



## THE ROAD AHEAD

At the recent annual World Economic Forum meet, corporate and political leaders from India were upbeat on global investor response towards the country, reasserting the confidence that remains in India despite a sluggish global economy.

Whilst 2002 was primarily a year of retrospection and consolidation, India hosted several trade missions and delegations exploring business opportunities across a spate of industrial sectors - including consumer goods, automotive, information technology, electronics, healthcare, power, media and entertainment. Several further missions took place in the first

quarter of this year, including the 11th Convergence India 2003 - the annual global telecommunications, information technology and broadcast show and Frames 2003, the biggest global convention on the business of entertainment in Asia.

In this issue of *india brief* we highlight key features of the Indian budget relevant to foreign investors, provide a birds eye view on buying property in India, report on the much-awaited decision by the government to permit dual citizenship and provide an update to our report on foreign arbitrations in Indian contracts that first featured in our Nov. 2001 newsletter.

## MUMBAI HOSTS MYCCI MISSION



Left to Right Lorraine Ellison, Rajiv Bhatia, Shalini Agarwal, Anajan Mitter, Rick Lowes

A high profile delegation, led by Lorraine Ellison of Mid Yorkshire Chamber of Commerce and Industry went to Mumbai last November to explore bilateral collaboration in the creative industries sector. The mission was timed to coincide with the 5th Indian International

film festival thereby providing many opportunities for the film related companies on the mission. This seminar saw participation of distinguished Indian and British filmmakers such as Shyam Benegal, Ketan Mehta, Amit Khanna, Asif Kapadia, Ben Hopkins, Anita Lewton and Leslee Udwin. According to the Confederation of Indian Industries, the Indian entertainment industry is growing at a rate of 30% and in five years would be worth £7.2 billion. Rakesh Mathur of Tim Pendry Ltd., covering the event, carried out a series of productive discussions with Indian film and TV producers and directors, noted "the number of opportunities for British investors to get in".

Lorraine Ellison, a regular visitor to India for the last 14 years, comments: "Things have changed enormously. As one of the world's top 3 emerging economies (with China and Brazil) India offers huge opportunities for those with commitment. Single hit visits are unlikely to be successful for any company, irrespective of sector.

Take the example of Bollywood, an area where we have encouraged UK and Indian producers and film companies to collaborate - this has created some very interesting results for companies in the North of England. It has generated an understanding of what is achievable and a real commitment to mutual business. It's all about getting to know each other and identifying mutual strengths Business is about joint collaboration and trading with each other - no one wants to do business without a win-win on both sides."

## BUDGET HIGHLIGHTS



The Union Budget for 2003-04 was unveiled by Finance Minister Jaswant Singh in Parliament on 28 February. The Budget, considered to be progressive and growth

oriented concentrated in part on the need for improving infrastructure, including projects to create new airports and modernise railways and seaports. The Government of India also reinforced its commitment to economic reform and investor friendly policies by raising the permitted level of foreign direct investment in private banks from 49 to 74 %.

- 100% FDI allowed in tea sector.
- 100% FDI allowed in advertising sector under the automatic route.
- India to be promoted as global health destination.
- Customs duty for capital goods for telecom sector cut to 15%.
- Customs duty exempt on all drugs and materials imported for clinical trials.
- Peak customs duty reduced from 30% to 25%.
- Excise duty on garments cut from 12% to 10%.
- Dividends from companies exempted from tax.
- Modernisation / renovation of airports and seaports planned (estimated costs around Rs.110 billion).
- 48 new road projects (estimated costs around Rs.400 billion).
- Special budget allocation of Rs.200 million for research in alternative fuel sources.
- Mega power project policy to be liberalised.
- Benefit of exemption allowed in hands of amalgamated/resulting company in case of reorganisation in IT sector.

## COMING HOME - A GUIDE TO BUYING PROPERTY OVERSEAS

Buying a property, wherever you are in the world, is no picnic. Buying a property in the next street to you can be complicated enough, so when you buy property in India, you can't expect an easy ride. You can, however, take steps to ensure that the headaches are kept to a minimum.

