

SEBI has decided to make public the registration process for all foreign institutional investors. Faced with criticism that there had been delays in registering FII, SEBI plans to put the process on its website alongside details of all applications received from FIIs and the status of their approval. This may be similar to what it does in the case of public offerings, where details are available to all investors.

### Mutual funds

After discussions with the Association of Mutual Funds in India (AMFI) and other market participants, SEBI is considering reducing the fees of all mutual fund schemes including debt funds, equity funds, funds of funds and also index funds. This is part of an exercise whereby SEBI first proposed to remove the entry-load payment on open-ended schemes that are bought through asset management company collection centres instead of distributors. There is a strong possibility that the entry-load will be scrapped. At present the entry-

load on open-ended equity schemes is between 2 and 2.5% of the amount invested.

### Broadcasting

Facing severe criticism from the industry, the government said on 17 October it is in the process of redrafting the controversial Broadcasting Bill, in addition to considering increasing permitted foreign direct investment in the cable sector from 49% to 74%. The government has proposed setting up a Broadcasting Regulatory Authority of India (BRAI) consisting of government officials. Currently the Telecommunications Regulatory Authority of India (TRAI) is responsible for broadcasting issues. ■

*The wrap is compiled by Luthra & Luthra Law Offices, which can be reached at luthra@luthra.com. The wrap is designed to provide general information on key legal developments. Readers should not act on the basis of this information without seeking professional advice.*



# Lowering the bar

**India Business Law Journal** investigates recent moves to open the legal market to foreign firms and hears reactions from a wide range of stakeholders

*Ben Frumin reports from New Delhi*

**A**s autumn began in India with sweltering summer temperatures, national newspapers and other publications featured enthusiastic stories heralding the imminent opening of India's legal market to foreign law firms.

"Government begins paving way for foreign law firms," declared one headline on *livemint.com*.

"Indian govt says 'yes' to foreign law firms," was another on *thelawyer.com*.

The proof behind such pronouncements, it seems, is comments reportedly made by the minister of law and justice, HR Bhardwaj, along with at least one meeting he held with partners at several Indian law firms to debate market liberalization. Bhardwaj reportedly said that a "cushion

package" would be worked out with domestic firms by December to help them deal with the entry of foreign competitors. A regulatory mechanism would be developed, the playing field would be levelled and foreigners would soon be allowed to practise foreign law in India.

Not everyone, however, is convinced that progress will be as speedy as some news reports indicate.

"I've heard this for the last four or five years," says Rohit Chaudhry, a partner at Chadbourne & Parke in Washington DC. "I do realize that there's an escalation in the rhetoric now, but as to when that becomes a reality, it'll happen when it happens."

Others think the latest developments mark legitimate progress.



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It's only a natural progression that the market should be opened up for foreign law firms.

Rohit Chaudhry  
Partner, Chadbourne & Parke



"If the Ministry of Law has its way, it will happen much earlier," says Som Mandal, managing partner of FoxMandal Little in New Delhi. "I would say [a firm decision on market liberalization will be made] by the end of this year."

The issue is a divisive one. Opponents worry that bigger, and often richer, foreign firms with no restrictions on advertising, websites or number of partners may unfairly diminish or destroy some domestic law firms.

Proponents, on the other hand, believe that market liberalization will improve services through competition and the introduction of international expertise into the domestic market.

They say that the opening is inevitable and that the debate should now focus on how rules and regulations can be created or changed to facilitate liberalization.

Excessive liberalization at too fast a pace could lead to a real overall quality dilution.

Bob Nelson  
Partner  
Thelen Reid



Despite some vocal opposition, a vast majority of Indian law firms claim (in public at least) to favour the entry of foreign firms.

Earlier this year, *India Business Law Journal* surveyed a wide cross-section of Indian law firms and corporate counsel and found that nearly three-quarters of respondents supported the entry of foreign firms. About one-fifth of respondents remained undecided but fewer than one in 10 said they opposed their entry.

