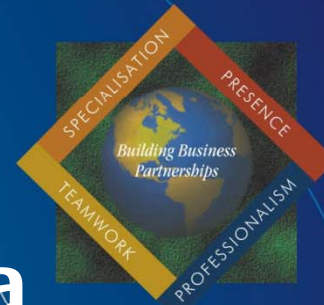


Development in India

An Outlook



Organiser
Japan External Trade Organisation (JETRO)

March 08, 2010



presented by
Ajay Sethi FCA - Managing Partner

Present Focus

- ❑ Recovery – focus on infrastructure
- ❑ Control fiscal deficit
- ❑ Ease-out defunct laws, rationalise taxes
- ❑ Spreading opportunities across the rural belt
- ❑ Encourage Foreign Direct Investment

ON THE ANVIL

Major Regulatory Changes

Understanding Regulatory Environment

- ❑ Most laws originate from British Laws
- ❑ Fine reading and interpretation is the norm
- ❑ Procedure Driven
- ❑ Failures to comply usually leads to penalty and sometimes prosecution

Policy Framework – In the horizon

- ❑ Direct Tax Code **(April 1, 2011)**
- ❑ New Companies Law Amendment Bill **(awaited)**
- ❑ Indirect Taxes - Goods & Services Tax **(April 1, 2011)**
- ❑ International Financial Reporting Standards (IFRS) **(April 1, 2011)**
- ❑ Insurance Laws (Amendment) Bill
- ❑ Banking Regulations (Amendment) Bill

Direct Tax Code (DTC)

- ❑ **Tax rates** rationalized - corporate to pay a reduced tax of 25 per cent
- ❑ Tax on **royalties** enhanced - 20 per cent on gross payment
- ❑ Domestic companies to still pay a *dividend distribution tax* at 15 per cent. Similarly, foreign companies to pay **branch profits tax** at 15 per cent of post tax profits
- ❑ Fresh tax **exemptions** to be 'investment linked' rather than 'profit linked'

Direct Tax Code (DTC)

- Introduction of **General Anti Avoidance Rule** ('GAAR') wherein commercial expediency of international transactions can be challenged by the authorities; primarily to check contentious issues viz. check round trip financing, lifting of corporate veil etc
- Provisions of DTC to have overriding effect over past **tax treaties** signed by India

New Companies Law Amendment Bill 2008

- Introduction of **One Person Company (OPC)**

OPC can be formed for charitable purpose as well

- Companies can be struck off if **business not commenced** within 180 days of incorporation
- One **Resident Director** mandatory for all companies
- A **Whole-Time Director** not to hold office in more than one company unless permitted by the company

Indirect Taxes

- Central Sales Tax/ VAT & Service Tax – to be merged into a single **Goods & Service Tax** ('GST') by April 1, 2011

International Financial Reporting Standards (IFRS)

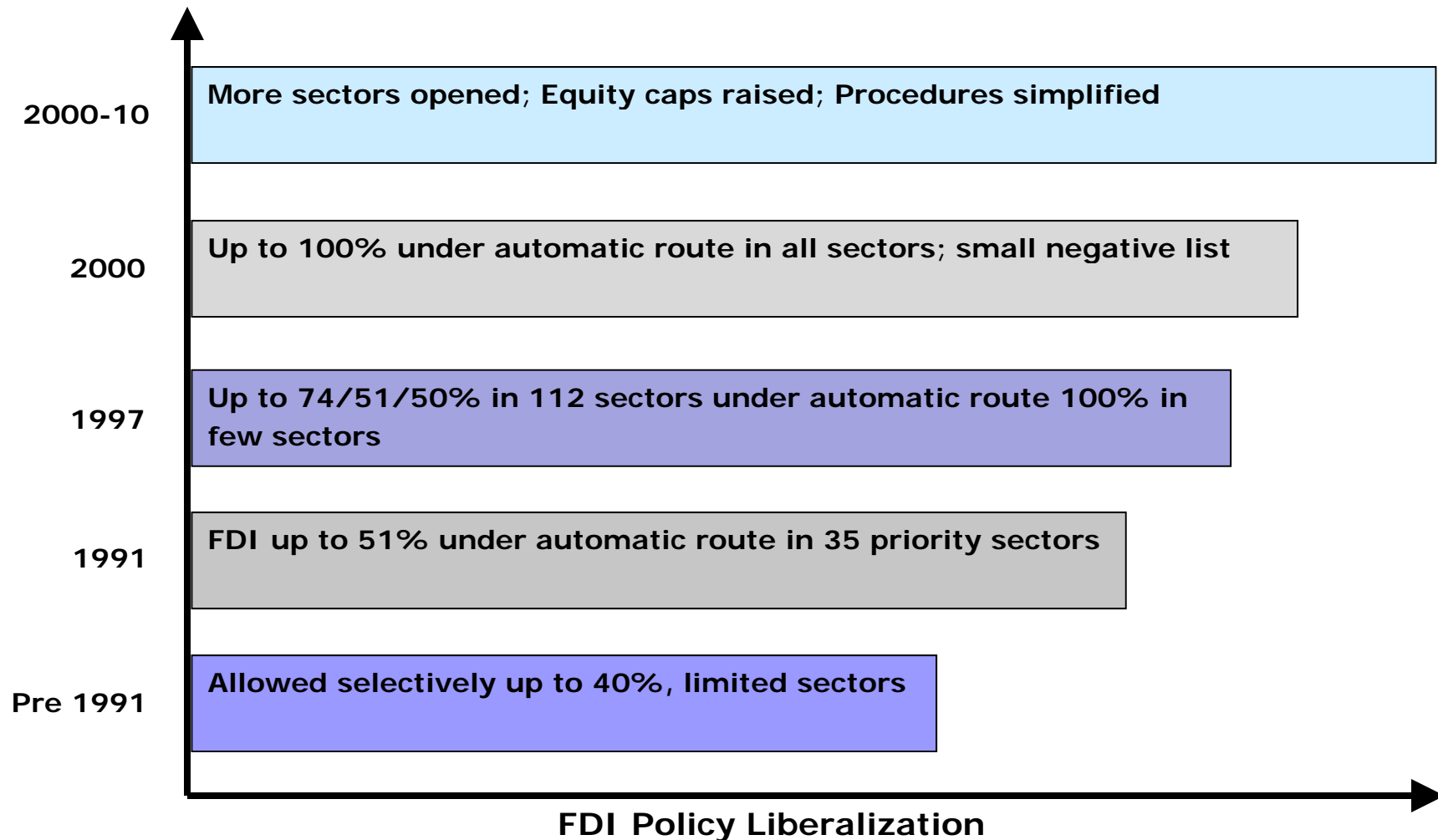
- India to fully converge with IFRS by **April 1, 2011**

