DOING BUSINESS

IN INDIA

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1 – INTRODUCTION

UHY is an international organisation providing accountancy, business management and consultancy services through financial business centres in around 100 countries throughout the world.

Business partners work together through the network to conduct transnational operations for clients as well as offering specialist knowledge and experience within their own national borders. Global specialists in various industry and market sectors are also available for consultation.

This detailed report providing key issues and information for investors considering business operations in India has been provided by the office of UHY representatives:

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Information in the following pages has been updated so that they are effective at the date shown, but inevitably they are both general and subject to change and should be used for guidance only. For specific matters, investors are strongly advised to obtain further information and take professional advice before making any decisions. This publication is current in August 2023.

We look forward to helping you do business in India.

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BACKGROUND

GEOGRAPHY

India is a natural subcontinent flanked by the Himalayas in the north, the Arabian Sea in the west, the Bay of Bengal in the east and the Indian Ocean in the south. It has a land frontier of 15,200km and a coastline of 7,517 km. The Andaman and Nicobar Islands in the Bay of Bengal and the Lakshadweep Islands in the Arabian Sea belong to the territory of India.

POPULATION

The Republic of India is the most populous country in the world with 1.4 billion people and a literacy rate of 74.04% with a great degree of regional variation (2011 census). Nearly 31.16% of India's population live in urban areas and 68.84% in rural areas. The country has 53 cities with a population of more than one million (2011 census). The census takes place once in 10 years, last due was in year 2021. However, due to the outbreak of pandemic, this has been delayed.

LANGUAGE

Hindi is the official language of the Republic. English, the associate official language, is widely used for business and understood almost everywhere in India.

GOVERNMENT

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, Delhi, 28 states and eight union territories. The central government has exclusive jurisdiction over all matters of national interest such as defence, communication, banking and currency, international trade and foreign affairs. The state governments have primary responsibility for matters such as law and order, education, health and agriculture.

The central government comprises a council of ministers headed by a prime minister. The prime minister is usually the head of the party which has the support of a majority in the parliament. Parliamentary elections are generally held once in five years.

JUDICIARY

India has a well-established and independent judicial system. The Supreme Court of India is the highest court of appeal at New Delhi and high courts in the states along with subsidiary district courts enforce the rule of law and ensure the fundamental rights of citizens, which are guaranteed by the Constitution.

CURRENCY AND BANKING

The Indian rupee (INR) is the country's currency.

The country's banking system is controlled and monitored by the Reserve Bank of India (Reserve Bank). The functions of the Reserve Bank are divided into two distinct areas:

- The Issue department, which looks after issues of currency.
- The Banking department, which regulates and supervises Indian banking.

The commercial banking system in India is fully developed with over 137 commercial banks including 45 foreign banks which together have more than 211,000 offices/branches including Automatic Telling Machines (ATMs) in various parts of the country.

TRAVEL REGULATIONS FOR FOREIGN PERSONNEL

Foreigners wishing to visit India can do so after obtaining 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.

Indian embassies and consulates abroad issue visas for up to five years with multiple entry options to foreign nationals for business purposes and for studies in India. For employment purposes, visas are issued for one year and can be extended for further stay. A foreign national staying in India for more than 180 days must obtain a registration certificate/residential permit from the Foreigners Registration offices of the state where s/he will be located.

Post pandemic, travellers arriving in India are required to fill a self-declaration form to declare their current health status.

ECONOMY

The Indian economy is rapidly integrating with the world economy.

A foreign investor who wishes to undertake business in India will find tremendous opportunities. The country's industrial policy offers a great deal of freedom to businesses and entrepreneurs to make their own investment decisions.

India has gone through close to two decades of economic reforms. Continuity in the economic liberalisation process and the political consensus which economic change necessitates has placed India on a growth path.

TABLE 1

Overview of economic statistics

	2022-23	2021-22
Gross domestic product (GDP) (in crores)	INR 15,760,363	INR 14,735,515
GDP – growth rate	7%	8.7%
Manufacturing sector – growth rate	0.6%	11.1%
Agricultural sector– growth rate	3.3%	3.5%
Services sector – growth rate	9.3%	9.6%
Exports	US$ 450.96 billion	US$ 422 billion
Imports	US$ 714.04 billion	US$ 613.05billion
<u>Balance of payments</u> Current Account Capital Account and Financial Account	 US$ -67.08 billion US$ 68.2 billion	 US$ -38.7 billion US$ 38.2 billion
Foreign exchange reserves End March	US$ 578.4 billion	US$ 607.3 billion
Exchange rate (US dollar to INR) On 31 March	INR 82.22	INR 75.65

FOREIGN DIRECT INVESTMENT

Continuous liberalisation in foreign direct investment (FDI) policy and simplification of procedures are contributing significantly to increase FDI into India. The government now conducts an annual review of FDI policy and procedures, and this has given added confidence to foreign investors that their concerns are addressed on a continuous basis.

TABLE 2

FDI by country

INVESTING COUNTRY	2022-23 USD BILLION	2022-23 % OF TOTAL	2021-22 USD BILLION	2021-22 % OF TOTAL
Singapore	17.2	37.37	15.9	27.01
Mauritius	6.1	13.32	9.4	15.98
USA	6.0	13.13	10.5	17.95
UAE	3.4	7.28	1.0	1.76
Netherland	2.5	5.43	4.6	7.86
Japan	1.8	3.91	1.5	2.54
United Kingdom	1.7	3.78	1.7	2.82
Cyprus	1.3	2.77	0.2	0.4
Cayman Islands	0.8	1.68	3.8	6.5
Germany	0.5	1.19	0.7	1.24
Total (Top 10)	**41.6**	**89.86**	**49.3**	**84.06**
Total FDI	**46**	**-**	**58.8**	-

TABLE 3

FDI by sector

SECTOR	2022-23USD BILLION	2022-23 % OF TOTAL	2021-22USD BILLION	2021-22 % OF TOTAL
Computer Software and Hardware	9.4	20.41	14.5	24.6
Services Sector	8.7	18.91	7.1	12.13
Trading	4.8	10.41	4.5	7.72
Drugs and Pharmaceuticals	2.1	4.47	1.4	2.41
Automobile Industry	1.9	4.13	7.0	11.9
Chemicals (other than fertilizers)	1.9	4.02	1.0	1.64
Construction (Infrastructure) Activities	1.7	3.7	3.2	5.53
Telecommunications	0.7	1.55	0.7	1.14
Metallurgical Industries	0.2	0.48	2.3	3.87
Construction Development	0.1	0.32	0.1	0.21
Total (Top 10)	**31.5**	**68.4**	**38.9**	**71.15**
Total FDI	**46**	**-**	**58.8**	**-**

Cumulative FDI equity inflows in India during the period April 2000 to March 2023 stood at USD 634.56 billion.

TABLE 4

India's major trading partners

COUNTRY	2022-23 (% OF INDIA'S TOTAL TRADE)	2021-22 (% OF INDIA'S TOTAL TRADE)
USA	11.05	11.50
China	9.77	11.11
UAE	7.28	7.02
Saudi Arabia	4.53	4.13
Russia	4.24	1.27

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2 – BUSINESS ENVIRONMENT

INDIA – AN ATTRACTIVE INVESTMENT LOCATION

India is one of the largest economies in the world with a stable democratic environment throughout 75 years of independence.

The main reasons for investing in the country are as follows:

- A large market size with a middle class population of 250–350 million, along with increasing purchasing power reflected by a remarkable increase in the purchase of consumer durables in recent years.
- Access to regional international markets through membership of regional integration frameworks such as the South Asian Association for Regional Cooperation (SAARC)
- Foreign investment is welcome in almost all sectors barring those of strategic concern.
- A foreign investment policy which is amongst the most liberal and attractive in emerging economies, with constant policy-based initiatives by the government in specific sectors such as telecoms, ports, airports etc.
- The Indian economy is well-suited to small and medium-sized companies which are now finding it difficult to operate in the saturated western markets.
- India has emerged as an across-the-board low-cost base, where multinationals can relocate.
- A large and diversified infrastructure spreads across the country
- An emphasis on technology, innovation and a knowledge base
- Large manufacturing capability spanning almost all areas of manufacturing activity.
- A developed banking system with a commercial banking network of more than 211,000 branches, supported by a number of national and state level financial institutions.
- A vibrant capital market comprising 7 recognised stock exchanges with more than 7,400 listed companies.
- The introduction of futures trading in selective commodities
- A steady flow of investments by private equity (PE) funds
- Legal protection for intellectual property rights
- An import regime conforming to World Trade Organisation commitments.
- The increased role of private and foreign investment in the Indian economy
- Rates of direct and indirect tax which are amongst the most competitive.
- Special investment and tax incentives for exports in certain sectors such as power, electronics, software, business process outsourcing and food processing.
- The rupee is fully convertible in current accounts and is being progressively liberalised in capital accounts.
- Availability of skilled manpower and professional managers
- English is the preferred business language.
- A well-developed insurance and financial services sector with an established regulatory authority
- Well-developed accountancy, legal, actuarial and consultancy professions
- A well-established legal system with an independent judiciary
- *Invest India:* As the national investment promotion and facilitation agency, Invest India focuses on sector-specific investor targeting and development of new partnerships to enable sustainable investments in India. Invest India also partners with substantial investment promotion agencies and multilateral organizations and actively works with several Indian states to build capacity as well as bring in global best practices in investment targeting, promotion and facilitation areas.

- *Startup India: A* flagship initiative of the Government of India, intended to build a strong eco-system for nurturing innovation and Startups in the country that will drive sustainable economic growth and generate large scale employment opportunities. The Government through this initiative aims to empower Startups to grow through innovation and design. Start-ups incorporated after March 31, 2016, can avail a three-year tax holiday in the first seven years of their existence, and enjoy a reduced tax rate of 25%.
- *Skill India:* This campaign aims to train over 400 million people in India in different skills by 2022. The Sector Skill Council has been set up to bridge the gap between industry demand and the skill ecosystem.
- *Make in India:* An initiative launched by the central government to encourage multi-national, as well as national companies to manufacture in India.
- *Smart City:* The Smart City concept was amongst the first major policy announcements by the Government in 2014. The broad concept of developing 'Smart cities' was to provide the burgeoning middle class with an aspirational lifestyle in their own home towns rather than have a large population continually migrate to the larger cities which were now faced with their own challenges, and were quite literally bursting at the seams. The larger picture of course, was to provide a better quality of life and standard of living and increase opportunity to the economically weaker sections of society.

INDUSTRIAL LICENSING

Industrial licences are regulated under the Industries (Development & Regulation) Act (IDR Act).

With progressive liberalisation and deregulation of the economy, the requirement for industrial licences has been substantially reduced. At present, industrial licensing for manufacturing is required only for the following:

- Industries retained under compulsory licensing.
- When a proposed location has certain restrictions.

INDUSTRIES RESERVED FOR THE PUBLIC SECTOR

The following industries are reserved for the public sector:

- Atomic energy
- Railway transport

INDUSTRIES REQUIRING COMPULSORY LICENSING

The following industries require a compulsory licence under the IDR Act/ appropriate authority:

- Cigars and cigarettes of tobacco and manufactured tobacco substitutes
- Electronic aerospace and defence equipment –all types
- Industrial explosives, including detonating fuses, safety fuses, gunpowder, nitrocellulose and matches.
- Hazardous chemicals including products hazardous to human safety and health.
- Distillation and brewing of alcoholic drinks.

MICRO, SMALL AND MEDIUM ENTERPRISES (MSMES)

The Micro, Small and Medium Enterprises Development Act, 2006 facilitates the promotion, development and enhancement of the competitiveness of micro, small and medium enterprises and addresses matters connected therewith or incidental thereto.

TABLE 5

Classification categories based on the amount of investment in plant and machinery/equipment and turnover

CATEGORY	INVESTMENT IN PLANT AND EQUIPMENT DOES NOT EXCEED	TURNOVER DOES NOT EXCEED
Micro enterprise	INR 10 million	INR 50 million
Small enterprise	INR 100 million	INR 500 million
Medium enterprise	INR 500 million	INR 2.50 billion

In today's liberalised and globalised environment, there are several preconditions to enhancing the global competitiveness of the MSMEs. These relate mainly to simplified systems and procedures, easy access to capital, positioning the MSMEs in the global value chain by enhancing their productivity (involving issues like technology upgrades, quality improvement, skill development etc.) and access to markets (both domestic and global). For the promotion and development of the MSMEs, the government has put in place policy measures as well as implemented several schemes/ programmes to address the requirements of the MSME sector in these areas.

LOCATION RESTRICTIONS

Industries located within 25 kilometres of the periphery of cities having a population of at least one million must obtain an industrial license from the Department for Promotion of Industry and Internal Trade (DPIIT).

The location restriction does not apply:

- If the unit is to be located in an area designated as an 'industrial area' before 25 July 1991
- In the case of electronics, computer software and printing and any other industry which is classified as a non-polluting industry.

The location of industrial units is subject to applicable location zoning, land use regulations, as well as environmental regulations to maintain ecological discipline.

PROCEDURE FOR OBTAINING INDUSTRIAL LICENCES

A number of initiatives have been taken for ease of doing business and for applying for an Industrial License, which include:

- Online application submission for Industrial License (IL) and Industrial Entrepreneur Memorandum (IEM) on 24X7 basis at DPIIT's G2B portal (Government-to-Business)
- Increasing initial validity period of Industrial License to three years from earlier two years
- Extension of validity upto seven years,
- Simplification of application Forms for Industrial License & Industrial Entrepreneur Memorandum etc.

POLICY FOR INDUSTRIES EXEMPT FROM LICENSING

Industrial undertakings exempt from requiring an industrial licence are only required to file an industrial entrepreneur memorandum (IEM) in the prescribed format.

CARRY-ON BUSINESS (COB) LICENCE

Small scale units by virtue of their natural growth may exceed the investment limit prescribed for small scale units. In such cases, these units need to obtain a carry-on-business (COB) licence based on the best production in the preceding three years. No export obligation is fixed on the capacity for which the COB licence is granted. An application is required to be made in the prescribed form and with the payment of a requisite fee. However, on further expansion of the capacity beyond the capacity included in the COB licence, the unit would need to obtain an industrial licence.

ENVIRONMENTAL CLEARANCES

Entrepreneurs are required to obtain statutory clearances relating to pollution control and the environment, as may be necessary, for setting up an industrial project. Industrial sectors are categorised based on Pollution Index which is a function of emissions, effluents, hazardous waste generated and consumption of resources.

FOREIGN INVESTMENT IN INDIA

The central government's liberalisation and economic reforms programme aims at rapid and substantial growth and integration with the global economy in a harmonised manner.

Industrial policy reforms have reduced industrial licensing requirements, removed restrictions on investments and expansion and facilitated easy access to foreign technology and foreign direct investment (FDI).

Investment in Indian companies can be made both by a foreign person (including individuals and entities) as well as resident Indian entities. Any non-resident investment in an Indian company is foreign direct investment (FDI)[1]. Investment by resident Indian entities could again comprise both resident and non-resident investment. Thus, an Indian company would have indirect foreign investment if the Indian investing company has foreign investment in it. Indirect investment can also be a cascading investment i.e., through multi-layered structure.

Foreign investments in an Indian company include all types of foreign investment i.e.:

- Equity instruments comprising of equity shares, convertible debentures, fully compulsorily mandatorily convertible preference shares and share warrants issued by an Indian company.
- Investment by foreign portfolio investors (FPI)
- Non-resident Indian (NRI)
- Securities other than capital instruments
- Investment in LLPs
- Investment by Foreign Venture Capital Funds (FVCIs)
- Indian Depository Receipts (IDRs).

Guidelines have been laid down for the calculation of total foreign investment i.e., direct and indirect foreign investment in, transfer of ownership and control in, and downstream investments by, an Indian company.

Besides the entry conditions on foreign investment, the investment/investors need to conform to all relevant sector laws, regulations, rules etc. (Refer Appendix I).

National security/internal security-related conditions (as contained in relevant statutes) will also have to be complied with.

[1] FDI means investment in equity instruments of an unlisted company and 10% or more on the post issue paid up equity of a listed company.

State governments/union territories have regulations in relation to matters in their legislative domain. These conditions also have to be met/complied with.

PROHIBITED INVESTMENTS

Foreign investment is prohibited in a company or a partnership firm or a proprietary concern or any entity, whether incorporated or not, which is engaged or proposes to engage in the following activities:

- Lottery businesses
- Gambling and betting including casinos
- Chit fund
- Nidhi company
- Trading in transferable development rights
- Real estate business or construction of farm houses, subject to exceptions. "Real estate business" shall not include development of townships, construction of residential/commercial premises, roads or bridges and Real Estate Investment Trusts (REITs) registered and regulated under the SEBI regulations
- Manufacturing of cigars, cheroots, cigarillos and cigarettes, tobacco and tobacco substitutes
- Activities/sectors not open for private sector investment (e.g., atomic energy, railway operations)
- Foreign technology collaboration in any form including licensing for franchise, trademark, brand name, management contract is also prohibited for lottery business and gambling and betting activities.

PERMITTED INVESTMENTS

In sectors other than those prohibited above, FDI can be made either under the:

- Automatic route, or
- Approval route i.e., with the specific prior approval of the government.

A person resident outside India or an entity incorporated outside India can invest in India subject to the FDI policy.

PROCEDURE UNDER AUTOMATIC ROUTE

FDI in sectors/activities in terms of sector specific guidelines (Refer Appendix I) falling under the automatic route do not require any prior approval either by the government or the Reserve Bank. The investment-receiving company is only required to report to the regional office of the Reserve Bank, the details of the amount of consideration, within 30 days of receipt thereof. The capital instrument must be issued to the foreign investor within 180 days of receipt of the consideration and the required documents must be filed with that office within 30 days of such issue. Specified information of companies having foreign investment is required to be filed by 15 July every year.

PROCEDURE UNDER APPROVAL ROUTE

Prior approval of the government through the concerned department/ministry is required in the following instances:

- FDI in prohibited activities
- FDI falling outside the sectoral limits as stated above
- Issue of shares to a person resident outside India against a share swap i.e., in lieu of consideration to be paid for shares acquired in a foreign company
- Issue of shares to a person resident outside India against import of capital goods, machinery equipment or against pre-incorporation/pre-operative expenses, subject to conditions.

FDI by citizens of/entities incorporated in, Pakistan/ can be made only with the prior approval of the central government, subject to conditions and exceptions.

NOTE:
Aggregate Foreign Portfolio Investment up to 49% of the paid-up capital on a fully diluted basis or the sectoral/statutory cap, whichever is lower, will not require Government approval or compliance of sectoral conditions as the case may be, if the investment does not result in transfer of ownership and control of the resident Indian company from resident Indian citizens or transfer of ownership or control to persons resident outside India.

MODE OF PAYMENT FOR ACQUISITION AND SALE

Subject to pricing guidelines, valuation norms and reporting and other compliances laid down by the Reserve Bank, FDI can be done in the following manner:

- Issue of fresh equity instruments by the Indian company including rights shares
- Acquisition by way of transfer of existing shares by person resident in/outside India.

Escrow accounts may be maintained with authorised dealers for the purpose, subject to conditions.

Mode of payment and remittance of sale/maturity proceeds of securities held must be in accordance with guidelines laid down in this regard and subject to conditions.

FDI is permitted under the categories listed below.

INVESTMENTS IN PUBLIC/PRIVATE LIMITED COMPANIES

An Indian company may issue equity instruments (subject to prescribed pricing guidelines/valuation norms) to a person resident outside India, within sector cap guidelines.

A person resident outside India may purchase equity instruments of a listed Indian company on a stock exchange in India subject to conditions.

A wholly owned subsidiary set up in India by a non-resident entity, operating in a sector where 100%FDI is allowed in the automatic route with no FDI linked performance conditions, may issue equity instruments to the said non-resident entity against pre-incorporation/ preoperative expenses up to a limit of 5%of its authorised capital or US$ 500,000 whichever is less, subject to conditions.

Subject to conditions, an Indian company may issue equity instruments to a person resident outside India if the Indian investee company is engaged in an automatic route sector against the following:

- Swap of capital instruments; or
- Import of capital goods/machinery/ equipment (excluding second-hand machinery); or
- Pre-operative/ pre-incorporation expenses (including payments of rent etc.)

Government approval is required if the Indian investee company is engaged in a sector falling under the Government route.

An Indian company may issue equity shares against any funds payable by it to a person resident outside India, subject to conditions.

INVESTMENT IN RIGHTS/BONUS SHARES OF AN INDIAN COMPANY

A foreign resident having an existing investment in an Indian company may make investment in equity instruments (other than share warrants) issued by such company as a rights or bonus issue, subject to conditions.

An individual who is a foreign resident exercising a right which was issued when he/she was resident in India can hold equity instruments (other than share warrants) so acquired on exercising the option, on a non-repatriation basis.

INVESTMENTS UNDER AMALGAMATIONS/MERGERS

Where a merger, amalgamation or reconstruction by way of demerger has been approved by the National Company Law Tribunal (NCLT)/Competent Authority, the transferee company or the new company (as the case may be) may issue shares to the shareholders of the transferor company resident outside India, subject to compliances and fulfilling the following conditions:

- The percentage of the shareholding of a non-resident in the transferee or new company does not exceed the sector caps.
- The transfer or company or the transferee company or the new company is not engaged in any activity prohibited under the FDI policy.

A merger, amalgamation or a reconstruction by way of demerger that involves a listed company is subject to the relevant regulations.

ISSUE OF CONVERTIBLE NOTES BY AN INDIAN START-UP COMPANY

A foreign person (other than an individual who is citizen of/entity incorporated in Pakistan or Bangladesh), can purchase convertible notes issued by an Indian startup company for an amount of INR 2.50 million or more in a single tranche.

A start-up company, engaged in a sector where foreign investment requires Government approval, can issue convertible notes to a foreign entity only with such approval. Issue of equity shares against such convertible notes must be in compliance with the entry route, sectoral caps, pricing guidelines and other specified conditions for foreign investment.

A start-up company issuing convertible notes to a foreign resident can receive the consideration by inward remittance through banking channels or out of balances in accounts maintained in India. Repayment or sale proceeds may be remitted outside India or credited to the Indian bank account maintained in accordance with the regulations.

A NRI or an OCI may acquire convertible notes on non-repatriation basis in accordance with the existing regulations.

A foreign resident may acquire or transfer by way of sale, convertible notes, from or to, a person resident in or outside India, provided the transfer takes place in accordance with the entry routes and prescribed pricing guidelines.

INVESTMENT IN LIMITED LIABILITY PARTNERSHIPS (LLP)

FDI in LLPs is permitted, subject to the following conditions:

- A foreign person (other than a citizen of/entity incorporated in Pakistan or Bangladesh) other than a Foreign Portfolio Investor (FPI) or a Foreign Venture Capital Investor (FVCI), may contribute to the capital of an LLP operating in sectors/ activities where foreign investment up to 100% is permitted under automatic route and there are no FDI linked performance conditions
- Investment by way of 'profit share' will fall under the category of reinvestment of earnings.
- Investment in an LLP is subject to the compliance of the conditions of Limited Liability Partnership Act, 2008
- A company/LLP having foreign investment, engaged in a sector where foreign investment up to 100% is permitted under the automatic route and there are no FDI linked performance conditions, can be converted into an LLP/company under the automatic route.

- Investment in an LLP either by way of capital contribution or by way of acquisition/ transfer of profit shares, should not be less than the fair price computed in the manner prescribed. In case of transfer of capital contribution/profit share to/from a resident in India to a foreign person or vice versa, the transfer shall be for a consideration not less/more than the fair price of capital contribution/profit share of an LLP.

INVESTMENTS BY NON-RESIDENT INDIANS (NRIS)

The Indian government actively encourages investment in India by Indians and persons of Indian origin who are resident abroad. NRIs are those who come under any of the following categories:

- Indian citizens who stay abroad for employment or for carrying on a business or vocation or any other purpose in circumstances indicating an indefinite period of stay outside of India.
- Government servants deputed abroad on assignments with foreign governments or regional/international agencies like the World Bank, the International Bank for Reconstruction and Development (IBRD), the International Monetary Fund (IMF) and the World Health Organisation (WHO)
- Officials of state governments and public sector undertakings deputed abroad on temporary assignments or posted to their branches or offices abroad.

NRIs become residents of India only when they return to India for employment or for carrying on any business or vocation or for any other purpose indicating an indefinite stay in India, but not when they come back on short visits for holidays or business.

Facilities available to NRIs are also made available to non-resident foreign citizens of Indian origin (Overseas Citizens of India or OCIs).

PURCHASE AND SALE OF EQUITY INSTRUMENTS BY NRI/OCI ON REPATRIATION BASIS

The purchase/sale of shares or convertible debentures/warrants by an NRI/OCI on a stock exchange in India on a repatriation and/or non-repatriation basis is permissible subject to the following conditions:

- An NRI/OCI may purchase/sell equity shares or convertible debentures or warrants of an Indian company through a registered broker on a recognised stock exchange subject to a limit of company, purchased by each NRI/OCI on repatriation and on a non-repatriation basis, does not exceed 5% of the paid- up value of shares/each series of convertible debentures issued by the company concerned
- NRIs/OCIs have to designate a branch of an authorised dealer for routing all transactions.
- The aggregate value of shares of any company purchased by all NRIs/ OCIs does not exceed 10% of the paid-up capital of the company and 10% of the paid-up value of each series of convertible debentures. The aggregate ceiling of 10% may be raised to 24% subject to the shareholders passing a special resolution in a general meeting of the Indian company concerned and subject to compliances.
- The transactions are on a delivery basis.

PURCHASE AND SALE OF EQUITY INSTRUMENTS BY NRI/OCI ON NON- REPATRIATION BASIS

The purchase of shares and debentures of Indian companies is not permissible if the company is engaged in any business in which FDI is prohibited.

An NRI/OCI may, without limit, purchase on a non-repatriation basis:

- Any equity instrument issued by a company without any limit.
- Units issued by an investment vehicle without any limit.
- The capital of a Limited Liability Partnership without any limit
- Convertible notes issued by a start-up company in accordance with the existing regulations.

