

India

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1. General information

1.1 Physical features

India is located in Asia and is the seventh largest country in the world by land mass. Its land frontier is about 15,200 kilometres and its coastline 7,517 kilometres long.

1.2 Population

At around 1.2 billion, India's population is the second largest in the world, surpassed only by China. One in every six people in the world is Indian; it is home to approximately 17% of the world's population. Between 2001 and 2011, India's population grew at the rate of 1.6%.

1.3 Government

India is a secular republic with a federal structure, comprising 28 states and seven union territories. The central (federal) government is located in New Delhi.

The supreme legislative body is the Indian parliament, which consists of two houses – an upper house and a lower house. Elections are held once every five years unless political instability requires them to be scheduled earlier.

(a) *The executive*

The head of state is the president, who has a largely ceremonial role except in limited circumstances. Executive power is exercised by the prime minister, who is usually the leader of the majority party in the lower house of parliament.

(b) *The judiciary*

The highest appellate court in India is the Supreme Court of India, which has its seat in New Delhi. The court also has jurisdiction in certain disputes between states and actions on the breach of fundamental rights of citizens. The president may consult the court.

Each state and union territory has a High Court, which in some cases is shared between two states, such as Punjab and Haryana. Under the High Courts are a large number of district and subordinate courts.

1.4 Economy

India has a mixed economy, dominated by the services sector. This sector makes up

about 55% of the economy, with both state and private participation. Economic reforms, first introduced in 1991 and developed over the years, have encouraged foreign investment and it is now permitted in the majority of industry and service sectors, except certain strategic ones (see section 2).

The major industries include automobile, cement, construction, information technology and information technology enabled services, oil and natural gas, textiles, telecommunications, and travel and tourism. The current global financial crisis has affected India, and its gross domestic product (GDP) growth has reduced.

Year	GDP growth rate (%)
2007/08	9.3
2008/09	6.8
2009/10	8
2010/11	8.4
2011/12	6.5

In 2011/12, India's exports totalled \$305.7 billion and its imports \$488.6 billion. In June 2012, India had \$290 billion of reserves.

During 2011/12, foreign direct investment was \$46,847 million. The major investors are shown in the table below. Favourable double tax avoidance agreements with Mauritius and Singapore have resulted in high investments from these jurisdictions.

Country	% of total foreign direct investment into India
Mauritius	38
Singapore	10
UK	9
Japan	7
USA	6

The sectors attracting the most foreign direct investment recently are as follows.

Sector	% of total foreign direct investment into India
Services (financial and non-financial)	19
Telecommunications	7
Construction activities (including roads and highways)	7
Computer hardware and software	7
Housing and real estate	7

1.5 Origin of laws in India

India's legal system can be traced back 5,000 years.

In ancient India, laws were believed to have divine origin and were based on the concept of *Dharma* (Sanskrit for 'that which upholds or supports'), which promotes virtues, beliefs, moral obligations, ethical laws, codes of behaviour, traditions and righteous actions that sustain human life in peace and harmony. They were found in ancient sacred texts called the Vedas.

Islamic jurisprudence was introduced in the Medieval Phase, beginning in the 10th century AD. This was also regarded as of divine origin.

During the English colonisation, the Anglo-Saxon system of administration and justice was established, setting up a system of codification of laws. Various statutes, such as the Indian Penal Code, the Code of Civil Procedure and the Indian Contract Act, were enacted at this time. They have been in force for about 150 years.

India was declared a republic in 1950 and adopted a written constitution, which is similar to that of the United States and in certain respects the United Kingdom. The administration of justice and systems of courts are based on the English common law system. The Supreme Court and the High Courts in each state have powers to issue high prerogative writs. Infringement of fundamental rights may be petitioned directly to the Supreme Court. Since 1991, significant changes have been introduced to decongest the courts by setting up special tribunals and fast tracks courts.

2. Foreign investment rules

2.1 Background

Increasingly since the 1991 economic liberalisation, the government has permitted, and indeed encouraged, foreign presence and investment in various industry sectors. The main objectives are to supplement domestic capital and to encourage economic growth and the development of skills and technology.

Generally, the following options are available for a non-resident to invest or establish a place of business in India:

- joint venture or wholly owned subsidiary;
- branch office;
- project office; and
- liaison office.

2.2 Joint venture or wholly owned subsidiary

Indian companies may issue equity shares, preference shares and convertible debentures to non-residents. Today, foreign direct investment is permitted in almost all industry sectors, albeit, in some cases, to varying degrees and subject to certain terms and conditions.

Depending on the industry sector, foreign direct investment in Indian companies falls either under the 'automatic' route or the 'approval' route. No permission is required under the automatic route. Foreign direct investments under the approval route must obtain prior governmental permission through an application to the Foreign Investment Promotion Board in New Delhi. Processing time is usually six to eight weeks.

Currently, foreign direct investment is prohibited in certain sectors, such as:

- atomic energy;
- railway transport (other than mass rapid transport systems);
- lottery business, gambling and betting; and
- the manufacture of cigars and cigarettes.

