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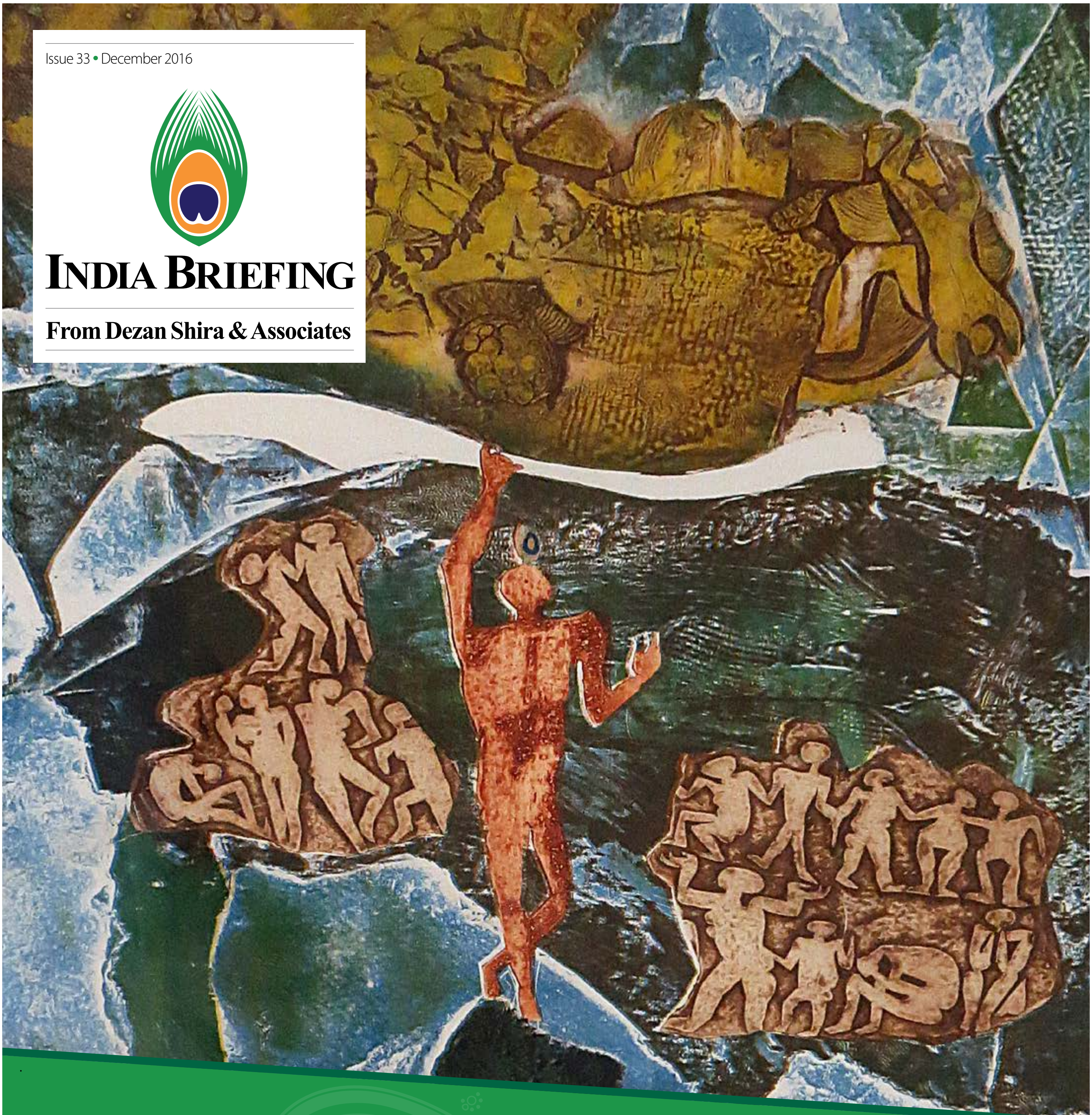

Taking Advantage of India's Improving Business Environment

Introduction

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India is currently one of the few bright spots among the world's emerging economies. A high GDP growth rate, forecast at 7.6 percent in 2017, reflects the Indian government's commitment to economic and institutional reform, infrastructural development, and improving the country's business competitiveness. Over the last two years, a positive narrative is emerging out of India, one that speaks of strong economic fundamentals, growing living standards, a clear federal vision, and a much more internationally engaged government. These have in turn led to a jump in FDI inflows, making India one of Asia's most competitive investment destinations.

