

SURANA & SURANA INTERNATIONAL ATTORNEYS

# Guide to Doing **BUSINESS** IN **INDIA**

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## About Surana & Surana International Attorneys

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Clients include the Fortune 500 MNCs leading Indian Corporates, Central & State Government organizations, High Networth Individuals, Social & Charitable institutes. The firm was the first in Asia to achieve ISO 9001 certification and the first in the World to achieve ISO 14000 & SA 8000 certifications. It has received several prestigious National & International awards.

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## **Foreword from Managing Partner & CEO**

The Make in India initiative of the Government of India has literally inspired an avalanche of industries and start-ups in almost every segment of business. Besides an upsurge of first-time entrepreneurs and younger generation of family-owned businesses diving into the deep-end of the business and industry cauldron, many international entities are training their views on India as their target destination.

We felt this the appropriate time to put together a Guide to Doing Business in India for the benefit of our international associates, clients and contacts who want to be a part of making the dream – Make in India- a reality.

We have tried to present a vast subject as succinctly as possible in a simple, easy to read format. Your feedback and critical comments will only serve to improve and guide our efforts to put together a better Version 2.0

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## TABLE OF CONTENTS

I.	<b>INTRODUCTION.....</b>	<b>5</b>
II.	<b>INDIA AT A GLANCE.....</b>	<b>7</b>
	<i>Political System.....</i>	<i>7</i>
	<i>Legal System.....</i>	<i>9</i>
	<i>Population.....</i>	<i>9</i>
	<i>Economy.....</i>	<i>10</i>
III.	<b>COMPANY FORMATION.....</b>	<b>23</b>
IV.	<b>MERGERS &amp; ACQUISITIONS.....</b>	<b>26</b>
V.	<b>TAXATION.....</b>	<b>27</b>
VI.	<b>LABOUR &amp; EMPLOYMENT LAW.....</b>	<b>32</b>
VII.	<b>TRADE.....</b>	<b>35</b>
VIII.	<b>BANKING &amp; FINANCE.....</b>	<b>37</b>
IX.	<b>FINANCIAL REPORTING &amp; AUDITING REQUIREMENTS.....</b>	<b>40</b>
X.	<b>INTELLECTUAL PROPERTY.....</b>	<b>42</b>
XI.	<b>PRIVACY &amp; DATA PROTECTION.....</b>	<b>46</b>
XII.	<b>ENVIRONMENTAL LAWS.....</b>	<b>48</b>
XIII.	<b>COMPETITION LAW.....</b>	<b>50</b>
XIV.	<b>WHITE COLLAR CRIMES.....</b>	<b>51</b>
XV.	<b>PROPOSED REFORMS.....</b>	<b>54</b>

## INTRODUCTION:

Doing business in India offers enormous opportunities for growth and investment. India is a large and complex market, and it should not be seen as one market, but a series of interconnected regional markets where the legislative, taxation and investment climate may change from one state to another. Over the years, with the onset of unprecedented economic liberation in the 1990s, India has opened its economy to a vast customer base internationally. Not only is India one of the fastest growing countries in the world, it has also succeeded in granting overseas investors more access to its vast and varied market than ever before. Factors such as political stability in the subcontinent; a large, young population; broad consensus on reforms; and a strong export sector are a big pull for expanding companies. India enjoys a strong business sector that is awaiting expansion, with a potential consumer base that far outstrips most other nations in the developed and developing world.

“Doing Business in India” broadly serves as a guide to India’s business, regulatory and tax environment. The key areas to be considered are, understanding; the market, business culture, structures surrounding market entry, finding customers, legal considerations and managing finances. It seeks to provide the reader with knowledge of the critical regulations and guidelines surrounding the conduction of business in India.

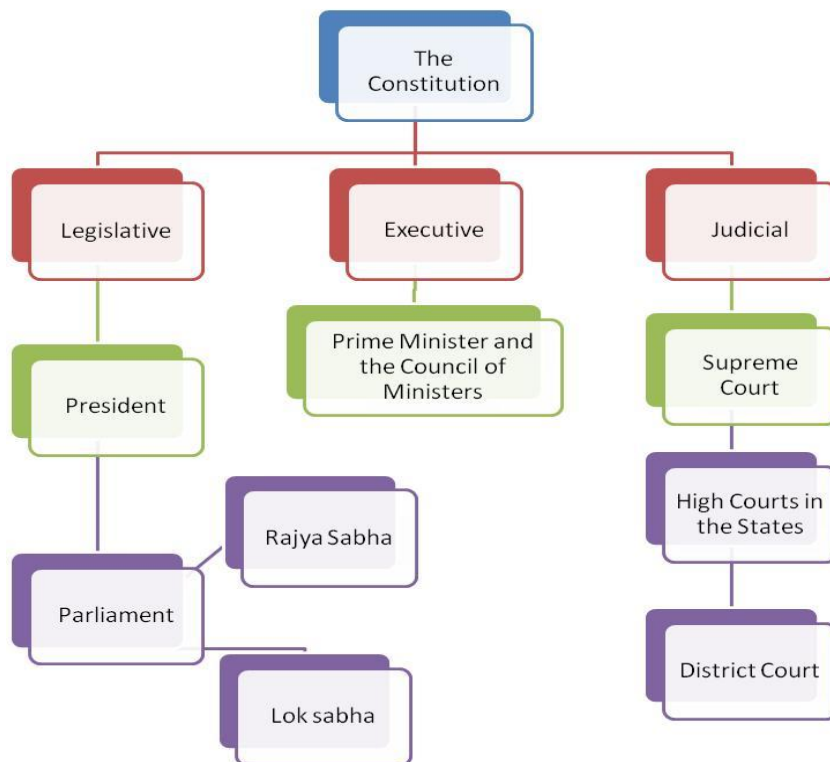
Particulars	Description
Location	The Indian peninsula is separated from mainland Asia by the Himalayas. The Country is surrounded by the Bay of Bengal in the east, the Arabian Sea in the west, and the Indian Ocean to the south.
Geographic Coordinates	Lying entirely in the Northern Hemisphere, the Country extends between 8° 4' and 37° 6' latitudes north of the Equator, and 68° 7' and 97° 25' longitudes east of it.
Indian Standard Time	GMT + 05:30
Area	3.3 Million sq. km
Telephone Country Code	+91
Border Countries	Afghanistan and Pakistan to the north-west; China, Bhutan and Nepal to the north; Myanmar to the east; and Bangladesh to the east of West Bengal. Sri Lanka is separated from India by a narrow channel of sea, formed by Palk Strait and the Gulf of Mannar.
Coastline	7,517 km encompassing the mainland, Lakshadweep Islands, and the Andaman & Nicobar Islands.
Climate	The climate of India can broadly be classified as a tropical monsoon one. But, in spite of much of the northern part of India lying beyond the tropical zone, the entire country has a tropical climate marked by relatively high temperatures and dry winters. There are four seasons: i. winter (December-February) ii. summer (March-June) iii. south-west monsoon season (June-September) iv. post monsoon season (October-November)
Terrain	The mainland comprises of four regions, namely the great mountain zone, plains of the Ganga and the Indus, the desert region, and the southern peninsula.
Natural Resources	Coal, iron ore, manganese ore, mica, bauxite, petroleum, titanium ore, chromite, natural gas, magnesite, limestone, arable land, dolomite, barytes, kaolin, gypsum, apatite, phosphorite, steatite, fluorite, etc.
Natural Hazards	Monsoon floods, flash floods, earthquakes, droughts, and landslides.
Environment - Current Issues	Air pollution control, energy conservation, solid waste management, oil and gas conservation, forest conservation, etc.

*Source: India at a Glance, see <https://www.india.gov.in/india-glance/profile>*

## INDIA AT A GLANCE:

### Political System

India is a Sovereign, Socialist, Secular Democratic Republic with a parliamentary system of government. It is governed by the Constitution of India. With Universal Adult Franchise, India's electorate is the world's largest. The federal nature of India's Constitution divides power between the central government in New Delhi and other state governments. The Constitution establishes a dual polity consisting of the Union at the Centre and the states at the periphery. Each is endowed with sovereign powers to be exercised in the field assigned to them respectively by the Constitution. The government is divided into three structural segments, namely, the legislature, executive and the judiciary.<sup>1</sup>



*Source: Google Images*

**Legislature:** Parliament is the supreme legislative body of the country, and it consists of the President and the two Houses – Rajya Sabha (Upper House) and Lok Sabha (Lower House).

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<sup>1</sup> India: Constitution and politics, Member Countries, The Commonwealth, <https://thecommonwealth.org/our-member-countries/india/constitution-politics>



Elections to the Lok Sabha are held every five years, after which the Prime Minister is appointed by the President.

**Executive:** The Union executive consists of the President, the Vice-President, and the Council of Ministers. The President and Vice-President are elected by members of an electoral college consisting of elected members of both Houses of Parliament and Legislative Assemblies of the states in accordance with the system of proportional representation by means of a single transferable vote. The Council of Ministers is headed by the Prime Minister who collectively aid and advise the President in exercise of his functions. The Council of Ministers comprises of Cabinet Ministers, Ministers of State, Ministers of State (independent charge) and Deputy Ministers.

**Judiciary:** The judiciary is that branch of the Constitution which interprets the law, settles disputes and administers justice to all citizens. For a democracy to function effectively, it is imperative to have an impartial and independent judiciary. India has a single integrated judicial system. The judiciary in India has a pyramidal structure with the Supreme Court at the top, High Courts below, and District and Subordinate Courts at the bottom. The Lower Courts function under the direct superintendence of the higher courts.

## Legal System



India has one of the oldest legal systems in the world. The Constitution of India is the supreme law of the country. It gives due recognition to statutes, case laws and customary laws consistent with its dispensations. The Indian judiciary has a longstanding reputation of being independent, impartial, and non-partisan. The Constitution provides for a single integrated system of courts to administer both, the union and state laws. Broadly speaking, there is a three-tier division, with the Supreme Court, the High Courts and the Lower Courts constituting a single judiciary.

## Population

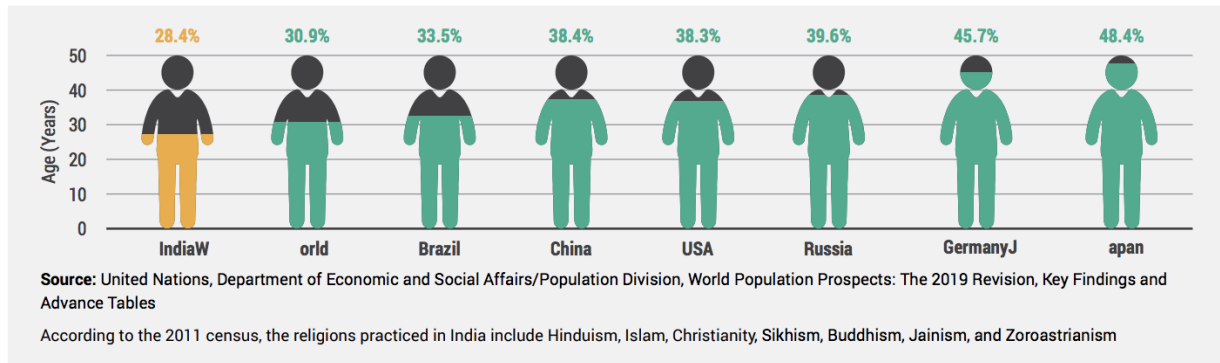
India is currently the second most populous country in the world, with an estimated 1.38 billion people in 2020.<sup>2</sup> The median age of India's population is 25, which in comparison to other Asian countries, puts India in a very favorable demographic position. The United Nations predicts that India's working age population (15-64 years) will significantly increase in the near future. This means that while most countries such as China, the USA and those in Europe, will witness a decrease in workforce, India's position is strengthening. A young, eager and well-educated workforce is the key to India's future prosperity. In the modern knowledge economy, this favourable demographic phase provides India with a significant competitive

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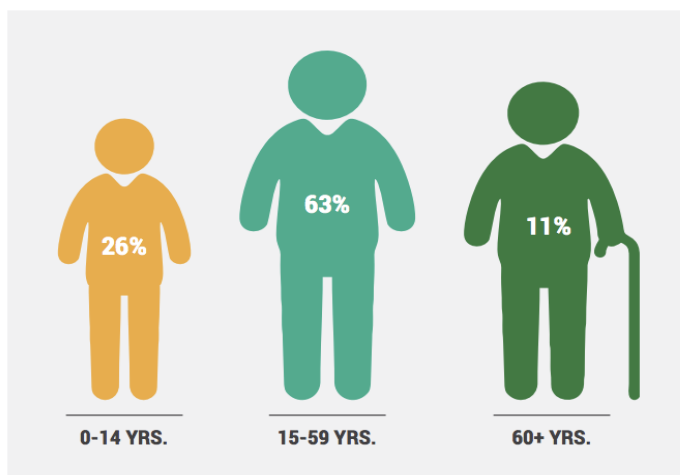
<sup>2</sup> World Population Prospects 2019, Comprehensive Tables, United Nations, Department of Economic and Social Affairs, Population Division (2019), [https://population.un.org/wpp/Publications/Files/WPP2019\\_Volume-I\\_Comprehensive-Tables.pdf](https://population.un.org/wpp/Publications/Files/WPP2019_Volume-I_Comprehensive-Tables.pdf)

advantage and has important implications for the country's economic growth trajectory and social stability.

