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PI LOT PAPERS

*Building Strategies for Future –
A Professional's Approach*



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MEETING THE GIANTS — DEVELOPING STRATEGIES FOR GLOBAL COMPETITION

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INTRODUCTION

“Change !” this simple word is the new found key to nations and individuals prosperity. Never before in the history, nations and men around the world have demonstrated such urgency to change now than before. The last decade of the last century is the turning point and one witnesses mind boggling changes around us each day. 5000 years ago a Tamil savant said “ The whole world is our country. All people of the world are our kith and kin.”

The Prophecy has come true.

WEALTH CREATION PROCESS - CHANGES

The pre industrial revolution saw the wealth of nations and individuals by the ownership of land and precious metals. Emperors, kings, landlords were measured by the ownership of territory of land and palaces and mansions filled with diamond gold, silver and every conceivable precious stones that had value. Asset creation was with brick and mortar and weaponry. Wealth distribution was by gratis. British Empire where the sun never set and the rulers and the nobles on all corners of the world were calling the shots.

The advent of Industrial revolution and the two world wars changed the rules of the game. Machinery, factories, laboratories marked the creation of wealth process. The real value addition was by the manufacturing process of converting raw material into a different finished product. The beneficiaries were owner and worker, both played active role in the process of wealth creation and distribution. Fords, Tatas, Birlas replaced kings and emperors as captains of wealth. US and Japan became world leaders by manufacturing process.

Incidentally, in seventies a natural resource like oil which was under priced suddenly became a source of wealth creation . The Gulf area which was harmlessly supplying cheap oil and leading nomadic life suddenly tasted western influence and used price mechanism and scarcity of supply to spurt wealth. The oil Sheikhs became the instrument of dictating economic opulence to the countries of the world.

The advent of computers - maxi and mini, which was a mere manufacturing innovation in the fifties became a technology of wealth creation by the last decade of the last century. The wealth creation process was passed on from manufacturing to technology. The software, which dictated and determined the power of hardware, became the conduit of wealth creation. Emergence of India and China as powers to be and the birth in a matter of decade on the “Forbes list” of Bill Gates, Narayanamurthis and Azis Premijis are part of history now.

Internet has made the world take off at the click of a mouse. E – Bay community is the emerging shape of things to come. The core competency and supply chain management strategy of the management gurus of yester years is replaced by the genius of source competency of the individual and the firm.

COMPANY SECRETARY – TOTAL BUSINESS MANAGER (TBM)

The transformation of the profession of company secretaries in the last three decades is awesome. From an over legislated national environment of the first two decades, where he was sought purely as a legal problem solver or legal emergency manager into an era of globalization and liberalization and the linking of the national

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economy to international competitive one saw his metamorphosis as an updater and net-worker of knowledge for emerging global problems. The profession is just poised to go global and network internationally.

Knowledge, as a strategy for meeting global competition, is familiar to company secretary as a knowledge-worker par excellence. Knowledge has emerged as the most strategically-significant resource of a professional firm. Professionals realize the need to more formally manage this resource. Today it is necessary to acquire knowledge at an unprecedented rate. It has become both a blessing and a burden. It is the leveraging of this resource that will spell success. The future environments of business organizations will be characterized by —

1. more and increasing scientific knowledge;
2. increasingly effective information, transportation and manufacturing technologies;
3. more and increasing complexity;
4. more and increasing dynamism;
5. more and increasing inter-firm competitiveness; and
6. more and increasing self realization of its own competence.

It is said ironically that increasing complexity of environment requires organisations to become more complex themselves or to find or create a less complex environment!! There will be greater variety of entities in the environment. The density of the entities will be increasing and their interdependence will be on the rise. Devising strategies for the future global competition will take all these factors into account. The advantage of exploiting competitor in-efficiencies is slowly getting replaced in optimizing and self realizing its own efficiency both in terms of production and distribution of products and services.

From mere knowledge source, the professional must develop business sensitivities to round himself into a multi – disciplinary approach to be a Total Business Manager (TBM). As a TBM, he not only possesses knowledge and know-how, who not only accesses to update and network but influences every business decision/deal so as to enhance real value addition to his client/company. The job of company secretary thus becomes measurable and quantifiable and no more happens to be just “ comfort provider and consultant.” This is the emerging challenge before the profession. The company secretary thus not only just lays down legal logistics for business and safety valves for business deals but also provides total business solutions for enhancing value. As TMB, he thus, becomes an active participant in the wealth creation process

SHIFTING, PARADIGM – FROM MANUFACTURING TO SERVICE

One must take cue from the fact that Indian economy is poised for services-led growth. The traditional view that sustained economic growth can come only from a growth in manufacturing may be fading. Stephen Roach, Chief Economist, Morgan Stanley pointed out during his recent visit to India that ‘Over the past 50 years, technological change has spurred capital-labour substitution and turned manufacturing into an increasingly labour-saving activity. Services are, by contrast, far more labour-intensive especially in the knowledge-based production activity of the information age’. Even in IT sector number of people employed in India is only 1 million while as per the recent Nasscom-McKinsey study the number of people required in BPO is 3.7 million by 2012. Other services like travel, tourism, entertainment transport, basic healthcare etc will create many more jobs. The Institute of Company Secretaries of India has already created segment-wise role modules for company secretaries in these areas. Further work needs to be done to develop strategies in these sectors to leverage India’s advantage in the global competitive market through the services of company secretaries. In this context it must be noted that while it has always been an intensely competitive global market, the last decade has been extremely disruptive. Competition will require leveraging reliable, real-time information across the value-chain to accurately forecast and meet market demand. While devising future strategies for value addition by company secretaries what must be noted is the emergence of a real-time enterprise that goes beyond the boundary of the enterprise itself and works seamlessly and efficiently across the entire ecosystems of the business. Company secretaries’ knowledge-base, expertise and multi-disciplinary networking should therefore be nimble-footed to encompass value-addition from all possible angles. He needs to acquire a deep insight into environment scanning and business interpretation approach to organizational problems.

CUSTOMER EXPERIENCING – PROFESSIONAL CHALLENGES

In their book – “The Future of Competition – Co-creating Unique Value with Customers” C K Prahlad and V Ramaswamy – talk of a totally new paradigm for competitiveness. The paradigm is that the value of a product to the customer now lies in the “ experience” the customer has when interacting with the company, and that the price, for example, may not be the sustainable value proposition for competitiveness.

The prices may not be the value proposition for customers in that access to a desirable experience is now more important than owning.

TVS Electronics, for example, has created a retail system which tracks a household’s favourite items, prints a bill in the consumers’ language where the printer and backup power is in one unit which is immune to dust and power fluctuations. For its customer, the Indian Kirana Store-owner, the cost is an affordable monthly payment of Rs. 1500/- compared to the cash registers which are used only for billing which cost Rs. 50,000/- a piece. TVS did this by spending time with the Kirana store owner in his environment and co-developed a unique solution right from scratch.

Another example is that of artisans in Rajasthan who sell linen and personalized stationery on-line to customers in the US, deliver within 7 days of the order being placed, and do so at one-tenth of the cost of US production. This example teaches how small or even tiny enterprises can collaborate and use the Internet to derive competitive advantage. Such appropriate strategies can be devised by studying absolute and comparative advantages small Indian enterprises have and leverage them to stay ahead in global market-place.

A Spanish clothing retailer Zora makes each employee responsible for selling and spotting fashion trends, by interacting with customers. If the employee sees that a customer likes a particular garment or a different colour, she alerts the company through its internal communications network- (employees even click photographs of new designs on their cellphones and MMS) to its head office. New designs, thus, surface at all times and it takes Zora two to three weeks to move from design sketch to store display of new garments, and, get this, the chain can replenish store stock twice a week i.e. 8 times a month.

MIT is developing a public website for almost all of its 2000 courses where lecture notes, simulations and so on will be posted as well, which students can combine with teacher-student interaction anywhere, whether that is at MIT’s own classrooms or any other university. Thus the real value of MIT education lies in the learning experience or the quality of the interaction between its various constituents, not its products.

The emergence of hospitality, tourism, entertainment, fashion, food, health care sectors clearly emphasize “customer experiencing” as a key spark to future building and wealth creation process.

The company secretaries’ role from statute interpreter has to graduate into consumers, investors, lenders and employees experiencing the organization as a fair player. Credibility, Accountability and Transparency are the watch dogs transcending the borders of good governance. His neutral umpire role of creating organisational sensitivities for public and community at large experiencing a fair and justness to all and as a nation building organization and not merely as a wealth accumulator is precisely his changing job.

STRATEGY TO SCALE GIANTS

A strategy to collaborate and even tie up with a competitor has been used by medium and large enterprises to survive in the highly competitive market place.

Financial services industry has been the bread and butter of Sun Microsystems. Sun was once widely respected as a technology innovator that powered Wall Street and other parts of corporate America with computer and operating system software. Yet the company had to prove that it has not grown lazy and ineffective and that it remains relevant in a rapidly changing industry.

Sun had to open a “Take Back Wall Street” campaign. It plans to introduce the latest version of Sun’s Solaris operating system, which hopefully can convince Wall Street firms that Sun’s technology remains relevant to their huge data centers.

Sun, having laid off 11,800 employees is still widely perceived to be a technology leader albeit having sustained a collapse of its stock, to less than \$ 4 from over \$ 60 in 2000.

Sun is also relying on its historic detente with Microsoft earlier in 2004, in which the two companies agreed to coordinate their products. The first will interconnect Microsoft's computer network sign-on system, known as Passport, and Sun's known as Liberty Alliance.

Strategies to master the giants, thus, also include a strategy to collaborate with a giant. Business has no permanent competitor or permanent collobrator but only a business alliance dictated by the market demands.

Company Secretary's futuristic vision will make him develop as an insight into the future. Mergers, acquisitions, re-engineering, re-structuring exercises and value addition and cost optimization drills will not only be life time events but day to day happenings.

