

# GLOBAL PERSPECTIVES



# Going global:

## Two Duke alumni reflect on what makes a cross-border collaboration work

**P**HOEBE KORNFELD '90 graduated with her JD shortly before Shabbir Wakhariya '91 began his LLM studies at Duke. They met more than a decade later when Kornfeld, then in-house counsel for Chiron Corp., retained Wakhariya regarding a vaccine-manufacturing joint-venture project Chiron's German subsidiary was entering into in India.

"As I made calls to several colleagues, Shabbir's name came up several times," recalls Kornfeld, now general counsel for Vienna-based vaccine-maker Intercell AG. "When I checked online to find out more about him, it was a real pleasure to find there was a Duke connection. That just added a layer of confidence to support the references I had received from others."

Wakhariya divides his time between New York, where he is a partner at Kelley Drye & Warren, and Mumbai, where he is a founding member of Wakhariya & Wakhariya and handles "inbound" referrals from Kelley Drye and other international law firms. Having joined Kelley Drye in 1992 to work in its established Indian law practice, Wakhariya specializes in cross-border mergers and acquisitions and securities offerings, and maintains a general corporate and litigation practice.

He supported Kornfeld in that initial joint-venture project and another involving marketing and sales, and subsequently in a variety of corporate governance, transactional, regulatory, and contentious matters in India.

On their first deal, Wakhariya immediately flagged a critical issue for Kornfeld: the fact that her company had an existing joint venture in India.

"An Indian regulation required consent to be obtained from the existing joint venture partner before a new joint venture could be formed in the same business," explains Wakhariya. "That's been one of the thorniest issues in India at any given point in time, ... a protectionist measure that has been frequently misused by Indian businesses."

Armed with Wakhariya's early warning of the obstacle posed by the regulation, Kornfeld was able to work with her company to negotiate its resolution with the existing joint venture partner, she says. "We had other business issues on the table with that partner, and we added this [development] to the package. Had we only received that information at some later date, or had we not been adequately advised about how serious an issue this could be, it could have cost us a lot more to receive the necessary clearance from that partner."

Because Indian company law does not recognize shareholder agreements, Wakhariya also counseled Kornfeld that all the terms of the [existing] shareholders' agreements needed to be incorporated into the bylaws of the new joint-venture company — the "articles of association" — or they would not be enforceable.

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India is a "very complicated market to work in," Kornfeld observes, adding that the fact a German subsidiary was involved in her initial project "added yet another layer to the varied analysis they were trying to open up." Accustomed to retaining local counsel to assist with cross-border transactions all over the world, Kornfeld says Wakhariya gave her exactly what she was seeking: sophisticated services and strategic, proactive advice delivered in a highly responsive manner.

"My clients at Chiron and Novartis were conducting business internationally, but expected the work be done to the best U.S. standards," says Kornfeld, adding that she also was hired for her knowledge of U.S. standards as the first European-based lawyer at Chiron. Having worked on international corporate, commercial, and transactional matters for most of her career — she practiced with White and Case in New York, Frankfurt, Paris, Budapest, and London before moving in-house — Kornfeld's expectations of Wakhariya reflected what she offers her senior executive team: "I give them a legal and commercial analysis at every turn, not just the legal analysis." (See Kornfeld profile, page 23.)

When looking for the "right" lawyer to handle international work, she generally looks for someone with a second law degree, Kornfeld says. "Those are the lawyers who [most often] meet those requirements — who have the level of sophistication and understand the responsiveness I require to best serve my clients." Seeing that Wakhariya had studied at Duke offered her an assurance that he had been educated to the highest standards. "I wasn't just expecting

an excellent Indian lawyer or even one who has been exposed to the U.S. system. It indicated the ability to think comparatively and to think about issues of international law."

Wakhariya, who calls his time at Duke "one of the best experiences" of his life, agrees that international schooling and training is essential. "The kind of training and exposure we get in the United States and the kind of care we are used to exercising for clients really does not exist in India," he says. "Clients like Phoebe are not looking only for a great Indian lawyer. They are looking for somebody who will be able to take charge of the situation, put themselves in her shoes, and be able to guide and anticipate problems and tell the in-house counsel what they should look out for.

"Historically, Indian lawyers have simply responded to instructions being given by their clients, rather than acting as advisers — they have only answered questions insofar as they have been directly asked," adds Wakhariya. "This is very different from the U.S. approach [where] business lawyers think like business people and proactively advise their corporate clients on what the issues should be, how they should be addressed, and how risks should be minimized."

In India as in other developing countries, Wakhariya points out, foreign clients cannot assume that laws are implemented as written, and must find the right local counsel "with hands-on experience maneuvering clients through the implementation of that law on their operations."

Transactional practice itself is relatively new in India, says Wakhariya, only emerging as a distinct specialty after the Indian economy began to liberalize in the early 1990s, as he was beginning his career in the United States. That he happened to be doing the right thing at the right time he attributes to pure luck. He credits his success as a bi-cultural lawyer to sheer hard work. "There's no substitute for it." ♣

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