



## International Insights: Deal-making in India

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## 1. India – An Attractive Investment Destination

# India – The Macro Context

1  
World's largest democracy

2  
Second largest country by population

3  
Third largest economy (PPP basis)

4  
Fourth largest ultra-net worth households

5  
World's seventh largest country by area

6  
Ranked eighth in Global FDI inflow in 2014

Key Facts	India	US
Population, million (July 2015)	1,252	321
Area, million sq km	3.3	9.8
GDP PPP, USD trillion (2014)	7.4	17.4
GDP per capita, USD (2014) <sup>(1)</sup>	5,565	52,118
GDP Breakup (S:M:A) <sup>(2)</sup>	58:24:18	78:21:2
National Savings, % of GDP	30%	18%
Exports, USD billion (2014)	343	1,610
Imports, USD billion (2014)	508	2,334
Exchange Rate, INR/ USD	66	1
Central Bank Policy Rate, %	7.25%	0.25%

## Advantage India

- **Demographic profile:** Median age of 27 years
- **Large consumer market:** Expected to become world's largest consumer market by 2030
- **Rising literacy rate:** 74% in 2011; 65% in 2001
- **Increasing GDP per capita income:** USD 5,565 in 2014; USD 2,548 in 2000
- **English-speaking population:** Estimated at 125 million (second only to U.S.)
- **Rising urban population:** 33% in 2015; 28% in 2000

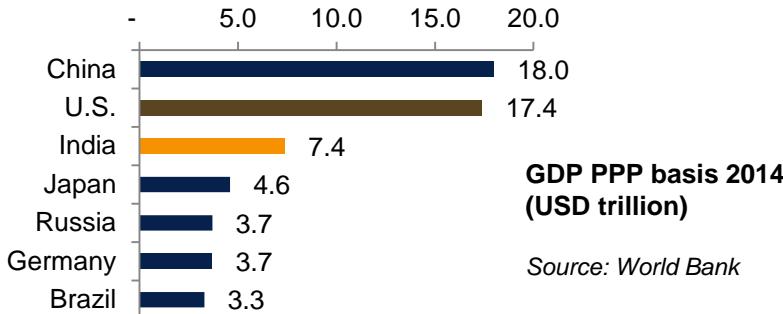
(1) GDP per capita, PPP (constant 2011 international dollar) – World Bank

(2) S:M:A = Service : Manufacturing : Agriculture

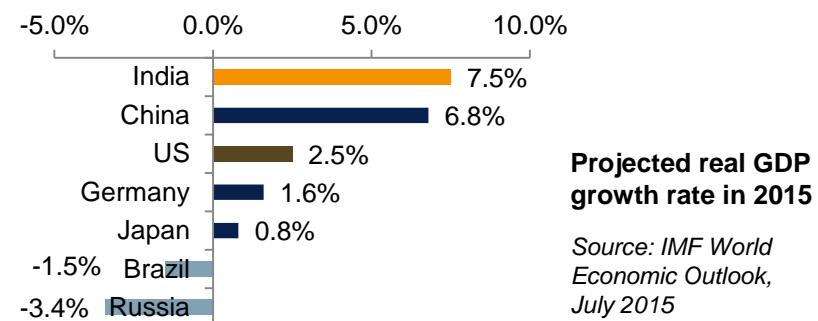
# Opportunities Unlimited

**The economy of India is backed by strong macroeconomic fundamentals, a conducive regulatory environment, and high-yielding capital markets**

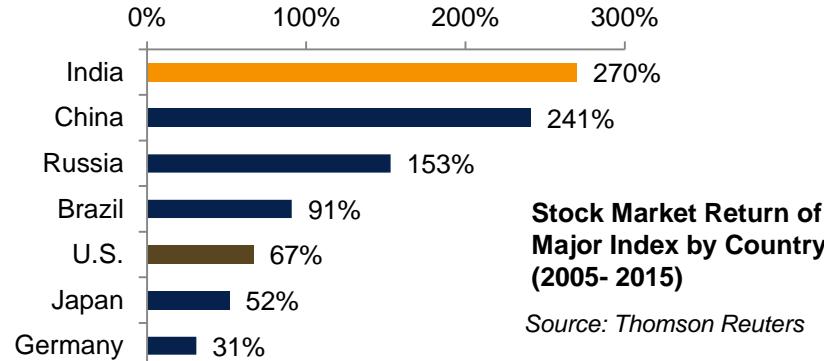
## World's third largest economy



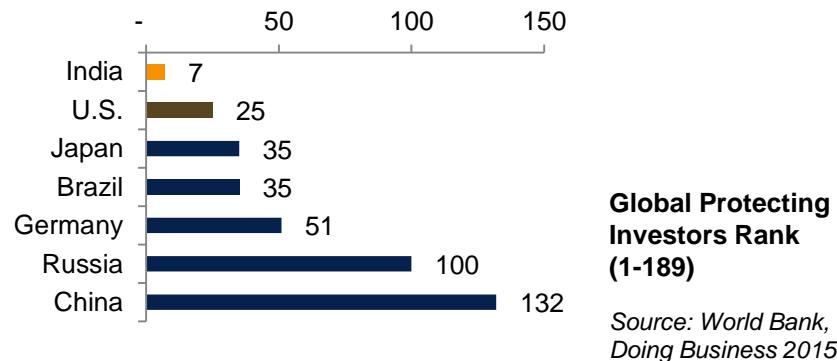
## Fastest growing major economy in the world



## One of the best performing equity markets



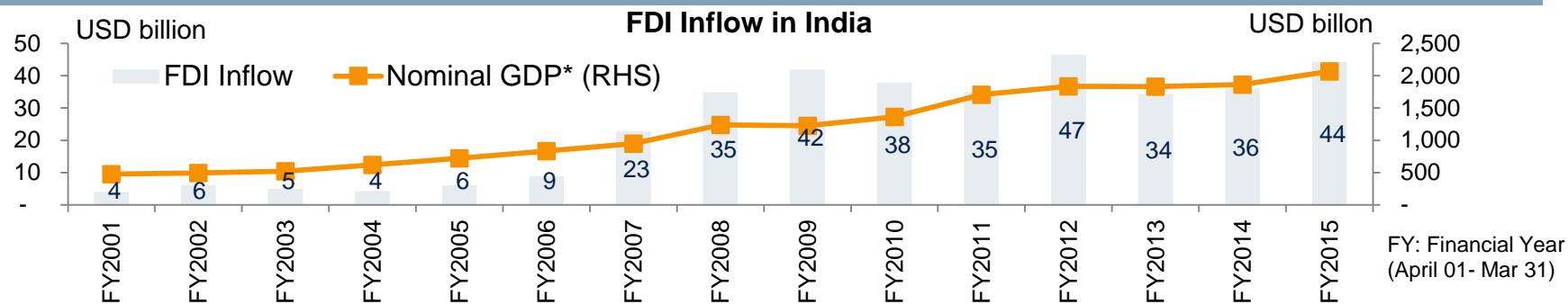
## India better than U.S. in minority investor protection



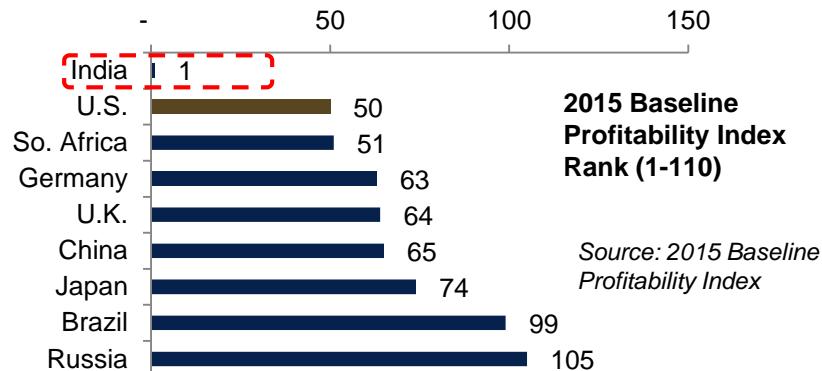
# Investors Looking Toward India

India has been one of the most attractive emerging market destinations for global investors since liberalization of Indian economy in 1991

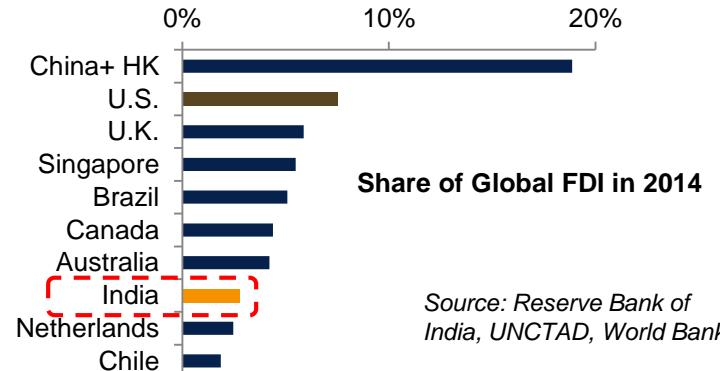
India has received cumulative FDI inflows of USD 368 billion in the last 15 years (FY2001-FY2015)



Ranked No. 1 Investment Destination in the World



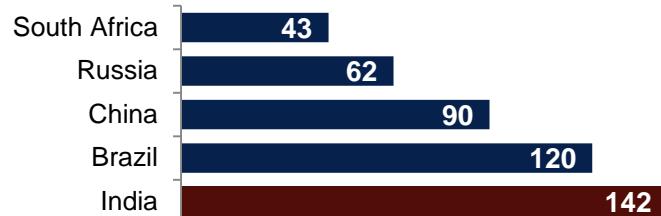
Ranked Eighth in Global FDI Inflow in 2014



# The Flip Side

India is one of the most promising emerging economies. However, challenges remain in realizing its true potential.

