DOING BUSINESS IN

INDIA

A Guide for Canadian Exporters and Investors

Canada

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ABOUT THE GUIDE

Doing Business in 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 believe your company could do well in India, this guide will help you decide how – or even whether – you should proceed. If you're already doing business abroad, but haven't 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, have discovered that it is a place where they can prosper.

This Guide is a compilation of publicly available information. It is not intended to provide specific advice and should not be relied on as such. This Guide is intended as an overview only. No action or decision should be taken without detailed independent research and professional advice concerning the specific subject matter of such action or decision. While EDC has made reasonable commercial efforts to ensure that the information contained in this Guide was accurate as of Fall 2010, EDC does not represent or warrant the accurateness, timeliness or completeness of the information contained in the Guide. This Guide or any part of it may become obsolete at any time. It is the user's responsibility to verify any information contained in this Guide before relying on such information. EDC is not liable in any manner whatsoever for any loss or damage caused by or resulting from any inaccuracies, errors or omissions in the information contained in this Guide. This Guide does not constitute legal or tax advice. For legal or tax advice, please consult a qualified professional.

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1 UNDERSTANDING THE INDIAN MARKET

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.

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 Indian National 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. These measures led to an impressive boom in the Indian economy. The pace of growth was interrupted for several months during the global financial turmoil of 2008–2009, but by early 2010 it seemed clear that the country had successfully weathered the storm and a strong recovery was underway.

One contributor to the country's economic expansion has been its abundant human capital. Technical education, for example, is one of the educational system's strengths; literally thousands of engineering colleges offer degrees and diplomas, with several hundred institutions concentrating on advanced training in information and communications technology. That said, the size of India's population and the country's enormous needs means that the demand for skilled workers still far outstrips the supply. According to the World Bank, "nearly 44 percent of India's labour force is illiterate, only 17 per cent has secondary schooling, and enrolment in higher education is a mere 11 per cent. Moreover, the quality of most graduates is poor and employers offer very little upgrading of skills; only 16 percent of Indian manufacturers offer in-service training compared to over 90 percent in China."[1]

1.1.1 Recent growth trends

In February 2010, the Indian government released its *Economic Survey 2009–2010*, in which it estimated that overall GDP growth for the 2009–2010 fiscal year (FY) would be approximately 7.2 per cent.[2] While this was a decline from earlier years, it was a very respectable performance given world economic conditions, and indicated that the economy had begun a strong, broad-based recovery from the slowdown that began in 2008.

The advance estimates for the fiscal year included the following:

- Overall manufacturing was forecast to increase by 8.9 per cent, a major improvement over the 3.2 per cent of the previous year. Sectors and subsectors with strong growth were automobiles, rubber and plastic products, wool and silk textiles, wood product and chemicals.
- The growth rate of the construction sector was estimated at 6.5 per cent, compared to 5.9 per cent in 2008–2009.
- The mining and quarrying sector was forecast to show a growth rate of 8.7 per cent, far higher than the previous year's rate of 1.6 per cent.
- It was estimated that the electricity, gas and water supply sectors would improve their growth rates to 8.2 per cent, more than doubling the 3.9 per cent of the previous year.
- Financing, insurance, real estate and business services were forecast to show a growth rate of around 10 per cent.

[1] World Bank, India Country Overview 2009. Available at http://go.worldbank.org/ZUIBUQT360.
[2] The *Economic Surveys* are available on through the Union Budget web site. Note that the Indian government's fiscal year runs from April 1 to March 31.

- The expansion of the middle class has been behind much of the Indian economy's growth during the past decade, which is reflected in the high growth rates of private consumption. This peaked in 2007–2008 at 9.6 per cent, but the world economic upheaval pushed it down to 6.8 per cent in 2008–2009. As India's recovery continues, it is very likely that middle-class demand for consumer goods and services will lead to increased rates of growth in these sectors.
- The major exception to the recovery is the agriculture, fishing and forestry sector, which is expected to show a .2 per cent decline for FY 2009–2010. For rice and coarse cereals, for example, there has been a considerable shortfall compared with the production levels of in the previous year. Lower-than-normal monsoon rainfalls were behind much of the decline, but agriculture remains a long-term worry for the government because of stagnating or declining yields and falling investment.

1.1.2 Economic prospects and needs

Assuming the global economy continues to recover, the *Economic Survey 2009–2010* considers India's economic outlook to be quite promising. This is due both to its well-capitalized and tightly regulated banking system, and to the inherent strength of its industrial corporations and service sectors, with their long history of profitability.

According to the *Survey*, private consumption, investment and exports were all increasing as of early 2010. Infrastructure growth, such as railway transport, power, telecommunications and civil aviation, was bouncing back from the lows of the second quarter of 2009, and capital market conditions were improving rapidly. Better yet, the manufacturing sector showed a sharp upward trend, while corporate earnings and profit margins were picking up.

To maintain such momentum over the longer term, however, India will need to pour enormous resources into expanding and upgrading its infrastructure. During the past two decades, the country's growth has placed huge strains on its power supply, roads, railways, ports and transportation systems. The resulting bottlenecks have consistently undermined the country's productivity and competitiveness, and efforts to alleviate the problems have so far fallen short – despite the doubling of the national highway network since 1997, for example, demand still outruns capacity. Inadequate infrastructure is a major impediment to growth in urban centres, while rural areas suffer from shortfalls in transportation, electrification, water supply and a range of other basic requirements.

