

International Legal Services Advisory Council
(ILSAC)

Submission on Legal Services

to the

Department of Foreign Affairs and Trade

in respect of

Australia-India Free Trade Agreement
Feasibility Study

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AUSTRALIA-INDIA FTA FEASIBILITY STUDY

SUBMISSION ON LEGAL SERVICES

Executive Summary

India is the world's second fastest growing large economy and Australia's fastest growing major trading partner. Australia's goods and services exports to India rose at an annual average of more than 30 per cent during the past five years¹. India is now Australia's 9th largest trading partner and Australia is India's 10th largest trading partner.

The rapid and sustained growth of the Indian economy has increased demand for lawyers with international and cross-border commercial legal services experience to service the needs of foreign investors, multinationals and Indian exporters. The availability of commercial legal services spanning the laws of multiple jurisdictions (fully integrated legal services) contributes to the security and predictability of the local business environment and is a catalyst for foreign investment.

It is in this area of fully integrated commercial legal services that Australian lawyers seek a right to practise. That is, a right to provide commercial legal advisory services to corporate clients and financial institutions, through a right to establish a local presence and enter into voluntary commercial associations with local lawyers/law firms or employ local lawyers.

The vast majority of India's one million lawyers provide *consumer* services, typically in areas such as family law, wills and personal injury. Australian lawyers do not seek to practise in these areas, nor do they seek a right of appearance before courts.

The legal services market in India is currently closed to foreign lawyers, even for the practise of foreign law. The regulatory body, the Bar Council of India, is strongly opposed to attempts to liberalise the market. While the Indian government has shown willingness to consider opening the market to foreign lawyers, protectionist elements appear to be heavily influenced by:

- i) a few prominent Indian firms currently benefiting from dominating the capture of trans-national commercial work through informal arrangements with foreign law firms, and

¹ *Australia and India – Natural Partners* (20 May 2008) speech by the Hon Simon Crean MP, Minister for Trade, to the Australia-India Joint Business Council.

- ii) the close to a million domestic lawyers who have an unfounded fear of foreign lawyers encroaching into their areas of practice.

The barriers to entry by Australian firms can be summarised as:

- Strong opposition from significant stakeholders including the Bar Council of India and Indian law firms who anticipate facing competition once the market is opened to foreign firms
- The Bar Council of India not recognising foreign and domestic law as distinct categories of law. This results in an inability to recognise that foreign lawyers will provide legal services that are different to the domestic *consumer* legal services provided by the vast majority of India's legal practitioners
- The fact that (unlike Australia) nearly all Indian lawyers work as advocates on an ongoing basis throughout their careers, making it virtually impossible for them to accept that foreign lawyers are not interested in representing clients before courts. This converts to an unfounded fear amongst the local profession of a loss of work to foreign lawyers, and
- Prohibitions on advertising and restrictions on the legal form of law firms, including prohibiting incorporation and limiting partnership size to 20.

These issues are manageable and Indian authorities should be encouraged to consider legal services regulatory concessions to Australia, perhaps on a progressive, phased-in basis, which could be modified in its impact before any consideration is given to extension to other countries.

Progressive liberalisation has produced substantial benefits for Australian and foreign lawyers and law firms in Australia, including transparency of regulation, national treatment (non-discrimination between domestic and foreign lawyers), and minimal interference in the operation of law firms and legal practice, while maintaining high professional standards. Regulatory change has stimulated competitiveness and innovation. Australia's legal services sector and international trade in legal services have expanded. Australian lawyers are keenly recruited in overseas jurisdictions, particularly England, the US and Asia generating professional mobility and beneficial links back to the Australian legal sector.

The benefits to India's legal services sector could be expected to include innovation in the supply and delivery of commercial legal services, improved client responsiveness due to increased choice in legal services providers, cost efficiencies in the supply of legal services, and enhanced availability and standards of professional training. The presence of Australian law firms will also provide immediate opportunities for local lawyers and law firms to provide legal services, in

commercial association with Australian firms, to clients in other countries in the region, thus adding to the export of legal services from India.

India's regulations significantly restrict the expansion of India's domestic legal sector and, in particular, engagement in the global market. Australia's experience is that consumer protection, ethical standards and quality of service, together with safeguarding the rule of law, can be achieved through other more appropriate non-discriminatory regulatory regimes. If more liberal regulation is carefully implemented, opening the legal services market to Australian lawyers would have clear mutual benefits for Australia's and India's economies and legal services sectors. Expanding the market for legal & business advisory services will support India's growth, including in critical sectors such as infrastructure development, manufacturing, resources and business investment.

