msi Global Alliance
Independent Legal & Accounting Firms

J C Bhalla & Co

Doing Business in India
2012

Together we are stronger™

www.msiglobal.org

Preface

This guide has been prepared by JC Bhalla & Co., an independent member of MSI Global Alliance. It is designed to provide information on a number of subjects important to those considering investing or doing business in India.

Doing Business in India has been designed for the information of readers. Whilst every effort has been made to ensure accuracy, information contained in this guide may not be comprehensive and recipients should not act upon it without seeking professional advice. Facts and figures as presented are correct at the time of writing.

Up-to-date advice and general assistance on Indian matters can be obtained from JC Bhalla & Co.; contact details can be found at the end of this guide.

October 2011

Table of Contents

1. Fact Sheet

Geography

Location	Southern Asia, bordering the Arabian Sea and the Bay of Bengal, between Myanmar and Pakistan
Area	3,287,240km^2
Land boundaries	China, Nepal, Tibet, Bhutan and the mountain range of the Himalayas (north); Myanmar and Bangladesh (east); Pakistan and Afghanistan (north-west)
Coastline	7,517km
Climate	Varies from tropical monsoon in the south to temperate in the north
Terrain	Upland plain (Deccan Plateau) in the south, flat to rolling plain along the Ganges, deserts in the west, Himalayas in the north
Time zone	GMT +5.5
People	India is the second most populous country in the world, with over 1.18 billion (2010 est.)
Population	More than 2,000
Ethnic groups Religion	Hindu 80.5%, Muslim 13.4%, Christian 2.3%, Sikh 1.9%, other 1.8%, unspecified 0.1%
Language	The Constitution of India recognises 22 languages as official languages of India. The use of English is widespread, particularly in business circles

Government

Country name	India
Government type	Federal Republic
Capital	New Delhi
Administrative divisions	28 states and seven union territories

Political situation	The President, vice-president, and the council of ministers officially wield executive power. The President of India is the figurehead of the country, and is given instructions (or "advice") by the Prime Minister, who leads a Council of Ministers (advisors). Parliament and the state governing bodies have control of the legislative branch of government. This body is made up of two houses (the Council of States and the House of the People) and the President.

Economy

GDP - per capita	US$3,200 {2009 est.)
GDP - real growth rate	7.4%
Labour force	467 million (Nov 2010)
Unemployment	9.4%
Currency (code)	Indian rupee (INR)

(This space has been intentionally left blank)

2. Business Entities and Accounting

2.1 Incorporation Options

The principal business entities for doing business in India are:
- Limited liability company - public or private
- Partnership
- Limited liability partnership (LLP)
- Sole proprietorship.

2.1.1 Companies

A company may be incorporated either as a public or private company.

The characteristics and requirements of both types of company are outlined below:

	Public	**Private**
Minimum capital requirement	INR500.000	INR100,000
Minimum number of subscribers/shareholders/ members	7	2
Maximum number of subscribers/sharehoiders/ members	No limit	50
Minimum number of directors	3	2
Invitation to public for shares/debentures/deposits from public	Yes	No

2.1.2 Partnerships

Partnerships, governed by the Indian Partnership Act, 1932, are created by execution of a Partnership Deed. At least two members are required to start a partnership. The number of members should not exceed ten in the case of banking businesses and 20 in all other businesses.

A partnership is not a separate legal entity in its own right. Partners are jointly and severally liable for the debts of the partnership.

Prior approval from the Reserve Bank of India (RBI) is required if foreign nationals intend to become partners in an Indian partnership.

2.1.3 Limited liability partnerships (LLPs)

The limited liability partnership (LLP) is an alternative business vehicle that not only gives members the benefit of limited liability but also the flexibility of organising their internal structure as a traditional partnership. It is a separate legal entity and, while the LLP itself is liable for the full extent of its assets, the liability of the members is limited.

Every LLP must have at least two partners and must also have at least two individuals as designated partners, of whom at least one must be resident in India. The duties and obligations of designated partners are provided in the law.

2.1.4 Sole proprietorships

Sole proprietorship is a form of business organisation in which an individual introduces their own capital, uses their own skill and intelligence in the management of its affairs, assumes all the risks of business and is solely responsible for the results of its operations.

2.1.5 Others

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

- Liaison office: a liaison office is in the nature of a representative office set up primarily to explore and understand the business and investment climate.

