Doing Business in India

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– Octroi Duty /Entry Tax
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• The Sale of Goods Act, 1930
• The Payment of Bonus Act, 1965
• The Payment of Gratuity Act, 1972
• The Workmen Compensation Act, 1923
• Employees Provident Fund & Miscellaneous Provisions Act, 1952 (EPFMPA)
• The Industrial Dispute Act, 1947
• The Minimum Wages Act, 1948
• The Negotiable Instruments Act, 1881
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About HLB

International

- HLB International is a worldwide organization of professional accounting firms and business advisers, each providing clients with a comprehensive and personal service relating to auditing, taxation, accounting and general and financial management advice.

- Formed in 1969, HLB International, through its member firms, can assist clients to do business in over 100 countries, who, collectively, have 1900 partners plus 14500 staff in 500 offices.

- Up-to-date information and general assistance on international matters can be obtained from any of the partners of Indian Federation listed in this booklet or from the Executive Office in London:

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**Foreword**

- This booklet has been prepared for the use of clients, partners and staff of HLB International member firms. It is designed to give some general information to those contemplating doing business in India and is not intended to be a comprehensive document. You should consult us, therefore, before taking further action. The Indian Federation Firms and HLB International cannot be held liable for any action or business decision taken on the basis of information in this booklet.

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December, 2011
Preface

- This guide is designed to provide to an investor, particularly a foreign investor, only basic information on the present business and economic environment in India. The information covers areas like economic trends, taxation, accounting, finance, capital markets, employment and labour, besides other commercial and legal implications influencing business decisions in the country's changing economic scenario.

- The information given is not exhaustive and is only meant to be a guide. This guide does not purport to be an offer, invitation or solicitation of any kind.

- This book reflects information current at December 2011. We shall be happy to provide additional information.
General – An Introduction to India

- Welcome to an insight of an enigma that is India. In the world, India is the seventh largest country, with the second largest population having the third largest English speaking population and will shortly be the fourth largest economy. It is a land of immense opportunities.

- India will never cease to amaze, whether in its people, its culture or in economic activity.

- India is a land of diversity with a congruence of many disparate cultures that continue to coexist in balanced harmony. It enjoys the advantage of a civilization of more than 5000 years. It is a vibrant country that symbolizes continuity in change and change in continuity.

- The country is a land of contrasts where tradition can coexist with development and where hope manages to flourish in despair.

- The present economic and tourism scenario is aptly described in the words “INCREDBILE INDIA”.

## A Brief Overview of India

### GEOGRAPHY OF INDIA

<table>
<thead>
<tr>
<th>Longitude</th>
<th>68°7 to 97°25</th>
</tr>
</thead>
<tbody>
<tr>
<td>Latitude</td>
<td>8°4 to 37°6 North</td>
</tr>
<tr>
<td>Capital</td>
<td>New Delhi</td>
</tr>
<tr>
<td>Boundaries</td>
<td>North - China, Nepal, Bhutan and the mountain range of the Himalayas. East - Myanmar (Burma), Bangladesh and the Bay of Bengal. South - The Indian Ocean and Sri Lanka. North West Pakistan, Afghanistan and the Arabian Sea</td>
</tr>
<tr>
<td>Major International Airports</td>
<td>Ahmedabad, Amritsar, Bengaluru, Chennai, Goa, Guwahati, Hyderabad, Kochi, Kolkata, Mumbai, New Delhi, Thiruvananthapuram</td>
</tr>
<tr>
<td>Major Seaports</td>
<td>Ennore, Haldia, Kandla, Kochi, Kolkata, Mumbai, Mormugao, New Managalore, Paradip, Tuticorin, Vishakhapatnam</td>
</tr>
<tr>
<td>Major Cities</td>
<td>Mumbai, New Delhi, Kolkata, Chennai, Bengaluru, Hyderabad, Pune, Lucknow, Kanpur</td>
</tr>
<tr>
<td>Currency Unit</td>
<td>Indian Rupee (INR)</td>
</tr>
<tr>
<td>Time Zone</td>
<td>GMT + 05:30 H</td>
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</table>
## GEOLOGICAL CHARACTERISTICS

<table>
<thead>
<tr>
<th>Climate</th>
<th>Tropical Monsoon</th>
</tr>
</thead>
<tbody>
<tr>
<td>Seasons</td>
<td></td>
</tr>
<tr>
<td>Summer</td>
<td>(March – June)</td>
</tr>
<tr>
<td>Monsoon</td>
<td>(June – October)</td>
</tr>
<tr>
<td>Post-Monsoon</td>
<td>(October – November)</td>
</tr>
<tr>
<td>Winter</td>
<td>(December – February)</td>
</tr>
<tr>
<td>Natural Resources</td>
<td>Coal (4th largest reserve in the world), manganese, bauxite, iron ore, mica, granite, titanium ore, chromites, diamond, limestone, natural gas, petroleum, arable land</td>
</tr>
<tr>
<td>Flora &amp; Fauna</td>
<td>Over 47,000 species (flora)</td>
</tr>
<tr>
<td></td>
<td>More than 89,000 species (fauna)</td>
</tr>
<tr>
<td>Major Rivers</td>
<td>Ganga, Yamuna, Brahmaputra, Godavari, Krishna, Cauvery, Narmada, Tapti</td>
</tr>
<tr>
<td>Islands</td>
<td>Lakshadweep, Diu &amp; Daman, Andaman &amp; Nicobar Islands</td>
</tr>
</tbody>
</table>
India is a sovereign, socialist, secular, democratic republic with a parliamentary system of Government. The Indian federation is the world’s largest democracy with strong foundations having a single citizenship, an extremely active judiciary and a parliamentary form of democracy. India is a Union of States. There are 28 States and 7 Union Territories.

**Three main arms of the Indian Governance Structure are:**

- **Legislative**
  - Rajya Sabha (250 seats)
  - Lok Sabha (545 seats)

- **Executive**
  - President
  - Vice President
  - Prime Minister

- **Judiciary**
  - Supreme Court
  - High Court
  - District Court
1. **The Executive**

   The President of India is the Constitutional head of the Executive of the Union. The cabinet of ministers headed by the Prime Minister of the country is responsible for the day-to-day running of the country. Though the President does not interfere with the working of the Prime Minister and his cabinet he is an important guiding force for the country. The Prime Minister and his cabinet are answerable to the bicameral Parliament of India, which is formed of the democratically elected representatives.

2. **The Legislature**

   The bicameral legislature is known as the parliament comprised of the Lok Sabha and the Rajya Sabha. The Lok Sabha members are elected by universal adult suffrage (right to vote) from all parts of India. The Rajya Sabha members are elected by the representatives of state legislatures and some nominated by the President of India on the basis of their contribution to society.

   An independent body known as Election Commission oversees the election process to ensure free and fair elections at central and state levels. It is highly respected for its independence, efficiency and integrity.

3. **Local Governments**

   Many of the state legislatures are bicameral and have a similar structure as the main Parliament. The state governments have a similar authority structure to the national government and enjoy similar powers.

4. The constitution has demarcated the subject jurisdiction of the Central Parliament and the state legislatures; some subjects are concurrent.

**LEGAL SYSTEM**

- The legal system in India is well established. The Supreme Court of India is the apex court of the Nation headed by the Chief Justice of India. All States have a High Court as an apex court at State level. In addition, there are district courts, metropolitan courts, city civil courts, tribunals and criminal courts functioning in the States. Judgments of lower level courts can be petitioned in the higher level courts. The entire judiciary system is independent of the India Governance Structure and operates as per provisions laid down in the Constitution of India. The legal system of India is based on English Law.

- For efficiency in disposal special Tribunals have been set up especially for economy matters such as direct and indirect tax, company law, competition act, modern arbitration and conciliation law is in place.
POLITICAL SETUP

- India is the largest democracy in the world and has adopted a Parliamentary system of Government with two Legislative Houses. The country is a Union of the National Capital Territory, Delhi, 29 States and 6 Union Territories. The Central Government has exclusive jurisdiction over all matters of national interest such as defense, communication, banking and currency, international trade and foreign affairs. The State Governments have primary responsibility for matters like law and order, education, health and agriculture.

- Major political parties in India include the Indian National Congress, the Bhartiya Janata Party, the Janta Dal, the Communist Party of India and the Samajwadi Party. The Indian National Congress is the most prominent party and has been in power in the country for more than 45 years since Independence.

ECONOMIC ARRANGEMENT

- Economic arrangements are very well established in the Government machinery through formation of Planning Commission, Five Year Plans and Annual Budgetary System. An Annual Central Budget for the next year (April - March) is presented before members of the Parliament by the ruling party of the Government in February each year.

- Estimates of receipts, expenditure, capital outlay and allocation of funds are directed through budget mechanism. All tax law proposals and rates for central coffers are directed through budgetary provisions. Sectors of paramount priority and national importance are supported through budget allocations. Financial progress is closely monitored and measured by the Ministry of Finance. An Annual economic survey report is presented prior to the presentation of the budget and necessary adjustments are then routed through the budgetary provisions.

- The principles and provisions of revenue sharing between Central and State Governments are well defined in the Constitution. Additional financial support to the States is provided by the Central Government on need basis.
## POPULATION
### DEMOGRAPHIC PROFILE

<p>| | |</p>
<table>
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<tr>
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<tbody>
<tr>
<td>Population</td>
<td>1.21 Billion (Urban: 29%, Rural: 71%)</td>
</tr>
<tr>
<td>Population Growth Rate</td>
<td>1.41% per annum</td>
</tr>
<tr>
<td>Birth Rate</td>
<td>22.22 (births/ 1000 population)</td>
</tr>
<tr>
<td>Death rate</td>
<td>6.4 (deaths/ 1000 population)</td>
</tr>
<tr>
<td>Life expectancy</td>
<td>70 Years</td>
</tr>
<tr>
<td>Sex ratio</td>
<td>1.06 males per female</td>
</tr>
<tr>
<td>Households</td>
<td>240 Million</td>
</tr>
</tbody>
</table>

- India has a population of approximately 1.21 billion people. Although India occupies only 2.4% of the world's land area, it supports over 17.5% of the world's population. Currently, it is the second most populous nation on earth, though if current trends persist, India will replace the People's Republic of China, as the most populous nation in less than 40 Years.

- It is a cultural mix of various races, religions, dialects, cultures, likes, dislikes and all the possible variations that one can expect.

- India can be described as a young country with almost 65% of its population lying between the age group of 15-64 years. About 29% of the Indian population lives in urban areas.

- India can boast of the largest pool of skilled and unskilled manpower, which is very versatile and adaptive. It has also got probably the largest pool of scientific qualified and technologically adapt manpower along with globally recognized innovators, managers, scientists and entrepreneurs in many fields. There also exists skilled and unskilled labour, which is not only cost effective and efficient but also capable of moulding itself to any requirements.
It is a cultural mix of various races, religions, dialects, cultures, likes, dislikes and all the possible variations that one can expect.

**Religions**
- Hinduism, Islam, Christianity and Sikhism are the four main religions followed in India. Other religions include Buddhism, Jainism, Judaism and Zoroastrianism.

**Languages**
- Hindi is the principal official language of India. Apart from Hindi there are 21 official languages including Bengali, Telugu, Marathi, Tamil, Urdu, and Gujarati. English has the status of an associate language and is widely used in national, political and commercial communication.

**Festivals**
- Deepawali, Holi, Guru Nanak Jayanti, Rakshabandhan, Christmas, Janamashtami, Id-ul-Zoha

**AGE STRUCTURE**
- India can be described as a young country with almost 65% of its population lying between the age group of 15-64 years. About 29% of the Indian population lives in urban areas. The average life expectancy is around 70 years. The median age in the country is around 25.1 years, which is lower than many countries in the world. More than half of the Indian population is educated and this figure is rapidly increasing. Almost 74% (male: 82%, female: 65%) of the population is literate.

**LANGUAGE SPOKEN**
- The official language of the country is Hindi. However, English with various degrees of fluency is spoken and understood throughout the country.

**EDUCATION AND LABOUR FORCE**

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

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

**Labour Force**
- India’s labour force stood at approximately 478.3 million in 2010. It is estimated that over 13 million people enter India’s urban labour force every year.
India can boast of the largest pool of skilled and unskilled manpower, which is very versatile and adaptive. It has also got probably the largest pool of scientific qualified and technologically adept manpower along with globally recognized innovators, managers, scientists and entrepreneurs in many fields. There also exists skilled and unskilled labour, which is not only cost effective and efficient but also capable of moulding itself to any requirements. Though India does not have much labour trouble, it does have well developed labour unions that look after worker rights.

The official language of the country is Hindi, which is spoken by almost 41% of the population. However, English with various degrees of fluency is spoken and understood throughout the country.

TRAVEL TO INDIA

India offers a multi-hued variety to its tourists. It is a country of holy shrines, beautiful beaches, snow-capped mountains, wildlife sanctuaries, Ayurveda massages and many interesting places to explore.

Some of the interesting tourist spots are Taj Mahal - one of the Seven Wonders of the World, at Agra, the famous erotic sculptures of Khajuraho, the Temples of South India, Beaches of Goa & Kerala, Kashmir - the Switzerland of India, Desert & Crafts of Rajasthan etc.

New Delhi is the capital of India. The other major cities are Mumbai, Chennai, Kolkata, Bangalore, Hyderabad and Ahmedabad.

International air connections are available from New Delhi, Mumbai, Chennai, Thiruvananthapuram, Bangalore, Hyderabad, Ahmedabad, Kochi, Kozhikode and Kolkata. Further, a number of international chartered air connections are also available from Goa. Most international airlines have regular flights into the country, with Air India, Jet Airways & King Fisher (the national international carriers) offering flight connections to various international destinations.

For domestic air travel, there are a number of regular airlines – Indian, Jet Airways, and Kingfisher airlines as well as budget airlines for inexpensive air travel Air Deccan, Spice Jet, Paramount Airways etc. The country also has an extensive rail and road transport network.
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<table>
<thead>
<tr>
<th>Mode</th>
<th>Length</th>
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<tbody>
<tr>
<td>Railways</td>
<td>111,599 Km</td>
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<tr>
<td>Roadways</td>
<td>3,316,452 Km</td>
</tr>
<tr>
<td>Waterways</td>
<td>14,500 Km</td>
</tr>
<tr>
<td>Number of Airports</td>
<td>454</td>
</tr>
</tbody>
</table>

PORTS

- India is presently ranked in 17th position in the maritime nations of the world. About 95% by volume and 70% by value of the country's trade is carried on through maritime transport.

- India has eleven major seaports: Kandla, Bombay, Nhava Sheva, Marmagao, New Mangalore, and Kochi (formerly known as Cochin) on the west coast, and Calcutta-Haldia, Paradip, Vishakhapatnam, Madras, and Tuticorin on the east coast. The eleven ports are the responsibility of the Ministry of State for Surface Transport but are managed by semi-independent port trusts overseen by boards appointed by the ministry from government departments, including the navy, port labour and industry, and ship owners and shipping companies.

- In order of gross weight tonnage conveyed annually, Bombay, Vishakhapatnam, Madras, and Marmagao are the most important ports. In addition, there are some 187 minor and intermediate working ports.

VISA ISSUE REGULATIONS

- Foreigners desirous of visiting India can obtain a visa from the Indian Mission in the country of their residence. They should possess a valid National Passport except in the case of nationals of Bhutan and Nepal, who may carry only suitable means of identification.

- The Consular Passport and Visa Division of the Ministry of External Affairs are responsible for issuance of Indian visas to foreign nationals for visits for various purposes. This facility is granted through various Indian missions abroad.

