

# India review

According to market analysts, the Indian economy has been undergoing a transformation over the last 15 years and is fast shaping up to become what PricewaterhouseCoopers defines as 'the third largest global economy by 2040.' ACQ asks several industry experts for their take on Asia's latest 'tiger' economy. Morag Dickson reports.

## Som Mandal and Vineet Aneja at FoxMandal Little

FoxMandal Little managing partner, Som Mandal, and partner, Vineet Aneja, work out of FML's New Delhi office. They say there is no doubt that India is fast on its way to becoming the third largest global economy.

"The growth rate of Indian companies is proof of the pace with which the economy is growing. The only effort required to sustain growth is to ensure that India remains the preferred hub for investment and global business activity.

"A trend that is common to both India and other global markets is the steady increase in private equity activity. There has been an ever increasing number of PE- and VC-backed deals to date this year.

"PE investments in domestic Indian companies form a large chunk of India's FDI total and the role of private equity in India's economic rebirth is phenomenal. However, this is not to say that it has come without any side effects. Price escalation in India's real estate market, for instance, can be almost wholly attributed to increased PE investment in the sector.

"FML has been engaged on a number of significant transactions of late, advising Ascott International in relation to a joint venture with a real estate developer; Alchemy Partners LLP and Ashmore Investments (UK) Ltd in relation to a private equity fund, a fund manager and an Indian advisory company; Fortune Brands in connection with its acquisition of the Teacher's Brand from Pernod Ricard; Citigroup with respect to its investment in a large real estate company at the pre IPO stage; Spice Communications Ltd in their IPO; and the Carlyle Group in its global acquisition of the engineered products division of Goodyear.

"The Fortune Brands/Pernod Ricard transaction was part of a global acquisition process involving Allied Domecq. Due to its global presence, all facilities and units of Allied Domecq were split between FB and PR. There were complexities as both parties raised claim over the facilities in India on the basis that such facility was predominantly for their brands. As a result, since no agreement was reached, it was decided to physically split the facilities.

"Lawyers at FML are encouraged to provide innovative solutions to legal problems and to provide business law advice as against plain vanilla legal advice. We are deal closers and work to achieve the client's objective in the best possible manner.

"Looking ahead, we predict further growth in the domain of private equity and FDI. In the post FDI review phase, it is expected that others sectors such as retail may be opened up for overseas investment, leading to even more inbound investments in India."

## Somasekhar Sundaresan at J Sagar Associates, Mumbai

Somasekhar Sundaresan is a partner at J Sagar Associates in Mumbai. He is convinced that India's M&A deal-making environment has never been busier.

On the domestic front, Sundaresan says the Indian capital market is booming. "There is a lot of sourced published data on domestic and cross-border M&A, all of which indicates the frenetic pace of activity in the M&A space," he states. "Key industries for FDI and M&A are banking, telecommunications, BPO firms, software, pharmaceuticals, hotels, special economic zones and townships.

"The market ecosystem in India has matured immensely over the past decade or so," advises the partner, "and although there is still considerable scope for advancement in sophistication, highly innovative and complex structures are already evident. In essence, activity in India is subject to the same concerns and issues as the global markets and is therefore fairly reflective of trends in those markets.

"The availability of funds has also shot up with exchange controls being eased to allow Indian companies greater access to overseas capital. And it is precisely this breaking down of exchange control barriers that is spurring M&A activity in India. In fact, it could well be the single biggest factor that is impacting the deal-making environment. Less than ten years ago, the Tatas would have had to get the consent of the Government of India to be able to make a bid for Corus. Today, we are able to witness a real-time bidding war and an aggressive ability of Indian companies to acquire overseas targets.