Median Age of the Total Population: 2020



Population Distribution by Age Group: 2020



*Source: United Nations, Department of Economic and Social Affairs/Population Division, World Population Prospects: The 2019 Revision, Key Findings and Advance Tables*

## Economy

History fosters understanding by tracing origins. The economic reforms that commenced in 1991 brought about expansion of the service sector, encouraged business activity, stimulated growth in the private sector and revived international trade. Some of the key measures included; reduction of tariffs, opening of the private sector to activities that had previously been reserved for the public sector, elimination of industrial license requirement, elimination of restrictions on foreign investment and doing away with limits on capital

accumulation amongst others.<sup>3</sup> Since the liberalisation of FDI policies, the Indian economy has welcomed many multinational corporations to invest. The said policy of FDI under liberalisation, privatisation and globalization saw sectors like manufacturing, retail, service and telecommunications, getting liberalised. Furthermore, the Government of India through its “Make in India” initiative liberalised its FDI policy for 25 sectors. According to the World Investment Report 2020, India is at the 9<sup>th</sup> position in the list of the world’s largest FDI recipients.<sup>4</sup>

During the financial year 2020-21 India attracted the highest ever total FDI inflow of USD 81.72 billion, which is 10% higher when compared to the previous financial year. “Computer Software & Hardware” has emerged as the top sector during 2020-21 with 44% share of the total FDI equity inflow. It is followed by Construction (Infrastructure) Activities and the Services Sector.<sup>5</sup> Other major sectors have also recorded a jump in equity during 2020-21 as compared to the previous year, namely, Retail Trading, Drugs & Pharmaceuticals, Rubber Goods and Electrical Trading.<sup>6</sup>

India’s annual GDP rose strength to strength during the liberalisation process as its commercial finance was spurred by economic reforms which attracted foreign investments more than foreign aid. The country saw a major remittance boom too, which was a consequence of globalisation. Imports and exports, of both, goods and services, have soared as a proportion of GDP because of India’s opening up and consequent globalisation. India is also in the process of reaping a demographic dividend that will give it a big edge over other economies. Economic reforms of the early 1990s have done India good – there have been major private sector successes, competitive and globalized markets have led to economically favourable outcomes, the IT sector has witnessed a boom, majority of Indian companies have become multinationals, thereby, making acquisitions globally. India has also fast become a global hub for research and development.

The Indian economy is constantly evolving and a variety of growth opportunities are present across multiple sectors. India is the third-largest economy in terms of Gross Domestic

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<sup>3</sup> Emran, M. S., Shilpi, F., & Alam, M. I. (2007). Economic Liberalization and Price Response of Aggregate Private Investment: Time Series Evidence from India. *The Canadian Journal of Economics* 40, 914–934

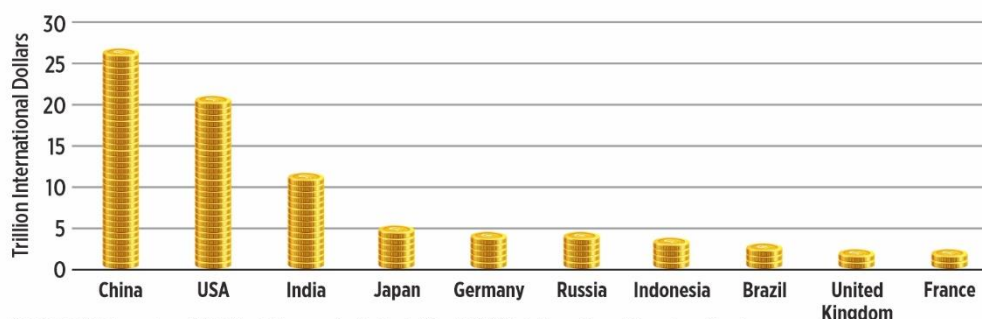
<sup>4</sup> [https://unctad.org/system/files/official-document/wir2020\\_en.pdf](https://unctad.org/system/files/official-document/wir2020_en.pdf)

<sup>5</sup> <https://www.makeinindia.com/policy/foreign-direct-investment>

<sup>6</sup> *Ibid*

Product (GDP) based on Purchasing Power Parity (PPP) and one of the fastest growing economies in the world.<sup>7</sup>

The World's Largest Economies by GDP (PPP): 2020



Source: GDP based on PPP, World Economic Outlook (April 2020), International Monetary Fund.

Many new initiatives have been taken up by the current government to facilitate investment and ease of doing business in the country. Some noteworthy initiatives among various others are “Aatmanirbhar Bharat” (self-reliant India), “Make-in-India”, “Start-up India” and “Digital India”. One such scheme under the government’s Aatmanirbhar Bharat initiative, called Production Linked Incentive (PLI) Scheme spreads across 13 key sectors to create national manufacturing champions, generate employment opportunities and enhance the country’s economy. The scheme provides incentives to companies for enhancing their domestic manufacturing and leads to incremental sales for products manufactured domestically within India.<sup>8</sup> The economic package under the self-reliant India initiative has supported the Indian economy and mitigated significant downside risks too.<sup>9</sup> India’s manufacturing sector is stagnant in comparison to its flourishing services sector.

In that vein, Make-in-India, aims to boost investment and industrial production to increase the GDP share of the manufacturing sector. The Indian government’s priority is to stay focussed on policies that can help further integrate India in the global value chain, through technology, trade and investment.<sup>10</sup> The Digital India initiative has three core areas (a) Creation of digital infrastructure; (b) Delivery of e-governance and digital services and (c) Spreading

<sup>7</sup> Overview, The World Bank in India, The World Bank, <https://www.worldbank.org/en/country/india/overview>

<sup>8</sup> <https://www.investindia.gov.in/production-linked-incentives-schemes-india>

<sup>9</sup> “Aatmanirbhar Bharat an important initiative; economic package supported Indian Economy: IMF”, Business Today (September 2020), <https://www.businesstoday.in/current/economy-politics/aatmanirbhar-bharat-an-important-initiative-economic-package-supported-indian-economy-imf/story/416975.html>

<sup>10</sup> [https://www.pmindia.gov.in/en/major\\_initiatives/make-in-india/](https://www.pmindia.gov.in/en/major_initiatives/make-in-india/)

digital literacy. The government seeks to bridge the digital divide and boost investment in the immediate term. Once this digital infrastructure is established, it will incentivize foreign investors, which will help facilitate digital innovation, efficiency and productivity across India's economy.<sup>11</sup>

India's global ranking in 'Ease of Doing Business', as published in the World Bank Group's Doing Business 2020 study, has risen by 14 positions to the 63<sup>rd</sup> rank in 2019 due to a slew of reforms and initiatives introduced by the government<sup>12</sup>. The current government's business friendly policies are expected to accelerate foreign investments as it aims to<sup>13</sup>:

- Revive growth by fuelling investments in infrastructure and manufacturing;
- Promote Foreign Direct Investment (FDI) in key sectors;
- Promote the public-private partnership model in critical sectors such as healthcare, defence and others;
- Open up all sectors (strategic and non-strategic) to the private sector with public/state-owned facilities only in strategic sectors;
- Introduce administrative and policy reforms to expedite project implementation;
- Have a stable, predictable and investor-friendly taxation regime;
- Increase transparency and establish systems to eliminate corruption;
- Strengthen and expand India's trade network with regional, bilateral and multilateral trade agreements;
- Develop human resources within the country to match the industry's fast-changing needs.

### **Major sectors:**

The trade, hotel, transport and communications sector, that is, the service sector account for the dominant share of the GDP which is followed by agriculture and allied sectors. Leading

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<sup>11</sup> “*India's Economic Initiatives: A Magnet for Investments*”, India Briefing (September 2015), [https://www.india-briefing.com/news/indias-economic-initiatives-magnet-investments-11247.html/#:~:text=Make%20in%20India%20thus%20aims,16%20percent%20to%2025%20percent.&text=100%20percent%20FDI%20is%20allowed,News%20Media%20\(26%20percent\)](https://www.india-briefing.com/news/indias-economic-initiatives-magnet-investments-11247.html/#:~:text=Make%20in%20India%20thus%20aims,16%20percent%20to%2025%20percent.&text=100%20percent%20FDI%20is%20allowed,News%20Media%20(26%20percent))

<sup>12</sup> Doing Business 2020 Report, World Bank, <https://www.doingbusiness.org/en/reports/global-reports/doing-business-2020>

<sup>13</sup> Doing Business (2020), The World Bank, <https://www.doingbusiness.org/en/data/exploreconomies/india>

multinationals today are setting up their R&D centres in India, thereby acknowledging India's true economic potential.

		June 2021 (USD Billion)	June 2020 (USD Billion)	June 2019 (USD Billion)	Growth vis-à-vis June 2020 (%)	Growth vis-à-vis June 2019 (%)
<b>Merchandise</b>	<b>Exports</b>	32.50	21.91	25.03	48.34	29.85
	<b>Imports</b>	41.87	21.11	41.03	98.31	2.05
	<b>Trade Balance</b>	-9.37	0.79	-16.00	1281.86	41.43
<b>Services*</b>	<b>Exports</b>	17.35	15.89	17.51	9.16	-0.94
	<b>Imports</b>	10.31	8.94	10.59	15.38	-2.68
	<b>Net of Services</b>	7.04	6.69	6.92	1.18	1.73
<b>Overall Trade (Merchandise+ Services)*</b>	<b>Exports</b>	49.85	37.80	42.54	31.87	17.17
	<b>Imports</b>	52.18	30.05	51.63	73.65	1.08
	<b>Trade Balance</b>	-2.34	7.75	-9.09	-130.13	74.30

*\*Note: The latest data for services sector released by RBI is for May 2021. The data for June 2021 is an estimation, which will be revised based on RBI's subsequent release. (ii) Data for 2019 and 2020 are revised on pro-rata basis using quarterly balance of payments data.*

*Source: Ministry of Commerce & Industry, see <https://commerce.gov.in/trade-statistics/latest-trade-figures/>*

Department of Commerce  
System on Foreign Trade Performance Analysis (FTPA) Version 3.0  
Export of Principal Commodities Groups