### Opposing views

On 17 September, India's law minister invited a number of Indian law firms to a dinner meeting at The Claridges, a five-star hotel in the heart of New Delhi. According to Lalit

ing up model, including enforcement mechanisms to ensure due compliance with the country's regulatory regime.

The question of surrogate firms – firms in India which exclusively or almost exclusively conduct practice at the behest of foreign firms – was also raised as a matter which needs proper scrutiny.

The minister clarified that legal services are not part of offers made during the Doha round of WTO/GATT negotiations.

This position can be changed only by a cabinet decision.

The commerce minister said he was not aware of the affidavit filed by the Law Ministry in the Bombay High Court and he noted that the stand taken in the affidavit was not previously discussed with the Ministry of Commerce.

SILF, by an overwhelming majority, opposes the proposal floated by the Law Ministry to allow foreign lawyers.

However, SILF will continue to engage constructively with the government and has called for the formation of an expert national committee of senior jurists, the Bar Council of India, representatives of Indian law firms and various other stakeholders to go into this issue in detail.

## Nothing has been decided

By Lalit Bhasin  
President  
Society of Indian Law Firms



In a meeting held on 3 October in New Delhi with members of the Society of Indian Law Firms (SILF), the commerce minister, Kamal Nath, categorically confirmed that no decision has yet been taken by the government of India to open the legal services sector to foreigners or foreign investment.

The Indian lawyers expressed the view that the process of opening up outside a multilateral World Trade Organization (WTO) process was inappropriate and without adequate safeguards.

The other issues discussed included providing a level playing field for Indian firms before the sector is opened.

Also, there needs to be adequate clarity for the open-

Bhasin, who was at the meeting, representatives of about 20 law firms attended. Bhasin is president of the Society of Indian Law Firms and a leading opponent of allowing foreign firms into India.

Mandal, who also attended the dinner, says the minister made it extremely clear that he believes foreign law firms should be allowed to practise foreign law in India. The minister circulated a concept paper calling for this change to be adopted soon and proposing a review five years after implementation.

According to Bhasin, those opposed to the entry of foreign firms stated their position strongly at the meeting. They agreed to go along with whatever the Bar Council of India decides, but they believe that if foreign firms are to be allowed in, the rules governing Indian lawyers must be more egalitarian. Opponents asked the minister to prepare a "proper committee" with broad representation to review overall policy decisions.

"We put forth our point of view with no holds barred," says Bhasin, but the law minister "didn't appear to be sympathetic".

However, Bhasin adds that the minister did assure the gathered lawyers that he would consider their position and that they should prepare a written explanation of their views. "The law minister assured us that he's got an open mind, and he invited our suggestions."

### Categorical stance

In contrast, Mandal says that while the minister did agree to consider suggestions, he also made it clear that he would not take instructions from opposition lawyers. "The minister was pretty categorical," says Mandal.

Just days after the meeting, the Ministry of Law and Justice filed an affidavit in the Bombay High Court that Bhasin describes as taking "an unequivocal stand that we should support the entry of foreign law firms".

"Taking a stand before a court means that you have already arrived at a decision. You cannot take the court lightly," says Bhasin. "It makes us feel very bad ... We have pointed out that this is not the correct way. It is like stabbing someone in the back. You are asking someone to enter into a dialogue, meanwhile you are presenting them with a *fait accompli*."

Mandal describes Bhasin's characterization of being stabbed in the back as "not true at all". He believes the affidavit is "a very positive step" towards opening the market.

The affidavit was filed in a long-running case in which Lawyers Collective, a legal pressure group, had challenged a small number of foreign firms which had set up liaison offices in India.

While there is no telling when this years-old case will be resolved, or if and how it might be appealed, the affidavit is seen by many as an official statement of the Ministry of Law's position on the issue of foreign law firms.

Despite the perceived betrayal, Bhasin planned to give the ministry a 50-page report on his position by 31 October. He claims that even if the ministry is intent on opening the market to foreign firms, the move would require the resolution of the case before the Bombay High Court and approval from the Commerce Ministry (which Bhasin says would be charged with developing a regulatory mechanism). It may even require an amendment to the Advocates Act.