India will thus require a huge volume of goods, equipment, plants, services and investments to sustain its development. The government estimates that about US$500 billion to US$750 billion will be spent on infrastructure during the next five years alone, and the total for the next 10 years may be as much as US$1.9 trillion. The emphasis will continue to be on basic facilities such as electricity, water, sanitation, education and health, and on developing the rural sector, which employs nearly 60 per cent of the total workforce.

Cause for optimism: The view from India

"Given the steadily improving fundamentals of the economy...the medium-term prospects of the Indian economy are really strong. If, in addition to this, there are improvements in infrastructure, both urban and rural, and reform in governance and administration...it is entirely possible for India to move into the rarefied domain of double-digit growth and even attempt to don the mantle of the fastest-growing economy in the world within the next four years."

– Economic Survey 2009–2010

Among India's 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 require expertise in designing, building and operating such facilities. These improvements will demand hundreds of billions of dollars in investment during the next few years.
- The government is maintaining its expansion of 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. Contracts for four UMPPs have been awarded and the other five are in various stages of the bidding and prequalification processes.
- India wants to increase its use of natural gas as an alternative to imported oil, and there are also 46 hydroelectric projects under construction around the country. This opens up potential markets for Canada's large range of gas- and hydro-related technologies.
- A quarter of all urban residents live in slums, and India's towns and cities face critical power, water, and infrastructure shortages as well as a rapidly deteriorating environment. Alleviating these problems will require large investments in water treatment technology, such as desalination and removal of suspended minerals; clean transportation systems; green buildings; renewable energy sources, such as solar power; and pollution control.
- 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 pace. The growth of wireless services has been especially swift; wireless subscribers now far outnumber fixed-line subscribers and their numbers are increasing at a much faster pace.
- The oil and gas industry is a major growth area. According to the Investment Commission of India, the total investment opportunity in the sector is expected to reach US$35 billion to US$40 billion by 2012. Much of India is unexplored for oil, so there are tremendous opportunities for Canadian oil and gas firms and services companies to play a role there.
- Like the entire auto sector, the auto components industry has been one of the fastest-growing manufacturing sectors in India. It concentrates on parts for engines, transmissions, steering, suspension, brakes, electrical, chassis and vehicle bodies. Industry turnover was estimated at more than US$19.1 billion in 2008–2009, and is likely to reach US$40 billion by 2015, with a potential compound annual growth rate (CAGR) of 11 per cent between 2008 and 2015.

1.1.3 The investment climate

In 2010, the UN Conference on Trade and Development ranked India third in attractiveness for global foreign direct investment (FDI). India's steady loosening of its investment rules, such as increased equity caps, removal of restrictions and simplified procedures, has contributed significantly to this success. Since 2006, the government's FDI-friendly initiatives have included:

- 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 and there are numerous incentives for investors; for more detail, refer to Chapter 5, "Investing in India."

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.

While the steady liberalization of India's economy has made this view obsolete, the country still ranks well down in Canada's list of export markets. This is beginning to change, however, as Canada and India have agreed to begin discussions about a comprehensive economic partnership agreement. The two countries have also concluded negotiations for a Foreign Investment Promotion and Protection Agreement (FIPA).

More Canadian companies and investors have been taking the plunge into India. Approximately 135 Canadian firms now have a presence in the country, with the professional engineering services, power, automotive, and ICT sectors being especially well-represented. As a result, Canadian goods exports to the country have nearly doubled during the past five years, from $1.04 billion in 2005 to $2.04 billion in 2009. On the FDI side, Canadian investment in India was valued at about $801 million in 2008, while India's FDI in Canada is currently estimated at $1 billion.[3]

This 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.

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

1.3 Going to India

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

1.3.1 Entering India

To enter India, you'll need a Canadian passport that will be valid for at least 190 days. Since you're travelling on business, you'll also need a business visa, which you must obtain from one of the numerous Indian Visa and Consular Services Centers in Canada. You may apply for a six-month or one-year business visa that is valid for multiple entries.

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 Travel.gc.ca web site.

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 temporary, duty-free and tax-free importation 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. The Chamber's web site also has details of how the Carnet is applied in various countries, including India.

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.

Visiting India in the low season, which runs from April to September, makes good business sense, as travel and hotel costs are cheaper then. It is also easier to obtain meetings with business people and policy makers during those months.

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.

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.

Business hours

Shops, banks and post offices open at 10 a.m. Most banks close at 2 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 9:30 a.m. to 6 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. Dates of holidays can be obtained from the Holiday List provided by the Ministry of Personnel.

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 early 2010, one Canadian dollar was worth about 44 rupees.

More than 30 foreign banks operate in India. 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

Foreign Affairs and International Trade Canada's Travel.gc.ca web site will give you detailed, current information about travelling in India. Here are some other basics:

- You can rent and drive a car in India using an international driver's licence, but it's not wise to do this. The vehicles are right-hand drive, driving itself 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 online in advance and can choose among several classes, the top three of which are air-conditioned.

- India's domestic airline sector is very vibrant, efficient and cheap. Among the major private airlines in India are Jet Airways, Kingfisher, SpiceJet, Go Air and Indigo, which operate hundreds of flights every day to 44 domestic and international destinations. Jet Airways, for example, has daily flights connecting Toronto to major Indian cities. Air India is India's national carrier and the country's only government-owned airline, and operates both domestically and internationally.

