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Selling to the Indian Market

Introduction

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India ranks among the world's top five retail markets. Yet, the Indian market remains highly fragmented. To succeed in this market, foreign retailers need to adopt a multifaceted strategy tailored to their specific business goals.

Moreover, the country's vast consumer market has significant regional variations in language, culture, religious beliefs, cuisine, customs, and social norms, all of which collectively influence consumer behavior and spending patterns. Further, the retail segment is closely regulated for foreign investment.

A successful market entry strategy demands careful consideration of all these factors, making local professional advice indispensable. This is why foreign retailers often choose to enter India through licensing arrangements with Indian partners and leverage local distribution networks.

In this edition of *India Briefing Magazine*, we explore the retail prospects in India as disposable incomes rise and online purchasing becomes ubiquitous. We also provide analysis of the various market entry routes for establishing a corporate entity in India and highlight key investment considerations for foreign retailers. Finally, we delve into the crucial decisions and regulatory compliances involved in selling foreign products in India.

With extensive experience in assisting foreign enterprises in establishing operations in Asia, Dezan Shira & Associates is well-equipped to help your company enter the Indian market. Our offices across India provide valuable local insights and expertise. For more information, please contact us at **india@dezshira.com**.

With kind regards,

Rohit Kapur

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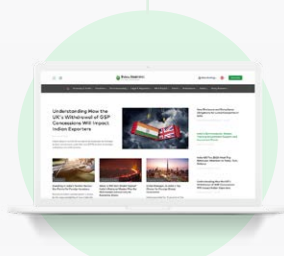

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Navigating Business Prospects in India's Retail Industry

India's retail industry is rapidly growing due to the entry of new players. With a large population, a growing middle class, and an emerging luxury spending cohort, foreign retailers have excellent prospects for business expansion in the Indian market.

Melissa Cyrill
Author

India's retail sector is experiencing robust growth driven by several factors. The country is experiencing a steady increase in national wages, rapid urbanization, and the emergence of the digital economy. Lower-tier cities no longer have to rely solely on physical stores, as an expanding network of last-mile logistics suppliers enables access to preferred brands through online platforms.

The retail landscape in India offers a wide array of choices, including global e-commerce platforms, single-brand shopping websites, multi-retail apps, and social media sellers. Furthermore, discretionary spending power is on the rise, with the average per capita income in India surpassing US$2000 and projected to exceed US$12,000 by 2047.

The substantial middle class and underserved consumer base in non-metropolitan cities have attracted the interest of several international retail giants seeking expansion into new markets. Branded products, such as apparel, cosmetics, jewelry, footwear, watches, food and beverage (F&B), and furnishings, are gaining popularity and becoming essential lifestyle items for both business and leisure purposes.

The era of social media and internet commerce has further accelerated two significant trends: product premiumization and a growing emphasis on health and sustainability. Indian consumers are increasingly making aspirational choices driven by their desired image.

Key growth drivers for the Indian retail industry

As India continues to evolve into a thriving consumer-driven economy, its retail industry is experiencing remarkable growth, making it one of the most attractive markets for businesses around the world.

Below we breakdown some of the factors driving greater investments into the consumer retail space in India.

Fourth largest retail destination

India has established itself as the fourth largest retail destination worldwide, providing a promising opportunity for businesses to expand their global sales networks.

During FY 2022-23, a significant surge in demand for discretionary and lifestyle products resulted in the rapid expansion of nearly a dozen listed retailers and quick-service restaurant chains across the country. Collectively, they added almost 4,700 stores to their network, averaging around 13 new stores per day. This expansion rate marked their most substantial growth in at least five years. India is projected to witness the opening of approximately 60 shopping malls, totaling 23.25 million square feet, in FY 2023-24.

The fast-moving consumer goods (FMCG), apparel and footwear, and consumer electronics segments are the largest segments in the Indian retail market, comprising 65 percent, 10 percent, and nine percent, respectively.

A Deloitte study titled "Future of Retail" predicts that India's online market will jump to US$325 billion in 2030 from US$70 billion in 2022. The organized retail market will grow to US$230 billion in 2030 from US$110 billion in 2022. However, the total value of the offline retail market will be U$1,605 billion in 2030, up from US$860 billion in 2022.

Second largest internet market

India currently ranks as the second largest internet market globally, with over 800 million internet users. The surge in smartphone users has propelled the growth of e-commerce platforms in the country. Online retail is projected to contribute 10.7 percent to the total retail market by 2024, a substantial increase from 4.7 percent in 2019. This provides businesses with the opportunity to reach a wide consumer base without the need for extensive physical stores, harnessing the potential of the digital economy to enhance their retail brand.

In 2021 alone, there were 1.2 million daily e-commerce transactions in India, and this number is expected to skyrocket, reaching 500 million online shoppers by 2030, up from 150 million in 2020. Consequently, the e-commerce market's gross merchandise value (GMV) is projected to reach US$350 billion by 2030. This presents a significant opportunity for businesses seeking to expand their presence and tap into India's thriving retail sector.

The majority of internet usage is reportedly increasingly dedicated to consuming short videos, and social media and short video content heavily influence the purchasing decisions of the youth demographic. Consequently, global retailers are also investing in social commerce channels and influencer marketing.

Multiple modes of payment

With improved internet access, the digital payment ecosystem in India is flourishing. Users and businesses have a wide range of options, including virtual cards, wire transfers, prepaid instruments (prepaid cards and digital wallets like Paytm, Google Pay, PhonePe, Apple Pay), as well as bank debit and credit cards.

Cashless transactions are gaining popularity among Indians for their daily expenses. The growth of digital payments in the past five years has been driven by the Unified Payments Interface (UPI), enabling real-time inter-bank transactions, and the Bharat Interface for Money (BHIM) app, simplifying the digital transaction process.

According to a report by Worldline India, as of Q2 2022, there were over 1 billion debit and credit cards in circulation in India, and UPI recorded more than 6 billion transactions per month. UPI is the dominant payment method, while credit cards are preferred for high-value transactions. Maharashtra, Tamil Nadu, Karnataka, Andhra Pradesh, and Kerala were the top five states with the highest transactions at physical merchant stores, while Hyderabad, Bengaluru, Chennai, Mumbai, and Pune were the top five cities.

In terms of digital transactions in 2022, Bengaluru led with 29 million transactions worth INR 65 billion, followed by Delhi with 19.6 million transactions worth INR 50 billion, Mumbai with 18.7 million transactions worth INR 49.50 billion, Pune with 15 million transactions worth INR 32.80 billion, and Chennai with 14.3 million transactions worth INR 35.50 billion.