## Ease of Doing Business Ranking – 2015



**Signs of transformation visible to put India back on an accelerated growth path**

### Key Concerns for Businesses in India

- Legislative and administrative environment
- Corporate taxation
- Political will and judicial system inadequacy
- Intellectual property rights protection
- Inadequate infrastructure
- Corruption
- Bureaucracy

Logistics Performance	India	Global
Average distance travelled by trucks in a day (kms)	200-300	600-800 (U.S.)
Annual container handling capacity (million TEUs)	8.4	60 (China)
Average turnaround time at ports (hours)	84	7 (Singapore)
3PL share of Logistics	9-10%	~60% (U.S.)



Stable political regime post-2014 elections for the first time in 3 decades

“Make in India” campaign for promoting manufacturing in India

Third largest and the fastest growing startup base in the world

Investment of USD 1 trillion reserved for infrastructure sector in the 12th Five-Year Plan (2012-17)

Introduction of GST

Recent amendments in FDI policy, especially in defense and Insurance sectors

### **Key Short-Term Challenges**

- Weak monsoon
- Depreciating rupee against dollar
- Increasing bank nonperforming assets (NPAs)

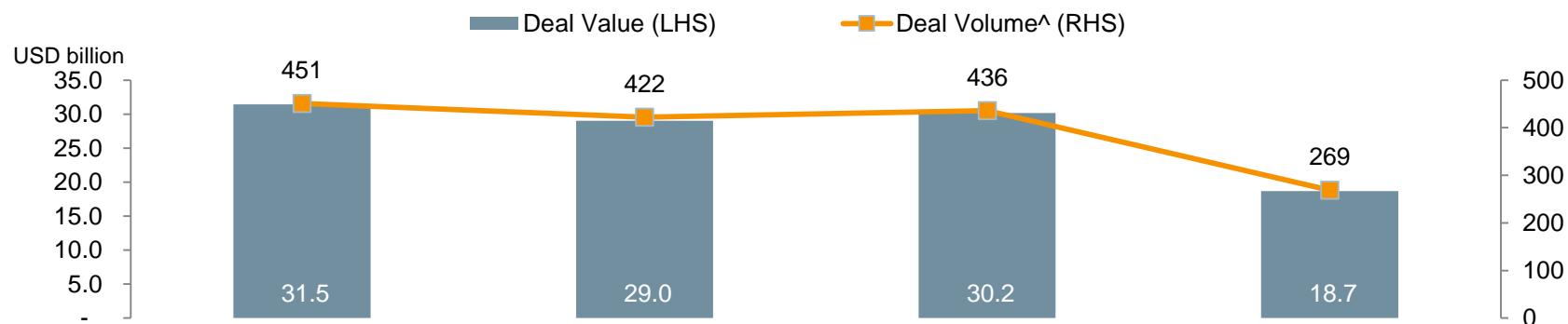
Sources: World Bank; Doing Business 2015



## 2. M&A Deal Activity in India

# India M&A Activity

Cross border M&A accounts for roughly 50% of the total M&A deal value (2012-2015)

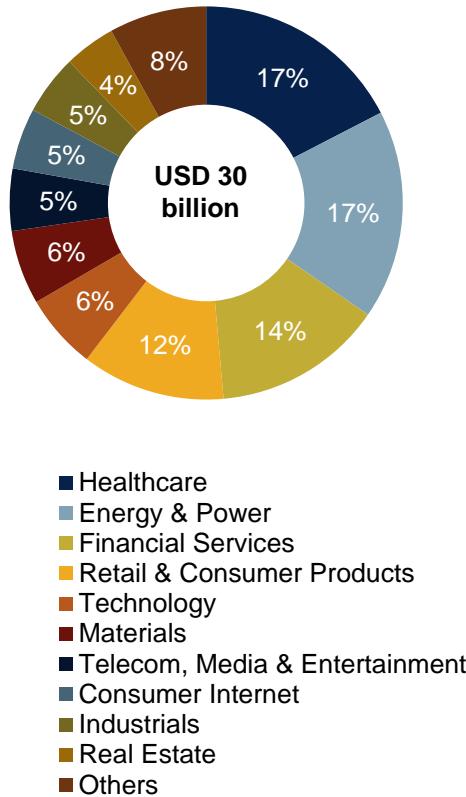


In USD billion	2012	2013	2014	YTD2015*
Inbound	8.4	14.6	10.2	6.8
Outbound	4.9	6.8	1.8	2.9
Domestic	18.1	7.6	18.2	8.9
<b>Total Deal Value</b>	<b>31.5</b>	<b>29.0</b>	<b>30.2</b>	<b>18.7</b>
Average Deal Size (USD million)	70	69	69	70
<b>Key M&amp;A Transactions</b>	<ul style="list-style-type: none"> <li>▪ Vedanta-Sterlite (USD 3.9 billion)</li> <li>▪ Diageo-United Spirits (USD 1.1 billion)</li> <li>▪ Gulf Oil-Houghton Int'l (USD 1.0 billion)</li> </ul>	<ul style="list-style-type: none"> <li>▪ OVL-Mozambique Videocon (USD 2.5 billion)</li> <li>▪ Mylan-Agila Specialties (USD 1.9 billion)</li> <li>▪ Bharti Airtel-Wireless Business (USD 0.9 billion)</li> </ul>	<ul style="list-style-type: none"> <li>▪ Sun Pharma-Ranbaxy (USD 3.2 billion)</li> <li>▪ Kotak Mahindra-ING Vysya (USD 2.4 billion)</li> <li>▪ Adani Power-Udupi Power (USD 1.0 billion)</li> </ul>	<ul style="list-style-type: none"> <li>▪ Vedanta-Cairn merger (USD 2.2 billion)</li> <li>▪ Lupin-Gavis Pharma (USD 0.9 billion)</li> <li>▪ Pantaloons-Madura merger (USD 0.8 billion)</li> </ul>

Source: Thomson Reuters

# Sector-wise M&A Activity in 2014

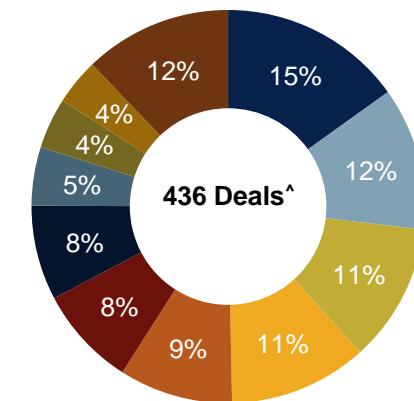
Healthcare and energy sectors dominated deal activity in terms of value while consumer retail and consumer Internet were the top sectors by volume



Source: Thomson Reuters

- Deals largely driven by domestic and inbound deals accounted for over 80% of M&A deal values.
- **Top Two Sectors by Deal Value**
  - **Overall:** Healthcare, Energy
  - **Inbound:** Consumer Retail, Consumer Internet
  - **Domestic:** Energy, Healthcare
  - **Outbound:** Industrials, Real Estate
- **Top Two Sectors by Volume**
  - **Overall:** Consumer Retail, Industrials
  - **Inbound:** Consumer Retail, Healthcare
  - **Domestic:** Financial Services, Materials
  - **Outbound:** Consumer Retail, Industrials

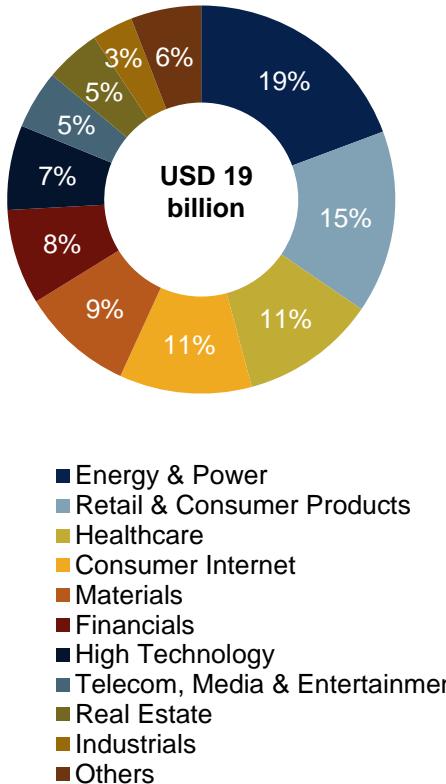
- Retail & Consumer Products
- Industrials
- Financial Services
- Technology
- Healthcare
- Materials
- Telecom, Media & Entertainment
- Energy & Power
- Consumer Internet
- Real Estate
- Others



^ Includes only deals with disclosed deal values

# Sector-wise M&A Activity in 2015\*

Energy and consumer retail sectors dominated deal activity in terms of value while consumer retail and financials were the top sectors by volume



