



INDIAN  
NATIONAL  
BAR  
ASSOCIATION

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INDIAN  
NATIONAL  
BAR  
ASSOCIATION

**SUBMITTED**

**REPORT  
ON**

**DRAFT BAR COUNCIL OF  
INDIA RULES**

**FOR**

**REGISTRATION AND  
REGULATION OF FOREIGN  
LAWYERS IN INDIA, 2016**



*Medhaadvisors*



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# 1. EXECUTIVE SUMMARY

## **LIBERALIZATION OF LEGAL SECTOR IN INDIA**

***“Reform is not the end in itself. Reform for me is just a way station on the long journey to the destination. The destination is the transformation of India”***

**– Prime Minister  
Shri Narendra Modi  
(On 07.06.2016)**



1.

## **WHY THE NEED FOR LIBERALISATION IN THE LEGAL SERVICES SECTOR IN INDIA?**

- I. India is targeting to achieve a \$5 trillion GDP in the next 6-7 years. The 2015-16 GDP grew 7.6% which in the fourth quarter was 7.9%. The corresponding rise in trade and commerce would require increased legal services support, both for domestic and foreign /international law apart from the need for diverse expertise, diverse skill-set with capability to scale up.

The initiatives by the Government of India such as Start-Up India, Digital India, Mudra Yojana, Skill Development, focus on creation and strengthening of young entrepreneurs. Start-Up India's success, thus, far can be measured from the fact that India now ranks no.3 with over 4200 start-ups and over \$18 billion investments till 2015. Additionally, the Mudra Yojana has enabled 3 crore small entrepreneurs in India to receive collateral free loan by way of formal access to credit, thereby enabling the Indian economy and small entrepreneurs to grow and prosper. These growing numbers of entrepreneurs engaged in diverse fields and competing in an open economy are bound to seek global multi-jurisdiction access for their growing business and will be requiring high quality but in-expensive (competitively priced) advice on domestic and foreign laws.

'Ease of Doing Business' by entrepreneurs in India should be at the center-stage of reforms in the legal services sector in India.

### **Professional approach:**

- India is targeting achieving a \$5 trillion GDP in the next 6-7 years.
- The 2015-16 GDP grew 7.6% which in the fourth quarter was 7.9%.
- The corresponding rise in trade and commerce would require increased legal services support, both for domestic and Foreign/International Law

***'Ease of Doing Business' by entrepreneurs in India should be at the center-stage of reforms in the legal services sector in India.***

<sup>1</sup> "Liberalisation of Legal Sector in India by Manoj Kumar, Founder, Hammurabi & Solomon at India International Legal Conclave & GC Manthan on 13.08.2016 @ Thimphu, Bhutan.

The present and emerging scenario throws up questions which cannot be ignored any further:

- Can such a rising demand for legal services (both for domestic and foreign/international law apart from the need for diverse expertise, diverse skill-set with capability to scale up) be met by organic growth alone in the legal services sector?
- Whether existing scale of lawyers in India are capable in filling the gap to practice in India - fill the deficit without collaborating and

allowing foreign lawyers to practice in India ?

- If not filled up on time, will the continuing and growing gap impact the pace of growth and transformation of India as envisaged by the Government of India?

The process of reforms in the legal services sector, apart from any other consideration or commitment, should also be driven by national priorities & considerations.

- II. India must emerge as the legal services capital to the world in the Asian and African region. This would require an enabling regime which encourages global participation, scalability and growth in the legal services sector in India by opening our doors to foreign lawyers to practice in India. India is uniquely placed today. Regionally, India is fast growing into a leader in Asia and Africa. Like most other sectors like Medical, IT, Skill Development and Infrastructure, reforms in the Legal Services

Sector must be driven to make India the service capital of the world for legal services sector in the region.

- III. There is a growing demand of niche capabilities in the legal services sector with the development of International Financial Centers, Aviation Hubs, Information Technology Hubs, Manufacturing Hubs and Growth Clusters. The nature of legal services required in these hubs and clusters are very unique and niche and require sustained leadership and innovation by law firms familiar with specific niche service areas. Allowing foreign law firms to practice in India will bring the much needed expertise in niche areas to the doorstep of the hubs and clusters.

## STAKEHOL

- **Emerging entrepreneurs**
- **India Inc**
- **Legal Professionals**
  - **Individual Lawyers**
  - **Law firms**
    - **Law firms organized as Sole Proprietary concerns**
    - **law firms having 200 + fee earners**
    - **law firms having 100 fee earners**
    - **law firms having 50 fee earners**
    - **small law firms**
    - **start-up law firms**
- **Law Universities**
  - **Students**
  - **General Counsels**
- **Industry**

## STAKEHOLDERS?

Amongst the multitude of stakeholders who together comprise of the legal services sector in India, the key notables are as follows:

- Wide section of emerging entrepreneurs achieving their aspirations as a result of initiatives of the Government of India, requiring high quality but in-expensive (competitively priced) advise on domestic and foreign laws;
- India Inc., comprising of businesses, large medium and small, requiring high quality but in-expensive (competitively priced) advise on domestic and foreign laws;
- Legal Professionals:
  - Individual Lawyers registered under the Advocates Act,1961 and engaged in the practice of law in India;
  - Law firms organized as Sole Proprietary concerns i.e. proprietors registered under the Advocates Act,1961 and engaged in the practice of law in India

***Reforms in the Legal Services sector would therefore need to evaluate and drive the growth of all the above stakeholders.***



- Law firms organized as Partnerships i.e. partners registered under the Advocates Act, 1961 and engaged in the practice of law in India:
  - law firms having 200 + fee earners
  - law firms having 100-199 fee earners
  - law firms having 50-99 fee earners
  - small law firms having 10-49 fee earners
  - start-up law firms
- Law Universities and Law Schools/Colleges in India providing graduation, masters or doctoral courses for law students;
- Students of law and interns undertaking graduation, masters or doctoral courses at Law Universities and Law Schools/Colleges in India
- General Counsels and members of In-House legal teams of various Indian Businesses
- Industry bodies/Institutions such as CII, FICCI, PHD Chamber, ICADR, ICAI, ASSOCHAM etc,
- Mediation and Alternate Dispute Resolution Professionals.

***The process of reforms in the legal services sector, apart from any other consideration or commitment, should also be driven by national priorities & considerations.***

## BENEFITS?

There is a great need to liberalize the Legal Service sector for the Global growth of the Country. In order to liberalize, we first need to identify the urge/necessity for the same:

- 1.) **Increase of overseas Deals:** Indian Companies are increasing its hold in markets abroad by expanding sectors like IT, Biotechnology and BPOs. These sectors work full time for the International clients thereby increasing the need for legal services spanning jurisdiction.
- 2.) **Bespoke Advisory:** Foreign companies possess expertise in specialized areas. A recent example would be licensing of 3G Spectrum.
- 3.) **Reciprocity benefits:** Indian law Firms should support the opening up and expand internationally if they want to take cue from other Sectors.
- 4.) **Impact on other Sectors:** Liberalizing the Legal Services will have a positive Impact on other emerging Indian Sectors like Real Estate and Retail. This played a crucial role in making Singapore, a Financial Hub.
- 5.) **Professional approach:** As per the Current Scenario, Indian law firms are family owned and fall behind in terms of the professional approach compared to the Foreign Law firms. Finally, Opening up will result in flourishing of Foreign Practices.

## BENEFITS?

- Increase of overseas Deals
- Bespoke Advisory
- Reciprocity benefits
- Impact on other Sectors
- Professional approach

## STRATEGY & APPROACH:

The initiative to liberalise the legal services sector should include:

- Removing restrictions on domestic law firms and permitting them to issue advertising brochures, open websites, and facilitate easier access to bank finance.
- Allowing foreign lawyers to practice International Arbitration and Mediation services in the country on foreign and international law.
- Indian Lawyers must put up a concrete Strategy in order to compete sustainably in a liberalized environment against well-established global players:
  - 1) **Consolidation:** Indian Law Firms can merge with other firms and this will give economies of scale, bargaining power and influence to policy decisions.

***India must emerge as the legal services capital to the world in the Asian and African region.***



- 2) **Professionalize:** Indian law firms will be able to attract skilled talent only when they put across a professional image as the current status is very family owned and it lacks professional approach.
- 3) **Differentiate:** Indian Lawyers can work on diverse projects and equip themselves in specific skills. Differentiation from another will enable them to attract good talent and charge premium premises.
- 4) **Global footprint:** Indian firms can follow the path of a few leading Indian Law Firms and set up offices in other parts of the world. This will increase the prospects of getting business from the MNCs who are willing to expand in India. Getting this kind of clientele will help them compete against the global players.
- 5) **Soft Skills:** Indian Lawyers need to invest in specific trainings to improve soft skills and also push for these things to become important part of the legal education curriculum.

## WAY FORWARD: RECOMMENDATIONS OF ENTRY IN PHASED MANNER:

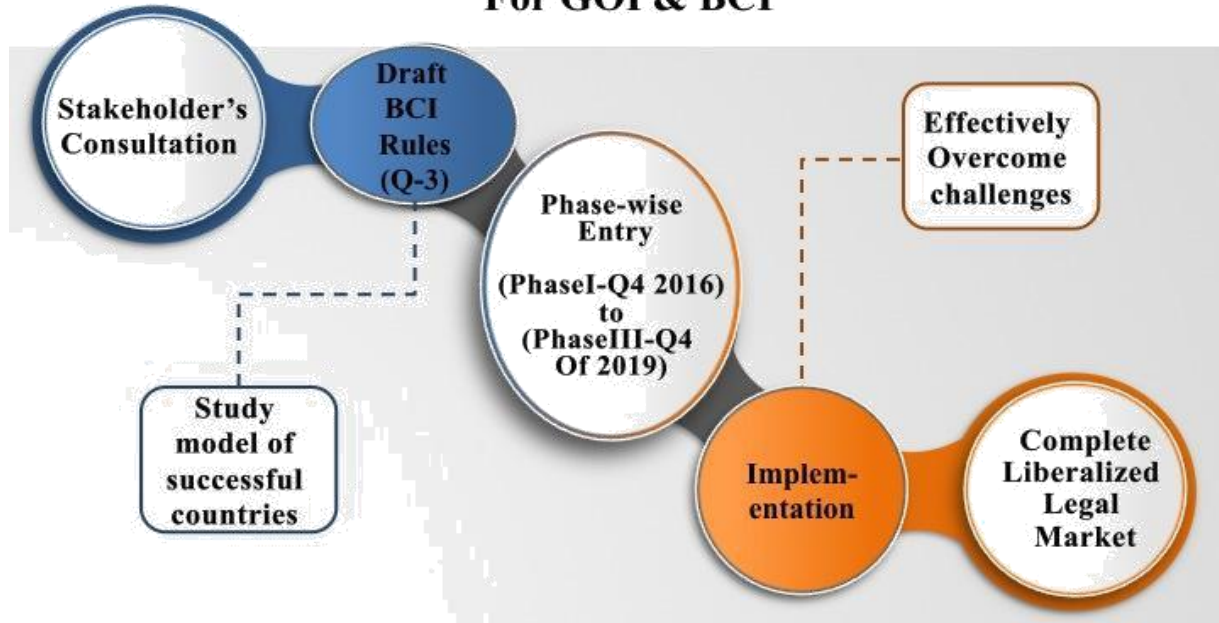
While advocating liberalization, specific measures have to be taken to bring Foreign Law firms into Indian Market, the opening up can be done in phases as proposed below so as to allow Indian firms to cope with the change.

1. The first phase would be to allow foreign lawyers to practice in the areas covered in the Draft BCI Rules.
2. The second phase would be bringing about internal reforms in various applicable laws such as the Advocates Act, 1961 and Limited Liability Partnership Act, 2008 which would in turn allow more partners to be part of the firm, removing restrictions on advertising and initiating reforms in the education sector is necessary to ensure availability of a good talent pool in legal profession.
3. Last Phase can be policy changes as necessary for expansion of the practice of foreign firms by allowing foreign lawyers to practice law in India including by forming joint ventures (JVs) and in Collaboration with Indian Lawyers. To come up with rules and policies to regulate the foreign lawyers and keep a check on their activity and to set up a disciplinary body to keep a tab on foreign lawyers as well.

***In future, foreign firms should be allowed to set up own shops or acquire 100% of Indian law firms in accordance with applicable laws and FDI policy***



## Liberalization of Legal Services In India : Tentative Milestones For GOI & BCI



*Reforms in the legal services sector should be implemented in strict predictable timelines in order to have effective engagement of all stakeholders*

<sup>2</sup> "Liberalisation of Legal Sector in India by Manoj Kumar, Founder, Hammurabi & Solomon at *India International Legal Conclave & GC Manthan* on 13.08.2016 @ *Thimphu, Bhutan*.

## 2. DRAFT MARK-UP OF BCI RULES FOR REGISTRATION AND REGULATION OF FOREIGN LAWYERS IN INDIA, 2016 ALONG WITH COMMENTS



### **BCI DRAFT RULES**



- ❖Registration of Foreign Lawyers and eligibility criteria.
- ❖Law practice by foreign lawyers : Nature & Extent
- ❖Incidental matters regarding opening of law offices
- ❖Deposit Amount
  - \$25,000 Registration of Individuals
  - \$50,000 registration fee for partnership firms,
  - \$10,000 / 20,000 renewal fee for individuals / firms respectively
  - Application for Registration, not practice Indian law in any form
- ❖Validity and renewal of registration
- ❖Foreign lawyers will be governed by the same disciplinary and ethical obligations of BCI
- ❖Area of Practice: Transactional, International laws & Arbitration.

3

### **Bar Council of India Rules for Registration and Regulation of Foreign Lawyers in India, 2016**

#### **Objects and reasons:**

International trade and commerce is advancing at a great pace and a country that is not able to keep abreast with these global phenomena is running a grave risk of being left out of the World Trade and Market. The legal profession in India has to rise to the occasion to meet the international challenges posed by such globalization of business and also by migration of people from one country to another on such a large scale that has not been witnessed in earlier times. The world is becoming a global village.

The demand for an open, responsive and receptive 'legal services dispensation mechanism' in India from the consumers of legal services who operate in international business and cross-country international trade and services is becoming severe day by day. Growth in international legal services, globalization of legal practice and internationalization of the law is increasingly becoming relevant to the growth of the legal services and practices in India.

<sup>3</sup> "Liberalisation of Legal Sector in India by Manoj Kumar, Founder, Hammurabi & Solomon at India International Legal Conclave & GC Manthan on 13.08.2016 @ Thimphu, Bhutan.

Additionally, in order to (ii) make India the Arbitration hub for the Afro-Asian region, (ii) to boost foreign direct investments in the services sector, (iii) give effect to the Government of India's initiative of opening up of the legal services sector in order to ensure better working environment for all stakeholders, increased employment opportunities, better training and learning opportunities for Indian lawyers and fostering a collaborative environment for Indian Lawyers and foreign lawyers to learn, grow and benefit, it is felt necessary that foreign lawyers are permitted to practice law in the field of foreign law; diverse international legal issues in non-litigious matters and in international arbitration.

Bar Council of India had initially opposed the entry of foreign lawyers in India in any form. However, it was authorized by the legal fraternity of the Country in the years 2007-2014 in a Joint Consultative Conferences of Bar Council of India and Chairmen, Vice Chairmen and Chairmen of Executive Committees of all the State Bar Councils in India to hold dialogue and to interact with the Government of India, Ministry of Law and Justice, Ministry of Trade and Commerce and Law Councils/Law Societies of foreign countries to explore the potential and prospects of opening the law practice in India to foreign lawyers in the field of practice of foreign law and diverse international legal issues in non-litigious matters on the principle of reciprocity and it has been doing so.