FIVE C'S OF GLOBAL PLAYER

Economics , in recent times has made political boundaries irrelevant. Military blocks and political dogmatic 'isms have made strange bed fellows for contributing to human welfare and happiness . Happiness replaces welfare. The demand of global community to have a decent standard of living for everyone has made politics accountable to economics. Comforts of yester years have become daily necessities and their number multiply each day. Human happiness is a key for the survival of business and sanity in society.

CULTURE, CHARACTER, COMPETENCE, CLASS AND CREATIVITY- these five C'S determine the future performance of a global player in contributing to human happiness. The role of company secretaries is to topgear and accelerate the organization to quickly achieve these five C'S.

Transparent business transactions open for public scrutiny, a culture of best ethical and moral standard of corporate governance, a character of fair play to all those players like investors, consumers in the wealth creation, to build international class of quality of products and services and a creative approach to men and matters at all times are not dream qualities any more. Organisation and individuals who would sail through 21st century, not as mere survivor but as a flourisher and accelarator grower, not a commoner among crowd but trend setter among giants and will scale these bench marks to make them ordinary traits of everyone of its or their daily happenings. Years ago what US President Kennedy said " The times demand invention, innovation, imagination and decision. Nations and individuals cannot build and grow but will whither if they miss these qualities."

Do you see the writing on the wall? Do you hear the murmur of the scriptures? We better do, we better must, or else we whither.

PROFESSIONALLY MANAGING THE ADVENT OF INDIAN MNCs

DR A K SEN GUPTA* & RAJU ANANTHANARAYANAN**

BACKDROP

The advent of globalization has created a new paradigm of opportunity for the business enterprises all over the world. All the four modes of liberalization under market access and relevant agreements of globalization ab initio had presumably the advantage for the business enterprises of the developed countries towards their expansion in developing counterparts. However, things have undergone dramatic transformation during last few years and leading corporate of several developing countries have taken advantage of the provisions of WTO and have moved ahead towards becoming MNCs in true sense of the term. The inorganic or organic routes adopted by them for expanding overseas have taken various shapes and form. These include setting up branches, opening up of fully owned subsidiaries, forming joint ventures, entering into strategic tie-ups with foreign counterparts, and so on. The path followed has depended on several issues that include the company's strategic perspective, legal provisions of the host country, anticipated cost benefit analysis of the various options and so on.

STRATEGIC FRAMEWORK

The strategy of a corporate can be defined in terms of its intent and action to achieve what it wants to ,under a given set of controllable as well as uncontrollable constraints. The word strategy used here is in the context of **business logic** of a corporate. Over a period of time, several models have emerged to provide different approaches to this logic. The most important among them include the 3Cs model (incorporating the 3 parameters of customers, cost and competitiveness), the 7Cs model (including 4 more indicators namely, context, capital, capabilities and channels), the 5 forces model of Michael Porter, the 7S framework (McKinsey & Co.), confrontational strategies (Cooper, 1995), and so on. However, the most popular and the exhaustive in the parlance of strategy continue to be the classical theory by Michael Porter in early 80s. According to him the three strategies that companies normally adopt in a given market are:

- (a) *Cost Leadership* : The focus here is to be the least cost producer among the peers with the given resources and processes.
- (b) *Differentiation* : The approach here is to do something different than what is being done by others, may be even at a premium.
- (c) *Focus* : The idea is to achieve either cost leadership or superiority position following differentiation strategy but for a given target market. It is something akin to a "**niche strategy**".

The basic steps in formulating any strategy thus involve incorporating a vision (where the company wants to go in a reasonably longer time frame), the analysis of core competence and SWOT (to find out whether it will be possible to go) and finally the route to follow including setting up the strategic roadmap and laying specific goals and objectives. The strategic theories described above were developed during 1980s when the external environment was much less turbulent and changes were more anticipated and expected. Strategies were comparatively stand-

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The views expressed by the authors are their personal.

alone and company specific (organic in nature). Global mergers and acquisitions were relatively unknown techniques at that point of time. The world since then has undergone dramatic transformation and is now much more unpredictable. The history of the mergers and acquisitions can academically be divided in three distinct phases:

- Pre-1960 period when mergers were primarily domestic and comprised mainly horizontal and vertical mergers.
- Post-1960 upto 1980s when mergers were primarily domestic but the concept of diversification and conglomerate came into being.
- Post-1980 period when all the concepts of horizontal, vertical and conglomerate came into focus with an important difference i.e. the mergers became global in nature.

Theoretically there are several rationales for mergers & acquisitions including the global ones. The prime objective before any firm is growth and higher profitability that results into **greater value creation** for shareholders. This is how a business enterprise can sustain and become bigger. There could be three possible ways of growth; organic that might be very slow as one has to compete and win, through innovation that might be costly and finally inorganic (through the route of mergers & acquisitions) that might relatively be easier from operational perspective. This is because there is a given name, systems and process and the acquirer has to leverage on the same to get the best of it. In reality it may not always be the case, as the integration must result in a win-win situation for both the parties and thereby induce **value creation** and should not cause **value destruction**. More than a third of mergers in the corporate world fail as integration in the true sense of the term does not take place giving rise to what is known as **“anergy”** in lieu of the traditional **“synergy”** that is the at root of success of all mergers or acquisitions.

Globalization Strategies : The global expansion / entry strategies have to be looked into with a slightly different perspective and can not be equated with a situation where two players are purely domestic. The considerations for such transactions are also, therefore, different. The key drivers among others include becoming global market leader, saturation of the domestic market, taking advantage of the proximity to the critical inputs or the final products / customers. According to a recent study conducted by KPMG, the consulting firm covering more than 300 cross-border acquisitions across the continent of Europe, the most important reasons found have been:

- Increase / protection of market share (41 per cent)
- Gain or increased presence in other geographical areas (28 per cent)
- Acquiring new products / services (11 per cent)
- Economies of scale (11 per cent)

(KPMG Survey on cross-border acquisitions, 2003)

The first theoretical model developed for identification of the driver processes of FDI investment for the purpose of cross-border acquisition strategy is known as **“Eclectic Paradigm”** (Dunning, 2000). This model known as **“OLI Model”** comprises three components:

- (a) *Ownership decision* to weigh the competitive advantage the firm has got in terms of exploitable capacity (market seeking and resource seeking) to own and start production in a foreign location.
- (b) *Locational decision* to evaluate the advantage in terms of superiority (trade-off between **push effects** from the home country and **pull effects** from the host country) to have location in a foreign location compared to the home country and the subsequent advantage for exporting to third countries. This could include other motives like currency rate or providing ancillary services (accountancy / legal / other professionals) to the companies of the host countries.
- (c) *Internationalization decision* to appraise various alternatives for growth outside the home country in terms of own production or expansion through other collaborative modes like alliances, partnerships, acquisitions, mergers, etc. This approach endeavors to look at various options and tries to identify the best possible methodology to expand overseas.

The model suggests that the strategic resolution to globalize depends on careful analysis of all the three legs of the OLI model and then taking the final decision.

Routes adopted for globalization have also been different. These include:

- (a) Expansion through branch overseas (green field operations),
- (b) Incorporating a fully-owned subsidiary in the host country,
- (c) Entering into strategic alliance with a foreign partner. This may take various forms like alliance among various international airlines for flying on a collaboration manner across the continents or taking over a rival/ competitor in a foreign country while allowing the latter to maintain its identity / management (so that the resistance level is minimal),
- (d) Taking over a foreign entity / company,
- (e) Buying out the assets of a foreign counterpart,
- (f) Joint venture with a foreign counterpart in terms of equity participation.

The main strategic thrust is, however, in terms of perspective for the future with respect to the desired positioning of the company. A **global positioning** strategy might involve global presence either in terms of physical presence or strategic alliances / partnerships. The **structured approach** for any company before going global would involve the following steps:

- (a) Vision for next 10-15 years,
- (b) Analysis of own core competence,
- (c) Analysis of competitors,
- (d) Positioning strategy,
- (e) Global market analysis & choice of route (internationalization strategy),
- (f) Implementation options including communication (internal as well as external),
- (g) Value creation analysis (including due diligence and valuation and methodology for acquiring / takeovers/ mergers/partnership, etc.),
- (h) Implementation (including monitoring & control).

If one looks at the global mega-mergers during the decade of 1990s, it becomes obvious that they were all driven by economies of scale and scope and efforts to create mega companies in the world (oligopoly). The ten largest mergers of the twentieth century that occurred between 1997 & 1999 (table-1) bear testimony to this phenomenon.

<ol style="list-style-type: none"> 1. Exxon and Mobil (\$86 bn) 2. Travelers' Group and Citicorp (\$73 bn) 3. SBC Communication and Ameritech (\$ 72 bn) 4. Bell Atlantic and GTE (\$71 bn) 5. AT & T and Tele-Communication (\$ 70 bn) 6. Nation Bank and Bank America (\$ 62 bn) 7. Vodafone and Air Touch Communication (\$ 62 bn) 8. British Petroleum and Amoco (\$ 55 bn) 9. Olivetti and Telecom Italia (\$ 34 bn) 10. Rhone-Poulenc and Hoechst (\$ 28 bn) <p style="text-align: center;">(Fortune and Acquisition Monthly, Various Dates)</p>
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Table-1

However, the million-dollar question remains whether such acquisitions have created value (shareholder value or stakeholder value in the larger context) as per the expectations. The answer in many cases has been negative. Studies all over the world during 1980s and 1990s have shown that in more than a third of the cases the mergers have failed to deliver the requisite or anticipated synergy; rather they have destroyed value. Some of the important reasons of such failures have been:

- Faulty due diligence,
- Lack of preparedness,
- Lack of industry knowledge,
- Over reliance on numbers,
- Poor organizational auditing,
- Defective communication and implementation strategy,
- Wrong valuation,
- Over financing,
- Not learning from prior lessons.

