Independent legal & accounting firms

Doing Business in India

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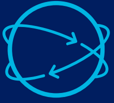
Doing business in India

MSI's guide on Doing Business in India provides current information about the financial, regulatory and legal considerations that could affect business dealings within India. For further assistance please contact our MSI member firms in India.



**Note to editor: The laws referenced in this guide are current as of June 2024. Please ensure accuracy with any subsequent updates.*

Country overview

Population

India has a total population of 1.44 billion inhabitants.

Government

India is a federation with a parliamentary system governed under the Constitution of India, which serves as the country's supreme legal document. The Constitution of India outlines the legislative powers of the central government (Parliament) and state governments (Legislative Assemblies and Councils). While some matters can be legislated at both levels, business laws in India are typically formulated at the central level. Here are some of the key laws that regulate business activities in India:

(i) ***The Companies Act, 2013*** for formation, financing and functioning of companies The Companies Act, 2013, which addresses the formation, financing, and functioning of companies
(ii) **The Indian Contracts Act, 1872**, which outlines general principles for the creation, performance, and enforceability of contracts
(iii) **The Foreign Exchange Management Act, 1999**, which regulates exchange control and oversees external trade and payments
(iv) **Labour and Employment Laws**, which stipulate employment conditions, social security, and occupational health standards for employees
(v) **Sector-specific Laws**, such as the Drugs and Cosmetics Act, Insurance Act, and Explosives Act
(vi) ***Arbitration and Conciliation Act, 1996***
(vii) ***Competition Act, 2002***

Languages

There is no existing national language followed country-wide, though Hindi and English are most prominently spoken. Each region has its own language that is used by the majority of residents there.

Currency

The national currency is the Indian Rupee.

Economic summary

GDP: $3.7 trillion
GDP Growth Rate: 7% (2024 Forecast)
Inflation: 4.5% (2024 Forecast)

Rights and Protection for Investors

One of the key enablers of investment in India is its status as the world's largest functioning democracy, which upholds the rule of law and guarantees fundamental rights, including the right to engage in trade or profession. India also boasts an independent judiciary to address grievances through litigation. Corporations and individuals can seek recourse through the established court system. Additionally, parties have access to alternative dispute resolution (ADR) mechanisms, such as arbitration, mediation, conciliation, and negotiation. These ADR methods are frequently preferred by private parties over traditional court proceedings, which can be lengthy.

India is a signatory to numerous bilateral and multilateral treaties, including Bilateral Investment Treaties (BITs). These BITs offer treaty-based rights and protections to foreign investors in India, along with special tariffs for imports and benefits for Indian investments abroad. BITs ensure a level playing field for foreign investors, contributing to the economy through capital, technology, and expertise. In her 2022-2023 budget speech, the Honourable Finance Minister emphasized the government's focus on enhancing investment by improving the ease of doing business and promoting the digital economy, fintech, technology-driven development, energy transition, and climate action. Additionally, the government proposed the introduction of a Central Bank Digital Currency (CBDC), leveraging blockchain and cryptographic technology, to be issued by the Reserve Bank of India for a more efficient and cost-effective currency management system.

Improving Ease of Doing Business

In recent years, the Government has initiated and executed several measures aimed at improving the ease of doing business in India. Below are some of the significant enhancements introduced to simplify the process of starting a business:

(i) Incorporation process with the introduction of the SPICe form (INC-32), which merges the applications for the Permanent Account Number (PAN) and the Tax Account Number (TAN) into a single submission.
(ii) Enabled registration under the Employee State Insurance Corporation (ESIC), Employee Provident Fund Organisation (EPFO), Contract Labour (Regulation and Abolition) Act, 1970 (CLRA), Building and Other Construction Workers (BOCW) (Regulation of Employment and Conditions of Service) Act, 1996,

and Inter-State Migrant Workmen Act (ISMW) Act, 1979 through the Shram Suvidha portal as a unified online service.

