INDIA

INVESTMENT CLIMATE STATEMENT

2015

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Executive Summary

In May 2014, the Narendra Modi-led Bharatiya Janata Party (BJP) won the world's largest democratic election, defeating a Congress-led coalition that been in power for the past decade. The 2014 election marked a turning point in investor sentiment, as a fractured minority government, seemingly unable to advance essential economic reforms, was displaced in favor of a government that had won on a platform of economic growth. The advent of a BJP-led government at the center, combined with the continued monetary stewardship of Raghuram Rajan, the respected Governor General of the Reserve Bank of India, made an immediate mark on investor sentiment. Stabilized currency rates and improved economic performance seemed to demonstrate that an era of policy paralysis and populism had ended in favor of a business-friendly growth agenda.

On August 17, 2014, India's Independence Day, Prime Minister Modi announced his Make in India initiative—a branded campaign to attract international capital to the country's struggling manufacturing sector. As the government appeared slow to propose economic reforms that matched its rhetoric, and struggled to pass through Parliament many of the reforms it did propose, investors have begun to wonder about the government's strategy.

Part of the problem arises from the decentralized nature of India's political system. Investors in India should be prepared to face varied political and economic conditions across India's twenty-nine states and seven union territories. There are differences in the quality of governance, regulation, taxation, labor relations, and education levels. Although India prides itself on its rule of law, the country ranks 186 out of 189 in the World Bank's, Ease of Doing Business Report in the category of Enforcing Contracts. Its courts have cases backlogged for years, and by some accounts more than 30 million cases could be pending at various levels of the judiciary.

While the government has managed to push through a number of investor-friendly reforms, including an increase in foreign direct investment (FDI) limits in insurance to 49 percent, on others, such as land acquisition, it has failed to muster sufficient political support. On still other long-awaited reforms—the Goods and Services Tax, labor law reforms, and subsidies reform among them—as of April 2015, the government had yet to put a program before Parliament. Thus, while the outlook has improved considerably, objective conditions for doing business in India remain similar to years past.

Opportunities in the current scenario are manifold. Indian conglomerates and high technology companies are generally equal in sophistication and prominence to their international counterparts. Certain industrial sectors, such as information technology, telecommunications, and engineering are globally recognized for their innovation and competitiveness. Foreign companies operating in India highlight that success requires a long-term planning horizon and a state-by-state strategy to adapt to the complexity and diversity of India's markets.

1. Openness To, and Restrictions Upon, Foreign Investment

Attitude toward Foreign Direct Investment

In the past year, the BJP-led government took a number of steps to ease FDI restrictions in sectors including insurance, defense, railways, construction, and medical devices. The government also issued two successive ordinances to revise the Land Acquisition Act. While the current government appears generally friendly to FDI, many sectors of the economy retain equity limits for foreign capital, and this has proven a deterrent to investment. The long-awaited Insurance Act, which raises caps on FDI from 26 percent to 49 percent for instance, also mandates that insurance companies retain "Indian management and control. As discussed below, many sectors also require multi-step processes for central and state government approval.

While the previous and current governments have progressively opened the country up to greater FDI, the overall attitude remains mixed. Outside of pensions, insurance, and defense, the government is empowered to raise FDI limits up to 100 percent without Parliamentary approval, yet in sectors such as multi-brand retail (MBR), the government has taken an anti-FDI stance. While considered pro-business, much of the party's constituency is comprised of shop-owners and other small business owners whom could potentially suffer losses under a liberalized MBR regime.

Other Investment Policy Reviews

In 2011, the 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

The Government announced its Foreign Trade Policy for 2015-2020 on April 1, 2015:
http://dgft.gov.in/exim/2000/ftp2015-20E.pdf

The Government also released its consolidated FDI policy circular:
http://dipp.nic.in/English/Policies/FDI_Circular_2015.pdf

Laws/Regulations of Foreign Direct Investment

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 nonetheless a misnomer, since investments in most sectors still require some amount of interaction with the government at both the state and national levels.

Investments that take the government route are subject to authorization from the principal ministry involved and potentially 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) oversee 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 percent 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 USD 200 million, the previous government established a Cabinet Committee on Investment (CCI) in December 2012, chaired by the Prime Minister. The CCI approved over 100 projects worth more than USD 60 billion, but foreign investors and many economists complained that these projects nonetheless stalled in central and state-level bureaucracies. In December 2014, the new government approved the formation of an Inter-Ministerial Committee led by the Department of Industrial Policy and Promotion (DIPP) to fast track investment proposals from the United States. Business Chamber and sources within the government have reported that the Inter-Ministerial Committee has been meeting informally and on an ad-hoc basis as they receive reports from business chambers and affected companies of stalled projects.

Industrial Promotion

Banking: Aggregate foreign investment from all sources in all private banks is capped at 74 percent. For state-owned banks, the foreign ownership limit is 20 percent. According to the 2011 road map for foreign bank entry, there are three distinct methods for entering the Indian banking sector. First, one may establish a branch in India. The second method is to establish a wholly-owned subsidiary (foreign banks can have either branches or subsidiaries). The third is to establish a subsidiary with total foreign investment of up to 74 percent. Foreign investors are 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 percent of the total paid-up capital and 5 percent 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 percent in private sector banks, and from one to 10 percent for public sector banks (PSBs), to make voting rights commensurate with economic ownership. The government recently signaled its intent to divest public sector banks (PSBs), i.e. to partially privatize PSBs to help in their re-capitalization efforts, particularly in light of new Basel 3 capitalization requirements. For the time being, however, divestment plans remain at the discussion stage.

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

Manufacturing: 100 percent FDI is allowed in most categories of manufacturing; however, the government maintains set-asides for micro and small enterprises (MSEs), defined as companies with less than USD 1 million in plant and machinery assets. Any investment in manufacturing that does not qualify as MSE must enter via the government route for FDI greater than 24 percent. 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 at 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.

