

**TRADE IN LEGAL SERVICES**

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**A CONSULTATION PAPER  
ON  
LEGAL SERVICES UNDER GATS**



**IN PREPARATION  
FOR THE ON-GOING SERVICES NEGOTIATIONS  
AT THE WTO**

**(Prepared by the Trade Policy Division, Department of Commerce, Govt of India)**

## **EXECUTIVE SUMMARY**

India is currently involved in comprehensive multilateral negotiations regarding trade in services. This discussion paper attempts to increase awareness of the main issues, challenges, and most importantly, opportunities that are relevant to the legal services sector. It also seeks to gather input regarding the kind of approach India should take and the types of goals the legal services sector would like to see achieved during these service negotiations. Comments provided in response to this document will assist the Indian government in its negotiations.

International trade in services between 149 Members of the World Trade Organization (WTO) is regulated by the General Agreement on Trade in Services (GATS). This Agreement was negotiated during the Uruguay Round of multilateral trade negotiations and covers all service sectors and all forms of trade in services. While the GATS is a government-to-government agreement, it is of direct relevance to firms. The GATS establishes a basic set of rules for world trade in services, a clear set of obligations for each Member country, and a legal structure for ensuring that those obligations are observed. This helps identify market openness and attempts to provide predictable market access.

Within the global economy, the significance of trade in services is hard to ignore. International trade in services currently amounts to well over two trillion US dollars, a sixth of total world trade. The service industries also account for a significant portion of the growth of the domestic economy and of job creation. In light of this increasing tradeability of services and the growing importance of service sectors to the economy, it is important to continue liberalizing trade in services and establish effective rules. Through the GATS negotiations, India hopes to secure better access to foreign service markets and higher levels of liberalization in service sectors. Professional services, including legal services, are an important part of GATS negotiations.

Lawyers supplying legal services abroad usually act as foreign legal consultants (FLC). Foreign legal consultants may provide advice in international law, the law of their home country or in the law of any third country for which they possess the required qualifications. Foreign lawyers are less likely to be involved in domestic law due to barriers such as qualification requirements, which are shaped along national lines.

This discussion paper attempts to generate a discussion on India's trade potential in legal services and to truly understand the situation of this sector, input from all stakeholders is necessary. Towards, this end, the following issues or questions relating to trade in Legal services may be considered for formulating comments.

1. Whether we are currently exporting enough legal services and what are the destinations of these service exports? Should we increase our trade in legal services so that Indian legal services professionals will get a pie of the US\$ 20 billion world trade in legal services annually?

2. What is the potential for the Indian lawyers if they want to expand their activities to get market access in other countries?
  2. (a) What are the area of potential for the kind of legal services in India with our globalization efforts? Are we in a position to meet these demands internally?
3. What are the constraints that Indian legal professionals are facing in providing their services to the WTO member countries of their interests? What are the most important methods by which our legal professionals want to reach out to their foreign clients?
4. In the future, which countries will be important export destinations for legal services? What type of legal services can be anticipated for exporting in the future?
5. Can our Legal professionals anticipate that method of delivering services internationally will change?
6. Do you think that partnering with foreign firms is an effective way to deliver services?
7. What do Legal Professionals consider as priority concerns with respect to the liberalization of trade in legal services?
  - i) "Buy-local" preferences, and /or 2) Investment limits or restrictions, and /or 3) Immigration/temporary entry restrictions, and /or 4) Limitations on the number of service providers in the market (i.e. quotas, exclusive rights, etc.), and/or 5) Non-recognition of professional credentials, and /or 6) Lack of transparency of local practising/licensing regime, and /or 7) Restrictions on access to government procurement projects , and /or 8) Subsidies and tax incentives, and/or, 9) Licensing requirements, and /or 10) Qualification requirements, and /or 11) Restriction on the use of company names, and/or 12) Language requirements, and/or 13) Residency/citizenship requirements, and /or 14) Restrictions on fee-setting, and /or 15) Unfair bidding practices, and / or 16) Currency controls
8. Whether it is imperative to first create a liberalized regime domestically for the Indian Lawyers / Advocates before considering any form of liberalization? This would in effect allow consolidation in the legal profession, which allows Indian Advocates to attain global standards and would allow them to compete with the best of the best.
9. Whether India should allow FLCs (Foreign Legal Consultant) or foreign firms in a phased manner, after domestic reforms are in place or not at all?

10. If yes, what should be the structure of their presence: a joint venture or a staged liberalisation?
11. What would be the areas in which foreign lawyers can advise, while strictly excluding court advocacy ?
12. What would be the role of the Bar Council s and that of the regulatory body in the home country of the foreign lawyer?
13. How would issue of liability and consumer welfare be handled incase involving foreign lawyers?
14. What should be a logical response to the various requests made on us at the WTO ( **Annex 3** ) , including in the ongoing plurilateral negotiations?
- 15. Are there certain areas where internationally liberalized market access in India will have a significant impact on Indian firms? **What will be this impact and how large will it be?****

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## **I. Introduction**

One of the key accomplishments of the last round of multilateral trade negotiations at the WTO was the negotiation of the General Agreement on Trade in Services (GATS). This Agreement resulted in improved rules for governing international trade in services. While much was accomplished during Uruguay round of negotiations on trade in services, there remains room for improvement, for expanding the coverage of commitments, and for eliminating trade restrictions. A new round of negotiations began with the objective of further progressive liberalization in trade in services since January 2000, seeking to expand existing commitments in trade in services.

Promoting trade liberalization in line with the GATS, in particular increased exports and more jobs is an objective of the Government. Increased access to international trade and investment opportunities for the service industries results not only in job creation, but also in the creation of opportunities for all businesses.

The GATS is not just a treaty between governments; it is first and foremost an instrument for the benefit of trade in general. Specifically, it increases opportunities for service companies wishing to export services or to invest and operate abroad. Department of Commerce has been consulting closely with the administrative departments / ministries, industry associations, regulatory bodies, stake holders to define India's objectives for the on-going Services negotiations under GATS.

**This document represents a step in the consultation process aimed at determining the negotiating position of the Indian *Legal Services* sector.** Legal Service has been classified as a professional service under the category of Business services as per the World Trade Organization's Classification list of *Services* Sector (W/120). Description of Legal services has been defined in UN CPC (United Nations Central Product Classification) *which* includes legal advisory and representation services and is as follows:

***Legal Services Definition*** (CPC 861) - This sector corresponds to the United Nations Central Product Classification (UN CPC) at the three-digit level. The definition includes:

**8611: Legal advisory and representation services in the different fields of law: ( 86111 - Legal advisory and representation services concerning criminal law) :-**

Legal advisory and representation services during the litigation process, and drafting services of legal documentation in relation to criminal law. Generally, this implies the defence of a client in front of a judicial body in a case of criminal offence. However, it can also consist of acting as a prosecutor in a case of criminal offence when private legal practitioners are hired on a fee basis by the government. Included are both the pleading of a case in court and out-of-court legal work. The latter comprises research and other work for the preparation of a criminal case (e.g. researching legal documentation, interviewing witnesses,

reviewing police and other reports), and the execution of post-litigation work, in relation to criminal law.

