

International Practice Group

Contributed by Harvey M. Burg,
Co-Chair of the International Practice Group

Burns & Levinson's growing International Practice Group assists clients doing business across the globe, across borders, and across cultures. We have collaborated with our clients to devise cross-border business plans; form, acquire, sell and merge companies; finance projects; coordinate complex due diligence processes; negotiate and establish joint ventures, commercial contracts, distributorships, technology licenses and transfers; secure cross-border protection of intellectual property; and negotiate and resolve disputes. We are able to do this in part because of our personal connections and our long-time participation in certain world-wide networks. As such, we are able to make our extensive array of business and professional contacts available for the benefit of our clients.

As part of our Firm's world-wide practice, certain attorneys within the International Practice Group have developed more focused practices and expertise, in particular with respect to Europe, Israel, India, China, and Canada.

India – A Promising Emerging Market for Franchisors

By Gaytri D. Kachroo

India is now well known as a pool for IT development talent and skilled workers for outsourcing back-office services (better known as BPO or business process outsourcing) such as accounting, telemarketing, customer service, and e-learning, in a multitude of industry sectors including financial services, health care, professional services, retail, pharmaceuticals and others.

As wealth creation succeeds, India is growing a sizeable middle class with purchasing power and so, India is no longer seen merely as a source of talented workers, but as an emerging market to which global companies can seek to sell. Approximately 150-200 million people in India today have purchasing power and seek products and services for a better lifestyle. According to the India Country Commercial Guide, "approximately 2 percent of Indians have a per capita income in excess of \$13,000" qualifying as over 20 million consumers who are well-off. More than 100 million Indians have a per capita income above \$3000. These numbers are all on the rise given India's current population of 1.3 billion people and its recent open economic policies inviting foreign investment and incentivizing the local population toward entrepreneurship.

A key retail solution being adopted is that of the franchise. Franchising has been utilized as a business model in India for several decades, as instantiated by the Bata shoe chain which began in the 1960's. Modern franchising is evolving into business models and concepts across such sectors as education, food services, healthcare, garments and apparel, entertainment, fitness and personal grooming clinics, stationery, hotels and restaurants, and courier services, to name a few.

DR. GAYTRI KACHROO

heads the India Practice Group and is a Member of the Corporate, International, Intellectual Property/SciTech and Canada Practice Groups.



According to economists, the Indian Franchise economy as of December 2004 accounted for 5% of the country's gross domestic product (GDP). There were approximately 600 active franchisors and more than 40,000 franchisees in India as of 2004. In the same study, it was estimated that the total annual sales turnover achieved by franchised businesses in India was in the range of \$1.6-2.1 billion USD. Franchising is poised to spur economic growth, encourage private enterprise in India with no danger of flight of capital, and offer the potential to establish products and services that meet an international standard.

Although India does not have laws relating specifically to franchising like many other countries, it has laws of general applicability that will affect a franchise relationship. Prime among these are intellectual property laws (trademark, brand, trade secret) assuring protection of the brand and trade secrets of the franchisor in the franchised jurisdiction. Other laws generally applicable to this situation are tax laws (and tax treaties), laws relating to foreign remittances (or similar currency restrictions), sales agency laws, and laws regarding technology licensing.

This means that local and international law must be considered when entering into a franchise agreement. It may be necessary to modify the Franchisor's current master form of franchise agree-

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Simpler Networks – Dialing Into Your Future

Imagine picking up your phone and dialing in a code to activate a new high-speed Internet service instantaneously. Now imagine using that same procedure to change phone service providers, or to call up movies on demand, or to deactivate services during vacations so you can save money.

When that happens you will no longer have to wait for “the cable guy” or the phone tech in the middle of a work-day, and you will likely see the monthly cost of services dropping on your bill. But this is not an imaginary future, thanks to Simpler Networks of Canada, which was founded in 1999.

True to its name, Simpler Networks has developed a simpler, reliable technology for automating the manual process that phone companies have used for generations to connect your communication lines to a particular service.

