DOING BUSINESS IN India

HLB

Fadnis & Gupte - Indore
Guru and Jana - Bangalore
Khimji Kunverji & Co - Mumbai
Manubhai & Shah LLP - Ahmedabad
M. Bhaskara Rao & Co - Hyderabad
Roy Varghese and Associates - Cochin
R. Subramanian & Co - Chennai
S.S. Kothari & Mehta - Delhi

Doing Business in India

Foreword

This booklet has been prepared for the use of clients, partners and staff of HLB International member firms. It is designed to give some general information to those contemplating to do business in India and is not intended to be a comprehensive document. You should therefore consult us before taking further action. HLB International and member firms cannot be held liable for any action or business decision taken on the basis of information in this booklet.

Fadnis & Gupte
Guru and Jana, Chartered Accountants
Khimji Kunverji & Co
Manubhai & Shah LLP
M. Bhaskar Rao & Co
Roy Varghese and Associates
R. Subramanian & Co
S.S. Kothari Mehta & Co

Issue date: 30 June 2016

About HLB International

Formed in 1969, HLB International is a world-wide network of independent accounting firms and business advisers. The network comprises member firms in 130 countries, who collectively have 21,000 staff in over 600 offices. Member firms provide clients with a comprehensive and personal service relating to auditing, taxation, accounting and general and financial management advice.

Up-to date information and general assistance on international matters can be obtained from any of the member firm partners of HLB International listed in this booklet or from the executive office in London.

HLB International
Executive Office
21 Ebury Street
London SW1W 0LD
UK

Telephone +44 (0)20 7881 1100
Fax +44 (0)20 7881 1109
Email: mailbox@hlbi.com
Website: www.hlbi.com

HLB International is a world-wide network of independent professional accounting firms and business advisers each of which is a separate and independent legal entity and as such has no liability for the acts and omissions of any other member. HLB International Limited is an English company limited by guarantee which co-ordinates the international activities of the HLB International network but does not provide, supervise or manage professional services to clients. Accordingly, HLB International Limited has no liability for the acts and omissions, if any, of any member of the HLB International network and vice versa.

INDIA – AT A GLANCE

India, a South Asian nation, is the seventh-largest country by area, the second-most populous country with over 1.21 billion people, and is the most populous democracy in the world. India holds its uniqueness in the diversity in its culture, tradition and value system. The culture of India, a blend of several cultures, span across the Indian Subcontinent and has been influenced by a history that is several millennia old. At the same time, the strong and fast developing economy of the country has helped to adapt itself to international changes with poise and comfort. The economy here has welcomed the international companies to invest in it with open arms since liberalization in 1990s. India was among the top 10 investment destinations during 2014 with USD 34 Billion. India is seen as one of the preferred investment destinations in recent years with a growth estimate of 7% – 7.30%, considered to be the best among the current growing economies. With the youngest population in the world, India has a significant edge in terms of cost competitiveness due to availability of skilled labour at a relatively low cost.

The continuous reform process since 1991 has resulted in India's growing influence in International Institutions (G-8, G-20) and negotiating free trade areas (with ASEAN, EU). The economic liberalization policies combined with privatization policies has resulted in influx of overseas investments, resulting in vast improvement in the professional standards of goods manufactured and services rendered.

With a stable and supportive Government, an improving foreign and trade policy, favorable investment schemes coupled with fundamentally strong political, financial and legal structures, India is rapidly attracting many global players for its strategic investment in the country.

Location and Climate

India's vast boundaries stretch from the Himalayan peaks to the Indian Ocean coastline and its history reaching back to more than 5 millennia. India has 29 States and 7 Union Territories covering 3.287 million square kilometres and having diverse climatic conditions from hot torrid to cold freezing climate, dry deserts to rainy wet climate.

With varied climatic conditions and favourable locations with coastlines, India has an advantage of mobility either through air, water or land, being well connected to all parts of the world. This provides a distinct advantage compared to other nations. With a well-developed network of roads, rail and water ways, India provides the best opportunity of doing business across the globe from India as the hub.

In A Summary

Capital	New Delhi
President	Dr. Pranab Mukherjeee
Prime Minister	Narendra Modi
Boundaries	North - China, Nepal, Bhutan and the mountain range of the Himalayas. East - Myanmar (Burma), Bangladesh and the Bay of Bengal. South – The Indian Ocean and Sri Lanka. North West – Pakistan, Afghanistan and the Arabian sea.
Major Cities	Mumbai, New Delhi, Kolkata, Chennai, Bengaluru, Hyderabad, Pune, Lucknow, Kanpur, Ahmedabad
Time Zone	GMT + 05:30 H
Language	Hindi is the official language. There are 23 constitutionally recognized languages like Marathi, Bengali, Gujarati, Punjabi, Tamil, etc.
Religion	Hinduism, Islam, Christianity, Sikhism, Buddhism, Jainism, Judaism, Zoroastrianism, etc.
International Airports	Mumbai, Delhi, Kolkata, Chennai, Bengaluru, Nagpur, Ahmedabad, Jaipur, Lucknow, etc.
Major Sea Ports	Kandla (Gujarat), Nava Sheva (Maharashtra), Marmugoa (Goa), Haldia and Paradip (West Bengal), Krishnapatanam Port (Andhra Pradesh), Cochin (Kerela), Tuticorin (Tamil Nadu), etc.
Natural Resources	Mica (World's Largest Producer), Iron Ore (3^{rd} Largest Producer), Coal (4th largest reserves in the world), Bauxite (5^{th} Largest Producer), Aluminium, Manganese, Limestone, Titanium ore, Chromite, Thorium, Natural gas, Petroleum, etc.

Flora & Fauna	Over 47,000 species (flora) More than 89,000 species (fauna)
Major Rivers	Ganga, Yamuna, Brahmaputra, Godavari, Krishna, Cauvery, Narmada, Tapi.
Islands	Lakshadweep, Daman & Diu, Andaman & Nicobar Islands.
Climate	Tropical Monsoon
Seasons	Summer (March – June), Monsoon (June – October), Autumn (October – November), Winter (December – February)

Population

Population	1.210 Billion (Urban: 32%, Rural: 68%)
Population Growth Rate	1.29% Annual
Birth Rate	19.89 (births/ 1000 population)
Death rate	7.35(deaths/ 1000 population)
Life expectancy	67.8 Years
Sex ratio	933females/ 1000 males
Households	240 Million

Age Structure

00-14 Years	28.5%	Around 60% of the population is in the working age group of 15 to 64 years giving the country a significant edge in terms of cost competitiveness and low labour costs. Two hundred and fifty million people are set to join India's workforce by 2030. As a big chunk of the population shifts into the working age group, the offshoot of that is an increase in disposable income and conspicuous consumption. This is the most exciting aspect of India's demographic dividend.
15-24 Years	18.1%	
25-54 Years	40.6%	
55-64 Years	7.0%	
65 above Years	5.8%	

The significant English speaking population and the strong knowledge base of the labour force is making India a top destination for multinational corporations that are looking at expanding their overseas operations for market and talent.

Education

India has over one million schools and around 9,200 colleges in general fields, 4,600 colleges in professional fields and 300 universities /institutions of national importance. There is large number of private and government or Municipal Corporation - run schools, in the urban areas. However, in the rural areas, education is imparted largely by government - run schools. Professional educational institutes, with a combined intake of over half a million students per annum, constantly add to the country's large pool of skilled English-speaking work force ,which is a tremendous competitive advantage.

Travel

Most part of the country are well connected by air, rail, and road transport. For domestic air travel, there are number of regular airlines. Nearly every major international airlines operates flights to and from the country. The country also has an extensive rail and road transport network. Railway services are offered by the government owned-Indian railways. Bus services (regular, deluxe and luxury) over shorter distance are provided by government agencies and private operators. Numerous car rental agencies offer cars for hire and public taxis are available in some cities

Public Holiday

Public Holidays are announced by the central government and individual state governments. There are three national holidays –Republic Day (January 26th), Independence Day (August 15th), and Gandhi Jayanti (October 2th). In addition, there are several holidays for festivals, the dates of which change year to year

Cost Of Living

India offers an advantage of low cost of living, relative to American and European countries. The cost of living varies by type of location (urban/rural), size of location (Small/large/metro), tastes and preferences of the people of a particular location, etc.

New Initiatives – An Over View

May 17, 2014 saw an euphoric change in the reigns of Central Government of the country whereby Narendra Modi led National Democratic Alliance (NDA) replaced Manmohan Singh led United Progressive Alliance in the with an overwhelming mandate at the General Elections, 2014.

Since assuming charge of the office on May 26, 2014, the Government of the country has been in an attempt to make India more business-friendly, reduce bureaucracy, improve transparency and embark on a vigorous foreign policy path. PM Modi has undertaken several visits to the Foreign Countries. As on June 2016, he had made 38 foreign trips on five continents.

The constant efforts made have borne fruits with India attracting investment commitments from various countries and multinational companies across the Globle like Apple, Amazon, Foxconn, etc.As the country is now poised for a sustainable growth with increase in consumer confidence and greater accountability, the structural reforms and initiatives since 2014 have now started gaining momentum. These reforms and initiatives are multi-dimensional and development oriented with primary focus on the compounding impact on the growth of the economy and creating the presence of India at the Global platform.

Below mentioned are the flagship initiatives made by the Government since 2014 which had a significant impact on the economy and transformed the image of the country:

- **Make in India**

Launching the scheme for Industrial Growth and making the country a Global Manufacturing Hub, it is an initiative of Government of India to encourage multi-national, as well as national companies to manufacture their products in India.

❖ **Startup India**

Creating a conducive environment for encouraging the prospective entrepreneurs to convert their business ideas into reality without facing much hassles in obtaining licenses, approvals, etc.

