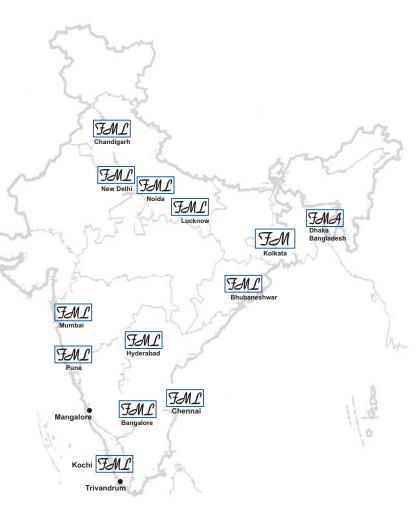


FOXMANDAL LITTLE





INVESTING IN INDIA

(Regulations and Incentives) 2009



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AAI	Airports Authority of India		
ADC	Additional Duty of Customs		
ADR	Alternative Dispute Resolution		
ADRs	American Depository Receipts		
ADSL	Asymmetric Digital Subscriber Lines		
AO	Assessing Officer		
ASSOCHAM	Associated Chambers of Commerce and Industry of India		
ATM	Automated Teller Machine		
BCAs	Bilateral Cooperation Agreements		
BCD	Basic Customs Duty		
BITs	Bilateral Investment Treaties		
BoA	Board of Approval		
BOOT	Build Own Operate & Transfer		
ВОТ	Build Operate & Transfer		
BPO	Business Processing Outsourcing		
BSE	Bombay Stock Exchange		
CAGR	Compound Annual Growth Rate		
CAS	Conditional Access System		
CAT	Central Administrative Tribunal		
CBDT	Central Board of Direct Taxes		
CBM	Coal Bed Methane		
CCD	Compulsory Convertible Debentures		
CCFI	Cabinet Committee for Foreign Investment		
CCPS	Compulsory Convertible Preference Share		
CECA	Comprehensive Economic Cooperation Agreement		
CENVAT	Central Value Added Tax		
CETP	Common Effluent Treatment Plants		
CMSWMF	Common Municipal Solid Waste Management Facility		
COAI	Cellular Operators Association of India		
CPC	Civil Procedure Code		
CPCB	Central Pollution Control Board		
CRAMs	Contract Research & Manufacturing Services		
CST	Central Sales Tax		
CTU	Central Transmission Utility		

CVD	Countervailing Duty	
CVR	Customs Valuation Rules 1988	
DBT	Department of Biotechnology	
DGCA	Directorate General of Civil Aviation	
DGFT	Director General of Foreign Trade	
DGMS	Directorate General of Mines Safety	
DIN	Director Identification Number	
DIPP	Department of Industrial Policy & Promotion	
DMFs	Drug Master Filings	
DMRC	Delhi Metro Rail Corporation	
DTH	Direct to Home	
DSC	Digital Signature Certificate	
DoT	Department of Telecommunication	
DTA	Domestic Tariff Area	
DTAA	Double Taxation Avoidance Agreement	
DTS	Department of Telecom Services	
DVCF	Domestic Venture Capital Funds	
EAC	Expert Appraisal Committee	
ECB	External Commercial Borrowings	
EHTP Electric Hardware Technology Park		
EIA	Environment Impact Assessment	
EOU	Export Oriented Unit	
E&P	Exploration & Production	
EPCGS	Export Promotion Capital Goods Scheme	
EPZ	Export Processing Zone	
ERF	Environment Relief Fund	
Exim Policy	Export Import Policy	
FBG Financial Bank Guarantee		
FBT Fringe Benefit Tax		
FCCBs Foreign Currency Convertible Bonds		
FDI	Foreign Direct Investment	
FEMA	Foreign Exchange Management Act	
FERA	Foreign Exchange Regulation Act 1973	
FIs	Financial Institutions	

FICCI	Federation of Indian Chambers of Commerce & Industry		
FIIs	Foreign Institutional Investors		
FIIA	Foreign Investment Implementation Authority		
FIPB	Foreign Investment Promotion Board		
FRROs	Foreigners Regional Registration Offices		
FSSA	Food Safety & Standards Authority		
FVCI	Foreign Venture Capital Investor		
FVCI	(SEBI) Foreign Venture Capital Investor		
Regulations	Regulations 2000		
GAIL	Gas Authority of India Ltd		
GDP	Gross Domestic Product		
GDRs	Global Depository Receipts		
GoI	Government of India		
GMPCS	Global Mobile Personal Communications Services		
На.	Hectares		
HSN	Harmonised System of Nomenclature		
HUF	Hindu Undivided Family		
ICSID	International Centre for Settlement of Investment Dispute		
IAD	International Airports Division		
IDRs	Indian Depository Receipts		
IEC	Importer Exporter Code		
IEM	Industrial Entrepreneurs Memorandum		
ILDS	International Long Distance Services		
IMG	Inter Ministerial Group		
INR/Rs./Rs	Indian Rupees		
IPAB	Intellectual Property Appellate Board		
IPEA	International Preliminary Examining Authority		
IPER	International Preliminary Examination Report		
IPR	Intellectual Property Rights		
IPTC	Independent Private Transmission Company		
IPTV	Internet Protocol Television		
IR	Indian Railways		
IRDA	Insurance Regulatory & Development Authority		
ISA	International Searching Authority		

IT	Information Technology		
ITAT	Income Tax Appellate Tribunal		
ITES	Information Technology Enabled Services		
ITU	International Telecommunication Union		
JPC	Joint Parliamentary Committee		
JVP	Joint Venture Partner		
KLD	Kilo litre of alcohol/ethanol per day		
KMPL	Kilometers Per Litre		
LoA	Letter of Assurance		
LIM	Lawful Interception Monitoring		
LIS	Lawful Interception System		
LNG	Liquified Natural Gas		
LOB	Limitation of Benefits		
LPG	Liquefied Petroleum Gas		
LRN	Loan Registration Number		
MMT	Million Metric Tonnes		
MMTPA Million Metric Tonnes Per Annum			
MOCA	Ministry of Civil Aviation		
MoEF	F Ministry of Environment & Forests		
MMSCMD Million Metric Standard Cubic Metres per Day			
MNCs	Multi-national Corporations		
MROs	Maintenance, Repair & Overhaul		
MRP	Maximum Retail Price		
MTPA	Million Tonnes Per Annum		
MoU	Memorandum of Understanding		
NAD	National Airports Division		
NADT	National Authority on Drugs & Therapeutics		
NASSCOM National Association of Software & Services Compa			
NBFCs Non Banking Financial Companies			
NDA	National Drug Authority		
NELP	New Exploration Licensing Policy		
NGOs	Non-Government Organisations		
NHAI	National Highway Authority of India		
NHDP	National Highways Development Project		

NIXI	National Internet Exchange of India		
NLDs	National Long Distance Services		
NOC	No Objection Certificate		
NPPA	National Pharmaceuticals Pricing Authority		
NRI	Non Resident Indian		
NSE	National Stock Exchange		
NTP	National Telecom Policy		
OCBs	Overseas Corporate Bodies		
OGL	Open General License		
OIL	Oil India Limited		
O&M	Operation & Maintenance		
ONA	Open Network Architecture		
ONGC	Oil & Natural Gas Corporation Limited		
OSPs	Other Service Providers		
PEs	Permanent Establishments		
PIO	Person of Indian Origin		
PLL	Petronet LNG Limited		
P&MP Act Petroleum & Mineral Pipelines			
	(Acquisition of Right of User in Land) Act 1962		
PMRTS	Public Mobile Radio Trunked Services		
PNGRB	The Petroleum & Natural Gas Regulatory Board		
PoP	Point of Presence		
PPAs	Power Purchase Agreements		
PPP	Public Private Partnership		
PSUs	Public Sector Undertakings		
PTC	Power Trading Corporation		
RA	Remote Access		
RBI	Reserve Bank of India		
R&D	Research & Development		
REIT	Real Estate Investment Trust		
RoU	Right of Use		
SBIRI	Small Business Innovation Research Industry		
SEAC	State Expert Appraisal Committee		
SEBs	State Electricity Boards		
SEBI	Securities and Exchange Board of India		

SEIAA	State Level Environment Impact Assessment Authority			
SEZ	Special Economic Zone			
SIA	Secretariat for Industrial Assistance			
SPCB	State Pollution Control Board			
SPV	Special Purpose Vehicle			
SRN	Service Request Number			
STP	Software Technology Park			
STU	State Transmission Utility			
TCD	Tonnes Crushed Per Day			
TDSAT	Telecom Disputes Settlement & Appellate Tribunal			
TEC	Telecom Engineering Centre			
TMT	Thousand Metric Ton			
TNCs	Transnational Corporations			
TPA	Tonnes Per Annum			
TPD	Tonnes Per Day			
TPH Tonnes Per Hour				
TRAI Telecom Regulatory Authority of India				
TRIPS Trade Related Aspects of Intellectual Property Righ				
TSDF	Treatment Storage & Disposal Facility			
UASL	Unified Access Services License			
UK	United Kingdom			
UN	United Nations			
UNWTO	UN World Tourism Organisation			
USA	United States of America			
USD	United States Dollar			
USFDA	United States Food & Drug Administration			
VAT	Value Added Tax			
VCF	Venture Capital Funds Regulations 1996			
Regulations	•			
VCUs	Venture Capital Undertakings			
VTM	Vigilance Technical Monitoring			
WIPO	World Intellectual Property Organisation			
WOS	Wholly Owned Subsidiary			
WTO	World Trade Organisation			

AN INTRODUCTION TO INDIA

India is the 7th largest country in the world and the second largest in Asia with a land mass of 3.29 million sq. km. and an estimated population of 1,166,079,217. It possesses a richness and diversity in culture, people, language, geographic and climatic conditions and natural resources that are matched by few other countries in the world.

Geography

In terms of area, India is the largest country in South Asia. The neighbouring countries in the north are China, Nepal and Bhutan; in the east, Bangladesh and Burma, and in the west, Pakistan and Afghanistan. In the south the country tapers off into the Indian Ocean. The Palk Straits separate India from the island country of Sri Lanka, which is situated to the southeast of India.

India is a natural sub-continent flanked by the Himalayas in the north, the Arabian Sea in the west, the Bay of Bengal in the east and the Indian Ocean in the south. The Andaman and Nicobar Islands in the Bay of Bengal and Lakshadweep Islands in the Arabian Sea are parts of the territory of India.

Climate

Due to the vastness of the country and differences of altitude there are various climatic zones in the country. The great Himalayan mountain barrier prevents the northern winter from blanketing India and thus keeps it pleasant in winter except for Kashmir and the hill stations in the Himalayas, where the temperature touches sub-zero.

Rainfall in India is not evenly distributed. Areas like the west coast, Bengal and Assam in the east get the heaviest rainfall with more than 200 cms each year. Mawsynram in Meghalaya receives the highest amount of rainfall (118.73 cm of annual rainfall) in the world. At the other extreme, Rajasthan and the high Ladakh plateau of Kashmir receive only 10 cms each year.

Population

India is the second most populous country in the world. The literacy rate is 62 per cent with a great degree of regional variation. Nearly 30 per cent of India's population lives in urban areas.

Language

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

Transportation

India has an extensive network of roads. The Indian railway system is the largest in Asia and the fourth largest in the world, with a network of about 63,221 km comprising Broad Gauge, Meter Gauge and Narrow Gauge. The railways play a crucial role in India's development.

Major marine ports of entry are Chennai (Madras), Haldia, Jawaharlal Nehru, Kandla, Kolkata (Calcutta), Mormugao, Mumbai (Bombay), New Mangalore, Vishakhapatnam Among the eleven major ports, Mumbai is the biggest port in India handling a major amount of the marine trade.

India is well served by air transport. The world's major airlines fly to and through India. Indian Airlines and other private airlines also provide extensive inbound and outbound air services. International airports are situated at New Delhi, Mumbai, Chennai, Kolkata, Thiruvananthapuram, Kochi, Hyderabad and Bangalore.

Communication

India has a well-developed modern system of communication. An excellent network of post offices, telegraph offices, telephone, telex, facsimile and e-mail facilities are available for internal and external communication. There are an estimated 39 million land-line users, 296 million cellular phone users and 80 million internet users in India.

Political set-up

India is the largest practising democracy in the world. The electoral process is well developed, with free and fair elections held at all levels, right down to individual villages, with universal adult suffrage. General elections are held every 5 years. The country is a union of States and Union Territories. The Central Government has exclusive jurisdiction over all matters of national interest such as defence, communication, banking and currency, international trade and foreign affairs. The State Governments have primary responsibility for matters like law and order, education, health and agriculture.

India has adopted a Parliamentary System of Government with two Legislative Houses. The Central Government comprises council of ministers headed by a Prime Minister. The Prime Minister is usually the head of the party, which has the support of a majority in the Parliament.

Judiciary

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

Currency and Banking

India's currency is the Indian Rupee. The country's currency & banking system is controlled and monitored by the RBI.

Travel regulations for foreign personnel

Foreigners desirous of visiting India can do so after obtaining a visa from the Indian Mission in their native country. They should posses a valid National passport – except in the case of nationals of Bhutan and Nepal, who may carry only suitable means of identification.

Indian Embassies and Consulates abroad issue visas up to 5 years with multiple entry option to foreign nationals for business purposes and for studies in India. For employment purposes, visas are issued for 1 year, which may be extended for further stay. A foreign national staying in India for more than 180 days, must obtain a Registration Certificate / Residential Permit from the Foreigners Registration office of the State where he would be stationed.

BUSINESS AND INVESTMENT CLIMATE

The economy of India is the fourth largest in the world as measured by purchasing power parity, with a GDP of USD 3.611 trillion. India is the second fastest growing major economy in the world, with an average growth rate of more than 7 per cent in the decade since 1997, reducing poverty by about 10 percentage points. India achieved 8.5 per cent GDP growth in 2006, 9.0 per cent in 2007, and 7.3 per cent in 2008, significantly expanding manufactures through late 2008.



India's dynamic and highly competitive private sector has long been the backbone of its economic activity. It accounts for over 75 per cent of its GDP and offers considerable scope for joint ventures and collaborations. Similarly, certain PSUs have been functioning effectively and competitively in the present day atmosphere of liberalised economy.

Economic factors

The industrial policy of India offers a great deal of freedom to business houses and entrepreneurs to make their own investment decisions. India has undergone more than a decade of economic reforms. Continuity in the economic liberalisation process and the political consensus on the same is encouraging the industrial growth path in India.

Why invest in india

There are several good reasons for investing in India.

- Political stability in a democratic environment since 60 years of independence;
- Vast domestic market with sizeable middle class population and increasing purchasing power reflected by remarkable increase in purchase of consumer durables in recent years;

As mentioned earlier, the Indian economy is one of the fastest growing economies in the world. India recorded the GDP growth rate of 8 per cent plus in first 6 months of the fiscal year 2006-2007. For the first six months of fiscal year 2006-2007, the country drew USD 2.86 billion of FDI and USD 5.10 billion of portfolio investment through Global Depository Receipts, American Depository Receipts, FIIs, offshore funds and others. GDP factor for the first quarter of 2007-08 was at INR 7231.32 billion that registered a growth rate of 9.3 per cent over the corresponding quarter of previous year. The economy grew at 9.3 per cent in quarter April-June and it was driven by manufacturing, construction and services sector and agriculture sector and the latest scenario of Indian gross domestic product factor is much higher than the world's annual average GDP of 5.5 per cent.

Government of India has established an Investment Commission that facilitates investments in the infrastructure sector among others. According to Indian government, Indian economy requires 320 billion dollars of investment for infrastructure development in next five year. This offers huge investment opportunity to both foreign and domestic investors.

As per the World Investment Report, 2008 of UNCTAD, India is the most promising destination for FDI in medium to long term investment. This speaks volumes about the soundness of the Indian economy.

The world's top corporate houses have announced major investments in India. This includes CISCO's commitment of USD 1.1 billion, SemIndia's USD 3 billion proposed investment, Intel's USD 1.2 billion, Microsoft's USD 1.7 billion, IBM's USD 6 billion and SAP lab's USD 1 billion investment which proves that the investment climate in India is conducive for foreign investment and economy has the capacity to absorb huge foreign investments.

- Foreign investment is welcome in all sectors barring those of strategic concern like defence and atomic energy;
- Emphasis on technology, innovation and knowledge base
- Large manufacturing capability, spanning almost all areas of manufacturing activities;

- Developed banking system, commercial banking network supported by a number of national and state level financial institutions;
- Vibrant capital market comprising 23 stock exchanges with over 9000 listed companies;
- Legal protection for intellectual property rights;
- Import regime in conformity with WTO commitments and removal of quantitative restrictions on imports of goods into India barring certain items on grounds of national security, defence and health;
- Increasing role of private and foreign investment in the Indian Economy;
- Rupee is fully convertible on current account and being progressively liberalized on capital account;
- A large reservoir of English speaking scientific and technical manpower as well as skilled, semi-skilled and unskilled people and huge diversified manufacturing base with an abundant supply and availability of quality raw materials. It is well endowed with agricultural, mineral and natural resources

Conclusion

India is being swept by a new wave of economic freedom and making tremendous progress in the direction of attaining its rightful place in the comity of nations. A series of positive economic reforms focused on deregulating the country and stimulating foreign investment has pushed India aggressively into the front ranks of other Asian countries.

The process of economic reform is unanimously supported by India's diverse political parties. There are no fundamental conflicts between its political and economic systems and the country has had a stable democratic system, favouring an open secular society with strong collective and individual rights and an environment supportive of free economic enterprise.



SPECIAL INTRODUCTION ON FOREIGN DIRECT INVESTMENT

Introduction

Ever since India gained independence, the nation's socio-economic development programmes have strived to achieve economic self-reliance and social equity. There is a near unanimity among political parties on economic reforms in India. With the benefits flowing from the economic reforms undertaken by successive governments in the country, this political consensus has broadened on a national scale.

Extended reforms in almost every sector have ensured macro-economic stabilization in the country. With the economy clearly charting the course of global integration and international competitiveness over the last decade, there has been substantial flow of Foreign Direct Investment (FDI) in various core sectors of the economy.

FDI has gained importance globally as an instrument of international economic integration. FDI policies along with trade policies have, in fact, become the focus of liberalization efforts in almost every country.

In India, the primary objective of the FDI policy is to invite and facilitate foreign investment to achieve faster economic growth. The policy guidelines of the Government of India for FDI in India are reviewed on an ongoing basis taking into account the economic requirements of the country. The regulations have been structured to identify the industrial sectors, with or without sectoral caps, for investments, to minimize the procedural formalities and finally to introduce an automatic route for foreign investors to bring in investment by merely informing the RBI.

The economic reforms initiated in 1991 introduced far reaching changes and to a great extent unshackled the Indian economy. These changes were mainly introduced in the following aspects of the economy:

- Trade and exchange controls;
- Selective access to foreign investment;
- Dominance of the public sector in industrial activity;
- Discretionary controls on industrial investment and capacity expansion;
- Public ownership and regulation of the financial sector.

The objectives of these reforms were to integrate the Indian economy with the global economy through trade, investment and technology flows and to create conditions that would give Indian entrepreneurs a level playing field.

Under the FDI policy, the original investment, as also the returns thereon, are fully repatriable. The payment of lump-sum fee and royalty to foreign technology provider, including that by a fully owned subsidiary to its offshore parent company, is permitted.

Further, the use of foreign brand names and trademarks for the sale of goods in India is permitted. The Indian capital market is now open to Foreign Institutional Investors (FIIs) in which the latter have shown a great amount of interest. Indian companies are permitted to raise funds from international capital markets.

India has entered into agreements for the avoidance of double taxation (DTAA) with over 90 countries (including limited DTAA's with 15 countries). Special investment and tax incentives are given for exports. Certain sectors such as power, electronics and software are also extended these benefits qua these sectors. "Single window" clearance facilities and "investor escort services" have also been provided in various states in order to simplify the approval process for new ventures. India has also entered into bilateral investment treaties (BITs) which are the agreements between two countries for the reciprocal encouragement, promotion and protection of investment in each other's territories by companies based in either country.

Overall Regulatory Framework for FDI

India's business regulatory environment covers all aspects of trade, industrial activity, taxes, foreign exchange, competition, intellectual property and social security. The government administers policy regulations and procedures through a system of notifications, which requires interested persons to continually keep track of the latest amendments applicable to their business interests.



The regulatory environment in India extends, *inter alia*, to the following business aspects:

- Foreign currency regulations
- Industrial regulations and administrative controls
- Regulations for managing business enterprises
- Regulations concerning taxation
- Regulations covering capital markets
- Regulations concerning business and trade practices and anti-trust matters
- Trade regulations conditions regulating export and import of goods and services
- Intellectual Property Regulations

Major Principles of India's Foreign Investment Regulations

The provisions, which apply only to entry of FDI, emanate from the Foreign Exchange Management Act, 1999 (FEMA). The route to foreign investment has been made easier as the thrust is more on the management of foreign investment rather than on regulation as was prevalent under its predecessor regulation, Foreign Exchange Regulation Act (FERA), 1973. India's foreign investment regulations are two pronged, one relates to the authorisations or licenses required by a foreign investor, and the other deals with the relationship between the subsidiary or joint venture company and its foreign parent company or investor, as the case may be (profit repatriation, royalties, etc.).

Basic Regulations Governing the entry by Foreign Investors

The basic rules regulating possible entry by foreign investors are as follows:

- No investment is permitted in a few sensitive sectors.

- Specific approval is required in a few sectors. Approvals are not automatic in these sectors and they are accorded on a case-to-case basis on merit.
- In all other sectors, foreign investment is allowed on an automatic basis up to the permissible limit set for a sector, i.e., it does not require prior approval of the Government of India, and the investment is required to be notified within a specified period.
- Except in the following circumstances, new proposals for foreign investment/ technical collaboration also require the prior approval of the government in cases where the foreign investor has an existing joint venture or technology transfer/trademark agreement (existing as on January 12, 2005) in the 'same' field:
 - o Investments to be made by Venture Capital Funds registered with the SEBI; or
 - Where the investment by either of the parties is less than 3 per cent in the existing joint-venture; or
 - o Where the existing venture/collaboration is defunct or sick.

In so far as joint ventures to be entered into after the date of this Press Note i.e. January 12, 2005 are concerned, the joint venture agreement may embody a 'conflict of interest' clause to safeguard the interests of joint venture partners in the event of one of the partners desiring to set up another joint venture or a wholly owned subsidiary in the 'same' field of economic activity. In order to determine 'same' field, the 4 digit National Industrial Classification (NIC) 1987 Code has to be referred to.

- Investments, once approved and implemented as per the approval conditions, are valid permanently and qualify for future repatriation of profits and capital.
- Approvals can follow one of the two routes, namely the Automatic route or the Approval
- The government, from time to time, notifies "sector specific guidelines for FDI" delineating the percentage of FDI permitted in specified sectors/activities. The guidelines also specify if the foreign investment would fall under the automatic or approval route. In the sectors/activities not listed in the guidelines, FDI is permitted up to 100 per cent under the automatic route, subject to the applicable sectoral rules/regulations. This list has been given at the end of this Chapter as Annexure I.

The Automatic Route

This route applies to all proposals that are completely in line with the investment guidelines prescribed for the sector. No prior approval is necessary for investments under the automatic route. However, the name of the collaborators, details of allotment, copy of the foreign collaboration agreement, the original foreign inward remittance certificate from the authorized dealer and other specified information are to be provided to the RBI within a specified period.

Automatic route extendes to all proposals:

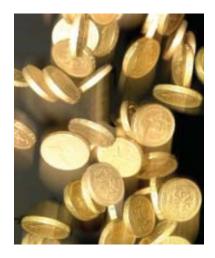
- Where the proposed investment is within the specified ceilings prescribed for automatic route;
- Subject to sectoral norms, FDI in Special Economic Zones (SEZs), Export Oriented Units (EOUs), Electronic Hardware Technology Park (EHTP), Software Technology Park (STP) and Industrial Parks;

The Approval Route

FDI activity not covered under the automatic route requires prior government approval and is considered by the Foreign Investment Promotion Board, Department of Economic Affairs, Ministry of Finance (FIPB) on a case-to-case basis. Prior approval of the Government of India is necessary for foreign investment in the following cases:

- Proposal requiring industrial license under the Industries (Development and Regulation) Act, 1951.
- Foreign equity being more than 24 per cent in the capital of units manufacturing items reserved for small-scale industries.
- All items which require an Industrial Licence in terms of the locational policy notified by Government under the Industrial Policy of 1991.
- All proposals in which the foreign collaborator had an existing venture/tie up in India in the same field on or before January 12, 2005, with some stated exceptions.
- All proposals with respect to sectors in which foreign investment can only be by prior government approval as per the notified sectoral policy.

The FIPB, comprising the secretaries of Departments/Ministries of Industries, Commerce, Finance and External Affairs, besides officials from various administrative Ministries, meets every week and considers applications in their totality. The decision of the committee is communicated within 30 days and applicants can also ascertain the status from the website http://www.dipp.nic.in. While granting approval, weightage is given to the employment potential, potential inflow of foreign exchange through exports, long term competitive advantage to India and favourable alignment of the proposals with government priorities like poverty alleviation, infrastructure development etc. The comments of the administrative Ministry as well as the industry development departments of the recipient State are well considered while clearing the proposal.



All cases involving higher investments, as well as applications rejected by the FIPB, are referred to the Cabinet Committee for Foreign Investment (CCFI) for its final decision. Proposals that are considered sensitive may necessitate presentations before the members of the Committee besides meetings with the concerned departments before a final decision is taken.

Besides the above, Foreign Investment Implementation Authority (FIIA) has been set up to facilitate quick implementation of FDI approvals and assist foreign investors in getting the necessary approvals.

Regulation Governing Relations with Parent Company

India has substantially liberalised foreign exchange controls since 1991. The trade account is fully convertible, which means that foreign exchange is easily available for all essential classes of payments

such as, import/export trade, business profits, technology fees, royalties, training, healthcare, education and overseas travel.

Remittance facilities have improved significantly in recent years, especially with the entry of private banks with international tie-ups and corresponding arrangements in all the principal business locations in the world. Leading banks offer remittance facilities through SWIFT, CHIPS and Telex Transfer modes, resulting in efficient fund transfers.

Few specified transfers are allowed on the capital account. The capital and profits of foreign investment in approved industrial activities are fully repatriable after deduction of applicable withholding taxes and other deductions, if any.

Procedure for Profit Repatriation

Profit repatriation can be in the form of dividends and bonus shares or capital gains from the sale of investments in India. Indian companies must pay a dividend distribution tax of 15 per cent + 10 per cent Surcharge + 3 per cent Education Cess (equivalent to 16.995 per cent) on the distributed profits, which are not further taxed in the hands of the beneficiary shareholders, including non-resident shareholders.

Dividends to shareholders must be repatriated within 30 days of their being announced, after submitting the necessary documentation to the RBI. The net dividends received from India are tax-free in the overseas recipient country, as provided in India's double taxation avoidance agreement with several countries.

Procedures for repatriation of remittances generated out of the assets of Indian subsidiaries of foreign companies under liquidation (winding up):

For the purpose of remitting the liquidated assets of the Indian companies, an application to an authorised dealer should be made together with the required information/documents as follows-

- NOC/Clearance certificate from the Indian Income Tax Authorities for the remittance;
- Auditor's certificate confirming that all liabilities in India have either been fully paid or adequately provided for;
- Auditor's certificate to the effect that the winding up is in accordance with the Companies Act;
- In case the winding up has been effected other than by a court order, then an auditor's certificate to the effect that there is no legal proceedings pending in any court in India against the applicant or the company under liquidation and that there is no legal impediment in permitting the liquidation.

Increasing Foreign Equity in existing Companies

With the exception of companies in the Financial Services Sector, i.e. Banks, Non Banking Financial Companies and Insurance, the Government dispensed with the requirement of obtaining prior approval of the Government (FIPB) with respect to transfer of shares/convertible debentures by

way of sale, from residents to non-residents (including transfer of subscriber's shares) of an existing Indian Company, provided the following conditions are fulfilled-

- The investment falls under the automatic route as per the FDI policy, and the transfer does not attract the provisions of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations 1997;
- Pursuant to the transfer, the shareholding of the non-resident complies with the sectoral limits of the FDI policy;
- The price at which the transfer takes place is in accordance with the pricing guidelines prescribed by SEBI/RBI.

However, the RBI permission would be necessary in cases involving transfer of existing shares in financial service sector and where compliance with SEBI (Substantial Acquisition of shares and takeover) Regulations, 1997, continues to be mandatory, if the existing company is a listed company. All proposals for raising foreign equity through preferential allotment of shares would need to be approved by the shareholders of the company through a special resolution under the Companies Act. Every preferential allotment of shares by listed companies viz; allotment of shares other than allotment on rights basis to select investors, is permitted at the market value of the shares.

Foreign Technology Agreements (including technology transfer and licensing agreements)

Foreign technology agreements are allowed in all industries (including reserved industries and industries involving compulsory licensing). The policy and procedures for executing foreign technology agreements have been simplified considerably. Automatic approval is accorded to all industries for foreign technology agreements envisaging payments of technical know-how fee within the following ceilings:

Payment of lump sum fee not exceeding USD 2 million, and royalties up to 5 per cent on domestic sales and up to 8 per cent on export sales.

- For a payment of any amount beyond the specified ceilings, prior approval of the Project Approval Board (PAB) the Department of Industrial Policy and Promotion (DIPP) is required.
- Extension/revalidation of existing or earlier technology agreements are not automatic and require fresh approval on specific merit, based on the satisfactory absorption of earlier know how. Remittances on lump sum and royalties are made after withholding taxes as set out in the DTAAs between India and the recipient country read with Indian income tax law.

Foreign technology agreements in the hotel industry are governed by a different set of guidelines and are covered under automatic route, subject to the fulfilment of the following parameters:-

- Technical and consulting services for architect, design etc., excluding costs of land and financingup to 3 per cent of the capital cost of the project less cost of land and finance;
- Financing and Marketing/Publicity support up to 3 per cent of the net turnover (i.e gross receipts less credit card charges, travel agents commission, sales tax, statutory payments etc.);

- Management fees including incentives up to 10 per cent of gross operating profit.

Government policies toward technology transfer through licensing and technical collaborations have always been positive, in keeping with the national theme of indigenisation and self-reliance. As a result, Indian industry has a tradition of technological collaboration in all sectors and in fact has developed its technology intensive sectors primarily through technical collaborations.

While clear guidelines exist for technical collaboration approvals in respect of lump sum fee and royalties, it is important to note a few procedural aspects:

- The payment schedule of lump sum fee can be agreed contractually between the parties.

Royalties:

- Higher royalties may be paid for exports than for domestic sales subject to an overall ceiling of 8 per cent.
- Royalties are calculated on the net ex factory sales less the landed costs of all imported components, and costs of all standard bought-out components, i.e., on the actual value added in manufacturing.
- Foreign companies offering technical know-how need to fully understand the implications of these conditions and incorporate necessary safeguards in the agreements with Indian know-how recipients, especially in high sales volume business.

Press Notes 2, 3 and 4 (2009 Series)

The Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, Government of India has recently issued three Press Notes i.e. Press Note 2, 3 and 4 (2009 series). Press Note 2 of 2009 lays down guidelines for calculation of total foreign investment i.e. direct and indirect foreign investment in Indian companies, Press Note 3 of 2009 lays down guidelines for transfer of ownership or control of Indian companies in sectors with caps from resident Indian citizens to non-resident entities and Press Note 4 of 2009 provides clarificatory guidelines on downstream investment by Indian companies.

(I) Press Note 2 of 2009

Press Note 2 of 2009 *inter alia* provides that:

1. For the purpose of computation of indirect foreign investment, foreign investment in Indian company shall include all types of foreign investments i.e. foreign direct investment, investment by Foreign Institutional Investors (FII) (holding as on March 31), Non Resident Indians (NRIs), ADRs, GDRs, Foreign Currency Convertible Bonds (FCCB) and convertible preference shares, convertible debentures regardless of whether the said investments have been made under Schedule 1, 2, 3 and 6 of Foreign Exchange Management Act (Transfer or Issue of Security by Persons Resident Outside India) Regulations.

- 2. Foreign investment through the investing Indian company would not be considered for calculation of indirect foreign investment in case of Indian companies which are 'owned and controlled' by resident Indian citizens and/or Indian companies which are owned and controlled by resident Indian citizens. In this regard, an Indian company would be considered as being "owned" by resident Indian citizens and Indian companies, which are owned and controlled by resident Indian citizens, if more than 50 per cent of the equity interest in it is beneficially owned by resident Indian citizens and Indian companies, which are owned and controlled ultimately by resident Indian citizens. Also, an Indian companies, which are owned and controlled by resident Indian citizens and Indian companies, which are owned and controlled by resident Indian citizens, if the resident Indian citizens and Indian companies, which are owned and controlled by resident Indian citizens, have the power to appoint a majority of its directors.
- 3. In case the aforementioned conditions are not satisfied or if the investing company is owned or controlled by 'non-resident entities', the entire investment by the investing company into the subject Indian company would be considered as indirect foreign investment, provided that, as an exception, the indirect foreign investment in only the 100 per cent owned subsidiaries of operating-cuminvesting/investing companies, will be limited to the foreign investment in the operating-cum-investing/investing



company. For the purposes of explanation it has been clarified that the said exception is being made since the downstream investment of a 100 per cent owned subsidiary of the holding company is akin to investment made by the holding company and the downstream investment should be a mirror image of the holding company. In this regard, an Indian company would be considered as being "owned" by 'non-resident entities', if more than 50 per cent of the equity interest in it is beneficially owned by non-residents. Also, an Indian company would be considered as being "controlled" by 'non-resident entities', if non-residents have the power to appoint a majority of its directors.

4. The full details about the foreign investment including ownership details etc. in Indian company(s) and information about the control of the company(s) would be furnished by the company(s) to the Government of India at the time of seeking approval. In any sector/activity, where Government approval is required for foreign investment and in cases where there are any *inter-se* agreements between/amongst share-holders which have an effect on the appointment of the Board of Directors or on the exercise of voting rights or of creating voting rights disproportionate to shareholding or any incidental matter thereof, such agreements will have to be informed to the approving authority. The approving authority will consider for determining ownership and control such *inter-se* agreements when considering the case for granting approval for foreign investment.

- 5. In all sectors attracting sectoral caps, the balance equity i.e. beyond the sectoral foreign investment cap, would specifically be beneficially owned by/held with/in the hands of resident Indian citizens and Indian companies, owned and controlled by resident Indian citizens.
- 6. The policy and the methodology as stated in Press Note 2 of 2009 would be applicable for determining the total foreign investment in all sectors, excepting in sectors where it is governed specifically under any statues or rules thereunder. Thus, for the present purposes this methodology will not be applicable in the Insurance sector where it will continue to be governed by the relevant Regulation.
- 7. Any foreign investment already made in accordance with the guidelines in existence prior to issue of this Press Note would not require any modification to confirm with these guidelines. All other investments, past and future, would come under the ambit of these new guidelines.

(II) Press Note 3 of 2009

Press Note 3 of 2009 *inter alia* provides that:

In sectors with caps, including *inter alia* defence production, air transport services, ground handling services, asset reconstruction companies, private sector banking, broadcasting, commodity exchanges, credit information companies, insurance, print media, telecommunications and satellites, Government approval/FIPB approval would be required in all cases where:

- 1. An Indian company is being established with foreign investment and is owned by a non-resident entity or
- 2. An Indian company is being established with foreign investment and is controlled by a non-resident entity or
- 3. The control of an existing Indian company, currently owned or controlled by resident Indian citizens and Indian companies, which are owned or controlled by resident Indian citizens, will be/is being transferred/passed on to a non-resident entity as a consequence of transfer of shares to non-resident entities through amalgamation, merger, acquisition etc. or;
- 4. The ownership of an existing Indian company, currently owned or controlled by resident Indian citizens and Indian companies, which are owned or controlled by resident Indian citizens, will be/is being transferred/passed on to a non-resident entity as a consequence of transfer of shares to non-resident entities through amalgamation, merger, acquisition etc.
- 5. These guidelines will not apply for sectors/activities where there are no foreign investment caps, that is, 100 per cent foreign investment is permitted without the prior approval from FIPB.

(III) Press Note 4 of 2009

Press Note 4 of 2009 inter alia provides that:

The policy on downstream investment comprises policy for (a) only operating companies (b) operating cum-investing companies (c) only investing companies.

The policy in this regard will be as below:

- (a) Only operating companies: Foreign investment in such companies would have to comply with the relevant sectoral conditions on entry route, conditionalities and caps with regard to the sectors in which such companies are operating.
- (b) Operating-cum-investing companies: Foreign investment into such companies would have to comply with the relevant sectoral conditions on entry route, conditionalities and caps with regard to the sectors in which such companies are operating. Further, the subject Indian companies into which downstream investments are made by such companies would have to comply with the relevant sectoral conditions on entry route, conditionalities and caps with regard to the sector in which the subject Indian companies are operating.
- (c) Investing companies: Foreign Investment in investing companies will require the prior Government/FIPB approval, regardless of the amount or extent of foreign investment. The Indian companies into which downstream investments are made by such investing companies would have to comply with the relevant sectoral conditions on entry route, conditionalities and caps with regard to the sector in which the subject Indian companies are operating.

Press Note 4 of 2009 also provides that for companies which do not have any operations and also do not have any downstream investments, for infusion of foreign investment into such companies, Government/FIPB approval would be required, regardless of the amount or extent of foreign investment. Further, as and when such company commences business(s) or makes downstream investment it will have to comply with the relevant sectoral conditions on entry route, conditionalities and caps.

Further, for operating-cum-investing companies and investing companies and for companies which do not have any operations and also do not have any downstream investments, downstream investments can be made subject to the following conditions:

(a) Such company is to notify SIA, DIPP and FIPB of its downstream investment within 30 days of such investment even if equity shares/CCPS/CCD have not been allotted along with the modality of investment in new/existing ventures (with/without expansion programme);



- (b) downstream investment by way of induction of foreign equity in an existing Indian Company to be duly supported by a resolution of the Board of Directors supporting the said induction as also a shareholders Agreement if any;
- (c) issue/transfer/pricing/valuation of shares shall be in accordance with applicable SEBI/RBI guidelines;
- (d) Investing companies would have to bring in requisite funds from abroad and not leverage funds from domestic market for such investments. This would, however, not preclude downstream operating companies to raise debt in the domestic market.

Conclusion

While FDI in developing countries, including India, has grown rapidly in recent years, shifts in its distribution suggest that significant competition exists among potential host countries. Multi-National Corporations (MNCs) frequently make choices among potential host countries when deciding where to locate their foreign production facilities. In that regard, the prospects for increase in FDI in India have been made attractive by favourable changes in its FDI policies.

This chapter lays the foundation for the following chapters which will portray some of the major changes which have been brought about by reforms in the economic sector and which strive to make India an attractive destination for FDI. It is hoped that these policies would shape the Indian economy and make India the preferred and most attractive destination for FDI.

Annexure-I

Policy On Foreign Direct Investment (FDI)

- I. Sectors prohibited for FDI
 - i. Retail trading (except single brand product retailing)
 - ii. Atomic energy
 - iii. Lottery business
 - iv. Gambling and Betting
 - v. Business of chit fund
 - vi. Nidhi company
 - vii. Trading in Transferable Development Rights (TDRs)
 - viii. Activity/sector not opened to private sector investment
- II. In Sectors/Activities not listed below, FDI is permitted up to 100 per cent on the automatic route subject to sectoral rules / regulations applicable.
- III. Sector-specific policy for FDI in the following sectors/activities, FDI up to the limit indicated below is allowed subject to other conditions as indicated:

S. No.	Sector/ Activity	FDI Cap/ Equity	Entry Route	Other Conditions
I	AGRICULTURE			
1.	Floriculture, Horticulture, Development of Seeds, Animal Husbandry, Pisciculture, Aquaculture and Cultivation of Vegetables & Mushrooms under controlled conditions and services related to agro and allied sectors.	100%	Automatic	
	Note: Besides the above, FDI is not allowed in any other agricultural sector /activity			
2.	Tea Sector, including tea Plantation Note: Besides the above,	100%	FIPB	Subject to divestment of 26% equity in favour of Indian partner/ Indian public within 5 years and
	FDI is not allowed in any other plantation sector/activity			prior approval of State Government concerned in case of any change in future land use.
П	INDUSTRY			
II A	MINING			
3.	Mining covering exploration and mining of diamonds & precious stones; gold, silver and minerals.	100%	Automatic	Subject to Mines & Minerals (Development & Regulation) Act, 1957 www.mines.nic.in Press Note 18 (1998) and Press Note 1 (2005) are not applicable for setting up 100% owned subsidiaries in so far as the mining sector is concerned, subject to a declaration from the applicant that he has no existing joint venture for the same area and /or the particular mineral.
4.	Coal & Lignite mining for captive consumption by power projects, and iron & steel, cement	100%	Automatic	Subject to provisions of Coal Mines (Nationalisation) Act, 1973 www.coal.nic.in

S. No.	Sector/ Activity	FDI Cap/ Equity	Entry Route	Other Conditions
	production and other eligible activities permitted under the Coal Mines (Nationalisation) Act, 1973.			
5.	Mining and mineral separation of titanium bearing minerals and ores, its value addition and integrated activities. Note: FDI will not be allowed in mining of "prescribed substances" listed in Government of India notification No. S.O. 61(E) dt. 18.1.2006 issued by the Department of Atomic Energy under the Atomic Energy Act, 1962.	100%	FIPB	Subject to sectoral regulations and the Mines and Minerals (Development & Regulation) Act, 1957 and the following conditionsi. value addition facilities are set up within India along with transfer of technology; ii. disposal of tailing during the mineral separation shall be carried out in accordance with regulations framed by the Atomic Energy Regulatory Board such Atomic Energy (Radiation Protection) Rules2004 and the Atomic Energy (Safe Disposal of Radioactive Wastes) Rules 1987.
II B	MANUFACTURING			
6.	Alcohol- Distillation & Brewing	100%	Automatic	Subject to license by appropriate authority
7.	Cigars & Cigarettes- Manufacture	100%	FIPB	Subject to industrial license under the Industries (Development & Regulation) Act, 1951
8.	Coffee& Rubber processing & warehousing	100%	Automatic	
9.	Defence production	26%	FIPB	Subject to licensing under Industries (Development & Regulation) Act, 1951 and guidelines on FDI in production of arms & ammunition.

S. No.	Sector/ Activity	FDI Cap/ Equity	Entry Route	Other Conditions
10.	Hazardous chemicals, viz., hydrocyanic acid and its derivatives; phosgene and its derivatives; and isocyanates and diisocyantes of hydrocarbon	100%	Automatic	Subject to industrial license under the Industries (Development & Regulation) Act, 1951 and other sectoral regulations.
11.	Industrial explosives - Manufacture	100%	Automatic	Subject to industrial license under Industries (Development & Regulation) Act, 1951 and regulations under Explosives Act, 1898
12.	Drugs & Pharmaceuticals including those involving use of recombinant DNA technology	100%	Automatic	
II C	POWER			
13.	Power including generation (except Atomic energy); transmission, distribution and Power Trading.	100%	Automatic	Subject to provisions of the Electricity Act, 2003 www.powermin.nic.in
III	SERVICES			
14.	CIVIL AVIATION SECTOR			
(i)	Airports -			
a.	Greenfield Projects	100%	Automatic	Subject to sectoral regulations notified by Ministry of Civil Aviation www civilaviation.nic. in
b.	Existing projects	100%	FIPB beyond 74%	Subject to sectoral regulations notified by Ministry of Civil Aviation www.civilaviation.nic. In

S. No.	Sector/Activity	FDI Cap/ Equity	Entry Route	Other Conditions
ii.	Air Transport Services including Domestic Scheduled Passenger Airlines; Non-Schedules Airlines; Chartered Airlines; Cargo Airlines; Helicopter and Seaplane Services			
c.	Scheduled Air Transport Services/ Domestic Scheduled Passenger Airline	49%- FDI; 100%- for NRI Investment	Automatic	Subject to no direct or indirect participation by foreign airlines and sectoral regulations.
d.	Non-Scheduled Air Transport Service/Non- Scheduled airlines, Chartered airlines, and Cargo airlines	74%- FDI 100%- for NRIs Investment	Automatic	Subject to no direct or indirect participation by foreign airlines in Non-Scheduled and Chartered airlines. Foreign airlines are allowed to participate in the equity of companies operating Cargo airlines. Also subject to sectoral regulations.
e.	Helicopter Services/ Seaplane services requiring DGCA approval	100%	Automatic	Foreign airlines are allowed to participate in the equity of companies operating Helicopter and seaplane airlines. Also subject to sectoral regulations.
iii	Other services under Civil Aviation Sector			
f.	Ground Handling Services	74%- FDI 100%- for NRIs Investment	Automatic	Subject to sectoral regulations and security clearance.
g.	Maintenance and Repair organizations; flying training institutes; and technical training institutions	100%	Automatic	
15.	Asset Reconstruction Companies	49% (only FDI)	FIPB	Where any individual investment exceeds 10% of the equity, provisions of Section 3(3)(f) of

S. No.	Sector/Activity	FDI Cap/ Equity	Entry Route	Other Conditions
				Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 should be complied with. www.finmin.nic.in
16.	Banking - Private sector	74% (FDI+FII)	Automatic	Subject to guidelines for setting up branches/ subsidiaries of foreign banks issued by RBI. www.rbi.org.in
17.	Broadcasting			
a.	FM Radio	FDI +FII investment up to 20%	FIPB	Subject to Guidelines notified by Ministry of Information & Broadcasting. www.mib.nic.in
ь.	Cable Network	49% (FDI+FII)	FIPB	Subject to Cable Television Network Rules (1994) Notified by Ministry of Information & Broadcasting. www.mib.nic.in
c.	Direct-To-Home	49% (FDI+FII) Within this limit, FDI Component not to exceed 20%	FIPB	Subject to guidelines issued by Ministry of Information & Broadcasting, www.mib.nec.in
d.	Setting up hardware facilities such as uplinking, HUB, etc.	49% (FDI+FII)	FIPB	Subject to Up-linking Policy notified by Ministry of Information & Broadcasting. www.mib.nic.in
e.	Up-linking a News & Current Affairs TV Channel	26% (FDI+FII)	FIPB	Subject to guidelines issued by Ministry of Information & Broadcasting. www.mib.nic.in
f.	Up-linking a News & Current Affairs TV Channel	100%	FIPB	Subject to guidelines issued by Ministry of Information & Broadcasting. www.mib.nic.in

S. No.	Sector/Activity	FDI Cap/ Equity	Entry Route	Other Conditions
18.	Commodity Exchanges	49% (FDI+FII) Investment by Registered FII under PIS will be limited to 23% and Investment under FDI Scheme limited to 26%	FIPB	FII purchases shall be restricted to secondary market only. No foreign investor/entity, including persons acting in concert, will hold more than 5% of the equity in these companies
19.	Construction Development project, including housing, commercial permises, resorts, eductional, institutions, recreational facilities, city and regional level infrastructure, townships. Note: FDI is not alowed in Real Estate Business	100%	Automatic	Subject to conditions notified vide Press Note 2 (2005 Series) including: a. minimum capitalization of US\$ 10 million for wholly owned subsidiaries and US\$ 5 million for joint venture. The funds would have to be brought within six months of commencement of business of the Company. b. Minimum area to be developed under each project-10 hectares in case of development of serviced housing plots; and built-up area of 50,000 sq. mts. in case of construction development project; and any of the above in case of a combination project. [Note 1: For investment by NRIs, the conditions mentioned in Press Note 2 / 2005 are not applicable. Note 2: For investment in SEZs, Hotels & Hospitals, conditions mentioned in Press Note 2(2005) are not applicable]

S. No.	Sector/ Activity	FDI Cap/ Equity	Entry Route	Other Conditions
20.	Courier Services for carrying packages, parcels and other items which do not come within the ambit of the Indian Post Office Act, 1898.	100%	FIPB	Subject to existing laws and exclusion of activity relating to distribution of letters, which is exclusively reserved for the State. www.indiapost.gov.in
21.	Credit Information Companies	49% (FDI+FII) Investment by Registered FII under PIS will be limited to 24% only in the CICs listed at the Stock Exchanges within the overall limit of 49% foreign investment.	FIPB	Foreign Investment in CIC will be subject to Credit Information Companies (Regulation) Act, 2005. FII investment will be subject to the conditions that: (a) No single entity should directly or indirectly hold more than 10% equity (b) Any acquisition in excess of 1% will have to be reported to RBI as a reporting requirement; and (c) FIIs investing in CICs shall not seek a representation on the Board of Directors based upon their shareholding
22.	Industrial Parks both setting up and in established Industrial Parks	100%	Automatic	Conditions in Press Note 2(2005) applicable for construction development projects would not apply provided the Industrial Parks meet with the under-mentioned conditions- i. it would comprise of a minimum of 10 units and no single unit shall occupy more than 50% of the allocable area; ii. the minimum percentage of the area to be allocated for industrial activity shall not be less than 66% of the total allocable area.

S. No.	Sector/ Activity	FDI Cap/ Equity	Entry Route	Other Conditions
23.	Insurance	26%	Automatic	Subject to licensing by the Insurance Regulatory & Development Authority www.irda.nic.in
24.	Non Banking Finance Companies i) Merchant Banking ii) Underwriting Portfolio Management Services iii) Investment Advisory Services iv) Financial Consultancy v) Stock Broking vi) Asset Management vii) Venture Capital viii) Custodial Services ix) Factoring x) Credit Rating Agencies xi) Leasing & Finance xii) Finance xiii) Housing Finance xiv) Forex Broking xv) Credit Card Business xvi) Money Changing Business xvii) Micro Credit xviii) Rural Credit	100%	Automatic	Subject to: a. minimum capitalization norms for fund based NBFCs - US\$ 0.5 million to be brought upfront for FDI up to 51%; US\$ 5 million to be brought upfront for FDI above 51% and up to 75%; and US\$ 50 million out of which US\$ 7.5 million to be brought upfront and the balance in 24 months for FDI beyond 75% and up to 100%. b. minimum capitalization norms for non-fund based NBFC activities- US\$ 0.5 million. c. foreign investors can set up 100% operating subsidiaries without the condition to disinvest a minimum of 25% of its equity to Indian entities subject to bringing in US\$ 50 million without any restriction on number of operating subsidiaries without bringing additional capital. d. joint venture operating NBFC's that have 75% or less than 75% foreign investment will also be allowed to set up subsidiaries for undertaking other NBFC activities subject to the subsidiaries also complying with the applicable minimum capital inflow.

S. No.	Sector/Activity	FDI Cap/ Equity	Entry Route	Other Conditions
				e. compliance with the guidelines of the RBI.
				f. The minimum capitalization norms would apply would be applicable where the foreign holding in a NBFC(both direct and foreign holding in a NBFC(both direct and indirect) exceeds the limits indicated at (a) above
				g. The capital for the purpose of minimum capitalization norms shall consist of ordinary shares only.
25.	Petroleum & Natural Gas sector			
a.	Refining	49% in case of PSUs 100% in case of private companies	FIPB (in case of PSUs) Automatic (in case of Private companies)	Subject to sectoral policy www.petroleum.nic.in and no divestment or dilution of domestic equity in the existing PSUs.
b.	Other than Refining and including market study and formulation; investment/financing; setting up infrastructure for marketing in Petroleum & Natural Gas sector.	100%	Automatic	Subject to sectoral regulations issued by Ministry of Petroleum & Natural Gas www.petroleum.nic.in
26.	Print Media			
a.	Publishing of newspaper and periodicals dealing with news and current affairs	26%	FIPB	Subject to Guidelines notified by Ministry of Information & Broadcasting. www.mib.nic.in

S. No.	Sector/Activity	FDI Cap/ Equity	Entry Route	Other Conditions
b.	Publishing of scientific magazines/ specialty journals/ periodicals/ facsimile edition of foreign newspapers.	100%	FIPB	Subject to guidelines issued by Ministry of Information & Broadcasting & Press Note 1 (2009) www.mib.nic.in
27.	Telecommunications			
a.	Basic and cellular, Unified Access Services, National/ International Long Distance, V-Sat, Public Mobile Radio Trunked Services (PMRTS), Global Mobile Personal Communications Services (GMPCS) and other value added telecom services	FDI, FII,NRI, FCCBs, ADRs, GDRs, convertible preference shares, and proportionate foreign equity in Indian	Automatic upto 49% FIPB beyond 49%	Subject to guidelines notified in the PN 3(2007)
b.	ISP with gateways, radiopaging, end-to-end bandwidth.	74%	Automatic up to 49% FIPB beyond 49%	Subject to licensing and security requirements notified by the Dept. of Telecommunications. www.dotindia.com
c.	(a) ISP without gateway, * (b) infrastructure provider providing dark fibre, right of way, duct space, tower (Category I); (c) electronic mail and voice mail *The government has revised guidelines for ISP's on 24-8-2007 and new guidelines provide for ISP licenses with gateway component only and with 74% FDI.	100%	Automatic up to 49% FIPB beyond 49%	Subject to the condition that such companies shall divest 26% of their equity in favour of Indian public in 5 years, if these companies are listed in other parts of the world. Also subject to licensing and security requirements, where required. www.dotindia.com

S. No.	Sector/ Activity	FDI Cap/ Equity	Entry Route	Other Conditions
d.	Manufacture of telecom equipments	100%	Automatic	Subject to sectoral requirements. www.dotindia.com
28.	Trading			
a.	Wholesale/cash & carry trading	100%	Automatic	
Ь.	Trading for exports	100%	Automatic	
c.	Trading of items sourced from small scale sector	100%	FIPB	Subject to the condition that the test marketing approval will be for a period of two years and Investment in setting up manufacturing facilities commences simultaneously with test marketing.
d.	Test marketing of such items for which a company has approval for manufacture	100%	FIPB	
e.	Single Brand product retailing	51%	FIPB	Subject to guidelines for FDI in trading issued by Department of Industrial Policy & Promotion vide Press Note 3 (2006 Series).
29.	Satellites- Establishment and operation	74%	FIPB	Subject to sectoral guidelines issued by Department of Space/ISRO www.isro.org
30.	Special Economic Zones and Free Trade Warehousing Zones covering setting up of these Zones and setting up units in the Zones	100%	Automatic	Subject to Special Economic Zones Act, 2005 and the Foreign Trade Policy. www.sezindia.nic.in

ENTRY OPTIONS IN INDIA FOR A FOREIGN ENTERPRISE

Introduction

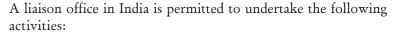
The Indian market opened up for foreign investors with the scrapping of industrial licensing and relaxation of FDI norms considerably. Currently, there are various options available to a foreign enterprise for setting up operations in India.

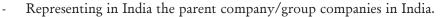
Entry Options in India

A foreign enterprise wishing to conduct business in India can opt for one of the following main options:

Liaison office:

These are owned and controlled by the foreign enterprises. However, the liaison offices are not allowed to earn any income and are primarily opened by foreign companies to liaise with their customers in India and for promoting export and import. No manufacturing, trading or any other commercial activity is permitted for a liaison office.





- Promoting export/import from/to India.
- Promoting technical/financial collaborations between parent/group companies and companies in India.
- Acting as a communication channel between the parent company and Indian companies.

The opening and operation of such offices is regulated by the FEMA as amended from time to time. Approval from the RBI is required for opening such offices. The conditions imposed for operation of such offices are:

- Expenses of such offices are to be met entirely through inward remittances of foreign exchange from the head office abroad.
- Such offices should not undertake any trading or commercial activities and their activities should be limited to collecting and transmitting information between the overseas head office and potential Indian customers.
- Such offices should not charge any commission or receive any income from Indian customers for providing liaison services.
- Liaison offices also have to file regular returns comprising of annual audited accounts, an annual report on the activities of the office and some other documents with the RBI.

An application to set up liaison office in India is to be made to the central office of RBI (Foreign Investment Division). After the application is approved, permission is initially granted for three years. Applications for renewal of permission should be made to the concerned regional office of RBI under whose jurisdiction the office is situated. Pursuant to the setting up of the liaison office, with the approval of the RBI, the Registrar of Companies needs to be intimated, about the setting up of a place of business under the Companies Act.



It may be noted that an insurance company having approval from the Insurance Regulatory and Development Authority under the provisions of Insurance Regulatory and Development Authority Act, 1999 to establish a liaison office in India does not require approval under the provisions of the FEMA.

Project office:

Foreign companies can set up temporary project/site offices in India to execute specific projects in India and to carry on any activity relating and incidental thereto. The RBI has granted general permission to a foreign entity for setting up a project office in India subject to the following conditions:

- 1. It has secured from an Indian company a contract to execute a project in India; and
- 2. The project is funded by inward remittance from abroad; or
- 3. The project is funded by a bilateral international finance agency (i.e. the World Bank, International Monetary Fund or similar other body); or
- 4. The project has been cleared by an appropriate authority; or
- 5. A company or entity in India awarding the contract has been granted term loan by a public financial institution or a bank for the project.

Pursuant to the setting up of the Project Office, the Registrar of Companies needs to be intimated about the setting up of a place of business under the Companies Act. RBI has also granted general permission to foreign entities to remit the surplus on winding up/ completion of projects.

Branch Office:

A branch office is basically an extended arm of the foreign company and can undertake export/import of goods, consultancy, research, coordination with local buyers and sellers, provide technical support for products sold in India, development of software and operations related to airline/shipping business. The branch office can acquire property for the permitted use, but cannot lease or rent property. The foreign parent company is liable for all activities of the Indian branch.

However, branches are not allowed to undertake manufacturing activities. These branches are treated as 'Permanent Establishment' of a foreign company in India and are liable for higher Income Tax (40 per cent plus 2.5 per cent surcharge plus 3 per cent education cess; as against 30 per cent plus 10 per cent surcharge plus 3 per cent education cess for companies set up in India). The profits earned by the branch office are freely remittable from India and the branches have to submit an annual activity certificate to the Reserve Bank of India.

The branch office can undertake the following activities:

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

Applications for opening of branches in India are to be made to the central office of RBI (Foreign Investment Division). However, approval from RBI is not required if a company intends to establish a branch/unit in SEZs to undertake manufacturing and service activities provided such units are functioning in those sectors where 100 per cent FDI is permitted; such units comply with the provisions of the Companies Act; such units function on a stand-alone basis, and in the event of winding up of business and for remittance of winding up proceeds, the branch approaches an authorized dealer (i.e., persons authorized by the RBI to deal in foreign exchange) with prescribed documents.



Acquisition Of Existing Companies:

Subject to the provisions of Press Note 1 of 2005 series issued by the Department of Industrial Policy and Promotion, sector specific FDI ceilings and other specific conditions pertaining to specific sectors as prescribed by the Ministry of Commerce & Industry, the requirement of procuring approval of the Government of India (FIPB) with regard to transfer of shares/convertible debentures by way of sale, from residents to non-residents (as well as from non-residents to residents), including transfer of subscriber's shares, of an existing company has been dispensed with. However, such permission would be necessary in cases involving transfer of existing shares in financial service sector [For details, please refer to the chapter on "Special Introduction on Foreign Direct Investment."]

Joint Venture:

This is a popular route for foreign companies wishing to establish a base in India. For this purpose, an Indian company with limited liability is incorporated in India under the Companies Act and investment made along with a suitable business partner. Depending upon the business sector, the investments on repatriation basis can be made into this Indian company under automatic route or through prior approval of the GoI acting through the FIPB. Foreign equity in such Indian companies can be up to 100 per cent depending on the business of the Indian company (in which case a wholly owned subsidiary can be set up by the foreign investor as discussed below), prevailing investment policies of the government and receipt of requisite approvals.

Factors to be considered while forming a Joint Venture:

In sectors where 100 per cent FDI is not permitted and wholly owned subsidiaries cannot be set up, a foreign investor may enter the Indian market through joint ventures. Forming a joint venture encompasses a number of stages and a number of factors. Mentioned below are some of the essential steps to be taken by a foreign party to a joint venture.

The most important decision is choosing an appropriate local partner. A local partner can play a significant role in overcoming various legal complexities. Business synergies, which are essential for the venture, are also required.

The next step is to identify a location for the proposed project. Choice of location depends upon the type of activity to be undertaken. If the activity relates to consumer goods sector, a variety of locations will be available due to the fact that a number of Indian partners can be easily found for such activities. However, in case of specialized industries, there may be limitations on the choice of location as the number of suitable partners for such activity is limited. Other important factors to be considered for this purpose are availability of infrastructure services and financial incentives such as preferential tax treatment.

Prior to commencing negotiation, confidentiality/non-disclosure agreements may be entered into between the parties for the protection of strategic business information. Such agreements are enforceable in India. Another step taken at the initial stages of negotiation is to sign a Memorandum of Understanding ("MoU"), which lays down the basic parameters of the project and contains the intention of the parties to enter into the joint venture, but is not generally legally binding.

This MoU is then used as a basis for the final binding joint venture agreement. Under Indian laws, the joint venture agreement/shareholders agreement has to be incorporated into the Articles of Association of the Indian company, which constitutes the byelaws of the joint venture company. The necessary stamp duty also has to be paid on the joint venture agreement and the Articles of Association. The joint venture agreement defines the mutual rights of the parties and also prescribes guidelines for efficient functioning of the company. Some of the important clauses/provisions, which ought to be included in the joint venture agreement, are as follows:

- **Approvals:** The joint venture agreement is subject to the RBI and FIPB policies. In addition, approvals and licenses in respect of tax, other registration, etc. are also required.
- Finance: This clause lays down the manner in which finances are to be raised for the business. It prescribes the amount of initial investment and the contributions to be made by each of the parties, i.e., the foreign investor and the Indian partner, in respect of additional funds, etc.
- Object: The objects, scope, extent and the end product of the joint venture should be specified.
- Shareholdings: This clause lays down the shareholding ratio between the parties in accordance with either the cash inputs or the assets brought in by them. It further states the class of shares to be issued and the rights attached thereto. Provisions relating to shareholders' meetings, voting rights, future issue of share capital, transfer of shares, etc., are also stated in this clause.
- Management: The constitution of the board of directors, provisions relating to meetings (of the board of directors and shareholders) and resolutions thereof form the ingredients of this clause. Terms and conditions for expansion of business, appointment and removal of the senior management and service agreements are all stated in this clause.
- Resolution of Disputes: The terms of this clause are to ascertain when a dispute is deemed to arise and the manner of settlement. The disputes are generally resolved using means of alternate dispute resolution. However, litigation may also be resorted to. The provisions of this clause shall govern the effects of such disputes on the joint venture.
- Confidentiality: This clause is in the nature of a prohibitory clause. It entails provisions for the preservation of the company's secrets and strategic information.
- Termination of Agreement: The conditions and circumstances, which lead to the termination of the joint venture agreement, such as, breach of agreement, insolvency, etc., are stated in this clause. The consequences of such termination are also mentioned



hereunder. Further, a 'Force majeure' clause may be added to the above, which provides protection to parties to the agreement in case of any event beyond its control, which prevents it from performing its prescribed functions.

Wholly Owned Subsidiaries:

There are certain sectors where the Government of India permits 100 per cent FDI. In such cases, the foreign investor can set up its wholly owned subsidiary. Investors prefer such a set up as they are able to exercise maximum control over its functioning and obtain maximum gain therefrom. A wholly owned subsidiary can be incorporated either as a public or a private company. It is more advantageous to form a private company because private companies are formed with just 2 to 50 members and many provisions of the Companies Act are not applicable.

Also, restrictions on transfer of shares are permitted and invitation to public to subscribe to its share capital is not allowed. Shares of the public limited companies on the other hand, are normally freely transferable and a minimum of seven members are required to form the company. Further, a company to be incorporated as a private company must have a minimum paid-up equity share capital of INR 100,000 while a public company must have a minimum paid-up capital of INR 500,000.

It is essential to point out here that in terms of the Companies Act, a private company, which is a subsidiary of a public company, falls under the definition of a public company. Thus, if a private company in India were a subsidiary of a foreign body corporate, which if incorporated in India would be treated as a public company as per the definition in the Companies Act, the said private company would be treated as a public company. The only exception to this rule is where one or more foreign bodies corporate hold the entire share capital of the private company.

Formation of a public limited company is suitable in case the proposed business requires:

- Large capital outlay,
- Raising of equity or debt finance from public,
- Wider distribution of shares and larger number of shareholders,
- Enlistment of the securities of the company on the stock-exchange(s).

Procedure For Incorporation Of A Company In India

The first step in incorporating a company in India is to obtain the name approval for the company, from the Registrar of Companies in the State/Union Territory in which the company will maintain its registered office. This approval is provided, subject to certain conditions. For instance, there should not be an existing company by the same name. Further, the last words in the name are required to be "Private Limited" in the case of a private company limited by shares and "Limited" in the case of a public company limited by shares.

The second step is the drafting of the Memorandum and the Articles of Association of the company and filing of the same with the concerned Registrar of Companies. The Memorandum of Association is a document that sets out the constitution of the company. It contains, inter alia, the objects and the scope of activities of the company and the extent of authorized share capital of the company. The Articles of Association contain the rules and regulations of the company for the management of its internal affairs. While the Memorandum specifies the objects and purposes for which the Company has been formed, the Articles of Association lay down the rules and regulations for achieving those objects and purposes. The Articles of Association would set out the contract between

the shareholders of the company with regard to the management of the company and transfer of its shares.

