INVESTMENT INDUSTRY IN INDIA

A short guide on Investment Industry in India.

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Preface

In India, the investment market has been booming for the past few years. Warren Buffett has often emphasized that investing in India should always be a long-term strategy because the industry has been growing from an emerging market to a developed one. In India, the following ten years will undoubtedly be profitable. India is one of the biggest and fastest-growing economies in the world. Many countries have expressed interest in investing in India because of the country's vast consumer base, inexpensive skilled labour, and abundant resources.

India's huge domestic consumption, led by the private sector, has played a major role in the country's growth. India has an estimated middle class of 400 million people who are the main drivers of consumption expenditure. This emerging middle class and increasing disposable incomes are the largest factors behind the increasing domestic consumption in India. It is estimated that the private consumer market in India will increase four times by 2025. The present government is also focusing on rural areas and farmers, as rural India is also emerging as an upcoming market for all types of consumer goods.

In September, 2022, 'Make in India', the flagship program of the government of India that aspires to facilitate investment, foster innovation, enhance skill development and build best-in-class manufacturing infrastructure completed 8 years of path-breaking reforms and has transformed the country into a leading global manufacturing and investment destination. The initiative is an open invitation to potential investors and partners across the globe to participate in the growth story of the new India.

A large number of Special Economic Zones ("SEZs") have been approved in India and it has acted as a booster dose for the stakeholders to invest, export and generate employment. In a bid to boost data centers and energy storage systems, including dense charging infrastructure and grid-scale battery systems in the country, the government has granted it an infrastructure status. This grant of status is a positive move by the government and is an acknowledgement of the growing dependency of the success of technology enabled sectors.

Indian economy overview

After India attained independence, it pursued a development policy based on centralized planning, regulation and control of private enterprise, state ownership, trade protection, and limits on the penetration of foreign capital and technology. This regime determined India's economic development until the mid-1980s, and thereafter movement towards economic liberalization and market orientation took place. As a result, India experienced a crisis in its balance of payments in early 1991, which threatened to destabilize the economy.

In response to this crisis, the government implemented a programme of structural reforms aimed at stabilising the economy and promoting reliance on market mechanisms, broadly referred to as "liberalization." The main components of the structural reforms programme were exchange and trade liberalisation; financial sector reforms and control of the budget deficit; inflation and money supply. A great deal of significance was placed on the promotion of foreign technology transfers and foreign investment in key areas, as well as the further development of the private sector.

The key characteristics of the post-liberalization growth path include:

1. the steady growth and rising share of the services sector. This captures the buoyancy of sectors such as information technology, telecommunications and banking & financial services in the economy;
2. the growing role of the private sector in investment, both on a stand-alone basis and in partnership with the government authorities, and
3. the increased importance of foreign resources, both in the form of 'portfolio' and 'Foreign Direct Investments' ("FDI"). The result has been a dramatic increase in foreign exchange reserves that are likely to ward off any possible external crisis.

Why invest in India ?

Large youth population

India's enormous population is no secret. The country is expected to have the world's largest youth population by 2030. It has the largest ever adolescent and youth population. India is also home to the third-largest group of scientists and technicians in the world. With a large, young population, high levels of education, a skilled workforce, and a strong work ethic, India is set to become a global player.

Political stability

The current federal government is empowered with one of the largest mandates and has taken many critical decisions to revive the stagnating economy, including liberalizing FDIs in certain sectors. It has also undertaken various initiatives and schemes, introduced dynamic reform exercises, and implemented investor-friendly policies to encourage the inflow of FDI into the country.

Market liquidity

Investors in India include well-established domestic institutional investors, family offices, ultra-high net worth investors, and large global institutional investors. Many sovereign funds have also tied up with Indian financial institutions to acquire core assets. Further, India's domestic consumption is at an all-time high, creating numerous opportunities.

Strong macro-economic fundamentals

The Indian economy has exhibited a healthy average growth rate of 7.02% over the last seven years. A rise in the consumption rate of domestic products, increased investment activities, sturdy foreign exchange reserves, and the decreasing current account deficit are expected to further boost growth. Taking into consideration the monetary and fiscals policies, India depicts a healthy front on its macro-economic fundamentals.

Human capital skills

In India, there is strong pool of scientific and technical manpower from such places as the India Institute of Technology and the India Institute of Management. Over 255 of fortune 500 companies are getting services from India. The Indian population is high-quality, cost-effective, and competitive. Over 100,000 IT professionals are added each year, and the IT industry is over US$14 billion and growing at 50 percent per year.

