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Global Firms Snap Up India Work With Liberalization In Limbo

By **Dan Packel**

Law360, New York (September 10, 2017, 8:02 PM EDT) -- The reforms that opened up India's economy in 1991 did not touch the country's legal industry, which remains shielded from foreign competition. But that's proved to be a small hurdle for the top international law firms.

As talk of reform has bubbled to the surface again in recent months, India specialists at several firms on Law360's Global 20 list say an opening wouldn't immediately change how they do business in the world's second-most populated country.

Barred from opening up offices in megacities like Mumbai and Delhi, litigating in Indian courts or even offering guidance on Indian law, these firms have succeeded in helping foreign businesses do deals in India, and they are seeing more and more opportunities to advise Indian clients in raising capital in global markets and acquiring assets abroad.

"The global aspirations of Indian firms have increased, and they're seeing really rapid growth," said Amit Singh, an Allen & Overy LLP partner. "Indian corporates have really come into their own."

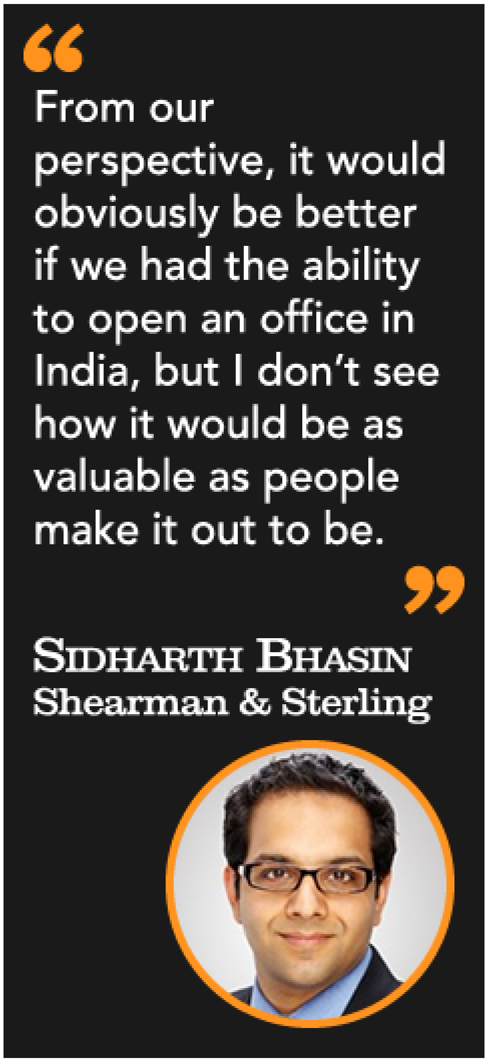
And the trend goes beyond just goods. Prime Minister Narendra Modi has recently taken steps to encourage Indian banks to do more international financing deals. The legal industry could be next, although lawyers have been hearing talk of change for years.

Even with indications that Modi himself is committed to a change, these India specialists aren't consumed by the intricacies of the reform process or with what a more open legal industry might look like. They say they've found a way to thrive from their perches outside the country.

"From our perspective, it would obviously be better if we had the ability to open an office in India," said Sid Bhasin, a partner in Shearman & Sterling LLP's mergers and acquisitions group. "But I don't see how it would be as valuable as people make it out to be."

Going Global

In the 25 years since India — facing a default on its national debt — abolished import quotas, slashed tariffs and put an end to licensing business in most domestic industries, the country's economy has taken off. GDP growth reliably sits at higher than 5 percent, peaking at over 11 percent in the first quarter of 2010.



The upshot is that foreign businesses want to acquire Indian assets. More recently, domestic enterprises have developed global aspirations.

Some credit Modi, who became prime minister in 2014, for stabilizing the domestic market and projecting a pro-business philosophy that has encouraged outbound investment. But the trend is not entirely new.

Indian conglomerate Tata Group bought South Korean truck manufacturer Daewoo Commercial Vehicles Co. in 2004 and purchased Jaguar Land Rover from Ford in 2008. The Aditya Birla Group, another India-based conglomerate, went on an international acquisition spree in the last decade.

Such deals slowed during the global economic downturn in the late aughts, but there's been a resurgence in recent years.

In 2016, a unit of Indian auto parts conglomerate Samvardhana Motherson Group spent $609 million to acquire Finnish components manufacturer PKC Group, for example, and Indian pharmaceutical companies like Aurobindo have been very active in snapping up overseas portfolios.

Unlike in-bound transactional work, which is largely handled by firms in India, these domestic companies depend on international firms for guidance on these deals.

Capital markets work is also thriving, with Indian corporations increasingly tapping into high-yield products, often through overseas subsidiaries based in locales like Mauritius and the Netherlands.

