DOING BUSINESS IN INDIA

A Construction Perspective

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1.0 COUNTRY OVERVIEW

1.1 Map of INDIA

Flights :

- Malaysian Airlines
- AirAsia
- AirAsiaX
- Tiger Airways
- Jet Airways
- Emirates
- Qatar Air
- Thai Air

Frequency : Multiple times in a day (depending on the airline and location)
Flying Times : 4-5 hours (non-stop flights, depending on location. For stop over flights, please consult individual websites)

1.2 India at a Glance

1.2.1 Location

Location : The Indian sub continent is separated from mainland Asia by the Himalayas. The Country is surrounded by the Bay of Bengal in the east, the Arabian Sea in the west, and the Indian Ocean to the south.
Indian Standard Time : GMT + 05:30
Telephone Country Code : +91

1.2.2 Geography and Climate

Area : 3.3 Million sq. km
Border Countries : Afghanistan and Pakistan to the north-west ; China, Bhutan and Nepal to the north; Myanmar to the east; and Bangladesh to the east of West Bengal. Sri Lanka is separated from India by a narrow channel of sea.
Coastline : 7,517 km encompassing the mainland, Lakshadweep Islands, and the Andaman and Nicobar Islands.
Climate : The entire country has a tropical climate marked by relatively high temperatures and dry winters. There are four seasons:

1. Winter (December-February)
2. Summer (March-June)
3. South-west monsoon season (June-September)
4. Post monsoon season (October-November)

1.2.3 History

The History of India begins with the birth of the Indus Valley Civilization in such sites as Mohenjo-Daro, Harappa, and Lothal, and the coming of the Aryans. These two phases are usually described as the pre-Vedic and Vedic periods. It is in the Vedic period that Hinduism first arose: this is the time to which the Vedas are dated.

Islam first came to India in the eighth century, and by the 11th century had firmly established itself in India as a political force; the North Indian dynasties of the Lodhis, Tughlaqs, and numerous others, whose remains are visible in Delhi and scattered elsewhere around North India, were finally succeeded by the Mughal empire, under which India once again achieved a large measure of political unity.

Vasco da Gama when landed at Calicut, sailing via the Cape of Good Hope in 1498, marked the beginning of the European era in Indian history. The Portuguese by the 16th Century had already established their colony in Goa.

In the next century, India was visited by a large number of European travellers - Italians, Englishmen, Frenchmen and Dutchmen. They were drawn to India for different reasons. Some were traders, others adventurers, and quite a few fired by the missionary zeal to find converts to Christianity. Eventually England, France, the Netherlands and Denmark, floated East India Companies.

The anticolonial struggle became truly a mass movement with the arrival of Mohandas Karamchand Gandhi (1869 - 1948) in 1915 who had suffered great humiliation in South Africa due to the policy of racial discrimination and later commited to rid his motherland of the ills of foreign rule.

Successive campaigns had the effect of driving the British out of India in 1947, but with independence came the independence of the country into Pakistan.

1.2.4 Demography

Population : 1,205,073,612 (July 2012 est.)

Religions : Hindu 80.5%, Muslim 13.4%, Christian 2.3%, Sikh 1.9%, other 1.8%, unspecified 0.1% (2001 census)

Languages : The constitution recognises 22 official languages including Hindi. English is widely used as a business language.

Hindi 41%, Bengali 8.1%, Telugu 7.2%, Marathi 7%, Tamil 5.9%, Urdu 5%, Gujarati 4.5%, Kannada 3.7%, Malayalam 3.2%, Oriya 3.2%, Punjabi 2.8%, Assamese 1.3%, Maithili 1.2%, other 5.9% (2001 census)

Age structure

0-14 years : 29.3% (male 187,386,162 / female 165,345,284)
15-24 years : 18.2% (male 116,019,042 / female 103,660,359)
25-54 years : 40.2% (male 249,017,538 / female 235,042,251)
55-64 years : 6.8% (male 41,035,270 / female 40,449,880)
65 years and over : 5.6% (male 31,892,823 / female 35,225,003) (2012 est.)

Median age

Total : 26.5 years
Male : 25.9 years
Female : 27.2 years (2012 est.)

Urbanization

Urban population : 30% of total population (2010)
Rate of urbanization : 2.4% annual rate of change (2010-15 est.)

Major cities - population

NEW DELHI (capital) 21.72 million, Mumbai 19.695 million, Kolkata 15.294 million, Chennai 7.416 million, Bangalore 7.079 million (2009)

Literacy

Definition : Age 15 and over can read and write
Total population : 61%
Male : 73.4%
Female : 47.8% (2001 census)

1.2.5 Government

Country Name : Republic of India

Capital : New Delhi

Government Type : Sovereign Socialist Secular Democratic Republic with a Parliamentary system of Government.

Administrative Divisions : 28 States and 7 Union Territories.

Executive Branch : The President of India is the Head of the State, while the Prime Minister is the Head of the Government, and runs office with the support of the Council of Ministers who form the Cabinet Ministry.

Legislative Branch : The Indian Legislature comprises of the Lok Sabha (House of the People) and the Rajya Sabha (Council of States) forming both the Houses of the Parliament.

Judicial Branch

The Supreme Court of India is the apex body of the Indian legal system, followed by other High Courts and subordinate Courts.

Parliament is the supreme legislative body of India. The Indian Parliament comprises of the President and the two Houses - Rajya Sabha (Council of States) and Lok Sabha (House of the People). The President has the power to summon and prorogue either House of Parliament or to dissolve Lok Sabha.

Lok Sabha

The Lok Sabha is composed of representatives of people chosen by direct election on the basis of Universal Adult Suffrage. Maximum strength of the House is 552 members - 530 members to represent the States, 20 members to represent the Union Territories, and 2 members to be nominated by the President from the Anglo-Indian Community.

Rajya Sabha

The Rajya Sabha consists of not more than 250 members - 238 members representing the States and Union Territories, and 12 members nominated by the President. Rajya Sabha is a permanent body and is not subject to dissolution. However, one third of the members retire every second year, and are replaced by newly elected members. Each member is elected for a term of six years. The Vice President of India is the ex-officio Chairman of Rajya Sabha. The House also elects a Deputy Chairman from among its members. Besides, there is also a panel of "Vice Chairmen" in the Rajya Sabha. The senior most minister, who is a member of Rajya Sabha, is appointed by the Prime Minister as Leader of the House.

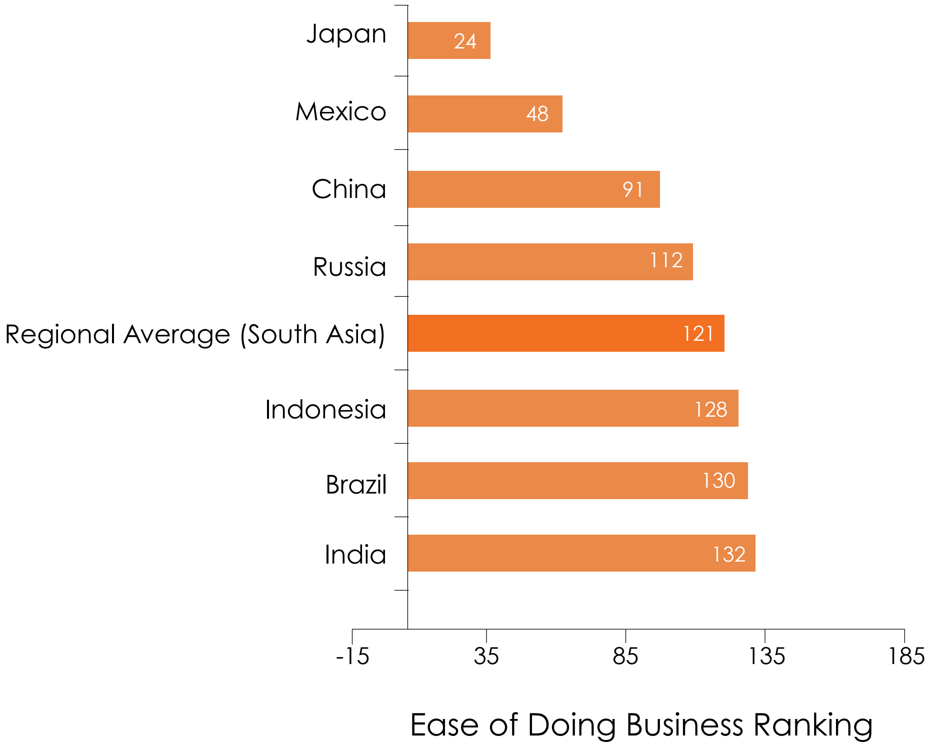
Chapter References

1. http://www.skyscanner.com
2. http://www.gkduniya.com
3. http://india.gov.in
4. http://www.doingbusiness.org
5. http://www.indexmundi.com/india/demographics_profile.html
6. http://en.wikipedia.org/wiki/Economy_of_India
7. http://www.bbc.co.uk/news/world-south-asia-12641776

2.0 INDIA INVESTMENT CLIMATE

2.1 Ease of Doing Business in India

India ranks 134 of 185 economies in the world.



How India and comparator economies rank on the ease of doing business.

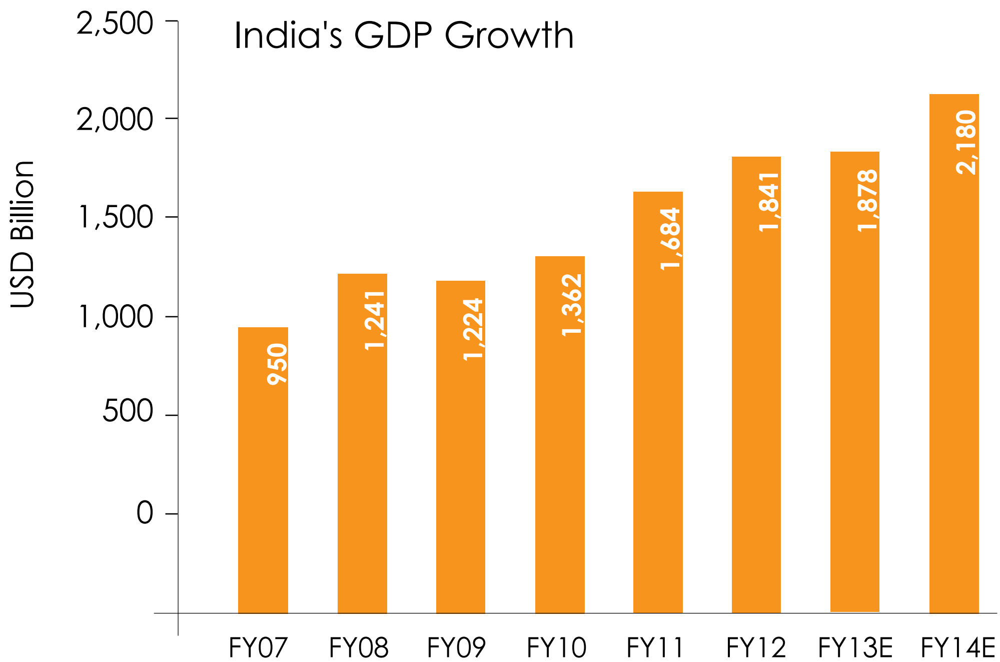
Doing Business Indicators for India vs Malaysia and the best performers globally.

