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A COMPARATIVE ANALYSIS OF REGULATORY FRAMEWORK RELATING TO FOREIGN INVESTMENTS IN INDIA, UK AND USA

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Abstract

The regulatory framework for foreign investments exists within municipal legal structures. States exercise their sovereignty through the implementation of domestic laws regulating foreign investment. These laws are based on international conventions such as the ICSID Convention[3], the New York Convention[4], and UNCITRAL[5]. The authors will endeavour to examine the legal systems of the United Kingdom, the United States of America, and India, with a particular focus on the primary provisions for foreign investment regulation. The authors have identified five fundamental criteria for the analysis of the regulatory framework: the Law for Implementing the ICSID Convention, the Law for Implementing the New York Convention, the Law for Conducting Non-ICSID Convention Arbitrations, and the Law for Regulating Internal and External Investments. The authors will also analyse the legal framework under FEMA, 1999, and highlight some important points from India's consolidated FDI policy 2020, which intended to facilitate foreign investment in India. By analysing the regulatory frameworks of other states, the author has attempted to make recommendations for the improvement of India's regulatory framework.

Keywords: Foreign Investment, New York Convention, ICSID Convention, UNCITRAL Model Law, FEMA 1999, FDI Policy

REGULATORY FRAMEWORK IN UNITED KINGDOM

Implementing the ICSID Convention

The International Centre for Settlement of Investment Disputes (ICSID) Convention is a treaty that was created to encourage and facilitate international investment by providing a mechanism for resolving investment disputes between foreign investors and host states. The Convention provides a framework for resolving disputes through international arbitration, which is a process by which parties agree to submit their dispute to an independent third-party arbitrator who will render a binding decision.

To implement the ICSID Convention, a state must first become a party to the Convention by signing and ratifying it. Once a state has ratified the Convention, it is required to adopt domestic legislation to give effect to the Convention's provisions within its jurisdiction. This includes establishing a legal framework that recognizes and enforces the Convention's arbitration provisions and ensures that ICSID arbitral awards are recognized and enforced within the state's legal system. In practice, implementing the ICSID Convention involves several steps. First, the state must establish a legal framework that recognizes the jurisdiction of ICSID tribunals and the validity of ICSID arbitral awards. This may involve amending existing legislation or

enacting new legislation that specifically addresses the Convention's provisions. Next, the state must establish procedures for the appointment of arbitrators and the conduct of arbitral proceedings under the Convention. This may involve creating a list of qualified arbitrators, establishing rules for the selection and appointment of arbitrators, and defining the procedural rules governing ICSID arbitration. Finally, the state must ensure that ICSID arbitral awards are recognized and enforced within its legal system. This may involve amending existing legislation to provide for the recognition and enforcement of foreign arbitral awards, or enacting new legislation specifically addressing the recognition and enforcement of ICSID arbitral awards. Implementing the ICSID Convention Statute requires a commitment to establishing a robust legal framework that recognizes the importance of international investment and provides an effective mechanism for resolving investment disputes between foreign investors and host states.

The United Kingdom has ratified the ICSID convention. The Arbitration (International Investment Disputes) Act of 1966, which came into effect on January 18, 1967, has been enacted. This act facilitates ICSID award recognition and enforcement. The Act stipulates that in order for a judgement to be enforceable, it must first be registered with the High Court. Registration of awards facilitates the determination of financial obligations resulting from the award. The applicant must follow the procedure specified in the court's rules and inform the other parties in advance of his intention to enforce the award. The applicant must also submit a certified copy of the award, as well as the issues to be proven and the court's chosen method of proof[6].

Once a request for registration has been lodged, the award shall have the same force and effect for execution as a high court judgement. The registration would enable the court to initiate proceedings on the award, calculate interest on the amount specified in the award, and exert total control over its execution.[7]

Statute for implementing non-ICSID Convention Award

The implementation of non-ICSID Convention awards, also known as foreign arbitral awards, involves the recognition and enforcement of arbitral awards made in a foreign jurisdiction outside of the ICSID Convention framework. The process of implementing non-ICSID Convention awards typically involves the adoption of domestic legislation to give effect to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, also known as the New York Convention. The New York Convention provides a framework for the recognition and enforcement of foreign arbitral awards in signatory countries. To implement the New York Convention, a state must first become a party to the Convention by signing and ratifying it. Once a state has ratified the Convention, it is required to adopt domestic legislation that recognizes and enforces the Convention's provisions within its jurisdiction. The process of implementing non-ICSID Convention awards may involve several steps, including:

Incorporation of the New York Convention into domestic law: A state may incorporate the New York Convention's provisions into domestic law through a range of legislative

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mechanisms, such as adopting the Convention as a standalone law or incorporating it into an existing arbitration law.

Establishment of a recognition and enforcement framework: The state must establish procedures for the recognition and enforcement of foreign arbitral awards. This may involve creating a designated court or other administrative body to handle the recognition and enforcement of awards, establishing criteria for recognition and enforcement, and defining the procedures governing recognition and enforcement proceedings. Recognition and enforcement of foreign arbitral awards: Once a foreign arbitral award has been recognized by the designated court or administrative body, the award may be enforced in the same manner as a domestic arbitral award. The state may enforce the award by seeking a court order or through other mechanisms available under domestic law. Implementing non-ICSID Convention awards requires a commitment to establishing a legal framework that recognizes and enforces the New York Convention's provisions and supports the recognition and enforcement of foreign arbitral awards. This is important to promote international trade and investment by providing an effective mechanism for resolving disputes arising from international commercial agreements.

