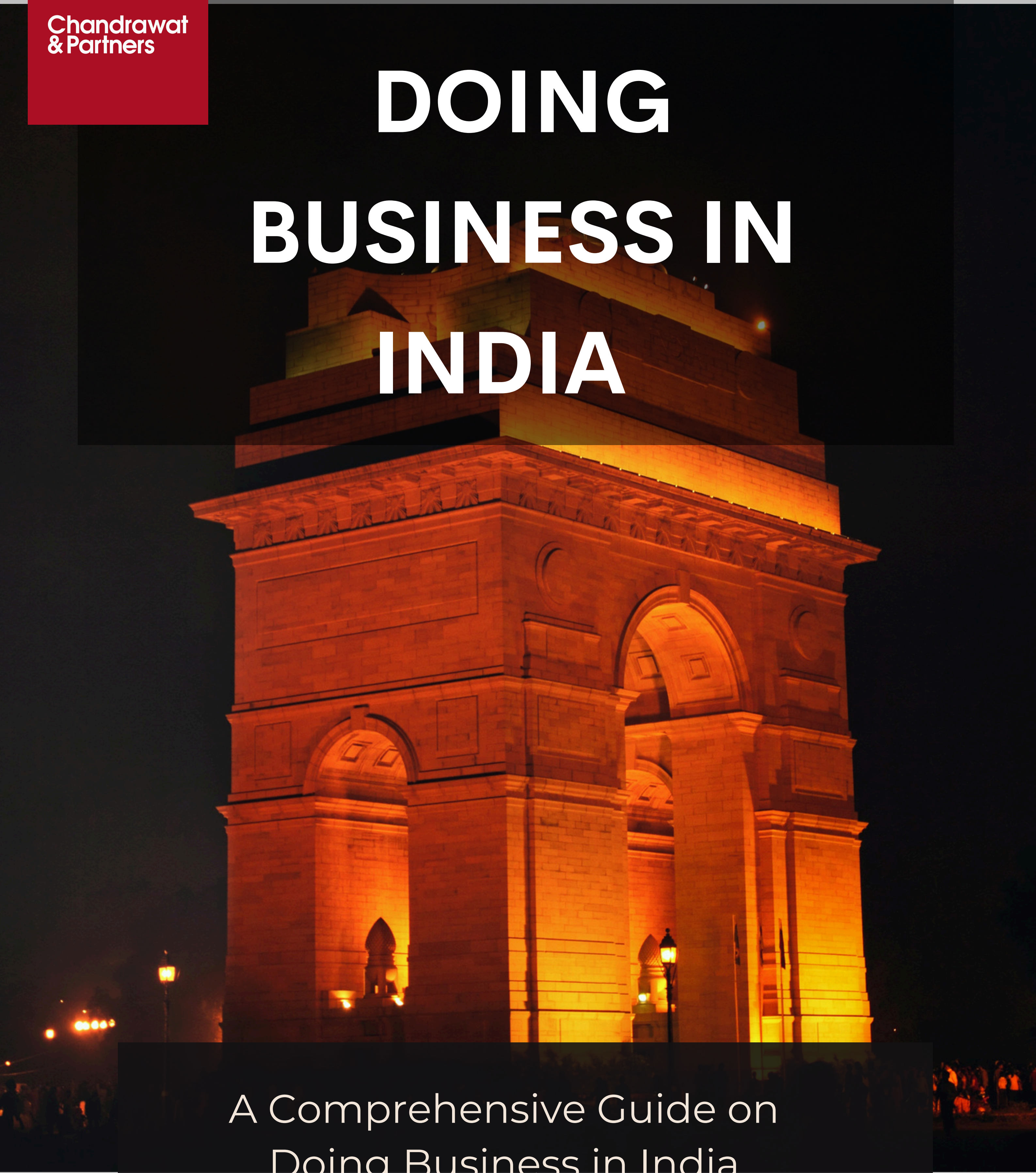
Chandrawat & Partners

DOING BUSINESS IN INDIA



A Comprehensive Guide on Doing Business in India

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INTRODUCTION

India is paving its way towards 'Atmanirbhar Bharat', propelled by positive developments around policies, domestic capabilities, and digital transformation. The country is striving towards becoming self-reliant from a manufacturing perspective, driving exports, inbound foreign investments, and collaboration with other countries.

With easing norms in compliance, focused policies, digitization across processes, and multiple options for investments in emerging sectors, India has placed itself as one of the preferred destinations for investments.

Manufacturing remains a core focus and is expected to drive collaboration with other countries, prompted by India's cost advantage and geographical benefits.

For instance, Foreign direct investment (FDI) in India surged by 47.8% to $16.17 billion in April-June of this fiscal year, driven by strong inflows in services, IT, telecom, and pharmaceuticals, as per government data. In comparison, FDI stood at $10.94 billion during April-June 2023-24.

Sectors such as technology, healthcare, fintech, and education among others show immense growth potential, translating into new business opportunities.

While several emerging sectors have been gaining momentum, the government has also been setting focus on a robust yet favorable business environment, to ensure sustained growth in inbound investments.

From a policy perspective, foreign direct investment regulations have been relaxed in several sectors to either increase the cap for investments or their inclusion under the automatic route.

BACKGROUND

India is one of the oldest civilizations in the world with a kaleidoscopic variety and rich cultural heritage. It has achieved all-round socio-economic progress since it's independence. As the 7th largest country in the world, India stands apart from the rest of Asia, marked off by mountains and the sea, which gives the country a distinct geographical entity.

Surrounded by the Great Himalayas in the north, it stretches southwards at the Tropic of Cancer, tapers off into the Indian Ocean between the Bay of Bengal on the east and the Arabian Sea on the west.

Currency

India's official currency is Indian Rupee ("INR") which is controlled by the Reserve Bank of India ("RBI"). The Currency Department in RBI attends the core statutory function of notes and coins issue and currency management.

Political System

India is a parliamentary democratic republic in which the President of India is the head of state and the Prime Minister of India is the head of government. India follows the dual polity system, i.e., a double government (federal in nature) that consists of the central authority at the Centre and states at the periphery.

The constitution defines the organizational powers and limitations of both central and state governments.

There is a provision for a bicameral legislature consisting of an upper house, the Rajya Sabha (Council of States) and a lower house, the Lok Sabha (House of the People). The Indian constitution provides for an independent judiciary, which is headed by the Supreme Court.

Climate

The climate of India can be broadly described as tropical monsoon type. There are four seasons:

- Winter (January-February);
- Hot weather summer (March-May);
- Rainy southwestern monsoon (June-September); and
- Post-monsoon, also known as northeast monsoon in the southern Peninsula (October- December).

India's climate is affected by two seasonal winds - the northeast monsoon and the southwest monsoon.

The northeast monsoon,commonly known as winter monsoon blows from land to sea, whereas southwest monsoon, known as summer monsoon, blows from sea to land after crossing the Indian Ocean, the Arabian Sea, and the Bay of Bengal.

Language

The official language of India is Hindi, although English is widely used for business communications and there are also 22 other official languages used in India.

Economy

The economy of India is characterized as a middle-income developing market economy. It is the world's fifth-largest economy by nominal GDP and the third largest by purchasing power parity (PPP). From 2014 to 2018, India was the world's fastest growing major economy, surpassing China.

The long-term growth perspective of the Indian economy remains positive due to its young population and corresponding low dependency ratio, healthy savings, and investment rates, and is increasing globalization in India and integration into the global economy.

STATES AND UNION TERRITORIES

India, a union of states is a sovereign, secular, democratic republic with a parliamentary system of government. The President is the constitutional head of the executive of the union.

In the states the Governor acts as the representative of the President, is the head of the Executive. The system of government in states closely resembles that of the Union. India is the seventh largest country and also the most populous in the world. It lies in southern Asia.

It is governed by a parliamentary form of government, formally known as the Republic of India. Thus, it gets difficult to manage the large country from one place. So, the Indian Constitution have provided the central government to make states as it feels suitable.

India is a federal union comprising 28 states and 8 union territories, for a total of 36 entities. The states and union territories are further subdivided into districts and smaller administrative divisions.

Union Territories are administered by the President through an Administrator appointed by him/her. From the largest to the smallest, each State/UT of India has a unique demography, history and culture, dress, festivals, language etc.

Union Territories (UTs)

Union Territories ("UTs") are federal territories and are controlled by the Union Government of India. In the Union Territories, the Lieutenant Governors are appointed by the President of India acting as their administrators.

Currently, India has nine Union Territories - Andaman and Nicobar Islands, Chandigarh, Dadra and Nagar Haveli and Daman and Diu, Delhi, Jammu and Kashmir, Ladakh, Lakshadweep, and Puducherry.

Types of (UTs) in India

India has two types of Union Territories. These are:

- Union Territories with Legislature – Delhi, Jammu and Kashmir and Puducherry.
- Union Territories without Legislature – Andaman and Nicobar, Chandigarh, Dadra and Nagar Haveli and Daman and Diu, Ladakh and Lakshadweep.

It should be noted that the Union Territories have no separate representation in the Rajya Sabha (Upper House) except for Delhi, Jammu and Kashmir and Puducherry.

LEGAL SYSTEM

India has a well-established and independent judiciary, which derives most of its judicial framework from the Common law system. Evaluating the legal system in India is one of the essentials for establishing a successful business in India.

The country incorporates key characteristics of common law jurisdictions, for instance the rules of equity, justice and the system of precedents.

Consequently, by adopting these principles, the Indian legal system is similar to the English legal system. However, unlike England, the Indian Constitution is a written one.

Constitution of India

The Constitution is the lex loci (Law of the place) in India. It is the supreme document governing all the laws in the country. The Indian Constitution is regarded as quasi-federal in nature i.e., federal in character but unitary in spirit.

