

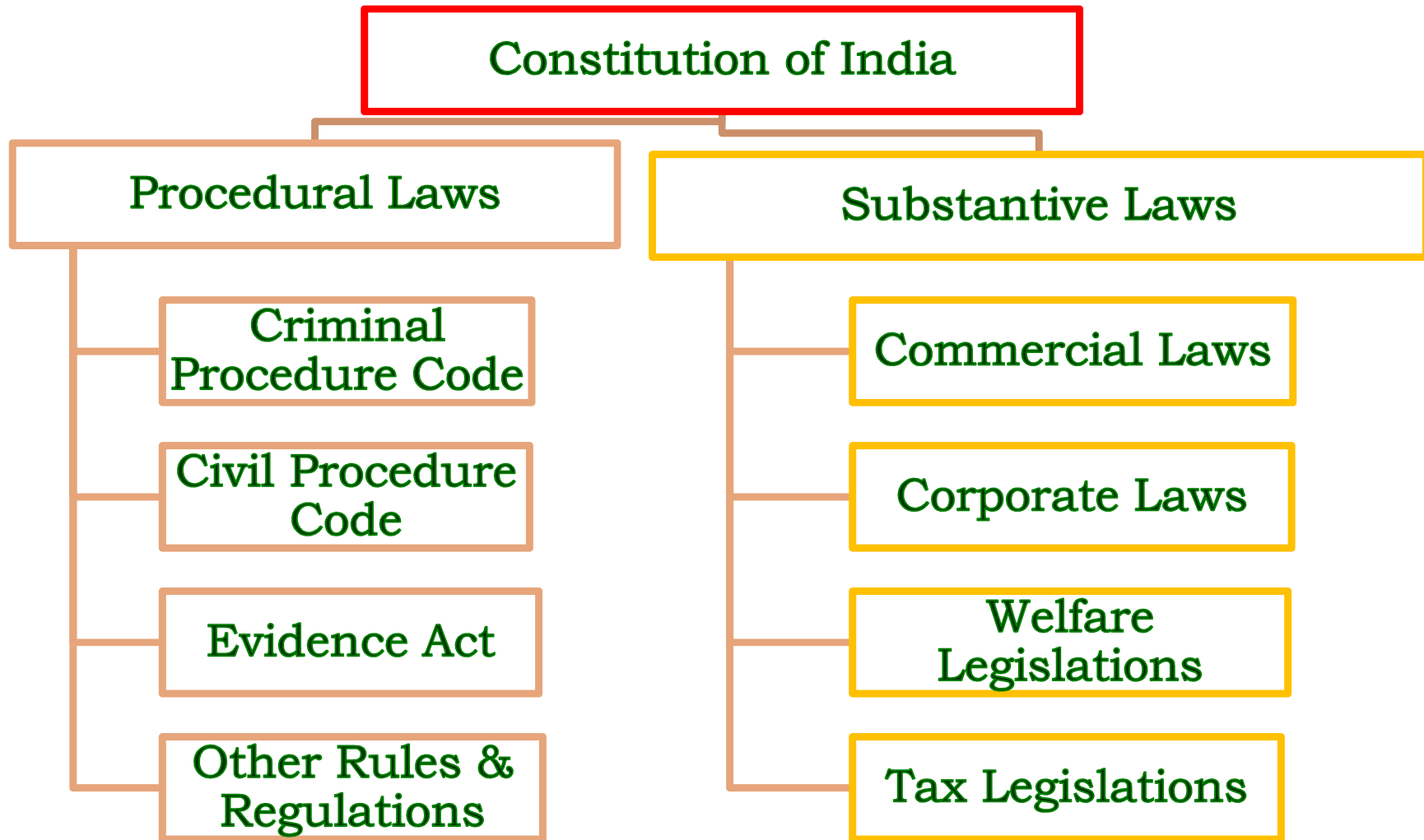


Doing Business in India

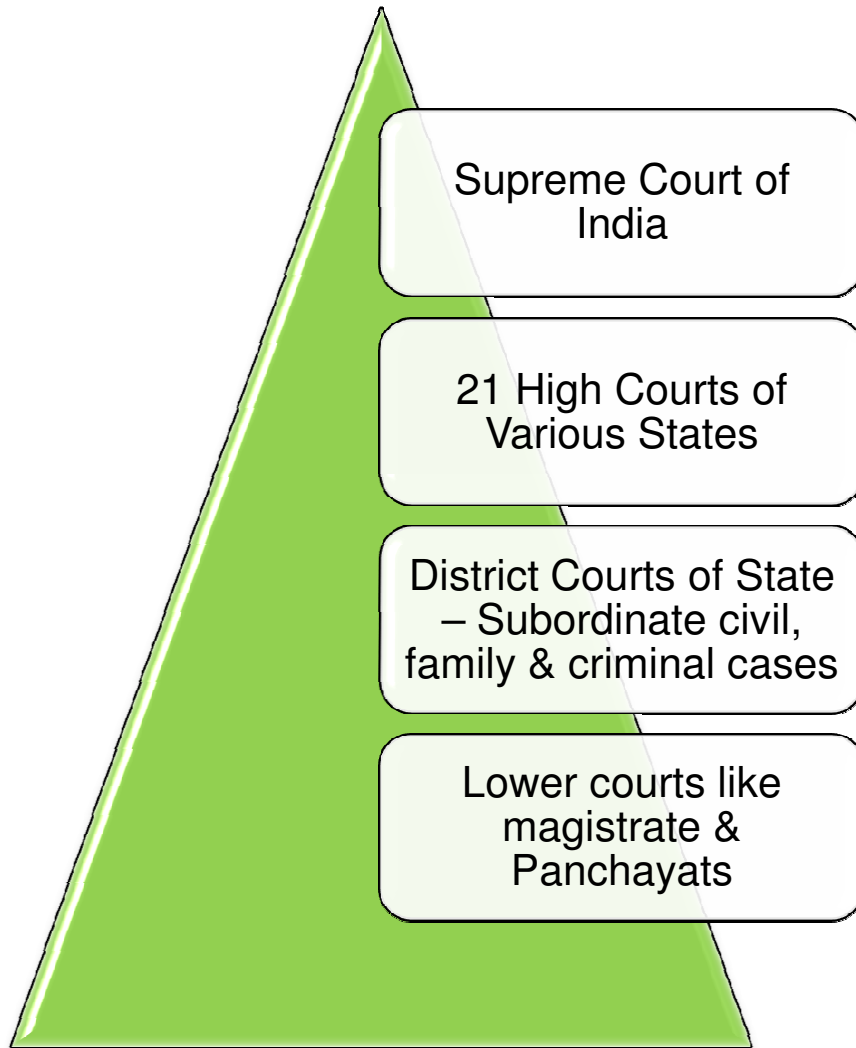
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Indian Legal Framework



Judicial Appellate System



- ▶ Claims may start at Magistrate Court
- ▶ Appeal from there lies in District Court
- ▶ Further appeal may lie in High Court
- ▶ Supreme Court is Apex Court to decide only questions of law
- ▶ Writ Jurisdiction Lies in High Court & Supreme Court

Indian Legal System

- ▶ Elaborate and extensive judicial and quasi judicial system
- ▶ Influence of common law principles
- ▶ Distribution of Legislative Powers

Arbitration and Conciliation Act, 1996

- Preferred method of settling disputes
- Based on the UNCITRAL Model Law
- Singapore most favored seat
- Cost effective and speedy
- Experts as arbitrators
- Flexibility in procedure, venue and timing
- Limited grounds of appeal

Intellectual Property Rights

- ▶ India is TRIPS Plus compliant
- ▶ Protection awarded to trademarks, copyright, patents, geographical indications, semi conductors, plant varieties etc
- ▶ No specific data protection law in India
- ▶ Outsourcing companies can protect their intellectual property
- ▶ Confidential information and trade secrets protected by contract law and law of equity
- ▶ Assignment of any intellectual property has to be in writing
- ▶ Licenses governed by contract law
- ▶ Geographical Indications cannot be licensed or assigned
- ▶ Zonal registries available for easy registrations
- ▶ Good and evolving intellectual property rights jurisprudence in the country with a specialised appellate board to deal with cases

