Executive Summary

India's sizeable and rapidly growing domestic market, growing financial markets, large English-speaking population, and stable democratic government make it an attractive market for investors. However, India underperforms relative to its vast potential. Major areas of concern include corruption, taxes, caps on foreign direct investment (FDI), inadequate financing at reasonable rates, complex and lengthy investment approval and land acquisition processes, antiquated labor laws, and poor contract sanctity and enforcement of arbitration judgments. While the government has taken encouraging action on several of these fronts in the past year, investors remain wary. There had been doubts about the second United Progressive Alliance (UPA II) government's ability to implement needed reforms. Investors are waiting to see which policy direction the new Bharatiya Janata Party (BJP)-led National Democratic Alliance (NDA) government, which decisively won the May 2014 national elections, will take. Most observers expect a more decisive and pro-business polity.

The recent UPA Government enacted a handful of new laws in 2013 that, if properly implemented and enforced, could improve the country's overall investment climate. The Companies Act offers significant improvements to corporate governance procedures, imposing stiffer penalties for fraud, increasing protection for investors and creditors, simplifying processes for creating and closing businesses, and mandating greater transparency in financial disclosures. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, a major update to the Land Acquisition Act of 1894, established new rules for acquiring land for public purposes, including large infrastructure projects, whether by the state, under public-private partnerships (PPP), or by private corporations. The law will make land purchases more expensive, but it has the potential to make the process of acquisition more transparent and expedient as well. Finally, in July 2013, the Cabinet eased limits on FDI in 12 sectors of the economy and authorized expedited approval mechanisms for investment in eight of those sectors—including telecommunications, asset reconstruction, petroleum, and gas.

The Indian rupee suffered a summer of instability in 2013, ending the year 13% lower. Two years of steady depreciation reflect slowing economic growth and rising macroeconomic imbalances. Growth dropped from 8.5% in 2010 to under 5% today. During this period, India's fiscal deficit remained large and the current account deficit widened, driven by a longstanding trade deficit. As a major oil importer, India faces a structural current account deficit, financed by foreign capital inflows. Recent declines in stable FDI inflows have increased India's reliance on more volatile portfolio capital to finance the deficit, rendering it more vulnerable to shifts in market sentiment. In the spring, India experienced sudden capital outflows and sharp depreciation of the rupee, due to concerns about tightening global liquidity conditions and India's relative macroeconomic stability. Over the summer, the Reserve Bank of India (RBI) took a series of steps to stabilize the currency and limit capital outflows, which damaged investor confidence. New leadership at the RBI in September improved policy transparency and helped restore confidence.

Many economists and investors comment that the previous UPA government, partly due to the demands of a large and diverse coalition, had allowed economic policy to drift. There are expectations that the new central government with a simple majority could steer economic policy, improve government transparency, and facilitate investment in manufacturing and infrastructure to stimulate growth and create jobs.

1. Openness To, and Restrictions Upon, Foreign Investment

Attitude Toward FDI

In the past year, the government has taken some steps to ease FDI restrictions in certain sectors and to improve corporate governance laws. However by the end of 2013, a stalemated parliament stymied confidence in the pace and efficacy of additional measures for improving the investment climate. Furthermore, many of the reform efforts the government undertook in the past years have come with a number of restrictions attached, such as in the case of FDI in multi-brand retail (MBR). The "opening up" to FDI in MBR came with so many conditions that only one international retailer has applied thus far.

Power and decision-making is decentralized in India. Investors should be prepared to face varying business and economic conditions across India's 29 states and seven union territories. There are differences at the state-level in political leadership, quality of governance, regulations, taxation, labor relations, and education levels. Although India prides itself on its rule of law, its courts have cases backlogged for many years. By some accounts more than 30 million cases could be pending in various courts, including India's high courts.

Other Investment Policy Reviews:

In 2011the Government of India underwent an investment policy review in the context of a Trade Policy Review by the WTO, available here:
http://www.wto.org/english/tratop_e/tpr_e/tp349_e.htm

Tables 1 and **Table 1B**

TABLE 1: The following chart summarizes several well-regarded indices and rankings.

Measure	**Year**	**Rank or value**	**Website Address**
Transparency International Corruption Perceptions index	2013	(94 of 177)	http://cpi.transparency.org/cpi2013/results/
Heritage Foundation's Economic Freedom index	2013	(126 of 170)	http://www.heritage.org/index/ranking
World Bank's Doing Business Report "Ease of Doing Business"	2013	(134 of 189)	http//doingbusiness.org/rankings

Global Innovation Index	2013	(66 of 142)	http://www.globalinnovationindex.org/content.aspx?page=gii-full-report-2013#pdfopener
World Bank GNI per capita	2012	$1550	http://data.worldbank.org/indicator/NY.GNP.PCAP.CD

TABLE 1B - Scorecards: The Millennium Challenge Corporation, a U.S. Government entity charged with delivering development grants to countries that have demonstrated a commitment to reform, produced scorecards for countries with a 2012 per capita gross national income (GNI) of $4,085 or less. A list of countries/economies with MCC scorecards and links to those scorecards is available here: http://www.mcc.gov/pages/selection/scorecards. Details on each of the MCC's indicators and a guide to reading the scorecards, are available here: http://www.mcc.gov/documents/reports/reference-2013001142401-fy14-guide-to-the-indicators.pdf

Measure	Year	Index/Ranking
MCC Gov't Effectiveness	2014	96%
MCC Rule of Law	2014	98%
MCC Control of Corruption	2014	80%
MCC Fiscal Policy	2014	4%
MCC Trade Policy	2014	40%
MCC Regulatory Quality	2014	71%
MCC Business Start Up	2014	47%
MCC Land Rights Access	2014	63%
MCC Natural Resource Mgmt	2014	36%

Investment Law and Strategies

There are two channels for foreign investment entering India: the "automatic route" and the "government route." Investments entering via the "automatic route" are not required to seek overall approval from the central government. The investor is expected to notify the RBI of its investment using the Foreign Collaboration - General Permission Route (FC GPR) form within 30 days of inward receipts and issuance of shares (http://rbidocs.rbi.org.in/rdocs/notification/PDFs/102APD110214.pdf. The title "automatic route" is a misnomer, since investments in most sectors will still require some interaction with the government at the state and national levels.

Investments that take the "government route" are subject to authorization from the principal ministry involved and/or the Foreign Investment Promotion Board (FIPB). The rules regulating government approval for investments vary from industry to industry, and the approving government entity varies depending on the applicant and the product. For example the Ministry of Commerce and Industry (MOCI) Department of Industrial Policy and Promotion (DIPP) oversees single-brand product retailing investment proposals, as well as proposals made by Non-Resident Indians (NRIs) and Overseas Corporate Bodies (OCBs). An NRI is an Indian citizen who has resided overseas for six months or more for any purpose. An OCB is a company, partnership firm, or other corporate entity that is at least 60% owned, directly or indirectly, by NRIs, including overseas trusts. MOCI's Department of Commerce approves investment proposals from export-oriented units (i.e., industrial companies that intend to export their entire production of goods and services). The FIBP, led by the Ministry of Finance (MOF) and MOCI, approves most other investment applications.

All new investments require a number of industrial approvals and clearances from different authorities such as the Pollution Control Board, Chief Inspector of Factories, Electricity Board, and Municipal Corporation (locally elected entities). To fast track the approval process for investments greater than $200 million, the government in December 2012 established the Cabinet Committee on Investment (CCI), chaired by the Prime Minister. Around 250 projects worth approximately $300 billion were stalled due to various inter-ministerial differences when the CCI began its work. To date the CCI has cleared over 99 projects worth over $60 billion, but there has been little impact on actual investment flows. Some analysts have pointed to the normal lag time between regulatory approval and actual physical investment as well as possible additional bureaucratic delays at both the central and state levels.

Sector-Specific Guidelines for FDI in Key Industries

Banking: Aggregate foreign investment from all sources in all private banks is capped at 74%. For state-owned banks, the foreign ownership limit is 20%. According to the 2011 road map for foreign bank entry, there are three distinct ways to enter the Indian banking sector. The first is by establishing a branch in India. The second is to establish a wholly-owned subsidiary, although it is important to note that foreign banks may have either branches or subsidiaries, but not both. The third is to establish a subsidiary with total foreign investment of up to 74%. Foreign investors are also legally permitted to acquire an ailing bank, though to date, the RBI has not authorized this type of transaction. Foreign institutional investment (FII) is limited to 10% of the total paid-up capital and 5% in cases where the investment is from a foreign bank/bank group. In December 2012, Parliament passed the Banking Regulation (Amendment) Act. The Act has increased the cap on voting rights for investors from 10 to 26% in private sector banks, and from one to 10% for public sector banks (PSBs) to make voting rights commensurate with economic ownership.