The federal features of the Constitution include distribution of powers between Central Government and State Governments. The distribution of powers between governments is enshrined in the Union, State and Concurrent lists of the Constitution.

The Constitution also possesses strong unitary features such as the unified judiciary with the Supreme Court at the apex, which is different from the federal principle envisaging a dual system of courts as in the US and the authority to make appointment of key positions (for example, Governors of the states, the Chief Election Commissioner, the Comptroller and Auditor General, etc. resting with the Central Government.

Hierarchy of Courts

The Supreme Court of India is the highest appellate court and adjudicates appeals from the state High Courts. The High Courts for each of the states (or union territories) are the principal civil courts of original jurisdiction in the state (or the union territory) and can try all offenses including those punishable with death.

The High Court adjudicates on appeals from lower courts and writ petitions under Article 226 of the Constitution. The district courts administer justice at the district level.

These courts are under administrative and judicial control of the High Court of the relevant state. The District and Sessions Court is the highest court in each district.

Commercial Courts

As per the Commercial Court Act, governments in Indian states shall constitute, in consultation with the concerned High Courts, Commercial Courts, Commercial Divisions and Commercial Appellate Divisions (hereafter, commercial courts) which are conferred with the power of adjudicating commercial disputes. Furthermore, the state government can establish commercial courts at the district level as much as it may be necessary.

However, the Commercial Courts Act contained a proviso that prevented the establishment of a commercial court in the territory where the High Court has ordinary original civil jurisdiction.

The definition of commercial disputes in the Commercial Court Act , in section 2(1)(c), includes issues relating to admiralty and maritime law and intellectual property rights issues as well.

The legislation added a new category of commercial disputes – those arising out of an agreement relating to the immovable property used exclusively in trade and commerce would be considered a commercial dispute.

Commercial Courts have been constituted to adjudicate commercial disputes of a ‘Specified Value’, i.e., when the value of the subject matter of the dispute exceeds INR 1 crore (approximately USD 152,000).

The Commercial Courts Act further prescribes the manner in which the specified value of the subject matter of a commercial dispute is to be ascertained.

The 2018 Amendment Act reduced the value from INR 10,000,000 (approx. USD 150000) to INR 300,000 (approx. USD 4500). The change in the specified value would ensure that the work of the commercial courts be considered for gauging the enforceability of contracts, apart from furthering the ease of dispute resolution.

Business Related Legislations

India has codified and uniform commercial laws that include legislations relating to contracts, corporations, exchange control, competition, taxation and the statutes are supplemented by policy pronouncements, press notes, notifications and regulations by Governmental departments and regulators.

The key business-related legislations in India are:

- The Companies Act, 2013 (which governs the incorporation management, restructuring and dissolution of companies);

- The Indian Contracts Act, 1872 (which lays down the general principles relating to the formation and enforceability of contracts, consideration, the various types of contracts including those of indemnity and guarantee, bailment and pledge, agency and breach of a contract);

- The Foreign Exchange Management Act, 1999 ("FEMA") (which provides for India's foreign exchange management regime and regulates the inflow and outflow of foreign exchange and investment into/from India) and the regulations issued thereunder, together with the rules/circulars/press notes/guidelines issued by the Government of India for setting out the foreign investment policy (including sector-specific requirements);

- The Securities Exchange Board of India Act, 1992 ("SEBI") (which governs the functions and powers of SEBI, India's securities market regulator) and the regulations issued thereunder, including, in particular, the SEBI ICDR Regulations (which governs the public offers of securities and offers of securities by listed companies);

- The SEBI Takeover Regulations (which govern the terms of mandatory and voluntary tender offers for shares of listed companies), the SEBI Insider Trading Regulations (which prohibit dealing in securities when in possession of unpublished price sensitive information)

- The Securities Contracts (Regulation) Act, 1956 ("SCRA") (which governs listing and trading of securities on stock exchanges in India) and the Listing Agreement with stock exchanges;

Employment Legislations

The definition of commercial disputes, in section 2(1)(c), includes issues relating to admiralty and maritime law and intellectual property rights issues as well. The legislation added a new category of commercial disputes – those arising out of an agreement relating to the immovable property used exclusively in trade and commerce would be considered as a commercial dispute.

Laws providing social security and welfare of employees

a) Employees' Provident Funds and Miscellaneous Provisions Act;

b) Employees' State Insurance Act;

c) Payment of Gratuity Act;

d) Payment of Bonus Act;

e) Maternity Benefits Act;

f) Minimum Wages Act;

g) Factories Act;

h) Labour Welfare Fund Act; and

i) Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act.

General Laws

(a) Constitutional provisions relating to fundamental rights enshrined in the Constitution of India; and
(b) Indian Contracts Act.

State Laws

(a) Shops and Establishments Acts in force in various States;
(b) Industrial Establishments (National and Festival Holidays and Other Holidays) Act; and
(c) State rules under and amendments to Central laws.

Working Hours

Indian employment laws typically provide for a maximum of nine hours of working a day including an hour of break and forty-eight hours a week. It may be noted that employment of women employees is restricted during night. However, special exemption is available for the IT sector subject to satisfaction of prescribed conditions.

Overtime is strongly discouraged with the premium on overtime being 100% of the total wage. Employees who work on National holidays are entitled to compensatory off in addition to overtime payment in most states.

SECTOR OPPORTUNITIES

Oil and Natural Gas

India is one of the world's fastest-growing energy market with oil and gas as one of the core sectors among industries that plays an important role in influencing functioning & decision making of almost all the other important sections relating to economy.

India is the 3rd largest energy and oil consumer in the world after China and the United States and 6th largest importer of liquefied natural gas ("LNG"). India's Hydrocarbon requirements are met through domestic production as well as through imports. The country imports oil and gas from various geographical regions including countries from the Middle-East, Africa, Europe, North America, South America and South-East Asia.

As per World Energy Outlook 2024 of International Energy Agency, the current share of India in global primary energy consumption is 6.1% and is likely to increase to about 9.8% under stated policies scenario by 2050. India's projected oil demand is going to grow at Compound Annual Growth Rate of 4.2% during 2017 - 2040, though the projected oil demand will be much lower as compared to the US and China.

Quick Review of the Sector

- India has emerged as a refinery hub and plans to increase refining capacity to 400 Million Metric Tonne Per Annum by 2025.
- India is expected to be one of the largest contributors to non-OECD(Organisation for Economic Co-operation and Development) petroleum consumption growth globally. Crude oil imports rose sharply to US$ 94.3 billion in the Financial Year 2024 (April to January) from US$ 70.72 billion in the Financial Year 2017.
- As of September 01, 2024, India's oil refining capacity stood at 248.9 million metric tons per annum ("MMTPA"), making it the second-largest refiner in Asia. Private companies owned about 35% of the total refining capacity. IOC is the largest domestic refiner, with a capacity of 69.7 MMTPA.
- At present about 19,998 km natural gas pipeline is operational and about 15,369 km gas pipelines is under development.

Investment Opportunities

- 100% FDI allowed in exploration activities of oil and natural gas fields under automatic route.
- Indian Oil, Bharat Petroleum Corporation Limited and Hindustan Petroleum Corporation Limited have announced the launch of Model Retail Outlet Scheme and a Digital Customer Feedback Programme called Darpan@petrolpump. These three oil PSUs have joined hands to launch model retail outlets to enhance service standards and amenities across their networks, which serve over 6 crore consumers every day.
- 230-billion-barrel O+OEG conventional hydrocarbons in over 3 million sq.km area, spread over 26 sedimentary basins, is available for investors.
- India aims to reduce oil and gas imports dependence by 10% by 2025.

Automotive Industry

In 2024, India became fourth largest country in the world by the valuation of the automotive industry. India's annual production of automobiles was 22.65 million vehicles, and 13 million vehicles were produced between April-October 2022. The two wheelers segment dominates the market in terms of volume owing to a growing middle class, and a huge percentage of India's population being young. Also, as a major auto exporter, India has a strong export growth expectations for the near future.

Market Size and opportunities

- India's auto industry is worth of more than US$ 100 billion and contributes 8% of the country's total export and accounts for 2.3% of India's GDP.
- Two wheelers and passenger vehicles dominate the domestic Indian auto market.
- Two wheelers (79.38%), passenger vehicles (9.79%) and three wheelers (9.52%) made up the majority of exports from India.
- In 2024, electric vehicle ("EV") sales reached a new high of 5,592 units. Overall, in 2021, 329, 190 EVs were sold in India, indicating a 168% YoY growth over last year's sales of 122,607 units.

2. Enhanced allocation of capex: The government has announced a sharp jump of 35.4% in capex outlay to INR 7.5 lakh crore next year as against INR 5.54 lakh crore in 2023. This move will provide the much-needed impetus for the commercial vehicle sector which has witnessed sharp demand contraction over the past two years.

3. High target for national highways: Expansion of national highways by 25,000 km under the Government's Gati Shakti Program, that encompasses thrust on seven different engines of growth, including roads, railways, and multi-modal logistics infrastructure, augurs well for the demand for commercial vehicles.

4. Tax Incentives for startups: The Finance Minister proposed capping surcharge on long- term capital gains arising on transfer of any type of assets at 15%. This step will give a boost to the startup community along with the proposal on extending tax benefits to manufacturing companies and startups.

5. Support for Ministry of Micro, Small & Medium Enterprises ("MSMEs"): The MSME sector in the manufacturing space gets a boost with rolling out of the government's Raising and Accelerating MSME Performance ("RAMP") programme with an outlay of INR 6,000 crore over five years. The objective of this programme is to improve credit and market access of MSMEs. Credit Guarantee Trust for Micro and Small Enterprises ("CGTMSE") scheme will be revamped with a required infusion of funds and will facilitate additional credit of INR 2 lakh crore for MSMEs to expand employment.