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1. International Legal Services Advisory Council (ILSAC)

The International Legal Services Advisory Council (ILSAC) is a part-time, voluntary advisory body established by the Australian Government to advise the Attorney-General and other Ministers on matters relating to Australia's international performance in legal and related services. It is chaired by the Hon Sir Laurence Street AC KCMG QC and has 20 senior members and representatives drawn from the private and public sectors. Detail of ILSAC's membership, function and activities are available at www.ilsac.gov.au.

2. What Australian lawyers seek in an FTA with India

Australian lawyers seek a right to provide fully integrated producer legal services in India that cover the laws of multiple jurisdictions. Australian law firms, following their clients to India, seek to provide commercial legal advisory services, including in matters of securities law, intellectual property rights and technology.² This would most effectively be achieved by permitting Australian lawyers to practise foreign law in India with a right to establish voluntary commercial associations with local law firms or to employ local lawyers. In this type of commercial association local lawyers would provide legal services in Indian law and foreign lawyers in foreign law. This type of system is essentially a limited licensing model where foreign lawyers are licensed to provide advisory services in respect of a limited body of law, ie foreign law.³

ILSAC encourages the adoption in India of the limited licensing system. Australian lawyers do not seek to practise host-country law, nor do they seek a right of appearance to represent clients before Indian courts. That is best undertaken by locally admitted lawyers.

The ability to form partnerships or other forms of integrated practice relationships between host-country and foreign legal practitioners is an important element of providing fully integrated and comprehensive trans-national legal services. It ensures that clients can obtain legal services from a common provider across different jurisdictions. A limited licensing scheme that does not provide for association between foreign and local legal practitioners would fail to achieve a framework that can efficiently service the needs of clients. A limited licensing scheme that lacks the ability to provide for association between foreign and host-country legal practitioners is, in effect, an unnecessary barrier to the provision of international legal services and a restriction on choice by the end users of commercial legal services – the business sector.

² Bruce Loudon, 'Firms seeking a wild safari are in for "jungle nightmare"' *The Australian* 23 May 2008, p 33.

³ Australian Government, Attorney-General's Department, 'International Legal Services Advisory Council Fifth Triennial Report' 2004-2007, 18.

3. The benefits to India of liberalisation of trade in legal services

3.1 Benefits for India's economy

The services driving India's economic growth have been those that are regulated on a more liberal basis, such as information technology, or those that are deregulated and opened to competition, such as telecommunications. The strict regulations in India's legal services sector and the limited legal services market size are likely to have a dampening effect on India's ongoing economic growth. Most of India's legal service providers are sole practitioners and there are relatively few firms with the capacity and expertise to service India's highly diversified and growing business sector. Permitting foreign lawyers and law firms a controlled presence in the country will help Indian businesses, both domestic and international, to compete with their peers. Just as opening the Indian banking and accounting industries have promoted economic growth, expanding the market for legal advisory services will assist India's growth in critical sectors such as infrastructure development, manufacturing, resources and business investment.

3.2 Benefits for India's legal services sector

Permitting Australian law firms to work in association with Indian law firms through a presence in India will have wide-ranging benefits to India's legal services sector, including:

- greater opportunities for specialisation by local lawyers, leading to the retention of India's best lawyers
- opportunities for Indian lawyers and law firms to work with Australian lawyers and law firms to provide legal services to clients in the region, particularly across South East Asia and China. This will assist the profession develop and engage in the export of legal services from India
- greater opportunities for local lawyers to gain wider expertise and experience
- greater opportunities for local practitioners to provide supporting or complementary services⁴
- greater opportunities for international commercial arbitration being conducted in the country
- immediate access to enhanced professional training, both in terms of increased availability and exposure to international best practice, including in practice management
- immediate access to an international client base and top-end electronic legal resources
- access to innovative approaches in the supply and delivery of commercial legal services, and
- improved client responsiveness due to increased choice in legal services providers and cost efficiencies in the supply of international legal services – particularly from firms with a form of integrated practice

⁴ World Trade Organization, Communication from Australia, 'Negotiating Proposal for Legal Services, Revision' S/CSS/W/67/Suppl.1/Rev.1, 10 July 2001, paragraph 6.