- The Indian High Commission / Embassy usually issues the visas in the applicant's country of residence with supporting documents. India permits tourist visa, business visa, employment visa and few other visas. Please refer to “Appendix A” for details.
EMPLOYMENT REGULATIONS

- There are various Acts, which regulate labour and employment in India. Some of the Acts are:
  - Apprentices Act, 1961
  - Beedi Workers Welfare Fund Act, 1976
  - Bonded Labour System (Abolition) Act, 1976
  - Building and Other Construction Workers (Regulation of Employment & Conditions of Service) Act, 1996
  - Child Labour (Prohibition & Regulation) Act, 1986
  - Children (Pledging of Labour) Act, 1933
  - Cine-Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981
  - Contract Labour (Regulation & Abolition) Act, 1970
  - Dangerous Machines (Regulation) Act, 1983
  - Dock Workers (Regulation of Employment) Act, 1948
  - Dock Workers (Safety, Health and Welfare) Act, 1986
  - Employees Provident Fund & Miscellaneous Provisions Act, 1952
  - Employees' State Insurance Act, 1948
  - Employers' Liability Act, 1938
  - Equal Remuneration Act, 1976
  - Factories Act, 1948
  - Industrial Disputes Act, 1947
  - Industrial Employment (Standing Orders) Act, 1946
  - Inter-State Migrant Workmen (Regulation of Employment and Condition of Service) Act, 1979
  - Labour Laws (Exemption from Furnishing Returns & Maintaining Registers by Certain Establishments) Act, 1988
  - Maternity Benefit Act, 1961
  - Minimum Wages Act, 1948
  - National Commission for Safai Karamcharis Act, 1993
  - Payment of Bonus Act, 1965
  - Payment of Gratuity Act, 1972
  - Payment of Wages Act, 1936
  - Pensions Act, 1871
  - Sales Promotion Employees (Conditions of Service) Act, 1976
  - Seamen’s Provident Fund Act, 1966
  - Trade Union Act, 1926
  - Weekly Holidays Act, 1948
  - Workmen's Compensation Act, 1923
BANKING AND FINANCE

- India provides a strong, well regulated banking, finance and capital markets. It supports new projects, expansions as well as acquisitions. The stock exchange allows companies to raise risk capital. It also has a supportive structure of venture capital and private equity funding.

- The banking sector is segregated as public or private sector banks, cooperative banks, regional rural banks and foreign banks. With the advancement of technology, banking has become more easy, fast, accurate and also time saving. ATMs, Mobile Banking, SMS Banking and Net Banking are only the tip of an iceberg.

- Almost all the Indian Banks provide services to Non-Resident Indians (NRIs). There are different types of accounts for them. They are:
  - Non-Resident (Ordinary) Account - NRO A/c
  - Non-Resident (External) Rupee Account - NRE A/c
  - Non-Resident (Foreign Currency) Account - FCNR A/c

GENERAL LENDING POLICIES

- Broadly, Banks and Financial Institutions in India grant loans for capital expenditure for setting up a new projector for expansion and diversification programmes of existing businesses. The finance is available for a fixed term ranging from one to seven years depending upon the project requirements. The rate of interest varies from seven to twelve percent depending upon the merits of each case.

- The Banks also grant working capital facilities against current assets of business entities. Non-fund based facilities in terms of letters of credit for procurement of raw materials and issuing payment and performance guarantees of business entities are also issued by the Banks.

- There are industry specific lending institutions also for power generation, irrigation, railways, roads, shipping, hotels and tourism, films production, housing construction, etc. In addition, special financial institutions for the promotion of small industries, agriculture, etc. provide soft finance to eligible business entities
CURRENCY

- The official currency of India is the “Indian rupee” commonly known as Rs. or INR. The rupee is fully convertible on the trade front under the liberalized exchange rate management system (“LERMS”). All transactions under the LERMS will take place at market-determined rates. The rupee is fully convertible on current account. On the capital account also the rupee is substantially free with residents permitted to invest abroad subject to completion of certain formalities and non-residents are permitted to invest in most sectors. In the international market the rupee is pegged to the US Dollar.

- The Indian Rupee has depreciated against the US Dollar over the past years. The INR US$ exchange rate, which stood at 48.80 on March 2002, at 39.50 in September 2007 which is currently at around 53.72 in December 2011.

DOMESTIC MARKET

- India can boast of being the largest growing market in the world due to its fast growing middle class with increasing standards of living and growing aspirations. The middle class has a high saving and spending potential making India a large market for a variety of goods.

India- Global Approach

Now, India is a member of all the major multilateral economic fora, be it International Monetary Fund (IMF), the World Bank and the Asian Development Bank (ADB). India is even a founding member of GATT and the World Trade Organization (WTO).

Regionally India is a member of SAARC (the South Asia Association of Regional Co-operation) and BIMSTEC (Bangladesh, India, Myanmar, Sri Lanka, Thailand Economic Co-operation). India enjoys different types of trade agreements with many countries. The complete list is given below:

Free Trade Agreement (FTA)

Free Trade Agreement between two countries or group of countries agrees to eliminate tariffs, quotas and preferences on most of the goods (if not all) between them. Countries choose FTA if their economic structures are complementary, not competitive. India enjoys FTA, till date, with the following two countries:

- Srilanka (28 December, 1998)
- Thailand (9th October, 2003)
Trade Agreements

It is a bilateral or multilateral treaty or any other enforceable compact which commits two or more nations to a specified terms of commerce, most of time involving mutually beneficial concessions.

- Bangladesh
- Bhutan
- Ceylon
- Maldives
- China
- Japan
- Korea
- Mongolia

Trade Treaty

- Nepal

Comprehensive Economic Cooperation Agreement (CECA)

- Singapore

Framework Agreement

A framework agreement is one which sets the stage for future substantive liberalization by defining the scope and terms of reference for some new area of discussions. List of countries with which India enjoys Framework Agreement are as mentioned below:

- With GCC states i.e. The Member States of the Cooperation Council for the Arab States of the Gulf.
- With ASEAN i.e. The Association of South East Asian Nations.
- With Chile.

*NOTE:* India will eliminate tariffs in 2011 for Brunei Darussalam, Cambodia, Lao PDR, Indonesia, Malaysia, Myanmar, Singapore, Thailand and Vietnam; Brunei Darussalam, Indonesia, Malaysia, Singapore and Thailand will eliminate in 2011 and new ASEAN Member States i.e. CLMV will eliminate in 2016 for India. India and Philippines will eliminate tariffs for each other on a reciprocal basis by 2016.
Regional Agreement

South Asia Free Trade Agreement (SAFTA) with Pakistan, Nepal, Sri Lanka, Bangladesh, Bhutan and the Maldives.

Preferential Trade Agreement (PTA)

This trade gives preferential access to only certain products. It is done by reducing tariffs, but it does not abolish them completely. PTA is established through trade pact and it is the weakest form of economic integration. India enjoys PTA with the following countries:

- Afghanistan
- Chile
- MERCOSUR - It is a trading bloc in Latin America comprising Brazil, Argentina, Uruguay and Paraguay. It has Chile and Bolivia as its associate members. MERCOSUR was formed in 1991 with the objective of facilitating the free movement of goods, services, capital and people among the four member countries.

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Doing Business in India
Our Vibrant Economy – Areas for Investment

Presently, the economy of India is on the fast track of progress at all levels. Prime sectors like Agriculture, Industry, Services etc. are progressing at a rapid rate. All the engines of the economy are currently running at nearly full speed.

GROSS DOMESTIC PRODUCT

• Among the growing economies of the world, India is second only to China. The country’s GDP has been growing at an average rate of 8.5% for the last few years. Despite the global economic slowdown, its GDP is expected to increase by 7.5% in 2011. Some major highlights:
  ▪ Growth momentum continues overcoming the financial crisis – 8.60% in 2010-11
  ▪ Revival in agriculture contributed to overall growth less than 1% last year
  ▪ Marginal increase in growth rate of Industry from 8% in 2009-10 to 8.1% in 2010-11
  ▪ Services keep momentum at around 10% year to year

• The average inflation in the 52 weeks ending on 26 March, 2011 was 13%.

DOMESTIC MARKET

• India can boast of being the largest growing market in the world due to its fast growing middle class with increasing standards of living and growing aspirations. The middle class has a high saving and spending potential making India a large market for a variety of goods.

Some major highlights:

  ▪ Indian middle class population projected to reach a figure of 583 million (41 percent of population)
  ▪ Indian middle class to control largest block of income at INR19 trillion by year 2015 and INR 51.5 trillion by year 2020
  ▪ Savings-Investment gap in private sector was 7.1% in 2008-09 and fell to 6.7% 2009-10
  ▪ Households plays a critical role in savings and capital formation
  ▪ High percentage of savings indicate capacity to build demand of products
  ▪ Spending pattern of Indian consumers shifting from basic necessities to discretionary items Personal products and services, Education and recreation, Transportation, Healthcare and communication to be fastest expanding categories
DOMESTIC CONSUMPTION FUELLING ECONOMIC GROWTH

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

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

INDUSTRY

- India is one of the leading developing nations with a strong presence in all areas of business and commerce. The major growth drivers in the future where immense growth is possible are:
  - IT Enabled Services
  - Software Development
  - Infrastructure and Allied Industries
  - Transport
  - Hospitality
  - Tourism Development
  - Insurance
  - Telecom
  - Back office operations
  - Bio-technology, Fast Moving Health Goods (FMHG) and Pharmaceuticals
  - Media & Entertainment
  - Fast Moving Consumer Goods (FMCG) and Luxury Goods
  - Manufacturing Hubs
  - Retail Marketing and Sales
  - Agriculture
  - Engineering and capital goods
  - Textiles

- The areas stated above are considered as the basis on which India can convert itself into economic superpower. The potential of these industries is unlimited due to the large Indian market and also due to India’s immense influence in the South Asian economy.
INFRASTRUCTURE

- The economy's growth rate has seen a surge in demand for increased capacities in roads, ports, airports, railways, power generation & transmission and in industrial infrastructure for the manufacturing and service sector. It is giving good returns to the investor.

MANUFACTURING

- Manufacturing recorded an impressive growth rate of 7.8% during the year 2010-11. It is because of impressive growth in the industrial sector, propelled by the robust growth in the manufacturing sector which continues the growth rate unabated. Overseas companies are investing more in India to take advantage of growing demand. Several MNCs like Sony, Samsung, Coca Cola, Nokia, Motorola, etc. which have got varied profiles are manufacturing in India.

SERVICE SECTOR

- It is another emerging area having a huge potential for expansion in a number of services. Some of the specific services having good scope for growth are:

  **Information Technology (IT)**

  The industry comprises software services, hardware and IT enabled services (ITES). IT and ITES services had shown an immense growth with a multi dynamic portfolio including Business Process Outsourcing (BPO) and Knowledge Process Outsourcing (KPO).

  **Business Process Outsourcing (BPO)**

  The sector in the past few years has witnessed considerable activity, including revamping up of operations by both the Indian and MNC players. BPO involves business process management and outsourcing. Business process management uses technology aimed at redesigning the process, reducing unnecessary steps, and bring efficiencies. On the other hand, outsourcing uses the expertise and resources of dedicated outside service providers to perform many of these vital yet non-core activities.

  India is firmly established as the largest recipient of outsourcing contracts as well as FDI inflows into BPO activities from industry majors and MNCs as more and more countries are striving to become outsourcers and are succeeding. The BPO industry is mostly dominated by companies providing BPO services (45%), followed by software development (20%) and call centres (18%).
India is undoubtedly the most favoured BPO destination of the world for a variety of reasons, a few of which are listed below:

- **Human Resource:**
  India is home to large and skilled human resources. India has an inherent strength, which has made it a major success as an outsourcing destination.

- **Language:**
  Besides being technically sound, the workforce is proficient in English.

- **Cost Effectiveness:**
  Employee costs are lower in comparison to other developed countries of the world.

- **Time Zone Differences:**
  India also has a distinct advantage of being in a different time zone that gives it flexibility in working hours.

**Knowledge Process Outsourcing (KPO)**

KPO is one-step extension of Business Processing Outsourcing (BPO) as BPO Industry is grooming into Knowledge Process Outsourcing because of its favorable advantages and future scope. Knowledge process can be defined as a high added value process chain where the achievement of objectives is highly dependent on the skills, domain knowledge and experience of the people carrying out the activity.

Some of the general services provided by the KPOs are:

- Intellectual Property Research;
- Equity Financial and Insurance Research;
- Data Search;
- Integration and Management;
- Analytics (Data Analytics/ Risk Analytics) and Data Mining Services;
- Research and Information Services in Human Resources;
- Business and Market Research;
- Engineering and Design Services;
- Design, Animation, and Simulation Services;
- Research and Development;
- Network Management;
- Decision Support Systems.
India is amongst the most favoured destinations for KPO's as the benefits described in the BPO sector above hold good for the KPO sector too.

**Telecommunication**

India's rapidly growing telecom sector has seen much activity in last couple of years. FDI upto 49% under the automatic route and 74% subject to conditions is allowed for telecom services. In case of Internet services without gateway, and for telecom equipment manufacturing industry, 100% is permitted.

The Department of Telecommunications (DOT) under the Ministry of Communications is the administrative department for monitoring the telecom sector.

The total number of telecom subscribers is expected to reach 250 million approximately by the end of year 2012.

**Tourism**

The Indian Tourism industry is one of the most important export industries of the country. Tourism yields substantial foreign exchanges for India. A large number of participants are contributing to the revenue of the industry. Segments such as hotels, tour operators, airlines, shipping etc., are significant contributors to this revenue.

**Retail And Distribution**

These are two fast emerging areas for organized large-scale activity from farms to the food table, with opportunities in the entire value chain.
Investment – Supportive Environment

- With globalization and the widening of the world economy, there is an immense potential for investment in India due to the following reasons:

  - India is one of the largest economies in the world.
  - Substantially a free market economy with government recognition of the need for further reforms.
  - Availability of one of the largest pool of cost effective, skilled and qualified scientific and technical manpower.
  - Large availability of educated manpower of around 360 million, which is more than the population of many countries.
  - Vibrant capital markets and strong financial sectors along with a large and penetrative network of banks and financial institutions.
  - Latest state of the art infrastructure facilities with governmental recognition of the need for greater improvement.
  - Growing middle class with increasing aspirations.
  - A vast untapped market waiting to be tapped. Approximately 1% of the Indian population would mean more than 10 million consumers, which is more than the combined population of Singapore and Hong Kong.
  - Recognized educational institutions, which are the providers of many top industry professionals in the world and also a source of manpower for potential investors.
  - India has a high savings rate leading to greater capital flow and therefore higher investment.
  - Indian Governments’ recognition about fiscal discipline and awareness of the need for prudent financial policies and curbing of subsidies over the long run.

FOREIGN DIRECT INVESTMENT

- Foreign Direct Investment (FDI) is permitted under the following forms of investments:
  - Through financial collaborations.
  - Through joint ventures and technical collaborations.
  - Through capital markets via Euro issues.
  - Through private placements or preferential allotments.
\textit{Sectors prohibited for FDI}

- Retail Trading (except single brand product retailing)
- Lottery Business including Government/private lottery, online lotteries, etc.
- Gambling and Betting including casinos etc.
- Chit funds
- Nidhi company
- Trading in Transferable Development Rights (TDRs)
- Real Estate Business or Construction of Farm Houses
- Manufacturing of Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes
- Activities/sectors not open to private sector investment e.g. Atomic Energy and Railway Transport (other than Mass Rapid Transport Systems).

\textit{Automatic Route}

In order to further improve the investment climate, a major rationalization of the FDI policy and associated procedures was recently undertaken by Ministry of Commerce and Industry.

As per the extant policy, FDI up to 100\% is allowed, under the automatic route, in most sectors/activities. FDI under the automatic route does not require prior approval either by the Government of India or the Reserve Bank of India (RBI). Investors are only required to notify the relevant Regional office of RBI within 30 days of receipt of inward remittances and file required documents with that office within 30 days of issue of shares to foreign investors.

Automatic route allowed in almost all sectors except:

- Where more than 24\% foreign equity is proposed to be inducted for the manufacture of items reserved for the Small Scale Sector.
- Proposals in which a foreign collaborator has a previous venture/tie up with India, where the consent of a partner is required.
- Where shares are being issued for acquiring existing shares of another Indian company.
- Proposals falling outside notified sectorial policy/caps.
**Approval Route—FIPB**

FDI in activities not covered under the automatic route requires prior Government approval and is considered by the Foreign Investment Promotion Board (FIPB), Ministry of Finance.

Indian companies having foreign investment approval through FIPB route do not require any further clearance from RBI for receiving inward remittance and issue of shares to the foreign investors. Again, the companies are required to notify the concerned Regional office of the RBI of receipt of inward remittances within 30 days of such receipt and within 30 days of issue of shares to the foreign investors or NRIs.

**Processing of non-automatic approval cases**

The Foreign Investment Promotion Board (FIPB) approves all other cases where the parameters of automatic approval are not met. Normal processing time is 4 to 6 weeks. Its approach is liberal for all sectors and all types of proposals, and rejections are few. It is not necessary for foreign investors to have a local partner, even when the foreign investor wishes to hold less than the entire equity of the company. The portion of the equity not proposed to be held by the foreign investor can be offered to the public.

The Foreign Investment Promotion Board (FIPB) has been constituted by the Government with a view to promote and attract foreign investment in India. The FIPB is a high powered committee comprising the Principal Secretary to the Prime Minister (Chairman), Finance Secretary and Commerce Secretary, and is located at the Ministry of Industry.