- Will apply to all **public listed companies** and those with turnover exceeding USD 25 million

- Paradigm shift in the basis of recording transactions
 - Impresses substance over form
 - Adequacy of disclosures

Foreign Direct Investment (FDI) in India an overview

The changing face of the FDI Policy



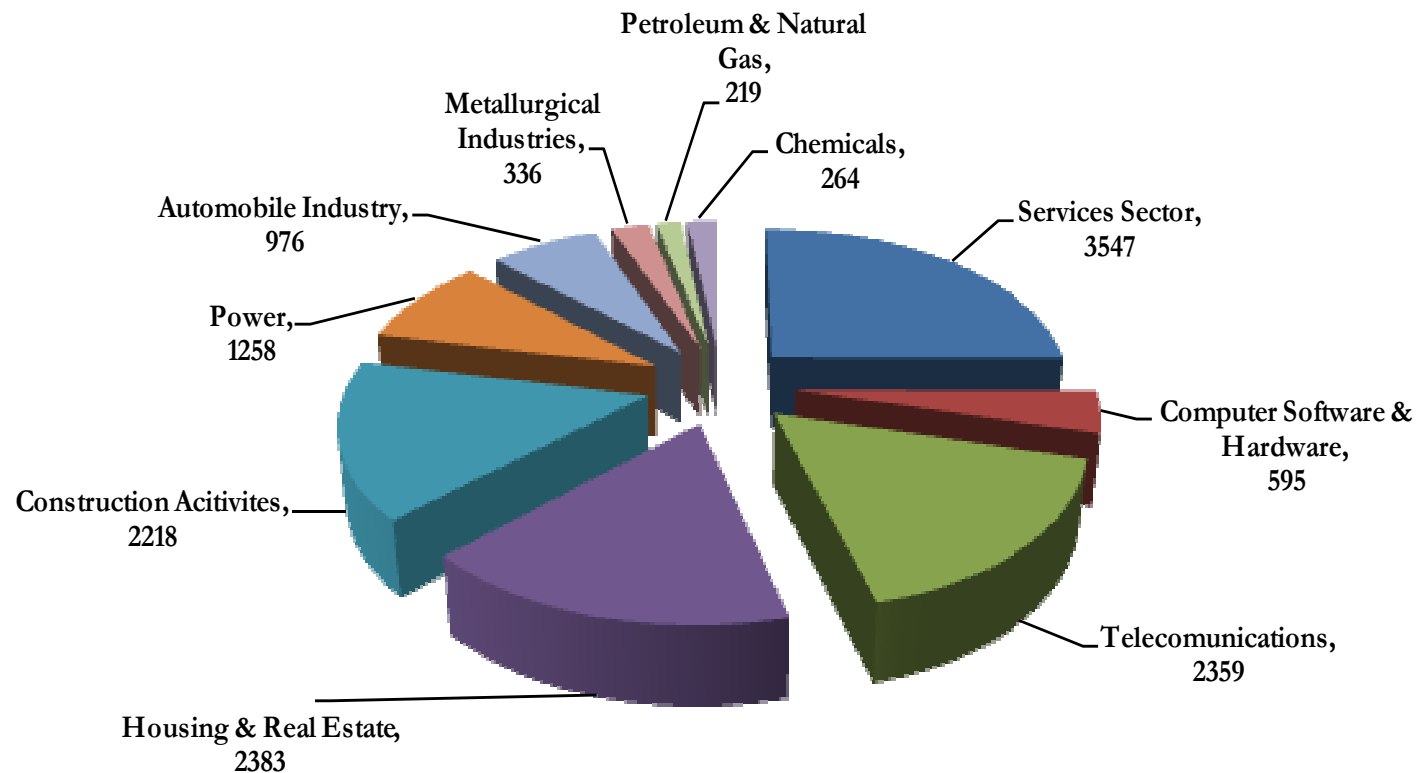
FDI Inflow - Top Investing Countries

Ranks	Country	2006-07	2007-08	2008-09	USD Million	
					2009-10 (April-Dec 2009)	Cumulative
1	MAURITIUS	6,363	11,096	11,208	8,913	45,778