Indian law firms are as mature and business-savvy as any other, but, in the context of cross-border transactions, they can undoubtedly gain benefits from being formally aligned with counterpart law firms from abroad. Permitting Australian lawyers a presence in India provides immediate opportunities for local lawyers and law firms to provide legal services, in commercial association with Australian firms, to clients in other countries in the region. Local law firms working in commercial association with Australian law firms provides for the exchange of technology, skills, and knowledge. Permitting meaningful commercial association will not only provide access to new technology and innovations and expose Indian firms to international best practice, it would benefit both Australian and Indian law firms through increased cross-referral work and opportunities in third countries.

4. India's legal services sector

Australia and India share common law ancestry. Close similarities exist in some areas of law, for example, Indian laws relating to monopolies and restrictive trade practices, consumer protection and corporations draw to a considerable extent on Australian laws. However, India's legal profession is structured differently to Australia's dual system of advocates and solicitors. India's introduction of the Advocates Act 1961 officially abolished the dual system so the practice of law in India is restricted to advocates; though, remnants of the dual system have persisted in Kolkata and Mumbai. Admission as an advocate requires Indian citizenship.⁵

The Indian Advocates Act 1961 contains a reciprocity clause for admission, so that nationals of another country may be admitted as an advocate if duly qualified citizens of India are permitted to practise law in that other country. However, despite the reality that Indian lawyers and law firms may be admitted to practise and establish a presence in the legal services market in Australia, Australia is not considered to provide reciprocity. Even if the reciprocity clause was facilitated, Australian legal practitioners neither require nor seek admission as an advocate in India in order to practise in the limited area of advising clients on international commercial transactions.

Most of India's one million lawyers operate as sole practitioners, providing *consumer* services.⁶ The key commercial legal services markets are primarily based in Mumbai (Bombay), Bangalore, New Delhi, Kolkata (Calcutta), and Chennai (Madras). Mumbai is the largest commercial centre and is dominated by a few large, long established, and mainly family-owned law firms. The bulk of the work generated by the influx of investment and technology companies has gone to a small

⁵ Advocates Act 1961 (India) section 24(1)(a).

⁶ David Robinson, 'Slow Passage to India' *Chambers Client Report*, Winter 2007-08, p 21.

number of India's leading firms, either operating from New Delhi, Mumbai or Bangalore. However, some of the prominent Indian firms that benefit from dominating trans-national commercial work through their direct but informal links to foreign law firms seem to exert significant influence over the Bar Council of India in resisting attempts to liberalise the market.

The legal services market in India is closed to foreign lawyers. The Indian government is receptive to considering opening the market to foreign lawyers and easing restrictions on law firms in India. However, the regulating body, the Bar Council of India, is opposed to attempts to liberalise the market for foreign lawyers. In 2000 the Indian Law Commission produced a draft proposal to consider the limited opening of the market. Major protests by Indian lawyers followed. In 2007 the Indian Ministry of Law and Justice released a consultation paper proposing gradual liberalisation of the legal services sector. This was met with strong opposition. The BCI issued a press release on 13 March 2007 reiterating a previous resolution of the Council 'strongly opposing the entry of foreign lawyers and law firms',⁷

Foreign law firms are not permitted to establish offices in India⁸ and the BCI has refused to grant any foreign firm the right to practise. White and Case (US) was the first foreign firm to open in India as a liaison office in the mid 1990s on a licence issued by the Reserve Bank of India. Chadbourne & Parke Associates (US) and Ashurst Morris Crisp (UK) followed. However, in 1995 the three law firms were sued by a group of Indian lawyers, the Lawyers Collective, on allegations that the foreign firms were practising law without being registered with the Indian Bar. This matter remains unresolved in the Mumbai High Court⁹ and Ashurst Morris Crisp is the only foreign firm to maintain a liaison office in the country. It is staffed by one person.

5. Barriers to entry to the Indian legal services market

The barriers to entry by Australian firms can be summarised as:

- Strong opposition from significant stakeholders including the Bar Council of India and Indian law firms who anticipate facing competition once the market is opened to foreign firms
- The Bar Council of India not recognising foreign and domestic law as distinct categories of law. This results in an inability to recognise that foreign lawyers can provide legal services that are different to domestic consumer legal services being provided by the vast majority of India's legal practitioners

⁷ Bar Council of India, Resolution 92/2005.

