

# The lion and the tiger

**Singapore is seeking to enhance its standing as India's business hub for Asia. Yet as India's legal and financial markets mature, its reliance on offshore expertise and capital may be falling**

*Vandana Chatlani reports*

**W**elcome to Singapore – India's most efficient city. At least that's how the Singaporean government would like its equatorial republic to be perceived. Singapore has worked hard to strengthen ties with India and promote the city as a base for inbound and outbound Indian investment. The Comprehensive Economic Cooperation Agreement signed between the two countries on 1 August 2005 focuses on bilateral investment, trade, security and educational interests and is the first such extensive agreement between India and any of its trading partners.

"The Singapore government is encouraging people to think of Singapore as another state of India," says Rahul Guptan,

a partner at Clifford Chance. It may be working: "A number of Indians joke that Singapore is India's fifth metro," says Narayan Iyer, a partner at Linklaters. "The biggest metro ... and everything works!"

Indians comprise Singapore's third-largest ethnic group and have played a prominent role in its political and economic development. Ethnic Indians such as Singapore's sixth and current president, SR Nathan, continue to hold high office. It is even believed that the Sanskrit words *simha* and *puram* – lion city – gave the island its name.

"Singapore has a significant and very successful Indian population, throughout the Singaporean legal community,

The Singapore government is encouraging people to think of Singapore as another state of India

Rahul Guptan  
Partner  
Clifford Chance



in business and in government, so there is a natural affinity between India and Singapore,” says Bill McCormack, a project finance partner at Shearman & Sterling.

“Singapore has been able to assimilate Indians,” adds Rajesh Sreenivasan, a partner at Rajah & Tann. “People are looking at a jurisdiction that they’re comfortable in and it’s not difficult to acclimatize in Singapore. Are Indians really as accepted and engaged in other countries?”

## International legal hub

Most foreign law firms operating in Singapore provide English, US or Australian law advice. Only six of them – Allen & Overy, Clifford Chance, Herbert Smith, Latham & Watkins, Norton Rose and White & Case – have been awarded the Qualifying Foreign Law Practice Licence which is required to advise on local corporate law. However, a proposal to liberalize the legal services industry and award more licences promises to allow Indian and other foreign firms to practise Singaporean law.

In the meantime Singapore is being used as a centre to service India and other regional markets. “We’re looking at the entire region, and using Singapore as our East Asian hub for the delivery of Indian law expertise,” says Vivek Kathpalia, a partner at Nishith Desai Associates, which practises Indian law in the city and was the first Indian law firm to establish an office there.

Herbert Smith’s Singapore practice has a similar strategy. “It’s a regional practice and we aren’t here just to do India work,” says Nicholas Peacock, a partner at the firm, who is currently advising Indian entities on purchases of Indonesian coal. “Indonesia has historically been a focus for Singapore and Malaysian firms,” he says. “Now India will become a big focus. I expect to see more energy activity in India.”

Many firms use Singapore as a base for their India work because they are not allowed to operate in India itself. Jai Pathak, partner-in-charge of Gibson Dunn & Crutcher’s

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### Practice Areas

<ul style="list-style-type: none"> <li>Capital Markets</li> <li>Competition Law</li> <li>Corporate &amp; Securities</li> <li>Employment and Human Resources</li> </ul>	<ul style="list-style-type: none"> <li>Fund Formation</li> <li>Fund Investments</li> <li>Intellectual Property</li> <li>International Tax</li> </ul>	<ul style="list-style-type: none"> <li>International Tax-Litigation</li> <li>Litigation &amp; Dispute Resolution</li> <li>Mergers &amp; Acquisitions</li> <li>Succession &amp; Estate Planning</li> </ul>
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### Industry Expertise

<ul style="list-style-type: none"> <li>Banking &amp; Finance</li> <li>Education</li> <li>Funds</li> <li>IT &amp; Outsourcing</li> </ul>	<ul style="list-style-type: none"> <li>Media &amp; Entertainment</li> <li>Pharma and Life Sciences</li> <li>Real Estate</li> <li>Social Sector</li> </ul>	<ul style="list-style-type: none"> <li>Technology</li> <li>Telecom</li> <li>Infrastructure</li> <li>Micro-finance</li> </ul>
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### Highlights & Recognition

