

Doing Business in India

Strategic and Practical Considerations

IMaCS Virtus Global Partners

January 2010



Strategic Framework

Do I need to leverage India?



How can I create an India Entry Strategy?



How do I manage risks in India?



How do I grow my operations in India?

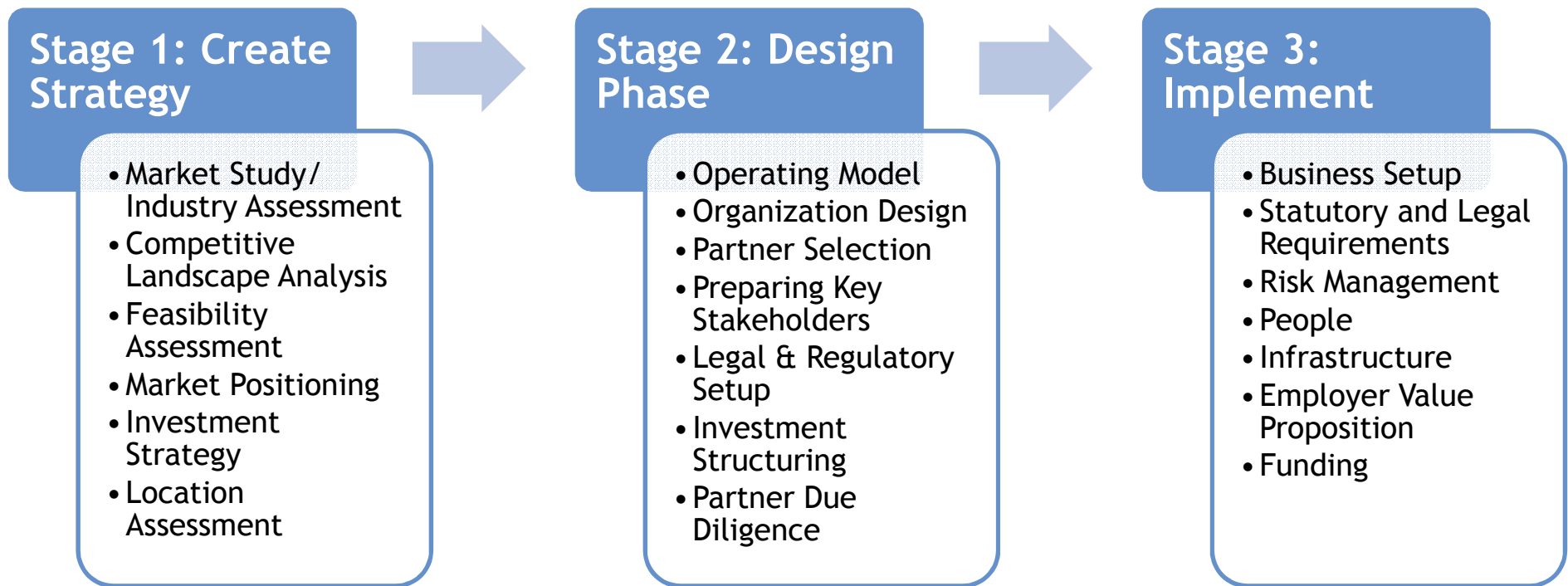
- Sustainable Advantages
- Changing Global Economy
- Future Growth of India

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- Organization Design
 - Finding Partners
 - Implementation

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- Statutory Compliance
 - Due Diligence
 - Legal Aspects
 - Risk Management

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- Culture & Communication
 - Creating Incentives
 - Monitoring Investment

Creating an India Entry Roadmap



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Why India?

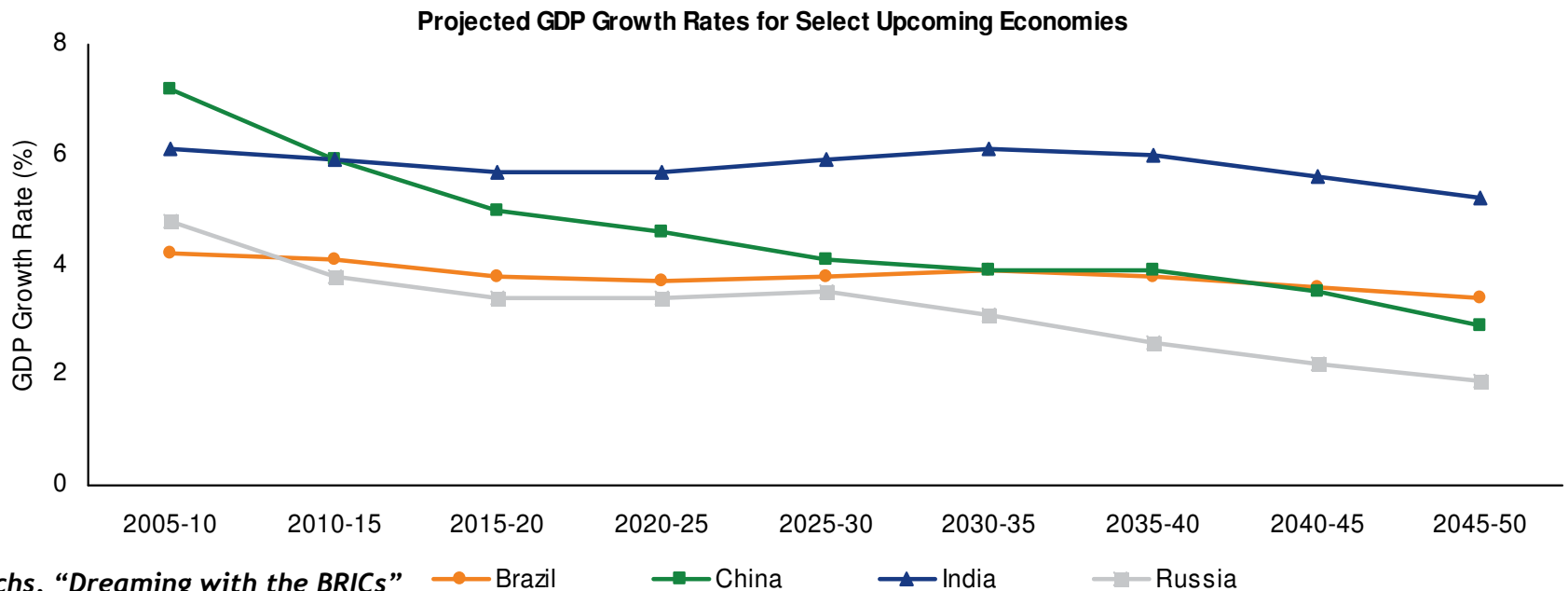
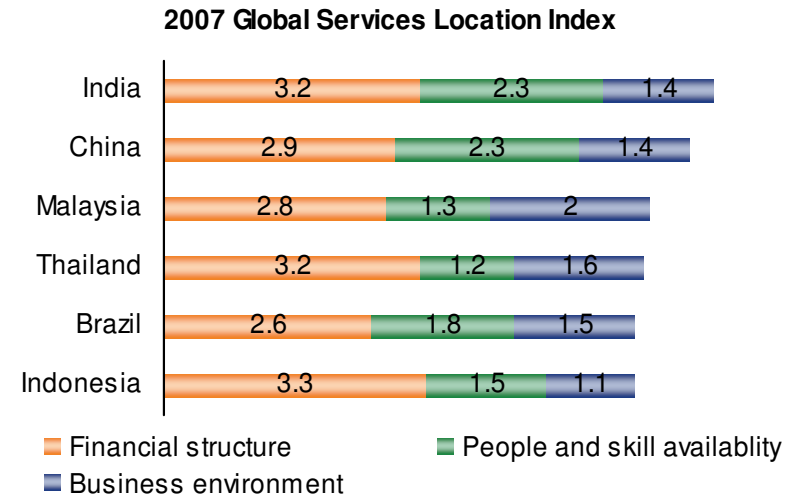
- **Educated, English-speaking populace of young workers**
- **Democratic and business-friendly government**
- **Low cost structure**
- **Eager and savvy consumer market with growing buying potential**

India is One of the World's Top Investment Destinations

... India is the top destination in the AT Kearney Global Retail Development Index (2007)