Limits on Foreign Control

Limits on foreign ownership and control vary by sector and industry. Please see Appendix 1 for a complete table of limits and procedures by sector.

Privatization Program

The Government of India has not generally privatized its assets to the extent of allowing changes in management. Instead, the government has adopted a gradual disinvestment policy that dilutes government stakes in public enterprises without sacrificing control. Such disinvestment has been undertaken both as fiscal support and as a means of improving PSU efficiency. Despite the financial upside to disinvestment in loss-making PSUs, the government has generally shied away from these efforts, as they have led to job losses and therefore engender political risks.

The government of late has begun to look to disinvestment proceeds as a major source of revenue to finance the fiscal deficit. However, the government has missed its disinvestment targets for the past four years. In the 2015-16 budget, the government has set a target of USD 11.4 billion (INR 695 billion) of earnings through disinvestment; if achieved, this would be an historic high.

Screening of FDI

Foreign Direct Investment (FDI) screening is undertaken by the Foreign Investment Promotion Board (FIPB), a Government of India entity that purportedly provides single window clearance for FDI proposals. The FIPB board consists of a chairman—normally Secretary in the MOF Department of Economic Affairs—and members from the MOCI Department of Industrial Policy & Promotion, the MOCI Department of Commerce, and the Ministry of External Affairs' Economic Relations Division. The Board is empowered to co-opt Secretary-level government functionaries and other top officials of financial institutions, banks, and professional experts, as required. The Minister of Finance approves FIPB decisions on investments up to USD 200 million, while larger investments require approval from the Cabinet Committee on Economic Affairs (CCEA).

Competition Law

The Competition Commission of India (CCI) is a statutory body responsible for enforcing the Competition Act of 2002. The CCI, first established in 2003, began functioning in May 2009. The Act is in consonance with international standards, prohibiting anti-competitive agreements and abuse of dominant position by enterprises. The Act regulates combinations (acquisition, acquiring of control, and mergers and acquisition) that cause or are likely to cause an appreciable adverse effect on competition. The CCI has also taken on the charge of protecting consumer interests, and it has come out with a number of orders that creatively interpret definitions of dominant position and cartel formation to protect consumer interests. In 2014, the CCI imposed a USD 400 million penalty on 14 auto companies that had been found guilty of indulging in anti-competitive practices in the sale spare parts.

Investment Trends

Apart from its role as an engine for economic growth, FDI has also served as a major source of non-debt finance for India's economic development. The Indian government's pro-business philosophy and a robust economy have ensured that foreign capital continue to flow into the country. The government expects new initiatives to eventually double the nation's FDI stock, reaching the USD 60 billion mark in FY15 as foreign investors gain increased confidence.

Table 1

Measure	Year	Index or Rank	Website Address
TI Corruption Perceptions index	2014	85 of 175	transparency.org/cpi2014/results
World Bank's Doing Business Report "Ease of Doing Business"	2015	142 of 189	doingbusiness.org/rankings
Global Innovation Index	2014	76 of 143	globalinnovationindex.org/content.aspx?page=data-analysis
World Bank GNI per capita	2013	USD 1,499	data.worldbank.org/indicator/NY.GNP.PCAP.CD

Millennium Challenge Corporation Country Scorecard

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 per capita gross national income (GNI) or USD 4,125 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/pages/docs/doc/report-guide-to-the-indicators-and-the-selection-process-fy-2015.

2. Conversion and Transfer Policies

Foreign Exchange

A determined Reserve Bank of India (RBI) and the advent of a strong BJP-led government resulted in positive market sentiment, allowing the Rupee to stabilize in 2014 following its battering the previous year. From its August 2013 (and all-time) low of 68.36 to the USD, the Rupee recovered to start the year 2014 at 61.93. It strengthened further to 58.42 in May, coinciding with the BJP's convincing electoral victory, and ended the year at 63.33. Though the Rupee lost ground for the fourth straight year, the decline was limited to roughly two percent in 2014 as compared to 13 percent in 2013. Indeed, the Rupee was one of the year's best performing emerging market currencies, beating out the Russian Ruble which lost over 70 percent of its value in 2014, and the Brazilian Real which tumbled over 12 percent.

The Indian government and RBI have slowly relaxed the series of counter-measures introduced in 2013 to reduce the country's current account deficit. In November 2014, the government lifted the so-called 80:20 import restrictions, which had mandated that 20 percent of all imported gold must be re-exported before any new metal could enter the country. In February 2015, the RBI lifted the remittance limit under a Liberalized Remittance Scheme, allowing individuals to remit USD 250,000 per year out of the country, double the previous limit of USD 125,000.

The Rupee (INR) is fully convertible only in current account transactions, as regulated under the Foreign Exchange Management Act regulations of 2000. Foreign exchange withdrawal is prohibited for remittance of lottery winnings; income from racing, riding or any other hobby; purchase of lottery tickets, banned or proscribed magazines; football pools and sweepstakes; payment of commission on exports made towards equity investment in Joint Ventures or Wholly Owned Subsidiaries of Indian companies abroad; and remittance of interest income on funds held in a Non-Resident Special Rupee Scheme Account. Furthermore, the following transactions require the approval of the Central Government: cultural tours; remittance of hiring charges for transponders for television Channels under the Ministry of Information and Broadcasting and Internet Service Providers under the Ministry of Communication and Information Technology; remittance of prize money and sponsorship of sports activity abroad, if the amount involved exceeds USD 100,000; advertisement in foreign print media for purposes other than promotion of tourism, foreign investments and international bidding (in excess USD 10,000) by a state government and its public sector undertakings (PSUs); and multi-modal transport operators paying remittances to their agents abroad. RBI approval is required for acquiring foreign currency above certain limits for specific purposes including: remittances for maintenance of close relatives abroad; remittances for any consultancy services; remittances exceeding five per cent of investment brought into India or USD 100,000, whichever is higher, by an entity in India by way of reimbursement of pre-incorporation expenses.