- Deals largely driven by domestic and inbound deals accounted for over 80% of M&A deal values.
- Top Two Sectors by Deal Value**
  - Overall:** Energy, Consumer Retail
  - Inbound:** Consumer Internet, Financial Services
  - Domestic:** Energy, Consumer Retail
  - Outbound:** Healthcare, Technology
- Top Two Sectors by Volume**
  - Overall:** Consumer Retail, Financial Services
  - Inbound:** Consumer Retail, Healthcare
  - Domestic:** Consumer Retail, Industrials
  - Outbound:** Technology, Industrials

- Retail & Consumer Products
- Financial Services
- Healthcare
- High Technology
- Materials
- Industrials
- Consumer Internet
- Energy & Power
- Telecom, Media & Entertainment
- Real Estate
- Others



Source: Thomson Reuters

Audit | Tax | Advisory | Risk | Performance

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\* For the period Jan. 1, 2015-Aug. 31, 2015  
^ Includes only deals with disclosed deal values



### 3. Inbound M&A in India

# Sectorwise Inbound M&A

**Consumer retail, healthcare and consumer Internet have experienced the maximum inbound activity over the last two years in terms of deal volumes**

Sector	2014		YTD2015*	
	Deal Count <sup>^</sup>	Deal Value	Deal Count <sup>^</sup>	Deal Value
Retail & Consumer Products	22	3,148	9	360
Healthcare	18	1,487	10	677
Consumer Internet	16	1,495	10	1,189
Financial Services	16	855	7	863
Industrials	16	630	6	542
Energy & Power	10	789	9	601
Technology	9	444	6	771
Materials	8	237	5	494
Telecom, Media & Entertainment	4	165	6	556
Real Estate	5	91	3	579
Others	18	877	6	294
<b>TOTAL</b>	<b>142</b>	<b>10,219</b>	<b>77</b>	<b>6,825</b>

Source: Thomson Reuters

## Retail & Consumer Products

- India expected to become world's largest consumer market by 2030
- Consumer sector witnessing large inbound deals (e.g., Diageo- United Spirits deal; Unilever- HUL deal)

## Healthcare

- Long-term Indian healthcare industry growth pegged at 15%
- With the growth of global generics market, MNC players finding significant value in acquiring Indian companies with quality operations

## Consumer Internet

- E-commerce segment has seen a lot of VC/PE activity over last 24 months
- With intense competition, the segment is now also seeing active consolidation

\* For the period Jan. 1, 2015-Aug. 31, 2015

<sup>^</sup> Includes only deals with disclosed deal values

# Region-wise Acquirers Since 2014

There has been continuous inbound interest from U.S., Japan, and U.K.

## United States

- Biggest buyer of Indian assets (both in value and volume terms) over the last decade
- U.S. firms with surplus cash are looking for further acquisitions in India
- **Active Sectors:** TMT, Consumer Retail, Healthcare

## Singapore and Mauritius

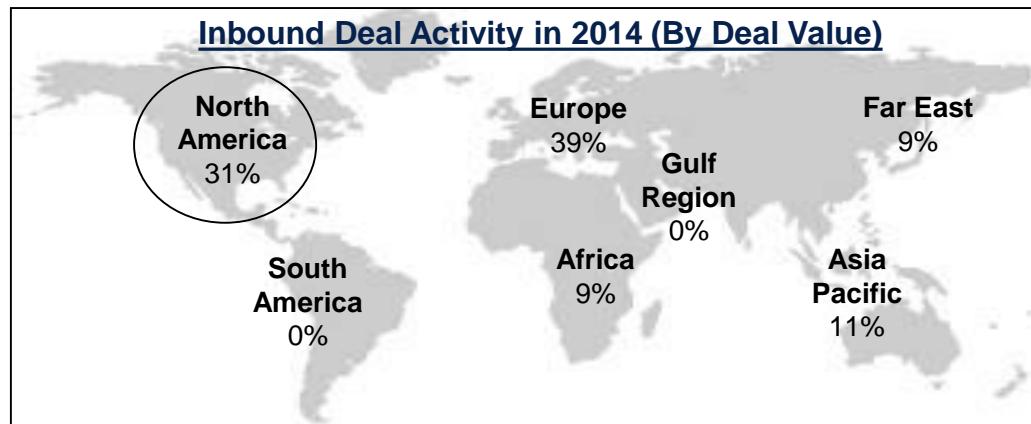
- Both are offshore financial centers and not the original sources of external financing
- Investments are either by financial investors or through subsidiaries of global MNCs

## Japan

- Fourth largest FDI contributor to India, especially in pharmaceuticals, automobiles, and services sectors
- 1,200+ Japanese firms already operating in India

## United Kingdom

- U.K.'s blue chip companies (Unilever, Vodafone, etc.) spent more on M&A in India than in any other emerging market over the past decade



Country	2014		YTD2015*	
	Deal Count^	Value	Deal Count^	Value
United States	38	2,492	30	2,609
Singapore	20	1,076	10	736
Mauritius	15	810	6	931
Japan	15	718	6	254
United Kingdom	10	841	5	524
Others	44	4,282	18	1,574
<b>TOTAL</b>	<b>142</b>	<b>10,219</b>	<b>77</b>	<b>6,825</b>

Source: Thomson Reuters

Audit | Tax | Advisory | Risk | Performance

\* For the period Jan. 1, 2015-Aug. 31, 2015

^ Includes only deals with disclosed deal values

# Top US Acquirers in India

More than 20% of Fortune 500 companies have done prior acquisitions/JVs in India

Consumer & Retail	Pharma/ Healthcare	TMT	Industrials	Chemicals	Others
<ul style="list-style-type: none"> <li>■ Walmart</li> <li>■ ADM</li> <li>■ P&amp;G</li> <li>■ Johnson &amp; Johnson</li> <li>■ Heinz</li> <li>■ Pepsico</li> <li>■ Coca-Cola</li> <li>■ McDonald's</li> <li>■ Philip Morris</li> <li>■ 3M</li> <li>■ ConAgra Foods</li> <li>■ General Mills</li> <li>■ Kraft Foods</li> <li>■ Colgate-Palmolive</li> <li>■ Kellogg's</li> <li>■ Starbucks</li> </ul>	<ul style="list-style-type: none"> <li>■ Pfizer</li> <li>■ Abbott</li> <li>■ Lilly</li> <li>■ Bristol-Myers Squibb</li> <li>■ DaVita</li> <li>■ Mylan</li> <li>■ Celgene</li> </ul>	<ul style="list-style-type: none"> <li>■ HP</li> <li>■ AT&amp;T</li> <li>■ Intel</li> <li>■ IBM</li> <li>■ Microsoft</li> <li>■ Google</li> <li>■ Cisco</li> <li>■ Oracle</li> <li>■ The Walt Disney Company</li> <li>■ 21st Century Fox</li> <li>■ Time Warner</li> <li>■ Avnet</li> <li>■ eBay Inc.</li> <li>■ Omnicom Group</li> </ul>	<ul style="list-style-type: none"> <li>■ United Technologies</li> <li>■ GE</li> <li>■ Caterpillar</li> <li>■ Cummins</li> <li>■ Lockheed Martin</li> <li>■ Emerson</li> <li>■ Johnson Controls</li> <li>■ Honeywell</li> <li>■ John Deere</li> <li>■ Danaher</li> <li>■ Goodyear</li> <li>■ Jabil</li> <li>■ Navistar</li> <li>■ Parker</li> <li>■ Whirlpool</li> </ul>	<ul style="list-style-type: none"> <li>■ Dow</li> <li>■ Merck</li> <li>■ DuPont</li> <li>■ PPG Industries</li> <li>■ Huntsman</li> <li>■ Sherwin Williams</li> <li>■ Ashland</li> <li>■ Celanese</li> </ul>	<ul style="list-style-type: none"> <li>■ New York Life</li> <li>■ MetLife</li> <li>■ Aetna</li> <li>■ Prudential Financial</li> <li>■ FedEx</li> <li>■ C.H. Robinson Worldwide, Inc.</li> <li>■ IPG</li> <li>■ MasterCard</li> <li>■ Avis Budget Group</li> <li>■ Owens-Illinois</li> <li>■ MeadWestvaco</li> <li>■ Host Hotels &amp; Resorts</li> <li>■ McGraw Hill Financial</li> </ul>

# Global PE/VC Investors in India

**Majority of the top global PE/VC investors have invested in India across a range of sectors over the last decade**

## PE Investments

- India has been consistently recording PE deals over USD 10 billion every year (USD 15 billion in 2014)
- More than 400 funds invested in India in 2014 with over 200 first-time investors; more PE/VC investors are looking to raise India-focused funds
- India has attracted all types of funds: growth funds, seed funds, buyout funds, infra/real estate focused funds, distressed funds, etc.
- Global PE/VC funds have invested across variety of sectors: consumer retail, technology, BFSI, pharma/healthcare, industrials, real estate, etc.