⁸ Bar council of India, Resolution 35/1999.

⁹ *Lawyers Collective v Bar Council of India & Ors*, Bombay High Court, case no. WP/1526/1995.

- The fact that (unlike Australia) nearly all Indian lawyers work as advocates on an ongoing basis throughout their careers, makes it virtually impossible for them to accept that foreign lawyers are not interested in representing clients before courts. This converts to an unfounded fear amongst the local profession of a loss of work to foreign lawyers
- Prohibiting all forms of advertising including websites and law directories, and
- Restrictions on the legal form of law firms, including prohibiting incorporation and limiting partnership size to 20.

The Indian legal profession is understood to regard the opening of its legal services market to foreign lawyers with apprehension, concerned that foreign lawyers will encroach into providing representational and domestic consumer legal services. This is not an area of interest to Australian lawyers. The apprehension concerns the perceived financial strength and commercial practice expertise of foreign law firms which, it is thought, will enable them to quickly build a dominant place in the 'high-value' end of India's legal services market. The formation of foreign-controlled practices delivering an integrated service to business users in foreign and Indian law is also feared to result in displacement or marginalisation of many Indian law firms. A related concern is that any market opening concessions granted bilaterally to Australia must eventually be extended by India to other countries such as the US and UK which are considered to be an even greater threat to Indian law firms. However, consistent with the wishes of the Indian legal profession, India is likely to open the legal services market to foreign lawyers in the medium to longer term. A free trade agreement with Australia would provide an ideal opportunity for India to take a progressive liberalisation approach by granting market access to Australian lawyers in the short term and then making adjustments, if any, to foreign lawyer regulations, before extending market access rights to other countries.

A prerequisite for ILSAC's preferred limited licensing regulatory approach is the recognition of the existence of separate categories of laws: foreign law (home-country, third-country, and international law) and domestic law (host-country law), being distinct bodies of law, as recognised in GATS commitments. India has not recognised these categories as discrete bodies of law and so requires foreign legal practitioners to meet full admission criteria for the practice of domestic law. This is unnecessarily burdensome because, in effect, a foreign lawyer is required to obtain a full licence when he or she may require only a licence to provide advisory services in the limited area of foreign law and not host-country law.

In the modern economic environment, the practice of law is best recognised not only as a profession, but also as an industry. Indian laws restricting partnership size to 20 and prohibiting incorporation limits the growth and size of Indian firms.¹⁰ Removing these restrictions and allowing firms a choice of mode of practice would assist Indian firms to grow and consolidate. Providing Indian advocates and law firms greater flexibility to enter into profit sharing arrangements with foreign lawyers and foreign law firms, together with the right to advertise, will enhance their capacity to deliver efficient legal services to a wider client base. Indian firms would be enabled to engage productively with foreign law firms both locally and in the global marketplace. These reforms are likely to result in a more resilient local legal services market with capacity to grow, and a legal profession that is responsive to domestic and international client needs.

6. Australia's legal services sector

An ILSAC survey¹¹ found that the total Australian legal services exports and cross-border activity amounted to \$543.2 million in the 2004-05 financial year. Australia's top four export destinations were North America (25%); the UK (16%); China and Hong Kong (14%); and Europe, excluding the UK (13%). The four key areas of practice were intellectual property, information technology and telecommunications (29%); corporate/merger and acquisition (24%); litigation/international commercial dispute resolution (17%); and banking and finance (8%). In the context of mode of service delivery, 16% of exports were derived through a commercial presence (branch office) overseas, 26% from fly-in, fly-out work, and 58% from law firms based in Australia in relation to overseas projects and for foreign clients. No legal services export or import statistics were collected specific to India under ILSAC's survey. However, from broad 2004-05 regional data, Australia's legal services exports to India may be worth about \$2 million annually in terms of fly-in, fly-out work and about a further \$2 million annually in terms of legal work involving inwards investment into Australia from India. However, these statistics could be understated by as much as 25%. Both legal services exports to, and imports from, India are expected to increase as a consequence of the growth in bilateral trade and investment between the two countries, particularly if a free trade agreement becomes a reality.

¹⁰ Trade Policy Division, Department of Commerce, Government of India, 'Trade in Legal Services: A Consultation Paper on Legal Services under GATS: In Preparation for the ongoing services negotiations at the WTO', 2006.

