



# India

## Compliance Risk Profile

Last Updated: 4/2020

### Summary

India is the 17<sup>th</sup> largest exporter and 11<sup>th</sup> largest importer in the world.<sup>1</sup> India borders 7 countries (Pakistan, Bangladesh, Nepal, Sri Lanka, Bhutan, Afghanistan, China and Myanmar) and is surrounded by the Indian Ocean (with the Arabian Sea bordering the west coast of India and the Bay of Bengal the east coast). India is strategically located between the middle east, west Asia and east Asia and is an important transit point for sea routes between Europe and Asia.

The World Economic Forum's (WEF) Global Competitiveness Report<sup>2</sup> ranks India 40<sup>th</sup> out of 137 countries analyzed for overall economic competitiveness. The top three problematic factors for doing business in India were listed as corruption (1<sup>st</sup>), access to financing (2<sup>nd</sup>), and tax rates (3<sup>rd</sup>).<sup>2</sup> The American Chamber of Commerce in India noted in their 2017 publication the "India-US dynamic..." ("AMCHAM India Report") that recent reforms such as the Goods and Services Tax and the Bankruptcy Code were vital to sustaining India's growth as its economy is expected to continue on its high growth trajectory.<sup>2</sup>

Over the last 10 years India has improved in the areas of corporate governance framework, rule of law, regulatory quality, data privacy laws, and anti-money laundering requirements. However, there has only been a slight improvement in the perception of the amount of corruption. The overall enforcement environment for existing compliance laws remains their weakest link. Multi-national companies operating in India should have strong local internal anti-corruption, and anti-fraud controls in-place as well as periodic monitoring and independent auditing to ensure compliance with corporate governance, and anti-corruption laws.

### General Country Information

India has a total population of 1.4 Bn<sup>1</sup> (2<sup>nd</sup> largest by population) with a demographic composition of 72.5% Indo-Aryan, 25% Dravidian, 3% Mongoloid and Other Minority Groups.<sup>1</sup> Even though it has large urban areas, most of the population lives in rural areas (67%). India has 39 cities with more than 1,000,000 inhabitants, 396 cities with 100,000 to 1 million inhabitants, and 2500 cities with 10,000 to 100,000 inhabitants.<sup>1</sup> The top 5 largest cities are: Mumbai (12,691,836), Delhi (10,927,986), Bengaluru (5,104,047), Kolkata (4,631,392), and Chennai (4,328,063). India has a population density of 420 people per km<sup>2</sup> and in Mumbai the density is 21,000 people per km<sup>2</sup>. There are several major languages spoken in India. The five most spoken languages are Hindi (551MM speakers), English (125MM), Bengali (91MM), Telugu (84MM), and Marathi (84MM).<sup>1</sup> India is one of the fastest growing economies in the world and has the third largest economy by purchasing power in the world. India's GDP grew by 6.8% from 2018-19 and 7.2% from 2017-18. India has a GDP of approx. \$2,611 Billion USD (\$2,036 USD per capita)<sup>2</sup>, and it has an area of 3,287,264 sq. km of land (7<sup>th</sup> largest by area).<sup>1</sup>

### Governance and Regulatory

## Legislation

Corporate governance for limited liability and joint stock companies in India is primarily governed by the Companies Act, 2013<sup>3</sup>. The Companies Act regulates the board of directors and committees. The Ministry of Corporate Affairs (MCA)<sup>3</sup> issues the guidelines and rules for companies regulated under the Companies Act. The MCA recently issued the National Guidelines for Responsible Business Conduct (NGRBC)<sup>3</sup>. The NGRBC outlines voluntary guidelines organized under nine principles. Each principle is expected to be part of the responsibilities of the board of directors.

In addition, other important governance requirements are found in the regulations issued by the Securities and Exchange Board of India (SEBI)<sup>3</sup>, the Reserve Bank of India (RBI)<sup>3</sup>, the Insurance Regulatory and Development Authority of India (IRDAI)<sup>3</sup>, the Bankruptcy Code, 2016<sup>3</sup>, and the Prevention of Money Laundering Act, 2002. Securities Laws are governed by the Securities and Exchange Board of India Act (1992/2017)<sup>3</sup> and the Securities Contract (Regulation) Act (1956/2017)<sup>3</sup>.