The third step is to register the company, which is completed when the Registrar of Companies issues the certificate of incorporation. The Registrar of Companies will give the certificate of incorporation after the required documents are presented along with the requisite registration fee, which is scaled according to the authorized share capital of the company. A private company can commence business on receipt of its certificate of incorporation. However, in addition, a public company needs a certificate of commencement of business from Registrar of Companies to commence the business.

A public company has the option of inviting the public for subscription to its share capital. Accordingly, the company has to issue a prospectus, which provides information about the company to potential investors. The Companies Act specifies the information to be contained in the prospectus.

As a part of its major step in the direction of reforms in corporate governance, the Ministry of Corporate Affairs, recently, launched the MCA-21, India's largest e-governance initiative, with a comprehensive online central portal of the Ministry of Corporate Affairs, i.e., www.mca.gov.in for the whole country, with the following salient features:-

- 1. Facility of online interaction with the Ministry of Corporate Affairs, without going to the office of the Registrar of Companies.
- 2. Online payment either through credit cards or the Internet banking facility. Payment through demand draft would be accepted against a system-generated challan (receipt) at more than 200 bank branches across the country.
- 3. Introduction of the concept of Director Identification Number (DIN), for all current and prospective directors. It is intended to be a lifetime number.
- 4. Introduction of a Service Request Number (SRN) in order to track the service request.
- 5. New e-forms with the facility of auto check and pre-scrutiny have been introduced. For certain e-forms pre-certification by a Company Secretary or a Chartered Accountant, has been made compulsory. All filings can be done online. However, for this, it would be essential to acquire the Digital Signature Certificate (DSC)
- 6. The benefit of online access to public records. Documents filed with the Registrar of Companies can be viewed online by visiting the portal and on payment of a fee of INR 50.

With the aforesaid characteristics, the MCA-21 project endeavours delivery of services with speed, transparency and certainty.

INTELLECTUAL PROPERTY RIGHTS

Introduction

There is a well established statutory, administrative and judicial framework to safeguard intellectual property rights (IPR) in India, whether they relate to patents, trade marks, copyright or industrial designs. Well-known international trademarks have been protected in India even when these marks were not registered in India. Computer software companies, publishing and music companies have been successful in curtailing piracy through various enforcement and awareness efforts in collaboration with each other and other public oriented organizations. The courts, under the doctrine of breach of confidentiality, have accorded an extensive protection to trade secrets. The right to privacy, which is not even protected in some developed countries, has been recognized in India. India is a signatory to the agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), which came into force on January 1st, 1995 as part of its acceptance of the GATT regime under the WTO. Indian laws protecting IPR are in line with the minimum standards for protection and enforcement as laid down by TRIPS.

Intellectual Property Regime in India

In India the following types of IPR are protected under statutory and common law:

- Trade Marks;
- Copyrights & Related Rights;
- Patents;
- Designs;
- Geographical Indications;
- Semiconductors Integrated Circuit Layout-Designs;
- Trade Secrets; and
- Plant Varieties.

International Treaties

India is a signatory to the following major international treaties relating to IPR:

- WIPO Convention, since May 1975;
- Paris Convention (Industrial Property), since December 1998;
- Berne Convention (Literary and Artistic Works), since April 1928;
- Patent Co-operation Treaty, since December 1998;
- Geneva Convention (Unauthorized Duplication of Phonograms), since February 1975;
- Budapest Treaty (Deposit of Micro-organisms), from December 2001;
- Nairobi Treaty (Olympic Symbol), since October 1983;
- Member of Universal Copyright Convention since October 1957;
- Member of SAARC since December 1985 and
- Biological Diversity (CBD) of United Nations.

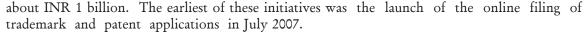
India has also signed various Bilateral Cooperation Agreements ("BCAs") in the form of Memorandums of Understanding (MoU) with the United Kingdom, the European Patent Office, the USA, France, Japan and the Swiss Federal Councillor for Economic Affairs. These MoU's focus on capacity building, public awareness programmes, human resources development, issues relating to counterfeits and pirated products and outreach activities, etc.

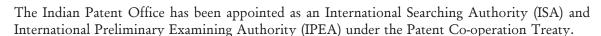
Significant IPR Endeavours in India

In India, the protection of IPR has assumed significance and the Government of India, through various legislative and regulatory measures has strengthened the IPR protection regime in the country. The year 1999 witnessed the consideration and passing of major legislation with regard to the protection of IPR in harmony with international practices and in compliance with India's obligations under TRIPS.

The year 2005-2006 saw major changes in India's patent law, which continued further with the introduction of various improvements in IPR laws and modernization of the government's intellectual property offices.

The Government of India has embarked on a major programme of modernization of the infrastructure of the intellectual property offices of India costing the exchequer





At an international level, India is actively involved in intellectual property matters with the World Intellectual Property Organisation (WIPO) which is demonstrated by the country's participation in organizing workshops, joint seminars and study programmes in partnership with WIPO. The WIPO Assembly has granted observer status to the Federation of Indian Chambers of Commerce and Industry (FICCI).

The GoI has established a National Institute for Intellectual Property Management, which will provide training, education and also perform research functions. Recently, the GoI has announced the opening of a regional centre for Open Source Software Development in West Bengal, India.

The Data Protection Bill, 2006 is pending consideration before the Parliament of India. The Bill provides for protection of the personal data and information of an individual collected for a particular purpose by one organisation and to prevent its usage by other organizations for commercial or other purposes. In addition the Bill entitles an individual to claim compensation or damages for disclosure of their personal data or information by an organisation without the individual's consent.



The Government of India has established the Intellectual Property Appellate Board (IPAB) for hearing appeals relating to both trademarks and patents, against the decisions of the respective Registrars. This specialised tribunal of India provides the speedy resolution of appeals.

In an attempt to monitor cross-border infringement and parallel imports, the Government of India has made provisions for a right holder to give notice about the infringing goods to the Commissioner of Customs at the port of import, requesting suspension of clearance of such infringing goods suspected to be in violation of complainant's IPR. The Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 under Section 156 of the Customs Act, 1962 have been implemented to strengthen border enforcement to prevent counterfeit and pirated goods from entering the country.

The Department of Biotechnology, Ministry of Science and Technology, Government of India has, as part of the new National Biotechnology Development Strategy launched by the Government of India, initiated a legislation to promote, protect and optimise the potential of public funded research and development in biotechnology and life sciences by regulating its IPR. The draft bill entitled Public Funded R&D (Protection, Utilization and Regulation of Intellectual Property) Bill, 2007 has been sent to the Cabinet for approval upon which it will be tabled in Parliament.

India's Union Cabinet has approved the National Design Policy that intends to use the slogan "Designed in India" and to provide Indian designs with better branding and global status for the designs quality and utility.

The Government of India has introduced amendments to the Designs Rules 2001 by way of notification and implementation of the Designs (Amendment) Rules, 2008.

In order to protect India's traditional knowledge from misappropriation, India has created Traditional Knowledge Digital Library (TKDL) to safeguard its traditional Indian medical knowledge that are available as an online digital database. This database contains the ancient medical knowledge of India and the original manuscripts and textbooks that may be in Sanskrit, Hindi, Persian or Urdu that are now made available in five international languages. The creation of TKDL is mainly to prevent international patent disputes and safeguard India's traditional knowledge.

The Government of India has recently entered into an agreement with the European Patent Office (EPO). The agreement provides access to EPO examiners to the TKDL database for the purpose of conducting prior art search and will act as a tool to avoid bio-piracy of India's ancient traditional wisdom.

Various legislations dealing with IPR in India

- The Trade Marks Act, 1999, the Trade Mark Rules, 2002, the Trade Marks (Applications and Appeals to the Intellectual Property Appellate Board) Rules, 2003 and the Trade Marks (Removal of Difficulties) Order, 2004;
- The Copyright Act, 1957 as amended in 1999 extended the provisions of this Act to foreign works and to works of nationals of countries that had joined the relevant copyright treaties after the Copyright Order, 1999 was made;

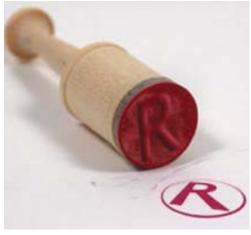
- The Patents Act, 1970 as amended by the Patent (Amendment) Act, 2005 and the Patent Rules 2003 as amended by the Patent (Amendment) Rules, 2006 that were implemented on May 5, 2006 to incorporate changes pursuant to India's obligations under TRIPS;
- The Designs Act, 2000 relating to Industrial Designs, was amended on May 11, 2001 and the Designs Rules 2001 as amended in 2008 by the Design (Amendment) Rules 2007;
- The Geographical Indications of Goods (Registration and the Protection) Act, 1999 and the Geographical Indications of Goods (Registration and the Protection) Rules 2002;
- The Semiconductor Integrated Circuits Layout-Design Act, 2000 and the Semiconductor Integrated Circuits Layout-Design Rules, 2001;
- The Protection of Plant Varieties and Farmers' Rights Act, 2001, the Protection of Plant Varieties and Farmers' Rights Rules, 2003 and the Protection of Plant Varieties and Farmers' Rights Regulations 2006;
- The Biological Diversity Act, 2002 and the Biological Diversity Rules, 2004;
- The Information Technology Act, 2000.

Important Legislations on Intellectual Property

The Trade Marks Act, 1999

Under the Trademarks Act, a mark is registered for 10 years and is renewable for successive periods of 10 years. The Act explicitly defines "well-known trademark". As such, it is now possible to prevent registration of imitations of well known marks where an identical or similar mark is used in relation to dissimilar goods or services and the use of the mark without due cause takes unfair advantage of or is detrimental to its distinctive character or repute.

Although not a signatory to the Nice Convention, India follows the International Classification of Goods and Services as listed in the 7th edition of the Nice Agreement for identifying the relevant class of goods and/or services for which a trademark application is filed.



Trademark rights can be exercised either by the registered proprietor or a registered user pursuant to the consent of the registered proprietor by written agreement. The Act sets out provisions for assignment of unregistered trademarks, which was not possible under the repealed Trade & Merchandise Act, 1958.

An application for registration of a trademark has to be made to the relevant office of the Trademarks Registry under whose jurisdiction the principal place of business of the applicant in India falls. In case the applicant does not carry on business in India, the application can be filed at the office of the Trademarks Registry within whose territorial limits the address for service in India is situated.

In the case of an unregistered company anyone may apply in her/his name and then subsequently assign the trademark in the company's favour. With the launch of e-filing facilities for trademark applications, an applicant can file a trademark from anywhere via the Internet and payment for filing the application can be made through the payment gateway of authorized bankers. It is also possible to file a multi-class application in India based on a single application provided that the official fee is paid on a per-class basis. Both used-based as well as intent-to-use based applications can be filed in India.

Before a trademark application is filed, a trademark search of the trademarks database maintained by the Trademarks Registry of India is recommended. This avoids filing for the same or similar marks, which can save the applicant the time, effort and cost incurred in developing and adopting a mark, which has previously been adopted by someone else.

India is a signatory to the Paris Convention and therefore it is possible to file an application for registration of a trademark claiming Convention priority. A priority application must be filed within 6 months of the priority date. To claim priority, a certified copy of the Convention application is required.

Among others, falsely applying or using a trademark with the intent to defraud, or possessing goods or things bearing false trademark for sale or selling or letting out for hire is a criminal offence under the Act, punishable with imprisonment up to 3 years and fine of up to INR 2,00,000.

The Trademarks (Amendment) Bill, 2007 (pending consideration before the Parliament) aims at amending the Trademarks Act, 1999 to bring it in line with the provisions of the Madrid Protocol and seeks to authorize the Registrar of Trade Marks to deal with international applications originating from India as well as those received from the International Bureau of World Intellectual Property Organization (WIPO).

Information required for filing a trade mark application in India

- Full name and address of Applicant;
- Specification of goods or services;
- Class;
- Mark:
- Particulars of use of the mark; and
- Details of Convention Priority, if any.

Documentation required

- A duly executed Power of Attorney;
- Certified copy of the priority application, certified by the Trademarks Registrar or competent authority of the country of priority, (this can be filed at the time of application or within two months of filing in India); and
- Electronic representation of the mark.

The Copyright Act, 1957:

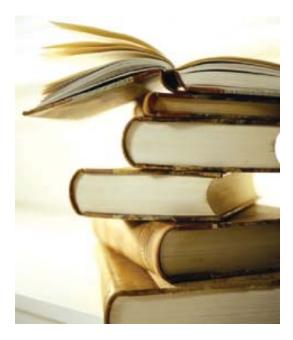
India has one of the most advanced copyright protection regimes in the world. The Copyright Act, 1957 is based on the Berne Convention for the Protection of Literary and Artistic Works and the Universal Copyright Convention, 1952. The Act protects original literary, dramatic, musical and artistic works as well as cinematograph films and sound recordings. The Copyright (Amendment) Act, 1999 makes the Indian copyright law compliant with TRIPS.

This amendment came into force on January 15, 2000. The Copyright (Amendment) Act, 1999, in compliance with the Article 14 of TRIPS, extended copyright protection to performers for fifty years, which is computed from the end of the calendar year in which the performance took place. Prior to this amendment, the performers' protection was valid for only 25 years.

As per the International Copyright Order, 1999 (promulgated by the Indian Government), "foreign works" which are first published in a country, which is a member of the Berne Convention or the Universal Copyright Convention, would be accorded the same copyright protection in India, as Indian works without undergoing any formalities. It provides that the foreign country accords "national treatment" to Indian works, recognizing the criterion of reciprocity. Therefore, such foreign copyright holders may enforce her/his rights in India in the face of an infringement action by relying on copyright protection issued in the holder's home country.

The Amendment Act of 1999 empowers the Indian Government to extend the provisions of the Copyright Act to performances and broadcasts made in other countries, provided, those countries extend similar protection to broadcasts and performances made in India.

Under the Act, the owner of a copyright may assign her/his rights to any person, either wholly or partially for the entire term of the copyright or any part thereof, her/his rights in an existing work or a future work. To be valid, the assignment must be made in writing. In a case where the period of assignment is not stated, the duration of assignment is deemed to be five years from the date of assignment. If the territorial extent of assignment of the rights is not specified, the territory is deemed to be limited to India. The reversion of rights provision in the Act states that in cases where the assignee does not exercise the rights granted to her/



him within a year from the date of assignment, the rights automatically revert to the assignor unless otherwise specified in the assignment agreement.

The Act contains a comprehensive definition of "computer programme". A new offence was added in the Act to cover willful use of infringing copy of computer programme. It further clarified the scope of copyright protection by modifying the meaning of "author" in relation to cinematograph

films or sound recordings to include the producer. Producer has been defined as a person who takes the initiative and responsibility for making the work. The definition of "communication to the public" includes making a work available by any means of display or diffusion and including not just communication through satellite but also cable or any other means of simultaneous communication to more than one household.

The landmark case of Eastern Book Company v. D.B. Modak (2008)1 SCC 1 has brought a paradigm shift in the degree of originality required in a work to attain copyright in India. This judgment of the Supreme Court of India has made a significant shift from the 'sweat of the brow' doctrine followed up till now to a 'modicum of creativity' as a standard for proving originality in a work to enable protection under the copyright act.

Software Copyright Protection in India:

The Act imposes heavy punishment and fines for infringement of copyright in a software programme. The Act clearly spells out the rights of a copyright holder, the position on software rentals and the rights of a user to make backup copies. It is illegal to make or distribute copies of copyrighted software without proper or specific authorization. The fair use provisions in relation to computer programmes allow acts necessary to obtain information for achieving interoperability of an independently created computer programme and further allowing observation, study or test of functioning of the computer programme in order to determine the underlying ideas and principles while performing acts necessary for the functions for which the computer programme is supplied. Backup copies may be made as temporary protection against loss, distribution or damage to the original copy.

Infringement of copyright and/or other rights conferred by the Act can be tried under both civil and criminal laws. The sale or hiring, or any offer for sale or hire of any copy of a computer program without specific authorization of the copyright holder is prohibited. The willful use of an infringing copy of a computer programme is an offence. Civil and criminal actions may be instituted for injunction, actual damage (including infringer's profits) and accounts and/or criminal punishments and fines. For willful use of an infringing copy of a computer programme, the Act stipulates up to three years of imprisonment and a fine of up to INR 200,000.

Information Required for Filing Copyright Application in India

- Name, address and nationality of the applicant;
- Nature of the applicant's interest in the copyright of the work;
- Name and address of every person, if any, who claims have any interest in the subject matter of the copyright or disputes the applicant's rights (to whom notice of the application is to be sent);
- Description of the work; and
- Title of the work.

Documentation Required

- A duly executed Power of Attorney;

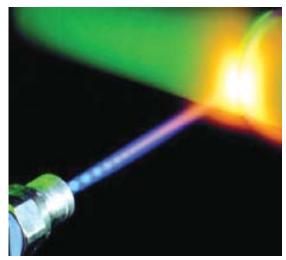
- Statement of Further Particulars (for literary, dramatic, musical and artistic works only) detailing nature of the work; and
- Copies of the work (three if the work is published, one if the work is unpublished).

The Patents Act, 1970

The Patents system is governed by The Patents Act, 1970 and the Patents Rules, 2003. The Patents Act and Rules have been amended on numerous occasions. The Patents (Amendment) Act, 2005, came into force on January 1, 2005. The Act and Rules increased the transparency and decentralized the functioning of Patent offices and simplified various other procedures associated with the grant of Patents. Product patents have been allowed in line with India's commitment under the TRIPS. In addition to the amendments done in the Act, the overall patent practise in India is gradually striding towards a standardized system, where enforcement plays a major part to maintain the equilibrium.

The following are the salient features of the Act-

The definition of "invention" stands widened and includes 'a new product or process involving an inventive step and capable of industrial application.' By the 2005 amendment, definition of "new invention" has been introduced in the Act as meaning 'any invention or technology which has not been anticipated by publication in any document or used in the country or elsewhere in the world before the date of filing of patent application with complete specification i.e. the subject matter has not fallen in public domain or does not form part of the state of the art.'



With a view to define patentable subject-matter in respect of pharmaceuticals, the definition of "pharmaceutical substance" has been inserted by the Patent (Amendment) Act of 2005, as meaning any new entity involving one or more inventive steps.

By virtue of the 2005 amendment, the mere discovery of a new form of a known substance, which does not result in the enhancement of the known efficacy of that substance, is not considered an invention within the purview of the Act. In addition, salts, esters, ethers, polymorphs, metabolites, pure form, particle size, isomers, mixtures of isomers, complexes, combinations and other derivatives of a known substance will be considered to be the same substance, unless they differ significantly in properties with regard to efficacy.

All chemical substances capable of being used as medicine, drug or food can now be patented. This is in compliance with the provisions under TRIPS. The Mail Box system for product related claims for medicines and drugs has now been opened for examination and a substantial number of product patents have been granted. This is a change that the pharmaceutical industry has been looking forward to for some time.

The Act, as amended, provides that persons resident in India have to apply for a permission from the Controller of Patents to file in foreign jurisdictions, unless application for patent for same invention has been made in India not less than six weeks before filing of the foreign application, and either no secrecy directions have been given or all such directions have been revoked. Failure to comply with this will lead to the deemed abandonment of such application and the patent granted, if any, will be liable to be revoked. However no such prior permission is required with respect to an invention whose application has first been filed in a country outside India by a person resident outside India.

A patent granted is now valid for 20 years from the date of filing. This has been extended, from the 14-year period that the old Act provided. The term of a patent granted through the Paris Convention Treaty (PCT) route is 20 years from the international filing date accorded under the PCT.

Provision for allowing priority provision under the PCT has been extended to a group of countries or inter-governmental organizations, therefore, 12 months priority will also be available to applications filed in the European Patent Office, African Regional Intellectual Property Office (ARIPO), African Intellectual Property Organization (AIPO) or (OAPI) and Eurasian Patent Office (EAPO).

Grounds for opposition as well as revocation have been enlarged. Pre-grant oppositions can be filed by the opponent even though it may not be an interested party in determining such opposition. Post-grant oppositions can be filed at any time by an interested party, after the grant of a patent but before the expiry of one year from grant.

The application for a patent is filed according to the territorial limits where the applicant normally resides, has domicile, has a place of business, or the place from where the invention actually originates. If the applicant has no place of business or domicile in India, the appropriate patent office is decided as per address for service in India, which is usually the address of the Patent Agent who files on behalf of the applicant.

The Intellectual Property Appellate Board (IPAB) for patents has been brought into force with effect from April 2, 2007. Thus, all the appeals arising out of a decision of the Controller, pending before the various High Courts, will be transferred to the IPAB. Likewise, fresh rectification applications under the Patents Act, 1970, will now have to be filed before the IPAB.

Information Required for Filing Patent Application:

- Full names and addresses of the applicant as well as the inventor; and
- Details of Convention Priority, if any including first filed country, filing number and date.

Documentation Required

- Provisional or complete specification. If the provisional specification is filed it must be followed by complete specification within 12 months;
- Drawing and abstract of the invention;

- Information and undertaking listing the number, filing date and current status of each foreign patent application;
- Priority document (if priority is claimed);
- Declaration of inventorship;
- A duly executed Power of Attorney;
- Search and examination reports issued in respect of corresponding foreign applications; and
- Translations, if required, accompanied by declarations verifying such translations duly signed.

PCT National Phase Entry in India

The PCT system allows a resident or national of a PCT Member State to obtain the effect of patent filings in any or all of the PCT countries and to defer the bulk of filing costs usually due on filing. India became a PCT contracting State on December 7, 1998. Since December 7, 1998, it has become possible to designate India in PCT applications and to elect India in the demand for preliminary examination. If India is a designated country in the PCT application and is also elected in the demand for preliminary examination filed within 19 months of the priority date, then the deadline for entry into the national phase in India is 31 months from the priority date.

PCT National Phase Application

Information Required:

- Name, address and Nationality of Applicants and inventors;
- PCT Application number;
- Priority application number, date of filing and country; and
- Details of corresponding foreign applications in a statement and undertaking to the Patent Office.

Documentation Required:

- PCT application and translation (if required) accompanied by declaration verifying such translation duly signed by the applicant or its authorized representative;
- Original Patent specification, claims and drawings in English;
- Amended claims, if any, filed under Article 19 of PCT;
- If International Preliminary Examination Report ("IPER") is requested, any amendment annexed to the IPER;
- A copy of PCT Request, International Preliminary Search Report and IPER;



- Declaration as to inventorship;
- A duly executed Power of Attorney; and
- Proof of right (assignment).

The Designs Act, 2000

The Indian Designs Act, 2000 governs industrial designs. The registration of a design confers on the registered proprietor the right to take action against third parties who apply the registered design without license or authorization.

The salient features of the Designs Act are as follows:

- 'Design' means and includes 'composition of lines or colours or combination thereof applied to any article in addition to the already recognized visual features of shape, configuration, pattern or ornamentation applied to any article but does not include any trade mark or property mark or artistic works as defined under the Copyright Act, 1957.
- Section 4 of the Designs Act, 2000 details the prohibition of registration of certain designs. It lays down that a design which is not new or original or has been disclosed to the public in India or in any other country by publication in tangible form or by use or in any other way prior to the filing date, or where applicable, the priority date of the application for registration or is not significantly distinguishable from known designs or combination of known designs or comprises or contains scandalous or obscene matter shall not be registered.
- An application which has not been completed due to any neglect or default of the applicant, so as to enable registration to be affected within six months from the date of application is deemed abandoned.
- India follows the International Classification of Industrial Designs according to the Locarno Agreement.
- It is possible to claim priority within the Paris Convention.
- The period of protection for a registered design is 10 years and this is extendable for an additional period of 5 years, if renewal is duly filed.

Information required for filing a Design Application:

- Full names and addresses of applicant as well as the designer;
- Class and name of the article to which a design is applied; and
- Details of Convention Priority, if any.

Documentation Required:

- A duly executed Power of Attorney;
- Deed of Assignment;
- Certified copy of the design application as filed in the country of priority; and
- Prospective view in addition to six directional views (front, rear, right side, left side, upper, and bottom) (Photographs are acceptable and preferred).

TRADING

The 1990s saw India moving from a controlled economy to a market driven economy in consonance with other global economies as barriers were removed and deregulation was introduced to boost the entry of private and international players into Indian markets. Earlier, Indian traders required import licenses for importing capital goods and merchandise, and there were excessively restrictive 'lists' of freely importable goods and where import was permitted, duties were ridiculously steep, thus encouraging gray channels for trade of foreign goods.

The Government now allows import of most items except those coming within the ambit of a Negative List (mostly defence and strategic industries), which has resulted in India becoming an extremely profitable and diverse market.

Foreign Trade Policy

The well-established Foreign Trade Policy regulates the export and import of goods. Exports and imports are free, except in cases where they are regulated by the provisions of this Policy. Besides the provisions of the Foreign Trade Policy, the exporters and importers are to comply with the provisions of the Foreign Trade (Development and Regulation) Act, 1992, along with Rules and Orders made thereunder; the terms and conditions of any licence/certificate/provision/authorization granted to them; as well as any other law for the time being in force.

Imports can be made into India under the Open General License (OGL), with most imported items falling under its purview. OGL is a blanket permit to all legally registered industrial units to import items without restriction. Those goods, which are not covered under OGL, are regulated under 3 categories:

- **Banned** these goods are completely forbidden to be imported and include ivory products, poultry and oils of animal origin.
- **Restricted** these goods are those for which demand is satisfactorily met by the Indian market itself. They may be imported only against a license and include certain consumer goods, drugs & chemicals, precious stones, seeds, animals, insecticides and electronic items.
- Canalized these are usually commodity imports which must be canalized though public enterprises, however, most of the goods in this category are not deregulated. They include crude oil, bulk agricultural products and some pharma-products. Capital goods are imported under a license issued by the Export Promotion Capital Goods Scheme (EPCGS) at concessional duty rates, which is subject to an export obligation for the finished goods, on part of the importer, within a specified time frame.

Transit of goods through India from or to countries adjacent to India shall be regulated in accordance with the bilateral treaties between India and those countries.

The Government also offers a duty exemption scheme under which imports of raw material, intermediates, components, parts, accessories and packaging materials, required for direct use in exportable products, may be freely permitted under various categories of licenses. Under the Advance Authorisation Scheme, duty free imports of raw materials, etc. are permitted on the fulfilment of

the export obligation within a certain time limit by the importer. Similarly, under EPCGS, capital goods and plant and machinery can be imported at a concessional customs duty rate of 3 per cent. This benefit is subject to prescribed export obligations.

Import licenses may be procured from the Director General of Foreign Trade (DGFT). Also, nobody can export or import without an Importer-Exporter Code (IEC), which may be obtained from the concerned Licensing Authority.

The Central Government has notified under Section 5 of the Foreign Trade (Development and Regulation Act), 1992 (No. 22 of 1992), the Foreign Trade Policy for the period 2004-2009 incorporating the Foreign Trade Policy for the financial year 2008- 2009, as modified this Policy came into force with effect from



1st April 2008. In the month of February 2009, the Central Government has also issued interim Foreign Trade Policy for the year 2009-10. The new Central Government to be formed after the General Elections scheduled to be held in April and May 2009 may issue a revised Foreign Trade Policy for next five financial years. The principal objectives of the Foreign Trade Policy are:

- 1. To double the percentage share of global merchandise trade within the next five years.
- 2. To act as an effective instrument of economic growth by giving a thrust to employment generation.

The following strategies are being adopted to achieve the aforesaid objectives-

- Unshackling of controls and creating an atmosphere of trust and transparency to unleash the innate entrepreneurship of our businessmen, industrialists and traders.
- Simplifying procedures and bringing down transaction costs.
- Neutralizing incidence of all levies and duties on inputs used in export products based on the fundamental principle that duties and levies should not be exported.
- Facilitating development of India as a global hub for manufacturing, trading and services.
- Identifying and nurturing special focus areas which would generate additional employment opportunities, particularly in semi-urban and rural areas, and developing a series of 'initiatives' for each of these.
- Facilitating technological and infrastructural upgradation of all the sectors of the Indian economy, especially through import of capital goods and equipment, thereby increasing value addition and productivity, while attaining internationally accepted standards of quality.
- Avoiding inverted duty structures and ensuring that our domestic sectors are not disadvantaged in the Free Trade Agreements/Regional Trade Agreements/Preferential Trade Agreements that we enter into in order to enhance our exports.
- Upgrading of infrastructural network, both physical and virtual, related to the entire Foreign Trade Chain, to international standards.

- Revitalising the Board of Trade by redefining its role, giving it due recognition and inducting experts on Trade Policy.
- Activating our embassies as key players in our export strategy and linking our commercial wings abroad through an electronic platform for real time trade intelligence and enquiry dissemination.

Partnership

The new policy envisages merchant exporters and manufacturers, business and industry as partners of Government in the achievement of its stated goals and objectives. This Policy is essentially a roadmap for the development of India's Trade Policy.

Foreign Investment Policy for Trading Activities

The Government has allowed under the Automatic Route, FDI up to 100 per cent for cash and carry wholesale trading, and export trading. The Government has also allowed FDI up to 51 per cent in single brand product retailing. FDI up to 100 per cent with FIPB approval is allowed in trading of items sourced from small scale sector and test marketing of such items for which a company has approval for manufacture.

The following kinds of trading are also permitted, subject to provisions of the Foreign Trade Policy:

- Companies for providing after sales services.
- Domestic trading of products of Joint Ventures is permitted at the wholesale level for such trading companies who wish to market manufactured products on behalf of their joint ventures in which they have equity participation in India.
- Trading of hi-tech items/items requiring specialised after-sales service.
- Trading of items for social sector.
- Trading of hi-tech, medical and diagnostic items.
- Domestic sourcing of products for exports.
- Test marketing of such items for which a company has approval for manufacture provided such test marketing facility will be for a period of two years, and investment in setting up manufacturing facilities commences simultaneously with test marketing.
- FDI up to 100 per cent permitted for e-commerce activities subject to the condition that such companies shall engage only in business-to-business (B2B) e-commerce and not in retail trading.

CAPITAL MARKET REGULATION

Currently in India there are 23 recognized stock exchanges, of which the Bombay Stock Exchange (BSE) and the National Stock Exchange (NSE) hold the most dominant positions in terms of number of companies listed on the exchange, capitalization and trading activity. As on March 31st, 2008, the number of companies listed on the BSE and NSE were 4887 and 1381 respectively.

The securities market in India is governed by four main legislations, which are as follows:

- 1. The Securities and Exchange Board of India (SEBI) Act, 1992: This Act has been enacted to protect the interests of investors and promote and regulate the securities market.
- 2. The Companies Act, 1956: This Act deals with issue, allotment and transfer of securities and provides for disclosure of relevant information in the public issue. It also regulates underwriting, use of premium and discount on issues, rights and bonus issues, payment of interest and dividends, supply of annual report and other information.
- 3. The Securities Contracts (Regulation) Act, 1956: This Act provides for direct and indirect control of virtually all aspects of the securities trading including the running of stock exchanges to prevent undesirable transactions in securities.



4. The Depositories Act, 1996: This Act lays down the provisions for the establishment of depositories to ensure fast, accurate and secure transfer of securities. It envisages transfer of ownership of securities electronically by book entry without physical transfer of securities. National Securities Depository Limited and Central Depository Services (India) Limited have been established under the Depositories Act.

In addition to the above, listed Indian companies are also governed by the bye laws of stock exchanges where they are listed and the provisions of the listing agreement with such stock exchange.

Under the Indian Companies Act 1956, two types of companies are recognized, private and public companies. Amongst these, private companies are not permitted to make an offer of securities to the public.

Types of Issues

The issues of securities can be classified as follows:

Public Issues: Public issues refer to issues made by an issuer to the new investors. A public issue involves detailed disclosures by the issuer company and its promoters as specified under the SEBI Disclosure and Investor Protection Guidelines 2000 (DIP Guidelines).

The DIP Guidelines are a comprehensive compilation of the legal framework within which companies are required to operate in relation to issuances of securities.

Further, public issues can be classified into Initial Public Offerings (IPO) and Follow-on Public Offerings (FPO). An IPO refers to a public offering made by an unlisted company in the form of either a fresh issue of securities or an offer for sale of its existing securities or both for the first time. After an IPO, the securities of the issuer company has to be listed and then only can be traded. An

FPO, on the other hand, refers to a public offering made by an already listed company, either through a fresh issue of securities or an offer for sale through an offer document.

Rights Issue: A rights issue refers to a fresh issue of securities being made by a listed company in which securities are offered to existing shareholders as on the record date. Usually, in such an issue, the ratio of securities offered to the existing shareholders is in the same ratio as the securities already held by them prior to the rights issue.

Private Placement/Preferential Allotment: A private placement refers to an issue of shares or securities which are offered by an issuer company to a select group of private investors as per the provisions of Section 81(1A) of the Indian Companies Act 1956. In case a public listed company is making such private placement, the same is referred to as a preferential allotment.

Initial Public Offerings: An IPO can be made through three different routes, the first being the fixed price method, second being the book building route and the third being a combination of both.

Fixed Price Method: In brief, the fixed price method refers to an issue being made by an issuer company where such issuer company is free to price the issue. The issuer company is, however, required to disclose the basis for calculation of issue price along with the qualitative and quantitative factors to justify the same. A company can only follow this route if it fulfils all the eligibility criteria prescribed in the DIP Guidelines. Where such criteria are not met, the Book Building Route has to be followed.

Book Building Route: The book building route for IPOs refers to an issue of securities by the issuer company where the price at which the securities are to be offered and allotted is not known and only the price band for the same can be ascertained. Further, the demand for securities can be known on a daily basis as the book is being built.

International Offerings

Indian companies have been permitted to issue equity and equity related instruments to international investors in the form of American Depository Receipts (ADRs), Global Depository Receipts (GDRs), Foreign Currency Convertible Bonds (FCCBs) for the purpose of raising monies abroad. A detailed notification has also been issued in this respect under the name "Issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993" on November 12, 1993 (Scheme).

In this regard, the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 provide that Indian companies may issue their Rupee denominated shares to a depository resident outside India for the purpose of such depository issuing ADRs/GDRs provided that same have been issued in accordance with the Scheme and guidelines issued by the Central Government there under from time to time. The prior approval from the Ministry of Finance, Government of India is required to issue such ADRs/GDRs, unless the issuing company is eligible in terms of the relevant scheme in force or notification issued by the Ministry of Finance.

The Scheme: It may be noted that under the Scheme, only an Indian company or a body corporate created by an act of Parliament is eligible to issue ADRs/GDRs.

Under the Scheme, Indian residents cannot subscribe to ADRs/GDRs. As for end-use restrictions, under the Scheme, proceeds from issue of ADRs/GDRs cannot be invested in stock markets and real estate.

In order to bring the ADRs/GDRs guidelines in alignment with SEBI's guidelines on domestic

capital issues, Government of India has issued the following additional guidelines on ADRs / GDRs under the Scheme:

- I. For listed companies: An Indian company, which is not eligible to raise funds from the Indian Capital Market including a company which has been restrained from accessing the securities market by the SEBI is not eligible to issue FCCBs and Ordinary Shares through ADRs/GDRs under the Scheme.
- II. For unlisted companies: Unlisted Indian companies require prior or simultaneous listing in the domestic market, while seeking to issue FCCBs and Ordinary Shares through ADRs/GDRs under the Scheme.

Mechanism: The instruments are issued by a depository abroad and listed in the overseas stock exchanges like NASDAQ, Luxembourg Stock Exchange, Singapore Stock Exchange etc.



The proceeds so raised have to be kept abroad till actually required in India. The Indian company has to be otherwise eligible to raise foreign equity under the extant FDI policy and the foreign shareholding after issue should be in compliance with the FDI policy.

Pricing: The Government of India on August 31, 2005 and the RBI on September 5, 2005 issued guidelines in respect of pricing of ADRs/GDRs, which has been subsequently amended, wherein it was specified that the pricing of ADRs/GDRs should not be less than average of the weekly high and low of the closing prices of the related shares quoted on a stock exchange during the two weeks preceding the relevant date.

The term "relevant date" has been defined as the date of meeting in which the board of the company or the committee of directors duly authorised by the board of the company decides to open the proposed issue.

Two-way Fungibility: A limited two-way fungibility is permitted by the Government of India for ADRs/GDRs, where under a stockbroker in India, registered with SEBI, can purchase the shares from the market for conversion into ADRs/GDRs. Re-issuance of ADRs /GDRs would be permitted to the extent of ADRs/GDRs which have been redeemed into underlying shares and sold in the Indian market.

Sponsoring an issue of ADRs/GDRs: An Indian Company can also sponsor an issue of ADRs/GDRs. Under this mechanism, the company offers its resident shareholders a choice to submit their shares back to the company so that on the basis of such shares, ADRs/GDRs can be issued abroad. The proceeds of the ADR/GDR issue is remitted back to India and distributed among the resident investors who had offered their rupee denominated shares for conversion. These proceeds can be kept in Resident Foreign Currency (Domestic) accounts in India by the shareholders who have tendered such shares for conversion into ADRs/GDRs.

Foreign Currency Exchangeable Bonds (FCEBs)

FCEB is a new instrument for fund raising which has been introduced in India. FCEB means a bond expressed in foreign currency, the principal and interest in respect of which is payable in foreign

currency, issued by an issuing company and subscribed in foreign currency by a person who is a resident outside India and exchangeable into equity share of another company, to be called the offered company, in any manner, either wholly or partly or on the basis of any equity related warrants attached to debt instruments. The minimum maturity of FCEBs should be 5 years and the issue of FCEBs requires prior approval from RBI.

Eligibility Criteria: The issuing company is required to be part of the promoter group of the offered company and must hold equity shares at the times of issuance of FCEBs. The offered company must be a listed company which is engaged in a sector eligible to receive FDI and eligible to issue or avail of FCCBs or ECBs. An Indian company, which is not eligible to raise funds from the Indian securities market is not allowed to issue FCEBs. The subscriber to FCEBs needs to comply with FDI policy and adhere to the sectoral caps at time of FCEBs. Prior approval of FIPB, wherever required under FDI, needs to be obtained.

Takeover

Public takeovers and substantial acquisition of shares are regulated by the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (Takeover Code). The Takeover Code is based on the cardinal principles of equality of opportunity to all shareholders, protection of minority interests, transparency and fairness and sets out disclosure and mandatory bid requirements upon reaching different thresholds of shares or voting rights. On an acquisition of shares or voting rights, which entitles the acquirer to more than 5 per cent or 10 per cent or 14 per cent or 54 per cent or 74 per cent of the shares or voting rights in a company, the acquirer is required to



disclose his aggregate shareholding or voting rights at every stage to the company and the stock exchanges where the shares are listed. There is also obligation of (i) continual disclosure on yearly basis, if the any person holds more than 15 per cent of the total shares or voting rights and (ii) disclosure of aggregate number of pledged shares of promoter or every person forming part of promoter group.

An acquisition entitling the acquirer to exercise 15 per cent or more of voting rights can only be permitted by making a public announcement to acquire such shares as per the provisions of the Regulations. An addition by 5 per cent in a financial year to the existing holding of more than 15 per cent, but less than 55 per cent of shares or voting rights can also be made by a public announcement only. Beyond the threshold of 55 per cent, no acquisition, whatsoever, can be made without such announcement except where the acquisition is made through open market purchase in normal segment on the stock exchange but not through bulk deal /block deal/ negotiated deal/ preferential allotment; or the increase in the shareholding or voting rights of the acquirer is pursuant to a buy back of shares by the target company and the post acquisition shareholding of the acquirer together with persons acting in concert with him shall not increase beyond 75 per cent.

Mutual Fund

A mutual fund is established in the form of a trust to raise monies through sale of units to the public or a section of the public under one or more schemes for investing in securities, including money market instruments. Mutual funds are governed under the SEBI (Mutual Funds) Regulations, 1996. Substantive provisions relevant to mutual funds are enshrined in the SEBI Act, 1992. Registering and regulating the working of mutual funds are among the outlined functions of SEBI. SEBI Act, 1992 provides for penal provisions for operating as a Mutual Fund without registration and for not complying with the provisions of SEBI Act, 1992 and rules/regulations made thereunder.

Indian Depository Receipts

Indian Depository Receipts (IDRs) are financial instruments that allow foreign companies to mobilise funds from Indian markets by offering equity and getting listed on Indian stock exchanges.

Eligibility Criteria: A company which is incorporated outside India, making an issue of IDRs through a domestic depository which is a custodian of securities registered with SEBI may do so as long as:

- 1. Its pre-issue paid-up capital and free reserves are at least USD 50 million and has a minimum average market capitalization (during the last three years) in its home country of at least USD 100 million;
- 2. The company is listed in its home country and it has a continuous trading record or history on a stock exchange in its parent country for at least three immediately preceding years; and
- 3. The company has a track record of distributable profits for at least three out of immediately preceding five years.

Other Provisions:

- (i) The number of underlying equity shares offered in a financial year through IDR offerings should not exceed 25 per cent of the post issue number of equity shares of the company;
- (ii) The size of an IDR issue should be at least INR 500 million; and
- (iii) The IDRs issued would be listed on the recognized Stock Exchange(s) in India and the same may be purchased, possessed and freely transferred by a person resident in India as defined in Foreign Exchange Management Act, 1999.



FOREIGN INSTITUTIONAL INVESTORS INVESTMENT IN INDIA

FIIs evolution in India

Foreign Institutional Investors (FII) is an investor or investment fund that is from or registered in a country outside of the one in which it is currently investing. Ever since September 14, 1992, when FIIs were first allowed to invest in all the securities traded on the primary and secondary markets, including shares, debentures and warrants issued by companies which were listed or were to be listed on the Stock Exchanges in India, FIIs have made a sizable investment in Indian financial markets. Their heavy selling in the Indian market normally cause havoc and their continued investment and buying often takes the market to newer heights.

Initially the idea of allowing FIIs was that they were broad-based, diversified funds, leaving out individual foreign investors and foreign companies. The only exception were the NRI and OCB portfolio investments through the secondary market, which were subject to individual ceilings of 5 per cent to prevent a possible "take over."

In February, 2000, the FII regulations were amended to permit foreign corporates and high networth individuals to also invest as sub-accounts of SEBI registered FIIs. Foreign corporates and high net worth individuals fall outside the category of diversified investors. FIIs were also permitted to seek SEBI registration in respect of sub-accounts for their clients under the regulations.

FII inflows can contribute in bridging the investment gap so that sustained high GDP growth rate of around 8 per cent targeted can materialize. FIIs, as professional bodies of asset managers and financial analysts, not only enhance competition in financial markets, but also improve the alignment of asset prices to fundamentals. FIIs by aligning asset prices closer to fundamentals stabilize markets.

But FII inflows are popularly described as "hot money", because of the herding behaviour and potential for large capital outflows.

FIIs Privileges

Section 115AD was inserted in the Income-Tax Act, 1961 by the Finance Act, 1993, levying a 10 per cent tax on the short-term capital gains made in the stock market by FIIs. FIIs have been happy with this arrangement and, in this context, the Double Taxation Avoidance Agreements (DTAAs) too have come in handy. Mauritius levies practically no tax on capital gains. Our DTAA with that country has helped FIIs routing their investments through that country get the benefit of nil tax on the capital gains made in the Indian stock market.

There are about 1,609 FIIs registered in India as on January 31, 2009

FIIs permissible Investment

FIIs are allowed to invest in the primary and secondary capital markets in India through the portfolio investment scheme (PIS). Under this scheme, FIIs can acquire through the stock exchanges in India following securities:

- Securities in primary and secondary markets including shares, debentures and warrants of companies, unlisted, listed or to be listed on a recognized stock exchange in India;
- b) Units of mutual funds;



- c) Government Securities;
- d) Derivatives traded on a recognized stock exchange;
- e) Commercial papers.

Investment Ceilings on FIIs

The ceiling for overall investment for FIIs is 24 per cent of the paid up capital of the Indian company. The limit is 20 per cent of the paid up capital in the case of public sector banks, including the State Bank of India. The ceiling of 24 per cent for FII investment can be raised up to sectoral cap/statutory ceiling, subject to the approval of the board and the general body of the company passing a special resolution to that effect.

Monitoring Foreign Investments made by FIIs

The Reserve Bank of India monitors the ceilings on FII investments in Indian companies on a daily basis. For effective monitoring of foreign investment ceiling limits, the Reserve Bank has fixed cut-off points that are two percentage points lower than the actual ceilings. The cut-off point, for instance, for companies with 24 per cent ceiling is 22 per cent and for companies with 30 per cent ceiling, is 28 per cent and so on. Similarly, the cut-off limit for public sector banks (including State Bank of India) is 18 per cent.

Once the aggregate net purchases of equity shares of the company by FIIs reach the cut-off point, which is 2 per cent below the overall limit, the Reserve Bank cautions all designated bank branches so as not to purchase any more equity shares of the respective company on behalf of FIIs without prior approval of the Reserve Bank. The link offices are then required to intimate the Reserve Bank about the total number and value of equity shares/convertible debentures of the company they propose to buy on behalf of FIIs. On receipt of such proposals, the Reserve Bank gives clearances on a first-come-first served basis till such investments in companies reach 24/30/40/49 per cent limit or the sectoral caps/statutory ceilings as applicable. On reaching the aggregate ceiling limit, the Reserve Bank advises all designated bank branches to stop purchases on behalf of their FIIs. The Reserve Bank also informs the general public about the 'caution' and the 'stop purchase' in these companies through a press release.

FIIs Categories

FIIs include the following foreign based categories:

- Pension Funds
- Mutual Funds
- Investment Trust
- Insurance or reinsurance companies
- Investment Trusts
- Banks
- Endowments
- University Funds
- Foundations
- Charitable Trusts or Charitable Societies

Further, following entities proposing to invest on behalf of broad based funds, are also eligible to be registered as FIIs:

- Asset Management Companies
- Institutional Portfolio Managers
- Trustees
- Power of Attorney Holders

Broad Based Fund means a fund established or incorporated outside India, which has at least twenty investors with no single individual investor holding more than 10% shares or units of the fund. If the fund has institutional investor(s) it shall not be necessary for the fund to have twenty investors. If the fund has an institutional investor holding more than 10% of shares or units in the fund, then the institutional investor must itself be broad based fund.

Registration of FIIs

Registration of FIIs as under (Foreign Institutional Investors) Regulations, 1995 issued by SEBI make the registration of FII mandatory and clearly lay down that no person shall buy, sell or otherwise deal in securities as a FII unless he holds a certificate granted by the SEBI.

FIIs registered with SEBI fall under the following categories:

- a) Regular FIIs those who are required to invest not less than 70 per cent of their investment in equity-related instruments and up to 30 per cent in non-equity instruments.
- b) 100 per cent debt-fund FIIs those who are permitted to invest only in debt instruments.

Eligibility criteria for applicant seeking FII registration

As per Regulation 6 of SEBI (FII) Regulations,1995, FIIs are required to fulfill the following conditions to qualify for grant of registration:

- Applicant should have track record, professional competence, financial soundness, experience, general reputation of fairness and integrity;
- The applicant should be regulated by an appropriate foreign regulatory authority in the same capacity/category where registration is sought from SEBI. Registration with authorities, which are responsible for incorporation, is not adequate to qualify as FII.
- The applicant is required to have the permission under the provisions of the Foreign Exchange Management Act, 1999 from the Reserve Bank of India.
- Applicant must be legally permitted to invest in securities outside the country or its incorporation/establishment.
- The applicant must be a "fit and proper" person.
- The applicant has to appoint a local custodian and enter into an agreement with the custodian. Besides it also has to appoint a designated bank to route its transactions.
- Payment of registration fee of USD 5000.

SEBI generally takes seven working days in granting FII registration. However, in cases where the information furnished by the applicants is incomplete, seven days shall be counted from the days when all necessary information sought, reaches SEBI.



In cases where the applicant is a bank and/or subsidiary of a bank, SEBI seeks comments from the Reserve Bank of India (RBI). In such cases, 7 working days would be counted from the day no objection is received from RBI.

The FII registration is valid for 5 years. After expiry of 5 years, the registration needs to be renewed.

Registration of Sub Accounts

A FII shall seek from the Board registration of each sub-account on whose behalf he proposes to make investments in India. Sub-account includes those foreign corporates, foreign individuals, and institutions, funds or portfolios established or incorporated outside India on whose behalf investments are proposed to be made in India by a FII.

Sub-Accounts that can be registered are as follow:-

- a) Institution or funds or portfolios established outside India, whether incorporated or not.
- b) Proprietary fund of FII.
- c) Foreign Corporates
- d) Foreign Individuals

The FII should apply on the behalf of the sub-account. Both the FII and the sub-account are required to sign the sub-account application form. The validity of sub-account registration is co-terminus with the FII registration under which it is registered.

A sub-account granted registration in accordance with the above procedure shall be deemed to be registered as a FII with the Securities and Exchange Board of India for the limited purpose of availing of the benefits available to FIIs under section 115 AD of Income Tax Act, 1961.

A FII shall be responsible and liable for all acts of commission and omission of all its sub-accounts and other deeds and things done by such sub-accounts in their capacity as sub-accounts. Even the FII sub-accounts have gone up over 30 per cent to 4,938 in early 2009 compared with 3,795 in January 2007.

SHARIA COMPLIANT INVESTMENTS

The Shari'a or Islamic law covers all aspects of life and there is no separation between temporal and religious matters. Thus, Shari'a provides the basic premise on which Islamic commercial and financial transactions are carried out. However, the Shari'a is not a codified body of law. It is a set of rules interpreted by Islamic scholars whose views reflect those of the community of which they are a part. It is derived from a number of sources including the primary source of Quran and guided by Islamic economics. The principles of commercial and financial transactions are based on the philosophy that money is not a commodity and therefore profit cannot be earned on its simple utilization. To generate profit, money needs to be utilized by an entrepreneur. This is because money is only a "potential capital" and it needs to be invested in business to turn it into capital.

Collection and payment of interest (called '**Riba**' in Islamic discourse) is prohibited under Islamic law. An investment in an unlawful or haraam business (e.g. alcohol, gambling, arms etc.) is prohibited. Ethical investment is the only acceptable form of investment. The market for Islamic financial products has garnered considerable attention in the recent years from the international financial community due to an estimated global worth of over USD 400 billion and an expected continued growth rate of 20 per cent per annum.

In the last few years, India has emerged as an investment destination for global Islamic investors. The reason for the investors looking towards India as a destination has been the recent policy changes leading to economic liberalization. India happens to be one of the fastest growing economies of the world and provides good opportunity for high returns on the investment. It has a well established secular democratic system in place and abundant natural resources. Some of the best Iron Ore mines of the world are located in India. It also has a huge amount of coal and natural gas reserves that can be utilized for power generation. There is a persistent need for major investments to make the best use of its resources for local as well as foreign markets. Being a vast country, with huge population, India has the capacity to absorb large investments. Naturally, the investors interested in Shari'a compliant transactions are now coming forward to invest in India.

A large number of companies in India are already qualifying the Sharia investment norms. According to a study conducted by Mumbai-based Idafa Investment Pvt. Ltd., the number of Shari'a-compliant stocks in India is much higher than in all the Muslim countries put together, thus providing enormous scope of parking money by Islamic investors. The study also indicates that 61 per cent Indian companies are Shari'a-compliant against 57 per cent in Malaysia, 51 per cent in Pakistan and a mere 6 per cent in Bahrain. Besides, 335 of 1,000 listed firms at National Stock Exchange and 237 out of 500 listed at Bombay Stock Exchange are Shari'a-compliant. The growth in market capitalization of Shari'a compliant stocks has also been found to be better than the rate of growth achieved by non-Shari'a-compliant stocks.

An International conference was held in Delhi from 31st August, 2007 to 1st September, 2007, on Participatory Banking keeping into account the market size. The Islamic Financial Market, based on participatory principles, is now of the order of USD 700 - USD 800 billion, growing at an annual rate of 10-15 per cent. In the next decade, it is estimated to be about USD 2-3 trillion.

THE INDIAN CONTRACT ACT

The Indian Contract Act lays down that 'all agreements are contracts if they are made by the free consent of parties, competent to contract, for a lawful consideration and with a lawful object". A contract validly made is enforceable in law. The parties are free to enter into any contract for lawful consideration and with lawful object. The courts in India honor the agreements reached between the parties and do not sit in judgment on the terms and conditions of the contract. Thus, local laws facilitate entering into investment contracts which are Shari'a compliant. Hence, it is possible to structure a contract, in a manner that complies with the requirements of the Indian Contract Act and other relevant statutes as also the principles laid down by Shari'a. In case anyone is interested in making investment in India in a manner that conforms to the requirement of Shari'a, the deal may be structured in an appropriate manner to meet the concerns and requirements of the investor.

FOREIGN EXCHANGE MANAGEMENT ACT, 1999

The Foreign Exchange Management Act is investment friendly. It has already attracted a large number of international investors as it provides for full current account convertibility and enables the profits from investments (which could also be Shari'a compliant in nature) to be legally remitted outside India. A foreign investor may invest in equities of an Indian company. Investment can be made in most of the sectors, except for sectors reserved for small-scale industries and certain other strategic sectors like defense, atomic energy etc. No prior approval is necessary for investments under the automatic route. However, the name of the collaboration, details of allotment, copy of the foreign collaboration agreement, the foreign inward remittance certificate from



the authorized dealer and other specified information is to be filed with the RBI within thirty days of bringing in the investment and again within thirty days of issuing any shares. An investor may lend money to an Indian Company or may carry on business in India by opening a branch office of a foreign company or by establishing a wholly owned subsidiary or by entering into a Joint Venture with an Indian company to carry on any business or manufacturing activity. India also welcomes FVCI registered with SEBI for investment in DVCF or in VCUs in the manner and subject to the terms and conditions specified in this regard. Offshore Venture Capital Funds/companies are allowed to invest in domestic venture capital undertaking as well as other companies through the automatic route, subject only to SEBI regulations and sector specific caps on FDI. It is pertinent to mention that in comparison to FDI, the price restrictions with respect to purchase of shares do not apply in case of investment by FVCI. It is possible to structure all such transaction in a manner which is Shari'a compliant and meets the investor specific requirements.

EXTERNAL COMMERCIAL BORROWINGS (ECB)

Introduction

The term ECB refers to commercial loans in the form of bank loans, buyers' credit, suppliers' credit, securitized instruments (e.g. floating rate notes and fixed rate bonds) availed from non-resident lenders by resident (Indian) borrowers with minimum average maturity of 3 years.

They are a source of finance for Indian corporates for expansion of existing capacity as well as for fresh investment.

Eligible Borrowers:

- O Under the Automatic Route, all corporate entities (except for financial intermediaries like banks, financial institutions (FIs), Non Banking Finance Companies (NBFCs) etc.), Non-Government Organisations (NGOs) engaged in micro-finance activities and Special Economic Zones (SEZ) Units are eligible to raise ECB.
- o All other borrowers not covered under the Automatic Route fall under the Approval Route.

Recognised Lenders

- o Borrowers can raise ECB from internationally recognized sources such as international banks, international capital markets, multilateral financial institutions (such as IFC, ADB, CDC, etc.), export credit agencies, suppliers of equipment, foreign collaborators and foreign equity holders [other than erstwhile Overseas Corporate Bodies (OCBs)].
- o For a "foreign equity holder" to be eligible as "recognized lender" under the automatic route, would require a minimum holding of equity in the borrower company as set out below:
 - For ECB up to USD 5 million minimum equity of 25 per cent held directly by the lender,
 - For ECB more than USD 5 million minimum equity of 25 per cent held directly by the lender and the proposed ECB not exceeding four times the direct foreign equity holding.
- o For individual lenders, certain additional criteria are also required to be complied with.

Amount and Maturity

- o A corporate may raise up to USD 500 million or equivalent during a financial year using ECBs.
- O An ECB up to USD 20 million or equivalent in a financial year must have a minimum average maturity of three years.
- o ECB above USD 20 million per financial year and up to USD 500 million or equivalent must have a minimum average maturity of five years.

All-in-Cost

 All-in-cost includes rate of interest, other fees and expenses in foreign currency but does not include commitment fee, pre-payment fee, fees payable and payment of withholding tax in Indian Rupees.

- The all-in-cost ceilings for ECB are reviewed from time to time. The ceiling has been withdrawn for the time being till December 31, 2009 under approval route. Prior to the withdrawal, the following ceilings were applicable:
 - For an Average Maturity Period of three years and up to five years- 300 basis points over 6 month LIBOR, and
 - For an Average Maturity Period of more than five years and up to seven years 500 basis points over 6 month LIBOR.
 - For an Average Maturity Period of more than seven years 500 basis points over 6 month LIBOR.

End Uses

- o ECB can be raised only for investment such as import of capital goods (as classified by DGFT in the Foreign Trade Policy), new projects, modernization/expansion of existing production units, in real sector industrial sector including small and medium enterprises (SME) and infrastructure sector in India. Infrastructure sector is defined as
 - (i) power,
 - (ii) telecommunication,
 - (iii) railways,
 - (iv) road including bridges,
 - (v) sea port and airport,
 - (vi) industrial parks,
 - (vii) urban infrastructure (water supply, sanitation and sewage projects); and
 - (viii) mining, exploration and refining

O Certain end uses are not permitted for ECB proceeds. These include investment in capital markets, acquisition of a company, investments in real estate, working capital, general corporate purpose and repayment of existing Rupee loans.

Guarantees

The choice of security to be provided to the overseas lender/supplier for securing ECB is up to the borrower. AD Category-I banks may, subject to the fulfilment of certain compliance requirements, convey 'no objection' under the Foreign Exchange Management Act (FEMA), 1999 for creation of charge on immovable assets, financial securities and issue of corporate or personal guarantees in favour of overseas lender/security trustee, to secure the ECB to be raised by the borrows.

Parking of ECB Proceeds overseas

o ECB proceeds may be parked overseas until actually required in India. ECB proceeds parked overseas can be invested in the following liquid assets

- Deposits or Certificate of Deposit or other products offered by banks rated not less than AA(-) by Standard and Poor/Fitch IBCA or Aa3 by Moody's;
- Deposits with overseas branch of an Authorised Dealer in India;
 and
- Treasury bills and other monetary instruments of one year maturity having minimum rating as indicated above.
- O The funds should be invested in such a way that the investments can be liquidated as and when funds are required by the borrower in India.
- O Alternatively, the borrowers may keep these funds off-shore with the overseas branches / subsidiaries of Indian banks abroad or to remit these funds to India for credit to their Rupee accounts with AD Category I banks in India, pending utilisation for permissible end-uses.



Prepayment

Subject to compliance with the stipulated minimum average maturity period as applicable to the loan, prepayment of ECB up to USD 500 million may be made under Automatic Route.

Conversion of ECB into Equity

The conversion of ECB into Equity is allowed provided that the following criteria are met:

- The activity of the company is covered under the Automatic Route for Foreign Direct Investment or Government approval for foreign equity participation has been obtained by the company,
- o The foreign equity holding after such conversion is within the sectoral cap, if any,
- o Pricing of shares is as per SEBI and erstwhile CCI guidelines/regulations in the case of listed/unlisted companies, as the case may be.

Procedure

Under the Automatic Route, no prior permission is required from the RBI. Borrowers may execute a loan agreement with a recognized lender to raise ECBs. However, prior to drawing down the loan, a Loan Registration Number (LRN) must be obtained from the RBI.

Under the Approval Route, the applicant borrowers are required to submit an application to the RBI, which would be considered by a special Empowered Committee set up for this purpose.

Borrowers also have a reporting requirement in the form of ECB-2 Return to be filed on monthly basis to the RBI.

In case of conversion of ECB into Equity, borrowers are required to report such conversion in the form FC-GPR to the RBI as well as in form ECB-2. Once reported, filing of ECB-2 in the subsequent months is not necessary. In case of partial conversion of ECBs, reporting for the converted portion should be made in the form FC-GPR and in the form ECB-2 for the unconverted portion.

Recent Changes to the ECB Guidelines

The Reserve Bank of India (RBI), vide a circular dated October 22, 2008 (A. P. (DIR Series) Circular No. 26) reviewed the policy on External Commercial Borrowings

The review brings about the following changes:

- ECB up to USD 500 million per borrower per financial year would be permitted for Rupee expenditure (expenditures in India) and/or foreign currency expenditure for permissible enduses under the Automatic Route. Earlier, the facility of availing ECB upto USD 500 million per financial year for rupee expenditure was available to the borrowers in Infrastructure sector under the Approval Route.
- The requirement of minimum average maturity period of seven years for ECB more than USD 100 million for Rupee capital expenditure by the borrowers in the infrastructure sector has been dispensed with.
- The payment for obtaining license/permit for 3G Spectrum under telecom sector will be considered an eligible end use for the purpose of ECB.

The Reserve Bank of India (RBI), vide a circular dated April 28, 2009 (A. P. (DIR Series) Circular No. 64), has decided to dispense with the requirement of all-in-cost ceilings on ECB until December 31, 2009. This relaxation in all-in-cost ceiling will be reviewed in December 2009. Further, corporates in the Hotels, Hospitals and Software sectors are allowed to avail of ECB up to USD 100 million per financial year, for foreign currency and/or Rupee capital expenditure for permissible end-use under the Automatic Route. So far, the facility of ECB up to USD 100 million could be availed by the borrowers from these sectors under Approval Route.

LABOUR AND EMPLOYMENT

Introduction

India has a substantial manual and skilled labour work force. Skilled manpower and professional managers are available at a comparatively moderate cost. India in particular has a dominant presence of IT professionals. There is also a large segment of semi skilled and unskilled workers available with labour rates being just a fraction of those prevailing in developed countries.

Constitution and Employment

The Indian Constitution ensures equality before the law and extends to its citizens equal protection of law within India. The Constitution under its various provisions prohibits any prejudice against citizens and also makes provision for the freedom of associations or trade unions.

Under Article 16, the Constitution mandates equality of opportunity in the matter of public employment and prohibits any form of discrimination in relation thereto. Part IV (Directive Principles of State Policy) dictates that the State shall make provisions for securing just and humane conditions of work for all.

Under the Constitution, Labour is a subject in the concurrent list whereby, both the Central & State Governments are competent to enact legislation subject to certain matters being reserved for Central Government exclusively.

Employment Policy

The aim of a well-conceived employment policy is to stimulate economic growth and development whilst raising the standard of living, meeting manpower requirements and overcoming unemployment. Such a policy strives to ensure that there is work for all those who are capable, and that there is freedom of choice of employment.

Labour Laws

India, being a member of the International Labour Organisation (ILO) adheres to the 37 ILO conventions protecting worker rights. In India, labour laws fall into the following groups:

- Industrial relations Industrial Disputes Act, Trade Unions Act, Industrial Employment (Standing Orders) Act
- Wage Regulations Minimum Wages Act, Payment of Wages Act, Equal Remuneration Act, Payment of Bonus Act
- Social Security Employees Provident Fund & Miscellaneous Provisions Act, Employees State Insurance Act, Workmen's Compensation Act,
- Working Conditions Factories Act, Equal Remuneration Act, Contract Labour Regulation Act, Shops and Commercial Establishment Act.
- Benefit Laws Maternity Benefit Act, Payment of Gratuity Act.

Salient Features of Important Indian Labour Laws Relevant for Industrial Sector Workmen's Compensation Act, 1923

This Act came into effect from 1st July 1924. The Act provides for payment of compensation by certain classes of employers to their workmen or their survivors in cases of industrial accidents and occupational diseases, resulting either in disablement or death.

Highlights:

- The Act makes employers liable to pay compensation for death, partial disablement and permanent disablement caused either by accident or by occupational diseases arising out of and in the course of employment.
- Under the provisions of this Act, there are three tests to determine whether the accident has occurred out of and in the course of employment:
 - That the employee was performing his duty in the course of his employment;
 - That the accident occurred at the place of performance of his duties; and
 - That the immediate act which led to the accident is not so remote from the sphere of his duties.
 - The Act provides for a defined arithmetical calculation of compensation based on salary, age of employee and degree of disability.

The Industrial Disputes Act, 1947

The Industrial Disputes Act, 1947 is in essence a procedural legislation and makes provision for the investigation and settlement of industrial disputes. The Act aims to remove causes of friction between an employer and his workmen in day-to-day working and stipulates measures to promote good relations between them. The Act regulates the conditions of service and creates an infrastructure for investigation into the solution and adjudication of industrial disputes between an employer and his workmen. It also makes provisions for the enforcement of awards and settlements. This legislation has been formulated with the primary objective of resolving industrial disputes with appropriate judicial intervention.

It is the most important legislation which addresses major labour related issues between the employer and employees.

Highlights:

- When a dispute arises the Government is empowered to refer it to any of the authorities specified in the Act or may refer it to an industrial court, in order to prevent the continuance of disputes.
- The Act provides for re-employment of employees victimized by their employers.
- Furthermore, in the fifth schedule the Act sets out categories of unfair labour practices. Section 2(k) of the Act defines "Industrial Dispute" as any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non employment or the terms of employment or with the conditions of labour, of any person.

- The term "Industry" as per Section 2(j) of the Act means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen.
- The Act provides a statutory umbrella over industrial settlements or awards (Section 18).
- The Act outlines procedural compliances for redundancy, lay off etc.

The Contract Labour (Regulation And Abolition) Act, 1970

This Act regulates the employment of contract labour in certain establishments and provides for its abolition in certain circumstances. The Act was passed to prevent the exploitation of contract labour, to introduce better conditions of work and to provide for essential amenities.

