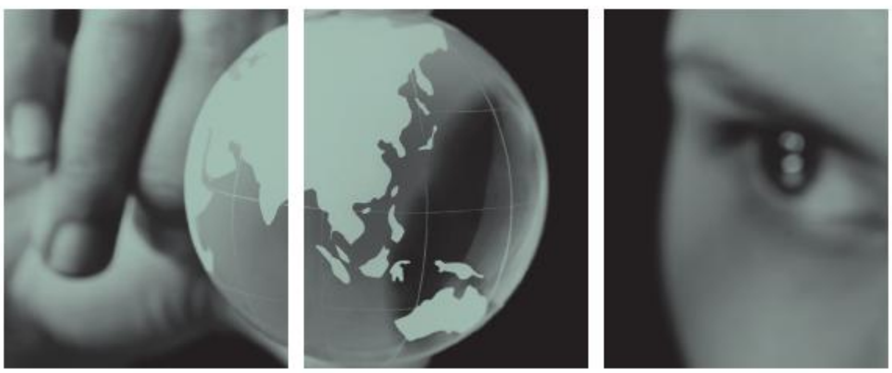
# Developing a Profitable Practice in Asia

ROBERT SAWHNEY



PUBLISHED BY ark group IN ASSOCIATION WITH mp managingpartner SRC Associates Ltd.
Driving competitiveness through integration
Part of a worldwide office network of over 50 countries

# Chapter 8: India

*By Bithika Anand*

WITH THE impact of the global financial crisis in 2009, India's GDP growth rate fell from an average of nine per cent in the last five years to 6.7 per cent. This led to most of India's M&A deals worth a modest sum of US$11.9bn. However, when compared to the rest of the world India stood out as a strong performer and in 2010 India's GDP growth is expected at around 7.2 per cent.

The signs of upheaval are evident. According to VCCEdge, the financial research platform of VCCircle, the value of M&A deals in India (many cross border) rose to US$19.20bn in the first quarter of this year up from US$5.19bn a year ago. The US and the UK by far are the most important markets for the export of Indian legal services industry.

The industry has been playing a pivotal role in enhancing foreign investment and creating a favorable environment for foreign investors in India. With a conservative estimate Indian commercial law practice is approximately worth Rs6000m to Rs6500m per annum.

### Key players in the India market

The Society of Indian Law Firms (SILF) records more than 150 law firms in India. The largest firms by lawyer numbers include:

- Amarchand Mangaldas;
- J Sagar Associates;
- Luthra & Luthra;
- Khaitan & Co;
- AZB & Partners;
- Trilegal;
- Dua & Associates;
- Desai & Diwanji;
- Fox Mandal;
- Nishith Desai Associates;
- Anand & Anand Advocates; and
- ALMT Legal.

According to SILF some recent entrants are:

- AKS Law Associates;
- Bakshi & Associates;
- Corporate Law Group;
- KR Chawla & Co;
- Hammurabi & Solomon;
- Tuli & Co; and
- Gandhi & Associates.

### Conditions for setting up a foreign law firm in India

The Advocates Act 1961, Foreign Exchange Management Act (FEMA), Companies Act and the Bar Council of India Rules 1975 regulate the legal services sector in India and the Bar Council, constituted under the Advocates Act, acts as the final regulating body. FDI is not permitted in this sector and international law firms are also not authorised to open offices in India.

Although foreign legal services providers may be engaged as employees or consultants in local law firms they cannot sign legal documents, represent clients or be appointed as partners. The

Advocates Act states: "An advocate shall not enter into a partnership or any other arrangement for sharing remuneration with any person or legal practitioner who is not an advocate."

However, a number of foreign law firms either have their liaison office or some sort of association with Indian law firms. Some of such associations are:

- Clyde & Co LLP's association with ALMT Legal;
- Allen & Overy LLP's non-exclusive referrals relationship with Trilegal; and
- Clifford Chance's alliance with AZB & Partners.

