



Doing business in India

2022

FOREWARD:

India is a vast, populous, and diverse nation encompassing many different identities, languages, cultures, and religions. India is the seventh largest country by area and the second most populous country in the world. In terms of its economic growth, India is one of the fastest growing economies of the world. Rated as one of the most stable economies, India continues to shine amidst global gloom. Led by the Modi government, several economic, financial, and institutional reforms including the reforms leading to ease of doing business across states, have been implemented.

Year 2020 brought some difficult times for businesses around the world and India was no exception. The COVID-19 pandemic disrupted industrial supply chains and daily livelihoods of the masses were severely impacted due to its negative effect on business and employment in almost every sector, with only select sectors in the digital and healthcare realms performing relatively better.

In-spite of economic lockdowns, multiple Indian states revealed new industrial policies and implemented business-friendly reforms to attract greater investments and bolster local manufacturing ecosystems. With the motive of '[Atmanirbhar Bharat](#)' [Self Reliant India], the Government of India also undertook important structural reforms to combat risks associated with the coronavirus pandemic and to strengthen India's economic fundamentals and to ensure long-term sustained growth.

The five pillars of 'Atmanirbhar Bharat' focuses on:

- Economy
- Infrastructure
- System
- Vibrant Demography

Some of the reforms undertaken are as follows:

- Large scale investment to boost infrastructure development.
- Reforms in labour laws which includes merging 44 central labour laws in 4 codes.
- Various dis-investment measures undertaken to enhance private investment and achieve economies of scale.

This document endeavours to lay down the fundamental legal regime regarding the conduct of business in India and resolves queries and issues normally raised by overseas investors. It is intended to act as a summarised legal guide to aid a potential investor in his decision-making in how to establish business entity and carry-on operations in India. Having said this, the detailed version of this document can be accessed at our website www.krestonsnr.com.

Today, when the world is looking at India as an ideal business destination, we hope that this document proves to be a handy and useful guide to all the aspirants from global business fraternity as well as our professional associates throughout the world in their analysis and evaluation of business ventures and in strengthening decision making process.



CA Mahendra Rustagi

CEO



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August 15, 2022,
New Delhi, India

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1.India: At a glance

“A brief look at the India— It’s languages, demography, economy, political and legal systems”



INDIA: AT A GLANCE

Profile

Area: 3,287,263 sq. km [1,269,346 sq. mi]

Location: North of the Equator

Latitude 8° 4' and 37° 6' north

Longitude 68° 7' and 97° 25' east

Capital: New Delhi

Indian Standard Time: GMT + 5:30

Telephone Country Code: +91

Geography and climate

Covering an area of 3.3 million sq. km, India is the seventh largest country in the world, occupying a major portion of the South Asian subcontinent. Extending from the Himalayas in the north, it stretches southwards to the Tropic of Cancer and tapers off into the Indian Ocean between the Bay of Bengal on the east and the Arabian Sea on the west.

Political system

India is a sovereign, socialist, secular, and democratic republic with a parliamentary system of government. It is governed by the Constitution of India, which came into force on 26 January 1950. It has a federal government with 28 states and 8 union territories and is the largest democracy in the world.

Legal system

India has one of the oldest legal systems in the world. The Constitution of India is the supreme law of the country. It gives due recognition to statutes, case laws and customary laws consistent with its dispensations. There is also a vast body of laws known as subordinate legislations in the form of rules, regulations, and bylaws made by the central and state courts to administer both union and state laws. As mentioned governments and local authorities. The Constitution has generally provided for a single integrated system of previously,

the judiciary is divided into various levels, with the courts forming a strict hierarchy of importance: The Supreme Court of India, High Courts (of respective states/groups of states), District Courts, followed by other subordinate courts.

Population

India is currently the second most populous country in the world, with an estimated 1.42 billion people in 2021. With around 63% of the population in the age range of 15–59 years and a median age of 28.4 years in 2020, India has a favourable demographic dividend. It will soon have the largest and youngest workforce in the world.

Language

The Constitution of India recognises 22 different local languages, of which Hindi is used for official communication along with English at a national level. Other Indian languages recognised by the constitution are Assamese, Bengali, Gujarati, Kannada, Kashmiri, Konkani, Malayalam, Manipuri, Marathi, Nepali, Oriya, Punjabi, Sanskrit, Sindhi, Tamil, Telugu, and Urdu. However, according to the 2011 census, about 30 languages are spoken by more than a million native speakers, and 122 are spoken by more than 10,000 speakers. According to the 2011 census, literacy rates stand at 74.04% (82.14% for males and 65.46% for females).