The Sector-wise list for Automatic Approval and FIPB approval is appended as “Appendix-B”.

**Foreign Investment through GDRs**

Indian companies are allowed to raise equity capital in the international market through the issue of Global Depository Receipts (GDRs). GDRs are designated in dollars and are not subject to any ceilings on investment. An applicant company seeking Government’s approval in this regard should have a consistent track record of good performance (financial or otherwise) for a minimum period of 3 years. This condition would be relaxed for infrastructure projects such as power generation, telecommunications, petroleum exploration and refining, ports, airports and roads.
CAPITAL MARKETS

- India has by the virtue of its size probably one of the largest investor bases in the world. The Bombay Stock exchange is one of the oldest stock exchanges in Asia. There are 23 recognized stock exchanges in India. However predominant business is done at the Bombay Stock Exchange (BSE) and National Stock Exchange (NSE). All the stock exchanges have screened based computerized trading with satellite up-linking facilities from any part in India. The exchanges now have trading of all securities in electronic units known as dematerialized shares.

- The BSE and the NSE have also introduced derivative products like Futures and Options with a view of bringing the Indian stock markets in tune with international markets and practices.

MUTUAL FUNDS

- In India, Mutual Funds are governed by the Securities and Exchange Board of India (SEBI) regulations. Foreign Participation in Mutual Funds and Asset Management Companies are governed by SEBI. All companies who wish to provide services of a mutual fund are also required to be members of Association of Mutual Funds of India.

VENTURE CAPITAL FUNDS AND COMPANIES

- Venture Capital funding is also considered as an option for funding business. It has gained momentum after the Information Technology boom where it gained popularity as a means of funding. In India, these funds are governed by SEBI guidelines. There are a number of funds, which are currently operational in India and involved in funding startup ventures. Many of the venture funds are involved in providing mezzanine or bridge financing and are better known as private equity players. The venture capital companies also provide entrepreneurs with incubator facilities with innovative ideas.

- The Indian Venture Capital Agency (IVCA) is the nodal centre for all venture capital activities in the country. The association was set up in 1992 and over the last few years it has developed an impressive database.
FOREIGN EXCHANGE MARKET

- The money market in India is structured and well developed. The major players in the money market are the Authorized dealers, Nationalized banks (mainly State Bank of India) and foreign banks that work under the active and regulatory control of the Reserve Bank of India.

- With the economic liberalization, the Govt. of India has opened the doors for attracting foreign exchange to the Country. The provisions of Foreign Exchange Management Act, govern foreign exchange in India.

- Foreign Exchange reserves continue to show an impressive growth.

FOREIGN EXCHANGE

- The Reserve Bank of India (RBI) is the governing authority for all matters relating to foreign exchange management and control. RBI manages through stipulations in the Foreign Exchange Management Act (FEMA) to supervise, control and flourish foreign funds.
LEGAL ENTITY FOR INDIAN OPERATIONS

- A foreign company has to make a choice as to its legal entity for carrying out business activities in India. The choice of legal entity will largely depend on the type of business operations in India. It is quite possible that a foreign company may do business in India without physically carrying out any activities in India. An example of such activity could be the export of goods and services to India. However, in most of the cases, when a foreign company decides to do business in India, it is generally not possible to totally abstain from activities in India. As a general guideline, a foreign company may do business in India in any one of the following manners while retaining its legal status as a foreign company:

  (I) As a foreign company without carrying out any business activity within Indian boundaries;

  (ii) Through a liaison office in India;

  (iii) Through a project office in India; and

  (iv) Through a branch office in India.

- A non-resident, depending upon its nature of business activities in India, may also operate through an Indian company in any of the following manners:

  (i) As an Indian company with 100% shareholding held by the foreign company. Such a company is called 100% subsidiary of the foreign company.

  (ii) As an Indian company in joint venture with one or more Indian and foreign partners.

- Government has approved the proposal to amend the Foreign Direct Investments (FDI) Policy for allowing FDI in Limited Liability Partnerships (LLPs). However, the rules, regulations and procedures for the same are awaited

FOREIGN COMPANY

- A Foreign Company is a company, which is incorporated outside India. Such companies, for conducting business in India, have to comply with the following formalities:

  (a) Compliance with the Indian Companies Act, 1956.

  (b) Compliance with the Reserve Bank of India's rules and regulations.
Compliance with the Companies Act

Sections 591 to 602 of the Companies Act contain provisions relating to foreign companies. As per section 592, foreign companies are required to file certain documents with the Registrar of Companies. The list of the documents to be filed is given in section 591. Foreign companies which establish a place of business in India shall, within 30 days of the establishment of the place of business, file with the Registrar of Companies the following documents:

- Certified copy of the Charter or Memorandum and Articles of Association of the company and if the instrument is not in the English language, a certified translation thereof in English.
- Full address of the registered office or principal office of the company abroad.
- List of Directors and Secretary of the company.
- The name and address of one or more persons resident in India who is or are authorized to accept, on behalf of the company, service of any notice served on the company.
- The full address of the office of the company in India which is deemed to be its place of business.

- The above documents are required to be delivered to the Registrar of Companies, New Delhi and also to the Registrar of the State in which the principal place of business of the foreign company is situated along with the prescribed form.

- Further, such a foreign company is required to submit its Indian business accounts and world accounts to the prescribed authorities. The Balance Sheet and Profit & Loss Account for Indian operations are to be compiled separately and independently as per the requirements of Schedule VI of the Companies Act. For the purposes of maintaining Indian accounts, a foreign company is required to keep at its principal place of business in India such books of accounts which relate to:
  - Money received or expended;
  - Sales and purchases made; and
  - Assets and liabilities.

However, where the foreign company has only liaison office(s) in India and is not engaged in any trading, manufacturing or other commercial activity in India, such a company should submit a certificate that the company did not carry out any trading activities.
Compliance with Reserve Bank of India's Formalities

The Foreign Exchange Regulation Act, 1973 ['FERA'] governed the business carried on in India by the foreign companies and foreign nationals. However, w.e.f. 1st, June 2000 FERA has been replaced by Foreign Exchange Management Act, 1999 (FEMA). A foreign company has to comply with various rules and regulations as prescribed in FEMA.

Liaison Office in India or Representative in India

Foreign companies intending to set up a liaison office in India or to post a representative in India for undertaking liaison activities are required to obtain approval from Reserve Bank of India. The RBI normally grants approval for liaison activities initially for a period of three years. The application is to be submitted to the Central Office of Reserve Bank (Foreign Investment Division).

It may be noted that when a foreign company undertakes liaison activities in India, whether through a liaison office or through a representative, the permission from the Reserve Bank is granted on the condition that the expenses of the liaison/representative office are to be met exclusively out of foreign exchange to be remitted from a foreign country to India. The Reserve Bank also requires submission of annual accounts.

List of the activities which may be undertaken by the Liaison office in India

• Representing in India the parent company/group companies.

• Promoting export import from/to India.

• Promoting technical/financial collaborations between parent/group companies and companies in India.

• Acting as a communication channel between the parent company and Indian companies.

Appointment as an Agent in India:

Foreign companies and foreign nationals are required to obtain RBI's permission for their appointment as agents in India. For the purposes of RBI regulations, the term 'agent' includes any person or company (including its branch) buying goods with a view of selling them before any processing thereof. It may also be mentioned that there are altogether different regulations for foreign nationals of Indian origin permanently resident in India.
**Project office in India**

A foreign company may open a project office/s in India provided it has secured from an Indian company, a contract to execute a project in India. RBI has now granted general permission to foreign entities to establish Project offices subject to specified conditions. Project offices may remit outside India the surplus of the project on its completion, general permission for which has been granted by the RBI.

**Branch Office in India**

Foreign companies can establish a branch office or other place of business for their activities of a trading, commercial or industrial nature. They are required to obtain permission of Reserve Bank to carry on such activities, for which an application to Reserve Bank should be made.

There are separate regulations for foreign nationals of Indian origin permanently resident in India.

**List of the activities which may be undertaken by the branch office in India**

- Export/Import of goods.
- Rendering professional or consultancy services.
- Carrying out research work, in which the parent company is engaged.
- Promoting technical or financial collaborations between Indian companies and parent or overseas group company.
- Representing the parent company in India and acting as buying/selling agent in India.
- Rendering services in Information Technology and development of software in India.
- Rendering technical support to the products supplied by parent/group companies.
- Foreign airline/shipping company.

A branch office is not allowed to carry out manufacturing activities on its own but is permitted to subcontract these to an Indian manufacturer. Branch Offices established with the approval of RBI may remit outside India the profit of the branch, net of applicable Indian taxes and subject to RBI guidelines. Permission for setting up branch offices is granted by the Reserve Bank of India (RBI).
INDIAN COMPANY

- A foreign company, depending upon its nature of business activities in India may also operate through an Indian company in any of the following manners:
  - as a joint venture with Indian partner
  - as a wholly owned subsidiary

- A foreign company can operate in India through an Indian company the shares of which may be partly held by the foreign company and partly by Indian partners. The incorporation of the Indian company is governed by the Indian Companies Act, 1956. Kindly note that, a New Companies Bill, 2011 proposing to replace the existing Companies Act, 1956, has been placed before the Parliament, recently. The same shall be applicable once the same is enacted.

- Incorporation of a company in India requires filing of certain documents with the Registrar of Companies including the Articles and the Memorandum of Association of the company along with the prescribed fees. The formalities relating to incorporation are rather simple requiring in all six to ten weeks’ time when a company can start its commercial operations.

- The Indian companies can be primarily divided into two categories:
  (i) Private Limited Company
  (ii) Public Limited Company.

- A private company means a company having a minimum paid up capital of Rs.0.1 million or such higher paid up capital as may be prescribed. The private limited company is a company which by its articles of association.
  - Restricts the right of its members to transfer shares;
  - Limits the number of its members to fifty:
  - Prohibits any invitation to the public to subscribe to its shares and debentures.
  - Prohibits any invitation or acceptance of deposits from persons other than its members, directors or their relatives.

- However, a public limited company does not have any such restrictions. Such a company can be quoted on stock exchanges in India and abroad. The company can also invite public to subscribe to its shares and can also raise loan by issue of debentures. The financial institutions also generally prefer to deal with a public limited company. Therefore, from foreigners' point of view, formation of a public limited company is a more appropriate form to carry out business activities in India.

- These companies can be limited by share capital or guarantee.
Capital of a Limited Liability Company

The minimum paid-up capital of a Public Company must be at least Rs. 0.5 million and that of a Private Company must be at least Rs. 0.1 million. Of the authorized share capital not all needs be paid in immediately. Shares may be partly paid. The authorized share capital may be increased by a simple resolution passed at the company's general meeting, if the articles of association so provide.

A limited company can issue only two kinds of shares, equity shares and preference shares, provided they form part of the authorized share capital of the company. Every member holding equity shares has a right to vote in respect of the capital held on every resolution placed before the company. Every member holding a preference share has a preferential right to be paid a fixed amount or rate of dividend; a preferential right, on winding up or repayment of capital, to be repaid the amount of capital paid up on his shares; right to vote only on resolutions which directly affect the rights attached to preference shares.

Under the Companies Act, 1956, consideration for subscriptions to shares may be in forms other than cash such as goodwill, know-how and supply of plant and machinery. While this option is freely available to Indian investors, foreign investors must normally contribute cash unless a specific approval from the Government is obtained.

Various Options as to Capital

A company can opt for various options pertaining to its Share Capital:

- Issue of further Capital
- Alteration of Share Capital
- Reduction of Share Capital
- Diminution of Share Capital
- Issue of Shares at par, at discount or at premium
- Issue of Sweat Equity Shares
- Buy back of Own Shares

A company, only in accordance with guidelines issued by SEBI, can make an offer of shares or other securities to the public. All offer documents for public issue of shares or other securities by companies intending to be listed on recognized stock exchanges or which are already listed, are required to be filed with SEBI and comply with directions issued by SEBI in this regard. All Rights offer documents are also to be filed with SEBI. Public offer and Rights offer documents must comply with disclosure norms lay down by SEBI.

 Shares are now permitted to be held in an electronic form through the depository mode.
Procedure for formation of a Company

The procedure for setting up a limited liability company whether public or private, which is normally entrusted to professional advisors, can be summarized as follows:

- At least two promoter subscribers in case of a private company and at least seven in the case of a public company must apply for availability of a suitable name.
- The proposed name must be approved by the Registrar of Companies.
- Two principal constitution documents of the company must be drawn up:
  (a) Memorandum of Association, which states the company's name, the situation of its legal address or registered office (which must be in India), the objects of the company, its limited liability status and the amount of its authorized capital.
  (b) Articles of Association, which regulates the company's internal management and the rights of its members among themselves.
- The promoter subscribers must sign two printed copies of the memorandum and the articles of association, in presence of a witness.
- In the case of a public company, a declaration by persons agreeing to act as directors must be obtained.
- The two signed copies of the memorandum and articles of association, one of which is duly stamped, the declaration (if required) and other specified documents, along with the registration fees prescribed, are presented to the Registrar of Companies for registration. On issue of its certificate of incorporation by the Registrar of Companies, the company comes legally into existence from that date.
- A private company may commence business as soon as a certificate of incorporation is issued. A public company, however, may not start operations until the Registrar of Companies, on completion of further formalities, has issued a certificate of entitlement to commence business.
- At any point of time, a private company must have at least two shareholders and a public company at least seven.

Cost of forming a Company

For the formation of a company other than the usual costs involved in research and development, documentation, stamp duty etc., costs have to be incurred for registration fees with the ROC. The amount of duty and the registration fees depends on the authorized capital of the company.
Management of a Limited Liability Company

The management of a company is vested in the board of directors, appointed by the shareholders, all of whom must be individuals. Directors need not be resident and can also be foreign nationals.

The minimum number of directors in a public company is 3 and in a private company 2. As to the maximum number of directors, if a public company proposes to increase the number of its directors by more than 12, approval of the Central Government is required.

The subscribers to the memorandum are deemed to be the first directors of the company. The shareholders in a General Body Meeting normally appoint subsequent directors.

A company may appoint one or more managing or full time directors. The appointment and remuneration of a managing or full time director of a public company is required to be approved by the shareholders in their General Body Meeting. Approval of the Government is not necessary if the appointee meets specified conditions and the remuneration is within the limits prescribed under the Companies Act.

Directors' remuneration is normally determined by the articles of association or by the shareholders at a General Body Meeting. A provision is made for minimum remuneration based upon the effective capital of the company, in case there is no profit or profit is inadequate. Unless the Central Government approves otherwise, the remuneration paid to the managing and full time directors of a public company may not exceed 5% of net profits if there is one such director, and 10% if there are more than one such director.

The articles of a private limited company can give power to its board of directors to fix the remuneration of a managing or full time director.

Meetings and Votes in a Limited Liability Company

An Annual General Meeting must be held in each calendar year, not more than fifteen months after the preceding meeting and within six months from close of each accounting period. The Annual General Meeting is required to be held during business hours on a working day at a place within the city in which the registered office of the company is situated. Shareholders are entitled to appoint proxies to attend meetings and vote on their behalf.
Ordinary resolutions require a simple majority of the votes that are cast by those attending the meeting (in person or by proxy). A company's articles of association can be amended only by a 'Special Resolution' which is passed by a 75% or greater majority of the votes cast at a general meeting of which due notice has been given. Usually, each shareholder has one vote by a show of hands. On a poll, voting rights are in proportion to each shareholder's share of the paid up capital.

A formal meeting of the Board of Directors is required to be held once in every three months. These meetings need not be necessarily held in a place within the city of the registered office of the company, and can be held anywhere even outside India.

**Publication of Information by a Limited Liability Company**

In addition to its constitution documents, every limited company must file its annual financial statements with the Registrar of Companies and an 'Annual Return' containing updated particulars of its shareholders, directors and share capital. Information filed with the Registrar of Companies is available to the public for inspection on payment of a nominal fee.

Public companies listed on the stock exchanges are required to publish their quarterly results in a local and National newspaper.

A limited company must state its name and registered office address in legible characters in its business letters, bill heads, notices and other official publications; and its name on all communications including invoices, receipts, cheques and endorsements.

