https://doi.org/10.61345/2734-8873.2024.2.6

GENERAL CHARACTERISTICS OF INVESTMENT LAW IN INDIA

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Annotation. The aim of the work is a comprehensive analysis of investment law in India.

The methodological basis of the study are official websites of specialized institutions, laws, analytical reports, articles by other scientists, etc.

According to the results of the conducted research, it was found that two main legislative acts regulate investment activities in India. The first piece of legislation is the Foreign Exchange Management Act, 1999, the main objective of which is to promote foreign trade and foreign exchange and to develop and maintain the foreign exchange market in India. According to Section 5 and 6 of the Law, operations with a current currency account are allowed only on the condition that they do not have any restrictions (criminal, state, etc.). Capital account transactions mean transactions during which changes in assets or liabilities occur (referring to liabilities of resident and non-resident persons in relation to assets). The second act – Consolidated Policy on Attracting FDI in India by the Department of Trade and Industry Promotion 2020 – includes clarification of all investment norms. The policy update is in line with the policy of need to attract FDI to India, as per the plans of the Department.

In conclusion, it was found that the legal system of India is based on common law, which is based on English law. According to the Constitution of India, a quasi-federal structure has been approved, which provides for the division of legislative power between the central government and the individual states. Foreign direct investment in India is governed by two main pieces of legislation. The first is the Foreign Exchange Management Act of 1999, its main objective is to facilitate foreign trade and foreign exchange and to develop and maintain the Indian foreign exchange market. The second – Consolidated policy on attracting FDI to India. Attracting foreign direct investment in India is possible in two ways: automatic investment of FDI and obtaining permission for FDI.

Key words: invest, share, state, government, legal system, act, foreigh direct investment.

Formulation of the problem. India is one of the fastest growing economies in the world. Over the period from 2012 to 2022, India's GDP grew by an average of 5.7% (with a drop of -5.8% in 2020 due to Covid-19) [1]. In addition, in the 2022 World Intellectual Property Organization Innovation Index, India was ranked 40th out of 132 countries in the world [2], and in the

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2023 Transparency International Corruption Perceptions Index, India ranked 93rd out of 180 (1 notch worse than in 2022) [3].

India has been a member of the South Asian Association for Regional Cooperation since 1985 [4], a member of the World Trade Organization since 1995, and before that it was a member of the GATT since 1948 [5]. These factors affect India's trade and investment policies. That is why this topic is very relevant.

Analysis of scientific publications. Separate aspects of the study of this issue were considered by several scientists, including D. Krishan, P. Ranjan, S.P. Subedi, A. Rajput, R. Sachdev, S.E. Rolland, D.M. Trubek, U. Pa, J.L. Int`l, K. Miles-Colo. A.K. Bjorklund, J.D. Mortenson, C. Pejovic, J.N. Pardede, D. Raju, J. Hepburn, R. Kabra, S. Manda, S.R. Subramanian, M.J. Williams-Colum, P. Anand, A.K. Sinha, T.H. Cheng, N. Bajpai, K. Miles, P.N. Upreti, M.d. Nolan, K.P. Sauvant, J. Armour, P. Lele, S.W. Schill, R. Howse, L.W. Mouyal, P.T. Stoll, R.B. Babu, T. Voon, D. Merriman etc.

The author set the **goal** to provide a comprehensive analysis of investment law in India.

Presenting main materials. The Indian legal system is based on common law, which is based on English law. Therefore, the basic principles of common law, which are common in Great Britain, also apply in the territory of India. According to the Constitution of India, a quasi-federal structure has been approved, which provides for the division of legislative power between the central government and the individual states. Also characteristic of the legal system of India are certain features of a unitary state. This is manifested in the unity of the judicial system.

In general, the Indian judiciary provides for an integrated system of courts to enforce both national and state laws. The judicial system includes the Supreme Court as the highest national court, as well as the High Court in each state or group of states, which is the highest court in that state. Article 141 of the Constitution of India provides that a judgment passed by the Supreme Court is binding on all courts within the territory of India. In addition to courts, tribunals are also vested with judicial or quasi-judicial powers under special statutes to resolve disputes or disputes relating to specific areas. The independence of the judiciary is defined in the Constitution to ensure the institutional independence of the judiciary from the executive and legislative branches of power [6].

Certain specialized regulatory authorities in India are vested with certain regulatory powers. For example, the Reserve Bank of India regulates provisions relating to banking and financial transactions involving foreign currency. The Securities Market Regulatory Board of India develops legislation that affects the securities market, while the Insurance Market Development Authority of India is responsible for regulating the insurance industry.

FDI in India is governed by the following legislation:

1. The Foreign Exchange Management Act, 1999, its main objective is to promote foreign trade and foreign exchange and to develop and maintain the foreign exchange market of India. According to Section 5 and 6 of the Law, operations with a current currency account are allowed only on the condition that they do not have any restrictions (criminal, state, etc.). Capital account

transactions mean transactions during which changes in assets or liabilities occur (referring to liabilities of resident and non-resident persons in relation to assets).