“This is one of the few pieces of the telecom network that is still managed manually,” says Mike Perrault, co-founder, president and executive vice president of sales for the company. He points out that many technicians are still driving out to big buildings and/or boxes full of wires and cables – called main distribution frames (MDFs) – to turn services “on” or “off” for a customer.

“They are still looking at 10,000 wires to make the right connection . . . [in] a section of the building that is easily 100 feet long, over 10 feet high and three feet wide,” Perrault explains, noting that technicians don’t always make the right connections initially (occasionally disconnecting services to homes or businesses accidentally). “Operators have been looking for a cost-effective solution to this problem for 30 years,” adds the electrical engineer, who also has a master’s degree in business administration from McGill University.

After years of research and development, Simpler Networks has finally found a solution in the form of an automated distribution frame (ADF) called EZ-MDF that utilizes micro electro-mechanical systems (MEMS), a form of microtechnology, to enable remote cable switching.

Simpler Networks

Redefining Flow-Through

“This means not only better service for the customer, but significant labor and space savings for the telecom provider,” says Perrault, noting that their EZ-MDF “box” not only eliminates the need for manual connections, but is half the size of a typical MDF.

“Operating expenses for phone companies are going through the roof right now, and work on jumper wiring is one of the largest cost components,” he says, adding that technicians can now be redeployed to more important work as service demands explode.

It is an amazing breakthrough, but the work that went into it nearly disappeared into history. “We were in dire straits when we first met with Burns & Levinson,” says Perrault, recalling a serendipitous invitation in 2003 to a “U.S./Canada Venture Capital Pipeline event” that the law firm sponsored. It was there that Perrault met with “angel investors” from the venture capital community who took an interest in the MEMS technology and the Simpler Networks story. As a result, the company closed some bridge financing later that year – financing that supported critical research and development refinements to Simpler’s then nascent product.

“We had to develop a prototype that was stable and reliable enough to meet carrier class standards of telecom companies,” Perrault recalls, noting that telecom services have to be nearly 100 percent reliable. “We had been working on this solution for years and we were running out of money,” he adds.

“That bridge round saved the company,” Perrault asserts, noting that Len Gold of Burns & Levinson Canada Co. had facilitated introductions to key consultants and potential investors. “We made it to another round of financing, and now roughly half of our funding comes from Boston sources,” he says, pointing for

Featured Client



MIKE PERRAULT
Co-founder
Simpler Networks

example to Highland Capital Partners and Kodiak Venture Partners.

“This financing allowed us to work the kinks out of our product and get it to market. Now we have become recognized as a world leader in ADF technology, and some of the top operators in the world are adopting our innovation,” he remarks.

One of the largest network equipment vendors, Lucent Technologies (now Alcatel-Lucent), is so confident in the EZ-MDF product that it has become an investor, as well as a global reseller. Lucent announced in October 2006 that it is offering Simpler Networks’ ADF hardware and software to help telecom service providers serve their customers better. Lucent boldly announced that the new technology would “cut operating costs for service providers by enabling setup of broadband services at remote terminals and street cabinets without a visit by a technician.”

Perrault says the product is already in use in many areas of North America and Europe, and his company is suddenly faced with a different problem – managing the growth of sales and operations functions. “Our successful financing has allowed me to get familiar with a lot of other services that Burns & Levinson offers to help with our development,” he remarks.

“Josef Volman and the whole team of lawyers there have impressed me with their knowledge, their skill and experience,” he says. “I’m also impressed with their speed and efficiency, their cost-effective approach, and the quality of the advice,” Perrault adds, noting that he uses Burns & Levinson for “all of our legal needs related to U.S. activities.”

As a result, Simpler Networks now taps the Boston-based firm not only for financing-related legal assistance, but for help with all kinds of commercial transactions, as well as matters related to human resources, labor and management issues, and corporate governance.

“We feel like we are in very good hands when we turn something over to our lawyers, and that allows us to focus on other things,” says Perrault. He acknowledges that today’s demands keep him from focusing too far into the future, but he confidently asserts that “we could one day allow end users around the globe to activate and deactivate all kinds of services through dial-tone access on their phones and via the web.” ■

This article was contributed by John Cunningham, freelance writer/editor.