- The First Indian law firm to be licensed to practice Indian law by the Attorney General of Singapore and the State Bar of California.
- Asian Legal Business: ‘Top 10 Firms to Watch in 2009’
- Pacific Business Press: Asian-Counsel Firm of the Year 2009 for Private Equity and Taxation
- Financial Times-RSG Consulting survey of Indian law firms: Ranked highest on ‘Quality’
- Chambers and Partners: Among the ‘Most In-Demand Practitioners’
- Practical Law Company (PLC): Leading firm for Taxation and IT & e-Commerce; Recommended firm for Capital Markets, Corporate Real Estate, M&A, IP, Outsourcing, Private Equity, Venture Capital and Telecom
- Legal 500 : Ranked # 1 in Tax, Investment Funds and TMT practices
- Asian survey by International Tax Review: Top ranking law firm and recognized for its cross-border structuring work
- International Financial Law Review: ‘Asian Law Firm of the Year (Pro Bono)’ in 2001 and ‘Indian Law Firm of the Year’ in 2000
- Consecutively for the fourth year in 2009, members of NDA have won the global competition for dissertations at the International Bar Association

Singapore office, says: "Foreign law firms are not allowed to open an office in India. But we have very close relationships with Indian law firms and with lawyers in India. Business in India is done on a human level, and very often a lawyer's physical presence is required. Because of its close proximity to India and indeed its cultural and economic ties, Singapore becomes an ideal location from which to work in the Indian market."

For other firms, expertise in specific practice areas is leveraged in Singapore. "We have a global India team and we share India coverage across offices," says Naomi Ishikawa, a partner at Milbank Tweed Hadley & McCloy. "Our Singapore office is staying quite lean," she continues. "We don't try to be everything to everyone. We concentrate on top-tier deals." For example, the firm recently handled a Tata Motors combined global depository receipt offering.

Like many international lawyers, David Makarechian, a partner at O'Melveny & Myers, emphasizes Singapore's role as a bridge between India and other markets. "We tend to act for a lot of Indian corporates that are doing inter-Asia transactions or involving the US in some way," he says. "We have a very strong China presence, for example." He notes that there is strong cross-border interest in both directions by clients in India and China.

"90% of our client base is foreign," says Jayne Kuriakose, a lawyer at Kochhar & Co, one of a handful of Indian law firms with offices in Singapore. "Our focus is on investments into India. Singapore serves as the Asia-Pacific headquarters for many multinationals. We have clients from oil, media and IT companies to hedge funds and mutual funds. The majority of our foreign clients have offices in Singapore and they would like us to be present here."

### Home-grown expertise

While most Singaporean firms claim to have active India practices, the work they undertake is often different from that handled by international firms or Indian firms with offices in the city. Singaporean firms typically represent mid-tier Indian companies aiming to list in Singapore, and small and medium-sized enterprises seeking to enter India. India-related arbitration is also an area of growing importance for the country's legal profession (see *The business of making peace*, page 23).

Domestic stalwarts Allen & Gledhill, WongPartnership, Rajah & Tann and Drew & Napier traditionally win the lion's

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Partner

Shearman & Sterling



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Rajesh Sreenivasan

Partner

Rajah & Tann



share of India-related work that is handled by Singaporean firms. However, local rivals are challenging their supremacy.

Lee & Lee has established an India practice group that advises Indian and Singaporean clients on a range of cross-border matters including investment, trade, joint ventures, listing and pursuit of judicial remedies. Colin Ng & Partners also has an India group, led by managing partner Colin Ng, which supports growing investments into and out of India, especially those involving Singapore, China and Australia. Shook Lin & Bok's India practice was set up in 2006 and the firm has added five Indian-qualified lawyers to its team. Meanwhile, KhattarWong & Partners has established a solid reputation for India transactions over the past 20 years. Last month its founder, Sat Pal Khattar, who no longer practises law, was awarded the Singapore Indian Chamber of Commerce and Industry India Business Award for helping to foster Singapore-India business and investment.

### To Singapore and beyond

Lawyers in Singapore stress the importance of the city's proximity to India and its culturally familiar environment. "It's easy to fly in and out of India from Singapore; the connections are excellent," says Pathak. "You can get into India at 10:30am and be back in Singapore very early the next morning. People feel very comfortable living in Singapore and working the Indian markets."

"Proximity to India is not to be discounted," confirms Sreenivasan. "You can complete a deal in a day."

The comfort and convenience factor has paved the way for cross-border investments between India and Singapore by major conglomerates as well as small and medium enterprises. Bilateral merchandise trade rose from S\$5.9 billion (US\$4.2 billion) in 2005 to S\$28.8 billion in 2008. Singapore's service exports to India rose from S\$2.4 billion in 2005 to S\$4.6 billion in 2008, while bilateral imports grew from S\$1.3 billion in 2005 to S\$2.3 billion in 2008. Recent reports say Singapore is now the second largest investor in India, contributing about 9% of total foreign direct investment.