## PE Exits

- USD 5.3 billion worth of reported PE exits in 2014
- PE exits have surged in recent times as investment window of five to eight years has passed for many investments by foreign investors
- Strategic and secondary sales have been the most common exit routes historically; strong inbound M&A opportunity from PE exits

## TOP GLOBAL PE/VC INVESTORS ACTIVE IN INDIA

Fund	Fund Origin	First Investment in India	No. of Investments till date*
<b>VC FUNDS</b>			
Sequoia Capital	U.S.	2005	143
Accel Partners	U.S.	2004	77
Tiger Global	U.S.	2007	48
Bessemer	U.S.	2005	44
Norwest Venture	U.S.	2005	37
<b>PE FUNDS</b>			
Blackstone	U.S.	2006	39
Temasek	Singapore	2004	38
Warburg Pincus	U.S.	1999	36
GIC	Singapore	2007	26
Carlyle Group	U.S.	2000	24

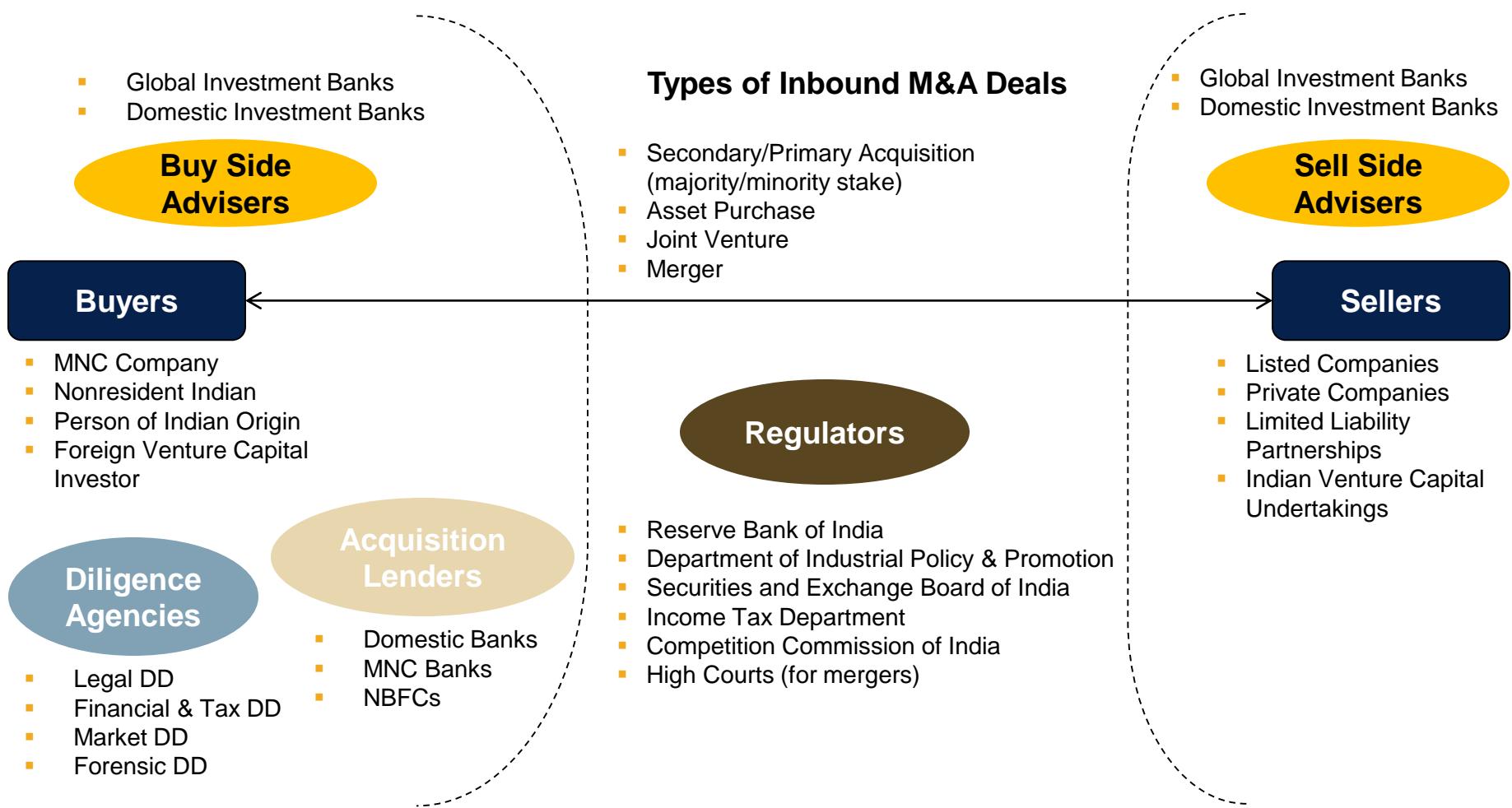
Source: Databoard

\* Until Aug. 31, 2015; multiple investments into a single company were counted as one



## 4. Inbound Deal Process

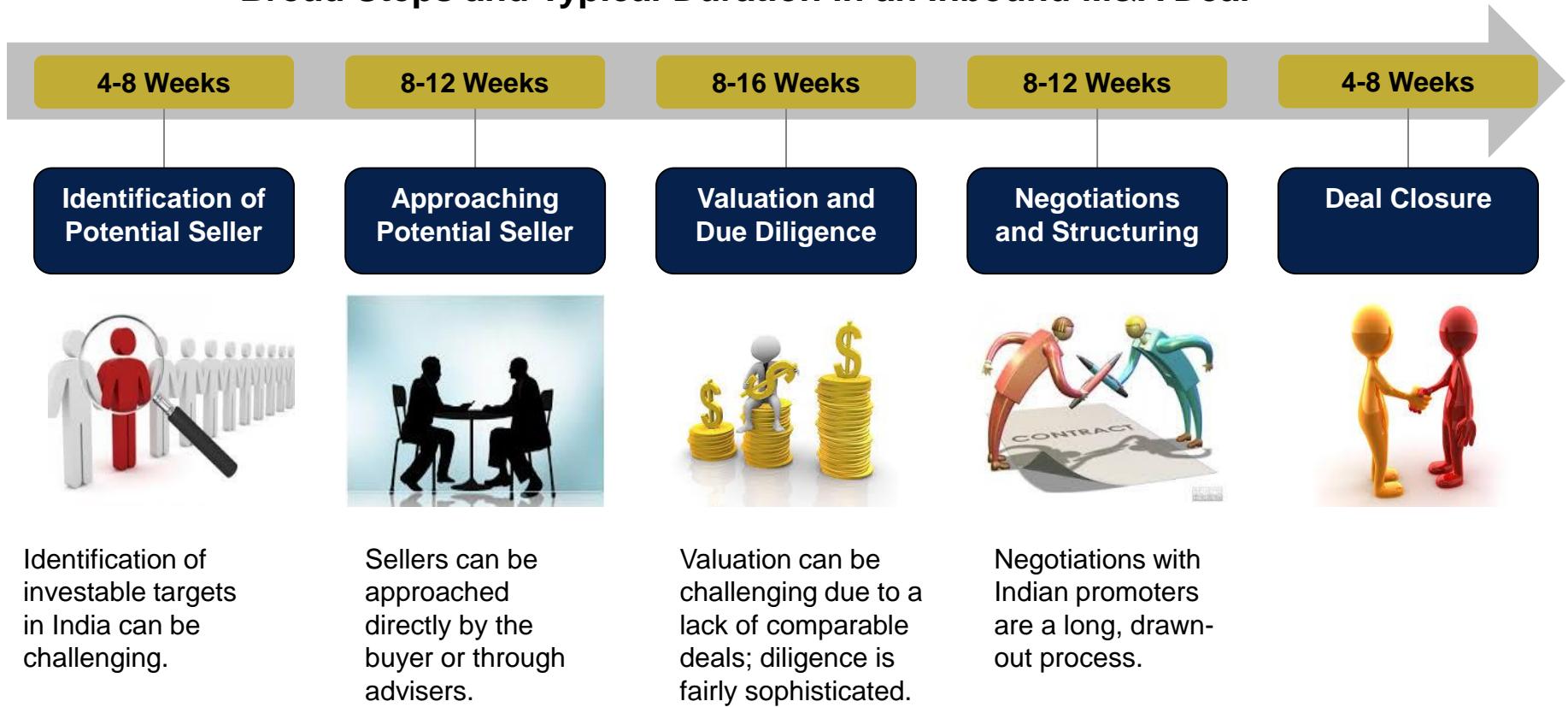
# Inbound M&A Ecosystem



# Inbound M&A Deal Process

Deal process in India can typically take six to 12 months from the start of discussions with the potential sellers to financial closure

## Broad Steps and Typical Duration in an Inbound M&A Deal



# Identification of Potential Targets



## Opportunities

- India has over 1.4 mn registered companies (including over 5,800 listed companies on BSE and NSE) offering plenty of options for a foreign investor looking to enter India through an acquisition.
- The majority of sectors in India are at growth stage/underpenetrated and have various players at different stages of growth.



## Challenges

- Most businesses are regional in nature and lack scale; there are only a few pan-India players.
- The majority of the companies are tightly controlled by promoters and promoter families that are not comfortable in giving up the management control of the business.
- Complex cross-holding structure of group companies
- Corporate governance standards may not be up to the expectations of the acquirer.