¹¹ Conducted by FMRC Legal as a collaborative exercise with the Commonwealth Attorney-General's Department, the Law Council of Australia, Austrade and eight leading law firms. The survey was conducted in response to concerns that the official statistics may understate the export and cross-border market for legal services by not identifying earnings of overseas branch offices of Australian law firms specifically as 'exports', but rather as 'returns on investment.'

Australia has autonomously liberalised its legal services market creating a hospitable limited licensing scheme consistent with the ‘Statement of General Principles of the Establishment and Regulation of Foreign Lawyers’ adopted by the International Bar Association. Foreign legal practitioners qualified and licensed to practise the law of a jurisdiction other than Australia may gain a limited licence to provide legal advisory services through a none-burdensome registration process with a State or Territory professional body. Registration as a foreign lawyer involves:

- establishing that the foreign lawyer is duly qualified and registered to engage in legal practice in one or more foreign countries and is not an Australian legal practitioner
- satisfying requirements as to probity and good professional standing, and
- a declaration to clients of whether they maintain professional indemnity insurance.

Foreign lawyers and law firms have a right to practise foreign law and a right to enter into partnership or other forms of voluntary commercial association with other foreign legal practitioners or Australian legal practitioners, without limitation on the number and type of such associations. ‘Fly-in, fly-out’ legal practice, without the requirement to register as a foreign lawyer, is permitted for an aggregate duration of 90 days in any twelve month period. Foreign lawyers also have the option of seeking admission as an Australian legal practitioner. Australia has no nationality or citizenship requirement for legal practitioners, no residency requirements, and no quantitative or geographic limitations for admission.

Progressive liberalisation has produced substantial benefits for Australian and foreign lawyers and law firms in Australia, including transparency of regulation, national treatment (non-discrimination between domestic and foreign lawyers), and minimal interference in the operation of law firms and legal practice. Regulatory change has stimulated competitiveness and innovation. Australia’s legal services sector and international trade in legal services have expanded, and Australian lawyers are keenly recruited in overseas jurisdictions, particularly England, the US and Asia.

7. Background

7.1 The role of legal services in trade and investment

Legal services are essential for trade and investment. Their vital role supporting and facilitating business forms a critical part of the infrastructure that underpins commercial transactions. Legal services enable economic and commercial activity by defining rights and responsibilities and processes for dispute resolution where commercial conflicts arise. Commercial legal services are typically categorised as *producer* (or intermediate) services provided in the form of advice to

corporate clients and financial institutions. These producer legal services form the core in delivering the level of certainty and assurance required for commercial, trade and investment decisions.

Along with other business services like accountancy and information technology, legal services are increasingly traded internationally. As cross-border business transactions increase, the availability of fully integrated legal services covering the laws of multiple jurisdictions is critical to sustainability and growth of international trade and investment. Corporations, financial institutions and other clients involved in cross-border commercial transactions seek legal *advisory* services covering the laws of jurisdictions in which the transaction spans. Foreign lawyers are, therefore, not interested in providing *consumer* legal services, which are typically final services such as those relating to family law, wills and personal injury. Nor are foreign legal practitioners usually interested in obtaining a right of audience to represent clients in the courts of host jurisdictions, other than a right to appear in international commercial arbitration.¹² Foreign legal practitioners are predominately concerned with providing legal advisory services that facilitate cross-border commercial, trade and investment activity of their corporate clients.

7.2 Globalisation of legal services and legal practice in the 21st Century

Law firms around the world are internationalising as their clients pursue opportunities in a rapidly globalising marketplace. The nature of legal services as a key business input has been transformed with the emergence of borderless commerce and client demand for multi-jurisdictional advice. The importance to international trade and investment of a regulatory framework that facilitates the ready provision of trans-national legal services and service suppliers is paramount.¹³ Such systems are seen as a catalyst for foreign investment, contributing to the security and predictability of the local business environment. Australia's approach to the liberalisation of legal services has been influenced by ILSAC's Principles for the Liberalisation of Trade in Legal Services.¹⁴ An increasing number of countries are establishing regulatory frameworks, guided by similar principles, to facilitate international trade in legal services.

¹² WTO, 'Legal Services: Background note by the Secretariat' S/C/W/43, 6 July 1998, paragraph 4.

