SWITZERLAND GLOBAL ENTERPRISE

India
Legal Provisions

Compiled by:

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GENERAL REMARKS

India's economic growth has averaged 7.0 per cent over the last 4 years, and the country has been ranked one of the fastest growing economies globally. The present government has moved swiftly in a number of areas to ensure further ease of doing business, but a lot more needs to be accomplished for a sustainable GDP growth of 7-8 percent. There is certainly a big business potential available to be tapped in India, as the country is poised to achieve buoyant growth in the near term due to improving macro-economic indicators, e.g. falling inflation and interest rates, lower current account deficit, improving fiscal deficit, as well as push for further reforms.

The Indian foreign trade is mainly regulated by the Foreign Trade Policy framed by the Ministry of Commerce and Industry (Directorate General of Foreign Trade). India still remains relatively a protected market in the world, due to its higher import tariffs and imposition of non-tariff barriers for certain goods. The tough bureaucratic procedures, lack of consistency in certain policies, rigid labour laws, and inadequate infrastructure in the country do hamper the utilisation of India’s trade and investment potential.

For a Swiss exporter, it may be worthwhile to note that the Indian market has, like many other countries, some unique features, e.g., there is a ‘cultural gap’ concerning many business practices, such as pragmatic approach towards administrative procedures, importance of “unwritten” information etc.

The Swiss Business Hub India is at the disposal of the Swiss companies, which are intending to do business in India or already doing business in India, for all possible assistance and guidance to help promote their business activities.

CUSTOMS

Though India has brought down its import duties since the gradual opening up of its economy from 1991 onwards, the same are still high as compared to import duties levied, for example, in other emerging economies of Asia. By gradually dismantling the high import tariff wall, India has not only fulfilled its obligations under the WTO, but is pushing its export industries to be competitive in the international market and preparing its local industries to face foreign competition. The import duty structure in the country remains a complex one. In general, the following four duties/cess are levied on imports (for more information, visit Central Board of Excise and Customs: http://www.cbec.gov.in/)

a) Basic Customs Duty (BCD): The peak rate is fixed at 10% for most of the non-agriculture items, however goods such as food products, liquor, automobiles etc. attract higher duties up to 125%. On the other hand, there are many products (e.g. machinery and equipment) which attract lower duty of 7.5%. BCD is calculated on assessable value (CIF value + Landing Charges @1% of CIF value)
b) Countervailing Duty (CVD): 0-20%, (mainly 12.5%, and is calculated on assessable value+BCD).

c) Special (education) Cess: 3% (calculated on BCD+CVD).
d) Special CVD: 4% (calculated on assessed value+BCD+CVD+Special Cess)

The imported goods are also charged octroi duties (state entry tax) in some Indian states. India also imposes anti-dumping duties in those cases wherein the domestic industry would be adversely affected owing to unfair trade from abroad.

The import of certain goods is subject to, in addition to Customs formalities, clearance from other government departments, e.g. import of primary agricultural products, food items, second hand automobiles etc. In such cases, the Customs authorities would clear the import shipment only after submission of 'clearance certificate' from the concerned department.

The government has laid down various schemes for import duty exemptions/concessions, e.g. for notified life-saving drugs, import of machinery at zero duty under the Export Promotion Capital Goods Scheme etc. Some schemes facilitate import of not only the capital goods but also the raw materials and consumables for units operating from the notified export promotion zones. There are also duty exemptions/concessions available under various bilateral/regional/international trade agreements subject to meeting the prescribed rules of origin.

IMPORT AND EXPORT REGULATIONS

The external trade of India is regulated by the Foreign Trade Policy framed by the Government every five years. Though this policy is announced for a period of five years, the government reviews it every year and makes amendments/new announcements, if considered necessary. This process of revision sometimes causes inconsistency in a policy matter that could impact the business plan of a company, including the one that is already operating in the country. Presently, the said Policy is mainly focused on the promotion of Indian exports. For details, please see the website: http://dgft.gov.in/.

Any Indian resident person/entity who intends to export from or import into India needs to obtain an Importer-Exporter Code (IEC) from the Directorate General of Foreign Trade. The imported goods need compliance with the domestic laws, regulations, technical specifications, environmental and safety norms wherever prescribed and as applicable to locally produced goods.

In order to promote foreign trade, mainly export from India, there are a number of schemes run by the government. For example, Special Economic Zones (http://sezindia.nic.in), which offer a number of incentives, including tax incentives, for setting up export units.