So-called masala bonds — issued outside of India but denominated in Indian rupees — are at the center of this upswing.

Allen & Overy's Singh recently advised government-owned energy conglomerate NTPC Ltd. on a novel 20 billion rupee issue of "green masala" bonds, raising funds exclusively for clean energy projects. That issue, announced in August 2016, is currently valued at over $312 million.

"We've done the majority of the masala transactions," Singh said.

Shearman & Sterling has taken advantage of the growing popularity of green bonds, guiding India-based clean-energy provider Greenko Investment Co. on the issue of $500 million in high-yield bonds, also in August 2016.

And Indian companies' growing connection to international financial institutions presents opportunities for lawyers outside of the country to step in when things go awry.

After Indian infrastructure conglomerate GVK, which developed airports in Mumbai and Bangalore, defaulted on repayments to several Indian banks, Reed Smith LLP advised ICICI Bank on litigation in England and the ultimate restructuring of a $10 billion loan with substantial cross-border components.

That's not an outlier, according to Ranajoy Basu, co-chair of Reed Smith's India group. Basu is also working with Bank of India to restructure $1.1 billion in loans denominated in a foreign currency to Mumbai-based conglomerate Videocon Group.

Banks themselves may be looking to tap into outside capital markets, Basu added, to increase the amount of money they have on hand.

"A number of the banks in India have the problem of large nonperforming portfolios," he said. "[They] are looking for funding to restructure."

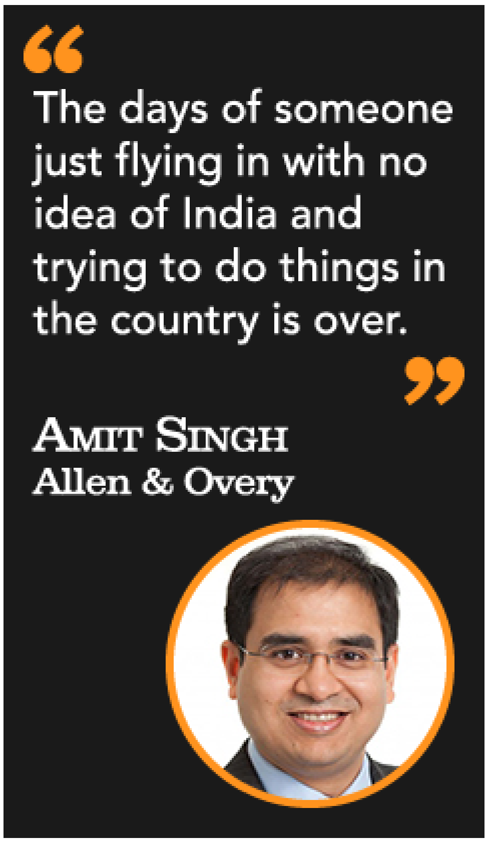
Making Inroads

Not being allowed to set up shop within India or offer insight on Indian law has forced firms engaged in the Indian market to work smartly.

“We don’t do everything for everyone,” said Bhasin, the Shearman & Sterling lawyer. “We go after the transactions where we can offer real value.”

For Bhasin’s firm, that means shying away from work on domestic equity capital markets while concentrating on cross-border deals, particularly on high-yield products. Other business comes from arbitration and work on investigations and compliance, especially with regard to the Foreign Corrupt Practices Act.

Working closely with local partners is also crucial. India has a deep bench of established corporate law firms, which, through the Society of Indian Law Firms, have been steadfast in their opposition to liberalization. Some international firms maintain so-called best friend relationships with domestic partners. Others have a wider list of partners.



“We have always followed the policy of supporting our clients with several law firms,” Basu said.

Attorneys must also get accustomed to the more than nine-hour flights from London to Mumbai and Delhi or the five- to six-hour flights from Singapore and Hong Kong.

Basu, who works out of London, says he’s in India three to four times a year — even more often if transactional activity demands it. Bhasin travels on a monthly basis from Singapore. Conference calls pick up the slack.

Homegrown experience also helps. Bhasin and Basu were both educated in India before heading overseas, as was Singh, the Allen & Overy lawyer.

“The days of someone just flying in with no idea of India and trying to do things in the country is over,” Singh said.

While many lawyers can solve the legal issues in a cross-border transaction, it’s more challenging to bring together two companies when the people involved have different ways of thinking and different ways of operating, Bhasin said.

“It’s the ability to solve for these other factors that really makes or breaks the deal,” he added.

