

India

Foreign Investment and Contracts

Business Opportunities & Challenges in India

SAMPLE SLIDES – REGISTER BY EMAIL FOR FULL VERSION

International Trade Association
of Greater Chicago

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Our Agenda

- 1. A Personal Perspective**
- 2. How Open Is India?**
- 3. Foreign Direct Investment + Entities**
- 4. India Contracts** - The Example of Agency and Distribution Agreements
- 5. Contract Dispute Resolution Clauses** – What Law? Are Courts the Answer?

My Personal Perspective on India

- **3 years with a Korean law firm in the late 1980s -- when Korea was an “emerging market”**
- Returned to New York in 1990 and have since handled foreign investment and contracts in multiple countries, **with a focus on emerging markets such as China – and India**
- **Have seen from the legal advisory trenches India’s transformation in comparison with many other countries,** including with Indian companies entering the US (recently closed a \$50 million manufacturing acquisition)

India's Rank - Doing Business

The World Bank

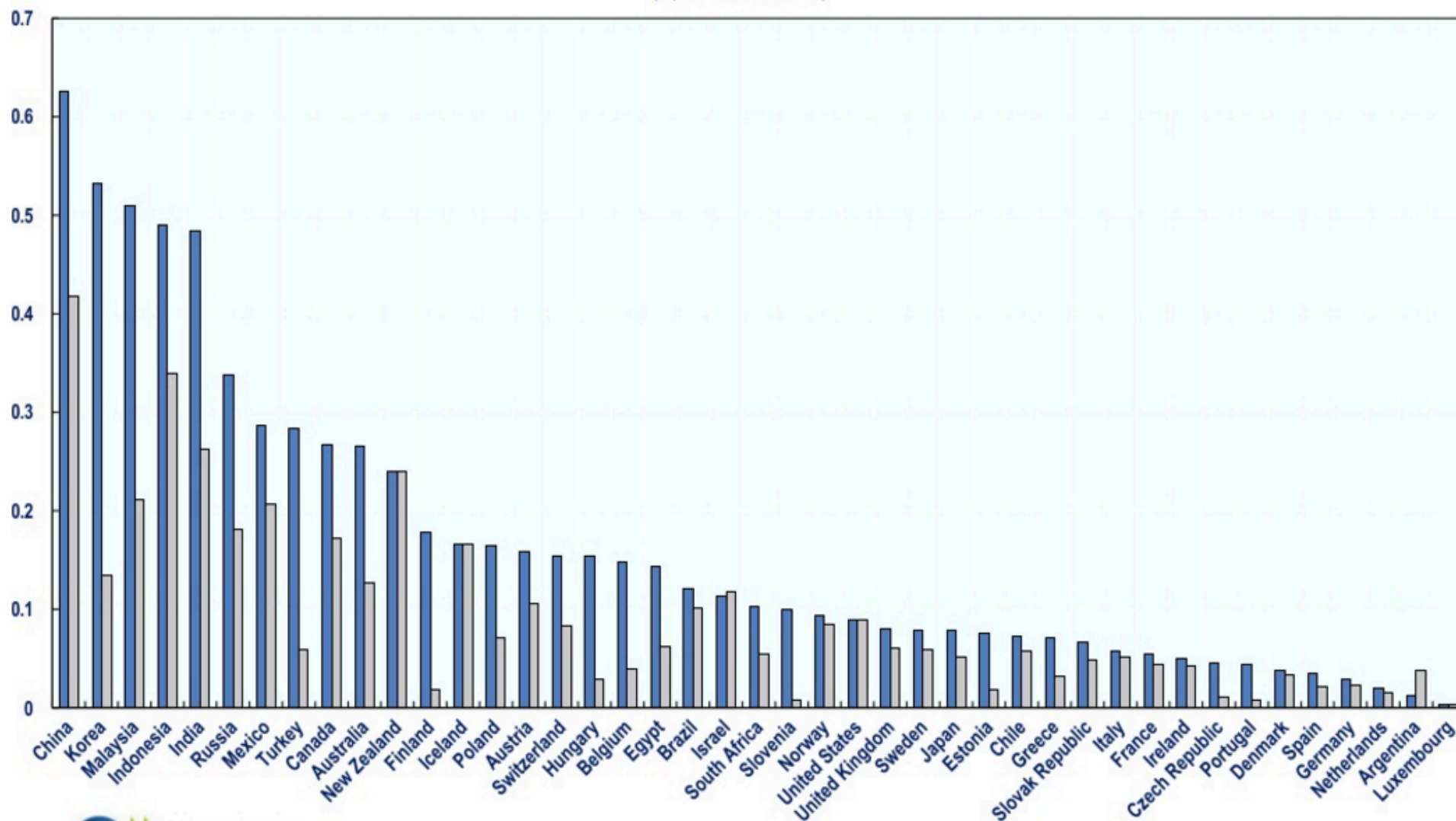
Topics	DB 2017 Rank	DB 2016 Rank ⓘ	Change in Rank	DB 2017 DTF (% points) ⓘ	DB 2016 DTF (% points) ⓘ	Change in DTF (% points) ⓘ
Overall	130	131	↑ 1	55.27	53.93	↑ 1.34
Starting a Business	155	151	↓ 4	74.31	73.74	↑ 0.57
Dealing with Construction Permits	185	184	↓ 1	32.83	32.83	-
Getting Electricity ✓	26	51	↑ 25	85.09	79.76	↑ 5.33
Registering Property	138	140	↑ 2	50.00	49.97	↑ 0.03
Getting Credit	44	42	↓ 2	65.00	65.00	-
Protecting Minority Investors	13	10	↓ 3	73.33	73.33	-
Paying Taxes ✓	172	172	-	46.58	43.17	↑ 3.41
Trading across Borders ✓	143	144	↑ 1	57.61	56.45	↑ 1.16
Enforcing Contracts ✓	172	178	↑ 6	35.19	32.41	↑ 2.78
Resolving Insolvency	136	135	↓ 1	32.75	32.59	↑ 0.16

