

Doing Business in India

*Regulatory, Taxation and
Compliances*

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About India

India is currently one of the fastest growing economies of the world with an average growth rate of about 5.5 - 6 percent per annum, over the last two decades. This has ensured that the economy ranks among the top five in the world, in terms of growth performance. In 2019, India's ten largest trading partners were USA, China, UAE, Saudi Arabia, Hong Kong, Iraq, Singapore, Germany, South Korea and Switzerland.

India has moved 14 places to be 63rd among 190 nations in the World Bank's ease of doing business ranking.

Given the current saving and investment rate as well as the productivity of capital, India can hope to attain about 6 percent growth per annum in the coming decades. Any substantial increase in this would require a significant step up of either domestic savings or foreign capital. The current economic scenario in India does not give any cause for optimism on this account. The alternative would have to involve a rise in the productivity of capital, for which there is a great deal of scope, not only in the public sector but also in the private sector. Achieving this would however require coherent micro and macro economic policies not only at the national but also at the state levels. Further, it would require a strong political consensus cutting across parties and regions. Certainly, if these barriers can be crossed, then India has the potential to attain a higher growth rate.



India Economy:

The IMF Verdict: 7.4% Growth Ahead for India

With a population of more than 1.2 billion, India is the world's largest democracy. Over the past decade, the country's integration into the global economy has been accompanied by economic growth. India has now emerged as a global player.

While the country's development trajectory is strong, challenges remain.

India's ability to achieve rapid, sustainable development will have profound implications for the world. India's success will be central to the world's collective ambition of ending extreme poverty and promoting shared prosperity, as well as for achieving the 2030 Sustainable Development Goals (SDGs).

On crucial issues ranging from managing scarce water resources, to modernizing food systems, to improving rural livelihoods, to ensuring that megacities become engines of sustainable economic growth and inclusion, India's development trajectory will have a major influence on the rest of the world.

At the same time, India's growing economic and political stature and the relevance of its experience, know-how and investments for the development efforts of other nations well-position the country to play a greater leadership role in the global arena.

Considering the global economic crisis due to COVID-19 outbreak causing a pandemic, India's economy is expected to grow **1.5 per cent to 2.8 per cent** in the 2020-21 fiscal starting April 1, the World Bank said in its South Asia Economic Focus report. It estimated India will grow 4.8 per cent to 5 per cent in the 2019-20 fiscal that ended on March 31.

The International Monetary Fund (IMF) further slashed India's growth estimate for FY20 to 4.2% from 4.8% and for FY21 to **1.9%** from 5.8% estimated in January, warning that the "worst recession since the Great Depression" will dwarf the economic damage caused by the global financial crisis a decade back. It also said that India and China would be the only two major economies likely to register growth, with all others contracting.

However, **India's growth is seen recovering sharply to 7.4% in the next fiscal year, as per IMF.**

It also said the recovery forecast for 2021 depends critically on the pandemic being brought under control in the second half of 2020, allowing containment efforts to be gradually scaled back and restoring consumer and investor confidence.

COVID-19 and Opportunities in India

The COVID-19 pandemic poses an unprecedented threat to both public health and the global economy. Only by ditching nationalist rhetoric and policies, and embracing stronger international cooperation, can governments protect the people they claim to represent. It must focus on **developing components' ecosystem** to enable complete manufacturing rather than just assembly.

Chinese investments in India have increased 5x to 6x in the last few years. The current crisis could accelerate **Make in India**. Besides, the higher import tariffs on components and finished products announced in Budget 2020 could boost local manufacturing.

Present situation demands increased **cooperation in production and distribution**, using global supply chains as effectively as possible, and pooling resources and equipment so that they can be allocated as per the need for shifts from one country to another.

India has the advantage of lower labour costs (about 1/3rd that of China) and skills availability. Thus, it has an opportunity to **increase production capacity**, expand trade, follow an export-driven model and give a thrust to the 'Make in India' campaign.

India is a land of skilled resources. It can take advantage of the skills available and accelerate manufacturing activity. By doing so, India can **create huge job opportunities**.

Increased Adoption of Enterprise Tech

With self-isolation becoming the new normal in the fight against Covid-19, the adoption of enterprise tech products is likely to increase and give an impetus to **enterprise tech startups** in India. These companies originally relied heavily on foreign clients, given the popularity of the traditional style of running businesses – which involved regular meetings in person – in the country.

Stimulus to Domestic Entrepreneurs

The coronavirus outbreak in China might be an opportunity for India to **fill in the global shortage** of materials supplied by several Chinese companies. The global market is looking for alternatives to China in order to meet the demands and India can grab this opportunity. There is news that India has been getting queries from the EU and the US for textiles, homeware, ceramic tiles, engineering goods, furniture, etc, seeking to replace Chinese suppliers.

FDI Opportunities in India

The foreign direct investment into India is a process for facilitating people to invest in India. If you are really interested in doing business in India with the help of foreign capital then make sure that you are investing in the right source and you can do this in a number of ways. Even when India was going through tough times, it was still a good financial breeding ground for all foreign investors. They have never felt the pressure as their genre of investment has always been unleashed for the purpose of ushering more capital within the country.

