Chandrawat & Partners

SHIPPING AND TRANSPORTATION INDUSTRY IN INDIA

A guide on Shipping and Transportation Industry in India.

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Introduction

The relationship between economic growth and infrastructure investment is very evident. The faster the economy grows, the greater the need for a faster and more reliable mode of transport for the movement of goods and people. The high growth of the Indian economy is driving the demand for shipping and transportation industries.

The transport sector in India is expected to grow at a CAGR of 5.9 percent, thereby becoming the fastest-growing area of India's infrastructure sector. Transport includes well-developed roads and highways, a widespread railway network, fast-growing aviation, and developing ports, shipping, and inland waterways infrastructure. The India Road Freight Transport Market stood at 139.02 billion USD in 2022 and is projected to reach 203.21 billion USD in 2028.

According to the Ministry of Shipping, around 95% of India's trade by volume and 70% by value is done through maritime transport. In November 2020, the Ministry of Shipping was renamed as the Ministry of Ports, Shipping and Waterways. The total allocation for the Ministry of Shipping in the Union Budget 2022-23 was Rs. 1,709.50 crore (US $223.31 million).

The Indian ports and shipping industry play a vital role in sustaining growth in the country's trade and commerce. India is the sixteenth-largest maritime country in the world, with a coastline of about 7,517 km. It has also facilitated a 10-year tax holiday for enterprises that develop, maintain, and operate ports, inland waterways, and inland ports.

Challenges in the shipping and transport industry

The shipping industry is an integral part of the transportation sector and the overall supply chain. Shipping moves goods across geolocations promptly, driving the economy toward a progressive path. The volume of cargo that ships carry is huge compared to other transportation modes, offering very significant economic advantages.

The COVID-19 crisis has profoundly affected the shipping industry, which has almost come to a standstill. Restrictions on the movement of goods and people have affected all international shipping companies financial performance with a significant slump in demand for goods and their transportation in the supply chain. The main authorities involved are customs, port and airport authorities, transport authorities, health and agriculture authorities.

Challenges related to the international movement of goods that operators face in shipping and transport include:

- finding qualified parties to arrange (part of) the transport over a long distance;
- deciding on the optimal transport route;
- combining cargo to obtain more efficient and less costly transport;
- tracing and tracking cargo whilst under transport;
- timely communication of essential documentation and information, and
- timely handling of customs, transit, and other regulatory procedures.

Overview of shipping sector

- Shipping is a global business whose performance is closely linked to the state of the global economy. Therefore, any impact on the global economy has an effect on the state of the shipping industry. The shipping industry is also regulated by the rules and regulations of the International Maritime Organization ("IMO"), the classification society, and the requirements of the flag state.

- The government also initiated the National Maritime Development Program, an initiative to develop the maritime sector with a planned outlay of US$ 11.8 billion. Moreover, it announced the Major Ports Authorities Bill in 2020 to provide regulation, operation, and planning for the major ports in India and to provide greater autonomy to existing ports.

- The government of India has allowed foreign direct investment ("FDI") of up to 100% under the automatic route for projects related to the construction and maintenance of ports and harbours.

- The shipping industry in India plays a vital role in sustaining growth in the country's trade and commerce. Most cargo ships that sail between East Asia, America, Europe, and Africa pass through Indian territorial waters.

- India has 12 major ports (6 on the eastern coast and 6 on the western coast) and 200 non-major ports. Major ports are under the jurisdiction of the Government of India, whereas non-major ports come under the jurisdiction of the respective state's Government Maritime Board ("GMB").

- Of the 200 non-major ports, 44 are functional and strategically located on the world's shipping routes. Non-major ports are steadily gaining share, and a major chunk of traffic has shifted from major ports to non-major ports.

- Ports in India handle almost 95% of the trade volume in India. Solid cargo contributes the largest share of all traffic handled at major ports in India, followed by liquid cargo and containers. Increasing trade activities and private participation in port infrastructure have supported port infrastructure activity in India.

Overview of transport sector

The pandemic affected almost every industry, not just in India but in the rest of the world. The logistics industry in India was particularly hard hit because of the stringent lockdown that was carried out by the authorities. Moreover, in 2021, before the devastating 2nd wave of COVID hit the country, the pace of recovery was still not clear. Nevertheless, with improved infrastructure, the Indian transport industry was able to recover gradually from the 3rd quarter of 2021.

During the pandemic, the air freight industry in India emerged as a rare success story. It was a lifeline for moving foods, medicine, and essential items both domestically and internationally. The last two years have witnessed unprecedented growth in this sector as the number of cargo planes operated by Indian carriers has risen from 5 to 25.

