



**Happy New Year to our Readers!**

## Comment/ Insight

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Identifying the *right* Indian partner or individuals for a Local Advisory Board is crucial since a variety of soft risks flow from factors such as their personal standing, reputation, cultural leanings, community and political affiliations and previous conduct re western partners. Two such risks are:

### Listed Family Companies: Transparent as Mist

India remains a 'family-controlled' business environment. The vast majority of Indian listed companies are in fact closely held by families or close-knit groupings operating like 'families'. While seeking prestige, additional finance and to deflect scrutiny through listing, the family is unlikely to cede real control even if it ostensibly controls a small minority of the total equity.

This may not at first, or for a while, be obvious to a Western partner that seeks comfort in 'dealing with a public company'. Indian promoters/ family controllers are likely to deploy a variety of techniques for "carrying on as usual" – while appearing to comply with governance requirements for a listed company. For all practical purposes, and notwithstanding the company adorning all the ornaments of listed public company – basic compliance, professional management, state institutional investors, non-executive boards of repute, etc – the business will remain "family-controlled and managed" - with the attendant risks and issues.

Manipulation on several fronts, as we noted in a previous India Brief, is a risk for western partners; most seem to place substantial reliance on the fact that a local partner is a 'listed Indian company' coupled with the "comfort" of 'usual legal and financial due diligence'. In fact, it becomes even more crucial to ascertain the real controllers and assess them for soft issues such as reputational and integrity and suitability.

### Indian Advisory Boards

Companies in India, including and often particularly public 'family companies', often establish a non-executive Advisory Board composed of persons of high local profile. This can often work well for image. Similarly, foreign companies and their JVs in India may benefit from a local Advisory Board.

However, this tool may work differently for western companies whose main business involves interfacing with the government or the Indian public sector- for example in Infrastructure, Oil and Gas, Defence procurement or any sector where the government is a customer for goods or services. Western companies seek local credibility and some 'local guidance' by appointing well-known local persons. However, where the business involves dealing with bureaucrats and government companies, it is highly unlikely that advisory board member will be content to draw the line, or discipline, under their limited roles. They are likely, whether disclosed or not, to flirt with 'making deals' and importing in the dimension of "Undisclosed Promises" – a topic we addressed in an earlier India Brief. It is a real risk that a particular individual's history, affiliations and track-record may actually alienate certain crucial quarters within the circles – proving the well-intentioned strategy counter-productive.

The question whether to constitute a Board is best decided only after suitable local people have been identified with the proper scrutiny. Otherwise a Western company risks importing 'personal agendas', 'political affiliations' and a string of un-auditable 'expectations and promises' made to the system. Defeating the original purpose and adding another layer of risk.

**NEXT ISSUE:** "Local Advisors" and "Agents and Multiplicity"

## Risk & Due Diligence

### Corruption Tale Continues

According to a leading Indian business publication, in the latest development in the long saga of corruption charges against bureaucrats, both serving and retired, and ministers, the CBI arrested the acting chairman of the Company Law Board for accepting a bribe of Rs 700,000. In recent months, investigations have been initiated and allegations of corruption made against several high-profile government officials.

These includes a former oil regulator who allegedly took favours from a leading Indian business house and who is being investigated by the Central Vigilance Commission (CVC); a director-general of Ordinance Factory Board arrested by the CBI for accepting bribes from arms vendors; a head of the All India Council for Technical Education for irregularities in granting approval to engineering colleges; a former Army Chief and a serving Major General for alleged disproportionate assets; and a mining industry senior official for breaching norms in allocating mining licences.

### Politics of Funds Allocation

Two years ago the Chief Minister of the State of Uttar Pradesh (UP), Mayawati's request to the Central Government for a special Rs 80,000-crore development package for the backward regions of the state was rejected. However it appears a package of Rs 7266 crore for the "integrated development of a region of UP consisting of seven districts requested by Rahul Gandhi of the Congress party seems to have been cleared. The Central Government (Congress controlled) may have snatched the credit for focusing on development of backward regions in UP.

### Foreign Law Firms Barred from India

In concluding a long-running litigation before it, the Mumbai High Court has concluded that permission granted by the Reserve Bank of India to foreign law firms in the early nineties to set up liaison offices in India is illegal. Only persons enrolled as Advocates in India may undertake the "practice of law" in any form. Unless overturned by further appeal, this judgment has left foreign law firms grappling with a host of question and cause a ripple effect that may last a while yet.

### Strikes and Urbanisation Impact Gurgaon-Manesar Auto Parts Belt

Rising labour unrest and strikes may cause the demise of the auto ancillary cluster in Gurgaon-Manesar. Many auto companies have already begun to move to reduce their dependence on Gurgaon and moving to tax favourable locations such as Hardwar and Pantnagar. Rapid urbanisation in Gurgaon is also contributing since this is contributing in making industry an eco hazard.

### Engineers Shortage

India's largest and most ambitious civil engineering company, Larsen & Toubro, has recently warned of an acute shortage in India's construction industry. This is threatening urgent plans for India's infrastructure development, in turn knocking the pace of planned economic growth. India's IT industry appears to be luring away engineering talent into better paid and less demanding jobs.

# Business Creation

## [100% FDI Permitted in Renewable Energy](#)

The Indian government now permits 100% foreign direct investment in the renewable energy sector and favourable incentives have been put into place to attract foreign investors, such as a generation-based incentive scheme in wind power projects. Foreign investors cannot avail of benefits of accelerated depreciation unlike domestic investors – and thus this new step alleviates such disadvantages.

## [India-Italy Bilateral Accord Signed](#)

Both countries signed a Memorandum of Intent to enhance bilateral economic and commercial ties. Bilateral trade has touched USD 18 Billion in 2008-9 despite global slow-down. India has invited investment and joint ventures in Ultra Mega Power Projects, Textile Machinery, Agricultural Food Processing, Auto Components, Wine-Making; India has offered expertise in railways, IT and textiles sectors.

## [Six National Highway Projects Cleared](#)

The Indian government has approved the widening of 445 km of national highways which will require an investment of Rs 44.5 billion, excluding land acquisition. National Highway Authority of India (NHA) will undertake six projects on a Design Build Finance Operate Transfer (DBFOT) mode. Five projects will be on a DBFOT (Toll) basis. The projects will now be tendered for bidding.

## [Swiss Holcim to Invest USD 1 Billion in 3 new Plants](#)

Swiss cement producer, Holcim, will set up 2-3 green-field manufacturing plants in India in the next 5 years, given strong domestic demand. It will increase its Indian production capacity from 50m tonne to 60 million tonne per annum. New plants will be set up in the limestone-rich states of Gujarat, Rajasthan, Punjab and Kerala.

## [Education Sector USD 100 Billion Opportunity in India](#)

An Indian business foundation (IBEF) reports a USD 100 Billion opportunity for investment over 5 years, driven by increasing demand for skilled professionals and the need of infrastructure. Education is a preferred sector with VC and private equity firms. Among other developments, European business schools are entering into tie-ups with leading Indian business schools, offering dual degree programmes

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