India, like the United States and China, relies upon laws, regulations, and listing rules for their legal corporate governance framework (instead of national codes or principles under the 'comply or explain' framework).<sup>3</sup>

## Environment

The 2020 World Bank's **Ease of Doing Business**<sup>2</sup> Report (EDB Report) ranks India overall 63 out of 190 countries analyzed for regulations that are conducive in fostering business activities and those that constrain it.

The World Bank's 2018 Worldwide Governance Indicator (WGI)<sup>4</sup> for **Regulatory Quality** (RQ), with -2.5 being weak and +2.5 being strong governance performance, gave India a score of -0.18 which resulted in a ranking of 112 out of 209 countries analyzed. This represents a slight improvement in performance from the 2009 score of -0.33 and a ranking of 123 out of 210 countries that were analyzed. The RQ indicator "*Reflects perceptions of the ability of the government to formulate and implement sound policies and regulations that permit and promote private sector development*"<sup>4</sup>.

The 2018 WGI **Rule of Law** (RL) indicator gave India a score of 0.03 which resulted in a ranking of 94 out of 209 countries analyzed. This represents a slight improvement in performance from the 2009 score and ranking (2009 score of 0.01 and a ranking of 96 out of 212 countries). The RL indicator "*Reflects perceptions of the extent to which agents have confidence in and abide by the rules of society, and in particular the quality of contract enforcement, property rights, the police, and the courts, as well as the likelihood of crime and violence*"<sup>4</sup>.

The 2018 WGI **Government Effectiveness** (GE) indicator gave India a score of 0.28 which resulted in a ranking of 76 (out of 209 countries analyzed). This represents a moderate increase in performance from the 2009 score of -0.01 and ranking of 92 out of 210 countries. The GE indicator "*Reflects perceptions of the quality of public services, the quality of the civil service and the degree of its independence from political pressures, the quality of policy formulation and implementation, and the credibility of the government's commitment to such policies*"<sup>4</sup>.

## Enforcement

In 2014, the SEBI barred India's largest real estate firm DLF Ltd from accessing capital markets for three years and Financial Technologies (India) Ltd was under review for an alleged role in a payment crisis.<sup>3</sup> Awareness of corporate governance practices has been elevated in recent years and corporate governance requirements are relatively robust in India. However, enforcement continues to be weak.

GCSG's Compliance Risk Index (CRI) analyzed eight independent factors to score the **governance and regulatory area compliance risk**<sup>5</sup> level for India as **Moderate**.

## Bribery and Corruption

### Legislation

The major legislation regulating corruption within India is primarily found within the Prevention of Corruption Act, 1988 (PCA). In addition, the Code of Criminal Procedure Act, Indian Contract Act, Prevention of Money Laundering Act, Foreign Contribution Regulation Act, 2010 (FCR), the Companies Act, 2013, the Central Vigilance Commission Act, 2003 (CVC), and the Lokpal and Lokayuktas Act, 2013 (LLA) regulate aspects of corruption and/or form oversight bodies.<sup>6</sup>

The PCA prohibits the receipt of 'undue advantage' by public servants and prohibits providing undue advantages by other persons.<sup>6</sup> 'Public servant' is broadly defined and includes any person in the service or pay of any government, local authority, statutory corporation, government company, or other body owned or controlled or aided by the government, as well as judges, arbitrators, and employees of institutions receiving financial aid. Whistleblowing is protected under the Whistle Blowers Protection Act.<sup>6</sup> The PCA also addresses intermediaries who facilitate bribery and considers even the attempt or agreement to give a bribe as a punishable offence.

Penalties under the PCA can include imprisonment from 6 months to 10 years and/or financial penalties.

## Environment

Transparency International's 2019 Corruption Perceptions Index (CPI) <sup>8</sup>, with zero being the most corrupt and 100 being the least corrupt, gave India a score of 41 which resulted in a ranking of 80 out of 180 countries surveyed. This represents a relatively equivalent risk to that found in the 2014 CPI with a score of 38 and ranking of 85 out of 174 countries surveyed.