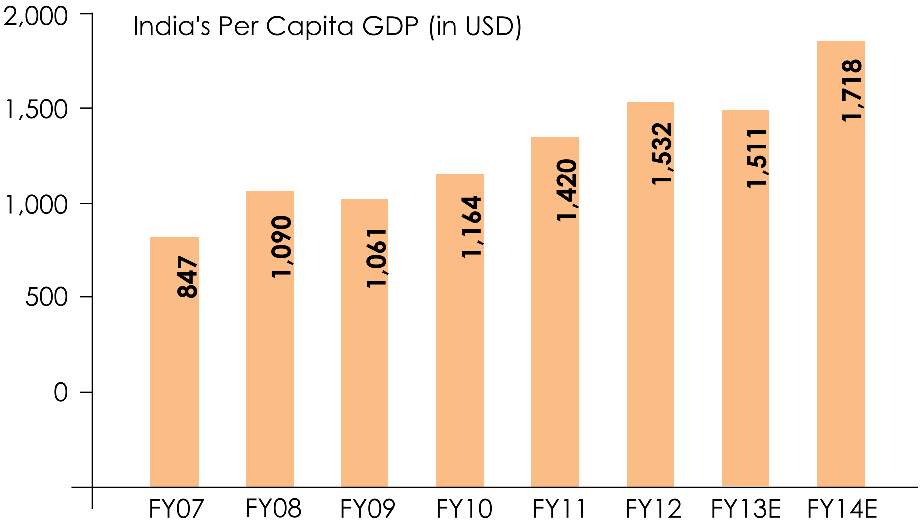
Indicator	India DB2013	Malaysia DB2013	Best Performer Globally DB2013
Overall Ease of Doing Business	134	12	Singapore (1)
Starting A Business (Rank)	173	54	New Zealand (1)
Dealing with Construction Permits	182	96	Hong Kong SAR, China (1)
Getting Electricity	105	28	Iceland (1)
Registering Property	94	33	Georgia (1)
Getting Credit (Rank)	23	1	United Kingdom (1)
Protecting Investors (Rank)	49	4	New Zealand (1)
Paying Taxes (Rank)	152	15	UAE (1)
Trading Across Borders (Rank)	127	11	Singapore (1)
Enforcing Contracts (Rank)	184	33	Luxembourg (1)
Resolving Insolvency	116	49	Japan (1)

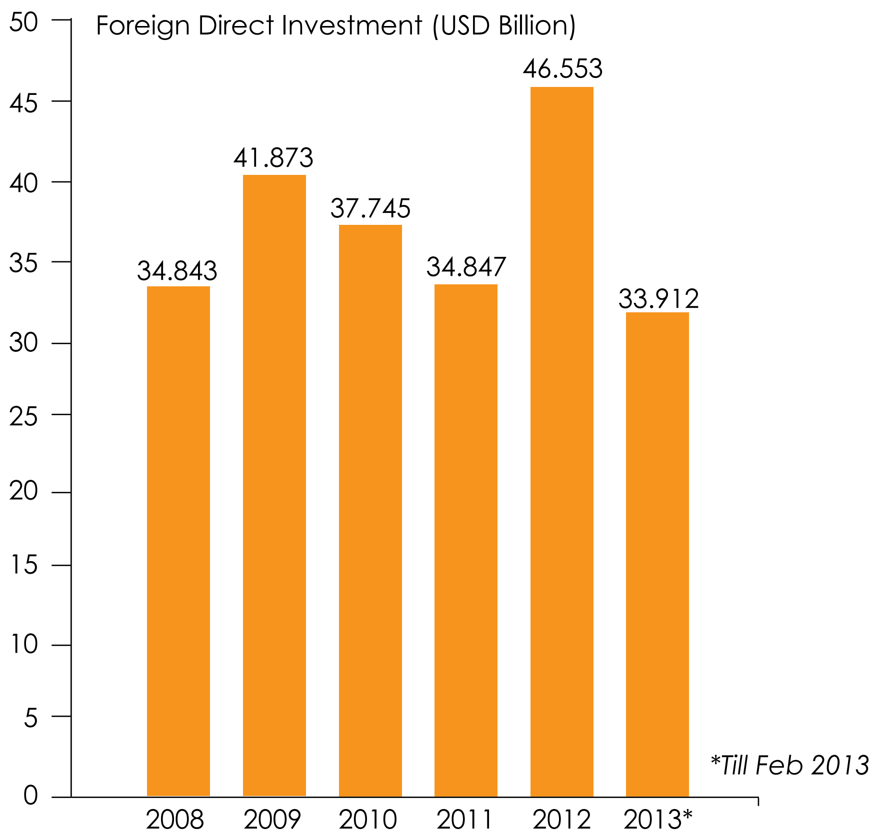
2.2 Economic Overview

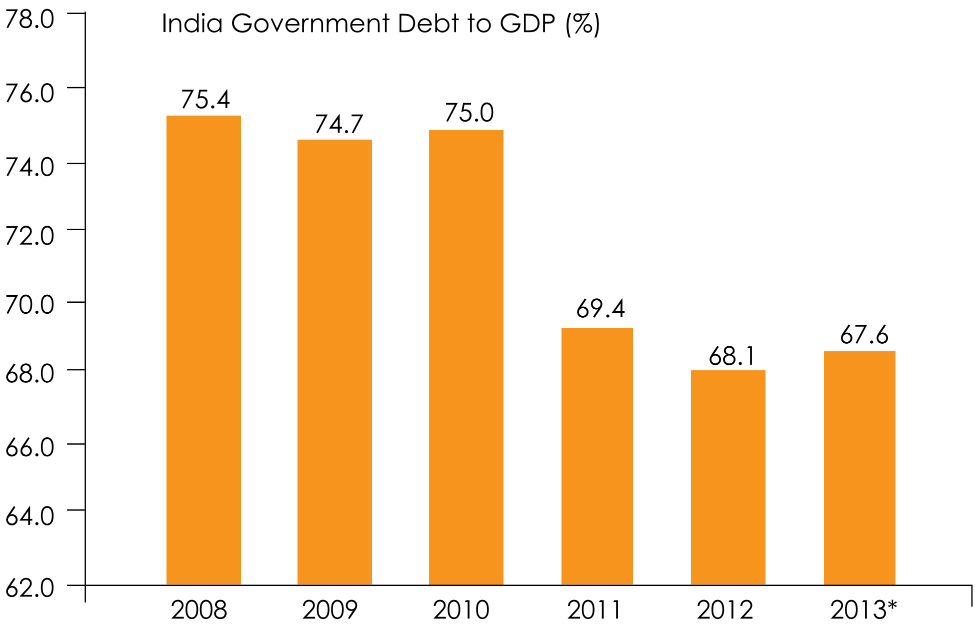
India has undergone a paradigm shift owing to large size of the market and its competitive position in the global economy. The Indian economy is on a robust growth trajectory and boasts of a stable annual growth rate, rising foreign exchange reserves and booming capital markets among others.

According to Ministry of Statistics and Program Implementation (MOSPI), Indian economy is estimated to grow at 5 percent in 2012-13 as compared to the growth rate of 6.2 percent in 2011-12 on account of global economic conditions. These Gross Domestic Product (GDP) figures are based at factor cost at constant (2004-05) prices for the year 2012-13. As per the given data GDP at factor cost at constant (2004-05) prices in the year 2012-13 is likely to attain a level of US$ 1013.63 billion, as against the GDP estimates for the year 2011-12 of US$ 966.56 billion. It is to be noted that India's GDP grew by an astounding 9.3% in 2010–11. The government has forecasted a growth of 6.1%-6.7% for the year 2013-14.

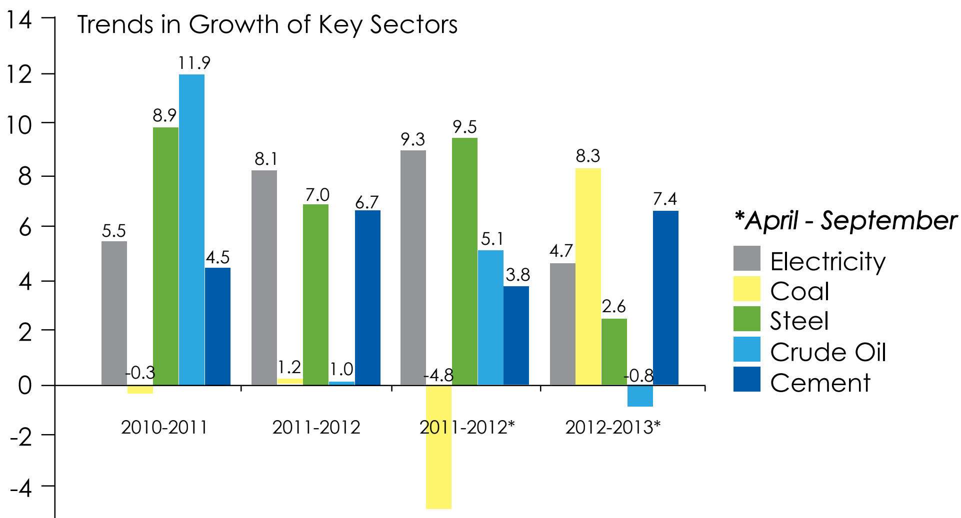



India's Per Capita GDP (in USD)
2,000
1,500
1,000
500
0
847
1,090
1,061
1,164
1,420
1,532
1,511
1,718
FY07
FY08
FY09
FY10
FY11
FY12
FY13E
FY14E


Foreign Direct Investment (USD Billion)
50
45
40
35
30
25
20
15
10
5
0
34.843
41.873
37.745
34.847
46.553
33.912
2008
2009
2010
2011
2012
2013*
*Till Feb 2013



Source : Planning Commision, Government of India *Till April 2013



Source : Mid Year Economic Analysis 2012-13

* India's financial year is from April to March
* The above means April 2010 - March 2011

2.3 Investment Opportunities

2.3.1 Resources Advantages and Developement Opportunities

- World's largest democracy with 1.2 billion people.
- Stable political environment and responsive administrative set up.
- Well established judiciary to enforce rule of law.
- Land of abundant natural resources and diverse climatic conditions.
- India's growth will start to outpace China's within three to five years and hence will become the fastest large economy with 9-10 per cent growth over the next 20-25 years (Morgan Stanley).
- Investor friendly policies and incentive based schemes.
- India's economy will grow fivefold in the next 20 years (McKinsey).
- Cost competitiveness; low labor costs.
- Total labor force of nearly 530 million.
- Large pool of skilled manpower; strong knowledge base with significant English speaking population.
- Young country with a median age of 30 years by 2025: India's economy will benefit from this "demographic dividend".
- The proportion of population in the working age group (15-59 years) is likely to increase from approximately 58 per cent in 2001 to more than 64 per cent by 2021.
- Huge untapped market potential.
- The urban population of India will double from the 2001 census figure of 290m to approximately 590 m by 2030 (McKinsey).
- Progressive simplification and rationalization of direct and indirect tax structures.
- Reduction in import tariffs.
- Full current account convertibility.
- India is member of WTO.
- Robust banking and financial institutions.
- The "2012 A.T. Kearney Foreign Direct Investment Confidence Index" has ranked India second most attractive destination for Foreign Direct Investment (FDI), an improvement from its third rank in the year 2010.

2.4 Foreign Investment in India

India is believed to be a good investment despite political uncertainty, bureaucratic hassles, shortages of power and infrastructural deficiencies. India presents a vast potential for overseas investment and is actively encouraging the entrance of foreign players into the market. India is expected to become one of the top three emerging economies in the world.

India has in the recent years emerged as a favored destination for investment in various sectors like Power generation, Construction, Heavy Machinery, Infrastructure project, Telecom, Communication, Software etc.

2.4.1 Foreign Investment Bodies

Foreign Investment Promotion Board (FIPB)

FIPB objective is to promote inflows of FDI into the country and also to provide appropriate institutional arrangements, transparent procedures and guidelines for investment promotion and to consider and approve/recommend proposals for foreign investment.

Secretariat for Industrial Assistance (SIA)

SIA has been set up by the Government of India in the Department of Industrial Policy and Promotion in the Ministry of Commerce & Industry to provide a single window service for entrepreneurial assistance, investor facilitation, receiving and processing all applications which require Government approval, conveying Government decisions on applications filed, assisting entrepreneurs and investors in setting up projects (including liaison with other organizations and State Governments) and in monitoring implementation of projects.

Investment Promotion and Infrastructure Development Cell

In order to give further impetus to facilitation and monitoring of investment, as well as for better coordination of infrastructural requirements for industry, a new cell called the "Investment Promotion and Infrastructure Development Cell" has been created.

2.5 Entry Routes for Investments in India

Approval Route – Permission required

- Existing Airports – beyond 74%
- Atomic Minerals
- In case of joint venture or technology collaboration agreement in the same field

Automatic Route – Freely permissible (100%)

- Greenfield airports.
- Construction and maintenance of infrastructure like ports, harbors, roads and highways.
- Power generation, transmission and distribution and power trading (atomic energy not permitted).
- Mass rapid transport systems.
- Townships, housing, built-up infrastructure and construction - development projects.