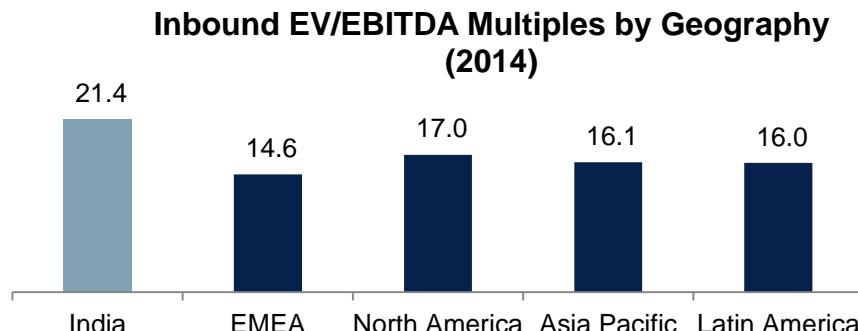
## Critical Parameters for Evaluation of Potential Sellers

Market Access	Financial Performance	Senior Management	Product Offerings Portfolio
Distribution Network	Cost or Revenue Synergies	Sector Regulations in India	Global Presence (if any)

# Valuation

**Managing valuation expectations is a key challenge faced by an inbound investor when identifying suitable targets in India**

- Valuation is the most critical factor in the overall M&A decision-making for an Indian seller promoter.
- In general, Indian businesses command a higher valuation than those for comparable mature market operations. This is because of the following reasons:
  - India offers significant growth opportunities for a global strategic partner.
  - Limited investable assets are available for sale, leading to competition between bidders.
  - Indian equity markets are trading at a premium compared to global peers.
- Due to lack of comparable multiples and reliable financial information about the target in public domain, valuation misalignment between buyer and seller is one of the greatest obstacles to a cross-border transaction in India.



Sources: Thomson Reuters; FactSet

Critical Parameters for Valuation
Comparable transactions in India
Credibility of historical financial performance
Future expansion potential
Business contracts terms with vendors and customers
Revenue and cost synergies, if any

# Due Diligence

**Thorough due diligence is the key to assessing and mitigating risk in the transactions and also facilitating successful valuation negotiations**

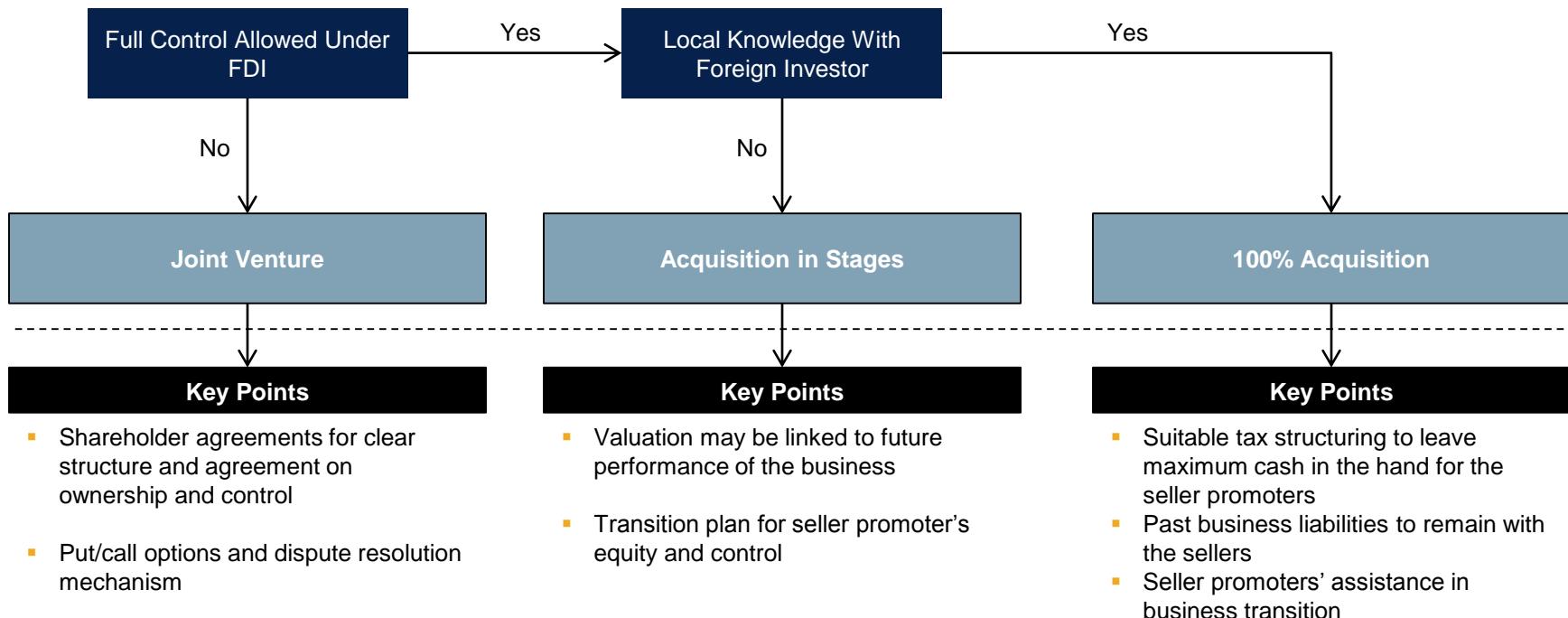
- Financial, legal, tax, and business due diligence require concerted time and effort from the inbound acquirer.
- Besides the standard diligence issues, there are some India-specific issues:
  - Incomes, assets, and liabilities outside the financial statements
  - Impact of variations between Indian GAAP and home country GAAP; poised to reduce
  - Retrospective tax amendments and lengthy dispute/appeal periods
  - Environmental concerns
- Inbound investors should consider FCPA due diligence (case to case basis) to safeguard against impact of potential illegal and unethical practices by the target company.

## Critical Parameters to Consider in Due Diligence

Financial Due Diligence	Legal Due Diligence	Other Diligences
Credible Financial Reporting	Contractual Arrangements	IT Systems
Related Party Transactions	Regulatory & Compliance	HR & Employee Issues
Assets & Liabilities	Environmental Approvals	Antitrust Issues (CCI Approval)
Employee Liability Recognition	Intellectual Property	
Tax Exposure (Direct/Indirect)	Past Litigations	

# Deal Structuring

The most important concern from an acquirer perspective during structuring is to achieve a balance between ownership control and transition of the business



## Other Aspects of Deal Structuring

- Lender covenants
- Corporate governance matters
- Financial reporting and control structures
- Employee transfers and HR integration
- Unfunded employee benefits
- Integration of ethical practices and compliances



## 5. Regulatory Perspective

# Regulatory Provisions to watch

Key  
Regulatory  
Acts

*Securities and  
Exchange Board  
of India Act,  
1992*

*The Competition  
Act, 2013*

*Income Tax Act,  
1961*

*Companies Act,  
2013*

*Foreign  
Exchange  
Management  
Act, 1999*

**Indirect Taxation**

# Investment Policies and Structure Options

**Local tax and regulatory advice from an India expert is a must for an inbound acquisition/ Joint Venture into India**

## Investment Structures

Investments can be structured through:

- Limited liability company, as a wholly owned subsidiary or JV
- Branch
- Limited liability partnership

## Foreign Direct Investment\*

- FDI under automatic route; sectoral caps in some sectors (e.g., banking, insurance, civil aviation, real estate)
- Inward remittance and foreign currency convertible bond treated as FDI
- FDI policy for entry routes, sectoral caps, instruments, etc.

## Investment Instruments

- Equity shares
- Preference shares
- Mandatorily convertible debentures

## External Commercial Borrowings

- ECB from shareholders or related parties do not need an approval
- Other RBI guidelines and authorization process adherence required

# Key M&A Regulations

Regulatory Issues	Regulatory Authority/ Act	Applicability/Regulations
<b>Open offer requirements for listed company acquisitions</b>	<b>RBI, SEBI</b>	<ul style="list-style-type: none"> <li>■ An entity acquiring over 25% stake in a listed company or assuming “control” <sup>(1)</sup> needs to make a mandatory open offer for purchasing another 26% stake from the public shareholders.</li> </ul>
<b>Pricing regulations for preferential allotment by listed companies</b>	<b>SEBI</b>	<p>Issue of preferential shares to be at a price not less than the higher of following:</p> <ul style="list-style-type: none"> <li>■ Average of weekly high and low closing prices traded during last six months</li> <li>■ Average of weekly high and low closing prices traded during last two months</li> </ul>
<b>External commercial borrowings [ECB]</b>	<b>RBI, FEMA</b>	<ul style="list-style-type: none"> <li>■ Subject to certain limits of amount, interest rate, and tenure</li> <li>■ Automatic approval for ECB in several industries, up to USD 750 million</li> <li>■ Shareholder loans fall within automatic approval</li> <li>■ End-use regulations apply</li> <li>■ RBI approval for loans outside these provisions</li> <li>■ Loan conversion to equity, subject to FDI policy</li> </ul>

(1) Control means the right to appoint majority of directors, or to control the management or policy decisions

# Key M&A Regulations (continued)

Regulatory Issues	Regulatory Authority/Act	Applicability/Regulations
Fair value pricing in inbound deals	SEBI, FEMA, RBI	<ul style="list-style-type: none"> <li>■ Fair value pricing is required for:           <ul style="list-style-type: none"> <li>■ Cross-border share acquisition/disposal transactions</li> <li>■ Conversion of debt instruments</li> <li>■ Issuance of new shares by an Indian LLC to foreign investors</li> </ul> </li> <li>■ Fair value pricing also required under the <i>Income Tax Act</i>. Issue price exceeding fair value to be treated as income and not as securities premium (for tax purposes)</li> <li>■ Fair value pricing needs, under FEMA, have created issues with put/call option pricing under JV agreements</li> </ul>
Buyback of shares and tax implications	Income Tax Act, SEBI	<ul style="list-style-type: none"> <li>■ Buyback is subject to limits based on net worth, outstanding shares, and resultant debt-to-capital ratio</li> <li>■ Requires compliance with SEBI regulations, for listed companies</li> <li>■ Tax withholding for capital gains</li> </ul>
Joint venture	RBI, FIPB	<ul style="list-style-type: none"> <li>■ Approval of RBI required if a JV is covered under automatic route</li> <li>■ Approval of FIPB required if a JV is not covered under automatic route</li> </ul>

