

### **Note on BCI's Notification regarding Entry of Foreign Law Firms in India**

In a recent attempt to liberalize the Indian legal market and help the legal profession grow to the benefit of Indian lawyers, the Bar Council of India (“BCI”) has released Bar Council of India Rules for and regulation of foreign lawyers or foreign law firms in India (herein referred as ‘the Rules’). A progressive achievement for BCI and the government of India, the Rules enable the Indian legal market be opened for the foreign lawyers and foreign law firms. Though restricted to limited practice, the bold move of BCI has upturned the long-held position, paving the path for Indian advocates to benefit from the significant career and growth opportunities that foreign law firms would bring to India.<sup>1</sup>

Through the advent of the new Rules, BCI has made a progressive attempt to facilitate the registration and practice of international lawyers in India. The Rules derive their existence from the judgment of the Supreme Court (“SC”) in the Bar Council of India vs A.K Balaji & Ors. (2018) case and the enabling provisions in the Advocates Act, 1961. They not only provide the extent and conditions to which foreign lawyers and foreign law firms can practice in India, but also provide the nature and extent of law practice that the foreign lawyers would be entitled to practice in India, particularly in non-litigious matters.<sup>2</sup>

Taking an “all-inclusive view”, the rules enable foreign law firms and foreign lawyers to handle variety of work /corporate work such as joint ventures, mergers and acquisitions, intellectual property matters, drafting of contracts and other related matters on reciprocal basis.<sup>3</sup> The foreign lawyers will not be permitted to appear before courts, tribunals, or statutory authorities or undertake work related to conveyancing of property, title investigation, etc. However, exception is carved out in the Rules for the international arbitration cases conducted in India.<sup>4</sup>

Written as a key principle, the BCI's new rule spells out a detailed process with twelve conditions<sup>5</sup> for the registration of foreign lawyers with BCI, which would be valid for five years and be eligible to be renewed subject to the conditions provided in the Rules. The

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<sup>1</sup> Covington, *Bar Council of India's 'Rules for Registration and Regulation of Foreign Lawyers and Foreign Law Firms in India, 2023'*, March 31, 2023. (Accessible at: <https://www.cov.com/-/media/files/corporate/publications/2023/03/bar-council-of-indias-rules-for-registration-and-regulation-of-foreign-lawyers-and-foreign-law-firms-in-india-2023.pdf>)

<sup>2</sup> Rule 8(1) of Bar Council of India Rules for Registration and Regulation of Foreign Lawyers and Foreign Law Firms in India, 2022

<sup>3</sup> Rule 8(2) of Bar Council of India Rules for Registration and Regulation of Foreign Lawyers and Foreign Law Firms in India, 2022

<sup>4</sup> *Bar council finally allows entry of foreign lawyers and firms in India, but these conditions apply*, The Print, March 15, 2023 (Accessible at: <https://theprint.in/india/bci-finally-allows-entry-of-foreign-lawyers-and-firms-in-india-but-these-conditions-apply/1445354/>)

<sup>5</sup> Rule 4(1) of Bar Council of India Rules for Registration and Regulation of Foreign Lawyers and Foreign Law Firms in India, 2022

application to be valid shall be accompanied by various confirmations, including a non-objection certificate from its regulator in the foreign country along with prescribed registration fees. Further, the applicant must also provide a declaration on affidavit stating that they have not been convicted of any offence and have not suffered any adverse order in any disciplinary matter. However, the key determinant of a valid application will be the principle of reciprocity<sup>6</sup> to promote and strengthen legal profession in India without entailing discrimination by counterpart foreign country and jeopardising the prospects of the Indian law firms or Indian lawyers.