Highlights:

- The Act applies: to every establishment in which twenty or more workmen are employed or were employed, on any day of the preceding twelve months, as contract labour; and to every contractor who employs or who employed, on any day of the preceding twelve months, twenty or more workmen.
- Every principal employer who intends to employ contract labour in his establishment/ factory has to make an application in the specified form and seek registration from the concerned authority of the area in which the establishment, sought to be registered, is located.
- Every application by a contractor for the grant of a license shall be made in triplicate in specified form to the licensing officer of the area in which the establishment is located, in relation to which he is the contractor, and every application for the grant of a license shall be accompanied by a certificate by the principal employer in specified form to the effect that the applicant has been employed by him as a contractor in relation to his establishment.
- Notices showing the rate of wages, hours of work, wage period, dates of payment of unpaid wages shall be displayed in English and in the local language understood by the majority of the workmen.

The Industrial Employment (Standing Orders) Act, 1946

The Act requires employers to define precisely the conditions of service of workmen employed in industrial establishments and to make such conditions known to the workmen employed therein.

Highlights:

- "Standing Orders" defines the conditions of recruitment, discharge, disciplinary action, holidays, leave, etc.; which helps in minimizing friction between the management and workers.
- The Act provides that every employer of an industrial establishment must have his standing orders certified; that the standing orders should be submitted to the certifying authority appointed for the purpose along with the particulars of all the workmen employed.
- This legislation provides the framework to make the employee hand-book.

The Trade Union Act, 1926

The Constitution provides for the formation of trade unions under Article 19(1)(c).

"Trade Union" means any combination whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen, or between employers and employers, or for imposing restrictive conditions on the conduct of any trade or business and includes any federation of two or more trade unions.

Highlights:

- Any seven or more members of an association may, by subscribing their names to the rules of the trade union and otherwise, comply with the provisions of this Act with respect to registration and apply for registration of the trade union under this Act. A trade union may register itself by observing the Trade Union Act and the rules and regulations made thereunder.
- Every registered trade union shall be a body corporate by the name under which it is registered and shall have perpetual succession and a common seal with power to acquire and hold both movable and immovable property and to contract and can also sue and be sued.

Minimum Wages Act, 1948

The Minimum Wages Act, 1948 has been enacted to provide for fixing minimum rates of wages for employees in certain lines of employment for work done in accordance with the contract of service, both express and implied. The Act intends to ensure social justice to the workers employed in certain scheduled employment by prescribing minimum rates of wages for them and to prevent exploitation of labour.

Highlights:

Under the Act, Central and State Governments are appropriate governments to

- Notify scheduled employment.
- Fix/revise minimum wages periodically.
- The Act contains a list of all scheduled employment for which minimum wages are to be fixed by the appropriate governments. There are two parts of the schedule namely, non-agricultural employments under Part I and employment in agriculture under Part II.
- The appropriate government fixes the minimum wage in respect of that scheduled employment where the number of employees is 1000 or more.
- The enforcement of the provisions of the Minimum Wages Act in the sphere of the Central Government is secured through the officers of central industrial relations machinery. In so far as State Governments/Union Territories are concerned, the enforcement is the responsibility of the respective State Government/Union Territory.

The Employees State Insurance Act, 1948

The Employees State Insurance Act provides benefits for employees in the industrial sector in case of sickness, maternity, disablement, employment injury, medical and funeral expenses and other such matters.

- The Act is jointly administered by the Central Government and State Governments.
- The Act aims to provide insured persons and their families with benefits namely: sickness benefits, medical benefits, disablement benefits, benefits to dependants in case of the death of the insured person-dependant's benefit, maternity benefits etc.
- This Act applies to factories that employ more than 10 persons in a power consuming factory or not more than 20 persons employed in non-power consuming factories or seasonal factories or mines under the Mines Act 1952, or railway running sheds or Indian Forces and government factories.

This social benefit piece of legislation is being extended to services sector in phased manner.

The Factories Act, 1948

The Factories Act, 1948 was enacted to regulate the working conditions of labour engaged in factories. The Act prevents workmen from being exploited and makes provisions for healthy service conditions and also protects workmen from industrial hazards.

Highlights:

- The Act defines factory as any premises including the precincts thereof whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power; or whereon twenty or more workers are working or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power.
- The Act regulates health, safety, welfare and other working conditions of workers working in factories. The Act also specifies the list of industries involving hazardous processes, permissible levels of certain substances in work environment, and a list of notifiable diseases.
- The Act clearly specifies working hours and workers are entitled to get extra wages for overtime, if they work for more than the prescribed hours.
- The Act regulates the leaves & holidays to be given to the employees.
- The Act requires the maintenance of various records like muster rolls, display of notices etc.
- The Act regulates health and safe working conditions for employees.
- The Act is enforced by the State Governments through their respective factory inspectorates.

Payment of Bonus Act, 1965

The Act provides for the payment of bonuses to persons employed in certain establishments. The Act is applicable to every factory and every other establishment in which twenty or more persons are employed on any day during an accounting year excluding some categories of employees as contained in Section 32 of the Act (i.e. employees in Life Insurance Corporation, seamen, port and dock workers, universities, etc.).

- Every employee shall be entitled to be paid a bonus by his employer in an accounting year, provided he has worked in the establishment for not less than thirty working days in that year.
- Every employer shall be bound to pay to every employee in respect of the accounting year, a minimum bonus which shall be 8.33 percent of his salary or wage earned by the employee during the accounting year or one hundred rupees, whichever is higher.

Where in any accounting year the allocable surplus (higher profits) exceeds the amount of minimum statutory bonus payable to the employee, the employer shall in addition to such minimum bonus, pay to every employee, an additional bonus which shall be an amount in proportion to the salary or wage earned by the employee during

- the accounting year subject to a maximum of twenty percent of such salary or wage.

Payment of Gratuity Act, 1972

This Act provides for a scheme for the payment of gratuity to employees upon their exit from employment. It is applicable to employees engaged in factories, mines, oil fields, plantations, ports, railway companies, shops or other establishments. Its provides a terminal and superannuation benefit.

Highlights:

- A gratuity shall be payable to an employee on the termination of his employment without cause (financial misconduct) after he has rendered continuous service for not less than 5 years, or on his superannuation, or on his retirement/resignation, or on his death/disablement due to accident/disease. The completion of continuous service for five years is not necessary where the termination of employment is due to death or disablement.
- The Act provides for payment of a gratuity at the rate of 15 days wages for every completed year of service or part thereof, in excess of six months.
- Maximum amount of gratuity payable under the Act and exempt from tax is currently notified at INR 3,50,000. (This is proposed to be revised to one million)
- Every employer (non-government) to obtain insurance in the manner prescribed, for his liability for payments towards the gratuity under this Act, from any of the prescribed insurers.
- Employers employing more than five hundred or more persons may establish an approved gratuity fund. The employer shall arrange to pay the amount of gratuity within thirty days from the date it becomes payable.

Payment of Wages Act, 1936

The Act regulates the payment of wages to persons employed in any factory and ensures that they are disbursed by their employers within the stipulated time frame and without any unauthorized deductions.

- The Act lays down that the wage period exceeding one month should be fixed and payment of wages must be made before the entry of the specific day after the last day of the wage period.
- The specific day is the seventh day of a month where the number of workers is not more than one thousand and tenth day in case the number of workers is one thousand or more.
- All wages must be paid in current legal tender (currency). The wages can also be paid by cheque or credited to the bank account of the employed persons with the written authorization of the employee.
- Section 15 of the Act provides that the wages of an employed person shall be paid to him without any deductions except those authorized under the Act. Deductions permissible from wages inter-alia, relate to unauthorized absence from duty, deductions for house accommodation, recovery of advances and statutory dues, etc.

The Maternity Benefit Act, 1961

This Act regulates the employment of women before and after child birth and provides for maternity leave, medical bonuses, mis-carriage and certain other benefits.

Highlights:

- Under this Act, no employer shall knowingly employ a woman in any establishment until 6 weeks following the day of her delivery.
- Subject to the provisions of this Act, every woman shall be entitled to and her employer shall be liable for, the payment of maternity benefit at the rate of the average daily wage for the period of her actual absence.
- The maximum period for which any woman shall be entitled to maternity benefit shall be twelve weeks of paid leave of which not more than six weeks shall precede the date of her expected delivery.
- Every woman, entitled to maternity benefit under this Act, shall also be entitled to receive from her employer a medical bonus (as is stipulated) if no pre-natal and post-natal care is provided by the employer free of charge.
- Where a woman absents herself under the provisions of this Act, it shall be unlawful for the employer to discharge or dismiss her during or on account of such absence or to give notice of discharge or dismissal.
- The Act is not applicable to the employees covered under the Employees State Insurance Act 1948.

Shops and Establishments Act, 1961 (Local/State Act)

This local/State Act provides for the regulation of conditions of work and employment in shops and commercial establishments.

- The Act defines 'commercial establishment' as a commercial, trading, banking or insurance establishment, or an administrative service. It also includes hotels, restaurants, boarding or eating-houses, cafés or any other refreshment house, theatres, or any other place of public amusement or entertainment and includes such other establishments as declared by the respective State Governments.
- The Act defines 'shop' as premises where any trade or business is carried on or where services are rendered to customers and includes offices, storerooms, godowns, or warehouses, whether in the same premises or otherwise, used in connection with such trade or business, but does not include a commercial establishment or a shop attached to a factory, as in such a case, the persons employed in the shop will fall within the scope of the Factories Act 1948.
- Under the Act, no employee in any establishment shall work for more than nine hours any day and forty-eight hours in any week. Provision shall be made for interval, rest, and weekly holidays and for annual leave with wages.

Child Labour (Prohibition and Regulation) Act, 1986

The Act prohibits the engagement of children in certain employments and regulates the conditions of work of children in certain other employments.

Highlights:

- Under the provisions of this Act, no child shall be employed or permitted to work in any of the occupations set forth in the schedules mentioned in the Act. A child below the age of 14 years cannot be employed in any hazardous industry.
- No child shall be required or permitted to work in any establishment in excess of such number of hours as may be prescribed for such establishment or class of establishments.
- Every child employed in an establishment shall be allowed in each week, a holiday of one whole day, which day shall be specified by the occupier in a notice permanently exhibited in a conspicuous place in the establishment.

Employees Provident Fund and Miscellaneous Provisions Act, 1952

This social security benefit Act provides for the institution of provident funds, pension funds and deposit linked insurance funds for employees in factories and other establishments. It applies to every establishment employing more than 20 persons and which is a factory engaged in any industry specified in Schedule I of the Act, or belongs to the class of such establishments specified by the Central Government.

Highlights:

- Applicable to industries and establishments employing 20 or more employees.
- Wage ceiling for coverage is INR 6,500 per month or less.

- These are administered by the Employees Provident Fund Organisation under the overall supervision and direction of the Central Board of Trustees and Committees.
- Statutory deduction of 12 per cent from the employee plus 12 per cent from the employer on monthly basis.
- Provident fund includes pension fund as well as Life Insurance Policy.

Mines Act, 1972

This Act prescribes standards for the health, safety and welfare of workers in coal, metalliferous and oil mines. The Directorate General of Mines Safety (DGMS) conducts inspections and inquiries, issues competency tests for the purpose of appointment of persons to various posts in the mines and organises seminars/conferences on various aspects of safety of workers. The activities of DGMS are geared to contain the number of accidents in mines.

Dock Workers (Safety, Health & Welfare) Act, 1986

This Act prescribes standards for the health, safety and welfare of workers working in ports/docks. There are inspectorates of dock safety at 10 major ports in India, viz. Kolkata, Mumbai, Chennai, Visakhapatnam, Paradip, Kandla, Mormugao, Tuticorin, Cochin and New Mangalore and the Act is administered by Director General, Factory Advice Service and Labour Institutes. The overall aim of the inspectorates is to contain the accident rates and the number of accidents at the ports.

Hiring Of Staff and Workers By Foreign Companies

Trained managerial, professional and technical staff, as well as skilled and unskilled workers, are available in India at competitive rates. Managerial and supervisory positions are usually filled through advertisements in the print media, campus recruitments and hiring consultants. Government sector and major industrial establishment have complete recruitment process through notified employment exchanges.

Some large head hunting firms help companies find suitable candidates for senior management positions. For hiring workers, companies advertise locally, go to industrial training schools or contact local employment exchanges. Appointing auditors of accounts, internal auditors and company secretaries is required in most cases, though it is not a pre-condition to investment.

Hiring of Foreign Nationals

Indian companies may engage the services of foreign nationals (including non-resident Indians) for short-term assignments without the prior approval of RBI. Applications for remittance of remuneration to foreign nationals should be made by Indian companies to authorized dealers.

Business Regulations for Foreign Nationals

Foreign nationals are allowed, in principle, to be employed in India either for a short duration or in regular employment on a non-permanent basis, for periods usually up to three years and beyond with appropriate Government approvals.

The basic requirements are:

- A valid business visa/working permit.
- Prior approval by the RBI for repatriation facilities with the exception of short-term engagements. All forms of employment of foreign nationals require prior approval as listed above. Although there are no restrictions on the number of expatriates in any company, the government policy is to encourage the use of indigenous skills as much as possible.
- A foreign national may open a bank account in India and receive funds from abroad. Foreign nationals in regular employment of Indian companies (including joint ventures) can remit up to 75 per cent of their net after tax earnings abroad to meet their overseas expenses or maintain their family etc. if the employment is approved by the government and the exchange control authorities. Such approvals are not necessary if employment is for a short duration, provided the amount of remittance is within approved limits.
- Retirement facilities to foreigners allow capital repatriation up to USD 1 million, besides all savings generated from bonafide income, without any restrictions.

Entry into India

Foreign nationals (except citizens of Nepal and Bhutan) entering India are required to carry a valid passport/travel documents and a valid visa. Visas for the purpose of tourism, entry, transit, conferences, business and employment in India are issued to foreign nationals by Indian Embassies and Consulates abroad. Indian companies may engage the services of foreign nationals (including non resident Indians) for short-term assignments without prior approval of the RBI. A foreign national, holding a visa (other than a tourist visa) valid for a period exceeding 180 days, is required to be registered with the Foreigners Regional Registration Offices (FRROs) in India. FRROs are located in all major cities. In the case of smaller cities, such permission can be obtained from the principal police station. Change of purpose or type of visa is not permitted.

Furthermore, visas, other than those for business, employment, student and entry, are not normally considered for extension. Business visas may be issued for up to 5 years, with a multiple entry provision. While a business visa is issued by an Indian Embassy abroad, it can be renewed or extended within India if the applicant desires. Foreign nationals who wish to work in India must obtain a residential permit from the FRRO.

Transfer of Residence

The transfer of residence scheme applies to foreign nationals visiting India for a long duration. Under this scheme, foreign nationals can import certain personal effects without paying customs duty. A bank guarantee has to be provided for this purpose, which is refundable after the individual has stayed in India for a year. To avail of this scheme, the goods have to be shipped within two months before the entry of the foreign national into India or one month after entry into India. The goods brought into India under the transfer of residence scheme have to be owned by the foreign national or his family for at least one year.

Taxation

Foreign nationals working in India are generally taxed only on their Indian income. Income received

from sources outside India is not taxable unless it is received in India. The Indian tax laws provide for exemption of tax on certain kinds of income earned for services rendered in India. Briefly, these are:

- Remuneration from a foreign enterprise not conducting any business in India, if the individual's stay in India does not exceed 90 days;
- Remuneration of a person employed on a foreign ship, if his stay does not exceed 90 days;
- Remuneration of foreign diplomatic, consular and trade officials and staff. Further, foreign nationals have the option of being taxed under the tax treaties that India may have signed with their country of residence.
- These treaties normally provide that the individual's income will not be taxed in India if the following conditions are satisfied:
 - The individual is employed in India by a foreign company.
 - The individual does not stay for more than 183 days in India during a fiscal year.
 - The individual's remuneration cost is not claimed as deductible business expenditure in India by the foreign company.

Recent Updates in India

National Policy on Safety, Health and Environment at Workplace

The Union Cabinet has approved the National Policy on Safety, Health and Environment at Workplace, on February 5, 2009 to address the issue of securing health and safety of workers in the country as envisaged in the Constitution. It provides general guidelines for all stakeholders such as Government, inspection authorities, employers, research and development institutions, educational institutions, etc. for developing a safety culture and environment at all work places. The Policy envisages actions for improving safety, health and environment at workplace by providing for a statutory framework, administrative and technical support, system of incentives, prevention strategies and their monitoring and inclusion of safety health and environment aspects in other related national policies.

It also spells an action programme comprising development of standards and codes of practices, encouraging compliance by stakeholders, increasing awareness, promoting and proving for research and development, knowledge and skill development, practical guidance and providing financial and non-financial incentives. The provisions of the policy would be reviewed every five years, if necessary.

National Policy on Skilled Development

The Government of India makes a constant effort to generate a skilled and regulated workforce. Working in this direction, The Union Cabinet on 23rd February, 2009, approved the National Policy on Skill Development proposed by the Ministry of Labour and Employment. The National Policy is devised with the objective to create a workforce empowered with improved skills, knowledge and internationally recognized qualifications to gain access to decent employment and ensure India's competitiveness in the dynamic global labour market. The target is to increase in productivity of workforce both in the organized and the unorganized sectors, seeking increased participation of youth, women, disabled and other disadvantaged sections.

Being the first ever policy in the country of such kind, it has been evolved after multiple rounds of consultation among different ministries of Central Government/State Governments, industries and employer organizations, trade unions and other stake holders. It aims to amalgamate the efforts of various sectors with superlative results and reforms the present system. The salient features of the policy are the following:

- 1. Demand driven system guided by labour market signals thereby reducing skills mismatch.
- 2. Expansion of outreach using established as well as innovative approaches.
- 3. National Vocational Qualifications Framework which will inter-alia include opportunities for horizontal and vertical mobility between general and technical education, recognition and certification of competencies irrespective of mode of learning.
- 4. System to deliver 'competencies' in line with nationally and internationally recognized standards.
- 5. Focus on new emerging occupations.
- 6. Focus on pre-employment training and life long learning.
- 7. Equity consideration adequate participation of women, disabled persons and disadvantaged groups including economically backward & minorities enhancing their access to training; improving employability and increasing employment opportunities.
- 8. Stress on research, planning and monitoring.
- 9. Involvement of social partners responsibility for management and financing of the system would be shared with all stakeholders and provide greater space for Public Private Partnership.
- 10. Promoting excellence.
- 11. Use of modern training technologies including distance learning, e-learning, web based learning, etc.
- 12. Skill up gradation of trainers, their quality assurance, and improvement of status.

Conclusion

Recently, there has been a host of IT, software and IT services companies, (being the constituents of the knowledge industry) entering the Indian market in line with the global trade policy. These are exempted from routine inspection by inspectors in line with the approved self-certification policy of the Government of India. India has a very large pool of English speaking technical persons, skilled workers and an abundant supply of potential employees that prove to be a major attraction for foreign investors. The present industrial policy has eased the entry of foreign technicians and personnel by wiping out the need of prior government approval for employment not in excess of 12 months. Employment in excess of 12 months requires clearance from the Government.

ENVIRONMENT LAWS AND REGULATIONS

Introduction

The transformation of developing countries from an agricultural to an industrial economy has been the focus of planners, underpinned by goals of stimulating growth and reducing poverty. In the process of transition, most development policies have focused exclusively on boosting output and reducing poverty. However more recently, there has been major concern over the environmental problems and human activities that have resulted in the pollution of the atmosphere, oceans and land.

India was the first nation to provide for environmental protection explicitly in its Constitution. The Constitution of India clearly states that it is the duty of the state to 'protect and improve the environment and to safeguard forests and wildlife of the country'. It imposes a duty on every citizen 'to protect and improve the natural environment including forests, lakes, rivers and wildlife'. The constitutional provisions are backed by a number of laws - acts, rules and notifications. Since the early 1970s, the Government has enacted 16 legislative measures that provide guidelines for protecting and improving the environment.

The Ministry of Environment & Forests (MOEF) is the nodal agency in the administrative structure of the Central Government for planning, promotion, co-ordination and overseeing the implementation of environmental and forestry programmes.

India has a Central Pollution Control Board (CPCB) at the national level and the State Pollution Control Board (SPCB) at the state level. The mandate of the CPCB is to set environmental standards for all plants in India, lay down ambient standards and coordinate the activities of the SPCBs. The implementation of environmental laws and their enforcement, however, are decentralized and are the responsibility of the SPCBs.

The main pollution control statutes in India are the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981, and the Environment (Protection) Act, 1986, which is designed to act as an umbrella legislation for the environment, with the responsibility for administering the new legislation falling on the CPCB and SPCBs.

The Nature of Environmental Regulation in India

One of the major challenges facing India is to maintain a delicate balance between its economic growth policy and its environmental policy. India's vast population, growing at a rapid rate, is one of the largest markets in the world for products and services. This dynamic population growth has contributed to a severe burden on its natural resources and has resulted in uncontrolled environmental degradation and neglect.

Following judicial intervention, Bhopal disaster and international pressure, India stepped up enforcement of environmental laws in the 1980s, which continued, into the 1990s. To contain the degradation of environment, the ongoing initiatives of the Government include preventive as well as promotional measures for pollution and environmental impact assessment of industrial and other projects.

The present national policies for environmental management are contained in the National Environment Policy, 2006, National Forest Policy, 1988, the National Conservation Strategy and Policy Statement on Environment and Development, 1992 and the Policy Statement on Abatement of Pollution, 1992.

Some policies such as the National Agriculture Policy, 2000, the National Population Policy, 2000 and the National Water Policy, 2002 have also contributed towards environmental management. All of these policies have recognized the need for sustainable development in their specific contexts and formulated necessary strategies to give effect to such recognition. The National Environment Policy, 2006 seeks to extend the coverage, and fill in the gaps that existed between the previous policies, in light of present knowledge and accumulated experience. It does not displace,



but instead builds on the earlier policies. The salient features of the National Environment Policy, 2006 are highlighted towards the end of this chapter.

With a view to mitigate the adverse environmental effects of development projects and to integrate environmental concern into development, prior environmental clearance of development projects based on impact assessment is being increasingly emphasised. Such clearance has been made mandatory for specified categories of development projects. Other initiatives include submission by industries of an environmental statement every year and setting up of a Cleaner Technology Division in the MOEF to develop and promote cleaner technologies that can be introduced in different sectors. While recognising the severe problems related to both air and water pollution, the Policy Statement for Abatement of Pollution, 1992, identifies the following steps to integrate environmental considerations into decision making at all levels -

- 1. Prevent pollution at source;
- 2. Encourage, develop and apply the best available practical technical solutions;
- 3. Ensure that the polluter pays for the pollution and control arrangements;
- 4. Focus on protection of heavily polluted areas and river stretches;
- 5. Involve the public in decision-making.

Environmental Guidelines for Establishing Industries-Prior Environmental Screening/ Environmental Clearance

The Central Government through the MOEF recently notified in September 2006, that for various specified activities, construction of new projects, the expansion or modernization of existing projects or activities entailing capacity addition with change in process and/or technology in any part of India the prior environmental clearances or screening would be required from the Central Government or as the case may be, by the State Level Environment Impact Assessment Authority, duly constituted

by the Central Government, where such activities or projects or expansion/modernization are beyond the specified limits. In relation to construction activities, prior clearance would be required even before commencement of preparation of land by the management for the project.

The Central Government by various Notifications in the year 2007 has constituted West Bengal, Gujarat, Andhra Pradesh, Uttar Pradesh, Meghalaya, Himachal Pradesh, Daman & Diu and Dadar & Nagar Haveli State Level Environment Impact Assessment Authority (SEIAA) in pursuance of notification issued by Central government under the Environment (Protection) Act/Rules, 1986. The Central Government directed that on or from the dates of its publication, the required construction of new projects or activities or the expansion or modernization of existing projects or activities listed in the schedule, entailing the capacity addition with changes in process or technology shall be undertaken in any part of India only after prior environmental clearance from the central government & SEIAA.

The categories of activities and expansion have been broadly split into two categories, viz., Category - A and Category - B. Category A activities would require clearance/screening at the Central level, whereas, Category B activities would require screening and/or clearance at the State level. Further, for carrying out the process of screening, scoping and appraisal of project, expert appraisal committees shall be appointed at the Central Government level and the SEIAA level. The Central Government and the SEIAA would have to consider the recommendations of expert committees appointed at the Central and State level, respectively, before finally deciding whether to grant approval or not. The categories have been listed at the end of this chapter.

The application seeking prior environmental clearance in all cases shall be made in the prescribed form after the identification of prospective site(s) for the project and/or activities to which the application relates, before commencing any construction activity, or preparation of land, at the site by the applicant. The applicant shall furnish, along with the application, a copy of the pre-feasibility project report except that, in case of construction projects or activities as specified, a copy of the conceptual plan shall be provided, instead of the pre-feasibility report.

Broadly, the environmental clearance process for new projects will comprise of a maximum of three stages:

- 1. Screening (Only for Category 'B' projects and activities).
- 2. The process of screening would be applicable to only a certain specified category of activities (this has been categorized as a sub category B2 to category B) such as, mining of minerals, at the State Level and if after the screening, it is found that the project requires a proper detailed process of appraisal and prior approval, the same shall be undertaken with respect to such projects. For all other projects falling under the specified categories of activities or expansion, the full process of appraisal would apply.
- 3. Scoping

The terms of reference (TOR) for the scope of the environment impact assessment (EIA) study to be undertaken are determined by the expert appraisal committee (EAC) for Category A projects and the concerned State expert appraisal committee (SEAC) for Category B1 projects, The TOR would have to address all relevant environmental concerns for preparation of the EIA report. These TOR would be determined on the basis of:

- 1. Information furnished in the application seeking clearance.
- 2. Site visit by the EAC/SEAC.
- 3. TOR filed by the applicant, if any.
- 4. Other information available with the EAC/SEAC.
- 5. Public Consultation: This process will have to be undertaken by all Category A and Category B projects so as to ascertain the concerns of the local people affected and others who have plausible stake in the environmental impacts of the project and take into account all material concerns in the project.
- 6. Appraisal: This stage entails a detailed scrutiny by the EAC/SEAC of the application, based on the EIA report, outcome of the public consultation. After the scrutiny the EAC/SEAC submits its recommendations to the concerned regulatory authority for final decision.

It is relevant to note that the EIA systematically examines both beneficial and adverse consequences of the project and ensures that these effects are taken into account during project design. It helps to identify possible environmental effects of the proposed project, proposes to mitigate adverse effects and predicts whether there will be significant adverse environmental effects, even after the mitigation is implemented. By considering the environmental effects of the project and their mitigation early in the project planning cycle, environmental assessment has many benefits, such as protection of environment, optimum utilization of resources and saving of time and cost of the project. A proper conducted EIA also lessens conflicts by promoting community participation, informing decision makers, and helping lay the base for environmentally sound projects. The benefits of integrating EIA have been observed in all stages of a project, from exploration and planning, through construction, operations, decommissioning, and beyond site closure.

Under the Environment (Protection) Rules, 1986, the Central Government has been empowered to impose prohibition or restrictions on the locations of an industry or the carrying on of processes and operations in an area based on their potential environmental impacts.

Upon the commencement of the project, in order to ensure that the projects are adequately monitored, the project management shall have to submit half-yearly compliance reports in respect of the stipulated prior environmental clearance terms and conditions in hard and soft copies to the regulatory authority concerned, on 1st June and 1st December of each calendar year. All such compliance reports submitted by the project management shall be public documents. Copies of the same shall be given to any person on application to the concerned regulatory authority. The latest compliance report shall also be displayed on the web site of the concerned regulatory authority.

Further, in establishing industries, care should be taken to minimize the adverse impact of industries on the immediate neighbourhood as well as distant places and should maintain the following distances from the areas listed:

1. Ecologically and/or otherwise sensitive area: at least 25 km. depending on the geoclimatic conditions, the requisite distance shall have to be increased by the appropriate agency;

- 2. Coastal area: at least ½ km. from high tide line (as specified in the Coastal Regulation Notification, 1991);
- 3. Flood Plain of the River Systems: at least ½ km. from the flood plain or modified flood plain as affected by a dam in the upstream or by flood control systems;
- 4. Transport/Communication System: at least ½ km. from highways and railway tracks (Railways Act, 1989);
- 5. Major Settlements (3, 00,000 population): distance from settlements is difficult to maintain because of urban sprawl. At the time of establishment of the industry, if any major settlement's notified limit is within 50 km., the spatial direction of growth of the settlement for at least a decade must be assessed and the industry should be situated at least 25 kms from the projected growth boundary of the settlement.

Fiscal Incentives to Encourage Control and Prevention of Pollution

- 1. In order to encourage environmental conservation, donations given by the corporate sector for conservation of nature and natural resources are exempted from income tax.
- 2. A depreciation allowance of 30 per cent is also allowed on devices and systems installed in industrial units for minimizing pollution or for conservation of natural resources.
- 3. In order to encourage plants to shift from congested urban areas, capital gains made in moving from urban to other areas are
 - from urban to other areas are exempted from taxes, if these are used for acquiring land and building production facilities in non-urban areas.
- 4. Excise and custom duty exemptions or reductions are given for the use of environment friendly raw materials.



1. Air (Prevention & Control of Pollution) Act, 1981: This Act is administered through the CPCB and SPCBs. The objective of this Act is to prevent, control and reduce air pollution including noise pollution. Unlike the Water Act, 1974, however, it is applicable to the whole of India and the States do not generally set their own standards except in consultation with the CPCB. The work areas between the CPCB and SPCB are well defined, with



SPCB acting as the implementing arm. The SPCB also specifies the air pollution control equipment that must be installed by factories and other industrial establishments and from time to time reviews the state of such equipment.

As far as FDI is concerned, the SPCB advises the State Government with respect to the suitability of any premises or location for carrying out any industrial activity, which is likely to cause air pollution.

2. The Environment (Protection) Act, 1986: The Environment Protection Act, 1986, is an umbrella legislation, which aims to plug loopholes of earlier legislations relating to the environment. Several sets of rules, relating to various aspects of management of hazardous chemicals, wastes, micro-organisms etc., have been notified under this Act. The Central Government has the power to set standards of quality of air, water, and soil for specified areas and for specified purposes under this Act. The maximum allowable limits of concentration of various environmental pollutants, as well as the procedures and safeguards for handling of hazardous substances and related restrictions, restrictions regarding the location of industry, and procedures and safeguards for the prevention of industrial accidents which may cause environmental pollution are legislated under this Act. However, if a particular SPCB so desires, it may set more but not less stringent standards in respect of a specified category of industries within its jurisdiction.

Those industries that require consent under the Water Act, Air Act or both, or authorization under the Hazardous Waste (Management and Handling) Rules, 1989 are required to submit an environmental audit report to the concerned SPCB by 30th September of each year under this Act.

A few of the Rules made under the Environment (Protection) Act are:

a. Hazardous Wastes (Management and Handling) Rules, 1989: In exercise of the powers conferred by Section 6, 8 and 25 of the Environment (Protection) Act, 1986, and in supersession of the Hazardous Wastes (Management and Handling) Rules, 1989, the Central Government has promulgated the Hazardous Wastes (Management, Handling and Transboundary Movement) Rules, 2008. These Rules shall apply to the hazardous wastes mentioned in the Schedule therein and shall not apply to waste-water, exhaust gas, radioactive wastes, bio-medical wastes, etc. for which special Acts or Rules have already been enacted.

"Hazardous waste", according to these Rules, means any waste which by reason of any of its physical, chemical, reactive, toxic, flammable, explosive or corrosive character cause danger to health or environment.

Amongst other things, the Rules stipulate that every person who is engaged in generation, processing, treatment, transportation and storage of hazardous wastes shall require to obtain an authorization from the SPCB, which shall remain valid for a period of 5 years. Further, the hazardous waste shall be collected, treated, recycled, stored or disposed of only in such facilities as may be authorized by the SPCB for such purpose. The utilization of hazardous wastes as a supplementary source or for

energy recovery, or after processing shall be carried out by the Units only after obtaining approval from the CPB. The Ministry of Environment and Forest shall be the nodal ministry to deal with the transboundary movement of hazardous wastes and to grant permission for transit of hazardous wastes through any part of India. No import of hazardous wastes from any country to India for disposal shall be permitted. The same is permitted only for recycling or recovery or reuse.

Under these Rules, the Central Government opted to describe various procedures for generation and disposal of hazardous waste, so as to cause least damage to the environment. Persons handling specific categories of hazardous wastes (18 categories have been identified so far) are required to obtain an authorization from the SPCB. A safety report is to be prepared by the concerned industry for handling of such wastes.

New industries are required to prepare such reports within five years of coming into operation. It is also required that the workers on site be provided with information, training and necessary equipment to ensure overall safety. Contingency plans in case of accidents also have to be prepared and notified to the local authorities. As per the recent amendments the occupier and the operator of a facility shall be responsible for proper collection, reception, treatment, storage and disposal of hazardous wastes. Furthermore, it is the responsibility of the occupier and the operator of a facility, to take all steps to ensure that the wastes are properly handled, and disposed of without any adverse effects to the environment. The occupier has to also ensure that he maintains proper disposal facilities and if he does not have one of his own he shall become a member of the Treatment, Storage and Disposal Facility (TSDF) maintained by the SPCB of the State in the jurisdiction of which the occupier operates.

- b. The Manufacture, Storage, and Import of Hazardous Chemical Rules, 1989: Under these Rules, about 170 chemicals have been notified as hazardous chemicals and detailed procedures have been notified. Under these rules, it is the duty of the occupier to:
 - a. Notify the authority of the presence of hazardous chemical in the activity being carried on. Any additions, which have been made to these hazardous chemicals, should also be reported.
 - b. Submit a "safety report" stating the precautions taken. These reports have to be updated if any material changes have been made.
 - c. Prepare an on-site emergency plan and an off-site emergency plan detailing how major accidents will be dealt with where the industrial activity is carried on.
 - d. Follow the safeguards provided while importing hazardous chemicals.
- c. The Bio-medical Waste (Management and Handling Rules), 1998: The said Rules were formulated along parallel lines of the Hazardous Wastes (Management and Handling Rules), 1989. Under the Rules, it is the duty of every institution and research centre generating bio-medical wastes to have proper facilities for the disposal, treatment, segregation, packaging, storage and transport of bio-medical waste and infectious wastes. The said Rules were amended in the year 2003.
- d. The Noise Pollution (Regulation and Control) Rules, 2000: The said Rules were passed to address problems relating to the increasing ambient noise levels in public places from various

sources, inter-alia, industrial activity, construction activity, generator sets, loud speakers, public address systems, music systems, vehicular horns and other mechanical devices having deleterious effects on human health and psychological well being of the people. The Rules lay down the air quality standards in respect of noise for different areas/zones.

3. The Water Prevention and Control of Pollution Act, 1974: The main provisions of this Act aim to prevent and control water pollution as well as restore water quality. The CPCB formulates standards, establishes and accredits testing laboratories that test samples of water, provides training, organizes awarenessbuilding campaigns and compiles statistics. The SPCB is entrusted with the actual task of planning and executing programmes to prevent pollution, inspecting factories etc, to ensure that they comply with the Act. The SPCB also stipulates specific conditions relating to temperature, volume, composition, rate and point of discharge



of emissions and effluents. The actual certificate, that a company meets the requisite standards, has to be issued by the SPCB. The CPCB advises the Government, coordinates various activities and provides technical assistance to the SPCBs and resolves disputes between them.

4. The Water Cess Act, 1977:

This Act authorises the collection of cess on water consumed by certain categories of industries specified in the schedule appended to the official notification of the Act. Local authorities may also specify the categories of such industries. The CPCB and the SPCB use the money thus collected to prevent and control water pollution. The purpose and the amount of water consumed by the industries determine the rate of the cess.

5. Public Liability Insurance Act, 1991:

The Act imposes on the Owner, the liability to provide immediate relief in respect of death or injury to any person or damage to property resulting from an accident while handling any of the notified hazardous chemicals. To be able to meet this liability, the Owner handling hazardous chemicals has to take out an insurance policy of an amount equal to its "paid up capital" or up to INR 5 million, whichever is less. The policy has to be renewed every year. The Owner also has to pay an amount equal to its annual premium to the Central Government's Environment Relief Fund (ERF). The liability of the insurer is limited to USD 10-15 million per accident up to a maximum of USD 30 million per year or up to the tenure of this policy. Any claim in excess to this liability will be paid from the ERF. The payment under this Act is only for immediate relief; owners shall have to provide the final compensation, if any, arising out of legal proceedings.

The National Environment Policy 2006

The National Environment Policy, 2006 is intended to mainstream environmental concerns in all development activities. It briefly describes the key environmental challenges currently and prospectively facing the country, the objectives of environment policy, normative principles underlying policy action, strategic themes for intervention, broad indications of the legislative and institutional developments. The principal objectives of the National Environment Policy, 2006 are as facilities:

- 1. Conservation of critical environmental resources;
- 2. Intergenerational Equity Livelihood Security for the poor;
- 3. Intergenerational Equity;
- 4. Integration of Environmental Concerns in Economic and Social development;
- 5. Environmental Governance;
- 6. Efficiency in Environmental Resource Use;
- 7. Enhancement of Resources for Environmental Conservation.

SCHEDULE I LIST OF PROJECTS REQUIRING ENVIRONMENTAL CLEARANCE

Pro	ject or Activity	Category with the	reshold limit	Conditions if any	
		A	В		
1.		Mining, extraction of natural resources and power generation (for a specified production capacity)			
(1)	(2)	(3)	(4)	(5)	
(a)	Mining of minerals	>50 ha. of mining lease area Asbestos mining irrespective of mining area	<50 ha. >5 ha. of mining lease area.	General conditions shall apply Note Mineral prospecting (not involving drilling) are exempted provided the concession areas have got previous clearance for physical survey	
(b)	Offshore and onshore oil and gas exploration, development & provided production	All projects	-	Note Exploration Surveys (not involving drilling) are exempted the concession areas have got previous clearance for physical survey	

(1)	(2)	(3)	(4)	(5)
(c)	River Valley projects	(i) >50 MW hydroelectric power generation; (ii) >10,000 ha. of culturable command area	(i) <50 MW >25 MW hydroelectric power generation; (ii) < 10,000 ha. of culturable command area	General Condition shall apply
(d)	Thermal Power Plants	>500 MW (coal/ lignite/naphta & gas based); >50 MW (Pet coke diesel and all other fuels)	< 500 MW (coal/ lignite/naptha & gas based); <50 MW >5 MW (Pet coke, diesel and all other fuels)	General Condition shall apply
(e)	Nuclear power projects and processing of nuclear fuel	All projects	-	-
2.		Primary Processing		
(a)	Coal washeries	>1 million ton/annum throughput of coal	<1 million ton/annum throughput of coal	General Condition shall apply (If located within mining area the proposal shall be appraised together with the mining proposal)
(b)	Mineral beneficiation	> 0.1 million ton/ annum mineral throughput	< 0.1 million ton/ annum mineral throughput	General Condition shall apply (Mining proposal with Mineral beneficiation shall be appraised together for grant of clearance)
3.	Materials Production			
(a)	Metallurgical industries (ferrous & non ferrous)	a) Primary metallurgical industry (All projects) b) Sponge iron manufacturing	Sponge iron manufacturing < 200 TPD Secondary metallurgical processing industry	General Condition shall apply for Sponge iron manufacturing

(1)	(2)	(3)	(4)	(5)
		> 200 TPD c) Secondary metallurgical processing industry All toxic and heavy metal producing units > 20,000 tonnes / annum	i.)All toxic and heavy metal producing units <20,000 tonnes /annum ii.)All other non -toxic secondary metallurgical processing industries >5000 tonnes/annum	
(b)	Cement plants	>1.0 million tonnes/ annum production capacity	<1.0 million tonnes/ annum production capacity. All Stand alone grinding units	General Condition shall apply
4.		Materials Processing		
(a)	Petroleum refining industry	All projects	-	-
(b)	Coke oven plants	>2,50,000 tonnes/ annum	<2,50,000 & >25,000 tonnes/annum	-
(c)	Asbestos milling and asbestos based products	All projects	-	-
(d)	Chlor-alkali industry	> 300 TPD production capacityor a unit located out side the notified industrial area/ estate	<300 TPD production capacity and located within a notified industrial area/ estate	Specific Condition shall apply No new Mercury Cell based plants will be permitted and existing units converting to membrane cell technology are exempted from this Notification
(e)	Soda ash Industry	All projects	-	-
(f)	Leather/skin/ hide processing	New projects outside the industrial area or	All new or expansion of projects located	Specific condition shall apply

(1)	(2)	(3)	(4)	(5)
	industry	expansion of existing units out side the industrial area	within a notified industrial area/ estate	
5.		Manufacturing/Fabric	cation	
(a)	Chemical fertilizers	All projects	-	-
(b)	Pesticides industry and pesticide specific intermediates (excluding formulations)	All units producing technical grade pesticides	-	-
(c)	Petro-chemical complexes (industries based on processing of petroleum fractions & natural gas and/or reforming to aromatics)	All projects	-	-
(d)	Manmade fibres manufacturing	Rayon	Others	General Condition shall apply
(e)	Petrochemical based processing (processes other than cracking & reformation and not covered under the complexes)	Located out side the notified industrial area/ estate	Located in a notified industrial area/ estate	Specific Condition shall apply
(f)	Synthetic organic chemicals industry (dyes	Located out side the notified industrial area/ estate	Located in a notified industrial area/ estate	Specific Condition shall apply

(1)	(2)	(3)	(4)	(5)
	& dye intermediates; bulk drugs and intermediates excluding drug formulations; synthetic rubbers; basic organic chemicals, other synthetic organic chemicals and chemical intermediates)			
(g)	Distilleries	(i) All Molasses based distilleries (ii) All Cane juice/ non-molasses based distilleries > 30 KLD	All Cane juice/non-molasses based distilleries – <30 KLD	General Condition shall apply
(h)	Integrated paint industry	-	All projects	General Condition shall apply
(i)	Pulp & paper industry excluding manufacturing of paper from waste paper and manufacture of paper from ready pulp with out bleaching	Pulp manufacturing and Pulp& Paper manufacturing industry	Paper manufacturing industry without pulp manufacturing	General Condition shall apply
(j)	Sugar Industry	-	> 5000 tcd cane crushing capacity	General Condition shall apply
(k)	Induction/arc furnaces/cupola furnaces 5 TPH or more	-	All projects	General Condition shall apply

(1)	(2)	(3)	(4)	(5)
6.		Service Sectors		
(a)	Oil & gas transportation pipe line (crude and refinery/ petrochemical products), passing through national parks / sanctuaries/ coral reefs / ecologically sensitive areas including LNG Terminal	All projects	-	-
(b)	Isolated storage & handling of hazardous chemicals (As per threshold planning quantity indicated in column 3 of schedule 2 & 3 of MSIHC Rules 1989 amended 2000)	-	All projects	General Condition shall apply
7.		Physical Infrastructur	e including Environme	ntal Services
(a)	Air ports	All projects	-	-
(b)	All ship breaking yards including ship breaking units	All projects	-	-
(c)	Industrial estates/ parks/ complexes/ areas, Export Processing	If at least one industry in the proposed industrial estate falls under the Category A, entire industrial	-Industrial estates housing at least one Category B industry and area < 500 ha.	Special condition shall apply Note: Industrial Estate of area

(1)	(2)	(3)	(4)	(5)
	Zones (EPZs), Special Economic Zones (SEZs), Biotech Parks, Leather Complexes.	area shall be treated as Category A, irrespective of the area. Industrial estates with area greater than 500 ha. and housing at least one Category B industry.	Industrial estates of area > 500 ha. and not housing any industry belonging to Category A or B.	below 500 ha. and not housing any industry of category A or B does not require clearance.
(d)	Common hazardous waste treatment, storage and disposal facilities (TSDFs)	All integrated facilities having incineration & land fill or incineration alone	All facilities having land fill only	General Condition shall apply
(e)	Ports, Harbours	>5 million TPA of cargo handling capacity (excluding fishing harbours)	< 5 million TPA of cargo handling capacity and/or ports/ harbours > 10,000 TPA of fish handling capacity	General Condition shall apply
(f)	Highways	i) New National High ways; and ii) Expansion of National High ways greater than 30 KM, involving additional right of way greater than 20m involving land acquisition and passing through more than one State.	i) New State High ways; and ii) Expansion of National /State Highways greater than 30 km involving additional right of way greater than 20m involving land acquisition.	General Condition shall apply
(g)	Aerial ropeways	-	All projects	General Condition shall apply
(h)	Common Effluent	-	All projects	General Condition shall apply

(1)	(2)	(3)	(4)	(5)
	Treatment Plants (CETPs)			
(i)	Common Municipal Solid Waste Management Facility (CMSWMF)	-	All Projects	General Condition shall apply
8.	Building /Construct	Building /Construction projects/Area Development projects and Townships		
(a)	Building and Construction projects	-	>20000 sq.mtrs and <1,50,000 sq.mtrs. of built-up area	(built up area for covered construction; in the case of facilities open to the sky, it will be the activity area)
(b)	Townships and Area Development projects.	-	Covering an area > 50 ha and or built up area > 1,50,000 sq. mtrs.	All projects under Item 8(b) shall be appraised as Category B1

In view of the serious threat faced by the River Ganga due to discharge of sewage effluents, trade effluents and other pollutants, the Central Government, in exercise of the powers conferred to it by Section 3 of the Environment (Protection) Act, 1986 has constituted the "National Ganga River Basin Authority" for effective abatement of pollution and conservation of the River Ganga. The Prime Minister is the ex-officio Chairperson of the Authority and the Union Minister of Environment and Forest is one of the members. Several Union Ministers as well as the Chief Ministers of various states through which the River flows are also ex-officio members of the Authority.

TAXATION SYSTEM IN INDIA

India has a well-developed tax structure with the authority to levy taxes divided between the Central Government and the State Governments. The Central Government levies direct taxes such as personal income tax and corporate tax and indirect taxes like customs duty, excise duties (other than on tobacco and alcohol), service tax and central sales tax. The States are empowered to levy State Sales tax (now Value Added Tax) and local taxes like Entry tax, Octroi duty etc. Taxation has always played an important role in the formulation of the Government's industrial policy. In the wake of economic reforms, the tax structure and procedures have been rationalised and simplified. Since 1991, the tax system in India has undergone substantial rationalization.

Direct Tax

The direct taxes levied in India are as follows: Income Tax governed by the Income Tax Act, 1961 (The Income Tax Act) Wealth Tax governed by the Wealth Tax Act, 1957 (The Wealth Tax Act)

Income Tax law in India consists of the following: -

1. The Income Tax Act, 1961

The Indian constitution has empowered the Central Government to levy and collect Income Tax and the Income Tax Act, which was enacted in 1961, governs the same. The Income Tax Act came into force on 1st April 1962 and extends to the whole of India. It consists of about 300 sections and 14 schedules read with the Income Tax Rules, 1962. The Income Tax Act determines which persons are liable to pay tax and in respect of which income. The various sections of the Act lay down the law of Income Tax and the schedules elucidate certain procedures and give certain lists, which are referred to in the Sections. However, the Act does not prescribe the rates of Income Tax. These rates are prescribed every year by the Finance Act (popularly known as "The Budget"). This is done mainly to give incentives for investment in priority sectors, to discourage tax evasion, to remove loopholes in the law and to synchronise the law with the existing economic situation.

2. The Income Tax Rules, 1962

The Income Tax Act empowers the Central Board of Direct Taxes (CBDT) to formulate rules for implementing the provisions of the Income Tax Act. Income Tax Rules have been kept separate from the Income Tax Act as the Rules can be amended more easily than the Act, by merely publishing a notification in the official gazette of the Government of India. However, in case of conflict between the Income Tax Act and its Rules, the provisions of the Income Tax Act shall prevail.

3. Circulars issued by CBDT

For the guidance of Income Tax Officers and the general public, the Central Board of Direct Taxes (CBDT) issues circulars on certain taxation matters, which are binding on the Income Tax Officers.

However, circulars cannot change the provisions of law; they merely clarify the law or relax certain provisions thereof in favour of the taxpayers. In the event of a dispute, the Courts are not bound by the circulars.

4. Case Laws and Doctrine of Precedents

The decisions of the tax tribunals and Courts on disputes pertaining to aspects of the income tax law form case laws. Case laws result in formation of precedents in law. The decisions of the Supreme Court of India are however binding on all lower Courts and tax authorities in India. High Court and Tribunal decisions are binding only in the States, which are within the jurisdiction of that particular Court. However, decision of one High Court and Tribunal has persuasive power over other States when deciding similar issues.

Basic concepts of income tax

Liability

Liability for income tax in India depends on a taxpayer's residence status, not on his citizenship. Tax officials determine residence status by the number of days an individual is physically present in the country during a fiscal year, which in India, begins on April 1st and ends on March 31st of the following year. To assess the tax burden, officials classify taxpayers as residents, non-residents or not-ordinarily residents. The Income Tax Act contains provisions for classifying residential status of a taxpayer.

The definition of income under the Income Tax Act is of an inclusive nature, i.e. apart from the items listed in the definition, any receipt, which satisfies the basic condition of being income is also to be treated as income and charged to income tax accordingly.

Income, inter alia, includes: -

- Profits or Gains from business or profession including any benefit, amenity, and perquisite obtained in the course of such business or profession;
- Salary Income including any benefit, allowance, amenity or perquisite obtained in addition to or in lieu of salary;
- Dividend Income;
- Winnings from lotteries, crossword puzzles, races, games, gambling or betting;
- Capital Gains on sale of capital assets;
- Amounts received under a Key Man Insurance Policy i.e. a life insurance policy taken by a person on the life of another person who is or was the employee of the first mentioned person or is or was connected in any manner whatsoever with the business of the first mentioned person;
- Voluntary contributions received by a religious or charitable trust or scientific research association or a sports promotion association.

Tax Rates

Different categories of persons are taxed at different rates under the Indian income tax law. The categories are Individuals, Co-operative societies, firm and Companies. The basic tax rates excluding surcharge and education cess applicable for the financial year 2008-2009 are as follows:

Individuals

• The tax rates applicable to Individuals are also applicable to Hindu Undivided Family (HUF), Association of Persons and Body of Individuals.

Up to INR 1,50,000	Nil
INR 1,50,000 - 3,00,000	10 per cent
INR 3,00,000 - 5,00,000	20 per cent
INR 5,00,000 and above	30 per cent

Union Budget 2009 has proposed that the exemption limit in personal income tax of individual tax payers to be raised by INR 10,000 from INR 1,50,000 to INR 1,60,000. Also the surcharge of 10 per cent on personal income tax applicable when the income exceeds INR 10,00,000 to be removed.

Firms

The firm is taxed at the rate of 30 per cent

Companies In the case of a domestic company In the case of a foreign company	30 per cent 40 per cent
Co-operative societies Up to INR 10,000 INR 10,000 INR 20,000 INR 20,000 and above	10 per cent 20 per cent 30 per cent

The above rates are further enhanced by Surcharge and Education cess at the applicable rates.

It may be noted that separate rates are prescribed for certain specified incomes like long term capital gains, winnings from lottery etc.

If a company has book profits but does not have taxable profits computed as per general provisions of the Income-tax Act, it is liable to pay Minimum Alternate Tax at the rate of 11.33 per cent in case of a Domestic Company and 10.56 per cent in case of a Foreign Company.

Unioin Budget 2009 has proposed that the Minimum Alternate Tax to be hiked from 10 per cent to 15 per cent for both domestic as well as foreign companies. The period allowed for carrying forward the tax credit under MAT to be extended from seven years to ten years.

Fringe Benefit Tax

Employees enjoy many fringe benefits during their working in the organisation. In some cases, the entire expenditure incurred by the employer is taxed in the hands of the employees where as in some cases these benefits are not taxed in the hands of the employees. Such benefits include entertainment, hospitality, conferences, sales promotion, conveyance tour and travel, boarding and lodging facilities, free or concessional tickets, telephone, festival celebrations, use of health clubs, gifts etc. These benefits which are not taxed in the hands of the employees are subject to Fringe Benefit Tax (FBT). FBT is levied at the rate of 30 per cent plus applicable surcharge and education cess on part value of aforesaid benefits. It generally ranges between 5 per cent to 50 per cent, but the

majority of cases is restricted to 20 per cent, therefore, effective rate of FBT in most of the cases is 6 per cent plus surcharge and education cess. FBT is not allowed as a deduction in computing the income chargeable under the head profits and gains of business or profession. FBT is payable quarterly in advance during the financial year.

FBT would also apply to liaison offices of foreign companies in India if the liaison offices have employees based in India. In cases where foreign companies have PEs in India, FBT is payable on expenditure incurred, which is attributable to the operations of the PEs in India. FBT is charged even from non-resident employers whose income is exempt under a Double Taxation Avoidance Agreement ("DTAA").

Union Budget 2009 has proposed that the Fringe Benefit Tax on the value of certain fringe benefits provided by employer to their employees has been proposed to be abolished.

Electronic Filing of Income-tax Return

Filing of Income Tax returns is a legal obligation of every person whose total income for the previous year has exceeded the maximum amount that is not chargeable to income tax under the provisions of the Income Tax Act. Income tax Department has introduced a convenient way to file these returns online using the Internet. It is mandatory for companies to submit the Income Tax returns electronically.

Taxation of Foreign Companies

The business income in the hands of a non-resident is chargeable to tax only when the same is either received in India or if it accrues in India. The question as to where the income from business accrues or arises is a question of fact to be determined in each individual case. However, certain guiding principles are laid down in Section 9 of the Income Tax Act for determining the question of accrual of business income in India.

Income from business operations is construed as accrued in India if the same accrues or arises, whether directly or indirectly, through or from any business connection in India. The expression 'business connection' has been defined under the Income Tax Act on the same basis as is used for determining a 'Permanent Establishment' of a non-resident under DTAA. A 'business connection' involves the concept of control, supervision or an activity of continuous nature. It necessitates a nexus between the activity and the business. A stray transaction or business activity does not, therefore, generally establish such nexus.

'Business' is a word of wide import and means activities carried on continuously and systematically by a person by the application of his labour and skill, with a view to earning an Income. Unless there is something to establish a relationship between the activity and such continuous and systematic carrying on of activities, the requisite nexus will be lacking. An idea of the import of this expression can be had from the following illustrative instances of a non-resident having 'business connection' in India. These instances can be: -

- Maintaining a branch office in India for the purchase or sale of goods or transacting other business;
- Appointing an agent in India for the systematic and regular purchase of raw material or other commodities or for sale of goods or for other business purposes;

- Erecting a factory in India where the raw material purchased locally is worked into a form suitable for export outside;
- Forming a local subsidiary company to sell the products of the non-resident parent company;
- Having financial association between resident and a non-resident company.

A non-resident will not be liable to tax in India on any income attributable to operations confined to purchase of goods in India for export, even though the non-resident has an office or an agency in India for this purpose.

Where a non-resident has an agent in India but makes sales directly to Indian customers, there will be no 'business connection' even if he pays to his agent an over-riding commission on such sales to India provided:

- The making of these sales can in no way be attributed to the existence of the agency or to any trading advantage or benefit accruing to the principal from the agency;
- The contracts to sell are made outside India, and
- The sales are made on a Principal-to-Principal basis.

The bilateral DTAA requires the presence of somewhat permanent nature of the non-resident in India so as to be able to exercise the jurisdiction of taxing the business income. Such presence is established through the existence of fixed place of business or relationship technically known as 'Permanent Establishment'.

A non-resident is also entitled to deduct out of the gross business income, that part of the head office expenses, which can be attributed to the Indian operations through 'Business Connection' or 'Permanent Establishment'. The law lays down the ceiling on the Head Office expenses that can be allowed as deduction in computing the business income. It is laid down that the deduction of actual amount of head office expenses attributable to the business or profession in India shall not exceed 5 per cent of the adjusted total income which means the total income before taking account of depreciation, carried forward losses etc. or deductions under Chapter VI-A of the Income Tax Act.

Special Provisions for computing capital gains from transfer of shares/debentures

Capital gains arising to a non-resident from the transfer of shares in or debentures of Indian companies is, at his option, computed by first converting the cost and the transfer consideration into the same foreign currency which was initially utilized in the purchase of such shares/ debentures and then the difference being the capital gains expressed in that foreign currency is reconverted into Indian currency for the purpose of taxation. This is done to ensure that the amount of capital gain chargeable to tax is not influenced by the exchange rate fluctuation and represents only the accretion in value. The rates of conversion and re-conversion to be applied are as prescribed in Rule 115A of the Income Tax Rules. For converting the cost of acquisition, the average of the telegraphic transfer buying rate and telegraphic selling rate of the foreign currency initially utilized in the purchase of the asset as on the date of its acquisition and for converting the transfer consideration the average of the telegraphic transfer buying rate and telegraphic transfer selling rate as on the date of transfer of the capital asset is to be considered. For reconversion of capital gain, the conversion rate will be the telegraphic transfer-buying rate as on the date of transfer of the capital asset.

The aforesaid manner of computation of capital gains is also applicable in respect of capital gains accruing or arising from every reinvestment thereafter in share or debentures of an Indian company. Where this option is availed of, the non-resident is not entitled to the benefit of indexation adjustment mentioned before.

In order to facilitate the restructuring of business, it is provided that transfer of shares in Indian companies from one foreign company to another, in a scheme of amalgamation or de-merger would not be regarded as a transfer provided two conditions are satisfied - firstly, that a specified percentage of the shareholders of the amalgamating company or the de-merged company continue to be the shareholders of the amalgamated company or the resulting company and secondly, that such transfer is not subject to capital gains tax in the country where the amalgamating company or the de-merged company is incorporated.

Capital gains arising from the transfer of short-term capital asset are included in the total income and taxed at the normal rate applicable to the income of the person earning it. Capital gains arising out of the transfer of long-term capital assets in the hands of non-residents are, however, assessed at flat rate of 20% plus applicable surcharge and cess. Short-term capital gains arising from the transfer of equity shares or units of equity-oriented mutual fund, which are chargeable to securities transaction tax at the time of transfer, are taxed at the rate of 15 per cent plus applicable surcharge and cess. However, long-term capital gains arising from the sale of equity shares in a company or units of equity-oriented mutual fund are exempt from tax.

Non-residents of certain categories are, however, assessed at special concessional rates of tax in respect of capital gains arising from the transfer of certain specified assets. In computing the capital gains in such cases, special provisions applicable in the case of non-residents for avoiding the influence of exchange rate fluctuation mentioned above are not to be applied.

Authority for Advance Ruling

With a view to avoid disputes regarding the assessment of income-tax liability in the case of a non resident and also specified categories of residents, a scheme of Advance Ruling has been incorporated under the Income Tax Act. The Authority for Advance Ruling pronounces rulings on the applications of the non-residents/residents submitted and such rulings are binding both on the applicant and the Income Tax Department. Thus, the applicant can avoid expensive and time-consuming litigation, which would have arisen from normal income tax assessment proceeding.

Double Tax Avoidance Agreements

The jurisdiction to tax capital gains between the source country and the country of residence of the person holding the assets is governed by the Double Tax Avoidance Agreement (DTAA), if any, existing between the source country and the country to which the non-resident belongs. The bilateral agreements entered into by India with many foreign countries provide concessional rates of tax on gross receipt basis in respect of such income. A taxpayer is entitled to be assessed at such rate or at the rate applicable under normal provisions of the Income Tax Act, whichever is beneficial to him.

Dividend Income from an Indian company

Under the current provisions of the Income Tax Act, dividend on shares received from an Indian company is exempt from taxation in the hands of the shareholder. However, the company declaring the dividend has to pay a dividend distribution tax of 15 per cent excluding surcharge and cess.

Exemption from the obligation to file the return of income

If the income of the non-residents governed by Section 115A and 115AC of the Income Tax Act consists only of the income from royalty, technical fees, interest, dividend or income from units covered by these sections and tax has been deducted at source, such persons need not file the return of income which they are otherwise required to file.

Taxation of Royalty and Fees for technical services

Royalty has been defined to mean consideration for transfer of rights in respect of or for use of intellectual property viz. patent, invention, model, design, secret formula, process or trademark and similar property. It includes consideration for imparting of information concerning the working or use of those properties and also for imparting of information concerning technical, industrial, commercial or scientific knowledge or skill. It makes no difference whether the consideration is by way of lump sum payment or in the form of recurring payments based on production or any other factor. It, however, does not include an income, which arises from the transfer of the asset itself and is liable to be taxed in the hands of the recipient as 'Capital Gains'.

'Fees for technical services' means any consideration for the rendering of managerial, technical or consultancy services, whether such consideration is paid in lump sum or in any other manner. It also includes consideration for providing services of technical or other personnel as part of their service contract. It, however, does not include consideration for any construction, assembly, mining or like projects undertaken by the recipient or consideration which would be income of recipient chargeable under the head 'salaries' by virtue of the existence of employer-employee relationship between the parties.

Royalty and Fees for technical services is taxable in the hands of non-residents if the same is received in or accrued in India.

Rates of taxation:

Royalty and Fees for technical services received in pursuance of agreements made on or after 1st June 2005 are taxable at 10 per cent of gross receipts plus applicable surcharge and education cess. The agreement with the Indian concern is required to be approved by the Central Government but if it relates to a matter included in the Industrial Policy of the GoI and the agreement is in accordance with that policy, such approval is not necessary. In the case of non-resident and non-corporate persons, this income is taxed at the normal rate prescribed in the Finance Act on net income basis i.e. after deduction of incidental expenses.

Special provisions in respect of newly established Units in Special Economic Zones

An entrepreneur referred to in Section 2(j) of the Special Economic Zones Act, 2005 deriving income from his unit which begins to manufacture or produce articles or things or provide any services during the previous year relevant to any assessment year commencing on or after 01-04-2006, a deduction of 100 per cent of the profits and gains derived from the export of such articles or things or from services for a period of five consecutive assessment years beginning with the assessment year relevant to the previous year in which the Unit begins to manufacture or produce such articles or things or provide services and 50 per cent of such profits and gains for further five assessment years and thereafter for the next five assessment years, so much of the amount not exceeding 50 per cent of the profits as debited to the profit and loss account of the previous year and credited to

"Special Economic Zone Re-investment Reserve Account" shall be allowed.

Taxation of Expatriates

India taxes residents on their entire worldwide income, while non-residents are taxed only on the income they receive in India or on income deemed to have been received in India. Not-ordinarily residents are taxed like non-residents, unless they have earned income outside the country that is connected with a business controlled in, or a profession carried on in India. In such cases, the income earned outside India is taxed as well. Married people and those with children receive no tax relief in India. Further, in the case of a married person whose spouse is also earning income, both spouses are taxed separately and must file separate tax returns with respect to their individual incomes.

Besides Income Tax, non-residents and not-ordinarily residents are also liable to pay wealth tax on any assets located in India. Assets outside India are exempt from this tax. Residents of India, on the other hand, are liable for wealth tax on their worldwide assets. Expatriates who draw their salary in Indian currency can remit up to 75 per cent of net-after-tax income to their home country. Expatriates can increase this percentage by obtaining prior permission from the RBI.

Normally, a foreign citizen who visits India and renders services incurs tax liability on the income earned in India. Consequently, the payment of services rendered by a foreigner in India would be subject to tax whether the money has already been taxed in the individual's country of origin or not. Therefore when an expatriate works in India, his entire salary-related income is subject to Indian tax even if he is paid outside India.

For tax purposes, salary includes base salary, cost-of-living allowances, bonuses, reimbursement of school fees, utilities, house rent, company-based accommodation, transportation, tax reimbursements and other payments the company makes on behalf of the employee. Expenses incurred by an employer in moving an expatriate to and from India and home-leave airfares are not considered taxable income in India. Gratuity paid on retirement, death or termination of services, payment against accumulated vacation and reimbursement of medical expenses are exempt from tax subject to prescribed limits.

India has Double Taxation Avoidance Treaties with many countries. Most of the treaties provide for exemption from income tax if:

- a) An expatriate stays in India for less than 183 days in a fiscal year;
- b) His salary is paid by an employer who is not a resident of India; and
- c) His salary is not claimed as deductible business expenditure in India.

Similar exemption is available to expatriates whose home countries do not have a treaty with India, provided the expatriate stays in the country for less than 90 days in a fiscal year. In light of these provisions, the expatriate's assignment from a treaty country should be structured in such a way that he does not stay in India for more than 183 days in a fiscal year (or 90 days, if from a non-treaty country). He may, however, stay in India for a continuous period of 365 days (180 days if from a non-treaty country) in two fiscal years, provided he stays for less than 183 days in each fiscal year.

Wealth Tax

Wealth tax is leviable only on certain specified assets. These, inter alia, include: -

- Guest house or any other house including farm house within twenty-five km from the local limits of any local body but does not include a house which has been allotted by a company to

an employee or an officer or a director who is in the whole time employment having a gross annual salary of less than INR 500,000. It also does not include any house for residential or commercial purposes which form part of stock-in-trade or which is occupied by the assessee for his business or profession or a residential property let out for at least 300 days in the year. Exemption from total wealth has been provided for one house or part of a house or a plot of land of up to 500 sq. metres belonging to an individual or a HUF;

- Motorcars other than those used in the business of running them on hire or treated as stock-in-trade;
- Jewellery, bullion (other than those used as stock-in-trade);
- Yachts, boats and aircraft (other than those used for commercial purposes);
- Cash in hand in excess of INR 50,000/- held by individuals or HUFs and in case of other person any amount not recorded in the books of account; and
- Urban land: Urban lands on which construction of buildings is not permissible or land occupied by building constructed with approval or land held for industrial purposes for two years are not included. Land held as stock in-trade for ten years is also not included.