In terms of consumer spending through electronic payment modes, grocery stores, restaurants, clothing and apparel, pharmacies, hotels, jewelry retail, specialty retail, household appliances, and departmental stores are the prominent categories. In the online space, e-commerce, gaming, utility, and financial services account for the majority of transactions.

However, despite the growing adoption of electronic payments in India, more than 75 percent of transactions still involve cash, especially for significant purchases like property transactions. As of October 21, 2022, the currency in circulation in India amounted to INR 30.89 trillion.

Growing consumer spending

India's expanding middle class is set to drive consumer spending, projected to increase from US$1.5 trillion in 2021 to nearly US$6 trillion by 2030. This shift presents significant business opportunities to meet the growing demand and capture a larger market share.

In 2023, consumer spending is expected to grow at a rate of 7.1 percent annually. While inflationary pressures have impacted post-pandemic spending recovery, discretionary purchases and non-essential spending are predicted to bounce back in 2024.

Per the Retailers Association of India (RAI), the organized retail sector witnessed a significant growth of 34 percent in FY 2022-23, surpassing pre-pandemic sales figures from 2019-20.

According to a report from ING, personal loan growth in India, which serves as an indicator of consumer spending, rose by 23.7 percent year-on-year in January 2023. Notably, loans for major purchases, such as vehicles and consumer durables, have demonstrated strong growth.

Premium is better

The trend of "premiumization" is impacting various product segments, ranging from chocolates and alcoholic beverages to electronics, clothing, and cosmetics. In certain categories like automobiles, the demand for premium products is surpassing the demand for entry-level options. For instance, in FY 2021-22, premium car sales witnessed a 38 percent year-on-year increase, while lower-priced car sales only grew by 7 percent. This shift is attributed to the evolving preferences of consumers, who now prioritize value and customization.

Previously, premium segments were predominantly targeted at high-net-worth individuals (HNWI), but they are now expanding to include millennials and consumers from non-metropolitan areas. Moreover, the customer base for luxury housing has also expanded beyond the typical high-net-worth and non-resident customers to encompass affluent middle-class individuals, largely due to the rise of remote and hybrid working models.

Post-pandemic revival of the luxury segment

Per data from McKinsey and the 2021 Knight Frank Wealth Report, the number of HNWI in India will grow 63 percent to 11,198 by 2025 from 6,884 in 2020. The number of US dollar billionaires are expected to increase from 113 in 2020 to 162 by 2025.

Further, 20 percent of luxury sales in India will be transacted online. Euromonitor International forecasts that the luxury market in India will reach a

Factors Influencing Consumer Brand Loyalty

- Brand name
- Logo and aesthethics
- Customer experience
- After sales service
- Celebrity association
- Instagram and other social media
- Sustainable practices
- Cultural linkages

Factors Influencing Consumer Brand Loyalty

Contextual rooted identity

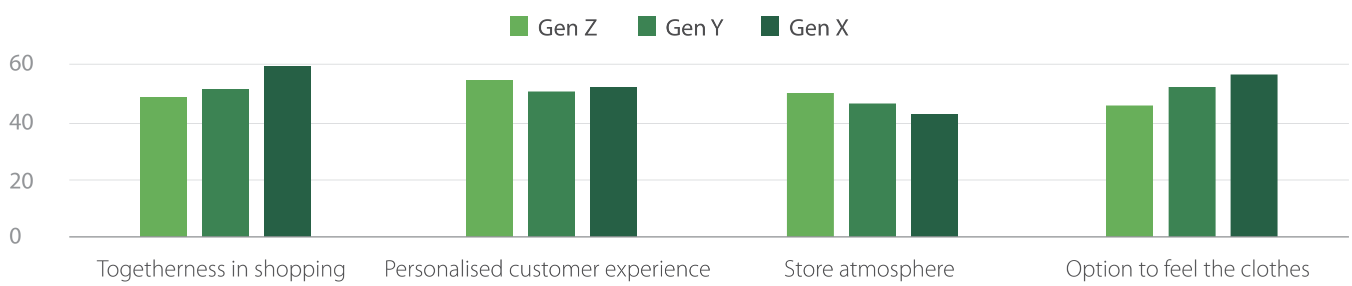
- Religion and tradition
- Family and kinship ties
- Spiritual and intangible needs
- Repressed and given identity

Context free identity

- Nationalistic modernism (Indian and western cultural mix)
- Individualism
- Material and tangible needs
- Creative persona and curating identity

Source: Vogue Business

Key Motivators for Offline Shopping



Only those who answered 'Strongly agree' or 'Agree' are included | *Source: Vogue Business* projected value of US$8.5 billion in 2023, an increase of US$2.5 billion compared to 2021. Luxury brands are seeking more real estate in India and are retailing at luxury brands-focused malls, concept and pop-up stores in metropolises like Mumbai and Bengaluru, as well as curated e-commerce platforms.

Booming retail market

According to a recent report by Anarock and Retailers Association of India (RAI), the organized retail sector in India is projected to grow at a 25 percent compound annual growth rate (CAGR). The Indian retail market is expected to reach US$1.1 trillion by 2027 and US$2 trillion by 2032, driven by a growing middle class. As such, the sector offers significant opportunities for businesses to thrive.

Despite the impact of the COVID-19 pandemic, the sector attracted US$1.47 billion in private equity (PE) investments between 2019 and 2022. However, the contribution of PE capital invested in retail real estate decreased from 16 percent in 2019 to 6 percent in 2022.

While India is primarily an offline market, the pandemic has influenced shopping and consumption preferences, leading to an increase in online commerce. Retail investors should consider both traditional and online channels. By 2024, offline retail is expected to hold approximately 89.3 percent of the total Indian retail market, down from 95.3 percent in 2019, according to the RAI report.

The online retail market is expected to reach a value of US$120-140 billion by FY 2025-26, with an annual growth rate of 25-30 percent over the next five years. In FY22, the sales volume of the overall organized retail segment was estimated to be US$52 billion and projected to grow to US$136 billion by 2028 at a 17 percent CAGR.

Retail leasing in India

Retail leasing in India experienced a significant 21 percent growth in 2022, primarily driven by the expansion plans of fashion retailers, hypermarkets, and restaurants, as stated in CBRE's report 'India Market Monitor 2022'. The report emphasizes optimistic growth prospects, supported by a strong supply pipeline and robust domestic demand. International brands, particularly in the F&B sector, are capitalizing on these opportunities, while domestic brands are witnessing increased demand for expansion. However, global challenges have resulted in temporary fluctuations.