2.6 General Incentives for Foreign Investors

Investment Incentives	The state finances a part of the fixed capital cost of the project. Various states have designated areas as ‘A’, ‘B’ and ‘C’ according to their levels of development. The level of incentive provided by a state varies and is generally larger for investment in backward areas. Further, the terms and ceiling of the incentives vary across states, depending on the nature of industry that the state is trying to promote.
Tax Concessions	There are a variety of tax concessions. The most important are the partial tax holiday for newly established small scale industrial undertakings, full five year tax holiday for entrepreneurs building infrastructure facilities and the full tax holiday for industrial units established in Free Trade Zones (FTZs) and for 100% Export Oriented Units.
Exemption for Foreign Technicians	Foreign technicians including Non-Resident Indians, required to serve in India under an approved contract of service are generally paid remuneration net of tax. The tax liability is borne by the Indian enterprise employing the technician, and the technician will owe no further tax.
Relaxed Procedures for Non-Resident Indian Investment	The Indian Government also has relaxed certain procedural rules for the setting up of industrial and other ventures by Non-Resident Indians (NRIs). NRIs are now permitted to make investments on a "non-repatriate" basis in new sectors, including infrastructure, housing and real estate development.
Tax Holiday	Section 801A of the Income Tax Act, 1961 allows a certain percentage of taxable income derived from the small-scale new industrial unit, as deduction. The deduction rate is 30 per cent of profits derived from the new industrial undertaking, etc. in the case of companies for a period of 10 years and 25 per cent of such profits for a like period in the case of other business entities.

Tax Holiday for New Industrial Undertakings in Under-developed Areas	With a view to encouraging new investment in industrially underdeveloped states and Union Territories, the government offers a full five-year tax holiday commencing in the year of production begins for new industrial undertakings located in the North-Eastern States of Jammu and Kashmir, Himachal Pradesh, Sikkim, Goa and the Union Territories of the Andaman and Nicobar islands and Dadra and Nagar Haveli, Daman and Diu, Lakshadweep and Pondicherry. A similar deduction is offered to new industrial undertakings in certain backward areas of other states.
Tax Holiday for Infrastructure Building	To promote the expansion of equality infrastructure, a full five-year tax holiday is allowed to any enterprise that builds, maintains, and operates any infrastructure facility, such as roads, highways or expressways, new bridges, airports, ports, or rapid rail transport systems on a BOT (build, operate, transfer), BOOT (build, own, operate, transfer), or similar basis. The enterprise must have entered into an agreement with the central or state government, local authority, or any other statutory authority for this purpose. The period within which the infrastructure facility has to be transferred needs to be stipulated in the agreement between the undertaking and the government concerned.
Adjustment for Business Losses	In India, there are five broad heads of income under which a taxpayer's different sources of income may be grouped. Except for speculation losses, long-term capital losses, losses from some specified sources like horse-races, gambling, etc., loss from any other source is eligible for set off against the profits from any other source under the same head of income. The net loss under any head is further eligible for set-off against the income from other heads but are allowed to be carried forward to be set off against capital gains in the subsequent years.

2.7 Investment Protection for Foreign Investors

Malaysia-India Comprehensive Economic Cooperation Aggreement

Malaysia and India established the Malaysia-India Comprehensive Economic Cooperation Agreement (MICECA) on 24 September 2010. MICECA came into force on 1 July 2011.

MICECA is a comprehensive agreement that covers trade in goods, trade in services, investments and movement of natural persons. It value-adds to the benefits shared from ASEAN-India Trade in Goods Agreement (AITIG) and will further facilitate and enhance two-way trade, services, investment and economic relations in general.

The Agreement provides a framework to further facilitate cross-border investments between the two countries through commitments on national treatment, most-favored nation treatment, as well as protection of investors and investments. The full text of the Agreement can be reviewed via this link www.miti.gov.my.

Trade In Goods

Under MICECA, both Malaysia and India will progressively reduce or eliminate tariffs on their respective industrial and agricultural products. Commitments by the countries are reflected in their Schedule of Commitments.

How does the product that you export enjoy the Preferential Duties

In order for your product to enjoy the preferential duties, it must fulfill the Rules of Origin (ROO) criteria under MICECA which is a Qualifying Value Content of 35% or Change in Tariff Classification.

In order for a product exported by Malaysia to enjoy preferential treatment (reduce duty or for some products zero duty) in India, exporters need to obtain a Certificate of Origin (CO) issued by the Ministry of International Trade and Industry (MITI), Malaysia. The CO is a certificate that can be used to satisfy your buyers that the products exported originate from Malaysia. The CO form can be obtained from the Federation of Malaysian Manufacturers (FMM).

If you import a product from India, in order for the product imported from India to enjoy preferential treatment in Malaysia, importers need to request the exporter / supplier in India to obtain a certificate of origin (CO) issued by the Export Inspection Agency of India (EIA). The CO form can also be obtained from the EIA offices.

Services

MICECA facilitates cross-border trade in services and provides services providers' access into each other's market.

Investment

The Agreement provides a framework to further facilitate cross-border investments between the two countries through commitments on national treatment, most-favored nation treatment, as well as protection of investors and investments.

Economic Cooperation and Programmes

Malaysia and India have agreed to undertake cooperation in several areas such as infrastructure development, human resource development, science and technology, including health, creative industries, tourism, SMEs and finance.

2.8 Prohibited Foreign Investment in India

Foreign investment is prohibited in a company, a partnership firm, a proprietary concern or any entity, whether incorporated or not which is engaged in the following activities :

- Business of chit fund / nidhi company (small savings funds company).
- Trading in transferable development rights (rights to develop real estate property).
- Retail trading (other than single brand retail trading). *(Recently the central government has allowed 51% Foreign Direct Investment (FDI) in multi brand retail. However, no provincial Government has yet approved the same.)*
- Atomic energy.
- Lottery business / gambling and betting.
- Agriculture and allied cultivation, animal breeding.
- Real estate business or construction (excluding development of townships, construction of residential / commercial premises, roads or bridges, educational institutions, recreational facilities, city and regional level infrastructure, township.)
- Partnerships / proprietorships in the print media sector.
- Manufacturing of tobacco products.
- Activities / sectors not opened for private sector investment.

Chapter References

1. http://www.miti.gov.my
2. http://www.rbi.org.in
3. http://indialiaison.com
4. http://www.pwc.com

3.0 ESTABLISHMENT OF BUSINESS

In line with the globalization and liberalization trends the Indian Government has been facilitating the growth of enterprise and entrepreneurship by instituting several reforms and adapting a pro-enterprise approach. The government has readily embraced new and evolving corporate vehicles, such as Limited Liability Partnership, while retaining certain vehicles that are inherent to its heritage. Indian legal framework allows for several types of business entities they are :

- Proprietorship.
- Partnership firm.
- Limited Liability Partnership.
- Private Limited Company.
- Public Limited Company.

In addition to the above legal entities, the following types of entities are available for foreign investors / foreign companies doing business in India :

- Wholly owned Subsidiary Company.
- Joint Venture Company.
- Liaison Office / Representative Office.
- Project Office.
- Branch Office.

Flow chart of registering business in India

START

Obtaining approval for the proposed name of the Company from the Registrar of Companies (ROC) on payment of prescribed fees

Drawing up the Memorandum of Association and payment of government duty

Drawing up the Articles of Association and payment of government duty

Getting the appropriate persons to subscribe to the Memorandum (a minimum of 7 for a public company and 2 for a private company) and procurement of an office premises for registration

Payment of Registration Fee to the ROC

Receipt of Certificate of Incorporation

Obtain a certificate of commencement of business from the ROC in case of a public company

END

3.1 Registering of Companies

Registering a company in India	To register a company, you need to first apply for a Director Identification Number (DIN) which can be done by filing e Form for acquiring the DIN. Once the DIN has been received, the applicant has to acquire a Digital Certificate and register the same on the portal of the Ministry of Corporate Affairs and apply for the company name approval. Once the company name is approved, the applicant can e-register the company by filling in the incorporation form depending on the type of company. The Steps are as follows : Step 1 : Application for DIN Step 2 : Acquire/ Register Digital Signature Certificate (DSC) Step 3 : Incorporate a Company Any foreign company can establish its place of business in India by filling Form 44. The e Form has to be digitally signed by authorized representative of the foreign company.
Limited Liability - Companies Limited by Shares	A Limited Liability Company (LLC) is a flexible form of enterprise that blends elements of partnership and corporate structures. An LLC is not a corporation it is a legal form of company that provides limited liability to its owners. "Limited by shares" means that the company has shareholders, and that the liability of the shareholders to creditors of the company is limited to the capital originally invested, i.e. the nominal value of the shares and any premium paid in return for the issue of the shares by the company. A shareholder's personal assets are thereby protected in the event of the company's insolvency, but money invested in the company will be lost. Private companies limited by shares are usually required to have the suffix "Limited" (often written "Ltd" or "Ltd.") or "Incorporated" ("Inc.") as part of their name

Private Limited Company	A private limited company is a voluntary association of not less than two and not more than fifty members, whose liability is limited, the transfer of whose shares is limited to its members and who is not allowed to invite the general public to subscribe to its shares or debentures.
Public Limited Companies	A public limited company is a voluntary association of members which is incorporated and, therefore has a separate legal existence and the liability of whose members is limited. The regulatory provisions for this type of entity are contained in The Companies Act, 1956. A Public Limited Company must be registered with ROC. There are some strict compliance requirements for Public Limited Company, these are : It must have at least three Directors A prospectus or a statement in lieu of prospectus has to be filed with the Registrar of Companies before allotment of shares. It has to obtain Certificate of Commencement of Business from the Registrar of Companies before it can commence business on incorporation. It has to hold a statutory meeting of members and file a Statutory Report with the Registrar of Companies.
Deemed Public Companies	Under section 43 (A) of Companies Act, 1956, certain private companies are deemed to be public companies when : • 25% or more of its paid up share capital is held by one or more body Corporate • Its average Annual turnover exceeds INR. 250 million. It holds 25% or more of paid up capital of a public company or it accepts or renews deposits from public after making an invitation by an advertisement.

Companies Limited by Guarantee	"company Limited by Guarantee" is defined in section 12(2)(b) of the Act and it means a company having the liability of its members limited by the memorandum to such amount as the members may respectively undertake by the memorandum to contribute to the assets of the company in the event of its being wound up. Guarantee companies are of two types, viz., guarantee company not having share capital and guarantee company having share capital. The procedure for incorporation of a company limited by guarantee is nearly the same as the one required to be followed for getting a public or a private limited company incorporated. However, the following distinctive features in the case of a company limited by guarantee must be noted :

3.2 Establishing a Construction Firm

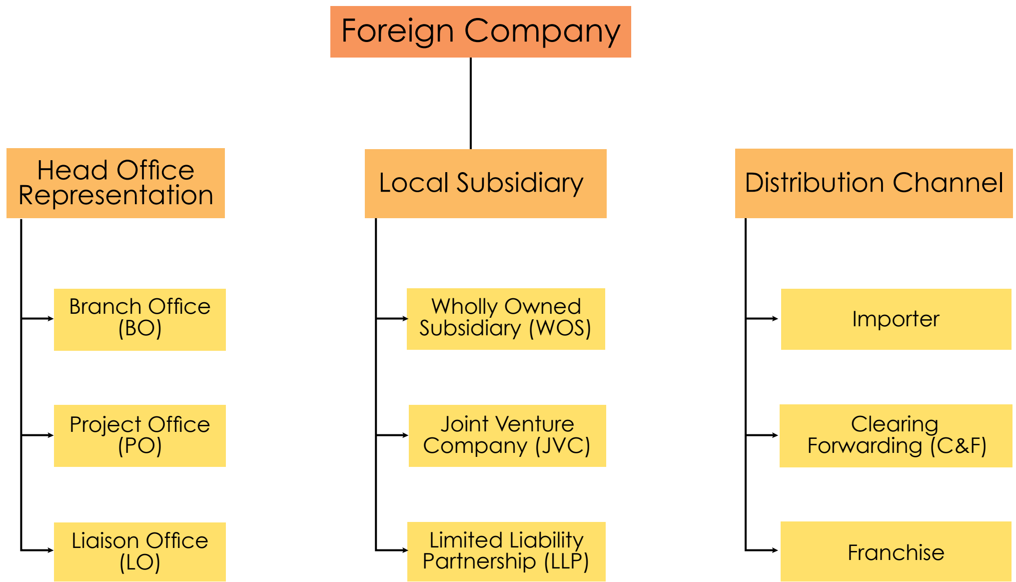
Establishing a Construction Firm in India follows the same procedure as registering a company as discussed above.

3.3 Entry for Foreign Companies

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

- Incorporate a company under the Companies Act, 1956, as a Joint Venture or a Wholly Owned Subsidiary.
- 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.