2	SINGAPORE	578	3,073	3,454	1,707	9,518
3	USA	856	1,089	1,802	1,584	7,919
4	UK	1,878	1,176	864	38	5,611
5	NETHERLANDS	644	695	883	769	4,359
6	CYPRUS	58	834	1,287	1,340	3,613
7	JAPAN	85	815	405	1,080	3,611
8	GERMANY	120	514	629	539	2,712
9	U.A.E.	260	258	257	587	1,507
10	FRANCE	117	145	467	242	1,469
	Total	15,726	24,579	27,329	20,921	110,761

Source – Department of Industrial Policy & Promotion

FDI - Sectoral Composition

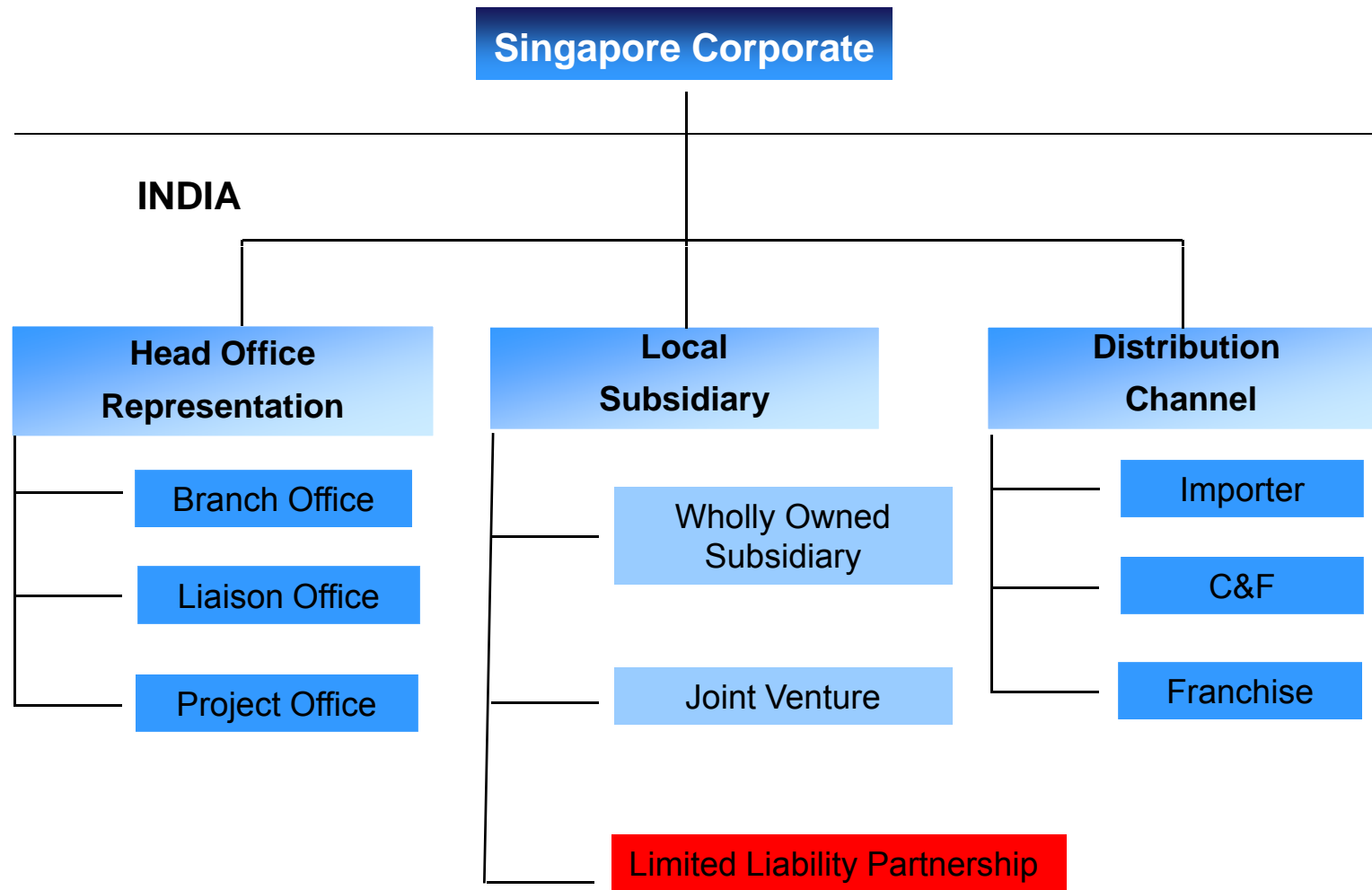
Sectoral Composition of FDI 2009-10 (USD million)