Trace International's 2019 Bribery Risk Matrix<sup>8</sup>, with 100 being the most corrupt and zero being the least corrupt, gave India a score of 48 which resulted in a ranking of 78 out of 200 countries surveyed. This represents a significant improvement over the 2014 score of 80 and ranking of 185 out of 197 countries surveyed.

The 2018 WGI Control of Corruption indicator<sup>4</sup>, with -2.5 being weak and +2.5 being strong governance performance, gave India a score of -0.19 which resulted in a ranking of 106 out of 209 countries. This represents an increase in performance from the 2009 score and ranking (2009 score of -0.45 and a ranking of 136 out of 210 countries). The WGI Control of Corruption indicator "*Reflects perceptions of the extent to which public power is exercised for private gain, including both petty and grand forms of corruption, as well as "capture" of the state by elites and private interests*"<sup>4</sup>.

There is an elevated risk of encountering corruption in India when dealing with aid programs and accessing public services. The poor are disproportionately affected by petty bribery in India. NGOs reported payments of bribes to facilitate police protection, school admission, water supply, and government assistance.<sup>8</sup> The 2016 WEF Enabling Trade Report<sup>10</sup> (WEF Trade Report) listed crime and theft (2<sup>nd</sup>) and corruption at the border (3<sup>rd</sup>) as two of the top three most problematic factors for importing into India. India has signed the United Nations Convention against Corruption<sup>8</sup> but is not a member of the OECD Anti-Bribery Convention.<sup>8</sup>

## Enforcement

In 2019 two former Cognizant officials were charged with authorizing \$2.5MM in bribe payments to a government official in India.<sup>7</sup> In 2018 Beam Suntory, Inc agreed to pay more than \$8MM to resolve charges that its Indian subsidiary violated the FCPA by using third-party distributors to make illicit payments.<sup>7</sup> In 2017 Cadbury Limited/Mondelez International agreed to pay \$13MM in penalties for FCPA violations that occurred after Mondelez acquired Cadbury and its subsidiaries.<sup>7</sup> In 2016 Embraer and Anheuser-Bush InBev settled FCPA charges.<sup>7</sup> In 2012 Eli Lilly and Company settled FCPA charges for more than \$29MM and Oracle was charged by the SEC for potential FCPA violations.<sup>7</sup>

India appointed the first Lokpal (anti-corruption ombudsman) under the Lokpal and Lokayuktas Act in March of 2019 as the public became more dissatisfied about the level of corruption.<sup>7</sup> In 2019 India declared the former chairman of United Spirits as its first Fugitive Economic Offender under the Fugitive Economic Offenders Act, 2018.<sup>7</sup> In general, there has been an increased willingness to pursue corruption cases in India, but overall enforcement is a weak area.

GCSG's Compliance Risk Index (CRI) analyzed four independent factors to score the **bribery and corruption area compliance risk**<sup>5</sup> level for India as **Moderate**.

## Trade

### Legislation

Exports and imports in India are regulated by Foreign Trade Policy "notified by Central government in exercise of powers conferred by section 5 of foreign trade (Development and Regulation) Act 1992."<sup>9</sup> Foreign Trade Policy 2015-2020 is currently effective.<sup>9</sup>

An importer or exporter must be licensed with the applicable regional licensing authority and every importer must obtain an Import Export Code (IEC). The Indian import and export classification system classifies goods in three categories: restricted, canalized, and prohibited. The list of potential duties that can be levied on an import or export include basic duty, IGST and Compensation Cess, countervailing duties, safeguard duties, and special addition duty of customs (SAD). In addition to the customs duty, there is a 1% customs handling fee assessed on each import into India. There is a customs duty calculator available on the excise and customs portal.<sup>9</sup>

Multi-national companies with manufacturing operations in India can consider setting up in a Special Economic Zone (SEZ). SEZ incentives include duty free import and domestic procurement of goods, exemption from the GST, single window clearances, exemption in electricity duty and tax on sale of electricity, customs officer support, etc...

The Central Board of Indirect Taxes & Customs, Ministry of Commerce and Industry, and the Directorate General of Foreign Trade are primarily responsible for imports and exports in India.<sup>9</sup> India is a member of GATT (1948) and the WTO (1995)<sup>9</sup>.

