DOING BUSINESS

IN INDIA

INDIA

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Prepared by
CHANDABHOY & JASSOOBHOY
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PREFACE

This booklet has been prepared by **CHANDABHOY & JASSOOBHOY** for the information of persons considering doing business in India. The material is presented in a summary form and is intended to serve only as a guide. The assistance of professional advisors is, therefore, recommended in dealing with specific business and legal questions.

While every care has been taken in the preparation of this booklet, no responsibility can be accepted for inaccuracies. At the same time it must be remembered that law and practice may also change.

This guide is dated **September 2014** and may be superseded by later publications. For additional information, please contact:

Chandabhoy & Jassoobhoy
208, Phoenix House, A Wing,
462, Senapati Bapat Marg, Lower Parel,
Mumbai 400 013.

Phone	**:**	**+91 22 2498 1516 / 2496 0045 / 24961356**
Fax	**:**	**+91 22 2498 1718**
Email	**:**	**mail@cnj.in**
Website	**:**	**www.cnj.in**

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1 – INTRODUCTION

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 7,517km. 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 second most populous country in the world with 1.2 billion people as per the 2011 census (estimated). The literacy rate is 74% with a great degree of regional variation. Nearly 30% of India's population live in urban areas and 70% in rural areas. The country has 44 cities with a population of more than one million (2011 provisional census).

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, 29 states and seven 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 230 commercial banks which together have more than 71,000 offices 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 posses 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 upto 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.

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

	2012–13	2013–14
Gross domestic product (GDP)	USD 1,876 billion	USD 1,671 billion
GDP – growth rate	4.5%	4.7%
Index of industrial production – growth rate	1.1%	-0.1%
Agricultural sector– growth rate	1.4%	4.7%
Services sector – growth rate	7.1%	7%
Exports	USD 306.58 billion	USD 318.61 billion
Export growth	-1.8%	4.7%
Imports	USD 502.24 billion	USD 466.22 billion
Import growth	0.4%	-8.3%
Balance of payments (April–Sep)	USD 3.83 billion	USD 15.51 billion
Foreign exchange reserves (USD billion)		
End March	292.0	304.20
26 September 2014	276.26	314.18
Exchange rate (US dollar to INR)		
At 31 March	INR 54.36	INR 59.76
At 26 September	INR 62.23	INR 61.57

FOREIGN DIRECT INVESTMENT

Continuous liberalisation in foreign direct investment (FDI) policy and simplification of procedures are contributing significantly to increased 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	2012–13 USD BILLION	2012–13 % OF TOTAL	2013–14 USD BILLION	2013–14 % OF TOTAL
Mauritius	2.31	10.30	5.99	24.65
Singapore	9.49	42.33	4.86	20.00
Japan	1.08	4.82	3.22	13.25
Netherlands	1.86	8.30	2.27	9.34
UK	2.24	10.00	1.72	7.08
Germany	0.86	3.84	1.04	4.28
France	0.56	2.50	0.81	3.33
USA	0.49	2.19	0.56	2.30
Cyprus	0.18	0.80	0.34	1.40
UAE	0.65	2.90	0.31	1.28
Total (top 10)	**19.72**	**87.96**	**21.12**	**86.91**
Total FDI	**22.42**	**-**	**24.30**	**-**

TABLE 3

FDI by sector

SECTOR	2012–13 USD BILLION	2012–13 % OF TOTAL	2013–14 USD BILLION	2013–14 % OF TOTAL
Services (financial and non financial)	4.83	21.54	2.23	9.18
Hotel and tourism	3.26	14.54	0.49	2.02
Automobile industry	1.54	6.87	1.52	6.26
Metallurgical industries	1.47	6.56	0.57	2.35
Construction development: townships, housing, built-up infrastructure	1.33	5.93	1.23	5.06
Drugs and pharmaceuticals	1.12	5.00	1.28	5.27
Power	0.54	2.41	1.07	4.40
Computer software and hardware	0.49	2.18	1.13	4.65
Telecommunications (radio paging, cellular mobile, basic telephone services)	0.30	1.34	1.31	5.39
Chemicals(other than fertilisers)	0.29	1.30	0.88	3.62
Total(top 10)	**15.17**	**67.67**	**11.71**	**48.19**
Total FDI	**22.42**	**-**	**24.30**	**-**

Cumulative FDI equity inflows in India during the period August 1991 to March 2014 stood at USD217.70billion.

TABLE 4
India's major trading partners

COUNTRY	2013–14 (% OF INDIA'S TOTAL TRADE)
China	8.63
USA	8.06
UAE	7.82
Saudi Arabia	6.39
Switzerland	2.78

2 – BUSINESS ENVIRORMENT

INDIA – AN ATTRACTIVE INVESTMENT LOCATION

India is one of the largest economies in the world with a stable democratic environment throughout 68 years of independence.

More than 100 Fortune 500 companies now have a presence in India.

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 almost 100,000 branches, supported by a number of national and state level financial institutions
- A vibrant capital market comprising 20 recognised stock exchanges with more than 10,000 listed companies
- The introduction of futures trading in selective commodities on three national level exchanges and 21 regional level exchanges
- A steady increase in 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.

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
- Manufacture of items reserved for small scale industry (SSI) sectors by non-SSI units
- 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:

- Distillation and brewing of alcoholic drinks
- 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.

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

CATEGORY	AN ENTERPRISE ENGAGED IN THE MANUFACTURE OR PRODUCTION OF SPECIFIED GOODS	AN ENTERPRISE ENGAGED IN PROVIDING SERVICES
Micro enterprise	Below INR 2.50 million	Below INR 1 million
Small enterprise	Above INR 2.50 million but below INR 50 million	Above INR 1 million but below INR 20 million
Medium enterprise	Above INR 50 million but below INR 100 million	Above INR 20 million but below INR 50 million

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

Industrial undertakings are free to select the location of their projects. An industrial licence is required if the proposed location is within 25km of the standard urban area limits of 23 cities having a population of one million or more, as per the 1991 census. These cities are: Greater Mumbai, Kolkata, Delhi, Chennai, Hyderabad, Bangalore, Ahmedabad, Pune, Kanpur, Nagpur, Lucknow, Surat, Jaipur, Kochi, Coimbatore, Vadodara, Indore, Patna, Madurai, Bhopal, Vishakhapatnam, Varanasi and Ludhiana.

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 and land use regulations and environmental regulations.

PROCEDURE FOR OBTAINING INDUSTRIAL LICENCES

An industrial licence is granted by the Secretariat for Industrial Assistance (SIA) on the recommendation of the Licensing Committee. Decisions are usually taken within four to six weeks of filing the application.

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 in 31 categories of industry specified by the Ministry of Environment and Forests under the Environmental Protection Act, 1986. This list includes petrochemical complexes, petroleum refineries, cement, thermal power plants, bulk drugs, fertilizers, dyes, paper, etc.

However, if the investment in the project is less than INR 1 billion, such environmental clearance is not necessary, except in cases of pesticides, bulk drugs and pharmaceuticals, asbestos and asbestos products, integrated paint complexes, mining projects, tourism projects with certain parameters, tarred roads in the Himalayan areas, distilleries, dyes, foundries and electroplating industries.

For setting up industries in certain locations which are considered fragile (e.g. the Aravalli Range, coastal areas, Doon valley, Dahanu, etc.), there are separate guidelines issued by the Ministry.

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 non-resident as well as resident Indian entities. Any non-resident investment in an Indian company is foreign direct investment (FDI). 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.

For the purpose of computation of indirect foreign investment, foreign investments in an Indian company shall include all types of foreign investment i.e.:

- FDI
- Investment by foreign institutional investors (FII)
- Non-resident Indian (NRI)
- American depository receipts (ADR)
- Global depository receipts (GDR)
- Foreign currency convertible bonds (FCCB)
- Equity shares, fully, compulsorily and mandatorily convertible preference shares and fully, compulsorily and mandatorily convertible debentures.

Guidelines have been laid down for the calculation of total foreign investment ie direct and indirect foreign investment in an Indian company.

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

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

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:

i) Business of chit fund
ii) Nidhi company
iii) Trading in transferable development rights
iv) Lottery businesses
v) Gambling and betting
vi) Agriculture (excluding floriculture, horticulture, development of seeds, animal husbandry, pisciculture and cultivation of vegetables, mushrooms etc. under controlled conditions and services related to agro and allied sectors)or plantation activity (other than tea plantations)
vii) Real estate business or construction of farm houses (excluding development of townships, construction of residential/commercial premises, roads or bridges, educational institutions, recreational facilities, city and regional level infrastructure, townships)
viii) Partnerships/proprietorships in the print media sector
ix) Manufacturing of cigars, cheroots, cigarillos and cigarettes, tobacco and tobacco substitutes
x) Activities/sectors not open for private sector investment (e.g. atomic energy, railway transport other than mass rapid transport systems).

Note: Foreign technology collaboration in any form, including licensing for franchises, trademarks, brand names or management contracts, is prohibited for lottery business, 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 Foreign Investment Promotion Board (FIPB), Ministry of Finance.

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

Erstwhile overseas corporate bodies (OCBs) –entities established outside India and owned predominantly by non-resident Indians with at least 60% of the paid-up capital) – incorporated outside India and which are not on the adverse list of the Reserve Bank, can make fresh investments under the FDI policy with the prior approval of the Reserve Bank, if the investment is through the automatic route or with the prior approval of the FIPB, if the investment is through the approval route.

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 equity/preference shares/debentures 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. Annual information of the foreign investment is required to be filed by 15 July every year.

PROCEDURE UNDER APPROVAL ROUTE

Prior approval of the government through the FIPB 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.

Such proposals are considered by the FIPB in terms of the prescribed guidelines. Further, FDI in cases (not covered by the automatic route) where the foreign investor has an existing venture or tie-up in India through an investment/technical collaboration/trademark agreement in the same/allied field as the company whose shares are being issued, subject to exceptions, requires prior approval of the FIPB.

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

Applications for all FDI cases, except non-resident Indian (NRI) investments, FDI in export oriented units (EOUs) and in retail trading (single branded products) should be submitted to the FIPB Unit, Department of Economic Affairs (DEA) and Ministry of Finance.

Applications for NRI investment, FDI in EOUs and in retail trading (single branded products) should be submitted to the Secretariat for Industrial Assistance (SIA) in the Department of Industrial Policy and Promotion (DIPP).

MODE OF INVESTMENTS

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

- Issue of fresh shares/convertible debentures 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.

FDI is permitted under the categories listed below.

INVESTMENTS IN PUBLIC/PRIVATE LIMITED COMPANIES

An Indian company may issue equity shares or fully and mandatorily convertible preference shares/debentures (subject to prescribed pricing guidelines/valuation norms) to a person resident outside India, within sector cap guidelines. This is subject to compliance with the provisions of the Industrial Policy and Procedures as notified by the SIA in the Ministry of Commerce and Industry, part of the government of India, from time to time and provided that:

- The activity of the issuer company does not require an industrial licence under the provisions of the IDR Act under the location policy notified by the government of India under the Industrial Policy of 1991 as amended from time to time
- The shares or convertible debentures are not being issued by the Indian company with a view to acquiring existing shares of any Indian company:
  - Issue of non-convertible, optionally convertible or partially convertible debentures or preference shares are considered as debt and accordingly, guidelines applicable to external commercial borrowings (see section II, H, below) apply
  - An Indian company may issue equity/preference shares under the automatic/approval route, subject to statutory compliances and prescribed pricing guidelines, to foreign investors:
    - Being a provider of technology/technical know-how against royalty/ lump sum fees due for payment
    - Against external commercial borrowings, subject to conditions
    - Against import of capital goods, machinery and equipment (excluding second hand machinery) and pre-operative and pre-incorporation expenses
- The foreign equity after conversion of the royalty/lumpsum/external commercial borrowing, is within the sector cap guidelines
- Units in special economic zones (SEZs) may issue equity shares to foreign investors against the import of capital goods, subject to valuation guidelines
- An Indian company may issue bonus shares or rights shares to its existing shareholders who are persons resident outside India at a price which is not lower than that of which the offer is made to resident shareholders, within sector cap guidelines. Such issue of shares must be in compliance with the provisions of the Companies Act and guidelines issued by the Securities Exchange Board of India (SEBI)
- An Indian company may issue bonus shares to its existing non-resident shareholders and such shares shall be on the same terms and conditions as regards repatriation as are applicable to the original shares
- Existing foreign investors are permitted to apply for additional shares/convertible debentures/preference shares over and above their rights share entitlement. Such additional rights shares out of the unsubscribed portion, if any, may be allotted, subject to sector caps
- An Indian company may issue preference shares at a coupon rate not exceeding 300 basis points over the prime lending rate of the State Bank of India as at the day of the board of directors meeting held for the issue of such shares.

INVESTMENTS IN MICRO AND SMALL ENTERPRISES (MSE)

A company which is a MSE, including an export oriented undertaking (EOU) andincluding units in a free trade zone (FTZ), an export processing zone (EPZ) or a software technology park (STP) or electronic hardware technology park (EHTP), not engaged in a prohibited activity may issue shares or convertible debentures to a foreign investor (other than a resident of Pakistan and to a resident of Bangladesh under the approval route) subject to prescribed limits and prevailing guidelines.

- An industrial undertaking which is not a MSE having an industrial licence for manufacturing items reserved for the MSE sector may issue shares to a foreign investor (other than a resident of Pakistan and to a resident of Bangladesh under the approval route) upto 24% of its paid-up capital or sector cap, whichever is lower. The issuing of shares exceeding 24% of the paid-up capital requires prior approval of the FIPB.

INVESTMENTS FOR SETTING UP SPECIAL ECONOMIC ZONES(SEZ)/ FREE TRADE WAREHOUSING ZONES (FTWZS)

100% FDI is permitted under the automatic route for setting up SEZs and FTWZs subject to the Special Economic Zones Act and the Foreign Trade Policy.

INVESTMENTS IN EXPORT ORIENTED UNITS (EOU)/ UNITS IN SEZ

Automatic approval for FDI is permitted in EOUs and units in SEZs to the extent of the sector caps referred to in Appendix I. Automatic approval is granted where:

- The activity proposed does not attract compulsory licensing or falls in the services sector except for research and development, software and IT enabled services
- The location is in conformity with the prescribed parameters
- Units undertake to achieve positive net foreign exchange earnings
- An EOU may be shifted to a SEZ with due approval provided the EOU unit has achieved a pro-rata obligation under the EOU scheme.

