

Doing Business with India

common pitfalls to avoid

organized by

Indian – Slovenian Business Forum for the Visiting Delegation

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presented by

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Presentation Outline

- ❑ India tour & business set-up
- ❑ Tax and regulatory matters

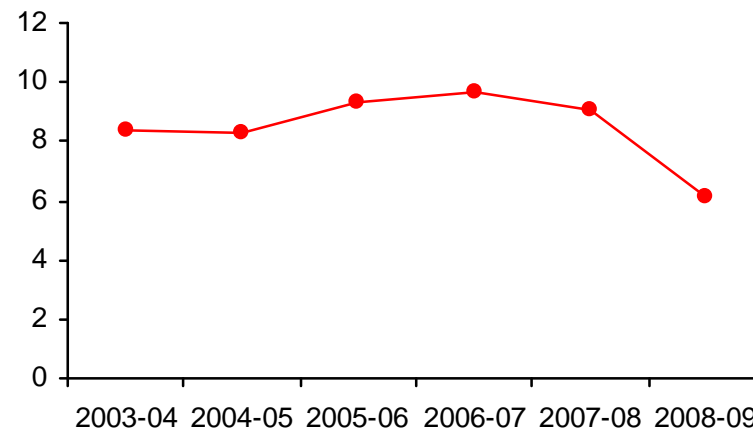
The Economy and the Tell Tale Signs

India Tour

- ❑ The 2nd **most attractive investment destination**
(source UNCTAD World Investment Report 2008)
- ❑ Advantage - **low cost of production, large size domestic market**
- ❑ Besides service industry, evolving into a **manufacturing hub**
- ❑ India figures in the **Research and Development** strategy of global corporate

Economic Indicators - GDP

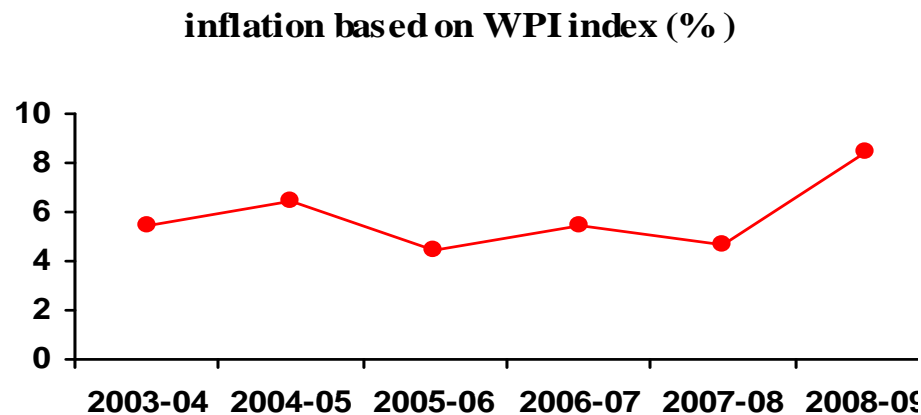
overall GDP growth (%)



Source – indiabudget.nic.in

- ❑ 2007-08: Economy robust at 9 per cent
- ❑ 2008-09: Economy decelerated to 6.7 per cent
- ❑ 2009 -10: GDP at 6-7 per cent, 2010 -11, expected at 9 per cent