The Indian government's favourable policy regime and robust business environment have ensured that foreign capital keeps flowing into the country. The government has taken many initiatives in recent years such as relaxing FDI norms across sectors such as defence, PSU oil refineries, telecom, power exchanges, and stock exchanges, among others.

According to the Department for Promotion of Industry and Internal Trade (DPIIT), FDI equity inflows in India stood at US\$ 456.79 billion during April 2000 to December 2019, indicating that government's effort to improve ease of doing business and relaxation in FDI norms is yielding results.

How to enter Indian market

A foreign company planning to set up business operations in India may:

- Incorporate a company under the Companies Act, 2013, as a Joint Venture, or a Wholly Owned Subsidiary, or
- Set up a Liaison Office / Representative Office or a Project Office or a Branch Office of the foreign company which can undertake activities permitted under the Foreign Exchange Management (Establishment in India of Branch Office or Other Place of Business) Regulations, 2000.

Routes for receiving Foreign Direct Investment in an Indian company

An Indian company may receive Foreign Direct Investment under the two routes as given under:

i. Automatic Route

FDI is allowed under the automatic route wherein no prior regulatory approval is required from either the RBI or FIPB. Under this route, investors are required to notify the concerned regional office of the RBI within 30 days of receiving investment money in India and to file the required documents and details of the shares allotted, with the same regional office, within 30 days of issuing such shares to the respective foreign investors, without prior approval either of the Government or the Reserve Bank of India in all activities/sectors as specified in the consolidated FDI Policy, issued by the Government of India from time to time.

ii. Government Route

FDI in activities not covered under the automatic route requires prior approval of the Government which are considered by the Foreign Investment Promotion Board (FIPB), Department of Economic Affairs, Ministry of Finance.

The Indian company having received FDI either under the Automatic route or the

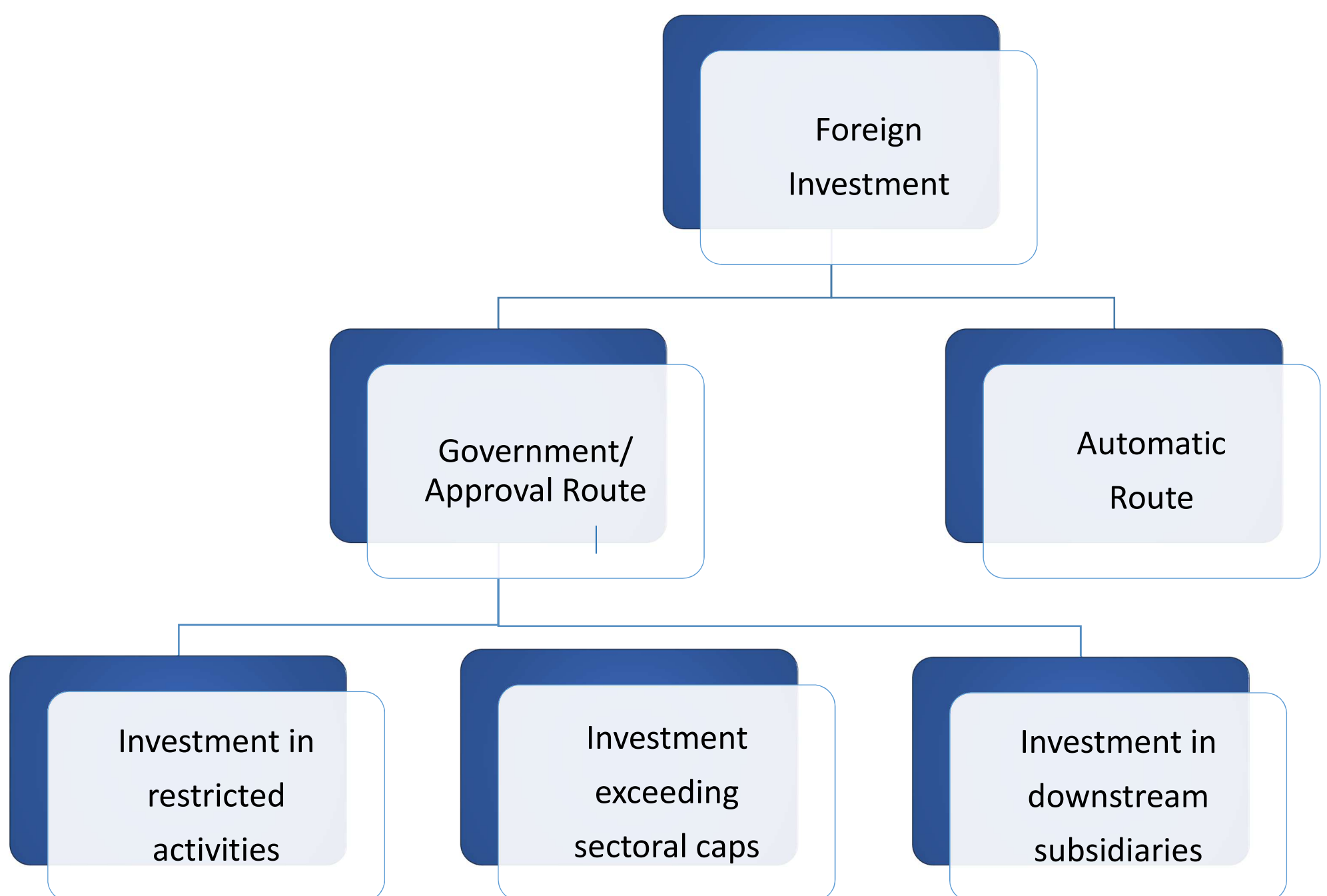
Government route is required to comply with provisions of the FDI policy including reporting the FDI to the Reserve Bank.