Time has come to take a call on the issue. Bar Council of India is of the view that opening up of law practice in India to foreign lawyers in the field of practice of foreign law; diverse international legal issues in non-litigious matters and in international arbitration cases would go a long way in helping legal services grow in India to the benefit of lawyers both from India and abroad. It is noteworthy that the standards of Indian lawyers in proficiency in law is comparable with the international standards and the legal fraternity in India is not likely to suffer any disadvantage in case law practice in India is opened up to foreign lawyers in a well controlled and regulated manner on the principle of reciprocity as it would be mutually beneficial for lawyers from India and abroad and these Rules are an attempt by Bar Council of India in this direction. In case, we sleep over the matter, the legal fraternity of India may be left behind in providing legal services to this fast growing class of service seekers in the field of law in India. Let us ensure that the opportunity for creating a hub for such legal services in India is not lost. Many countries have already allowed the foreign lawyers to practice foreign law and diverse international legal issues and arbitration matters in their countries in restricted fields with specific and prescribed conditions.

Taking an all-inclusive view, the Bar Council Of India resolves to implement these rules enabling foreign lawyers to practice foreign law and diverse international law and international arbitration matters in India on the principle of reciprocity in a well-defined, regulated and controlled manner. It is expected that Foreign Countries also extend the reciprocity interest of India Lawyers including law firms to practice in their jurisdiction.

For the aforesaid reasons and in order to meet the aforesaid objectives, the Bar Council of India has framed 'the Bar Council of India Rules for registration of foreign lawyers in India, 2016' under its rule making powers under clauses (d), (e), (ic), (l) and (m) of sub-section (1) of section 7 and clauses (ah), (ag), (c), (e) and (h) of sub-section (1) of section 49 read with sections 24, 29 and 47 of the Advocates Act, 1961 and under all other enabling provisions.

## CHAPTER I

### PRELIMINARY

#### 1. Short title, extent and commencement:-

- (a) These rules shall be called as the Bar Council of India Rules for registration and Regulation of Foreign Lawyers in India.
- (b) These rules shall come into force in whole of India as soon as notified in the official Gazette.

#### 2. Definitions

- (i) 'Act' means the Advocates Act, 1961 as amended from time to time.
- (ii) The definitions of different terms as given in the Act shall apply to these Rules as well.
- (iii) 'Foreign Lawyer' means a person who, including a law firm, **limited liability partnership**, company or a corporation, by whatever name called or described, who/which is entitled to practice law in a foreign country.
- (iv) 'Foreign Country' means a foreign country, which is recognized as such by the Government of India and it includes the constituent State as thereof in case such as a foreign country has a federal structure of governance and such Constituent state has its own justice-delivery system and a separate class of persons entitled to practice law.
- (v) 'Country of the primary qualification' means a Foreign Country in which the Foreign Lawyer is entitled to practice law as per law of **such Foreign** Country.
- (vi) 'Foreign law' means law, which is or was effective in the Country of Primary Qualification.
- (vii) 'Competent Authority of the Foreign Country' means the Government or a court of law or a statutory authority or bar council or legally authorized association or any other legally recognized and constituted body by whatever name called or described, which is competent to grant license to practice law.
- (viii) '**International Arbitration Case**' means an arbitration case concerning a commercial or monetary matter which is conducted in India in which all or any of the parties are persons who have an address or principal office or head office in a Foreign Country.

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Provide the same regime as permitted for Indian Lawyers including a law firm. BCI may consider making suitable amendments to the Advocates Act, 1961 in order to provide a level playing field, with respect to choice of constitution/entity for practicing law, website, advertisement and business promotion.

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BCI may consider making it mandatory for Foreign Lawyers/Law Firms to, train, collaborate and engage Indian Lawyers which practicing law in the area of International Arbitration in India. This will prepare the Indian Lawyers to professionalize themselves on trans-national and multi-jurisdiction transactions.

## CHAPTER II

### **REGISTRATION OF FOREIGN LAWYERS AND THE EXTENT AND CONDITIONS SUBJECT TO WHICH THEY CAN PRACTICE LAW IN INDIA**

#### **3. Registration of Foreign Lawyers and eligibility criteria therefor:**

- (1) A Foreign Lawyer/ **Law Firm** shall not be entitled to practice law in India unless he/it is registered with the Bar Council of India under these rules.  
Provided that this prohibition will not apply to law practiced by a Foreign Lawyer in case such practice is done on a 'fly in an fly out basis' for the purpose of giving legal advice to the client in India regarding foreign law and on diverse international legal issues and provided further that services of such a Foreign Lawyer had been procured in a Foreign Country and he/it does not maintain an office in India for the purpose of such practice and lastly such practice in India for one or more periods does not, in aggregate, exceed sixty days in any period of twelve months.
- (2) 'Right to practice law' in the concerned 'foreign country of the primary qualification' shall be the primary qualification for practicing law in India under these rules.


## CHAPTER III

### APPLICATIONS FOR REGISTRATION, RENEWAL OF REGISTRATION AND MATTERS CONNECTED WITH LAW PRACTICE IN INDIA

4. **Application for registration-** (1) a Foreign Lawyer shall apply for registration under these rules in 'FORM A' appended to these Rules along with registration fee and guarantee amount either in person or through registered post. This application and fee may also be submitted on-line. Such an application shall also be accompanied by non-refundable Process charges of such an amount as may be fixed by Bar Council of India from time to time.

This application shall be addressed to the secretary, Bar Council of India and shall be accompanied by the following documents:-

- (i) A certificate from the government of India, (ministry of law & justice and ministry of commerce and trade) or such other authority or officer as Union Government may authorize in this behalf that an effective legal system exists in concerned foreign country of the primary qualification and that it has no objection in case the applicant is registered under these rules and practices law in India;
- (ii) A certificate from the competent authority of the concerned foreign country of primary qualification certifying that the applicant is entitled to practice law in that country;
- (iii) A certificate from the government of the foreign country of primary qualification or from a competent authority thereof certifying that advocates enrolled under the advocates act, 1961 are permitted to practice law in that country in the manner and to the extent which is comparable to the law practice permitted under these rules along with copies of the relevant laws and rules;
- (iv) A certificate from the competent authority of the concerned country of primary qualification or any other competent authority/ies, courts, bar association, bar council, etc. that the applicant has been in active practice in that country.
- (v) A certificate from the Competent Authority of the concerned foreign country of primary qualification that no proceedings of professional or other misconduct are pending either before it or before any other authority competent to entertain and decide such proceeding;
- (vi) A certificate of the competent authority of the concerned foreign country of primary qualification giving details of the fee structure and other amounts chargeable from an advocate enrolled under the Act for enabling him to practice law in that country along with relevant Rules and Laws;
- (vii) 'No objection Certificate' of the competent authority of the concerned foreign country of primary qualification that it has no objection in case the applicant starts law practice in India and that the applicant enjoys a good standing in the Bar.
- (viii) A declaration on affidavit that the applicant has not been convicted of any offence and has not suffered any adverse order in any disciplinary matter. (In case he has suffered any conviction/adverse order, relevant attested copies of the order of conviction/adverse order and other related documents about the matter like appeal and stay, if any, or sentence/ fine suffered/ paid etc. are to be annexed);
- (ix) A declaration on affidavit that the applicant has no objection and consents to the making of enquiries and investigation by the Bar Council of India on its own or through such government or non-government investigation agency, as it may deem fit, to verify the veracity of the particulars disclosed by the applicant in the application and genuineness of the documents annexed therewith;
- (x) An undertaking on oath that he/it shall not practice Indian law in any form or before any court of Law, Tribunal, Board or any other Authority legally entitled to record evidence on oath;
- (xi) A declaration on oath that he/it shall not be entitled to and shall not claim any interest on the guarantee amount deposited by him/it with Bar Council of India at the time of registration under these Rules and that the Bar Council shall be entitled to adjust and


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BCI may consider simplifying the documentation required under the present Rules in order to ensure that no prohibitive entry barriers for foreign lawyers/law firm emerge out of the Rules and the initiative of the Government of India to liberalize the legal services sector is effectively given effect to.



- apply this guarantee amount to the penalty and cost amounts that may be awarded by the Bar Council of India under rules 9 and 10;
- (xii) A declaration on oath that the applicant fully understands and appreciates the fact that on registration under rule 7 of these Rules, the Advocates Act, 1961 and Rules made there under, mutatis mutandis, apply to him/it in respect of law practice by him/it in India and that he/it is subject to the jurisdiction of Courts of Law in India and to the jurisdiction of Bar Council of India in relation to such practice.

## 5. Validity of registration and renewal of registration.-

- (1) The registration done under rule 7 shall be valid for a period of 5(five) years only and the foreign lawyer would be required to renew it by filing an application for renewal in Form B within 6 months before the date on which such validity **expires**.
- (2) A foreign lawyer shall apply for renewal of registration under these rules in 'FORM B' appended to these Rules along with renewal fee either in person or through registered Post.
- (3) This application for renewal shall be addressed to the Secretary, Bar Council of India and shall be accompanied by the following documents:-
- (i) A certificate from the government of India or such other authority or officer as it may authorize in this behalf that an effective legal system continues exist in concerned foreign country of the primary qualification since his/its registration under rule 7 and that it has no objection in case the registration of applicant is renewed under these Rules and he/it continues to practice law in India;
  - (ii) Certificate from the Competent Authority of the concerned foreign country of primary qualification certifying the applicant continues to be entitled to practice law in that Country since his/its registration under rule 7;
  - (iii) A certificate from the government of the foreign country of primary qualification or from a competent Authority there of certifying that advocates enrolled under the Advocates Act, 1961 are continued to be permitted to practice law in that country in the matter and to the extent which is comparable to the law practice permitted under these Rules since his/its registration under rule 7 along with copies of the relevant law and Rules;
  - (iv) Certificate of the competent authority of the concerned foreign country of primary qualification that no proceedings of professional or other misconduct have been filed either before it or before any other authority competent to entertain and decide such proceedings since his/its registration under Rule 7;
  - (v) 'No Objection Certificate' of the competent authority of the concerned foreign country of primary qualification that it has no objection in case the applicant continues to practice law in India;
  - (vi) A declaration on affidavit that the applicant has not been convicted of any offence and has not suffered any adverse order in any disciplinary matter after registration under rule 7- (In case it/he has suffered any conviction/adverse order, relevant attested copies of the order of conviction/adverse order and other related documents about the matter like appeal and stay, if any, or sentence/fine suffered/ paid etc. are to be annexed);
  - (vii) A declaration on affidavit that the applicant has no objection and consents to the making of enquiries and investigation by the Bar Council of India on its own or through such government or non-government investigating agency, as it may deem fit, to verify the veracity of the particulars disclosed by the applicant in the application for renewal and genuineness of the documents annexed therewith.

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BCI may consider simplifying the documentation required under the present Rules in order to ensure that no prohibitive entry barriers for foreign lawyers/law firm emerge out of the Rules and the initiative of the Government of India to liberalize the legal services sector is effectively given effect to.

## 6. Registration and renewal fee and guarantee amount.-

(A). After receipt of such application, the Bar Council of India or a committee constituted by the Council in this behalf, shall examine the application, hold an enquiry with regard to genuineness of the contents and



the documents attached with the application. The Council will also examine the truth about the reciprocity with the concerned foreign country. And after such examination and enquiry, if the application is found to be fit for registration, the Council shall grant a Certificate of Registration with a separate Registration with a separate Registration Number.

(B). The Council will inform the Government of India soon after such registration and shall also send a copy of such Registration Certificate.

(C). In the matter of Registration and Designated Advocates (or whatever name they are known in the concerned foreign country) are to be given preference as the rights and privileges of such senior Advocates are prescribed under Section 23 of the Advocates Act, 1961.

(D). An application for registration/renewal of registration shall be accompanied by registration/renewal fee of such an amount as is equivalent to the fee and other charges chargeable in the concerned foreign country of primary qualifications from an advocate enrolled under the Act on account of registration/permission to practice law there but such fee shall not be less than fee amount given herein below:

(i) Registration fee in case of a foreign lawyer, if he is an individual:

- USD 25,000/- (USD twenty five thousand only);

(ii) Registration fee in case of a foreign lawyer, if it is a Firm, Private Limited Partnership, Company, Limited Liability Partnership (LLP) etc:

- USD 50,000/- (USD fifty thousand only);

(iii) Renewal fee in case of a foreign lawyer:

- USD 10,000/- (USD ten thousand only);

(iv) Renewal fee in case of a foreign lawyer, if it is a Firm, Private Limited Partnership, Company, Limited Liability Partnership (LLP) etc.:

- USD 20,000/- (USD twenty thousand only).

(E) The application for registration shall also be accompanied by Security Deposit as follows:-

(i) Security deposit in case of a foreign lawyer, if he is an individual:

- USD 15,000/- (USD fifteen thousand only);

(ii) Guarantee amount in case of a foreign lawyer, if it is a Firm, Private Limited Partnership, Company, Limited Liability partnership (LLP) etc.:

- USD 40,000/- (USD forty thousand only).

The Security deposit shall be returnable to the foreign lawyer when he/it voluntarily terminates foreign law practice in India or when it/his registration expires or when his registration is cancelled permanently but Bar Council of India shall be entitled to adjust and deduct amounts equivalent to the penalty and costs imposed by it on it/him under Rule 9 and 10 from this Security Deposit in case it/he omits to pay.

(F). The Security deposit shall be kept by the Bar Council of India under a separate Head and interest accruing thereon shall be used by it for meeting its expenses for the due implementation and management of these Rules.

**7. Disposal of applications for registration and renewal.-** The Bar Council of India may allow the application for registration filed under rule 4 and for renewal filed under rule 5, if it is satisfied that the application is supported by all the relevant documents, guarantee amount, process charges, fee etc. as required under these Rules and that the applicant does not suffer from any criminal or disciplinary proceedings that are likely to make him/it unsuitable for practicing law in India under these rules and lastly that the country of the primary qualifications allows advocates enrolled under the Act to practice law in that country in the manner and to the extent which is comparable to the law practice permitted by these Rules.

However, the Bar Council of India shall not reject an application for registration/renewal unless a reasonable opportunity of being heard has been afforded to the applicant. In the vent of rejection of application for registration/renewal, the registration fee/renewal fee/guarantee amount deposited by the applicant shall be returned to him after adjusting and deducting such amounts as are recoverable by the Bar Council of India under these Rules.

Provided that the Bar Council of India may, at its absolute discretion, hold consultation with the Government of India and its concerned Ministries, if the same is deemed necessary in a particular case, to ensure that the applicant fulfills all the relevant requirements and conditions as laid down by these Rules.

Provided that the aforesaid registration and renewal thereof shall not, in any way, entitle the foreign lawyer to have free and unregulated entry and stay in India for which it/he remains governed by the Indian Law and lawful orders/instructions issued by the Government of India, State Governments, statutory bodies or any competent authorities in India from time to time.

Provided further that the Bar Council of India may seek information from the Government of India and its various Ministries about the existence of an effective legal system in the concerned foreign country and also about the existence of any unfair discrimination in the matter of law practice by Indian advocates in that Country and Bar Council of India may suo-moto start proceedings for cancellation of registration or for cancellation of renewal of registration in case Government of India certifies, either on its asking or otherwise, that an effective legal system no longer exists in the concerned foreign country and that Indian Lawyers are being subjected to unfair discrimination there.

## CHAPTER IV

### LAW PRACTICE BY FOREIGN LAWYERS

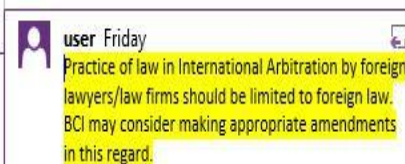
**8. Law practice by a foreign lawyers: nature and extent thereof:-** (1) A foreign lawyer registered under rules shall be entitled to practice law in India in non-litigious matters only subject to such exceptions, conditions and limitations as are laid down under these Rules and he/it shall be deemed to be an advocate within the meaning sections 29, 30 and 33 of the Act qua such acts and deeds as are envisaged to be performed by him under these Rules as a foreign lawyer.