IT Sector

India retains 40th rank out of 132 economics in the global innovation index ("GII") 2023 rankings published by the world intellectual property organization. India has been on a rising trajectory, over the past several years in the "GII", from a rank of 81 in 2015 and 46th position in 2021.

The country spends $1.6 billion annually on training workforce in the sector. The industry is the largest employer within the private sector, employing 3.9 million people. India is transforming into a digital economy with over 450 million plus internet subscribers, only second to China.

Indian IT industry has more than 17,000 firms, of which over 1,000 are large firms with over 50 delivery locations in India. The country's cost competitiveness in providing IT services, which is approximately 3-4 times more cost-effective than the US, continues to be its unique selling proposition in the global sourcing market.

The National Optical Fibre Network ("NOFN") aims to connect all 250,000 Gram Panchayats (village council) in the country with high-speed broadband.

Up to 100% FDI is allowed in data processing, software development and computer consultancy services; software supply services; business and management consultancy services, market research services, technical testing and analysis services under the automatic route. India is the 2nd Fastest Digitizing Economy Globally.

Indian IT's core competencies and strengths have attracted significant investment from major countries. The computer software and hardware sector in India attracted cumulative FDI inflows worth US$ 74.12 billion between April 2000 and June 2023. The sector ranked 2nd in FDI inflows as per the data released by Department for Promotion of Industry and Internal Trade ("DPIIT"). Investments stood at US$ 9.2 billion in the review period.

The sector is headed towards achieving $1 trillion digital economy by 2023. The country has become the global digital capabilities hub with around 75% of global digital talent present in the country. The Indian technology industry crossed the $200 revenue mark, reaching $227 revenue in 2023, witnessing a $30 incremental revenue in the year with an overall growth rate of 15.5%.

Construction Sector

The Construction industry in India consists of the Real estate as well as the Urban development segment. The Real estate segment covers residential, office, retail, hotels, and leisure parks, among others. While the urban development segment broadly consists of sub-segments such as water supply, sanitation, urban transport, schools and healthcare.

- By 2025, Construction market in India is expected to emerge as the third largest globally.
- By 2025, Construction out put is expected to grow on an average by 7.1% each year; and
- 100% FDI under automatic route is permitted in completed projects for operations and management of townships, malls/shopping complexes and business constructions.
- 100% FDI is allowed under the automatic route for urban infrastructures such as urban transport, water supply and sewerage and sewage treatment.

Retail and Ecommerce

India - The Top Retail Destination

The retail market in India has undergone a major transformation and has witnessed tremendous growth in the last 10 years.

- The overall retail market is set to cross the $1.75 trillion mark by 2026 from $795 billion in 2017.
- India's e-commerce retail market which stood at $30 billion in 2019 is also set to grow at a CAGR of 30% for gross merchandise value to be worth $200 billion by 2026.
- Direct-to-Consumer segment could have a $100 billion addressable market by 2025.
- Going by the growth trajectory of India, the country by 2025 could be $ 1 trillion market for digital transaction. The cash to non-cash ratio in India by 2025 could be the exact reverse of what it is today.
- India ranks among the best countries to invest in retail space. Factors that make India so attractive include the most population in the world, a middle class of 600 million people, increasing urbanization and increasing consumer spending.

Industry Scenario

The Indian e-commerce industry is expected to cross the $200 billion mark by 2026. India's retail market is estimated to reach $1.75 trillion by 2026, from $0.79 trillion in 2021, growing at a CAGR of 9-11%, driven by socio-demographic and economic factors such as urbanization, income growth and rise in nuclear families.

In 2023, e-commerce accounted for nearly one third of several electronic categories, almost half of smartphones sold, and about a fifth of all apparel sales in India. Online penetration of retail is expected to reach 10.7% by 2025 versus 4.7% in 2019.

India is largely an unorganized retail market, contributing 88% to the total retail sector in India. The organized retail market is currently valued at $60 billion, while the unorganized market holds the rest.

E-retail market is expected to continue its strong growth - it registered a CAGR of over 35% to reach Rs. 1.8 trillion (US$ 25.75 billion) by 2025. Over the next five years, the Indian e- retail industry is projected to exceed ~300-350 million shoppers, propelling the online Gross Merchandise Value ("GMV") to US$ 100-120 billion by 2025. The Indian e-commerce industry is expected to cross $200 mark by 2026.

Media and Entertainment

India has a large broadcasting and distribution industry, comprising approximately 900 satellite TV channels, 6,000 multi-system operators, around 60,000 local cable operators, 7 DTH operators and few IPTV service providers. India's M&E industry is expected to grow between US$ 55-70 billion by 2030.

India has 759 million are active users, accessing the internet at least once a month. By 2025 the number is expected to grow to 900 million. This is for the first time that the majority of Indians have become active internet users

- By 2025, Media & Entertainment industry is expected to reach $34 billion at a Compound Annual Growth Rate ("CAGR") of 10%.
- The overall online video market for India is projected to grow at a CAGR of 26% between 2020 and 2025 to reach $4.5 billion in revenue over the next five years.
- OTT content cost may grow at a CAGR of 18% to reach $1.6 billion between 2020-2025.
- India holds the most potential of any market in the world and its breakneck rate of growth will see total OTT video revenue overtake South Korea, Germany and Australia to jump to be the 6th largest market in 2024.
- Up to 100% FDI allowed in Teleports, DTH, Multi-System Operator, cable networks in DAS areas, mobile TV, Head end-in-the-Sky Broadcasting Services.
- 100% FDI is allowed in Publishing/ Printing of scientific and Technical magazines/Specialty journals/Periodicals under the government route.
- The Indian M&E industry is projected to grow at a pace of 14% over the period of 2019-2024, outshining the global average of 4.2% CAGR, with advertising revenue expected to increase at a Compound Annual Growth Rate (CAGR) of 15.3% during the same period. Animation and VFX is expected to grow at a CAGR of 20.4%.

COMPANY FORMATION & REGISTRATION

The company formation in India or Incorporation Procedure of a Private Limited Company in India is governed as prescribed under Companies Act, 2013. A company or firm is considered an object that is separate from the people who own or operate the company. Companies can be formed by individuals, specialized agents, solicitors or accountants.

Types of Companies in India

Starting a business in India, these are the following types of business organizations available:

- **Public Limited Company:** A limited liability company or a public company is a type of limited liability company that provides its shares to the general public. A public limited company must have at least seven (7) shareholders. The limited liability company is primarily in stock exchange.

- **Private Limited Company (Pvt. Ltd.):** A private limited company is a type of limited company in which minimum shareholders is two (2). These shares are not available to general public. Many businesses are privately owned by private limited companies.

- **Limited Liability Partnership ("LLP"):** A limited liability partnership is a well-organized business model as they are a separate legal entity from a partnership entity and business assets are separate from the personal assets of partners. In the event that the business suffer loses, the partners' assets are not risked as the maximum liability of all partners is determined by the capital allocated to the business.

- **Sole Proprietorship**: A business owned by single person and heavily employed in traditional businesses. The founder is solely responsible for the entire business and the owner is not separate from each other.

- **One Person Company ("OPC")**: A company owned by a single owner who is also the shareholder and director. OPC was introduced in the Companies Act, 2013 to support entrepreneurs who are able to start a business or register a company, this allows them to forma single economic company.

- **Section 8 Company**: A Section 8 Company of Companies Act, 2013 is similar to a Section 25 company under the old Companies Act, 1956. Section 8 Company is one of the most well-known types of Non-Profit Organization in India.

- **Liaison Office/Representative Office**: Liaison Office may be established with the approval of the Indian government. The role of the Liaison Office is limited to data collection, promotion/import promotion and facilitation of technical/financial interactions. The Liaison Office cannot perform any commercial activity directly or indirectly.

- **Project Office**: An external company planning to undertake specific projects in India can establish temporary offices/site offices in India to perform tasks related only to that project. The Government of India has now granted general approval to foreign companies to establish project offices under certain conditions.

- **Branch Office:** The branch office is involved in the following activities: Exporting/importing, providing professional or consulting services, doing research work, where a parent company operates. The objective of estabilishing a branch office is to promote technical or financial cooperation between Indian companies and a parent or foreign parent company.

- **Partnership:** This business is an arrangement in which parties, known as partners, agree to work together to advance their mutual interests. Partners in partnerships can be individuals, businesses, interest-based organizations, schools, governments or combinations.

Steps involved in Company Formation

All of the following steps are overlooked by the Ministyr of Corporate affairs also known as MCA.

Name: Application for the designation (Name) availability of the proposed company shall be done on the Ministry of COrporate Affairs website (MCA)with the Central Registration Center ("CRC") and the name of the Company shall be unique and shall not be already registered with the ROC. Applicant can submit online application along with requisite fee to the CRC.

Name Validity: After the approval of applicant's proposed company name, Registrar of Companies will issue a Name availability Letter, the approval of the availability of name for the proposed company. The name will remain valid for 60 days from the date on which the application for the reservation was made. The candidate can apply for the registration of the new company by filing the mandatory forms within 6 months of the name approval date.