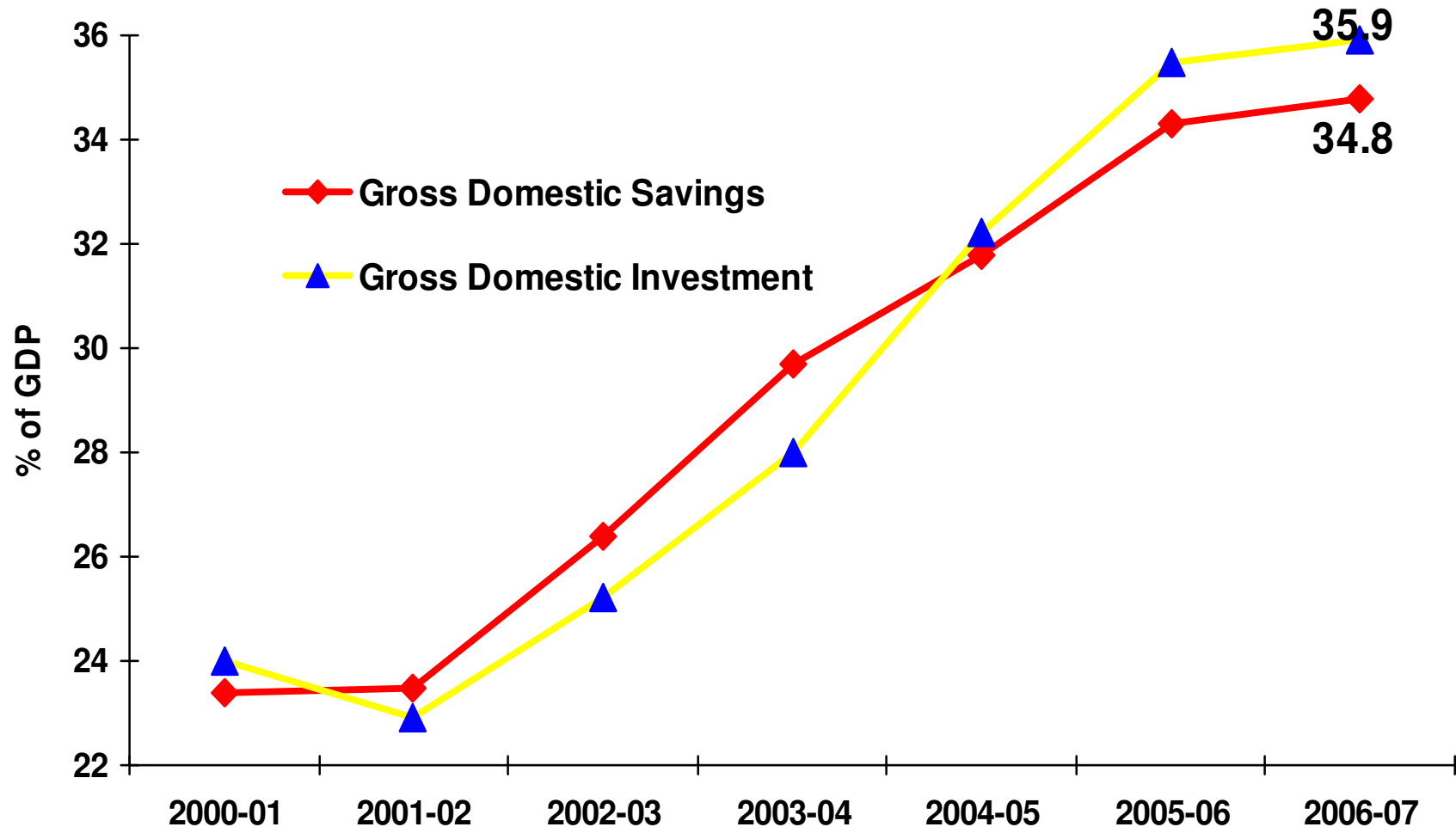
Services sector attracted interest of major global players and large investments are pumped in it

India is expected to outperform its rivals in the BRIC, in terms of GDP growth rate, from 2015 onwards...



Source: Goldman Sachs, "Dreaming with the BRICs"

Consumer spending and household savings have grown..



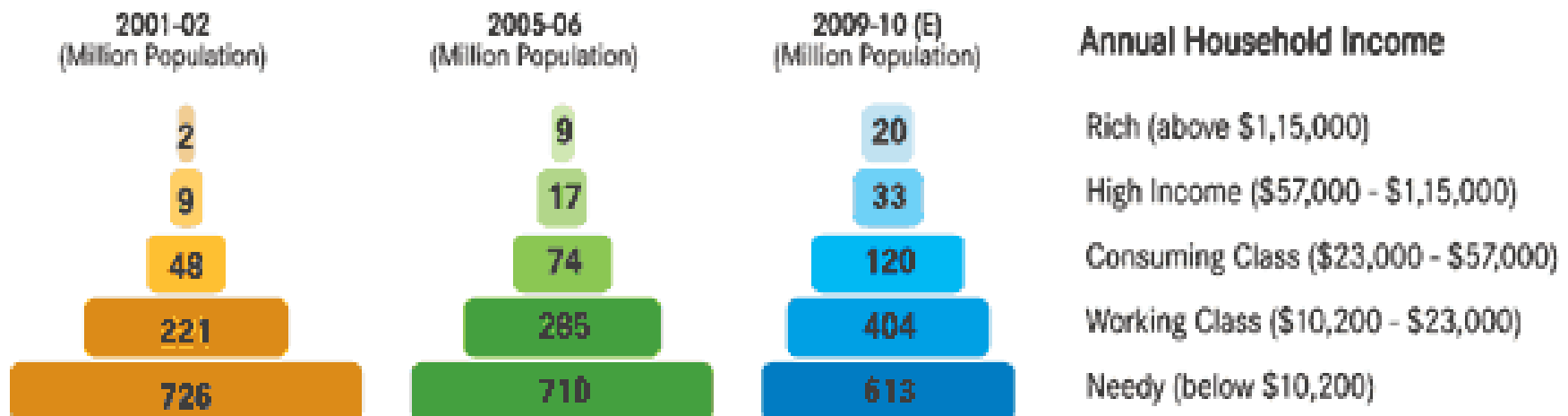
..fuelled by several factors

- India is the 4th largest economy in the world as measured by purchasing power
- India has a consumer base of 1.2 billion people
- The youngest population of the world - hence sustainable, long term growth is assured
- Modern (organized) retail converging with the consumption boom will open up many opportunities for small and mid-size consumer companies
- Rapid growth in the number of middle class consumers

The Indian Demographic Dividend

By 2009-10, over 500 million Indians are expected to have a household income of over \$10,000* per annum