- Project office: a project management office (PMO) is a group or department within a business, agency or enterprise that defines and maintains standards for project management within the organisation.

- Branch office: a branch office is an office that serves a certain geographic or demographic area to expand the access of customer services and other services available to beyond the home office.

- Wholly-owned subsidiary company: a subsidiary whose parent company owns 100% of its common stock and there are no minority owners.

- Joint venture company: a joint venture is a business agreement in which parties agrees to develop, for a finite time, a new entity and new assets by contributing equity. They both exercise control over the enterprise and consequently share revenues, expenses and assets.

2.2 Accounting and Auditing

Companies are required, under the Companies Act 1956, to keep and maintain such books and records to enable a true and fair view of the state of affairs of the company to be prepared. The books of account must be kept for a minimum of eight years. Financial statements should be presented in INR.

The Institute of Chartered Accountants of India (ICAI) is the apex institution that regulates the accounting and auditing practices in India.

Currently, in India, companies follow domestic accounting standards (Indian GAAP or IGAAP) when preparing their financial statements. However, as per the commitment, made by the Indian Prime Minister at the G20 summit in 2009, towards the alignment of Indian accounting standards with IFRS, a road map for phased convergence starting from April 2011 was released by the ministry of corporate affairs. Even though the government has deferred this implementation date for IFRS, citing ambiguities on taxation issues, these matters are expected to be resolved in the near future.

The following audits are conducted in respect of the financial statements:

Statutory audit: mandatory for every company whether public or private. It must be conducted annually in respect of the financial statements of every company by an auditor appointed by the company in its Annual General Meeting.

Internal audit: where the paid-up capital of the company exceeds INR5m or the average annual sales for three consecutive years exceed INR50m, the company is required to have an appropriate internal audit system commensurate with the size of the company and nature of its business. The internal auditor reviews and issues their report after conducting an internal audit of the company.

Cost audit: applies to a list of industries and the products covered under Section 209(1)(d) of The Companies Act 1956 such as cement, cycles, refrigerators, electric motors etc. Cost accounts shall be audited by a cost accountant. Chartered Accountants appointed by Central Government may also carry out the cost audit if sufficient cost accountants are not available.

Tax audit: required under the Income Tax Act, 1961 and is mandatory for business entities with gross turnover exceeding INR6m and professionals with gross receipts exceeding INR 1.5m. Gross turnover shall include any tax, duty, cess or fee (by whatever name called) under any law for the time being in force, notwithstanding any right arising as a consequence of such payment. The tax audit comprises verification of all records, documents, books of account etc. to determine the actual tax liability of the entity. Only a Chartered Accountant holding a valid Certificate of Practice may carry out a tax audit.

2.3 Filing Requirements

Companies incorporated in India under the Companies Act are required to file annual accounts with the Registrar of Companies. Foreign investors and/or their agents in India are required to file certain statements and returns at periodic intervals as prescribed by the RBI under the Foreign Exchange Management Act, 1999.

Various reporting requirements are prescribed under the Companies Act for both public and private companies.

(This space has been intentionally left blank)

3. Finance and Investment

3.1 Exchange Control

The RBI is the governing authority for all matters relating to foreign exchange management and control. Any transaction in a foreign currency is governed by the Foreign Exchange Management Act 1999. Residents are required to sell foreign money coming into their possession to a central bank or specialised government agency at the exchange rate set by the government.

3.2 Sources of Finance

3.2.1 Banking

The banking system in India is well developed to meet the requirements of trade, commerce and industry and is comprised of public and private sector banks, co-operative banks and regional rural banks. The banking sector is regulated by the RBI.

Banks and financial institutions in India grant loans for capital expenditure, for setting up a new project or for expansion and diversification programmes of existing units, for a fixed term ranging from one to seven years depending upon the project requirements. Banks also grant working capital facilities secured against the current assets of the business entities.

3.2.2 Venture capital funds and companies

Venture capital funding is an option for funding business. There are a number of funds which are currently operational in India and involved in funding start up ventures. Many of the venture funds are involved in providing mezzanine or bridge financing and are better known as private equity players. Venture capital companies also provide entrepreneurs with incubator facilities with innovative ideas. The Indian Venture Capital Agency (IVCA) is the nodal centre for all venture capital activities in the country.