Freshfields Bruckhaus Deringer M&A partner Sam Newhouse has been working on India deals for the last decade, initially advising foreign firms on inbound investments, primarily in energy. That work has expanded to representing Indian companies, as he advised the Essar Group on its sale of its oil refinery and retail business to Russia’s Rosneft for $12.9 billion in a deal that closed last month.

“As with many economies, you need to be familiar with a complicated regulatory regime,” Newhouse said. “Having an understanding of the rules of the road that are unique to any one country is also critical. You only pick that up over time.”

Pushing for Liberalization

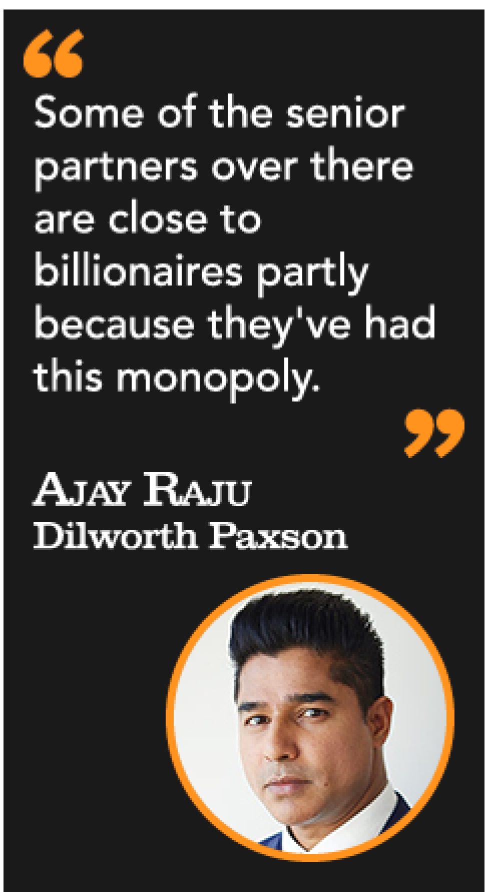
As figures in the Modi government have turned up the volume on talk about opening the legal market, many observers are reserving judgment.

“For the last decade, they've been saying, ‘This is the year,’” said Ajay Raju, chairman and CEO of Philadelphia-based Dilworth Paxson LLP, whose practice involves a number of cross-border deals.

A much-touted push in 2016 fell short after the Bar Council of India, the body created by Parliament to regulate and represent the bar, withdrew the set of new rules it had proposed to open the legal sector that September. The group said the plan to allow foreign law firms to practice in India had not gained traction among local bar associations.

Corporate law firms and lawyers, in particular, fear any change that would erode their business serving international clients, the most profitable section of their business. And they worry that domestic talent would also jump to foreign newcomers, according to proponents of liberalization.

“Some of the senior partners over there are close to billionaires partly because they've had this monopoly,” Raju said.



This July, the Modi government gave the process another push, according to Ramit Singh, founder of the Rasich Group, which is advising the Indian Corporate Counsel Association in the discussions.

The Ministry of Law and Justice and the Department of Commerce ordered the Bar Council to revise regulations to allow domestic firms to set up websites and advertise as a step to leveling the playing field for the entry of foreign firms. The government has also lifted a restriction on the practice of law within special economic zones, a move seen as a step toward letting foreign firms set up in places like Gujarat International Finance Tec-City, which Modi envisions as an international financial hub.

Modi is reputedly keen to establish India as a hotbed for international arbitration, and his government made clear that if allowed into the country, foreign firms would still be barred from practicing in Indian courts and would be limited to arbitration and offering guidance on foreign law.

But even these limited steps are shrouded in uncertainty.

“I have been convinced for some time now that no one will be happy with the final solution, whatever it may be, because no one is putting in the effort such a regulatory overhaul requires,” Singh said. “If it miraculously ends up working out for everyone, it will be by chance, not construct.”

In the meantime, international firms are also questioning whether the envisioned changes make any sense for them.

“Would we really be adding value to our clients just by setting up shop?” Reed Smith’s Basu asked. “If things actively change and clients want us to be present on the ground, that’s one thing, but there’s no indication of that at the moment.”

--Editing by Jeremy Barker and Christine Chun.

Methodology: Law360 surveyed law firms about their global attorney headcounts, office locations and cross-border and international work between April 1, 2016, and April 1, 2017. Headcount and office information is as of March 31, 2017, except for Cleary Gottlieb, which is as of Dec. 31, 2016.

Firms are ranked based on five factors: the percentage of the firm's attorneys located outside its home country; the number of offices outside the firm's home country; the number of countries where the firm has at least one office; the practice area breadth of the firm's cross-border and international work; and the size and complexity of the firm's cross-border and international work.

If a firm has no designated home country, Law360 used the country where the most attorneys are based as a “home” country in order to calculate the firm’s rank.