Legal Structures for Foreign Entities for Conducting Business in India



3.4 Comparative Summary of Entry Operations in India

3.4.1 Setting Up Requirements and Permitted Activities

Particulars	Setting Up Requirements	Permitted Activities
Liason Office (LO)	Prior approval of Reserve Bank of India (RBI) required	a. Only liaison / representation / communication role permitted. b. No commercial or business activities allowed to be undertaken.
Project Office (PO) / Branch Office (BO)	Prior approval of RBI required for BO (other than undertaking Manufacturing and service activities in Special Economics Zones (SEZs)). Prior approval not required to set up PO if certain conditions are fulfilled.	BO : Activities Listed / permitted by RBI to be undertaken. Manufacturing and processing activities (except in SEZ units) not permitted for BO. PO : PO to undertake activities only in relation and incidental to the execution of the project.
Subsidiary Company	Automatic route : No priorn approval required. Post-facto fillings to be undetaken with RBI. Approval Route : GoI / FIPB approval required. Post-facto filings required to be undertaken with RBI.	Any activity specified in the Memorandum of Association of Association of the company, subject to FDI guidelines.
Limited Liability Partnership	Foreign investment allowed in sectors, which are under 100% automatic route with prior GoI / FIPB approval.	LLP to engage in sectors / activities for which 100% FDI is allowed without any approval LLPs with foreign investment will not be eligible to make any downstream investments.

3.4.2 Funding of Local Operations and Limitation of liability

Particulars	Funding of Local Operations	Limitation of Liability
Liason Office (LO)	Local expenses to be met out of inward remittances received from abroad from the head office through normal banking channels	Unlimited liability
Project Office (PO) / Branch Office (BO)	Local expenses to be met through inward remittances from head office or from earnings from permitted operations	Unlimited liability
Subsidiary Company	Funding to be through equity or other forms of permitted capital infusion or borrowings (local as well as overseas as per prescribed norms) or internal accruals	Liability limited to the extent of equity participation in the Indian Company
Limited Liability Partnership	Contribution in the capital of the LLP should be through inward remittance or by debit to Non-Recurring Engineering (NRE) / Foreign Currency Non-Resident (FCNR) account of the designated partner LLP's not eligible to raise External Commercial Borrowing (ECB)	Liability of the partners is limited to their agreed contribution to the LLP except in case of fraud, wrongful act, etc.

3.4.3 Compliance Requirement Under Foreign Exchange Management Regulations

Particulars	Compliance Requirements under Foreign Exchange Management Regulations
Liason Office (LO)	• Required to file an annual activity certificate (from auditors in India) with RBI • In case of multiple LOs, the Nodal Office could file a combined annual activity certificate with respect to all its offices in India
Project Office (PO) / Branch Office (BO)	• Required to file an annual activity certificate (from auditors in India) with RB • For multiple BOs, the Nodal Office could file a combined annual activity certificate with respect to all its offices in India
Subsidiary Company	Required to file periodic and annual filings relating to foreign liabilities and assets receipt of capital and issue of shares to foreign investors
Limited Liability Partnership	No filing requirements prescribed as of now

3.4.4 Compliance Requirement Under Income Tax (IT) Act

Particulars	Compliance Requirements under Income Tax (IT) Act	Compliance Requirements under Income Tax (IT) Act
Liason Office (LO)	• Since an LO is not permitted to undertake any business activity in India, it is typically not subject to tax in India • However, LO is required to undertake annual compliance by filing annual information in the prescribed form	• Liable to be taxed on global income at 32.45% (including surcharge and cess) on a net income basis • Subsidiary company liable to Minimum Alternate Tax (MAT) at the rate of 20.01% (including surcharge and cess) of its book profits • Dividend declared freely remittable but subject to distribution tax of 16.22% on dividends declared / distributed /paid, pursuant to which dividend is tax free for all shareholders • Distribution tax to be paid only on ammount of dividend distributed after reducing dividends received from subsidiary provided (where the distribution tax has been paid by such subsidiary company) • Indian transfer pricing regulations applicable
Project Office (PO) / Branch Office (BO)	• Liable to be taxed on income earned at the rate applicable to foreign corporations, i.e., 42.02% (including surcharge and cess) and required to file returns of income in India • MAT is considered to be applicable to BO / PO at the rate of 19.44% (including surcharge and cess) of its book profits • No further tax on repatriation of profits, which are permissible in both cases • Indian transfer pricing regulations applicable	• Liable to be taxed on global income at 30.90% (including cess) on net income basis • LLP liable to MAT at the rate of 19.05% (including cess) of its book profit • No Dividend Distribution Tax levied on profit distribution

3.4.5 Permanent Establishment, Repatriation of Funds on an Ongoing Basis and Exit Mechanism

Particulars	Permanent Establishment (PE)	Repatriation of Funds on an Ongoing Basis	Exit Mechanism
Liason Office (LO)	• LOs generally do not constitute PE under DTAA due to limited scope of activities in India • If the activities of the LO go beyond the realm of preparatory or auxiliary character as provided for in the DTAA, a PE / taxable presence is likely to be constituted	• Typically the LO is not permitted to undertake any business activity in india as such, there may not be any repatriations from the LO • However, in case of closure of the LO, any surplus cash may be repatriated with RBI approval	Prior approval of the RBI, ROC and the Income Tax authorities
Project Office (PO) / Branch Office (BO)	Generally constituting a PE and a taxable presence under Double Taxation Avoidance Aggreement (DTAA) and domestic IT provisions	Approval not required for remittance of post-tax profits to the Head Office outside India, subject to filing of requisite documents with RBI	Prior approval of the RBI, ROC and the Income Tax authorities
Subsidiary Company	An independent taxable entity and not a PE of the foreign company	• Subsidiary does not require any approval for remittance of post-tax profits • Dividends declared will be subject of distribution tax	Exit can be through sale of shares or winding up or liquidation winding up / liquidation can be a long drawn complex process
Limited liability Partnership	• An independent taxable entity • However, wether interest in LLP result in a PE for a foreign partner, is still an ambigious position under LLP	LLP does not require any approval for remittance of post-tax profits	Foreign partner permitted to transfer its stake in LLP / dissolve the LLP

Chapter References

1. http://www.indiacompanysetup.com/india-business-entity-types/
2. http://business.gov.in
3. http://www.mca.gov.in
4. http://wirc-icai.org

4.0 FINANCIAL FACILITIES

4.1 Banking Facilities

India's Rs 77 trillion (US$ 1.30 trillion)-banking industry is well at par with global standards and norms.

The country has 87 scheduled commercial banks with deposits worth Rs.71.6 trillion (US$ 1.21 trillion) as on 31 May, 2013.

Of this, 26 are public sector banks, which control over 70 per cent of India's banking sector, 20 are private banks and 41 are foreign banks. Of the total, 41 banks are listed with a total market capitalisation of Rs.9.35 trillion (US$ 158.16 billion) as per the recent statistics.

4.1.1 Local Borrowing

Foreign and domestic companies have adequate access to legitimate local financial institutions to borrow at domestic rates.

4.1.2 Foreign Loans

Foreign currency borrowings raised by the Indian companies from sources outside India are called External Commercial Borrowings (ECBs). These are commercial loans with minimum average maturity of 3 years. ECB's include :

- Bank Loans.
- Buyer's Credit.
- Supplier's Credit.
- Securitized instruments (e.g. floating rate notes and fixed rate bonds.)
- Credit from official export credit agencies.
- Commercial borrowings from the private sector window of multilateral financial Institutions.
- Investment by Foreign Institutional Investors (FIIs) in dedicated debt funds.

ECBs act as an additional source of funds for companies to finance its investment needs. Balance of payment and foreign exchange reserves position are two important drivers to decide the level of ECBs.

4.2 Zonal Restrictions

There are no regional or zonal restrictions on investments. Tariff concession and tax-holiday periods varies according to location, with less developed regions providing the best offers.

4.3 Project Financing

4.3.1 Commercial Lending

Commercial lenders are the prominent financers for the infrastructure sector of the country. However, many Indian banks are now on the verge of reaching their maximum limits for lending toward the infrastructure sector. With significant number of high investments proposals in the pipeline for the infrastructure sector, the banks are finding it difficult to finance infrastructure projects. One of the key problems faced by banks is the asset-liability mismatch problem, typically of infrastructure projects.

Challenge of asset-liability mismatch and reaching infrastructure expose limits

The asset-liability mismatch problem arises due to the fact that longer duration loans required by the infrastructure projects need to be financed by shorter duration borrowings. The low deposit rates have further aggravated the situation as the depositors are unwilling to commit themselves to long-term maturities.

Take-out financing as a solution

The take-out financing scheme has been developed to deal with issues of hitting sectoral limits, concentration risk and asset-liability mismatch. The take-out financing scheme involves three parties-project company, lending company and taking over institution (bank / consortium of banks / FI). Under the scheme, the taking over institution enters an aggreement by which the lender transfers a part / whole of the outstanding to the taking over instituation on a pre-determined basis.

Measures Taken by The RBI

Additionally, the Reserve Bank of India (RBI) has takena number of regulatory concessions for infrastructure finance :-

- Permitting banks to enter take-out financing arrangement
- Freedom to issue long term bonds by banks
- Relaxation of single and group borrower limit for additional credit exposure in the infrastructure sector
- Flexibility to invest in unrated bonds of companies engaged in infrastructure activities within the overall ceiling of 10%
- Excluding the promoters' shares in the SPV of an infrastructure project to be pledged to the lending bank from the banks' capital market exposure
- Permitting banks to extend finance to fund promoter's equity where the proposal involves acquisition of share in an existing company enganged in implementing or operating an infrastructure project in India.

Further, the central bank recently eased the norms by allowing banks to lend 20% of its capital funds to infrastructure Finance Companies (IFCs).

4.3.2 Bonds

The bond market in India comprises issuances by both Central and state government bodies, financial institutions, banks and corporates. Indian companies are allowed to issue bonds in India currency for trading on the corporate bond market in the country according to the existing regulations. Foreign institutional investors are permitted to invest in these bonds up to INR935 billion collectively, with a "carve out" of INR234 billion for infrastructure projects.

4.3.3 External Commercial Borrowings

External Commercial Borrowings (ECBs) can also serve as an important means of funding debt requirements of the infrastructure project. The number of ECBs extended depends on interest rates in the country. Over the years, they have become cheaper and developers are increasingly viewing them as an alternate source.

4.3.4 Foreign Investment Funding

Foreign Direct Investment (FDI) - FDI of up to 100% is permitted in greenfield infrastructure projects under the automatic route. In the case of existing projects, FDI under the automatic route is permitted up to 74% and FIPB approval is required beyond 74%. FDI gained a prominent role in infrastructure financing in the recent years.

4.3.5 Foreign Institutional Investment (FII)

The Government of India (GOI) is reportedly in talks with the regulatory authorities to allow infrastructure finance companies to issue bonds to foreign investors for the purpose of raising infrastructure finance in the country. The GOI had earlier raised the limit on FII investment in corporate bonds of duration of more than five years issued by companies in this sector.

4.3.6 Multilateral Agencies Lending

Institutions such as the World Bank and the Asian Development Bank also provide funds to finance Public Private Partnership (PPP) infrastructure projects.

Asian Developement Bank (ADB)

ADB also provides support to India in structuring of potential PPP through its support in the form of Technical Assistance (TA). The support provided by the institution is in the following forms :

- Public sector loans to states or municipalities for financing grants / equity support
- Public sector loans to India Infrastructure Finance Company Ltd (IIFCL) that further grant funds for project companies
- Private sector loans to project companies
- Provision of Guarantee to commercial lenders.

World Bank

World Bank support intends to increase the availability of long-term financing for infrastructure Public Private Partnership (PPP) project in India. It will help India Infrastructure Finance Company Limited (IIFCL) to stimulate the developement of a long-term local currency debt financing market for infrastructure in India.

4.3.7 Insurance / Pension Funds

Pension funds can serve as an alternate source of finance for infrastructure projects as they provide long-term streams of income, constancy, predictable cash flows, lower default rates, diversification of project and societal benefits. The Government of India (GOI) plans to allow infrastructure companies to raise finances from both domestic and foreign insurance and pension funds by launching Infrastructure Debt Funds (IDFs). IDFs can be setup as a trust or a company. To attract off shore funds into IDFs, the Ministry of Finance proposed that with holding tax on interest payment on borrowing by IDFs will be reduced from 20% to 5%. Also income of IDFs will also be exempt from income tax.

