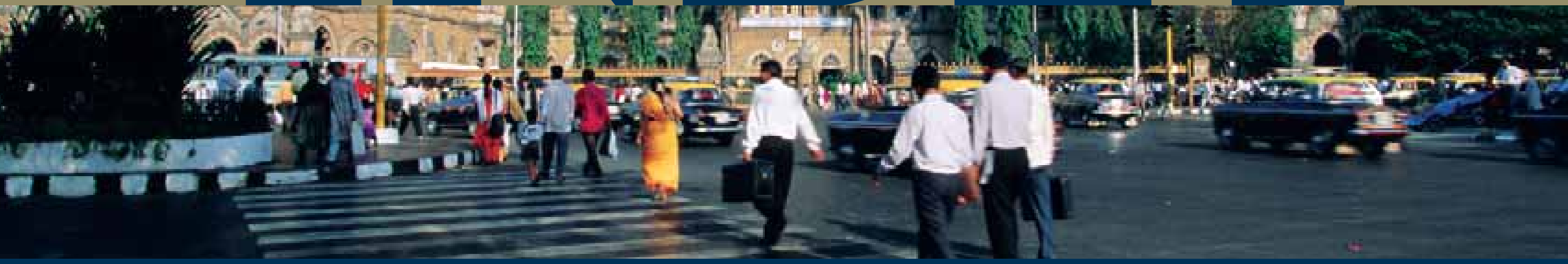
DOING BUSINESS WITH INDIA



A GUIDE FOR
CANADIAN EXPORTERS AND INVESTORS

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EDC

About the Guide

Doing Business with India is designed to help Canadian companies learn about the Indian marketplace and how they can do business there. If you've never operated outside Canada but you believe that your company could do well in foreign markets, this guide will help you decide how – or even whether – you should proceed. If you're already doing business abroad, but haven't as yet ventured into India, it will help you find your way into this promising marketplace.

The Indian market is enormously varied and extremely competitive, and its unfamiliarity can make it intimidating. Nevertheless, plenty of Canadian businesses, of all sizes and in many sectors, are prospering in this remarkable country.

Doing Business with India: A Guide for Canadian Exporters and Investors (2009) is an update of the *Exporting to India: A Guide for Canadian Business*, which was first produced by EDC in 2006.

DOING BUSINESS WITH

INDIA

A GUIDE FOR CANADIAN EXPORTERS AND INVESTORS

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1

Possessors of a rich and ancient cultural heritage, and living in a nation that stretches from the Himalayas to the tropics, India's billion-plus people make up the world's largest democracy and one of the planet's biggest markets.

UNDERSTANDING THE INDIAN MARKET

The country is a republic, with a political structure based on the British parliamentary system, and is made up of 29 states and six territories. Like Canada, it has three main government branches: an executive branch, a Parliament consisting of an upper and lower house, and an independent judiciary. Unlike Canada, it has more than 100 national, regional and political parties. The two major political players are the Congress Party and the Bhartiya Janata Party (BJP). Indian governments have tended to be stable, although they frequently need to resort to coalition politics in order to stay in power.

1.1 The economic environment

India's government has been a strong participant in the country's business life since the country gained independence from Britain in 1947. But until the early 1990s, state control of the economy was very pervasive, with a great deal of regulation and bureaucratic red tape. This severely impeded economic growth, which remained lackadaisical for many years.

The rapid expansion of India's economy did not begin until 1991, when the government began a vigorous program of economic liberalization. Among other reforms, it deregulated industry, reduced tariffs, cut domestic taxes and simplified the rules for foreign investment. It also began investing heavily in sectors such as infrastructure and rural development, and, in an attempt to reduce government interference in the economy and to encourage foreign and private investment, it started allowing much more outside participation in key sectors such as telecommunications, insurance, real estate, biotechnology and infrastructure. With the help of low interest and inflation rates, these measures have led to an ongoing boom in the Indian economy.

Another key contributor to the country's economic expansion has been its abundant human capital, as India's excellent schools and colleges continue to produce a large labour force of well-educated, English-speaking workers. Technical education, to take just a single example, is one of the educational system's strengths; literally thousands of engineering colleges offer degrees and diplomas, with several hundred of these institutions concentrating on advanced training in information and communications technology.

1.1.1 Recent growth trends

As reported in the government's Economic Survey 2007-2008[1], India's GDP grew by 8.7 per cent during that fiscal year and is forecasted to grow by 5.5 per cent by EDC's Economics Group in 2009. This was distinctly lower than its overall growth during 2005–2006 (9.2 per cent) and 2006–2007 (9.6 per cent). Nevertheless, most major sectors continued to expand, although at a more leisurely rate than in previous years. In more detail:

- Overall manufacturing in 2007–2008 slowed from its 2006–2007 level, but still managed a healthy growth rate of 9.4 per cent.

[1] *The Economic Surveys are available at www.indiabudget.nic.in. Note that the Indian government's fiscal year runs from April 1 to March 31.*

- Construction increased by 9.6 per cent over 2006–2007 levels, but the growth rate had moderated. This slowdown contributed to lower growth in the mining, steel, concrete and petroleum sectors.
- Mining and quarrying, based on the country's abundant natural resources, rose by 3.4 per cent.
- The electricity sector posted a gain of 7.8 per cent, up considerably from the previous year's growth rate of 6 per cent.
- In the services sector, financing, real estate and business services rose by 11.7 per cent.
- Growth in the agriculture, forestry and fishing sector was 2.6 per cent, a decline from the previous year's increase of 3.8 per cent. Agriculture in particular is a major worry for the Indian government because of stagnating yield and declining investment.
- The expansion of the middle class has been behind much of the Indian economy's growth during the past decade, especially since lower interest rates have stimulated consumer demand for a large variety of goods and services. Depending on the seriousness of the global slowdown expected during 2009–2010, this growth may flatten or even decline. Once the world economy recovers, however, it's very likely that India's middle class will begin to grow again, as will its demand for consumer goods and services.

1.1.2 Economic prospects and needs

Although India's growth rate has slowed since the heady days of 2006–2007, it has remained respectable. In October 2008, the Reserve Bank of India estimated that the economy would expand by 7 per cent in 2008–2009, although the turmoil in the international economic and financial situation was already casting some doubt on this prediction.

One of the country's major advantages is its banking system, which is well capitalized and is still extensively regulated despite the reforms of the past decade and a half; this has insulated the country somewhat from the economic shocks being felt elsewhere in the world. Nevertheless, some heavily export-dependent industries, such as textiles, were already seeing sharp drops in shipments as 2008 drew toward its close.

Assuming the global economy recovers, the country's industrial outlook is quite bright. According to the Economic Survey 2007–2008, the capital goods sector is showing respectable growth, especially in industrial machinery. This will help the country with the much-needed expansion of its industrial capacity. In addition, the inherent strength of India's industrial corporations, with their history of profitability and their strong investment planning, confirms the likelihood of future growth.

That said, India still needs to strengthen its economic foundations in two vital areas:

- The industrial infrastructure must be expanded and upgraded. Infrastructure growth not only alleviates supply constraints in industrial production, but also stimulates additional domestic demand.

- The current skill deficit in many areas of Indian manufacturing must be dealt with quickly and effectively. This will encourage R&D and technological innovations, which are urgently needed in the chemical, automotive and pharmaceutical sectors, among others.

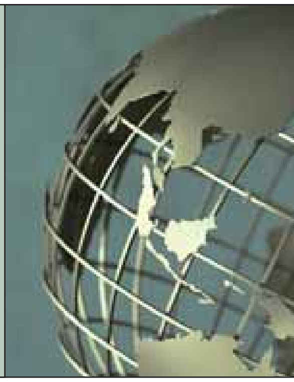
The agricultural sector is somewhat less encouraging. Again according to the *Survey*, … besides weather-induced fluctuations, output of this sector has been affected due to reduced capital investment and plateauing of yield levels in major crops… a gradual degradation of natural resources through overuse and inappropriate use of chemical fertilizers has affected soil quality, resulting in stagnation in the yield levels. Public investment in agriculture has declined and this sector has not been able to attract private investment because of lower/unattractive returns.

India will thus require a huge volume of goods, equipment, plants, services and investments to maintain the momentum of its development and, in the case of agriculture, to avoid slipping backward. Among its needs, many of which can be met by Canadian companies, are the following:

- The country's roads, railways, seaports and airports all need upgrading, which will consume hundreds of billions of dollars during the next few years. Canada has plenty of expertise in building such infrastructures.
- The government is maintaining its push to expand India's electricity-generating capacity, with the country's electricity market now welcoming foreign and private sector investment. Coal remains the mainstay of the power sector, and the Ministry of Power India has launched development of nine coal-based Ultra-Mega Power Projects (UMPPs), each with a capacity of 4,000 MW and up. Of the nine, four have been awarded to the private sector.
- India wants to increase its use of natural gas as an alternative to imported oil, which opens up potential markets for Canadian refining, storage and distribution technologies.
- Alleviating the stress on India's urban environments will require large investments in technology for water treatment, clean transportation, green architecture, renewable energy sources and pollution control. Canada has considerable expertise in such technology.

EDC and the Indian market

EDC support for Canadian companies in India has increased almost five-fold during the past five years. In 2008, EDC's business volume in the country exceeded $1.7 billion for the first time; this figure represented approximately two-thirds of all Canadian trade with, and investment in, India during that year. This growth is due in part to the increase in overall Canadian activity in India and in part to the resources and attention that EDC has committed to the country in recent years.



- Canadian firms can help India meet its residential construction needs. The country is the largest housing market in South Asia; almost 30 per cent of all Indians live in cities, but the housing stock is inadequate.
- Rehabilitating the agricultural sector will demand new equipment and new infrastructures for the storage, refrigeration and distribution of agri-food products, all of which can be supplied by Canadian companies.
- The telecommunications sector is continuing to expand at a rapid clip. The growth of wireless services has been especially swift; wireless subscribers now far outnumber fixed-line subscribers, and are increasing at a much faster pace.

1.1.3 The investment climate

India has been steadily loosening its investment rules since 2006, when it carried out a major review of its foreign direct investment (FDI) policies. This has led to many adjustments such as increased equity caps, removal of restrictions and simplified procedures. More recently, the government has undertaken a range of FDI-friendly initiatives such as the following:

- working with the Federation of Indian Chambers of Commerce and Industry (FICCI) and the Confederation of Indian Industry (CII) to attract foreign investment to the country;
- establishing the Foreign Investment Implementation Authority (FIIA) to help solve investment-related problems;
- launching the National Manufacturing Competitiveness Council (NMCC) to provide a forum to encourage the growth of manufacturing; and
- promoting regular interaction with foreign investors through bilateral, regional and international meetings.

FDI is allowed in most sectors, with a few exceptions such as agriculture, and there is a range of incentives for investors; for more detail, refer to Chapter 5, "Investing in India." Approval of an investment is either by the automatic route under the jurisdiction of the Reserve Bank of India (RBI), or via government approval through the Foreign Investment Promotion Board (FIPB) under the Ministry of Finance.

1.2 Canada-India trade and investment

To most Canadians, including Canadian businesspeople, India is a distant and unfamiliar place. This has produced something of a disconnect between the two countries, neither of which knows much about the business potential of the other. Possibly aggravating this, on the Canadian side, is a preconception that India's maze of trade regulations and tariffs make it a closed economy that's unwelcoming to outsiders.

The steady liberalization of India's economy has made this latter view obsolete. Even so, while India is our biggest trading partner in South Asia, it ranks well down in our list of export markets. This is beginning to turn around, however, as more Canadian companies and investors take the plunge into India. In 2008, we exported over $2.2 billion worth of merchandise to the country, an increase of 31 per cent over the previous year. In addition, we provided $331 million worth of services to buyers in India.

On the FDI side, the Canada-India investment relationship is fairly small; Canadian FDI in India was valued at about $200 million in 2007, while India's FDI in Canada is currently estimated at $145 million[2]. However, Canada and India signed a Foreign Investment Promotion and Protection Agreement (FIPA) in June 2008, and this will probably lead to higher investment flows in both directions.

This level of progress is due partly to the efforts of Canadian and Indian institutions such as the Asia-Pacific Foundation of Canada, the Canada-India Business Council and the Indo-Canada Chamber of Commerce, which are helping to broaden and deepen the economic and business links between the two countries.

[2] *All currency figures are in Canadian funds except where noted otherwise.*

1.3 Going to India

If you're going to export to India, you'll definitely need to visit the place beforehand. The following sections examine the essentials of travelling to the country and getting along there.

