

ClientAlert

India Practice

December 2011

Potential Restrictions on Travel to India by Lawyers from Outside India Including In-House Legal Counsel

Executive Summary

An Indian lawyer has filed a lawsuit in a court in India seeking to restrain certain named US, British and Australian law firms and other lawyers from outside India, i.e., foreign lawyers, from providing legal advice of any kind in India, including advice regarding the laws of their respective home jurisdictions. If this lawsuit is successful, lawyers not admitted as “advocates” in India, including in-house legal counsel, will be barred from traveling to India to advise their clients, even on laws of their home jurisdiction (e.g., New York law or English law). Recently, the Government of India and the Bar Council of India, a statutory body empowered to regulate the practice of law within India (the “BCI”), have filed affidavits in the Indian court supporting the position advocated by the petitioner in the lawsuit. The Indian court is scheduled to commence a final hearing on the merits of the lawsuit on February 1, 2012. It is difficult to predict the outcome.

If you are concerned that an adverse ruling by the Indian court could affect the ability of in-house legal counsel to travel to India or consult with foreign lawyers in India, we urge you to communicate your concerns to the Government of India and the BCI on an expedited basis.

Lawsuit

In March 2010, A.K. Balaji, an Indian lawyer (the “Petitioner”), filed a lawsuit in the Madras High Court, Chennai (formerly known as Madras), India, against certain US, English and Australian law firms, certain legal process outsourcing companies, the Government of India and the BCI. Please [click here](#) to see a copy of the petition filed by the Petitioner in the Madras High Court. The Petitioner argues that only legal practitioners registered as “advocates” under India’s Advocates Act of 1961 can practice law in India, including advising on foreign and international laws. The Petitioner’s position is that the provision of legal advice in India by lawyers who are not registered as “advocates” in India amounts to illegal practice of law in India, and the petitioner has sought to prohibit all such foreign lawyers from undertaking any legal work within India. The Government of India and the BCI have taken positions before the Madras High Court that largely support the Petitioner’s interpretation of the Advocates Act.



If you have any questions, need any further information regarding this lawsuit or the issues raised by it, or are interested in filing a joint amicus curiae brief before the Madras High Court in respect of this lawsuit, please contact:

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Implications of a Ruling Against Foreign Lawyers

- Foreign lawyers are not permitted to open an office in India and currently travel to India as needed on a “fly in and fly out” basis to advise their clients on matters relating to laws of their home jurisdiction and international law. With a few limited exceptions, only citizens of India with a law degree from Indian law schools can be registered as “advocates” in India. Therefore, foreign lawyers will not be able to advise in India on the laws of their home jurisdiction even on a “fly in and fly out” basis unless the BCI passes regulations permitting them to do so. Only lawyers with Indian law degrees who are registered as “advocates” will be entitled to advise on foreign and international laws within India.
- Foreign lawyers, including in-house legal counsel, could be restricted or entirely prohibited from traveling to India to advise on laws of their home jurisdiction. Examples of restricted activities could include meeting and consulting with clients in India on issues involving US or UK securities laws, US Foreign Corrupt Practices Act, UK Bribery Act, corporate, employment and general business advisory work regularly performed by in-house legal counsel and acting in international arbitration matters.
- Prohibiting foreign lawyers, including in-house legal counsel, from traveling to see their clients in India to advise on the laws of their home jurisdiction or international law could materially inhibit the ability of foreign corporations and financial institutions to pursue business activities in India.

What You Can Do

The named respondents in the lawsuit and the American Bar Association (the “ABA”) have communicated to the Government of India and the BCI that this matter should be resolved by policy and rule making by appropriate Indian regulatory authorities after discussions with all stakeholders and not by a court. Until such regulatory resolution is achieved, the ABA has suggested that the status quo should be maintained which would permit foreign lawyers including in-house legal counsel to travel to India as and when necessary to advise their clients on the laws of their home jurisdiction or international law. If you are concerned about the outcome of this lawsuit, you can:

- reach out to the Government of India officials, officials of the BCI and the Indian business community generally to communicate your concerns
- collectively or through business and professional associations consider (a) making a written representation to the Government of India and the BCI and (b) filing an amicus curiae brief before the Madras High Court

The final hearing on this lawsuit is scheduled to commence on February 1, 2012. Ideally, any representation or filing in this regard should be made before February 1, 2012.

Please [click here](#) to see a suggested form of letter that you could use to communicate your concerns regarding this lawsuit to the Government of India and the BCI. Please [click here](#) to see the addresses of the relevant officials of the Government of India and the BCI to whom you can communicate your concerns regarding this lawsuit.

Please let us know if you or your organization is interested in joining with others in filing an amicus curiae brief before the Madras High Court in respect of this lawsuit. We can assist you in preparing and filing such a joint brief.

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