

Indian Law Firms See Foreign Entry Announcement As Welcome, Complex, Inevitable

Apr 12, 2023

Indian Law Firms See Foreign Entry Announcement As Welcome, Complex, Inevitable

Managing Partners divided on whether entry will be easily adaptable for inbound talent

By Senior Journalist Pavan Lall



A recent government announcement to allow foreign law firms to set up offices in India will have long term ramifications for lawyers, corporates as well as incumbent firms according to Managing Partners of large corporate law firms but the impact of the decision and the time it will take to cascade over is still out with the jury.

As of March 10, foreign law firms can plant a flag here, specifically to offer M&A and Corporate Advisory Services and to handle arbitration disputes for foreign clients. So far, the remit of the law firms will be restricted because they won't be allowed to make court appearances but will be able to work with local lawyers across the gamut of the Indian legal system.



Sridhar Gorthi, Management Committee Member at law firm Trilegal, says that, the very reason that the decision is now a talking point is because it's really about setting a commercially viable presence. *"That leads to the question, will clients in the Indian market pay higher rates? Will the quality of service provided by foreign firms be so enhanced that Indian clients will value them at international rates?"* he said.

His view is that especially over the last 5 to 10 years Indian law firms have really scaled up on their capabilities to handle extremely complex client situations, and clients value that. *"If you compare what they spend for*



this in India to how they pay for the same services globally, in other more mature markets, it's a fraction of what they pay offshore," Gorthi notes, adding that there may be a creamy layer that would have the appetite to pay higher fees for complex matters but it will likely be a small number.

"The key of course is that foreign lawyers on day one under these regulations will not be able to engage

with Indian clients and provide Indian law advice, which means it will be a much longer journey than many people think it is", he said.

Other leading lawyers see the move as inevitable. "I think that this was anticipated for a long time and



it's finally happened. I think, broadly for the legal sector as a whole, it's always a good thing. But there will certainly be a lot of people, still, who will try and resist it as far as possible, said **Bahram Vakil, Founding Partner at law firm AZB & Partners** which incidentally used to have a "friendship" with law firm Clifford Chance, part of the magic circle in England. Vakil however is of the view that there are also changes needed right here at home. "The Advocates Act needs amendment. But as far as timelines go, the move should happen this year", he added.

The core discussion amongst law firms is presently on how the entry will be allowed for.



Pallavi Shroff, who is a **member of the Society of Indian Law Firms (SILF)** stated that "SILF does not oppose the entry of law firms, but it has to be done in a phased manner. And that has been a stand since 2014. Phase 1 should really be to liberalise the Indian legal profession. Presently we are only allowed unlimited liability partnerships, we are not allowed limited liability partnerships or LLCs, or any other form of organizations for ourselves. So in today's day and age to have unlimited liability partnership is a difficult situation for people because they are restrictive firms. Partnerships and again limitations of partnerships are fifty. So you have only 50 partners, and then you can't keep growing, because people will leave if you can't grow as an example," Shroff said. "Then we can't do any form of covert marketing or anything, advertising marketing. Even if I want to sponsor an event which is connected to law, there are issues. So marketing, advertising and even websites have to be greatly relooked." Shroff went on to add



that "Phase 2 is to let them come in and practice their foreign jurisdiction law, and must declare which is the jurisdictional law that they will practice. Today, most firms are multi-jurisdictional. So now it is their home country's law," she said, adding that these are also confidence building measures that go between the two sets of people because law is always local. Her overarching point is "Let them come in, but do it in a timely sequence, not a knee jerk reaction."

Does the decision lead to any tricky overlaps in work between foreign and Indian law firms?

Now, where is the overlap with Indian firms?

Management Committee Member Nishant Parikh of Trilegal says that "Indian lawyers appear to



be worried about the implementation of these rules in letter and spirit. The themselves don't create a significant overlap and the competition between Indian and foreign lawyers is limited to international arbitrations. Then why worry? The question in everybody's minds is how the Bar Council will monitor the activities of foreign lawyers whether they register or operate on a "fly in fly out" basis, and ensure strict compliance."