Only those debts which have been incurred in relation to the aforementioned assets are allowed as a deduction in the computation of net wealth. The value of an asset, other than cash, is taken as per the rules framed for valuation of assets and where no rules exist, at the estimated price which it would fetch if it were sold in the open market. In the case of an individual, the wealth of others in certain cases, as specified in Section 4 of the Income Tax Act, is deemed to be owned by him and is also taken into account in computing his net wealth.

The wealth tax is leviable at the rate of one per cent of the amount by which the net wealth exceeds INR 1.5 million. In the case of an assessee being a person of Indian origin or a citizen of India who was ordinarily residing in a foreign country and who has returned to India for settling permanently, the money and the value of assets brought by him into India and the value of assets acquired by him out of such money within one year immediately preceding the date of his return and at any time thereafter, will not be included in the net wealth of assessee. But this exemption shall apply only for a period of successive assessment years commencing with the assessment year next, following the date on which such person returned to India.

The return of net wealth is ordinarily required to be furnished to the Wealth Tax Officer before the due date which is the due date for filing the income tax return by him. If any wealth tax is payable on the net wealth declared by the tax payer in his return, he is required to pay such tax on the basis of self-assessment before furnishing the return and to attach the proof of payment thereof with the return.

Transfer Pricing

Increasing participation of multinational groups in economic activities in the country has given rise to new and complex issues emerging from transactions entered into between two or more Associated Enterprises. With a view to provide a detailed statutory framework which can lead to computation of reasonable, fair and equitable profits and tax in India, in the case of such multinational enterprises, the Finance Act, 2001 substituted section 92 of the Income Tax Act with a new section and introduced new sections 92A to 92F in the Income Tax Act, relating to computation of income from an international transaction with an associated enterprise having regard to the arm's length price.

Any income arising from an international transaction or where the international transaction comprises of only an outgoing, the allowance for such expenses or interest arising from the international transaction shall be determined having regard to the arm's length price. The provisions, however, would not be applicable in a case where the application of arm's length price results in decrease in the overall tax incidence in India in respect of the parties involved in the international transaction.

Union Budget 2009 has proposed that the Government proposes to set up an alternate dispute resolution mechanism within the Income Tax Department for the resolution of transfer pricing disputes.

Arm's length price: In accordance with internationally accepted principles, it has been provided that any income arising from an international transaction or an outgoing like expenses or interest from the international transaction between Associated Enterprises shall be computed having regard to the Arm's Length Price, which is the price that would be charged in the transaction if it had been entered into by unrelated parties in similar conditions. The Arm's Length Price shall be determined by one of the methods specified as follows:

- a. Comparable uncontrolled price method;
- b. Resale price method;
- c. Cost plus method;
- d. Profit split method;
- e. Transactional net margin method;
- f. Such other method as may be prescribed.

The taxpayer can select the most appropriate method to be applied to any given transaction, but taking into account certain factors prescribed in the Income Tax Rules. With a view to allow a degree of flexibility in adopting an Arm's Length Price, the proviso to sub-section (2) of section 92C of the Income Tax Act provides that where the most appropriate method results in more than one price, a price which differs from the arithmetical mean by an amount not exceeding five percent of such mean may be taken to be the Arm's Length Price, at the option of the assessee.

Associated Enterprises: Section 92A of the Income Tax Act provides meaning of the expression 'Associated Enterprises'. The enterprises will be taken to be Associated Enterprises if one enterprise is controlled by the other, or both enterprises are controlled by a common third person. The concept of control adopted in the legislation extends not only to control through holding shares or voting power or the power to appoint the management of an enterprise, but also through debt and control over various components of the business activity performed by the taxpayer such as control over raw materials, sales and intangibles.

International Transaction: Section 92B of the Income Tax Act provides a broad definition of International Transaction, which is to be read with the definition of transactions given in section 92F of the Income-Tax Act. An International Transaction is essentially a cross border transaction between Associated Enterprises, in any sort of property, whether tangible or intangible, or in the provision of services, lending of money etc. At least one of the parties to the transaction must be a non-resident. The definition also covers a transaction between two non-residents, where, for example, one of them has a Permanent Establishment whose income is taxable in India.

Sub-section (2) of section 92B of the Income Tax Act extends the scope of the definition of International Transaction by providing that a transaction entered into with an unrelated person

shall be deemed to be a transaction with an Associated Enterprise, if there exists a prior agreement in relation to the transaction between such other person and the Associated Enterprise, or the terms of the relevant transaction are determined by the Associated Enterprise.

An illustration of such a transaction could be where the assessee, being an enterprise resident in India, exports goods to an unrelated person abroad and there is a separate arrangement or agreement between the unrelated person and an Associated Enterprise which influences the price at which the goods are exported. In such a case, the transaction with the unrelated enterprise will also be subject to transfer pricing regulations.

Union Budget 2009 has proposed that the Central Board of Direct Taxes (CBDT) seeks to introduce 'safe harbour' rules to reduce the impact of judgemental errors in determining the arms's length price in international transactions.

Documentation: Section 92D of the Income-Tax Act provides that every person who has undertaken an international transaction shall keep and maintain such information and documents as specified by rules made by the CBDT. The Board has also been empowered to specify the period for which the information and documents are required to be retained.

Such documentation includes background information on the commercial environment in which the transaction has been entered into and information regarding the International Transaction entered into, the analysis undertaken to select the most appropriate method and to identify comparable transactions and the actual working out of the Arm's Length Price of the transaction. The documentation should be available with the assessee by the specified date defined in Section 92F of the Income Tax Act. During the course of any proceeding under the Income Tax Act, the concerned Income Tax Authority may require any person who has undertaken an International Transaction to furnish any of the information and documents specified under the Income Tax Rules within a period of thirty days from the date of receipt of notice issued in this regard and such period may be extended by a further period not exceeding thirty days.

Further, Section 92E of the Income Tax Act provides that every person who has entered into an International Transaction during a previous year shall obtain a report from an accountant and furnish such report on or before the specified date in the prescribed form and manner. Rule 10E of the Income Tax Rules, and Form No. 3 CEB have been notified in this regard. The accountant's report only requires furnishing of factual information relating to the International Transaction entered into, the Arm's Length Price determined by the assessee and the method applied in such determination. It also requires an opinion as to whether the prescribed documentation has been maintained.

Burden of Proof: The primary onus is on the taxpayer to determine the Arm's Length Price in accordance with the rules and to substantiate the same with the prescribed documentation. Where such onus is discharged by the assessee and the data used for determining the Arm's Length Price is reliable and correct, there can be no intervention by the Assessing Officer (AO). The AO may intervene, only if:

On the basis of material or information or document in his possession, he is of the opinion that the price charged in the International Transaction has not been determined in accordance with the methods prescribed, or

- Information and documents relating to the International Transaction have not been kept and maintained by the assessee in accordance with the provisions of Section 92D of the Income Tax Act and the Rules made there under, or
- The information or data used in computation of the Arm's Length Price is not reliable or correct; or
- The assessee has failed to furnish, within the specified time, any information or document which he was required to furnish.

If any one of such circumstances exists, the AO may reject the price adopted by the assessee and determine the Arm's Length Price in accordance with the same rules. However, an opportunity has to be given to the assessee before determining such price. Thereafter, the AO may compute the total income on the basis of the Arm's Length Price so determined by him.

Section 92CA of the Income-tax Act provides that where an assessee has entered into an International Transaction in any previous year, the AO may, with the prior approval of the Commissioner, refer the computation of Arm's Length Price in relation to the said International Transaction to a Transfer Pricing Officer. The Transfer Pricing Officer, after giving the assessee an opportunity of being heard and after making enquiries, shall determine the Arm's Length Price in relation to the International Transaction and subsequently, the AO shall compute the total income of the assessee, having regard to the Arm's Length Price determined by the Transfer Pricing Officer.

Indirect Tax

The current indirect tax and regulatory regime in India is as follows -

- 1. Customs duty on importation/exportation of goods.
- 2. Central Value Added Tax (CENVAT)/Central Excise Duty- on manufacture of goods.
- 3. Service Tax on rendition of notified services.
- 4. VAT / Central Sales Tax / Works Contract Tax on sale of goods within India and on transfer of materials in works contracts.

The aforesaid indirect taxes are briefly explained as follows-

- 1. Customs Duties: Customs duties(here mean the import duties only, though exceptionally, export duties are also levied on some goods) are levied by the Central Government on imported goods at rates which depend on the classification of the goods specified under the Customs Tariff Act, 1975 which is generally aligned with the Harmonised System of Nomenclature (HSN). The following customs duties are presently applicable on the goods imported into India:
 - a. Basic Customs Duty (BCD) this is calculated at the effective rate applied to the landed value of the goods which comprises of CIF value and the landing charges.
 - b. Additional Duty of Customs in lieu of CENVAT or Countervailing Duty (CVD) this is equivalent to the excise duty applicable on like goods manufactured in India. This is calculated on the landed value and the basic customs duty. However, on most of the consumer goods intended for retail sale duty is calculated based on the maximum retail price (MRP) printed on their packs, net of a certain permissible deduction computed as a percentage thereof. This duty is grossed up with 2% education cess and 1% secondary and higher education cess.

c. Additional Duty of Customs (ADC) in lieu of sales tax / VAT - this is levied at the rate of 4 per cent on the landed value of the goods and the duties mentioned above on a cumulative basis. This duty is leviable on the sum total of assessable value, basic custom duty and countervailing duty. In addition 2% education cess and 1% secondary and higher education cess is levied on the amount of aggregate of the above customs duties, excluding the ADC in lieu of sales tax/VAT.

Calculation of Customs Duty

The following table would assist in understanding the method by which the customs duty liability is calculated. The landed value and the duty rates are assumptions.

Customs	Assessable Value(INR)	Duty	Aggregate Value(INR)
Landed value of Imports BCD @ 10 per cent on INR 100	100	10	110
CVD Additional Duty @ 8.24 per cent on INR 110		9.064	119.064
Education Cess on Customs Duty @ 2 per cent of INR 19.064 (119.064-100)		0.38	
Secondary and Higher Education Cesson Customs Duty @ 1 per cent of INR 19.064 (119.064-100)		0.19	119.635
ADC @ 4 per cent of INR 119.635		4.785	124.42
Total Duty		24.42	

In addition, 2 per cent Education Cess and 1 per cent Secondary and Higher Education Cess is computed on the amount of aggregate of BCD and CVD per cent on INR 19.064 in the above example.

Under the rationalised Import Tariff Structure the peak rate of customs duty is 10%. However, the Central Government has issued more than 100 Notifications that grant partial or complete exemption to specified goods from payment of customs duties upon satisfaction of specified conditions.

Customs Valuation - General

The general principles adopted for valuation of the goods under the Indian Customs Act are in conformity with the WTO agreement on customs valuation.

Customs duties are levied on the 'transaction value' of imported goods. The expression 'transaction value' of the goods has been defined to mean the price at which such or like goods are ordinarily sold, or offered for sale, for delivery at the time and place of importation in the course of international trade, where the seller and the buyer are not related parties and the price is the sole consideration for

such sale. Further, the aforesaid transaction value is determined under the Customs Valuation (Determination of Price of the Imported Goods) Rules, 1988 ('CVR').

The CVR provides that the transaction value of the imported goods shall be the price actually paid or payable for the goods when sold for export to India. The aforesaid transaction value of imported goods does not include the following charges or costs, provided that they are distinguished from the price actually paid or payable for the imported goods:-

- a. Charges for construction, erection, assembly, maintenance or technical assistance undertaken after importation on imported goods such as industrial plant, machinery or machines;
- b. The cost of transport after importation;
- c. Duties and taxes in India.

The price actually paid or payable refers to the price for the imported goods. Thus, any other payments from the buyer to the supplier that do not relate to the imported goods would not form part of the customs value.

Re-export of imported goods and Drawback of Customs duties paid

The Customs Act, 1962 provides that when any goods capable of being easily identified which have been imported into India and upon which any duty has been paid on importation, are entered for export and the proper officer makes an order permitting clearance and loading of the goods for exportation, 98 per cent of such duty shall be repaid subject to the conditions that-

- a. the goods are identified to the satisfaction to the Asst./ Deputy Commissioner of customs as the goods which were imported; and
- b. the goods are entered for export within two years from the date of payment of duty on the importation thereof.

The aforesaid period of two years can be extended by the authorities on sufficient cause being shown.

If imported goods are put to use and thereafter re-exported, refund to import duties will be allowed at reducing rates depending on the period for which the goods have been utilised in India. The refund rates in such cases are as follows:

Period of use in India	Percentage of Duty Refund
3 months	95 per cent
Between 3 months and 6 months	85 per cent
Between 6 months and 9 months	75 per cent
Between 9 months and 12 months	70 per cent
Between 12 months and 15 months	65 per cent
Between 15 months and 18 months	60 per cent
More than 18 months	NIL

2. CENVAT / Central Excise Duty

Central Value Added Tax (CENVAT) is a duty of excise levied by the Central Government on manufacture of movable and marketable goods in India. The duty is levied at the rates specified in the Central Excise Tariff Act, 1985. The Tariff is primarily based on the Harmonised System of Nomenclature (HSN).

The CENVAT, on most of the consumer goods which are intended for retail sale, is payable on the basis of the Maximum Retail Price (MRP) printed on the packages containing the goods. However, deductions at the rates ranging from 35 per cent to 50 per cent are admissible from the MRP for the purposes of charging CENVAT. The other goods are generally chargeable to duty on the 'transaction value' of the goods sold to an independent buyer. In addition, the Central Government has the power to fix tariff values for charging ad valorem duties on the goods.

The duty rates under the rationalised structure are up to 8 per cent. Further, a 3 per cent Education Cess is chargeable on the amount of CENVAT liability. In addition, there are more than 100 Notifications granting partial or complete exemption to specified goods from payment of excise duties.

The CENVAT operates as modified VAT wherein a manufacturer is allowed credit of the CENVAT paid on locally sourced goods, Additional Duty of Customs paid on imported goods and service tax paid on input services. The CENVAT credit can be utilised for payment of duty on the clearance of dutiable final products manufactured in India. The CENVAT credit is meant to avoid cascading effect of the duty on the manufactured goods.

CENVAT benefits for export of goods manufactured in India Procurement of materials. The manufacturer of export goods is entitled to procure inputs from other indigenous manufacturers free of excise duty, under the Central Excise Rules. Alternatively, where the manufacturer has used CENVAT paid inputs in the manufacture of export goods, he can obtain rebate/ refund of excise duty paid on such inputs.

Export of manufactured goods without payment of excise duty or under rebate/ refund

The goods manufactured in India can be exported without payment of duty after execution of a bond or filing letter of undertaking, as appropriate, with the excise authorities for the duty liability. Alternatively, where excise duty paid goods have been exported outside India, the exporter is entitled to obtain a rebate/ refund of CENVAT paid on such goods.

3. Service Tax

Service tax is applicable on notified services rendered or received in India. Further, the tax is levied on taxable services rendered by the persons defined in the statute. Service tax is currently levied at the rate of 10.3 per cent (including 2 per cent Education Cess and 1% Secondary and Higher Education Cess) of the value of the taxable services as defined in the statue.

It is the liability of the service provider to pay the tax. The tax is normally passed on to the buyer of the services. However, in case of taxable services provided by a non-resident from outside India, the person receiving such services in India is liable to pay service tax on the value of such services under reverse charge mechanism.

A service provider is allowed to avail set off of service tax paid on input services and CENVAT paid on inputs and capital goods from his output service tax liability.

4. VAT/ Central Sales Tax / Works Contract Tax

The transaction of sale or purchase of movable goods in India is subject to central sales tax (CST) or VAT. Imports into and exports out of India do not attract CST or VAT. However, a resale of an imported product in India shall attract CST or VAT. Further, sales tax is also not levied on services. Sales tax / VAT is levied under the following legislation:

- Central Sales Tax Act, 1956 (CST Act), which regulates the sale or purchase of goods between two States (inter-state sales)
- Local VAT legislation, which regulates the sale or purchase of goods within a particular State (intra-state sales)

Inter-state sales or purchases to a registered dealer can be made at a concessional CST rate of 2 per cent against statutory declaration in Form such as form C. In the absence of such a form, the higher VAT rate as applicable in the originating State, shall apply.

The Union and States have evolved a consensus to gradually reduce the CST rate to NIL by Year 2010. The Local Sales Tax was replaced with VAT in 20 States with effect from April 2005. The rest of the States have also now implemented VAT thereafter. The rates of VAT on intra-state sales are prescribed under the Schedules to the relevant State VAT legislation. The States which have implemented VAT generally have four slabs of VAT rates, namely NIL, 1 per cent, 4 per cent and 12.50 per cent.

The general VAT rates are as follows -

1 per cent Precious metals like gold and silver

4 per cent Industrial inputs, packaging materials capital goods, agro

Products & medicines

12.50 per cent other items and consumer goods

Exports are zero rated under VAT regime. Under VAT, tax is charged on each point of sale of a product within the State. Further, a set off of tax paid in the previous transaction within the State against tax payable on output sale within or from the State is provided.

VAT credit is restricted only on intra-state purchases of inputs and capital goods used in manufacturing operations.

Further, input tax credit is not admissible in the following cases:

- If the inputs have been procured inter-state (charged to CST);
- The inputs are used in the manufacture of or sale of VAT exempted goods Inputs have been purchased from non VAT registered dealers.

However, VAT credit with regard to exports is allowed. The input tax credit can be utilized by a registered person to pay output VAT on intra-state sales of output products and inter-state sales of output products.

In other words, input tax credit availed by a VAT registered person can be set off against output tax liability of VAT or CST. Further, there is an option to apply for a refund of input tax credit pertaining to exports. In case, the finished products are stock transferred outside the State of manufacture, otherwise than by way of sale, credit on inputs in excess of the prevalent CST rate only will be allowed in most of the States. It is pertinent to note that both CST and VAT simultaneously do not apply to one sale transaction.

However, there could arise situations where goods purchased inter-state on payment of CST and subsequently sold intra-state are subject to VAT of that State and vice versa. In such a transaction, there is an impact of both the CST as well as the applicable VAT. To minimise this tax incidence, in- transit sales are effected whereby the rate of sales tax on the entire transaction is restricted to CST rate alone.

The definition of "Sale" in most State VAT legislation as well as under the CST Act has been widened to include within its scope the transfer of property in goods effected in the course of execution of a works contract.

A contract, the execution of which involves the transfer of labour and material, is generally termed as 'works contract' and is subject to works contract tax. Works contract tax is thus nothing but VAT / CST on a works contract. Only the material portion of the contract is subject to this tax. Apart from prescribing exclusion for the amount representing the labour component of the contract, the States also prescribe various other deductions for arriving at the amount of taxable turnover for this tax. This tax is prescribed under the relevant State VAT legislation where the contract is to be executed.

Research and Development Cess

Under the Research and Development Cess Act, 1986, cess is levied by the Central Government, at a rate of 5 percent on import of technology into India. Such cess is required to be paid by the importer on or before remitting any money towards payments for such imports.

The term 'technology' is defined under the above-mentioned legislation to be any special or technical knowledge or any special service required for any purpose whatsoever by an industrial concern under any foreign collaboration and includes designs, drawings, publications and deputation of technical personnel.

Other taxes

In addition to the above, some other taxes imposed by Central/State Governments are as follows:-

- Transfer of assets attracts stamp duty
- Some States impose real estate taxes based on assessed values
- Municipalities levy taxes on real estate and other taxes in their jurisdiction and Octroi on goods entering their jurisdiction.

DOUBLE TAXATION TREATIES

The Central Government, under section 90 of the Income-tax Act, has been authorized to enter into Double Taxation Avoidance Agreements (DTAAs) with other countries. The object of such DTAAs is to evolve an equitable basis for the allocation of the right to tax different types of income between the 'source' and 'residence'. These DTAAs generally provide for relaxation in the taxation rates at which the resident of a contracting State to such tax treaty may be taxed on the income generated by him in the other contracting State. Thus, the objective of these DTAAs is to generally prevent the assessee of a State being taxed in two States for the same income generated by him in one of the contracting States, and thereby removes such impediment in foreign trade and investment activities. For example, a non-resident, under the income tax law, becomes liable to tax in India in respect of income arising here by virtue of it being the country of source and then again, in his own country in respect of the same income by virtue of the inclusion of such income in the 'total world income' which is the tax base in the country of residence. Tax incidence, therefore, becomes an important factor influencing the non-residents in deciding about the location of their investment, services, technology etc.

DTAAs serve the purpose of providing protection to tax payers against double taxation and thus preventing the discouragement which taxation may cause in the free flow of international trade, international investment and international transfer of technology. These treaties also aim at preventing discrimination between the taxpayers in the international field and providing a reasonable element of legal and fiscal certainty within a legal framework. In addition, such treaties contain provisions for mutual exchange of information and for reducing litigation by providing for mutual assistance procedure. Acting under the authority of law, the Central Government has so far entered into such DTAAs with countries listed below.

These DTAAs follow a near uniform pattern in as much as India has guided itself by the UN model of tax treaties. The DTAAs allocate jurisdiction between the source and resident country. Wherever such jurisdiction is given to both the countries, the DTAAs prescribe maximum rate of taxation in the source country, which is generally lower than the rate of tax under the domestic laws of that country. The resident country agreeing to give credit for tax paid in the source country avoids the double taxation in such cases, thereby reducing tax payable in the resident country by the amount of tax paid in the source country.

These DTAAs give the right of taxation in respect of income of the nature of interest, dividend, royalty and fees for technical services to the country of residence. However, taxation in the source country has to be limited to the rates prescribed in the tax treaty. The rate of taxation is on gross receipts without deduction of expenses.

So far as income from capital gains is concerned, gains arising from transfer of immovable properties are taxed in the country where such properties are situated. Gains arising from the transfer of movable properties forming part of the business property of a 'Permanent Establishment' or the 'Fixed Base' are taxed in the country where such Permanent Establishment or the Fixed Base is located. Different provisions exist for taxation of capital gains arising from transfer of shares. In a number of DTAAs, the right to tax is given to the State of which the company is resident. In some others, the country of residence of the shareholder has this right and in some others, the country of residence of the transferor has the right if the shareholding of the transferor is of a prescribed percentage.

So far as the business income is concerned, the source country gets the right to tax only if there is a 'Permanent Establishment' or a 'Fixed Place of Business' there. Taxation of business income is on net income from business at the rate prescribed in the relevant Finance Act.

Income derived by rendering of professional services or other activities of independent character are taxable in the country of residence except when the person deriving income from such services has a Fixed Base in the other country from where such services are performed. Such income is also taxable in the source country, if the person's stay exceeds 183 days in that financial year.

Income from dependent personal service, i.e. from employment is taxed in the country of residence unless the employment is exercised in the other State. Even if the employment is exercised in any other State, the remuneration will be taxed in the country of residence if –

- The recipient is present in the source State for a period not exceeding 183 days;
- The remuneration is paid by a person who is not a resident of that State; and
- The remuneration is not borne by a Permanent Establishment or a Fixed Base.

The DTAAs also provide for jurisdiction to tax director's fees, remuneration of persons in Government service, payments received by students and apprentices, income of entertainers and athletes, pensions and social security payments and other incomes.

DTAAs also contain clauses for non-discrimination of the national of a contracting State in the other State vis-à-vis the nationals of that other State. The fact that higher rates of tax are prescribed for foreign companies in India does not amount to discrimination against the Permanent Establishment of the non- resident company. This has been made explicit in certain DTAAs such as the one with U.K. Provisions also exist for mutual agreement procedure which authorizes the competent authorities of the two States to resolve any dispute that may arise in the matter of taxation without going through the normal process of appeals etc. provided under the domestic law. Another important feature of some DTAAs is the existence of a clause providing for exchange of information between the two contracting States which may be necessary for carrying out the provisions of the DTAA or for effective implementation of domestic laws concerning taxes covered by the tax treaty. Information about residents getting payments in other contracting States necessary for proper assessment of total income of such individual is thus facilitated by such DTAAs.

It may sometimes happen that owing to reduction in tax rates under the domestic law, after coming into existence of the treaty, the domestic rates become more favourable to the non-residents. Since the object of the DTAAs is to benefit the non-residents, they have, under such circumstances, the option to be assessed either as per the provisions of the treaty or the domestic law of the land.

In order to avoid any demand or refund consequent to assessment and to facilitate the process of assessment, it has been provided that tax shall be deducted at source out of payments to non-residents at the same rate at which the particular income is made taxable under the DTAAs. For example, as a result of amendments made, exempting dividend income from taxation, no deduction of tax is required to be made in respect of such income.

India has entered into comprehensive Double Taxation Avoidance Treaties with the following countries:

Armenia	Japan	South Africa	
Australia	Jordan	Spain	
Austria	Kazakstan	Sri Lanka	
Bangladesh	Kenya	Sudan	
Belarus	Korea	Sweden	
Belgium	Kyrgyz Republic	Swiss Confederation	
Botswana	Libya	Syria	
Brazil	Malaysia	Tanzania	
Bulgaria	Malta	Thailand	
Canada	Mauritius	Trinidad and Tobago	
China	Mongolia	Turkey	
Cyprus	Morocco	Turkmenistan	
Czech Republic	Namibia	UAE	
Denmark	Nepal	UAR (Egypt)	
Egypt	Netherlands	Uganda	
Finland	New Zealand	UK	
France	Norway	Ukraine	
Germany	Oman	USA	
Greece	Philippines	Uzbekistan	
Hungary	Poland	Vietnam	
Iceland	Portuguese Republic	Zambia	
Indonesia	Qatar		
Ireland	Romania		
Israel	Russia		
Italy	Saudi Arabia		
	Serbia		
	Singapore		
	Slovenia		

DOUBLE TAXATION AVOIDANCE AGREEMENT BETWEEN INDIA AND MAURITIUS, SINGAPORE AND CYPRUS

The Government of India has entered into various agreements with the Governments of different countries for the avoidance of double taxation and for prevention of fiscal evasion. Of them, the maximum emphasis is upon agreements entered into with the abovementioned three countries.

The purpose of these agreements, as specified in the preamble, is avoidance of double taxation and prevention of fiscal evasion with respect to taxes on income and capital gains and also encouragement of mutual trade and investment. It was intended by these agreements to increase the mutual trade and investment between India and the respective country and also to bring an environment of certainty in matters of tax affairs in both countries.

India and Mauritius entered into a Double Taxation Avoidance Convention (Agreement) on April 1, 1983.

Mauritius is a traditional hub through which foreign investment in India is routed because of it being a tax haven State. Mauritius has firmly established itself as the principal source of foreign fund flows into India accounting for more than a third of the aggregate FDI flows into India over the past 12 years and a third of aggregate actual inward remittance. The reason for this is that the Agreement provides for attractive tax benefits for investing shareholders as it provides for no Indian withholding tax on capital gains tax on transfer of shares in the Indian company.

Additionally, the Mauritius Government charges its resident company with negligible rate of tax and therefore the company set up in Mauritius for investing in India gains from both the sides, in the sense that they do not pay tax for the income generated by them from investing activities carried out in India and also save tax in the home country, i.e. Mauritius.

It is apparent from the above that there are substantial benefits arising from investing through Mauritius. As of now, there is nothing to indicate that the tax authorities in India have started questioning the use of Mauritius entity and also there is no indication of any change being suggested by the Ministry of Finance in India. It also may be pointed out that in several treaties, which India has entered into with other countries; there are special provisions for anti-treaty shopping. No such anti-treaty shopping provision exists in the case of Indo-Mauritius DTAA.

The significant terms of this Agreement between India and Mauritius include Article 13, which provides the manner of taxation of capital gains. Article 13 of the Agreement provides that gains from the alienation of immovable property may be taxed in the State in which the property is situated. Gains derived by a resident of a contracting State from the alienation of movable property forming part of the business property of a Permanent Establishment, which an enterprise of a contracting State has in the other contracting State or of movable property pertaining to a Fixed Base available to a resident of a contracting State in the other contracting State for the purpose of performing independent personal services including such gains from the alienation of such a Permanent Establishment may be taxed in that other State.

In terms of Circular no. 682 dated March 30, 1994 issued by the Central Board of Direct Taxes ("CBDT") under section 90 of the Income Tax Act 1961, the Government of India clarified that the capital gains of any resident of Mauritius by alienation of shares of an Indian company shall be

taxable only in Mauritius according to taxation laws of Mauritius and will not be liable to tax in India. This circular prompted many FIIs, which were resident in Mauritius to invest huge amounts of capital in shares of Indian companies with expectations of making profits by sale of such shares without being subjected to tax in India.

Incidentally, this clarification came at a time when many foreign companies were planning to invest in India to take advantage of the liberalisation process started by the Government in the year 1991. The impact was so huge that companies, which were planning to invest in India, incorporated a subsidiary in Mauritius for the purpose of investing in India to avail the benefit of low dividend taxation and zero capital gains for taxation in India.

These companies incorporated in Mauritius for the purpose of investing in India were shell companies with no business of their own and were allegedly also controlled and managed from a country other than Mauritius. Since benefits of the Indo-Mauritius Agreement are available only to those persons who are 'resident' in either of the country, doubts were raised whether these FIIs, which were incorporated in Mauritius to invest in India but being managed from a country other than Mauritius, were 'resident' in Mauritius. These doubts were however clarified in 2000 by the Finance Minister. It was stated that the views taken by some of the Income tax officers pertained to specific cases of assessments only and did not represent or reflect the policy of the Government of India with regard to denial of tax benefits to such FIIs. This move was intended to put the FIIs proposing to invest in India at a comfort level from taxation point of view.

To further clarify the position, the CBDT issued Circular No. 789 dated April 13, 2000 which provided that if the certificate of residence has been issued by the Mauritius authorities, such certificate shall constitute sufficient evidence for accepting the status of residence as well as beneficial ownership for applying the Agreement accordingly. The circular was to be applicable to proceedings which are pending at various levels.

It was this Circular, which prompted a writ petition to be filed with the Delhi High Court. Delhi High Court slammed this Circular issued by the CBDT. However, this judgment of the Delhi High Court was countered by the Supreme Court of India [Union of India v. Azadi Bacho Andolan and Anr JT 2003 (Suppl. 2) SC 205]. The Supreme Court made the following points in its judgment:

- 1. Stare decisis, the fact that several tax treaties have been entered upon based on section 90 of the Income-tax Act and that if this doctrine is not applied it will result in chaos and opening up of a Pandora's box of uncertainty.
- 2. Section 119 of the Income Tax Act is deliberately worded in a general manner so that the CBDT is enabled to issue appropriate orders to subordinate authorities for proper administration of the Income Tax Act so long as it is not prejudicial to assessees. CBDT can set things on course by eliminating avoidable wastage of time, talent and energy of Assessing Officers. The Circular does not curb, confine the powers of the Assessing Officers with regard to any particular assessment. It merely formulates broad guidelines to be applied in the matter of assessees covered by the double taxation treaty.
- 3. The Circular does not amount to impermissible delegation of legislative power. If an authority lacks the power, then the legislation is bad. On the contrary, if the authority is clothed

- with the requisite power, then irrespective of whether the legislation fails in its objective or not, the vires of the legislation is not liable to be questioned.
- 4. The contention of the respondents proceeds on the fallacious premise that liability to taxation is the same as payment of tax. Liability to taxation is a legal situation; payment of tax is a fiscal fact. What is relevant to this case is liability to taxation and not the fiscal fact of actual payment of tax. It is not possible to accept the argument that avoidance of double taxation can arise only when tax is actually paid in one of the contracting States.
- 5. The Joint Parliamentary Committee (JPC) may have noticed certain consequences, intended or unintended, flowing from the treaty and made appropriate recommendations. It is not possible for the Supreme Court to say that the treaty or the circular are not contrary to law nor would it be possible to interfere with them on the basis of the report of the JPC.
- 6. Developing countries need foreign investments and treaty-shopping opportunities can be an additional factor to attract them. Cyprus, Mauritius and Singapore are cases in point. Mauritius today provides a suitable treaty conduit for South Asia and South Africa. Overall, countries need to take and do take, a holistic view. The loss of tax revenues could be insignificant compared to other non-tax benefits to the economy. Abuse of treaty shopping may have been intended at the time the treaty was entered into and it is a matter best left to the discretion of the executive whether to continue this and if so, for how long. The Court cannot judge the legality of treaty shopping. A holistic view has to be taken to adjudge what is perhaps regarded in contemporary thinking as a necessary evil in a developing economy.

This judgment, being a landmark one, has restored the confidence of the FIIs which have invested in India and the judgment, by honouring treaty obligations has elevated India's international credibility. After Circular no. 789 dated April 13, 2000, CBDT has issued another Circular dated February 10, 2003 which provides that companies resident in Mauritius could be taxed in India if the department finds that the company is also resident in India and is effectively managed from India. The essence of the Circular is the tiebreaker clause, which provides that if a company is resident of both countries, it is taxable in the country from where it is effectively controlled. The following precautions should be taken in order to establish residency of the entity in Mauritius:

- 1. Substantial board meetings should be held in Mauritius or if held by teleconference the meeting should be chaired in Mauritius;
- 2. Major decisions must be taken in Mauritius;
- 3. Annual General Meeting and Extraordinary Shareholder's Meeting should be held in Mauritius;
- 4. The company should have a registered address in Mauritius;
- 5. Memorandum and Articles of Association Minute Book Share Register Books of Accounts should be placed in Mauritius;
- 6. The company should maintain its bank accounts in Mauritius; and
- 7. The company should have resident auditors and resident secretary.

Government of India has entered into a similar agreement with the Government of Cyprus also for the avoidance of double taxation and for prevention of fiscal evasion. India and Cyprus entered into a Double Taxation Avoidance Convention (Agreement) on 21 December, 1994. The said agreement is on the same lines as that of the agreement with Mauritius, as discussed above. The purpose of this Agreement, as specified in the preamble, is avoidance of double taxation and prevention of fiscal evasion with respect to taxes on income and capital gains and also encouragement of mutual trade and investment. It was intended by this Agreement to increase the mutual trade and investment between the two countries and also to bring an environment of certainty in matters of tax affairs in both countries. The highlight of the treaty is:

Full exemption of tax on capital gains income accruing to a Cyprus resident from sale of shares of an Indian company.

Other major points include:

- No withholding tax on distribution of dividends to parent;
- Corporate rate of tax of 10 per cent.

As can be seen from above, Cyprus is also considered a tax haven similar to Mauritius. Under the India-Cyprus tax treaty, capital gains arising in India are exempt from tax and dividend income from withholding tax. Cyprus also does not levy any tax on capital gains. There is a lower 10 per cent tax on interest, royalties and fee for technical services. Cyprus is one of the 10 new member states that joined the EU's ranks recently and could well take the top position in most favoured choices for routing of investments by FIIs into India. In fact Cyprus corporate tax rates, now the lowest in Europe at 10 per cent are lower than even those in Mauritius. More importantly, dividends and profits from trade in securities are normally tax-free in Cyprus. Profits from the disposal of shares, stocks and securities in any recognised stock exchange are also exempt from income tax in Cyprus.

Unilateral tax relief has been introduced for foreign tax paid abroad. This will be credited against any Cyprus tax, regardless of the existence of any double taxation agreement with the country where the foreign tax is paid. Cyprus also has a framework under which FIIs can pay lower taxes in their home countries.

About 50% of the interest received by corporations, excluding interest received in the context of the ordinary trading activity of the corporation (banks, interest on debtors) is exempted from tax. Capital gains tax is imposed only on the disposal of property situated in Cyprus. Dividend income can be exempt from tax if the Cyprus company holds at least 1% stake directly in the company paying the dividend.

The exemption does not apply if the company paying the dividend engages directly or indirectly in over 50% of its activities that produce investment income and the foreign tax burden on the income of the company paying the dividends is substantially lower than the tax burden in Cyprus.

The country treats a company as its tax resident if it is managed and controlled from Cyprus. All expenses incurred in earning income can be deducted from taxable profit. Tax losses in a year can be

carried forward and set off against future profits. Cyprus now fulfils all OECD norms and the EU Code of Conduct. With the recent revisions to its corporate law, it is excellently positioned as an entry-level jurisdiction for anyone seeking to do business, especially FIIs operating in India. In fact experts estimate that a large number of foreign investors operating in India out of Mauritius are likely to shift to Cyprus.

But India is reworking its tax treaty with Cyprus to check its abuse. Earlier, similar changes in bilateral tax treaty were made with respect to the Indo-UAE DTAA, which has already been notified. In this case capital gains have been made taxable in the State where the gains are earned.

The Government of India has already initiated negotiations with Cyprus for bringing changes in the treaty. Preventing misuse of tax treaties is weighing heavy on India's agenda and it is now pushing for renegotiation of agreement with countries considered tax havens.

India may push for bringing limitation of benefit clause in the treaty with Cyprus. Under the limitation of benefits clause, entities, which are not eligible, cannot get any benefit under the tax treaty. India has built in this provision in its treaty with Singapore and it is keen on bringing this provision in its treaty with Mauritius. Through this clause, the governments can deny benefits of the treaty if the affairs with a view to take advantage of the treaty.

Listing on the stock exchange in any of the countries, ceiling for turnover, a certain cap on expenditure on carrying the operations in one of the contracting States are some of the restrictions which could be brought in. India's concerns about the agreement with Cyprus stems from alleged misuse of the treaty by companies that route their investments into the Indian securities market to get exemption from capital gains tax.

A similar agreement have also been entered into by India with Singapore as well. The DTAA between India and Singapore was signed on 27th May 1994 and was later amended on 29th June 2005 as part of Comprehensive Economic Cooperation Agreement. Singapore is India's largest trading and investment partner in ASEAN. The increasingly close relations between India and Singapore in recent years have been underpinned by a dramatic growth in bilateral trade and investment linkages. India is looking for infrastructure investments, critical technologies and export markets. Singapore has surplus capital and could be a useful partner in infrastructure development in India as well as investment in Indian companies. For reaping the benefits of economies of scale of trade between two countries India-Singapore Joint Study Group (JSG) was formed to look into the possibility of concluding a Comprehensive Economic Cooperation Agreement (CECA) between the two countries. As a result CECA was signed between India and Singapore on 29th June 2005. During the conclusion of CECA, amendments were also made to the DTAA between India and Singapore. However, the DTAA between India and Singapore is not as flexible as is with Mauritius. The definition, as per Article 5, of Permanent Establishment includes any enterprise carrying on supervision in connection with a building site or construction, installation or assembly project for a period of more than 183 days. An enterprise is also considered as Permanent Establishment if it furnishes services for a period of 90 days in other country and if it furnishes services for an aggregate period of more than 30 days for its associated enterprise. In respect of royalties and fees for technical services, the tax rate arising in one of the two countries and payable to a resident of the other country shall not exceed 10 per cent. In respect of Capital Gains, Gains arising to a resident of one of the two countries from alienation of any property (including shares) in the other country (other than immoveable property or property forming part of a permanent establishment or the permanent establishment itself) would be taxed only in the country where the alienator is a resident.

Thus, if a resident of Singapore were to sell shares of an Indian company to a resident of India, the capital gains arising from such sale would be taxed only in Singapore. This is subject to the Limitation of Benefits (LOB) provisions. The Protocol has a LOB provision, to prevent abuse of the favourable capital gains tax treatment mentioned above. The LOB provision provides that a tax resident of either of the countries will not be entitled to the favourable capital gains tax treatment if its affairs are arranged primarily to take advantage of the benefits of the said favourable tax treatment. A shell/conduit company (i.e. a company being a resident of a Contracting State with negligible or nil business operations or with no real and continuous business activities in the Resident State) will not be eligible for the favourable capital gains tax treatment.

However a Company would not be a shell/conduit company if: it is listed on the recognized stock exchange of the Contracting State; or its total annual expenditure on operations in that Contracting State is equal to or more than USD 200,000 or INR 5 million in the respective Contracting State as the case may be, in the immediately preceding period of 24 months from the date the gains arise i.e. the date of alienation.

In respect of exchange of information, the Protocol provides that on a request of one of the countries, the Revenue Authority of the other country shall collect and share all information with the other country that it is competent to obtain for its own purposes under its law. This exchange of information would be done through the Competent Authority of the other country. The Protocol provides that the above amendments relating to Capital Gains, LOB and Exchange of Information shall remain in force as long as any Convention/DTAA between India and Mauritius provides that any gains from the alienation of shares in a company which is a resident of either India or Mauritius shall be taxable only in the country in which the alienator (transferor) is a resident.

DISPUTE RESOLUTION

The liberalisation of the Indian economy, its integration with the world economy and the emergence of an allpervasive and proactive WTO are significant economic events of the past decade. These events have completely transformed the form and substance of today's world trade and have thrown up previously unknown challenges thus giving rise to a plethora of cross border disputes. In an environment where the international business community, through Trans-national Corporations (TNCs) is becoming increasingly involved in India, all new contracts and agreements contain dispute resolution clauses.



In India, the most significant legal principle is the rule of law which is vital to the maintenance of the country's democracy. The Judiciary which is independent from the Legislature and Executive is entrusted with the duty of ensuring that no constitutional or legal authority acts beyond the limits of its power or indeed abuses or misuses it. Hence the Indian judicial system (the higher courts) commonly addresses the failings of the Legislature and the Executive to the extent that the Courts often strike out State and Central government legislations, which are unjustified or violative of the fundamental rights of Indian citizens. However, the judiciary is severely over burdened and the backlog of matters is vast. Generally, litigation in India is a cumbersome, time-consuming process and consequently, expensive affair.

More often than not, the parties agree to resolve any disputes, outside the judicial system of the host country in order to benefit from a level playing field when doing so. In such situations, there arises a need for ADR mechanisms. ADR instills confidence in parties as it has the advantages of being both neutral and speedy and is also devoid of the numerous shortcomings that plague the traditional judicial system. India in fact has in place, a robust legislation in the form of The Arbitration and Conciliation Act, 1996 which deals with one of the modes of ADR.

1. Court System

India has a three tier Court System. A typical Indian litigation action would commence in a District Court (Trial Court) and reach its logical conclusion in the Supreme Court of India, which is the apex court of the country and its highest appellate forum. The High Courts, along with the various State level courts, situated mostly in the State Capitals, constitute the middle rung of the three-tier system.

District Courts are the courts of first instance in India, except in cases where they are prevented from being so by virtue of lack of pecuniary jurisdiction. In addition cases involving a violation of fundamental rights are also beyond the scope of District Courts and therefore such cases may be filed in the respective High Court or even directly in the Supreme Court of India.

A litigant's decision as to where to file a commercial dispute in a particular forum depends upon the value of the matter. Needless to say, in all areas of litigation, be it civil, criminal or commercial, the

territorial jurisdiction of a court must be considered before a case is filed. In India, the place where the cause of action arose and the place of residence of the defendant are some of the necessary determinants of territorial jurisdiction.

Court fees are payable in most civil cases and the sum payable depends on the amount at which a suit is valued. Court fees differ from State to State.

As indicated above, the Indian Court system is bogged down by a number of issues almost all of which are related to the fact that the sheer number of cases seriously outweighs the number of judges available to deal with them and consequently, there is a huge backlog resulting in the delay in the dispensation of justice. Due to delays inherent in court procedures, it has become standard practice for lawyers in India to depend heavily on the remedy of ad interim, ex-parte injunctions. It is pertinent to point out that the process for obtaining injunctions is fairly fast in India and also that parties with strong cases are likely to get favourable ex-parte injunctions from the Courts. In fact, such parties can move the Court and obtain an injunction within the same day, depending upon the urgency of the matter. It is only the final disposal of cases that takes longer.

In addition, the Civil Procedure Code (CPC) provides for a "Summary Procedure" which is a faster mode for recovery of a debt or liquidated demand in money. This procedure applies to suits pertaining to negotiable instruments, bills of exchange, promissory notes etc. wherein a party seeks to recover a debt, arising out of a written contract or an enactment or on a guarantee in respect of a debt. The essence of the summary suit is that the defendant is not, as in an ordinary suit, entitled, as of right, to defend the suit. Under this procedure, where a part of the amount claimed by the plaintiff is admitted by the defendant to be due from him, the court normally does not grant leave to defend the suit to the defendant and the plaintiff is entitled to a decree. The object underlying this procedure is to prevent unreasonable obstruction by a defendant who has no defence.

Although various quasi-judicial forums and tribunals have been set up in an effort to scale down the burden of the large volume cases on the traditional mainstream Courts, the Courts system remains encumbered by the vast gap in the huge number of cases filed and the insufficient number of judges to adjudicate them.

Some of the special Courts and Tribunals in India are: -

- (a) Various Tax Tribunals such as the Income Tax Appellate Tribunal (ITAT)
- (b) Consumer Dispute Redressal Forums
- (c) Insurance Regulatory and Development Authority of India
- (d) Industrial Tribunal
- (e) Debts Recovery Tribunals and Appellate Tribunals
- (f) Company Law Board
- (g) Motor Accidents Claims Tribunal
- (h) Telecom Dispute Settlement Appellate Tribunal (TDSAT)
- (i) Central Administrative Tribunal (CAT)

An appeal can be filed before a District Court and sessions judge against an order made by a Civil

Judge. A second appeal may be made in the High Court and thereafter for final adjudication, before the Supreme Court. However, the Supreme Court does not entertain every dispute and for a matter to be heard by the apex court, it is imperative that it has certain substantial questions of law, which need adjudication. The Appellant files a petition for special leave to appeal and in the event that the Court grants leave to appeal only then does the Supreme Court hear the said matter.

It is important to mention that under Article 141 of the Constitution of India, every judgment delivered by the Supreme Court becomes the law of the land to be followed thereafter by all lower courts, until such a time that the said decision is overruled by a larger Bench of the same Court. The Supreme Court thus sets precedents, which are to be followed by all Courts. As well as appellate jurisdiction, the Supreme Court also enjoys writ jurisdiction whereby an aggrieved person may directly approach the Court for certain writs, orders or directions.

It is important to highlight that foreign judgments and decrees are generally conclusive in India. Sections 13 of the CPC stipulates that a foreign judgment shall be conclusive as to any matter directly adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title except: -

- (a) Where it has not been pronounced by a court of competent jurisdiction;
- (b) Where it has not been given on the merits of the case;
- (c) Where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognise the law of India in cases in which such law is applicable;
- (d) Where the proceedings in which judgment was obtained are opposed to natural justice;
- (e) Where it has been obtained by fraud;
- (f) Where it sustains a claim founded on a breach of any law in force in India.

However, generally a party seeking to enforce a foreign judgment has to file a fresh suit based on the foreign judgment or decree. Only in the circumstance where the judgment is from a reciprocating territory as recognised under the CPC, can a foreign judgment be brought for direct execution and enforcement. Section 44 A of the CPC lays down that where a certified copy of decree of any of the superior courts (courts specified in the Central Government notification) of any reciprocating territory has been filed in a District Court, the decree may be executed in India as if it has been passed by the District Court. 'Reciprocating territory' means any country or territory outside India, which the Central Government may, by notification in the official gazette, declare to be a reciprocating territory for the purposes of that section. Some countries like Singapore, Malaysia, United Kingdom, New Zealand, Hong Kong and the Fiji Islands are reciprocating territories notified as such by the Government of India.

2. Arbitration and Conciliation

The growth of global trade and the delay in the disposal of cases in courts under the formal judicial system in several countries made it crucial to have in place an ADR system, particularly in commercial disputes. To secure the confidence of the international community and the growing volume of India's trade and commercial relationships with the rest of the world, after the new liberalisation

policy of the Government of India, the Indian Parliament enacted the Arbitration and Conciliation Act of 1996 (Arbitration Act) based on the UNCITRAL Model Law. The importance of transnational commercial arbitration has been recognised and it has been specifically provided that even where the arbitration is held in India, the parties to the contract would be free to designate the law applicable to the substance of the dispute. The main object of the Arbitration Act was to enable the expeditious resolution of a commercial dispute with minimum intervention by a court of law so that trade and commerce are not affected by cumbersome and protracted litigation. All types of arbitration conducted in India are governed by Part I of the Arbitration Act, including international commercial arbitration, where the seat of arbitration is in India (leading to a domestic award). Part II of the Arbitration Act deals with the enforcement of arbitration agreements and awards under the New York Convention and the Geneva Convention, where the seat of arbitration is outside India (leading to a foreign award).

The Arbitration Act also provides for "international commercial arbitration" which is defined as an arbitration relating to disputes arising out of legal relationships, whether contractual or not, considered as commercial under Indian law and where at least one of the parties is:

- (a) An individual who is a national of/habitually resident in any country other than India; or
- (b) A body corporate incorporated in any country other than India; or
- (c) A company/association/body of individuals whose central management and control is exercised in any country other than India; or
- (d) The government of a foreign country.

The Arbitration Act provides that in the case of an international commercial arbitration, the parties are free to decide on the substantive law governing the agreement/transaction, i.e., the parties can mutually decide to apply the law of any country of their choice to govern their commercial relationship. This choice of law will have to be followed and applied by the arbitrator(s). However, the Act clearly mentions that the conflict of laws rules of the chosen country shall not apply.

Grounds for challenging Foreign Awards

The enforcement of a foreign award may be refused, at the request of the party against whom it is invoked, on certain specified grounds under the Arbitration Act. Broadly, the party challenging the enforcement of a foreign award has to establish before the court of competent jurisdiction the following -

- (a) The parties to the agreement were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or
- (b) The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
- (c) The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of submission to arbitration: or
- (d) The composition of the arbitral authority or the arbitral procedure was not in accordance

- with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or
- (e) The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

The enforcement of an award may also be refused if the court finds that the subject matter of the difference is not capable of settlement by arbitration under the law of India or the enforcement of the award would be contrary to the public policy of India. Further, an award is said to be in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption.

Grounds for challenging Domestic Awards

The court of competent jurisdiction may set an Indian Arbitral Award aside only if-

- (a) A party was under some incapacity; or
- (b) The arbitration agreement is not valid under the law to which the parties have subjected it to, failing any indication thereon, under the law for the time being in force; or
- (c) The party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
- (d) The arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration.
 - Provided that, if the decision on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or
- (e) The composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of Part I of the Arbitration Act from which the parties cannot derogate, or, failing such agreement, was not in accordance with the Arbitration Act.

A domestic award can also be set aside if the court finds that the subject matter of the dispute is not capable of settlement by arbitration under the law for the time being in force or if the arbitral award is in conflict with the public policy of India. The concept of public policy (arising out of judicial pronouncements) can generally be broken down into the following:

- (a) Fundamental policy of Indian law; or
- (b) The interest of India; or
- (c) Justice or morality.

Furthermore, courts have held that an arbitration award could also be set aside if it is so unfair and unreasonable that it shocks the conscience of the court.

Execution Procedure

Once the court decides that the foreign award is enforceable, it can proceed to execute the same. A foreign award can be executed in India by filing an execution application.

The domestic award is enforceable under the general procedures set out in CPC for execution of a court decree once the time for making an application to set aside the award has expired, or such application having been made, it has been refused.

New Dispute Resolution Opportunities offered by Bilateral Investment Treaties

Bilateral Investment Treaties ("BITs") offer an additional tier of protection to foreign investors against the host country. The three principal areas addressed in most BITs are;

- (a) Scope of the Treaty The scope of most investment treaties flows from their definition of the words "investor" and "investment". An "investor" is usually defined as a national of a party to the treaty, or a company or other juridical entity, either incorporated in that country or controlled by nationals or companies of that country. An "investment" generally means all assets, including claims to money or to performance, having an economic value. Loans and promissory notes (even after assignment by the initial creditors) have been held to be investments within the scope of certain investment treaties.
- (b) Substantive Protection Investment treaties generally require each country party to admit in its territory, investments by investors of other country parties, in accordance with the host country's laws and regulations. They then set out a series of specific investment protections. These vary from treaty to treaty, but they typically include assurances of fair, equitable and non-discriminatory treatment; full security and protection; most-favoured nation status; compensation for expropriation or acts tantamounting to expropriation; and free transfer of returns on investment. These substantive protections cover a wide range of acts and omissions by countries or local authorities, particularly given the increasingly broad interpretation by international tribunals of what constitutes an act tantamount to expropriation. However, many of these protections may already be available under the contracting country's investment laws or under customary international law.
- (c) Dispute Resolution Mechanisms A standard modern investment treaty will contain two dispute resolution mechanisms:
 - a. One for disputes between a country party and investors of another country party;
 - b. The second for disputes between the two or more countries that are party to the treaty.

The most significant feature of the investor-country mechanism in most treaties is that countries make a very broad offer, to all investors of the other country parties, of neutral international arbitration of all disputes it has, or may have with any of those investors, in the future. Traditionally, the offer and acceptance of arbitration, occurs well before a dispute arises, through the inclusion of an arbitration clause in a main agreement, simultaneously executed by parties, specifically contracting with each other. Although dubbed "arbitration without privity," investment treaty arbitration, in fact, remains based on the consent of the parties, as with any arbitration. Significantly, investment treaty arbitration is also available where the country and the investor do have a prior contract.

Some treaties bar access to international arbitration where the investor has already chosen a different dispute resolution path.

This sort of "fork in the road" clause usually prevents an unsuspecting investor, who has commenced proceedings in courts of the host country. The following are the stages in the dispute resolution mechanism between an investor and a contracting party:

- Any dispute to be settled amicably through negotiations between the parties;
- If such dispute cannot be settled by negotiations within a specified time period then the investor may submit the dispute to arbitration.

Investment Treaties Ratified by India

Multilateral Treaties- The major multilateral investment treaty in Asia is the 1987 ASEAN Agreement for the Promotion of Investments. In addition to a number of substantive investment protections, the ASEAN Investment Agreement contemplates several methods, of resolving disputes between a member country and an investor of another member country. India is also a party to the Convention establishing the Multilateral Investment Guarantee Agency, which provides for settlement of disputes between country parties to the Convention and Multilateral Investment Guarantee Agency, through negotiation, conciliation and arbitration. There are a number of agreements in other sectors to which India is a party, which similarly contain provisions for resolution of disputes through ADR procedures. However, India has not acceded to the International Centre for Settlement of Investment Disputes (ICSID) Convention.

Bilateral Investment Treaties - India has ratified approximetely 47 bilateral investment treaties, with countries including Australia, France, Japan and Korea. India has recently entered into bilateral investment protection agreements with the United Kingdom, Germany, Russian Federation, Netherlands, Malaysia and Denmark.

In conclusion, alternative dispute resolution mechanisms in India are in line with the best international practices and provide an essential and much needed comfort to international investors keen to engage in business with India.

AVIATION

The Aviation Industry in India is presently seeing a dynamic growth. Although a number of sectors were opened in 1991, the aerospace sector is still under the control of the Government, under the Ministry of Civil Aviation (MOCA), which is responsible for the formulation of national policies and programmes for development, regulation of civil aviation, for devising and implementing schemes for orderly growth and expansion of civil air transport.

Important organizations within the MOCA are:

- Airports Authority of India (AAI), which owns and manages over 82 operational domestic airports and 12 international airports in India. The AAI operates most aspects of the airport (including air traffic control) and operational aspects.
- Directorate General of Civil Aviation (DGCA) is the statutory regulator, which is responsible for regulation of air services to/from/within India and for formulation and enforcement of civil air regulations, air safety and airworthiness standards.



- International Airports Division (IAD), which manages eight international Airports at Delhi, Mumbai, Kolkata, Chennai, Thiruvananthapuram, Kochi, Hyderabad and Bangalore.
- National Airports Division (NAD), which manages all domestic airports in the country.

International airports in Delhi and Mumbai are being restructured and modernized through private sector participation. In the joint venture, AAI and other Government PSUs will hold 26 per cent equity, with the balance 74 per cent to be held by the strategic partner.

The Government has decided that the GMR consortium will be the private partner for the modernization and development of Delhi airport and the GVK consortium for the Mumbai airport.

The efforts of private sector participation has led to significant development and modernization of Mumbai and Delhi airports, which are the country's busiest airports and now emerging as leading airports in the world. The air traffic being handled by Delhi and Mumbai airport is now comparable to the major airports in U.S. and Europe.

Investment Policy:

- FDI limit in "Air Transport Service (Domestic Airlines)" is 49 percent and NRI investment up to 100 percent is permitted through the automatic route;
- The Government has recently extended the prevailing FDI limit of 49 to 74 percent in cargo and chartered airlines;
- Aircraft manufacturers Boeing and Airbus can look forward to setting up fully owned MROs in future;

- Government also decided that only non-airline companies from overseas would be eligible for 100 percent ownership of cargo and chartered airlines;
- Government also decided to open up gates for foreign investors in ground handling services subject to an equity cap of 74 percent;
- Also foreign firms can set up wholly-owned subsidiaries to run flying training institutes, technical training institutes, helicopter and sea plane services;
- No direct or indirect equity participation by foreign airlines is allowed in domestic air transport services;
- FIIs are allowed to hold equity in the domestic air transport sector provided they do not have foreign airlines as their shareholders;
- Foreign investors allowed to have representation (up to 33 per cent) on Board of Directors of a domestic airline company;
- Management contract with a foreign airline is not permitted;
- Domestic air transport operators (Operators) permitted to get maintenance, overhaul, repair work done and training of pilots/ engineers conducted by other airlines;
- Operators allowed employing foreign pilots/ engineers, with prior approval.

The Government, in October 2003, took a major step towards liberalizing the domestic aviation industry by extending the "open sky policy" to all foreign airlines without entering into bilateral agreements with State-run Air-India (AI) and Indian Airlines (IA). The policy allows foreign airlines, including those from the Persian Gulf, to enhance their capacity into and out of India for certain months in the peak passenger season.

This policy would allow all foreign carriers from Europe, North America, Southeast Asia and the Gulf to operate additional capacity.

In the airports sector, 100 percent FDI is allowed under the automatic route for Greenfield projects. In existing airports, 100 percent FDI is allowed. However, FDI beyond 74 percent requires FIPB approval. These investments are subject to sectoral regulations notified by the Ministry of Civil Aviation.

Opportunity:

India's liberal civil aviation policy puts greater emphasis on private sector participation to promote investment in this sector. The proposed new civil aviation policy will open up the vast Indian market for aircrafts, avionics equipment and other related business for foreign investors.

During the year 2007, domestic airline passenger traffic has shown a growth of 36.74 per cent in the first nine months (January to September, 2007) as compared to the corresponding period in 2006. Furthermore the scheduled domestic air services are now available to/from 82 airports as against nearly 75 in the year 2006.

With the establishment and growth of several scheduled domestic airlines and the consequential requirement to have an institutionalized arrangement to provide a platform for exchange of views between all Government agencies and the airlines on a regular basis, the Government, in June 2006, decided to constitute an Airlines Facilitation Committee.

The Committee shall deliberate and suggest measures to be taken by the Government, amongst other, issues pertaining to engaging foreign pilots, airworthiness examination of aircraft, airport security issues etc.

A draft policy regarding the use of aircraft infrastructure in case of merger/takeover of airlines and sale/transfer of aircraft has been approved by the Government. The draft policy provides that the airline that takes over the aircraft pursuant to the merger / take over or sale / transfer of the aircraft may be allowed the use of the airport infrastructure such as parking bays, landing slots etc., which are allotted by the Airport Operator without any payment (subject to certain prescribed conditions). The Civil Aviation Ministry has said that the government plans to improve 100 operational airports by 2010 and is working to create at least 500 small and big airports across the country.

The international airports in Delhi and Mumbai have been restructured and are being modernized through private sector participation. The construction of first phase of Delhi airport started in January 2007 and is likely to be completed in March 2010. The cost of the first phase of development is approximately INR 88.9 billion. Construction work for Mumbai airport also started in January 2007. The cost of development is INR 70 billion.

Greenfield airport projects have been launched for Bangalore on a BOOT basis for a 30 years project for INR 24.7 billion. Similarly, in Hyderabad on a BOOT basis for approximately INR 24.78 billion, a consortium led by Siemens, Germany with Unique Zurich, Switzerland and Larsen & Toubro India Limited as other members have been chosen as strategic joint venture partners. The Government is also taking initiatives to invite foreign investment in capital-intensive aerospace infrastructure projects throughout the country.

The Ministry of Civil Aviation expects 80 million passengers in India by 2020. The number of air travellers increased by a record 38.5 per cent in 2006-2007. India anticipates the doubling of passenger traffic over the next decade. Domestic market size will cross 60 million and international traffic 20 million. In the wake of the momentous increase in international air travel and resulting non-availability of seats to and from India during the peak winter season, a limited open sky policy has been adopted by the Government to ease the situation.

According to the Ministry of Civil Aviation, the country will need 1500 to 2000 passenger planes in 10 years, up from the present number of 260. At present 0.8 percent of the domestic population are air travellers and by the time 10 percent of the population begin to fly, India will need approximately 5000 aircrafts.

AUTOMOTIVE SECTOR

The Indian automotive industry consists of increasingly quality conscious manufacturers. A large, highly skilled but low cost manufacturing base makes collaboration with overseas players attractive. The growth curve of India's automotive industry has been on an upswing for the past few years. India became the fastest growing car market in the world in 2004, with a growth rate of 20 per cent. Continuing the upswing, the sector posted an impressive 13.5 per cent growth in 2006-07, according to estimates. Further, sales of passenger cars during 2008-09 to 2015-16 are expected to grow at a CAGR of around 10 per cent.



Many domestic manufacturers have already successfully entered into collaborations and others are actively seeking to do so. Further, due to liberalisation in the 1990s and opening up of the domestic automobile industry, India has developed as an emerging automotive hub for both components and vehicles. India has become the destination of global automobile majors like General Motors, Suzuki, Ford, Toyota, Hyundai, Daimler Chrysler, Fiat, Skoda, Mitsubishi, Honda, Volvo, Iveco, New Holland etc.

Many reputed foreign brands have set up manufacturing facilities in India and are increasingly looking at this market, in terms of contributing to their global operations.

Additionally, large automotive companies are utilising India's well-developed IT software capabilities and have set up research & development (R&D) hubs here for their global operations. Tata Motors launched the Nano in India on March 23, 2009 at the Gymkhana Club in Mumbai. The base model of the car is priced at INR 1,00,000 ex-factory and is touted as the world's cheapest car.

Close to a dozen new small cars from big names, including Maruti-Suzuki, Honda, Volkswagen, Fiat, Ford and Toyota are expected to hit the road by 2010, rejuvenating a market that accounts for as much as 75 per cent of car sales. In the long term, India is well equipped to become a big market for automotive and component manufacturers in terms of local demand and as a base for export.

Domestic And Foreign Vehicle Manufacturers

Passenger Vehicles - Foreign companies manufacturing locally include Hyundai, Ford, General Motors, Honda, Daimler Chrysler and Toyota. The main domestic manufacturers of passenger vehicles are as follows:

- Maruti;
- Tata Motors:
- Mahindra & Mahindra; and
- Hindustan Motors.

Indian Automotive Industry - Development and Growth

Pre 1983	1983-1993	1993-2007
Closed market Growth of market limited by supply Outdated models	Suzuki, Japan and GOI joint venture to form Maruti Udyog Joint ventures with companies in commercial vehicles and components	Delicencing of the sector in 1993 Global major OEMs start assembly in India (GM, Ford, Honda, Hyundai, etc.) Imports allowed from April 2001; alignment
Players • Hindustan Motors • Premier • Telco • Ashok Leyland • Mahindra & Mahindra	Players • Maruti Udyog • Hindustan Motors • Premier • Telco • Ashok Leyland • Mahindra & Mahindra	of duty on components and parts to ASEAN levels Implementation of VAT

Commercial Vehicles (CVs) - The main Indian companies in the Commercial Vehicle segment are:

- Tata Motors Limited;
- Ashok Leyland;
- Bajaj Tempo Limited;
- Eicher Motors Limited; and
- Swaraj Mazda.

Two/Three Wheelers - The main manufacturers within this segment are Bajaj Auto, Escorts Yamaha, Hero Honda, LML and TVS. The scooter segment recorded a production growth of 3.5 per cent in the year 2006-07 over the year 2005-06 whereas the motorcycles segment recorded a production growth of 13 per cent in the year 2006-07 over the year 2005-06. Motorcycle sales are expected to perform positively in future, exceeding 10 million units by 2012-13.

The projected CAGR of passenger vehicle production from 2006-2014 is 10.5 per cent for cars, 3 per cent for Multi Utility Vehicles (MUVs) and 9.6 per cent over all.

Components - The auto parts industry has emerged as one of India's fastest growing manufacturing sectors and a globally competitive one. The auto components industry in India is dominated by around 500 key players, which contribute more than 85 percent of India's production. The industry has very deep forward and backward linkages with almost every other engineering manufacturing sector of the economy. It supports industries like automobiles, machine tools, steel, aluminium, rubber, plastics, electrical, electronics, forgings and machining.

India has also emerged as an outsourcing hub for auto parts for international companies such as Ford, General Motors, Daimler Chrysler, Fiat, Volkswagen and Toyota.

India enjoys cost advantage with regard to castings and forgings. The manufacturing costs in India are 25 to 30 percent lower than its western counterparts. India's competitive advantage does not come from costs alone, but from its full service supply capability.

The component industry put in additional capacity of USD 1 billion in 2006-07. In the same period, this sector's exports grew by 25 per cent to reach USD 3 billion. The global sourcing of components is further expected to double to USD 5.9 billion in 2008 - 2009. Value of auto component exports is likely to attain a double digit figure in 2012-13 and the turnover of the Indian auto component industry is forecasted to surpass USD 50 billion in 2014-15.