The Free Trade & Warehousing Zones (FTWZ) is a special category of Special Economic Zones with a focus on trading and warehousing. The scheme envisages duty free import of all goods (except prohibited items etc.). Such goods are permitted to be re-sold/re-invoiced or re-exported. Re-export is permitted without any restrictions. These goods are also permitted to be sold in the domestic market on payment of customs duties as applicable on the date of such sale. Packing or re-packing without processing, and labeling as per customer or marketing requirements could be undertaken within the FTWZ.

CURRENCY REGULATIONS

A visitor to India is allowed to bring in foreign exchange without any upper limit by declaring to Customs authorities on his/her arrival the relevant particulars in the Currency Declaration Form (CDF). The visitor needs not give any declaration in the CDF, if the aggregate value of the foreign exchange brought in by him/her in the form of currency notes, bank notes or travellers cheques does not exceed US$ 10,000 or its equivalent, and/or the value of foreign currency notes does not exceed US$ 5,000 or its equivalent. Such visitor will be permitted by Customs to take out his/her unspent foreign currency provided (i) the amount being taken out does not exceed the amount that he/she had declared to the Customs authorities, in form CDF, on

arrival in India, or (ii) the amount being taken out of India in foreign exchange is less than the amount for which a declaration in CDF is required to be made at the time of arrival in India to the Customs authorities.

An Indian resident going abroad can obtain foreign exchange up to US$25,000 for a business trip to any country other than Nepal and Bhutan. Release of foreign exchange exceeding US$25,000 for a travel abroad (other than Nepal and Bhutan) for business purposes, irrespective of period of stay, requires prior permission from Reserve Bank of India (RBI). However, for private visits, e.g. for tourism purposes etc., foreign exchange up to US$ 10,000 can be obtained by an Indian resident in any one calendar year.

Additionally, all resident individuals in India have been permitted under the Liberalised Remittance Scheme (LRS) to freely remit up to US$ 250,000 per financial year for any permitted current or capital account transaction or a combination of both. LRS can be used to acquire both listed and unlisted shares of an overseas company.

The RBI has permitted the banks dealing in foreign exchange in India to allow remittances without the usual documentation in case the remittance for a current account transaction does not exceed US$ 25,000 and the payment is being made by a cheque drawn on the applicant's bank account or by a demand draft. In such cases a simple letter from resident individual, containing names and address of the applicant, name and address of the beneficiary, amount to be remitted and the purpose of remittance, would be sufficient. The RBI has also permitted any person resident in India to take out of country (other than to Nepal and Bhutan) the Indian currency notes up to an amount not exceeding INR 25,500, with exception for the cases where a different limit is permitted under any general permission granted under the prevailing regulations.

The Indian rupee is fully convertible on the current account, therefore the regulatory framework for the foreign trade transactions is very open and the authorised dealers (include authorised banks) for foreign exchange are generally permitted to conduct the business with minimum interface with the RBI. The Indian rupee is also fully convertible on the capital account for the foreign investors (e.g. FDIs). The repatriation of the investment capital is permissible, except where the original investment was allowed on the specific condition that it would not be repatriated. Furthermore, the repatriation of business profits (dividend/interest) and royalty is also permissible. In the case of sale of shares by a foreigner/non-resident Indian to a resident Indian, the amount can be repatriated subject to fulfilment of certain conditions.

The dissolution/winding up of a company may be either voluntary or following a decision by the High Court. In such cases, the RBI considers the remittance of net proceeds to foreign partners of a dissolved company on a case-by-case basis. For detailed information, please browse the website of the Reserve Bank of India (http://www.rbi.org.in/).

REGISTRATION PROCEDURE FOR PRODUCTS

The Bureau of Indian Standards (BIS) is the central organisation responsible to ensure the compliance of various products to the prescribed quality standards. There are some products for which it is mandatory to obtain BIS registration/certification before these can be marketed in India. More information is given in the following paragraph. Furthermore, there are also other products e.g., pharmaceuticals, which require registration with the concerned government agencies in India. More here: http://www.bis.gov.in/

STANDARDS, TECHNICAL RULES, LABELLING REGULATIONS

Bureau of Indian Standards (BIS) operates a product certification scheme for foreign manufacturers. In this scheme, a licence can be granted for any product against an Indian Standard specifying product characteristics, which is amenable to certification. Licence is granted to a foreign manufacturer if the applicant has requisite manufacturing & testing facilities and competent testing personnel, results of preliminary inspection(s) and testing conducted at the manufacturer's premises are satisfactory and it agrees to comply with Scheme of Testing & Inspection (STI) and to pay BIS licence fee as applicable.