(iii) Eliminated the incorporation fee for companies with an authorized capital up to INR 1,500,000.
(iv) Introduced a single-window system for the approval of building plans to streamline the process for obtaining construction permits.
(v) Established regulations to protect minority investors.
(vi) Standardized the methods of computing taxable income and other tax accounting standards.
(vii) Implemented an insolvency and bankruptcy code.
(viii) Facilitated ease of trading across borders and reduced border compliance through infrastructure improvements.
(ix) Amended various penal provisions across 42 sectoral laws to decriminalize minor violations, thereby promoting ease of doing business.

Main sectors of the economy

India's economy includes traditional village farming, modern agriculture, handicrafts, a variety of industries, and extensive service sectors. While agriculture employs nearly half of the workforce, services contribute significantly to economic growth, making up almost two-thirds of India's output while employing less than one-third of its labour force. Leveraging its large educated population, India has emerged as a leading exporter of information technology services, business process outsourcing, and software professionals.

The main sectors of the Indian economy comprises of the services sector (55%), manufacturing sector (17.7%) and the agriculture sector (18%).

Total FDI inflows in the FY 23-24 were USD 71 billion (approximately). The top 5 sectors attracting the highest FDI equity inflows were: services sector (16%), computer software and hardware (15%), telecommunications (6%) and trading (6%).

Indian Exports

Indian overall exports (merchandise) in May 2024 were USD$ 68.29 billion registering a positive growth of 10.25%, compared to May 2023. Major commodity groups of export that recorded positive growth in May 2024 over the corresponding month of last year included coffee, tobacco, tea, oil seeds, oil meals, spices, other cereals, organic & inorganic chemicals, miscellaneous processed items, fruits & vegetables, drugs & pharmaceuticals, tobacco and coffee.

Setting up a business

In general, there are two types of entry strategies for foreign businesses in India: registration of a company or establishing a branch/liaison office in India. The initial step involves registering a private limited company, which is regarded as the simplest and quickest method for foreign nationals and foreign companies to enter the Indian market.

The foreign direct investment which ranges up to 100% in a private limited company under the automatic route for most sectors and in such case no special permission is required from the Central Government in India. However, investments originating from a citizen or an entity based in a country that shares a land border with India (such as China, Bhutan, Bangladesh, Pakistan, and Nepal) or where the beneficial owner of the investment into India is located in or is a citizen of one of these **bordering countries**, require prior approval from the Government.

Secondly, one can opt to register a branch office, project office or liaison office which necessarily requires RBI and/or Government approval.

Legal types of business entities

(i) Private Ltd Company
(ii) Public Ltd Company
(iii) Limited Liability Partnership
(iv) Partnership
(v) Proprietary Firm
(vi) Branch Office
(vii) Investment Vehicle
(viii) Startup

In international business, the private limited company by way of a subsidiary company and branch office entity types are most commonly used. The private limited company restricts the rights of the shareholders to transfer the shares of the company and has a minimum of 2 and a maximum of 200 members. The minimum paid up share capital for such an entity is INR 100,000.

Process of how to set up a company

A start up or a company is incorporated by registration with the Ministry of Corporate Affairs (MCA). The registration includes 'must follow rules' and certain preliminary registrations like Digital Signature (DSC), Director Identity Number (DIN) and filing for e-form(s) which one can get after submission of various documentary evidences with respect to address and identity proof of promoters. In 2015, the company incorporation process was streamlined by introducing a single, integrated e-form. This form allows applicants to simultaneously apply for statutory registrations such as Goods and Services Tax (GST), Employees State Insurance (ESIC), Employees Provident Fund (EPFO), Shops and Establishment Act (in certain states), and Professional Tax registrations (in applicable states) at the time of forming the company.

A key requirement for incorporating a company in India is appointing a director who has resided in India for at least 182 days during the financial year. Additionally, if a national from one of the bordering countries seeks appointment as a director in an Indian company, they must obtain security clearance from the Ministry of Home Affairs, Government of India, and attach this clearance along with their consent when applying for directorship in the Indian company.

