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President

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The President of the United States
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dear Mr. President:

The American Bar Association welcomes the report that you will be visiting India on November 6, 2010. The ABA recognizes the importance of India as the fourteenth biggest trading partner of the United States. Uniquely among our trading partners, India has a present equal balance of trade with the U.S., amounting to \$50 billion in services and goods annually. By reason of the Federal Government's efforts in general and yours in particular, the ABA and the lawyers who are its members hope that this trade will flourish in the future.

A critical element in increasing the size of that trade and the relationship between the two nations is the provision of legal services in their support. Such services of lawyers well versed not only in the laws of the United States and India but also cross border transactional matters are plainly essential for such an increase. Obviously, the ability of lawyers in the United States to provide such services is an important issue for the ABA and its membership.

However, there is currently a serious risk that unless action is taken by the Government of India and the Indian Bar Council, such legal services will be curtailed significantly, creating serious and perhaps overwhelming obstacles to the desired increase in United States/India trade contemplated by the March 17, 2010 Framework for Cooperation on Trade and Investment.

Under the auspices of the ABA, overseas licensed lawyers including those from India have been enabled to provide their legal services to businesses stationed in the United States. As this letter will summarize, there is an effort in India to deny such reciprocal treatment to U.S. licensed lawyers.

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The ABA's Model Rule for Licensing and Practice by Foreign Legal Consultants has been adopted by 32 U.S. jurisdictions (including the leading U.S. commercial states, such as New York, California and Illinois, as well as the District of Columbia). This regime allows licensed lawyers from outside the U.S., including Indian lawyers, upon acceptance of a registration with the local bar or court, to maintain an office in the United States and advise clients, face to face or otherwise, about the laws of their home country without passing any examinations or undergoing any training in the United States. U.S. lawyers who wish to provide U.S. law advice in India request that you urge the Government of India, during your upcoming visit to India, to establish a similar rule allowing non-Indian lawyers to provide advice to their clients in India on laws of their home jurisdiction. Your inclusion of this issue on your agenda will greatly assist the U.S. lawyers in making progress in their discussions with the Government of India and other authorities responsible for regulating non-Indian lawyers.

On a related matter, a recently brought law suit is pending in the High Court of Madras in which a private Indian lawyer seeks to limit the ability of U.S. lawyers to travel to India and give advice about their home country's laws to Indian clients or to U.S. clients that are at the time present in India. Many of the largest U.S. law firms including Covington & Burling LLP, White & Case LLP and the U.S. law firms listed on the attachment to the letter, are joint respondents in the proceeding (the "U.S. Respondent Firms").

Other U.S., British and Australian law firms are named respondents as well. The Government of India as well as the Bar Council of India are also named respondents.

Indian lawyers also travel frequently to the U.S. on an "in and out basis" to advise American clients about Indian law without registration. Given the increasing number of cross-border transactions involving India and the U.S. (e.g., issuance of Indian Depository Receipts, investments by India based multi-national companies in U.S. businesses and acquisitions by India based multi-national companies of U.S. businesses and companies, etc.), this practice is likely to become even more prevalent.

At the present time, none of the Respondent U.S. Firms has an office in India. Even though an Indian lawyer, upon registration, can open an office in the U.S. to give advice on Indian law, the U.S. Respondent Firms are confining their activity to travel to India on a temporary basis to provide advice on the law of their home countries.

U.S. lawyers want no more than the rights Indian lawyers have in the United States - a reciprocal opportunity to advise clients on the laws of their home country without presuming to advise on the law of a country where they are not admitted to practice.

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Prohibiting American lawyers from visiting their India based clients to advise and counsel them on matters pertaining to U.S. law, even on a short run basis, would adversely impact their ability to represent their clients and unnecessarily disadvantage these U.S. law firms. Requiring officials of Indian companies to travel outside India to obtain advice concerning non-Indian law would significantly raise the transaction costs of Indian companies, creating an additional impediment to retaining the services of U.S. based law firms.

In addition, prohibiting American lawyers from traveling with their U.S. clients to India in order to advise and counsel them on U.S. related legal issues in connection with transactions, ventures, financings or the like being pursued with India based companies will severely handicap the ability of U.S. based companies in pursuing activities in India with India counter-parties – activities that, undoubtedly, will benefit the Indian and U.S. economies.

In the short run, it is hoped that the courts will not intervene in this matter which should be resolved through appropriate governmental and regulatory means and that the status quo (under which lawyers from both countries can and do visit the other on a temporary, transient basis to advise only on home country law) can be maintained while authorities in India address the broader issue of whether, for example, some form of registration scheme should be adopted that would permit U.S. lawyers to have a more established role in India.

In the long term, we are asking that the Government of India adopt rules and regulations that are consistent with the ABA's Foreign Legal Consultant Rule which allows foreign lawyers to establish offices in the U.S. and give advice on the law of their home countries.

I urge you to consider including this pressing issue on your agenda for your meetings in India. If I can provide any further information please have your staff contact me. Again, thank you for your attention to this matter. In the event that you have any question or if there is any way that I can assist in resolving this matter by working with you or your colleagues, please do not hesitate to contact me.

Sincerely,



Stephen N. Zack

Attachments

List of U.S. law firms

Kelley Drye & Warren LLP

White & Case LLP

Wilmer Hale

Shearman & Sterling LLP

Hogan & Hartson

Davis Polk & Wardwell

Akin Gump Strauss Hauer & Feld LLP

Paul, Weiss, Rifkin, Wharton & Garrison

Pillsbury Winthrop Shaw Pittman

Wilson Sonsini Goodrich & Rosati

Arnold & Porter LLP

Covington & Burling LLP

Perkins Coie

Mayer Brown LLP