Manufacturing: 100% FDI is allowed in most sub-categories of manufacturing; however, the government maintains set asides for micro and small enterprises (MSEs), defined by the government as a company with less than $1 million in plant and machinery. Any investment in manufacturing that does not qualify as MSE and manufactures items reserved for the MSE sector must enter via the government route for FDI greater than 24%. Since 1997, the government has steadily decreased the number of sectors it protects under the national small-scale industry (SSI) policy. At its peak in the late 1990s, more than 800 categories were protected. The most current list is publicly available here: http://www.dcmsme.gov.in/publications/reserveditems/reserved2010.pdf. The 2011 National Manufacturing Policy (NMP) provides the framework for India’s local manufacturing requirements in the Information and Communications Technology (ICT) and clean energy sectors. http://commerce.nic.in/whatsnew/National_Manfacruring_Policy2011.pdf

Non-Banking Financial Companies (NBFC): 100% FDI is allowed via the automatic route. NBFCs include the following types of businesses: merchant banking, underwriting, portfolio management, financial consulting, stock-brokerages, asset management, venture capital, credit rating agencies, housing finance, leasing and finance, credit card businesses, foreign exchange brokerages, money changers, factoring and custodial services, investment advisory services, and micro and rural credit. All investments are subject to the following minimum capitalization norms: $500,000 upfront for investments with up to 51% foreign ownership; $5 million upfront for investments with 51% to 74.9% ownership; $50 million total, with $7.5 million required up-front and the remaining balance within 24 months for investments with greater than 75% ownership. Wholly foreign-owned NBFCs, with a minimum capitalization of $50 million, are allowed to set up unlimited numbers of subsidiaries for specific NBFC activities and are not required to bring in additional capital. RBI regulates and supervises the NBFCs.

TABLE 2: Limits and Regulation of Foreign Direct Investment (FDI)*

<table>
<tr><th>Sector</th><th>% FDI</th><th>Route</th><th>Note</th></tr>
<tr><td>Advertising and Film</td><td>100%</td><td>Automatic</td><td>Includes film production, exhibition, distribution, and related services and products.</td></tr>
<tr><td>Agriculture (Farming)</td><td>None</td><td></td><td></td></tr>
<tr><td rowspan="2">Agriculture-related Activities</td><td>100%</td><td>Automatic</td><td>Seed industry, floriculture, horticulture, animal husbandry, aquaculture, fish farming, and cultivation of vegetables and mushrooms.</td></tr>
<tr><td>100%</td><td>Government</td><td>Tea plantations. Five years after making the initial investment in a tea plantation, foreign investors are required to divest ownership to allow for at least 26% Indian ownership.</td></tr>
<tr><td rowspan="3">Airline Carriers (air transport services)</td><td>49%</td><td>Government</td><td>Scheduled and non-scheduled airline carriers, although NRIs may own 100% of a domestic airline, as announced in September, 2012, by the Cabinet Committee on Economic Affairs. Investments are required to follow relevant SEBI regulations that include the Issue of Capital and Disclosure Requirements (ICDR) Regulations and the Substantial Acquisition of Shares and Takeovers (SAST) Regulations. (http://pib.nic.in/newsite/PrintRelease.aspx?relid=87785)</td></tr>
<tr><td>74%</td><td>Automatic</td><td>Non-scheduled, chartered, and/or cargo airlines.</td></tr>
<tr><td>100%</td><td>Automatic</td><td>Investments in helicopter and seaplane services. Investors are required to seek approval from the Directorate General of Civil Aviation.</td></tr>
<tr><td rowspan="5">Airport Infrastructure</td><td>100%</td><td>Automatic</td><td>Green-field projects.</td></tr>
<tr><td>74%</td><td>Automatic</td><td>Existing projects. FDI greater than 74% requires FIPB approval.</td></tr>
<tr><td>49%</td><td>Automatic</td><td rowspan="2">Ground-handling businesses at airports. (NRIs are allowed 100%).</td></tr>
<tr><td>49-74%</td><td>Government</td></tr>
<tr><td>100%</td><td>Automatic</td><td>Maintenance and repair operations, flight training institutes, and technical training institutes.</td></tr>
<tr><td>Alcoholic Distillation</td><td>100%</td><td>Automatic</td><td>Requires a license from DIPP under the provisions of the Industries (Development and Regulation)</td></tr>
</table>

and Brewing			Act, 1951.
Asset Reconstruction Companies	74%	Government	An ARC is a company registered with the RBI under Section 3 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act). FII is now permitted.
Automobiles	100%	Automatic	Local content requirements and/or export obligations apply.
Broadcasting	26%	Government	Subject to guidelines issued by the Ministry of Information and Broadcasting.
	49%	Automatic	Direct-to-home broadcasting and mobile TV. TV channels, irrespective of ownership or management control, have to up-link from India and comply with the broadcast code issued by the Ministry of Information and Broadcasting.
	49-74%	Government	
	26%	Government	News and current affairs channels with up-linking from India, including portfolio investment.
	100%	Government	Entertainment and general interest channels.
	49%	Government	Establishing up-linking hub/teleports. (http://pib.nic.in/newsite/PrintRelease.aspx?relid=87787)
Business Services	100%	Automatic	Data processing, software development, and computer consultancy services. 100% FDI is allowed for call centers and business processing outsourcing (BPO) organizations, subject to certain conditions.
Cable Network	49%	Government	Approval is required, as articulated in the Cable Television Networks Rules, 1994.
Coal/Lignite	100%	?	Setting up or operating power projects and coal mines for captive consumption.
	100%	Automatic	Coal processing plants, so long as the equity recipient does not sell processed coal on the open market.
	100	Automatic	Mining of coal or lignite for captive consumption.
Coffee and Rubber Processing and Warehousing	100%	Automatic	
Commodity Exchanges	49% (FDI + FII/FPI)	FII/FPI - Automatic FDI - Government	Registered FII/FPI investments are through the automatic route and limited to 23%. FDI investment is limited to 26% through the government route. No foreign investor or entity may hold more than 5% equity. http://dipp.nic.in/English/Policies/FDI_Circular_2014.pdf
Construction	100%	Automatic	Permitted in the construction and maintenance of

Development Projects			roads, highways, vehicular bridges, tunnels, ports and harbors, townships, housing, commercial buildings, resorts, educational institutions, and infrastructure. (NRIs are not authorized to own land). Subject to certain minimum capitalization and minimum area-of-development requirements. Since 2010, the minimum capitalization requirement has been $10 million for wholly-owned subsidiaries and $5 million for joint ventures with Indian partners. In the case of serviced housing plots, a minimum of 10 hectares (25 acres) must be developed, while in the case of construction-development projects, the minimum built-up area must be 50,000 square meters (approx. 538,000 square feet). At least 50% of the project must be developed within five years from the date of obtaining all statutory clearances.
Credit Information Companies	74% (FDI+FII/ FPI)	Government	Requires RBI approval. FII/FPI investment permitted up to 24% within an overall limit of 74% for foreign investment. No single investor/entity can own shares worth more than 10% of total paid-up capital. Furthermore, any acquisition in excess of 1% requires mandatory reporting to RBI.
Courier Services (Other Than Distribution of Letters)	100%	Government	
Defense and Strategic Industries	26% 49% in certain cases	Government	Subject to a DIPP license in consultation with the Defense Ministry. Production of arms and ammunition is subject to additional FDI guidelines. Purchase and price preferences may be given to public sector enterprises as per Department of Public Enterprise guidelines. The licensee must establish adequate safety and security procedures once the authorization is granted and production begins. Proposals for FDI beyond 26% require further approvals and must result in Indian access to “state-of-the-art” technology.
Drug/Pharmaceuticals	100%	Automatic	Green-field investments.
	100%	Government	Brown-field investments.
Business to Business E-	100%		Business-to-business e-commerce under the government approval route. No FDI is allowed in

commerce			retail e-commerce.
Education Services	100%	Automatic	In practical terms, restrictions limit investments to education service providers rather than educational institutions. The Foreign Educational Institutions (Regulation of Entry and Operations, Maintenance of Quality and Prevention of Commercialization) Bill proposed in the previous Parliament would, if passed, allow foreign universities to establish campuses independently without working with an Indian partner institution, but with conditions attached.
Food Processing	100%	Automatic	For fruit and vegetable processing, dairy products, meat and poultry products, fishing and fish processing, grains, confections, consumer and convenience foods, soft bottling, food parks, cold chain, and warehousing. The exception is for alcoholic beverages and beer, where a license is required.
	100%	Automatic	For cold storage facilities.
Hazardous Chemicals	100%	Automatic	A DIPP license is required under the provisions of the Industries (Development and Regulation) Act, 1951.
Health Services	100%	Automatic	
Hotels, Tourism, and Restaurants	100%	Automatic	
Real Estate	None		NRIs who obtain "Overseas Citizenship of India" status are allowed to own property and invest as if they were citizens. NRIs may invest up to 100% FDI with prior government approval in the real estate sector and in integrated townships including housing, commercial premises, resorts, and hotels, as well as in projects such as the manufacture of building materials.
Industrial explosives	100%	Automatic	Manufacturers of explosives or materials deemed by the authorities as explosives are required to obtain a license to set up factory operations from the state government's industry commissioner.
Industrial Parks	100%	Automatic	The industrial park must include at least ten units with no single unit occupying more than 50% of the area, and at least 66% of the area made available for industrial activity.
Information Technology	100%	Automatic	For software and electronics development. No FDI is allowed in companies that develop software for the aerospace and defense sectors.