Financial year of taxes and financial accounts

The tax year and the fiscal year are similar i.e. from 1 April to 31 March.

Accounting and auditing

In India, audits are conducted for each fiscal year (April 1 to March 31). The two

most common types of statutory audits in India are:
(i) Tax Audits
(ii) Company Audits

Tax Audits

Tax Audits are required under Section 44AB of Income tax Act, 1961. This section mandates every person whose business turnover exceeds INR 10 Crore (subject to certain thresholds on cash transactions) and every person working in a profession with gross receipts exceeding INR 50 lakh must have their accounts audited by an independent chartered accountant.

Company Audits

The requirements for a company audit are outlined in the Companies Act, 2013. Regardless of the business type or turnover, every company is required to have its annual accounts audited each financial year. Only an independent chartered accountant or a partnership firm of chartered accountants is eligible to be appointed as the company's statutory auditor.

Economic and fiscal incentives

The Central Government has launched several initiatives to foster investments in the country. These programs provide allowances to manufacturers (subject to specific conditions) for establishing units in special economic zones, national investment and manufacturing zones, and export-oriented units. Benefits include export incentives such as duty drawback, duty exemption, and other incentives tailored to specific sectors and regions. Additionally, in recent years, the Government of India has introduced various initiatives, including:

(i) The "Digital India" initiative aims to enhance digital infrastructure, deliver services digitally, and promote digital literacy.
(ii) The "Make in India" initiative promotes domestic manufacturing to bolster economic growth.
(iii) The "Start-Up" programme offers special tax incentives to selected start-ups. India maintains its position as the world's third-largest base for start-ups, with over 70,000 recognized ventures.

The Government of India has implemented numerous regulatory reforms to open new sectors to foreign direct investment (FDI), raise the limits on foreign investment in sectors with previously lower allowances, and simplify other conditions related to foreign investment. These progressive FDI policy reforms have facilitated business operations in India and boosted the rate of foreign investment, making India a more appealing destination for foreign investors.

Revised definition for Classification of MSMEs:

In order to improve the ease of doing business for MSMEs, the definition of MSMEs were revised as part of the economic package announced amid the pandemic. Unlike the erstwhile definition, the revised criteria categorise manufacturing and service enterprises similarly. Accordingly, the basis for classifying MSMEs is as follows:

(i) Micro: Investment less than INR 1 crore and annual turnover up to Rs.5 crores
(ii) Small: Investment less than INR 10 crores and annual turnover up to INR 50 crores
(iii) Medium: Investment less than INR 50 crores and annual turnover up to INR 250 crores

Taxation

The tax system in any given country is invariably an extremely important criterion when it comes to companies finding a country of incorporation. The view taken by the Indian Government is that the tax system may under no circumstances form an impediment for entities wishing to incorporate a company in India.

In that framework, it is possible to obtain advance certainty regarding the fiscal qualification of international corporate structures in the form of so-called Advance Tax Rulings. In addition, India has also signed tax treaties with many other countries to prevent the occurrence of double taxation.

Taxable income

A company's profits, which include business/trading income, passive income, and capital gains, are subject to taxation. This also encompasses income from the indirect transfer of assets situated in India. When calculating taxable income, standard business expenses and certain specified items can be deducted.

Taxation of dividends

Dividends received by a foreign company from the profits of its subsidiary in India are subject to income tax at a rate which is the most beneficial to the taxpayer under the laws in India or the applicable tax treaty. An additional surcharge and cess are imposed in case the tax rate under Indian laws gets attracted.

Capital gains

The tax treatment depends on whether gains are long or short term. Gains are long term if the asset is held for more than three years (one year in the case of listed shares and specified securities, and two years in the case of unlisted shares and immovable property). Companies (unlisted and listed) are liable to pay an additional tax of 20% on income distributed to a shareholder on account of a buyback of the company's shares.