Moreover, the Rules signal an inclusive list of measures that would constitute ‘practice of law’ in India for a foreign lawyer, namely foreign law, international arbitration conducted in India which may involve foreign law, appearing before bodies that cannot take evidence for foreign law, limits on Indian lawyers at foreign law firms in India.<sup>7</sup>

Expanding of this segment by the BCI inviting foreign law firms and foreign lawyers to the Indian legal market would have positive spillover effect, particularly:

- helping legal profession/domain grow in India to the benefit of lawyers in India;
- will result in the inflow of Foreign Direct Investment in the country, making India a hub of International Commercial Arbitration;
- appears as an opportunity for creating development and growth for legal profession;
- support in a big way the ambition of India to be more visible and valuable in a global context, especially on international trade and commerce;
- will act as a guiding force to the legal petitioners who are already working with their counterparts<sup>8</sup>;
- provide the impetus to all students who sought to work in the field of Arbitration and Dispute Resolution<sup>9</sup>; and
- beneficial to those who have contracts providing for international forms of dispute resolution, especially arbitration, for their Indian projects<sup>10</sup>

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<sup>6</sup> Rule 12 of Bar Council of India Rules for Registration and Regulation of Foreign Lawyers and Foreign Law Firms in India, 2022

<sup>7</sup> BCI Allows Foreign Lawyers and Foreign Law Firms to Practice Law in India, March 15, 2023. (Accessible at <https://www.foxmandal.in/bci-allows-foreign-lawyers-and-law-firms-to-practice-law-in-india/>)

<sup>8</sup> Analysis of Bar Council Notification Permitting Entry of Foreign Lawyers and Firms, Khurana & Khurana Advocates and IP Attorneys, April 08, 2023. (Accessible at: <https://www.khuranaandkhurana.com/2023/04/08/analysis-of-bar-council-notification-permitting-entry-of-foreign-lawyers-and-firms/>)

<sup>9</sup> *Id.*

<sup>10</sup> *Foreign law firms now able to practise in India*, Pinsent Masons, March 24, 2023. (Accessible at: <https://www.pinsentmasons.com/out-law/news/foreign-law-firms-now-able-practise-india>)

While the Rules appear as a step in the right direction and have been welcomed by the legal fraternity as constructive and progressive, there are a few shortfalls that might cast shadow on the Indian legal market. The change could possibly affect the livelihood of independent advocates in India. Additionally, it might make it difficult for recent law graduates to procure employment given the enormous disparity in the quality of legal education offered in India and other nations.<sup>11</sup> Further, the Rules appear to limit Foreign Lawyers to representing only foreign clients in international arbitrations held in India. If the governing law of the matter in dispute is the law of a jurisdiction other than India, the Foreign Lawyer should not be disqualified from representing any party to the dispute.<sup>12</sup> Moreover, the reciprocity principle only covers situations where the certificate effects that law firm or lawyer is permitted to practice in country of origin but not the situations where the law firm registers itself with country that has a reciprocal arrangement with India but has its partners from countries which do not have such an agreement with India (for e.g. countries like Pakistan).<sup>13</sup>

The decision of the BCI is truly ground-breaking and important development that will possibly boost competition in the Indian legal market resulting in opening of economy to its full potential. The move will undoubtedly carve a positive impact on the legal profession dispensation mechanism in India and set a stage for development of a truly international legal domain. However, there is no question that BCI may use extreme caution and vigilance that brings to the surface apparent shortcomings and to guard against any abuse or manipulation of the law by foreign legal institutions. To ensure that the Indian legal community is on an equal footing with its foreseeable rivals, it must implement the essential reforms.

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<sup>11</sup> *Ibid* at 8.

<sup>12</sup> Covington, *Bar Council of India's 'Rules for Registration and Regulation of Foreign Lawyers and Foreign Law Firms in India, 2023'*, March 31, 2023. (Accessible at: <https://www.cov.com/-/media/files/corporate/publications/2023/03/bar-council-of-indias-rules-for-registration-and-regulation-of-foreign-lawyers-and-foreign-law-firms-in-india-2023.pdf>)

<sup>13</sup> *Foreign lawyers and firms in India: It's time the profession was globalized – but it has to be done right*, *Indian Express*, March 29, 2023 (Accessible at: <https://indianexpress.com/article/opinion/columns/foreign-lawyers-firms-in-india-its-time-profession-was-globalised-8525767/>)