5.0 Termination of Business

5.1 Winding up a Registered Company

The Companies Act provides for two modes of winding up a registered company.

i) Grounds for Compulsory Winding Up or Winding up by the Tribunal

- If the company has, by a Special Resolution, resolved that the company be wound up by the Tribunal.
- If default is made in delivering the statutory report to the Registrar or in holding the statutory meeting.
- If the company fails to commence its business within one year of its incorporation, or suspends its business for a whole year.
- If the number of members is reduced below the statutory minimum i.e. below seven in case of a public company and two in the case of a private company.
- If the company is unable to pay its debts.
- If the tribunal is of the opinion that it is just and equitable that the company should be wound up.
- Tribunal may inquire into the revival and rehabilitation of sick units. It its revival is unlikely, the tribunal can order its winding up.
- If the company has made a default in filing with the Registrar its balance sheet and profit and loss account or annual return for any five consecutive financial years.
- If the company has acted against the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality.

ii) Voluntary Winding Up of a Registered Company

When a company is wound up by the members or the creditors without the intervention of Tribunal, it is called as voluntary winding up. It may take place by :-

- By passing an ordinary resolution in the general meeting if :-
  - (i) The period fixed for the duration of the company by the articles has expired.
  - (ii) Some event on the happening of which company is to be dissolved, has happened.
- By passing a special resolution to wind up voluntarily for any reason whatsoever.

The Companies Act (Section 484) provides for two methods for voluntary winding up :-

i) Members' voluntary winding up

- A declaration of solvency must be made by a majority of directors, or all of them if they are two in number.
- Shareholders must pass an ordinary or special resolution for winding up of the company.

ii) Creditor's voluntary winding up

It is possible in the case of insolvent companies. It requires the holding of meetings of creditors besides those of the members right from the beginning of the process of voluntary winding up. It is the creditors who get the right to appoint liquidator and hence, the winding up proceedings are dominated by the creditors.

5.2 Winding up an Unregistered Company

According to the Companies Act, an unregistered company includes any partnership, association, or company consisting of more than seven persons at the time when petition for winding up is presented. But it will not cover the following :-

However, a foreign company carrying on business in India can be wound up as an unregistered company even if it has been dissolved or has ceased to exist under the laws of the country of its incorporation.

Chapter References

1. http://financialservices.gov.in/
2. http://www.salvuscapital.com
3. http://RBI.org.in/
4. http://www.oecd.org/daf/ca/corporategovernanceprinciples/44071177.pdf
5. http://business.gov.in
6. Media Reports, Press Releases, RBI Document

6.0 ENVIRONMENT REGULATIONS

Environmental Protection has been given the constitutional status. Directive Principles of State Policy states that, it is the duty of the state to 'protect and improve the environment and to safeguard the forests and wildlife of the country'.

In India, the Ministry of Environment and Forests (MoEF) is the apex administrative body for :-

- Regulating and ensuring environmental protection
- Formulating the environmental policy framework in the country
- Undertaking conservation and survey of flora, fauna, forests and wildlife
- Planning, promotion, co-ordination and overseeing the implementation of environmental and forestry programmes

The Ministry is also the Nodal agency in the country for the United Nations Environment Programme (UNEP). The organizational structure of the Ministry covers number of Divisions, Directorate, Board, Subordinate Offices, Autonomous Institutions and Public Sector Undertakings to assist it in achieving all these objectives.

Besides, the responsibility for prevention and control of industrial pollution is primarily executed by the Central Pollution Control Board (CPCB) at the Central Level, which is a statutory authority, attached to the MoEF. The State Departments of Environment and State Pollution Control Boards are the designated agencies to perform this function at the State Level.

6.1 Central Government has Enacted Several Laws for Environmental Protection

- The Environment (Protection) Act, 1986, is the umbrella legislation which authorizes the Central Government to protect and improve environmental quality, control and reduce pollution from all sources, and prohibit or restrict the setting and / or operation of any industrial facility on environmental grounds.
- Acts relating to Water Pollution, are comprehensive in their coverage, applying to streams, inland waters, subterranean waters, and seas or tidal waters.
- Acts relating to Air Pollution, are aimed at prevention, control and abatement of air pollution.
- Acts relating to Forest Conservation, provide for the conservation of forests and for matters connected therewith or ancillary or incidental thereto.
- Acts relating to Wildlife Protection, provide for the protection of wild animals, birds and plants and for matters connected therewith or ancillary or incidental there to with a view to ensuring the ecological and environmental security of the country.
- Acts relating to Biological Diversity, provide for conservation of biological diversity, sustainable use of its components as well as fair and equitable sharing of the benefits arising out of the use of biological resources and knowledge associated with it.
- Acts relating to Public Liability Insurance, provide for public liability insurance (immediate relief) to the persons affected by accidents occurring while handling any hazardous substances.
- Rules relating to Noise pollution, aim at controlling noise levels in public places from various sources like industrial activity, construction activity, generator sets, loud speakers, public address systems, music systems, vehicular horns and other mechanical devices having deleterious effects on human health and the psychological wellbeing of the people.
- Rules relating to Management of Hazardous Substances, aim to control the generation, collection, treatment, import, storage, and handling of hazardous waste. The term " hazardous substances" include flammables, explosives, heavy metals such as lead, arsenic and mercury, nuclear and petroleum fuel by-product, dangerous microorganism and scores of synthetic chemical compounds like DDT and dioxins.

The Central Pollution Control Board (CPCB) has developed National Standards for Effluents and Emission under the statutory powers of the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981. These standards have been approved and notified by the Government of India, Ministry of Environment and Forests, under Section 25 of the Environmental (Protection) Act, 1986. Besides, standards for ambient air quality, ambient noise, automobile and fuels quality specifications for petrol and diesel. Guidelines have also been developed separately for hospital waste management.

Also, an Environmental Information System (ENVIS) has been established as a plan programme and as a comprehensive network in environmental information collection, collation, storage, retrieval and dissemination to varying users.

7.0 MANPOWER REQUIREMENT

Working in India demonstrates the willingness to work in a new culture and international market. As India's importance in world economy increases, work experience in this country will become increasingly profitable.

7.1 Overview of Indian Economy

A more detailed overview of the Indian Economy is handled in Chapter 2. However, the Indian economy is visibly changing. Look no further than the IT parks that have sprung up like mushrooms. Today, more than 50% of India's GDP is generated through services.

7.2 Work Permits and Visas

All foreign nationals coming to India are required to have a valid passport and a valid Indian Visa. Exceptions are citizens of Bhutan, Nepal and the Maldives. Holders of PIO (Person of Indian Origin) and OCI (Overseas Citizen of India) Cards also only need passports.

Foreigners entering India for a stay longer than 180 days are required to register with the Foreigners Regional Registration Office (FRRO), or with the superintendent of the local police station under whose jurisdiction they propose to stay. People of Indian origin need to register as well.

7.2.1 Visa Application for India

Depending on the duration and purpose of the stay there are different visas. Unfortunately, application forms and procedures can differ depending on the country of application please ensure that the correct visa form is being filled. There are certain documents that you will need for all visa applications, no matter which type of visa you apply for.

These are :

- Passport, valid for at least six months and with at least three blank pages in it
- Two passport-sized photographs
- Two of the respective visa application forms correctly filled in and signed by applicant
- If applicant has been in a country with high risk of yellow fever transmission within six days prior to arrival in India, they have to provide a yellow fever certificate stating that they have been vaccinated against the disease.

It is important to keep in mind that all types of visa start from the date of issue, so you cannot apply well in advance for a visa that becomes valid at a later date.

7.2.2 Types of Visa

- Transit Visa
- Tourist Visas
- Business Visas
- Employment Visas and work permits for India
- Entry Visas and visas for spouses and families
- Student Visas
- Restricted / Protected Area Permits

Transit Visa

Transit Visas are granted by Indian missions abroad for stops of up to 72 hours within 15 days from date of issue. These visas are issued only for changing flights en route to another country.

Tourist Visas

Tourist Visas for India are valid for six months. Atourist visa is issued as a multiple entry visa. Keep in mind that this visa is not extendible and not convertible.

Business Visas

Business visas are usually valid for six months, though business visas for periods of up to 5 years are obtainable too. The period of stay in India for each visit is limited to 180 days. Business visas are issued as multiple entry visas.

To apply for a business visa, the applicant will have to provide two copies of a letter from the company, stating personal details as well as information about business partners in India. Additionally the applicant will need to hand in an invitation letter from the Indian business partner. An interview may be conducted by one of the officials at the embassy.

Employment Visas and work permits for India

Employment visas, also referred to as E-Visas, are issued to foreigners who want to work for either an international or an Indian company in India. Applicants wanting to do an internship in India will also need an E-Visa.

The application process for employment visas is complicated and time-consuming. Employment visa automatically serves as a work permit for India. The application can be made either by the applicant or the company.

In addition to the documents above applicant will need to provide :

- Original employment contract
- Good conduct certificate from applicant's home country
- A health certificate
- The Employment Visa Pro forma (attached to the visa application)
- The E-Visa company / salary / tax summary pro forma (attached as well)
- Proof of company´s registration

If you want to change jobs in India you will need to apply for a new work visa. You can apply for the new visa either at an embassy or consulate in your home country or at an FRRO / FRO (Foreigners Regional Registration Office / Foreigners Registration Office) in India.

Entry Visas and Visas for Spouses and Families

Entry Visas are valid for six month to five year stays, with multiple entries. These visas are only given to persons of Indian origin or to family members of persons employed in India.

Student Visas

Student visas for India are valid for the period of study in India. They have to be renewed every year, up to a maximum of 5 years. Multiple-entry visas are given to genuine students for regular studies at recognized institutions in India.

Restricted / Protected Area Permits

To enter certain regions in India you will need a special permit. These regions include eastern states such as *Manipur, Mizoram, Arunachal Pradesh, Nagaland and Sikkim* (due to their close location to Myanmar and Bangladesh). Some regions in the North and Northwest also require a special permit, including parts of *Jammu and Kashmir, Rajasthan and Himachal Pradesh*. Since these regions, especially Jammu and Kashmir, have seen terrorist activities throughout recent decades you should take special care when visiting them. *Andaman* and the *Nicobar Islands* require you to have a Restricted / Protected Area Permit as well.

The permit is free and issued by the Resident Commissioner of the State, the Foreigners Regional Registration Office (FRRO) of the State or by the Foreign Division of the Ministry of Home Affairs in New Delhi. The application is comparatively easy - you only have to fill in a form stating the purpose and duration of your stay in the region. Permits are issued on the same day.

7.3 Employment Conditions

Working conditions and salaries in India are different from the ones in western countries. The official workweek in India runs from Monday to Saturday, from 10 am to 6pm each day. In reality, overtime is the norm and most local companies do not compensate their workers for it.

The Indian work culture is immensely diverse. There are major differences depending on whether you work for small, local companies, for big Indian corporations or for international companies. Business practices also vary between regions.

7.4 Work Practices in India

The importance of hierarchies in Indian culture can also be witnessed in the daily work environment. People of different management levels are treated differently. The behavior of superiors towards other employees seems very rude from a Western point of view. This is normal in India. Communication within Indian companies is something many expatriates have trouble getting used to. Unlike rather relaxed business dinners, formality plays an important role in Indian work environment and instructions are direct (to the point of seeming bossy). It is also highly unlikely that you will address you co-workers with their first names.

7.5 Salaries in India

Average salaries in India are only a fraction of Western salaries. However, they are rising at rates between 12 and 14 percent each year. Expatriates usually earn significantly higher salaries than Indians, though this depends on whether they work for Indian or international companies.

If you are appointed to India by your company from overseas your salary will usually be at a Western level. You will also be provided with the full list of benefits available to employees in Europe or the USA.

In addition to salary and standard benefits, international companies often provide special expatriate allowances, such as housing allowance, three to five weeks paid vacation, a round trip air ticket per year, full healthcare coverage etc.

7.6 Fringe Benefits

Indian companies usually do not offer the fancy expat benefits provided by international companies. However, fringe benefits are an important part of every Indians pay check and can account to up to 50% of the actual salary. Since fringe benefits are taxed at a lower rate than regular income (Fringe Benefit Tax, FBT) they are commonly used to reduce the required tax payments. Typical benefits include paid vacation, sick leave, health insurance and maternity leave. Depending on your job and qualification the amount of healthcare benefits varies greatly but will usually be around Rs10,000 a month.

7.7 Vacation in India

There are 15 to 20 paid public holidays, depending on where you work in India. Indian employees will additionally get a minimum of 12 days paid vacation. Expatriates are usually entitled to 18 to 30 days of paid vacation a year. Make sure that these regulations about extra vacation days are explicitly stated in the employment contract.