❖ **Skill India**

A campaign launched with an aim to train over 40 crore skilled workforce in India by 2022 It includes various initiatives of the government like "National Skill Development Mission", "National Policy for Skill Development and Entrepreneurship, 2015", "Pradhan Mantri Kaushal Vikas Yojana (PMKVY)" and the "Skill Loan scheme".

❖ **Digital India Initiative**

A campaign launched to ensure that Government services are made available to citizens electronically by improving online infrastructure and by increasing Internet connectivity or by making the country digitally empowered in the field of technology. The initiative includes plans to connect rural areas with high-speed internet networks.

❖ **Swachh Bharat Abhiyan**

A national campaign started by the Government aimed at clean streets, roads, towns and infrastructure of the country. It aims to eradicate open defecation by October 2, 2019 by constructing toilets across villages and cities, create awareness of healthy sanitation and adopt a scientific and modern solid waste management system.

❖ **UDAY (Ujjwal DISCOM Assurance Yojana)**

The scheme has been lauded to provide financial assistance to the distressed power distribution companies and helping them with a financial turnaround in order to improve its operational efficiencies and reduce the cost of power.

❖ **Power for all programme**

The programme aims at providing quality and affordable power supply for 24*7 to all the cities and villages by the end of 2019.

❖ **Smart Cities Mission**

The mission aims at developing 100 cities across the country with a aim of citizen friendly and ensuring sustainable living thereby impacting the quality of living of the people and driving the economic growth.

❖ **National Mission for Clean Ganga**

The mission is aimed to undertake effective steps to eliminate pollution and bring back the sanctity of holy Ganga river which had been lost due to constant release of effluents in the river in the form of Human Waste, Industrial Waste, Waste generated during religious events, etc. The mission aims to revive the ecology of Ganga and ensure a better water quality and environment friendly development.

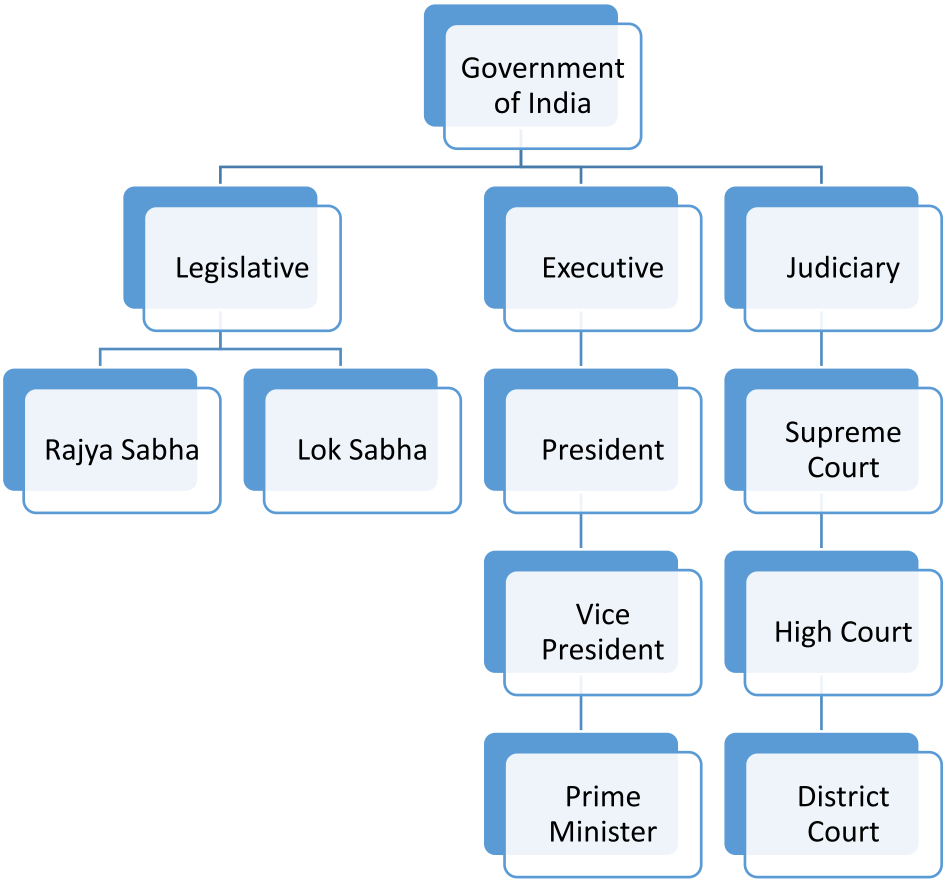
GOVERNMENT AND LEGAL SYSTEM

Government:

India is a sovereign, socialist, secular, democratic republic with a parliamentary system of Government. The Indian federation is the largest and one of the oldest democracies with strong foundations having a single citizenship, an extremely active judiciary and a parliamentary form of democracy. India is a Union of States.

There are 29 States and 7 Union Territories.

Three main arms of the Indian Governance Structure are:



1. **The Executive**

The President of India is the Constitutional head of the Executive of the Union and is the head of the armed forces. The cabinet of ministers headed by the Prime Minister of the country is responsible for the day-to-day running of the country. Though the President does not interfere with the working of the Prime Minister and his cabinet, he is an important guiding force for the country. The Prime Minister and his cabinet are answerable to the bicameral parliament of India, which is formed of the democratically elected representatives.

2. **The Legislature**

The bicameral legislature known as the parliament is comprised of the Lok Sabha and the Rajya Sabha. The Lok Sabha members are elected by universal adult suffrage (right to vote) from all parts of India. The Rajya Sabha members are elected by the representatives of state legislatures and some nominated by the President of India on the basis of their contribution to society.

An independent body known as the Election Commission oversees the election process to ensure free and fair elections at central and state levels. It is highly respected for its independence, efficiency and integrity.

3. **State Governments**

Many of the state legislatures are bicameral and have a similar structure to the main Parliament. The State Governments have a similar authority structure to the National Government and enjoy similar powers. At present there are 29 states with bicameral system of government & Seven Union

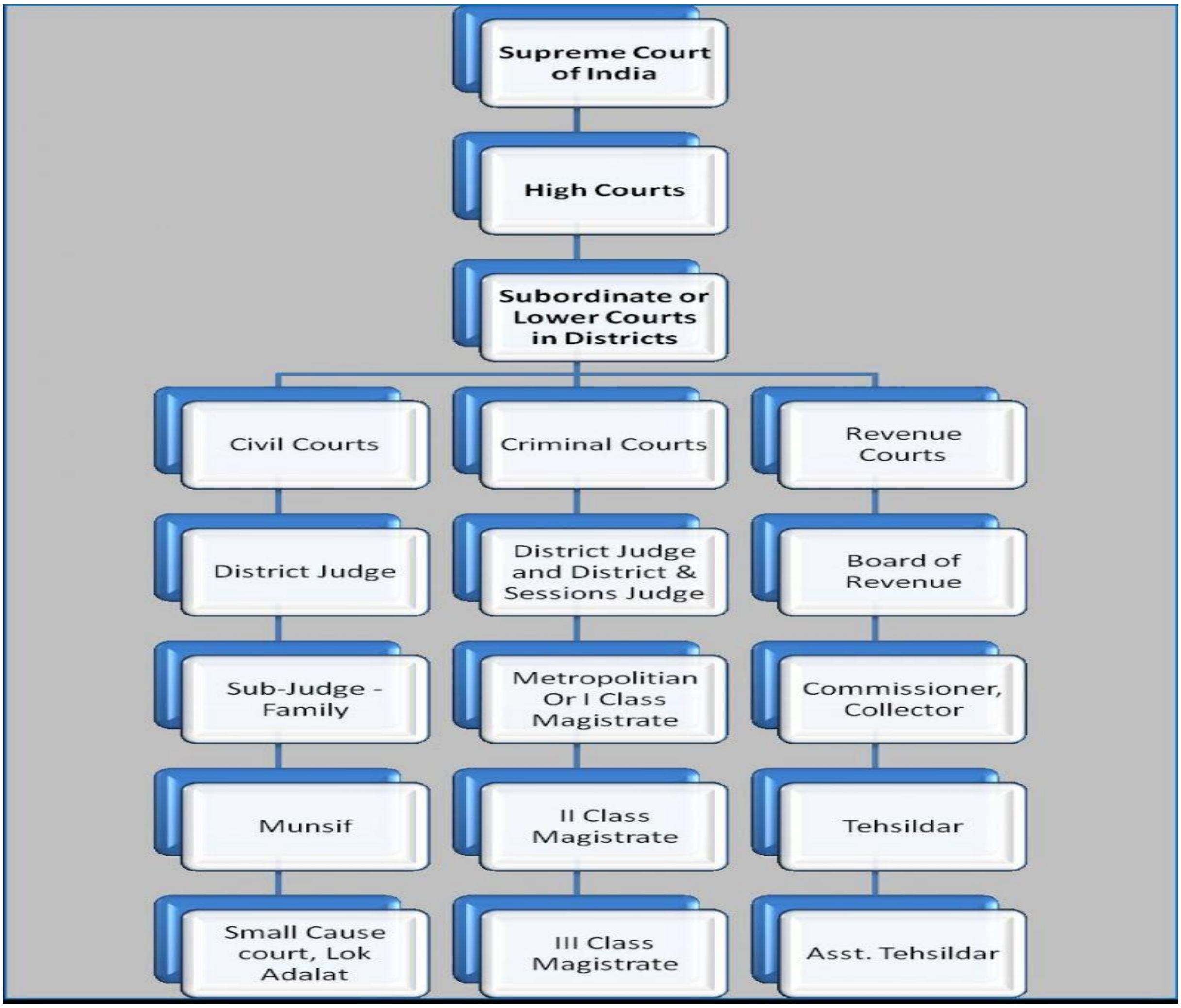
Territories directly under the governance of the Union Government.