"Even if the government makes up its mind to open up legal services, there have to be some corresponding

## Foreign firms raise standards

By Murali Neelakatan  
Partner  
Ashurst



We believe that foreign lawyers should be allowed into India and that this will benefit the country and its businesses, which have publicly asked for this for many years.

It will also help the Indian legal profession in the same way it helped the accounting profession when large international firms entered India several years ago.

As the Indian economy becomes more integrated with the global community, the number of major Indian projects tendered with a requirement for the participation of foreign lawyers is growing at a significant pace.

This is happening despite the restrictions currently in place on foreign law firms practising law in India.

Allowing foreign lawyers a presence in the country will therefore help domestic businesses compete on a more level playing field with their international peers. At the same time, it will grow the size of the Indian legal market and benefit Indian lawyers who will have more opportunities to showcase their talent in the global marketplace.

Their banking, consulting and accounting colleagues already enjoy these opportunities generated by the entry of international players.

Another case in point can be found in the enormous growth of the English legal market following its liberalization in the early '70s.

Foreign law firms have already introduced higher standards and new techniques into the Indian market.

Some Indian firms have quickly adopted them and this is expected to continue and should be encouraged.

However, only advocates who are admitted to a Bar in India should have rights of audience in court or be able to conduct litigation.

India also requires regulations to remove the limitation on the size of partnerships, to permit advocates to share fees with non-advocates, and to permit appropriate advertising. Advertising will allow Indian firms to better compete with international players looking to enter the India market but with already-established operations abroad.

A sensible, workable and transparent regime should be put in place to regulate foreign lawyers resident in India in conjunction with their home regulator.

In the context of a cross-border transaction, [Indian firms] need to be aligned with correspondent law firms.

MR Prasanna  
Group Executive President  
(Legal)  
Aditya Birla Group



changes in the laws, which is quite a lengthy procedure. Amendment of a law is not a simple thing. The soonest it could happen is in about three years," says Bhasin.

On 3 October, several lawyers held a meeting with Ministry of Commerce officials. Bhasin describes this meeting as "excellent" and "very reassuring".

Meanwhile, Mandal, who did not attend but was briefed on it, expressed his disappointment that opponents of opening the market were given more time to present their views than those on the other side. No decisions were made at this meeting, which was a forum for both sides to present their positions.

### Benefits for most, if not all?

While details of when and how may be in doubt, many think the eventual opening of India's legal market to foreign firms is a relative certainty.

"The Indian economy is booming," says Chaudhry of Chadbourne & Parke.

"There's a lot of business to be done in India, and law, being a service sector, follows where business goes. It's only a natural progression that the market should be opened up for foreign law firms."

Sakate Khaitan, a partner at ALMT Legal in London, says that while Indian firms might lose work on international transactions to international firms with an Indian presence, the benefits to Indian firms outweigh the costs. He believes that opening the market will cause legal fees in India to rise to international levels, and that wages and salaries will rise as a result.

"Absolutely," says Khaitan. "In my view the Indian legal market should be opened up."

MR Prasanna, group executive president (legal) at Aditya Birla Group, also sees advantages in opening the legal market. He believes it would save corporate counsel the time and expense of cobbling together two or more law firms of different competencies.

"The foreign law firm which is US-centric or UK-centric or Euro-centric, which operates as a one-stop shop, would help corporate counsel in integrating the domestic and foreign legal advisory services that operate in the same time zones," he says.

"I would not characterize the current limitations of the Indian legal profession as a big stumbling block. I would rather say that [Indian law firms] are as mature and as business-savvy as any other firms, but in the context of a cross-border transaction, they need to be aligned with correspondent law firms," continues Prasanna.

Diljeet Titus, managing partner of Titus & Co in New Delhi, also supports the opening of the market but only if proper equalizing measures are taken. "It is critical that before foreign firms are allowed in, certain restrictions on Indian firms must be lifted," he says.

