



# Strategies for doing business in India

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## A BRIEF OVERVIEW

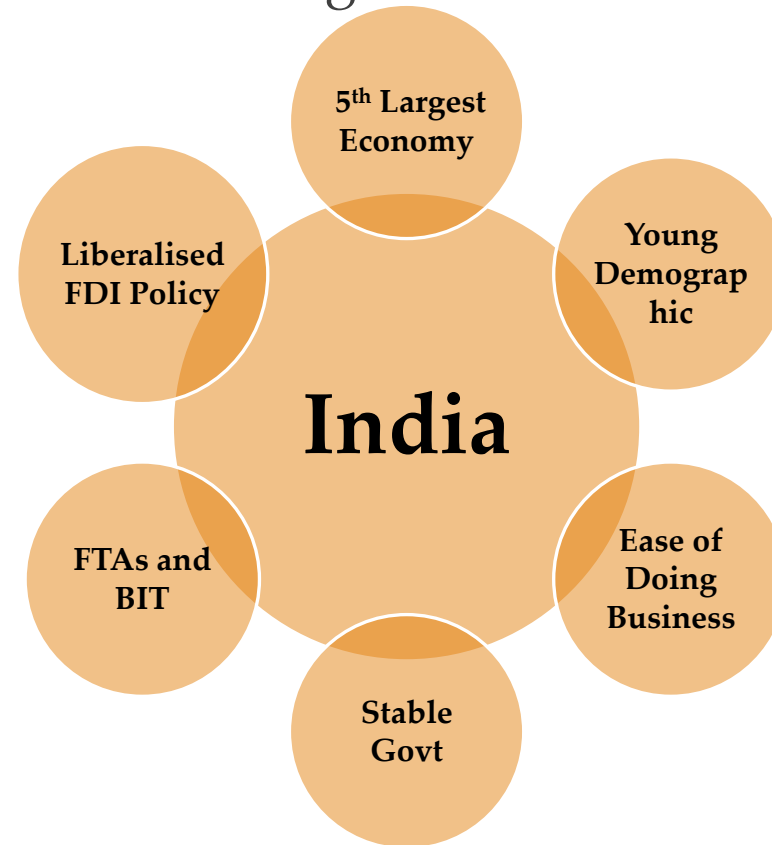
November 25, 2024

Presentation by : Mr. Suhaan Mukerji

# Introduction

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- India – A key destination for foreign investment



# Investment Trends in India

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- Foreign Direct Investment (“FDI”) inflow into India in the last decade (2014-2024) has been 690 USD billion. Significant increase in the last decade compared to any other time period.
- Top 5 sectors receiving FDI Inflow in FY 2023-24 - Services, Computer Science and Hardware, Trading, Automobile and Telecom
- From April 2000-June 2024, India's service sector attracted the highest FDI equity amounting to USD 113.49 billion
- Top 5 states with FDI Inflow in FY 2023-24 – Maharashtra, Karnataka, Gujarat, Delhi, Tamil Nadu.
- Investment from Czech Republic in the last decade – Automobile, Energy, Metallurgy, etc.

# Free Trade Agreements & India

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- India has signed 14 FTAs since 2014.
- List includes – UAE, Australia, Japan, Singapore, Malaysia, Mauritius, European Free Trade Association (Iceland, Liechtenstein, Norway, and Switzerland), ASEAN (Vietnam, Indonesia, Thailand, Philippines etc.) South Asian FTA (Sri Lanka, Bhutan, Nepal etc.)
- Negotiations ongoing with – UK, Oman, and EU.
- Average tariff reduction in FTAs ranges between 80% and 100% on various goods.
- FTAs primarily focused on Automobile, Pharmaceuticals, Textiles and Apparel sector.
- Strategic FTAs include -
  - India EFTA FTA - Includes provisions for technology cooperation in emerging areas like green technology and digital innovation.
  - India-UAE CEPA – Focus on food manufacturing and food processing facilities.
  - India-Australia FTA – Provides for assured access to critical minerals for EV manufacturing.