BIS recognizes CB Test Certificates issued under IECEE-CB Scheme for the designated product categories for Grant of Licence under its Product Certification Marks Scheme.

A foreign manufacturer shall set up a liaison / branch office located in India with the permission of Reserve Bank of India, which shall meet all liabilities with respect to BIS Act, Rules and Regulations for purpose of the BIS licence. The requirement to set up an office in India shall not apply if the foreign manufacturer nominates a legally appointed agent, located in India, who declares his/her consent to be responsible for compliance to the provisions of the BIS Act, 1986; Rules and Regulations framed thereunder, and terms & conditions of the BIS licence, including agreement, undertakings, etc., executed by or on behalf of the foreign manufacturer in connection with the grant of such licence.

The BIS maintains, through its surveillance operations, a close vigil on the quality of goods certified. More information is available at the website of the BIS - http://www.bis.org.in/.

The Standards of Weights and Measures (Packaged Commodities) Rules 1977 in India have the provisions for labelling on the packages of the products covered under these rules. Any of the products covered under these rules, when imported into India, shall be subject to compliance of the said provisions before the same is cleared by Customs for home consumption. In particular, all pre-packaged commodities, which are imported into India and are meant for retail sale, shall carry, inter alia, the following declarations on the packages:

- Name and address of the manufacturer and/or importer.
- Generic or common name of the commodity packed.
- Net quantity in terms of standard unit of weights and measures. If the net quantity in the imported package is given in any other unit, its equivalent in terms of standard units shall be declared by the importer.
- Month and year of packing in which the commodity is manufactured or packed or imported.
- Maximum retail sale price at which the commodity in packaged form may be sold to the ultimate consumer.
- Customer Care Number with name, address, Telephone No. of the person/office which can be contacted in case of consumer complaints.

Moreover, on the packed food products, the manufacturer has to also specify whether it is vegetarian or non-vegetarian in compliance with the provisions under the Prevention of Food Adulteration Rules. Additionally, the ingredients of a food product,its nutritional values,as well as country of origin shall also be mentioned on the packaging label. The import of food products into India is subjected to sanitary and phytosanitary regulations. The customs clearance of such products relatively takes more time.

Further information can be obtained from the Department of Consumer Affairs of the Government of India (More here: http://fcamin.nic.in/).

TAXES

Indian legislation relating to taxes is contained in different Acts relating to the nature of the tax (e.g. Income Tax Act 1961 or Customs Tariff Act 1975). Indian tax rates as well as customs duties are being reviewed and amended, if required, on an annual basis, when the Indian budget is prepared (usually in February/March of each year). The Indian fiscal year runs from April 1 to March 31. India has a broad variety of taxes, especially a diversity of indirect taxes, levied partly by the Centre and partly by the States.

A summary of India's income taxes is given herein below, but remember that, for a Swiss company, the Swiss-Indian DTAA is partly offering lower rates than the generally applied tax rates.

Goods and Services Tax (GST)

A national single tax system was introduced on 1 July 2017 – Goods and Services Tax (GST). The intent behind introducing GST was, in simple terms, to maximise economic gain and minimise compliance pain. This tax system combines the taxes which were previously levied at the national and state levels. As a result, there

is now a single tax system, which is uniform throughout the country across states and union territories. Four tax rates exist under GST: 5%, 12% 18%, 28%. Products exempted from GST include alcohol for human consumption, petroleum products (crude oil, petrol, diesel, natural gas, ATF), tobacco, and entertainment tax levied by local bodies. The benefits of GST include reduction in purchase prices for consumer products, free flow of goods and services between various regions across India, simplified tax regime, creation of a common national market, and decrease in illegal transactions. More information can be found here: http://www.cbec.gov.in/htdocs-cbec/gst/index

Double Taxation

The Swiss-Indian Double Taxation Avoidance Agreement/DTAA defines the specific tax competences and tax rates applicable to Swiss companies doing business in India and vice-versa to Indian companies in Switzerland. As per the protocol signed later on to amend the Swiss Indian DTAA, the current rate of Indian withholding tax on incomes earned by Swiss companies in India are:

Dividend	10% (in India, the recipients do not pay dividend tax)
Interest	10%
Royalty	10%
Technical Service Fee	10%

Permanent Account Number

As per an amendment made in Indian tax law, every recipient including a non-resident/foreign company, has to furnish a Permanent Account Number (PAN) to the payer in India. If the recipient fails to provide the PAN, withholding tax rate would increase to 20-25% on aforesaid payments. By obtaining a PAN, Swiss companies can enjoy lower withholding tax rates specified in the bilateral treaty. Furthermore, it is required for non-residents to produce a tax residency certificate (TRC) from the country of tax residence, with the prescribed details, if such individuals wish to avail the treaty benefits in India.