Indian companies, eager to expand, are using the city as a stepping stone to Asia and beyond. China is an obvious target for many, but increasingly Indonesia is featuring in the India-related deals that are routed through Singapore.

"There are around 20 or 30 companies involved in acquisitions in Indonesia in the commodities sector – particularly oil



The Japanese are looking at India like the Koreans did a few years ago

Vivek Kathpalia

Partner

Nishith Desai Associates



and gas," says Ashok Lalwani, a partner at Baker & McKenzie Wong & Leow. "There is dire need for natural resources in India," concurs Sriram Chakravarthi, an Indian-qualified partner at Shook Lin & Bok. "Indonesia is well endowed with natural resources; especially coal ... the deal flow is very hot."

Gaylord Watkins, a Singapore-based partner at Heenan Blaikie, agrees. "There is great demand from Indian power companies for Indonesian coal, but this requires huge upfront investments," he says. "About one and a half years

ago, Tata was buying a third of coal mines in Indonesia – at present, Indian companies are pausing because they realize how much it's going to cost. Much also depends on Indonesia's restriction of exports."

Singapore itself has proved an appealing destination for Indian companies. The city's strategic location, world-class facilities, excellent infrastructure and highly skilled workforce led Indian telecoms and entertainment group Spice Global to establish its international office there last year.

India's favourable tax treaty with Singapore offers incentives to Indian companies looking to set up their offshore headquarters and holding companies in the city. "Singapore is now being used as an alternative to Mauritius for investments into India," says Andrew Martin, a partner at Baker & McKenzie Wong & Leow, who cautions that tax authorities are keeping a close eye on the trend.

Significant tax benefits are only one reason many telecom operators are based in Singapore, says Sreenivasan. "Many large telecommunications operators can look at Singapore as a second hub," he says. "We do a lot of regulatory work in the telecom sector in Singapore, and I assist companies with regulatory compliance in Singapore and from Singapore to the rest of the region."

Regional clients are also turning to Singapore for guidance on entering the Indian market. "Japanese clients are investing in India in a big way," says Kayal Sachi, a banking and finance partner at Allen & Overy.

Kathpalia at Nishith Desai agrees. "Many Japanese companies are using their Singapore subsidiaries to take a lead role

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on deciding how to enter into India," he says. "We're seeing a great push on Japanese investments into India in these areas, but for now Japanese clients are wary and scared of India, especially from a regulatory and tax point of view."

India and Japan are expected to sign a free-trade agreement within the next few months. This is likely to create a boom in Japanese investment in India's manufacturing sector. "The Japanese are looking at India like the Koreans did a few years ago," says Kathpalia. "The Koreans stole a march over the Japanese so Japan wants to play catch-up."

"What will emerge in the next year will be a greater interaction and interplay between India and the Far East – essentially Japan, China, Taiwan and Korea," predicts Chakravarthi at Shook Lin & Bok. "Singapore is well-placed to capitalize on this."

### Growth areas

Investments into and out of India have strengthened as companies restructure and move on from the financial crisis. "Strategic buyers are looking actively and opportunistically,"

says Lalwani. "Others are conducting damage control and working on restructuring."

"Restructuring has been a big focus of our office in Singapore," adds Makarechian at O'Melveny & Myers. "Most of that restructuring work has been in Indonesia but we were involved in quite a high-profile restructuring in India for the Lodha Group where we represented Deutsche Bank."

Other international law firms advising on India deals from Singapore say their practices are dominated by capital markets work. "For these deals, you really need to be in a jurisdiction where it's easy to travel to India," says Rajiv Gupta, a partner at Latham & Watkins. "India is a country where people love to meet face to face."

"The Singapore Stock Exchange is making huge forays into India," says Guptan at Clifford Chance, tracing the recovery of markets from January onwards. "India's capital markets needed a catalyst of one deal to go through aggressively priced," he recalls. "The Indiabulls Power offering was priced at the top end and oversubscribed six times. The market was so hot from the results and that feel-good factor has continued. There's a deal every week [and] the pipeline is huge."

## The business of making peace

### Singapore takes its seat at the global arbitration table

New York, London, Geneva, Hong Kong and Paris have long been considered premier jurisdictions for arbitration. Singapore may be about to join them. The city has used competitive pricing and the building of modern facilities to aggressively position itself as a regional and perhaps global hub for arbitration.