## Trends – Winds of change

The growth of the Indian legal services industry links directly to the growth of Indian economy post liberalisation and relaxation of FDI norms in 1991. It can be summed up in the words of Cyril Shroff, managing partner, Amarchand Mangaldas whose firm's inception was more than 90 years ago but until the early 90s, was essentially a boutique shop specialising in few areas such as financial services. The firm was well reputed but was small in terms of size of operation. "The main growth has occurred in the last 15 years. That's been driven primarily I think by three factors: the market group, availability of high quality employable law graduates from universities and a more entrepreneurial and western oriented management culture."

In terms of India's financial hubs Mumbai and New Delhi are the more prominent legal centres although Bangalore, Kolkata, Chennai, Hyderabad, Ahmedabad, Guragon and Chandigarh are home to offices of many of firms with national coverage such as Trilegal and J Sagar Associates, among others.

As the Indian economy is globalising, large amount of transactional work is available on the basis of which law firms can build a large corporate firm. The sector also has a deep well of talent, with about 1.1 million lawyers, probably only second to the US in terms of numbers.

However, in terms of professional demand there is still a shortage of legal experts to the tune of 22 per cent, reports the Federation of Indian Chambers of Commerce and Industry.

With work available for everyone many noted firms have emerged post liberalisation. According to the RSG India report[1] some of the reputed firms that have emerged since the FDI regime was relaxed in 1991 include:

| Firm | Established |
|---|---|
| ■ JSA | 1991 |
| ■ Trilegal | 2000 |
| ■ ALMT | 2001 |
| ■ DSK Legal | 2001 |
| ■ AZB | 2004 |
| ■ S&R Associates | 2005 |

Also, the RSG India report states that second generation Indian lawyers are keen to absorb international experience and then apply it to grow a new style of Indian legal business. In the survey 81 per cent of RSG's sample group of second generation lawyers said they wanted to be near the action, which meant staying in India. Out of the top 50 Indian law firms (as per RSG ranking) 17 have been established since 2000. They are more likely than older law firms to have enfranchised partnership models and be open to tie-up relationships with western law firms.

Law firms are also seeing emergence of new practice areas related to project finance, intellectual property rights, competition law, corporate taxation, infra-

| Financial Year 2009-10 | |
|---|---|
| *(April-March)* | *(In US$ mn)* |
| April 2009 | 2,339 |
| May 2009 | 2,095 |
| June 2009 | 2,582 |
| July 2009 | 3,516 |
| August 2009 | 3,268 |
| September 2009 | 1,512 |
| October 2009 | 2,332 |
| Novemeber 2009 | 1,735 |
| December 2009 | 1,542 |
| January 2010 | 2,042 |
| February 2010 | 1,717 |
| March 2010 | 1,208 |

Table 1: FDI equity inflows during the financial year 2009-10[2]

structure contracts and investment laws, which were virtually unknown to Indian law firms before 1991 and 1992.

Another trend that has been taking place in the legal services sector for a decade now is that of consolidation. Bigger law firms have merged with small and boutique law firms to address clients with a stronger portfolio of services. Luthra & Luthra in 1998 merged with Shandok, Shama and Sondhi. A decade later in 2008 it merged with another tax law firm.

Despite the UK's historic relationship with India, corporate India's eyes are largely turned to the US. The US wins the most inward investment and as such the number of individual American law firms coming into India is higher. According to a survey report covering Indian clients and Indian law firms, US firms make up 53 per cent of the total while UK firms make up 35 per cent. India has emerged as a major developing country receiving FDI. In 2008 to 2009 India had received US$27.3bn worth of FDI.