Thriving economy

India's economy showed great signs of recovery in Financial Year ("FY") 2022 after the COVID-19 pandemic. In FY22, India received its highest-ever annual FDI inflow, standing at US$ 83.57 billion, a staggering 85.09% growth from FY15. India's private equity investment environment is also scaling new heights, with increases in deal size, deal activity, and fundraising, as well as improvements in term sheets.

Where to invest in India ?

Direct equity:

Direct equity, refers to the investments made in the stocks of a company. Trading in the stocks of public listed companies can be carried out through the recognized stock exchanges for which a Demat account and KYC (Know your customer) verification are mandatory. Stocks are ideal for those who are looking for a long-term investment.

National pension system:

Pension funds are formed under the National Pension Scheme and is appropriate for those who intend to build a robust retirement fund by investing their savings into a government-monitored pension fund that invests in diversified stock market portfolios including government bonds, corporate debentures and shares. The returns or the accumulated pension wealth made on such investments are used to purchase a life annuity and a portion is available for withdrawal at the end of the scheme cycle.

Mutual funds:

A mutual fund is a company that pools money from many investors and invests the money in securities such as stocks, bonds, and short-term debt. The combined holdings of the mutual fund are known as its portfolio. Investors buy shares in mutual funds, which represent their part ownership in the fund and the income generated. Most mutual funds fall into one of the four main categories: money market funds, bond funds, stock funds, and target-date funds. The pooled sum is managed by a finance professional called the fund manager. Mutual funds are broadly divided into equity, debt, and hybrid funds. Equity mutual funds invest in stocks and equity-related instruments, while debt mutual funds invest in bonds and papers, and hybrid funds are invested across equity and debt instruments.

Fixed deposits:

Fixed deposits are an investment option offered by banks and financial institutions under which one deposits a lump sum amount for a fixed period and earns a predetermined rate of interest. Unlike mutual funds and stocks, fixed deposits offer complete capital protection as well as guaranteed returns. Fixed deposits are ideal for a conservative investor.

The interest offered by fixed deposits change as per the economic conditions and are decided by the banks depending on the Reserve Bank of India's (RBI) policy review decisions. Fixed deposits are typically locked-in investments, but investors are often allowed to avail loans or overdraft facilities against them. There is also a tax-saving variant of fixed deposit, which comes with a lock-in of 5 years.

Recurring deposits:

A recurring deposit ("RD") is another fixed tenure investment that allows investors to invest a fixed amount every month for a pre-defined time and earn a fixed rate of interest. Banks and post office branches offer RDs. The interest rates are defined by the institution offering it. An RD allows investors to invest a small amount every month to build a corpus over a defined time period. RDs offer complete capital protection as well as guaranteed returns. Like fixed deposits, RDs are recommended for risk-averse investors.

Public provident fund:

Public Provident Fund ("PPF") is a government-backed fixed-income scheme that can be considered a risk-free investment as its returns are guaranteed by the government. It is available at almost all Indian banks and post offices with a minimum investment amount of Rs. 500 per annum and a maximum amount of Rs. 1.5 lakh per annum. The current interest rate is 7.10% per annum. The interest rate offered by PPF is revised on a quarterly basis by the government of India. The corpus withdrawn upon maturity is entirely tax-free in the investor’s hands. PPF also allows loans and partial withdrawals after certain conditions have been met. Premature withdrawals are permitted if they meet certain conditions, and one can extend an investment in a five-year block upon maturity.

Foreign direct investment

The government of India provides tax and non-tax investment incentives in specific sectors (e.g., electronics) and in regions like the northeast region, Jammu & Kashmir, Himachal Pradesh, and Uttarakhand. It also grants incentives to manufacturing companies to set up their business units in SEZs, National Investment and Manufacturing Zones ("NIMZ"), and Export Oriented Units ("EOU"). Additionally, state governments have their own policies that provide additional incentives like access to land at subsidised prices, attractive interest rates on loans, reduced tariffs on electric power supply, tax concessions, etc.

In order to promote FDI inflow and encourage businesses to set up shop in India, the development banks at the central and state levels offer medium- to long-term loans for new projects. Further, FDI policy has been relaxed in a variety of sectors by raising the foreign investment limit, easing conditions for investment, and liberalising the entry mode by allowing sectors to be covered under the automatic route instead of the government route. Reforms have also been introduced in the banking system so as to facilitate access to funds and regularise the supply of credit.