7.8 Labour Laws

Indian labour law refers to laws regulating employment in India. There are over fifty national laws and many more state-level laws. For an indepth look at all labour laws, please visit http://labour.nic.in/content/

The table below contrasts the labour laws in India to those in China , United States and Malaysia :-

Practice Required by law	India	China	United State	Malaysia
Minimum wage (US$ / month)	45 (INR 2500 / month)	182.5	1242.6	299 (RM999)
Standard work day	8 hours	8 hours	8 hours	8 hours
Minimum rest while at work	30 minutes 5 hour	None	None	None
Maximum overtime limit	200 hours per year	432 hours per year	None	100 hours / month
Premium pay for overtime	100%	50%	50%	50%
Dismissal due to redundancy allowed?	Yes, if approved by government	Yes, without approval of government	Yes, without approval of government	Yes, without approval of government
Government approval required for 1 person dismissal	Yes	No	No	No
Government approval for redundancy dissmissal granted	Rarely	Not applicable	Not applicable	Not applicable
Dismissal priority rules regulated	Yes	Yes	No	No
Severance pay for redundancy dismissal of employee with 1 year tenure	2.1 week salary	4.3 week salary	None	10 days
Severance pay for redundancy dismissal of employee with 5 year tenure	10.7 week salary	21.7 week salary	None	60 days

7.9 Employee Association

In India, no legal restriction is imposed on individuals on joining public employees associations or any trade unions. Even civil servants in India are allowed to form their own associations but they are not allowed to join or form any political party while they are in service. These unions come under the purview of the trade union legislations.

7.10 Reasonable Restrictions on Formation of Associations or Trade Unions in India

The right to associate is recognized by the Indian Constitution as well. Article 19 (1) recognizes this right subject to 'reasonable restrictions.' Associations can be formed for any purposes that are legitimate. The purpose can be for economic, social, cultural or political reasons. Once an association is formed, a copy of its aims, objectives, and constitution must be sent to the head of the department. Accordingly, a letter of recognition may be issued by the head. However, service rules need to be examined so as to check whether there is restriction on affiliation to outside bodies.

To recognize employees associations, many instructions are laid down by the government of India, a few are listed below :

- The association must consist of a distinct class of government employees.
- Every government employee of the same class should be eligible for the association's membership.
- Government reserves the right to refuse recognition to associations in which all officers are either not in active service of the government or are honorable retired officers to the same class of government employees that the association seeks to represent.

7.11 Social Security in India

Social security is available only to those who are employed in the organised sector (less than 10 percent of India's workforce). The Employees' State Insurance scheme provides medical care and other benefits (in the case of workplace accidents, temporary or permanent disability, incapacity, maternity leave, support for dependants) to employees who earn less than Rs15,000 a month.

The Employees' Provident Fund Organisation (EPFO) is a statutory body under the Ministry of Labour and Employment that administers social security regulations.

The EPFO covers pensions and survivors' benefits in the event of an employee's death. It is compulsory for all workers employed by companies with more than 20 staff. Employers must apply for the fund on behalf of their workers.

Since October 2008, all foreigners employed in India have been subject to the terms of the EPFO under the category of "international workers".

The employee is required to contribute 12 percent of their salary to the EPFO, which is automatically deducted by the employer. Employers must match this 12 percent contribution. Employers are legally required to deduct these contributions and remit them to the EPFO.

Tax-free interest is earned on contributions made to the fund at a specified rate, which is updated regularly by the government. For 2012-13, the rate is 8.8 percent.

Foreigners can withdraw the accumulated balance from this fund only when they reach 58, except in the case of citizens of those countries that have a social security agreement in force with India. It can also be withdrawn in the case of permanent and total incapacity to work due to illness.

An international worker can request exemption from contributions to the EPFO if they are from a country that has a social security agreement with India, is contributing to their country's social security system and has the status of "detached worker" (employees who have been sent to India by a company in their home country). In this case, the worker must obtain a "certificate of coverage" (also known as a "detachment certificate") to qualify for exemption. This is issued by the social security authority in their home country and is valid only for the period of time stipulated in the relevant social security agreement.

7.12 Bilateral Social Security Agreements

A social security agreement between Malaysia and India has been made and its presently under review by the both the government.

8.0 TAXATION

India has a well-developed tax structure with clearly demarcated authority between Central and State Governments and local bodies. Central Government levies taxes on income (except tax on agricultural income, which the State Governments can levy), customs duties, central excise and service tax.

Value Added Tax (VAT), (Sales tax in States where VAT is not yet in force), stamp duty, State Excise, land revenue and tax on professions are levied by the State Governments. Local bodies are empowered to levy tax on properties and for utilities like water supply, drainage etc.

In last 10-15 years, Indian taxation system has undergone tremendous reforms. The tax rates have been rationalized and tax laws have been simplified resulting in better compliance, ease of tax payment and better enforcement. The process of rationalization of tax administration is ongoing in India.

Different types of taxes :-

Direct Tax	• Capital Gains Tax • Perquisite Tax (Fringe Benefit Tax)
Indirect Tax	• Sales Tax • Service Tax • Customs Duty and Octroi • Excise Duty (the Central Value Added Tax (CEVAT)) • Anti Dumping Duty
Other Taxes	• Professional Tax • Municipal Tax • Stamp Duty, Registration • Toll Tax • Entertainment Tax • Gift Tax

8.1 Individual Income Tax

The maximum marginal income tax rate on employment income is 33.99 percent including surcharge and an education cess of 3 percent levied on tax. The top marginal rate kicks in at INR 100,00,000 of taxable income. This is after considering the following: As per Finance Bill 2013, it is proposed to levy surcharge for individuals at 10 percent of the tax liability if taxable income exceeds INR 10 million. Education cess at the rate of 3 percent is applicable in any case on the amount of basic tax plus surcharge, where applicable.

8.2 Corporate Taxes

A corporation is deemed to be resident in India if it is incorporated in India or if it's control and management is situated entirely in India.

Domestic corporations are subject to tax at a basic rate of 35% and a 2.5% surcharge. Foreign corporations have a basic tax rate of 40% and a 2.5% surcharge. In addition, an education cess at the rate of 2% on the tax payable is also charged. Corporates are subject to wealth tax at the rate of 1%, if the net wealth exceeds Rs.1.5 million.

8.3 Capital Gains Tax

At the time of Sale of any Asset, Tax is liable to be paid on the Gains earned on the sale of the asset. Such gains could either be Short Term Capital Gains or Long Term Capital Gains. The basis of such classification is as under :

- Short Term Capital Gain (STCG): if the Asset is held for less than 36 months
- Long Term Capital Gain (LTCG): if the Asset is held for more than 36 months

Capital Gain Tax Rate

- STCG – As per the normal Income Tax Slabs
- LTCG – 20%

8.3.1 Capital Gains Arising on Sales of Shares

In case the Asset is held in the form of Securities Transaction Tax (STT) paid shares, Equity Oriented Mutual Fund, Unit Trust of India (UTI) or Zero Coupon Bonds- the period of such classification shall be 12 months and not 36 months.

The STCG rate in such a case shall be 15% and the LTCG shall be exempt from Income Tax under section 10(38) provided that such transaction is subject to the SST. In case a loss arises on the sale of an asset, the capital loss can be set off against other capital gains in that year. If the loss cannot be set off in can be carried forward for the next 8 years. However loss can only be carried forward if the return was filed before the due date.

8.4 Dividend Income

Dividend distribution tax is the tax levied by the Indian Government on companies according to the dividend paid to a company's investors.

The dividend distribution tax is 15%.

Additional surcharge of 5% on Dividend Distribution Tax (DDT) and education cess of 3% is also levied.

8.5 Royalties

Tax rate on royalties and fees for technical services that an Indian company pays to a Non Resident Indian or a Foreign Company is 25%.

8.6 Value Added Tax (VAT)

India has a federal structure with both federal and state specific indirect tax levies on sale of goods. India introduced (in the period 2003–2006) VAT to replace the erstwhile sales tax regime on sale transactions within the state. In tandem with the above state VAT regime exists another regime namely central sales tax (CST), which is levied on sale of goods occasioning movement across states. Sale by one taxable person to another taxable person across states is charged to CST.

Other Local Indirect Taxes Beside VAT

Other indirect taxes include

- Service tax - 12.36 %
- Customs duty - Up to 31.70%
- Fringe benefit Tax – 33.99%
- Excise Duty – Up to 14.42%
- Sales Tax -12.36%
- Other local levies including Stamp duty, Entertainment tax and Luxury tax.

Voluntary VAT Registration for an Overseas Company.

An overseas company is not liable to register for VAT in India unless it has an office in India, which is engaged in business of sale of goods. However, there is no restriction per se on overseas company to apply for a voluntary registration.

How Frequently are VAT Returns Submitted?

A registered taxable person is liable to file VAT returns in the respective states. The frequency of VAT returns filing varies across states. Further, depending on the category of the taxable person / turnover or tax liability incurred during the preceding year or expected during the current year, the VAT return filing could be monthly, quarterly, or half-yearly.

How are Exports of Goods and Services Treated?

Export of goods out of India is zero-rated. A taxable person can claim refund of VAT paid on inputs used in export of goods, subject to the prescribed requirements. Alternatively, subject to conditions, a taxable person can also purchase goods for export without payment of VAT.

Similarly, export of services from India is exempt from service tax, (a separate federal levy on provision of notified services), subject to conditions.

Can a Business Issue VAT Invoices Denominated in a Foreign Currency?

The invoice can be raised in foreign currency, provided equivalent INR amount is also mentioned on the invoice.

Is There a Relief from VAT for the Sale of a Business as a Going Concern?

Yes, if a business is sold as a going concern, VAT may not apply, subject to certain conditions. For example, the business should be transferred as a whole and the purchaser should be able to carry on the business by stepping into the shoes of the seller. Where part of a business is transferred, then that part of the business should have independent and separate operations.

How are Transactions Between Head Office and Branch Treated?

The transactions involving supply of goods between head office and a branch or vice versa are not subject to VAT, subject to conditions and furnishing of prescribed statutory declarations.

8.7 Tax Incentives

Government of India provides tax incentives for :-

- Corporate profit
- Accelerated depreciation allowance
- Deductibility of certain expenses subject to certain conditions.

These tax incentives are, subject to specified conditions, available for new investment in

- Infrastructure,
- Power distribution,
- Certain telecom services,
- Undertakings developing or operating industrial parks or special economic zones,
- Production or refining of mineral oil,
- Companies carrying on R&D,
- Developing housing projects,
- Undertakings in certain hill states,
- Handling of food grains,
- Food processing,
- Rural hospitals etc.

8.8 Tax Considerations by Foreign Companies

Some of the key areas to be considered for effective tax structuring on the net internal rate of returns :-

8.8.1 Entry and Exit Strategy

Holding company location – Appropriate planning in respect of a holding company jurisdiction is necessary to minimize Indian withholding tax and Indian capital gains on the sale of shares in Indian companies.

Financing – In order to introduce debt into India, there are various issues that need to be considered such as the Indian External Commercial Borrowings rules, withholding tax issues on distributions out of India and the availability of a tax deduction for the distribution at the Indian level.

8.8.2 Holding The Investment

Permanent Establishments – One of the risks with managing investments in India is managing the Indian permanent establishment position, where if the Indian tax authorities successfully argue that there is an Indian permanent establishment of the foreign operations In India, then there maybe significant adverse tax implications. It is therefore important to carefully manage the operations carried out at the Indian level. In practical terms in the Engineering and Construction (E&C) industry, activities generally take a long duration to complete, and hence PE clauses (especially fixed base and service PE) come into play in this industry more often.

8.8.3 Cash and Profits Repatriation

Profit repatriation – There are various options on repatriating profits from the structure, such as dividend distributions, share sale, capital reductions, etc, all with differing tax impacts.

Engineering, procurement and construction (EPC) contracts – onshore versus offshore.

In the E&C industry, the execution of projects is undertaken substantially by way of an engineering, procurement and construction (EPC) contract. A typical EPC contract will have the following scope of work in a single project :

- Supply of equipment (offshore and onshore)
- Installation / commissioning
- Services (offshore and onshore)
- Software / technology transfer (offshore and onshore)

Under a typical EPC contract, a non - resident contractor performs a multitude of activities. The scope of work under an EPC contract would include both onshore and offshore activities . Taxability of payments received by foreign companies under EPC contracts has become a matter of great debate and litigation. Onshore supplies and services are normally taxable in India. Offshore supply of goods and services under a composite contract are something of a grey area. The Indian revenue authorities often attempt to bring the entire EPC contract, including the offshore supplies and services, within the range of taxes in India. The tax authorities may cite a business connection in India, and also note the presumed indivisibility of EPC contracts.