The country is also becoming an important host for investments from Korea, Hong Kong and Singapore. Mauritius has low corporate tax and has a liberal Double Taxation Agreement (DTA) with India. Thus many investments from other Asian and global sources have been re-routed to India via Mauritius which has consistently been the top source of FDI to India.

| Ranks | Country | 2008-09 (April- March) *Amount in US$m | 2009-10 (April- March) *Amount in US$m | Cumulative Inflows *Amount in US$m (April '00 to Mar'10) | % age to total Inflows in terms of US$ |
|---|---|---|---|---|---|
| 1. | Mauritius | 11,208 | 10,376 | 47,240 | 43% |
| 2. | Singapore | 3,454 | 2,379 | 10,190 | 9% |
| 3. | U.S.A. | 1,802 | 1,943 | 8,278 | 8% |
| 4. | U.K. | 864 | 657 | 5,884 | 5% |
| 5. | Netherlands | 883 | 899 | 4,487 | 4% |
| 6. | Cyprus | 1,287 | 1,623 | 3,899 | 4% |
| 7. | Japan | 405 | 1,183 | 3,714 | 3% |
| 8. | Germany | 629 | 626 | 2,799 | 3% |
| 9. | U.A.E. | 257 | 629 | 1,549 | 1% |
| 10. | France | 467 | 303 | 1,530 | 1% |

Table 2: Share of top investing countries' equity inflows[3]

| Ranks | Sector | 2008-09 (April- March) *Amount in US$m | 2009-10 (April- March) *Amount in US$m | Cumulative Inflows *Amount in US$m (April '00 to Mar'10) | % age to total Inflows |
|---|---|---|---|---|---|
| 1. | Services sector (financial and non-financial) | 6,116 | 4,392 | 23,640 | 21 % |
| 2. | Computer software and hardware | 1,677 | 919 | 9,872 | 9% |
| 3. | Telecommunications (radio paging, cellular mobile, basic telephone services) | 2,558 | 2,554 | 8,931 | 8% |
| 4. | Housing and real estate | 2,801 | 2,844 | 8,357 | 8% |
| 5. | Construction activities (including roads and highways) | 2,028 | 2,868 | 8,059 | 7% |
| 6. | Power | 985 | 1,437 | 4,627 | 4% |
| 7. | Automobile industry | 1,152 | 1,177 | 4,565 | 4% |
| 8. | Metallurgical industries | 961 | 407 | 3,130 | 3% |
| 9. | Petroleum and natural gas | 412 | 272 | 2,666 | 2% |
| 10. | Chemicals (other than fertilisers) | 749 | 362 | 2,496 | 2% |

Table 3: Sectors attracting highest FDI equity inflows in India[4]

Equity inflows to India remained relatively flat up to 2005 but have grown significantly over the last few years reaching over US$25bn in 2009 from a modest figure of around US$3bn in 2005.

Some recent M&A deals as reported in various media:

- The sale of Piramal Healthcare to Abbott Laboratories for US$3.7bn done by Crawford Bayley and Luthra & Luthra;
- The Hinduja Group acquired Luxembourg bank KBL European Private Bankers from Belgium-based financial services company KBC Group for US$1.70bn. Allen & Overy (A&O) did the US$1.72bn worth deals. Independent Benelux-international firm Loyens & Loeff bagged the mandate for the Hindujas;
- A&O's second deal, advised jointly with Trilegal, was its instruction on the US$24m CLSA buy of Equitas Micro Finance India, which had instructed Universal Legal;
- Universal Legal also acted for another microfinance company, Bhartiya Samruddhi Finance, in which AZB-advised US venture capital firm Matrix Partners took a US$23m stake;
- Irish firm A&L Goodbody and Linklaters advised the seller Anglo American Zinc with Dewey & LeBoeuf and African firm Corpus Legal Practitioners stepped in for Hindustan Zinc;

- The US$339m purchase of a 40 per cent share by Reliance Industries in the US natural gas field Marcellus Shale owned by Atlas Energy. Jones Day, Ledgewood Law Firm and Wachtell Lipton Rosen & Katz advised the target and Vinson & Elkins advised Reliance;
- Godrej Consumer Product buy-out of its joint venture with Sara Lee Corporation, where Freshfields Bruckhaus Deringer and Trilegal shared the mandate;
- AZB assisted the National Stock Exchange of India in its five per cent stake sale to Temasek Holdings for US$175m; and
- J Sagar Associates (JSA) bagged the US$104m Glodyne Technoserve buy of US-based IT support services company DecisionOne and the US$42m acquisition by Essar Group of networking company AGC Networks.

