India

Diligence

Monthly Brief

November 2009

India brief for EU business owners, decision-makers and project/CSR leaders

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Comment/ Insight

Identifying the *right* Indian partner is a greater challenge than generally realised; some risks posed by potential local partners can be anticipated from factors such as their personal standing, reputation, cultural leanings, community and political affiliations and previous conduct re western partners. Two such risks are:

Undisclosed Promises & Commitments

Sometimes unexpected 'difficulties and obstacles' seem to suddenly afflict infrastructure or public sector related projects, sales and ventures in India, baffling westerners. Most likely reason: disgruntled recipients/ beneficiaries - usually officials or bureaucrats - of verbal promises made by the Indian 'partner'.

Some local Indian parties, in their quest to persuade the western partner, may use the tactic of offering quiet "promises and understandings" to co-operative officials, who in turn are likely to help the Indian party look solid, credible and 'well connected'. The ability of the Indian side to deliver its own promises to the western partner may also rely on such cooperation.

Unfortunately, it can be quite late in a project/ venture cycle before any adverse consequences of undisclosed promises kick in. By such time, substantial commitments in terms of capital, people and reputation have been made by the western side. Implications can be severe and complex depending on whether the Indian side made commitments on its own account, or on behalf of its proposed (and quite oblivious) western partner, or on its own account but would now rather the western partner makes good.

Financial Bleed

A maze of Indian regulations, tax complexities and bureaucratic influences are all fertile opportunity for some unscrupulous Indian 'partners' to slow bleed assets and value out of a joint venture vehicle. Community allegiances or pure financial motive can persuade some local managers, accountants or lawyers to help.

Inevitably, an Indian partner will want to call the shots in the local market – posing a challenge in stemming the bleed. Fudged accounting, manipulated valuations, undisclosed transfer pricing arrangements and un-auditable "necessary local costs of doing business" - can often blur the picture. However, if a western partner is not too distracted by the niceties of things, or too impressed by the structured, professional image of the Indian side, or is not in an 'ostrich-like mode' there will be tell-tale signs and flags:

A local Indian company, even if listed, is controlled in reality by a close-knit family or small clique, shrouded in misty deal-making and secrecy, paying lip-service to transparency and governance; Local partner negotiates hard, even if a minority shareholder, for control and role dominance and then appears to concede and settle for the right to appoint the JV's CFO/financial controller; Local partner wants its own existing group accountants, auditors and lawyers be appointed; Local partner insists that due to inherent sensitivities, it alone must be responsible for negotiating revenue-generating orders/ contracts, especially in government-related sectors; Local partner seeks to establish separate 'funds accounts' that foreign partners must not require details of 'for their own sake'; Convoluted contractual dealings with the Indian side's group entities; and so on.

NEXT TIME: **'Listed Family Companies: Transparent as Mist'** and '**India Advisory Boards'**

Risk & Due Diligence

India Probes Telecoms Licence Irregularities/ Criminal Conspiracy

In October Indian government investigators from the Central Bureau of Investigation (CBI) raided India's Department of Telecommunications (DOT) as part of an investigation into "serious irregularities" in the award in January 2008 of telecom licenses to domestic private sector operators. Eight Indian companies originally won the licenses, later attracting large foreign investments from companies such as Norway's Telenor and Etisalat of the UAE. Some licensees later sold stakes for large sums. The CBI indicated that there may have been a criminal conspiracy between certain officials of the DOT and private individuals in the award of the licenses

Sesa Goa Financial Fraud

India's Serious Fraud Investigation Office (SFIO) is to probe mismanagement and financial irregularities in Sesa Goa, listed in the Bombay Stock Exchange, and its subsidiaries. The probe emanates from a complaints filed by a shareholder, prior to the acquisition of a 51% interest by London-based Vedanta Resources in 2007.