(2) The practice of law by a foreign lawyer shall include the following legal services:-

(i) Doing work, transacting business, giving advice and opinion concerning the laws of the country of the primary qualification;

(ii) providing legal services and appearing as a lawyer for a person, firm, company, corporation, trust, society etc. who/which is having an address or principal office or head office in a foreign country in an international arbitration case which is conducted in India and in such arbitration case 'foreign law', may or may not be **involved**;

(iii) providing legal services and appearing as a lawyer for a person, firm, company, corporation, trust, society etc. who/which is having an address or principal office or head office in the foreign country of the primary qualification in



proceedings before bodies other than Courts, Tribunals, Boards, statutory authorities who are not legally entitled to take evidence on oath, in which knowledge of foreign law of the country of the primary qualification is essential;

(iv) providing legal services concerning the laws of the Country of primary qualification and on diverse international legal issues, provided that such legal services, unless otherwise provided for in these Rules, shall not include representation or the preparation of documents regarding procedures before a Court of Law, Tribunal or any other Authority competent to record evidence on oath or preparation of any documents, petitions etc. to be submitted to any such forum regarding such procedures.

**9. Incidental matters as regards opening of law offices, entering into partnerships, procuring other legal services etc. in connection with the practice of law in India:-** (1) The registered foreign lawyer shall be entitled to do the following things in connection with the practice of law in India:-

(i) to open law office or offices in India for carrying on law practice in India subject to the condition that Bar Council of India shall be kept informed of the particulars of such office/offices viz. postal address, name of the owner/lessee of the property in which the office/offices are located and the documents enabling and entitling him/it to occupy it.

(ii) to engage and procure the services of one or more advocate enrolled under the Act, but such engagement shall not entitle and allow the foreign lawyer to practice Indian Law,

(iii) to engage and procure the services of one or more Indian-Registered foreign lawyers,

(iv) to enter into partnership with one or more Indian-Registered foreign lawyer and/or advocates enrolled under the Act,

(v) to work for an advocate enrolled under the Act and for any Indian Law Firm,

(vi) to work for another Indian-Registered foreign lawyer.

## CHAPTER V

### DISCIPLINARY ISSUES AND PENALTIES FOR SECURING REGISTRATION BY MISREPRESENTATION ETC.

**10. Disciplinary Issues.-** (1) A foreign lawyer registered under these rules shall be subject to the same ethical and practice standards laid down under the Advocates Act, 1961 and Rules made there under as are the advocates enrolled under the Act.


(2) where on receipt of a complaint or otherwise the Bar Council of India has reason to believe that any foreign lawyer registered under these Rules has been guilty of professional or other misconduct in connection with law practice in India, it shall refer the case for disposal to any of its disciplinary committee under section 36 of the Advocates Act, 1961.

(3) In disposing of the proceedings under section 36 of the Act and this rule, the disciplinary committee of the Bar Council of India may make any of the following orders, namely:-

(a) dismiss the complaint or drop the proceedings;

(b) reprimand the foreign lawyer;

(c) suspend the registration of the foreign lawyer for such period as it may deem fit;

 user Friday  
BCI may consider harmonizing the rules relating to ethical and practice standards with global standards in order to provide a level playing field amongst Indian And foreign lawyers.

- (d) cancel the registration permanently;
- (e) impose penalty of such an amount as it may deem fit;
- (f) impose costs.

**11. Consequences of securing registration by misrepresentation, fraud etc:-** (1) The Bar Council of India may, if satisfied, either on a complaint made to it or otherwise that any person has secured registration/renewal of registration as a foreign lawyer by misrepresentation as to an essential fact or by fraud or undue influence, it may make, after giving him/it an opportunity of being heard, cancel the registration/renewal of registration of such a foreign lawyer with or without penalty of such an amount as it may deem fit.

However, if such misrepresentation relates to a fact, which is not essential, it may make any of the following orders, namely:-

- (a) Dismiss the complaint or drop the proceedings;
- (b) Reprimand the foreign lawyer;
- (c) Suspend the registration of the foreign lawyer for such period as it may deem fit;
- (d) Impose penalty of such an amount as it may deem fit;
- (e) Impose costs.

## CHAPTER VI MISCELLANEOUS

**12. Regulatory Authority.-** The Bar Council of India shall have the right of issuing such directions and regulations from time to time, as are necessary for the proper implementation and execution of these Rules. The Bar Council of India may hold deliberations and consultations with its counterparts i.e. statutory authorities in management of the legal profession in different foreign countries in consultations with the Government of India on the principle of reciprocity so as to promote and strengthen the legal services in India to keep pace with the globalization of trade and commerce to provide a vibrant and effective framework of legal service that can cater to the ever changing needs of the people, belonging to different religious, faiths and having different personal laws, migrating from one country to the other and to promote international progress, coherence and unity.

The Bar Council of India is responsible for ensuring the reciprocity. The Council can cancel the registration of any foreign lawyer or law firm if it comes to the notice of the council through any source that the Indian lawyers or Indian Law Firm are being discriminated by the concerned foreign lawyers/foreign law firm or the government an opportunity to place their views before the council.

**13. Removal of difficulties.-** In case any doubt or dispute as to the meaning, interpretation and execution of these Rules arise, the Bar Council of India shall be the final authority to resolve and settle all such disputes and its decision thereon shall be final.

### 3. INTRODUCTION

#### FAQs - LIBERALIZATION OF LEGAL SERVICES?



- ❖ The Advocates Act, 1961 listed qualifications to be admitted as an advocate on a State Roll and be eligible to practice law in India.
- ❖ Law practice in India constitutes mostly transactional & litigious work.
- ❖ Uruguay Round under the GATS negotiations: liberalization of all service sectors, including legal services-India has not undertaken any commitment
- ❖ India, contracting state to the GATS is yet to comply with trade in services (GATS)
- ❖ Many member countries viz US, EC, Australia, Singapore, Japan, China, Switzerland, New Zealand and Brazil have requested India for taking commitment in Legal Services
- ❖ November 2015- Law Society, Bar Council of England and Wales and the Bar Council of India drew up a memorandum of understanding on opening up the market
- ❖ Is there a need for Foreign Law Firms/ Lawyers in India?
- ❖ Legal Services : Which Stakeholders are impacted?

4

#### 3.1 Report Coverage and Introduction

***“It has been said that arguing against globalization is like arguing against the laws of gravity”***

One of the most evident and momentous outcome of the process of globalization and liberalization has been the opening up of economies of almost all the countries all over the world. There has also been rising demands on India, from members of the WTO for liberalizing of the Indian legal services sector. But, on the other hand, there has been a strong hesitation on the side of the Bar Association of India and chiefly the Bar Council of India in allowing foreign law firms to enter India. Their point of view is that it may lead to the lessening of opportunities available to the domestic lawyers and they would be marginalized.

The Indian Legal Services Sector is one of the fast paced growing services sectors of the Indian Economy. At present, India has the 2nd largest number of lawyers in the world with the strength of more than one million lawyers. According to available statistics, about 80,000 law graduates pass out every year from the country's 965 law schools. Legal Services is one of the services that can be opened up to trade under the General Agreement on Trade in Services (GATS) but is subjected to the commitments made by the Indian Government in this regard. India has not yet included legal services in its schedule of commitments under the General Agreements on Trade in Services. There is a lot of debate and ambiguity on whether foreign lawyers can fly-in-fly-out to India to counsel clients on foreign laws. Codification of the law on this subject is necessary.

The controversy surrounding this issue is not new. As early as 1995, Lawyers' Collective (a bona fide public interest trust set up by public spirited lawyers to provide legal aid) moved to Bombay High Court under section 29 of the Advocates Act. Their agenda was to challenge the accessibility of foreign law

<sup>4</sup> “Liberalisation of Legal Sector in India by Manoj Kumar, Founder, Hammurabi & Solomon at India International Legal Conclave & GC Manthan on 13.08.2016 @ Thimphu, Bhutan.



firms to the Indian Legal Market to “practice law” in India. It was contended that the important question which needed to be addressed and adjudicated upon by the High Court was whether foreign law firms were eligible to set up offices in India and whether the term “practice the profession of law” extended beyond and had a wider scope than appearing before a court or Forum to render legal advice to clients and/or draft legal documents. It was fervently argued by the Petitioners in the said case that the Act in question has provisions that enable only the advocates who are enrolled in India are thus eligible to practice the vocation of law and legal practice in India. It was also contended that the words “practice the profession of law” was not limited only to appearance and arguments before courts and fora and also giving professional advice as an attorney, but its scope was enlarged to drafting legal documents and writings, rendering professional advice to clients complying with the international standards and commercial transactions.

If we analyze the past trends, we have come a long way in our approach towards the entry of foreign law firms in India. In 2009, in the case of *Lawyers Collective v. Indian Bar Council*<sup>5</sup>, it was unthinkable that such entry could ever be facilitated as iterated by the Bombay High Court. But the changing trends in the economy, aided by Globalization, have been a catalyst to propel the same. The Advocates Act<sup>6</sup> also restricted their entry. Indians could practice abroad, but the reverse was not possible previously.

But this does not mean that Foreign Law Firms/Lawyers have not been present in the Indian sphere. They have been working with their Indian clients through their associations with the Indian Law Firms or via their branch offices in other countries. BCI norms seek to provide a framework within which these practices can be regulated and be subjected to certain guidelines. For example, international firms like **Allen & Overy** (specializes on power projects, chiefly in the oil & gas sector; has acted for Indian banks, alongside providing advisory work for other corporations and companies in India), **CMS Cameron** (helped and advised the government of Orissa on privatization procedure of the state electricity system), **Denton Wilde Sapte** (renders services and professional advice to big Indian companies like Tata Electric and Gujarat State Energy Company), **Linklaters** (played a big role in representing clients against the Maharashtra State Electricity Board), **Baker and McKenzie**, are amongst the most dynamic foreign law firms which have been working in India over a period of past two decades. It is discussed that all these firms have significant experience as well as expertise in the field of infrastructure and energy laws, Intellectual Property Rights, Indian as well as international commercial transactions, project financing and funding, Foreign Direct Investment, financial laws and commercial laws and arbitration. .

## 3.2. Historical Perspective - India

### 3.2.1. Brief History of Law in India

Law in India has evolved from religious prescription to the current constitutional and legal system we have today, traversing through secular legal systems and the common law. During the shift from Mughal legal system, the advocates under that regimen, “vakils”, too followed suit, though they mostly continued their earlier role as client representatives. The doors of the newly created Supreme Courts were barred to Indian practitioners as right of audience was limited to members of English, Irish and Scottish professional bodies. Subsequently, rules and statutes culminating in the Legal Practitioners Act of 1846 opened up the profession regardless of nationality or religion.

India has an organic law as consequence of common law system. Through judicial pronouncements and legislative action, this has been fine-tuned for Indian conditions. The Indian legal system’s move towards a social justice paradigm, though undertook independently, can be seen to mirror the changes in other territories with common law system.

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<sup>5</sup> *Lawyers Collective v. Bar Council of India*, Writ Petition No. 1526/1995 (Bombay H.C. 2009), available at <http://barandbench.com/userfiles/files/File/LawyersCollectiveforeignfirmsBbayHC.pdf>.

<sup>6</sup> The Advocates Act, No. 25 of 1961, India Code available at :<http://www.sharmalawco.in/downloads/the%20advocates%20act%201961.pdf>.



### **3.2.2 Present day Scenario**

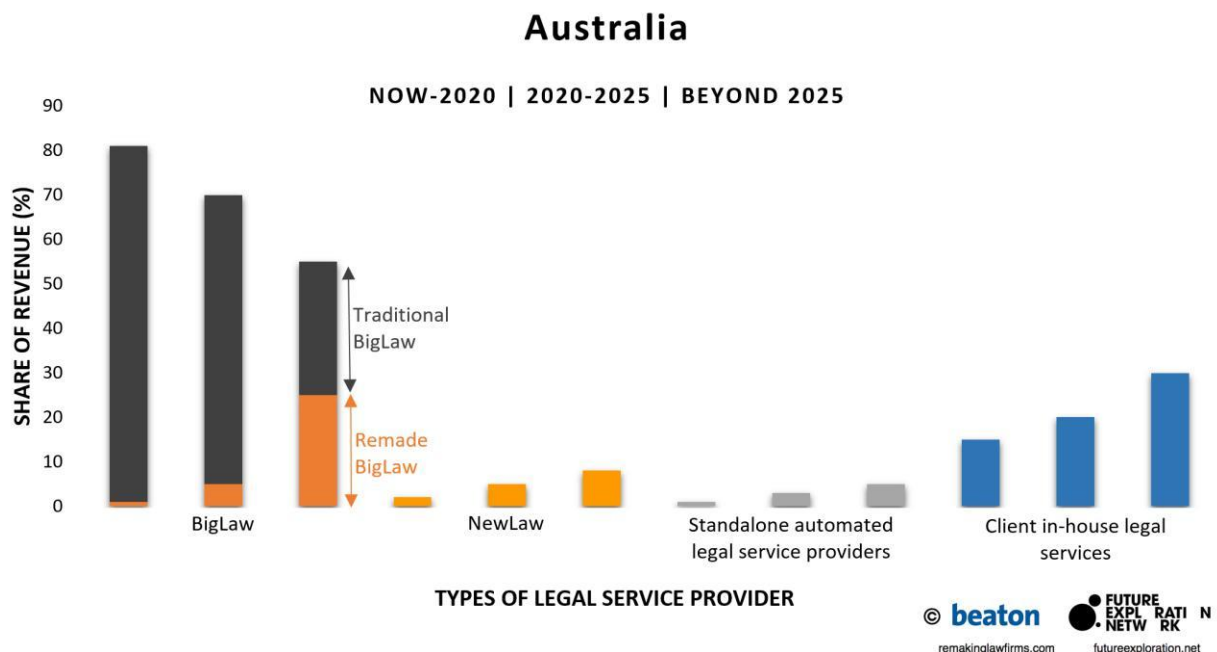
The service industries already play an important role in the Indian economy and are growing faster than other components of India's Gross Domestic Product (GDP). Services account for 59.9 per cent of GDP of India in 2013-14, is a sector of critical interest in India. In 2013 India ranked 6<sup>th</sup> in services exporter and 7<sup>th</sup> in services imports of the world trade in commercial services. Firms in the service sectors, both large firms and SME's (small and medium enterprises) are more likely to be engaged in exports than their goods producing counterparts. In light of the increasing tradability of services and the growing importance of the service industries to the economy, the prospects for more rapid growth in services trade are excellent.

## 4. GLOBAL SCENARIO

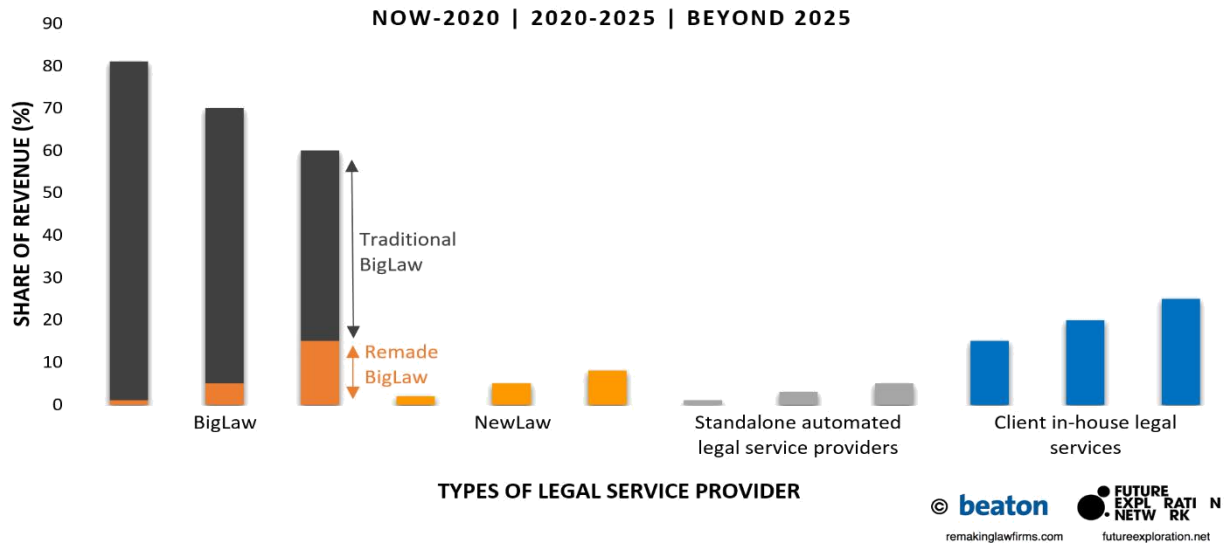
### 4.1 Market Size, Sectors, and Trends

The International picture within the global economy, the significance of trade in services is hard to ignore. In 2013, world commercial services exports was \$4.6 trillion which grew at the rate of 6%. World import of commercial services grew at 4% and reached \$4.3 trillion during 2013. However, commercial potential extends significantly beyond simple cross - border flows of services. It is estimated that trade in services through commercial presence could be at large as cross - border trade - that means that the balance of payments figures may only account for half the actual trade in services. Several groups argue that services account for approximately 60% of the world's economic output, or more than US\$14 trillion in economic activity which could be within the reach of international competition.