If the unit is enabled to bonding by customs authorities, conversion of existing domestic tariff area (DTA) units into an EOU is also permitted under the automatic route, if the necessary parameters are satisfied.

Proposals not covered by the automatic route are considered on a case by case basis by the Board of Approval, Department of Commerce.

INVESTMENT IN LIMITED LIABILITY PARTNERSHIPS (LLP)

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

- FDI in LLPs will be allowed through the approval route, only for LLPs operating in sectors/activities where 100% FDI is allowed
- LLPs with FDI will not be allowed to operate in the following sectors/activities:
  - Sectors eligible to accept 100% FDI under the automatic route but are subject to FDi linked performance related conditions
  - Sectors eligible to accept less than 100% under the automatic route
  - Sectors eligible to accept FDI under the approval route
  - agricultural/plantation activities, print media or real estate business
  - Sectors prohibited to accept FDI
- An Indian company having FDI, will be permitted to make downstream investment in an LLP only if both – the company, as well as the LLP – are operating in sectors where 100% FDI is allowed through the automatic route and there are no FDI-linked performance related conditions
- LLPs with FDI will not be eligible to make any downstream investments
- Foreign capital participation in the capital structure of LLPs will be allowed only by way of cash consideration, received by inward remittance, through normal banking channels or by debit to NRE/FCNR accounts of the person concerned, maintained with an authorised dealer/authorised bank

- Investment in LLPs by foreign institutional investors (FIIs), Qualified Foreign Investors (QFIs),foreign venture capital investors (FVCIs) and Foreign Portfolio Investors will not be permitted. LLPs will also not be permitted to avail themselves of external commercial borrowings (ECBs)
- FDI in a LLP by way of capital contribution or by way of acquisition/transfer of profit share, would have to be atleast equal to the fair price worked out with any internationally accepted valuation norm as per market practice. Transfer of capital contribution from a resident to a non-resident and vice versa, is permitted subject to conditions and valuation norms
- The designated partners will be responsible for compliance with all the above conditions and also liable for all penalties imposed on the LLP for any contravention
- Conversion of a company with FDI into an LLP will be allowed only if the above stipulations are met and with the prior approval of the FIPB.

INVESTMENTS UNDER AMALGAMATIONS/MERGERS

Where a merger, amalgamation or reconstruction by way of demerger has been approved by a court in India, 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 cap
- The transferor company or the transferee company or the new company is not engaged in any activity prohibited under the FDI policy.

Where a scheme of arrangement for an Indian company has been approved by a court in India, the Indian company may issue non-convertible redeemable preference shares or debentures out of its general reserves by way of distribution as bonus to the shareholders resident outside India, subject to conditions.

INVESTMENTS IN GLOBAL DEPOSITORY RECEIPTS (GDRS)/AMERICAN DEPOSITORY RECEIPTS (ADRS)

Indian companies which are eligible to issue shares to persons resident outside India under the FDI scheme, are allowed to raise equity capital in the international market by issuing rupee denominated shares to an on-resident depository for the purpose of the issuing of GDRs/ADRs with the approval of the Ministry of Finance and in accordance with the 'Issue of Foreign Currency Convertible Bonds and Ordinary shares (Through Depository Receipt Mechanism) Scheme' and following the guidelines issued by the central government in this regard.

An Indian listed company which is not eligible to raise funds from the Indian capital market, including a company restrained by the SEBI to do so, is not eligible to issue GDRs/ADRs. Unlisted companies, which have not accessed the GDR/ADR route for raising capital, would require prior or simultaneous listing in the domestic market. Unlisted companies which have already issued GDRs/ADRs, have to list in the domestic market on making a profit or within three years of such issue of GDRs/ADRs, whichever is earlier.

GDRs/ADRs are valued as per guidelines and are issued on the basis of the ratio worked out by the Indian company in consultation with the lead manager. Proceeds from the issue have to be kept abroad, pending utilisation. Such proceeds may be invested as per the guidelines until such time.

There is no restriction on the number or monetary limit of GDRs/ADRs/FCCBs that can be floated by an Indian company in a financial year. For a company engaged in the manufacture of items covered under the automatic route, the FDI of which after a proposed issue of GDRs/ADRs/FCCBs is likely to exceed the sector caps, would need to obtain prior government clearance through the FIPB before seeking final approval from the Ministry of Finance.

There are no end-use restrictions on GDR/ADR issue proceeds, except for an express ban on investments in real estate and the stock markets. Voting rights on shares issued under the scheme will be as per the governing law. The pricing of GDR/ADR issues will be as per the prescribed guidelines.

Under the two-way fungibility scheme, an Indian stock broker registered with SEBI can purchase shares of an Indian company from the market for conversion to GDRs/ADRs based on instructions from overseas investors. Reissue of GDRs/ADRs would be permitted to the extent of GDRs/ADRs which have been redeemed into underlying shares and sold in the Indian market.

An Indian company can also sponsor an issue of GDRs/ADRs by offering its resident shareholders a choice to submit their shares back to the company so that consequently, GDRs/ADRs may be issued abroad.

An Indian company issuing GDRs/ADRs is required to furnish to the Reserve Bank full details of such an issue within 30 days of the closing of the issue. Quarterly returns are also required to be filed until the entire amount raised is repatriated to India or utilised abroad.

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.

A person is deemed to be a person of Indian origin (PIO) if s/he at anytime held an Indian passport, or if s/he, or either of his/her parents, or any of his/her grandparents was an Indian and a permanent resident in India at anytime. A spouse of a citizen of India or of a PIO (though of non-Indian origin) is deemed to be a PIO.

PORTFOLIO INVESTMENT SCHEME (PIS) FOR NRIS

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

- An NRI may purchase/sell shares and or convertible debentures of an Indian company through a registered broker on a recognised stock exchange
- NRIs have to designate a branch of an authorised dealer for routing all transactions
- The paid-up value of shares/each series of convertible debentures of an Indian company, purchased by each NRI 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
- The aggregate value of shares of any company purchased by all NRIs does not exceed 10% of the paid-up capital of the company and in the case of purchase of convertible debentures, the aggregate paid-up value of each series of debentures purchased by all NRIs does not exceed 10% of the paid-up value of each series of convertible debentures. However, the aggregate ceiling of 10% may be raised to 24% subject to the shareholders passing a special resolution to that effect in a general meeting of the Indian company concerned and subject to compliances
- The transactions shall be on a delivery basis
- Payment for purchase is made by inward remittance in foreign exchange through normal banking channels or out of funds held in the specified bank accounts in India.

Shares purchased by NRIs under the PIS cannot be transferred by way of sale under a private arrangement or by way of gift to a person resident in India or outside India other than a relative, without the prior approval of the Reserve Bank.

NRIs are allowed to invest in exchange trade derivative contracts approved by SEBI out of rupee funds, on a non-repatriation basis, subject to prescribed limits.

PURCHASE AND SALE OF SHARES/ CONVERTIBLE DEBENTURES BY NRI 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 may, without limit, purchase on a non-repatriation basis:

- Shares or convertible debentures of an Indian company whether by public issue, private placement or rights issue, without any limit subject to the restrictions mentioned above
- Dated government securities, treasury bills
- Units of domestic mutual funds and units of money market mutual funds in India.

Payment to purchase shares etc. on a non-repatriation basis should be either by inward remittance through normal banking channels or out of funds held in the specified bank accounts in India.

The NRI to whom the shares are being transferred should obtain prior permission of the FIPB to acquire the shares if s/he has a previous venture or tie-up in India through investment in shares, debentures, technical collaboration, trademark agreements or investment by whatever name called in the same or allied field in which the Indian company whose shares are being transferred, is engaged.

This restriction will, however, not apply to the transfer of shares of an Indian company engaged in the information technology sector or transfers to specified international financial institutions.

PURCHASE BY NRIS OF OTHER SECURITIES ON A REPATRIATION BASIS:

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

- Dated government securities (other than bearer securities) or treasury bills or 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.

NRIs can also invest in nonconvertible debentures issued by an Indian company, both on a repatriation and non-repatriation basis, subject to conditions.

FOREIGN INVESTMENT IN INFRASTRUCTURE DEBT FUNDS

Foreign investment is permitted on a repatriation basis by eligible non-resident investors in:

- Rupee and foreign currency denominated bonds issued by infrastructure debt funds (IDFs) set up as an Indian company and registered as non-banking financial companies (NBFCs) with the Reserve Bank of India, and
- Rupee denominated units issued by IDFs set up as SEBI-registered domestic mutual funds, in accordance with the terms and conditions stipulated by the SEBI and the RBI.

INVESTMENT IN INDIAN DEPOSITORY RECEIPTS

Indian depository receipts (IDRs) can be issued by non-resident companies in India subject to and under the terms and conditions of Companies (Issue of Depository Receipts) Rules, 2004 as amended and the other relevant guidelines. These IDRs can be issued in India through a domestic depository to residents in India as well as SEBI-registered FIIs and NRIs. In cases where funds are raised through issuances of IDRs by financial/banking companies having a presence in India, either through a branch or subsidiary, the approval of the sector regulator(s) should be obtained before the issuance of IDRs.

FEMA regulations are not applicable to persons resident in India (as defined in FEMA) for investing in IDRs and for a subsequent transfer arising out of a transaction on a recognised stock exchange in India.

FIIs, including SEBI-approved sub-accounts of the FIIs registered with SEBI, and non-resident Indians (NRIs) may invest, purchase, hold and transfer IDRs of eligible companies resident outside India and issued in the Indian capital market, subject to the relevant regulations. Further, NRIs are allowed to invest in IDRs out of funds held in accounts maintained with an authorised dealer.

INVESTMENT BY QUALIFIED FOREIGN INVESTORS

Qualified foreign investors (QFIs) are those non-resident investors (other than SEBI-registered FIIs and SEBI-registered FVCIs) who meet the ‘know your customer’ (KYC) requirements of SEBI and fulfil other specified conditions.

QFIs are allowed to purchase on a repatriation basis:

- Equity shares of Indian companies, and

- Rupee-denominated units of equity schemes of domestic mutual funds issued by SEBI-registered domestic mutual funds as provided by the SEBI and the RBI.

QFIs can invest through SEBI-registered depository participants (DPs) only in equity shares of listed Indian companies through recognised brokers on recognised stock exchanges in India, as well as in equity shares of Indian companies which are offered to the public in India in terms of the relevant and applicable SEBI guidelines/regulations. QFIs are also permitted to acquire equity shares by way of rights shares, bonus shares or equity shares on account of stock split/consolidation or equity shares on account of amalgamation, demerger or such corporate actions subject to the prescribed investment limits, as set out below.

The individual and aggregate investment limits for the QFIs are 5% and 10% respectively of the paid-up capital of an Indian company. These limits are over and above the FII and NRI investment ceilings prescribed under the portfolio investment scheme for foreign investment in India. Further, wherever there are composite sector caps under the extant FDI policy, these limits for QFI investment in equity shares must also be within such overall FDI sector caps.

A QFI can sell the equity shares acquired through recognised brokers on a recognised stock exchange or in an open offer/buy-back of shares in accordance with SEBI guidelines.

The pricing of all eligible transactions and investments in all eligible instruments by QFIs under this scheme are subject to the relevant and applicable SEBI guidelines.

QFIs are permitted to hedge their currency risk on their investments under the terms of the guidelines issued by the Reserve Bank from time to time.

INVESTMENT IN NON-CORPORATE BUSINESS

NRIs/PIOs are permitted to invest in a partnership firm/proprietorship concern subject to the following conditions:

- The amount invested is received either by inward remittance through normal banking channels or out of the funds in specified accounts maintained with an authorised dealer in accordance with relevant regulations
- The firm or the proprietary concern is not engaged in any agricultural/ plantation activity or real estate business i.e. dealing in land and immovable property with a view to earning profit or income there from, or engaged in the print media sector
- The amount invested would not be eligible for repatriation outside India
- NRIs/PIOs are required to obtain permission of the Reserve Bank for investment in a partnership firm/sole proprietorship with repatriation benefits.

A person resident outside India, other than NRIs/PIOs, requires prior permission of the Reserve Bank for investment in a firm/sole proprietorship/association of persons. Such applications are considered in consultation with the central government.

INVESTMENTS BY FOREIGN INSTITUTIONAL INVESTORS (FIIS)

An FII is defined as an institution established or incorporated outside India for making investments in Indian securities and includes a sub-account of an FII.

FIIs who have obtained registration from SEBI and the Reserve Bank are permitted to invest on a full repatriation basis under the portfolio investment scheme in the Indian primary and secondary stock markets (including the Over the Counter Exchange of India –OTCEI) subject to the following limits:

- A single FII or an approved sub-account of an FII cannot hold more than 10% of the paid-up capital of an Indian company, or 10%of the paid-up value of each series of convertible debentures issued by an Indian company
- The total holding of FIIs in any company will be subject to a ceiling of 24% of its paid-up capital of the company or paid-up value of each series of convertible debentures. The limit of 24% may be increased up to the sector cap/statutory ceiling, as applicable, by the Indian company concerned, by passing a resolution of its board of directors followed by the passing of a special resolution to that effect by the shareholders of the company in a general meeting and subject to compliances.

A domestic asset management company or portfolio manager registered with the SEBI as an FII for managing the fund of a sub-account, can make investments on behalf of a foreign citizen resident outside India or a corporate body registered outside India, subject to the limits set out and certain other conditions.

FIIs are not permitted to invest in asset reconstruction companies, or in any industry/activity in the prohibited category.

FIIs registered with the SEBI and sub-accounts of such FIIs are permitted to short sell, lend and borrow equity shares, subject to conditions prescribed by the Reserve Bank and SEBI/other regulatory agencies, from time to time.

Banks maintaining accounts of FIIs can provide forward cover with the INR as one of the currencies, subject to conditions.

An FII is permitted to purchase shares or convertible debentures of an Indian company through private placement/arrangement subject to the limits specified above, sector caps and prescribed conditions.

FIIs may invest through the equity or debt route. Under the equity route, FIIs can make either a 100% investment in equity-related instruments or upto 30% in debt instruments and 70% in equity instruments. An FII may form a 100% debt fund, which has to be registered with SEBI. Investments in debt securities are subject to limits stipulated by SEBI, if any.

FIIs can also invest in approved exchange traded derivative contracts traded on a recognised stock exchange (subject to conditions), tender their securities directly in response to an open offer made in terms of the SEBI (Substantial Acquisition of Shares and Takeovers) regulations and lend securities through an approved intermediary in accordance with the stock lending scheme of SEBI.FIIs are also permitted to trade in all exchange traded derivative products within specified trading position limits. FIIs are allowed to offer foreign sovereign securities with an AAA rating to recognised stock exchanges in India as collateral for their transactions in the derivatives market.

