



HERBERT
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DOING BUSINESS IN INDIA



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Key facts for international investors



29
STATES



PARLIAMENTARY
DEMOCRACY



5 YEARS
GOVERNMENT
TENURE¹



OFFICIAL
LANGUAGES
HINDI AND ENGLISH



LANGUAGE
OF BUSINESS²
ENGLISH



KEY BUSINESS
CENTRES
MUMBAI, DELHI⁶,
BENGALURU, HYDERABAD,
AHMEDABAD, CHENNAI,
PUNE AND KOLKATA



LEGAL SYSTEM
COMMON LAW (WITH
WRITTEN CONSTITUTION)



APEX COURT
SUPREME COURT
OF INDIA³



DISPUTE RESOLUTION
INDIAN COURTS AND
INTERNATIONAL ARBITRATIONS



MAJOR STOCK
EXCHANGES
BSE⁴ AND NSE⁵



CENTRAL BANK
RESERVE BANK OF
INDIA (RBI)



RICHEST STATES⁷
MAHARASHTRA AND
TAMIL NADU

1. Next elections in 2019
2. Popular local business languages: Hindi, Gujarati, Punjabi, Maharathi and Tamil
3. Supreme Court of India (situated in Delhi)
4. Bombay Stock Exchange (BSE)
5. National Stock Exchange (NSE)
6. Includes Gurugram and Noida
7. By GDP



Why India?

India is one of the fastest growing newly-industrialised economies exhibiting the strongest GDP growth amongst the G20 nations of 6%-8% with GDP of over US\$2.3 trillion.



This growth is being driven in particular by its demography, notably with almost 50% of its 1.3 billion population below the age of 25 and an expanding middle class. The country is also currently in the midst of a wave of urbanisation, having recorded the highest annual growth amongst major economies between 2010 and 2015, and it is currently projected that 600 million people will live in Indian cities by 2031. Indian cities already contribute more than 60% to the country's GDP.

The IMF's latest world economic data reveals that the Indian economy is the world's sixth largest by nominal GDP and third largest by purchasing power parity. And it is expected to become the 5th largest consumer economy by 2025.

India has also recently moved up in the World Bank's Doing Business rankings from 130th position to 100th position. Corruption and bureaucracy which have historically been considered to be the primary factors for India's low rankings are being very seriously tackled, and India aims to be in the top 50.

Today, for international investors, this second largest country by population and the largest democracy in the world offers significant opportunities.

- The Indian economy's robust growth rate figures, the large market size and current high returns are further endorsed by a politically stable and a strong majority government in the centre, which has over the last few years introduced a significant number of structural reforms aimed at creating a business friendly environment in particular for international investors. And it is currently considered likely that this government will be re-elected in 2019, thus promising political stability until 2024.
- At a socio-economic level, India needs to create jobs in order to accommodate the vast number of new entrants to the labour market each year. This is a significant driver behind the government's "Make in India" campaign which seeks to bring more of the benefits of increased international investment physically into India, with a greater share of the actual manufacturing undertaken within India. For further details, please see here: www.makeinindia.com

Headline initiatives

- Make in India
- Digital India
- Skill India
- New pan-India goods and services tax (GST)
- New IPR policy
- New bankruptcy code
- Smart cities
- Relaxing foreign investment restrictions
- Anti-corruption drive
- Startup India
- New companies law/corporate governance
- Competition between states

Investment opportunities

States

India has a federal structure with the entire country divided into 29 states and seven union territories, with each being run by its state or UT government. Whilst the state or the UT government is primarily responsible for governance in its region, there are certain subject matters which fall outside its jurisdiction and are exclusively the responsibility of the central government.

To boost competition amongst states, the central government has in the last few years introduced the concept of “cooperative federalism”, ranking states on the basis of ease of doing business. State rankings can now be monitored here: www.eodb.dipp.gov.in. So if you are in an initial stage of considering which part of India to invest in, table 1, table 2 and table 3 will provide a helpful indication.

