

India's corporate lawyers today are a reflection of the country itself – confident to the point of being brash, possessed of a strong work ethic, and above all, deeply ambitious. Part of this is due to the deals resulting from a surging economy – according to the IMF, India will be the fastest-growing major economy in 2018, with a growth rate of 7.4 percent that rises to 7.8 percent in 2019. According to EY, the country witnessed 1,022 M&A transactions in 2017, a seven-year-high, led by domestic deals in sectors like telecom, retail and consumer products and technology. Likewise, 153 IPOs hit the Indian stock

market last year, raising \$11.6 billion, also according to EY. The strong deal flow has continued into 2018 as well.

But it's more than just the work that makes the Indian market so compelling. Even a decade or two ago, the market remained a virtual oligopoly, dominated by a small number of family-controlled firms who snapped up the best lawyers from the handful of good law schools in the country. Since then, the legal education system has been drastically overhauled, with law schools popping up around the country, producing a steady stream of high-class corporate attorneys. Many of these lawyers, a

number of whom were subsequently educated overseas, are unsatisfied by the traditional avenues offered by the older law firms, and are instead launching their own startups. Others are venturing into cutting-edge areas of law that have emerged because of fast-evolving technology. If there has ever been the best time to be a lawyer in India, it is now.

RISING LEGAL WORK

In the last couple of years, India has faced two major economic shocks. In November 2016, the government suddenly announced that 500-rupee

India today is possibly the most dynamic legal market in all of Asia. Part of it is due to the surging economy – corporate lawyers are benefiting from the ensuing deal flow – but the market itself is seeing a seismic shift as the old model of family-controlled law firms comes up against hungry young upstarts. While this is leading to increased choices for the clients, firms are realising that they need to be nimble to stay on top.

BY CORNELIA ZOU

ASLEEPING GI

(\$7.25) and 1000-rupee banknotes would be demonetised, causing a period of complete chaos. Then in July last year, the government introduced a Goods and Services Tax (GST) that was criticised for being implemented shabbily, again inconveniencing businesses. However, the country has since made a rapid recovery, as demonstrated by the increasing GDP growth.

Much of the transactional work done by large Indian corporate law firms is of three kinds: Domestic transactions involving large and mid-sized listed companies; the India portion of global or multi-jurisdictional transactions; and private equity deals for major private equity funds.

While inbound investment takes up a big chunk of the transactional work of Indian law firms, domestic transactions have also increased – especially related to consolidation of holdings.

“The key industries, apart from the usual ones such as information technology, are pharma, healthcare, automotive and real estate,” says Shivpriya

Nanda, joint managing partner at J. Sagar Associates (JSA).

Larger law firms seem to be getting more work providing clients with legal advice on their mid-size transactions.

“The larger corporate law firms continue to service all aspects – this includes advisory work as well as transactional,” Nanda says. “However, there seems to be a trend towards advising on larger volumes of mid-size deals – clients seem to be willing to engage larger law firms for quality legal advice even for transactions for mid-sized transactions.”

“More recently, there has been huge amount of work going on in the insolvency and distress space,” says Devidas Banerji, a partner at Khaitan & Co. “There’s also been a huge push from the government on in the digital space, such as the development of fintech and improvement of data privacy.”

GOVERNMENT REFORMS

In the past year, the Indian government has focused on reforms that would improve the ease of doing business in the

country. Amrit Mehta, associate partner at Majmudar & Partners, points out that several reporting and compliance requirements under Indian company, foreign exchange, employment and tax laws have been revised and reduced.

In terms of foreign direct investment (FDI), the Indian government has been taking various steps to make the entire process of doing business in the country simpler. For example, the Reserve Bank of India announced plans to introduce online reporting system for foreign investment very soon.

“Further, the foreign investment policy has also been liberalised and a majority of the sectors have been brought under the automatic route,” Mehta says. “These changes have impacted both transactional and general corporate work done by law firms and has to a significant extent increased the workflow.”