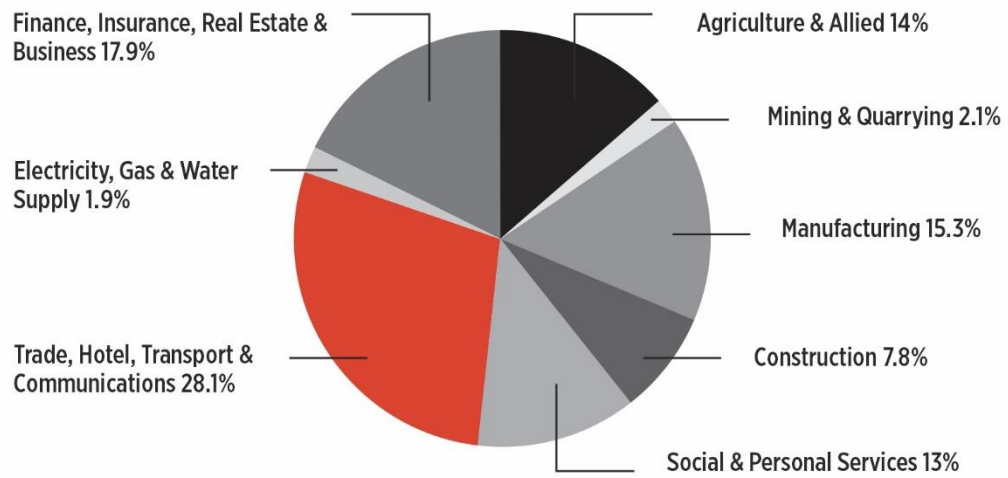
Dated: 2/8/2021  
Values in Rs. Crores

Commodity	Apr-Jan 2020	Apr-Jan 2021	%Growth	%Share
1. PLANTATION	9,298.32	8,988.77	-3.33	0.53
2. AGRI & ALLIED PRODUCTS	150,281.22	187,151.21	24.53	11.00
3. MARINE PRODUCTS	41,538.35	36,941.16	-11.07	2.17
4. ORES & MINERALS	27,267.24	37,054.18	35.89	2.18
5. LEATHER & LEATHER MANUFACTURES	29,215.22	21,005.63	-28.10	1.24
6. GEMS & JEWELLERY	217,511.86	146,092.06	-32.83	8.59
7. SPORTS GOODS	1,726.73	1,663.50	-3.66	0.10
8. CHEMICALS & RELATED PRODUCTS	266,640.08	293,150.38	9.94	17.24
9. PLASTIC & RUBBER ARTICLES	49,533.22	48,814.47	-1.45	2.87
10. ARTICLES OF STONE, PLASTER, CEMENT, ASBESTOS, MICA OR SIMILAR MATERIALS; CERAMIC PRODUCTS; GLASS AND GLASSWARE	31,061.24	33,594.98	8.16	1.98
11. PAPER & RELATED PRODUCTS	20,151.24	19,485.28	-3.30	1.15
12. BASE METALS	143,415.54	161,121.40	12.35	9.47
13. OPTICAL, MEDICAL & SURGICAL INSTRUMENTS	14,011.56	13,186.46	-5.89	0.78
14. ELECTRONICS ITEMS	66,238.37	61,087.17	-7.78	3.59
15. MACHINERY	168,650.01	155,117.54	-8.02	9.12
16. OFFICE EQUIPMENTS	1,166.09	842.21	-27.77	0.05
17. TRANSPORT EQUIPMENTS	138,777.59	118,707.07	-14.46	6.98
18. PROJECT GOODS	84.40	12.66	-85.00	0.00
19. TEXTILES & ALLIED PRODUCTS	198,349.69	174,216.83	-12.17	10.24
20. PETROLEUM CRUDE & PRODUCTS	249,014.67	146,616.27	-41.12	8.62
21. OTHERS	37,808.06	35,937.24	-4.95	2.11
Total	1,861,740.70	1,700,786.48	-8.65	100.00

Source: Ministry of Commerce & Industry, see  
<https://tradestat.commerce.gov.in/ftpa/comgrpq.asp>

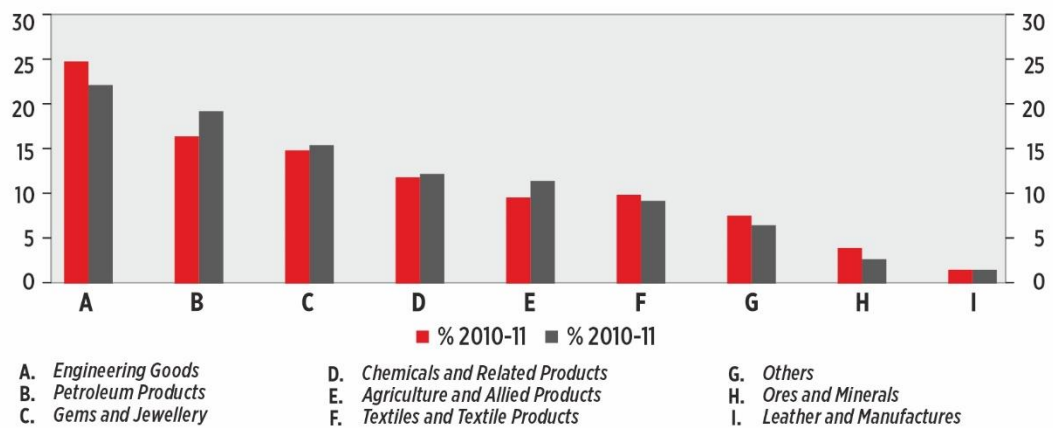


### Sector-wise composition of India's GDP

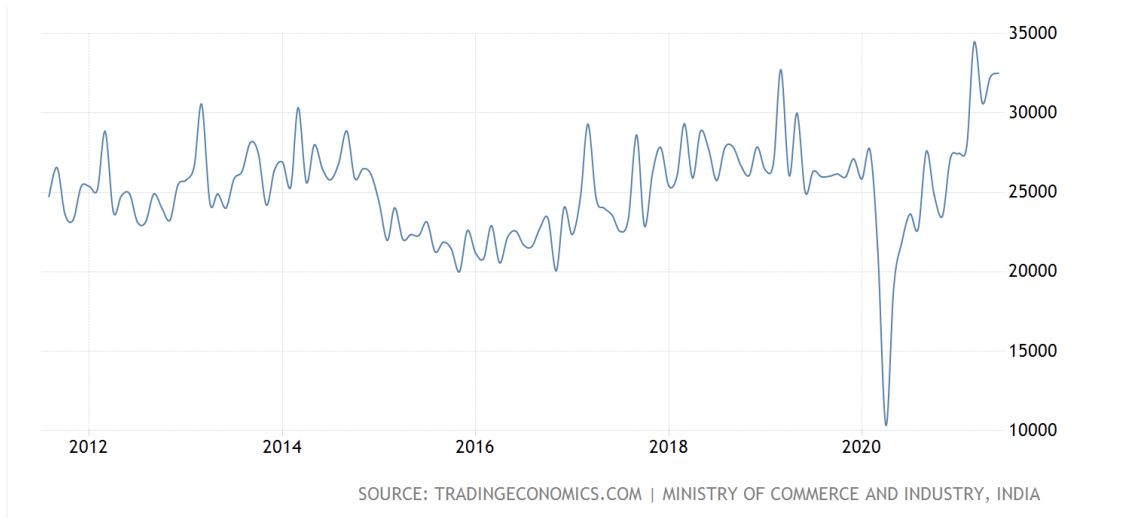


Source: <http://business.mapsofindia.com/india-gdp/2011-12>

### India's Top Commodity Exports in 2011-2012

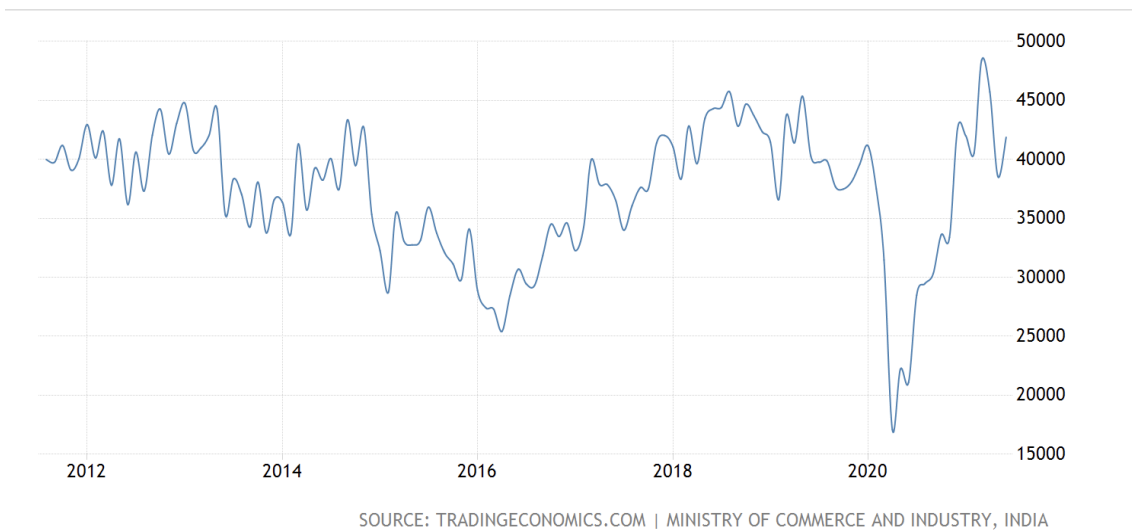


Source: Compiled from Ministry of Commerce and Industry and DGCI&S data (April - Dec 2011-12)



Actual	Previous	Highest	Lowest	Dates	Unit	Frequency	
32500.00	32270.00	34450.00	59.01	1957 - 2021	USD Million	Monthly	Current Prices, NSA

Source: [tradingeconomics.com/Ministry of Commerce and Industry, India](https://tradingeconomics.com/Ministry-of-Commerce-and-Industry-India)



Actual	Previous	Highest	Lowest	Dates	Unit	Frequency	
41870.00	38550.00	48380.00	117.40	1957 - 2021	USD Million	Monthly	Current Prices, NSA

Source: [tradingeconomics.com/Ministry of Commerce and Industry, India](https://tradingeconomics.com/Ministry-of-Commerce-and-Industry-India)

## **Invest India: National Investment Promotion and Facilitation Agency:**

“Invest India”, set up in 2009, is a non-profit venture under the Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, Government of India. Its primary focus is attracting and enabling Foreign Direct Investment (FDI) and investors from overseas. Invest India is typically the first point of contact for global investors to start exploring India as an investment destination. Furthermore, it focuses on sector-specific investor targeting and development of new partnerships to enable sustainable investments. Sectors that Invest India focuses on are Agriculture & Forestry, Auto Components, Automobile, Aviation, BFSI – Fintech & Financial Services, Biotechnology, Capital Goods, Chemicals, Construction, Defence Manufacturing, Electronic Systems, Food Processing, Healthcare, IT & BPM, Leather, Media, Medical Devices, Metals & Mining, Oil & Gas, Pharmaceuticals, Ports & Shipping, Railways, Renewable Energy, Retail & E-Commerce, Roads & Highways, Telecom, Textiles & Apparel, Thermal Power and Tourism & Hospitality.<sup>14</sup> The Agency has come up with and facilitated some very successful initiatives across a wide variety of sectors and states. A lot of these initiatives are digitally powered, making it easier for investors to invest in the country.<sup>15</sup>

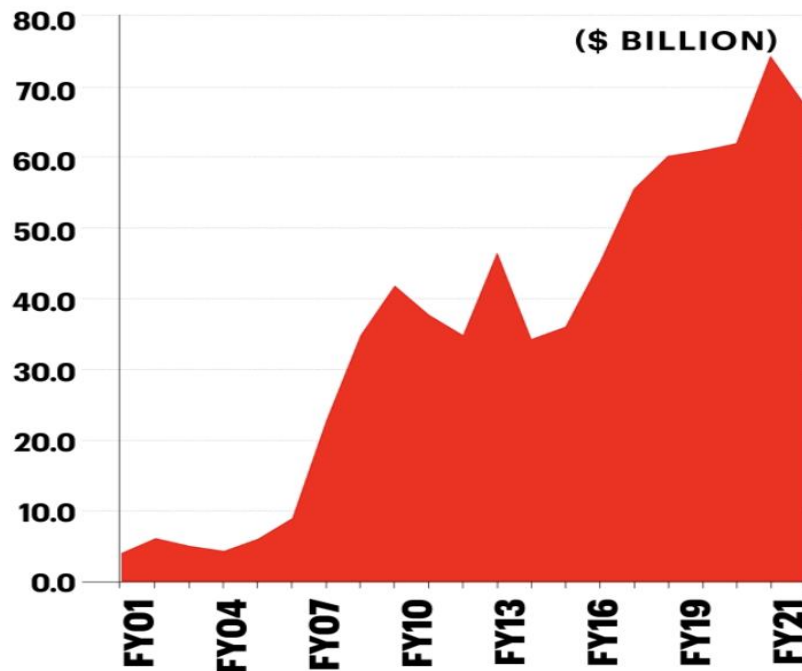
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<sup>14</sup> <https://www.investindia.gov.in/sectors>

<sup>15</sup> “*Invest India: The government’s own startup*”, Fortune India (May 2021), <https://www.fortuneindia.com/enterprise/invest-india-the-governments-own-startup/105488>

## THE FDI STORY

INDIA'S FDI GROWTH HAS BEEN GOOD, WITH \$73.5 BILLION COMING IN FOR THE YEAR 2019-20.