"In value terms, the size of inbound and outbound FDI is now competing. The presence of private equity players has significantly improved FDI inflows. The PE industry in India is booming, putting money in the hands of Indian companies to acquire domestic and overseas targets. PE play in India has not been purely private as would be the wont in other markets. Most PE investors have substantially invested in listed stock, participated in PIPEs and have also been involved in different types of creative structures with control play leading to tender offers for listed companies. PE players in India have been happy to be in 'joint venture' situations too, at times becoming the single-largest shareholder alongside the founders of listed companies.

"The role played by PE giants/funds in India's economic boom cannot be understated - they have catalysed M&A activity. One sees PE funds competing with strategic players in the buy-out space, and that has kept industry groups on their toes. With the power to stay unlisted for three to four years, PE funds have been able to finance completely new ventures and have enabled human capital to be fuelled with money for spiralling growth.

"At J Sagar Associates, we have completed a number of buy-outs and take privates and have worked with the Carlyle Group, Actis, Blackstone, 3i, Goldman Sachs, and Texas Pacific.

"We also bring a keen sense of commercial and strategic bargaining to the table, fuelled by our experience with real-life situations faced by private equity players in India, ranging from successful exits at the one end of the spectrum to value-eroding litigation



Som Mandal



Vineet Aneja

### DETAILS

FOXMANDAL LITTLE  
SOLICITORS & ADVOCATES

jsa

J. SAGAR ASSOCIATES  
advocates & solicitors

Som Mandal, Managing Partner, and Vineet Aneja, Partner  
FoxMandal Little, Noida, NCR of New Delhi  
[www.foxmandallittle.com](http://www.foxmandallittle.com)  
som.mandal@foxmandallittle.com  
vineet.aneja@foxmandallittle.com  
+91 120 4305555

Somasekhar Sundaresan, Partner  
J Sagar Associates, Mumbai  
[www.jsalaw.com](http://www.jsalaw.com)  
somasekhar@jsalaw.com  
+91 22 6656 1504

## 20 REVIEW

### Indian review



Ravi Kulkarni



Rabindra Jhunjunwala



Vikram Utamsingh

#### DETAILS



Ravi Kulkarni, Senior Partner  
Rabindra Jhunjunwala, Partner  
Khaitan & Co, Mumbai  
rabindra@khaitanco.com  
+91 22 66365000

Vikram Utamsingh  
Executive Director and Head of Private Equity, India  
KPMG India Private Limited, Mumbai  
www.in.kpmg.com  
vutamsingh@kpmg.com  
+91 22 39835302

“The M&A deal-making environment in India has been frantic with activity in the last few years - a trend that is expected to continue at the same pace for the foreseeable future.”

Ravi Kulkarni and Rabindra Jhunjunwala

at the other. Our insights into intricate capital market regulations for listed companies in India helps us bring an advanced foresight to our PE clients when they even contemplate investing in a private company in India. Our extensive experience with public markets and their complicated regulatory framework, gives us an edge in providing our client with clear-cut specific solution options and helps them take informed investment decisions.”

#### Ravi Kulkarni and Rabindra Jhunjunwala at Khaitan & Co, Mumbai

Senior partner, Ravi Kulkarni, and partner, Rabindra Jhunjunwala, work out of Khaitan & Co's Mumbai office. They say that the Indian economy is booming.

“The M&A deal-making environment in India has been frantic with activity in the last few years - a trend that is expected to continue at the same pace for the foreseeable future. There is an unprecedented interest in India and its economy across the world. Everybody wants a piece of the great Indian pie.

“In response to the global nature of M&A, major Indian corporates have created specialists and dedicated M&A cells within their organisations to look at the opportunities at home and abroad. There are world leaders like Vodafone entering the Indian market, and Indian companies like Tata and Suzlon buying out much larger sized companies like Corus, Hansen Transmissions and REpower in other countries.

“With increasing economic activity the world over, India's economic and business activities are undeniably impacted by and thereby reflective of current global trends. There is appetite for growth among big corporates and small and medium corporates alike, representing a generic confidence in business.