Given just one overlap in the space of arbitration, but none as far as any other advice or legal services is concerned should Indian law firms be concerned? "I think the concern stems from the fact that you're allowing foreign lawyers to set up offices here, seek registration with the bar council and whilst you are supposed to provide foreign law advice. Where is the monitoring mechanism? That's where the concern seems to be stemming from, right saying, okay, once you've allowed somebody to set up an office here, are you going to monitor this and make sure that the law is being implemented in letter & spirit," Parikh said.



Ameet Naik, Founder and Managing Partner of Naik Naik & Company says that the move is a great step for mid-sized law firms but Indian lawyering and legal industry is in a great space globally as well because of growing offshore business but one has to be mindful of what the foreign law firms will offer. "We have to keep in mind that culturally for the Indian client relationships are of paramount importance," he says. "That will not change, it's (legal field) also very personality driven which will not change. the legal industry is name-centric and also star-centric." Equally he adds that there is a lot to learn from foreign law firms as most of the leading ones are all centuries old. "The average Indian client is also now a global business person which is why Indian lawyers are who they are but there will have to be a mix and match and while the devil is in the details the sector will eventually have to fully open up, a partial opening won't make a change."

Mohit Saraf, Founding Partner of Saraf and Partners says that the risk of poaching is already there



in the market. "Every firm in India is subject to their lawyers being hired by a London or Singapore desk of some big foreign firms. That risk will increase but it's not powerful enough to disrupt the way the legal sector is evolving." Most Indian lawyers Saraf says are not dual-qualified and therefore may have to go the route of becoming paralegals in order to work for Indian offices of foreign firms. Will the pricing structure in India work for foreign firms? Saraf doesn't think it will. "I see a large number of firms opening an office with a couple lawyers but not a large 50-lawyer team," he says. Most Indian firms are already competing with each other and everyone wants to grow which has led to a pricing war that has in turn led to a negative pricing environment. Lower order and middle order firms may continue to do work and the top tier will try to retain counsel and while moving up the value chain. "Eventually the pricing of the top Indian law firms will have to go up to keep pace with the market," Saraf says. "This will be a catalyst for professionalism for firms and move away from family-owned or run structures."



There are other nuances at play. "The way the regulation foreign law firms at the moment is actually no different from the current situation, pre-regulation. Foreign lawyers can obviously continue to advise foreign clients on foreign law, and even though those clients may be based in India, they don't need to have an India office to do that. That is something that's already happening," Gorthi opines.

The risk is obviously that of losing talent. Will they hire India qualified lawyers? "They're already hiring India qualified lawyers; they have no restriction in their jurisdiction that prevents them from hiring lawyers of other nationalities as we do under the Advocates Act. There's no such restriction on them," he says.

Opening an office in India, however, requires them to go through the entire registration process and makes them



subject to the disciplinary proceedings of the Bar Council of India, and the jurisdiction of Indian courts. "Now, for the privilege of these two benefits, they really are not getting much value in exchange. So if a foreign firm sets up an office and sticks to the letter of the law, they're doing what they're already allowed to do, but are now subject to various restrictions and Indian jurisdiction on disciplinary matters. So honestly, for any international law firm, it may not make too much sense to do this, unless, over time, as you say, either the regulations change and get therefore more facilitative", Gorthi says.

So right now, it's not a very conducive situation for a foreign law firm to come in and invest heavily in India, on the back of these regulations, given the scope of what they're actually allowed to do, he says. "It may be a much longer journey than people think it is."



Ultimately there are two things to keep in mind. "One is that in a large, complex domestic demand driven market such as India, it is invariably the local firms that emerge as the top 1-2-3 firms. Of course, the international firms will want to have a strong presence here, but how large do you need to be in India? And we are talking about this from the context of a global firm that has other priorities, in markets where it is potentially stronger, in markets that are more in their comfort zones," Gorthi said. "I think domestic firms that invest in creating more equitable reward structures will struggle less no matter what the outcome of the opening of the market and how fast or slow it happens."