**8611: (86119 - Legal advisory and representation services in judicial procedures concerning other fields of law) :-**

Legal advisory and representation services during the litigation process, and drafting services of legal documentation in relation to law other than criminal law. Representation services generally consist of either acting as a prosecutor on behalf of the client, or defending the client from a prosecution. Included are both the pleading of a case in court, and out-of-court legal work. The latter comprises research and other work for the preparation of a case (e.g. researching legal documentation, interviewing witnesses, reviewing police and other reports), and the execution of post-litigation work, in relation to law other than criminal law.

**8612: (86120 - Legal advisory and representation services in statutory procedures of quasi-judicial tribunals, boards, etc.) :-**

Legal advisory and representation services during the litigation process, and drafting services of legal documentation in relation to statutory procedures. Generally, this implies the representation of a client in front of a statutory body (e.g. an administrative tribunal). Included are both the pleading of a case in front of authorized bodies other than judicial courts, and the related legal work. The latter comprises research and other work for the preparation of a non-judicial case (e.g. researching legal documentation, interviewing witnesses, reviewing reports), and the execution of post-litigation work.

**8613: (86130 - Legal documentation and certification services) :-**

Preparation, drawing up and certification services of legal documents. The services generally comprise the provision of a number of related legal services including the provision of advice and the execution of various tasks necessary for the drawing up or certification of documents. Included are the drawing up of wills, marriage contracts, commercial contracts, business charters, etc.

**8619 (86190 - Other legal advisory and information services):-**

Advisory services to clients related to their legal rights and obligations and providing information on legal matters not elsewhere classified. Services such as escrow services and estate settlement services are included.

## II. Review of the General Agreement on Trade in Services (GATS)

### II.1 What is the GATS?

The General Agreement on Trade in Services (GATS), negotiated during the Uruguay Round of multilateral negotiations, is a multilateral, comprehensive framework of rules governing trade in services. It applies to all service sectors and all forms of trade in services, including investment. It comprises three parts: (i) the general framework of rules and obligations; (ii) individual schedules of commitments for each WTO Member, which specify, on a sector-by-sector basis, the conditions under which foreigners may supply services; and (iii) annexes and ministerial decisions.

The multilateral trading system, under which the GATS was negotiated, has existed for fifty years. Among the outcomes of the last round (Uruguay Round) of negotiations was the establishment of the World Trade Organization (WTO). This organization is responsible for overseeing the implementation of the various multilateral trade agreements and their dispute settlement mechanisms.

While the GATS is a government-to-government agreement, it is of direct relevance to firms because it lays down the framework of international rules within which firms operate around the globe. The GATS establishes a basic set of rules for world trade in services, a clear set of obligations for each Member country, and a legal structure (Schedule of Specific commitments) for ensuring that those obligations are observed. This allows firms to identify which markets are open to Foreign Service providers and to be sure that these markets will remain open in the future. In the event of a disagreement, the Agreement contains a dispute settlement mechanism through which Member countries can attempt to obtain the treatment to which they are entitled.

The GATS covers virtually every aspect of services trade, including:

- the majority of services which include 160 sub-sectors under 11 categories of services sectors as classified in the document no MTN.GNS/W/120 of the WTO.
- almost all the major world markets of 149 WTO members;
- the different means [ various modes of supply of services – (Mode 1- cross border supply, Mode 2 -consumption abroad, Mode 3 – Commercial presence and Mode 4- Movement of Natural persons)] by which a service can be supplied to a foreign market customer. Definitions of various Modes of services supplies are as follows:
  - **Cross-border supply (Mode 1)** - Trade takes place from the territory of one Member into that of another without movement of the service provider, e.g. legal plans sent by internet or wire or satellite etc.
  - **Consumption abroad (Mode 2)** - Services consumed or purchased by nationals of a Member in the territory of another Member where these services are supplied,

e.g. tourism, where the consumer travels to another country to consume the service.

- **Commercial presence (Mode 3)** - Any type of business or professional establishment, including branches and representative offices, e.g. direct investment in the host country.
- **Movement of a natural person (Mode 4)** - Temporary presence of natural persons in a market for the purpose of supplying services, e.g. a professional or employee of a service provider.

The GATS has become one of the key reference texts used by corporate planners seeking to exploit foreign opportunities.

## **II.2 To whom does the GATS apply?**

All 149 Members of the WTO must abide by the GATS. It covers over 95% of global trade in services.

## **II.3 What are the important obligations of the GATS?**

The most important obligations of the GATS include the following:

**Most-Favoured-Nation (MFN) Treatment.** A WTO Member cannot discriminate among foreign service providers by offering more favourable treatment to service providers of any one country. Members are permitted to maintain existing measures which contravene the MFN obligation, but any exceptions must be clearly stated in the Member's MFN exemption list.

**National Treatment:** In the services sectors listed in a Member's schedule of commitments, the Member cannot take measures to discriminate between domestic and foreign service providers; in other words, foreign firms must be treated as favourably as domestic firms. Any measure which violates the national treatment obligation must be clearly inscribed in the Member's schedule of commitments.

**Market Access:** In the sectors listed in a Member's schedule of commitments, the Member cannot take measures which are defined in the GATS as restricting market access. Examples of measures which would restrict market access include: quotas, economic needs tests, requirements for certain types of legal entities, and maximum foreign shareholding limits. Any measure which violates the market access obligation must be clearly inscribed in the Member's schedule of commitments.

**Domestic Regulation:** Members' regulations must be administered in a reasonable, objective and impartial manner. Qualifications and licensing requirements and technical standards must be based on objective and transparent criteria, and not more burdensome than necessary to ensure the quality of the service.

**Transparency :** Members shall make public all measures which pertain to the GATS. The WTO must be notified of any relevant changes to government policies, regulations or

administrative guidelines which significantly affect trade in services covered by the specific commitments under the Agreement. As well, Members must establish enquiry point and respond promptly to requests for information on their regulatory regimes.

In the event that a Member fails to carry out its obligations or specific commitments under the GATS, other Members have recourse to the WTO's dispute settlement mechanism.

#### **II.4 How does the GATS relate to the day-to-day business of supplying a service?**

The GATS covers all the major ways in which service suppliers serve their clients -- the so-called modes of supply. This means that countries have to say whether or not they allow:

- foreign firms to deal with clients in their market from across the border (i.e. to give legal advice electronically);
- their citizens to travel abroad to visit the supplier ( e.g a foreigner come to India to consume the services of a Indian lawyer of law firm) in order to consume a service;
- foreign service suppliers to establish an operation ( e.g law firm etc) in their market; or
- suppliers to enter the country in person ( e.g a lawyer) to do business.

As a result, firms know where they stand in foreign markets and in their dealings with foreign clients. If they encounter barriers related to these modes of supply, they can verify whether the GATS Member concerned has made legal commitments in this area and ask for the assistance of their government in resolving the issue. All Members have recourse to a dispute settlement process in case another Member does not conform to its obligations.

#### **II.5 The Bottom Line**

The GATS is a broad and comprehensive agreement which gives both guidance and enforceable guarantees to service suppliers who are seeking to supply services to foreign clients. When in doubt about their rights in a foreign market, or when seeking to clarify the opportunities open to them, the GATS should be a first point of reference for all service suppliers.