Capital account transactions are open to foreign investors, though subject to various clearances. NRI investment in real estate, remittance of proceeds from the sale of assets, remittance of proceeds from the sale of shares may be subject to approval by the RBI or FIPB.

Foreign institutional investors (FIIs) may transfer funds from Rupee to foreign currency accounts and back at market exchange rates. They may also repatriate capital, capital gains, dividends, interest income, and compensation from the sale of rights offerings without RBI approval. The RBI also authorizes automatic approval to Indian industry for payments associated with foreign collaboration agreements, royalties, and lump sum fees for technology transfer, and payments for the use of trademarks and brand names. Royalties and lump sum payments are taxed at 10 percent.

Remittance Policies

Remittances are permitted on all investments and profits earned by foreign companies in India once taxes have been paid. Nonetheless, certain sectors are subject to special conditions, including construction, development projects, and defense, wherein the foreign investment is subject to a lock-in period. Profits and dividend remittances as current account transactions are permitted without RBI approval following payment of a dividend distribution tax. The RBI has usually approved such transactions 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 for the purpose of hedging customers' foreign currency liabilities. They may also offer forward coverage to non-resident entities on FDI deployed since 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. In 2014, the Supreme Court of India cancelled 214 out of 218 coal blocks allocated since 1993. Apart from the cancellations, the Supreme Court ordered that operational mines would have to pay a penalty of INR 295 (USD 5) for every ton of coal previously extracted. 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 the overall lack of contract sanctity. According to the World Bank's, Report 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 has also funded ICADR to conduct training for mediators in commercial disputes settlement.

India is a signatory to the convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958 New York Convention). It is not unusual for Indian firms to file lawsuits in domestic courts in order to delay paying the arbitral award. Seven cases are currently pending, the oldest of which dates to 1983. India is not a member state to the International Centre for the Settlement of Investment Disputes (ICSID).

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, but at a lower cost. Since that time, no 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. In his budget speech of February 2015, the Finance Minister announced the government’s intention to propose a Public Contract Bill, aimed at streamlining the resolution of public contract disputes. Another proposal aims to establish specialized commercial divisions within domestic courts to settle long-pending commercial disputes. The government expects to introduce legislation following consultation with stakeholders.

Bankruptcy

According to the World Bank, it takes an average of 4.3 years to recover funds from an insolvent company in India, compared to 2.6 years in South Asia and 1.7 years in OECD countries. The Companies Act adopted by the erstwhile UPA government in 2013 introduced major changes to bankruptcy law, in both the procedures and the institutions involved. Under the law, the revival or liquidation of "sick companies" will be undertaken by a National Company Law Tribunal (NCLT) composed of legal and technical experts and presided over by a High Court judge. The new law does not, however, provide for U.S. style Chapter 11 bankruptcy provisions. The current Finance Minister announced a proposal to introduce Chapter 11-type bankruptcy mechanisms during his budget speech in February 2015.

Investment Disputes

India received 17 notices under Bilateral Investment Treaties. Most recently, the British oil company Cairn has invoked the India-UK bilateral investment treaty to contest a retroactive taxation reassessment of USD 1.6 billion plus interest and penalties. Discussions are also underway in the dispute initiated by Vodafone against retrospective capital gains taxation, and firms including IBM and Royal Dutch Shell have been involved in similar disputes over retroactive taxation of transfer pricing.

International Arbitration

Given the amount of disputes, the Government of India circulated for two weeks, in April 2015, a new model bilateral investment treaty (BIT) for public comments. A number of provisions have been introduced to protect the sovereign from investment disputes. Foreign investors will also not have access to bilateral investment promotion and protection agreements (BIPPA, as BITs are known in India), if the contracts they have entered into with local investors or the government provide exclusively for legal recourse in India. As many as 17 companies or individuals – including Vodafone International Holdings BV, Deutsche Telekom, Sistema, Children's Investment Fund, and TCI Cyprus Holdings – have served arbitration notices on India under BIPPAs after their investments faced adverse policy action. Several investors have also challenged the legality of a Supreme Court decision to cancel telecom licenses.

ICSID Convention and New York Convention

Though India is not a signatory to the International Centre for Settlement of Investment Disputes (ICSID Convention), Current claims by foreign investors against India can be pursued through the ICSID Additional Facility Rules, the UN Commission on International Trade Law (UNCITRAL Model Law) rules, or through the use of ad hoc proceedings.

Duration of Dispute Resolution

According to the World Bank Ease of Doing Business Report, enforcement of contracts takes an average of 1,420 days in India. This includes an average of 20 days for filing the dispute, 1,095 days for trial, and 305 days for enforcement of judgments. As a percentage of the total claim, dispute resolution will cost the litigant an average of 39.6 percent.

Under Indian law, the following types of disputes cannot be settled by arbitration, but must be settled through civil suits: matters of public rights; proceedings under the Foreign Exchange Management Act that are quasi-criminal in nature; validity of IPR granted by statutory authorities; taxation matters beyond the will of the parties; and disputes involving insolvency proceedings.

Arbitration is the preferred mode of commercial dispute resolution in India. In April 2009 the London Court of International Arbitration (LCIA), launched its first independent subsidiary in India.

Alternate Dispute Resolution (ADR)
Since formal dispute resolution is expensive and time consuming, many businesses are resorting to methods including ADR for resolving disputes. The most commonly used ADRs are arbitration and mediation. India has enacted the Arbitration and Conciliation Act (based on the UNCITRAL Model Laws of Arbitration). Experts agree that the ADRM techniques are extra-judicial in character and emphasize that ADRM cannot displace litigation. In cases that involve Constitutional or criminal law, traditional litigation remains necessary.