"Bar Council of India rules prohibit advocates in India from engaging in any form of advertising or even indicating areas of specialization," says Titus. "Many foreign firms can advertise freely in their own countries. Foreign law firms will be able to aggressively advertise and market their India-related competencies in countries outside India. Thus, these advertising restrictions on Indian law firms should be removed."

the future, the government should impose reasonable restrictions and regulations to govern the practices of foreign firms and allow Indian firms to feel reinforced. It would also be highly beneficial to Indian firms to remove restrictions in regards to advertising.

Domestic and international corporations which use legal services in India have a bright future ahead. Allowing foreign law firms to practise in India – with reasonable restrictions – will facilitate international competition and provide clients with a wider array of expertise.

From the lawyer's point of view, working with international law firms in India will provide additional opportunities to learn, develop and further their careers. Any resistance is due to a rash assumption about the threat of competition.

We as recruiters will have to prepare ourselves to overcome the chronic scarcity of talent in the market in order to meet law firms' demands for increasing numbers of high-quality lawyers.

## Sharing good staff

By Dinesh Sharma  
Head  
Personnel Junction



As a legal recruiter, the most painful impact of liberalization will be sharing good lawyers with international law firms.

This is the right time for Indian law firms to team up and create thoughtful solutions, such as raising their own standards to match or exceed international law firms.

To protect domestic firms and allay their fears about

Titus also believes that Indian law firms should be given reciprocal rights of access to foreign countries. He adds that foreign lawyers who do not have any formal legal education in India should be restricted to foreign law, with Indian law left to Indian lawyers.

### Foreign lawyers among the opponents

Even if such restrictions and equalizations were implemented, not everyone agrees that the market should be opened at all. Richard D Rogovin, a member of the corporate department at Frost Brown Todd in Columbus, Ohio, is one foreign lawyer who is opposed to opening India's legal market to foreign firms.

"India's lawyers might wish to seek alliances with foreign law firms ... because there are advantages in cross-referrals, collaboration and mentoring that a young firm in India can gain from such relationships," Rogovin says.

"However, a large international firm can soon dominate an area of practice because it has the financial resources that most local firms do not enjoy."

"The apprehension put forward by a part of the Indian legal fraternity is that once foreign law firms are allowed to practise in India, the Indian law firms (which are comparatively smaller and which do not have the financial muscle



**A CASE FOR OPENING UP:** Many domestic law firms want to see the Indian market opened to foreign firms.

## Indian clients will benefit

By Nigel Thompson  
Senior Partner  
Baker Botts



Foreign law firms, in particular the large international ones, are in India already.

They may be based in the UK or New York or other jurisdictions but they are already providing legal advice in India from afar and Indian clients – many of whom are increasingly global players – are already using their services on a regular basis.

If those firms are permitted to go one step further and put their nameplate above the door of a permanent establishment in India, the main beneficiaries will likely be Indian clients.

Clients will then have easier access to the advice they require, in the same time zone and hopefully at lower cost.

The recent growth of Indian corporates into major global enterprises means that they need more regular access to advice on the legal systems and regulations that drive their participation in the global capital markets.

These laws and regulations underpin most international business transactions.

Allowing the entrance of foreign players into the Indian legal market should not be a controversial subject.

Provided there is proper regulation of foreign firms such as exists in jurisdictions like England and Wales, India could see significant economic benefits from the entrance of foreign law firms into its market.

The more contentious question is whether those firms should be allowed to practise Indian law in India by joining forces with already-qualified Indian lawyers.

The experience of other jurisdictions, like England and Wales as well as places like Italy, France, Germany and Japan, shows that the most likely effect of such a move is to provide further employment opportunities for lawyers from the host country, while maintaining a diversity of law firms for clients to choose from.

Meanwhile, traditional areas generally dominated by domestic lawyers such as court advocacy work tend to remain largely unaffected by the entrance of foreign players who tend to have a different focus in their practice.

At the same time, the best lawyers in their field can usually choose to tie up with an international firm or remain independent.