# Ease of Doing Business Measures

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- Make in India Initiative - Aims to boost manufacturing and attract FDI
  - Targets 27 sectors (Automobile, Pharmaceuticals & Medical Devices, Food Processing, IT and ITes services etc.) to enhance job creation and innovation
- Production Linked Incentive (PLI) Scheme - Offers financial incentives on incremental sales for manufacturing in India across 14 sectors
  - Sectors– Food products, Mobile manufacturing, Medical devices, telecom products etc.
- Ease of Doing Business (EoDB) Reforms - India improved its EoDB rank from 142 in 2014 to 63 in 2019.
  - Focus on simplifying regulations and digitizing processes
- Business Reforms Action Plan (BRAP) - Introduced by GoI to promote competitive federalism
  - States ranked on reform implementation for better business environments

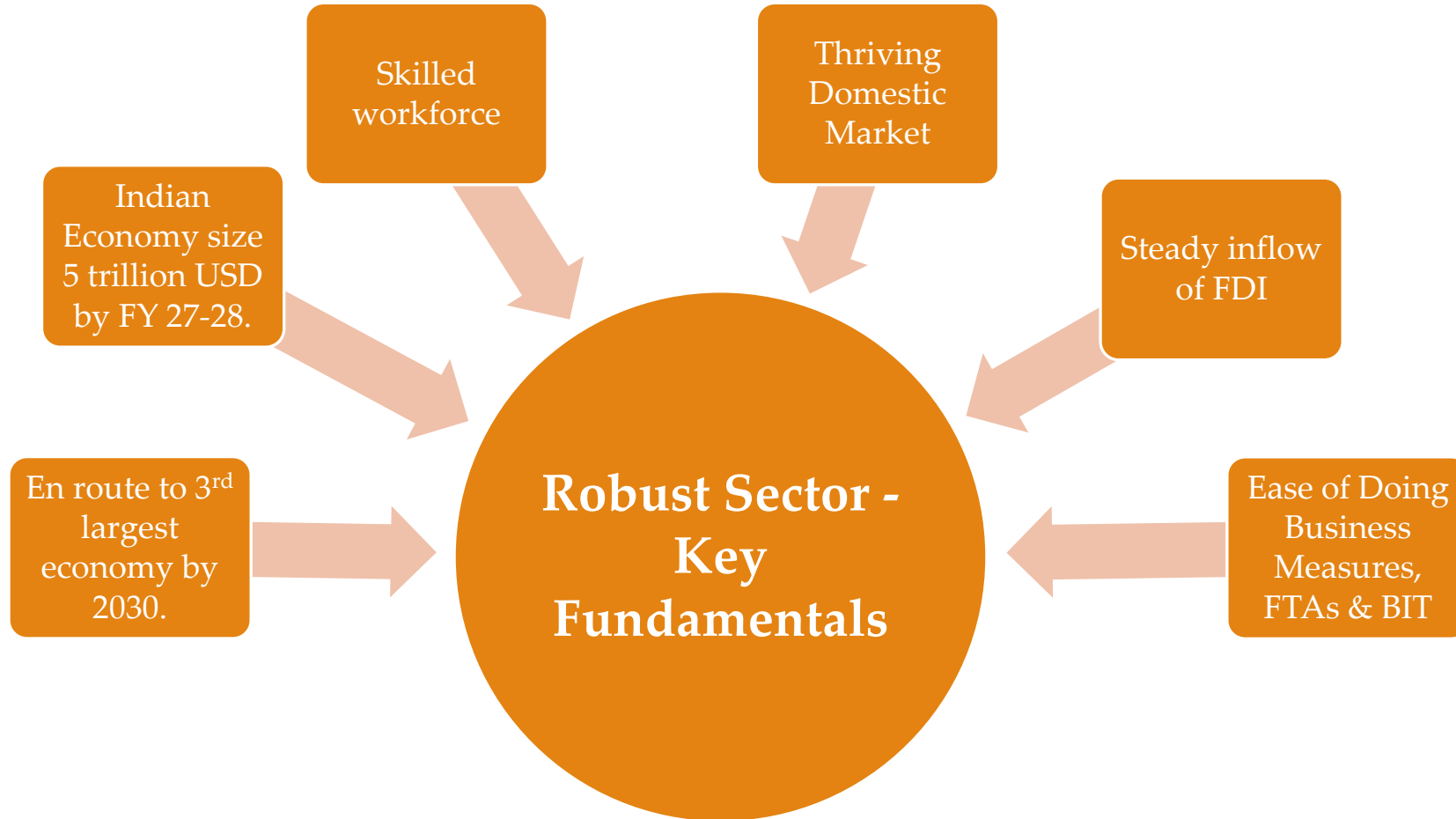