Key sectors contributing to the leasing activity in 2022 include fashion and apparel, F&B, hypermarkets, homeware, and department stores. Bangalore and the Delhi-National Capital Region played a significant role, accounting for 61 percent of the leasing activity, while Chennai, Hyderabad, and Pune each held a nine percent share.

The retail leasing market is expected to gain momentum in tier-2, tier-3, and tier-4 cities in India as business activities in these areas accelerate and the purchasing power of these regions continues to grow. Several states in India are incentivizing businesses to establish their presence in non-metropolitan areas. With the rise of a hybrid workforce, this trend positively influences the spending capacity and categories of expenditure in these areas.

In another report by CBRE, 'India Retail Figures H2 2022', it was noted that international brands like Tim Hortons, Victoria's Secret, and Uniqlo expanded their operations in July-December 2022, despite global challenges and post-pandemic economic fluctuations. Retailers focused on opening larger establishments in prominent locations to enhance the shopping experience for customers. According to data provided by property consultancy firm Anarock, the proportion of transactions involving retail spaces in India ranging from 2,000 sq ft to 5,000 sq ft rose to 28 percent in 2022 from 24 percent the year prior.

Furthermore, many brands focused on expanding in tier-2 cities. Tim Hortons entered Ludhiana, Uniqlo opened its first store in Chandigarh, and Dehradun welcomed Starbucks, Biba, and Shopper's Stop.

In metro areas, notable brands like Pottery Barn, Adidas, Zara, Nike, and Azorte launched flagship stores and expanded their presence. Apple opened its first two stores in India in Mumbai and New Delhi. Brands like Zara and H&M invested in store revamps as they diversified their product lines. Starbucks recorded its fastest store expansion in FY 2022-23, adding 71 new stores.

Meanwhile, Ikea, the Swedish furniture retailer, has opened large-format stores in Hyderabad, Navi Mumbai, and Bengaluru, along with city stores in Mumbai. The retailer had allocated a significant budget of INR 105 billion (US$1.27 billion) for

Classification of City Tiers in India

Metropolitan areas and cities with a population of 100,000 and more are classified as tier-1 cities in India. They are Bangalore, Chennai, Delhi, Hyderabad, Kolkata, Mumbai, Ahmedabad, and Pune.

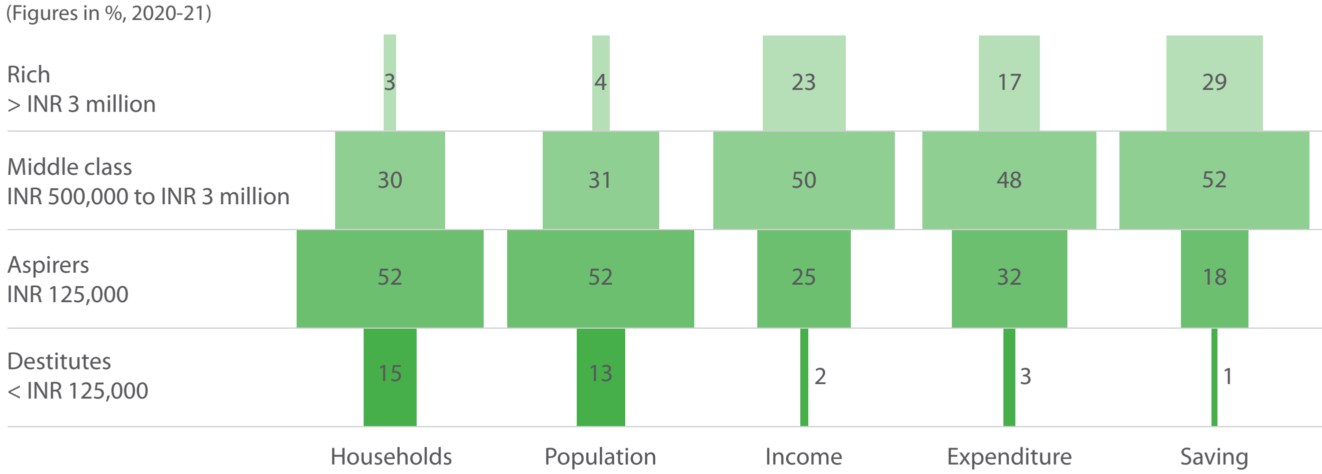
Cities with a population ranging from 50,000 to 100,000 are classified as tier-2 cities, while those with a population of 20,000 to 50,000 are categorized as tier-3 cities. Tier-4 cities, on the other hand, have a population of 10,000 to 19,999.

However, the classification of many cities may be outdated as they are categorized per census findings. The 2021 Census has been postponed multiple times due to the pandemic, with the latest extension set for October 2023. India surpassed China to become the world's most populous country in 2023, and the median age in India is 28.2 years.

Many lower tier cities in India are now important business destinations due to strong connectivity with metropolitan hubs through multi-modal logistics networks. These cities offer lower operational costs and access to a flexible labor market.

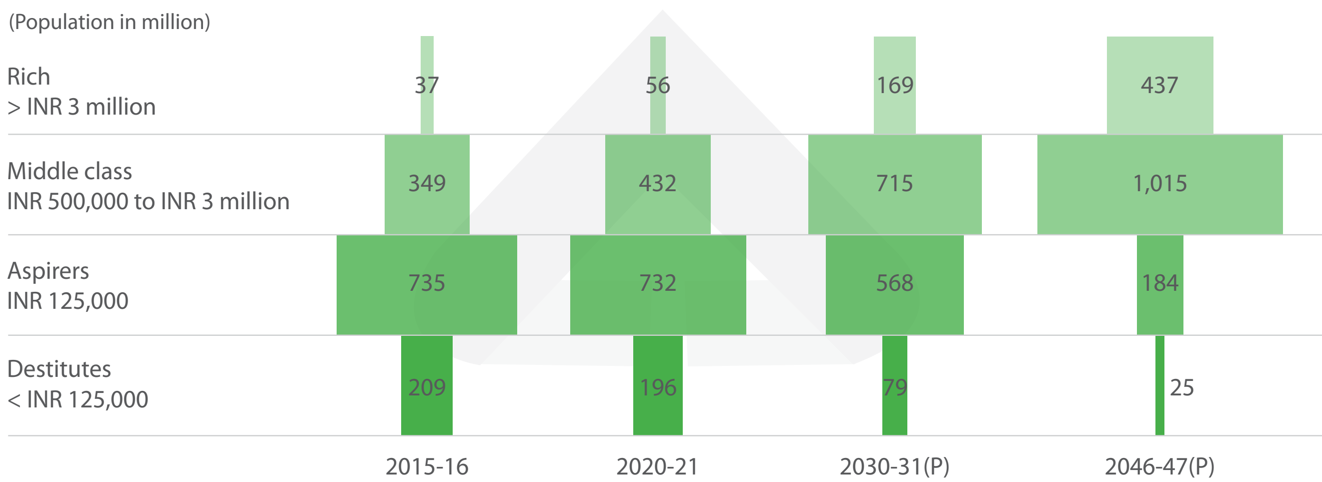
Further, educational institutions are often located on the outskirts of major cities, providing a talent pipeline. As a result, many of these cities are key nodes in local industrial ecosystems and host suppliers to major manufacturers.