Among the reasons for this resurgent economic optimism are various new federal initiatives and legislative developments that target the revival of previously lagging sectors, institutionalize regulatory efficiency, and work towards banking and tax reforms. While India's 'doing business' rankings themselves may show slight improvement, the country's overall business environment has markedly improved. Today, states in India are encouraged to compete for foreign investment, and are publicly ranked by the government based on their performance on fixed parameters.

In this issue of India Briefing Magazine, we look at the important regulatory reforms, policy initiatives, and increased incentives for investing in the Indian market that have emerged since Prime Minister Narendra Modi took office in 2014. Foreign companies should take note of the pro-business agenda of the current government and stay updated with the new reforms and sectoral policies that might ease their entry, investment, and expansion of business operations in India.

With its growing team of specialists, Dezan Shira & Associates India can provide its clients with legal, tax, and operational advisory services. We hope that this issue of India Briefing will inform readers about India's improving business environment and the increasing scope of advantages it offers to foreign investors.

With kind regards,

Rohit Kapur

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This Issue's Topic

Taking Advantage of India's Improving Business Environment

Table of Contents

Online Resources from India Briefing

- An Introduction to Doing Business in India 2016
- Pre-Investment Due Diligence in India
- Expecting in India: Employee Maternity Pay and Leave
- Simplifying Personal Tax Filing in India – Digital Solutions and New Initiatives by the Government

Online Resources on Emerging Asia

- Knowledge Sharing Platform
- Indirect Taxation Across ASEAN
- The Changing Landscape of China's Manufacturing Sector
- Vietnam Announces 7.3 Percent Wage Hike from 2017

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Policy Initiatives Under the Modi-Led Government

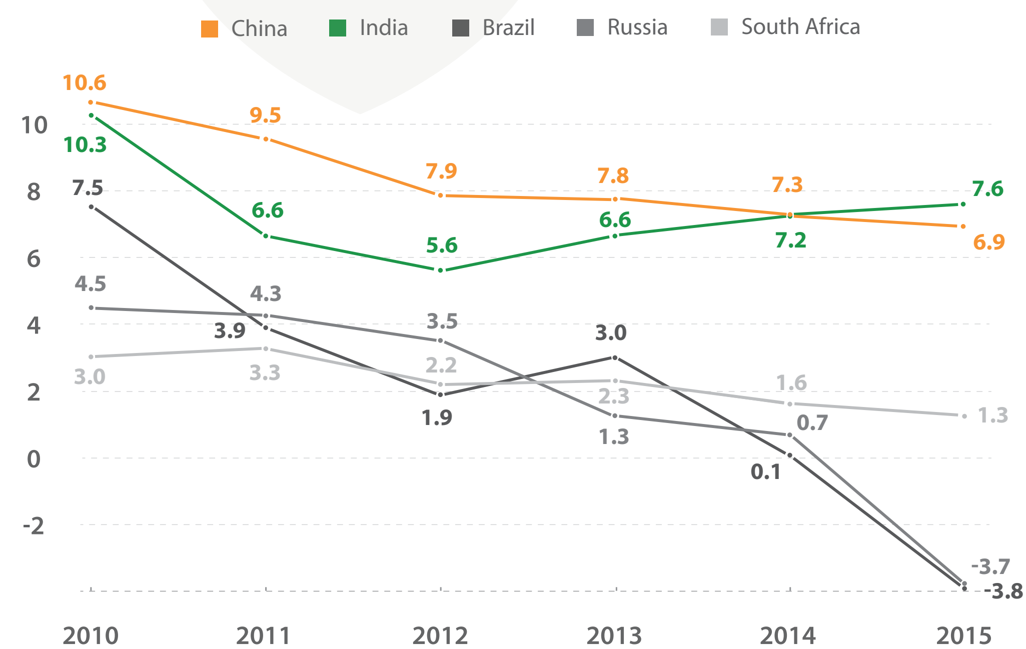
By Dezan Shira & Associates Delhi Office
Editor: Melissa Cyrill