The above investments are deemed to be domestic investment at par with the investment made by residents.

PURCHASE BY NRIS/OCIS OF OTHER SECURITIES ON A REPATRIATION BASIS:

An NRI/OCI may, without limit, purchase on a repatriation basis:

- Units of domestic mutual funds
- Bonds issued by a public sector undertaking in India.
- Shares in public sector enterprises being disinvested by the government, provided the purchase is in accordance with the terms and conditions stipulated in the notice inviting bids.

An NRI may subscribe to National Pension System governed and administered by Pension Fund Regulatory and Development Authority (PFRDA), provided such person is eligible to invest as per the provisions of the PFRDA Act. The annuity/accumulated saving will be repatriable.

INVESTMENT IN NON-CORPORATE BUSINESS

An NRI or an OCI may invest, on a non-repatriation basis, by way of contribution to the capital of a firm or a proprietary concern in India provided such firm or proprietary concern is not engaged in any agricultural/ plantation activity or print media or real estate business.

INVESTMENT IN AN INVESTMENT VEHICLE (IV)

An Investment Vehicle (IV) is an entity registered with the SEBI and governed by the relevant regulations and includes Real Estate Investment Trusts (REITs), Infrastructure Investment Trusts (InvIts) and Alternate Investment Funds (AIFs).

A foreign person (other than a citizen of/entity incorporated in Pakistan or Bangladesh) may invest in units of IVs, subject to conditions.

A foreign person having acquired or purchased units may sell or transfer or redeem the units in any manner as per regulations framed by SEBI or directions issued by the Reserve Bank.

An IV may issue its units to a foreign person against swap of capital instruments of a Special Purpose Vehicle (SPV) proposed to be acquired by such IV.

Investments by an IV into an Indian entity shall be reckoned as indirect foreign investment for the investee Indian entity if the Sponsor or the Manager or the Investment Manager (i) is not owned and not controlled by resident Indian citizens or (ii) is owned or controlled by persons resident outside India.

An AIF Category III which has received any foreign investment shall make portfolio investment in only such securities or instruments in which a FPI is allowed to invest under the relevant laws/regulations.

ISSUE OF INDIAN DEPOSITORY RECEIPTS (IDRS)

Foreign companies may issue IDRs through a Domestic Depository, to persons resident in India and outside India, subject to conditions.

An FPI or an NRI or an OCI may purchase, hold or sell IDRs, subject to the following terms and conditions:

- NRIs or OCIs may invest in the IDRs out of funds held in their account, maintained in accordance with the relevant regulations.
- Limited two way fungibility of IDRs shall be permissible subject to conditions;
- IDR shall not be redeemable into underlying equity shares before the expiry of one year from the date of issue.

Redemption/ conversion of IDRs into underlying equity shares of the issuing company are subject to compliance with the relevant regulations.

INVESTMENT IN DEPOSITORY RECEIPTS

A person resident outside India is allowed to invest in securities/units under the Depository Receipts Scheme, 2014 and subject to the relevant guidelines issued in this behalf.

A domestic custodian may purchase eligible instruments on behalf of a person resident outside India, for the purpose of converting the instruments so purchased into depository receipts.

The aggregate of eligible instruments which may be issued or transferred to foreign depositories, along with eligible instruments already held by persons resident outside India, cannot exceed the limit on foreign holding of such eligible instruments and such issue or transfer shall not be done at price less than the price applicable to a corresponding mode of issue or transfer of such instruments to domestic investors under the applicable laws.

INVESTMENTS BY FOREIGN PORTFOLIO INVESTOR (FPI)

A Foreign Portfolio Investor (FPI) may purchase or sell equity instruments of an Indian company on a recognised stock exchange or any other securities in India, subject to conditions.

FPI holdings must be less than 10% of the total paid-up equity capital on a fully diluted basis or less than 10% of the paid-up value of each series of debentures or preference shares or share warrants issued by an Indian company subject to the total holdings of all FPIs put together being less than 24% of paid-up equity capital on a fully diluted basis or paid up value of each series of debentures or preference shares or share warrants. The said limits are the individual and aggregate limit, respectively.

The aggregate limit of 24% may be increased by the Indian company concerned up to the sectoral cap/ statutory ceiling, as applicable, with the approval of its Board of Directors and its General Body through a resolution and a special resolution, respectively.

In case the total individual limit increases to 10% or more, the total investment made by the FPI shall be re-classified as FDI subject to the conditions as specified by SEBI and the Reserve Bank in this regard and the investee company and the investor complying with the specified reporting requirements.

An FPI may purchase equity instruments of an Indian company through public offer/private placement, subject to the individual and aggregate limits prescribed and specified conditions.

An FPI may undertake short selling as well as lending and borrowing of securities subject to conditions stipulated by SEBI and the Reserve Bank.

Investments are subject to the limits and margin requirements prescribed by SEBI and the Reserve Bank and other conditions.

The foreign currency accounts must be used only and exclusively for permitted transactions.

All investments made by deemed FPIs in accordance with the regulations prior to their registration as FPI shall be continued to be valid and taken into account for computation of aggregate limits.

INVESTMENTS BY FOREIGN VENTURE CAPITAL INVESTORS (FVCI)

Subject to the terms and conditions laid down by the Reserve Bank, a FVCI may purchase:

- Securities, issued by an Indian company engaged only in a specified sector whose securities are not listed on a recognized stock exchange at the time of issue of the said securities;
- Securities issued by a start-up;
- Units of a Venture Capital Fund (VCF) or of a Category I Alternative Investment Fund (Cat-I AIF) or units of a scheme or of a fund set up by a VCF or by a Cat-I AIF.

In case of investment in equity instruments, sectoral caps, entry routes and attendant conditions will apply.

An FVCI may purchase the securities/capital instruments either from the issuer of these securities/instruments or from any person holding these securities/instruments. The FVCI may invest in securities on a recognized stock exchange subject to the provisions of the SEBI regulations.

The FVCI may acquire, by purchase or otherwise, from, or transfer, by sale or otherwise, to, any person resident in or outside India, any security/ instrument it is allowed to invest in, at a price that is mutually acceptable to the buyer and the seller/ issuer. The FVCI may also receive the proceeds of the liquidation of VCFs or of Cat-I AIFs or of schemes/ funds set up by the VCFs or Cat-I AIFs.

The foreign currency accounts must be used only and exclusively for permitted transactions.

INVESTMENTS UNDER EMPLOYEE STOCK OPTION PLAN (ESOP) SCHEME

An Indian company may issue employee stock options or sweat equity shares to its employees/directors or employees/directors of its holding company or joint venture or wholly-owned subsidiary abroad who are resident outside India, subject to the following conditions:

- The scheme has been drawn up under terms of the applicable regulations;
- The options/shares issued to the non-resident employees/directors are within the applicable sectoral caps;
- Issue of options/shares in a company falling under the Approval route, is subject to prior government approval;
- Issue of options/shares to employees/directors who are citizens of Bangladesh or Pakistan would be subject to prior government approval;
- The issuer company is required to report the necessary details of such issues to the requisite regional office of the Reserve Bank within 30 days from the date of issue of shares under the ESOP.

TRANSFER OF EQUITY INSTRUMENTS OF AN INDIAN COMPANY

A person resident in India may transfer by way of sale, equity instruments to a person resident outside India, subject to the payment of taxes, in compliance with the pricing and sectoral cap guidelines, documentation and reporting requirements as specified by the Reserve Bank.

A person resident outside India (other than an NRI/OCI) may transfer by way of sale or gift, any equity instruments, subject to compliance with pricing and sectoral cap guidelines (and consequent approval, if required), documentation and reporting requirements as specified by the Reserve Bank.

Consideration for sale can be paid on a deferred basis, or settled through an escrow arrangement, subject to conditions.

PLEDGE OF SHARES

The promoter of an Indian company, which has raised ECBs, may pledge the shares of the borrowing company or that of its associate Indian companies as security for the ECB, subject to conditions.

INVESTMENTS IN IMMOVEABLE PROPERTY IN INDIA

This can entail:

- Acquisition of immovable property for carrying on a permitted activity
  - A person resident outside India who has a branch, office or other place of business in India (other than a liaison office) for carrying on a permitted business activity, with requisite approvals wherever necessary, is eligible to acquire immovable property in India which is necessary for or incidental to carrying on such an activity, provided that the applicable laws are duly complied with. The entity/concerned person is required to file a declaration with the Reserve Bank within 90 days of acquisition. The entity/concerned person is eligible to transfer by way of a mortgage the said immovable property to an authorised dealer (bank) as a security for any borrowing
- Citizens of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal, Bhutan, Macau, Hong Kong or Democratic People's Republic of Korea shall not acquire or transfer immovable property in India, other than through a lease not exceeding five years. A non- resident cannot transfer immovable property in India without prior permission of the Reserve Bank
- Foreign nationals of non-Indian origin resident outside India may acquire one immovable property other than agricultural land/ farm house/ plantation, together with the spouse who is NRI/OCI, subject to conditions
- Immovable property (other than agricultural land/plantations/farmhouses) may be acquired/sold by an NRI/OCI by way of:
  - Purchase,
  - Gift from a person resident in India or an NRI/OCI
  - Inheritance from a person resident in India, or from a person resident outside India who acquired the property in accordance with the prevailing law,
  - transferred by way of sale to a person resident in India or by way of gift to an NRI/OCI or a person resident in India.
- Payment for acquisition can be made:
  - out of funds received by way of remittance through banking channels.
  - out of funds held in any non-resident account maintained in accordance with the regulations.
- Repatriation of sale proceeds:
  - In the event of the sale of immovable property in India by an NRI/OCI, the authorised dealer will allow repatriation of sale proceeds outside India provided:
  - The immovable property was acquired by the seller in accordance with the provisions of the foreign exchange law in force at the time of acquisition by him/her and with the provisions of regulations framed under the Foreign Exchange Management Act (FEMA)
    - The amount for acquisition of the immovable property was paid in foreign exchange received through banking channels or out of funds held in FCNR account or out of funds held in NRE account.
    - In the case of residential property, the repatriation of sale proceeds is restricted to not more than two such properties.

FOREIGN TECHNOLOGY AGREEMENTS

For promoting the technological capability and competitiveness of Indian industry, the acquisition of foreign technology is encouraged through foreign technology collaboration agreements.

The introduction of know-how through such collaborations is permitted through the automatic route. The terms of payment under foreign technology collaboration includes technical know-how fees, payment for designs and drawings, and payment for engineering services and royalty. Payment of royalties includes the payment for use of trademarks and brand names of the foreign collaborator.

Payments for hiring foreign technicians, deputations of Indian technicians abroad and the testing of indigenous raw material, products and technology in foreign countries, are governed by separate procedures and rules of the Reserve Bank relating to current account transactions.

DIRECT INVESTMENTS OUTSIDE INDIA

Overseas investments in joint ventures and wholly-owned subsidiaries have been recognised as important avenues for promoting global business by Indian entrepreneurs.

Joint ventures are perceived as a medium of economic and business co-operation between India and other countries. The transfer of technology and skills, sharing of results of R&D, access to wider global markets, promotion of brand images, generation of employment and utilisation of raw materials available in India and in the host country are other significant benefits arising out of such overseas investments. They are also important drivers of foreign trade through increased exports of plant and machinery and goods and services from India and also a source of foreign exchange earnings by way of dividend earnings, royalty, technical know-how fees and other entitlements on such investments.

The Reserve Bank has been progressively relaxing the rules and simplifying the procedures both for current account as well as capital account transactions in keeping with the spirit of liberalisation.

Investments outside India are permitted in the categories outlined below under the automatic route, except direct investment in a foreign entity engaged in real estate business or banking business. The automatic route facility is not available for investments in Pakistan.

INVESTMENT IN A JOINTVENTURE (JV) OR WHOLLY-OWNED SUBSIDIARY (WOS)

Financial commitments can be made subject to conditions, by a company or a body created under an act of parliament or a partnership firm or a limited liability partnership (LLP) (the Indian entity) in an overseas JV/WOS engaged in a *bonafide* business activity up to 100% of the net worth of the Indian entity as per the last audited balance sheet.

The total financial commitment of the Indian Party in all the Joint Ventures/Wholly Owned Subsidiaries are subject to conditions.

An Indian entity may undertake financial commitment without equity participation and without prior approval of the Reserve Bank, provided the purpose is for business requirements and as per the legal requirements of the host country.

Compulsorily Convertible Preference Shares (CCPS) are treated on par with equity shares and an Indian party is permitted to undertake financial commitment based on contribution by way of CCPS.

The Indian entity may extend a loan/guarantee to or on behalf of an overseas concern in which it has equity participation.

An Indian entity can create a charge on immovable/moveable property and other financial assets of the Indian parent/group companies or JV/WoS/Step-down Subsidiary (SDS) in favour of an overseas lender/bank in India for availing fund/non-fund based facilities for its JV/WoS/SDS outside India or its group companies in India, subject to conditions.

The Indian entity should not be on the Reserve Bank’s caution list or list of defaulters. Direct investment is not permitted in an overseas entity located in countries identified by the Financial Action Task Force (FATF) as non co-operative territories and countries or as notified by the Reserve Bank.

An Indian entity is also permitted to make direct investments to acquire without limit, shares of a foreign company engaged in a *bonafide* business activity out of proceeds of GDRs/ADRs, subject to conditions.

Investments in a JV/WOS abroad are permitted under the automatic route through the medium of a special purpose vehicle (SPV), subject to the condition that the Indian entity is not on the Reserve Bank's caution list or list of defaulters or under investigation by the Enforcement Directorate, in which case, prior approval of the Reserve Bank is required.

Indian entities are permitted to issue corporate guarantees on behalf of their first level step-down operational JV/WOS set up as a special purpose vehicle (SPV) under the automatic route, subject to conditions. The issuance of a corporate guarantee on behalf of second generation or a subsequent level step-down operating subsidiary will be considered under the approval route, provided the Indian Party indirectly holds a 51% or more stake in the overseas subsidiary for which such a guarantee is intended to be issued.

Where the investment is a partial or full acquisition in an existing foreign company, valuation of the shares of the foreign company shall be:

- Where investment is by way of remittance and is more than USD 5 million, by a merchant banker registered with SEBI or an investment banker registered with the appropriate authority in the host country.
- In all other cases, by a chartered accountant or a certified public accountant.

Investments in a JV/WOS are to be reported to the Reserve Bank in the prescribed form within 30 days of the transaction.

PROHIBITIONS

Indian entities are prohibited from making investments in a foreign entity engaged in real estate (meaning the buying and selling of real estate or trading in transferable development rights (TDRs) but this does not include the development of townships, construction of residential/commercial premises, or roads and bridges) or in a banking business, without the prior approval of the Reserve Bank.

INVESTMENT IN EQUITY/BONDS OF AN OVERSEAS LISTED COMPANY

A listed Indian Company may invest up to 50% of its net worth in shares and rated bonds/fixed income securities (which are rated not below investment grade) by an accredited agency, issued by listed overseas companies.

Subject to conditions, resident individuals may invest in/acquire:

- Equity shares:
  - By way of gift/inheritance
  - Under a cashless ESOP
  - Shares offered by a foreign company under its ESOP scheme.
  - Qualification shares for becoming a director of a company outside India.
- Rated bonds/fixed income securities issued by overseas companies.

The limit as specified by the liberalised remittance scheme is currently USD 250,000 in any calendar year. Acquisition of immovable property outside India is not permitted under the scheme.

INVESTMENT BY MUTUAL FUNDS

Mutual funds registered with SEBI may invest within specified limits, in shares, securities of overseas companies, funds, etc., subject to regulations.

INVESTMENT IN THE FINANCIAL SERVICES SECTOR

- Investments can be made by an Indian entity in any entity outside India engaged in financial services activities provided that the Indian entity:
  - Is registered with the regulatory authority in India for conducting financial services activities.
  - Has earned net profit during the preceding three financial years from financial services activities.
  - Has obtained approval from the concerned regulatory authorities both in India and abroad for venturing into such financial sector activity.
  - Has fulfilled the prudential norms relating to capital adequacy as prescribed by the concerned regulatory authority in India.
- Any additional investment by a step-down subsidiary of a JV/WOS in the financial services sector shall be made only after complying with the conditions stipulated above.

INVESTMENT BY CAPITALISATION

An Indian entity may make a direct investment in a foreign company by way of capitalisation of specified dues (to the Indian entity), subject to conditions.

OVERSEAS INVESTMENTS BY PROPRIETORSHIP CONCERNS

Proprietorship concerns and unregistered partnership firms are allowed to set up a JV/WOS outside India with prior approval of the Reserve Bank, subject to satisfying certain eligibility criteria. Proprietorship concerns can also accept shares in a foreign company in lieu of fees due, subject to prior approval of the Reserve Bank and other conditions.

PRIOR APPROVAL OF THE RESERVE BANK

Prior approval of the Reserve Bank is required in all other cases of direct investment abroad or investment by way of exchange of shares of a foreign company. For such a purpose, an application is required to be made by the Indian entity to the Reserve Bank through their bankers in the prescribed form and supplied together with the necessary documents.

FUNDING OF INVESTMENTS

Investments may be funded out of one or more of the following sources:

- Foreign exchange from an authorised dealer (bank)
- Capitalisation of exports
- Shares swap
- 100% of the value of guarantees issued by the Indian entity to or on behalf of the JV/WOS
- Proceeds under the ECB regulations
- Exchange of GDRs/ADRs
- Balance in EEFC account
- Proceeds of GDR/ADR issues
- 50% of the value of performance guarantee issued by the Indian party on behalf of the JV/WOS
- 100% of the value of the bank guarantee issued by an Indian bank on behalf of the JV/WOS of the Indian party which is backed by a counter guarantee/collateral by the Indian party.

This ceiling of investment upto 100% of the net worth of the Indian investing company will not be applicable where the investment is made out of the funds held in the exchange earner's foreign exchange (EEFC) account of the Indian entity or out of the funds raised through an issue of GDRs/ADRs.

TRANSFER/PLEDGE OF SHARES

The transfer of shares (including involving a write-down in the value of the investment) in a JV/WOS is subject to guidelines specified by the Reserve Bank.

An Indian entity may transfer, by way of a pledge, shares held in a JV/WOS/SDS outside India as security for availing itself of any credit facilities for itself or for the JV/WOS/SDS, subject to conditions.

An Indian entity may also transfer by way of a pledge, the shares held in an overseas JV/WOS to an overseas lender, provided the lender is regulated and supervised as a bank and the total financial commitments of the Indian entity remain within the limits stipulated by the Reserve Bank for overseas investments, from time to time.

TENDER/BIDDING PROCESS FOR ACQUISITION

An Indian entity is permitted to make a remittance towards an earnest money deposit or issue a bid bond guarantee on its behalf for participating in a bidding or tender procedure for acquiring a company outside India, subject to conditions and compliances.

RESTRUCTURING OF THE BALANCE SHEET

Indian promoters who have set up a WOS abroad or have at least a 51% stake in an overseas JV, may write off capital (equity/preference shares) or other receivables, such as, loans, royalty, technical knowhow fees and management fees in respect of the JV /WOS, even while such a JV /WOS continues to function, subject to conditions.

POST INVESTMENT CHANGES/ADDITIONAL INVESTMENTS

A JV/WOS set up by an Indian entity as above, may diversify its activities/set up a step-down subsidiary/alter the share holding pattern in the overseas entity, subject to compliances.

OBLIGATIONS OF THE INDIAN ENTITY

An Indian entity is required to comply with prescribed reporting and other requirements with regards to the investment in the JV/WOS.

FINANCE SECTOR

BANKING

The banking system is controlled and monitored by the Reserve Bank.

Commercial banks, co-operative banks and regional rural banks broadly make up the banking system in India. Public sector banks have more branches in rural and semi-urban centres compared with private banks. Foreign banks, on the other hand, have all of their branches in urban or metropolitan centres.

At present, the Reserve Bank permits foreign banks to operate as branches of their overseas parents. The public sector banks comprise the State Bank of India, its associates and 12 other banks owned by the government (nationalised banks). These banks form the dominant group in India and account for approximately 70% of total assets of the banking industry.

The State Bank of India the largest public sector bank has a benchmark prime lending rate (BPLR) of approx. 12-14% for credit and term facilities.

Industrial units are financed primarily through the following sources:

- Internal sources i.e., capital and reserves or internal accruals
- External sources i.e., raising capital by way of debentures or bonds or term borrowings.
- Borrowings for working capital.
- Government subsidies.

CAPITAL ISSUE

Capital issues by companies are supervised by the SEBI, which is empowered to regulate the financial structure of joint stock companies and acts to safeguard the investing public. Minimum limits for a promoter's contribution are laid down for all issues of capital to the public.

STOCK MARKET AND LISTING REQUIREMENTS

India has a vibrant capital market comprising 10 stock exchanges with more than 6,500 listed companies. SEBI monitors the stock market in India.

The national stock exchange has been setup in Mumbai to provide online nationwide trading facilities for shares and for the wholesale debt and capital markets.

TERM BORROWINGS

India has a well-organised capital market with several financial agencies which provide term borrowings and guarantees and underwriting facilities to the industrial sector. The principal agencies for term borrowings are the All India financial institutions, the commercial banks and state financial corporations.

VENTURE CAPITAL (VC)

VC is money provided by professionals who invest alongside management in young, rapidly growing companies that have the potential to develop into significant economic contributors. VC is an important source of equity for start-up companies.

Venture capitalists generally:

- Finance new and rapidly growing companies
- Purchase equity securities
- Assist in the development of new products or services.
- Add value to the company through active participation.
- Take higher risks with the expectation of higher rewards.
- Have a long-term orientation.

These funds are regulated by SEBI regulations. According to the regulations, a VC fund means a fund established in the form of a company or trust, which raises monies through loans, donations, issue of securities or units as the case may be and makes or proposes to make investments in accordance with these regulations.

CREDIT RATING

A credit rating is a requirement for debenture issues, fixed deposits and commercial paper programmes. Credit ratings are presently carried out by six agencies – the Credit Rating Information Services of India Limited (CRISIL), the Investment Information and Credit Rating Agency of India (ICRA), Credit Analysis and Research Ltd (CARE), ONICRA Credit Rating Agency of India Ltd., SMERA and Fitch Ratings India Private Limited.

MUTUAL FUNDS

The Unit Trust of India, India's first mutual fund, was established in 1964. Banks, financial institutions, insurance companies and companies in the private sector, including foreign companies, have established mutual funds in India. The average aggregate assets under management by mutual funds were USD 509.23 billion as on April 30, 2023.

At this point in time, the Indian mutual fund industry is in its growth stage; it is only in the last few years that the typical Indian investor has discovered the mutual fund vehicle as an option for earning a steady income on their savings. The total assets under management by the entire mutual fund industry constitute around 14-15% of the deposits held by the banking industry.

The entry of the private sector into the mutual fund industry started with the opening up of the Indian economy in the early 1990s. A number of foreign mutual funds have now set up operations in India.

BORROWINGS

Subject to compliance with the relevant regulations, an Indian entity/person resident in India, may:

- Lend in foreign exchange to a WoS or JV abroad;
- Borrow, by way of loan or overdraft or any other credit facility, from a foreign bank for execution of an overseas turnkey project or civil construction contract;
- Avail of foreign currency credit for a specified period for import of goods into India;
- Lend in foreign currency out of funds held in the EEFC account for trade related purposes;
- Borrow upto US$ 250,000 from relatives outside India.

EXTERNAL COMMERCIAL BORROWING (ECB) BORROWING

ECB refers to commercial loans in the form of bank loans, floating and fixed rate notes, buyer's credit, supplier's credit, financial lease and securitised instruments availed from non-resident lenders. The policy for ECBs is also applicable to raising funds through the issue of FCCBs and FCEBs.

FCCBs are to be issued in accordance with the 'Issue of Foreign Currency Convertible Bonds and Ordinary shares (Through Depository Receipt Mechanism) Scheme' and subscribed by non-residents.
A foreign currency exchangeable bond (FCEB) means a bond expressed in a foreign currency, the principal and interest in respect of which is payable in foreign currency, issued by an 'issuing company' and subscribed to by a person who is a resident outside India, in foreign currency and exchangeable into equity shares of another company, to be called the 'offered company', in any manner, either wholly, or partly or on the basis of any equity- related warrants attached to debt instruments. The FCEB must comply with the 'Issue of Foreign Currency Exchangeable Bonds (FCEB) Scheme', 2008. The guidelines, rules etc. governing ECBs are also applicable to FCEBs. FCEBs are subject to a ceiling of USD 750 million in a financial year. A public issue can be made only through reputed lead managers in the capital market. Private placement is restricted and maturity of FCEBs cannot be less than five years.

Preference shares (non-convertible, optionally convertible, partially convertible) and nonconvertible debentures are considered as debt and accordingly, ECB norms apply.

ECBs can be accessed under the Automatic route upto US$ 750 or equivalent and under the Approval route for amounts exceeding US$ 750 million or its equivalent. Under the Approval route, the prospective borrowers are required to send their requests to the Reserve Bank for review.

With regard to foreign currency ECB from direct foreign equity holders, the ECB liability/equity ratio cannot exceed 7:1, except if the outstanding does not exceed US$ 5 million. Borrowers will have to comply with debt equity guidelines issued by the regulator.

ECBs can be obtained in any freely convertible foreign currency or in INR. ECBs in foreign currency can be converted to any other foreign currency or INR. ECB in INR cannot be converted to any other currency.

ALL-IN COST CEILINGS

The all-in-cost ceiling per annum is the benchmark rate plus 450 basis points. The benchmark rate is the LIBOR or any other applicable six month interbank interest rate. The all-in cost includes the rate of interest, other fees and expenses in foreign currency except for commitment fees, pre-payment fees, and fees payable in Indian rupees. Such all-in costs are specified by the Reserve Bank from time to time. Any withholding tax in Indian Rupees is excluded for calculating the all-in cost.