Prohibited Route:

FDI is prohibited under the Government Route as well as the Automatic Route in the following sectors:

- i) Lottery Business
- ii) Gambling and Betting
- iii) Business of Chit Fund
- iv) Nidhi Company
- v) Agricultural (excluding Floriculture, Horticulture, Development of seeds, Animal Husbandry, Pisciculture and cultivation of vegetables, mushrooms, etc. under controlled conditions and services related to agro and allied sectors) and Plantations activities (other than Tea Plantations)
- vi) Housing and Real Estate business (except development of townships, construction of residential/commercial premises, roads or bridges to the extent specified)
- vii) Trading in Transferable Development Rights (TDRs).
- viii) Manufacture of cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes.
- ix) Activities/sectors not open to private sector investment e.g. Atomic Energy

Below chart gives the brief overview of approvals required in foreign investment in India



Setting up a company in India

If a foreign company wants to carry on its Indian operations under an Indian entity, then it can go via joint venture route, create a wholly owned subsidiary or a LLP in India. The wholly owned subsidiary would mean that a foreign company incorporates a new company which is held solely by the foreign company, or purchases all shares of an Indian company, which then becomes a wholly owned subsidiary of the foreign company. In a joint venture, the foreign company and the Indian partner sign an agreement (a Memorandum of Understanding or a JV Agreement) either for perpetual existence or for a specific project or limited duration.

The formation of wholly owned subsidiary will need to comply with all the Registrar Of Companies' processes including submission of different forms, payment of necessary fees, opening of bank accounts, etc. Once the certificate of incorporation is received, the documents for capital infusion have to be submitted for complying with Foreign Direct Investment regulations prescribed by the Reserve Bank of India.

Depending upon the nature of the business activities and the business sector, companies need to register with relevant sector regulators:

- Financing and investing operations, etc., must register with the RBI as a non-banking finance company;
- Asset reconstruction companies must register with the RBI;
- Insurance services (life and non-life) and insurance broking companies, etc., must register with the Insurance Regulatory Development Authority;
- Stock brokers, sub-brokers, merchant bankers, underwriters, custodians, portfolio managers, credit rating agencies, mutual funds, venture capital, asset management companies, share transfer agents, etc., must register with SEBI; and
- Pension funds must register with the Pension Fund Regulatory and Development Authority.

Setting up a company in India

Limited Liability Company

A limited liability company is an incorporated entity that is legally separate from its shareholders and members. A limited company requires a minimum of two shareholders and foreign companies can hold up to 99.9 percent of its shares. Limited companies can own property, hire employees, sue and be sued. A limited company also has unlimited existence, meaning its existence is not dependent on the status of shareholders or members. Limited companies can borrow funds. Establishing a limited company provides the most control and strongest presence to a foreign company.

Incorporating a private limited company is the simplest and quickest mode to set up a business in India for a foreign company. Moreover, further exemptions are available to private companies with lesser restrictions as compared to public limited companies. Thus, most of the foreign companies prefer to form a fully owned private limited company as a subsidiary.

Permitted incomes

All income arising out of its business activities. It can also issue invoice from India.

Remittance outside India

Remittance is allowed by way of:

1. Dividends
2. Royalties
3. Fees towards technical knowhow
4. Remittances under Supply Contracts (subject to limitation of matters of 'Related Party transactions')

Indian Taxation

A limited Liability company actually does business in India and is, therefore, subject to corporate tax @ 25% (for turnover upto Rs. 2.5 Billion) and 30% (for turnover exceeding Rs. 2.5 Billion). Surcharge is applicable @ 7% on taxable income exceeding 1 Cr upto 10 Cr., and @ 12% on taxable income exceeding 10 Cr. Health and education cess is also applicable @ 4%.

Moreover, a company is also required to file income tax return in India.

Other Forms of Business Operations

Limited Liability Partnership

A limited liability partnership firm (LLP) is a cross between partnership firms and a limited company. An LLP is a separate legal entity than its members, which means that the liability of members is limited to their agreed contributions. Only in sectors where the RBI permits 100 percent foreign direct investment (FDI) can a foreign company establish an LLP. Under Prime Minister Modi, the Indian government has eased FDI restrictions and the list of sectors under 100 percent FDI is growing. LLPs can buy and own property, produce revenue, and remit earnings outside of India. LLPs are taxed at 30 percent, and an additional surcharge of 12 percent is applied to LLPs if total income exceeds one crore.

