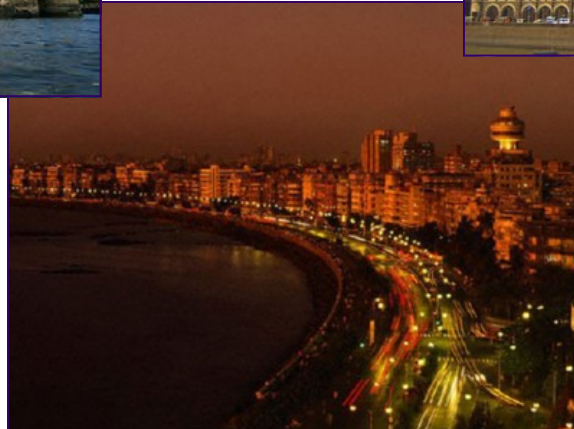




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U.S. AND INDIA: KEY LEGAL ASPECTS OF CROSS BORDER BUSINESS

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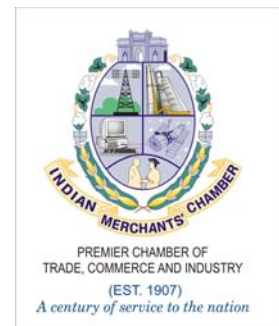


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Jessica L. Smith • American Bar Association Section of International Law • Washington, DC USA

Shikhil Suri • Crowell & Moring LLP • Washington, D.C.

Hon. Sanjay Tailor • Circuit Court of Cook County • Chicago, Illinois USA

The listing of the Planning Committee was compiled as accurately as possible from Section records. If we have omitted your name or have it listed incorrectly, we sincerely apologize.

PROGRAM AGENDA

Current as of 1.17.12

Thursday, January 19, 2012

7:00 PM – 9:00 PM REGISTRATION

7:00 PM – 9:00 PM OPENING RECEPTION

Opening Reception Sponsored by:



Welcome:

Priti Suri, PSA, New Delhi, India

Hon. Sanjay Tailor, Circuit Court of Cook County, Chicago, Illinois USA

Opening Remarks:

Peter Haas, U.S. Consul General in Bombay

Darius Khambatta, Additional Solicitor General, Government of India

Friday, January 20, 2012

9:00 AM – 9:30 AM REGISTRATION & REFRESHMENTS

9:30 AM - 10:00 AM WELCOME

Erik Wulff, DLA Piper, Washington, DC USA

Priti Suri, PSA, New Delhi, India

10:00 AM - 11:15 AM SESSION 1

Regulatory Aspects of Investments, Acquisitions, Joint Ventures, and Distribution in India by US Companies

Despite United States and Europe being mired in recession and a debt crisis, with India's economy growing at a remarkable pace of more than 7% in the first half of the current fiscal year, India continues to be an attractive investment destination and maintains its rapid evolution as one of the key markets in the world and a major trading partner for the United States. It is well-known that India has endeavored to liberalize and open its doors to foreign investment but with certain checks and significant guidelines. The deliberation during this session focuses on the regulatory framework involved in acquisitions, JVs and distribution in India, identifying the critical challenges and highlighting the opportunities in the Indian market for US companies.

Program Chair:

Cyril Shroff, Amarchand Mangaldas, Mumbai, India

Speakers:

H.R. Khan, Deputy Governor RBI, Mumbai, India (Invited)

J. Ranganayakulu, SEBI, Mumbai, India (Invited)

Sandeep Parekh, Finsec Law Advisers, Mumbai, India

R. Prasad, Competition Commission of India, New Delhi, India

Pramod Rao, ICICI Bank, Mumbai, India (Invited)

11:15 AM – 11:30 AM

TEA

11:30 AM – 12:45 PM

SESSION 2

Regulatory Aspects of Investments, Acquisitions, Joint Ventures, and Distribution in the US by Indian Companies

There are many legal issues that affect Indian companies looking to do business in the U.S., whether making investments, acquiring companies, entering into joint ventures or distribution arrangements. These panels (Sessions 2 and 4) - comprising eminent in-house and private practitioners - will discuss market entry options, and legal, practical and strategic issues relevant to each. Key issues include Immigration, Fund Raising (including in the capital markets and other capital markets-related issues), Business Entity Formation, Tax, Intellectual Property, and Labor & Employment.

With almost \$200 billion of cross border acquisitions in the US by non U.S. investors and acquirers in the last year, the panel will also discuss valuation trends, effective structuring, funding, and common mistakes made by non-US companies.