RECOGNISED LENDERS

Borrowers can raise ECB from internationally recognised sources such as:

- Resident of FATF or IOSCO compliant country
- International banks
- Multilateral and regional financial institutions
- Foreign equity holders
- Foreign branches or subsidiaries of Indian banks, subject to conditions and exceptions

END USE RESTRICTIONS

Subject to exceptions, ECB proceeds cannot be used for:

- On lending
- Investment in the capital market
- Purchase of equity
- Real estate
- Working capital
- General corporate purposes
- Repayment of existing rupee loans

Borrowers are permitted to keep ECB proceeds abroad or to remit the funds to India, pending utilisation for permitted end-use, subject to Reserve Bank directives. ECB proceeds parked abroad may be invested in specified liquid assets.

MINIMUM AVERAGE MATURITY PERIOD (MAMP)

The MAMP for ECBs is 3 years and in specified cases, between 1 and 10 years.

ECBS FOR START-UPS

Start-ups can access ECB subject to conditions and compliances.

HEDGING

Entities raising ECBs can hedge foreign currency exposure subject to guidelines.

GUARANTEE

Issuance of a guarantee, standby letter of credit, letter of undertaking or letter of comfort by banks, financial institutions and NBFCs from India and relating to ECBs is not permitted.

SECURITY

The choice of security to be provided is left to the borrower, subject to compliances.

PREPAYMENT

Prepayment of outstanding foreign currency loan may be made as per directives of the Reserve Bank.

CONVERSION OF ECB INTO EQUITY SHARE CAPITAL

Conversion of ECB into equity share capital of the borrower company is permitted subject to the following conditions:

- The activity of the Indian company is covered under the automatic route for FDI or government approval for foreign equity participation has been obtained by the company.
- The foreign equity holding after such conversion of debt into equity is within the sector cap guidelines.
- Pricing of the shares is as per the relevant guidelines.

Conversion of ECB into equity is required to be reported to the Reserve Bank as per the procedure laid down in this regard.

SPECIAL INVESTMENT PROGRAMMES

Special schemes are available for setting up export-oriented units for the electronics/IT sector.

Various incentives and concessions are available under these schemes. The schemes are:

- Export oriented units (EOU)/electronics hardware technology parks (EHTP)/software technology parks (STP) schemes
- Special economic zones (SEZ) scheme.

SPECIAL ECONOMIC ZONES SCHEME

The government of India introduced the concept of SEZ in 2001–02 with a view to providing an internationally competitive hassle-free environment for exports. Eight export processing zones (EPZs) have been upgraded into SEZs. SEZs are designated as a duty-free enclave and treated as foreign territory for trade operations and duties and tariff purposes.

Goods and services going into an SEZ area from DTA shall be treated as exports and goods and services coming from the SEZ area into DTA shall be treated as if these are being imported.

A SEZ may be setup in the public, private or joint sector or by the state government, subject to guidelines.

A project proposal for the setting up of a SEZ, recommended by the relevant state government, shall be considered by the Board of Approval in the Department of Commerce.

On approval of the proposal, a letter of permission (LOP) shall be issued to the developer for development, operation and maintenance of the SEZ.

SEZ units may be set up for the manufacture of goods and rendering of services. Proposals for setting up units requiring an industrial licence in an SEZ may be granted approval by the Development Commissioner after clearance of the proposal by the SEZ Board of Approval and Department of Industrial Policy and Promotion within 45 days on merits.

A LOP/letter of intent (LOI) issued to SEZ units shall be valid for a period of three years for commencement of production. The LOP/LOI shall be valid for a period of five years from the date of commencement of production and would be construed as a licence for all purposes. On completion of five years of operation, the approval may be renewed by the Development Commissioner concerned for a period of five years at a time on receipt of an application for renewal from the unit.

Each LOP/LOI shall have separate ear-marked premises and shall specify the items of manufacture/service activity, annual capacity, projected annual export for the first five years in dollar terms, net foreign exchange earnings (NFE), limitations, if any, regarding sale of finished goods, by-products and rejects in the DTA and such other matters as may be necessary and also impose such conditions as may be required.

In cases where there is any change in approved activity or on the undertaking of any new activity by SEZ units, the Development Commissioner shall issue an amended LOP within six days of receiving intimation from the unit.

The unit shall execute a legal undertaking with the Development Commissioner concerned in the prescribed format.

Salient features of the above schemes are given in Appendix II.

ESTABLISHMENT OF BRANCH OFFICES/UNITS IN SEZ

The Reserve Bank has given general permission for foreign companies to establish branch offices/units in SEZ for undertaking manufacturing and services activities subject to the following conditions:

- Such units are functioning in those sectors where 100% FDI is permitted.
- Such units comply with Chapter XXII of the Indian Companies Act
- Such units function on a standalone basis.

At the time of winding up, any branch is required to approach the Reserve Bank with prescribed documents. Winding up proceeds may be repatriated subject to payment of Indian taxes.

BUSINESS LAWS AND LEGISLATION

RESERVE BANK OF INDIA

The Reserve Bank of India (Reserve Bank) is the Indian banking regulator and was established on 1 April 1935 in accordance with the provisions of the Reserve Bank of India Act. Its 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 a multifaceted role and acts in the following various capacities, as a:

- 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 systems 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, 1999, 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;
- Developmental role- to perform a wide range of promotional activities and functions to support the national objectives;
- Regulator and supervisor of payment and settlement systems – to introduce and upgrade safe and efficient modes of payment systems in the country to meet requirements of the public at large and ensure that the public confidence is maintained in the payment and settlement system;
- Banker to the government – performs a merchant banking function for the central and the state governments and also acts as their banker;
- Banker to banks – maintains banking accounts of all scheduled banks; and
- RBI acts as the authority to issue banking licenses, NBFC licenses and now payment banks too.

SECURITIES AND EXCHANGE BOARD OF INDIA

The Securities and Exchange Board of India (SEBI) is the securities and markets regulator in India and regulates and promotes an orderly development of capital markets 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 at *http://sebi.gov.in*.

Some of the key SEBI regulations are listed below.

SEBI INSIDER TRADING REGULATIONS (Insider Trading Regulations)

The 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 restricting the use of unpublished price sensitive information by insiders.

All listed companies and entities/persons having access to sensitive information must frame a Code of Internal Procedures and Conduct along the lines of the specified model code to prevent insider trading and to regulate, monitor and report trading by designated persons and immediate relatives of designated persons towards achieving compliance with the Insider Trading Regulations. 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 undertaken 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. who assist or advise listed companies are covered by this requirement. SEBI imposes huge monetary penalties up to three times the amount of profit made, apart from initiating criminal prosecution, in cases of default.

SEBI (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS (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. These regulations were formulated so that the process of acquisition and takeovers is carried out in a well-defined and orderly manner following the fairness and transparency. Based on the limits, the acquirer has to comply with reporting requirements or make a mandatory open offer to 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'. The interests of the public shareholders are protected by the Takeover Regulations as it places an obligation on acquirers to mandatorily provide an exit opportunity to public shareholders in case of a takeover or substantial acquisition. The Takeover Code seeks to ensure that the securities market in India operates in a fair, equitable and transparent manner.

SEBI (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2015 (Listing Regulations)

The Listing Regulations consolidate the reporting requirements and streamlines the provisions of existing listing agreements for different segments of capital markets such as equity shares, nonconvertible debt securities, GDRs, etc. and disclosure norms in relation thereto, thereby ensuring better transparency in capital markets. The overarching principles governing disclosures are covered under the provisions of the Listing Regulations which mandate a listed entity to ensure accurate and timely disclosure on all material matters including the financial situation, ownership, performance and governance of the listed entity. The Listing Regulations also require a listed entity to make disclosures of material events and information.

SEBI (ISSUE OF CAPITAL AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2018 (ICDR Regulations)

Regulations to be complied with for companies going for public issue of securities including in certain instances for companies whose securities are already listed and who are doing a further issue of securities. The ICDR Regulations include eligibility requirements, disclosure norms for listing, lock-in requirements and other conditions.

The ICDR Regulations emphasise on streamlining disclosure requirements with respect to financial statements in offer documents for initial public offerings, by reducing the volume of disclosures and focusing on what is considered material and relevant to an investor in making an investment decision.

THE COMPETITION ACT

The Monopolies and Restrictive Trade Practices Act (MRTP), since repealed, was an important piece of economic legislation, and in certain respects was similar to anti-trust legislation in other countries meant to control unfair and/or restrictive business practice.

The Competition Act is now operational in India, bringing India into line with the international competition law regimes. The Competition Act prohibits anti-competitive agreements, abuse of dominant position by enterprises and regulates various types of transactions / combinations (acquisitions of shares, assets, or control, and mergers and amalgamations) which cause or are likely to cause an appreciable adverse effect on competition within India. Certain categories of transactions / combinations which trigger certain stipulated assets, turnover and, soon to be implemented, deal value based thresholds, require the approval of the CCI prior to consummation of the transaction / combination. The Competition Act has been enacted keeping in view of the economic development of India, for the establishment of a Commission (namely the Competition Commission of India or CCI) to prevent practices having 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, in India, and for matters connected therewith or incidental thereto.

It is the duty of CCI to eliminate practices having adverse effect on competition, promote and sustain competition, protect the interests of consumers, and ensure freedom of trade in the markets of India. The Commission is also required to give opinion on competition issues on a reference received from a statutory authority established under any law and to undertake competition advocacy, create public awareness and impart training on competition issues.

The CCI has the power to direct enterprises engaged in any anti-competitive agreements or dominance abusive behaviour to discontinue or not enter into or modify such arrangements, impose penalties of up to 10% of the average relevant turnover of the enterprise for the last 3 preceding financial years. The CCI can also pass directions against dominant enterprises for division of its business, the transfer of its assets, modifying its charter documents, formation or winding up of enterprises, etc. In the case of cartelisation, the CCI can impose a penalty of up to 3 times of the profit for each year of the continuance of the cartel arrangement or 10% of the turnover of each year of the continuance of such cartel arrangement, whichever is higher. Where transactions / combinations requiring the prior approval of the CCI are consummated without the CCI's prior approval, the CCI can impose penalties on the party responsible in obtaining the approval which can extend up to 1% of the total assets or turnover, whichever is higher, of the combination.

FOREIGN EXCHANGE MANAGEMENT ACT

The Foreign Exchange Management Act (FEMA) replaced the Foreign Exchange Regulation Act (FERA) in 2000. FEMA aims at facilitating external trade and payments and for promoting the orderly development and maintenance of foreign exchange markets in India.

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/entity 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 persons resident in India and persons resident outside India, 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 any physical stay.

FEMA has classified transactions into two broad categories, i.e., capital account transactions and current account transactions. The fundamental rule is that if it is a current account transaction, it is permitted unless prohibited or specifically regulated by FEMA. For capital account transactions, the rule is that unless it is specifically permitted, it is prohibited by FEMA.

A 'current account transaction' is a transaction other than a capital account transaction.

The Government of India 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 Government of India;
- Transactions exceeding specified monetary limits, which require prior Reserve Bank approval.

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 up to 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.

Presently, there is full convertibility on current account, but not on capital account.

The Reserve Bank has also 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 called by whatever name;
- Any borrowing or lending in rupees in whatever form or called by whatever name 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, import or 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.

INTELLECTUAL PROPERTY RIGHTS

Intellectual property refers to creations of the mind, i.e., inventions, industrial designs for articles, literary and artistic work, and names and symbols used in commerce.

The law governing intellectual property rights is an umbrella term which encompasses within its fold, various statute laws such as:

- The Patents Act
- The Copyright Act
- The Trademarks Act
- The Designs Act
- The Geographical Indications of Goods (Registration and Protection) Act
- The Semiconductors of Integrated Circuits Layout Design Act
- Protection of Plant Varieties and Farmer's Right Act

Other forms of intellectual property rights such as confidential information, trade secrets, know-how, etc. which are not governed by any statute are also offered protection by the courts in India.

Summarised provisions of the laws relating to trademarks, copyright, patents, the geographical indication of goods and industrial design, which form segments of the law of intellectual property, are highlighted below.

TRADEMARK

The Trademarks Act enables the registration and protection of trademarks, brands and trade names for goods and services and prevents the fraudulent use of trademarks on merchandise.

A trademark is a visual symbol which is capable of distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and combination of colour. It can be in the form of a work, a device or a label applied to commercial articles with a view to indicating to the purchasing public that they are the goods manufactured or dealt with by a particular person/entity as distinguished from goods of a similar nature.

The function of a trademark is to give an indication to the purchaser or possible purchaser as to the manufacture or quality of the goods.

Services have also been included for protection with service marks. Such registration is relevant to the protection of non-tangible products.

The Trademarks Act also provides for protection of marks under the categories of certification marks and collective marks.

Registration of a trademark, which resembles existing well-known trademarks, is not permissible. A registered trademark can be protected in perpetuity subject only to the condition that it is used or renewed periodically, and that action is taken against the infringer.

Any person, claiming to be the proprietor of a trademark used or proposed to be used by him, may apply for registration in the prescribed manner.

Additionally:
- Foreign-owned trademarks may be used for the sale of goods in India;
- Trademarks are registered for maximum of ten years from the date of application;
- Subsequent registration may be renewed for a ten-year period;
- Passing-off actions may protect unregistered trademarks;
- Registered trademarks may be protected under statute or by passing- off actions by an injunction suit or opposition against trademarks in the process of registration.

PATENTS
A patent is a statutory grant of monopoly for working an invention and vending the resulting product.

A new product or process involving an inventive step and capable of industrial application is defined as an invention. Not all inventions are eligible for patent protection. It is not necessary that the product developed should be a totally new product, even if a product is substantially improved by an inventive step, it would be termed as an invention. It is essential for a validity of the patent that it must be the inventor's own discovery as opposed to mere verification of what was already known before the date of the patent.

The Patents Act provides for the granting of exclusive rights to sell or distribute an article or substance in respect of the following:
- Any new invention, which is not obvious
- Any new and useful art, process, or method of manufacture, machine apparatus or other article or substance produced by manufacture.

India is a member of the World Intellectual Property Organisation and a signatory to the Patent Co-operation Treaty.

The Patents Act provides for international applications under the Patent Co-operation Treaty. An applicant can file an international patent application, in most cases, with the national patent officer, or directly with WIPO, if permitted by the applicant's state's national security provisions. The term of a patent shall be 20 years from the international filing date accorded under the Patent Co-operation Treaty.

COPYRIGHT

Copyright is a right given by the law to creators of literary, dramatic, musical and artistic works and producers of cinematograph films and sound recordings. In fact, it is a bundle of rights including, inter alia, rights of reproduction, communication to the public, adaptation and translation of the work. Copyright in India is governed and protected by the Copyright Act. India is a member of the Universal Copyright Convention and the Berne Convention for the Protection of Literary and Artistic Work. Indian copyright owners can protect their copyright in any country since India is a member of both these conventions.

The Copyright Act provides for the registration of works. However, non-registration does not generally affect the rights of the owners of copyright. Copyright is a self-sustaining right independent of registration.

Copyright means the exclusive right to do or authorise others to do certain acts in relation to the following:

- Original work involving skill, labour and judgement in respect of literary works such as books and publications, including computer software
- Artistic works whether usable as trademarks or not
- Engineering drawings, industrial drawings
- Sound recordings
- Musical works
- Cinematographic films
- Broadcasting reproduction rights.

The object of copyright law is to encourage authors, composers, artists and designers to create original works by rewarding them with the exclusive right, for a limited period, to exploit the work for monetary gain.

There is no copyright in ideas. Copyright subsists only in the form of expression in which the idea is reduced to work as specified above. Since there is no copyright in an idea, there shall be no infringement if an idea is adopted and put into one's own work which is substantially a variant of the original.

The owner of the copyright in an existing work, or the prospective owner of the copyright in a future work, may assign the copyright to any person either wholly or partially and either generally or subject to limitations, and either for the whole term of the copyright or any part thereof. The assignment of copyright in any future work shall take effect only when the work comes into existence. To be valid, the assignment of copyright must be made in writing and signed by the assignor or by his duly authorised agent.

The general rule is that copyright lasts for 60 years. In the case of original literary, dramatic, musical and artistic works the 60-year period is counted from the year following the death of the author. In the case of cinematograph films, sound recordings, photographs, posthumous publications, anonymous and pseudonymous publications, works of government and works of international organisations, the 60-year period is counted from the date of publication.

Infringement occurs if the following is done without the consent of the author:

- Reproduction of work in material form
- Publication of the work
- Communication of the work in public
- Adaption and translation of the work.

Against an infringement of copyright, the author has the right to file a civil suit or criminal prosecution, in addition to remedies available from the Registrar of Copyrights, Copyright Board and Copyright Societies.

INDUSTRIAL DESIGNS

The registration and protection of industrial designs in India is administered by the Designs Act and corresponding Designs Rules. The designs, which are new and original designs having aesthetic value and not having been previously been known or published in India or elsewhere, are entitled to registration under the act. Designs that improvise any function of an article cannot be registered under the Design Act.

An International classification of industrial designs based on the Locarno Agreement Establishing an International Classification for Industrial Designs has been inserted into the Designs Act.

The object of design registration is to ensure that persons other than the originator are not using the design without the permission of the originator. The right conferred by registration of a design is called copyright. The Design Act governs copyright in an industrial design or product design. If a design is registered under the Design Act, it is not eligible for protection under the Copyright Act even though it may be an original artistic work. The term of registration is ten years, which can be extended for a further period of five years.

GEOGRAPHICAL INDICATIONS OF GOODS

The Geographical Indications of Goods (Registration and Protection) Act (GI Act) has been introduced to conform to the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement. The GI Act seeks to provide registration and better protection of geographical indication relating to goods in India and is designed to protect the use of such geographical indication from infringement by others and protect the consumers from confusion and deception. Procedure for registration is similar to the Trademarks Act. The term of registration is ten years, renewable thereafter.

The term 'geographical indication' in relation to goods is defined as that aspect of industrial property which refer to the geographical indication referring to a country or to a place situated therein as being the country or place of origin of that product. Typically, such a name conveys an assurance of quality and distinctiveness which is essentially attributable to the fact of its origin in that defined geographical locality, region or country.

The GI Act prohibits the registration of geographical indications:

- The use of which is likely to deceive or cause confusion
- The use of which would be contrary to any law in force at the time
- Which comprises or contains scandalous or obscene matter
- Which comprises or contains any matter likely to hurt the religious feelings of any class or section of citizens of India
- Which would otherwise be disentitled to protection in a Court
- Which are determined to be generic names or indications of goods and are therefore not protected in the country of origin, or which have fallen into disuse in that country
- Which, although literally true as to the territory, region or locality in which goods originate, falsely represent the fact that the goods originated in another territory, region or locality.

PRIVACY

The provisions of the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011 sets out the law in relation to the collection, handling, storing usage, disclosure and security practices in relation to personal data.

It is also pertinent to note that in July 2017, the Ministry of Electronics and Information Technology, Government of India constituted a committee of experts (Committee) under the chairmanship of Justice B N Srikrishna. Whilst the Supreme Court has held that the right to privacy is a fundamental right flowing from the right to life and personal liberty and other fundamental rights securing individual liberty in the Constitution of India, the Committee was set up to assess the key issues pertaining to the data protection regime in India and propose changes to it. The Personal Data Protection Bill, 2019 was proposed after discussions and deliberations by the Committee. This was however subsequently withdrawn a new draft Digital Personal Data Protection Bill, 2023 has been introduced. Please note that the said 2023 Draft Bill has not yet been codified into a new legislation yet as it is subject to review and is likely to undergo changes prior to implementation.

ARBITRATION ACT

Arbitration is a mechanism for the expeditious redressing of disputes.

With increasing pressure on civil courts due to pending cases and a complex civil procedure code, arbitration is becoming increasingly popular as an alternative dispute resolution mechanism. The Arbitration Act is based on the Convention in the Recognition and Enforcement of Foreign Arbitral Awards, 1958, the Model Law on International Commercial Arbitration and the UNCITRAL Conciliation Rules, 1980. The Arbitration Act is a comprehensive legislative piece and regulates arbitration in two parts: (i) Part I of the Arbitration Act governs commercial arbitration (domestic and international) with a seat in India; and (ii) Part II of the Arbitration Act governs the enforcement of foreign awards in India. Further, Part III of the Arbitration Act deals with conciliation proceedings.

Arbitration takes place between parties in terms of an agreement in writing, which could be in the form of a separate agreement in writing or a clause in an existing agreement. Exchange of communications which can form part of a record like letters, faxes etc. can also be treated as a written agreement.

Certain statutes exclude the jurisdiction of private arbitration. The following matters cannot be referred to arbitration:

- Insolvency matters
- Matrimonial cases
- Testamentary matters
- Industrial disputes
- Criminal proceedings
- Matters relating to charitable trusts.

Additionally, the courts in India have also held that any matters or disputes dealing with rights in rem, are not arbitrable in nature.

The parties to an arbitration agreement may decide on the number of arbitrators. If parties fail to appoint an arbitrator despite agreeing a process, any party is permitted to approach the courts for appointment of arbitrator(s).

The parties are free to agree to any location and procedure for conducting the arbitral proceedings as long as such procedure does not violate the principals of natural justice.

The grounds on which the domestic courts would reject an arbitration award is limited in case of domestic arbitration and is highly restricted in case of international commercial arbitrations.

An arbitral tribunal must make an award in accordance with the substantive laws in force. Such an award must be made by a majority of the arbitrators. During the proceedings, the tribunal may use mediation or conciliation to encourage settlement between the parties.

An arbitral award must be in writing and state the reasons for the award, unless it is an award of consent of the parties. The award may include interest until the date of the award.

An award may be set aside by making an application within three months, for specified reasons.

An award, not set aside, may be enforced in the same manner as a decree under the Code of Civil Procedure.

THE INSOLVENCY AND BANKRUPTCY CODE (CODE)

The Insolvency Code came into effect on December 1, 2016 and is a comprehensive legislation that seeks to replace extant insolvency and restructuring laws in India and proposes to cover corporate persons (i.e., companies and LLP's), partnerships and individuals. The National Company Law Tribunals (NCLT) have the jurisdiction in respect of insolvency and restructuring proceedings against corporate persons in India, while the Debt Recovery Tribunal oversees proceedings against individuals and partnerships.
The Code provides for the establishment of the Insolvency and Bankruptcy Board which entrusted with the monitoring and regulation of the insolvency sector in the Indian economy and regulation of the entities established under the Insolvency Code.

The Code is a bankruptcy law which seeks to consolidate and amend among others the following legislative framework relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals.

- Recovery of Debts due to Banks and Financial Institutions Act, 1993
- Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002
- Sick Industrial Companies (Special Provisions) Act, 1985 (SICA) repealed
- Winding up provisions of the Companies Act, 1956, Companies Act, 2013 and LLP Act 2013
- The Presidential Towns Insolvency Act, 1909
- Provincial Insolvency Act, 1920

The Code provides creditors with a mechanism to initiate an insolvency resolution process in the event a debtor is unable to pay its debts. The Code proposes creation of various new institutions which have specialized roles in the insolvency resolution process. The Code has created a regulatory and supervisory body i.e., the Insolvency and Bankruptcy Board of India (IBBI), which has the overall responsibility to educate, effectively implement and operationalize the Code.

The salient features of the Code are:

- Provides for clear, coherent and speedy process for early identification of financial distress and resolution of companies and limited liability entities if the underlying business is found to be viable.
- Two distinct processes for resolution of individuals, namely – 'Fresh Start' and 'Insolvency Resolution'.
- Four pillared institutional infrastructure:

- Insolvency Professionals (IPs) – the resolution processes will be conducted by licensed IPs. They would play a key role in the efficient working of the bankruptcy process. They would be regulated by 'Insolvency Professional Agencies (IPA). The Insolvency and Bankruptcy Board of India has recently notified the Model by laws and Governing body of IPAs. As per recently notified regulations, not-for-profit companies having a minimum net worth of Rs.10 crore will be eligible to act as an IPA. The code has become operational with IPAs getting registered.
- Information Utilities (IUs) – IUs will be established to collect, collate and disseminate financial information to facilitate insolvency resolution. This would eliminate delays and disputes about facts when default does take place.
- National Company Law Tribunal (NCLT) – it will be the forum where companies' insolvency will be heard and Debt Recovery Tribunal (DRT) will be the forum where individual and firms insolvencies will be heard. These institutions, along with their appellate bodies, viz., NCLAT and DRATs will be adequately strengthened so as to achieve world class functioning of the bankruptcy process.
- The Insolvency and Bankruptcy Board of India – this body will have regulatory over-sight over the IPs, IPAs and IUs.

When resolution/restructuring of debts is not viable, the NCLT may direct for dissolution of the company. The Code envisages a two stage process, first, revival/resolution and second, liquidation:

- Corporate Insolvency Resolution Process (Insolvency Resolution Process);
- Fast Track Corporate Insolvency Resolution Process (Fast Track Resolution Process);
- Liquidation

The Insolvency Resolution Process and Fast Track Resolution Process are measures to help revive a company.

INSOLVENCY RESOLUTION PROCESS

- An insolvency resolution process can be initiated by a financial creditor, an operational creditor or by a corporate applicant.
- Upon admission of the application preferred by a financial creditor/operational creditor, a moratorium is declared on the continuation and initiation of all legal proceedings against the debtor and an interim resolution professional (IRP) is appointed by the NCLT within 14 days from the insolvency commencement date.
- The moratorium continues to be in operation till the completion of the Insolvency Resolution Process which is required to be completed within 180 days of the application being admitted (extendable by a maximum period of 90 days in case of delay).
- During the continuation of the moratorium the debtor is not permitted to alienate, encumber or sell any asset with the approval of the Committee of Creditors (COC).
- Once an IRP is appointed, the board of directors is suspended and the management vests with the IRP. IRPs are required to conduct the insolvency resolution process, take over the assets and management of a company, assist creditors in collecting information and manage the Insolvency Resolution Process. The term of the IRP is to continue until a resolution professional (RP) is appointed under Section 22 of the Insolvency Code.
- The essential idea of the Insolvency Code is that when an entity defaults on its debt, control shifts from the shareholders/promoters to a Committee of Creditors, who have 180 days in which to evaluate proposals from various players about resuscitating the company or taking it into liquidation. When decisions are taken in a time-bound manner, there is a greater chance that the company can be saved as a going concern, and the productive resources of the economy (the labour and the capital) can be put to the best use. This is in complete departure with the experience under the SICA regime where there were delays leading to destruction of the value of the company.
- The process will end under two circumstances, (i) when the creditors decide to evolve a resolution plan or sell the assets of the debtor, or (ii) the 180-day time period for negotiations has come to an

end. In case a plan cannot be negotiated upon during the time limit, the assets of the debtor will be sold to repay his outstanding dues. The proceeds from the sale of assets will be distributed based on an order of priority.