4. The constitution has demarcated the subject jurisdiction of the Central Parliament and the state legislatures; some subjects are concurrent.

Legal System:

The legal system in India is well established. The Supreme Court of India is the apex court of the Nation headed by the Chief Justice of India. All States have a High Court as an apex court at State level. In addition, there are district courts, metropolitan courts, city civil courts, tribunals and criminal courts functioning in the States. Judgments of lower level courts can be petitioned in the higher level courts.

The entire judiciary system is independent of the India Governance Structure and operates as per provisions laid down in the Constitution of India. The legal system of India is based on English Law. India has a federal judicial system with a legal system based on mixed law i.e., based on parliamentary legislature, court laws, customary and religious laws as well.



ECONOMY

The Economy of India is the seventh largest in the world by nominal GDP and the third largest by Purchasing Power Parity (PPP). The country is classified as a newly industrialised country, one of the G-20 major economies, a member of Brazil, Russia, India, China and South Africa (BRICS) and a developing economy with an average growth rate of approximately 7%. The long-term growth prospective of the Indian economy is positive due to its young population, corresponding low dependency ratio, healthy savings and investment rates and increasing integration into the global economy. The Indian economy has the potential to become the world's 3rd largest economy by the next decade. India also topped the World Bank's growth outlook for 2015-16 for the first time with the economy having grown 7.6% in 2015-16 and expected to grow 7 – 7.30% in 2016-17.

India has one of the fastest growing service sectors in the world with an annual growth rate of above 9% since 2001, which contributed to 57% of GDP in 2012-13. India has become a major exporter of IT services, BPO services and software services. India is also the fourth largest start-up hub in the world with over 3,100 technology start-ups in 2014-15.

India has been a World Trade Organisation (WTO) member since 1st January, 1995 and a member of the General Agreement on Tariffs and Trade (GATT) since 8th July, 1948.

The agricultural sector is the largest employer in India's economy. India ranks second worldwide in farm output. The Industry sector has held a constant share of its economic contribution (26% of GDP in 2013-14) (24.2% in 2014-15) as per Central Intelligence Agency (America) (CIA).

India has a $600 billion retail market in 2015 and one of the world's fastest growing e-Commerce markets. India is also home to the world's third largest Billionaires pool with 111 billionaires in 2016 and fourth largest number of ultra-high-net-worth households that have more than 100 million dollars.

India's two major stock exchanges, the Bombay Stock Exchange and the National Stock Exchange of India, had a market capitalization of US$1.71 trillion and US$1.68 trillion respectively, as of Feb, 2015, which ranks 11th& 12th largest in the world respectively, according to the World Federation of Exchanges.

CURRENCY

Indian Rupee is the official currency of the Republic of India commonly known as Rs. or INR and is issued by the Reserve Bank of India. The symbol for the Indian Rupee was officially adopted in 2010 after a design competition and derives from the Devanagari letter "Ra".

The rupee is fully convertible on the trade front under the Liberalized Exchange Rate Management System ("LERMS"). All transactions under the LERMS will take place at market- determined rates. The rupee is fully convertible on current account. On the capital account also, the rupee is substantially free with residents permitted to invest abroad, subject to completion of certain formalities and non-residents are permitted to invest in most sectors. In the international market, the rupee is pegged to the US Dollar.

The Indian Rupee has depreciated against the US Dollar over the past years. The INR US$ exchange rate stood at around 66.28 in March, 2016. Currently, it is at around 66.52 as at May, 2016 and expected to be range bound between 65 to 70 in the near future.

COSTS OF STARTING A BUSINESS:

Cost of Incorporating a Company: Around US$800 to US$1,500.

Obtaining registrations under various Laws (both Central and State Governments)will be around US$400 to US$700.

The details of the Companies, its Directors, Charges or lien of the Companies (if any), Incorporation documents and other documents of the Companies are available for public inspection in the website of the Ministry of Corporate Affairs.

INVESTMENT FACTORS – FOREIGN DIRECT INVESTMENT

Foreign Direct Investment policy in India is widely reckoned as the most liberal in the emerging economies. FDI up to 100% is allowed under automatic route in most sectors and activities. The Government of India has taken significant initiatives to strengthen the economic credentials of the country and make it one of the strongest economies in the world.
Owing to higher infrastructure spending, increased fiscal devolution to states and continued reforms in fiscal and monetary policy, the Indian economic outlook has strengthened. The current Government is striving to move steadily to minimize structural and political bottlenecks and fast track investment flow and economic performance. India is fast becoming home to startup companies focused on high growth areas such as mobility, e-commerce and other vertical specific solutions, creating new markets and driving innovation.

Following are the Sectors in which FDI is permissible:

A. Sectors in which 100% FDI ppermitted – Automatic Route:

1. Agriculture & Animal Husbandry:

- Floriculture, Horticulture, Apiculture and Cultivation of Vegetables & Mushrooms under controlled conditions
- Development and Production of seeds and planting material;
- Animal Husbandry (including breeding of dogs), Pisciculture, Aquaculture, under controlled conditions
- Services related to agro and allied sectors

2. Plantation sector:

- Tea sector including tea plantations
- Coffee plantations
- Rubber plantations
- Cardamom plantations
- Palm oil tree plantations
- Olive oil tree plantations

3. Mining:

- Mining and Exploration of metal and non-metal ores
- Coal and Lignite
- Mining and mineral separation of titanium bearing minerals and ores, its value addition and integrated activities

4. Petroleum and Natural Gas

5. Automobiles and Automobiles Components

6. Roads and Highways

7. Railway Infrastructure

8. Ports and Harbours - Construction and Maintenance

9. Civil Aviation:

- ❖ Airports- Greenfield Projects

- ❖ Air Transport Service:
    - Scheduled Air Transport Service/ Domestic Scheduled Passenger Airline only for NRIs
    - Regional Air Transport Service
    - Non-Scheduled Air Transport Service
    - Helicopter services/seaplane services requiring DGCA approval

- ❖ Other services:
    - Ground handling services
    - Maintenance & repair organizations, flying training institutes and technical training institutions

10. Tourism and Hospitality

11. Renewable Energy

12. Non-Banking Finance Companies (NBFC)

13. Asset Reconstruction Companies

14. White label ATM operations

15. Credit Information Companies

16. Medical Devices

17. Pharmaceuticals - Greenfield

18. Trading:

- ❖ Cash & carry wholesale trading

- ❖ E-commerce activities: B to B trading

19. Construction development Projects

20. Industrial Parks

21. Electronic System Design and Manufacturing

22. Electrical Machinery

23. Broadcasting Content Service

❖ Up-linking of Non-'News & Current Affairs' TV Channels

24. Print Media:

❖ Publishing/printing of scientific and technical magazines/specialty journals/ periodicals

❖ Publication of facsimile edition of foreign newspapers.

25. Duty Free shops

26. Leathers

27. Food Processing

B. Sectors in which 100% or less is permitted – Government Approval

SN	Sector	FDI Limits	Route
1.	Banking- Private sector	74%	Up to 49% - Automatic beyond 49% to 74% - FIPB
2.	Public Sector Banks	20%	FIPB
3.	Civil Aviation: ❖ Airports Existing Projects ❖ Air Transport Service: Scheduled Air Transport Service/ Domestic Scheduled Passenger Airline for Non NRIs	100% 49%	Up to 74% - Automatic beyond 74% - FIPB Automatic
4.	Defence	49%	Up to 49% - Automatic Beyond 49% - FIPB case to case basis
5.	Insurance & Sub Activities	49%	Automatic
6.	Pension	49%	Automatic
7.	Power exchanges	49%	Automatic
8.	Infrastructure companies in security market namely Stock exchange, commodity exchange	49%	Automatic

9.	Telecom Services (including telecom infrastructure providers Category-I)	100%	Up to 49% - Automatic beyond 49% - FIPB
10.	Print Media: ❖ Publishing of newspaper and periodicals dealing with news and current affairs ❖ Publication of Indian editions of foreign magazines dealing with news and current affairs	26%	FIPB
11.	Air Transport Services	49%	Automatic
12.	Satellites establishment & operations	100%	FIPB
13.	Private Security Agencies	49%	FIPB
14.	Broadcasting Carriage Services: ❖ Teleport ❖ Direct to Home ❖ Cable Network ❖ Mobile TV ❖ Headed in the sky Broadcasting service(HITS)	100%	Up to 49% - Automatic- Beyond 49% - FIPB
15.	Broadcasting Content Service: ❖ FM Radio ❖ Up-linking of News & Current Affairs TV Channels	49%	FIPB
16.	Single Brand product retail Trading	100%	Up to 49% - Automatic Beyond 49%-FIPB
17.	Multi Brand Retail Trading	51%	FIPB
18.	Pharmaceuticals - Brownfield	100%	FIPB

BANKING SYSTEM AND SOURCE OF FINANCE

India has a diversified financial sector undergoing rapid expansion, both in terms of a strong growth of existing financial services firms and new entities entering the market. The sector is comprised of commercial banks, insurance companies, non-banking financial companies, co-operatives, pension funds, mutual funds and other smaller financial entities. The Banking Laws (Amendment) Bill passed in 2012, has allowed new entities such as payments banks to be created recently thereby adding to the types of entities operating in the sector. However, the financial sector in India is predominantly a banking sector with commercial banks accounting for more than 64 per cent of the total assets held by the financial system.