Dispute Resolutions Pending
India has seen a significant number of disputes in the recent past, many of which have made headline news globally. Finance Minister Arun Jaitley in his FY2014-15 budget speech announced that tax demands of USD 65 billion are under dispute and litigation, before various courts and appellate authorities. An increasing backlog of cases at all levels reflects the current state of India’s legal apparatus, and the need for reform in dispute resolution. The dispute resolution infrastructure is characterized by an inadequate number of courts, benches and judges; inordinate delays in filling judicial vacancies; and only 14 judges per million people in India. Almost 25 percent of judicial vacancies can be attributed to procedural delays.

5. Performance Requirements and Investment Incentives

WTO/TRIMS

In 1995, India is a member of the World Trade Organization (WTO) Trade Related Investment Measures Agreement (TRIMS). The TRIMS agreement requires member countries to notify and eliminate non-compliant TRIMS. India was given a five-year grace period to eliminate notified TRIMS, and according to the GOI, India no longer has any outstanding obligation under the agreement. India has not reported any additional TRIMS to the WTO since then. Nonetheless, domestic content requirements under the Jawaharlal Nehru National Solar Mission (NSM) for solar cells and solar modules appear to be discriminatory, and the U.S. has initiated action before the WTO against India. The case is still before the WTO Disputes Panel.

Investment Incentives

The government provides a 10-year tax holiday for knowledge-based startups. 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 percent 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://deity.gov.in/sites/upload_files/dit/files/Notification_Preference_DMEPs_Govt_%20Proc_23_12_2013.pdf). Major changes in the revised policy include the exemption of private companies, and removal of the PMA Policy on equipment notified for security reasons. The former notifications under the 2012 Policy, including the notification of 23 telecom products by Department of Telecommunications, are still valid until revised further.

Research and Development

The GOI allows for 100 percent FDI in research and development, through the automatic route.

Performance Requirements

Foreign nationals executing projects 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, medical, research, or employment visa—are required to register with the Foreigners Regional Registration Officer (FRRO) in Delhi or the Foreigners Registration Officer (FRO) in their own jurisdiction within 14 days of arrival. The employment of foreigners for periods longer than 12 months requires the approval of the Ministry of Home Affairs (MHA).

Data Storage

The GOI does not require IT providers to turn over source code or provide access to surveillance. The Draft National Telecom M2M Roadmap, which has not been implemented and is currently undergoing a public comment period, states that “all M2M gateways and application servers serving customers in India, needs to be located in India only. The draft policy also proposes that foreign SIM cards should not be permitted in devices to be used in India.

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

Several cities, including the metropolitan cities of Delhi, Calcutta, Mumbai, and Chennai have grown according to a master plan registered with the central government's Ministry of Urban Development. Property rights are generally well-enforced in such places, and district magistrates—normally senior local government officials—notify land and property registrations. Banks and financial institutions will provide mortgages and liens against such registered property.

In other urban areas, and in areas where illegal settlements have been built up, titling remains unclear. As per the GOI Department of Land Resources, the Indian government has launched a National Land Records Modernization Program (NLRMP) to clarify land records and provide landholders with legal title. The program requires the government to survey an area of approximately 2.16 million square miles, including over 430 million rural households, 55 million urban households, and 430 million land records. The government acknowledges the enormity of the task and has not yet provided an estimate as to when the work will be completed.

Traditional land use rights, including communal rights to forests, pastures, and agricultural land, are sanctioned according to various laws, depending on the land category and community residing on it. Relevant legislation includes the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 the Forest Rights Act, the Tribal Rights Act and the Tribal Land Act.

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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).

In India, a registered sale deed does not confer title ownership and is merely a record of the 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.

On December 31, 2014, the government passed a Land Acquisition Amendment ordinance intended to meet the objectives of farmer welfare; along with expeditiously meeting the strategic and developmental needs of the country. However, the government has faced stiff resistance from opposition parties on legitimating the ordinance, as it negates the previous Land Acquisition law's social impact assessment and consent requirements (i.e. necessitating the consent of specified shares of landowners prior to the invocation of eminent domain). For now, the land acquisition/eminent domain regime remains in flux.

Intellectual Property Rights

India offers basic protections to copyright holders. However, 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, and has weak protection against unlawful circumvention of technological protection measures. It also lacks an effective notice and take-down system for infringing materials posted online. India was listed on the Priority Watch List in USTR's Special 301 report for 2014. The country hosts six Notorious Markets according to USTR's latest report issued in 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). Several of these markets have appeared on previous lists but no identifiable, meaningful, or effective responses have been taken by the Indian government.

India updated its trademark law in recent years to approach 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. WIPO has 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 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 product. 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 allows for the registration of 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.

Customs officers have ex-officio authority to seize and destroy counterfeit goods, though rights holders must pay for storage and destruction of counterfeit materials. India offers all types of counterfeit goods for sale; the seven most vulnerable sectors for IPR crime include automotive parts, alcohol, computer hardware, fast-moving commercial goods (FMCG) for personal use, FMCG packaged foods, mobile phones, and tobacco products. India is slowly experiencing a marginal improvement in its IP protections, both in the ease of registering IP and in the ease of enforcement.

In multilateral negotiations and the WTO TRIPS Council, India, together with other countries, presses demands for unlimited technology transfer that could lead to coercion of private rights holders, weakening their property rights. These outcomes could undermine innovation, trade, and investment in IP-intensive products and services that are critical parts of the response to climate change, sustainable economic development, and other challenges. By advancing such positions, the Indian government is creating uncertainty with respect to its commitment to create a domestic environment that will encourage innovation and investment in high technology industries.
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
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+91-11-2419-2334
Kalpana.reddy@trade.gov

Country/Economy resources:
Madhvi Kataria
American Chamber of Commerce in India (AMCHAM)
Associate Director
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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 a 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, and investment policy.

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 taken 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. 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 new government made several amendments to the act in 2014 to make it more investor friendly.