Law for implementing the New York Convention

The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards is an international treaty that provides a framework for the recognition and enforcement of foreign arbitral awards. To implement the New York Convention, a state must first become a party to the Convention by signing and ratifying it. Once a state has ratified the Convention, it is required to adopt domestic legislation to give effect to the Convention's provisions within its jurisdiction. The process of implementing the New York Convention typically involves several key steps:

1. Incorporation of the Convention into domestic law: A state may incorporate the Convention's provisions into domestic law through a range of legislative mechanisms, such as adopting the Convention as a standalone law or incorporating it into an existing arbitration law.
2. Definition of key terms: The state must define key terms used in the Convention, such as "arbitral award," "arbitration agreement," and "public policy." This is important to ensure consistency and clarity in the interpretation and application of the Convention.
3. Recognition and enforcement of foreign arbitral awards: The state must establish procedures for the recognition and enforcement of foreign arbitral awards, which may involve creating a designated court or other administrative body to handle such matters, establishing criteria for recognition and enforcement, and defining the procedures governing recognition and enforcement proceedings.
4. Grounds for refusing recognition and enforcement: The state must establish grounds for refusing recognition and enforcement of foreign arbitral awards, which may include procedural defects, invalidity of the arbitration agreement, lack of due process, and violation of public policy.

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5. Relationship with domestic law: The state must clarify the relationship between the Convention and domestic law, including the relationship between the Convention and existing national laws governing arbitration.

On September 24, 1975, the United Kingdom ratified the New York Convention of 1958. This convention's provisions are included in the Arbitration Act of 1996. The third section of this statute contains the New York Convention's implementation provisions. This act defines Arbitration Award as a decision rendered in accordance with an arbitration agreement. A New York Convention award is recognised as binding between the parties against whom it was rendered, and the parties may use it as a defense, offset, or counterclaim in any proceeding in England, Northern Ireland, or Wales[8]. Similar to a court judgement or order, the New York Convention Award is also enforceable[9]. the party must present either an authenticated original or a certified duplicate of the award. In addition, the act details the conditions under which an award cannot be enforced. These grounds include the incapacity of the parties to an arbitration agreement, the invalidity of the agreement, the absence of a fair hearing, an award not founded on the merits, and an award that has not yet become enforceable[10].

Statute governing internal investments

There are no investment protection laws in the United Kingdom, as both domestic and foreign investments are regarded equally. In the event of a threat to national security, they may be handled differently. In the event of an instance of unlawful expropriation, the Act provides the remedy of judicial review.

External Investments Regulation

The Exports Credit Guarantee Department is the export credit agency for the United Kingdom. It aids exporters and investors by protecting British exporters from non-payment by foreign buyers. It also provides bank loan guarantees to British exporting companies for purchasers of products and services. It also provides insurance against political risk for domestic investors investing abroad. The Multilateral Investment Guarantee Agency Act of 1988 was enacted by the United Kingdom to implement MIGA 1985. Under MIGA 1985, UK nationals and corporate entities can obtain political risk insurance against any risk imposed by developing countries by paying a premium. To qualify for insurance, investors must meet certain requirements, including that their investment be medium- to long-term in nature, contribute to the development of the host country, be financially viable, and adhere to MIGA's policy of social and environmental sustainability.

REGULATORY FRAMEWORK IN UNITED STATES OF AMERICA

Implementation of the ICSID Convention

The International Centre for Settlement of Investment Disputes (ICSID) is an international organization established under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, also known as the ICSID Convention. The ICSID Convention provides a framework for the settlement of investment disputes between foreign

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investors and host states. To implement the ICSID Convention, a state must first become a party to the Convention by signing and ratifying it. Once a state has ratified the Convention, it is required to adopt domestic legislation to give effect to the Convention's provisions within its jurisdiction. The process of implementing the ICSID Convention typically involves several key steps:

Incorporation of the Convention into domestic law: A state may incorporate the Convention's provisions into domestic law through a range of legislative mechanisms, such as adopting the Convention as a standalone law or incorporating it into an existing arbitration law. Establishment of a competent authority: The state must establish a competent authority to act as the central point of contact for ICSID-related matters within its jurisdiction. This authority is typically responsible for receiving and transmitting notices, communications, and requests related to ICSID arbitration proceedings. Consent to ICSID arbitration: The state must provide for consent to ICSID arbitration by foreign investors within its jurisdiction. This typically involves the inclusion of a clause in investment agreements, such as a bilateral investment treaty or an investment contract, providing for the parties' consent to ICSID arbitration.

Recognition and enforcement of ICSID awards: The state must provide for the recognition and enforcement of ICSID awards within its jurisdiction. Under the ICSID Convention, ICSID awards are recognized as binding and enforceable in the same manner as final judgments of the state's highest court. The Washington Convention was ratified by the United States of America on June 10, 1966. It has enacted domestic legislation to implement the terms of the Washington Convention. The domestic law is the United States Code: Settlement of Investment Disputes, 22 USC, which was passed on August 11, 1966. There is a specific chapter 21 A in the code that discusses investment dispute resolution in detail[11]. This chapter emphasises that, as stipulated by the Convention, the President may appoint commission members and representatives[12]. The Code also specifies that any award rendered pursuant to Chapter IV of the convention will give rise to a right under the convention. An award's monetary obligations shall be enforced, and the award shall have the same effect as a national court's judgement.[13] The district courts in the United States shall have complete authority to resolve any disputes arising out of the award[14].

