

Corporate Counsel's Guide to

# DOING BUSINESS IN INDIA, 3D

2012 EDITION

KENNETH A. CUTSHAW  
ROHIT KOCHHAR  
KOCHHAR & CO.

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# **Corporate Counsel's Guide to Doing Business in India, 3d**

**2012 Edition**

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By

**Kenneth A. Cutshaw**

**Rohit Kochhar**

**Kochhar & Co.**

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## About the Authors

This book has been written by experts in the field of Indian law and business. The concerted effort of Kenneth A. Cutshaw and Kochhar & Co., one of India's largest corporate commercial law firms, was required to bring this intensive and comprehensive effort to the final publication of this work. Several partners and associates of Kochhar & Co. have authored chapters based on their expertise in the legal field. The result is indicative of the pride taken by the authors and contributors in producing a book that is for the benefit of both an American and Indian businessperson and lawyer.

### **Kenneth A. Cutshaw**

Kenneth A. Cutshaw is an accomplished globalist—assuming career assignments in business, legal, academic and government. Cutshaw has functioned from the C-suite to the board room to operations in business and educational arenas. Cutshaw has led an expansion of a global restaurant chain, taught a graduate global business course at three universities for more than a decade, was a key participant in the international development of export controls after the dissolution of the Soviet Union, was an executive of The 1982 World Exposition, and is recognized for co-founding a post-Soviet private university in the Country of Georgia where he served as its first Dean of Law and continues as International Provost. His career began in 1979, and since then Cutshaw has excelled in a wide spectrum of work environments including C-level business management, law, academics, entrepreneurial ventures, government, and foreign policy.

Currently, Cutshaw is an Executive Vice President, Chief Legal Officer and Secretary of Cajun Operating Company, a private company based in Atlanta, Georgia. Cajun is franchisor and operator of Church's Chicken and Texas Chicken restaurants globally. Cutshaw manages the legal affairs/government relations of the Company, has led a global expansion of the Church's and Texas Brands, and governs compliance issues. Cutshaw is President of the Cajun Funding Corporation, the owner of the Trademarks and President of Cajun UK, Ltd. Church's Chicken and Texas Chicken, a recognized brand name in the QSR sector, has 1,750 locations worldwide in 22 countries and system sales of \$1.3 billion. He was formerly a partner with the global law firm, Holland & Knight, LLP. His law practice, for over 15 years, focused on global business transactions.

In the Restaurant Industry, Cutshaw was co-founder of the restaurant concept known as Cheers Funeatery in Tennessee; a founding partner of the Red, Hot & Blue restaurant chain formerly based in Washington DC; and co-founder of Let's Go Back, LLC, the first franchisee of the Flying Biscuit restaurants in Atlanta. He is active with the International Franchise Association, National Restaurant Association and National Retail Federation among others.

Cutshaw was appointed Honorary Consul for India in 2000 and is now Emeritus (retired) Honorary Consul. He served as Chairman, President and Board Member of The American Council of Young Political Leaders (ACYPL), an NGO established in 1966 that has introduced thousands of young political leaders in over 70 countries to the political process. He is a co-founder of Georgian American University (founded 2004 in Tbilisi, Georgia) and functions as its Provost and Global Dean. He was an Adjunct Professor at Emory University, Georgia Tech and Georgia State University teaching global business to graduate students. Cutshaw has business interests in several India-based entities, real estate interests in Tennessee and a waste incineration company founded in 1952. Cutshaw has expertise with World Expositions, having worked in several events approved by the Bureau of International Expositions, a treaty organization in Paris France. He is a founding Director for the non-profit ICA (India, China, America) Institute based in Singapore and Atlanta. In addition, he has served on Boards for several India Chambers. He is an Honorary Chair of the India Council of Political Leaders. He serves on several non-profit Boards of Directors such as the World Trade Center Atlanta. From 2006 to 2008, he served on the USA Federal Government Advisory Committee on International Economic Policy. Cutshaw is a Lifetime Sigma Chi Fraternity member and received its highest distinction in 2011 being named a Significant Sig.