Economic Indicators - Inflation



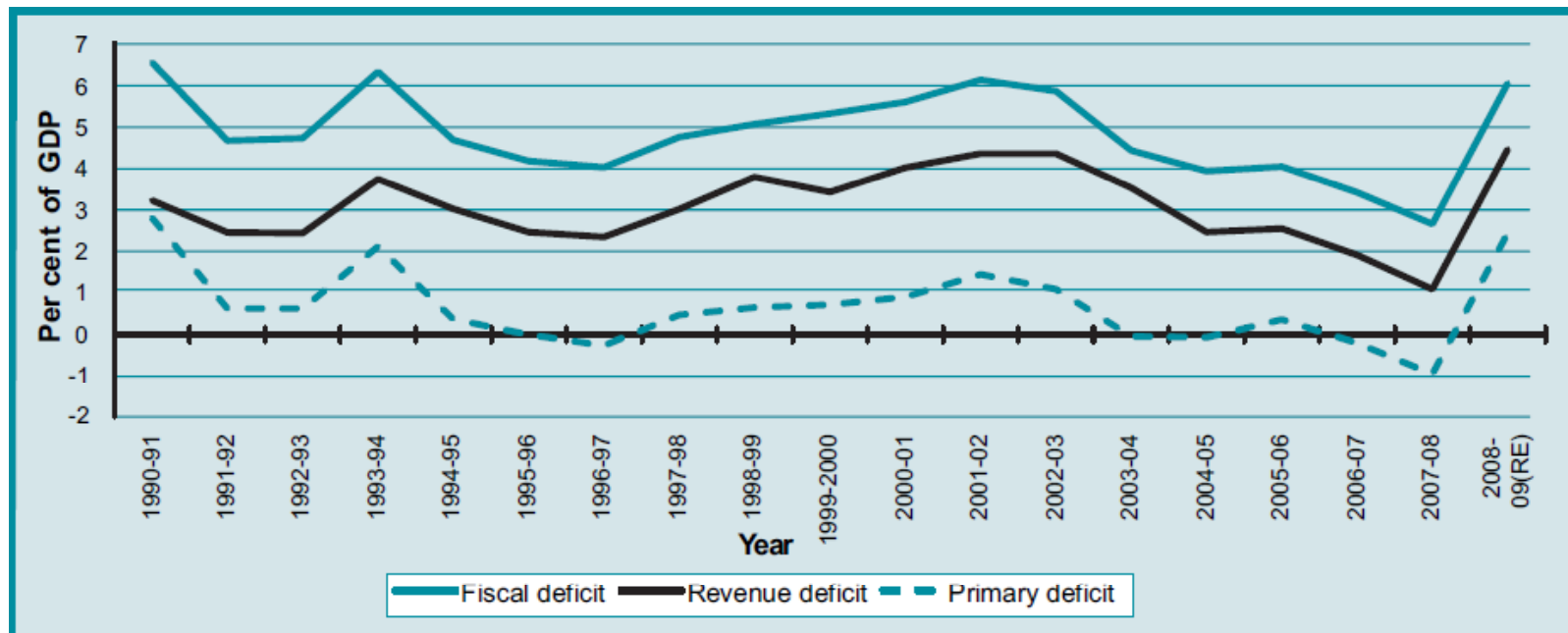
Source – indiabudget.nic.in

Inflation rose sharply in 2008-09 to 8.4% from 4.7% in 2007-08 followed by a dramatic reversal in past three months. In September 2009, positive inflation at 1 per cent

In the present world scenario, not an immediate cause of concern.

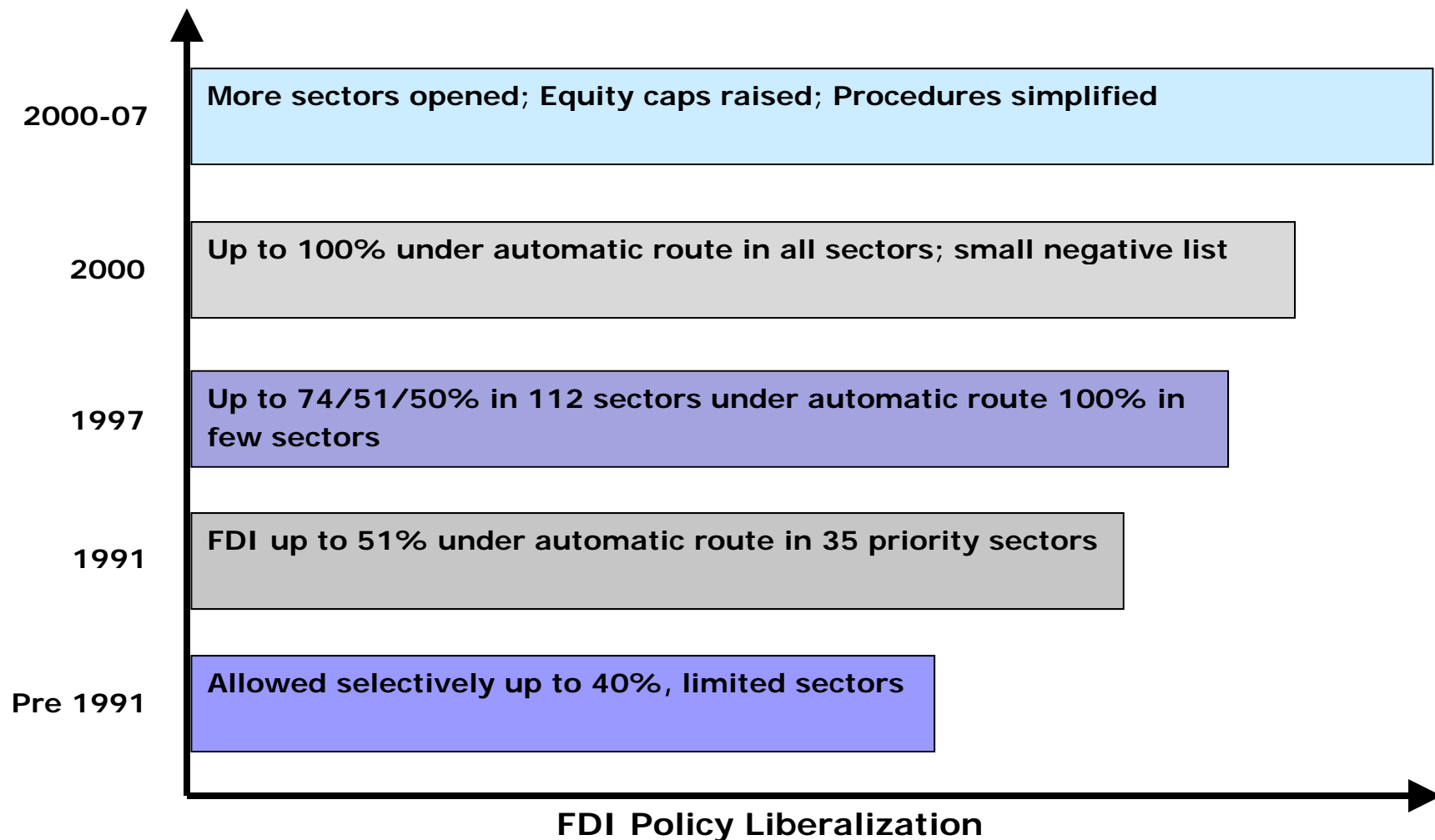
Economic Indicators - Fiscal Deficit

Trends in Deficit



Sharp deterioration in the fiscal position due to conscious measures to counteract effect of global shocks i.e. global commodity price rise and financial meltdown.
Fiscal deficit at 6.8 per cent - matter of key concern.