# Investment Protection by BIT

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- India revised its model BIT in 2016.
- Signed BITs (revised model) with 5 nations including Brazil (2020) and UAE (2024).
- Model BIT provides the following protection to foreign investors -
  - Following customary international law (due process, non-arbitrariness etc.)
  - Full Protection and Security
  - National Treatment
  - Expropriation
  - Transparency
- Investor-friendly amendments – In India-UAE BIT, local remedies clause relaxed from 5 to 3 yrs.

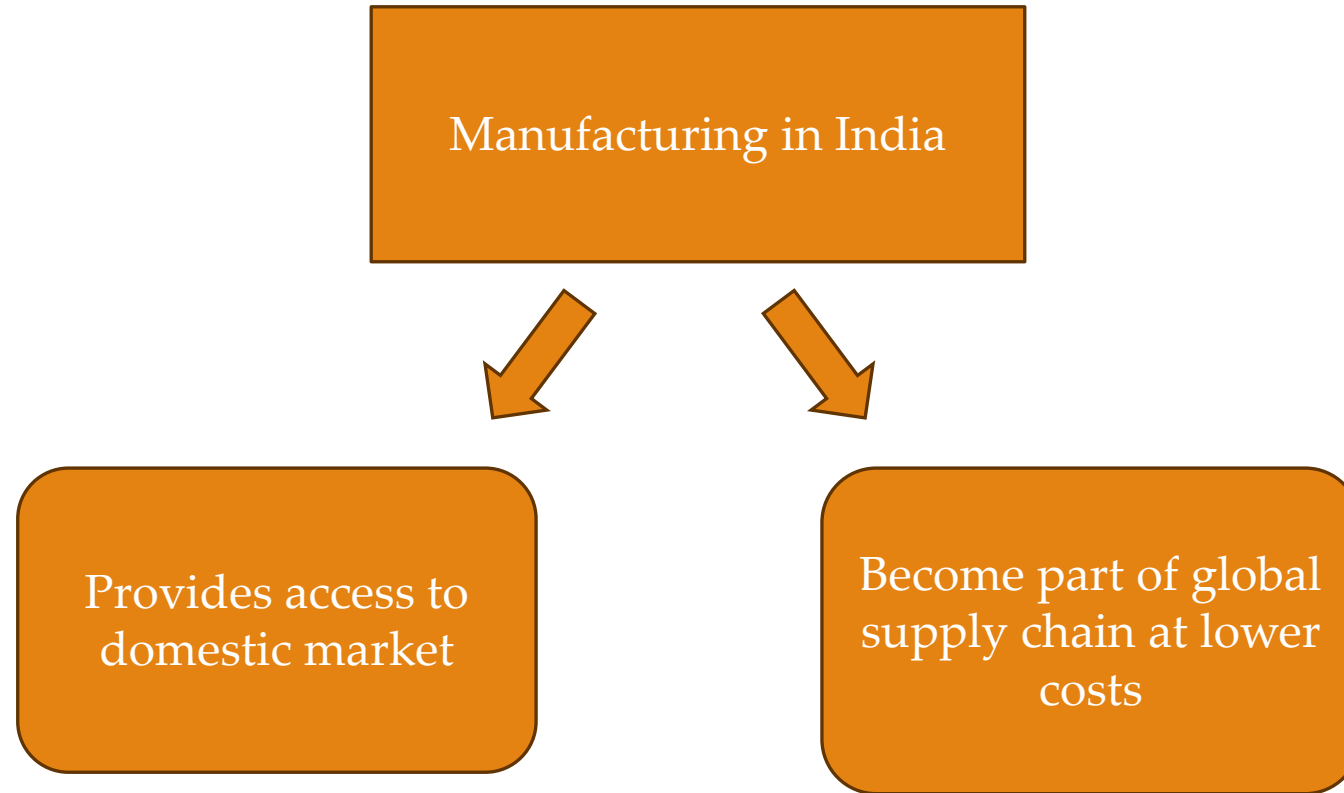
# Indian Manufacturing Sector

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# Indian Manufacturing & Global Supply Chain

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# Indian Manufacturing & Global Supply Chain

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## India's Rise In The Global Supply Chain

Dave Evans Contributor @  
Co-Founder of Fictiv. Stanford MechE. Ford Alum.  
Forbes 30 Under 30.