1.3.1 Entering India

1

To enter India, you'll need a Canadian passport that will be valid for at least six months past the date on which you'll leave India. Since you're travelling on business, you'll also need a business visa, which you must obtain from one of the Indian consular offices in Canada. These are:

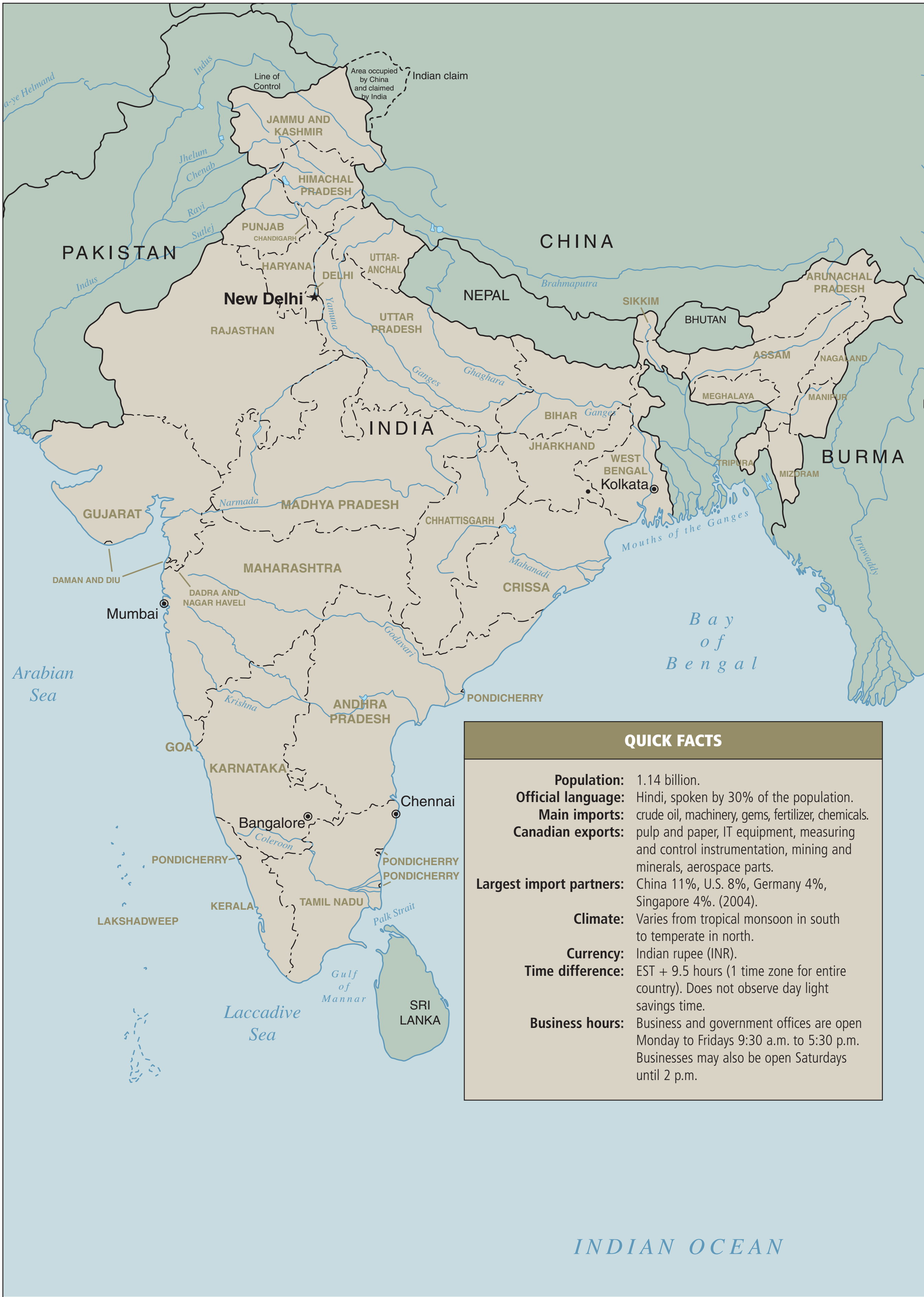
The High Commission of India
10 Springfield Road
Ottawa, Ontario
K1M 1C9
613-744-3751
Email: hicomind@hciottawa.ca
www.hciottawa.ca

Consulate General of India
201-325 Howe Street
Vancouver, B.C.
V6C 1Z7
604-662-8811
Email: indicacg@telus.net
www.cgivancouver.com

Consulate General of India
365 Bloor Street East, 7th Floor
Toronto, Ontario
M4W 3L4
416-960-0751
Email: cgindia@cgitoronto.ca
www.cgitoronto.ca

If your visa allows you to be in India for more than 180 days, you have to register, within 14 days of arrival, with the local office of the Foreigners Regional Registration Officer (FRRO) in Mumbai, Kolkata, New Delhi or Chennai, or with the Superintendent of Police in all other districts.

For up-to-date information about travel to India, including health and security issues, refer to Foreign Affairs and International Trade Canada's Consular Affairs web site at **www.voyage.gc.ca**.



QUICK FACTS

Population:	1.14 billion.
Official language:	Hindi, spoken by 30% of the population.
Main imports:	crude oil, machinery, gems, fertilizer, chemicals.
Canadian exports:	pulp and paper, IT equipment, measuring and control instrumentation, mining and minerals, aerospace parts.
Largest import partners:	China 11%, U.S. 8%, Germany 4%, Singapore 4%. (2004).
Climate:	Varies from tropical monsoon in south to temperate in north.
Currency:	Indian rupee (INR).
Time difference:	EST + 9.5 hours (1 time zone for entire country). Does not observe day light savings time.
Business hours:	Business and government offices are open Monday to Fridays 9:30 a.m. to 5:30 p.m. Businesses may also be open Saturdays until 2 p.m.

1.3.2 Temporary entry of goods

If you go to India on business, you may need to bring commercial samples, exhibits, promotional materials or business equipment such as laptops into the country. The Federation of Indian Chambers of Commerce and Industry (FICCI) recommends that you obtain an ATA Carnet for this purpose, since a valid Carnet permits duty-free and tax-free temporary import of goods into India. ATA Carnets are available, for a fee, to business and sales executives, exhibitors at trade fairs and travelling professionals. You can obtain one by applying to the Canadian Chamber of Commerce at **www.chamber.ca**.

1.3.3 Getting along in India

No guide can hope to prepare any first-time visitor for the extraordinary experience that is India, but the following background may help.

- **Climate**

India has four seasons, but they're not what Canadians are used to. They are:

- Winter (December to February)
- Summer (March to May)
- Southwest monsoon (June to September; the rainy season)
- Post-monsoon, also known as the northeast monsoon (October to November)

Summer temperatures of 40°C and above are common in northern India, and the south is hotter still. In December, January and February, the country's winter months, temperatures in parts of the north can fall to near 0°C; by contrast, winter temperatures in the south are rarely below 10°C.

- **Languages**

India's official language is Hindi, but this is widely spoken only in the north; in the south, several non-Hindi regional languages are used. When it comes to business, however, English is commonly spoken throughout the country, and government officials use English in their day-to-day work as well. In addition to Hindi and English, there are 18 other major languages in use, together with at least 700 dialects.

- **Time zones**

India is five and one-half hours ahead of Greenwich Mean Time (GMT). There's no daylight saving time, so there are no time changes during the year. To find out what time it is in various Indian cities with respect to your location in Canada, use the World Clock at **www.timeanddate.com**.

- **Business hours**

  Shops, banks and post offices open at 10 a.m. Most banks close at 4 p.m. and post offices at 5 p.m. Shops are typically open until 7 p.m., six days a week. Businesses are usually closed on Sundays. The central government and state governments work five days a week, Monday through Friday, from 10 a.m. to 5 p.m.

- **Public holidays**

  There are three national holidays: Republic Day (January 26); Independence Day (August 15); and Mahatma Gandhi's birthday (October 2). There are also many holiday festivals, whose dates vary from year to year.

- **Money**

  The currency is the rupee, written as Rs, which is divided into 100 paise (p). You can't bring rupees into the country or take them out when you leave. U.S. dollars or American Express travellers' cheques are the best way to carry money in India; when cashing travellers' cheques, you'll save time and paperwork if you use large banks in major cities. Major credit cards are accepted in most cities. In late 2008, one Canadian dollar was worth about 40 rupees.

  More than 30 foreign banks operate in India, including several branches of Scotiabank. Most foreign banks maintain ATMs in India, so you can usually access funds in your Canadian accounts through the international ATM network.

1.3.4 Getting around in India

The Consular Affairs web site at **www.voyage.gc.ca** will give you detailed, current information about travelling in India. Here are some other basics:

- You can rent and drive a car (right-hand drive) in India using an international driver's licence, but don't be tempted to do this. Driving is dangerous, the roads are congested and people don't obey traffic regulations. If you're unlucky enough to cause an accident, you can be in serious trouble, especially if you've injured a pedestrian or a cow – drivers have been violently attacked in these circumstances. It's much better to hire a car and driver to take you where you want to go.
- Rail travel can be an excellent way to see India. You book tickets in advance and can choose among several classes, the top three of which are air conditioned.
- The major private airline in India is Jet Airways. It operates about 380 flights every day to 44 domestic destinations, and now flies internationally as well. Air India is India's national carrier and the only government-owned airline in the country.

1.3.5 The business and social environment

Indian businesspeople are fully aware of internationally accepted business etiquette and are quite comfortable with it. If you understand and conform to certain cultural nuances, though, people will appreciate it. Here are some things to be aware of:

- Exchange of business cards is expected.
- Formal address is preferred. Use surnames and, when applicable, professional titles like “Doctor.” Use of first names is not appropriate. Forms of address can also vary according to ethnic group, religion and local culture, so find out what’s customary before you meet people.
- Indian men (but few women) will shake hands with foreign men, but a Canadian woman should not offer a handshake. Canadians of both sexes might consider using the “namaste” gesture, bowing slightly with palms pressed together below the chin, instead of proffering a hand.
- Indians are often not punctual by Canadian standards. This is cultural and shouldn’t be thought of as rude or inconsiderate.
- Business entertaining is usually done outside the home, but you may also receive invitations to people’s residences. Shoes are removed before one enters the house, unless the host or hostess is wearing shoes.
- Gift-giving is accepted, but be careful about what you give to whom. Alcohol is off-limits to Muslims, and leather items should be avoided altogether because the recipient can’t be sure whether their sources might be pigskin (offensive to Muslims) or cowhide (offensive to Hindus). Flowers, chocolate and Indian sweets, however, are appropriate.
- Remember that Hindus don’t eat beef or beef products, and Muslims don’t eat pork or pork products. Many Indians, incidentally, are vegetarians. If someone offers you a drink (whether alcohol or not), it’s polite to refuse the first offer, but you should accept the second or third.
- Thanking your host for a meal isn’t done because it’s considered a form of payment. Instead, return the hospitality by offering a dinner or lunch invitation of your own.
- Getting up to leave and saying goodbye to your hosts immediately after finishing a meal is perfectly acceptable. In contrast to western custom, social interaction happens before a meal is served; in fact, it is not appropriate to stay for any length of time after a meal.

The above doesn’t cover nearly all the nuances, but there are numerous web sites that provide information on cultural and business behaviour in India and elsewhere. The best advisor, of course, is likely to be an Indian who lives in India.

1.3.6 Tips for succeeding in the Indian market

There’s no substitute for direct experience in any market, but here are some pointers that will help you with an Indian business venture.

- There are many Indo-Canadian businesspeople with experience in the Indian market, and they can be an invaluable resource on its needs and subtleties.

- Canadian companies need to have a local presence to succeed. This could be on their own or in partnership with a local player. Customers in India need to be assured of continued service and support when they do business with Canadian companies.
- Canadian companies should not look at only doing business with well known names in India. The competition to do business with them is fierce and they are hard bargainers. It is advisable to look for a local partner with a reasonable track record and who is flexible in the terms of business.
- Indians place great importance on personal relationships. This extends to business dealings in a way that isn't common in Canada, and most Indians will want to get to know you as part of doing business with you. Establishing a personal side to your business relationship is part of building mutual trust, and without that trust it will be much harder to negotiate a sale. Always keep in mind that Indians value long-term relationships and will repay your loyalty with their own.
- Tailor your strategies to your market, remembering that India's enormous variety of cultural, ethnic, religious and linguistic groups requires particular sensitivity in everything from product adaptation to packaging.
- Willingness to provide technology and knowledge transfer will increase your attractiveness as a business partner.
- Be aware that business negotiations in India can take much longer than they do in North America. If you show frustration or discouragement, you may irreparably damage your chances of closing a sale.
- Expect to visit India as often as needed. Sending senior company representatives, rather than junior ones, will also signal your commitment to doing business. This will be important to your prospective customer or partner.

Keep informed with EDC

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- eNews: EDC's monthly electronic newsletter
- *Export Trends & Tips*: Monthly article about export issues for Canadian small businesses
- News Release Alerts: Automatically receive EDC news releases via email
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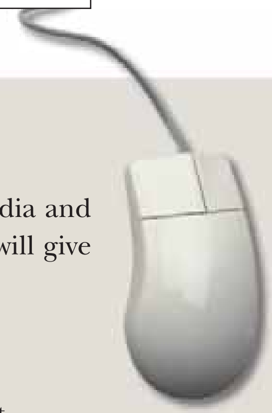
- *ExportWise*: EDC's quarterly magazine featuring exporters' stories, industry and market trends, economic analyses and exporter resources



1.4 Resources for Canadian exporters and investors

There are many resources that Canadian businesses can use to learn about India and how they can do business there. The following list is far from exhaustive, but will give you a good start.