# Tax Implications on M&A in India

<b>Transfer Pricing</b>	<ul style="list-style-type: none"><li>• Arm's length pricing for cross-border and domestic transactions with associated enterprises</li><li>• Impact on deal structure (debt) and operating structure (services, royalties, management fees, etc.)</li><li>• Valuation impact of pending litigation</li><li>• Advance pricing agreement mechanism is now available</li></ul>
<b>Withholding Tax</b>	<ul style="list-style-type: none"><li>• Withholding tax implications on capital gains</li><li>• Tax consequences from "indirect transfers" – Vodafone case and consequent amendments</li><li>• Structure impact on future group company payments to buyer entities</li></ul>
<b>Escrow Arrangement</b>	<ul style="list-style-type: none"><li>• Structure challenges when transactions are for acquiring existing listed shares or preferential allotment of shares</li><li>• Tax timing impact on retention of consideration toward unlisted share acquisition</li></ul>
<b>Purchase Price Allocation</b>	<ul style="list-style-type: none"><li>• To streamline with GAAP and tax allowances, depending upon nature of acquisition</li></ul>
<b>Indirect Tax</b>	<ul style="list-style-type: none"><li>• Transferee not liable to pay sales tax, and/or VAT liabilities of transferor company</li><li>• Indirect tax credits available to transferee post-merger; carry forward availability in business acquisition to be structured</li></ul>
<b>Dividend Tax</b>	<ul style="list-style-type: none"><li>• Dividend paid by an Indian company is exempt from tax in hands of shareholders</li><li>• Company to pay dividend distribution tax @15% – this is not a tax withholding</li><li>• Creates double tax potential with home country tax</li></ul>
<b>General Anti-Avoidance Rules (GAAR)</b>	<ul style="list-style-type: none"><li>• Aims at checking tax avoidance and allows the tax department to scrutinize the transactions</li><li>• GAAR to be implemented from April 2017</li></ul>

# Tax Implications – M&A Types

## Share Purchase

- Gains on sale of shares are taxable as long term or short term as per the period of holding
- Securities Transaction Tax (STT) is levied if shares are listed on stock exchange
- Gains arising on the sale of assets subject to STT held for more than 12 months are exempt from tax
- No VAT application
- Valuation of shares may be subject to RBI guidelines
- Approval from SEBI and FIPB required

## Business Transfer

- Slump sale and itemized sale are subject to capital gain tax
- Tax on long-term and short-term capital gain depends upon the period of holding of asset
- Values of the assets and brands can be restated and captured by acquirer for accounting and tax purposes at a specified price in an itemized sale
- No requirement to make an open offer
- Impact of tax disputes and demands on assets taken over, to be released

## Merger

- Tax neutrality in case of amalgamation/merger
- Transfer taxes are exempt if amalgamating company is an Indian company and entire consideration comprises shares in the amalgamated company
- Transfer of immovable properties attracts stamp duty
- Unabsorbed depreciation and accumulated losses of the amalgamating company can be carried forward by the amalgamated company
- VAT implications may vary from state to state



## 6. Other Aspects of Deal-Making in India

# Post-Deal Integration

Mitigating cultural and management differences between the two parties is the key for a successful inbound acquisition into India

## Employees

- Manage employee benefits and expectations, work practices
- Training toward cultural commonality and ethics
- Post-integration staffing plan may impact valuation, if retrenchment is planned

## Senior Management

- Strong, autonomous senior management with clear hierarchy
- Should be conscious of differences; willing to drive synergies and common goals

## Integration Plan

- Vision to be clearly planned and documented
- Drive process and business synergies
- Small dedicated task team, with empowerment
- Recognize differences in Indian business practices, while setting global alignment goals

# Cultural Nuances

**Cultural awareness about Indian businesses can help a foreign investor go a long way in successful negotiations and post-deal integration**



## Delay is inevitable

- Negotiations process in India is usually drawn out
- It is also not uncommon for people being late for meetings
- Important for a foreign investor to exercise patience and not exhibit frustration



## Yes/No conundrum

- Indians avoid saying "No" as it is considered rude
- Phrases like "We'll see" or "We will try" are generally employed to politely say "No"
- Even a "Yes" may not be a confirmation



## Bargaining

- Hard bargaining is part of repertoire of every Indian businessman
- It is important for the foreign investor to be flexible in his or her approach
- However, high-pressure tactics should not be used during negotiations



## It's all about trust

- Indians deal favorably with people they trust
- Initial efforts in a deal should be focused on building a rapport and trust
- Indians prefer trusted person better over fancy presentations



## Hierarchy

- Decisions are always taken at the highest level
- In early stage meetings, senior personnel may not even be present

# Soft Issues – Role of Advisers

**Investment banks play an important role in managing soft issues in the deal and act as catalysts for deal success**

Identification of Potential Targets

- Buy-side investment bank assists foreign investor in screening potential targets based on cultural fit and the promoters' reputation in the market



Approaching Potential Sellers

- Foreign buyers with limited local experience use investment banks as a primary catalyst in reaching out to potential sellers and introducing to promoters

Valuation and Due Diligence

- Role of investment banks on both sides become very important in respect of setting realistic valuation expectations due to absence of reliable comparable transactions in India
- Involvement of professional advisers on the sell side also facilitates a well-managed deal process with virtual data rooms, verified financial information, etc.



Negotiations and Structuring

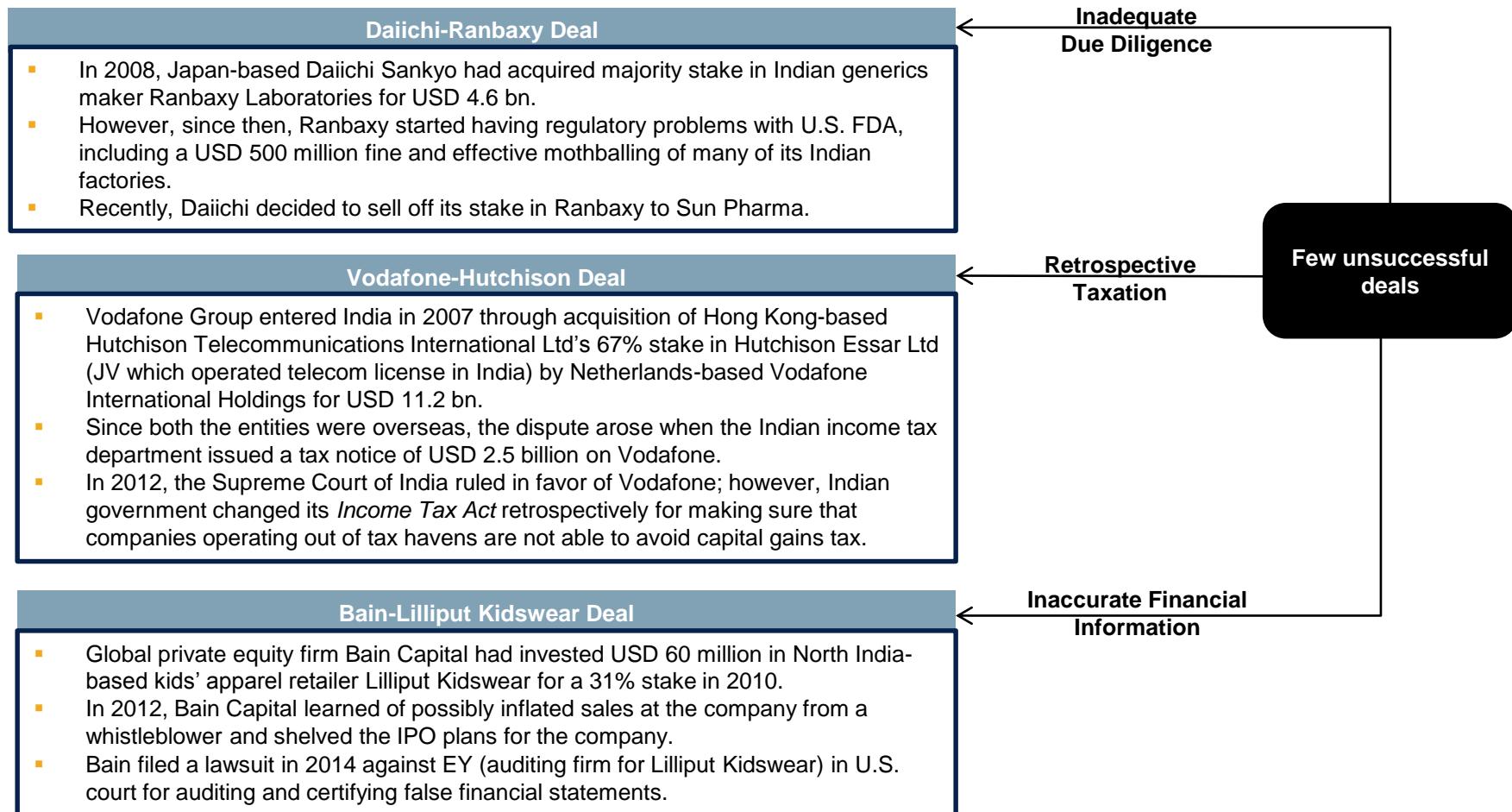
- “Bazaar” bargaining culture of India is also reflected in M&A with promoters looking for hard bargain and sell-side investment bankers leading their cause
- Outings with promoters/bankers (Indian hospitality) are also common during negotiations stage



Deal Closure

- “Management of promoter ego” by investment banks is the single most crucial factor in successful deal-making in India

# Deals Gone Bad; Lessons To Be Learned



# Key Success Mantras for Acquisition

**India is an exciting and challenging place to pursue an acquisition, with a successful deal demanding comprehensive planning at the acquirer's end**

## Understanding the Seller Promoters

- A relationship with the seller promoter is of significant importance in an inbound deal.
- Internal politics among family business owners; manage multiple decision-makers and structure impact on future operations
- Before ensuing with a deal conversation, a foreign investor should invest time and effort in understanding the promoters and the management well.

