



EVERYTHING MATTERS

Doing Business in India

The Legal Framework

Bremen

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India: a booming (?) country

- Largest democracy in the world; population of 1.2 bn
- Growth rates 2010/2011: 7%; 2011/2012: 7%; 2012/13E: 7%
- Growth rates will exceed those of China
- Demographic trend:
 - Average age: 25 years
 - 25% of the world's population below 25 lives in India
 - 50% of the population below 25 years
 - 5.5% of the population above 65 years
- Third largest economy in the world in 2050 (today: 10th)
- Fifth largest consumer market in 2025 (today: 12th)
- Household income: doubling within the next 13-14 years

- Middle class grows by 1 million every month
- Business language: English
- Education is a key asset – IT / technology / Science play an important role
- Foreign direct investment ("FDI") into India: USD 24bn in 2010/2011; USD 32 bn in 2011/2012 – the EU is India's largest trading partner
- UNCTAD World Investment Report (2012): ranked no. 3 among preferred investment destinations for international companies

- M&A in India (2011): USD 26bn, - 43% compared to previous year –
 - Outbound: USD 9.9 bn
 - Inbound: USD 9.99 bn
 - Domestic: USD 6.1 bn
- Issues: increasing costs (HR cost: 10-15% p.a.), inflation
- Slow pace in further liberalisation of economy
- Corruption
- Efficiency of administration and judiciary
- Infrastructure

India's economy - the developments since 1947

- Command economy, largely following socialist principles including nationalisation of companies, strict licensing etc. (1947-1990)
- Start of economic liberalisation and globalisation of the Indian economy when forex reserves almost at nil (1991-2000)
- Further liberalisation (since 2000)
- 2010: Consolidation of FDI Policy
- 2012: Important step: retail

□ India provides huge investment opportunities, including in the following sectors:

□ Infrastructure:

- Power
- Telecommunications
- Roads
- Ports
- Civil Aviation & Airports
- Petroleum & Natural Gas
- Urban Infrastructure

□ Services:

- Banking & Financial Services
- Insurance
- Real Estate & Construction
- Retail
- Tourism

□ Manufacturing:

- Metals: Steel & Aluminium
- Textiles & Garments
- Electronics Hardware
- Chemicals
- Automobiles
- Auto Components
- Gems & Jewellery

- Manufacturing (cont.):

- Food & Agro Products

- Natural Resources:

- Coal
- Metal Ores
- Oil & Gas Exploration

- Knowledge Economy:

- Pharmaceuticals & Biotechnology
- Healthcare
- IT & IT-Enabled Services

- Defence

□ Intellectual Property:

- Paris Convention and TRIPS

- Modern IP laws:

 - Copyright Act, 1957

 - Patents Act, 1970

 - Trademarks Act, 1999

 - Designs Act, 2000

- IP owners entitled to civil and criminal remedies

□ Employment Laws:

- Laws mainly regulate blue collar sector; white collar sector: contractual

- Generally not as strong as European employment laws, but in particular PSUs have strong labour representation

□ Tax -

- Corporate tax: 40-45% for non-resident companies (plus dividend tax in the hands of the distributing domestic company)

- Recent developments:

- Taxation of off-shore transactions: new approach by the Indian tax authorities? - the Vodafone Case

□ Competition Law

- Competition Act, 2002 replaces MRTP Act
- Modern competition law; first decision issued by the Competition Commission of India
- Provisions concerning anti-competitive agreements and abuse of dominant position in force
- Merger control rules in force

□ Dispute Resolution

- Developed court system
- But: long proceedings; therefore: arbitration

- Dispute Resolution (cont.)
 - Arbitration in relation to India transactions: concerns of international businesses and arbitration experts
 - New proposals to reform the Indian arbitration framework
 - Careful drafting of arbitration clauses required

Investing in India: the practice (?)