While the fiscal deficit and public debt remain high, the government has taken various steps to reduce them. The most notable of these initiatives is the introduction of the Goods and Services Tax ("GST"), which aims to boost tax revenues and make the economy more competitive in the long run. In order to position India as a global hub for Electronics System Design and Manufacturing ("ESDM") and aid the vision of the National Policy on Electronics ("NPE") 2019, three schemes have been notified: the Production Linked Incentive Scheme ("PLI"), the Scheme for Promotion of Manufacturing of Electronic Components and Semiconductors ("SPECS"), and the Modified Electronics Manufacturing Clusters Scheme (EMC 2.0).

All about investing in India

Over the years, India has emerged as one of the fastest-growing economies in the world, and it now offers a growing and thriving environment for investments, both domestic and foreign. The Indian economy has continuously recorded high growth rates and has become an attractive destination for investment. According to recent trends, India is only second to China in the league of favorite investment destinations. As the Indian economy is developing rapidly, it has opened new avenues for people to start businesses.

Ways of investing in India

These are the following ways in which investment can be made in India:

- **Incorporation of an Indian company:** The foreign investor can set up a separate legal entity in India under the provisions of the Companies Act, 2013. The foreign investors can invest in such Indian company up to 100 per cent of capital based on sectoral guidelines specified by the government of India.

- **Unincorporated entity:** On the basis of the activities that the company is looking to carry out, the foreign company can operate in India by establishing either a branch office, liaison office or a project office in India, but the structure shall be analysed based on the pros and cons which each structure offers.

Investment environment in India

The government of India is trying to accommodate and utilise the conducive investment environment of the country by relaxing and even introducing new policies. The change in government policy, availability of resources at lesser prices, tax holidays, liberalisation of external commercial borrowing norms, etc. are the reasons contributing to the increase FDI in India. India currently has a welcoming FDI policy and it allows Non-Resident Indians ("NRI") to open bank accounts in India.

Investment sector in India for NRI

India's FDI Policy specifies sectors in which investments can be made under the automictic and the government approval route. The policy also specifies the limits to FDI for each sector. Investments in sectors like agriculture, mining, alcohol brewing, power, industrial explosives, hazardous chemicals, drugs and pharmaceuticals, transport, insurance, industrial parks, non-banking financial institutions, etc. can be made under the automatic route while investment in some sectors may require the approval of the Foreign Investment Promotion Board ("FIPB").

Global investors summit

Invest India is the National Investment Promotion and Facilitation Agency that helps investors looking for investment opportunities and options in India. A panel discussion on "Production-Linked Incentives Schemes (PLI): Boosting Manufacturing in India" was organised by Invest India. It focused on the significance of the Indian Prime Minister's vision of "Atmanirbhar Bharat," the journey the Indian government took to introduce these programmes, and how these changes have improved the nation's manufacturing environment. It also covered how the private sector views these PLI programmes as a component of their internal strategy and how it has assisted them in solidifying their plans for manufacturing in India.

Atmanirbhar Bharat Abhiyaan, or the "Self-reliant India campaign," is the vision of a new India. The aim is to make the country and its citizens independent and self-reliant in all senses. The five pillars of Aatma Nirbhar Bharat include economy, infrastructure, system, vibrant demography, and demand.

The key objectives of the "Self-Reliant India" (Atmanirbhar Bharat Abhiyan) mission are as follows:

- Develop India into a global supply chain hub.
- Build the government's trust in the private sector's capabilities and prospects.
- Establish "good force multipliers" for Indian manufacturers.
- Enter the global markets to export goods including agriculture, textiles, clothing, and jewellery.
- Determine the adequacy of each sector (e.g., defence, agriculture, healthcare, infrastructure, etc.), with the help of the FY22 budget, to achieve self-reliance.

The government took several bold reforms, such as supply chain reforms for agriculture, rational tax systems, simple and clear laws, capable human resources, and a strong financial system. The Ministry of Tribal Affairs (MoTA) has been actively pursuing the Atma Nirbhar Bharat Abhiyan by envisioning projects and policies that promote self-sustenance and are self-generating for the tribal community of India.

Governing rules and laws

The key laws that regulate foreign investments in India are:

- FDI Policy, issued by the Department for Promotion of Industry and Internal Trade ("DPIIT").
- Foreign Exchange Management Act 1999 ("FEMA") and the rules and regulations issued thereunder, specifically, the Foreign Exchange Management (Non-debt Instruments) Rules 2019 ("NDI Rules").

The Ministry of Finance issued the revised NDI Rules on October 17, 2019. The new NDI Rules replace the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017, and the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2018. ("Immovable Property Regulations"). While the immovable property regulations have been included in the NDI Rules, they remain unchanged in substance.