## Environment

**Facilitation.** The WEF Trade Report<sup>10</sup> gave India an overall score of 3.9, with 6.0 being the best and 2.9 being the worst scoring country in the index. This ranks India 109<sup>th</sup> out of 136 countries that were evaluated for trade facilitation performance. The top 3 most problematic factors for importing, noted in the WEF Trade Report, included high cost or delays caused by domestic transportation, crime and theft, and corruption at the border.

Corruption at foreign borders, high cost or delays caused by domestic transportation, and burdensome procedures at foreign borders were the top three most problematic factors for exporting from India. The EDB Report<sup>2</sup> ranks India 68<sup>th</sup> out of 190 countries for “trading across borders” which includes evaluating the time and cost to export and import.

India has signed free trade agreements, MOUs, and/or economic cooperation agreements with Argentina, Colombia, Nepal, Finland, Singapore, Malaysia, Chile, Japan, Ecuador, Afghanistan, South Korea, Sri Lanka, Bhutan, Peru, Cuba, Guatemala, and Brazil.<sup>11</sup> In addition, India is part of the ASEAN and Asia Pacific Trade Agreements.<sup>11</sup>

In 2017, India exported \$292B and imported \$417B.<sup>1</sup> Its top export destinations were the United States, UAE, China, Hong Kong, and Germany and its top exports were refined petroleum, diamonds, packaged medicaments, jewelry, and rice.<sup>1</sup> The top import origins of India are China, the United States, the UAE, Switzerland, and Saudi Arabia and its top imports were crude petroleum, gold, diamonds, coal briquettes, and petroleum gas.<sup>1</sup> India has 19 large and 18 small maritime ports.<sup>11</sup>

**Compliance.** While the United States and European Union have sanctions in place against individual persons and organizations throughout the world, neither has comprehensive country-level economic sanctions programs in place against India.<sup>12</sup> A U.S. GAO report<sup>13</sup> did not indicate India as a country to watch as a transshipment hub<sup>14</sup> with a potential for higher risk of illicit transshipment. India is not a party to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) but is a party to the Biological Weapons Convention (BWC) and Chemical Weapons Convention (CWC).<sup>15</sup> India is not a member of the multi-lateral export control regime Nuclear Suppliers Group (NSG) but is a member of the Wassenaar Arrangement, Australia Group, and Missile Technology Control Regime (MTCR).<sup>15</sup>

### **Enforcement**

In 2015 the US Treasury Department sanctioned two Indian Nationals under the Foreign Narcotics Kingpin Designation Act.<sup>12</sup>

Indian Customs seized and then released a Chinese flagged ship with nuclear capable cargo in March 2020.<sup>12</sup> In June 2019 Mumbai Customs seized goods, in a crackdown on Chinese e-commerce companies, of Shein and Club Factory’s local unit over tax evasion.<sup>12</sup> In February 2018 India imposed anti-dumping duties on the import of solar tempered glass from Malaysia.<sup>12</sup>

GCSCG’s Compliance Risk Index (CRI) analyzed five independent factors to score the **trade compliance area risk**<sup>5</sup> level for India as **Moderate**.

## **Financial**

### **Legislation**

India has a comprehensive KYC, suspicious transaction reporting, and PEP due diligence framework. The main legislation and regulations governing money laundering in India include the Prevention of Money Laundering Act, 2002 (PMLA) and rules by the Reserve Bank of India (RBI) and the Securities and Exchange Board of India (SEBI).<sup>16</sup> In 2019 the Finance Act was introduced that made some important amendments to the PMLA that made the e-KYC process easier and helped to clarify the list of records that should be submitted and maintained.<sup>16</sup>

India’s safe harbor provision protects principal officers and compliance officers of institutions that file STRs in good faith, but it does not protect all employees.<sup>19</sup>

India is a member of the Financial Action Task Force (FATF), the APG, and the EAG.<sup>17</sup>

### **Environment**

**Access to Finance.** The WEF Trade Report<sup>10</sup> gave India a score of 4.4 (1-7 best) and a ranking of 40 out of 136 economies for access to finance.

