

## CURRENT STATE OF PLAY OF THE LIBERALIZATION OF INDIA'S LEGAL MARKET

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### Introduction

In March 2023, the Bar Council of India (the “BCI”) notified the Bar Council of India Rules for Registration and Regulation of Foreign Lawyers and Foreign Law Firms in India, 2022 (the “BCI Rules”) permitting foreign lawyers and law firms to practice foreign law, international law, and international arbitration matters in India on the principle of reciprocity (see our update on the [entry of foreign law firms in India](#)). The BCI also prescribed registration formalities.

However, the response from foreign law firms to the BCI Rules was underwhelming with only a few firms entering the Indian legal market. As per news reports, we understand that three (3) foreign law firms currently operate in India: (i) a combination of Dentons with Link Legal; (ii) GVA Professional; and (iii) TNY Legal (the latter two firms are both Japanese law firms established in Gurugram, NCR).

Last month, the Indian government released a draft of the Advocates (Amendment) Bill, 2025 (the “Draft Amendment Bill”), which, however, has been temporarily withdrawn for further amendments following various issues raised by lawyers. Nevertheless, with the introduction and subsequent withdrawal of the Draft Amendment Bill, the debate surrounding the entry of foreign law firms into India has, once again, gained traction.

The Draft Amendment Bill, *inter alia*, proposed to amend the Advocates Act, 1961 through the insertion of sub-clause (cc) in clause 2 of Section 49A, which would have empowered the Central Government to make rules governing the entry of foreign law firms and foreign lawyers into India and render invalid the BCI Rules.

### Outcome of the BCI Rules

In the two (2) years since the introduction of the BCI Rules, foreign law firms have not been too enthusiastic to enter the Indian legal market for a host of reasons, including the inability to advise Indian clients on foreign law issues in India, onerous registration and paperwork requirements, difficulties in proving reciprocity, and lack of clarity on taxation of revenues.

In addition, last year, a litigation was propounded by Narendra Sharma and others against the BCI. In this case, Narendra Sharma and a group of Advocates filed a writ petition before the Delhi High Court challenging the BCI Rules. The petitioners argued that the BCI lacks authority under the Advocates Act, 1961, to allow foreign lawyers to practice in non-litigious matters in India. They further contended that this move could adversely impact Indian lawyers, especially young practitioners, by subjecting them to competition from well-established foreign law firms. During the initial hearing, the Delhi High Court examined the 2018 Supreme Court judgment in **Bar Council of India v. A.K. Balaji & Others** and enquired

whether the BCI had the authority to notify the BCI Rules in light of this ruling, which explicitly states that foreign law firms and foreign lawyers cannot establish offices in India and can only visit India on a fly-in and fly-out basis to provide legal advice on foreign law. The Delhi High Court has issued notices to the BCI and the Ministry of Law and Justice seeking their responses in the matter. The case has been adjourned for further hearings to April 8, 2025.

## **Potential impact of the Draft Amendment Bill**

The introduction of the Draft Amendment Bill indicates that the Indian government wants to take charge of this matter and find some via media to permit foreign law firms and foreign lawyers limited practice rights in India. Over the years, various international stakeholders have alluded to the fact that the presence of foreign law firms and lawyers in India can help improve India's standing as a global business jurisdiction and make available specialized foreign legal expertise to Indian clients in India. Many multinational corporations, financial institutions, and foreign investors operate and conduct business in several jurisdictions and prefer one-stop solutions for their tax and legal needs. Although they are able to use the Indian arms of international accounting firms, no such options are available on the legal side. As such, if the Indian government permits collaborations and joint ventures between foreign and domestic law firms, then such joint venture firms can provide a one-stop-shop to such clients needing foreign and Indian law advice on complex cross-border transactions. In addition, the top thirty Indian law firms are now quite sophisticated and can handle large scale transactions with as much aplomb as many international law firms.

Nevertheless, any liberalization of the Indian legal market to foreign law firms and foreign lawyers can have adverse consequences for small and mid-sized domestic law firms, who may struggle to match the muscle power of the international law firms or any joint ventures that they may form with the larger Indian law firms.

## **Comparison with Singapore and Japan**

Singapore has somewhat cracked the code and established itself as a global legal hub by adopting a progressive approach and allowing foreign law firms to practice in areas of law, including domestic law, in a structured manner. Singapore introduced various models for foreign law firms to practice in Singapore, such as the Foreign Law Practice, the Joint Law Venture, the Formal Law Alliance, and the Qualifying Foreign Law Practice, thereby encouraging collaboration between foreign and domestic law firms.

These models as enunciated in Singapore's Legal Profession Act, 1966 allow "certain types of registered lawyers," including Singapore qualified lawyers or legal practitioners and regulated foreign lawyers (regulated foreign lawyers are foreign lawyers who have registered themselves and have obtained a foreign practitioner's certificate) to practice in "permitted areas of legal practice," which exclude: (i) constitutional and administrative law; (ii) conveyancing; (iii) criminal law; (iv) family law; (v) succession law; (vi) trust law; (vii) appearing or pleading in courts; and (viii) appearing in any court hearing.

Japan has also opened its legal market to foreign law firms but has adopted a stricter approach to liberalization by allowing them to practice only foreign law. Japan has implemented measures to facilitate the integration of foreign law firms into its legal market by allowing partnerships with Japanese law firms and providing clear guidelines for practice.

Singapore and Japan seem to have integrated foreign firms while maintaining control over their respective domestic legal markets.

## Our comments

Liberalization of the Indian legal market can bring benefits to both, clients and domestic lawyers, if done in a balanced and structured way. The presence of foreign lawyers in India can serve to raise the overall standards of the Indian legal market with the introduction of operational best practices, adherence to conflicts of law rules, attorney training, etc. It may also serve to raise the fee scale for Indian law firms, as clients will be more exposed to offerings of foreign lawyers and the reasoning behind their higher price points.

The Singaporean and Japanese models shows that there is no one-size-fits-all model for liberalization of a country's legal market. Each country needs to adopt a structure that meets its economic and social needs.

Therefore, the Indian government may consider adopting a gradual and phased approach to liberalization. In the initial stage, the government may consider permitting partnerships/ collaborations between foreign and Indian law firms on a case-to-case basis, in a set-up where only foreign law is practiced by foreign lawyers and Indian law by Indian lawyers who have a practice history of ten to fifteen years in India. This can create a balanced legal market and prevent foreign law firms from dominating the market or have unchecked access. In this regard, the government should put in place a simpler registration process for foreign law firms/ lawyers to register and establish a presence in India and provide clarity on taxation and permanent establishment issues.

The phased opening should be carefully monitored to ensure that it does not adversely impact Indian law firms. Depending on its success and whether there are benefits to clients, the government can consider further liberalization, including, perhaps, mergers of Indian law firms into foreign law firms.