. An endorsement is also made in the passport relating to registration. The foreigner is required to intimate any permanent change in his/her address to the registration authorities. The person is also required to inform the Registration Officer if he/she proposes to be absent from his/her registered address for a continuous period of eight weeks or more. Similarly, a foreigner, who stays for a period of more than eight weeks at any place other than the district of his/her registered address, should inform the Registration Officer of that district of his/her presence. Every foreigner is required to furnish to the Registration Officer of the district in which his/her registered address is located, particulars relating to any circumstances affecting in any manner the accuracy of the particulars recorded in his/her certificate of registration within 14 days after the circumstance has occurred, and should provide to the Registration Officer all information as may be required to maintain the accuracy of the certificate.

Every foreigner who is about to depart finally from India should surrender his/her certificate of registration either to the Registration Officer of the place where he/she was registered, of the place from where he/she intends to depart or to the Immigration Officer at the port/check post of exit at the time of his/her final departure from India.

K.4 Family and personal considerations

Work visas for family members

Entry visas are issued to accompanying family members of individuals visiting India on business or for employment. Spouses or dependents of working expatriates must obtain separate work permits to be employed in India. Family members intending to reside with a working expatriate must register separately at the local registration office. Children of working expatriates must obtain student visas to attend Indian schools.

Driver's permit

Foreign nationals are not permitted to drive in India using their home country drivers' licenses. They should obtain international drivers' licenses in their home countries. Such licenses are normally valid for six months.

To obtain an Indian driver's license, individuals should apply to the Regional Transport Authority, which issues learners' permits. This will enable the individual to drive when accompanied by an adult who has a valid Indian driver's license. One month after the learner's permit is issued, a driving test and a verbal examination on local driving laws needs to be taken. On successful completion of the examinations, the Regional Transport Authority issues a driver's license.

K.5 Other matters

K.5.1 PIO Card

A PIO card can be obtained by any individual who satisfies any of the following conditions:

- The individual has held an Indian passport at any time.
- The individual or any of his/her parents, grandparents or great-grandparents were born in and are permanently resident in India.
- The individual's spouse is a citizen of India or a PIO (This implies that even a foreign spouse of a citizen of India or of a person of Indian origin may apply for a PIO card.)

PIO card holders are granted certain benefits including:

- A waiver of the requirement to obtain a visa to visit India
- Exemption from the requirement to register if the individual's stay in India does not exceed 180 days
- The acquisition, holding, transfer and disposal of immovable properties in India
- Facilities for obtaining admission to educational institutions in India

K.5.2 Dual citizenship

In December 2003, the Indian Parliament passed a Bill to allow persons of Indian origin, who are also citizens of one of the listed countries (16 countries have been listed), to acquire "Overseas Citizenship" of India without surrendering the citizenship of the other country. The benefit of dual citizenship was recently extended to all persons of Indian origin who have migrated from India after 26 January 1950. Overseas Indian citizens will be entitled to certain rights and benefits, which will be prescribed by the Central Government.

Chapter L

Direct taxes

India has a well-developed tax structure and the authority to levy taxes is divided between the Central and state governments. The Central Government levies direct taxes including income tax, wealth tax, corporate tax and indirect taxes comprising customs duty, excise duty, central sales tax and service tax. The states are empowered to levy professional tax and state sales tax apart from various other local taxes, including entry tax and octroi.

L.1 Administration

Administration, supervision and control in the area of direct taxes lies with the CBDT. The CBDT works under the MoF, exercises significant influence over the working of the country's direct tax laws and also ensures effective discharge of executive and administrative functions.

The Indian tax year extends from 1 April of a year to 31 March of the subsequent year. A corporation's tax year also ends on the same date. All corporations are required to file a ROI by 30 September, even in the event of loss. Non-resident corporations must file a ROI in India if they conduct business in the country.

All corporations with taxable income in India must register with their respective jurisdictional tax authorities. Corporate tax liability needs to be estimated and discharged by way of advance tax in four installments on 15 June, 15 September, 15 December and 15 March every year.

Filing of late ROI and delay in payment/shortfall in taxes are liable to attract penal interest at prescribed rates. Interest is generally imposed on the balance of the unpaid tax due and on underpayment of the advance tax due.

L.2 Corporate income tax

For Indian income tax purposes, a corporation's income comprises of:

- Income from house property
- Income from business
- Capital gains realized on any disposition of the corporation's capital assets
- Residual income arising from non-business activities

Corporations resident in India (whether owned by Indians or non-residents) are taxed on their worldwide income arising from all sources. Non-resident corporations are taxed on the income earned from a business connection in India or from other Indian sources. A corporation is deemed to be resident in India if it is incorporated in the country or if its control and management is entirely located in India.

If there is a tax treaty between India and the country of residence of the taxpayer, the provisions of the IT Act or the tax treaty, whichever is more beneficial, will apply. Accordingly, the taxability of a non-resident in India may be restricted or modified and lower rates may apply. In general, India's tax treaties provide that residents of other countries are subject to Indian tax on business profits derived from a business in India, only if the non-resident has a permanent establishment in the country.

L.2.1 Rates of corporate tax

Normal rate

Domestic corporations are subject to tax at a basic tax rate of 30%, as well as a 10% surcharge. Foreign corporations are subject to a basic tax rate of 40%, as well as a 2.5% surcharge. The surcharge is only applicable in cases where the total income of the taxpayer (domestic or foreign corporation) exceeds INR10 million. Further, the tax payable by all companies is enhanced by an education cess at the rate of 3% on the tax payable, inclusive of surcharge. The effective tax rate for domestic corporations is 33.99% and for foreign corporations 42.23%.

A table depicting the rates of corporate tax:

Tax	Percentage
Corporate income tax for domestic corporations	30 (a)
Corporate income tax for foreign corporations	40 (a)
DDT	15 (a)
Long-term capital gains tax	20(a) (d) (e)
Withholding tax	
Dividends	
Paid to domestic corporations	0 (g)
Paid to foreign corporations	0 (g)
Interest	
Paid to domestic corporations	10 (a)
Paid to foreign corporations	20 (a) (b)
Royalties from patents, know-how, etc.	
Paid to domestic corporations	10 (a)
Paid to foreign corporations	10 (a) (f)
FTS	
Paid to domestic corporations	10 (a)
Paid to foreign corporations	10 (a) (f)
Net operating losses (years)	
Carry back	0
Carry forward	8 (c)

a. For the tax year ending 31 March 2010, the rates listed above for corporate income tax, including capital gains Tax and DDT, have to be increased by a surcharge of 10% of such taxes in the case of domestic corporations. In the case of foreign corporations and branches, income tax, capital gains tax and withholding taxes have to be increased by a surcharge of 2.5% of such taxes. The surcharge (except in the case of DDT) is only applicable in cases where the total income of the taxpayer (resident corporation or foreign corporation/branch) exceeds INR10 million. In addition, the tax payable by corporations (except in the case of withholding taxes on payments to domestic corporations) has been increased by an education cess, which is imposed at the rate of 3% of the tax payable, inclusive of the surcharge

b. This rate only applies to interest on foreign currency loans. Any other interest is subject to tax at the normal rates applicable for foreign corporations.

c. Unabsorbed depreciation may be carried forward indefinitely to offset taxable profits in subsequent years. Unabsorbed business loss may be carried forward to offset the profits of eight years succeeding the year when the loss occurred.

d. Capital gains arising from the sale of assets held for more than three years (one year in the case of certain assets such as shares, the unit of a mutual fund, etc.) are known as long-term capital gains. Capital gains other than such long-term gains are known as short-term capital gains, which are taxed at normal corporate rates.

e. Long-term capital gains arising from the transfer of equity shares or the units of an equity-oriented mutual fund on any recognized stock exchange in India are exempt from tax if STT has been paid on such transactions and short term capital gains on such transactions are taxed at 15%.

f. Subject rates apply in the case of royalty/FTS being received by a foreign company in pursuance of an agreement made on or after 1 June 2005.

g. Dividends paid by domestic corporations are exempt from tax in the hands of the recipients, if DDT is paid on the dividends paid.

Special rates for non-resident corporations

Royalty or fees for technical services: Foreign corporations are taxed with respect to royalty or fees for technical services (FTS), which are received from the government, from Indian concerns under agreements that are approved by the government or which are in accordance with the country's industrial policy (refer to notes 1 and 2)

In pursuance of agreements made on or after 1 June 2005	Taxable at 10% on a gross basis (plus surcharge at 2.5% and education cess at 3%)

Notes:

1. Royalties and FTS earned in pursuance of agreements made after 31 March 2003, which are effectively connected with the foreign corporation's permanent establishment in India, are taxed on a net basis at the normal rates applicable to foreign corporations.

2. Royalties and FTS (not effectively connected with the foreign corporation's permanent establishment in India), which are not received from the government, are received from Indian concerns under agreements not approved by the government or which are not in accordance with India's industrial policy, are also taxed on a net basis at the normal rates applicable to foreign corporations.

Dividend income: Dividend income distributed by domestic corporations is exempt from tax in the hands of the recipients.

Interest on foreign currency loans: Foreign corporations earning interest on foreign currency loans given to an Indian concern or to the Government of India are taxed at the rate of 20% on the gross interest.

Income earned by overseas financial organizations: Specified overseas financial organizations earning an income from units of specified mutual funds, purchased in foreign currency, are taxed at the rate of 10% on the gross amount of such income. Long term capital gains arising from the transfer of such units are also taxed at the rate of 10%.

Income earned by FIIs: FIIs are taxed at the rate of 20% on income received with respect to securities, the rate of 10% on long term capital gains and the rate of 30% on short term capital gains arising from the transfer of securities. However, if the transaction is liable to STT, an FII's long term capital gains are exempt from tax and its short term capital gain is liable to taxation at 15%.

The rates given above may be subject to more beneficial provisions of the tax treaty between India and the country in which the taxpayer is resident.

See Appendix 5 for a sample corporate tax calculation.

L.2.2 Determination of taxable income

i Income from house property

Income earned by renting out of house property is taxable in the hands of the owner. Valuation of income from house property is prescribed under various scenarios of occupancy ranging from rented, vacant to self-occupied. The owner is entitled to a deduction on account of municipal taxes actually paid.

Further, a standard deduction for repairs from such income at 30% of the prescribed value is permitted. Interest on borrowed capital, up to specified limits and on fulfilment of prescribed conditions, is also allowed as a deduction while computing the net income liable to tax.

ii Income from business

Taxable profits are computed in accordance with common business or accounting principles, modified by statutory tax provisions.

Business deductions

Taxpayers may deduct all business-related expenses from their gross income. Personal expenses and capital expenditure, other than expenditure on scientific research, are not deductible.

Inventories

Inventories should be valued in accordance with the accounting policy regularly complied with by the tax payer at cost or net realizable value (whichever is lower).

Provisions

In general, ad hoc provisions for expenses or losses are not tax-deductible. Provisions for duties, taxes (apart from income tax and wealth tax), bonuses, leave salary and interest on specified loans are deductible on an accrual basis, provided corresponding payments are discharged before the due date for filing the ROI. Otherwise, the deduction is allowed in the year of actual payment.

General provisions for doubtful debts are not deductible unless the bad debt is actually written off in the accounts. However, relief is available to banks and financial institutions with respect to non-performing assets.

Retirement payments

Payments made to employees under Voluntary Retirement Schemes are deductible over a period of five years commencing from the year in which the sum has been paid.

Contributions to retirement benefits and other similar welfare funds are deductible, provided the corresponding payments are discharged before due date for filing the ROI. Otherwise, deduction is allowed in the year of actual payment.

Depreciation and amortization allowances

Depreciation or amortization included in financial statements is not deductible. Except in the case of undertakings engaged in the generation or the generation and distribution of power, depreciation for tax purposes must be calculated on a block of assets according to the declining balance method at prescribed rates. Allowance for depreciation is only available after the asset is ready for use for its business purpose. In the event assets are acquired during the year and put to use for a period of less than 180 days, only half of the admissible depreciation is allowable.

Depreciation is computed on the amount arrived at after adding to the declining balance value at the beginning of the year of a particular block of assets, the actual cost of the assets acquired during the year, reduced by the sale proceeds arising from the disposition of any asset in that block.