The consideration for the purchase must be remitted by inward remittance from abroad or through normal banking channels or out of funds held in an account maintained in accordance with the regulations.

FIIs can also invest on a repatriation basis in the following, subject to limits:

- Dated government securities
- Treasury bills
- Listed non-convertible debentures/bonds issued by domestic companies
- Commercial papers
- Units of domestic mutual funds
- Security receipts issued by asset reconstruction companies
- Investment in rupee-denominated perpetual debt instruments and debt capital instruments issued by banks in India.
- Specified non-convertible debentures/bonds/units
- Credit enhanced bonds.

The above can be acquired directly from the issuer of such securities or through a recognised stock exchange, subject to notified limits and prescribed conditions.

Shares purchased by FIIs on the stock exchange may not be transferred by way of sale under private arrangement or by way of gift to a person resident in India or outside India without the prior approval of the RBI.

Specified reporting requirements are to be complied within respect of the purchase/sale transactions undertaken by FIIs.

INVESTMENTS BY REGISTERED FOREIGN PORTFOLIO INVESTOR (RFPI)

A RFPI registered with SEBI may purchase shares and convertible debentures of an Indian company under the Foreign Portfolio Investor (RFPI) scheme.

A RFPI may open an account with a bank in India for routing the receipt and payments for transactions relating to purchase and sale of securities, subject to conditions.

The total holding of each RFPI shall be below 10% of the total paid-up equity capital or 10% of the paid-up value of each series of convertible debentures issued by an Indian company, subject to the overall holdings of all RFPIs not exceeding 24% of the paid-up equity capital or paid-up value of each series of debentures. The limit of 24% may be increased up to the sector cap/statutory ceiling, as applicable, by the Indian company concerned, by passing a resolution of its board of directors followed by the passing of a special resolution to that effect by the shareholders of the company in a general meeting and subject to compliances.

RFPIs are permitted to purchase shares/convertible debentures of an Indian company through offer/private placement, subject to the ceiling specified above and other conditions.

A RFPI is permitted to short sell as well as lend and borrow securities, subject to conditions stipulated by the Reserve Bank and SEBI.

A RFPI is permitted to remit sale proceeds on sale of shares/convertible debentures, subject to payment of taxes.

INVESTMENTS BY VENTURE CAPITAL FUNDS (VCF)/FOREIGN VENTURE CAPITAL INVESTORS (FVCI)

A FVCI registered with SEBI may apply to the Reserve Bank for permission to invest in an Indian venture capital undertaking (IVCU) or in an Indian VCF (IVCF) or in a scheme floated by such an IVCF, subject to the condition that the VCF should also be registered with SEBI. Investments by such FVCIs shall be subject to SEBI regulations and sector caps under the FDI policy.

The registered FVCI may purchase equity/equity-linked instruments/debt/debt instruments, debentures of an IVCU or of a VCF or units of schemes/funds setup by a VCF through initial public offer or private placement.

The purchase/sale of shares, debentures and units can be at a price that is mutually acceptable to the buyer and the seller.

INVESTMENTS UNDER EMPLOYEE STOCK OPTION PLAN (ESOP) SCHEME

A listed Indian company may issue shares under the ESOP Scheme to its resident employees or non-resident employees of its joint venture or wholly-owned subsidiary abroad, either directly or through a trust, subject to the following conditions:

- The scheme has been drawn up under terms of regulations issued by the SEBI
- The face value of the shares to be allotted under the scheme to non-resident employees does not exceed 5% of the paid-up capital of the issuing company
- If the company is not listed, the provisions of the Companies Act will have to be followed
- ESOPs can be issued to non-resident employees except for citizens of Pakistan. ESOPs can be issued to citizens of Bangladesh with the prior approval of the FIPB.
- 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 SHARES ETC. OF AN INDIAN COMPANY

A person resident in India may transfer shares, convertible debentures or other securities, of an Indian company, to a person resident outside India, subject to the payment of taxes, in compliance with the necessary conditions and on obtaining requisite approvals, where required.

A person resident outside India may transfer any shares, convertible debentures or other securities of an Indian company, without prior approval of the Reserve Bank, subject to compliance with pricing guidelines, documentation and reporting requirements as specified by the RBI.

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 RBI within 90 days from the date of such an 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 or Bhutan shall not acquire or transfer immovable property in India, other than through a lease not exceeding five years, without prior permission of the Reserve Bank
- Foreign nationals of non-Indian origin resident outside India are not permitted to acquire any immovable property in India (unless such property is acquired by way of inheritance from a person who was resident in India) without prior permission of the Reserve Bank (other than by way of a lease not exceeding five years). Such foreign nationals can acquire immoveable property on becoming residents of India, subject to conditions
- Foreign nationals of non-Indian origin who have acquired immovable property in India by way of inheritance or with the specific approval of the Reserve Bank cannot transfer such property without prior permission of the Reserve Bank
- Agricultural land/plantations/farmhouses:
  - NRIs and PIOs cannot purchase agricultural land, plantations or farmhouses
  - NRIs and PIOs may transfer agricultural land/plantation property/farmhouses in India (acquired by way of inheritance) by way of sale or gift to Indian citizens permanently residing in India. At present, repatriation of sale proceeds is not permissible
- Immovable property (other than agricultural land/plantations/farmhouses) may be acquired/transferred by:
  - An NRI, by way of purchase, gift or inheritance, and transferred to an NRI/PIO or a person resident in India
  - A PIO by way of purchase, gift or inheritance from a person resident in India, or from a person resident outside India who acquired the property in accordance with the prevailing law, and transferred by way of sale to a person resident in India or by way of gift to an NRI/PIO 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 a NRI/PIO, 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 to be repatriated does not exceed a) the amount paid for the acquisition of the immovable property in foreign exchange received through normal banking channels or out of funds held in the FCNR Account or b) the foreign currency equivalent as on the date of payment of the amount paid, where such payment was made from the funds held in the NRE account for acquisition of the property

In the case of residential property, the repatriation of sale proceeds is restricted to not more than two such properties.

In the case of the sale of immovable property purchased out of rupee funds, authorised dealers may allow the facility of repatriation of funds out of balances held by NRIs/PIO in their NRO accounts upto USD 1 million per calendar year, subject to furnishing an undertaking by the remitter, payment of applicable taxes and a certificate from a chartered accountant.

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 RBI 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.

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 upto 100% of the net worth of the Indian entity as per the last audited balance sheet.

This ceiling 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. Further, the ceiling will include the contribution to the capital of the JV/WOS, the loan granted to the JV/WOS and 100% guarantees (other than performance guarantees), 100% of the bank guarantees issued by a resident bank on behalf of a JV/WOS and 50% of the performance guarantees issued to or on behalf of the JV/WOS, 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 only to an overseas concern in which it has equity participation. The Indian entity may offer any form of guarantee, subject to conditions.

Specific approval of the Reserve Bank will be required for creating a charge on immovable/moveable property and other financial assets (except for a pledge of shares of an overseas JV/WOS) of the Indian parent/ group companies in favour of a non-resident entity within the overall limit fixed (presently 100%) for financial commitment, subject to conditions.

The Indian entity should not be on the Reserve Bank's caution list or list of defaulters.

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.

In cases of investment by way of a share swap, the valuation of shares will have to be made by a merchant banker registered with SEBI or an investment banker outside India who is duly registered with the appropriate authority, subject to the prior approval of the FIPB.

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 directly or indirectly holds a 51% or more stake in the overseas subsidiary for which such a guarantee is intended to be issued.

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.

An Indian entity is also permitted to acquire shares of a foreign company engaged in a bonafide business activity in exchange for GDRs/ADRs issued to the latter, subject to the provisions of the 'Issue of Foreign Currency Convertible Bonds and Ordinary shares (Through Depository Receipt Mechanism) Scheme' and guidelines thereunder, and certain other conditions.

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.

CAPITALISATION OF EXPORTS AND OTHER DUES

An Indian entity is permitted to capitalise the payments due from the foreign entity towards exports, fees, royalties or any other dues from the foreign entity for the supply of technical know-how, consultancy, managerial and other services within the ceilings applicable. Any capitalisation of export proceeds remaining unrealised beyond the prescribed period of realisation will require prior approval of the Reserve Bank.

Indian software exporters are permitted to receive 25% of the value of their exports to an overseas software start-up company in the form of shares without entering into JOVs, with prior approval of the Reserve Bank.

INVESTMENT IN UNINCORPORATED ENTITIES OVERSEAS IN THE OIL SECTOR

Indian companies are permitted to invest in unincorporated entities overseas in the oil sector under the automatic route upto 100%of their net worth, provided the proposal has been approved by the competent authority and is duly supported by a certified copy of the resolution of the board of directors approving suchan investment. Investment in excess of 100% of the net worth of an Indian company shall require prior approval of the Reserve Bank.

INVESTMENTS IN THE ENERGY AND NATURAL RESOURCES SECTOR

The Reserve Bank will consider applications for investment in a JV/WOS overseas in the energy and natural resources sectors (e.g. oil, gas, coal and mineral ores) in excess of 100% of the net worth of the Indian company as on the date of the last audited balance sheet.

INVESTMENT IN EQUITY/BONDS OF AN OVERSEAS LISTED COMPANY

A listed Indian Company may invest upto 50% of its networth 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 USD125,000 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 upto a ceiling of USD 7billion in:

- GDRs/ ADRs of Indian and foreign companies
- Equity of overseas listed companies
- Initial and follow-on public offerings for listings on recognised stock exchanges overseas
- Foreign debt securities in countries with fully convertible currencies, short-term as well as long-term instruments rated not below investment grade by accredited/registered credit agencies
- Money market instruments rated not below investment grade
- Repos in the form of investment, where the counter party is rated not below investment grade. The repos should not, however, involve any borrowings by the mutual funds
- Government securities, where the country is rated not below investment grade
- Derivatives traded on recognised stock exchanges overseas only for hedging and portfolio balancing with underlying securities
- Short-term deposits with banks overseas where the issuer is rated not below investment grade
- Units/securities issued by overseas mutual funds or unit trusts registered with overseas regulators and investing in:
  - The aforesaid securities
  - Real estate investment trusts (REITS) listed on recognised stock exchanges overseas
  - Unlisted overseas securities (not exceeding 10% of their net assets).

A limited number of qualified Indian mutual funds are permitted to invest cumulatively upto USD 1 billion in overseas exchange traded funds as may be permitted by SEBI.

INVESTMENT BY DOMESTIC VENTURE CAPITAL FUNDS (DVCF)

DVCFs registered with SEBI may invest in equity and equity linked instruments of off-shore venture capital undertakings, subject to specified limits.

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.

Regulated entities in the financial sector making investments in any activity overseas are required to comply with the above guidelines. Unregulated entities in the financial services sector in India may invest in non-financial sector activities subject to compliance with the relevant regulations. Trading in commodities exchanges overseas and setting up a JV/WOS for trading in overseas exchanges will be seen as financial services activity and require clearance from the Forward Markets Commission.

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.

PRIOR APPROVAL OF THE RESERVE BANK

Prior approval of the Reserve Bank is required in all other cases of direct investment abroad. 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
- 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.

In respect of the last two sources listed above, the ceiling limit of 100% of the net worth will not apply.

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 outside India as security for availing itself of any credit facilities for itself or for the JV/WOS, 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.

HEDGING OF OVERSEAS DIRECT INVESTMENT

Indian entities having overseas direct investments are permitted to hedge the exchange risk arising out of such investments, subject to certain conditions.

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 five associates and 20 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 and other public sector banks, have a benchmark prime lending rate (BPLR) ranging from 14.25–15.75% 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 20 stock exchanges with more than 10,000 listed companies. SEBI monitors the stock market in India.

OTCEI operates as an alternative to the stock market. The object of the OTCEI "is to provide an alternate market for the securities of smaller companies, closely held companies desirous of listing, etc. OTCEI allows for the listing of companies with issued and paid-up capital ranging between INR 3 million and INR 250 million and a minimum offer to the public rating from 25% to 60% depending upon the type of issue.

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), Brick worth Ratings India Private Ltd., ONICRA Credit Rating Agency of India Ltd. 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 aggregate assets under management by mutual funds were USD162.45 billion as at June 2014.

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 11% 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.

EXTERNAL COMMERCIAL BORROWING (ECB)

ECB refers to commercial loans in the form of bank loans, buyer's credit, supplier's credit and securitised instruments availed from non-resident lenders with a minimum average maturity of three years. The policy for ECBs is also applicable to raising funds through the issue of FCCBs. 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. Preference shares (non-convertible, optionally convertible, partially convertible) are considered as debt and accordingly, ECB norms apply.

FOREIGN CURRENCY EXCHANGEABLE BONDS (FCEB) SCHEME

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.