Creating and Maintaining a Solid Banking Relationship

By Raymond E. Baxter

With apologies to our many lender clients, it is sometimes said that a banker is someone who lends you an umbrella when the sun is shining, and wants it back when it's raining. This article will provide practical advice on how to "keep the umbrella" by creating and maintaining a solid banking relationship with your lender that will survive both good and bad economic times.

At the outset, it is important that your financial team try to anticipate all your financing needs. You should try to understand your bank's lending policies, credit limits and the range of services offered to determine if they are a good fit for you in light of those needs.

Work with your counsel to negotiate loan terms you can live with. While interest rates and payment schedules are of course critical, there will be other provisions of the loan documents that, if violated, give the lender the right to call the loan. Such provisions include affirmative covenants such as complying with financial tests, maintaining insurance coverage, and financial reporting, and negative covenants like limits on salaries paid to and transactions with insiders, and restrictions on additional borrowing, liens and mortgages, distributions to owners, sales of assets, mergers and other corporate transactions. Make sure your financial team understands these provisions.

If these constraints are understood, you are more likely to be able to anticipate violations and thus request waivers of such violations from the bank in advance. While there are no guarantees that the bank will grant such waivers, you will find the lender more receptive to such anticipatory requests.

As in any business relationship, communication is key. Educate your loan officer up front about your business and industry, your management team, financial needs, long and short term goals and related strategies, and industry cycles. The better your loan officer understands your business

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and the industry in which you operate, the better he or she will be able to meet your needs. Also, in an environment of bank mergers, it is important to establish relationships with more than just your loan officer so make an effort to know others in the bank.

During the term of the loan, communication involves more than submitting to the lender required financial statements. Mere numbers cannot be a substitute for taking the time and effort to inform your loan officer of the story behind the numbers. Be proactive and take the initiative in providing information, particularly when you hit the "bumps in the road" that inevitably occur for every business. While it is a natural tendency to want to downplay bad news, full, complete and timely disclosure of all matters affecting your business, including adverse news, will help to ensure a solid banking relationship. One way or another, the loan officer will become aware of these matters anyway, and it is always best to present bad news as directly and as early as possible, *together with the company's proposed response to the problem.* This demonstrates that you care about the relationship and that management has an action plan to deal with difficult issues. Remember that loss of credibility dooms the relationship.

In sum then, the key to "keeping the umbrella" is to maintain a solid bank relationship based on understanding your obligations and maintaining meaningful and timely communication with your lender. ■

HINGHAM OFFICE CHANGES SUITES!

We have changed our space at 175 Derby Street and as of March 23, 2007 can be found at Suite #6. We are now in the second building on the right as you enter 175 Derby Street. Our telephone and fax will not change.

India – A Promising Emerging Market for Franchisors

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ment to align with formation of an Indian franchise or to create an entirely different form of agreement. U.S. law may also continue to apply in some circumstances, in the event, for instance, the franchise is sold to U.S. citizens or residents even if operated outside the U.S. If the agreement is entered in the U.S., both federal and applicable state franchise disclosure laws are likely to apply even if the franchise unit(s) will be operated outside the country.

Further differences can be found with regard to enforcement of contracts, judgments and arbitral awards. The Indian legal system is based in large part on the common law, the same as the U.S. but based upon Indian precedents and case-law. Moreover, the Indian Code of Civil Procedure provides for the enforcement of foreign judgments but requires the decree-holder to file a suit for enforcement before the appropriate court in India. There are myriad requirements for the enforcement of such foreign decrees relating to the laws of India. Finally, the Indian legal system provides for arbitration under the Arbitration and Conciliation Act of 1996 (ACA) which has been modeled along the lines of the UNCITRAL model law of International Commercial arbitration and the UNCITRAL "Conciliation Rules."

The geographic, cultural and linguistic distances separating franchisee and franchisor are reasons to devote more energy to the relationship, not less. In India, companies such as McDonald's, Baskin-Robbins, Schweppes, Canada Dry, hotel chains like Holiday Inn,

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At Burns & Levinson, your personal and business success is our top priority – so whatever your legal need, consider it done. Our core practices include Business/Corporate, Business Litigation, Intellectual Property, Real Estate and Private Client services where we represent dynamic, growth-oriented businesses, privately and publicly held companies, universities, institutions and individuals.