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### India to surpass Germany, Japan to be 3rd largest consumer market by 2026: UBS

Over the past decade, India's consumption has almost doubled to \$2.1 trillion in 2023, up from \$1.2 trillion in 2013.

— ZOYA SPRINGWALA | MAY 08, 2024 / 10:14 IST

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Adjusted for inflation, the real household consumption growth will be below the trend, between 4-5 percent in FY25/26.



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## Prime Ministers of the Czech Republic and India agree on a strategic partnership focusing on innovation

11. 1. 2024 17:26



Czech Prime Minister Petr Fiala was received for bilateral talks by Indian Prime Minister Narendra Modi on 10 January 2024.

# Manufacturing & Indian Market



Indian manufacturing contributes 17% to GDP ; GoI target is to reach 25%.

National Industrial Corridor Development Program – Currently 5 corridors ; in 2024 – 12 new corridors approved with an estimated investment of USD 3.5 billion.

Introduction of the new Labour Codes - Labour Laws streamlined; made business-friendly.

2 million graduates annually; Primarily from Science, Technology and Engineering backgrounds.

# Market Entry into India

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# Key Regulations

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Reserve Bank of India (RBI) – Financial and Foreign Exchange Laws

Corporate Laws- Companies Act, 2013, LLP Act 2008 etc.

Tax Laws – GST, Income Tax etc.