Second hand domestic car market - Significant tariff and non-tariff barriers exist for the import of foreign second hand vehicles. An import license is no longer required but the Government has introduced a number of barriers to all categories of vehicles, to protect the domestic industry:

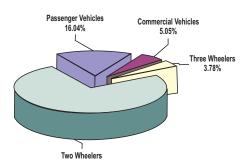
- The used vehicle must be less than 3 years old and should have a minimum road worthiness for a period of 5 years from the date of import;
- Only right hand drive vehicles are permitted;
- Vehicles must adhere to Motor Vehicles Act 1998 and be certified by a testing agency before and after import;
- A single port of entry all vehicles must be imported via the customs port in Mumbai;
- New vehicles require Type Approval and conformity of production;
- The tariffs for passenger cars and two wheelers (unbound) rates are 100 per cent for used vehicles and 60 per cent for new vehicles.

Investment Policy

- Almost all Quantitative Restrictions were removed in April 2001 in line with India's obligations under the WTO.
- Automatic approval for foreign equity investment up to 100 per cent for manufacture of automobiles and components is permitted.
- Government formulated the Auto Policy for India with a vision to establish a globally competitive industry in India and to double its contribution to the economy by 2010.
- National Automotive Fuel Policy has been announced, which envisages a phased programme for introducing Euro emission and fuel regulation by 2010.
- Tractors of engine capacity more than 1800 cc for semi-trailers will now attract excise duty at the rate of 8 per cent.
- Reduction in the excise duty on parts and accessories of motor vehicles from 14 per cent to 8 per cent.
- Setting up of the National Automotive Testing and R&D Infrastructure Project (NATRIP) at a total cost of INR 17.18 billion for enabling the industry to usher in global standards of vehicular safety, emission and performance standards
- Finalization of the Automotive Mission Plan (AMP) 2006-2016 for making India a preferred destination for design and manufacture of automobile and automotive components.

Exports

Automobile exports registered a growth of 22.30 percent during 2007-08. The growth was led by two wheelers segment which grew at 32.31 percent. Commercial vehicles and passenger vehicles



75.13%

Category-Wise Market Share in 2007-08

exports grew by 19.10 percent and 9.37 percent respectively. The exports of three wheelers' segment declined by 1.85 per cent.

Opportunity

- Despite the speculations of slow growth from different quarters because of unprecedented rise in input prices, the cumulative growth of the passenger vehicles segment during April 2007 March 2008 was 12.17 percent. Passenger Cars grew by 11.79 percent, Utility Vehicles by 10.57 percent and Multi Purpose Vehicles by 21.39 percent in this period.
- Passenger car production in India is projected to cross three million units in 2014-15.
- The commercial vehicles segment grew marginally at 4.07 percent. While medium & heavy commercial vehicles declined by 1.66 percent, light commercial vehicles recorded a growth of 12.29 percent in 2007-08 compared to the year before.
- Two wheelers registered a negative growth rate of 7.92 percent during the period 2007-08, with motorcycles and electric two wheelers segments declining by 11.90 per cent and 44.93 per cent respectively. However, scooters and mopeds segment grew by 11.64 per cent and 16.63 per cent respectively.
- Backed by Government's initiative on rural roads and better connectivity with major towns and cities, improved agricultural performance, upward trend of purchasing power in the hands of rural people, the two wheeler industry is expected to grow at an even higher rate.

BANKING AND FINANCIAL SERVICES

RBI is the regulatory body for banking operations in India. It supervises and administers foreign exchange control and banking regulations and administers the Government's monetary policy. It is also responsible for granting licenses for new bank branches and approving licenses for private banks. The Indian banking industry is made up of state-controlled and private banks. Since the economic liberalization initiated in 1991-92, the industry has witnessed increased participation of private and multinational banks. Today, in India, the private sector is allowed 100 per cent equity in banks. Further, the sectoral cap on foreign investment in private sector banking has been increased to 74 per cent (FDI+FII) subject to guidelines for setting up branches/subsidiaries of foreign banks issued by RBI.

SCHEDULED AND NON-SCHEDULED BANKS

As per Section 42(6)(a) of the RBI Act, subject to the fulfillment of conditions stated below, RBI allows inclusion of banks in the list of scheduled banks provided under Schedule II of the RBI Act. The conditions to be satisfied for the purposes of a scheduled bank are as follows:

- (i) The bank has a paid-up capital and reserves of an aggregate value of not less than five lakhs of rupees; and
- (ii) The bank satisfies RBI that its affairs are not being conducted in a manner detrimental to the interests of its depositors; and
- (iii) The bank is a state co-operative bank or a company as defined in section 3 of the Companies Act, 1956 (1 of 1956), or an institution notified by the Central Government in this behalf or a corporation or a company incorporated by or under any law in force



in any place outside India. All banks other than scheduled banks are non-scheduled banks. The scheduled banks comprise scheduled commercial banks and scheduled cooperative banks. Further, the scheduled commercial banks in India are categorized into five different groups according to their ownership and/or nature of operation:- (i) Nationalized Banks; (ii) State Bank of India and its associates; (iii) Regional Rural Banks (iv) Foreign Banks; and (v) Other Indian private sector banks. Scheduled Co-operative Banks consist of Scheduled State Co-operative Banks and Scheduled Urban Co-operative Banks.

In September 2008, there were 171 commercial banks, Indian and foreign; out of which 166 were scheduled commercial banks and 5 non-scheduled commercial banks. In terms of business, the public sector banks, namely the State Bank of India and the nationalized banks, still dominate the banking sector, although some private sector banks like ICICI Bank and HDFC Bank have also emerged in recent times as big players.

LOCAL FINANCING

All sources of local financing are available to foreign-participation companies incorporated in India, regardless of the extent of foreign participation. Under foreign exchange regulations, foreigners and non-residents, including foreign companies, require the permission of the RBI to borrow from a person or company resident in India.

REGULATIONS ON PRIVATE AND FOREIGN BANKS

The entry of foreign banks is based on reciprocity, economic and political bilateral relations. An inter-departmental committee approves applications for entry and expansion. Foreign banks in India are subject to the same regulations as any other bank in India.

With a view to further liberalizing foreign investment in the banking sector, the Government has effected the following changes:

FDI limit in Indian Private Sector Banks

- (a) FDI limit in Private Sector Banks is raised to 74 per cent under the automatic route including investment by FIIs. This includes FDI investment under Portfolio Investment Scheme (PIS) by FIIs, NRIs and shares acquired prior to September 16, 2003 by OCBs, and continues to include IPOs, Private placements, GDRs/ADRs and acquisition of shares from existing shareholders.
- (b) The aggregate foreign investment in a private bank from all sources will be allowed up to a maximum of 74 per cent of the paid up capital of the bank.
- (c) The stipulations as above will also be applicable to all investments in existing private sector banks.
- (d) The permissible limits under PIS through stock exchanges for FIIs and NRIs will be as follows:
- (i) In the case of FIIs, individual FII holding is restricted to 10 per cent and aggregate limit for all FIIs in a banking company cannot exceed 24 per cent, which can be raised up to 40 per cent by a board and special resolution of the banking company.
- (ii) In the case of NRIs, as hitherto, individual holding is restricted to 5 per cent and the aggregate limit cannot exceed 10 per cent. However, NRI holding can be allowed up to 24 per cent provided the banking company passes a special resolution to that effect in the General Body.
- (e) Application for FDI in private banks having joint venture/ subsidiary in insurance sector may be addressed to the RBI for consideration in consultation with the Insurance Regulatory and Development Authority (IRDA) in order to ensure that the 26 per cent limit of foreign shareholding applicable for the insurance sector is not being breached.
- (f) Transfer of shares under FDI from residents to non-residents requires approval of FIPB under FEMA.
- (g) The policies and procedures prescribed, from time to time by RBI and other institutions such as SEBI, Ministry of Corporate Affairs and IRDA on these matters apply.

(h) RBI guidelines relating to acquisition by purchase or otherwise of shares of a private bank, if such acquisition results in any person owning or controlling 5 per cent or more of the paid up capital of the private bank apply to foreign investors as well.

A foreign bank may operate in India through only one of the three channels viz. (i) branch (ii) subsidiary and (iii) a joint venture. In the light of Press Note No. 2 of 2004 series issued by the Ministry of Commerce & Industry, foreign banks are allowed to operate in India by way of branch or WOS.

- 1. Establishing a Branch by a Foreign Bank. In order for a foreign bank to acquire the status of an Indian bank and for such bank to carry on banking operations in India, it would have to obtain a banking license from the RBI. While deciding on an application for banking license, the RBI takes into consideration the following:-
 - That the company is or will be in a position to pay its present or future depositors in full as their claims accrue;
 - That the affairs of the company are not being, or are not likely to be, conducted in a manner detrimental to the interests of its present or future depositors;
 - That the general character of the proposed management of the company will not be prejudicial to the public interest or the interest of its depositors;
 - That the company has adequate capital structure and earning prospects;
 - That the public interest will be served by the grant of a license to the company to carry on banking business in India;
 - That having regard to the banking facilities available in the proposed principal area of operations of the company, the potential scope for expansion of the banks already in existence in the area and other relevant factors, the grant of the license would not be prejudicial to the operation and consolidation of the banking system consistent with monetary stability and economic growth;
 - Any other condition, the fulfillment of which would in the opinion of the RBI, be necessary to ensure that the carrying on of the banking business in India by the company will not be prejudicial to the public interest or the interests of the depositors.

In addition to the conditions applicable on Indian banks in setting up of branches, foreign banks desirous of setting up a branch in India are required to adhere to the following additional conditions, laid down in the Master Circular of the RBI dated July 1, 2008-

- Foreign banks are required to bring in an assigned capital of USD 25 million upfront at the time of opening their first branch in India.
- Foreign banks need to submit their branch expansion plan on an annual basis.
- The RBI in considering the application submitted by a foreign bank, in addition to the parameters laid down for Indian banks, takes into account the following additional parameters-
- i. Foreign bank's and its group's track record of compliance and functioning in the global markets. The RBI may also seek reports from home country supervisors, if necessary;

- ii. Weightage is given to the even distribution of home countries of foreign banks having presence in India;
- iii. The treatment extended to Indian banks in the home country of the applicant is taken into consideration;
- iv. Due consideration is given to the bilateral and diplomatic relations between India and the home country;
- v. The branch expansion of foreign banks would be considered keeping in view India's commitments at WTO ATMs would not be included in the number of branches for such computation.

The RBI has the power to cancel the license granted by it under the terms of the Banking Regulation Act. 1949.

Expansion of Branches- Any foreign bank having existing branch and desirous of establishing additional branch (s) in India would have to apply to the RBI, giving relevant information about the bank, its major shareholders, financial position, etc. Request from banks will be examined, keeping in view (i) the financial soundness of the bank (ii) history of the banking company (iii) general character of its management (iv) adequacy of its capital structure and earning prospects (v) public interest dimensions such as banking facilities provided to common persons in under banked areas, pricing of products etc. With regard to foreign banks other factors like international and home country ranking, rating, economic and political relations between the two countries (in particular the home country of the bank should not discriminate against Indian banks). The system of granting authorizations each time of opening individual branches has been replaced by a system of giving aggregated approvals, on an annual basis. Also, it would not be essential to procure a 'license' from the RBI each time a new branch is opened.

2. Setting up of a subsidiary by foreign banks

A foreign bank vide Press Note 4 of 2004 series by Ministry of Industry & Commerce is permitted to also establish a WOS either through conversion of existing branches into a subsidiary or through a fresh banking license, provided the foreign banks are regulated by a banking supervisory authority in their home countries and meet the licensing criteria prescribed by the RBI. The RBI issued the guidelines for the setting up of a WOS by a foreign bank vide Roadmap dated February 28, 2005 ("Roadmap") for the presence of foreign banks in India. As per the Roadmap, following shall be the conditions that need to be complied with by the parent foreign bank while seeking an approval from the RBI for setting up of a WOS:

A. Eligibility criteria

- 1. Foreign banks applying to the RBI for setting up a WOS in India must satisfy the RBI that they are subject to adequate prudential supervision in their home country. In considering the standard of supervision exercised by the home country regulator, the RBI will have regard to the Basel standards.
- 2. The setting up of a wholly owned banking subsidiary in India should have the approval of the home country regulator.

- 3. Other factors (but not limited to) that will be taken into account while considering the application are given below:
 - Economic and political relations between India and the country of incorporation of the foreign bank;
 - Financial soundness of the foreign bank;
 - Ownership pattern of the foreign bank;
 - International and home country ranking of the foreign bank;
 - Rating of the foreign bank by international rating agencies;
 - International presence of the foreign bank.

B. Capital requirement

The minimum start-up capital requirement for a WOS would be INR 3 billion and the WOS shall be required to maintain a capital adequacy ratio of 10 per cent or as may be prescribed from time to time on a continuous basis, from the commencement of its operations.

C. Corporate Governance

The composition of the Board of directors of the WOS should meet the following requirements:

- Not less than 50 percent of the directors should be Indian nationals resident in India.
- Not less than 50 per cent of the directors should be non-executive directors.
- A minimum of one-third of the directors should be totally independent of the management of the subsidiary in India, its parent or associates.
- The directors shall conform to the 'Fit and Proper' criteria as laid down in RBI's extant guidelines dated June 25, 2004.
- RBI's approval for the directors may be obtained as per the procedure adopted in the case of the erstwhile Local Advisory Boards of foreign bank branches.

D. Accounting, Prudential Norms and other requirements

- The WOS will be subject to the licensing requirements and conditions, broadly consistent with those for new private sector banks.
- The WOS will be treated on par with the existing branches of foreign banks for branch expansion. The RBI may also prescribe market access and national treatment limitation consistent with WTO as also other appropriate limitations to the operations of WOS, consistent with international practices and the country's requirements.

The banking subsidiary will be governed by the provisions of the Companies Act, 1956, Banking Regulation Act, RBI Act, other relevant statutes and the directives, prudential regulations and other guidelines/instructions issued by RBI and other regulators from time to time.

Subject to the above-referred criteria/conditions, an application may be made by a foreign parent bank for setting up of a WOS to the Chief General Manager-in-Charge, Department of Banking Operations and Development, RBI.

In addition it must be noted that as per the Roadmap, under the second phase (March 2009 onwards) the WOS of foreign banks upon completion of a minimum prescribed period of operation will be allowed to list and dilute their stake so that at least 26 per cent of the paid up capital of the WOS is held by resident Indians at all times. The dilution may be either by way of an Initial Public Offer or an Offer for Sale.

Even though RBI has issued Roadmap specifying establishment of WOS by foreign banks in India but however, so far all foreign banks operating in India are carrying out their banking operations through their branches only.

3. Acquisition of stake in another existing private sector bank in India

The present section has been divided into two parts namely-

- A. Acquisition of shareholding in selected Indian private banks by foreign banks as provided under the Roadmap The entry of foreign banks is permitted in those private sector banks that are identified by the RBI for restructuring. In such identified banks, foreign banks would be allowed to acquire a controlling stake in a phased manner. In considering an application made by a foreign bank, for acquisition of 5 per cent or more in the private bank, RBI will take into account the standing and reputation of the foreign bank, globally as well as in India, and the desired level and nature of presence of the foreign bank in India. RBI may, if it is satisfied that such investment by the foreign bank concerned will be in the long-term interest of all the stakeholders in the investee bank, permit acquisition of such percentage as it may deem fit. The RBI may also specify, if necessary, that the investor bank shall make a minimum acquisition of 15 percent or more and may also specify the period of time for such acquisition. The over all limit of 74 per cent will be applicable.
- B. Acquisition of stake in Indian private banks by a foreign entity other than a bank under the FDI route In terms of the Guidelines issued by the RBI on February 28, 2005, the RBI guidelines on acknowledgement for acquisition or transfer of shares issued on February 3, 2004 will be applicable for any acquisition of shares beyond 5 per cent and above the paid up capital of the private sector bank. As per the aforesaid Guidelines, any FDI in private banks will require acknowledgement of the RBI before the bank (target bank) can effect the allotment or transfer of shares. The RBI, while granting acknowledgement may require such acknowledgement to be obtained for subsequent acquisition at any higher thresholds as may be specified.

Where shareholding reaches and exceeds 5 percent either individually or as a group- All shareholding of 5 per cent and above will have to meet the 'fit and proper' tests of competence, reputation, track record, integrity, satisfactory outcome of financial vetting, source of funds and so on.

Where the applicant is a body corporate, fit and proper, it would include good corporate governance, financial strength and integrity in addition to the assessment of individuals and other entities associated with the body corporate as enumerated above.

Where shareholding reaches a level above 10 per cent upto a level of 30 per cent, either individually or as a group- In the interest of diversified ownership of banks, the objective will be to ensure that no single entity or group of related entities have shareholding or control, directly or indirectly, in any bank in excess of 10 per cent of the paid-up capital of the private sector bank. Any higher level of acquisition will be with the prior approval of RBI and in accordance with the guidelines of February 3, 2004. As per these Guidelines, where acquisition or investment takes the shareholding of the applicant to a level of 10 per cent to 30 per cent, the RBI shall also take into account other factors including but not limited to source and stability of the funds for the acquisition, business record and experience of the applicant including any experience of acquisition of companies, etc.

Where shareholding reaches a level of 30 per cent, either individually or as a group-Acknowledgement beyond 30 per cent shall be considered after taking into account, in addition to the aforementioned criteria, factors such as whether the acquisition is in public interest, soundness and feasibility of plans of the applicant for the future conduct and development of business of the bank, impact of the shareholders agreement on the management and control of the bank etc.

Restrictions on Voting Rights- No person holding shares in a banking company shall, in respect of the shares held by him, exercise voting rights on poll in excess of the 10 per cent of the total voting rights of all the shareholders of the banking company. This 10 per cent voting rights restriction is per shareholder transaction and there appears to be no segregation between a foreign bank's shareholding and local shareholding. As stated above, these voting right restrictions apply equally to FDI and also to domestic shareholders. Therefore, if a person has 74 per cent FDI in an Indian bank, such person's voting right will be capped at 10 percent. In relation to 100 per cent subsidiaries, a 10 per cent voting right would in effect be a 100 per cent voting right in view of the fact that there may not be any other shareholder, except the shareholders who may be nominated by the foreign bank to satisfy the test of minimum number of shareholders under the Companies Act.

At present there is a limit of ten per cent on voting rights available to any person in a poll situation in respect of banking companies, and this should be noted by the potential investor. Any change in the ceiling can be brought about only after final policy decisions and appropriate Parliamentary approvals.

OPPORTUNITIES

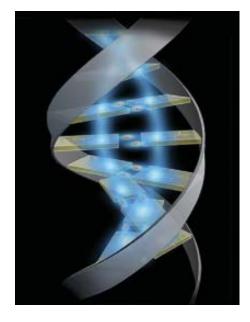
- Private and foreign investment is encouraged in the banking sector. The Government has already adopted and published a long-term policy, which promises post-entry national treatment to foreign banks in India, apart from easier entry norms.
- India has moved in a major way towards financial groups by offering various financial services through separate arms. This is close to the concept of universal banking.
- Retail Banking is another sunrise sector and holds a promising future in India. A recent McKinsey study reveals that the domestic retail banking market is expanding with annual revenues expected to more than double to USD 16.5 billion by 2010 from about USD 6.4 billion during 2007. The major cause for the hope on retail banking is that the penetration level hitherto is about only 2 per cent of the population and the number of potential customers is increasing at a fast pace. Thus the actual market potential is tremendous.

According to an estimate, the number of credit cardholders in India is a mere 7 million. However, with a fast increasing middle class with rising income, it is expected that the market will witness a growth of around 35 per cent. Further, surveys indicate that credit card spends will treble in the next five years.

- As part of the integration of financial services world over, new opportunities have emerged for banks to enter into the area of insurance, thus opening up viable opportunities to enhance their non-interest income and improve their performance.
- Merchant banking is emerging as a niche corporate banking service. Mergers and acquisitions, buy-backs, capital syndication, etc., have suddenly grown in volumes and more action is expected in the years to come. Further, with the capital markets reaching historic heights merchant banking promises lucrative business.
- A large and rapidly growing consumer market provides opportunities in retail banking and finance.
- Increasing globalization combined with domestic deregulation will create a demand for sophisticated financial products as well as innovative financing techniques.
- Internet based trading has made a foray in the Indian market and is growing.
- Risks will be spread beyond the individual, community, economic sector and geographic area helping both individuals and industry.

BIOTECHNOLOGY

In recent years biotechnology sector has witnessed accelerated growth. With approximately 300 companies, the growth of the biotech sector in India has been rapid. Unlike in the past, the growth is not restricted to only bio-pharmaceutical companies, but substantial commercial activity has been started in bio-agri (bio fertilisers, bio pesticides, transgenic), bio-industry, bio-informatics and bioservices with the pace of Research & Development (R&D), clinical trials and manufacturing on contract. The overall biotechnology industry in India is estimated to have a market of about USD 25 billion by 2015. The Indian domestic biotechnology industry grew by 37 per cent in the year 2006-2007. Total biotechnology exports were estimated at USD 763 million during 2006-07 with 75 per cent of it coming from biopharmaceuticals. There is a further estimated growth at USD 2.80 billion in 2007-08 and is likely to continue to grow at a compound annual growth rate (CAGR) of 30 per cent. A lion's share of India's domestic Bio-technology market segmentation in 2006-07



is taken by Bio-pharmaceuticals followed by significant market share of Bio-agriculture, Bio-services, Industrial Products, Bio-informatics etc.

Venture capitalists are now keenly studying the sector for investment opportunities. In 1986 the setting up of a separate Department of Biotechnology (DBT) under the Ministry of Science & Technology gave a new impetus to the development of modern biology and biotechnology in India. The DBT has promoted and accelerated the pace of development of biotechnology in the country.

The phenomenal growth in the Indian biotech industry is attributable to a robust platform provided by quality R&D along with a favourable regulatory mechanism. India substantially amended its patent laws to comply with its obligations under the Agreement of Trade Related Aspect of Intellectual Property Rights (TRIPS). The Indian Patents Act, 1970 allows statutory protection to innovation related to biotechnology - micro-organisms

Investments in the Biotech Sector

Year	US\$ million	Growth
2002 - 03	155	N/A
2003 - 04	207	33.86%
2004 - 05	296	42.94%
2005 - 06	401	35.80%
2006 - 07	552	37.58%

Number may appear inconsistent because of rounding off

Source : Biospectrum, June'7

are patentable. In addition, genetic interventions and synthetic gene distinct from the naturally occurring gene segments are also patentable.

Under the Indian Patents Act, microbiological processes can be patented. Also patentable are processes for producing new-microorganisms through genetic engineering and the products that result out of this process, such as microorganisms including plasmids and viruses if they are non-living.

- Cell lines-A cell line is patentable if artificially produced.
- R-DNA, RNA, AMINO ACID: if the end result is non-living, it is patentable.
- Hybridoma technology: patents are also allowed on hybridoma technology, but not on protoplast fusion.
- Expressed sequence tag's, or ESTs, are small fragments of genetic material obtained by reverse transcriptions of messenger RNA (mRNA) from expressed genes. The gene sequence, or expressed sequence tags (ESTs), can be patented if it has a use, such as if it works as a probe.

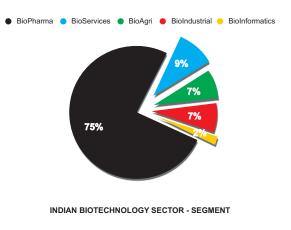
India is a member of the Budapest Treaty since December 17, 2001, to assist in the standardization process of biotechnology patenting. Further, the law now provides for the grant of product patents for inventions in the field of biotechnology.

A data protection law is also on the anvil. The Government of India has constituted an Inter-Ministerial Committee to report on data protection in India. The Government of India is presently debating the need for a data protection law encompassing data exclusivity safeguards in accordance with Article 39(3) of the TRIPS.

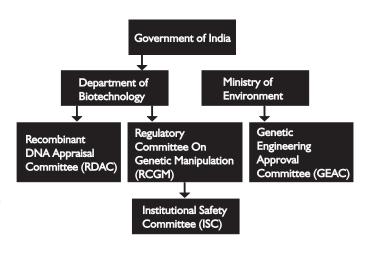
The Government of India recognizing the importance of the biotechnology sector and the impact it has on the economy as well as the immense potential it holds in healthcare and food adequacy, Government of India conducted a two-year-long nationwide consultation process with stakeholders including concerned ministries, universities, research institutes, private sector, civil society, consumer groups etc. Government of India has approved the National Biotechnology Development Strategy.

Key elements of the National Biotechnology Development Strategy

- 30 per cent of DBT's budget will be on public-private partnership programmes.
- A Biotechnology Industry Partnership Programme (BIPP) for advanced technologies will be launched with engagement of large industry partners.
- To support the Small and Medium Sector Innovation, DBT has expanded the role played by Small Business Innovation Research Industry (SBIRI).



- A Biotechnology Industry Research Assistance Council ("BIRAC") has been launched to set the boundary between academic and private sector.
- United Nations Educational Scientific and Cultural Organisation (UNESCO) regional centre for science, education and innovation in biotechnology is being established at Faridabad, Haryana, by DBT as part of a health science and technology cluster.
- Fellowships and R&D support will be offered to young and senior scientists of Indian origin to return to Indian laboratories to enhance national priorities.
- A new national initiative will be taken to build capacity in technology transfer and intellectual property rights.
- To promote innovation, accelerated technology and product development, a new approach of cluster development has been given the green signal by the Government of India.
- Institutions, representing a new breed, will be designed with a strong bias for integrating science and translation, and for producing skilled personnel driven towards entrepreneurship.
- DBT will give special emphasis on translational initiatives to promote mass use technologies.
- International partnerships will be levered to achieve global best practices in S&T efforts for joint Intellectual Property generation, harmonization of regulatory processes, smooth transboundary movement of biological materials and to access global markets for products and processes.



The sum of approximately INR 6.5 billion has been allocated for the DBT in the draft Eleventh Plan. The Ministry of Science & Technology had prepared two Bills namely, public funded R & D (Protection, Utilisation and Regulation of Intellectual Property) Bill, 2007 and the DNA Profiling Bill to augment and transform forensic investigation and criminal justice delivery system, and is likely to introduce them in this year's Budget Session of Parliament to get the Cabinet approval.

Advantages of Investing in Biotechnology Sector

• Large pool of scientific talent available at a reasonable cost, trained manpower and knowledge base English speaking population;

- Good network of research laboratories and a wealth of R&D institutions;
- Well developed base industries (e.g. pharmaceuticals, seeds);
- Access to intellectual resources of NRIs in this area;
- Rich and varied biodiversity;
- Biotechnology industry serves as a research arm to Agritech and Pharma industry with increased potential for strategic alliances;
- Rising market for Biopharmaceuticals and Biogenerics.
- Global trends show that all large pharmaceutical players are putting their money in health care for long-term benefits. It is expected that nearly half the drugs in the next decade would be biotech products;
- Tremendous potential in agri-business in an agrarian economy like India, potential therefore for transgenic seeds, bio-fertilizers etc.;
- The field of biotechnology, both for new innovations and application, will form a major research and commercial endeavour for socio economic development in this decade;
- Several State Governments such as Karnataka, Tamil Nadu, Andhra Pradesh, Maharashtra and Delhi have taken initiatives to encourage entrepreneurs to set up biotechnology industries in their States. Some of the key steps taken by the State Governments include: announcing separate Biotechnology Policy for their States, setting up of exclusive Biotech Parks, setting up of Task Forces with experts to guide them on policy issues. Bangalore (in Karnataka), the IT capital of India, is emerging as the hub of biotechnology in India;
- Past consumption of biotechnology products in India and future consumption estimates promising;
- Attractive tax exemptions on profits and gains from business by companies carrying on scientific R&D.

FOOD PROCESSING

The Indian food market, according to the 'India Food Report 2008' by Research and Markets is estimated at over USD 182 billion, and accounts for about two thirds of the total Indian retail market. Further, according to consultancy firm McKinsey & Co., the retail food sector in India is likely to grow from around USD 70 billion in 2008 to USD 150 billion by 2025.

India is the largest producer of milk in the world and the second largest producer of fruits and vegetables. It is the third largest producer of food grains and fish. Despite its raw material base, India accounts for only 1.5 per cent of the international food trade. While India has abundant food supply, the processed food industry is still in its nascent stages. Only 2.2 per cent for fruits and vegetables and 35 per cent of milk is processed. The processing level is 26 per cent for marine products, 6 per cent for poultry and 20 per cent for buffalo meat while nearly 80 per cent of the agricultural products in developed countries undergo processing and packaging. This shows the huge potential available for both investors and exporters in this sector.

'Vision 2015' undertaken by the Ministry of Food Processing Industries entails doubling India's share in global food trade from 1.6 per cent to 3 per cent, increasing processing of perishable food from 6 per cent to 20 per cent and value addition from 20 per cent to 35 per cent. The food processing industry in India contributes 16 per cent to the manufacturing GDP which is expected to go up to 18 per cent.

The growth rate of food processing units has risen from 7 per cent to 13.14 per cent per annum in the last five years and is likely to register a growth rate of upto 20 per cent in the next five years, on the back of a step-up in investments and increase in consumer demand.

Policy framework

Automatic approval for foreign equity up to 100 per cent is available for most of the processed food items excepting those

reserved for small-scale sector, which are subject to certain conditions. Most of the processed food items have been exempted from the purview of licensing under the Industries (Development & Regulation) Act, 1951, except items reserved for small-scale sector and alcoholic beverages.

The Government of India has recently enacted the Food Safety and Standard Act, 2006 consolidating thirteen legislations in the food sector under a common umbrella. This Act establishes the FSSA to lay down the scientific standards for articles of food and to regulate their manufacture, storage, distribution, sale and import into the country.

Incentives

In order to promote investment in the food-processing sector, several policy initiatives have been taken in recent years. The liberalized policy regime, with specific incentives for high priority food processing sector, provides a very conducive environment for investments and exports of food items.

Excise duty on processed fruits and vegetables has been brought down from 16 per cent to zero level.

Since 1999, food processing industry has been declared a priority sector for lending by banks. NABARD has created a refinancing window with a corpus of USD 204.92 million for agro processing infrastructure and market development.

In a bid to boost the food sector, the Government is also developing 30 greenfield mega food parks (across ten States with each park receiving an investment of USD 51.39 million), which would cover the entire food processing cycle "from the farm gate to the retail outlet".

Food parks are being set up to enable food and beverage units to use capital intensive facilities such as cold storage, warehouse, quality control labs, effluent treatment plant, etc.

Excise duty has been waived on condensed milk, ice cream, preparations of meat, fish and poultry, pectin, pasta and yeast and all kinds of food mixes. Excise duty on ready to eat packaged foods has been reduced from 16 per cent to 8 per cent. Excise duty on aerated drinks has been reduced from 24 per cent to 16 per cent. Excise duty on processed fruits and vegetables has been brought down from 16 per cent to zero.

In addition, the Ministry of Food Processing Industries has special schemes to assist the setting up of cold storages, packaging centres, value addition centres and irradiation facilities.

Furthermore, Agriculture and Processed Food Products Export Development Authority (APEDA) has been making efforts to encourage export of agricultural and processed food products. APEDA has set up centres and other infrastructural facilities for perishable cargo at various international airports. It has set up and upgraded testing laboratories for export of fruits & vegetables. It has also set up agri-export zones for fruits and vegetables. APEDA also supports participation and organisation of international trade fairs and promotional campaigns and has provided financial assistance to its registered exporters.

Dairy and Probiotics

Both production and consumption of milk and its derivatives are traditionally high in the country.

Probiotic dairy products, which contain live organisms, build immunity and help in digestion, is an emerging category in the Indian food market. Along with domestic dairy majors like, Amul and Mother Dairy, global players like Nestle have made significant investments to capitalise the potential of the segment. The latest entrant is Yakult Danone with its investment worth USD 28.3 million and an additional USD 20.8 million on the cards for the next 2–3 years.

According to the latest report on 'Indian Functional Foods and Beverage markets' by Frost & Sullivan, the market of nutraceuticals and probiotics earned revenues of over USD 185 million in 2007 and is projected to touch an estimated USD 1,161 million in 2012. Although the segment is in its nascent stage currently, it is poised for an upswing. A healthy domestic economy and awareness of health products are expected to give a boost to the segment.

Beverages

According to industry experts, the market for carbonated drinks in India is worth USD 1.5 billion while the juice and juice-based drinks market accounts for USD 0.25 billion. Growing at a rate of 25

per cent, the fruit-drinks category is one of the fastest growing in the beverages market. Sports and energy drinks, which currently have a low penetration in the Indian market, have sufficient potential to grow. They are considered a socially-acceptable alternative to alcoholic beverages.

The market for alcoholic beverages has been growing consistently. 'The Future of Wine', a report on the state of the wine industry over 50 years, prepared by Berry Bros & Rudd, one of the oldest, independent wine merchants in Britain, suggests that the market for wine in India is growing at over 25 per cent per year.

Approaching the milestone of one million cases a year, the Indian wine market has also recorded an impressive growth rate. Global wine majors have already set up shop in India to tap the vast potential. Out of the total consumption of grape wine in India, around 80 per cent wine consumption is from the major cities.

Opportunities

- India's population is nearly 23 per cent of the global population and is one of the most attractive consumer markets in the world today.
- Income levels across population segments have been growing in India. The increase in income levels of the Indian population and the emergence of the consumer class that has higher propensity to spend, offers great growth opportunities for companies across various sectors.



- A large proportion of the Indian population is relatively young in the age group of 20-59 years. This group is also high in consumption and therefore, this trend is expected to provide a further boost to the growth of consumption in India.
- Urban consumers in India have become more exposed to western lifestyles through overseas
 travel and presence of foreign media in India. Increase in the population of working women and
 increasing prevalence of nuclear double income families, especially in urban areas, are other
 trend shaping lifestyles. The food-processing sector has been impacted by these trends, as there
 has been an increase in the demand for processed, ready-to-cook and ready-to-eat food. These
 trends imply significant growth potential for the sector in future and add to its investment
 attractiveness.
- Rapid urbanisation, increased literacy, changing life-style, more women in work force and rising per capita income have all caused rapid growth and changes in the demand pattern, leading to several new opportunities for processed food. According to the India Food and Drink Report Q3 2008 by research analysis firm Research and Market, by 2012, India's processed food output is likely to grow by 44.2 per cent to touch USD 90.1 billion, while packaged food sales will increase by 67.5 per cent to reach USD 21.7 billion. On a per capita basis, per capita packaged food spending is expected to grow by 56.5 per cent to USD 18.06 by 2012.

HEALTHCARE

Although India has a fairly good healthcare system comprising of Government and private service providers, the demand-supply gap for healthcare delivery is large. In India, health is a State subject, though the Ministry of Health & Family Welfare oversees national disease control programmes. However, the Government realizes that public funding is constrained and consequently the various States want to attract private investment in this sector. Rising incomes and growing literacy are likely to drive higher per capita expenditure on healthcare. The trend is shifting from infectious diseases to lifestyle diseases. To meet this growing demand, the country needs USD 50 billion annually for the next 20 years, says a Confederation of Indian Industry (CII) study. India needs to add 2 million beds by 2027 to the existing 1.1 million, and requires immediate investments of US\$ 82 billion as per the Technopak Advisors in their report - 'India Healthcare Trends 2008'.

The Indian healthcare industry is poised to grow at a CAGR of 25 to 30 per cent to reach a market size of around INR 280 billion by financial year (FY) 2015, according to global consulting firm KPMG. The sector has grown at a CAGR of 37 per cent over the last seven years. Healthcare, which is a USD 35 billion industry in India, is expected to reach over USD 75 billion by 2012 and USD 150 billion by 2017 according to Technopak Advisors report. The healthcare industry is interestingly poised as it strives to emerge as a global hub due to the distinct advantages it enjoys in clinical excellence and low costs. The industry, which was once the exclusive domain of the Government, has seen a steady participation of major corporate houses which have helped set up premium hospitals and medical facilities across the country.

Investment Policy

The FDI Policy puts hospitals under automatic route with 100 per cent FDI.

The Government has in the recent past provided a boost to the sector through a host of measures like extension of tax benefits to financial institutions, providing long-term capital to private hospitals with 100 beds or more, increase in tax depreciation rate up to 40 per cent on life saving medical equipments, and reduction/exemption of customs and excise duties on life saving equipment and drugs, hearing aids, crutches, wheel chairs, walking frames, tricycles and artificial limbs.

Opportunity

Medical Equipment

This market is growing at 15 per cent per annum and is currently estimated at around USD 2.17 billion. It is estimated to reach USD 4.97 billion by 2012. Foreign manufacturers with extensive service networks (GE, Philips, Hitachi, Siemens) dominate the higher end of the equipment market. Indian manufacturers are producing good quality medium tech equipment. The lower end of the market (consumables and disposable equipment) is dominated by a fragmented group of local manufacturers. The market for medical plastics and laboratory supplies is growing fast. Some



foreign equipment manufacturers have engaged in third party manufacturing in India to avoid import tariffs. The more ambitious have developed their own production facilities, taking advantage of low

manufacturing costs and using India as a platform to supply the Asian market. Opportunities exist for those who can supply hospitals with a high quality, integrated range of products, supported by an extensive service network.

Hospitals

Until the early 1980s, Government-run hospitals and those operated by charitable organizations were the main providers of subsidized healthcare. However, in the recent past, corporate and privately run hospitals have mushroomed, both small hospitals (popularly called nursing homes, which typically have 4-50 beds) and large. Most large trusts and corporate hospitals have invested in modern equipment and focus on super-specialties. The private sector accounts for 70 per cent of primary medical care and 40 per cent of all hospital care in India. They also employ 80 per cent of the country's medical personnel. The corporate hospital sector is most developed in southern India while charitable/trust hospitals proliferate in the west. However, the north and east are also showing a growing trend in private hospital expansion. Key therapeutic areas are cardiology, nephrology, oncology, orthopaedics, geriatrics, maternity and trauma/critical care. India is likely to reach a bed to thousand population ratio of 1.85 and, in a best case scenario, a ratio of 2 by 2012. Beds in excess of 1 million need to be added to reach a ratio of 1.85 per thousand at an investment of USD 77.9 billion.

Education & Training

There is a pressing need for qualified specialist nurses and paramedics and qualified hospital administrators. Specialist nurse training will become vital as the number of single-super-speciality and multi-super-speciality hospitals increase. The growth of the diagnostics/analytics sector has also created a requirement for training in biochemical engineering. The development of medical services such as clinical waste management and emergency medicine will generate specific educational requirements e.g. paramedics. Tele-medicine and distance learning are exciting concepts with the potential to facilitate novel partnerships in education.

Information Management

This includes public health, insurance, hospital management, clinical research and clinical trials. Clinical trials have the potential to become a USD 1 billion industry by 2010 and the health services outsourcing sector has the potential to grow to USD 7.4 billion by 2012, from USD 3.7 billion in 2006, at a CAGR of 11 per cent.

Indian clinical research organisations (CROs) do not see any near-term impact of recession as large pharma customers such as AstraZeneca and Glaxo continue to send more work to India, where these trials could be conducted at one-fifth of the cost in the US.

Information technology, a core competence of the southern and western region, facilitates management of information. There is considerable scope for partnership in the field of health informatics (the application of information technology to health data). According to a report by Springboard Research, India has the fastest growing healthcare IT market in Asia, with an expected growth rate of 22 per cent, followed closely by China and Vietnam. In fact, the Indian healthcare technology market is poised to be worth more than USD 254 million by 2012.

Healthcare Services

Two services that are finding growing importance are emergency medical services and clinical waste management. In both cases there is willingness for the private and public sectors to work together to implement effective systems.

Health Insurance

Less than 10 per cent of the Indian population is covered by some form of health insurance. However this sector is rapidly growing. The Indian health insurance business is growing at 50 per cent. The sector is projected to grow to USD 5.75 billion by 2010, according to a study by the New Delhibased PHD Chamber of Commerce and Industry.

According to a report by McKinsey on the Indian pharmaceutical and healthcare sector, one-fifth of India's population is likely to have medical insurance by 2015, leading to an estimated increase in consumer spending on healthcare from USD 2,054 per household in 2005 to USD 3,514 per household by 2015.

Indian corporates will be a market segment for private insurance providers, developing the market for third party administration of insurance packages.

It is expected that the major international players will establish networks of affiliated hospitals and may seek direct involvement in the development of new facilities, especially cost-effective diagnostic centers. The voluntary health insurance market is growing at a fast pace.

Medical Tourism

'First World treatment' at 'Third World prices' is how industry sources define medical tourism in India. Although India is a recent entrant into medical tourism, it is fast catching up. Credit Suisse estimates medical tourism to be growing at between 25-30 per cent annually. According to industry body ASSOCHAM, India's medical tourism sector is expected to grow at an annual rate of 30 per cent to become a USD 1.93 billion industry by 2015 as foreign arrivals increase. With world-class healthcare professionals, nursing care and treatment costing almost one-sixth of that in the developed countries, India is witnessing 30 per cent growth in medical tourism per year.

The healthcare industry employs over four million people, making it one of the largest service sectors in the economy. A joint study by the Confederation of Indian Industry and McKinsey shows that at the current pace of growth, medical tourism, currently pegged at USD 350 million, has the potential to grow into a USD 2.2 billion industry by 2012. India is unique as it offers holistic medicinal services. With yoga, meditation, ayurveda, allopathy and other systems of medicines, India offers a unique basket of services to an individual that is difficult to match by other countries. Also, clinical outcomes in India are at par with the world's best centres, besides having internationally qualified and experienced specialists.

The Government has also been proactive in encouraging prospects in this sector with a number of initiatives:

- A new category of visa 'Medical Visa' ('M'-Visa) has been introduced which can be given for a specific purpose to foreign tourists coming into India.
- Guidelines have been formulated by Department of Ayurveda, Yoga & Naturopathy, Unani, Siddha and Homoeopathy prescribing minimum requirements for Ayurveda and Panchkarma Centres.

It is not only the cost advantage that keeps the health sector ticking, but also a high success rate and growing credibility.

INFORMATION TECHNOLOGY & SOURCING TO INDIA

India's Information Technology (IT) sector has exhibited tremendous growth, with revenues expected to reach \$60 billion in exports and USD 75 billion in overall software and services revenues by 2010. Market openings have emerged across four business sectors - IT services, software products, IT enabled services and e-business. According to the NASSCOM revenue from the Indian IT-BPO industry (including domestic market) reached the USD 52 billion mark (showing an overall growth of 28 per cent from the year 2006-2007) and the software and services exports segment reached USD 40.4 billion (a growth of 29 per cent in USD) in FY07-08. The domestic segment registered revenues of USD 11.6 billion (a growth of 26 per cent in INR).

In view of the tremendous growth potential of the industry, the Government has taken steps to bolster investor confidence and growth by extending incentives to investors and by providing a regulatory backbone through the establishment of a separate Ministry of Information Technology in October 1999 and the enactment of the Information Technology Act, 2000. The IT Ministry is primarily responsible for framing all legislations and policies relating to information technology, knowledge based industries, internet, ecommerce and IT education and IT-based education and development of electronics and computers.

Information Technology Act, 2000 was enacted to provide a legal framework for recognition of electronic contracts, prevention of computer crimes, electronic Revenue segmentation of IT/ITeS sector in 2008 (US\$ billion)

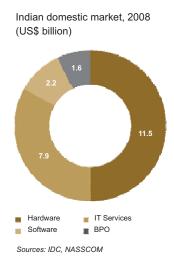
23.2

40.8

Exports

Domestic

Sources: IDC NASSCOM



filing of documents, etc. This Act also deals with cyber security and other information regarding security related legal aspects. It amended certain related laws to provide a fully sufficient legal environment for conduct of business in cyberspace. The Act paved the way for electronic documentation and payments through certification of public keys by the certifying authorities and maintaining database of certifying authorities and a national repository artefacts and other technical infrastructure.

The Information Technology Act 2000 has now been amended by Information Technology Amendment Act 2008 which was notified on the 5th of February 2009. Under the amended Act existing Sections (viz. 43, 65, 66 and 72) have been revisited and some amendments/more stringent provisions have been provided for, to do away with concerns about the operating provisions in IT Act related to "Data Protection and Privacy" in addition to contractual agreements between the

parties. There is a proposal to add Section 43A related to handling of sensitive personal data or information with reasonable security practices and procedures thereto. Further, with the intent to protect the privacy of the individual subscribers, there is also a proposal for inserting an additional Section 72A that deals with breach of confidentiality with intent to cause injury to a subscriber. Also, a gradation has been made of severity of computer related offences committed dishonestly or fraudulently and punishment thereof under Section 66. Besides, the language of Section 66 penalising computer related offences has been revised to be in lines with Section 43 related to penalty for damage to computer resource.

Investment Policy

Foreign investment has been liberalized and incentives have been offered to both foreign and local investors as follows:

- Automatic route has been permitted for foreign equity up to 100 per cent in software and electronics, except aerospace and defence subject to specified conditions;
- 100 per cent foreign investment has been permitted in units set up exclusively for exports. Such units can be set up under any one of the following schemes, namely EHTPs, STPs, Free-Trade Zones/EPZs and 100 per cent EOUs;
- FDI for 100 per cent of the equity has been permitted in BPO companies;
- Duty-free imports of capital goods are permitted (under the EPCGS) for BPO companies;
- A number of States have developed their own IT policy to promote the development of software sector;
- A tax holiday up to 2010 has been declared for IT units to be set up in Software Technology Parks;
- A tax holiday for research and development has been declared for up to 10 years with 15 per cent tax concession;
- An IT venture capital fund has been set up;
- Simplification and liberalization of the Export & Import Policy;
- The Foreign Trade Policy 2004-2009, permits under the EPCGS, a service provider to import capital goods including computer software systems (for pre production, production and post production) at 5 per cent basic customs duty subject to undertaking exports (eight times duty saved on import of capital goods) within a period of 8 years.

Opportunities

According to a recent World Bank study, India is the preferred location for software vendors for its quality and cost effectiveness. Recognizing the special advantages and opportunities in India, many leading IT multinationals have set up operations in India. India has a strong Unix base, which provides opportunities for the development of products for Internet based applications. Further, India has global connectivity with international dialing facility from over 13,220 locations. Leased/switched high-speed data links from major centres through STPs and VSNL for point-to-point communication are also available. Internet connectivity is provided through several networks.

Abundant investment opportunities exist in the following thrust areas in India:

- Satellite-based communication
- Communication infrastructure
- Gateways
- Wireless
- Software development
- IT-enabled services
- IT Education (100,000 post-graduate professionals in IT required annually)
- IT-enabled education
- Optic fiber cable
- Data centers & server farms



Business Process Outsourcing (IT-Enabled Services)

The advent of globalization and an IT slump in the West have created a plethora of business opportunities for nations with low labour costs. In the Indian context, the impact of globalization would be best highlighted by the emergence and growth of its BPO. Outsourcing, in simple terms, is moving a job or function from a high cost location to a lower cost location outside the country.

In the Indian context, BPO is synonymous with Information Technology enabled services (ITES), whereby business processes and/or services are performed in India and delivered over various communication channels, including the Internet, worldwide.

With a worldwide growth of 12 per cent in the BPO sector (the highest among all technology related segments), the ITES segment is expected to employ over 1.1 million Indians, according to studies conducted by NASSCOM and leading business intelligence company, McKinsey & Co. Market research shows that in terms of job creation, the ITES-BPO industry is growing at a rate of over 50 per cent.

Till date, India has provided outsourcing solutions to many Fortune 500 companies, including General Electric, Citibank, Morgan Stanley, Wal-Mart, AT&T, Reebok, General Motors, Sony, Boeing, Coca-Cola, Pepsi, Swiss Air, United Airlines, Philips, IBM, Lucas, British Aerospace, General Motors, and Sears.

A World Bank funded study in the United States has confirmed that vendors rate India as their number one choice for outsourcing in the field of software development.

Key Trends:

The following facts point to the developments taking place in the ITES-BPO space:

➤ In FY 2008-09, the Indian IT-BPO sector grew by 12 per cent to reach USD 71.7 billion in revenue. Out of this, software and services exports amount to nearly 66 per cent by clocking an

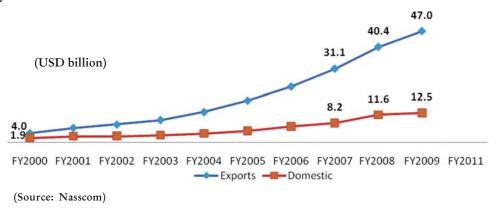
impressive USD 47.3 billion and directly employed over 1.7 million professionals. Complementing this rising trend is the growth of high value software product development and engineering services. Export revenues from these grew by 15 per cent to reach USD 7.3 billion in FY 2008-09.

- > The domestic IT market (including hardware) grew by 5.3 per cent to reach USD 24.3 billion.
- > The IT-BPO sector constitutes an estimated 5.8 per cent of the national GDP in FY 2008-09.
- Although the US and the UK remained the largest IT-BPO export markets in FY2008 with 60 per cent and 19 per cent respectively, demand from Europe is steadily increasing at a CAGR of more than 51 per cent over FY 2004-2008.
- Many leading Indian ITES-BPO companies boast of recognized quality certifications such as the COPC and expertise in several diversified sectors including, Banking, Financial Services and Insurance (BFSI) (which remain the largest vertical market for Indian IT-BPO exports) and Hitech/Telecom.
- ➤ Direct employment in the IT-BPO industry has crossed 2.2 million while indirect employment is at an estimated 8 million.

India's Edge

- 38 per cent of e-commerce start-ups of 1999 in Silicon Valley by Indians
- 50 portals being launched in India every month
- 15 out of 23 SEI Level 5 companies worldwide are Indian
- 170 Indian software companies have already acquired quality certification: ISO 9000/SEI
- Large pool of software professionals proficient in English
- A software and computing services sector with the highest compounded growth rate globally or the last five years in a row
- Economic and political stability

Industry Performance



Infrastructure

The availability of a robust infrastructure, including but not limited to its telecom infrastructure, has played a key role in India's rapid growth in the IT – BPO sector. The Government has taken steps to facilitate an uninterrupted power supply and a fast and reliable telecom structure, which are prerequisites for the operation of BPOs. Falling telecom prices around the world has further facilitated call centre capabilities. Currently GE, Accenture, IBM and others have thousands of people working in these centres. Priority has also been given to the development of highways, with major investments being made by both the Central and State Governments in recognition of the role of such infrastructure in the development and expansion of industries such as the IT sector.

Large Human Resource

India ranks amongst the best choices in outsourcing due to an education system which produces a vast number of science and mathematics graduates proficient in English. This combination of skills together with its cost effectiveness has enabled the country to take advantage of the growing demand for IT services.

Service Providers

The service providers have very precise and ambitious growth plans. Many have reached sufficient scale to produce powerful results and most have extraordinary margins, cash flows and market capitalizations, giving them the wherewithal to execute. For example, Infosys now has a market cap that exceeds that of Electronic Data Systems, even though it is just one-twentieth the size.

Cost

According to McKinsey & Co. estimates, global corporations are generating cost savings in the range from 40-60 per cent, depending on the process off shored. Manpower costs in India are 70-80 per cent less than in US and UK.

Government Support

The Central and many State Governments have taken several measures to promote the development of the IT-BPO sector. These include:

- The constitution of a National IT Task Force to provide an Action Plan to promote the sector. This 108-point Action Plan has been approved by the Government of India which is in the process of implementing it;
- A separate Ministry of Information Technology was set up to expedite swift approval and implementation of IT projects and to streamline the regulatory process;
- With the enactment of the Information Technology Act 2000 India joins a select band of 12 nations that have cyber laws;
- Given the importance of data protection and privacy, the Indian Ministry of Information Technology and NASSCOM are seeking to emulate the European Union by enacting stringent

data protection laws that restrict transfer and storage of data to countries with weaker privacy protection;

- The Government is also offering a comprehensive package of tax incentives and is backing telecom deregulation to support the growth of this sector;
- Software Technology Parks: Software Technology Parks with world-class infrastructure have been established to encourage foreign investment and promote software development. Foreign investment up to 100 per cent is permitted and approved under the automatic route. These offer incentives and concessions, including tax holidays till 2010. Moreover, the company need not be located at the same complex since mere registration will entitle it to such incentives;
- 100 per cent Export Oriented Units (EOU): Companies can either get registered as a software technology park or as a 100 per cent EOU in order to be entitled to tax and other benefits. Presently, ITES exports amount to USD 31.4 million and it is expected to grow to USD 39-40 billion by 2008.

Complementing the above incentives is the role played by organisations like NASSCOM which provide a key interface between the Government and stakeholders of the IT-BPO sector in addressing policy issues and regulatory barriers.

An employee registry programme has been initiated by NASSCOM which contain a national database of employees. This programme is administered by the National Securities Depository Ltd (NSDL) which hires a professional reference-checking company to conduct background checks on employees, including police checks, photographs and biometrics like fingerprints. The idea is to strengthen the systems and processes and make referral checks more stringent.

Legal Issues

Establishments seeking to obtain BPO services must ensure that the said service is permissible under law and/or whether they are regulated. Moreover, in certain instances, outsourcing, even if it be of business processes in banks, financial institutions or of insurance companies may become complicated as it might come under the purview of Contract Labour (Regulation & Abolition) Act, 1970 and require specific registration by both the establishment and the provider.

Establishments which are not carrying on business in India but engage the services of a provider who is resident in India and who is under the control and/or management of the establishment, would need to ensure that the service provider complies with the requirements of the new transfer pricing regulations under the Income Tax Act. Providers, who service only overseas clients, may be entitled to register themselves as 100 per cent EOUs and hence be entitled to certain incentives and facilities, which include duty free imports of all types of capital goods, raw material and consumables in addition to a tax holiday.

It is also essential for the establishment to carefully study the provider and to also conduct a comprehensive due diligence on the provider. Further, to safeguard its interests and to minimize the risks that it might have to counter, it is advisable that the establishment protects itself contractually. A contract between the establishment and the provider should therefore cover issues such as scope of services, confidentiality of information, security (providing for back-up/contingency plans in case

of any default), Intellectual Property Rights issues, time schedule, exclusivity, onus of taxation liability, force majeure, risk management, termination, personnel, payment terms, jurisdiction, dispute resolution, etc.

Legal Outsourcing

Legal Process Outsourcing (LPO) is proving to be another avenue of revenue with several international law firms, legal departments of large corporations and also State and Government agencies outsourcing their legal work to India. Attorneys proficient in English and familiar with common law doctrines, not to mention a cost reduction of up to 80 per cent has attracted these entities which seek to reduce cost and increase efficiency. Most LPO outfits in India are reported to be staffed 24/7.

Services outsourced include preparation of pleadings, docketing, proof-reading, transcription of recorded documents, litigation support and research, case studies and law firm marketing.

Going forward

The global technology related spending is expected to reduce on account of the present global crisis. Despite the global economic crisis, NASSCOM is confident that the Indian IT-BPO industry will see sustainable growth over the next two years and will clock revenues of USD 60-62 billion by 2010-11. The industry is rapidly spreading across tier-II and tier-III cities in India thus creating employment opportunities in such cities. However, in order to sustain this growth and to compete with emerging global players, the sector would need to focus on productivity, benchmarking and enhanced operational efficiencies.

- The industry will continue to diversify in terms of geographies, verticals and service lines
- Small and Medium Businesses are expected to emerge as a significant opportunity due to lower IT adoption currently
- Lack of working age population in the developed economies and a significant long term cost arbitrage indicates India's sustained cost competitiveness
- Service providers are expected to enhance focus to domestic market to de-risk business and tap into the local growth opportunities.

INFRASTRUCTURE - ROADS, AIRPORTS, PORTS, RAILWAYS

1. Roads

India has 3.34 million kilometres of road network; which is the second largest in the world. This network consists of Expressways, National highways, State Highways, Major District Roads, Other District Roads and Village Roads with following length distributions:

National Highways	66569 km.
State Highways	131899 km.
Major and Other District Roads	470,000 km.
Rural Roads	2650000 km.

The National Highways are under the control of the Central Government and all other roads are under the control of the State Governments. The Central Government through the Ministry of Road Transport and Highways is actively involved with international organisations like World Bank, Asian Development Bank, Japan Bank for International Co-operation for upgradation of technology and decision making process. The Central Government is also involved in active cooperation in the field of developing highway linkages like Asian Highways. The Ministry of Road Transport and Highways has also signed a Memorandum of



Understanding with its counterparts in Malaysia and France for co-operation in the areas of highway engineering.

Historically investments in road infrastructure, particularly in the highways were being made by the Government sector mainly because of the large volume of resources required, long gestation period, uncertain returns and various associated externalities. The galloping resource requirements and the concern for managerial efficiency and consumer responsiveness have led in recent times to an active involvement by the private sector also. To encourage participation of private sector, the Ministry of Road Transport and highways has laid down comprehensive policy guidelines for private sector participation in the highway sector. The Government has also announced several incentives such as tax exemptions and duty free import for road building equipments and machinery to encourage private sector participation.

The National Highways Authority of India is mandated to implement the NHDP, which is India's largest ever highway project. NHDP is a project to upgrade, rehabilitate and widen major highways in India to a higher standard. The project is implemented in four phases including I, II, IIIA and V. Phase I of the project includes Golden Quadrilateral connecting four major cities. As of January, 2009, 5,704 of the intended 5,846 km stretch has been completed. Phase II of the project includes the North-South East-West corridor connecting the four corners of the country. 44 per cent of the project is still under progress as of January, 2009. Phase IIIA of the project has been approved by the Government to upgrade 12,109 km. of the project on BOT basis. Further, widening of roads to 6 lane has been approved under Phase V, however the stretches are still being identified by the Government.

Investment policy

Several incentives have been announced by the Government to attract private sector participation and FDI, which include the following –

- 1. Government will carry out all preparatory work including land acquisition and utility removal. Right of way (ROW) would be made available to concessionaires free from all encumbrances. Government would bear the cost of the following:
 - a. Project Feasibility Study
 - b. Land for the right of way and way side amenities
 - c. Shifting of utilities
 - d. Environmental clearance, cutting of trees, etc.
- 2. FDI up to 100 per cent under automatic route in road sector, that is, in projects construction and maintenance of roads, highways, vehicular bridges, toll roads and vehicular tunnels.
- 3. NHAI/Government of India to provide capital grant up to 40 per cent of project cost to enhance viability on a case-to-case basis. The quantum of the subsidy is to be decided on a case-to-case basis.
- 4. 100 per cent tax exemption in any consecutive 10 years out of 20 years after commissioning of the project.
- 5. Concession period allowed up to 30 years.
- 6. Duty free import of high capacity and modern road construction equipments.
- 7. Declaration of the road sector as an industry (Infrastructure as defined in section 18(1)(12) of the Infrastructure Act includes Roads).
- 8. Easier external commercial borrowing norms.
- 9. Right to retain toll in BOT projects toll rates are indexed to the wholesale price index.

Types of Public Private Partnership

While there are a number of forms of PPP, the common forms that are popular in India and have been used for development of National Highways are-

- BOT (Toll) basis
- BOT (Annuity) basis
- SPV basis

BOT (Toll) Model

In a BOT (Toll) Model, the concessionaire (private sector) is required to meet the upfront/construction cost and the expenditure on annual maintenance. The concessionaire recovers the entire upfront/construction cost along with the interest and a return on investment out of the future toll collection.

The viability of the project greatly depends on the traffic. However, with a view to bridge the gap between the investment required and the gains arising out of it, i.e. to increase the viability of the projects, capital grant is also provided (up to a maximum of 40 per cent of the project cost has been provided under NHDP). So far 48 projects valued at about INR 493.29 crores haven been taken up on BOT basis (Toll based projects). Out of this, 23 projects have been completed and 25 projects are in various stages of progress.

BOT (Annuity) Model

In a BOT (Annuity) Model, the concessionaire (private sector) is required to meet the entire upfront/construction cost (no grant is paid by the client) and the expenditure on annual maintenance. The concessionaire recovers the entire investment and a pre-determined cost of return out of the annuities payable by the client every year. The selection is made based on the least annuity quoted by the bidders (the concession period being fixed). The client (Government/NHAI) retains the risk with respect to traffic (toll), since the client collects the toll. 20 projects, valued at about INR 7.694 billion, have been taken up on Annuity basis of which 8 projects have been completed and 12 projects are in progress.

Special Purpose Vehicle

The NHAI has also formed SPV for funding road projects. SPV's are separate legal entities formed under the Companies Act, 1956. It involves very less cash support from the NHAI in the form of equity/debt; rest of the funds comes from Ports/Financial Institutions/beneficiary organisations in the form of equities/debt. The amount spent on development of roads/highways is to be recovered in prescribed concession period by way of collection of toll fee by SPV. Twelve projects valued at about INR 23.39 billion have been taken up under SPV funding. Five projects amounting to INR 8.90 billion have been completed so far; and 7 projects amounting to INR 14.49 billion are in progress on SPV basis.

Opportunities

- India has 2.56 km road/thousand population and 768 km. road/thousand sq. km. of total land. Indian roads carry around 80 per cent of passenger traffic and 65 per cent of freight traffic. National Highways constitute only about 2 per cent of the road network but carry about 40 per cent of the total road traffic. The number of vehicles has been growing at an average pace of 10.16 cent per annum over the last five years.
 - Annual growth rate of 12 15 percent in the passenger traffic and 15 18 percent in the cargo traffic has been projected in the next five years.
- The projected investment during the Eleventh Plan in the roads sector stands at INR 3668.43 billion. During the Eleventh 5-year Plan period, private sector investment in the road infrastructure sector is expected to total INR 1,323.85 billion, constituting 36.1 per cent of the total investments. Therefore, there exists a huge potential for investors to invest in the road construction sector. According to the Planning Commission, the road freight industry will grow at a CAGR of 9.9 per cent and 19.3 per cent per annum in terms of passenger traffic from 2007-08 to 2011-12. A target of 1,231 billion tonne kms. (BTK) will be put on road freight volumes for the period between 2011-12.
- Further, various Central and State Government Projects as mentioned below are under way:
 - o The Indian Government has launched the ambitious NHDP involving a total investment of USD 54.1 billion up to 2012.
 - o It has also started the Bharat Nirman Programme that aims to cover every village having a population of over 1,000 or over 500 in hilly and tribal areas, with all-weather roads. To achieve this, 146,185 kms. of road length is proposed to be constructed by 2009.

- o INR 1320 billion Pradhan Mantri Gram Sadak Yojana aiming to connect habitations with populations above 500. As of June 2007, about 122,000 km. of roads have been developed and work on another 100,000 km is in progress. Another Special Accelerated Road Development Programme covering 7,616 km. has been approved at an estimated cost of INR 121.23 billion for the north- eastern region.
- The State Government initiated projects are:
 - the Second Rajasthan Mega Highways Project,
 - the Bond-BOT and ADB funded road stretches in Madhya Pradesh,
 - Outer Ring Road Project in Hyderabad,
 - World Bank funded Punjab Roads Sector Projects,
 - Karnataka State Highways Improvement Project,
 - Bangalore International Airport Expressway and construction of two ring roads in Bangalore with an investment of INR 73 billion,
 - Gujarat Industrial Development Board has identified 19 road projects covering a length of 1,741 km. in Gujarat at an investment of INR 152 billion.
- Rural Roads: Constructing 1,65,244 km. of new rural roads, and renewing and upgrading existing 1,92,464 km. covering 78,304 rural habitations.
- Committee on Infrastructure headed by the Prime Minister set up in August 2004 has outlined the future highways development programme for the period 2005 to 2012, as follows:
- Completion of balance length of Golden Quadrilateral connecting Delhi, Mumbai, Chennai and Kolkata; and Corridors under NHDP Phase I and Phase II at an estimated cost of INR 300 billion comprises mostly of GQ (5,846 km.) and NS-EW Corridor (981 km.), port connectivity (356 km.) and others (315 km.).
- Upgradation and 4 laning at 8074 km of National Highways under NHDP Phase III on BOT Model.
- Widening to two lanes with paved shoulders of 20,000 km of National Highway under NHDP Phase IV at an indicative cost of INR 250 billion.
- Widening to six lanes of 6,500 km of Golden Quadrilateral and selected stretches of National Highways under NHDP Phase V.
- Development of 1,000 km of expressways under NHDP Phase VI at an estimated cost of INR 166.8 billion.
- Construction of 700 km ring roads, flyovers and bypasses on selected stretches under NHDP Phase VII at an estimated cost of INR 166.80 billion.
- Development and strengthening of 1,310 km. of roads including 1,110 km. of National Highways in North East under Phase A of (SARDP-NE) at the cost of INR 46.18 billion has already been approved by the Government. Out of 1110 km of National Highways, 603 km. is to be executed on BOT (annuity) basis by the NHAI. However, the Government has accorded approval for the implementation of Phase A and the construction work on 454 km. length has been commenced. Preparation of Detailed Project Report for development of 2,118 km. of National Highway and 4,188 km. of State roads under Phase B has also been approved. Further, 1,207 km is also under consideration. 36 district head quarters out of 85, which are not connected to National Highways, will be connected.