1.4.1 Specific resources for doing business in India

- The **Associated Chambers of Commerc**e and Industry of India has a web site at **www.assocham.org**.
- The **Canada-India Business Council** is Canada's only private sector, national association of Canadian companies doing business in India. Visit them at **www.canada-indiabusiness.ca/home.htm**.
- **The *CIA World Factbook*** has a useful chapter on India; see **https://www.cia.gov/library/publications/the-world-factbook/geos/in.html**.
- The **Confederation of Indian Industry's** web site provides news and resources about India's industrial sectors; it's at **www.ciionline.org**.
- The **Directorate General of Commercial Intelligence and Statistics** (DGCI&S) is the official organization for the collection, compilation and dissemination of India's trade statistics and commercial information. Refer to **www.dgciskol.nic.in**.
- The **Directorate General of Foreign Trade** has a wealth of useful resources and links. Its web site is at **http://dgft.delhi.nic.in**.
- **The Federation of Indian Chambers of Commerce and Industry**, at **www.ficci.com**, is an association of 1,500 corporations and more than 500 chambers of commerce and business associations.
- The **High Commission of India** in Ottawa has a broad range of information about the country, available at **www.hciottawa.ca**.
- The **India Brand Equity Foundation** (IBEF), at **www.ibef.org**, is a public-private partnership between the Ministry of Commerce and Industry, the Government of India and the Confederation of Indian Industry.
- IBEF also provides a range of free FDI guides and sectoral presentations that you can download. Each of the latter identifies the major Indian companies operating in the sector examined. You'll find them at **www.ibef.org/artdisplay.aspx?cat_id=409&art_id=6505.**
- **Indiaserver** provides general information, from travel to movies, about India. Visit **www.indiaserver.com**.
- **IndiaMART**, at **www.indiamart.com**, is a major portal to a vast range of information about the Indian marketplace.

- The **India Finance and Investment Guide**, at **www.finance.indiamart.com**, is a good general resource for learning about taxes, investment and export-import policies.
- The **Ministry of Commerce and Industry** of India maintains a web site that includes an import-export databank on the country's economic activity; refer to **www.commerce.nic.in**.
- There is a directory of official Indian Government web sites at **http://goidirectory.nic.in**.

1.4.2 Resources for specific sectors

For a list of sector-specific government ministries and departments, refer to the IBEF web page at **www.ibef.org/artdisplay.aspx?art_id=18696&cat_id=708**. Other sector resources are given in Chapter 2.

1.4.3 General resources for doing business abroad

- **Canada Business** is one of the first places you should go for export information. It's a collaborative network of federal and provincial government services that help Canadian entrepreneurs and exporters build their companies. It's at **www.canadabusiness.gc.ca**.
- **The Canadian Trade Commissioner Service** (TCS) provides services to Canadian businesses in Canada and abroad, including market research studies and country-specific reports. The Virtual Trade Commissioner, also available though the TCS, is a personalized, web-based resource that will give you market information and leads specific to your business interests. You can register for the Virtual Trade Commissioner when you visit the TCS web site at **www.tradecommissioner.gc.ca**.
- ***Canada's International Market Access Report***, available at **www.international.gc.ca/trade-agreements-accords-commerciaux/cimar-rcami/cimar2008.aspx**, describes the federal government's priorities for improving Canadian access to foreign markets.
- **Export Development Canada** (EDC), at **www.edc.ca**, is a Crown corporation that provides financial services and global market expertise to Canadian companies intending to sell their products and services abroad.
- **Foreign Affairs and International Trade Canada** (DFAIT) provides information about foreign affairs, foreign policy, the Canadian economy, international trade, travel assistance and passport services. It's at **www.international.gc.ca**.
- **CanadExport**, at **www.international.gc.ca/canadexport/**, is a free, online publication maintained by DFAIT. It provides news about trade opportunities, export programs, trade fairs,
business missions and more.
- **Industry Canada** is an excellent source of information, offering market reports as well as the Trade Data Online research tool. Refer to **www.ic.gc.ca**.

2

In this section, we'll examine several market segments that offer excellent opportunities to Canadian exporters. These are also high-priority sectors for Export Development Canada.

OPPORTUNITIES FOR CANADIAN EXPORTERS

Note that many of the following forecasts assume that India's growth will not suffer severe effects from the global economic slowdown that began in 2008. If the recovery from the slowdown is protracted, or if it is substantially delayed, most of these projections will need to be revised downward – although the amount of decline is almost impossible to predict.

2.1 Automotive

In 2008, India's automotive sector ranked 11th in the world in car production and 13th in commercial vehicle production. It consists of five major sub-sectors: cars and utility vehicles, two-wheelers, commercial vehicles, tractors and auto components.

Car sales in India have been rising at about 17 per cent per year; even so, only 8.5 people in 1,000 own a car. Given this low market penetration, domestic car sales in India could grow at a steady rate of 13 per cent annually over the next seven years.

More than 80 per cent of the 1.5 million cars sold annually in India are small vehicles, and Suzuki, Hyundai, Renault, Nissan, Ford and Toyota have plans to establish small-car manufacturing hubs in India to satisfy this market. The two-wheeler segment has grown at 13 per cent annually for the past 15 years but is expected to slow as people move to small, affordable cars.

Commercial vehicle sales, which rise and fall with industrial production, have reflected India's economic expansion in an annual growth rate of more than 27 per cent. Development of infrastructure, particularly roads, has also boosted this sector of the industry and its growth will continue to parallel that of India's industries. Since fuel expenses account for most of the cost of transportation, alternate fuel technologies such as liquefied petroleum gas (LPG) are of interest to India's automotive manufacturers.

The auto components industry has been one of the fastest-growing manufacturing sectors in India and concentrates on parts for engines, transmissions, steering, suspension, brakes, electrical, chassis and vehicle bodies. It is considered to have major potential for foreign direct investment.

The availability of credit and low interest rates influences India's automotive sales quite heavily, since 90 per cent of commercial vehicles, 80 per cent of cars and 60 per cent of two-wheelers are purchased through financing.

The major Indian companies in this sector are:

- Ashok Leyland: **www.ashokleyland.com**
- Ford India: **www.india.ford.com**
- Mahindra and Mahindra: **www.mahindra.com**
- Tata Motors: **www.tatamotors.com**
- Maruti Suzuki: **www.marutisuzuki.com**

Other resources are:

- Automotive Component Manufacturers Association of India: **www.acmainfo.com**
- Automotive Tyre Manufacturers' Association: **www.atmaindia.org**
- Society of Indian Automobile Manufacturers: **www.siamindia.com**

2.2 Energy

2

India's inadequate power infrastructure and the resulting energy shortages threaten the continued growth of the country's economy. The gap between demand and supply has been increasing steadily; peak demand in 2007 was 102,428 MW but the peak supply was 90,019 MW – a deficit of 12,409 MW. The situation will become worse as the demand for power increases, unless there are major new investments in power generation. In fact, India's energy requirements are expected to expand at least fivefold over the next 25 years.

India is working hard to find new sources of power. The country pursues all available power-generation methods including conventional, non-conventional and emerging technologies. Thermal power plants fuelled by coal and gas account for about 64 per cent of the total and hydroelectric sources for about 25 per cent. Renewable resources provide around 7.5 per cent, while nuclear power is a distant fourth at 3 per cent.

The major Indian companies in this sector are:

- GMR Group: **www.gmrgroup.co.in**
- Jaiprakash Power: **www.jppowerventures.com**
- Larsen & Toubro: **www.larsentoubro.com**
- National Thermal Power Corporation (NTPC): **www.ntpc.co.in**
- Reliance Power: **www.reliancepower.co.in**
- Tata Power: **www.tatapower.com**
- Lanco Infratech Ltd: **www.lancogroup.com**
- Essar Group: **www.essar.com**

Other resources are:

- Indian Electrical and Electronics Manufacturers Association: **www.ieema.org**
- Power Grid Corporation of India: **www.powergridindia.com**

2.3 Mining and steel

In India, 80 per cent of mining is coal extraction, with the rest being various metals and minerals such as gold, copper, iron, lead, bauxite, zinc and uranium.

India's expenditure on mining is scant compared to that of other developing countries, and the investment gap is most likely to be covered by the private sector. India welcomes joint ventures in this industry, and there are likely to be substantial opportunities in the development of resources such as iron ore, bauxite, mica, potash and a number of low-grade ores. Some small gold deposits may also hold promise.

As for coal, it is estimated that this segment of the mining sector will need tens of billions of dollars in investment during the next 10 to 20 years, including investment in raw coal production, clean coal technologies and logistics.

The connection between coal and steel is a close one, and the major Indian steel companies have been allotted captive coal blocks to secure their supplies. This offers opportunities for Canadian mining companies to provide them with expertise and technology.

Close to 60 per cent of India's total steel consumption is accounted for by the construction sector, while the auto sector devours another 28 per cent. The Indian steel industry is somewhat fragmented in comparison to that of other markets, with half a dozen major corporations and large number of secondary producers. Nevertheless, it has enjoyed a history of strong growth because of the booming economy and heavy spending on infrastructure.

India is set to become the second-largest producer of steel in the world by about 2015, rising from fifth place in 2008. It will be helped along this path by its ready access to domestic sources of cheap iron ore and coal (except high-quality coking coal, which it must import); this will be a considerable asset when the international prices for these commodities resume their rise.

The major steel companies have announced expansion plans for the next 10 years, and have been assured of captive iron ore sources that will secure their supply of raw materials. The sector may require investments of close to US$70 billion by 2012 to finance this expansion.

The major Indian companies in the mining and steel sectors are:

- Essar Steel: **www.essarsteel.com**
- Hindalco: **www.hindalco.com**
- JSW: **www.jsw.in/companies/company_JSWSteel.shtml**
- Tata Steel: **www.tatasteel.com**

Other resources are:

- All India Stainless Steel Industries Association: **www.aissia.org**
- Indian Refractory Makers Association: **www.irmaindia.org**
- Srei Infrastructure Finance: **www.srei.com**
- Steel Authority of India: **www.sail.co.in**

2.4 Telecommunications

India is one of the world's fastest-growing telecom markets, with a net addition of close to 7 million subscribers each month. In December 2008, it reached a total of 384.79 million subscribers country-wide, bringing India's overall teledensity to almost 33.23 per cent. Density is still about 10 per cent in rural areas, however, so it is estimated that most of the next 500 million telecom customers will be found through the expansion of the non-urban market.

The government plans to raise the country's teledensity to about 45 per cent by 2010, thereby offering substantial growth opportunities for service providers. It has set a target of 500 million telephone connections by the end of that year, with a minimum of 20 million of these being broadband – a huge expansion over the current 3 million broadband connections. Telecom licences have been awarded to several new players in India, and this will offer opportunities for suppliers of network technology.

Indian telecom service providers are tightly focused on value-added services. They are deploying both of the major network technologies – Global System for Mobile Communications (GSM) and Code Division Multiple Access (CDMA) – and are expected to roll out new technologies such as WiMax, IPTV and VoIP in the next six to 18 months.

The major Indian companies in this sector are:

- Bharti Airtel: **www.bharti.com**
- IDEA Cellular: **www.ideacellular.com**
- Reliance Communications: **www.rcom.co.in**
- Tata Communications: **www.tatacommunications.com**
- Tata Teleservices: **www.tataindicom.com**
- Vodafone Essar: **www.vodafone.in**

Other resources are:

- Cellular Operators Association of India: **www.coai.com**
- Internet Service Providers Association of India: **www.ispai.in**
- Manufacturers Association of Information Technology: **www.mait.com**
- Telecom Equipment Manufacturers' Association: **www.tfci.com/cni/tema.htm**

2.5 Government procurement

India is not a signatory to the WTO Agreement on Government Procurement, and procurement procedures lack transparency and standardization. As a result, the process of doing business with the Indian government is heavily bureaucratized and extremely slow.

The government does publish tendering requests, however; you'll find them on the Tenders India web site at **www.tenders.gov.in**. The Directorate General of Commercial Intelligence & Statistics also distributes the *Indian Trade Journal*, a weekly government periodical that publishes tenders from all Government of India organizations. It's available at **www.dgciskol.nic.in/indian_trade_journal.htm**.

2.6 Service Sector

A key sector that can attract Canadian investment is the services sector. This sector contributed to about 55 per cent of India's GDP during 2006-07.

The service sectors that have grown faster than the economy are:

- Information Technology (IT is the leading service sector)
- IT-enabled Services
- Telecommunications
- Financial Services
- Community Services
- Hotels and Restaurants

3

There's no single Indian marketplace. Instead, each one is distinguished by factors such as religion, geography, ethnic group, income and political persuasion. This mosaic is a product of India's history, during which it has seen a myriad of cultures, states and empires come and go. It's also a result of the country's size; with a population of more than a billion, inhabiting a land stretching from the Himalayas to the tropics, it's no wonder that people's needs and desires aren't the same everywhere.