(Source : Global Acquisitions by Stan Lees, Plagrove Macmillan, 2003)

It has also to be appreciated that there are several barriers in any globalization process. This becomes much more complex when compared to domestic expansion as laws and rules & regulations vary widely across countries. The barriers can broadly be classified under the following heads:

(a) Structural barriers

- *Statutory* : laws, Company Law provisions, protection of rights of the unions / workers, etc.
- *Regulatory* : regulations (domestic as well as governed by regional blocks) as regards global mergers, acquisitions,
- *Infrastructure* : institutions of action like accountancy, etc.

(b) Technical barriers : management and other related issues like voting rights, etc.

(c) Information barriers : various knowledge sources like accounting, legal, structural, etc.

(d) Culture and tradition : value systems of various societies.

(Source : Creating value from mergers and acquisitions by Sudi Sundasanam, Pearson Education, 2003)

The internationalization growth approach involves understanding the barriers, developing **appropriate coping strategies** to counter them and finally ensuring that the global integration strategies deliver the expected results. In many cases the globalization efforts have failed because the expanding / acquiring company could not properly understand the underlying explicit or implicit barriers. Often times some of the barriers appear to be trivial and deserve no or little attention. For example, the cultural barriers appear to be simple but in fact they are not. Today they are more talked about and considered the most important driver of a successful integration process. The people involved in the internationalization process are therefore required to be careful about such apparent trivial issues.

Indian Scenario : India is no exception to this global trend. The apprehension existing at the beginning of the reforms process in 1991 that the Indian corporate would fast become the hunting ground for the foreign players resulting in India being taken over by the global giants has belied. The **"power of Indian story"** reveals that contrary has been the case. Several Indian corporate have during last few years expanded globally and come to be known as MNCs in true sense of the term. In a recent report of Merrill Lynch, the global investment giant, one of the driving factors for this trend is the lack of growth opportunity observed by Indian corporate in the overseas market due to absence of **distribution networks** whereas the global companies have been increasingly using India as a **sourcing base**. The saturation of the domestic demand and huge opportunities in some other parts of

the world have been the other driving factors. This phenomenon has forced Indian corporate to go global through any of the routes mentioned earlier. The fundamental premise for all these actions has been two-fold:

- Value creation for the shareholders, and
- Ensuring sustainability on a longer-term basis.

Several success stories in recent past have shown that given the right type of **leadership** and proper **strategic perspective**, Indian corporates can endeavour to become global players in true sense of the term. Some of the recent Indian corporate stories of takeover / mergers are worth mentioning. These include:

- (a) Flag Telecom, the giant global submarine cable network and Reliance
- (b) Expert Information Services, an Australian company and Infosys
- (c) Daewoo Commercial Vehicles and Tata motors
- (d) Forging Business of CDP, Germany and Bharat Forge
- (e) Copper Mines in Australia and Hindalco
- (f) Aventis' Generic Unit in France and Ranbaxy
- (g) Redrock, the British Cosmetic firm and Dabur
- (h) Precision Forging Unit of Dana Spicer, UK and Sundaram Fasteners
- (i) Propack, a Swiss Company with Essel.

(Source : Business Standard, 23rd August, 2004)

These are only some of the several such cases that have taken place in recent past with substantial consideration money involved in each case. The driver in each case has been distinct and unique. For example, the prime driver of Tata's acquisition was to enter the Korean and other markets like Chinese; the economy of scale was the main motivating factor for the action of Bharat Forge. Market penetration strategy was the key issue behind the acquisition act of Ranbaxy. Some companies are finding the **global expansion** as a normal strategy as good as their domestic policy of expansion. Having established their superiority in terms of production capability, functionality, quality and price, they are confident and finding the global expansion as an exclusive means of augmenting their zone of competence and presence. For example, Aditya Birla Group has presence in more than 18 countries with overseas revenues forming around one third of their gross earnings. Acquisition of Berger Points has provided Asian Paints access to more than 22 countries all over the globe. The setting up of the motorcycle plant in china by TVS group, the buying of the mining companies in Australia by the Aditya Birla group, and the floating of the subsidiary in South Africa by Tata Steel are some of the recently found comfort levels of the Indian corporate in spreading their wings off-shore. There have also been cases of **joint strategy** as manifested in a joint construction bid in Mauritius by two of the Indian leading construction companies. The success story of Essel Propack is a clear indication as to how the **global leadership vision** can drive a company to adopting such successful strategies. The company set a very clear vision to become the **world's largest manufacturer** of laminated tubes as early as in 1995. Thus started the journey and the company achieved the goal in 2000 when it successfully acquired Propack in the year 2000. Today Essel Propack is successfully operating in more than 10 countries that include both developed and emerging economies (US, UK, Germany, China, Nepal, Indonesia, Mexico, Columbia, and so on). The company has successfully followed a deliberate policy of global expansion primarily through 100 per cent ventures. There are other instances where Indian companies are successfully engaged in manufacturing operations abroad. For example, the US outfit of Mahindra & Mahindra is producing more than 10,000 tractors annually. The conducive and flexible guidelines and norms prescribed by the regulators particularly during last 4-5 years have been one of the key facilitators for this trend. Not that the journey has always been easy. There have been several barriers / constraints in terms of regulations / rules / approvals of the host countries. However, the propensity and the appetite of the Indian corporate to become global have in the long run survived and the success stories reflect this trend.

Key Issues : The successful roadmap of the strategic agenda of globalization by the Indian companies (and for that matter any acquiring company) requires deep insight into understanding the key issues involved. These primarily

depend on the route the company is taking to expand globally. Some of the key issues that need careful consideration are:

(a) For Joint ventures (applicable for both the parties):

- Strengths: technological, financial, complementarity,
- Common strategic objectives,
- Strong commitment,
- Market share and increase in geographical reach,
- Research and development capabilities,
- Economies of scale,
- Functional skill transfer,
- Key management personnel.

(b) For green field route

- Whether the Indian company is a market or technology leader ?
- Whether the overseas venture is on the invitation of a customer? Whether the customer would provide the necessary support, at least in the initial stages ?
- Whether the Indian company has adequate strength at the ground level to enable it to obtain approvals from the government ?
- Whether the Indian company has a ready market for its products ?

(c) For acquisition / take-over / strategic alliance

- Will the acquisition make financial and techno-commercial sense ?
- Whether it will help in acquiring leadership position ?
- Will it create positive EVA & MVA ?
- Whether the alliance is sustainable in the long-term ?

Required Skill Sets : The world of globalization has opened up a new vista of opportunities for the corporate houses of India. However, the process is not as simple as it appears and requires specific skill sets on part of the people involved in the process of strategy formulation and implementation. No doubt some of the skill sets are necessary even for managing a company in the domestic parlance. However, they become more important in the global context as the **counter parties** are located in two **different parts** of the world and therefore any successful strategy and subsequent negotiation calls for upgraded and modified skill sets. It is to be remembered that **strategy, people, structure, processes** and **culture** are at the core of any merger process and the failure in any one of them may endanger the entire process. The skill sets are, therefore, needed to take care of all these issues. Some of the skill sets / attitudes essential for a merger process to be successful particularly in the global context are:

- Vision and goal orientation,
- Good planning and organizational ability,
- Good communication ability: effective, speaking, writing, active listening, continuous communication, clarity,
- Good negotiation and persuasion,
- Problem solving,
- Technical knowledge,
- Social skills: understanding, friendliness, trust, respect for others' feelings,
- Legal and financial knowledge,
- Good judgement and decision making,

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- Critical thinking and analytical ability,
 - Good co-ordination ability,
 - Ability to manage cross-cultural differences / conflicts,
 - Ability to work in teams,
 - Propensity to build strong relationship and respect for relationship across cultures (GUANXI: a Chinese word),
 - Flexibility to respond to change to global conditions,
 - Ability to set appropriate deadlines and monitor commitment to deadlines, as delays are unacceptable in global relationships. One will lose respect and the JV could break,
 - Being open and transparent,
 - Ability to learn new things for eg. foreign language and etiquettes,
 - Understanding body language of the counter-party,
 - Positive attitude and desire to form strategic alliances,
 - Adaptability to various situations and stress bearing ability,
 - Ability to take positions / play games (in inevitable situations during negotiations).

While all other skills are important, the most critical factor remains managing the **cross-cultural issues**. This spans across the life of the deal from **pre-alliance negotiation** to managing successfully the post-alliance **cross-cultural diversity**. Success or failure of many of the global transactions to a large extent depends on the strategies to manage this critical issue. While the fundamentals of HR strategy remain the same for any alliance / acquisition, whether domestic or global, the complexity increases as one is involved in managing cross-cultural issues not only of **two companies** but of **two nations** as well. The usual theory of managing people suggests that in any proper merger case the vital HR strategy comprises three phases:

- (a) Commitment and openness of the two parties at the **beginning** of the negotiations,
- (b) Open and transparent **communication** to all concerned immediately after the negotiations reach the concluding stage belying all fears and apprehensions, and
- (c) Honesty in implementing the **promises** made during the negotiation and communicated to all concerned.

Therefore, for successful cultural integration the essential pre-requisites include clarification of culture, predicting culture clash, identifying the boundaries upto which the cultural integration can take place and moving upto only that level, explaining the cultural change to the counterparty and finally the most important part i.e. protecting the target culture if that does not affect the merger to a damaging extent. The problem in the global context is accentuated as different nations have different ways of looking at things and their **value systems** also vary widely. One has to be aware of this as a **successful negotiation** to a large extent will depend on this. For example, a US company would like to be brief, crisp and expect professional approach; a German may need detailed analysis and explanation with bars, charts, graphs, etc.; building relationship i.e. Guanxi is very important from Chinese perspective before one can start a business transaction; a South-American negotiator may need a relaxing conversation pre-and post business talk and so on. The complex cross-cultural contour, therefore, calls for a separate set of skill sets for the negotiator / implementer of a successful global merger process.