As per statistical approximation of the WTO, services supplied in various Modes i.e. cross border supply (Mode 1), consumption abroad (Mode 2), commercial presence (Mode 3) and movement of natural persons (Mode 4) account for 35%, 10-15%, 50%, and 1-2% respectively of the total commercial services flow in the world.



## Canada



### 4.2 Practice as Foreign Legal Consultants (FLC)

FLCs usually seek access in fields of law for which they are already qualified. They are currently in the forefront of liberalization in the legal services sector. However, even in the absence of serious qualification requirement barriers, FLCs still face important regulatory obstacles with respect to licensing requirements. In most cases, the practice of international law is permitted provided that the FLC is competent or to the extent allowed by the country where the lawyer is registered.

USA and Europe are the primary locations that engage foreign legal consultants followed by South America and Asia. India is currently involved in comprehensive multilateral negotiations regarding trade in services. Through the GATS negotiations, India hopes to secure better access to Foreign Service markets and higher levels of liberalization in service sectors. Professional services, including legal services, are an important part of GATS negotiations. To truly understand the situation of India's trade potential in legal services sector, input from all stakeholders is necessary.

India has not undertaken any commitment in the legal services sector during the Uruguay Round of negotiations. It has neither offered for any commitments in legal services in its Initial Offer nor in its Revised Offer submitted at the WTO during the course of on-going Services negotiations under GATS. FDI is not permitted in this sector. International law firms are not allowed to establish offices in India. Moreover, Indian advocates are not permitted to enter into profit sharing arrangements with the persons other than Indian advocates. Foreign Law firms are not permitted to open offices in India as per the Advocates Act 1961 and they are also prohibited from giving any legal advice that could constitute practicing of Indian law.

There is a strong sentiment amongst various members of the profession that favours permitting foreign law firms even in a limited way would lead to the growth opportunities available to domestic lawyers. This has been the experience in every jurisdiction that has adopted a FLC regime. New York, which has had a FLC regime for more than half a century now, is a very good example. The opportunity for domestic lawyers has been greatest in those jurisdictions where the FLC regimes are the most liberal. It is important that we look into the immense trade potential of the Indian legal profession, but without compromising on the interests of Indian Advocates. At the same time, it is a reality that the Indian economy is fast integrating into the global economy. While a number of foreign companies are investing in India, Indian companies are also acquiring foreign companies on a regular basis. This requires capacity building of Indian lawyers and Indian law firms in areas such as international law, third country law,

patents law etc. so that they can not only advise the foreign companies in India, but also support Indian companies acquiring assets abroad. Lawyers have played a crucial role in helping formulate policy to enhance foreign investment and to create a favorable environment for foreign investors. Despite limiting circumstances, Indian law firms in particular over the last few years, have displayed a youthful dynamism by re-inventing themselves to provide cutting edge legal advice. Leading firms in different jurisdictions have worked with Indian lawyers/law firms, who have several cross-country transactions in the fields of international commercial and financial law to their credit.

Having functioned in such a limiting framework for the past fifty years, the Indian legal profession is today ill-equipped to compete on par with international law community, which has grown in liberalized regimes and possess vast resources at their disposal.

Typical market access limitations in the legal sector include: restrictions on the movement of professional, managerial and technical personnel, and restrictions in the form of incorporation. Although lawyers engaging in advisory services in international and home/third country law (foreign legal consultants) are less likely to be subject to nationality requirements, general nationality requirements for all legal services may still restrict foreign legal consultants. Limitations on the form of incorporation are still very common in the legal services sector. Several countries prohibit incorporation, while others allow only selected forms of incorporation, but these restrictions are applied equally to foreign and domestic practitioners. Restrictions on foreign equity specific to legal services are not very common although general investment restrictions still apply to legal services.

Qualification requirements often represent an insurmountable barrier to trade in legal services, especially for the practice of host country law. Legal education differs from country to country and in some cases (like India) within the same country. In some instances, these differences are so significant that regulators require foreign qualified lawyers to re-qualify in order to be able to practice. Many member countries viz US, EC, Australia, Singapore, Japan, China, Switzerland, New Zealand and Brazil have requested India for taking commitment in Legal Services. These requests have also been reflected in the process of bilateral requests which are mostly for FLC's in only corporate and international law. There is no such request to practice domestic law in Indian courts. These requests are only for their engagement in a consultative capacity. There are requests for commercial association between foreign and local lawyers and firms on our terms and conditions.

## 5. THE INTERNATIONAL MARKET

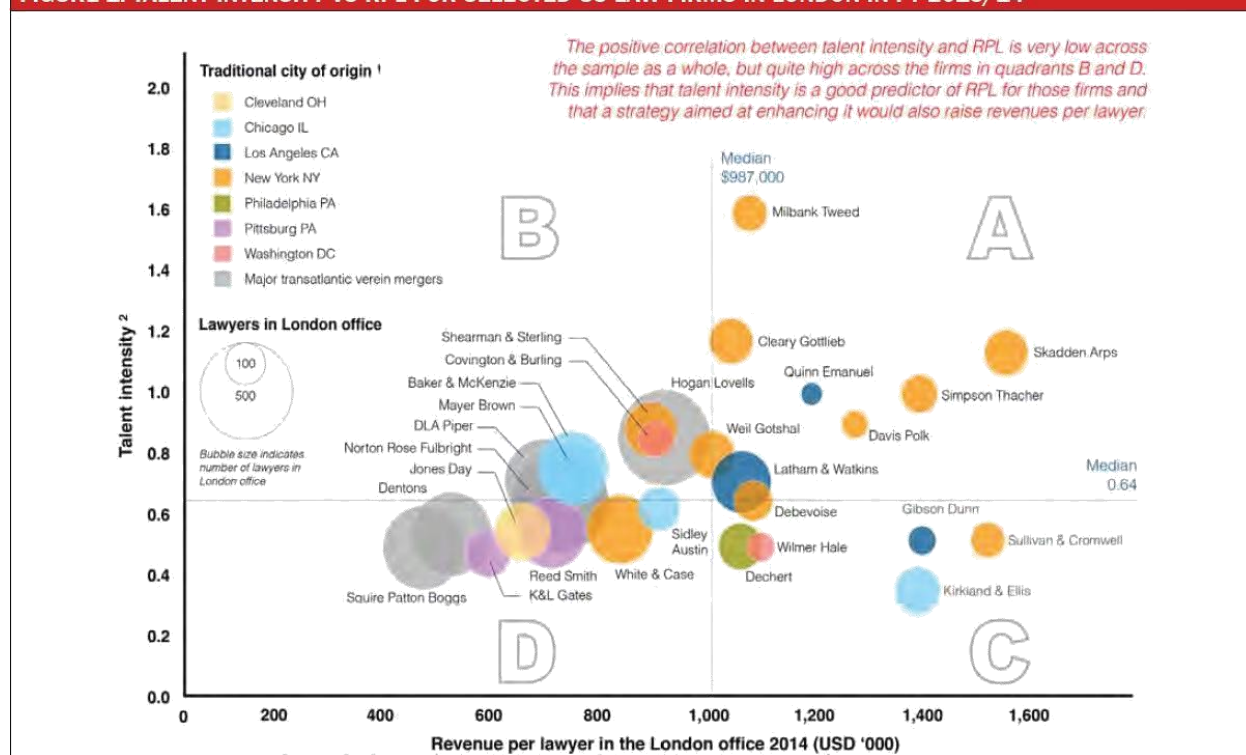
Legal firms have taken on a more international orientation in recent years in order to keep pace with the growing global needs of their clientele. Most of the demand for foreign legal services comes from businesses and organizations involved in international trade. Business law and international law are therefore the sectors most affected by international trade in legal services, although the possibility of entry of Foreign Service suppliers in more traditional sectors of domestic law should not be discounted as the sector becomes increasingly integrated and competitive. Lawyers supplying legal services abroad usually act as foreign legal consultants (FLC). The legal services sector has experienced a steady and continuous growth in the past decades as a consequence of the growth in international trade and the emergence of new fields of practice, particularly in the area of Business Law. Issues such as corporate restructuring, privatization, cross-border mergers and acquisitions, intellectual property rights, new financial instruments, and competition law have recently generated an increasing demand for more sophisticated legal services.

In the vast majority of countries the legal profession is practiced by individual professionals or small firms, while large firms are still a phenomenon limited to a small number of Anglo- Saxon/ common law countries. Top law firms are mostly from United States, UK, Canada, France, Germany etc. though India has a very small representation.

Most trade in legal services takes place across borders or via the temporary stay of natural persons travelling as individual professionals or as employees/partners of a foreign established law firm. Affiliate trade of legal services is still limited as suppliers often find the costs and the difficulties associated with establishing a commercial presence too high.

Cross-Border trade in legal services consists of the transmission of legal documents or advice by mail or via telecommunication devices. Technological developments in the telecommunications sector are creating more efficient and accessible ways by which cross-border trade in legal services can take place. Trade in legal services is expected to benefit from the growth of the Internet and of electronic commerce since the majority of legal services (with some exceptions, such as court appearances) can be delivered electronically.

**FIGURE 1: TALENT INTENSITY VS RPL FOR SELECTED US LAW FIRMS IN LONDON IN FY 2013/14**



<sup>1</sup> - Several of these firms have merged and merged again over the years so have cultural roots in multiple cities now, both in the U.S. and internationally  
<sup>2</sup> - Talent intensity is the number of UK / London Chambers Rankings awarded to the firm divided by the number of partners in the London office. We use that as a proxy for the firm's "bench strength."  
 Sources: The Lawyer UK 200 2014; Chambers & Partners; Firms' websites; Matt Byrne "Quinn Emanuel London revenue falls by 28% in 2013 to £19.8 million," The Lawyer 5 March 2014

## 5.1 Regulatory Structure And Relevant Trade Liberalizations

Legal services belong to the group of "accredited" professional services. Lawyers often require a license to practice. Licensing requirements may include qualification, establishment or residency requirements, absence of a criminal record, the taking of an oath, subscription of a professional indemnity insurance, etc. Professional organizations of lawyers exist in most countries and membership in these organizations is often mandatory. Typical market access limitations in the legal sector include: restrictions on the movement of professional, managerial and technical personnel, and restrictions on the form of incorporation. Although lawyers engaging in advisory services in international and home/third country law (foreign legal consultants) are less likely to be subject to nationality requirements, general nationality requirements for all legal services may still restrict foreign legal consultants. Limitations on the form of incorporation are still very common in the legal services sector. Several countries prohibit incorporation, while others allow only selected forms of incorporation, but these restrictions are applied equally to foreign and domestic practitioners. Restrictions on foreign equity specific to legal services are not very common although general investment restrictions still apply to legal services. Important national treatment limitations include: nationality requirements; restrictions on partnership with local professionals; restrictions on the hiring of local professionals; restrictions on the use of international and foreign firm names; residency requirements; and general discrimination in the licensing process. Nationality requirements in this sector are often based on the notion that lawyers provide a "public function." Requirements to partner with or to hire locally licensed professionals prevent law firms acting as foreign legal consultants from expanding into the fields of court representation and host country law.

Qualification requirements often represent an insurmountable barrier to trade in legal services, especially for the practice of host country law. Legal education differs from country to country and in some cases



(like India) within the same country. In some instances, these differences are so significant that regulators require foreign qualified lawyers to re-qualify in order to be able to practice. In the fields of international law and home/third country law, qualification requirements constitute lower barriers to trade than in the field of host country law. Foreign legal consultants usually seek access in fields of law for which they are already qualified. Foreign legal consultants are currently in the forefront of liberalization in the legal services sector. However, even in the absence of serious qualification requirement barriers, foreign legal consultants still face important regulatory obstacles with respect to licensing requirements. Indeed, though foreign legal consultants encounter few barriers when providing services across borders, their domestic establishment is never the less, regulated in most countries.

## 5.2 Country wise-structure

### A. UNITED KINGDOM

#### Introduction

United Kingdom has a very strong and flourishing legal market. It houses most of the world's largest law firms as well as ten percent of the Global fee revenue.<sup>7</sup> Legal sector also employs a very large number of professionals in the United Kingdom. The UK has a great standing as one of the most important global centers for the purpose of providing international legal services and dispute resolution. It is also a very good destination for legal education as well as legal training. There are numerous firms in London, and there are also a large number of high-quality legal services catering to various needs in cities such as Belfast, Birmingham, Bristol, Cardiff, Edinburgh, Glasgow, Leeds, Liverpool and Manchester.

Smaller firms in size have had an edge as many firms in this tier of the economy have been able to execute certain improvisations and cost-cutting practices, which include mergers. This has given them competitive advantage which was not possessed by the larger international firms. The business of law still remains a noteworthy contributor to the overall UK economy. The legal sector employs over 314,000 people in private practices (which includes those employed by law firms and also certain independent practitioners), two-thirds of which have location outside London. These jobs are extremely skilled and professional, with a great level of expertise which is profitable for investment and growth. The sector's trade surplus has nearly doubled over the past decade to a record £3.6bn in 2014, helping to partially compensate for the UK's trade in goods deficit. Legal services' supply to the UK economy increased over 50% during this period, to £25.7bn in 2015, or 1.6% of GVA.

#### Jurisdiction

There are many countries from where the lawyers, who are qualified, can apply to take the examination to become eligible to practice law in the United Kingdom.<sup>8</sup>

#### Registration

The materialization of the Eurobond market in the 1960s and the role of London as an international finance centre have variously contributed to the development of the legal sector. English law is also the most extensively used legal system globally, contributing 27% of the world's 320 legal jurisdictions. English law is also the most popularly used foreign law in Asian countries as well. The international expansion of legal services and profession has been a result of law firms' need to sustain the progressively growing international activities of their clients and thereby enabling them to capitalize on the increasing international trends for their services. The Registered Foreign Lawyers Order 2009 regulates the practice of foreign lawyers who have been registered.<sup>9</sup> Foreign lawyers can register with the SRA

<sup>7</sup> <https://www.thecityuk.com/research/uk-legal-services-2016-report/>

<sup>8</sup> <http://www.sra.org.uk/solicitors/qlts/recognised-jurisdictions.page>

<sup>9</sup> <http://www.sra.org.uk/sra/regulatory-framework/Registered-Foreign-Lawyers-Order-2009.page>

(Solicitors Regulation Authority) and in this case they may enter into partnership with other solicitors. European lawyers may also practice law in England (also including reserved activities), with their home country's law degree and may also enter into or create partnership with other solicitors. Qualified and eligible lawyers from certain, (generally common law) countries may also undertake the Qualified Lawyers Transfer Scheme which enables them to become English solicitors without performing any training contract or the requirement of any other qualification. There is also a similar test, which is known as the Bar Transfer Test. It is for barristers. Foreign graduates, whether in the legal profession or even otherwise, should get a certificate of academic standing from the SRA or BSB before being permitted to undertake the GDL (Graduate Diploma in Law). Depending on the degree course content in the Foreign Country, students may be exempted from one or more GDL modules.