Assets	Percent	Assets	Percent
Plant and machinery	15*	Buses, lorries and taxies that are hired out	30
Cars other than those that are hired out	15	Ships	20
Computers (including software)	60	Residential buildings	5
		Buildings other than residential ones	10
Furniture and fittings, including electrical fittings	10	Intangible assets such as know-how, patents, copyrights trademarks, licenses, franchises or any other business or commercial right of similar nature	25

*In respect of plant and machinery (other than ships and aircraft) installed after 31 March 2005, accelerated depreciation equal to 20% of the actual cost is allowed in the year of acquisition to the taxpayer engaged in the business of manufacturing or producing any article.

Corporations engaged in the generation of or the generation and distribution of power have the option of claiming depreciation on a straight-line basis, but when this option is once exercised, it cannot be changed later.

Restrictions on interest deductions

India does not currently have mandatory thin capitalization rules. However, banks and financial corporations are required to comply with prescribed capital adequacy norms. Interest is allowed as a deduction, provided it is with respect to capital borrowed for the purpose of business.

Disallowance of payments to residents and non-residents

To enforce tax-withholding provisions, certain payments on which tax has not been withheld or deposited according to the law are not allowed as a deduction in the tax year in which the payment is made, but are only allowed as deductions in the tax year in which the appropriate taxes withheld are deposited.

Foreign exchange losses

Foreign exchange fluctuations are considered while computing taxable income, provided they are on revenue account. Realized exchange fluctuations on a liability, with respect to assets acquired outside India, can be adjusted with their declining balance value.

Relief for losses

Business losses, other than unabsorbed depreciation, may be carried forward to be set off against taxable business income derived during the next eight years, provided the ROI for the year of loss is filed by the due date. However, closely held corporations are required to satisfy a 51% continuity of ownership test to carry forward business losses.

Unabsorbed depreciation may be carried forward indefinitely, to be set off against the taxable income of subsequent years.

iii Capital gains and losses

Proceeds in excess of cost from the disposition of capital assets are generally taxed as capital gains. Capital assets include all kinds of property except stock-in-trade, raw materials and consumables used in businesses or professions, personal effects (except jewellery), agricultural land and notified gold bonds.

General provisions

Long term capital gains: Profits earned from the transfer of long term capital assets are referred to as long term capital gains. Generally, assets which are assets that have been held for more than three years are treated as long term capital assets for the purpose of capital gains. However, the following assets are treated as long term capital assets if held for more than one year:

- Shares (both listed and unlisted) or any other listed security
- Units of Unit Trust of India (UTI)
- Units of specified mutual funds
- Specified zero coupon bonds

In general, long term capital gains are taxed at a basic rate of 20%. The cost of a capital asset is adjusted for inflation (indexation) to arrive at the indexed cost, which is allowed as a deduction while computing such long-term capital gains.

Gains derived from the transfer of UTI units, specified mutual fund units, listed securities or zero coupon bonds could be taxed at the rate of 10% (plus applicable surcharge and education cess), without allowing indexation adjustments, or at the rate of 20% (plus applicable surcharge and education cess) with the benefits of indexation, at the option of the taxpayer.

Long term capital gains arising on the transfer of equity shares or the units of an equity-oriented fund (>65% equity) on any recognized stock exchange in India is exempt from tax if the transaction was entered on or after 1 October 2004, and STT has been paid on the transaction.

For assets acquired on or before 1 April 1981, the fair market value, as of 1 April 1981, or the actual cost of acquisition at the option of the taxpayer, will be treated as the cost of the asset. To compute capital gains arising from the transfer of bonus shares acquired after 1 April 1981, its cost is considered to be nil.

Long term capital losses are allowed to be carried forward for eight consecutive years (subject to ROI filed on or before the due date), but may only be offset against taxable long term capital gains.

Long term capital gains are exempted from tax if an investment has been made as prescribed by the law in certain specified modes, including investment in residential property and specified bonds of institutions.

Short term capital gains: Capital gains arising from the transfer of short-term capital assets (assets that do not qualify as long-term capital assets) are referred to as short term capital gains and are taxed at the normal corporate income tax rates.

Short term capital gains arising on the transfer of equity shares, the units of an equity-oriented fund on any recognized stock exchange in India (on or after the date on which STT came into force), on which STT has been paid, are taxed at the lower rate of 15% (plus applicable surcharge and education cess).

Short term capital losses are allowed to be carried forward for eight consecutive years (subject to filing of ROI on or before the due date) and may only be offset against taxable capital gains (both short and long term).

Capital gains on depreciable assets: To compute capital gains arising from the sale of assets on which depreciation has been allowed, the sale proceeds of the assets are deducted from the declining balance value of the block of assets (including additions made during the year) of which the former form a part. If the sales proceeds exceed the declining balance value of the entire block, the excess is treated as short-term capital gain. Otherwise, there is no capital gain from the sale of such assets, even if the sales proceeds of a particular asset are greater than the cost of such an asset. If all the assets that form a part of a block are sold, the excess/deficit of the declining balance (including additions made during the year) over the sale amount is treated as a short term capital gain/capital loss.

Special provisions relating to capital gains

Domestic tax law has a special provision for the taxation of capital gains earned by non-residents by the transfer of the shares and debentures of an Indian corporation acquired by utilizing foreign currency. Any gain (short or long term) is reconverted into Indian rupees at the exchange rate prevailing on the date of the transfer, to calculate taxable capital gains.

This special provision is a measure that is aimed at mitigating the effect of any fluctuation in the exchange rates of foreign currency on the capital gains earned by non-residents. No indexation benefits are offered in the calculation of capital gains in such cases.

Amalgamations, demergers and slump sales

Amalgamations: Amalgamations are tax-neutral, subject to the satisfaction of prescribed conditions. In the case of non-compliance with any of the prescribed conditions, any brought forward business loss and unabsorbed depreciation, which has been set off by the amalgamated corporation, is treated as its income for the year in which it failed to fulfil any of the prescribed conditions mentioned above.

Demergers: The demerger of businesses by existing corporations is tax-neutral, subject to the fulfilment of prescribed conditions. The accumulated losses and depreciation of the demerged corporation, attributable to the resulting corporation, can be carried forward and set off by the latter, subject to its compliance with prescribed conditions.

Slump sale: Profits derived from a slump sale are taxed as long term capital gains if the transferred undertaking has been held for more than 36 months. Taxable capital gain arising from a slump sale is the excess of the consideration received over the net worth of the undertaking. The net worth is the difference between the value of the undertaking's total assets (the sum of the tax-depreciated value of assets that are depreciable for income tax purposes and the book value of the other assets) and the book value of its liabilities.

iv. Income from other sources

Income that does not specifically fall under any of the types above is liable to tax as ''income from other sources'', including investment income and winnings from lotteries.

Investment income

Dividends are taxed in the following manner:

- Domestic corporations are required to pay DDT on profits distributed as dividends at the rate of 16.995%, including the applicable surcharge at the rate of 10% and education cess at the rate of 3% with effect from 1 April 2007.

- The amounts declared, distributed or paid as dividends by Indian corporations are not taxable in the hands of the shareholders.

The dividends paid by foreign corporations are subject to tax in the hands of the shareholders.

L.3 Other direct taxes (corporate)

L.3.1 Minimum Alternate Tax (MAT)

Indian tax law requires MAT to be paid by corporations on the basis of profits disclosed in their financial statements. In cases where the tax payable according to regular tax provisions is less than 15% of their book profits, corporations must pay 15% of their book profits as tax. Book profits (for this purpose) are computed by making the prescribed adjustments to the net profit disclosed by corporations in their financial statements.

MAT paid by corporations for tax years beginning on or after 1 April 2009 may be carried forward for 10 years and set off against income tax payable under the normal provisions of the IT Act. The maximum amount that can be set off against regular income tax is equal to the difference between the tax payable on the total income (as computed under the IT Act) and the tax that needs to be paid under MAT provisions for the year.

A report from a chartered accountant, certifying the quantum of book profits, must be filed along with the ROI.

L.3.2 DDT

Dividends paid by domestic corporations are exempt from tax in the hands of the recipients. However, resident corporations must pay DDT at the rate of 16.995% (including a 10% surcharge and a 3% education cess) on dividends declared, distributed or paid by them. Such tax is a non-deductible expense. Ultimate holding corporations can claim credit for DDT paid by subsidiary corporations with respect to the dividend earned from them during the year.

L.3.3 FBT

FBT was introduced in 2005, but has been recently abolished by the Finance (No. 2) Act, 2009.

L.3.4 Wealth tax

In India, wealth tax is payable at the rate of 1% if the taxable value of a corporation's net wealth exceeds INR3 million. Assets subject to tax include residential houses, cars, yachts, boats, aircraft, urban land, jewellery, bullion, precious metals, any amount of cash not recorded in books of account and commercial property not used as business, office or factory premises. However, a residential house or houses owned by an employer and provided to an employee earning less than INR500, 000 a year are exempt from tax. The assets mentioned above, other than urban land, are exempt from tax if they are owned as stock-in-trade or used for hire. Productive assets such as shares, debentures and bank deposits etc are not subject to wealth tax. A deduction is allowed for debts owed that have been incurred with relation to taxable assets. Tax is levied on net wealth, as of 31 March, preceding the year of assessment.

L.4 Industry-specific tax schemes

An optional tonnage tax scheme was introduced for the Indian shipping industry from 1 April 2004, which taxes income on a deemed profit basis.

Oil and insurance corporations have a separate code of taxation.

L.5 Foreign tax relief

Tax treaties entered by India with several other countries govern foreign tax relief to avoid double taxation. If there is no such agreement, resident corporations may claim a foreign tax credit for the tax paid by them in other countries. The credit amount granted to such corporations is whichever is lower: the tax payable in India on income that is subject to double taxation or the foreign tax paid.

For a list of tax rates prescribed under the various treaties, see Appendix 6.

L.6 Appeal mechanism

L.6.1 Conventional route:

The following is the conventional appellate route that a taxpayer can adopt:

- Appeal to Commissioner of Income Tax (Appeals)

An aggrieved taxpayer can file an appeal within the prescribed time, i.e., 30 days, and on payment of the prescribed fees, with the Commissioner of Income Tax (Appeals) (CIT-A) against any appealable order passed in his/her tax assessment by a lower authority.

- Appeal to Income Tax Appellate Tribunal (ITAT)

  If a taxpayer or the revenue department feels aggrieved about an order passed by the CIT-A, he or she may prefer an appeal, within the prescribed time, i.e., within 60 days, and on payment of the prescribed fees, with the ITAT on any question of fact or law or both. ITAT is the final fact-finding authority.

- Appeal to the High Court (HC)

  The IT Act provides for appeals to the HC from every order of the ITAT wherever the taxpayer/revenue department feels aggrieved, provided the appeal involves a substantial question of law. The appeal needs to be filed within the time limit allowed under the IT Act, i.e., 120 days, along with the payment of the necessary fees.

- Appeal to the Supreme Court (SC)

  This is the final appellate authority under the IT Act. Where either the taxpayer or the revenue department is aggrieved by the order of the HC, an appeal can be preferred to the SC. The time limit and fee payment rule applies to this appeal as well.

L.6.2 Dispute Resolution Panel (DRP)

In recognition of the fact that the tax dispute resolution mechanism presently in place is time consuming and finality is attained only after protracted litigation, an Alternate Dispute Resolution (ADR) mechanism has been introduced in the IT Act effective from 1 October 2009. The ADR mechanism is

expected to resolve transfer pricing disputes for all categories of taxpayers, as well as disputes relating to the taxation of foreign companies in general (eligible taxpayers), on a fast-track basis. A DRP has been established for this purpose with the notification of the DRP rules on 20 November 2009.
The DRP rules provide for establishment of the DRP at eight different locations in India and prescribe the procedure to be followed by the eligible taxpayers while seeking intervention of DRP in income-tax assessments.