DEMOGRAPHIC TRANSFORMATION OF INDIA

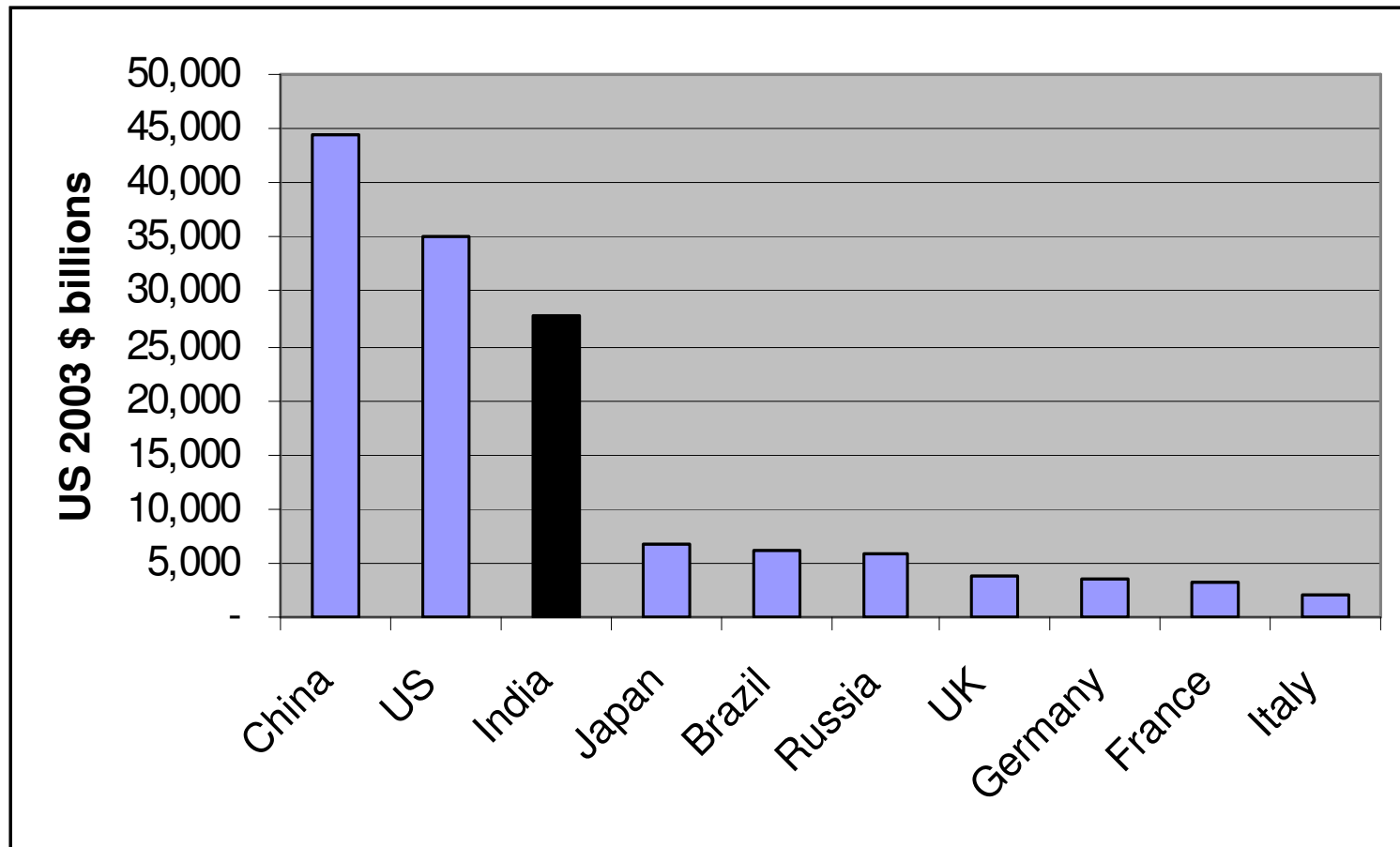


* In PPP (Purchasing Power Parity) terms

Note: Average household size is 5.38; All values in PPP terms at 2001-02 prices

Source: NCAER

By Year 2050, India will be World's 3rd Largest Economy



Source: Goldman Sachs, "Dreaming with the BRICs"

Many large companies have invested into India



POSCO to invest in building steel manufacturing plants and facilities in India by 2016

USD 12 billion



vodafone

Vodafone buys Hutch

USD 11 billion



Plans to establish three manufacturing plants to produce photo-voltaic units

USD 2 billion



Plans to spend on its development operations in India over the next four years

USD 1.7 billion

Many large companies have invested into India



Plans investment in private equity in Indian markets

USD 1 billion



Plans investment in private equity, real estate, and private wealth management

USD 1 billion



Aditya Birla Group increased its stake in Idea Cellular by acquiring 48.14-percent stake

USD 0.98 billion



Mylan Laboratories acquired a majority stake in Matrix Laboratories

USD 0.74 billion

India has consistently improved over the last 17 years

Progressive Reforms Process

- Opportunities to enter new sectors as the reforms process opens them up for foreign direct investment (FDI). For example, Single Brand Retail, Life and General Insurance

Strong Economic Environment

- Growing GDP and FDI, falling rates of interest and maturing capital markets creates private equity investment opportunity in infrastructure, telecom, cement, toll roads, bridges, manufacturing, technology, and pharmaceuticals

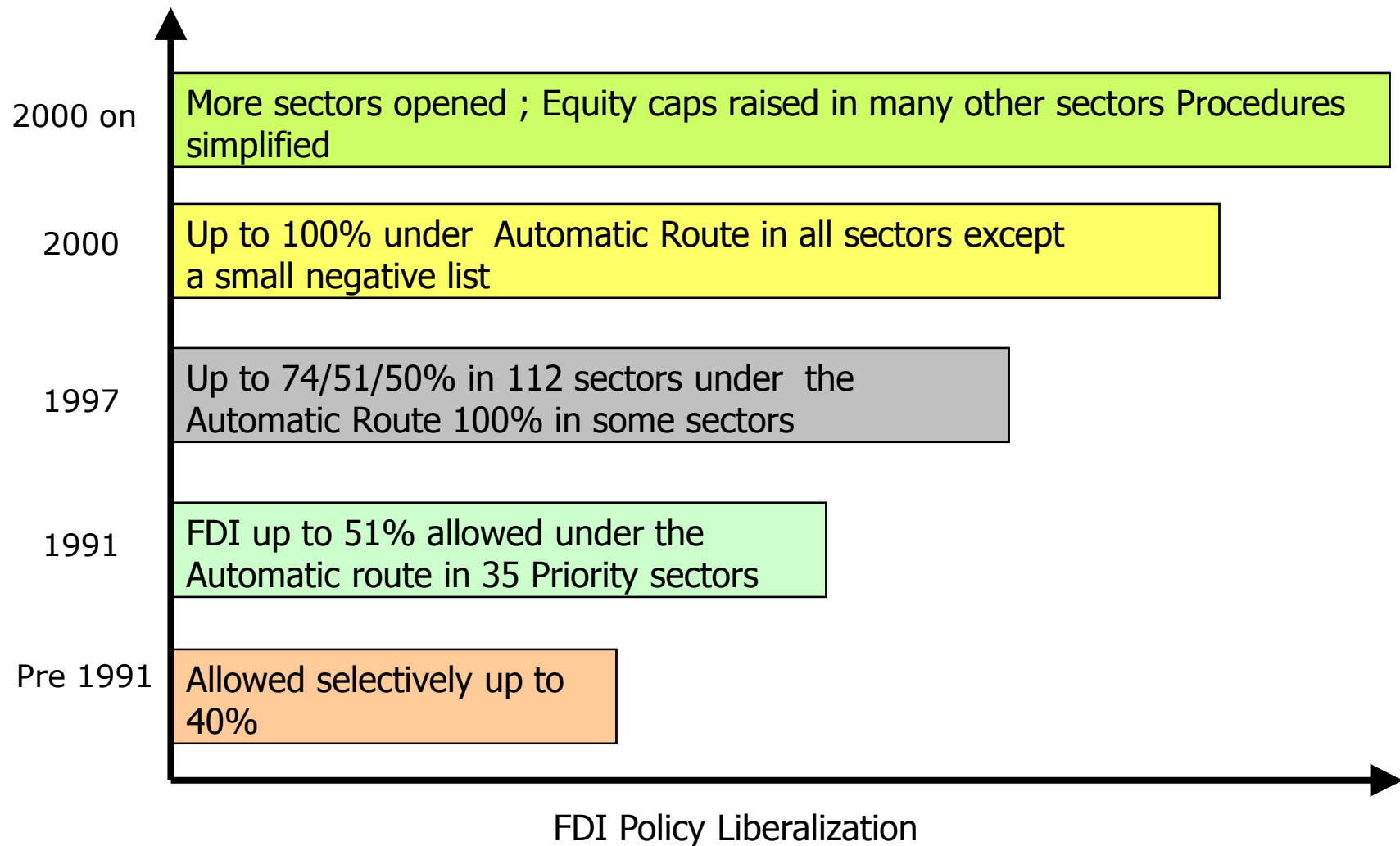
Large Domestic Market

- Growing consumer population expands markets across sectors
- Opportunities to use India as a test market for clinical trials and developing products for the global market
- Growing through acquisitions of strong Indian companies across sectors

Availability of Resources

- Availability of raw material and highly skilled workforce
- Opportunities to set up manufacturing bases in India, both for fulfilling local demand, as well as for developing a global sourcing hub
- Opportunities to set up R&D, software development and engineering centers that cater to their global operations
- Opportunities to set up centers for business process outsourcing
- Leveraging India as a source of high quality managerial talent

It has become easier to invest into India



Potential Investment Opportunities

Information Technology

- Software and Services - \$50 billion
- IT-enabled Services - \$17 billion
- E-Commerce - \$8.9 billion

Biotechnology

- \$4.5 billion by 2010

Retail

- \$300 billion by 2010

Healthcare

- \$ 16 billion potential

Energy

Power Generation
\$143 billion

Roads
\$40 billion

Transmission & Distribution
\$ 116 billion

Coal
\$ 26 billion

Investment Requirement in Energy up to 2012 and other Infrastructure Areas

Refineries
\$ 22 billion

Cross-Country Pipelines
\$ 116 billion

Oil & Gas
\$ 100 billion

Ports
\$ 20 Billion

LNG Terminals
\$ 10 billion

Railways
\$ 15 Billion

Markets with Significant Export Potential

- Airport and Ground Handling Equipment
- Computers and Peripherals
- Education Services
- Electric Power Generation, Distribution and Transmission Equipment
- Food Processing & Cold Storage Equipment
- Machine Tools
- Medical Equipment
- Mining and Mineral Processing Equipment
- Oil and Gas Field Machinery
- Pollution Control Equipment
- Safety and Security Equipment
- Telecommunications Equipment
- Textile Machinery
- Water Treatment

