

Further to our discussions on 26 February 2015 I would like to make the following written submissions for the Australia-India CECA negotiations.

My interest lies primarily in the legal sector having practiced in India for over 7 years and in Australia for nearly 9 years now. I have been working on fostering better ties between the two countries in this area.

Please note that I am the President of the International Law Association-Victorian Chapter, Deputy Chair of the Law Institute of Victoria- International Law Section Committee and also the Committee Member (Treasurer) of the Asian Australian Lawyers Association. My views may be informed by these various roles, however the submission I make are my own personal views.

Though I am not currently working in the private sector, through my involvement in building on the Australia India relationship in the legal sector, I am aware that there is an interest on the part of law firms, universities and judiciary in both the countries to build on the relationship, despite the barriers faced by law firms and overseas practitioners in setting up business or being allowed to practice in India.

With the growing trade between the countries and India becoming an important international market it will be necessary to have lawyers with expertise in both jurisdictions or for clients to have easy access to experts in both jurisdictions.

Australia and India also share the common law background which should make it easier for lawyers in either jurisdiction to transfer across their skills and make positive contributions to each other's legal systems.

The legal market in Australia is comparatively more open, although from the Indian legal market perspective, that is theoretical more than practical as it is unlikely that Indian firms or lawyers would be in a position to enter the market. There are no restrictions on establishment of foreign firms in Australia and foreign lawyers are allowed to work in law firms provided they do not provide advice on Australian law or profess to hold local qualifications. The accreditation requirements are still quite onerous with upto 12 subjects and upto 1 year of training required to be completed before foreign lawyers can practice in an Australian jurisdiction.

The Indian market is much more restrictive and neither joint ventures nor FDI in the legal sector is permitted. Foreign law firms have to largely rely on fly-in-fly-out arrangements and work with Indian law firms. They are not allowed to represent local clients in India. Although I am not completely aware, I believe that the accreditation requirements would be very onerous too.

Considering the above there is a recognised need:

1. for the establishment of links with strategic partners in India with a view to enhancing the profile and reputation of the Australian legal profession and promoting business opportunities for Australian practitioners to build clients and work in India and vice versa; and
2. for exchange of legal knowledge between the two countries as each has legal expertise in certain areas which the other can draw upon. This can be at the academic level, judicial level, between professionals or legislative level (when laws are being drafted).

To this end it is imperative that the legal market is opened up in India to allow for the establishment by foreign laws firms of local offices and for foreign lawyers to practice in India. There is also the need for mutual recognition of degrees that allows free movement of legal experts.

It would also be useful if lawyers had the ability to go for internships or secondments at law firms in the other country.

It has come to my knowledge that recently there have been some deliberations and that the Indian Department of Commerce has recommended a 2 phase road map for the liberalisation of the legal professions.

The first phase would include Domestic Regulatory Reforms with simultaneous opening up of International Arbitration and Mediation services in Foreign and International law.

The second phase would include opening up of non-litigious and non-representational services in Indian Law.

There is still strict opposition to FDI and third party ownership of law firms and reservations against Foreign Firms who have third party non-lawyer funding from entering the Indian Legal Market.

The other reservation is against Multi Disciplinary Practices (MDP) from entering the Market, this includes reservations against the Big Four accountancy firms (E&Y, PWC, Deloitte and KPMG) entering the legal profession in case MDP's are allowed.

The issue of reciprocal access for Indian Lawyers is to be clarified later.

An approval for the implementation of the LLP structure as well as permitting law firms to issue brochures, open websites, access bank finance as well as increase in professional indemnity limits has been agreed to in principle by representative bodies of the bar.

It would be useful and easier to push for the proposals that have already been agreed upon to be implemented. However it is also important that assertions are made for allowing FDI in law firms in India (not necessarily 100% but a certain percentage), for the establishment of Joint ventures, for reciprocal access for lawyers and an easier and less onerous accreditation process on both sides.

This may be difficult due to the resistance faced from the bar stemming from the general historical mindset of an average litigation lawyer who believes that his/her work would suffer if foreign lawyers/law firms are allowed to practice in India.

A collaborative approach based on professional gains, academic gain, sharing of judicial advancements and commonality of legal systems should therefore be undertaken by DFAT. The following actions are suggested for achieving the outcomes discussed above:

1. Liaise and engage with counterpart peak bodies and relevant parties (including Bar Council of India and the Bar Associations of major courts like Supreme Court of India and the various State Courts), law societies, government and regulators etc to lobby for the liberalisation of legal services market in India by establishing and expanding practice rights and by pursuing the removal of barriers to the entry of Australian lawyers.

2. Inclusion of services sector with focus on legal in the international trade missions visiting India. This may assist in establishing the links and reducing the barriers.
3. Liaise closely with Law Council of Australia, Law Institute of Victoria (and peak legal bodies in other States). The International Strategy of the Law Council of Australia has India as one of the priority markets. Share with them the notifications of incoming delegations and issues raised for discussion and also any opportunities for providing input in the negotiations for FTAs.
4. Engage with and draw upon the experts and professionals connected to these peak bodies and the legal community generally, who have relationships with counterparts in India to assist DFAT in liaising with the relevant bodies and authorities in India.
5. Liaise with universities to gain better understanding of how common academic interests can be used to push for greater liberalisation of the legal market in India. University of Melbourne is offering a new course that requires internship in India. Indian Universities and law firms may have similar interests and are therefore more likely to lobby for liberalisation.
6. Greater involvement of judiciary could also assist due to common academic interests. The judiciary may be open for greater exchange of information and dialogue and can persuade authorities for liberalisation.

I would be more than happy to assist in any way I can. I have family in the profession in India and the necessary relationships and I still have membership of the professional bodies in India. I am therefore in a position to facilitate any discussions that may be required or provide input where possible.