- The assets will be distributed in the following order, in case of liquidation: (i) fees of insolvency professional and costs related to the resolution process, (ii) workmen's dues and secured creditors who have relinquished security, (iii) employee wages (other than workmen), (iv) unsecured creditors, (v) government dues and remaining secured creditors (for any remaining debt after enforcement of their collateral), (vi) any remaining debt, (vii) preference shareholders; and (viii) equity shareholders.
- For cross border insolvency, the central government may enter into agreements with other countries to enforce provisions of the Insolvency Code. (Cross border insolvency relates to an insolvent debtor who has assets abroad).

The Insolvency Code also provides for voluntary winding up by a corporate person who has not committed any default, provided certain conditions as laid down in the Insolvency Code are fulfilled.

The Insolvency Code is thus a comprehensive and systemic reform, which will give a quantum leap to the functioning of the credit market. It would take India from having among relatively weak insolvency regimes to providing businesses a stronger framework. It lays the foundations for the development of the corporate bond market, which would finance the infrastructure projects of the future.

Insolvency professionals are those licensed professionals appointed by the Insolvency Professional agencies who would take on the role of Resolution Professionals/Liquidator/Bankruptcy Trustee in the Insolvency Resolution Process of different entities.

The Code has recently introduced Pre-packaged Insolvency Resolution Process (PRIRP) for speedier resolution of insolvency. This process helps to resolve stress as a going concern, with minimum assistance of Government. Further, the process allows creditors and debtors to work on an informal plan and then submit to Adjudicating Authority (AA) for approval. Thus, flexibility is available in initial stages. A detailed framework has been provided in the Code.

THE RIGHT TO INFORMATION ACT (RTI ACT)

The RTI Act came into effect on October 12, 2005. The RTI Act provides for the setting out of the practical regime of right to information for citizens to secure access to information under the control of public authorities to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission (CIC) and State Information Commissions (SICs) and for matters connected therewith or incidental thereto.

The RTI Act provides for certain categories of information to be exempt from disclosure. The RTI Act also provides for appointment of a Chief Public Information Officer to deal with requests for information.

The salient features of the RTI Act are:

- To streamline the administration in order that the various functionaries of the government adapt themselves to the obligation of furnishing information as called for
- Provide for an independent apparatus or instrumentality for enabling citizens to obtain information about the functioning of various government functionaries
- To spell out the contents of the obligation to furnish information, as well as any matters which are otherwise exempted from being furnished, to a requesting member of the public
- The RTI Act provides for:
  - A hierarchy of instrumentalities with inbuilt provisions for appeal
  - Remedies to the third party as defined in the act
  - The barring of jurisdiction of civil courts

- Exemptions where the RTI Act does not apply
- Empowerment of the Government to prepare educational programmes etc.
- Distinction in terms of the period available for receiving information.

CONSUMER PROTECTION ACT (CP ACT)

The CP Act, read with the rules and regulations framed thereunder, provides for better protection of the interests of consumers.

The CP Act provides for establishment of consumer councils and other authorities for settlement of consumers' disputes and for matters connected therewith. For speedy redressal of consumer disputes, the CP Act provides for setting up of quasi-judicial machinery at the district, state and central level.

PREVENTION OF MONEY LAUNDERING ACT (PML ACT)

The PML Act seeks to combat money laundering in India and has three main objectives i.e., (a) to prevent and control money laundering/proceeds of crime; (b) to confiscate and seize the property obtained from the laundered money/proceeds of crime; and (c) to deal with any other issue connected with money laundering/proceeds of crime in India.

Under the PML Act, specified reporting entities are required to maintain a record of all the transactions of the nature and value of which have been prescribed in the rules notified under the PML Act.

Such transactions include:

- All cash transactions of the value of more than INR 1 million, or the equivalent in foreign currency
- All series of cash transaction integrally connected to each other which have been valued at below INR 1 million or the 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 the 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 as a whole is imperative for international financial relationships. The guidelines lay down the minimum requirements/disclosures to be made in respect of 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.

3 – SETTING UP A BUSINESS

BUSINESS FORMS

Foreign investors may establish a business presence in India through:

- A branch/liaison office
- A project office
-
- Joint Venture (JV) companies in collaboration with an Indian partner and/or by making a public offering
- Incorporating a company with limited liability in either of the following ways:
  - Incorporating a wholly-owned company with 100% foreign equity
  - Limited Liability Partnerships (LLPs) subject to satisfaction of conditions

BRANCH/LIAISON OFFICE

BRANCH OFFICE

Foreign companies engaged in manufacturing and trading activities can open branch offices to:

- Undertake export and import trading activities
- Render professional or consultancy services (other than practice of legal profession in any matter)
- Carrying out research work in areas in which the parent company is engaged
- Promote possible technical and financial collaborations between Indian and overseas parent/group companies
- Represent the parent company in India in various matters and act as buying/selling agents
- Render services in information technology and development of software in India
- Render technical support to the products supplied by the parent/group companies
- Act as a foreign airline/shipping company.

Normally, the branch office should be engaged in the activity that the parent company is engaged in.

The branch / liaison / project office have been granted general permission to carry out permitted / incidental activities from leased property subject to lease period not exceeding five years.
Profits of a branch office can be freely repatriated subject to payment of taxes and production of specified documents.

LIAISON OFFICE

Foreign companies engaged in manufacturing/trading activities can open liaison offices to:

- Represent the parent company/group companies in India
- Promote exports/imports from/to India
- Promote technical/financial collaborations between parent/group companies and companies in India
- Act as a communication channel between the parent company and Indian companies.

Currently, a foreign law firm is not allowed to open any branch/liaison/project office in India.

Permission to set up liaison offices is granted for an initial period of three years which can be further extended from time to time subject to compliances. Validity of liaison office in case of nonbanking financial companies or those in construction/development is two years after which, the office must be closed down or converted into a JV/wholly owned subsidiary as per the extant Foreign Direct Investment policy. Expenses of a liaison office can be met only out of remittances from the head office. The role of such offices is restricted to collecting information about potential marketing opportunities and providing information regarding the parent company and its products and services to potential Indian customers.

APPLICATIONS AND APPROVALS

Applications for establishing a branch/liaison office are required to be routed through nominated bankers and in the prescribed form, along with specified documents. Applications are considered using certain criteria relating to the track record and net worth of the parent company, under the following routes:

- Reserve Bank route – where the principal business of the foreign entity falls under sectors where 100% FDI is permitted under the automatic route
- Government route – cases other than the above.

Foreign insurance/banking companies can establish liaison offices in India after obtaining the approval of the requisite regulatory authority.

Prior approval of the Reserve Bank is required where:

- the applicant is a citizen of or is registered/incorporated in Pakistan;
- the applicant is a citizen of or is registered/incorporated in Bangladesh, Sri Lanka, Afghanistan, Iran, China, Hong Kong or Macau and the application is for opening a liaison, branch or project office in Jammu and Kashmir, North East region and Andaman and Nicobar Islands;
- the principal business of the applicant falls in the four sectors namely Defence, Telecom, Private Security and Information and Broadcasting;
- the applicant is a non-government organisation, non-profit organisation, body / agency / department of a foreign government.

PROJECT OFFICE

SETTING UP

General permission has been given by the Reserve Bank to foreign companies for establishing project offices in India, provided they have secured a contract from an Indian company to execute a contract in India and the following conditions are fulfilled:

- The project is funded directly by inward remittances from abroad; or
- The project is funded by a bilateral or a multi-lateral international financing agency; or
- The project has been cleared by the appropriate authority; or
- A company or an entity in India awarding the contract has been granted a term loan by a public financial institution or a bank in India for the project.

Reserve Bank approval is required if the above criteria are not met.

A project office may open foreign currency accounts with banks in India, subject to conditions.

Pending winding-up/completion of the project, intermittent remittances by project offices are permitted, subject to payment of Indian taxes and other specified conditions.

ON-GOING COMPLIANCES

Branch/liaison/project offices are required to fulfil annual compliances as laid down by the Reserve Bank in the prescribed form and manner.

CLOSURE

At the time of winding up/closure of the branch/liaison/project office, specified documents and confirmations, certified by the officers and chartered accountants, are required to be filed with the Reserve Bank.

LIMITED LIABILITY COMPANY (LLC)

The most common form of business enterprise for a foreign investor is a limited liability company.

Sole proprietors and partnerships are the other business forms prevalent in India but due to their unlimited liability, they are not normally found to be suitable by overseas investors.

Under the present policy of the government, all companies must be incorporated in India under the Companies Act, 2013 to carry on any business/service activities in the country.

Indian companies are classified into three categories – 'public', 'private' and 'one person' companies. A private company is one which:

- Restricts the right to transfer its shares
- Limits the number of its members to 200, except in the case of an 'One Person Company' (OPC)
- Prohibits invitation or acceptance of deposits from persons other than its members, directors or their relatives and prohibits public subscription to its share capital.

A public company is a company other than a private company or a private company which is a subsidiary of a public company.

An OPC is a company with only one member.

The Companies Act has wider regulations for public companies in respect of management, borrowings and dealings with members and creditors due to greater public participation.

COMPANY FORMATION

The formation of a company requires:

- Selection of a name (which has to be approved by the Registrar of Companies)
- Determination of the state in which the registered office will be situated
- Drafting of a memorandum of association which sets out the objects for which the company is formed and its capital, and the articles of association which set out the regulations for the company's internal management
- Preparation of prescribed documents for submission to the Registrar of Companies for registration along with the requisite fees.

The Registrar's office verifies the documents submitted and ascertains that all the formalities necessary for the formation of the company have been complied with. The Registrar then certifies under his hand that the company is formed. The company thereon emerges as a legal entity with limited liability. The entire process of registering a company is now done electronically.

MEMORANDUM AND ARTICLES OF ASSOCIATION

The memorandum of association of a company defines the objects for which the company exists. The company cannot operate beyond the scope of business activities defined in the memorandum. The memorandum of association of a public company is signed by a minimum of seven promoters, by a minimum of two in the case of private company and by one in the case of an OPC.

The articles of association are the internal regulations for the conduct of the company's affairs. The articles cannot go beyond the scope of the memorandum.

ISSUE OF SHARES

The issue of shares requires compliance with various provisions of the Companies Act and the Rules prescribed. A prospectus is a document which offers to the public the shares of a company, requires detailed disclosure with regard to the company, its directors, its past working and future projections, contracts which it has entered into, and other details. A company can issue shares to the public only after a copy of the prospectus has been filed with the Registrar.

Securities may be issued through private placement, preferential allotment or by way of rights or bonus issues, subject to conditions.

An Indian company may issue 'sweat equity shares' i.e., shares issued by a company to employees or directors at a discount or for consideration other than cash for providing know-how or making available rights in the nature of intellectual property rights or value additions, if approved by its shareholders, subject to certain conditions. Companies can also issue shares under a scheme, subject to the SEBI guidelines. A company cannot issue shares at a discount.

An Indian company may buy back its own shares if authorised by its articles of association and approved by its shareholders, subject to certain conditions.

A public limited company may issue shares with differential rights as to voting, dividends or otherwise, subject to certain conditions.

A company can reduce its share capital with the prior approval of the high court and subject to the conditions prescribed under the Companies Act.

ACCOUNTS

Books of accounts

- Every Company is required to maintain books of account at its registered office for every financial year.
- The Act has defined financial year to mean the year from April 1 to the subsequent to March 31. However, in case a company or body corporate which is a holding, or a subsidiary of a company incorporated outside India is required to follow a different financial year for consolidation of its accounts outside India then it can do so with prior approval of the National Company Law Tribunal.

Financial Statements

The financial statements for a financial year must be prepared in accordance with the prescribed Accounting Standards and should:

- Present a true and fair view of the affairs of the Company
- Comply with the accounting standards (AS) notified under Section 133 of the Act
- Be prepared in the format as prescribed.

Financial statements include the following:

- Balance Sheet
- A Statement of Profit and Loss Account
- Cash Flow Statement in specified cases
- Statement of changes in Equity, if applicable; and
- Explanatory notes annexed to, or forming part of, any document referred to above.

The Ministry of Corporate Affairs has notified the Indian Accounting Standards (Ind AS) which have been prepared in line with International Financial Reporting Standards (IFRS) with an objective of increasing the transparency of the financial statements and its acceptability at a global level. Currently, the Ind AS is applicable for a certain class of companies depending upon whether they are listed or in the process of listing on stock exchange, their net worth and whether they are holding, subsidiary, JV or associate companies of the listed entities.

Preparation of Consolidated Financial Statements (CFS)

A Company having one or more subsidiaries must also prepare CFS of the Company and of all the subsidiaries in the same form and manner as that of its own and the same should also be placed before the annual general meeting.

Preparation of CFS shall not apply if the following conditions are met by the company:

i. It is a Wholly-Owned Subsidiary (WOS), or is a partially-owned subsidiary of another company and all its other members do not object to for not presenting CFS subject to satisfaction of conditions;

ii. Whose securities are not listed or are not in the process of listing on any stock exchange, whether in India or outside India; and

iii. Its ultimate or any intermediate holding company files CFS with the authority which are in compliance with the applicable AS

A separate statement containing the salient features of the FS and its subsidiary/ies is also required to be attached to the FS.

AUDIT

Internal Audit

Internal Auditors can either be

a) Chartered Accountant or
b) Cost accountant or
c) Such other professional as may be decided by the Board of Directors (BoD) to conduct an internal audit of the functions and activities of the Company.

As per the Rules, specified companies must appoint Internal Auditors:

A Company may appoint a firm of Internal Auditors or an Internal Auditor. Such a person may or may not be an employee of the Company.

The Audit Committee of the Company or the Board shall, in consultation with the Internal Auditor, formulate the scope, functioning, periodicity and methodology for conducting the internal audit.

Statutory Auditors

Every company shall at the first AGM, appoint an individual or a firm as an auditor who shall hold office from the conclusion of that meeting till the conclusion of its sixth AGM and thereafter till the conclusion of every sixth meeting.

Compulsory rotation of individual auditors every five years and of the audit firm in every 10 years for specified category of companies.

There is an option granted to the members of the Company to rotate the signing partner in an audit firm or to appoint an additional auditor.

On expiry of the term of auditors, the new firm which gets appointed shall not have a partner in common with the retiring firm.

DIRECTORS AND MANAGEMENT

The Companies Act, which governs the functioning of companies, requires a company to have at least two directors if it is a private company, or three directors in the case of a public company, or one director in the case of one person company.

Non-resident Indians or foreign nationals can be appointed as a whole time director or managing director subject to applicable rules. For companies where public is substantially involved, two third directors are liable to retire by rotation and one third are liable to retire at every general meeting after the meeting at which first directors are appointed. Provisions also exist in the Companies Act for the appointment of alternate directors to act in place of the original director. It is common practice for the foreign investor to have Indian legal and accounting professionals to act as alternate directors as their nominees to protect the foreign investor's interest in Indian companies. Companies must have at least one resident Indian director.

Every director of a company must obtain a director identification number (DIN) by making an application in the prescribed form and supported by specified documents duly attested as instructed. Such an application is required to be made electronically and once allotted, the DIN is required to be used in all necessary compliances under the Companies Act. The DIN holders are required to file KYC form annually to update the information available with Registrar.

PROVISIONS FOR LISTED COMPANIES

Listed companies are required to comply with the following conditions/fulfil the following requirements:

- Enter into a listing agreement with the concerned stock exchanges. An important provision of such agreement is Clause 49 which deals with the following matters:
  - Independence of the board of directors
  - Composition and role of the audit committee
  - Regulations and guidelines with regards to maintaining financial reporting and transparency in relation thereto, including certifying the audited financial statements and cashflow statement by the chief executive officer and chief financial officer, statement of application of funds raised, criteria for payments to non-executive directors etc.

- Publish and submit to the stock exchanges quarterly/half-yearly financial results accompanied by a limited review report by the statutory auditors.

ANNUAL FILINGS

Every company is required to file its financials and an annual return confirming specified information and details of the company and includes a confirmation of a company secretary relating to prescribed matters.

OTHER MATTERS

The Companies Act 2013 is largely rule based – while the Act itself lays down the substantive law, the rules determine the operation and administration of every aspect of the Act and accordingly, various Rules have been framed under the Act with regard to various administrative and operational matters.

There are a number of filings, etc., that have been prescribed under the Companies Act in relation to operational and administrative matters which companies are required to comply with.

COMPANIES ACT AND CORPORATE GOVERNANCE

The Companies Act regulates the formation, financing, functioning and winding up of companies.

The Companies Act prescribes the regulatory mechanism regarding all relevant aspects of companies including organisational, financial, and managerial aspects. Although the freedom of companies is important in the corporate sector, protection of investors and shareholders is equally important.

The Companies Act 2013 replaces the Companies Act 1956 and makes provision for transparency, governance and compliance.

The main objects of the Companies Act are:
- To help the attainment of the ultimate ends of the social and economic policy of the Government
- To help the development of Companies in India on healthy lines, because corporate sector constitutes a very important segment of the economy
- To equip the Government with adequate powers to intervene in the affairs of a company in the public interest and as per the procedure prescribed by law so that the interest of all the stake-holders may be protected from unscrupulous management
- To protect the interests of large number of shareholders, as there exists separation of ownership from management in a company
- To safeguard the interests of creditors

In particular, the Companies Act 2013 puts a greater emphasis on the following matters:
- Increased reporting framework
  - Mandatory requirement for consolidated financial statements
  - Financial year to be uniform
  - Revision in form and presentation of financial statements
  - Mandatory internal audit and reporting on internal financial controls
- Higher Auditor accountability
  - Auditor appointment and rotation
  - Reporting responsibilities
  - Cannot render specified non-audit services
- Easier procedures for restructuring
  - Rationalising multi layered structures
  - Simplifying procedures
- Wider director and management responsibility with particular reference to remuneration and related party transactions
- Inclusive Corporate Social Responsibility Agenda

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.

CORPORATE GOVERNANCE

Corporate Governance is necessary to ensure compliances of policies and procedures that are required to be followed by the companies in their daily course of business activities. Transparency and accountability is what the stakeholders and shareholders expect from the directors of the company. The Companies Act 2013 lays down the conditions and mechanisms that companies are required to comply with in order to ensure effective corporate governance.

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

- Composition of the board of directors including appointment of independent directors
- A director's responsibility statement must be included in the director's report
- The constitution of committees of the board including an audit committee
- The debarring of a person to act as a director of a company if there is any default in filing annual returns, accounts, or repayment of deposits/debentures/interest/dividends
- The 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 listed companies including provisions relating to:
  - Appointment of independent directors, their powers and responsibilities
  - Stricter approval mechanism for related party transactions
  - Principles of corporate governance extended to material subsidiaries of listed companies
  - Expanded role of the Audit Committee
  - Compulsory whistle blower mechanism
  - Setting up of a Nomination and Remuneration Committee
  - The Board of Directors to form a Code of Conduct and ensure strict compliance with the code.
  - The Board of Directors are responsible for framing, monitoring and implementing the risk management policy of the company and for the purpose constitute a Risk Management Committee
- Voluntary adoption of Corporate Governance Voluntary Guidelines, 2009.

A separate section on corporate governance is to be included in the annual reports of listed companies, with a detailed compliance report on corporate governance.

LIMITED LIABILITY PARTNERSHIPS

A limited liability partnership (LLP) is a form of business structure which combines the best elements of the partnership and corporate structures for carrying out business and provides considerable flexibility in management, especially for small and medium-sized firms. The LLPs are governed under the Limited Liability Partnership Act, 2008.

The salient features of the LLP Act are:

- The LLP is an alternative corporate business vehicle that gives the benefits of limited liability but allows its members the flexibility of organising 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 it is available for use by any enterprise which fulfils the prescribed requirements
- While the LLP is a separate legal entity, liable to the full extent of its assets, the liability of the partners is limited to their agreed contribution in the LLP, except for any act carried out by the LLP with intent to defraud. 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
- An LLP shall be a corporate body and a legal entity separate from its partners and is capable of doing and suffering acts just as any other corporate bodies. It will have perpetual succession
- The rights and duties of a partner of an LLP and mutual rights and duties between an LLP and its partners are governed by the LLP agreement between the partners or between the LLP and its partners
- Partners are agents of the LLP but not agents of the other partners
- 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 (10 for banking business). An individual or a corporate body can become a partner

- LLPs must have at least two individuals as ‘designated partners’ of which one must be resident in India. A corporate body partner of an LLP may nominate an individual as a ‘designated partner’
- The taxation of LLPs is addressed in the Income tax Act, 1961 (see Section V). For the purpose, an LLP is treated at par with a partnership firm under the Partnership Act, 1932
- LLPs are required to maintain books of accounts and are required to have the accounts audited, subject to exceptions. Annual filings are required to be made with the Registrar of Companies (ROC)
- LLPs are required to file the LLP agreement with the ROC and inform the ROC of any changes to the agreement or changes in particulars of the designated partners
- The right of a partner to share profits and losses is transferable either wholly or in part
- The LLP Act provides for corporate actions like mergers, amalgamations, etc
- Concept of ‘whistle blower’ is incorporated in the LLP Act.
- A partnership under the Partnership Act, 1932 may be converted into an LLP. A private company or an unlisted public company may also be converted into an LLP provided there is no ‘security interest’ subsisting on the date of application for conversion and the partners of the limited liability partnership to which it converts comprise all the shareholders of the company and no one else.
- While enabling provisions in respect of the winding-up and dissolution of LLPs have been made, detailed provisions in this regard are provided by way of rules under the Act
- The Act also provides for conversion of existing partnership firms, private limited companies and unlisted public companies into an LLP by registering the same with the ROC
- The ROC is the authority responsible to register, administer and control LLPs
- The governance of LLPs shall be in electronic mode
- Heavy penalties have been provided in case of non-compliance of provisions of the LLP Act.

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4 – LABOUR

LABOUR LAWS

FACTORIES ACT

The Factories Act provides for the health, safety, welfare, service conditions and other aspects of workers in factories. The Act is enforced by the state government which frames rules to ensure that local conditions are reflected in enforcement.

The Act also regulates the safeguards to be adopted for the use and handling of hazardous substances.

The Factories Act covers the whole of India and is applicable to all 'factories' including government factories. The act applies to all factories involved in a manufacturing process employing more than 10 people and working with the aid of power or employing 20 people and working without the aid of power, where employees were working on any day in the preceding 12 months.

A 'factory' does not include a mine (which is covered under the Mines Act), a mobile unit of the armed forces, a railway shed, a hotel, restaurant or eating place.

The Act covers all workers in factory premises or precincts employed directly or through an agency (including a contractor) and who are involved in any manufacturing process.

INDUSTRIAL DISPUTES ACT

The Industrial Disputes Act covers establishments engaged in various activities and provides for the investigation and settlement of disputes relating to lockouts, layoffs, retrenchment, closures, etc. The Act provides the processes for the reconciliation and adjudication of disputes or differences between employees and employers and computations of certain types of payments to employees. The Act restricts unfair labour practices, prescribes regulations for governing cases of strikes, lock-outs, lay-offs, retrenchment and closure in certain establishments. Consequences of such eventualities are provided towards employees and employers as well. Industrial establishments include any undertakings carrying out business, trade, manufacture etc.

PAYMENT OF BONUS ACT

The Payment of Bonus Act provides for the payment of bonuses to persons employed in certain types of establishments on the basis of profits or on the basis of production or productivity. The Act is applicable to every factory, establishment employing 20 (10 in the state of Maharashtra) or more persons or other designated establishments. The Act is only applicable to employees drawing upto a certain level of salary per month (currently Rs.21,000/-). The minimum bonus that an employer is required to pay (even if they have suffered losses during the accounting year) is 8.33% of salary, which can rise up to a maximum of 20% in specified situations.

PAYMENT OF GRATUITY ACT

The Payment of Gratuity Act provides a scheme for the payment of gratuity to all employees in factories, establishments employing 10 or more employees or other designated establishments. Gratuity is payable to an employee (having completed five years of continuous service, calculated in the prescribed manner) on their cessation of employment at the rate of 15 days salary for each completed year of service (or a part thereof) exceeding six months, with the denominator taken as 26, subject to a maximum of INR 2 million.

PAYMENT OF WAGES ACT

The Payment of Wages Act regulates issues relating to time limits within which wages shall be distributed to employees of specified establishments and specifies that no deductions other than those authorised by the law are made by employers.

MINIMUM WAGES ACT

The Minimum Wages Act prescribes minimum wages for all employees in various types of establishments or those working at home in certain sectors specified in the schedule of the Act. Central and state governments revise the minimum wages specified from time to time.

EMPLOYEES PROVIDENT FUND ACT (EPF ACT)

The EPF Act seeks to ensure the financial security of employees in an establishment by providing for a system of compulsory savings towards an employee's retirement. The Act is applicable to factories, establishments employing more than 20 persons and other designated establishments. The provident fund is deducted at 12% of the salary (basic + specified allowances and other salary components which satisfy the principles of universality) paid to an employee in a month. Employers are required to contribute an equal amount towards the provident fund and deposit the same with the authorities. The accumulated balance in the employee's account is payable at the time of retirement/death.

Where employees draw a monthly 'salary' (as understood under the EPF Act) exceeding INR 15,000, employers have the option of contributing provident fund only on INR 15,000 and not the entire salary amount.
In the case of expats employed with an Indian company, the provident fund is applicable on the entire salary.

EMPLOYEES PENSION SCHEME

The EPF pension scheme under the EPF Act provides for a monthly pension to employees on their superannuation, and for pensions to widows and children of employees.

The EPF pension scheme applies to all factories and establishments to which the EPF Act applies.