Contribution of India’s Middle Class to Income, Spending, and Savings



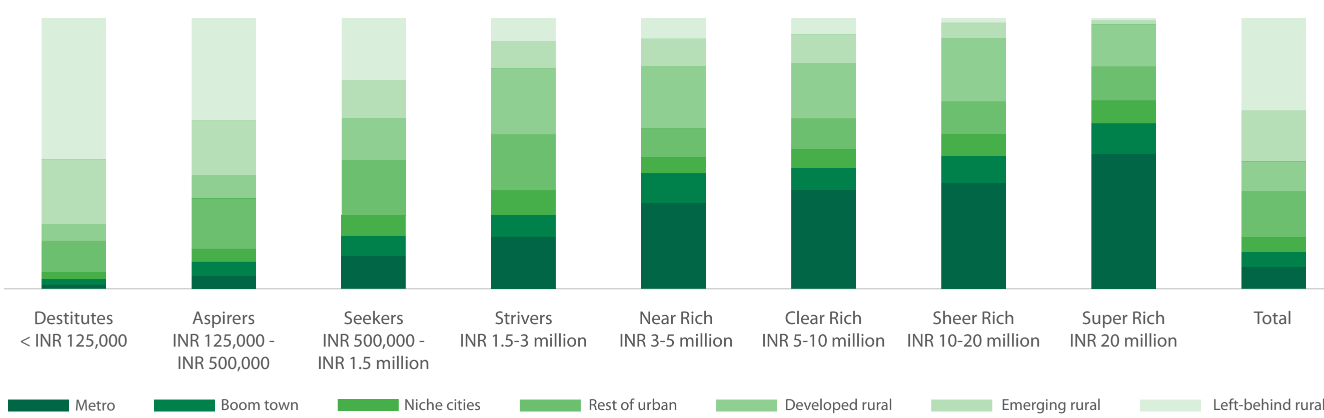
*Annual household income at 2020-21 prices

India’s Population by Income Category – Projection to 2047



*Annual household income at 2020-21 prices

Where Do India's People Live by Income Level



Source: Gearing Up for a Billion-Plus Middle Class by 2047, 2022 Report by PRICE the Indian market in two investment phases. Its parent company, Ingka Group, recently set aside INR 75 billion to open two shopping centers in the Delhi-NCR region. Ikea also operates e-commerce platforms in select cities across India – Bengaluru, Mumbai, Pune, Ahmedabad, Vadodara, and Surat.

Based on the latest investor data, as of March 31, 2023, a group of companies consisting of Reliance Retail, Aditya Birla Fashion & Retail (ABFRL), DMart, Tata's Trent, Titan Co, and Starbucks collectively operated a staggering 30,520 stores. This was a substantial increase from a total of 25,821 stores in 2021-22. Reliance Retail, ABFRL, and Trent have successfully introduced numerous international brands to the Indian market.

Overall, the retail leasing market in India is witnessing dynamic growth, with both domestic and international brands expanding their footprint and capitalizing on the opportunities presented by different city tiers.

Rising economic power of non-metro cities

A survey conducted by the think tank People Research on India's Consumer Economy (PRICE) focused on 63 cities in India with a population exceeding one million in 2021. The survey revealed that these cities comprised a significant portion of India's middle class (27 percent) and wealthy population (43 percent).

Additionally, these cities contributed 29 percent of the country's household disposable income, 27 percent of total spending, and 38 percent of total savings. The report categorized the surveyed cities into seven groups based on annual household income, considering an average household size of 4.6.

The cities were further classified as metros (nine cities), boomtowns (16 cities), niche cities (38 cities), and a category referred to as "rest of urban."

In metros and boomtowns, more than half of the households fell into the middle-class category, defined as having an annual income ranging from INR 500,000 to INR 3 million.

The nine metros, namely Mumbai, Delhi, Kolkata, Bengaluru, Chennai, Hyderabad, Surat, Ahmedabad, and Pune, represented the largest markets in terms of household disposable income and total consumption expenditure. On the other hand, boomtowns, which are emerging large markets, had a young population and exhibited the fastest growth in disposable income.

Notable lower-tier cities in this category included Bhopal, Coimbatore, Indore, Jaipur, Kanpur, Kannur, Kochi, Kozhikode, Lucknow, Madurai, Malappuram, Nagpur, Nashik, Thiruvananthapuram, Thrissur, and Tirupur.

Summary

India's thriving retail market, along with its growing middle class, expanding consumer spending, and digital growth, make it a highly attractive destination for businesses seeking growth opportunities.

With the right strategy and approach, investing in the Indian retail market can prove to be a highly profitable decision for businesses looking to expand their global footprint.

Market Entry Routes and Retail Strategy

India is a vast consumer market with significant regional, cultural, and socioeconomic diversity. However, various protectionist measures are in place that restrict foreign investment in the retail space. Foreign brands must carefully navigate the terms and conditions associated with the acceptable entry routes, such as licensing agreements, joint ventures and partnerships, and franchises.

Melissa Cyrill
Author

India is the world's fourth largest retail market and the 16th-ranked country on the 2023 FDI Confidence Index.

The retail industry in India accounts for more than 10 percent of the country's GDP and employs approximately eight percent of the population. A wide range of foreign brands are active in the Indian market, across the consumer spectrum.

Setting up in India

While setting up in India, foreign companies should choose an entity structure that caters best to their need. The selection of the right entity structure will help the company establish itself as a strong player in the Indian market and help them reap financial gains.