Role of Professionals : The Indian professionals under the given situation have a critical role to play. While in almost all the global strategic transactions involving alliance or acquisition, the acquiring company appoints a globally well-known Law / Accounting / HR Firm to undertake the corresponding due diligence of the to-be acquired company, the Indian professional-counterparts have a very important character to enact. There are certain inner advantages India as a nation enjoys. The Indian professional fraternity, by and large, is technically competent, possesses necessary analytical skills, and has a reasonable command over English spoken as well as written that gives them an edge over others. Indian law is based on English Law and therefore, many a times have universal application or it enables Indian professionals to easily understand and interpret the laws of other countries. Similarly, our accountants are well equipped as our GAAP is broadly on the same lines as that of US or UK GAAP. Indian

accounting standards are based on IAS. India being a country of diversity, the professionals are in a position to handle the cross-cultural differences with relative ease. However, in the changing world they need to keep pace with the evolving issues. There is a need for upgradation in all contours of **knowledge, skills** and **attitude** for making the globalization process a success. The areas in which they need to upgrade themselves include:

- (a) Knowledge of legal, accounting, and cultural issues of other countries,
- (b) Understanding of the **mathematical models** of valuation of a company and also the concepts relating to EVA / MVA,
- (c) **Professional approach** to handle the global issues,
- (d) Expertise in country risk analysis,
- (e) **Cognitive abilities** to interact, coordinate and negotiate with people with different cultural background,
- (f) Knowledge of basic business communication in a **foreign language** other than English,
- (g) Positive attitude towards people with a strong sense of **empathy**,
- (h) **Emotional maturity** with an attitude towards avoiding confrontation / conflicts, and
- (i) **Leadership skills** as expected from a professional so that the commitment for alliance is observable.

There is an added dimension to the situation. In many of the foreign ventures promoted by Indian companies, the **top management team** is Indian. There is thus a need to develop professional managers who can lead teams of foreign nationals in an alien country, which is not an easy task. The traits and temperament of such a top management team is totally different. As the process of globalization by Indian MNCs become more prevalent, there has to be consistent efforts by Indian companies to develop a **cadre** of such professionals at the top.

With particular reference to the Company Secretaries, their role is crucial particularly in the context of interpreting the local laws for his / her management, liaising with the local lawyers, coordinating with the JV partner and the Indian company. These are primarily restricted at the pre-alliance stage. Negotiation teams should ideally comprise people with diverse background like legal, finance, technical, and so on. The team should have a **leader** as well as a **coordinator**. While the leader is usually a strategist from the top management, the Company Secretary fits ideally into the role of the coordinator. Being a professional it is relatively easier for a Company Secretary or for that matter any other professional to develop a sense of mutual trust and belief with the foreign counterpart and hence discussions / negotiations can be much more open and transparent. Unfortunately, the course content of the professional bodies in India does not touch many of these issues. Though the current syllabus of the ICSI does have a paper on WTO & JV, it is not exhaustive and its coverage should extend to managing various issues relating to international business environment and management of MNCs. This possibly will enable the Company Secretaries to become better professionals and more competent to understand the intricate issues involved while negotiating and striking an international deal.

Concluding Remarks : With arrival of the era of irreversible globalization, multinational and transnational companies will soon become the hallmark of the world economy. As the concept of **global competitiveness** becomes a reality, there are increasing trends towards oligopoly arising out of mega-mergers and alliances among larger players of the world. The efficiency of a local economy will to a large extent depend on how it has integrated with the world economy both through the **internal absorption** and creation of **domestic global companies**. India has rightfully taken a big leap in this regard with emergence of a number of significantly large global players including world leaders. It is slowly moving into the League of Nations that will propel tomorrow's world economy. The professionals working at all levels in the Indian companies have thus to be aware of the crucial role they have to play in this transition from mere **compliance** or **auditing** to **knowledge** and **facilitating** role. To be able to be catalytic in such a scenario as professionals they have to be global in their approach and attitude. Possessing only knowledge and skills will not be adequate in this challenging and eventful transition. What will be of essence is the change in **mind set** from **local** to **global**. The acid test of survival of a true professional in the coming decade will be how he / she can adopt and adapt to the global standards. The professional bodies also need to be aware of the ground realities and modify their interventions accordingly.

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IPRS — A GATEWAY TO CORPORATE GLOBALISATION

DR AVINASH SHIVADE*

INTRODUCTION

Intellectual property rights have assumed great importance in modern age. The intellectual property rights law has been emerging globally as a viable system of creating assets for a company.

Valuations placed on some of the intellectual property rights such as trade marks are on a scale which is unheard of in case of immovable properties. Until recently, under the provisions of the Income Tax Act, government expected one to take income tax clearance from income tax authorities whenever value of transactions exceeded certain limits. The values of IPRs in the market far exceed these figures.

Trade Marks are being licensed or traded in India for crores of rupees. Trademark CIBACA was sold for Rs. 200 crores. Another company in the business of manufacture of audio-visual systems and now in telecom business has total assets estimated at around Rs. 500 crores. But the value of its trade mark is said to be Rs. 1100 crores. The Trademark 'Kwality' was sold territory wise for crores of Rupees. Indian pharmaceutical companies are selling their patents for substantial amounts in international markets.

The recent transaction of Sun Pharma agreeing to purchase three brands of an unlisted US company called Women's First Healthcare (WFHC) involving acquisition of three brands for a sum of \$5.4 million, without condition of payment of royalty, is also a pointer in the direction Indian industries are leading to (Incidentally, the fact that brands were put up in a Bankruptcy proceeding by the concerned US company also indicates the strength of these brands to pay off some of the dues of the company- though such may not be the intention when the brands were developed first !).

IPRs create substantial value for a product. The value of common table salt is a few rupees if sold in a grocery shop; but the same business has turnover of crores of rupees when the same product is branded and advertised. A patent gives monopoly to a company for an invention.

As such, it has become imperative to pay attention to evolving strategy for IPRs of a Company. In practically every field of business, IPRs are assuming increasing importance. Indian Pharmaceutical companies are entering into licensing and assigning drugs or novel drug delivery systems. In case of information technology, biotechnology, FMCG companies, intellectual property rights assume great importance and relevance. Thus, Intellectual Property Rights of a Company are substantial assets to which Company must pay close attention .

Intellectual property rights are restricted by territoriality although they may have an international relevance. To be globally viable, while building up intellectual property rights portfolio, feasibility of protecting intellectual property rights internationally should be evaluated. As a strategy, it is imperative to have a national and international perspective while implementing the IPR regime. Development of IPRs with a national and global perspective will significantly contribute to the global presence of a company.

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SALIENT ASPECTS OF INTELLECTUAL PROPERTY RIGHTS

The management of Intellectual property rights is broadly centered on the following aspects:

- (1) Identification of potential Intellectual property rights.
- (2) Creation of Intellectual property rights portfolio.
- (3) Administration of Intellectual property rights.
- (4) Exploitation of Intellectual property rights.
- (5) Periodic evaluation of Intellectual property rights.
- (6) Protection of Intellectual property rights.

Greater awareness of these various aspects is of paramount importance for implementation of Intellectual property rights regime. These aspects are broadly discussed now hereafter :

Identification of potential intellectual property rights

Every business has its own peculiar characteristics. An individual approach and strategy for developing IPRs is therefore necessary. A company may evaluate its potential IPRs in two steps. The first step is to have a continuous interaction with the major departments of the Company like Research and Development division, Production, Marketing divisions etc., with a look out for possible IPRs which can contribute to IPR portfolio of a Company.

The next step is to obtain legal advice for potentially viable Intellectual property rights. At this stage, it is also necessary to take into account Intellectual property rights of the competitors.

It must be realised that Intellectual property rights are not separate, watertight compartments. A single product may be a product protected by a Patent, its design may be protected as an Industrial Design, its name may be protected as a Trade Mark etc. Similarly, apart from broad categories of intellectual property rights patents, trade marks, copyright, and industrial designs, there are also other collateral rights such as confidential information and know how transfer transactions.

It is thus necessary to have an integrated approach while evaluating potential IPRs for creating an IPR portfolio.

Creation of IPR portfolio

This is a major work for any company. Sometimes it is necessary to begin with the name of the company itself. Name of the company or the trading style itself can be a trade mark. It is often seen that a company is incorporated after great deal of effort, time and money only to be surprised with a legal notice that the company should stop using a particular name as a trade mark as it is a trade mark of some other company.

In the present times, the challenge is not limited only to India. Even foreign companies are known to raise objections to a name of a company – and even Indian companies. There are number of cases where after launching web sites, companies have received legal notices to withdraw or change the name of the company. Recently, a software export company which had the word 'Dreamworks' in its corporate name received a legal notice from a U.S.A. Company which pointed out that there were as many as seven different registrations of seven different corporations having same name as part of their corporate name in the U.S.A. The Walt Disney Corporation raises objections whenever its trademarks are violated in any manner, including cases where they are used as a part of name of a company or any business, by issuing legal notices and following it up with litigation where necessary.

In another case, after winning the online arbitration launched by a US company, an Indian Company was served with a notice of a suit from California Court. In the suit the same US Company had alleged, that the name of the web site, (in respect of which the US company had lost online arbitration of WIPO) was its Trade mark, registered in the US, and the Indian Company had no right to use it for its website. When the Directors of the Company sent a hurried reply contending that the California Court had no jurisdiction, the Court rejected the

reply as being not in accordance with California Rules and passed a decree for injunction and directed the Indian Company to pay damages of 100,000 US Dollars and 51,000 US Dollars as 'Attorney's fees'!

Thus, it is imperative that even for selecting name for itself, the Company must have a global outlook. Otherwise, great deal of efforts and money is wasted in changing the corporate identity.