The Changing Face of the FDI Policy



FDI Inflow - Top Investing Countries

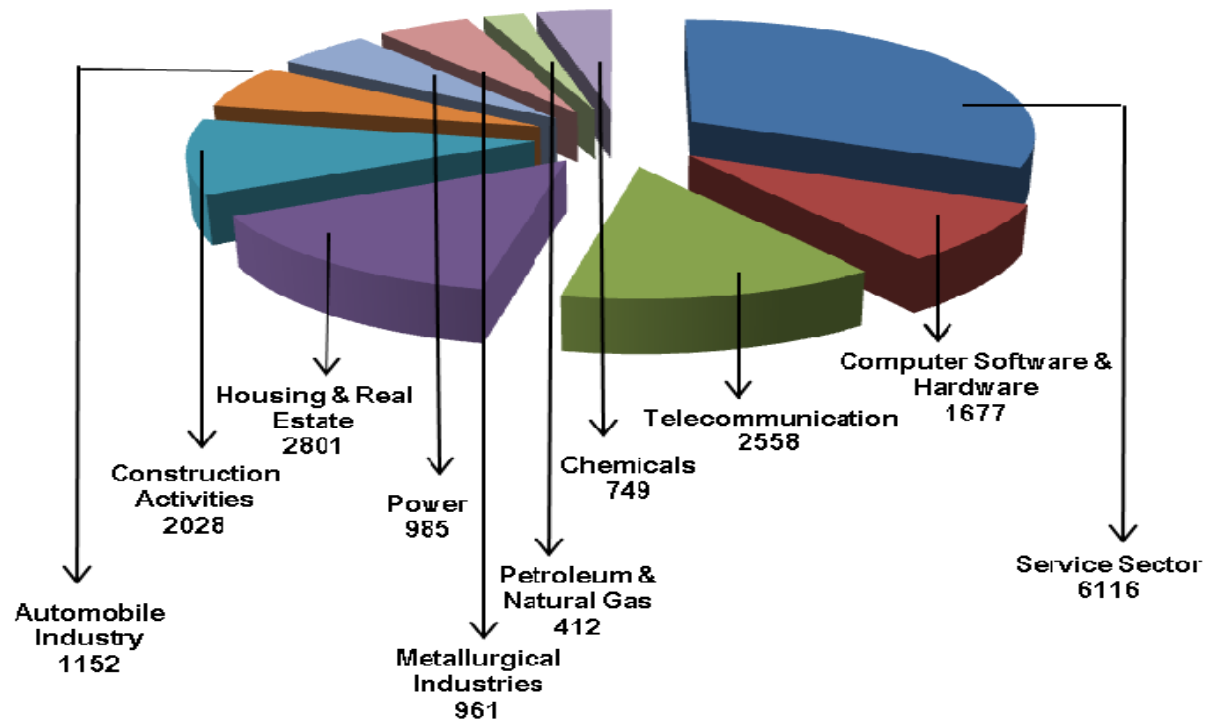
US\$ Million

Ranks	Country	2006-07	2007-08	2008-09	2009-10 (May 2009)	Cumulative
1	MAURITIUS	6,363	11,096	11,208	2,515	39,379
2	SINGAPORE	578	3,073	3,454	260	8,071
3	USA	856	1,089	1,802	173	6,508
4	UK	1,878	1,176	864	62	5,289
5	NETHERLANDS	644	695	883	110	3,701
6	JAPAN	85	815	405	303	2,834
7	GERMANY	120	514	629	205	2,378
8	CYPRUS	58	834	1,287	307	2,579
9	FRANCE	117	145	467	6	1,233
10	U.A.E.	260	258	257	75	995
60	SLOVENIA	-	-	-	-	8.24
	Total	15,726	24,579	27,309	4,434	94,282.24

Source – Department of Industrial Policy & Promotion

FDI - Sectoral Composition

Sectoral Composition of FDI 2008-09 (US \$ million)



Budget 2009 & beyond

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

Promising Sectors

- ❑ **Retail**
- ❑ **Healthcare**
- ❑ **Logistics**
- ❑ **Education**
- ❑ **Power**
- ❑ **Transport**
- ❑ **Banking**
- ❑ **Telecom**