**Corporate Governance**

The Government of India has good Corporate Governance (CG) leading to more transparent, ethical and fair business practices to be adopted by corporate entities at large. Certain important features of CG are as under:

The Report of the Board of Directors shall now include a Directors' Responsibility Statement confirming (i) maintenance of adequate accounting records for safeguarding the assets of the company and for preventing and detecting frauds and other irregularities (ii) judgments and estimates made in a reasonable and prudent manner to ensure true and fair view of the accounts (iii) preparation of accounts by following the applicable accounting standards (iv) consistent application of the accounting policies selected, and (v) preparation of financial statements on a going concern basis.
It is further provided that every public company having paid up capital of Rs. Fifty million or more shall constitute a committee of the Board known as the Audit Committee. Such a committee shall have full access to the information contained in the records of the company and shall also have powers to seek external professional advice. All the recommendations of the Committee relating to financial management and audit reporting shall be binding on the Board. Recommendations not acceptable to the Board is to be communicated to the Shareholders with reasons thereof.

The Companies Act now debars a person from acting as a Director of a company if there is a default in filing Annual Return / Accounts or repayment of deposits / Interest or dividends.

Apart from the above requirements, all listed companies are now required to publish their quarterly and half yearly results with a limited review by the Auditors. Such accounts shall be prepared in compliance with the applicable accounting standards and shall also disclose segmental results. With the annual report, all listed companies have to publish audited consolidated accounts also.

Listed companies are also required to include a report on CG in their annual report covering certain vital information. Some elements of the important information are listed below:

- A brief statement on company's philosophy on code of governance.
- Composition and category of directors, their attendance at the Board Meeting etc.
- Audit committee, Remuneration committee and Shareholders committee details.
- Certain important disclosure by the Board.
- Means of communication with the company.
- General shareholders information.

**Accounting Systems and Standards and Audit Committee**

India has a well-established system of accounting. All corporate entities follow the mercantile (accrual) system for recording their accounting transactions. The Institute of Chartered Accountants of India, the Accounting regulatory authority, has prescribed Accounting Standards and Auditing and Assurance Standards providing comprehensive guidelines. These are mandatory applicable mainly to listed companies. Some of the Accounting Standards are not applicable to private limited companies and non-corporate entities subject to conditions specified.
India is also a member of International Accounting Standards Board and whenever the international body prescribes new accounting standards, these are adopted in India also with modifications to suit to the Indian environment and laws.

With liberalization and globalization and many Indians going global and vice-versa, the ICAI and the Government is in process of International Financial Reporting Standards (IFRS) convergence. The IFRS converged Accounting Standards are proposed to be applicable to various entities in aforesaid manner depending upon their size.

**Joint Venture Company**

A joint venture company in India is like any other Indian company for the purposes of Indian Companies Act, Indian Income-tax Act and other applicable laws, rules and regulations. The formalities relating to incorporation of an Indian company have already been discussed in preceding paragraphs. A foreign company participating in a Joint Venture may need the permission from the Reserve Bank of India (RBI) or Foreign Investment Promotion Board (FIPB) depending upon the nature of the industry vis a vis the quantum of the investment as already explained in earlier section of Foreign Direct Investment.

**Wholly Owned Subsidiary**

A foreign company may also operate in India by incorporating a company in India whose 100% shares are held by a foreign company. Such a company is known as a wholly owned subsidiary. The formalities relating to incorporation of a wholly owned subsidiary are more or less the same as incorporation of a normal Indian company. However, such a company requires a prior approval from Foreign Investment Promotion Board ["FIPB"].

**OTHER LEGAL ENTITIES**

- **Partnership:** Partnership is created by an agreement between the partners, which is called the Partnership Deed. The Indian Partnership Act governs the partnerships.

- **Cooperatives:** Government encourages cooperatives in certain sectors like retailing of goods for mass consumption and certain agro industries.

- **Trusts:** Trusts are usually created in India for charitable or religious purposes under the Indian Trust Act, 1882
• **Limited Liability Partnerships (LLPs):** LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership. The LLP can continue its existence irrespective of changes in partners. It is capable of entering into contracts and holding property in its own name. The LLP is a separate legal entity, is liable to the full extent of its assets but liability of the partners is limited to their agreed contribution in the LLP. Further, no partner is liable on account of the independent or un-authorized actions of other partners, thus individual partners are shielded from joint liability created by another partner’s wrongful business decisions or misconduct. Mutual rights and duties of the partners within a LLP are governed by an agreement between the partners or between the partners and the LLP as the case may be. The LLP, however, is not relieved of the liability for its other obligations as a separate entity. FDI is permitted in LLPs subject to prior approval from Foreign Investment Promotion Board ["FIPB"] and such other conditions as prescribe.

• **Societies:** These are formed under the Indian Societies Registration Act, 1860 so as to promote social welfare activities, which help them to have a well-defined purpose, having enough resources, funds etc. and are also immune from external pressures, tensions etc. so that their purposes are fulfilled.
Taxation

- The tax system in India aims at achieving economic growth by encouraging investments in the desired channels. Though there are attractive tax incentives for foreign investment in India, domestic industry and trade also enjoys numerous tax concessions. Likewise the service sector particularly the export of services is entitled to number of tax incentives.

- Preferred categories where these tax incentives are made available can broadly be classified into 3 categories as below:
  - Priority sector, which includes infrastructure, power, tourism etc.
  - Set up in certain preferred locations.
  - Export of goods and services.

- These incentives are dealt in detail under the head of “Tax Concessions” and “Some lucrative areas for investment”

- The levy of tax in India is broadly divided into Direct and Indirect Taxes and the same is divided amongst Central & the State Governments as per the Constitution.

- **Direct Taxes** include levies such as Income Tax, Wealth Tax, etc., which come within the purview of Central Government.

- The Income Tax Act, 1961 (IT Act) is the operative (main) Act in India providing the machinery and methodology for the determination, computation and payment of income tax. The IT Act is substantiated by the Income Tax Rules providing methodology, rules and forms for payment of taxes. The Central Board of Direct Taxes (CBDT) is the final Authority and governs the entire mechanism of direct taxes in India.

- A new Direct Tax Code (DTC) proposed to replace the Income tax act is placed before the Parliament. DTC proposes to introduce certain major provisions relating to Controlled Foreign Corporation (CFC), Exempt-Exempt-Taxable (EET) vs. Exempt-Exempt-Exempt (EEE) Regime for Saving Schemes, Advance Pricing Arrangement (‘APA’), General Anti Avoidance Rule (‘GAAR’), and definition of Residents etc. DTC was proposed to be effective from 01.04.2012 but this deadline seems difficult to meet.
• **Indirect taxes** on the other hand are handled either by the Central or State Governments. Customs Duty, Excise Duty & Service tax being the prime drivers of nation's growth are under direct control of the Central Government, the final authority being Central Board of Excise and Customs (CBEC). The States enjoy the power to levy taxes like professional tax and state sales tax, now popularly known as VAT and other local taxes like octroi etc.

• The Indian government is studying tax reforms that include many other Central and State level direct and indirect taxes, excise duties, service tax and luxury tax, and replace them with a single Goods and Service Tax (GST). GST was proposed to be effective from 01.04.2012 but this deadline seems difficult to meet.

**General Structure**

The general structure of taxes in India is comprised of two parts:

<table>
<thead>
<tr>
<th>Direct Taxes</th>
<th>Indirect Taxes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Income Tax</td>
<td>Excise Duty</td>
</tr>
<tr>
<td>Wealth Tax</td>
<td>Value Added Tax / Sales Tax</td>
</tr>
<tr>
<td></td>
<td>Customs Duty</td>
</tr>
<tr>
<td></td>
<td>Stamp Duty</td>
</tr>
<tr>
<td></td>
<td>Service Tax</td>
</tr>
<tr>
<td></td>
<td>Octroi Duty</td>
</tr>
</tbody>
</table>
**DIRECT TAXES - INCOME TAX**

**Terminology**

a) **Assessment**
   In general context the word assessment means computation of tax and procedure for imposing tax liability. An assessment, therefore, comprises of two stages:
   - Computation of total income
   - Determination of tax payable thereon

b) **Assessment year (A.Y)**
   An assessment year is the year in which the income of the previous year is to be assessed and brought to tax and means the period of twelve months commencing on the 1st day of April every year.

c) **Previous Year**
   The financial year immediately preceding the assessment year, in which the income is earned and brought to tax, is the previous year.

d) **Assessee**
   An assessee is a person by whom any tax or any other sum of money is payable; or in respect of whom any proceeding has been taken for the assessment of his / its’ income or loss; or of the income or loss of any other person in respect of which he / it is assessable; or any amount of refund is due to him / it or to such other person under the IT Act.

e) **Categories of Assessee**
   The Income Tax Act recognizes seven categories of persons chargeable to tax:
   - Individuals,
   - Hindu Undivided Families (HUF),
   - Companies,
   - Firms,
   - Association of persons (AOP) or Body of individuals (BOI),
   - Local Authorities,
   - Artificial juridical persons not falling within any of the preceding categories.
**Residence**

Under the Income Tax Act, the incidence of tax on a taxpayer depends on his residential status.

Assessees are divided into the following three categories:

- Resident in India,
- Resident but not an ordinary resident,
- Non-resident in India.

**Residential Status and Basis of Charge**

The residential status of individual taxpayer primarily depends upon the period of stay in India and in case of others, on the location of control and management of their business in India.

**Individual**

Conditions for being Resident are as under:

<table>
<thead>
<tr>
<th>Category</th>
<th>Days for which he should be in India in the previous year</th>
<th>Days for which he should be in India, during 4 years preceding the</th>
</tr>
</thead>
<tbody>
<tr>
<td>Indian citizen leaving India during the previous year as member of crew of an Indian ship or for employment outside India</td>
<td>182 days or more</td>
<td>Not applicable</td>
</tr>
<tr>
<td>Indian citizen or person of Indian origin who being outside India, comes on a visit to India during the previous year.</td>
<td>182 days or more</td>
<td>Not applicable</td>
</tr>
<tr>
<td>Any other individual –</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(1) Either Case 1; or</td>
<td>182 days or more</td>
<td>Not applicable</td>
</tr>
<tr>
<td>(2) Case 2:</td>
<td>60 days or more</td>
<td>365 days or more</td>
</tr>
</tbody>
</table>
Conditions for being a 'Resident and Ordinarily Resident':

1. Should be 'a resident' in India in at least 2 out of 10 previous years preceding the relevant previous year; and

2. Should be in India for 730 days or more during 7 previous years preceding the relevant previous year.

**Firm/Association of Persons**

If control and management is situated wholly outside India, it is non-resident otherwise resident.

**Company**

If the control and management is situated wholly in India, it is resident, otherwise non-resident. An Indian Company is always a resident. Companies are further classified into two categories viz. Domestic and Foreign Company. Domestic company means an Indian company or any other company, which has made prescribed arrangements for the declaration and payment of dividend within India. Foreign company means a company, which is not a domestic company.

**Basis of Charge**

<table>
<thead>
<tr>
<th>Time &amp; place of Accrual/Receipt of income</th>
<th>Resident &amp; Ordinarily Resident</th>
<th>Resident &amp; Not ordinarily Resident</th>
<th>Non-Resident</th>
</tr>
</thead>
<tbody>
<tr>
<td>Received in India by him or on his behalf</td>
<td>Y</td>
<td>Y</td>
<td>Y</td>
</tr>
<tr>
<td>Deemed to be received in India by him or on his behalf</td>
<td>Y</td>
<td>Y</td>
<td>Y</td>
</tr>
<tr>
<td>Accrues or arises to him in India</td>
<td>Y</td>
<td>Y</td>
<td>Y</td>
</tr>
<tr>
<td>Deemed to accrue or arise to him in India</td>
<td>Y</td>
<td>Y</td>
<td>Y</td>
</tr>
<tr>
<td>Accrues / arises &amp; received outside India from business controlled or profession set up in India</td>
<td>Y</td>
<td>Y</td>
<td>N</td>
</tr>
<tr>
<td>Accrues/ arises &amp; received outside India from business controlled or profession set up outside India</td>
<td>Y</td>
<td>N</td>
<td>N</td>
</tr>
</tbody>
</table>
Heads of Income

The income liable to tax is to be computed under the following heads:

- Income from Salaries.
- Income from House Property.
- Profits and Gains from Business and Profession.
- Capital Gains.
- Income from Other Sources.

Rates of Tax

Individuals, Hindu Undivided Families and Body of Individuals:

<table>
<thead>
<tr>
<th>Total Income Slab</th>
<th>Rate of Tax (A.Y. 2012-13)</th>
<th>Education Cess (EC)</th>
<th>Secondary and Higher Education Cess</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to `2,00,000*</td>
<td>Nil</td>
<td>Nil</td>
<td>Nil</td>
</tr>
<tr>
<td><code>2,00,000* - </code>5,00,000</td>
<td>10%</td>
<td>2%</td>
<td>1%</td>
</tr>
<tr>
<td><code>5,00,001 - </code>10,00,000</td>
<td>20%</td>
<td>2%</td>
<td>1%</td>
</tr>
<tr>
<td>`10,00,000 above</td>
<td>30%</td>
<td>2%</td>
<td>1%</td>
</tr>
</tbody>
</table>

There is a no surcharge on income.

{*`` 250,000 in case of an individual resident in India who is 60 years of age or above.}

A new category ‘Very Senior Citizens’ has been introduced for Individuals residents in India with a qualifying age of 80 years and above and a higher exemption limit of `5,00,000.

<table>
<thead>
<tr>
<th>Total Income Slab</th>
<th>Rate of Tax (A.Y. 2012-13)</th>
<th>Education Cess (EC)</th>
<th>Secondary and Higher Education Cess</th>
</tr>
</thead>
<tbody>
<tr>
<td>Upto `5,00,000</td>
<td>NIL</td>
<td>--</td>
<td>--</td>
</tr>
<tr>
<td><code>500,001 – </code>10,00,000</td>
<td>20%</td>
<td>2%</td>
<td>1%</td>
</tr>
<tr>
<td>`10,00,000 above</td>
<td>30%</td>
<td>2%</td>
<td>1%</td>
</tr>
</tbody>
</table>
Others

<table>
<thead>
<tr>
<th>Category</th>
<th>Rate of Tax (A.Y. 2012-13)</th>
<th>Surcharge (SC)</th>
<th>Education Cess &amp; Secondary and Higher Education cess</th>
</tr>
</thead>
<tbody>
<tr>
<td>Partnership Firms / LLP</td>
<td>30%</td>
<td>Nil</td>
<td>3%</td>
</tr>
<tr>
<td>Domestic Company (having income below `1,00,00,000)</td>
<td>30%</td>
<td>Nil</td>
<td>3%</td>
</tr>
<tr>
<td>Domestic Company (having income above `1,00,00,000)</td>
<td>30%</td>
<td>5%</td>
<td>3%</td>
</tr>
<tr>
<td>Foreign Company (having income below `1,00,00,000)</td>
<td>40%</td>
<td>Nil</td>
<td>3%</td>
</tr>
<tr>
<td>Foreign Company (having income above `1,00,00,000)</td>
<td>40%</td>
<td>2%</td>
<td>3%</td>
</tr>
</tbody>
</table>

A.Y. – Assessment Year

Notes: 1) A surcharge is applicable in cases where the total income taxable during previous year exceeds `10,000,000 (Ten Millions) 2) LLP will be taxed the same way as a partnership. The exception is that a partner of partnership firm is liable personally for income tax liability of firm.

**Dividend Income**

Dividend (other than a deemed dividend explained below) declared by a domestic company is exempt in the hands of the recipient, but is taxed in the hands of the dividend distributing company @ 16.2225% (applicable from AY 2011-12). Where the domestic company has received any dividend from its subsidiary company during the year and the subsidiary company has paid tax on such dividend, then dividend distributed by the domestic company in the same year to that extent will not be subject to tax under the Income Tax Act (applicable from 01-07-2012).

**Deemed Dividend**

Under section 2(22)(e) of the Income Tax Act, any loan or advance made by a company in which the public is not substantially interested in India to a shareholder holding 10% or more of the voting powers of the company or to any person in which such a shareholder is substantially interested or any payments made by any such company on behalf of or for the individual benefit of such a shareholder is deemed to be a dividend in the hands of the recipient, taxable in the hands of the shareholder and not liable to tax in the company.
**Dividends received from foreign companies**

Dividends received by an Indian Company from a foreign company, in which the Indian company holds 26% or more in nominal value of equity share capital, is taxable at the rate of 15% under section 115BBD of the Income Tax Act. (Applicable for AY 2012-13 and AY 2013-14)

**Capital Gains Tax**

Capital gains arising from the sale of capital assets are classified into two categories viz:

- Short term capital gains; and
- Long term capital gains.

Short term capital gains means any gains arising from transfer of capital assets which are held for a period of not more than 36 months (12 months in case of shares held in a company, other securities listed on a recognized stock exchange in India or a unit of a mutual fund registered in India, units of UTI, zero coupon bonds). Such short term capital gains are taxable at the normal tax rates applicable to each category of taxable persons.