SOURCE: DEPARTMENT FOR PROMOTION OF INDUSTRY AND INTERNAL TRADE, MINISTRY OF COMMERCE AND INDUSTRY; FORTUNE INDIA RESEARCH

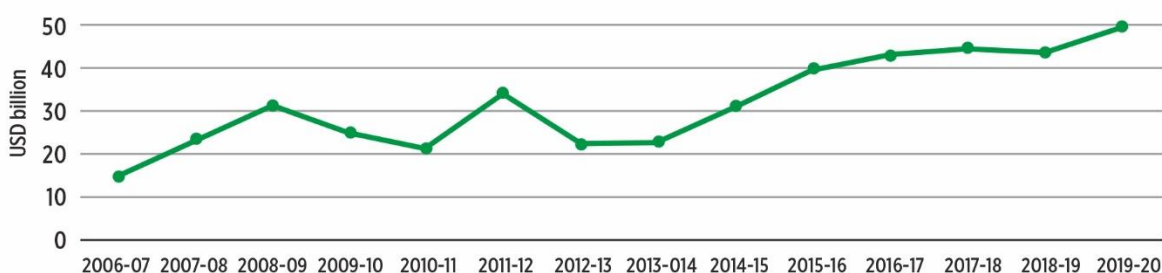
### NOTES;

- 1) DATA FOR FY21 IS UP TO DEC. 2020
- 2) TOTAL FDI INCLUDES FDI EQUITY VIA FIPB, AUTOMATIC, ACQUISITION ROUTES; ESTIMATED EQUITY CAPITAL OF UNINCORPORATED BODIES; RE-INVESTED EARNINGS; AND OTHER CAPITAL

### Foreign investments:

Foreign Direct Investments (FDI) has been a major non-debt financial resource for the economic development of India. The FDI regime was progressively liberalized during the course of the early 1990s. Numerous restrictions on foreign investment were removed and procedures were simplified. With limited exceptions, foreigners can invest directly in India either on their own or as a joint venture in industries where foreign investment is restricted. Moreover, investment ceilings, which are applicable in certain cases, are gradually being removed/phased out, as a result of which, India has witnessed a steady increase of foreign inflows.

**Annual FDI Equity Inflows into India: Financial Years 2006-07 to 2019-20**



Source: Department of Industrial Policy & Promotion, FDI Statistics, January to March 2019.

From April 2000–March 2020, cumulative FDI inflows into India stood at USD 680.919 billion. FY 2019-20 witnessed FDI equity inflows of USD 49.98 billion, registering a rise of 13% over FY 2018-19 which witnessed USD 44.37 billion in equity inflows.<sup>16</sup>

Features of the government’s robust foreign investment policy as per the Consolidated FDI Policy Circular of 2017, Department of Industrial Policy and Promotion and Ministry of Commerce and Industry include the following<sup>17</sup>:

- No government approval is required for FDI in majority of the sectors/activities, except for a small negative list as formulated by the government.
- The government has formulated ‘Sector-Specific Guidelines for FDI,’ wherein investments up to specified sectorial caps are covered under the automatic route with a few exceptions.
- Foreign Investment Promotion Board 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

<sup>16</sup> FDI Statistics, Department for Promotion of Industry and Internal Trade, [https://dipp.gov.in/sites/default/files/FDI\\_Factsheet\\_March20\\_28May\\_2020.pdf](https://dipp.gov.in/sites/default/files/FDI_Factsheet_March20_28May_2020.pdf)

<sup>17</sup> Consolidated FDI Policy (Effective August 2017), Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, Government of India, [https://dipp.gov.in/sites/default/files/CFPC\\_2017\\_FINAL\\_RELEASED\\_28.8.17\\_1.pdf](https://dipp.gov.in/sites/default/files/CFPC_2017_FINAL_RELEASED_28.8.17_1.pdf)

repatriation of profits on capital investment is permitted, subject to payment of taxes and other specified conditions.

- Indian capital markets are open to Foreign Institutional Investors (FIIs).
- Indian companies are permitted to raise funds from international capital markets.
- Special investment and tax incentives are given for exports and other 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.

Repatriation of profits is a very important point for foreign investors. Prior to investing in India, investors must know how to repatriate their profits. The procedures to remit money will typically depend upon the investor’s investment model. Foreign companies in India tend to operate through either a liaison office, branch office, project office or a wholly owned subsidiary. Each investment model has its own procedures and regulations for conducting foreign business and repatriating its profits. There are various strategies available to repatriate profits, such as royalties, interest on loan, management fees, share buyback and capital reduction. Commonly, Indian companies pay a royalty to a foreign holding company for the use of intellectual properties such as trademarks and brand names, patents, copyrights, technical expertise and services or for the right to use their designs. A common practice for a company is to provide its foreign affiliates intellectual property rights and enjoy fixed percentage as royalty payments. Royalty payments to a foreign company usually attract withholding of taxes under the Income Tax Act, 1961, plus any applicable surcharge and education cess.

Dividend distribution as a technique to repatriate funds to domestic country of a foreign investor. Dividends are typically taxed in the country where dividends are being received. Consider Double Taxation Agreements (DTAA) signed between two or more countries to help taxpayers avoid paying double taxes on the same income. The incentive of doing away with double taxation makes this a rather popular method of repatriation.

Repatriation through buyback of shares means companies using a portion of income to buyback their own shares. A buyback allows companies to invest in themselves. By reducing the number of shares outstanding on the market, buybacks increase the proportion of shares a

company owns and acts as a mode of returning capital. When it comes to repatriation through management fees, it means paying a fees to a company for providing services to another foreign company. Such fees can be categorised as technical support fees or administrative fees subject to any taxes as may be applicable. As stated above, selection of these repatriation strategies depends on a variety of factors, therefore, generally a blend of these methods is deployed to remit funds overseas in a way that serves long-terms business goals well.

India is one of the most exciting markets in the world. It has a rapidly growing population and a dynamic economy that make it a great avenue for international investors. The benefits of investing in India include positive demographics, strong economic growth, geopolitical stability etc. Skilled managerial and technical manpower combined with new initiatives, policies and regulations provide India with a cutting edge in the global market and will help augment current capabilities.

### **Special Economic Zones (SEZs):**

Special Economic Zones (SEZs) are areas in India that offer incentives to resident businesses. Essentially, these areas are subject to different economic regulations than other regions within the country.<sup>18</sup> The aim of SEZs include, generation of employment, increasing trade balance, increased investment and facilitation of economic growth. When an individual/company conducts business in a SEZ, there are a variety of economic advantages for them, including tax incentives and the opportunity to pay lower tariffs. Typically, SEZs tend to be conducive to and attract foreign direct investment. Some of the incentives offered to the units in SEZs for attracting investment include, but are not limited to, duty free import/domestic procurement of goods for development, operation and maintenance of SEZ units, single window clearance for Central and State level approvals, exemption from Central Sales Tax, exemption from Service Tax and State Sales Tax (these have now subsumed into GST and supplies to SEZs are zero rated under IGST Act, 2017).<sup>19</sup>

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<sup>18</sup> <http://www.sezindia.nic.in/>

<sup>19</sup> <http://sezindia.nic.in/cms/facilities-and-incentives.php>

## **COMPANY FORMATION**

The Ministry of Corporate Affairs regulates corporate affairs in India through the Companies Act 2013 and other allied Acts, Rules, and Regulations. The Companies Act 2013 consolidates the law relating to formation and functioning of companies. A foreign entity can set up their business operations in India either as an incorporated or unincorporated entity. Such a choice should be made keeping in mind the business objective. The right choice will ensure efficiency from an operational, regulatory, legal and tax perspective.

The foreign entity may choose to operate as an Indian company where it can either operate as a Wholly-Owned Subsidiary Company, Joint Venture with an Indian partner such that there is equity participation or a Limited Liability Partnership. However, if the foreign entity chooses to operate as a foreign company, its options are to set up a Liaison Office (represent the parent company in India), Project Office (activities as per contract to execute project) or Branch Office (undertake activities in the fields of export, import, R&D, consultancy amongst others) in India to carry on with its work.



**The following table gives a snapshot of some of the commonly preferred business forms in India**

Particulars	Liaison office (LO)	Project office (PO)/Branch office (BO)	Private Limited Company	Limited Liability Partnership (LLP)
<b>Legal</b>	Represents the parent company and acts only as a communication channel of the foreign parent company.	Both BO and PO are extended arms of the parent company. A PO is generally set-up for specific projects, whereas a BO is set-up for carrying activities in the course of the business <sup>1</sup> .	Independent status	Independent status
<b>Approval for commencement</b>	<ul style="list-style-type: none"> <li>Required from an authorized dealer bank (AD Bank), which is subject to fulfilment of prescribed conditions<sup>2</sup>.</li> <li>Required from RBI in exceptional scenarios.</li> </ul>	<ul style="list-style-type: none"> <li>Required from an AD Bank, which is subject to fulfilment of the prescribed conditions<sup>2</sup>.</li> <li>Required from RBI in exceptional scenarios.</li> </ul>	A company can be set up subject to FDI guidelines.	An LLP can be set up subject to FDI guidelines.
<b>Permitted activities</b>	Liaison activities No commercial / business activities are permitted.	Restricted scope Activities listed by RBI are only allowed to be undertaken.	Activities specified in Memorandum of Association of the company, subject to FDI guidelines	Activities specified in LLP agreement, subject to FDI guidelines.
<b>Income tax rate</b>	An LO is not subject to tax in India, since it is not permitted to undertake any business activity.	Liable to tax on income earned in India @45% <sup>3</sup> .	<ul style="list-style-type: none"> <li>Liable to tax on global income @ different corporate tax rates (15%/22%/25%/30%)<sup>3</sup> depending upon the nature of activities, annual turnover and fulfilment of certain conditions (please refer section 'L' for details on applicable tax rates).</li> <li>Company is liable to Minimum Alternate Tax (MAT) @ 15%<sup>3</sup> on its book profit.</li> </ul>	<ul style="list-style-type: none"> <li>Liable to tax on global income @ 30%<sup>3</sup>.</li> <li>An LLP is liable to Alternate Minimum Tax (AMT) @ 18.5%<sup>3</sup> on its book profits.</li> </ul>
<b>Repatriation of accumulated profits</b>	Not applicable as LO is not permitted to undertake any business activity.	A BO/PO is permitted to remit post-tax profits outside India upon fulfilling procedural compliances.	No statutory approval required; procedural compliances to be undertaken.	No statutory approval required; procedural compliances to be undertaken.
<b>Ease of exit</b>	Prior approval of AD Bank and ROC authorities is required.	Prior approval of AD Bank and ROC authorities is required.	<ul style="list-style-type: none"> <li>It may be complex depending on the strategy adopted.</li> <li>Exit can be through sale of shares or liquidation.</li> </ul>	<ul style="list-style-type: none"> <li>It may be complex depending on the strategy adopted.</li> <li>Exit can be through sale of interest or dissolution.</li> </ul>

*Source: Doing Business in India, June 2020, Ernst & Young*

A company may be a listed company or an unlisted company. Unlisted private companies have greater flexibility and less strict rules when it comes to matters including composition of board of directors, number of directors, voting rights, kinds of share capital, inter-corporate loans etc. The Act further categorises a company, based on the control and influence test, into a holding company, subsidiary company or an associate company. Other types of companies mentioned are foreign companies, government companies, small companies, banking companies and dormant companies.



