

# Business Standard

## Liberalising legal services: Before the door opens

Sudipto Dey July 05, 2015 Last Updated at 21:34 IST

As the government is looking to open up transactional legal services to foreign law firms and develop India as an international arbitration hub, the Indian legal fraternity is clamouring for some relaxation in rules for publicising and advertising their services. This would help Indian firms create a brand around practice.

Another long-standing demand has been to allow a firm to operate as a limited liability firm (LLP), and facilitate access to working capital from banks. The fraternity has been pressing the government to enter into mutual recognition agreements with countries before opening up the domestic market.

### WHAT THE LEGAL FRATERNITY WANTS

- Loosen restrictive rules and regulations that prevent law firms from disseminating information, advertising, or creating a brand around their practice
- Remove ambiguities about whether law firms can operate as LLPs, clarify taxation-related issues
- Enter into mutual recognition agreements with partner countries to recognise legal qualifications, and bring broad harmonisation of practice rules

The Society of Indian Law Firms (SILF), an association of large legal firms, has proposed a phased opening up of the market, spread over five to seven years. However, industry players note that international pressure to open up India's services sector - in line with World Trade Organization agreements - might force the government to expedite the move. Over the next 12 to 18 months, the government is expected to initiate the process.

This will enable foreign firms to set up their offices and practice international law in the country, after the government amends the Advocates Act, 1961.

The Bar Council of India, the regulator, is expected to play a key role in the process. Last week, Commerce Secretary Rajeev Kher said a committee of secretaries would take up the issue in early July. Following this, a Cabinet note would be prepared for consideration of the government.

However, the legal fraternity appears to be divided over the issue. "Mutual recognition of legal qualifications and broad harmonisation of practice rules are vital to this process of opening up our legal

market," says Rajiv Luthra, founder and managing partner, Luthra & Luthra. There must be a level-playing field, he adds.

According to Lalit Bhasin, president, SIFT, it is important to allow Indian law firms to publicise their services through websites, brochures and advertisements. This will be keeping in line with global practices, he adds.

Luthra feels that the Indian legal practice needs a regulatory evolution. "Indian law firms have so far been forced to be conservative in their approach, given some of the restrictive rules and regulations in place," he adds. Over the last decade, Indian law firms, especially those in the corporate and transactional practice, have grown in size, both in terms of manpower and services offered. Already, at least half-a-dozen large law firms have offices in several countries, including cities such as New York, California, Dubai, Singapore and Munich.

Many agree that opening up of the market will help enhance the level of services provided to corporate India. "Such a move would force Indian firms to achieve higher quality of service. It will provide better opportunities to professionals," says Rabindra Jhunjhunwala, partner, Khaitan & Co.

More than reciprocity, immigration rules serve as a worst form of protectionism and are a bigger barrier to globalisation, says Nishith Desai, managing partner, Nishith Desai Associates.

"Just as free movement of financial capital is desirable for the growth of world trade, free movement of human capital and right to work anywhere are absolutely essential," he adds.

Erik Wulff, partner, DLA Piper, a leading law firm in the United States, feels that the debate over allowing foreign law firms in India should be driven by needs of customers in India and those abroad, with interest in investing, or doing business in the country. "The legal profession's duty is to provide effective legal services to clients, and it is the clients' needs that should drive this debate," says Wulff.

While allaying fears of increasing competition in the domestic market, Wulff points out that the offices of an international law firm in India will predominantly be staffed with Indian lawyers, along with some foreign lawyers with key skill sets.

When it comes to reciprocity, Wulff says even in the United States, there is no complete reciprocity within the 50 states in that country, where each regulate the practice of law. Commercial centres such as New York and California allow foreign law firms to practice in their states. "The reality is that some Indian law firms already have their offices in the US, yet there's no reciprocity in India," he says.

The government, including the prime minister, has been talking about making India a destination for international arbitration and mediation services. In a recent note to the ministry of commerce, SIFT has suggested that the government should provide financial help and offer land to independent bodies, like the Bar Association and SILT, to develop infrastructure for housing arbitration and mediation centres. "Institutional arbitration can be a huge source of revenue," says Bhasin.

Many in the legal fraternity feel that the government itself should not set up an institute of arbitration and mediation, as many a time governments or public sector undertakings are parties to a dispute. "An institution which owes its existence to the government may not inspire confidence for impartial arbitration," says Bhasin. SIFT's proposal is to set up the institute in Delhi, followed by branches in Mumbai, Bengaluru, Kolkata, Ahmedabad and Hyderabad.

The coming months will only show how far the government is willing to walk the talk.