

The Singapore-India Joint Venture: Truly Symbiotic

Latham & Watkins reviews the special business relationship.

HOW DO YOU EXPLAIN INDIA'S INCREASINGLY CLOSE BUSINESS RELATIONSHIP WITH SINGAPORE?

Singapore has proved to be the destination of choice for many Indian corporates doing business overseas, though historically other markets such as London and New York have also had close ties

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with India. With its highly developed and successful free market economy, low taxation, proximity to the Indian subcontinent, numerous direct flights and sizable Indian population, Singapore's trade ties with India have flourished.

In addition, Singapore has become the South

East Asian hub for many law firms, banks, financial institutions and private equity funds, allowing relatively easy access to capital raising and investment.

In 2012, India introduced its general anti-avoidance rules (GAAR) in a bid to tax offshore transaction structures, followed by a revised double-taxation avoidance agreement (DTAA) between Singapore and India in late 2016, which provided greater certainty regarding tax treatment of funds flowing into India through Singapore and vice versa. These changes have further helped Singapore to become a destination of choice for several Indian multinationals.

WHAT IS THE EFFECT OF THE SINGAPORE-INDIAN DTAA?

The agreement puts Singapore on par with India's other favourite offshore tax jurisdiction – Mauritius – which has a similar treaty to address the tax on fund flows between India and Mauritius.

In addition to the certainty provided by the tax treaty, Singapore also has a top-class regulatory framework and support from managers, service providers and initiatives by the government.

To set up in Singapore a business can't just put up a name plate: there are substantive requires. For example they need to have people on the ground and they need to have the requisite regulatory approvals. This has had the benefit of creating greater certainty with respect to how Indian tax authorities may view Singapore-centred transactions.



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WHAT HAS SINGAPORE DONE TO HAVE BECOME A PREFERRED HOME FOR INVESTMENT FUNDS FOCUSING ON INDIA?

Two core factors driving the funds industry in Singapore are:

1. Due to the DTAA, Singapore has become an increasingly viable, and in some cases more attractive, jurisdiction for funds vehicles investing in India. Singapore is not perceived to be a tax haven and investors consider a Singapore presence to be able to meet the “substance” test that is likely to be required under GAAR by the tax authorities in India.

2. Singapore introduced the Limited Partnership (“LP”) business structure in 2009. This structure is based on the Anglo-Saxon limited partnership model, which is the vehicle of choice for many investors and is used in places such as the UK, the Channel Islands and the Cayman Islands.

These key factors have propelled a significant amount of M&A into India via Singapore, and expanded other related ecosystems, such as banking, capital markets and arbitration. It has also helped attract a pool of available to various industries, advisors, professionals and business services in Singapore, further contributing to attracting investment.

WHY DOES SINGAPORE WIN AS AN ARBITRATION VENUE FOR INDIANS?

The Singapore International Arbitration Centre (SIAC) has done an excellent job of marketing itself to international companies, particularly in India, as the forum of choice for arbitrations.

Singapore is perceived as a ‘neutral’ dispute resolution forum for India – both by Indian companies as well as foreign investors. Singapore’s cultural and geographic proximity to India is attractive to Indian companies and its stellar reputation as an arbitration centre, on par with locations such as Hong Kong or London, offers foreign investors a “neutral” forum for arbitration to avoid any local bias.

WHY HAS SINGAPORE BECOME INDIA’S START-UP HUB?

When companies are looking at forming a holding company structure, Singapore has become a jurisdiction of choice. Foreign investors investing in India, particularly in the technology industry, prefer to invest via Singapore holding companies holding Indian assets. Accordingly, many top companies in India have a Singapore holding company structure.