- Projects under NHDP in future will be awarded on BOT basis in general and in exceptional cases under normal contracts. 30 BOT projects covering a length of 1,568 km. awarded during 2005 would be appropriately monitored.
- Committee of Secretaries (CoS) has been set up to resolve NHDP implementation issues.
- As a result of CoS deliberations, land acquisition notification procedures have been streamlined.
- Several inter-ministerial and state issues have been resolved.
 - Amendment in Allocation of Business Rules has been made to authorise Department of Road Transport and Highways to notify acquisition of land without references to Ministry of Law. This has expedited the process of acquisition of land.
 - Project size has been adequately programmed for a length of 100 km. or more for investment level of USD 120 million and more for attracting foreign investors.
- Under the Special Accelerated Road Development Programme in the North East (SARDP-NE), the Cabinet Committee on Economic Affairs (CCEA) has agreed to the modifications to Phase A of the SARDP-NE, to facilitate road linkage to Sittwe port of Myanmar, with an investment of USD 1.24 billion. It also gave the nod to an alternative highway between Siliguri and Gangtok with paved shoulders under Phase 'A' of SARDP-NE. An added investment of USD 21.13 million has been allocated for the upgradation of certain important stretches of NH 31 A. Approval for an alternative alignment of the four-lane NH 37 to bypass Kaziranga and the modification of the four-laning of 315 km. from Nagaon to Dibrugarh, has also been given by the Government.

Avenues for:

- 1. Consulting firms: Feasibility studies, detailed project preparation & construction supervision.
- 2. Construction Industry: Contracts ranging up to USD 50 60 billion are required in the next five years.
- 3. Investors:
 - a. BOT projects on Toll and Annuity basis.
 - b. Participation in bonds and direct borrowings.
 - c. Equipment manufacturers.
 - d. State-of-the-art technology deployment.
 - e. Construction equipment exempted from import duties.

Carriage by Road Act, 2006, notified in the Gazette of India on 01.10.2007, will make the transport system transparent and will further modernize the systems and procedures of transportation trade by road. India has joined the 1998 Agreement of WP-29 (World Forum for Harmonization of Vehicles Regulations) on April 21, 2006. This Agreement enables the country to adopt international best practices and to further benchmark the safety and environmental performances of the vehicles manufactured domestically or imported into the country.

2. Airports

The expansion of domestic low-cost airlines network and the decision of international airlines to offer connectivity to more destinations helped the country's airports register a tremendous increase in passengers. The needs of an increasingly urban population, coupled with significant increases in

industrial, trade and commercial demands have placed immense strain on the existing airport infrastructure.

Therefore, the Indian Government has attached a high priority to building and investing in the transport infrastructure sector, particularly in airports. Primary responsibility for development and management of airports rests with the Central/State Governments.

The Government has placed added emphasis on the revival of the tourism industry. This, along with the process of opening up the civil aviation sector, has added new dimensions to the challenges faced by the AAI, responsible for handling all passenger/cargo traffic and providing facilities. The AAI operates most aspects of the airport (including air traffic control) and procures most of their equipment directly (via global/local tenders).

MOCA oversees the provision of airport facilities, air traffic services and the carriage of passengers and freight.

India has 125 airports owned and operated by AAI, of these 12 are designated as International Airports. According to the latest report India's passenger traffic is expected to grow over 15 per cent and cross 100 million passengers per annum by 2010 and the cargo traffic to grow at over 20 per cent per annum to cross 3.3 million tones by 2010. Investments into the Indian aviation sector are expected to the tune of USD 30 billion by 2012 and about USD 50 billion by 2015. This investment will be required for airport modernization, fleet acquisition and setting up of MRO and other facilities, such as pilot training institutes etc.

Privatisation of Airports

This substantial rise is a direct effect of the low cost fares that have changed the face of the Indian civil aviation sector. In India, demand for low-cost travel has skyrocketed, with domestic flight operations in this segment showing an increase of 466 per cent. In light of this fast paced development of the Indian civil aviation industry, opportunities exist for airlines and organisations involved in airport infrastructure & management, passenger & cargo handling, and related services. The Indian Government's decision to allow private sector participation makes India a very attractive market and destination for airport equipment manufacturers and service providers from across the globe.

The year 2007 witnessed a boom in both international and domestic air traffic; this has been largely due to the policy of increased liberalization in both the sectors. A remarkable growth of 36.74 per cent was witnessed in domestic air traffic, as the domestic air services are now available from/to 82 airports. The Government of India plans to lease out the four main Metro Airports (Delhi, Mumbai, Chennai and Kolkata) to private investors (Air Traffic Control will remain the responsibility of the AAI). As mentioned above, firm plans are in hand to lease out four main Metro Airports to private investors for a period of 30 years. Airports Authority of India Act of 1994 was amended in 2003, and this amended Act provides for a suitable legal framework for restructuring of airports and setting up of private and Greenfield airports.

The major projects which are ongoing/envisaged for airport are:

- The Government is upgrading and modernizing airports of Airports Authority of India (AAI) at Delhi and Mumbai through restructuring process by adopting a joint venture route between AAI and private players, to be selected through an international competitive bidding process.

- The Joint Venture Companies (JVCs) will be operating, managing and developing Delhi and Mumbai airports for a period of 30 years with an option of extension of the term for an additional 30 years. It has been estimated on preliminary basis that a capital investment to the extent of INR 79.61 billion and INR 61.31 billion will be required for Delhi and Mumbai airports, respectively over a period of 20 years in 4 stages of 5 years each. The JVCs will be subject to a 49% maximum permissible limit of FDI. Within three months from the date of execution of Operation Management and Development Agreement (OMDA), subject to fulfilling the conditions precedent, the JVCs will be in possession of Delhi and Mumbai airports. Mandatory Capital Projects of Delhi and Mumbai airports are likely to be completed on or before 31st March, 2010.
- Greenfield airport project at Devanahalli near Bangalore has been implemented on a BOOT basis with PPP at a revised cost of INR 24.70 billion. Government of Karnataka and Airports Authority of India (AAI) together hold 26 per cent equity and the strategic joint venture partners hold the balance 74 per cent. AAI's investment in the equity is capped at INR 0.50 billion. A consortium led by Siemens, Germany with Unique Zurich, Switzerland and Larsen & Toubro India Limited as other members have been chosen as the strategic joint venture partners. The approximate cost of the Project is INR 14 billion. The target opening date of the airport was 33 months from the date of Financial Closure. The Financial Closure was achieved on June 23rd 2005 and the formal implementation of the Project commenced on July 2nd 2005. This project stands complete and the commercial operation of the airport has begun from May, 2008.
- A similar Greenfield airport is being developed in Shamshabad, near Hyderabad on BOOT basis with PPP by the Government of Andhra Pradesh. The approximate cost of the Project is INR 17.60 billion. A Special Purpose Vehicle under the name and style of Hyderabad International Airport Limited (HIAL) has been set up. AAI and Government of Andhra Pradesh together hold 26 per cent equity with AAI's equity being capped at INR 500 million. The balance 74 per cent being held by the strategic partner, a consortium consisting of M/s GMR Enterprises and Malaysian Airports Holdings Berhard. The target opening date of the airport was 36 months from the date of Financial Closure. The Financial Closure was achieved on 22nd August, 2005. The said project is complete and the airport has started its operations from March, 2008.
- AAI's Board has approved a proposal for construction of a new international terminal building at Trivandrum Airport at an estimated cost of INR 2.45 billion.
- MOCA proposes to modernize the Kolkata and Chennai Airports so that these airports become world standard.
- AAI proposes to establish a Greenfield airport in Navi Mumbai by Public Private Participation.
- AAI has decided to transform 35 tentatively selected non-metro airports to world-class standards in phases, with focus on airside and city side development and enhancement of non-aeronautical revenues with an estimated cost of INR 46.62 billion excluding the land development.
- Other private sector aided airports planned: Ahmedabad airport, Amritsar airport upgradation, Chennai cargo complex, new international terminal and second runway for Delhi airport, runway extension and international block for Jaipur airport.

The Inter Ministerial Group (IMG) has approved an action plan for the development of Kolkata airport at an estimated cost of INR 19.42 billion, for completion by June 2010.

Investment Policy

- The Government has allowed 100 per cent FDI through automatic route in setting up Greenfield airport projects. For existing airports, FDI up to 74 per cent is permitted through automatic approvals and up to 100 per cent through special permission (from FIPB).
- 74 per cent FDI is allowed in Airport Ground Handling. While the clearance for foreign investment in this area would be done on a case-to-case basis, foreign investors will have to form joint ventures with the AAI, Indian Airlines or Air-India to enter the segment.
- FDI up to 49 per cent is permitted as well in domestic airline under automatic route subject to no direct or indirect equity participation by the foreign airlines. Non-resident Indians are allowed to hold up to 100 per cent equity in domestic air transport services.
- The Government has permitted FDI in duty-free shops. However, flow of foreign investment in duty-free outlets will not amount to opening up of retail trading where FDI is not allowed.
- A ten-year tax holiday can be claimed for 100 per cent of the profits derived from the development of airports for a period of ten consecutive assessment years out of the first fifteen assessment years.
- The requirement of transferring the infrastructure facility to the Government in order to be eligible for the above tax holiday has been withdrawn.
- Private developers are allowed to set up captive airstrips and general airports 150 km. away from an existing airport.
- The Indian Government plans to set up an Airport Economic Regulatory Authority to provide a level playing field to all players.
- 4 per cent FDI is permissible in cargo and non-scheduled airlines.

Opportunities

- Specific investment opportunities include:
 - o Expansion of import and export wings at international airports;
 - o Building of new, integrated cargo and airfreight terminals;
 - o Building of common user domestic terminals at all international airports;
 - o Introduction of elevating transfer vehicles with stacker systems;
 - o Introduction of electronic data interchange at all airports to enable handling of international cargo;
 - o Cargo-handling equipment;
 - o Training equipment for Air Traffic Controllers;
 - o Runway-cleaning equipment;
 - o Grass cutting equipment;
 - o Ground safety equipment (fire tenders, fire tiller pumps, breathing apparatus etc);
 - o Voice Control Communication Systems;
 - o Calibration equipment/systems;
 - o Area Augmentation Systems;
 - o X-Ray baggage security screening equipment;
 - o Airport security equipment like Close Circuit Television (CCTV), perimeter security equipment, smart cards etc;

- o Non-directional Beacons;
- o Commercial development of unused land (this is at an early stage);
- o Duty free outlets at the five international airports.

As per the Investment Commission of India, the aviation sector is likely to boom further in the coming years, attracting huge investment.

- Passenger traffic is projected to grow at a CAGR of over 15 per cent in the next 5 years.
- The Vision 2020 statement announced by the Ministry of Civil Aviation, envisages creating infrastructure to handle 280 million passengers by 2020.
- Investment opportunities of USD 110 billion envisaged up to 2020 with USD 80 billion in new aircraft and USD 30 billion in development of airport infrastructure.
- Associated areas like MRO and training offer high investment potential. A report by Ernst & Young says the MRO category in the aviation sector can absorb up to USD 120 billion worth of investments by 2020.
- Air cargo traffic will grow at over 11.4 per cent per annum over the next 5 years to exceed 2.8 million tonnes by 2010.
- Foreign air cargo players are betting big on India and many are planning to add capacity. As part of its expansion, Emirates is increasing its flights to New Delhi, Mumbai, Bangalore, Hyderabad, Chennai and Kochi over a period of time.
- Eurocopter, a division of European Aeronautic, Defense and Space Company (EADS), world leader in aerospace defence and related services, is keen to enter the emergency medical services (EMS) business in India and the company is in talks with leading hospital majors like the Manipal group and the Apollo group. The company has 480 helicopters operating in India in both the civil and military sectors and the company also hopes to increase its business through heli-tourism.
- India has signed a new air service pact with the United Arab Emirates (UAE) for the revision of the air services agreement between the two countries.

Cape Town Convention/Aircraft Protocol

The Cabinet has on 26 November, 2007 approved India's accession to the Cape Town Convention and the Aircraft Protocol. The principal objective of the Convention/Protocol is the efficient financing of mobile equipment. It is designed to establish an international legal regime for categories of high value and uniquely identifiable mobile equipments.

The economic benefits of the Cape Town Convention are significant. It is likely to reduce the risk applicable to asset-based financing and leasing transactions by establishing an international legal framework, backed by treaty relations and, where necessary, implementing domestic laws. The risk reduction will not only increase the availability of aviation credit at a cheaper cost, but will also broaden the spectrum of financing alternatives available to aircraft operators.

Aircraft (Amendment) Bill, 2007 (Amendment to the Aircraft Act, 1934)

Keeping in view various developments in the civil aviation sector in the past few years, a review of the existing provisions of the Aircraft Act, 1934 was undertaken and it was considered necessary to carry out certain amendments to make it more effective and consistent with the present requirements. The Amendment Bill has been passed by both the houses of parliament on 27 November, 2007.

Through the Amendment to the Aircraft Act, for ensuring Safety and Security Control, the Central Government has made the following changes:

- Licensing of air traffic controll officials.
- Certification, inspection and regulation of the Communication, Navigation and Surveillance/ Air Traffic Management (CNS/ATM) facilities.
- Compulsory packaging of food grains and sugar in jute bags.
- Safeguarding civil aviation against acts of unlawful interference and ensuring civil aviation security.
- Frame rules to ensure civil aviation security.
- Update the Aircraft Act 1934.

The existing power of Director General of Civil Aviation (DGCA) has been enlarged to issue directions to:

- Regulate the air transport services (e.g. aircraft operations, air traffic control or maintenance and operation of any aerodrome, communications, navigation, surveillance and air traffic management).
- Provide licenses to air traffic control officials.
- Exercise regulatory control on foreign registered aircraft coming to or flying over India.

Through these amendments it is ensured that air travel in India continues to meet international safety and security standards.

To conclude, the Indian aviation sector is likely to see clear skies ahead in the years to come.

With a growth rate of 18 per cent per annum, the industry will see rapid expansion in terms of players as well as the number of aircrafts. The strength of the Indian fleet is projected to be 500-550 by 2010.

- Cargo transportation is likely to touch 3.4 million tonnes in 2010.
- 480 aircrafts will be delivered by 2012.
- The number of passengers to touch 400 million by 2020.
- The government plans to invest USD 9 billion by 2010 to develop airports.

3. Ports

India currently has 12 major ports and 187 minor /intermediate ports spread across the vast coastline of 7,517 kms. According to the Indian Ports Association, the 12 major ports together handled a total of 519.24 million tonnes (MT) of cargo in 2007–08, an increase of 11.94 per cent over 463.78 MT handled in 2006–07. Further, the total cargo traffic handled by the 12 ports during April-September 2008–09 has been 261.73 MT as against 244.14 MT in the corresponding period last fiscal.

The primary responsibility for the development and management of these ports rests with the Central Government. The minor and intermediate ports are under the jurisdiction of their respective State Governments. In order to attract private investment the Government announced a Port Privatisation Policy in October 1996 and identified areas for private sector participation. This has thrown open a number of opportunities for Indian and foreign companies, which include the construction of berths on a BOT basis and the leasing of port assets, etc. As a result considerable private investment has started flowing into the Indian port sector. A number of existing facilities have been taken over by private players and many new facilities have also been set up at existing ports. Two new ports (Mundra and Pipavav in Gujarat) have also been constructed in the private sector.

There has been an impressive surge in cargo traffic, which has grown at a rate of more than 10 per cent during the last few years; the Indian ports have consistently focused on expansion of their cargo handling capacities. By 2012, the Indian Government targets increasing the cargo handling capacity of major ports by two folds to reach 1.5 billion metric tonnes It is, therefore, planned to augment the capacities in the major ports to about 1000 million tonnes per annum (MTPA) by that period so as to ensure smooth flow of traffic. This would involve capacity addition of about 545 MTPA. 276 projects involving investment of USD 12.40 billion, which cover the entire gamut of activities in the major ports, have been identified under the National Maritime Development Programme (NMDP) to be taken for implementation up to 2011-12. The investments to achieve this would be around USD 25 billion, and would be through public-private partnerships. According to Crisil research estimates, ports will grow by 160 per cent over the 2007–08 and 2011–12 period. A comprehensive National Maritime Development Policy has been formulated to facilitate private investment, improve service quality and promote competitiveness, and USD 11.33 billion has been allocated for the same.

Under the plan, India's foremost container port, Jawaharlal Nehru Port, will be seeing a massive expansion and up gradation drive, with around USD 1.78 billion slated for the development of port infrastructure, including the deepening and widening of its main navigational channel, over the next five years.

Further, by November 2009, the first phase of the international container transshipment terminal (ICTT) project at Vallarpadam is likely to be completed, and Kochi port will soon emerge as a transshipment hub for India. The construction work for the first phase of the international container transshipment terminal (ICTT) project is rolling speedily at Vallarpadam. This will make Kochi an important shipping centre, reducing India's dependence on foreign ports for transshipment.

Traffic at the ports has been growing at a brisk pace and therefore, increasing cargo handling capacities of the ports is crucial to India. To meet this demand, India's ports are likely to increase cargo handling capacity to 1,855 MT by 2012 from the present 758 MT now, with an investment of about USD 20.61 billion, as foreign trade expands. Private firms are likely to invest about 65 per cent of this amount mainly in commercially viable projects like construction of berths and operation of berths and terminals. So far there has been an investment of INR 36.09 billion from the private sector.

Investment Policy

The Government of India has been encouraging private sector participation including foreign direct investment. The major areas for private investment includes construction of cargo handling berths,

container terminals and warehousing facilities, installation of cargo handling equipment, construction of dry docks, and ship repair facilities etc.

The Indian Government has announced the following measures to promote foreign investment in ports sector:

- Foreign Direct Investment upto 100 under automatic route is permitted for construction and maintenance of ports and habours.
- A further investment of over USD 9.07 billion will be made for 111 Shipping Sector Projects by 2015.
- The Ministry of Shipping plans to launch 10 major expansion projects in 2008–09 at an estimated investment of USD 1.06 billion with 60 per cent of investments allocated for the Chennai mega container terminal.
- Open tenders will be invited for private sector participation on a BOT basis;
- Major ports have been permitted to form joint ventures with foreign ports, minor ports and other companies to attract new technology, better management practices, implementation of development schemes and creation of optional port infrastructure;
- Ten year tax holiday to be availed of during the initial fifteen years has been provided under section 80-IA of the Income Tax Act, 1961;
- Tariff Authority of Major Ports (TAMP) regulates the ceiling for tariffs charged by major ports/port operators (not applicable to minor ports);
- Government has opened up all the areas of port operation for private sector participation;
- Increasing the rail connectivity of ports with the domestic market.

As an initiative to such plan, the State of West Bengal plans to set up a deep draft port with the facility to receive vessels requiring a minimum draft of 17 metres. Further, the Gujarat Government has taken new initiatives for the Sagarkhedu programme (launched for the all round development of the coastal areas) to develop ship-building/repairing yards, private ports, jetties, captive jetties, Vessel Traffic Management System (VTMS) system, training and introduction of new marine courses and implementation of schemes relating to Roll-on/Roll-off (RO-RO) ferry services at 22 coastal areas of the State. With the target of completing the programme for ports and shipping sector under the NMDP, the Ministry of Shipping is considering raising the cap on new infrastructure investments made by major ports from their own reserves by 10 times. Ports will be now able to invest around USD 103.03 million from the present USD 10.30 million.

Opportunities

15 private sector projects involving an investment of INR 42.42 billion are operational in various major ports. One project ICTT at Cochin is partly operational, 5 projects are under implementation and there are 17 more projects in the pipeline. The preferred route for private sector participation is through open competitive bidding. According to the Planning Commission there is an investment opportunity of USD 25 billion by 2011–12 in India's shipping and ports sectors, as the country seeks to double its ports capacity to 1,500 MT (major ports capacity to 1,000 MT and non-major ports to 500 MT capacity). Segment-wise, while ports sector would provide an USD 13.75 billion investment opportunity, shipping and inland waterways are likely to present an USD 11.25 billion investment opportunity.

Areas identified for privatisation or investment by the private sector includes:

- Leasing out of existing port assets.
- Creation of additional assets such as:
 - o Construction and operation of container terminals;
 - O Construction and operation of bulk, break bulk, multipurpose and specialized cargo berths;
 - o Warehousing, container freight stations, storage facilities and tank farms;
 - o Craning and handling equipment;
 - o Setting up of captive power plants;
 - o Dry docking and ship repair facilities;
- Leasing of equipment for port handling and Leasing of floating crafts from the private sector.
- Pilotage
- Captive facilities for port based industries.
- Consultancies for:
 - o Efficient Operation & Maintenance (O&M) practices in port management
 - o Training for improved productivity
 - o Safe and efficient vessel traffic management system
- Deepening of main harbour and entrance channel/approach channel.

Investment opportunities:

- Offshore Container Terminal at Mumbai Port Estimated investment USD 273 million
- Second Container Terminal at Tuticorin Port Estimated investment USD 33 million
- Cruise cum Container Terminal at Mormugao Estimated investment USD 41 million
- Fourth Container Terminal at Jawaharlal Nehru Port Estimated investment USD 976 million
- Marine Chemical Terminal at Jawaharlal Nehru Port Estimated investment USD 936 million
- Four multipurpose cargo berths at Kandla Port Estimated investment USD 98 million
- Bulk cargo berth at Mormugao Port Estimated investment USD 31 million
- Container Terminal at Ennore Port Estimated investment USD 222 million (Phase I)
- The Maritime States have drawn up plans for a number of projects to expand their port capacities substantially during the next 5 years, which includes projects for capacity addition of 115.50 MTPA in Gujarat, 83.20 MTPA in Maharashtra, 30 MTPA in Tamil Nadu, 27.50 MTPA in Kerala, 25.20 MTPA in Orissa and 17 MTPA in Karnataka. These include Greenfield port projects, captive facilities and upgradation of existing ports.

4. Railways

Indian Railways is the world's fourth largest rail network, the second largest in Asia, and the second largest rail network under a single management. It is also the world's fourth largest freight carrier. With a growth rate of 12 per cent, Indian Railways is the world's second busiest railway after China in terms of passengers per kilometer and the third busiest overall. With further growth of the economy, the estimated traffic level by the end of 2011-12 is expected to be about 8.4 billion passengers and 1.1 billion tonnes of freight per year.

Operating on three gauges - broad gauge, meter gauge and narrow gauge and in spite of the global recession, the freight traffic of Railways sustained its growth during the last few months of 2008. and went on to register 13.87 per cent growth in its revenue, amounting to USD 11.83 billion during the period between April-December 2008. The overall revenue earnings from goods increased by 14.53 per cent to reach USD 7.99 billion during this period.

Freight loading during November and December 2008 increased by 1.29 per cent and 3.08 per cent to reach 66.62 million tonnes and 72.13 million tonnes respectively, over the same period last year. The total passenger revenue earnings during first nine months of the financial year 2008-09 stood at USD 3.33 billion compared to USD 2.98 billion during the same period last year, registering an increase of 11.81 per cent. As per a Railways statement almost 5,319 million passengers travelled on the Railways during April-December 2008, an increase of 6.60 per cent against 4,990 million passengers during the same period last year.

Indian Railways comes under the jurisdiction of the Ministry of Railways and is run by the Railway Board (comprising the Chairman, Financial Commissioner and the Board Members), which is responsible for policy formulation and implementation.

The Railway Ministry has taken up the most ambitious ever annual plan for 2008-09, entailing an enormous investment of USD 7.91 billion, registering a 21 per cent increase over the previous year. The plan includes a total budgetary support of USD 1.66 billion including USD 163.33 million to be provided from the Central Road Fund. The annual plan will have Internal and External Budgetary Resources (IEBR) funding of 79 per cent.

Investment Policy

The Government policy allows private sector investment and ownership in rail track, rolling stock, container depots and any other infrastructure related to a railway system, which are not train operations. The Policy bars private sector entry in train operations only.

FDI of up to 100 per cent is permitted under the automatic route in railway infrastructure as long as train operations are not involved.

- The Railways Minister has announced plans to invest USD 42.22 billion for the modernisation, capacity increase and completion of new projects during the 11th Five Year Plan. Southern Railway is planning an investment of around USD 137.44 million for port connectivity projects at Chennai, Tuticorin, Mangalore, Ennore and Cochin, over the next 10 years.
- The construction work on the dedicated freight corridor project will start in early 2009 with an initial investment of USD 154.74 million for the 100 km stretch on the eastern corridor. The entire project, which will cover over 2,762 km. will entail an overall investment of over USD 5.78 billion to USD 7.64 billion. The commissioning of the critical stretches of the entire project will be over by 2015-16.

The Railways has so far allowed only infrastructure related investment in rail sector, which is consistent with the Government of India's policy. On the other hand railway transport is totally reserved for public sector under the Industrial Policy. Rail transport is defined as operation of freight and passenger trains, and does not include ownership of track, rolling stock and any other infrastructure related to a railway system.

The investment in container business permitted by the Railways is only to the extent of ownership of rolling stock and provision of container services. The Indian Railways will carry out operation of container trains. Similarly, 100 per cent FDI is allowed in rail track construction.

The Government of India has conceived a massive investment plan for rail sector to eliminate capacity bottlenecks on Golden Quadrilateral and Diagonals.

Further, the Railways is expected to get a loan of USD 7.61 billion from the World Bank and the Asian Development Bank (ADB) for the construction of about 76 per cent of the proposed 2,739 km. Dedicated rail Freight Corridor (DFC).

Metro Railways

There are also ongoing projects to improve suburban metro systems in Kolkata and Delhi. These are being handled by separate mass transit organisations. In Delhi, Delhi Metro Rail Corporation (DMRC) has already completed major routes and has commenced operations on certain other routes, while work is in progress to connect all important places in the National Capital Region. All projects are advertised via global/local tenders.

The other States that also have plans to introduce metro rail systems are:

- 1. Maharashtra Mumbai Urban Transport Project
- 2. Karnataka Bangalore Namma Metro
- 3. There are a number of other metro/light rail projects in the pipeline including Hyderabad Light Rail System, Pune Light Rail System and Ahmedabad Metro, which are the following:
 - a. Chennai Metro Rail Project (CMRP) The Government of India has approved the CMRP on January 28, 2009, to roll out by 2014-15 with an estimated cost of INR 146 billion. Of this the Central and the State Government are together expected to contribute about 41 per cent. The balance will be met by loan granted by the Japan International Corporation Agency.
 - b. In another development, India will have its first monorail in Mumbai soon. The 19.54 km. long monorail which will connect south Mumbai to the eastern suburbs (Jacob Circle to Chembur via Wadala), is expected to be complete in a period of 30 months and greatly reduce the burden on the existing railway network. Malaysian-based Scomi Engineering in collaboration with Larsen&Toubro will execute the USD 5.03 billion project.

Some of the projects under execution are as follows:

- Indian Railways have set a high target of rail renewal over 2941 kms. requiring 3,39,288 MT of rail steel. The target of sleeper renewal over 2382 kms. will require 3.86 million pre-stressed concerete sleepers (approx.).
- A target of renewal of 4.45 million of Pre-stressed Concrete (PSC) sleepers has been fixed for open line works, requiring 88200 MT of steel.
- Increasing the manufacture of coaches' upto 3000, this is an increase of 12.5 per cent over the previous years.

- It is planned to acquire 2873 Electric Multiple Unit Trains (EMUs), 1091 Mainline Electric Multiple Unit Trains (MEMUs), 216 Kolkata Metro coaches and 3 phase propulsion system for 200 motor coaches with an expected outlay of about INR 92 billion.
- Railway to acquire sufficient number of wagons to meet the requirements of growing freight.
- Production of diesel locomotives and high horse power Electro-motive Division (EMD) Design Locomotives would be enhanced at the Diesel Locomotive Works (DLW), Varanasi. DLW has been able to produce 152 locomotives during the first seven months of the current fiscal as against 137 in the corresponding last year i.e. an increase of 10.9 per cent.
- The production of wheels & axles is being increased by 60 per cent in comparison to the last year which will also help in saving foreign exchange.
- Work is in progress for the development of 300 railway stations into model stations. Besides, Indian Railways have envisaged creation of 23 world class stations of which four are being taken up in first stage.
- Indian Railways are setting up a 1000 MW thermal power plant through a joint venture with National Thermal Power Corporation (NTPC) at Nabi Nagar, Bihar with a total cost of INR 53.52 billion.
- Indian Railways are also seeking an allocation of a coal block of 300 MT which is proposed to be utilised for setting up a 2000 MW power plant.
- Railway electrification target for the XIth Plan has been enhanced to 3500 kms.
- The high density network of Indian Railways, including DC-AC conversion in Mumbai, is being strengthened for carrying heavier trains and the requirement of fund for these works in 2009-10 is INR 5 billion
- Acquisition of electric locomotives has been enhanced from to 220 in 2008-09. Process is underway
 for acquiring 200 electric locomotives from BHEL at an approximate cost of INR 55 million
 each.

Moving ahead, the Railways has the following plans for 2009-10 and beyond:

- The network of Railways in Mumbai is being further improved and the requirement of funds for these works in 2009-10 is USD 102.69 million.
- Railway electrification target for the Eleventh Plan has been raised to 3500 Kms.
- USD 368. 61 million will be invested during 2009-10 for upgrading signalling systems.
- Indian Railways is planning to spend USD 573.12 million to improve telecommunication works till 2011-12.
- The Railways Ministry has invited applications for the setting up of multi-modal logistic parks planned to be set up through PPPs. The Railway Board invited expressions of interest (EoI) for these projects. It entails the building of logistic parks along the 3,300 km. Dedicated Freight Corridor (DFC), planned by the Railways. There would be around 20 logistic parks, estimated to be built with an investment of about USD 2.05 billion. The project also consists of a few mega multi-modal logistic parks as hubs offering state-of-the-art integrated logistic facilities.

- The Indian Railways also has plans to set up key infrastructure facilities like freight nodal points, Container Park and a coaching complex in Paradeep, in order to cater to the proposed Petroleum, Chemical and Petrochemical Investment Region (PCPIR) in the region. Railways will also improve connectivity in the Paradeep region which includes the 82-km Paradeep-Haridaspur broad gauge line, with an investment of USD 118.62 million.
- The Railways' plan to attract about USD 24.63 billion in the next five years through public private partnerships, so as to complement its efforts to modernise, upgrade and expand its infrastructure.
- The Railways also plans to open the marketing, operation and maintenance of the luxury train segment to private players to take advantage of the demand for such trains.
- The Government also plans to set-up a new wheel factory at Chapra, a diesel locomotive factory at Marora, an electric locomotive factory at Madhepura, and a coach factory at Rae Bareli (at a combined cost of USD 974.18 million) making 'India a manufacturing hub for southern Asia and Africa' in railway equipment.
- Kolkata will be getting an underwater rail connection with the extension of the Kolkata metro to its neighbouring city Howrah, through a tunnel under the Hooghly River. The project is estimated to cost USD 986.4 million and will connect Howrah and the information technology suburb of Salt Lake.

Innovative Initiatives

The Railways is in a dynamic phase of growth with new initiatives planned to increase its revenue and optimally utilise its resources.

- For the training of railway managers to meet future challenges, Indian Railways is planning to set up an international management institute in New Delhi. The International Railway Strategic Management Institute will come up in collaboration with the International Union of Railways and USD 4.64 million has already been sanctioned for it.
- The Railways has decided to increase its income through advertising on all Rajdhani trains, with the cost of advertising being around USD 1.26 million per train.
- Development of agri-retail hubs, cold storage houses, multi-purpose warehouses on surplus land with the Railways.
- Development of 100 budget hotels with private participation in the vicinity of railway stations.
- Introducing new generation trains that would be fuel-efficient, recyclable and have low-emission to generate certified emission reduction credits.
- Introducing marketing rights for advertising on railway tickets and reservation charts.
- Installation of Wi-Fi for providing wireless access at 500 stations.
- Establishment of integrated logistic parks on unused lands.
- Along with these, the Railways has adopted many new measures like Dynamic Pricing Policy, Tariff Rationalization, Non-Peak Season Incremental Freight Discount Scheme, Empty flow Direction Freight Discount Scheme, Loyalty Discount Scheme and Long-term Freight Discount Scheme among others to boost its capacity utilisation levels.

INSURANCE

The law of insurance has always been a topic of current interest, which engages close attention of various interested groups in India as well as abroad. Insurance business is divided into four classes: 1) Life insurance 2) Fire insurance 3) Marine insurance and 4) Miscellaneous insurance. Life insurers transact with life insurance business and general insurers transact with the rest of the classes. No composites are permitted as per law. The scope for growth of insurance business in India is immense. Life and general insurance in India is still a fairly nascent sector with the life insurance premiums contributing to around 2.5 per cent of the India's GDP while general insurance premiums contribute to around 0.65 per cent of India's GDP.

Insurance is a subject, which is not only important to the investors and the business community but is also of concern to the common man. Traditionally, insurance business has been carried out by

government owned corporations and no foreign investment was permitted. Reforms in the insurance sector were initiated with the enactment of the Insurance Regulatory & Development Act, 1999. After its establishment in April 2000, Insurance Regulatory and Development Authority (IRDA), has fastidiously stuck to its schedule of framing regulations and registering the private insurance companies. Ever since IRDA put in place a framework of globally compatible regulations, life insurance and general insurance companies have registered themselves in the private sector.



Insurance in India is a federal subject. There are mainly two legislations, which govern the insurance sector in India - the Insurance Act, 1938 and the Insurance Regulatory and Development Act, 1999.

Besides the above, there are sector specific insurance legislations such as the Marine Insurance Act, 1963 etc. The Insurance Act, 1938 provides for the legal framework governing the insurance business in India. The Insurance Regulatory and Development Act, 1999 provides for the setting up of IRDA to protect the interests of the holders of insurance policies, and to ensure orderly growth of insurance business in India. Broadly, insurance business in India can be divided into two categories, life insurance and general insurance.

The business of insurance in India can only be carried on by an Indian insurance company, which is incorporated under the Companies Act, 1956 and in which the aggregate equity holding by a foreign company does not exceed 26 per cent of the paid up capital of such Indian insurance company. However, for Indian promoters, a holding in excess of 26 per cent is permitted for a period of 10 years after which the amount (in excess of 26 per cent) must be divested.

This privilege has not been offered to foreign companies. Further, such Indian insurance company has to obtain a certificate of registration from the IRDA, which is renewable every year after commencement of business. An insurance company carrying on the business of life insurance or

general insurance is required to have a minimum paid up equity capital of INR 1 billion and an insurance company carrying on exclusively the business of a re-insurer is required to have a minimum paid up equity capital of INR 2 billion. Insurance companies that are registered with the IRDA, are permitted to issue general insurance policies denominated in foreign currency and are also permitted to receive premiums in foreign currency without the prior approval of the RBI. However, this is permitted only for certain kinds of cases such as marine insurance for vessels owned by foreign shipping companies and chartered by Indian companies, aviation insurance for aircrafts imported from outside India on lease/hire basis for the purpose of air taxi operations etc. The government's own estimates show that the insurance market in India will grow more than ten-fold.

Investment Policy

The government is encouraging private sector participation in the insurance industry with the passage of the Insurance Regulatory and Development Act, 1999. The opening up of this industry offers tremendous opportunities for insurers, insurance intermediaries and other organizations connected with the industry.

A foreign investor can acquire up to 26 per cent shares in an Indian company undertaking insurance activities, via the automatic route, subject to licensing from the IRDA.

However, if the foreign entity making the FDI already has an existing venture or tie-up through investment in shares or debentures, a technical collaboration or a trademark agreement or has undertaken any other form of investment in India, in the same field of activity, permission for FDI has to be sought from the Foreign Investment Promotion Board.



The Government has recently granted general permission to the overseas insurance companies to establish liaison offices in India, after having obtained prior approval from the IRDA. The operations of the liaison offices will be subject to the terms and conditions of the approval accorded by IRDA as well as the restrictions imposed by the RBI.

Indian insurers are permitted to place reinsurance business with foreign reinsurers provided the insurer has given an option to cede atleast 10 per cent of the reinsurance to General Insurance Corporation of India and the foreign reinsurer has a rating of BBB or above from a reputable credit rating agency in the past 5 years.

MEDIA AND ENTERTAINMENT

India's multifaceted and ancient culture continues to enhance the ethos and traditions rooted within its civilization. Media and entertainment activities have traditionally played an important role in assimilating the regional and religious diversity into a common ethos, which is today known as the 'Indian culture'. It is for this reason that over the years media and entertainment as an industry sector has emerged among the fastest growing sectors in India and today plays a major role in the country's economic growth. It is as such, witnessing a rapid growth and has the potential to garner USD 200 billion by 2015.

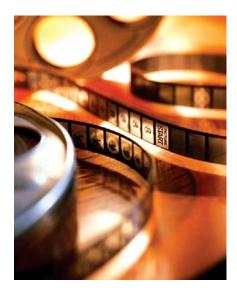
The media and entertainment industry is primarily under the aegis of the Ministry of Information and Broadcasting, which formulates and administers laws, rules and regulations relating to information, broadcasting, the press and films. The industry is regulated by different sets of laws, such as Cinema Exhibitions Rules, Entertainment Tax Regulations etc. Besides, as media comes under the purview of the concurrent list, laws have also been passed by almost all States in relation to the same.

According to industry experts the Media and Entertainment industry in India, with its numerous segments such as film, television, advertising, print media and music among others, is set to enter a golden era. The following gives an overview of the various sub sectors of the industry.

Movies

Globally, the Indian entertainment industry dictates the overall commercial film production by virtue of sheer volume of its output and extensive distribution of films throughout the world. Various Indian regional film industries (Bollywood, Bhojpuri, Tamil, Telugu etc.) attract a large audience worldwide, ranging from countries like UK, USA, Canada to East and South Africa, Middle East, Fiji, British Caribbean and other such countries with significant Indian population.

The Indian film industry which is worth INR 230 billion approximately is by far the largest in the world and continues to grow considerably. It is expected to produce about 1200 films each year in different languages, compared to Hollywood's 150-odd. The size of the domestic film industry is likely to double to INR 400 billion in the next few years,



creating employment opportunities for about six million people by 2010. The main reason backing the growth of the film industry has been the existence of more than 20 official languages, innumerable dialects, hundreds of costumes and thousands of ideologies.

The technological advancement is also assisting this industry to grow in all respects, covering film production, film exhibition, sales and corporatization. A large number of movies are being produced and marketed revolving on the prevailing socio-economic issues. The industry is increasingly getting more corporatized. Several film production, distribution and exhibition companies are coming out with public issues.

Ever since the film industry opened its gates to foreign investments, several favorable projects have poured in and a huge number of overseas production units have also setup operations in India. Amongst others, Walt Disney in partnership with Yash Raj Films Limited has made animated movies and the Warner Group is funding the Sippys' future film projects.

Entertainment industry in India has grown beyond the multiplex revolution in metros and is now witnessing a boom in tier II & III cities. Initiatives to set up more digital cinema halls in the country are already underway. This will improve the quality of prints and thereby make film viewing a more pleasurable experience. India has now emerged to be the first commercially activated digital cinema market in Asia.

Fight against piracy has also been taken to the next level in the recent past, with the successful introduction of sophisticated encryption technology, digital distribution and exhibition.

Television Broadcasting (Cable TV and TV Software)

Over the years, television has provided a platform for mass communication. The revenue from Indian television is set to grow at a CAGR of 22 percent to INR 519 billion (USD 13.11 billion) by 2011 surpassing the present scale of INR 191 billion (USD 4.82 billion). The key-role in the growth of the Indian television industry is being played by the subscription revenues which will increase over a period of five years, both from the number of pay TV channels as well as increased subscription rates.



While distribution platforms like DTH, Digital Cable and IPTV have already captured significant market

portion with a total subscriber base (excluding Doordarshan's non-commercial DTH venture) of more than 8.9 million. Infact the number of new subscribers added by DTH operators in the first seven months of 2008 was almost equal to the subscriber base DTH had acquired since its first commercial operations began in 2003. According to Ernst & Young's projection, the total subscriber base of DTH may grow to 19 million households by 2010.

On the regulatory front the TRAI is now considering introducing tariff regulation in the DTH sector. It currently is in the process of inviting stake holder and general public feedback on a consultation paper that not only covers tariff regulation but also issues relating to value-added services such as movie-on-demand, pay-per-view and services.

Music Industry

The Indian music industry, which until recently was overwhelmingly dominated by film music, is now being propelled by non-film music. As a result, "Licensed Digital Distribution" and "Mobile Music" will surpass the sale of music in traditional formats such as cassettes and compact discs within India. According to the PricewaterhouseCooper (PwC) study, the music industry is likely to grow by 2 per cent over the next five years and will be a USD 164.56 million industry by 2012.

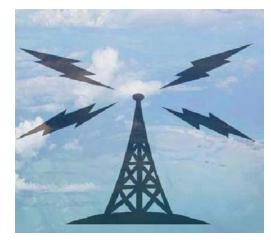
The share of digital music is also expected to increase with advancement in technology. According to a recent joint study undertaken by PwC, International Federation of Phonographic Industries and Soundbuzz, a digital music company, by the end of 2009, digital music sales are expected to account for 88 per cent of the total music industry revenue and India will become the second country in the world, after South Korea, where digital music sales will surpass the sales of music in traditional formats such as cassettes and compact discs.

Radio

Many dynamic changes are expected vis-à-vis the radio entertainment sector, which is the cheapest and traditional form of entertainment, reaching 99 per cent of the population in India.

The radio industry that was been dominated by All India Radio is now liberalized and has been opened for both private and foreign investment. The industry is geared up to grow at a CAGR of 24 per cent over the next few years to USD 370.22 million in 2012.

Private FM radio has emerged as the fastest growing segment in the media, notching up an average 30 per



cent growth in advertising revenues, compared to the industry's average of 18 per cent. Moreover, it is expected to increase to USD 218.49 million over the next two years from USD 133.52 million currently.

Advertising (Out-Of-Home, Internet, Print Media and TV)

The advertising industry recorded a robust growth in the current financial year. Advertising contributed USD 4.75 billion or 38 per cent to the revenues generated by the media and entertainment industry.

According to the latest projections by Media Partners Asia (MPA), a leading international media research agency, the CAGR of India's advertising industry between 2008 and 2013 will be 12.8 per cent.

Out of home advertising includes billboards and street furniture as distinguished from broadcast, print or internet advertising. The existing magnitude of internet advertising is INR 1.6 billion (USD 40.56 million) and with a CAGR of 17 percent is anticipated to reach INR 9.5 billion (USD 241.8 million) by 2010.

However, outdoors advertising is expected to grow at 16 percent from a current size of INR 10 billion (USD 25 million) to INR 21.5 billion (USD 545 million) by 2010.

Also the print media is estimated to grow at a CAGR of 13 percent from an existing size of INR 85 billion (USD 2156 million) to INR 232 billion (USD 5886 million) by 2010.

Animation and Games

Segments like animation and gaming are also likely to see significant growth in the near future however it is a relatively small sector in India but has tremendous scope with the advancement of technology.

The Indian animation industry, standing at USD 460 million, is expected to grow at a CAGR of 27 percent to reach USD 1,163 million, while the Indian gaming market is expected to grow 25 percent from USD 267.35 million to USD 822.69 million by 2012 according to a report prepared by NASSCOM and Ernst & Young.

Investment Policy

The various reform measures adopted by the government have had a cascading effect on the expansion of the industry:

- Foreign holding in cable TV and DTH is permissible up to 49 percent however, not less than 51 per cent of the paid up share capital should be held by Indian citizens in the case of a cable network company.
- Permission granted for 100 per cent FDI through the automatic route for film industry and advertising sans entry-level conditions.
- Permitted 100 per cent FDI in non-news publications and 26 per cent FDI in news publications.
- FDI with a 20 percent cap opened for FM radio sector while print media and DTH broadcasting face a current restriction of 26 per cent and 20 per cent respectively.
- License for DTH broadcasting services in India is valid for a period of 10 years from the date of issue of wireless license by Wireless Planning and Coordination Wing of Ministry of Communication & Information Technology.
- Indian companies setting up teleports for leasing or hiring out their facilities to broadcasters is allowed upto 49 per cent, however, setting up of uplinking hubs for satellite uplinking by private TV broadcasters from the Indian soil only need to comply with Broadcast (Programme and Advertising) Code.
- Industry status provided to films segment.
- FM Radio business opened to the private sector.
- 100 per cent FDI in TV Software Production is permissible under the condition that all future laws on broadcasting will be applicable to the foreign investor and no broadcasting is assumed from Indian territory without Government approval.

In the current Five Year Plan the Government has also allotted USD 50.13 million for various development projects of the film industry and the funds are set to be utilized to set up a centre for excellence in animation, gaming and visual effects, among others.

Opportunities

- Entertainment tax holidays declared for multiplex projects by a number of State Governments. With the upgradation of simple screen theatres to multiplexes in India over a span of time, the growth in screens is highly noticeable.
- The Indian film, music and TV industry are actively attempting to strengthen and expand their overseas markets creating new opening for innovation and commercial alliances. Other segments which can become a platform for major opportunities are the films, TV & radio, advertising, publishing, music, fashion & industrial design and event management.
- Extended broadband networks have given rise to an array of value-added service offerings to cable subscribers.
- As a result of DTH services, broadcasters will be able to avail a guaranteed revenue stream in terms of subscription revenues and will give way to new avenues for providing value added services such as different modes of communication including data, voice, fax and internet.
- The credit for increment in foreign exchange goes to the increasing market share of USD 17.4 billion in 2008 in the animation segment as well as inherent advantages such as IT skills and cost competitiveness.
- Theatres/Cineplexes are creating ample opportunities for investment.



- Due to the establishment of a new Up-linking Policy, India is envisaged to become an up-linking hub.
- TRAI has recommended the Satellite Radio Policy to the Government as it has the potential to reach 100 per cent of the Indian population and consequently considered to be an important tool for achieving some of India's development process.
- The domestic media and entertainment industry secured INR 4 billion FDI over the last three financial years. The possibility of new revenue sources and new cost structures will change the total infrastructure and face of the media and entertainment industry.

MINERALS AND NATURAL RESOURCES

Major Mineral Resources

India produces 89 minerals out of which 4 are fuel, 11 metallic, 52 non-metallic and 22 minor minerals. It is a leading producer of iron ore, bauxite, coal, lignite, aluminium, chromite, manganese ore, barytes, titanium and soapstone in the world. The country is also an emerging world player in the production of industrial minerals. It is the largest producer of sheet mica in the world and accounts for 60 per cent of the global mica trade. Coal is India's largest mineral resource and the country is the third largest producer of coal globally.

Reserves

India is rich in mineral resources with large reserves of several primary metal ores such as iron ore, bauxite, chromium, manganese, coal and titanium. India has estimated coal reserves of about 248 billion tonnes, which makes it the fourth largest in the world. Lignite is mainly found in Tamil Nadu, Gujarat and Rajasthan and total reserves are about 27.45 billion tonnes. Total recoverable reserves of hematite are about 10052 million tonnes and magnetite 3408 million tonnes. India has 13 billion tonnes of iron ore reserves, 2.3 billion tonnes of bauxite reserves, 160 million tonnes of manganese



reserves and 57 million tonnes of chromium reserves. The country also has resources of copper, chromite, lead-zinc, manganese, nickel and many other minerals.

In addition, India ranks 3rd, 4th, 6th and 7th in the world in production of chromite, iron ore, bauxite and manganese ore, respectively.

Regulation of Minerals

Management of mineral resources in India is the responsibility of the Central Government and the State Governments as specified by Entry 54 of the Union List (List I) and Entry 23 of the State List (List II) of the Seventh Schedule of the Constitution of India. The Central Government, in consultation with the State Governments, formulates the legal measures for the regulation of mines and the development of mineral resources to ensure basic uniformity in mineral administration and to ensure that the development of mineral resources keeps pace, and is in consonance with national policy goals. The Mines and Minerals (Development and Regulation) Act, 1957 (MMDR Act) and Rules framed thereunder, defines the role to be played by the Central Government and the State Governments in their respective domains, with regard to mineral development. The provisions of the MMDR Act and its rules are reviewed from time to time and harmonised with the prevalent policies governing industrial and socio-economic developments in India.

The MMDR Act lays down the legal framework for the regulation of mines and development of all minerals other than petroleum and natural gas. The Central Government has framed the Mineral Concession Rules, 1960 (MCR) for regulating the grant of prospecting licenses and mining leases in respect of all minerals other than atomic minerals and minor minerals. The Central Government

has also framed the Mineral Conservation and Development Rules, 1988 (MCDR) for conservation and systematic development of minerals. These are applicable to all minerals except coal, atomic minerals and minor minerals.

Growth

India has made significant strides in mineral development in the last 50 years.

Exploration of minerals is carried out on land, off shore and on sea-beds. India was conferred the status of pioneer investor in sea-bed exploration (by the UN in 1982) along with France, Japan, USSR and 4 multinational companies. India is the first country in the world to secure offshore mining site of about 1,50,000 sq. km. area in



the central part of the Indian Ocean. The country has also developed technology for deep-sea mining.

Mining operations were by and large labour intensive in 1947. However, as a result of emergence of many public sector mining companies such as Steel Authority of India Ltd., Coal India Ltd., Bharat Aluminium Company Ltd., National Aluminium Company Ltd., Hindustan Zinc Ltd., Hindustan Copper Limited, Kudremukh Iron Ore Company Ltd., etc. large scale mechanisation and state-of-the-art technology have been adopted.

The mineral sector consisting of 86 minerals (excluding atomic minerals) contributes 4.0 per cent of the GDP at current prices and 10.5 per cent of the total industrial production. The total number of those employed in labour for fuel and major minerals (consisting of metallic and non-metallic) is around 1 million. Over 3,000 mines are reporting production of these minerals in the country i.e. 2329 private and 848 public sector mines. Approximately 86 per cent of the total value of production of all minerals (excluding atomic minerals) comes from government owned ventures.

The Ministry of Mines is responsible for the survey and exploration of all minerals (except natural gas, petroleum and atomic minerals) and for the mining and metallurgy of non-ferrous metals.

The Geological Survey of India is the national organisation responsible for locating mineral resources and also the systematic generation and continuous updation of geosciences information through ground, marine and air surveys. The Mineral Exploration Corporation Limited is responsible for the detailed exploration of various minerals/ores by drilling and exploratory mining and proving reserves for their eventual exploration. The Indian Bureau of Mines is the national organisation engaged in the promotion, conservation and scientific development of mineral resources other than coal, petroleum, natural gas, atomic minerals and minor minerals.

Investment Policy

 A national mineral policy for non-fuel and non-coal minerals has evolved over the years in India. The policy emphasizes the need for conservation and judicious exploitation of finite mineral resources through scientific methods of mining, beneficiation and economic utilisation. Simultaneously, it keeps in view the present and future needs of the defence and development of India and strives to ensure the indigenous availability of basic and strategic minerals to avoid the disruption of core industrial production in times of international strife.

- The National Mineral Policy of 1993 was revised in 1994 and as a result, private investment (both domestic and foreign), has been permitted for the exploration and exploitation of thirteen minerals: iron -ore, copper, manganese, lead, chrome ore, zinc, sulphur, molybdenum, gold, tungsten ore, diamond, nickel and platinum group of metals.
- There are only 10 minerals (except fuel minerals and atomic minerals) which require the prior approval of the Central Government for the grant of mineral concessions: asbestos, bauxite, zinc, chrome ore, precious stones, copper ore, manganese ore, gold, lead and iron ore.
- In December 1999, the Policy was amended further and made very progressive and investor friendly.

The salient features and implications of the said amended Policy are as follows:

- 1. The concept of reconnaissance operations as a stage of operations distinct from and prior to actual prospecting operations has been introduced.
- 2. The reconnaissance permit holder will have preferential right for grant of prospecting license.
- 3. The area restrictions of reconnaissance permits, prospecting licenses and mining leases will apply only State-wise.
- 4. Area Limit/ Time Period for Mineral Concessions are as follows:

	Maximum Area in a State	Initial Grant	Renewal
Reconnaissance Permit	10,000 sq. km. (Single permit 5000 sq. km.)	3 Years	-
Prospecting License	25 sq. km.	3 Years	2 Years
Mining Lease	10 sq. km.	20-30 Years	Blocks of 20 Years

However, a new National Mineral Policy has been approved by the Cabinet in March 2008. The preamble to the policy states that the National Mineral Policy has to be dynamic taking into consideration the changing needs of industry in the context of the domestic and global economic environment. The basic features of the said Policy is to ensure carrying out of systemic regional and detailed exploration in the entire geologically conducive mineral bearing area of the country using state-of-the-art techniques. It provides for zero waste mining to be the national goal and for upgradation of mining technology to ensure extraction and utilisation of the entire run-of-mines.

The Policy predicts that large investments along with the latest technologies will be required in prospecting and mining to achieve its aims. The intention is to develop capital market structures to

attract risk investment into survey and prospecting. The Policy further provides that the revenues from minerals are to be rationalised to ensure that the mineral bearing States get a fair share of the value of the minerals extracted from their grounds. The States are to be assisted to overcome the problem of illegal mining through operational and financial linkages with the Indian Bureau of Mines. A comprehensive institutional framework for research & development and training is to be developed.

It is stipulated that the Central Government, in consultation with State Governments, is to formulate the legal measures necessary for giving effect to the new National Mineral Policy 2008. Such measures would include amending the MMDR Act, the MCR and the MCDR in line with the Policy.

The Policy provides that the core mining functions of the State in the future would include facilitation and regulation of exploration and mining activities of investors and entrepreneurs, provision of infrastructure and tax collection. In mining activities, it is intended that there shall be arms



length distance between State agencies (Public Sector Undertakings) that mine and those that regulate.

In the future, the private sector is to be the main source of investment in reconnaissance and exploration and government agencies are to expend public funds primarily in areas where private sector investments are not forthcoming. The national inventory of mineral resources is to be based on a comprehensive and up to date review of exploration data. In coordination with Geological Survey of India, the Indian Bureau of Mines would maintain a database in digitised form comprising both a Resource Inventory and a Tenement Registry.

According to the Policy, mining is an eligible activity for obtaining financial support from financial institutions. However, presently, as per the Policy, only those mining projects which have a substantial component of mining machinery, equipment and buildings would be financed. Steps would be taken to facilitate financing of mine development and also of exploration integral to the mining project. The Policy provides that, as prospecting is a high risk venture, access to "risk funds" from capital markets and venture funds is to be facilitated.

FDI

Initially, all proposals were considered on a case-by-case basis by the FIPB.

FDI policy was further liberalised in January 1997, which opened up an "automatic approval" route for foreign equity participation up to 50 per cent in mining projects, and up to 74 per cent in services incidental to mining. These sectoral guidelines were further revised by the Department of Mines. Currently, Press Note 7 (2008) dated 31st March 2008, provides as follows:

Sector/Activity	FDI Cap/ Equity	Entry Route	Other conditions
Mining covering exploration and mining of diamonds & precious stones; gold, silver and minerals	100%	Automatic	Subject to Mines & Minerals (Development & Regulation) Act, 1957 www.mines.nic.in Press Note 18 (1998) and Press Note 1 (2005) are not applicable for setting up 100% owned subsidiaries in so far as the mining sector is concerned, subject to a declaration from the applicant that he has no existing joint venture for the same area and/or the particular mineral.
Coal and Lignite mining for captive consumption by power projects, and iron & steel, cement production and other eligible activities permitted under the Coal Mines (Nationalisation) Act 1973	100%	Automatic	Subject to provisions of Coal Mines (Nationalisation) Act, 1973 www.coal.nic.in
Mining and mineral separation of titanium bearing minerals and ores, its value addition and integrated activities. Note: FDI will not be allowed in mining of "prescribed substances" listed in Government of India notification No. S.O. 61(E) dt. 18.1.2006 issued by the Department of Atomic Energy under the Atomic Energy Act, 1962	100%	FIPB	Subject to sectoral regulations and the Mines and Minerals (Development & Regulation) Act, 1957 and the following conditions: i. value addition facilities are set up within India along with transfer of technology; ii. disposal of tailing during the mineral separation shall be carried out in accordance with regulations framed by Atomic Energy Regulatory Board such Atomic Energy (Radiation) Protection) Rules 2004 and the Atomic Energy (Safe Disposal of Radioactive Wastes) Rules 1987.

Opportunity

- No case of renewal of a prospecting license/mining lease for the 10 minerals (as listed under the sub-heading "Investment Policy"), need be referred to the Central Government. Transfer of mining leases for these 10 minerals also do not need to be referred to the Central Government although in both cases the State government's authorization is required.

- State Governments have been delegated powers to grant mineral concessions even for areas which are not compact or contiguous, to permit amalgamation of two or more adjoining mining leases and to approve mining plans for certain categories of mines, subject to the prior approval from the Central Government where the statute so provides.

Foreign Trade

Minerals continue to be an important source of foreign exchange earnings. The policy of export keeps in mind the mineral inventory position and the long-term needs of India. Efforts are made to export minerals in value added form as far as possible and whenever it becomes necessary to export minerals and ores, the strategy is to make such exports competitive.

The provisional value of export of ores and minerals during 2007-08 was INR 950.22 billion, which shows a remarkable growth as compared to the exports in the preceding year. Diamond (mostly cut) was the principal item of export during 2007-08, which accounted for 60 per cent, followed by iron ore with a contribution of 24.6 per cent, granite 4.51 per cent, zinc ore and concentrate 1.35 per cent, chromite 1.29 per cent, bauxite 1.24 per cent and alumina 1.07 per cent. Further, building and monumental stones, emerald, coal (including lignite), marble etc. were the other important minerals exported in the preceding year.



The import of minerals and allied material is co-ordinated as far as possible with the indigenous development of mineral based industries. Areas of co-operation with countries with a complementary resource base is developed for mutual advantages. The basic approach is to make available the mineral based materials to domestic users at reasonable prices.

The provisional value of import of ores and minerals during 2007-08 was INR 3495.07 billion. Petroleum (crude) was the main constituent of mineral import during 2007-08, which accounted for 73.66 per cent of the total value of import of ores and minerals followed by diamond (uncut) with 8.92 per cent. Coal, natural gas, coke, copper ores and concentrate, rock phosphate, sulphur etc. were the other important minerals imported during 2007-08.

OIL AND NATURAL GAS

OIL

The Indian Petroleum industry is one of the oldest in the world. Oil was struck at Makum near Margherita in Assam in 1889. The industry has come a long way since then. At the time of independence in 1947, the oil and gas industry was controlled by international companies and the country produced about 0.25 Mt of crude oil in Assam of which 0.23 Mt was refined. Digboi was the only refinery and the market infrastructure was confined to urban and well-populated areas.

After independence, the Government realized the importance of oil and gas for rapid industrial development and its strategic role in defense. Consequently, while framing the Industrial Policy Statement of 1948, the development of petroleum industry in the country was considered to be of utmost necessity. Until 1955, private oil companies mainly carried out exploration of hydrocarbon resources of India. In 1955, Government of India decided to develop the oil and natural gas resources in various regions of the country as part of the public



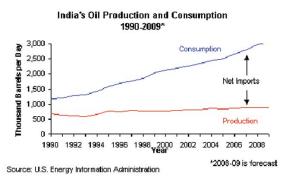
sector development. With this objective, an Oil and Natural Gas Directorate was set up towards the end of 1955, as a subordinate office under the then Ministry of Natural Resources and Scientific Research. The department was constituted with a nucleus of geoscientists from the Geological survey of India.

In April 1956, the Government of India adopted the Industrial Policy Resolution, which placed the mineral oil industry among the schedule 'A' industries, the future development of which was to be the sole and exclusive responsibility of the State.

Thus, in the 1970s the industry was nationalized. Every activity including exploration, development, production, refining, marketing, distribution was controlled by the various national oil companies. The size of the Indian oil industry is estimated to be USD 110 billion. Ever since India's economic liberalization programme started, the Indian oil and gas sector has gone through some very fundamental changes. The last eight years have seen a radical restructuring of the Indian oil and gas sector. The recent initiatives enable private oil companies, both foreign and Indian, to explore new oil and natural gas reserves, develop proven reserves, and establish petroleum refineries and pipelines. There still remains tremendous potential, as India remains one of the least explored regions in the world with a well density of 20 per 100 sq km.

According to the Oil & Gas Journal (OGJ), India had 5.6 billion barrels of proven oil reserves as of January 2009, the second-largest amount in the Asia-Pacific region after China. India's crude oil reserves tend to be light and sweet, with specific gravity varying from 38° API in the offshore Mumbai High field to 32° API at other onshore basins. India produced roughly 880 thousand bbl/d of total oil in 2008, of which approximately 650 thousand bbl/d was crude oil, with the rest of the production resulting from other liquids and refinery gain. India has over 3,600 operating oil wells, according to OGJ. India's oil consumption has continued to be robust in recent years. In 2007, India consumed approximately 2.8 million bbl/d, making it the fifth largest consumer of oil in the world. Demand grew to nearly 3 million bbl/d in 2008.

The combination of rising oil consumption and relatively flat production has left India increasingly dependent on imports to meet its petroleum demand. In 2006, India was the seventh largest net importer of oil in the world. With 2007 net imports of 1.8 million bbl/d, India is currently dependent on imports for 75 percent of its oil consumption. It is expected that India would become the fourth largest net importer of oil in the world by 2025, behind the United States, China, and Japan. Currently



we are the world's 5th largest consumer of energy which accounts for approximately 3.9 per cent of world consumption. USA, China, Russian federation and Japan are the top four energy consumers.

In the past few years, the country's economy has witnessed a healthy 7 per cent to 9 per cent growth rate. To sustain this high growth, India needs a substantial quantity of crude oil and natural gas.

Oil comprises 36 per cent of India's primary energy consumption and is expected to grow both in absolute and percentage terms driven by overall economic growth. Future oil consumption in India is expected to grow rapidly, to 3.4 million bbl/d by 2010 from 1.9 million bbl/d in 1999. India's demand for petroleum products during 2008-09 is estimated to be 133.4 MMT which is higher by 4.5 MMT(about 0.10 million barrels/day) as compared to 2007-08. Growth in demand is expected to catapult the overall demand to 196 in 2011-12 and 250 MMT in 2024-25. During the same period domestic production from existing developed reserves is expected to grow at approximately 2.5 per cent.

The main focus of the Indian Government is to enhance energy security for the country. Government of India and the oil companies have initiated several measures to enhance energy security for the country, viz (a) increasing exploration and production activities in the country (b) acquiring oil and gas assets abroad (c) development of alternate sources of energy (d) strategic storage of crude oil (e) conservation and implementation of environment friendly policies. The national endeavor to bridge the ever-increasing gap between demand and supply of petroleum products by intensifying exploratory efforts for oil and gas in the Indian sedimentary basins and abroad need to be supported by other alternate sources of energy like Coal Bed Methane (CBM), Gas Hydrates, Coal Liquefaction, Ethanol and Bio-Diesel, etc. The first CBM gas production from Raniganj CBM block in West Bengal commenced in July 2007. In India, CBM resources are estimated at about 2,600-3,300 billion cubic metres. 26 CBM blocks have been awarded under 3 rounds of global competitive bidding.

India is attempting to limit its dependence on oil imports somewhat by expanding domestic exploration and production. To this end, the Indian Government is pursuing the New Exploration Licensing Policy (NELP), which was approved in 1997 and finally declared in 1999, which permits 100 percent FDI in exploration, an activity long restricted to Indian State-owned firms.

The Petroleum and Natural Gas Regulatory Board (PNGRB)

The Petroleum and Natural Gas Regulatory Board, established in October 2007 under the PNGRB Act 2006, is an important new body that will oversee the oil and gas industry. Some of its aims in respect of petroleum, petroleum products and natural gas are:

- To oversee and regulate refining, processing, storing, transportation, distribution, marketing and sale;
- To protect interests of consumers and entities engaged in specific activities;
- To ensure uninterrupted and adequate supply;
- To promote competitive markets. A competitive bidding process has been proposed to select public and private entities for developing city gas distribution networks.

The functions of PNGRB include:

- Registration of entities to market notified petroleum and petroleum products; establish and operate liquefied natural gas terminals and establish storage facilities for petroleum, petroleum products or natural gas;
- Authorizing entities to lay, build, operate or expand a common carrier or contract carrier and lay, build, operate or expand city or local natural gas distribution network;



- Declaring pipelines as common carrier or contract carrier;
- Regulating access to common carrier or contract carrier so as to ensure fair trade and competition amongst entities; specify pipeline access code; transportation rates for common carrier or contract carrier;
- Regulating access to city or local natural gas distribution network so as to ensure fair trade and competition amongst entities as per pipeline access code;
- Ensuring adequate availability of notified petroleum, petroleum products and natural gas;
- Monitoring prices and taking corrective measures to prevent restrictive trade practice by the entities;
- Securing equitable distribution for petroleum and petroleum products;
- Regulating, and enforcing, retail service obligations for retail outlets and marketing service obligations for entities;
- Monitoring transportation rates and taking corrective action to prevent restrictive trade practice by the entities;
- Maintaining a data bank of information on activities relating to petroleum, petroleum products and natural gas;
- Laying down regulations for the technical standards and specifications including safety standards
 in activities relating to petroleum, petroleum products and natural gas, including the construction
 and operation of pipeline and infrastructure projects related to downstream petroleum and natural
 gas sector.

In addition the Board also has powers to adjudicate and decide upon any dispute arising amongst entities on issues relating to refining, processing, storage, transportation, distribution, marketing and sale of petroleum, petroleum products and natural gas.

