Top 10 Issues in Strategic M&A

1. Set Timelines, but be Flexible:

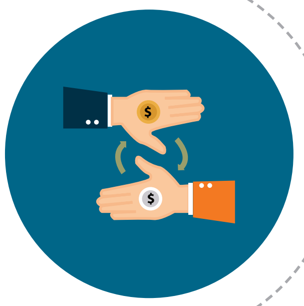
Negotiating investments into India can be a complex and time-consuming process, especially in regulated sectors. If the Indian party does not have prior experience with strategic investors, it will need time to get used to new structures and work paradigms. Agreed timelines often slip on account of business and personal exigencies too.

Tip: Plan your schedules and timelines with the extended timelines factored in.

2. Know if you are eligible to invest in the Sector:

While most businesses sectors are now open to 100% foreign investment, a few are still closed (like lottery, betting and gambling), are only party open (like telecom and banking, where foreigners can invest upto 74% and 49% respectively) or place conditions on foreign investment (like multi-brand retail and e-commerce).

Tip: Before agreeing commercials, deep dive into the target's business to see if they are doing activities that you can invest in. Don't just take the promoters' word for it.



3. Get Exclusivity, but don't commit to Price:

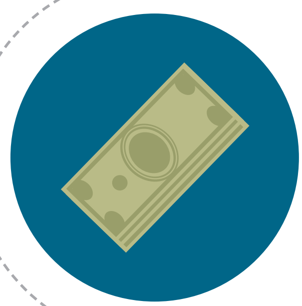
Term Sheets and LoIs primarily give you comfort that the target is negotiating exclusively with you. However, only a handful of terms like exclusivity, dispute resolution and confidentiality are intended to be binding in these documents. Ask counsel for a Term Sheet draft that has terms customary for the Indian market.

Tip: If you need to commit to a purchase price upfront, make sure to indicate that it is subject to legal and financial due diligence and tax structuring.

4. Due Diligence and Antecedents Checks:

Public information about Indian companies, and for that matter, Indian promoters, is often not readily available. Ask to do a legal and financial due diligence before you invest. Consider conducting an antecedents check particularly if the target or its management is engaged in 'risky' or high visibility sectors like real estate, government procurement, defense.

Tip: Legal counsel and accountants will help with due diligence, but antecedents checks (in sensitive sectors) are usually done by specialized agencies.



5. Structuring the Deal:

In addition to tax, foreign exchange restrictions will most impact your investment structure. A foreign investor is restricted from investing below 'fair market value', and holdbacks and earn-outs are restricted in time period and value. If due diligence has thrown up requirements for any regulatory, lender or third party consents or approvals, build these into your structure.

Tip: Ask counsel for a funding or structuring note, and discuss this with your tax advisors as well at the start of the project.

6. Investment Agreements and Instruments:

You will likely need a Share Purchase Agreement or Share Subscription Investment; in addition, and unless its a 100% acquisition, you will need a Shareholders' Agreement. Most investors buy equity shares. Instruments like preference shares, convertible debt and non-converible debt are available but will not get you full control.

Tip: Choose your investment instrument per your investment goal; do you require control, or would prefer guaranteed returns, for instance.

7. Negotiating with Indian Partners:

Be prepared for cultural differences when negotiating with Indian promoters. As with every country, attitudes and negotiating tactics will differ from what you are used to. In particular, be prepared for Indian partners to take hard bargaining positions, and threaten to 'walk away' from the deal at the drop of a hat.

Tip: Be respectful, but do not give up a commercial position only because the Indian partner 'reacts badly' to it. You are expected to bargain hard, and most times parties are happy to 'split the difference'.

8. Plan for Closing:

You should prepare to have funds ready at closing, and know how to route these to India. See if you need to pay stamp duty, and obtain this before closing. Ask your counsel if any pre- or post-closing approvals are required from the competition authorities, foreign exchange regulator, tax regulator, etc. Address specific issues, like if you need the shares to be dematerialized to save stamp duty, etc.

Tip: Ask counsel to give you a typical 'closing checklist' for Indian transactions and build in redundancies (in timelines and procedures) for closing formalities.

9. Plan for Post Closing Too:

Specially if you have acquired 100% controlling interest, know what you will need to run the business and have a transition plan in place. If you need to station directors in India, you will require to have them registered. You should have agreed employment agreements with key employees along with the Investment Agreements. Have the promoters introduce you to major customers and suppliers.

Tip: Retain key employees and agree a business plan for the next 2-3 years at the time of the investment.

10. Allow for Cultural Differences:

India is multi-cultural and diverse in its language, customs and habits, confusing those who are not familiar with it. In small and mid-sized companies, corporate compliance, governance and transparency in decision making are yet to reach optimal levels.

Tip: Work with Indian partners and employees to integrate governance models that achieve required standards of compliance and transparency. Don't impose your models en masse, but don't accept their existing models at face value either.

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