Additionally, the Krishi Udan scheme by the Indian government has connected farmers from the remotest regions that are difficult to reach by road or rail, to the main consumption centres of the country via air freight. Moreover, the incentive scheme of the Ministry of Civil Aviation has enormously helped the domestic air freight sector to develop as an economic mode of transport for perishable items.

Prospective investors

India's strategic location, enveloped by the world's busiest maritime route in the Indian Ocean, underscores the importance of its shipping industry, which facilitates 95 percent of India's international trade by volume. Therefore, India is giving the highest priority to the development of its maritime sector and is seeking investments to the tune of US $81 billion. India allows up to 100 percent FDI in port and harbour construction projects under the automatic route.

The Indian subcontinent, itself in a particularly tactical location, surrounded by the waters of the Indian Ocean Region (IOR), which supports around 80 percent of the world's maritime oil trade. This vast coastline enclosed by the world's busiest trade route forms the rationale for India's economic dependence on the maritime sector.

India's shipping industry is the linchpin of Indian trade and commerce, both by value and volume. According to data from the Ministry of Ports, Shipping and Waterways (MoPSW), around 95 percent of India's international trading volume and 70 percent of total trade value is dependent on the maritime channel. In fact, this sector will determine the success of the Make in India initiative, which depends as much on its connectivity and supply-enabling prowess as on its manufacturing capacity. As of April 2020, India's maritime fleet strength stands at 1431.

Investment opportunities in the Indian shipping industry

Keeping in mind the significant contribution made by the maritime sector in facilitating Indian trade overseas, the Indian government has streamlined and expanded its attention as well as investments towards the sector with a focus on developing, maintaining, and operating ports, inland waterways, and shipbuilding in India. In the last two decades, Indian ports have attracted a cumulative FDI amounting to INR 122 billion (US $1.64 billion).

Under the Sagarmala Project (2015-2035), over 574 new projects have been identified for implementation by 2035 and an investment to the tune of INR 6 trillion (US$81 billion) has been invited, including from the private sector, towards the areas of port modernization and new port development, port connectivity enhancement, port-linked industrialization, and coastal community development. As of now, a total of 121 projects at a cost of INR 302.28 billion (US$4 billion) have been completed and 201 projects at a cost of INR 3.09 trillion (US $42 billion) are under implementation.

With a focus on clean renewable energy sources in the sector, along with augmentation of related infrastructure for both trade and tourism, India is being pitched as the most preferred investment destination among global players. At the Maritime India Summit conducted in March 2021, India announced 400 new projects in the sector with an investment potential of INR 2.25 trillion (US$30 billion) for the development of the Indian coastline. India has also released a 10-year maritime sector blueprint, "Vision India 2030," which outlines India's vision for the development of the sector.

This vision includes setting up smart ports; the creation of a Maritime Development Fund ("MDF") with a corpus of INR 250 billion (US $3.36 billion); and the establishment of a pan-India port regulatory authority. Along with the development of ports and waterways, India is also actively working on increasing its shipbuilding capacity as well as its ship repair infrastructure.

Investment opportunities in the Indian transport industry

India's transportation infrastructure has grown by leaps and bounds in the new millennium. Seminal infrastructure projects—the Golden Quadrilateral national highway network, the Delhi Metro rapid transit system, and several public–private partnership airport projects across India's major metropolitan regions in New Delhi, Mumbai, Bengaluru, and Hyderabad, just to name a few—have not only revolutionised the capacity and quality of the country's transportation infrastructure but also spurred the growth of other major infrastructure projects, such as the Bharatmala Pariyojana national highway project, high-speed and semi-high-speed rail projects, dedicated rail freight corridors, rapid-transit metro railways across major cities, and the modernization of airports.

The road freight sector in India will continue to grow at a compound annual growth rate ("CAGR") of 8% in the next few years to reach $330 billion by 2025. The rapid development of this sector is largely due to the e-commerce boom, infrastructural developments, and an increasing retail sales market. The last two years have witnessed unprecedented growth in this sector as the number of cargo planes operated by Indian carriers has risen from 5 to 25. The increased digital literacy not just in the cities but in the rural and semi-urban areas has added to the e-commerce demand. Simply put, e-commerce and pharma are the two major demand creators for the air freight industry.

India is a leading manufacturing hub in Asia, and infrastructural development has allowed manufacturers to import with ease and ensure a greater volume of export. Technology has become more accessible and logistics companies big and small are increasingly adopting digital solutions like cloud computing, IoT sensors, and GPS trackers to stay relevant in the industry. The large-scale use of technology by the Indian transportation and logistics sector is allowing freight forwarders in India to compete on an equal footing with their peers from many developed economies.