Long term capital gains are capital gains other than short term capital gains. Such long term capital gains are taxable at special rate of 20% (plus applicable SC & EC @ 3%). In computing the capital gains, the cost of acquisition of the capital asset is indexed as per the cost inflation index of India.

Exemptions from capital gains tax are available in certain cases if such capital gains or sales proceeds from the capital assets are reinvested in some other specified capital assets.

In the case where the sale consideration of the asset is not ascertainable or cannot be determined, then for the purpose of computing capital gains fair market value of the said asset as on the date of transfer will be considered as the value of sale consideration.

**Capital gains on securities purchased in Indian Currency**

In the case of equity shares and equity oriented units of mutual fund, which are sold on recognized stock exchanges in India and on which securities transaction taxes have been charged, short term capital gains are taxable at special rate of 15% (plus applicable SC & EC @ 3%) from A.Y. 2011-12.
If such shares and funds are held for long term i.e. for 12 months or more capital gains are entirely exempt from tax.

In the case of unlisted securities, any long term capital gains arising from the transfer of such securities in the hands of a non-resident (not being a company) or a foreign company, long term capital gains are taxable at special rate of 10% (plus applicable SC & EC @ 3%) from A.Y. 2013-14). The capital gains will be computed without applying the cost inflation index of India.

There are separate provisions for non-residents acquiring shares and other securities in the foreign currency. These provisions relate to mode of computation of capital gains.

**Special Rates for Non–Domestic Companies**

Royalty or Fees from Technical Services: Non-Domestic companies are taxed in the following manner:

| Received from the government or from Indian corporations under agreements that are approved by the government or which are in accordance with the Industrial Policy (refer notes 1 and 2 below) | Taxable at 20% on a gross basis |
| In pursuance of agreements made after May 31, 1997 but before June 1, 2005 | Taxable at 20% on a gross basis |
| In pursuance of agreements made on or after June 1, 2005 | Taxable at 10% on a gross basis |

**The above rates may be subject to more beneficial provisions contained in a tax treaty entered into between India and the country in which the taxpayer is resident.**

**Notes:**

1. Royalties and fees for technical Services earned in pursuance of agreements made after March 31, 2003 which are effectively connected with the foreign corporation's Permanent Indian Establishment are taxed at the rate of 40% (plus surcharge and education cess) on a net income basis.

2. All the tax rates mentioned above, excluding the rates prescribed under the relevant treaty, must be enhanced by a surcharge of 2%. Further, the tax payable by all the corporations should be enhanced by an education cess at the rate of 3% on the tax payable inclusive of surcharge.
Scope of “Royalty” definition widened

It has been clarified in the Finance Act 2012, w.r.e.f. A.Y. 1997-98, that royalty includes any payment made on account of transfer of all or any right for use or right to use a computer software (including granting of license) irrespective of the medium.

Interest on Foreign-Currency Loans

Non-resident corporations earning interest on foreign-currency loans extended to Indian business enterprises or to the Government of India are taxed at the rate of 20% on the gross amount of interest.

In case where a non-resident (not being a company) or a foreign company earns interest income on foreign currency loans extended to Indian Companies between 01-07-2012 and 01-07-2015 under a loan agreement or by way issue of long-term infrastructure bonds, as approved by the Central Government, such income is taxed at the rate of 5% on the gross amount of interest, to the extent to which such interest does not exceed the amount of interest as calculated at the rate approved by the Central Government.

The above rate may be subject to more beneficial provisions contained in the tax treaty between India and the country in which the taxpayer is resident. The tax rate mentioned above, excluding the rate prescribed under the relevant treaty, must be enhanced by a surcharge of 2% and an education cess at the rate of 3% on the tax payable inclusive of surcharge.

Income from purchase of crude oil from foreign companies

Any income received by a foreign company in India in Indian Currency on account of sale of crude oil is exempt from tax in India provided that the agreement of such sale is approved by the Central Government and the foreign company is not engaged in any other activity in India (Applicable from AY 2013-14)

Return Filing in relation to assets located India

It is now mandatory for every resident (not being resident and ordinary resident) to file return of income in India who is having any asset (including financial interest in any entity) or signing authority in any account located outside India, irrespective of the fact whether the resident taxpayer has taxable income or not (Applicable from AY 2012-13).
Financial Institutional Investors

FIIs are taxed at the rate of 10% on long-term capital gains and at the rate of 30% on short-term capital gains arising from the transfer of securities (other than units). However, if the transaction is liable to STT, the long-term capital gains may be exempt from tax and short-term capital gains may be liable to tax at 15% from A.Y. 2009-10.

The above rates may be subject to more beneficial provisions contained in the tax treaty between India and the country in which the taxpayer is resident. All the tax rates mentioned above, excluding the rates prescribed under the relevant treaty, must be enhanced by a surcharge of 2% and an education cess at the rate of 3% on the tax payable inclusive of surcharge.

Anti-abuse provisions - General Anti-Avoidance Rule (GAAR)

It is proposed to codify the doctrine of “substance over form” where the real intention of the parties and effect of transactions and purpose of an arrangement is taken into account for determining the tax consequences, irrespective of the legal structure that has been superimposed to camouflage the real intent and purpose. It is accordingly proposed to provide GAAR to deal with such aggressive tax planning.

The provisions of GAAR provides the power to the income tax authorities to deny tax benefit to an entity if a transaction has been carried out with the sole intention of tax avoidance (Applicable from AY 2014-15)

Presumptive Taxation

In certain specified cases, taxable income and the tax thereon are calculated on a presumptive basis.
<table>
<thead>
<tr>
<th>Activity</th>
<th>Shipping business of Non Resident</th>
<th>Exploration of mineral oils</th>
<th>Operation of Aircrafts</th>
<th>Business of Civil construction</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sections applied</td>
<td>44B</td>
<td>44BB</td>
<td>44BBA</td>
<td>44BBB</td>
</tr>
</tbody>
</table>
| Conditions                                   | (1) Assessee is non-resident in India.  
(2) The assessee is engaged in the business of operation of ships | (1) Assessee is non-resident in India.  
(2) The assessee is engaged in the business of providing services and facilities in connection with, or supplying plant and machinery on hire, used or to be used in the exploration for, and exploration of mineral oils. | (1) Assessee is non-resident in India.  
(2) The assessee is engaged in the business of operation of Aircrafts | (1) Assessee is a Foreign company.  
(2) Assessee is engaged in the business of civil construction or erection of planter machinery or testing or commissioning thereof, in connection with a turnkey power project  
(3) The aforesaid project is approved by Central Government.  
(4) The above project is financed under any international aid programme |
| Tax liability                                | 7.5% of amount received on account of carriage of goods, passengers, livestock mail or shipped at any port in India etc.  
The amount received or deemed to be received in India by or on behalf of the assessee on account of carriage of goods, passengers, livestock mail or goods shipped at any port in India etc. shipped at any port outside India. | 10% of the aggregate of the amount on account of aforesaid services and facilities | 5% of amount on account of carriage of passengers, livestock, mail or goods from any place in or from any place outside India. | 10% of the amount paid or payable (whether in or out of India) on account of aforesaid services and facilities |
Withholding Tax/Tax Deducted at Source (TDS)

Under Indian Income Tax laws, tax has to be withheld at source by the person responsible for making the payment if such a payment is taxable in India in the hands of the payee. Such tax has to be deducted at the time of credit to the account of the payee or actual payment, whichever is earlier. The rates for such deduction are provided in the Income tax Act.

However, w.e.f. AY 2010-11, it is made mandatory for the payee to furnish Permanent Account Number (PAN) to the person responsible for deducting tax, on failure of which tax will be withheld at 20% or at the rate as per the Income Tax Act whichever is higher.

Minimum Alternate Tax (MAT) and Alternate Minimum Tax (AMT)

With a view to bring zero tax paying companies and Limited Liability Partnership firms (LLP) having book profits under the tax net, the domestic tax law requires companies to pay MAT in lieu of the normal corporate tax, in a case where the normal corporate tax is lower than the MAT and LLPs to pay AMT, in case the normal tax is lower than the AMT.

MAT and AMT are levied at 18.5 percent (plus applicable surcharge, cess and secondary and higher education cess) of the adjusted book profits of companies and adjusted total income of LLPs respectively, where the normal tax payable is less than 18.5 percent of their book profits.

A tax credit, being the difference between the tax liability under MAT or AMT provisions, respectively and normal provisions, can be carried forward for setoff in the year in which tax is payable under the regular provisions. Such setoff shall be allowed on the difference of tax as per regular provisions and as per MAT and AMT provisions. However, no carry forward shall be allowed beyond the tenth assessment year succeeding the assessment year in which the tax credit becomes allowable.

A certificate from a Chartered Accountant certifying the amount of book profits (in case of companies) and the adjusted total income (in case of LLPs) must be filed together with the tax return.

The provisions of AMT are applicable to all persons (excluding companies). However, the provisions of AMT will not be applicable to persons (excluding LLPs) whose adjusted total income does not exceed Rs.20,00,000 (Applicable from AY 2013-14)
**Depreciation Allowance**

In the process of extending incentives and concessions to achieve economic growth, Indian tax law provides for accelerated depreciation allowance through higher rates, intended to encourage capital investments by reducing overall tax incidence.

Allowance for depreciation is available from the year since when the asset is ready to “put to use” for the business purpose. The Indian Income Tax Act provides that for tax purposes, the depreciation is calculated on block of assets at prescribed rates as per declining balance method (written down value method). The only exception is the undertakings engaged in power generation where the straight-line method could also be opted.

The block of assets method is easy to understand. The cost of assets acquired during the year is added to the opening balance and sale value of the assets disposed off during the year is reduced there from. The prescribed rates are then applied on the balance.

For assets installed in the second half of the fiscal year depreciation at 50% of the normal rate is applied.

**Tax Depreciation Rates (written down value method)**

<table>
<thead>
<tr>
<th>Assets</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residential buildings</td>
<td>5</td>
</tr>
<tr>
<td>Buildings other than above</td>
<td>10</td>
</tr>
<tr>
<td>Purely temporary erections</td>
<td>100</td>
</tr>
<tr>
<td>Plant and machinery</td>
<td>15</td>
</tr>
<tr>
<td>Power generating and transmission</td>
<td>80</td>
</tr>
<tr>
<td>Computers (including software)</td>
<td>60</td>
</tr>
<tr>
<td>Furniture and fittings, including electrical fittings</td>
<td>10</td>
</tr>
<tr>
<td>Intangible assets (such as know-how, patents, copyrights trademarks,</td>
<td>25</td>
</tr>
<tr>
<td>licenses, franchises or any other business or commercial right of</td>
<td></td>
</tr>
<tr>
<td>similar nature)</td>
<td></td>
</tr>
</tbody>
</table>

Additional depreciation @ 20% is allowed to an assessee, engaged in the business of manufacture or production of any article or thing or in the business of generation and distribution of power, in respect of Plant and machinery (other than specified plant & machinery) put to use during a financial year.
The above list is only illustrative, and not exhaustive.

Any unabsorbed depreciation is allowed to be carried forward for an indefinite period for claiming setoff against the taxable income of subsequent years.

Company law provides for the straight line method of depreciation which leads to a lower charge in the initial years in the published accounts thus giving rise to deferred tax.

**Business Losses**

Business losses are allowed to be carried forward and setoff in the next eight subsequent years against the taxable business income derived in those years. But losses from speculation business are allowed to be carried forward only for 4 AY’s and losses from 35AD can be carried forward for unlimited period. Also losses u/s 35AD cannot be set off against any other sources except from the business under section 35AD.

Section 35AD provides for deduction in respect of expenditure incurred on specified business, subject to certain conditions.

**Double Tax Relief**

Keeping in line with the international practice of avoiding double taxation of cross border income, India has entered into agreements with the Government of other countries outside India for the avoidance of double taxation of income under the Indian Act and under the corresponding law in force in that country. The double taxation agreements are in the nature of delegated legislation negotiated with the purpose of providing a rational and equitable allocation of income between two countries over which both have tax jurisdiction and to provide relief from double taxation of the same income taxed in two countries.

The purpose of a Double Taxation Avoidance Agreement is to assist tax payers in India and abroad to know in advance, to the extent practicable, the tax implications of the various transactions arising from the implementation of an agreement for foreign collaboration between any person in India and another outside India. Also help to choose a foreign collaborator located in a particular country with which India has entered into an agreement for avoidance of double taxation. This is because the provisions of such bilateral agreements override the provisions of the domestic laws and because the burden of tax falling on the collaborators in the two countries becomes much more clearly ascertainable in the light of such bilateral agreements. Most of these agreements are comprehensive and cover all types of income whereas some of these are limited to aircraft and/ or shipping profits.
Countries with which India has entered into Double Tax Relief agreement:

<table>
<thead>
<tr>
<th>Country</th>
<th>Country</th>
<th>Country</th>
</tr>
</thead>
<tbody>
<tr>
<td>Afghanistan*</td>
<td>Kazakhstan</td>
<td>Russia</td>
</tr>
<tr>
<td>Armenia</td>
<td>Kenya</td>
<td>SAARC Countries*</td>
</tr>
<tr>
<td>Australia</td>
<td>Korea</td>
<td>Saudi Arabia</td>
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<td>Austria</td>
<td>Kuwait</td>
<td>Serbia</td>
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<td>Bangladesh</td>
<td>Kyrgyz Republic</td>
<td>Singapore</td>
</tr>
<tr>
<td>Belarus</td>
<td>Lebanon*</td>
<td>Slovenia</td>
</tr>
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<td>Belgium</td>
<td>Libya</td>
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<tr>
<td>Botswana</td>
<td>Luxembourg</td>
<td>Spain</td>
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<tr>
<td>Brazil</td>
<td>Malaysia</td>
<td>Sri Lanka</td>
</tr>
<tr>
<td>Bulgaria</td>
<td>Maldives*</td>
<td>Sudan</td>
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<tr>
<td>Canada</td>
<td>Malta</td>
<td>Sweden</td>
</tr>
<tr>
<td>China</td>
<td>Mauritius</td>
<td>Swiss Confederation</td>
</tr>
<tr>
<td>Cyprus</td>
<td>Mongolia</td>
<td>Syrian Arab Republic</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>Montenegro</td>
<td>Tajikistan</td>
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<tr>
<td>Denmark</td>
<td>Morocco</td>
<td>Tanzania</td>
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<tr>
<td>Egypt</td>
<td>Mozambique</td>
<td>Thailand</td>
</tr>
<tr>
<td>Ethiopia*</td>
<td>Myanmar</td>
<td>Trinidad &amp; Tobago</td>
</tr>
<tr>
<td>Finland</td>
<td>Namibia</td>
<td>Turkey</td>
</tr>
<tr>
<td>France</td>
<td>Nepal</td>
<td>Turkmenistan</td>
</tr>
<tr>
<td>Germany</td>
<td>Netherlands</td>
<td>U.A.E.</td>
</tr>
<tr>
<td>Greece</td>
<td>New Zealand</td>
<td>U.K.</td>
</tr>
<tr>
<td>Hashemite Kingdom of Jordan</td>
<td>Norway</td>
<td>U.S.A.</td>
</tr>
<tr>
<td>Hungary</td>
<td>Oman</td>
<td>Uganda</td>
</tr>
<tr>
<td>Iceland</td>
<td>Pakistan*</td>
<td>Ukraine</td>
</tr>
<tr>
<td>Indonesia</td>
<td>People’s Democratic</td>
<td>Ukraine</td>
</tr>
<tr>
<td>Iran*</td>
<td>Philippines</td>
<td>United Arab Republic</td>
</tr>
<tr>
<td>Ireland</td>
<td>Poland</td>
<td>United Mexican States</td>
</tr>
<tr>
<td>Israel</td>
<td>Portuguese Republic</td>
<td>Uzbekistan</td>
</tr>
<tr>
<td>Italy</td>
<td>Qatar</td>
<td>Vietnam</td>
</tr>
<tr>
<td>Japan</td>
<td>Romania</td>
<td>Zambia</td>
</tr>
</tbody>
</table>

* Limited Agreements
To avail the benefit of the Double Taxation Avoidance Agreement, the non-resident assessee has to mandatorily provide a certificate containing such particulars, as may be prescribed, of his being a resident in any country outside India, obtained by him from the Government of that country (Applicable from AY 2013-14)

**Tax Information Exchange Agreement**

- Bermuda
- Bahamas
- Isle of Man
- British Virgin Islands

**Advance Rulings**

Income-tax law in India is complicated as in most other countries. It is sometimes not easy to construe the legal provisions; doubts arise in the minds of tax gatherers and taxpayers alike as to the correct interpretation of law. This situation creates more practical difficulties to foreign enterprises doing business in India. Therefore, with a view to minimizing uncertainty in taxation of income, the Government of India has introduced a system of Advance Rulings to enable any non-resident to obtain binding rulings on its income-tax liability even before the income is earned. The system of Advance Rulings is primarily meant for non-residents so that the complexity of the Indian tax legislation or the delay and cost of litigation in tax matters may not act as a disincentive for their investment proposals in India. Accordingly, the foreign companies and other non-residents proposing to do business in India can know the extent of their tax liability in advance. For this purpose, Chapter “XIX-B” consisting of sections245N to 245V was inserted in the Income-tax Act by the Finance Act, 1993, with effect from 1st June, 1993.