**Financial Secrecy and Money-Laundering.** The latest Financial Secrecy Index (FSI)<sup>18</sup> gave India an overall score of 238.68, with 1,575 being the most secret and 12 being the least secret country in the index. This FSI score indicates a moderate concern for financial secrecy. The 2020 International Narcotics Control Strategy Report<sup>19</sup> (NCSR) lists India as a country of concern for money laundering activities. The NCSR report on India said: “India faces various money laundering vulnerabilities, including informal financing networks that largely serve illiterate, rural citizens; complex onshore and offshore corporate structures; and enforcement capacity constraints.”

The most common money laundering methods include intermingling criminal proceeds with licit assets, purchasing bank checks with cash, routing funds through employees accounts, and complex legal structures.”<sup>19</sup>

### **Enforcement**

Since 2009, India has increased its focus on money laundering, but in general the Indian government has prioritized prosecuting tax evasion and counterfeit currency crimes over money laundering.<sup>19</sup> “India has taken steps to implement an effective AML regime, but deficiencies remain. Observers and law enforcement professionals express concern about effective implementation and enforcement of the current laws, especially with regard to criminal prosecutions”<sup>19</sup>

India has improved on its ability to work with global law enforcement agencies with mutual legal assistance requests, but U.S. investigators continue to have limited success coordinating with their Indian counterparts in the area of seizure of illicit proceeds.<sup>19</sup>

GCSG’s Compliance Risk Index (CRI) analyzed two independent factors to score the **financial area compliance risk**<sup>5</sup> level for India as **Moderate**.

## **Data Privacy**

### **Legislation**

The Supreme Court of India ruled, in the case “Justice K.S. Puttaswamy (Retd) v. Union of India” (the “Ruling”), that privacy is a fundamental right within the Indian Constitution.<sup>20</sup> The Ruling resulted in the introduction of the Personal Data Protection Bill (PDP) in December 2019.<sup>20</sup> Once approved the PDP establishes a Data Protection Authority and will govern the processing of personal data by the government and companies incorporated in India as well as other companies that may simply just deal with personal data of individuals in India. Existing Indian law around privacy is governed by the Information Technology Act, 2000.<sup>20</sup> In addition, the Indian IT Ministry adopted Privacy Rules in 2011.<sup>20</sup> The Privacy Rules require corporations that collect, process, and store personal information to follow certain requirements.

### **Environment**

The DLA Piper data protection laws comparison world graphic lists India as “Limited” for data protection laws and enforcement.<sup>21</sup> Comparitech’s assessment of privacy protection and the state of surveillance ranked India 45 out of 47 countries included in the assessment with a score of 2.4 and a rating of “Systemic failure to maintain safeguards.”<sup>21</sup>

The Global Cybersecurity Index (GCI) 2018 lists India in Table 1 which indicates a high level of commitment to the five cybersecurity pillars rated in the index with a score of 0.719 and global rank of 47 out of 175 countries analyzed.<sup>21</sup> The National Cyber Security Index (NCSI) gives India a score of 59.74 and a global rank of 34 out of 152 countries. NCSI is “a *global index, which measures the preparedness of countries to prevent cyber threats and manage cyber incidents.*”<sup>21</sup>

### **Enforcement**

In 2018 Indian officials in charge of a biometric identity database filed a police complaint after it was reported there had been an unauthorized breach of their database.<sup>22</sup> The breach resulted in names, addresses, and photos of 1.3 billion records being sold for 500 rupees.

GCSG’s Compliance Risk Index (CRI) does not score **the data privacy compliance risk**<sup>5</sup> level.

## **Country Risk Rating**

GCSG’s Compliance Risk Index (CRI) analyzed 19 independent factors to score the **overall compliance risk**<sup>5</sup> for India at **6.23** (1-10 Highest). This score assigns an overall **Moderate** compliance risk level for multi-national businesses operating within and/or conducting cross-border trade with entities operating within India.

**Note:** GCSG’s third-party risk ranking tool (which assesses risk at the entity level) and due diligence reports also incorporate GCSG’s country Compliance Risk Index (CRI) scoring and can be used to further drill down on potential risks posed by your supply channel and sales channel third parties. Click [here](#) to learn more.

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