¹³ WTO, 'Communication from Australia: Negotiating Proposal for Legal Services' S/CSS/W/67, 27 March 2001, paragraph 2.

¹⁴ Australian Government, Attorney-General's Department, 'International Legal Services Advisory Council Fifth Triennial Report' 2004-2007, 17.

7.3 Multilateral developments

Australia has made a significant and positive impact internationally by promoting the liberalisation of trade in legal services through the World Trade Organisation's General Agreement on Trade in Services (GATS). Australia's role in legal services negotiations under the WTO has been supported by Australia's own legal services commitments under the Uruguay Round and recent offers under the Doha Round of negotiations. Australia chairs the Friends Group on Legal Services under the GATS and is recognised as a leader in promoting the liberalisation of trans-national trade in legal services.

India is an active participant in the WTO. However, India did not undertake commitments in legal services under the Uruguay Round negotiations in contrast to 45 Members who did make commitments.¹⁵ India has also not, to date, offered to make any commitments on legal services in the current Doha Round.

7.4 Regional and bilateral developments

At the regional level, Australia is the major proponent of a proposed Asia Pacific Economic Cooperation (APEC) Legal Services Initiative, which is under consideration by APEC Members. This initiative has been widely supported by APEC members and aims to increase the level of confidence within APEC economies concerning the benefits associated with the mobility of lawyers across borders. Australia has also promoted the liberalisation of trans-national trade in legal services through the Individual Action Plan process under APEC. The Individual Action Plan, which is updated annually, sets up regulatory provisions applicable to both goods and services sub-sectors across the economy. It also identifies regulatory improvements foreshadowed or implemented by the APEC economies each year.

While not a member of APEC, India has been strengthening trading ties with other nations in the region. India has signed Free Trade Agreements or similar bilateral agreements with a number of countries including Sri Lanka, Singapore, Chile, Mercosur and the South Asian Association for Regional Cooperation. India has been actively pursuing a program of bilateral free trade agreement negotiations and studies, including with China, Japan, South Korea, the European Union, ASEAN, Malaysia, Indonesia, Thailand, New Zealand the Gulf Cooperation Council.¹⁶

¹⁵ WTO, 'Legal Services: Background note by the Secretariat' S/C/W/43, 6 July 1998, paragraph G (a).

¹⁶ Department of Foreign Affairs, 'India Country Brief', http://www.dfat.gov.au/geo/india/india_brief.html, accessed 23 May 2008.

Australia currently has free trade agreements with New Zealand, the US, Thailand and Singapore and is in various stages of negotiations with Malaysia, China, Chile, the Gulf Cooperation Council, Japan and collectively with the ten members of ASEAN. The improved mobility of legal professionals has been a key aspect of these negotiations.

7.5 Australia-India bilateral trade and investment

Bilateral trade between Australia and India is significant and growing strongly. Australia's exports to India in 2006-07 amounted to A\$10,104 million and imports amounted to A\$1,314 million. Australia currently enjoys a trade surplus with India in services trade of A\$1,335 million (exports of A\$1,743 million and imports A\$408 million (2006-07)). Australia and India's economic relationship has intensified with a number of agreements being negotiated recently such as the Trade and Economic Framework in March 2006 and Memoranda of Understanding on Defence Cooperation, Customs, Information and Communications Technology, Combating International Terrorism and Biotechnology, a bilateral Air Services Agreement, and the Scientific Collaboration Fund.¹⁷

Since widespread market deregulation in the 1990s, the Indian economy has experienced consistent, robust economic growth. At the same time, Australian commercial interests in India have been expanding, particularly in services. A range of Indian businesses, predominately in the IT industry, expanded their operations across Australia in 2007.¹⁸ India is the second largest source country of international students studying in Australia.

The growth of the Indian economy has fostered demand for qualified and suitably experienced international lawyers to service the needs of foreign investors and multinationals in India and Indian exporters of capital, goods and services. There is also demand in India for internationally qualified lawyers and accountants to support Indian companies acquiring assets abroad, especially in the resource and information technology sectors.¹⁹

7.6 Australia-India links in law and legal services

The Australia India Council makes recommendations to the Australian Government through the Minister for Foreign Affairs in respect of the broadening and deepening of the relationship between Australia and India through raising awareness, promoting visits, exchanges, and institutional links.