ECBs can be accessed under the following routes:

- Automatic route
  - Eligible borrowers:
    - Corporates registered under the Companies Act, including those in the hotel, hospital and software sector and infrastructure finance companies (IFCs) except for financial intermediaries (such as banks, financial institutions, housing finance companies and non-banking financial companies)
    - Units in SEZs for their own requirements. Such units cannot transfer or on-lend funds to sister concerns or units in the domestic tariff area (DTA)
    - Specified NBFCs for on-lending to the infrastructure sector or for financing of import of equipment for leasing to infrastructure projects
    - Non-government organisations (NGOs)engaged in microfinance activities
    - Corporates in the services sector, i.e. hotels, hospitals and software sector
    - Companies in the miscellaneous services sector (only from equity holders and group companies) engaged in training (not education), research and development and infrastructure sector support. Companies in trading, logistics, finance and consultancy are not covered
  - Holding companies and Core Investment Companies (CICs) regulated by the Reserve Bank are permitted to raise ECB for project use in special purpose vehicles (SPVs) having business activity in the infrastructure sector, subject to conditions. The maximum amount of an ECB that can be raised by a corporate (other than those in the hotel, hospital, software and miscellaneous service sector) in a financial year is USD 750 million, or its equivalent

- Maturity of ECBs raised:
  - An ECB with a minimum average maturity of three years for an amount upto USD 20 million, or its equivalent
  - An ECB with a minimum average maturity of five years for an amount above USD 20 million and upto USD 750 million, or its equivalent
- An ECB upto USD 20 million can have call/put options provided the minimum average maturity of three years is complied with before exercising the call/put option
- Corporates in the hotel, hospital, software and miscellaneous services sector can raise ECBs upto USD 200 million or its equivalent in a financial year for meeting forex or rupee capital expenditure for permitted end uses, except for the acquisition of land
- Eligible borrowers can avail themselves of ECBs designated in Indian rupees as per the prevailing ECB guidelines

- Approval route
  - Eligible borrowers are:
    - On lending by the Export-Import Bank of India, subject to conditions
    - Specified banks and financial institutions
    - NBFCs raising ECBs with a minimum average maturity of five years to finance the import of infrastructure equipment for leasing to infrastructure projects
    - Specified NBFCs for on-lending to the infrastructure sector or for financing of import of equipment for leasing to infrastructure projects, subject to conditions
    - Issue of FCCBs by housing finance companies satisfying certain criteria
    - On lending by IFCs to the infrastructure sector, subject to conditions
    - Special purpose vehicles or any other entity notified by the Reserve Bank, set upto finance infrastructure companies/project
    - Developers of SEZ/national manufacturing investment zones can raise ECBs for providing infrastructure facilities within the SEZ
    - Eligible borrowers under the automatic route other than corporates in the services sector i.e. hotels, hospitals and software, can avail themselves of ECBs beyond USD 750 million or equivalent per financial year
    - Corporates in the services sector, i.e. hotels, hospitals and software can avail themselves of ECBs beyond USD 200 million or equivalent per financial year
    - Developers/builders/housing finance companies (HFCs)/the National Housing Bank (NHB) may avail themselves of ECBs for low-cost affordable housing projects
    - Corporates that are under investigation by statutory agencies but otherwise eligible, may avail of ECB, subject to conditions.
    - Holding companies and Core Investment Companies (CICs) regulated by the Reserve Bank are permitted to raise ECB for project use in special purpose vehicles (SPVs) having business activity in the infrastructure sector, subject to conditions
    - Cases falling outside the purview of the automatic route.

ALL-IN COST CEILINGS

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. Any withholding tax in Indian Rupees is excluded for calculating the all-in cost. The current ceilings are shown in the table below.

TABLE 6

All-in cost ceilings

MINIMUM AVERAGE MATURITY PERIOD	ALL-IN COST CEILINGS OVER A SIX MONTH LIBOR
Three years and up to five years	350 basis points
More than five years	500 basis points

RECOGNISED LENDERS

Borrowers can raise ECB from internationally recognised sources such as:

- International banks
- International capital markets
- Multilateral financial institutions
- Export credit agencies
- Suppliers of equipment
- Foreign collaborators
- Foreign equity holders.

END USE RESTRICTIONS

- The following end uses are permitted for funds raised under ECB via the automatic and approval route:
  - Import of capital goods by new projects or modernisation/expansion of existing production units, in the real sector, industrial and infrastructure sectors and specified services sector, namely hotels, hospitals, software and miscellaneous services. Infrastructure is defined as:
    - Power supply
    - Telecommunications
    - Railways
    - Roads and bridges
    - Sea ports and airports
    - Industrial parks
    - Urban infrastructure
    - Mining, exploration and refining
    - Cold storage or cold room facilities
  - Investment in overseas JVs/WOS subject to guidelines
  - First stage acquisition of shares in the disinvestment process and also in the mandatory second stage offer to the public under the governments' disinvestment program of public section undertaking shares
  - Interest during construction (IDC) for Indian companies in the infrastructure sector
  - Specified NBFCs for on-lending to the infrastructure sector or for financing of import of equipment for leasing to infrastructure projects
  - Refinancing of bridge finance availed of for import of capital goods by companies in the infrastructure sector
  - For import of services, technical knowhow and payment of license fees for companies in the manufacturing and infrastructure sector as a part of import of capital goods, subject to conditions
  - For general corporate purposes (ECB received from direct foreign equity holders) by companies in manufacturing, infrastructure hotels, hospitals and services sector, subject to conditions Payment of spectrum allocation.
  - Maintenance and operating of toll systems for roads and highways for capital expenditure, subject to conditions

- The following end uses are permitted for ECB funds raised under the approval route only:
  - Repayment of rupee loans from the domestic banking system
  - Bridge finance by Indian companies in the infrastructure sector, subject to conditions
  - ECB for working capital for the civil aviation sector. The overall ECB ceiling for the civil aviation sector is USD 1 billion with a specific cap for individual airline companies of USD 300 million
  - Low-cost affordable housing
  - Repayment of rupee loans and/or fresh rupee capital expenditure for companies with consistent foreign exchange earnings
- ECB proceeds cannot be used for:
  - On lending
  - Investment in the capital market
  - Acquisition of a company
  - Real estate
  - Working capital
  - General corporate purposes
  - Repayment of existing rupee loans except under the approval route, under a scheme of 'take-out' finance, subject to conditions.

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

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 ECB upto USD 500 million may be allowed by the authorised dealer without prior approval from the Reserve Bank. However, the stipulated minimum average maturity period, as applicable for the loan, must be complied with. Prepayments in excess of USD 500 million require prior Reserve Bank approval.

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 FIPB and 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.

TAKE-OUT FINANCE

As per existing norms, refinancing of domestic rupee loans with ECB is not permitted. Keeping in mind the special funding needs of the infrastructure sector, a scheme of take-out finance has been put in place. Accordingly, take-out financing arrangements through ECB under the approval route has been permitted for refinancing of rupee loans from domestic banks by eligible borrowers in the seaport, airport, roads (including bridges) and power sectors for the development of new projects, subject to conditions.

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 Part XI 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) 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, in order to facilitate external trade and payment and promote orderly development and maintenance of the foreign exchange market in India
- Issuer of currency – to issue and exchange or destroy currency and coins not fit for circulation in order to give the public the adequate quantity of supplies of currency notes and coins and in good quality
- Banker to the government – 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.

SECURITIES AND EXCHANGE BOARD OF INDIA

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

SEBI has three primary functions:

- To deal with all matters relating to the development and regulation of the securities market and investor protection, and advise government on these matters
- To prepare comprehensive legislation for the regulation and development of the securities market
- To carry out such functions as may be delegated by the central government for the development and regulation of the securities market.

Mutualfunds,merchantbankers,FIIs,portfoliomanagers,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

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

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

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

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 US, Europe and most recently China in relation to competition law regimes. The act regulates the way companies do business in India. As an independent body responsible for investigating mergers, market shares and conditions, besides regulating firms, the Competition Commission of India (CCI) has replaced the Monopolies and Restrictive Trade Practices Commission (MRTPC).

Keeping in mind the economic development of the country, the Commission has been established under the Competition Act to prevent practices having an adverse effect on competition, to promote and sustain competition in markets, to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets of India, and for matters connected therewith or incidental thereto, with particular reference to:

- Anti-competitive agreements
- Prohibition of abuse of a dominant position
- Regulation of combinations.

The Competition Commission of India has a chairperson and six members.

To achieve its objectives, the Commission endeavours to do the following:

- Make the markets work for the benefit and welfare of consumers
- Ensure fair and healthy competition in economic activities in the country for faster and inclusive growth and development of economy
- Implement competition policies with an aim to effectuate the most efficient utilisation of economic resources
- Develop and nurture effective relations and interactions with sector regulators to ensure smooth alignment of sector regulatory laws in tandem with the competition law
- Effectively carry out competition advocacy and spread information about the benefits of competition among all stakeholders to establish and nurture a competition culture in the Indian economy.

Companies could face stringent turnover/profit linked fines if they fall foul of new competition laws. The regime has been modelled on the European system and it proposes to make contravention of CCI orders a criminal offence.

FOREIGN EXCHANGE MANAGEMENT ACT

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

The FEMA extends to the whole of India and also applies to branches, offices and agencies located outside India that are owned and controlled by a person/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 residents and non-residents, residential status is of utmost importance. Residential status under the FEMA is determined by the intent of the person to stay in India for an indefinite period of time as against any physical stay.

A 'capital account transaction' is a transaction that alters the assets and liabilities, including contingent liabilities outside India, of persons resident in India, or assets and liabilities in India of persons resident outside India, and includes transactions specifically referred to in the FEMA. The Reserve Bank has issued regulations to specify:

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

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

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

- Transfer or issue of any foreign security by a person resident outside India
- Transfer or issue of any security by a person resident outside India
- Transfer or issue of any security or foreign security by any branch, office or agency in India on behalf of a person resident outside India
- Any borrowing or lending in foreign exchange in whatever form or 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.

A 'current account transaction' is a transaction other than a capital account transaction. The central government has framed rules under which current account transactions have been broadly classified as:

- Transactions that are prohibited
- Transactions that require the prior approval of central government
- Transactions exceeding specified monetary limits, which require prior Reserve Bank approval.

INTELLECTUAL PROPERTY RIGHTS

Intellectual property refers to creations of the mind, ie 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 (passed by parliament but as yet to be implemented)
- The Semiconductors of Integrated Circuits Layout Design Act
- Protection of Plant Varieties and Farmer's Right Act
- Information Technology Act
- Biological Diversity Act
- The Convergence Bill.

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

TRADEMARKS

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

A trademark is a visual symbol. 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.

Trademarks are essentially a product of an economy where competition is involved between the manufacturers of similar products. Though not compulsory, registration of trademarks is advisable for better protection under the law.

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

The 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.

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 or for a lifetime on payment of the prescribed fee
- 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 legal right granted by the government that permits the owner to prevent others from making, using or selling an invention and is granted for a period of 20 years from the date of filing the application.

Not all inventions are eligible for patent protection.

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. The term of a patent shall be 20 years from the international filing date accorded under the Patent Co-operation Treaty.

COPYRIGHT

Copyright in India is governed and protected by the Copyright Act. India is a member of the Universal Copyright Convention and the Berne Convention. Indian copyright owners can protect their copyright in any country since India is a member of both these conventions.

The 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 term of copyright in the case of published literary, dramatic, musical and artistic works (other than photographs) published within the lifetime of the author, subsists until 60 years beginning from the next calendar year following the year in which the author dies.

The term of copyright subsists until 60 years beginning from the calendar year following the year in which the work is first published for the following works:
- Any anonymous and pseudonymous work
- Any posthumous work
- Any photographs
- Any cinematograph films
- Any sound recordings
- Any government work
- Any works of public undertakings
- Any works of international organisations.

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
- Adoption and translation of the work.

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

INDUSTRIAL DESIGNS

Designs which, when applied to articles, lend aesthetic appeal to goods are protected by the Design Act 2000.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 act.

The Design Act 2000 follows the Locarno Classification. 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 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 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, means an indication which identifies such goods as agricultural goods, natural goods or manufactured goods as originating, or having been manufactured in the territory of country, or a region or locality in that territory, where a given quality, reputation or other characteristic of such goods is essentially attributable to its geographical origin and in the case where such goods are manufactured, one of the activities of either the production or processing or preparation of the goods concerned takes place in such a territory, region or locality, as the case may be.

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.

ARBITRATION & CONCILIATION 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.

Arbitration may take 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 statues 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.

The parties to arbitration may decide on the number of arbitrators, except that this shall not be an even number. If parties fail, a sole arbitrator is appointed by the chief justice. However, if the provisions of a statute provide differently, such provisions shall prevail.

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.

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 RIGHT TO INFORMATION (RTI) ACT

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.

The aim of this act is to promote transparency and accountability in the working of every public authority, for the constitution of a Central Information Commission (CIC) and State Information Commissions (SICs) and for matters connected therewith or incidental thereto.

The salient features of the 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 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 act does not apply
  - Empowerment of the central government to prepare educational programmes etc.
  - Distinction in terms of the period available for receiving information.

CONSUMER PROTECTION ACT

This Act provides for better protection of the interests of consumers.

The purpose of the act is to make provision for the establishment of consumer councils and other authorities for the settlement of consumers' disputes and for matters connected therewith.

PREVENTION OF MONEY LAUNDERING (PML) ACT

Under the PML Act, every banking company, financial institution and intermediary (including a stock broker, sub-broker, share transfer agent, banker to an issue, trustee to a trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and any other intermediary associated with the stock market and registered with the SEBI) shall have to maintain a record of all the transactions of the nature and value of which have been prescribed in the rules notified under the 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
- Incorporating a company with limited liability in either of the following ways:
  - JV companies in collaboration with an Indian partner and/or by making a public offering
  - Incorporating a wholly-owned company with 100% foreign equity.

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
- 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 foreign 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. A branch office is not permitted to carry out retail trading or any manufacturing or processing activities in India, directly or indirectly.

Branch offices may acquire property only for their own use and to carry out permitted activities. Branch offices of entities in Pakistan, Bangladesh, Sri Lanka, Afghanistan, Iran, Bhutan or China, can only lease property for not more than five years.

Foreign banks do not require Reserve Bank approval to establish a branch, if such a bank has obtained approval under the Banking Regulation Act.

Profits of a branch office can be freely repatriated subject to payment of taxes.

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.

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. 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.

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

APPLICATIONS AND APPROVALS

Applications for establishing a branch/liaison office are required to be routed through nominated bankers and in the prescribed form, alongwith 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.

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 by inward remittances from abroad
- The project is funded by a bilateral or a multi-lateral international financing agency
- The project has been cleared by the appropriate authority
- A company or an entity in India 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, 1956 to carryon any business/service activities in the country.

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

- Has a minimum paid-up capital of INR 100,000
- Restricts the right to transfer its shares
- Limits the number of its members to 50
- 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 company is a public company provided it has a minimum paid-up capital of INR 500,000 or a private company which is a subsidiary of a public company and is a company other than a private company as defined above.

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 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 one person company.

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. 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. Atleast 90% subscription of the public issue must be collected before allotment.

An Indian company may issue 'sweat equity shares' ie 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.

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.

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 directors, other than a non-resident managing director, can serve on the board of an Indian company. Under the Companies Act, one-third of the directors need not retire by rotation and therefore, it is not unusual for the foreign investor to have the right to nominate directors who need not retire by rotation.

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.

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.

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 quarterly/half-yearly financial results accompanied by a limited review report by the statutory auditors.

ANNUAL CERTIFICATION

Every company which is not required by law to employ a full-time company secretary and having a paid-up capital in excess of INR 1 million but less than INR 50 million, is required to obtain a secretarial compliance certificate from a secretary in full-time practice, certifying compliance with prescribed requirements under the Companies Act.

Such a certificate is required to be completed in the prescribed form and tabled before the annual general meeting, and filed with the Registrar of Companies within 30 days of the meeting.