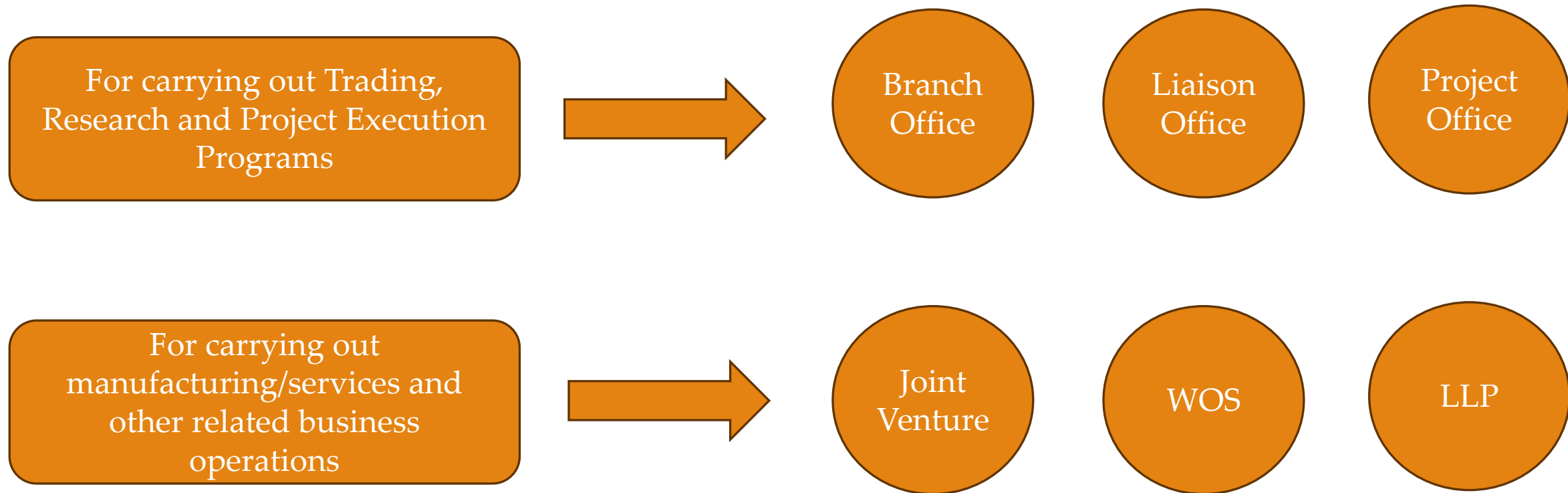
BIS Standards

Labour and Industrial Laws

Intellectual Property Laws

# Structuring Market Entry

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# Entity Types

Kind of Entity	Permitted Activities	Procedure & Criteria	Notable Points
Liaison Office (“LO”)	<ul style="list-style-type: none"> <li>• Representing the parent company/group company</li> <li>• Promoting export/import to/from India</li> <li>• Acting as a communication channel between parent company and Indian companies</li> </ul>	<ul style="list-style-type: none"> <li>• Prior permission from RBI required by applying via AD Category-1 Bank.</li> <li>• Foreign entity (“FE”) – profit-making track record in last 3 FYs.</li> <li>• Net-worth of FE &gt; USD 50,000.</li> <li>• To register with jurisdictional RoC &lt;30 days of establishment.</li> <li>• To obtain PAN from Income Tax Dept. upon setting up office.</li> </ul>	<ul style="list-style-type: none"> <li>• Not permitted to earn any income/revenue in India.</li> <li>• Cannot engage in commercial trading/industrial activity.</li> <li>• Minimal presence</li> <li>• Helps build B2B relationship</li> </ul>
Branch Office (“BO”)	<ul style="list-style-type: none"> <li>• Export/import of goods.</li> <li>• Rendering professional/consultancy services</li> </ul>	<ul style="list-style-type: none"> <li>• Application procedure like LO.</li> <li>• Register with jurisdictional RoC.</li> <li>• FE must have a profit-making track record for the last 5 FYs.</li> <li>• FE net worth &gt; USD 100,000</li> <li>• To obtain PAN from Income Tax Dept. upon setting up office.</li> </ul>	<ul style="list-style-type: none"> <li>• Not allowed to carry out manufacturing /processing activities.</li> <li>• Profit can be remitted outside India.</li> </ul>

# Entity Types

Kind of Entity	Permitted Activities	Procedure & Criteria	Notable Points
BOs in SEZ	<ul style="list-style-type: none"> <li>• Manufacturing and service activities can be undertaken without any permission from RBI provided -               <ul style="list-style-type: none"> <li>▪ BO functioning in 100% FDI permitted sector</li> <li>▪ BO functions on a stand-alone basis</li> <li>▪ Comply with special provisions for Foreign Companies u/ Companies Act, 2013.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Prior permission from RBI by application via Category-I AD Bank required to establish BO in SEZ.</li> <li>• Further, additional procedures are prescribed in the specific SEZ.</li> </ul>	<ul style="list-style-type: none"> <li>• BOs in SEZs allowed to manufacture and provide services.</li> <li>• Entities in SEZ allowed special benefits – tax breaks, ease of doing business measures.</li> </ul>
Project Office (“PO”)	<ul style="list-style-type: none"> <li>• FE can set up provided it receives a contract from Indian company to execute a project in India.</li> <li>• Project must be funded directly by inward remittance from abroad, or by bilateral /multilateral financing agency.</li> </ul>	<ul style="list-style-type: none"> <li>• Application process similar to LO and BO.</li> </ul>	<ul style="list-style-type: none"> <li>• Used for construction and infrastructure projects.</li> </ul>

# Entity Types

Kind of Entity	Permitted Activities	Procedure & Criteria	Notable Points
Wholly Owned Subsidiary/ Subsidiary/ Joint Venture	<ul style="list-style-type: none"> <li>Typically established as a Private Limited Company under the Indian Companies Act, 2013.</li> <li>Permitted activities as per FDI policy</li> <li>Business activities required to be mentioned in Charter Documents.</li> </ul>	<ul style="list-style-type: none"> <li>Reserving the name of the company by filing SPICe+ form with MCA.</li> <li>Charter Documents- Memorandum of Association and Articles of Association and register with jurisdictional RoC.</li> <li>Obtain PAN and GST Registration</li> <li>All directors to obtain Class-3 Digital Signature Certificate (DSC).</li> </ul>	<ul style="list-style-type: none"> <li>Minimum 2 Directors (at least one director must be an Indian citizen+ resident in last FY).</li> <li>At least 2 shareholders (no restrictions like directors).</li> <li>Have a registered office in India.</li> <li>Regular compliance such as Annual Financial Statements, AGM, appointing an auditor etc.</li> </ul>