In practice, many times it becomes apparent that there is a lack of clarity about certain notions of Intellectual property rights. Intellectual property rights can be classified into three categories.

- (1) Although registrable, formal registration is not necessary such as in the case of copyrights or trade marks,
- (2) Intellectual property rights for which registration is mandatory – such as patents and designs.
- (3) Intellectual property rights for which at present there is neither codified law, nor registration machinery available such as in the case of know-how, and confidential information.

The major categories of Intellectual property rights, namely copyrights, designs, patents, and trade marks and the recently emerging Geological Indications, have an elaborate administrative set up for granting registrations. There are offices of Registrars and provisions for Appellate authorities.

In case of copyrights and trademarks, it is necessary to take strategic decisions as to how such rights should be managed or protected. In case of copyright, for example, copyright comes into existence as soon as one completes the work, or creates a software programme. The High Courts have held, by and large, that in India a formal registration of copyright is not necessary for its enforcement. However, registration of copyright has certain distinct benefits. A certificate issued by the Registrar of Copyrights is valuable in infringement proceedings. It is also useful when recourse to police authorities is required to be taken. Such a certificate is considered as prima facie evidence of existence of copyright and is also useful in prosecuting applications for interim injunctions in courts. It is therefore always desirable to register copyrightable work under the provisions of the Copyright Act.

In case of a trademark, it is considered as a common law right. High Courts have consistently held that registration is not mandatory for a trademark. However, in case of a trademark or service marks, it is necessary to register such a mark when it has a substantial market presence. While protecting trademark, registration gives it a sharp edge.

In case of an unregistered trade mark, though legal action is maintainable, this legal action for passing off of a trade mark is maintainable efforts are required to show deceptive similarity or passing off of a product by the defendant. In case of registered Trademark, the present Trademark Act also permits you to sue for infringement where the Company is carrying on the business and not at the place where infringement is taking place.

In case of patents and industrial designs, registration is mandatory. Thus, as a basic strategy the Intellectual property rights for a company should be registered at the earliest with the concerned Authorities.

Know-how and confidential information are also considered as intellectual property rights. Although TRIPs provides for protection of confidential information, at present there is no codified law on the subject. In case of know-how and confidential information, drafting of proper contract is necessary. In case of these rights, recourse has to be made to the principles of the Law of Contract. Contractual bind in case of confidential information or know-how is strong enough to be protected by a court of law. The efficacy of this will however, depend on the nature of the transaction and the nature of information sought to be protected.

It is necessary to keep a keen watch on various intellectual property rights in a company's portfolio. Many of the intellectual property rights such as trade mark, patents or designs are required to be renewed periodically. Registration of such intellectual property rights lapses in case of non-renewal. In case of Patents, many times only Provisional specifications are filed. The last date of filing complete specification is missed by the Company in spite of fairly long period available for the same. It is necessary to have proper a proper administrative set up to consider these administrative aspects of such intellectual property rights.

Intellectual property rights at international level

The need to have an international system for securing IPRs internationally has been recognized since last two centuries. The main vehicle for developing IPRs on international level, are International Treaties. Where there is no treaty or where India has not acceded to such a treaty, protection of IPRs is rather cumbersome.

The Paris Convention of 1883 for protection of intellectual property rights was the earliest measure for extending intellectual property rights on a international level . Countries to the Convention were said to form a 'Union', which would protect the intellectual property rights of member countries. The basic principle was the principle of reciprocal protection of intellectual property rights by the members of the Union.

The General Agreement on Tariffs and Trade or GATT emerged in 1947. In the year 1980, multinational corporations and international agencies began to show their interest for including intellectual property rights under the umbrella of GATT. The Uruguay Round which ultimately led to the final treaty began in the year 1986. The discussions and deliberations continued to such an extent that GATT came to be nicknamed as 'General Agreement to Talk and Talk'. When concluded finally, it contained 28 agreements. TRIPS was one of the agreements of GATT.

The relevant treaties of IPRs are as follows:

- (1) *Copyright* : Berne Convention and Universal Copyright Convention or UCC
- (2) *Trade Marks* : Trade Mark Law Treaty 1994 and the Madrid Agreement concerning international registration of marks.
- (3) *Patents* : Patent Co-operation Treaty which makes filing of a single application for a patent on an international scale possible. Another relevant treaty is the Budapest Treaty of International Recognition of Deposits of Microorganisms for the Purposes of Patent Procedure, 1977.
- (4) For Industrial Designs, the relevant agreement is the Locarno Agreement, establishing international classification for industrial designs 1968.
- (5) *Integrated Circuits* : Washington Treaty of intellectual property rights in respect of integrated circuits.

India is a signatory to the Copyright treaties i.e. Berne Convention and the Universal Copyright Convention. India is also a signatory to the Patents Cooperation Treaty. In case of other intellectual property rights, multiple registrations in other countries is necessary.

In case of Patents, more than 95 countries are signatory to the Patent Cooperation Treaty. Unlike in the past, single application for patents can be filed in India as an application under the Patent Cooperation Treaty. The applicant has a wide choice to designate the countries in which the applicant intends to secure patent. Considerable advantage of this treaty is that the date of filing patent application in India is applicable in all such countries in which the patent protection is to be secured. Another advantage is that feasibility and usefulness of the patent can be evaluated from the reports received in the procedural stages in a PCT application.

Though theoretically it is possible to enter into separate collaborations for manufacture of patented article in different countries, a collaborator or licensee would insist on exclusive rights being given. Patents can also be assigned by a company depending upon potential of patents.

In case of copyright, display of convention notice of copyright secures copyright protection for a company in all convention countries irrespective of formalities of registration, if any, required in any member countries for securing copyright. Initially, the copyright law aimed at securing fictional and musical works. Gradually, it has emerged as a legislation to protect non-fictional works, which are in fact major beneficiaries of the law of copyright.

With the gradual increase of international companies setting up manufacturing facilities in India, and the Indian companies exporting their goods abroad, trade marks and service marks have an increasing role to play in global awareness of the trademarks. In this context, signing of concerned International Agreements is a necessity.

Licensing of intellectual property rights:

Intellectual property rights can be exploited by companies in two ways. Firstly, the Company itself to its advantage can use these. Secondly, after building up the intellectual property rights a company may assign it lock stock and barrel to a third party for a consideration. For this decision, the considerations would be expected revenue for such intellectual property rights.

In the event it is to be retained by the company for itself, the cost of protecting such intellectual property rights nationally as well as internationally. If the projected costs and other considerations are out of proportion to the expected returns from intellectual property rights, it is better to assign or completely sell off such intellectual property rights.

However, the most common method for exploiting an intellectual property right is by granting licenses.

Licensing of intellectual property rights requires properly thought-out decisions on the part of the Company. Normally, the Patents or Trademarks developed by a company are used for the purposes of the Company. If there is a useful technology, which can be exploited by the company for its own benefit it may not be advisable to license such a technology in the market. Such a step may jeopardize the prospects of the company. Secondly, there is a further possibility that the licensee may himself turn into a competitor of the Company. There could be innumerable consequences once the licence comes to an end. At the same time, a Company cannot finance and develop intellectual property rights for selling such technology in the market unless the Company has been formed for such a purpose alone. These considerations are particularly important when the question of licensing of patents is involved.

Another aspect involved in the licensing agreement is bargaining strength of the parties. A powerful Corporation may be able to obtain licenses or assignments at an unconscionable price. A rare technology, however, may yield much higher consideration than expected. As observed by Vernon Parker:

"In many organizations who possess cerebral technology there is no doubt that the principal factor that leads them to seek a license with technology is the opportunity of earning revenue in the form of fees and royalties and a lot of licensing is done for this reason alone. Many organizations exist to develop or perfect technologies and then license them...The said license research establishments and universities are the sources of technology and innovations which are licensed to earn money even though perhaps not developed for that purpose."

While negotiating a licence following factors are relevant:

- (1) Life of a particular intellectual property right. Various intellectual property rights have different periods of existence. For example, a patent remains in existence for a period of twenty years, whereas a trademark may exist perpetually.
- (2) *Term of a licence* : At the outset it is not possible to judge the working relationship between the licensor and licensee. The background of a licensee, if known as is generally the case, helps in arriving at a decision.
- (3) Consideration payable for such a licence.
- (4) Jurisdiction in case of legal complications.
- (5) The trends prevalent in the concerned intellectual property rights.
- (6) Provisions in case of breach of terms and conditions of a licence and settlement of rights in such circumstances.
- (7) Law applicable to the licence. This is necessary as sometimes in case of disputes, when a contract is perused, one often comes across a situation that the matter is to be governed by law of a particular country or that for resolving disputes the arbitrator will sit in London. Cost considerations in such a case make enforcement of intellectual property rights unviable.

Periodic Evaluation of IPRs

It is necessary to keep evaluating the IPRs periodically. This has two advantages. Firstly it gives a perspective of the IPRs which is useful for deciding whether some of the IPRs can be utilized better by selling off or by licensing.

Secondly, it helps in evolving plan of action for the Company. While evaluating the intellectual property rights it is necessary to summarize intellectual property rights portfolio and assign commercial significance to each intellectual property right. David Bainbridge gives following example by way of illustration for identification and evaluation of intellectual property rights in the case of a company involved in Construction..