It is hard to see why this pattern would not be repeated in India.

## A phased opening

By Ferheen Mahomed  
Managing Director &  
Head of Legal (Asia, ex-Japan)  
Société Générale



India prides itself on being the world's greatest democracy. With democracy comes freedom and, I believe, competition.

India is pushing ahead in all areas of development and vying for global power. So it should have the confidence to face competition that will lead to further excellence in the long term.

This liberalization should occur in all areas, including the legal profession.

I do, however, agree that this cannot be done overnight and there should be phases to allow orderly competition and avoid chaos and instability. India should take a long-term view and start allowing foreign law firms to enter gradually.

China is not a bad example to follow and India could use the China model with its own refinements.

Allowing foreign law firms to set up in India with limited practices would be a positive move for all concerned, including local firms and their clients. Foreign firms should be confined to advising on foreign law and should be restricted in how many offices they may open and in how many cities.

This would be the first phase.

Simply allowing their presence will mean that cross-border transactions will be conducted in a more effective manner.

Foreign firms will also help train local talent and give bright lawyers the opportunity to work overseas where they will gain wider experience and exposure before returning to India.

In the second phase, more formal cooperation and joint ventures could be considered.

Anti-monopoly considerations could ensure that approvals are not given to arrangements where competition in a particular field would be eliminated by one dominant firm.

This may also help niche practices gain exposure.

The final phase would be allowing foreign firms a full practise in India, provided a certain percentage of the lawyers are India-qualified and have a certain amount of experience.

Any form of liberalization requires thought and refinements, but the conviction and confidence must be there to move things forward with the belief that competition will breed excellence in the long run.

## Level the playing field

By Rajiv Luthra  
Managing Partner  
Luthra & Luthra



The legal community is rightly arguing that the government should undertake the liberalization of legal services only after placing domestic law firms on a level playing field and on terms that are not prejudicial to their very survival.

For instance, it has been our continued suggestion that the government enable law firms to organize themselves as LLPs, allow them to maintain websites and remove the limitation on the number of partners they may have. It is also crucial that law firms should not be subject to capital gains tax on becoming LLPs.

These fundamental steps have promoted thriving communities of large law firms in other countries. In India, however, the restrictions have prevented law firms from growing.

Furthermore, while the government has promised

to bring about the suggested changes, the necessary legislative initiatives have not been implemented.

Foreign law firms should be allowed into India, but in partnership with Indian firms to ensure both benefit from joint collaboration and the pooling of talent.

Foreign counterparts have suggested they will only practise foreign or international law; a superficial distinction as the aim of most foreign law firms is to advise on transactions and not merely on conflict clauses that are the only foreign law aspect of a transaction.

More importantly, the distinction between foreign and Indian law will create an enormous enforcement burden since every deal involving a foreign firm would have to be reviewed.

In addition, foreign lawyers should be subject to the same rules of discipline as their Indian counterparts, including the professional and disciplinary rules of the Advocates Act.

They should not be permitted rights of audience in Indian courts, tribunals or administrative bodies or to sign opinions on Indian law.

Liberalization of the legal market will provide a host of opportunities for young graduates and benefit clients. It should certainly be allowed, but only after Indian law firms have had an opportunity to grow and consolidate to effectively compete with their foreign counterparts.

which foreign firms have) would be wiped from existence," says ML Bhakta, senior partner at Kanga & Company in Mumbai, noting that he does not oppose the entry of foreign firms.

### Long-distance service

Glenn Gerstell of Milbank Tweed in Washington DC says his firm hasn't found the absence of an office in India to limit its ability to serve clients.

"There is surprisingly little insistence on the part of clients for their foreign law firms to have an office in Mumbai or Delhi," he says.

The real advantage of having a bricks-and-mortar presence in India, Gerstell says, "would come from the important but hard-to-quantify benefit of greater personal interaction, both in doing deals and in marketing.

"Even in this day of email and video conferencing, there's obviously no substitute for getting together for lunch or simply being fully versed in the local scene," he says.