Personal Income Taxes

Indian residents are taxed at progressive rates (10%, 20% or 30%); the maximum rate of 30% is applicable to an annual income of INR 1'000'000 or more (i.e. approx. SFr. 15'000 -- or more). The detailed information is available at the website of the Income Tax Department: http://incometaxindia.gov.in/. A surcharge of 15% is levied in the case of individual/firm, if the income exceeds INR 10'000'000. India has currently only about 4 percent of its population paying income taxes. The Indian Government's efforts at widening the tax base have not been very successful so far.

Corporate taxes are levied as follows:

Domestic company, incl. joint venture/subsidiary in India	30%	(on its world-wide income)
Foreign company (e.g. Branch/Project office in India)	40%	(only on income which is derived out of its business operations carried out in India)

The domestic companies are liable to also pay 7% and 12% surcharge, if the income exceeds INR 10 million and 100 million respectively. The foreign companies are liable to pay 2% and 5% surcharge, if the income exceeds INR 10 million and 100 million respectively. Additionally, education cess of 3 per cent is to be charged on personal and corporate income taxes (including surcharge). Thus the current effective rate of corporate tax for domestic and foreign companies is 34.60 per cent and 43.26 per cent respectively if the income exceeds INR 100 million.

Indian capital gain taxes

Short-term capital gains are taxed at the normal corporate income tax rates, with some exceptions.

In general, the long-term capital gains are taxed at a basic rate of 20%. Alternatively, on listed equity shares, a security transaction tax is levied at a rate of 0.01 - 0.125 per cent (varies according to the type of transaction made at the stock exchange).

Any firm, corporation or individual, which is not resident in India, can obtain advance rulings on any matters relating to Income Tax.

Some other taxes on manufacturing/business activities:

- Dividend Distribution Tax (payable only by domestic company at the rate of 20.35%)
- Excise Tax (manufactured goods)
- Customs Duty (imported goods)
- VAT / Sales Tax
- Central Sales Tax
- Service Tax

Taxes applicable to expatriates in India - A foreign national in regular employment with an Indian company is liable to pay tax on his/her earnings, wherever received. Any other income is taxable only if received in India. For an expatriate in India, it makes a lot sense to ask the advice of an Indian tax expert in order to structure his/her earnings in such a way that tax benefits/rebates can be fully availed of.

In accordance with the Swiss-Indian Double Taxation Avoidance Agreement, the remuneration derived by a Swiss resident in respect of employment, services or activities performed in India shall be taxable in Switzerland only, if the Swiss is present in India for a period or periods not exceeding 183 days in the aggregate in any 12-month period, and the remuneration is paid by, or on behalf of an employer who is not resident in India and it is not borne by a permanent establishment which the employer has in India.

COMMERCIAL LAW

India has a well-established legal system to regulate commercial activities, both in domestic market and with foreign market. Some of the currently enforced commercial laws (many of these have been amended from time to time) are as follows:

- Foreign Trade (Development and Regulation) Act, 1992
- Foreign Exchange Management Act, 1999
- Competition Act 2002
- Sale of Goods Act, 1930
- Negotiable Instruments Act, 1881
- Indian Contract Act, 1872
- Indian Partnership Act, 1932
- Companies Act, 2013
- Arbitration and Conciliation Act, 1996
- The Industrial Disputes Act 1947
- The Contract Labour (Regulation and Abolition) Act 1970
- Drugs and Cosmetics Act, 1940
- Prevention of Food Adulteration Act, 1954
- Standards of Weights and Measures Act, 1976

and various laws to protect intellectual property rights.

However, the legal procedures in the country are very time consuming and a court case could drag on for a number of years before a final judgement is delivered.

SETTING UP COMPANIES

Foreign companies have several entry possibilities depending on the activities they intend to pursue in India.

Establishing a branch office - Foreign manufacturing and trading companies, not incorporated in India, but having an India branch office can carry out the following activities:

i. represent the parent company as buying/selling agent
ii. conduct research in which the parent company is engaged
iii. undertake export/import-trading activities
iv. promote technical and financial collaborations between Indian and foreign companies.
v. render professional or consultancy services
vi. render services in Information technology and development of software in India.
vii. render technical support to the products supplied by the parent/ Group companies.
viii. foreign airline/shipping.