Yamini Dwarkanath, an independent legal consultant who has extensive in-house experience working as the GC of a mid-sized private equity and venture

ANT AWAKENS

capital firm specialised in FDI into Indian companies as well as domestic investment, says that she hopes to see some financial sectors that were earlier regulated becoming deregulated or less-regulated going forward. "That has been the general trend of the way the government thinks," she says. "The government wants to promote business and foreign investment into India, so it has been revisiting the regulations of this sector frequently and removing a lot of conditions."

Additionally, India's much-lauded Insolvency and Bankruptcy Code, which became effective in December 2016, was in full flow last year and has brought Indian law firms plenty of work. "In the last couple of years, there has been a huge amount of activities for all law firms- whether acting for the distressed borrower or the committee of creditors," Banerji says.

"2018 is the year of the Insolvency and Bankruptcy Code in India – this legislation has created a substantial work stream for both finance lawyers as well as litigators," Nanda says. "In addition, because each insolvency proceeding has multiple interested parties, all of whom require legal advice, law firms are being engaged on all aspects of the process."

India has a creditor acquisition model, which means that once an insolvency case is accepted, the debtor will lose possession of its company and the company will go to the hands of the creditor. The resolution applicant needs help from law firms that will look after them during the resolution process. Even if the resolution fails, and the company is liquidated, the liquidators will also require advice from law firms like how to conduct the liquidation process.

"The implementation of the Code resulted in the filing of more than 4,000 matters in National Company Law Tribunal. This was further fuelled by the Reserve Bank of India putting pressure on banks to initiate actions on non-performing big accounts. This whole change created challenges for legal on both the sides - filing as well as defending," says Atul Juvle, general counsel at Schindler India Private Limited.



"2018 is the year of the Insolvency and Bankruptcy Code in India – this legislation has created a substantial work stream for both finance lawyers as well as litigators. In addition, because each insolvency proceeding has multiple interested parties, all of whom require legal advice, law firms are being engaged on all aspects of the process."

— Shivpriya Nanda, J. Sagar Associates

Another key legal development of India is the Real Estate (Regulation and Development) Act (RERA) that came into force in mid-2017. It has many provisions for compliance as well as obligations.

"This is expected to considerably strengthen the financial discipline in the real estate sector, resulting into comfort for foreign investors in this sector," Juvle says. "It has created a lot of work and

demand for legal and compliance professionals in real estate sector. Because of this, FDI flow into the real estate sector has improved considerably."

Juvle also points out that the Central Goods and Services Act 2017 has changed the indirect taxation domain of India. "Timebound implementation created a huge demand-supply gap for legal and compliance professionals across the country. Legal work is expected to grow exponentially once the litigation in this area starts, creating a huge flow of work in two to five years' time."

A MARKET IN FLUX

In 2015, India's then-largest law firm, Amarchand Mangaldas, split into Shardul Amarchand Mangaldas and Cyril Amarchand Mangaldas in 2015 and caused quite the industry reshuffle in the country's legal market. The effect is being felt even today, as the two are among a slew of top-tier firms battling for top-notch legal talent.

"The split resulted in a major churn in the Indian law firm market and the legal market saw many lateral movements and team expansions taking place across different firms," Mehta says. "Mergers and consolidations have been limited to mid and small law firms, including a few start-up law firms."

"The larger Indian law firms have since been focusing on poaching and



Trademarking the iconic Taj Mahal Palace Hotel

The year 2017 was witness to yet another crowning jewel in the history of the Taj Mahal Palace hotel with the hotel becoming the first private building in India to be trademarked under the Trade Marks Act, 1999. With this feat the Taj Mahal Palace hotel has joined the ranks of iconic architectural marvels including the Empire State Building, the Chrysler Building and the Sydney Opera House, which have secured intellectual property rights in their distinctive building designs.