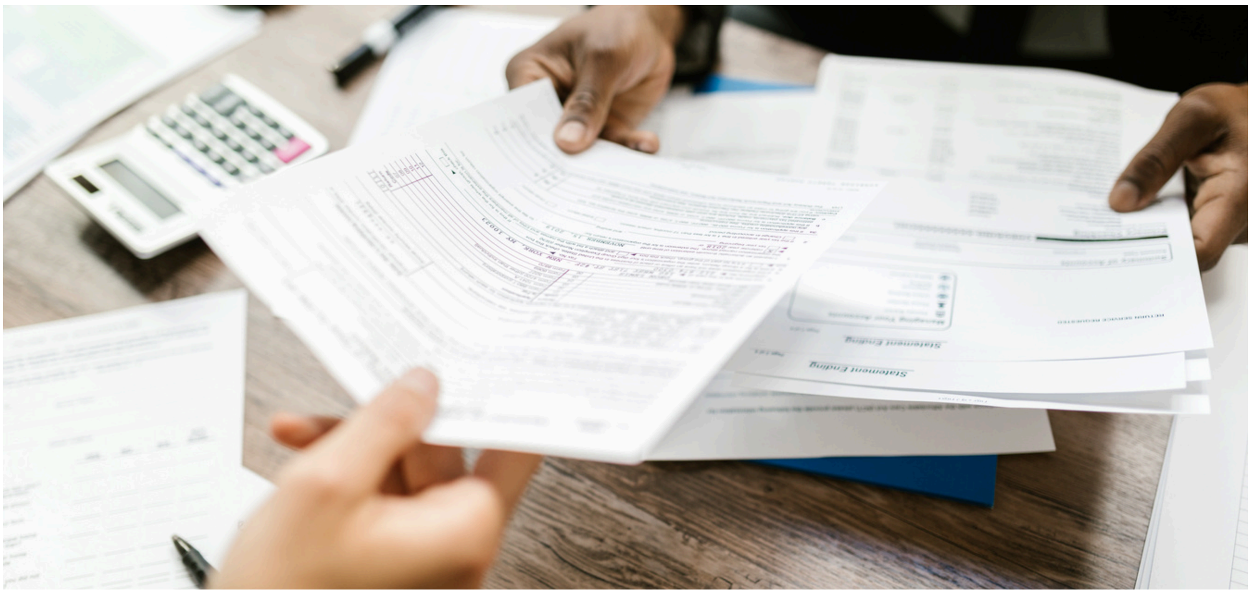
DSC: Subscribers and Directors must have Digital Signature Certificate ("DSC"), which is necessary to file the company registration documents. It is necessary to obtain DSC for at least one director to sign E-forms relating to incorporation and other documents.

DIN: Director's Identification Number ("DIN") can be applied with the application of Incorporation of the company, if not obtained. Each specific intending to be appointed as director of a company shall make an application for the allotment of Director Identification Number in form, to the Central Government in such form and manner and along with such fees as may be prescribed. For LLP, obtain Designated Partner Identification Pin ("DPIN").

Memorandum of Association ("MoA") and Article of Association ("AoA"): Following with application for incorporation, Memorandum of Association and Articles of Association and other necessary prescribed documents that need to be submitted with ROC, the 'Memorandum of Association' defines composition and objects of company and 'Articles of Association' contains rules & regulations of company for management of its daily affairs. However, if the outsider subscribers visit India on Business Visa for signing the documents for company registration, the MoA and AoA require to be signed digitally instead of manual signatures and MoA and AoA have to be attached in form SPICe + to proceed with the Incorporation application.

Drafting of Memorandum of Association and Article of Asociation:

- Arrange for the drafting of the Memorandum and Articles of Association by the solicitors, vetting and printing of the same by ROC.
- With the appropriate stamp duty, arrange for stamping of the Memorandum and Articles.
- Get the Memorandum and the Articles signed by at least two subscribers in his/herown hand, his/her father's name, occupation, address and the number of shares subscribed for and witnessed by at least one person.
- The key objects should match with the goals shown in e-form INC-1.
- Memorandum should be in the respective forms as prescribed in Tables A, B, C, D and E in Schedule-1.
- Articles should be in respective forms as prescribed in Table F, G, H, I and J in Schedule-1.
- When the non-resident subscribers visit India on Business Visa for validation the documents for company registration, the MoA and AoA are required to be signed digitally instead of manual signatures and such physical MoA and AoA have to be attached in form to proceed with the Incorporation application.



TAXATION IN INDIA

Taxation in India can be classified into direct and indirect taxes.

Direct taxes are levied on taxable income earned by individuals and corporate entities which is deposited by the assesses themselves.

Indirect taxes are levied on the sale and provision of goods and services respectively and the burden is on the seller to collect and deposit taxes.

Major Central Taxes

- Income Tax,
- Central Goods & Services Tax ("CGST"),
- Customs Duty, and
- Integrated Goods & Services Tax ("IGST").

Major State Taxes

- State Goods & Services Tax ("SGST"), and
- Stamp Duty & Registration.

Direct Taxes

Income Tax

The tax that gets levied on the annual income or the profits of an individual or an entity is Income Tax. Therefore, the Indian tax system recognizes both salaried and self-employed individuals who are earning an income, to be liable to pay income tax. Also, there is also a tax exemption limit of up to Rs. 2.5 lakh per annum under the Indian tax system, given to individuals below 60 years of age.

Taxpayers in India,for the purpose of income tax include:

- Individuals, Hindu Undivided Family ("HUF"),
- Association of Persons ("AOP") and Body of Individuals ("BOI"),
- Artificial Judicial Person ("AJP")

Each of these taxpayers is taxed differently under the Indian income tax laws. While firms and Indian companies have a fixed rate of tax on profits, the individual, HUF, AOP and BOI taxpayers are taxed based on the income slab they fall under which has a different tax rate.

a) Individuals, Hindu Undivided Family (HUF), Association of Persons (AOP) and Body of Individuals (BOI)

b) Firms (including LLP)

Income Slab in Rupees (Existing Tax Scheme)	New Tax rates Under New Regime without Deduction
0 to 3 lakh	NIL
3 lakh to Rs 6 lakh	5%
Rs 6 lakh to 9 lakh	10%
Rs 9 lakh to Rs 12 lakh	15%
Rs 12 lakh to Rs 15 lakh	20%
Above Rs 15 lakh	30%

Dates for filing Income Tax Return

- 31st July for Individuals not liable for TaxAudit;
- 31st October for Tax Payers liable for Tax Audit or a Company; and
- 30th November for Tax Payers liable for Transfer Pricing.

Withholding Taxes

Tax Deducted at Source ("TDS")

The concept of TDS was introduced with an aim to collect tax from the very source of income. As per this concept, a person (deductor) who is liable to make payment of specified nature to any other person (deductee) shall deduct tax at source and remit the same into the account of the Central Government. The deductee from whose income tax has been deducted at source would be entitled to get credit of the amount so deducted on the basis of Form 26AS or TDS certificate issued by the deductor. There are various withholding tax (TDS) rates for various category of payments made by Payer to Payee ranging from 1% to 20%.

Tax Collected at Source ("TCS")

Tax collected at source (TCS) is the tax payable by a seller which he collects from the buyer at the time of sale. Section 206C of the Income Tax Act governs the goods on which the seller has to collect tax from the purchasers. There are various TCS rates for various category of goods ranging from 1% to 5%. The TDS and TCS payments are required to be monthly deposited to the Central Government by the 7th of next month except for the month of March for which due date is April 30.

Indirect Taxes

Goods and Services Tax

Goods or Services Tax ("GST") is a consumption tax imposed on services and goods supply and has completely replaced almost all the indirect taxes in India. The Indian tax system stipulates that every stage of the goods production process and value-added services is under the obligation to pay GST.

The introduction of GST under the Indian tax system has resulted in the abolition of other kinds of indirect taxes in India and charges like Value Added Tax ("VAT"), Octroi, Central Value Added Tax ("CENVAT") and also custom and excise taxes.

As per the Indian tax system, an exemption is given to the products or services such as electricity, alcoholic drinks, and petroleum products that do not get taxed under GST. This tax is imposed according to the previous tax regime decided by the different state governments.

Custom Duty

Custom duty is a type of Indirect Tax which is applicable on all goods imported and a few goods exported out of the country. Duties levied on import of goods are termed as import duty while duties levied on exported goods are termed as export duty.

All matters related to custom duty are handled by the Central Board of Excise & Customs ("CBEC"). CBEC formulates policies that concern collection or levying of custom duties, custom duty evasion, smuggling prevention and administrative decisions related to customs formations.

The objective behind levying customs duty is to safeguard each nation's economy, jobs, environment, residents, etc., by regulating the movement of goods, especially prohibited and restrictive goods, in and out of any country.

DOUBLE TAX AVOIDANCE AGREEMENTS

India has one of the major networks of tax agreements for the avoidance of double taxation and prevention of tax evasion. The Double Taxation Avoidance Agreement ("DTAA") is a tax treaty signed between India and another country (or any two/multiple countries) so that taxpayers can avoid paying double taxes on their income earned from the source country as well as the residence country. At present, India has double tax avoidance treaties with more than 80 countries around the world.

The purpose of such tax agreements is to develop a fair and reasonable system for the allocation of the right to tax different types of income between the 'source' and 'residence' countries. The agreement between the selling countries provides specific procedures on how the income generated in one country and shifted to another is to be taxed by the source and resident country.

Types of DTAA

There are two types of Double Taxation Agreements that can be provided:

Bilateral Treaties: When there is a contract of DTAA between the two countries relief is planned according to mutual agreement between such two countries. This treaty can be granted by either of the following methods:

- Exemption method- income is taxed in only one country in this method.
- Tax credit - Under this method, income is taxed in both countries. Relief is granted in the country in which he taxpayer is the resident.

Unilateral Treaties: The home land provides relief when there is no mutual agreement between the countries.