The GATS is primarily helpful to service exporters, but it also benefits others. Because it promotes trade and competition in services, business and consumer users of services have access to a broader spectrum of service suppliers and in more competitive prices. All citizens stand to benefit from the new job opportunities and growth which can result from increased trade in services.

Department of Commerce conducts consultations with the concerned departments / ministries, industry associations, Professional bodies and other stakeholders on a regular

basis wherein they have an opportunity to identify the foreign trade restrictions they would like to see alleviated.

### **III. The Importance of Trade in Services**

#### **III.1 The International Picture**

Within the global economy, the significance of trade in services is hard to ignore. In 2005, world trade in commercial services, measured on a balance of payments basis, accounted for approximately one-fifth of total global exports (US\$10.0 trillion). Consequently, trade in commercial services are currently valued at more than US\$ 2.50 trillion worldwide.

However, commercial potential extends significantly beyond simple cross-border flows of services. It is estimated that trade in services through commercial presence could be at least as large as cross-border trade - that means that the balance of payments figures may only account for half the actual trade in services. Several groups argue that services account for approximately 60% of the world's economic output, or more than US\$14 trillion in economic activity which could be within the reach of international competition. As per statistical approximation of the WTO, services supplies in various Modes i.e cross border supply (Mode 1), consumption abroad ( Mode -2) , commercial presence (Mode 3) and movement of natural persons( Mode 4) account for 35%, 10-15%, 50%, and 1-2% respectively of the total commercial services flows in the world.

#### **III.2 India's Position**

The service industries already play an important role in the Indian economy and are growing faster than other components of India's Gross Domestic Product (GDP). Services account for 54.1 per cent of GDP of India in 2005-06, is a sector of critical interest in India. In 2004, while India's share in world merchandise exports was 0.8 per cent, the corresponding share in world commercial services was 1.9 per cent. India's services exports grew by 226% from \$17.5 billion in 2000-01 to US\$39.6 billion in 2004-05. India's imports in commercial services has also grown from US\$ 20 billion in 2000-01 to US\$ 40.9 billion in 2004-05 which is 2% of the total imports of world trade (US\$2095 billion) in commercial services. In 2004-05 India ranked 16<sup>th</sup> in both as a services exporter and importer of the world trade in commercial services.

With regard to the future of services industry in India, NASSCOM / Mckinsey Report of 2005 has visualized that India's IT exports will grow to US\$60 billion by 2008 and in consequence of that indirect and indirect employment will grow by 4 million.

Firms in the service sectors, both large firms and SME's (small and medium enterprises) are more likely to be engaged in exports than their goods producing counterparts.

In light of the increasing tradability of services and the growing importance of the service industries to the economy, the prospects for more rapid growth in services trade

are excellent. India clearly has the necessary expertise and capabilities to succeed in selling its services in rapidly growing international markets. In particular, Indian lawyers, with their advantage of the English language and the Common Law tradition, should be able to capitalize on this growing trend of trade in services.

## **IV. The Legal Services Profession/Industry**

### **IV.1 How are legal services defined?**

Legal services refer to legal advisory and representation services, legal or juridical procedures, and the drawing up of legal instruments or documentation. The work of drawing up legal instruments or documentation covers a group of related services in the form of fees for trademark and patent registration and maintenance fees on patents. Lawyers provide legal advice, represent clients, prepare contracts and other legal documents, and may act as executor or trustees in estate matters. They often specialize in specific areas of law such as criminal, corporate, real estate and labour law.

### **IV.2 The International Market:**

Legal firms have taken on a more international orientation in recent years in order to keep pace with the growing global needs of their clientele. Most of the demand for foreign legal services comes from businesses and organizations involved in international trade. Business law and international law are therefore the sectors most affected by international trade in legal services, although the possibility of entry of foreign service suppliers in more traditional sectors of domestic law should not be discounted as the sector becomes increasingly integrated and competitive.

Lawyers supplying legal services abroad usually act as foreign legal consultants (FLC). Foreign legal consultants may provide advice in international law, the law of their home country or in the law of any third country for which they possess the required qualifications. Domestic law still plays a marginal role in legal services trade due to barriers such as qualification requirements, which are shaped along national lines.

The legal services sector has experienced a steady and continuous growth in the past decades as a consequence of the growth in international trade and the emergence of new fields of practice, particularly in the area of business law. Issues such as corporate restructuring, privatization, cross-border mergers and acquisitions, intellectual property rights, new financial instruments, and competition law have recently generated an increasing demand for more sophisticated legal services.

Unfortunately, there is no comprehensive disaggregated data on the size of international legal services since these services are often bundled with other professional services or business services. It has been estimated that in the European Union, the number of professional suppliers of legal services grew on average by over 20% between 1989 and 1993. In the United States, the size of the legal profession is estimated to have tripled between 1973 and 1993.

The number of lawyers and law firms varies among countries according to the size of the economy, the level of economic development, and the structure of the legal profession. In the mid 1990s, the number of lawyers in the United States reached 800,000, compared to 500,000 in the European Union and 19,000 in Japan. These numbers have increased manifold by 2005. In US 100 top firms revenues in 2003 account for 60% of total revenue for the profession. **The global legal services market has been estimated approximately at US\$20 billion annually.**

In the vast majority of countries the legal profession is practised by individual professionals or small firms, while large firms are still a phenomenon limited to a small number of Anglo-Saxon/ common law countries. Top law firms are mostly from United States, UK, Canada, France, Germany etc. though India has a very small representation.

Most trade in legal services takes place across borders or via the temporary stay of natural persons travelling as individual professionals or as employees/partners of a foreign established law firm. Affiliate trade of legal services is still limited as suppliers often find the costs and the difficulties associated with establishing a commercial presence too high.

Cross-border trade in legal services consists of the transmission of legal documents or advice by mail or via telecommunication devices. Technological developments in the telecommunications sector are creating more efficient and accessible ways by which cross-border trade in legal services can take place. Trade in legal services is expected to benefit from the growth of the Internet and of electronic commerce since the majority of legal services (with some exceptions, such as court appearances) can be delivered electronically.

#### **IV.3 The state of play in India and Indian Market:**

The Advocates Act, 1961 and the Bar Council of India Rules, 1975 are the rules which regulate the legal services sector in India and the Bar Council constituted under Advocates Act acts as the final regulating body. India has the world's second largest legal profession with more than 600,000 lawyers. According to some data available, the Indian commercial law practice is approximately in the order of Rs. 600 - 650 crore per annum. The service providers are individual lawyers, small or family based firms. In India, Legal services can be provided only by natural persons who are citizens of India, who are on the rolls of the advocates in the states where the service is being provided. The service provider can either be a sole proprietorship or a partnership firm consisting of persons similarly qualifies to practice law. In order to be eligible for enrolment as an advocate, a candidate has to be citizen of the country or a country which allows Indian nationals to practice as per the reciprocity treatment, has to hold a degree in law from an institution/university recognized by the Bar Council of India (BCI) and be at least twenty one years of age.

Cross border trade and the temporary movement of natural persons are the two most important modes of supply of legal services under GATS.

