

INDIA THE LAND OF RISING OPPORTUNITIES

CAN YOU AFFORD TO MISS THE ACTION

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STUDIO LEGALE

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2014: THE BEGINNING OF A NEW ERA

CONTINUATION, CONSOLIDATION AND GROWTH

SOLID MANDATE BY INDIAN ELECTORATE FOR GOVERNANCE BY GROWTH

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INVESTMENT UNDER AUTOMATIC ROUTE: NO PRIOR SANCTION

**ALMOST ALL SECTORS HAVE BEEN BROUGHT UNDER THE
PURVIEW OF AUTOMATIC ROUTE**

VERY FEW SECTORS REQUIRE PRIOR GOVERNMENT APPROVAL

SECTORAL CAPS ON FDI HAVE BEEN RELAXED

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REFORMS UNDER WAY

**NUMEROUS REFORMS INCLUDING LIBERALIZATION OF FDI IN SEVERAL SECTORS
HAVE BEEN PROPOSED AND SOME EVEN CARRIED OUT**

DEFENSE

THE SECTORAL CAP FOR FDI IN DEFENCE HAS BEEN RAISED FROM 26% TO 49%,

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INSURANCE

**SUBJECT TO INDIAN MANAGEMENT AND CONTROL, THE FDI IN
INSURANCE SECTOR TO BE ALLOWED UNDER AUTOMATIC ROUTE UP
TO 26%; AND FDI FROM 26% TO 49% WOULD REQUIRE GOVERNMENT
APPROVAL**

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RAIL INFRASTRUCTURE

**100% FDI UNDER AUTOMATIC ROUTE PERMITTED
IN CONSTRUCTION, OPERATION AND
MAINTENANCE IN SPECIFIED RAIL
INFRASTRUCTURE PROJECTS**

OPPORTUNITY TO TAKE PART IN INFRASTRUCTURE

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REAL ESTATE

**PROPOSED TO REDUCE THE PROJECT SIZE REQUIREMENT TO 20,000
SQ. MTRS. FROM THE CURRENT 50,000 SQ. MTRS. AND THE
CAPITALIZATION REQUIREMENT FOR A WHOLLY OWNED SUBSIDIARY
TO USD 5 MILLION FROM THE CURRENT USD 10 MILLION**

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SETTING UP OPERATIONS IN INDIA

**A FOREIGN INVESTOR MAY ESTABLISH OPERATIONS IN INDIA EITHER
IN THE FORM OF UNINCORPORATED OR INCORPORATED ENTITIES**

UNINCORPORATED

**BRANCH OFFICE
LIAISON OFFICE
PROJECT OFFICE
LIMITED LIABILITY PARTNERSHIP**

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INCORPORATED ENTITIES

PRIVATE/ PUBLIC LIMITED COMPANIES

AND NOW

SINGLE SHAREHOLDER COMPANIES

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SIGNIFICANT CHANGES BROUGHT IN BY THE COMPANIES ACT, 2013

A. MANDATORY RESIDENT DIRECTOR

ALL COMPANIES NOW MUST ENSURE THAT A DIRECTOR OF THE COMPANY IS A RESIDENT DIRECTOR I.E. HE HAS STAYED IN INDIA FOR A PERIOD OF AT LEAST 182 DAYS IN THE PREVIOUS CALENDAR YEAR.

B. SINGLE SHAREHOLDER COMPANIES

C. CORPORATE SOCIAL RESPONSIBILITY

STEP TO MAKE INDIAN COMPANIES ACT AT PAR WITH DEVELOPED WORLD

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TAXATION IN INDIA

DIRECT TAX CODE

A NEW LEGISLATION FOR DIRECT TAXES IS BEING CONSIDERED BY THE INDIAN PARLIAMENT. THIS NEW LEGISLATION, ONCE ENACTED, WILL REPLACE THE EXISTING INCOME TAX ACT. AMONG OTHER THING, THE NEW LEGISLATION ALSO SEEKS TO INTRODUCE CONTROLLED FOREIGN CORPORATION RULES, CHANGE THE RESIDENCY CRITERIA, STRUCTURE OF CAPITAL GAIN TAX, ETC.