Currency

The currency of India is the Rupee (ISO code: INR; symbol: ₹). The Reserve Bank of India, which is the central bank of the country, has the sole authority to issue banknotes and coins.

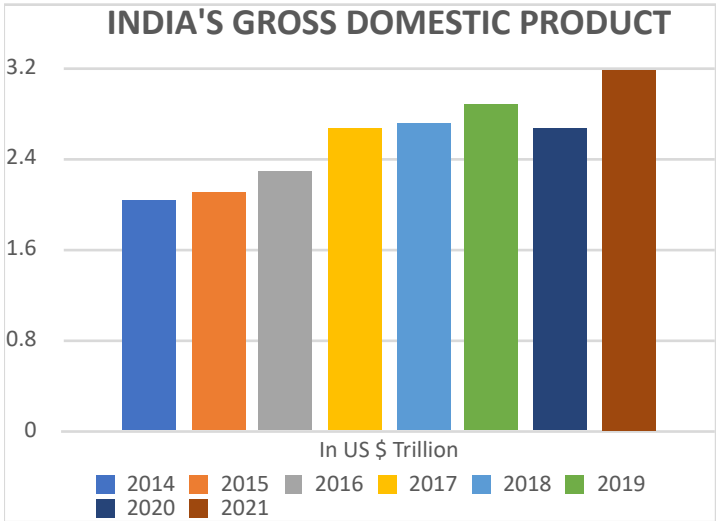
Economy

India has emerged as the fastest growing major economy in the world and is expected to be one of the top three economic powers in the world over the next 10-15 years, backed by its robust democracy and strong partnerships.

The service sector has been driving economic growth in India, accounting for 55% of Gross Value Added (GVA) growth (at constant prices), followed by the industry sector with a 28% share, and agriculture accounting for 17%. However, agriculture still has the largest share in employment (over 40% of the total workforce), followed by services (approximately 30%). Within the service sector, India is the leading sourcing destination across the world. As per industry estimates, India accounts for approximately 55% market share of the US\$ 200-250 billion global services sourcing business in 2019-20. Further, the IT industry accounts for approximately 8% of India's GDP.

India's Economy Rebounded Strongly Despite Facing 3 Major COVID-19 Waves as India's GDP forecast for FY 2022-23 is poised at 7.5%.

India's nominal GDP at current prices was estimated at Rs. 232.15 trillion (US\$ 3.12 trillion) in FY22. With more than 100 unicorns valued at US\$ 332.7 billion, India has the third-largest unicorn base in the world. The government is also focusing on renewable sources to generate energy and is planning to achieve 40% of its energy from non-fossil sources by 2030.

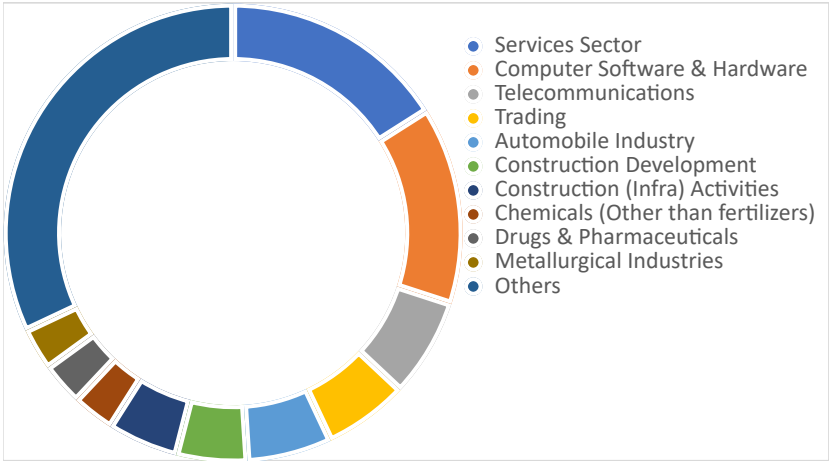
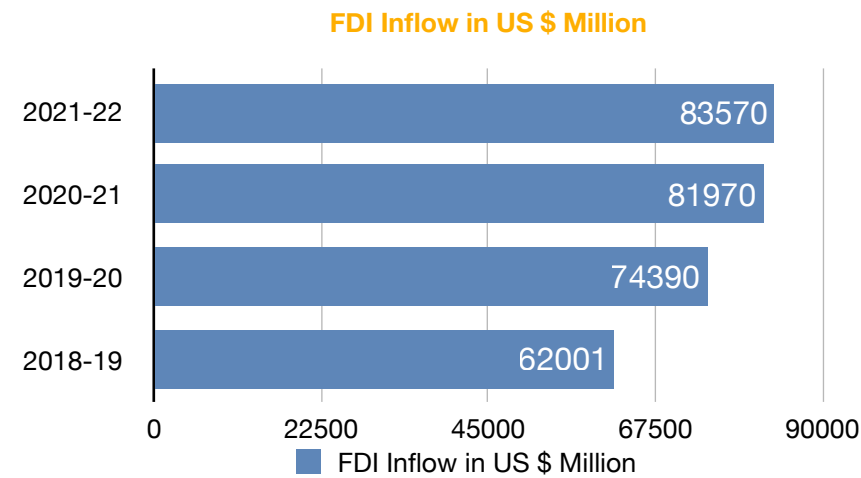