In comparison to a Limited Company, an LLP requires less paperwork and minimal record keeping. An LLP also has a reputational advantage over a Partnership Firm because of the additional registration involved. An LLP must register with the Ministry of Corporate Affairs, lending credible proof of the company's existence.

Joint Ventures

A joint venture is a partnership between two or more companies or individuals who agree to pool capital or goods into a uniform project. Joint ventures in India have been most popular for sectors that do not have 100 percent FDI.

Joint ventures offer relatively low risk to foreign companies, provided that these companies conduct due diligence on their Indian partners. A joint venture allows foreign companies to utilize the existing networks of their Indian partners, and once taxed, such companies can remit their Indian profits outside the country.

JVs are subject to corporate tax @ 30% plus surcharge and cess.

Making the right choice

Choosing whether to set up an office, firm, or company in India has to correspond to a company's size, ambitions, and desired trajectory in the country.

An LO may work best for a smaller company exploring prospects in India. Alternately, incorporating a limited company would be the logical decision of a company looking to aggressively expand within Asian emerging markets.

In making a decision for your business, do consider consulting a professional advisor on the following:

- A review of the latest laws and regulations;
- Due diligence for would-be partners and service providers;
- Exit strategy planning for limited control establishments; and,
- Operational issues – such as connectivity, labor laws, and state-based regulations –when planning the physical location of your Indian presence



Mandatory Compliance by the Company

Although Private Limited Company is the most popular form of starting a business, there are various compliances which are required to be followed once your business is incorporated.

Managing the day to day operations of your business along with complying the corporate laws can be little taxing for any entrepreneur. Hence, it is essential to take help of a professional and also understand such legal requirements to ensure timely fulfilment of compliances, without any levy of interest or penalty.

Recently, Government strike off more than 2 Lakh companies and disqualified more than 3 Lakh directors for non-compliance of various provisions of Companies Act, 2013. Such type of historic action came at the time when government came to know about the various techniques used by corporate entity to evade taxes.

Company law provides legal compliance that are required to be followed by every company like reporting of financial results, reporting of changes in management, maintenance of statutory registers, auditing of accounts etc.

All the compliances provided under the Company Law may be divided in 2 parts for making it easy to understand **Mandatory Compliances** and **Event Based Compliances**.

We have elaborated below such compliances which a private limited company has to mandatorily ensure:

Mandatory Compliance by the Company

Company Name Board	Every Company shall paint or affix the name and address of registered office and keep the same painted/affixed, outside every office or place in which its business is carried on, in legible letters.
Letter Head of Company	Every Company shall get its name, address of registered office, CIN, telephone and email printed on all business letters, billheads, letter papers. Notices and other official publications.
First Board Meeting	First Meeting of Board of Directors is required to be held within 30 days of Incorporation of Company. Notice of BM must be send to every director at least 7 days before the meeting.
Subsequent Board Meetings	Minimum 4 Board Meetings to be held every year with not more than 120 days gap between two meetings. In case of small company, it is sufficient to conduct only two Board Meetings
Issuing of Share Certificate	The Company is required to issue Share Certificates to the subscribers of memorandum within 60 days of Incorporation of Company.
Filing of Disclosure of interest by Directors	Every director at: <ul style="list-style-type: none">- First meeting in which he participates as director; or- First meeting of Board in every FY; or- Whenever there is change in disclosures shall disclose in Form MBP-1 (along with list of relatives and concern of relatives in the Company as per RPT definition), his concern or interest in any company, body corporate, firm or other association of individuals (including shareholding interest). Form MBP-1 shall be kept in the records of the company.

Resident Director	Every Company is required to appoint at least one Director who has stayed in India for a total period of not less than 182 days in the previous calendar year.
Alteration in MOA and AOA	Every alteration of Articles and Memorandum shall be filed with Registrar together with copy of altered Articles, notice of meeting and SR within 30 days of passing Special Resolution. Every alteration made in MOA and AOA shall be noted in every copy thereof.
Registers	<p>Every Company shall keep and maintain following Registers in the specified format:</p> <ul style="list-style-type: none"> - Register of Members MGT-1 - Register of other Security Holders residing outside India MGT-3 - Register of Transfer and Transmission of Shares SH-6 - Register of Charge CHS-7 - Index of the Registers
Other Registers	Every Company shall keep at its Registered Office, a Register of Directors and KMP in the prescribed format containing prescribed particulars.
Resolution	<ul style="list-style-type: none"> - Copy of every resolution (with explanatory statement, if any) or Agreement for the specified matters to be filed with ROC in Form MGT-14 within 30 days. - Articles of Company shall have copy of resolution effecting amendment in AOA and Agreements referred in Section 117(3) of the Act
Minutes of Meeting	<ul style="list-style-type: none"> - Minutes of every general meeting, Creditors, Board and Committee shall be prepared and kept within 30 days of conclusion of every meeting concerned. - All appointments in the meeting shall be included in the minutes. - Minutes of each meeting shall be entered into Minutes Book along with date of such entry.
Meeting, at shorter notice	<ul style="list-style-type: none"> - Meeting can be convened on a shorter notice for urgent matters - Consent from not less than 95% of members entitled to vote thereat
Quorum	<ul style="list-style-type: none"> - Quorum shall be one-third or two directors, whichever is higher - Directors participating through Video Conferencing shall be counted for the purpose of quorum