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.
- Both Indian men and women will shake hands with foreign men and women. 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.
- Like people in many Asian and South American cultures, 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.
- Don't be in a rush. Very few export ventures turn an immediate profit, and you may not get into the black for two or three years. Also 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; you won't be able to do everything from home. 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.
- Setting up a business presence in India can be expensive, slow and confusing. Again, patience and sensitivity are prerequisites for success.
- Don't underestimate your Indian competitors. They know the market better than you do and are quite capable of holding their own in it.

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 Commerce and Industry of India has a membership of tens of thousands of companies and professionals across the country.
- The Canada-India Business Council is Canada's only private sector, national association of Canadian companies doing business in India.
- The CIA World Factbook has a useful chapter on India.
- The Confederation of Indian Industry's web site provides news and resources about India's industrial sectors.
- 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.
- The Directorate General of Foreign Trade has a wealth of useful resources and links.
- The Reserve Bank of India (RBI) has a large database of information about the Indian economy.
- The Federation of Indian Chambers of Commerce and Industry 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.
- The India Brand Equity Foundation (IBEF) is a public-private partnership between the Ministry of Commerce and Industry, the Government of India and the Confederation of Indian Industry. IBEF provides a range of free FDI guides and sectoral presentations you can download. Also available from IBEF is Ernst & Young's *Doing Business in India*, a general tax, investment and business guide. At the time of writing, the 2008 edition was the most recent version available.
- Indiaserver provides general information, from travel to movies, about India.
- IndiaMART is a major portal to a vast range of information about the Indian marketplace.
- The India Finance and Investment Guide is a good general resource for learning about taxes, investment and export-import policies.
- The Ministry of Commerce and Industry maintains a web site that includes an import-export databank on the country's economic activity.
- There is a directory of official Indian Government web sites available to businesses and the general public.

1.4.2 Resources for specific sectors

The IBEF web site has a list of sector-specific government ministries and departments. Other sector resources are provided in Chapter 2.

1.4.3 General resources for doing business abroad

- **Canada Business** is a collaborative network of federal and provincial government services that help Canadian entrepreneurs and exporters build their companies.
- 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.
- **Canada's International Market Access Report** is an online resource, updated yearly, that describes the federal government's priorities for improving Canadian access to foreign markets.
- **Export Development Canada** (EDC) 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.
- **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.

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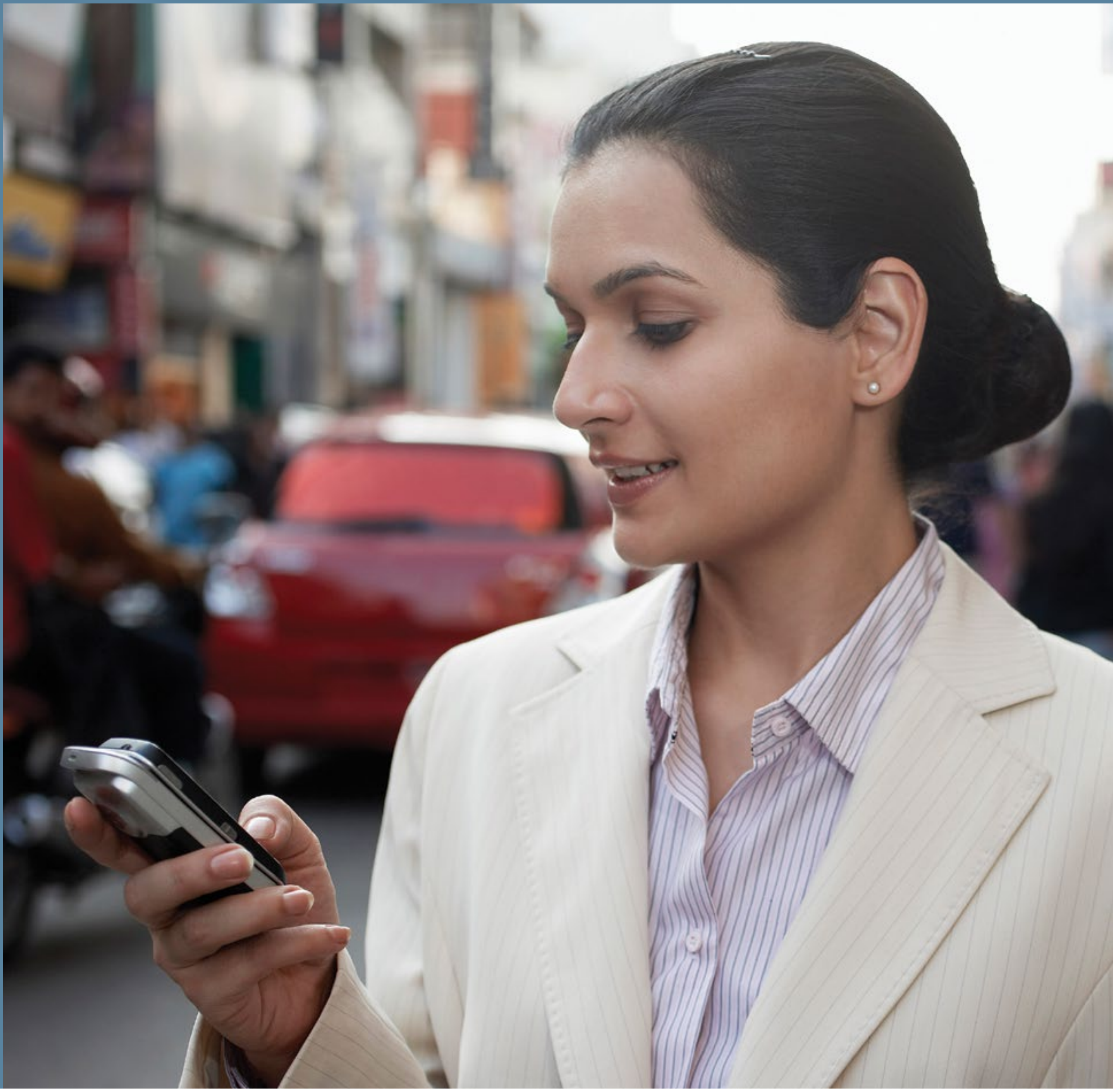
- *ExportWise*: EDC's quarterly magazine featuring exporters' stories, industry and market trends, economic analyses and exporter resources