Policy Framework – In the horizon

- ❑ Goods & Services Tax

- ❑ Companies Law Amendment Bill

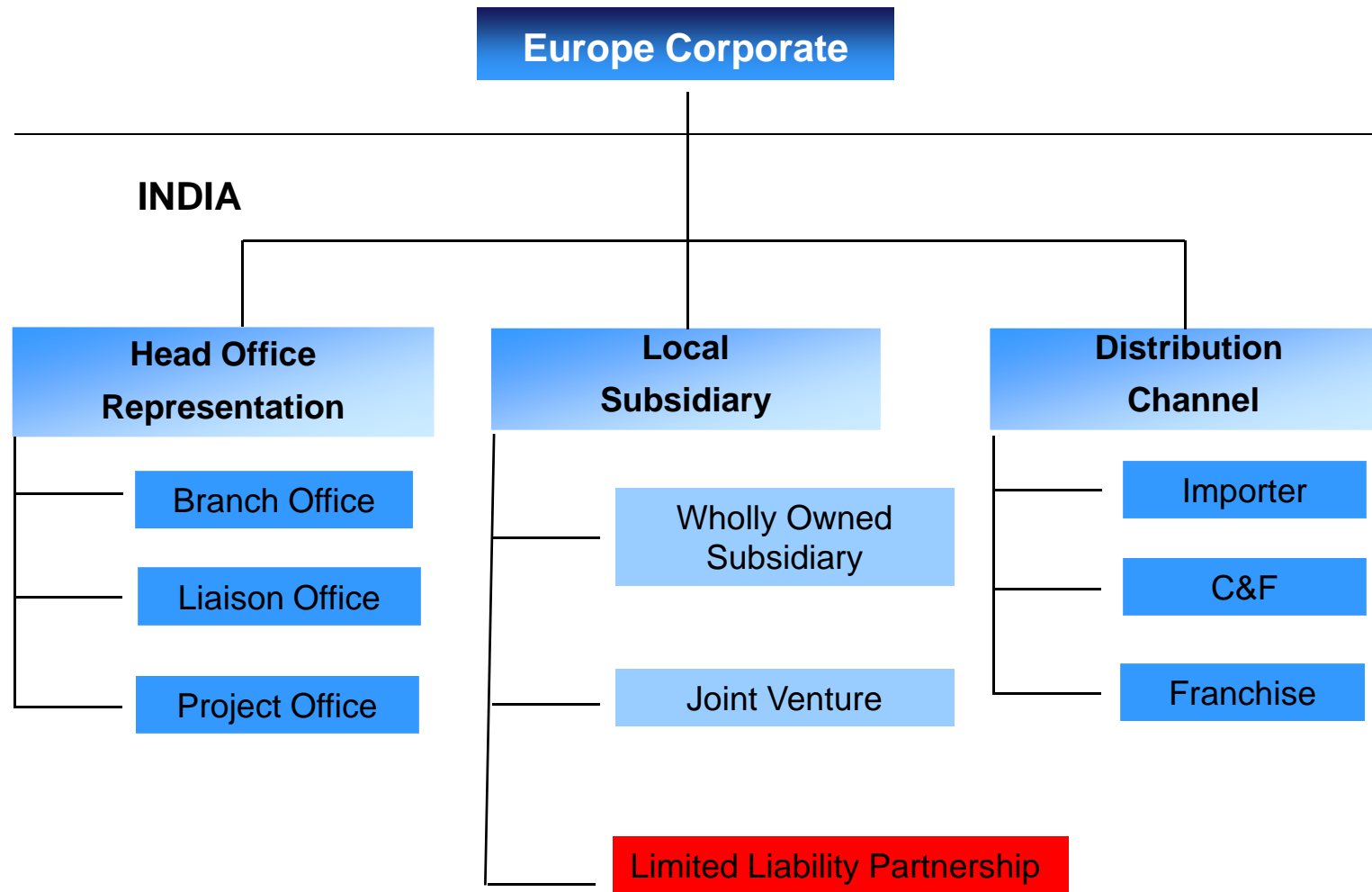
- ❑ New Direct Tax Code

- ❑ Insurance Laws (Amendment) Bill

- ❑ Banking Regulations (Amendment) Bill

India Entry Strategy

India Entry - Mode of Investment



India Entry - Alternate Entity Comparison

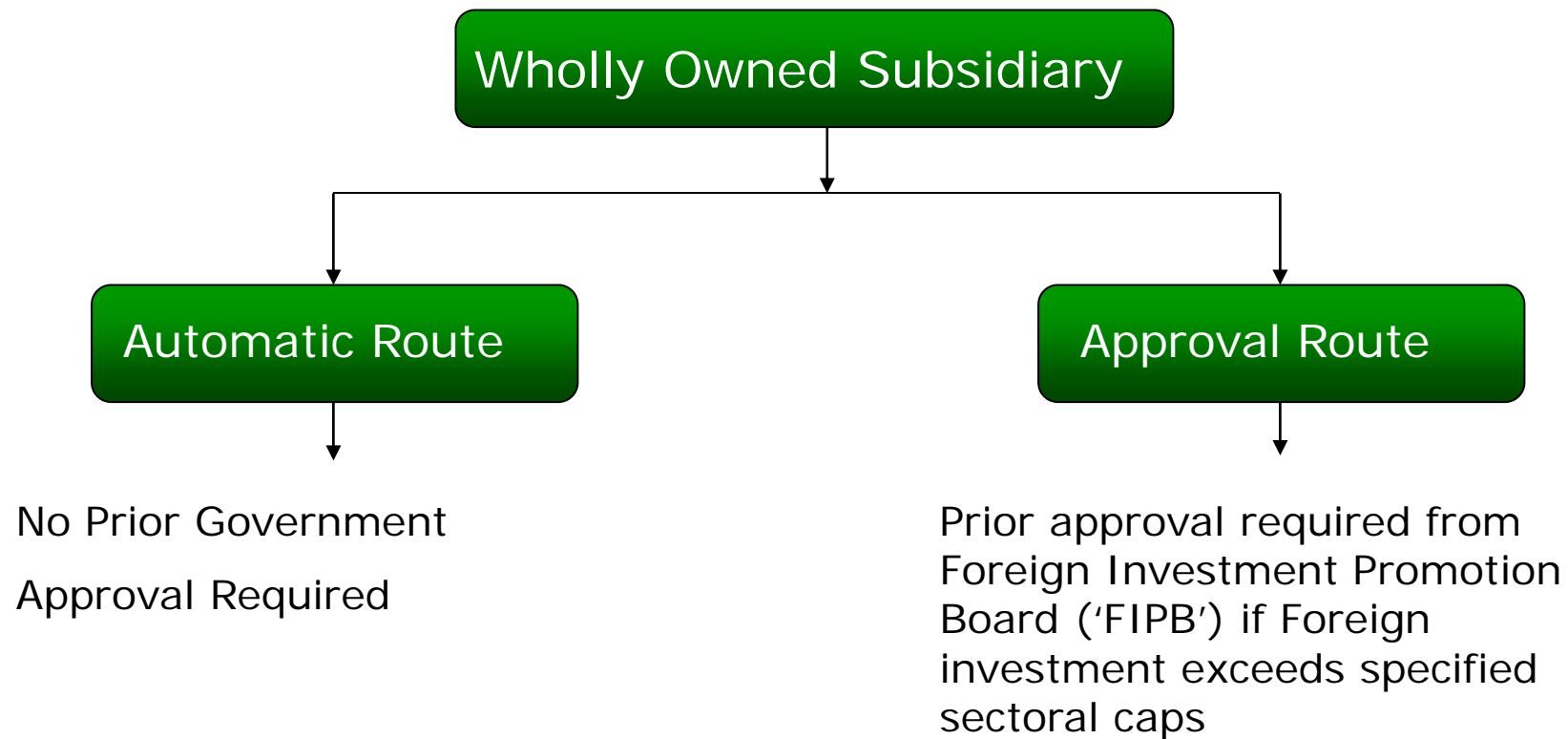
	Corporate [CO]	Liaison Office [LO]	Project Office [PO]	Branch Office [BO]
Characteristics	Share capital owned by parent company	No commercial activities allowed	Temporary site office, specific projects	Commercial activities allowed
Status	Shareholders	Foreign Company	Foreign Company	Foreign Company
Tax Rate	30% +	Non Taxable	40% +	40% +
Control	Board of Directors	Parent Company	Parent Company	Parent Company
Set-up	FIPB Approval / Automatic Route (4-6 weeks)	RBI approval (4 weeks)	RBI approval (4 weeks)	RBI approval (4 weeks)
Closure	ROC (6-9 months)	RBI (3 months)	RBI (3 months)	RBI (3 months)

RBI – Reserve Bank of India
FIPB – Foreign Investment Promotion Board
ROC – Registrar of Companies

Investment Strategy – Corporate

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

Investment Strategy - Greenfield Project



Investment Strategy - Policy Matters (#1)

- ❑ Analysis of **Sectoral Caps** - Investment Allowed Under Automatic or Approval Route
- ❑ **Negative List** - Gambling & Betting, Lottery business, Atomic Energy, Retail trading (except 'Single Brand' product retailing)
- ❑ **Press Note 1 of 2005** - Special Approval on Investment in Existing Industries



Examine the Negative List, Sectoral caps and SSI reservations while conceptualizing investment into India

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

Joint Venture Project vs Wholly Owned Subsidiary

- ❑ Value added by Indian Partner
 - Operating Infrastructure
 - Market Access
 - Regulatory Knowledge
 - Labour Management
- ❑ Management and Control
- ❑ Dilution of Profits
- ❑ Protection of Technology, Trademarks and Trade Names

Investment Strategy (# 3)