source: The Economist "One more push" 23.07.2011

Jon Berkeley

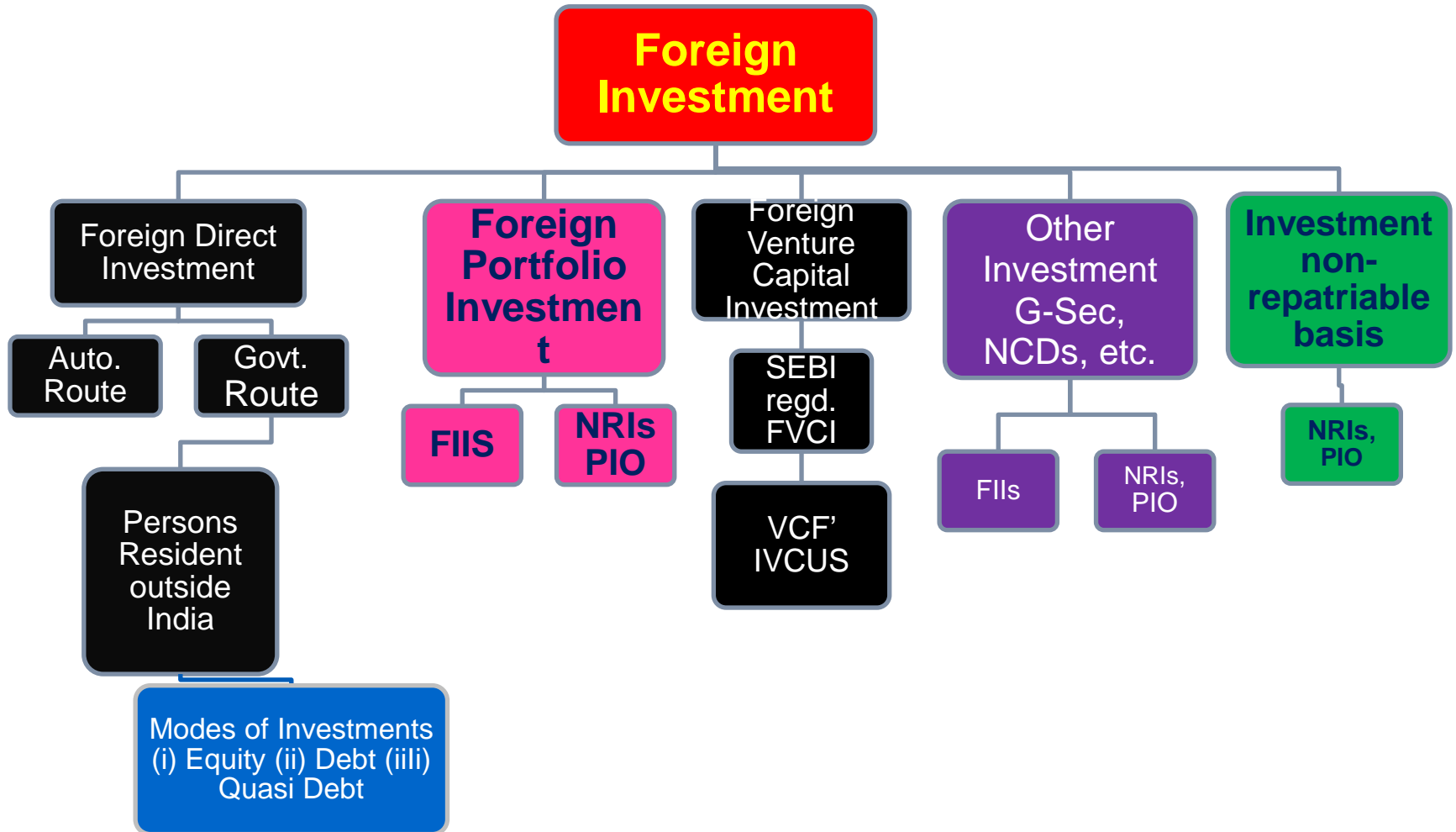
□ Purpose:

- Controlled market liberalisation
- Protection of Indian interest
- Protection of minority interests
- Controlling the economy

□ Consolidated FDI Policy/April 2010:

- All Press Notes/Circulars/Policies etc. are now consolidated (updates every six months)

Foreign Direct Investment Policy (2)



- Three FDI categories:
 - Prohibited Category, e.g.,
 - Atomic energy
 - Lottery
 - Gambling
 - Betting
 - Production of Cigarettes

 - Automatic Route
 - Automotive
 - IT
 - Generally manufacturing sector (with few exceptions in sensitive areas)

 - Approval Route
 - Retail (single-brand/multi-brand)
 - Banking/financial services
 - Telecommunication

- Market entry strategy depends on various factors, including
 - industry sector
 - relevant market conditions
 - existence of suitable partners
 - financial resources of partner
 - HR resources
 - Specific circumstances

- There is no general rule as to which market entry option should be chosen.