Standard & Poors estimates that credit growth in India's banking sector would improve to 12-13 per cent in FY16 from less than 10 per cent in the second half of CY14. Banking sector in India has been transformed completely. Presently, the latest inclusions such as Internet banking and Core banking have made banking operations more user friendly and easy. With a combined push by both government and private sector, India is undoubtedly one of the world's most vibrant capital markets.

The banking sector is challenged by competitive pressures, changes in customer loyalty, stringent regulatory environment and entry of new players, all of which are pressuring organizations to adopt new business models, streamline operations and improve processes.

Sources of Finance:

Long Term

India has by the virtue of its size, probably one of the largest investor bases in the world. The Bombay Stock Exchange is one of the oldest stock exchanges in Asia. Predominantly transactions are done at the Bombay Stock Exchange (BSE) and National Stock Exchange (NSE). All the stock exchanges have screen based computerised trading with satellite up-linking facilities from any part in India. The exchanges now have trading of all securities in electronic units known as dematerialized. The BSE and the NSE have also introduced derivative products like Futures and Options with a view of bringing the Indian stock markets in tune with international markets and practices.

India has well controlled and regulated capital markets for raising funds through equity or debt. Securities and Exchange Board of India regulates the capital markets, by prescribing stringent disclosure requirements and monitoring the functioning of the intermediaries.

Recent initiatives in Indian Capital Markets

- Privatization of Public sector undertakings.
- Promotion of more private sector banks.
- Promotion and growth of Mutual funds.
- Encouraging NRI Investments through amendments to Foreign Exchange Management Act.
- Online trading facilities.
- Dilution of Equity holdings in Foreign Exchange Regulation Act (FERA) Companies, Companies incorporated outside India (other than banking companies).
- Holding of securities in dematerialized form.
- Promotion of concepts like Merchant bankers, Over The Counter Exchange of India (OTCEI), Global Depository Receipts (GDRs), Etc.,
- Regulation of Non-Banking Financial Companies (NBFCs).
- Introduction of Forwarding Trading & Futures Trading.

- Strict compliance procedures for participants, brokers and other persons dealing with capital markets.

Special Financial Institutions
A large number of financial institutions have been established in India for providing long-term financial assistance to industrial enterprises. There are many all-India institutions like Industrial Finance Corporation of India (IFCI), National Bank for Agricultural and Rural Development Bank, Small Industries Development Bank of India, etc. At the State level, there are State Financial Corporations (SFCs) and State Industrial Development Corporations (SIDCs). These national and state level institutions are known as 'Development Banks'. Besides the development banks, there are several other institutions called as 'Investment Companies' or 'Investment Trusts' which subscribe to the shares and debentures offered to the public by companies. These include the Life Insurance Corporation of India (LIC); General Insurance Corporation of India (GIC); Unit Trust of India (UTI), etc.

Leasing Companies

Manufacturing companies can secure long-term funds from leasing companies. For this purpose, a Lease Agreement is made whereby, plant, machinery and fixed assets may be purchased by the leasing company and allowed to be used by the manufacturing concern for a specified period, on payment of an annual rental. At the end of the period, the manufacturing company may have the option of purchasing the asset at a reduced price. The lease rent includes an element of interest besides expenses and profits of the leasing company.

Short Term Funding

Bank Credit
Commercial Banks play an important role in financing the short-term requirements of business concerns.

They provide finance in the following ways:-

- **Loans**: When a bank makes an advance in a lump sum, the whole of which is withdrawn to cash immediately by the borrower, who undertakes to repay it in one single installment, it is called a loan. The borrower is required to pay the interest on the whole amount.

- **Cash credit**: It is the most popular method of financing by commercial banks. When a borrower is allowed to borrow up to a certain limit against the security of tangible assets or guarantees, it is known as secured credit, but if the cash credit is not backed by any security, it is known as clean cash credit. In case of clean cash credit, the borrower gives a promissory note which is signed by two or more sureties. The borrower has to pay interest only on the amount actually utilised.

- **Overdrafts**: Under this, the commercial bank allows its customer to overdraw his current account so that it shows the debit balance. The customer is charged interest on the account actually overdrawn and not on the limit sanctioned.

- **Discounting of bills**: Commercial banks finance the business concern by discounting their credit instruments like bills of exchange, promissory notes and hundies (hundies are financial instruments that developed in Medieval India for use in trade and credit transactions. Hundi is an unconditional order in writing made by a person directing another to pay certain sum of money to a person named in the order). These documents are discounted by the bank at a price lower than their face value.

Commercial banks also have now started Factoring / accounts receivable and payable financing among other new ways for financing short term fund requirements of businesses.

FOREX CONTROL

The Indian rupee is yet to become fully convertible. However, talks are at advanced levels for conversion of the same.

The Reserve Bank of India (RBI) through Foreign Exchange Management Act controls the inflow and outflow of foreign exchange. Post liberalization, there has been slew of relaxations with regard to foreign exchange. The reporting requirements in foreign exchange have been vastly reduced and also the compliance procedures are simplified, leading to more influx of FDI.

RBI has introduced lots of initiatives in line with Foreign Direct Investment policy of the Government.

EMPLOYMENT REGULATIONS

The law relating to labour and employment in India is primarily known under the broad category of "Industrial Law". A distinguishing feature of Indian Labour and Employment Laws is that, in India there are three main categories of employees: Government employees, employees in Government controlled corporate bodies known as Public Sector Undertakings (PSUs) and private sector employees.

The rules and regulations governing the employment of Government employees stem from the Constitution of India. Public sector employees are governed by their own service regulations, which either have statutory force, in the case of statutory corporations, or are based on statutory orders.

Private Sector employees are governed by provisions of labour and employment laws. There are various Acts, which regulate labour and employment in India. Some of the major acts governing the labour and employment sector are:

- Bonded Labour System (Abolition) Act, 1976;
- Building and Other Construction Workers (Regulation of Employment & Conditions of Service) Act, 1996;
- Child Labour (Prohibition & Regulation) Act, 1986;
- Children (Pledging of Labour) Act, 1933;
- Contract Labour (Regulation & Abolition) Act, 1970;
- Dangerous Machines (Regulation) Act, 1983;
- Employees Provident Fund & Miscellaneous Provisions Act, 1952;
- Employees' State Insurance Act, 1948;
- Equal Remuneration Act, 1976;
- Factories Act, 1948;
- Industrial Disputes Act, 1947;
- Industrial Employment (Standing Orders) Act, 1946;
- Inter-State Migrant Workmen (Regulation of Employment and Condition of Service) Act, 1979;
- Minimum Wages Act, 1948;
- Payment of Bonus Act, 1965;
- Payment of Gratuity Act, 1972;
- Payment of Wages Act, 1936;
- Shops & Establishments Act 1953;
- Trade Union Act, 1926;
- Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Act 2013 and
- Workmen's Compensation Act, 1923.

The Indian Social Security system provides retirement and insurance benefits to labour force employed in Factories and other establishments. The social security benefits are governed by The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (PF Act), The Employees' State Insurance Act, 1948 and The Payment of Gratuity Act, 1972. These Acts provide for retirement benefits to the work force including medical assistance, subject to provisions of the Act. They also provide for retirement benefits/ post-retirement benefits to employees of both private and public sector. A fund has been set up for this purpose from which benefits are distributed to members. It is mandatory for every establishment employing more than 20 employees to be registered under this fund. Contribution to the fund is made by both the employee and the employer.

The Employment regulations also provide for regulating the minimum wages payable to the work force. The Minimum Wages Act, 1948 and The Payment of Wages Act, 1936 regulate the minimum amount payable by prescribing the rate per day for various sectors and skills. The Acts also provide for the number of working days, normal working hours per day and overtime rates for extra hours, in addition to normal working hours.

The National and Festival Holidays Act, regulates the closure of factories with regard to festival holidays of National importance. Apart from the National Festival and Holidays Act, The Minimum Wages Act, 1948, the Factories Act, 1948 and the Shops and Establishment Act also contain provisions with regard to the minimum number of days of holidays required to be provided by every establishment.

The Government has commissioned an initiative to rank various Indian States based on ease of doing business, which has encouraged them to reform their labour laws to simplify compliance and attract investment.

Visa - Types and Procedures

The following types of visas are normally granted for entry to India.

Temporary Visa

Visitors to India need visas to enter the country unless they are Indian citizens. Non-resident Indians holding citizenship of another country are also required to obtain visas before arriving in India, unless they hold a Person of Indian Origin (PIO) card issued by the Indian Government. Visas must be obtained from the Indian Embassy or Consulate in the applicant's home country.

Special permits are required for visiting the Andaman and Nicobar Islands, Bhutan, Lakshadweep, remote North-Eastern States and Sikkim.

Tourist Visa

Tourist visas are valid for one to six months, generally beginning on the date the visa was issued and not on the date of entry into India. Tourist visas are generally multiple-entry visas; however, this option must be specifically requested at the time of application.

Business Visa

This visa is required by persons visiting India on business. It is necessary to provide a letter from the applicant's overseas employer, stating the exact purpose of the visit and the expected duration with the application. A letter of invitation from the Indian Company should also be provided. Business visas are valid for six months or more, with multiple entries. However, holders usually are not allowed to remain in India for more than six months at a time (depending on the nature of the business). Ten year business visas can be granted to foreigners who set up joint ventures in India.

Employment Visa (Work Permits)

A Multiple Entry Employment visa is granted on a case by case basis to foreign nationals wishing to take up an employment in India. Indian companies are allowed to engage the services of foreign nationals without any approval. An employment visa must be obtained from the Indian Consulate in the country of residence of the applicant, prior to departure for India. The Employee must earning US$ 25,000 or more.