An authority constituted under the Income-tax Act, which is known as the Authority for Advance Rulings, renders advance Rulings in India.

**Transfer Pricing**

As per provisions of Income Tax Act, any income arising from an international transaction or a specified domestic transaction shall be computed having regard to the Arm’s Length Price.
International transaction means a transaction between two or more Associated Enterprises, either or both of whom are non-residents, in the nature of purchase, sale or lease of tangible or intangible property or provision of services or lending or borrowing money or any other transaction having a bearing on the profits, income, losses or assets of such enterprises. In addition, a mutual agreement or arrangement between two or more associated enterprises for allocation or apportionment of, or any contribution to, any cost or expense incurred or to be incurred in connection with a benefit, service, or facility provided or to be provided to any one or more of such enterprises will also be subject to the Arm’s Length rule.

Specified domestic transaction means any of the following transactions, not being an international transaction, namely:—

- any expenditure in respect of which payment has been made or is to be made to a related parties or to persons who have substantial interest in the business of the assessee
- any transfer of goods or services within the business units which are not at market price
- any transactions with tax holiday units

and where the aggregate of such transactions entered into by the assessee in the previous year exceeds a sum of fifty million rupees.

Arm’s Length Price means a price, which is applied or proposed to be applied in a transaction between persons other than associated enterprises in uncontrolled conditions. The Arm’s Length Price has to be computed by applying the most appropriate method out of the following 5 specified methods:

(a) Comparable uncontrolled price method;
(b) Resale price method;
(c) Cost plus method;
(d) Profit split method;
(e) Transactional net margin method

As per provisions of the Act, all or anyone of the associated enterprises must be a “non-resident”.
An “enterprise” is an Associated Enterprise:

- If it participates directly or indirectly in the management or control or capital of the other Enterprise

- If any person who participates in the management or control or capital of an enterprise and also participates in the management or control or capital of the other enterprise.

- All assessee subject to transfer pricing regulation are required to be maintain documentation of all International transactions with Associated Enterprises for each year. Further all such assessee are required to file a Transfer Pricing Report issued by a chartered accountant with the Income tax department within November 30 immediately following the end of each Financial Year.

In case the Assessing Officer makes adjustments to the returned income due to the order of the Transfer Pricing Officer, assessee has an option to approach the Dispute Resolution Panel with its objections.

The Dispute Resolution Panel, after proper inquiry and having heard both the assessee and the Assessing Officer, may confirm, reduce or enhance variations proposed in the draft order for passing of the assessment order. Dispute Resolution Panel Order is appealable directly before ITAT

**Securities Transaction Tax (STT)**

STT is payable on transactions in equity shares, derivatives and units of an equity-oriented funds entered in a recognized stock exchange or on sale of units of any equity mutual fund to the mutual fund.

The rates of STT are:

- Delivery-based transactions in equity shares or units of an equity-oriented funds—Buyer and seller each to pay 0.1% on value of such transaction (Applicable from 01-07-2012)

- Sale of units of any equity oriented mutual fund to the mutual fund Seller to pay 0.25%

- Non-Delivery based transactions in equity shares or units of equity- oriented units - Seller to pay 0.125%

- Derivatives—Seller to pay 0.017%. 
• Sale of an option / futures in securities. Seller to pay 0.017% of value of such transaction.

• Sale of an option in Securities where option is exercised. Purchaser to pay 0.125% of value of such transactions.

• Sale of unlisted equity shares in an initial public offer and where such shares are subsequently listed in a recognized stock exchange - Seller to pay 0.2% (Applicable from 01-07-2012)

• STT is collected by the recognised stock exchange / mutual fund and paid to the government.

Wealth tax

This is a tax imposed on certain non-productive assets owned by the assessee. Some of the non-productive assets include jewellery, non-residential house property, etc. Investment in shares and other financial instruments are entirely exempt from Wealth tax. Wealth Tax is charged for every assessment year, on the net wealth of an individual/company, on the corresponding valuation date @ 1% of the amount by which net wealth exceeds ` 30,00,000.

INDIRECT TAXES

Customs Duty

• Item No. 83 of the Union list of the Constitution of India provides for the levy of Duties of Customs including export duties. Custom Duty is levied on goods imported into or exported from India. Predominantly, this duty is on import and partially on export of goods. In the present scenario of increasing globalization and entering into of free trade agreements with the members of the various regional trading blocks like SAARC & ASEAN & with WTO, the custom duty rates have been standardized by the regulatory authorities and the levy load reduced to a great extent. The peak rate has reduced from 30% in 2002-03 to 10% in 2007-08

• The customs duty on imports is levied when the goods cross the custom frontiers, i.e., when they enter the territorial boundaries of India. Goods can either be cleared for home consumption, directly from the proton the payment of custom duty or else can be cleared to warehouse without payment of duty, by furnishing a bond, wherefrom such goods can be cleared at a later date for home consumption, on payment of duty and other warehousing charges. Certain goods for import fall under the Negative List whereby specific permission is required before its import.
• For the purpose of computation of custom duty, rate and value are required.

• **Rate:** A separate act i.e. CTA (Customs Tariff Act) provides for the rates of import & export duties. There are two types of rates as specified in CTA. One is standard rate & the other one is preferential rate. The preferential rate is applicable only for the countries as notified by the Central Government.

• **Valuation:** The valuation is done as per Custom Valuation (DPIG) Rules, 1988 & transaction value is the primary basis for valuation under the Indian Customs Law.

• **Types of Duties under Customs Law:**
  - Basic Custom Duty i.e. BCD.
  - Additional Customs Duty i.e. CVD (Countervail Excise Duty).
  - Additional Duty of Customs in lieu of VAT.

• In addition following duties can also be levied to protect domestic industry
  - Anti-Dumping Duty.
  - Countervailing duty on subsidized articles.
  - Safeguard Duty.
  - Protective Duty.

• Due to imposition of these additional duties, the effective custom rate becomes much higher than 10%. Certain Exemptions/concessions are available for imports under specific schemes. The foreign trade policy also provides incentives for exports like Duty drawback, Export promotion Capital Goods Scheme (EPCG) etc.

**Excise Duty**

Item No. 84 of the Union List of the Constitution of India provides for the levy of Excise Duty on goods produced or manufactured in India. The incidence of tax is normally passed on to the buyer. Though the tax levy is on the manufacture of goods, the tax is required to be paid on removal of goods from the factory premises where the manufacture takes place. Thus the outflow of funds can be delayed till the goods are removed from the factory.

For the purpose of computation of excise duty, rate and value are required.

**Rate:** A separate Act i.e. CETA (Central Excise Tariff Act) provides for the rates of excise duties and goods must be essentially mentioned in CETA to become excisable. The rates are on a declining trend & at present most of the products mentioned in CETA are either charged at 12% or are NIL rated.
Valuation: The Excise Act provides three basis for the Calculation of excise duty:

1. Specific Duty payable on the basis of weight, length etc.
2. Tariff Value i.e. values fixed by the Central Government for certain notified goods.
3. Retail Sale Price i.e. on the basis of MRP subject to certain abatements.

Duty is charged mostly on an ad- valorem basis. Value for the purpose of calculating excise duty is taken as per the Central Excise Valuation Rules, 2000. Where price is the sole consideration for sale, and buyer & seller are not related person, assessable value is taken to be 'Transactional Value'. It is the price at which goods are sold by the assessee at the time & place of removal.

CENVAT-Avoidance of Double Taxation:

Double taxation on the goods manufactured, which consists of duty paid on raw materials can be avoided by applying the provisions of CENVAT (Central Value Added Tax).

Cess @3% is applicable on duties of Customs and Excise.

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

CST & VAT are the taxes on sale of goods. CST is charged by the Central Government on inter-state sales & VAT is charged on intrastate sales by the respective state government.

For the present CST will continue, though it is proposed to be phased out in due course. The provisions in respect of Central State Tax are summarized below:

- The rate of CST is 2%.
- There will be no credit of CST paid on inter-state purchases.
- If goods are sent on stock transfer outside the state, input tax credit in excess of 4% will be allowed as credit. In other words, input tax to the extent of 4% will not be allowed as credit, if goods are sent inter-state.

The Government has implemented a Value Added Tax (VAT) regime in most of the States from 1st April 2005. The VAT scheme in India is quite similar to those prevailing in other Countries. It is a multi-point tax & is levied on value added at each stage. Under the VAT scheme, full input tax credit is available in respect of locally procured goods and in respect of capital goods, input credit is available on a staggered basis over a period of two to three years. Accordingly, it removes the cascading effect of tax for intermediate businesses.
The rate of VAT in most states are as under except in some states where certain higher rates have been prescribed:

- 0% for natural and unprocessed products and others essential goods;
- 1% for silver, gold ornaments, etc.;
- 5.5% for agricultural and industrial inputs, IT products, Capital goods, items of basic necessities, etc.; and
- 14.5% for other goods.

Sales tax (i.e. CST & VAT) is levied on the value of goods sold. The value of goods will include the cost of manufacture, excise duty levied on the cost of manufacture and profit margin adjusted in the unit rate. Sales tax is recovered from the first buyer and passed on the exchequer. Second Sales do not bear the burden of Sales Tax. Rates of sales tax are different in various states.

**Service Tax**

Item No. 92C of the Union List of the Constitution of India provides for the levy of Service tax in India. There is no separate Act for service tax and provisions relating thereto are given in the Finance Act itself. The Finance Act, 2012 has made radical changes in the scope of service tax. Service tax is levied on all services except those provided in the Negative List (Applicable from 01-07-2012) and which are specifically exempt via Mega Exemption Notification.

Negative List: This list contains 17 services which do not fall under the purview of service tax

Mega Exemption Notification: This list provides those services which specifically exempt from service tax

**Rate:** Service tax is charged at a Specified rate on the value of taxable services. The rate of Service Tax is fixed at 12.36% (including cess) on the value of chargeable services (Applicable from 01-04-2012)

**Valuation:** Service tax is basically levied on the value of the services provided as per the Valuation Rules. Non-monetary consideration can also be subjected to service tax levy.

**Exemption to Small Scale Service Providers:** Exemption is given with regard to service tax to Small Scale Service Providers when the value of taxable services provided does not exceed Rs. 10,00,000
Export/ Import of Services: The Export of Services Rules, 2005 & Import of Services Rules, 2006 respectively specify the criteria based on which a particular service would qualify as an exporter import. In case of export of services, no service tax is payable. Further the exporter can also claim rebate/refund of excise duty/ service tax paid on inputs/ input services used in the export of the service. The same is not applicable from 01-07-2012

From 01-07-2012, Place of Provision of Service Rules (PPS) will be applicable. As per these rules, service tax will be leviable on all services which are provided or are deemed to be provided in a taxable territory. The place of provision of service shall be the location of service receiver usually, except in that case where the place of provision has been specified in these rules. In case any service falls within more than one rule mentioned in PPS Rules, in such case, the place of provision of service will be determined as per the rule which was later in the order of the Rules.

CENVAT Credit: The provisions of CENVAT Credit are also applicable in case of Service tax i.e. credit of tax on input/ input services can be availed. Further credit Rules also allow a service provider to avail & utilize the credit of additional duty of excise/customs (on inputs as well as capital goods) for the payment of service tax.

Point of Taxation: Recently government brought stringent provisions of service tax to get early revenue to the government by introducing Point of Taxation Rules, 2011. The purpose of rule is to set out as to when service tax to be paid by the service provider and determination of effective rate of service tax.

Point of Taxation means the point in time when a service shall be deemed to have been provided so that tax to be paid to government. This is for the purpose of Collection of Service Tax.

The following are the Point of Taxation:-

<table>
<thead>
<tr>
<th>Situation</th>
<th>Point of Taxation</th>
</tr>
</thead>
<tbody>
<tr>
<td>If Service Provided</td>
<td>Date of Invoice (If Invoice not raised within 30 days of provision of service then date of completion of service) or Date of amount received whichever is earlier</td>
</tr>
<tr>
<td>Before provision of service Invoice</td>
<td>Date of Invoice or Date of payment received whichever is earlier</td>
</tr>
<tr>
<td>raised and payment received</td>
<td></td>
</tr>
<tr>
<td>If advance received towards provision</td>
<td>Date of Advance received</td>
</tr>
<tr>
<td>of service</td>
<td></td>
</tr>
</tbody>
</table>
**Stamp Duty**

Almost all documents executed in India are chargeable to Stamp Duty at specified rates as mentioned in the relevant Acts. The rate structure is decided by the states. The legal enforceability of any document requiring bearing stamp duty is considered by any authority only when it bears stamp at the prescribed rate applicable in the place of its execution.

**Octroi Duty/Entry Tax**

This is a tax levied by the municipalities of various towns and cities at the time of entry of goods into such towns and cities. It is also identified as entry tax for entry of goods in the respective jurisdiction of the local authorities. Exemptions and concessions in the duty are being offered by local authorities depending upon their requirements. There is no proposal to extend VAT to entry tax or Octroi levied by local authorities. These will continue.

**Research and Development Cess**

Under the Research and Development Cess Act, 1986, cess is levied by Central Government at the rate of 5% on the import of technology into India. Such cess is required to be paid by the importer on payments made for such imports.

**Goods & Service Tax (GST)**

The indirect tax regime in India is proposed to be replaced by a Comprehensive dual GST with Central GST and State GST to be levied concurrently by the Centre and the States. GST would replace most indirect taxes currently in place. The tax base is anticipated to be comprehensive, including virtually all goods and services, with minimum exemptions.

Following the destination principle, GST structure would include imports while exports would be zero-rated. For inter-State transactions in India, the State tax would apply in the State of destination as opposed to that of origin.

Full input credit system would operate in parallel for CGST and SGST, however, cross utilization of input tax credit between CGST and SGST would not be permitted.

GST will have a far reaching impact on virtually all aspects of businesses operating in the country, for instance, pricing of products and services; supply chain optimization; IT, accounting and tax compliance systems.
Special Economic Zones and Software Parks

- With a view to giving impetus to its export drive, the government has set up Export Processing Zones (EPZ's), which provide almost free trade environment for export production to make Indian export products more competitive in the world market.

- The Government has introduced various schemes to offer special incentives and tax concessions to businesses engaged in exports such as the 100% Export oriented Units (EOU’s) Scheme, Software Technology Parks (STP's) Scheme and the Electronic Hardware Technology Parks (EHTP's) Scheme. The schemes provide for a minimum value addition to the cost of production and the units have to be a net positive foreign exchange earner.

SPECIAL ECONOMIC ZONE (SEZ)

- Foreign Trade Policy provides for setting up of SEZs in the country with a view to enable an internationally competitive and hassle-free environment for exports. The SEZ Policy was announced by the government in 2000. Subsequently SEZ Act 2005 was enacted in June 2005.

- The important features of the SEZ policy are enumerated below:
  - SEZs are to be specifically delineated duty free enclaves and shall be deemed to be foreign territory for the purposes of trade operations and duties and tariffs.
  - Goods going into the SEZ area from Domestic Tariff Area (DTA) shall be treated as deemed exports and goods coming from the SEZ area into DTA shall be treated as if the goods are being imported.
  - SEZ units can be setup for manufacture of goods and rendering of services, production, processing, assembling, trading, repair, remaking, reconditioning, re-engineering including making of gold/silver/platinum jewellery and articles thereof or in connection therewith.
  - SEZs may be set up in the public, private or joint sector or by State Governments.
  - SEZ should have the minimum prescribed area as per the policy.
  - SEZ units would have to be positive Net Foreign Exchange Earners and would not be subject to any minimum value addition norms for export obligations.
  - 100% FDI would be permitted for all investments in SEZs except a few activities under the negative list (tobacco, alcoholic beverages, arms and ammunition, etc.).
  - The Development Commissioner would be responsible for administrative control of the zone.
**Fiscal Incentives Available to SEZ Developers/Units**

**Direct Tax Incentives for SEZ Developers**

- 100% tax holiday for the business of developing SEZ available for a period of any 10 consecutive years out of 15 years beginning from the year in which the SEZ is notified.
- The above benefits are also available in respect of co-developers providing infrastructure facilities.