Key features of the ADR mechanism through the constitution of the DRP are as follows:

- The Tax Authority is required to forward a copy of a draft assessment order to the eligible taxpayer if the former proposes a variation to the income or loss which is prejudicial to the eligible taxpayer.
- The eligible taxpayer who objects to the draft assessment order has to file its objections with the DRP in a prescribed form, accompanied by certain other documents relating to the income tax assessment within 30 days of the receipt of the draft assessment order. The objections need to be specific and must, on each issue, indicate areas of disagreement with the Tax Authority.
- After hearing the objections, the DRP would issue appropriate directions to the Tax Authority for completion of the income tax assessment within a maximum period of 9 months from the end of the month in which the draft assessment order was forwarded to the eligible taxpayer.
- The directions of the DRP are binding on the Tax Authority and the Tax Authority cannot appeal against these directions or an assessment order passed pursuant to these directions. However, the eligible taxpayer can file an appeal directly with the ITAT against the assessment order.

Each DRP consists of a collegium of three "commissioner" level officials nominated by the CBDT, the highest tax administration body in India. The DRP is given powers vested in a "court" under the Code of Civil Procedure, 1908, while trying a suit with respect to discovery and inspection, enforcing the attendance of any person, compelling the production of books of accounts and issuing commissions.

The ADR mechanism through the constitution of the DRP, is expected to facilitate an expeditious resolution of transfer pricing and international tax disputes. It is expected that the DRP would help in resolving transfer pricing and international tax controversies, reducing taxpayer grievance and litigation, on a basis which is fair and impartial to both the tax administration and the taxpayer and in a manner that will enhance public confidence in the integrity and efficiency of the DRP.

L.6.3 Authority for advance ruling

- A scheme of advance rulings was introduced by the Finance Act, 1993 for determination of tax liability. Under the scheme, the power to issue advance rulings, which are binding on the tax authorities as well as the applicant, has been entrusted to an independent adjudicatory body.
- Advance ruling relates to the written opinion by an authority, which is empowered to render it with regard to the tax consequences of a transaction or proposed transaction.
- A ruling can be obtained by an applicant (who may be either a non-resident or a resident who has entered a transaction with a non-resident) with respect to any question of law or fact in relation to the tax liability of the non-resident, arising out of a transaction undertaken or proposed to be undertaken.

L.7 Income tax (Individuals)

L.7.1 Liability for income tax

Liability for income tax is governed by the residential status of individuals during the tax year.

Individuals are considered to be residents if they meet either of the following criteria:

- They were present in India for 182 days or more during the tax year, which extends from 1 April to 31 March.
- They were present in India for 60 days or more during the tax year and for at least 365 days in total during the preceding four tax years. (This may be extended to 182 days in certain cases.)

Individuals who do not meet the criteria mentioned above are considered to be non-residents. People are considered to be "not ordinarily resident," if, in addition to meeting one of the criteria above, they satisfy either of the following conditions:

- Non-resident in India for 9 of the preceding 10 tax years
- Present in India for 729 days or less during the previous seven tax years

All individuals are subject to tax, unless they are exempt under the IT Act, or applicable tax treaties.

Income liable to be taxed in India depends on the residential status of the taxpayer. Categories of income liable to be taxed, according to residential status, have been depicted in the table below:

Residential status	Taxability
Resident	▸ Worldwide income
Resident and not ordinarily resident	▸ Income received in India or deemed to be received in India ▸ Income accruing or arising in India or deemed to accrue or arise in India ▸ Income accruing or arising outside India, either from a business controlled from India or a profession setup in India
Non-resident	▸ Income received in India or deemed to be received in India ▸ Income accruing or arising in India or deemed to accrue or arise in India*

*Non-residents are taxed on income deemed to accrue or arise through a business connection In India, through or from any property, asset or source of income in India or by the transfer of a capital asset located in India.

L.7.2 Types of incomes that are subject to tax in India

In general, all income received or accrued in India is subject to tax. Taxation of various types of income is detailed below. See the table in Appendix 7.1, which indicates individual income tax calculation and Appendix 7.2, which depicts the taxability of income items.

i Employment income

All salary income related to services rendered in India is deemed to accrue or arise in India, regardless of where it is received or the residential status of the recipient.

Employees of foreign enterprises, who are citizens of foreign jurisdictions, are not subject to tax if all of the following conditions are satisfied:

- The enterprise is not engaged in trade or business in India.
- The employee does not stay in India for an aggregate period of more than 90 days in the tax year.
- The compensation paid is not claimed by the employer as deduction from taxable income in India.

Similar exemptions are available under tax treaties if an individual's stay is less than 182 days, but conditions vary. Non-resident foreign citizens employed on foreign ships, who do not stay in India for longer than 90 days in a tax year, are also exempt from tax on their earnings.

In general, most elements of compensation are taxable in India. However, certain benefits (listed below) may receive preferential tax treatment, subject to certain requirements.

Corporation housing: The benefits of corporation housing (owned by the employer) is generally taxed at 15% of an individual's salary (10% of salary in cities with a population of less than 2,500,000 and 7.5% of salary in cities with a population of less than 1,000,000), according to the 2001 census. In the event accommodation is taken on lease by the employer, the employee is taxed at either 15% of his/her salary or the actual lease rental paid by the employer, whichever is lower. However, where the rent paid by the employer for the accommodation is recovered from the employee, the perquisite value is reduced by this amount. Furniture and appliances provided by the employer are taxed at the rate of 10% of their cost if the employer owns the items or the rent paid if the employer hires these.

Hotel accommodation: If an employee is provided with hotel accommodation, tax is imposed on either the hotel charges paid by the employer or 24% of the employee's salary, whichever is lower, reduced by the amount recovered from the employee, unless such accommodation is provided free of cost to the individual for up to 15 days on relocation. Such accommodation, provided for 15 days in aggregate, is exempt from tax.

Superannuation fund: Contributions made by an employer (in excess of INR0.1 million) to a superannuation fund are taxable in the hands of the employee.

Interest-free or low-interest loans: The benefit of interest-free loans or low-interest loans exceeding INR20,000 to an employee or a member of an employee's household is taxable, based on the purpose for availing the loan. The rate of interest is notified by the State Bank of India.

Employer-paid taxes on non-monetary benefits: In general, the tax paid by an employer on behalf of an employee is grossed and taxed in the hands of the employee. However, any tax paid by an employer, on behalf of the employee, on non-monetary benefits is exempt in the hands of the employee.

The following employer-paid items are not included in an employee's taxable compensation or included in his/her taxable income at a lower value to the extent that they do not exceed specified limits and satisfy the prescribed conditions:

- Reimbursable medical expenses
- Contributions to retirement benefit funds, including provident and gratuity funds, in India
- Certain allowances, including house rent, leave travel.

There is tax exemption of up to INR100 per month per child for up to two children on an education allowance provided by the employer to an employee, to meet the cost of his/her children's education. An allowance granted to an employee to meet the hostel expenses (boarding expenses in residential schools and colleges) of his/her children is exempt up to INR300 per month per child for up to two children.

ii Taxation of Employer-Provided Stock Options (ESOPs)

ESOPs allotted/transferred by an employer, free of cost or at a concessional rate, are taxable in the hands of the employee. ESOPs are taxed at the fair market rate on the date they are exercised by an employee, reduced by the amount actually paid by or recovered from the employee.

iii.Income from house property

As per the provisions of the IT Act, taxability of income from house property in the case of corporations and individuals is the same. For taxability of income from house property, kindly refer to Section L.2.2.i.

iv Self-employment and business income

All self-employed individuals or those doing business in India are subject to tax. The general principles of taxation in respect of business income in the case of individuals are similar to those of a corporation as discussed in Section L.2.2.ii.

Deemed basis of taxation

With the objective of increasing compliance with taxation provisions for small businesses, and reducing the administrative burden on the tax machinery, the government has recently introduced a presumptive taxation scheme that will be effective from 1 April 2010, which will be applicable to individuals, any Hindu undivided family (HUF) and partnership firms (excluding LLPs) for all businesses (except the business of plying, hiring or leasing goods and carriages) with a turnover of INR4 million or less. Under the scheme, the taxpayer has the option of declaring total income on a deemed basis at 8% of the gross receipts.

v. Capital gains on assets

The provisions in respect of taxability of capital gains in the case of individuals are similar to those in respect of corporations as discussed in Section L.2.2.iii

However, the following provisions are applicable only in respect of individuals and HUF:

- Long-term capital gains are exempt from tax in certain cases if such gains are reinvested within six months in certain specified long-term assets. If, within three years of such reinvestment, the new assets are sold or, in certain cases, used as security for a loan or an advance, the capital gains derived from the sale of the original asset are subject to tax in the year the new assets are sold or used as security.
- Exemptions are available for long-term gains derived from the sale of a residential house and other capital assets if such gains are used to acquire a residential house or specified bonds within the prescribed time.
- Further, capital gains arising from the transfer of land is exempt if such land has been used by a tax payer or a tax payer's parents for agricultural purposes for at least two years immediately preceding the date of transfer, and if the taxpayer uses the gains to purchase other land for agricultural purposes within two years from the date of the transfer. If gains from the sale of agricultural land are not reinvested, they are taxed as short term gains if this land is held for less than three years, and as long term gains if it is held for more than three years.

vi Income from other sources (investments, lotteries)

The general principles of taxation in respect of income from other sources in the case of individuals are similar to those of a corporation as discussed in Section L.2.2.iv. However, certain transactions are taxable only in the case of individuals or HUFs.

NRIs (including persons of Indian origin) may exercise an option to be taxed at the flat rate of 20% on their gross investment income and a flat rate of 10% on their long-term capital gains on certain specified assets (without any deductions) arising from their foreign currency assets, acquired in India through remittances in convertible foreign exchange. The tax is withheld at source.

Interest payable on savings banks and fixed deposits in India is taxable, and taxes are withheld at source by the banks if the interest exceeds INR10,000 in the tax year. The interest payable by scheduled banks (on approved foreign currency deposits) to non-residents, and not ordinary residents, is exempt from tax.

Taxability of certain transactions

- Any sum of money received (in excess of INR50, 000) without consideration is taxable in the hands of the recipient.
- Where immovable property or any other property is received without consideration and the fair value of such property exceeds INR50, 000, the fair value of such property is taxable as income from other sources.
- Where immovable property or any other property is received for a consideration and such consideration is less than the fair value of the property by an amount exceeding INR50,000, the fair value reduced by the consideration received is taxable as income from other sources

- The provisions given above are not applicable where the sum of money or property is received from a relative, on the occasion of the individual's marriage, under a will or inheritance, in contemplation of the death of the payer or donor or from a local authority, approved fund or trust.

L.7.3 Deductions

For individuals, a deduction of up to INR100, 000 can be claimed from their gross total income for prescribed contributions to savings instruments and pension funds. Further, deduction may be claimed from gross total income for payment of tuition fees for the education of specified family members. In addition, interest paid on loans obtained to pursue higher education (after Grade 10) is fully deductible. However, no deduction is available for repayment of the principal amount.

Medical insurance premiums for recognized policies in India, paid for insurance of the health of an individual or his/her family may be deducted, up to a maximum of INR15,000 (INR20,000 if insured person is over 65 years) from their gross total income.

L.7.4 Income tax rates (individuals)

The following tax rates have been proposed that will apply to resident and non-resident individual tax payers for the year ending 31 March 2010.

Income slabs (INR)	Income tax
0–160,000*	Nil
160,001-300,000	10% of income in excess of INR160,000
300,001–500,000	INR14,000 plus 20% of income in excess of INR300,000
500,001 upwards	INR54,000 plus 30% of income in excess of INR500,000

- Resident individuals with incomes of up to INR160,000 do not need to pay income tax and education cess. The exemption limit has been increased to INR190,000 for resident women below 65 years and to INR240,000 for resident individuals who are 65 years old or older.
- The amount of tax payable needs to be increased by an education cess which is imposed at 3% of the tax payable.

For a sample tax calculation, see Appendix 7.3.

L.8 Income tax filing and payment process

All income is taxed on the basis of the fiscal tax year from 1 April to 31 March. All taxpayers, including non-residents, must file ROI if their income exceeds the maximum amount that is not liable to taxation.

ROI for salary income needs to be filed by 31 July, ROI for self-employment or business income must also be filed by 31 July, or, if accounts are subject to a tax audit, by 30 September every year. Wealth tax returns for individuals need to be filed by the same deadline applicable to them in the case of income tax returns.