Exceptions are made for volunteers, ethnic cooks, translators, non-English language teachers and members of Foreign High Commissions and Embassies. The Employment Visa is generally valid for 1 year. Further extension upto 5 years may be obtained from the Ministry of Home Affairs through the relevant Foreigner Regional Registration Office (FRRO)/ Office of the Senior Superintendent of Police (SSP), in the relevant State in India.

According to the rules currently in force, a change of category of visa is not permitted. Any breach in the purpose/ category of the visa granted to a foreign national is illegal and can result in his/ her deportation. The foreign national can however apply for an extension of visa duration. The application is to be made to the Ministry of Home Affairs through the relevant FRRO/ Office of the Senior Superintendent of Police (SSP) along with required documents for getting visa extension.

Registration Requirements

Foreign national entering India for the first time on a visa (whether tourist, business or any other) which is valid for a period of more than 180 days, would be required to register themselves with the appropriate Foreigner's Regional Registration Office (FRRO) within fourteen (14) days of his/ her arrival in India. Such a visa holder would be required to register with the relevant FRRO notwithstanding the fact that the visa holder intends to remain in India for a period that is less than the duration of the visa in question. Therefore, the implication of such a visa is that, the foreign national holding the visa would be deemed to have the intention of remaining in India for the entire duration of the visa. In case foreign nationals are required to move around the country to comply with the demands of their jobs/profession, under such circumstances, the foreign national would be required to obtain registration with the 'relevant FRRO' i.e., either in the first port of entry or where the residential address has been provided.

Conversion/ Extension of Visa

In the event that a foreign national holding a visa valid for a period of less than one year desires to convert it into a visa valid for a period of more than one year, then he/ she would be required to approach the Ministry of Home Affairs for conversion/ extension of the said visa.

BUSINESS STRUCTURES IN INDIA

Sole proprietorship

The business is generally conducted by the owner and he is responsible for all the debts and business decisions of the entity. There are no registration requirements with regard to sole proprietary concerns in India, except for Taxation.

Partnership Firms

A business entity, where a group of persons join together to conduct a common business, with each person contributing capital and other infrastructure for running and managing the business.

The liability of each partner is unlimited. A partnership is governed by the Provisions of Indian Partnership Act.

Limited Liability Partnerships (LLP)

- LLP is a new corporate structure that combines the flexibility of a partnership and the advantages of limited liability of a company at a low compliance cost. Owing to flexibility in its structure and operation, it would be useful for small and medium enterprises, in general and for the enterprises in services sector, in particular. Internationally, LLPs are the preferred vehicle of business, particularly for service industry or for activities involving professionals.
- LLP is governed by the provisions of the Limited Liability Partnership Act, 2008, the salient features of which are as follows:
- The LLP shall be a body corporate and a legal entity separate from its partners. Any two or more persons, associated for carrying on a lawful business with a

view to profit, may by subscribing their names to an incorporation document and filing the same with the Registrar, form a Limited Liability Partnership. The LLP will have perpetual succession.

- ❖ The mutual rights and duties of partners of an LLP inter se and those of the LLP and its partners shall be governed by an Agreement between partners or between the LLP and the partners subject to the provisions of the LLP Act, 2008. The Act provides flexibility to devise the Agreement as per their choice.
- ❖ The LLP will be a separate legal entity, liable to the full extent of its assets, with the liability of the partners being limited to their agreed contribution in the LLP, which may be of tangible or intangible nature or both tangible and intangible in nature. No partner would be liable on account of the independent or un-authorized actions of other partners or their misconduct. The liabilities of the LLP and partners who are found to have acted with intent to defraud creditors or for any fraudulent purpose shall be unlimited for all or any of the debts or other liabilities of the LLP.

Limited Liability Companies (LLC)

A foreign company has to make a choice as to its legal entity for carrying out business activities in India. The choice of legal entity will largely depend on the type of business operation in India. It is quite possible that a foreign company may do business in India without physically carrying out any activities in India. An example of such activity could be the export of goods and services to India.

However, in most of the cases, when a foreign company decides to do business in India, it is generally not possible to totally abstain from activities in India.

As a general guideline, a foreign company may do business in India in any one of the following manners, while retaining its legal status as a foreign company:

i. As a foreign company without carrying out any business activity within Indian boundaries;
ii. Through a liaison office in India;
iii. Through a project office in India; and
iv. Through a branch office in India.

A non-resident, depending upon the nature of its business activities in India, may also operate through an Indian company in any of the following manner:

i. As an Indian company with 100% shareholding held by the foreign company. Such a company is called a 100% subsidiary of the foreign company.
ii. As an Indian company in a joint venture with one or more Indian and foreign partners. Government has approved the proposal to amend the Foreign Direct Investments (FDI) Policy for allowing FDI in Limited Liability Partnerships (LLPs). However, the rules, regulations and procedures for the same are awaited.

Foreign Company

A Company or Body Corporate incorporated outside India having a place of business in India, whether by itself or through an agent, physically or through electronic mode and conducts any business activity in India in any other manner.

Such companies, for conducting business in India, have to comply with the following formalities:

i. Compliance with the Indian Companies Act, 2013;
ii. Compliance with the Reserve Bank of India's rules and regulations; and
iii. Provisions of the Income Tax Act.

Appointment as an Agent in India

Foreign companies and foreign nationals are required to obtain RBI's permission for their appointment as agents in India. For the purposes of RBI regulations, the term 'agent' includes any person or company (including its branch) buying goods with a view of selling them before any processing thereof. It may also be mentioned that there are altogether different regulations for foreign nationals of Indian origin, permanently resident in India.

Liaison office:

A liaison office is the most basic form of business presence that a foreign company can have in India.

'Liaison Office' means a place of business to act as a channel of communication between the principal place of business or Head Office and entities in India but which does not undertake any commercial /trading/ industrial activity, directly or indirectly, and maintains itself out of inward remittances received from abroad through normal banking channel.

Project office in India

A foreign company may open a project office/s in India provided it has secured from an Indian company, a contract to execute a project in India. RBI has now granted general permission to foreign entities to establish Project offices, subject to specified conditions. Project offices may remit outside India, the surplus of the project on its completion, general permission for which has been granted by the RBI.

Branch Office in India

Foreign companies can establish a branch office or other place of business for their activities of a trading, commercial or industrial nature. They are required to obtain permission of Reserve Bank to carry on such activities, for which an application to the Reserve Bank should be made. There are separate regulations for foreign nationals of Indian origin permanently resident in India.

List of the activities which may be undertaken by the branch office in India:

- 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 airline/ shipping company.
- A branch office is not allowed to carry out manufacturing activities on its own but, is permitted to sub-contract these to an Indian manufacturer.
- Branch Offices established with the approval of RBI may remit outside India, the profit of the branch, net of applicable Indian taxes, subject to RBI guidelines. Permission for setting up branch office is granted by the Reserve Bank of India (RBI).

Indian Company

A foreign company, depending upon its nature of business activities in India may also operate through an Indian company in any of the following manner:-

- as a joint venture with Indian partner
- as a wholly owned subsidiary

A foreign company can operate in India through an Indian company, the shares of which may be partly held by the foreign company and partly by Indian partners.

The incorporation of the Indian company is governed by the Indian Companies Act, 2013.

Incorporation of a company in India requires the filing of certain documents with the Registrar of Companies including the Articles and the Memorandum of Association of the company, along with the prescribed fees.

The formalities relating to incorporation are rather simple, requiring in all, one week time, when a company can start its commercial operations.

Indian companies can be primarily divided into two categories:

1. Private Limited Company
2. Public Limited Company

A private limited company is a company which by its Articles of Association:-

- ❖ Restricts the right of its members to transfer shares.
- ❖ Limits the number of its members to two hundred.
- ❖ Prohibits any invitation to the public to subscribe to its shares and debentures.

However, a public limited company does not have any such restrictions. Securities of such a company can be listed on stock exchanges in India and abroad.

The company can also invite public to subscribe to its shares and can also raise loans by the issue of debentures.

Financial institutions also generally prefer to deal with a public limited company. Therefore, from foreigners' point of view, formation of a public limited company is a more appropriate form to carry out business activities in India.

These companies can be limited by share capital or guarantee.

A limited company can issue only two kinds of shares; equity shares and preference shares, provided they form part of the authorized share capital of the company. The equity shares can be with differential voting rights.

Every member holding equity shares has a right to vote in respect of the capital held on every resolution placed before the company.

Every member holding a preference share has a preferential right to be paid a fixed amount or rate of dividend; a preferential right, on winding up or repayment of capital, to be repaid the amount of capital paid up on his shares; right to vote only on resolutions which directly affect the rights attached to preference shares.

Under the Companies Act, 2013, consideration for subscriptions to shares may be in forms other than cash such as goodwill, know-how and supply of plant and machinery.

While this option is freely available to Indian investors, foreign investors must normally contribute cash, unless a specific approval from the Government is obtained.

Audits are mandatory for all categories of companies.

Various Options as to raising of Capital

A company, only in accordance with guidelines issued by SEBI, can make an offer of shares or other securities to the public. All offer documents for public issue of shares or other securities by companies intending to be listed on recognized stock exchanges or which are already listed, are required to be filed with the Securities and Exchange Board of India (SEBI) and comply with regulations issued by SEBI in this regard.

All Rights offer documents are also to be filed with SEBI. Public offer and Rights offer documents must comply with disclosure norms laid down by SEBI.

Shares are now permitted to be held in an electronic form through the depository mode.

Accounting and Auditing Requirements

For sole proprietorships and partnership concerns, there are very limited compliance requirements.

For Limited Companies, there are strict compliance requirements more so in case of listed companies.

Detailed compliance procedures including auditing and accounting requirements have been laid down in the Companies Act, 2013.