“Factors impacting these trends relate to economic liberalisation and the removal of regulatory controls. Private equity funds too have contributed significantly to the spurt in the valuation of Indian companies and the increase in FDI levels, assisting India in its economic rebirth. PE players have invested in both pre-IPO placement and the IPO process proper and are driving up the demand and valuation for Indian equity. Presently India is a hotbed for foreign investment with many countries looking at huge investments in India in various sectors.

“Khaitan & Co has advised: Hutchison Telecommunications International Ltd in relation to the sale of shares to Vodafone plc (\$19bn); Suzlon Energy Ltd in relation to its acquisitions of Hansen Transmission (\$565m) and REpower Systems Ltd (€1.021bn); Vedanta Resources plc in relation to its acquisition of Sesa Goa Limited (\$981m); Mahindra & Mahindra in relation to its acquisition of Punjab Tractor Ltd (\$510m).

“What distinguishes our advisory is a healthy mix of more than 90 years' experience, our modern systems, and the efficient handling of mandates at an optimum cost. We ensure hands-on involvement at partner and senior partner level so that the client receives the best possible assistance. Our ambition is to be a respected law firm providing an efficient and courteous service, acting with fairness, integrity and diligence, and exercising social responsibility while enjoying life.”

#### Vikram Utamsingh at KPMG, Mumbai

Vikram Utamsingh is executive director and head of

Private Equity, India, at KPMG. He says deal activity has improved considerably in size and volume over the past two years.

“For the first time, India was the favoured destination for private equity deals in Southeast Asia, overtaking China. In the first half of 2007, close to US\$4bn of deal value was recorded with some 110 private equity deals being consummated. This reflects the ever-increasing size of private equity deals, now around US\$35m - an increase of some 25% as compared with the first half of 2006.

“What is important to reflect on, is that there is now a high acceptance by Indian companies across sectors that private equity is an excellent source of growth capital, and this is fuelling transaction activity.

“Deal activity in India is different from that of other global markets as transactions are largely growth capital transactions. With the Indian economy registering a blistering 9% GDP growth, Indian companies are achieving annual growth rates of between 20% and 25 %, and need funds for capital expansion locally or for acquiring businesses in overseas markets - hence the participation of global buy-out funds in growth capital transactions.”

Regarding the recent influx of global private equity entrants in the Indian market, Utamsingh says it is difficult to distinguish between FDI and private equity investments. “Given India's tax and regulatory frameworks, a large part of private equity investment is organised as FDI in any case, albeit as growth capital as opposed to greenfield investments.

“While private equity funds outbid strategic investors in some deals, Indian companies may still prefer strategic partners for the value they bring in terms of access to markets, customers, technology and branding. So essentially, both private equity and FDI have their respective roles and are not necessarily in conflict.”

And how is KPMG in Mumbai fairing?

“According to a leading deal-tracking organisation, KPMG was ranked number two (in terms of volume of deals) in its league tables in 2005, 2006 and the first half of 2007 for India adviser rankings for completed deals.

“Examples include the sale of Sangli Bank to ICICI, the sale of Liva Pharmaceutical to Zydus Pharmaceuticals and the placements for private equity for Electrotherm and RSB Transmission. Currently, KPMG is advising on a large MBO transaction involving private equity. From a due diligence and tax structuring perspective, KPMG India has assisted Blackstone, Lehman Brothers, TPG, Carlyle, Apax, Providence Capital, Warburg Pincus, 3i and other funds on their India transactions.”

What's around the corner?

“Emergence of a larger number of buy-out transactions as some Indian business groups are now more willing to give up control,” states Utamsingh.

#### Sandeep Katwala at Linklaters, Hong Kong

Sandeep Katwala is a partner and head of Linklaters' India group. He says economic growth rates in India have been astonishing over the last five years.