### **Other Details**

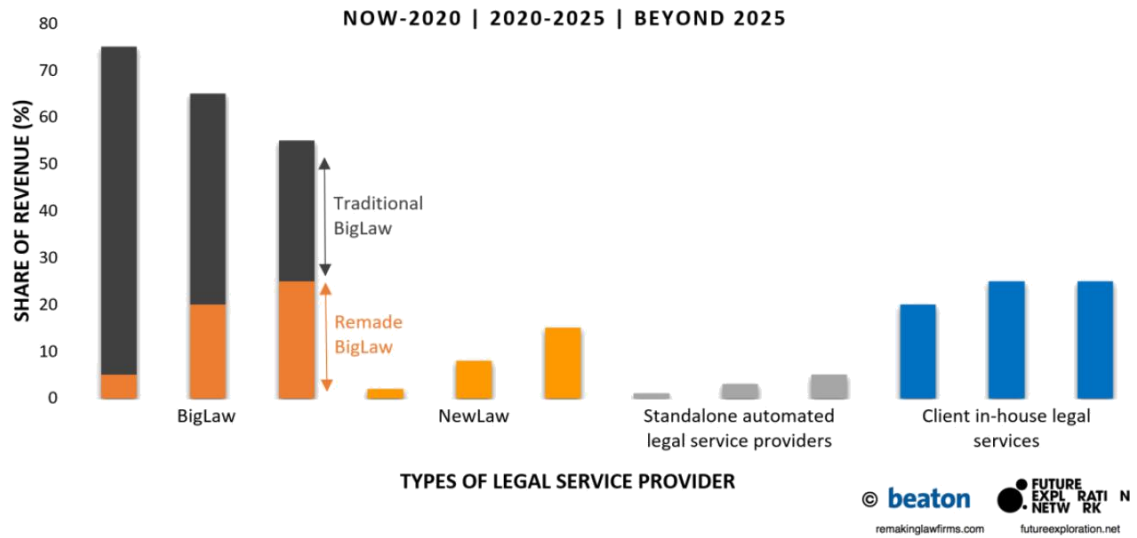
In countries where law is an undergraduate course, doing a foreign law degree puts the foreign law student in the same point as a UK non-law graduate. In countries where it is common to do a post-graduate law degree and take the bar exam but not practical training (for example the USA), it is lucrative to qualify abroad and then do the QLTS (Qualified Lawyers Transfer Scheme) in the UK. The procedure for lawyers qualified outside England and Wales to become an English solicitor (the full degree will be Solicitor of the Senior Courts of England and Wales) is called the Qualified Lawyers Transfer Scheme (QLTS). It should be noted that technically, there is no such concept as a British lawyer, as the UK is comprised of three different jurisdictions – England & Wales, Scotland and Northern Ireland. The legal vocation in England & Wales is again sub-divided into three distinct professions – solicitors, barristers and legal executives. Barristers primarily work on advocacy and professional legal advice, and are generally self-employed and are seen working in shared offices called chambers. Solicitors and legal executives generally work with law firms. The prominent difference is that certain types of legal work cannot be performed by legal executives and are required to be supervised by a solicitor. The QLTS is administered by the Solicitors Regulation Authority (SRA), which regulates the legal profession in England and Wales. There are no formal eligibility requirements as such to register and take the QLTS examinations, but in order to be admitted as an English solicitor by the SRA after passing the same, one needs to be a qualified lawyer of good reputation in a recognized jurisdiction. There is no requirement of experience and there is no vocational training period either.

A particular study<sup>10</sup> has acknowledged five important forces that will control the supply and demand sides of the legal professional markets over the coming decade. These forces are determining the character and quantity of clients' requirements and how the same will be met.

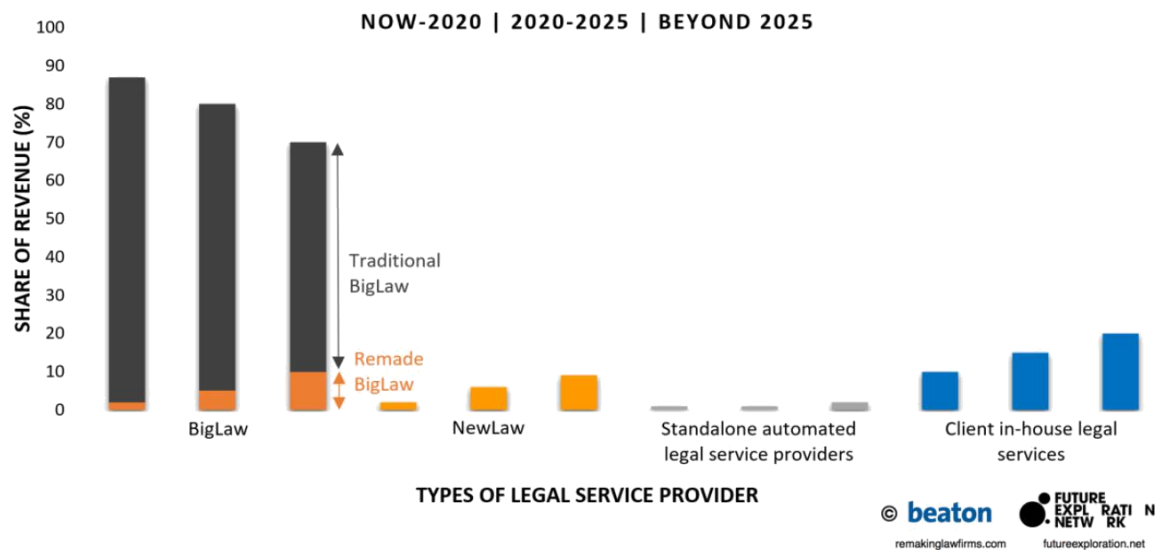
- **Excessive-competition**: Excessive-competition will create many changes in industry structure, including a precise demarcation of the strategic groups and abundance in the quality and quantity of legal services professionals which will intensify the supply-side competitive sphere.
- **De-regulation**: De-regulation will positively reduce, even delete or alter the regulations on almost all spheres of the ownership of providers and the ways in which legal services are performed and delivered to the clients.
- **Change in clients' expectancies**: The pace and seriousness with which clients change the directions in which they seek to meet their legal needs will occur more swiftly than most aspire.
- **Technological advancement**: The result of technological advancement as an alternate, not just a requirement, for lawyers' services will have greater far-reaching effects than most people anticipate.
- **Large Law firm inertia**: On the whole, the Large Law firms will not be as swift to build up the competency for change management and improvisation that are required to remain lucrative in the conditions expected after 2025.

<sup>10</sup>, <http://futureexploration.net/blog/2016/05/future-timeline-the-restructuring-of-the-global-legal-services-industry.html>

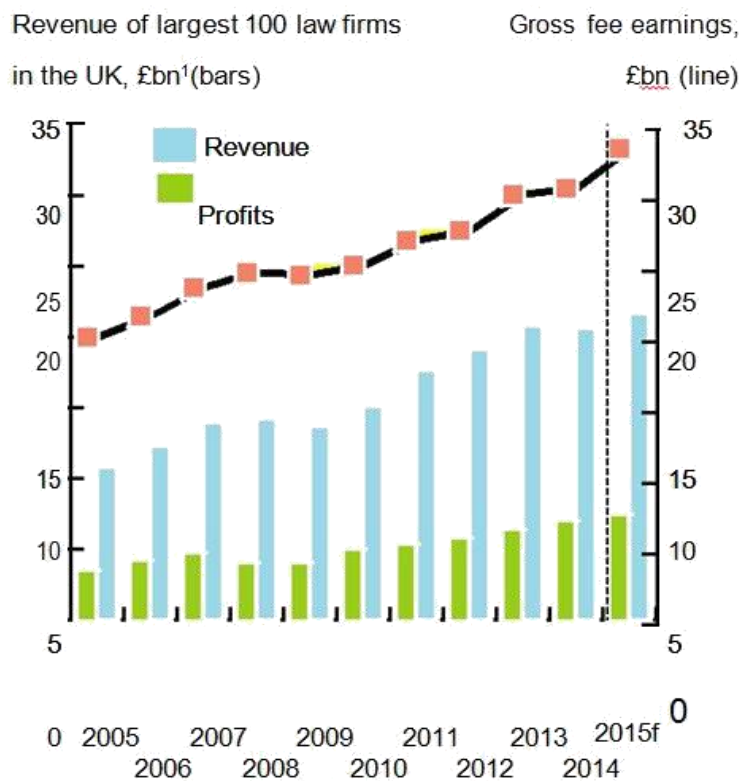
## England & Wales



## Western Europe



## UK LEGAL SERVICES FEE INCOME

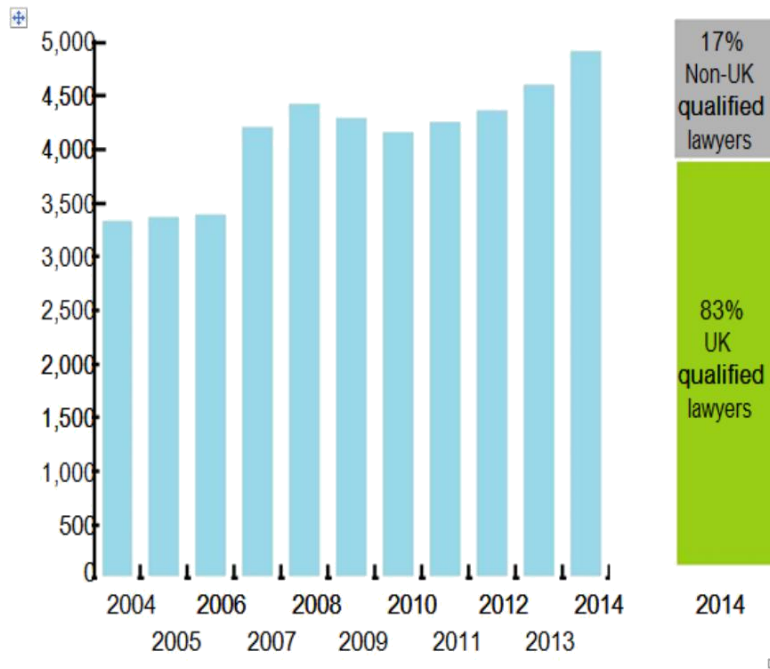


<sup>1</sup> The income of top 100 UK firms primarily originates in London.  
Data for top 100 firms is for the financial year.

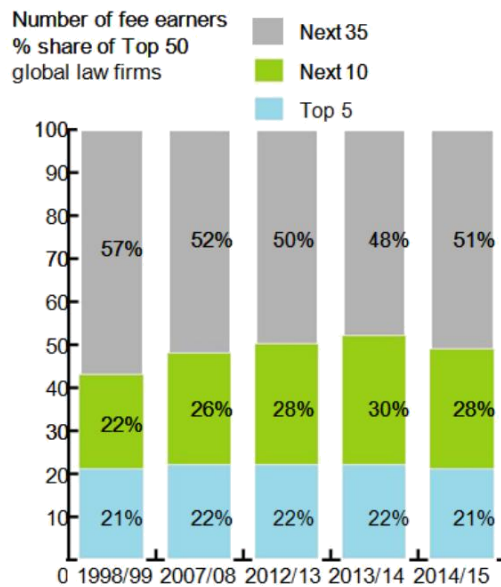
Source: Office for National Statistics (ONS); Legal Business

## HEADCOUNT OF LARGEST OVERSEAS FIRMS IN LONDON

Total head-count, yearly average  
(50 largest overseas law firms in London)



## CONCENTRATION OF LEGAL SERVICES



Source: The City UK calculations based on Legal Business data

## **B. SOUTH AFRICA**

### **Professional Qualifications**

The Qualifications of Legal Practitioners Amendment Act of 1997 provides that LLB is the universal legal qualification for admission and enrolment as an Advocate or Attorney. Usually those who want to start private practice as an advocate, are required to become a member of Bar Association by enrolling in a period of training in fellowship with a practicing member of the Bar and by taking an admission examination. Before admission as an attorney, an LLB graduate must work as a candidate attorney with a practicing attorney. They may attend a practical legal training course or perform community service. This may reduce the period required to serve articles. After that, the candidates have to write a professional examination set conducted by the appropriate provincial Law Society. The Act of Parliament regulating admission to practice law is undergoing revision and a new law is expected to operate in the near future. This may also result in changes in the requirements set out above.

### **Language Proficiency in the Legal profession**

There are no statutory language requirements for the practice of law, and the completion of courses in Latin is no longer a requirement for the LLB degree at the University. Language proficiency in South African languages is, however, very important for the study and practice of law in South Africa. Prospective lawyers are encouraged to include courses in their national languages in their curriculum.

### **South African Career Opportunities**

A Law degree involves the ability to read quickly with a good comprehension and critical insight. Law also trains you to write clearly, logically, coherently and succinctly. These skills are useful in any context, and increasingly our graduates spend a period abroad, using these skills in other legal systems. An LLB degree also equips a person to analyze any sort of problem and to assess the available options and it teaches us about a society's rules and aspirations, in both the Public and Commercial sectors. Becoming an Attorney is only one of the many options that a law graduate has; many LLB graduates do become attorneys or advocates, but the list of options is vast and growing.

### **Academic**

An LLB degree can be the first step to an academic career. UCT's Master of Laws and Postgraduate Diploma programs rank amongst the largest in the world with 43 graduate courses on offer.

### **Advocate**

LLB graduates undergo six months' training in fellowship with a practicing member of the Bar. After an admission examination, the work of an advocate generally involves research, drafting opinions and pleadings and presenting cases in court, most often - though not exclusively - in the High Court.

### **Attorney**

An LLB graduate must serve articles of clerkship with a practicing attorney and then write a professional examination set by the relevant provincial Law Society to become an attorney. Attorneys' work includes drafting legal documents, negotiating settlements of disputes, and preparing cases for presentation in Court.

### **Business**

Law graduates are to be found across the whole spectrum of business, from small firms to large corporations. There are legal advisors in tax, real estate, labor relations, contracts, public information and acquisitions; there are forensic auditors and ombudsmen, ethics and employment officers, policy and legislative analyst. Publishing firms look for legal editors, researchers and writers.

### **Government**



The Department of Justice provides employment to State attorneys, prosecutors, legal drafters and definitely magistrates and judges. Law graduates interested in international law can join Foreign Affairs or Trade and Industry. Government departments at both national and provincial level employ lawyers, as do the National Parliament, Provincial Legislatures and Municipal Councils. In fact, there is no sector of government in which lawyers do not play a role.

## **QUALIFICATION OF FOREIGNERS AS ATTORNEYS IN SOUTH AFRICA**

### **Jurisdiction**

Foreign lawyers may establish under home title (the title granted to you by your home jurisdiction, e.g. as a Solicitor of England & Wales) and are permitted to practice home and international law. In addition, they can also practice:

- International finance
- Project management
- Arbitration

### **Academic requirements**

Unless a person is from a designated country (at present Swaziland, Namibia, Lesotho and the former TBVC states) a person must complete a South African LLB degree and comply with the other requirements with regard to articles or community service, practical legal training and the admission examination. A person who intends to be admitted in the Republic of South Africa, can submit his/her degree to a South African university for an indication of whether any credit by such university would be given with regard to any part of the foreign law degree.

Further requirements with regard to admission are provided in the Attorneys Act, 1979 as amended. A person must be a South African citizen or permanent resident and be otherwise fit and proper in the opinion of the court to be admitted as an attorney.

An LLM does not give access to the profession. A South African Qualification Authority (SAQA) or university certificate is a foreign degree that is of the same or higher status as LLB is not sufficient in this case. In case of a degree from a university in a designated country, a South African university may certify that such degree is of the same or higher status.