A branch office is not allowed to carry out manufacturing activities on its own but is permitted to subcontract these to an Indian manufacturer. A branch office established with the approval of RBI, may remit outside India the profit of the branch, net of applicable Indian taxes.

Opening a liaison or representative office - Foreign companies can also set up a representative office to establish a liaison between Indian businesspeople and the overseas parent company. Its role is limited to collecting information about possible market opportunities and providing information about the company and its products to prospective Indian customers. A liaison office can not undertake any commercial activity directly or indirectly, and therefore, cannot earn any income in India.

Foreign companies incorporated outside of India but conducting business in India through a branch or a liaison office also fall within the purview of the Indian Companies Act.

Operating through a project office **-** Foreign companies can operate through project offices for undertaking specific contracts or activities such as turnkey projects or installation projects. For execution of the contract so taken, a project office is allowed to enter into sub-contracts.

The RBI has granted a general permission to a foreign entity for setting up a Project Office in India subject to the following conditions:

1) It has secured from an Indian company a contract to execute a project in India, and
2) The project is funded by inward remittance from abroad; or is funded by a bilateral or multilateral international finance agency; or has been cleared by an appropriate authority; or a company or entity in Indian awarding the contract has been granted term loan by a public financial institution or a bank in India for the project.
3) The foreign company is required to furnish a report to the concerned Regional Office of the RBI under whose jurisdiction the Project Office is set up, comprising the required details about the company and the project.

Foreign companies intending to open branch, liaison or project offices usually first apply to the Reserve Bank of India (RBI) in the prescribed form (FNC 4 / FNC 5). For details, please see at: http://www.rbi.org.in/scripts/BS_ECMCatDisplay.aspx?catid=13. The government has recently relaxed the approval process for setting up of the branch, liaison and project offices of foreign companies in India. Except for defence, telecom, private security, information and broadcasting and non-government organisation sectors, such approvals can now be given by certain banks.

Operating through a franchisee **-** A growing number of foreign companies, particularly from the hospitality industry, have started operations in India through the franchise route. To evaluate prospective franchisees, foreign firms should use several criteria such as the financial soundness of the party; ability to see-through initial teething problems together; and similarity of values; as well as protection of intellectual property.

For foreign investors, there are currently two routes for getting the required permission to set up a joint venture or wholly owned subsidiary in India, namely “automatic route” or “Government approval route”. Over the past more than a decade, the Indian government has been gradually liberalising the norms for foreign direct investments, and consequently such investments are now allowed in almost all industries through the “automatic route”, with some exceptions. The detailed information about these routes are given in the following paragraphs.

The new entity needs to be registered with the office of the Registrar of Companies in India, which will issue the certificate of incorporation. A company may either be a private limited company or a public limited company. Private companies are preferred for small group of business people. A private limited company is allowed to commence its operations on obtaining the certificate of incorporation, whereas a public limited company has to complete certain additional formalities, e.g. issue of shares to public, before it is allowed to commence its business activities. For information about the procedure for the incorporation of a company in India, please browse the following weblink to the Ministry of Corporate Affairs: http://www.mca.gov.in/MinistryV2/hd.html.

India has passed the legislation to facilitate establishment of Limited Liability Partnerships. This new business form is a hybrid of partnership firm and company and is a separate legal entity with liability being limited to the extent of stake held by a partner. This is quite suitable for professional service providers.

JOINT VENTURE OPPORTUNITIES

India does not have a separate law for foreign investment, but it is the stated objective of the amended Indian Industries Act (1951) to invite and to facilitate foreign investments. Foreign investments and returns on them are, in general, fully repatriable. Since the economic reform started in India in 1991, the volume of foreign investments in the country has increased substantially. The government, in order to further promote investment, both domestic and foreign, in the country, has initiated many steps to simplify procedures, rationalise various policies and set up regulatory frameworks, and has offered a number of incentives, especially to the firms engaged in the export business. Consequently, considerable investments have flown into many sectors, e.g. telecommunication, transportation, electrical equipment, information technology, chemicals and pharmaceuticals, and services.

Automatic Route - Foreign investment is ‘automatically’ allowed in almost all industries, with some exceptions and subject to the notified sectoral policy and foreign equity caps. For investments under this route, the companies do not require any prior approval from the Government. However, the companies are required to notify the regional office of the RBI within 30 days of receipt of inward remittance(s) and file the required documents with that office within 30 days of issue of shares to foreign investors.