Options for foreign brands operating in India include establishing an Indian subsidiary, forming joint ventures or having licensing arrangements with Indian partners, or a combination of these structures. Foreign brands can own equity interests in Indian businesses under India's FDI policy, which sets requirements and permissions for foreign investment.

Alternatively, franchisors can grant franchise rights to local franchisees through contractual agreements.

Franchising model

Franchising is well-suited to India's current growth and urbanization trends, aligning with the proliferation of malls that serve as hubs for franchises in affluent metropolises, tier-2, and tier-3 cities.

Companies that can adapt their products to regional preferences and create new market niches have a golden opportunity to tap into India's thriving consumer demand and aspirations.

Popular Market Entry Routes in India

Liaison office (LO) or Representative office (RO): These entities are used for networking, exploring market opportunities, and promoting the parent company's business activities. Setup time typically takes 1-3 months. The compliance requirements include having an Authorized Representative residing in India with a valid Permanent Account Number (PAN) and filing information with the Income Tax Department.

Tax audits are not applicable, but financials are subject to statutory audit. Transfer pricing is not applicable. Since there is no income accrual, no income tax is imposed. However, the parent company should have a profit-making track record in the home country, and the net worth should be at least US$50,000.

The LO/RO cannot conduct business and can only serve as a communication channel. The permission to set up is granted for a 3-year period, subject to review for extension. The entity must sustain itself through private remittances from the parent company.

Limited liability partnership (LLP): An LLP is a hybrid of a partnership firm and a company. It can undertake activities as defined in the LLP Agreement, subject to the FDI Policy if foreign direct investment is intended. Setup time is 1-3 months.

Tax audits are required if the LLP's annual turnover exceeds INR 50 million, and transfer pricing norms apply. The LLP is taxed at a rate of 30% (plus applicable surcharge and cess). There is no withholding tax on repatriation of partners' share of profit, although partners may be subject to tax in their receiving country. Profits after tax can be repatriated to foreign partners as defined in the LLP Agreement. There are no minimum capital requirements, and an LLP may sustain itself through various means, such as partner's capital, loans, or income generated by the LLP.

Wholly owned subsidiary (WOS): A WOS is set up as a private limited liability company in sectors where 100% FDI is allowed. The company can undertake activities as stipulated in the Memorandum of Association, subject to Indian laws and regulations. Setup time is 1-3 months.

Financial audits are mandatory, and tax audits are required for turnover exceeding INR 50 million. Transfer pricing is applicable. The tax rate varies based on turnover. Repatriation of various fees and transactions is subject to withholding tax as prescribed in the Double Taxation Avoidance Agreement (DTAA).

There is no minimum capital requirement, and the company can sustain itself through various means such as share sales, loans, equity partners, income generated by the company, or ECB if eligible. Incorporating a company may require prior approval from the Government of India, depending on the activities and FDI route.

Overall, these market entry options offer different structures, compliance requirements, and financial considerations, allowing businesses to choose the most suitable option based on their objectives and operations in India.

India's franchise industry has been experiencing steady growth, with well-established brands expanding their presence and new franchise concepts emerging. Projections indicate that the Indian franchise industry will exceed INR 70 billion (US$845.09 million) by 2025. Currently, the industry employs over 1.5 million people and contributes nearly four percent to India's GDP.

Although several global franchisors are already operating in India, there is still ample room for expansion, as franchises represent only a fraction of the overall market. The franchising sector in India is expected to grow at a compound annual growth rate (CAGR) of 30 percent through 2025, driven by factors such as the expanding middle class with disposable income, favorable government policies, and a growing awareness of franchising as a viable business model.

Examples of foreign franchises in India are The Gap, Inc., which entered India in May 2015 through franchise pact with Arvind Lifestyle Brand, Everstone Capital's master franchisee pact with Burger King in India, and Rebel Foods master franchisee rights for Wendy's offline business in India.

Routes to Enter India's Retail Market

Single brand – Apple Inc., Ikea, Uniqlo, H&M, Decathlon, AstorMueller AG

Joint venture partnerships – Marks & Spencer and Reliance Retail, Zara and Tata-owned Trent Ltd., Starbucks and Tata Global Beverages

Cash-and-carry / wholesale – Metro AG [Sold to Reliance Retail], Walmart [Merged wholesale business with Flipkart business]

Multi-brand – FDI restrictions on supermarket retail.

Food-only retail – FDI restrictions have failed to attract foreign retailers.

Franchisees – Domino's Pizza, 7-Eleven, Valentino, Victoria's Secret, Tim Hortons, Spar Supermarkets, Charles & Keith, Superdry, Sephora, Estee Lauder, Mango, Toys "R" Us, New Balance, US Polo Assn

Franchise entry strategy

In India, there are various options available for franchises:

1. **Direct franchising:** Direct franchising involves a company establishing a network of franchises directly. This approach is suitable for local companies that already have experience in India. However, it may present challenges for foreign companies entering the Indian market for the first time.
2. **Master franchising:** Master franchising entails a company granting exclusive rights to develop a foreign brand to a local entity. Often, the franchisor makes a significant investment in this arrangement. The master franchisee assumes responsibility for expanding the company's brand by either cultivating a network of sub-franchises or opening outlets owned by the master franchisee. These two approaches can be pursued simultaneously.
3. **Regional franchising:** Regional franchising operates similarly to master franchising but

focuses on a specific regional area rather than the entire country. Given India's diverse culture and complex state-specific laws, many franchisors opt for a regional franchising strategy.

4. **Local incorporation:** Local incorporation involves a foreign franchisor establishing a subsidiary company and granting it franchising rights in India. For example, the American fast food chain Subway has set up a subsidiary in India that manages their franchising network.

Appeal of the franchising strategy

With more than 10,000 registered franchises and 3,500 active ones, India offers abundant opportunities for both investors and entrepreneurs. For investors, it provides a relatively low-risk entry into a new market. For entrepreneurs, it presents a chance to establish their own business with the support of an established brand.

The Indian government has demonstrated its commitment to the franchise industry by implementing measures to foster its growth, including the establishment of the National Franchise Development Centre (NFDC) and the launch of the Franchise India Brand Show (FIBS). With a promising growth trajectory and supportive government policies, the franchise business is poised for even greater success in India.