¹⁷ Department of Foreign Affairs and Trade, 'India Fact Sheet', <http://www.dfat.gov.au/geo/fs/inia.pdf>, accessed: 23 May 2008.

¹⁸ Australia India Council Newsletter, Jan-Feb, 7.

In 1996, the Australia India Council and ILSAC conducted an Australia-India Legal Conference in Delhi as part of the 'New Horizons' program launched by the Australian government to enhance cultural and trade links between India and Australia. The conference was instrumental in taking the first steps towards building closer links between professionals, academics and others in the legal sectors in the two countries.

Legal cooperation has continued on several fronts. In 1996, Justice Kirby of the High Court of Australia delivered a speech on 'International Influences on Legal Development' at the Indo-Australian Public Policy Conference, and the 1997 Bar Association of India lecture on 'Judicial Activism,' both in New Delhi. Also in 1997, the Australasian Law Teachers Association conducted a seven day 'Training the Legal Trainer' workshop at the National Law School of India University in Bangalore. In 1998, LEADR, an association of dispute resolvers based in Australia, conducted three mediation workshops in New Delhi, Mumbai and Calcutta and in 1999 LAWASIA conducted Legal Writing Skills Workshops in Pune and Bangalore.

In 2004, ILSAC and the Australian Attorney-General's Department led a legal services mission to India to raise the profile and highlight the capabilities of the Australian legal services sector in India; commence a dialogue at both the official and profession levels on trans-national legal practice and how this process is managed in India, Australia and elsewhere; and to identify initiatives to promote Australia-India cooperation in law and legal services including developing mutually beneficial professional, commercial and institutional links. The mission, led by Dr David Bennett AO QC, Solicitor-General of Australia, consisted of 19 delegates from seven law firms, delegates from five law schools, a legal practice management consultant, representatives from the Law Council of Australia and Queensland Law Society, ILSAC and the Australian Attorney-General's Department.

ILSAC has actively supported the proposed Joint Australia-India Consultative Committee on Legal Services (JAICCOLS). The JAICCOLS proposal arose out of a suggestion by India's Minister for Commerce and Industry, the Hon Kamal Nath, to Australia's then Minister for Trade, the Hon Mark Vaile MP, in 2005. The initiative was advanced to strengthen the links in law and legal services between Australia and India with a focus on the mutual benefits to be found in legal cooperation, professional mobility and trade in legal services. Discussions concerning the proposal have involved a range of stakeholders, including the Bar Council of India, eminent members of the Indian legal profession, the Ministry of Law and Justice, the Ministry of Commerce, Delhi

¹⁹ Australian Government, Department of foreign Affairs and Trade, 'India's Services Sector: Unlocking Opportunities, 2007.

University Law School, and the Legal Committee of the Federated Indian Chambers of Commerce and Industry. The project is currently awaiting the completion of a new consultative process by the Bar Council of India. It is hoped that JAICCOLS will be established, and will undertake a jointly agreed work program involving research, exchange of information, and other measures to encourage closer links in law and legal services.

In October 2007 the Australian Solicitor-General, Dr David Bennett AO QC, and Mr Iain Anderson of the Attorney-General's Department visited India and met with the Bar Association of Madras, the Ministry of Law and Justice, the Minister of Commerce and Industry, and the President of the Bar Council of India. The Bar Council indicated that consideration to the regulation of foreign lawyers would be given at the next meeting in November 2007. The Bar Council has since requested information from Australia on examples of the structure of foreign law firms in China, and the regulations issued by China's equivalent to the Bar Council. This interest may indicate a changing attitude to market liberalisation. However, a new chair has since been appointed to the Bar Council and we are yet to discern whether this interest is sustained.

Each of the 19 State Bar Councils elects a member to represent its State on the Bar Council of India. The Australian counter-part to the Bar Council (though without the regulating function) is the Law Council of Australia. The Law Council of Australia has offered to host a delegation from the Bar Council of India in mid 2008. While the Bar Council initially indicated its acceptance to visit Australia, it now seems that this visit may not proceed.

In January 2008 the Minister for Trade, the Hon Simon Crean, visited Mumbai and New Delhi gave a keynote address on the benefits of freer trade at the Partnership Summit hosted by the Confederation of Indian Industry. The Hon Mr Crean discussed with the Indian Government the benefits of trade liberalisation and noted that such benefits would only be fully achieved if it is complemented by domestic reforms.

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