India has not undertaken any commitment in the legal services sector during the Uruguay Round of negotiations. It has neither offered for any commitments in legal services in its Initial Offer nor in its Revised Offer submitted at the WTO during the course of on-going Services negotiations under GATS. FDI is not permitted in this sector. International law firms are not allowed to establish offices in India. Moreover, Indian advocates are not permitted to enter into profit sharing arrangements with the persons other than Indian advocates. Foreign Law firms are not permitted to open offices in India as per the Advocates Act 1961 and they are also prohibited from giving any legal advice that could constitute practicing of Indian law.

There is a strong sentiment amongst various members of the profession that permitting foreign law firms even in a limited way would lead to the shrinking of the opportunities available to domestic lawyers. The Bar Council of India, the apex body representing the interest of Indian Advocates has on various occasions expressed its apprehensions in allowing foreign lawyers/law firms into India.

It is important that we look into the immense trade potential of the Indian legal profession, but without compromising on the interests of Indian Advocates. At the same time, it is a reality that the Indian economy is fast integrating into the global economy. While a number of foreign companies are investing in India, Indian companies are also acquiring foreign companies on a regular basis. This requires capacity building of Indian lawyers and Indian law firms in areas such as international law, third country law, patents law etc. so that they can not only advise the foreign companies in India, but also support Indian companies acquiring assets abroad.

Lawyers have played a crucial role in helping formulate policy to enhance foreign investment and to create a favorable environment for foreign investors. Despite limiting circumstances, Indian law firms in particular over the last few years, have displayed a youthful dynamism by re-inventing themselves to provide cutting edge legal advice. Leading firms in different jurisdictions have worked with Indian lawyers/law firms, who have several cross-country transactions in the fields of international commercial and financial law to their credit.

Expansion into the international market will not go unimpeded. Indian lawyers will continue to face competitive challenges from existing global players, principally the internationally focussed legal practices operating from the United States, Canada, the United Kingdom, France, Germany and Spain.

#### **IV.4 Domestic Restrictions on Indian lawyers / firms:**

Development of legal profession in India has been restricted in India on account of the number of impediments in the current regulatory system which hinders Indian law firms from competing effectively against foreign firms. Some of the current restrictions, which severely limit the scope of growth in the legal profession, are:

- i) Partnerships are the only permitted model of practice for law firms in India.

- ii) Further modes of practice such as limited liability partnerships or Limited Liability Corporation are not permitted.
- iii) Limitation on the number of partners to 20. This limits the growth and size of Indian law firms.
- iv) Bar on advertising even having entries in law directories.
- v) Practice of law is treated as a profession and not an industry resulting in lack of finance for lawyers.
- vi) Ban on advertising.
- vii) Multidisciplinary practicing firms not allowed

Having functioned in such a limiting framework for the past fifty-years, the Indian legal profession is today ill-equipped to compete on par with international lawyers, who have grown their practices in liberalized regimes and have vast resources at their disposal. It is further to be noted that there are only a few firms in India having the expertise to handle commercial work for multinationals.

## **V. REGULATORY STRUCTURE AND RELEVANT TRADE LIBERALIZATIONS**

Legal services belong to the group of "accredited" professional services. Lawyers often require a licence to practice. Licensing requirements may include qualification, establishment or residency requirements, absence of a criminal record, the taking of an oath, subscription of a professional indemnity insurance, etc. Professional organizations of lawyers exist in most countries and membership in these organizations is often mandatory.

Typical market access limitations in the legal sector include: restrictions on the movement of professional, managerial and technical personnel, and restrictions on the form of incorporation. Although lawyers engaging in advisory services in international and home/third country law (foreign legal consultants) are less likely to be subject to nationality requirements, general nationality requirements for all legal services may still restrict foreign legal consultants. Limitations on the form of incorporation are still very common in the legal services sector. Several countries prohibit incorporation, while others allow only selected forms of incorporation, but these restrictions are applied equally to foreign and domestic practitioners. Restrictions on foreign equity specific to legal services are not very common although general investment restrictions still apply to legal services.

Important national treatment limitations include: nationality requirements; restrictions on partnership with local professionals; restrictions on the hiring of local professionals; restrictions on the use of international and foreign firm names; residency requirements; and general discrimination in the licensing process. Nationality requirements in this sector are often based on the notion that lawyers provide a "public function." Requirements to partner with or to hire locally licensed professionals prevent law firms acting as foreign legal consultants from expanding into the fields of court representation and host country law.

Qualification requirements often represent an insurmountable barrier to trade in legal services, especially for the practice of host country law. Legal education differs from country to country and in some cases (like India) within the same country. In some instances, these differences are so significant that regulators require foreign qualified lawyers to re-qualify in order to be able to practice.

In the fields of international law and home/third country law, qualification requirements constitute lower barriers to trade than in the field of host country law. Foreign legal consultants usually seek access in fields of law for which they are already qualified. Foreign legal consultants are currently in the forefront of liberalization in the legal services sector. However, even in the absence of serious qualification requirement barriers, foreign legal consultants still face important regulatory obstacles with respect to licensing requirements. Indeed, though foreign legal consultants encounter few barriers when providing services across borders, their domestic establishment is never the less regulated in most countries.

## **V.1 ANALYSIS OF THE GATS COMMITMENTS RELATED TO LEGAL SERVICES**

During the Uruguay Round of trade negotiations, a working group on professional services was created to discuss the applicability to the professional services sector of the basic concepts developed for the services agreement. It was agreed that there seemed to be no need for a specific annex dealing with legal services. However, at the conclusion of the Uruguay Round it was felt that work remained to be done on the domestic regulation of professional services, including legal services. Domestic regulations, such as qualification standards, were deemed to constitute effective barriers to free trade in legal services. As a result, the Working Party on Professional Services (WPPS) was established to contribute to the development of additional rules related to the domestic regulation of professional services. WPPS has adopted disciplines on 'Accountancy Sector' in February, 1998. Negotiations / Consultations are going on in Working Party on Domestic Regulations (WPDR) of the WTO to formulate a disciplines based on the disciplines on 'accountancy sector' which would be applicable across all other professional sectors including legal services.

In the WTO classification, legal services are sub-divided into: (i) legal advisory and representation services concerning criminal law; (ii) legal advisory and representation services in judicial procedures concerning other fields of law; (iii) legal advisory and representation services in statutory procedures of quasi-judicial tribunals, boards, etc.; (iv) legal documentation and certification services; and (v) other legal and advisory information. However, the distinction between the various fields of law was not as relevant to Members scheduling commitments as the distinction between advice and representation in host country, home country, and international law. As a result, the GATS schedules distinguish between the following legal services: (a) host country law (advisory/representation); (b) home country law and/or third country law (advisory/representation); (c) international law (advisory/representation); (d) other legal documentation, certification, advisory, and information services.

The GATS covers all advisory and representation services in the various fields of law and in statutory procedures. This includes notarial services since they are supplied on a commercial basis. However, activities related to the administration of justice (judges, court clerks, public prosecutors, etc.) are effectively excluded from the scope of the GATS as in most countries it is considered a "service supplied in the exercise of governmental authority." Although several countries made commitments in legal services, many have identified restrictions. **A summary of the commitments taken by Members of the WTO is at Annex 1.**

## **V.2 Consideration of horizontal commitments:**

As mentioned earlier, all Members committed to the basic precepts of trade liberalization in services, including the Most-Favoured-Nation (MFN) Treatment. In addition, several members also agreed to some basic horizontal issues and restrictions. These consist of broad measures affecting investment, real estate transactions, government subsidies or taxation, and the temporary movement of natural persons. To assess the full extent of trade liberalization, horizontal restrictions have to be examined in conjunction with sector-specific commitments.