9. Efficient Capital Markets and Portfolio Investment

Riding high on sentiments, the S&P BSE SENSEX index — India's benchmark 30-share index — ended the year 6,329 points or 30 percent higher at 27,499. The Sensex had a near-euphoric rise touching an all-time high of 28,822 on November 28, 2014, not long after a new government was installed in the center. Market capitalization of the Bombay Stock Exchange (BSE) hit USD 1.56 trillion on December 31, 2014. The year 2014 also marks the third consecutive year of gains for the stock market, after a sharp plunge in 2011. Globally, the Sensex was the second best performing index among major nations, following China's benchmark Shanghai Composite. The National Stock Exchange and BSE Ltd. together comprise about 100 percent of total Indian stock market turnover. In September 2014, MCX-SX, a stock exchange established in 2008, received SEBI approval to change its name to "Metropolitan Stock Exchange of India Ltd." Spot prices for index stocks are generally market-driven, and settlement mechanisms are consistent with international standards. Unlike Indian equity markets, local debt and currency markets remain relatively underdeveloped, with limited participation from foreign investors. Indian businesses receive the majority of their finance through the banking system, not through capital markets. Although private placements of corporate debt have increased, India's corporate bond market is small (equivalent to only13 percent of GDP according to a recent CARE Report) 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 foreign institutional investors 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 percent debt-fund FIIs. Eligible FIIs include the following: 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 of India on whose behalf investments are made within India by an FII. These include foreign individuals and corporations, broad-based funds, proprietary funds under the name of a registered FII, endowment and university funds, and charitable trusts and societies. Non-resident Indians (NRIs) are not eligible to apply as sub-accounts.

FIIs invested nearly USD 24.7 billion in the Indian debt market in 2014, the highest level of investment since 1997. Also, for the first time, FII investment in debt outpaced that in the equity market, as most debt inflows have gone to government securities. FIIs invested USD 16.3 billion in Indian equities in 2014. As the equity market rallied through most of calendar 2014, the total number of registered FIIs, qualified foreign investors (QFIs), and Foreign Portfolio Investors (FPIs) rose to 2,223 in December 2014. On the other hand, the number of registered FII sub-accounts dropped to 5,427. The revised FPI regulations (that combine existing FIIs, FII sub-accounts, and QFIs into a new class termed as FPI) issued in January by the Securities Exchange Board of India (SEBI) have made registration of foreign investors much simpler. Previously, foreign investors registered with SEBI, but the new rules allow designated depository participants (like NSDL and CDSL) to accept all applications for registration as FPIs. Industry watchers say that the NSDL database may not reflect new registrations accurately until all existing FIIs are registered as FPIs.

Indian equity markets have few restrictions on capital flows, but do limit foreign ownership stakes. FIIs and sub-accounts can own up to 10 percent and 5 percent respectively of the paid-up equity capital of any Indian company. Aggregate FPI investment in an Indian company is capped at 24 percent, unless specifically authorized by that company's board of directors. All investor classes are permitted to sell short, except for NRIs. Investors must, however, maintain a minimum margin requirement.

In June 2014, the RBI allowed FPIs to access the currency futures or exchange traded currency options market to hedge onshore currency risks in India, a move that was touted as a significant initiative in attracting Dollar inflows into the country. According to RBI data, the participation of FPIs in exchange traded currency derivatives has remained muted. Participation of FPIs in OTC currency derivatives has also remained quite low. India's growing importance in the global economy has led to increased interest in the Rupee. Yet, the persistence of capital controls in the onshore market has led to the development of an offshore Rupee market called Non Deliverable Forward (NDF), particularly in Singapore, Dubai, London, and New York. The RBI has taken a number of steps in the recent past to bring these offshore activities onshore, in order to deepen the domestic markets, enhance downstream benefits, and generally obviate the need for an NDF market.

Foreign firms and persons are prohibited from trading in commodities. SEBI allows foreign brokers to work on behalf of registered FIIs, but these 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 post tax, may be repatriated without prior approval. NRIs are subject to separate investment limitations. They can repatriate dividends, rents, and interest earned in India, and specially designated NRI bank deposits are fully convertible.

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 to FDI policy. FVCIs can invest in many sectors including software business, information technology, pharmaceuticals and drugs, biotechnology, nanotechnology, biofuels, agriculture, and infrastructure. Companies incorporated outside India can raise capital in India's capital markets through the issuance of Indian Depository Receipts (IDRs). These transactions are subject to RBI and SEBI monitoring per conditions outlined at:
http://www.sebi.gov.in/cms/sebi_data/commondocs/foreigncos1_p.pdf

Companies are required to maintain pre-issued, paid-up capital, and free reserves of at least USD 100 million, as well as an average turnover of USD 500 million during the three financial years preceding issuance. The company must be profitable for at least five years preceding the issuance, declaring dividends of no less than 10 percent 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, remains the only foreign firm to have issued IDRs.

External commercial borrowing (ECB), or direct lending to Indian entities by foreign institutions, is allowed if funds are used for outward FDI, or for domestic investment in industry, infrastructure, hotels, hospitals, software, self-help groups or microfinance activities, or to buy shares in the disinvestment of public sector entities (http://www.rbi.org.in/scripts/BS_ViewMasCirculardetails.aspx?id=9069). ECBs cannot be used for on-lending, investments in financial assets, acquisition of real estate or a domestic firm, meeting of working capital requirements or repayment of existing Rupee loans. An ECB can raise a maximum of USD 750 million in a financial year, unless it is in the hotel, hospital, software, or miscellaneous services sectors. NGOs engaged in micro-finance activities and Micro Finance Institutions can raise ECB up to USD 10 million in a financial year, and must hedge 100 percent of their currency risk exposure. Non-bank Finance Company – Infrastructure Finance Companies (NBFC-IFCs) can raise ECB up to 75 percent of their owned funds and must hedge 75 percent of their currency risk exposure. The all-in cost ceilings for ECBs with an average maturity period of three-to-five years is capped at 350 basis points over the six-month LIBOR, and 500 points for loans maturing after five years. Indian companies borrowed close to USD34.12 billion in foreign currency through ECBs and USD 400 million through foreign currency convertible bonds (FCCBs) in 2013.