Mandatory Compliance by the Directors

Appointment of Director	Every person to be appointed as Director shall provide his consent in Form DIR-2 and such consent shall be filed by the Company with ROC in Form DIR-12, within 30 Days of appointment.
Provisions related to DIN	Every individual intending to be appointed as director shall make an electronic application in Form DIR-3 to Central Government for allotment of DIN.
Qualification of Director	<ul style="list-style-type: none">- Qualification for appointment of director- Declaration from Director at the time of appointment or reappointment in Form DIR-8- Annual disclosure from Director to be taken
Number of Directorship	<ul style="list-style-type: none">- No person shall be a director in more than 20 companies- Maximum number of public companies can be 10 (Director in Section-8 Co. and Dormant Director not to be included)
Resignation by Director	<ul style="list-style-type: none">- Director shall intimate his resignation to the Company, which the Company shall file with ROC in Form DIR-12 in 30 days- Company shall put resignation details on its website and in its Directors' Report.
Return of Director and KMP	Return of Directors and KMP to be filed with ROC in Form DIR 12, within 30 days of appointment or change.
Regularisation of Additional Director	If company wants to appoint additional director as director, then it shall regularize the person as director in General Meeting by passing Shareholder Resolution. File form DIR-12 for Change in Designation of Director along with ordinary resolution within 30 days of AGM.

Mandatory Filings with MCA

First Auditor	First Auditor of the company shall be appointed by the BOD within 30 days of Incorporation who shall hold the office till the conclusion of 1 st AGM. In case of First Auditor, filing of ADT-1 is not mandatory.
Subsequent Auditor	The BOD shall appoint the auditor in first AGM of company who shall hold the office till the conclusion of 6 th AGM and shall inform the same to ROC by filing ADT-1. The responsibility to file Form ADT 1 is that of the company and not of the auditor within 15 days from the date of appointment.
Ratification of Auditor	Shareholders will ratify the appointment of Auditor in every AGM but there is no need to file ADT-1 for ratification.
Casual Vacancy of Auditor	If Casual Vacancy is arising due to the resignation of auditor, it shall be filled within 30 days of BOD meeting, subject to approval in General Meeting (AGM or EGM). Any auditor appointed in a Casual Vacancy shall hold office until the conclusion of the next Annual General Meeting.
ADT-3	The auditor shall file with the company a resignation letter stating the reason for resigning and file Form ADT-3 with the registrar within 30 days from the date of resignation. Filing form ADT-3 is the responsibility of the auditor and can only be filed if ADT-1 of the relevant auditor was filed.
Annual General Meeting	Every Company is required to hold an Annual General Meeting on or before 30th September every year during business hours (9 am to 6pm), on a day that is not a public holiday and either at the registered office of the Company or within the city, town or village where the registered office is situated. A 21 clear days' notice is required to be given for the same.
Filing of Financial Statements	Every Company is required to file its Financial Statements within 30 days of its Annual General Meeting with Registrar of Company in E-Form AOC-4. The same shall be digitally signed by one director and certified by CA/CS/Cost Accountant in Practice.

Mandatory Filings with MCA

Filing of Annual Return	Every company is required to file its Annual Return with Registrar of Companies within 60 days of Annual General Meeting in E-Form MGT-7. A company having turnover of INR 50 Crore or more shall be certified by a Practicing CS in Form MGT-8.
Regularisation of Additional Director	If company wants to appoint additional director as director, then it shall regularize the person as director in General Meeting by passing Shareholder Resolution. File form DIR-12 for Change in Designation of Director along with ordinary resolution within 30 days of AGM.
Directors' Report	Directors' Report is to be filed covering all the information required for Small Company under Section 134 within 30 days of AGM along with Form AOC-4. It should be signed by the "Chairperson" authorized by the Board, where he is not so authorized by at least 2 Directors.
Filing of Financial Statements of a Foreign Co.	Every Foreign Company is required to file Annual accounts (consolidated financial statements/ global accounts) along with the list of all principal places of business in India within 6 months of close of the Financial Year.
Filing of Annual Return of a Foreign Co.	Every foreign company shall prepare and file annual return of the company in e-Form FC-4 within 60 days from the close of financial year.

Event Based Compliances

These compliances are triggered based on happening of certain events. There is paperwork that needs to be done for the same and there are various deadlines for these tasks. In case of non-compliance or even a missed deadline there can be penalties, additional fees or a compounding of offence, etc. Hence, it is necessary that the happening of such events be tracked and compliances met with on time.