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Giving Back to Boston's Youth

Contributed by Angeline Mistretta and Anna DeLeo, Marketing

For the past decade Burns & Levinson has put children in general – and Boston students in particular – at the center of its philanthropic mission. In 1998, the firm began a partnership with Brighton High School (BHS), in conjunction with the Boston Bar Association (BBA) and the Private Industry Council. Through this partnership, our attorneys coach students who are part of the BHS mock-trial team and prepare them for mock-trial contests. With our attorneys coaching the students every week for approximately five months of the year, students on the team learn about legal proceedings at trial and real world legal issues. The students also gain the confidence and presence needed to succeed. This year, they won their first competition in their division.

The partnership also includes an internship program, which is very successful and is open to all BHS students. Danielle Martin, a junior at BHS in 2000, worked as an intern to the librarian and continued with the program until she graduated in 2002. She was then hired as a part-time employee during her undergraduate studies at UMass-Boston.

Chrisana Watson, a former BHS student, interned at Burns & Levinson until she graduated in 2006 and now works part time at the firm as she attends Suffolk University. Attorney Victoria Walton, who assists in coaching the mock trial team, now mentors Chrisana.

Additionally, Burns & Levinson, led by attorney Nancy Newark, assists BHS in fundraising efforts. In 2006, the first year of fundraising, more than \$25,000 was raised towards a new school sign. This year's fundraising efforts will support programs that have recently been cut, specifically scholarship and after-school programs.

Our other programs have been equally effective. In 2006, we created the Power of an Idea® Scholarship Contest, which gives Boston public high school and charter school students (grades 9 - 12) an opportunity to create an invention by taking an idea from concept to creation to patent. The winner of the contest receives a \$15,000 scholarship to be used for tuition and expenses for higher education. As part of the prize package, the winner receives legal patent services for the winning device, machine or process. Last year the scholarship was awarded to a student of the John D. O'Bryant School of Math & Science. Attorneys from our Intellectual Property/SciTech group spend time guiding the students through the contest process. Since the success of the inaugural contest we are committed to making this an annual event.

Our efforts have paid dividends. This January, Burns & Levinson was recognized by the New England Chapter of the Legal Marketing Association and received both first place in the Community Relations category and Best of Show at its annual Your Honor Awards ceremony. In recognition of our many activities with Brighton High School and the BBA's Children and Youth Outreach Project, Burns & Levinson was honored to receive

Focus

Focus is published three times a year by Burns & Levinson LLP for clients and friends of the firm. This newsletter provides general information and does not constitute legal advice.

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the BBA's Volunteer Leadership Award in 2005.

Attorneys and staff most recently active in these programs are: **Brighton High School** – Nancy Newark, Victoria Walton, Angelita Delgadillo, Kate Benard; **Power of an Idea** – David Gomes, Anne Pareti, Anna DeLeo, Angeline Mistretta. ■

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Hyatt Regency and others have franchised through joint ventures for the most part, and wholly owned operations through subsidiaries (now possible through relaxation of certain Indian laws). The joint venture model has been the most successful franchise model as it ensures more accountability from Indian partners and provides more control for the foreign franchisor in India. There are a number of group types (by cultural community, geographic and caste membership, and business ethos) currently engaged in the franchising

industry in India. Many of them do not have characteristics reminiscent of North American Franchising.

Differences can affect such issues as:

- Uniformity in design of franchise units (store fronts and interiors or warehousing);
- Uniformity in product (range of quality, services, prices, etc.);
- Advertising – usually the responsibility of the franchisor for sake of uniformity in branding;

- Logo, trade-name, trademarks, etc.;
- Business system management – can diverge without control over processes; and
- Site selection (real estate culture in India is fast evolving) among others.

Given this background, an India franchise raises a number of issues and needs to be appropriately coordinated through counsel with a familiarity with the local franchisees culture and state and national laws in India and a network of local legal and other expertise at their disposal. ■