Program Chairs:

Adam Farlow, Baker & McKenzie, London, United Kingdom

Speakers:

Susan Cohen, Mintz Levin, Boston, Massachusetts USA

Anand Dayal, Koura & Co., Mumbai, India

Ralph Voltmer, Covington & Burling, Washington, DC, USA

12:45 PM – 1:45 PM

LUNCH

1:45 PM – 3:00 PM

SESSION 3

Getting the Deal Done: Investment, Acquisitions, Joint Ventures, and Distribution in India by US Companies

This program will cover high level practical aspects of closing transactions such as investments, acquisitions and joint ventures in India by US companies. Distribution of products and services by US companies will also be touched upon. The focus will be on the practical aspects of getting the deal

done. The panelists will delve into the peculiar Indian law issues that are associated with such transactions. They will share their experiences of the different situations and issues they were faced with, and how those were addressed.

Program Chair:

Vishal Gandhi, Gandhi & Associates, Mumbai, India

Speakers:

Pratik Bose, Cisco, San Jose, California, USA

H. Jayesh, Juris Corp, Mumbai, India

Somasekhar Sundaesan, JSA, Mumbai, India

3:00 PM – 4:15 PM **SESSION 4**
Getting the Deal Done: Investment, Acquisitions, Joint Ventures, and Distribution in the US by Indian Companies

There are many legal issues that affect non U.S. Companies looking to do business in the U.S. This panel comprising of eminent in-house and private practitioners will provide an overview of the main areas of concern: Business Entities, Tax, Intellectual Property, and Labor & Employment. This panel will discuss market entry options, and legal and strategic issues relevant to each.

With almost \$200 billion of cross border acquisitions in the US by non U.S. investors and acquirers in the last year, the panel will also discuss valuation trends, effective structuring, funding, and common mistakes made by non-US companies.

Program Chair:

Shikhil Suri, Crowell & Moring LLP, Washington, DC USA

Speakers:

Stephen Besen, Shearman & Sterling, New York, New York, USA

David Carpenter, Mayer Brown, New York, New York, USA

Rahul Patel, King & Spalding, Atlanta, Georgia, USA

Naveen Raju, Reliance Industries, Mumbai, India

4:15 PM – 4:45 PM **TEA**

4:45 PM – 6:00 PM **SESSION 5**
Session 5A: Alternate Dispute Resolution Mechanism – Focus on Commercial Transaction Disputes, Popular Jurisdictions, Enforcement Issues **Ballroom 1**

Panelists in this session will discuss topics such as: the experience Indian and American clients have in international arbitrations and mediation in the US versus the United Kingdom and Singapore; the growth of mediation in India; the issue of preferred arbitrators; and the enforcement of arbitral awards and challenges to awards and interim stay orders passed by Indian courts in international arbitrations.

Program Chair:

Anand Desai, DSK Legal, Mumbai, India

Speakers:

Rafiq Dada, Senior Advocate, Mumbai High Court, Mumbai, India

JP Duffy, DLA Piper USA, New York City, New York, USA

Ravi Kadam, Advocate General, Mumbai High Court, Mumbai, India

Baiju Vasani, Crowell & Moring, Washington, DC USA

Session 5B: Lawyers' Professional Responsibilities and Ethics – Views from India, Europe and the U.S. **Ballroom 2**

The experienced practitioners forming the panel will first explain the structure of the legal profession, applicable sources of law and the enforcement mechanism available in the jurisdictions covered in order to provide a better understanding of the regulatory and ethical requirements applicable to the practice of law.

On this basis specific issues will be discussed in more depth, such as the duty of loyalty, different approaches to conflicts, confidentiality/professional privilege, and advertising for legal services. Particular attention will be put upon the challenges provided by the globalization of the profession and the international practice of law.

Program Chair:

Hans-Michael Giesen, GÖRG law firm, Berlin, Germany

Speakers:

Lalit Bhasin, Bhasin & Co., New Delhi, India

Robert H. Mundheim, Shearman & Sterling, New York, New York USA

Chris Perrin, Clifford Chance, London, United Kingdom

8:00 PM – 10:00 PM **COCKTAILS AND DINNER**

Program Chair and Moderator:

Zia Mody, AZB & Partners, Mumbai, India

Saturday, January 21, 2012

9:00 AM – 9:30 AM **REGISTRATION AND REFRESHMENTS**

9:30 – 10:45 AM **SESSION 6**
Session 6A: Current and Future Indian Tax and other Regulatory Challenges **Ballroom 1**

This panel is proudly sponsored by:



Indian economy has continued to remain vibrant the past many years and is poised for a promising and robust growth trajectory. Many believe that the recent turn of events in the world economy is likely to have visible negative impact on the Indian economy, nonetheless, one views it as a challenge at hand for the Indian business to overcome such impediments in the medium to short term. Clearly, much of the growth would depend inter alia on reforms that ought to be ushered by Federal Government and Tax reforms would most certainly form an integral part of such milieu.