A company can issue only two types of shares, that are, equity shares that have voting rights or differential rights as to dividend, voting or otherwise; and preference shares that do not carry voting rights, except in limited circumstances. Preference shareholders have a preferential right over the equity shareholders to dividends and assets of the company in case of winding up. A draft notification was placed before the Parliament on July 14, 2014, proposing exemptions for private companies from certain requirements under the 2013 Act. One such proposal provided that the provisions in relation to share capital and voting rights of equity and preference shareholders should not be applicable to a private company, if it is specifically provided in its Articles of Association (AOA). However, the said draft notification has not yet come into effect.<sup>20</sup>

The Companies Act regulates a wide range of activities including, incorporation, governance, management, operationalisation and liquidation. Investors should have a look at the Act to find detailed provisions on Duties and Liabilities of Directors, Liability of Directors, Merger of an Indian Company with a Foreign Company, Related Party Transactions, Class Action Suits and Corporate Social Responsibility. Speaking of directors, the 2013 Act provides that no body corporate, association or firm can be appointed as a director of a company, and only an individual can be so appointed. The 2013 Act brought upon many changes in relation to Board composition, including mandatory appointment of at least one resident director and one woman director, as well as independent directors for certain specific class of companies.

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<sup>20</sup> Doing Business in India – Guide for Indian Diaspora, Ministry of Overseas Indian Affairs, <https://www.mea.gov.in/images/pdf/DoingBusinessinIndiaGuide.pdf>

Directors have a vast expanse of responsibilities and duties that they must fulfil. The 2013 Act specifically provides for statutory duties of directors, which include duty to act in good faith to promote objects of the company, duty of care, skill and diligence, exercise independent judgment, duty not to get involved in a situation of conflicting interests amongst others. The statute helped solidify the role of directors in day to day operations of a company along with consequences faced in case of a potential breach of duties.

## **MERGERS & ACQUISITIONS:**

Despite the severe global economic distress induced as a result of the COVID-19 pandemic, India's Mergers & Acquisitions (M&A) market has remained resilient. The deal driver was consolidation on opportunity-driven acquisition, especially with the IT sector. The IT sector led the way as the need for cybersecurity and cloud computing services urged with remote operations. Certain deals worthy of being noted are Facebook acquiring a 10% stake in Jio Platforms, meanwhile, Google acquiring a 7.7% stake. India is currently enjoying a healthy M&A environment where the Indian telecoms and digital space are seen as an attractive investment area for global tech giants. Other sectors that are likely to see a boost include online gaming and entertainment. The influx of online streaming platforms are being seen as a promising investment. Indian fintech such as lending and payments, insurance technology and wealth management have also seen positive growth in the first half of 2020.<sup>21</sup>

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<sup>21</sup> *"Indian M&A in a changed world"*, International Financial Law Review (September 2020), <https://www.iflr.com/article/b1nhrgetfb3x5g/indian-mampa-in-a-changed-world>



The key legislation and regulations governing Indian M&A include Companies Act, 2013 (primary legislation governing companies and mergers), Securities Regulation (regulated by Securities Exchange Board of India – see Substantial Acquisition of Shares and Takeovers Regulations, 2011 and Delisting of Equity Shares Regulations, 2009), Competition Act, 2002, Insolvency and Bankruptcy Code , 2016 and Income Tax Act, 1961.

## **TAXATION**

Any person doing business in India has to consider various direct and indirect taxes that are levied and collected by the Central and State governments.



### Corporate Income Tax

In India, all domestic companies are liable to tax on their global income, while foreign companies are liable to tax in India with respect to income received or deemed to be received in India or income which accrues or arises in India or income which is deemed to accrue or arise in India. The effective corporate income tax rate (base rate + surcharge + cess) depends on the type of the company (domestic or foreign) and the quantum of its taxable income in the previous year. The year refers to the Financial Year (FY), which begins on 1 April and ends on 31 March, while the previous year refers to the previous financial year. The rate of tax, surcharge, and cess could be changed by the Finance Act passed by the Indian government every year.<sup>22</sup>

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<sup>22</sup> *Diversify to Differentiate Think India, Think Next, Doing Business in India 2020*, <https://www.nexdigm.com/doing-business-in-india/pdf/nexdigm-skp-dbi.pdf>

The corporate tax rates applicable for FY 2019-20 are outlined below:-

Particulars	Taxable income > INR 100 million	INR 10 million < taxable income < INR 100 million	Other cases
Domestic company (not opting for lower tax rates and having turnover exceeding INR 4 billion in FY 2018-19)	34.944% (30% base rate + 12% surcharge + 4% Health and education cess)	33.384% (30% base rate + 7% surcharge + 4% Health and education cess)	31.20% (30% base rate + 4% Health and education cess)
Domestic company (not opting for lower tax rates and having turnover not exceeding INR 4 billion in FY 2018-19)	29.12% (25% base rate + 12% surcharge + 4% Health and education cess)	27.82% (25% base rate + 7% surcharge + 4% Health and education cess)	26.00% (25% base rate + 4% Health and education cess)
Domestic company (opting for lower tax rates)	25.168% (22% base rate + 10% surcharge + 4% Health and education cess)	25.168% (22% base rate + 10% surcharge + 4% Health and education cess)	25.168% (22% base rate + 10% surcharge + 4% Health and education cess)
New domestic manufacturing companies*	17.16% (15% base rate + 10% surcharge + 4% Health and education cess)	17.16% (15% base rate + 10% surcharge + 4% Health and education cess)	17.16% (15% base rate + 10% surcharge + 4% Health and education cess)
Foreign company	43.68% (40% base rate + 5% surcharge + 4% Health and education cess)	42.432% (40% base rate + 2% surcharge + 4% Health and education cess)	41.60% (40% base rate + 4% Health and education cess)

\*Domestic companies which have been incorporated and registered on or after 1 October 2019 and has commenced manufacturing on or before 31 March 2023

Source: *Diversify to Differentiate Think India, Think Next, Doing Business in India 2020, Nexdigm*

### Personal Taxation (Direct Tax)

While companies contribute a significant amount to the tax collected each year, contributions from individuals also form an important element of the revenue. Personal tax as per the Indian Income Tax Act, 1961 (ITA), is levied on individuals. The rates of taxation differ in each financial year (1 April to 31 March), and are usually lower than the rate of taxation for corporates. In other words, the central government levies direct taxes by way of income tax. Its administration, control, and supervision lie with the Central Board of Direct Taxes (CBDT). Another form of direct tax is wealth tax, which is charged on the net wealth of the assessee on the valuation date of the relevant fiscal year. Under the Wealth Tax Act, tax is charged in respect of the wealth held during the relevant financial year by the following persons viz. Individual, Hindu Undivided Family (HUF) and Company. Net wealth means the value of all specified assets on the valuation date as reduced by the debt incurred to acquire those assets. The net wealth so arrived at is charged to tax at the specified rates.

As amended by Finance Act 2020, rate for income tax is as follows<sup>23</sup>:

<b>Individuals</b>		
<i>(Other than senior and super senior citizen)</i>		
<b>Net Income Range</b>	<b>Rate of Income-tax</b>	
	<b>Assessment Year 2021-22</b>	<b>Assessment Year 2020-21</b>
Up to Rs. 2,50,000	-	-
Rs. 2,50,000 to Rs. 5,00,000	5%	5%
Rs. 5,00,000 to Rs. 10,00,000	20%	20%
Above Rs. 10,00,000	30%	30%

*Source: Income Tax Department, Government of India*

### Indirect Taxation

Before the advent of the Goods and Services Tax (GST) in India, indirect taxation was broadly divided into the following levies: Value Added Tax (VAT), Central Sales Tax (CST), Service Tax, Excise Duty, Customs Duty, Luxury Tax, Purchase Tax, Taxes on lottery, betting and gambling, Service Tax and Central Excise Duty Value Added tax (CENVAT). Different types of taxes were levied for different activities under the erstwhile indirect tax regime - for instance, VAT/CST as applicable to the sale of goods, Service Tax as applicable on the provision of services, Central Excise Duty was levied on the manufacturing of goods, etc. However, with the introduction of GST in India with effect from 1 July 2017, VAT, CST, Service Tax, Central Excise Duty and other indirect taxes have been subsumed under GST. The implementation of the ‘One Vision One Tax’ policy is envisaged with GST in India.

GST was envisaged as a more efficient tax system that would widen the tax base, do away with the multiplicity of taxes and their cascading effects, encourage better compliance and minimise any kind of competitive distortions. The GST system comprises of, the Central Goods and Services Tax Act, 2017, which provides for the taxing powers of the Central Government, individual State/Union Territory Goods and Services Tax Acts (“SGST Act” and

<sup>23</sup>[https://www.incometaxindia.gov.in/\\_layouts/15/dit/mobile/viewer.aspx?path=https://www.incometaxindia.gov.in/charts++tables/tax+rates.htm&k&IsDIg=0](https://www.incometaxindia.gov.in/_layouts/15/dit/mobile/viewer.aspx?path=https://www.incometaxindia.gov.in/charts++tables/tax+rates.htm&k&IsDIg=0)  
<https://www.incometaxindia.gov.in/pages/charts-and-tables.aspx>

“UTGST Act” respectively) which provide for the taxing powers of each State / Union Territory, and the Integrated Goods and Services Tax Act, 2017 (“IGST Act”), which grants exclusive rights to the Centre to tax inter-state commerce.<sup>24</sup>

The commodities and services subject to GST are categorized under four tax slabs, viz. 5%, 12%, 18%, and 28%. However, GST is not applicable to certain commodities such as jute, fish, eggs, fresh meat, milk, curd, fresh fruits, buttermilk, vegetables, etc. Most of the goods are covered under the 12% and 18% tax slabs, while services are generally taxable at 18%. The number of products covered in the highest tax slab of 28% has substantially reduced since the inception of GST. Presently the 28% tax slab mostly covers luxury commodities, including motor vehicles, cement, personal aircrafts, yachts, etc.<sup>25</sup>

The overhaul of indirect taxation was brought about in the hopes of a simpler tax system, reduction in prices of goods and services due to elimination of cascading, uniform prices throughout the country, transparency, and increase in employment opportunities.<sup>26</sup> It is considered as the biggest indirect tax reform of India and has been a major transition in the Indian tax framework.

For GST Rates, see the following: <https://cbic-gst.gov.in/pdf/goods-rates-booklet-03July2017.pdf> and <https://cbic-gst.gov.in/pdf/services-booklet-03July2017.pdf>

Another type of indirect tax worth mentioning are Custom and Excise Duties. The duty that is levied on the goods which are manufactured in the country is called excise duty whereas the duty levied on the goods that are imported from a foreign country is called custom duty. Readers should note that GST has now subsumed a number of indirect taxes including excise duty. When it comes to customs duty, every good has a predefined rate of duty that is determined based on various factors, including where such good was acquired, what is the value of said goods amongst others. Customs duties are charged almost universally on every good that is imported into the country and are typically classified as: Countervailing Duty, Anti-dumping Duty, Basic Customs Duty, Protective Duty and Education Cess on Customs

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<sup>24</sup> <https://cbic-gst.gov.in/index.html>

<sup>25</sup> The extensive list of GST rates for products and services can be found at the Central Board of Indirect Taxes and Customs, <https://cbic-gst.gov.in/gst-goods-services-rates.html>

<sup>26</sup> <https://cbic-gst.gov.in/pdf/citizens.pdf>



Duty. Customs duties are typically calculated on a specific or ad valorem basis, that is, on the value of goods. All matters related to customs duty fall under the Central Board of Excise & Customs (CBEC). The CBEC, in turn, is a division of the Department of Revenue of the Ministry of Finance. Customs duty is imposed by the Government of India under the Indian Customs Act formulated in 1962 by virtue of Article 265 of the Constitution of India. CBEC formulates policies that concern the levying of customs duties, customs duty evasion, and administrative decisions related to customs formations. For more information on customs duties, refer to the following: <https://www.cbic.gov.in/htdocs-cbec/customs>

### Taxation from point of view of Expatriates

The Indian fiscal year runs from April 1 to March 31. A person (here expatriate) is liable to pay taxes in India based on their tax residency during a fiscal year. Expatriates are people who are staying in a country other than their country of origin, either temporarily or permanently. In India, the income earned by foreign expatriates is deemed to be received in India for services rendered by them by virtue of Section 9(1)(ii) of the Income Tax Act. The rates applicable for expatriates are the slab rates for non-residents as per the Income Tax Act prevailing in the country.