2 OPPORTUNITIES FOR CANADIAN EXPORTERS

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



2.1 Automotive

India's automotive sector is the ninth-largest in the world and is one of the largest exporters of automobiles in Asia. The industry includes five major subsectors: cars and utility vehicles, two-wheelers, commercial vehicles (CVs), tractors and auto components. Leading global auto names such as GM, Volkswagen, BMW, Suzuki, Nissan, Ford, Fiat, Honda, and Hyundai have manufacturing facilities in India for the domestic market and for exports to Europe and North America.

Although the sector was affected by the 2008–2009 economic slowdown, overall production still increased from 9.65 million vehicles in 2007–2008 to 9.94 million vehicles in 2008–2009. Passenger vehicle output increased from 1.55 million to 1.6 million units, while two-wheelers increased from 7.25 million to 7.6 million units. In commercial vehicles, production fell by more than 100,000 units from 2007–2008 to 2008–2009 as businesses cut back on their purchasing, but the recovering economy and road developments such as the Golden Quadrilateral project will likely lead to renewed growth in this subsector.

More than 80 per cent of the cars sold in India are small. The Indian company Tata launched its tiny Nano in 2009, and this type of small, light, cheap automobile is expected to change the dynamics of the Indian car industry. Tata is not alone; many companies, including Suzuki, Hyundai, Renault, Nissan, Ford and Toyota are planning to establish small-car manufacturing hubs in India.

Because the level of car ownership in India is extremely low (only 8.5 people out of 1,000 own one) domestic car sales in India could grow at a steady rate of 10–12 per cent annually over the next seven years. Credit availability and interest rates will strongly influence automotive sales, however, since 90 per cent of CVs, 80 per cent of cars and 60 per cent of two-wheelers are purchased through financing.

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. Industry turnover was estimated at more than US$19.1 billion in 2008–2009, and is likely to reach US$40 billion by 2015, with a potential CAGR of 11 per cent between 2008 and 2015. These volumes and figures can make it highly attractive to Canadian exporters and investors. Many Canadian auto component companies are actively doing business in India.

Top Indian companies in this sector are:

- Ashok Leyland
- Hyundai
- Mahindra and Mahindra
- Maruti Suzuki
- Tata Motors

2.2 Telecommunications

India has one of the world's fastest-growing telecom markets, with more than 10 million new users signing up for service each month. As of February 2010, there were 600 million telecom subscribers in India, of which 563 million were mobile users and 37 million were on fixed lines. Teledensity in urban areas has exceeded 100 per cent, meaning there are more phones than people. In rural areas, teledensity stands at 18 per cent, giving an overall density of slightly more than 51 per cent.

Most of the next 500 million subscribers will be in rural areas as connectivity is extended to more and more regions, using both GSM and CDMA technologies. During 2010, service providers are expected to roll out additional technologies such as 3G, WiMax, IPTV and VoIP. As a result of these developments, the sector is expected to enjoy a CAGR of 30 per cent until the end of 2010, and probably beyond that date. In fact, according to a study conducted by Nokia, the communications sector is expected to become a major contributor to the country's economic output by 2014, when it will account for 15.4 per cent of GDP.

Value-added services are currently the priority for all telecom providers. The available spectrum was expanded by the April 2010 auction of the 3G frequencies, and licences have been awarded to new players. The Indian equipment market was already estimated at US$24 billion in FY 2009, and this expansion will offer opportunities to Canadian companies in value-added services and in 3G and 4G technologies.

Top Indian companies in this sector are:

- Aircel Cellular
- Reliance Communications
- Tata Communications
- Vodafone Essar
- Bharti Airtel
- Tata Teleservices
- IDEA Cellular

2.3 Oil and gas

India's oil and natural gas sector, which includes the transportation, refining and marketing of these resources, accounts for more than 15 per cent of the country's GDP. With a 3 per cent share of global refining capacity, India is also the world's fifth-largest petroleum refiner, and its petroleum exports have emerged as the country's single largest foreign exchange earner.

According to the Gas Authority of India (GAIL), gas availability in India is expected to grow at a CAGR of 23 per cent. To accommodate this growth, GAIL is investing heavily in the country's pipeline network, and will spend up to US$756 million between 2009 and 2012 to expand its transmission capacity. According to the Investment Commission of India, the total investment opportunity in the oil and gas sector is expected to reach US$35 billion to US$40 billion by 2012.

During the past decade, the government has undertaken several measures to encourage investment in the sector, including:

- allowing 100 per cent foreign direct investment (FDI) in private refineries through the automatic approval procedure and 26 per cent in government-owned refineries;
- implementation of the New Exploration Licensing Policy (NELP) in 1997;
- abolition of the administered pricing policy; and
- allowing 100 per cent FDI in petroleum products, exploration, gas pipelines, marketing and retail through the automatic approval procedure.