*Source: [Tradingeconomics.com](https://tradingeconomics.com/india/gdp)|World Bank

FDI Inflow

India has recorded highest ever annual FDI inflow of USD 83.57 billion in the Financial Year 2021-22.

The financial year wise details of total FDI inflow reported in the country during the last four years is given below:



STATEMENT ON SECTOR-WISE FDI EQUITY INFLOWS
FROM APRIL 2000 TO MARCH 2021

2. Government Policies & Business Regulations

“A brief look at various government initiatives aimed at supporting businesses & associated regulatory measures”



GOVERNMENT POLICIES AND BUSINESS REGULATIONS

Companies Act

The Companies Act, 2013 was enacted by the Indian parliament to regulate the incorporation, responsibilities of directors, and dissolution of a company in India.

The Ministry of Corporate Affairs [MCA] is primarily concerned with administration of Companies Act regulates the functioning of the corporate sector in India. The MCA is also responsible for administering the Competition Act, 2002 to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interests of consumers through the commission set up under the Act.

Foreign Direct Investment (FDI)

Apart from being a critical driver of economic growth, FDI is a major source of non-debt financial resource for the economic development of India. To take advantage of relatively lower wages, special investment privileges such as tax exemptions, etc, foreign companies can establish their presence in India by incorporating a company under the Companies Act as a joint venture (JV) or a wholly owned subsidiary (WOS).

FDI can be made through two routes that are:

- **Automatic Route:** Indian companies engaged in various industries can issue shares to foreign investors up to 100% of their paid-up capital.
- **Government Approval Route:** Certain activities that are not covered under the automatic route require prior Government approval for FDI. governments and local authorities.

Foreign Exchange Management Act

The Government of India formulated Foreign Exchange

Management Act [FEMA] to encourage the external payments and across the border trades in India. The main objective of FEMA was to help facilitate external trade and payments in India. It was also meant to help orderly development and maintenance of foreign exchange market in India. It defines the procedures, formalities, dealings of all foreign exchange transactions in India. These transactions are mainly classified under two categories - Current Account Transactions and Capital Account Transactions.

The ‘Make in India’ Program

The **Make in India** initiative was launched by Prime Minister in September 2014 as part of a wider set of nation-building initiatives. It quickly became a rallying cry for India’s innumerable stakeholders and partners. It was a powerful, galvanising call to action to India’s citizens and business leaders, and an invitation to potential partners and investors around the world. Make in India represents a comprehensive and unprecedented overhaul of outdated processes and policies.

Repatriation of Funds from India

Over the years, the Indian Government has substantially liberalised remittances of income and assets. All investments and profits earned by branches of a foreign company are repatriable after payment of applicable taxes, subject to sector-specific exceptions. Further, a foreign investor can receive profits from Indian companies in two broad ways:

- Pay out of profits as dividends; and
- Buy back of shares of company.

Environmental Laws

The environmental laws in India are guided by environmental legal principles and focus on the management of specific natural resources, such as forests, minerals, or fisheries.

The tremendous growth of the Indian economy has resulted in a lot of pressure on its finite natural resources. In order to prevent indiscriminate exploitation of natural resources, the Government

regulates the development of industrial projects / activities through environmental approvals and compliances.

