

INDIA OPENS UP:



LIBERALISATION OF THE INDIAN LEGAL MARKET

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Background and announcement of the Rules

India's history of allowing foreign lawyers and foreign law firms entry into India has been chequered to say the least, with the Bar Council of India ("BCI") historically being in opposition to this in any form and the Indian judiciary deliberating on this issue on various occasions in the past. Despite the BCI's position, various ministries and arms of the Indian government have been in a dialogue with Law Councils and Societies of foreign countries (including that of England & Wales)

to explore the potential and prospect of opening the practice of law in India to foreign lawyers, for almost two decades. Recently, in a long-awaited move, the BCI published a notification on 10 March 2023¹ ("Notification"), allowing the entry of foreign lawyers and foreign law firms in India for the first time, and setting out the rules for their registration and regulation ("Rules"). The Notification states that the demand for an open, responsive, and receptive legal profession in India from clients who operate international businesses could no longer be ignored and that the globalisation of legal practice and internationalisation of the law has become increasingly relevant to the growth of the legal profession in India².

BCI's announcement is in fact not surprising when looked at in the context of the extensive negotiations that have been taking place for an India-UK free trade agreement ("FTA")³. India was the UK's 12th largest trading partner, with the total trade of good and services between the countries being valued at £34 billion in the four quarters to the end of Q3 2022, which accounts for 2.1% of total UK trade⁴. It is reported that one of issues highlighted by the UK during trade talks was foreign investors' need for foreign law support when doing business in India⁵. This sentiment was echoed in a press release dated 19 March 2023, in which the BCI noted that multinational and foreign companies have historically preferred places like

1 The Notification can be found at https://www.livelaw.in/pdf_upload/bar-council-of-india-rules-for-registration-and-regulation-of-foreign-lawyers-and-foreign-law-firms-in-india-2022-463531.pdf

2 Paragraph 3, Objects and Reasoning section, Notification

3 The UK and India concluded the seventh round of talks for the FTA on 10 February 2023 and the eighth round is due to take place later this spring: <https://www.gov.uk/government/news/joint-outcome-statement-uk-india-round-seven-fta-negotiations>

4 <https://www.india-briefing.com/news/india-uk-fta-25699.html/>; https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1150598/india-trade-and-investment-factsheet-2023-04-20.pdf

5 <https://www.india-briefing.com/news/india-uk-fta-25699.html/>

London, Singapore and Paris over India as a venue for arbitration, since in India they have not been allowed to bring lawyers and law firms from their own countries to advise them in international commercial arbitration proceedings but the Rules now address this issue in the hope that this will help India become a hub for international commercial arbitration⁶.

The Law Society of England & Wales issued a statement regarding the BCI's decision, saying: "We have long campaigned for this historic opening up of India's legal services sector to foreign law firms. We thank the Bar Council of India and the Indian Ministry of Law and Justice for our constructive and productive discussions on the issue."



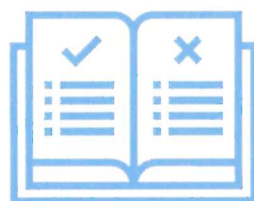
What can foreign lawyers and law firms do under the new Rules?

Foreign lawyers and law firms can now advise on and practice foreign law, engage in international arbitration matters for foreign clients, and advise on international legal issues in non-litigious matters in India on the principle of reciprocity. At this stage there is some ambiguity on what a foreign client is⁸ and on what reciprocity means in practice. The Notification states that the UK has said to have authorized Indian lawyers and law firms to establish offices in England & Wales, allowing them to practice Indian law, international

law, and provide legal advice under English law and in response, the BCI stated that it will verify these claims and reciprocate accordingly.

Further, foreign lawyers and law firms can conduct transactional and corporate work, such as joint ventures, mergers and acquisitions, intellectual property matters, and drafting contracts, among other related matters. However, they are not allowed to appear before any courts, tribunals, or other statutory or regulatory authorities in India.

Foreign lawyers and firms are required to register with the BCI, for which the fees are \$50,000 for a firm and \$25,000 for an individual. This, however, does not apply in the "fly in and fly out" practice, which is only permitted if it does not exceed 60 days in any period of 12 months.



Local Indian firms' reception of the Rules

It is worth noting that the Society of Indian Law Firms ("SILF") has expressed concerns about the timing and manner of this development while welcoming BCI's initiative in framing the Rules. In its representation to the BCI submitted on 31 March 2023, SILF noted inter alia that the Rules are discriminatory toward Indian lawyers who are governed by the code of conduct and regulations under the Indian Advocates Act, 1961. This Act entails archaic rules that forbid Indian lawyers from forming limited liability partnerships, any form of marketing and innovative fee structures, whereas foreign lawyers and law firms will be governed by their home country's rules, which are unlikely to be as restrictive.

How this feedback is going to be implemented is yet to be seen but having a level playing field for Indian lawyers is imperative to the local legal industry.



Comment

While it appears that there are several points in relation to the Rules that need clarification and possibly some fine tuning, this is the first step (or leap) toward India becoming more globalised and accessible to the world and especially to foreign investors.



6 Paragraph 6, Press Release which can be found at https://images.assettype.com/barandbench/2023-03/57a2a39d-a1a9-4d43-ae22-aa1a5fb3e8d/Press_Release_Dated_19_03_2023.pdf.

7 <https://www.lawsociety.org.uk/contact-or-visit-us/press-office/press-releases/historic-decision-to-open-up-india-to-foreign-lawyers>

8 Although under the Rules, a foreign client is defined as "an individual/s who is/are citizen/s of a foreign nation or a firm/corporation/business entity having its registered office/head office in a foreign country with a branch/regional office or manufacturing unit in India", it is not clear how this definition will be applied to multinational corporations that have complex corporate structures.