Legal and regulatory landscape

While India lacks a specific franchise law, legislation that apply to commercial arrangements are also relevant to franchise agreements. These include the Indian Contract Act 1872 (the Contract Act), the Sale of Goods Act 1930, the Specific Relief Act 1963, The Foreign Exchange Management Act (FEMA), 1999, Insolvency and Bankruptcy Code 2016, the Goods and Services Tax Act, 2017, Consumer Protection Act 2019, the Consumer Protection (E-Commerce Rules) 2020, The Competition (Amendment) Act 2023, and Prevention of Money Laundering (Maintenance of Records) Amendment Rules, 2023.

Indian foreign exchange control regulations govern payments between Indian franchisees and international franchisors.

Trademark registration and enforcement are essential for brand protection in India. Indian courts, however, have demonstrated recognition and protection of internationally reputed trademarks, even if not registered in India. Various cases involving brands like Calvin Klein, H&M, Skechers USA, Crocs Inc, McDonalds' have addressed trademark infringement and provided trade redress. India's customs laws also prohibit the import of infringing goods. Know-how may be protected under copyright or patent laws, or through contractual provisions.

Licensing agreements

A licensing agreement is a contract between two parties, namely the licensor and the licensee. It involves the licensor granting the licensee the rights to use their trademark, brand name, patented technology, or the ability to produce and sell goods that are owned by the licensor. Through this agreement, the licensee gains the privilege to utilize the licensor's intellectual property.

The primary purpose of a licensing agreement is for the licensor to capitalize on their intellectual property by allowing the licensee to utilize it and generate revenue. For example, Apple Premium Resellers like Aptronix are third-party stores that have acquired a license from Apple to sell its products in India.

India imposes certain conditions and restrictions on foreign equity in the retail sector, prompting several international brands to operate in the country through local franchises and distributors. Through licensing agreements, global retailers can establish partnerships with Indian companies. The Indian company pays a fee to the brand owner and invests in marketing and launching the brand in India. Sometimes, the brand owner may invest in the Indian retailer to expand its brand presence instead of receiving brand fees or royalties. Examples of companies that entered India's retail market through franchise agreements are Gap Inc., Aeropostale Inc., and Ipanema.

Reliance Brands Limited has brought to India 50 international brands, some of whom have their largest markets in the country. These include Armani Exchange, Burberry, Bottega Veneta, Dune, Hugo Boss, Emporio Armani, Giorgio Armani, Hamleys, Jimmy Choo, Kate Spade, Marks & Spencer, Paul Smith, Potter Barn, Tiffany & Co., Tod's, Tumi, West Elm, among others. The Aditya Birla Fashion and Retail Limited (ABFRL) portfolio includes multi-brand and single brand retailers, such as The Collective, Simon Carter, Ted Baker, American Eagle, Ralph Lauren, Hackett London, Louis Philippe, Van Heusen, Allen Solly, Peter England, to mention a few. In 2022, ABFRL bought the exclusive rights from Adidas AG to sell and distribute Reebok products in India and the ASEAN market. ABFRL holds online and offline rights to the Indian network of California-based fashion brand Forever 21. ABFRL has also entered a strategic partnership with the Galeries Lafayette to open luxury department stores and a dedicated e-commerce platform in India.

Interestingly, the Chinese fast fashion retail giant Shein will re-enter the Indian market via a licensing agreement with Reliance Retail Ventures Limited (RRVL). Shein will grant a license for its technology and trademarks to Reliance Retail. As part of this collaboration, a homegrown e-commerce retail platform tailored for Indian customers will be developed, exclusively featuring Shein branded products. Ownership and control of the platform will be with RRVL's Indian subsidiary. While 93 percent of Shein's sourcing is from China, the partnership with RRVL involves integrating 25,000 MSMEs. Depending on the outcomes, this arrangement could serve as a model for future international partnerships in the retail sector. Shein has revolutionized the fast-fashion e-commerce model as it utilizes market information to anticipate upcoming trends. As part of its production strategy, Shein adopts a small-batch approach and

Most Profitable Franchises in India

Beauty and wellness	Food and beverage	Fashion retail	Jewelry Retail	Healthcare and Diagnostics
Jawed Habib's hair and salon	Subway	Puma	Malabar Gold & Diamonds	Thyrocare
Affinity Salon	KFC	FabIndia	Tanishq	Apollo Diagnostics
Looks Unisex Salon	Pind Balluchi	Bata	Kalyan Jewellers	Dr Lal Pathlabs
Shahnaz Husain Group	Kake Di Hatti	Liberty Shoes	Gitanjali Jewellers	Lifecare Diagnostics
	Bikanervala			

maintains low inventory levels to conduct market testing. Its proximity to outsourced manufacturers has enabled faster transactions, collaboration, and product movement. It remains to be seen therefore whether the Shein-RRVL partnership can replicate this online retail success, and at scale.

FDI regulation in India

Prior to setting up, the foreign stakeholder must assess India's regulation of foreign direct investment (FDI). Most sectors are now liberalized, but India closely scrutinizes foreign investments into the retail sector.

For investments made under the government approval route, foreign investors must obtain prior clearance from the respective ministry or department. In contrast, investments made under the automatic route only require the investor to inform the Reserve Bank of India (RBI) after the investment is made.

Below we discuss the FDI policy as it applies to key retail categories.

Single brand retail

India is open to foreign investment in single brand product retail trading (SBRT) for production and marketing purposes.

The government's policy aims to improve consumer access to high-quality goods, promote greater sourcing from India, and enhance the competitiveness of Indian enterprises by facilitating access to global designs, technologies, and management practices.

FDI in single brand product retail trading is subject to certain conditions, which include:

- The products to be sold must belong to a single brand only.
- The products should be sold under the same brand internationally, in one or more countries other than India.
- Single brand product retail trading encompasses only products that are branded during the manufacturing process.
- A non-resident entity, whether the brand owner or not, can engage in single brand product retail trading in India either directly or through a legally valid agreement with an Indian entity.

For proposals involving foreign investment beyond 51 percent, the SBRT entity is required to source 30 percent of the value of goods from India, preferably from micro, small, and medium enterprises (MSMES), village and cottage industries, artisans, and craftsmen across all sectors. The company must self-certify the quantum of domestic sourcing, which will later be verified by statutory auditors based on certified accounts maintained by the company. The initial five-year average value of goods procured must meet the sourcing requirement, followed by an annual basis fulfilment.

Regarding the local sourcing requirement, all procurements made from India by the SBRT entity for that single brand count towards local sourcing, regardless of whether the goods are sold domestically or exported. The SBRT entity can also offset sourcing of goods from India for its global operations against the mandatory 30 percent sourcing requirement.

An SBRT entity operating physical retail stores can also engage in retail trading through e-commerce. However, if e-commerce operations commence before opening brick and mortar stores, the entity must establish physical stores within two years from the start of online retail.