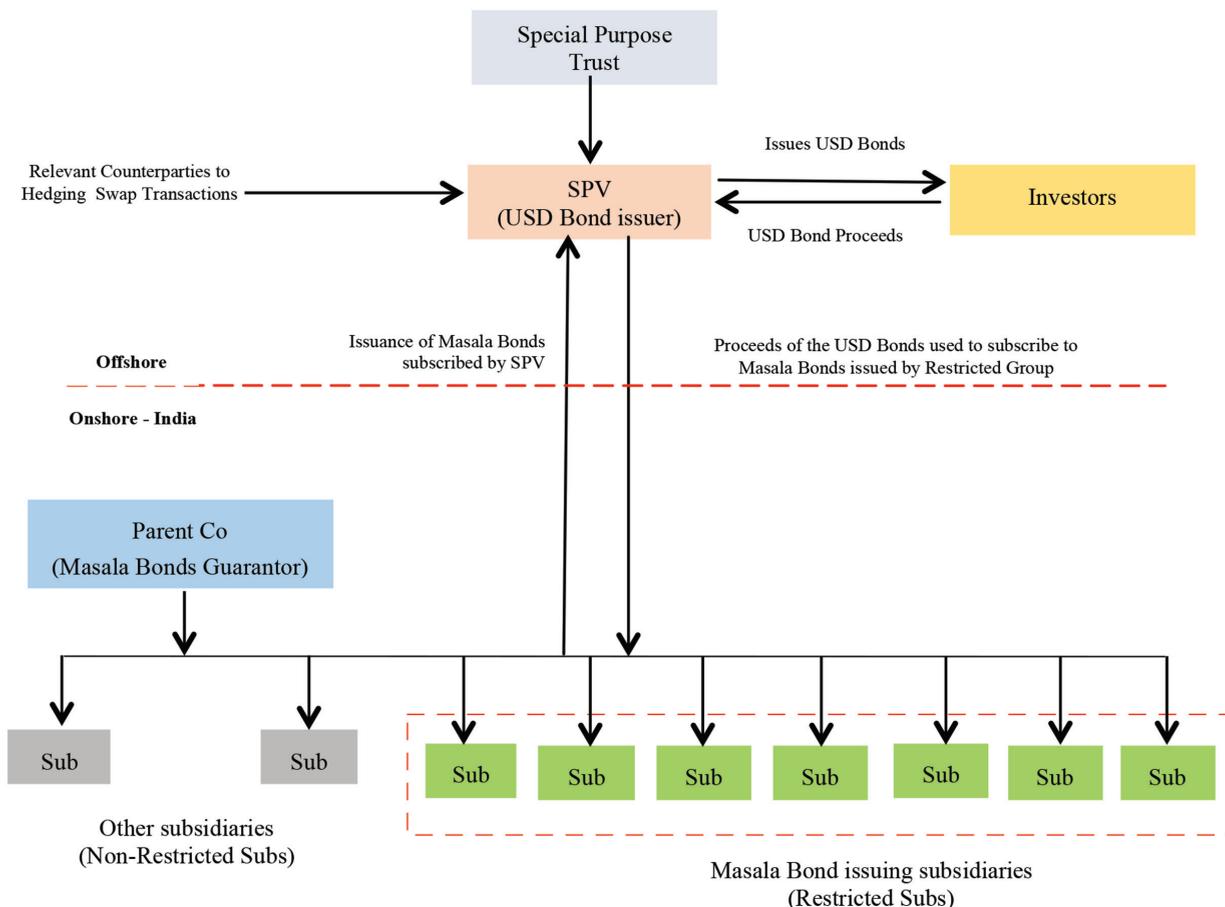
Other than the reasons highlighted above, the following reasons have also contributed to Singapore being the jurisdiction of choice for companies in India:

1. The ease of investment and fund flow movement permitted in Singapore; and
2. Indian rules do not permit direct listing of an Indian company outside India. The ADR scheme India has proposed has still not been enforced in full, awaiting further regulatory action.

WITH INDIA'S BIGGEST START-UPS OPERATING VIA SINGAPORE HOLDING STRUCTURES, ARE THE TWO COUNTRIES COMPETING ON SOME LEVEL, AND COULD SINGAPORE LOSE OUT IF INDIA FIXES ITS DOMESTIC DISPUTE RESOLUTION OR STREAMLINES ITS CORPORATE REGULATIONS?