The main environmental laws under which various key environmental permits (or consents) are being issued in India, include the following:

- Water (Prevention and Control of Pollution) Act 1974 (Water Act), which also initially identified the powers, functions, and hierarchy of the environmental agencies, the CPCB and the SPCBs.

The tremendous growth of the Indian economy has resulted in a lot of pressure on its finite natural resources. In order to prevent:

- Air (Prevention and Control of Pollution) Act 1981 (Air Act).
- Environment (Protection) Act 1986 (EP Act): This umbrella law enables the central government to take measures it deems necessary to protect and improve the environment, and to prevent, control and abate environmental pollution. A wide range of rules and notifications have been adopted under it, such as the:
 - ✦ E-Waste (Management) Rules 2016, as amended in 2018 (E-Waste Rules);
 - ✦ Batteries (Management & Handling) Rules 2001 (and the proposed draft Battery Waste Management Rules 2020);
 - ✦ Bio-Medical Waste Management Rules 2016.



3.Business Entities

“A look at the various modes of establishing business presence in India”



BUSINESS ENTITIES

Entity Options for Foreign Companies

A foreign company planning to set up business operations in India can:

- Set up a liaison office/representative office, project office or branch office of the foreign company to undertake activities permitted under the Foreign Exchange Management (Establishment in India of Branch Office or Other Place of Business) Regulations, 2000; or
- Incorporate a company under the Companies Act as a Joint Venture [JV] or a Wholly Owned Subsidiary [WOS]; or
- Invest in a Limited Liability Partnership [LLP] under the Limited Liability Partnership Act, 2008.

Liaison Office

A Liaison Office [LO] can undertake only liaison activities, i.e. it can act as a channel of communication between the Head Office abroad and parties in India. It is not allowed to undertake any business activity in India and cannot earn any income in India.

Branch Office

Companies incorporated outside India and engaged in manufacturing or trading activities are allowed to set up Branch Offices [BO] in India with specific approval of the RBI. Such BOs are permitted to represent the parent/ group companies and undertake the *inter alia* following activities in India:

- Export/import of goods,
- Render professional or consultancy services,
- Carry out research work in areas in which the parent company is engaged etc.

Project Office

The RBI has granted general permission to foreign companies to establish Project Offices [PO] in India where they have secured a contract from an Indian company to execute a project in India. Without prior permission of the RBI, no citizen or company registered in Pakistan, Bangladesh, Sri Lanka, Afghanistan, Iran, China, Hong Kong or Macau can establish a BO/LO/PO or any other place of business in India.

Wholly Owned Subsidiary / Joint Venture

A foreign company may set up a WOS in sectors where 100% FDI is permitted under the FDI policy. Alternatively, it could enter into a joint venture with an Indian partner. A foreign company incorporated as either of these two entities under the Companies Act is treated at par with any domestic Indian company within the scope of approval and subject to all Indian laws and regulations as applicable to other domestic Indian companies.

Further, a foreign investor can receive profits from Indian companies in two broad ways:

- Pay out of profits as dividends; and
- Buy back of shares of company.

Limited Liability Partnership

A Limited Liability Partnership [LLP] is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership.

An LLP can continue its existence irrespective of changes in partners. It is capable of entering into contracts and holding property in its own name. It is a separate legal entity and is liable to the full extent of its assets, but the liability of the partners is limited to their agreed contribution in the LLP.

4.Taxation

“A look at the various direct and indirect tax rates applicable in India and the related compliances”



TAXATION

Residential Status

In respect of an assessee, the incidence of tax is dependent upon his residential status under the Income Tax Act, 1961. On the basis of their residential status, the assessee is classified into two broad categories under the Act, namely:

- Resident and ordinarily resident
- Resident but not ordinarily resident

Scope of Total Income

PARTICULARS OF INCOME	RESIDENT & ORDINARILY RESIDENT	RESIDENT BUT NOT ORDINARILY RESIDENT	NON-RESIDENT
Income received or deemed to be received in India	Taxable	Taxable	Taxable
Income accrues or arises in or is deemed to accrue or arise in India	Taxable	Taxable	Taxable
Income earned outside India	Taxable	Taxable (only if earned from a business/ profession controlled from India)	Non-Taxable

Company Taxation

The corporate tax structure for FY 2022-23:

Domestic Companies

PARTICULARS	INCOME TAX RATES
Total turnover or gross receipts during the previous year 2019-20 doesn't exceed ₹4 billion	25%
Other Domestic Companies	30%
Domestic companies not availing certain deductions/ incentives	22%
Domestic Manufacturing companies incorporated after 01-10-2019 not availing certain deductions/ incentives	15%

Foreign Companies

The tax rate of foreign company is 40%.