PREPARING TO EXPORT TO INDIA

Indian markets are highly competitive and price-sensitive, and Indian companies are well-managed, aggressive and very capable of competing against Canadian firms. Indian business connections are also built on personal relationships in ways that are often unfamiliar to Canadians, and establishing such relationships is vitally important if you're going to succeed in India. For these and other reasons, it's essential to meticulously research your potential Indian markets and how they do business, and to use this research to develop a detailed business strategy.

If you have little or no experience selling to foreign markets, you might begin your India initiative by consulting some general guides on the subject. The Step-by-Step Guide to Exporting, which you can obtain at **www.infoexport.gc.ca/eng/guide-exporting.jsp**, gives an overall picture of what's involved.

You'll also find valuable information about India's Export-Import Policy (Exim Policy) at **www.exim.indiamart.com**. The site covers the country's foreign trade policy, customs regulations, licensing and many other topics.

3.1 Researching and identifying target markets

The first stage of your research is to figure out whether your business does, in fact, have a product or service that people and/or businesses in India will want to buy. A useful first step is to identify the goods that India imports from your industry sector; this information, in basic form, is available from Industry Canada's Trade Data Online tool at **www.ic.gc.ca/epic/site/tdo-dcd.nsf/en/Home**.

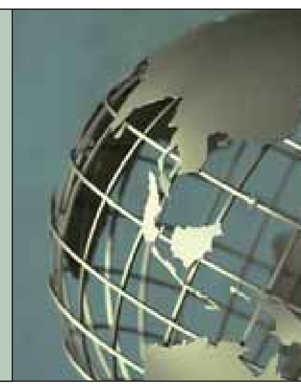
This tool, however, only tells you about Canada's share of these imports. To identify India's total imports for your sector, you can use TradeMap and similar tools from the International Trade Centre. The services are free of charge and you can register for them through the Canada Business web site at www.canadabusiness.ca; on the web site's home page, use the "Exporting" link and then the "Market Research" link.

With this information in hand, continue your online research by using the Trade Commissioner Service's Indian market reports, available through the web site of Canada's High Commission to India at **www.infoexport.gc.ca/ie-en/Office.jsp?oid=90&cid=525**.

The Foreign Affairs and International Trade web site also offers you the Virtual Trade Commissioner, a personalized service with free registration; it's at **www.infoexport.gc.ca/ie-en/login.jsp**. And be sure to visit the Canada-India Business Council's web site at **www.canada-indiabusiness.ca**.

Regional differences

The single most important fact to know about the Indian marketplace is that it varies enormously from region to region and from state to state. These variations can be so great, in fact, that different states can seem like different countries, a situation that is accentuated by the regional nature of Indian politics. As a result, business and investment environments can vary wildly from one state to another, depending on the region in which the state is located and the political stance of the state's ruling party.



Once you've completed your preliminary research and believe you've identified one or two promising market segments, it's time to move to the next step – figuring out whether your company is, in fact, ready to do business in India.

3.2 Assessing your readiness

It's unpleasant to realize, halfway through a sale, that your company doesn't have the capacity to fulfill its side of the bargain. This is why it's crucially important to determine your export readiness before you embark on an overseas venture, especially to a country that's so different from Canada. Ask yourself questions such as:

- Does my company have enough people to handle the extra work involved in the sale?
- Do we have enough production capacity to meet the additional demands of this market? (And remember how big India is!)
- Can we obtain enough cash to support the export venture until it becomes profitable?

The "Exporting" section of the Canada Business web site has tools that will help you work through this stage; try the Export Diagnostic, which you'll find on the "Getting Started" page under "Assessing Your Export Readiness." Or visit Export Development Canada's web site and try the EXPORTAble questionnaire at **www.edc.ca/edcsecure/exportable/intro.asp**.

3.3 Creating your export plan

Assuming you do have the capacities you need, the next step is to draft an export plan. This uses the results of your research to refine your business goals and to establish how you'll achieve them. Among many other things, it should cover:

- the products or services you're selling;
- adaptations of the product and its packaging for Indian tastes and conditions;
- your competitive advantages and disadvantages;
- your market research and its conclusions;
- your key markets and their characteristics;
- your pricing strategy and marketing approach;
- tariff and non-tariff barriers;
- your key competitors and market risks; and
- your financial strategy for the sale.

If you need help writing your plan you can use the "Writing an Export Plan" guide available though the "Getting Started" page of the "Export" section of the Canada Business web site.

3.4 Preparing to enter your target market

India is a very complex marketplace. Selecting the best target markets from your list of potential opportunities, and devising the best entry strategies for them, will be difficult unless you obtain detailed, up-to-date knowledge about the local business environment. You'll be much more likely to succeed in this if you talk to people who have current, specialized knowledge of the country, and who can review your business plan to see if it matches the realities of India.

The best place to start is your local International Trade Canada Regional Office. Operated by the Canadian Trade Commissioner Service and located in every province (refer to **www.infoexport.gc.ca/ie-en/InCanada.jsp** for the office nearest you), these offices provide one-on-one export help, specialized market and sector information, leads to trade fairs and missions, and help with export financing.

They can also put you in touch with the trade teams that work out of Canada's diplomatic offices in India. These teams are located in the Canadian High Commission in New Delhi, the Canadian Consulates General in Mumbai and Chandigarh, the Canadian Consulate in Chennai, the Honorary Consulate of Canada in Kolkata, and the Canadian Trade Offices in Bangalore and Hyderabad (refer to the Appendix for contact information). These on-the-ground teams provide Canadian exporters with:

- local market prospects;
- key contacts searches;
- local company information;
- visit information;
- face-to-face briefings; and
- advice on solving crucial business problems.

You can find more about Canada's consulates and offices in India from the international section of the Canadian Trade Commissioner Service's web site at **www.infoexport.gc.ca/ie-en/EServices.jsp**.

Steps to export success

For a quick overview of how to get started in exporting, including links to lots of resources, be sure to look at EDC's online guide, "Introduction to Exporting 101." You'll find it at **www.edc.ca/english/exports.htm**.

EDC has also developed a "how-to" guide called *Discover New Markets*, which outlines the steps you need to take before you begin exporting. Go to **www.edc.ca/newmarkets** to get your free copy.

3

3.5 Market entry for goods exporters

There are several ways to enter the Indian market. Many are forms of FDI such as subsidiaries, branch offices, liaison offices and project offices; we'll examine these in Chapter 5.

If you prefer not to open a subsidiary or an office, it is possible to sell your goods directly to Indian customers even though you don't have a formal business presence in India. Trying to do this by yourself isn't usually wise, however, unless you know a great deal about the intricacies of the Indian market. So if you want to use this strategy, you'll almost certainly need a partner in the form of an agent or distributor. Franchising is also a possibility if your company uses that business model.

No matter which approach you choose, however, you should retain the services of a lawyer well acquainted with Indian business law before you commit yourself to a partner or a franchisee.

3.5.1 Agents and distributors

An agent is an individual or firm you employ, usually on commission, to sell your product or service. A distributor, by contrast, buys your product from you and then sells it on to the end users. Either type of representative, if you get the right one, will be familiar with local conditions and can help you find customers, arrange distribution channels, handle documentation, clear your goods though customs and provide after-sales service. If your sale involves complex contracts, a representative is almost a necessity.

Finding the right representative will take some work. Contacts at trade fairs are one avenue, and you should also check with sources such as the Canadian Trade Commissioner Service, your sector's trade associations and the various Indo-Canadian business associations referred to in Chapter 1. Other companies in your sector may also be willing to share information about their experience with particular representatives. Investigative trips to potential markets can be useful, as well.

No matter how you look for representatives, though, be extremely careful to exercise due diligence. For example:

- Be sure they have the marketing knowledge, industry expertise, financial capacity and facilities (such as showrooms and staff) required to represent you properly.
- Be sure they're motivated to develop new markets and new customers for you.
- If they represent products that compete head-to-head with yours, find out how they'll resolve this potential conflict.
- Don't hire them merely on the basis of their enthusiasm for your product or their persistence in trying to get your business.
- Always check their reputation and references.

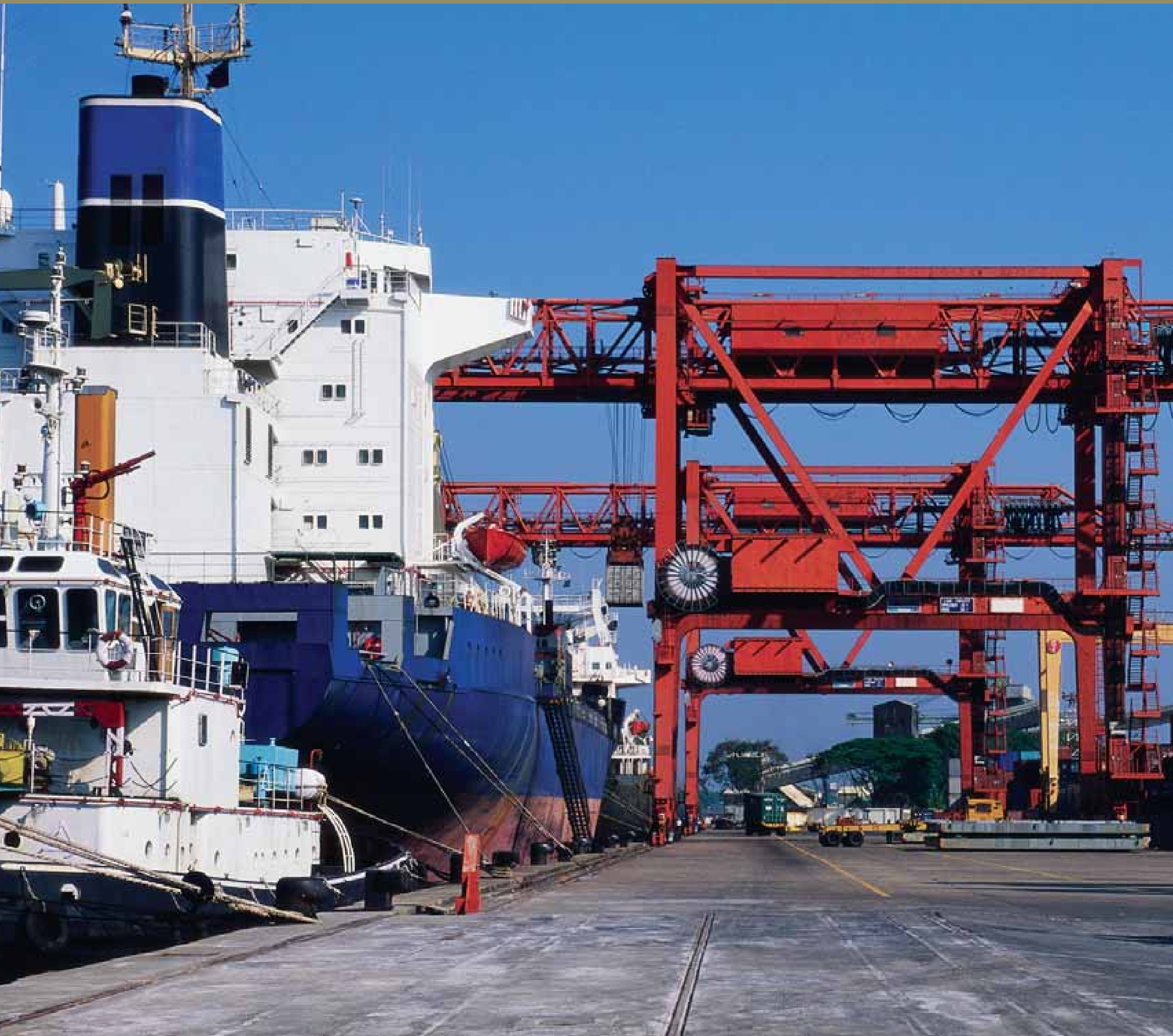
3.5.2 Franchising

Franchising accounts for about 3 per cent of India's total retail market and is increasingly popular among India's myriads of small entrepreneurs. In 2008, the number of franchisees was growing at a rate of 30 per cent per annum, and the franchise market was estimated to be worth about US$2.7 billion.

4

Even as you negotiate a sale, you need to be aware of what will be involved in delivering the goods to your Indian customer. Delivery can absorb a great deal of time and energy, especially if you try to cope with its financial, legal and logistical demands by yourself. You should, therefore, know how the system works so you can build the appropriate expenses into your final quote to the customer.

DELIVERING TO INDIA



When you're researching this, be sure to contact one of the Indian offices of the Canadian Trade Commissioner Service. The trade team there can tell you the do's and don'ts of moving your products into the country. You can also contact the Indian Central Board of Excise and Customs, whose web site is at **www.cbec.gov.in**.

4.1 Non-tariff barriers to trade

Non-tariff barriers are government measures or policies, other than tariffs, that restrict or distort international trade. For India, these may include the barriers outlined below; be sure to find out whether any of them apply to your exports before you close a sale.

Standards, testing, labelling and certification

Standards, testing, labelling and certification requirements ensure that imported goods meet a country's health, safety and quality standards. In India, there are 109 commodities that must be certified by the Bureau of Indian Standards (BIS) before they can enter the country. These include items such as food additives, electrical appliances, and certain kinds of cement and structural steel. Refer to the Bureau web site at **www.bis.org.in** for more information.