<i>Subject matter</i>	<i>Commercial Significance (Scale 0 to 10)</i>	<i>Legal protection Applicable or Available</i>	<i>Action</i>
Business Information (Suppliers, Subcontractors, Clients, local Authorities etc.)	7	Confidence Copyright	All company's contracts to deal with confidence, especially contracts of employment and contracts with sub-contractors & consultants
Plans drawings and specifications	8	Copyright (Confidence)	Keep records of important documents and their creation (consider depositing copies with a solicitor)
Special techniques and articles, for Example, trench support method, new Scaffolding clip	10	Patent (confidence) (copyright)	Apply for patents (if there is any doubt as to whether the company is entitled to be a proprietor, for example, in the case of invention by employee outside his or her normal duties, make formal agreement as to ownership), Keep confidential until, at least, application has been filed.
New designs, for example, new shape of fireplace, new design for plaster relief work, etc.	9	Registered designs Design right (Artistic copyright)	Register designs that have any eye-appeal. For functional designs keep records and consider depositing copies.
Company name, product and technique names, advertising and sales techniques.	9	Trade and Service marks Passing off (Copyright) (Confidence)	Register distinctive marks in the appropriate classes. Be wary about using unregistrable names or marks – if there is no alternative, advertise them to quickly build up goodwill. Be prepared to prove goodwill and damage in a case of passing-off. Fully record marketing techniques (this may help a copyright action if a technique is deliberately copied.)

Protection of intellectual property rights

This is considered as one of the daunting aspects of intellectual property rights. In case of intellectual property rights, a company is not in physical possession of the concerned right. Software in which copyright subsists, has to be licensed on a major scale. A Patented product has to be launched in the market. The goods bearing a trademark have to be sold in the market.

This peculiar aspect of an intellectual property right gives them a peculiar vulnerability. The technological possibility of reverse engineering always looms at a distance.

As intellectual property rights are intangible rights, protecting intellectual property rights is an intricate exercise. The protection of intellectual property rights is mainly through the following means:

- (1) Adequate notice of intellectual property rights or services
- (2) Pre-litigation steps
- (3) Litigation.

Adequate Notice of intellectual property rights

Many times intellectual property rights are violated because of ignorance by user. Adequate display of intellectual property rights of the company on the product such as Copyright, Trademark, 'Patent applied for' 'patent registration No. xxxxxx' etc. has its own effect on the infringers. Even on a website where the company intends to retain copyright in respect of certain contents, such notice should be used. It is pertinent to note here that some of the intellectual property rights statutes permit the defence of innocent infringement where the infringer contends that he was not aware that the company had any intellectual property rights in the concerned product. Such a defence is ruled out at the outset when such notices are published adequately on the products.

Pre-litigation steps

Once violation of an intellectual property right is detected, it is not necessary to proceed directly to litigation. Prior to the litigation, various alternatives are available.

To start with, initially, a circular can be issued to the customers of the company warning them that certain counterfeit goods are in the market and that the buyers should be careful while purchasing the goods.

If the violations are on a large scale, it is always advisable to publish a public notice in prominent newspaper. Depending on the market, such notices may be published in English, as well as widely circulated local language newspapers. Such public notices have great importance as not only it is a notice to the unauthorized users, the trade is also informed of trade marks of the company and the rights of the company are also highlighted.

Cease and Desist notice:

When the violation of the intellectual property rights continues the next step is to issue a specific notice to the infringer asking him to cease and desist from infringing the intellectual property rights of the company. Such notices are always issued before intellectual property rights litigation for two purposes. The first purpose is, as experience goes, eight persons out of ten will reply that they are going to stop violating intellectual property rights complained of. The psychology of an infringer is to make a quick buck without much hassles. Such a person normally does not like the prospect of litigation in court. Thus, about 80 to 90% of all the litigations can be settled by issuing specific cease and desist notices. Such notices are also useful where litigation is filed in a court. Cease and Desist notice, and reply or non-reply to such notice will expose the defendant. The defendant also similarly cannot contend that he was not aware of the existence of the intellectual property rights of the plaintiffs.

Litigation

It is often said that intellectual property rights litigation is expensive. However, if considered cost-wise, it will not be correct to say that this litigation is costlier than any other kind of litigation like say Company matters, or Excise or Tax disputes. In litigation, it is always advisable to apply for interim orders against defendant either by

way of injunction or by way of ex-parte appointment of receiver or seizure of goods. In many cases, at this stage itself, the defendant may come to terms and the litigation gets over.

Sometimes, a cautious defendant waits till the Court decides interim application on merits and thereafter offers a compromise. Usual experience is that thus even in case of litigation; eight cases out of ten are settled at some preliminary or interim stage. Question of pursuing litigation comes in cases of at the most 10 to 20% cases. Thus, litigation is also a powerful tool for protecting the intellectual property rights of a company.

It has been observed that there are some companies which pursue the infringers with tenacity. Such persistent pressure on the infringers has the effect of the company being recognized as a company with strong policy of protecting intellectual property rights. Thus, potential infringers think thrice before violating intellectual property rights of such a company. Thus, though cost-wise it appears to be more at the initial stage, the edge, which the company gets by such a strategy, deters the potential infringers.

The IPR assets of a company must be protected irrespective of whether they are major or minor. Many Indian companies and counterparts of MNCs forcefully protect their IPRs. Sometimes, it may be practical not to resort to litigation. But this is only after having made it sure that the infringer has accepted the IPRs and their evaluation by the infringer. To ignore infringements, sometimes also called as the 'Ostrich Approach' to IPRs, and the perils of IPR violations is to ignore the significance of IPRs. Certain cases in this connection may be considered. Auto major Honda filed trade mark infringement action against an Indian manufacturer who was manufacturing pressure cookers under the trade mark 'Honda'. Argument that cookers are a different product, were rejected by the Delhi High court. In a suit filed by Daimler Benz, the High Court restrained a hosiery manufacturer from using the word 'Benz' and photograph of a person standing in a pose similar to the Benz three-pronged star. Volvo filed a case against a company, which had the word 'Volvo' as part of its name and Division Bench of the High Court granted injunction against such use. The principle behind such an extensive protection strategy is that marks get diluted by such a rampant use. Goods of the company lose their status in the market. Such 'Ostrich Approach' must be avoided at all costs.

Protection of confidential information

As there is no codified law for protecting confidential information, a confidentiality clause has to be protected by invoking the principles of law of contract. Under a confidential agreement, it is the duty of the licensee to protect the confidentiality of the information parted with by the licensor under the contract.

Needless to say, that if intellectual property rights are not protected vigorously, ultimately it is the company which will suffer in the long run.

To conclude, IPRs have great potential to contribute to the assets of a company. In many industries IPRs constitute backbone of a company. If IPRs are developed and protected with a national and global perspective, and with a well-defined IPR strategy, IPRs would be a major gateway to corporate globalization.

Use of Global Location Number in e-Governance

Ravi Mathur, CEO, EAN India

Department of Company Affairs

What do the goals lead to?

Goal	Leads to
Easy secure access to citizens; any time, any place, any device	<p>“Government virtual-front-office”</p> <ul style="list-style-type: none"> - Portals (Pvt and Govt) - Multiple delivery Channels
<p>“Any document anywhere” access to DCA employees</p> <p>Customer-centric solution</p> <p>Robust solution</p>	<p>Centralized document repository</p> <p>Localized access of current documents</p>
Minimal Operations Management overhead	<p>All components to support standards based NMS;</p> <p>Status & Statistics reporting is a requirement for applications</p>
Scalability, Performance, and other requirements	<p>Distributed Application Servers</p> <p>Scalability for all components</p>
Joined up services, app-to-app interoperability	<p>“Government Services Gateway”; Use of standards and frameworks</p>

DCA Mandates

DCA Vision IT Act
Security Standards

Leveraging Technology

Customer Service:
Call centers, VOIP, CRM

Authentication,
Business logic
Payment

Gateway

XML

Metadata, architecture,
access, languages

PKI/Unique IDs

Mobile Devices

Getting There

Metrics

Business Cases
Risk Assessment
Best Practices
Streamlined Processes

Change Agents

Collaboration: Interagency Councils
Exec Leadership Initiatives
Workforce: Awareness, Training
Outreach: White papers, Talks, Press

NISG Products

Policy Guidance
Interoperability & Standards
Agency Pilots
Alliances w/Agencies & Industry

Infrastructure

Authent-
ication

Digital
Signatures

CA Cross
Certification

Secure
Web

Single Face Portal

Business Access

Department of Company Affairs

DCA Net



- A centrally hosted DCA Portal and Data Center
 - Located at a city with an RD/RoC office
 - Data center to internet: multiple ISPs
- Contact centers: one per region
- Connectivity to all offices using leased circuits
 - 2 Mbps circuits used through-out
 - ISDN backup option
- Disaster Recovery Center
 - Located at another city with an RD/RoC office
 - 0.5 day resumption of business
 - Data preserved until closure of last business day

Need for common Business Identification Number

Business Identification Number (BIN)

An innovative, trans-jurisdictional, multi-agency partnership that will allow businesses to interact with various levels of government using **just one** Common Business Identifier – the **BIN**

Benefits of BIN



For Business Entity

- Single identifier for any business entity
 - Key enabler of Single-Window concept
 - Promotes Client-centric approach

For Government Departments

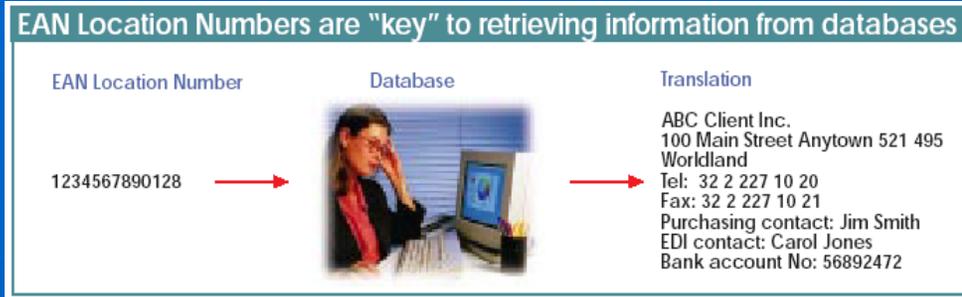
- Key component of a framework of **“Joined-up Government”**
 - Single Composite Application Form
 - Integrated workflow across departments in a limited way
- Single point of data entry and maintenance
 - Promotes data consistency across departments
- Track history, status and progress of a business entity across departments
- Better Information System that helps in policy-making
- Potential for integration with International systems of business numbering