EMPLOYEE STATE INSURANCE ACT (ESI ACT)

The ESI Act provides for certain benefits through government hospitals to employees (and sometimes dependants) in case of sickness, maternity, medical reasons, disablement and employment injury. The ESI Act is applicable to all factories which have more than 10 employees working with the aid of power or having more than 20 employees working without the aid of power, shops and other designated establishments.

The employees entitled to the ESIC benefits are those earning a salary (basic + costs allowance + overtime) not exceeding INR 21,000 per month.

Monthly contributions towards ESIC are 0.75% of an employee's salary and a matching contribution from the employer of 3.25% of the employee's salary.

EMPLOYEES' COMPENSATION ACT

The Employees' Compensation Act provides that compensation shall be provided to a workman for any injury suffered during the course of his/her employment or to his/her dependents in the case of their death. The Act provides for the rate at which compensation shall be paid to an employee.

MAHARASHTRA STATE TAX ON PROFESSIONS (PROFESSION TAX ACT)

The Profession tax Act is a state area and every state is empowered to enact legislation in this regard. The Act extends to every person engaged actively or otherwise in any profession, trade, calling or employment and falling within the classes specified in the Act. Tax is payable to the state government as prescribed. As regards persons earning a salary or wages, the employer will deduct the profession tax from the salaries or wages. An employer, too, is required to pay the tax as prescribed.

MAHARASHTRA SHOPS AND ESTABLISHMENTS ACT (S&E ACT)

The S&E Act is a state law and every state is empowered to enact legislation in this regard. The Act extends to every establishment carrying on any business, trade, manufacture or profession and engages 10 or more workers. The Act regulates working conditions including payment of wages, holidays and leave, and health safety and welfare.

PREVENTION OF SEXUAL HARASSMENT OF WOMEN AT WORKPLACE ACT

The Prevention of Sexual Harassment of Women at Workplace Act imposes obligations on the employer and the government to take appropriate steps to ensure the safety of women at the workplace. The Act is applicable to all establishments.

MATERNITY BENEFIT ACT

This law provides for the regulation of employment of women in certain categories of establishments for certain periods before and after child-birth and to provide for maternity benefit and certain other benefits. This Act provides for benefits and safeguards for women who are pregnant, who adopt, who are commissioning mothers, and also those who suffer certain pregnancy related illnesses.

APPRENTICES ACT

This law provides for the mandatory appointment by certain categories of establishments of apprentices and the regulation of their employment. Individuals that are appointed and registered as apprentices under this law are excluded from the ambit of all other labour and employment laws.

MAHARASHTRA WORKMEN'S MINIMUM HOUSE RENT ALLOWANCE ACT

This law provides for the payment of a certain minimum house rent allowance to employees by certain categories of establishments which employ 50 or more employees. Presently, the minimum house rent allowance to be paid is 5% of the wages (i.e., basic wages and dearness allowance).

CONTRACT LABOUR (REGULATION AND ABOLITION) ACT

This law regulates the employment of contract labour in certain establishments and provides for its abolition in certain circumstances. The principal employer and the contractor are both required to obtain separate registrations / licences under the provisions of this law when the total number of contractual workers engaged cross a certain limit. These limits are separately stipulated from state to state in India.

EQUAL REMUNERATION ACT

This law provides for the payment of equal pay for equal work for both man and woman. It also provides for the prevention of discrimination in payment of wages on the ground of sex against women in the matter of employment and for the matter commented therewith or incidental thereto.

RIGHTS OF PERSONS WITH DISABILITIES ACT

This law sets out certain basic obligations on employers with a view to protect the rights of persons with disabilities. Employers are inter alia obligated to formulate policies, prevent discrimination, provide equal opportunities, etc.

TRANSGENDER PERSONS (PROTECTION OF RIGHTS) ACT

This law provides for the protection of rights of transgender persons and their welfare and for matters connected therewith and incidental thereto.

INDUSTRIAL EMPLOYMENT (STANDING ORDERS)

This law requires employers in industrial establishments to formally define conditions of employment under them and submit draft standing orders to the local certifying authority for certification. In certain States in India the model standing orders as prescribed under the state rules are automatically applicable to the establishment and if the establishments desire to deviate from any of the conditions set out in the model standing orders, then they are required to approach the local certifying authority with their proposed amendments for certification.

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5A – TAXATION

DIRECT TAXATION

INCOME TAX

India's income tax regime is governed by the Income Tax Act, 1961 (IT Act) and the rules framed thereunder. The Indian constitution prohibits states from imposing tax on income other than income derived from agriculture.

ADMINISTRATIVE SYSTEM

At the apex of the income tax department is the Central Board of Direct Taxes (CBDT). The CBDT is part of the Finance Ministry and administers direct tax laws. The CBDT is a large organisation with director-generals, chief commissioners and commissioners in charge of specified areas assisted by deputy commissioners and officers, who issue assessment orders and collect taxes.

ASSESSMENTS

All taxpayers are required to file a return of income form on or before specified dates for each tax year. Tax on income is assessed for a tax year commencing 1 April at the rates in force for the relevant assessment year. The assessment year is the year commencing on 1 April, immediately succeeding the tax year.

Assessments of more than 90% of non-corporate taxpayers are completed in a summary manner by accepting the returns furnished. Assessments in the remaining cases are made after detailed scrutiny and investigation.

Assessment of a non-resident can be made either directly or through their agent. In some cases, an income tax officer can treat a person in India as an agent of a non-resident and collect taxes from the non-resident through that agent.

Penalties and prosecutions can be imposed for specific non compliances, subject to the fulfilment of certain conditions and exceptions.

CBDT has introduced a scheme of faceless assessment which is roadway towards a paperless, faceless assessment stripping away at bureaucratic layers. The objective of the scheme is to introduce greater transparency, efficiency in terms where the taxpayer can represent himself, simplification of tax compliance, ease of communication by setting a standard and expectation of the response and overall tax friendly ecosystem.

The outcome of this scheme is that the taxpayers will no longer be attached to a specific territory or jurisdiction or office for assessments thus eliminating all human interfaces. With the implementation of the new assessment system, there will be a significant reduction in the delay in tax assessments and audits because the system would automatically flag unwanted actions or deference.

The faceless e-assessment system for income tax, which is currently being piloted, is a milestone initiative towards achieving these goals and India is the first country to implement this system and this can help the country in coping up with current issues.

ADVANCE RULING

A person can seek an advance ruling on a determination (including a question of law or fact):

- In relation to a transaction undertaken or proposed to be undertaken with a non-resident applicant

- Of the tax liability of a non-resident in respect of a transaction undertaken or proposed to be undertaken by the resident applicant with a non-resident
- Or decision of an issue (including a question of law or fact) relating to the computing of the total income pending before any income tax authority or the appellate tribunal.

An advance ruling would be binding for the specific transaction (for which the determination is sought) on the tax authorities and the applicant who has sought it. The advance ruling would be binding unless there is a change in the law or in the facts. Advance rulings are communicated within six months from the date of application.

RESIDENCE

The liability to tax under the IT Act depends upon the residential status of the taxpayer, irrespective of his/her nationality or domicile.

An individual is said to be resident in India in a tax year if he/she is:

- In India for a period or periods amounting to 182 days or more in a tax year, or
- In India for an aggregate period of 60 Days or more (182 days in certain cases) in the tax year and has been in India for an aggregate period of 365 days or more in the four tax years preceding that tax year
- An Indian citizen earning income in India exceeding INR 1.50 million who is not liable to tax in any country or territory, by reason of residence or domicile.

A person is said to be a 'resident but not ordinary resident' (NOR) in India in any tax year if an individual:

- Has been non-resident in India in nine out of ten tax years preceding that tax year, or
- Has during the seven tax years preceding that tax year, been in India for a period or periods aggregating to 729 days or less;
- Who is a citizen of India or OCI earning income in India exceeding INR 1.50 million has been in India in that tax year for more than 120 days but less than 182 days.

A non-resident is a person who is not resident in India.

A company, whether Indian or foreign, is said to be resident in India if:

- It is a company incorporated in India; or
- During the relevant tax year, its place of effective management is in India.

Note: The place of effective management is where the key management and commercial decisions for the business entity, in substance, are taken.

SCOPE OF TOTAL INCOME

A resident pays tax in India on his/her global income.

A non-resident is taxable on his/her income received in India and also on income sourced in India. The IT Act contains provisions which deem whether income accrues or arises in India i.e., is sourced in India.

A 'resident but not ordinary resident' is not liable to tax in respect of income which accrues outside India unless that income is derived from a business controlled in or a profession set up in India.

In relation to interest, royalty and fees for technical services paid by a resident to a non-resident, such income will be taxed in the hands of the non-resident whether or not such a non-resident:

- Has a residence or place of business or business connection in India
- Has rendered services in India.

Royalty includes payments for transfer of all or any rights in respect of any property, right or information and includes the right to use or the right for use of any computer software.

TAXABLE INCOME

The income of the taxpayer is determined under five headings – salaries, income from house (residential) property, profits and gains of business or profession, capital gains and income from other sources.

Specific deductions are available under each source and there are specific rules as to what constitutes income from each source. The tax charged is at the rates in force for the relevant tax year.
The IT Act provides for the setting off of losses and carrying forward of unabsorbed losses under various income headings, which are referred to in Table 8, below.

The consequently adjusted income is the gross total income. Gross total income less certain specified deductions and tax incentives provided under the IT Act is the total taxable income of a taxpayer.

Certain types of income and receipts are fully exempt from tax and do not form part of gross total income.

Any sum of money received by an individual or by a family member in case of death of such individual, from a COVID-19 related illness, is not taxable.

INCOME COMPUTATION AND DISCLOSURE STANDARDS

Income Computation and Disclosure Standards have been notified for the purpose of computing income for tax purposes. These standards must be followed for computing business income and income from other sources by taxpayers who draw up their financial statements under the accrual system of accounting.

AGRICULTURAL INCOME

Agriculture is a state area and there is no central income tax on agricultural income.

Agricultural income is exempt from tax. However, agricultural income is aggregated with other income for the purpose of determining the rate of tax applicable to other income.

TAX CONCESSIONS

The IT Act offers several tax incentives to industrial units in the country for computing taxable income from businesses and professions.

These incentives reduce the tax incidence substantially.

DEPRECIATION ALLOWANCE

Depreciation is available at specified rates on tangible and intangible capital assets (except land and goodwill) owned by a taxpayer and used for the purposes of a business or profession.

Tangible assets are classified into four categories – buildings, furniture and fixtures, plant and machinery, and ships. Intangible assets include know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of a similar nature.

Depreciation is restricted to 50% of the rates in the year of acquisition if the asset is used for less than 180 days. Depreciation can also be claimed on fractional ownership of assets.

An additional 20% depreciation is allowed in case of any new machinery or plant (other than ships and aircrafts), which has been acquired and installed after 31 March 2005 by a taxpayer engaged in the business of manufacture or production of any article or thing or in the business of the generation and/or distribution of power, subject to satisfying specified conditions.

It is mandatory to claim depreciation allowance. Depreciation that is not absorbed can be carried forward and set off against income in subsequent years without any time limit.

The IT Act permits a depreciation allowance on a written-down value method. However, in respect of assets acquired by undertakings engaged in the business of generation or generation and distribution of power, the taxpayer may opt to claim depreciation under the straight line method on individual assets instead of on a block of assets. Once exercised, such an option cannot be reversed.

Rates of depreciation prescribed for assets falling within each category, are given in Appendix III.

EXPENDITURE DEDUCTIONS

SCIENTIFIC RESEARCH

Any expenditure incurred on scientific research, which is related to business, shall be allowed as a deduction from the taxable income. Contributions made to national laboratories or approved research associations, companies, universities, colleges or institutions engaged in scientific, social or statistical research is allowed at the specified weighted rate. A weighted deduction is allowed to companies engaged in the business of bio-technology or in the manufacture or production of any specified article or item on any expenditure or any approved in-house research and development facility.

TELECOMMUNICATION SERVICES LICENCES

Payments made to acquire spectrum for operating telecommunication services can be amortised over the duration for which the spectrum is acquired.

SPECTRUM LICENCES FOR TELECOMMUNICATION SERVICES

Payments made to acquire spectrum for operating telecommunication services can be amortised over the duration for which the spectrum is acquired.

ELIGIBLE PROJECTS/SCHEMES

Any expenditure incurred by a taxpayer by way of payment to a public sector company or a local authority or to an approved association or institution for carrying out eligible projects or schemes for the social and economic welfare, or betterment of the general public is allowed as a deduction.

EXPENDITURE ON SPECIFIED BUSINESS

Any capital expenditure incurred wholly and exclusively for the purposes of any ‘specified business’ is allowed as an expenditure in the year in which such an expenditure is incurred, subject to conditions.

PRELIMINARY EXPENDITURE

Deductions will be allowed to a taxpayer in respect of specified expenditure incurred prior to the commencement of business in relation to the extension of an undertaking on setting up a new unit. The deduction is permitted to the extent of 20% for a period of five years from commencement. The allowed expense amount is restricted to 5% of the cost of the project or the capital employed, subject to conditions.

AMALGAMATIONS/DEMERGERS
Any Indian company which has incurred expenditure wholly for the purpose of an amalgamation or demerger will be allowed a deduction over a period of five years in equal instalments from the year in which the amalgamation or demerger takes place.

VOLUNTARY RETIREMENT EXPENSES
Deductions in respect of payments made to employees on voluntary retirement, in accordance with prescribed guidelines, shall be allowed as a deduction in five equal instalments starting from the tax year in which the expenditure is incurred.

PROSPECTING FOR CERTAIN MINERALS
Deductions can be claimed by a taxpayer in respect of expenditure incurred on prospecting for the development of certain minerals (listed in Schedule VII of the IT Act). Deductions can be claimed in respect of expenditure incurred during a period of five years until the year in which commercial production is commenced and can be claimed over a period of ten years in equal instalments from the year in which commercial production starts.

TEA, COFFEE, RUBBER BUSINESS
Deductions will be allowed to a taxpayer engaged in the business of growing and manufacturing tea or coffee or rubber to the extent of 40% of the profits computed under the heading 'profits and gains of business and profession' or the amount deposited with the National Bank for Agriculture and Rural Development (NABARD), or in a deposit account opened in accordance with a specified scheme, whichever is less.

The amount is required to be deposited within six months from the end of the financial year or before the due filing date of the return of income.

PETROLEUM AND NATURAL GAS BUSINESS
Deductions will be allowed to a taxpayer engaged in the business of prospecting for, extracting or producing petroleum or natural gas in India, to the extent of 20% of the profits computed under the head 'profits and gains of business or profession' or the amount deposited with the State Bank of India or in a 'site restoration account' opened in accordance with a specified scheme, whichever is less.

CORPORATE SOCIAL RESPONSIBILITY
No deduction will be allowed to a taxpayer on expenditure incurred on any activity relating to Corporate Social Responsibility (CSR) as referred to in the Companies Act 2013.

LIMITATION ON INTEREST DEDUCTION
Deduction on account of interest in excess of INR 10 million payable by an Indian company (except for banking, insurance and other specified companies), permanent establishment or a foreign company to its non-resident associate enterprise will be restricted to 30% of the earnings, subject to conditions.

TAX EXEMPTIONS
Income earned by specified trusts including business trusts, real estate investment trusts, venture capital undertakings, etc., are subject to full tax exemption, subject to conditions.

DIVIDENDS
The exemption on dividend income is withdrawn. Dividend Income is now taxable in the hands of the shareholder.

The dividend income, in the hands of a non-resident person (including FPIs and non-resident Indian citizens (NRIs)), is taxable at the rate of 20% without providing for deduction under any provisions of the Income-tax Act. However, dividend income of an investment division of an offshore banking unit is taxed at 10%.

Dividend received by a domestic company from a foreign company, in which equity shareholding of such domestic company is less than 26%, is taxable at normal tax rate. The domestic company can claim deduction for any expense incurred by it for the purposes of earning such dividend income.

INTERCORPORATE DIVIDENDS

As the taxability of dividend is proposed to be shifted from companies to shareholders, to remove the cascading effect where a domestic company receives a dividend from another domestic company, set-off for inter-corporate dividends are introduced.

BUYBACK DISTRIBUTION TAX (BDT)

Tax at an effective rate of 23.30% (20% tax plus a 12% surcharge plus a 4%) cess is payable on the distributed income paid on buy back of shares.

As per the explanation provided in the section, "distributed income" means the consideration paid by the company on buy-back of shares as reduced by the amount, which was received by the company for issue of such shares, determined in the prescribed manner.

SPECIAL PROVISIONS RELATING TO INCOME OF SHIPPING COMPANIES

Under the tonnage tax scheme (TTS – a scheme of presumptive taxation), Indian shipping companies have to exercise the option to be assessed either under the TTS or under the normal provisions of the IT Act, subject to fulfilling various criteria.

TAX HOLIDAYS

The IT Act provides for tax holidays to certain industrial undertakings/enterprises engaged in specified sectors/activities.

Types of tax holiday are summarised in the tables below.

TABLE 6

Staggered tax concessions available to undertakings/units/companies

NATURE OF ACTIVITY	TAX CONCESSION (% OF PROFITS)	PERIOD	BUSINESS COMMENCING
Handling, storage and transportation of food grains, processing, preservation and packaging of fruits and vegetables	100% 30%[2]	First five years Next five years	After 31 March 2001
Collecting and processing or treating of bio-degradable waste	100%	First five years	Any time
Manufacture or produce, any article or thing	30% of additional employee cost to new workmen	Three years from year in which employment is provided	-

[2] In case, the taxpayer is person other than company, then the tax rate will be 25%.

NATURE OF ACTIVITY	TAX CONCESSION (% OF PROFITS)	PERIOD	BUSINESS COMMENCING
Units in international financial service centre and income of offshore banking units in SEZ	100%	First 10 years	Any time
Business by a 'start-up' which involves innovation, development, improvement of new products, processes or services or a scalable business model with a high potential of employment generation or wealth creation	100%	Three consecutive years out of the first 10 years, subject to an annual turnover limit of INR 1 billion	Before April 01,2024

BUSINESS LOSS

The IT Act provides conditions for the set-off of losses and the carry forward of unabsorbed losses, as shown in the table below.

TABLE 8

Losses in a tax year computed under any income heading:-

NATURE OF LOSS	SET OFF AGAINST	UNABSORBED LOSS CARRY FORWARD TIME LIMIT (YEARS)
Computed under any income heading	Income computed under any other heading of income, except as stated below	-
Business income	Income computed under any other heading of income, except salary income	Eight
Speculation business	Income from 'speculation' business	Four
Short-term capital loss	Capital gains	Eight
Long-term capital loss	Long-term capital gain	Eight
Loss from 'specified business'	Income from 'specified business'	-

Losses can be carried forward only if the return of income has been filed on time.

Loss incurred in any year will be allowed to set off only if shares carrying 51% voting power continue to be held by the persons who held the shares carrying 51% of the voting power in the year in which the losses were incurred.

However, any loss cannot be set off against undisclosed income detected during search and survey operations.

CAPITAL GAINS

Profits and gains from the transfer of capital assets other than those held for business purposes, are charged to tax as 'capital gains' in the year in which the transfer takes place.

Capital gains are classified as long-term capital gains if they arise from the transfer of capital assets:

- In the case of shares held in a listed company, or other securities listed on a recognised stock exchange in India or units of equity oriented mutual funds or zero-coupon bonds, for a period of 12 months or more

- In the case of unlisted shares held in a company or immovable property being land or building or both, for a period of 24 months or more
- In the case of other assets, held for a period of 36 months or more.

Capital gains arising from the transfer of a capital asset which is a unit of the Unit Scheme 1964 are exempt from income tax.

The IT Act provides for certain transactions which are not considered as transfers of capital assets. The IT Act also lists out certain transactions of transfer of capital assets (including shares) in a merger, demerger, business re-organisations and other specified transactions which do not result in a transfer giving rise to capital gains.

Long-term capital gains are calculated after deducting from sale proceeds the indexed cost of acquisition, and the indexed cost of improvement and expenditure incurred in connection with the transfer. The indexed cost of acquisition and indexed cost of improvement refer to costs duly indexed and adjusted for inflation as prescribed in the act. Bonds and debentures (other than capital indexed bonds issued by the government) are not eligible for cost indexation. The benefits of indexation are not available to non-resident taxpayers.

For purposes of the computation of capital gains, the taxpayer has the option to take either the actual cost or the fair market value of the asset (other than depreciable assets), as at 1 April 2001, as the cost of acquisition where the capital asset became the property of the taxpayer by any mode specified in the IT Act.

In the case of a taxpayer who is a non-resident, capital gains arising from the transfer of capital assets, being the shares or debentures of an Indian company, shall be calculated by converting the cost of acquisition, and expenses incurred for the transfer and sale consideration into the same foreign currency as was utilised for the purchase of shares or debentures. The capital gains so computed will be converted into Indian currency on the date of transfer.

Specified hybrid securities known as 'Market Linked Debentures'. have been brought under the purview of taxation on transfer, maturity or redemption and will be taxed as short term capital gain.

Profits arising on the transfer of intangible assets such as goodwill of a business or profession, the right to manufacture, produce or process any article or thing, the right to carry on any business, tenancy rights, stage carriage permits, or loom hours, trademarks or brand names associated with a business, are chargeable to tax as capital gains. Where no consideration paid to acquire an intangible asset or any other right, cost of acquisition or cost of improvement shall be taken as NIL.

In the case of land and buildings, where the consideration declared as a result of the transfer of land or buildings or both is less than the value adopted or the value that would have been adopted by any state government authority, for the purpose of payment of stamp duty, such a value is deemed to be the consideration for the transfer. Capital gains are required to be computed accordingly. The IT Act provides references for disputed values to a valuation officer.

While computing capital gains on transfer of land or building or both under a joint development agreement, full value of consideration to include the stamp duty value increased by consideration received by cash, cheque, draft or any other mode.

While computing capital gains on transfer of house property, cost of acquisition or cost of improvement to not include amount of interest claimed under other provisions of the Act.

Gains arising in the following transactions, among others, are chargeable to tax as capital gains:

- Gains arising on the transfer of securities acquired under stock option schemes or as ‘sweat equity’
- Insurance compensation for the destruction or damage of a capital asset
- Profits or gains arising on the sale of one or more undertakings as a ‘slump sale’
- Gains arising to shareholders on the distribution of assets by companies in liquidation
- Gains arising on the conversion of capital assets into stock in trade
- Gains arising on the transfer of a capital asset by a partner of the firm by way of capital contribution or otherwise
- Gains arising on the transfer of a capital asset by way of distribution on dissolution or otherwise of a firm or association of persons
- Gains arising out of the transfer of a capital asset by way of compulsory acquisition under any law.

The IT Act provides for a reduction of long-term capital gains income to the extent the net consideration/capital gains are invested in specified assets and held for at least three/five years as the case may be, subject to prescribed limits and conditions.

The findings of the Supreme Court in the landmark judgement in the Vodafone case led to a retrospective legislative clarification in terms of which the gains arising from a transfer of capital assets outside India, which derive value substantially, directly or indirectly from assets in India, would be subject to tax in India.

In cases where the consideration for transfer of shares in an unlisted company is less than the fair market value determined in the specified manner, the fair market value is the basis of computing the capital gain.

Capital Gain on Slump sale transactions will be calculated on the difference amounting between the full value of consideration and the fair market value of the capital assets (excluding goodwill unless acquired of previous owner).

Long-term capital gains in other cases are taxed at the rate of 20% for all resident taxpayers. However, in cases of long-term capital gains on the transfer of unlisted securities or units of any mutual fund or zero-coupon bonds, the tax rate would be restricted to 10% of such capital gains computed without the benefit of indexation or at the rate of 20% of such capital gains computed with the benefit of indexation, whichever is more beneficial to the taxpayer. In case of long-term capital gains on equity shares in a company or units of an equity-oriented fund or a unit of a business trust on which securities transaction tax has been paid on acquisition/transfer, the tax rate is 10% of the capital gain in excess of INR 100,000, subject to conditions.
Such tax on long-term capital gains arising on account of transfer of any long-term capital asset will be increased by surcharge restricted to 15%.

Short-term capital gains are joined together with the other income of the taxpayer from other headings and charged to tax at normal rates of tax. However, short-term capital gains arising on the sale of equity shares in a company or units of an equity-oriented fund or units of business trust (such a transaction being charged to securities transaction tax, as referred to on page 68) are taxed at 15%.

BUSINESS REORGANISATION

Under the IT Act, demergers and amalgamations are recognised as a means of business reorganisation.

Tax benefits and concessions available to an undertaking continue upon its transfer to a resulting company under a scheme of demerger.

The transfer of a capital asset by the demerged company to the resulting Indian company in a demerger is not chargeable to capital gains tax.

Transfer of a capital asset in a scheme of amalgamation, by the amalgamating company to the resulting amalgamated Indian company, is not chargeable to tax.

Any consideration received by way of the issue of shares by the resulting company in a demerger to the shareholders of the demerged company, is not chargeable to capital gains tax.

Transfer by a shareholder in a scheme of amalgamation of shares in an amalgamating company in consideration for the shares in the amalgamated Indian Company, is not chargeable to tax.

Any transfer of a capital asset on intangible assets in the following instances of succession, is not regarded as a transfer, subject to fulfilling specified conditions:

- By a partnership firm to a company
- By a private limited company or an unlisted public company to a limited liability partnership
- By a proprietorship to a company.

However, any reduction of goodwill of a business or profession, from the block of assets is deemed as a transfer.

Benefits of unabsorbed business loss and/or unabsorbed depreciation of the amalgamating company/undertaking can be taken by the amalgamated company/resulting company, subject to certain conditions.

Undertakings established in the free trade zone, 100% export-oriented undertakings and units set up in SEZs would continue to be eligible for deductions under the respective sections in the event of the transfer of the undertaking in an amalgamation or demerger. The deduction will be given to the amalgamated or the resulting company.

In a scheme of reorganisation, the successor entity is required to furnish a modified return in form, manner and time as prescribed under the IT Act, which will be considered while conducting assessment or reassessment.