Sanitary and Phytosanitary Measures

A particular class of standards, called Sanitary and Phytosanitary Measures (SPS), can affect Canadian exporters of agricultural and other natural-resource products. If you're an exporter of such products, shipping your goods to India may require that you meet these standards, as specified in the WTO Agreement on Sanitary and Phytosanitary Measures. For more information, refer to the WTO web site, specifically the section at **www.wto.org/english/tratop_e/sps_e/sps_e.htm**.

Canadian companies in the agri-food sector can learn about export regulations and certifications for food products by visiting the Canadian Food Inspection Agency web site at **www.inspection.gc.ca**.

Other barriers

Like most countries, India sometimes uses various measures to protect its domestic industry from being undercut by foreign products that are sold into the country at a cost below that of production. In the Indian service sector, there are some restrictions on foreign activity in insurance, banking, securities, motion pictures, accounting, construction, architecture, engineering, retailing, legal services and telecommunications.

Export controls

Some exports – primarily military and nuclear technology, firearms, logs, and goods of U.S. origin – are subject to Canadian export controls and require permits if they are to be exported from Canada. Export controls are the responsibility of the Canadian Export and Import Controls Bureau (EICB), whose web site is at **www.dfait.gc.ca/eicb/menu-en.asp**. Detailed information, including a publication *called A Guide to Canada's Export Controls* is available at **www.dfait.gc.ca/trade/eicb/military/milit_tech-en.asp**.

4.2 Import regulations and licensing

India's former licensing controls have been greatly loosened during the past decade. Under the Open General Licence established by India's EXIM Policy, most goods can be imported without licences or restrictions.

There are three classes of goods that are regulated, however. These are:

- prohibited goods that can't be imported into the country;
- restricted goods requiring an import licence; and
- "canalized" goods that only government monopolies can import.

These goods appear on the "Negative List" web page of the India Finance and Investment Guide, available at **www.finance.indiamart.com/exports_imports/importing_india/negative_list**.

Four institutions are responsible for issuing import licences. They are:

- the Department of Electronics for computer and computer-related items;
- the Department of Industrial Policy and Promotion for organized-sector firms, except those importing computers and computer systems;
- the Ministry of Defence for defence-related items; and
- the Director General of Foreign Trade for small-scale industries not covered above.

4.3 Tariffs

India levies several types of import duty. The rates vary according to the goods, but the 2008–2009 budget left the maximum import duty for non-agricultural products at 10 per cent. The various kinds of duty are:

- **Basic customs Duty** (BCD): This applies to all goods imported into India. It may be calculated either as a percentage of the value of the goods or at a specified rate.
- **Countervailing Duty** (CVD): This is a duty used to protect Indian industries. It is levied on the cost of imported goods and equals the excise duty applied to the same goods when manufactured domestically.
- **Special Additional Customs Duty** (Special CVD): Formerly called surcharge, this is applied to all items at 4 per cent of the basic customs duty.

- **Anti-dumping Duty:** Anti-dumping duty applies to specific goods imported from specific countries to prevent harm to domestic industries.
- **Safeguard Duty:** If the government establishes that the quantity of a good being imported is high enough to damage a domestic industry, then it can apply a safeguard duty to the good.
- **Education Cess:** This is fixed at 3 per cent of the accumulated duty (2 per cent Education Cess plus 1 per cent Secondary and Higher Education Cess).
- **Customs Handling Fee:** The Indian government assesses a one per cent customs handling fee on all imports.

For more information about customs and tariffs, refer to the Indian Export-Import Portal at **www.exim.indiamart.com**. For more information about India's federal budget, refer to **www.indiabudget.nic.in**.

4.4 Establishing the importer of record

The "importer of record" is legally responsible for customs clearance of your goods into India and for paying any tariffs or taxes applied to them. If your customer (or your agent or distributor, for that matter) asks you to assume contractual responsibility for these procedures and costs, and you agree, you'll become the importer of record.

You should always refuse to do this, because it means you'll have to shoulder any problems the customer might have with the Indian customs authorities over the shipment. It's much better to stipulate in the contract that your responsibility ends when the goods reach the customer's port of entry. Better yet, try to make the customer responsible for the shipment from the time it leaves Canada. And never, under any circumstances, agree to move the goods within India itself.

4.5 Labelling and marking

Be sure you comply with all labelling and marking requirements for your product. An error that may seem unimportant to you can stop a shipment on the dock and leave it in a customs limbo, unable to move either forward or back. The various Indo-Canadian business organizations listed in the Appendix may be able to help you with labels and marks; however, the best way to ensure that you have the correct labelling information is often to ask your customer for it. In addition, to protect yourself contractually, you can get sample labels approved as part of the contract.

4

4.6 Documentation

At the minimum, goods imported into India require a commercial invoice, including:

- the country of origin;
- the consignee's name;
- the number and date of the letter of credit and the number of the import licence if applicable;
- the terms of payment;
- the name of the carrier;
- a description and identifying marks of outer containers; and
- a detailed description of the goods including quantity, weight (gross and net), value, shipping charges and insurance.

They also require:

- a certificate of origin;
- a bill of lading; and
- a packing list.

Depending on the kinds of goods you're shipping, Indian customs may require other documentation as well. Check with your buyer or representative to make sure you provide everything that's needed.

4.7 Packing and insurance

Remember that India's summer (March to May) is extremely hot and humid, and that your shipment may be stored outside in monsoon rains, so pack accordingly. Containers should be strong and proof against petty theft.

As a shipper assumes only limited liability for goods in transit, you'll be primarily responsible for your shipment until it arrives at the Indian port of entry. Shipping insurance, therefore, is an unavoidable expense. You can usually obtain insurance through a freight forwarder (see the next section), which is often preferable to doing it yourself.

4.8 Using freight forwarders

For most Canadian exporters, the complications of shipping are more than they want to handle. The solution is to use a freight forwarder.

There are numerous freight-forwarding companies in Canada, many of which have international expertise. You can pick and choose among their various services or have them manage the whole process, starting at your loading dock and ending on the customer's doorstep. They can handle transportation, customs clearance, cargo insurance, document preparation and processing, warehousing, local delivery in India and many other necessary functions.

Choosing a freight forwarder requires its own brand of due diligence. The two most important things to find out are whether the forwarder is experienced in clearing goods into India, and whether it uses an Indian partner with a reputation for competence. Even if it passes those two tests, you should also:

- ask the forwarder for a list of customers and ask those customers about the forwarder's quality of service;
- check the forwarder's credit references;
- find out if the forwarder is experienced in handling your type of product; and
- make sure the forwarder can handle the volume of shipping you expect.

5

In October 2008, India's Prime Minister announced that the country would need more than US$500 billion in investments during the next five years. That figure was for infrastructure development alone, so the scope for investment in the economy as a whole is obviously far higher[3].

INVESTING IN INDIA

As mentioned in Chapter 1, India has become much more open to FDI than it was a few years ago. Foreigners can now invest in most sectors and the country provides a range of incentives to encourage them to do so. In fact, FDI is completely prohibited only in:

- gambling and betting enterprises;
- lottery enterprises;
- atomic energy;
- retail trading except for single-branded product retailing; and
- agricultural activities excluding floriculture, horticulture, development of seeds, animal husbandry, fish farming and the cultivation of vegetables.

In this chapter, we'll examine the basics of FDI in India and the opportunities this offers Canadian companies.

5.1 Investment procedures

There are two procedures governing FDI in India: the automatic route and the government approval route. Investment via the former route does not require any prior approval, although various notifications about remittances and shares must be given to the Reserve Bank of India (RBI).

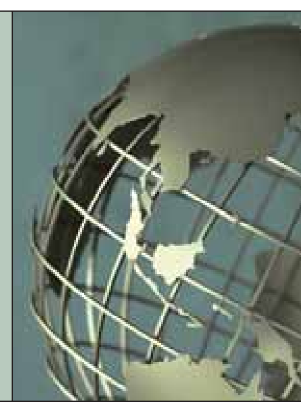
Under the government approval route, an investment proposal must be approved by the Finance Ministry's Foreign Investment Promotion Board (FIPB), whose web site is at **www.finmin.nic.in/fipbweb/webpage.asp**. Products requiring such approvals are:

- alcoholic drinks;
- tobacco products;
- electronic, aerospace and defence equipment;
- explosives; and
- hazardous chemicals.

EDC Equity Investments

EDC Equity Investments allow you to leverage EDC's access to a unique combination of financial tools, expertise and international networks and to acquire the private equity and venture capital you need to expand your export business.

Emphasis is placed on investments that reflect strong export orientation and have the potential to generate economics benefits to Canada of twice the original investment. For more information, refer to **www.edc.ca/english/financing_equity_investments.htm**.



[3] *Much of the information in this chapter is based on the manual Investing in India: Foreign Direct Investment Policy and Procedures, published in 2008 by the Indian Ministry of Commerce and Industry. PDF copies of the manual are available from the Ministry web site at* ***www.dipp.nic.in****, under the "Investing in India: FDI Policy" link.*

5.2 Types of market entry

There are several ways for investors to enter the Indian market, ranging from industrial licensing to the establishment of subsidiaries and offices.

5.2.1 Industrial Licensing

Industrial licences are regulated under the Industries (Development and Regulation) Act 1951, and FDI in these areas requires that the investor follow the government approval route. Licences are required for:

- **Industries with compulsory licensing:** These are the industries listed in section 5.1. Compulsory licences are granted by the Secretariat for Industrial Assistance in the Department of Industrial Policy and Promotion. To apply, use the Composite Form for Foreign Collaboration and Industrial Licence (IL-FC), which you can obtain from the Forms section of the Department of Industrial Policy and Promotion web site at **www.dipp.nic.in**.
- **Manufacture of items reserved for the small-scale sector by larger units:** The government has reserved some items for exclusive manufacture by this sector. You can obtain a list of these items from the web site of the Ministry of Micro, Small and Medium Enterprises at **www.laghu-udyog.com/ssiindia/reservitems.html**.
- **Proposed locations with restrictions on their use:** Some kinds of manufacturing require an industrial licence if they are within a certain distance of specified urban areas.

5.2.2 Foreign technology agreements

The government encourages the acquisition of foreign technology through collaboration agreements. These can include technology transfer fees, payment for designs and drawings, payment for engineering services and payment of royalties. Depending on the sector, such agreements can be established by either the automatic approval route or by the government approval route.

5.2.3 Corporate subsidiaries

You can establish a wholly owned corporate subsidiary in India by incorporating a company under the provisions of the *Companies Act, 1956*. This is done by applying to the Registrar of companies (ROC). For details, refer to the Ministry of Corporate Affairs at **www.mca.gov.in**.

The chief advantage of a subsidiary is that it's treated as an Indian company and is usually the most effective way of doing business in India. If you decide to close it down, though, there will be more complications than with some of the other options.

5.2.4 Liaison offices

Liaison offices are restricted to collecting market information and providing information to prospective Indian customers. They can import and export goods and facilitate technical and financial cooperation between Indian companies and the liaison office's parent companies. They cannot undertake any commercial activities and cannot earn income in India. Approvals for liaison offices are granted by the Reserve Bank of India (RBI).

5.2.5 Project offices

If your company is planning to carry out a project in India, it can set up a project office. The office can only undertake activities related to the project. Approvals for project offices are granted by the RBI.

5.2.6 Branch offices

Branch offices are also approved by the RBI and are allowed to:

- import and export goods;
- provide professional or consulting services;
- carry out research;
- promote technical and financial cooperation between Indian companies and your Canadian company;
- represent your Canadian company in India and act as a buying and selling agent there;
- provide information technology services and services in software development; and
- provide technical support for products supplied by your Canadian company.

Branch profits can be remitted outside India, subject to taxes and RBI guidelines.

EDC Project Finance

EDCs Project Finance focuses on three key sectors: energy; telecom and infrastructure; and mining, metals, and resources. Project Finance services provide structuring expertise and direct financing for complex, large-scale global projects across a variety of industry sectors.

EDC has extensive international financing contacts and can help you mobilize capital for a project. As a partner in international financing syndicates, EDC has traditionally taken on such roles as advisor, arranger and underwriter as well as specific roles related to the project's technical, environmental or documentation needs. EDC also provides financing for smaller-scale projects, acquisitions and asset financings. For more detail, refer to **www.edc.ca/english/financing_project_finance.htm**.

5.2.7 Joint ventures

India promotes joint ventures between Indian and foreign firms because they encourage capital investments, imports of capital goods and transfer of technology. If you choose the wrong partner for your joint venture, though, it can be a very expensive mistake, so be sure that both parties to the venture know in advance what will be expected of them. Needless to say, do very careful research and due diligence into your prospective partner's experience, business record, credit worthiness, financial stability and management quality.

5.2.8 Special Economic Zones

To streamline economic development, the Indian government has established or approved the plans for more than 550 Special Economic Zones (SEZs). These zones are treated as foreign territory for trade, duty and investment purposes. Some of the activities permitted within them are manufacturing, provision of services, processing, assembly, packaging and trading.