Government Approval Route - Foreign investments that do not qualify under the Automatic route require prior permission from the Foreign Investment Promotion Board (FIPB), managed by the Union Ministry of Finance, New Delhi. The FIPB usually holds weekly meetings in order to clear the submitted proposals; the time normally required for clearances should not exceed 30 days, but can be longer if the promoters are being asked to provide additional information. The Finance Secretary chairs the FIPB (a Secretary is the highest-ranking civil servant in the Indian administration). For investment proposals involving amounts above INR. 30 billion (SFr. 435 mio. approx.) or for projects in politically sensitive fields (e.g. civil aviation), there is a Cabinet Committee on Economic Affairs (CCEA) which makes the necessary decision.

There are certain investment proposals which require approval from the government, e.g. proposals falling outside notified sectoral policy/ foreign equity caps or under sectors in which FDI is not permitted and/or whenever any investor chooses to make an application to the Foreign Investment Promotion Board and not to avail of the automatic route.

The booklet “Consolidated FDI Policy 2015” available at the website of the Department of Industrial Policy and Promotion: http://dipp.gov.in/English/Policies/FDI_Circular_2015.pdf contains detailed information for foreign investors, including sector-wise guidelines for the foreign direct investments in India.

The potential investors intending to use automatic approval route can access the relevant information and application forms (FC-RBI or FT-RBI) from the website of the Reserve Bank of India: http://www.rbi.org.in/scripts/BS_ECMCatDisplay.aspx?catid=13.

100%-foreign owned companies are allowed in many areas/sectors (please see the list in the aforesaid booklet published by the Department of Industrial Policy and Promotion). Furthermore, wholly owned subsidiaries are also allowed in setting up 100% export oriented units -EOUs, units in Special Economic Zones (SEZs), companies where proprietary technology is sought to be protected or sophisticated technology is proposed to be brought in. Several Swiss companies do now have 100%-owned companies in India. For information about Swiss companies operating in India, please refer to the Embassy’s publication “Swiss-Indian Trade and Investment Relations 2016”, available on the Embassy’s website: https://www.eda.admin.ch/content/dam/countries/countries-content/india/en/Swiss-Indian%20Trade%20%26%20Invest%20Relations_2016.pdf.

Recent approval records show that the Indian Government is also willing to give approvals, on a case-to-case basis, to foreign partners who decide to enhance later on their equity participation in the existing Indian ventures within the FDI ceiling, if any (the pre-condition is obviously submission of an agreement with the Indian promoter(s)/ shareholders as well as a board resolution).

To further liberalise the FDI regime in the country, the government permits issue of equity shares to a person resident outside India against lumpsum fee and royalty due for payment, and external commercial borrowing, subject to meeting all applicable tax liabilities and procedures. Furthermore, an Indian company may be permitted to issue equity shares to non-residents against import of capital goods, subject to fulfillment of certain conditions.

Technical Collaborations **-** Foreign technology/licensing agreements are granted automatic approval under the current Indian policy, i.e. lumpsum payment and/or Royalties on sales in domestic market, foreign markets, as well as royalties on the use of trademark and brand name do not need any approval of the Government of India. However, such payments are subject to Foreign Exchange Management (Current Account Transactions) Rules 2000, as amended from time to time.

Furthermore, the foreign investment through fully convertible preference shares is treated as foreign direct shareholding for the purpose of sectoral caps on foreign investment. The maximum dividend rate on preference shares shall be within the limit prescribed by the Ministry of Finance.

PROMOTION OF INVESTMENT

In order to promote the foreign direct investments in the country, the Indian government has initiated a number of measures to facilitate smooth entry. In addition to the Foreign Investment Promotion Board functioning in the Ministry of Finance, the Indian government has also set up the Foreign Investment Implementation Authority (FIIA) in the Ministry of Commerce and Industry (Department of Industrial Policy and Promotion) to facilitate quick implementation of FDI approvals. The FIIA takes, among other measures, initiatives to conduct multi-agency consultations to find solution to problems faced by the foreign investors.

Besides direct investments in India, foreign entities, e.g. Foreign Institutional Investors (FIIs) are also allowed to invest in the primary and secondary capital markets in the country. A FII and each of its sub-accounts can

invest up to 10 per cent of the paid-up share capital of an Indian company. FIIs can cumulatively hold up to 24 per cent of the paid-up share capital of a company, and they may increase their holding up to the applicable FDI ceilings in various sectors with the approval of the Board of the investee Indian company. The shareholders of such investee Indian company must also pass a special resolution to approve such an increase.

Protection of Investment **-** An Investment Promotion and Protection Agreement between Switzerland and India was signed in 1997 and it came into force effective February 2000. The Agreement emphasises providing free transfer of investments and returns, and its fundamental points include the Most Favoured Nation and National Treatment provisions.