## **REQUIREMENTS FOR ADMISSION OF FOREIGN LAWYERS AS ATTORNEYS IN SOUTH AFRICA**

### **Attorneys**

There are no special exemptions or recognition of qualifications that apply in respect of persons qualified as attorneys in any other country in terms of the Attorneys Act, No. 53 of 1979 ("the Act"), except for the former TBVC States (being the Transkei, Bophuthatswana, Venda and Ciskei), Lesotho, Swaziland, Namibia and Zimbabwe. One should bear in mind that totally different statutes regulate the admission requirements in these countries. The main requirements for admission as an attorney in South Africa are prescribed by the Attorneys Act, No. 53 of 1979 and inter alia include the following:

- A B. Proc (phased out by 31 December 2004) or LLB degree obtained from a South African University;
- Two years of service under a contract of articles of clerkship with a South African firm of attorneys or community service at an accredited law clinic or approved office of the Legal Aid Board or one year if the person attended the full time practical law school;
- The successful completion of the Attorneys Admission Examination;

- South African citizenship or a permit for permanent residence in South Africa;
- Attendance and successful completion of a legal training course approved by the Law Society;

It is necessary to satisfy the Court that the person applying for admission is a fit and proper person to practice as an attorney.

### Exceptions

The Attorneys Act makes provision for the Minister of Justice to designate certain countries in terms of Section 2, 13 and 17 of the Act.

Section 2: The significance of designation in terms of Section 2 is that any graduate of a law faculty from a designated country can register a contract of articles in South Africa if a South African University certifies that the law degree of that University is of the same or of a higher standard than the appropriate law degree conferred by South African Universities.

Section 13 provides for the exemption from articles of clerkship and/or the attorney's admission examination, subject to certain conditions such as the designation of countries and classes of persons possibly designated.

Section 17 provides for cross border practicing rights in respect of certain designated countries.

## C. BRAZIL

### Introduction:

Brazil's legal market is correspondingly large, complex and sophisticated as The Brazilian Bar Association is 'quite a powerful organization', argues Hayaux-du-Tilly, adding that its 750,000 or so (Brazil has the second largest number of lawyers per capita after the US) 'would not necessarily embrace competition from foreigners'. As a result, Brazil is one of the few large markets where national firms have clearly held their own, leaving little room for the international giants.<sup>11</sup> Brazil's laws are largely based on the Portuguese laws due to colonization. It is also a mixture of French (Napoleonic Code), German law and Italian law. Hence the Brazilian Law Market becomes very complex.

The Brazilian Bar Association restricts close collaboration with foreign firms, but some international associations do exist: *Campos Mello Advogados* enjoys cooperation with transatlantic giant *DLA Piper LLP*, and the market also features *Tauil & Chequer Advogados* in association with *Mayer Brown and Trench, Rossi e Watanabe Advogados*, associated with *Baker & McKenzie*<sup>12</sup>. Although no commitment was made by Brazil for the legal services, but it was hoped that Brazil would put forward an offer under the current round of GATS negotiations.

### Under regulations defined in Ordinance 91/2000, foreign lawyers or law firms can:

1. Foreign lawyers will be called as 'foreign legal consultants' who would be advising Brazilian clients on international legal matters.
2. Foreign firms are not allowed to enter into partnership or hire Brazilian lawyers and if a lawyer does so they will not be able to advise on Brazilian law and will be treated as a foreign legal consultant.
3. The fees or equity with a Brazilian law firm is banned.

As *Yves Hayaux-du-Tilly*, co-founder of UK business network Latin American Forum expresses that 'Brazil is quite a protectionist country which has not embraced free trade as some other Latin American countries have.' In the year 2014 the Sao Paulo division of the Brazilian Bar Association (OAB-SP) was the city with highest number of foreign law firms which called for the toughening of existing rules. The

<sup>11</sup> <http://uk.practicallaw.com/2-207-2254?source=relatedcontent>

<sup>12</sup> <http://www.legal500.com/c/brazil/legal-market-overview>

OAB-SP believed that in some cases the rules were being flouted where there are associations between national and international law firms. Brazil is clearly considered a legal market worth persevering with.

### Registration:

- **Individuals-** Individuals having law degree from a Brazilian or international law school may be admitted to practice law in Brazil as *attorneys*, provided they sit pass the OAB bar examination (which has low approval rates even among Brazilian attorneys) and fulfill other OAB requirements. The validity of License is for an indefinite period.
- **Law firms-**Both domestic and foreign law firms should comply with the rules contained in Law 8906/1994, the OAB (Ordem dos Advogados)<sup>13</sup> Code of Ethics and Discipline and the OAB regulations<sup>14</sup>. The validity of license for a foreign law firm to practice is for three years and may be renewed after completion of three-year. In case the above rules are not complied, the OAB may suspend or cancel the license of the foreign law consultancy firm. Finally, foreign law firms have to adapt their structures to be able to comply with the Brazilian applicable rules that impose certain limitations on their activities in Brazil.
- **Attorneys-** Attorneys whose incorporation documents are registered with the OAB may practice in a law firm. Foreign law consultants may also incorporate a legal entity, a foreign law consultancy firm should be registered, whose incorporation documents registered with the OAB. In neither case may a legal entity be a partner of the firm, which may only be held by individuals. However, the OAB allows the use of the foreign law firm's corporate name, provided that it is authorized by such foreign law firm

### Steps towards Liberalization

1. Due to the collapse of the GATS talks there are few prospect of progress through the WTO, and correspondingly a real need for the UK government to take action with a view to achieve greater liberalization in the Brazilian legal Industry.
2. UK government, either through Ministerial interventions, or UK Trade and Investment or other channels, to help UK law firms to operate freely in Brazil. It is not acceptable for Brazil to impose restrictions on UK lawyers giving advice on Brazilian law and entering into partnerships or joint ventures with Brazilian law firms.
3. The Select Committee will agree, and will recommend that the UK government maximize its efforts for achieving liberalization of legal services in Brazil. To this end, assistance of the Select Committee in any other or further way that it may think useful.

### Exceptions/Restrictions in Brazil:

1. Restriction on multi-jurisdictional partnerships hampers the ability to offer service to clients, and constrains our further investment in Brazil. It is believed that the failure to liberalize legal services effects development of the Brazilian economy.
2. Client service is affected because foreign law firms cannot enter into partnership or joint venture arrangements with Brazilian law firms, to advice on Brazilian law. Hence unable to contribute to net investment in human capital in Brazil<sup>15</sup>.

<sup>13</sup> <http://www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=1570&context=ijgls>.

<sup>14</sup> [http://www.martindale.com/legal-management/article\\_Machado-Associados-Advogados-e\\_1171398.htm](http://www.martindale.com/legal-management/article_Machado-Associados-Advogados-e_1171398.htm).

<sup>15</sup> <http://www.publications.parliament.uk/pa/cm200607/cmselect/cmtrdind/208/208we10.htm>

3. It is believed that Brazilian Law Firms have the impact that foreign law firms would have on the legal sector are misplaced. There is minimal overlap between our practice and the practices of the vast majority of Brazilian lawyers.
4. Although Brazilian law firms include matters on cross-border, but still there are cases that Brazilian domestic firms do not have the breadth and depth of knowledge of global firms. The accumulation of this expertise in Brazil can only be hampered if foreign law firms are limited in their contribution.

#### **Regulatory compliance for foreign law firms/ Lawyers:**

1. Foreign lawyers do not need to register their presence or intention to provide legal services for occasional or 'fly in, fly out' services.
2. Foreign law firms are restricted within the scope of Provimen<sup>16</sup> to 91-2000 of the OAB which governs 'consultants and firms of consultants in foreign law' in Brazil.

#### **Foreign lawyers and law firms can:**

1. Register as a Foreign Law Consultant with the relevant state OAB in order to practice their home country and international law.
2. Register a law firm that is relevant to OAB with their internationally adopted firm name followed by the mandatory title (Foreign Law Consultants) and the country or state or origin.
3. Qualify as Brazilian advogado by a process of re-validating their degree and passing the Bar examination.

#### **Foreign lawyers and law firms cannot:**

1. Enter into partnership with a Brazilian lawyer or hire the same unless that lawyer gives up his/her title and does not advise on Brazilian law.
2. Enter into partnership with a Brazilian law firm.
3. Appear in court.
4. Advisor or consultant on the Brazilian law.
5. Form Multi-Disciplinary Partnerships.

Foreign law firms and lawyers are subject to the same regulation, ethics rules and annual fees as that of local lawyers and firms.

#### **D. RUSSIA**

The Russian legal system is based on the Civil Law tradition. Lawyers in Russia called as “**Advokat**”.

#### **Regulation of Legal Services in Russia**

The Federal Chamber of Advocates was created in January 2003 on the basis of the adoption of the Advocacy Act, 2002. The purpose of the Advocacy Act is to (re-) structure the legal vocation that was wholly deregulated following Perestroika and the end of the Soviet Union.

Regulation is controlled to advocates and lies with the 83 regional Bar Associations, one for each part i.e. “subject of the federation”.

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<sup>16</sup> This is a provision No. 91/2000, it regulates the exercise and the activities of consultants and corporate consultants in Foreign Law in Brazil.

A license is not allowed to practice law. Therefore, many lawyers practice law under the title of “legal consultant”. Though, legal consultants are not permitted to carry out any criminal litigation in any court, only those advocates who have obtained their law degree and training are competent to appear in court on criminal matters.

To work as an Advocate one must have completed 4-6 years legal education and be registered with their regional bar association and the Council Federation of Advocates. There are certain exceptions where in-house lawyers and executives can appear in court on behalf of their clients, or, representatives of individuals who can hire any person to appear in court on their behalf.

## **Legal Education**

To become an advocate a person should complete at least 2 years of legal education. The usual way is to get an undergraduate degree in law (four years) and a Specialist in Law or Jurist degree (one year), then take the oral examinations. Some employers also encourage law graduates to complete a one year Master’s degree, though it is not mandatory.

## **Exception**

But there is no procedure in place to limit advocate or legal consultant to practice Russian law in a foreign law firm. However a Russian lawyer must be working in partnership with a foreign law firm.

## **Regulatory conformity**

Foreign lawyers may practice in Russia and may give professional legal advice on international law and their domestic law, although they cannot work in the same way as an Advocate. So, they are not allowed to do any work on criminal litigation. Foreign practices must register as firms with the Ministry of Justice.

The “Solicitors Regulation Authority” has permitted the Russian profession of advokat for the purposes of Multi-National Partnerships (MNPs).

## **REQUALIFICATION**

It is not possible for the lawyers of EU, including solicitors of England and Wales to re-qualify in Russia by means of a similar exam.

## **WTO POSITION**

The Eighth Ministerial Conference officially accepted the Accession Package of the Russia Federation in 2011. The WTO welcomed the Russian Federation as its 156th member on 22 August 2012. Russia became a member of WTO in 2012.<sup>17</sup>

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<sup>17</sup> <http://communities.lawsociety.org.uk/international/regions/cis/russia/how-to-practise-in-russia/5043353.fullarticle>.

## **Legislation governing the legal sector**

The Law "On Legal Practice and Advocacy in the Russian Federation" of 31 May 2002, the Federal Constitutional Law "On The Constitutional Court of the Russian Federation" (21 July 1994), Criminal Procedural Code of the Russian Federation (18 December 2001).

### **Provisions for obtaining license and its renewal to practice law by an individual lawyer**

Provisions of Article 9 of the Law 'On Legal Practice and Advocacy' laid down the requirements for an individual to gain the status of an advocate i.e.

- An undergraduate degree in law and a postgraduate Law or Jurist Master's degree
- Two years' experience as a trainee.

In addition to this, candidates must have competence in the law of the Russian Federation and not have any unspent criminal convictions. A written and oral examination conducted by the Qualification Commission of the Chamber of Advocates for the admission as an advocate and on admission the advocate must swear an oath. Advocates then have to register with the relevant branch of the Federal State Registry.

### **Jurisdictional Limits**

The license to practice law in the Russian Federation is national even if an advocate may only be registered with one local state registry.

### **Certain activities reserved to those who are licensed to practice law in the jurisdiction**

The activities reserved to advocates are provided for in the Federal law "On Legal Practice and Advocacy" of 31 May 2002, the Federal Constitutional Law "On The Constitutional Court of the Russian Federation" of 21 July 1994), the Criminal Procedural Code of the Russian Federation of 18 December 2001. Only licensed advocates are permitted to act as representatives of organizations, bodies of state authority, bodies of local government in civil justice and administrative court proceedings and those proceedings connected with administrative infringement cases and only advocates are permitted to represent individuals in criminal defense cases. Lawyers who wish to practice outside of these areas are not required to be licensed as advocates.

There is no nationality restriction to practice law in Russian Federation.

### **Legal forms in which lawyers work**

Russian advocates can exercise their activity through one of four forms:

- As an individual,



- In an Advocates 'college' which is a non-profit vehicle;
- In a law office or law firm or
- In a legal consultative office which primarily exists to offer legal aid.

### **Ethical or regulatory requirements**

A Code of Professional Ethics for Advocates was adopted by the Federal Chamber of Advocates on 31 January 2003. According to this code, advocates 'shall have the right to be governed in their activity by the norms and rules of the General Code of Rules for Lawyers of countries of the European community insofar as these rules do not contravene the advocacy legislation and the provisions of this Code'.

### **Do law firms need to receive a "license"?**

Law Colleges of advocates must also enroll with the local State Registry firm legal licensing procedure.

The local branch of the Federal State Registry under the auspices of the Ministry of Justice is certified to issue licenses for individuals, colleges of advocates and foreign law firms. Relevant documentation including evidence must be submitted stating that the Qualification Commission of the relevant local Chamber of Advocates has admitted the advocate.

### **GENERAL TRADE IN LEGAL SERVICE**

- Russian Federation has made commitments in modes 1-3 under GATS in Legal Services.
- Russia has bilateral trade agreements with Armenia, Azerbaijan, Belorussia, Georgia, Kazakhstan, Kirghizia, Moldavia, Tajikistan, and Ukraine.
- The only treaty including legal services is the Agreement on Trade in Services and Investments in States – Members of the Common Economic Space (Moscow, 2010) which is in force for Russia, Belorussia and Kazakhstan.

### **Are foreign lawyers from different jurisdictions treated differently?**

Foreign lawyers from Belorussia and Kazakhstan may be treated differently under the Agreement on Trade in Services and Investments in States – Members of the Common Economic Space (Moscow, 2010).

In Russia, there are more than 50 foreign law firms (mostly from Moscow and Saint Petersburg) from the US, UK, Germany, Canada, Austria, Italy, Finland, Cyprus, France *etc.*

## **INDIVIDUAL FOREIGN LAWYERS**

### **Requirement of obtaining license**

There is no requirement to procure a license for temporary legal practice by foreign lawyers as there is a general rule that any foreigner who is going to provide any services (not only legal) in Russia during even a temporary stay in Russia must take authorization from immigration authorities to provide such services. There are several exceptions to this general rule which may be applicable to foreign lawyers.

Foreign lawyer can obtain visa just to visit clients or to market.

### **Requirement of license to establish and practice as a foreign legal consultant**

A foreign lawyer to practice in the Russian Federation as a jurist does not require particular license. However, he/she may also seek to be recognized as a foreign advocate. A foreign lawyer may become a foreign advocate and be entered in the special Russian register maintained by the Ministry of Justice provided that his/her status in his/her home jurisdiction is similar to that of a Russian advocate (inter alia requiring equivalent education, experience, and the passing of an examination).

The Ministry of Justice generally deems that a foreign advocate is at liberty to provide legal services only on the law of his/her home country. Otherwise a foreign lawyer may be self-employed or be employed as a foreign legal consultant in a domestic or foreign law firm. In these instances there are no limitations on scope of practice.

**There are no conditions that are required to fulfill by a foreign lawyer after granting limited license** instead of adhering with the rules applicable to all foreigners in Russia on their stay and activities.

Foreign lawyers are allowed to undertake arbitration and mediation as Arbitration or Mediation Institutions provides special provisions in their rules on the involvement of foreign lawyers in arbitration or mediation. However, any foreigner who is going to provide services in Russia, even on a temporary basis, has to obtain permission from immigration authorities to provide such services.