The panel discussion will therefore, focus on the key policy changes in the realm of taxation that are in the anvil which promises introduction of a vibrant, transparent and effective tax regime for Corporate India as well as International Investors. The discussion will be focused on the proposed introduction of the Direct tax Code (which would replace the existing Corporation tax laws) and introduction of the Goods and Service Tax laws ("GST"), which aims at consolidating multiple indirect taxes currently levied in India on manufacture, sale, services et al, into a single GST law.

The discussion will also focus on some of the current tax issues being faced by the Industry (both domestic as also foreign investors) in so far as they relate to laws governing tax withholding on payments to foreign investors on alleged capital gains, cross border taxation on supply of software, aggressive approach of the Revenue on transfer pricing administration, proposed streamlining of the service tax laws and paradigm shift introduced under customs assessments. In addition, the Panel will discuss, issues relating to source rule and sectoral policy, which at times are being driven by tax considerations.

Program Chairs:

Sujit Ghosh, BMR Legal, New Delhi, India

Vivek Mehra, PWC India, Gurgaon, India

Speakers:

Aseem Chawla, Amarchand Mangaldas, New Delhi, India

Rupak Saha, General Electric, Gurgaon, India

Sridhar Raman, Coca Cola, Guragon, India

Prashant Deshpande, Deloitte Haskins and Sells, Mumbai, India

Session 6B: The Deal Is Done, Now What? A Look at Import and Export Issues in India and the United States **Ballroom 2**

After a business deal is completed, businesses must figure out how to import and/or export its product into its new market (India or the United States) and ensure that they are compliant with all import and export rules and regulations. Our panel will discuss and examine regulations and laws governing the entry of new products into India and the United States including U.S. and Indian customs laws, as well as the export from the home country, including U.S. export laws, FCPA issues, new changes to the U.S. and Indian export regimes. Panelists will also discuss common problems when importing or exporting and tips for best practice.

Program Chair:

Amy Stanley Hariani, US-India Business Council, Washington, DC USA

Speakers:

Kavita Mohan, Grunfeld Desiderio Lebowitz Silverman and Klestadt, Washington, DC USA

Rohan Shah, Economic Laws Practice, Mumbai, India

D.K.Singh, Department of Commerce, Government of India, Delhi, India

J. Michael Taylor, King & Spalding, Washington, DC USA

10:45 AM – 11:00 AM

TEA

11:00 AM – 12:15 PM

SESSION 7

Session 7A: IP Challenges Faced by US Companies Doing Business in India **Ballroom 1**

Since India's accession to the WTO in January, 1995, the Government of India has undertaken major overhaul of its IP statutes in an effort to make them TRIPs-compliant. Simultaneously with these legislative changes, the IP administration system in India has also undergone a series of reforms over the past few years. While these legislative and administrative reforms have gone some way in enhancing standards of IP protection and IP service delivery mechanism in India, there are still certain unfinished steps in the process of India's integration with a WTO-compliant regime.

With the emergence of India as a destination for foreign investment in major sectors of its economy coupled with its established position as a hub for R&D and the outsourcing industry, several legal and policy issues have emerged, highlighting certain gaps in the current legal and statutory framework and emphasizing the need for harmonization of Indian laws and practice with global models of doing business.

This session seeks to examine IP challenges faced by US companies arising from India's current legal and statutory framework and their interpretations on the aspects of licensing, ownership, protection and commercialization of intellectual property rights in India. The aim of the session will also be to assess India's WTO compliance score card in this domain.

Program Chair:

Rajendra Kumar, K&S Partners, Gurgaon, India

Speakers:

Vivek Jha, PwC, Mumbai, India

Dinish Jotwani, Trustman & Co., New Delhi, India

Shwetaree Majumder, Fidus Law Chambers, Noida, India

Jyoti Sagar, JSA, Gurgaon, India

Session 7B: Creating a Corruption-Free Environment for Business – The Indian, US, and UK Perspectives **Ballroom 2**

Corporations and businesses around the world are justifiably concerned and adapting their operations accordingly. Enhanced anti-corruption legislation and enforcement in India and extraterritorially by the US and UK and other OECD countries is now very high-profile. A highly distinguished panel of experts will examine anti-corruption legislation and process in India and the practical effects, and application, of US and UK law to businesses operating in India – whether or not Indian.