**Direct Tax Incentives for SEZ Units**

- 15 year tax holiday (100% for first 5 years, 50% for next 5 years, and up to 50% of ploughed back export profit for next 5 years, subject to creation of special purpose reserves) on export profits available to units commencing business after April 1, 2005.
- The provisions of MAT were not applicable to SEZ Units till AY 2011-12. Now the same is applicable from AY 2012-13.

**Indirect Tax Incentives for SEZ Developers/Units**

SEZ developers and entrepreneurs are eligible for the following benefits for carrying out authorised operations in the SEZ:

- Exemption from customs duty on good/services imported or exported. [Supplies from Domestic Tariff Area (DTA) to SEZ to be treated as exports, while those from SEZ to DTA to be treated as imports]
- Exemption from excise duty on goods procured from DTA.
- Drawback or any other admissible benefits on goods brought or services rendered by DTA.
- Exemption from service tax on taxable input services.
- Exemption from Central Sales Tax on interstate sale or purchase of goods except for newspaper.
- Removal of goods into DTA also permitted subject to prescribed conditions and on payment of all applicable customs duty leviable on importation of such goods into India.
SOFTWARE TECHNOLOGY PARKS - STP SCHEME

- The STP scheme is a 100 percent export oriented scheme for the development and export of computer software, including export of professional services using communication links or physical media. This scheme is unique in its nature as it focuses on one product/sector, i.e. computer software.

- The scheme integrates the government concept of 100 percent Export oriented Units (EOUs) and Export Processing Zones (EPZs) and the concept of Science Parks/Technology Parks, as operating elsewhere in the world.
  - Approvals are given under single window clearance scheme.
  - A company can set up a STP unit anywhere in India.
  - 100% Foreign Equity is permitted and approved by the jurisdictional Director of STPI.
  - All the imports of Hardware & Software in the STP units are completely duty free.
  - Import of secondhand capital goods is also permitted.
  - It shall be a positive net foreign exchange earner which shall be achieved over a block of 5 years.
  - Use of computer system for commercial training purposes is permissible subject to the condition that no computer terminals are installed outside the STP premises.
  - Sales in the Domestic Tariff Area (DTA) shall be permissible up to 50% of exports in value terms.
  - The capital goods purchased from the Domestic Tariff Area (DTA) are entitled to benefits like exemption from excise Duty & reimbursement of Central Sales Tax (CST)
  - Capital invested by Foreign Entrepreneurs, know-how Fees, Royalty, Dividend etc., can be freely repatriated after payment of Income Taxes due on them, if any.
  - Repatriation of foreign currency for payments can be freely done.
Other Economic Laws & Regulations

RESERVE BANK OF INDIA

• The Reserve Bank of India (Reserve Bank) was established on April 1, 1935 in accordance with the provisions of the Reserve Bank of India Act. The objectives are to regulate the issue of bank notes, regulate the banking industry, keeping reserves with a view to securing monetary stability in India, and to operate the currency and credit system of the country to its advantage.

• The Reserve Bank has multifaceted role and acts in the following various capacities:

  Monetary Authority
  To formulate, implement and monitor the monetary policy in order to maintain price stability and ensure adequate flow of credit to productive sectors.

  Regulator and Supervisor of the Financial System
  To prescribe the broad parameters of banking operations within which the country’s banking and financial system function in order to maintain public confidence in the system, protect depositors’ interests and provide cost-effective banking services to the public.

  Manager of Exchange Control
  To manage the Foreign Exchange Management Act, in order to facilitate external trade and payment and promote orderly development and maintenance of the foreign exchange market in India.

  Issuer of Currency
  To issue and exchange or destroy currency and coins not fit for circulation in order to give the public the adequate quantity of supplies of currency notes and coins and in good quality.

  Banker to the Government
  To perform merchant banking function for the Central and State Governments and also act as their banker.

  Banker to Banks
  To maintain banking accounts of all Scheduled banks.
SECURITIES AND EXCHANGE BOARD OF INDIA

- The Securities and Exchange Board of India (SEBI) regulates and promotes an orderly development of the capital market in India.

- SEBI has three primary functions:
  - To deal with all matters relating to the development and regulation of the securities market and investor protection, and advise government on these matters
  - To prepare comprehensive legislation for the regulation and development of the securities market
  - To carry out such functions as may be delegated by the Central Government for the development and regulation of the securities market

- Mutual funds, merchant bankers, FIIs, portfolio managers, stockbrokers, sub-brokers, share transfer agents, bankers and registrars to public issue, underwriters, investment advisors and any other intermediaries who may be associated with the securities market in any manner have been brought under the purview of the regulatory powers of SEBI. Rules, regulations and guidelines have been issued by the SEBI in this regard and are available on the website http://sebi.gov.in.

- Among the key SEBI Regulations are the following -
  
  **SEBI Insider Trading Regulations**

  The SEBI (Prohibition of Insider Trading) Regulations incorporate several disclosure and other reporting requirements, the onus of which is cast on the company, its directors, employees and also on intermediaries such as investment bankers, lawyers, auditors, brokers etc. These Regulations seek to curb insider trading, price rigging, unfair practices, etc. by those possessions of certain vital and confidential information.

  All listed companies must frame a Code of Internal Procedures and Conduction the lines of the specified model code to prevent insider trading. Violation of the code of conduct will lead to disciplinary action by the company, which may include a wage freeze, suspension, ineligibility to participate in ESOPs, etc., in addition to any action by SEBI.

  Stock brokers, sub-brokers, transfer agents, investment bankers, registrars, bankers to a public issue, investment advisers, portfolio managers, asset management companies, trustees of mutual funds, professional firms such as auditors, accountancy firms, law firms, analysts, consultants, etc., assisting or advising listed companies are covered by this requirement.
SEBI Takeover Regulations

The Takeover Regulations apply when there is an acquisition of equity shares/ voting power/ control of a listed company in excess of the specified limits. Based on the limits, the Acquirer has to comply with reporting requirements or acquire shares from the public. The person acquiring the shares/voting power/control is an Acquirer and the company whose shares are being acquired is the Target Company.

Disclosure on Acquisition

- Acquirer acquires (in addition to shares already held by him) greater than or equal to 5% or 10% or 14% or 54% or 74% shares/voting power in a listed company
- Acquirer must disclose his holding at each stage to the Target Company and Stock Exchanges within two days of acquisition
- Target Company must in turn disclose the same to the Stock Exchanges
- Subsequent continuing disclosures are required to be made.

Any Acquirer who acquires shares/voting in excess of the limits have to make a Public Announcement an advertisement, through a merchant banker specifying that he desires to acquire a minimum of 20% of the voting capital of the company from the public.

A Public Announcement is required to be made when:

- Acquisition (in addition to shares already held) of shares/voting power upto 15% by an Acquirer/ Persons Acting in Concert (PACs)
- Acquisition of shares/voting power greater than or equal to 5% in any financial year by an Acquirer/ PACs already holding greater than or equal to 15% but less than or equal to 55% (popularly known as ‘Creeping Acquisition’)
- Acquisition of any shares/voting power by an Acquirer/PACs already holding greater than or equal to 55% but less than or equal to 75%
- Acquisition of control over a Target Company (with or without shares/voting power)

Acquisition could be director indirect, i.e. by acquiring an unlisted company, via the vehicle of a foreign company, etc. For an indirect acquisition, the Public Announcement is to be made within three months of the restructuring/acquisition.
The Public Announcement must contain the Minimum Offer Price calculated as under:

<table>
<thead>
<tr>
<th>For frequently traded shares</th>
<th>For infrequently traded shares</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Highest of:</strong></td>
<td><strong>Highest of:</strong></td>
</tr>
<tr>
<td>• Negotiated price between Acquirer and shareholders of Target Company</td>
<td>• Negotiated price between Acquirer and shareholders of Target Company</td>
</tr>
<tr>
<td>• Acquisition price paid by Acquirer in 26 weeks prior to Public Announcement</td>
<td>• Acquisition price paid by Acquirer in 26 weeks prior to Public Announcement</td>
</tr>
<tr>
<td><strong>Higher of the average of:</strong></td>
<td><strong>Others Parameters such as:</strong></td>
</tr>
<tr>
<td>• Weekly high/low of closing prices during 26 weeks prior to the Public Announcement</td>
<td>• Book Value</td>
</tr>
<tr>
<td>• Average of daily high/low of closing prices during the 2 weeks prior to Public Announcement</td>
<td>• EPS</td>
</tr>
<tr>
<td></td>
<td>• P/ E Multiple vis-a-vis Industry Average</td>
</tr>
</tbody>
</table>

The offer price may be paid in cash, listed equity shares/ rated secured instruments of the Acquirer.

**Other Conditions**

- Every Acquirer must provide for an Escrow Account of 25% of the consideration for offer sizes < INR 1 billion and 10% for the excess consideration above INR 1 Billion
- The Escrow may consist of cash with a bank, bank guarantee, securities with margin
- Various obligations are cast upon the Acquirer, Target Company and the merchant banker
- An offer once made can only be withdrawn if any statutory approval has been refused, the sole Acquirer has died or special circumstances exist which SEBI deems fit
- If the offer results in public shareholding falling below 10%, then the Acquirer shall buyout the remaining shares as per the SEBI Delisting Guidelines or within six months it shall raise the public shareholding by an offer for sale or by a fresh issue
Competitive Bids

- Any other person can make a competitive PA within 21 days of the first PA
- This Bid must be equal to the present + proposed shareholding of the first Acquirer
- The first Acquirer can revise his offer pursuant to the competitive bid within 14 days
- Both Acquirers can make upward revisions in the price and number of shares till seven days before the closure of the offer

Dematerialisation of Securities

Issue and allotment of shares in a Public/ Rights/ Offer for sale must be only in dematerialised (demat) form. However, an option must be given to the subscriber to receive the shares in physical format, i.e. certificate. Unlisted securities can also be issued in demat form.

Currently, there are two Depositories and several depository participants associated with one or both of these Depositories. A company whose securities are to be dematerialised must execute an agreement with the Depository.

A shareholder is required to open a separate demat account with the depository participant for every combination of shareholding. Almost all listed securities are now compulsorily traded in the demat form.

Transfer of securities in a demat form is exempt from stamp duty applicable to transfer of shares under the Indian Stamp Act. However, the transfer would attract demat charges.

LIMITED LIABILITY PARTNERSHIPS

- Limited Liability Partnership (LLP) is a form of business structure which combines best elements of the partnership and corporate structures of carrying out business and provides considerable flexibility in management and for conducting businesses, especially to small and medium firms. The LLP were recently introduced in India vide the Limited Liability Partnership Act, 2008 (LLP Act). The salient features of the LLP Act are as under:

  - The LLP is an alternative corporate business vehicle that would give the benefits of limited liability but allows its members the flexibility of organizing their internal structure as a partnership based on an agreement
The LLP Act does not restrict the benefit of the LLP structure to certain classes of professionals only and would be available for use by any enterprise which fulfills the prescribed requirements.

While the LLP is a separate legal entity, liable to the full extent of its assets, the liability of the partners would be limited to their agreed contribution in the LLP. Further, no partner would be liable on account of the independent or unauthorised actions of other partners, thus allowing individual partners to be shielded from joint liability created by another partner’s wrongful business decisions or misconduct.

A LLP shall be a body corporate and a legal entity separate from its partners. It will have perpetual succession. The Indian Partnership Act, 1932 does not apply to LLPs. There shall be no upper limit on the number of partners in an LLP unlike in an ordinary partnership firm where the maximum number of partners cannot exceed 20. Under the LLP Act one of the partners of the LLP must be an Indian.

The taxation of LLPs is addressed in the Income tax Act, 1961 (see Section IV).

The LLP Act provides for corporate actions like mergers, amalgamations, etc.

While the enabling provisions in respect of winding up and dissolutions of LLPs have been made, detailed provisions in this regard would be provided by way of rules under the Act.

The Act also provides for conversion of existing partnership firm, private limited company and unlisted public company into a LLP by registering the same with the Registrar of Companies (ROC). The ROC is the authority responsible to register and control LLPs.

The governance of LLPs shall be in electronic mode.

**COMPANIES ACT AND CORPORATE GOVERNANCE**

- The Companies Act regulates the formation, financing, functioning and winding up of companies. The Companies Act prescribes regulatory mechanism regarding all relevant aspects including organisational, financial and managerial aspects of companies. In the functioning of the corporate sector, although freedom of companies is important, protection of investors and shareholders is equally important.

- The main objects of the Companies Act are:
  - To protect the interests of the large number of shareholders as there exists separation of ownership from management in a company
  - To safeguard interests of creditors
To help development of companies on healthy lines

To help attainment of the social and economic objectives of the Government of India

To equip the government with adequate powers of intervention, in the affairs of a company in public interest as prescribed by law to protect the interest of all stakeholders

- Synergies exist between the Companies Act and the regulations issued by the SEBI in common matters relating to governance, management, issue of securities, investor protection, etc.

- Specifically, the Companies Act inter alia provides for the following:
  - Incorporation of companies and related matters;
  - Issue of prospectus and other matters relating to issue of shares and debentures and miscellaneous provisions relating thereto;
  - Registration of charges;
  - Management and administration, which deal with the following matters:
    - Registered office
    - Commencement of new businesses
    - Register of members and debenture holders, including foreign registers
    - Meetings and proceedings
    - Managerial remuneration
    - Dividend payments
    - Accounts and audit
    - Investigation of the affairs of a company
    - Appointment of the Board of Directors, conduct of Board meetings, powers of the Board, disclosures of interest, remuneration and compensation, etc.
  - Provisions relating to company secretaries and managers;
  - Powers of the Central Government to remove managerial personnel on recommendation of the Tribunal;
  - Arbitration, compromises, arrangements (including amalgamations) and reconstructions;
- Prevention of oppression and management;
- Revival and rehabilitation of sick industrial companies;
- Winding up proceedings;
- Incorporation of Producer companies and related matters - a Producer company is a company engaged in agriculture or any other primary activity or service which promotes the interests of farmers or consumers;
- Companies incorporated outside and carrying on business in India.

**Corporate Governance**

With a view to encourage companies to adopt good corporate governance practices leading to more transparent, ethical and fair business conduct, following provisions have been made:

- Director’s Responsibility Statement to be included in the Director’s Report;
- Constitution of an Audit Committee;
- Debarring a person to act as a Director of a Company if default in filing Annual Returns, Accounts, or repayment of deposits/debentures/interest/dividend has taken place;
- Appointment of a Director in maximum 15 companies;
- Clause 49 of the Listing Agreement with Stock Exchanges providing for promoting and raising the standards of corporate governance in companies

**FOREIGN EXCHANGE MANAGEMENT ACT**

- The Foreign Exchange Management Act (FEMA) replaced the Foreign Exchange Regulation Act (FERA) in 2000 and was enacted with the objective of facilitating external trade and payments and promoting the orderly development and maintenance of foreign exchange markets in India. The FEMA extends to the whole of India and also applies to branches, offices and agencies located outside India that are owned and controlled by a person resident in India. The Reserve Bank supervises compliance with the FEMA by specifying Regulations and issuing directions. The Central Government is empowered to make requisite Rules.

- As the FEMA regulates transactions between residents and non-residents, residential status is of utmost importance. Residential status under the FEMA is determined by the intent of the person to stay in India for an indefinite period of time as against physical stay.
A “capital account transaction” is a transaction that alters the assets and liabilities, including contingent liabilities outside India, of persons resident in India, or assets and liabilities in India, of persons resident outside India, and includes transactions specifically referred to in the FEMA.

The Reserve Bank has issued Regulations to specify:

- Any class or classes of capital account transactions that are permissible;
- The limit upto which foreign exchange will be admissible in the case of such transactions.

However, the Reserve Bank is not permitted to impose any restriction on the drawing of foreign exchange for payments due on account of the amortisation of loans or for the depreciation of direct investments in the ordinary course of business.

