

IC-14/8/2016-Imp. Cell
Government of India
Ministry of Law & Justice
Department of Legal Affairs
(Implementation Cell)

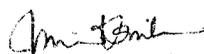
Shastri Bhawan, New Delhi.

Dated: 24.08.2017

Subject: - Minutes of the meeting dated 28.07.2017 at 4.30 pm under the Chairmanship of Hon'ble Minister of Law and Justice and Co-chaired by Hon'ble Minister of State for Law and Justice on the issue of entry of foreign lawyers/law firms in India.

The undersigned is directed to forward herewith minutes of the meeting dated 28.07.2017 at 4.30 pm on the subject mentioned above.

2. As desired by the Hon'ble Minister of Law and Justice all concerned are also requested to furnish their suggestions/representation on the issue at the earliest.


(Unni Krishnan I)

Under Secretary to the Government of India

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To,

1. The Commerce Secretary, (Ms. Rita Teatota), Department of Commerce, Udyog Bhawan, New Delhi.
2. The Chairman, (Shri Manan Kumar Mishra), Bar Council of India, 21, Rouse Avenue, Institutional Area, New Delhi.
3. Shri Lalit Bhasin, President, Society of Indian Law Firms, 10, Hailey Road, 10th Floor, New Delhi – 110001.
4. Shri Kaviraj Singh, Secretary General, Indian National Bar Association, A-298, Ashoka Park Road, Block A, New Friends Colony, New Delhi – 110025.
5. Shri Percival Billimoria, Partner, Cyril Amarchand Mangaldas, 4th Floor, Prius Platinum, D-3, District Centre, Saket, New Delhi – 110017.
6. Shri Amit Kapur, Senior Partner, J Sagar Associates, B-303, 3rd Floor, Ansal Plaza, Hudco Place, August Kranti Marg, New Delhi – 110049.
7. Shri Anand S. Pathak, Managing Partner, Pathak & Associates Law Offices, 1st Floor, Dr. Gopal Das Bhawan, 28, Barakhamba Road, Delhi – 110001.

Copy for information to,

1. PS to Hon'ble Minister of Law Justice.
2. PS to Hon'ble Minister of State for Law and Justice.
3. PS to Law Secretary.
4. PS to OSD.

**MINUTES OF THE MEETING HELD ON 28TH JULY, FRIDAY AT 4.30 PM UNDER
THE CHAIRMANSHIP OF SHRI RAVI SHANKAR PRASAD, HON'BLE UNION
MINISTER OF LAW AND JUSTICE CO-CHAIED BY SHRI P.P. CHAUDHARY,
HON'BLE UNION MINISTER OF STATE (L&J) IN THE CONFERENCE ROOM OF
LEGISLATIVE DEPARTMENT, SHASTRI BHAVAN.**

LIST OF PARTICIPANTS

1. Shri Suresh Chandra, Secretary, Department of Legal Affairs.
2. ShriRita Teotia, Secretary, Ministry of Commerce.
3. ShriManan Kumar Mishra, Chairman, Bar Council of India.
4. ShriLalitBhasin, President, Society of Indian Law Firms.
5. ShriPrashant Kumar, President, Bar Association of India
6. ShriKaviraj Singh, Secretary General, Indian National Bar Association.
7. ShriInder Kumar, Addl. Secretary, Department of Legal Affairs.
8. Dr. P.K. Behera, Dy. Legal Adviser, Department of Legal Affairs.
9. Shri Salman Waris, Partner, Tech Legis.
10. ShriTabrez Ahmad, Indian National Bar Association.
11. Shri Percival Billimoria, Partner, Cyril Amarchand.
12. Ms. GauriRasgotra, Cyril Amarchand.
13. Ms. SuchitraChitale, Partner, Chitale&Chitale.
14. ShriAmitKapur, Senior Partner, J. Sagar Association.
15. ShriAnand S. Pathak, Managing Partner, Pathak& Associates Law Offices.
16. ShriMohitSharaff, Senior Partner, Luthra&Luthra Law Offices.

At the outset the Hon'ble Minister of Law & Justice and the Hon'ble Minister of State for Law & Justice welcomed all participants to the meeting.

Hon'ble Union Minister of Law & Justice:

India is becoming a big investment destination and is attracting the largest FDIs. Investments have gone up and due to this there is wide spread desire to get acquainted with the Indian Law among foreigners. There is also a need for reciprocation: our lawyers need to know more about the laws prevailing in other countries. Therefore there is no doubt that our legal scenario has to be totally opened up. The President of the Society of Indian Law Firms and others had earlier raised certain issues and difficulties pertaining to Indian lawyers and law firms vis-à-vis opening up of the legal scenario of India to foreign players. Whenever reforms to open up India's economy was made, initially the national economic scenario had initially undergone difficulties, but later on had always benefitted out of it. The message that Indian lawyers are the best has to go to the world.