Implementing New York Convention

The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards is an international treaty that provides a framework for the recognition and enforcement of foreign arbitral awards. To implement the New York Convention, a state must first become a party to the Convention by signing and ratifying it. Once a state has ratified the Convention, it is required to adopt domestic legislation to give effect to the Convention's provisions within its jurisdiction. The Federal Arbitration Act regulates arbitrations seated in the United States, including those that are not administered by ICSID. The act consists of three chapters. The initial chapter describes the general provisions. The second chapter gives effect to Convention on the Recognition and Enforcement of Foreign Arbitral Awards provisions[15]. This section contains a foreign arbitral award or agreement, i.e., it involves nationals of states other than the

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United States.[16] District courts shall have jurisdiction over all matters governed by the convention, regardless of the amount at stake.[17]

Statute applicable to Non-ICSID Convention Award

The enforcement of non-ICSID Convention awards, which are awards issued in international commercial arbitrations not covered by the ICSID Convention, is typically governed by the domestic laws of the country in which enforcement is sought. However, there are also a number of international treaties and conventions that address the recognition and enforcement of non-ICSID Convention awards.

One key treaty is the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. The New York Convention provides a framework for the recognition and enforcement of foreign arbitral awards, including non-ICSID Convention awards, in over 160 countries around the world. To enforce a non-ICSID Convention award under the New York Convention, a party must typically provide the award and the underlying arbitration agreement to the competent court in the jurisdiction where enforcement is sought. The court will then verify the award's authenticity, ensure that the underlying arbitration agreement is valid, and confirm that the award is not contrary to public policy before issuing an enforcement order. The federal arbitration act applies to domestic non-ICSID arbitrations. The first chapter of this act consists of general provisions that define maritime transactions and commerce in section 1, provisions relating to the validity, irrevocability, and enforcement of arbitration agreements in section 2, and a suspension of proceedings in section 3. This section applies to non- ICSID arbitrations.

Internal Investments in the United States of America

The private property of both domestic and foreign investors is protected from expropriation under the Fifth Amendment of the United States Constitution. Furthermore, Article 6 of the Constitution provides treaties with the same authority as domestic laws, ensuring that foreign investments are also safeguarded from arbitrary expropriation.

Statute Governing Foreign Investment in the United States of America

The United States has endorsed the MIGA Convention, which permits American individuals and corporations to acquire guarantees for insurance against political acts, conflicts, civil disturbances, contract violations, or expropriation that may result in tangible property losses or damage. However, for the investment to qualify for this benefit, it must be financially sustainable and have a medium to long-term scope, contribute to the host country's development goals, and satisfy MIGA's social and environmental sustainability criteria.

REGULATORY FRAMEWORK IN INDIA

Implementation of the ICSID Convention

India has not ratified the ICSID Convention, which means that its domestic courts cannot interfere with the decisions made by an arbitral tribunal under this convention. Such awards are also not open to appeal. However, India follows the ICSID additional facility rules, which

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can be used in cases where one of the parties involved in a dispute is a signatory of the ICSID Convention.

Statute for the New York Convention

On July 13, 1960, India ratified the New York Convention, and its provisions were implemented in the country's domestic legal framework through the Arbitration and Conciliation Act of 1996. Chapter 1 of Part II of this Act lays down the conditions for enforcing awards made under the New York Convention.

However, India has made two reservations with respect to the New York Convention. First, it will only recognize and enforce judgments issued in territories that are designated as reciprocating territories by the Central Government. As of now, only 48 out of the 164 signatories have been notified as reciprocating territories.

Secondly, India will only apply the convention to commercial legal disputes, as determined by national law.

Laws for administering non-ICSID Arbitration

India employs the UNCITRAL Model Law as a mechanism for resolving disputes, including those that are non-ICSID awards. The administration of such awards falls under Part 1 of The Arbitration and Conciliation Act of 1996, which governs arbitrations in India.

Analysis of Indian Regulatory Framework

The Department for Promotion of Industry and Internal Trade, along with the Reserve Bank of India, serves as the main regulatory bodies for foreign direct investment (FDI) in India. The FDI policy is crafted with the country's national interests in mind, with a focus on acquiring technology and generating foreign exchange resources.

It is worth noting that changes in the Indian government can result in changes to the FDI policy. As a result, foreign investors should pay close attention to any changes to the FDI policy to ensure that their investments align with the new regulations.

DPIIT

DPIIT stands for the Department for Promotion of Industry and Internal Trade, which is a department under the Ministry of Commerce and Industry of the Government of India. Its primary role is to formulate and implement policies and initiatives aimed at promoting industrial development, foreign trade, and investment in India.

The DPIIT is responsible for a range of activities, including formulating policies and schemes to support industrial development, promoting foreign investment, facilitating technological development, and improving the country's business environment. The department also plays an active role in attracting foreign investors and promoting the "Make in India" initiative, which aims to encourage local manufacturing and production in India. The DPIIT is a crucial department that plays a significant role in shaping India's economic growth and development.