Huge Indian Reserves of Unutilised Foreign Aid

According to the Comptroller and Auditor General (CAG), India is sitting on huge unutilised foreign aid reserves of Rs 780 Billion in the period 2001-2007, paying hefty sums as penalties. Main reasons are: Inefficient handling of land acquisitions, site handover, utility shifting, rehabilitation and dispute settling; Unavailability of qualified contractors, engineers and consultants with relevant domain expertise; High fiscal deficit limits the ability of States to share costs of infrastructure development, and; Poor monitoring and evaluation due to shortage of qualified people.

Mauritius Treaty Shopping Contradictions

The Indian Department of Revenue has in recent months been rejecting Foreign Direct Investment (FDI) proposals routed through Mauritius, arguing that these were set up for tax avoidance and involved 'treaty shopping'. However, India's Foreign Investment Promotion Board (FIPB) has recently once again condemned and rejected the Revenue's stance by re-affirming that the India-Mauritius Tax Treaty is valid and operational. However the tax department is still staking its claim in pending legal proceedings such as the Vodafone Essar demerger scheme.

EU Transparency Norms Affect Indian Auditors

About 200 Indian companies are listed on various EU Stock Exchanges. Under new EU Transparency norms, enforceable by December 2012, Indian Audit firms must (1) disclose sensitive business details re Indian EU-listed companies in a statement called the Transparency Report (2) disclose their own total earnings from audit and non-audit services and amounts paid to their partners, and (3) as statutory auditors be compulsorily monitored by independent oversight boards that have a majority of non-practising chartered accountants.

Business Creation

Sikorsky JV with Tata for Aerospace Components

Tata Advanced Systems and Sikorsky Aircraft of the US have established an Indian joint venture, as follow-on from the long-term contract signed in June 2009 for the assembly of Sikorsky S-92 helicopter cabins. Components for the helicopter cabins will be manufactured by the JV. Both the long-term contract and the JV flow from a MOU singed in February 2007. Tata is developing the facility at its Hyderabad location, and the components will begin production in 2011. The JV is also expected to make components for other aerospace OEMs. Sikorsky's Tata connection is part of its strategy to establish significant operations in regions where the need for rotorcraft and support is high.

Novo Nordisk of Denmark Looks at India as Insulin Hub

World-leader in diabetes care, Novo Nordisk of Denmark has inaugurated a dedicated facility with a capacity of 26 million vials per annum in partner ship with and Indian firm, Ahmedabad-based Torrent Pharmaceuticals. Novo Nordisk already has manufacturing in China, but with India easily the world's diabetes capital with over 50 million suffers, the company could develop India as a manufacturing hub for the sub-continent.

Enfinity of Belgium Tie-Up for Solar Power Project in Andhra Pradesh

Titan Energy Systems, a Hyderabad based contractor and supplier of PV Modules, and Enfinity, based in Waregem, Belgium, will together establish a 1 Giga watt Power (GWp) or 1000 MW of solar Photovoltaic (PV) project in the State of Hyderabad. The Belgians will develop and finance the proposed project, and the partners will establish a SPV as the project vehicle. In the first phase, 500 MW of capacity will be built over 5 years.

Hidromas of Turkey and Fujitec of Japan to Set Up in Mahindra World

The State of Tamil Nadu, in keeping with its image a premier destination for MNCs, has been in fast-track mode in clearing small and large projects in the State. Hidromas is finalising its plan for what is the first manufacturing investment plan in the Chennai. Fujitec India, subsidiary of Fujitec Singapore, will establish a lift assembling unit with a range of products including elevators, escalators and autowalks. Both companies have leased space in Mahindra World City.

Three Major Ports Worth Rs 77 Billion Cleared for PPP Development

In a boost to major port capacity, India's Public-Private Partnership Approval Committee (PPPAC) recently approved 3 major port projects worth Rs 77 billion. These include the development of the fourth container terminal at the Jawaharlal Nehru Port (JNPT) at Navi Mumbai, which will be the largest such container terminal in India at a cost of Rs 67 Billion. However, the shipping minister is revising its policy guidelines to prevent monopoly via the PPP route.

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