Countries that have DTAA with India

India has signed a Double Tax Avoidance Agreement with a number of countries where Indians reside. Following is the list of some of the major countries:

Country Name	Double Tax Avoidance Agreement
Argentine	Yes
Albania	Yes
Armenia	Yes
Australia	Yes

Bangladesh	Yes
Belarus	Yes
Belgium	Yes
Bhutan	Yes
Botswana	Yes
Brazil	Yes
Bulgaria	Yes
Canada	Yes
China	Yes
Colombia	Yes
Croatia	Yes
Cyprus	Yes
Czech Republic	Yes

Estonia	Yes
Ethiopia	Yes
Fiji	Yes
Finland	Yes
France	Yes
Georgia	Yes
Germany	Yes
Greece	Yes
Hong Kong	Yes
Hungary	Yes
Iceland	Yes
Indonesia	yes
Ireland	Yes
Israel	Yes
Italy	Yes

Japan	Yes
Kazakhstan	Yes
Kenya	Yes
Korea	Yes
Kuwait	Yes
Kyrgyz Republic	Yes
Latvia	Yes
Libya	Yes
Lithuania	Yes
Luxembourg	Yes
Macedonia	yes
Malaysia	Yes
Marshall Islands	Yes
Mongolia	Yes
Mauritius	yes
Montenegro	Yes

Mozambique	Yes
Myanmar	Yes
Malta	Yes
Namibia	Yes
Nepal	Yes
Netherlands	Yes
New Zealand	Yes
Norway	Yes
OECD Member Countries	Yes
Oman	Yes
Oriental Republic of Uruguay	Yes
Poland	Yes
Philippines	Yes
Portuguese Republic	Yes

Romania	Yes
Russia	Yes
Saudi Arabia	Yes
Serbia	Yes
Singapore	Yes
Slovak Republic	Yes
Slovenia	Yes
South Africa	yes
Spain	Yes
Sri Lanka	Yes
Sudan	Yes
Swiss Confederation	Yes
Tajikistan	Yes

Trinidad and Tobago	Yes
Turkey	Yes
Turkmenistan	Yes
UAE	Yes
UAR (Egypt)	Yes
USA	Yes
Uganda	Yes
Ukraine	Yes
United Mexican States	Yes
Uzbekistan	Yes
UK	Yes
Vietnam	Yes
Zambia	Yes

Multilateral Instrument

The Multilateral Instrument ("MLI") is a treaty/standard pattern, which is one component of the Organization for Economic Cooperation and Development ("OECD"), Base Erosion and Profit Shifting ("BEPS") project is designed to help instrument, the recommended measures to avoid tax treaty abuse. Countries will be able to use the MLI framework to implement some of the BEPS action plans relating to double tax treaties. India has listed 93 tax agreement in the final MLI position.

On behalf of India, the Finance Minister of India signed the MLI in Paris on June 07, 2017. MLI is one of the most significant and crucial BEPS action plans for the purpose of executing tax treaty related measures in order to prevent Base Erosion and Profit Shifting(BEPS).

Free Trade Agreement ("FTA")

Trade is of excessive importance to most nations in the current time. Trade without barriers – free trade – is promoted by institutions like World Trade Organization ("WTO"). In general, a Free Trade Agreement ("FTA") is an agreement between two or more countries to reduce barriers to imports and exports among them, which allows, goods and services to be bought and sold across international borders with little or no government quotas, tariffs, quotas, subsidies, or prohibitions to hinder their exchange.

In 2009, the Free Trade Agreement in Goods was signed and enacted in 2010. India will stand to gain as it has always asked for an FTA which will be more inclusive and included services which has been India's strongest sector. In directive to enhance economic and strategic relations with the Southeast Asian countries, the Indian government has put in place a Project Development Fund to set up industrial hubs in Cambodia, Myanmar, Laos, and Vietnam ("CMLV") countries through separate Special Purpose Vehicles ("SPVs").

TRANSFER PRICING

Transfer pricing are the procedures and rules for pricing transactions between and within enterprises under joint ownership. In India, transfer pricing was introduced through an amendment in Income Tax Rules, 1962, inserting Section(s) 92A-F and relevant Rule(s) 10A-E which applies to both domestic and international transactions, falling above a threshold in terms of deal value.

The law is in-line with the organization for Economic Co-operation and Development Guidelines on Transfer Pricing and ensures that the transaction between 'related' parties must be at price that should be comparable if the transaction was happening between unrelated parties.

International Transactions

Section 92B of the Income Tax Act, 1961, defines the international transaction(s) as a transaction between two or more associated enterprises, wherein either one or both the enterprises are non- residents. The nature of transactions shall be recorded through a mutual arrangement or agreement between the enterprises. International transactions can involve:

a. Provision of services;

b. A purchase, sale or lease of tangible or intangible assets;

c. Borrowing or lending of money; or

d. Any other transaction which has some effect on the profit or income or loss or assets of the enterprises and the enterprises have mutually agreed to apportion cost or expense incurred in the process of such transactions.

The extent of transfer pricing and consequent provisions can be extended to SDTs or Specified Domestic transactions and the transactions include are :

a. Expenditures in which payment has been made or would be made to adirector, a relative of director, or an entity where a director or the company has the voting interest exceeding 20%

Associated Enterprises

As defined under Section 92A of the Income Tax Act, 1961, the term 'Associated Enterprises' in relation to another enterprise shall mean, an enterprise: -

- which take part either directly or indirectly or through one or more intermediaries in the management or control or capital of the other enterprise.
- in case of one or more persons that take part either directly or indirectly or through one or more intermediaries in the management or control or capital are the same persons that take part either directly or indirectly or through one or more intermediaries in the management or control or capital of the other enterprise.

Audit Under Transfer Pricing

Any persons entering into a specified domestic transaction or international transaction has to furnish a report from an accountant, which is a prescribed form, duly signed and verified by the accountant. It is compulsory to obtain such report before the specified date by any person entering into a specified domestic transaction or international transaction in the preceding year. The audit is applicable to both specified domestic and international transactions.

Comparison of Transfer Pricing

Following methods have been laid down by the Indian taxation system for comparing the transfer price:

- Comparable uncontrolled method (CUP method)
- Cost Plus Method
- Resale Price Method
- Transactional net margin Method
- Other Method
- Profit Split Method

FOREIGN TRADE POLICY

India's Foreign Trade Policy ("FTP") delivers the basic context of policy and strategy for encouraging exports and trade. It is reviewed periodically to adapt to the changing international and domestic scenario. Trade facilitation is a priority of the Indian Government for cutting down the transaction cost and time, thereby rendering Indian exports more competitive. The Government had taken various measures and enacted provisions of Foreign Trade Policy in the direction of trade facilitation for the benefit of stakeholders of import and export trade.

In India, through the twin channels of capital flows and trade, domestic economy has witnessed increased GDP and trebled per capita income in over the last two decades. India's trade and external sector have a major impact on the expansion in per capita income and GDP growth.

Capital Inflows: According to Business Standard report, the net FDI in India (inflows minus the outflows) declined to $10.584 billion in FY 2023-2024 from $28 billion in the FY 2022-2023.

Foreign Trade Policy 2023 and other schemes provide various measures to boost India's exports with the objective to power economic growth with boost of exports to 2 trillion USD by 2030 by a keen focus on areas like pharmaceuticals, e-commerce and high tech manufacturing.

Exports from India Schemes

There shall be following two schemes for exports of Merchandise and Services respectively:

Remision of duties and taxes on Exported products (RoDTEP): It is an objective to neutralize the taxes and duties suffered on exported goods which are otherwwise not credited or remitted or refundedin anyb manner.The benefit is given as percentage of FOB or fixed amount per unit of measurement. RoDTEP scheme is notified by the Department of Commerce and administered by Department of Revenue.

The RoDTEP scheme provides to rebate with the Centrala, Staate and Local duties/taxes/levies which are not refunded under any other duty remission schemes.

Service Exports from India Scheme ("SEIS"): Objective of Service Exports from India Scheme (SEIS) is to encourage and maximize export of notified Services from India. Service Providers of eligible services shall be entitled to Duty Credit Scrip at notified rates of 5% on net foreign exchange earned. In order to claim reward under the scheme, Service provider shall have to have an active Importer Exporter Code ("IEC") at the time of rendering such services for which rewards are claimed.

Foreign exchange remittances other than those earned for rendering of notified services would not be counted for entitlement. Thus, other sources of foreign exchange earnings such as equity or debt participation, donations, receipts of repayment of loans etc. and any other inflow of foreign exchange, unrelated to rendering of service, would be ineligible.

Duty Remission Schemes

Duty Exemption Schemes enable duty free import of inputs required for export production. Duty Exemption Schemes consist of:

1. Duty Exemption Schemes

a. Advance Authorization ("AA") : It include Advance Authorization for Annual Requirement. It is issued to allow duty free import of input, which is physically incorporated in export product (making normal allowance for wastage). In addition, fuel, oil, catalyst which is consumed/utilized in the process of production of export product, may also be allowed.

b. **Duty Free Import Authorization ("DFIA") :** Duty Free Import Authorization is issued to allow duty free import of inputs with a minimum value addition requirement of 20%. In addition, import of oil and catalyst which is consumed/utilized in the process of production of export product, may also be allowed. DFIA shall be exempted only from the payment of basic customs duty.

2. Duty Remission Scheme

A Duty Remission Scheme enables post export replenishment/remission of duty on inputs used in export product. Duty Remission Schemes consist of:

a. Duty Entitlement Passbook Scheme ("DEPB"): DEPB is an export incentive scheme of Government provided to Exporters in India. The objective of DEPB is to neutralize the incidence of Customs duty on the import content of the export product.

b. Duty Drawback (DBK) Scheme: The Scheme is administered by Department of Revenue. Under this scheme relief of Customs and Central Excise Duties suffered on the inputs/components used in the manufacture of goods exported is allowed to Exporters. The admissible duty drawback amount is paid to exporters by depositing it into their nominated bank account.

As one of the important players in the global economic, India has accredited to its stand as one of the most desirable destinations for foreign investments around the globe. Constant technological and infrastructural development across the country also indicates healthy growth for the trade and economic sector in the near future. To increase overall growth and economic development in the global market, the Government of India is working on striking important deals with the Governments of different countries.