Takeover regulations require disclosure upon acquisition of shares exceeding 5 percent of total capitalization. SEBI regulations require that any acquisition of 15 percent or more of the voting rights in a listed company must trigger a public offer. The public offer made by the acquiring entity (i.e., the individual, company, or other legal entity) must allow for the sale of at least 20 percent of the company's voting rights. Since October 2008, an owner holding between 55 percent and 75 percent of voting rights can acquire additional voting rights of up to 5 percent 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. Subsequent to such acquisition, the buyer's total shares should not cross the threshold of 75 percent. 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.

Money and Banking System, Hostile Takeovers

Twenty-seven public sector banks (PSB) dominate the Indian banking market, the largest of which is the State Bank of India (SBI). PSBs accounted for 73.3 percent of aggregate deposits and 71.2 percent of gross bank credit at the end of December 2014. 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, meaning that the government can become quite influential in credit decisions. The Non-Performing Assets (NPAs) of the banks stood at USD 49 billion as of December 2014 due to sluggish growth. PSBs accounted for over 90 percent of total NPAs.

The RBI has taken a number of steps to encourage recovery of NPAs, including mandatory board-approved loan recovery policies, establishment of effective mechanisms for information sharing regarding loan sanctions, and the establishment of legal mechanisms. The RBI released guidelines on January 30 for "Early Recognition of Financial Distress, Prompt Steps for Resolution and Fair Recovery for Lenders: Framework for Revitalizing Distress Assets in the Economy" suggesting various steps for earlier recognition and resolution of stressed assets (http://www.rbi.org.in/scripts/PublicationReportDetails.aspx?UrlPage=&ID=715).

The Guinness Book of World Records has recognized the achievements of the Pradhan Mantri Jan Dhan Yojana (PMJDY), the world's largest financial inclusion initiative. As of April 2015, 125 million bank accounts have been opened under the initiative, which aims to provide a bank account to every un-banked Indian. Though the number of accounts opened is immense, 84.4 million of these still maintain a zero-balance, and six months of "satisfactory transactions" are necessary before the account-holder qualifies for benefits including overdraft and life insurance. It is likely the number of transactions will rise once the government expands its initiative for providing subsidies and benefits through direct bank transfers.

Takeover regulation in India applies equally to domestic and foreign companies. The regulations do not recognize, however, 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 percent of total capitalization. As per SEBI's Substantial Acquisition of Shares and Takeovers (Amendment) Regulations, released in 2013, acquisition of 25 percent or more of the voting rights in a listed company triggers a public offering of an additional 26 percent stake at least. Under the creeping acquisition limit, the acquirer holding 25 percent or more voting rights in the target company can acquire additional shares or voting rights up to 5 percent of the total voting rights in any financial year, up to a maximum permissible non-public shareholding limit of 75 percent generally. Acquisition of control over the target company, irrespective of shares or voting rights held by the acquirer, will trigger a mandatory open offer.

10. Competition from State-Owned Enterprises

In India, the government owns or controls interests in key sectors with significant economic impact, including infrastructure, oil, gas, mining, and manufacturing. Over the decades, the Indian government has taken a number of steps to improve the performance of Central Public Sector Enterprises (CPSEs), including improvements to corporate governance. Reforms carried out in the 1990s focused on liberalization and deregulation of most sectors and disinvestment of government shares. These and other steps to strengthen CPSE boards and enhance transparency evolved into a more comprehensive governance approach, culminating in the Guidelines on Corporate Governance of State-Owned Enterprises issued in 2007 and their mandatory implementation from 2010. Governance reforms gained prominence for several reasons: the important role that CPSEs continue to play in the Indian economy; increased pressure on CPSEs to improve their competitiveness as a result of exposure to competition and hard budget constraints; new listings of CPSEs on capital markets.

OECD Guidelines on Corporate Governance of SOEs

The Organization for the Economic Cooperation and Development (OECD) Guidelines on Corporate Governance of State-Owned Enterprises (SOEs) give concrete advice to countries on how to manage more effectively their responsibilities as company owners, thus helping to make state-owned enterprises more competitive, efficient and transparent. Adopted in 2005 as an internationally-agreed standard on how governments should exercise ownership of SOEs, the guidelines underwent review and revision in 2014 to take into account developments since their adoption and the experiences of the growing number of countries that have taken steps to implement their recommendations. The revision process is overseen by the OECD Corporate Governance Committee's Working Party on State Ownership and Privatization Practices. It involves extensive consultations with business and labor representatives, civil society, and representatives of OECD's partner countries.

Sovereign Wealth Funds

India does not have a sovereign wealth fund. Under the previous government, the Prime Minister's Council on Trade and Industry had suggested setting up a sovereign fund with an initial corpus of USD 5 billion to help fund acquisition of companies abroad; however, the idea has not found much traction under the current government. Looking to attract larger inflows from sovereign wealth funds and foreign pension funds, government and financial sector regulators have renewed their efforts to make Indian markets, especially government bonds, much more appealing to such investors. The policymakers view the overseas investments by sovereign wealth funds, multilateral agencies, endowment funds, pension funds, insurers, and foreign central banks as much more stable in nature, as compared to institutional investors and hedge funds. The world's largest sovereign wealth fund, Norway's Government Pension Fund Global (GPFG), plans to significantly increase its holdings in India. Mr. Yngve Slyngstad, Chief Executive Officer GPFG said "India is one of those markets where you should expect that we will continue to increase our investments over time, significantly." He added that the BJP-led government has shifted toward more market-based energy pricing, allowed more foreign investment in the defense industry, and pushed to revive the manufacturing. These and other reforms, he noted, have increased investor confidence in the country.