Term Sheet and Shareholder's Agreement

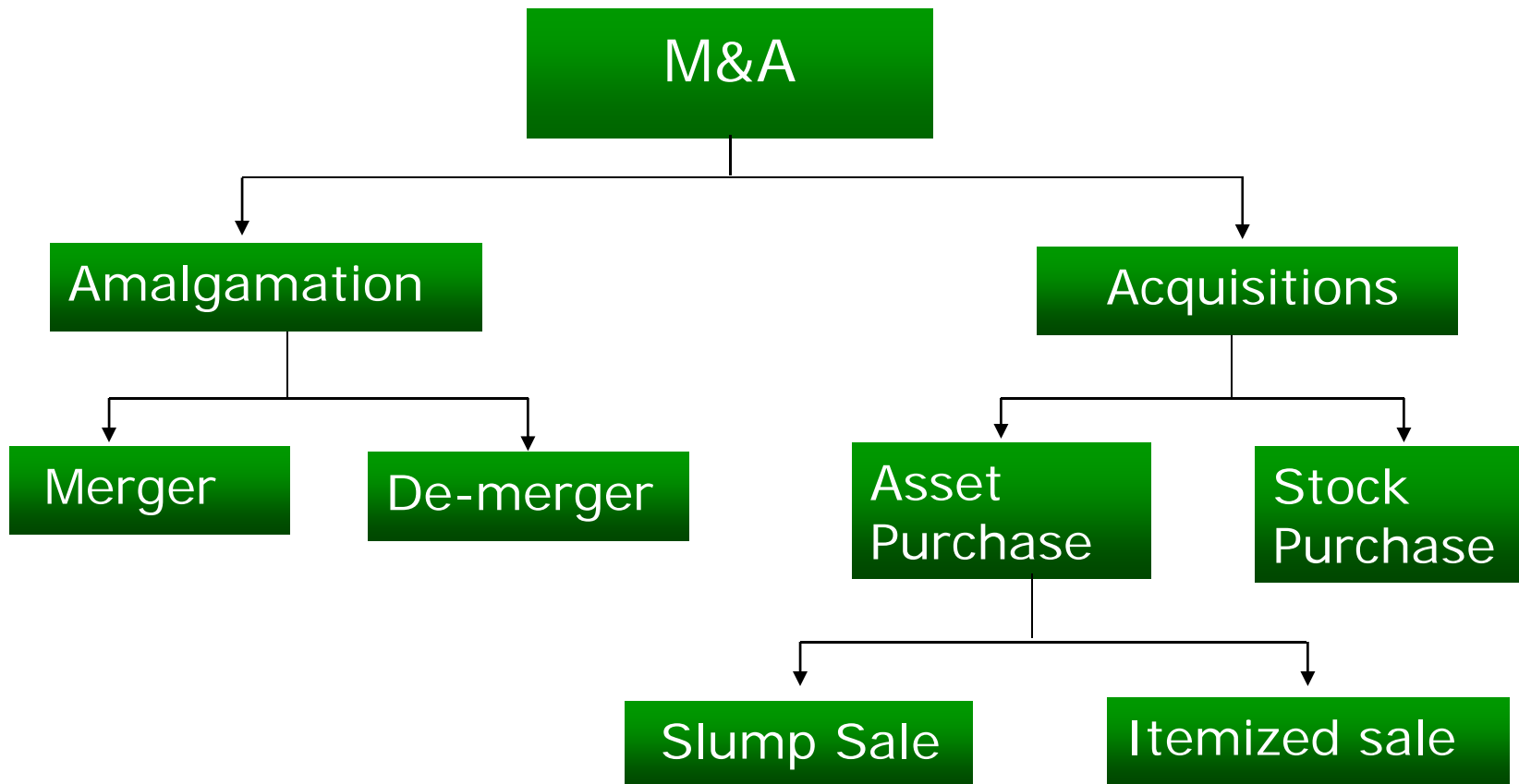
Management control issues viz.

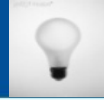
- appointment to the board of directors and chairman of the board
- appointment of CEO, MD, CFO
- issues arising from future change of control, non-compete, etc.
- implications of 26, 51 and 75 percent shareholding

Operational issues viz.

- Labour handling
- Regulatory approvals
- Appointing head of sales, manufacturing, etc

Investment Strategy - Brownfield Project





Value Addition to the Feasibility Study

- ❑ Have you considered various Municipal Level Taxes?
- ❑ Have you considered effect of Pension Schemes etc?
- ❑ If land is required, have you considered future expansion plans?
- ❑ Logistics and easy access to resources taken into consideration?