- There are positive and not so positive examples.

- Business activity
 - Wholly owned Subsidiary
 - Joint Venture
 - Acquisition of stake in Indian company (e.g., listed companies)
 - Branch Office
 - Project Office

- Representation
 - Liaison Office

□ Joint Venture

□ Advantages:

- shared (and limited) liability
- Market penetration
- Experience and expertise of Indian JV Partner

□ Challenges:

- Maximum/minimum prices fixed upon exit
- Coordination with JV Partner
- Capital increases/growing the business
- Controlling from abroad

- Success factors:
 - Selection of JV Partner
 - Due Diligence
 - Clear agreements
 - Reflect shareholders agreement in Articles of Association
 - Veto rights
 - Non-compete agreements (enforcement may be problematic)
 - Clear strategy for capital increases
 - Exit mechanism
 - Proper dispute resolution clause

The real life: setting up a Joint Venture (1)

- Joint Ventures: main market entry option
- The founding procedure:
 - Selection of JV Partner: common goals and philosophy
 - Memorandum of Understanding/Letter of Intent
 - Discussion and agreement on all basic features to avoid misunderstanding/disagreement at a later stage
 - Due Diligence
 - Negotiation of the JV Agreement and related agreements
 - Creation of the JV company, obtaining licenses etc.
 - Amendment of Articles of Association of the JV Company

The real life: setting up a Joint Venture (2)

- Important contract clauses in JV Agreement:
 - Board of Directors/Shareholder Meeting: quorum
 - Protection of minority shareholders: Reserved Matters
 - Deadlock
 - Exit mechanisms
 - Non-compete obligations
 - Intellectual Property
 - Dispute resolution clause

The real life: setting up a Joint Venture (3)

- The mostly used company form: Private Limited Company - these are some of the most important features:
 - Minimum capital: INR 100,000 (approximately EUR 1,700)
 - Limitation on ability to transfer shares
 - Minimum of two and maximum of 50 shareholders
 - Minimum of two directors
 - Not open to the public
 - P&L not publicly available (although must be filed)

The real life: setting up a Joint Venture (4)

- The daily life of a Private Limited Company:
 - Board Meetings
 - Shareholder meetings
 - Indian GAAP - soon IFRS(?)
 - As of INR 50m paid up capital: full time Company Secretary
 - Directors' liability
 - Generally less compliance obligations than in Public Companies

□ Term Sheets:

- Take your time
- Indian laws are complicated
- Involve advisors at an early stage

□ Due Diligence:

- Generally recommended, also in JV situations since the Indian partner often contributes assets
- Protection against reputational loss

□ Public approvals/permits:

- Result not always predictable
- Problem: investors are too prudent or too optimistic - finding the right balance is essential

- Cultural Differences:
 - A decisive subject
 - Personal relationships
 - Western vs. Indian leadership styles
 - Binding agreements
 - Communication
 - Religion and spirituality
 - Respect/pride
 - Accepting criticism

Thank you very much for your attention!



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Daniel regularly advises non-Indian companies on their investments – and disputes – in India, as well as Indian investors in Europe. As part of his Indo-European work, he has acted for and advised large private companies as well as governments and governmental institutions. Daniel has extensive experience in advising and representing clients in international disputes, including arbitration and mediation, as well as in EU and German competition law.

Daniel is a German- and English-qualified lawyer and has studied law and mediation in the UK and Germany. Daniel is also the President of the Indo-German Lawyers Association, the Official Representative to the European Union of the Indo-German Chamber of Commerce and a Board Member and Co-Head of the Legal and Corporate Committee of the Europe India Chamber of Commerce. He is a lecturer on Indian business law at the University of Applied Sciences in Graz (Austria) and regularly publishes on Indo-European legal topics. Daniel is a frequent speaker at seminars and conferences.