Much of India has not yet been explored for oil, so there is a huge potential for Canadian participation in India's oil exploration and development programs. In addition, India imports about 40 per cent of its oil and gas field equipment and supplies, and the total demand in this subsector is estimated at US$4 billion.

There are further needs in subsectors such as seismic and aerogravity/aeromagnetic surveys; survey and stimulation vessels; floating production, storage and offloading units; subsea equipment and services; and oil field equipment, packages and technologies. Some of the key opportunities for Canadian businesses are:

- enhanced oil recovery technologies, including specialty chemicals and services for improved production;
- exploration services and equipment technologies;
- integrated exploration and production solutions; and
- oil and gas education and training services.

The discovery of gas on the east coast, in the Krishna Godavari Basin (in which Calgary-based Niko Resources has a 10 per cent stake) is driving further development. New pipelines are being built from east to west and northward, and there is a new Reliance Industries refinery at Jamnagar. This has resulted in the opening up of city-wide gas distribution projects, and the linkage of residential areas to the nascent pipeline networks.

Top Indian companies in this sector are:

- Reliance Industries
- Essar Oil
- ONGC India
- Punj Lloyd Upstream
- Gujarat State Petroleum Corporation
- Cairn India

2.4 Power

India's demand for power is growing at a breakneck pace, and the energy sector will require an investment of around US$120 billion to US$150 billion during the next five years. To maintain the country's economic momentum, the government has raised its target for power generation to achieve a capacity of 92,700 MW by the end of the current five-year plan in 2012. Renewable energy projects worth US$16.5 billion are also part of this plan. In addition, the government has allocated a capital subsidy of US$ 6.88 billion for providing electricity connections and associated infrastructure to 120,000 rural villages by 2012.

Top Indian companies in this sector are:

- GMR Group
- Jaiprakash Power
- Larsen & Toubro
- National Thermal Power Corporation (NTPC)
- Reliance Power
- Tata Power
- Adani Power

2.5 Transportation

The National Highway Development Programme (NHDP) offers potential opportunities for Canadian companies. The plan includes:

- upgrading the Golden Quadrilateral and other corridors to four lanes;
- upgrading 100,000 km of high-density national highways to up to six lanes;
- upgrading 20,000 km of single-lane roads to two lanes;
- developing 1,000 kilometres of expressways; and
- building and rebuilding bridges, ring roads, bypasses and service roads.

The rail network is being improved as well, with emphasis on electrifying rail lines, harmonizing track gauges, modernizing railway stations, and expanding existing freight terminals and building new ones. In the urban transit sector, there are opportunities in metro projects planned for Hyderabad, Bangalore, Mumbai and Delhi, which include monorail, light rail and rapid-transit bus systems.

Maritime ports are also being upgraded under the auspices of the National Maritime Development Project, with the objective of increasing India's port capacity from an existing 573 million tonnes to more than 1 billion tonnes by 2012. There are opportunities for Canadian companies in projects related the construction of cargo handling berths, container terminals, warehousing facilities and dry docks, and the installation of cargo handling equipment.

Key government entities in this sector are:

- Ministry of Road Transport & Highways
- National Highways Authority
- Ministry of Shipping

2.6 Medical devices and services

India's medical devices market already ranks among the world's top 20. Demand is expected to grow at 23 per cent per year, and the total market is estimated to reach $77 billion annually by 2012. More than 77 per cent of the medical device market is supplied by imports, with half of this total being diagnostic imaging devices and consumables. Some of the best sales prospects include:

- cancer diagnostic devices;
- cardiac products;
- medical imaging equipment;
- plastic surgery equipment;
- laboratory products; and
- orthopaedic and prosthetic appliances.

Canadian companies could consider approaches such as:

- joint ventures with established players to meet the increasing needs for improved and affordable medical devices and treatments;
- setting up a manufacturing base in India to serve the Asian and the North American markets; or
- setting up and managing hospitals in cooperation with Indian or multinational healthcare providers.

Key players in this sector are:

- Apollo Hospitals Enterprise
- Fortis Healthcare
- Manipal Health Systems
- Max Healthcare
- Columbia Asia
- Global Hospitals
- Partners Harvard Medical International

2.7 Environmental technologies

Energy security and sustainable development are high on India's agenda. The renewable energy sector is estimated to offer growth rates of 25 per cent per annum, while investment is projected at $3 billion annually. Niche opportunities include solar energy equipment such as solar photovoltaic modules and roof tiles, inverters and controllers. Wind energy and carbon reduction and emission control equipment offer further potential, as do technologies for water supply, wastewater management and solid waste management.

Some key contacts in this sector are:

- Ministry of Environment and Forests
- Ministry of New and Renewable Energy
- The Energy and Resources Institute
- Everything About Water
- Central Pollution Control Board

2.8 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. The Directorate General of Commercial Intelligence and Statistics also distributes the *Indian Trade Journal*, a weekly government periodical that publishes tenders from all Government of India organizations.

3 PREPARING TO EXPORT TO INDIA

There's no single, easily defined Indian market. Instead, India contains many different marketplaces, each distinguished by factors such as religion, geography, ethnic group, income bracket, social status, occupation and political persuasion. This extraordinary mosaic is a product of India's long 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 that stretches from the Himalayas to the tropics, it's no wonder that people's needs and desires aren't the same everywhere.