These conditions do not apply to the SBRT of Indian brands, which must be owned and controlled by resident Indian citizens or companies owned and controlled by resident Indian citizens.

In 2018, an update was made to the FDI policy, exempting Indian entities of global retailers with FDI exceeding 51 percent from the local sourcing requirement for up to three years from the start of their business, if their products involved state-of-the-art and cutting-edge technology where local sourcing is not feasible. After three years, the SBRT entity must comply with the 30 percent sourcing norm.

These regulations can pose challenges for foreign investors dealing with such products. An alternative approach is to limit FDI to 51 percent and find a local partner to hold the remaining 49 percent.

Multi-brand retail

India has laid down conditions for permitting FDI in multi-brand retail trading or MBRT in all products. These are as follows:

- Fresh agricultural produce, including fruits, vegetables, flowers, grains, pulses, fresh poultry, fishery, and meat products, which may be unbranded.
- Minimum FDI amount from foreign investors must be US$100 million.
- At least 50 percent of the initial US$100 million FDI must be invested in back-end infrastructure within three years. Back-end infrastructure includes capital expenditure on processing, manufacturing, distribution, design improvement, quality control, packaging, logistics, storage, warehousing, and agriculture market produce infrastructure. Subsequent investments can be made by the MBRT retailer depending upon its business requirements.
- A minimum of 30 percent of the procurement value of manufactured/processed products must be sourced from Indian MSME industries with an investment not exceeding US$2 million in plant and machinery. Agricultural and farmers cooperatives can also be considered and there are procurement requirements attached.
- Companies must self-certify compliance with the stipulated FDI conditions and maintain audited accounts.
- Retail sales outlets can only be established in cities with a population of over 1 million. They may also cover an area of 10 km around the city limits, conforming to Master/Zonal Plans.
- The Government has first right of procurement of agricultural products.
- State Governments/Union Territory Governments have the freedom to decide on implementing the FDI policy provisions. The following States/Union Territories have agreed to allow FDI in multi-brand retail trading: Andhra Pradesh, Assam, Delhi, Haryana, Himachal Pradesh, Jammu & Kashmir, Karnataka, Maharashtra, Manipur, Rajasthan, Uttarakhand, Daman & Diu, and Dadra & Nagar Haveli. The establishment of retail sales outlets must comply with applicable State/Union Territory laws and regulations.

FDI Limits Based on Retail Activity in India		
Sector/activity	**Percent of equity/ FDI cap**	**Entry route**
Cash & carry wholesale trading/wholesale trading (including sourcing from MSEs)	100%	Automatic
E-commerce – marketplace model	100%	Automatic
Single brand product retail trading	100%	Automatic
Multi-brand retail trading	51%	Government approval required
Duty free shops	100%	Automatic

Note: FDI is not permitted in the inventory-based e-commerce model.

- E-commerce retail trading is not permitted for companies with FDI in multi-brand retail trading. Also FDI is not permitted for the inventory-based model of e-commerce activities. In this model, an e-commerce startup or entity owns the inventory of goods and services and sells them directly to consumers.

Duty Free

These are establishments located in customs bonded areas at international airports, seaports, and land custom stations where international passengers transit. Foreign investment in Duty Free Shops must adhere to the Customs Act, 1962, and other applicable laws and regulations. Duty Free shops cannot conduct retail trading activities in the domestic tariff area of India.

Summary

When entering the Indian market, foreign companies must carefully choose the appropriate entity structure that suits their needs. The country's FDI policy allows foreign brands to have equity interests in India businesses, but with specific requirements and permissions. Foreign brands in India have various options, such as establishing an Indian subsidiary, forming joint ventures, or entering licensing agreements with Indian partners. Franchising is a viable model, considering India's growing consumer base, increasing disposable incomes, and urbanization trends.

FDI Rules Applicable in the E-Commerce Sector

To adhere to the FDI Policy, B2B e-commerce businesses must:

- Sell to entities with relevant tax registration, trade licenses demonstrating commercial activity, permits for retail business, or specific institutions (such as incorporated companies) for self-consumption purposes.
- Maintain daily records with entity details, registration, license number, and sales amount.
- Limit sales to affiliated companies to 25% of total turnover.

Moreover, the FDI Policy imposes additional obligations on marketplace B2C e-commerce entities:

- These include prohibiting the manipulation of prices on goods and services and preventing the marketplace entity from enforcing exclusive selling arrangements with sellers.

However, marketplace entities can provide support services to sellers, such as warehousing, logistics, order fulfillment, call center support, and payment collection services.

Key Considerations Before Selling Foreign Products in India

India's highly fragmented market requires foreign retailers and brands to customize their strategy to suit their target customer base. Foreign companies are advised to adopt a multifaceted approach that factors both specific business objectives and local sensitivities.

Melissa Cyrill
Author

The retail sector in India is experiencing rapid growth, making it one of the country's fastest-growing business segments. The Indian retail market is expected to grow to US$1 trillion by 2027 and US$2 trillion by 2032. India's e-commerce industry is also on the rise, with revenue forecasted to increase from US$46.2 billion in 2020 to US$136.47 billion by 2026. The country is poised to become the world's fastest-growing e-commerce market, driven by significant investments in technology, infrastructure, and a growing number of internet users.

Below we delve into some key considerations, including the challenges of doing business in India, best practices for selling to the Indian market, and insights on product pricing and regulation.

Challenges posed by the nature of the Indian market

Entering the Indian market poses challenges and complexities for new entrants due to various factors.

- **Market fragmentation:** India's vast size, cultural diversity, linguistic variations, and uneven infrastructure development contribute to market fragmentation. These factors make it challenging to create a unified approach to target consumers effectively.
- **Low per capita income:** The average per capita income in India is relatively low, standing at US$7,333 in 2021-22. This lower purchasing power can affect consumer spending patterns and pose challenges for companies looking to penetrate the market with premium or high-priced products.
- **Costly sales infrastructure:** Establishing and maintaining independent sales infrastructure can be costly in India. Companies often need to invest significant resources in building distribution networks, logistics, and retail channels to reach the diverse consumer base spread across the country.
- **Large retail outlet density:** India boasts a vast number of retail outlets, estimated to be around

12-15 million. These outlets are distributed across various urban and rural centers, and many of them are small and unorganized. Navigating this dense retail landscape can be challenging, especially for companies without established distribution networks.