India and Singapore have developed a mutually beneficial relationship in select areas. Generally speaking, India and Singapore have a symbiotic relationship. India gets significant amount of foreign direct

Back-to-Back Masala Bond Transaction



investment (FDI) from Singapore, which the Indian government is very focused on. It is also beneficial for India, since Singapore is a regulated jurisdiction, where the funds are subject to disclosure and regulation, offering comfort to the Indian government.

While a number of funds are beginning to register themselves as an AIF (alternative investment fund) in India, which gives them access to onshore funding from Indian investors, however, as most funds have a pan-Asia focus, a significant number of funds invest in India through their Singapore entities.

This approach is unlikely to change significantly in the short to medium term. While there have been a number of reforms in India, many aspects in India still remain regulated. In contrast, Singapore permits easier flow of capital and exchange controls, making it a favourable environment for doing business.

Singapore is also a lower tax jurisdiction than India.

In addition, Singapore has been an attractive place for listing of business trusts, such as infrastructure investment trusts (InvITs) and real estate investment trusts (REITs). However, India has now permitted InvITs and REITs to list in India.

HAVE THERE BEEN ANY MAJOR CHANGES IN SINGAPORE COMPANY LAWS RECENTLY?

Singapore is a stable and mature jurisdiction. With respect to its company laws and regulations, there have been recent changes, aimed at creating a positive investment environment. None of these have been adverse to Indian companies.

Singapore has also finally amended its companies law to permit dual class shares, and this seems to have gained traction with the Singapore Stock Exchange (SGX), which has launched a public consultation to seek feedback on such structures.

WHAT ABOUT THE FUTURE OF INDIAN COMPANIES USING SINGAPORE TO ACCESS THE CAPITAL MARKETS?

The Indian government has introduced significant reforms in capital markets in recent years to persuade more companies to raise capital domestically in India and not look internationally. The

Singapore Stock Exchange (SGX) does, however, still remain the default choice for a very significant percentage of offshore bonds from India.

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There has been a big push by the Indian government for companies to consider issuing masala bonds, but because of issues such as Rupee convertibility and high hedging costs, an alternative structure of USD bonds issued by a Singapore or Mauritius SPV with back-to-back masala bonds or non-convertible debentures (see transaction structure chart on previous page) seems to be becoming popular.

The Singapore government introduced a bond grant scheme in January 2017, pursuant to which it would provide a grant to an issuer from any ASEAN country and certain other countries, including India, considering listing of their bonds on the SGX, and reimburse expenses related to their bond offering of up to S\$400,000.

From 1 June 2017 onwards, another incentive will be made available to potential issuers in the bond market in Singapore. The Monetary Authority of Singapore (MAS) has announced the implementation of the green bonds grant scheme, which is applicable to offerings of qualified green bonds - offerings that comply with international green bond standards - on the Singapore Stock Exchange. First time and repeat issuers will be eligible for a grant of up to S\$100,000.

In India, real estate developers could be eligible for green bonds by having green buildings, and many renewable energy companies could benefit if they can qualify for green standards. ■

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Rajiv Gupta is Global Head of Latham & Watkins' India Practice and has extensive experience in a wide range of corporate finance matters, including representing issuers and underwriters in both US and international securities transactions, particularly in initial public offerings, private placements, high-yield and investment-grade debt offerings, offerings of convertible debt, equity-linked and derivative products, structured finance and exchange offers.

Mr. Gupta has also been involved in various mergers and acquisitions, restructuring and merchant banking transactions, spin-offs and joint ventures.

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Sharon Lau is the Office Managing Partner of Latham & Watkins' Singapore office. Ms. Lau's practice focuses on corporate finance transactions where she represents both issuers and underwriters in international securities transactions, and public and private mergers and acquisitions where she represents private equity sponsors, financial investors and corporates.

Ms. Lau's corporate finance expertise includes:

- Initial public offerings and private placements
- High-yield and investment grade debt offerings
- Consent solicitations, tender offers and exchange offers

Ms. Lau's mergers and acquisitions expertise includes:

- Joint ventures and other private investments
- Buyouts, public takeovers and privatizations
- Venture capital investments

She also advises on regulatory compliance and corporate governance issues.