To enable Indian industry to go abroad government agencies have taken some constructive measures that resulted in the actual outward FDI in JVs and WOSs. During the quarter July-September 2008, FDI outflow rose to the tune of US$3,134m, showing a growth of 5.4 per cent over US$2,972m during the corresponding period of the previous year. Of the total investments 84 per cent were in the form of equity and the remaining 16 per cent were loans.

The trend to invest overseas was initiated by companies from the IT sector. Over time, companies from other sectors such as automotive, pharmaceuticals, chemicals, mining, gems and jewellery; oil and gas, FMCG; and textiles joined the league. Since Indian exports are largely driven by small manufacturing enterprises even they are now taking the overseas investment route to strengthen their competitiveness.

As a result some ambitious and daring investments have been made by the Indian Inc. lately. For example, Hindalco-Novelis, ONGC-Imperial, Tata Steel-Corus, Suzlon-REpower, Wipro-Infocrossing, United Spirits-Whyte & Mackay, etc.

As per the RBI's data for the year 2007 to 2008 the total outward investment from India excluding that made by individuals and banks rose 29.6 per cent to US$17.4bn largely due to acquisitions. A large part of this was through the equity route.

According to the *Economics Times*[6], in a sectoral spread of India's investments abroad, manufacturing topped the charts followed by the non-financial service sector. Within the manufacturing sector investments were in industries such as electronic equipment, fertilisers, agricultural and allied products; and gems and jewellery, while within non-financial services investments were targeted at telecom, medical services and software development services.

The direction of investment proposals reveals that the US, Singapore, Netherlands, Mauritius and Britain together accounted for more than 60 per cent of proposed outward investment from India as against the first half of 2008 when the Netherlands (largely used as an investment route by Indian firms to invest in Europe) led the charts followed by Singapore among other nations. Lately, France and Canada have also entered the fray as they offer attractive investment opportunities for the Indian Inc.

With impressive inbound and outbound FDI flow and availability of huge business opportunity, it is estimated that the Indian legal market will be worth approximately US$650m in 2010. Around half this figure is expected to be spent on Indian firms and the rest will go to foreign law firms with Indian practices.

The discussion on opening up of the legal market has also intensified in India and the government is keen on deciding to make the sector a level playing field. It was quite evident when Indian Law Minister Veerappa Moily in an interview on 13 June 2010 said: "We should not shut our minds to the big ideas." He noted that the UK and China had faced similar problems in the past when foreign law firms wanted entry but these were overcome later.

The government has already made Limited Liability Partnerships (LLPs) a reality in India and has taken efforts to have an enactment in place to govern it. The Bar Council is also looking into the requests for relaxing the constraints on advertising the legal profession.

For now however, foreign firms carry on their work around the rules and Indian firms are doing their best to pick up the speed on achieving so-called level playing ground.

By Bithika Anand, CEO Legal League Consulting, India, bithika@legalleague.co.in

### References

1. RSG India report, RSG Consulting, 2008.
2. Department of Industrial Policy & Promotion Ministry of Commerce and Industry, viewed August 2010, further information: http://dipp.nic.in
3. *Ibid.*
4. *Ibid.*
5. Rai, S., 'Indian companies conquering shores abroad', The *Economic Times*, 22 June 2009.

## Transformation of Indian legal sector in last the 15 years

*By Bithika Anand*

The transformation of the Indian legal sector from a profession that was traditionally made up of small independent sole-proprietary firms to multi-million dollar partnership firms evolved through liberalisation of the Indian economy and the globalisation process that saw the integration of India's economy with the global economy.

