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India – Law Firms

Inbound And Outbound Investment: As The Indian Middle Class Grows, India Grows From Strength To Strength

*The Editor interviews **Rahul Patel**, King & Spalding LLP.*

Editor: Mr. Patel, would you tell our readers something about your professional experience?

Patel: I went to both undergraduate and law school at the University of Florida. I came to King & Spalding in Atlanta as a summer associate because I was attracted to the type of corporate work that the firm handled, together with its Atlanta location. Twelve years later I am still at the firm's Atlanta office and a partner. My practice has a primary focus on mergers and acquisitions and other strategic transactions, and lately I have been focused on cross-border transactions involving India.

Editor: Please tell us about your practice. How has it evolved over the course of your career?

Patel: The most significant change I have experienced over the course of my career concerns the Indian aspect of my practice. The opportunity for an Indian practice has developed as a result of the liberalization of the Indian economy, and over the past five years this development has really accelerated. As a result, foreign companies have increasingly invested in India, and Indian enterprises have begun to invest outside the country. We have seen this development as an



Rahul Patel

opportunity for King & Spalding to play an active role in both inbound and outbound investment work. The India practice has also tied in nicely to our firm's Middle East practice. King & Spalding has had a long-standing presence in the Middle East, and a good portion of inbound investment into India has originated from this region.

Editor: Please tell us about India as an investment destination and place to do business. What are the hot areas in the Indian economy now?

Patel: One of the principal areas of investment is infrastructure. I think it is

fair to say that from the time of independence in 1947 until the early 1990s the Indian government did not pay a great deal of attention to the country's infrastructure. This issue is now being addressed, but with close to half a century of neglect there is a great deal of catching up to do if the country is going to compete with the major players in the global economy, particularly China. India's roads, for example, are not in good shape, and there is a very great need to connect the major cities – Chennai with Bangalore, Delhi with Calcutta and Mumbai – with modern highways. A great deal of work is necessary to bring the country's bridges, port facilities, railways and airports up to world standard as well. All of this means that a great deal of inbound investment is going to be directed to major infrastructure projects. Construction companies, both domestic and foreign, are going to be extremely busy in the coming years.

Other areas that are going to see increased activity include real estate, financial services, healthcare, food and hospitality, travel, entertainment and a range of economic sectors that are affected by the dramatic growth of India's middle class. For the first time in history large numbers of people in India have disposable income, and, I think, those numbers are only going to increase as the country assumes a greater role in the global economy.

Editor: Concerning inbound invest-

Please email the interviewee at rpatel@kslaw.com with questions about this interview.

ment, have you found arbitration to be a satisfactory alternative to litigation in the Indian context?

Patel: It is standard practice for us to advise our clients considering doing business in India on arbitration as an alternative to litigation. Whenever we are negotiating a partnership, joint venture or some other arrangement with an Indian enterprise, we attempt to insert an arbitration clause into the contract. This is meant to prevent any potential dispute between the parties from being handled by the Indian court system, which can take a long time. We also try and provide that the arbitration take place outside of India and subject to the arbitration rules of one of the principal international arbitration organizations. It is much easier to enforce a foreign arbitration than a judicial award in an Indian court.

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Editor: What are the key issues to be addressed in a partnership or joint venture agreement between a foreign national and an Indian enterprise?

Patel: Foreign direct investment in India has been liberalized to a considerable extent in recent years. Nevertheless, it continues to be tightly regulated. The first thing a non-Indian investing in India should be concerned with is the limitations placed on foreign ownership of certain types of enterprise. This varies greatly from industry to industry. With many industries there are no restrictions on foreign ownership, but as a general matter in areas which concern defense, security, or some strategic aspect of the country's economy there are limitations on the percentage of an Indian enterprise that a foreigner may own. It is essential

to understand this at the outset of any discussion concerning the acquisition of an Indian company.

Secondly, it is essential for the non-Indian investing in India to know its Indian partner. Due diligence is more than an exercise in checking off the boxes in this situation. The Indian partner – its experience and expertise both with government regulators and the industry in which the joint undertaking is to operate – will be crucial to the investment paying off. One should not choose a partner solely because it is necessary to satisfy some sort of Indian ownership requirement. The partner must understand the business, the regulatory environment and the seas that are to be navigated.

Another important aspect is tax planning and taking advantage of Double Taxation Avoidance Agreements that India has with various countries in order to limit tax liability.

Editor: What about an exit strategy? You obviously don't want to go into a deal with the idea that it isn't going to work, but on the other hand common sense dictates that the parties must pay some attention to that possibility.

Patel: As with any other investment, parties should consider the possibility of an IPO or a sale of either party's investment to a third party. An investment by a reputable non-Indian company in an Indian company very often enhances the credibility of the joint enterprise, thereby adding value to the investment of both parties. To be sure, this is not automatic. Assuming the due diligence process has been properly conducted, however, the exit strategy in this type of situation should be no different from that employed anywhere else.

Editor: How about mergers and acquisitions? What should general counsel at an American company know about the acquisition of an Indian concern?

Patel: Notwithstanding what I have said about restrictions on foreign ownership of Indian companies, in certain industries and industry sectors the acquisition of 100 percent of an Indian concern by a foreign investor is a possibility. The best

advice I can give to a client seeking to take such a step is to consider entering the Indian market *initially* by partnering with an Indian company with the requisite connections and experience. I think it is a real stretch to expect a foreign investor to be able to, say, navigate the Indian regulatory environment without having first been introduced to it by the right partner and through a gradual and well planned process.

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Editor: With respect to outbound investment, where do you see Indian enterprises making investments and carrying on activities in the global arena?

Patel: There are a number of hot areas, and a number of the major Indian companies have consummated headline grabbing transactions in the past few years, especially in the metals and automotive areas. There has also been considerable outbound investment targeting areas where India itself has considerable strength, including healthcare and the pharmaceuticals area, entertainment, hospitality, and, of course, business outsourcing.

Editor: Please share with us your thoughts about the Indian economy.

Patel: The Indian economy has been thriving over the past five years. I think this will generally continue over the long term, although the economy will experience some short term slowdown as a result of economic issues the world is facing generally. However, I see the middle class continuing to grow. That, in turn, is going to attract more inbound investment and, at the same time, more outbound investment.