Commerce Secretary

For the last several years the Ministry of Commerce has been attempting to work with various statutory bodies and Ministries in order to suggest liberalization of various bodies. There are more than 1.2 million lawyers in India. Therefore, we have enormous potential for tapping the legal services market. To achieve this, a twofold reform is required. First is the domestic reform, i.e., providing conducive environment for foreign lawyers and legal firms to practice in India. However, totally opening up the entire legal scenario all at once to foreign players will be disastrous. It can be done only by allowing opening up of sectors of our legal system on a step by step basis. This will enable Indian players to have the opportunity to offer their services globally and to compete with the best in the world. As a beginning, the example of China can be replicated. China started with allowing foreign players in Special Economic Zones.

The example of opening up of international financial sector in Ahmedabad Special Economic Zone (SEZ) is notable. This was started on an experimental basis in the SEZ. Financial services including insurance has been opened up under the regulation of SEBI. Now there are firms which have established themselves and running successfully. Similarly, what is suggested at present is that global legal advisory services can be allowed within SEZ. The firms in SEZ can offer services in arbitration and advisory services to the companies within the SEZ. Such global legal firms located within SEZ are not to offer any of their services outside the physical boundaries of the SEZ.

ShriLalitBhasin, President, Society of Indian Law Firms.

Any question that SILFor Bar Association of India are opposed to the opening up of legal services sector to foreign players may be dispelled. They are supporting the Government's initiative. However, it should be done in the manner as suggested. There were presentations made by the Ministry of Commerce, in which the representatives of BCI and SILF were present. The Ministry of Commerce had suggested following the Singapore model. President SILF had, as a primary measure, suggested for liberalization of the domestic sector itself which is directly in the hands of the BCI. Indian law firms cannot have their own web sites, brochures, or entries in the international law directories. Then how are Indian law firms supposed to compete with international law firms? This should be the first phase of the liberalization of the domestic legal sector, where foreign players can come and practice law of their own jurisdiction by employing their own lawyers. They would be allowed to advise Indian businessmen. The second phase would be the foreign law firms can have some kind of adjustments with Indian lawyers similar to that of the Singapore Model.

Hon'ble Minister of Law & Justice enquired whether there was any problem in introducing the Gujarat Model.

President SILF replied that Gujarat Model encourages backdoor entry of foreign law firms without barriers. He requested not to apply the Gujarat Model to legal services.

Hon'ble Minister of Law & Justice called for flexibility and open mindedness. He wanted to know how liberalization in legal services can be done without even opening a window.

President SILF replied that the Government can open a window any time it chooses subject to conditions to be laid down by making appropriate amendments to the Advocates Act.

Shri Prashant Kumar, President, Bar Association of India.

SEZs harm the legal profession. We can allow foreign players to open law firms in India subject to the stipulation that these foreign players have to invest in India. Subject to this condition, legal services and legal technology development sectors can be allowed in SEZs

Shri Salman Waris, Partner, Tech Legis

We already have Indian Law Firms performing back door services in Dubai, Singapore and London. Thus we are already taking away the work of foreign lawyers in these places. The right way forward is not to keep the doors closed and have them hire Indian lawyers. It is not practically possible to prevent exchange of backdoor legal services as they are already happened. We should allow foreign legal firms to come in. However there should be a regulatory body in India to regulate them. Foreign countries that allow Indian players within their legal system already have such regulatory bodies in their respective jurisdictions.

Shri Tabrez Ahmad, Indian National Bar Association (INBA).

He called for introduction of information technology and multi-disciplinary services within legal sector. An ecosystem needs to be created where our legal professionals are going beyond law and obtaining skills as multi-disciplinary legal professionals.

Shri Kaviraj Singh, Secretary General, INBA.

Supported opening up of legal sector.

SuchitraChitale, Partner, Chitale&Chitale.

Suggested that the Indian Legal Scenario should be opened up with the rider that there should be reciprocity.

Shri Percival Billimoria, Partner, Cyril Amarchand.

Suggested that firms in India should be allowed to have limited liability. Also he pointed out that although Indian lawyers are providing their services abroad they are not allowed to practice American Law in American soil. Therefore, the American lawyer should not be allowed to practice Indian law in Indian soil. Reciprocity should be on equal terms both ways.

Ms. GauriRasgotra, Partner Cyril Amarchand.

Brought up the issue of reciprocity and also wanted to know the status/designation of foreign lawyers practicing in India and Indian lawyers practicing abroad.

ShriAmitKapur, Senior Partner, J. Sagar Association.

Our legal system should open up. However, a level playing field should be ensured. Foreign players coming into India should hire Indian lawyers. We allow foreign players in SEZs for advising businessmen in SEZs on Foreign Law. So far as opening up of the legal profession to foreign players is concerned, domestic players should be allowed to strengthen themselves first and then open up.