## Prior Local Presence in India

- There is a need for a foreign player to gain knowledge of regulatory, market, and cultural practices in India before embarking on an acquisition.
- Hence, before a successful acquisition, it helps for a foreign player to have a local presence in India through a subsidiary, JV, or a sales/trading office.

## Thorough Due Diligence

- Investment in India has its unique due diligence challenges: weak corporate governance & financial reporting, changing regulatory landscape, aggressive tax management by corporates, etc.
- Foreign acquirers should conduct a comprehensive and thorough due diligence to assess not only the financial, tax, and legal implications of the deal but also the commercial and forensic perspective.

## Robust Deal Structuring

- Deal structuring in India has to be worked out based on multiple factors: tax laws, regulatory restrictions, acquirer funding route and instrument, etc.
- The structure has to be relevant in not only the current situation but also in the future (next 3-5 years).



## 7. Appendix

# Key Inbound M&A Deals

## Select Inbound M&A Deals (2012-2015)

Year	Acquirer	Acquirer Country	Target	Target Sector	Deal Type	Deal Value (USD million)	Stake %
2015	SoftBank; Alibaba Group	Japan; China	Snapdeal.com	Consumer Internet	Acquisition	500	NA
2015	Apax Partners	Mauritius	Shriram City Union Finance	Financial Services	Acquisition	359	20%
2015*	Advent International; Temasek Holdings	Singapore	Crompton Greaves (Consumer Products)	Industrials	Acquisition	314	34%
2015*	Lafarge SA	France	Lafarge India	Materials	PE Exit	305	14%
2015	Parkway Hospital	Malaysia	Global Hospitals	Healthcare	Acquisition	350	74%
2015	Sembcorp Industries	Singapore	Green Infra	Energy & Power	Acquisition	171	60%
2015	Viacom Inc.	United States	Prism TV	Media & Entertainment	Acquisition	153	50%
2015	Alibaba Group	China	One97 Communication (Paytm)	Consumer Internet	PE Investment	575	NA
2014	SoftBank	United States	Snapdeal.com	Technology	Acquisition	627	NA
2014	Huhtamaki Oyj	Finland	Positive Packaging Industries Ltd.	Industrials	Acquisition	336	100%
2014	Meiji Holdings	Japan	Medreich Ltd.	Pharma	Acquisition	290	100%

Source: Thomson Reuters

 \* Deal not yet completed  
 NA: Not Available

# Key Inbound M&A Deals (continued)

Select Inbound M&amp;A Deals (2012-2015)

Year	Acquirer	Acquirer Country	Target	Target Sector	Deal Type	Deal Value (USD million)	Stake %
2013	GlaxoSmithKline Pte. Ltd.	Singapore	GSK Pharmaceuticals Ltd.	Pharma	Open Offer (Parent)	1,035	24%
2013	Vodafone Group PLC	United Kingdom	Vodafone India Ltd.	Telecom Media	Acquisition (Parent)	1,653	37%
2013	Unilever PLC	United Kingdom	Hindustan Unilever Ltd.	Consumer & Retail	Acquisition (Parent)	3,573	15%
2013	Etihad Airways	UAE	Jet Airways	Aviation	Acquisition	379	24%
2013	Mylan Inc.	United States	Agila Specialties	Pharma	Acquisition	1,850	100%
2013	Toshiba Corporation	Japan	Vijai Electricals	Industrials	Acquisition	200	NA
2012	GlaxoSmithKline Pte. Ltd.	Singapore	GSK Consumer Healthcare Ltd.	Pharma	Open Offer (Parent)	864	29%
2012	Relay BV (Diageo)	Netherlands	United Spirits Limited	Consumer & Retail	Acquisition	1,049	27%
2012	Shelf Drilling Holdings Ltd.	UAE	Transocean Ltd.	Energy & Power	Asset Purchase	1,050	NM
2012	Mitsui Sumitomo Insurance	Japan	Max New York Life Insurance	Financial Services	Joint Venture	533	26%

Source: Thomson Reuters

 NA: Not Available  
 NM: Not Meaningful

# Sector-wise FDI Restrictions

## India welcomes FDI under automatic route into most sectors

Foreign investment was restricted in India before 1991. India has since followed a policy of economic liberalization and currently allows FDI under automatic route for most of the sectors, except the ones indicated in the table.

Sectors with FDI caps	% of Equity/FDI Cap	Entry Route	Remarks
Others	100%	Government <sup>(1)</sup>	
Banking-Private	74%	Automatic/Govt. <sup>(2)</sup>	Automatic up to 49%; government route beyond 49% and up to 74%
Broadcasting Carriage (3)	74%	Automatic/Govt.	Automatic up to 49%; government route beyond 49% and up to 74%
Multibrand Retail Trading	51%	Government <sup>(4)</sup>	Minimum amount of USD 100 million to be brought in by the foreign investor
Local Cable Operators	49%	Automatic	
Insurance	49%	Automatic/Govt.	Automatic up to 26%; government route beyond 26% and up to 49%
Commodity Exchanges	49%	Automatic <sup>(5)</sup>	
Infrastructure	49%	Automatic <sup>(5)</sup>	
Private Security Agencies	49%	Government	
Air Transport Services	49%	Automatic <sup>(6)</sup>	Scheduled services up to 49% allowed; nonscheduled up to 74% allowed
Defense	49%	Government	Above 49% by Cabinet Committee on Security (CCS) <sup>(7)</sup>
Petroleum Refining (PSU)	49%	Automatic	
Print Media	26%	Government	Including FDI and investment by NRIs/PIOs/FII/FPI
FM Radio & News Channels	26%	Government	
Banking-PSU	20%	Government	FDI and Portfolio Investment limit of 20%

(1) Includes Telecom, Single brand product retailing, Asset Reconstruction cos, Brownfield Pharma, Tea Plantation etc

(2) Up to 100% allowed for nonresident Indians

(3) Includes telecom, single-brand product retailing, asset reconstruction companies, brownfield pharmaceutical companies, tea plantation, etc.

(4) Total investment including FII/FPIs to not exceed 74%

(5) At least 50% of total FDI brought in the first tranche of USD 100 million to be invested in "back-end infrastructure" within three years

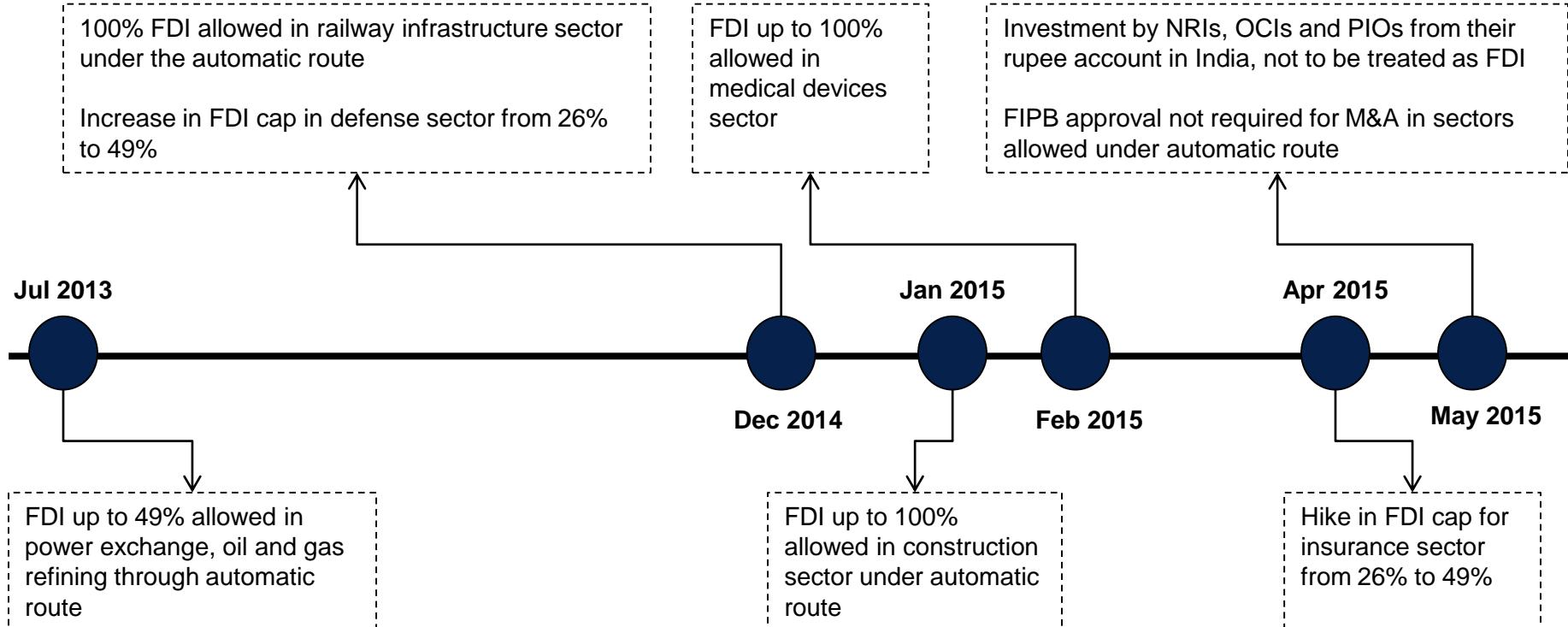
(6) FDI limit of 26% and FII/FPI limit of 23% of the paid-up capital