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The DPIIT is entrusted with the responsibility of setting the industrial policy of the federal government, which encompasses various domains, including enhancing productivity in Indian businesses, regulating industrial administration, addressing queries related to e-commerce and entrepreneurship, streamlining business efficiency, promoting domestic commerce, and administering industries by issuing industrial licenses and accepting industrial entrepreneur memorandums. The DPIIT plays a crucial role in managing foreign direct investment and encouraging investments for the growth and development of the country's industries. Additionally, the department is responsible for safeguarding intellectual property rights and administering six laws related to it.[18]

Reserve Bank of India

The Reserve Bank of India (RBI) is the central bank of India and the regulator of the country's monetary policy. It was established in 1935 under the Reserve Bank of India Act, and its headquarters are located in Mumbai. The RBI's primary mandate is to ensure the stability of the Indian rupee and regulate the country's banking system. The RBI formulates and implements monetary policy, which includes regulating the supply and cost of money in the economy. It is also responsible for managing the country's foreign exchange reserves, overseeing the payment and settlement system, and acting as the lender of last resort to banks and other financial institutions.

Apart from these core functions, the RBI also plays a vital role in regulating and supervising the banking sector to maintain financial stability and ensure the safety of depositor funds. It also promotes financial inclusion and works to develop the financial sector to support economic growth and development. The RBI is a crucial institution for the Indian economy, as it plays a pivotal role in maintaining financial stability, regulating the monetary system, and promoting economic growth.

Foreign Exchange Management Act, 1999

The Foreign Exchange Management Act (FEMA) was enacted in India in 1999 with the goal of regulating foreign exchange transactions in the country. It replaced the Foreign Exchange Regulation Act (FERA) of 1973, which had become outdated due to the economic reforms of the early 1990s.

FEMA aims to facilitate external trade and payments and to promote orderly development and maintenance of foreign exchange market in India. The act deals with foreign exchange inflow and outflow, currency exchange, dealings in gold and silver, and import and export of currency and bullion, among other things.[19]

Under FEMA, the Reserve Bank of India (RBI) has been given wide-ranging powers to regulate foreign exchange transactions and to prevent and penalize any illegal activities related to foreign exchange. It also empowers the RBI to impose penalties and confiscate illegal funds, and establishes special courts to expedite cases related to foreign exchange violations. The act also provides for the appointment of an authorized person who can carry out foreign exchange transactions on behalf of others, subject to certain conditions. FEMA has been amended several

times since its enactment to reflect the changing needs of the Indian economy and to align it with international best practices in the field of foreign exchange regulation.[20]

The Foreign Exchange Management Act of 1999 eliminated the restrictions on current account transactions imposed by the RBI[21], except as allowed by law, to align with the general obligations stated in the Articles and Agreement of the IMF[22]. Section 139 of the 2015 Amendment Act eliminated subsection (3) of Section 6 of the Act. Usually, any action that involves the modification of an asset located in India by someone who is not a resident of India is prohibited unless specified otherwise by law.[23]

FEMA's Chapter II focuses on foreign exchange regulation and management. Domestic companies with foreign equity participation are treated the same as other locally incorporated companies and are subject to foreign exchange laws. FEMA also requires that no non-resident person can establish a branch, liaison office, project office, or other place of business in India without the approval or knowledge of the RBI. The definition clause of FEMA specifies crucial terms such as authorized person[24], capital account transaction[25], current account transaction[26], and foreign exchange[27]. FEMA includes both explicit statutory provisions and scope for creating rules[28] and regulations[29] to regulate foreign investments.

Analysis of FDI 2020 Policy

The Department for Promotion of Industry and Internal Commerce (DPIIT) is responsible for creating and implementing the government's FDI policy in India, as well as maintaining data on FDI flows into the country. The government has adopted a liberal FDI policy, allowing up to 100 percent FDI through the automatic route in most sectors and activities. To make India an attractive destination for foreign investment, the FDI policy regime has been modified, and DPIIT is actively involved in its liberalization and rationalization. The Foreign Investment Promotion Board has been dissolved, and relevant ministries and departments are now responsible for processing FDI applications and obtaining government approval according to the existing FDI policy and FEMA. DPIIT is the sole government agency responsible for facilitating FDI through the approval route.

The author discusses the FDI Circular for 2020, which is a set of guidelines that aims to simplify and streamline the FDI process. The circular provides clarity on various FDI-related issues, such as sector-specific FDI restrictions, FDI in e-commerce, and the acquisition of existing Indian companies by foreign investors. The circular also introduces changes to the FDI policy in various sectors, such as insurance, aviation, and media.

Overall, the DPIIT plays a crucial role in attracting FDI to India, and the government's liberal FDI policy is a testament to its commitment to foreign investment. The FDI Circular for 2020 is an essential document for foreign investors interested in investing in India, as it provides clear guidelines on FDI-related issues and changes to the FDI policy in different sectors.

There are two ways of investing in India - the automatic route and the government route. The automatic route allows non-resident investors and Indian enterprises to make investments without obtaining prior permission from the Indian government. On the other hand, the

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government route requires permission from the Government of India, and specific ministries and departments are responsible for examining such proposals. This route is taken when a non-resident entity intends to establish an Indian company, or when the Indian company is not owned or controlled by a resident[30].

