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Comment/ Insight

Infrastructure building continues at a frantic pace as the Commonwealth Games loom. Delhi, with its gleaming new airport and expanded Metro, stands poised to welcome the world. Traditional Indian hospitality will excel itself, and Western companies will, must, enjoy it all; however, even momentary distraction may invite soft risks to reputation and capital. Local partners, senior management, agents or local advisors may import hidden risks that flow from their personal standing, reputation, cultural leanings, community and political affiliations and previous conduct re western partners. Two areas of risk are:

Partnering Decisions & Anxiety

A good old western presumption, that feels safe and accepted, is: enter India only with the intermediation of a "local partner". In the past, India's complex protectionist laws mostly allowed no option other than minority foreign ownership. Today's 100 % ownership is permitted in all but a handful of strategic industry sectors. Crucially, many competent and proud Indian technocrats expect the 'respect' of direct engagement by western companies.

Yet, many Westerners assume that only a local partner 'breeds success' in India. Then, with great purpose, and armed with picture-perfect Mckinsey process maps, the Western side in good faith plunges deep into the challenges and anxieties of "local partner selection". Most may end up in convoluted equity or non-equity arrangements, completely dependant on their local 'partner' who then controls the 'local interface' with key stakeholders such as customers and officials. Complete control, dependence and absolute intermediation - handed to the local 'partner'.

In many cases this inevitably "breeds distress".

A business case for such strategy, even where majority foreign ownership is permitted, may be clear and compelling. However, soft issues and risks often remain unspotted, and unlocking the relationship may not be as easy as simply making an application to an Indian court. We have highlighted in previous issues of India Diligence Brief the impact of soft local risks such as 'manipulation', 'undisclosed promises', 'financial bleed', 'family-controlled public companies', etc, and highlight in this edition below a further effective local tactical play.

"Local partners" are in many cases useful and indeed needed, but can be engaged and configured in many ways other than (always) as equity partners having total local say. In all cases, every India entry strategy must bear the end-game in mind: protect capital, reputation and potential exit.

Litigation – A Tactical Game

Indian courts struggle with work-load. Litigation in India can linger for years, delaying otherwise sound commercial strategy and business plans. The Indian State and its agencies comprise about 70% of long pending cases before Indian courts; many pending for decades. Some astute local partners may deliberately deploy tactical litigation unashamedly, directly or behind-the-scenes, for engineering the prospects of protracted imbroglio and judicial wilderness. Western parties: joint-venture participants, project owners, operators, IPR owners, and the like, often find themselves on the 'loss' side of this equation.

In many instances 'trusted' local partners may be secretly behind protracted and sometimes unfounded sanctions and actions by judicial and quazi-judicial bodies that cause great frustration and high costs. Manipulation by local parties to create long judicial delays, aided at times by the 'system', is a favourite pressure-tactic to escape obligations or induce favourable changes in commercial obligations after a western party is committed. Creeping re-negotiations by local partners that characterise many business contracts are often supported by tactical threats of legal limbo. The same factor often proves a catalyst for western parties to sell their joint-venture stakes to their Indian partners at far less than the market value.

While there is no easy answer, one significant proactive step is to assess and uncover the real credentials and previous conduct of a proposed local party. Careful and discreet soft due diligence can throw up early red flags about the likely intentions and tactics of a local party - that may have been found to be "suitable" and "trusted" by routine legal and financial due diligence.

NEXT ISSUE: "Relationship Strategies" and "Politics of Local Resourcing"

Risk & Due Diligence

[NHAI Officials' Homes, Offices, Raided](#)

Federal investigators from the CBI (Central Bureau of Investigation) raided offices of the National High Authority of India and the homes of some of its officials, following complaints of corruption and abuse of authority over the award of a project. NHAI is the nodal agency that administers India's 35000 km National Highway Development Programme. It has awarded a total of 118 projects worth an estimated GBP 9.8 Billion.

[India's Central Vigilance Commission \(CVC\) Proposes Changes](#)

The CVC wants changes to the Prevention of Corruption Act for achieving speedy investigation and trial of corrupt public servants. It wants more special courts and a re-look at the legal and statutory powers for initiating action and probes, especially against senior bureaucrats and government officials.

[CVC Rule on Single Bids – Not Applicable to Port Projects](#)

Restrictions by the CVC on government departments and state-owned firms prohibiting the acceptance of single bids when hiring a contractor or purchasing proprietary items - do not apply to port privatization projects, according to the Shipping ministry. Port projects developed by private parties on a BOT basis do not involve "buying proprietary items".

[Serious Fraud Office \(SFO\) Gets Empowered](#)

The Indian government is finally giving the SFO, currently part of the ministry of corporate affairs, some real teeth. The new Indian draft Companies Act introduces new statutory authority and powers and levy of potential penalties. The new frame-work will allow investigators to look at all aspects of 'fraud' independent of current penal codes and processes.

Business Creation

[GBP 2.3 Billion Sukhoi Order Cleared](#)

India's Cabinet Committee of Security (CCS) has cleared on of the biggest defence orders in recent times. An additional 42 Sukhoi-30 MKI fighters – modern Russian warplanes – will take the total number with the IAF to 272. India's Hindustan Aeronautics Limited (HAL) will manufacture and deliver the same by 2016-17. India remains one of the fastest growing defence procurement markets in the world.

[Indian Railways Investment Challenge](#)

India would need to move about 6 Billion MT of cargo by 2020 even if the economy grows only modestly at 6% p.a. Rail needs to be able to take 60% of the domestic cargo by 2020 from its current levels of 30%: i.e., needs to move 3.6 Billion MT of cargo in 10 years, four times from the current level of 900 million MT level. This means additional rakes are required worth GBP 36 Billion and GBP 21.5 Billion of locomotives thus needed. This money is only likely to come through the PPP route mostly.

[India Blocks Chinese Power Groups](#)

India is screening Chinese companies out of equipment supply contracts for new power plants. in favour of local manufacturers. Grounds cited are poor quality and the desire to develop domestic manufacturing capacity. The use of Chinese labour to install power projects has also raised issues of 'national security'.

[India's Combat Helicopter takes to the Skies](#)

The Light Combat Helicopter (LCH), the first developed in India, finally took India closer to the elite club of nations with the capability to design, develop and manufacture such craft. The flight display of the first prototype was declared successful and a day of pride for HAL and the whole nation. The 5-tonne helicopter also incorporates stealth features and state-of-the-art weapons.

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