Insurance	26%	Automatic	Investors must obtain a license from the Insurance Regulatory and Development Authority (IRDA).
Infrastructure Companies in the Securities Market (i.e., stock exchanges, depositories, and clearing corporations)	26%	Government	Over and above the FDI limit, FII's are allowed to buy shares through the secondary markets up to 23% of the paid-up capital through the automatic route. FIIs are only allowed to invest via secondary markets.
Legal services	None		In March 2010, a Chennai-based attorney, on behalf of the Association of Indian Lawyers, filed a writ of petition in the Madras High Court against 31 foreign law firms, the Bar Council of India, and the Ministry of External Affairs to prevent foreign law firms from practicing in India. The Madras High Court has repeatedly delayed a decision in order to give the court more time to consult with foreign firms. The outcome of the case remains unresolved and the future of foreign law firms practicing in India remains uncertain. The petitioner in the Madras case and other opponents of foreign investment in legal services—with a particular focus on U.S. attorneys—insist foreign firms should be barred from practicing law in India until there is reciprocity in the U.S. market. Law firms from the UK and other countries have found alternatives to the ban on FDI.
Lottery, Gambling, and Betting	None		
Mining	100%	Automatic	For diamonds and precious stones, gold/silver, and other mineral mining and exploration.
	100%	Government	For mining and mineral separation of titanium minerals and ores.
Pensions	26%	Automatic	The Parliament passed the Pension Fund Development and Regulatory Authority (PFDRA) Act that lifted the ban on FDI. It is now linked to the Insurance Amendment Act for a further increase in the permitted FDI level.
Petroleum	100%	Automatic (tax incentives, production sharing, and	Discovered small fields; refining with domestic private company; petroleum product/pipeline; petrol/diesel retail outlets; LNG pipeline; exploration; investment financing; market study and formulation.

		other terms and conditions apply)	Refining by public sector company only; disinvestment is prohibited.
Pollution Control	49%	Government	For equipment manufacture, consulting, and management services.
Ports and Harbors	100%	Automatic	For construction and manufacturing of ports and harbors. Security clearances from the Ministry of Defense are required for all bidders on port projects, and only the bids of cleared bidders will be considered.
Power	100%	Automatic	For the power sector (except atomic energy) which includes generation, transmission, and distribution of electricity, and power trading. FDI up to 49% is permitted in power exchanges; such foreign investment would be subject to an FDI limit of 26% and an FII limit of 23% of the paid-up capital. For power exchanges, FII investment is permitted under the automatic route and FDI is permitted under the government approval route.
Print Media	26%	Government	Printing science and technology magazines/journals.
	100%	Government	Publication of facsimile editions of foreign newspapers.
Professional services	100%	Automatic	For most consulting and professional services, including accounting services.
Research and Development Services	100%	Automatic	
Railways	None		Train operations.
			Auxiliary areas such as rail track construction, ownership of rolling stock, provisioning of container services, and container depots.
	100%	Government	Building of “fixed railway infrastructure” including railway lines for the purpose of increasing port connectivity with industrial and logistical parks, mines, and other parts of the country.
	100%	Government	
Retailing (single brand)	100%	Government	Investors are required to meet a 30% local content requirement sourced from domestic small and medium enterprises (SMEs).

<table>
<tr><td></td><td></td><td></td><td>(http://pib.nic.in/newsite/PrintRelease.aspx?relid=87766).</td></tr>
<tr><td>Retailing (multi-brand)</td><td>51%</td><td>Government</td><td>Investors are required to seek: 1) state government approval, 2) open locations in cities with a population greater than a million residents, 3) commit 50% of first $100 million invested into developing backend infrastructure, and 4) source 30% of the total value of the products sold from Indian SMEs.</td></tr>
<tr><td>Roads</td><td>100%</td><td>Automatic</td><td>Including highways, and mass rapid transport systems.</td></tr>
<tr><td>Satellites</td><td>74%</td><td>Government</td><td>For the establishment and operation of satellites.</td></tr>
<tr><td>Security Agencies</td><td>49%</td><td>Government</td><td></td></tr>
<tr><td>Shipping</td><td>74%</td><td>Automatic</td><td></td></tr>
<tr><td>Storage and Warehouse Services</td><td>100%</td><td>Automatic</td><td>Including for cold storage warehousing of agricultural products.</td></tr>
<tr><td rowspan="2">Telecommunications</td><td>74%</td><td>Government</td><td rowspan="2">All telecom services including Telecom Infrastructure Providers Category-I, viz. Basic, Cellular, Unified Access Services, Unified license(Access services),Unified License, National/ International Long Distance, Commercial V-Sat, Public Mobile Radio Trunked Services (PMRTS), Global Mobile Personal Communications Services (GMPCS), All types of ISP licenses, Voice Mail/Audiotex/UMS, Resale of IPLC, Mobile Number Portability services, Infrastructure Provider Category – I (providing dark fiber, right of way, duct space, tower) except Other Service Providers.</td></tr>
<tr><td>100%</td><td>Automatic</td></tr>
<tr><td>Trading/Wholesale</td><td>100%</td><td>Automatic</td><td>For exporting, bulk imports with export warehouse sales, and cash-and-carry wholesale trading. A wholesaler/cash-and-carry trader cannot open a retail shop to sell directly to consumers.</td></tr>
</table>

*Compiled from official GOI publications and regulation

2. Conversion and Transfer Policies

The Indian rupee lost nearly 13% of its value in the year 2013, a trend similar to that of currencies in other emerging economies. While the shock to currency values was largely driven by external factors and speculation, the rupee has suffered steady depreciation over the past two years in line with slowing economic growth. The rupee started the year at 54.83 to the U.S. dollar, dropped by about 25% to 68.36 in August 2013, and closed the year at 61.90. Various measures were announced by the government and the RBI to contain the outflow of capital outflow and curb the depreciation. The government increased the import duty on gold — India's second largest import after oil which helped to narrow the large current account deficit. The RBI announced that Indians could remit only $75,000 out of the country per year, down from a previous limit of $200,000. As the rupee stabilized, RBI in June 2014 enhanced this limit to $125,000. Furthermore, Indian corporations, which were previously allowed to invest four times their net worth overseas were limited to investment equal to their net worth; however, the RBI also reinstated this to the original four times limit in September 2013.

Foreign Exchange
The rupee is fully convertible for current account transactions, which are regulated under the Foreign Exchange Management Rules, 2000. RBI approval is required for acquiring foreign currency above certain limits for specific purposes (e.g., foreign travel, consulting services, and foreign studies). Capital account transactions are open for foreign investors, but subject to various clearances. Conversion restrictions include the following:

NRI investment in real estate may be subject to a "lock-in" period;

RBI approval is needed to remit the proceeds of sales of assets;

Foreign partners may sell their shares to resident Indian investors without RBI approval, provided the shares were eligible to be repatriated out of India;

Global Depository Receipts and American Depository Receipts proceeds from abroad may be retained without restrictions except for an end-use ban on investment in real estate and stock markets; Foreign Investment Promotion Board (FIPB) approval is also required in some cases. Up to $1 million per year may be remitted for transfer of assets into India;

Foreign institutional investors (FIIs) may transfer funds from rupee to foreign currency accounts and vice-versa at market exchange rates. They may also repatriate capital, capital gains, dividends, interest income, and any compensation from the sale of rights offerings, net of all taxes, without RBI approval. The RBI authorizes automatic approval to Indian industries for payments associated with foreign collaboration agreements, royalties, and lump sum fees for technology transfers and payments for the use of trademarks and brand names without limits. Royalties and lump sum payments are taxed at 10%.