Market Potential - Retail

Potential

- The high growth projected in domestic retail demand will be fuelled by:
 - ✓ The migration of population to higher income segments with increasing per capita incomes
 - ✓ Increasing urbanization
 - ✓ Changing consumer attitudes, especially the increasing use of credit cards
 - ✓ Growth of the population in the 20 to 49 years age band
- There are retail opportunities in most product categories and for all types of formats:
 - ✓ Food and Grocery: The largest category but largely unorganized
 - ✓ Home Improvement and Consumer Durables: Over 20% p.a. CAGR estimated in the next 10 years
 - ✓ Apparel and Dining: 13% p.a. CAGR projected over 10 years
- Opportunities exist for investment in supply chain infrastructure, cold chain, and logistics
- India also has significant potential to emerge as a sourcing base for a wide variety of goods for international retail companies
 - ✓ Many international retailers including Wal-Mart, GAP, JC Penney etc. are already procuring from India

Market Potential - Retail

Policy

- 100% FDI is allowed in Cash and Carry Wholesale formats. Franchisee arrangements are also permitted in retail trade.
- 51% FDI is allowed in single brand retailing.
- The government is examining further liberalization of FDI in retail trade.

Market Potential - Power Sector

Potential

- Large demand-supply gap - All India average energy shortfall of 9% and peak demand shortfall of 14%
- The implementation of key reforms is likely to foster growth in all segments
 - ✓ Unbundling of vertically integrated SEBs
 - ✓ “Open Access” to Transmission and Distribution networks
 - ✓ Select distribution circles to be franchised/privatized
 - ✓ Tariff reforms by regulatory authorities
- Opportunities in Generation for:
 - ✓ Ultra Mega Power Plants (UMPP) - 9 projects of 4000 MW each
 - ✓ Coal-based plants at pithead or coastal locations (imported coal)
 - ✓ Natural gas/CNG-based turbines at load centers or near gas terminals
 - ✓ Hydel power potential of 150,000 MW is untapped as assessed by the Government of India
 - ✓ Renovation, modernization, up-rating and life extension of old thermal and hydro power plants
- Opportunities in Transmission network ventures - additional 60,000 circuit km of Transmission network expected by 2012
 - ✓ Private sector participation possible through JV and 100% equity mode
- Total investment opportunity of about US\$ 150 billion over a 5 year horizon

Market Potential - Power Sector

Policy

- 100% FDI permitted in Generation, Transmission & Distribution - the Government is keen to draw private investment into the sector.
- Policy framework: Electricity Act 2003 and National Electricity Policy 2005.
- Incentives: Income tax holiday for a block of 10 years in the first 15 years of operation; waiver of capital goods import duties on mega power projects (above 1,000 MW generation capacity).
- Independent Regulators: Central Electricity Regulatory Commission for central PSUs and inter-state issues. Each state has its own Electricity Regulatory Commission.

Market Potential - Real Estate and Construction

Potential

- Several factors are expected to contribute to the rapid growth in real estate
 - ✓ Large demand-supply gap in affordable housing, with demand being fuelled by tax incentives and a growing middle class with higher savings
 - ✓ Increasing demand for commercial and office space especially from the rapidly growing retail, IT/ITeS, and hospitality sectors
 - ✓ The recently announced JNNURM expected to provide further impetus
- Investment opportunities exist in almost every segment of the business
 - ✓ Housing: about 25 million new units expected to be built in 7 years
 - ✓ Office space for IT/ITES: 150 million sq. ft. across urban India by 2010
 - ✓ Commercial space for organized retailing: 220 million sq. ft. by 2010
 - ✓ Hotels and Hospitality: Over 100,000 new rooms in the next 5 years
- Investment opportunity of over US\$75 billion in the next 5 years

Market Potential - Real Estate and Construction

Policy

- 100% FDI is allowed in real estate development subject to minimum scale norms of either:
 - ✓ 25 acres in case of serviced plots or integrated townships; or
 - ✓ 50,000 square meters of built-up area for construction development projects
- Initial investment is locked-in for a 3 year period

Market Potential - Banking and Financial Sector

Potential

- Several factors favor high growth
 - ✓ Demographic profile favors higher retail offtake - 54% of the population is in the 15-35 years age group
 - ✓ Capital expenditure by the government and private industry expected to grow at a high rate
 - ✓ Economic growth of about 14% p.a. in nominal terms
- SME lending, a largely untapped market, presents a significant opportunity
 - SMEs account for 40% of the industrial output and 35% of direct exports
- Regulatory and technological enablers leading to high growth
 - ✓ The banking system is technologically enabled with RTGS and check truncation in place
 - ✓ Improved asset management practices - Gross NPAs to Advances ratio reduced from 24-25% in 1993 to 2.5% in 2006-07
- Investment opportunity across all segments in the banking and financial services sector
 - ✓ Low penetration in the pension market makes it a lucrative business segment
 - ✓ Foreign banks likely to be allowed to acquire local banks after March 2009 when the next stage of banking reforms is proposed

Market Potential - Banking and Financial Sector

Policy

- Reserve Bank of India (RBI), India's central bank, is the regulator for the banking and financial services industry
- RBI approval is required for all foreign investment in this sector
 - Foreign banks can do business in India either by setting up branches or through a wholly owned subsidiary, after approval by RBI
- Indian private banks can be 74% foreign owned, with a 5% cap on ownership by any one entity

Market Potential - Auto Components

Potential

- India amongst the most competitive manufacturers of auto components, especially:
 - ✓ Metal intensive components: forgings, stampings, castings
 - ✓ Skilled labor-intensive components: machining, wiring-harness, other electrical components
 - ✓ Hi-tech components: electronic fuel injectors
- Opportunity to address the global auto components market while leveraging India's large and growing domestic market
- Opportunity to set up R&D centers in India
 - ✓ Indian technical skills acknowledged as among the best in the world
- High level of sourcing of auto components from low cost countries (LCC's) to act as a driver for growth
- Potential of over US\$5 billion for investment in India

Policy

- 100% FDI allowed through the automatic route

Market Potential - IT and IT Enabled Services

Potential

- India's inherent IT capabilities - talented workforce and world-class companies
 - ✓ Availability of technically skilled and English-speaking labor force at a fraction of the cost compared to US and Europe
 - ✓ Quality orientation, project and process management expertise
 - ✓ Enhanced global service delivery capabilities of Indian companies through a combination of greenfield initiatives, M&A, alliances and partnerships with local players
- International recognition of India's strengths
 - ✓ Increasing awareness among global companies about India's capabilities in higher, value-added activities and in the global delivery model
 - ✓ Leading international companies have identified custom application development and maintenance as priority areas due to a high offshoreable component
- High growth of domestic IT & ITeS market due to several regulatory and technological factors:
 - ✓ Increased investments by enterprises in IT infrastructure, applications and IT outsourcing
 - ✓ Demand for domestic BPOs has been largely driven by faster GDP growth and by sectors such as telecom, banking, insurance, retail, healthcare, tourism and automobiles.
- Opportunity to supply to the global market in addition to serving the growing domestic demand

Market Potential - IT and IT Enabled Services

Policy

- 100% FDI is permitted in this sector under the automatic route
- SEZs, EOUs and Software Technology Parks have been set up across India - income tax exemptions are available for units in these designated areas/zones
- IT Act, 2000 legalizes the acceptance of electronic records and digital signatures providing a legal backbone to e-commerce

Market Potential - Healthcare

Potential

- High-growth in the domestic market arising from:
 - ✓ Increasing health awareness: share in total private consumption expected to increase by 10%
 - ✓ Increasing penetration of health insurance
 - ✓ Rapid growth in private sector companies owning and managing hospitals
- High-growth in medical tourism
 - ✓ Cost of comparable treatment is on average 1/8th to 1/5th of those in western countries.
- Opportunities exist in multiple segments along the value chain
 - ✓ Service providers: curative and preventive in primary, secondary and tertiary care
 - ✓ Diagnostics services: imaging and pathology labs
 - ✓ Infrastructure: hospitals, diagnostic centers
 - ✓ Health insurance: less than 10% of the population is covered by health insurance. The medical insurance premium income is expected to grow to US\$3.8 billion by 2012
- 44% growth in health insurance during 2006-2007
 - ✓ Healthcare BPO: medical billing, disease coding, forms processing and claims adjudication
 - ✓ Training: large opportunity for training doctors, managers, nurses and technicians
- Investment opportunity of over US\$25 billion by 2010