Cutshaw began his professional career in 1979. In 1985, he accepted a political appointment to serve six years with the Administrations of President Ronald Reagan and President George H. W. Bush at the U.S. Commerce Department in international trade positions involving export/import regulatory programs. Mr. Cutshaw served as Deputy Assistant Secretary managing the Export Enforcement program of the Commerce Department. This position required Cutshaw to manage a global law enforcement and intelligence agency with Federal agents posted around the world and responsible for assuring compliance with the United States export control laws. Prior to his U.S. Government appointment, Mr. Cutshaw served as Senior Counsel for the 1982 World's Fair, Senior Attorney for the Tennessee Legislature, Manager of a 1984 U.S. Senate Campaign and assis-

## ABOUT THE AUTHORS

tant in a Tennessee District Attorney General office.

Cutshaw has lectured and published on U.S. and global business and legal issues and has testified before U.S. Congress. Other civic and professional affiliations include: Council on Foreign Relations; China Research Center; Co-Founder, Awakening, Inc.; Atlanta Chamber; American University Law Dean's Advisory Council and other groups. He formerly served on the Federal Government Industry Advisory Committee for Customs and Trade (1993-96); International Committee Chairman, Atlanta Boy Scouts; Atlanta Woodruff Arts Council; University of Tennessee Alumni Board and Law School Advisory Board; Vice-Chairman, Tennessee Republican Party (1982-84); Chairman, Legislation and Insurance Committees, Tennessee Bar Association. He is a member of the International Bar, American Bar, District of Columbia Bar, Georgia Bar, Tennessee Bar, Atlanta Bar and Inter-Pacific Bar (former Vice-Chairman, International Trade Committee). He represented Vietnam at the 1996 Olympics. He has been recognized by many Who's Who organizations.

Cutshaw is co-author of three books by Thomson Reuters: *Doing Business in China* (2010), *Doing Business in India* (2012), and *Doing Business in Russia* (2010). In addition, Mr. Cutshaw writes a monthly column entitled "Outsource Resource" for the Association of Corporate Counsel magazine.

Cutshaw received a Master of Laws in international studies from American University (1987), a J.D. in business law from The University of Tennessee (1978), and a B.A. in public administration from The University of Tennessee (1975). Cutshaw graduated from a Global Leaders Management course at the India Institute of Management Ahmedabad (IIMA) and Duke University in 2007. Cutshaw received two academic scholarships during College and taught graduate MBA courses for two decades.

Cutshaw is married to Diane Dracos Cutshaw. She is President of Family Wealth Services LLC. They have three children and reside in Durham, NC and Atlanta, Georgia. One daughter is works and resides in Nashville, TN; his 19-year old son is a freshman at Duke University and his 13-year old daughter (adopted from China) is a competitive platform diver. He is a native of Tennessee. Mr. Cutshaw is an avid outdoorsman participating in high-adventure sports, including mountaineering expeditions on six continents, flying, skiing, scuba diving and golf. He was active in Boy Scouts with his son, an Eagle Scout. He is a global enthusiast; enjoys cultural events and a frequent traveler.

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A special acknowledgement is dedicated to Dorothy Thomas. Dorothy Thomas is a partner with the law firm, Kochhar & Co., and directs the Chennai office for Kochhar & Co. in India. Dorothy had the primary responsibility of coordinating the organization of this book. Without Dorothy, this new edition of the "Doing Business in India" book would not have been possible. Her tenacious talent, her patience and her persistent reminders to all of the authors was instrumental in allowing this new edition to be published. A heartfelt note of appreciation goes from Kenneth Cutshaw, Rohit Kochhar and all of the chapter authors to Dorothy for her significant contributions to this book.

Kenneth Cutshaw personally acknowledges his appreciation to Rohit Kochhar, the Managing Partner and founder of Kochhar & Co., for his support of this third edition of the book. Rohit Kochhar has been a professional colleague and a friend for more than two decades. Mr. Kochhar has developed a law firm over a brief period of time that is recognized as one of the most respected law firms in India with an extensive client list from Asia, Europe, the Middle East and the Americas. Mr. Kochhar's firm is considered a leading law firm for foreign direct investment in India. The manner of the Kochhar & Co. legal practice and representation of clients is a global style reflective of the law firms from Europe and the United States. Additionally, Mr. Kochhar, with the counseling, guidance and participation of Mr. Cutshaw, has developed the Kochhar Group, which offers business services and legal process outsourcing.

The legal process outsourcing industry is poised to grow dramatically in the years ahead and will provide fiscal savings for clients around the world as they develop business models that support the outsourcing of legal services to destinations outside their country. With its English legal system foundation, India is positioned to become the largest legal process outsourcing destination in the world. Kochhar LexServe is a leading company in the legal process outsourcing arena.