ShriAnand S. Pathak, Managing Partner, Pathak& Associates Law Offices.

According to him reciprocity already exists. In his personal experience, he practiced American law in the USA and Indian law in India.

ShriMohitSaraf, Senior Partner, Luthra&Luthra Law Offices.

Exporting services outside the tariff area is a good idea. We need to regulate that part by hiring Indian lawyers India will not benefit from this and it will lead to several problems in level-building.

ShriManan Kumar Mishra, Chairman Bar Council of India.

He sought sufficient time to discuss the issue of entry of foreign players in Indian legal system. He further stated that opening up has created a general fear in the minds of Indian lawyers that they are going to be jobless. While the BCI is not opposed to allowing foreign players in India the prime concern is regarding the mechanism of regulation. The BCI has no mechanism to regulate the reciprocity factor, this has to be looked after by the Government itself. It is the right of the

regulator to decide what will be allowed and what not to be allowed. As on date there are different set of regulations for SEZs and for domestic sector.

Shri Suresh Chandra, Secretary, Department of Legal Affairs.

The Law Secretary said that they have already highlighted the reforms and are here to discuss on a specific issue whether we can allow the foreign law firms to have their offices in SEZ. In this respect the Ministry of Commerce had already issued separate notification, IRDA, SEBI are also allowing their insurance and finance sector to have their offices. The only issue which is remaining is the legal firms and the legal services and idea is that this is something exporting legal services from here and not to give any legal advice to either, other parts of India outside India SEZ or practice before courts. So there are two issues, one is the eligibility of Section 24 and then reciprocity under Section 47.

Law Secretary was of the view that already there are provisions, to allow foreign lawyers to practice first of all to provide level playing field in the SEZ to achieve their objectives and targets we can allow to establish their offices provided there is a registration mechanism for them and with the conditions that the regulator as the Bar Council and the reciprocity is a notification issued by the Central Government.

On the issue of Section 47, he was of the view that this is permissible but we have to first get the order of the Supreme Court of India quiet early. In this regard, the Solicitor General of India has already been requested twice to expedite the case because there is a stay, and then only the fly-in and fly-out legal services are allowed. The Bar Council of India and the Law Ministry will come to a decision and issue notification under the Advocates Act in view of the other notification that they issued.

Hon'ble Union Minister of State for Law & Justice:

The Hon'ble Minister of State for Law & Justice expressed that broadly a decision has been taken for allowing the foreign law firms, there is no quarrel on this point. The second aspect is about the modalities, how it could be settled, there are so many issues. It can be in two ways, one is, once we have taken a decision that we should allow them then the second part, is how to allow them. Then we have to construct all the aspects, we can sort it, in short we can't take all the aspects into consideration and take a decision.

So far as Supreme Court matter is concerned, the Hon'ble Minister of State was of the view that it is only the issue in respect of allowing foreign law Counsel in the Court. But so far as outside court is concerned there is nothing to do with it. On the issue of arbitration and other matters he felt that he need not go into it. So far as

in the case of amendment of law practice pleading outside the court, without amending the Advocates Act, even if Bar Council of India amends' the rule that is not enough, they have to go for an amendment of the Act. The concrete suggestions should come on the table and the Committee should consider all the aspects and give their recommendations how we can proceed further, what process are required to amend in the Advocates Act and vis-à-vis to the qualification and the examination. The issue is important, some of the countries may be America and northern countries their education may be upto the level but other countries they are not upto the level, so how to allow them to practice in India. He said that all these modalities are required to be considered by the Committee constituted by the Law Ministry. The recommendations submitted by the Committee will be taken into consideration in the next meeting and thereafter a final view will be taken.

Hon'ble Union Minister of Law & Justice:

The Hon'ble Minister's suggestion for SEZ in the first instance was for two reasons, and one of the reason is Reciprocity, he assured the legal services that he is very clear and completely with them, there would be no compromise. If any lawyer or law firms are victimized or discriminated, they will be given the same reply. India is a very poor country, but if you cage with a lot of things then reforms need to push. He mentioned that the FDIs have been opened, and in the last three years 80 mobile manufacturing factories have come up in India. India has become a big hub of mobile manufacturer.

The Hon'ble Minister stated that the Hon'ble Prime Minister is very keen to make India a hub of international arbitration and we have already undertaken to reform the Indian arbitration law. If India has to become a hub of international arbitration, then why don't the legal services come on board? He said that as you all know arbitration has across spectrums of arbitrations in the world.

The Hon'ble Minister further mentioned that every day he tells the Law Secretary that in any matter he wants an Indian Judge to be on the seat of international arbitration. He emphasized that Indian Law firms must play a more proactive role more in International Arbitration. Therefore more opening up is needed.

After deliberations, it was decided that the supplement views including suggestions which have emerged, will be submitted by all the stake holders within two weeks' time.

The meeting ended with vote of thanks to the Chair.