Until the 90s the process of globalisation of the Indian economy was constrained by barriers to trade and investment. However, forced by deep crisis when foreign currency reserves had plummeted to almost US$1bn and India was close to defaulting on its loans, trade barriers were lowered and a process of structural change initiated, spurred by the studies and influences of The World Bank and other international organisations. The new model adopted by the country was known as liberalisation, privatisation and globalisation.

Post liberalisation India witnessed spectacular average annual growth rates of 6.2 per cent between 1992 and 2005. Being one of the quintessential services required for inbound and outbound investments, the implication of the same on the legal service sector has been both quantitative and qualitative. "The main growth has occurred in the last 15 years. The Indian economy really started globalising and getting more liberal from the early 90s after the policies that the government pursued so that gave us firstly that large amount of transactional work on the basis of which you could build a large corporate firm," said Cyril Shroff, managing partner of Amarchand Mangaldas, India's largest law firm in terms of number of lawyers, in an interview.

In the last 15 years the corporate legal sector has seen unimaginable levels of activity in project financing, intellectual property protection, environmental protection, competition law, corporate taxation, infrastructure contract, corporate governance and investment law. Thus new practices have emerged that were almost unknown before 90's.

The emergence of new boutique and specialist law firms on corporate legal horizon is another development that has taken place in the last decade. For example, as per an RSG survey many noted firms emerged in India after 1991 that include JSA (1991), Trilegal (2000), ALMT (2001), DSK Legal (2001), AZB (2004), S&R Associates (2005) among others.

"Law is not a trade, not briefs, not merchandise and so the heaven of commercial competition should not vulgarise the legal profession," said Justice Krishna Iyer, back in 1976 in the case entitled *Bar Council of India v. M V Dhabolkar*. His statement sums up the conception of legal services as a 'noble profession' rather than services that prevailed until 15 years ago. However, post liberalisation, with the increase of FDI inflow into the country and increasing demand of specialised legal services associated with it, this view has been gradually fading away.

| Year | Total amount of FDI inflow in US$ |
|---|---|
| 2000-2001 | 4,029 |
| 2001-2002 | 6,130 |
| 2002-2003 | 5,035 |
| 2003-2004 | 4,322 |
| 2004-2005 | 6,051 |
| 2005-2006 | 8,961 |
| 2006-2007 | 22,826 |
| 2007-2008 (P) + | 34,835 |
| 2008-2009 (P) + | 35,180 |
| 2009-2010 ++ | 34,167 |
| Cumulative total<br>(from April 2000 to March 2010) | 161,536 |

Figure 1: Amount of FDI Inflows from 2000-2010 (up to March)[1]

a. Figures for equity capital of unincorporated bodies for 2007-08 & 2008-09 are estimates.
b. "+" data in respect of 're-invested earnings' and 'other capital' for the years 2007-2008 & 2008-09 are estimated as average of previous two years.
c. (P) All figures are provisional.
d. Updated by RBI up to March 2010.

Over the years courts have also recognised legal service as a service rendered to the clients and have held that lawyers are accountable to the clients in the cases of deficiency of services.

Research reveals that in two recent global M&A waves, 1995 to 2000 and 2004 to 2007, cross-border M&A activity increased from 27 per cent to 33 per cent of deal volume, reaching a new high of 38 per cent in 2007. The Accenture report also found that the volume and value of M&A deals involving Brazil, Russia, India, China, Mexico and South Korea is starting to increase. Acquisitions in these developing countries soared from just over four per cent of global M&A activity in 1995 to 12.4 per cent in 2007.

"Moreover, the value of deals in which companies from emerging markets bought companies in the developed world increased, as a percentage of total worldwide deal value, from 1.4 per cent in the 1995 to 2000 period to four per cent in the 2004 to 2007 period," authors of the report add. Today India law firms are better equipped to handle complex cross-border transactions both inbound and outbound.

Another notable feature of the legal services sector in India 15 years ago was the 'prestige' issue related to the legal profession, which discouraged lawyers to take up a job with a law firm. However, with the opening of the economy and demand for corporate legal lawyers increasing the lawyers gradually came around, accepting jobs in law firms and become part of the India's success story.