The Taj Mahal Palace hotel secured protection under the Trade Marks Act, 1999, as our Act also protects unconventional marks such as sound marks, color marks, shape marks, image marks including any graphical representation, which have acquired distinctiveness and are capable of distinguishing the good and services of one person from another. Section 2(m) of the Act defines a 'mark' as including a device, brand, heading, label, ticket, name, signature, word, letter, numeral, shape of goods, packaging or combination of colours thereof. Similarly, Section 2(z) (b) defines a trade mark as a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may



Pravin Anand

Managing Partner

E: pravin@anandandanand.com

include shape of goods, their packaging and combination of colours. Thus the scope of protection under the Trade Marks Act in India is wide.

The Indo-Saracenic arches and architraves of the hotel along with its exterior tower wing and the unique red-tiled Florentine gothic dome have become iconic and thus, have been granted protection under the Act. The protection has been granted in class 43 being services for food and drink; temporary accommodation, under the NICE classification for goods and services.

The protection granted to Indian Hotels Company Limited, restrains any person or

entity from making a commercial use of the image of the Taj Mahal Palace hotel in relation to goods and services including allied and cognate goods, in the class which registration has been granted. Thus, this registration in no manner precludes an individual or a tourist from clicking photos for private and non-commercial use.

The hotel with its glorious history has had many firsts-it was the first hotel in India to have electricity a licensed bar, an elevator, to be converted into a hospital during the World War-I. The hotel has also served distinguished dignitaries such as Albert Einstein, the Wright Brothers, Neil Armstrong, Beate's John Lenon, Barack Obama, Hillary Clinton- to name a few.

This unconventional trademark protection adds to this long list adding to the rich heritage of the Taj Mahal Palace Hotel.

Anand & Anand

First Channel Building Plot No. 17 A Sector 16 A, Film City, Noida 201301 (UP), India

T: +91 120 4059300

F: +91 120 4243056

E: email@anandandanand.com

W: www.anandandanand.com

expanding teams. There is room for a number of law firms with different business models to grow," Mehta adds "The last few years has seen several lateral and team movements. The larger law firms have been upping team sizes across levels to tap into the growing market and to combat the high attrition they face."

All that says, it's not that the larger is always better. "Clients prefer to only have mid to senior level lawyers staffed on their assignments and do not want to pay for junior lawyers who may be involved in research work," Mehta says. "In these circumstances, it is increasingly important for practically every law firm to understand its clients' preferences and modify their staffing arrangement, fees and work product accordingly."

Nanda agrees. "The number of lawyers in a law firm doesn't matter – what matters is if they are gainfully employed. The firms that are doing well are the ones who have the work to keep their attorneys occupied," she says.

"Some law firms which had hired indiscriminately are now feeling the pinch on productivity and are downsizing or right-sizing."

The past few years has also seen the emergence of a host of smaller law firms. These are usually led by younger lawyers who promise niche expertise and a more client-focused experience. That says, most of the current legal work, especially complicated cross-border transactions, is still concentrated in the large law firms.

"Smaller firms with more specialised practices are mushrooming up," Banerji says. "But I think larger firms are better placed because of their broader range of practice areas. Large transactions that involve various disciplines need a group of lawyers, and larger law firms have all the different verticals to keep the transaction within the firm which is difficult for smaller firms without those capabilities."

But how long will the traditional law firm model continue to dominate in India? Lawyers find it hard to predict.

"As far as models are concerned, the basic model of an Indian law firm (in its modern avatar) is still only 25-30 years old, therefore, while evolution is certain, the pace of such evolution is predictably slow," Nanda says.

She adds that there might be consolidation ahead in the law firm market. "Quality senior-level attorneys are tough to come by and firms are looking to reduce dead weight and improve efficiency," Nanda says.

TALENT WARS

The amount of young legal talent joining the profession is increasing alongside the growing number of law schools in India as compared to five years ago, leading many to believe that, at some stage, there might be too many lawyers.

"Considering influx of students in college, I feel that employment market may reach stagnation stage at entry or junior level, in the immediate future," Juvle says.

Banerji is more optimistic about the emerging legal talent in India.

“The level of talent available in India now – especially those that are fresh out of law school - is excellent,” Banerji says. “The legal market has broadened. Fresh graduates do not necessarily need to apply to law firms, as there are a large number of banks, private equity firms, and mid-to-large-sized companies that require in-house legal teams, so there’s a huge opportunity on that side as well. And there are a number of people who want to go into litigation as well.”