“The domestic market sees a large volume of friendly M&A activity, especially at the mid-market level. For the inbound sector it is very clear that a number of MNCs are looking closely at the Indian market with a view to acquiring stakes in Indian companies. Certain sectors, such as telecoms and pharma, are of great interest given

## Indian review

India's astonishing growth rate, and with the exception of retail banking, the financial services sector has significant M&A potential.

"The major factor in terms of cross-border activity has been the aspiration of Indian companies to expand their global footprint, due in part to the relaxation by the Ministry of Finance in the amounts Indian companies can borrow to fund offshore acquisitions. The majority of these are highly leveraged transactions. Favourite destinations seem to be Germany, CEE, Latin America and the US. Sectors tend to be pharma, chemicals, auto, engineering and IT/BPO.

"There have been a large number of transactions in the 'private equity' space. While press reports tend to focus on well-known global names, the reality is that there are basically four types of investors who have been taking positions in Indian companies, whether listed or unlisted. These are (i) funds (many of them US-based), (ii) principal investment arms of the large financial institutions, (iii) well-known private equity houses and (iv) smaller one-off funds targeted at real estate and infrastructure.

"Infrastructure, real estate, financial services, telecoms and pharmaceuticals are probably at the top of everyone's list.

"Linklaters has acted for Vodafone in their acquisition of the Hutch/Essar mobile assets - by far, the largest ever acquisition in the Indian market by an offshore entity. With a consideration of c.\$11bn, it was a landmark transaction for our India group to be involved with, one which served to deepen our longstanding relationship with Vodafone Group plc. The transaction allowed us to get extensive exposure to the regulatory framework in India, the ever-changing telecom regulation and the foreign investment regime in general.

"We also have also been involved in many cross-border transactions and have represented either the acquirers (eg Suzlon, Reliance, Tata Motors, Zydus) or the lenders (eg Tata/Corus, UB/Whyte and Mackay).

"Linklaters has acted on many of the largest and more complex deals (DLF IPO, Cairn IPO, Reliance Communications US\$1bn convertible bond). We have a very strong capital markets practice, the market leading banking team (Tata/Corus, Tetley Tea, Suzlon etc), a strong private equity practice, and a powerful M&A practice (eg Vodafone)."

#### Mohit Saraf at Luthra & Luthra, New Delhi

Mohit Saraf is a senior partner at Luthra & Luthra. He believes positive economic trends and regulatory patterns over the last 15 years have resulted in considerable inorganic growth in the Indian market.

"From consolidation within sectors to acquiring stakes in foreign players, M&A activity has been on an upswing and has come across as an effective form of realising high growth and potential synergies between players. 2007 has already witnessed 331 M&A deals worth \$44.34bn.

"Factors that have been conducive to increased M&A transactions are India's improved sovereign rating, the liberalisation of caps relating to external commercial loans and those relating to investments made in an overseas subsidiaries.

"Indian businesses are competing with foreign companies and each other in the race to snap up distressed and high-cost overseas businesses and are fast emerging as global players in their sectors.

"In recent times, private equity investment has formed a significant component of total FDI. Promoters are now opting for PE investment immediately prior to IPO as it helps in arriving at valuations. In 2006, 10% of the total monies invested by PE funds in Asia were invested in India and in 2007, India has emerged the third largest destination for private equity in the Asia-Pacific region."

And what deals have you been mandated on this year?

"We represented Mylan in its acquisition of Matrix Laboratories Ltd (\$736m); United Spirits Ltd in its acquisition of Whyte & Mackay (\$1.19bn); and UB Holdings Ltd in its acquisition of a substantial stake in

Deccan Aviation Ltd (\$220m).

"Luthra & Luthra is often praised by clients for combining legal expertise with a deep understanding of business and commerce. We are known for delivering quality advisory, even under very aggressive deadlines and work seamlessly to provide solutions to diverse issues that may arise in the course of a transaction.