The growing sophistication of business in Asia has seen increased demand for alternative dispute resolution. Acknowledging Singapore's international appeal, image of impartiality and expertise in the area, Indian corporates are seeking to channel their disputes through established institutions like the Singapore International Arbitration Centre (SIAC).

"Clients are writing SIAC arbitration almost by default in their contracts," says Nicholas Peacock, a partner at Herbert Smith. "Awards from Singapore are enforceable in India ... that doesn't work with Hong Kong."

"There was reticence a few years ago but now parties are agreeing to Singapore as an arbitration seat for Indian party deals," concurs Andrew Martin, a partner at Baker & McKenzie Wong & Leow.

"SIAC is being chosen more contractually," confirms Doug Peel, a partner at White & Case, which will launch an arbitration practice in Singapore in January 2010. "There's a trend to using Singapore, and a trend to arbitration as consensual restructurings don't happen or projects and investments run into trouble."

"Singapore offers a comfort factor, it is convenient, it has clear credibility and is the preferred destination for dispute resolution," says Paul Supramaniam, a partner at Berwin Leighton Paisner. "SIAC is cheaper in covering associated costs and faster than the International

Chamber of Commerce in London, and it is more accessible."

"There has been increased demand for arbitrators in Singapore to hear disputes," says Yu-Jin Tay, who leads Shearman & Sterling's Asian international arbitration practice from Singapore. "Singapore has best of class physical infrastructure to match the legal infrastructure already in place. This will lead to greater preference by Indian parties to settle disputes here."

The showpiece of those facilities is undoubtedly Singapore's new, purpose-built accommodation for international dispute resolution, Maxwell Chambers. The building has 14 hearing rooms and 12 preparation rooms, with a suite of services available including digital recording and transcription, translation and secretarial assistance and catering. Its deputy director, Ban Jiun Ean, says Maxwell Chambers offers greater privacy, space and configurability than London's International Chamber of Commerce.

"We even have a gymnasium and a lounge for arbitrators," says Ban, who believes the chambers should be a comfortable and conducive space for mediators who want to relax between sessions.

According to Naresh Mahtani, a partner at Singaporean firm ATMD Bird & Bird, SIAC and Maxwell Chambers have significantly assisted the Indian arbitration community.

"Historically London was the preferred choice for arbitration, but now it is Singapore," says Rahul Guptan, a partner at Clifford Chance. "It's all about a mindset – people think they will get a better hearing in Singapore. Singapore is poising itself as Asia's arbitration centre."

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Sriram Chakravarthi  
Partner  
Shook Lin & Bok



Gupta believes optimism surrounding the Indian elections helped the market gain momentum. "Companies were sitting on piles of cash because they'd been waiting almost a year due to market volatility," he says. "Then suddenly there was a flurry of qualified institutional placement deals where

companies were coming in and out on a daily basis."

Gupta says the re-emergence of initial public offerings from companies that had shelved or postponed their plans is even more significant. "IPOs in India take around six months or so, so if you're starting an IPO now you're really taking a long-term view of the market," he says. "It's a confidence-building move for the market which will sustain itself over the next year or so."

Optimism also prevails on the banking and finance front. "There are signs of new-money work coming back ... Pretty much all we do is India," says Iyer at Linklaters. Partner Arun Balasubramanian is equally focused on the subcontinent.

"The domestic market in India is stronger than the international markets," says Iyer. "Suddenly rupee borrowing isn't as attractive as it was. Capital markets remain very strong, but equally new-money work in terms of Indian borrowings for capital expenditure or small-ticket acquisition financing is prevalent. It's not the billion-dollar financing we saw last year, but deals in the US\$100-200 million range."

## Projects and infrastructure

Another type of work that has often been routed through Singapore is project finance. However, in recent months the lack of liquidity of international investors has meant that a large proportion of India's project finance investment has been sourced domestically.

"Overwhelmingly, project finance has been done in India this year, and overwhelmingly out of that, it has been done

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Chambers and Partners 2007

"Bird & Bird has a good name in the cleantech and renewables sectors"

Legal 500 2009

"Recognised as a 'firm to watch' for India related work"

India Business Law Journal  
2009

"The firm must be acknowledged for its corporate and private equity services."

EMEA Legal 500 2007

Asian-Counsel Firm of the Year for TMT in Singapore

Asian Counsel 2009



Managing Intellectual Property

Singapore IP firm of the year 2008

Asian-Counsel Firm of the Year for TMT in China

Asian Counsel 2008



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by state banks, in particular the State Bank of India,” says Doug Peel, a partner at White & Case. “We’re medium to long-term bullish about cross-border project finance into India, but at the moment, it’s pretty quiet.”