Establishing the Transport Industry in India

Determining Transport Industry Specialization: The first step in starting a transportation service is determining who and what goods will be transported. One of the most important things is to select a specialty.One might need to engage with one kind of transportation provider to be productive.

Choosing the business model: There are various business models available. Few among those are sole proprietorships, partnerships, and limited liability companies.

Obtaining a Tax Identification Number: Creating a corporation is one of the first steps toward becoming a transportation service provider. It may be required to get a licence from your local or state government to operate. Check with the local government to see whether you need a business licence in your region.

Licensing requirements: Permits and licences in the transportation industry include:

- International Air Transport Association (IATA) registration for freight forwarders
- Air Cargo Agents Association of India (ACAAI) registration
- Registrations with the Income Tax Department, the Registrar of Companies, the Directorate General of Foreign Trade (DGFT), etc.,
- Any vehicle in a fleet must be registered as a business vehicle.
- allowing for a high amount of freight or cargo.
- Insurance plans protect drivers, passengers, and even goods.

Creating a budget and financial goals: It all depends on the kind of transportation firm one choose to operate. Although a one-vehicle taxi service is likely to be less costly than keeping an entire logistical fleet, any business owner can budget for these costs.

Competition: It has now become convenient for multinational corporations and foreign investors to enter the Indian transportation and logistics sector after the liberalisation of FDI (foreign direct investment) norms. It is important to pay heed to the fact that these big giants can make huge investments in marketing, infrastructure, and promotion. Hence, it is very crucial to conduct proper research on the competitors and focus on the organization's ranking in the market.

Licenses required for transport business

As per the different state government transportation authorities, transport business owners must get a permit from a regional or state transportation authority. A permit is an instrument granted by the state or regional transport authority permitting the use of a motor vehicle as a transport vehicle in a specific way according to the applicable provisions of the motor vehicle rules and act. Vehicles transporting goods weighing less than 3,000 kilos and government-owned transport vehicles are exempt from the permission requirement criteria set by the government authorities.

Depending on the plan and budget, one can buy an area or take it on rent or lease. Here we will discuss the procedure for both:

- **PAN and TAN Registration:** Permanent Account Number ("PAN") and Tax Deduction and Collection Account Number ("TAN") registration in the name of the business is mandatory. However, in the case of a sole proprietorship, both the PAN and the TAN can be obtained in the owner's name.

- **Obtain a fire no objection certificate ("NOC"):** When you are starting a transport business, it is necessary to obtain a fire NOC from the Chief Fire Officer for your garage. The garage stores machine oils and engine oils, which are flammable by nature, and therefore it is mandatory to declare the kinds of machines, oils, and other relevant items to be stored and used there.

- **Permit from the Pollution Control Board:** It is necessary to obtain a permit and submit a plan for that purpose to the Pollution Control Board and propose how you are going to treat the waste materials in the garage. Furthermore, according to the Motor Vehicles Act, each vehicle used in this business must have its own pollution permit.

How to start shipping business?

The first step to starting a shipping business is to choose a business name. This is a very important choice since the company name is the brand and will last for the lifetime of the business. One of the most important steps in starting a shipping business is to develop a business plan. The process of creating the plan ensures that the person has fully understood the market and his own business strategy. The business plan should include the following: company overview, industry analysis, customer analysis, competitive analysis; and market analysis. The next step is to choose a legal structure for a shipping company and register it with the Secretary of State in each state where the business is supposed to operate.

Further, the business should be registered with the Internal Revenue Service ("IRS"), which will result in the IRS issuing an Employer Identification Number ("EIN"). Most banks will require you to have an EIN in order to open up an account. In addition, in order to hire employees, an EIN will be required since that is how the IRS tracks your payroll tax payments. The most important ones are to obtain a business licence, a permit to operate a commercial vehicle, and a permit to transport goods. A licence to import or export goods, depending on the type of shipping business, will also be required for the smooth running of the business.


Laws on shipping and transportation

Shipping in India is centrally regulated and exclusively controlled by the government of India. The government regulates shipping through the Ministry of Shipping ("MoS"). The MoS has set up a semi-autonomous statutory body – the Directorate General of Shipping ("DG") – whose powers are circumscribed by the Indian Merchant Shipping Act, 1958 ("MSA") to deal with all matters relating to shipping policy and legislation, the implementation of various international conventions, and other mandatory regulations of the International Maritime Organization.

The MSA is a general umbrella law to deal with merchant shipping. The MSA empowers the DG Shipping to promulgate delegated legislation such as circulars and notifications to deal with all issues relating to shipping. The Mercantile Maritime Department is a body under the control of the DG Shipping dealing with the registration of Indian-flagged vessels, surveys of ships and enforcement of international regulations such as the Load Line Conventions. Generally, an Indian shipping company would have to pay corporate tax at a rate of 33.3 percent, unless it opted for the tonnage tax system, which is between 1 percent and 2 percent of its income.