MERGER AND ACQUISITION

Mergers and acquisitions refer to the association of two or more companies. In a merger a new company is formed whereas, in acquisition no new company is formed only the purchase is made of a company by other. The Indian economy is flourishing with a fast pace and is emerging at the top in the sectors of IT, R&D, infrastructure, energy, pharmaceutical, telecom, financial services etc.

In recent years, India has seen a great potential in Merger and Acquisition (M&A) transactions. The practice is being exercised dynamically and is now an inseparable part of today's business world.

Mergers or reorganization is done either as an arrangement between the company, and its shareholders or creditors by a compromise. Sanction of the jurisdictional High Court for shareholders, creditors, and other regulatory authorities are needed for reorganization. In recent changes, the power to approve mergers and reorganization has been shifted from the High Courts to the National Company Law Tribunal ("NCLT").

A demerger is a business rearrangement in which a business is fragmented into components, either to operate on their own, or to be sold or to be liquidated. It is mainly used to segregate core and non-core businesses activities of the companies. Demergers are a court-driven process, requiring sanction .

Types of Mergers in India

- **Horizontal Mergers:** It refers to two firms functioning in the same industry or producing the same products combining together in the same sector. The main objectives of horizontal mergers are to reduce competition, benefit from economies of scale, control the market and achieve monopoly status.

- **Vertical Merger:** A vertical merger usually occurs in two forms. One is when a firm acquires another firm which produces raw materials used by it. For e.g., a tyre manufacturer acquires a rubber manufacturer, a car manufacturer acquires a steel company etc. Another way of vertical merger occurs when a firm acquires another firm to get closer to the customer.

- **Conglomerate Merger:** It refers to the combination of two firms operating in industries unlike each other. The business of the target company is entirely different from those of the acquiring company with an objective to achieve diversity.

- **Concentric Merger:** It involves the merger of the two firms belonging to the same industry but neither in the same line of business or products. Here, a new company is formed to develop a more competitive and enhanced customer base in the vested industry.

- **Forward Merger:** In a forward merger, organization decides to merge with its buyers. For e.g., when the ICICI Bank acquired Bank of Madura.

- **Reverse Merger:** It involves the acquisition of a larger firm by a smaller firm and has been followed efficaciously for the revival of the sick industries. Usually, in such case, the smaller company takes over the larger target firm but the management and control vests with the larger company.

- **Subsidiary Merger:** The subsidiary merger happens when the buyer sets up an acquisition subsidiary which merges into the target, in other words, when a parent company acquires its subsidiary company, it is said to be a subsidiary merger or also downstream merger.

Legal Framework for Mergers & Acquisitions

The Companies Act, 2013: It is the main legislation that governs transactions relating to compromises, arrangements, and amalgamations of all companies in India. All Corporate transactions must be implemented in accordance with the provisions of the Act with the related rules.

The Foreign Exchange Management Act, 1999 ("FEMA") and Foreign Direct Investment ("FDI") policy: FEMA and the related rules and regulations issued by the Reserve Bank of India controls all the foreign exchange transactions in India. Along with FEMA, the Government of India & Department of Industrial Policy and Promotion (DIPP) also issues FDI policy which outlines the laws governing foreign investment in India.

The Security and Exchange Board of India ("SEBI"): In India, SEBI is a market watchdog and a regulator for publicly listed companies that issues all the directions and regulations to govern the securities market. All transactions pertaining to mergers and acquisition which involves the acquisition of a substantial stake in a publicly listed company is governed by the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011. The Code also provides an orderly framework within which takeovers are conducted, ensuring fair treatment of the target company and providing with a proper opportunity to decide on the merits of a takeover and protecting the rights of share holders.

The Income Tax Act, 1961: In India, the taxations of mergers and acquisitions is governed by the Income Tax Act, 1961 read with the Double Taxation Avoidance Agreements ("DTAA") signed between India and the jurisdictional country of the non-resident person, if any, who is a party to the transactions.

The Contract Act, 1872: The Contract Act regulates the definitive agreements and governs the contracts and the party's rights that are agreed contractually. Some of the important clauses of a contract includes, representations and warranties of each party, non-compete clause, indemnity clause, etc.

VISA REQUIREMENTS

Most nations require the nationalities of other nations to obtain a visa prior to visiting the territory of their nation. Depending on the country and their visa policies, the application process may differ, however, they are similar in nature. Most countries need other nationalities to have a valid passport or travel document in order to qualify for the visa. In addition to passports, most countries need the applicants to either submit an invitation letter, proof of address, proof of sufficient funds, etc. to qualify for their visa.

In order to travel to India, citizens of many nations need a visa stating their residency and activities in India. Visitors to India must obtain a visa from an Indian diplomatic mission unless they come from one of the visa-exempt countries or a country whose citizens may obtain a visa on arrival, or an e-visa online. Whether it is visiting friends, touring, starting a business, doing research, or doing journalism or communication work, the visitors need a specific type of visa.

TYPES OF VISAS

1. Business Visa ‘B Visa’

Eligibility

A Business visa is granted to a foreign national for the following purposes –

- Applicant who wishes to visit India to establish an industrial/business venture, other than proprietorship firms and partnership firms, in India.
- Applicant visiting India for purchase or sell of industrial products/commercial products/consumer durables.
- Applicants coming to India for recruitment of manpower.
- Applicants coming to India for technical meetings or discussions, attending Board meetings or general meetings for providing business services support.
- Applicants who are partners in the business and/or working as Directors of the company.
- Applicants coming to India for consultations regarding exhibitions or for participation in exhibitions, trade fairs, business fairs etc.
- Applicants expecting to visit India to participate in cultural events/activities with remuneration.
- Applicants coming to India for pre-sales or post-sales activity not amounting to actual execution of any contract or project.
- Foreign experts/specialists on a visit of short duration in connection with an ongoing project with the objective of monitoring the progress of the work, conducting meetings with Indian customers and/or to provide technical guidance.

Essentials

- The applicant must have all the valid travel documents and a re-entry permit.
- The applicant must have a sound financial standing and cannot be insolvent.
- The applicant should be an expert in the intended field of business or should be a person of credibility in the society.
- The applicant must comply with all necessary requirements prescribed by the Government of India.

Conditions for grant of Business Visa

- The applicant must have all the valid travel documents and a re-entry permit.
- The applicant must have a sound financial standing and cannot be insolvent.
- The applicant should be an expert in the intended field of business or should be a person of credibility in the society.
- The applicant must comply with all necessary requirements prescribed by the Government of India.

Duration & Validity of Business Visa

Validity of Business visa will be as specified below:

- Business Visa may be granted with 10 years validity with multiple entry facility to the citizens of the United States of America, Canada, Japan, United Kingdom and South Africa. This visa shall be issued with the stipulation that “continuous stay during each visit shall not exceed 180 days and registration not required”.

- Multiple entry Business Visa may be granted for a period of 5 years as a default option to the national of specific countries. Grant of 5-year Tourist Visa will be with the stipulation “continuous stay during each visit shall not exceed 180 days and registration not required”.

- In respect of nationals of 30 specified countries, duration of visa will be decided by the concerned Indian Missions/Posts subject to a maximum of 5 years with the stipulation “continuous stay during each visit shall not exceed 180 days and registration not required”.

- In respect of nationals of Bangladesh, China and Pakistan, provisions as available in the bilateral agreements/policy guidelines, as issued from time to time, will be applicable.

Registration

All Business Visa holders are required to register themselves with the FRRO/FRO concerned in case the aggregate stay in India on Business Visa exceeds 180 days during a calendar year.

Other conditions

Business Visa shall be non-convertible to any other type of visa except in specific cases. Regarding conversion of Business Visa to other categories of visa, please see the general policy guidelines relating to Indian visa on this website.

Grant of extension of stay to foreigners holding a Business visa

In case Business visa is granted for a period less than five years by the Indian Missions, the same can be extended up to a maximum period of five years subject to the gross sales/turnover from the business activities, for which the foreigner has been granted visa, is not less than Rs.1 crore per annum (to be achieved within 2 years of setting up the business or date of initial grant of Business visa, whichever is earlier). In other categories, visa extension shall be subject to submission of documents of proof of doing business/consultancy. Extension of Business Visa may be granted by the FRRO/FRO concerned on year-to-year basis. The period of extension shall not be beyond five years from the date of issue of the Business visa.

Visa to family members of a foreigner granted Business visa

Family members/dependents of a foreigner who is granted Business visa shall be granted dependent visa of appropriate sub-category. Its validity shall be co-terminus with the validity of the visa of the principal visa holder or for such shorter period as may be considered necessary. Such family members may also be granted Student/Research Visa, etc. provided they are otherwise eligible for grant of such a visa.

Permanent Residency Status ("PRS")

Conditions to be fulfilled:

- Employment of at least 20 resident Indians in every financial year should be generated.
- Foreign Direct Investment (FDI) brought by the foreigner should not be less than Rs. 10 crores within 18 months or Rs.25 crores within 36 months.
- Citizens of Pakistan or third country nationals of Pakistani origin are not eligible for the scheme.

2. Conference Visa 'C Visa'

Indian Conference Visas are issued to those foreigners who wish to visit India for conferences, seminars, workshops, information transfer, etc. Delegates from various countries are issued Conference Visas if they carry the necessary invitations and certificates to attend any international conference, seminar, workshop, knowledge transfer session etc. Administered by any Department or Department of Government of India, any State Government, Central Educational Institutions, Public Funded Universities, Public Sector Services, United Nations or any United Nations organization, NGOs, etc.

At conferences, seminars, workshops, information transfer sessions, etc. conducted by private companies, foreign delegates must apply for the shortest visa lengths available to them. Normally, a valid Business Visa for three months is issued.

Indian Conference Visas are valid till the duration of the conference.

3. Diplomatic Visa 'D Visa'

These are Visas issued to foreign nationals with official passports. These visas can only be processed by the Indian Embassy and Indian Consulates, with the exception of valid passport holders, diplomas, from the UK who wish to travel to India on a Private Visa.