The government's foreign direct investment policy on specific industries is as follows:

- floriculture, horticulture, development and production of seeds and planting material, animal husbandry, services related to agro and allied sectors – up to 100% foreign direct investment is permitted under the automatic route;
- tea, including tea plantations – up to 100% foreign direct investment is permitted under the approval route;
- mining and exploration of metal and non-metal ores – up to 100% foreign direct investment is permitted under the automatic route;
- mining and mineral separation of titanium bearing minerals and ores, increasing its value and integrated activities – up to 100% foreign direct investment is permitted under the approval route;
- exploration of oil and natural gas fields, infrastructure related to marketing of petroleum products and natural gas, marketing of natural gas and petroleum products, petroleum product pipelines, liquid natural gas regasification infrastructure, petroleum refining in the private sector, subject to government policy on private participation in exploration of oil and the existing fields of natural oil companies – up to 100% foreign direct investment is permitted under the automatic route;
- petroleum refining by public sector undertakings, without disinvestment or dilution of domestic equity in the existing undertaking – up to 49% foreign direct investment is permitted under the approval route;

- defence industry – up to 26% foreign direct investment is permitted under the approval route;
- publishing newspaper and periodicals on news and current affairs/publication of Indian editions of foreign magazines on news and current affairs – up to 26% foreign direct investment is permitted under the approval route;
- publishing/printing scientific and technical magazines/speciality journals/periodicals/publication of facsimile editions of foreign newspapers – up to 100% foreign direct investment is permitted under the approval route;
- airports:
 - greenfield projects – up to 100% foreign direct investment is permitted under the automatic route;
 - existing projects – up to 74% foreign direct investment is permitted under the automatic route; foreign direct investment above 74% must follow the approval route;
- scheduled air transport services/domestic scheduled passenger airline – up to 49% foreign direct investment is permitted under the automatic route;¹
- non-scheduled air transport service – up to 49% foreign direct investment is permitted under the automatic route; foreign direct investment between 49% and 74% must follow the approval route;
- townships, housing, built-up infrastructure and construction development projects – up to 100% foreign direct investment is permitted under the automatic route, subject to conditions on minimum investment and development of the area (see section 8);
- industrial parks, new and existing – up to 100% foreign direct investment is permitted under the automatic route;
- telecom services – up to 49% foreign direct investment is permitted under the automatic route; foreign direct investment between 49% and 74% must follow the approval route;
- cash and carry wholesale trading – up to 100% foreign direct investment is permitted under the automatic route;
- single brand product retail trading – up to 100% foreign direct investment is permitted under the approval route;
- multi-brand retail trading – up to 51% foreign direct investment is permitted under the approval route;
- non-banking finance companies, for specific activities such as merchant banking, underwriting, portfolio management, investment advisory services, stock broking, credit card business, micro credit and rural credit – up to 100% foreign direct investment is permitted under the automatic route; and
- pharmaceuticals:
 - greenfield – up to 100% foreign direct investment is permitted under the automatic route;

1 Foreign airlines are now permitted, subject to certain conditions, to invest under the approval route in scheduled and non-scheduled air transport services, up to the limit of 49% (including foreign direct investment and foreign institutional investors' investments).

- existing companies – up to 100% foreign direct investment is permitted under the approval route.

2.3 Branch office

A branch office can undertake the following activities in India:

- export/import of goods (procurement of goods for export and sale of goods after import are allowed only on wholesale basis);
- rendering professional or consultancy services;
- carrying out research work in areas in which the parent company is engaged;
- promoting technical or financial collaboration between an Indian company and its parent or overseas group company;
- representing a parent company in India and acting as the buying/selling agent in India;
- rendering services in information technology and development of software;
- rendering technical support to the products supplied by parent/group companies; and
- the business of a foreign airline/shipping company.

Normally, a branch office must be engaged in the activity in which the parent company is engaged. However, a branch office cannot engage in retail trading activities or carry out manufacturing or processing activities.

A foreign entity wishing to open a branch office in India must obtain the permission of India's central bank – the Reserve Bank of India. This is done through an Indian bank. The entity must show that it has traded at a profit during the preceding five financial years in its home country and that its net worth is not less than the equivalent of \$100,000.

2.4 Project office

Foreign companies can establish project office(s) if they have a contract to execute a project in India and:

- the project is funded directly by inward remittance from abroad;
- the project is funded by a bilateral or multilateral international financing agency;
- the project has been cleared by an appropriate authority; or
- the company or entity in India awarding the contract has been granted a term loan by a public financial institution or a bank in India for the project.

If these criteria are not met, the Reserve Bank of India's permission must be obtained to establish the project office.

2.5 Liaison office

A liaison office may undertake the following activities:

- representing in India the parent company/group companies;
- promoting export/import from/to India;
- promoting technical/financial collaborations between parent/group companies and companies in India; and