## **V.3 Consideration of the sector-specific commitments**

The remaining commitments are identified in the sector-specific schedule of each Member country. In the service sectors listed in their schedule, unless otherwise specified, Members agree to the basic national treatment and market access obligations of the GATS.

As a result of the Uruguay Round 58 countries made commitments in Legal Services sector. The countries that did not make commitments in legal services are not constrained by the GATS obligations related to national treatment or market access. **List of countries that have taken commitments in Legal services has been tabulated at Annex 2.**

During the Uruguay Round, out of the 58 countries, 23 made commitments in advisory host country law, 53 in advisory international law, 52 in advisory home country law, 5 in third country law, and 6 in other legal services (including legal documentation and certification services and other advisory and information services). In addition, several countries made commitments in legal representation services; 21 countries made this type of commitment in host country law, 18 in international law, and 18 in home country law. Countries with commitments in all three major types of law include Japan and the United States. Most EU countries made commitments only in international and home country law. India scheduled commitments in advisory international, home country and third country law.

Brunei Darussalam, Bulgaria, the Dominican Republic, and Singapore have MFN exemptions for legal services. Of these exemptions, one applies to all countries on the basis of reciprocity, while two others are based on case-by-case approval. The fourth exemption extends full national treatment for commercial presence and the presence of natural persons only to companies and citizens of countries with which preferential arrangements exist. Singapore agreed to keep the possibility of removing this exemption

under review. Costa Rica, Honduras, Panama, and Turkey have MFN exemptions for professional services. These exemptions maintain reciprocity as a condition for authorizations to exercise professional activities including legal services.

Commitments vary significantly between countries and regions. Several countries made commitments about foreign legal consultants, while far fewer made commitments about host country law. Several developing countries have made relatively liberal commitments in legal services, but the majority did not provide a schedule for legal services and, therefore, remain completely unbound.

It appears that many countries apply regimes in this sector that are more liberal than the regimes committed to in their schedule. In addition, some countries which have not scheduled specific commitments in legal services maintain rather liberal regimes.

#### **V.4 Limitations in General**

Although 58 countries made commitments in legal services, there were limitations to these commitments. The most common limitations to market access are restrictions on the type of legal entity. In most cases, Members have limited the choice of legal form to natural persons (sole proprietorships) or partnerships, excluding limited companies. Some countries have also scheduled nationality and citizenship limitations. In one country, consent of the bar association is required for establishment.

With regard to national treatment, the most prevalent restrictions are residency requirements. In three instances, Members have scheduled a requirement for all legal service suppliers (domestic and foreign) to be graduates of national universities; this restriction discriminates *de facto* between domestic and foreign service suppliers. Other scheduled national treatment limitations include: (i) recognition of foreign degrees only for nationals who have studies abroad; and (ii) the requirement for foreign lawyers to take an active part in the business in order to be able to maintain an interest in a local law firm.

Legal services, like other professional services, is a sector where regulatory barriers are rather high. Most measures are licensing and qualification requirements, which may constitute important barriers to trade in legal services. However, domestic regulatory requirements do not have to be listed in the schedule, unless they fall within the definition of market access or national treatment, but those measures affecting trade must still be administered in a reasonable, objective and impartial manner.

#### **V.5 Requests Made to India on Legal services at the WTO:**

Many member countries viz US, EC, Australia, Singapore, Japan, China, Switzerland, New Zealand and Brazil have requested India for taking commitment in Legal Services. These requests have also been reflected in the process of plurilateral requests which are mostly for FLC's in only corporate and international law. There is no such request to practice domestic law in Indian courts. These requests are only for their engagement in a consultative capacity. There are requests for commercial association

between foreign and local lawyers and firms on our terms and conditions. **List of requests made by member countries to India on legal services is at Annex 3. The prevalent regime for foreign lawyers in some of the Asian countries is at Annex 4.**

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## SUMMARY OF GATS COMMITMENTS RELATED TO LEGAL SERVICES

### LEGAL SERVICES SECTOR-SPECIFIC COMMITMENTS

This section outlines the sector-specific commitments and limitations to market access and national treatment established in individual country schedules. In total, 58 countries provided schedules for legal services but the level of commitment varies significantly by region and country. For reasons of presentation, the examination of sector-specific commitments is grouped by region and limited to India's major trading partners.

#### United States

(The terms of access provided by the United States in the GATS are not as liberal as those provided in the North American Free Trade Agreement).

- Legal Services: practise as or through a qualified U.S. lawyer (all states)
  - For market access, services must be supplied by a natural person.
  - For market access, an in-state office must be maintained for licensure in: the District of Columbia, Indiana, Michigan, Minnesota, Mississippi, New Jersey, Ohio, South Dakota and Tennessee.
  - For market access of commercial enterprises, partnership in law firms is limited to persons licenced as lawyers. U.S. citizenship is also required to practice before the U.S. Patent and Trademark Office.
  - For national treatment, in-state or U.S. residency is required for licensure in: Hawaii, Iowa, Kansas, Massachusetts, Michigan, Minnesota, Mississippi, Nebraska, New Jersey, New Hampshire, Oklahoma, Rhode Island, South Dakota, Vermont, Virginia, and Wyoming.
- *Legal Services: consultancy on law of jurisdiction where service supplier is qualified as a lawyer, excludes: (i) appearing in any court or before any magistrate or other judicial officer; (ii) preparing any instrument effecting the transfer or registration of title to U.S. real estate; (iii) preparing will or trust instrument effecting the disposition of any property located in the United States and owned by a resident thereof; and (iv) preparing any instrument in respect of marital or parental relations, rights or duties of U.S. residents.*
- Access varies significantly by state and only the practice of international law is relatively liberal. In most states, the practice of international law is permitted provided that the Foreign Legal Consultant (FLC) is competent or to the extent allowed by the country where the lawyer is registered.

- Market access for commercial presence and natural persons is unbound in: Alabama, Arizona, Arkansas, Colorado, Delaware, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming.
- Alaska, California, Connecticut, Columbia, Florida, Georgia, Hawaii, Illinois, Michigan, Minnesota, New Jersey, New York, Ohio, Oregon, Texas, and Washington have relatively few limitations on access. In Michigan, in-state residency is required for national treatment of commercial presence or the presence natural persons. Minnesota, New Jersey, New York, Ohio and Washington require an in-state office for market access of natural persons.
- Practice of third country law is permitted only in New Jersey, Alaska, Connecticut, New York, Oregon, Ohio, District of Columbia, and Hawaii, but the lawyer must be competent in that country's law or obtains legal advice from an attorney licenced in that jurisdiction.
- Practice of host-country law is permitted only in New Jersey, New York, Alaska, District of Columbia, Hawaii, Oregon, and Ohio, but the FLC must obtain legal advice from an attorney licenced to practice in that jurisdiction.
- Ohio does not permit partnerships with local lawyers.

