


India: SEZ (Amendment) Rules, 2017 – Boon or Bane for Law Firms

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The Amendment of Rule 76 of the SEZ Rules, 2006 on January 3, 2017, to allow Law and Accountancy Firms to set up shops in SEZs, though short in content, is arguably big on implications for domestic and foreign Law Firms. This amendment, while allowing foreign Law Firms to set foot on Indian soil, also extends an opportunity to domestic Law Firms for a tax-efficient operation.

With restriction on SEZ operation now removed, domestic Law Firms may increasingly relocate to SEZs. Should a domestic Law Firm decide to serve DTA and offshore Clients from its SEZ office, its services would be basically of two types – taxed services to DTA Clients and tax-exempted services to offshore clients and SEZ units. To this extent, the Amendment could be a bonanza for offshore clientele practice of domestic Law Firms, though it may not necessarily result in business volume expansion. A regulatory challenge will, however, be ensuring that DTA related services are not passed off as otherwise for taxation reasons.

For foreign Law Firms, the Amendment may not be as big game changer as it is made out to be (tax exemption being globally common across SEZs), unless such foreign Law Firms work around regulatory loopholes for using their SEZ presence as a launching pad for DTA operation. Such an avenue for mischievous abuse aside, availability of competitive local resource can be a possible reason for foreign Law Firms to start Indian SEZ operation. However, local talent alone may not be a good enough reason for foreign Law Firms to open Indian SEZ offices for two reasons – existing LPOs in India and separate Indian desks in most of the big foreign Law Firms.

The Amendment may immediately have the dual impact of displacing LPOs from DTA to Indian SEZs and moving offshore Indian desks of foreign Law Firms to Indian SEZs, which arguably may not be the legislative intent; allowing foreign Law Firms in SEZs

should be for additional gainful economic activities beyond LPOs and tax exemption. The Amendment may also reshape the role of many Indian Law Firms functioning as active surrogates of many foreign Law Firms (collateral damage, howsoever unintended) to passive surrogates.

Indian SEZ regime ought to offer better operational flexibility (local resource apart) if it has to beat other offshore centres, which takes us to more serious issues – whether foreign Law Firms would be permitted to render Indian law related non-litigious legal services to offshore clients at par with domestic Law Firms (presuming so) and what if a Law Firm misuses its SEZ platform to serve DTA Clients?

Just as global accountancy firms are often accused of drawing a thin line between accountancy and legal services, there is a possibility (howsoever remote) of Law Firms planting full-fledged offices in an SEZ, outwardly for global clients but actually for DTA clients and for legal services requiring DTA execution. For example, services related to M&A under Indian law may very well be rendered by a SEZ Law Firm but shown executed by a surrogate DTA Law Firm to circumvent operational constraints. Same goes for litigation support services and all other non-litigious matters requiring DTA execution.

Current restrictions on foreign Law Firms should apply to SEZ foreign Law Firms, in the absence of a clear disenabling set of laws with the subject Amendment. This apart, it could be practically unfeasible to enforce some of the SEZ related restrictions for want of fool-proof mechanism to ensure permissibility of activities of Law Firms in a SEZ. Inspection under Sections 21 and/or 22 of SEZ Act may not go down well for a free, fair, and competitive business environment (client-attorney privileged communication issue aside) and if e-mail records and servers are tell-tale proof of breach, the same can easily be tempered with or hard copies can be an easy way out. Though accounts can be regularly scrutinized, a smart Chartered Accountant may find 10 different ways of avoiding the inevitable, should such a scrutiny take place.

Unlike their offshore counterparts, Indian Advocates Act, 1962 and guidelines issued by the BCI have a long list of do's and don'ts qua advertisement, contingency fee, client solicitation, web hosting etc. for the Indian legal fraternity. Hence, the issue – whether foreign Law Firms in SEZs are to be exempted from such restrictions and if so, whether similarly situated Indian Law Firms would be treated at par? If not, it is a clear disadvantage for Indian Law Firms.

The above having said, a lot of groundwork would need to be covered for allowing Law Firms in SEZs. Since the Hon'ble Bombay High Court in *Lawyers Collective case [2010 (2) Bom CR 753)* has allowed lawyers enrolled with a Bar Council under Sections 29 and 30 of the Advocates Act, 1961 to practice law in India (litigation and non-litigious), a slew of regulatory measures would need to be taken up under Section 49 of the SEZ Act, 2005 and/or Section 49(A) of the Advocates Act, 1962 or specific provisions of other relevant Acts, inter alia, to allow Law Firms in SEZs and to create a level-playing field qua domestic and foreign Law Firms.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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