Remittance Policies
Profits and dividend remittances, as current account transactions, are permitted without RBI approval; but income tax payment clearance is required. Transactions are usually processed without delay;

Foreign banks may remit profits and surpluses to their headquarters, subject to compliance with the Banking Regulation Act, 1949. Banks are permitted to offer foreign currency-rupee swaps without limits to enable customers to hedge their foreign currency liabilities. They may also offer forward coverage to non-resident entities on FDI deployed after 1993.

3. Expropriation and Compensation

India's image as an investment destination was tarnished in 2010 and 2011 by high profile graft cases in the construction and telecom sectors, exacerbating existing private sector concerns about the government's uneven application of its policies. In October 2012, India's Supreme Court cancelled 122 telecom licenses and the authorized spectrum held by eight operators under what came to be known as the 2G scandal. The decision impacted both domestic and foreign telecom operators. Some of the operators affected by this cancellation stated in media that they may exit India rather than wait for the issuance of new market rules. The U.S. Government continues to urge the Government of India to foster an attractive and reliable investment climate by reducing barriers to investment and minimizing bureaucratic hurdles for businesses. India would benefit from providing a secure legal and regulatory framework for the private sector, as well as institutionalized dispute resolution mechanisms that expedite resolution of commercial disagreements.

4. Dispute Settlement

Legal System, Specialized Courts, Judicial Independence, Judgments of Foreign Courts
Foreign investors frequently complain about a lack of "sanctity of contracts." According to a World Bank Study on Ease of Doing Business, it takes nearly four years on average to resolve a commercial dispute in India, the third longest average rate in the world (http://www.doingbusiness.org/data/exploreeconomies/india?topic=enforcing-contracts#resolving-insolvency). Indian courts are understaffed and lack the technology necessary to resolve an enormous backlog of pending cases—estimated by the UN at 30-40 million cases nationwide (http://www.refworld.org/docid/51ab45674.html).

In an attempt to align its adjudication of commercial contract disputes with the rest of the world, India enacted the Arbitration and Conciliation Act based on the United Nations Commission on International Trade Law model in 1996. Judgments of foreign courts are enforceable under multilateral conventions like the Geneva Convention. The government established the International Center for Alternative Dispute Resolution (ICADR) as an autonomous organization under the Ministry of Law and Justice to promote the settlement of domestic and international disputes through alternate dispute resolution. The World Bank funded ICADR to conduct training for mediators in commercial disputes settlement.

India is a member of the New York Convention of 1958 on the recognition and enforcement of foreign arbitral awards. Despite this, Indian firms have filed cases with Indian courts in several instances to delay paying the awards granted in arbitration to the U.S. party. Seven cases are currently pending, the oldest of which dates to 1983. India has yet to become a member of the International Center for the Settlement of Investment Disputes. The Permanent Court of Arbitration (PCA, The Hague), and the Indian Law Ministry agreed, in 2007, to establish a regional PCA office in New Delhi to provide an arbitration forum to match the facilities offered at The Hague at a far lower cost. Since then, no further progress has been made in establishing the office. In November 2009, the Department of Revenue's Central Board of Direct Taxes established eight dispute resolution panels (DRPs) across the country to settle the transfer-pricing tax disputes of domestic and foreign companies.

Bankruptcy
According to the World Bank, it takes creditors an average of 4.3 years to recover funds from an insolvent company in India. The Companies Act adopted in 2013 will introduce major changes in bankruptcy law, both in the procedures and the institutions involved; the law will not, however, provide for Chapter 11-type bankruptcy provisions, as many small business owners had urged. Under the current law, the Board for Industrial and Financial Reconstruction (BIFR) is responsible for all efforts to revive “sick” companies, while the high courts are responsible for overseeing their liquidation. Under the new law, both functions will fall to a new National Company Law Tribunal (NCLT) composed of legal and technical experts, and presided over by a high court judge with at least five years of experience. The government will also appoint an appellate tribunal for hearing appeals of NCLT decisions, while the Supreme Court will remain the final arbiter of the Companies Act. Under the new law, a “sick” company is one that can no longer pay its debts (as opposed to the old definition, in which sick companies were those that had suffered a loss of 50% of their net worth). Though the Companies Act represents a step forward in bankruptcy law, the new system as yet remains untested.

5. Performance Requirements and Investment Incentives

Performance Requirements
The government is currently pursuing local content requirements in specific areas including information and communications technology (ICT), electronics, and clean energy to increase the manufacturing sector’s contribution to GDP. Foreign investors in India express concern about these policies and the negative impact they may have on India’s investment climate, especially if the GOI applies local content requirements to the private sector. The GOI has already issued finalized notifications on local content requirements for ICT equipment in government procurement, but issued guidance in December 2013 to keep them out of private sector transactions (http://commerce.nic.in/whatsnew/National_Manfacturring_Policy2011.pdf).

Companies are free to select the location of their industrial projects, but foreign investors complain that difficulties in land acquisition and uneven zoning regulations prevent them from establishing factories in their preferred location. The Ministry of Commerce and Industry, in recognition of these difficulties, has set aside land for 14 integrated industrial townships called National Investment and Manufacturing Zones (NIMZs). NIMZs offer investors a one-stop approval process for investment, state-of-the-art infrastructure, pre-zoned land for industrial use, and other tax benefits. Seven basic No Objection Certificates are required for almost all investments and projects:

1. Tree Authority
2. Storm Water and Drain Department
3. Sewerage Department
4. Hydraulic Department
5. Environmental Department (concerned with debris management)
6. Traffic and Coordination Department
7. Chief Fire Officer (fire department clearance)

Labor

Foreign nationals executing projects and/or contracts in India are required to obtain "employment" visas. All foreigners (including foreigners of Indian origin) visiting India for more than 180 days—whether carrying a student visa, medical visa, research visa or employment visa—are required to register with the Foreigners Regional Registration Officer (FRRO) in Delhi or the Foreigners Registration Officer (FRO) in their jurisdiction within 14 days of their arrival.

The employment of foreigners for periods longer than 12 months requires the approval of the Ministry of Home Affairs (MHA). Recently, MHA eased the rule requiring foreign nationals traveling to India on a multiple-entry Indian tourist visa to wait a minimum of two months between visits to India, eliminating it entirely for most travelers.

The Department of Telecommunications under the Ministry of Communications and Information Technology closely monitors the employment of foreign nationals in the telecom sector. Senior leadership and managers of security operations, among others, are required to be citizens of India or obtain a security clearance from the Ministry of Home Affairs (MHA). More details on this and related rules are available on the MHA website: http://mha.nic.in/foreigDiv/pdfs/TourVISA-Schm.pdf.

Investment Incentives

The government provides a 10-year tax holiday for knowledge-based start-ups. Many states also use local tax incentives to attract investment, and these benefits vary by state and by sector.

In August 2009, MOCI released its foreign trade policy for fiscal years 2009-14, which highlighted various incentives for exporters with a particular emphasis on labor intensive sectors such as textiles, processed foods, leather, gems and jewelry, tea, and handloom items. The duty credit extended to exporters under this scheme is 3% of the free-on-board (FOB) export value. Exporters are also allowed to import machinery and capital goods duty free. More information can be found here: http://dgft.gov.in/

Taxation

Recent government efforts to strengthen general anti-avoidance rules (GAAR) and expand tax authorities' purview to collect taxes retrospectively on the indirect transfer of shares have created concerns and uncertainties for foreign investors. A coordinated international effort to dissuade the government from implementing these laws in 2012 resulted in a reprieve that may be extended to 2016. If implemented as passed in the 2012 budget, the GAAR and retrospective tax rules would have resulted in large tax payments by companies like Vodafone to the government.

Private industry remains hopeful the government will follow through with promises to overhaul India's direct and indirect tax regime. In 2009, the Government of India announced its intention to implement a goods and services tax (GST) and streamline its Direct Tax Code DTC. GST seeks to standardize taxes levied at all points in the supply chain concurrently by both the central and state governments. A GST would harmonize India under one tax regime by eliminating national and state value-added taxes (VATs), central excise taxes, and a number of other state-level taxes. Parliamentary gridlock and uneven support from state governments have stalled progress. Many economists consider GST one of the most critical economic reforms the government could take, estimating that it could increase GDP growth by up to 2%.

6. Right to Private Ownership and Establishment

Foreign and domestic private entities are permitted to establish and own businesses in trading companies, subsidiaries, joint ventures, branch offices, project offices, and liaison offices, subject to certain sector-specific restrictions. The government does not permit foreign investment in real estate, other than company property used to conduct business and for the development of most types of new commercial and residential properties. FIIs can now invest in initial public offerings (IPOs) of companies engaged in real estate. They can also participate in pre-IPO placements undertaken by such real estate companies without regard to FDI stipulations.