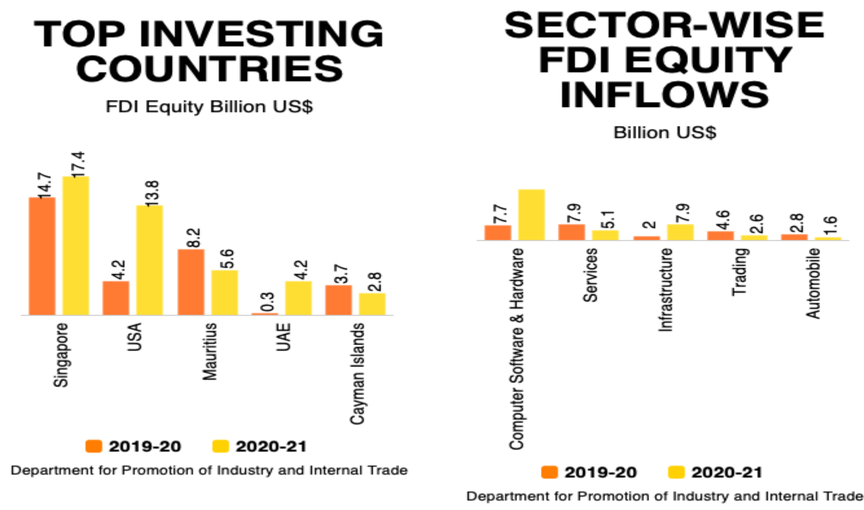
The FDI Circular comprises five chapters and nine appendices. The first chapter outlines the objective, purpose, and scope of the policy. The second and third chapters define FDI and lay out its general conditions, respectively. The fourth and fifth chapters provide details on the procedural formalities and sector-specific requirements, respectively. The annexes contain the specific provisions and conditions that must be followed for particular sectors.

The Competent Authorities for granting approval for foreign investment in sectors/activities requiring government approval are listed below[31]:

1. Mining : Ministry of Mines
2. Print/ Electronic Media: Ministry of Information and Broadcasting
3. Telecommunications: Department of Telecommunication
4. Satellites: Department of Space
5. Private Security Agencies: Ministry of Home affairs.
6. FDI Proposals by NRI's: DPIIT
7. Banking: Department of Financial Services

Prohibited sectors for FDI include[32]: Lottery business, gambling, betting, chit funds, Nidhi Company, trading in transferable development rights, real estate business, atomic energy and railway operations.

Some of the recent statistical data from DPIIT[33] is quoted below:



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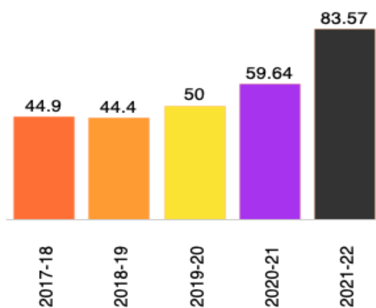
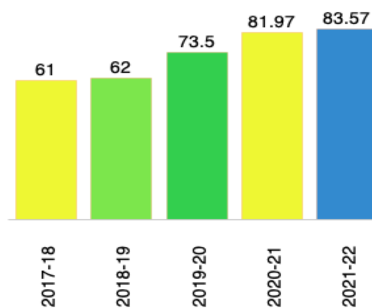
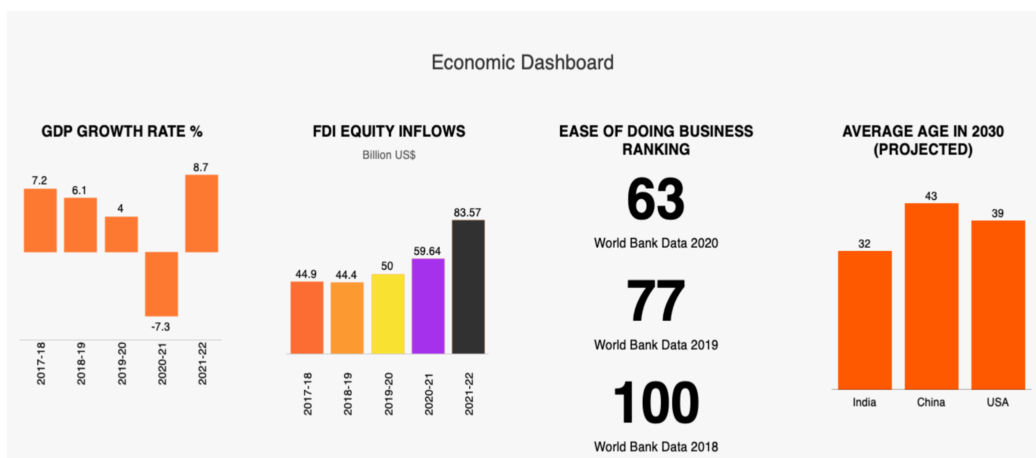




Source: DPIIT[34]



Source: DPIIT[35]

