



Business | Big law in India

India loosens restrictions on foreign lawyers

For real this time?



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PROTRACTED LEGAL battles are common in India. One of the longest-running of all concerns who is allowed to practise law in the country. On March 10th the Bar Council of India quietly released an announcement that, though armed with inevitable caveats, removed some of the restrictions that have for decades kept most foreign lawyers from plying their trade on Indian soil. “With this, the legal practice of India enters a new era,” says Vyapak Desai of Nishith Desai Associates, a rare Indian law firm with offices abroad.

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Since independence in 1947 India has, in the name of self-sufficiency, created barriers to entry for outsiders in many industries. As elsewhere in the world, the legal profession was deemed particularly sensitive. So sensitive that, in 1961, the Advocates Act required all lawyers to be Indian citizens. At the urging of the central bank, the Foreign Exchange Regulation Act of 1973 created an exemption. Foreigners were still barred from representing clients in courtrooms but they could advise them on things like contracts and mergers. By the 1990s a handful of foreign firms had set up shop in India, including giants like White & Case, a big New York firm.

Then, in 2009, the Supreme Court ended the exemption. Foreign lawyers keen to maintain a toehold in India's growing economy resigned themselves to establishing "best friend" relationships with local law firms. This enabled non-Indian lawyers to pay Indian clients brief visits. Still, to avoid the attendant hassle, many preferred to meet instead in London, Singapore or, more recently, Dubai.

Under the new rules, which have received the government's imprimatur, foreign lawyers can stay in India for 60 days a year—or permanently, if they register with the authorities. They may advise foreign firms in India on matters of international law. They still may not appear before any tribunal, regulatory authority or other forum with "trappings of a court". With one exception: foreigners will be able to represent clients before Indian panels in cases of international commercial arbitration.

This carve-out hints at the reasons behind the Bar Council's reform, notes Burzin Somandy of Somandy & Associates, a law firm in Mumbai. As the council itself explains in its decision, "experience and facts show" that multinational companies prefer going to foreign arbitration panels to have their Indian claims heard. The hope seems to be that foreign businesses would keep such proceedings in India if they can be represented by their foreign counsel. And that, in turn, would boost confidence in the Indian legal system—and, by extension, India's economy. Robust legal logic? The jury is out. ■

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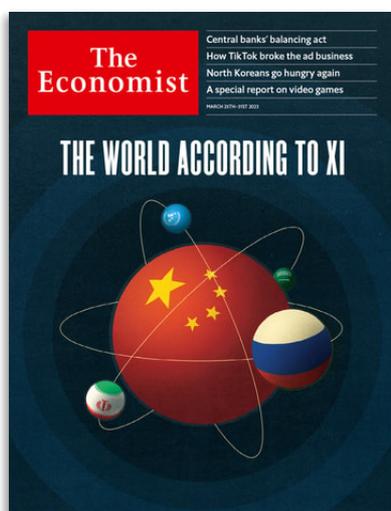
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