India is projected to grow at 7.6 percent in 2017 on the back of a range of structural reforms signalling the commitment of the current government under Prime Minister Narendra Modi to create a more business friendly policy environment. Illustrating this picture of rapid economic growth is the fact that India's GDP (US$ 2.30 trillion) recently surpassed that of the UK (US$ 2.29 trillion) - when it was forecast to overtake the UK economy only by 2020. Corresponding to the government's reforms agenda, various economic programs have been launched over the last two years. The most important among these initiatives are mentioned below.

Make in India

Launched on September 25, 2014 as Prime Minister Narendra Modi government's flagship economic program, Make in India, is designed to establish India as a leading manufacturing hub. To achieve this goal, Make in India actively encourages foreign investments, relaxing the FDI policy for 25 focus sectors. These include automobiles and auto components, electronics and electrical machinery, construction, renewable energy, mining, roads and highways, textiles and garments, and health and wellness, among others. The Department of Industrial Policy and Promotion (DIPP) oversees

GDP growth in annual percentages



Source: World Bank

the Make in India program and has set into motion a policy that incentivizes states to compete for large investment projects. The DIPP also publishes public rankings for the states, tracking their relative 'ease of doing business' performance.

Digital India

In 2015, the government launched the Digital India program with a vision to transform India into a digitally empowered society and knowledge economy. Five main strategies are meant to take the country closer to this goal, namely establishing broadband highways; universal access to mobile connectivity; public internet access; e-governance; eKranti (electronic delivery of services) citizen communication; electronics manufacturing; jobs growth in the IT sector; and early harvest programs such as Wi-Fi in universities and electronic alerts regarding weather and natural disaster updates. Further, the central government has allowed states to identify additional state-specific projects that are socioeconomically relevant.

Skill India

India has a unique demographic dividend. The country presently has about 860 million workers and is set to dominate the Asia-Pacific working-age population by 2050. At the same time, India is a difficult country to source the skilled labor required by its accelerated economic growth. Confronting this challenge, the Skill India campaign aims to train graduates and workers in the specific skills needed by industry shortages. The goal of the program is to train 400 million people by 2022 through the National Skill Development Corporation. Important schemes under the Skill India mission are the US$226 million Pradhan Mantri Kaushal Vikas Yojana (PMKVY) and the Skill Loan scheme. Additionally, the government has formulated a National Policy for Skill Development and Entrepreneurship.

Startup India

India is the third largest base for tech startups in the world, and also ranks among the top five for both tech and non-tech startups combined. This is why the government views the startup sector as an important driver of job creation and economic growth in the country. In an effort to promote and better regulate the burgeoning sector, a new national policy called the Startup India Action Plan was unveiled in early 2016. Incentives under the plan include regulatory and tax benefits for startups for three years, capital gains tax exemption, access to funds from the government's US$1.5 billion (Rs 100 billion) corpus, reduction in patent registration fees by 80 percent, simpler entry and exit norms, protection of intellectual property rights (IPR), and facilities to promote entrepreneurship among women and SC/ST communities.

Smart Cities Mission

This is an urban renewal and retrofitting program by the government that aims to develop the infrastructure of 100 cities, making them citizen friendly and sustainable. The Ministry of Urban Development kickstarted the program by shortlisting 20 cities in January, followed by 13 more cities in May, and 29 cities in September via a competitive selection process. The program opens up a myriad of investment prospects in the infrastructure sector as the government envisions public-private partnerships (PPPs) and municipal bonds to meet the funding gap. It is planned that several services, typically provided by governmental bodies, will be licensed to private companies in these cities. The core development focus of India's smart cities will be adequate water supply, assured electricity supply, sanitation and solid waste management, efficient urban mobility and public transport, affordable housing, robust IT connectivity, e-governance mechanisms, safety and security of citizens, health, and education.