### **Foreign lawyers allowed appearing in court**

There are very few limitations like. Some criminal cases and some cases involving minors are restricted to advocates. Also specific rules made on legal assistance for mentally challenged/ handicapped persons (only by advocates or by an officer/representative from a special State legal bureau); and, with limited scope, only advocates can make representations in the Russian Constitutional Court. Foreign lawyers can appear in court either as jurists or by obtaining the status of a Russian or a foreign advocate in Russia.

### **Requalification**

**Foreign lawyers can be re-qualified as local lawyers.** But if a foreigner wishes to become a Russian advocate they must adhere to all requisites applicable to local lawyers (including education in Russia and the passing of the exam).

Under the Agreement of Trade in Services and Investments in States – Members of the Common Economic Space (Moscow, 2010) Russia has reserved the right to refuse advocates from Belarus and Kazakhstan the right to qualify as Russian advocates because these states impose a nationality requirement for advocate status.

## **FOREIGN LAW FIRMS**

Foreign law firms don't need to obtain license to open an office

### **Registration of foreign law firms**

A foreign law firm must comply with the general registration rules applicable to all foreign companies wishing to open an office. An office may be established either by assimilation as a Russian commercial company (registration is undertaken with the revenue authorities) or in a form of a branch or representative office of a foreign law firm. In the latter case the application must be made to the State Registration Chamber at the Ministry of Justice).

### **Geographical Restrictions**

There are no limitations on the number of branches. Under the special Russian Government Decree there are 19 geographical areas in Russia which foreigners can only visit with prior permission and thus no offices of foreign firm can be established there.

## **EMPLOYMENT AND PARTNERSHIP**

**There are no limitations on the ownership share of foreign lawyers in a law firm.**

### **Domestic lawyer appointed by foreign law firm**

Advocates can form partnerships with foreign lawyers through cooperation contracts. Russian jurists may enter into any type of partnership (contractual or in a form of a legal entity) with any foreign lawyer. If the foreign lawyer is enrolled in the special Russian registry as a foreign advocate then the rules for Russian advocates will be applicable.

Advocates can utilize a foreign lawyer provided that this foreign lawyer is not enrolled in the special Russian registry as a foreign advocate.<sup>18</sup>

### **Foreign lawyers could also be prohibited from practicing in Russian courts**

Denis Voronenkov, member of the State Duma Security and Anti-corruption Committee, has submitted a bill to the State Duma that would forbid foreign lawyers and their firms from providing legal representation in Russian courts, according to the database of the lower house of parliament. The amendments are proposed to Russia's Commercial Procedure Code and Civil Procedure Code.

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<sup>18</sup>[http://www.ibanet.org/PPID/Constituent/Bar\\_Issues\\_Commission/ITILS\\_Russia.aspx](http://www.ibanet.org/PPID/Constituent/Bar_Issues_Commission/ITILS_Russia.aspx)

Under the bill, foreign lawyers would be expelled from representing clients in commercial and civil disputes considered by Russian courts. Practicing in foreign legal firms as legal advisors and attorneys for Russian businessmen increases risk to inflict harm to the national economic security because access to a commercial transaction and analytical data therefore becomes accessible to parties potentially affiliated with foreign intelligence organizations.

A parallel legal bar has been adopted in China, India, Brazil, according to Voronenkov.<sup>19</sup>

## **E. INDONESIA:**<sup>20</sup>

The key challenge in coping with the entry of foreign lawyers into the local market is the increased competition for a share of the market. With the globalization of the world economy, it has become imperative to produce high level lawyers not only in knowledge and skills but in strength of character.

As a member of the World Trade Organization (WTO), Indonesia is required to liberalize its economy, including trade and services, which also covers legal services. As a consequence, the<sup>21</sup> entry of foreign lawyers into the country is inevitable.

At present, Indonesia still does not grant full access to Indonesian legal markets for foreign lawyers. Legal services are still of the negative list for Foreign Direct Investment (FDI).

- Foreign law firms are not permitted to practice in their own name and are required to work with a local law firm.

- Indonesian law allows only Indonesian nationals who have graduated from an Indonesian legal facility or other recognized institution to join the local bar and practice law

**Areas of practice:** Pursuant to the prevailing Indonesian Advocates Law, foreign lawyers are not allowed to open offices in Indonesia. Foreign lawyers can practice in Indonesia only if they work as employee or consultants, not as owners or partners in Indonesian law offices. So, they cannot run their own office in Indonesia.

Foreign lawyers can practice law in Indonesia, but limited to international law or the law of the country that they come from. Only Indonesian lawyers can appear in courts and deal with Indonesian legal affairs.

**REGISTRATION:** The Ministry of Law and Human Rights presently regulates work permits for foreign lawyers seeking to work with an Indonesian law firm. The process is complicated and lengthy. The prospective employing law firm must lodge an application with the Minister who needs to obtain written recommendation from the Bar Association in respect of each lawyer applying for a work permit. Foreign lawyers seeking to work in Indonesia must pay in advance a fee of \$100USD per month for their time in Indonesia. We understand that there are around 40 foreign lawyers with work permits working in Indonesia as legal consultants. Under the present regulations, every foreign lawyer who wants to practice in Indonesia must first obtain a work permit issued by the Minister of Manpower. The permission can be given only after there has been a specific recommendation from the Minister of Justice and Human Rights Affairs.

## **OTHER DETAILS:**

At present, there are more than 50 foreign lawyers practicing law in Indonesia, and almost all of them are practicing in Jakarta. A number of international firms have also opened offices in Indonesia either by

<sup>19</sup> [http://www.rapsinews.com/legislation\\_news/20160414/275871051.html](http://www.rapsinews.com/legislation_news/20160414/275871051.html).

<sup>20</sup> <http://www.thejakartapost.com/news/2009/10/11/challenges-legal-profession.html>

<sup>21</sup> <https://www.lawcouncil.asn.au/lawcouncil/images/LCA-PDF/docs-2700-/2732->

DevelopmentofCountryStrategiesforJapanChinaIndonesiaIndiaandSouthKorea.pdf

employing or entering into cooperation arrangements with Indonesian lawyers. It has become a reality that Indonesian lawyers are currently facing tough competition not only from within but also from outside the country, in particular with lawyers from the advanced industrial countries.

Most Indonesian law firms are small, generalist firms with practices spanning a wide area of mainly non-commercial work. The only exception to this seems to be the area of dispute resolution that is dominated by a number of high-end and boutique firms specializing only in this area. There are a number of Indonesian firms which are seen as “leading the pack” in transnational commercial work and most of these firms have close links to overseas firms. A more open Indonesian legal services market is likely to complement, rather than rival, Singapore or Hong Kong as major hubs for Australian law firms to service the region. Currently at least twenty-seven international firms use offices in South East Asia, predominantly Singapore or Hong Kong as a base into the Indonesian market.

#### **The benefits to Indonesia of liberalization of trade in legal services:**

While the liberalization of the trade in transnational legal services will contribute to underpinning rule of law and good governance initiatives, there are two areas that are likely to gain a direct economic benefit from further liberalization of the legal services market.

- a) Firstly, ensuring the availability of fully integrated commercial legal services will encourage and facilitate increased levels of foreign direct investment, thereby benefiting the Indonesian economy. The capacity for foreign investors to obtain legal services from their own lawyers (and law firms) who can then work in close association with Indonesian counterparts with the option of bringing together teams of lawyers with specialist expertise (eg. resources, infrastructure) from multiple jurisdictions, is crucial in building the level confidence and assurance to better facilitate foreign investment.
- b) The second area that will benefit from the liberalization of the trade in transnational legal services is the local profession.

#### **F. CHINA<sup>22</sup>:**

China joined the WTO on 11 December 2001. As part of accession commitments, China agreed to open its service market, gradually and conditionally, to its fellow WTO members under the General Agreement on Trade in Services (GATS). Legal services are the very first ones to appear in China’s schedule of commitments. The Chinese legal system and legal profession have not reached the level of maturity that could command the confidence of foreign investors and trading partners. Foreign legal services are a necessary supplement to the legal services provided by Chinese legal professionals.

- Foreign law firms can provide legal services in China only in the form of representative offices
- The representatives of the representative office are required to be practitioner lawyers who have practiced for not less than two years outside of China (a chief representative requires to have practiced for not less than three years outside China).
- Foreign representative offices and their representative offices are only allowed to conduct a limited number of activities, which do not encompass Chinese legal affairs

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<sup>22</sup>THE LEGAL SERVICE MARKET IN CHINA: IMPLEMENTATION OF CHINA’S GATS COMMITMENTS AND FOREIGN LEGAL SERVICES IN CHINA  
[http://www.tsinghuachinalawreview.org/articles/PDF/TCLR\\_0501\\_HUANG.pdf](http://www.tsinghuachinalawreview.org/articles/PDF/TCLR_0501_HUANG.pdf)

## **AREAS/SCOPE OF PRACTICES:**

An examination of China's commitments under GATS reveals a substantially limited scope for representative offices of foreign law firms to operate in the Chinese legal service market. Clause (a) and (b) address the application of foreign and international law. Clause (c) addresses the application of Chinese law. Clause (d) permits foreign law firms to form long-term contractual relationship with Chinese law firms to provide legal services jointly. The precise meaning of Clause (e) is unclear on its face. As it turns out, Clause (e) is the key provision that stages the battleground for the competing sides of the market share, namely the FLSP and their Chinese counterparts. According to Clause (a) through (c), in a typical cross border transaction between a foreign and Chinese commercial party, the foreign aspect of the transaction is to be handled by the foreign lawyers of a representative office. The Chinese aspect of the transaction is to be handled by Chinese law firms through the method of entrustment. Clause (e) permits one type of service that concerns Chinese law to be directly provided by a foreign law firm, that is: to provide information on the impact of the Chinese legal environment.

The manner in which FLSP are permitted to operate in China's legal service market is via representative offices. The scope of services permitted by FLSP is as follows:

- a) To provide clients with consultancy on the legislation of the country / region where the lawyers of the law firm are permitted to engage in lawyer's professional work, and on international conventions and practices;
- b) To handle, when entrusted by clients or Chinese law firms, legal affairs of the country / region where the lawyers of the law firm are permitted to engage in lawyer's professional work;
- c) To entrust, on behalf of foreign clients, Chinese law firms to deal with the Chinese legal affairs;
- d) To enter into contracts to maintain long-term entrustment relations with Chinese law firms for legal affairs;
- e) To provide information on the impact of the Chinese legal environment. Entrustment allows the foreign representative office to directly instruct lawyers in the entrusted Chinese law firm, as agreed between both parties.

It has been suggested that China "should be regarded as a liberalized market in terms of permitting foreign law firms to practice foreign law," although "it is still restricted in terms of allowing joint ventures or partnerships with Chinese law firms or allowing foreign law firms to practice Chinese law." Such a contradictory approach might be explained by the control that the centralized government wants to have on the whole country, with particular emphasis on civil liberties.

It is likely that the Chinese priority in liberalizing legal services is to allow time for domestic firms to develop before opening the market further, but regulatory integration will be required before equality of access can be achieved. However, regulatory integration might not be possible without a cultural understanding of local legal practices. A number of major international firms have already expanded into the Chinese market, but such expansion has been limited to the practice of foreign law that limits the potential market.

## **RESTRICTIONS/EXCEPTIONS:**

Further restrictions are imposed on personnel who work in such representative offices, namely that foreign law firms may not employ Chinese practicing lawyers. However, foreign law firms are not permitted to hire practicing Chinese lawyers. Since legal certification in China is not open to foreign nationals the possibility of foreign lawyers providing legal service in relation to Chinese law virtually does not exist. For a Chinese lawyer who works in a foreign law firm to provide such information, he must have foregone his right to practice. While this may seem unduly restrictive, China is far from the only GATS signatory with such provisions.

The allowance given to foreign law firms for their real participation in the Chinese legal service market is extremely limited. In the area of employment, foreign law firms may only hire Chinese lawyers who do not



practice or are willing to forego their right to practice. In the area of operations, foreign law firm may only provide, in terms of Chinese law, “information on the impact of the Chinese legal environment.” Although the Environment Clause is somewhat ambiguous, this carefully chosen terminology as the core content of the permissive Clause is unable to disguise China’s protectionist intent to preserve a significant market share for its own legal profession.

As a result of these narrowly drafted Commitment Clauses, the application of Chinese law is almost exclusively the domain of practicing Chinese lawyers. Since foreign law firms may not employ Chinese practicing lawyer, this means that a foreign client with an issue of substantive Chinese law will have to engage a Chinese law firm for advice either directly or via a foreign representative office through the Entrustment Clause. Either way, the profit of such services is guaranteed to go to the Chinese law firm.

## **OTHER DETAILS:**

### **LEGISLATIVE ADDITIONS:**

Initial legislation implementing GATS Commitments China’s GATS Commitments are neither directly applicable nor have the “self-executing effect” domestically. Domestic legislation implementing these Commitments is necessary for their implementation. The first implementing legislation is the Regulations on Administration of Foreign Law Firms’ Representative Offices in China (Administrative Regulations) in 2001. Four additions were inserted into this legislation. The additions are of great significance. They further clarify and narrow down the permissible business scope for foreign law firms in addition to the prohibition that foreign law firms may not employ Chinese practicing lawyers as found in GATS Commitments, the Administrative Regulations further provide that even Chinese supporting staff in foreign law firms may not provide legal services to clients. This means that not only may a foreign law firm not employ practicing Chinese lawyers to advise on issues concerning Chinese law, but also that a qualified Chinese lawyer, who is willing to relinquish his right to practice and act in the capacity of a supporting staff in a foreign law firm, may not give advice on Chinese law. In other words, foreign law firms’ ability to advice on Chinese law has been completely stripped away.

## **CONCLUSION:**

Currently, although foreign lawyers are not permitted to practice Chinese law, they are still active in a wide variety of legal areas, such as banking, finance, commercial arbitration, property, tax, maritime law, direct investment, intellectual property, and general corporate consulting. Their contribution is not limited to building a healthy competitive market. The young Chinese legal profession stands to learn from their foreign counterparts’ professionalism, managerial skills, and internationally accepted code of conduct. There is no doubt that China has made considerable progress in its legal reforms in the last three decades. However, the reforms are superficial and are limited to only specific sectors. Western legal systems are built on capitalist ideology; their laws and political structure are consistent with the notion of separation of powers, rule of law, democracy, natural justice, etc. China’s reform will not be immune to these dominant influences. So far, China’s reform, albeit superficial, has been consistent with the western mode of practice. This is the result of combined forces, such as the influence of the FLSP, the pressure of globalization, and especially WTO obligations. However, its socialist nature and the supremacy of Communist Party interests are inherently at odds with the direction it is heading in. In due time, China’s legal reform will reach the point where its political ideology and structure will be questioned, or the reforms will meet a dead end.

## G. JAPAN<sup>23</sup> :

In early 1980's, when U.S. was facing huge trade deficit, the U.S. Trade Representative at the time urged Japan to open its legal services market to U.S. and Japan to eliminate non-trade barriers. Thus, the Japanese Bar Association and American Bar Association began to discuss Japan's liberalization of its legal services market to foreign lawyers. Then, through GATS (General Agreement on Trade and Services) and Uruguay Round of 1986, Japan facilitated the opening of its legal services market.

**On May 23, 1986**, Japan finally enacted a special law to permit foreign lawyers to practice in Japan on a limited basis. The law went into effect as of April 1, 1987.

Japan presents as the most liberalized legal services market amongst the five target countries. Certain cooperative joint enterprises have been permitted for a decade, and "full liberalization," involving foreign employment of local lawyers and joint ventures, was introduced in 2005 although some business limitations continue to apply. The emphasis for future Japanese engagement should therefore be based on relationship building.

In 1945 during U.S. occupation of Japan, America's provisional government in Japan admitted about 70 U.S. lawyers into Japanese Bar. Currently, there are about **10 U.S. lawyers** still registered with Japanese Bar Association and practicing in Japan.