To establish a business, various government approvals and clearances are required including incorporation of the company and registration under the State Sales Tax Act and Central and State Excise Acts. Businesses that intend to build facilities on land they own are also required to take the following steps: register the land; seek land use permission if the industry is located outside an industrially zoned area; obtain environmental site approval; seek authorization for electricity and financing; and obtain appropriate approvals for construction plans from the respective state and municipal authorities. Promoters also need to obtain industry-specific environmental approvals in compliance with the Water and Air Pollution Control Acts. Petrochemical complexes, petroleum refineries, thermal power plants, bulk drug makers, and manufacturers of fertilizers, dyes, and paper, among others, must obtain clearance from the Ministry of Environment and Forests.

7. Protection of Property Rights

Real Property

The Foreign Exchange Management Regulations and the Foreign Exchange Management Act set forth the rules that allow foreign entities to own immoveable property in India and convert foreign currencies for the purposes of investing in India. These regulations can be found at http://rbi.org.in/scripts/BS_FemaNotifications.aspx?Id=175 and http://www.rbi.org.in/scripts/fema.aspx. Foreign investors operating under the automatic route are allowed the same rights as a citizen for the purchase of immovable property in India in connection with an approved business activity. India ranks 92 out of 189 for ease of registering property in the World Bank's Doing Business Report (http://www.doingbusiness.org/rankings).

Informal Transactions

According to a 2013 report by Credit Suisse, half of India's total GDP and 90% of its employment are informal. According to ILO figures, India has the largest percentage of any country's total work force employed informally (http://laborsta.ilo.org/applv8/data/INFORMAL_ECONOMY/2012-06-Statistical%20update%20-%20v2.pdf).

In India, a registered sale deed does not confer title ownership and is merely a record of sales transaction. It only confers presumptive ownership, which can still be disputed. Actual title is established through a chain of historical transfer documents that originate from the land's original established owner. Accordingly, before purchasing land, buyers should examine all the link documents that establish title from the original owner. Many owners, particularly in urban areas, do not have access to the necessary chain of documents. This increases uncertainty and risks in land transactions.

Intellectual Property Rights

India has adequate copyright laws, but enforcement is weak and piracy of copyrighted materials is widespread. India is a party to the Berne Convention, UNESCO, and the World Intellectual Property Organization (WIPO). In 2012, India amended its copyright laws and signed WIPO's Beijing Treaty on the Protection of Audiovisual Performances. However, the copyright law still contains several broad exceptions for personal use and "fair dealing," weak protection against unlawful circumvention of technological protection measures, and lacks an effective notice and take-down system for online infringing materials. India was listed on the Priority Watch List in USTR's Special 301 report for 2013. The country hosts six "Notorious Markets" according to USTR latest report of February 2014. These include Nehru Place and Gaffar Markets in New Delhi; Mannish Market and Lamington Road in Mumbai, Cheney Trade Center and Hong Kong Bazaar in Hyderabad (http://www.ustr.gov/about-us/press-office/press-releases/2014/February/Notorious-markets-list-focuses-fight-against-global-piracy-and-counterfeiting).

India updated its trademark law in recent years to bring it closer to international standards for filing and granting trademarks. It is worth noting that India acceded to and has implemented the Madrid Protocol as of July 2013. In 2014, the WIPO plans to conduct capacity building programs throughout the country to educate trademark professionals on the Madrid system. WIPO has also been recognized as an International Search Authority/International Preliminary Examination Authority (ISA/IPEA) under the Patent Cooperation Treaty and began accepting applications in October 2013.

Pharmaceutical and agro-chemical products can be patented in India. Plant varieties are protected by the Plant Varieties and Farmers' Rights Act. Software embedded in hardware may also be patented. However, the interpretation and application of the patent law lacks clarity, especially with regard to several important areas such as compulsory licenses, pre-grant opposition provisions, and defining the scope of patentable inventions (e.g., whether patents are limited to new chemical entities rather than incremental innovation). In 2012, India issued its first compulsory license for a patented pharmaceutical. In the case of Natco vs. Bayer, an Indian generics company sought and was granted a compulsory license under India's laws to make a generic version of Bayer's liver and kidney cancer drug, Nexavar. Indian law does not protect against the unfair commercial use of test data or other data submitted to the government during the application for market approval of pharmaceutical or agro-chemical products. The Pesticides Management Bill (2008), which would allow data protection of agricultural chemical provisions, stalled in the previous Parliament.

Indian law provides no statutory protection of trade secrets. The Designs Act meets India's obligations under WTO/TRIPS (Trade-Related Aspects of Intellectual Property Rights) for industrial designs. The Designs Rules, which detail classification of design, conform to the international system and are intended to take care of the proliferation of design-related activities in various fields. India's Semiconductor Integrated Circuits Layout Designs Act is based on standards developed by WIPO; however, this law remains inactive due to the lack of implementing regulations.

For additional information about treaty obligations and points of contact at local IP offices, please see WIPO's country profiles at http://www.wipo.int/directory/en/.

Resources for Rights Holders:
Contact at U.S. Embassy
Kalpana Reddy
IP Attaché
+91-11-2419-2334
Kalpana.reddy@trade.gov

Country/Economy resources:
Madhvi Kataria
American Chamber of Commerce in India (AMCHAM)
Associate Director
madhvi.kataria@amchamindia.com
2652 5201 / 02; 2652 5203; 98102-02213

You can find a list of lawyers at the U.S. Embassy website:
http://newdelhi.usembassy.gov/mobile//service/other-citizen-services/judicial-assistance.html

8. Transparency of the Regulatory System

Despite progress, the Indian economy is still constrained by conflicting rules and an overly complex bureaucratic system that has broad discretionary powers. India has a decentralized federal system of government in which states possess extensive regulatory powers. Regulatory decisions governing important issues such as zoning, land-use, and the environment vary between states. Opposition from labor unions and political constituencies slows the pace of land acquisition, environmental clearances, investment policy, and labor rights.

The central government has been successful in establishing independent and effective regulators in telecommunications, securities, insurance, and pensions. The Competition Commission of India (CCI), India's antitrust body, has begun to take up its enforcement powers and is now taking cases against cartelization and abuse of dominance, as well as conducting capacity-building programs for bureaucrats and company officials. In December 2012, the Government of India introduced amendments to the Competition Act, 2002 that would empower CCI to order search and seizure operations. Currently the commission's investigations wing is required to seek the approval of the local chief metropolitan magistrate for a search and seizure operation. In June 2011, the government enacted rules governing mergers and acquisitions. The Securities and Exchange Bureau of India (SEBI) enforces corporate governance and is well regarded by foreign institutional investors. The RBI, which regulates the Indian banking sector, is also held in high regard. Some Indian regulators, including SEBI and the RBI, engage with industry stakeholders through periods of public comment, but the practice is not consistent across the government.

The Companies Act adopted in 2013 brings India's corporate governance rules in line with international standards with regards to transparency and audit procedures. The law will require more time, however, for the creation of new institutional structures.

9. Efficient Capital Markets and Portfolio Investment

In Indian rupee terms, the S&P BSE SENSEX index — India's benchmark 30-share index — was up 9% in 2013, compared with a 25%gain in 2012. However, the S&P BSE dollar index 30, a U.S. dollar linked version of SENSEX, was down 4% due to the rupee's depreciation. The market capitalization of the Bombay Stock Exchange (BSE) was $1.09 trillion on December 31, 2013. Despite introduction of a new stock exchange, MCX Stock Exchange, the National Stock Exchange and BSE account for 100% of total Indian stock market turnover. Spot prices for index stocks are usually market-driven and settlement mechanisms are in line with international standards. Unlike Indian equity markets, local debt and currency markets are relatively underdeveloped with limited participation from foreign investors. Indian businesses receive the majority of their financing through the banking system, not capital markets. Although private placements of corporate debt have increased, the size of India's corporate bond market is small (equivalent to only 5% of GDP) and daily trading volume remains thin.

Foreign investment in India can be made through various routes, including: FDI, the Portfolio Investment Scheme (PIS), and venture capital investment. The PIS route provides access to a wide range of foreign portfolio investors, including FIIs, FII sub-accounts, Qualified Foreign Investors (QFIs), and Non NRIs. FIIs are divided into two categories: regular FIIs, which invest in both equity and debt; and 100% debt-fund FIIs. Eligible FIIs include: overseas pension funds, mutual funds, banks, foreign central banks, sovereign wealth funds, endowment and university funds, foundations, charitable trusts and societies, insurance companies, re-insurance companies, foreign government agencies, international and multilateral organizations, broad-based funds, asset management companies, investment managers, and hedge funds. FIIs must be registered and regulated by a recognized authority in their home country; as a result, many U.S.-based hedge funds cannot register as FIIs. "Sub-account" refers to any person residing outside India on whose behalf investments are made within India by an FII. These include foreign individuals or corporates, broad-based funds, proprietary funds under the name of a registered FII, endowment and university funds, charitable trusts and societies. NRIs are not eligible to apply as sub-accounts.