Aadhaar or Unique Identification Number

Aadhaar is a 12-digit unique identification number issued by the Indian government to every individual resident of India , which serves as proof of identity and address. Under the Aadhaar Act of 2016, the government is linking all essential government services and benefits schemes to the Aadhaar identification. More importantly, the Aadhaar identity card is now considered as an essential document for KYC (know-your-customer) verification and legal identification. account, secure a digital life certificate for automatic pension transfer, access LPG subsidy, and for direct provident fund disbursal into their account.

Regulatory Reforms Since the 2014 Election

By Dezan Shira & Associates Delhi Office
Editor: Pritesh Samuel

The passage of a variety of reforms in recent years reflects the government's continued push to transform the India's business environment and thereby improve access for foreign investors. Here, we take a look at the key reforms and laws passed and in development since Prime Minister Narendra Modi's government came into power in 2014.

Insolvency and Bankruptcy Code, 2016

The Insolvency and Bankruptcy Code was introduced in November 2015 and was passed in parliament in May 2016. The Code repeals the Presidency Towns Insolvency Act of 1909 and the Provisional Insolvency Act of 1920, while also amending other laws, including the Companies Act of 2013, Recovery of Debts Due to Banks and Financial Institution Act of 1993, and the Sick Industrial Companies (Special Provisions) Repeal Act of 2003. The Code assesses the viability of the debtor and stipulates a plan for either its revival or speedy liquidation.

Real Estate Act, 2016

The Real Estate (Regulation and Development) Act amends the original Real Estate Bill, 2013 and became law on May 1, 2016. All state governments will be required to implement the Act's rules and regulations, and the full Act is to come into force from May 1, 2017. The 2016 Real Estate Act aims to protect the interests of purchasers by promoting transparency, accountability, and efficiency in construction and execution of real estate projects by promoters. Among other provisions, it ensures that promoters will be held accountable for not registering with the Real Estate Regulatory Authority or not providing enough information on the project. In addition, brokers who help with the sale and purchase of real estate will come under the Act.

Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015

This Act aims to expedite the justice delivery system addressing commercial disputes. It came into effect on October 2015. The Act sets up a Commercial Court at the district level and establishes a commercial division in the High Court. The term 'commercial dispute' is also clearly defined to include all disputes dealing with commercial transactions regarding partnership agreements, joint venture agreements, intellectual property rights, shareholder agreements, insurance, etc. Under the Act, disputes over matters worth more than US$148,000 (Rs 10 million) will be adjudicated by the Special Commercial Courts. All international commercial arbitrations will also be brought under the High Court. The Act lays down strict timelines to ensure the prompt resolution of disputes within 90 days, among other advantages.

The Arbitration and Conciliation (Amendment) Ordinance, 2015

The Arbitration and Conciliation Act, 1996 was amended by the Arbitration and Conciliation (Amendment) Ordinance, 2015. One of the main changes made was with respect to restrictions on arbitrators. The amended Act states that companies can no longer appoint their own employees as arbitrators. Arbitration cases have to be resolved within a year, with an option for a six month extension. For international arbitration, the courts lower than the High Court do not have any jurisdiction. Both parties can also mutually settle disputes based on written pleadings and submission of documents. If a settlement is being approached, the tribunals have to finalize it within six months. As far as possible, oral hearings must be done daily to expedite the resolution process.

e-Commerce

The e-commerce industry continues to expand as more Indians shop online and move towards cashless transactions. With major online companies like Flipkart and Amazon offering attractive discounts, the industry is expected to grow at an annual rate of 51 percent. Most recently, the government clarified its policy on FDI in online retail. Consumer businesses that operate as marketplaces – which refers to companies that act as facilitators between buyers and sellers on a technology platform – are allowed 100 percent FDI under the automatic route. While the sector can be further liberalized, the government has at least formalized its policy for the e-commerce sector in a transparent manner, unlike previously, when companies worked under assumptions and without clear regulatory oversight. India's e-commerce sector has attracted a significant amount of FDI and is an opportunity for foreign investors. New research shows that India's e-commerce market could overtake that of the US by 2034, going head-to-head with China. This is why investors cannot afford to ignore the multi-fold growth potential of India's digital market segment.