Table 1: Top 10 states

Ease of doing business rankings

2016	2015	STATES
1.	2.	Andhra Pradesh
1.	13.	Telangana
3.	1.	Gujarat
4.	4.	Chhattisgarh
5.	5.	Madhya Pradesh
6.	14.	Haryana
7.	3.	Jharkhand
8.	6.	Rajasthan
9.	23.	Uttarakhand
10.	8.	Maharashtra

Table 2: Top 10 richest states (by GDP)

2014-15	STATES
1.	Maharashtra (US\$250 billion)
2.	Tamil Nadu (US\$150 billion)
3.	Uttar Pradesh (US\$150 billion)
4.	Gujarat (US\$130 billion)
5.	West Bengal (US\$120 billion)
6.	Karnataka (US\$100 billion)
7.	Rajasthan (US\$85 billion)
8.	Andhra Pradesh (US\$77 billion)
9.	Madhya Pradesh (US\$75 billion)
10.	Delhi (US\$67 billion)

As shown in table 2 whilst Maharashtra (Mumbai being its capital city, which is often referred to as the financial capital of India) is the biggest state by GDP, we expect that the next round of growth will take place in India's emerging states (as also indicated in table 1). In terms of cities, we expect that Mumbai, Delhi (includes Gurugram and Noida) and Bengaluru will continue to be the main financial centres in India, with Ahmedabad and Hyderabad as emerging ones.

Growth rate in emerging states is quite robust but given the vastness of the country, the level of infrastructure (roads and electricity) and political instability at the state government level could vary substantially across some of the emerging states.

Sectors

In terms of sectors, India has emerged as home to globally recognised companies in information technology, pharmaceuticals, textiles, steel and telecommunications sectors. However, India is one of the few economies which are well placed with almost **all important sectors showing signs of growth.**

Table 3: Based on implementation of reforms, States have been divided into four categories

CATEGORY	STATES
Leaders (90-100%)	Andhra Pradesh, Telangana, Gujarat, Chhattisgarh, Madhya Pradesh, Haryana, Jharkhand, Rajasthan, Uttarakhand, Maharashtra, Odisha, Punjab
Aspiring Leaders (70-90%)	Karnataka, Uttar Pradesh, West Bengal and Bihar
Acceleration Required (40-70%)	Himachal Pradesh, Tamil Nadu and Delhi
Jump Start Needed (0-40%)	Kerala, Goa, Tripura, Daman & Diu, Assam, Dadra & Nagar Haveli, Puducherry, Nagaland, Manipur, Mizoram, Sikkim, Arunachal Pradesh, Jammu and Kashmir, Chandigarh, Meghalaya, Andaman & Nicobar Islands, and Lakshadweep







Business culture

Promoter culture

It is quite common for the big Indian corporates (including the ones listed on the Indian stock exchanges) to be majority-controlled by the promoters. Unlike other countries, in India the promoters usually exercise a significant influence in the day-to-day operations of their businesses.

Relationship with promoters

Understand promoter's key motivations and future plans (including succession plans). Alignment between the promoter and the investor is absolutely key to running a successful operation in India.

Indian culture

India is a vast and diverse country, with 22 languages (which have an official status in addition to English), thousands of dialects (which change every 100 kilometres in certain region) and at least four main religions. Its vastness and diversity has an impact on how business is done in each region and it is therefore very difficult to make generalisations about the Indian business culture.

If you are visiting India for meetings, the following tips may be useful across the country.

Written communication

Calls and meetings are more prevalent than written detailed communication and calling on mobile phones is considered normal (landline phones are not so popular now). Also, texting and messaging on apps (such as Whatsapp) are used regularly for business communication nowadays.

Language

English is the language of business in India and Indians are hesitant in saying "no", as it is often considered offensive, and instead they prefer saying "will try" or "will see". Also, asking too many questions or trying to elicit a clear response can often be counter-productive.

Holidays

India has more bank holidays than many other countries and most of these are religion based (lasting more than a couple of days) and sometimes specific to certain regions. So do check the Indian holiday calendar before arranging a meeting, and avoid meetings in the week which has a big festival (eg Diwali, Holi or Ganesh Chaturthi).

Not only about work

India is well-known for its hospitality and food and it is quite common to be invited home by your Indian counterpart for a meal with the family. It is considered polite to talk about family, even during business meetings. And it is popularly known about India, if you win an Indian's trust, they are likely to go out of their way to help.

Greetings

Etiquette typically allows a handshake. Namaste is a common greeting in India but less used during business meetings.

Generalisation

Given India's vastness and diversity, be cautious of generalising the Indian business culture.