FIIs and sub-accounts must register with the SEBI to invest in India's capital markets. As of December 2013, there were 1,739 FIIs and 6,394 sub-accounts registered with SEBI. FIIs purchased and sold equities worth $20.10 billion in 2013; however, foreign investors repatriated $8 billion from the local bond market in 2013. As a result, net inbound investment by FIIs, in both debt and equity markets, only reached $1.2 billion. While FIIs are allowed to invest in all listed securities traded in India's primary and secondary markets (as well as unlisted securities, including government and corporate debt, mutual funds, and commercial paper), India does impose various restrictions based on investment type, including quantitative restrictions on debt inflows.

On April 1, 2013, the government announced rationalization of FII debt investment categories, in an attempt to attract more stable foreign debt capital inflows. The first category consists of government securities of $25 billion, which merges the $10 billion investment limit in short-term government paper with the $15 billion limit in long-term government securities. Subsequently, the government expanded this limit to $30 billion, earmarking an additional $5 billion for long-term investors, including: sovereign wealth funds, multilateral agencies, endowment funds, insurance funds, pension funds and foreign central banks. The second category, for corporate debt, has a limit of $51 billion, following the merger of separate categories for infrastructure and non-infrastructure bonds. In September, 2013 SEBI further simplified foreign investors' direct access to the local debt market by eliminating its debt limit auction system.

Indian equity markets have few restrictions on capital flows, but do limit foreign ownership stakes. FIIs and sub-accounts can own up to 10% and 5%, respectively, of the paid-up equity capital of any Indian company. Aggregate investment in any Indian company by all FIIs and sub-accounts is capped at 24%, unless specifically authorized by that company's board of directors. The short-selling of shares is permitted to all investor classes, except NRIs, including FIIs, domestic institutional and retail investors that are registered with SEBI. However, investors must maintain a minimum margin requirement.

FIIs are not permitted to participate in the new currency futures markets. In order to end speculative trades in the Indian rupee that take place in the offshore non-deliverable forwards (NDF) market, the RBI plans to allow FIIs and NRIs to trade in the currency futures market. This will both deepen the domestic currency market and bring it under the purview of domestic regulators. Foreign firms and persons are prohibited from trading in commodities. SEBI allows foreign brokers to work on behalf of registered FIIs. FIIs can also bypass brokers and deal directly with companies in open offers. FII bank deposits are fully convertible and their capital, capital gains, dividends, interest income, and any compensation from the sale of rights offerings, net of all taxes, may be repatriated without prior approval. NRIs are subject to separate investment limitations. They can repatriate dividends, rents, and interest earned in India and their specially designated bank deposits are fully convertible.

QFIs are allowed to invest in the equity and debt schemes of mutual funds and equities. QFIs are defined as individuals, groups, and associations that reside in a Financial Action Task Force (FATF)-compliant foreign country, a country that has signed onto the International Organization of Securities Commissions' (IOSCO) multilateral Memorandum of Understanding, or a country that has signed a bilateral MOU with SEBI. QFIs which meet prescribed know your customer (KYC) requirements are permitted to invest through SEBI registered Qualified Depository Participants. The limits on individual and aggregate investment for QFIs are 5% and 10% of the company's paid-up capital, respectively, subject to sectorial caps. These limits are over and above the cap earmarked for FIIs and NRIs, who can invest directly in the Indian equity market. QFIs can also invest in listed, or to-be-listed, corporate debt and mutual funds.

Foreign venture capital investors (FVCIs) must register with SEBI to invest in Indian firms. They can also set up domestic asset management companies to manage funds. All such investments are allowed under the automatic route, subject to SEBI and RBI regulations and FDI policy. FVCIs can invest in many sectors including software business, information technology, pharmaceutical and drugs, bio-technology, nano-technology, biofuels, agriculture, and infrastructure.

Foreign Portfolio Investors (FPI): In October 2013, SEBI approved combining existing FIIs, sub-accounts, and QFIs into a new class termed as Foreign Portfolio Investors (FPIs). The FPI regulations attempt to provide uniform entry norms and simplify compliance requirements for all FPIs in India. FPIs are required to register with SEBI-authorized Designated Depository Participants and to meet risk-based KYC norms.

Companies incorporated outside India can raise capital in India's capital market through the issuance of Indian Depository Receipts (IDRs). These transactions are subject to RBI and SEBI monitoring per conditions outlined at: www.rbi.org.in/Scripts/NotificationUser.aspx?Id=5185&Mode=0. Companies are required to have pre-issued, paid-up capital and free reserves of least $100 million, as well as an average turnover of $500 million during the three financial years preceding the issuance. In addition, the company must have been profitable for at least five years preceding the issuance, declaring dividends of not less than 10% each year and maintaining a pre-issue debt-equity ratio of no more than 2:1. Standard Chartered Bank, a British bank which was the first foreign entity to list in India in June 2010, is the only foreign firm to have issued IDRs. On March 1, 2013, SEBI issued a detailed framework a detailed framework for conversion of IDRs into equity shares (http://www.sebi.gov.in/cms/sebi_data/attachdocs/1362136042656.pdf).

External commercial borrowing (ECB or direct lending to Indian entities by foreign institutions) is allowed if the funds will be used for outward FDI or domestically for investment in industry, infrastructure, hotels, hospitals, or software, self-help groups or microfinance activities or to buy shares in disinvestment of public sector entities (http://www.rbi.org.in/scripts/BS_ViewMasCirculardetails.aspx?id=8101). ECBs may not be used for on-lending, investments in financial assets, or acquiring real estate or a domestic firm. In September 2013, the RBI permitted use of ECBs with minimum average maturity of seven years for financing general corporate purposes subject to the condition that the minimum paid-up equity of 25% should be held directly by the lender. As of July 2013, the all-in-costs ceilings for ECBs with an average maturity period of three to five years was capped at 350 basis points over six month LIBOR and 500 points for loans maturing after five years. Indian companies have borrowed close to $34.12 billion in foreign currency through ECBs and $400 million through FCCBs in 2013.

Takeover regulations require disclosure upon acquisition of shares exceeding 5% of total capitalization. SEBI regulations require that any acquisition of 15% or more of the voting rights in a listed company will trigger a public offer. The public offer made by the acquiring entity (i.e., an individual, company, or other legal entity) must be for at least 20% of the company's voting rights. Since October 2008, an owner holding between 55% and 75% of voting rights can acquire additional voting rights of up to 5% without making a public offer (i.e., creeping acquisition). However, the buyer can make a creeping acquisition only by open market purchases and not through bulk/block/negotiated deals or preferential allotment. Furthermore, subsequent to this acquisition, the buyer's total shares should not cross the 75% threshold. RBI and FIPB clearances are required to assume a controlling stake in an Indian company. Cross shareholding and stable shareholding are not prevalent in the Indian market. SEBI regulates hostile takeovers.

Banking System

Banking in India is largely dominated by public sector banks (PSB). There are currently 27 PSBs in India, the largest of which is the State Bank of India (SBI). In 2012-2013 the PSBs held a 77% share of total deposits versus 13% for private banks (including 4% by foreign banks). PSBs are not technically subject to any excess regulations over commercial banks, neither in terms of lending practice nor deposits. They do, however, have their CEOs, upper management, and a number of their board of directors appointed by the government, making the government extremely influential in credit decisions. As of the first quarter of 2014, non-performing assets (NPA) accounted for approximately 4% of total banking system assets, and 5% of PSB assets. The RBI in April 2014 proposed a set of recommendations to the Ministry of Finance for the government to reduce its ownership stake and control of PSBs.

Hostile Takeovers

Takeover regulation in India applies equally to domestic and foreign companies. The regulations do not recognize any distinct category of hostile takeovers. RBI and FIPB clearances are required to acquire a controlling stake in Indian companies. Takeover regulations require disclosure on acquisition of shares exceeding 5% of total capitalization. As per SEBI's Substantial Acquisition of Shares and Takeovers (Amendment) Regulations, 2013, acquisition of 25% or more of the voting rights in a listed company triggers a public offering of an additional 26% stake at least. Under the creeping acquisition limit, the acquirer holding 25% or more voting rights in the target company can acquire additional shares or voting rights up to 5% of the total voting rights in any financial year, up to a maximum permissible non-public shareholding limit of 75% generally. Acquisition of control over the target company, irrespective of shares or voting rights held by the acquirer, will trigger a mandatory open offer (http://www.sebi.gov.in/cms/sebi_data/commondocs/takeovernotifi_p.pdf and http://www.sebi.gov.in/cms/sebi_data/commondocs/sa_p.pdf).