3.2.3 Stock exchange

There are 23 stock exchanges in India; however, the Bombay Stock Exchange (BSE) and the National Stock Exchange (NSE) are the most significant. The growth of the Indian corporate sector is thereby facilitated by the provision of an efficient capital raising platform.

3.3 Tariffs

The Customs Act governs the levying of tariffs on imports and exports and frames the rules for customs valuation. The Customs Tariff Act specifies the tariff rates and provides for the imposition of anti-dumping and countervailing duties. With some exceptions, most tariffs are *ad valorem.* Tariff rates, excise duties, regulatory duties, countervailing duties and the like are subject to revision in each annual budget.

Indian import policy includes a duty exemption scheme for registered exporters so that they may import the inputs required for export production at international prices and free from duty, in order to make their exports more competitive. Imported items which are exempt from customs duty are raw materials, components and consumables.

3.4 Incentives and Restrictions for Foreign Investors

India is attracting foreign investors through a balanced package of fiscal incentives including:

- Complete tax exemptions
- Investment incentives offered by Central and State Governments
- Tax treaties with over 70 countries.

India has a number of Special Economic Zones (SEZ). SEZs are considered as foreign territory in all that concerns taxes and customs. Companies in a SEZ are eligible for a total exemption from tax for the first five years and a 50% exemption from the tax due for the following five years.

Export oriented undertakings (EOU) located in Free Trade Zones, software technology parks, or in hardware technology parks whose total production is intended for export are entitled to an exemption from taxes for ten years as well as to an exemption from import taxes.

FDi is not permitted in certain industrial sectors including retail trading, atomic energy and lotteries. In other sectors the level of FDi is subject to restrictions:

- Private sector banking (49%)
- Insurance (26%)
- Telecommunication (49%)
- Airports (74%)
- Exploration for and mining of diamonds and other precious stones (74%).

In some sectors FDI is permitted only after obtaining approval of the Government such as - petroleum (except for private sector oil refining), natural gas and liquefied natural gas pipelines, companies investing in infrastructure and the services sector, defence and strategic industries, atomic minerals, print media, broadcasting, postal services, courier services, establishment and operation of satellites, development of integrated townships and tea.

(This space has been intentionally left blank)

4. Employment Regulation and Social Security

4.1 Entry Visa and Work Permit Requirements

Foreigners wishing to visit India can obtain a visa from the Indian Mission in the country of their residence. They should possess a vaiid international passport, except in the case of nationals of Bhutan and Nepal for whom an approved means of identification is sufficient.

The following types of visas may be granted to foreigners wishing to visit and work in India:

4.1.1 Business visa

A business visa is required by. persons visiting India on business. It is necessary to provide a letter from the applicant's overseas employer stating the exact purpose of the visit and the expected duration with the application. A letter of invitation from the Indian Company should also be provided. A multiple entry business visa may be granted for up to two years.

4.1.2 Employment visa

A multiple entry employment visa may be granted on a case-by-case basis to foreign nationals wishing to take up employment in India. An employment visa must be obtained from the Indian Consulate in the country of residence of the applicant prior to departure for India.

4.1.3 Entry visa

An entry visa is issued to those of India origin visiting India for tourism or other non-business related purposes. Members of the family of a person employed in India are also eligible for an entry visa. In the latter case, documents establishing the employment of the person employed in India along with a copy of their employment visa must be attached to the application.

4.1.4 Tourist visa

A tourist visa is given to those visiting India for tourism or other non-business related purposes and is generally valid up to six months.

4.2 Hiring Local Employees

India has one of the world's largest pools of scientific and technical personnel: this serves as an important attraction for foreign investors.

Contracts of employment may be expressed or implied, in writing or verbal. Contract labour in India must be paid a minimum wage and, except as required under the applicable laws relating to Provident Fund (see 4.4), ESI (see 4.4), withholding tax etc, wages must be paid without deductions.

There are various acts which regulate labour and employment in India, including:

- Child Labour (Prohibition & Regulation) Act, 1986
- Children (Pledging of Labour) Act, 1933
- Minimum Wages Act, 1948
- Payment of Bonus Act, 1965
- Payment of Gratuity Act, 1972
- Employees' State Insurance Act, 1948
- Workmen's Compensation Act, 1923.