Competition Law

- ▶ The Competition Act *inter-alia* regulates & requires compulsory notification of various combinations
- ▶ Combinations are defined as:
 - ▶ Acquisition of shares; Acquisition of control by an enterprise over another
 - ▶ Amalgamations between or amongst enterprises that exceed certain threshold limits as specified by the Competition Act
- ▶ All of which is likely to cause an appreciable adverse effect on competition within the relevant market in India
- ▶ A person holding 10% or more of the equity shares of a “dominant undertaking” is required to inform the central government before transferring any of its shares.
- ▶ Foreign entities have to notify the competition commission only when they have a local nexus as specified in the Competition Act

Labour Laws

- ▶ Central and state legislations govern employment matters
- ▶ Written contracts not mandated by law, but are typically entered into at managerial levels
- ▶ In the absence of written terms, employment covered by statutory forms of employment terms called Industrial Standing Orders
- ▶ Contracts in restraint of trade are invalid, but non-compete during term of contract is valid
- ▶ Rules exist relating to termination of employment

Employee Matters

- ▶ Host of welfare legislations enacted by the government - mandatory statutory benefits, such as gratuity and pension available for employees (blue collar workers) not professionals
- ▶ Statutory contributions by employer to employee provident fund & state insurance schemes
- ▶ Mandatory leave policy under the Shops and Establishment Act
- ▶ Stock options may be granted to employees in accordance with the stock option scheme
- ▶ Any person resident in India for more than 182 days in a year is liable to pay income tax

Overview for Foreign Investment

▶ Legal Framework

- ▶ Consolidated Industrial Policy
- ▶ Foreign Exchange Management Act
- ▶ Reserve Bank of India
- ▶ Notifications

▶ Entry Route

- ▶ Governmental Route: For certain sensitive sectors such as defence, telecommunication, prior governmental approval is required
- ▶ Automatic Route: Most sectors are open to 100% foreign direct investment which does not require any prior governmental approval

Investing in India

- ▶ Foreign Investments can be made in the following forms:
 - ▶ Foreign Direct Investments (FDI)
 - ▶ Foreign Portfolio Investments (FII, NRIs, PIOs)
 - ▶ Foreign Venture Capital Investments
 - ▶ Investments on non-repatriable basis
- ▶ Foreign Investments can be made in the following instruments:
 - ▶ Shares (equity or preference)
 - ▶ Convertible instruments
 - ▶ Warrants
 - ▶ ADRs/GDRs
 - ▶ FCCBs
 - ▶ Fully/partially convertible rupee debentures
 - ▶ Debt

Sectoral Limitations

Prohibited Sectors

- Lottery business
- Gambling & betting
- Manufacturing of cigars, cigarillos and cigarettes, of tobacco or of tobacco substitutes
- Trading in transferable development rights
- Activity/sector not opened to private sector investment
- Atomic Energy and Railway Transport other than Mass Rapid Transport Systems.