The Auditing process in India is monitored by The Institute of Chartered Accountants of India (ICAI), which issues various guidelines and also technical write ups for performance of audits. Apart from the Companies Act, which provides for compliance procedures for Companies registered in India, the Income Tax Act also prescribes certain audit procedures for business entities based on Turnover Limits.

The Comptroller and Auditor General of India also prescribe audits for Government Companies and Public Sector Undertakings and the report is submitted to the Parliament.
The Institute of Chartered Accountants of India (ICAI) has constituted the Financial Reporting and Review Board which would review the general purpose, financial statements of certain enterprises and auditor's report thereon, with a view to determine the extent of compliance with Generally Accepted Accounting Principles (GAAP), Disclosure Requirements by various statutes and reporting requirements as stated in statutes for auditors. The review is done suo motto or on reference to it by the Reserve Bank of India, the Securities and Exchange Board of India, the Insurance Regulatory and Development Authority, the Central Government, etc.

India has recently converged with International Financial Reporting Standards. The accounting standards known as IND AS have been notified, which are in line with the International Financial Reporting Standards (IFRS).

The financial reporting requirements including the form, structure disclosure requirements have been detailed in the Companies Act, 2013. In case of listed companies, additional disclosure requirements are provided in the Listing Agreements and are governed by SEBI.

TAXATION

Recently, there has been a paradigm shift in focus of the Indian Government on the tax front from addressing legacy issues like the issue of retrospective taxation to current objective of Make in India, curbing Black Money, Base Erosion & Profit Shifting ("BEPS"), tax certainty, smooth and transparent tax administration and dispute resolution. The tax system in India aims at achieving economic growth by encouraging investments in the desired channels. Though there are attractive tax incentives for foreign investment in India, domestic industry and trade also enjoys numerous tax concessions. Likewise, the service sector particularly the export of services is entitled to number of tax incentives

The levy of tax in India is broadly divided into Direct and Indirect Taxes and the same is divided amongst Central & the State Governments as per the Constitution.

DIRECT TAXES include levies such as Income Tax, Wealth Tax, etc., which come within the purview of Central Government. The Income Tax Act, 1961 ("IT Act") is the operative (main) Act in India providing the machinery and methodology for the determination, computation and payment of income tax. . The Central Board of Direct Taxes (CBDT) is the final Authority and governs the entire mechanism of direct taxes in India.

INDIRECT TAXES are handled either by the Central or State Governments. Customs Duty, Excise Duty & Service Tax being the prime drivers of nation's growth is under direct control of the Central Government, the final authority being Central Board of Excise and Customs ("CBEC"). The States enjoy the power to levy taxes like professional tax, stamp duties and state sales tax, now popularly known as Value Added Tax ("VAT") and other local taxes like Octroi etc.

With an aim to bring a paradigm shift in the field of Indirect Taxation, Indian Government is currently in the process of replacing Service Tax and VAT with a single Goods and Service Tax ("GST"). The Empowered Committee of State Finance Ministers released the model GST framework in June 2016.

DIRECT TAXATION

Income Tax

Previous Year and Assessment year

In general, income earned in the Previous Year is taxed in the Assessment Year. Previous Year is year commencing on 01st of April or date of commencement of business whichever is earlier and ending on 31st of March.

The year subsequent to the previous year (01^{st} of April to 31^{st} of March) is called the Assessment Year.

Tax Structure

The Tax rates and tax compliance is dependent on the type of business. There are separate tax structures in Indian Income Tax Act as below:

- ❖ Sole proprietary concerns are grouped along with Individuals
- ❖ Hindu Undivided Families
- ❖ Partnership Firms or Limited Liability Partnerships
- ❖ Association of Persons
- ❖ Companies

Further, there is preferential treatment for Agricultural Income.

The Income structure under Taxation is divided broadly into the following:

1. Income from Salaries
2. Income from House Property
3. Income from Business or Profession
4. Income from Capital Gains
5. Income from Other Sources

Depending on which source the income pertains to, the taxable income is arrived at by applying the provisions of the Act.

Every entity whose income is chargeable to Income Tax has to get itself registered under the Income Tax Act by obtaining a Permanent Account Number (PAN). PAN is a ten digit alpha numeric number provided by the Indian Income Tax Department and is used as the control number for assessment of income earned by the entity and retrieval of information about the activities of the entity.

Rates of Income Tax are subject to change every year. Tax rates for various entities for the financial year 2016 – 2017 are provided below:

For Individuals, HUFs, AOPs, BOIs & AJPs

SLAB OF INCOME	TAX RATE
≤ INR 2.5 Lakh	NIL
INR 2.5 Lakh – INR 5 Lakh	10%
INR 5 Lakh – INR 10 Lakh	20%
≥ INR 10 Lakh	30%

Rate of Surcharge on income-tax is 15%, in case total income exceeds INR 1 Crore

Rate of Education Cess ("EC") & Secondary and Higher Education Cess ("SHEC") on the amount of 'Income-tax + Surcharge' is 2% and 1% respectively

For Firms & Companies (The below rates include applicable Surcharge, EC and SHEC)

Taxable Income (in INR)	**Up to 1 Crore**		**1 Crore to 10 Crore**		**Taxable Income above 10 Crore**
Turnover in PY 2014-15 (in INR)	**Up to 5 Crore**	**More than 5 Crore**	**Up to 5 Crore**	**More than 5 Crore**	
Partnership Firms / LLP	30.90%	30.90%	34.608%	34.608%	34.608%
Domestic Companies	29.87%	30.90%	31.96%	33.063%	34.608%
Foreign Companies	41.20%	41.20%	42.024%	42.024%	43.26%

Note:

❖ Rate of Surcharge are as under:

Taxable Income (in INR)	Up to 1 Crore	1 Crore to 10 Crore	Above 10 Crore
Partnership Firms / LLP	0%	12%	12%
Domestic Companies	0%	7%	12%
Foreign Companies	0%	2%	5%

❖ Rate of EC & SHEC on the amount of 'Income-tax + Surcharge' is 2% and 1% respectively

New Initiatives:

❖ For newly set-up domestic companies, with effect from PY 2016-17, tax at 25% at the option of the company, if company: (i) has been set-up & registered on or after 01-03-2016; (ii) is engaged solely in business of manufacture or production of any article or thing; (iii) has not claimed any tax incentives; and (iv) furnished its option in prescribed manner before the due date of filing Return of Income. The effective tax rates in such case would be as under:

IF TOTAL INCOME (in INR)	EFFECTIVE TAX RATE
Up to 1 Crore	25.75%
1 Crore to 10 Crore	27.55%
Above 10 Crore	28.84%

(The above rates includes applicable Surcharge, EC and SHEC)

❖ **Start-Ups**

With effect from PY 2016-17, various tax incentives have been extended in respect of an eligible start-up, being a company, engaged in eligible business involving innovation, development, deployment or commercialization of new products, processes or services driven by technology or intellectual property provided that:

- it is incorporated on or after 1-4-2016 but before 1-4-2019
- total turnover of business does not exceed INR 25 crore in any year from PY 2016-17 to PY 2020-21
- it holds a certificate of eligible business from Inter-Ministerial Board of Certification as notified by Govt. ('IMBC')

Withholding Tax/Tax Deducted at Source (TDS)

Under IT Act, tax has to be withheld at source by the person responsible for making the payment if such a payment is taxable in India in the hands of the payee. Such tax has to be deducted at the time of credit to the account of the payee or actual payment, whichever is earlier. The rates for such deduction are provided in the IT Act.

It is made mandatory for the payee to furnish Permanent Account Number ("PAN") to the person responsible for deducting tax, on failure of which tax will be withheld at higher of: (i) rate specified in the IT Act or (ii) rates in force or (iii) at 20%.

Minimum Alternate Tax (MAT)

With a view to bring zero-tax paying companies having book profits under the tax net, the IT Act requires companies to pay MAT in lieu of the normal corporate tax, in case the normal corporate tax liability is lower than MAT liability. MAT is levied at the rate of 18.5% *(plus applicable Surcharge, EC and SHEC)* on the book profits. A credit of the difference between the MAT liability and normal corporate tax liability is available to be carried forward for set-off in the year in which tax is payable under the normal provisions of the IT Act.

Alternate Minimum Tax (AMT)
The provisions of AMT are applicable to all non-corporate assessees, including LLPs. AMT is levied on the Adjusted Total Income ("ATI") at the rate of 18.5% *(plus applicable Surcharge, EC and SHEC)*. Tax is payable as per the provisions of AMT in case the normal tax liability is lower than AMT liability. A credit of the difference between the AMT liability and normal tax liability is available to be carried forward for set-off in the year in which tax is payable under the normal provisions of the IT Act. The provisions of AMT are not applicable to an Individual, HUF, AOP, BOI or AJP in case the ATI does not exceed Rs.20 Lakh.

Capital Gain Tax
Capital gains arising from the sale of capital assets are classified into two categories, viz., Short-term capital gains and Long-term capital gains.

Short-term capital gains means any gains arising from transfer of capital assets which are held for a period of not more than 36 months. However, in case of securities listed on a recognized stock exchange in India, units of an equity-oriented mutual fund (listed or unlisted), units of UTI (listed or unlisted) and zero-coupon bonds (listed or unlisted), such period shall be reckoned as 12 months and in case of unlisted shares of a company, such period shall be reckoned as 24 months. Such short-term capital gains are taxable at the normal tax rates applicable to each category of taxable persons.