The Reserve Bank has issued Regulations which prohibit, restrict and regulate the following:

- Transfer or issue of any foreign security by a person resident outside India;
- Transfer or issue of any security by a person resident outside India;
- Transfer or issue of any security or foreign security by any branch, office or agency in India on behalf of a person resident outside India;
- Any borrowing or lending in foreign exchange in whatever form or by whatever name called;
- Any borrowing or lending in rupees in whatever form or by whatever name called between a person resident in India and a person resident outside India;
- Deposits between persons resident in India and persons resident outside India;
- The export, importer holding of currency or currency notes;
- The transfer of immovable property outside India, other than by way of a lease exceeding five years, by a person resident in India;
- The acquisition or transfer of immovable property in India, other than by way of a lease exceeding five years, by a person resident outside India;
- The giving of a guarantee or surety with respect to any debt, obligation or other liability incurred;
- The establishment of a branch, office or other place of business, by a person resident outside India for carrying out any activity.
A “current account transaction” is a transaction other than a capital account transaction. The Central Government has framed Rules under which current account transactions have been broadly classified as:

- Transactions that are prohibited;
- Transactions that require the prior approval of the Central Government;
- Transactions exceeding specified monetary limits, which require prior Reserve Bank approval

PREVENTION OF MONEY LAUNDERING ACT

The Prevention of Money Laundering Act was brought into force with effect from July 1, 2005. Under the Act, every banking company, financial institution and intermediary (including a stock broker, sub-broker, share transfer agent, banker to an issue, trustee to a trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and any other intermediary associated with the stock market and registered with the SEBI shall have to maintain a record of all the transactions of the nature and value of which have prescribed in the Rules notified under the Act. Such transactions include:

- All cash transactions of the value of more than INR 1 million, or its equivalent in foreign currency;
- All series of cash transaction integrally connected to each other which have been valued at below INR 1 million or its equivalent in foreign currency, where such series of transactions take place within one calendar month;
- All cash transactions where forged or counterfeit currency notes or bank notes have been used as genuine and where any forgery of a valuable security has taken place;
- All suspicious transactions, whether or not in cash

SEBI has issued guidelines to the intermediaries, specified above, in context of the recommendations of the Financial Action Task Force (FATF) on anti-money laundering standards. Compliance with these standards by all intermediaries and the country is imperative for international financial relationships. The guidelines lay down the minimum requirements/disclosures to be made in respect of the clients.

The intermediaries may specify additional disclosures to be made by their clients to address concerns of money laundering and suspicious transactions undertaken by clients.
Indian Contract Act, 1872

As per the Act, all agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and a lawful object, and are not expressly declared to be void. Every person who is a major (adult 18 years and above) according to the law to which he is subject, and who is of sound mind and is not disqualified from contracting by any law to which he is subject, is competent to contract.

The Information Technology Act, 2008

An Act to provide legal recognition for transactions carried out by means of electronic data interchange, commonly referred to as "electronic commerce" and which involve the use of alternatives to paper-based methods of communication and storage of information to facilitate electronic filing of documents with the Government agencies.

The Consumer Protection Act, 1986

The Act provides for better protection of the interests of consumers and for the purpose makes provision for the establishment of consumer councils and other authorities for the settlement of consumers' disputes.

The Competition Act, 2002

The Act provides for the establishment of a Commission to prevent practices having an adverse effect on competition; to promote and sustain competition in markets; to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets.

The Sale of Goods Act, 1930

Though contracts for sale of goods are subject to the general principles of the law relating to contracts i.e. the Indian Contract Act, 1872, but they have certain peculiar features such as, transfer of ownership of the goods, rights and duties of the buyer and seller, conditions and warranties implied under a contract for sale of goods, etc. which are the subject matter of the provisions of the Sale of Goods Act, 1930.

The Payment of Bonus Act, 1965

The Act provides for payment of bonus to persons employed in certain establishments (every factory and every other establishment where 20 or more workmen are employed on any day during an accounting year) on the basis of either profits or production or productivity. However the government may by way of notification make The Payment of bonus Act applicable to such classes of factories / establishment employing less than 20 employees as it may deem provided it shall not be applicable to factories / establishment employing less than 10 employees.
The Payment of Gratuity Act, 1972
The Act is applicable to every factory, shop or an establishment in which ten or more persons are employed, or were employed on any day of the proceeding twelve months and the said factory, shop or establishment shall continue to be governed by the provisions even if the number of persons employed therein fall below ten.

The Workmen Compensation Act, 1923
The Act's aim is to provide workmen and/or their dependents some relief by certain classes of employers in case of accidents arising out of and in the course of employment and causing either death or disablement of workmen.

Employees Provident Fund And Miscellaneous Provisions Act, 1952 (EPFMPA)
The Act was enacted with the main object of “making some provision for the future of the industrial worker after he retires or for his dependents in case of his early death” and accordingly to provide for the institution of provident funds, pension fund and deposit linked insurance fund for employees in the factories and other establishments.

The Industrial Dispute Act, 1947
An Act, to make provision for the investigation and settlement of industrial disputes and for certain other purposes.

The Minimum Wages Act, 1948
It was enacted to protect and safeguard the interest of workmen. Its main object is to ensure that the wage period is fixed and the payment of proper wages is made in time to workmen. In case of any violation, it provides a right to make claims.

The Negotiable Instruments Act, 1881
The aim of the Act is to regulate commercial transactions and was drafted to suit requirements of business conditions prevailing when it was passed in 1881. The instrument is mainly an instrument of credit readily convertible into money and easily passable from one hand to another.
The Factories Act, 1948
The Act is social legislation which has been enacted for occupational safety, health and welfare of workers at work places. It applies to the industries in which 10 or more than 10 workers are employed (in manufacturing process being carried out with the aid of power) or in which 20 or more than 20 workers are employed (in manufacturing process being carried out without the aid of power) or less than 10 workers are employed if activity notified by the state government on any day of the preceding 12 months.

The Trademark Act, 1999
An Act to amend and consolidate the law relating to trade marks, to provide for registration and better protection of trademarks for goods and services and for the prevention of the use of fraudulent marks. The Act consists of several provisions relating to the speedy disposal of appeals, rectification of applications and simplification of procedures for the registration of the registered user and for enlarging the scope of the permitted use of trademarks and prohibition on the use of someone else's trademarks as part of corporate names or names of business concerns.

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

Under this act several measures have been adopted to strengthen and streamline the enforcement of copyright protection. The amendments made to the copyright law have ushered in comprehensive changes and brought it in line with the new developments in satellite broadcasting, computer software and digital technology.

Indian Patents Act, 1970
The Act provides for the grant, revocation, registration, license, assignment and infringement of patents in India. The main aim of the amendments made to the Act was to grant product patents for invention relating to drugs and medicines.

Arbitration and Conciliation Act, 1996
The main purpose of the Act is to provide quick redress in commercial disputes by private arbitration which is necessary for the smooth functioning of business and industry. The object of arbitration is settlement of dispute in an expeditious, convenient, inexpensive and private manner so that they do not become the subject of future litigation between the parties.
APPENDIX A

VISA–TYPES AND PROCEDURES

The following types of visas are normally granted for entry to India –

**Temporary Visas**

Visitors to India need visas to enter the country unless they are Indian citizens. Nonresident Indians holding citizenship of another country are also required to obtain visas before arriving in India unless they hold a Person of Indian Origin (PIO) card issued by the Indian government. Visas must be obtained from the Indian Embassy or Consulate in the applicant’s home country. Special permits are required for visiting the Andaman and Nicobar Islands, Bhutan, Lakshadweep, remote North-eastern states and Sikkim. Tourist visas are valid for one to six months, generally beginning on the date the visa was issued and not on the date of entry into India. Tourist visas are generally multiple-entry visas, however, this option must be specifically requested at the time of application. In late 2009, India introduced new rules to curb the misuse of tourist visas in India (people who were living in India on a Tourist visas, and doing quick runs to a neighboring country and back every six months). Anyone who has an Indian tourist visa must now have two month gap between visits to India. There are a couple of exceptions two month gap rule.

**Business Visa**

This visa is required by persons visiting India on business. It is necessary to provide a letter from the applicant’s overseas employer stating the exact purpose of the visit, and the expected duration with the application. A letter of invitation from the Indian Company should also be provided. Business visas are valid for six months or more, with multiple entries. However, holders usually aren’t allowed to remain in India for more than six months at a time (depending on the nature of the business). Ten year business visas can be granted to foreigners who set up joint ventures in India.

**Employment Visa (Work Permits)**

A Multiple Entry employment visa is granted on a case by case basis to foreign nationals wishing to take up an employment in India. Indian companies are allowed to engage the services of foreign nationals without any approval. An employment visa must be obtained from the Indian Consulate in the country of residence of the applicant, prior to departure for India. The Employee must earning US$ 25,000 or more. Exceptions are made for volunteers, ethnic cooks, translators, non-English
language teachers, and members of Foreign High Commissions and Embassies. Employment Visa is generally valid for 1 year. Further extension upto 5 years may be obtained from Ministry of Home Affairs through the concerned FRRO/ Office of the Senior Superintendent of Police (SSP) in the concerned state in India.

Normally the following main papers are required to be filed with the application for employment visa –

- A letter of secondment from the overseas company and an employment letter from the Indian Company
- Expected duration of the employment

**Entry Visa/ X-Visa**

This visa is granted to those persons who wish to visit India for long term or permanent residence but do not belong to any of the above categories.

Foreign nationals coming to India on an employment visa may obtain an X-visa for their spouses before coming to India. If such a spouse decides to take up any employment in India, then the spouse will be required to go back to port of origination and obtain the requisite employment visa. According to the rules currently in force, a change of category of visa is not permitted. Any breach in the purpose/ category of the visa granted to a foreign national is illegal and can result in his/ her deportation. The foreign national can however apply for an extension of visa duration. The application is to be made to the Ministry of Home Affairs through the concerned FRRO/ Office of the Senior Superintendent of Police (SSP) along with required documents for getting visa extension.

**REGISTRATION REQUIREMENTS**

- Foreign national entering India for the first time on a visa (whether tourist, business or any other) which is valid for a period of more than 180 days, would be required to register themselves with the appropriate Foreigner’s Regional Registration Office (FRRO) within fourteen (14) days of his/ her arrival in India. Such a visa holder would be required to register with the relevant FRRO notwithstanding the fact that the visa holder intends to remain in India for a period that is less than the duration of the visa in question. Therefore, the implication of such a visa is that the foreign national holding the visa would be deemed to have the intention of remaining in India for the entire duration of the visa. In case foreign nationals are required to move around the country to comply with the demands of their jobs/profession. Under such circumstances, the foreign national would be required to obtain registration with the ‘relevant FRRO’ i.e. either in the first port of entry or where the residential address has been provided.
CONVERSION/ EXTENSION OF VISA

- In the event that a foreign national holding a visa valid for a period of less than one year desires to convert it into a visa valid for a period of more than one year, then he/she would be required to approach the Ministry of Home Affairs for conversion/extension of the said visa.

DRIVERS PERMIT

- Foreign nationals are not allowed to drive in India using their home country Drivers’ Licenses. Foreign nationals must obtain International Drivers’ Licenses in their home countries. International Drivers’ Licenses are generally valid for six months. To obtain an Indian Driver’s License, individuals must apply to the Regional Transport Authority, which issues Learners’ Permits. This enables the individual to drive if accompanied by an adult who has a valid Indian Driver’s License. One month after the Learner’s Permit is issued; a driving test and a verbal examination of the local driving laws must be taken. On successful completion of the examinations, the Regional Transport Authority issues a Driver’s License.
## APPENDIX B

### FDI CAPS FOR DIFFERENT SECTORS

Sector wise list of Foreign Direct Investment permitted under automatic route

<table>
<thead>
<tr>
<th>Illustrative List of Sector</th>
<th>Investment Cap - Automatic Route</th>
</tr>
</thead>
<tbody>
<tr>
<td>Airport-Greenfield Projects</td>
<td>100%</td>
</tr>
<tr>
<td>Airport – Existing Projects</td>
<td>100% (Automatic upto 74%, FIPB Beyond 74%)</td>
</tr>
<tr>
<td>Scheduled Air Transport Services -</td>
<td>49%</td>
</tr>
<tr>
<td>Non-Scheduled Air Transport Service</td>
<td>74% (Automatic upto 49%, FIPB Beyond 49%)</td>
</tr>
<tr>
<td>Helicopter Services</td>
<td>100%</td>
</tr>
<tr>
<td>Banking Private Sector</td>
<td>74% (Automatic upto 49%, FIPB Beyond 49%)</td>
</tr>
<tr>
<td>Civil Aviation Sector – Ground Handling Services</td>
<td>74% (Automatic upto 49%, FIPB Beyond 49%)</td>
</tr>
<tr>
<td>Civil Aviation Sector – Maintenance and repair organizations, flying training institutes and technical training institutions</td>
<td>100%</td>
</tr>
<tr>
<td>Insurance</td>
<td>26%</td>
</tr>
<tr>
<td>Pharmaceutical – Greenfield</td>
<td>100%</td>
</tr>
<tr>
<td>Mining and Exploration of metal and non-metal ores, Coal &amp; Lignite mining for Captive consumption</td>
<td>100%</td>
</tr>
<tr>
<td>Construction development projects</td>
<td>100%</td>
</tr>
<tr>
<td>Floriculture, Horticulture, Animal Husbandry, Pisciculture, Aquaculture etc.</td>
<td>100%</td>
</tr>
<tr>
<td>NBFCs – Only approved activities</td>
<td>100%</td>
</tr>
<tr>
<td>Industrial Parks – new and existing</td>
<td>100%</td>
</tr>
<tr>
<td>E-commerce activities</td>
<td>100%</td>
</tr>
<tr>
<td>Petroleum and Natural Gas – Private Sector</td>
<td>100%</td>
</tr>
<tr>
<td>Trading – Cash &amp; Carrying / Wholesale Trading</td>
<td>100%</td>
</tr>
<tr>
<td>Telecom – Basic and cellular, unified access services etc.</td>
<td>Cap – 74%, FIPB beyond 49%</td>
</tr>
<tr>
<td>Telecom – ISP with / without Gateways, Radio Paging, end-to-end bandwidth</td>
<td>Cap – 74%, FIPB beyond 49%</td>
</tr>
<tr>
<td>Note: The permission limit is subject to further conditions.</td>
<td></td>
</tr>
</tbody>
</table>
Sector wise list of Foreign Direct Investment permitted under approval route:

<table>
<thead>
<tr>
<th>Illustrative list of Sector</th>
<th>Investment Cap under FIPB</th>
</tr>
</thead>
<tbody>
<tr>
<td>Asset Reconstruction companies</td>
<td>49%</td>
</tr>
<tr>
<td>Broadcasting - FM Radio Broadcasting</td>
<td>26%</td>
</tr>
<tr>
<td>Broadcasting – (HITS) Broadcasting Service</td>
<td>74% (Automatic upto 49%)</td>
</tr>
<tr>
<td>Broadcasting - Cable Network Broadcasting, Direct to Home</td>
<td>49%</td>
</tr>
<tr>
<td>Setting up of Uplinking HUB / Teleports</td>
<td>49%</td>
</tr>
<tr>
<td>Up-linking a Non-News &amp; Current Affairs TV Channel</td>
<td>100%</td>
</tr>
<tr>
<td>Up-linking a News &amp; Current Affairs TV Ch.</td>
<td>26%</td>
</tr>
<tr>
<td>Courier Services</td>
<td>100%</td>
</tr>
<tr>
<td>Credit Information Companies</td>
<td>49%</td>
</tr>
<tr>
<td>Defense Industry</td>
<td>26%</td>
</tr>
<tr>
<td>Pharmaceutical – Existing Companies</td>
<td>100%</td>
</tr>
<tr>
<td>Petroleum Refining – Public Sector</td>
<td>49%</td>
</tr>
<tr>
<td>Print Media – news papers &amp; periodicals, Indian Edition of Foreign Magazines</td>
<td>26%</td>
</tr>
<tr>
<td>Print Media – Publishing / printing of Scientific Magazines, specialty journals, etc., Publication of facsimile edition of foreign newspapers</td>
<td>100%</td>
</tr>
<tr>
<td>Tea Sector including Tea Plantations</td>
<td>100%</td>
</tr>
<tr>
<td>Trading - Test Marketing</td>
<td>100%</td>
</tr>
<tr>
<td>Retailing – Single Brand</td>
<td>100%</td>
</tr>
<tr>
<td>Satellite - Establishment and Operation</td>
<td>74%</td>
</tr>
<tr>
<td>Banking – Public Sector</td>
<td>20%</td>
</tr>
<tr>
<td>Policy for FDI in Commodity Exchange</td>
<td>49%</td>
</tr>
<tr>
<td>Infrastructure Company in the Securities Market</td>
<td>49%</td>
</tr>
</tbody>
</table>