"Local Indian firms know and understand their clients and their society and should be encouraged to grow with the Indian economy, but not smothered by foreign competition or absorbed by foreign firms by which they will then be controlled," adds Rogovin.

For his part, Bob Nelson, a partner at Thelen Reid in San Francisco, warns that there is an inherent danger in opening the market.

"I fear that excessive liberalization at too fast a pace could lead to a real overall quality dilution – where top Indian firms lose many of their good lawyers, while foreign firms that hire such lawyers and establish local presences cannot establish sufficient depth and critical mass – essentially creating a situation where quality is spread too thinly," he says.

"I think that slow, organic change over time is best," Nelson continues.



**MORE DEALS, MORE WORK:** Increasing participation in the global economy means local clients have more need for international advice.

## The profession will prosper

By Som Mandal  
Managing Partner  
FoxMandal Little



As the managing partner of one of the largest law firms in India, I support the entry of foreign law firms.

Contrary to popular belief that domestic firms will be wiped out by the entry of international firms, I believe foreign players will enhance the quality of service, facilitate the adoption of international best practices and promote the overall development of individual lawyers.

A look at the Chinese and Japanese legal service industries is a window to the future. In China and Japan domestic law firms operate successfully among foreign firms. The competition is between consolidated local firms and the smaller outposts of the foreign ones.

The major beneficiaries of liberalization would be businesses. The availability of foreign lawyers will

reduce costs to businesses expanding overseas and allow them access to services in India that are at par with the best in the world, but at a lower cost.

However, while I strongly support the entry of foreign firms, I propose they initially be allowed to practise only the law of their jurisdiction and later be allowed to enter into joint ventures with local firms. Furthermore, litigation can be preserved for domestic lawyers.

The Ministry of Law and Justice, the Bar Council of India and the Society of Indian Law Firms should formulate guidelines and rules to govern the operation of foreign firms to ensure a level playing field. At present, Indian law firms cannot have more than 20 partners and, in that respect, limited liability partnership legislation is needed. Moreover, prohibitions on advertising need to be reformed.

We also suggest that the government support Indian lawyers by directing government departments and public sector undertakings to Indian lawyers or law firms.

Widespread opposition is common prior to the liberalization of any sector. In the insurance sector, for example, employees went on strike. Today, however, all insurance companies are operating in a highly competitive market and on a level playing field.

The legal profession will also prosper.

Before foreign firms are allowed in, certain restrictions on Indian firms must be lifted.

Diljeet Titus  
Managing Partner  
Titus & Co



Some feel that it's not just Indian firms that need to be concerned: Foreign firms should also be cautious of what they're getting themselves into. For instance, during a previous attempt at liberalization in the early 1990s, Chadbourne & Parke opened a liaison office in New Delhi, where a handful of US attorneys began working.

But a few years later, the Chadbourne office became the subject of litigation (which is still pending), and was closed. "Chadbourne has faced the brunt of this in the past," explains Chaudhry.

And, he warns, it is critical for all parties to "be very careful of how it's done". ■



**CLEAR POINT OF VIEW:** Opponents of a more open legal market plan to make their opinions clear.

## More expertise not amiss

By Usha Amonkar  
Vice President  
Mahindra & Mahindra



Since 1991, India has steadily liberalized its economy, facilitating foreign entities to set up businesses in the country.

As an extension of that, it's only fair to allow foreign law firms to set up shop in India.

The legal services rendered by the existing firms have been satisfactory, but foreign firms could increase competition and provide more opportunities to our youth.

And there are several areas of law where greater expertise will not be amiss, particularly specialized fields such as cyber laws and securities-related laws and regulations.

As far as the foreign law firms are concerned, liber-

alization will give them access to a new and emerging market and help them to understand India and its culture.

If such firms set up shop in India, both domestic and foreign corporations will benefit.

Domestic corporations will have better access to foreign expertise and foreign businesses will find it easier to appoint a law firm to represent them in India.