India does not have the concept of joint filing. As a result, married persons are taxed separately. The passive income of minor children is aggregated with that of the parent with the higher income.

Taxpayers with income earned from employment pay tax through tax withheld by employer from their monthly salaries each pay period. Taxpayers with tax liability exceeding INR10,000 need to make advance payments, after deducting credit for tax withheld, in three instalments on 15 September, 15 December and 15 March every year.

Non-residents are subject to the same filing requirements as residents. However, non-residents and NRI nationals (including persons of Indian origin), who only have investment income or long-term capital gains (on foreign exchange assets), need not file ROI if the required tax is withheld at source. Non-residents are subject to the same assessment procedures as residents.

Before leaving India, any individual who is not domiciled in the country is required to furnish an undertaking to the prescribed authority and obtain a No Objection Certificate (NOC) if the person has been in India to engage in business, professional or employment activities. Such undertakings must be obtained from the individual's employer or the payer of the income, and these undertakings must state that the employer or the payer of income will pay the tax payable by the individual. An exemption for obtaining an NOC is granted to foreign tourists or individuals visiting India for purposes other than business or employment, regardless of the number of days spent by them in the country. At the time Indian nationals domiciled in India depart from the country, they need to provide their Permanent Account Number (PAN), the purpose of their visit and the estimated period of their stay to the prescribed authority. However, a person domiciled in India may also be required to obtain a NOC in certain specified circumstances.

L.9 Other direct taxes (individuals)

L.9.1 Wealth tax

In India, wealth tax is payable at the rate of 1% if the taxable value of an individual's net wealth exceeds INR3 million. Assets subject to tax include residential houses, cars, yachts, boats, aircraft, urban land, jewellery, bullion, precious metals, cash in excess of INR50,000, and commercial property not used as business, office or factory premises. However, a residential house or houses owned by an employer and provided to an employee earning less than INR500,000 a year are exempt from tax. The assets mentioned above, other than urban land, are exempt from tax if they are owned as stock-in-trade or used for hire. Productive assets, including shares, debentures and bank deposits, are not subject to wealth tax. A deduction is allowed for debts owed that have been incurred with relation to taxable assets. Tax is levied on net wealth, as of 31 March, preceding the year of assessment.

L.9.2 Social security

No social security taxes are levied in India. However, certain statutory deductions, including Provident Fund and Employees State Insurance, are withheld from the income earned by tax payers, according to the provisions of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (EPF Act), in cases where they are employed in establishments that employ more than the specified number of people and/or in the event their income exceeding certain specified limits.

In October 2008, the government issued a notification that extended the applicability of the EPF Act to international workers, i.e., expatriates coming under the ambit of India's Provident Fund regulations. However, this notification is not applicable to expatriates who contribute to a social security program in their countries of origin (countries with which India has signed a social security totalization agreement), e.g., Belgium and Germany.

L.10 Direct Tax Code, 2009[30]

The complex structure of the direct tax laws, numerous amendments, the increased cost of compliance and administration and protracted litigation had given rise to numerous concerns among tax payers and administrators. In this backdrop, the Government of India released a draft of the Direct Tax Code Bill, 2009 (DTC Bill) on 12 August 2009 for public comments, along with a Discussion Paper.

The DTC Bill contains significant proposals such as reduction of corporate tax rate to 25%, unlimited carry-forward of losses, levy of minimum alternate tax (MAT) based on gross assets, introduction of stringent anti-avoidance rules, expansion of rules defining corporate residence and source of income, redefining the relationship between treaty law and domestic tax law, levy of a Branch Profit Tax on foreign companies and rigorous withholding tax provisions.

30 The DTC was released by the government in August 2009. It seeks to replace the existing Indian IT Act and is likely to be in force from 1 April 2011. It was introduced with the objective of simplifying Indian tax laws. As of now, the DTC has been released for public comments, and is yet to be tabled in the Parliament.

A welcome proposal in the DTC Bill is the introduction of an Advance Pricing Arrangements mechanism, which would go a long way in providing certainty in the area of transfer pricing for MNCs.

Based on wide ranging consultation and public comments, the Government has finally identified some critical areas of concern which merit a relook (this includes the proposals for MAT on gross assets, capital gains taxation for nonresidents, status of tax treaties, general anti-avoidance rules and residential status of foreign companies). The DTC Bill would be reviewed in detail before a revised DTC Bill is tabled in the Parliament and subsequently, promulgated into law.

Chapter M

Transfer pricing

Comprehensive transfer pricing regulations (TPRs) were introduced, effective from 1 April 2001, with the objective of preventing MNCs from manipulating prices in intra-group transactions, e.g., by transferring their profits outside India.

Indian transfer pricing provisions are generally in line with transfer pricing guidelines for MNCs and tax administrators issued by the Organisation for Economic Co-operation and Development (OECD Guidelines). However, there are some significant differences, e.g., these guidelines encompass a wider definition of the term "associated enterprise" and have the concept of arithmetical mean as opposed to statistical measures of median/arm's length range which are followed internationally.

Under TPRs, any international transaction (ITN) between two or more associated enterprises (including permanent establishments) must be at arm's length price (ALP). These regulations also apply to cost-sharing arrangements. TPRs require the application of the most appropriate among all prescribed methods.

The following methods have been prescribed:

- Comparable uncontrolled price method
- Resale price method
- Cost plus method
- Profit split method
- Transactional and net margin method

However, TPRs do not mandate a hierarchy of methods. They require taxpayers entering ITNs to maintain prescribed documents and information and also obtain and furnish an accountant's report, which includes prescribed details relating to the ITNs being carried out, to the tax authorities.

The prescribed documents include details of the ownership structure, description of the functions performed, risks undertaken, assets used by the parties to the relevant transaction, etc. Failure to maintain the documentation required by TPRs or to furnish the report of a chartered accountant result in imposition of a penalty.

Nature of default	Possible penalty
Failure to keep and maintain documents and information with respect to an ITN	An amount equal to 2% of the value of the ITN
Failure to furnish the documents or information required by TPRs	An amount equal to 2% of the value of the ITN for each such failure
Failure to furnish the report of a chartered accountant mandated by TPRs	INR100,000

According to TPRs, enterprises are considered to be "associated" if there is direct/indirect participation in the management, control or capital of an enterprise or by the same persons in both the enterprises. Further, TPRs suggest certain other deeming provisions, which also trigger an associated enterprise relationship. Some of the important ones among these include:

- Direct/Indirect shareholding giving rise to 26% or more of voting power
- Dependence on source of raw materials/consumables as well as on customers in the case of manufactured/processed goods, price and other conditions being influenced by the contracting party
- Authority to appoint more than 50% of board of directors or one or more of executive directors or members of the governing board of the other enterprise
- Dependence on borrowings, i.e., advancing loans amounting to not less than 51% of the total assets of the enterprise or providing a guarantee amounting to not less than 10% of the total borrowings

M.1 Safe harbour rules

According to the amendment of the Finance Act (No. 2) 2009, determination of ALP with respect to ITN is subject to "safe harbour" rules, which the CBDT is empowered to draft. Safe harbour indicates the circumstances under which tax authorities accept a transfer price declared by a taxpayer.

M.2 Dispute Resolution Panel

Please refer to the discussion in Section L.6.2

M.3 Advance Pricing Arrangements (APAs)

APAs are currently not in force in India.

Chapter N

Indirect taxes

N.1 Excise duty

Excise duty is applicable on the manufacture of goods within India and is payable by the manufacturer.

Most products attract a uniform rate of 8% plus education cess at 2% and SHEC at 1% of the excise duty, making the effective duty exposure 8.24%, i.e., excise duty of 8% and education cess (including SHEC) of 0.24%.

Excise duty is generally levied on an ad valorem basis, either expressed as a percentage of the transaction value or maximum retail price (for certain specified goods). Goods manufactured in India can be exported without payment of excise duty, subject to specified conditions. Similarly, input used in the manufacture of these goods can be procured without payment of excise duty.

The government has prescribed certain rules that allow manufacturers to take credit for specified duties, including excise duty, CVD, SAD paid on varied input and capital goods, as well as service tax paid on input services used in the manufacture of taxable goods. The manufacturer can utilize such credit to pay the excise duty applicable on the final goods manufactured.

N.2 Service tax

Service tax is applicable on the provision of specified services in India. It is also applicable on import of services. In this regard, import rules have been issued by the government, which prescribe the criteria based on which a service qualifies as an import.

Service tax is applicable on more than 100 services, and is levied at the uniform rate of 10% of the value of service plus education cess at 2% and SHEC at 1% of service tax, making the effective tax exposure 10.30%, i.e., service tax of 10% and education cess (including SHEC) of 0.30%.

The government has prescribed rules to determine the value of taxable service.

The individual providing the service collects service tax from the receiver and is responsible for depositing it with the government. However, when a service is imported, as mentioned above, the importer of the service is responsible for depositing it with the government.

No service tax is applicable, subject to export conditions, on export of a service. The government has issued rules that include specific criteria, based on which a particular service qualifies as an export. In the case of export of a specified service, a mechanism has been provided, which prescribes the option to claim rebate/refund of excise duty/CVD/service tax paid on input/input services used to export the service.

Alternatively, the provider of a specified service can also avail of credit for duties, including excise duty, CVD paid on input and capital goods and service tax paid on input services used to provide such export services. The credit can thereafter be utilized to pay the output service tax liability arising from services that are not exported. The balance, if any, can be claimed as refund from the government.

Credit of SAD paid on import of goods is not available to offset output service tax liability. There is no credit of duty/tax paid on input/output services that are used exclusively to provide non-taxable or exempt services.

N.3 VAT/CST

VAT is an intra-state multi-point tax system and is levied on value added products at each stage. Presently, all the states have replaced their erstwhile sales tax regime with VAT.

The basic rate slabs under VAT are as follows:

- 0% for natural and unprocessed products and other essential goods
- 1% for special goods such as gold, bullion, silver, etc.
- 4% for agricultural and industrial input, IT products, capital goods and intangible goods, i.e., patents and others, as well as items of basic necessity
- 12.5% for all other goods that do not fall under any of the categories mentioned above.

Interstate sales continue to be liable to CST, which is imposed by the Central government and administered by the state governments. Recently, the rate of CST has been reduced to 2% from 3%, subject to the provision of prescribed declaration forms. The applicable VAT rate in the relevant state applies in the event the prescribed declaration has not been provided. Declaration forms are only issued when the goods are procured for (i) resale, (ii) manufacture or processing of goods for sale, (iii) a telecommunications network, (iv) mining or (v) the generation or distribution of electricity or any other form of power.

Further, a sale involving import of goods from outside India is not liable to CST, subject to the prescribed conditions. Moreover, sale of goods involving export of goods from India is also not liable to CST.

It is proposed that CST will be phased out over the next one or two years.

Input tax credit is available with respect to VAT paid on locally procured goods, including capital goods (other than the "negative list" of goods provided under respective state VAT laws). The credit can be set off against output tax liability, including CST.

N.4 Octroi/Entry tax

Entry tax/Octroi is levied by state/local authorities on the entry of goods within its jurisdiction, for use, consumption or sale on the purchase value of the goods. For this purpose, the state is divided into different local areas. The value of the entry tax levied on different products may vary from state to state.

It is relevant to note that the constitutional validity of entry tax laws is presently a subject of dispute. The applicability and status of the dispute needs to be examined on a state to state basis.

N.5 Research and Development Cess

The Research and Development Cess is levied by the Central government at 5% on import of technology into India through a foreign collaboration. This cess is required to be paid by the importer of technology on payments made for such imports.

N.6 Other significant taxes

N.6.1 Stamp duty

Stamp duty is paid for a transaction executed by way of a document or instrument under the provisions of the Indian Stamp Act or the State Acts. Stamp duty is applicable on purchase of land and various other transactions, e.g., lease, conveyance, mortgage, partitions, transfers, etc. Levy of stamp duty is generally dependent on the state where the agreement is executed. Typically, for immovable property, this duty is payable in the state where the property is located. Payment of accurate stamp duty on instruments gives them legality. Such instruments have evidentiary value and can be admitted as evidence in a court of law. Instruments that are not properly stamped are not admitted as evidence in a court of law. The rates of stamp duty on instruments relating to the transfer of immovable property vary from state to state. Stamp duty can be paid by using stamp paper, adhesive stamps or by franking.