A special acknowledgement is extended to the Embassy of India, its representatives in Washington, D.C., the consulate offices throughout the United States, and those dedicated Foreign



Service professionals within the Indian government. Although their participation in the book has begun with only their moral support and encouragement, the authors believe that cooperation from the India government representatives in the United States and India will allow this book to continue its recognition as a noted guide on doing business in India. We thank the representatives of the government of India for their support of this book.

Although the book has contributions from many authors, the strong support of Dorothy Thomas and Britta Larsen in the development of the book and contributions from the two named authors, Kenneth Cutshaw and Rohit Kochhar, made the book possible. There were others that have been supportive throughout the process, including members of various Indian Chambers throughout the United States. Trade organizations and bar associations have been supportive as they have responded to questions and comments from the authors. The universities, from which many of the authors earned their degrees, have provided legal research support as well as encouragement. Our appreciation is extended to all these resources that are necessary to permit any notable book to be presented to the public.

On a personal note, Kenneth A. Cutshaw wishes to acknowledge the support and patience of his family members, wife De, son Drew and daughter Christy, during the process of creating this book and the time and energy devoted to the book during this process.

Rohit Kochhar likewise acknowledges the support and patience of his family members, wife Sonali, and his son and two daughters for their support during the development of the book.

Kenneth A. Cutshaw

Rohit Kochhar

## Preface

Since publication of the first edition in 2001, Indian laws, especially governing investments into India, have undergone sweeping changes. The Indian Government has considerably liberalized procedures governing foreign investments thereby making India one of the most favorable investment destinations in the world today. The material in this third edition has been revised and updated from the second edition to include information on key legal topics. Detailed guidance for investors concerning possible entry strategy options, foreign direct investment policies and outsourcing to India are addressed in this third edition, which we believe will serve as a useful tool to our readers.

The primary audience for this book is the American businessperson interested in doing business in India, or the American businessperson who has already entered the markets of India but wishes to learn more about the legal framework and how to function within the legal business system of India. The book is written to provide information to the legal practitioner, who has an interest in doing business in India for the benefit of his or her clients, or is actively engaged with Indian legal and business transactions and needs the assistance of knowledgeable experts on the details of doing business in India.

This book is not intended to serve as a preventive legal reference for all legal and business matters associated with an operation, enterprise, or transaction in or with India. Any and all information pertaining to a specific set of circumstances should be referred to a legal practitioner or consultant knowledgeable in Indian matters to obtain the appropriate guidance and advice with regard to such specific set of circumstances. This book can provide a useful framework of knowledge for various business and legal aspects of doing business in India, but is no substitute to actual advice on a set of particular circumstances.

The people of India who reside in their homeland or elsewhere in the world are proud to call their country the world's oldest and most powerful democracy. It is certainly true that a country that has over 1.2 billion people and practices a true democracy qualifies as the world's largest democracy. India's democracy has challenges, as all democracies do, as India's government is continually confronted with political coalitions that arise from a true democracy and elections by the people and for the people. From

the creation of India's separate sovereignty from the United Kingdom in 1947, India has grown significantly to support and enhance the lives of its citizens. India will continue to grow and prosper under the multiple political parties and their coalitions. This third edition is intended to provide an overview and understanding of the methods and legal framework of doing business in and with India.

India has, over the last two decades, established excellent relations with the United States. The meetings held in Washington, D.C. in July 2005 followed by the New Delhi meeting in March 2006 between President George W. Bush and Prime Minister Dr. Manmohan Singh demonstrated the level of transformation in India-U.S. relations and the establishment of a global, strategic partnership between the two countries. The visit by President Barack Obama in October 2010 has further strengthened the business and political relationships between the two countries.

One of the reasons for publishing this new edition is the significant presence of people of Indian origin in the United States. There are more than 2.5 million people of Indian origin that live in the United States and the community of Indian Americans continues to grow. The United States is a popular destination for Indian students seeking higher education degrees with over 100,000 students from India pursuing educational degrees in U.S. educational institutions.

For those that have already invested in India, have done business with India, or hope to do business with India, this Third Edition of **CORPORATE COUNSEL'S GUIDE TO DOING BUSINESS IN INDIA** may provide the framework for reviewing and understanding the process of doing business in India.

Kenneth A. Cutshaw

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