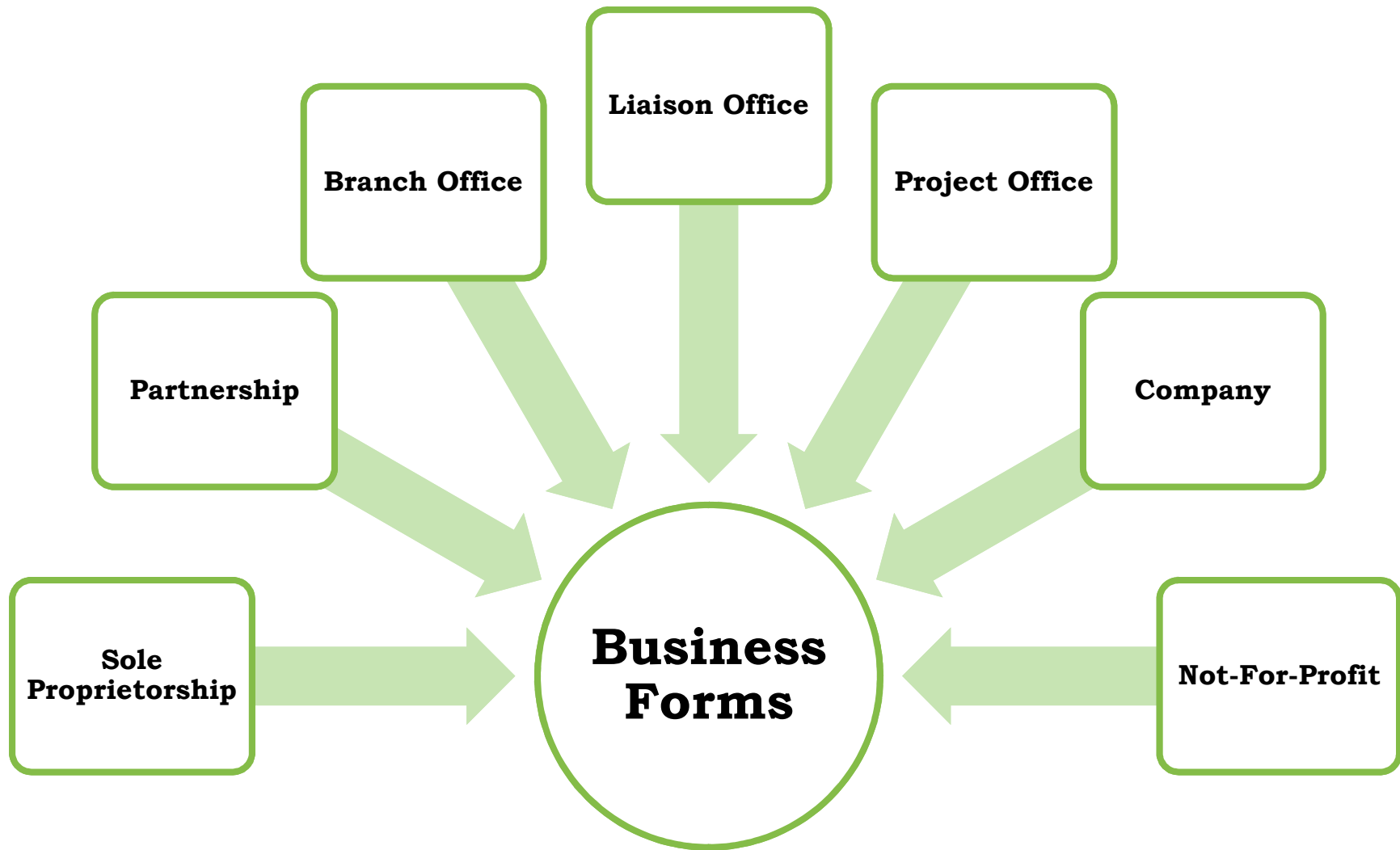
Governmental Approvals

- Defense Production (26%)
- Broadcasting (20 % to 100%)
- Credit Information Companies
- Real Estate
- Telecommunications (beyond 49%)
- Single Brand Trading and Multi-Brand Retail
- Print Media
- Courier Services

Automatic Route

- Manufacturing
- Entertainment
- Pharmaceuticals
- Greenfield Airport Projects
- Construction of townships/housing
- Mining
- NBFCs
- Construction/ Infrastructure Development
- Industrial Parks
- SEZs
- Banking – Private Sector (74%)
- Cash & carry wholesale trading

Forms of Business Organisation



Types of Companies

Private Company

- Closely held entity
- Minimum members required 2-maximum 50
- Single Person Company
- Flexibility to impose restrictions on share transfer
- Can have differential voting rights & disproportionate dividend
- Can commence business immediately after incorporation