Program Chair:

Aaron Schildhaus, Law Offices of Aaron Schildhaus, Washington, DC USA

Speakers:

Elizabeth Gray, Willkie, Farr & Gallagher, Washington, DC USA

Navita Srikant, Kroll Consulting Services Limited, Mumbai, India

KK Venugopal, Senior Advocate, India Supreme Court, New Delhi, India

12:15 PM – 1:15 PM

LUNCH

1:15 PM – 2:30 PM

SESSION 8

Session 8A: Investing in India's Infrastructure Projects **Ballroom 1**

The Government of India publishes five-year economic development plans, covering all aspects of the economy, including "infrastructure" (power, roads, telecom, railways, sea- and airports and water projects). Model concession agreements and PPP guidelines are in effect, and the government's India Infrastructure Finance Company will provide "gap" funding of up to 20% of a project's cost. The Eleventh Plan (2007 – 2011) targeted infrastructure spending of more than US \$500 bn., and the Twelfth looks to achieve 9 – 11% annual GDP overall. The panel will examine the promise vs. the result of these efforts and will identify "green, yellow and red" lights to implementation of projects in particular sectors.

Program Chair:

Atul Sharma, Link Legal, New Delhi, India

Speakers:

John Alexander, J.M. Baxi & Co., Mumbai, India

Ajay Gupta, General Electric Capital, New Delhi, India

Ishtiaq Ali, Clasis Law, Mumbai, India

Michael S. Hindus, Pillsbury Winthrop Shaw Pittman LLP, San Francisco, CA, USA

Session 8B: Corporate Counsel: Dotted Lines, Reporting Responsibilities & Best Practices **Ballroom 2**

This panel, comprising senior in house counsel and law firm partners, will discuss the change in the role and the emergence of the general counsel in India in the last 5-7 years more in line with the US model as a business partner with a seat at the head table. It will also discuss the role in depth and whether it is advisable to include governance, ethics, compliance and risk management and the challenges that the transition means. The discussion will move to resolution of conflicts in some situations, given the highly competitive

business environment and the reporting relationship for the new enlarged role. Panelists will seek the views of the audience on the blurring of the hitherto strict dividing lines for switching careers between in house counsels and law firms, trends in future and outsourcing to law firms.

Program Chair:

Vijaya Sampath, Bharti Enterprises, New Delhi, India
Mona Dange, G.E. India, Mumbai, India

Speakers:

Priti Suri, PSA, New Delhi, India
Erik Wulff, DLA Piper, Washington, DC USA
Nilanjan Sinha, GE Capital India, Mumbai, India

2:30 PM – 3:45 PM

SESSION 9

Session 9A: US and India Law Firm Cooperation

Ballroom 1

As India assumes a more important role in international trade and commerce, it will be important for Indian law firms to work more closely with foreign law firms in the pursuit of the global transactions that will necessarily follow. This program will explore the way international law firms cooperate with one another when they work together on important international transactions and explore the best practices of doing so. The panel will consist of practitioners from major Indian law firms and leaders from outside India who are experienced in creating, supporting, and operating the legal teams needed to pursue and complete important international transactions.

Program Chairs:

James P. Duffy, III, New York City, New York, USA
Rajiv Luthra, Luthra & Luthra, New Delhi, India

Speakers:

Paul Lippe, Legal OnRamp, Moffett Field, California USA
Shardul Shroff, Amarchand Mangaldas, New Delhi, India
Leon Steinberg, Black Hills IP, Rapid City, South Dakota USA

Session 9B: India's Defense Requirements - Opportunities and Challenges for Indian and U.S. Businesses

Ballroom 2

India is one of the world's largest export markets for defense supplies and services. Yet, India seeks an indigenous aerospace and defense industry. India thus represents a huge but very challenging market. Compliance obligations include the U.S. FCPA, the U.K. Anti-Bribery Act and India's Prevention of Corruption Act. Defense sellers must navigate the Defense Procurement Procedure and commit to offsets worth 30% of contract value. Offsets drive opportunities for U.S.-Indian "tie-ups" to develop aerospace and defense capabilities in India. The panel's distinguished Indian and U.S. experts will offer practical advice to "solve the puzzle" of India's defense requirements.

Program Chair:

Robert Metzger, Rogers Joseph O'Donnell, Washington, DC USA

Speakers:

Alina Arora, Luthra & Luthra, Mumbai, India
Dr. Vivek Lall, Reliance Group, Mumbai, India
Wg Cmdr. Neelu Khatri (Ret'd), KPMG Advisory Services Pvt. Ltd., Gurgaon, India
Vivek Rae, DG Acquisition, New Delhi, India (*Invited*)

3:45 PM – 4:15 PM

TEA

4:15 PM – 5:30 PM

WRAP UP AND CLOSING REMARKS

Erik Wulff, DLA Piper, Washington, DC USA
Jane Schukoske, S.M. Sehgal Foundation, Gurgaon, India
Priti Suri, PSA, New Delhi, India
Session Program Chairs