In addition, according to the Law, any person carrying out FDI must submit an annual declaration indicating liabilities in other countries and the value and volume of assets. However, it is worth noting that the Law also allows current account operations, which are different from capital account operations (these operations usually include such transactions as individual money transfers, purchase of some goods, etc.).

The Law on Foreign Exchange Management is supplemented by 17 regulations, including: Regulation on Current Account Operations of 2000, Regulation on Permitted Capital Account Operations of 2000, Regulation on the Transfer and Issuance of Foreign Securities of 2004, Regulation on Account Opening in foreign currency from 2000, Regulation on the acquisition and transfer of immovable property in India from 2018, Regulation on the establishment of branches of companies in India from 2000, Regulation on foreign exchange operations from 2016, Regulation on export of goods and services from 2015, Regulation on sale, repatriation and sale of foreign currency from 2000, Regulation on storage and possession of foreign currency from 2000, Regulation on currency exchange rules from 2018, Regulation on foreign currency management from 2016, 2017 and 2018, Regulation on opening a deposit in foreign currency from 2016 [7].

2. Consolidated FDI Policy in India developed by Department of Trade and Industry Promotion 2020 – includes clarification of all investment norms. The update of the policy is in accordance with the policy of the need to attract FDI to India, according to the plans of the Department [8].

The policy for attracting FDI to India is developed by the Department of Industry and Trade Promotion, and its implementation is the responsibility of lead agencies at the federal level and sub-national partners. It is also worth noting that in some cases this document may contain certain provisions that are discriminatory towards a foreign investor. For example, the Consolidated FDI Policy in India 2020 prohibits foreign investors from participating in multi-brand retail. This prohibition affects the general image of the market model of the economy.

In general, this document is formed after careful discussion between government agencies, after which it is approved by the Cabinet of Ministers of India. In some cases, the approval of the Parliament of India is also required [9].

Important in terms of attracting FDI to India was the March 2023 decision by the Bar Council of India to allow foreign lawyers and law firms to practice cases involving foreign law, international law and international arbitration. Prior to this decision, foreign lawyers and companies had to obtain a permit for their activities. Each such case was considered separately [10].

Attracting foreign direct investment in India is possible in two ways:

Automatic FDI – FDI in this manner does not require additional approval from the Reserve Bank of India or the central government (through a ministry or department of a ministry responsible for the sector). But the invested FDI must meet the limit that is defined in the industry. For example, automatic

FDI investments can be made in the following sectors: industry, agriculture, service sector, industrial parks, etc.

Obtaining permission for FDI - investments in this way must be approved in advance by the Reserve Bank of India or the relevant department in the central government. A total of 11 sectors for FDI require prior approval: mining, defence, broadcasting and print media, civil aviation, satellites, telecommunications, security agencies, trade (food), financial services and pharmaceuticals (Table 1) [11].

Table 1.
Sectors in India where prior government approval is required for FDI

Sector	Permitted share of foreign capital	Additional conditions
Mining industry	100%	Transfer of technologies for the extraction of titanium-containing minerals
Oil processing	49% (larger share requires permission)	
Energy	49% ((larger share requires permission)	
Pharmaceuticals	74% (larger share requires permission)	
Telecommunications	49% (larger share requires permission)	
Media publishing	26% (larger share requires permission)	
Financial services	74% (larger share requires permission)	
Insurance companies	49% (larger share requires permission)	
Aviation industry	49% (larger share requires permission)	Foreign airlines can invest in companies serving cargo airlines, helicopter and seaplane services
Trade	51% (larger share requires permission)	The minimum amount of FDI is USD 100 million, at least 50% of which will be invested in the server part infrastructure within 3 years

Source: compiled by the author according to [11].

It is also worth noting that the legislation prohibits investing FDI in such sectors as agriculture, lottery business, gambling, stock exchanges, real estate, production of cigars, cigarettes, cigarillos, nuclear energy, railway transportation.

Currency legislation is another no less important component in attracting FDI. Thus, after investing FDI in the established formats and within the established terms, the foreign investor is obliged to:

FDI attracted through the initial issuance of securities within 30 days, the investor is obliged to notify the regulatory authorities about the issuance of such securities.

Attracting FDI through the secondary purchase of securities, the investor must notify the regulatory authorities of the issuance of such securities within 60 days.

FDI in the amount of 5% or more of the authorized capital requires the investor to initiate the beginning of public information disclosure.

Before investing FDI in India, a foreign investor must provide the following information to the Department of Industry and Trade Promotion:

O Brief information on the volume of FDI;

O Financial statements of the investment object and the company that will make the investment;

O Details of the investment offer;

O Information about the beneficial owners of the investment object;

O Certificate of assessment of all financial statements approved by the state auditor.

All investors are taxed in accordance with the Income Tax Act of 1961, which determines the tax rates for both domestic and foreign investments. The effective tax rate of FDI in India is determined according to a combination of the following factors: the nature of the organization, the resident status of the organization, the nature of the activity, gross revenue, customs payments, etc.