RECURRING REGULATORY COMPLIANCES

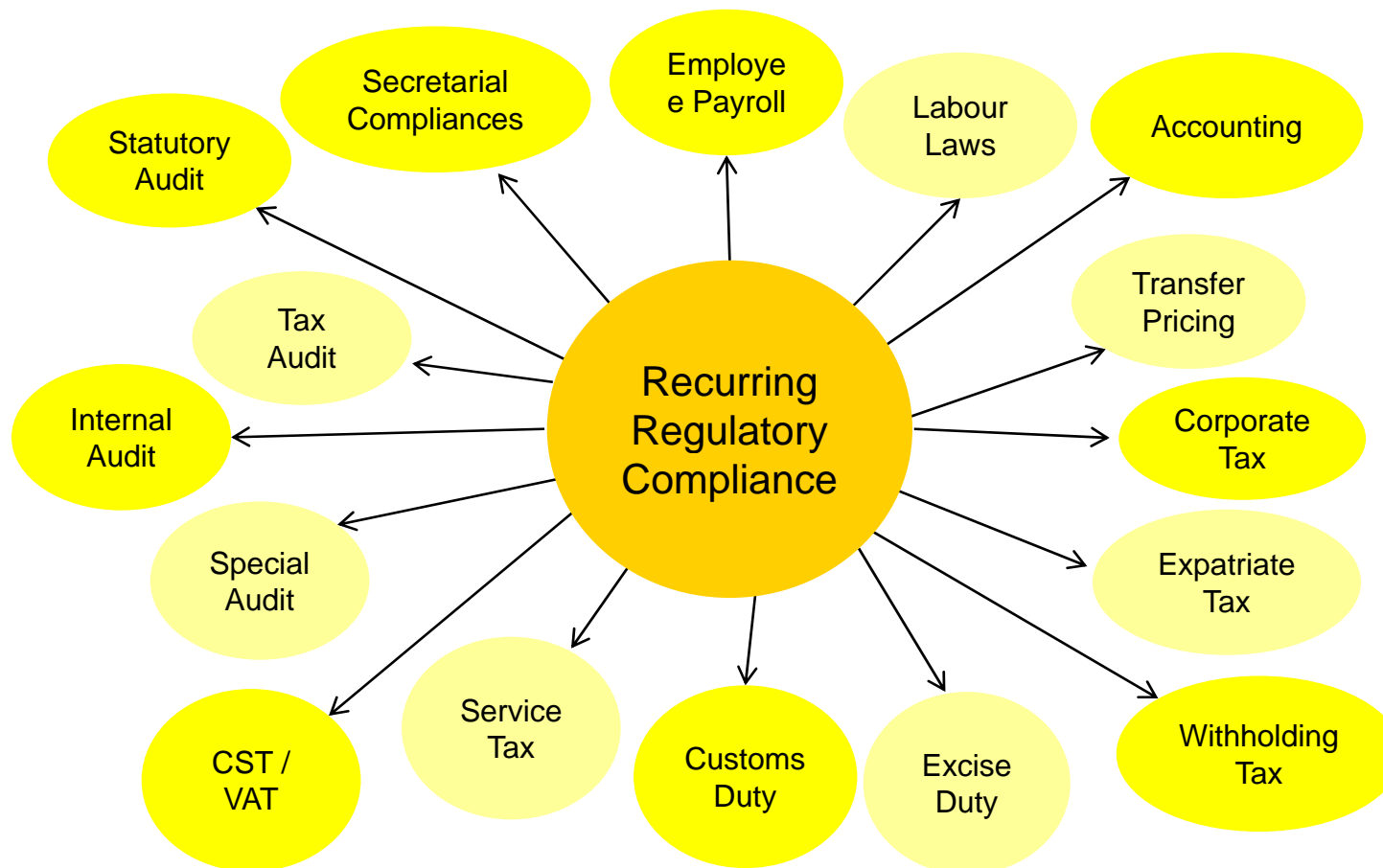
Understanding Regulatory Environment

- ❑ Most laws originate from British Laws
- ❑ Procedure Driven
- ❑ Failures to comply can lead to penalty and sometimes prosecution
- ❑ Impetus is to avoid labor exploitation (*blue collar staff*)
- ❑ Fine reading and interpretation is the norm

Regulatory Matters - Key Authorities

- ❑ Reserve Bank of India ('RBI')
- ❑ Registrar of Companies ('ROC')
- ❑ Income Tax Authorities
- ❑ Central Board of Excise and Customs ('CBEC')
- ❑ Labour Commissioner

Compliances -Overview



Accounting & Audit - Key Issues

- ❑ Financial Year - April 1st to March 31st
- ❑ Recording of transactions - per Indian GAAP (IFRS on way)
- ❑ Adequate provisioning and appropriate disclosure
- ❑ Compliances - Daily, Monthly, Quarterly, Annual

Transfer pricing (#4)

Ensuring that transactions between group companies are at market price?

- ❑ **Arm's Length price ('ALP')**

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

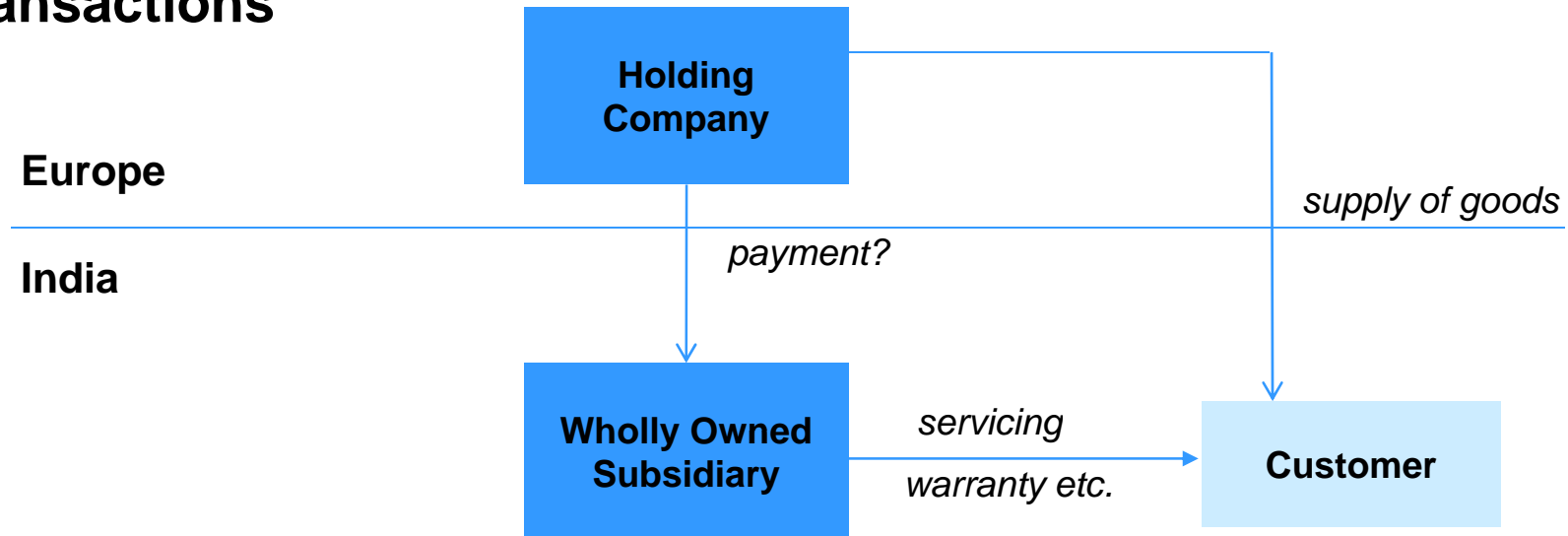
ALP means a price which is applied in a transaction between persons other than associated enterprises