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CORPORATE TAX

CORPORATE TAX IS THE TAX LEVIED UNDER THE INCOME TAX ACT ON THE EARNINGS OF COMPANIES. THE CORPORATE TAX IS CURRENTLY AT ABOUT 32% - 34% FOR RESIDENT COMPANIES AND ABOUT 42% - 43% FOR NON-RESIDENT COMPANIES, DEPENDING ON WHETHER THEIR NET INCOME IS EXCEEDS INR 10 CRORES OR NOT. IN THE CASE OF EARNING OF INDIVIDUALS THE RESIDENTS ARE TAXED ON THEIR WORLDWIDE INCOME WHILE NON-RESIDENTS ARE ONLY TAXED ON INCOME ARISING FROM SOURCES IN INDIA. A COMPANY IS SAID TO BE RESIDENT IN INDIA IF IT IS INCORPORATED IN INDIA OR IS WHOLLY CONTROLLED AND MANAGED IN INDIA

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DIVIDEND TAX

COMPANIES PAY DIVIDENDS TO SHAREHOLDERS AND THE DIVIDENDS SO PAID ARE SUBJECT TO A DIVIDEND DISTRIBUTION TAX (“DDT”), PAYABLE BY THE COMPANY, AT THE RATE OF APPROXIMATELY 16%

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CAPITAL GAINS

TAX ON CAPITAL GAINS DEPENDS ON THE PERIOD OF HOLDING OF A CAPITAL ASSET. SHORT TERM GAINS MAY ARISE IF THE ASSET IS HELD FOR A PERIOD LESSER THAN 3 YEARS OR 1 YEAR FOR SECURITIES. SHORT TERM GAINS EARNED BY A NON-RESIDENT ON SALE OF LISTED SECURITIES ARE TAXABLE AT THE RATE OF APPROXIMATELY 15%, OR AT ORDINARY CORPORATE TAX RATE WITH RESPECT TO OTHER SECURITIES

LONG TERM GAINS MAY ARISE IF THE ASSET IS HELD FOR A PERIOD MORE THAN 3 YEARS OR 1 YEAR FOR SECURITIES. LONG TERM CAPITAL GAINS EARNED BY A NON-RESIDENT ON THE SALE OF UNLISTED SECURITIES MAY BE TAXED AT THE RATE OF 10% - 21%, DEPENDING ON CERTAIN FACTORS. LONG TERM GAINS ON SALE OF LISTED SECURITIES ON A STOCK EXCHANGE ARE EXEMPT AND ONLY SUBJECT TO A SECURITIES TRANSACTION TAX

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WITHHOLDING TAXES

TAX IS TO BE WITHHELD AT THE APPLICABLE RATE ON ALL PAYMENTS MADE TO A NON-RESIDENT, WHICH ARE TAXABLE IN INDIA

CREDITS ON WITHHOLDING TAXES CAN BE AVAILED IN THE HOME COUNTRY UNDER THE DOUBLE TAXATION AVOIDANCE AGREEMENT ENTERED INTO BY INDIA WITH SEVERAL COUNTRIES INCLUDING ITALY

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PERSONAL INCOME TAX

**MAXIMUM RATE OF TAX OF AROUND 34% ON RESIDENTS
AN INDIVIDUAL MAY BE TREATED AS A RESIDENT IF HE IS IN INDIA FOR A PERIOD
OF AT LEAST 182 DAYS IN A SPECIFIC YEAR OR 60 DAYS IN THE YEAR AND 365
DAYS IN THE 4 PRECEDING YEARS**