NON-CORPORATE/ INDIVIDUAL TAX RATES AND ADVANCE TAX

TABLE 9

Income tax rates for individuals/Hindu Undivided Family (HUF)

TAXABLE INCOME (INR)	RATES OF INCOME –TAX FOR TAX YEAR 2023-2024 (INR)	INR
0–250,000 (for other taxpayers) 0–300,000 (for senior citizens – age 60 to 80) 0–500,000 (for very senior citizens – age 80+)	Nil	
300,001–500,000 (for senior citizens) 250,001–500,000 (for other taxpayers)	5% of excess over	300,000 250,000
500,001–1,000,000 (for senior citizens / for very senior citizens/ for other tax payers)	10,000/Nil/ 12,500 + 20% of excess over	500,000

TAXABLE INCOME (INR)	RATES OF INCOME –TAX FOR TAX YEAR 2023-2024 (INR)	INR
Above 1,000,000	110,000/100,000/ 112,500 + 30% of excess over	1,000,000

Alternatively, an individual may opt to pay tax at the following rates which is to be construed as the default tax regime:

TABLE 10

TAXABLE INCOME (INR)	RATES OF INCOME –TAX FOR TAX YEAR 2023-24(INR)	INR
0-300,000	NIL	
300,001-600,000	5% of excess over	300,000
600,001-900,000	15,000+ 10% of excess over	600,000
900,001-1,200,000	75,000+ 15% of excess over	900,000
1,200,001-1,500,000	210,000+ 20% of excess over	1,200,000
Above 1,500,000	450,000+ 30% of excess over	1,500,000

A surcharge is levied on the tax under either option, as follows:

- at the rate of 10% where the total income exceeds INR 5 million but not exceeding INR 10 million
- at the rate of 15% where the total income exceeds INR 10 million
- at the rate of 25% where the total income exceeds INR 20 million

Health and Education Cess at the rate of 4% is levied on the aggregate of the tax and surcharge.

Deductions from the total income up to INR 150,000 are allowed in respect of specified investments.

Individuals / HUF opting for taxation under the new regime are not entitled to claim specified exemptions/deductions. However, following deductions may be claimed under the optional tax regime:

- Standard deduction to salaried taxpayer of INR 50,000
- Deduction from income in the nature of family pension upto specified limits
- The upper limit for availing the benefit of rebate by resident individuals increase from INR 0.5 million to INR 0.7 million

An individual may opt for the New Tax Rates in the prescribed manner, before the due date for furnishing the return of income. An individual having income from business can opt out of paying tax at the New Tax Rates only once for the tax year other than the year for which the option was exercised, except where such person ceases to have any business income, in which case, the option can be exercised again.

ADVANCE TAX

Non-corporate taxpayers are required to estimate their net tax and to make advance payments in four instalments as shown in the table below.

TABLE 11
Advance payment instalments

DUE DATE OF INSTALMENT ON OR BEFORE	AMOUNT PAYABLE AS A % OF NET TAX LIABILITY
15 June	At least 15%
15 September	At least 45%
15 December	At least 75%
15 March	100%

CORPORATE TAX RATES AND ADVANCE TAX

The corporate tax year is the year ending 31 March and is taxed at the rates applicable in the assessment year commencing on the succeeding 1 April.

TABLE 12
Corporate tax rates

		SURCHARGE			
COMPANY	BASIC TAX RATE	INCOME < INR 10 MILLION	INCOME INR 10–100 MILLION	INCOME> INR 100 MILLION	CESS (ON TAX +SURCHARGE)
Domestic company:		NIL	7%	12%	4%
- Turnover < INR 4 billion in tax year 2021-22	25%				
- Domestic manufacturing company*	25%	NIL	7%	12%	4%
- Opting for special rate of tax**	22%				4%
- New domestic manufacturing company**	15%				
- Others	30%	NIL	7%	12%	4%
Foreign company	40%	NIL	2%	5%	4%

*Subject to conditions and exceptions, while computing the taxable income, a company opting to pay tax at the lower rates:

- cannot claim any exemptions or deductions, otherwise available under the ITA or any other law;
- cannot set off any carried forward loss or depreciation;
- cannot claim depreciation.

**The rate of surcharge is capped at 10% increased by mandatory health and education cess of 4% for a domestic company whose income is chargeable to tax at the rate 15% or 22%.

A company may opt for the reduced rate of tax in the prescribed manner, before the due date for furnishing the return of income. An option once exercised cannot be withdrawn for the year in which such option was first exercised or a subsequent year.

Under the IT Act, a foreign company is one which is not a domestic company.

ADVANCE TAX BY CORPORATE ASSESSES

For each tax year, companies are required to pay income tax in advance in four instalments on or before the dates specified in the table below.

TABLE 13
Due date of instalments

DUE DATE OF INSTALMENT ON OR BEFORE	AMOUNT PAYABLE AS A % OF NET TAX LIABILITY
15 June	At least 15%
15 September	At least 45%
15 December	At least 75%
15 March	100%

TAX ON INCOME FROM PATENTS

Income by way of royalty on patent developed and registered in India, is subject to tax @ 10%, subject to conditions.

TAX ON INCOME FROM CARBON CREDITS

Income by way of transfer of carbon credits, is subject to tax @ 10%, subject to conditions.

TAX ON DIVIDENDS RECEIVED FROM FOREIGN COMPANIES

Dividend earned by an Indian company from its investment of at least 26% in the equity shares of a foreign company, is subject to tax @ 15%.

MINIMUM ALTERNATE TAX (MAT)

If the tax liability of a company is less than 15% of its book profits, such book profits are deemed to be the total income chargeable to MAT.

TABLE 14
Rates of MAT

TAX/TAXPAYER	INCOME< INR 10 MILLION	INCOME INR 10–100 MILLION	INCOME> INR 100 MILLION
Minimum Alternate Tax			
- Domestic Companies	15.60 %	16.69 %	17.47 %
- Foreign Companies	15.60%	15.92%	16.38 %

‘Book profits’ means the net profit for the relevant tax year as shown in the profit and loss account prepared in accordance with the provisions of the Companies Act, increased or reduced by the specified adjustments.

If the tax liability of a limited liability partnership (LLP) is less than 15% of an LLP’s ‘adjusted total income’, such ‘adjusted total income’ is deemed to be the total income chargeable to MAT at the rate of (effectively) 15.60% (15% tax plus 4% cess).

MAT paid can be carried forward for setting off against tax payable under the other provisions of the IT Act, in 15 subsequent years.

MAT provisions are not applicable to a foreign company on following income:

(a) Capital gain from securities;
(b) Interest
(c) Royalty
(d) Foreign Technical Services

(e) Dividend

SPECIAL PROVISIONS FOR NON-RESIDENTS

TAXABLE INCOME OF NON-RESIDENTS ENGAGED IN SPECIFIED BUSINESS

Taxable income of non-resident individuals and foreign companies is calculated at a flat rate varying from 5–10% of the amount paid or payable (whether in or outside India), or an amount received or deemed to be received in India by or on behalf of the taxpayer on account of the types of business income shown in the table below.

TABLE 15

Tax rates for non-residents engaged in specified business activities: -

NATURE OF BUSINESS	TAXABLE INCOME
Shipping business	7.5% of the amount paid/payable in or out of India to the taxpayer on account of carriage of passengers, livestock, mail or goods shipped at any port in India. Amount received/deemed to be received for the carriage of passengers, livestock, mail or goods shipped at any port outside India. Amount paid/payable or received/ receivable includes demurrage charges, handling charges or any other amount of a similar nature
Exploration, etc. of mineral oils	10% of the aggregate amount paid/payable whether in India or out of India to a taxpayer or to any person on his behalf on account of provision of services and facilities, supply of plant and machinery on hire for extraction of mineral oils in India or outside India. Amount received and deemed to be received in India on behalf of the taxpayer on account of provision of services and facilities, supply of plant and machinery on hire for extraction of mineral oils outside India. There are certain exceptions to the above provisions.
Operation of aircraft	5% of the aggregate of the amount payable (whether in India or outside India) to a taxpayer or to any person on his behalf on account of the carriage of passengers, livestock, mails or goods from any place in India. Amount received or deemed to be received in India by or on behalf of the taxpayer for the carriage of goods, passengers, livestock and mail from any place outside India.
Civil construction, etc., in certain turnkey power projects	A taxpayer, being a foreign company engaged in the business of civil construction, or the erection of plant and machinery on testing and commissioning thereof, in connection with turnkey power projects approved by central government for an amount equal to 10% of the amount paid/ payable in or out of India to the said taxpayer or to any person on his behalf or account of such work shall be deemed to be income computed under the heading profit and gain of business or profession.

TABLE 16

Taxation of income of non-residents, etc

INCOME	TAXPAYER	RATE OF TAX
i) Taxable dividend i.e., other than those on which dividend distribution tax is paid ii) Interest on foreign currency debt iii) Interest received from a specified infrastructure debt fund iii) Income received from mutual fund units or UTI units purchased in foreign currency	Non-resident or foreign company	20%
i) Income received from units purchased in foreign currency ii) Long-term capital gain arising from the transfer of units purchased in foreign currency	Overseas financial organisation (off-shore fund)	10%
i) Interest on notified bonds of any Indian company or public sector company bonds purchased in foreign currency ii) Taxable dividend on global depository receipts (GDRs) purchased in foreign currency iii) Long-term capital gain arising from the transfer of bonds or GDRs	Non-resident	10%
i) Taxable dividend on GDRs issued by an Indian company in accordance with a notified employee stock option scheme purchased in foreign currency ii) Long-term capital gain arising from the transfer of GDRs	Resident employee of an Indian company or its subsidiary engaged in specified knowledge-based industry (IT or IT related) or service	10%
i) Taxable dividends on securities ii) Long-term capital gain arising from the transfer of such securities iii)Short-term capital gain arising from the transfer of such securities, if securities transaction tax is paid iv) Short-term capital gain arising from the transfer of such securities other than (iii)	Foreign institutional investors (FIIs)	20% 10% 15% 30%
Winnings from lotteries, crossword puzzles, races including horse races, card games and other games of any sort or gambling or betting of any form or nature whatsoever	Any non-resident	30%
i) Participation in any specified game or sports ii) Advertisement iii) Contribution of articles relating to any game or sports in India in newspapers, magazines, or journals	Foreign national who is non-resident	10%
Income by way of amount guarantee to be paid or payable in relation to any specified game or sports played in India	Non-resident sports association or institution	20%
Royalty/fees for technical services (see Note)	Non-resident or foreign company	25%
Income from units of an open-ended equity-oriented fund of the Unit Trust of India or of mutual funds in excess of INR 100,000	Non-resident or foreign company	10%
Anonymous donations received on behalf of any university or other educational institution or any hospital or any fund or any specified	Any non-resident	30%

INCOME	TAXPAYER	RATE OF TAX
trust or institution		

Note: Royalties received by a foreign company through a permanent establishment (PE) in India are subject to tax as business profits, subject to conditions and compliances.

EQUALISATION LEVY

An equalisation levy is charged: -

- At 6% on the amount of consideration for online advertising, provision of digital space, or any other facility or service for online advertisement, received from a non-resident entity subject to certain conditions.
- At 2% of the amount of consideration of an e-commerce operator from e-commerce supply or services made or provided in India in specified circumstances.

WITHHOLDING TAXES

Every person, other than an individual not subject to audit under the IT Act, who makes certain payments including salary, interest, contract payments, rent, commission, brokerage and fees for professional and technical services, is required to deduct tax at source at prescribed rates. (See Appendix IV.)

In the case of a non-resident and foreign company, tax is deducted at source at the rates prescribed for the particular source of income. No deduction is allowable in respect of payments made for interest, royalties and fees for technical services to non-residents or foreign companies, whether within India or outside India, without deduction and payment of tax.

An application can be made to the tax authorities for permission to withhold taxes at a rate lower than those prescribed under the IT Act in cases where the income of a non-resident or resident is not chargeable to tax in India or is taxable at rates lower than that prescribed for withholding taxes.

The IT Act provides for disallowance of an expense, if the tax required to be deducted thereon has not been deducted, or has not been paid into the government treasury if deducted. Such an expense will be allowed as a deduction in the year in which the tax has been withheld/paid to the government treasury.

Subject to certain exceptions, failure to furnish the permanent account number (PAN) (this is the tax identification number under the ITA) by the recipient of any sum of money, will be subject to withholding tax by the payer at the highest of the following rates:

- The rate specified in the relevant provision of the ITA
- The rate in force
- 20%.

Taxes withheld must be deposited and returns for the same must be filed within specified time limits. A full tax credit is granted to the payee of tax deducted at source upon production of a tax deduction certificate against the final tax liability of the payee.

Failure to deduct or to collect tax at source on profits and gains from specified business by the person responsible is subject to a charge of interest.

DOUBLE TAXATION RELIEF

The government has entered into comprehensive agreements with various countries to avoid the double taxation of income.

Agreements have also been entered into with certain countries to avoid double taxation in respect of income from shipping and air transport.

Unilateral relief is available in India from double taxation where there is no double taxation avoidance agreement. This relief is by way of a deduction from the Indian income tax of a sum which is calculated on the doubly taxed income at the lower of the rate of tax or the rate of tax of the other country where tax has been paid.

Tax rates under some treaties are given in Appendix V.

BUSINESS CONNECTION

The term 'business connection' under the IT Act is significant for a non-resident because any profit earned by a non-resident is taxable in India if it is earned through or from any business connection in India.

The Income tax Act also sets out instances, in which income is deemed to accrue or arise in India subject to certain conditions and exceptions in relation to the following:

- Income accruing or arising from any business connection in India, or through or from any property, or asset, or source of income in India, or from the transfer of a capital asset situated in India.
- Salaries earned in India
- Dividend paid by an Indian company outside India
- Interest, royalty and fees for technical services

A business connection normally encompasses:
- A business in India
- A connection with the non-resident and that business
- A direct or indirect earning of income by virtue of or through that connection.

A 'business connection' requires an element of continuity. An isolated transaction is not regarded as a business connection. The existence of a business connection is a question of fact and would be based upon the circumstances of each case. A 'significant economic presence' constitutes a business connection in specified circumstances.

No business connection is said to exist in case of an eligible investment fund, the fund management activity of which is carried out through an eligible fund manager acting on behalf of such fund, subject to certain conditions and exceptions.

TRANSFER PRICING

The IT Act contains provisions relating to transfer pricing in an international or specified domestic transaction with an associated enterprise.

Any income arising from an 'international transaction' or specified domestic transaction between 'associated enterprises' must be computed at arm's length price (ALP).

In accordance with internationally accepted principles, it has been provided that any income arising from an international or specified domestic transaction or an outgoing like expense or interest from the international transaction between associated enterprises, shall be computed having regard to the ALP, which is the price that would have been charged for the transaction if it had been entered into by unrelated parties in similar conditions.

The ALP shall be determined by one of the methods described below:
- Comparable uncontrolled price method
- Resale price method
- Cost plus method
- Profit split method
- Transactional net margin method
- Any other prescribed method.

The taxpayer can select the most appropriate method to be applied to any given transaction, but such a selection has to be made taking into account the factors prescribed in the Income Tax rules. With a view to allowing a degree of flexibility in adopting the ALP, the IT Act provides that where the most appropriate method results in more than one price, the arm’s length price shall be computed in the manner as prescribed.

The primary onus is on the taxpayer to determine an ALP in accordance with the rules, and to substantiate it with the prescribed documentation. Where such onus is discharged by the taxpayer and the data used for determining the ALP is reliable and correct, there can be no intervention by the assessing officer or reference of the transaction to a transfer pricing officer.

The IT Act provides for a secondary adjustment to be made in the books of account between the Indian company and the non-resident associate enterprise, in certain situations, where a primary adjustment to the transfer price has been made.

Detailed documentation in respect of international or domestic transactions must be maintained. Accountants’ reports are to be completed and filed in the prescribed format before the due dates for filing tax returns.

Where an Indian taxpayer enters into a transaction with a party in a ‘notified jurisdictional area’, then such a transaction will be considered an ‘international transaction’ and the parties to the transaction will be considered ‘associate enterprises’ and accordingly, the provisions of the transfer pricing regulations shall apply.

The Indian constituent of an international group is required to furnish specified information to the tax authorities.

SAFE HARBOUR RULES

The determination of the ALP will be subject to ‘safe harbour’ rules which have been notified by the Central Board of Direct Taxes which will set out the circumstances in which the tax authorities shall accept the transfer price declared by the taxpayer.

ALTERNATE DISPUTE RESOLUTION MECHANISM

With a view to contain protracted litigation in relation to transfer pricing transactions and their valuation, an alternative dispute resolution mechanism has been put into place. On being presented with a draft assessment order, an eligible taxpayer is given an opportunity to place any representations/submissions to substantiate their claim in the income returned before a duly constituted alternative dispute panel (referred to as the 'dispute resolution panel') comprising three commissioners of income tax.

An eligible taxpayer is:

- One who has entered into a transfer pricing transaction which has been referred to a transfer pricing officer.
- Any non-resident (including any foreign company).

STATEMENT OF FINANCIAL TRANSACTIONS

The IT Act requires certain specified persons to furnish a Statement of Financial Transactions (SFT) in respect of certain specified financial transactions recorded by them during the financial year.

The SFT is required to be furnished within the prescribed time i.e., by May 31 immediately following the financial year in which the transaction is registered or recorded, in the prescribed form and manner.

The SFT is to be filed electronically and accompanied with a certificate regarding clean and virus free data. Penalties are prescribed for defaults in filing the SFT.

WEALTH TAX

Wealth tax in India is abolished effective April 1, 2016.

SALARIES AND PERQUISITES

A salary includes salary due from the current employer, previous employer, advance salary and arrears of salary.

It also includes wages, annuity, pension, gratuity fees, commission, perquisites, and profits in lieu of salary and leave salary.

Perquisites include value of accommodation and any benefit granted or provided free of cost or at concessional rate.

TABLE 17

Rules governing the valuation of perquisites

NATURE OF PERQUISITE/BENEFIT	PERQUISITE VALUE
Accommodation	15% of salary in cities if the population exceeds 2.5 million 10% of salary in cities if the population exceeds 1 million 7.5% of salary in other cases
Provision of sweeper / gardener / helper / watchman	Actual cost incurred by the employer
Provision for value of gas, electricity, and water	Actual cost incurred by the employer
Provision of educational facilities	Cost of providing such a facility by the employer. No perquisite if the value of such benefit does not exceed INR 1000 per month per child but limited to two children
Provision of interest free/concessional loan	Difference in the rate of interest between SBI prime lending rate and the actual interest charged by the employer

NATURE OF PERQUISITE/BENEFIT	PERQUISITE VALUE
Provision of assets like computers, laptop, and other moveable assets	10% of the actual cost per annum
Transfer of movable assets	Cost less 10% of the wear and tear for each year of use paid by the employee at the time of transfer
Medical expenses/ Reimbursements*	Specified payments made by an employer towards: – Medical insurance premium of an employee – Overseas medical treatment in respect of specified employees are not considered perquisites
Value of specified security or sweat equity shares allotted to and transferred, directly or indirectly by the employer or former employer to the taxpayer free of cost or at a concessional rate	Fair market value of the specified security or sweat equity share, as reduced by the amount paid/recovered from the taxpayer
Contribution to a superannuation fund by the employer	In excess of INR 7,50,000
Any other fringe benefit or amenity	As per rules prescribed.

*Any sum paid by an employer towards expenditure incurred by an employee on COVID-19 related medical treatment will not be considered as a taxable perquisite, subject to conditions.

TAXATION OF EMPLOYEE STOCK OPTION PLANS (ESOPS)

ESOPs refer to schemes offered by companies to their employees for acquiring a stake in the employer-company.

The stake may be in various forms such as an allotment of shares, grant of stock options that entitle the employee to acquire the shares in the future, or simply by way of rewarding an employee based on the appreciation in the value of shares.

Amongst the various types of ESOPs offered are the following:

- Stock option scheme – the company grants an option to the employee to apply for the shares of the company during a specified period of time at a price that is pre-determined or is to be determined at an agreed price
- Share purchase scheme – the company offers shares to the employee which are allotted against the payment of the offer price
- Stock appreciation rights – the employee is paid the appreciation in the price or value of the shares from the point of grant to the exercise date.

The following aspects must be considered in the process of setting up and implementing an ESOP scheme:

- Ensuring adequate reward linked with performance
- Compliance with SEBI guidelines, wherever applicable
- Ensuring optimal tax treatment for employer and employee
- Proper accounting and disclosure in the financial statements of the company issuing shares under the ESOP.

ESOPs are subject to tax as perquisites at the time of allotment. On sale of shares by the employees, Capital Gains Tax is attracted to the extent of the sale consideration exceeding the value adopted as perquisite, when it had been taxed in the hands of the employee.

However, certain relaxations in respect of taxability are provided to the eligible start-ups such as deferment of deduction of tax on the value of perquisites.

Income tax rules prescribe the basis for valuation of specified securities (being an equity share) and other securities.

SEBI has prescribed the accounting treatment for securities issued under ESOPs.

TAXATION OF LIMITED LIABILITY PARTNERSHIPS (LLPS)

Under the IT Act, an LLP is treated on a par with a partnership firm and all provisions of the IT Act which are applicable to a partnership firm, apply to an LLP.

Accordingly, as in the case of partnership firms, an LLP will be subject to tax on profits and the partners will be exempt on their share of profits.

The IT Act sets out limits on payment of salaries and interest to partners of a firm/LLP.

TAXATION OF VIRTUAL DIGITAL ASSETS (VDAS)

VDAs have been brought under the purview of taxation at the rate of 30%. A taxpayer cannot avail any deduction of expenses on transfer of such assets, except for the cost of acquisition. Further, set off of loss on transfer of such assets will not be allowed against any other head of income.

Transfer of VDAs for nil or inadequate consideration will be taxable in the hands of transferee.

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5B – INDIRECT TAXATION

GOODS AND SERVICE TAX

A comprehensive dual Goods and Services Tax (GST) had replaced the complex multiple indirect tax structure from 1 July 2017.

However, being a new act in force it is subject to various changes made through notifications and circulars to achieve the purpose of enactment of this act i.e., to simplify doing business in India.

GST is applicable on 'supply' of goods or services as against the past concept of tax on the manufacture of goods or on sale of goods or on provision of services.

Types of supply of goods or services

Intra State supply

Where the location of supplier and place of supply are in same state/ union territory then such supply of goods or services is termed as intra state supply

Inter State supply

Where the location of supplier and place of supply are in different state/ union territory then such supply of goods or services is termed as inter- state supply

Supply of goods or services or both

- when the supplier is located in India and the place of supply is outside India.
- to or by a Special Economic Zone developer or a Special Economic Zone unitor.
- in the taxable territory, not being an intra – state supply and not covered elsewhere in this section, shall be treated to be a supply of goods or services or both in the course of inter-state trade or commerce.

Taxes to be levied

All intra-state supply of goods or services or both shall be eligible for Central Goods and Services Tax (CGST) and State Goods and Services Tax (SGST) [also known as Central Tax & State Tax].

All intra-union territory supply of goods or services or both shall be eligible for Central Goods and Services Tax (CGST) and Union Territory Goods and Services Tax (UTGST) [also known as Union territory Tax).

All inter-state or inter-union territory supply of goods or services or both shall be eligible for Integrated Goods and Services Tax (IGST) [also known as Integrated Tax]. Import of goods and/or services would be treated as inter-State supplies and would be subject to IGST in addition to the applicable customs duties.

Export of goods and/or services would be treated as deemed inter-state supplies and would be subject to zero rate of tax. However, in certain situations, they are subject to IGST.

EXEMPTION

Previously taxpayers engaged in supply of goods with an annual turnover of INR 2 million were exempted from GST. However, with a view to ease the compliance burden, with effect from 01st April, 2019 taxpayers engaged in supply of goods with an annual turnover of INR 4 million (INR 2 million for specified special category States) would be exempt from GST.

Taxpayers engaged in supply of services with an annual turnover of INR 2 million (INR 1 million for specified special category States) would be exempt from GST.

Exports are zero-rated, subject to conditions. Option of exporting without payment of tax is also provided to eliminate blockage of funds for businesses.

Certain goods of basic necessities are kept under Nil or 0% GST rate to benefit the masses.

COMPOSITION SCHEME

A compounding option (i.e., to pay tax at a flat rate without credits) would be available to small taxpayers having an annual turnover of up to specified limits.

Advantages of composition scheme:

- Lesser compliance (returns, maintaining books of record, issuance of invoices)
- Limited tax liability
- High liquidity as taxes are at a lower rate

Disadvantages of composition scheme:

- A limited territory of business. The dealer is barred from carrying out inter-state transactions
- No Input Tax Credit available to composition dealers
- The taxpayer will not be eligible to supply exempt goods or goods through an e-commerce portal.

REVERSE CHARGE MECHANISM

Generally, the supplier of goods or services is liable to pay GST. However, in specified cases, the liability is to be paid on reverse charge basis by the recipient of such goods or services.

RATE OF TAX

Products and services are categorized in five major tax slabs:
0%, 5%, 12%, 18% and 28%.

INPUT TAX CREDIT

For a GST registered person, tax on sales is output tax liability and tax paid on purchases made by registered person is input tax credit. Output tax liability can be reduced by adjusting input tax credit.

Manner of Utilization of Input Tax credit

TABLE 18

The protocol to avail and utilize the credit of these taxes is as follows:

CREDIT OF	TO BE UTILISED FOR PAYMENT OF	BALANCE TO BE UTILISED FURTHER FOR PAYMENT OF
IGST	IGST	CGST/SGST/UTGST
SGST/UTGST	SGST/UTGST	IGST
CGST	CGST	IGST

RETURNS

Returns are required to be filed as follows:

Quarterly Returns:	Taxpayers with Annual Turnover upto INR 50 million.
Monthly Returns:	Taxpayers with Annual Turnover greater than INR 50 million.

There are different return forms for different categories of persons.

An annual compilation of outward supplies, inward supplies, tax liability and input tax credit availed during a financial year is to be filed by all registered dealers in annual return. It is due to be filed on or before 31st December of the year following the particular financial year.