10. Competition from State-Owned Enterprises

India's public sector enterprises (PSEs), both at the central and state levels, play an important role in the country's industrialization. As of December 31, 2013, 249 Central Public Sector Enterprises (CPSEs) (excluding 7 insurance companies) were operating in India. The number of profit making CPSEs increased steadily from 143 in 2004-05 to 160 in 2010-11. The manufacturing sector constitutes the largest component of investment in CPSEs (45%) followed by services (35%), energy (12%), and mining (8%). Foreign investments are allowed in the CPSEs in all four of these sectors. The Ministry of Heavy Industries and Public Enterprises' Department of Public Enterprises oversees CPSEs. CPSEs have boards of directors, wherein at least one third of the directors are externally appointed. The chairman, managing director, and directors are appointed independently. Companies can appoint private consultants, senior retired officers, and politically affiliated individuals to their boards. Detailed guideline on CPSE corporate governance can be found at http://164.100.47.134/intranet/CorporateSociaResponsbility.pdf

As of 2011, the government had granted five CPSEs in the energy and mining and metal manufacturing and products sectors — Indian Oil Corporation, NTPC Limited, Oil and Natural Gas Corporation, Coal India Limited (CIL) and Steel Authority of India — "Maharatna" status, which allows the management greater financial and operational freedom to expand the CPSEs' operations. Maharatna-designated CPSEs are allowed to invest up to $1.1 billion without government approval. The government plans to continue divesting itself of CPSEs, but intends to retain at least 51% ownership. Foreign investors are allowed to buy equity stakes in all CPSEs via IPOs.

Although there do not appear to be systemic advantages, CPSEs in some sectors enjoy pricing and bidding advantages over their private sector and foreign competitors. Over the last few years the government has increased the pace of its divestment from CPSEs, although there are no immediate plans to sell majority shares of CPSEs to the private sector or to list more than 50% of the shares on any of the Indian stock exchanges.

11. Corporate Social Responsibility

The passage of the Companies Act of 2013 marks a dramatic change in India's corporate social responsibility (CSR) policy, as the law requires a minimum level of CSR spending for large, profitable companies, as well the formation of a CSR committees by company boards of directors. Section 135 of the new legislation requires publicly-held companies to spend 2% of annual domestic profits on CSR-related activities. As of the law's enactment on April 1, 2014, domestic companies (including subsidiaries of multinational companies) generating approximately $200 million or more in sales, with a net worth greater than $100 million, and that have earned annual profits greater than $1 million for three consecutive years must issue a public report of their CSR expenditures or provide an explanation of why the company did not meet the minimum CSR spending requirements. The directors of companies that fail to report will be held personally accountable under the law and can face fines or imprisonment. This act is among the most prescriptive CSR laws in the world, but implementation remains untested. While there is widespread support for encouraging greater CSR activity in India, some companies have expressed concern about the lack of clarity and enforcement mechanisms provided in the law.

Until the implementing regulations for foreign companies operating in India have been clarified under the new Companies Law, foreign companies should also verify whether they are subject to the Ministry of Corporate Affairs' "National Voluntary Guidelines on Social, Environmental & Economic Responsibilities of Business," which encourages large companies to voluntarily spend 2% of their profits on CSR activities. The guidelines also require companies to disclose details regarding their CSR-related expenditures: http://164.100.47.134/intranet/CorporateSociaResponsbility.pdf .

India has a number of companies that are world-class leaders in CSR. For example, in 2012, Microsoft India was a semifinalist in the annual Secretary of State's Award for Corporate

Excellence because of its significant contributions to improving environmental awareness in India.

There are many NGOs working on CSR in India, including the following:

- ICCSR, the Indian Centre for Corporate Responsibility http://www.iccsr.org/
- Transparency International India (TII) http://www.transparencyindia.org/
- Samhita Social Ventures http://wwww.samhita.org

TII sponsors the Advocacy and Legal Action Center, which runs an Anti-Corruption Hotline and provides training sessions on corporate governance and CSR.

Shareholder Protection

Also under the Companies Act, 2013, company finances are subject to regular audits, and auditors change every five years. The company's chief financial officer is held personally accountable for the contents of financial statements. The law provides for sundry mechanisms to promote transparency and accountability, such as whistleblower protections. The legislation discourages the use of confusing corporate structures to avoid taxation, hide losses, or launder money. The law sets tough penalties for embezzlement, including mandatory jail time and hefty fines for offenders, and introduces class-action lawsuits, as well as provisions to prevent conflicts of interest and insider trading. The Act also establishes a new committee, the National Financial Reporting Authority, tasked with prescribing and monitoring accounting and auditing standards—a first in India.

12. Political Violence

In Andhra Pradesh, there were protests, strikes, and violence leading up to the creation of a separate Telangana state on June 2. Bombings in Hyderabad, Bangalore, and Bodh Gaya in 2013 disrupted tourism and business in those areas, but no U.S. companies were reported to have been affected. The CEO of a major direct selling company was arrested repeatedly in the past two years under the "Prize Chits and Money Circulation Schemes (Banning) Act," although the state in which it operates had previously given the company a green light.

Outbursts of violence related to insurgent movements continue in Jammu and Kashmir and some northeastern states. Maoist/Naxalite insurgent groups remain active in some eastern and central Indian states, including the rural areas of Bihar, Jharkhand, Chhattisgarh, West Bengal, and Orissa. Travelers to India are invited to visit the U.S. Department of State travel advisory website at: http://travel.state.gov/travel/cis_pa_tw/cis/cis_1139.html for the latest information and travel resources.

13. Corruption

While India's struggle against corruption has had a distinct influence on Parliament, media, and public debate over the last year, little concrete action, apart from the Parliament's passage of the Lokpal (Citizen's Ombudsman) bill, has been undertaken to curb the problem. Anti-corruption activist Arvind Kejriwal launched a series of corruption allegations against some of India's richest and most high-profile individuals, including a senior cabinet minister, family members of the ruling Congress party's leader, and the president of the leading opposition party. Kejriwal successfully launched the Aam Aadmi Party(AAP), whose key plank is anti-corruption. AAP made its spectacular debut during the December 2013 Delhi state assembly elections, receiving the second highest seat share and subsequently forming a short-lived (49 days) Delhi State government with Kejriwal as Chief Minister. U.S. firms continue to point toward corruption as the single greatest disincentive to doing business in India. In private conversations, foreign firms note the lack of transparency in rules of governance, extremely cumbersome official procedures, and excessive and unregulated discretionary powers afforded to politicians and lower-level bureaucrats as major obstacles to investing in India.

India is ranked 94 out of 177 countries surveyed in Transparency International's 2013 Corruption Perception Index, similar to the previous year's rank of 94 of 183. The legal framework for fighting corruption is addressed by the following laws: the Prevention of Corruption Act, 1988; the Code of Criminal Procedures, 1973; the Companies Act, 1956; the Indian Contract Act, 1872; the Prevention of Money Laundering Act, 2002; and the Companies Act, 2013. Anti-corruption laws amended since 2004 have granted additional powers to vigilance departments in government ministries at the central and state levels. The amendments elevated India's Central Vigilance Commission (CVC) to a statutory body. On December 18, 2013, Parliament enacted the Lokpal bill, which will create a national anti-corruption ombudsman that also requires states to create state-level ombudsmen within one year of the law's passage.

Although India is not a party to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, in May 2011, the government ratified the United Nations Convention against Corruption. Also in 2011, Prime Minister Manmohan Singh set an ambitious legislative agenda to curb corruption, including bills to protect whistleblowers, eliminate graft in government procurement, punish bribery of foreign public officials, address grievances against poor and corrupt delivery of government services, and amend the Prevention of Money Laundering Act to expand definitions of money laundering. Most of these bills stalled in Parliament. While many NGOs and citizens' groups had hoped that the Companies Act, 2013 would contain provisions akin to the U.S. Foreign Corrupt Practices Act, there remains no particular legislation applicable to corrupt corporate practices overseas.

The national Right to Information Act, 2005, and equivalent state acts function similarly to the U.S. Freedom of Information Act, requiring government officials to furnish information requested by citizens or face punitive action. Increased computerization of services, coupled with central and state government efforts to establish vigilance commissions, is in many areas opening up new avenues to seek redress of grievances.