Losses

Business losses and capital losses may be carried forward for eight years, with short term capital losses offsetting capital gains on both long and short-terms capital assets, and long-term capital losses offsetting only long-term capital gains. Unabsorbed depreciation may be offset against any income, whereas business losses may be offset only against business profits in subsequent years.

Rate

The standard rate is 30% for domestic companies and 40% for foreign companies and branches of foreign companies.

With effect from FY 2019-20, all domestic company shall have an option to pay income-tax at the rate of 22% subject to

condition that they will not avail any exemption/incentive.

Any new domestic company incorporated on or after 1 October 2019 with fresh investment in manufacturing and having commenced manufacturing/ production on or before 31 March 2024 is eligible for beneficial tax rate of 15% provided it does not avail any exemption/incentive.

Recent Announcements

(i) Equalisation Levy
In 2016, a 6% Equalisation Levy (EL) was introduced, applied to the consideration for online advertisements and digital advertising received by non-residents. This levy was to be deducted by residents or non-residents with a taxable presence in India when paying for such services. In 2020, the scope of the EL was broadened. Now, a 2% EL is imposed on the consideration received or receivable by e-commerce operators for e-commerce supplies or services made, facilitated, or provided to: (i) an Indian resident, (ii) anyone using an IP address located in India, or (iii) a non-resident engaged in specified activities. Unlike the 6% EL on advertising, the 2% EL is directly payable by the non-resident e-commerce operators.

(ii) International Financial Services Centres
To boost the financial services sector in India, the government has established an International Financial Services Centre (IFSC) in Gujarat. This IFSC offers a ten-year tax holiday for units engaged in activities like banking, wealth management services, derivative trading, and aircraft leasing. Additionally, to attract foreign investment, the IFSC provides various incentives to non-resident investors, including exemptions on capital gains from trading securities on stock exchanges.

Surcharge

A 2% surcharge applies to foreign companies if income exceeds Rs. 10 million, and a 5% surcharge applies if income exceeds Rs. 100 million. An additional 4% cess is payable in all cases.

Minimum Alternative Tax

Minimum Alternate Tax (MAT) is imposed at 15% (plus any applicable surcharge and cess) on the adjusted book profits of corporations whose tax liability is less than 15% of their book profits. MAT is not leviable on companies opting for 22% tax regime or new manufacturing companies. Additionally, MAT is not applicable to specific income earned by foreign companies, such as capital gains from securities transactions, interest, royalties, and fees for technical services. The MAT credit can be carried forward for a period of up to 15 years.

Transfer pricing

International transactions between Associated Enterprises are expected to happen at Arm's Length Price (ALP). Primary adjustment is made for the difference between the transfer price and ALP and tax is payable on such adjustment. Such amount is required to be repatriated to India within 90 days, on failure of which Secondary Adjustment would be made and imputed interest would be chargeable to tax. However, taxpayers have an option of paying one-time additional tax of 18% instead of repatriation.

Compliance and Assessment

Individual taxpayers are required to file income-tax return before 31st July of the Assessment Year (AY) (the year after the FY). Whereas, corporate assesses not covered under Transfer Pricing are required to file their return by 30th September of the AY. In case where Transfer pricing is applicable, the Due Date is 30th November of the AY. Assessment of returns filed by taxpayers from the Income Tax Department is required to be completed generally within 2 years from the end of FY and in cases where Transfer Pricing is applicable, the time limit is 3 years.

Foreign tax credits

Foreign tax paid may be credited against Indian tax on the same profits, but the credit is limited to the amount of Indian Tax payable on the foreign income. Specific rules have been introduced regarding the mechanism for granting a foreign tax credit.

Withholding taxes

(i) Dividends – Dividend payments by Indian companies are subject to withholding tax in India. Domestic companies paying the dividends are no longer subject to DDT and dividend shall now be taxable in the hands of shareholders /unit holders at applicable slab rate.