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 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
- A 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 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. An individual or a corporate body can become a partner
- LLPs must have atleast two individuals as 'designated partners' of which one must be resident in India. A corporate body partner of a LLP may nominate an individual as a 'designated partner'

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

- 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
- The LLP Act provides for corporate actions like mergers, amalgamations etc
- 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 a LLP by registering the same with the ROC
- The ROC is the authority responsible to register and control LLPs
- The governance of LLPs shall be in electronic mode.

COMPANIES ACT AND CORPORATE GOVERNANCE

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

The Companies Act prescribes 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 1956and 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:

- A director's responsibility statement must be included in the director's report
- The constitution of 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.

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 ten 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 industrial establishments and provides for the investigation and settlement of industrial disputes relating to lockouts, layoffs, retrenchment etc. It provides the processes for the reconciliation and adjudication of disputes or differences between employees and employers. Industrial establishments include any undertakings carrying out business, trade, manufacture etc.

The act lays down the conditions that shall be complied with before the termination/ retrenchment or layoff of a workman, subject to conditions.

PAYMENT OF BONUS ACT

The Payment of Bonus Act provides for the payment of bonuses to persons employed in certain establishments on the basis of profits or on the basis of production or productivity. The act is applicable to every factory, establishment employing 20 or more persons or other designated establishments. The minimum bonus which an employer is required to pay (even if they have suffered losses during the accounting year) is 8.33% of salary.

PAYMENT OF GRATUITY ACT

The Payment of Gratuity Act provides a scheme for the payment of gratuity to all employees in factories, establishments employing ten or more employees or other designated establishments. Gratuity is payable to an employee (having completed five years of continuous service) on his/her retirement/resignation at the rate of 15 days salary for each completed year of service (or a part thereof) exceeding six months, subject to a maximum of INR 1 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 all 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 + costs allowance) 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.

Employees earning more than INR 6,500 monthly (basic + costs allowance) are not entitled to a matching contribution from the employer.

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 ten 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 15,000 per month.

Monthly contributions towards ESIC are 1.75% of an employee’s salary and a matching contribution from the employer of 4.75% of the employee’s salary.

WORKMEN’S COMPENSATION ACT

The Workmen’s 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.

5 – 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.

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 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 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.

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.

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 the control and management of its affairs is situated wholly in India. A foreign company will have part of its management and control outside India and, hence, will be a non-resident.

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 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.

AGRICULTURAL INCOME

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

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) 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

INVESTMENTIN NEW PLANT OR MACHINERY

Any expenditure incurred by a company engaged in the business of manufacture or production when investing in new plant or machinery to a value exceeding INR250 million is allowed a deduction of 15% of the actual cost of the assets acquired upto March 31, 2017.

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 a weighted rate of 125%/175%/200%. A weighted deduction of 200% 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 a licence for operating telecommunication services can be amortised over the duration for which the licence is in force.

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 (a weighted average deduction of 200% in some cases) 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.

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.

DIVIDEND AND INCOME DISTRIBUTION TAX (DT)

Domestic companies are required to pay tax on dividends declared, distributed or paid at an effectively grossed up rate of 20.5% (15% tax plus a 10% surcharge plus a 3% education tax). The dividend distribution tax will be levied on gross amount of dividend instead of net dividend income.

The amount of dividends on which such tax is payable shall be reduced by the dividend if received from a subsidiary company, subject to conditions.

Mutual funds (other than equity-oriented funds) are required to pay tax on distributed income as follows:

- By a money market mutual fund or liquid funds:
  - 39.52% (25% tax plus 10% surcharge plus 3% education tax) on income distribution to an individual or HUF
  - 51.49% (30% tax plus 10% surcharge plus 3% education tax) on income distribution to others
- By a fund other than a money market mutual fund or liquid fund:
  - 39.52% (25% tax plus 10% surcharge plus 3% education tax) on income distribution to an individual or HUF
  - 51.49% (30% tax plus 10% surcharge plus 3% education tax) on income distribution to others.

Dividends declared, distributed or paid by a 'specified foreign company' are taxed in the hands of a recipient Indian company at an effective rate of 17% (15% tax plus 10% surcharge plus 3% education tax).

Dividends on income on which tax has been paid (as above) is not taxed again in the hands on the recipient.

Open ended equity-oriented funds are exempt from tax on income distributed.

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 7

Tax holiday of 100% of profits for any 10 consecutive years (at the option of the taxpayer) out of the first 15 years of operation

NATURE OF ACTIVITY	BUSINESS COMMENCING
Development, operation and maintenance of a specified infrastructure facility by an enterprise owned by an Indian company or a consortium of Indian companies. (The block period stated above is 20 years)	After 31 March 1995
Generation or generation and distribution of power Transmission or distribution of power by laying a network of new lines Substantial renovation and modernisation of existing network of transmission or distribution lines	Before April 1, 2017
Developer of a SEZ	After 31 March 2005
Commercial production of mineral oil (tax concession only for the initial seven years)	After 31 March 1997
Commercial production of natural gas in blocks licensed under the prevailing policy (tax concession only for the initial seven years)	After 31 March 2009

TABLE 8

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,	100%	First five years	After 31 March 2001
processing, preservation and	30% (25% if	Next five years	

packaging of fruits and vegetables	taxpayer other than company)		
Manufacture or produce and eligible articles/things/carry on eligible business in North Eastern states	100%	First ten years	Before 31 March 2017
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 wages to new workmen	Three years from year in which employment is provided	-
Units in international financial service centre and income of off-shore banking units in SEZ	100% 50%	First five years Next five years	Any time

TABLE 9

Special tax concessions for export profits

NATURE OF ACTIVITY	TAX CONCESSION (% OF PRO-RATED PROFITS)	PERIOD	BUSINESS COMMENCING
Export of articles or things manufactured or services provided, by a unit in a SEZ	100% 50% of profits 50% of the amount of profit credited to a special reserve account	First five years Next five years Next five years	-

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 10

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 in 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.

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 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.

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 1981, 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.

Profits arising on the transfer of intangible assets such as goodwill of a business, 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.

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.

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

- Gains arising on the buy-back of shares
- 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 atleast three years.

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.

Income from long-term capital gains arising from the transfer of equity shares in a company through a recognised stock exchange in India or a unit of an equity-oriented fund (such transaction being charged to securities transaction tax, as referred to on page 87), is exempt from income tax.

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 listed 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.

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 (such a transaction being charged to securities transaction tax, as referred to on page 87) 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.

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.

NON-CORPORATE/ INDIVIDUAL TAX RATES AND ADVANCE TAX

TABLE 11

Income tax rates for individuals (irrespective of residential status)

TAXABLE INCOME (INR)	RATES OF INCOME –TAX FOR TAX YEAR 2014–15 (INR)	
0–300,000 (for senior citizens – age 60 to 80) 0–500,000 (for very senior citizens – age 80+) 0–250,000 (for other taxpayers)	Nil	
300,001–500,000 (for senior citizens) 250,001–500,000 (for other taxpayers)	10% of excess over	300,000 250,000
500,001–1,000,000	20,000/Nil/25,000 + 20% of excess over	500,000

Above 1000,000	120,000/100,000/125,000 + 30% of excess over	1,000,000

Note: Education tax of 3% is levied on tax
A surcharge is levied at the rate of 10% on income above INR 10 million
A tax credit of INR 2,000 is allowed to individuals earning income up to INR 500,000
Individuals/HUFs are allowed a deduction from the total income up to INR 150,000 in respect of specified investments.

ADVANCE TAX

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

TABLE 12
Advance payment instalments

DUE DATE OF INSTALMENT ON OR BEFORE	AMOUNT PAYABLE AS A % OF NET TAX LIABILITY
15 September	At least 30%
15 December	At least 60%
15 March	Balance amount

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 13
Corporate tax rates

COMPANY	BASIC TAX RATE	SURCHARGE ON INCOME< INR 10 MILLION	SURCHARGE ON INCOME INR 10–100 MILLION	SURCHARGE ON INCOME> INR 100 MILLION	EDUCATION TAX (ON TAX PLUS SURCHARGE)
Domestic	30%	0%	5%	10%	3%
Foreign	40%	0%	2%	5%	3%

Note: 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 14
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	Balance amount

MINIMUM ALTERNATE TAX (MAT)

If the tax liability of a company is less than 18.5% of its book profits, such book profits are deemed to be the total income chargeable to MAT.

TABLE 15

Rates of MAT

TAX/TAXPAYER	INCOME< INR 10 MILLION	INCOME INR 10–100 MILLION	INCOME> INR 100 MILLION
Minimum Alternate Tax			
- Domestic Companies	19.055%	20.0078%	20.9605%
- Foreign Companies	19.055%	19.4361%	20.0078%

'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 18.50% 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) 19.06% (18.5% tax plus 3% education tax).

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

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 16

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,	10% of the aggregate amount paid/payable whether in India or out of

NATURE OF BUSINESS	TAXABLE INCOME
etc. of mineral oils	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 17

Taxation of income of non-residents, etc

INCOME	TAXPAYER	RATE OF TAX
i) Taxable dividend ie 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	Resident employee of an	10%

INCOME	TAXPAYER	RATE OF TAX
schemepurchasedin foreign currency ii) Long-term capital gain arising from the transfer of GDRs	Indian company or its subsidiary engaged in specified knowledge-based industry (IT or IT related) or service	
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	Non-resident or foreign company	Tax free
Anonymous donations received on behalf of any university or other educational institution or any hospital or any fund or any specified trust or institution	Any non-resident	30%

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.

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.

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 subject to withholding tax, 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.

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.

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.

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' is 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.

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.

SAFE HARBOUR RULES

The determination of the ALP will be subject to 'safe harbour' rules (to be notified) 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
- A foreign company.

ANNUAL INFORMATION REPORT

The IT Act requires certain specified persons to furnish an annual information report (AIR) in respect of certain specified financial transactions recorded by them during the financial year.

The AIR is required to be furnished within the prescribed time ie by 31 August immediately following the financial year in which the transaction is registered or recorded, in the prescribed form and manner.

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

WEALTH TAX

Wealth tax in India under the Wealth Tax Act is payable each year on taxable wealth and depends upon residential status, citizenship and the location of assets.

Taxable wealth includes residential and farm houses (one property is exempt for individuals), motor cars, jewellery, bullion, utensils of gold or silver, yachts, boats, aircraft, urban land and cash exceeding specified limits as reduced by debts owed and incurred in relation to such assets.

A resident Indian citizen pays tax on his global net wealth. A non-resident pays tax on his net wealth in India.

A foreign citizen, whether resident in India or abroad, pays wealth tax only on his net wealth in India.

Wealth of a partnership firm/limited liability partnership (LLP) is assessed for wealth tax in the hands of the individual partners in proportion to their share in the profits of the partnership firm/LLP.

Wealth tax, in the case of individuals and companies, is chargeable at 1% of the net taxable wealth exceeding INR 3 million.

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 accumulation and any benefit granted or provided free of cost or at concessional rate.

TABLE 18

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 100 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
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: − Reimbursement of medical expenses (up to INR 15,000 per annum) − 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 100,000
Any other fringe benefit or amenity	As per rules prescribed.

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 or transfer of the shares, on the excess of the fair value as on the date of vesting, and the exercise price.

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, a 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 a LLP.

Accordingly, as in the case of partnership firms, a 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.

DIRECT TAX CODE – THE WAY FORWARD

The direct tax code (DTC) seeks to consolidate and amend the law relating to all direct taxes, namely, income tax, dividend distribution tax and wealth tax so as to establish an economically efficient, effective and equitable direct tax system which will facilitate voluntary compliance and help increase the tax-GDP ratio.

Another objective is to reduce the scope for disputes and minimise litigation.

The DTC is designed to provide stability in the tax regime as it is based on well-accepted principles of taxation and best international practices. It will eventually pave the way for a single unified taxpayer reporting system.

The government of India has introduced a bill in parliament to overhaul its archaic direct tax laws, a key reform aimed at simplifying procedures for investors and bring in more revenue by widening the tax net.

The bill also aims to simplify rules on corporate mergers and create a tax code that can support growth in Asia's third-largest economy. The DTC aims to provide greater tax clarity and stability to investors who want to invest in Indian projects and companies.

Once parliamentary approval is obtained, the new direct tax law is expected to be introduced in the very near future.

The other salient features of the code are:

- Single code for direct taxes
- Use of simple language
- Reducing the scope for litigation
- Flexibility
- Ensuring that the law can be reflected in a form
- Consolidation of provisions
- Elimination of regulatory functions and the provision of stability.

INDIRECT TAXATION – EXCISE DUTY

CENTRAL EXCISE DUTY

Excise duty is levied on goods manufactured or produced in India. It is levied under the authority of the Central Excise Act at the rates prescribed in the First Schedule and Second Schedule to the Central Excise Tariff Act as periodically amended. The effective rates may be lower pursuant to general/ specific notifications issued by the government granting certain goods whole or partial exemption from duty.

The Central Excise Act extends the scope of the term ‘manufacture’ to include certain processes or activities such as repacking, re-labelling, declaration or alteration of retail sales prices etc. in relation to certain specified goods, which may not amount to manufacture as per the principles evolved by the courts or in the conventional sense of the term.

The duty is either levied on the value of excisable goods or in some cases is levied on the declared retail sales price of the goods where the goods are designated for this purpose. Where the duty is levied on the basis of the value of the excisable goods, such value is the ‘transaction value’ which is the value/price:

- For delivery at the time and place of removal
- Where the buyer is not a related person
- Price is the sole consideration.

Otherwise, the value is to be determined in accordance with the central excise valuation rules.

Excise duty is payable by the manufacturer but is commercially recovered from the buyer as a part of the consideration for the sale of goods. Duty to pay is fastened on manufacturing, but for administrative purpose it is collected at the time of clearance.

To avoid a cascading effect, a scheme known as CENVAT has been put into place, under which a manufacturer can avail themselves of the credit of the Central Excise Duties or Additional Duties of Customs including education tax paid on specified inputs and capital goods used in the manufacture of excisable goods and utilise it in discharging duty on finished excisable goods. The credit mechanism has been further expanded to allow inter-sector credit of tax paid on goods and services (see section on Service Tax).

BASIC EXCISE DUTY

Basic excise duty, also termed as CENVAT, is levied at the rates specified in the First Schedule to the Central Excise Tariff Act. The present general rate is 12%.

This duty is applicable to almost all excisable goods. There is partial exemption for a few products.