ENTRY CONDITIONS, WORK PERMITS, RESIDENCE PERMITS, LABOUR LAW

Swiss nationals travelling to India on business must obtain business visa valid for the duration of their stay in India. Longer term business visas valid for up to 5 years with multiple entries can also be granted to frequent travellers. As per new visa guidelines issued by the Government of India recently, foreign engineers/technicians travelling to India to implement projects/contracts, including installation or repair of machinery, would require employment visa from the Indian diplomatic representations abroad. Indian diplomatic representations also grant employment visas based on a contract between the applicant and the employer and the corresponding appointment letter from India. Generally, all foreign nationals who have visas of duration more than 6 months and also intending to stay for more than six months have to register themselves with the concerned Foreigners Regional Registration Officer (FRRO)/District Foreigners Registration Officer within 14 days of their first arrival in India. Upon this registration, the FRRO/District Foreigners Registration Officer issues the residence permit to a foreign national. The FRRO/District Foreigners Registration Office grants to a foreign national, who resides in India on the basis of employment/business visa, a residence-cum-work permit after the registration formalities are completed.

The employment of labour in the organised sector is regulated by different laws, e.g. Industrial Disputes Act, The Factories Act, Minimum Wages Act, Workmen's Compensation Act, Contract Labour (Regulation and Abolition) Act, and Trade Unions Act. Traditionally, the Indian labour laws were framed keeping in the mind the planned economic development and welfare of labour class. These days, the labour laws in the country are considered to be rigid which make it difficult to close down even a loss-making firm. Though the government has recognised the need to modernise the labour laws, especially the Industrial Disputes Act and Contract Labour Act to facilitate easy closures and layoffs, but the process to bring about changes has been extremely slow so far. Nevertheless, the government has recently eased administrative burden on companies/firms relating to filing of various returns under labour laws.

PROCEDURES FOR COLLECTING PAYMENT

The foreign exchange transactions are regulated under the Foreign Exchange Management Act 1999. Though the Indian rupee is fully convertible on the current account transactions, the Central Government has imposed certain restrictions for these transactions in public interest and in consultation with the Reserve Bank of India.

Import shipments - The authorised dealers are permitted to open letters of credit on behalf of their customers who are known to be participating in the trade. While doing so, they follow normal banking procedures. The letter of credit, in particular, stipulates a condition requiring that the bill of lading should indicate the name and address of the importer in India as well as the authorised dealer opening the credit. Remittances for imports under letters of credit or otherwise have to be made against shipping documents etc. except where it is otherwise prescribed.

The Authorised dealers may allow advance remittances for import of goods without any ceiling subject to the following conditions:
(a) The importer should hold the EC copy of a valid import licence if the goods to be imported are those included in the negative list of imports given in the Foreign Trade Policy.

(b) Remittance is made direct to the supplier.
(c) If the amount of advance remittance exceeds U.S.$ 200,000 or its equivalent, a guarantee from an international bank of repute situated outside India or a guarantee of an authorised dealer in India, if such a guarantee is issued against the counter-guarantee of an international bank of repute situated outside India, should be obtained. An unconditional standby L/C from an international bank of repute situated outside India may be accepted in lieu of bank guarantee provided it is irrevocable, non-transferable and lists out full particulars of the transactions and there is a clear provision for prompt payment being received in convertible currency in an approved manner. The validity of the guarantee/letter of credit should cover adequately the period for the purpose of enforcing payment.
(d) Physical import of goods into India should be made within six months (three years in case of capital goods) from the date of remittance and the importer should give an undertaking to furnish documentary evidence of import within fifteen days from the close of the relevant period.
(e) Authorised dealer should ensure that in the event of non-import of goods, the amount of advance remittance is repatriated to India or is utilised for any other purposes for which release of exchange is permissible under the Act, to the satisfaction of the authorised dealer.

The government has liberalised the regulations concerning advanced remittances. In cases where the importer is unable to obtain bank guarantee from overseas suppliers and the authorised dealer (Category-I bank) is satisfied about the track record and bonafides of the importer, the requirement of the bank guarantee / standby letter of credit may not be insisted upon for advance remittance up to US$ 5 million. The government has also authorised the dealers to make such remittances for all admissible current account transactions for import of services up to US$ 500,000, without bank guarantee.