11. Corporate Social Responsibility

The Companies Act of 2013 marked 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 CSR committees by company boards of directors. Section 135 requires publicly-held companies to spend 2 percent 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 USD 200 million or more in sales, with a net worth greater than USD 100 million, or with annual profits greater than USD 1 million for three consecutive years, must issue a public report of their CSR expenditures, or provide an explanation of why they failed to meet the minimum CSR spending requirements. The directors of companies that fail to report are held personally accountable under the law and can face fines or imprisonment. According to a recent joint handbook published by the Confederation of Indian Industries (CII) and Price Waterhouse Coopers on Corporate Social

Responsibility in India, the industry has responded positively to CSR reform measures. The combination of regulatory and social pressures has led companies to pursue their CSR activities more systematically. The same handbook states that the Indian Institute of Corporate Affairs (under the Ministry of Corporate Affairs) estimates that a minimum of 6,000 Indian companies will be required to undertake CSR projects in compliance with the Companies Act. Many will be undertaking these initiatives for the first time.

By requiring companies with a minimum net profit of USD 1 million to invest in CSR, the Companies Act is likely to bring many small and medium enterprises (SME) into the CSR fold. The lower threshold could usher in a fresh set of challenges as companies must become compliant with a diverse set of requirements.

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

• GiveIndia (http://www.giveindia.org) Give India gives a donation platform that allows companies to support a cause of choice from about 200 NGOs that have been scrutinized for transparency and credibility

• Transparency International India (TII) (http://www.transparencyindia.org). TII sponsors the Advocacy and Legal Action Center, which runs an Anti-Corruption Hotline and provides training sessions on corporate governance and CSR.

• Charities Aid Foundation (http://www.cafindia.org/) CAF India provides strategic and management support to corporates, individuals and PSUs in order to ensure greater impact of their philanthropic and CSR investments

OECD Guidelines for Multinational Enterprises

GOI does not adhere to the OECD Guidelines for Multinational Enterprises.

12. Political Violence

There have been no significant incidents involving political violence since mid-2014. However, outbursts of violence related to insurgent movements continue in Jammu and Kashmir and some northeastern states. Maoist/Naxalite insurgent groups also remain active in some eastern and central Indian states, including the rural areas of southern Bihar, Jharkhand, Chhattisgarh, 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

India is a signatory to the United Nations Conventions against Corruption and a member of the G20 Working Group against Corruption. India is ranked 85 out of 175 countries surveyed in Transparency International’s 2014 Corruption Perception Index, which is an improvement over last year’s ranking of 94 out of 177. The legal framework for fighting corruption in India is addressed by the following laws: the Prevention of Corruption Act, 1988; the Code of Criminal Procedures, 1973; 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 also elevated India's Central Vigilance Commission (CVC) to a statutory body. India's Parliament enacted the Lokpal bill in 2013, which created a national anti-corruption ombudsman and requires states to create state-level ombudsmen within one year of the law's passage. The government has yet to implement the law, however, and as yet, no ombudsmen have been appointed.

In February 2014, the government enacted the Whistleblower Act, intended to protect anti-corruption activists, but as yet unimplemented. Experts believe that the prosecution of corruption has proven effective only among the lower levels of India's bureaucracy; senior bureaucrats have generally been spared. Businesses consistently cite corruption as a significant obstacle to FDI in India and identify government procurement as a process particularly vulnerable to corruption.

The Companies Act, 2013, established rules related to corruption in the private sector by mandating mechanisms for the protection of whistle blowers, industry codes of conduct, and the appointment of independent directors to company boards. As yet, the government has established no monitoring mechanism, and it is unclear the extent to which these protections have been instituted. No legislation focuses particularly on the protection of NGOs working on corruption issues, though the Whistleblowers Protection Act, 2011, may afford some protection once it has been fully implemented.

UN Anticorruption Convention, OECD Convention on Combatting Bribery

India is a signatory to the United Nations Conventions against Corruption and is a member of the G20 Working Group against Corruption

India is not party to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

Resources to Report Corruption

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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.

The Government of India circulated a new model BIT in April 2015 for two weeks of public comment. A number of provisions have been introduced to protect the sovereign from investment disputes. Foreign investors will not have access to bilateral investment treaties, if the contracts they have entered into with local investors or the government provide exclusively for legal recourse in India.

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 International Trade Administration's Invest in America program (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.

Bilateral Taxation Treaties

India has a bilateral taxation treaty with the United States.

15. OPIC and Other Investment Insurance Programs

The Overseas Private Investment Corporation (OPIC), a U.S. government agency created to protect U.S. investor interests abroad, offers capital and risk mitigation tools including: financing (from large structured finance to small business financing), political risk insurance, and support for private equity investment funds. Since 1974, OPIC has invested nearly USD 2.7 billion in 148 projects in India. OPIC is a key member of the U.S.-India Partnership to Advance Clean Energy (PACE,) and since 2009, OPIC has invested over USD 900 million in India, with one third of those investments in renewable energy (http://www.energy.gov/ia/initiatives/us-india-energy-cooperation). In fiscal year 2014, OPIC committed over USD 84 million to seven new projects in India, including investments in solar energy and loans to microfinance and SME lenders. OPIC's portfolio in India totals almost USD 734 million in 22 projects; with over USD 300 million in funds invested in over 20 companies across a variety of industries including clean energy, transportation/logistics, healthcare, financial services, and consumer goods.

16. Labor

Although there are more than 20 million unionized workers in India, unions represent less than 5 percent of the total work force. Most of these unions are linked to political parties. According to provisional figures from the Ministry of Labor and Employment (MOLE), over 3.6 million workdays were lost to strikes and lockouts in 2013, as opposed to 2 million workdays lost in 2012.