I am of the view that foreign firms should be allowed to set up in India.

Although they should confine themselves to non-litigation and consultancy matters rather than litigation work.

These firms should be permitted to register themselves with the Bar Council and should be governed by the laws applicable to Indian law firms.

Amendments should be made to the Companies Act to permit Indian law firms to have more partners and to introduce the concept of limited liability partnerships. Further, Indian law firms should be allowed to set up their firms in foreign countries.

The only "cushioning" that Indian law firms should be given is that foreign lawyers should not be allowed to practise in Indian courts, just as Indian lawyers are not allowed to practise in foreign courts.

**EDITOR'S NOTE:** More views can be found in **Inbox** on page 4. The views expressed are the personal opinions of the individual contributors and do not necessarily reflect the views of the organizations for which they work. Contributions may have been edited for style, length and readability but not substance.

## Keeping the house in order

In-house legal teams should be structured and managed in a way that makes them indispensable to the business, says MR Prasanna of Aditya Birla



**N**ot that long ago, I had the unique privilege of setting up the in-house legal team at a diversified Indian multinational conglomerate.

The company did the right thing. It spent considerable time and effort identifying the right person to head up the team and provided the freedom to hire professionals with different skill-sets.

It is important to identify a vision and a mission statement for the legal team from the start. Both are as integral to in-house counsel as they are to the business as a whole. Corporate counsel must operate like an in-house law firm, with an emphasis on quality services. At the same time, in-house lawyers must understand the business since they not only advise but also devise and implement strategies.

This is not a new idea. Shipping, pharmaceutical and software companies have very specialized in-house lawyers. However, diversified conglomerates need corporate counsel with some specialized knowledge combined with a broad understanding of the group's business.

An ideal team includes lawyers and support staff with different levels of experience. Finding the team members is the first step. Keeping them may be a more difficult challenge, particularly in India's fiercely competitive market.

### Adding value

Legal department budgets are often small, barely covering staff and overheads. Corporate counsel have to keep costs down and generate value for money.

As a result, legal outsourcing is often out of bounds. The freedom to engage external counsel is circumscribed by the ability to pay for it. In-house lawyers must demonstrate that the issue at hand requires external validation to ensure certainty or good governance. In-house counsel can maximize the value of external counsel through background work and gathering all available information beforehand. This process can be streamlined by encouraging team members to keep on top of their areas of expertise.

Individuals can take responsibility for a specific aspect of the business. Rotating them regularly can make their jobs more interesting and help with staff retention.

A broad understanding of the business can help develop better legal risk management systems and convince the business managers – who want everything done yesterday – of the importance of managing these risks.

### Avoiding disputes

An important aspect of managing legal risks is avoiding litigation but some expertise is still needed to develop a practical policy, gain greater control and lower costs.

A strong understanding of increasingly popular alternative dispute resolution techniques is also required and it is up to in-house counsel to develop mechanisms to resolve disputes informally by identifying potential conflicts and providing for their resolution. This can create more commercial, instead of legal, options to resolve differences.

Formal arbitration also requires deft handling and understanding of the applicable legislation.

### IT is key

With the increasing integration of technology and the law, information retrieval and document management have become important functions of any in-house team. Investments in both of these areas are of immense value.

More often than not, members of in-house legal teams underestimate the value of updating their knowledge. However, it is extremely important for them to spend time catching up on developments in their fields of expertise and the business must allow them the time to do this. Learning and unlearning is a continuous process.

### How to become indispensable

Balancing the demands of the business for speed and immediate clarity with the demands of the profession for thorough research and deliberation can be difficult. But corporate counsel should never cut corners. Mistakes are simply not affordable.

Continuous engagement with the business managers helps business decision-makers recognize that a "fast food" approach does not work in every situation. Periodic updates about work in progress help managers empathize and work more closely with the legal professionals.

A practical-minded legal team with a good business orientation is bound not only to succeed, but to become an indispensable part of any large business. ■

MR Prasanna is a non-executive director and head of the in-house legal team at Aditya Birla Group.