

## JUST IN

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### **By The Way**

## Foreign Law Firms

On 16 December 2009, the Division Bench of the Bombay High Court passed a landmark judgement regarding entry of foreign law firms in India. The Division Bench, comprising of the Hon'ble Chief Justice Swatanter Kumar and Dharmadhikari, JJ. held that the provisions of the Advocates Act, 1961 and Rules governing the respective State Bar Associations, does not permit the entry of foreign law firms in India, even if it is merely to provide consultancy services and not take-up litigation matters.

In 1995, Lawyers' Collective had moved the Bombay High Court against three foreign firms namely, White & Case, Chadbourne & Park and Ashurst Morris Crisp for servicing both Indian and foreign clients through their Indian offices. The first two are firms based in the U.S.A., while the third is UK based. The firms had merely been allowed to set up liaison offices in India by the RBI under Section 29(1)(a) of the erstwhile Foreign Exchange Regulation Act, 1973. However, they had been providing full consultancy services as if registered under Section 30 of the same Act, which dealt with grant of permission to practise any profession.

The foreign firms had earlier inter-alia put forth the argument that legal professionals who do not intend to 'act or plead' before a judicial authority do not necessarily fall within the ambit of the Advocates Act, and hence foreign firms who merely wish to provide advisory services were permitted to do so, as they did not fall within the purview of the said Act. At the interlocutory stage, the High Court had held that the words 'to practise the profession of law' have a very wide mandate and cannot be limited merely to being given audience before a court, tribunal or quasi-judicial authority.

In line with the above reasoning, the High Court has vide its order dated 16 December 2009 has effectively denied entry to any foreign law firm into India *per se*, until the Advocates Act is amended or replaced. However, this does not prohibit foreign firms from entering into referral agreements with Indian firms, or forming other types of relationships. The question of reciprocity with other countries and India's obligations for trade in legal services under the WTO General Agreement on Trade in Services (GATS) will have to be looked into, and accordingly changes may have to be effected in the present law in order to permit the entry of foreign law firms.

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***Editor : Rahul Kothari***

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