The Internet has really opened up the international property market and made searching for a home on the other side of the world a great deal easier. Jo Woolgar of international estate agent Yes Property International says: "We have properties for sale all over the world and we currently have four properties for sale in India. Quite often we find UK-based Asians use our service to sell properties in South East Asia."

The online versions of major newspapers are a good starting point. The Times of India [www.timesofindia.com](http://www.timesofindia.com) has a very comprehensive property search engine, for example. You cannot rely on the Internet alone, however. It is advisable to make at least one trip to the area you are looking to buy in before handing over any money.

When it comes to formally completing the sale, it is essential to retain the services of a law firm that has knowledge of the local legal system says Sameer Tapia, a partner in ALMT Legal. ALMT Legal was founded three years ago in London as the first active Indian law firm in the UK; it also has offices in Bombay and Delhi and associated offices across India. Tapia explains: "We don't advise on English law, we advise on Indian law. We really are one of a kind and have a huge amount of representation into India. I represent many clients buying or selling property in India, we help bridge the cultural gap. You have to remember when you are dealing with India you are dealing with 18 languages and several dialects, you need local knowledge and expertise, which is where we come in."

India seems to be the most popular country in the region with overseas buyers. HSBC's South East Asia spokesperson says: "A lot of non-resident Indians have purchased a second home in India. I think they like to keep one leg back home, where they have family connections." Indeed Goa is also becoming a popular second home destination with non-Asians. Hellman of Tee Marbella says that "The two to three-bedroom properties we are promoting in the Miramar Beach area, for example, start at approximately £30,000, while in the Colva Beach area, about a half mile from the sea, two-bedroom apartments sell for less than £11,000. If you compare this with properties in Spain, the cheapest two-bedroom apartments now cost approximately £100,000 and if they are on the beach more than £150,000."

India's most expensive property, however, is found in South Mumbai, says ALMT Legal's Tapia. He explains: "Land prices in south Mumbai were at their peak in 1994. A really posh flat there could cost between £1 million and £2 million. It was more expensive than Tokyo at one time. Property prices in Mumbai have now dropped by about 30 to 35 per cent, but the property market is still very strong. There is almost nowhere else left to build and the market saturation is what is keeping prices stable. Mumbai is our New York, Delhi is our Washington if you like. Mumbai is the commercial and financial capital of India, Delhi is its political centre."



The rental market is also strong in India around those areas that are home to large multinational firms. "Multinationals often provide serviced offices for their senior staff in India, and this keeps the upmarket rental market booming," explains Tapia.

So what attracts people to buying a second home in India? Sameer says: "We help three main types of clients looking to either buy or sell property in India. There are those who have moved outside of India, but like to keep a place there for sentimental reasons and to be near their family; there are those who buy purely for investment purposes and a third group who have ancestral property in the country. Those who have ancestral property in India, i.e. a home that has been passed down from generation to generation, often find that over a period of time a property, which they think is of little value, suddenly becomes very sought after. They realise they are sitting on a gold mine. This group often looks to sell this property and invest the profits in a further property and so the chain continues. On the whole, foreigners rarely buy a place in India, unless they have vested interests there."

Tapia of ALMT Legal says: "The law in India is very much based on English law and the conveyancing process runs on pretty similar lines. First you go and view the property. If you decide you want to buy it, you put in a memorandum of understanding (MOU), and then you put a deposit down. You get a search done and in India it is particularly important to check that there are no ancestral claims outstanding on the property. Then the solicitor ties up the conveyancing formalities and you complete. It is not as common to undertake a structural survey in India as it is in the UK. You tend to find that surveyors are only called in if the property is very old. In fact, you are more likely to get it looked over by an architect prior to purchase. Planning laws are also much more lenient in India than they are in the UK. You may find a really beautiful apartment, and then discover that your neighbour has put an ugly air conditioning tower on the roof. People do what they want to their buildings they don't care if they spoil its looks. You do find, however, that in India freehold property is generally much better maintained. So, if there is a choice, go for freehold."