EDUCATION TAX AND SECONDARY AND HIGHER EDUCATION TAX

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

DUTIES UNDER OTHER ACTS

Some duties and taxes are levied on manufactured products under other acts. The administrative machinery of central excise is used to collect those taxes. Provisions of the Central Excise Act and Rules have been made applicable for levy and collection of these duties/taxes. Such duties include national calamity contingent duty, additional duty on goods of special importance, additional excise duty on pan masala and tobacco products, duty on medical and toilet preparations, additional duty on mineral products, and additional duty on textiles and textile articles etc.

CUSTOMS DUTY

Custom duties are levied on the import of goods into the country under the authority of the Customs Act and in certain instances, on exports.

The duty is levied at the rates specified in the Customs Tariff Act. The effective rates of customs duties may vary pursuant to general and/or specific exemptions or concession notifications issued by the government.

TYPES OF DUTIES

The effective rate of duty is approximately 26.85%. The following are the various types of duties which can be levied.

BASIC DUTY

The peak rate of customs duty on non-agricultural goods is 10%.

ADDITIONAL DUTY

This is also referred to as the countervailing duty (CVD). This duty is equivalent to excise duty levied on a like product manufactured in India. If a like product is not manufactured or produced in India, the excise duty that would be levied on that product had it been manufactured or produced in India is applied. If duty applies to the product at different rates, the highest rate among those rates is applied. Such duty is levied on the value of goods plus the basic custom duty payable. The current rate applicable to most industrial products is 12%.

SPECIAL ADDITIONAL DUTY

Also referred to as the special CVD, this duty counterbalances sales tax, value added tax (VAT), local tax or other charges which are levied on like articles on a sale, purchase or transaction in India. Such a duty does not exceed 4% of the value of the article.

EDUCATION TAX AND SECONDARY AND HIGHER EDUCATION TAX

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

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 harmonised 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.

In addition to ad-valorem duties, for some products, the Customs Tariff Act prescribes specific rates of duties i.e. the rate of duty is specific in rupee terms and not based on value.

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

OCTROI DUTY

Octroi duty is a tax levied on the entry of goods within certain city limits.

In the state of Maharashtra (except for the city of Mumbai) octroi duty has been replaced by a Local Body Tax (LBT).

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 alongwith interest at 2% per month, subject to the penalty not exceeding twice the amount of duty.

SALES TAX/VALUE ADDED TAX

SALES TAX

Sales tax is a levy on the purchase and sale of goods in India. Sales tax is levied under the authority of both central legislation and state government legislation (State Value Added Tax Acts). The central sales tax is governed by the Central Sales Tax Act (CST Act) which covers interstate transactions of the sale of goods as well as exempts transactions of import of goods into or export of goods out of India. The states' sales tax is governed by the respective State Value Added Tax Acts, under which tax is levied on intrastate transactions of sales.

The VAT systems adopted by the states are similar at a broad level but may vary from state to state on different points. The important features of VAT Act in Maharashtra are discussed hereunder.

VALUE ADDED TAX (VAT) ACT

The Maharashtra VAT Act, 2002 (MVAT Act) came into force on 1 April 2005. Under the MVAT Act, a dealer is liable to pay tax on the basis of turnover of sales or purchases within the state. The term 'dealer' includes persons who buy or sell goods in the state whether for commission, remuneration or otherwise in the course of their business or in connection with or incidental to or consequential to engagement in such business.

However, an agriculturist, educational institution and transporters are deemed not to be a 'dealer', subject to fulfilment of specified conditions.

Every dealer whose sales turnover and the turnover of taxable goods (purchased or sold) exceeds the limits specified in the table below, is required to get registration under the MVAT Act and will be liable to pay VAT.

TABLE 19

Turnover limits for the purpose of liability/registration

CATEGORY OF DEALER	TOTAL TURNOVER OF SALES (INR)	TURNOVER OF TAXABLE GOODS PURCHASED OR SOLD (INR)
Importer	100,000	10,000
Others	500,000	10,000

TABLE 20

Indicative rates of tax

NATURE OF GOODS	RATE OF TAX
Essential commodities	Nil
Gold, silver, precious stones, pearls etc	1%
Declared goods, industrial inputs, and such other specified goods	5%
Foreign liquor, country liquor, spirits etc	At specified rates
Certain petroleum products	10–26%
All other goods not covered above (revenue neutral rate)	12.5%

Every registered dealer is required to file a correct, complete and self-consistent return in the prescribed form and by the due date in the electronic format only.

The tax payable, if any, as per the return, shall be paid into the government treasury along with the return.

The dealer is entitled to claim a refund of the excess payment made in respect of the period for which the return has been filed, or may carry forward the same for adjustment towards the tax payable as per the return to be filed for any subsequent period.

Refunds can be adjusted in a subsequent month's return. However, refunds cannot be adjusted against liability of the subsequent year.

All registered dealers are entitled to set off the VAT paid on inputs like raw material, finished goods and packing material, within the state of Maharashtra against their output tax liabilities.

The set off is subject to the following:

- Set-off is allowed only to a registered dealer
- A valid tax invoice is necessary to claim set-off
- Proper accounts must be maintained
- The set-off on eligible goods has to be claimed in the tax period in which the goods have been purchased.

Set-off shall not be admissible in respect of certain items/in certain circumstances

If during a tax period (month/quarter/six months) the tax on total turnover of sales is less than the amount of input tax credit, then such an excess amount of credit may either be adjusted by the dealer against his tax liability under the CST Act for the same period or may be carried forward to the next period. The excess credit may be carried forward in this manner till the end of the accounting year. The balance, if any, thereafter can be claimed as a refund from the department.

No tax is payable on the export of goods out of India. However, a set-off is available for the input tax paid on purchases from within the state when used in such exports. The VAT paid on purchases (inputs), may be adjusted against the VAT/CST liability or claimed as a refund.

Interstate sales and movement of goods are governed by the Central Sales Tax Act. Such transactions are not liable for VAT. However, input credit is available for the VAT paid in Maharashtra, subject to exceptions.

WORKS CONTRACTS TAX

States also levy tax under their VAT Acts on transactions which are 'deemed sales' like works contracts and leases. A works contract essentially comprises a contract for carrying out work involving the supply of labour and/or material, the property in which passes during execution of the contract.

The rate of tax on such deemed sales of goods used in the execution of a works contract is the same as prescribed in the relevant schedules to the respective goods. However, the sale price of such goods has to be determined in accordance with the provisions contained in the Maharashtra VAT Rules.

Accordingly, the value of goods at the time of the transfer of property in the goods (whether as goods or in some other form) involved in the execution of works contract has to be determined by effecting the specified deductions from the value of the entire contract in so far as the amounts relating to the deduction pertain to the said works contracts.

Where the contractor has not maintained accounts which enable a proper evaluation of the different deductions as above or where the Commissioner finds that the accounts maintained by the contractor are not sufficiently clear or intelligible, the contractor or, as the case may be, the Commissioner may in lieu of the deductions provide a lump sum deduction as prescribed and determine accordingly the sale price of the goods at the time of the said transfer of property.

Under the works contract composition scheme, a dealer, may, at his option, choose to pay tax at 5% on construction contracts (as notified) or in case of other contracts at 8% on the total contract value, after deducting the amount paid towards a sub-contract, if any.

However, in respect of such contract/s, where the dealer has chosen to pay tax by way of composition at 8%, the amount of set-off available on inputs will be restricted to 64% of the total amount of set-off for respective goods used in such contract(s).

Tax is required to be deducted at source and paid as prescribed.

TAX ON RIGHT TO USE GOODS (LEASING AND HIRING)

Previously, a tax on leasing and/or hiring charges was payable under the Maharashtra Tax on Right to Use Goods Act. Presently, all such transactions of 'deemed sale' are liable to tax under the MVAT Act at the same rate of tax as prescribed in the schedules.

The MVAT Act requires certain dealers/persons to get their accounts audited by an accountant within the prescribed period from the end of the year. The report of such an audit is required to be furnished in the prescribed format.

THE CENTRAL SALES TAX ACT (CST ACT)

Every dealer is liable to pay tax under the CST Act on the sale of goods (other than electrical energy) effected by him in the course of interstate trade or commerce during the year. The tax is payable if the sale or purchase:

- Occasions the movement of goods from one state to another
- Is effected by a transfer of documents of title to the goods during their movement from one state to another.

Further, the dealer is liable to pay tax on sale of taxable goods effected by him in the course of interstate trade or commerce, notwithstanding that the turnover limit of sales or purchases for registration and liability for tax has not been exceeded under the relevant state tax laws.

No tax is payable on the following transactions of sale:

- In the course of importing of goods into the territory of India
- A transaction of sale in the course of exports outside of India
- Penultimate sales i.e. the last sale preceding the sale occasioning the export of goods
- Interstate sales in certain cases; sales to a SEZ development or a unit in a SEZ.

A single interstate sale of any amount effected by a dealer attracts tax liability under the CST Act and consequential liability for obtaining a certificate of registration. The application for registration shall be made within 30 days from the date on which the first interstate sale is effected. However, dealers registered under the State Sales Tax Act may get registration even without effecting any interstate sale. Dealers effecting sales in the course of interstate trade are required to obtain a declaration in the prescribed form from the purchaser of goods to apply a concessional rate. Rates of tax on sales in the course of interstate trade or commerce are prescribed by the Act, as shown in the table below.

TABLE 21

Rates of tax on sales in the course of interstate trade or commerce

	WITH FORM 'C'	WITHOUT FORM 'C'
Goods specified in registration certificate of the registered dealer	2% or local rate, whichever is lower	Local rate
All other sales (based on the rate of tax	Nil/Local rate/2%	Nil/Local rate

under the under the local Acts)

The transfer of goods from one state to another to one's own place of business (branch) is exempt from the levy of tax, subject to compliances.

The purchasing dealer is required to get forms from the prescribed authority under his seal and signature. The dealer issuing the forms shall keep a record of forms used by him.

The tax is to be collected by the registered dealer who sells goods in the course of interstate trade or commerce and shall be paid to the government treasury, along with a return, within the time as may be prescribed by the state government in the local Act.

SERVICE TAX

Service tax is a union levy and is governed by Chapter V of Finance Act, 1994, as amended from time to time.

The rate of service tax is presently 12.36% (service tax at 12% plus education tax a 2% and secondary and higher education tax at 1%). Service tax is charged on the gross value of services.

TAXABLE SERVICES

Service tax is levied on all (taxable) services other than those services specified in the 'negative list', which are provided or agreed to be provided in the taxable territory (the whole of India, except the state of Jammu and Kashmir), by one person to another and collected in the manner as prescribed.
'Service' means any activity carried out by one person for another for a consideration, and includes declared services, but does not include the following:

- Any activity which consists merely of:
  - A transfer of title in goods or immovable property, in any manner
  - Such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of Article 366 of the constitution
  - A transaction in money or actionable claim
- Provision of service by an employee to an employer in the course of employment
- Fees taken in any court or tribunal established under any law for the time being in force, subject to exceptions.

'Declared service' means any activity carried out by a person for another person for a consideration and declared as such.

TABLE 22

Payment of service tax and filing of returns

ENTITIES	SERVICE TAX RECEIVED DURING THE PERIOD	PAYABLE BY
Individuals, proprietary concerns, partnership firms	1 April–30 June 1 July– 30 September 1 October –31 December 1 January–31 March	5 July 5 October 5 January 31 March
AOP, BOI, companies	April to February March	5th of the following month

ENTITIES	SERVICE TAX RECEIVED DURING THE PERIOD	PAYABLE BY
		March 31 Service tax is to be paid electronically

Where a taxable service transaction is entered into with any associated enterprise, any payment received towards the value of the taxable service must include any amount credited to any account, called by whatever name, in the books of account of the person liable to pay the service tax.
E-payment of service tax is mandatory for all taxpayers who paid service tax in excess of INR 5 million in the preceding financial year or the current financial year.

RETURNS

- For the period 1 April to 30 September By 25 October
- For the period 1 October to 31 March By 25 April

Small service providers ie those the aggregate value of whose taxable services provided during the preceding financial year did not exceed INR 1 million have been exempted from service tax up to an aggregate value of taxable services of INR 1 million in a financial year.

Returns of service tax are to be filed electronically if the total service tax paid in the preceding financial year exceeds INR 1 million. Taxpayers may file one consolidated return for each service provided by them.

The non-timely filing of returns will attract a late fee as specified.

EXPORT AND IMPORT OF SERVICES

Service tax is payable in respect of services other than those services specified in the 'negative list' provided or agreed to be provided in the taxable territory (the whole of India, except the state of Jammu and Kashmir), by one person to another and collected in the manner as prescribed. Thus, services provided in the taxable territory are taxable. The Place of Provision of Services Rules, 2012 determines the place where the service is provided and received. The table below sets out the place for provision of services, subject to conditions.

TABLE 23
Provision of services

PLACE OF SERVICE PROVISION	LOCATION
i) Generally	Location of recipient of service
ii) Performance-based services	Location where the services are actually performed
iii) Relating to immovable property	Where the immovable property is located or intended to be located
iv) Relating to events	Where the event is actually held
v) Services in (ii), (iii) and (iv) provided at more than one location	Where the greatest proportion of the services are provided
vi) Provider and recipient of service located in the taxable territory	Location of the recipient of the service

PLACE OF SERVICE PROVISION	LOCATION
vii) Certain specified services such as: − By a banking company, financial company, non-banking financial company, to account holders − Online information or database access or retrieval services − Intermediary services − Hiring means of transport, up to one month	Location of the service provider
viii) Goods transportation services	Place of destination of goods
ix) Passenger transportation services	Place where the passenger embarks on the conveyance for a continuous journey
x) Services provided on board a conveyance	First scheduled point of departure of the conveyance for the journey

In order to prevent double taxation or non-taxation of the provision of a service, or for the uniform application of the rules, the central government may designate any description of a service or the circumstances in which the place of provision shall be the place of effective use and enjoyment of a service.

EXPORT OF SERVICES

The provision of any service provided or agreed to be provided shall be treated as export of a service when:

- The provider of the service is located in the taxable territory
- The recipient of the service is located outside India
- The service is not a service specified in the negative list
- The place of provision of the service is outside India
- The payment for such service has been received by the provider of service in convertible foreign exchange
- The provider of the service and recipient of the service are not merely establishments of a distinct person.

Where any service is exported, the central government may, by notification, grant rebate of service tax or duty paid on input services or inputs, as the case may be, used in providing such a service and the rebate shall be allowed subject to such safeguards, conditions and limitations, as may be specified.