4. Emergency Visa

This Visa is issued to those Indians who hold a US passport. The Consular Office has the power to grant 'emergency visas' for events that require a US passport holder from India to travel to India for a short period of time.

Generally, emergency visas are allowed for real emergencies such as the death of a blood relative, legal obligations that require a court appearance in India, etc. The Consular Office also has the power to treat the event as an 'emergency' and to approve or reject the Emergency Visa for a person.

5. Entry Visa ‘X Visa’

Entry visas are issued to:

- Persons having Indian origin, meaning that they once had Indian nationality at some point in their lives. These applicants must apply under Entry Visa instead of Tourist Visa, even if their trip to India can be described as requiring a Tourism Visa:

- Married/children of people of Indian descent.

- Couples/foreign children traveling to India for employment visas, business visas, study visas, student visas or other long-term visas.

It should be noted that the period of validity of these visas will be equal to the validity of the main Visa, for those traveling to accompany foreign nationals on long-term Visa.

6. Journalist Visa ‘J Visa’

Professional journalists, videographers, photographers, etc. must have to apply for this Visa category if they wish to enter India and do journalism work. The processing time is of 3 to 5 days. Journalist visas are valid for 3 months, from the date of issue and not from the first day of travel under Visa to India.

Journalists wishing to travel to India to do a documentary should first contact the Press and Information Wing of the Indian Consulate.

7. Missionary Visa 'M Visa'

This visa is issued to those foreigners who wish to enter India for religious reasons and purposes. The processing time for such visas can be up to 3 months.

8. Research visa 'R Visa'

Scholars, students, environmentalists, doctors, archaeologists, and other professions that require special vis as to enter India for the purpose of conducting research are allowed to enter India with a study Visa or 'R Visa'.

9. Student Visa 'S Visa'

Student visas to India are issued to those who wish to travel to India for further education at a recognized and accredited Indian university or college. Student visas are issued for the duration of selected courses or for more than 5 years, subject to renewal.

Student Visa is a Visa-entry visa which means that a Visa holder can travel to their home country and return to India for the same Visa without having to re-apply during each visit.

10. Tourist Visa

India Tourism Visas is issued to those who wish to travel to India for sightseeing, leisure, vacation, or for casual visits to friends or relatives. This Visa is not for business research, commercial or educational purposes.

FOREIGN INVESTMENT

Foreign investors who wish to set up operations in India are required to conform with the consolidated foreign direct investment ("FDI") Policy and foreign exchange control laws that are regulated by the government of India. Therefore, Foreign Exchange Management Act, 1999 ("FEMA"), the Companies Act 2013, and the guidelines there under, administer the setting-up of incorporated and unincorporated entities.

FDI Policy

The government started economic and financial reforms in 1991, recognizing the significant role played by foreign direct investment in acceleration of the country's economic growth. India is now leading in the second-generation reforms and promoting the integration of the Indian economy with the global economy.

FDI has been a major non-debt financial resource for the economic development of India. Foreign companies enjoy various benefits by investing in India such as lower wages, special investment privileges like tax exemptions, etc,

Significant Developments

Some of the noteworthy FDI announcements:

- Around 65% of India's FDI equity inflows have been observed through services such as drugs and pharmaceuticals , construction (infrastructure activities) and non- conventional energy sectors .
- The Netherlands, singapore, Japan , the USA and Mauritius acounted for approximately 70% of the total FDI Equity ijnflows in India.
- The government expects significant risks of geopolitical tensions, high debt levels and global economic uncertainities despite the increase in the FDI in 2024.
- Proposals involving FDI beyond 49% in sensitive areas from security point of view, to be brought by the Ministry of Railways before the Cabinet Committee on Security (CCS) for consideration on a case to case basis.
- Single-window clearance and the Goods and Services Tax (GST) implementation, have eased the bureaucratic burden on businesses and foreign investors in India, thereby enhancing the ease of business in the country.

Import/Export Controls

Export and import of goods and services from India are allowed under FEMA. The said export and import regulations specify regulations relating to settlement of export and import transactions, limits permissible, realization of proceeds and advance receipts.

No forms are prescribed for export of services; however, the export proceeds are required to be realized within a stipulated time period. The export regulations set out the obligations for Indian exporters of goods.

Exchange Control & ECBS

In India, the inflow and outflow of funds have been simplified by the liberalization of the exchange control regulations over the years. Considering the government policy of economic liberalization, continuous changes have been announced but even though, for foreign exchange transactions approvals are requisite from the authorities. Foreign Exchange Management Act (FEMA) governs such regulations in India with the Reserve Bank of India (RBI) as the apex exchange control authority, regulating the related laws as required from time to time. It has exhaustive jurisdiction in terms of foreign exchange and external trade and payments, applying to whole India and all offices,branches and agencies out side India that are owned by an Indian resident.

External Commercial Borrowings ("ECBs") means the debt taken by a competent entity in India only for commercial purposes, extended by any external sources. Following the norms and conditions put forth by the RBI, ECBs helps Indian companies and entities to raise fresh investments and funds from outside India. It escalates the potential growth of the country by direct inflow of capital into various sector by the government and also, the value of funds raised is usually simple & lower when borrowed from external sources.

INTELLECTUAL PROPERTY

Keeping in line with the world, India has a strong intellectual property regime with legislations in place to protect copyright, designs, patents, trademarks and geographical indications, plant varieties and farmers rights. India is also a common law jurisdiction and Indian courts do protect proprietary rights including goodwill and reputation of a business represented by any intellectual property.

India being a signatory to the Agreement on Trade Related Intellectual Property Rights ("TRIPS"), has introduced a series of necessary statutes and amendments in the existing statues for compliance with its obligation as a signatory.

Patent Act, 1970 (Amended in 2024)

A patent is an exclusive right granted by the Government to the inventor to exclude others to use, make and sell an invention for a specific period of time. In India, the law related to patents is governed by the Indian Patents Act ("IPA"), 1970.

Copyright Act, 1957 (As amended in 2021)

The Copyright Act as supported by the Copyright Rules, 2013 (Copyright Rules), is the law governing copyright protection in India. Copyright Act provides that a copyright subsists in an original literary, dramatic, musical or artistic work, cinematographic films, and sound recordings.

Designs Act, 2000(Amended 2021)

Industrial designs in India are protected under the Designs Act, 2000 (Designs Act), which replaced the Designs Act, 1911. The Designs Act incorporates the minimum standards for the protection of industrial designs, in accordance with the TRIPS agreement. It also provides for the introduction of an international system of classification, as per the Locarno Classification. The civil remedies available in such cases are injunctions, damages, compensation, or delivery-up of the infringing articles.

Trademarks Act, 1999(Amended 2010)

Trademarks are protected both under statutory law and common law. The Trademarks Act, 1999 along with the rules thereunder govern the law of trademarks in India. India follows the NICE Classification of goods and services, which is incorporated in the Schedule to the Trade Marks Rules, 2017 (New Trade Mark Rules). The act consists of definitions, registration, objections, penalties, and remedies.

Recognition of well-known marks & trans- border reputation

Under the New Trademark Rules, applicants are provided with an opportunity to apply for recognition of their marks as “Well-Known Trademarks” in India. Previously, such recognition was provided via a court order/judgment, whereas now such recognition is proposed to be provided by registration of mark as a well-known mark. Further, infringement actions for a registered trademark along with the claims for passing off for an unregistered mark are recognized by Indian courts. The courts not only grant injunctions but also award damages or an order for account of profits.

Modes of Acquisition of IPRs

The diverse modes of acquisition of IP are:

1. Grant, Registration or Publication;
2. Assignment; and
3. Transmission.

Remittance of Royalties

FEMA requires that royalties may not exceed 5% on local sales and 8% on exports from India and the lump-sum payment does not exceed USD 2 million. RBI regulates the remittance of royalties and has delegated powers to Authorized Dealers ("AD") to make payment of royalties under IP collaboration agreement.

RBI allows payment of foreign technology collaboration fees by Indian companies under the automatic route which means no prior permission of the RBI is needed, provided that the following conditions are fulfilled:

- royalty amount does not exceed the limits mentioned above;
- royalty limits are net of taxes and conform to standard conditions; and
- royalties are calculated on the basis of ex-factory sale price of the product, exclusive of excise duties, minus the cost of the standard bought-out component and the landed cost of imported components, irrespective of the source of procurement, including freight, insurance, customs duties, etc.

Licensing of Intellectual Property in India

The instrument granting license must be in writing duly signed by the owner in the presence of two witnesses. License must be registered with Registrar or Controller, which is the concerned authority, for the user to become a registered user. Certain Statutes allow licensing without registration.

HUMAN RESOURCES REGULATIONS

While establishing human resource (HR) regulations and policies, foreign companies need to strike a balance between their own best practices and local norms in the country. Foreign companies should seek to establish a solid understanding of laws and regulations that inform HR administration as a basis for their HR policies in the country.

This is particularly important in country like India, where federal, state, and industry-specific regulations govern labour laws. Strong HR policies can make employers more attractive to aptitude in the labor market and lower costly attrition rates. Meanwhile, strong HR and payroll administration can help introduce company values locally and improve workforce efficiency.

Employment & Wages Regulations

Recruitment, selection, training, contract and development

It is advisable for companies to use contracts to limit risk and define the terms and conditions of employment. The Article 16 of Indian constitution says that equal opportunity should be given to all citizens of India relating to employment. This article states that the employee should not be discriminated on any ground. This is applicable to public employment. A private sector establishment with around 25 or more employees, must inform vacancy under Employment Exchange (Compulsory Notification of Vacancies) Act, 1959.