Postal Imports - Remittances against bills received for collection in respect of imports by post parcel may be made by authorised dealers, provided the goods imported are such as are normally dispatched by post parcel. In these cases, the relative parcel receipts must be produced as evidence of dispatch through the post and an undertaking to submit post parcel wrappers within three months from the date of remittance should be furnished by importers. If the parcel has already been received in India, the parcel wrapper should be produced in support of the remittance application. Where goods to be imported are not of a kind normally imported by post parcel or where authorised dealer is not satisfied about the bona fides of the application, the case should be referred to Reserve Bank for prior approval with full particulars together with relative parcel receipt/s (or wrapper/s).

Handling of import bills - As a general rule import bills and documents should be received from the banker of the seller by the banker of the buyer in India. Authorised dealers should not, therefore, make remittances where import bills received directly by the importers from the overseas seller, except in the following cases:

- Where the value of import bill does not exceed U.S.$ 300,000/-
- Import bills received by wholly owned Indian subsidiaries of foreign companies from their principals.
- Import bills received by Status Holder Exporters as defined in the Foreign Trade Policy.
- Import bills received by all limited companies viz. public limited, deemed public limited and private limited companies.

At the request of an importer, authorised dealer may receive bills direct from the overseas seller, provided the authorised dealer is fully satisfied about the financial standing/status and track record of the importer. Before extending the facility, authorised dealer should obtain report on the overseas seller from the overseas banker or reputed credit agency.

Export shipments- The amount representing the full export value of the goods exported shall be received through an authorised dealer in the manner specified in the Foreign Exchange Management (Manner of Receipt & Payment) Regulations 2000. Payment for exports could also be received by the exporter, e.g. in the form of bank draft, pay order, banker's or personal cheques, or foreign currency notes/foreign currency travellers' cheques from the buyer during his/her visit to India. Currently, an exporter has 12 months' time to realise for the export shipment. However, the time period may be extended on some valid grounds.

Advance Payments - Exporters may receive advance payments from their overseas buyers. It should, however, be ensured that the shipments made against the advance payments are monitored by the authorised

dealer through whom the advance payment is received. The appropriations made against every shipment must be endorsed on the original copy of the inward remittance certificate issued for advance remittance.

Handling of export documents - Authorised dealers should normally despatch shipping documents to their overseas branches/ correspondents as expeditiously as possible. Authorised dealers may despatch shipping documents direct to the consignees or their agents resident in the country of final destination of goods in cases where advance payment or an irrevocable letter of credit has been received for the full value of the export shipment and the underlying sale contract/letter of credit provides for despatch of documents direct to the consignee or his agent resident in the country of final destination of goods. Furthermore, an authorised dealer may accede to the request of the exporter, for dispatch of documents by the authorised dealer, for whatever reason, direct to the consignee/agent provided the concerned exporter's track record is good to the satisfaction of the authorised dealer.

The documents may be directly sent by the exporter to the consignee (i) in respect of goods exported against 100 per cent advance remittance, in terms of aforesaid paragraph 'Advance Payments', or (ii) in respect of goods or software the documents of which are accompanied with a declaration by the exporter that they are not more than INR 25,000 and not declared on GR/SDF/PP/SOFTEX (export declaration forms).

Third Party Payments – The RBI has liberalised the procedure relating to payment of export and import taking into account the evolving international trade practices. With respect to payments for export, the banks may now allow payment to be received from third party subject to certain conditions, including a firm's irrevocable order backed by a tripartite agreement and the exporter should mention the third party remittance in the Export Declaration Form. In relation to import of goods, among other conditions, it shall be required to provide in the narration of the invoice that the related payment has to be made to the third party whose name is also provided in the invoice.

Though the rules and regulations for foreign exchange transactions have been simplified over the years, the bureaucratic procedures are still time consuming, resulting in increased transaction costs.

INFORMATION SOURCES

Department of Industrial Policy & Promotion	http://dipp.nic.in
Department of Commerce	http://commerce.nic.in
Directorate General of Foreign Trade	http://dgft.gov.in/
Reserve Bank of India	http://www.rbi.org.in
Central Board of Excise and Customs	http://www.cbec.gov.in
Income Tax Department, Delhi	http://incometaxindia.gov.in/
Department of Consumer Affairs	http://fcamin.nic.in/index.asp
Bureau of Indian Standards	http://www.bis.org.in
Ministry of Law and Justice	http://lawmin.nic.in
Government of India	http://goidirectory.nic.in
Embassy of Switzerland	http://www.eda.admin.ch/newdelhi

Note: Due care and diligence has been taken while preparing this document. However, as part of the information contained herein is based on literature available from the secondary sources and web-links, it is advisable to check for any possible change that might have been introduced in the meantime by a concerned government department/agency.

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