Also, note that India has entered into numerous Double Taxation Avoidance Agreements (DTAA). An individual who is resident of a country with which India has entered into DTAA could avail the treaty benefits to either eliminate taxation in one of the countries or avail credit of taxes paid in the country of residence. Individuals rendering services in India for a shorter span of time may be eligible to claim short stay exemption under the Income Tax Act or the relevant DTAA.

## **LABOUR AND EMPLOYMENT LAW**

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 labour and protects their interests.



Various legislative, administrative and governance initiatives have been taken by both central and state governments to generate employment and facilitate ease of doing business. Indian labour laws are made to define relations between employees and employers as well as to safeguard the interest of the workers. Some of the major labour law statutes in India include, but are not limited to, the following:

- Worker's Compensation Act 1923: Purpose of the statute is to compensate an employee or his/her survivors in the vent of industrial accidents or occupational diseases, resulting in disablement or death during the course of the person's employment;
- The Trade Unions Act 1926: provides for the registration of trade unions of employers and workers, and is administered by the state governments. It confers legal and corporate status on registered trade unions. The six major Central Trade Unions (CTU) in India are the United Trade Union Congress (UTUC), Bhartiya Mazdoor Sangh (BMS), Hind Mazdoor Sang (HMS), All India Trade Union Congress (AITUC), Centre of Indian Trade Unions (CITU) and the Indian National Trade Union Congress (INTUC);<sup>27</sup>

<sup>27</sup> Ministry of Labour and Employment, Ministry of Overseas Indian Affairs

- Payment of Wages Act 1936: seeks to regulate the payment of wages to certain classes of employees in an industry;
- Industrial Disputes Act 1947: it is the main legislation in India that provides for the investigation and settlement of industrial disputes;
- Minimum Wages Act 1948: seeks to determine the minimum rates of wages in certain employments, a list of which is contained in the legislation;
- Payment of Bonus Act 1965: 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 matters connected therewith;
- Employees Provident Fund and Miscellaneous Provisions Act 1952: it seeks to ensure the financial security of employees in an establishment by providing a system of compulsory savings;
- Industrial Employment (Standing Orders) Act 1946, requires employers in industrial establishments to clearly define the conditions of employment to their workers by issuing standing orders or implementing services rules;
- The Maternity Benefit Act 1961: it regulates the employment of women in certain establishments for prescribed period before and after childbirth; and
- Sexual Harassment of Women Employees at Workplace (Prevention, Prohibition and Redressal) Act 2013: workplace sexual harassment is increasingly understood as a violation of women's rights and a form of violence against women. This Act seeks to provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment and for all matters connected therewith.<sup>28</sup>

## NEW LABOUR LAWS

It is also worth noting that India, one of the most labour-intensive countries in the world, has recently codified 29 of its national-level labour laws into four codes. The 2<sup>nd</sup> National Commission on Labour (NCL) recommended said consolidation. Labour laws have been added in a piecemeal manner, which has resulted in the laws being complicated, mutually

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<sup>28</sup> Handbook on Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013, Ministry of Women and Child Development, Government of India, <https://www.iitk.ac.in/wc/data/Handbook%20on%20Sexual%20Harassment%20of%20Women%20at%20Workplace.pdf>

inconsistent, and ad-hoc. The Commission stressed on the need to simplify and consolidate labour laws for the purposes of uniformity and transparency. The codification process has led to transformation of obsolete laws, ease of compliance and expanded the applicability and scope of labour laws.

The Code on Wages, 2019, subsumes and repeals the Payment of Wages Act, 1936, the Minimum Wages Act, 1948, the Payment of Bonus Act, 1965 and the Equal Remuneration Act, 1976.

The Industrial Relations Code, 2020, subsumes and repeals the Industrial Employment (Standing Orders) Act 1946, Industrial Disputes Act 1947 & The Trade Unions Act 1926.

The Occupational Safety, Health and Working Conditions Code, 2020, subsumes and repeals the Factories Act 1948, the Contract Labour (Regulation and Abolition) Act, 1970 and 12 other minor acts.

The Social Security Code, 2020, subsumes and repeals the Maternity Benefit Act, 1961, the Payment of Gratuity Act, 1972, the Employee State Insurance Act, 1948 and 6 other acts.

## **TRADE**

India's economic growth levels are attributable to structural domestic reforms and favourable global trade conditions. The domestic industry is preparing for greater opportunities and deeper integration in the global value chain, with a special emphasis on India's manufacturing sector.<sup>29</sup> India's current trade policy is set out in the 2015-2020 Foreign Trade Policy (FTP), which the government releases every five years. The FTP outlines government strategies and steps to promote domestic production and exports with the objective of driving economic growth. The stated aim of the said FTP is to stimulate the increase of India's global exports to 3.5% by 2020. Policies such as "Make in India" and "Digital India" attempt to incentivise the diversification of India's export base, which, will result in increasing global

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<sup>29</sup> "International Trade in goods and services in India: overview", Thomson Reuters Practical Law (2020), [https://uk.practicallaw.thomsonreuters.com/w-009-2204?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/w-009-2204?transitionType=Default&contextData=(sc.Default)&firstPage=true)

competitiveness. India was to unveil the 2021-2026 FTP but due to the Covid-19 pandemic, the government decided to extend the existing policy till September 30.

The 2021-2026 FTP is eagerly awaited as the Indian economy continues to reel from the effects of the second wave of the deadly pandemic and disruptions to international trade caused by lockdowns and restrictions worldwide. The UN World Economic Situation and Prospects 2021 report says India's economy shrank 9.6% in 2020 against a global average of 4.3%. It projects a 7.3% growth for India in 2021.<sup>30</sup> Hopes for a turnaround rest largely on exports picking up. Exporters expect the new policy to include initiatives aimed at improving India's standing in global merchandise and services exports and to correct the deficiencies of Foreign Trade Policy 2015-2020.<sup>31</sup>



From a very high level, successive Indian governments have worked to bring down tariff rates since the early 1990s. While tariffs have been reduced and quantitative restrictions were largely eliminated in 2001, India has increasingly relied on non-tariff barriers, including technical standards and regulations, sanitary rules, local content schemes and quotas.<sup>32</sup>

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<sup>30</sup> World Economic Situation and Prospects, United Nations (2021), [https://www.un.org/development/desa/dpad/wp-content/uploads/sites/45/WESP2021\\_FullReport.pdf](https://www.un.org/development/desa/dpad/wp-content/uploads/sites/45/WESP2021_FullReport.pdf)

<sup>31</sup> *India's GDP estimated to contract by 9.6% in 2020, may grow by 7.3% in 2021: UN Report*, Scroll (2021), <https://scroll.in/latest/985144/indias-gdp-estimated-to-contract-by-9-6-in-2020-may-grow-by-7-3-in-2021-un-report>

<sup>32</sup> *Doing Business in India*, HSBC & PWC (2017), <https://dhriiti.com/wp-content/uploads/2017/11/doing-business-in-india.pdf>



Furthermore, India being a founding member of World Trade Organisation (WTO) is a party to several regional trade agreements (RTAs) and preferential trade agreements (PTAs). On account of India's "look east" policy, India has also entered into RTAs with various Asian countries. Some of these RTAs include the India – Sri Lanka Free Trade Agreement, Indo – Nepal Treaty of Trade, South Asia Free Trade Agreement, ASEAN – India Comprehensive Economic Cooperation Agreement amongst others.

## **BANKING AND FINANCE**



India has a diversified financial sector that is undergoing rapid expansion, in terms of strong growth of existing financial service firms and new entities entering the market. The financial sector comprises of commercial banks, insurance companies, non-banking financial companies, pension funds, mutual funds and other entities. The banking and financial sector in India functions under the direct superintendence and control of Reserve Bank of India (RBI). The RBI being the central bank is the monetary authority when it comes to formulating and implementing monetary policy, regulating and supervising of the financial system in terms of prescribing a broad operational framework for the country's banking and financial system, issuer of currency, banker and debt manager to the government and manager of India's foreign exchange market.<sup>33</sup> The RBI's preamble states that its mission is to facilitate monetary stability in India and operate the currency and credit system of the country to its advantage while keeping in mind the objective of growth. The primary Acts governing this sector are the

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<sup>33</sup> Reserve Bank of India, <https://www.rbi.org.in/>

Reserve Bank of India Act, 1934 and the Banking Regulation Act, 1949 [also the Banking Laws (Amendment) Act, 2012]. Several other Acts govern specific functions (e.g., the Foreign Exchange Management Act, 1999), banking operations and individual institutions.<sup>34</sup>

#### Indian financial services sector

The Indian financial sector has the following broad categories:

1	Commercial and retail banks
2	White Label Automated Teller Machine (WLA)
3	Payment banks/wallets
4	NBFC
5	Housing Finance Companies (HFC)
6	Microfinance Institutions (MFIs)
7	Insurance companies
8	Capital markets
9	Pension funds
10	Mutual funds
11	Private equity and Venture Capital (VC) funds
12	Asset Reconstruction Companies (ARCs)
13	REIT/InvIT fund
14	Angel or start-up fund

*Source:* A guide to establishing presence in India, 2018, Grant Thornton

Other sources of finance in India include the following:

- Private equity and VC funds: private equity and venture capital have played the role of a lucrative springboard in providing growth capital for Indian businesses. These industries have grown over the past decade and evolved into a more mature market. Average deal size has been increasing with funds putting in more capital to achieve greater scales. Venture capital is regulated by Securities and Exchange Board of India (SEBI); a venture capital may be set up by a company or a trust after a certificate of registration is granted by SEBI. A VC can raise money from any Indian or Non-Resident Indian (NRI).<sup>35</sup>
- REITs/InvIT fund: Real Estate Investment Trusts and Infrastructure Investment Trusts are innovative vehicles that allow developers to monetise revenue generating real estate and infrastructure assets, while enabling investors or unit holders to invest in these

<sup>34</sup> About Us, Reserve Bank of India, <https://www.rbi.org.in/Scripts/AboutusDisplay.aspx#LF>

<sup>35</sup> Securities and Exchange Board of India, <https://www.sebi.gov.in/>

assets without actually owning them.<sup>36</sup> In other words, they are an alternate fund-raising mechanism offered to capital intensive industries.