Nonetheless, some recent landmark judicial rulings with regard to EPC contracts in India suggest that tax outcomes for each of the components of the contract must be determined independently. These rulings have brought about a general principle that profit from offshore supplies would not be taxable in India, subject to the following conditions :

- Principal to principal transaction
- Title (i.e. risk and ownership) in the offshore supplies passed to the buyer on high seas (outside India)
- Sale consideration is received outside India
- Sale is at arm's length

Although the above rulings suggest that offshore supply and services may not to be taxed in India, the taxability depends on the specifics of each case. Further, the revenue authorities have not accepted the above rulings and the matter is pending before the higher judicial authority. E&C companies should take care to structure contracts in a tax efficient manner, taking into account the particulars of each project.

Chapter References

1. http://www.incometaxindia.gov.in
2. http://www.indiankanoon.org
3. http://en.wikipedia.org
4. http://www.pwc.com
5. Black's Law Dictionary definition
6. Finance Minister P Chidamparam, The New Indian Express, Business Page, Kochi Edition, Feb 8, 2013
7. Sullivan, Arthur; Steven M. Sheffrin (2003). Economics: Principles in action. Upper Saddle River, New Jersey 07458: Pearson Prentice Hall. p. 273. ISBN 0-13-063085-3
8. Section 2(14A), Income Tax Act 1961
9. Section 205(1A) inserted by Companies Act 2000, w.e.f. 13-12-2000
10. Income Tax Act, 1961

9.0 EXCHANGE AND REMITTING FUNDS

9.1 Remittances

The Reserve Bank of India had announced a Liberalised Remittance Scheme (the Scheme) in February 2004 as a step towards further simplification and liberalisation of the foreign exchange facilities available to resident individuals. As per the Scheme, resident individuals may remit up to USD 75,000 per financial year for any permitted capital and current account transactions or a combination of both.

9.1.1 Liberalised Remittance Scheme (LRS) of USD 75,000

Under the Liberalised Remittance Scheme, all resident individuals, including minors, are allowed to freely remit up to USD 75,000 per financial year (April – March) for any permissible current or capital account transaction or a combination of both.

9.1.2 Capital Account Transactions Permitted Under the Scheme

Under the Scheme, resident individuals can acquire and hold shares or debt instruments or any other assets outside India, without prior approval of the Reserve Bank. Individuals can also open, maintain and hold foreign currency accounts with banks outside India for carrying out transactions permitted under the Scheme.

9.1.3 Prohibited Items Under the Scheme

The remittance facility under the Scheme is not available for the following :-

- Remittance for any purpose specifically prohibited under Schedule-I (like purchase of lottery tickets / sweep stakes, proscribed magazines, etc.) or any item restricted under Schedule II of Foreign Exchange Management (Current Account Transactions) Rules, 2000.
- Remittance from India for margins or margin calls to overseas exchanges / overseas counterparty.
- Remittances for purchase of FCCBs issued by Indian companies in the overseas secondary market.
- Remittance for trading in foreign exchange abroad.
- Remittance by a resident individual for setting up a company abroad.
- Remittances directly or indirectly to Bhutan, Nepal, Mauritius and Pakistan.
- Remittances directly or indirectly to countries identified by the Financial Action Task Force (FATF) as "non co-operative countries and territories", from time to time.
- Remittances directly or indirectly to those individuals and entities identified as posing significant risk of committing acts of terrorism as advised separately by the Reserve Bank to the banks.
- With effect from August 14, 2013, the scheme is not available for remittances for acquisition of immovable property directly or indirectly outside India.

LRS Facility is in Addition to Existing Facilities Detailed in Schedule III Under Remittances.

The facility under the Scheme is in addition to those already available for private travel, business travel, studies, medical treatment, etc., as described in Schedule III of Foreign Exchange Management (Current Account Transactions) Rules, 2000. The Scheme can also be used for these purposes.

- The resident individual investors can retain and re-invest the income earned on investments made under the Scheme. The residents are not required to repatriate the funds or income generated out of investments made under the Scheme.
- Remittances under the facility can be consolidated in respect of family members subject to the individual family members complying with the terms and conditions of the Scheme.
- Remittances under the Scheme can be used for purchasing objects of art subject to compliance with the extant Foreign Trade Policy of the Government of India and other applicable laws.
- The Scheme can also be used for remittance of funds for acquiring ESOPs.
- The remittance under the Scheme is in addition to acquisition of ESOPs linked to ADR/ GDR.
- There is no restriction on the frequency. However, the total amount of foreign exchange purchased from or remitted through, all sources in India during a financial year should be within the cumulative limit of USD.75,000.

Can an individual, who has repatriated the amount remitted during the financial year, avail of the facility once again?

Once a remittance is made for an amount up to USD 75,000 during the financial year, he would not be eligible to make any further remittances under this scheme, even if the proceeds of the investments have been brought back into the country.

Can resident individuals make remittances under LRS for investments in immovable properties abroad, which were acquired under instalment basis?

Resident individuals are permitted to make remittances for acquiring immovable property within the annual limit of USD 75000 for already contracted cases.

9.2 Guidelines for Financial Intermediaries

Are intermediaries expected to seek specific approval for making overseas investments available to clients?

Banks including those not having operational presence in India are required to obtain prior approval from the Department of Banking Operations and Development, Central Office, Reserve Bank of India, Central Office Building, Shahid Bhagat Singh Marg, Mumbai, for soliciting deposits for their foreign/overseas branches or for acting as agents for overseas mutual funds or any other foreign financial.

Are there any restrictions on the kind / quality of debt or equity instruments an individual can invest in?

No ratings or guidelines have been prescribed under the Liberalised Remittance Scheme. However, the individual investor is expected to exercise due diligence while taking a decision regarding the investments under the Scheme.

Whether credit facilities in Indian Rupees or foreign currency would be permissible against security of such deposits?

No. The Scheme does not envisage extension of credit facility against the security of the deposits. Further, the banks should not extend any kind of credit facilities to resident individuals to facilitate outward remittances under the Scheme.

Can bankers open foreign currency accounts in India for residents under the Scheme?

No. Banks in India cannot open foreign currency accounts in India for residents under the Scheme.

Can an Offshore Banking Unit (OBU) in India be treated on par with a branch of the bank outside India for the purpose of opening of foreign currency accounts by residents under the Scheme?

No. For the purpose of the Scheme, an OBU in India is not treated as an overseas branch of a bank in India.

Chapter References

1. http://rbi.org.in

10.0 MATERIAL AND MACHINES

10.1 Material Market Price

The best way to check market prices for industrial material and commodities is http://www.commodityonline.com. Please go to the site and log in accordingly.

10.2 Material Suppliers and Location

Electrical and Building Materials Suppliers Related Categories :-
http://www.mapsofindia.com. Please go the site and log in accordingly.

Materials / Machineries

Materials / Machineries	Suppliers
Blocks and Tiles	1. M.S Tiles House 2. Agrawal and Sons Tiles House
Building Chemicals	1. H S Builder 2. Som Construction Company
Cable and Pipe Lying	1. Ganpati Cables 2. Saini Traders
Electrical and Building Materials Suppliers	1. BSES Yamuna Power Ltd. 2. Vaishno Setring Store
False Ceilings	1. New Age Interior 2. Anutone Accoustics Ltd.
Granites and Marbles	1. Aggarwal Marble 2. Granite India

Materials / Machineries	Suppliers
Interlock Factories	1. Royal Tiles
Materials Suppliers	1. Achal Traders 2. Karishma Paints and Sanitaryware
Natural Stones	1. Rama Ratan Kendra 2. M and M International
Plumbing and Building Materials	1. M. L. Sharma and Co 2. Bharat Plumber
Portacabin Manufacturers	1. Beardsell Limited
Readymix Concrete	1. Perstorp Chemicals India Pvt. Ltd.
Road Markers	1. Bsccandcjv
Rolling Shutters	1. Ashoka Safe Co. 2. Ganga Rolling Shutter
Space Frames	1. FurnitureIndia
Stone and Marble Suppliers	1. Classic Marbles 2. Shri Ram Marble

Construction bodies / Associations in India

Construction	Suppliers
Building Contractors	1. H S Builder 2. Som Construction Company
Building Inspection Services	1. Cortex Construction Solutions Private Limited 2. Nibas Sandhan
Concrete Construction	1. Acc Concrete Ltd. 2. Shubham Traders
Construction Companies	1. Mojj Engineering System Ltd. 2. Sharma Construction
Construction Equipment Spare Parts	1. Jyoti Construction Company 2. Bellstone Hi Tech International
Construction Maintenance	1. Revti Sons 2. Rajnish Kumar
Construction Management Consultants	1. Pramod Associates 2. Raga Infratech Pvt. Ltd.
Construction Materials	1. Delhi Builders Stores 2. Royal Marble and Tiles
General Maintenance	1. B C Abrol & Co 2. Shri Balaji Glass & Pipe House
Industrial Installation	1. Jai Mata Marble & Granites
Mechanical Services	1. S K and Sons 2. Svl Engineering Works
Construction Stone	1. Unistar Enterprises 2. Fashion Wave
Road Construction Equipment Suppliers	1. Vibra Constructions 2. M/S Sangle Construction
Scaffolding Services	1. Saurabh Buildcon Private Limited 2. Grajesh Scaffolding Works
Tower	1. P S Construction Company 2. Arani Power System Limited
Wall and Corner Protection Systems	1. Ratan Chand Madan Mohan 2. Delite Electricals
Waterproofing and Thermal Services	1. Kohli Brothers 2. S R Traders
Construction Civil	1. Orient Constructions Pvt. Ltd. 2. Rahul Enterprises

11.0 CUSTOMS AND EXCISE REGULATIONS

The Central Board of Excise and Customs (CBEC) is the nodal national agency responsible for administering Customs, Central Excise and Service Tax in India.

Currently the Customs and Excise department comes under the Department of Revenue, Ministry of Finance.

11.1 Excise Duty

Central Excise duty is an indirect tax levied on those goods that are manufactured in India and are meant for home consumption. The taxable event is 'manufacture' and the liability of central excise duty arises as soon as the goods are manufactured.

11.1.1 Modified Value Added Tax (MODVAT) and Central Value Added Tax (CENVAT)

Modvat Scheme ensures the revenue of the same order and at same time the price of the final product could be lower. Apart from reducing the costs through elimination of cascade effect, and bringing in greater rationalization in tax structure and also bringing in certainty in the amount of tax leviable on the final product, this scheme will help the consumer to understand precisely the impact of taxation on the cost of any product and will, therefore, enable consumer resistance to unethical attempts on the part of manufacturers to raise prices of final products, attributing the same to higher taxes.

Subsequently, MODVAT scheme was restructured into CENVAT (Central Value Added Tax) scheme.

Under the Cenvat Scheme, a manufacturer of final product or provider of taxable service shall be allowed to take credit of duty of excise as well as of service tax paid on any input received in the factory or any input service received by manufacturer of final product.

11.1.2 Different Kinds of Excise Duties

- Basic Excise Duty
- Special Excise Duty
- Additional Duties of Excise (Textiles and textile Articles)
- Additional Duties of Excise (Goods of Special Importance)
- National Calamity Contingent Duty
- Excise Duties and Cesses Leviable Under Miscellaneous Act
- Education Cess on excisable goods is levied in addition to any other duties of excise chargeable on such goods

11.2 Customs Duties (Import Duty and Export Tax)

Customs Duty is a type of indirect tax levied on goods imported into India as well as on goods exported from India. Taxable event is import into or export from India. Import of goods means bringing into India of goods from a place outside India. India includes the territorial waters of India, which extend up to 12 nautical miles into the sea to the coast of India. Export of goods means taking goods out of India to a place outside India.

11.2.1 Type of Custom Duties

Basic Duty

It may be at the standard rate or, in the case of import from some other countries, at the preferential rate.

Additional Customs Duty

Equal to central excise duty leviable on like goods produced or manufactured in India. Additional duty is commonly referred to as Counter veiling duty or C.V.D. Additional duty is calculated on a value base of aggregate of value of the goods including landing charges and basic customs duty. Other duties like anti-dumping duty, safeguard duty etc. is not taken into account.

True Countervailing Duty or Additional Duty of Customs

Is levied to offset the disadvantage to like Indian goods due to high excise duty on their inputs. It is levied to provide a level playing field to indigenous goods, which have to bear various internal taxes. This additional duty will not be included in the assessable value for levy of education cess on imported goods. Manufacturers will be able to take credit of this additional duty for payment of excise duty on their finished products.