On the in-house side, the dynamic changes on the regulatory front have also posed a challenge for companies to retain or hire lawyers.

“Tremendous opportunities at middle level makes retention of lawyers, which is one of the important objectives for a GC,” Juvle says. “Growing economy, sweeping changes in regulatory domains and shortage of experienced professionals, are the main reasons for the significant movement of talent laterally. This is expected to grow for some more time.”

RELATIONSHIPS MATTER

Compared to other jurisdictions, India’s legal market is a lot more relationship-driven. Many companies have worked with the same law firms for decades, and forged a very strong bond with them.

“Law firms that have been working with a client over a period of time have a huge advantage, because they know what the priorities of the client are, and how they think - there is a synergy between them,” Dwarkanath says. “This relationship can also be built and developed with new teams given the time and commitment on both sides. However, the hourly billing system followed by law firms poses a challenge to clients like us in my sector.”

In terms of work, law firms can usually deliver the desired service to their clients. But for cost-sensitive companies, the large external legal fees can sometimes be a big issue.

“In my previous company, we were more sensitive to costs,” Dwarkanath says. “The one challenge we had with law firms is that the better ones liked

“The level of talent available in India now – especially those that are fresh out of law school - is excellent. The legal market has broadened. Fresh graduates do not necessarily need to apply to law firms, as there are a large number of banks, private equity firms, and mid-to-large-sized companies that require in-house legal teams, so there’s a huge opportunity on that side as well. And there are a number of people who want to go into litigation as well.”

— **Devidas Banerji, Khaitan & Co.**

to bill on an hourly basis. As a result, it would become quite expensive for us as transactions could go on for one or two months.”

“Unfortunately, law firms have been unable to break out of that mould. Maybe a couple of their clients will pay them on an hourly basis, but a lot of companies, like ours, will always ask for a fixed quote,” she adds.

“However, law firms have also faced increased resistance an hourly-fee model and since then have been working on fixed fee structures. These are again, not standardised and is a product of the type of work at hand.”

Unsurprisingly, law firms also feel like they have been facing fee pressures from clients in the last five years.

“Most clients prefer to work on fixed fee quotes or at least a fee estimate, even if hourly rates are agreed upon,” Mehta says. “Also, clients want to cut costs on due diligence work, regulatory advice and filings, which are all time-consuming from a resource standpoint.”

“Amidst fee pressures from clients, all law firms regardless of their size are having a tough time retaining clients and maintaining standards. Moreover, in the last few years, undercutting fees simply to get a mandate has been a significant trend adopted by few large Indian law firms,” he adds.

“Clients increasingly expect more ‘bang for their buck’ – ensuring that the client believes that he/she has received legal services commensurate to the fees paid remains the biggest challenge,” notes Nanda.

Lawyers say that as a result, billing structures are becoming more flexible.

“Charging by hourly rate is one option, but there are also other fee structures law firms are coming up with, whether it be a fixed cost or milestone payments,” Banerji says. “We’re quite flexible when it comes to meeting clients’ needs, but sometimes as the deal is unfolding, it’s hard to meaningfully assess how much time it would entail. Then the lawyers have to be mindful of how much time they’re spending on the case.”

Besides cost and competence, in-house counsel also seek the following from law firms: Partner involvement, good accessibility, quick turnaround time and a strong knowledge of the client’s business.

“Whether a lot of the standard documents will make sense to you or not depends on how well you know the sector,” Dwarkanath says. “A firm has to have the maturity to be able to assess the actual risks within the documents and not make every small thing a big legal stand-off between the two sides.”

Juvle adds that two sides need to work together to ensure successful transactions.

“We work closely with corporate law firms for crucial, sensitive and high-value matters. As both sides have tremendous professional pressures as well as opportunities, they need to be both understanding and accommodating” Juvle says. “We trust the law firm to provide time-bound intelligent creative solutions. This requires not only good expertise and knowledge but also genuine involvement in the matter for finding creative solutions.”