National Intellectual Property Rights (IPR)

The government announced a new IPR policy in May of this year. As per the notification, national laws on patents, trademarks, and IPRs will now be shaped by the overarching policy, which intends to safeguard the interests and rights of owners and tackles copyright infringement. The Department of Industrial Promotion and Policy (DIPP) will regulate intellectual property rights in India and the national IPR policy will be reviewed every five years. According to the new policy, online registration of trademarks will be permitted. This is because the government wants to expedite the process of trademark and patent examination to just one month by 2017. The policy scope has been expanded to include films, music, and industrial drawings.

Coal Mines (Special Provisions) Bill, 2015

The government passed the Coal Mines (Special Provisions) Bill in May 2015 allowing the e-auction of coal blocks. The Bill allows the winning bidder the rights, title, and interest over the land and mining infrastructure together. The bidding process is also made transparent through the law. The Coal Mines Bill is important to the central government as it looks to develop the eastern part of the country that is rich in mineral deposits. So far the government has held three auctions with both power and non-power companies participating. While the auctioning of mines is for national use, the government is expected to later allow private companies to mine commercially. As of now, the mining sector in the country is dominated by the state-run Coal India Ltd.

Incentives for Investing in India

By Dezan Shira & Associates Delhi Office
Editors: Melissa Cyrill & Pritesh Samuel

World Bank's Doing Business Report

The Doing Business Report (DBR), which was launched in 2003, is an annual survey-based report that aims to measure the actual costs of doing business in 185 countries. The report produces a quantitative assessment of each country's regulations for starting a business, dealing with construction permits, employing workers, registering property, accessing credit, protecting investors, paying taxes, trading across borders, enforcing contracts, securing an electricity connection, and closing a business. Based on their scores in each parameter, the report ranks the countries surveyed, according to their ease of doing business, relative to each other's performance.

India's overall 'ease of doing business' ranking for 2017 shows only marginal improvement, moving to 130th from 131st last year. Responding to the muted impact of its reform initiatives, the government announced that a transparent feedback mechanism will be put in place to monitor the gaps between policy formulation and implementation. The figures on the next page show a breakdown of the World Bank's assessment for 2017.

The World Bank recognizes the following regulatory achievements in India this year:

- Establishment of an electronic system for companies to pay employee insurance contributions.
- Easier procedures for exporting and importing.
- New arbitral mechanisms for resolving commercial disputes.

Investors gauging India's business competitiveness based on the DBR should take note of some of the report's methodological limitations. India is a federal democracy, and regulations differ across the country according to respective state laws and institutions. Yet, the DBR only evaluates the capital Delhi and Mumbai (Maharashtra state), which do not accurately represent the country's business conditions overall. In fact, Delhi and Mumbai belong to the lower performing states in India as per the joint assessment of the Department of Industrial Policy and Promotion (DIPP) and the World Bank. Results from their latest survey of Indian states show that 16 out of 29 states have implemented more than 75 percent of the 340 reforms proposed by the DIPP, covering the following categories – single-window systems, tax reforms, construction permits, environment and labor reforms, inspection reforms, access to information and transparency, and commercial dispute resolution enablers.

Lastly, the World Bank's Doing Business Report acknowledges only those reforms that were reported by business intermediaries as being implemented by June 1, 2016. This means that a host of measures implemented since then have not yet been factored in and should boost India's rankings in the near future.