Oil and Gas Market (Downstream)

The downstream (refining and marketing) oil industry promises to be one of the attractive growth markets in the world. The Hydrocarbon Vision 2025 formulated by the Ministry of Petroleum & Natural Gas in 1999 emphasized 90 per cent self-sufficiency in middle distillates (diesel/kerosene group) in the sector with an appropriate mix of national oil companies, foreign players and private Indian players so as to develop a globally competitive industry. This resulted in specific measures in the refining and marketing sectors, which included permitting private participation in refining, pipeline and marketing infrastructure sectors, phased dismantling of price controls, decanalisation of crude product imports/exports



etc. As many as 206 blocks have been given out for exploration under the first seven rounds of NELP since April 2000 against just 22 blocks in the preceding 10 years.

Refineries- There are currently a total of 19 refineries in the country comprising 17 in the public sector and two in the private sector, namely Reliance Petroleum Ltd. at Jamnagar and Essar Oil Ltd. at Vadinar. The domestic refining capacity as on 1.4.2008 was 148.968 MMTPA. The domestic petroleum-refining sector is open to the private sector as well as to the joint sector (national-private partnerships) for new refineries. The refineries are also allowed forward integration in the field of petrochemicals etc. for better value addition, opening another area for investments.

Pipelines - The transport of petroleum products into the interiors and hinterland from ports and refinery locations is undertaken by railways, pipelines, coastal and road tankers. With oil companies increasingly switching over to the pipeline mode, the share of ipelines has risen from 23.3 per cent to 32 per cent. Pre-commissioning of 1600 kilometres of cross-country pipeline has been carried out in line with approved methodology as of December 2006.



In a major decision towards deregulation of oil sector and to attract investment in the petroleum product pipelines, in November 2002 the Government had laid down a new Petroleum Product Pipeline Policy for laying pipelines in the country on common carrier principle. Guidelines for laying petroleum product pipelines were notified on 20.11.2002. Supplementary guidelines in this regard have also been notified on 26.10.2004. Under this policy, proposals have been received from Gas Transportation and Infrastructure Company Limited (a subsidiary of Reliance Industries Limited), Hindustan Petroleum Corporation Limited and Essar Oil Limited for laying cross-country pipelines.

With a view to providing a framework for future growth of the gas sector and to promote investment in gas pipelines as well as to provide interconnectivity between regions, consumers and producers, the Government in December 2006, notified the Policy for Development of Natural Gas Pipelines and City or Local Natural Gas Distribution Network. The objective of the policy is to promote investment from public as well as private sector in natural gas pipelines and city or local natural gas distribution networks, to facilitate open access for all players to the pipeline network on a non-

discriminatory basis, promote competition among entities thereby avoiding any abuse of the dominant position by any entity, and secure the consumer interest in terms of gas availability and reasonable tariff for natural gas pipelines and city or local natural gas distribution networks.

Current capacity of product pipelines is 61.77 MMT. Several pipelines to transport crude, gas and liquefied petroleum gas (LPG) are being set up. Foreign companies have tied up with Indian counterparts to provide the technology, undertake contracts to lay the pipelines, etc.

LPG - This sector is fully open for private sector investment. The LPG consumption in 2007- 08 was 12165 TMT. The smaller towns/rural demand is now increasing. The widening demand and supply gap offers immense opportunities in creating infrastructure for LPG handling, transportation, inland storage facilities, bottling plants and marketing. The requirement of LPG over and above the indigenous availability is met by imports. Several projects for import facilities are coming up. Both national and private sector companies like SHV, Shell, Caltex, Exxon Mobil, are working on these projects.

Oil and Gas Market (Upstream)

India has very high energy import dependence. The sector has witnessed gradual liberalisation since 1991. Until the early 1990s, the oil and gas exploration industry was a monopoly of the national oil companies, Oil India Ltd (OIL) and the Oil & Natural Gas Corporation Limited (ONGC). Participation by private sector companies in oil exploration and production (E&P), however, is becoming increasingly significant.

India has an estimated sedimentary area of 3.14 million sq. km. comprising 26 sedimentary basins, out of which, 1.35 million sq. km. area is in deepwater and 1.79 million sq. km. area is in onland and shallow offshore. At present 1.06 million sq. km. area is held under Petroleum Exploration Licenses in 18 basins by national oil companies viz. ONGC, OIL and private/joint venture companies.

New Exploration Licensing Policy (NELP)

New Exploration Licensing Policy (NELP) was formulated by the Government of India, with Directorate General of Hydrocarbons (DGH) as a nodal agency, during 1997-98 to provide a level playing field to both public and private sector companies in exploration and production of hydrocarbons. Government of India's commitment to the liberalization process is reflected in NELP, which has been conceptualized keeping in mind the immediate need for increasing domestic production. To attract more investment in oil exploration and production, NELP has steered steadily towards a healthy spirit of competition between national oil companies and private companies. Under NELP, licenses for exploration are being awarded only through a competitive bidding system and national oil companies are required to compete on an equal footing with Indian and foreign companies to secure Petroleum Exploration Licences (PEL). This has been a landmark event in the growth of the upstream oil sector in India. The foreign and Indian private companies are invited to supplement the efforts of national oil companies in the discovery of hydrocarbons. The development of E&P sector has been significantly boosted through this policy of the Government of India, which brought major liberalization in the sector and opened up E&P for private and foreign investment, where 100 per cent FDI is allowed.

Under NELP, which became effective in February 1999, acreages are offered to the participating companies through the process of open competitive bidding. The terms and conditions of this open and transparent policy rank amongst the most attractive in the world. The first round of offer of blocks was in the year 1999. Under the latest round, NELP-VII, the Government awarded 44 Exploration Blocks, viz. 11 in deepwater, 7 in shallow water and 26 onland blocks covering an area of 0.122 million sq. km in the year 2008. With this, the overall number of blocks brought under exploration exceeded 200.

Under NELP, the committed investment on exploration is envisaged as USD 8.3 billion, out of which about USD 4.5 billion has already been incurred on exploration and about USD 1.5 billion on development of discoveries. The total committed investment for phase-I of Exploration under NELP-VII is about USD 1.5 billion.

Within five years, investment made on exploration has exceeded INR 130 billion in NELP blocks. What is more important is that 30 oil & gas discoveries have been made, out of which gas discoveries in Krishna Godavari (KG) basin are the most significant, wherefrom natural gas production of about 40 MMSCMD is likely to be produced by 2008-09, which will further increase to 80 MMSCMD by 2011-12.

Some of the features of the attractive terms offered by the Government under NELP are:

- An income tax holiday for seven years from the start of commercial production
- The possibility of seismic option alone in the first phase of the exploration period.
- Up to 100 per cent participation by foreign companies.
- No minimum expenditure commitment during exploration period.
- No signature, discovery or production bonus.
- No mandatory State participation.
- No carried interest by national oil companies.
- No customs duty on imports required for petroleum operations.
- Biddable cost recovery limit: Up to 100 per cent.
- Option to amortise exploration and drilling expenditures over a period of 10 years from first commercial production.
- Sharing of profit petroleum with Government of India based on pre-tax investment multiple achieved by the contractor and is biddable.
- Royalty for onland areas is payable at the rate of 12.5 per cent for crude oil and 10 per cent for natural gas. For shallow water offshore areas, royalty is payable at the rate of 10 per cent for both crude oil and natural gas whereas for deepwater offshore areas (beyond 400 m iso-bath) royalty is payable for both crude oil & natural gas at the rate of 5 per cent for the first seven years of commercial production and thereafter at the rate of 10 per cent.
- Fiscal stability provision in the contract.
- Provisions for assignment.

Presently, apart from the two national oil companies, ONGC & OIL, more than two dozen foreign companies are working in the E&P sector including global majors like BG, BP, ENI, Petrobras, Santos, Cairn and NIKO. With recent exploration and development efforts under way in India, crude oil production is likely to increase by over 30% in the next five years. Similarly, by year 2012 natural gas production will more than triple from the present level of about 90 MMSCMD per day.

Several oil and gas discoveries have already been made in onland and offshore areas including deepwater, for which development plans by the operators are in progress. So far till year 2007-08 a total of 67 hydrocarbon discoveries were made that include ONGC (38), OIL (8), RIL (8), GSPC (5), HOEC (2), Essar (2), Jubilant (2), Cairn (1) and Focus (1). Accretion of In-place reserves (O+OEG) of 363.06 MMT and ultimate reserves (O+OEG) of 115.26 MMT was achieved.

The dominance of the public sector continues on the upstream side, although in recent rounds of bidding under the NELP domestic private sector and state sector participation and, to a more limited extent, foreign participation has emerged. Before implementing NELP, 11% of Indian sedimentary basins were under exploration which has now been increased to cover 44% of Indian sedimentary basins. In the next four years, it is planned to increase coverage to 80% of total Indian sedimentary basins. By 2015, the entire area of Indian sedimentary basins is likely to be under exploration. As the exploration work is progressing in NELP blocks, the results in terms of new oil and gas discoveries are pouring in. Under NELP regime, oil production has commenced from deep water block D-6 in KG basin during September 2008 and this is the first oil from deep waters of India. Natural gas supply is likely to commence from April 2009 at the rate of 80 MMSCMD from the same block.

Natural Gas

- Production of natural gas was almost negligible at the time of independence. The production of natural gas is estimated to be around 31,478 MMSCMD for the year 2007-08. The main producers of natural gas are ONGC, OIL and JVs of Tapti, Panna-Mukta and Ravva. Under the production sharing contracts, private parties from some of the fields are also producing gas. Government has also offered blocks under NELP to private and public sector companies with the right to market gas at market determined prices. Natural gas supplies about 7 per cent of India's energy demand. Indian consumption of natural gas has risen faster than any other fuel in recent years. Natural Gas is currently the source of half of the LPG produced in the country. Out of the total production of around 96 MMSCMD in the year 2007-08, after internal consumption, extraction of LPG and unavoidable flaring, around 73 MMSCMD was available for sale to various consumers. In addition around 7 MMPTA of re-gasified LNG (about 23 MMSCMD) was also supplied to domestic consumers.
- To meet future demand, India is pursuing additional long-term sources of natural gas, mainly through imported Liquefied Natural Gas. Since increased use of natural gas in power generation is one of the main reasons for increase in demand, the Indian Government is encouraging the construction of gas-fired electric power plants in coastal areas where they can be easily supplied with LNG by sea. Geographically, India is very strategically located and is flanked by large gas reserves on both the east and west. India is relatively close to four of the world's top five countries/locations in terms of proven gas reserves, viz. Iran, Qatar, Saudi Arabia and Abu Dhabi. The large natural gas market of India is a major attraction to the LNG exporting countries.

- LNG Imports: India is investing heavily in the infrastructure required to support increased use of natural gas by expanding domestic pipeline capacity and building LNG import terminals and additional facilities to handle imports. To narrow the gap between the demand and supply of LNG, the Government has permitted private companies to set up LNG terminals. Petronet LNG Ltd. (PLL), a joint venture promoted by GAIL, IOCL, BPCL and ONGC was formed for import of LNG to meet the growing demand of natural gas. PLL has set up the country's first LNG receiving and regasification terminal at Dahej, Gujarat, and is in the process of building another terminal at Kochi, Kerala. While the Dahej terminal has a nominal capacity of 5 MMTPA (equivalent to 20 MMSCMD of natural gas), the Kochi terminal will have a capacity of 2.5 MMTPA (equivalent to 10 MMSCMD of natural gas). Shell's 2.5 MMTPA capacity LNG terminal at Hazira has been commissioned. Dabhol LNG terminal (total 5 MMTPA capacity, with about 2.9 MMTPA available for merchant sales) may also become operational subject to availability of LNG for the project. LNG terminals at Kochi in Kerala, Mangalore in Karnataka and Krishnapatnam/Ennore in Tamil Nadu are also under active consideration and may fructify in the next 4-5 years.
- Gas Distribution & Supply- Until recently, GAIL (the public sector nodal gas distribution company) has played a dominant role in the development and growth of the Indian gas market. With the gradual liberalisation of the gas transmission & distribution sector, GAIL is actively seeking suitable business alliances with leading Indian and overseas companies for joint ventures in the following areas:
 - o Increasing gas supplies to the Indian market;
 - o CBM exploitation and evaluation of gas from gas hydrates;
 - o Deriving Natural gas from coal and lignite energy deposits;
 - Projects related to upstream and downstream sectors of the petroleum industry as well as generation of power;
 - o Upstream participation and development of a gas pipeline and distribution infrastructure;
 - Gas processing facilities to provide value added products, to expand GAIL's business activities outside India, preferably in West, Central and South East Asia.

The PNGRB draft norms call for the entities involved in the gas market to maintain separate books of accounts for different activities, so as to have transparency and for proper disclosure of costs.

Investment Policy

The Indian Government has announced significant policy initiatives to attract foreign investment:

- FDI is permitted up to 100 per cent under the automatic route in oil exploration in both small and medium sized fields subject to and under the policy of the Government on private participation in (i) exploration of oil and (ii) the discovered fields of national oil companies;
- Refining Industry has been de-licensed Tremendous opportunity for investment exists in these sectors in the years to come, in which the private sector, including the foreign companies can set up their own projects or through joint ventures in public sector companies.
- The refining sector is open to the joint sector (public-private partnerships) as well as to the private sector for new refineries. FDI participation up to 49 per cent is permitted in case of

PSUs, subject to approval from the FIPB. In case of private Indian companies, FDI is permitted up to 100 per cent under the automatic route;

- For petroleum products pipeline and natural gas pipeline, FDI is permitted up to 100 per cent on the automatic route subject to and under the Government policy and regulations thereof;
- FDI is permitted up to 100 per cent on the automatic route in petroleum products marketing. FDI in this sector would be permissible subject to the existing sectoral policy and regulatory framework in the oil-marketing sector.
 - Subject to the policy laid down by the Government, marketing of transportation fuels can be permitted to a company investing or proposing to invest at least INR 20 billion in exploration, refining, pipelines or terminals in the oil and gas sector of India. Import of LNG and natural gas is on OGL. If an entity requires the acquisition of Right of Use (ROU) in land, it approaches the Ministry of Petroleum and Natural Gas for the acquisition under the Petroleum & Mineral Pipelines (Acquisition of Right of Use in Land) Act, 1962 (P&MP Act, 1962).
- FDI up to 100 per cent is permitted for the purpose of market study and formulation, and for investment/financing.

Opportunities

- Total sedimentary basins, including deep water 3.14 million sq. km. (41 per cent of this is still unexplored). India is endowed with 26 sedimentary basins totalling around 1.72 million sq. km. of which offshore area amounts to 0.38 million sq. km. Most of the basins are under various stages of intensive/extensive exploration.
- Large demand for natural gas

Year	Demand (MMSCMD)
2002	151
2007	231
2012	313
2025	391

MMSCMD: Million Standard Cubic Metres per Day

The present domestic gas supply is only 65 MMSCMD. The increasing demand supply gap is expected to be met by imports of LNG and pipeline gas.

Development of infrastructure

	1988-99	2024-25
Product Pipelines capacity (MMT)	28.55	166
Port Capacity (MMT)	111	361

1000 00

2024.25

• In the refining sector, opportunities exist for investment in public sector oil companies that are divesting their equity to the public. Additional refining capacity of 110 million tonnes per annum will be required in the near future. With such phenomenal growth in this sector, there is ample scope and opportunity for the transfer of technologies required and exports of capital goods, etc, to India.

The technologies required will be for -

- o Upgrading, expansion, replacement and new refineries;
- o To meet the predominant demand for middle distillates; and
- o To improve the quality of petroleum products to make them environment friendly and globally competitive.
- Extensive oil and gas distribution infrastructure such as cross-country pipelines, port terminals, tankages and strategic reserves build-up will have to be developed to meet the projected requirements.
- India is adopting more environmentally benign measures with regard to usage and quality of fuels. Lead phasing-out & benzene reduction in gasoline, sulphur reduction and acetane improvements of diesel are amongst the prominent measures that are under implementation/consideration. Such quality up-gradation of fuels will call for adopting latest/state-of-the-art technology requiring huge investments by way of providing reformulated gasoline producing units, hydrocrackers, hydro-treaters, hydrodesulphurisers etc.
- There is unlimited scope in LPG marketing. With rural areas also starting to consume LPG, the demand is likely to increase even further. There is now a huge demand for LPG in commercial and industrial sectors also. Increased demand and gap in demand and supply offer immense opportunities in the marketing of LPG, which is fully opened up for private investment. The requirement of LPG over and above the indigenous availability is met by imports. The LPG import capacity at two ports in the country, viz. Visakha and Mumbai, is 700 trillion metric tonne per annum (TMTPA). New LPG import facilities at Kandla and Mangalore are being set up and the capacity at Visakha is being augmented. However, to fill in the gap, the private sector and joint venture companies are planning to set up LPG import facilities at different locations. Foreign companies like Exxon, Shell, Caltex, Mobil, Vitol SHV, etc. have shown interest in setting up LPG import facilities. Huge investment is required for the development of these facilities.
- With the LPG distribution network increasing fast, investments are also required in the transportation of LPG, inland storage facilities, bottling plants and distribution network. Private companies are welcome to invest in these areas.
- More than 250 proposals have been approved for construction of LPG bottling plants in the
 private sector. However, due to non-availability of LPG, not much progress has been made in
 this regard. LPG storage terminals and import facilities at ports can be set up for supplying LPG
 to private sector bottling plants for mutual benefit of all concerned.

Natural Gas Hydrates & Coal Gasification

These are a potential source of natural gas and constitute a promising area where opportunities exist for companies to participate in exploiting this potential source of energy and, if encouraging results are obtained, it would open up a new opportunity in supplementing natural gas resources.

PHARMACEUTICALS & CHEMICALS

The value of the Indian pharmaceutical industry has touched the figure of USD 10 billion. This is expected to grow to approximately USD 30 billion by 2010, driven primarily by exports to regulated markets like the US and Europe with Contract Research and Manufacturing Services (CRAMs). India is ranked fourth in the world in terms of volume and thirteenth in terms of value. India's share in the world pharmaceuticals market stands at two per cent in value and eight per cent in volume. The size of the Indian pharmaceutical industry is about USD 17 billion and constitutes 1.3 per cent of India's GDP. Most of the domestic pharmaceutical drug requirements are met by the domestic industry as in mainly the manufacture of Active Pharmaceuticals Ingredients (APIs) and CRAMS. In



the segment of APIs, India ranks third in the world, producing about 500 different APIs. Currently, India is among the top 20 pharmaceutical exporters across the world, with 119 United States Food & Drugs Administration (USFDA) inspected plants, the largest outside the USA.

The total size of the industry was estimated at USD 18 billion at the end of 2007. The Indian domestic pharmaceutical market size was estimated at USD 10.76 billion in the year 2008 and is expected to grow at a high CAGR of 9.9 per cent till 2010 and thereafter at a CAGR of 9.5 per cent till 2015. Indian pharmaceutical companies have filed the largest number of Drug Master Filings (DMFs) with the USFDA and over one third of the DMFs are filed in USA. DMFs from India accounted for 27 per cent of US filings in 2004, 37 per cent in 2005 and 44 per cent in 2006. In 2007, India has filed 110 DMFs. Around 30 per cent of approved Abbreviated New Drug Application (ANDAs) in USA are from India, the country seconding only USA. Along with this, there are scores of approvals by various regulatory bodies like the UK Medicine and Healthcare Prodct Regulatory Agency (MHRA) and Therapeutic Goods Administration (TGA) (Australia) etc. India, encouragingly, is a frontrunner in patent challenges too, ranking next to USA with a share of 21 per cent of patent challenges.

Opportunities in the Pharma Sector

Growth reflected by the Indian pharmaceutical industry in terms of infrastructure development, technology base and the range of production is tremendous. The industry's strength lies in world-class technology, cost effective production of 90 per cent of bulk drugs and all required formulation, rich bio-diversity, competitive research & development (R&D) costs and over 20 per cent growth rate in exports. A study by CMIE database 'Prowess' reveals that in an overall data for 596 Indian pharmaceuticals companies, whose sales and R&D investment figures available with the database, a total of 151 companies invested in R&D activities as of end of June, 2008. The total R&D investment showed a figure of INR

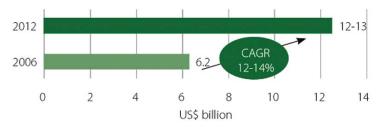
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29.732 billion, which is 9.9 per cent of the sales of these 151 companies.

With an increasing number of bulk drugs going off patent and the capability of Indian scientists in process technology, the share of Indian pharma products in the world market is expected to rise further. The recent amendments in India's patent law hold much promise for the pharmaceutical industry. Grant of product patents has restricted the reverse engineering techniques. Now undoubtedly the tilt is towards new drug development. This will facilitate relaxation in the drug price control mechanism. Further, the global pharma majors are awaiting statutory data exclusivity. The Government of India is currently pursuing the issue through an inter-ministerial committee. A data exclusivity law will go a long way in attracting global players in India in their quest for cost competitive new drugs development.

A recent interesting activity and a topic of debate and serious policymaking amongst the Government and industry think tanks, is the effort of foreign MNC entrants to establish Patent Linkage norms with the Drug Control Organisation. Recent litigation cases in the High Courts show that the MNCs are interested in enforcing Patent Linkage, as in, the Drug Controller General should not approve the marketing of a patent product by any person other than the person who holds the right for the said product. India being majorly a generic pharmaceuticals hub, the domestic players, for obvious reasons, are opposing Patent Linkage. It remains to be seen the kind of policy the Government formulates in order to balance the interests of both the domestic generic players as well as the foreign pharmaceutical companies who find the Indian market very lucrative and sound.

Forecasted Indian Pharmaceutical Market



Source: Compiled From Industry Sources

Apart from the price control measures, which would now undergo substantial changes, a new National Pharmaceutical Policy is expected. The draft Policy recommends the formation of a Pharmaceutical Advisory Forum within the National Pharmaceuticals Pricing Authority (NPPA), the setting up of Price Monitoring Cells in States funded by the Government of India, establishment of a National Drug Authority (NDA) [which will eventually be merged with NPPA to form National Authority on Drugs & Therapeutics (NADT)] and



the strengthening of the Drug Regulatory and Patent offices in the country. The draft Policy also proposes fixing equitable prices for bulk drugs and their formulations including cost plus margins model, negotiated prices, differential prices, reference prices, bulk purchase prices etc. It is further proposed that several exemptions from price control will be provided. It is also proposed that the new-patented drugs would be exempt from price control for 10 years post commercialization. However, the Indian Patents Act, 1970 as amended and Patents Rules 2003 provide that those drugs which emanate from the mailbox applications and were being produced by Indian manufacturers

would continue to be produced and marketed by them even after such patents are granted after 2005, but will be subjected to royalty payments. Therefore, those patented drugs will have only marginal price increases. This draft National Pharmaceutical Policy, 2006 is still under finalization.

The Indian retail pharmaceutical market size was estimated at USD 7.8 billion in the year 2008 and is expected to grow at a high CAGR of 9.9 per cent till 2010 and thereafter at a CAGR of 9.5 per cent till 2015. Pharmaceutical industry has shown commendable export performance, the trade balance being positive throughout the years. Over the period 2003-04 to 2008-09 the CAGR of exports has been 17.8 per cent.

The key driver in the Indian Generic Pharmaceutical Industry is the sheer amount of intellectual talent in the form of scientists in organic/medicinal chemistry formulation science, biotechnology, microbiology etc., design and regulatory compliant running of manufacturing facilities, legal capabilities and resources, techno marketing capabilities, access to funds at reasonable cost, APIs/Formulation Development DMFs/ANDAs, Specialty Generics R&D and filings, Patent filings, manufacturing infrastructure for pharma/biopharmaceuticals, and access to market. In addition, there are new technologies like Biocatalysis, Organocatalysis and Nanotechnology which have already made forays into the Indian Research and Development field and are making significant influence on the industry.

Finally, developments in the health insurance sector also indicate increasing opportunities for pharma manufacturers. The Government of India proposes to allow further foreign participation in the insurance industry. This, along with aggressive marketing by the local companies, promises a bonanza for the pharma industry with increased capacity to pay for costly drugs. Fringe benefit tax has also been exempted on the medical samples supplied to doctors. There has been a reduction of customs duty on certain life saving drugs.

Opportunities in the Chemical Sector

The size of the Indian chemical industry is estimated at around USD 35 billion approximately., which is equivalent to about 3% of India's GDP. The overall investment in this sector is an estimated USD 60 billion and total employment generated is about 1 million. In terms of export, the sector accounts for 13-14 per cent and 8-9 per cent of the total imports of the country. In terms of volume, it is the 12th largest in the world and 3rd largest in the Asian continent. According to current statistics, per capita consumption of products of the chemical industry in India is about 1/10th of the world average. The Indian chemical industry has gradually evolved from being a basic chemical producer to becoming an innovative industry, over the last decade or so. With investments in R&D, the industry is registering significant growth in the knowledge sector comprising of specialty chemicals, fine chemicals and pharmaceuticals. The Indian chemical market segment wise is as under: -

Segment	Market Value (billion US\$)	
Basic Chemicals	20	
Specialty Chemicals	9	
High End / Knowledge Segment	6	
Total	35	

The well-established Indian chemicals industry is highly heterogeneous, encompassing a wide range of products including organic and inorganic chemicals, dyestuffs, paints, pesticides and specialty chemicals. The industry has withstood challenges from the international market and has seen continuous growth in its exports. Some of the prominent individual chemical industries are caustic soda, soda ash, carbon black, phenol, acetic acid, methanol and azo dyes. India is the 4th largest producer of agrochemicals after USA, Japan and China. The agrochemicals market in India is valued at INR 45 billion. Another significant wing of the Indian chemical sector is dyestuffs which has a huge application in the textile industry. India has emerged as a global supplier of dyestuffs and dye intermediates, particularly for reactives, acid, vat and direct dyes. India accounts for 7 per cent of the world production in the manufacture of these goods.



The chemicals sector together accounts for over 13-14 per cent of total Indian exports. With its established expertise in the IT sector, focused attention on R&D and ability to produce high quality products at globally competitive prices, India will play a crucial role in the knowledge based industries in the coming years.

The petrochemical sector has been witnessing a growth of over 12 per cent in the last decade, which is about twice the growth rate of GDP. However, the per capita consumption of commodity polymers and synthetic fibres has been 4.7 kgs and 1.6 kgs respectively, which is much below the world average of 25 kgs and 4 kgs.

It is envisaged that the demand for polymers will grow at the rate of 12-13 per cent and synthetic fibres at about 6 per cent in the current decade. To meet the growing demand, additional capacity of about 10 million tonnes of commodity polymers and about 1 million tonne of synthetic fibres would have to be created. The rapidly growing demand and huge captive domestic market gives an opportunity for investment of over INR 700 billion.

Investment Policy

- The Pharmaceutical Policy, 2002 has focused on liberalization by reducing the number of drugs subject to price control and by further opening the market to foreign investment.
- The Investment Policy strives to ensure abundant availability, within the country, of good quality essential pharmaceuticals for mass consumption. This is in addition to strengthening the indigenous capability for cost effective quality production.
- Control of prices is achieved through the Drugs (Price Control) Order, 1995 wherein 74 bulk
 drugs are presently price controlled. The number of drugs under price control will be reduced
 under the new Drugs (Price Control) Orders to be issued in accordance with the Pharmaceutical
 Policy, 2002.

- Abolition of industrial licensing for all bulk drugs, intermediates and formulations except for
 the production of products of recombinant DNA technology, bulk drugs requiring in-vivo use of
 nucleic acids as active principal and specific cell/tissue targeted drug formulations. It is now for
 the investor, rather than the Government, to decide whether the market can sustain their
 product.
- FDI up to 100 per cent is permitted in the automatic route for manufacture of drugs and pharmaceuticals, provided that the activity does not attract compulsory licensing or involve use of recombinant DNA technology and specific cell/tissue targeted formulations.
- FDI proposals for the manufacture of licensable drugs and pharmaceuticals and bulk drugs produced
 by recombinant DNA technology and specific cell/tissue targeted formulations will require
 prior Government approval. DNA based products must be cleared by the Department of

Biotechnology, Government of India due to the potential health and environmental risks involved.

- The peak rate of customs duty on most chemicals is 7.5 per cent
- On basic raw materials like acid grade fluorspar, sulphur, rock phosphate, natural borates is 5 per cent
- On most building blocks & feedstock the duty is 5 per cent (ethylene, propylene, crude, naptha, benzene, toluene, xylene, ethylbenzene)
- On almost all chemicals the excise duty is 16 per cent



POWER

Introduction

Power is a critical infrastructure on which the socio-economic development of a country depends. The availability of reliable and quality power at competitive rates is very crucial to sustain growth of all the sectors of the economy, that is, primary, secondary and tertiary. This helps to make domestic markets globally competitive and thus improve the quality of life of the people.

India is one of the world's largest energy consumers having a total installed capacity of 1,47,457.81 MW (as on January 1, 2009) out of which the private sector has contributed a staggering 13.5 per cent. The thermal, hydro and nuclear energy and renewable energy sources including wind, small hydro, biomass etc., each contribute substantially to the total installed capacity of the country. While thermal energy accounts for 64.6 per cent and continues to be the preferred source others such as hydro contributes 24.7 per cent and nuclear and renewable energy contribute 2.9 per cent and 7.7 per cent respectively. India's power system today with its extensive regional grids maturing in to an integrated national grid has millions of kilometers of lines criss-crossing the diverse topography of the country.

The process of electrification commenced in India almost concurrently with the developed world in 1880s, with the establishment of a small hydroelectric power station in Darjeeling. However, commercial production and distribution started in 1889 in Calcutta

(now Kolkata). Legal provisions to support and regulate the sector were put in place through the Indian Electricity Act, 1910. Under the Constitution of India, electricity is a concurrent subject at entry number 38 in List III of the Seventh Schedule.

In 1948, the Electricity (Supply) Act, 1948 paved the way for establishing Electricity Boards in the States of the Union. All new power generation, transmission and distribution in the rural sector and the urban centres (which was not served by private utilities) came under the purview of State and Central Government agencies. State Electricity Boards (SEBs) were formed in all the States. The result was that the power sector was brought under Government control; the power sector was chiefly funded by support from Government budgets in the form of long term and concession interest loans.

However, in 1991, the Government of India embarked upon a massive clean up exercise encompassing all policies having financial involvement of Governments- both at the level of Union and States. The present legislation regulating the power sector is the Electricity Act, 2003. The Act provides an enabling framework for accelerated and more efficient development of the power sector and aims to separate the generation, transmission and distribution of power in the country. The Act seeks to encourage competition with appropriate regulatory intervention. Competition is expected to yield efficiency gains and in turn result in availability of quality supply of electricity to consumers at competitive rates.

The National Electricity Policy

The National Electricity Policy was notified on February 12, 2005. The policy is one of the key instruments for providing guidance to the Electricity Regulatory Commissions in discharge of their

functions and to the Central Electricity Authority for preparation of the National Electricity Plan. The policy aims at accelerated development of the power sector, providing supply of electricity to all areas and protecting interests of consumers and other stakeholders, keeping in view availability of energy resources, technology available to exploit these resources, economics of generation using different resources, and energy security issues.

The policy estimates that an investment of the order of INR 90,000 million (at 2002-03 prices) would be required to finance generation, transmission, sub- transmission, distribution and rural electrification projects. Thus, considering the magnitude of the expansion of the sector required, private investment is encouraged through various incentives and mechanisms under the policy. The policy has been made under the Electricity Act 2003, which removes barriers to entry in different segments for private investors and introduces measures to provide for a business environment that is conducive to investments by ensuring adequate returns and suitable transitional models with predetermined improvements in efficiency parameters. In addition, the policy also addresses the need for regulatory certainty by promoting transparency and independence of regulatory commissions. The National Electricity Policy offers all aspects of power production and supply to private entrepreneurs for investment; be it power generation, distribution, co-generation or renovation and modernization. Moreover, after the enactment of the Electricity Act, 2003, another area is now open to foreign investment in the form of power trading which has been recognized as a distinct activity of the Power sector and the Power Ministry made strong recommendations for 100 per cent FDI in trading of electricity through the automatic route in June 2005. The Ministry of Commerce and Industry, indeed, in its sweeping changes in the FDI policy has allowed FDI up to 100 per cent under the automatic route, subject to the compliance with Regulations under the Electricity Act, 2003.

India is already on its way to establishing a power market. This requires considerable and continuous effort starting from continued strengthening of inter-regional power transmission links, open access to transmission and later to distribution links, releasing the under-utilised captive capacities, to the designing of an effective market mechanism suited to India's needs. In the short term, market rules should promote economic efficiency, so that customer loads are served and reliability is maintained at the lowest possible cost. In the long term, the market should produce prices that stimulate appropriate levels of investments in new generation and transmission capacity. In recent times, the number of private investors in the power sector has steadily increased.

Main Thrust

The policy lays down the approach for developing rural electrification distribution backbone and village electrification to achieve the target of completing household electrification in next five years as envisaged in the National Common Minimum Programme. The policy further envisages financial support in terms of capital subsidy to States for rural electrification and special preference to Dalit Bastis, Tribal Areas and other weaker sections for rural electrification. The policy also aims at full development of hydroelectric power.

Principle Objectives

The principle objectives of the National Electricity Policy can be summarized as follows:

(a) Access to Electricity - Available for all households in next five years.

- (b) Availability of Power Demand to be fully met by 2012. Energy and peaking shortages to be overcome and adequate spinning reserve to be available. Supply of reliable and quality power of specified standards in an efficient manner and at reasonable rates.
- (c) Per capita availability of electricity to be increased to over 1000 units by 2012.
- (d) Minimum lifeline consumption of 1 unit/household/day as a merit good by year 2012.
- (e) Financial Turnaround and Commercial Viability of Electricity Sector.
- (f) Protection of consumers' interests.

Investment Policy

The Government has allowed 100 per cent FDI through the automatic route in the power sector across generation, transmission, distribution and power trading, the need for capacity enhancements both in term of installations and equipment, providing ample scope for foreign investment and the overall economic growth of the country.

The policy also provides tax incentive by allowing deduction of 100 per cent of the profits from business for a period of 10 years for generation, distribution and transmission of power, commencing before 31.3.2006.

In addition, steps have also been taken by the Government of India to encourage Mega Power Projects (i.e. 1,000 MW thermal power projects and 500 MW hydroelectric power projects) catering to the electricity requirements of more than one State.

The Government is also keenly encouraging private participation in the power sector, while taking the initiative in seeking overseas investment. The guidelines for private sector participation in transmission sector envisage two distinct routes: -

- (i) Joint Venture (JV) Route, wherein the Central Transmission Utility (CTU)/State Transmission Utility (STU) shall own at least 26 per cent equity and the balance shall be contributed by the Joint Venture Partner (JVP); and
- (ii) Independent Private Transmission Company (IPTC) Route, wherein 100 percent equity shall be owned by the private entity. Thus, significant investment opportunities exist in all the segments of the power sector.

Attractive investment opportunities are likely to develop in the distribution of power as several State Governments have agreed to allow entry of the private sector in distribution.

Overall, following are the key initiatives under the power policy to attract private participation and investment in the power sector:

- (i) Private sector is permitted to set up coal, gas or liquid based thermal projects, hydel projects and wind or solar projects of any size;
- (ii) Role of the Central Government is minimal and the State Government and State Electricity Boards (SEBs) are empowered to negotiate directly with developers, facilitating speedy clearances for the investors;
- (iii) Ancillary sectors such as coal have been significantly deregulated;

- (iv) Twenty two States namely, Orissa, Haryana, Andhra Pradesh, Uttar Pradesh, Karnataka, West Bengal, Tamil Nadu, Punjab, Delhi, Gujarat, Madhya Pradesh, Maharashtra, Rajasthan, Himachal Pradesh, Assam, Chhattisgarh, Uttaranchal, Goa, Bihar, Jharkhand, Kerala, Arunachal Pradesh have constituted their respective State Electricity Regulatory Commission (SERC) and Tripura, Meghalaya, Mizorum, Nagaland, Manipur, Sikkim have shown willingness to constitute their respective State Electricity Regulatory Commission (SERC). SERCs of Orissa, Andhra Pradesh, Uttar Pradesh, Maharashtra, Gujarat, Haryana, Karnataka, Rajasthan, Delhi, Madhya Pradesh, Himachal Pradesh, West Bengal, Uttaranchal and Punjab have issued tariff orders;
- (v) The SEBs of Orissa, Haryana, Andhra Pradesh, Uttar Pradesh, Karnataka, Delhi and Rajasthan have been unbundled/corporatised. Fourteen States (Orissa, Haryana, Andhra Pradesh, Uttar Pradesh, Delhi, West Bengal, Maharashtra, Karnataka, Himachal Pradesh, Gujarat, Punjab, Arunachal Pradesh, Rajasthan and Tamil Nadu) have constituted/notified constitution of State Electricity Regulatory Commission;
- (vi) Repatriation of dividends in United States dollars is permitted;
- (vii) A ten-year tax holiday is granted from date of commencement of power generation as mentioned above.

Opportunities

The Planning Commission has estimated an investment of INR 7,253.25 billion for the power sector during the Eleventh Plan period (2007-11). Of this, power generation accounts for the highest share at 55.6 per cent, followed by distribution at 23.4 per cent, and transmission at 21 per cent. During the 10th Plan (2002-2007) & the 11th Plan (2007-2012), a total capacity addition of 1,13,000 MW has been envisaged, entailing an investment of INR 5,750 billion in power generation, transmission and distribution.

The Government of India has envisaged a capacity addition of 100,000 MW during 2002-2012 to meet its mission of power to All. National Electricity Plan, 2005 and National Common Minimum Programme have set the goal of providing access to electricity to 1000 units, meeting peak and energy shortages and having a spinning reserve of 5 per cent. An average economic growth rate of 9 per cent has been targeted during the 11th plan. Merchant Power Plants are identified as another investment opportunity by Ministry of Power, Government of India. The provisions under Electricity Act regarding non-discriminatory open access in transmission and distribution will facilitate the emergence of Merchant Power Plants. Merchant Power Plants are required to cater to the category of consumer of over 1 MW load that would be getting open access.

The Government of India announced the New Hydro Policy on 3rd January, 2008 to "address the problems with respect to tariff based bidding". The new policy seeks to balance the demands of all stakeholders including the developer, State Governments, consumers by creating a level playing field for private and public hydro power projects.

Following are the highlights of the policy:

- a. The competitive bidding which was available only to public undertakings upto 2011 is now available to private hydro power projects.
- b. The developer will now have the facility of merchant sale of upto 40 per cent of the saleable energy in hydro projects.

- c. An additional 1 per cent free power over and above 12% will be earmarked for a Local Area Development.
- d. Each project affected family (PAF) to get 100 units of electricity every month for a period of 10 years, free of charge.
- e. Project authorities to construct houses at resettled sites for project affected persons.
- f. At every project site an industrial training institute (ITI) will be set up six months before the beginning of the project work.

The other specific project opportunities include the following:

- (i) In power generation, a number of projects have been identified as Mega Power Projects (MPPs). Power Trading Corporation (PTC) was incorporated, for the purpose of buying power from Mega Power Projects under long-term Power Purchase Agreements (PPAs) and selling the power to the beneficiary states also under long-term PPAs. Transmission projects for power transfer area are available for competitive bidding by the Central Transmission Utility (Power Grid) and State Transmission Utilities (SEBs/Grid Corporations). The transmission system projects are being identified for competitive bidding by the Central and State Transmission Utilities.
- (ii) Liquid Fuel Based Projects using Low Sulphur Heavy Stock (LSHS), Furnace Oil (FO), Heavy Petroleum Stock (HPS), Naphtha, Vacuum Residue, Condensate and Orimulsion are permitted by the Government. Import of Liquefied Natural Gas (LNG) is also being considered for setting up large capacity combined cycle power plants.
- (iii) To meet the chronic demands of power and shortage of power generation, the Government of India initiated the launch of Ultra Mega Power Projects (UMPPs) in the year 2005, to accelerate the pace of capacity addition of 1,00,000 MW by the end of eleventh year of planning by way of rekindling private sector interest. The UMPPs are projects with a capacity of 4,000 MW or more, based on supercritical technology, involving huge investments of INR 160-INR 200 billion. They are considered as the extension of the MPPs, which failed to have an effect in the power production and had limited success. In order to set up such projects, the Ministry of Power has entered into an association with the Central Electricity Authority and the Power Finance Corporation (PFC). As the nodal agency, PFC carries out the initial development work like land acquisition and preparation of project reports. In each case, a special purpose vehicle (SPV), funded and owned by PFC, is floated. Projects are awarded on the basis of competitive bidding with the bidding based on the first year of quoted tariff. The SPV is then transferred to the successful bidder.

Four UMPPs have been awarded till date, through national tariff-based competitive bidding. They are located at Mundra (Gujrat), Sasan (Madhya Pradesh), Krishnapatnam (Andhra Pradesh) and Tilaiya (Jharkhand). The next four UMPPs identified for implementation are at Kudgi (Karnataka), Bedabaha (Orissa), Cheyyur (Tamil Nadu) and Munge (Maharashtra).

Attractive investment opportunities have come up in the distribution of power as several State Governments have allowed entry of the private sector in distribution. Hence, the growing market for power equipment and the need for faster capacity creation will encourage more strategic tie-up in the industry.

The Electricity Act, 2003

The Act aims to promote competition, protect consumer interests and provide power for all areas. For achieving these objectives the Act creates a liberal framework for power development and a competitive environment by facilitating private investment, de-licensing generation (except for hydro generation/nuclear) and distribution (in rural areas) and providing for multiple licensing in distribution. The Electricity Act also sets out stringent provisions for controlling theft of electricity and focuses on revenue recovery in cases of unauthorized use of electricity. It obliges States to restructure Electricity Boards and mandates creation of Regulatory Commissions who are to determine retail tariff from time to time. On the whole the Electricity Act provides for a liberal framework by opening access in transmission from outset and in distribution in phases (to be allowed by SERCs).

Following are some important features of the Electricity Act:

- (i) The Electricity Act, 2003 has created non-discriminatory open access in transmission i.e. all consumers with loads above 1 MW would have the right to get open access by January 2009.
- (ii) The Act requires that the Central Government prepares a National Electricity Policy in consultation with State Governments and thrusts the completion of rural electrification. The important aspects of the National Electricity Policy notified under the Act have already been highlighted earlier.
- (iii) The Act provides for license free generation and distribution in the rural areas. It also provides that generation is de-licensed and captive generation be freely permitted. Hydro projects would, however, need clearance from the Central Electricity Authority as per the Act.
- (iv) Private licensees in transmission and entry in distribution through an independent network are provided under the Act. Moreover the Act provides that distribution licensees would be free to undertake generation and generating companies would be free to take up distribution businesses.
- (v) Under the Act, as mentioned earlier, trading in power has been recognized as a distinct activity.
 - a. There would be a transmission utility at the Central as well as State level, which would be a Government company and have the responsibility of ensuring that the transmission network is developed in a planned and coordinated manner to meet the requirements of the sector. The load dispatch function could be kept with the transmission utility or separated. In case of separation, the load dispatch function would have to remain with the State Government, organization/company.
 - b. There would be open access in transmission from the outset with the provisions for surcharge for taking care of current level of cross subsidy with the surcharge being gradually phased out.
 - c. The SERCs may permit open access in distribution in phases with surcharge for
 - i. Current level of cross subsidy to be gradually phased out along with cross subsidies; and
 - ii. Obligation to supply for rural and remote areas stand alone systems for generations and distribution would be permitted.
- (vi) Trading as a distinct activity has been recognized, however, the regulatory commissions are empowered to fix ceilings on trading margins, if necessary.

- (vii) Where there is direct commercial relationship between a consumer and a generating company or a trader, the price of power would not be regulated.
- (viii) An appellate tribunal has been created for disposal of appeals against the decisions of the CERC and SERCs so that there is speedy disposal of such matters.

Provisions relating to theft of electricity have a revenue focus.

Non-Conventional Energy (Renewable)

Keeping in view the progress made, the Working Group for Renewable Energy for the Eleventh Plan (2007-12) has proposed a target of 14,000MW for grid-based renewable energy (Wind - 10,500 MW; Biomass-2,100 MW; Small hydro-1,400 MW). Currently, almost 7.7 per cent of the total commercial energy requirement of the country is being met via renewable sources. The Government is targeting to increase the contribution to 10 per cent i.e. 10,000 MW by 2012. The total estimated potential for power generation from renewable energy sources such as wind, small hydro, biomass and solar energy in the next 25 years will be 183,000 MW.

With respect to renewable energy sources, investment opportunities for foreign investors are available in the following areas:

- (i) Foreign investments are allowed in wind, solar photovoltaic, solar thermal, small hydro, biomass, co-generation, geothermal, tidal and urban & industrial wastes based power projects. Further, foreign investment is also allowed with respect to manufacturing of renewable energy systems and devices based on wide, solar photo-voltaic, solar thermal, small hydro, biomass, co-generation, geothermal, tidal and urban & industrial wastes for their utilisation in India and also for exports to developing and third world countries.
- (ii) Foreign investors can enter into a joint venture with an Indian partner for financial and/or technical collaboration and for setting up of renewable energy based power generation projects. No clearances are required from Central Electricity Authority for project up to INR 1 billion.

The Government of India also encourages foreign investors to set up renewable energy based power generation projects on BOO (Build-Own-Operate) basis. Various chambers of commerce and industry associations in India provide guidance to the investors in finding appropriate partners.

Conventional Energy (Non renewable)

Coal

India has 7 per cent of the world's proven coal reserves. Coal meets approximately 63 per cent of the country's total energy requirements. By current estimates the reserves are enough to meet India's needs for at least another 100 years. India now ranks 3rd amongst the coal producing countries in the world. 100 per cent FDI is allowed under the automatic route for coal & lignite mining for captive consumption.

Coal resources in India were nationalized for long. Subsequently, in the 90s the Government allowed private ownership of coal resources subject to specified end uses. Thus, coal resources were allocated to companies who would use coal for captive consumption in iron & steel manufacturing, production of cement, generation of power and washing of coal. Mining companies having back-to-back tie ups

for supply of coal to any company engaged in cement production, iron & steel manufacture and power generation are also eligible for allocation of coal blocks. Recently, the Government has also notified coal to liquid project as an approved end use for allocation of captive coal block. Further, the Government has proposed to allow wider private participation in coal resources. Reports suggest that the requisite amendment in the law to give effect to the proposal for wider participation of private players is in the pipeline. Further, the Government also proposes to introduce, amend the law and provide for grant of mining lease for coal on the basis of competitive bidding.

Applications for allocation of captive coal blocks are made to the Coal Ministry. An applicant in the private sector, fulfilling the qualifying norms cited above, can only apply for allocation of one of such coal blocks as is placed in a list notified by the Government in this regard (commonly referred to as "captive list"). The Coal Ministry decides upon approval of the allocation on the basis of the recommendation of an inter-ministerial screening committee. The grant of mining lease in respect of captive coal blocks is regulated under the Mines and Minerals (Development & Regulation) Act and the rules made thereunder. The normal tenure of a coalmine lease is for a period of 20-30 years and is subject to prescribed terms and conditions.

Coal is also made available to end users by the Government coal companies under Fuel Supply Agreements (FSA). The Coal Distribution Policy regulates provision of coal under the FSA regime. A new Coal Distribution Policy (NCDP) has become effective from 18th October, 2007.

The NCDP accords preferential status to power utilities and fertilizers sector. The NCDP provides that 100 per cent of the quantity as per normative requirements of power utilities and fertilizer plants will be considered for supply of coal through FSAs by Coal India Limited (CIL) (a Government coal company) at fixed prices determined by it. However, pursuant to a recent decision, coastal power plants are eligible to obtain only 70 per cent of their normative coal requirements under a FSA.

As regards consumers in other sectors with coal requirement in excess of 4200 tonnes, the NCDP provides that 75 per cent of the normative quantities required by such consumers will be considered for supply by the CIL through FSAs at prices to be fixed and notified by CIL. The quantity to be supplied by the CIL to any consumer is determined on a case to case basis by a Screening Committee constituted for such purpose. Such consumers are free to procure the balance coal requirement through imports and e-auction.

Once the supply of coal to a consumer is approved then the CIL or its subsidiary companies issue a Letter of Assurance (LOA) to the consumer. The LOA stipulates fulfillment of certain conditions precedent before the execution of a binding FSA. Further, upon issue of LOA, a consumer is also required to furnish a bank guarantee for an amount equivalent to 5 per cent of the value of the annual coal requirement of such consumer. The bank guarantee furnished by a consumer is subject to forfeiture if it cannot achieve the milestones stipulated in the LOA.

Ministry of Power in consultation with Ministry of Coal has identified 15 coal blocks with estimated reserves of about 3.6 billion tonnes for allocation to merchant and captive power plants.

The investment policy relating to coal mining is as follows:

(a) The private Indian companies setting up or operating power projects as well as coal or lignite mines for captive consumption in such projects are allowed foreign equity up to 100 per cent

- provided that the coal or lignite produced by them is meant entirely for captive consumption in power generation.
- (b) 100 per cent foreign investment in the equity of an Indian subsidiary of a foreign company or in the equity of an Indian company for setting up of coal processing plants in India may be allowed subject to the conditions that such an Indian subsidiary or the Indian company:
 - (i) Shall not do coal mining; and
 - (ii) Shall not sell the washed coal or sized coal from their Coal Processing Plants in the open market and shall supply the washed coal or sized coal from their Coal Processing Plants to the respective parties sending raw coal to such Coal Processing Plants for washing or sizing.
- (c) The other private Indian companies engaged in exploration or mining of coal and lignite for captive consumption for production of iron and steel and production of cement may be allowed automatic foreign equity up to 100 per cent.

Some of the other opportunities open to the foreign investor are:

- (a) Coal Washeries -The demand for washed coal is on the rise on account of factors like increase in per unit coal consumption for power generation, maintenance of power generation equipment, reduction in transportation costs and concern for the environment.
- (b) **Equipment Supply** Indian coal producing companies need the introduction of the latest technology both in underground and open cast mining and the supply of equipment by foreign manufacturers.
- (c) Engineering Services It is usual for Indian companies to utilize the services of external specialists for planning and designing mines and monitoring projects. Two areas where foreign technical assistance is much in demand are geotechnical and hydrogeological evaluations of the deposit and mine production planning.
- (d) Technology The Government encourages investment by the private sector in adoption of clean coal technologies like Integrated Gasification Combined Cycle, Pressurized Fluidised Bed Combustion, Coal Beneficiation and slurry combustion, in situ Coal Gasification and CBM exploitation, underground mining assistance on the project for subsidence and strata control in multiseam working in underground mines.

Coordinated Development

Electricity being a concurrent subject, a well-coordinated approach would be necessary for development of the power sector. This is essential for the attainment of the objective of providing electricity-access to all households and providing reliable uninterrupted quality power supply to all consumers. The State Governments have a major role, particularly in creation of generation capacity, state level transmission and distribution. The Central Government would assist the States in the attainment of this objective. It would be playing a supportive role in fresh capacity addition and a major role in development of the National Grid. The State Governments need to ensure the success of reforms and restoration of financial health in distribution, which alone can enable the creation of requisite generation capacity. The Regulatory Commissions have the responsibility of ensuring that the regulatory processes facilitate the attainment of this objective. They also have a developmental role whose fulfillment would need a less formal and a consultative process.

REAL ESTATE, CONSTRUCTION AND TOWNSHIP DEVELOPMENT

Introduction

The decision to liberalize FDI norms in the real estate sector is perhaps the most significant economic policy decision taken by the Government of India . The Indian real estate sector is attracting a lot of attention from foreign investors primarily due to such liberalization of FDI norms and the extremely promising timely returns to the investors.

In the past, only NRIs and PIOs were permitted to invest in the housing and the real estate sectors. Foreign investors other than NRIs were allowed to invest only in development of integrated townships and settlements either through a wholly owned subsidiary or through a joint venture company in India along with a local partner with the prior approval from FIPB.



Post Press Note 2 of 2005 Era

The Government of India, with a view to catalyze investment in townships, housing, built-up infrastructure and construction and development projects and with a vision to utilize the same as an instrument to generate economic activity, creation of new employment opportunities and to add to the available housing stock and built-up infrastructure, allowed FDI up to 100 per cent under the automatic route in townships, housing, built-up infrastructure and construction-development projects vide Press Note 2 of 2005 issued by the DIPP. The Government of India in the year 2005, subject to the certain development and investment criterion as mentioned below:

Development Criteria

- A minimum area of ten (10) hectares or twenty five (25) acres of land to be developed for serviced housing plots.
- For construction development projects, a prescribed minimum area of 50,000 square meters is needed to be developed.
- For a combination project, any one of above two conditions would suffice.
- At least 50 per cent of the project must be developed within a period of five years from the date of obtaining all statutory clearances.
- The foreign investor would not be permitted to sell undeveloped plots.
- The project shall conform to the norms and standards, including land use requirements and
 provision of community amenities and common facilities, as laid down in the applicable building
 control regulations, bye-laws, rules and other regulations of the State Government/Municipal/
 Local Body concerned.
- The foreign investor shall be responsible for obtaining all necessary approvals, including those of the building/layout plans, developing internal and peripheral areas and other infrastructure

facilities, payment of development, external development and other charges and complying with all other requirements as prescribed under applicable rules/bye-laws/regulations of the State Government/Municipal/Local Body concerned.

• The State Government/Municipal/Local Body concerned, which approves the building/development plans, would monitor compliance of the above conditions by the developer.

Investment Conditions

- Minimum capitalization of USD 10 million for wholly owned subsidiaries and USD 5 million for joint ventures with Indian partners.
- Funds to be brought in within six months of commencement of business.
- Original investment i.e USD 10 million for wholly owned subsidiaries and USD 5 million for
 joint ventures with Indian partners, cannot be repatriated before a period of three years from
 completion of minimum capitalization. Investor may be permitted to exit earlier with prior
 Government approval.
- Any investment over and above USD 5 million can be repatriated any time without any regulatory approval.

The stipulations contained in the Press Note 2 of 2005 are not applicable to Special Economic Zones projects; neither shall they apply to establishment and operation of hotels and hospitals in which 100 per cent FDI is already allowed under automatic routes as per Press Note 4 (2001 Series) and Press Note 2 (2000 Series) respectively.

Industrial Parks

Since the year 2000, FDI up to 100 per cent has been permitted under the automatic route in Industrial Park vide Press Note 2 of 2000. However, to do away with the confusion on the applicability of Press Note 2 of 2005 for construction and development of 'Industrial Park', Government of India published Press Note 3 of 2008 and clarified again that 100 per cent FDI is allowed for construction and development of Industrial Park. The said Press Note 3 of 2008 defined Industrial Park as a project in which quality infrastructure facilities in the form of plots of developed land or built up space or a combination with common facilities, is developed and made available to all the allottee units for the purposes of industrial activity. This press note further clarified that any restriction applicable



on construction and development projects in terms of Press Note 2 of 2005 shall not be applicable on construction and development of Industrial Parks provided, that the proposed real estate is developed for an activity falling within the wide definition of industrial activity and satisfies the following conditions prescribed under Press Note 3 of 2008:

(i) It comprises a minimum of 10 units with no single unit occupying in excess of 50 per cent of the allocable area; and

(ii) The minimum percentage of the area to be allocated for industrial activity is not less than 66 per cent of the total allocable area.

Certain tax benefits are available to any entity which only develops or develops and operates or maintains and operates an Industrial Park. However, in order to get the said tax benefits the said entity has to get itself registered and notified with the Indian Income Tax Authority under 'Industrial Park Scheme, 2008'.

Real Estate Mutual Funds

On June 26, 2006, the SEBI has cleared the pathway for Real Estate Mutual Funds. Moving ahead on April 25, 2008, SEBI announced amendments to the SEBI (Mutual Funds) Regulations, 1996 that permit to pave way for launch of Real Estate Mutual Funds (REMFs).

The REMF scheme is one which invests directly or indirectly in real estate assets or other permissible assets. Some of the key features of REMFs as allowed by SEBI are as follows:

- Existing mutual funds are eligible to launch REMFs if they have adequate number of experienced key personnel/directors.
- Every REMF scheme shall be close-ended and its units shall be listed on a recognized stock exchange.
- Net asset value (NAV) of the scheme shall be declared daily.
- At least 35% of the net assets of the scheme shall be invested directly in real estate assets.
- Each asset shall be valued by two valuers, who are accredited by a credit rating agency, every 90 days from date of purchase.
- Caps have been imposed on investments in a single city, single project, etc.
- The amended regulations have also specified accounting and valuation norms pertaining to REMF schemes.

Real Estate Venture Capital Funds

As a boost to the liberalization process, SEBI has also permitted foreign venture capital investment in real estate in 2005. This was after the Central Government further relaxed the rules regarding FDI in real estate, as noted above. It would be pertinent to note that Real Estate Investment Trust is not permitted to operate in India by SEBI. However, trusts if registered with SEBI as Venture Capital Fund (VCF) or as FVCI are allowed to invest in India subject to restrictions imposed under SEBI Regulations and FDI restrictions as discussed above.



It is important to highlight that investment through VCF or FVCI are not under the automatic route and the promoter of such VCF/FVCI is required to register with SEBI, which in turn has to take clearance from the RBI and of late RBI is very cautions in giving clearance to FVCI specially in case of real estate. Recently, in May 2009, the first SEBI recognised Real Estate Venture Capital Fund was launched in Kerela.

Real Estate Investment Trusts (REITs)

Bearing in mind that REITs have become a preferred public property investment vehicle around the world and can become the investment vehicle of choice for institutional and retail investors who are interested to participate in the real estate ownership, management and development. SEBI in the year 2008, issued a discussion paper on this subject.

Key points of the paper are highlighted below:

- (i) REITs would invest directly in real estate projects after collecting funds from investors through stock exchanges.
- (ii) Banks, public financial institutions, insurance companies and corporate houses can be trustees of REITs.
- (iii) REITs would be created under the Indian Trusts Act, 1882 and would have to be worth a minimum of INR 5 billion.
- (iv) REITs will be close ended and the schemes shall be compulsorily listed on the stock exchange.
- (v) REITs would be barred from making investments in vacant land subject to the guidelines laid down by SEBI.



The discussion paper was closed for comments in January 2008, and further legislative action on the part of the Government is eagerly awaited.

Investment in Real Estate by NRIs and PIOs

FDI by NRIs and PIOs has been granted special permission under the present FDI policy for investment in real estate and the investments made by them are not subject to Press Note 2 of 2005. Under the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2000, NRIs and PIOs have been given general permission to acquire any immovable property in India other than agricultural / plantation / farm house. However, PIOs may only purchase such property from funds received in India by way of inward remittance from any place outside India or from funds held in a non-resident account maintained in accordance with the provisions of FEMA.

Investment in Indian real estate sector by foreign investor by way of ECB.

Utilisation of proceeds of ECB is not permitted in real estate sector except for the purposes of development of integrated township (as defined below).

Prior to May 2007, ECB was allowed to be utilized for development of integrated township under the approval of RBI. However, in May 2007 RBI, withdrew this exemption accorded to the development of integrated township to avail ECB from the foreign investor.

However, RBI through its recent notification dated January 2, 2009 once again permitted that corporates engaged in the development of integrated township, as defined in Press Note 3 (2002 series) dated January 04, 2002, issued by DIPP, Government of India can utilised the proceeds of ECB under the Approval Route. The term 'Integrated township' is defined as to include housing, commercial premises, hotels, resorts, city and regional level urban infrastructure facilities such as roads and bridges, mass rapid transit systems and manufacture of building materials. Development of land and providing allied infrastructure forms an integrated part of township's development. The minimum area to be developed should be 100 acres for which norms and standards are to be followed as per the local bye-laws / rules. In the absence of such bye-laws/rules, a minimum of two thousand dwelling units for about ten thousand people would need to be developed.

Some key aspects which should be kept in mind by foreign investor while investing in Indian Real Estate Sector and/or negotiating with the Joint Venture Partner/Developer are as follow:

- Title of project land should be clear.
- Choice of Joint venture partner,
- Time lines for project completions,
- Necessary Approvals,
- Suitable tax, legal and financial structure.
- Controlling stake in joint venture.
- Exit options joint venture.

RETAIL TRADE

Introduction

Rising income levels, education and a global exposure are causing a fundamental shift in the Indian middle class purchasing and shopping habits. This underlies the scope of growth in the organized retail trade market in India. Retailing through formats such as supermarkets, hypermarkets, department stores and other specialty chains are increasing and the organized retail sector is expected to grow to about 12 per cent of the retail sector by 2010. Retail trading has contributed to the tune of 12 per cent of



the Indian GDP in the past few years and with the projected CAGR of around 40 per cent by 2013, the retail trading sector is perhaps one of the most lucrative and oft noticed.

Entry into Indian Retail Market

Leading industrial houses in the country are investing in the sector. This includes Foodworld, Shoppers' Stop, Cross-roads, Pyramid, Pantaloon and other such outlets.

Retailing through non-traditional channels such as fuelling stations, direct selling and home shopping television is on the rise. Traditionally, though, retail trading has been carried out through small neighbourhood shops run by a family or few individuals. Mostly such shops are a source of livelihood for these families and individuals. Therefore, the opening up of the retail sector to foreign investment has not been encouraged until recently.

FDI in retail trading was opened up in 2006. Prior to this, foreign retail brands were making inroads into the retail market in India using the franchise model. Foreign retail chains like Nike, Mango, Adidas, Swarovski, Benetton, Lifestyle, Zegna, Metro, etc. have already established their operations using the franchise model.

Foreign Direct Investment in Retail

The Government of India, in 2006, allowed FDI up to 51 per cent with prior FIPB approval, in the retail trade of 'Single Brand' products. This is, inter alia, aimed at attracting investments in production and marketing, improving the availability of such goods for the consumer, encouraging increased sourcing of goods from India and enhancing competitiveness of Indian enterprises through access to global design technologies and management practices. This would be subject to the following conditions-

- i) Products to be sold should be of a 'Single Brand' only.
- ii) Products should be sold under the same brand internationally.
- iii) 'Single Brand' product retailing would cover only products, which are branded during manufacturing.

FDI would be allowed only with prior approval of the Government of India. Application seeking permission of the Government for the FDI in retail trade of 'Single Brand' products would be made to the SIA, Department of Industrial Policy & Promotion. The application would specifically indicate the product/product categories which are proposed to be sold under a 'Single Brand'. Any addition to the product/product categories to be sold under 'Single Brand' would require a fresh approval of the Government.

Although FDI in the retail sector was not allowed in India, a number of multi national corporations had devised strategies to get around this hurdle and tap the retail sector in India. Some of these strategies are as follows.

Franchise:

- Foreign company licenses brand name and technology to local partner. Receives royalty and fees in return.
- In case master franchisee is appointed for region or country, he has the right to appoint local franchisees.
- Examples Nike, Mango, Adidas, Swarovski, Benetton, Lifestyle, Zegna, etc.

Manufacturing:

- Foreign company sets up Indian arm for production and manufacturing within India with or without a local partner.
- Example Bata.

Distribution:

- This can work as a part of the franchise model.
- Foreign company sets up local distribution office.
- Supply products to Indian retailers to sell.
- Also set up franchised outlets for brand.
- Examples Swarovski, Hugo Boss, etc.

Wholesale trading:

- Cash and Carry operations.
- 100 per cent FDI permitted.
- Examples Metro Cash & Carry, Bharti Walmart venture.

Given the potential and the positive growth outlook, it is only a matter of time before India fully opens up its USD 353 billion retail market to foreign investors.

SPECIAL ECONOMIC ZONES

Introduction

On 1st April 2000, the Government of India, with the intent to provide a boost to Indian exports, introduced the Special Economic Zone Scheme under the Export and Import Policy (now referred as "Foreign Trade Policy") (Policy) with the objectives of providing an internationally competitive and hassle free environment for earning of foreign exchange, inviting FDI, facilitating transfer of technology and generation of employment. The Policy, with certain amendments, was brought out into a special legislation in the form of the "Special Economic Zones Act, 2005" and rules made there under called the "Special Economic Zones Rules, 2006".

SEZ Developer and SEZ Unit

Investors have the option to either seek (i) to be a SEZ developer (Developer) or (ii) to establish a SEZ Unit or (iii) to be a SEZ Developer and establish a SEZ Unit.

The comparison in respect of the three options is set out below:

Description	SEZ Developer	SEZ Unit	SEZ Developer and SEZ Unit
Scope of Activity	Approved by the Board of Approval of Ministry of Commerce for the development of an SEZ which may include development of infrastructure, roads, airports, ports, transport system, generation and distribution of power, telecom, hospitals, hotels, educational institutions, leisure and entertainment units, residential/industrial/commercial complexes, water supply, sanitation and sewerage system and any other facility within the approved SEZ premises	Engaged in the business of export of goods/services	

Description	SEZ Developer	SEZ Unit	SEZ Developer and SEZ Unit
Incentives	i. 100 per cent of the profit derived from the business of development of SEZ exempt from Income Tax for a block of any 10 years within the first 15 years of operation of the SEZ	i. 100 per cent of the profit for the first 5 years and 50 per cent for the next 5 years derived from the business of export exempt from Income Tax. 50 per cent for the next 5 years to the extent that the profits are recultivated in the SEZ Unit by transferring to a Reinvestment Reserve Account	All incentives available to SEZ Developer and SEZ Unit would be available
	ii. Procurement of goods from India/ other countries exempted from VAT, Excise/Customs levy, respectively	ii. Procurement of goods from India/other countries exempt from Excise/ Customs levy. However, VAT exemption is not available on the supplies to the establishments operating in the nonprocessing area	
	iii. Services availed exempt from Service Tax	iii. Services availed exempt from Service Tax	

Description	SEZ Developer	SEZ Unit	SEZ Developer and SEZ Unit
Procedure and time period for approval	Relatively lengthy and complex procedure	Simpler and shorter procedure	Procedure to become SEZ Developer as well as the procedure to set up SEZ Unit would have to be followed independently
Investment	More investment required	Investment limited to cost of setting up Unit	Investment for both required separately
Land/area	Land acquisition being a sensitive public issue, most State governments require the Developers to acquire the requisite lands on their own. Though some State governments do assist the Developers, in cases where a major chunk of the earmarked land has already been acquired by a Developer	Can take allocated plot on lease in SEZ area	Once land acquired by the Developer, a specified land in the proceesing area can be earmarked to the unit for the approved activity

SEZ DEVELOPER

Eligibility Criteria

A SEZ can be developed and managed by any person (i.e. individual, NRIs, Indian or foreign companies, firms, HUF etc.) or by the Central Government or State Government and their agencies. An SEZ can also be set up in the joint sector by the Central Government or State Government and their agencies. A SEZ can also be set up in the joint sector by both the State Governments and their agencies and a private person.