## FOREIGN ARBITRATION PROVISIONS IN INDIAN CONTRACTS

### BHATIA INTERNATIONAL V. BULK TRADING S.A. & ANOTHER: A CASE STUDY

In November 2001 we reported on the decision of the Delhi High Court in *Marriot International Inc. v. Ansal Hotels Ltd.* (the Marriot case). The Marriot case held that Part II of the Arbitration and Conciliation Act 1996, which, inter alia, deals with the enforcement of foreign awards in India, did not authorize Indian courts to grant relief in respect of the subject matter of arbitrations held outside India. The Supreme Court of India has now overruled the decision in the Marriot case in *Bhatia International v. Bulk Trading S.A. & Another* (the Bhatia case).

### BRIEF BACKGROUND OF ARBITRATION LAW IN INDIA

The Arbitration and Conciliation Act 1996 (the Act) was enacted to consolidate and amend the law relating to domestic arbitrations and enforcement of foreign arbitral awards. It replaced the Arbitration Act 1940 which had become outdated and was not in harmony with the arbitral mechanism available to resolve the disputes as existing in many other countries. The Act was divided into 4 parts; Part I dealing with arbitrations, Part II dealing with the enforcement of foreign arbitral awards under the New York and Geneva Conventions, Part III dealing with Conciliation and Part IV incorporating certain supplemental provisions. The Act put in place in India the UNCITRAL Model Law on International Commercial Arbitration 1985.



In the Marriot case the Delhi High Court held that the ability for parties to approach the courts for interim relief in respect of the subject matter of arbitration is contained in Section 9 of Part I of the Act. Further it was held that since Part I of the Act specifically deals with domestic arbitrations and the legislature has omitted (whether intentionally or not) to provide a similar provision under Part II of the Act which deals with offshore arbitrations, such remedies will not be available to offshore arbitrations.

### THE SUPREME COURTS INTERPRETATION

It was argued in the Bhatia International case that if the Marriot case reasoning was to be adopted it would leave parties who have opted for international commercial arbitrations outside India without relief for the duration of arbitral proceedings which would be extremely prejudicial to the rights of the parties involved. It is for this reason

that after the Marriot case most foreign companies opted to insert domestic arbitral clauses into their agreements in order that they might get interim relief in the case of any dispute.

The Supreme Court held that in an international commercial arbitration held outside India unless the parties to an arbitration agreement expressly or impliedly

excluded the provisions of Part I of the Act then those provisions shall apply to such arbitration. Thus Section 9 which provides for interim measures by an Indian court would hold good for an arbitration held outside India unless excluded by agreement. The Court has observed that Part II deals with awards made in a convention country (signatory to the New York or Geneva Convention) and held that accordingly an award made in a non convention country would not come under Part II and be thus considered as a domestic award made under Part I of the Act.

This implies that for arbitrations held in a non convention country Part I would compulsorily apply and parties cannot contract out of the provisions of Part I including Section 9 which provides for interim relief.

### CHANGE IN APPROACH

Following Marriot, sensible advice to potential investors in India with respect to dispute resolution in contracts was to recommend a domestic arbitration clause to avail of the benefit of interim relief. However in light of the Bhatia case it would now make sense to look closely at other jurisdictions for international commercial arbitrations depending on the convenience of the parties. The tricky issue would be to decide between a convention and non convention country as enforcement is now seemingly easier in cases of awards made in a non convention country till the Supreme Court finds occasion to take a second look at this issue.