Wages, Compensation and Rewarding

All employers in the organized sector must provide the basic cost of living to employee categories specified in Minimum Wages Act, 1948. It is perhaps more important to ensure wages are compliant with prevailing laws. Regarding to remuneration for employees, companies should ensure that employment contracts consider this while defining the terms and conditions.

Payment of Wages Acts states, there should be no delay in paying the employees even if the employee is terminated, he is entitled to get salary for the month he worked. Workmen Compensation Act, 1923 provides financial support to the employees and their family members when the employee is injured. If the owner is incapable to give compensation, it is declared as a criminal offense.

Termination of employment

In India, employees may only be terminated as per the terms and conditions which is shown in employment contract. The circumstances drafted in company contracts cannot replace these legal statues. Finally, termination without notice is prohibited in India. Termination period vary by function and length of employment.

The Workmen's Compensation Act, 1923

It provides for the payment by certain class of employers to their workmen of compensation for injury by accident and protects the interest of the workers who are working in hazardous industry.

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

It provides protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment in all establishments.

The Maternity Benefit Act, 1961(Amendment 2017)

This Act regulates the employment of women in certain establishments for certain period before and after childbirth and to provide for maternity benefit (applicable to all establishments employing 10 or more persons). After the Amendment of the Act, 26 weeks of paid leave is available for women for the first two children, and 12 weeks subsequently. Companies employing more than 50 people, must also provide crèche services.

DATA PRIVACY

The importance of data protection increases as the amount of data generated and stored ends up growing at unprecedented prices. There is also little tolerance for leisure time which can make it difficult to get important details. Data protection in India is currently governed by the Information Technology Act, 2000 and the Information Technology (Reasonable security practices and procedures and sensitive personal data or information) Rules, 2011.)

Information Technology Act

The Act provides for the legal recognition of various transactions with electronic communication devices, exemptions, and mediators, corporate or cyber cafes etc.

- Requires companies to take the necessary steps to protect the privacy of its users.
- The law applies to people inside India and to outsiders if they do something illegal.

In terms of section 75 of the Act, a company located outside India but with a computer, computer system or computer network located in India may be prosecuted if it fails to comply with the provisions of the Act. Even if the company is not in India, it can be prosecuted as long as it operates through its programs/networks available in India.

It is important for the company to ensure that it operates in its day-to-day operations in a lawful manner. Failure to do so will result in unwanted charges, costs, and time. It is the responsibility of all the companies to keep up to date with various amendments, and regulations, where compliance is required.

The Personal Data Protection Bill(2023)

The bill shall apply to the processing of digital personal data within India where such data is collected online , offline or is digitised.This bill applies to outside India and for any oppurtunity where similiar goods or services are being offerednin India.
The bill was in need since India did not have a standalone law on data protection and usage of peronal data was governed under the Information Technology (IT) Act, 2000.
The bill encompasses key notations of applicability , consent and rights and duties of the dat principal.
The entity of determining the obligations of the fidiciury duties are incentivized in the bill.

Key Highlights of the Bill

- The Personal Data Protection Bill will define the framework for the management of personal information, including its processing by public and private bodies.

- Personal data: This is personal information, and can be used to identify any individual, and include details such as - Name, contact details - Email ID, phone number, fingerprint, web history, cookie data, etc.

- Data fiduciaries should ensure that they only request users the data needed to achieve the purpose they have passed on to them. When the stated purpose for data collection is over, companies will have to delete user data.

DISPUTE RESOLUTION

India has a single integrated system of Judiciary in view of a single Constitution. The Common law system which is followed in England influenced the Indian Judicial System. The courts in India are as:

Supreme Court: The Supreme Court of India consists of the Chief Justice of India and other supreme court judges. The Supreme Court of India is the highest court of appeal and is vested with various powers, it exercises original, appellate, and advisory jurisdiction. The Supreme Court is a court of record because its judgement are of penitentiary value and cannot be questioned in any court.

High Court: The High Courts are state-wise and takes up issues on state level and takes up appealed cases of district courts falling under their jurisdiction. The High Court also works as a commercial court in commercial disputes.

District Courts: The State Government in India has established the District Courts in every district. These courts are under administrative and judicial control of the High Court of the State to which that district belongs. The District Court is the highest Civil Court in a district. Civil and Criminal Courts are two types of Courts in every district. Civil Courts exercise the power of subject matter jurisdiction, territorial Jurisdiction, pecuniary jurisdiction and appellate jurisdiction.

1.District and Session Court
2.Court of Civil Judge (Senior Division)
3.Court of Civil Judge (Junior Division)

Criminal Court Hierarchy

1. District and Session Court
2. . Judicial Magistrate of the First Class
3. Judicial Magistrate of the Second Class
4. Executive Magistrate

National Company Law Appellate Tribunal

National Company Law Tribunal is a quasi - judicial body in India that adjudicates issues relating to company law and Indian companies which are compliant under it. The National Company Law Tribunal has exclusive jurisdiction to try all matters under the Companies Act. NCLT was constituted for resolving company law matters in a speedy and efficient manner.

Registrar of company and regional directors: As per Companies Act, 2013, certain powers of adjudication of penalties have been delegated to Registrar of Companies (ROC) and regional directors.

EXIT STRATEGY

Setting up a company or investing in it can involve a vast risk. The company may face ups and downs due to uncertain market conditions. At many times, the financial investors look for exit options which allow them to exit the company with a high return on the investment. There can be number of ways through which a company can plan its market exit in India.

Initial Public Offering

An initial public offering ("IPO") has been one of the most suitable exit options for the investors. Although, a company can go only go through an IPO, if the company is doing well and certain conditions are fulfilled as laid down under the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 and the rules and regulations of the concerned stock exchange.

Third Party Sale by the Company

The exit clause also provides an option whereby a sale of the securities held by such investors is arranged by the company and/or the promoters. Other investors often buy out such investors' securities through mergers and acquisitions (M&A Transactions). The parties can have a common agreement initially, but a sanction of the High Court is required for bringing it into effect. The provisions of the Companies Act, 2013 (Act) has to be followed in such case. The company or its promotor may, alternatively, arrange a buyer for the investor securities.

Third Party Sale Arranged by the Investor

The investors can get to arrange a sale of the securities owned by them (if the company fails to provide an exit option) to any person of their choice. Although generally the investors are barred from selling their securities to any competitors during the continuance of any investment agreement, while exercising the exit right under this option, they can choose any potential buyer, including such competitors. Although, that may depend upon the terms of the contractual arrangements between both parties.

Winding up of a company

Process of winding up of a company can be initiated under provisions of Companies Act, 2013 or the Insolvency and Bankruptcy Code, 2016 depending on the facts of each case. Winding up refers to the process of liquidation of the company by selling its assets and paying back its liabilities. A liquidator is to be appointed for that purpose.

Generally, a company can be wound up in one of two ways:

- Compulsorily winding up of a company by court; or
- Voluntary winding up by the shareholders or the creditors of the company.

THE BUDGET 2024

The Finance Minister, in her Budget speech,mentioned the intention of the Government to:

- Govt also proposed simplification of rules and regulations for Foreign Investments (FDI) and overseas investments to facilitate foreign investments and prioritize key sectors meanwhle promoting Indian Rupee overseas.

- Govt proposed the development of taxonomy for climate finance to facilitate capital availability for climate adaptation and mitigation supporting India's green transition .

- For the ease of doing business and digitalization measures , Jan Vishwas Bill 2.0 is under works

- Approx 5000 Industrial Training ("ITIs") will be upgraded using a hubb and spoke model with an outcome based approach.

- Govt announced loans upto 10 lakh INR for higher education in domestic instituitions for youth.

- The finance department allocated Rs 2.66 lakh crore for rurqal development and rural infrastructure projects.

- 5 crore tribal people across 63000 villages will be benefitted form PM Janjatiya Unnnat Gram Abhiyan Yojana.

- Enhanced Mudra Loans are to increase the limits for Mudra loans to rs 20 lakhs for entreupneurs who have successfully repaid previous loans.

- PM Awas Yojana to address housing needs of 1 crore urban poor and middle class families.

- Abolition of Angel tax for all investors to support startups .

- Reduction in corporate tax rate for foreign companies from 40% to 35%.

- Decriminalization of non-reporting of small foreign assets up to ₹20 lakh..

- Withdraw the 2% equalization levy, expand tax benefits for certain funds and entities in Indian Financial System Code (“IFSCs”), and offer immunity from penalties for benamidar disclosures.

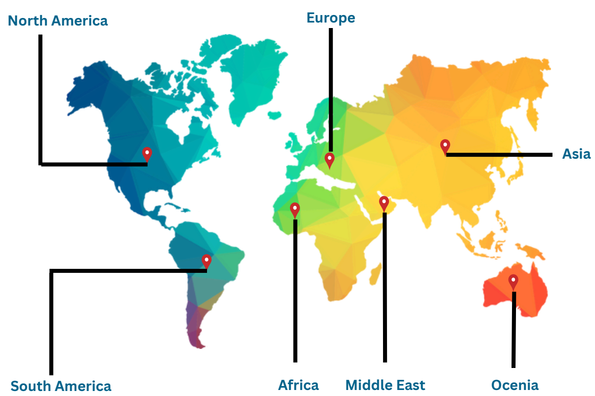
- Increase standard deductions for salaried employees and family pensioners.

- Monetary limits – An increase has been made for filling appeals in various courts to reduce litigation and provide certainty in international taxation. Tax Tribunals, High Court limit and Supreme Court to Rs. 60 Lakhs and Rs. 2 Crore and Rs. 5 Crores respectively

- Digitalization – All major GST, Customs, and Income Tax services will be paperless within 2 years..

- An increase in officers to address appeal backlogs and introduce the Vivas Se Vishwas Scheme 2024 to resolve income tax dispute has been proposed.

SERVING CLIENTS WORLDWIDE



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