(ii) Interest - Interest paid to a non-resident on a foreign currency borrowing or debt generally is subject to a 20% withholding tax, plus the applicable surcharge and cess. A withholding tax rate of 5%, along with the relevant surcharge and cess, applies to particular types of interest paid to non-residents. This includes interest on certain foreign currency borrowings and on investments made by foreign institutional investors or qualified foreign investors in rupee-denominated bonds of Indian companies or in government securities. These rates may be lowered under a tax treaty.

(iii) Royalties & Technical Services - Royalties & Fees for technical services paid to a non- resident are subject to 10% withholding tax, plus the applicable surcharge and cess. The rate is in line with most of the tax treaties entered by India.

Avoidance of double taxation

India has entered into 97 bilateral tax treaties known as Double taxation avoidance agreements (DTAA) with various countries to prevent the double taxation of same income being taxed in two jurisdictions for a same person.

Multilateral instrument (MLI)

MLI implements treaty related Base Erosion and Profit Sharing (BEPS) measures, envisaged by Organisation of

Economic Commerce and Development (OECD), in tax treaties. India is a party to MLI and provisions relating to MLI came into force on 1st October 2019. It shall not amend the DTAAs but shall work in tandem to analyse the taxability and related aspects for a given transaction.

Goods and service tax

Goods and Service Tax (GST) was introduced in India on 1st July 2017. GST replaces a complex system of various indirect tax levies such as value added tax (VAT), central sales tax and central excise duty (except for a few specified non-GST goods); service tax; entry tax; entertainment tax; and various other local taxes previously levied on most goods and services.

Rates - Goods and Services are broadly categorised under a structure with five rates; 0%, 5%, 12%, 18% and 28%. Generally, rate of tax for services is 18%.

Exports and supplies to Special Economic Zones (SEZ) are zero rated. Certain items such as sale of land, completed buildings, petroleum products are outside the ambit of GST whereas certain food products are also exempt.

Filings – Taxpayer has to file

(i) GSTR 1 (Return for outward supply) – monthly or Quarterly (as applicable)
(ii) GSTR 3B (Monthly return for payment)
(iii) GSTR 9 – Annual Return
(iv) GSTR 9C – Reconciliation statement required to be filed by taxpayers whose turnover exceeds the prescribed limit.

HR/ Labour Law

Matters related to employment in India are primarily governed by the Constitution of India, specific laws framed by the Central and State Governments, municipal laws, collective and individual agreements, as well as judicial precedents. India has an established labour law regime which balances the interests of employers with rights of employees.

Employment Conditions

a) Factories Act, 1948 - An Act intended to provide for health, safety, welfare, working hours and leave of workers in factories (manufacturing units).

b) Shops & Establishment Acts (State Wise) - An Act enacted to regulate the payment of wages, terms of services, holidays, leaves, work conditions, hours of work, overtime, etc. for people employed in shops and commercial establishments.

c) Contract Labour (Regulation & Abolition) Act, 1970 - An Act aimed at regulating the engagement of contractor and contract labour by the principal employer.

d) Industrial Employment Standing Order Act, 1946 - Any establishment employing 100 or more workmen is required to regulate and codify conditions of service and obtain certification from the concerned regulatory authority.

e) Building and other construction workers (Regulation of employment and conditions of service) Act, 1996 - For the benefit of workers engaged in building and construction activities to regulate matters related to their safety, health and welfare and any other matter incidental thereto.

f) The Sexual Harassment of Women at Workplace Act, 2013 - An Act designed to offer protection against workplace sexual harassment of women, ensuring the prevention and resolution of such complaints and addressing related or incidental issues.

Industrial Relations

a) Industrial Disputes Act, 1947 - To provide a mechanism for regulating the rights of the employees and settlement of industrial disputes in a peaceful and harmonious manner.
b) Trade Unions Act, 1926 - To establish the rights, duties and obligations of trade unions and facilitate their registration.

Remuneration

(i) The Minimum Wages Act, 1948 – An Act intended to fix minimum rates of wages for certain employments so as to ensure fair compensation for the worker.