Another development that has marked the transformation of legal sector in India is the availability of quality legal professionals. Today, India has close to 1.1m lawyers. "The national law schools, which are sort of based on management institutions have changed the format in terms of legal education. So, the availability of high quality law graduates allowed us to recruit and fuel our expansion," said Shroff.

Many top Indian law firms have also gradually adopted management culture that is more entrepreneurial and more western-oriented. "Our law firm is structured very similar to many western organisations. We have formal career tracks, practice groups and we've tried to use best practice in terms of structuring our organisation more institutionally," added Shroff.

Globalisation has expanded the internal and external demand for legal services in India. There is a discerning shift in the disposition of emerging legal sectors towards settling disputes through ADRS rather adversarial litigation mode of dispute resolution. The involvement of Indian law firms in international deals has also brought them closer to their counterparts in international law firms. For many law firms the past 15 years have been a learning phase where they tried to benchmark their systems and processes, equity sharing model and management against the global standards. Indian law firms have also been quick to develop local expertise as innumerable MNCs set their shops in various parts of the country in the past one-and-a-half decade.

Today, the awareness about professionalising the management of law firms is growing and this process itself would create quality business support professionals for the sector in near future. Presently, the areas where Indian law firms are showing interest include profit sharing systems, branding and marketing, IT solutions, training and knowledge management.

## Rise of legal process outsourcing

Bickel & Brewer in 1995 with its office, I&A International in Hyderabad was the first legal process outsourcing (LPO) company in India. It dealt with digitisation of legal documents and created searchable databases. In 2001 GE was the first company to offshore its in-house legal work in India. Today it is the fastest growing knowledge process outsourcing sector in the country. During 2009 and 2010 the LPO sector registered a growth of nearly 40 per cent and is expected to continue growing at high rates in the near future. A study by ValueNotes, a research firm which tracks the sector, says the size of the LPO business in India has increased to US$250m in March 2009 from US$146m two years ago.

An Associated Chambers of Commerce and Industry of India report says that India's LPO industry is slated to increase its share from the current three/four per cent to six/seven per cent in the US$250bn global legal outsourcing market. The report pegs the potential income from the US alone at US$3/4bn in the coming five years.

The rise of LPOs in India is attributed to the following:

- Political and economic stability with a high-quality, low-cost and flexible workforce;
- One of the largest pools of English-speaking graduates in the world;
- English as the language of instruction in law schools;
- A legal system based on English common law (US and UK) therefore legal understanding and analysis is applicable and adaptable;
- Time differentials that allow for around-the-clock document review;
- Advances in technology that allow for remote and secure document review; and
- The ability to maintain a constant and consistent team of trained individuals at reduced costs. Collectively, these factors, in addition to established processes and procedures (discussed in the following paragraphs) support a recipe for reducing inefficiencies in document review.

The rise of the LPO sector in India is playing significant role in changing the landscape of the country's legal sector. There are currently over a million lawyers in India and the country's law schools produce nearly 80,000 law graduates every year. Hardly five per cent of them join law firms and legal departments. Thus, LPO has become a big attraction for many law graduates. The Indian LPO sector is also witnessing a change in the quality of work which is being outsourced to them. They are now offering solutions ranging from day-to-day commercial contract drafting, corporate governance, M&A due diligence, risk management and compliance, IPR services and litigation support and e-discovery. Almost 40 per cent of the services offered are administrative, personal or property-based.

It is evident from the sector's performance that this sunrise segment in legal space can be a major revenue earner for the country. Debates on opening the Indian legal market for foreign players are long-standing. Despite opposition it is fairly understood that it is going to happen sooner or later. Therefore the Indian legal service sector is gradually bracing up to face the situation.

#### Reference

1. Table no 44, Foreign Investment Flows, RBI's Bulletin May 2010, 12 May 2010.