### **South America**

(The terms of access provided by Chile in the GATS are not as liberal as those provided in the India-Chile Free Trade Agreement.)

- Members with GATS commitments in legal services: *Argentina, Chile, Colombia, Ecuador, Guyana, and Venezuela.*
- Argentina and Guyana made commitments in all forms of legal services; Chile made commitments concerning legal advice on matters of public international law and international commercial law; Columbia and Ecuador made commitments in legal advisory services in foreign legislation and international legislation (excluding advice and litigation in national law); Columbia also made commitments on legal advisory services related to mining; and Venezuela made commitments in legal advisory services (not representation services).
- With the exception of Chile, there are relatively few limitations on commitments made by these countries.
- Chile remain unbound with respect to cross-border supply and consumption abroad of legal services while the presence of natural persons is unbound except as indicated in the horizontal section. Foreign lawyers in Chile may be subject to assessment by the competent authorities. If the implementation of legal advice

involves appearing or fulfilling formal procedures before a Chilean court of justice or administrative body, then it must be done by a professional recognized in Chile.

- Venezuela remains unbound with respect to the cross-border supply of legal services.
- Columbia remains unbound with respect to commercial presence and the presence of natural persons for the delivery of legal services not related to mining.
- In Guyana, non- CARICOM (the Caribbean commonwealth) individuals are required to have their qualifications reviewed by the Council of Legal Education and undergo a six month period of training for national treatment.

### **Central America and the Caribbean**

- Members with GATS commitments in legal services: *Panama, Netherlands Antilles, Jamaica, El Salvador, Dominican Republic, Trinidad and Tobago, Antigua and Barbuda, Cuba, Barbados, and Aruba.*
- Cuba made commitments in legal services and other legal advisory and information services; Barbados made commitments in legal documentation and certification services; Aruba, Antigua and Barbuda, Jamaica, Netherlands Antilles, and Panama made commitments in legal advisory international law and home-country law; Dominican Republic and El Salvador made commitments in other legal advisory and information services; and Trinidad and Tobago made commitments in advisory international legal services.
- Cuba remains unbound with respect to the cross-border supply of legal services.
- Barbados remains unbound with respect to cross-border supply and consumption abroad; for market access only a natural person can practice law and an attorney has to be admitted to the local Bar and registered as required under the *Legal Profession Act*.
- In order to practise as a lawyer in El Salvador, the authorization of the Supreme Court of Justice is required. A foreigner wishing to practise as a lawyer in El Salvador must be a graduate of a Salvadorian university. To practise as a notary it is necessary to be Salvadorian.
- Aruba remains unbound with respect to the presence of natural persons for market access.
- The Dominican Republic remains unbound with respect to the presence of natural persons and national treatment of cross-border supply and consumption abroad.
- In Jamaica attorneys from other jurisdictions cannot practice without acceptance by the Jamaica Bar Association.

### **European Union**

- Members with GATS commitments in legal services: *Austria, Belgium, Denmark, Finland, France, Germany, Greece, Netherlands, Ireland, Italy, Luxembourg, Portugal, Spain, Sweden, and United Kingdom.*
- All EU countries made commitments related to legal advice on home country law and public international law. France and Luxemburg also made commitments in home country law.
- France and Portugal remain unbound for the drafting of legal documents.
- For national treatment, the marketing of legal advisory activities is restricted in Denmark to lawyers with a Danish licence to practice and law firms registered in Denmark. For national treatment, only lawyers holding a Danish licence to practise may sit on or be part of the management team of a Danish law firm.
- Market access of commercial enterprises in Germany is subject to acceptance into a Bar Association according to the *Federal Lawyers Act*, which requires establishment and is restricted to sole proprietorships or partnerships.
- For market access of natural persons, Germany and the United Kingdom require a university degree, professional qualifications, and three years of professional experience in the sector.
- Host country law and international law in France are open to members of the regulated legal and judicial professions.
- In Luxemburg, host country law and international law are subject to registration as "avocat" at the Luxemburg Bar.

#### **Other European Countries (including eastern Europe)**

- Members with GATS commitments in legal services: *Bulgaria, Czech Republic, Hungary, Iceland, Liechtenstein, Norway, Poland, Romania, Slovak Republic, Slovenia, and Switzerland.*
- The Czech Republic, Poland, Romania, the Slovak Republic, and Slovenia made commitments regarding legal services in general. Bulgaria, Liechtenstein, Iceland and Switzerland made commitments for advisory services in international and home country law, while Iceland also made commitments dealing with third-country law. Norway made commitments for legal advice on foreign (home country) law.
- For market access to Norway, it is necessary to take active part in the business and to have an interest (own shares and/or be a member of the board of the firm) in a firm of Norwegian advocates. Foreign advocates can give advice on foreign law and international law after application; however, there are some restrictions on co-operation with Norwegian advocates.
- Liechtenstein remains unbound with respect to commercial presence.

- In Iceland, members of the General Bar Association have an exclusive right to represent clients before all the major courts. For national treatment regarding legal advice on home country law, lawyers must pass an Icelandic law exam (or equivalent) and satisfy conditions of nationality or previous residency of at least one year when practising legal services as a member of the General Bar Association of Iceland.
- In Hungary, commercial presence should take the form of a representative office for market access.
- For activities involving national law in the Czech and Slovak Republics, acceptance in the local Bar Association or Chamber of Commercial Lawyers is required. For national treatment, barristers and commercial lawyers must be graduates of local universities.
- In Bulgaria, consultancy on law does not include (i) legal representation in front of jurisdiction (judicial or non-judicial) and administrative bodies as well as preparation of legal documents for such procedures; (ii) expression of legal options concerning laws other than the law of the jurisdiction where the service supplier is qualified as a lawyer; and (iii) out- of-court legal representation related to the rights and obligations of Bulgarian nationals.
- Swiss nationality is necessary to open up a practice in the canton of St. Gall.
- In Slovenia, commercial presence is restricted to sole proprietorships or partnerships. Only lawyers with a licence to practice may be partners. For activities involving national law, acceptance into the local Bar Association is required. Consent of the Bar Association is required for the establishment of any law firm. To be accepted into the Bar Association, lawyers have to have a certificate of knowledge of Slovenian law and must be proficient in the Slovenian language.
- In Poland, the establishment of commercial presence requires authorization and the Polish nationality.
- Romania remains unbound with respect to commercial presence and the presence of natural persons.

### **Middle East**

- Members with GATS commitments in legal services: *Turkey and Israel*.
- Turkey has made commitments in advisory services on foreign and international law and Israel has made commitments on legal services in general.
- For national treatment, representation in the Turkish courts is reserved to Turkish nationals.
- Commercial presence in Israel is restricted to Israeli residents or citizens.