Long-term capital gains are capital gains other than short-term capital gains and taxable at 20% *(plus applicable Surcharge, EC and SHEC)*. However, long-term capital gains on listed securities and zero-coupon bonds, are taxable in either manner, at the option of the assessee: (i) in case of indexed cost of acquisition – special rate of 20% *(plus applicable Surcharge, EC and SHEC)* or (ii) in case of cost of acquisition (without indexation) – special rate of 10% *(plus applicable Surcharge, EC and SHEC).*

Long-term capital gains on transfer of unlisted securities or shares of a company (not being a company in which the public are substantially interested) by a non-resident (not being a company) or a foreign company is taxable at a special rate of 10% *(plus applicable Surcharge, EC and SHEC)*. The benefit of indexation of cost of acquisition will not be available in this case.

For a non-resident (not being a company) or a foreign company, capital gains may be subject to more beneficial provisions contained in the tax treaty between India and the country in which the taxpayer is resident.

Exemptions from capital gains tax are available in certain cases if such capital gains or sales proceeds from the capital assets are reinvested in some other specified capital assets.

In the case where the sale consideration of the capital asset is not ascertainable or cannot be determined, then for the purpose of computing capital gains, fair market value of the said asset as on the date of transfer will be considered as the value of sale consideration.

There are separate provisions for non-residents acquiring shares and other securities in foreign currency.

Dividend Income
Dividend (other than a deemed dividend) declared by a domestic company is exempt in the hands of the recipient, but is taxed in the form of Dividend Distribution Tax ("DDT") in the hands of the dividend distributing company at 20.92% *(including applicable Surcharge, EC and SHEC)* with effect from PY 2016-17. Where the domestic company has received any dividend from its subsidiary company during the year and the subsidiary company has paid tax on such dividend, then dividend distributed by the domestic company in the same year to that extent will not be subject to tax under the IT Act.

Deemed Dividend

Section 2(22)(e) of the IT Act provides that any loan or advance made by a company, in which the public is not substantially interested, to:

1. a shareholder holding 10% or more of the voting powers of the company; or
2. to any concern in which such a shareholder is a member or a partner and which he has a substantial interest; or
3. any payments made by any such company on behalf of, or for the individual benefit of, such a shareholder

is deemed to be a dividend in the hands of the recipient, taxable in the hands of the shareholder and not liable to tax in the company.

Dividend Received From Foreign Companies

Dividends received by an Indian Company from a Foreign Company, in which the Indian Company holds 26% or more in nominal value of equity share capital, is taxable at the rate of 15%

Special Rates for Non-Residents (Not Being a Company) Or Foreign Company

❖ **Royalty Or Fees For Technical Services ("FTS"):**

In case Royalty or FTS are received by a non-resident (not being a company) or a foreign company from the Government or from Indian corporations under agreements that are approved by the Government or which are in accordance with the Industrial Policy:

- In pursuance of agreements made after May 31, 1997 but before June 1, 2005 – Taxable at 20% on a gross basis *(plus applicable Surcharge, EC and SHEC)*
- In pursuance of agreements made on or after June 1, 2005 – Taxable at 10% on a gross basis *(plus applicable Surcharge, EC and SHEC)*

The above rates may be subject to more beneficial provisions contained in a tax treaty entered into between India and the country in which the taxpayer is resident.

However, in case the Royalties or FTS earned in pursuance of agreements made after March 31, 2003 are effectively connected with the Permanent Establishment ("PE") of the non-resident (not being a company) or foreign company in India, then the same are taxed at the rate of 40% *(plus applicable Surcharge, EC and SHEC)* on a net income basis

Scope of "Royalty" definition widened:

It has been clarified in the Finance Act 2012, w.r.e.f. 1-6-1976, that royalty includes any payment made on account of transfer of all or any right for use or right to use a computer software (including granting of license) irrespective of the medium through which such right is transferred

❖ **Interest On Loans Or Long-Term Bonds In Foreign Currency:**

Interest on loans or long-term bonds in foreign currency earned by a non-resident (not being a company) or a foreign company is taxable at the rate of **20%** *(plus applicable Surcharge, EC and SHEC)* on the gross amount of interest

In respect of interest earned under a foreign currency loan agreement (between 1-7-2012 and 1-7-2017) or on long-term bonds including long-term infrastructure bonds issued in foreign currency (between 1-10-2014 and 1-7-2017), withholding tax is applicable at the rate of **5%** *(plus applicable Surcharge, EC and SHEC)* on the gross amount of interest, to the extent to which such interest does not exceed the amount of interest as calculated at the rate approved by the Central Government.

The above rate may be subject to more beneficial provisions contained in the tax treaty between India and the country in which the taxpayer is resident.

Advance Rulings

Income-tax law in India is complicated as in most other countries. It is sometimes not easy to construe the legal provisions; doubts arise in the minds of tax gatherers and taxpayers alike as to the correct interpretation of law. Therefore, with a view to minimizing uncertainty in the taxation of income, the Government of India has introduced a system of Advance Rulings to enable any non-resident to obtain binding rulings on its income-tax liability even before the income is earned.

Transfer Pricing
Commercial transactions between the different parts of the multinational groups may not be subject to the same market forces shaping relations between the two independent firms. The price charged may be arbitrary and dictated, with no relation to cost and added value and diverge from the market forces. Transfer price is, thus, a price which represents the value of good; or services between independently operating units of an organisation, but, the expression "transfer pricing" generally refers to prices of transactions between associated enterprises which may take place under conditions differing from those taking place between independent enterprises.

The Indian Transfer Pricing Code prescribes that income arising from international transactions or specified domestic transactions between associated enterprises should be computed, having regard to the arm's-length price. It has been clarified that any allowance for an expenditure or interest or allocation of any cost or expense arising from an international transaction or specified domestic transaction also shall be determined, having regard to the arm's-length price.

To bring about certainty and uniformity with regard to determination of arm's length price of the International transaction, the Indian Government has introduced the provisions of Advance Pricing Agreement (APA). An APA is an agreement between the Government and the taxpayer, which determines, in advance, the arm's length price or specifies the manner of determination of arm's length price (or both), in relation to an International transaction. The APA so entered into shall be binding on both the taxpayer and the tax

The system of Advance Rulings is primarily meant for non-residents so that the complexity of the Indian tax legislation or the delay and cost of litigation in tax matters may not act as a disincentive for their investment proposals in India.

authorities with respect to the transaction covered under the agreement.

Double Taxation Avoidance Agreements
Keeping in line with the international practice of avoiding double taxation of cross border income, India has entered into agreements with the Government of other countries for the avoidance of double taxation of income under the Indian IT Act and under the corresponding law in force in that country. India has comprehensive Double Taxation Avoidance Agreements (DTAA) with 93 countries, Limited Agreements with 8 countries and Tax Information Exchange Agreements with 16 countries.

The purpose of a Double Taxation Avoidance Agreement ("DTAA") is to assist tax payers in India and abroad to know in advance, to the extent practicable, the tax implications of the various transactions arising from the implementation of an agreement for foreign collaboration between any person in India and another outside India. Most of these agreements are comprehensive and cover all types of income whereas some of these are limited to aircraft and / or shipping profits. The provisions of the IT Act or the relevant DTAA, whichever are beneficial, would apply to the assessee.

To avail the benefit of the DTAA, the non-resident assessee has to mandatorily provide a Tax Residency Certificate ("TRC") containing such particulars, as may be prescribed, obtained by him from the Government of that country.

Return Filing In Relation To Assets Located In India
It is now mandatory for every resident (not being resident and ordinary resident) to file return of income in India who is having any asset (including financial interest in any entity) or signing authority in any account located outside India, irrespective of the fact whether the resident taxpayer has taxable income or not.

Securities Transaction Tax (STT)
STT is payable on transactions in equity shares, derivatives and units of an equity-oriented funds entered in a recognized stock exchange or on sale of units of any equity mutual fund to the mutual fund.

Stamp Duty
Stamp duty is payable on various legal documents specified by statute and can be either ad valorem or based on value as executed in the legal documents. The Stamp duty is governed by the Indian Stamp Act.

Stamp duty in India is generally levied on Transfer of Property, Transfer of shares, bills of exchange, hire purchase, Execution of Lease agreement, Partnership deed, Execution of Mortgage / commercial loan / home loan agreements.
In real estate transactions, stamp duty is payable on buying, selling, leasing of residential / commercial properties.

Documents not duly stamped are not producible in the court of law.

Property Taxes
Property tax is levy on property payable by the owner. Tax is levied by the governing authority of the jurisdiction in which the property is situated, called the Municipal Corporations or Village Panchayat.

Property Tax is levied on the annual rental value of the property calculated by the local authorities based on its location, occupancy status, covered area and quality of construction. Vacant land is not subject to property tax.
Apart from property tax, local authorities also levy Water and Drainage Tax and Scavenging Tax.

INDIRECT TAXATION

Customs Duty
Custom Duty is on imports and exports, import/export procedures, prohibitions on importation and exportation of goods, penalties, offences, etc. The Central Board of Excise & Customs ("CBEC") is the apex body for customs matters. In the present scenario of increasing globalization and entering into free trade agreements with the members of the various regional trading blocks like the South Asian Association for Regional Cooperation (SAARC), the Association of Southeast Asian Nations (ASEAN) and with the WTO, the custom duty rates have been standardized by the regulatory authorities and the levy load is reduced to a great extent. The peak rate has reduced from 30% in 2002-03 to 10%.
The customs duty on imports is levied when the goods cross the custom frontiers, i.e., when they enter the territorial boundaries of India. Goods can either be cleared for home consumption, directly from the port on the payment of custom duty or else can be cleared to warehouse without payment of duty, by furnishing a bond, wherefrom such goods can be cleared at a later date for home consumption, on payment of duty and other warehousing charges. Certain goods for import fall under the Negative List whereby specific permission is required before its import.