# Entity Types

Kind of Entity	Permitted Activities	Procedure & Criteria	Notable Points
Limited Liability Partnership	<ul style="list-style-type: none"> <li>• Typically allowed any business activity.</li> <li>• Used generally for the provision of services like consultancy, legal, accounting etc.</li> <li>• Cannot operate as NBFC.</li> <li>• FDI allowed in LLP subject to –               <ul style="list-style-type: none"> <li>• where 100% FDI is allowed through the automatic route, and</li> <li>• no FDI-linked performance conditions.</li> <li>• Compliance with LLP Act 2008.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Governed by LLP Act 2008.</li> <li>• Needs to register under LLP Act with the jurisdictional RoC by filing Form 27 within 30 days of establishing place of business</li> </ul>	<ul style="list-style-type: none"> <li>• At least 2 designated partners (one has to be resident of India, 180 days prior to registration)</li> </ul>

# Foreign Direct Investment

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FDI Policy –To promote  
Foreign Investment  
(investment in share capital)

Since 1991, policy liberalized  
substantially to facilitate  
foreign investment

Department of Industrial  
Policy & Promotion (DIPP)-  
Regulates FDI Policy  
RBI- Monitors Compliance and  
Administration of the Policy

# Foreign Direct Investment

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## Automatic Route

- No prior permission required.
- Includes Sectors such as – Manufacturing in most sectors (such as Automobile) , Civil Aviation.

## Government Approval Route

- Requires specific approval of concerned authority depending on the sector.
- Includes sectors such as – Defence (beyond 74%), Telecom Services (beyond 49%)

## Prohibited Sectors

- Atomic Energy ; Railway Operations ; Betting, Gambling and Lotteries (including online lotteries) ; Chit fund ; Nidhi Company ; Real Estate ; Trading in Transferable Development Rights ; Manufacturing of tobacco and related products

# Technology Transfer/Licensing

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## Methods

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graph TD; Methods[Methods] --- Licensing[Licensing Agreements]; Methods --- Transfer[Technology Transfer Agreements];
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### Licensing Agreements

- Licensing of IPR, software licences, trademark, franchisee licenses
- Licensing Fee/Royalty
- Confidentiality and Protection of IPR of the Transferor

### Technology Transfer Agreements

- Transfer of know-how, license of IPR
- Commercialization of developed technology
- Fee for transfer
- Conditions of Transfer - Set up R&D Centres, Set up of production/manufacturing plants or operations units.

# IPR Framework

India is a signatory to TRIPS

## Protection of IPR

The Indian Patents Act of 1970

Technology Transfers

Trademarks Act of 1999; Designs Act of 2000

Copyright Act of 1957

Licensing/Assignment Agreements

Indian Contract Act, 1872 & Case Laws

Trade Secrets Protection

# Contract Manufacturing (1/2)

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- Refers to manufacturing undertaken through a third party via legally tenable contract either on a Principal to Principal basis or Principal to Agent basis.
  - Under FDI - Indian investee entity can either undertake manufacturing or manufacture via CMs.
  - Benefits for the principal manufacturer - economic efficiency, scale, operational efficiencies and flexibility.

## Key Sectors

- Electronics (mobile phones, components).
- Pharmaceuticals (Generic drugs, active pharma ingredients).
- Automobiles (Components and Assemblies).

## Steps to mitigate risk

- Prescribing detailed instructions
- Owning all IPR; licensing via legally vetted agreements.
- Having control over the sourcing of raw materials.
- Deputing personnel to supervise or conduct audits.