Surcharge

COMPANY	NET INCOME	
	Between 10 Mn. To 100 Mn.	Exceeds 100 Mn.
Domestic	7%	12%
Domestic companies not availing certain deductions/ incentives	10%	10%

COMPANY	NET INCOME	
	Between 10 Mn. To 100 Mn.	Exceeds 100 Mn.
Domestic Manufacturing companies incorporated after 01-10-2019 not availing certain deductions/ incentives	10%	10%
Foreign	2%	5%

Health & Education Cess

4% of Income Tax and surcharge

Minimum Alternate Tax (MAT)

There is tax on 'book profits' in case the tax on the company's book profit (post certain adjustments) is greater than the tax on income computed as per the normal provisions of the ITA. This is commonly known as MAT, which is charged at a rate of 15% on book profits plus applicable surcharge and 4% cess on the tax and surcharge.

However, MAT is not applicable on income earned by Foreign Institutional Investors/Foreign Portfolio Investors (FIIs/ FPIs) and foreign companies from various sources, such as capital gains, interest, royalty, and fees for technical services. Also, MAT is not applicable to foreign companies not having any Permanent Establishment [PE] in India or which are not required to be registered under the Companies Act in India.

Presumptive Taxation

The Indian Income Tax Act also provides for a mechanism wherein income in the case of specified businesses, such as

shipping, aircraft, civil construction, etc. is computed on a presumptive basis, which results in a lower effective tax rate.

Taxability of income (other than business income) under the Income Tax Act:

- **Royalty/Fees for Technical Services:** Income earned by a foreign company in the nature of royalty/ fees for technical services, is taxable in India on a gross basis at the rate of 10% (plus applicable surcharge and education cess).
- **Interest:** Interest income earned by non-residents for loans provided in a foreign currency is taxable in India at the rate of 20% (plus applicable surcharge and education cess).

However, the interest from foreign currency loans and any long-term bonds would be taxable at a concessional rate of 5% (plus applicable surcharge and education cess) provided the loan or bonds are acquired during a specified period and subject to specified conditions. Furthermore, the said concessional rate of 5% (on the interest income of such bonds) would apply even if the non-resident does not have a Permanent Account Number (PAN) in India. The benefit of 5% taxation has also been extended to interest earned from Rupee Denominated Bonds.

- **Transfer of carbon credits:** Taxable on a gross basis at the rate of 10%.
- **Dividend:** Dividend income received from an Indian company shall be charged to tax at the rate of 20%.

However, with respect to the above, where a beneficial rate/provision is prescribed under any treaty entered into by India with a foreign country, a non-resident can claim such beneficial rate/provision subject to conditions mentioned under the treaty with the respective country.

Personal Tax Rates

The tax rate applicable to an individual would depend on his income bracket. Various income slabs along with different tax rates are provided

every year in the Union Budget. The slab rates mentioned in the Budget

are applicable for the following financial year (April– March).

The Finance Act, 2022 has introduced the following rates for individual taxpayers (other than senior citizens):

NET INCOME RANGE	INCOME TAX RATES
Up to ₹ 250,000	NIL
Above ₹ 250,000 up to ₹ 500,000	5%
Above ₹ 500,000 up to ₹ 1 million	20%
Above ₹ 1 million	30%

Furthermore, the law also provides special exemptions to 'resident senior citizens' (individuals who are more than 60 years of age) and 'resident very senior citizens' (individuals who are more than 80 years of age), where the basic exemption limit is ₹ 300,000 and ₹ 500,000, respectively. In addition to this, surcharge shall be levied on individuals in the following manner:

- 10% of Income Tax where total income exceeds ₹5 million
- 15% of Income Tax where total income exceeds ₹10 million
- 25% of Income Tax where total income exceeds ₹20 million
- 37% of Income Tax where total income exceeds ₹ 50 million

All taxes in India are further increased by a health and education cess, which is 4% of the total tax payable (tax plus surcharge).

Goods & Services Tax (GST)

Goods and Services Tax (GST) is a destination-based consumption tax. It has brought transparency into the administration, reduced the cascading effect of taxes on the cost of goods and services and thereby, create a common national market. Different GST rate slabs such as 5%, 12%, 18% & 28% have been prescribed for different categories of products. Further, imports are subjected to GST, while exports are zero-rated i.e. GST free.