Labor unrest occurs throughout India, though the reasons and affected sectors vary widely. Some labor problems are the result of workplace disagreements over pay, working conditions, and union representation. South Indian states count as the most industrialized in India, and due to strong labor representation, Kerala stands out for most frequent strikes. Tamil Nadu and Karnataka follow, and the states of Gujarat and Andhra Pradesh also experience similar strikes and lockouts, according to government statistics. Nationally, the banking sector faces the most labor unrest.

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 USD 3.50 per day for unskilled laborers to over USD 200 per month for skilled production workers. Retrenchment, closure, and layoffs are governed by the Industrial Disputes Act of1947, which requires prior government permission to lay off workers or close businesses employing more than 100 people. Foreign banks also require RBI approval to close branches. Permission is generally difficult to obtain, which has resulted in the increasing use of contract workers (i.e. non-permanent employees) to circumvent the law. Private firms successfully downsize through voluntary retirement schemes.

The BJP-led government that took office in May 2014 promised to reform labor laws and ease conditions for doing business in India. To date, much of the movement on labor laws has taken place at the state level, particularly in Rajasthan, where the government has passed major amendments to allow for quicker hiring, firing, laying off, and shutting down. The Government of India's Ministry of Labor and Employment launched a web portal to assist companies in filing a single online report on compliance with 16 labor related laws. The Ministry also tabled legislation to amend India's Factories Act that would encourage voluntary compliance of occupational safety and health standards and would reduce government inspections. India's major labor unions have opposed the labor reforms, arguing that they compromise workers' safety and job security.

On December 5, major trade unions led protests against the government's attempt to reform the nation's labor laws. Unions in the coal industry went on strike for two days in January 2015 to protest the government's move to divest in government controlled coal companies responsible for a majority of India's coal production.

There are no reliable statistics for the number of unemployed in India due to the informal nature of most employment. The Government of India nonetheless acknowledges a shortage of skilled labor in high-growth sectors of the economy, including information technology and manufacturing. The current government has established a Ministry of Skill Development, has embarked on a national program to increase skilled labor.

17. Foreign Trade Zones/Free Ports/Trade Facilitation

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 as foreign territory; therefore businesses operating within SEZs are not subject to customs regulations, nor FDI equity caps. They also receive exemptions from industrial licensing requirements, and they enjoy tax holidays and other tax breaks. Export Processing Zones (EPZs) are industrial parks with incentives for foreign investors in export-oriented businesses. STPs are special zones with similar incentives for software exports. Export Oriented Units (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 now begun the establishment of NIMZs. Fourteen NIMZs have been approved to date, of which eight are planned on the Delhi-Mumbai Industrial Corridor route. NIMZs have been envisioned 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. Publicly available information suggests that foreign and domestic companies will be able to seek all state and central government authorizations for operating with NIMZs via single window.

18. Foreign Direct Investment and Foreign Portfolio Investment Statistics

Table 2: Key Macroeconomic Data, U.S. FDI in Host Country/Economy

	Host Country Statistical source*		USG or international statistical source		USG or International Source of Data: BEA; IMF; Eurostat; UNCTAD, Other
Economic Data	**Year**	**Amount**	**Year**	**Amount**	
Host Country Gross Domestic Product (GDP) ($T USD)	2014	2.1	2013	1.87	www.worldbank.org/en/country
Foreign Direct Investment	**Host Country Statistical source***		**USG or international statistical source**		**USG or international Source of data: BEA; IMF; Eurostat; UNCTAD, Other**
U.S. FDI in partner country ($M USD, stock positions)	2014	37,758	2013	24,318	http://bea.gov/international/factsheet/factsheet.cfm?Area=612
Host country's FDI in the United States ($M USD, stock positions)	2012	3,970	2013	7,118	http://bea.gov/international/factsheet/factsheet.cfm?Area=612
Total inbound stock of FDI as % host GDP	2014	1.8%	2013	1.3%	

*GOI Gross Domestic Product at http://indiabudget.nic.in/es2014-15/estat1.pdf. Inward FDI data available at http://dipp.nic.in. Outward FDI data available at http://rbidocs.rbi.org.in/rdocs/Speeches/PDFs/OV27022012.pdf. Note that DIPP figures include equity inflows, reinvested earnings and "other capital," and therefore are not directly comparable with the international data.

Table 3: Sources and Destination of FDI

Direct Investment from/in Counterpart Economy Data					
From Top Five Sources/To Top Five Destinations *(US Dollars, Millions)*					
Inward Direct Investment			**Outward Direct Investment**		
Total Inward	243,224	100%	Total Outward	29,294	100%
Mauritius	86,187	36%	Netherlands	8,427	28.8%
Singapore	30,707	13%	Singapore	4,454	15.2%
UK	21,911	9%	British Virgin Islands	3,687	12.6%
Japan	17,879	7%	Mauritius	3,029	10.3%
Netherlands	14,371	6%	United States	2,052	7.0%
"0" reflects amounts rounded to +/- USD 500,000.					

Source: Department of Industrial Policy and Promotion, Government of India

Table 4: Sources of Portfolio Investment

Portfolio Investment Assets								
Top Five Partners (Millions, US Dollars)								
Total			**Equity Securities**			**Total Debt Securities**		
All Countries	1,684	100%	All Countries	1,664	100%	All Countries	20	100%
United States	634	37%	United States	623	67%	United States	11	55%
Luxembourg	456	27%	Luxembourg	456	27%	Sri Lanka	5	25%
Bermuda	231	23%	Bermuda	231	14%	Mauritius	1	5%
Mauritius	112	6%	Mauritius	111	7%	UK	1	5%
China, P.R.: Hong Kong	52	3%	China, P.R.: Hong Kong	52	3%	Singapore	1	5%

Source: IMF Coordinated Portfolio Investment Survey

19. Contact for More Information

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