- Start-up fund: start-ups in India have been growing at a significant rate in the past few years. The availability of talent has been a big contributor to the growth of the start-up ecosystem. As mentioned above, India has the largest global young (population in age group of 18 to 35 years) population which has been generously supported by eco-system enablers like multiple incubation programs across sectors, quality co-working spaces and emerging global partnerships in the field of innovation.<sup>37</sup> The regulatory push in India to support the growth of the start-up eco-system is in the right direction. Multiple schemes and initiatives have been launched to give a boost to the start-up eco-system - such as Start-up India (flagship initiative by the government of India to facilitate incubation centres, tax exemptions for start-ups and easier patent filing), Small Industries Development Bank of India (SIDBI) Fund of Funds and initiatives by the NITI Aayog. There has been a significant effort to infuse domestic capital into the VC eco-system.<sup>38</sup>



<sup>36</sup> <https://www.crisil.com/en/home/our-businesses/ratings/new-products/reits-invits.html>

<sup>37</sup> Start-up India national report ([https://www.start-upindia.gov.in/content/dam/invest-india/compendium/Start-up%20India%20-%20National%20report\\_Final%20Version\\_web.pdf](https://www.start-upindia.gov.in/content/dam/invest-india/compendium/Start-up%20India%20-%20National%20report_Final%20Version_web.pdf))

<sup>38</sup> Private Investing in India – Venture Capital Focus, State of Sector Report, <https://sidbi.in/files/announcements/Private-Investing-in-India---Venture-Capital-Focus.pdf>



## FINANCIAL REPORTING AND AUDIT REQUIREMENTS



In India, reporting and auditing requirements of business entities are primarily governed by the regulations issued by the Institute of Chartered Accountants of India (ICAI), the Securities and Exchange Board of India (SEBI), the Ministry of Corporate Affairs (MCA) and the Central Board of Direct Taxes (CBDT). Businesses including those of public and private companies and branches of foreign companies are required to be audited by independent certified accountants. The ICAI has issued accounting standards which are applicable to all entities engaged in commercial, industrial or business activities. The legal recognition to these standards has been given by the central government by notification of the standards under the Companies Act, 2013 (2013 Act). The 2013 Act is an act of the Parliament of India which governs the incorporation of a company, manner of conducting the affairs of a company, responsibilities of its board of directors and other provisions including winding up. It also prescribes the financial reporting and auditing requirements to be followed by all companies including foreign companies as defined in the 2013 Act. The companies listed on a recognised stock exchange in India are governed by rules and regulations issued by the SEBI from time to

time. In addition, there is industry-specific guidance relating to financial reporting issued by the relevant authorities such as the RBI.<sup>39 40</sup>

Some of the common requirements include preparation of financial statements, valuation of inventories, disclosure of accounting policies, records need to be made (every company should follow accrual basis of accounting and a historical cost basis although revaluation of capital assets is permissible), preparation of consolidated financial statements if a company has one or more subsidiaries, adopt a uniform financial year and accounting year for income tax purposes ending on March 31 amongst others.<sup>41</sup>



Income Computation and Disclosure Standards (ICDS) were issued by the Government of India in exercise of powers conferred to it under The Income Tax Act, 1961. ICDS were brought about with the aim of bringing uniformity in accounting policies governing computation of income in accordance with tax related provisions and also reducing the irregularities amongst them.<sup>42</sup> They are applicable to all taxpayers, corporate or noncorporate.

<sup>39</sup> A guide to establishing presence in India, 2018, Grant Thornton, <https://www.grantthornton.in/globalassets/1.-member-firms/india/assets/pdfs/doing-business-in-india-25-may.pdf>

<sup>40</sup> The Institute of Chartered Accountants of India, [https://www.icaai.org/post.html?post\\_id=8658](https://www.icaai.org/post.html?post_id=8658)

<sup>41</sup> The Institute of Chartered Accountants of India, <https://www.icaai.org/post/accounting-standards>

<sup>42</sup> [https://en.wikipedia.org/wiki/Income\\_Computation\\_and\\_Disclosure\\_Standards](https://en.wikipedia.org/wiki/Income_Computation_and_Disclosure_Standards)





## Copyright

Copyright protection in India is available for any original, literary, dramatic, musical work, sound recording(s), and cinematographic film(s). The Copyright Act, 1957, provides for the registration of such works. Unlike patents, copyright protects the expression and not ideas. In India, copyright is an inherent right of the creator towards their creation, which is why it is not necessary to register a work to claim a copyright protection over it. Acquisition of copyright is automatic i.e. it comes into existence as soon as a work is created and requires no formalities. In other words, an author's copyright in a work is recognised even without registration. However, it is always advisable to get a certificate of registration of since it furnishes prima facie evidence in a court of law with reference to disputes on ownership of copyright.<sup>45</sup> The Copyright Act provides for both civil and criminal remedies for an infringement, which could be in the form of damages, injunction or an order for seizure.<sup>46</sup>

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<sup>45</sup> A Hand-Book of Copyright Law, Ministry of Human Resource Development, <http://copyright.gov.in/documents/handbook.html>

<sup>46</sup> The Copyright Act 1957, <https://copyright.gov.in/Documents/CopyrightRules1957.pdf>

## Trademark

The Trade Marks Act, 1999 and the Trade Marks Rules, 2017 govern the law relating to trademarks in India. A trademark means a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one undertaking from those of another undertaking.<sup>47</sup> Collectively, they provide for the registration of trademarks for goods and services, including collective marks, and for the assignment and transmission of trademarks. Registration under the Trade Marks Act confers exclusive rights to use the mark, subject to any conditions imposed. In a situation where the trademark is registered and the owner's rights are infringed, then the owners can take action to restrain unauthorized users. In case of infringement of registered trademarks, the statutory remedies of injunction, damages, accounts and delivery up of infringing marks and labels are available.

## Patents

A patent is granted for an invention that is a new product or a process involving an inventive step and capable of industrial application. The Indian Patents Act, 1970 provides for grant, revocation, registration, license, assignment and infringement of patents in India, as amended by the Patents (Amendment) Act, 2005 and the Patents Rules, 2003, as amended by the Patent (Amendment) Rules, 2016.

India is a signatory to the Paris Convention for the Protection of Industrial Property, 1883 and the Patent Cooperation Treaty (PCT), 1970. Consequently, any foreign entity can adopt any of the aforesaid treaties for filing of application for grant of patent in India. Normally, a patent obtained in India is not enforceable in another country, as patent protection is a territorial right. However, as India is a signatory to the Patent Cooperation Treaty (PCT), applicants can file a single international patent application under the PCT and simultaneously seek protection for an invention in more than 153 countries.<sup>48</sup>

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<sup>47</sup> The Trade Marks Act 1999, [https://legislative.gov.in/sites/default/files/A1999-47\\_0.pdf](https://legislative.gov.in/sites/default/files/A1999-47_0.pdf)

<sup>48</sup> World Intellectual Property Organization, <http://www.wipo.int/pct/en/>

## Industrial Design

The Designs Act, 2000 protects certain designs and was enacted to fulfil India's obligations under WTO agreements. The Act seeks to protect novel designs formulated by an owner with the objective of applying them to specific articles, to be manufactured and marketed commercially for a specific period of time. The essential purpose of design law is to promote and protect the design element of industrial production. The registration of a design confers upon the registered proprietor a 'copyright' on the design for the period of registration. It gives the proprietor the exclusive right to apply it to any article in the registered class.<sup>49</sup>

## Geographical Indications

The Geographical Indication of Goods (Registration and Protection) Act, 1999 ("GI Act") provides for the registration and better protection of geographical indications from infringement by others and provides protection to consumers from deception. As per the GI Act, a Geographical Indication means an indication which identifies particular goods as agricultural, natural or manufactured goods that originated or were manufactured in the territory of a country or a region or locality, where a given quality, reputation or other characteristic of such goods is essentially attributable to its geographical origin.<sup>50</sup>



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<sup>49</sup> The Designs Act, 2000, <https://ipindia.gov.in/designs-act-2000.htm>

<sup>50</sup> The Geographical Indication of Goods (Registration and Protection) Act, 1999, <https://legislative.gov.in/sites/default/files/A1999-48.pdf>



## PRIVACY AND DATA PROTECTION

India has also not yet enacted a specific legislation on data protection. As of now, India's regulatory mechanism for privacy and data protection is currently governed by the Information Technology Act, 2000. The Indian legislature had amended the Information Technology Act (2000) ("IT Act") to include Section 43A and Section 72A, which give a right to compensation for improper disclosure of personal information.<sup>51</sup> India's apex court in 2018 declared the right to privacy as a fundamental right guaranteed under Article 21 of the Constitution of India.<sup>52</sup> Thereafter, in December 2019, the Indian Government introduced the Personal Data Protection ("PDP") Bill, 2019 in the lower house of Parliament. The PDP Bill is currently under review by the Parliament.<sup>53</sup> The Indian central government subsequently issued the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011 under Section 43A of the IT Act. A clarification to the above Rules was issued on 24 August, 2011. The Rules have imposed additional requirements on commercial and business entities in India relating to the collection and disclosure of sensitive personal data or information.<sup>54</sup>

India is not a party to any convention on protection of personal data which is equivalent to the General Data Protection Regulation.<sup>55</sup> However, India has adopted or is a party to other international declarations and conventions such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, which recognise the right to privacy.<sup>56</sup>

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<sup>51</sup> <https://www.indiacode.nic.in/bitstream/123456789/1999/3/A2000-21.pdf>

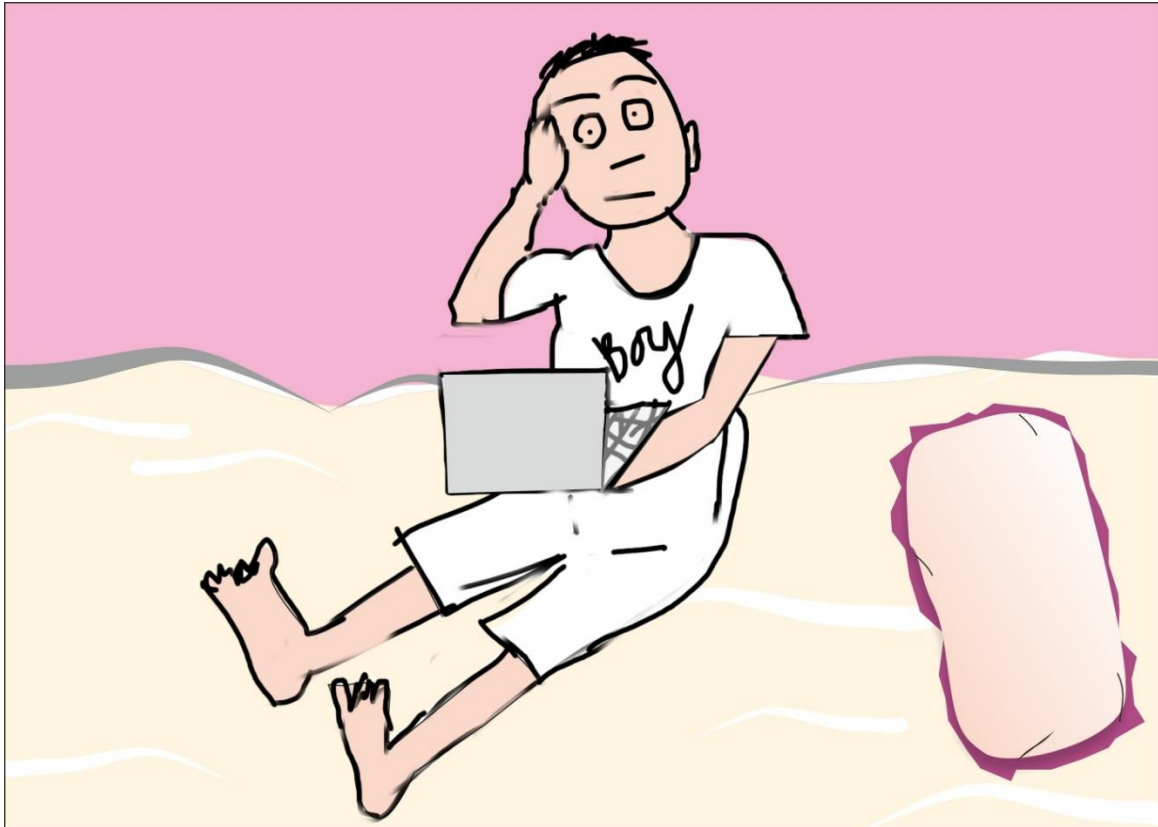
<sup>52</sup> Justice K.S Puttaswami & another Vs. Union of India Writ Petition (CIVIL) NO 494 OF 2012

<sup>53</sup> *India: Key Features of the Personal Data Protection Bill, 2019*, Mondaq (2020), <https://www.mondaq.com/india/data-protection/904330/key-features-of-the-personal-data-protection-bill-2019>

<sup>54</sup> Data Protected – India (2020), [https://www.linklaters.com/en/insights/data-protected/data-protected---india#:~:text=Union%20of%20India\)%2C%20the%20Supreme,%E2%80%9D%20and%20%E2%80%9Cpersonal%20liberty%E2%80%9D](https://www.linklaters.com/en/insights/data-protected/data-protected---india#:~:text=Union%20of%20India)%2C%20the%20Supreme,%E2%80%9D%20and%20%E2%80%9Cpersonal%20liberty%E2%80%9D)