Our top four tips for India are as follows:

1

Long-term planning

Achieving sustainability and profitability in operations will require a longer term outlook and planning

2

Presence of senior personnel

Presence of senior personnel (both in terms of age and experience) on the ground is helpful to ensure swifter progress

3

Bespoke Indian business plan

Replicating a business plan from another country is likely not to work in India and therefore international investors must look at creating a bespoke India focussed business plan after having completed an initial thorough research. Overtime *Indianising* your India operations will likely bring more efficiency

4

Wider commitment to India

You may find local integration to be much easier if your investment has, or comes with, elements of wider commitment to India

Guidance

Approvals

Dealing with Indian regulators can be a time-consuming process, although the current Indian government has undertaken and is continuing to undertake measures to ensure that there is an efficient regulatory environment.

Corporate governance

Whilst most of the Indian companies generally follow sophisticated business practices, there are instances of less developed financing reporting, regulatory compliance and corporate governance.

Foreign investment/FDI laws

India has undergone a significant relaxation of its foreign investment (or FDI) laws over the last few years, most recently in August 2017 and January 2018. Under the new regime, FDI approval applications are being processed at a much faster pace and the list of sectors/activities where prior government approval is required has been significantly reduced. The direction of travel of the Indian government has been towards significant de-regulation in order to promote and accelerate further international investment into India.

Indian judicial systems

The senior judiciary in India is well-respected and comprises highly regarded judges and advocates. However, the significant backlog of cases in the Indian judicial system, which stands at an astounding 24 million, increases the risk of litigation in India when compared with developed economies. A dispute in Indian courts can take 10 years or more to reach judgment, and enforcing an international arbitral award can also be lengthy and challenging. Also, given India's vastness and diversity, the style and availability of the High Courts and their local bar can vary away from the main commercial centres.

For further details, please see [Our Guide on India Related Commercial Contracts](#) and <http://hsfnotes.com>

BIT changes

In 2016-17, India decided to terminate bilateral investment treaties (BITs) with close to 60 countries. India's actions sent mixed messages at a time when the Indian government was making renewed efforts to attract inbound investment with its 'Make in India' campaign, and when outbound investment by Indian companies continued to increase into both developed and developing economies. Until new arrangements are

agreed between India and the relevant counterparty country, new investments by international investors into India, and by Indian investors into other countries, will cease to receive BIT protections, which is unattractive for international investors.

Tax

Whilst the previous government enacted a legislation which proved certain challenges for international investors (as well as Indian investors), no new legislation has been introduced under the current government.

Intellectual property

India is making vital improvements to its IPR legislations and enforcement procedures

Over-leveraged/distressed assets

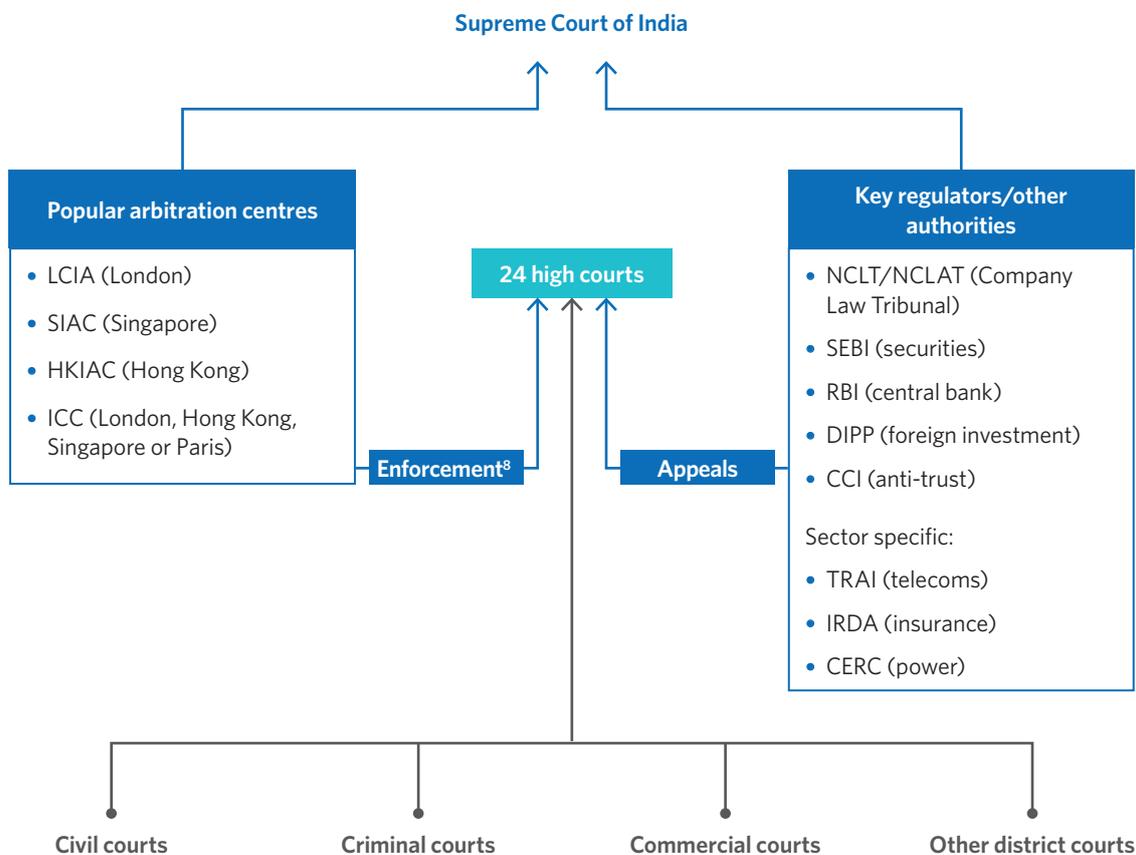
Some of the Indian businesses have been victims of over-leveraging resulting in creation of distressed assets. Whilst a number of promoters of such Indian businesses have focussed on the sale of their non-core assets and of strategic stakes to raise funds to reduce borrowings, at a macro level the Indian government has recently introduced the Insolvency and Bankruptcy Code 2016 with the aim to make insolvency and bankruptcy procedures more streamlined and efficient (which were previously spread over a number of Indian statutes that often did not generally produce desired outcomes). For further details, please see our bulletin [here](#).