## **Asia-Pacific**

- Members with GATS commitments in legal services: *Thailand, Malaysia, and Japan*.
- Thailand and Japan made commitments regarding legal services in general, whereas Malaysia made commitments for advisory and consultancy services relating only to home country laws, international law and offshore corporation laws of Malaysia.
- Thailand is unbound with respect to the cross-border supply of legal services and the presence of natural persons. For national treatment, foreign equity participation cannot exceed 49%.
- In Malaysia, market access for commercial presence can only be through a corporation incorporated in the Federal Territory of Labuan. Legal services shall only be supplied to offshore corporations established in the Federal Territory of Labuan.
- In Japan, a service supplier must be recognized as "Gaikoku-Ho-Jimu-Bengoshi" by the Minister of Justice and must register with the Japan Federation of Bar Associations. To receive recognition, the service supplier must (i) be qualified as a lawyer in the jurisdiction; (ii) be engaged as a lawyer for at least 5 years in the jurisdiction; (iii) not be subject to such conditions of disqualification in the jurisdiction which if applied to Bengoshi would disqualify the Bengoshi; (iv) undertake the profession in good faith; (v) possess plans, residence and financial basis to perform the functions properly and steadily; and (vi) possess the capability to compensate for damages caused to the client. For market access, the services must be supplied by a natural person and commercial presence is required. For consultancy on law of a jurisdiction where the service supplier is a qualified lawyer, the service supplier is required to stay in Japan not less than 18 days in a year for national treatment.

## **Africa**

- Members with GATS commitments in legal services: *South Africa, Sierra Leone, Rwanda, Lesotho, and Gambia*.
- Sierra Leone, Rwanda and Gambia made commitments regarding legal services in general. South Africa and Lesotho made commitments in domestic law and advisory services in foreign and international law.
- South Africa and Lesotho remain unbound with respect to cross-border supply and consumption abroad of legal services.
- In Sierra Leone, commercial presence must take the form of a partnership. Foreign ventures must be competitive and registered institutions in their own countries.

## **Australasia**

- Members with GATS commitments in legal services: *Australia, New Zealand, Papua New Guinea, and Solomon Islands.*
- Papua New Guinea made commitments regarding legal services in general. New Zealand made commitments regarding domestic legal services and advisory international law. Australia and the Solomon Islands made commitments regarding home country law and public international law.
- In Australia, natural persons practising foreign law may join a local law firm only as an employee or as a consultant and may not enter into partnership with or employ local lawyers. For national treatment in New South Wales or Victoria, at least one equity partner in a firm engaged in advising on foreign law matters must be a permanent resident; in Queensland, at least one equity partner in a foreign law firm must be a resident for a minimum period of 180 days per calendar year.
- In the Solomon Islands, commercial presence must take the form of a sole proprietorship or partnership.

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Dominican Republic							Other legal advisory and information services	MA: 1, 2, 3 NT: 3
Ecuador			X		X			All*
El Salvador							Other legal advisory and information services	All*
European Union	France and Luxembourg	France and Luxembourg	X		X			All*
Gambia	X	X	X	X	X	X		All*
Guyana	X	X	X	X	X	X		All*
Hungary					X			All*
Iceland			X		XF			All*
Israel	X	X	X	X	X	X		All*
Jamaica			X		X			All*
Japan	X	X	X	X	X	X	Services supplied by qualified patent attorneys and maritime procedure agents	All*
Lesotho	X	X	X		XF			3, 4*
Liechtenstein			X		X			1, 2, 4*
Malaysia	Domestic offshore corporate laws		X		X			1, 2, 4*; mode 3 limited to Labuan

Netherlands Antilles			X		X			All
New Zealand	X	X	X					All*
Norway					X			All*
Panama			X		X			All*
Papua New Guinea	X	X	X	X	X	X		All*
Poland	X	X	X	X	X	X		1, 2
Romania	X	X	X	X	X	X		1, 2
Rwanda	X	X	X	X	X	X		All
Sierra Leone	X	X	X	X	X	X		All*
Slovak Republic	X	X	X	X	X	X		All*
Slovenia	X	X	X	X	X	X		All*
Solomon Islands			X	X	X	X		All*
South Africa	X	X	X	X	X	X		3, 4*
Switzerland			X		X			All*
Thailand	X	X	X	X	X	X		2, 3
Trinidad and Tobago			X					All
Turkey			X		XF			All
United States	X	X	X	X	X	X		All*
Venezuela	X		X		X			2, 4*
<b>Total Number of</b>	<b>23</b>	<b>21</b>	<b>53</b>	<b>18</b>	<b>55</b>	<b>18</b>	<b>6</b>	

<b>Countries</b>								
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Modes: (1) Cross-border supply, (2) Consumption abroad, (3) Commercial presence, (4) Presence of natural persons.

X: indicates a partial or full market access and national treatment commitment.

XF: indicates a partial or full commitment in home and third country law.

MA: market access.

NT: national treatment.

\*: mode 4 unbound, except as indicated in the horizontal section.

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## Annex 3

### Legal Services – Requests to India and Offers/commitments made by select countries

S. No.	Country	Requests made to India	Offer/commitments made by Requesting Country
1.	<b>Australia</b>	<ul style="list-style-type: none"> <li>• Take commitments as per a model schedule prescribed by them, to allow foreign lawyers to enter and establish commercial presence to practice home country, third country and international law without having to meet the requirements to practice host country law.</li> <li>• Right of voluntary commercial association between Australian and local lawyers/law firms and right to use own name.</li> </ul>	Offered full commitments in Modes 1, 2 and 3 and Mode 4 as per horizontal section, for <b>Legal advisory and representational services in domestic law (host-country law)</b>
2.	<b>USA</b>	<ul style="list-style-type: none"> <li>• Full MA and NT commitments for lawyers and law firms in Modes 1,2, and 3.</li> <li>• Permit foreign law firms to establish enterprises with partnerships/JVs with local firms.</li> <li>• Permit foreign firms to hire local lawyers.</li> <li>• Take additional commitments to allow foreign legal consultants and licensed lawyers abiding by rules and regulations of host country, in accordance with a reference paper to be provided.</li> </ul>	Commitments taken for legal services <i>as</i> or through a qualified US lawyer consultancy on law of jurisdiction where service supplier is qualified as a lawyer. <p><b><u>Such consultancy excludes :</u></b></p> <ul style="list-style-type: none"> <li>i) appearing for a person other than himself or herself as attorney in any court, or before any magistrate or other judicial officer,</li> <li>ii) preparing any instrument effecting the transfer or registration of title to real estate located in the United States of America;</li> <li>iii) preparing any will or trust instrument effecting the disposition on death of any property located in the United States of America and owned by a resident thereof, or any instrument relating to the administration of a decedent's estate in the United States of America; and</li> <li>iv) preparing any instrument in respect of the marital or parental relations, rights or duties of a resident of the United States of America, or the custody or care of the children of such a resident.)</li> </ul>