Particulars	Form No.	Time Limit
▪ Change in Directors or KMP	DIR-12	Within 30 Days of such change
▪ Increase in Authorized Share capital	SH-7	Within 30 days of passing OR
▪ Increase in Paid up share capital (Issue of security)	PAS-3	Within fifteen days from the date of the allotment
▪ Change in registered office	INC-22	Within fifteen days from the date of such change
▪ Change in secured borrowing (Creation, modification and satisfaction of charge)	CHG-1	All types of Charges within 30 days of its creation
▪ Change of name of company	INC-24	Within 60 days from the date of applying reservation of name in INC-1
▪ Conversion of company	INC-27	-
▪ Filing of resolution and agreements	MGT-14	Within 30 days from date of passing resolution
▪ Removal of Director before Expiry	ADT-2	Within 30 days from date of passing SR
▪ Application for KYC of Directors	DIR-3 KYC	On or before 30 th April of immediate next Financial Year (Annual Compliance)
▪ Report for Disqualification of the Director	DIR-9	To be filed by company within 30 days of such disqualification

Other relevant compliances

Form INC-22A – ACTIVE Company Tagging

All companies registered before 31st December 2017 are required to file e-Form ACTIVE (Active Company Tagging Identities and Verification) – INC-22A on or before 25th April 2019. Failure to file e-Form Active will lead to a penalty of Rs. 10,000.

Requirements for Filing ACTIVE Form

- (a) DIN of all the directors shall be active while filing form INC-22A
- (b) Form ADT-1 for appointment of auditor should have already been filed.
- (c) Annual filing (Form AOC-4 and MGT-7) of the company shall be complete till F.Y. 17-18.
- (d) Email ID which will be verified by OTP
- (e) Photograph of Registered office showing external building and inside office also showing therein at least one Director KMP who has affixed his/her DSC to this form.

Declaration of Commencement of Business

Every company is now required to file e Form INC 20A with Registrar of Companies within 180 days of its Incorporation for commencement of its business with effect from 2nd November, 2018.

(a) a declaration is filed by a director within a period of 180 days of the date of incorporation of the company in form INC-20 A and verified in such manner as may be prescribed, with the Registrar that every subscriber to the memorandum has paid the value of the shares agreed to be taken by him on the date of making of such declaration; and

(b) The company has filed with the Registrar a verification of its registered office as provided in sub-section (2) of section 12 in Form INC-22.

Company (SBO i.e, Significant Beneficial Ownership) Rules 2019

In simple terms, SBO is an individual who either alone or together with other individuals or trust, exercises rights or entitlements in the Reporting Company by way of holding 10% shares or 10% voting rights or right to receive 10% or more dividend, both indirect and direct holdings or right taken together or such individual exercise significant influence or control, indirectly or along with direct holding in the Reporting Company.

BEN-1

It is duty of every reporting company to find out or identify individual who is a significant beneficial owner and make such individual(s) to file declaration in Form BEN-1 to the Company within 90 days from commencement of rules i.e. 9th May 2019. For any change in SBO, within 30 days of acquiring or change therein.

BEN-2

Company to file a Return of significant beneficial owners in shares in form BEN-2 within 30 days of receipt of BEN 1 to ROC.

BEN-3

Register of beneficial owners holding significant beneficial interest: Every company shall maintain a register of the interest declared which shall include the name of individual, his date of birth, address, details of ownership in the company and such other details as may be prescribed.

BEN-4

Every reporting company shall give notice to its member for seeking information in BEN 4 in all cases where such member (other than an individual), holds not less than 10% of its:

- (a) shares, or
- (b) voting rights, or
- (c) right to receive or participate in the dividend or any other distribution payable in a FY

Corporate Social Responsibility

Applicable to companies having:

- Net worth of INR 5 billion or more, or
- Turnover of INR 10 billion or more, or
- Net profit of INR 50 million or more,
- during any financial year shall have to constitute a CSR committee and implement CSR policies.

Such companies will have to spend at least **2% of the average net profits** made by the company in the preceding three financial years or such immediately preceding FYs (where 3 years not completed since incorporation) in accordance with the CSR policy.

*Losses, if any, in preceding financial years shall not be considered for calculating average net profits.

Transfer to Schedule VII Funds

If the amount allocated for CSR activities by a company is unable to spend the targeted amount, then the company is required to transfer the amount to a Fund prescribed in Schedule VII. An example of a fund specified in the Schedule would be the Prime Minister's National Relief Fund. The unspent amount has to be transferred to such a Fund within 30 days post the date of closure of the third financial year.

Transfer to Unspent CSR Account

Companies are only required to retain amounts only to the extent of what is necessary for any ongoing projects. However, there will be specific rules and regulations under which a project will be selected as eligible for current projects. Even in such cases of ongoing projects, the amount set aside by the company for the project is required to be put into a special CSR account post 30 days from the end of a financial year. It is from this account that the expenditure for the ongoing project must be utilised in the next 3 years. Additionally, if the amount in the CSR account is not utilised for any CSR activity within the next 3 years, then the amount will once again be transferable to the Funds mentioned in Schedule VII.