SEZs offer a range of FDI incentives. These include:

- duty-free import and domestic procurement of goods for the development, operation and maintenance of SEZ-based businesses;
- 100 per cent income tax exemption on export income for the first five years, 50 per cent for the next five years, and 50 per cent of the ploughed-back export profit for next five years;
- exemption from minimum alternate tax;
- external commercial borrowing of up to US$500 million annually through recognized banking channels, without any maturity restrictions;
- exemption from Central Sales Tax;
- exemption from Service Tax;
- a single-window clearance for central- and state-level approvals; and
- exemption from state sales tax and other levies as extended by the respective state governments.

The Indian states offer a variety of state-level incentives as well, such as rebates on the cost of land, employment subsidies and concessions on power tariffs. For more information, refer to the Special Economic Zones web site at **www.sezindia.nic.in**.

5.3 Taxes

Tax regimes tend to be works in progress and are affected by the country's annual budget, so be sure to consult legal and accounting professionals before you make assumptions about how Indian taxes will affect your investment. For more detail, refer to the web site of the Income Tax Department of the Ministry of Finance, located at **www.incometaxindia.gov.in**. For current information on the Indian budget, refer to **www.indiabudget.nic.in**.

5.3.1 India’s tax system

India’s central government levies direct taxes, such as corporate taxes, as well as indirect taxes that include customs duties, excise taxes and sales taxes. The state governments also levy taxes of various kinds. India’s fiscal year begins April 1 and runs to March 31; the corporate tax year also ends on the latter date.

5.3.2 Corporate taxes

If you’ve incorporated an Indian subsidiary, this is considered a resident corporation. It will be treated as a domestic Indian corporation and will pay corporate taxes on the income it receives from all sources worldwide. If your business presence is deemed a non-resident one – for example, if it’s a branch or liaison office – it will be taxed as a domestic Indian firm on the income it earns in India.

As of May 2008, for domestic/resident corporations, the basic corporate tax rate was 30 per cent, plus a 10 per cent surcharge and an education cess of 3 per cent of the basic tax; this equates to a combined tax rate of 33.99 per cent. For non-resident companies (branch or liaison offices) it was 40 per cent plus a 2.5 per cent surcharge and an education cess of 3 per cent of the basic tax, for a combined rate of 42.23 per cent. Other rates can apply depending on the income source and the sector. All these rates can change, so be sure to check with a tax expert or the Income Tax Department to verify them.

You may be able to lighten your tax burden if you’re eligible for any of the tax incentives the government offers to various sectors. Among these sectors, as of 2008, were electrical power generation and transmission, telecommunications, infrastructure, oil and gas production, industrial and scientific research, housing construction, grain transport, biotechnology, and food processing and preservation. The incentives include tax holidays on corporate profits, faster depreciation allowances and deductibility of certain kinds of expenses.

Canada and India have signed a taxation treaty so that Canadian companies doing business in India won’t have to pay taxes in both countries. This removes any threat of double taxation. You’ll find the text of the treaty at **www.treaty-accord.gc.ca/ViewTreaty.asp?Treaty_ID=102409**.

5.3.3 Other taxes affecting business operations

Like most countries, India doesn't depend solely on income taxes for its revenue. Several other taxes are levied within the country's economy, including the following:

- **Central Value Added Tax** (CENVAT): Sometimes referred to as excise duty, this indirect tax is levied by the central government on almost all goods. It varies with the type of goods but ranges from nil to a maximum of 14 per cent (although a few products are taxed at 24 per cent). It is normally calculated according to the maximum retail price of the product.
- **Central sales tax** (CST): The central government levies CST on goods sold across state borders in interstate commerce. It is set at either 3 per cent or at the state sales tax rate, whichever is higher. The CST is to be phased out in 2010, being replaced by the value-added tax.
- **Value-added tax** (VAT): The VAT was introduced in April 2005. When fully implemented, it will replace the CST and the sales taxes formerly levied by the states.
- **Service tax:** Service tax is levied on specified taxable services at the rate of 12 per cent of the service's gross value of taxable services. An education cess of 3 per cent of the sales tax is levied. Service tax currently applies to about 100 services.

5.3.4 Indian accounting standards

Companies operating in India must follow the accounting standards set out by the Accounting Standards Board of the Institute of Chartered Accountants of India (ICAI). These standards are mandatory and are derived from the International Financial Reporting Standards (IFRS), although the two sets of standards differ in a number of ways. If this may be an issue for your business, consult a qualified accounting professional.

5.4 Exchange controls

Exchange control is regulated under the *Foreign Exchange Management Act* (FEMA). The rupee is fully convertible for current account transactions, subject to a negative list of transactions that are prohibited or require prior approval. A foreign-invested Indian company is treated on par with other locally incorporated companies, so the exchange control laws and regulations for residents apply to foreign-invested companies as well.

5.5 The labour force

Most Indian managers and technicians, and many skilled workers, speak English. However, the shortage of skilled labour in India has led to intense competition among employers, to inflated salaries and to excessive employee turnover rates.

There is, however, no legislation that requires you to employ Indian nationals, and restrictions on employing foreign technicians and managers have been eliminated. The RBI has raised the remittable per-diem rate to $1,000, with an annual ceiling of US$200,000 for services provided by foreign workers payable to a foreign firm. Employment of foreigners for more than 12 months requires approval from the Ministry of Home Affairs.

6

Financing a foreign sale is complex, and the details are far beyond the scope of this guide. The broad outlines are fairly straightforward, though, and this chapter will provide you with some essential background on India's financial system and on meeting your financial needs if you intend to do business there.

FINANCES AND FINANCING

6.1 India's financial system

India's financial system consists of public, private and foreign banks, together with the various types of financial institutions that are common elsewhere in the world. For the most part, these organizations are capable of meeting the needs of borrowers and are working hard to make their financial products attractive.

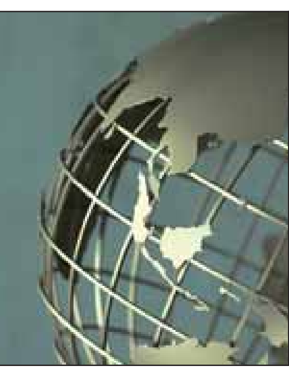
The central government controls the currency and the policies related to it. The Indian unit of currency is the rupee (Rs), made up of 100 paise (p). Banknotes and coins come in various denominations from 1,000 Rs down to 10 paise. Indian publications sometimes state large sums in crore, an amount equal to 10 million; thus a sale worth "Rs 5.5 crore" amounts to 55 million rupees. In late 2008, one Canadian dollar was worth about 40 rupees.

The Reserve Bank of India (RBI) is the central bank and supervises all banking activities in the country. These are carried out by 28 public-sector banks, 28 private banks, 30 foreign banks, scores of cooperative and regional rural banks, and a range of non-banking financial institutions.

The RBI also oversees and manages India's foreign exchange regulations and policies, which are governed by the *Foreign Exchange Management Act*. The Act is intended to facilitate external trade payments and help with the development of an Indian foreign exchange market.

Non-Indian banks normally use international auditing firms, but many domestic Indian banks prefer local auditors who don't always comply with international standards. Even so, India's banking system is well regulated, with standards of disclosure and accounting that approach international best practices.

For more information on India's financial system, refer to the online India Finance and Investment Guide at **www.finance.indiamart.com**; for bank information, go directly to **www.finance.indiamart.com/investment_in_india/banks.html**.



How export financing works

EDC's online EXPORT*FinanceGuide*, which you'll find at **www.edc.ca/english/tools_12185.htm**, is a good introduction to export financing.

EDC is actively involved in financing Indian buyers who purchase goods and services from Canada. If you think this might be an option worth exploring, please contact EDC's representatives in India (refer to the Appendix for contact information).

6.2 Financing your exports

You may have a marketable product or service, strong customer interest, energetic assistance from trade officers and the best market research available. But without the financial resources you need to support your sale, you won't travel far from square one.

For many smaller businesses, it can be hard to finance an export initiative from company coffers. You may, for example, need new capital to manufacture the goods your customer wants, and to carry you over until you get paid for them. If this applies to you, you'll need to find out what financing is available and how you can obtain it.

6.3 Types of financial assistance

As an exporter, you're likely to need one or more of these three types of financial help:

- *Pre-shipment export financing:* This provides you with the means to provide the goods or services your customer wants. You'll need to show the lender that you have a firm export sale and a contract that is acceptable in terms of repayment risk, payment terms, production timeframes and recourse conditions.
- *Post-shipment export financing:* This covers your financial needs from the time you ship the goods until you get paid.
- *Medium-term export financing:* This is often used for capital goods exports and can be obtained for terms of 180 days to two years, sometimes more.

Service exporters tend to have different financial needs from goods exporters. You'll find information about this in EDC's online EXPORT*FinanceGuide* at **www.edc.ca/english/tools_12185.htm**.

6.4 Sources of financial assistance

Banks, financial institutions and government agencies are the most common sources of export financing.

- **Banks:** Most companies operate domestically with lines of credit and business loans from their banks. Banks also finance export operations, especially if the exporter arranges the support though EDC.
- **EDC:** EDC provides a wide range of financial tools for Canadian exporters and investors, particularly small- and medium-size companies. These include:
  - Accounts Receivable Insurance to protect you if your customer can't or won't pay;
  - Contract Frustration Insurance to cover your risks on a single contract sale (Accounts Receivable Insurance covers all your receivables under all your contract sales);

- Performance Security Insurance to protect you if your customer cashes in your bond even when you've fulfilled the terms of your contract (this is called a "wrongful call");
- Political Risk Insurance to protect you against political or economic upheavals in your market;
- bonding products to help you make the sale when your customer wants a guarantee that you'll deliver on the terms of your contract; and
- financing solutions to help you with issues such as pre-shipment and customer financing.

- **Business Development Bank of Canada** (BDC): BDC provides flexible financing for the development of international markets, R&D, product modifications and new production equipment or technology. Refer to **www.bdc.ca** for more information.
- **The Canadian Commercial Corporation** (CCC): The CCC is an export contracting agency established by the Canadian government and can act as a procurement agent for foreign government buyers. When arranging such procurements, CCC manages both the contracting process and purchasing cycle. For more information, visit **www.ccc.ca**.
- **Government agencies**: Numerous federal, regional and provincial government agencies offer financial assistance to exporters. To obtain help with finding the ones that may be right for you, begin by contacting Canada Business at **www.canadabusiness.ca**.

6.5 Customer financing

You may find yourself in a situation where Indian businesses would like to buy from you but can't immediately raise the money to do so. EDC may be able to help by providing loans to these customers to enable them to purchase your goods or services. This can be managed in several ways, such as setting up lines of credit with Indian banks so they can lend money to the local businesses, or by arranging direct loans. For more information, go to **www.edc.ca/english/financing_foreign_buyer.htm** or contact EDC's representative in India.

6.6 Getting paid

No Indian customer will pay you for your goods before receiving them. You, similarly, would be unwise to ship the goods without some assurance that the customer has the money to pay for them. The most common way to resolve this dilemma, when exporting to India, is to arrange payment through letters of credit (LCs). LCs provide security for both parties because they designate banks to receive and check shipping documents, and to guarantee payment.

6.6.1 Letters of credit

Letters of credit can be "confirmed" or "unconfirmed". A confirmed LC has been issued on behalf of the customer by the customer's bank in India, and its validity has been confirmed by a domestic Canadian bank. If you have a confirmed letter of credit, you are reasonably assured of receiving payment from the Canadian bank even if the foreign customer or the foreign bank defaults.

LCs can also be irrevocable. This means they can't be cancelled or amended without your approval. The most secure form of payment is an LC that's both confirmed and irrevocable.

In practice, an LC works like this:

- Your customer arranges a letter of credit with his or her bank.
- The customer's bank prepares an irrevocable LC. This includes specifications as to how you'll deliver the goods.
- The customer's bank sends the LC to your Canadian bank for confirmation.
- Your bank issues a letter of confirmation and sends the letter and the LC to you.
- You check the LC very carefully. In particular, you ensure that it agrees in all respects with the terms of your contract with the customer. If the LC's terms and those of the contract are different, and if you don't meet the LC's terms because you overlooked the discrepancy, the LC may be deemed invalid and you might not get paid.
- You arrange shipping and delivery with your freight forwarder. Once the goods are loaded, you get the appropriate shipping documents from the forwarder; you use these to prove that you have fully complied with the terms of the contract.
- You take these documents to your bank, which sends them to the customer's bank for review. The customer's bank sends them to the customer, and the customer obtains the documents that will allow the goods to be claimed.
- The customer's bank pays your bank, which then pays you.

6.6.2 Tips for using letters of credit

To avoid difficulties, keep the following in mind when using letters of credit:

- Ensure that the LC allows partial shipments and transhipment.
- Make sure you can prove that you shipped the goods by the date specified in the LC.
- Always check shipping conditions with your freight forwarder to make sure that nothing will cause a delay in delivery.
- Present all documents by the dates specified.