Anti-dumping Duty / Safeguard Duty

For import of specified goods with a view to protecting domestic industry from unfair injury. It would not apply to goods imported by a 100% EOU (Export Oriented Units) and units in FTZ (Free Trade Zones) and SEZ (Special Economic Zones).

On export of goods, anti-dumping duty is rebate-able only by way of a special brand rate of drawback. Safeguard duties do not require the finding of unfair trade practice such as dumping or subsidy on the part of exporting countries but they must not discriminate between imports from different countries. Safeguard action is resorted to only if it has been established that a sudden increase in imports has caused or threatens to cause serious injury to the domestic industry.

Education Cess

At the prescribed rate is levied as a percentage of aggregate duties of customs. If goods are fully exempted from duty or are chargeable to nil duty or are cleared without payment of duty under prescribed procedure such as clearance under bond, no cess would be levied.

11.3 Service Tax

Service tax is a tax levied on services rendered by a person and the responsibility of payment of the tax is cast on the service provider. It is an indirect tax as it can be recovered from the service receiver by the service provider in course of his business transactions. The Finance Act, extends the levy of service tax to the whole of India, except the State of Jammu and Kashmir.

Service tax is payable @ 12% of the 'gross amount' charged by the service provider for providing such taxable service. The Education Cess is payable @ 2% of the service tax payable.

Chapter References

1. http://rbi.org.in

12.0 CONSTRUCTION OUTLOOK AND OPPORTUNITIES

12.1 Roads and Highways

India's roads are already congested, and getting more so. Annual growth is projected at over 12% for passenger traffic and over 15% for cargo traffic. The Indian Government estimates around US$90 billion plus investment is required over FY07-FY12 to improve the country's road infrastructure.

Plans announced by the Government to increase investments in road infrastructure would increase funds from around US$15 billion per year to over US$23 billion in 2011-2012. The quantum of funds invested as part of these programmes will significantly exceed that invested in recent history. Such programmes would be funded via a mix of public and private initiatives.

The Indian Government, via the National Highway Development Program (NHDP), is planning more than 200 projects in NHDP Phase III and V to be bid out, representing around 13,000km of roads. The average project size is expected to US$150 million-US$200 million.

Larger projects are likely to reach the US$700 million-US$800 million range. About 53 projects with aggregate length of 3000km and an estimated cost of around US$8 billion are already at the pre-qualification stage. The procurement process favours players with good experience and sound financial strength.

The opportunities do not stop there. More than 10 states are also actively planning the development of their highways. While the average size of these projects is smaller than the NHDP projects, most will still be substantial, in the US$100 million-US$125 million range. All told, more than 4,500km of state highways are likely to be awarded by the end of 2010.

12.2 Rail

The Indian Government has also recognised existing infrastructure gaps and capacity constraints in the rail system, and as a consequence plans large scale investment over the five years from FY07-FY12. Projected investments total US$65 billion, of which 40% is expected to be contributed by the private sector. One major PPP programme is already in its initial phases. The Dedicated Freight Corridor project is designed to alleviate congestion on the rail routes between Delhi and Mumbai and Delhi and Kolkota by building long-distance, cargo-only rail lines, at an estimated cost of US$6 billion-7 billion.

Other proposed initiatives include the development of manufacturing plants for rolling stock with long-term committed procurement for several years, and the setting up of logistics parks. City metro systems are also in the pipeline. The first corridor of the Mumbai Metro Project has already been awarded to Reliance Infrastructure and the Government has asked the final shortlisted companies to submit detailed financial bids for the second phase of the Mumbai Metro.

Indian Railways is also looking for private partners to help modernise railway stations to world-class levels, and for projects focused on increasing connectivity with ports.

12.3 Ports and Airports

Increasing connectivity with inland transport networks is just one of many challenges currently facing India's ports, which have seen massive swells in the amount of goods transported. Traffic is estimated to reach 877 million tonnes by 2011-12, and containerised cargo is expected to grow at 15.5% (CAGR) over the next 7 years. India's existing ports infrastructure is not sufficient to handle the increased loads – cargo unloading at many ports is currently inadequate, even where ports have already been modernised. An estimated investment of around US$22 billion is targeted for port projects in the five year period from FY07- FY12. The National Maritime Development Programme includes 276 projects, with a required investment of about US$15 billion over the next ten years, with private investment targeted at around US$8billion. In addition to improving road and rail connections, projects related to port development (construction of jetties, berths, container terminals, deepening of channels to improve draft, etc.), will provide major opportunities for E&C companies. Recent deregulation of the sector now permits 100% FDI, and an independent tariff regulatory authority has been set up to facilitate projects at major ports.

Air traffic has increased rapidly in recent years, although this slowed in 2007. While a number of Indian airlines have faced challenging market conditions in 2008, and the rate of growth is likely to be significantly less than initially projected, Indians are still flying in much greater numbers. Estimates made in 2007 by the Indian Government's Committee on Infrastructure suggest that passenger traffic will grow at a CAGR of over 15% in the next 5 years. Indian manufacturers are also looking to the skies – the same source anticipates that cargo traffic will grow at over 20% p.a. over the next five years.

Even if these estimates prove somewhat optimistic, the growth already achieved has put tremendous pressure on airport infrastructure. The Indian Government has projected that an investment of around US$8 billion in the five year period from FY07-12 will be needed to help cope with additional demand, and private sector participation is expected to play a key role. The private sector has already stepped up to the challenge of airport infrastructure development in several cases, with private participation in recent years at Delhi, Mumbai, Hyderabad, Cochin and Bangalore supplementing the efforts of the Airports Authority of India.

The Government has proposed the establishment of an Airport Economic Regulatory Authority (AERA) to promote efficiency, competitive pricing and a customer-focused service. State governments are also getting involved and looking to facilitate the development of new airports. The total investment on new airports has been proposed at about US$10 billion by 2012. Greenfield airport projects are planned in resort destinations and emerging metros such as Goa, Pune, Navi Mumbai, Greater Noida and Kannur. Further, 35 non-metro airports are proposed for development. Prequalification of bidders for development of Amritsar and Udaipur airport has already been completed, and bids for 10 non-metro airports are scheduled to be invited shortly.

As the density of airports increases in various regions, increased competition is likely to bring new issues into focus, such as corporate performance management. Airports will look to diversify their revenue sources through the development of city-side infrastructure. Airlines will also be looking for new technology solutions to maximize revenues and reduce costs. MRO (Maintenance, Repair & Overhaul) facilities could therefore also present new business opportunities.

The need for improved aviation infrastructure extends beyond the construction of new airports – existing metro airports also require significant modernization and upgrading. EPC contractors are expected to be sought for Chennai and Kolkata airports in the immediate future.

12.4 Power

Increased manufacturing activities and a growing population are also causing a surge in power usage. India has the fifth largest electricity grid in the world with 135 GW capacity, and the world's third largest transmission and distribution (T&D) network. Large investments are needed to meet growing demand and provide universal access. The policy and regulatory framework is pro-investment – shifting away from 'negotiated and guaranteed' to 'open and market competition'. Given the increased competition, diversity, and number of opportunities, project and collaboration risk must be more carefully assessed and managed.

An investment of US$167 billion is projected for electricity projects in the five year period from FY07-FY12. The massive number and scope of potential projects has attracted a number of new investors, lenders and operators. All new awards are through open, competitive bidding. A rush is on to develop new assets, harness natural resources, and attract global finance – but an industry focus and strategy is necessary to properly tap into this opportunity.

E&C companies may want to consider involvement in the construction of power stations, and T&D networks, particularly if sustainable building and generation technologies can be leveraged. The Indian Government is also looking to encourage the generation of wind and solar power by providing generation-based incentives to those companies who do not claim accelerated depreciation, so E&C companies with experience in building these types of alternative energy projects may find excellent opportunities.

13.0 COUNTRY RISK

13.1 According to Business Monitor International

- While the declining support for the Indian National Congress (INC)-led ruling alliance and the rising popularity of the Bharatiya Janata Party (BJP)-led political opposition is unsurprising, it is too early to tell whether these trends will persist through to the next general elections.
- The May-June collapse of the Indian rupee has reinforced concerns that the country is unlikely to enjoy a forceful economic bounce in the coming quarters.
- The Reserve Bank of India's decision-making process over the coming months will centre on the country's fragile external dynamics, which means a continued pause in its current easing cycle. At the moment, the projection is for the benchmark repo rate to remain at 7.25% through the remainder of FY2013/14.
- The enduring size of India's current account deficit in the face of an ongoing growth deceleration is disconcerting, as it signals that the country has yet to undergo the external rebalancing needed to put the economy back onto an even keel.
- The budget plans for the current fiscal year were distinctly underwhelming, reflecting the earlier expectation for a mixture of both populism and pragmatism. BMI is forecasting an end-FY2013/14 central government deficit projection of 5.0% of GDP, as its revenue targets are too optimistic and there is a lack of a concerted effort to rein in expenditures.

13.2 Key Risks to Outlook

- ***Downside Risks To Growth*** : The manner in which the government responds to looming electoral pressures in the run-up to the 2014 general elections could see the Indian economy swing either way. In the bearish case, the government could opt for a more populist approach, which then leads to a further exacerbation of the country's twin deficits. In the near term, the rupee's recent collapse poses a risk to growth via channels such as a steep rise in imported inflation.
- ***Upside Risks To Fiscal Deficit*** : Even more so than in FY2012 / 13, this fiscal year will see growing risk of fiscal slippage owing to increasing political pressure to ramp up spending prior to the 2014 general elections.
- ***Upside Risks To Interest Rate*** : In light of the recent sell-off in the rupee, there remains a fundamental risk that the central bank could be forced to hike interest rates sooner than any would expect given the economy's still-vulnerable structural dynamics due to its lingering twin deficits.
- ***Downside Risks To Exchange Rate*** : Risks to medium-term rupee outlook remain weighted to the downside. Potential fiscal profligacy, failure of the expected recovery in the EU to materialise, and a short-term bounce in key commodity prices are the key risks to watch.

14.0 THE CHALLENGES FACES BY MALAYSIAN COMPANIES VENTURING IN INDIA

14.1 Reasons that Lead to Non-Profitable Experience

- Insufficient understanding of Indian market structure and character – very competitive market with smart and unscrupulous elements.
- Insufficient understanding of social and political dynamics – particularly 'free lunch' culture in India.
- 100% Malaysian ownership model.
- Insufficient homework in partner selection – unreliable Indian partners with hidden agenda.
- Strategic flaw in excessive financial dependence on Malaysian parent – not accessing Indian banking and capital markets.
- Posting and depending on line managers with only Malaysian experience
- It would be counter objective to criticize Indian market and government – facts remains.
- India is one of the top 2 largest domestic consumption stories – one of the most sustainable growth markets with very high resilience.
- American, European and Japanese companies have been operating profitably in India for several decades – Unilever, BAT, Nestle, Trafalgar House, Sony, Areva T&D, Alstom, Citi Bank, Standard Chartered Bank etc.

14.2 Strategy to Operate Profitably in India

Right Partner Selection

- Select partners bringing complimenting core competencies and non-competitive, non-overlapping business portfolio.
- Select smaller player who see sustainable need to partner.
- Select partners with global exposure, sound management capabilities and total commitment to integrity in partnership.
- Invest time and resources in understanding – payoffs are high.
- Use sound consulting organization with proven track record – avoid falling for brand names alone – Lehman brothers can fail.

Right Strategy

- Define clearly India market entry goals and strategies.
- Avoid transactional (contract seeking) approach.
- Enter Indian market with long term vision form local limited liability company to handle business.
- Build sound diverse board with sufficient India experience.
- Trust local partner under system driven approach.
- Seek local banking support – avoid corporate guarantees from home office.

14.3 How to Exploit India Opportunity with Maximum Taking

Indian Order Book

- Indian has huge order book potential.
- Be selective and achieve pre-defined business targets knowing the execution limitations.

Indian Human Talent

- Hire and retain right talent.
- Goal has to be to build an organization that supports global high profitability growth.
- Expose Indian team to global markets and make them international employees with long term employment promise.

Indian Capital Market

- Have clear plan to go public in India and future growth has to come from Indian capital.

15.0 THE WAY FORWARD

Overall, the opportunities to develop a significant business in India are extremely promising for E&C companies, if they have carefully selected strong local partners, structured contracts sensibly to maximise tax benefits where appropriate, and taken a long-term, sustainable perspective. Foreign companies who do not acknowledge the opportunity in good time may miss out on a critical opportunity to establish a long-term presence in one of the world's largest growth markets.