Indian markets are highly competitive and price-sensitive, and Indian companies are well-managed, aggressive and very capable of competing against Canadian firms. In addition, Indian business connections are 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 do meticulous research into 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*, for example, gives an overall picture of what's involved.

You'll also find valuable information about India's export–import policy at Indiamart's Export–Import Portal. It covers the country's foreign trade policy, customs regulations, licensing and many other topics.

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 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.

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 web page.

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 a set of five market analysis tools from the International Trade Centre. These tools are available through subscription only; in 2010, the annual fee for the full set was US$900 for an institutional or company licence.

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. The DFAIT web site also offers you the Virtual Trade Commissioner, a personalized service with free registration. And be sure to visit the Canada-India Business Council's web site for breaking news, events and market sector information.

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 ready to do business in India.

3.2 Assessing your readiness

It's alarming 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 several subsections that will help you get started in exporting, understand export financing, do your market research and deal with sales, logistics, laws and regulations.

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 with your plan you can use the Writing an Export Plan guide available on the Canada Business web site.

Steps to export success

EDC has developed a how-to guide called *Discover New Markets*, which outlines the steps you need to take before you begin exporting.

3.4 Preparing to enter your target market

As mentioned earlier, India is not a single, homogeneous market but a collection of many marketplaces with widely varying characteristics. This means that obtaining detailed, up-to-date knowledge about a local market is a prerequisite for deciding whether you should enter it at all. The same knowledge is vital for developing a successful entry strategy if you decide that the market is a viable one for your business.

The best place to start is your local office of the Canadian Trade Commissioner Service, which can provide one-on-one export help, specialized market and sector information, leads to trade fairs and missions, and assistance with export financing.

The local Canadian office can also put you in touch with the Trade Commissioner Service's Indian offices, located in Canada's diplomatic missions in India. These 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.

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. If you decide to use this strategy, it's highly advisable to sell through a local partner – such as an Indian distributor or agent – unless you know a great deal about your particular target market. Franchising is also a possibility if your company uses that business model. No matter which approach you choose, however, you should obtain expert legal counsel before committing your company to the arrangement.

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, in 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 Indian 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, *always* check their reputations 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, especially in the food, beverage, education and professional services sectors. The number of franchisees is growing rapidly and their annual sales turnover is estimated to be US$2.7 to US$3 billion.

4 DELIVERING TO INDIA

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.

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 dos and don'ts of moving your products into the country. You can also contact the Indian **Central Board of Excise and Customs**.

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, more than 100 commodities 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.

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.

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.

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 – including military and nuclear technology, firearms, softwood lumber 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). Various guides to these controls are accessible from the EICB home page.

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.

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 the following import duties:

- **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 that depends on the type of goods.
- **Countervailing Duty (CVD):** Officially called "additional duty of customs," 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. An additional countervailing duty, called Special CVD, is applied to all items at 4 per cent of the BCD.
- **Anti-dumping Duty:** Anti-dumping duty applies to specific goods imported from specific countries to prevent harm to domestic industries.
- **Safeguard/Protective 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 1 per cent of the aggregated customs duty.
- **Customs Handling Fee:** The Indian government assesses a one per cent customs handling fee on all imports.

For more information about customs, refer to the Indian Export–Import Portal.

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 Appendix B 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. To protect yourself contractually, you can also get sample labels approved as part of the contract.

4.6 Documentation

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

- the sender's details;
- the recipient's details;
- the invoice number;
- terms of trade (such as FOB); and
- content details of the shipment, including the number of items, the weight, country of origin, freight and insurance charges and declared value.

A shipment also requires:

- a certificate of origin;
- an import declaration; and
- 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, such as import licences and certificates. 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, as described in the next section.

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 who will provide references;
- 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 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 approval 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 and licensed by the Finance Ministry's Foreign Investment Promotion Board (FIBP). The following industries require a compulsory licence:

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

The RBI has a useful FAQ that answers some basic questions about investing in India.

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, download the Composite Form for Foreign Collaboration and Industrial Licence (FC-IL) from the Forms section of the Department of Industrial Policy and Promotion web site.
- **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.
- **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 through either the automatic approval route or 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*. You do so by applying to the Registrar of companies (ROC). For details, refer to the Ministry of Corporate Affairs, especially the Guidelines section and its procedure for incorporating a new company.

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/representative 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.

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, carry out 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, several hundred 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. As of early 2010, 105 SEZs were in operation and a further 574 had been approved.

SEZs are administered by the Department of Commerce and offer a range of FDI incentives for a company setting up in one of these zones. These incentives 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.

Developers of 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.

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 Income Tax Department of the Ministry of Finance. For current information on the Indian budget, refer to the Union Budget and Economic Survey.

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.

In the 2010–2011 budget, the basic corporate tax rate remained at 30 per cent. Added to this is a surcharge of 7.5 per cent and an education cess of 3 per cent of the basic tax. This works out to a combined tax rate of 33.22 per cent. For non-resident companies (branch or liaison offices) the combined rate is 42.23 per cent, unchanged from the previous year. 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, especially the infrastructure sector. These 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.

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 central value added tax (cenvat), the central sales tax (CST), the value-added tax (VAT) and the service tax.

This complex system is to be replaced in FY 2011 by a goods and services tax (GST), set up in two forms:

- a central GST (CGST) of 5 percent that subsumes the cenvat, the service tax, and some other indirect taxes; and
- a state-level GST (SGST) of 7 per cent that subsumes the VAT, the CST and some other indirect taxes.