E-INVOICING

Taxpayers with annual turnover exceeding a certain threshold are required to submit an already generated standard invoice on a common e-invoice portal. 'E-invoicing' or 'electronic invoicing' is a system in which Business to Business ('B2B') transactions and a few other documents are authenticated electronically by the Goods and Services Tax Network ('GSTN') for further use on the common GST portal. This system automates the multi-purpose reporting with a one-time input of invoice details.

AUDIT

Taxpayers with annual turnover exceeding INR 50 million are required to get their accounts and records audited by a chartered accountant or cost accountant appointed by the taxpayer.

The GST Audit from FY 2020-21 has been discontinued. Only departmental audit would be conducted on select cases.

Following other entities have also been exempted from GST Audit:

- All the foreign companies which are into airlines business and compliant with the relevant provisions and rules of the Companies Act, 2013 are exempted from GST Audit.
- The persons who are non-residents and are providing OIDAR service in India to unregistered persons.

REGISTRATION

Following persons are mandatorily required to obtain registration:

- Individuals registered under the Pre-GST law (i.e., Excise, VAT, Service Tax etc.)
- Businesses with turnover above the threshold limit of INR 4 million (INR2 million for North-Eastern States) in case of supply of goods. In case of supply of services threshold limit is of INR 2 million (INR 1 million for North Eastern states)
- Persons making any interstate taxable supplies subject to exceptions.
- Casual taxable person / Non-Resident taxable person
- Agents of a supplier & Input service distributor
- Those paying tax under the reverse charge mechanism
- Person who supply goods or services via an e-commerce aggregator (only if annual turnover exceeds INR 4 million)
- Every e-commerce aggregator who is required to collect tax at source
- Persons required to deduct tax, whether or not separately registered
- Person supplying online information and database access or retrieval services from a place outside India to, a person in India other than a registered taxable person.

ANTI-PROFITEERING RULES

The National Anti-profiteering Authority has been constituted to examine whether the reduction in the tax rate or benefit of input tax credits availed by any registered person have actually resulted in a reduction in prices of goods and services. Non-compliance would be subject to such action considered fit, by the Authority.

CUSTOMS DUTY

CUSTOMS DUTY IN INDIA IS A TYPE OF INDIRECT TAX, WHICH IS LEVIED ON COMMODITIES IMPORTED INTO INDIA AS WELL AS ON COMMODITIES EXPORTED FROM INDIA.

After the implementation of GST by the government, the Countervailing Duty (CVD) and Special Additional Duty of Customs (SAD) have been effectively replaced by Integrated Goods and Services Tax (IGST).

TYPES OF CUSTOMS DUTIES

- Basic Customs Duty
- Education cess and Secondary and Higher Education cess
- Anti-dumping duty
- Safeguard duty

BASIC CUSTOMS DUTY

This is the basic duty levied under the Customs Act. Duty is levied at the rates specified in the First and Second Schedules to the Customs Tariff Act, 1975. The duty payable is measured as a percentage of the transaction value determined under the Customs Act. This value is the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation or for the export from India for delivery at the time and place for exportation and includes other components of costs to the extent and in the manner specified in rules made in this behalf. Different rates have been prescribed for different items.

EDUCATION CESS AND SECONDARY AND HIGHER EDUCATION CESS

Education tax of 2% and a secondary and higher education tax of 1% are imposed on the aggregate duties of customs.

RATES

The duty tax can vary from 0% to even 150% depending on the product. Some products like lifesaving drugs are exempted from tax.

GENERAL

In addition, anti-dumping and safeguard duties are levied on specified products for specified periods. Special excise duties are also levied on certain products listed in various schedules of the Customs Tariff Act.

The importer is required to pay customs duty at the time of clearance of goods from the port/airport. The rate of duty depends on the classification of goods, which is based on the internationally accepted harmonized system of nomenclature.

The duty is largely levied on an ad-valorem basis i.e., based on the value of the goods. The duty is levied on the ‘transaction value’ which is the value of the imported goods between unrelated persons and where price is the sole consideration for the sale. In other cases, the transaction value is determined as per the customs valuation rules.

The Special Valuation Branch (SVB) investigates transactions involving imports between ‘related’ parties. The SVB examines and rules on the correctness of the value adopted.

STAMP DUTY

Stamp duty is imposed on the execution of specified instruments.

Stamp duty is charged on the instrument and not on the transaction. The levy is governed by the Indian Stamp Act or the respective State Stamp Acts. Some states have enacted separate legislation, whereas some have adopted the Indian Stamp Act with or without modifications. The rates of stamp duty vary from state to state.

The Bombay Stamp Act and certain provisions of the Indian Stamp Act apply to the state of Maharashtra. The instruments executed in the state and enlisted in the Schedule to the Act are chargeable to stamp duty at the applicable rate. Instruments executed outside the state are liable to duty only on their receipt in the state, provided it relates to property situated in the state or a matter or thing to be done in the state. All other instruments would be charged under the Indian Stamp Act, or not at all.

Other provisions are:

- Stamp duty can be paid by way of adhesive or impressed stamps on the instruments
- The stamp papers must be in the name of one of the parties to the transaction
- The date of issue of the stamp paper must not be more than six months prior to the date of the transaction
- The cost of the stamp duty is a matter of agreement between the parties to the transaction. However, the act provides for methods to break the deadlock in specified cases
- Some of the important articles governing stamp duty on certain documents are mentioned in Schedule I of the Stamp Act. Depending upon the instrument, the duty may be payable based on the true market value of the property, area, or any other criteria
- Any person can apply to the Collector of Stamps for adjudication of the stamp duty payable on the instrument
- All instruments chargeable with duty and executed by any person in Maharashtra shall be stamped before, or at the time of execution or immediately thereafter or on the next working day following the day of execution.

Any instrument which is inadequately stamped/not stamped is inadmissible as evidence for any purpose. Such instruments can be admissible only on payment of the requisite amount of duty along with interest and penalty.

SECURITIES TRANSACTION TAX

Securities transaction tax is levied at specified rates of the value of the securities transacted on a recognised stock exchange in India.

The tax is levied as shown in the table below.

TABLE 19
Securities transaction tax

TAXABLE SECURITIES TRANSACTION	RATE	PAYABLE BY
Purchase of an equity share in a company (or unit of a business trust), where the transaction is entered into on a recognized stock exchange and the contract for the purchase of the share or unit is settled by the actual delivery or transfer of the share or unit	0.10%	Purchaser

TAXABLE SECURITIES TRANSACTION	RATE	PAYABLE BY
Sale of an equity share in a company (or unit of a business trust) where the transaction is entered into on a recognized stock exchange and the contract for the sale of the share is settled by the actual delivery or transfer of the share or unit	0.10%	Seller
Sale of an equity share in a company or a unit of an equity-oriented fund or unit of a business trust, where the transaction is entered into on a recognized stock exchange and the contract for the sale of the share or unit is settled otherwise than by the actual delivery or transfer of the share or unit	0.025%	Seller
Sale of a unit of an equity-oriented fund, where the transaction is entered into on a recognized stock exchange and the contract for the sale of the units is settled by the actual delivery or transfer of the units.	0.001%	Seller
Sale of an option in securities	0.0625%	Seller
Sale of an option in securities where the option is exercised	0.125%	Purchaser
Sale of a futures in securities	0.0125%	Seller
Sale of a unit of an equity-oriented fund to the mutual fund	0.001%	Seller
Sale of unlisted equity shares under an offer for sale	0.20%	Seller
Sale of unlisted units of a business trust under an offer for sale	0.20%	Seller
Sale or surrender or redemption of a unit of an equity-oriented fund to an insurance company, on maturity or partial withdrawal, with respect to unit linked insurance policy issued by such insurance company on or after the first day of February, 2021	0.001%	Seller

The securities transaction tax is collected by the stock exchange and remitted to the exchequer.

The authorities under the IT Act shall administer the securities transaction tax.

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6 - ACCOUNTING & REPORTING

The Institute of Chartered Accountants of India (ICAI) is the professional body which represents the accountancy profession at national and international levels.

Regional councils and local chapters of the ICAI, which are spread across India, undertake the task of continuing professional education.

AUDITING REQUIREMENTS

Auditing the accounts of a company is compulsory under the Companies Act 2013.

Companies prepare their financial statements based on historical costs and on accrual basis as per the provisions of the Companies Act 2013. These financial statements are required to be audited by chartered accountants and an annual report circulated to the members every year. This report generally consists of the:

- Director’s report
- Auditor’s report
- Balance sheet
- Profit and loss account
- Cash flow statement.

AUDIT UNDER THE CENTRAL GOVERNMENT COST AUDIT RULES

The central government may direct certain companies for cost audit of accounts. The cost auditor must be a cost accountant under the Cost and Works Accountant Act, 1959.

AUDIT UNDER INCOME TAX LAW

The Income tax Act, 1961 requires a tax audit to be conducted by a chartered accountant for taxpayers with sales from business in excess of INR 100 million a year, or with gross receipts from a profession in excess of INR 5 million. An audit report is also required to be issued by a chartered accountant in order to claim tax incentives/holiday benefits.

In addition to the tax audit, every person who has entered into an international transaction or specified domestic transaction with its associated enterprises, is required to obtain a report from a chartered accountant, duly signed and verified in the prescribed manner and setting forth such particulars as may be prescribed by the Income tax Act, 1961.

ACCOUNTING STANDARDS AND PRINCIPLES

Statements of accounting standards are issued by the Accounting Standards Board of the ICAI which prescribes methods of accounting approved by the ICAI for application to financial statements.

The accounting standards are notified by the Central Government after consultation with the National Financial Reporting Authority (NFRA). In addition to accounting standards, guidance notes are issued by the ICAI. The ICAI has taken steps to integrate financial reporting with global standards and has issued Indian Accounting Standards (IND-AS) which are now applicable to specified categories of reporting entities.

REGULATING BODY

The Central Government has constituted a separate and independent regulatory body known as the National Financial Reporting Authority (NFRA) to provide for matters relating to accounting and auditing standards under this Act.

NFRA has the power to:

- make recommendations to the Central Government on the formulation and laying down of accounting and auditing policies and standards for adoption by companies or class of companies or their auditors,
- monitor and enforce the compliance with accounting standards and auditing standards,
- oversee the quality of service of the professions associated with ensuring compliance with such standards, and suggest measures required for improvement in quality of service and such other related matters, investigate into the matters of professional or other misconduct committed by any member or firm of chartered accountants, registered under the Chartered Accountants Act, 1949.

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7 – UHY REPRESENTATION IN INDIA

CHANDABHOY & JASSOOBHOY
INDIA

UHY

CONTACT DETAILS

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Year established:	1908
Number of partners:	8
Total staff:	67

CONTACTS

Liaison contact:	Sunil Hansraj
Position:	Joint Managing Partner
Email:	sunil@cnj.in

ABOUT US

Chandabhoy & Jassoobhoy are an independent representative member firm of UHY in India

OTHER IN-COUNTRY OFFICE LOCATIONS AND CONTACTS

Affiliate offices - Chandabhoy & Jassoobhoy & Affiliates - in Bangalore, Chennai, Hyderabad and Mumbai.
Networked offices at New Delhi, Ahmedabad, Baroda, Surat, Jaipur and Kolkata.

SERVICE AREAS

Audit and assurance
Taxation
Business and management consultancy
Financial valuation and due diligence
Overseas investment
Services to foreign investors
Accounts process outsourcing
Payroll outsourcing

SPECIALIST SERVICE AREAS

USGAAP audit and conversions
Corporate governance review
Transfer pricing & structuring of cross border transactions
Special purpose inspection, investigations and due diligence reviews

PRINCIPAL OPERATING SECTORS

Housing finance
Software
BPO & IT-enabled services
Telecom
Mutual funds
Banking and finance
Insurance

The network for doing business

CHANDABHOY & JASSOOBHOY
INDIA

Shipping
Nuclear power
Registrar and transfer agents
Film production & advertising
Quality assurance & inspection

LANGUAGES
English, Hindi, Gujarati, Marathi, Tamil.

CURRENT PRINCIPAL CLIENTS
HDFC Ltd.
HDFC Sales
KC Maritime
Kesar Group
Bank of Baroda
GIC Housing Finance Ltd.
Shaze Retail PVt. Ltd.
TBZ Nirmal Zaveri Pvt. Ltd.
Shaw Floors India Pvt. Ltd.
Profand Vyalat Maritime
Quantum (M) Ltd.
Marken Ltd.
Wealth Words Technology India Pvt. Ltd.

OTHER COUNTRIES IN UHY CURRENTLY WORKING WITH, OR HAVE WORKED WITH IN THE PAST
Australia, Hong Kong, Singapore, US, UK, Phillipines, Israel.

BRIEF HISTORY OF FIRM
Chandabhoy & Jassoobhoy was established in 1908 and is one of the longest established accountancy firms in India. Among the firm's earliest clients were textile mills and large charitable institutions, some of which continue to be clients of the firm today. Since then audit has become compulsory for corporate entities, taxation is all pervasive, consultancy a growing phenomenon and technology an essential tool and aid to management. In all these areas, the firm, which had quiet beginnings, has kept pace with the present trends of a modern professional practice.

LODHA & CO
INDIA

UHY

CONTACT DETAILS

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www.lodhaco.com

CONTACTS

Liaison contact:	Indranil Choudhury
Email:	ichoudhury@lodhaco.com

Year established:	1949
PCAOB registered?:	Yes
Number of partners:	15
Total staff:	290

ABOUT US

Lodha & Co is an independent representative member firm of UHY in India

OTHER IN-COUNTRY OFFICE LOCATIONS AND CONTACTS

Mumbai, New Delhi, Hyderabad, Chennai and Jaipur.

BRIEF DESCRIPTION OF FIRM

Lodha & Co., a firm of Chartered Accountants, was formed on 1st July 1949 in Kolkata by Late Mr. Jaswant Singh Lodha. He was succeeded by Late Mr. Rajendra Singh Lodha who grew the firm to amongst India's most respected and significant firms.

Over the last six decades, the firm has grown from strength to strength, offering a wide range of professional services including Assurance, Corporate Finance, Consultancy, Taxation and Outsourcing.

The firm has a truly pan-india presence and is one of the leading firms of Chartered Accountants in India, having fifteen partners and a dedicated staff of over 300 people.

SERVICE AREAS

Audit and Assurance
Business Advisory
Accounting and Outsourcing
Taxation
Corporate Finance and Advisory Services

SPECIALIST SERVICE AREAS

Corporate Finance – M&A Advisory, Corporate Restructuring, Valuation of Business and Shares, Joint ventures and Collaborations.
Management Consultancy – Management information Systems and Standard Operating Procedures.
Outsourcing – financial model review, payroll processing and other back office operations.

The network for doing business

LODHA & CO
INDIA

PRINCIPAL OPERATING SECTORS
Banking, Insurance & Finance
Consumer Goods
Media & Publication
Metals, Iron & Steel
Power
Retail Chain & Distribution
Roads, Highways and Toll Management

LANGUAGES
English, Hindi, Bengali, Tamil, Telagu, Marwari.

CURRENT PRINCIPAL CLIENTS
Confidentiality precludes disclosure in this document.

OTHER COUNTRIES IN UHY CURRENTLY WORKING WITH, OR HAVE WORKED WITH IN THE PAST
Our firm's recent admittance to UHY membership has not yet fully provided an opportunity for international work.

The network for doing business

LET US HELP YOU ACHIEVE FURTHER BUSINESS SUCCESS

To find out how UHY can assist your business, contact any of our member firms. You can visit us online at www.uhy.com to find contact details for all of our offices, or email us at info@uhy.com for further information.

UHY is an international network of legally independent accounting and consultancy firms whose administrative entity is Urbach Hacker Young International Limited, a UK company. UHY is the brand name for the UHY international network. Services to clients are provided by member firms and not by Urbach Hacker Young International Limited. Neither Urbach Hacker Young International Limited, the UHY network, nor any member of UHY has any liability for services provided by other members.

APPENDIX I – SECTOR SPECIFIC GUIDELINES FOR FOREIGN DIRECT INVESTMENT

AGRICULTURAL SECTOR

SECTOR OF BUSINESS/ COMMERCE	ROUTE	ACTIVITIES PERMITTED/ CONDITIONS
Agriculture and animal husbandry	Automatic route: 100% FDI	a) Floriculture, horticulture, apiculture and cultivation of vegetables and mushrooms under controlled conditions; b) Development and production of seeds and planting material; c) Animal husbandry (including of breeding of dogs), pisciculture, aquaculture; d) Services related to agro and allied sectors. Besides the above, FDI is not permitted in any other agricultural sector/activity.
Plantation: Tea (including tea sector) Coffee Rubber Cardamom Palm oil tree Olive oil tree	Automatic route: 100% FDI	FDI is not allowed in any other plantation sector/activity. Prior approval of state government for any future land use change.

MINING INDUSTRY

SECTOR OF BUSINESS/ COMMERCE	ROUTE	ACTIVITIES PERMITTED/ CONDITIONS
Mining	Automatic route: 100% FDI	Mining and exploration of metal and non-metal ores including diamond, gold, silver and precious ores, but excluding titanium bearing minerals and its ores subject to sectoral regulations and applicable laws.
Coal and lignite	Automatic route: 100% FDI	1) Coal and lignite mining for captive consumption by power projects, iron and steel and cement units and other eligible activities permitted under applicable laws; 2) Setting up coal processing plants like washeries, subject to conditions;
Mining and mineral separation of titanium bearing minerals and ores, its value addition and integrated activities	Approval route: 100% FDI	All the activities but subject to conditions.
Petroleum and natural gas other than refining	Automatic route: 100% FDI	Exploration, infrastructure, trading and marketing of petroleum products, pipelines, market study, subject to regulatory framework and sector policy.

SECTOR OF BUSINESS/ COMMERCE	ROUTE	ACTIVITIES PERMITTED/ CONDITIONS
Petroleum Refining	Automatic route: up to 49% FDI	Petroleum refining by the PSU with approval, without involving any disinvestment or dilution of domestic equity in the existing PSUs.
Petroleum refining	Automatic route: 100% FDI	Subject to approval by Government for strategic divestment of a PSU.

MANUFACTURING SECTOR

SECTOR OF BUSINESS/ COMMERCE	ROUTE	ACTIVITIES PERMITTED/ CONDITIONS
Manufacturing	Automatic route 100% FDI	Subject to FDI policy. A manufacturer is permitted to sell its products manufactured in India through wholesale and retail including through e-commerce, without government approval.
Trading of food products	Approval Route 100% FDI	Trading of food products, including through e-commerce, manufactured /produced in India, subject to conditions.

DEFENCE

SECTOR OF BUSINESS/ COMMERCE	ROUTE	ACTIVITIES PERMITTED/ CONDITIONS
Defence	Automatic route: up to 49% FDI	All the activities where industrial licensing is not required.
	Automatic route: up to 74% FDI	All the activities subject to applicable laws.
	Approval route: Above 74% and up to 100% FDI	Activities where it is likely to result in access to modern technology or for other reasons to be recorded.

BROADCASTING SERVICES

SECTOR OF BUSINESS/ COMMERCE	ROUTE	ACTIVITIES PERMITTED/ CONDITIONS
a) Broadcasting carriage services i) Teleports ii) Direct to home (DTH) iii) Cable networks (Multi system operators – MSOs – operating at national or state or district levels and	Automatic route: 100% FDI	Subject to guidelines issued by the Ministry of Information and Broadcasting, and other specified conditions.

SECTOR OF BUSINESS/ COMMERCE	ROUTE	ACTIVITIES PERMITTED/ CONDITIONS
undertaking upgrades of networks) iv) Mobile TV v) Headend-in-the Sky (HITS) broadcasting service		
Cable networks (other MSOs)	Automatic route: 100% FDI	Subject to guidelines issued by the Ministry of Information and Broadcasting, and other specified conditions.
b) Broadcasting Content Services Terrestrial broadcasting FM (FM radio)	Approval route: 49% FDI	Subject to guidelines issued by the Ministry of Information and Broadcasting, and other specified conditions.
Uplinking of news and current affairs TV channel	Approval route: 49%	Subject to guidelines issued by the Ministry of Information and Broadcasting, and other specified conditions.
Uploading/streaming of news and current affairs through digital media	Approval route: 26%	Subject to guidelines issued by the Ministry of Information and Broadcasting, and other specified conditions.
Uplinking of non-news and current affairs' TV Channels/ downlinking of TV channels	Automatic route: 100%	Subject to guidelines issued by the Ministry of Information and Broadcasting, and other specified conditions.

PRINT MEDIA

SECTOR OF BUSINESS/ COMMERCE	ROUTE	ACTIVITIES PERMITTED/ CONDITIONS
Publication of newspaper and periodicals dealing with news and current affair	Approval route FDI 26%	All the activities mentioned in the first column.
Publication of Indian editions of foreign magazines dealing with news and current affairs	Approval route FDI 26%	All the activities mentioned in the first column.
Publishing / printing of Scientific and technical magazines/journals	Approval route FDI 100%	However, printing should be subject to legal framework and guidelines issued from time to time.
Publication of facsimile edition of foreign newspapers	Approval route FDI 100%	All the activities mentioned in the first column, only if FDI is by owner of original foreign newspaper. Subject to other guidelines.

CIVIL AVIATION SECTOR

SECTOR OF BUSINESS/ COMMERCE	ROUTE	ACTIVITIES PERMITTED/ CONDITIONS
Airports	Automatic route FDI 100%	Airports in greenfield projects
	Automatic route FDI 100%	Existing projects
Scheduled air transport service/ domestic scheduled passenger airline/Regional air transport service	Automatic Route: (100% – NRI/OCI, 49% – others)	Foreign airlines are allowed to invest in the capital of Indian companies operating scheduled and non-scheduled air transport services up to the limit of 49%, subject to conditions
	Approval route: Beyond 49% and up to 100% FDI (Other than NRI)	
Non-scheduled Air Transport Service	Automatic route: 100% FDI	Air Transport Service includes domestic scheduled passenger airlines, non-scheduled air transport services, helicopter and sea-plane services.
Helicopter services, seaplane services	Automatic route: 100% FDI	DGCA approval required. Foreign airlines can participate in the equity, subject to conditions.
Ground handling service	Automatic route: 100% FDI	All the activities mentioned in the first column subject to sectoral regulations and security clearances
Maintenance and training	Automatic route: 100% FDI	Maintenance and repair organisations, flying training institutes and technical training institutes

CONSTRUCTION DEVELOPMENT – TOWNSHIPS, HOUSING, BUILT-UP INFRASTRUCTURE

SECTOR OF BUSINESS/ COMMERCE	ROUTE	ACTIVITIES PERMITTED/ CONDITIONS
Construction development projects	Automatic route; 100% FDI	All the activities mentioned in the first column, subject to conditions. This would include development of townships, construction of residential/commercial premises, roads or bridges, hotels, resorts, hospitals, educational institutions, recreational facilities, city and regional level infrastructure, townships. No investment in real estate business, construction of farm houses and trading in Transfer Development Rights (TDRs).

INDUSTRIAL PARKS

SECTOR OF BUSINESS/ COMMERCE	ROUTE	ACTIVITIES PERMITTED/ CONDITIONS
Industrial parks	Automatic route: 100% FDI	Setting up and also running existing industrial parks, subject to conditions.

SATELLITE ESTABLISHMENTS AND OPERATIONS

SECTOR OF BUSINESS/ COMMERCE	ROUTE	ACTIVITIES PERMITTED/ CONDITIONS
Satellite	Approval route: 100% FDI	Establishments and operations subject to the sectoral guidelines of Department of Space/ISRO.

PRIVATE SECURITY AGENCIES

SECTOR OF BUSINESS/ COMMERCE	ROUTE	ACTIVITIES PERMITTED/ CONDITIONS
Private Securities Agencies	Approval route: 49% FDI	

TELECOMMUNICATIONS

SECTOR OF BUSINESS/ COMMERCE	ROUTE	ACTIVITIES PERMITTED/ CONDITIONS
Telecom services	Automatic Route: 100% FDI	All specified telecom services subject to approval by Department of Telecommunications (DoT).

TRADING

SECTOR OF BUSINESS/ COMMERCE	ROUTE	ACTIVITIES PERMITTED/ CONDITIONS
Cash and carry wholesale trading / wholesale trading (including sourcing from MSEs)	Automatic route: 100% FDI	All the activities mentioned in the first column, subject to guidelines.
B2B e-Commerce activities	Automatic route: 100% FDI	All the activities mentioned in the first column, subject to guidelines.
Market place model of e-commerce for goods and services	Automatic route: 100% FDI	Subject to guidelines and regulations.
Single brand product retail trading	Automatic route: 100% FDI	Foreign investment subject to prescribed guidelines.

SECTOR OF BUSINESS/ COMMERCE	ROUTE	ACTIVITIES PERMITTED/ CONDITIONS
Multi brand retail trading	Approval route: 51% FDI	All the activities mentioned in the first column, but subject to prescribed conditions. at least 30% sourcing should be done from, MSME sectors. So far, 13 states and union territories have agreed to allow multi-brand trading with FDI in their states/union territories.
Duty free shops	Automatic route: FDI 100%	Shops must be set up in custom bonded areas, subject to satisfaction of conditions.

PHARMACEUTICALS

SECTOR OF BUSINESS/ COMMERCE	ROUTE	ACTIVITIES PERMITTED/ CONDITIONS
a) Greenfield	Automatic route: 100% FDI	Subject to the guidelines issued by the Ministry of Health and Family Welfare.
b) Brownfield	Automatic route: up to 74% FDI Approval route: above 74% and up to 100% FDI	

RAILWAY INFRASTRUCTURE

SECTOR OF BUSINESS/ COMMERCE	ROUTE	ACTIVITIES PERMITTED/ CONDITIONS
Construction, operation and maintenance of specified railway infrastructure	Automatic route: 100% FDI	Subject to sectoral guidelines of the Ministry of Railways. Proposals beyond 49% FDI will be subject to clearance of the Cabinet Committee on Security (CCS).