Penalty for non-compliance

If a company fails to comply with the provisions prescribed in the new amended Section 135 of the Companies Act, 2013, the company will be liable to a penalty of an amount that will be more than INR 50,000 but less than INR 25 Lakhs. Moreover, it also prescribes that every officer of such non-compliant company will be levied with a fine that is more than INR 50,000 but less than INR 5 Lakhs, or up to 3 years of imprisonment as punishment, or even both.

Taxation in India

The tax structure in India is divided into direct and indirect taxes.

While **direct taxes** are levied on taxable income earned by individuals and corporate entities, the burden to deposit taxes is on the assessee themselves. On the other hand, **indirect taxes** are levied on the sale and provision of goods and services respectively and the burden to collect and deposit taxes is on the sellers instead of the assessee directly.

Taxes in India are levied by the **Central Government** and the **State Governments**. Some minor taxes are also levied by the local authorities such as the Municipality and the Local Governments.

Over the last few years, the Central and many State Governments have undertaken various policy reforms and process simplification towards great predictability, fairness and automation. This has consequently led to India's meteoric rise to the top 100 in the World Bank's Ease of Doing Business (EoDB) ranking in 2018. The Goods & Services Tax (GST) reform is one such reform to ease the complex multiple indirect tax regime in India.

Taxes Levied by Central Government

Direct Taxes

- Tax on Corporate Income
- Capital Gains Tax
- Personal Income Tax
- Tax Incentives

Indirect Taxes

- Excise Duty (on specific goods)
- Customs Duty
- Goods & Services Tax (CGST & IGST)
- Securities Transaction Tax

Taxes Levied by State Governments and Local Bodies

- Goods & Services Tax (State GST)
- Tax on goods and passengers carried by roads or on inland waterways
- Stamp Duty
- Property Tax
- Toll Tax
- Professional tax

Taxation in India

Direct Taxes

Taxes on Corporate Income:

Companies residents in India are taxed on their worldwide income arising from all sources in accordance with the provisions of the Income Tax Act. Non-resident corporations are essentially taxed on the income earned from a business connection in India or from other Indian sources. A corporation is deemed to be resident in India if it is incorporated in India or if its control and management is situated entirely in India. Domestic corporations are subject to tax at a basic rate of 30%. Foreign corporations have a basic tax rate of 40%. In addition, a health and education cess at the rate of 4% on the tax payable is also charged. Corporates are subject to wealth tax at the rate of 1%, if the net wealth exceeds INR 3 million. Till March 2020, domestic corporations have to pay dividend distribution tax at the rate of 15% plus surcharge and education cess, however, such dividends received are exempt in the hands of recipients.

However, from FY 20-21, in a move that will offer some relief to India Inc., the Narendra Modi-led government eliminated the dividend distribution tax that is levied on dividends issued by companies. Dividend income will now be taxed only in the hands of investors as per the tax rate applicable to their income.

Goods and Services Tax

GST is one of the biggest indirect tax reforms in the Country.

GST regime was implemented from 1st July 2017, and India has adopted the dual GST model in which both the Centre and States levy taxes.

GST is a comprehensive tax levy on manufacture, sale and consumption of goods and services at a national level.

Through a tax credit mechanism, this tax is collected on value-added goods and services at each stage of sale or purchase in the supply chain.

The system allows the set-off of GST paid on the procurement of goods and services against the GST which is payable on the supply of goods or services. However, the end consumer bears this tax as he is the last person in the supply chain.

Thus, GST has mainly removed the Cascading effect on the sale of goods and services. Removal of cascading effect has impacted the cost of goods. Since the GST regime eliminates the tax on tax, the cost of goods decreases.

GST is also mainly technologically driven. All activities like registration, return filing, application for refund and response to notice needs to be done online on the GST Portal; this accelerates the processes.

Double Tax Avoidance Treaty

India has entered into DTAA with more than 85 countries including the US. In case of countries with which India has Double tax Avoidance Agreement, the tax rates are determined by such agreements. Domestic corporations are granted credit on foreign tax paid by them, while calculating tax liability in India.

Double taxation can be avoided in two ways. One, the resident country exempts income earned in the foreign country. Or, it grants credits for the tax paid in the other country.

The rules vary from treaty to treaty. For example, the tax treaty with Mauritius has zero tax for capital gains on equities, but that with the US taxes capital gains.

Broadly, under DTAA, the country where the income is generated has the right to tax it according to its laws. The country of residence gives credits for this tax and taxes the income at a lower rate.

For example, if India taxes long term capital gains at 20%, the country of residence where such gains are taxed at 30% will levy only 10% tax on such income.

In many cases, if an individual establishes his residency in a country with which India has signed DTAA, then income generated in India will be taxed at the rate mentioned in the treaty.

Related Party Transactions

The Companies Act, 2013 has made significant amendments vis-à-vis related party transactions making this a significant focus area. The responsibilities are rather onerous with strict consequences in cases of non-compliance.

Key highlights are as follows:

The transactions of a company with its related parties which are not in the ordinary course of business and which are not arm's length would require the consent of the Board of Directors of the Company.