In general, the taxation rates of FDI in India can be presented as follows:

1. The rate for foreign companies is 40%, provided the company's revenue does not exceed INR 10 million (in comparison, Indian companies with the same revenue are taxed at a rate of 25%). If the total amount of income is more than 10 million rupees but less than 100 million, then the rate increases by 2% (for Indian companies, the rate increases by 7%). If the income of the company is more than 100 million rupees, then initially the tax rate increases by 5% (10% for companies from India).

2. The rate for foreign partner companies of Indian companies is 30% if the income does not exceed 10 million rupees (an additional rate of 12% applies if the income exceeds the above amount). Under certain conditions, the partner company can be considered as national. In this case, the same tax rates as for a resident company are applied to it.

3. In addition, all companies pay an additional tax of 4% of income for health care and education [12].

Settlement of investment disputes in India is governed by the Arbitration and Conciliation Act, 1996. This Law contains provisions taken from the conventions of the UN Commission on International Trade Law (UNCITRAL). This was done in order to harmonize domestic legislation on dispute resolution with internationally recognized standards. The government, with the support of the World Bank, established the International Center for Alternative Dispute Resolution. It is an autonomous organization under the Ministry of Law and Justice of India. The main goal of the Center is to facilitate the resolution of domestic and international disputes [13].

India has also acceded to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention of 1958) [14]. However, it is worth noting that the vast majority of Indian companies file lawsuits in national courts. This is done in order to delay the execution of the arbitration award, especially in cases where a certain amount must be paid based on the results of the arbitration. The most famous such case is Amazon v. Future Coupon Private Ltd. In 2019, Amazon filed a lawsuit against Future Coupon Ltd at the Singapore International Arbitration Center. In 2021, the Center issued an interim decision, according to which Future Coupon Ltd had to pay a certain amount of money. However, the Indian company refused to accept the decision and announced the bankruptcy procedure, applying the corresponding decision to the court in India [15].

It is also worth noting that India is not a member state of the International Center for Settlement of Investment Disputes. Therefore, when filing lawsuits against Indian companies and the state, foreign investors use the Rules of the Additional Settlement Mechanism of the International Center for Settlement of Investment Disputes [16], the UNISTRAL Convention, or through other special procedures. Since the resolution of disputes in most cases is laborious and capital-intensive, many foreign companies choose an alternative method of dispute resolution, which includes arbitration and mediation. The Indian Arbitration and Mediation Act, 1996 [17] is a complete reflection of the UNISTRAL Arbitration Rules [18].

Thus, the Law reflects all stages of the arbitration process: from the conclusion of the arbitration agreement, the composition and jurisdiction of the arbitration court and the degree of court intervention to the recognition and enforcement of the arbitration award. In general, the main purpose of the UNISTRAL Arbitration Rules is to reflect the consensus of states regarding the key aspects of the implementation of international arbitration, adopted by states of all regions of the world, taking into account different legal and economic systems. However, the Law stipulates those cases related to constitutional or criminal law cannot be resolved through arbitration. When considering such cases, it is necessary to use traditional court proceedings.

In 2017, the Ministry of Law and Justice of India and the Permanent Court of Arbitration in The Hague entered into a preliminary agreement, which identified the need for the establishment of a regional office of the Permanent Court of Arbitration in New Delhi. However, the office was never opened [19].

The Central Board of Taxation of India established eight task forces in 2009 to resolve investment disputes, particularly those involving transfer pricing between domestic and foreign companies. Since 2016, the Government has enacted a decision whereby India's Commercial Courts, Commercial Courts and Appellate Courts have the power to set up specialized panels in national courts to deal with protracted commercial cases.

India had signed bilateral investment agreements with 87 countries of the world. These agreements defined the bilateral investment regime with the states. The first such agreement was signed with Great Britain in 1994. However, as of 2024, only 8 agreements are currently in force: with the Philippines from 2000, Libya from 2007, Senegal from 2008, Bangladesh from 2009, Colombia from 2009, Lithuania from 2011, the United Arab Emirates from 2013 (with additions in 2024) and Belarus from 2018.

Another 17 bilateral trade agreements contain provisions that regulate investment activities between states or groups of states. The first agreement of this type was signed with the European Union in 1994, and the last in 2024 with the European Free Trade Association [20].

Conclusions. In conclusion, it was found that the legal system of India is based on common law, which is based on English law. According to the Constitution of India, a quasi-federal structure has been approved, which provides for the division of legislative power between the central government and the individual states. Foreign direct investment in India is governed by two main pieces of legislation. The first is the Foreign Exchange Management Act of 1999, its main objective is to facilitate foreign trade and foreign exchange and to develop and maintain the Indian foreign exchange market. The second is a consolidated policy on attracting FDI to India. Attracting foreign direct investment in India is possible in two ways: automatic investment of FDI and obtaining permission for FDI.

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