Ease of Doing Business Global Rankings, World Bank Doing Business Report 2017

Country	2016	2017	Change
RUSSIA	36	40	▼
SOUTH AFRICA	72	74	▼
CHINA	80	78	▲
NEPAL	99	107	▼
SRI LANKA	107	110	▼
BRAZIL	121	123	▼
INDIA	131	130	▲
PAKISTAN	138	144	▼
BANGLADESH	174	176	▼

India's Ranking on Business Parameters

Parameter	2016	2017	Change
PROTECTING MINORITY INVESTORS	8	13	▼
GETTING CREDIT	42	44	▼
GETTING ELECTRICITY	70	26	▲
TRADING ACROSS BORDERS	133	143	▼
RESOLVING INSOLVENCY	136	136	—
REGISTERING PROPERTY	138	138	—
STARTING A BUSINESS	155	155	—
PAYING TAXES	157	172	▼
ENFORCING CONTRACTS	178	172	▲
DEALING WITH CONSTRUCTION PERMITS	183	185	▼

Corruption Perception Index (CPI), Transparency International				
Country	2014		2015	
	Rank	Score	Rank	Score
RUSSIA	136	27	119	29
SOUTH AFRICA	67	44	61	44
CHINA	100	36	83	37
NEPAL	126	29	130	27
SRI LANKA	85	38	83	37
BRAZIL	69	43	76	38
INDIA	85	38	76	38
PAKISTAN	126	29	117	30
BANGLADESH	145	25	139	25

Liberalized FDI Regime

The Modi-led government further liberalized India's foreign investment climate in 2016 in an effort to build investment momentum and grow the country's domestic manufacturing capabilities. So far, two rounds of reforms (November 2015 and June 2016) under the present government have eased the restrictions on the limit of FDI permitted, increased the number of sectors allowing 100 percent FDI, and put many sectors on the automatic route for FDI approval.

Given Modi's ambitious economic reform agenda, the government views foreign investments as a critical source of non-debt financial resources for India's growth needs. High inbound investments are therefore encouraged in most sectors and are expected to boost employment prospects and infrastructure development. In fact, the government also incentivizes foreign investment in sectors like construction and expansion of roads, highways, railways, and ports through greenfield and brownfield projects.

Further, the Union Cabinet has approved a scheme allowing the grant of Permanent Residency Status (PRS) to foreign investors based on a minimum investment of US$1.5 million (Rs 100 million) within 18 months or US$3.6 million (Rs 250 million) within 36 months.

Automatic & Government Routes

India offers two routes for allowing foreign investment – the automatic route (which does not require pre-approval by the government) and the government approval route. Approvals are done by the Foreign Investment Promotion Board (FIPB). Recently, the government expanded foreign investment limits under the automatic route for several sectors, raising it to 100 percent FDI in certain instances. If FDI exceeds the prescribed limit in the sector, it must go through the government approval route for permission to proceed.

In the next page, we list a few of the sectors under the automatic and government approval routes as of June 2016.

Comparing India's Automatic Route and Government Route for FDI

Automatic Route	
Sector	**Investment Permitted**
Broadcasting Carriage Services	100%
Airports	100%
Air Transport Service	100%
Ground Handling Services	100%
Maintenance and Repair Organizations; Flying Training Institutes; and Technical Training Institutions	100%
Construction Development	100%
Industrial Parks	100%
Trading – Wholesale & B2B e-commerce	100%
Duty Free Shops	100%
Railway Infrastructure	100%
Credit Information Companies	100%
Non-Banking Finance Companies	100%
Multi-Brand Retail	51%
Infrastructure Company in the Securities market	49%
Insurance	49%
Pension	49%
Power Exchanges	49%
Telecom Services	49%
Government Route	
Sector	**Approval Required**
Mining and mineral separation of titanium bearing minerals and ores	100%
Defence	Required beyond 49%
Publication of facsimile edition of foreign newspapers	100%
Print Media - Publishing of newspaper and periodicals dealing with news and current affairs	Limited to 26%
Print Media - Publication of Indian editions of foreign magazines dealing with news and current affairs	Limited to 26%
Air Transport Service	Required beyond 49%
Satellites – Establishment and Operation	100%
Telecom Services	100%
Trading – Single Brand Retail Trading	Required beyond 49%
Banking – Private Sector	Required beyond 49%
Banking – Public Sector	Limited to 20%
Private Security Agencies	Required beyond 49% & limited to 74%
Trading - Multi Brand Retail Trading	Limited to 51%