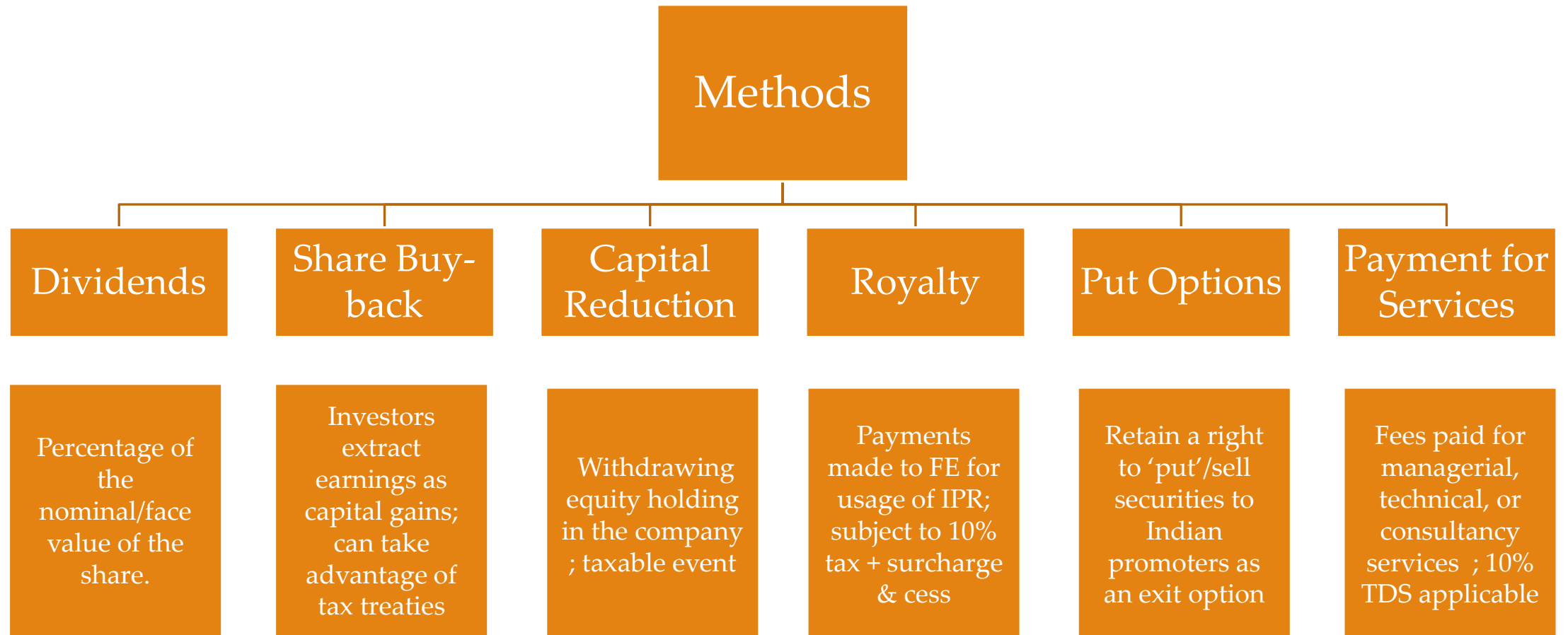
# Contract Manufacturing (2/2)

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- Relevant Laws
  - Indian Contract Act, 1872 – Primary law that governs contracts and agreements in India
  - Specific Relief Act, 1963 - Provides remedies for breach of contract.
- Dispute Resolution Mechanism –
  - Arbitration – Heavily promoted by GoI ; frequent amendments made to law to ensure timely resolution of disputes.
  - Commercial Courts Act, 2015 - Establishes commercial courts and time-bound procedures to expedite the resolution of commercial disputes

# Repatriation of Funds/Profits

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# Considerations to decide location for investment

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- SEZ Zones (like - GIFT City)
- State-specific setups based on EoDB standards and historical advantages.
- Sector in which investment is planned and requirement of kind of labour (skilled/manual).
- Industrial Corridors.
- Transport infrastructure (Roads, Highways) and Connectivity (Access to Ports).

# Best Practises for Foreign Businesses

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- Understanding local regulations and compliance requirements with a focus on sectors with greater scrutiny.
- Building relationships with regulators, local authorities, and industry bodies.
- Collaborate with reliable local partners for market insights.
- Use digital platforms to reach a tech-savvy consumer base.
- Importance of strategic legal counsel and due diligence.

THANK YOU

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