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## DUAL NATIONALITY - A REALITY



The Indian Prime Minister's announcement early in 2003 in favour of granting dual citizenship to Indians in selected countries has elated thousands of Indians across the world. This move will allow Non Resident Indians (NRI's) in Britain to acquire and hold both Indian and British passports with all the residency rights of an Indian citizen with the exception of the right to vote in an Indian election. Mr. Vajpayee said "The challenge of preserving Indian heritage and culture by the global diaspora while also fully integrating with the political, social and cultural life of

their adopted lands had been done impeccably and that the global NRI community had managed to achieve this fine equilibrium". The Government has in principle agreed with the committee's suggestion that Dual Citizenship can be extended right away to those settled in the US, UK, Canada, European mainland, Australia, New Zealand and Singapore. These countries either permit or tolerate dual citizenship. Indians settled in Sri Lanka, Mauritius and Malaysia may not be entitled to dual citizenship and would have to opt for "person of Indian origin" certificates.

## 29TH BIENNIAL CONFERENCE OF THE INTERNATIONAL BAR ASSOCIATION



Sameer Tapia, a partner of the firm, attended the International Bar Association's Biennial Conference which took place between 20 to 25 October 2002 in Durban (in the province of Kwa - Zulu Natal), South Africa.

Historically it is the first such event to be held on the continent of Africa. The IBA, a prestigious international organisation once again brought together legal luminaries from across the globe. More than 4,000 lawyers from over 90 countries attended this conference in Durban, networking to build the bridges which assist clients in overcoming legal, cultural and social barriers when conducting business in foreign territories.

Pictured above is ALMT partner Sameer Tapia with Diana Kempe, President of the IBA who was pleased to learn about our firm's presence in the UK and India and the services we provide clients on both continents.

### ALMT PARTICIPATION

Speaking at the India Telecom and Software Opportunities seminar organised by Trade Partners UK in North England on the eve of the 11th Convergence India conference, Vaibhav Shukla of ALMT Legal guided delegates on the legal framework and aspects of doing business in India, in particular in the IT and Telecom sector. Shalini Agarwal, ALMT Legal partner accompanying the British Telecommunications mission to Delhi engaged in several productive discussions with both domestic and international players keen to benefit from this growth area and explore opportunities to collaborate for mutual benefit.

ALMT partner Sameer Tapia joined the East Midlands trade mission to Mumbai and Hyderabad assisting clients develop contacts and identify business opportunities.

Frames 2003, attended by ALMT partners Shalini Agarwal and Ananjan Mitter was a show case event for the media and entertainment industry bringing the various streams of films, music, TV and radio together for active deliberation on key issues of finance, marketing, advertising, technology, intellectual property rights and production. Prominent foreign attendees included Michael Fox, Director, Commonwealth Film Festival, Chris Cramer, President, CNN International, Michael Grindon, President, Columbia Tristar Intl. Television.

The 13th annual Inter-Pacific Bar Association meet recently took place in Delhi. The theme - The dawn of the new ICE age - provided active and lively debate on legal issues arising from the convergence of diverse technologies such as Information, Communication and E-commerce that have broken down traditional geographical boundaries thereby creating new legal and regulatory challenges. The Women Business Lawyers session, under the chairmanship of Rosaline Cheung of Johnson Stokes & Masters and assisted by committee members Suchitra Chitale (AY Chitale & Co) and Shalini Agarwal (ALMT Legal) saw an active exchange of ideas and experiences relating to lawyers dealing with the media.

### CULTURAL TIP: RULES OF THE ROAD - AN UNOFFICIAL GUIDE

If it is your first, second or indeed umpteenth visit to India, it is worth remembering the following:

- The assumption of immortality by all road users
- All vehicles are driven in accordance with the Indian drivers mantra: To slow is to falter, to brake is to fail, to stop is defeat
- All traffic to occupy the centre of the road and overtaking is mandatory
- Rights of way: Traffic from the right has priority- so does the left & the middle!
- Use of horn: Short urgent horn blasts indicate supremacy; long desperate blasts denote supplication and all horn signals mean "I have no intention of stopping... even if I could!"

Not to forget the caste system on which Indian traffic is structured namely, in descending order give way to cows, elephants, heavy trucks, buses, cars, dogs and then pedestrians.



# india brief

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