7

Canada and India share a legal heritage based on English common law, and in some respects our legal systems are similar. But there are also differences, and Canadian exporters need local legal counsel to avoid difficulties. Moreover, as any experienced exporter knows, international trade is inherently more complex than domestic trade, so retaining a legal professional who is familiar with the laws of the target market is just part of doing business there.

THE FINE PRINT

7.1 Coping with contracts

This complexity is reflected in the structure of international trade contracts. Perhaps the most basic issue is that they have to comply with two possibly divergent sets of laws, those of the exporter's country and those of the importer's country. This is why it's vitally important to establish clearly which country's law will govern the terms of the contract and any disputes that might arise from it. This is called, in legal jargon, "the proper law" of the contract.

No exporter should sign any contract until it has been carefully reviewed by competent legal counsel. If you do sign without this advice, you risk disputes and possibly litigation over payment, breaches of contract, breaches of guarantees, ownership of intellectual property, creditors' rights and other difficulties too numerous to mention.

The following are among the most important issues to be covered in a contract, but there will certainly be others depending on the nature of the sale and your customer.

- Who is party to the contract?
- What are its validity conditions?
- What goods or services are to be provided and what is the purchase price?
- What are the terms for payment, inspection and delivery?
- What is the contract completion date?
- What warranty and/or maintenance terms and conditions apply?
- Who is responsible for obtaining any import/export licences?
- Are there contract performance security requirements, such as bank letters of guarantee or surety bonds, and what are they?
- What remedies are available if the customer defaults or cancels?
- What provisions exist for independent mediation or arbitration to resolve disputes, and in which jurisdiction would this take place?

Remember that contract negotiations in India will go more slowly than they would in Canada – possibly much more slowly. Expect this and allow for it in your schedule. The same applies to an even greater degree if you're dealing with the Indian bureaucracy.

When negotiating, be aware that your Indian counterparts may not disagree with you directly about contractual or other issues, as this is considered impolite. Instead, they may suggest that the matter can be discussed at another time, or find some other way to avoid an outright negative response.

In any case, your potential customers will be very, very unlikely to commit to a sale during your first meeting. And because negotiations can be protracted, it's a good idea to build some flexibility into your initial position so that you can alter price or contract conditions without giving away more than you should.

7.2 Performance guarantees and bonding

Your Indian customer is likely to require some kind of contract performance security to ensure that that you'll fulfill your end of the bargain. These securities are usually referred to as "bonds" and include standby irrevocable letters of credit, letters of guarantee and contract surety bonds.

If you provide one of these instruments, make sure that your contract clearly stipulates your performance obligations, as well as the conditions under which your customer can make a valid call for non-performance and thus have the security paid out to him. The chief risk associated with a bond is that of a "wrongful call;" for more information on this, refer to Section 8.4, "Wrongful calls."

7.3 Litigation and arbitration

If you have legal problems with an Indian customer or partner, don't be in a hurry to turn to the courts. Litigation in India is likely to be time-consuming, expensive and possibly not in your best interest, no matter how justified your position.

A better choice might be arbitration. Also called alternative dispute resolution (ADR), arbitration uses a tribunal to consider the questions over which the parties are in conflict and to decide how to resolve them. Increasing numbers of Indian lawyers are working in this field, and some are beginning to specialize in specific industry sectors. You can find out more about this at the ADR Institute of Canada at **www.amic.org**. The U.S. equivalent is the International Centre for Dispute Resolution at **www.adr.org**.

EDC's bonding services

A bond is a financial guarantee to your customer that you'll abide by the terms of your contract. EDC doesn't issue bonds directly to you, but can work with your bank to arrange the guarantees or insurance you need.

Before issuing a bond, the bank will require that you provide security by freezing cash in your account. This protects the bank if you fail to perform and if your customer "calls the bond" – that is, if your customer demands that the value of the bond be paid out.

EDC can help you by guaranteeing to the bank that it will be reimbursed if your customer calls the bond. This frees up your cash flow and, if your customer does call the bond, EDC will pay the bank so you don't have to. For more information on EDC's bonding services, refer to **www.edc.ca/english/bonding.htm**.

7.4 Protecting your intellectual property

Services and tangible goods aren't the only valuable assets your company may possess. Many businesses own proprietary technology such as industrial processes or patented machine designs, and/or intellectual property such as computer software code. These assets may comprise most of the company's value, and losing control of them could have severe repercussions. These kinds of property (collectively referred to as intellectual property or IP) should, therefore, have a level of protection that matches their value.

There are several methods of establishing such protection, primarily by registering patents, trademarks and copyrights with the appropriate institutions and authorities. You can find out more about these protections, and how to register for them, at the Canadian Intellectual Property Office web site at **www.cipo.gc.ca**. In brief, they are as follows:

- **Patents**

Patents are granted for new inventions (such as processes, machines, manufacturing techniques or the composition of substances), or any new and useful improvement of an existing invention, and are intended to prevent people or businesses from making, using or selling them without the patent owner's permission.

Note that having a Canadian patent does not protect your IP in India, so if you market an unprotected product there, any Indian company can copy it. To obtain an Indian patent, you must go through the office of the Controller General of Patents, Designs and Trade Marks, whose web site is at **www.patentoffice.nic.in**. The procedures manual for patenting something (which you can download a **http://www.patentoffice.nic.in/ipr/patent/manual-2052005.pdf** is more than 160 pages long, so you'd be well advised to retain a lawyer who is familiar with the process.

- **Trademarks**

Trademarks are words, names, symbols, sounds, or colours that distinguish goods and services from those manufactured or sold by others, and indicate the source of the goods. As with patents, registering your trademarks in Canada doesn't protect them in India, so you'll have register them there as well, again with the Controller General of Patents, Designs and Trade Marks.

- **Copyrights**

Copyrights cover both published and unpublished works. If you own the copyright to a work, you alone are allowed to produce, reproduce, perform or publish the work, or to permit anyone else to do so. Copyrights apply to original works of authorship, including literary, dramatic, musical, artistic, and certain other intellectual works. Your work is protected in Canada even if you don't register the copyright for it, but if the work is going to be sold in India, registration is a good idea. Doing so gives you a certificate that you can use to prove ownership if necessary.

A Canadian copyright, unlike patents and trademarks, does protect your work in other countries, provided they have signed the Berne Copyright Convention or the Universal Copyright Convention. India is a signatory to both, so if you have registered your copyright in Canada, it's protected in India as well.

Overall, India's IP laws and regulations make it a reasonably safe place for intellectual property. That said, however, IP theft does occur there, so you should always protect yourself as comprehensively as you can.

In particular, if a contract calls for licensing IP to an Indian client, be sure that the wording on what the licensee can and can't do with the IP is precise. Being vague about this can lead to serious problems and possibly major loss. If the licensee uses your IP to create new products, for example, the inherent value of your asset can be greatly reduced.

7.5 Standards and conformity

Indian product standards are comparable to international standards and don't usually present difficulties to exporters. India has been developing a system of laws and regulations to establish and enforce these standards and, as a result, they are receiving increased emphasis in the marketplace.

The Bureau of Indian Standards (BIS) is responsible for developing national standards and is the only institution in the country that is permitted to do so. The BIS is also India's World Trade Organization (WTO) Enquiry Point, which is responsible for notifying India's trading partners of new standards and conformity assessment procedures, or of changes to existing ones. The BIS web site is at **www.bis.org.in**.

BIS also operates a system of certification and conformity-assessment labs in India, which can test and certify foreign products for compliance with Indian standards. However, it's not necessary to send your goods to India to have them certified. Instead, you can use the BIS self-certification procedure, which allows you to apply the Indian Standard Mark to your product after it has been found to comply with the applicable Indian standard.

The required assessment is carried out by BIS inspectors who, at your expense, will visit your manufacturing facility in Canada. The BIS web page on foreign certification is at **www.bis.org.in/cert/fm.htm**, with a link to the downloadable application form.

If you want more information on standards from the Canadian perspective, visit the web site of the Standards Council of Canada (SCC) at **www.scc.ca**, which is Canada's WTO Enquiry Point for standards notification. The SCC provides a variety of free information and has a paid custom research service that can give you company-specific data on standards, legislation and certification issues around the world.

The SCC also operates a free service called Export Alert!, which will send you an email warning when foreign regulators are changing the requirements that apply to your products. To find out more or to subscribe, visit **www.scc.ca/en/news_events/subscriptions/export_alert.shtml**.

7.6 Labour laws

India belongs to the International Labour Organization (ILO) and complies with ILO conventions. Both the central government and state governments have enacted laws on labour that cover issues such as resolution of industrial disputes, working conditions, labour compensation, insurance, child labour and equal remuneration. The web site of the Ministry of Labour and Employment is at **www.labour.nic.in**. The legislation is listed at **www.labour.nic.in/act/welcome.html**.

The major labour legislation of the central government includes the following:

- The ***Workmen's Compensation Act 1923*** provides that compensation shall be provided to a workman for any injury suffered during the course of his employment or to his dependents in the case of his death.
- The ***Minimum Wages Act 1948*** prescribes minimum wages for all employees in all establishments or working at home in certain employments specified in the schedule of the Act.
- The ***Payment of Wages Act 1936*** regulates issues relating to time limits within which wages shall be paid and that no deductions other than those authorized by the law are made by the employer.
- The ***Industrial Disputes Act 1947*** provides for the investigation and settlement of industrial disputes. It provides the machinery for the reconciliation and adjudication of disputes or differences between the employees and the employers.
- The ***Employees Provident Fund and Miscellaneous Provisions Act 1952*** seeks to ensure the financial security of the employees in an establishment by providing for a system of compulsory savings. The Act provides for the establishment of a contributory Provident Fund in which employees' contributions are at least equal to the contribution payable by the employer.
- The ***Payment of Bonus Act 1965*** provides for the payment of bonuses to persons employed in certain establishments on the basis of profits or on the basis of production or productivity. The Act is applicable to establishments employing 20 or more persons.
- The ***Payment of Gratuity Act 1972*** provides for a scheme for the payment of gratuities to all employees in all establishments employing 10 or more workers.
- The ***Maternity Benefit Act 1961*** regulates the employment of the women in certain establishments for a prescribed period before and after child birth and provides certain other benefits.
- The ***Industrial Employment (Standing orders) Act 1946*** requires employers in industrial establishments to clearly define the conditions of employment by issuing duly certified standing orders. Model standing orders issued under the Act deal with classification of workmen, holidays, shifts, payment of wages, leaves and termination.

8

Doing business abroad is inherently more risky than operating in Canada. But you can certainly minimize and manage these hazards, provided you know what they are, and if you understand the level of threat that they represent. In this section, we'll explore various ways in which you can protect your company from the risks inherent in the Indian market.

RISK MANAGEMENT

The major dangers, which arise to various degrees in most countries, include:

- political risks;
- customer risk (for example, bad credit or insolvency);
- failure of the customer to pay;
- wrongful calls of bonds; and
- corruption.

8.1 Political risks

Political risk remains a reality for Canadian companies that wish to do business in India. However, because of the country's size and complexity, the levels of risk vary enormously from region to region and from state to state – to such a degree, in fact, that different regions can almost be different countries. Much of this variation, and the risks that are attached to it, are the result of the strong regionalization of Indian politics and the way this shapes the behaviour of the central government in New Delhi.

8.1.1 Policy risks

New Delhi is the political hub of India. It is here that regional political parties from across India – many of which are only present in one state – converge with the broad-based national parties, the largest of which are the Congress Party and the BJP. This convergence occurs in the country's Parliament, particularly in its Lower House, in which nearly 40 different political parties are represented.

Because of its effects on the federal system of government, the proliferation of regionally-based parties and their growing prominence in the Indian Parliament is one of the most important political shifts in contemporary India. The dispersal of power resulting from this development means that one of the two major parties is usually elected by a plurality of votes and not with the outright majority it needs to form a government by itself. In consequence, the elected party has to assemble a coalition in order to govern. These coalitions invariably include regional parties and are held together by often-frail ties of compromise and negotiation.

For investors, the regionalization of politics is not necessarily a problem in itself. But its side effects can definitely be problematic, since the presence of highly regionalized parties in a central coalition government can have unpredictable effects on national policy development and implementation. A regional party, for example, can demand government action (or inaction) on an issue that affects only that party's region, and threaten to withdraw from the coalition if its demands are not met. This can force changes to policy that will cause difficulties for investors, or can delay the passage of legislation that investors were relying on. In a recent instance, a regional party was opposed to financial reforms that would have increased the quotas for foreign investment, and blocked the changes by threatening to withdraw from the coalition. As a result, the passage of the legislation was delayed until 2009 at the earliest.

In the same vein, if a regional party does withdraw from a coalition and forces an election, business-related legislation that might otherwise have passed must wait until the installation of a new government – even if the issue that brought the government down had nothing at all to do with that particular legislation. For a company counting on specific business or financial reforms to smooth the path of an investment, such a possibility can constitute a substantial political risk.

Last but far from least, political regionalization produces drastically different business and investment environments across the country. A state in the northeast may put insuperable obstacles in the way of building a new factory there, while a regional government in the southwest may welcome the same development with offers of inexpensive land and attractive tax advantages. It all depends on the state and the politics of its ruling party.