Related party transactions have been defined to include the following:

- Sale, purchase or supply of any goods or materials
- Selling or otherwise disposing of, or buying, property of any kind
- Leasing of property of any kind
- Availing or rendering of any services
- Appointment of any agents for purchase or sale of goods, materials, services or property

- Related party's appointment to any office or place of profit in the company, its subsidiary company or associate company, and
- Underwriting the subscription of any securities or derivatives of the company.

However, the above transactions require shareholders' approval by resolution if they exceed beyond certain limit.

The definition of 'related party' with respect to a company has been widely defined and includes:

- Holding Company,
- Subsidiary Company,
- Sister Subsidiary,
- Associate Company,
- Directors, Key Management Personnel (including relatives),
- Firms / companies where directors / relatives are interested and

Transfer Pricing

Overview

Transfer Pricing in India was introduced in 2001 for curbing tax avoidance by laying down norms for computation of income arising from international transactions or specified domestic transactions (“SDTs”) having regard to the “arm’s length price”. The Indian Transfer Pricing Regulations (TP Regulations) comprise Sections 92 to 92F of the Income-tax Act, 1961 (“the Act”) and Rules 10A to 10T of the Income Tax Rules, 1962 (‘the Rules’) which guides computation of the transfer price and suggests detailed documentation procedures.

The Finance Act, 2012 expanded the scope of TP regulations by insertion of a new section 92BA in the Indian Income tax Act, 1961 to include SDTs within its ambit. SDTs would include transactions entered into by domestic related parties, or by an undertaking with another undertaking of the same tax payer. In addition the Finance Act, 2012 also introduced Section 92CC and 92CD read with Rules 10F to 10T and 44GA to provide the Advance Pricing Agreement Regime in the Indian transfer pricing environment.

Key features of the TP Regulations

- every person who has undertaken an international transaction with an associated enterprise shall maintain information and contemporaneous documentation as prescribed under the Rules
- every person who has entered into an international transaction during a previous year shall obtain an Accountant’s Report and furnish such report on or before the filing of the income tax return which is 30th November following the end of the financial year.
- stringent penalties have been prescribed for non-adherence to the TP Regulations

Advance Ruling and Dispute Resolution

The Central Government has constituted an Authority for Advance Rulings and Dispute Resolution for the purposes of pronouncing an advance ruling and resolution of disputes.

Non-resident Applicant/ Appellant: for determination in relation to a transaction which has been undertaken, or is proposed to be undertaken, by the applicant, and such determination shall include the determination of any question of law, or of fact, specified in the application.

Resident Applicant/ Appellant: for determination in relation to the tax liability of a non-resident arising out of a transaction which has been undertaken, or is proposed to be undertaken, by the applicant with such non-resident, and such determination shall include the determination of any question of law, or of fact, specified in the application.

Public sector company: A resolution of any dispute relating to computation of tax bases or any other issue arising from the order of an Assessing Officer passed in pursuance of the direction of the Dispute Resolution Panel or with the approval of the Commissioner, or any rectification order in relation to such order.

About Us

Neeraj Bhagat & Company is a team of distinguished **chartered accountants**, corporate financial advisors and **tax consultants in India**. Our firm of chartered accountants represents a coalition of specialized skills that is geared to offer sound financial solutions and advices. The organization is a congregation of professionally qualified and experienced persons who are committed to add value and optimize the benefits accruing to clients.

We are prominent Chartered Accountants in India. We offer services of accounts outsourcing, auditing, company formation in India, Business taxation, corporate compliance, starting business in India, registration of foreign companies, transfer pricing, tax due diligence, taxation of expatriates etc.



About Us

Powering over 20 years of our success is a team of distinguished chartered accountants, corporate financial advisors and tax consultants in India.

We are based in New Delhi and have our offices in Gurgaon and Mumbai as well. We are a member of Allinial Global, which happens to be one of the top 20 Accounting Associations in the world.

We offer services in New Delhi and other major cities in India, like:

- **Accounts Outsourcing**
- **Process Outsourcing**
- **Auditing**
- **Company Formation in India**
- **Business Taxation**
- **Corporate Compliance**
- **Starting Business in India**
- **Registration of Foreign Companies**
- **Transfer Pricing**
- **Tax Due Diligence**
- **Taxation of Expatriates**

We also help foreign companies in setting up business in India and getting them necessary statutory approvals from various authorities.

Experience of handling corporate affairs in different areas for over two decades assisting many organizations to set up business in India and operating it smoothly adds to the list.





Our Offices in India

New Delhi

S-13, St. Soldier Tower, G-Block Commercial Complex,
Vikas Puri, New Delhi – 110018 (India)

Phone: + 91 11-48560000, +91 9810158561

Email: info@neerajbhagat.com

Website: www.neerajbhagat.in

Gurugram

1156, Tower B2, 11th Floor, Spaze I Tech Park, Sohna Road,
Sector 49, Gurgaon-122001, Haryana (India)

Phone: + 91 124-4371317, + 91 124-4371318

Mumbai

Unit No.3, 1st Floor, New Laxmi Shopping Centre, A-Wing,
H.D.Road, Ghatkopar (W), Mumbai – 400086 (India)

Phone: + 91 9820263544, + 91 22-25110016