Excise Duty
Excise duty is duty on manufacture of goods. All goods manufactured in India or deemed to be manufactured in India are liable to pay excise duty. Though the tax levy is on manufacture, the payment of tax is required to be made at the time of clearance of goods from the factory gate or depot. Excise Duty rates are on a declining trend & at present, most of the products are either charged at 12.5% or are NIL rated.

Service Tax
Service Tax is levied on all services other than those provided in the Negative list. The negative list consists of 17 services. Apart from the negative list, there is also mega exemption notification which exempts certain taxable services based on certain

criteria from payment of service tax. Currently, Service Tax is charged on the value of taxable services at the rate of **15%** (i.e., Fixed rate of 14%, 0.5% Swachh Bharat Cess and 0.5% Krishi Kalyan Cess). The value of taxable services is determined as per the Valuation Rules. Non-monetary consideration can also be subjected to Service Tax levy. Exemption is given with regard to Service Tax to Small Scale Service Providers when the value of taxable services provided does not exceed INR 10 Lakh.

Value Added Tax (VAT) / Central Sales Tax (CST)
CST and VAT are the taxes on sale of goods. CST is charged by the Central Government on interstate sales and VAT is charged on intra-state sales by the respective State Governments. The current rate of CST is 2% and the rate of VAT is different for different products and differs from state to state.

Octroi Duty / Entry Tax
This is a tax levied by the municipalities of various towns and cities at the time of entry of goods into such towns and cities. It is also identified as entry tax for entry of goods in the respective jurisdiction of the local authorities. Exemptions and concessions in the duty are being offered by local authorities depending upon their requirements.

Research And Development Cess (R & D Cess)
Under the Research and Development Cess Act, 1986, 'R & D Cess' is levied by Central Government at the rate of 5% on all payments made by an industrial concern for import of technology into India under a foreign collaboration. Such cess is required to be paid by the importer on payments made for such imports.

Goods & Service Tax (GST)
In order to replace existing multiple tax structures of Centre and State taxes, Indian Government is proposing to introduce a dual model of comprehensive tax on goods and services containing Central GST ("CGST") / State GST ("SGST").

GST integrates various taxes by taxing goods and services with value addition at each stage by giving full credit for inputs such that the final consumer bear's the tax. Central taxes like Central Excise Duty, Additional Excise duty, Service Tax, Additional Custom Duty and Special Additional Duty and State level taxes like, VAT or Sales Tax, Central Sales Tax, Entertainment Tax, Entry Tax, Purchase Tax, Luxury Tax and Octroi will subsume in GST.

GST being a destination based consumption tax based on VAT Principle would greatly help in removing economic distortions and will help in development of a common national market. The tax base is anticipated to be comprehensive, including virtually all goods and services, with minimum exemptions. Implementation of GST would mitigate cascading effect of tax or double taxation in a major way and reduce overall tax burden on goods & services by at **least 25%-30%.**

The model law has been released with a view to engage with the stakeholders and invites suggestions and feedback. The CGST will be framed based on the model GST law. The states will draft their own SGST based on the draft model law with minor variations incorporating State-based exemptions.

CONTACTS IN INDIA

Ahmedabad - Manubhai & Shah LLP
Address: Manubhai & Shah LLP
2nd Floor, "B" Wing, Premium House(Behind Natraj Theatre), Near Gandhigram, Railway Station, Ashram Road, Ahmedabad - 380 009.

Telephone: +91 (0)79 2658 0966/0956/2484/5064
Fax: +91 (0)79 2658 3573
Email: kshitij@msglobal.co.in
Web: www.msglobal.co.in

Bangalore - Guru and Jana, Chartered Accountants
Address: Guru and Jana, Chartered Accountants
No. 41, Patalamma Temple Road, Basavanguddi, Near South End Circle, Bangalore, Karnataka – 560004.

Telephone: +90 8042 202020
Mobile: +90 8042 202020
Email: guru@gurujana.com
Web: www.gurujana.com

Baroda - Manubhai& Shah LLP
Address: Manubhai& Shah LLP
301, 302, Aryaman Complex, 8, Prakash Society, Jetalpur Road, Baroda.

Telephone: +91 265 2311414
Email: baroda@msglobal.co.in
Web: www.msglobal.co.in

Chandigarh - S.S. Kothari Mehta & Company
Address: S.S. Kothari Mehta & Company
SCO-19, 1st Floor, Sector-11, Panchkula-134 109.

Telephone: +91 172 5066820
Web: www.sskmin.com

Chennai (Madras) - R. Subramanian and Company
Address: R. Subramanian and Company
6 (36) Krishnaswamy Avenue, Luz, Mylapore, Chennai - 600 004.

Telephone: +91 (0)44 2499 2261/1347/4231
Fax: +91 (0)44 2499 1408
Email: rs@rscompany.co.in
Web: www.rscompany.co.in

Cochin - Roy Varghese and Associates
Address: Roy Varghese and Associates
41/2138 E, Third Floor, St. Benedict Road, Ernakulam North, Cochin - 682 018.

Telephone: + 91 484 3068366
Mobile: +91 98475 61680, 98470 53765
Fax: +91 484 2397365

Email: cochin@rva.in
Web: www.rva.in

Delhi - S.S. Kothari Mehta & Company
Address: S.S. Kothari Mehta & Company
145-148, Tribhuvan Complex, Ishwar Nagar, Mathura Road, New Delhi – 110065.

Telephone: +91 11 46708888/26932901
Fax: +91 11 66628889
Email: delhi@sskmin.com / Intl@sskmin.com
Web: www.sskmin.com

Gandhidham (Kandla) - Khimji Kunverji& Co.
Address: Khimji Kunverji& Co.
Office No. 1,2 16 & 17, 1stFloor, Neelam Complex, Plot No. 298, Ward 12/B, Opp. Dr. C G High School, Gandhidham (Kutch), Gujarat - 370 201.

Telephone: +91 (0)2836 221427/223567
Fax: +91 (0)2836 222835
Email: vishal@kkc.in
Web: www.kkc.in

Hyderabad - M. Bhaskara Rao & Co.
Address: M. Bhaskara Rao & Co., 5-D Fifth Floor 'Kautilya', 6-3-652, Somajiguda, Hyderabad - 500 082.

Telephone: +91 (0)40 2 3311245/2 3393900/2 3324119
Fax: +91 (0)40 2 3399248
Email: mbr_co@eth.net / mvr@mbrc.co.in
Web: www.mbrc.co.in

Indore - Fadnis&Gupte
Address: Fadnis&Gupte, Chartered Accountants
B-14 RatlamKothi, KanchanBagh Main Road, Indore - 452 001 (MP)

Telephone: +91 731 251 4448/ 252 7716
Mobile: +91 98260 27717
Fax: +91 731 252 7830
Email: fng@bsnl.in
Web: www.fngca.com

Jabalpur - KhimjiKunverji& Co.
Address: KhimjiKunverji& Co., D-1, Kritika Complex, Hotel Krishna Road, Napier Town, Jabalpur - 482 001, Madhya Pradesh.

Telephone: +91 (0)761 2450009
Email: ramesh@kkc.in
Web: www.kkc.in

Jamnagar - Manubhai& Shah LLP
Address: Manubhai& Shah LLP
Opp: Dr.Nanshi Building, Central Bank of India Road, Jamnagar - 361 001.

Telephone: +91 98240 49402

Fax: +91 (22) 22874828
Email: hitesh.pomal@manubhaico.com
Web: www.msglobal.co.in

Kolkata - S.S. Kothari Mehta & Company
Address: S.S. Kothari Mehta & Company
21-Landsdowne Place, 4th Floor, Flat No.4A, (Opp: Ramakrishna Mission Hospital), Kolkata-700 029 (West Bengal).

Fax: +91 33 24546786
Web: www.sskmin.com

Mumbai (Bombay) - HLB Technologies (Mumbai) Private Limited
Address: HLB Technologies (Mumbai) Private Limited - Business Process Outsourcing & Application Software Development
Suite 51, Bombay Mutual Building, Sir Phiroz Shah Mehta Road, Fort Mumbai - 400 001, Maharashtra.

Telephone: + 91(0) 2413 3139/ 40
Email: info@hlbtechnologies.com
Web: www.hlbtechnologies.com

Mumbai (Bombay) – Khimji Kunverji& Co.
Address: Khimji Kunverji& Co.
Level 19, Sunshine Tower, Senapati Bapat Marg, Elphinstone Road, Mumbai - 400 013.

Telephone: +91-22-6143-7333
Fax: +91-22 6143-7300
Email: info@kkc.in
Web: www.kkc.in

Rajkot - Manubhai& Shah LLP
Address: Manubhai& Shah LLP
2nd Floor, Shriji Complex, Opp. Jalaram Petrol Pump, Kalawad Road, Rajkot - 360 001, Gujarat.

Telephone: +91 281 2450162
Email: Rajkot@msglobal.co.in
Web: www.msglobal.co.in

Trivandrum - Roy Varghese and Associates
Address: Roy Varghese and Associates
Ground Floor, Nikunjam Saras (Indian Bank Building), Pattom Palace Jn., Pattom P.O. Trivandrum - 695 004.

Telephone: + 91 471 2541174
Mobile: +91 98475 61680, 98470 40781
Fax: +91 471 2541581
Email: trivandrum@rva.in
Web: www.rva.in

Fadnis & Gupte - Indore
Guru and Jana - Bangalore
Khimji Kunverji & Co - Mumbai
Manubhai & Shah LLP - Ahmedabad
M. Bhaskara Rao & Co - Hyderabad
Roy Varghese and Associates - Cochin
R. Subramanian & Co - Chennai
S.S. Kothari & Mehta - Delhi

HLB International is a world-wide network of independent accounting firms and business advisers