Customs Duty

In India, Customs Duty is levied on the import of goods into the country. Customs Duty is payable at the time of clearance of goods for home consumption from the customs station.



5. Labor Laws and Social Security Schemes

“A brief look at various government initiatives aimed at supporting businesses & associated regulatory measures”



LABOR LAWS & SOCIAL SECURITY SCHEMES

The Indian Government has been working on a complete replacement of the archaic labor regulations. The new set of regulations consolidates 44 labor laws under 4 categories of Codes. The objective is to simplify and modernise labor regulation. The four broad codes are Wages, Industrial Relations, Social Security and Occupational Safety, Health & working conditions (OSH).

The Code on Wages

It aims is to regulate wage and bonus payments in all employments like trade, manufacture, business, and industry. It include: railways, mines, oilfields, and banking companies and establishments carried on by or under the authority of the central government.

The Code on Wages replaces 4 existing Laws:

1. Minimum Wages Act, 1948
2. Payment of Wages Act, 1936
3. Payment of Bonus Act, 1965
4. Equal Remuneration Act, 1976

The Code on Industrial Relations

Companies incorporated outside India and engaged in manufacturing or trading activities The Code consolidates and amends the laws relating to Trade Unions, conditions of employment in industrial establishment or undertaking, investigation and settlement of industrial disputes and for matters connected therewith. The object of the Code is to realise industrial peace and harmony and safeguard the rights of employers and employees by providing easy labor reforms.

The Industrial Relations Code replaced 3 existing laws:

1. The Trade Unions Act, 1926

1. The Industrial Disputes Act, 1947
2. The Industrial Employment Act. 1946
3. The Industrial Disputes Act, 1947

The Code on Social Security

It aims to extend social security to all employees and workers either in the organised or unorganised or any other sectors.

Highlights of the social security Code are:

- Establishment of Social Security Funds
- Provident Fund and ESI Schemes
- Role of aggregators
- Maternity benefits
- Schemes for Self-Employed
- Gratuity

Safety, Health and Working Conditions Code

Code emphasises on health, safety and welfare of the workers employed in various sectors like industry, trade, business, manufacturing, factory, motor transport undertaking, building and other construction work, newspaper establishments, audio-video production, plantation, mine & dock-work and service sectors. It applies on factories having 20 or more workers and manufacturing process is being carried on with the aid of power or 40 or more workers where manufacturing process is being carried on without the aid of power.



About Kreston SNR



Kreston SNR is a full service advisory firm providing end to end business advisory services for any organisation carrying on business or looking to setup its business in India or overseas.



Head Quartered at New Delhi with branch offices at Pune & Bangalore, Kreston SNR caters to both domestic and overseas clients.



Engaged in providing India entry support, Tax, Accounting and Consulting Services to its Domestic and Overseas clients.

Also engaged in ESG and Sustainability services for corporates in India and overseas.



Our focus is to bring value to clients through the expertise of our team consisting of CAs, CS, legal & Management professionals.



The firm has an overall strength of around 70 team members and partners.

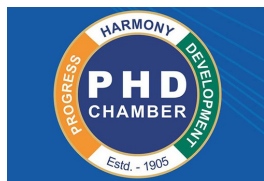
Membership



Kreston Global is a global network of independent accounting firms headquartered in UK. Founded in 1971 Kreston offers reliable and convenient access to quality services through member firms located around the globe.

Currently ranking as the 12th largest accounting network in the world, **Kreston** has more than 160 firms with 23,500 professional and support staff. Kreston Members are present in over 120 countries worldwide.

PHD Chamber of Commerce & Industry



Established in 1905, PHD Chamber is a proactive and dynamic multi - State apex organisation working at the grass-root level having strong national and international linkages.

The Chamber acts as a catalyst in the promotion of industry, trade and entrepreneurship. PHD Chamber, through its research-based policy advocacy role, positively impacts the economic growth and development of the nation.

What We Offer

Kreston SNR is committed to assist its clients in the following areas:

BUSINESS CONSULTING SERVICES



What We Offer

ENVIRONMENTAL, SOCIAL AND GOVERNANCE (ESG) SERVICES

- ESG Assessment
- ESG Framework Development
- ESG Strategy and Advisory
- Reporting and Engagement
- ESG Integration



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