INDIA ENTRY

Mode of Investment

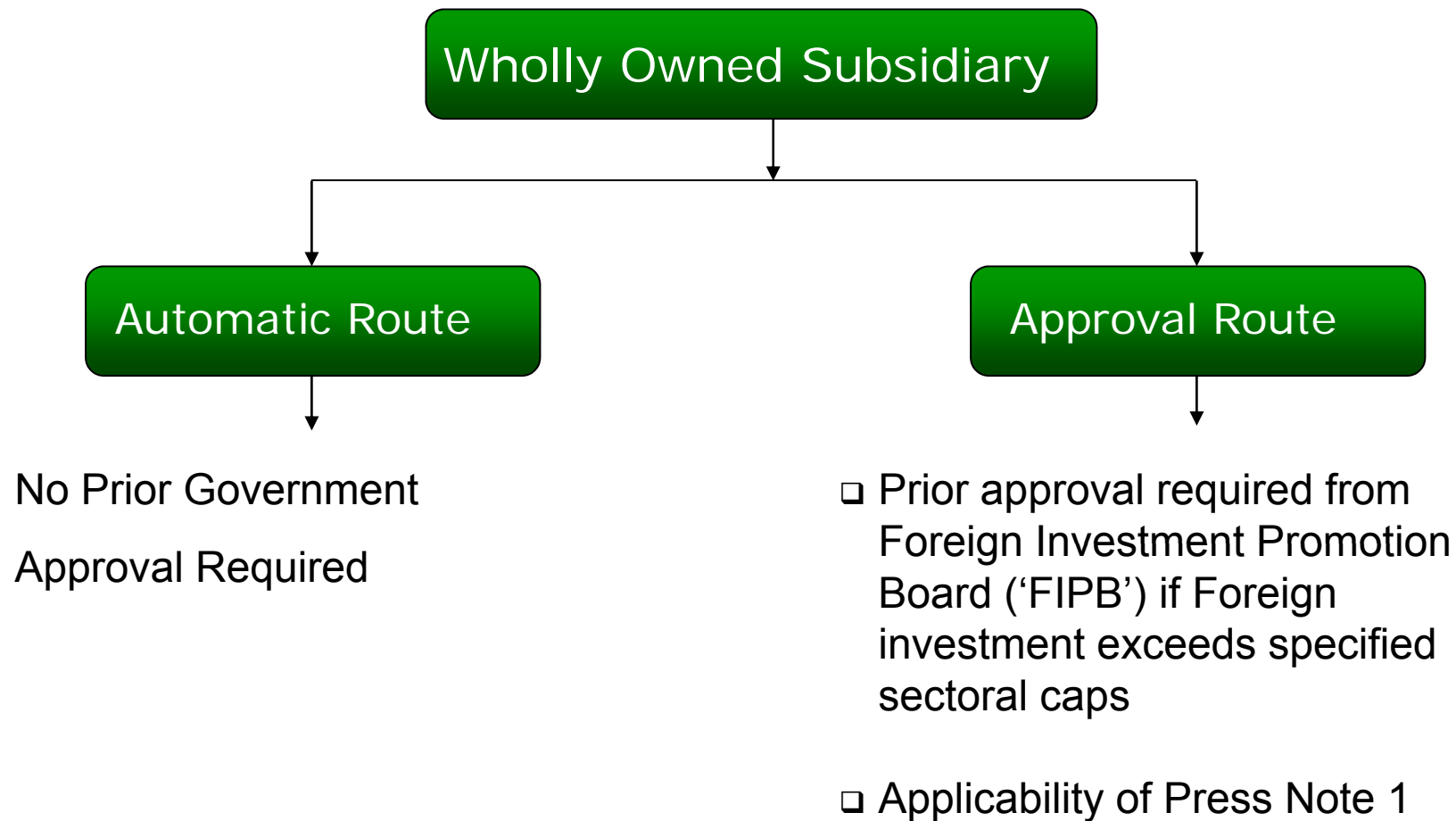
INDIA ENTRY - Mode of Investment



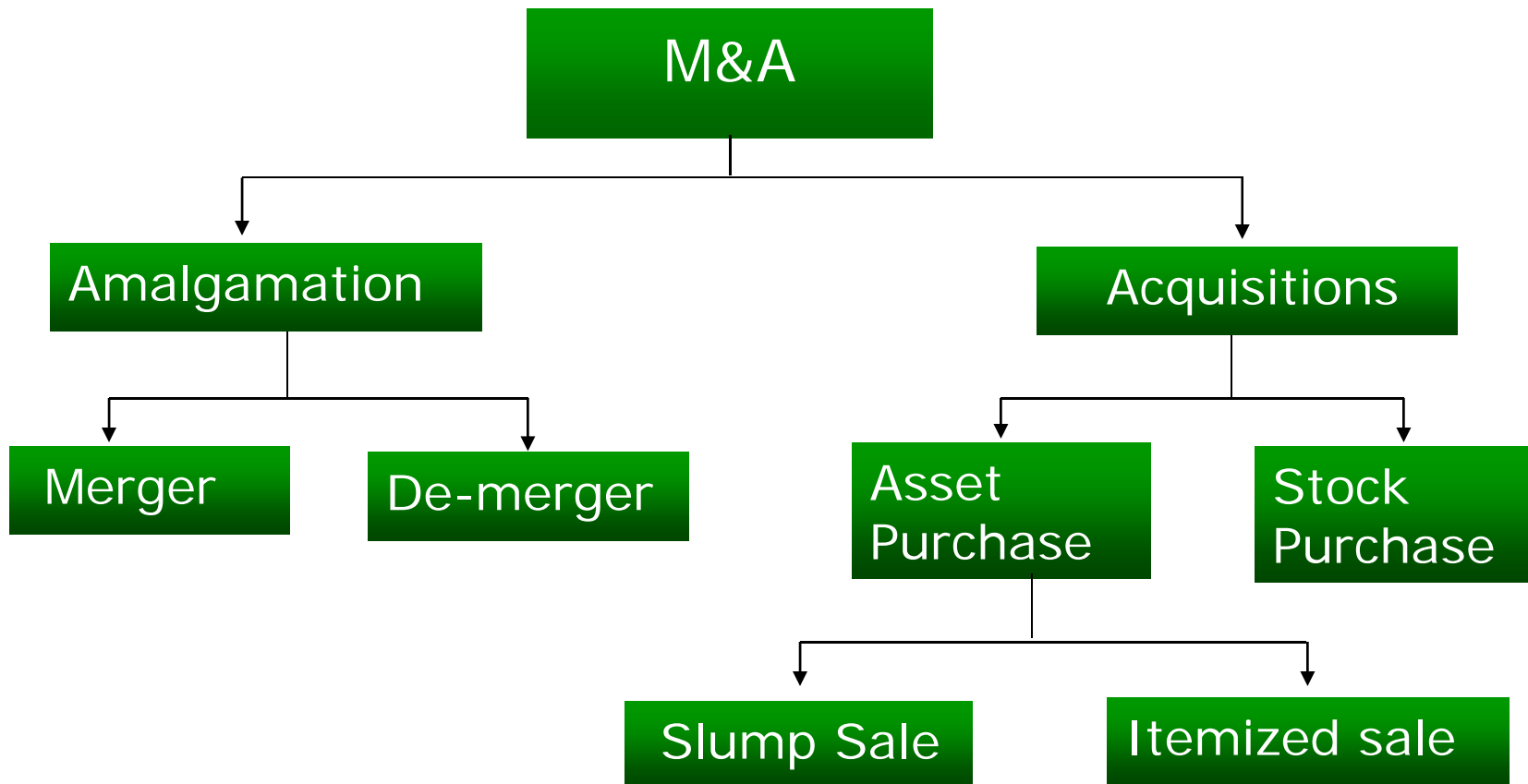
INVESTMENT STRATEGY – Corporate

- ❑ Green field project (*Wholly Owned Subsidiary*)
- ❑ Brown field project (*Acquisition*)
- ❑ Joint Venture

INVESTMENT STRATEGY - Greenfield Project



INVESTMENT STRATEGY - Brownfield Project



INVESTMENT STRATEGY

Term Sheet and Shareholder's Agreement

Management control issues viz.

- ❑ appointment to the board of directors and chairman of the board
- ❑ appointment of CEO, MD, CFO
- ❑ issues arising from future change of control, non-compete, etc.
- ❑ implications of 26, 51 and 75 percent shareholding

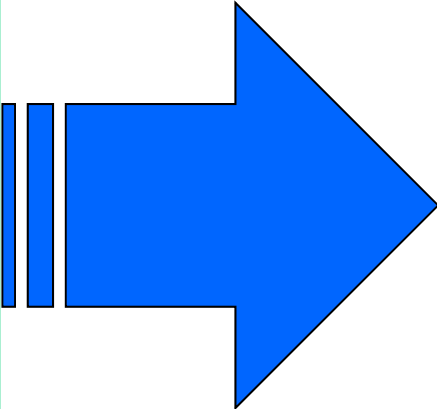
Operational issues viz.