Summary of key pitfalls

- Lack of rigorous due diligence on the target
- Non-alignment of incentives of the promoter/management of the target
- Poor/ineffective corporate governance structures of the target
- Failure to track the covenants and undertakings in effect during the life cycle of the investment
- Lack of consideration of:
 - structuring issues, in particular in relation to debt; and
 - the evolving tax aspects
- Governing law and dispute resolution



Indian judicial structure



8 India is a party to the New York Convention (recognition and enforcements of foreign arbitral awards)

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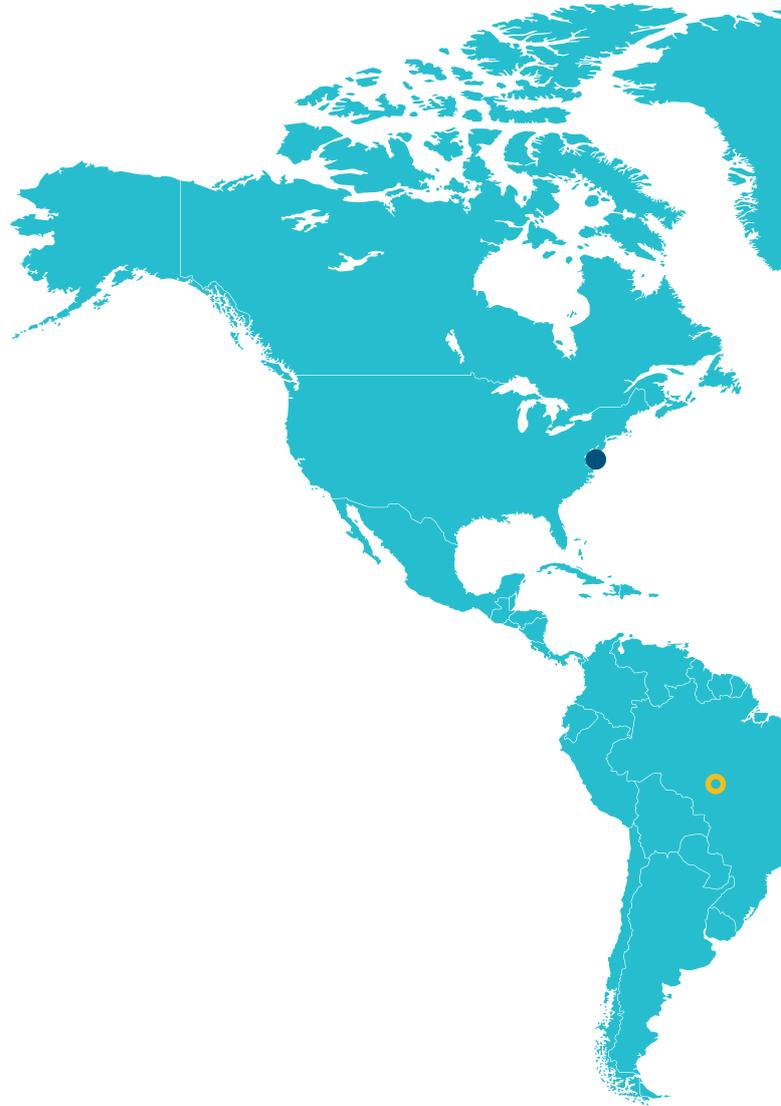
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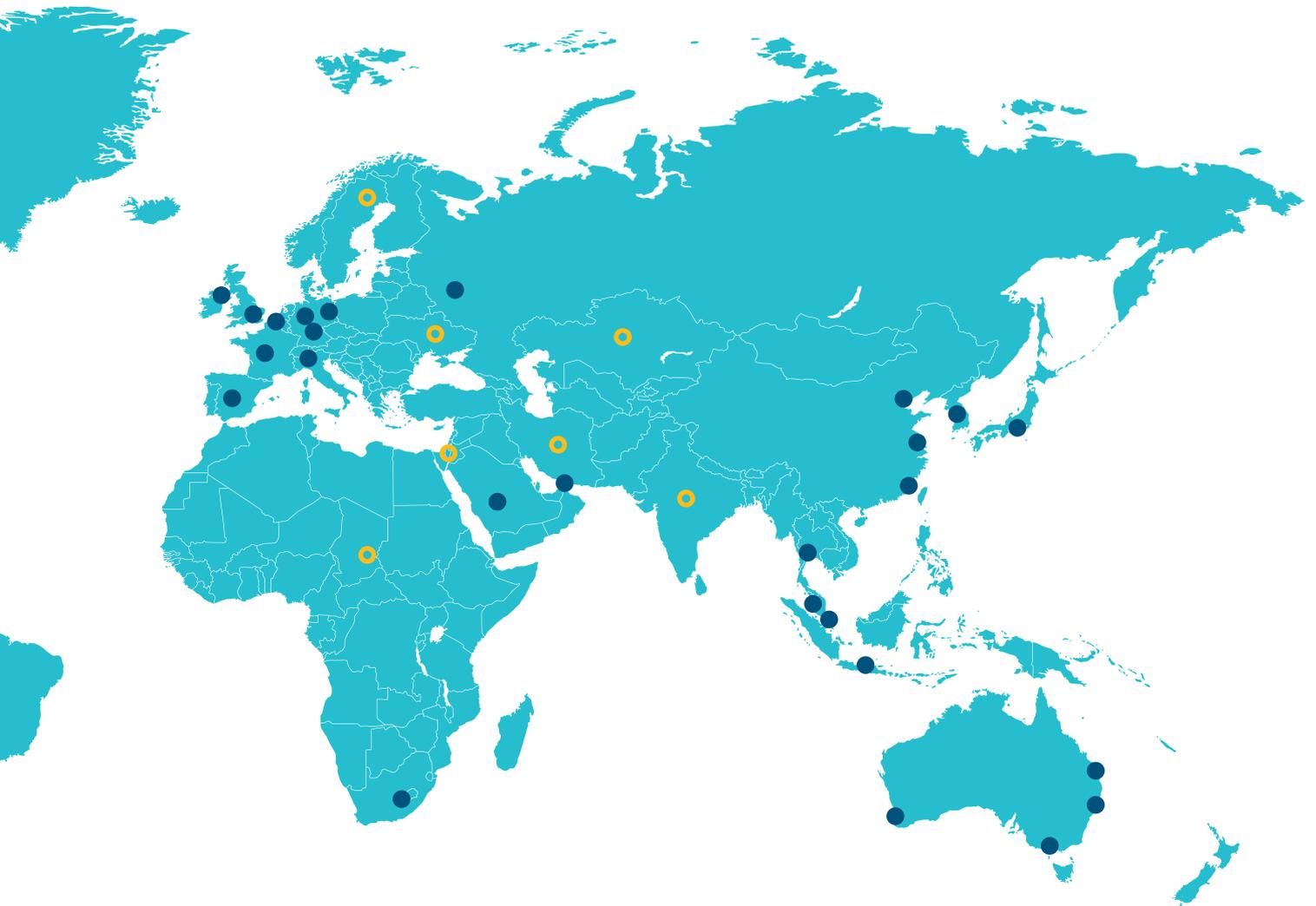


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