FINANCIAL SERVICES

SECTOR OF BUSINESS/ COMMERCE	ROUTE	ACTIVITIES PERMITTED/ CONDITIONS
Asset reconstruction companies (ARC)	Automatic route: 100% FDI	Must be registered with the RBI. Subject to conditions and compliance with relevant laws.
Banking in private sector	Automatic route: 49% FDI Approval route: Beyond 49% up to 74% FDI	Subject to conditions.
Banks in public sector including State Bank of India (SBI)	Approval route: 20% FDI	Subject to conditions.

SECTOR OF BUSINESS/ COMMERCE	ROUTE	ACTIVITIES PERMITTED/ CONDITIONS
White Label ATM Operations	Automatic route: 100% FDI	Subject to conditions.

INFRASTRUCTURE COMPANIES IN SECURITIES MARKET

SECTOR OF BUSINESS/ COMMERCE	ROUTE	ACTIVITIES PERMITTED/ CONDITIONS
Infrastructure companies in securities market e.g., stock exchanges, depositories, commodity derivative exchanges, and clearing operations	Automatic route: 49% FDI	Investment as per specified guidelines by Government and Reserve Bank of India, subject to conditions.

COMMODITY EXCHANGES

SECTOR OF BUSINESS/ COMMERCE	ROUTE	ACTIVITIES PERMITTED/ CONDITIONS
Commodity spot exchanges	Automatic route: 49% FDI	Subject to investment restrictions and conditions and guidelines of the central/state government.

POWER EXCHANGES

SECTOR OF BUSINESS/ COMMERCE	ROUTE	ACTIVITIES PERMITTED/ CONDITIONS
Power exchanges	Automatic route: 49% FDI	Registered under CERC Regulations/other guidelines.

CREDIT INFORMATION COMPANIES

SECTOR OF BUSINESS/ COMMERCE	ROUTE	ACTIVITIES PERMITTED/ CONDITIONS
Credit information companies (CIC)	Automatic route: 100% FDI	Foreign investment in credit information companies is subject to the Credit Information Companies (Regulation) Act, 2005 and subject to other conditions.

INSURANCE

SECTOR OF BUSINESS/ COMMERCE	ROUTE	ACTIVITIES PERMITTED/ CONDITIONS
Insurance Company	Automatic route: 74% FDI	Subject to conditions.
Intermediaries or insurance intermediaries including brokers, consultants, corporate agents, third party administrators, surveyors and loss assessors and other notified entities	Automatic route: 100% FDI	Subject to notifications issued by Insurance Regulatory and Development Authority (IRDA), subject to conditions.

PENSION SECTOR

SECTOR OF BUSINESS/ COMMERCE	ROUTE	ACTIVITIES PERMITTED/ CONDITIONS
Pension sector	Automatic route: 49% FDI	Subject to conditions issued by the Regulator.

OTHER FINANCIAL SERVICES

SECTOR OF BUSINESS/ COMMERCE	ROUTE	ACTIVITIES PERMITTED/ CONDITIONS
Regulated financial services		Subject to guidelines issued by the relevant Regulator.

OTHER SECTORS

SECTOR OF BUSINESS/ COMMERCE	ROUTE	ACTIVITIES PERMITTED/ CONDITIONS
No limit for FDI in any other sector/activity	Not applicable	FDI up to 100% is permissible in any sector other than those where FDI is restricted, subject to applicable laws/ sectoral rules/regulations.

PROHIBITED SECTORS

SECTOR OF BUSINESS/ COMMERCE	ROUTE	ACTIVITIES PERMITTED/ CONDITIONS
Atomic energy, railway operations other than permitted, lottery, gambling, betting, casinos, agriculture, nidhi companies, manufacturing cigars and cigarettes, specified real estate activities, plantation and specified foreign technology collaborations.	Not applicable	

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APPENDIX II – SALIENT FEATURES FOR INVESTMENTS IN EXPORT ORIENTED UNITS (EOUS), ELECTRONICS HARDWARE TECHNOLOGY PARKS (EHTPS), SOFTWARE TECHNOLOGY PARKS (STPS) AND SPECIAL ECONOMIC ZONES (SEZS) SCHEMES

	EOU/EHT/STP UNIT	SEZ UNIT
Foreign equity permissible	100% with repatriation benefits Sector norms as notified by the Government shall apply to FDI in services activities	100%, with repatriation benefits, subject to exceptions Sector norms as notified by the Government shall apply to foreign investment in services and trading activities
Approvals	Approvals will be given by the Units Approval Committee or Development Commissioner. Single window clearance for all activities. Separate procedure of approvals, where licensing is required	Single window clearance for all activities. Separate procedure of approvals, where licensing is required
Duty free imports permissible	Capital goods, raw materials, components and other inputs, imported or procured from Domestic Tariff Area (DTA) or bonded warehouses in DTA. Units may import/procure from DTA, duty / tax free. Certain specified goods may also be imported duty free for creating a central facility for use by software units. Facility can be used for export of software	Capital goods, raw materials, components and other inputs, imported or procured from DTA Units may import/procure from DTA, duty / tax free, all types of goods for creating a central facility for use by units. Facility can be used by DTA units for export of software SEZ units may import/procure goods and services from the DTA without payment of duty for setting up, operation and maintenance of units in the Zone
Leasing of capital goods	Pursuant to a contract, capital goods may be sourced from a domestic/foreign leasing company without payment of duty / tax.	Pursuant to a contract and other compliances, capital goods may be sourced from a domestic/ foreign leasing company without payment of duty / tax
Exports	Entire production of goods and services, including repair, re-making, reconditioning and re-engineering. Trading units are not covered under these schemes	Export of goods and services including agro-products, partly processed goods, sub-assemblies and components and by-products, rejects and waste scrap arising out of the production process. Software units may undertake exports using data communication links or in the form of physical exports (which may be through courier service also), including export of professional services
Export obligations	Unit shall be a positive net foreign exchange (NFE) earner, which shall be calculated cumulatively in blocks of five years, starting from commencement of production	Unit shall be a positive Net Foreign Exchange (NFE) earner, which shall be calculated cumulatively in blocks of 5 years, starting from commencement of production

	EOU/EHT/STP UNIT	SEZ UNIT
	Supplies of Information Technology Agreement (ITA-1) and notified zero duty items manufactured by these units in the (DTA) shall be counted towards fulfilment of export obligation	Supplies of Information Technology Agreement (ITA-1) and notified zero duty items manufactured by these units in the (DTA) shall be counted towards fulfilment of export obligation Supplies to other EOU/ SEZ/EHTP/STP units shall also be counted towards NFE provided that such goods are permissible for procurement by units
Investment criteria	For other than specified EOUs – INR 10 million	Nil
Income tax benefits	Nil	100% income tax exemption of export profits is available to SEZ units for five years, 50% for next five years and 50% of ploughed back profits for five years thereafter
Central sales tax	Refundable	Exempt
Other benefits/ incentives	a) Exemption from payment of central excise duty on goods procured from DTA on goods manufactured in India b) Exemption from industrial licensing for manufacture of items reserved for small scale sector	a) Exempt from Goods and Service tax. b) Exempt from central excise duty. c) Full authority to provide services like water, electricity, security, restaurants and recreation centres on commercial terms d) Facility to develop township within the SEZ with residential areas, markets, play grounds, clubs and recreation centres e) Reimbursement of duty paid on fuels or any other goods procured from DTA as per the rate of drawback notified by the Directorate General of Foreign Trade from the date of such notification f) Procurement of raw materials and export of finished products exempt from central levies g) Exemption from Industrial Licensing for manufacture of items reserved for SSI sector h) Exempt from payment minimum alternate tax i) Exempt from payment of dividend distribution tax.

APPENDIX III – RATES OF DEPRECIATION AS PER THE INCOME TAX ACT ON THE WRITTEN DOWN VALUE (WDV)

SR. NO.	NATURE OF THE ASSET	RATE
1.	**Buildings**	
1.1	Building used mainly for residential purposes, except hotels and boarding houses	5%
1.2.	Building for installing plant and machinery forming part of water supply project or water treatment system which is put into use for providing specified infrastructure facilities on or after 01.09.2002	40%
1.3.	Buildings other than the items in 1.1 and 1.2, above	10%
1.4	Temporary structures- Wooden Structures	40%
2.	**Furniture and Fixtures including electrical fittings**	10%
3.	**Plant and Machinery**	
3.1	General Items	15%
3.2	Motor cars other than those used for running them on hire	15%
3.3	Aeroplanes – aero engines	40%
3.4	Motor buses, motor lorries and motor taxies used in the business of running them on hire	30%
3.5	Moulds issued in rubber and plastic goods factories	30%
3.6	Specified air pollution equipment	40%
3.7	Specified water pollution equipment	40%
3.8	Solid waste control equipment; recycling and resource recovery systems	40%
3.9	Machineries and plant used in semi-conductor industries	30%
3.10	Specified lifesaving medical equipment	40%
3.11	Containers made of glass/plastic used as re-fills	40%
3.12	Computer including software	40%
3.13	Machinery and plant used in a water supply project or a water treatment system which is put into use for providing specified infrastructure facilities	40%
3.14	Wooden parts used in artificial silk manufacturing units	40%
3.15	Cinematograph films – bulbs of studio lights	40%
3.16	Match factories – Wooden match frames	40%
3.17	Mines and quarries – Tubs, winding ropes, haulage ropes, sand stowing pipes and safety lamps	40%
3.18	Salt – works, salt pans, reservoirs and condensers	40%
3.19	Flour mill – rollers	40%
3.20	Iron and steel industry – rolling mill rolls	40%
3.21	Sugar works – rollers	40%
3.22	Specified energy saving devices being	40%
3.23	Gas cylinders including valves and regulators	40%
3.24	Direct fire glass melting furnaces	40%
3.25	Plant used in mineral oils concerns/Oil wells	40%/15%

SR. NO.	NATURE OF THE ASSET	RATE
3.26	Specified renewable energy devices	40%
3.27	a) Books owned by taxpayers carrying on a profession: − Books of annual publication − Books other than items stated above b) Books owned by the taxpayer carrying on the business in running lending libraries	 40% 40% 40%
4.	**Ships**	
4.1	Ocean going ships including dredgers, tugs, barges, survey launches and fishing vessels	20%
4.2	Vessels used in inland waters, including speed boats	20%
5.	Intangible assets being know-how, patents, copyrights, trademarks, licenses, franchises or any other business or commercial rights of similar nature	25%

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APPENDIX IV – RATES OF WITHHOLDING TAXES FOR FINANCIAL YEAR 2023-24

(Amounts in INR)

SR. NO.	PARTICULARS	PAYMENT THRESHOLD	RATE OF TAX DEDUCTION AT SOURCE (TDS)	
1	Interest on securities	10,000		10%
2	Interest other than interest on securities	5,000[3]		10%
3	For winnings from lotteries and crossword puzzles	10,000 each tax year		30%
4	For winnings from horse races	10,000 each tax year		30%
5	Payments under a contract (including payments to a sub-contractor and payments under advertising contracts	30,000 per contract[4]	Payments to: - Individual s/HUF - Others	 1% 2%
6	Insurance commission	15,000	Payments to: -Domestic company -Others	 10% 5%
7	Payments in respect of deposits under specified savings instruments	2,500		10%
8	Payments made at the time of re-purchase of units	No limit		20%
9	Payment of commission, fees, etc., on sale of lottery tickets	15,000		5%
10	Brokerage, commission	15,000		5%
11	Rent	240,000		10%[5]
12	Transfer of immovable property	50,00,000	1% of the higher of the sum paid or credited to the resident or the stamp duty value of the property	

[3] Applicable threshold limit is INR 40,000 in case of deposits in banks and INR 50,000 in case of senior citizens)
[4] Applicable threshold limit is INR 1,00,000 in case of aggregate contracts in a tax year.
[5] In case of use of plant, machinery or equipment, the tax rate will be 2%

SR. NO.	PARTICULARS	PAYMENT THRESHOLD	RATE OF TAX DEDUCTION AT SOURCE (TDS)	
13	Professional and technical services	30,000	Others	10%[6]
14	Payment of enhanced compensation	250,000		10%
15	Payment towards interest on infrastructure debt fund to non-resident	No limit		5%
16	Income distribution by a specified business trust	No limit	Unitholder: - Resident - Non resident	 10% 5%/At rates specified
17	Income distribution by a specified investment fund	No limit	Unitholder: - Resident - Non resident	 10% At rates specified
18	Income payable to a resident investor in a specified securitisation trust	No limit	Payments to Resident: - Individuals/HUF - Others Payments to Non-Residents	 25% 30% At rates specified
19	Payment to non-resident sportsmen / entertainer / sports association or institution	No limit		20%
20	Payment towards interest on foreign currency borrowing to non-resident	No limit		5%/4%
21	Income from units of a business trust or an investment fund	No limit		10%
22	Payments to non-resident persons including companies		At rates specified	
23	Cash withdrawn from one or more accounts maintained with specified persons	Excess of 10 million[7]		2%
24	Income from units of specified mutual funds	5,000		10%
25	Payment or credit by the e-commerce operator to e-commerce participant	0.5 million Subject to conditions)		1%

[6] In case of payments like fees for technical services, royalty of specified nature and call centre operations, tax rate will be 2%.

[7] In case of certain specified exceptions, the applicable threshold limit will be excess of INR 0.2 million and accordingly, the tax rate will vary.

SR. NO.	PARTICULARS	PAYMENT THRESHOLD	RATE OF TAX DEDUCTION AT SOURCE (TDS)
26	Buyer of Goods	5 million (subject to satisfaction of conditions)	0.1%
27	Payments of benefits or perquisites of a business or profession received in cash or in kind or partly in cash and partly in kind	20,000	10%
28	Transfer of Virtual Digital Assets	50,000 [8]	1%
29	Cash Withdrawals	10 million	2%
30	Winnings from online games (with effect from July 01, 2023)	No limit	30%

Note:

1) There will be no levy of surcharge and cess on payments to resident corporate and resident non corporate taxpayers.
2) In addition to the base rate of tax:
   (a) TDS rates on payments to foreign companies will be subject to:
   - Surcharge:
   (i) At 2% (if aggregate payments are likely to exceed INR 10 million but less than INR 100 million), or
   (ii) 5% (if aggregate payments are likely to exceed INR 100 million)
   (iii) Health and education cess at 4% on tax amount including surcharge.

   (b) TDS rate on payments to non-resident (other than foreign companies) will be subject to health and education cess at 4%

3) Subject to exceptions, where any person whose receipts are subject to withholding tax, does not furnish the Permanent Account No. (PAN) to the person making the payment, tax will be withheld at the higher of the following:
   a) Twice rate prescribed under the IT Act
   b) Twice rate in force
   c) 5%

[8] In certain specified cases, the applicable threshold limit will be INR 10,000.

APPENDIX V – UPPER LIMITS OF WITHHOLDING TAXES IN INDIA'S AGREEMENTS FOR AVOIDANCE OF DOUBLE TAXATION

	DIVIDENDS (INBOUND)		INTEREST		ROYALTY		FEES FOR TECHNICAL SERVICES	
COUNTRY	RIGHT OF THE STATE TO TAX	RATE	RATE OF THE STATE TO TAX	RATE	RIGHT OF THE STATE TO TAX	RATE	RATE OF THE STATE TO TAX	RATE
Australia	Both	15%	Both	15%+	Both	10% 15% 20%	10/15%	
Bangladesh	Both	10%^ 15%	Both	10%	Both	10%	*	
Belgium	Both	15%	Both	10% 15%	Both	10%	Both	10%
Brazil	Both	15%	Both	15%	Both	25% 15%	**	
China	Both	10%	Both	10%	Both	10%	Both	10%
Cyprus	Both	10%^	Both	10%	Both	10%	Both	10%
Czech Republic	Both	10%	Both	10%	Both	10%	Both	10%
Denmark	Both	15% 25%	Both	10%+ 15%+	Both	20%	Both	20%
Finland	Both	10%	Both	10%	Both	10%	Both	10%
Germany	Both	10%	Both	10%	Both	10%	Both	10%
Indonesia	Both	10%	Both	10%	Both	10%	Both	10%
Israel	Both	10%	Both	10%	Both	10%	Both	10%
Italy	Both	15%^ 25%	Both	15%+	Both	20%	Both	20%
Japan	Both	10%	Both	10%	Both	10%	Both	10%
Malaysia	Both	5%	Both	10%	Both	10%	Both	10%
Mauritius	Both	5% 15%	Both	7.5%$	Both	15%+	Both	10%
Netherlands	Both	10%	Both	10%	Both	10%	Both	10%
New Zealand#	Both	15%	Both	10%	Both	10%	Both	10%
South Africa	Both #	10%	Both	10%	Both	10%	Both	10%
Russian Federation	Both	10%	Both	10%	Both	10%	Both	10%
Saudi Arabia	Both	5%	Both	10%	Both	10%	***	
Spain	Both	15%	Both	15%	Both	10% 20%	Both	20%
Sri Lanka	Both	7.5%	Both	10%	Both	10%	Both	10%
Sweden	Both	10%	Both	10%	Both	10%	Both	10%
Swiss Confederation	Both	10%	Both	10%	Both	10%	Both	10%

	DIVIDENDS (INBOUND)		INTEREST		ROYALTY		FEES FOR TECHNICAL SERVICES	
COUNTRY	RIGHT OF THE STATE TO TAX	RATE	RATE OF THE STATE TO TAX	RATE	RIGHT OF THE STATE TO TAX	RATE	RATE OF THE STATE TO TAX	RATE
Thailand	Both	10%	Both	10%	Both	10%	*	
United Arab Emirates	Both	10%	Both	5% 12.5%	Both	10%	***	
United Kingdom	Both	15% 10%	Both	10% 15%	Both	10% 15% 20%	Both	10% 15% 20%
United States of America	Both	15% 25% 10%	Both	10% 15%	Both	10% 15% 20%	Both	10% 15% 20%

* Not mentioned – tax law in the state, which has the right to tax, shall prevail
** No separate provision – to be taxed in the Source country as per domestic law
*** No separate provision – to be taxed in the country of Residence as per domestic law
+Beneficial ownership may not be required
$ Interest exempt if beneficially owned by government or local authorities or agency or entity created or organized by government of other contracting state (Notification no. S02680E deleted date 10-08-2016)
^ Beneficial owner is a company.
# The competent Authorities of Contracting states may by mutual agreement settle the application of this limitation.

Note:
1) India has entered into comprehensive double tax avoidance agreements with 85 countries. Information regarding such other agreements is available at:
https://www.incometaxindia.gov.in/_layouts/15/dit/mobile/viewer.aspx?path=https://www.incometaxindia.gov.in/charts%20%20tables/tax%20rates%20as%20per%20it%20act%20vis-a-vis%20tax%20treaties.htm&k=&IsDlg=0

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APPENDIX VI – LIST OF ACCOUNTING STANDARDS ALONGWITH REFERENCE OF ASSOCIATED /IFRS

List of IFRS corresponding to the Ind AS

International Financial Reporting Standards in a broad sense comprise:

- ***Conceptual Framework for Financial Reporting***—stating basic principles and grounds of IFRS
- ***IAS***—standards issued before 2001
- ***IFRS***—standards issued after 2001
- ***SIC***—interpretations of accounting standards, giving specific guidance on unclear issues
- ***IFRIC***—newer interpretations, issued after 2001

List of IFRS corresponding to the Ind AS notified by the MCA

S. No.	IFRS/ IAS	Indian Accounting Standard	Title
1.	IAS 1	Ind AS 1	*Presentation of Financial Statements*
2.	IAS 2	Ind AS 2	*Inventories*
3.	IAS 7	Ind AS 7	*Statement of Cash Flows*
4.	IAS 8	Ind AS 8	*Accounting Policies, Changes in Accounting Estimates and Errors*
5.	IAS 10	Ind AS 10	*Events after the Reporting Period*
6.	IAS 12	Ind AS 12	*Income Taxes*
7.	IAS 16	Ind AS 16	*Property, Plant and Equipment*
8.	IAS 19	Ind AS 19	*Employee Benefits*
9.	IAS 20	Ind AS 20	*Accounting for Government Grants and Disclosure of Government Assistance*
10.	IAS 21	Ind AS 21	*The Effects of Changes in Foreign Exchange Rates*
11.	IAS 23	Ind AS 23	*Borrowing Costs*
12.	IAS 24	Ind AS 24	*Related Party Disclosures*
13.	IAS 26	*	*Accounting and Reporting by Retirement Benefit Plans*
14.	IAS 27	Ind AS 27	*Separate Financial Statements*
15.	IAS 28	Ind AS 28	*Investments in Associates and Joint Ventures*
16.	IAS 29	Ind AS 29	*Financial Reporting in Hyperinflationary Economies*
17.	IAS 32	Ind AS 32	*Financial Instruments: Presentation*
18.	IAS 33	Ind AS 33	*Earnings per Share*

S. No.	IFRS/ IAS	Indian Accounting Standard	Title
19.	IAS 34	Ind AS 34	*Interim Financial Reporting*
20.	IAS 36	Ind AS 36	*Impairment of Assets*
21.	IAS 37	Ind AS 37	*Provisions, Contingent Liabilities and Contingent Assets*
22.	IAS 38	Ind AS 38	*Intangible Assets*
23.	IAS 39	**	*Financial Instruments: Recognition and Measurement*
24.	IAS 40	Ind AS 40	*Investment Property*
25.	IAS 41	Ind AS 41	*Agriculture*
26.	IFRS 1	Ind AS 101	*First-time Adoption of Indian Accounting Standards*
27.	IFRS 2	Ind AS 102	*Share-based Payment*
28.	IFRS 3	Ind AS 103	*Business Combinations*
29.	***IFRS 4	Ind AS 104	*Insurance Contracts*
30.	IFRS 5	Ind AS 105	*Non-current Assets Held for Sale and Discontinued Operations*
31.	IFRS 6	Ind AS 106	*Exploration for and Evaluation of Mineral Resources*
32.	IFRS 7	Ind AS 107	*Financial Instruments: Disclosures*
33.	IFRS 8	Ind AS 108	*Operating Segments*
34.	IFRS 9	Ind AS 109	*Financial Instruments*
35.	IFRS 10	Ind AS 110	*Consolidated Financial Statements*
36.	IFRS 11	Ind AS 111	*Joint Arrangements*
37.	IFRS 12	Ind AS 112	*Disclosure of Interests in Other Entities*
38.	IFRS 13	Ind AS 113	*Fair Value Measurement*
39.	IFRS 14	Ind AS 114	*Regulatory Deferral Accounts*
40.	IFRS 15	Ind AS 115	*Revenue from Contracts with Customers*
41.	IFRS 16	Ind AS 116	*Leases*
42.	***IFRS 17	Ind AS corresponding to IFRS 17 is under formulation	*Insurance Contracts*

*Ind AS corresponding to IAS 26, Accounting and Reporting by Retirement Benefit Plans, has not been issued as this standard is not applicable to companies.

**IAS 39 contains only part relating to hedge accounting which is still valid globally as continuation of this part is permitted globally. But in India, only IFRS 9 hedge accounting is permitted, hence the part of IAS 39 is not relevant and no equivalent standard exists.

***IFRS 17 is applicable for reporting periods beginning on or after 1 Jan 2023 and it supersedes IFRS 4

FRICs/SICs included in the corresponding Appendices to Ind AS

As per the scheme of formulation of Indian Accounting Standards, the interpretations issued by the IASB, IFRIC and SIC added as an appendix with the relevant Ind AS.

S No.	IFRIC/ SIC No.	Corresponding Appendix included in Ind AS	IFRIC/SIC
1.	IFRIC 1	Appendix A to Ind AS 16	Changes in Existing Decommissioning, Restoration and Similar Liabilities
2.	IFRIC 2	#	Members' Shares in Co-operative Entities and similar Instruments
3.	IFRIC 5	Appendix A to Ind AS 37	Rights to Interests arising from Decommissioning, Restoration and Environmental Rehabilitation Funds
4.	IFRIC 6	Appendix B to Ind AS 37	Liabilities arising from Participating in a Specific Market—Waste Electrical and Electronic Equipment
5.	IFRIC 7	Appendix A to Ind AS 29	Applying the Restatement Approach under Ind AS 29 Financial Reporting in Hyperinflationary Economies
6.	IFRIC 9	Part of Appendix B to Ind AS 109	Reassessment of Embedded Derivatives
7.	IFRIC 10	Appendix A to Ind AS 34	Interim Financial Reporting and Impairment
8.	IFRIC 12	Appendix D to Ind AS 115	Service Concession Arrangements
9.	IFRIC 14	Appendix B to Ind AS 19	Ind AS 19 —The Limit on a Defined Benefit Asset, Minimum Funding Requirements and their Interaction
10.	IFRIC 16	Appendix C to Ind AS 109	Hedges of a Net Investment in a Foreign Operation
11.	IFRIC 17	Appendix A to Ind AS 10	Distribution of Non-cash Assets to Owners
12.	IFRIC 19	Appendix D to Ind AS 109	Extinguishing Financial Liabilities with Equity Instruments
13.	IFRIC 20	Appendix B to Ind AS 16	Stripping Costs in the Production Phase of a Surface Mine

S No.	IFRIC/ SIC No.	Corresponding Appendix included in Ind AS	IFRIC/SIC
14.	IFRIC 21	Appendix C to Ind AS 37	Levies
15.	IFRIC 22	Appendix B to Ind AS 21	Foreign Currency Transactions and Advance Consideration
16.	IFRIC 23	Appendix C to Ind AS 12	Uncertainty over Income Tax Treatments
17.	SIC-7	##	Introduction of Euro
18.	SIC-10	Appendix A to Ind AS 20	Government Assistance—No Specific Relation to Operating Activities
19.	SIC-25	Appendix A to Ind AS 12	Income Taxes—Changes in the Tax Status of an Entity or its Shareholders
20.	SIC-29	Appendix E to Ind AS 115	Service Concession Arrangements: Disclosures
21.	SIC-32	Appendix A to Ind AS 38	Intangible Assets—Web Site Costs

#Appendix corresponding to IFRIC 2 is not issued as it is not relevant for the companies.

##Appendix corresponding to SIC-7 is not issued as it is not relevant in the Indian context.

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