Foreign Direct Investment in SEZs

FDI up to 100 per cent is allowed through the automatic route for all manufacturing activities in SEZs, except for the following activities:

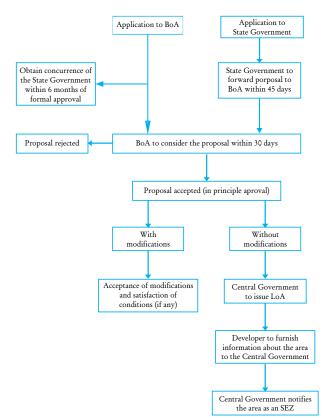
- Arms and ammunition, explosives and allied items of defence equipments, defence aircraft and warships;
- Atomic substances;
- Narcotics and psychotropic substances and hazardous chemicals;
- Distillation and brewing of alcoholic drinks; and
- Cigarettes/cigars and manufactured tobacco substitutes.

For services, norms as notified, would be applicable.

Procedure

- 1) Any person, who intends to set up a Special Economic Zone, shall identify the area for developing the SEZ.
- 2) After such person has identified the area for developing the SEZ:
 - a) He may make a proposal to the State Government concerned for the purpose of setting up the SEZ in the manner as given in Form A of the SEZ Rules, 2006. The State Government concerned, after due consideration, shall forward it to the Board of Approval (BOA).
 - b) Or he may, at his option, make a proposal directly to the BOA for the purpose of setting up a SEZ. In such case, the person concerned shall be required to obtain concurrence of the State Government concerned within 6 months of the date of approval of the proposal.
- 3) Salient issues that may arise at the application stage:
 - a) It is necessary to convince the relevant authorities about the promoter's credentials.
 - b) It is necessary to prove to the relevant authorities that the Developer has past experience in establishing and maintaining such large scale projects.
 - c) It is necessary to furnish proof of title to the land and to provide land details.
 - d) It is necessary to convince the relevant authorities that the Developer has entered into necessary financial arrangements to ensure that all the financial costs relating to the project have been taken care of.
 - e) The relevant authorities should be convinced of the benefits which the project will provide to the Government (both State and Central) and the role the project will play in development of the area.

The steps involved in the issuance of a Letter of Approval to an SEZ Developer may be understood better from the adjacent table:



After the Letter of Approval is issued, the Developer shall supply the exact details of the identified area of the SEZ to the Central Government along with proof of its legal right and possession. In case the SEZ land is taken on lease the same should be for a minimum period of 20 years and this shall be supported by a certificate from the State Government that the land is free from all encumbrances. It is also a requirement that the area to be notified should be contiguous and vacant as deemed by the BOA.

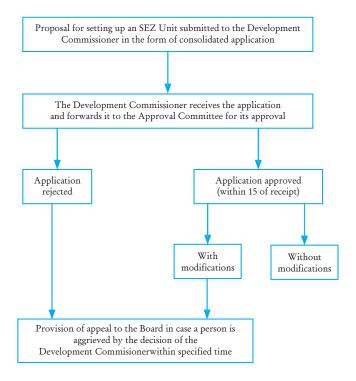
After the submission of such details and other details, if any, required by the Central Government and on acceptance by the Developer of the conditions specified in the Letter of Approval, the Central Government shall notify the identified area as a Special Economic Zone.

SEZ UNIT

A SEZ Unit (Unit), is a unit or a branch of a business establishment set up in the processing area of the SEZ for carrying out one or more authorized operations only. In essence, a SEZ Unit is a micro entity within the SEZ, set up for manufacture of goods and/or rendering services or for activities of trading and warehousing. An application for setting up a SEZ Unit may be made to the Development Commissioner in the specified format. One of the primary obligations of a Unit is that it must earn foreign exchange through its activities, which may include, *inter alia*, supply of goods and services to other Units in SEZs.

SEZ Units qualify for FDI approval through the automatic route, subject to sectoral norms.

The procedure involved for setting up a SEZ Unit may be understood better by the following chart:



In case the application is accepted (with or without modifications), the entity is allowed to function as a SEZ Unit.

Area Requirements

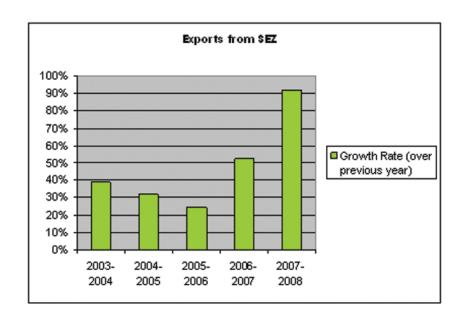
Sr. No.	Type of SEZ	Area	Area for Special States and* Union Territories
1.	Multi-Product	1000 Hectares	200 Hectares
2.	Multi- Services	100 Hectares	100 Hectares
3.	Sector Specific	100 Hectares	50 Hectares
4.	Electronic Hardware and Software including Information Technology Enabled Services	10 Hectares and minimum built up area of 100,000 sq. mtr.	10 Hectares and minimum built up area of 100,000 sq. mtr.
5.	Gems and Jewelry	10 Hectares and minimum built up area of 50,000 sq. mtr.	10 Hectares and minimum built up area of 50,000 sq. mtr.
6.	Bio-Technology	10 Hectares and minimum built up area of 40,000 sq. mtr.	10 Hectares and minimum built up area of 40,000 sq. mtr.
7.	Non-conventional energy including solar energy equipment, cell but not including non- conventional energy production and manufacturing	10 Hectares and minimum built up area of 40,000 sq. mtr.	10 Hectares and minimum built up area of 40,000 sq. mtr.
8.	Free Trade and Warehousing Zone	40 Hectares and minimum built up area of 100,000 sq. mtr.	40 Hectares and minimum built up area of 100,000 sq. mtr.

^{*} Special States include Arunachal, Assam, Goa, Himachal Pradesh, Jammu & Kashmir, Mizoram, Manipur, Sikkim, Tripura and Uttranchal.

Statistics

Over the last five years, exports from the functioning SEZs are as under

Year	Value (INR in billions)	Growth Rate (over previous year)
2003-2004	138.54	39 per cent
2004-2005	183.14	32 per cent
2005-2006	228.40	24.7 per cent
2006-2007	347.87	52.3 per cent
2007-2008	666.38	92 per cent



Current investment and employment:

Investment: INR 138.64 billion
Employment: 39,49,203 persons

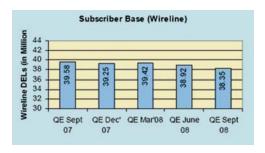
TELECOMMUNICATION

The Indian telecommunications sector has emerged as one of the most dynamic sectors in the country and has been identified by many as one of the sectors which would continue to expand despite the current economic meltdown. For a country that stood at the bottom of the pyramid in terms of tele density a decade ago, the year 2008 was a watershed for the sector when India's subscriber base topped 350 million users to make its network the second largest in the world after China, displacing the United States. The major credit for this leap goes to the mobile telephony segment of communications. The year 2008 also saw Indian telecom operators add a whopping 8-10 million new subscribers to the network each month, making a host of global companies look towards India as their next big market for growth, especially in the hinterland.

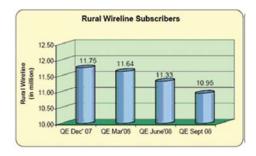
TRAI in its "Indian Telecom Services Performance Indicators July- September 2008", a periodical report providing broad perspective on the telecom services to serve as a reference document for various stakeholders, research agencies and analysts, has outlined the following figures:



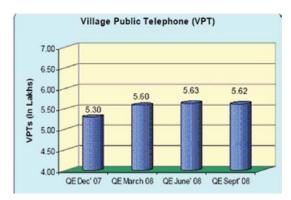
1. Wireline services subscriber base stood at 38.35 million in the quarter ending September 2008 as compared to 38.92 million in the quarter ending June 2008.



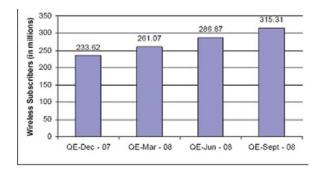
2. Rural Wireline Subscriber base stood at 10.95 million in the quarter ending September 2008 as compared to 11.33 million in the quarter ending June 2008.



3. Number of Village Public Telephones (VPTs) have decreased from 5.63 lakhs in the quarter ending June 2008 to 5.62 lakhs in the quarter ending September 2008.



4. Wireless subscribers have reached 315.31 million as on 30th September 2008 as against 286.87 million subscribers in the previous quarter.



5. There are 233.68 million GSM subscribers (74.11 per cent) and 81.63 million CDMA subscribers (25.89 per cent) at the end of September 2008.



- 6. There are 12.24 million Internet subscribers at the end of September 2008 as compared to 11.66 million at the end of June 2008 registering a growth of 4.97 per cent.
- 7. There are 88.27 million wireless data subscribers at the end of September 2008 [capable of accessing data services including internet through mobile handsets (GSM/CDMA)]
- 8. The number of Broadband subscribers (with a download speed of 256 Kbps or more) was 4.90 million at the end of September 2008 as compared to 4.38 million at the end of June 2008.

These numbers illustrate the growth vividly. The dynamics of the sector has stirred the global players more than ever and hence investments in the sector are also on the rise.

The sector has also undergone a substantial change in terms of mobile versus fixed phones and public versus private participation.

Investors can look to capture the gains of the Indian telecom boom and diversify their operations outside developed economies that are marked by saturated telecom markets and lower GDP growth rates. Most of the regulatory ambignities are being gradually cleared which has heightened interest of investors in the Indian telecom sector.

India opened its telecom sector as a part of economic reforms initiated in 1991. While the formal opening of the Indian telecom services sector began in 1994 with the National Telecom Policy (NTP 1994), the sector witnessed the first concrete move towards establishing a liberalized telecom sector with the establishment of the TRAI. With the advent of the New Telecom Policy of 1999 (NTP 99), the sector has been further liberalized and the licensing of all telecom services is carried out under the policy framework of NTP 99.

A number of new policy initiatives have been taken to implement the NTP 99 in a time bound manner, which are intended to introduce greater degree of competition among the telecom operators.

Key features of the NTP 99 include:

- Strengthening of Regulator.
- National long distance services opened to private operators.
- International long distance services opened to private sectors.
- Private telecom operators licensed on a revenue sharing basis, plus a one-time entry fee.
- Resolution of problems of existing operators envisaged.
- Direct interconnectivity and sharing of network with other telecom operators within the service area was permitted.
- Department of Telecommunication Services (DTS) corporatized in 2001.
- Spectrum Management made transparent and more efficient

FDI Policy

FDI of up to 100 per cent is permitted in:

- Manufacturing of telecom equipment;
- Internet services (not providing international gateways);
- Infrastructure providers (Category I);
- E-mail services:
- Voice mail services;
- Call centres for IT enabled services;



The Government, vide its Press Note 5 (2005 Series) dated 3.11.2005, had notified the enhancement of FDI limits from 49 per cent to 74 per cent in certain telecom services subject to specified conditions. However, this Note now stands superseded by Press Note 3 (2007 Series) dated 19.4.2007 wherein the limit enhancement to 74 per cent has been made applicable to the following telecom services-Basic, Cellular, Unified Access Services, National/International Long Distance, V-Sat, Public Mobile Radio Trunk Services (PMRTS), Global Mobile Personal Communications Services (GMPCS) and other value added services subject to the following conditions:

1. The total composite foreign holding including but not limited to investments by Foreign Institutional Investors (FIIs), Non Resident Indians (NRIs), Foreign Currency Convertible Bonds (FCCBs), American Depository Receipts (ADRs), Global Depository Receipts (GDRs), convertible preference shares held by foreign entity, proportionate foreign investment in Indian promoters/investment companies holding shares in the licensee company including their holding companies or a legal entity (such as mutual funds, trusts etc.), will not exceed 74 per cent. Thus, 74 per cent foreign investment can be made directly or indirectly in the operating company or through a holding company.

Hence, the remaining 26 per cent should be owned by resident Indian citizens or an Indian Company (i.e. Foreign Direct Investment does not exceed 49 percent and the management is with the Indian owners). The proportionate foreign component of such an Indian Company is also to be counted towards the ceiling of 74 per cent.

However, foreign component in the total holding of Indian public sector banks and Indian public sector financial institutions is treated as 'Indian' holding. The licensees companies are required to disclose the status of such foreign holding and certify that the foreign investment is within the ceiling of 74 per cent on a half yearly basis.

- 2. FDI up to 49 per cent is under the automatic route. FIPB approval is required for FDI in the licensee company/Indian promoters/investment companies including their holding companies if it has a bearing on the overall ceiling of 74 per cent. While approving the investment proposals, FIPB shall take note that investment is not coming from unfriendly countries.
- 3. The investment approval by FIPB shall envisage the conditionality that the company would adhere to the license agreement.
- 4. FDI shall be subject to laws of India and not the laws of the foreign country/ countries.
- 5. Security Conditions:
 - a. The Chief Officer in charge of technical network operations and the Chief Security Officer should be a resident Indian citizen.
 - b. Under the provisions of Press Note 3 (2007 Series) details of infrastructure/ network diagram (technical details of the network) could be provided on a need basis only to telecom equipment suppliers/manufacturers and the affiliate/parents of the licensee company. Clearance from the licensor Public Mobile Radio Trunk Services (Department of Telecommunications, Government of India) would be required if such information is to be provided to anybody else.
 - c. For security reasons, domestic traffic of such entities as may be identified/ specified by the licensor shall not be hauled/routed to any place outside India.

- d. The licensee company shall take adequate and timely measures to ensure that the information transacted through a network by the subscribers is secure and protected.
- e. The officers/officials of the licensee companies dealing with the lawful interception of the messages will be resident Indian citizens.
- f. The majority Directors on the Board of the company shall be Indian citizens.
- g. The positions of the Chairman, Managing Director, Chief Executive Officer (CEO) and/or Chief Financial Officer (CFO), if held by foreign nationals, would require to be security vetted by Ministry of Home Affairs (MoHA). Security vetting shall be required periodically on yearly basis. In case something adverse is found during the security vetting, the direction of MoHA shall be binding on the licensee.
- h. The Company shall not transfer the following to any person/place outside India:
- i. Any accounting information relating to subscriber (except for international roaming/billing) (Note: it does not restrict a statutorily required disclosure of financial nature); and
 - (i) The company must provide traceable identity of their subscribers. However, in case of providing service to roaming subscriber of foreign companies, the Indian company shall endeavour to obtain traceable identity of roaming subscribers from the foreign company as a part of its roaming agreement.
 - (ii) User information (except pertaining to foreign subscribers using Indian Operator's network while roaming)
- j. On request of the licensor or any other agency authorised by the licensor, the telecom service provider should be able to provide the geographical location of any subscriber (BTS location) at a given point of time.
- k. The Remote Access (RA) to network would be provided only to approved location(s) abroad through approved location(s) in India. The licensor (Department of Telecommunication) in consultation with the Security Agencies (IB) would give the approval for location(s).
- 1. Under no circumstances, should any RA to the suppliers/manufacturers and affiliate(s) be enabled to access Lawful Interception System (LIS), Lawful Interception Monitoring (LIM), call contents of the traffic and any such sensitive sector/data, which the licensor may notify from time to time.
- m. The licensee company is not allowed to use remote access facility for monitoring of content.
- n. Suitable technical device should be made available at Indian end to the designated security agency/licensor in which a mirror image of the remote access information is available on line for monitoring purposes.
- o. Complete audit trail of the remote access activities pertaining to the network operated in India should be maintained for a period of six months and provided on request to the licensor or any other agency authorised by the licensor.
- p. The telecom service providers should ensure that necessary provision (hardware/software) is available in their equipment for doing the Lawful interception and monitoring from a centralized location.

- q. The telecom service providers should familiarize/train Vigilance Technical Monitoring (VTM)/security agency officers/officials in respect of relevant operations/ features of their systems.
- r. It shall be open to the licensor to restrict the licensee company from operating in any sensitive area from the national security angle.
- s. In order to maintain the privacy of voice and data, monitoring shall only be done upon authorisation by the Union Home Secretary or Home Secretaries of the States/ Union Territories.
- t. For monitoring traffic, the licensee company shall provide access of their network and other facilities as well as to books of accounts, to the security agencies.
- u. The aforesaid security conditions shall be applicable to all the licensee companies operating the telecom services covered under the said Press Note irrespective of the level of FDI.
- v. Other Service Providers (OSPs), providing services like Call Centres, Business Process Outsourcing (BPO) tele-marketing, tele-education, etc, are registered with DoT as OSP. Such OSPs operate the service using the telecom infrastructure provided by licensed telecom service providers and 100 per cent FDI is permitted for OSPs. As the security conditions are applicable to all licensed telecom service providers, the security conditions mentioned above shall not be separately enforced on OSPs.

The above conditions are also applicable to the existing companies operating telecom services with the FDI cap of 49 per cent. An unconditional compliance to the above conditions is to be submitted by the existing telecom services providers to the licensor within 3 (three) months from the date of the Press Note and, thereafter, a bi-annual compliance report is to be submitted on every 1st day of January and July of each year. These sectoral caps have been reaffirmed by the Government vide Press Note 7 (2008 Series) subject to the compliance of the requirements of Press Note 3 (2007 Series).

However, there has been one alteration in the above scenario. As outlined above, Press Note 3 of 2007 states that both direct and indirect foreign investment in the licensee company shall be counted for the purpose of FDI ceiling and lays down the methodology for the proportion method used in the telecom sector for calculating FDI. Recently, the DIPP has issued Press Note 2 of 2009 which has broadened the scope for additional foreign investments into Indian companies. According to the said Press Note, the foreign investment through the investing Indian company would not be considered for calculation of the indirect foreign investment in case of Indian companies which are 'owned and controlled' by resident Indian citizens and/or Indian companies which are owned and controlled by resident Indian citizens. Hence the provisions relating to calculation of indirect FDI in telecom companies in Press Note 3 of 2007 above now stand deleted and superseded by the relevant provisions of Press Note 2 of 2009. Press Note 3 of 2009 has also been issued which lays down guidelines for transfer of ownership or control of Indian companies in sectors with caps from resident Indian citizens to non-resident entities. Press Note 4 of 2009 has further qualified the new guidelines laying down therein the regulations governing the downstream investment by Indian investing companies.

Apart from the above Press Notes which govern FDI in telecom, the DoT, Government of India, has issued guidelines for intra service area Merger of Cellular Mobile Telephone Service (CMTS)/Unified Access Services (UAS) Licenses in April 2008. The salient features of the said guidelines are as follows:

- 1. Prior approval of the DoT shall be necessary for merger of the licence.
- 2. Merger of licences shall be restricted to the same service area.
- 3. Merger of licence(s) shall be permitted in the following category of licences:
 - a. Cellular Mobile Telephone Service (CMTS) Licence with Cellular Mobile Telephone Service (CMTS) Licence;
 - b. Unified Access Services Licence (UASL) with Unified Access Services Licence (UASL);
 - c. Cellular Mobile Telephone Service (CMTS) Licence with Unified Access Services Licence (UASL); merged licences in all the categories above shall be in UASL category only.
- 4. The relevant service market be defined as wireline and wireless services. Wireless service market shall include fixed wireless as well.
- 5. Exchange Data Records (EDR) shall be used in the calculation of wireline subscribers and specifically Visitor Location Register (VLR) data, in the calculation of wireless subscribers for the purpose of computing market share based on subscriber base.
- 6. For determination of market power, market share of both subscriber base and adjusted gross revenue of licensee in the relevant market shall be considered to decide the level of dominance for regulating the M&A activity.
- 7. The duly audited Adjusted Gross Revenue shall be the basis of computing revenue based market share for operators in the relevant market.
- 8. The market share of merged entity in the relevant market shall not be greater than 40 per cent either in terms of subscriber base separately for wireless as well as wireline subscriber base or in terms of Adjusted Gross Revenue.
- 9. No M&A activity shall be allowed if the number of UAS/CMTS access service providers reduces below four in the relevant market consequent upon such an M&A activity under consideration.
- 10. Consequent upon the Merger of licences in a service area, the post merger licensee entity shall be entitled to the total amount of spectrum held by the merging entities, subject to the condition that after merger, licensee shall meet, within a period of 3 months from date of approval of merger by the Licensor, the prevailing spectrum allocation criterion separately for GSM & CDMA technologies, as in case of any other UAS/CMTS licensee(s).
- 11. In case of failure to meet the spectrum allocation criterion in the above mentioned period of 3 months, post merger Licensee shall surrender the excess spectrum, if any, failing which it may be treated as violation of terms & conditions of the licence agreement and action shall be taken accordingly. In addition, after the expiry of the above mentioned period of 3 months, the applicable rate of spectrum charge shall be doubled every 3 months in case of excess spectrum held by post merger licensee.

- 12. Further, the spectrum transfer charge, as may be specified by the Government, shall be payable within the prescribed period.
- 13. On merger, spectrum enhancement charge shall also be charged as applicable in case of any other UAS/CMTS licensee.
- 14. Discretion to choose the band to surrender the spectrum beyond the ceiling will be of the new entity.
- 15. All dues, if any, relating to the licence of the merging entities in that given service area, will have to be cleared by either of the two licencees before issue of the permission for merger of licences.
- 16. In case consequent to merger of licences in a service area, the licensee becomes a "Significant Market Power" (SMP) post merger, then the extant rules & regulations applicable to SMPs would also apply to the merged entity.
- 17. The annual license fee and the spectrum charge are paid as a certain specified percentage of the AGR of the licensee. On the merger of the two licenses, the AGR of the two entities will also be merged and the license fee will be therefore levied at the specified rate for that service area on the resultant total AGR. Similarly, for the purpose of payment of the spectrum charge, the spectrum held by the two licensees will be added/merged and the annual spectrum charge will be at the prescribed rate applicable on this total spectrum. However, in case of holding of spectrum for various technologies by the entity subsequent to M&A, spectrum charges & license fee etc. or any other criterion being followed by the licensor shall be applicable as in case of any other UAS/CMTS licensee.
- 18. For regulating acquisitions of equity stake of one access services licensee company/legal person/promoter company in the enterprise of another access services licensee in the same license area, present guidelines on Substantial Equity shall continue which is reproduced below:
 - "No single company/legal person, either directly or through its associates, shall have substantial equity holding in more than one LICENSEE Company in the same service area for the Access Services namely; Basic, Cellular and Unified Access Service. 'Substantial equity' herein will mean 'an equity of 10% or more'. A promoter company/Legal person cannot have stakes in more than one LICENSEE Company for the same service area."
- 19. Any permission for merger shall be accorded only after completion of 3 years from the effective date of the licences.
- 20. The duration of licence of the merged entity in the respective service area will be equal to the remaining duration of the Licence of the two merging licences whichever is less on the date of merger.
- 21. For example, if licence of company 'A' is merging with Licence of company 'B', then the remaining duration of licence of 'A' or 'B' whichever is less will be applicable for the merged entity in the respective service area.
- 22. The dispute resolution shall lie with Telecom Dispute Settlement and Appellate Tribunal as per TRAI Act 1997 as amended by TRAI (Amendment) Act 2000.
- 23. Licensor reserves the right to modify these guidelines or incorporate new guidelines considered necessary in the interest of national security, public interest and for proper conduct of telegraphs.

Investment incentives

A. Incentives to Promote Telecom Equipment Manufacturing

- 1. Customs duty on ITA-I (Information Technology Agreement) product reduced to zero with effect from 01.03.2005.
- 2. 4 per cent additional duty on import of ITA products to countervail the State level taxes.
- 3. No industrial licence for manufacturing of telecom equipment. Simple Industrial Entrepreneurs Memorandum (IEM) has to be filed with Secretariat for Industrial Assistance (SIA).
- 4. 100 per cent FDI through automatic route.
- 5. Fully repatriable dividend income and capital invested.
- 6. Payment of technical know-how fee of up to USD 2 million and royalty up to 5 per cent on domestic sales and 8 per cent on export sales, net of taxes, through automatic route.
- 7. Imposition of additional import duty, at the rate not exceeding 4 per cent ad-valorem, to countervail sales tax, value added tax, local taxes and other charges leviable on like goods on their sale or purchase or transportation in India.
- 8. Promotion of telecom product in specific SEZs.
- 9. Modification of EHTP/SEZs scheme to allow 100 per cent sales in the DTA for the purpose of meeting export obligations.

B. Incentives for Promotion of Service Sectors

- 1. Any undertaking which has started or starts providing telecommunication services whether basic or cellular, including radio paging domestic satellite service, network of trunking, broadband network and internet services on or after the 1st day of April, 1995, but on or before the 31st day of March 2005, will be allowed, in computing the total income, a deduction of, an amount equal to hundred percent of profits and gains derived from such business for ten consecutive assessment years.
- 2. Import of specified telecom equipment (ITA1 Products) is permitted at zero customs duty rates.
- 3. Import of all capital goods for manufacturing telecom equipment does not require any license.

C. Incentives for Exporters

- 1. 10-year income tax holiday for EOU/EPZ/STP/EHTP units.
- 2. Export income is exempt from income tax for all exporters.
- 3. Under the EPCG capital goods for pre production and post production (including CKD/ SKD thereof as well as computer software systems) at 5 per cent customs duty is permitted

- subject to an export obligation equivalent to 8 times of duty saved on capital goods imported to be fulfilled over a period of 8 years.
- 4. However, for SSI units, import of capital goods at 5 per cent customs duty shall be allowed subject to a fulfilment of an export obligation equivalent to 6 times the duty saved (on capital goods imported under the scheme) over a period of 8 years from the date of issue of licence provided the landed CIF value of such imported capital goods under the scheme does not exceed INR 2.5 million and the total investment in plant and machinery after such imports does not exceed the SSI limit.
 - However, in respect of EPCG licences with a duty saved of INR 1 billion or more, the same export obligation, as the case may be, shall be required to be fulfilled over a period of 12 years.
- 5. Tax holiday 100 per cent for five years and 30 per cent for next five years in a block of 15 years.
- 6. Infrastructure Telecom equipment exempted from customs duty.
- 7. Reduction of customs duty on mobile phones to 5 per cent.
- 8. Exemption from excise duty on cellular phones and its components, pagers, radio trunking terminals and parts.
- 9. Telecom services sector allowed the benefit of carry forward of losses on mergers.

Opportunities

With a view to attracting more investment in the telecom sector, the Government of India is providing opportunities for investors in the following:

1. International Long Distance Services (ILDS) - The ILDS is basically a network carriage service (also called Bearer) providing international connectivity to the network operated by foreign carriers. India had agreed, under the GATS, to review its opening up in 2004. However, open competition in this sector was allowed with effect from April 2002 itself. There is now no limit on the number of service providers in this sector. The licence for ILD service is issued initially for a period of 20 years, with automatic extension of the licence by a period of 5 years. The applicant company pays a one-time non-refundable entry fee of INR 25 million plus a bank guarantee of INR 250 million, which will be released on fulfilment of the roll out obligations. The annual licence fee including USO contribution is @ 6 per cent of the Adjusted Gross Revenue and the fee/royalty for the use of spectrum and possession of wireless telegraphy equipment are payable separately. At present, there are 10 ILD service providers (9 Private and 1 Public Sector Undertaking).

As per current roll out obligations under ILD license, the licensee undertakes to fulfil the minimum network roll out obligations for installing at least one Gateway Switch having appropriate interconnections with at least one National Long Distance (NLD) service licensee. There is no bar in setting up of Point of Presence (PoP) or gateway switches in remaining location of Level I Taxs. Preferably, these PoPs should conform to Open Network Architecture (ONA) i.e.

should be based on internationally accepted standards to ensure seamless working with other Carrier's Network.

The license is valid for twenty years from the date of license agreement and is extendable by 5 years. The FDI limit is 74 per cent and is subject to the conditions laid down in the relevant guidelines and the license agreement.

2. National Long Distance Services (NLDs) - NLDs have been opened up for free competition. NLD operators are permitted to carry intercircle long distance voice and data traffic and may also carry intra-circle traffic based on mutual agreement with the basic service operator. The license is valid for a period of 20 years, extendable by 10 years.

The Government announced, on 13.08.2000, the guidelines for entry of the private sector in National Long Distance Services without any restriction on the number of operators. The DOT guidelines of license for the National Long Distance operations were also issued, the key aspects of which are as follows:

- a. Unlimited entry for carrying both inter-circle and intra-circle calls.
- b. Total foreign equity (including equity of NRIs and international funding agencies) must not exceed 74 per cent. Promoters must have a combined net worth of INR 25 million.
- c. Private operators will have to enter into an arrangement with fixed-service providers within a circle for traffic between long-distance and short-distance charging centres.
- d. Seven years time frame set for rollout of network, spread over four phases. Any shortfall in network coverage would result in encashment and forfeiture of bank guarantee of that phase.
- e. Private operators to pay a one-time entry fee of INR 25 million plus a Financial Bank Guarantee (FBG) of INR 200 million. The revenue sharing agreement would be to the extent of 6 per cent.
- f. Private operators allowed to set up landing facilities that can access submarine cables and use excess bandwidth available.
- 3. Global Mobile Personal Communications Satellite (GMPCS) There is no restriction on the number of GMPCS licenses, which are issued on a first-cum-first-serve basis. Gateways for GMPCS are to be located in India and operation and maintenance of the same is to be with an organisation designated by the Government.
- 4. Basic Telephone Services Basic telephone services or wireline services have been opened up for free competition. For the purpose of licensing, the country has been divided into 21 service areas. State-owned operators provide services in all 21 service areas and private operators have commenced services in 8 service areas. Basic operators are permitted to carry their own long distance traffic within their service area. Direct interconnectivity and sharing of infrastructure with other service providers in the same service area has been permitted. Basic operators have also been permitted to provide limited mobility services. The license is valid for a period of 20 years, extendable by 10 years. The list of wireline service providers as on September 2008 is as follows:

S1. No.	Name of the Service Provider	Area of Operation
1	BSNL	All India except Delhi & Mumbai
2	MTNL	Delhi & Mumbai
3	Bharti Airtel Ltd	Andhra Pradesh, Gujarat, Haryana, Karnataka, Kerala, Madhya Pradesh, Delhi, Kolkata, Rajasthan, Maharashtra, Punjab, Tamil Nadu, UP-East, UP- West(including Uttaranchal) and West Bengal
4	Tata Teleservices (Maharashtra) Ltd.	Maharashtra, Mumbai
5	Tata Teleservices Ltd.	Andhra Pradesh, Gujarat, Bihar, Orissa,Himachal Pradesh, Karnataka, Kerala, Madhya Pradesh, Delhi, Kolkata, Chennai, Maharashtra, Punjab, Tamil Nadu, Rajasthan, UP-East, UP-West (including Uttaranchal) and West Bengal
6	HFCL Infotel Ltd	Punjab
7	Shyam Telelink Ltd	Rajasthan
8	Reliance Communications Ltd.	Andhra Pradesh, Gujarat, Bihar, Orissa,Himachal Pradesh, Karnataka, Kerala, Madhya Pradesh, Delhi, Kolkata, Chennai, Maharashtra, Punjab, Tamil Nadu, Rajasthan, UP-East, UP-West(including Uttaranchal) and West Bengal

5. Cellular Mobile Services- There are 23 Service Areas consisting of 19 Telecom Circle Service Areas and 4 Metro Service Areas for providing Cellular Mobile Telephone Service (CMTS). As per conditions of the License Agreement, cellular operators are free to provide, within their area of operation, all types of mobile services including voice and non-voice messages, data services and Public Call Offices (PCOs) utilizing any type of network equipment, including circuit and/or package switches that meet the relevant International Telecommunication Union (ITU) / Telecom Engineering Centre (TEC) standards.

With effect from 1st April, 2004, the license fee, excluding spectrum charges for cellular mobile telephone services is 10 per cent of "Adjusted Gross Revenue" (AGR) for Metro Service Areas and category 'A' circles, 8 per cent of AGR for category 'B' Circles and 6 per cent of AGR for category 'C' Circles.

The old cellular licensees (1st and 2nd CMTS licensees) in telecom circles have been given additional concession for a period of 4 years with effect from 1st April, 2004 in the license fee. The license fee, excluding spectrum charges for old cellular licensees (1st and 2nd CMTS licensees) in telecom circles is 8 per cent of "Adjusted Gross Revenue" (AGR) for category 'A' circles, 6 per cent of AGR for category 'B' Circles and 5 per cent of AGR for category 'C' Circles for a period of 4 years with effect from 1st April, 2004.

In addition to license fees, the CMTS licensees pay spectrum charges on revenue share basis of 2 per cent of AGR for spectrum up to 4.4 MHz. For spectrum beyond 4.2 MHz up to 6.2 MHz, they are required to pay additional charges @1 per cent of AGR. For spectrum beyond 6.2 MHz, which shall be given if the subscriber base is more than 500000, they are required to pay additional 1 per cent of AGR. Allocation of spectrum beyond 6.2 MHz is subject to availability; however, spectrum allocation would be limited to a maximum of 10MHz +10MHz per operator in a service area. Such additional allocation could be considered only after a suitable subscriber base, as may be prescribed, is reached. Consequent upon announcement of guidelines for Unified Access (Basic & Cellular) Services licenses on 11.11.2003, some of the CMTS operators have been permitted to migrate from CMTS License to Unified Access Service License (UASL).

No new CMTS and Basic service licenses are being awarded after issuing the guidelines for Unified Access Service Licence(UASL).

The status of total licensees as on 21st May 2009 is as follows:

BASIC LICENSEES : 2 CMTS LICENSEES : 38 UAS LICENSEES : 241 TOTAL LICENSEES : 281

- 6. Internet Services Internet services have been opened up for free competition. Licenses have been granted to approximately 376 licensees with over 200 companies already having commenced services. Internet service providers are permitted to establish their own International Gateways (Satellite or Submarine cable) for carrying Internet traffic and are also permitted to give bandwidth from gateway to other Internet service providers. A token license fee of INR 1 per annum is payable as license fee. The Government has revised guidelines for ISPs on 24th August, 2007 and new guidelines provide for ISP licenses with gateway component only and with 74 per cent FDI as per Press Note 3 (2007 series) detailed earlier in the chapter. Some of the salient features of the ISP guidelines are as follows:
 - a. An applicant company may be granted any number of licenses and there will be no limit of number of licenses granted in a particular area.
 - b. Performance Bank Guarantee of INR 20 million for Category 'A' Service Area, INR 2 million for each Category 'B' Service Area and INR 0.3 million for each Category 'C' Service Area has to be submitted.
 - c. License fee is waived unto 31.10.2003 and will be INR 1 per annum thereafter for those ISPs who obtain licenses prior to 01.11.2003; however, the Telecom Authority reserves the right to review and impose license fee including Universal Service Obligation (USO) levy anytime during the validity of the license, which decision with its terms and conditions, shall be binding on the licensee.
 - d. Private ISPs are permitted to setup their own gateways. ISPs are allowed to set up international gateways using satellite and submarine cable landing stations.
 - e. Under Simplified Exit policy, an ISP can surrender the Licence without starting the service, by paying surrender charges. The surrender charges would be equivalent to 5 per cent of the Performance Bank Guarantee (PBG) amount.

7. Broadband- Recognizing the potential of Broadband service in growth of GDP and enhancement in quality of life through societal applications, Government has announced a Broadband Policy in October 2004. The main emphasis is on the creation of infrastructure through various technologies that can contribute to the growth of broadband services. These technologies include optical fibre, Asymmetric Digital Subscriber Lines (ADSL), cable TV network, DTH etc. Broadband connectivity has been defined as "Always On" with the minimum speed of 256 kbps. It is estimated that the number of broadband subscribers would be 20 million by 2010. With a view to encourage Broadband Connectivity, both outdoor and indoor usage of low power Wi-Fi and Wi-Max systems in 2.4 GHz- 2.4835 GHz band has been de-licensed. The use of low power indoor systems in 5.15-5.35 GHz and 5.725-5.875 GHz bands has also been delicensed in January 2005. The SACFA/WPC clearance has been simplified. The setting up of National Internet Exchange of India (NIEI) would enable bringing down the international bandwidth cost substantially, thus making broadband connectivity more affordable.

The prime consideration guiding the Policy includes affordability and reliability of Broadband services, incentives for creation of additional infrastructure, employment opportunities, induction of latest technologies, national security and bringing in competitive environment so as to reduce regulatory interventions.

With this Policy, the Government intends to make available transponder capacity for VSAT services at competitive rates after taking into consideration the security requirements. The service providers are permitted to enter into franchisee agreement with cable TV network operators. However, the licensee shall be responsible for compliance of the terms and conditions of the licence. Further in the case of DTH services, the service providers are permitted to provide Receive-Only-Internet Service. The role of other facilitators such as electricity authorities, Departments of ITs of various State Governments, Departments of Local Self Governments, Panchayats, Departments of Health and Family Welfare, Departments of Education is very important to carry the advantage of broadband services to the users, particularly in rural areas.

In rural areas, connectivity of 512 KBPS with ADSL 2 plus technology (on wire) will be provided from about 20,000 existing exchanges in rural areas having optical fibre connectivity. Community Service Centres, secondary schools, banks, health centres, Panchayats, police stations etc. can be provided with this connectivity in the vicinity of above-mentioned 20,000 exchanges in rural areas. DOT will be subsidizing the infrastructure cost of Broadband network through support from USO Fund to ensure that Broadband services are available to users at affordable tariffs.

- 8. Other Value Added Services- The scheme for value added services has been considerably liberalised. These services include radio paging, public mobile radio trunking and domestic data using VSATs. Tele- education, tele-medicine, tele-banking, call centres are rapidly growing in India and they have recently witnessed significant investments from domestic and foreign investors.
- 9. Unified Access Services License- The guidelines for Unified Access (Basic & Cellular) Services, licenses for telecommunication services under NTP99 have been expanded to include the following, pursuant to the Addendum released to the New Policy of '99:
 - a. Unified license for Telecommunication Services permitting the licensee to provide all telecommunication/telegraph service covering various geographical areas using any technology;

b. License for Unified Access (Basic & Cellular) Services permitting the licensee to provide Basic and/or Cellular Services using any technology in a defined service area.

Under the Unified regime, the existing operators shall have an option to continue under the present licensing regime (with present terms and conditions) or migrate to Unified Access Services License (UASL) in the existing service areas, with the existing allocated/contracted spectrum.

Further, the license fee, service area, rollout obligations and performance bank guarantee will be the same as for the Fourth Cellular Mobile Service Provider. The service provider migrating to UASL will continue to provide wireless services in already allocated/contracted spectrum and no additional spectrum will be allotted under the migration process. Cross over allocation was not envisaged. In fact a reading of the standard clauses of the license in consonance with the UASL Guidelines in November 2002 clearly establish that while the UAS providers are free to use any technology without any restriction, the existing operators had the option to continue as they were or migrate to UAL in the existing service areas with the existing allocated/contracted spectrum. Thus clearly, the choice of technology/platform was available to the new licensees, but in respect of the existing operators, the guidelines made it clear that the technology choice had already been made and that the operator could only offer services in the allocated/contracted spectrum. Continuity of technology in providing telecom services was held to be the cornerstone of the UASL conditions and also spectrum allocation, which has always been considered as a scarce commodity. The guidelines provide freedom to use any technology without any restriction but it gets conditioned by the specific bands of spectrum and allocative principles. Freedom, once exercised, was regarded as the base.

However, in October 2007, the DOT vide a Press Release dated 19.10.2007, announced that it had, in principle, approved recommendations made by TRAI regarding, amongst others, the following two aspects:

- 1. Enhancement of the subscriber linked allocation criteria by a considerable number;
- 2. Permission of cross over allocation of spectrum by allowing both GSM and CDMA spectrum under the same license.
- 10. Virtual Private Network The DoT has issued guidelines for Internet Service Providers (ISPs) seeking permission to offer VPN services. As per the said guidelines, the ISPs are permitted to provide layer 2 and 3 [as defined in ITU-T Rec Y.1311 (03/2002)] VPN services over its network restricted to its licensed service area. Layer 1 VPN services are not permitted. ISPs are to pay tariff which shall be as prescribed by TRAI from time to time along with a one time refundable fee of INR 100 million, INR 20 million and INR 10 million for Category A, B and C respectively. In addition an annual license fee shall be charged at the rate of 8 per cent of Adjusted Gross Revenue generated under the license.

Initially, Financial Bank Guarantee (FBG) of an amount of INR 10 million, INR 2 million and INR 1 million for Category A, B and C ISPs respectively shall also have to be submitted by the ISP. Subsequently the amount of FBG shall be the estimated sum payable equivalent to license fees for the two quarters and other dues not otherwise securitised and any additional amount as deemed fit by the licensor. Under the provisional permission ISP are not allowed to engage in reselling bandwidth directly or indirectly. They shall, however, be permitted

to lay optical fibre cable or set up radio links for provision of the services under their license in its Service Area.

ISPs are also free to enter into mutually agreed commercial arrangement with authorized telecom service providers for sharing of infrastructure.

- 11. Other Service Provider (including BPO) Other Service Provider (OSP) means a company providing Application Services and the types of OSP registration are as classified below:
 - a. International Call Centres
 - b. Domestic Call Centres
 - c. Stand alone Domestic Call Centre
 - d. Sharing of common infrastructure
 - e. Network Operation Centre
 - f. Tele-banking
 - g. Tele-medicine
 - h. Tele-trading
 - i. Tele-education
 - j. E-Commerce
 - k. Vehicle Tracking System
 - 1. Long Range Alarm System
 - m. Bill Payment Terminal

Vide Press Note dated 23.8.2007, the Government had decided to decentralize the registration of call centres (Domestic and International) under the OSP category and the Telemarketers under 'Telemarketing' category from the DOT Headquarters to the respective Vigilance Telecom Monitoring (VTM) cells of the respective circles. This proved to be an immense success and hence further decentralization was introduced vide Press Note dated 2nd June 2008. Currently there are 34 VTM cells facilitating the smooth registration of call centres (Domestic and International) under the OSP category and the Telemarketers under 'Telemarketing' across the country.

12. 3rd Generation (3G) and Broadband Wireless Access (BWA) spectrum - 3G systems represent the next step in the evolution of mobile cellular communication. 2G systems focus on voice communication, while 3G systems support increased data communication. They allow high speed data transfer of at least 144 kbps, mobile Internet access, entertainment, and triple-play converged communications services, and have markedly greater capacity and spectrum efficiency than 2G systems. BWA technologies enable high-speed data communication over wireless links. BWA may offer significant advantages over wireline broadband systems based on cable network or DSL in terms of better coverage, speedy deployment, high scalability, lower maintenance and upgrade costs, and phased investment to match market growth.

The DoT vide guidelines dated 1st August 2008, laid down the following fundamental principles for the auction of 3G spectrum:-

- Spectrum in 2.1 GHz band shall be allocated for 3G services through bidding/auction.

- Any person who holds a UAS License or who fulfils the eligibility criteria for obtaining a UAS License and has previous experience of running 3G services can bid for 3G spectrum.
- Mergers and acquisitions shall be as per the guidelines dated 22nd April 2008 (detailed earlier in the chapter).
- The earnest money (in the form of a Bank Guarantee from a Scheduled Bank) shall be 25% of the reserve price.
- In the event of subsequent auctions, due to more spectrum becoming available, the reserve price will be the highest bid price of the last auction.
- Successful bidder shall deposit 25% of the successful bid amount as bid deposit within 5 days of the close of the auction, failing which the earnest money shall be forfeited.
- The successful bidder shall get spectrum allotment for a period of 20 years. Successful bidders who are not UAS Licensees would be granted a separate UAS License for the concerned service area under the Indian Telegraph Act 1885.
- The successful bidder shall obtain a separate clearance from Standing Advisory Committee on Radio Frequency Allocation (SACFA) as also a separate wireless operating license from Wireless Planning and Coordination (WPC) wing as per prescribed procedure.
- No annual spectrum charge shall be payable in the first year from the date of allotment of the spectrum. Thereafter, the licensee has to pay an annual spectrum charge of 1% of AGR.
- Vide separate guidelines also dated 1st August 2008, DoT laid down the following fundamental principles for the auction of BWA spectrum:
- Spectrum in 2.1 GHz band shall be allocated for BWA services through bidding/auction.
- Any person who holds a UAS License or who fulfils the eligibility criteria for obtaining a UAS License and has previous experience of running 3G services or who holds an Internet Service Provider (ISP) License can bid for BWA spectrum.
- Mergers and acquisitions shall be as per the guidelines dated 22nd April 2008 (detailed earlier in the chapter).
- Successful bidder shall deposit 25% of the successful bid amount as bid deposit within 5 days of the close of the auction, failing which the earnest money shall be forfeited.
- The successful bidder shall get spectrum allotment for a period of 15 years.
- The successful bidder shall obtain SACFA clearance as also a separate wireless operating license from WPC as per prescribed procedure.
- No annual spectrum charge shall be payable in the first year from the date of allotment of the spectrum. Thereafter, the licensee has to pay an annual spectrum charge of 1% of AGR.

Apart from the above guidelines, the DoT has issued an Information Memorandum (Memorandum) dated 12th December, 2008, which provides information for those parties wishing to bid for spectrum to support 3G and BWA services and supplements and updates the guidelines dated 1st August, 2008

along with the amendments thereto. In particular, the Memorandum gives a more exhaustive eligibility criteria for both 3G and BWA spectrum auction, which are as follows:

- 1. 3G For the spectrum in 2.1GHz band (3G Spectrum): Any entity
 - i. who holds a UAS/ Cellular Mobile Telephone Service (CMTS) licence; or
 - ii. (a) who has previous experience of running 3G telecom services either directly or through a majority-owned subsidiary; and (b) gives an undertaking to obtain UAS licence through a New Entrant Nominee UAS Licensee as per the DoT guidelines before starting telecom operations;
 - can bid for 3G Spectrum (subject to other provisions in the Memorandum).
- 2. BWA For the spectrum in 2.3 GHz and 2.5GHz bands (BWA Spectrum): Any entity:
 - i. who holds a UAS/ CMTS licence; or
 - ii. who holds a ISP licence (category 'A' or 'B'); or
 - iii. gives an undertaking to obtain a UAS licence through a New Entrant Nominee UAS Licensee as per the DoT guidelines before starting telecom operations;
 - can bid for BWA Spectrum (subject to other provisions of the Memorandum).

The Memorandum clarifies that since the DoT guidelines stipulate that a UAS licence can only be awarded to an Indian Company, foreign applicants will need to form an Indian subsidiary to obtain the UAS licence. Further foreign applicants are allowed to participate in the Auctions directly, but will need to apply for a licence subsequently through an Indian subsidiary since spectrum can only be allocated to an Indian company. It is important to note here that the foreign applicants have to comply with all the other relevant DoT as well as FDI guidelines while setting up their Indian subsidiary.

TRAVEL AND TOURISM

India offers a variety of categories of tourism like Cultural tourism which includes Indian fairs and festivals, Indian cuisine, Indian music and dance, Indian art, Spiritual tourism which includes yoga tourism and pilgrimage tourism, Nature tourism which includes beach tourism, adventure tourism, hill station tourism and wildlife tourism, Medical tourism which includes Ayurveda and other forms of medications, Historical tourism which includes the Indian palaces, forts and the rich Indian heritage.

Tourism is a major area of growth for the Indian economy. In the year 2007, it contributed 6.23 per cent to the GDP, 8.78 per cent of total employment in the country was in the tourism sector, generating about 53 million jobs, both direct and indirect. The growth of tourism in India has been significant and consistent in the last five years recording a double digit growth. India achieved spectacular progress in tourism with a growth rate that surpassed the global average. According to the Ministry of Tourism, India's share in the



tourist arrival has continued to increase from 2002 onwards. The Foreign Tourist Arrival (FTAs) rose from 3.46 million in 2004 to an estimated 5.08 million in 2007. This growth rate is more than the world growth figure of tourist arrivals which stood at 6.6 per cent and that of Asia Pacific Region which was 10.4 per cent. In terms of the international tourism receipts India has performed exceptionally well by recording an earning of 10.73 billion USD during 2007 thereby marking a growth of 24.3 per cent as compared to the year 2006. Here again India exceeded the world growth rate which was 15.4 per cent and also that of Asia Pacific which was 8.78 per cent.

The rank of India in international arrivals rose from 51st in 2003 to 42nd in 2007 and tourism receipts from 37th in 2003 to 20th in 2007. The period January to October of 2008 recorded a total of 4.32 million foreign tourist arrivals, an increase of 9.4 per cent as compared to the corresponding period in 2007. Domestic tourism visits in India increased from 309 million in 2003 to 527 million in 2007.

Tourism makes a significant contribution to India's foreign exchange earnings, which grew from US\$ 6.17 billion in 2004 to an estimated USD 11.96 billion in 2007. According to the latest



Tourism Satellite Accounting (TSA) research, released by the World Travel and Tourism Council (WTTC) and its strategic partner Accenture, India's travel and tourism industry was estimated to generate approximately USD 100 billion in 2008. This figure is expected to go up to almost

US\$ 275.5 billion by 2018, growing at an average of 9.4 per cent over the next ten years. Moreover, according to the TSA research, travel and tourism is expected to contribute 6.1 per cent to India's national GDP and provide almost 40 million jobs by 2018. Significantly, a country brand index (CBI) 2008 survey, conducted by FutureBrand—a leading global brand consultancy—in collaboration with public relations firm Weber Shandwick's Global Travel & Lifestyle Practice, has ranked India second in the value-for-money index.

Infrastructure Development

Considering the benefits that tourism brings, the Ministry of Tourism, Government of India is continuing with a multi pronged development strategy with a view to achieving even higher growth of quality tourism in the near future. The Ministry of Tourism sanctioned approximately INR 6.11 billion for Infrastructure development in the year 2007-08 and INR 4.82 billion in the year 2008-09 (Upto October 2008).



The Ministry has launched a scheme for development of nationally and internationally important destinations and circuits through Mega Projects. Till date 22 Mega Projects have already been identified and of these 15 projects have been sanctioned.

The Ministry aims to achieve 10 million foreign tourist arrivals and over 500 million domestic tourists in 2010. It is expected that tourist flow of this magnitude will lead to accumulation of additional foreign exchange to the tune of about USD 9 billion and about 15 million additional jobs.

International Awards and Recognition

- In the year 2008 India bagged three awards at the Busan International Travel Fair 2008 in South Korea. These three awards were Best Tourism Promotion Award, Best Tourism Publicity Award and Best Folklore Performance Award.
- Conde Nast Traveller, UK, in its Readers Travel Awards 2008 has ranked India among the top 2 most favoured countries in the world, consecutively for the 2nd year.
- India received the award for the leading destination at the Asia World Travel Awards 2008-"Asia and Indian Ocean" Ceremony, in Shanghai, China.
- PC World adjudged www.incredibleindia.org a winner of the PC World Web Award 2008.
- India received the World Travel Award 2008 for leading Responsible Tourism Destination.
- In November 2007 The United Nations World Tourism Organisation unanimously elected India as the Chairman of its Executive Council.

- India bagged the World Travel Awards 2007 in three categories (a) World's Leading Destination Marketing Award for the Incredible India Campaign (b) Asia's Leading Destination, and (c) Asia's Leading Tourist and Convention Bureau.
- Travel Trade Gazette (TTG), Asia Travel Group had chosen India as the Destination of the Year in the 18th TTG Travel awards-2007.
- The prestigious "World Travel Award 2008" for its role in developing and promotion of "Responsible Tourism" at the 14th World Travel Market (WTM) 2008 held at Excel, London in November, 2008.
- India successfully hosted the PATA Travel Mart 2008 in Hyderabad in September 2008. Approximately 1,089 trade delegates from 56 countries, comprising 374 global buyers from 324 organisations and 715 Asia Pacific seller delegates from 301 organisations participated in the Travel Mart.

Investment Policy

Tourism sector is an attractive sector for investment as 100 per cent FDI is permissible in this sector through the automatic route. Tourism related industry includes travel agencies, tour operating agencies and tourist transport operating agencies, units providing facilities for cultural, adventure and wildlife experience to tourists, surface, air and water transport facilities to tourists, leisure, entertainment, amusement, sports and health units for tourists and convention/seminar units and organization. The term hotels include restaurants, beach resorts and other tourist complexes providing accommodation and/or catering and food facilities.

Investment opportunity in Tourism

Hotels

Indian tourism sector is growing at one of the fastest rates in the world and the foreign tourist arrivals are targeted to grow to 10 million in 5 years. Even the domestic tourism is expected to increase by 15 per cent to 20 per cent per annum over the next 5 years. This will result in a rapid growth in average room rents and this is expected to continue until sufficient new supply comes on stream. Average room rates increased by over 15 per cent in 2007; the fastest growth rate was in 4-star and 5-star segments.

Potential

Ministry of Tourism estimated that there will be a shortage of 1,50,000 hotel rooms by 2010 all over the country. It is also estimated that 30,000 hotel rooms would be required in the NCR for the Commonwealth Games 2010.

• The growth momentum in domestic and international travel is expected to receive a further boost with more budget airlines/lower air-fares, open sky policies and expected improvements in travel infrastructure (roads, airports, railways)

- There are opportunities in all price and value chain segments due to the shortage of hotel stock; plans are on to increase quality accommodation from the current 110,000 rooms to 200,000 rooms by 2011.
- Significant requirement of hotel stock and tourist infrastructure for the Commonwealth Games in New Delhi in 2010.
- It is estimated that the hospitality sector is likely to see investments in excess of USD 11.41 billion in the next two years. Also, India is likely to have around 40 international hotel brands by 2011. Along with these large-scale expansion plans, international hotel asset management companies are also likely to enter India.

ONLINE TOURISM

Travel portals are cashing in on the booming demand for hotel rooms. There has been a surge in hotel booking on travel portals in the recent past. The online travel industry is a USD 800 million industry in India, that is, about 14 per cent of the entire travel industry.

COMMONWEALTH GAMES-2010 & CRICKET WORLD CUP-2011

India will host the Commonwealth Games in 2010 and the Cricket World Cup in 2011. The events are expected to increase both inbound tourism and domestic tourism in the country. With more than ten million foreign visitors expected to visit India for watching the events, India's share in global foreign tourism would go up almost 1.5 per cent in 2010 as compared to just 0.54 per cent in 2006.

AMUSEMENT PARKS

The amusement park industry in India has recorded an impressive growth of 56 per cent since 2002. This sector is expected to grow further. It is expected that by the year 2020 there would be 500 new amusement parks with fresh investment of INR 100 billion. Of this 50 per cent would be in terms of equipment of which 50 per cent would be indigenously manufactured. In terms of employment generation, the new parks are likely to create jobs for 60 million man-hours per month.

MEDICAL TOURISM

India represents one of the most potential medical tourism markets in the world. Factors such as low cost, scale and range of treatments provided by India differentiate it from other medical tourism destinations. The growth in India's medical tourism market is expected to serve as a boon for several associated industries also, including hotel industry, medical equipment industry and pharmaceutical industry.

In 2007, around 272,000 medical tourists visited India for medical tourism and together, they brought USD 656 Million in revenues. The Indian medical tourism market is expected to generate over USD 2.5 billion in revenue by 2012.

VENTURE CAPITAL

Domestic and offshore venture capital funds investing in India are governed by SEBI. The legal framework within which venture capital funds operate are broadly covered within the ambit of the SEBI Act, 1992, SEBI (Foreign Venture Capital Investors) Regulations, 2000 (FVCI Regulations) and the SEBI (Venture Capital Funds) Regulations, 1996 (VCF Regulations).

Foreign Venture Capital Investor

A Foreign Venture Capital Investor (FVCI) as defined under the FVCI Regulations means an investor incorporated and established outside India, registered under the FVCI Regulations and one that proposes to make investments in accordance with the FVCI Regulations. It is pertinent to note that it is not mandatory to register the overseas fund with SEBI under the FVCI Regulations; in that case any investment made by such unregistered fund would be treated as FDI.



FVCI investments are subject to the following conditions: -

- (i) It shall disclose its investment strategy to the SEBI;
- (ii) It can invest its total funds in one DVCF (defined later);
- (iii) It shall make investments as follows:
 - (A) At least 66.67 per cent of the investible funds shall be invested in unlisted equity shares or equity linked instruments of VCUs;
 - (B) Not more than 33.33 per cent of the investible funds may be invested by way of:
 - (a) Subscription to the initial public offer of a VCU whose shares are proposed to be listed;
 - (b) Debt or debt instrument of a VCU in which the FVCI has already made an investment by way of equity;
 - c) Preferential allotment of equity shares of a listed company subject to a lock in period of one year;
 - (d) The equity shares or equity-linked instruments of a financially weak company or a sick industrial company whose shares are listed;
 - (e) Special purpose vehicles which are created for the purpose of facilitating or promoting investment in accordance with the FVCI Regulations;
- (iv) It shall disclose the duration of life cycle of the fund.

The investment conditions/ restrictions stipulated in (iii) above must be achieved by the FVCI by the end of its life cycle. VCUs have been defined to mean domestic companies, which are not engaged in activities which have been classified under the Negative List specified by SEBI and whose shares are not listed on a recognized stock exchange in India.

The Negative List, as provided in Schedule III to the FVCI Regulations and Schedule III to the VCF Regulations, as amended by the SEBI (Foreign Venture Capital Investors) (Amendment) Regulations, 2004 and the SEBI (Venture Capital Funds) (Amendment) Regulations, 2004 respectively (w.e.f. April 5, 2004), includes the following:

1. Non-banking financial services excluding those Non-Banking Financial companies, which are

registered with Reserve Bank of India and have been categorized as Equipment Leasing or Hire Purchase companies.

- 2. Gold financing excluding those companies which are engaged in gold financing for jewellery.
- 3. Activities not permitted under the Industrial Policy of Government of India.
- 4. Any other activity, which may be specified by SEBI in consultation with the Government of India from time to time.

Domestic Venture Capital Fund

Domestic Venture Capital Funds (DVCF) as per the VCF Regulations means a fund established in the form of a trust or a company including a body corporate and registered under these regulations, which:

- (i) has a dedicated pool of capital;
- (ii) raised in a manner specified in the regulations; and
- (iii) invests in accordance with the regulations.

DVCFs are allowed to raise monies from investors whether Indian, foreign or non-resident Indians by way of issue of units. However, the DVCF cannot issue any document or advertisement inviting offers from the public for subscription or purchase of its units and can raise monies only through private placement of its units.

Minimum investment to be accepted from any investor should be INR 500,000 except in the case of employees, principal officers or directors of the DVCF, or directors of the Trustee Company or trustees where the DVCF has been established as a trust, employees of the manager of the DVCF where lower amounts may be accepted.

Each DVCF is required to have a minimum firm capital commitment from its investors of INR 50 million before the start of operations by the DVCF.

All investments made or to be made by a DVCF are subject to the following conditions:

- (i) A DVCF shall disclose the investment strategy at the time of application for registration.
- (ii) A DVCF cannot invest more than 25 per cent of its corpus in one VCU.
- (iii) A DVCF can invest in securities of foreign companies subject to such conditions or guidelines that may be stipulated or issued by the Reserve Bank of India and the SEBI from time to time.
- (iv) A DVCF is not permitted to invest in associate companies. An "associate company" has been defined to mean a company in which a director or trustee or sponsor or settler of the DVCF or the investment manager hold either individually or collectively, equity shares in excess of 15 per cent of the paid-up equity share capital of VCU.
- (v) A DVCF shall make investments subject to the following restrictions:
 - (a) At least 66.67 per cent of the investible funds shall be invested in unlisted equity shares or equity linked instruments of VCUs.
 - (b) Not more than 33.33 per cent of the investible funds can be invested by way of:
 - (1) Subscription to the initial public offer of a VCU whose shares are proposed to be listed;
 - (2) Debt or debt instrument of a VCU in which the DVCF has already made an investment by way of equity;

- (3) Preferential allotment of equity shares of a listed company subject to lock in period of one year;
- (4) The equity shares or equity-linked instruments of a financially weak company or a sick industrial company whose shares are listed;
- (5) Special purpose vehicles created by the DVCF for the purpose of facilitating or promoting investment in accordance with the VCF Regulations.
- (vi) A DVCF has to disclose the duration of life cycle of the fund.

The investment conditions/ restrictions stipulated in (v) above must be achieved by the DVCF by the end of its life cycle.

The SEBI has, vide the Securities and Exchange Board of India (Venture Capital Funds) (Amendment) Regulations, 2006 dated January 25, 2006, permitted DVCFs to invest in securities of foreign companies subject to the conditions or guidelines of the Reserve Bank of India and SEBI.

SEBI has also increased the application and registration for DVCFs to INR 0.1 million and INR 1 million respectively, vide (Venture Capital Funds) (Amendment) Regulations, 2006 dated September 4,2006. However, vide SEBI (Payment of Fees) (Amendment) Regulations, 2008, the registration fees has been brought back to INR 0.5 million.

Foreign Exchange Management Act, 1999

Regulation 5 of the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 (FEMA Regulations) provide that an FVCI registered with SEBI may make investment in a DVCF or a VCU in the manner and subject to the terms and conditions specified in Schedule 6. Provided that the FVCI shall not purchase shares or convertible debentures of an Indian company which is engaged in the print media sector.

Schedule 6 of the FEMA Regulations provides that:

- (i) A registered FVCI may, through the SEBI, apply to the Reserve Bank of India for permission to invest in VCU or in a DVCF or in a scheme floated by such DVCFs. Permission may be granted by the Reserve Bank subject to such terms and conditions as may be considered necessary.
- (ii) The registered FVCI permitted by the Reserve Bank, may purchase equity/equity linked instruments/debt/debt instruments, debentures of a VCU or of a DVCF through initial public offer or private placement or in units of schemes/funds set up by a DVCF.
- (iii) The amount of consideration for investment in DVCFs/VCUs shall be paid out of inward remittances from abroad through normal banking channels or out of funds held in an account maintained with a designated branch of an authorized dealer.

Further, Annexure B to the FEMA Regulations provides for the sectoral cap on investments by persons resident outside India. The relevant portion of the Annexure reads as follows-"Offshore Venture Capital Funds/companies are allowed to invest in domestic venture capital undertaking as well as other companies through the automatic route, subject only to SEBI regulations and sector specific caps on FDI."

It is pertinent to mention that in comparison to FDI, the price restrictions with respect to purchase of shares do not apply in case of investment by FVCI.

NOTES

NOTES

In May 2006, the merger of India's two leading law firms, Fox Mandal and Little & Co. led to the inception of the firm, FoxMandal Little ("FML") making it India's largest law firm.

Fox Mandal was established in 1896 with Mr. J.K. Fox and Mr. G.C. Mandal joining together to establish one of the first Indo-British partnerships. Fox Mandal with Little & Co., which was established in the 1856, make FML also **India's oldest law firm**, boasting of an unparalleled legal tradition of being the legal advisor for the East India Company, the Government of India and the successive Governments of the Presidency of Bombay.

The firm has offices in India, U.K. and Bangladesh including Bangalore, Bhubaneswar, Chandigarh, Chennai, Dhaka, Hyderabad, Kochi, Kolkata, Lucknow, Mumbai, Noida, New Delhi, London and Pune with associate offices at Coimbatore, Mangalore and Trivandrum. FML is a well-reputed full service law firm presenting an appropriate mix of the necessary legal expertise, industry specialization and commercial acumen. This firm of advocates, solicitors and notaries, comprises of 400 lawyers with 50 partners and 250 para-legal staff. Our offices situated in all the important regions in India ensure that our clients receive cost-effective, value added and fully integrated services.

Over the years, both Fox Mandal and Little & Co. have been ranked as the top firm in India by various international journals. Recently, FML won "The Best National Law Firm, 2008" award by the International Legal Alliance Summit & Awards, 2008 at Paris and distinguished during the International Legal Awards Ceremony amongst the leading law firms from 22 countries. We have been awarded the "Employer of Choice, 2008, a response among over 15,000 lawyers region-wide by ALB (Asian Legal Business). FoxMandal Little has been recognized with "Client Choice Award, 2007" in India from more than 1,300 individual assessments received from corporate counsel worldwide by ILO (International Law Office), the official partner to the International Bar Association, for FML stands apart for the excellent client care and the quality of service. It has been awarded for the law firms' ability to add real value to their clients' business above and beyond the other players in the market. Amongst others, we have been adjudged as "The Best Law Firm of the Year" for India in 2006 by IFLR (International Financial Law Review), a Euromoney publication.

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