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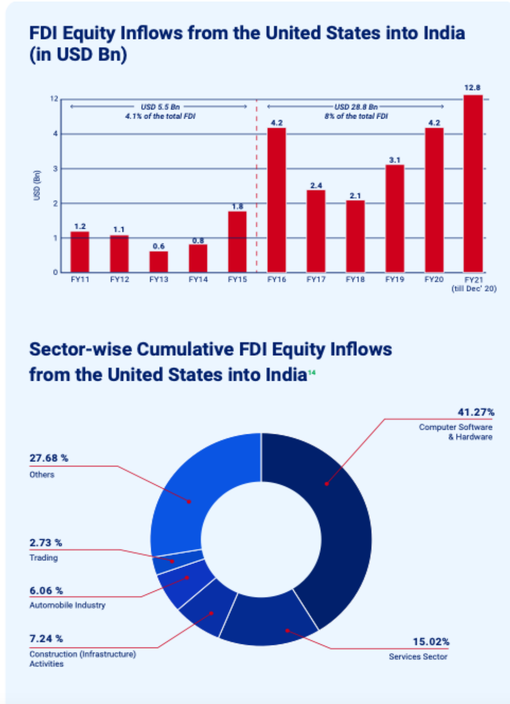
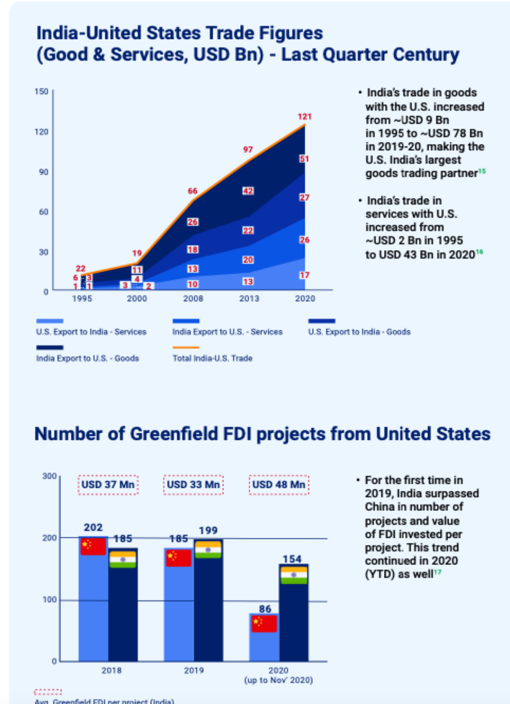
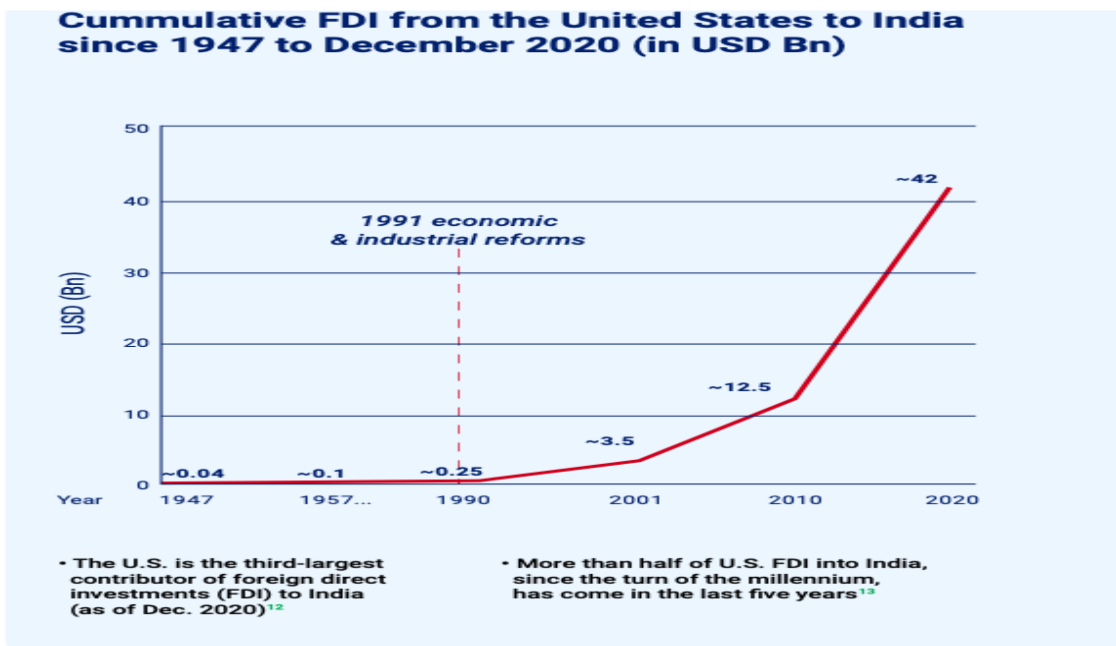
Statistical data for FDI received from USA:





Source[36]: Investindia



Source[37]: InvestIndia

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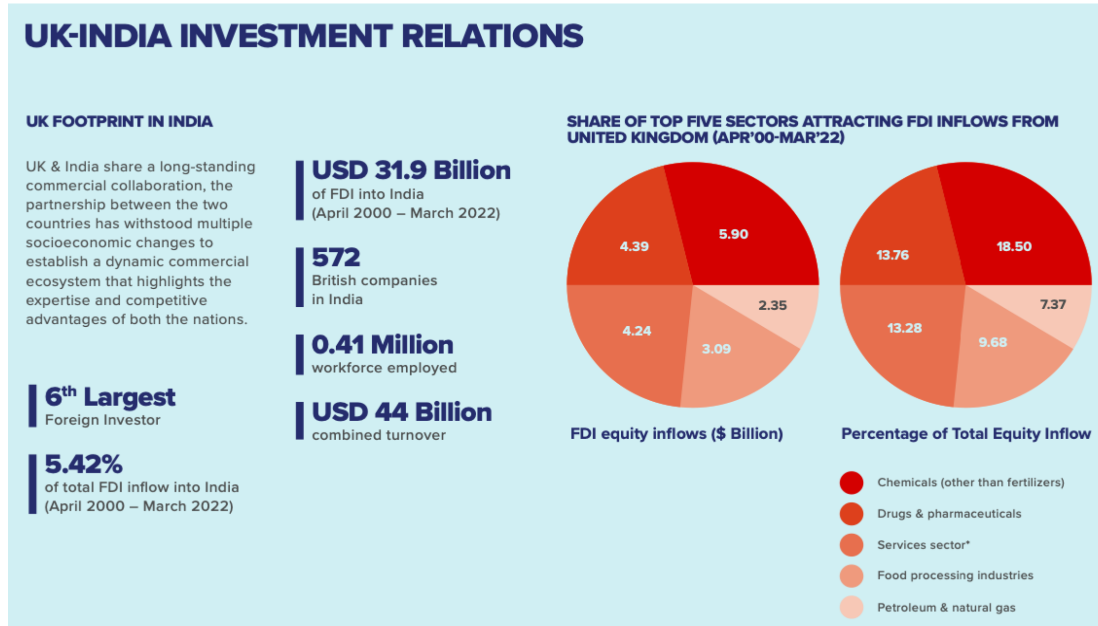
Statistical Data for FDI received from United Kingdom:



Source[38]: Investindia

Source[39]: Investindia

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MAJOR INITIATIVES BY THE GOVERNMENT FOR FACILITATING FDI

Make in India

On September 25, 2014, the Make in India initiative was launched to promote investment, innovation, infrastructure development, and position India as a global manufacturing, design, and innovation center. The government has prioritized the development of a strong manufacturing sector and the "Vocal for Local" campaign has increased exposure of Indian manufacturing to the global market. The Make in India program has seen significant achievements, and now Make in India 2.0 is focused on 27 different industries.[40]

Empowered Group of Secretaries and Project Development Cells (PDC's)

To encourage and facilitate investment in India, the Union Cabinet has approved the establishment of an empowered group of secretaries (EGoS) and Project Development Cells (PDC) in various ministries and departments. This initiative aims to expedite investment coordination between the central and state governments, and to provide an investor-friendly interface for both domestic and foreign investors.

In 29 ministries/departments of the Indian government, Project Development Cells have been established and are led by Joint Secretary-level officers. All PDCs presume flawless operation, executing clearly defined investor engagement strategies, which include the following:

1. Identification of potential financiers
2. multidimensional engagement with interested investors
3. Active engagement with a vast array of stakeholders to address existing investor concerns
4. Create new projects/proposals and publicise existing investment opportunities

The Project Development Cells (PDCs) have been involved in various interactions with stakeholders aimed at comprehending and addressing industry-wide challenges, discovering policies that can unlock investment potential in different sectors, promoting current investment opportunities, and exploring new projects and proposals[41].

National Single Window

This is a digital platform that assists investors in identifying and applying for approvals based on their business needs. This concept was introduced to simplify the application process for regulatory approvals and registrations in India through a centralised location, with the following goals in mind[42]:

1. To establish a single-window mechanism by integrating the services offered by multiple central ministries, departments, and state administrations.
2. To provide a centralised location for acquiring the pre-establishment and pre-operational approvals and permits necessary to establish a business in India.

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3. To provide electronic services that are effective, transparent, convenient, and integrated to investors, industries, and businesses.
4. To provide a consistent and seamless experience for corporate users.

Ease of Doing Business

The EODB (Ease of Doing Business) index is a ranking established by the world bank group based on some basic parameters of business regulation, including: starting a business, obtaining construction permits, registering property, generating electricity, protecting minority investors, obtaining credit, paying taxes, enhancing cross-border trade, enforcing contracts, and resolving insolvency. A higher EODB Ranking indicates that the regulatory environment is more conducive to business formation and operation.[43]

Out of 190 countries, India ranked 63rd in Doing Business 2020: World Bank Report. The government of India has launched a number of regulatory reforms for making it easier to do business in India.[44]

CONCLUSION

The authors have analyzed the regulatory framework for foreign direct investment in four selected countries. The decision to choose these countries is based on two reasons. Firstly, the USA and UK are significant sources of FDI for India, as reflected in the statistical data. Secondly, these countries have ratified the ICSID convention and enacted domestic laws to give effect to it. According to the authors, membership in ICSID has helped these countries enhance their framework for foreign investment. Additionally, they have implemented domestic laws to enforce the provisions of MIGA, which has safeguarded the interests and investments of domestic investors when investing in developing countries.

In their analysis, the authors examined the regulatory framework for foreign investments in India, including the FEMA of 1999 and the FDI consolidated policy of 2020, as well as the roles of the DPIIT and RBI in managing foreign reserves. They also discussed the government's efforts to improve investment inflows and streamline the approval process for investors. However, the authors noted that India lacks a political risk insurance scheme for local investors investing abroad and there is a lack of clarity on the timeline for FDI approvals and reasons for rejections. Addressing these issues could further enhance India's appeal as an investment destination.