The rate of duty is generally calculated on an ad valorem basis, depending on the nature of the instrument and the state where it is executed. Further, stamp duty can be levied at a flat rate on a certain document, irrespective of the amount involved.

N.6.2 Profession tax

Profession tax is a state levy on professions, trades, a calling or employment in a state. Thus, every person who is engaged in any of the activities mentioned above is liable to pay profession tax. Not all the state governments levy profession tax currently.

In states where such a levy exists, every enterprise with employees earning salaries may be required to register itself and withhold profession tax from the salary paid to its employees at specified rates and deposit it into the government treasury. The employer is liable to pay the requisite amount of profession tax on such salaries or wages, irrespective of whether it has deducted an equivalent amount from the salaries paid.

Further, employers are also required to pay profession tax at specified rates in their own capacity.

N.6.3 STT

STT is levied on the value of a taxable securities transaction, as depicted below:

Transaction	Rates	Payable by
Purchase/Sale of equity shares, units of equity- oriented mutual funds (delivery-based)	0.125%	Purchaser, Seller (both)
Sale of equity shares, units of equity-oriented mutual funds (non-delivery based)	0.025%	Seller
Sale of an option in securities	0.017%	Seller
Sale of an option in securities, where an option is exercised	0.125%	Purchaser
Sale of futures in securities	0.017%	Seller
Sale of units of equity-oriented funds to a mutual fund	0.250%	Seller

N.6.4 Luxury tax

Luxury tax is a state levy on certain specified luxuries and certain facilities, services, enjoyments, utilities, etc. Generally, luxury tax is levied on specific accommodation and services provided in hotels and clubs of a specific kind and on certain commodities such as cigarettes.

N.6.5 Property tax

The owner of a property (usually real estate) is liable to pay property tax. The amount of tax is estimated on the value of the property being taxed (ad valorem tax) at applicable rates. Property tax is levied on residents by local municipal authorities in India, to sustain basic civic services in the city.

N.6.6 Entertainment tax

In India, entertainment tax is paid by the entertainment industry. This tax is applicable on large-scale entertainment shows, private sponsored festivals, movie tickets, video game arcades and amusement parks, among others. With reference to this tax, entertainment activities include commercial movie/theater shows, games, amusement parks, exhibitions, celebrity stage shows and any kind of sports such as horse racing, golf, etc. The entertainment tax department looks after the tax payable for the entertainment activities being performed in various places across the country.
The entertainment tax department is located in Delhi and is under the jurisdiction of the Delhi Entertainment and Betting Tax Act, 1996. The rate of tax is different for various entertainment activities.

N.7 Goods and Services Tax (GST)

The Government has proposed that the indirect tax regime in India be replaced by a comprehensive dual GST, to be levied concurrently by the Centre (CGST) and the States (SGST). It is anticipated that the base for the GST would be comprehensive, including virtually all goods and services, with minimum exemptions. The GST structure would follow the destination principle, i.e., imports would be included in the tax base, while exports would be zero-rated. In the case of inter-state transactions within India, the State tax would apply in the State of destination as opposed to that of origin.

GST would replace most indirect taxes currently in place such as:

Central Taxes	State Taxes
▸ Central Excise Duty (including additional excise duties) ▸ Service tax ▸ Additional customs duty ▸ Surcharge and cesses	▸ VAT/Sales tax (including CST and Purchase tax) ▸ Entertainment tax (other than levies by local bodies) ▸ Entry tax (not in lieu of octroi) ▸ Luxury tax ▸ Taxes on lottery, betting and gambling ▸ State cesses and surcharges

In addition to the above, consideration is being given to replacing other taxes as well, such as stamp duty, taxes on vehicles, taxes on goods and passengers, taxes and duties on electricity and octroi.

Full input credit system would operate in parallel for CGST and SGST. GST paid on the procurement of goods and services will be available for credit against that payable on the supply of goods or services. The consumer, being the last person in the supply chain, will bear the tax, with no right of input tax credit. Cross utilization of input tax credit for between CGST and SGST would not be permitted.

GST has been envisaged as a more efficient tax system that would widen the tax base, do away with the multiplicity of taxes and their cascading effects, minimize competitive distortions, and encourage better compliance.

The new tax structure would have a significant impact on all businesses, manufacturers, traders and service providers, and on all aspects of their activities, including supply chains and logistics, product pricing, dealer margins, and IT and accounting systems.

Many of the design features of the GST are yet to be finalized. They are being discussed by the Centre and the states.

The Empowered Committee of State Finance Ministers, a collective forum for the State Finance Ministers, brought out the 'First Discussion Paper on GST in India' (FDP) on 10 November 2009 to share its views on the GST design and elicit views of the stakeholders. The GST model outlined in the FDP has the following features:

- The tax to be a Dual GST, consisting of the CGST and and the SGST.
- Inter-state transactions to be subjected to Integrated GST, to be collected by the Centre, but will appropriate transfer of funds to the destination state.

- Both CGST and SGST to be consumption-based, credit-invoice type, and levied on the basis of the destination principle.
- Three rates for the tax: a nominal rate for precious metals, a lower rate for essential commodities, and a standard rate for all other goods and services (the tax rates and classification of goods and services under each rate not specified).
- Registration threshold of INR1 million for SGST and INR15 million for CGST.
- Octroi, Purchase tax on food grains, Municipal Entertainment Tax, and stamp duties not to be subsumed. The paper is silent on the treatment of other levies such as the electricity cess, and the passenger/transportation/vehicle taxes.
- Real property, alcohol, and petroleum (and possibly Natural Gas and Electricity) to be kept outside the purview of GST.
- Industrial incentives to be converted into cash refunds. Special Industrial Area Incentives to be continued up to legitimate expiry date.

The Thirteenth Finance Commission, the Constitutional body appointed to give recommendations for sharing of resources between the Centre and the States, also released a technical paper on 15 December 2009 (Technical Paper), providing an alternative model for a flawless GST. While the basic structure of the flawless GST outlined in the Technical Paper is similar to that proposed in the FDP, it is more comprehensive in scope and places much greater emphasis on inter-state and Centre-state uniformity.

The following are the key distinguishing features of the flawless model:

- The Technical Paper recommends a single rate of GST: 5% for CGST and 7% for SGST. These rates are calculated to satisfy the criterion of revenue neutrality.
- The base to include all goods and services (including real property, alcohol, petroleum, and financial services), with possible exemption for certain unprocessed food items, and health, education, and public services.
- Emission fuels, alcohol and tobacco products to be subject to supplementary excises.
- All transaction-based taxes (including octroi, stamp duties, and purchase taxes) to be subsumed under the GST.
- Common registration threshold of INR1 million for both CGST and SGST.
- Compounding scheme for dealers with turnover up to INR4 million, and for jewelers without any turnover limit.
- All future changes in GST design to be subject to approval of a new Constitutional body, the Council of Finance Ministers, that would include all Centre and State Finance Ministers.

Given the significant differences in the GST models outlined in the FDP and the Technical Paper, the governments are trying to achieve political consensus on the important aspects of the tax, such as the tax base, rates, compensation to the States for any loss in their revenues, treatment of inter-state supplies of goods and services, and the nature and extent of inter-state and Centre-state harmonization. Another important issue that needs to be addressed is amendments to the Constitution to empower the states and the Centre to levy such a tax. Currently, neither the Centre, nor the states can levy a tax on all goods and services at all stages of trade.

The Centre had initially proposed 1 April 2010 as the target date for implementation of the GST. However, given the state of affairs, it is expected that the implementation would be deferred by 12 months. A clear roadmap for implementation of GST is now awaited.

Chapter O

Incentives

The Government of India has been extending a host of incentives and concessions to eligible corporations in certain industries.

O.1 Direct tax incentives

O.1.1 Profits from new undertakings

New undertakings are those that are formed by means other than the division or reconstruction of a business already in existence or the transfer of machinery or a plant, previously used in India for another purpose, to a new business. The following table details the available tax exemptions:

Quantum of exemption		
Type of business activities	**Percentage of profit**	**Period**
Power projects Undertakings engaged in the following activities are eligible for a tax holiday: ▸ Undertakings engaged in the generation or generation and distribution of power ▸ Those laying a network of new transmission or distribution lines ▸ Undertakings carrying out substantial renovation and modernization of existing transmission or distribution lines (b) (c)	100	10 consecutive years (out of 15 years)
Undertaking set up for reconstruction or revival of a power-generation plant where it begins to generate, transmit or distribute power before 31 March 2011	100	10 consecutive years (out of 15 years)

Type of business activities	Percentage of profit	Period
Infrastructure projects Companies (or consortiums of companies) set up before 31 March 2011, who are engaged in the following activities, are eligible for a tax holiday, e.g., carrying on the business of developing or maintaining and operating or developing, operating and maintaining new infrastructure facilities such as roads, bridges, rail systems, highway projects including housing or other activities, which are an integral part of the project and include water supply, water treatment, irrigation project, sanitation and sewerage or solid waste management systems, ports, airports, inland waterways, inland ports or navigational channels in the sea (a).	100	10 consecutive years (out of 20 years)
Undertakings that develop, develop and operate, or maintain and operate an industrial park on or before 31 March 2011	100	10 consecutive years (out of 15 years)
Undertakings carrying on the business of laying and operating a cross-country natural gas distribution network on or after 1 April 2007	100	10 consecutive years (out of 15 years)
Undertakings located in any part of India that began commercial production of mineral oil on or after 1 April 1997	100	7 years
Undertakings that began/begin to refine oil on or after 1 October 1998 but not later than 31 March 2012	100	7 years

Type of business activities	Percentage of profit	Period
Engaged in commercial production of natural gas in blocks licensed under NELP VIII on or after 1 April 2009	100	7 years
Engaged in commercial production of natural gas in blocks licensed under IV round of bidding for award of exploration contracts for Coal Bed Methane Blocks on or after 1 April 2009	100	7 years
Undertakings operating and maintaining hospitals located anywhere in India (except for certain excluded areas), constructed between 1 April 2008 and 31 March 2013 (with a minimum of 100 beds)	100	5 years
Undertakings manufacturing or producing any articles (except for certain excluded articles) and expanding substantially in specified zones in Himachal Pradesh and Uttaranchal before 1 April 2012 (c)	100 25 (30 in the case of companies)	First 5 years Next 5 years
Undertakings manufacturing or producing any specified articles or beginning any specified operations and undertaking substantial expansion in Himachal Pradesh or Uttaranchal before 1 April 2012 (c)	100 25 (30 in case of companies)	First 5 years Next 5 years
Undertakings engaged in the business of processing, preservation and packaging of fruits or vegetables; meat and meat products; poultry, marine or dairy products or from the integrated business of handling, storing and transporting food grains (d)	100 25 (30 in case of companies)	5 years 5 years

Type of business activities	Percentage of profit	Period
Undertakings engaged in collecting and processing or treating bio-degradable waste to generate power, producing bio-fertilizers, bio-pesticides and other biological agents and biogas; making pellets or briquettes for fuel or organic manure	100	5 years
Undertaking engaged in the hotel business; the business of building, owning and operating a convention center in the National Capital Territory of Delhi and the districts of Faridabad, Gurgaon, Gautam Budh Nagar and Ghaziabad, if such a hotel or convention center will be constructed before 1 April 2010	100	5 years
Undertakings engaged in the hotel business in districts with a world heritage site, and the hotel is/will be constructed and started/starts functioning between 1 April 2008 and 31 March 2013	100	5 years
Undertaking manufacturing or producing eligible articles or product, undertaking substantial expansion to manufacture or produce any eligible article or product or engaging in eligible business in the North-Eastern States	100	10 years

a. The exemption is available for a period of 10 years falling within the period of the initial 20 years. However, in the case of ports, airports, inland ports and navigation channels in the sea and inland waterways, the exemption is available for 10 years falling within the period of the initial 15 years.

b. Substantial renovation/modernization, if undertaken, should be completed by 31 March 2011. Generation and/or transmission and/or distribution should commence before 31 March 2011.

c. Profits derived from substantial expansion undertaken by an existing undertaking or enterprise is also eligible for exemption.

d. The incentive will not be available to an undertaking engaged in the business of processing, preserving and packaging meat or meat products, poultry, marine or dairy products if it began its operations before 1 April 2009.