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INTELLECTUAL PROPERTY

INDIA HAS A WORLD CLASS INTELLECTUAL PROPERTY REGIME

IN ADDITION TO BEING A SIGNATORY TO THE AGREEMENT ON TRADE RELATED INTELLECTUAL PROPERTY RIGHTS ("TRIPS"), INDIA IS ALSO A SIGNATORY TO SEVERAL INTERNATIONAL INTELLECTUAL PROPERTY CONVENTIONS. SOME OF THE MORE SIGNIFICANT INTELLECTUAL PROPERTY LAWS ARE:

COPYRIGHTS, PATENTS, TRADE MARKS AND DESIGN PROTECTION

COPYRIGHT ACT, 1957 ("COPYRIGHT ACT"), SUPPORTED BY THE RECENTLY AMENDED COPYRIGHT RULES, 2013 ("COPYRIGHT RULES"), TOGETHER GOVERN THE LAW FOR COPYRIGHT PROTECTION IN INDIA. THE CURRENT LAW PROVIDES THAT A COPYRIGHT SUBSISTS IN AN ORIGINAL LITERARY, DRAMATIC, MUSICAL OR ARTISTIC WORK, CINEMATOGRAPH FILMS, AND SOUND RECORDINGS.

**PATENTS ACT 2005 IS A WORLD CLASS STATUTE AT PAR WITH THE DEVELOPED COUNTRIES
TRADE MARKS ACT AND DESIGNS ACT SUITABLY PROTECT INVESTORS**

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ALTERNATE DISPUTE RESOLUTION (ADR)

INDIA HAS A HIGHLY DEVELOPED WORLD CLASS ARBITRATION ENVIRONMENT. ARBITRATION ACT 1996 IS AT PAR WITH ARBITRATION RULES UNDER UNCITRAL AND HIGHLY ACCEPTED WORLDWIDE FOREIGN INVESTORS SHOULD OPT FOR ARBITRATION IN THE JV CONTRACT WITH SEAT AT AN INDEPENDENT LOCATION. PART I OF THE 1996 ACT SHOULD BE SPECIFICALLY EXCLUDED.

EXECUTION OF A FOREIGN AWARD IS WELL PROVIDED IN THE ACT EVEN FOREIGN JUDGMENTS AND DECREES CAN BE EXECUTED IN INDIA UNDER THE CIVIL PROCEDURE CODE

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GOVERNMENT INITIATIVES

The newly elected government (“Government”) in India is very keenly looking to increase the economic growth. In order to do so the Government is willing to provide the much needed support in order to boost the economy and hence a number of measures have been taken by the Government in that direction.

The improvement in the economic performance in recent period is an indicator of the improvement in the business environment and market sentiments, and can be attributed to the numerous initiatives taken up by the Government.

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Initiatives taken or to be taken by the Government

Online licenses:

Process of applying for Industrial License (IL) and Industrial Entrepreneur Memorandum (IEM) has been made online and is available 24x7. This will lead to ease of filing applications and online payment of service charges. A maximum timeline of 12 weeks has been set by Ministry of Home Affairs for grant of security clearance on Industrial Licence Applications.

A Defence products' list for industrial licensing has been issued which contains products that have been excluded from the purview of industrial licensing. Also dual use items that have military as well as civilian applications will also not require Industrial License from a defence perspective.

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ITALY AND INDIA

Economic relations

Italy is among India's top 5 trading partners in the EU and the 12th largest investor in India. Main items of import from Italy are general and special purpose machinery, machine tools, metallurgical products, and engineering items. Around 140 large Italian companies are active in India. Top sectors attracting FDI inflows from Italy are Automobile Industry/Transportation, Food Processing, Metallurgical Industry, Textiles, Electrical Equipment and others

Treaties

**Italy and India also have agreements/treaties that seek to promote and protect mutual business interest. Two such essential agreements are:
Bilateral Investment Promotion and Protection treaty
Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income**

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CONCLUSION

Given the current political and economic situation in India, there is a great likelihood of a turnaround of the economy for the better. The opening up of the markets and the liberalization of policies and laws for favoring investments is a proof of how much impetus is being given to economic development. It is thus no surprise as to why India is regaining its position as one of the most lucrative markets for investments, globally.

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