- ❑ Labour handling
- ❑ Government Liaisoning
- ❑ Appointing head of sales, manufacturing, etc

Significant Issues & Changes

Planning India Investment

LO/BO – Change in Regulatory Compliance

Permission	Existing Rules		New Policy
Applications for Setting-up a BO/LO In India	Submit with RBI		submit with your banker who shall verify, recommend and forward to the RBI.
Extension of LO	LO which are initially allowed for a period of 3 years, to seek RBI approval for further extension.		Your banker can verify and directly permit an extension.
Closure of LO/BO	Approval from RBI to repatriate funds		Your banker can permit repatriation of funds
Activity Report	submitted with RBI		submitted with your banker and with Directorate General of Income Tax (International Taxation)

INVESTMENT STRATEGY

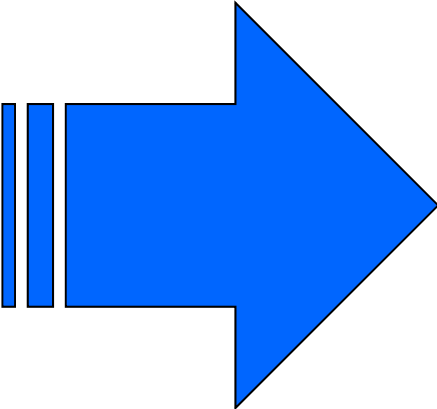
Existing Collaboration(s) in India can restrict your entry plans

- ❑ Do you have an existing joint venture with an Indian partner for the very field in which you now intend to set-up business in India?
- ❑ Do you have an existing technology collaboration with an Indian partner for the same field in which you intend to do business in India?

Press Note 1 (2005 Series)

If yes, a 'No Objection Certificate' is mandatory from the existing Indian Partner and prior approval is required from the Foreign Investment Promotion Board of India

Prior Approval For Foreign Investment

Foreign Investment	Existing Rules		New Policy
Where total project cost < / = Rs 6 billion and sectoral caps apply	Foreign Investment Promotion Bureau ('FIPB') approval		FIPB Approval still needed
Where total project cost > Rs 6 billion upto Rs 12 billion	Cabinet Committee on Economic Affairs ('CECA') approval		Only FIPB Approval would be required upto USD 261 million
Investment in any sector / activity earlier under approval route and approval granted	Further investment required FIPB / CECA approval		No approval from FIPB / CECA
Investment in sector / activity where prior approval (Press Note 18/98 or 1/2005 obtained) granted	Further investment still required prior approval from FIPB / CECA		No further approval to be obtained from FIPB/ CCEA for undertaking new ventures in the same field

TRANSFER PRICING

□ **Arm's Length price ('ALP')**

Any income arising from an international transaction between associated parties to be computed having regard to ALP

ALP means a price which is applied in a transaction between persons other than associated enterprises