O.1.2 FTZs and STPs/HTPs

A tax deduction equal to 100% for 10 consecutive years of the profits derived from the export of articles, products or computer software by units located in FTZs, HTPs/STPs and SEZs (established before 31 March 2005) and 100% EOUs is calculated by applying to the taxable income the ratio of the export turnover to the total turnover. This is available up to the tax year 2010–11. However, FTZs and HTPs/STPs are subject to MAT.

O.1.3 Investment-linked incentives

The government has introduced an investment-linked tax deduction for the following specified businesses as an incentive:

- Setting up and operating a cold chain facility
- Setting up and operating a warehousing facility for storage of agricultural produce
- Laying and operating a cross-country natural gas or crude or petroleum oil pipeline network for distribution, including storage facilities, being an integral part of such a network

As a result, 100% deduction is allowed with respect to the entire expenditure of capital incurred, wholly and exclusively, for the purpose of the specified business during the previous year in which such expenditure was incurred. As a further incentive, any expenditure which is incurred wholly and exclusively for the purpose of the specified business prior to the commencement of operations and is capitalized in the books of accounts is also allowed as a deduction in the year in which the business is commenced.

The specified business should commence its operations from the following prescribed dates:

- On or after 1 April 2007 in case the specified business pertains to laying and operating a cross-country natural gas pipeline network for distribution, with storage facilities being an integral part of such a network
- On or after 1 April 2009 in the case of other specified business

O.2 SEZs

O.2.1 Introduction

India's FTP provides for SEZs being set up in the country with a view to enable an internationally competitive and problem-free environment for export. Units may be set up in an SEZ for manufacture, trading or services activity.

The policy provides for SEZs being set up in the public, private or joint sectors or by state governments. The Central Government has also converted some of the existing EPZs/FTZs into SEZs to give momentum to this sector. The number of notified SEZs in India crossed the 300 mark (as of 31 December 2009 in India), including multi-product, sector-specific and free trade warehousing zones.

More than 531 SEZ proposals have been approved by the government and are in various stages of being set up. Some approved SEZs are located at Dronagiri (Maharashtra); Kulpi (West Bengal); Paradip (Orissa); Bhadohi, Kanpur and Greater Noida (Uttar Pradesh); Kakinada (Andhra Pradesh); Hassan (Karnataka) and Positra, Dahej, Mundra, Vanj-Surat, Hazira-Surat and Icchapur-Surat (Gujarat). Some of these SEZs are in their initial stages of development while others are ready for operation.

At present, SEZ units in India provide direct employment to around 1,13,426 persons with an investment of about INR1,283,904.40 million.

Corporate direct tax incentives:

- Profits derived by undertakings (set up in SEZs) from the export of articles or computer software are allowed as a deduction from the computation of taxable income.
- There is no liability for MAT on profits derived from exports by undertakings set up in SEZs.

O.2.2 Computation of profits from export

$$\text{Computation of profits derived from exports} = \frac{\text{Profits of the business of the undertaking} \times \text{Export turnover of the undertaking}}{\text{Total turnover of the undertaking}}$$

Amount of deduction	
Percentage of profits derived from export	**Undertakings established in SEZs on or after 1 April 2005 under SEZA**
100%	For the first five years starting from the year in which manufacture or production commences
50%	For the next five years
50% (subject to fulfilment of reinvestment conditions*)	For the next five years

* These conditions require transfer of profits to a separate reserve account, which is to be utilized for capital expansion.

Conditions for availing tax incentive

- The undertaking must commence the manufacture or production of articles or provide services (including computer software) in a SEZ.
- There must be export of such articles or services.
- The undertaking is not formed by splitting up or reconstructing a business already in existence.
- The undertaking is not formed by transferring to a new business of machinery or plant previously used for any purpose. However, if any machinery, plant or any part thereof, previously used for any purpose, is transferred to a new business, and the total value of the machinery, plant or part so transferred does not exceed 20% of the total value of the machinery or plant used in the business, the aforesaid condition will be deemed to have been complied with. Any machinery or plant used outside India by any other person, provided it has never been used in India, or if it has been imported into India from any country outside India, and no depreciation has been claimed on it in India, will not be regarded as a machinery or plant previously used for any purpose
- The taxpayer should furnish a report from a chartered accountant certifying the deduction.

Other corporate tax incentives:

- Exemption from MAT payable by developer and co-developer.
- Exemption from DDT on profits distributed by an enterprise engaged in developing, developing and operating, or developing, operating and maintaining an SEZ.
- Exemption from capital gains tax on the sale of fixed assets (subject to fulfilment of use condition) to be granted to industrial undertakings shifting their base from urban areas or any other area to an SEZ.

O.2.3 Indirect tax incentives for SEZ units

- Duty-free import of capital goods (including second-hand capital goods), raw materials, consumables, and spares for the development, operation and maintenance of SEZ units
- Duty-free procurement of capital goods (including second-hand capital goods), raw materials and consumable spares from the domestic market
- Exemption from payment of CST on interstate purchases from the domestic market
- Exemption from service tax for services provided to a unit (including a unit under construction) of an SEZ to carry on authorized operations in the SEZ
- Subject to the achievement of positive net foreign exchange earnings, SEZ units to be permitted to sell their production in the Domestic Tariff Area (DTA) on payment of full customs duty, subject to the import policy in force
- Certain supplies in DTA, including supplies to other EOU/STP/EHTP/BTP/SEZ units, holders of special import licences, and the sale of ITA-bound items (payment for which is received in INR), taken into account to gauge the achievement of positive net foreign exchange earnings
- Complete freedom for subcontracting
- Subcontracting of parts of production permitted abroad
- No routine examination by Customs of export and import cargo
- Re-export of imported goods found defective, goods imported from foreign suppliers on a loan basis without guaranteed receipt waiver under intimation to the Development Commissioner

- Facility to retain 100% of the foreign exchange receipts in the export earner's foreign currency account

O.2.4 Incentives for developers of SEZs

- No net foreign exchange earning requirement/export obligation imposed on SEZ developers
- Procuring goods from the DTA without payment of duty or importing specified goods without payment of customs duty, as may be notified by the government for the development of an SEZ
- Full freedom in the allocation of developed plots to approved SEZ units on a purely commercial basis
- Full authority to provide services, including water, electricity, security, restaurants, and recreation centers, on commercial lines
- Facility to develop a township within an SEZ with residential areas, markets, playgrounds, clubs and recreation centers adhering to SEZ norms
- Exemption from service tax on taxable services provided to a developer or unit to carry on authorized operations in an SEZ
- Exemption from CST imposed on domestic inter-state procurement of goods

O.3 State-level incentives

State governments have proactively come up with several incentives to encourage investment and attract capital:

- Special tax incentives
- Rebate on cost of land
- Rebate on stamp duty on sale/lease of land
- Concession in power tariff for new units
- Self-certification under various Acts
- Special incentive packages for mega projects
- Employment subsidies

O.3.1 Investment incentives

Various states have incentive schemes to attract investment by financing a certain percentage of the fixed capital cost of a project. These states have designated areas "A", "B" and "C" according to their level of development. The incentives provided by states vary, and are generally larger for investments made in backward areas. Further, the terms and ceiling for incentives also vary across states, depending on the nature of the industry the state is trying to promote.

O.3.2 Power tariff incentives

Power tariff incentives are provided by state governments in various ways:

- Exemption from payment of electricity duty
- Freeze on tariff charged for new units for a few years after commencement of production

- Assurance of uninterrupted electricity supply and concessional rates of billing, subject to certain conditions
- Financial incentives for purchase and installation of captive power-generation sets

O.3.3 Other incentives

Some states extend other incentives to small-scale units or priority industries, as defined in their industrial policy statements. An indicative list of such incentives:

- Concessional rate of interest on loans granted by state finance corporations
- Price preference for goods made by small-scale industries in purchases made by government and semi-government organizations
- Exemption from payment of octroi (entry tax) for a certain specified period
- Preferential allotment of land and sheds in industrial areas to small-scale industries
- VAT deferred in lieu of interest-free loans

Some states have taken the initiative to streamline the investment approval process by introducing common application forms for various approvals. A "green channel facility" has been introduced in some states, whereby applications required for clearances are received and processed through various institutional offices on a time-bound basis.

Appendices

Appendix 1: List of frequently used abbreviations

ADR	American Depository Receipt
BCTT	Banking Cash Transaction Tax
BPO	Business Process Outsourcing
BTP	Biotechnology Park
CAGR	Compounded Annual Growth Rate
CBDT	Central Board of Direct Taxes
CCI	Competition Commission of India
DDT	Dividend Distribution Tax
EHTP	Electronic Hardware Technology Park
EPZ	Export Processing Zone
FBT	Fringe Benefit Tax
FCCB	Foreign Currency Convertible Bond
FDI	Foreign Direct Investment
FEMA	Foreign Exchange Management Act, 1999
FII	Foreign Institutional Investor
FIPB	Foreign Investment Promotion Board
FTP	Foreign Trade Policy
FTZ	Free Trade Zone
FY	Financial Year
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
GDR	Global Depository Receipt
HTP	Hardware Technology Park
INR	Indian Rupee
IRDA	Insurance Regulatory and Development Authority

IT	Information Technology
IT Act	Income Tax Act, 1961
ITES	IT Enabled Services
Km	Kilometers
MNC	Multinational Company
MoF	Ministry of Finance
MoP	Ministry of Power
MoPNG	Ministry of Petroleum and Natural Gas
NBFC	Non-Banking Financial Company
NELP	New Exploration and Licensing Policy
NRI	Non-resident Indians
PIO	Person of Indian Origin
PSB	Public Sector Bank
PSU	Public Sector Unit
ROI	Return of Income
RBI	Reserve Bank of India
Rs.	Indian Rupee
SEBI	Securities and Exchange Board of India
SEZ	Special Economic Zone
SEZA	Special Economic Zones Act, 2005
STP	Software Technology Park
STT	Securities Transaction Tax
TRAI	Telecom Regulatory Authority of India
VAT	Value Added Tax
WTO	World Trade Organization

Appendix 2: Useful addresses and telephone numbers

When calling from an international location, the caller must dial the international country code for India (0091), followed by the city code (mentioned within brackets) and the local telephone number. When calling from within India, the caller must dial "0" followed by the city code and the local telephone number.