Market Potential - Healthcare

Policy

- 100% FDI is permitted for all health-related services under the automatic route
- Infrastructure status has been accorded to hospitals
 - ✓ Lower tariffs and higher depreciation on medical equipment
- Income tax exemption for 5 years to hospitals in rural areas, Tier II and Tier III cities

Special Economic Zones (SEZ's)

- SEZ Act and the rules framed hereunder have been notified with effect from February 2006.
- An SEZ is an export oriented duty free enclave, which is deemed to be outside the customs territory of India.
- 22 operational SEZ's in India and over 200 SEZ's are in various stages of approval and development.
- 100% tax deduction for 10 years for SEZ developer.
- Exemption from dividend distribution tax for SEZ developer.
- Exemption of Sales Tax on purchases from Domestic Tariff Area for both developer and a SEZ unit.
- Exemption from Service Tax for both developer and a SEZ unit.
- No minimum export obligation.
- A 100% permitted under the automatic route for SEZ development.
- 15 year corporate tax exemption on export profits to a SEZ unit.
- Branches of foreign companies in SEZ's are eligible to undertake manufacturing activities.

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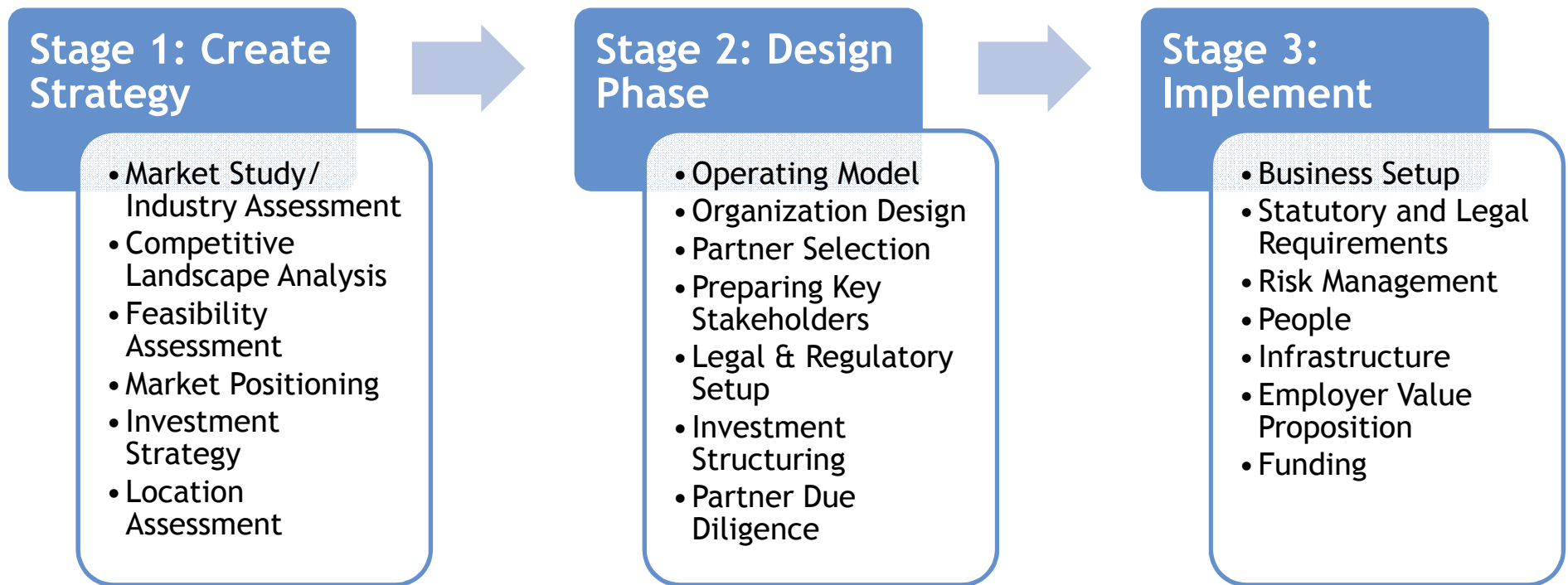
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Creating an India Entry Roadmap



Keys to Success in India

- Good local partners knowledgeable regarding the local market and procedural issues.
- Study the Market & Competition.
- Good planning.
- Aggressive due diligence and follow up.
- Patience and commitment.
- Hire good advisors
- Understand the rules, standards and regulations.

Creating Strategy

- Market study/ Industry Assessment
 - Market organization
 - Current market size
 - Expected growth rate
 - Industry trends
 - Drivers of value
 - Export component
 - Affect of currency fluctuation and relationship to the global markets
- Competitive Landscape Analysis
 - Barriers to entry
 - Degree of maturity
 - Number of competitors
 - Performance and profitability
 - Products and brands
 - Financing and flexibility
 - Areas of vulnerability
 - First-Mover advantage

Creating Strategy

- Feasibility Assessment
 - Price Point
 - Unit economics
 - Cost benefit Analysis
 - Change in consumer tastes, preferences
- Market Positioning
 - Branding/ Positioning
 - Impact on P&L
- Investment Strategy and Structure
 - Investment timeframe
 - Step by step analysis
 - Return on Investment calculations
- Location Assessment
 - Access to ports/ highways
 - Tax incentives
 - Special Economic Zones
 - Proximity to industry clusters

Design Phase

- Operating Model
 - Form of enterprise
 - Corporate structure
 - Partnership structure
- Organization Design
 - Number of employees
 - Mix of local and global staff
- Partner Selection
 - Value Proposition
 - Key Advantages
 - Risk Assessment
- Due Diligence

Design Phase

- Preparing Key Stakeholders
 - Business plan presentation
 - Financial analysis
- Legal & Regulatory Setup
 - Choosing the right legal and tax structure
- Investment Structuring