<sup>55</sup> General Data Protection Regulation, <https://gdpr-info.eu/>

<sup>56</sup> *"Jurisprudence of Right to Privacy in India"*, Rahul Kumar, (2020), Social Science Research Network, <https://poseidon01.ssrn.com/delivery.php?ID=277088114073097116068116080069110102029075010065021082108071013081086094118000079093123061037002058104115003091102122121102116047042021051029116122015117016003080073055060031106111068021001127093077068084069008074097015115081024110088019098082101083090&EXT=pdf&INDEX=TRUE>



The IT Act imposes civil liability for negligent handling of “sensitive personal information” and criminal liability with punishment in cases of disclosure of information in breach of a lawful contract. The law imposes liability on a body corporate in the form of damages and by the way of compensation to the person who is affected, in the event such body corporate is negligent in implementing and maintaining reasonable security practices and procedures, which could lead to wrongful loss or wrongful gain of such sensitive personal data. The law also imposes penalty on any person irrespective of whether it is a private intermediary or a government entity for the disclosure of personal information.<sup>57</sup>

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<sup>57</sup> Doing Business in India – Guide for Indian Diaspora, Ministry of Overseas Indian Affairs, <https://www.mea.gov.in/images/pdf/DoingBusinessinIndiaGuide.pdf>



## ENVIRONMENTAL LAWS



The Indian judiciary has succeeded in advocating for protection of environment. The development and evolvement of environment law in India can be credited with the development of the judicial institutions. The Indian Constitution specifically provides for protection and improvement of the environment. Case in point is, Article 48A, which is a part of the Directive Principles of State Policy under Chapter IV of the Constitution of India, requires the State to protect and improve the environment and to safeguard the forests and wildlife of the country. Article 51A(g) casts a duty on every citizen of the country to protect and improve the environment. Although not enforceable in a court of law, an activist judiciary has given effect to the objective underlying these principles by reading them in conjunction with the fundamental rights, which are enforceable in a court of law.<sup>58</sup>

The existing legal framework comprises of environmental law statutes such as, Environment (Protection) Act, 1986, Water (Prevention and Control of Pollution) Act 1974, Air (Prevention and Control of Pollution) Act 1981, Plastic Waste Management Rules 2016, Wild Life (Protection) Act 1972, Biological Diversity Act 2002 and the National Green Tribunal Act, 2010 amongst many others.

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<sup>58</sup>Environment law in India – an overview, CMS Law-Now (1999), [https://www.cms-lawnow.com/ealerts/1999/11/environment-law-in-india-an-overview?cc\\_lang=en](https://www.cms-lawnow.com/ealerts/1999/11/environment-law-in-india-an-overview?cc_lang=en)

Depending on the type of activities undertaken by a company, multiple permits may need to be obtained in order to conduct the said activity. The Ministry of Environment, Forests and Climate Change is responsible for regulating and issuing permits, which is determined on the basis of how the industry is classified. The key environmental permits, or consents/authorisations as they are referred to in India, must be obtained from the local State Pollution Control Board.



In an interesting development, the Supreme Court of India has held the right to enjoyment of pollution free air and water as a part of Article 21 of the Constitution, which guarantees protection of life and personal liberty. This means that any citizen is free to approach the Supreme Court (or the High Court) directly, through a Public Interest Litigation (“PIL”), on the violation of Article 21.<sup>59</sup> Therefore, with the ease of approaching the court for enforcing environmental laws, the Supreme Court has potentially opened the floodgates for environmental litigation. In other words, the Supreme Court has relaxed the standing and procedural requirements for filing a PIL.<sup>60</sup> One of the hallmarks of Indian environmental law

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<sup>59</sup> “Public Interest Environmental Litigations in India: Contributions and Complications” Geetanjoy Sahu, The Indian Journal of Political Science, Vol. LXIX, No. 4, 2008, [https://www.jstor.org/stable/41856466?seq=1#metadata\\_info\\_tab\\_contents](https://www.jstor.org/stable/41856466?seq=1#metadata_info_tab_contents)

<sup>60</sup> “Effectiveness of Environmental Public Interest Litigation in India: Determining the Key Variables” Faure and Raja, Fordham Environmental Law Review, Vol. XXI, No. 2, 2010, <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1668&context=elr>

is the establishment of the National Green Tribunal (special tribunal). It was established through the National Green Tribunal Act 2010 and is responsible for effective and expeditious disposal of cases relating to environment protection and conservation.<sup>61</sup> It has dedicated jurisdiction on environmental matters and is mandated to dispose applications within 6 months of filing.

## COMPETITION LAW

Competition law in India is governed by the Competition Act 2002. The Act seeks to prevent anti-competitive practices, protect the interests of the consumers, ensure freedom of trade in markets and promote competition.<sup>62</sup> Over the years, the Act has moved away from their focus of curbing monopolies towards promoting and sustaining competition to enhance consumer welfare and support economic growth. This overhaul was brought upon in the wake of rapid liberalisation and privatisation that was triggered in the early nineties.



This is an example of Price Fixing (an agreement among competitors that raises, lowers or stabilizes prices). Competition laws require that each entity establish prices on its own, without agreeing with a competitor. After all, it is easier to collude and set prices together rather than compete in a competitive environment!

The scope of the Competition Act is to prohibit all anti-competitive practices, which cause “an appreciable adverse effect on competition in India” (AAEC): see Sections 3 (anti-

<sup>61</sup> [https://greentribunal.gov.in/sites/default/files/act\\_rules/National\\_Green\\_Tribunal\\_Act,\\_2010.pdf](https://greentribunal.gov.in/sites/default/files/act_rules/National_Green_Tribunal_Act,_2010.pdf) found on <https://greentribunal.gov.in/ngt-act>

<sup>62</sup> The Competition Act, 2002, Competition Commission of India, [https://www.cci.gov.in/sites/default/files/cci\\_pdf/competitionact2012.pdf](https://www.cci.gov.in/sites/default/files/cci_pdf/competitionact2012.pdf) and [https://www.cci.gov.in/sites/default/files/cci\\_pdf/competitionact2012.pdf](https://www.cci.gov.in/sites/default/files/cci_pdf/competitionact2012.pdf)

competitive agreements), 4 (abuse of dominance), 5 and 6 (combinations). The main objectives that the Act sought to achieve were: crack down on anti-competitive practices, prohibit abuse of dominance, provide for the establishment of Competition Commission of India (CCI), a quasi-judicial body to protect consumer interests, prevent practices that have an adverse impact on competition, ensure freedom of trade is carried on by other participants in the market etc.<sup>63</sup> The CCI is entrusted with eliminating prohibited practices and is an independent entity possessing a common seal with the power to enter into contracts and to sue in its name. It consists of a chairperson, who is to be assisted by a minimum of two, and a maximum of ten other members.<sup>64</sup> When it comes to jurisdictional limits, as per Section 32 of the Act, the CCI has been conferred with extra-territorial jurisdiction. This means that any acquisition where assets/turnover are in India and exceed the specified limits would be subject to the scrutiny of the CCI, even if the acquirer and target are located outside India.<sup>65</sup>



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<sup>63</sup> India: Indian Competition Act: An Overview, Mondaq (2005), <https://www.mondaq.com/india/antitrust-eu-competition-/33971/indian-competition-act-an-overview>

<sup>64</sup> Id

<sup>65</sup> Competition Act 2002, [https://www.cci.gov.in/sites/default/files/cci\\_pdf/competitionact2012.pdf](https://www.cci.gov.in/sites/default/files/cci_pdf/competitionact2012.pdf)

## WHITE COLLAR CRIMES

White collar crimes are defined as financially motivated, non-violent crimes committed by businesses and government professionals. Some of the most common white collar crimes are fraud, bribery, money laundering, tax evasion and corruption. Advancement in technology has accelerated growth in another type of white collar crime called cybercrime. Legislations such as Prevention of Money Laundering Act 2002, Prevention of Corruption Act 1988, Information Technology Act 2002 form the current legal framework when it comes to white collar crimes. The Indian government, enforcement agencies, regulators have introduced The Prevention of Corruption (Amendment) Act 2018 (“Act”) and tightened the scrutiny and penalties in India thereby, ensuring compliance.

This Act is the government’s conscious attempt towards a more mature anti-corruption framework. It extends its scope to those, who give or promise to give undue advantage to a person, with an intent to induce or reward a public servant to perform their public duty improperly, thereby, making bribe giving an offence.<sup>66</sup> Commercial organisations are now liable for prosecution under this Act. There is a prescribed time limit for trial of offences. This is an endeavour to conclude matters quickly. The Act also grants power to attach property, confiscate money or property and administrate property tainted by corrupt activities.<sup>67</sup>

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<sup>66</sup> India: White Collar and Investigations: India and Globally, Mondaq (2019), <https://www.mondaq.com/india/white-collar-crime-anti-corruption-fraud/780342/white-collar-and-investigations-india-and-globally>

<sup>67</sup> The Prevention of Corruption (Amendment) Act 2018, <http://www.egazette.nic.in/writereaddata/2018/187644.pdf>



With the Indian legal framework on white collar crimes attempting to catch up with its western counterparts, corporate houses and directors are becoming more aware of the need to have sound anti-corruption policies in place. What does this mean for someone starting a business in India?

Section 9(1) of the Act grants immunity to commercial organisations which have “adequate procedures” in place for complying with said guidelines. Essentially, in the absence of guidelines prescribed by the government, it is important that commercial organizations introduce manuals, guidance notes and compliance programs to ensure that employees are adequately educated about their obligations under the Act. Failure to do so might exacerbate liabilities under the Act.

Regulatory agencies such as the Enforcement Directorate (law enforcement and economic intelligence agency; fights money laundering)<sup>68</sup>, Central Vigilance Commission (apex vigilance institution; detection and punishment of corruption and other malpractices)<sup>69</sup> and Serious Fraud Investigation Office (fraud investigating agency; detecting and prosecuting

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<sup>68</sup> <https://www.enforcementdirectorate.gov.in/>

<sup>69</sup> <https://cvc.gov.in/>

or recommending for prosecution white collar crimes and frauds)<sup>70</sup> are entrusted with the responsibilities of cracking down on white collar crimes in India.

## PROPOSED REFORMS

Economic reforms have the potential of reforming the economy of a country but the process of doing so is rather nuanced and involves a diverse set of issues. Some of the reforms are as follows<sup>71</sup>:

- Create an outside restructuring process to ease the burden on the National Company Law Tribunal;
- Create a bankruptcy resolution process for financial firms;
- Raise ceiling on Foreign Institutional Investment (FIIs) in government bonds;
- Allow companies to conduct layoffs without government permission with respect to the Industrial Relations Code, 2019;
- Fill all judicial vacancies in India's courts with qualified personnel to expedite the adjudication process;
- Reduce restrictions such as sourcing rules, minimum investment size and location limitations on foreign investment in multi-brand retail;
- Introduce a new Securities Law code to consolidate laws under the Securities and Exchange Board of India Act, 1992 the Depositories Act, 1996, the Securities Contracts Regulation Act, 1956 and the Government Securities Act, 2007;
- Remove the turnover and paid-up capital thresholds for setting up of one person companies and dilute the residents requirements for the sole members. If the proposal is adopted, a sole member will be required to remain in India for a minimum of 120 days as opposed to the current requirement of 182 days. NRIs will also be allowed to set up such companies;
- Set up an asset reconstruction company ("Bad Bank") to take over the bad loans of banks. This will enable banks to restructure their balance sheets and increase flexibility in the sector;
- Allow more than 50% foreign investment in direct retail e-commerce;

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<sup>70</sup> <https://sfio.nic.in/>

<sup>71</sup> <https://indiareforms.csis.org/>

- Include electricity, oil & gas, real estate and alcohol in the ambit of the GST;
- Privatised public sector banks and reduce the government's majority stake in the same;
- Start a statutorily backed and professionally managed Development Finance Institution ("DFI") to support financing of long-term projects;
- Push for further divestments in government-owned units, including banking insurance sectors;
- Establish and facilitate a paperless court system to ensure expedited resolution of cases. The government announced the launch of the Integrated Case Management Information System in order to digitise India's courts, but so far its implementation has been limited;
- Offer one-stop shopping for central government clearances. The World Bank's Ease of Doing Business Report, 2019 reports the lengthy and often cumbersome requirements that one needs to go through to start a business in India. This process needs to be simplified and made user-friendly.





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