An Indian shipping company could opt for the tonnage tax system by fulfilling certain guidelines laid down by the government, such as the training of Indian seafarers and making financial provisions for new vessel ownership. The Indian indirect tax regime has undergone a radical overhaul with the implementation of the goods and services tax regime (the new taxation structure is a destination-based tax on consumption as compared to the principle of origin-based taxation under the erstwhile regime).

Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017: This act shall apply to every vessel, irrespective of the place of residence or domicile of the owner. The Admiralty Act seeks to consolidate the existing laws relating to admiralty jurisdiction, admiralty proceedings on maritime claims, maritime liens, arrest, detention, sale of vessels, and other connected matters.

The Motor Vehicles Act, 1988, which came into force on 1 July 1989 and replaced the Motor Vehicles Act, 1939, aims at consolidating and amending the laws relating to motor vehicles. However, judging by the entire statute, it seems the chief aim of the statute was to ensure road transportation and motor vehicle safety, as the entire statute deals with provisions relating to licencing of drivers and conductors, registration of motor vehicles, control of motor vehicles through permits, special provisions relating to state transport undertakings, traffic regulation, insurance, and liability, as well as offences and penalties if the above provisions are violated.

The Road Transport Corporation Act, 1950, was enacted shortly after independence with the goal of enabling states to provide suitable and cost-effective transportation services to their citizens, despite the absence and hidden disdain of private players. The statute enabled the state governments to set up corporations so as to provide the aforementioned services whilst also providing ancillary services.

The Carriage by Road Act, 2007 was enacted with the aim of regularising common carriers and limiting their liability as to the goods carried by them when damage or loss happens to the goods being carried by them that is not occasioned by criminal or negligible acts by the carriers. The statute also requires the consignee to declare the value of the goods being delivered so that an appropriate liability can be determined for the loss of or damage done to the goods because of the negligence or criminal acts of the carrier or their agents and servants.

Policy support to the industry

In the Federal Budget 2021-22, the government has announced a subsidy worth INR 16.24 billion (US $218.40 million) to Indian shipping companies to encourage merchant ship flagging. The Major Port Authorities Act, 2021, has also been passed to align governance models in these ports with international best practices. A revised investor-friendly Model Concession Agreement ("MCA") has been implemented, which will aid in the transparency and uniformity of contractual agreements that major ports will enter into with investors for projects under the build, operate, and transfer model.

Since there has been an increasing inclination towards the privatisation of the shipping industry with ports shifting to a landlord model, a dispute redressal portal was launched, "SAROD-Ports" (Society for Affordable Redressal of Disputes – Ports) in 2020 to help develop confidence in the private sector. The Ministry also launched an indigenous software solution for vessel traffic services (VTS) and vessel traffic monitoring systems (VTMS) in the same year, making strides towards digitization of the sector. A 10-year tax holiday will be provided for businesses engaged in developing, maintaining, and operating ports, inland waterways, and inland ports.

How can we help?

Our shipping attorneys are adept at providing guidance on all matters pertaining to the industry, such as major tragedies, maritime insurance coverage claims, security enforcement, and criminal prosecutions in litigation and disputes.

With a global, interconnected network composed of member firms and professional consultants around the world, we aim to successfully serve our clients wherever challenges and opportunities arise. Our goal then, as now, was to provide high-quality services to our valued clients. We encourage strong relationships with leaders in a variety of industries, employ flexibility, and emphasise applicable solutions in order to offer clients leading strategies.

We have also been following financial matters concerning the taxation of shipping companies and overall shipping activity, and we participate in several national and international forums for the maintenance of the special taxation status of vessels.

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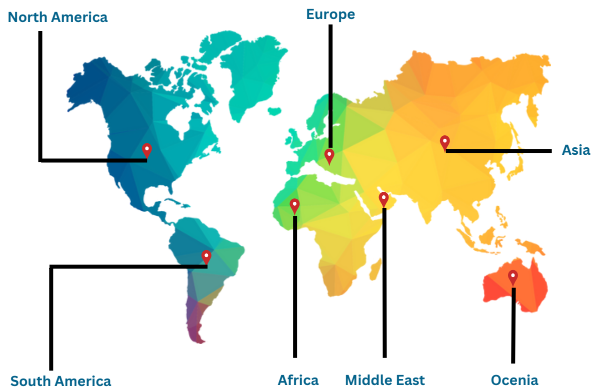

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