Business facilitators	
Confederation of Indian Industry	CII Mantosh Sondhi Centre 23, Institutional Area, Lodhi Road New Delhi 110 003 Telephone: (11) 2462 9994-7 Facsimile: (11) 2462 6149/2463 3168 Website: www.ciionline.org
Federation of Indian Chambers of Commerce	Federation House and Industry Tansen Marg New Delhi 110 001 Telephone: (11) 2373 8760 – 70 Facsimile: (11) 2372 1504/2332 0714 Website: www.ficci.com
The Associated Chambers of Commerce	ASSOCHAM Corporate Office and Industry in India 1, Community Centre Zamrudpur Kailash Colony, New Delhi – 110 048 Telephone: 46550555 Facsimile: 46536481/46536482 46536497/46536498 Website: www.assocham.org

Indian Investment Centre	Department of Economic Affairs Jeevan Vihar, 4th Floor Sansad Marg New Delhi 110 001 Telephone: (11) 2373 3673/79 Facsimile: (11) 2373 2245 Website: www.iic.nic.in
Department of Industrial Policy & Promotion	Ministry of Commerce & Industry Udyog Bhawan New Delhi 110 011 Telephone: (11) 2306 1222 Facsimile: (11) 2306 2626 Website: www.dipp.gov.in
Foreign Investment Promotion Board	Department of Economic Affairs Ministry of Finance North Block New Delhi 110 001 Telephone: (11) 2309 4905 Facsimile: (11) 2309 3422 Website: www.finmin.nic.in
Software Technology Parks of India	Electronics Niketan 6, CGO Complex, Lodhi Road, New Delhi 110 035 Telephone: (11) 2436 2811/3187/4034/3484 Facsimile: (11) 24363436/24634336 Website: www.stpi.soft.net
Regulatory bodies	
Reserve Bank of India	Central Office Shahid Bhagat Singh Marg Mumbai 400 001 Telephone: (22) 2260 1000 Facsimile: (22) 22616 0623/0630 Website: www.rbi.org.in

Insurance Regulatory and Development Authority	3rd Floor, Parisrama Bhavanam Basheerbagh Hyderabad 500 004 Telephone: (40) 23381100 Facsimile: (40) 6682 3334 Website: www.irdaindia.org
Securities and Exchange Board of India	Mittal Court B Wing 224, Nariman Point Mumbai 400 021 Telephone: (22) 2285 0451 Facsimile: (22) 2285 5585 Website: www.sebi.gov.in
Telecom Regulatory Authority of India	A- 2/14, Safdarjung Enclave New Delhi 110 029 Telephone: (11) 2610 1934 Facsimile: (11) 2610 3294 Website: www.trai.gov.in
Directorate General of Hydrocarbons	Hindustan Times House 4th and 11th Floors 18-20, Kasturba Gandhi Marg New Delhi 110 001 Telephone: (11) 2335 2650/17/47 Facsimile: (11) 2331 7081/2335 2649 Website: www.dghindia.org
Directorate General of Civil Aviation	Aurobindo Marg, Opposite Safdarjung Airport New Delhi 110 003 Telephone: (11) 2462 2495 Facsimile: (11) 2462 9221 Website: www.dgca.nic.in
Directorate General of Shipping	Jahaz Bhavan Walchand Hirachand Marg Mumbai 400 001 Telephone: (22) 2261 3651 – 54 Facsimile: (22) 2261 3655 Website: www.dgshipping.nic.in

Central Drugs Standard Control Organization	Nirman Bhawan New Delhi 110 011 Telephone: (11) 2301 8806 Facsimile: (11) 2301 2648 Website: www.cdso.nic.in
Central Board of Excise & Customs	North Block New Delhi 110 001 Telephone: (11) 2301 3908 Facsimile: (11) 2301 6475 Website: www.cbec.gov.in
National Highways Authority of India	G 5&6, Sector-10, Dwarka New Delhi 110 045 Telephone: (11) 2507 4100 Facsimile: (11) 2508 0360 Website: www.nhai.org
Key ministries in the Government of India	
Ministry of Civil Aviation	Rajiv Gandhi Bhawan, B Block Safdarjung Airport Complex New Delhi 110 003 Telephone: (11) 2461 0358 Facsimile: (11) 2461 0378 Website: www.civilaviation.nic.in
Department of Chemicals & Petrochemicals	Shastri Bhawan, A Wing Dr Rajendra Prasad Marg New Delhi 110 001 Telephone: (11) 2338 4196/2338 2467 Facsimile: (11) 2338 7892 Website: www.chemicals.nic.in
Department of Commerce	Udyog Bhawan New Delhi 110 011 Telephone: (11) 2306 3664 Facsimile: (11) 2306 1796 Website: www.commerce.gov.in

Department of Information Technology	Electronics Niketan CGO Complex, Lodhi Road, New Delhi 110 003 Telephone: (11) 2436 4041 Facsimile: (11) 2436 3134 Website: www.mit.gov.in
Department of Telecommunications	Sanchar Bhawan 20, Ashoka Road New Delhi 110 001 Telephone: (11) 2371 9898 Facsimile: (11) 2371 1514 Website: www.dot.gov.in
Ministry of Environment & Forests	Paryavaran Bhawan CGO Complex, Lodhi Road New Delhi 110 003 Telephone: (11) 2436 1896/2436 0721 Website: www.envfor.nic.in
Ministry of Finance	North Block New Delhi 110 001 Telephone: (11) 2309 2947 Facsimile: (11) 2309 2145 Website: www.finmin.nic.in
Ministry of Food Processing Industries	Panchsheel Bhavan August Kranti Marg New Delhi 110 049 Telephone: (11) 2649 2475 Facsimile: (11) 2649 3228 Website: www.mofpi.nic.in
Ministry of Information & Broadcasting	Shastri Bhawan, A Wing Dr Rajendra Prasad Marg New Delhi 110 001 Telephone: (11) 2338 2639 Facsimile: (11) 2338 3513 Website: www.mib.nic.in

Ministry of Mines	3rd Floor, A Wing Shastri Bhawan Dr Rajendra Prasad Marg New Delhi 110 001 Telephone: (11) 2338 3082 Facsimile: (11) 2338 6402 Website: www.mines.nic.in
Ministry of Petroleum and Natural Gas	Shastri Bhawan Dr Rajendra Prasad Road New Delhi 110 001 Telephone: (11) 2338 3562 Facsimile: (11) 2307 0723 Website: www.petroleum.nic.in
Ministry of Power	Shram Shakti Bhavan New Delhi 110 001 Telephone: (11) 2371 1316/0271 Facsimile: (11) 2372 1487 Website: www.powermin.nic.in
Department of Shipping	Transport Bhavan 1, Parliament Street New Delhi 110 001 Telephone: (11) 2371 4938 Facsimile: (11) 2371 6656 Website: www.shipping.nic.in
Department of Road Transport & Highways Transport Bhavan	1, Parliament Street New Delhi 110 001 Telephone: (11) 2371 4104 Facsimile: (11) 2335 6669 Website: www.morth.nic.in
Ministry of Steel	Udyog Bhawan New Delhi 110 011 Telephone: (11) 2379 3432 Facsimile: (11) 2301 3236 Website: www.steel.nic.in

Ministry of Textiles	Udyog Bhawan New Delhi 110 011 Telephone: (11) 2306 1330/10/14 Facsimile: (11) 2306 3711/3681 Website: www.texmin.nic.in
Ministry of Tourism	Transport Bhavan 1, Parliament Street New Delhi 110 001 Telephone: (11) 2371 1792/2332 1395 Facsimile: (11) 2371 7890 Website: www.tourism.nic.in
Industry associations	
Indian Banks Association	6th Floor, Centre 1 World Trade Centre Complex Cuffe Parade Mumbai 400 005 Telephone: (22) 2217 4040 Facsimile: (22) 2218 4222 Website: www.indianbanksassociation.org
Association of Mutual Funds in India	709, Raheja Centre, Free Press Journal Marg Nariman Point, Mumbai 400 021 Telephone: (22) 66101886/7, 22876338/9 Facsimile: (22) 66101889/66101916 Website: www.amfiindia.com
Chemicals and Petrochemicals Manufacturers Association	10th Floor, Vijaya Building, 17, Barakhamba Road New Delhi 110 001 Telephone: (11) 2332 6377/2332 2068 Facsimile: (11) 2331 0282 Website: www.cpmai.net

Indian Chemicals Manufacturers Association	Sir Vithaldas Chambers 16, Mumbai Samachar Marg Mumbai 400 023 Telephone: (22) 2204 7649/8043/2284 6852 Facsimile: (22) 2204 8057 Website: www.icmaindia.com
All India Plastics Manufacturers' Association	AIPMA House, A-52, Street No. 1 MIDC, Marol, Andheri East Mumbai 400 093 Telephone: (22) 2821 7324/7325 Facsimile: (22) 2835 2511/2512 Website: www.aipma.net
Bulk Drug Manufacturers Association	C-25, Industrial Estate Near SBH, Sanath Nagar Hyderabad 500 038 Telephone: (40) 2370 3910/6718 Facsimile: (40) 2370 4804 Website: www.bdm-assn.org
Indian Drug Manufacturers Association	102-B, Poonam Chambers Dr Annie Besant Road, Worli Mumbai 400 018 Telephone: (22) 2497 4308/2494 4624 Facsimile: (22) 2495 0723 Website: www.idma-assn.org
Organization of Pharmaceutical Producers of India	Ground Floor, Peninsula Chambers Ganpatrao Kadam Marg, Lower Parel Mumbai 400 013 Telephone: (22) 2491 8123/2486/5662 7007 Facsimile: (22) 2491 5168 Website: www.indiaoppi.com
Association of Biotechnology Led Enterprises	No 13, Second Floor, 4th C Block 10th Main Road, Koramangala Bangalore 560 034 Telephone: (80) 2553 3938 Facsimile: (80) 2553 3938 Website: www.ableindia.org

National Association of Software and Service Companies	International Youth Centre Teen Murti Marg, Chanakyapuri New Delhi 110 021 Telephone: (11) 2301 0199 Facsimile: (11) 2301 5452 Website: www.nasscom.org
Manufacturers' Association for Information Technology	4th Floor, PHD House Opposite Asian Games Village New Delhi 110 016 Telephone: (11) 2685 5487/2686 6976 Facsimile: (11) 2685 1321 Website: www.mait.com
India Semiconductor Association	3rd Floor, Divyasree Chambers Langford Town Bangalore 560 025 Telephone: (80) 2212 0009 Facsimile: (80) 2207 2186 Website: www.isaonline.org
Cellular Operators Association of India	14, Bhai Veer Singh Marg New Delhi 110 001 Telephone: (11) 2334 9275 Facsimile: (11) 2334 9276 9277 Website: www.coai.in
Association of Unified Telecom Service Providers of India	B-601, Gauri Sadan 5, Hailey Road New Delhi 110 001 Telephone: (11) 2335 8585/8989 Facsimile: (11) 2332 7397 Website: www.auspi.org
The Indian Broadcasting Foundation	B-304, Third Floor, Ansal Plaza, Hudco Place, Khelgaon Marg, Andrewsganj, New Delhi 110 049 Telephone: (11) 2625 5238/5239/1618 Facsimile: (11) 2625 5240 Website: www.ibf-india.com

Electronic Component Industries Association	ELCINA House 422, Okhla Industrial Estate New Delhi 110 020 Telephone: (11) 2692 4597/8053 Facsimile: (11) 2692 3440 Website: www.elcina.com
Indian Electrical & Electronics Manufacturers Association	501, Kakad Chambers 132, Dr Annie Besant Road, Worli Mumbai 400 018 Telephone: (22) 2493 0532/6528/6529 Facsimile: (22) 2493 2705 Website: www.ieema.org
Consumer Electronics & TV Manufacturers Association	J-13, Jangpura Extension New Delhi 110 014 Telephone: (11) 2432 1616/3090 8288 Facsimile: (11) 2432 1616 Website: www.cetmaindia.org
Society of Indian Automobile Manufacturers	Core 4-B, 5th Floor, India Habitat Centre Lodhi Road New Delhi 110 003 Telephone: (11) 2464 7810-12 Facsimile: (11) 2464 8222 Website: www.siamindia.com
Automotive Component Manufacturers Association of India	6th Floor, The Capital Court Olof Palme Marg, Munirka New Delhi 110 067 Telephone: (11) 2616 0315/2617 5873 Facsimile: (11) 2616 0317 Website: www.acmainfo.com
Federation of Indian Export Organisations	Niryat Bhawan", Rao Tula Ram Marg, Opp. Army Hospital Research & Referral, New Delhi -110057 Telephone: (11) 26150101-04 Facsimile: (11) 26150066/26150077 Website: www.fieo.org

Appendix 3: Exchange rates

The table below provides RBI reference exchange rates for the Indian rupee against the four major currencies as on 31 December 2009.

Currency	Exchange rate
US dollar	46.53
Euro	67.04
UK pound	75.48
Japanese yen (per 100 JPY)	50.34

Source: RBI (http://rbi.org.in)

Appendix 4: FDI policy

Illustrative list of sectors in which FDI up to 100% is allowed under the automatic route

- NBFCs
- Coal and lignite mining for captive consumption by power projects as well as iron and steel, cement production
- Power
- Software development
- Electronic hardware
- Film industry
- Advertising
- Hospitals
- Hotels

- Food processing
- Private oil refineries
- Manufacture of telecom products
- Airports (greenfield projects)
- Management consultancy
- Pollution control and management
- Wholesale/Cash & carry trading
- Trading for exports
- Manufacture of drugs and pharmaceuticals
- Industrial parks
- SEZs and free trade warehousing zones
- Agriculture (restricted to floriculture, horticulture, development of seeds, animal husbandry, pisciculture, aquaculture, cultivation of vegetables and mushrooms under controlled conditions and services related to agro and allied sectors)
- Alcohol distillation and brewing
- Manufacture of coffee and rubber processing and warehousing, most manufacturing activities
- Non-banking financial services
- Construction development projects including housing, commercial premises, resorts, educational institutions, recreational facilities, cities and regional-level infrastructure, townships.