Implementation of BIN thru GLN



- GLN to be linked/ mapped to Business Identifiers of each department
- GLN to be used for
 - unique identification of business entities
 - EDI transactions
 - International trade

GLN Format/Features



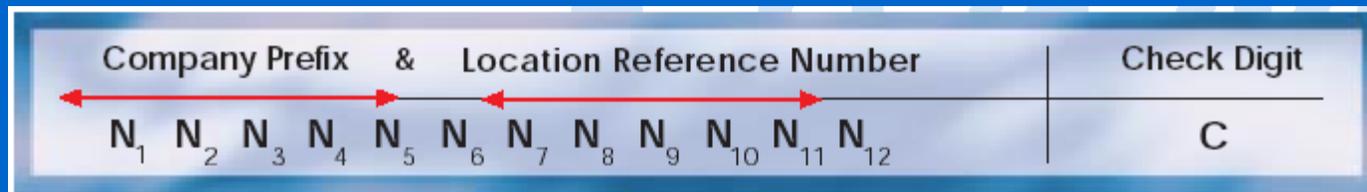
The Global Location Number (GLN) is part of the EAN.UCC numbering system. It is a 13 digit numeric code that provides a Company the means to identify its corporate structure to its trading partners. GLNs can be used to define:

- Legal entities (e.g. HLL in India)
This can be whole companies, subsidiaries or divisions such as a supplier, customer, bank etc.
- Functional entities (e.g. Western region sales office, central billing)
A purchasing department within a legal entity, an accounting department, a returns department, a nursing station, a ward, a customer number within a legal entity etc.
- Physical entities (e.g. store, factory, warehouse).
A particular room within a building. A warehouse or dock door, delivery point or a transmission point etc.

The sub-set of these standards which relate to identification of companies (entities/sub-entities) are endorsed under ISO6523 and are recognized by the United Nations for implementation under UN/EDIFACT for EDI messages.

GLN Structure: 3 components

- Company Prefix
- Location Reference
- Check Digit



Features of GLN

- *Unique*: Every business (entity/sub-entity/location) can be allocated a globally unique identifier.
- *Non-significant*: Facilitates usage of same GLN across Govt. departments, being non-significant. GLN acts a key to unlock company information which can be stored by each department within its internal application, based on its specific requirements.
- *International recognition and acceptance*: GLN's are endorsed within ISO/UN standards and widely used across the world for sourcing opportunities.
- *Secure*: Being of fixed length, well defined structure, with a check digit, facilitates secure data transmission and processing.
- *Permanence*: Remains unaltered with change in attribute information, eg. change in tel. nos., contact persons, business activity etc.

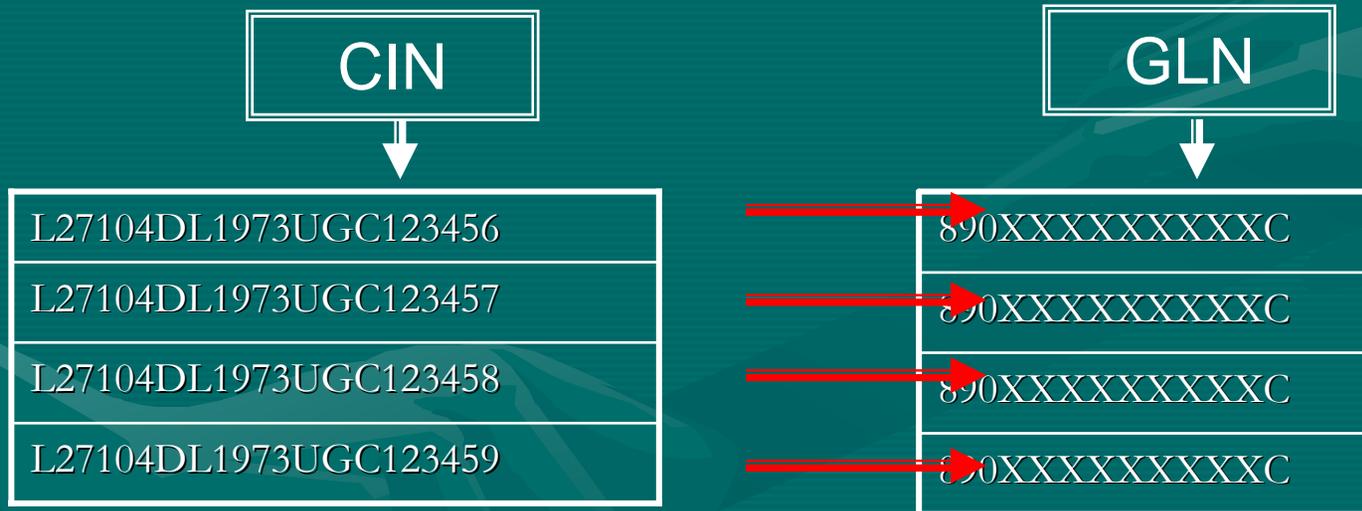
Features of GLN



- *Administration by third party:* GLN's can be allocated and administered by EAN.
- *Scalable numbering capacity:* At both main entity level (registered office of a company) and sub-entity levels (branch offices, manufacturing facilities etc. of a company)
- *Multisectoral usage:* Being non-significant, GLN can be used for identification of companies across Industry sectors/segments.
- *Usage across business environments:* Being non-significant, GLN can be used in G2B, G2G and B2B environments. This provides added value to companies through use of one single numbering system.
- *Usage in EDI:* Can be used in filing of EDI documents with Customs, Banks, Ports etc. Endorsed within UN/EDIFACT standards.
- *Usage across multiple G2B applications:* GLN's can be used in eBidding, eProcurement, ePayment processes etc. by different department.

GLN Linkage with CIN

An one-to-one mapping will be created between CIN numbers and allocated GLN numbers



GEPIR: The company register of the world

EAN INDIA
EAN.UCC - the Global Language of Business

The Global EAN Party Information Repository (GEPIR) is a repository of information of Indian companies and their products who are registered as EAN India subscribers. It also interconnects this database of Indian companies with the International data of over 9,00,000 EAN member companies across 128 Countries.

GEPIR is designed to provide company and product information based on **GTIN/SSCC/GLN**. It also provides:

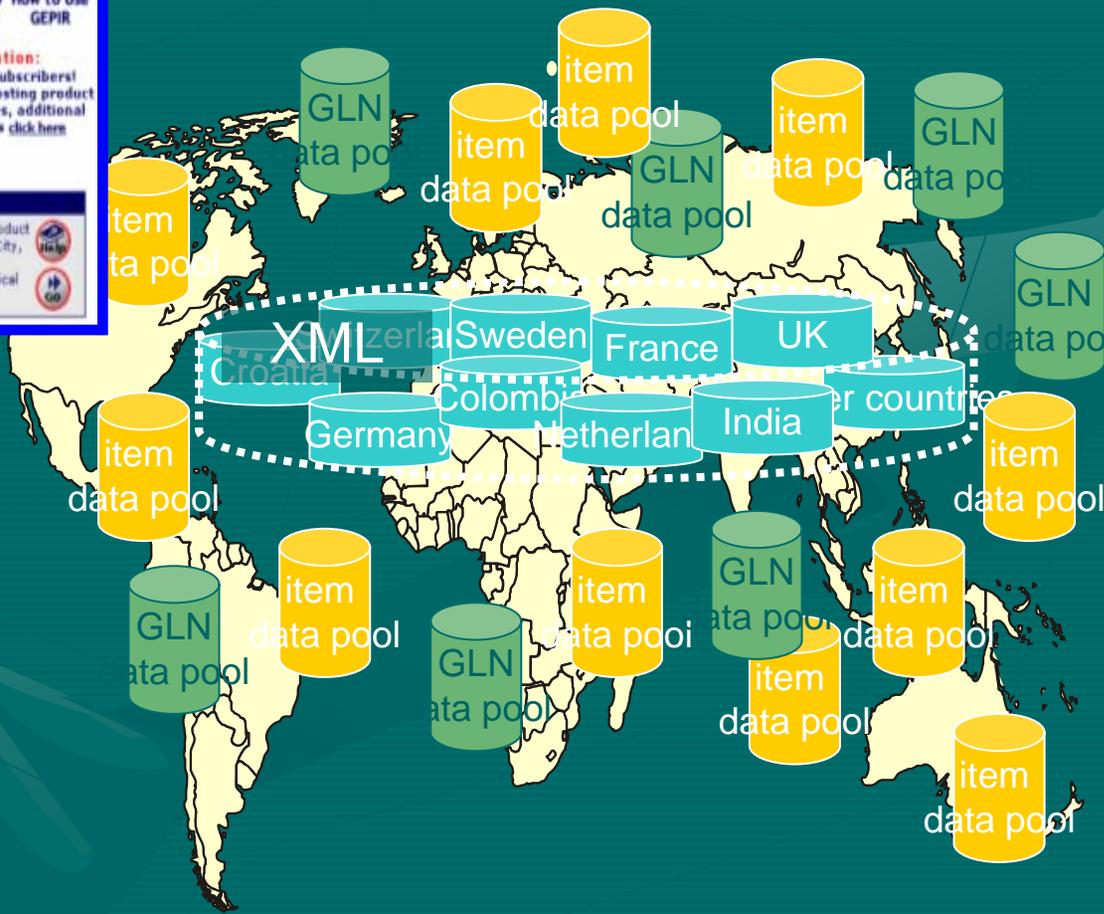
- EAN India subscribers' repository of **products (GTIN)**, **locations (GLN)** and **commitments (SSCC)**.
- Advanced search features like Product category, company name, City, Type of Business.
- Facility to upload (for subscribers) and view images of subscriber's products.
- For subscribers, a facility to manage (modify) their **GTIN/GLN/SSCC** information.