			<p>Commitments in Mode 1 and 2 and 4 are subject to condition of service by natural persons, in-state licence and residency requirements in certain states.</p> <p>Mode 3 commitment is subject to conditions of services supplied by a natural person and that Partnership in law firms is limited to persons licensed as lawyers. NT limitation of residency for practice before the US Patent and Trademark Office</p> <p>In addition to the above general commitments, different states such as Alaska, Arizona, Connecticut, California, Columbia, Florida, Georgia, Hawaii, Illinois, Indiana, Louisiana, Massachusetts, Michigan Minnesota, Missouri, New Jersey, New Mexico, New York, North Carolina, Ohio, Oregon, Texas, Utah, and Washington have taken different Additional Commitments in respect of <b>Practice of international law, Practice of 3rd-country law, Practice of host-country law etc.</b></p>
3.	<b>EC</b>	<p>Commit, covering at least consultancy on public international law and on law of jurisdiction where supplier or its personnel are qualified lawyers. Take full commitments for MA &amp; NT for Modes 1, 2, and 3. In Mode 4, commit as per horizontal commitments.</p>	<p>Offered commitments in Modes 1, 2, 3 and 4 subject to requirement of EC nationality for the full admission to the Bar for practice of domestic law, allowing only legal representation services, reservation of Legal representation in criminal proceedings to sworn solicitors, nationality, quotas etc. scheduled by various member states.</p> <p>Several other state-wise limitations have been scheduled.</p>
4.	<b>Canada</b>	<b>No requests made to India</b>	<p>Offered commitments for <b>Foreign Legal Consultants (advisory services on foreign and public international law only)</b>, with full commitments in Modes 1, 2 and 4 as per horizontal section.</p> <p>Under Mode 3, requirement that Commercial presence must take the form of a sole proprietorship or partnership has been scheduled.</p>
5.	<b>New Zealand</b>	<ul style="list-style-type: none"> <li>Take full commitments for MA &amp; NT for Modes 1,2, and 3 and 4 as per horizontal commitments for Legal Services, including patent agents and attorney's services. (Patent agents and attorney services also include filing</li> </ul>	<p>Commitments offered for <b>Domestic Law, Foreign law and International law</b> with full commitments in Modes 1, 2 and 3 and Mode 4 as per horizontal section.</p>

		of applications for patents, designs and trademarks)	
6.	<b>Brazil</b>	<ul style="list-style-type: none"> <li>Take commitments for consultancy services on international law and on law of jurisdiction where service supplier or its personnel are qualified lawyers.</li> </ul>	<b>No commitments Offered</b>
7.	<b>Singapore</b>	<ul style="list-style-type: none"> <li>Take full MA &amp; NT commitments in Modes 1, 2, and 3 and under Mode 4, as per horizontal section.</li> </ul>	<b>No commitments Offered</b>
8.	<b>China</b>	<ul style="list-style-type: none"> <li>Take full MA and NT commitments in Modes 1 and 2. Under mode 4, take commitments as per horizontal section.</li> <li>Under Mode 3, take commitments to allow establishment of firms in the form of institution in India to provide legal services for the foreign enterprises and individuals who carry out commercial and trade activities, or stay in India, to provide consultations on international treaties and practices.</li> </ul>	<p>Taken commitments in <b>Legal Services (excluding Chinese law practice)</b>.</p> <p>Full commitments in Modes 1 and 2, and as per horizontal section in Mode 4.</p> <p>Under Mode 3, commitments taken subject to condition that Foreign law firms can provide legal services only in the form of representative offices.</p> <p>NT limitation that all representatives shall be resident in China no less than six months each year and that the representative office shall not employ Chinese national registered lawyers have been scheduled.</p>
9.	<b>Switzerland</b>	Take full commitments in Modes 1, 2, 3 and under Mode 4, as per horizontal section, for consultancy on all fields of law.	<p>Commitments offered for <b>International commercial arbitration services, Legal advisory services, Mediation and extra-judicial conciliation services, Patent attorney services (includes trademarks)</b>.</p> <p>Full MA commitments in <b>Modes 1, 2, 3 and Mode 4</b> as per horizontal section. Certain NT limitation relating to permanent postal address in Switzerland, requirement of one year of professional experience etc. scheduled.</p>
10.	<b>Japan</b>	<ul style="list-style-type: none"> <li>Abolish nationality requirement for obtaining qualification as lawyer, if it exists.</li> <li>Take commitments for supply of legal services by foreign lawyer on home</li> </ul>	<p>Commitments offered for Legal services supplied by a lawyer qualified as "Bengoshi" under Japanese law.</p> <p><b>Under Mode 1 and 2</b>, commitments offered subject to the condition that services must be supplied by a natural person or by a Legal Profession Corporation and commercial presence requirement</p>

		<p>country law</p> <ul style="list-style-type: none"> <li>• Requirement of minimum practicing experience should not exceed 3 years in total and should not require 3 consecutive years of experience.</li> <li>• Additional commitments to permit legal services on international law and third country law, with condition that they obtain written legal advice from an attorney qualified in that jurisdiction.</li> </ul>	<p><b>Under Mode 3</b>, commitments offered are subject to the condition that services must be supplied by a natural person or by a Legal Profession Corporation</p> <p>For <b>Legal advisory services</b> which does not include legal representational services ; expression of legal opinions concerning laws other than laws of the jurisdiction where the service supplier is qualified as a lawyer etc.</p> <p>Commitments in Mode 1 are subject to commercial presence and stay duration of 180 days.</p> <p>Mode 2 full commitments. Mode 3 condition of service being supplied by a natural person.</p> <p>Commitments also offered for Legal services supplied by other judicial personnel qualified as "Shiho-Shoshi", "Gyosei-Shoshi", etc. under Japanese law in various areas.</p>
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**THE REGIME OF FOREIGN LAWYERS OF SOME COUNTRIES IN ASIA**

In brief, following are the regime of foreign lawyers in some countries of Asia.

**China**

- Foreign law firms can provide legal services in China only in the form of representative offices
- The representatives of the representative office are required to be practitioner lawyers have practiced for not less than two years outside of China (a chief representative requires to have practiced for not less than three years outside China).
- Foreign representative offices and their representative offices are only allowed to conduct a limited number of activities, *which do not encompass Chinese legal affairs*:

**Indonesia**

- Foreign law firms are not permitted to practice in their own name and are required to work with a local law firm.
- Indonesian law allows only Indonesian nationals who have graduated from an Indonesian legal facility or other recognized institution to join the local bar and practice law.

**Singapore**

- Foreign lawyers are prohibited from practicing Singapore law. A foreign lawyer can practice foreign law in Singapore, including his or her home country law, a third-country law, or international law, without re-qualifying
- However, foreign lawyers are free to constitute an LLP to practice foreign law subject to the written approval of the Attorney-General's office.
- A foreign law firm cannot employ a Singapore qualified lawyer to practice Singapore law or hold shares of any kind in a Singapore law firm.
- Also, foreign law firms can only provide legal services in relation to Singapore law through a Joint Law Venture (“**JLV**”) or Formal Law Alliance (“**FLA**”) with a Singapore law firm, subject to a series of conditions and requirements

## **Malaysia**

- Foreign lawyers are currently not permitted to practice in Malaysia.
- A new draft legislation towards liberalizing the legal services sector proposes that foreign law firms will be allowed to establish Joint Law Ventures (“**JLV**”) with Malaysian law firms.
- As per the draft legislation the Malaysian firm shall have at least 70% of the equity and voting rights in the JLV.
- Further, a JLV shall only be entitled to engage in ‘permitted practice areas’.

## **Japan**

- Japan has fully liberalized its legal services sector as of April 2005. However, it will be interesting to get an overview of the Specific Joint Enterprise [**SJE**] model, which was previously the only vehicle for a foreign lawyer to establish a practice in partnership with a Japanese lawyer.

It is evident from the above that countries that have opted to liberalise their legal services sector, have done so in a very gradual manner, whilst simultaneously providing for an equitable transition to a global playing field.

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