Resources to report corruption:

U.S. Embassy Resources
U.S. Commercial Service
The American Center
24 Kasturba Gandhi Marg

Tel: 91-11-2347 2000; Fax: 91-11-2331 5172
newdelhiofficebox@trade.gov

Non-Governmental Resources
Transparency International India
Phone: +91 11 2646 0826
Fax: +91 11 2622 4711
Email: info@transparencyindia.org
Website: http://www.transparencyindia.org/

14. Bilateral Investment Agreements

As of July 2012, India had concluded 82 bilateral investment treaties (BIT) including with the United Kingdom, France, Germany, Switzerland, Malaysia, and Mauritius. Of these, 72 agreements are currently in force. The complete list of agreements can be found at: http://www.finmin.nic.in/bipa/bipa_index.asp. In early 2012 local media reported that Coal India lost in international arbitration against an Australian firm. The Australian firm reportedly won its case based on more favorable treaty language from a third country investment treaty, leading the Government of India to temporarily suspend all BIT negotiations until it had drafted a new model agreement.

In 2009, India concluded a Comprehensive Economic Cooperation Agreement (CEPA) with ASEAN and a free trade agreement (FTA) in goods, services, and investment with South Korea. In February 2011, India signed CEPAs with Japan and Malaysia. FTA negotiations with the EU and Canada are still under way, and India is negotiating a CEPA with Thailand.

In February 2014, the United States and India held technical discussions on a BIT. The U.S. Department of Commerce's International Trade Administration's "Invest in America" program (now known as "SelectUSA"), and "Invest India," a joint venture between DIPP and the Federation of Indian Chambers of Commerce and Industry (FICCI), signed a Memorandum of Intent in November 2009, to facilitate FDI in both countries.

15. OPIC and Other Investment Insurance Programs

The United States and India signed an Investment Incentive Agreement in 1987, which covers Overseas Private Investment Corporate (OPIC) programs. OPIC is currently operating in India in the areas of renewable energy and power, telecommunications, manufacturing, housing, services, education, clean water and logistics in infrastructure. In 2013, OPIC was on track to support an additional $3.5 million in clean energy and other projects in India. Since 1974, OPIC has committed more than $2.6 billion to financing and insurance in India and supported 140 projects. OPIC's current portfolio in India totals $671 million across 17 projects particularly focusing in on energy, financial services, manufacturing and services.

16. Labor

Although there are more than 20 million unionized workers in India, unions represent less than 5% of the total work force. Most unions are linked to political parties. According to provisional figures from the Ministry of Labor and Employment (MOLE), two million workdays were lost to strikes and lockouts during the first nine months of 2012, as opposed to 10 million workdays lost in 2011, and 20 million in 2010.

Labor unrest occurs throughout India, though the reasons and affected sectors vary widely. The largest car manufacturer in India experienced violent strikes in 2012. The company was forced to shut down for a month leading to estimated losses around $300 million. In 2011, foreign companies in the manufacturing sector experienced labor problems in Gujarat, while others in the same sector have reported excellent labor relations. Some labor problems are the result of workplace disagreements over pay, working conditions, and union representation. The states of Gujarat, Kerala, Andhra Pradesh, Karnataka, and Rajasthan experience the most strikes and lockouts, according to government statistics. Sectors with the most labor unrest include banks and the automobile industry.

India’s labor regulations are among the world’s most stringent and complex, and over time have limited the growth of the formal manufacturing sector. The rules governing the payment of wages and salaries are set forth in the Payment of Wages Act, 1936, and the Minimum Wages Act, 1948. Industrial wages vary by state, ranging from about $3.50 per day for unskilled workers to over $200 per month for skilled production workers. Retrenchment, closure, and layoffs are governed by the Industrial Disputes Act, 1947, which requires prior government permission to lay off workers or to close businesses employing more than 100 people. Foreign banks also require RBI approval to close branches. Permission is not easily obtained, resulting in greater use of contract workers in the manufacturing sector to circumvent the law. Private firms successfully downsize through voluntary retirement schemes.

In August 2010, Parliament passed the Industrial Disputes (Amendment) Bill, 2010, which contains provisions to effect the following: increase the wage ceiling prescribed for supervisors; bring disputes between contractors and contracted labor under the purview of the MOLE, in consultation with relevant state or central government offices; provide direct access for workers to labor courts or tribunals in case of disputes; seek more qualified officers to preside over labor courts or tribunals; establish a grievance process; and empower industrial tribunals-cum-courts to enforce decrees.

17. Foreign Trade Zones/Free Ports

The government established several foreign trade zone schemes to encourage export-oriented production. These include Special Economic Zones (SEZ), Export Processing Zones (EPZ), Software Technology Parks (STP), and Export Oriented Units (EOU). The newest category is the National Industrial and Manufacturing Zones (NIMZ), of which 14 are being established across India. These schemes are governed by separate rules and granted different benefits, details of which can be found at: www.sezindia.nic.in; www.stpi.in; and www.eouindia.gov.in/handbook_procedures.htm .

SEZs are treated like foreign territory and therefore, businesses operating within SEZs are not subject to customs regulations, are not bound by FDI equity caps, receive exemptions from industrial licensing requirements, and enjoy tax holidays and other tax breaks. EPZs are industrial parks with incentives for foreign investors in export-oriented businesses. STPs are special zones with similar incentives for software exports. EOUs are industrial companies established anywhere in India that export their entire production and are granted the following: duty-free import of intermediate goods; income tax holidays; exemption from excise tax on capital goods, components, and raw materials; and a waiver on sales taxes.

As part of its new industrial policy, the government has started to establish NIMZs. Fourteen NIMZs have been approved to date, of which eight are planned on the Delhi-Mumbai Industrial Corridor route. NIMZs are slated to be established as green-field integrated industrial townships with a minimum area of 5000 hectares and managed by a special purpose vehicle, headed by a government official. The available information about NIMZ suggests that foreign and domestic companies that establish their operations in a NIMZ will be able to seek government authorizations via a single approval window for all clearances.

18. Foreign Direct Investment and Foreign Portfolio Investment Statistics

TABLE 3: Key Macroeconomic data, U.S. FDI in India

	Host Country Statistical source* Source: DIPP, MOF, RBI		USG or international statistical source		Source of data
Economic Data	Year	Amount	Year	Amount	
Host Country Gross Domestic Product (GDP) (*Millions U.S. Dollars)*	2012	$1.895 trillion	2012	$1.895 trillion	http://www.worldbank.org/en/country http://indiabudget.nic.in/budget2013-2014/survey.asp
Foreign Direct Investment	Host Country Statistical source: DIPP; RBI		USG or international statistical source		World Bank http://www.worldbank.org/en/country

U.S. FDI in partner country (*Millions U.S. Dollars, stock positions)*	2012	$36,860 million*	2012	$29,583 million	(BEA) click selections to reach. http://dipp.nic.in/
Host country's FDI in the United States (*Millions U.S. Dollars, stock positions)*	2012	$3,970 million	2012	$3,970 million	(BEA) click selections to reach http://rbidocs.rbi.org.in/rdocs/Speeches/PDFs/OV27022012.pdf
Total inbound stock of FDI as % host GDP	2012	1.95%	2012	1.49%	

* DIPP figures include equity inflows, reinvested earnings and "other capital," and therefore are not directly comparable with the international data.

TABLE 4: Sources and Destination of FDI

Direct Investment from/in Counterpart Economy Data					
From Top Five Sources/To Top Five Destinations *(U.S. Dollars, Millions)*					
Inward Direct Investment			**Outward Direct Investment**		
Total Inward	218,134	100%	Total Outward	79,857	100%
Mauritius	57,727	26%	Singapore	21,481	27%
United Kingdom	35,595	16%	Mauritius	12,355	15%
United States	32,562	15%	Netherlands	11,134	14%
Singapore	17,654	8%	United States	7,066	9%
Japan	15,470	7%	United Arab Emirates	3,874	5%

TABLE 5: Sources of Portfolio Investment

Portfolio Investment Assets as of End of 2012								
Top Five Partners (Millions, US Dollars)								
Total			Equity Securities			Total Debt Securities		
World	1,021	100%	World	1,002	100%	World	19	100%
Luxembourg	329	32%	Luxembourg	329	33%	Philippines	18	97%
Bermuda	207	20%	Bermuda	207	21%	Luxembourg	0.35	2%
United States	106	10%	United States	106	11%	Korea, Republic of	0.09	0.49%
China, P.R.: Hong Kong	62	6%	China, P.R.: Hong Kong	62	6%	Singapore	0.09	0.49%
Thailand	52	5%	Thailand	52	5%	United States	0.07	0.39%

Source: http://cpis.imf.org/

19. Contact Point at Post for Public Inquiries

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