IMPORT OF SERVICES

The taxability of services rendered by persons outside the taxable territory will be determined by the provisions of the Place of Provision of Services Rules, 2012. Accordingly, the recipient of services will be liable to pay service tax (reverse charge mechanism) when the following conditions are satisfied cumulatively:

- Services are rendered by a person in a non-taxable territory
- The place of provision of service is in a taxable territory
- The services are received by a person located in a taxable territory.

CREDIT FOR SERVICE TAX PAID ON INPUTS

A rebate (credit) may be claimed on the whole of the duty paid on excisable inputs or the whole of the service tax and tax paid on all taxable input services used in providing output services, subject to certain conditions and limitations. No credit is available if the output service is exempt from service tax.

EXEMPTION FROM SERVICE TAX

Taxable services provided in relation to authorised operations in an SEZ and received by a developer or units in a SEZ, whether or not the taxable services are provided in the SEZ, are exempt from service tax, subject to certain conditions. The exemption is allowed with respect to service tax on services consumed within the SEZ. Where services to the SEZ are consumed partly or wholly outside the SEZ, the exemption will be by way of a refund of service tax paid on the taxable services.

Specified taxable services received by an exporter of goods and used for purposes of the goods exported are exempt from service tax, subject to certain conditions.

VALUE OF TAXABLE SERVICES

The value of taxable services is determined by reference to the Service Tax (Determination of Value) Rules, 2006. Specific provisions have been laid down for determining the value of services received in kind and services provided to a related/associated enterprise.

ASSESSMENT AND OTHER PROCEDURES

The rules provide for the self-assessment of service tax liability by the service provider and list instances in which the assistant commissioner or the deputy commissioner of the Central Excise department may be approached and the service tax liability assessed and paid on a provisional basis, subject to the assessment of the final liability.

Provisions have been laid down with respect to the following matters:

- The regulations provide for compulsory registration of service providers, where the aggregate value of the taxable service provided exceeds INR 900,000
- In situations governed by the reverse charge mechanism provisions, the recipient/specified person is required to register.

A person liable for payment of service tax should register with the relevant authorities within 30 days from the date of commencement of the business of providing a taxable service.

POINT OF TAXATION

'Point of taxation' means the point in time when a service is deemed to be provided. Normally, the point of taxation will be:

- The time when the invoice for services provided or agreed to be provided is issued, where the invoice is issued within 14 days of the completion of provision of the service; otherwise, the date of such completion will be considered
- The date of receipt of payment to the extent of such payment, where the service provider receives payment before the time specified in (i) above
- The above applies for the determination of point of taxation in the case of a continuous supply of service.

However, in the case of an advance receipt, the date of such receipt will be considered as the point of taxation.

DETERMINATION OF POINT OF TAXATION IN CASE OF SPECIFIED SERVICES OR PERSONS

The point of taxation will be the date of receipt of payment in the following cases:

- Export of services
- Where the recipient of a service pays service tax
- Specified services in the case of individuals, proprietary or partnership firms.

In the case of a transaction with an associated enterprise, where the person providing the service is located outside India, the point of taxation will be the date of debit in the books of account for the recipient of the service or the date of making a payment, whichever is earlier.

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 24
Securities transaction tax

TAXABLE SECURITIES TRANSACTION	RATE	PAYABLE BY
Purchase of an equity share in a company where the transaction of such a purchase is entered into in a recognised stock exchange and the contract for the purchase of such a share is settled by the actual delivery or transfer of the share	0.10%	Purchaser
Sale of an equity share in a company where the transaction of such a sale is entered into in a recognised stock exchange and the contract for the sale of such a share is settled by the actual delivery or transfer of the share	0.10%	Seller
Sale of an equity share in a company or a unit of an equity-oriented fund, where the transaction of such a sale is entered into in a recognised stock exchange and the contract for the sale of such a share or unit is settled otherwise than by the actual delivery or transfer of such share or unit	0.025%	Seller
Sale of an option in securities	0.017%	Seller
Sale of an option in securities where the option is exercised	0.125%	Purchaser
Sale of a futures in securities	0.01%	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

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

Securities on which such a tax is levied include:

- Shares, bonds, debentures etc, or other marketable securities of a like nature, in or of any incorporated company or other body corporate
- Derivatives
- Units or any other instrument issued by any collective investment scheme to the investors in such schemes

- Security receipts defined under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act
- Government securities
- Other notified instruments
- In the case of option contracts, the value of the transaction would include the strike price and the premium.

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

GOODS AND SERVICES TAX (GST) – THE WAY AHEAD

The present indirect taxes structure in India (as discussed above) which comprises of various taxes both at the central level and the state level which are levied in respect of different forms of economic activities, has been the subject of frequent criticism.

Criticism has been on account of the:
- High incidence of tax– the cumulative burden of indirect taxes ranges from 28–44%
- Multiplicity of taxes –levied under various legislations split between the federal and the state legislations
- Duplication of taxation on the same transaction– for example activities such as licensing of intellectual property rights could attract both VAT (‘state level’) and service tax (‘central level’)
- Absence of a comprehensive credit mechanism for off-setting the taxes paid at different points in the transactional chain– for example, no set-off provided for VAT credit against service tax payable and vice versa
- The multiple taxes levied under different legislations are separately administered – this results in dealing with various administrative authorities and a multiplicity of litigation.

With this background, the most far-reaching development in the indirect taxes domain in recent times has been the announcement of and progress in relation to the introduction of the goods and services tax (GST).

India has subscribed to a dual GST model where the centre and states will each legislate, levy and administer the central GST (CGST) and the state GST (SGST), respectively. The Empowered Committee of State Finance Ministers, based on the recommendations of the Joint Working Group constituted for preparing the roadmap for successful implementation of the GST, in November 2009 released the ‘First Discussion Paper’ on GST which gives the broad contours of the proposed dual GST model. This was followed by the report of the Task Force of the Thirteenth Finance Commission which was released in December 2009 and the comments of the Department of Revenue as regards the GST structure. It is expected that the proposed GST model will be close on the heels of the structure suggested by the ‘First Discussion Paper’.

The broad framework of the proposed GST model as per the ‘First Discussion Paper’ and the subsequent announcements made by the Ministry of Finance is as follows:
- The CGST is expected to subsume central excise duty, additional excise duties, service tax, the additional customs duties, surcharges and education cess, whereas the SGST is expected to subsume state VAT/sales tax, entertainment tax, luxury tax, entry tax, state taxes and surcharges
- Both, the central government and the states will tax all supplies of goods and services with CGST and SGST respectively. The levy will be with respect to all transactions of goods and services made for a consideration, except:

- Exempted goods and services
- Goods outside the purview of GST (alcoholic beverages, petroleum products and electricity are expected to be kept outside the purview of GST)
- Transactions which are below the threshhold limit (proposed at INR 1 million)
  - There will be a dual-rate structure for goods (standard rate and lower rate) and a single rate for services
  - The incidence of tax will be as per the destination principle. The taxable events will be the sale of goods and consumption of services
  - An integrated goods and services tax (IGST) may be introduced to tax the interstate transaction of goods and services. In case of this IGST, the rate of tax will be a combined rate of CGST and SGST.

There is expected to be a complete fungibility of credit between CGST on goods and services. Similarly, there is also expected to be complete fungibility of credit between SGST on goods and services. Further, IGST credits can be utilised for payment of IGST, SGST and CGST liability. The IGST mechanism will make the credits fungible.

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 1956.

Companies prepare their financial statements based on historical costs as per the provisions of the Companies Act 1956. 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:

- Directors 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 10 million a year, or with gross receipts from a profession in excess of INR 2.5 million. An audit report is also required to be issued by a chartered accountant in order to claim tax incentives/holiday benefits.

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 Accounting Standards Board (ASB) in the Ministry of Company Affairs, Government of India. In addition to accounting standards, generally accepted accounting principles and guidance notes are issued by the ICAI. The ICAI is committed to be fully compliant with the IFRS and to this end has issued Exposure Drafts of Indian Accounting Standards (IND-AS) for convergence with the IFRS (for corresponding reference to US GAAP/IFRS, refer Appendix VI).

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, agriculture and cultivation of vegetables & mushrooms under controlled conditions b) Development and production of seeds and planting material c) Animal husbandry (including of breeding of dogs), pisciculture, aquaculture under controlled conditions d) Services related to agro and allied sectors FDI is not permitted in any other agricultural sector/activity
Tea plantation	Automatic route (100% FDI)	FDI is not allowed in any other plantation sector/activity

MINING INDUSTRY

SECTOR OF BUSINESS/ COMMERCE	ROUTE	ACTIVITIES PERMITTED/ CONDITIONS
Mining	Automatic route (100% FDI)	Exploration and mining 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 the Mines and Minerals (Development and Regulation) Act, 1957, under the automatic route
Coal and lignite	Automatic route (100% FDI)	1) Captive consumption of power projects, iron and steel and cement units and other eligible activities. 2) Setting up coal processing plants like washeries, subject to conditions mentioned therein.
Mining and mineral separation of titanium bearing minerals and ores, its value addition and integrated activities	FIPB approval (100% FDI)	All the activities mentioned in the first column, but subject to conditions
Petroleum products other than refining Petroleum refining	Automatic route (100% FDI) Automatic (up to 49% FDI)	Exploration, infrastructure, trading and marketing of petroleum products, pipelines, market study, subject to regulatory framework and sector policy Petroleum refining by the PSU with approval, without involving any disinvestment or dilution of domestic equity in the existing PSUs.

MANUFACTURING SECTOR

SECTOR OF BUSINESS/ COMMERCE	ROUTE	ACTIVITIES PERMITTED/ CONDITIONS
Items reserved for micro and small enterprises IMSE	FDI up to 24% – automatic route FDI above 24% – approval route	All the activities mentioned in the first column
Defence and strategic industries	Approval Route (upto 26% FDI including NRI) Cabinet Committee on Security (CCS) (above 26%)	All the activities mentioned in the first column, but subject to licensing and security requirements and subject to conditions On case to case basis, which ensure access to modern and 'state-of-art' technology in the country Investment by RFPI/FIIs through portfolio investment is not permitted

POWER

SECTOR OF BUSINESS/ COMMERCE	ROUTE	ACTIVITIES PERMITTED/ CONDITIONS
Power exchanges	Automatic 49% (FDI – 26%, FII/RFPI – 23%)	Registered under CERC Regulations

CIVIL AVIATION SECTOR

SECTOR OF BUSINESS/ COMMERCE	ROUTE	ACTIVITIES PERMITTED/ CONDITIONS
Airports	Automatic: 100% FDI Automatic: 74% FDI Approval: Above 74%	Airports in greenfield projects Existing projects
Scheduled air transport service/ domestic scheduled passenger airline	Automatic Route(100% – NRI, 49% – others)	Scheduled air transport services, domestic scheduled passenger airline. 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
Non-scheduled and chartered airlines	Automatic route (FDI – 49%) Approval route (NRI – 100%,	Non-scheduled air transport service. No direct or indirect equity participation by foreign airlines is allowed, except in companies operating cargo airlines

SECTOR OF BUSINESS/ COMMERCE	ROUTE	ACTIVITIES PERMITTED/ CONDITIONS
	Others – 74%)	
Helicopter services, seaplane services	Automatic route (100% FDI)	All the activities mentioned in the first column, but DGCA approval required. Foreign airlines can participate in equity
Ground handling service	Automatic route (FDI – 49%) Approval route (NRI – 100%, Others – 74%)	All the activities mentioned in the first column
Maintenance and training	Automatic route (100% FDI)	Maintenance and repair organisations, flying training institutes and technical training institutes

FINANCIAL SERVICES

SECTOR OF BUSINESS/ COMMERCE	ROUTE	ACTIVITIES PERMITTED/ CONDITIONS
Asset reconstruction companies (ARC)	100% of paid up capital of ARC (FDI/FII/RFPI) Automatic (up to 49%) FIPB approval (above 49%)	Persons residing outside India can invest in the capital of ARCs registered with Reserve Bank, up to 49% on the automatic route, and beyond 49% on the government route.
Banking in private sector	Automatic route (FDI – 49%) Approval route (FDI including FII/RFPI and PIS – 74%)	However, individual FFI holding restricted to 10%, voting right limited to 10%
Banks in public sector	Approval route (FDI and portfolio investment – 20%)	All the activities mentioned in the first column
Subsidiaries by foreign banks but not both	Not applicable	Foreign banks can have branches or subsidiary in India with RBI permission but not both

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 –	FDI: 74% Automatic up to 49% Approval route (49%–74%)	Subject to guidelines issued by the Ministry of Information and Broadcasting, and other specified conditions

SECTOR OF BUSINESS/ COMMERCE	ROUTE	ACTIVITIES PERMITTED/ CONDITIONS
operating at national or state or district levels and undertaking upgrades of networks) iv) Mobile TV v) Head in the Sky (HITS) broadcasting service		
Cable networks (other MSOs not undertaking upgrades of networks towards digitalisation and addressibility and local cable operators)	Automatic 49%	However, individual FFI holding restricted to 10%, voting right limited to 10%
Terrestrial broadcasting FM radio	Approval 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	Approval 100%	Subject to guidelines issued by the Ministry of Information and Broadcasting, and other specified conditions
Uplinking news and current affairs TV channel	Approval 26%	Subject to guidelines issued by the Ministry of Information and Broadcasting, and other specified conditions

COMMODITY EXCHANGES

SECTOR OF BUSINESS/ COMMERCE	ROUTE	ACTIVITIES PERMITTED/ CONDITIONS
Commodity exchanges	Automatic (FDI + FII/RFPI: 49%)	Investment by a registered FII/RFPI under the portfolio investment scheme (PIS) will be limited to 23% and investment under the FDI scheme limited to 26% Foreign investment in commodity exchanges will be subject to the guidelines of the Department of Consumer Affairs/Forward Markets Commission

CONSTRUCTION DEVELOPMENT – TOWNSHIPS, HOUSING, BUILT-UP INFRASTRUCTURE

SECTOR OF BUSINESS/ COMMERCE	ROUTE	ACTIVITIES PERMITTED/ CONDITIONS
Development of townships, housing, built-up infrastructure and development projects	Automatic route (100% FDI)	All the activities mentioned in the first column, but subject to conditions. No investment in real estate business. This would include housing commercial premises, hotels, resorts, hospitals, educational institutions recreational facilities, city and regional level infrastructure
Development of SEZ	Automatic route(100% FDI)	All the activities mentioned in the first column