This is not to say that legal work on projects has dried up altogether: “80% of our work is India-focused and it’s challenging work,” says Sachi at Allen & Overy, which has represented a range of Indian banks including ICICI, Axis Bank and the State Bank of India. “We’re doing deals with Jindal and Suzlon and working with IFC on a Maldivian solid waste project,” he explains. “We’re also working on a few power projects in India with the rupee refinancing the dollar market.”

Shearman & Sterling is also active on the project finance front. “The domestic banks have been dominant, historically,” McCormack says, “but increasingly, clients like the Asian Development Bank and IFC, a division of the World Bank, have been seen on large infrastructure projects like the Mundra Ultra Mega Power Project.”

WongPartnership recently represented Changi Airports International in its acquisition of a 26% stake of Bengal Aerotropolis Projects (which is developing the Durgapur Aerotropolis northwest of Kolkata), and says it is a sign of things to come. “We have observed that infrastructure and real estate development in India is of particular interest to Singaporean companies, and we hope that restrictions will ease further to facilitate more foreign investment in the future,” says Annabelle Yip, co-head of WongPartnership’s India practice. “There may also be some scope in the aviation sector as it liberalizes,” adds Yip.

Singapore’s enviable track record for infrastructure projects lends credibility to its involvement in new developments in India. “Bangalore airport now boasts Swiss cleanliness and efficiency!” exclaims Naresh Mahtani, a partner at Singapore law firm ATMD Bird & Bird, which has been advising Indian clients on joint ventures with Singapore partners for upcoming projects including a new IT park, a beach resort and commercial and residential developments.

“India still has a long way to go for infrastructure though,” Mahtani is quick to add.

### Rivals for India’s affections

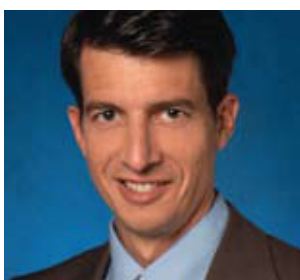
Singapore’s obvious rival for India work is the other prosperous, ex-colonial trading city of the East: Hong Kong.

Hong Kong enjoys closer proximity to India than New

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David Makarechian  
Partner

O’Melveny & Myers



### The trend is increasingly for deals coming out of India to be executed in India

Narayan Iyer  
Partner  
Linklaters



York or London and is the base of many corporations’ Asia-Pacific head offices. Its thriving financial services sector, low tax rates and highly liberalized legal market have led several international law firms to locate their India teams there.

“The tax regime in Singapore is very favourable, but Hong Kong is equally aggressive,” says Sreenivasan.

Some argue that Hong Kong’s agenda has changed in a way that means it no longer competes with Singapore for India-related business. “Hong Kong is becoming increasingly Sino-centric while Singapore is becoming more India-centric,” says Pathak at Gibson Dunn & Crutcher. “This is a reflection of distances within Asia and a subtle demarcation of North and South Asia practices.”

Looking globally, while several lawyers highlight the inconvenience and high costs of servicing India from traditional hubs such as New York and London, an equal number say the significance of these Western financial centres to India remains undiminished. “Non-Indian banks execute out of London,” says Ishikawa bluntly.

Pathak explains in more detail: “If one is really interested in running a focused India practice group, it is easier to do it from Singapore. New York and London are farther away, although the bigger investment decisions are made there in terms of inbound work into India simply because that’s where the corporate headquarters are located.”

Manoj Sandrasegara, a partner at Drew & Napier, agrees. “New York and London will still be important centres because lots of Indian companies are keen to invest in the US and structure their deals through New York,” he says. “Hong Kong is more focused on China and North Asia, so structuring Indian deals through Singapore rather than Hong Kong has increased, but only in this part of the world. I actually think it will take a heck of a lot for us to displace New York and London.”

### Standing on its own two feet

Still, many observers are noticing a shift in the centre of gravity when it comes to deal-making, with a trend for directions to originate from India instead of New York, London or Singapore.

“Increasingly there are a number of instructions coming from the ground in India, but a lot of the guys in India report to people in Singapore or Hong Kong,” explains Iyer at Linklaters. “The trend is increasingly for deals coming out of India to be executed in India. A number of bankers and service providers have moved onshore.”

“The Indian experiment seems to have worked,” Iyer continues. “It’s one of the least affected countries in the last 12 months ... Monetary policies remain stable, inflation is controlled, forex reserves continue to remain high. Even on re-forecasted growth targets you’re talking about much higher growth than elsewhere in the world.”

“Although it may sound strange, India will become more important for India,” he says. ■