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.

However, the ICAI has announced that full use of the International Financial Reporting Standards (IFRS) will be mandatory in India for financial statements for periods beginning on or after April 1, 2011. In addition, the Reserve Bank of India has stated that banks' financial statements must be IFRS-compliant for periods beginning on or after the same date.

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 FINANCES AND FINANCING

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.

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 50 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 early 2010, one Canadian dollar was worth about 44 rupees.

The Reserve Bank of India (RBI) is the central bank and supervises all banking activities in the country. These are carried out by 27 public-sector banks, 31 private banks, 38 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.

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 of either goods or services, 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.

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 solutions for Canadian exporters and investors, particularly small and medium-size companies. They include the following:
  - EDC's Export Guarantee Program enables you to obtain loans from your financial institution to provide you with the financing you need for your export-related activities or foreign investments.
  - Supplier Financing provides you with access to cash so you don't have to wait for payment from your Indian buyers.
  - Buyer Financing can help you offer your customers extended payment terms by providing them with financing for an export sale of capital goods and/or services.
- Business Development Bank of Canada (BDC): BDC provides flexible financing for the development of international markets, research and development, product modifications and new production equipment or technology.
- 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.
- **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.

6.5 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.[4]

6.5.1 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.

[4] There is a strengthening global trend toward the use of open account transactions rather than LCs as a payment method. According to a survey from the Association for Financial Professionals, almost half of the companies doing business in India expect that their use of open account will grow.

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.

6.5.2 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 THE FINE PRINT

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 considerable differences, and Canadian exporters to India will need local legal counsel if they want 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.

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."

EDC bonding solutions

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. To find out more, visit EDC bonding solutions.

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. The U.S. equivalent is the International Centre for Dispute Resolution.

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**. 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. The **procedures manual** for patenting something 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, theft of copyrighted property is not uncommon, 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.

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** has a link to the downloadable application form.

If you want more information on standards from the Canadian perspective, visit the **Standards Council of Canada** (SCC), 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.

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 the resolution of industrial disputes, working conditions, labour compensation, insurance, child labour and equal remuneration. The web site of the **Ministry of Labour and Employment** lists the various **labour regulations**.

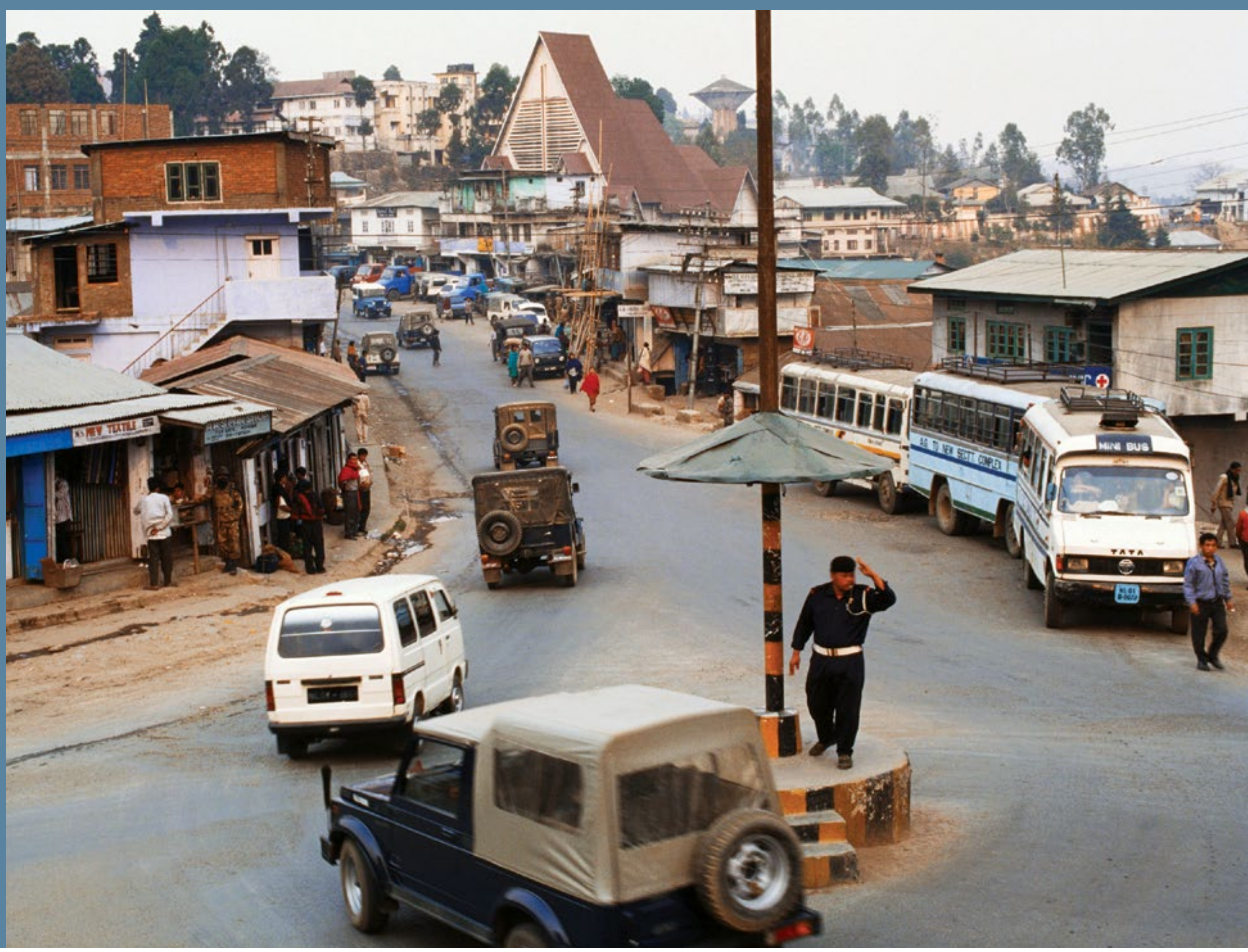
The major labour legislation of the central government includes the following:

- 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 childbirth 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 RISK MANAGEMENT

Doing business abroad is inherently more risky than operating in Canada. But you can certainly minimize and manage these risks, provided you know what they are, and if you understand the level of threat they represent. 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;
› corruption; and
› other risks.



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 attached risks, 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 Indian National Congress 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.

The Indian general election of 2009

In 2009, the United Progressive Alliance (UPA), a coalition led by the Indian National Congress, obtained a majority and formed the government. Because the 2009 results also gave the UPA a plurality of seats, this government should be more stable than the previous regime and less sensitive to the demands of minority parties. The result should be a more predictable business and investment environment.

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 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 places 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. The Mumbai attacks of November 2008 highlighted the danger posed by terrorist groups.

However, the strong capital flows into India since the Mumbai event strongly suggest that, for investors, the country’s investment advantages far outweigh any risks presented by terrorism.

8.1.4 Mitigating political risk

In a national perspective, the political risks of doing business in India are not 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 solutions 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.

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 representative 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 insurance solutions to protect you against such unfortunate events. Among them are the following:

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 nor 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. The policy insures up to 90 per cent of your losses if a customer doesn't pay after accepting the goods.

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.

Performance Security Insurance

Performance Security Insurance covers up to 95 per cent of your losses if your customer demands payment of a bond issued by your bank without valid reason.

Customer checking through EDC

EDC's EXPORT*Check* service can help you assess a potential customer. Available by subscription, 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 Dun & Bradstreet reports on the target business, including credit and financial information, details of the company's history and its management team, and any legal problems it may have.

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.")

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 to you to recover its loss. The customer's action in this case is known as a "wrongful call" and can cause serious 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.

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 Guarantee** (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.

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.

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***.

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 Appendix B; 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.

9 APPENDICES

A. Canadian contacts in India

High Commission of Canada, New Delhi
7/8 Shantipath Chanakyapuri
New Delhi 110 021, India
Tel.: 011-91-11-4178-2000
Fax: 011-91-11-4178-2020
Email: delhi@international.gc.ca

Consulate General of Canada, Mumbai
Fort House, 6th Floor, 221, Dr. D.N. Road
Mumbai, Maharashtra 400 001, India
Tel.: 011-91-22-6749-4444
Fax: 011-91-22-6749-4454
Email: mmbai@international.gc.ca

Consulate General of Canada, 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 of Canada, 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

Canadian Trade Office, Kolkata
Hyatt Regency Kolkata - JA-1
Sector III, Salt Lake City
Kolkata 700 098, India
Tel.: 011-91-33-2335-4010
Fax: 011-91-33-2335-4011
Email: india.commerce@international.gc.ca

Canadian Trade Office, Bangalore
103, Prestige Meridian 1
29 M.G. Road
Bangalore, India
Tel.: 011-91-80-2558-1116
Fax: 011-91-80-2559-9424
Email: baglr@gocindia.org

Canadian Trade Office, Ahmedabad
Hotel Le Meridien
Near Nehru Bridge
Ahmedabad 380001
Tel.: 011-91-79-2550-5053
Fax: 011-91-79-2550-2433
Email: india.commerce@international.gc.ca

Canadian Trade Office, Hyderabad
ITC Hotel, The Kakatiya - 6-3-1187 Begumpet
Hyderabad, 500 034, India
Tel.: 011-91-40-2340-4518
Fax: 011-91-40 2340-4523
Email: india.commerce@international.gc.ca

B. 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@aiaiindia.com

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

Associated Chambers of Commerce and Industry of India
ASSOCHAM Corporate Office, 1, Community Centre Zamrudpur
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C. Major Canadian companies in India

BMO Capital Markets (Mumbai)
Bombardier (Baroda, New Delhi)
Brookfield Asset Management (Mumbai)
CADIM (Delhi)
CAE (Bangalore)
CGI (Bangalore)
Four Seasons (Mumbai)
Fraco India (Chennai)
GL&V (Pune)
Hatch Energy (New Delhi)
Husky Injection Molding (Mumbai, Chennai, New Delhi)
Lea Associates (Delhi)
Legett and Pratt (Chennai)
Magna Automotive (Mumbai, Delhi, Pune)
Minaean India Habitat (Mumbai)
Nortel Networks (Mumbai)
Pratt & Whitney (Bangalore)
Royal Bank of Canada (Mumbai)
RSW Inc (Delhi)
R V Anderson (Mumbai)
Samco Machinery (Delhi)
Sandwell Engineering (Mumbai)
Scotiabank (five cities)
SNC Lavalin (Delhi, Mumbai)
Sun Life (Mumbai and New Delhi)
TD Bank (Mumbai)
Teknion Furniture Systems (Bangalore)
Wesley Clover (Delhi)

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