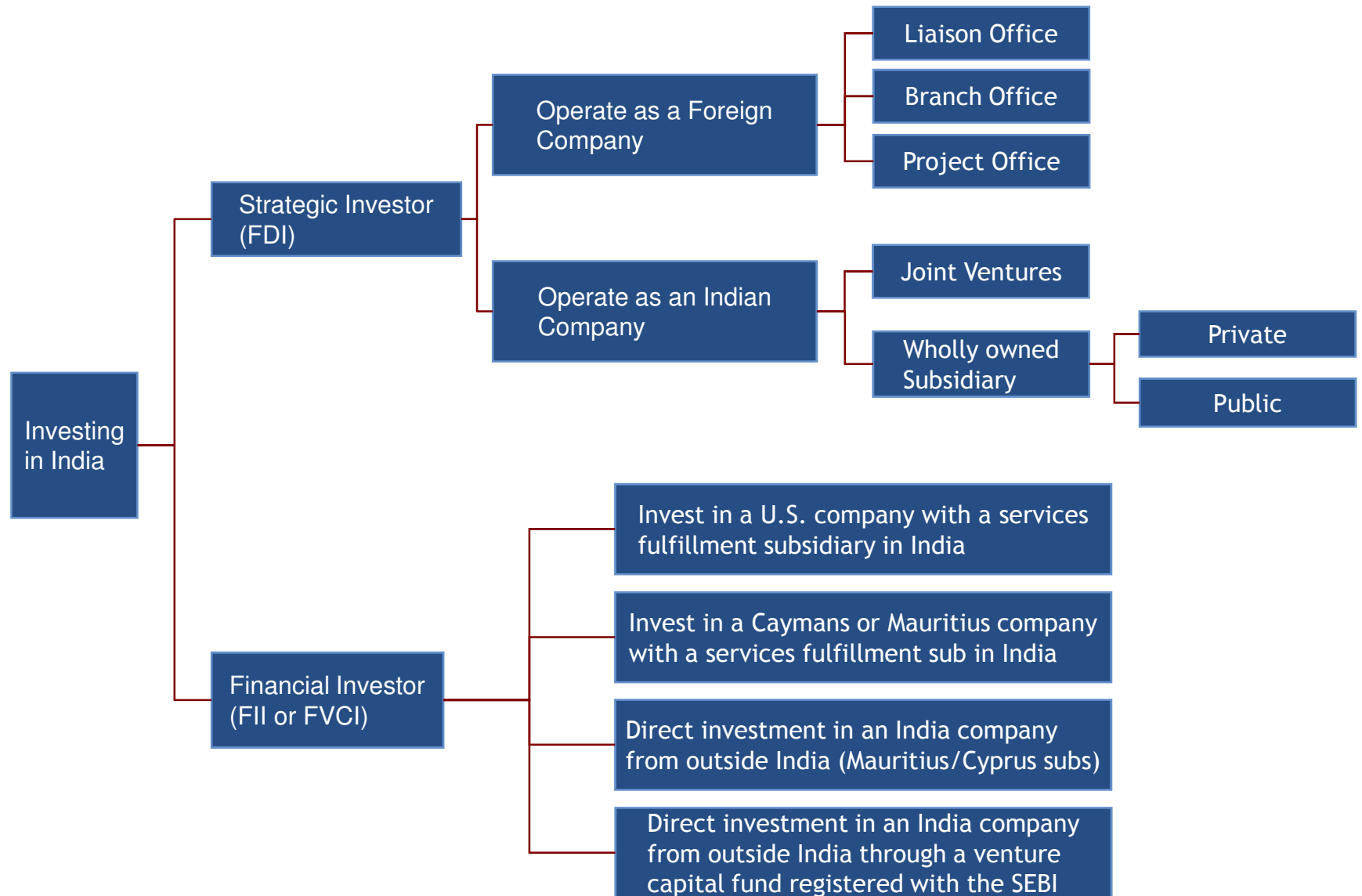
Implementation

- Business Setup
 - Registration of company
 - RBI approvals
- Statutory and Legal Requirements
- Risk Management
- People
 - Hiring key personnel
- Infrastructure
- Employer Value Proposition
 - Recruitment strategy
 - Long term / Short term incentive programs (ESOP's / variable pay / incentives)
- Funding

Key Indian Cities



Structuring Investments



Strategic Investors seeking India presence commonly use the automatic route

Automatic Route

- 100% FDI permitted in most sectors
- No prior approval necessary; Only post-facto filings
- FDI should be brought through normal banking channels
- Investment represented by fresh issue of shares

Prior Approval

Generally, applicable in following cases:

- Certain cases where FDI is regulated
- Investor has existing joint venture / collaboration in same field existing prior to 13 Jan 2005
- Acquisition of existing shares in financial services sector

Applications processed by Foreign Investment Promotion Board [FIPB] Decision generally within 4-6 weeks

Negative List

FDI not allowed in certain sensitive sectors e.g.:

- Agriculture
- Atomic energy
- Railway Transport
- Real Estate (except townships/ industrial parks, etc)

FDI in select sectors

- ✓ IT
- ✓ ITES
- ✓ Textiles
- ✓ Pharma
- ✓ Oil & Gas
- ✓ AMC
- ✓ NBFC
- ✓ Integrated township development
- ✓ Industrial parks
- ✓ Industrial model towns
- ✓ Hotels and tourism
- ✓ SEZ's
- ✗ Atomic energy
- ✗ Railway transport
- ✗ Lottery business, gambling and betting

FDI limits

FDI up to 100%

- Petroleum Sector
- Construction Development Project
- B2B e-commerce
- Tea Sector, including tea plantation
- ISP
- Domestic Airlines
- Hotel and Tourism
- Drug and Pharmaceuticals
- Software Development
- Electronic hardware
- Hospitals
- Venture capital funds/companies
- Roads and highways

FDI up to 74%

- Development of Airports
- ISP with Gateways, radio-paging, end-to-end bandwidth
- Establishment and operation of facilities
- Private sector banks
- Telecommunication services
- Mining of precious stones
- Atomic minerals
- Exploration and mining of coal and ignite for captive consumption

FDI up to 49%

- Broadcasting
- Domestic airlines
- Investing companies in infrastructure/services

FDI up to 26%

- FM Broadcasting
- Print Media
- Defense Industries
- Insurance

FDI Prohibited

- Retail Trading
- Atomic Energy
- Arms and ammunition
- Coal and ignite
- Gambling and betting
- Lottery business
- Railway transport

In order for a foreign investment to be eligible for the automatic route, certain conditions must be met

- The investment should be by way of subscription of a fresh issue of shares and not by way of purchase of existing shares from existing shareholders of the company.
- The investment should be within the sectoral equity caps prescribed, where applicable.
- The investment should not be in sectors where industrial license is required to be obtained or where foreign investment has been expressly prohibited.
- FDI Regulations prescribe a minimum price for foreign investment which is arrived at on the basis of a prescribed formula, unless made by Foreign Venture Capital Investors registered with SEBI
- With the exception of the IT sector, in all other sectors, the foreign investor cannot avail of the automatic route if such investor already has a previous venture or tie-up in the same field in India. However, this requirement applies essentially to strategic business investors and not to financial investors who may hold other portfolio investments in Indian companies.

Liaison/ Representative Office - Scope of Activities

Key Considerations

- Testing the waters without committing major resources.
- Developing trade relations.
- Collecting market information.
- Inspection & coordination of purchases for export to parent company.

Regulatory/ Legal Framework

- Office expenses to be met through foreign exchange remittance from Head Office abroad.
- No business activity permitted.
- Prior RBI approval required.
- Liaison office not taxed.
- Regular filings with Registrar of Companies (ROC).

Project Office - Scope of Activities

Key Considerations

- Office for undertaking a specific project.
- Approvals granted for both Government and private sector projects.

Regulatory/ Legal Framework

- Specific approval to be obtained from RBI's regional office.
- Regular ROC filings to be made.

Branch Office - Scope of Activities

Key Considerations

- Scope of activities larger than that of a liaison office.
- Represent parent or other foreign company as buying/ selling agent.
- Research in the sector, in which the parent company is involved.
- Render professional or consultancy services.
- Undertake export/ import trading activities.

Regulatory/ Legal Framework

- Prior RBI approval to be obtained.
- Regular filings to be made with the ROC.
- Own manufacturing activities not permitted.
- Taxed @ 42% (including surcharge) of profits of Indian branch.

Setting up a Wholly Owned Subsidiary

Key Considerations

- Incorporation of an Indian company - private or public.
- Specific FIPB approval to be sought if investment does not qualify for automatic approval.
- Corporate tax @ 35%.

Nature of the Company

- Private company to have a minimum of 2 members and a minimum paid up capital of Rs. 1,00,000/- (approx USD 2000).
- Public company to have a minimum of 7 members and a minimum paid up capital of Rs. 5,00,000/- (approx USD 10,000).

Setting up a Joint Venture Company

Key Considerations

- Approval requirement depending on sector, in which investment is made.
- Taxation as applicable to an Indian company.
- Both, the principal investment and the income are allowed to be repatriated outside India without restrictions.
- Dividend taxable in the hands of the shareholder.

Joint Venture or Wholly Owned Subsidiary

Key Considerations

- Meetings
- ROC filings
- Labour And Employment
- Taxation
 - ✓ Taxation of foreign personnel in India
 - ✓ Tax treaties

Other Routes to Invest in India

Key Considerations

- Technical Collaboration
- Investing in an existing Indian company
 - ✓ Fresh issue of shares by an Indian company
 - ✓ Purchase of existing shares in an Indian company by way of transfer
- Foreign Institutional Investor