- ❑ **Associated Enterprise ('AE')**

Participation in management or control or capital of other enterprise
Directly through intermediaries

Transfer Pricing (#5)

Determining the appropriate pricing for group companies transactions



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

Permanent Establishment (PE) (#6)

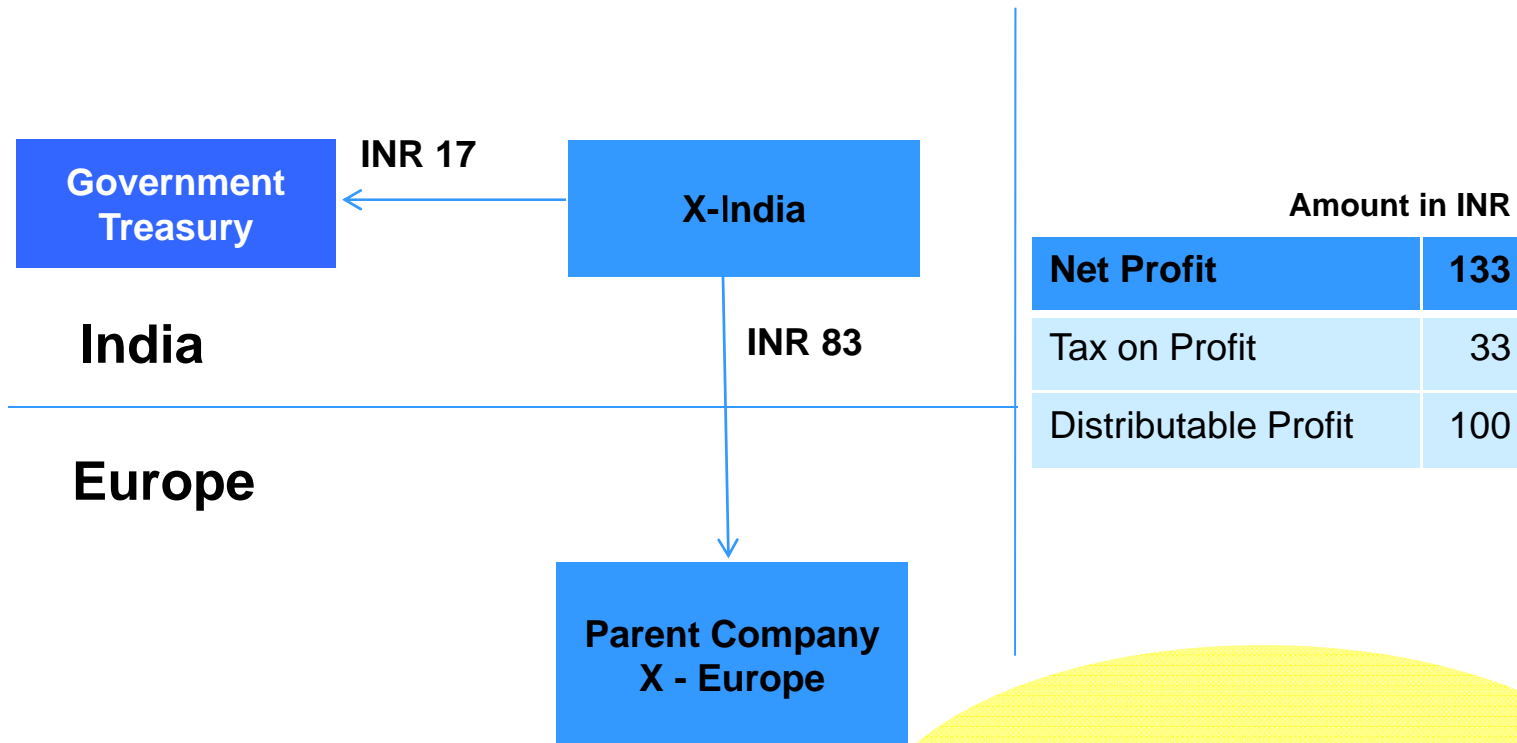
Risk of exposure

- ❑ Foreign company operating through an agent, branch etc regarded as having a PE in India
- ❑ In certain cases, an Indian subsidiary can be classified as a PE

Where work linked to India,
India tax office can prove
existence of PE, part or entire
portion of India linked
transactions can be brought to
tax in India

Repatriating Profits (#7)

The issue around Dividend Distribution Tax



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

ON THE ANVIL

Major Regulatory Changes # 8

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'
- ❑ 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 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 2010

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

About Us

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** - member of **NIS Global**, an international association of independent accounting firms
- ❑ Approximately 70 per cent are **overseas clients**
- ❑ Offices across India and affiliations worldwide
- ❑ More than 20 years **work experience**
- ❑ Professional **staff strength** of over 150 in India & 1,500 through associate network

Our Services



Services

- ❑ **Business Advisory – Inbound investments**
- ❑ **Transaction Advisory – M&A, Restructuring**
- ❑ **Market Research/ Industrial Analysis**
- ❑ **Tax – Expatriates, Transfer Pricing**
- ❑ **Compliance – Bookkeeping, IFRS, SOX**
- ❑ **Audit – Statutory, Internal**

Thank You