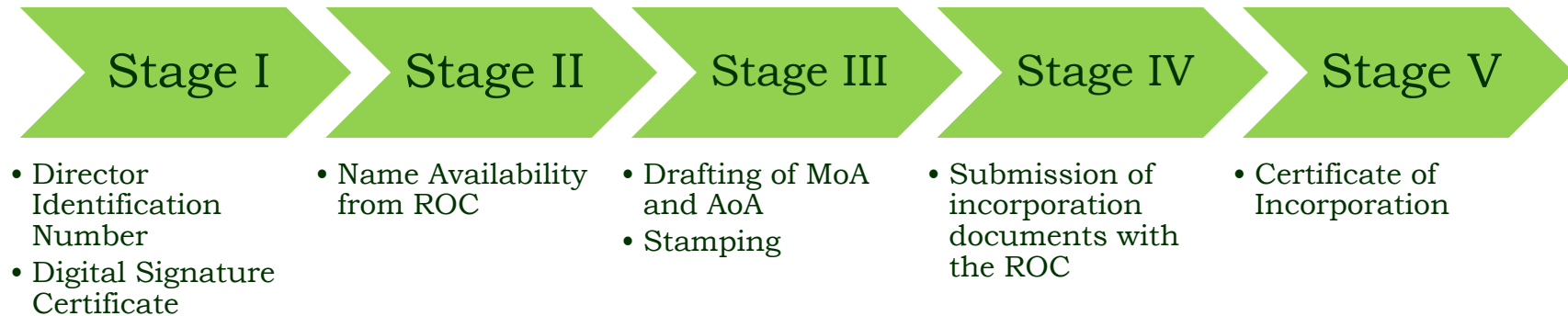
Public Company

- Minimum members required 7 - No limit on maximum
- Can raise public funding with regulatory approval
- Cannot have restrictions on transferability of shares

Listed Company

- Listed on recognised stock exchanges
- Minimum public shareholding – 25 %
- Mandatory compliance with corporate governance norms
- Governed by SEBI norms and must comply with listing agreements
- Acquisitions or share transfers triggers takeover code

Compliances and Procedures



Key statutory compliances after incorporation

- Convene at least one board of directors meeting every three calendar months and at least four such meetings in a year. The calendar year in India runs from April 01 to March 31. This may be done via video conference as well
- Convene an Annual General Meeting (AGM) in each calendar year and the time gap between two successive AGM should not exceed 18 months
- Statutory Registers to be maintained, such as Register of Members, Charges, Investments, Director Shareholdings etc
- Requisite filings have to be made at the Registrar of Companies for any change in nature of the company or its shareholdings, e.g. name change, increase in authorised share capital, creation of charge etc

Rights of Shareholders

Less than 10%

- Apply to the Central Government for permission to file proceedings for oppression and mismanagement
- The members making the application must establish a strong prima facie case of oppression and mismanagement

10% - 25%

- Rights against Oppression and Mismanagement
- Powers to call for an Extraordinary General Meeting
- Right to block minority squeeze out
- Investigation into the affairs of the Company

26% - 50%

- In addition to the above: Block Special Resolutions

51% - 71%

- Ability to pass resolutions that require a majority vote
- Effective management and board control, dispose of assets, borrowings

76% & Above

- Ability to pass resolutions that require a special resolution and vote of 3/4th of the majority
- Ability to change Articles of Association, make selective issuances of capital, restructure/wind up the company

Concerns While Investing

▶ **Legal Constraints**

- ▶ Enforcement of rights in Court can be a lengthy process
- ▶ Slow progress in labour reforms
- ▶ Young corporate governance
- ▶ Enhanced level of compliance in sensitive sectors
- ▶ Restrictions on pricing & funding of WOS

▶ **Other Constraints**

- ▶ Demand outstrips supply
- ▶ Abuse of environmental resources
- ▶ “License Raj”
- ▶ State Involvement in infrastructure & private enterprise

Advantage India

- ▶ Youth Population – High Ambitions
- ▶ English Speaking Workforce
- ▶ Strong Vocational Training & Diploma Education
- ▶ Emphasis on Education, Science, R&D & Engineering
- ▶ Common Law
- ▶ Democracy
- ▶ Instinctive Entrepreneurs
- ▶ Proactive Judiciary
- ▶ Large Market Size with Increased Purchasing Power

Understanding India

- ▶ Avoid Stereotyping- Turn-off Cultural Pre-Conceptions
- ▶ How we negotiate- Indians tend to be argumentative & have lots of patience to revisit issues
- ▶ Family Businesses - Respect for Hierarchy & Age
- ▶ Disagreements seldom expressed in a direct manner
- ▶ A perspective on time
 - ▶ Indian Stretchable Time
 - ▶ Auspicious timing for business
- ▶ The Indian English – Indian Accent; Typical Expressions

Come to India – Destination India!

Thank You


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Disclaimer: This presentation is for information purposes only. Specific legal advise and opinion should be sought before any proposed investment