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Nick Benson is a leading legal advisor in the field of investment funds. He has extensive experience structuring and negotiating private capital investment vehicles on behalf of leading international sponsors and investors, with a particular focus on Europe, Asia and the Middle East.

Mr. Benson's practice serves clients across the alternative assets spectrum, including private equity, infrastructure, real estate and hedge funds. His expertise includes:

- Fund Formation
- Bespoke Investment Mandates
- Co-Investments
- Secondaries
- Management Team Spin-outs and Start-ups
- Investment Advisor Structuring and Operations

FIRM PROFILE

Latham & Watkins combines deep industry knowledge and technical expertise to provide clients with innovative solutions to their most complex legal and business challenges. From a global platform, more than 2,400 Latham lawyers work as an integrated partnership focused on providing excellent client service with a collaborative approach.

Latham offers clients:

- Deep experience in successful enterprise-transforming transactions and in defending bet-the-company disputes
- A solutions-based approach, providing innovative and sound commercial advice
- Optimally sized teams supported by a long-standing culture geared toward establishing and nurturing long-term client relationships

SINGAPORE OFFICE

For more than 20 years, Latham lawyers in Singapore have advised clients on complex corporate, finance and regulatory matters. The Singapore office has developed a breadth of experience across many industries, including: financial services, oil and gas, power, mining and metals, communications, internet and digital media, information technology, hospitality, gaming

and leisure, as well as entertainment, sports and media. Awarded “Most Innovative Firm in Asia-Pacific” by the *Financial Times*, Latham takes pride in providing innovative advice to corporations, financial institutions, government agencies and other significant players.

With extensive experience in South and South-east Asia, Latham lawyers in Singapore represent Asian, US, European and Middle Eastern companies conducting business across the region, and act for Asian companies in their direct investment activities and capital markets transactions globally.

Latham’s key practice areas in Singapore include:

- Banking
- Capital Markets
- Entertainment, Sports & Media
- Mergers & Acquisitions
- Outsourcing
- Private Equity
- Project Development & Finance
- Public Company Representation
- Restructuring, Insolvency & Workouts
- Structured Finance
- Technology Transactions
- Venture Capital & Investment Funds

INDIA PRACTICE

Latham is one of the largest and most experienced international law firms advising both domestic and international clients on their transactions in India and globally. The firm boasts more than 50 India focused lawyers based in Latham’s offices in Asia, Europe, the Middle East and the US, representing clients on ground-breaking transactions in India. Latham’s India Practice provides clients market-leading advice across a number of practices, including:

- Banking
- Capital Markets
- Litigation
- Mergers & Acquisitions
- Private Equity
- Project Development & Finance
- Public Company Representation
- Technology Transactions

With more than two decades of experience in the country, Latham lawyers have advised on more than 200 transactions in India, with a combined value of more than US\$150 billion. Clients benefit from Latham’s longstanding history working alongside leading law firms in India, delivering top quality local and international legal advice on many of the country’s landmark transactions.

Members of Latham’s India Practice routinely handle transactions governed under both English and US law, and the firm includes lawyers who are proficient in Hindi, Gujarati, Malayalam, Punjabi, Tamil and Kannada.

Latham is one of the largest and most experienced international law firms advising both domestic and international clients on their transactions in India and globally.

India Business Law Journal has named Latham a leading foreign law firm for India transactions and Latham’s India Practice is top ranked in *Chambers Asia-Pacific*.

Practice head Rajiv Gupta was named as a Band 1 Lawyer for capital markets in India in *Chambers Asia-Pacific 2017*, acknowledged for his “experience across a broad range of capital markets transactions” and cited for being “the most prominent US Capital Markets lawyer for India work.” Mr. Gupta was also named Capital Markets Lawyer of the Year by *The American Lawyer* at the ‘Asian Lawyer Emerging Markets Awards’ in 2015.