- **Strong local competition:** The Indian market is highly competitive, with strong local players dominating various sectors. Existing local brands and businesses have established customer loyalty and market presence, making it crucial for new entrants to differentiate themselves and offer unique value propositions to attract consumers.

Navigating these challenges requires a thorough understanding of the Indian market, careful planning, and customized strategies tailored to local preferences and market dynamics.

Distribution and logistics

The distribution and logistics landscape in India involves a three-tier structure of distributors, wholesalers, and retailers. Independent distribution and logistics firms have emerged, offering services to retailers. The use of free trade and warehousing zones near ports and airports facilitates efficient distribution and logistics. Foreign companies should consider appointing agents, representatives, or distributors and conduct thorough due diligence before entering into partnerships.

Retail distribution strategy

Retail distribution encompasses the strategic process by which a business procures products from manufacturers and delivers them to the end customers. This distribution strategy can involve various channels, such as wholesale and direct-to-consumer sales, use of intermediaries or resellers, and independent distributors. Foreign retailers must note the restrictions under India's foreign direct investment (FDI) policy before choosing their retail market entry route and distribution channel.

Warehousing

The Indian government encourages companies to enter the Indian market by facilitating the use of free trade and warehousing zones (FTWZ). These zones, primarily situated near seaports, airports, and inland ports, improve efficiency in distribution and optimizes logistics costs. They enable easier importation, exportation, warehousing, and utilization of value-added services.

FDI up to 100 percent is permitted for the development and establishment of FTWZs and their associated infrastructure facilities. Almost all goods for warehousing can be imported duty-free to these zones, with a few exceptions like prohibited items like arms and ammunition, hazardous waste, special chemicals, organisms, materials, equipment, and certain technology items.

Customs duties are only levied when goods imported into the FTWZ are sold in the market. The maximum duration for storing products in an FTWZ is two years, after which they must be either re-exported or sold. If the items are not re-exported within a three-month grace period after the two-year limit, customs duties become due automatically.

Forging business critical networks and due diligence

Before entering into a partnership with an Indian firm, thorough due diligence is crucial. Evaluating factors such as the firm's business reputation, financial resources, investment capacity, marketing strength, regional coverage, industry experience, and creditworthiness is important. An ideal distributor should have strong connections in the financial sector, offer credit facilities, and be capable of effectively promoting a wide range of products and services. It is essential for agents, representatives, or distributors to maintain high-quality facilities and employ qualified personnel.

Foreign companies need to exercise caution and not solely rely on a potential partner's enthusiasm. Indian companies often represent multiple businesses and may have limited time or capacity to expand into new markets. It is important to be vigilant as client lists provided by potential partners could be outdated or inactive.

In India, it is a misconception that large national distributors always have an advantage. Smaller distributors with localized presence and expertise in specific regions or niche markets can outperform larger distributors in certain cases. While India is moving towards modern distribution channels, most businesses still operate through fragmented and multi-layered networks. Therefore, selecting distributors based on their experience with specific products may be more viable than those claiming broader geographic coverage.

Brand awareness and pricing

In order to succeed in India's highly fragmented market, foreign retailers and brands need to tailor their strategies to cater to their specific target customer base.

Brand awareness in India can be achieved through various advertising channels, such as television, digital media, print media, and social media platforms.

Pricing strategies must consider factors like India's Goods and Services Tax (GST), customs duties on imported goods, and preferences for quality and lower prices. Bargaining is common, and online shopping festivals have gained popularity. Product durability, after-sales services, and meeting consumer expectations are crucial for long-term market dominance and customer loyalty.

Regulatory standards

Regulatory standards in India include the Bureau of Indian Standards (BIS) certification scheme and the Food Safety and Standards Authority of India (FSSAI) for food standards. BIS certification may be mandatory for certain products, and the FSSAI promotes fortified products and clean food labels. Foreign products must comply with labeling requirements and other regulations.

Labeling requirements

Foreign products intended for direct consumption in India must comply with specific labeling requirements. These requirements may differ from international norms, and products that are improperly labeled may be rejected or detained by customs officials.

For non-food commodities intended for direct retail sale, the labeling must include the importer's name and address, the generic or common name of the commodity, net quantity in the metric system, month and year of packing, and the maximum retail price (MRP) including taxes and other charges. Labels should be in English or Hindi.

Packaged food labels must include the name or description of the product, ingredients in descending order, manufacturer/packer's complete address, country of origin, net weight or volume, batch or code number, manufacturing and packaging dates, best consumption period, MRP, and the FSSAI logo with the license number.

Additional requirements include indicating whether the food is vegetarian or non-vegetarian using specific symbols, mentioning irradiation and coloring material if applicable, and ensuring bold and clearly visible declarations in either English or Hindi.

If packaged food products lack proper information, a single label may be affixed at the customs bound warehouse with the importer's name and address, FSSAI logo and license number, Veg or Non-Veg logo, and category/subcategory information for proprietary food.

Making use of free trade agreements

Foreign companies seeking to sell their product offerings in the Indian market should explore whether they can tap into India's free trade agreements (FTAs). FTAs cover trade in goods (such as agricultural or industrial products) or services (such as banking, construction, trading), intellectual property rights (IPRs), investment, government procurement and competition policy, and doing business in the digital economy. A key provision in FTAs is the reduction in tariffs but these are usually accompanied by strict rules of origin (ROO).

Besides tariff relaxation and elimination, FTAs seek to facilitate trade with international markets by addressing non-tariff barriers, such as licensing requirements, market subsidies, public procurement, dispute resolution mechanisms, etc.

So far, India has signed 13 free trade agreements with its trading partners, three of which have been signed in the last five years, namely the India-Mauritius Comprehensive Economic Cooperation and Partnership Agreement (CECPA), India-UAE Comprehensive Partnership Agreement (CEPA), and India-Australia Economic Cooperation and Trade Agreement (IndAus ECTA).

Summary

A successful strategy to sell your products and services in India requires a multifaceted approach. This includes choosing the right entry strategy based on in-depth analysis of consumer preferences, existing sales channels, and the evolving landscape of distribution and marketing practices. India, being a vast consumer market, exhibits significant cultural regional diversity. Moreover, different regions vary in terms of their socioeconomic profiles thereby impacting spending capacity or decision making.

All these factors influence consumer purchasing behavior; it is not uncommon for certain brands to enjoy higher consumer affection in certain parts of the country than others. Customizing your retail strategy, such as by localizing marketing campaigns, product innovation, and cultivating digital appeal, may position you for success in the Indian market.