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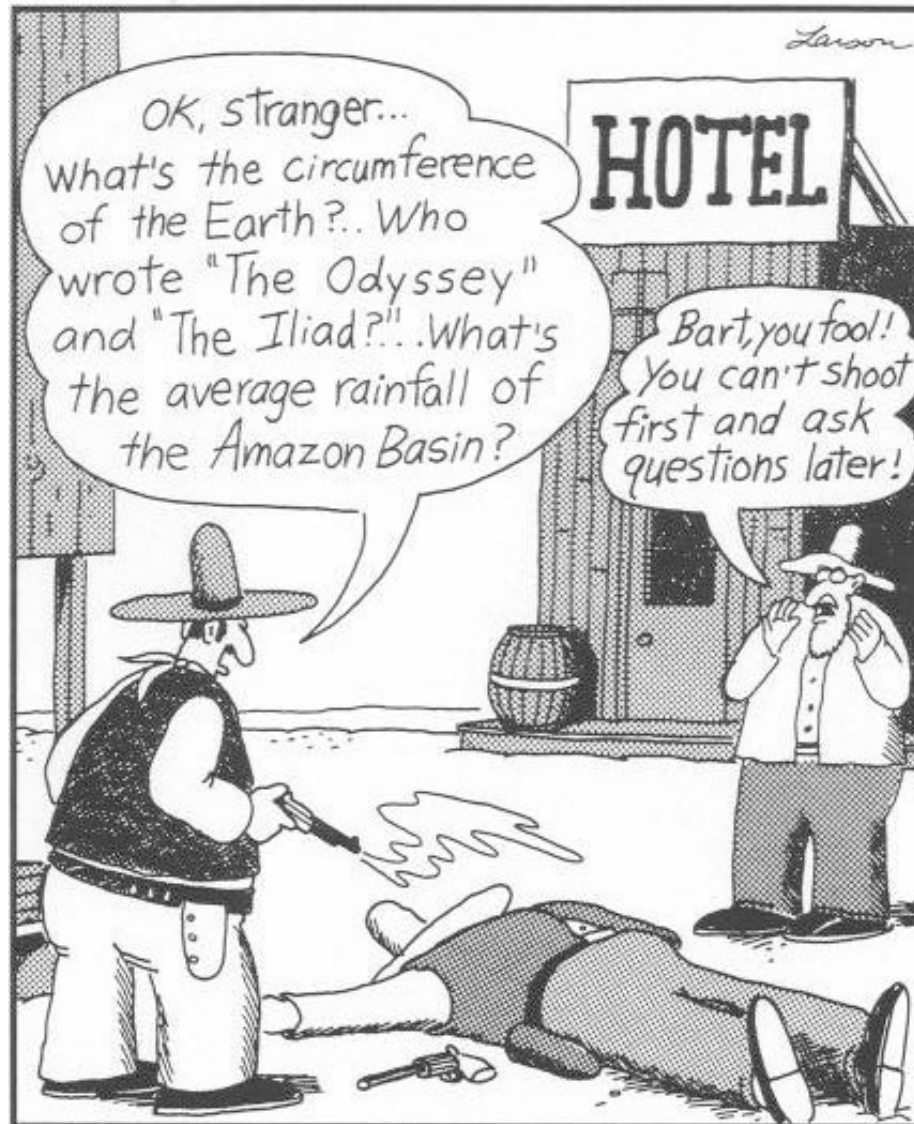
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Due Diligence - The Bottom Line



Doing Due Diligence US vs. India

	Western Countries	India	
		Large Companies with prior M&A experience	Others
1. Transparency in financial information	High	Medium	Low to Medium
2. Normal duration of due diligence	1-8 weeks	1-8 weeks	3-12 weeks
3. Assistance required by target company to prepare for due diligence	Minimal	Minimal	Generally require assistance
4. Basis of financial information	US GAAP and IFRS	Generally Indian GAAP, some companies prepare as per US GAAP or IFRS	Indian GAAP
5. Audited financial information	By reputable standards	By reputable standards	May not be very reliable
6. Extent of related party transaction	Varies; typically fully disclosed	Usually extensive; fully disclosed	Usually extensive; may not be fully disclosed
7. Disclosure of contingent liabilities	Usually transparent	Generally adequate disclosures	Inadequate disclosures
8. Reliance on computerized systems	Typical	Typical	Evolving; dependence on manual process
9. Reliability on representations and warranties	Normally reliable	Untested	Untested
10. Enforceability of indemnification	Strongly; backed by courts	Untested: may need to consider "holdbacks" or "escrows"	Untested: may need to consider "holdbacks" or "escrows"

*source: Ernst & Young

Ten Tips to Successful Due Diligence

1. Know the mindset of the target company

Comprehensive information required for the due diligence process is not readily available with the Indian companies due to lack of detailed management information system. For example, detailed schedule of margins by product and by customer may not be easy to come by with these companies. The forecasting methodologies of such small and medium sized Indian companies are not very robust, often leading to simplistic projections. The forecasts tend to be aggressive, without a track record to boot.

2. Understand key differences in doing a due diligence in the western countries and in India

Going in for a due diligence process with the right expectations is a critical success factor for US investors. The quality of financial statements, financial infrastructure and business and business process will be lower and less explicit than western investors are accustomed to. This results in the need to explore more risk areas and take more time for the due diligence.

Ten Tips to Successful Due Diligence (E&Y)

3. Listen for the word “NO”:

Asian culture is less direct in some respects. Western investors rarely hear their Indian counterparts say “no” even though they do not mean “yes”.

4. Look out for Hidden Skeletons:

Inadequate disclosures impede the ability to access critical information that might alter the investor's perception with regard to the value of the company, environment issues and aggressive tax positions among others.

5. Evaluate Corporate Governance:

Companies are slowly realizing the importance of corporate governance and some of the leading organizations are benchmarking to global standards. Some others are moving towards improvement.

6. Keep an Eye on Related Party Transactions:

As a hangover of the licensing raj, Indian businesses are generally structured as conglomerates or group businesses which create extensive related party transactions.

Ten Tips to Successful Due Diligence (E&Y)

7. Avoid Legal Minefields

Weak corporate governance is compounded with tardy legal systems where dispute resolution often remains a distant goal..

8. Communicate with Care

In any transaction, communication must be handled with utmost care. Sensitivity to Indian culture with regard to dealing with the owners who are also the entrepreneurs of the company will help to make the venture more rewarding.

9. Manage the Control Freaks

It is often observed that founding members of a start-up will refuse to give up control and settle for a minority ownership stake (a common condition for many start-ups in exchange for Private Equity funding).

10. Think Global, Act Local

Firms with a presence in India have a distinct edge due to their wide networks of contacts and experience of the Indian business environment.

Drill Down Due Diligence

Possible Tasks	Objectives
Phase I	
1. Review audit workpapers	Identify risk areas which need special attention
2. Raise asset/liability questions	Validate book value of assets/liabilities and assess the impact on future earnings
3. Analyse income statement fluctuation	Understand the seasonality of the business, assess quality of earnings etc
4. Identify potential pro forma adjustments	Ensure that historical profitability of the acquired business is truly reflected
5. Assess stand alone matters	Evaluate standalone costs incase of carve-outs.
6. Identify contingent liabilities	Determine impact on valuation and identify areas for detailed due diligence
Phase II	
1. Evaluate profitability by product/ segment/ geography	Develop in-depth understanding of the business, assess the quality of earnings
2. Analyse correlation between price and volume	Same as above
3. Identify key cost drivers and expense variability	Same as above
4. Review capital expenditure history	Determine impact on valuation
5. Analyse working capital sensitivity and seasonality	Determine impact on valuation and buyers financing needs
6. Analyse projections versus history	Assess the practicability of the projections for profitability, working capital and capex. Determine impact on valuation.
7. Evaluate the human resources and benefits issues	Determine impact on valuation
8. Quantify pro-forma EBITDA	Same as above
9. Discuss findings with target and Finalize Due Diligence report	Present the factual analysis to the target to ensure that facts are correct, and no facts are missed out.
	Summarize key findings and observations, raise alerts, if any, to facilitate investment decision
10. Develop CPs, CSs, Reps, warranties and indemnities for purchase agreement from a financial perspective	Minimizing the investment risk

Legal Matters

Legal Matters

- Dispute Resolution
- Intellectual Property Protection
- State Governments
- Company Income Tax

Dispute Resolution

Special Economy Courts

- ✓ Industrial Tribunal - employee disputes
- ✓ Tax Tribunal - tax disputes
- ✓ Debts Recovery Tribunal - debts disputes

Local Lawyer

- ✓ Responsible for legal issues in our company

Intellectual Property

Special Protection Activities

- ✓ Handbook of copyright law
- ✓ Cooperation with police academy
- ✓ Workshops and seminars for department chiefs