(ii) The Payment of Wages Act,1936 – An Act aimed at ensuring the payment of wages of certain class of employees at regular intervals without undue delays.

(iii) Payment of Bonus Act,1965 – An Act designed to regularize payment of bonus for certain establishments such as factories and establishments employing 20 or more persons on any day of an accounting year.

(iv) Equal Remuneration Act, 1976 – An Act intended to secure equal pay by payment of equal remuneration for work of a similar nature to both men and women and prevent discrimination on grounds of gender.

Social security

a) Payment of Gratuity Act, 1972 – An Act for ensuring payment of gratuity, a retirement benefit paid upon cessation of employment.

b) Workmen's Compensation Act, 1923 - An Act intended to offer relief to workmen and/or their dependents in the event of accidents that occur during employment, leading to death or disablement.

c) Employees Provident Fund and Miscellaneous Provisions Act, 1952 - An Act aimed at providing for a scheme wherein both the employee and employer make an equal contribution into a national fund which attracts a stipulated interest per annum and the accumulated amount is paid on retirement to the employee along with the interest that has accrued.

d) Employees' State Insurance Act, 1948 - An Act enacted to provide for a scheme wherein the employer and the employee must contribute a certain percentage of

the monthly wages to the Insurance Corporation.

e) Social Security Agreements (SSAs) – Social Security Agreements are bilateral instruments to protect the social security interests of workers posted in another country. There are 20 operational SSAs entered by India with various countries which ensure the avoidance of double coverage under social security regulations for international workers. It further enables India to protect the interests of cross border workers by negotiating SSAs with other countries which have a significant inbound population into India.

Dispute Resolution

Collective bargaining is an effective technique to resolve labour disputes in India and is utilised in cases wherein the number of employees are large and represented by trade unions which can be formed at company level, regional level or industry level. A collective bargaining agreement provides for terms and conditions of employment pertaining to wages, working hours, obligation of workmen and the employer, dispute resolution, leave, holidays, benefits and more.

Pension

In India, pensions are regulated by "The Employees' Pension Scheme, 1995," which applies to all factories and establishments covered by the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. This Scheme is intended for members of the Provident Funds Scheme or any scheme exempted under it. The pension policy serves as a social initiative to support employees' livelihoods after retirement.

Visa and Work permits

Employment visas are issued to foreigners who are working in India, for an organisation registered in India. Employment visas are generally granted for up to two years (multiple entry), or for the term of the assignment. Foreign technicians coming to India pursuant to a bilateral government agreement or a collaboration agreement approved by the Indian government can get a multiple entry visa for the duration of the agreement subject to a maximum period of 5 years. For highly skilled IT person visa validity is up to 3 years with multiple entries.

Labour Reforms

In an effort to modernize and simplify labour and employment laws in India, as well as to promote 'ease of doing business,' the Indian Government has introduced four labour law codes: (a) the Code on Wages, (b) the Industrial Relations Code, (c) the Code on Social Security, and (d) the Occupational Safety, Health, and Working Conditions Code (collectively known as the "Labour Codes"). These codes will replace 29 existing labour-related laws. When implemented, the Labour Codes will streamline and condense the regulatory framework for labour and employment laws in India, facilitating smoother governance that benefits both employers and employees across various industries.

Corporate Governance and Social Responsibilities

Corporate governance is the combination of rules, processes or laws by which businesses are operated, regulated or controlled.

Every company having net worth of Rs. 500 crore or more, or turnover of Rs. 1000 crore or more or a net profit of Rs. 5 crore or more during the immediately preceding financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director.

A company must spend, in every financial year, at least 2% of the average net profits of the company made during the three immediately preceding financial years as its obligation towards corporate and social responsibility. The expenditure incurred on account of CSR is not allowed as deduction against the income of corporates.

Contact us

The information provided in this guide cannot be exhaustive and we recommend anyone considering doing business in India should seek professional advice from our member firms before making any business or investment decision.

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