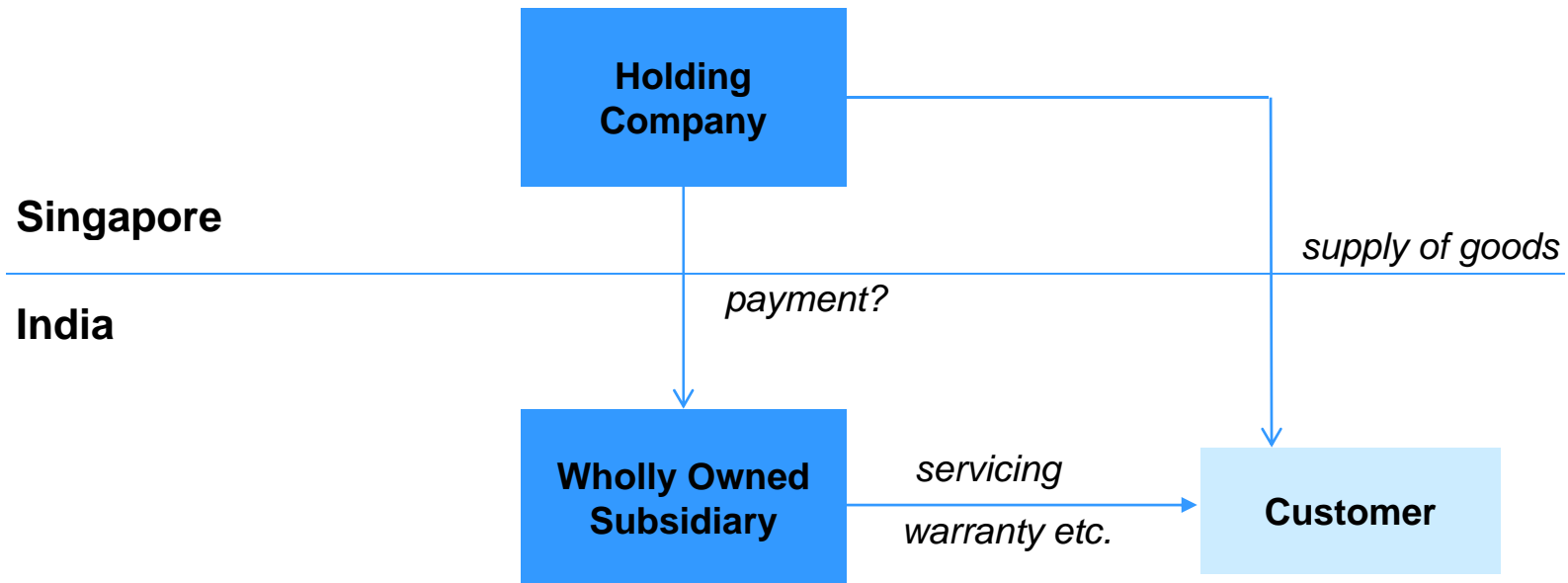
□ **Associated Enterprise ('AE')**

Participation in management or control or capital of other enterprise

Directly through intermediaries

TRANSFER PRICING

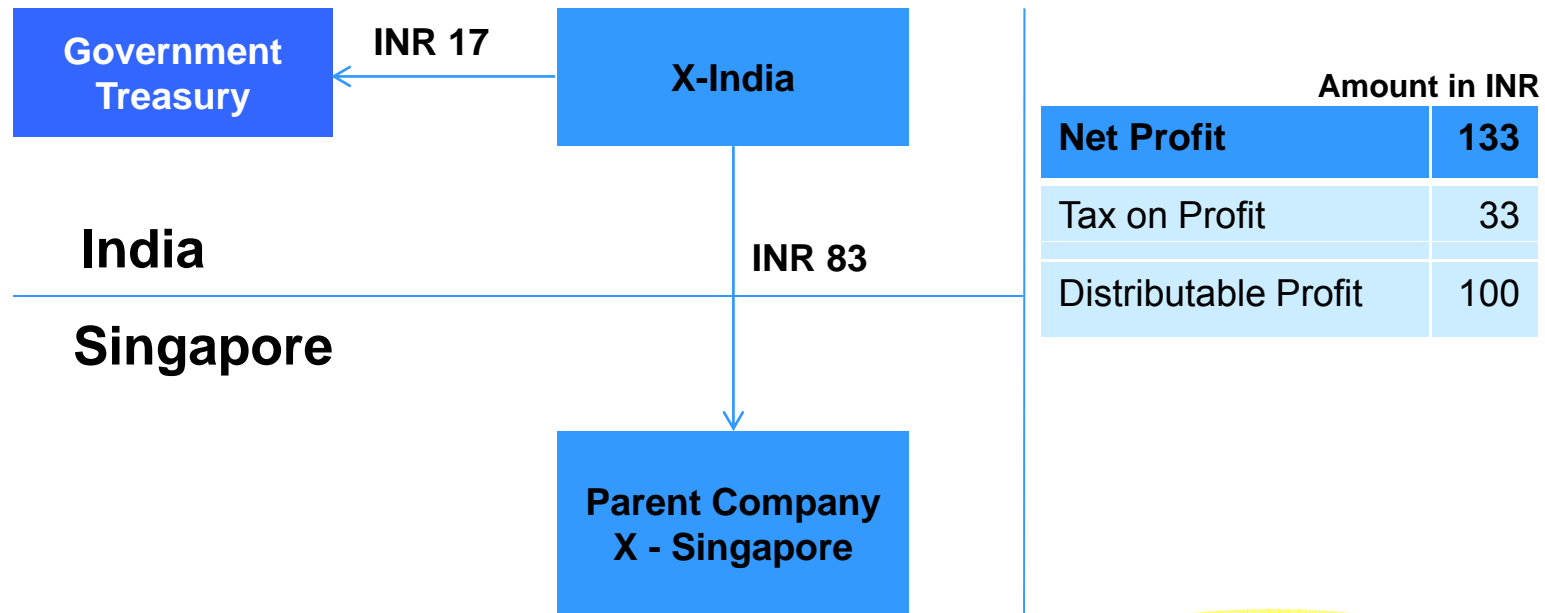
Determining the appropriate pricing for intra - group transactions



Transfer Pricing Issue –
what should be the profit
margin of the Wholly
Owned Subsidiary?

REPATRIATING PROFITS

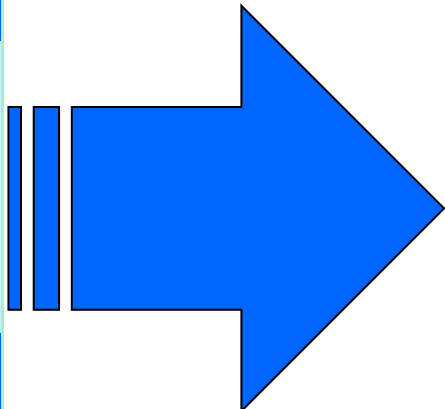
The menace of Dividend Distribution Tax



Whether the credit in respect of Dividend Distribution Tax (DDT) of INR 17 is available in the Parent Country?