FDI liberalisation in selected countries

1997

2014

(Open = 0; closed = 1)



India's Market Liberalization

The OECD

"There are barriers to manufacturing growth

Labour regulations become relatively stringent and costly to comply with when firms grow

The quality of infrastructure is below par

Taxes are complex and costly to comply with

The business environment is cumbersome and the outdated bankruptcy law makes it difficult to reallocate capital to most productive activities"

OECD ECONOMIC SURVEY OF INDIA Stronger and better growth Delhi, 19 November 2014

India Business Establishment

Foreign Direct Investment + *Entity Establishment*

Foreign Direct Investment

- ◆ Outside of a limited range of sectors, **India is reasonably open to foreign investment.**
- ◆ **Most sectors – including most manufacturing - open to 100% foreign equity investment through an automatic approval process** (requiring only a post-investment notification)
- ◆ Some foreign investment equity maximums, such as insurance, telecommunication services and banking
- ◆ Prohibition on a limited group of remaining sectors, such as some agricultural, gambling and atomic energy



Cross-Border Contracts

*Understand the local law implications
for entering into contracts*

Deceptively Simple Contracts?

- International contracts such as for sales and distribution are a simplified and less expensive alternative for entering a foreign market
 - These agreements look like the kind of agreements used in a company's domestic market - what can go wrong?
 - **US business is especially at a disadvantage - relative freedom of contract, lack of local dealer-protection, absence of currency and other cross-border issues**



Indian Agency and Distribution Agreements

*Are You Following
Best Practices?*

Dealer Protection - EU

- ◆ Perhaps **the best-known framework of termination limitations is found in Europe** - EU Directive 86/653 has been enacted into local law of EU member countries with local variations to generally apply to “agency” relationships
- ◆ Generally for “indefinite term” agreements, requires termination notice of 1 month per each year of the relationship up to a maximum of 6-months and post-termination compensation as a form of reward for building the local business on behalf of a principal, to a maximum of 1-year of revenues earned by the “agent”



Cross-Border Agency and Distribution Agreements

Governing Law and Dispute Resolution

Governing Law and Dispute Resolution

The Issue:

- ◆ Can choice of law and dispute resolution help circumvent mandatory local law issues and avoid local litigation?
- ◆ Typical US contracts specify a US State law and local courts:

“Illinois law and Chicago Courts”

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