All of the above are subject to specified conditions for investment in the relevant sector/industry and are also subject to prescribed documentation requirements.

Appendix 5: Corporate tax calculation

The following e.g., illustrates the computation of taxable income and tax liability of a domestic company for the tax year 1 April 2009 to 31 March 2010:

Net profit as per financial statement		14,500,000
Less:		
Net dividends received from domestic company	(2,000,000)	
(exempt from tax)		
Income from sub-leased property	(200,000)	
(considered separately)		(2,200,000)
		12,300,000
Add:		
Provision for tax	9,000,000	
Depreciation as per financial statements	3,000,000	
Disallowed expenses	200,000	12,200,000
(such expenses are not related to the business)		24,500,000
Less:		
Tax depreciation		(5,560,000)
Business income		18,940,000
Income from other sources:		
Net income from sub-leased property		200,000
Gross total income		19,140,000

Taxable income		**19,140,000**
Calculation of tax		
Income tax at 30% on INR19,140,000		5,742,000
Add:		
Surcharge at 10% (since total income more than INR10 million)	574,200	
Education cess at 3%		189,486
Tax payable		**6,505,686**
Less:		
Advance tax paid during the tax year		(5,700,000)
Balance tax payable/ (refundable) with ROI (1)	805,686	
Liability for tax excludes the interest chargeable on account of underpayment of advance tax.		

Appendix 6: Treaty tax rates

The following table presents the treaty rate or the rate under the domestic tax laws on outbound payments for countries that have concluded double tax avoidance treaties with India, whichever is lower.

	Interest %	Royalties (f) %
Armenia	10 (b)	10 (d)
Australia	15	10 (c) (k)
Austria	10 (b)	10 (d)
Bangladesh	10 (b)	10 (d)
Belarus	10 (b)	10 (c)
Belgium	15 (b)	10 (e)
Botswana	10 (b)	10 (d)
Brazil	15 (b)	10 (c)
Bulgaria	15 (b)	10 (c)
Canada	15 (b)	10 (c) (k)
China	10 (b)	10 (d)
Cyprus	10 (b)	10 (c)
Czech Republic	10 (b)	10 (d)
Denmark	15 (b)	10 (c)
Finland	10 (b)	10 (c) (k)
France	10 (b) (e)	10 (d) (e)
Germany	10 (b)	10 (d)
Greece	20 (a)	10 (c)
Hungary	10 (b) (e)	10 (c) (e)
Iceland	10 (b)	10 (d)
Indonesia	10 (b)	10 (c)
Ireland	10 (b)	10 (d)
Israel	10 (b) (e)	10 (d) (e)
Italy	15 (b) (i)	10 (c) (i)

	Interest %	Royalties (f) %
Japan	10 (b)	10 (c)
Jordan	10 (b)	10 (c)
Kazakhstan	10 (b) (e)	10 (d) (e)
Kenya	15 (b)	10 (c)
Korea	15 (b)	10 (c)
Kuwait	10 (b)	10 (d)
Kyrgyz Republic	10 (b)	10 (c)
Libya	20 (a)	10 (c)
Luxembourg (i)	10 (b)	10 (d)
Malaysia	10 (b)	10 (d)
Malta	10 (b)	10 (c)
Mauritius	20 (a) (b)	10 (c)
Mexico (g)	10 (b)	10 (d)
Mongolia	15 (b)	10 (c)
Montenegro	10 (b)	10 (d)
Morocco	10 (b)	10 (d)
Myanmar (i)	10 (b)	10 (d)
Namibia	10 (b)	10 (d)
Nepal	15 (b)	10 (c)
Netherlands	10 (b) (e)	10 (d) (e)
New Zealand	10 (b)	10 (d)
Norway	15 (b)	10 (c) (e)
Oman	10 (b)	10 (c)
Philippines	15 (b)	10 (c)
Poland	15 (b)	10 (c)
Portugal	10 (b)	10 (d)
Qatar	10 (b)	10 (d)
Romania	15 (b)	10 (c)
Russian Federation	10 (b)	10 (d)
Saudi Arabia	10 (b)	10 (d)

	Interest %	Royalties (f) %
Serbia	10 (b)	10 (d)
Singapore	15 (b)	10 (d) (k)
Slovenia	10 (b)	10 (d)
South Africa	10 (b)	10 (d)
Spain	15 (b)	10 (c) (e) (k)
Sri Lanka	10 (b)	10 (d)
Sudan	10 (b)	10 (d)
Sweden	10 (b) (e)	10 (d) (e)
Switzerland	10 (b) (e)	10 (d) (e)
Syria	10 (b)	10 (d)
Tajikistan (i)	10 (b)	10 (d)
Tanzania	12.5(b)	10 (c)
Thailand	20 (a) (b)	10 (c)
Trinidad and Tobago	10 (b)	10 (d)
Turkey	15 (b)	10 (c)
Turkmenistan	10 (b)	10 (d)
Uganda	10 (b)	10 (d)
Ukraine	10 (b)	10 (d)
United Arab Emirates	12.5 (b)	10 (d)
United Arab Republic	20 (a)	10 (c)
United Kingdom	15 (b)	10 (c) (k)
United States	15 (b)	10 (c) (k)
Uzbekistan	15 (b)	10 (c)
Vietnam	10 (b)	10 (d)
Zambia	10 (b)	10 (d)
Non-treaty countries	20 (a)	10 (c)

a. This rate is provided under the Indian IT law, being the rate lower than that prescribed under the relevant treaty. This rate applies to the interest on monies borrowed, or debts incurred, in foreign currency. Other interest is taxed at the rate of 40% plus a surcharge of 2.5% (only where the aggregate income exceeds INR10 million) and an education cess of 3% (on income-tax and surcharge)

b. A reduced rate of 0% to 10% applies generally to banks, and, in a few cases, to financial institutions local authorities, political subdivisions and the government

c. This rate is provided under the Indian IT law, being the rate lower than that prescribed under the relevant tax treaty. This rate is increased by a surcharge of 2.5% (only where the aggregate income exceeds INR10 million) and further enhanced by an education cess of 3% (on income tax and surcharge). It applies to royalties (not effectively connected to permanent establishment or fixed base in India) paid to foreign corporations under agreements that are approved by the Government of India or are in accordance with the industrial policy, and that are entered into after 31 May 2005. However, if the royalty is paid under an agreement, which is not approved by the Central Government or is not in accordance with the industrial policy, the royalty is taxed on a net basis at a rate of 40% plus a surcharge of 2.5% (only where the aggregate income exceeds INR10 million) and an education cess of 3% (on income-tax and surcharge).

d. This rate is provided under the relevant treaty. It applies to royalty not effectively connected with permanent establishment in India

e. A more restrictive scope of the definition of royalty may be available under the most favored nation clause in the relevant treaty.

f. Most of India's tax treaties also provide for withholding tax rates for technical services fees. In most cases, the rates applicable to royalties also apply to the technical services fees.

g. The tax treaty is not effective as on date.

h. Dividends: Under the Indian IT law, Indian companies must pay DDT at the rate of 15% plus a surcharge of 10% and an education cess of 3%) on dividends declared, distributed or paid by them. Such dividends are exempt from tax in the hands of the recipients.

i. The tax treaty is effective from 1 April 2010.

j. The tax rate applicable on interest and royalty is reduced to 10% as per the Press Information Bureau press release dated 13 January 2006. The text of the protocol is yet to be notified.

k. A 10% rate applies to royalties relating to the use of industrial, commercial or scientific equipment and technical or consultancy services that are ancillary and subsidiary to the application or use of such equipment.

Appendix 7.1: Individual IT calculation

The following e.g., illustrates the method of calculating taxable income and IT liability for an individual for the tax year 1 April 2009 to 31 March 2010.

	INR	INR
Calculation of taxable Income		
Salary and perquisites		430,000
Income from self-occupied property		0
Less interest paid on construction loan,		
limited to INR150,000		(150,000)
Capital gains (long-term)		30,000
Interest income		20,000
Gross total income		**330,000**
Deductions not generally deductable:		
Medical insurance,	(10,000)	
Investments in: (a)		
Provident fund	(20,000)	
Life insurance	(10,000)	
Other tax saving investments	(20,000)	60,000
Taxable income (b)		**270,000***

Calculation of tax liability		
Ordinary taxable income at rates from the personal income tax rate table [(240,000-160,000) x 10%] (c)		8,000
Capital gains (long-term of 30,000 x 20%)		6,000
Total tax liability		14,000
Surcharge		
Education cess @ 3%		420
Less:		
Taxes withheld on salary	8240	
Advance tax payment	6180	(14,420)
Balance due with filing of ROI		0

a. Contributions/investments in the tax savings plan will be allowed as deduction from gross total income up to INR100,000.

b. Taxable income consists of long-term capital gains (INR30,000) other than listed securities.

c. In the case of a resident woman and resident senior citizen*, the minimum taxable income threshold is INR190,000 andINR 240,000, respectively, as against INR160,000 for any other individual.

Appendix 7.2: Taxability of Income Items

	Taxable	Not Taxable	Comments
Compensation			
Base salary	X	–	(a)
Bonus	X	–	(a)
Cost-of-living allowance	X	–	(a)
Tax perquisite (that is, tax paid by employer)	X	–	(b)
Rent-free housing	X	–	(c)
Utilities	X	–	(a)
Education reimbursement	X	–	(a)
Hardship allowance	X	–	(a)
Entertainment allowance	X	–	(a)
Other allowance	X	–	(a)
Moving expenses	–	X	(d)
Medical reimbursement	–	X	(e)
Value of meals provided during working hours	–	X	–
Other items			
Foreign-source personal ordinary income (interest and dividends)	–	X	(f)
Capital gain from sale of personal residence in home country	–	X	(f)
Capital gains from sale of other assets in home country (stocks and shares)	–	X	(f)

a. Compensation paid for services performed in India is taxable in India, regardless of where the compensation is paid. Remuneration includes any salary payable to the employee for a rest or leave period, which is preceded or followed by the performance of services in India and is provided for in the employment contract.

b. Tax paid by the employer is a taxable perquisite in the hands of the employee. However, tax paid on non monetary benefits provided to an employee is not treated as income in the hands of the employee, subject to the satisfaction of certain conditions.

c. The taxable value of a perquisite with respect to rent-free housing is calculated using a formula.

d. Relocation expenses incurred at the time of transfer are not taxable to the employee, subject to the satisfaction of certain conditions.

e. Medical expenditures or reimbursements are exempt, subject to certain conditions and limits.

f. This item is non taxable for individuals who are considered resident and not ordinarily resident or who are considered non resident, provided these are not received in or directly remitted to India.

Appendix 7.3: Sample tax calculation

The following is a tax calculation for an expatriate who was sent to India on 1 April 2007 for a period of two years.

	USD	USD
Calculation of taxable income		
Basic salary	120,000	
Bonus	12,000	
Employer pension contribution to home country plan (a)	8,400	
Children education allowance (after exemption)	12,000	
Cost of living allowance	24,000	
Foreign-service premium	30,000	
Housing utilities	1,200	
Total of salary, bonus and taxable allowances		207,600
Perquisite (c): Rent paid by employer for unfurnished housing (lower of amount paid of USD36,000 or 20% of salary, bonus and taxable allowances, which equals USD39,600 [20% of USD198,000])		
Taxable perquisite		36,000
Taxable income		243,600
Taxable income in Indian currency (USD243,600X41) (c)		9,987,600
Calculation of tax payable (Rs.)		
Income tax		2,900,280
Education cess at 3%		87,008
Total tax payable		**2,987,288**

a. Employer contributions to a home country plan may be claimed as non-taxable based on judicial pronouncements.

b. It is assumed that the city in which the accommodation is provided had a population exceeding 2.5 million according to the 2001 census.

c. For the purpose of the e.g.,, the conversion rate is USD1 = INR41.
(d).

Notes

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