The NDI Rules govern investments in India by non-resident investors, NRIs, and other overseas citizens of India. The NDI rules prescribe, among other things:

- the conditions attached to foreign investments in India and
- the pricing guidelines for foreign investments, acquisitions and transfers of immovable property in India, downstream investments, the repatriation of sale proceeds, and so on.

License and registration

License for investment activity is a permission that permits its holder a right to engage in the specified financial activity, issued by the central and the state body of the country specially authorized for the foregoing. Notably, there are a few restrictions making the process of obtaining licenses for such investments a bit complicated and time-consuming procedure.

The registration procedure for FDI in India is as follows:

- **Submit an online proposal**

The first thing that one needs to do is visit the website of Foreign Investment Facilitation Portal ("FIFP") and register themselves. After registration, one needs to login by entering their user credentials and submit the proposal of investment by filing an online application form (in the available format) and attaching requisite documents.

- **E-transfer of proposal**

Once the online application has been submitted along with the requisite documents on the website of FIFP, the Department for Promotion of Industry and Internal Trade ("DPIIT") e-transfers the application to the concerned ministry/department for their consideration. The transfer of the application is usually done within a period of 2 days from the date of filing of the online application.

- **Preliminary scrutinization**

The concerned ministry/department conducts a preliminary scrutinization of the proposal and documents and may ask the applicant for any additional documents or information that might be required. This process usually carries on over a span of 1 week.

- **Security Clearance from Ministry of Home Affairs**

The FDI proposals for investing in the sectors that require the security clearance, would mandatorily be referred to the Ministry of Home Affairs (MHA) for their comments as well.

- **Acceptance or rejection of the proposal**

Once the proposal is complete in all respects, the concerned ministry/department within the next two weeks, processes the proposal for its final decision and conveys the same to the applicant. Approval/rejection letters are sent online by the concerned ministry/department to the applicant,

Dispute resolution

Globalization and the growth of international commerce have created an unprecedented need to efficiently resolve cross-border disputes. With the evolution of effective and efficient arbitration systems, complex issues relating to the enforcement of foreign arbitration awards and judgements are constantly being deliberated upon. For arbitration to gain prominence as the preferred mode of dispute resolution, an in-depth analysis of the various legal issues arising therefrom is required.

India has given notice of unilateral termination of 58 Bilateral Investment Treaties ("BIT") on March 31, 2017, and it is in the process of signing some crucial BITs, such as the US-India BIT. All of this is in conjunction with India's aim of increasing foreign investment flow into the country.

Investment arbitration usually arises out of investment treaties that are entered into by foreign investors and the host country with a view to one party making an investment in the business ventures of the other.

The regime works hand in glove with the International Commercial Arbitration to create a conducive environment for foreign direct investment (FDI) and business to flourish in any country. Thus, the key aspect of investment arbitration is that it transplants the private adjudicative model from the sphere of international commercial arbitration into the realm of government, thereby giving individual investors and private parties a chance to seek redress for treatment accorded them by the Government of India.

How we can help?



Our team focus on serving clients in the investment management industry with every issue they might face, including fund formation and management, fund distribution arrangements, regulatory and compliance issues, mergers and restructurings, securities enforcement, tax matters and litigation. We serve a wide range of industry participants engaged in every aspect of investment and fund management.

In addition to our work on matters related to fund management, regulatory and compliance issues, distribution arrangements, mergers and restructurings, and tax matters, we have a vigorous practice representing clients from asset management businesses and their service providers. Our professionals have worked with several leading asset management consolidators as well as medium to smaller sized advisory firms in connection with legal services.

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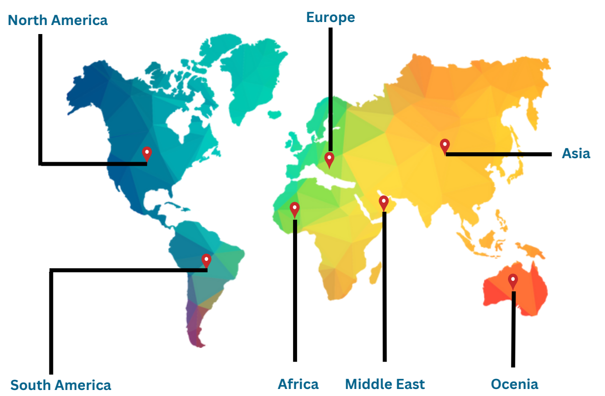

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