8.1.2 The land question

The politics of land use in India can have major implications for investors. Land is vitally important to the population because of the prominence of agriculture in the Indian economy, so all land-related matters are highly politicized. The situation is aggravated by the nature of India's federal system, which extends considerable autonomy on land policy to the states. This ensures jurisdictional confusion and land policies that can differ wildly from region to region. Land issues are most contentious in eastern and central India, less so in the west and south.

The land conflicts related to the Special Economic Zones (SEZs) provide a good example of the results that this can have for investors. For several years now, there has been considerable trouble and unrest about the way land has been acquired for these zones. In some states, land for SEZs has been purchased through a "willing buyer, willing seller" process, with companies buying land directly from private landowners. In other places, however, governments have seized land from landowners, often under legal pretences, and then handed it over to private developers for SEZ development.

These land seizures have led to violent clashes among local communities, private developers and, occasionally, armed groups. In some cases, the conflicts have been so unnerving that investors have abandoned plans to establish SEZs and have taken their business elsewhere, often at great expense. As a result, the central government has tried to reduce the involvement of state governments in further SEZ development, since experience has shown that SEZ creation proceeds more smoothly if it uses the "willing buyer, willing seller" process.

8.1.3 Civil disturbances

India has a history of civil disturbances that persists into the present day. Hindu-Muslim communal violence has broken out on various occasions in several locations across India, while the Maoist (Naxalite) insurgency in central and eastern India is a persistent instigator of political violence in several states. Separatist insurgencies in the northeastern states of Assam and Manipur remain sources of instability in that part of the country. The threat level varies from region to region, with the northeast being the most dangerous.

Several terrorist attacks in 2007–2008 highlighted the threat posed by terrorist groups, and these attacks have increasingly been directed at areas of foreign investment. The major strike in Mumbai in November 2008, however, was the first time in recent history that foreigners, as individuals, were specifically targeted in a major assault. The immediate effects of the Mumbai events will be a heightened awareness of the security risks of doing business in India, and this will likely produce a short- to mid-term drop in business activity involving foreign investors.

8.1.4 Mitigating political risk

In a national perspective, the political risks of doing business in India are not exceptionally high. Practically speaking, though, the level of risk depends on where you want to establish your business and the political circumstances that prevail in that region. If you need to operate in a location where political risk may be higher than you'd like, you should find out what EDC's Political Risk Insurance (PRI) can offer you.

EDC's PRI policies cover major risks that include:

- breach of contract by a foreign government or state-owned entity;
- non-payment by a foreign government;
- expropriation of your assets or investments;
- political violence that damages your assets or forces you to shut down foreign operations;
- conversion risk, which keeps you from converting local currency into hard currency;
- transfer risk, which keeps you from moving hard currency out of country; and
- repossession risk, which keeps you from repossessing or re-exporting physical assets you brought into the country.

Political risk insurance isn't the only way that EDC can help Canadian investors and exporters protect themselves. Even if you're not intending to use one of EDC's products or services, you can contact EDC for risk information about India or any of the many other markets where EDC is active. For more details, refer to **www.edc.ca/english/insurance_political_risk.htm**.

8.2 Customer risk

The more you know about a potential foreign customer or partner, the better. In other words, you absolutely must carry out your due diligence to find out about the company's creditworthiness, its financial record, the quality of its management, its business history and its reputation in the Indian and international marketplace.

Here are some ways to check out a prospective customer or partner:

- Contact the EDC representatives in India, or the trade teams in the various Canadian diplomatic offices in India, and ask whether they have any information about the company.
- Check with your bank to see if it has a correspondent bank in India or elsewhere that could verify the customer's reputation.
- Does the prospective customer deal with other Canadian firms? If you can find out, canvas their opinions about the company.
- If you're willing to pay, there are many credit-reporting firms around the world that can help you verify a prospective customer's soundness. Such an investment in due diligence, even if expensive, could be worth every penny if it reveals a major risk to your company.

8.3 Failure to pay

A customer's failure to pay can jeopardize the very survival of your business. And even if you know a company well and it has always paid you promptly, it still could collapse without warning and leave you unable to meet your own bills. EDC has several products to protect you against such unfortunate events; you can learn more about all of them at **www.edc.ca/english/insurance.htm**, or you can call 1-866-283-2957 and speak with an EDC representative. The products are:

- **Accounts Receivable Insurance**

  EDC's Accounts Receivable Insurance (ARI) will cover up to 90 per cent of your losses if your Indian customer doesn't pay due to bankruptcy, or refuses to pay for no good reason. It also covers you if the customer refuses to accept the shipment or if your import permits are cancelled. And while neither revolution or war is likely in India, ARI will cover you for these, too.

- **Single Buyer Insurance**

  Single Buyer Insurance covers unlimited export sales to the same customer for six months on shipments or services worth up to US$250,000. The policy insures up to 90 per cent of your losses if a customer doesn't pay after accepting the goods.

- **EXPORT Protect**

  EXPORT Protect is an online insurance service for single export transactions, excluding services, that covers up to 90 per cent of your losses if your customer doesn't pay after accepting the goods. It offers 90 days of coverage on shipments up to US$250,000.

- **Contract Frustration Insurance**

  EDC's Contract Frustration Insurance (CFI), formerly known as Specific Transaction Insurance, will cover up to 90 per cent of your losses in relation to a specific export contract for services, capital goods or projects.

8.4 Wrongful calls

Suppose you've worked with a bank to post a contract performance bond in the form of a standby irrevocable letter of credit, or a letter of guarantee. Your Indian customer was satisfied by this assurance, and you've fulfilled the contract in all respects. (For information on bonds and what they do, refer to Section 7.2, "Performance guarantees and bonding.")

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But instead of paying you, the customer “calls the bond” – that is, alleges that you haven’t met the contract conditions, and demands that your bank pay him the value of the bond. The bank complies, and then comes back on you to recover its loss. The customer’s action in this case is known as a “wrongful call” and can cause no end of financial problems.

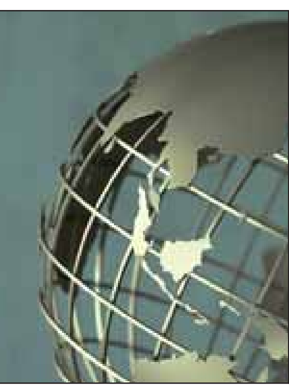
However, you’ll be protected in this situation if you have EDC’s Performance Security Insurance (PSI), which will cover up to 95 per cent of your loss when a customer issues a wrongful call and there proves to be no legitimate reason for doing so. For more information, refer to **www.edc.ca/english/insurance_performance_security.htm**.

8.5 Foreign exchange risks

Many international transactions specify an extended time between the signing of a contract and the delivery of the goods or services. This exposes you to foreign exchange risks before you receive full payment for your contract.

Companies often try to protect themselves from this risk by going to their banks and buying a foreign exchange contract to lock in an exchange rate. To do this, however, a bank may demand collateral of up to 15 per cent of the contract value.

On foreign exchange contracts of up to three years, EDC’s Foreign Exchange Facility Guarantees (FXGs) can help you meet these collateral requirements by providing your bank with a guarantee that will replace your collateral requirements. The bank can then forego freezing your company’s cash or operating line, which will free your working capital for other purposes. Refer to **www.edc.ca/english/bonding_foreign_exchange.htm** for more information.



Customer checking through EDC

EDC’s EXPORT *Check* online service can help you assess a potential customer before you close the deal. Available on a cost per report basis, EXPORT *Check* will provide you with a credit profile of the company and any payment or claims experience EDC has had with it. The service also provides D&B reports on the target business, including credit and financial information, details of the company’s history and its management team, and any legal problems the company has. For more information, refer to **www.edc.ca/edcexportcheck**.

8.6 Corruption

Corruption, unfortunately, is not uncommon in Indian society. India's Central Bureau of Investigation registers hundreds of corruption cases every year, but the courts are so backlogged that it's difficult for the authorities to make headway.

Most Canadian companies will never run into any trouble when selling goods or services to an Indian corporate customer. However, there are always exceptions, so your best protection is to carry out your due diligence before you engage in any business with an Indian firm. At the very least, you should seek references for the company from:

- the Canadian Trade Commissioner Service at the Canadian High Commission in New Delhi, and/or the various Canadian Consulates in India;
- other Canadian companies doing business in the market;
- industry or business associations such as those listed in the Appendix; and
- local banks.

One good sign is a company's pride in belonging to a business chamber or association, and its willingness to refer you to those organizations for references. Competent legal counsel will also help ensure that you don't get involved in unsavoury business dealings.

Although it hardly needs to be said, you should walk away from any deal that suggests even a hint of impropriety. No exporter or investor should ever do business with an Indian company that makes such overtures, and pursuing the relationship can lead to long-term, expensive and damaging repercussions.

Guarding against corruption

Like India, Canada has laws against corruption, including laws against the corruption of foreign officials. Canadians can be prosecuted in Canadian courts if they break these laws or counsel other people to break them. For a plain-language guide to this legislation, download EDC's pamphlet, *Keeping Corruption Out*. It's at **www.edc.ca/english/docs/csr_anticorruption_e.pdf**.

The Organisation for Economic Co-operation and Development also has deep concerns about bribery, and publishes a 100-page booklet called *Bribery in Public Procurement*; to read an online copy, refer to **http://213.253.134.43/oecd/pdfs/browseit/2807061E.pdf**.

Major Canadian exporters to India

Advanced technology and machinery
MDS (Canada)
Research In Motion Ltd.
COM DEV International Ltd.
Nortel Networks Inc.
UTStarcom ltd.
Husky Injection Molding Systems Ltd.
Brampton Engineering Inc.
Corma Inc.
Velan Inc.
Bell Helicopter
Gurit Canada

Forestry
Bowater Inc.
Kruger Inc.
Tembec Industries Inc.
West Fraser Mills Ltd.
Optimum Trading Corporation

Power
SNC Lavalin Inc.
RSW International
Aecon Inc.

Base and semi-manufactured Goods
Canpotex Ltd.
Steel Canada Ltd.
Tembec Industries Inc.

Surface transportation
Bombardier (Rail Division)

Key Indian and Indo-Canadian business organizations

All India Association of Industries
New Excelsior Building, 6th Floor
A.K. Nayak Marg,
Fort, Mumbai 400 001, India
Tel.: 011-91-22-2201-9265
Fax: 011-91-22-2201-9764
Email: info@aiaionline.org
www.aiaionline.org

Asia Pacific Foundation of Canada
890 West Pender Street, Suite 220
Vancouver, BC, V6C 1J9
Tel.: 604-684-5986
Fax: 604-681-1370
Email: info@asiapacific.ca
www.asiapacific.ca

Associated Chambers of Commerce and Industry of India
ASSOCHAM Corporate Office, 1,
Community Centre Zamrudpur
Kailash Colony, New Delhi 110 048,
India
Tel.: 011-91-11-4655-0555
Fax: 011-91-11-4653-6481
Email: assocham@nic.in
www.assocham.org

Canada-India Business Council
1 St. Clair Ave. East, Suite 1004
Toronto, ON, M4T 2V7
Tel.: 416-214-5947
Fax: 416-214-9081
Email: info@canada-indiabusiness.ca
www.canada-indiabusiness.ca

Confederation of Indian Industry
CII Mantosh Sondhi Centre
23, Institutional Area, Lodhi Road
New Delhi 110 003, India
Tel.: 011-91-11-2462-9994-7
Fax: 011-91-11-2462-1649
Email: ciico@ciionline.org
www.ciionline.org

Federation of Indian Chambers of Commerce and Industry
Tansen Marg
New Delhi 110 001, India
Tel.: 011-91-11-2373-8760-70
Fax: 011-91-11-2332-0714
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EDC Regional Offices in Canada

Please refer to:
http://www.edc.ca/english/mediaroom_9256.htm

Key Canadian contacts in India

Canadian High Commission, New Delhi

7/8 Shantipath, Chanakyapuri
New Delhi 110 021, India
Tel.: 011-91-11-4178-2000
Fax:011-91-11-4178-2041
Email: delhi@international.gc.ca

Consulate General, Mumbai

Fort House, 6th Floor
221, Dr. D.N. Road
Mumbai, 400 001, India
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Fax: 011-91-22-6749-4454
Email: mmbai@international.gc.ca

Consulate General, Chandigarh

SCO# 54-56, Sector 17-A
Chandigarh 160 017, India
Tel.: 011-91-172-505-0300
Fax: 011-91-172-505-0320
Email: CHADG-G@international.gc.ca

Consulate General, Chennai

18 (Old 24), 3rd floor YAFA Tower
Khader Nawaz Khan Road,
Nungambakkam
Chennai 600 006, India
Tel.: 011-91-44-2833-0888
Fax: 011-91-44-4215-9393
Email: cheni@gocindia.org

Consultate of Canada, Kolkata

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Fax: 011-91-033-2242-6828
Email: ccklkta@rpg.in

Canadian Trade Office, Bangalore

103 Prestige Meridian 1
29 M.G. Road
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