State Governments

Responsibility

➤ Registration

- ✓ 13 procedures to register a company

Responsible for Necessary Infrastructure

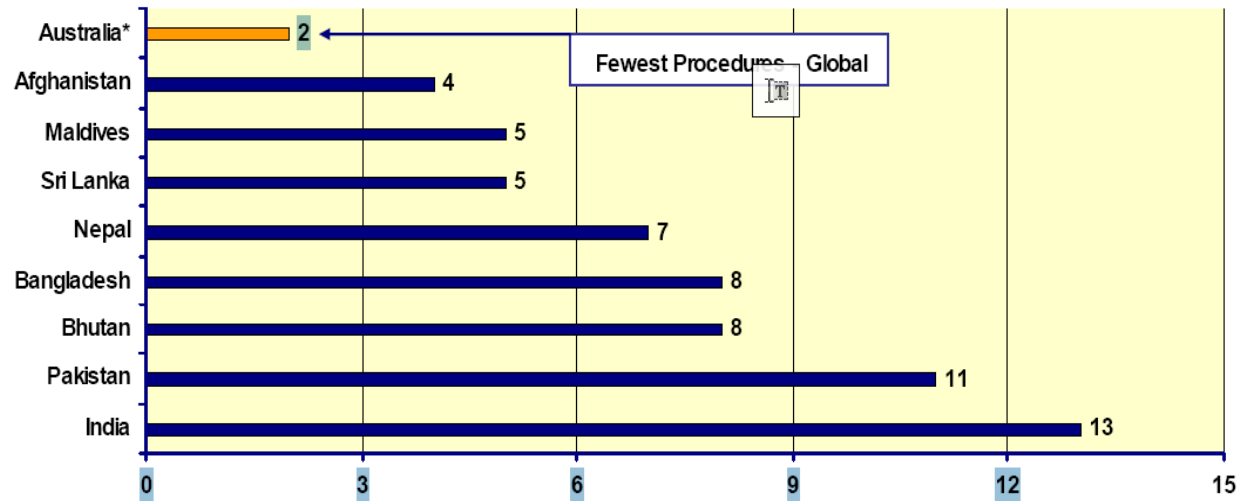
➤ Offices

➤ Electricity

➤ Internet and telephone connection

➤ Water supply

Offer National Industry Parks



Outsourcing to India

Apart from India's ...

- ✓ robust communication infrastructure;
- ✓ large English-speaking workforce;
- ✓ low labor costs and overheads; and
- ✓ appropriate time-zone difference with the West,

... India has the following advantages to offer:

- The brand equity built by the software services sector in India which exports software to 95 countries around the world.
- Faster adoption of well-defined business processes resulting in higher productivity gains.
- India has state-of-the-art technologies for total solutions: outsource turnkey projects.
- India has a stable government and is one of the world's 10 fastest-growing economies.

Cost and Quality Advantages



Outsourcing to India is now more about high quality rather than cost

- Indian companies are fast scaling up to match or surpass international quality standards and are ensuring that they stay ahead through stable quality systems and continuous quality improvement.

Legal Considerations

- Outsourcing through Ownership Model
- Owning the Intellectual Property
- Enforcing the Contract
- Protecting Trade Secrets and IP
- Liability
- Tax Considerations
- Employment Issues
- Conclusions

Owning Intellectual Property

Key Considerations

- Indian copyright law may apply
- Standard “works for hire” clause may not viable
- Patent protection unlikely
- Some concerns on fair use provisions for pre-existing IP

Enforcing the Contract

Key Considerations

- Customers want home jurisdiction and governing law.
- Arbitration v. Court - from an enforcement perspective.
- Execute an onshore contract with the subsidiary.
- Avoiding Indian courts other than for injunctive relief.
- Very few disputes have arisen.

Protecting Trade Secrets & Intellectual Property

Key Considerations

- India's piracy rate is misleading.
- No specific statute for data protection and privacy.
- Common law remedies and jurisprudence applicable.
- Indian service companies follow safe harbor provisions.
- Injunctive & equitable relief reasonably easy.
- Need for forum shopping for IP friendly court.
- Not easy to enforce employee restrictions.
- Criminal remedies are an option.

Employment Issues

Key Considerations

- Requirements for layoff of employees onerous.
- Messy employment requirements rarely followed.
- BPO Companies may be affected.
 - Government policies on women working at night.
 - Government policies on flexible hours, holidays, etc.
- Stock options - restrictions on purchase of foreign stock.
- Recent skirmishes on IP related employee movement.
- Not easy to restrict employees.
- Some visa & immigration problems both ways.

Strategic Framework

Do I need to leverage India?



How can I create an India Entry Strategy?



How do I manage risks in India?



How do I grow my operations in India?

- Sustainable Advantages
- Changing Global Economy
- Future Growth of India

-
- Organization Design
 - Finding Partners
 - Implementation

-
- Statutory Compliance
 - Due Diligence
 - Legal Aspects
 - Risk Management

-
- Culture & Communication
 - Creating Incentives
 - Monitoring Investment

Culture

- **Cultural Aspects**

- *Four major Religions*: Major religions are Hindu, Muslim, and some Christians
- *Diverse Languages*: There are 15 recognized languages with Hindi as the official language

- **Social Interactions**

- Indian's are very open and will ask personal questions
- The proper greeting is *namaste* or hello
- 3 feet of personal space, and gestures have different meanings
- Strong male hierarchy

- **Entertainment Protocols**

- Most meetings are between 11am and 4pm
- Always use the professional title
- An invitation to an Indian's home should be taken seriously

Business Conduct

- Business cards are in English, and exchanged at the first meeting.
 - Hindi ... the major official language in India
 - Different official languages in different states
 - More than 20 languages spoken in India
 - English => language of the international commerce
 - What's your name? => English
 - What's your *good* name? => "Hinglish"
- Gifts are also a popular custom, but adhere to religious observance.
- The use of a respected 3rd person intermediary for introduction is recommended.
- Plan meetings in advance, and do not make a tight time schedule.

Think Local

- ❖ The Indianized Chinese
- ❖ KFC - Tandoori Chicken preferred to the 'KFC experience'
- ❖ McDonalds - 'McVeggie Burger' & 'McAloo Tikki'
- ❖ Domino's - 'Peppy Paneer' & 'Chicken Chettinad'
- ❖ Pizza Hut / Pizza Express - spicing it up!

Recruitment/ Retention Strategies

Recruitment

- For every 5 openings, only 1 qualified candidate
- Employees seen as internal “customers”
- HR managers judged as salespeople- rather than administrators

Retention

- Differentiating company from competitors
 - ✓ compensation and benefits tailored to particular job
- Play on sense of togetherness
 - ✓ de-emphasize pay-for-performance
- More important whether person liked and respected
 - ✓ performance ability not valued as strongly

Negotiation

- Preparation is a key to success in India.
- Present issues in a hierarchical order
- There is low sensitivity to time.
- A relationship must be formed.
- Negotiations should be at the highest level of the Indian organization.

Do's

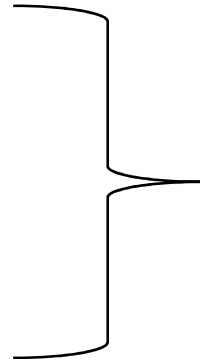
- Rely on written agreements, not YES.
- Modern India relies on contracts
- Consider other firms.
- Bring a group of negotiators.
- Save concessions for strategic implementation.

Don'ts

- Don't be swayed by kindness
- Don't bring up business on the first meeting.
- Don't trust every manager as equal

Look for the word “No”

- “We will see”
- “I will try”
- “Possibly”



Means “NO”

Monitoring Operations

- ✓ Assess Performance
- ✓ Keep Management Focused
- ✓ Identify Areas for Improvement
- ✓ Review Monthly Reports
- ✓ Participate in Board Meetings
- ✓ Attend Industry Conferences
- ✓ Discuss Results with Management
- ✓ Talk to Department Heads, Other Managers
- ✓ Scan News Headlines
- ✓ Analyze Industry Studies, Research
- ✓ Check for Fraudulence, Inconsistencies

About Virtus Global Partners

IMaCS Virtus Global Partners, Inc. (IVG Partners) offers advisory services to North American companies and private equity funds seeking India related growth, investment and sourcing opportunities. Our mission is to enable our clients to transform their business by adding India as a key part of their global footprint. Our clients benefit from our local presence, strong relationships, knowledge of local business practice, experience and financial expertise.

We provide India related Strategy & Roadmap Consulting, Partner/ Target Search, Operation Setup & Support, Cross-border M&A Advisory, Project/ Bid Advisory and Transaction Advisory services. Our team possesses a deep understanding of the business environment both in the US and India and is well connected with companies, financial institutions, governmental agencies, and private equity firms in both markets.

We have an established track record of over 15 years and 900 engagements providing advisory services to a diversified client base across manufacturing, infrastructure, energy, technology, industrial commodities, and retail. We also work with multilateral and bilateral government agencies, banks & financial institutions, and regulators. We are headquartered in New York with eight offices in India.

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