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5. https://uncitral.un.org/en/texts/arbitration/modellaw/commercial_arbitration UNCITRAL (United Nations Commission on International Trade Law) Model Law on International Commercial arbitration 1985 with amendments as adopted in 2006
6. Section 1, Arbitration (International Investment Disputes) Act 1966
7. Ibid. Section 2
8. Section 101, Arbitration Act 1996
9. Section 103, Arbitration Act 1996
10. https://www.govinfo.gov/content/pkg/USCODE-2020-title22/pdf/USCODE-2020-title22-chap21A.pdf Accessed on 23rd November, 2022
11. Section 1650, United States Code: Settlement of Investment Disputes
12. Section 1650 a, United States Code: Settlement of Investment Disputes
13. Section 1650 b, United States Code: Settlement of Investment Disputes
14. Section 201, Federal Arbitration Act
15. Ibid. Section 202
16. Ibid. Section 203
17. https://dpiit.gov.in/about-us/role-and-functions-dpiit ACCESSED ON 03.01.2023, https://www.rbi.org.in/Scripts/Fema.aspx Accessed on 09.03.2023
18. https://www.rbi.org.in/Scripts/Fema.aspx Accessed on 09.03.2023
19. Section 5 of FEMA 1999 “Any person may sell or draw foreign exchange to or from an authorised person if such sale or drawal is a current account transaction: Provided that the Central Government may, in public interest and in consultation with the Reserve Bank, impose such reasonable restrictions for current account transactions as may be prescribed”.
20. Article VIII, General Obligations of the members, Articles and Agreement of IMF
21. The Foreign Exchange Management Act 1999, Section 2 (c) “authorised person means an authorised dealer, money changer, off-shore banking unit or any other person for the time being authorised under sub-section (1) of section 10 to deal in foreign exchange or foreign securities;”
22. The Foreign Exchange Management Act 1999, Section 2 (e) “capital account transaction means a transaction which alters the assets or liabilities, including contingent liabilities, outside India of persons resident in India or assets or liabilities in India of persons resident outside India, and includes transactions referred to in sub-section (3) of section 6”
23. The Foreign Exchange Management Act 1999, Section 2 (j) “current account transaction” means a transaction other than a capital account transaction and without prejudice to the generality of the foregoing such transaction includes,—(i) payments due in connection with foreign trade, other current business, services, and short-term banking and credit facilities in the ordinary course of business, (ii) payments due as interest on loans and as net income from investments, (iii) remittances for living expenses of parents, spouse and children residing abroad, and (iv) expenses in connection with foreign travel, education and medical care of parents, spouse and children
24. The Foreign Exchange Management Act 1999, Section 2 (n) “foreign exchange” means foreign currency and includes,— (i) deposits, credits and balances payable in any foreign currency, (ii) drafts, travellers cheques, letters of credit or bills of exchange, expressed or drawn in Indian currency but payable in any

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foreign currency, (iii) drafts, travellers cheques, letters of credit or bills of exchange drawn by banks, institutions or persons outside India, but payable in Indian currency;

25. The Foreign Exchange Management Act, 1999 Section 46 Power to make rules (1) The Central Government may, by notification, make rules to carry out the provisions of this Act. (2) Without prejudice to the generality of the foregoing power, such rules may provide for,— (a) the imposition of reasonable restrictions on current account transactions under section 5; (b) the manner in which the contravention may be compounded under sub-section (1) of section 15; (c) the manner of holding an inquiry by the Adjudicating Authority under sub-section (1) of section 16; (d) the form of appeal and fee for filing such appeal under sections 17 and 19; (e) the salary and allowances payable to and the other terms and conditions of service of the 2[Special Director (Appeals)] under section 23; (f) the salaries and allowances and other conditions of service of the officers and employees of the 3[office of the Special Director (Appeals)] under sub-section (3) of section 27; (g) the additional matters in respect of which the Appellate Tribunal and the Special Director (Appeals) may exercise the powers of a civil court under clause (i) of sub-section (2) of section 28; 4[(gg) the aggregate value of foreign exchange referred to in sub-section (1) of section 37A;] (h) the authority or person and the manner in which any document may be authenticated under clause (ii) of section 39; and (i) any other matter which is required to be, or may be, prescribed.
26. The Foreign Exchange Management Act, 1999 1 The Reserve Bank may, by notification, make regulations to carry out the provisions of this Act and the rules made thereunder.
27. FDI Policy 2020, Para 3.4.2
28. Ibid. Para 4.1.1
29. Ibid. Para 5.1
30. https://indbiz.gov.in/dashboard/#fdi ACCESSED on 30.01.2023
31. https://indbiz.gov.in/dashboard/#fdi ACCESSED on 30.01.2023
32. https://static.investindia.gov.in/2021-04/A%20Natural%20Partnership_%20United%20States%20–%20India%20FDI%20Perspectives.pdf, Accessed on 09.03.2023
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38. https://openknowledge.worldbank.org/server/api/core/bitstreams/0be02f45-ade4-551d-a85d-986be83e77f0/content Accessed on 13.03.2023
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