SECTOR OF COMMERCE	BUSINESS/ ROUTE	ACTIVITIES PERMITTED/ CONDITIONS
Industrial parks	Automatic route (100% FDI)	Setting up and also running existing industrial parks

CREDIT INFORMATION COMPANIES

SECTOR OF COMMERCE	BUSINESS/ ROUTE	ACTIVITIES PERMITTED/ CONDITIONS
Credit information companies (CIC)	Automatic (FDI + FII/RFPI: 74%)	Foreign investment in credit information companies is subject to the Credit Information Companies (Regulation) Act, 2005 and subject to other conditions

INSURANCE

SECTOR OF COMMERCE	BUSINESS/ ROUTE	ACTIVITIES PERMITTED/ CONDITIONS
Insurance	Automatic route(26% FDI+RFPI/FII/NRI)	All the activities mentioned in the first column, but subject to conditions

INFRASTRUCTURE COMPANIES IN SECURITIES MARKET

SECTOR OF COMMERCE	BUSINESS/ ROUTE	ACTIVITIES PERMITTED/ CONDITIONS
Infrastructure companies in securities market eg stock exchanges, depositories and clearing operations	Automatic (FDI + FII/RFPI: 49%)	Stock exchanges, depositories and clearing operations However, FDI cap is 26% and FII/RFPI cap is 23% of the paid-up capital

NON-BANKING FINANCE COMPANIES (NBFC)

SECTOR OF COMMERCE	BUSINESS/ ROUTE	ACTIVITIES PERMITTED/ CONDITIONS
NBFC	Automatic route(100% FDI)	Merchant banking, underwriting, portfolio management services, investment advisory services, financial consultancy, stock broking, asset management, venture capital, custodian services, factoring, credit rating agencies, leasing and finance, housing finance, forex broking, money changing business, micro credit, rural credit, credit card business etc. Credit card business includes debit cards, charge cards, smart cards, value added cards etc. However, only financial leasing is eligible for 100% FDI and not operating lease

PRINT MEDIA

SECTOR OF BUSINESS/ COMMERCE	ROUTE	ACTIVITIES PERMITTED/ CONDITIONS
Publication of newspaper and periodicals dealing with news and current affair	Approval route (FDI/NRI/PIOs/(FII /RFPI) – 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/NRI/PIOs/(FII /RFPI) – 26%)	All the activities mentioned in the first column
Scientific and technical magazines/journals	Approval route (FDI – 100%)	Printing of scientific and technical magazines, periodicals and journals. 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

SECURITY AGENCIES

SECTOR OF BUSINESS/ COMMERCE	ROUTE	ACTIVITIES PERMITTED/ CONDITIONS
Security agencies in private sector	Approval route (FDI – 49%)	All the activities mentioned in the first column, but subject to conditions

SATELLITE ESTABLISHMENTS AND OPERATIONS

SECTOR OF BUSINESS/ COMMERCE	ROUTE	ACTIVITIES PERMITTED/ CONDITIONS
Satellite	Approval route (FDI – 74%)	Establishments and operations subject to the sectoral guidelines of Department of Space/ISRO.

TELECOMMUNICATIONS

SECTOR OF BUSINESS/ COMMERCE	ROUTE	ACTIVITIES PERMITTED/ CONDITIONS
Telecom services	Up to 49% – automatic route Above 49% – approval route	All specified telecom services Subject to observance of licensing and security conditions by licensee as well as investors, as notified by the Department of Telecommunications (DoT) from time to time, and subject to other conditions

TRADING

SECTOR OF BUSINESS/ COMMERCE	ROUTE	ACTIVITIES PERMITTED/ CONDITIONS
Cash and carry wholesale trading/wholesale trading (including sourcing from MSEs)	Automatic route (FDI – 100%)	All the activities mentioned in the first column, but subject to prescribed guidelines
e-Commerce activities	Automatic route (FDI – 100%)	All the activities mentioned in the first column
Single brand retail trading	100% FDI Automatic (up to 49%) Approval route (above 49%)	Foreign investment subject to prescribed guidelines. At least 30% sourcing should be done from India, preferably from MSME sectors
Multi brand retail trading	FIPB Approval (FDI – 51%)	All the activities mentioned in the first column, but subject to prescribed conditions. So far, 11 states and union territories have agreed to allow multi-brand trading with FDI in their states/union territories

COURIER

SECTOR OF BUSINESS/ COMMERCE	ROUTE	ACTIVITIES PERMITTED/ CONDITIONS
Courier services	Automatic (100% FDI)	Courier services (except distribution of letters)

PHARMACEUTICALS

SECTOR OF BUSINESS/ COMMERCE	ROUTE	ACTIVITIES PERMITTED/ CONDITIONS
Pharmaceuticals	Automatic route (100% FDI)	Greenfield projects
	Approval route (100% FDI)	Brownfield companies

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 transport, lottery, agriculture, retail trading, plantation, nidhi companies, real estate, manufacturing cigars, cigarettes	Not applicable	

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

	EQU/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	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 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 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	Pursuant to a contract and other compliances, capital goods may be sourced from a domestic/ foreign leasing company without payment of duty
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	Unit shall be a positive net	Unit shall be a positive Net Foreign

obligations	foreign exchange (NFE) earner, which shall be calculated cumulatively in blocks of five years, starting from commencement of production 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	Exchange (NFE) earner, which shall be calculated cumulatively in blocks of 5 years, starting from commencement of production 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 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) Refund of duty paid on fuel procured from domestic oil companies, depots of domestic oil PSU's at rates notified c) Credit on service tax paid d) Exemption from industrial licensing for manufacture of items reserved for small scale sector	a) Exempt from 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	100%
1.3.	Buildings other than the items in 1.1 and 1.2, above	10%
1.4	Temporary structures	100%
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	100%
3.7	Specified water pollution equipment	100%
3.8	Solid waste control equipment; recycling and resource recovery systems	100%
3.9	Machineries and plant used in semi conductor industries	30%
3.10	Specified life saving medical equipment	40%
3.11	Containers made of glass/plastic used as re-fills	50%
3.12	Computer including software	60%
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	100%
3.14	Wooden parts used in artificial silk manufacturing units	100%
3.15	Cinematograph films – bulbs of studio lights	100%
3.16	Match factories – Wooden match frames	100%
3.17	Mines and quarries – Tubs, winding ropes, haulage ropes, sand stowing pipes and safety lamps	100%
3.18	Salt – works, salt pans, reservoirs and condensers	100%
3.19	Flour mill – rollers	80%
3.20	Iron and steel industry – rolling mill rolls	80%
3.21	Sugar works – rollers	80%
3.22	Specified energy saving devices being	80%
3.23	Gas cylinders including valves and regulators	60%
3.24	Direct fire glass melting furnaces	60%

3.25	Plant used in mineral oils concerns	60%
3.26	Specified renewable energy devices	80%
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	 100% 60% 100%
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%

APPENDIX IV – RATES OF WITHHOLDING TAXES

SR. NO.	PARTICULARS	PAYMENT THRESHOLD	RATE OF TAX DEDUCTION AT SOURCE (TDS)	
1	Interest on securities	INR 5,000	Non-corporates: Corporates:	10% 10%
2	Interest other than interest on securities	INR 10,000 (in the case of deposits in banks including co-op. banks, cooperative societies engaging in the business of banking and post offices.) INR 5,000 in other cases	10%	
3	For winnings from lotteries and crossword puzzles	INR 10,000	30%	
4	For winnings from horse races	INR 5,000	30%	
5	Payments under a contract (including payments to a sub contractor and payments under advertising contracts	INR 30,000 per contract or contracts aggregating more than INR 75,000 in a tax year	Payments to: Individuals/HUF Others	 1% 2%
6	Insurance commission	INR 20,000	10%	
7	Payments in respect of deposits under specified savings instruments	INR 2,500	20%	
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	INR 1,000	10%	
10	Brokerage, commission	INR 5,000	10%	
11	Rent	INR 180,000	For the use of machinery, plant	2%

			or equipment: For the use of any land or building (including factory building) or land appurtenant to a building (including factory building) or furniture or fittings	 10%
12	Transfer of immovable property	INR 50,00,000	1%	
13	Professional and technical services	INR 30,000	10%	
14	Payment of enhanced compensation	INR 100,000	10%	
15	Payment towards interest on infrastructure debt fund to non-resident	No limit	5%	
16	Payment to non-resident sportsmen / entertainer / sports association or institution	No limit	20%	
17	Payment towards interest on foreign currency borrowing to non resident	Nil	5%	
18	Payments to non-resident persons including companies		As per rates specified	

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:
  - 1) 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) Education cess at 3% on tax amount including surcharge.
  - b) TDS rate on payments to non resident (other than foreign companies) will be subject to education cess at 3%

3) Where any person whose receipts are subject to TDS, does not furnish the Permanent Account No. (PAN) to the deductor, tax will be deducted at the highest of the following:

- a) Rate prescribed under the IT Act
- b) Rate mentioned in the Finance Act
- c) Rate of 20%.

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%	Both	10% 15%
Bangladesh	Both	10% 15%	Both	10%	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% 15%	Both	10%	Both	15%	Both	15% 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% 15%	Both	10%	Both	15%	**	
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	*$	Both	15%+	**	
Netherlands	Both	10%	Both	10%	Both	10%	Both	10%
New Zealand	Both	15%	Both	10%	Both	10%	Both	10%
Republic of 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%	***	
Spain	Both	15%	Both	15%	Both	10% 20%	Both	20%
Sri Lanka	Both	15%+	Both	10%	Both	10%	***	10%

Sweden	Both	10%	Both	10%	Both	10%	Both	10%
Swiss Confederation	Both	10%	Both	10%	Both	10%	Both	10%
Thailand	Both	15% 20%	Both	10% 25%	Both	15%	Both	*
United Arab Emirates	Both	10%	Both	5% 12.5%	Both	10%	***	
United Kingdom	Both	15%	Both	15% 10%	Both	10% 15% 20%	Both	10% 15% 20%
United States of America	Both	15% 25%	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 bank carrying on bonafide banking business. In other cases, rate is applicable as per domestic law.

Note:
1) In addition to the above 29 countries, India has entered into comprehensive double tax avoidance agreements with 58 other countries. Information regarding such other agreements is available at:
http://law.incometaxindia.gov.in/DIT/intDtaa.aspx

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

SR. NO.	IFR/IAS NO.	CORRESPONDING INDIAN ACCOUNTING STANDARD	*US GAAP REFERENCE	NAME
1	IAS 1	Ind AS 1	SFAS 16, 111, 154	Presentation of financial statements
2	IAS 2	Ind AS 2	SFAS 48 , 49, 151, 153	Inventories
3	IAS 7	Ind AS 7	SFAS 95, 102, 104, 115, 117,133, 149	Statement of cash flows
4	IAS 8	Ind AS 8	SFAS 16, 111, 154	Accounting policies, changes in accounting estimates and errors
5	IAS 10	Ind AS 10	SFAS 1, 165	Events after the reporting period
6	IAS 11	Ind AS 11	SFAS 109	Construction contracts
7	IAS 12	Ind AS 12	SFAS 5, 6, 37, 52, 109	Income taxes
8	IAS 16	Ind AS 16	SFAS 2,34, 42, 58, 62, 68, 109, 141, 142, 143,144, 146, 147, 153	Property, plant and equipment
9	IAS 17	Ind AS 17	SFAS 13, 22, 23, 27, 28, 29, 66, 91, 98, 140, 143, 144, 145, 146	Leases
10	IAS 18	Ind AS 18	SFAS5, 45, 48, 66, 67, 91, 98, 109, 144, 152	Revenue
11	IAS 19	Ind AS 19	SFAS5, 87, 88, 106,112, 130, 132 (r), 144, 149, 158	Employee benefits
12	IAS 20	Ind AS 20	SFAS 16	Accounting for government grants and disclosure of government assistance
13	IAS 21	Ind AS 21	SFAS 52, 133	The effects of changes in foreign exchange rates
14	IAS 23	Ind AS 23	SFAS 34	Borrowing costs
15	IAS 24	Ind AS 24	SFAS 57	Related party disclosures
16	IAS 26	*		Accounting and reporting by retirement benefit plans
17	IAS 27	Ind AS 27	SFAS 141, 160	Consolidated and separate financial statements
18	IAS 28	Ind AS 28	SFAS 94, 140, 141, 142, 167	Investments in Associates

19	IAS 29	Ind AS 29		Financial reporting in hyperinflationary economies
20	IAS 31	Ind AS 31	SFAS 140	Interests in joint ventures
21	IAS 32	Ind AS 32	155, 156, 159, 161, 166	Financial instruments: presentation
22	IAS 33	Ind AS 33	SFAS 128 , 129 & 150	Earnings per share
23	IAS 34	Ind AS 34	SFAS 16, 69, 95, 109, 128, 130, 131, 132 (r), 154	Interim financial reporting
24	IAS 36	Ind AS 36	SFAS 131, 142	Impairment of assets
25	IAS 37	Ind AS 37	SFAS 5, 6, 11, 43, 48, 78, 112	Provisions, contingent liabilities and contingent assets
26	IAS 38	Ind AS 38	SFAS 142	Intangible assets
27	IAS 39	Ind AS 39	SFAS 107, 115, 133, 137, 138, 140, 149, 150,	Financial instruments: recognition and measurement
28	IAS 40	Ind AS 41	SFAS 107, 115, 133, 137, 138, 140, 149, 150,	Investment property
29	IAS 41	**		Agriculture
30	IFRS 1	Ind AS 101		First-time adoption of Indian accounting standards
31	IFRS 2	Ind AS 102		Share based payment
32	IFRS 3	Ind AS 103	SFAS 94, 140, 141, 142, 164	Business combinations
33	IFRS 4	Ind AS 104		Insurance contracts
34	IFRS 5	Ind AS 105	SFAS 144	Non-current assets held for Sale and Discontinued Operations
35	IFRS 6	Ind AS 106		Exploration for and evaluation of mineral resources
36	IFRS 7	Ind AS 107		Financial instruments: disclosures
37	IFRS 8	Ind AS 108	SFAS 131	Operating segments
38	IFRS 9	***		Financial instruments

* Ind AS corresponding to IAS 26 Accounting and Reporting by Retirement Benefit Plans has not been placed on MCA's website as this standard is not applicable to companies
** Ind AS corresponding to IAS 41, Agriculture, is being redrafted
*** It has been decided that Ind AS corresponding to IFRS 9, Financial Instruments, should not be issued since it was felt that it was incomplete; instead of this standard, Ind AS 39 has been issued.