4.3 Trade Unions

There are, at present, numerous trade unions in India which regulate the aspirations of the working classes. In India there is a guaranteed fundamental right to form Labour unions. This right applies whether a union has been recognised or not. The Trade Unions Act, 1926 is completely silent on the question of recognising a trade union for the purpose of collective bargaining. During the collective bargaining process, workers are represented through trade unions. Collective bargaining aims to resolve issues pertaining to wages, working conditions, health and safety, and working hours.

4.4 Social Security System

India has a sound social security system in place. The principal social security laws enacted in India are the following:

4.4.1 The Employees' State Insurance Act, 1948

An employee covered under the scheme must contribute 1.75% of the wages and an employer contributes 4.75% of the wages payable to an employee. The total contribution in respect of an employee is 6.50% of the wages payable.

4.4.2 The Employees' Provident Funds & Miscellaneous Provisions Act, 1952

Employers with ten or more employees must pay contributions equivalent to 12% of their salaries to the employees' provident fund. Employees earning not more than INR 6,500 per month must pay contributions of 12% of their salary to the employees' provident fund. Higher paid employees may make voluntary contributions. Contributions are deductible for income tax purposes.

4.4.3 The Payment of Gratuity Act, 1972

Gratuity is a statutory benefit paid to employees who have rendered continuous service for at least five years under the Payment of Gratuity Act, 1972. The employee is entitled to 15 days of pay for each completed year of service. The employer can also structure a gratuity benefit that is higher than statutory requirements. The gratuity benefit is payable on cessation of employment (either by resignation, death, retirement or termination, etc) by taking the last drawn salary as the basis for the calculation.

(This space has been intentionally left blank)

5. Taxation

The general structure of taxes in India comprises two parts:

Direct Taxes	Indirect Taxes
Income tax	Customs duty
Wealth tax	Excise duty
	Central sales tax
	Value added tax
	Service tax
	Stamp duty

5.1 Direct Taxes

The right to levy direct tax rests with Central Government.

5.1.1 Income tax

Corporate and personal taxation in India is governed by the Income Tax Act, 1961. Income tax is levied on "total income" of entities and individuals for the financial year known as "previous year". The tax year runs from 1 April until 31 March.

The income liable to tax is to be computed under the following headings:

- Income from salaries
- Income from residential property other than the assessee's exempt residence
- Profits/gains from business/profession
- Capital gains
- Income from other sources.

Certain exemptions and deductions are available for different assessees under the various provisions of the Income Tax Act, including:

- Expenditure for newly established undertakings in Free Trade Zones, SEZ, 100% export-oriented undertakings
- Expenditure on scientific research, know-how
- Expenditure on acquisition of patent or copyrights
- Expenditure for obtaining a license to operate telecommunication services
- Expenditure for carrying out rural development programmes.

Income tax rates for individuals, Hindu undivided families and body of individuals

Total Income	**Tax Rate (FY 2011-12)**	**Education Cess (on Income Tax)**	**Secondary & Higher Education Cess (on Income Tax)**
Financial Year 2010-11			
Up to INR 180,000*	Nil	Nil	Nil
INR 180,001 – INR 500,000	10%	2%	1%
INR 500,001 – INR 800,000	20%	2%	1%
Above INR 800,000	30%	2%	1%

*INR 190,000 in case of resident women below 60 years, INR 250,000 in case of resident senior citizens above 60 years, INR 500,000 in case of resident senior citizens above 80 years.

Other

Total Income	**Tax Rate (FY 2011-12)**	**Surcharge (on Income Tax)**	**Education Cess (on Income Tax)**	**Secondary & Higher Education Cess (on Income Tax)**
Partnership	30%	Nil	2%	1%
Domestic Company	30%	5% (if net income exceeds INR 10m)	2%	1%
Foreign Company	40%	2% (if net income exceeds INR 10m)	2%	1%

Minimum alternate tax (MAT) on book profit is charged at the rate of 20.0078% for domestic companies and 19.4361% for foreign companies. A MAT applies if a company's tax liability is calculated to be less than 18.5% of its book profits. For all companies, where the MAT applies the excess of the liability over the tax calculated on ordinary principles may be carried forward and credited against future tax liabilities for up to ten years.

Domestic companies are subject to dividend distribution tax at a rate of 16.2225% on the amount of dividends declared.