(7) On case-to-case basis, wherever it is likely to result in access to modern and state-of-the-art technology in the country

# Recent Amendments in FDI Policy

Indian government has relaxed FDI norms in the recent past to ensure continuous inflow of foreign capital into the country

## Key Recent Amendments



Source: Reserve Bank of India

# Top Sectors by FDI

Tremendous FDI potential across various sectors in the country

	Industry Size & Growth	Key Growth Drivers
<b>Services (1)USD</b>	<ul style="list-style-type: none"> <li>Size: USD 1,953 billion (FY14)</li> <li>CAGR 10-12% (FY15- FY20)</li> <li>Cumulative FDI<sup>(3)</sup>- USD 42 billion</li> </ul>	<ul style="list-style-type: none"> <li>Sharp increase in income and favorable savings</li> <li>Paradigm shift from public to private sector funding</li> <li>Cost-competitive services</li> </ul>
<b>Infrastructure &amp; Real Estate</b>	<ul style="list-style-type: none"> <li>Size: USD 157 billion (FY14)</li> <li>CAGR 7-8% (FY15-FY24)</li> <li>Cumulative FDI<sup>(3)</sup>- USD 24 billion</li> </ul>	<ul style="list-style-type: none"> <li>Urban housing shortage in India</li> <li>USD 1 trillion investments projected for infrastructure sector in the 12<sup>th</sup> Five-Year Plan</li> </ul>
<b>Telecom</b>	<ul style="list-style-type: none"> <li>Size: USD 30 billion (FY14)</li> <li>CAGR 5% (FY15-FY17)</li> <li>Cumulative FDI<sup>(3)</sup>- USD 17 billion</li> </ul>	<ul style="list-style-type: none"> <li>Increasing affordability</li> <li>Low tariffs, easy payment plans</li> <li>Increased coverage, availability of mobile services</li> </ul>
<b>Computer Software &amp; Hardware (2)</b>	<ul style="list-style-type: none"> <li>Size: USD 118 billion (FY14)</li> <li>CAGR 13-15% (FY15-FY20)</li> <li>Cumulative FDI<sup>(3)</sup>- USD 14 billion</li> </ul>	<ul style="list-style-type: none"> <li>Digital India campaign, smart cities, and increased government focus on broadband Internet infrastructure</li> <li>Emerging technologies: social media, mobility, and cloud</li> </ul>
<b>Drugs/Pharmaceuticals</b>	<ul style="list-style-type: none"> <li>Size: USD 27 billion (FY14)</li> <li>CAGR 16% (FY16-20)</li> <li>Cumulative FDI<sup>(3)</sup>- USD 13 billion</li> </ul>	<ul style="list-style-type: none"> <li>Low-cost drug manufacturing</li> <li>Strong product pipeline</li> <li>Rise of lifestyle diseases in India</li> </ul>

Sources: Reserve Bank of India, DIPP, Make in India, IBEF, CII, NASSCOM, Research & Markets, Department of Telecommunications

(1) Services sector includes financial, banking, insurance, nonfinancial/business, outsourcing, R&D, courier, etc.

(2) Represents IT/ITeS sector

(3) Cumulative FDI inflow from April 2000 to January 2015

# Bilateral Investment Treaties

**The majority of FDI investments into India are routed through Mauritius on the back of favorable bilateral investment treaty and free trade agreement**

S No	Top 10 Countries by FDI	Cumulative FDI Inflow <sup>(1)</sup>	Bilateral Investment Promotion and Protection Agreements	Free Trade Agreements
1	Mauritius	USD 86 billion	✓	✓
2	Singapore	USD 31 billion	✗	✓
3	United Kingdom	USD 22 billion	✓	✓ <sup>(2)</sup>
4	Japan	USD 18 billion	✗	✓
5	The Netherlands	USD 14 billion	✓	✓ <sup>(2)</sup>
6	USA	USD 14 billion	✗	✗
7	Cyprus	USD 8 billion	✓	✓ <sup>(2)</sup>
8	Germany	USD 7 billion	✓	✓ <sup>(2)</sup>
9	France	USD 4 billion	✓	✓ <sup>(2)</sup>
10	UAE	USD 3 billion	✗ <sup>(3)</sup>	✓ <sup>(4)</sup>

India has bilateral investment promotion and protection agreements with 72 countries (currently in force)

Inflows from Singapore have boosted in recent times due to a favorable double taxation avoidance agreement between India and Singapore and better legal system in Singapore vs. Mauritius.

Source: Reserve Bank of India

# Acquisition vs. JV vs. Own Operations

Outright acquisition typically has been preferred by foreign investors compared to JVs and greenfield projects

Different Modes of Investment in India			
	Acquisition (Majority/Minority Stake)	Joint Venture	Own Operations
<b>Key Benefits</b>	<ul style="list-style-type: none"> <li>Established distribution and procurement network of the Indian partner</li> <li>Immediate market access for the foreign player without a time lag</li> <li>Shorter lead time compared to establishing new operations</li> </ul>	<ul style="list-style-type: none"> <li>Established distribution and procurement network of the Indian partner</li> <li>Local partner awareness for better handling on-ground issues</li> <li>Low cost/investment commitment for the foreign partner</li> <li>Foreign investor can gain local knowledge before acquiring majority control</li> </ul>	<ul style="list-style-type: none"> <li>Ability to start small before expanding further</li> <li>Full control over business and operations</li> <li>Flexibility for the buyer to choose location in India (tax sops different by states)</li> </ul>
<b>Limitations</b>	<ul style="list-style-type: none"> <li>Not always easy to find an investable target in India</li> <li>Historical/cultural baggage of the seller's workforce</li> </ul>	<ul style="list-style-type: none"> <li>Leakage of technical secrets to the local partner</li> <li>Ownership- and control-related issues</li> <li>Commonality of ethical standards</li> </ul>	<ul style="list-style-type: none"> <li>Time consuming and demanding, especially for a new foreign investor</li> </ul>
<b>Preferred Sectors</b>	<ul style="list-style-type: none"> <li>Sectors without FDI caps</li> </ul>	<ul style="list-style-type: none"> <li>Sectors with FDI caps: insurance, defense, multi-brand retail, etc.</li> <li>Others: auto components</li> </ul>	<ul style="list-style-type: none"> <li>Capital intensive sectors (steel, electronics, single brand retail)</li> </ul>
<b>Recently Announced Investments</b>	<ul style="list-style-type: none"> <li>Mylan-Famy Care (USD 800 million)</li> <li>Alibaba-Paytm (USD 575 million)</li> </ul>	<ul style="list-style-type: none"> <li>SoftBank-Foxconn-Bharti JV for renewable energy (USD 20 billion)</li> <li>AirAsia-Tata Sons JV in aviation sector</li> </ul>	<ul style="list-style-type: none"> <li>Foxconn Group electronics manufacturing facility (USD 5 billion)</li> <li>USD 1 billion investment announced by General Motors</li> </ul>

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- *Thomson Reuters*
- *Reserve Bank of India (RBI)*
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- *United Nations Conference on Trade and Development (UNCTAD)*
- *International Monetary Finance (IMF)*
- *CIA World Factbook*
- *World Bank*
- *India Brand Equity Foundation (IBEF)*
- *Make in India*

## ■ M&A Transaction Reporting Methodology

- Thomson Reuters database used for reporting of M&A deals in/from India
- Only completed, pending, and intended M&A deals with disclosed deal values included for the purpose of this presentation
- Inbound M&A represents India target and non-India acquirer
- Outbound M&A represents non-India target and India acquirer
- Domestic M&A represents India target and India acquirer

# Key Abbreviations

BFSI	Banking, Financial Services and Insurance	NBFC	Non-Banking Financial Companies
BSE	Bombay Stock Exchange	NRI	Non-Resident Indian
CCI	Competition Commission of India	NSE	National Stock Exchange
DD	Due Diligence	OCI	Overseas Citizenship of India
ECB	External Commercial Borrowing	PE	Private Equity
EMEA	Europe, Middle East and Africa	PIO	Person of Indian Origin
FCPA	The Foreign Corrupt Practices Act of 1977	PPP	Purchasing Power Parity
FDI	Foreign Direct Investment	RBI	Reserve Bank of India
FEMA	Foreign Exchange Management Act	SEBI	Securities and Exchange Board of India
FIPB	Foreign Investment Promotion Board	TMT	Technology, Media and Telecom
GAAP	Generally Accepted Accounting Principles	USD	United States Dollar
GDP	Gross Domestic Product	VAT	Value Added Tax
GST	Goods & Services Tax	VC	Venture Capital
INR	Indian Rupee	YTD	Year Till Date

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