"India's regulatory framework has not kept pace with changes in the economy, hence and hence, transactions need to be structured within the framework of archaic laws. With our wealth of deal experience, we understand and interpret law appropriately to achieve commercial objectives in a legally sound manner, interacting closely with regulators in relation to policy evolution.

"Looking ahead, we expect a quantum leap in deal activity in both inbound and outbound investments. India's economy has been consistently growing at around 9% and various studies demonstrate that India has the potential to continue growing at a high rate for at least the next 15-20 years. Continuing liberalisation is the key to India's transition from a developing to a developed economy and the Government has committed to promoting a friendly environment for foreign investment."

#### John Riddick at Penningtons Solicitors LLP

John Riddick is a partner in the Business Services division at Penningtons Solicitors LLP and a member of the firm's India group. He states that there is a lot of activity in the M&A deal-making environment in India. Large numbers of Indian companies are also looking at overseas acquisitions e.g. Tata acquiring Corus.

"There is a thriving industrial market in Asia and changing regulatory environments that will allow for deal/investment activity. Deal activity in India is reaching unprecedented levels due to the liberalisation process that commenced in 1991. There is also considerable activity on a cross-border basis. This has to be attributable to the growth in economic activity, together with deregulation.

"A large number of international PE players are now active in India. Deal flows have increased tremendously over the last two to three years compared to 10-15 years ago when only a handful of PE players were active in the market. FDI inflows have certainly increased due to investments by PE players. Private equity will play an important part in India's economic re-birth."

And India's key markets?

"At the moment it is difficult to say which part of the economy is driving growth," says Riddick. "Growth is seen in almost all sectors of the economy. The real estate and financial services sectors appear to be attracting large amounts of FDI.

"As a law firm, we have been involved either directly or indirectly in all areas of M&A, private equity, capital markets, joint ventures etc.

"We acted in the sale of Williamson Tea Assam as part of the UK parent's exit strategy from India. It showed that shareholders can now exit, if required, from the Indian market and crystallise a gain.

"We also acted for Shasun Chemicals - a listed Indian company - in its acquisition of part of the UK business of Rhodia, a French pharmaceutical company. It demonstrates an appetite for external investment and showed Shasun's confidence as an Indian company to globalise."

What gives you the edge?

"We have excellent mid-market capabilities which have been demonstrated in a range of deals over a long period and are less expensive than many of our competitors," states Riddick. "Penningtons is an established adviser to Bank of India and the TATA Group in the UK, as well as a number of prominent Indian families.

"Looking ahead, although some predicted a slowdown in the Indian economy, the increased levels of FDI and foreign interest seem to indicate otherwise.

"I would like to express my thanks to Apurva Diwanji of Indian law firm Desai & Diwanji who was also kind enough to contribute his views." **ACQ**



Sandeep Katwala



Mohit Saraf,



John Riddick

#### DETAILS

Linklaters



Luthra & Luthra  
Law Offices



PENNINGTONS  
SOLICITORS

Sandeep Katwala  
Partner, Head of India Group  
Linklaters, Hong Kong  
[www.linklaters.com](http://www.linklaters.com)  
[sandeep.katwala@linklaters.com](mailto:sandeep.katwala@linklaters.com)  
+852 2842 4819

Mohit Saraf, Senior Partner  
Luthra & Luthra Law Offices  
New Delhi, Mumbai &  
Bangalore  
[www.luthra.com](http://www.luthra.com)  
[msaraf@luthra.com](mailto:msaraf@luthra.com)  
+91 11 41215100 (New Delhi)

John Riddick, Partner  
Penningtons Solicitors LLP  
[www.penningtons.co.uk](http://www.penningtons.co.uk)  
[riddickj@penningtons.co.uk](mailto:riddickj@penningtons.co.uk)  
+44 (0)1635 571000  
Penningtons' India group can  
also be contacted through  
Rustam S Dubash on +44  
(0)20 7457 3000 -  
[dubashrs@penningtons.co.uk](mailto:dubashrs@penningtons.co.uk)