Royalty / Fee for Technology / Trademark

Royalty Payment	Under existing rules, prior approval required	New Policy
Recurring royalty payments	in excess of 5% on domestic sales and 8% on exports	No approval required for one time lumpsum fee or recurring royalty payments
Lumpsum fee for transfer of technology	in excess of USD 2 million	Subject to FEMA (Current Account Transaction) Rules, 2000; Post-reporting system
Payments for use of trademark/brand name	in excess of 1% on domestic sales and 2% on exports	



Corporate Catalyst India

(in joint venture with SCS Global)

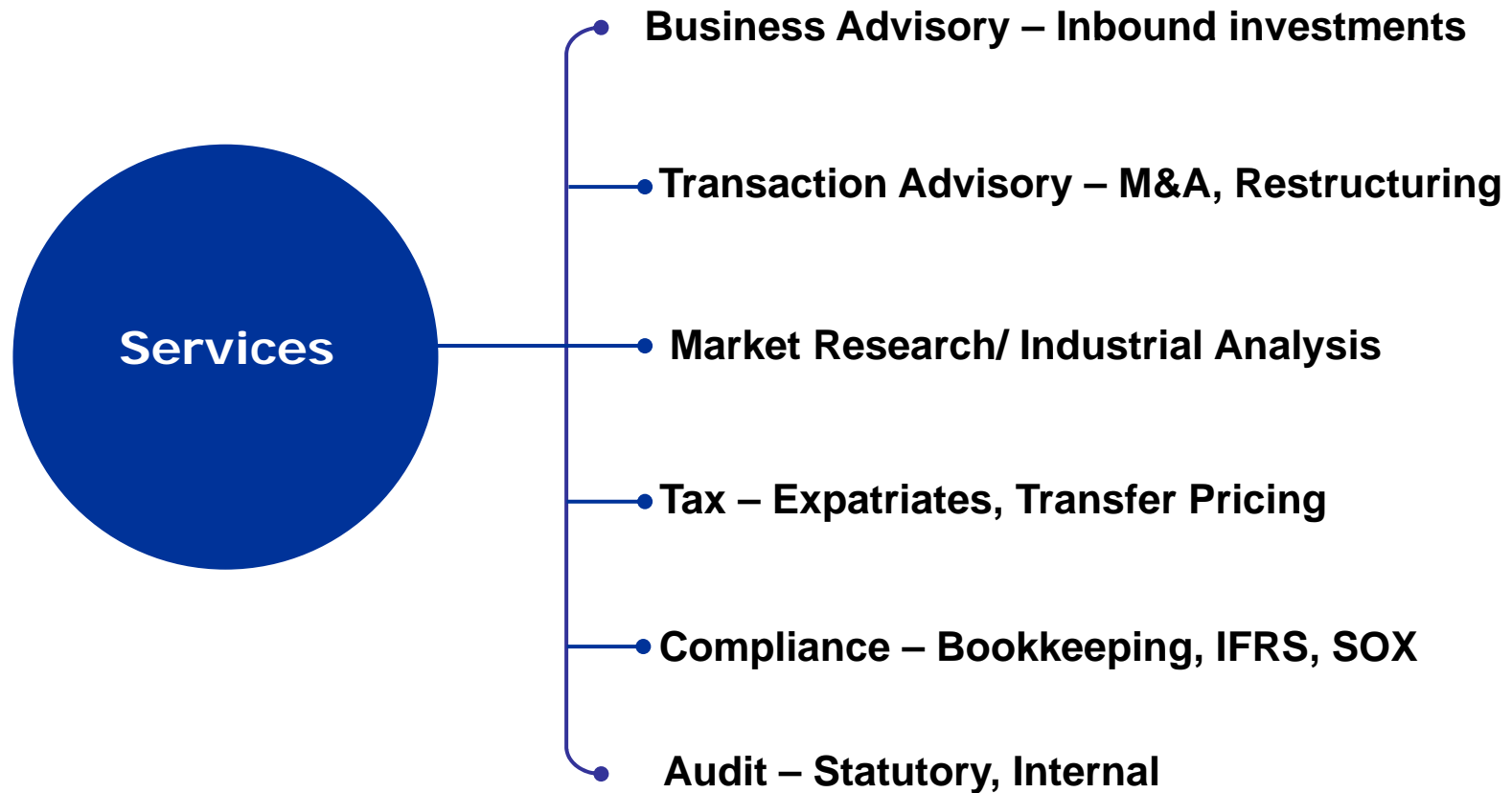
&

ASA & Associates chartered accountants
(a member firm of NIS Global)

Our Strengths

- ❑ **CCI** – joint venture with **SCS Global**
- ❑ **ASA** (sister firm of CCI) - member of **NIS Global**, an international association of independent accounting firms
- ❑ Approximately 70 per cent are **Japanese Corporates**
- ❑ Offices across India
- ❑ More than 20 years **work experience**
- ❑ Professional **staff strength** of over 150 in India & 1500 through associate network

Our Services



Thank You