Attention: EAN Subscribers! For hosting product images, additional details click here

For more information on EAN India and its activities Please [click here](#)

GEPIR - Search
Search for EAN India/subscriber information by Company name City, Zip/Pin code & Country and also by GTIN/GLN/SSCC numbers.

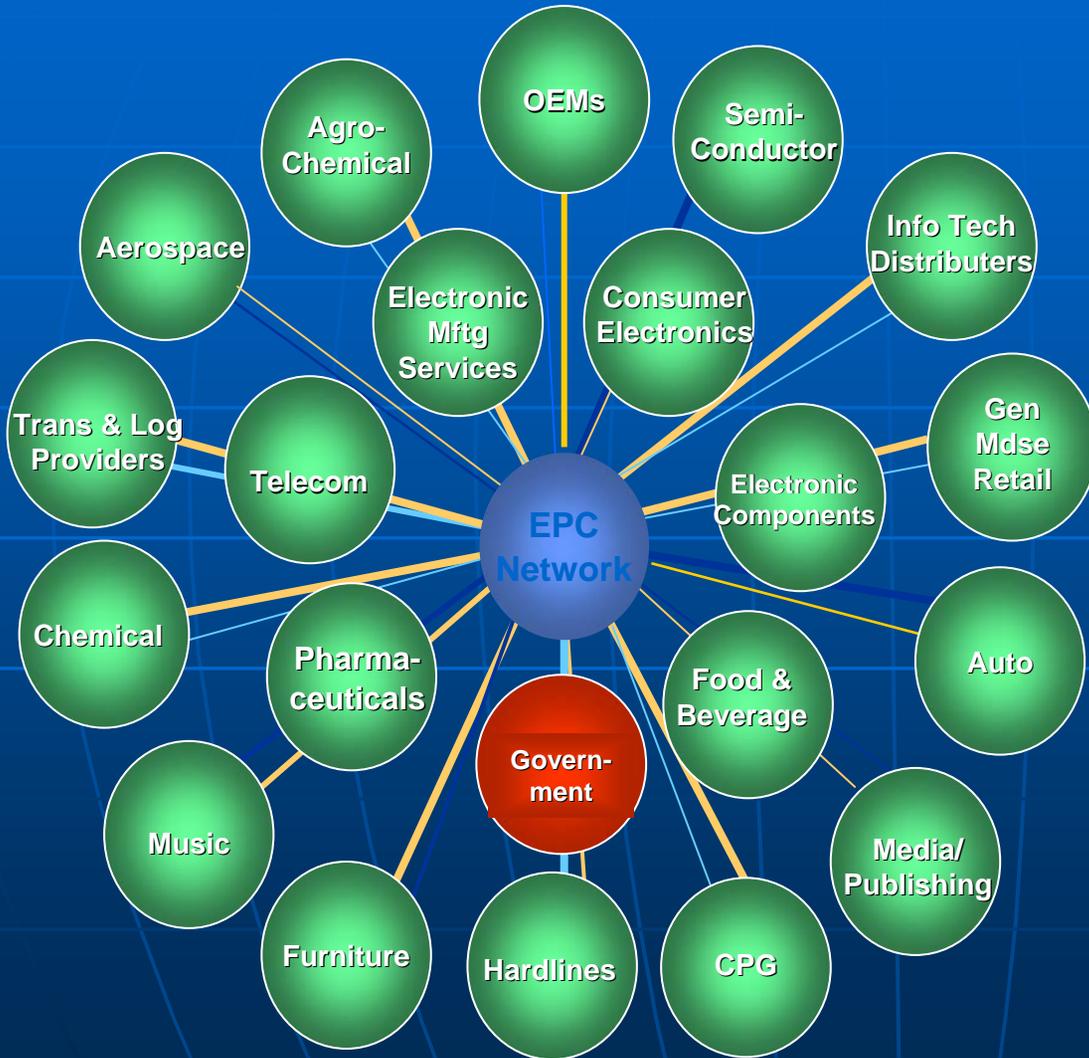
Company By Product Category
Provides a list of all EAN India subscribers by product category, as well as State, Geographical Zone, City, Nature of business of subscribers. For e.g. List of companies supplying Pharmaceutical products in Delhi



WAP



Electronic Product Code The RFID Frontier



Key Business Applications - India



Defence
Logistics



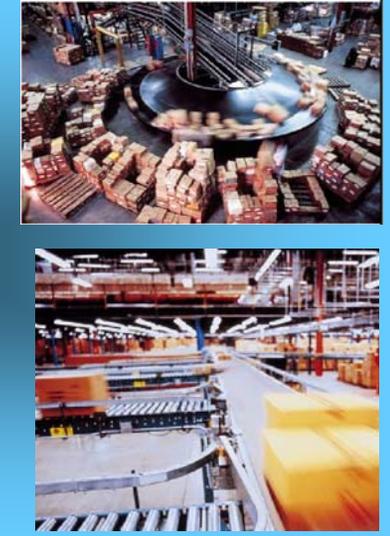
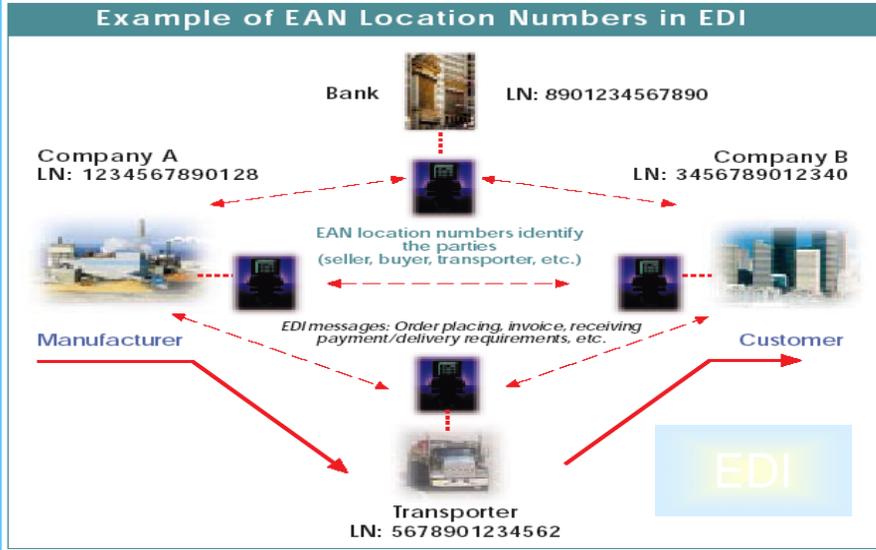
Pharma
Counterfeit



Food & other
sector
track and trace

GLN Applications across the world

GLN applications across the world



Euro DB Financial Services

the domain of information
EURO DB the specialist in legal and financial information

Enter your search criteria (with the possibility of cross reference)

Selection
 VAT Nr: BE
 EAN Nr:
 Name:
 Street:
 Postal code:
 Town:
 Search

Company data
 IMAGE PRODUCTIONS PIA
 GOEBKINT J
 Louvain-la-Neuve 14
 8400 OOSTENDE
 Activity: [14401]
 Advertising companies
 VAT Nr: BE40302510
 GLN: 649999937903

List of establishments

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File Edit View Favorites Tools Help
 Back Forward Stop Home Search Favorites Media
 Address http://www.ean.ch/Page_26.htm

EAN (Schweiz, Suisse, Svizzera)

Company's country: SWITZERLAND

Specific GLN databases (only for Switzerland):
 SWISS MEMBERSHIP DATABASE
 SWISS MEMBERSHIP DATABASE
 MEDWIN (Healthcare)
 COMELIVRES (publishing trade)
 Import

Company:
 Postcode:

Search

Message sender: 7600001000196
 Number of hits: 1

EAN number	Company name / Address	Contact
7601002102896 List of all GLN	Praxisgemeinschaft Dres. med. Ch. Wartmann/R. Prautsch Hinterhagweg CH-5722 Gränichen	Tel. : Fax : E-mail : Internet :



The Customs Department
.....
of the Kingdom of Thailand



GLN usage

In filing of goods declaration to Customs for Cargo clearance,
GLN used as identifier for sender/recipient of EDI messages

*<http://www.customs.go.th/Customs-Eng/CargoClearance/CargoClearance.jsp?menuNme=Cargo>
#*

GLN Usage - Healthcare

“Unique identification of pharma drugs, medical drugs and in EDI for identification of Hospitals/clinics/wards/ Pharmacies etc.”

- Global usage

- Australia, Denmark, France, Japan, Sweden, Switzerland, Thailand, U.S.A. etc.

e-government



Technical Standards Catalogue
VERSION 6 draft for public consultation ending Wed 17 March 2004



<http://www.govtalk.gov.uk/schemasstandards/egif.asp>



The e-catalogue of goods and companies will present all data required and used in e-commerce transactions: address, VAT number, all logistics data, description of products, pictures etc. It is worth stressing that catalogues would be build according to EAN/UCC rules. Companies would be identified by their world wide unique Global Localization Number (GLN) and goods by EAN 13 number that are also unique. Such a solution would allow for the elimination of almost all communication problems within the supply chain, as well as within the B2C exchange process.

<http://www.mpips.gov.pl/english/wydruk.php?nr=21>

EAN India



- Affiliated to EAN International, Belgium controlling 90 EAN organizations worldwide
- EAN India is a non profit organization under the Ministry of Commerce with its Board of members as follows :
 - FICCI
 - CII
 - ASSOCHAM
 - FIEO
 - SPICES BOARD
 - BIS
 - IMC
 - IIP
 - APEDA

Representation from all industries

EAN International



- The EAN system is administered by EAN International and its 101 EAN Member Organizations across the Globe.
- More than *1 million companies* throughout the world are members of EAN/UCC across 24 Industry sectors.
- EAN standards are created in response to business requirements, collaboratively with stake holders.
- EAN International works closely with Standards Committees on EDI, Bar coding, ECR etc.

Thank you

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