5.1.2 Wealth tax

Wealth tax is charged for every assessment year on the net wealth of an individual/company, calculated based on the corresponding valuation date at 1% of the amount by which net wealth exceeds INR 3m.

5.1.3 Proposed direct tax code

A Draft Direct Tax Code to replace the existing Income Tax Act, 1961 has been issued for public comments. The Direct Tax Code will, if enacted, replace the existing income Tax Act and would represent a radical overhaul of the tax system. The new code aims to renovate and simplify the existing tax proposals for individual tax payers, corporations and foreign residents. The provisions of the proposed direct tax code are designed to be sufficiently simple that taxpayers may be certain of their meaning and establish their liability.

5.2 Indirect Taxes

5.2.1 Customs duty

Customs duty is levied on the import of goods. The rate of customs duty is levied as per the Customs Tariff Act, 1975, which is aligned with the Harmonised System of Nomenclature (HSN) followed internationally. Exemptions are available depending on the nature of goods, status of importer, country of import etc. The top rate of basic customs duty on all non-agricultural products is 10%.

5.2.2 Excise duty

Excise duty is levied on excisable goods manufactured in India and is payable upon clearance of the goods from designated establishments. Rates are prescribed in the Central Excise Tariff Act, 1985 (which is aligned with the HSN). Duty is generally levied at 10.3%: this includes cess at 3% on the duty.

5.2.3 Value added tax (VAT)

VAT is a state specific levy on the sale of movable goods within a state in India. VAT is generally payable at the rates of 1%, 4% and 12.5% according to the category of goods. Basic necessities and goods of local importance have been placed in the zero rate bracket or the exempted schedule. VAT paid on inputs may be offset against output VAT or central sales tax liability (see 5.2.4 below).

Registration of traders with gross annual-turnover above INR0.5m is compulsory. A new dealer is allowed 30 days from the date of liability to register. Returns are to be filed monthly/quarterly/annually as per the provisions of the State Acts/Rules.

5.2.4 Central Sales Tax (CST)

CST is chargeable on the sale of goods from one state to another. Payment of the levy cannot be offset against an output VAT or CST liability. CST is levied at a rate of 2% if the required forms are issued by the purchaser, otherwise higher rates, up to 12.5%, may apply.

5.2.5 Service tax

Service tax is levied on notified taxable services (presently more than 100 services) in India. The current rate is fixed at 10.3%, including cess at 3% on the service tax, on the gross amount charged for the services provided.

5.2.6 Stamp Duty

Stamp duty is a duty imposed at state level on certain legal instruments and commercial transactions. The rate of stamp duties varies from state to state.

5.2.7 Proposed goods and service tax (GST)

GST is, at the time of writing, in the process of being introduced to replace existing indirect taxes. The introduction of GST will have a far reaching impact on virtually all aspects of business in the country, including: supply chain, sourcing and distribution decisions: inventory costs and cash flows; pricing policy; accounting and IT systems; and transactions management. The tax base is anticipated to be comprehensive, including virtually all goods and services with few exemptions.

5.2.8 Incentives and benefits

There are several schemes which grant incentives and other benefits to tax payers including:

- Export promotion capital goods (EPCG) scheme - allows the import of capital goods on payment at a concessional rate of 5%, subject to fulfillment of export obligations

- Duty entitlement pass book (DEPB) scheme - neutralises the incidence of basic customs duty on the import content of export product by way of grant of duty credit against export product
- Advance license scheme - inputs required to manufacture export products may be imported without payment of customs duty.

Also units which undertake to export their entire production of goods and services may set up an EOU located in an electronic hardware technology park, a software technology park or a biotechnology park in India.

(This space has been intentionally left blank)

Member Firm Contact Details

JC Bhalla & Co.

Head Office	**:**	B-17, Maharani Bagh New Delhi – 110 065 Phones: 91-11-26847416, 41551155
Branch Office	**:**	B-5, Sector-6 Noida – 201 301 (Uttar Pradesh) National Capital Region Phones: 91-120-4241000 Fax : 91-120-4241007

J C BHALLA & CO.

(A member firm of MSI Global Alliance)
B-5, Sector-6, Noida (Uttar Pradesh) – 201 301
National Capital Region
Tel : +91-120-4241000, Fax : +91-120-4241007
E-mail: taxaid@vsnl.com