Since 1982, U.S. pressure on liberalizing Japanese legal services market was becoming serious so, Japan and U.S. formally opened talks to discuss the opening of Japanese legal services market to American lawyers on a bilateral basis.

Moreover, in 1986, **Uruguay Round** put additional pressure on Japan to liberalize its legal services market to all foreigners. Finally, on May 23, 1986, Japan enacted "Special Measures Law Concerning the Handling of Legal Business by Foreign Lawyers" and formally opened its legal services market to all foreign lawyers.

### RESTICTIONS/EXCEPTIONS:

However, Japan's Special Law had various restrictions such as:

- 1) Foreign lawyers may only practice in international matters for which they have been trained and licensed;
- 2) Only individual foreign lawyers may practice, and foreign law firms are not permitted to practice; and
- 3) Foreign lawyers are not permitted to form partnership or association with local Japanese lawyers, or hire local Japanese lawyers.

In November 1989, the U.S. Trade Representative criticized Japan's Special Law of 1986 for having severe restrictions and urged Japan to further liberalize its legal services market.

He particularly emphasized and demanded that foreign lawyers should be allowed to form a partnership with local Japanese lawyers and if necessary, to hire Japanese lawyers.

In June 1994, Japan amended Special Law of 1986 and further liberalized its legal services market in response to increasing international pressure.

The Special Law of 1986 as amended in 1994 **still requires foreign lawyers to practice only in international matters, but foreign lawyers are now permitted to form project partnership with local Japanese lawyers to work together on specific cases.**

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<sup>23</sup>[http://www2.law.columbia.edu/course\\_00S\\_L9436\\_001/2004/legal%20market.pdf](http://www2.law.columbia.edu/course_00S_L9436_001/2004/legal%20market.pdf)

## H. MALAYSIA<sup>24</sup>:

Various amendments to the law came into force on 3 June 2014 and this allowed foreign law firms and foreign lawyers to practice in Peninsular Malaysia.

There are three entry routes for foreign lawyers:

- (1) **Qualified Foreign Law Firm (QFLF)** – the stand-alone model where the foreign firm must demonstrate relevant legal expertise and experience in the permitted practice areas;
- (2) **International Partnership (IP)** – the joint venture model with at least 60% equity by a Malaysian firm and not more than 40% by the foreign firm; and
- (3) **Registration as a Foreign Lawyer.**

The Legal Profession (Licensing of International Partnerships and Qualified Foreign Law Firms and Registration of Foreign Lawyers) Rules 2014 (“the Rules”) have a very open definition of what the permitted practice areas are.

**RESTRICTIONS/EXCEPTIONS:** Essentially, it is work regulated by Malaysian law and at least one other national law, or work regulated solely by any law other than Malaysian law. The Rules then provide excluded areas such as conveyance, litigation, criminal law, constitutional and trust law.

### PRESENT STATUS:

- a) Allows a foreign lawyer to enter Malaysia to advise or consult with a client on any matter pertaining to foreign law provided that the accumulated period of stay will not exceed 60 days in a calendar year and that immigration authorization has been obtained.
- b) Further, foreign lawyers advising or rendering any other assistance in arbitrations, or who appear as counsel or arbitrators in arbitrations in Malaysia, will be permitted to enter the country at any time and with no limit on the duration of their stay.

### OTHER DETAILS:

One year since Malaysia’s legal market liberalized and allowed the entry of foreign law firms, we have seen only the entry of one firm under the new legal framework. Trowers & Hamlin’s earlier had a presence through a non-trading office and in April 2015, became the first QFLF in Malaysia.

## I. SINGAPORE<sup>25</sup> :

Foreign lawyers are prohibited from practicing Singapore law. A foreign lawyer can practice foreign law in Singapore, including his or her home country law, a third-country law, or international law, without re-qualifying.

However, foreign lawyers are free to constitute an LLP to practice foreign law subject to the written approval of the Attorney General’s office.

<sup>24</sup><https://themalaysianlawyer.com/2015/10/19/liberalising-malaysia-one-year-on/>

<sup>25</sup>International Bar Association 3rd Asia-Pacific Regional Forum Conference “LIBERALISATION OF LEGAL SERVICES FREEING THE LEGAL LANDSCAPE: IS SOUTH-EAST ASIA READY?”<https://www.agc.gov.sg/DATA/0/Docs/NewsFiles/Speech%20by%20AG%20at%20IBA%203rd%20Asia%20Pacific%20Regional%20Conference.pdf>

A foreign law firm cannot employ a Singapore qualified lawyer to practice Singapore law or hold shares of any kind in a Singapore law firm. Also, foreign law firms can only provide legal services in relation to Singapore law through a Joint Law Venture ("JLV"). For decades foreign law firms have been granted admission into the country, but until recently they had been prohibited from practicing Singaporean law") or Formal Law Alliance ("FLA") with a Singapore law firm, subject to a series of conditions and requirements Malaysia

#### PRESENT STATUS:

- a) Foreign lawyers are currently not permitted to practice in Malaysia. A new draft legislation towards liberalizing the legal services sector proposes that foreign law firms will be allowed to establish Joint Law Ventures ("JLV") with Malaysian law firms.
- b) As per the draft legislation the Malaysian firm shall have at least 70% of the equity and voting rights in the JLV.
- c) Further, a JLV shall only be entitled to engage in 'permitted practice areas'.

#### J. SOUTH KOREA<sup>26</sup>:

In 1945, Korean Lawyer's Law provided for foreign lawyers to receive honorary Korean Bar Membership. In 1986 Korea participated in the Uruguay Round where Korea opened its insurance, finance and telecommunication markets. Although there was a pressure to open Korea's legal services market, it was held over in favor of opening insurance, finance and other markets which were greater in size and amount. In 1992, during the Dialogue for Economic Cooperation between U.S. and Korea, Korea was put on pressure to liberalize its legal services market at least to permit "international affiliation" between U.S. law firms and local Korean law firms. In 1994, issue of liberalizing Korean legal services market was raised again as a bilateral issue between U.S. and Korea.

On March 29, 1995, Korea applied for a membership in the OECD. As a part of the application process, Korea had to satisfy some initial qualification criteria in the legal services market. Thus, in **December 1996**, Korea voluntarily removed legal services market from prohibitive category to free category by amending Korea's Foreign Investment Law.

In the same year, Korea also voluntarily amended its Lawyer's Law to permit non-Korean citizens to sit for the Korean bar examination and to permit legal practice.

However in reality, it is impossible for foreign lawyers to pass the Korean Bar Examination, mostly because of foreign lawyer's lack of fluency in Korean language.

Korea's membership in the OECD has caused greater pressure on Korea to liberalize its legal services market than ever before. OECD widely advocates liberalization of legal services market and has "OECD Workshop on Professional Services" to facilitate opening of such market. Under WTO, Korea could have delayed liberalization of legal services market, since WTO permits progressive liberalization individually tailored to each country's unique situation. Now, negotiation by Korean Government with other WTO member countries on individual basis or against OECD's decision has become very difficult. Korea's commitment to liberalizing its legal services market was uncertain and its process unclear before Korea's OECD membership. But now, Korea's road to liberalizing its legal services market has become more definite and the issues more crystallized.

Like Japan, Korea will have to open its legal services market in more definite terms and under schedule.

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<sup>26</sup>[http://www2.law.columbia.edu/course\\_00S\\_L9436\\_001/2004/legal%20market.pdf](http://www2.law.columbia.edu/course_00S_L9436_001/2004/legal%20market.pdf)

## **PRESENT STATUS:**

Currently, the Korean Bar Association and government ministries have various forms of study groups on the effects of liberalizing Korean legal services market. In fact, the Korean Bar Association has been studying issues regarding foreign lawyers working in Korea under a Korean Bar Association panel, which was established in 1986.

### **Current Legal Services Market in Korea:**

There are only about 3,000 practicing attorneys as of 1997 in Korea and most of them are solo practitioners. There are about 70 law firms or law partnerships and only about 7 of the law firms have over 10 lawyers as members of the firm. Korean lawyers are much like barristers in England where their practice is almost exclusively in litigation. Korean lawyers are university graduates mostly with only undergraduate law degrees who attended judicial training school for subsequent professional training and education. During the growth of Korean economy, Korea has come to see the need for "American style" lawyers. Consequently, such small number of practicing lawyers in Korea presents a problem. On one level, there are too few practicing Korean lawyers to supply the high demand of Korea's present and future booming market for more American style lawyers. On another level, Korean legal culture, legal education and training do not sufficiently equip Korean lawyers to provide Korea's ever-increasing need for American style lawyers. Korea's selection process of its lawyers is very severe and highly competitive. Bar examination is extremely difficult and is further exacerbated by quota on how many lawyers to admit each year.

Under the most recent **attempts at reforming Korean legal profession**, the Korean Bar Association decided to increase the number of lawyers admitted to the Bar each year until it reaches up to 600 per year. Until about ten years ago, only about 50 to 100 lawyers were admitted to the bar each year. About 3 years ago, the number of lawyers admitted to the bar steadily increased to 300 per year.

**Foreign Lawyers in Korea:** Foreign lawyers have an important role to play in liberalization of Korean legal services market and development of a new era in Korean legal services Market. For some time in the near future, foreign lawyers in Korea will have to fill the needs and the void in Korea's increasing demand for American style lawyers. This is especially true for Korean-American lawyers who were educated and trained in U.S. Currently, there are many foreign lawyers working in Korea as foreign legal consultants in the capacity of associate attorneys in law firms and as in-house counsels in private companies. The advent of foreign law firms in Korea will soon be inevitable.<sup>27</sup>

## **K. UNITED STATES OF AMERICA:**

Problems of liberalizing legal services market to foreign lawyers first started in 1974 between France and U.S. on a bilateral basis. Richard Nixon, then the President of U.S., who was also a lawyer, advocated the opening of legal services market to American lawyers in France. France reluctantly opened its legal services market to U.S. lawyers, and in return, New York reciprocated by opening its bar membership to French lawyers to practice within the State of New York

### **American Legal Services Market for Foreign Lawyers**

In present scenario in U.S., only fifteen States permit Bar Membership to foreign lawyers including New York and California. New York opened its Bar Membership to foreigners in 1974 and California opened its Bar Membership in 1993. In New York, there are 169 foreign lawyers with New York Bar. In California, there are eight foreign lawyers with California Bar Membership.

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<sup>27</sup> [http://www2.law.columbia.edu/course\\_00S\\_L9436\\_001/2004/legal%20market.pdf](http://www2.law.columbia.edu/course_00S_L9436_001/2004/legal%20market.pdf)

Most notably, New York is one of the jurisdictions most open to admitting foreign lawyers to practice. In New York, certain foreign lawyers who have law degrees from certain schools and studying English law may be eligible to sit for the bar without having to obtain any further American law school study. Graduates of other law schools outside of the United States will generally be eligible to sit for the bar after graduating from a one-year LL.M. program at an ABA accredited school. Because New York is such a huge legal marketplace with broad international practices, it is easy to assume that a lawyer who can become admitted in New York will be able to practice throughout the rest of the country.

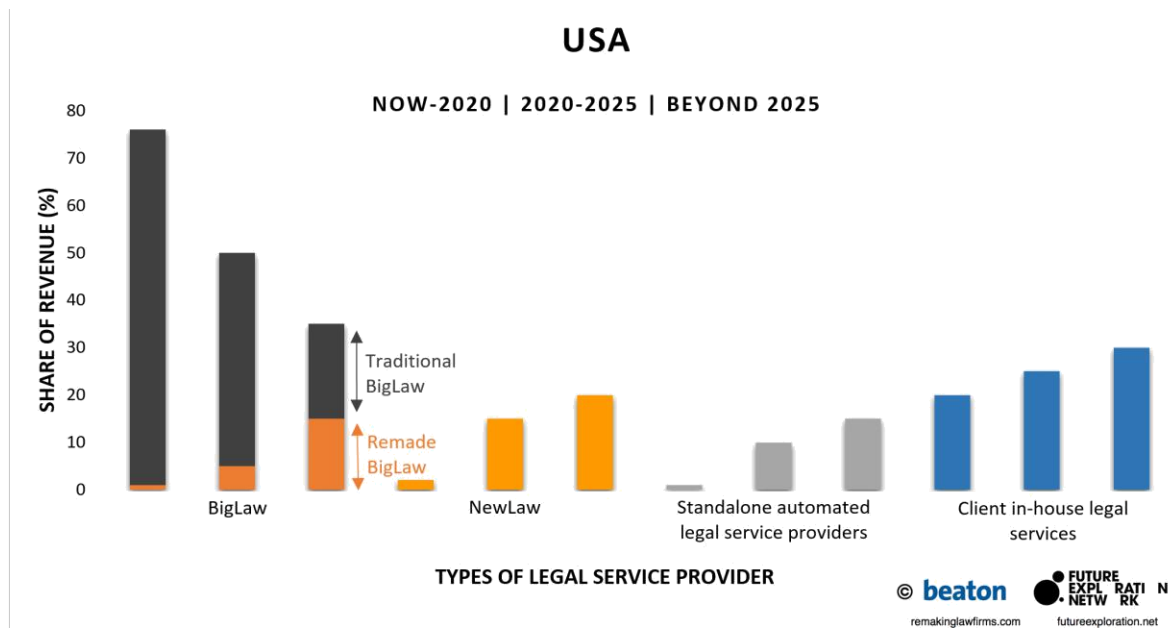
One of the common misconceptions is that the New York rule is the standard for practicing in the United States. In fact, it is not. Only one other state allows foreign lawyers to sit for the bar without any local study. (Massachusetts, which allows the graduates of certain Canadian law school graduates to sit for the Massachusetts Bar Examination). Outside of New York, the United States legal system, and the many Bar Associations contained within are actually quite exclusive with respect to foreign trained and educated lawyers.

According to the ABA, only 5 states will allow a foreign lawyer to take the Bar under any circumstances (New York, California, Alabama, New Hampshire and Virginia). That's less than 10% of the jurisdictions in the United States! Thus, to practice in the United States, a lawyer must sit for and pass one of the Bar Examinations in one of these states. Depending on the lawyer's practice, this may limit the locations where he or she can practice. Since New York and California are both large internationally oriented cities, this certainly provides substantial opportunity. However, moving to a different state to practice law may be difficult.



**Source:** Estimated by William D. Henderson using data from the US Census



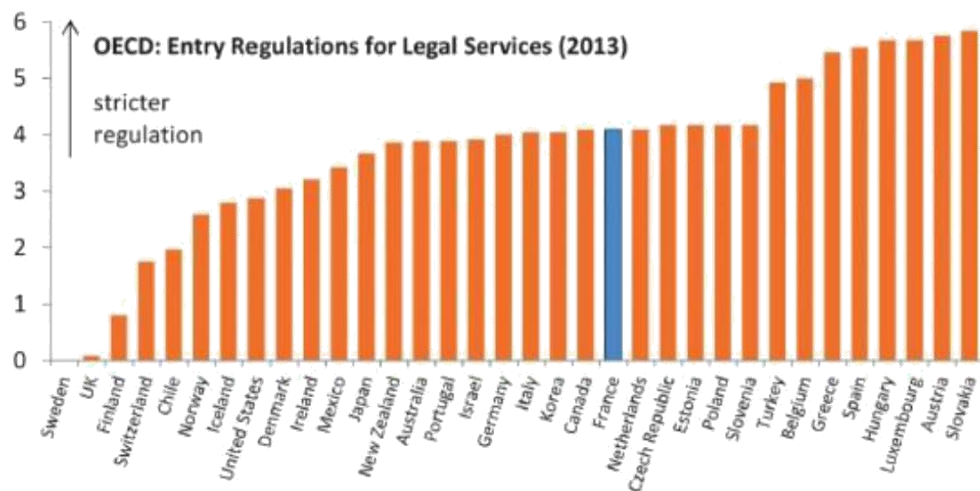


### 5.3 Key Trends

Five mega-forces which will drive the supply and demand sides of the legal service markets over the coming 10+ years. These forces are shaping the nature and volume of clients' needs and how these needs will be met.

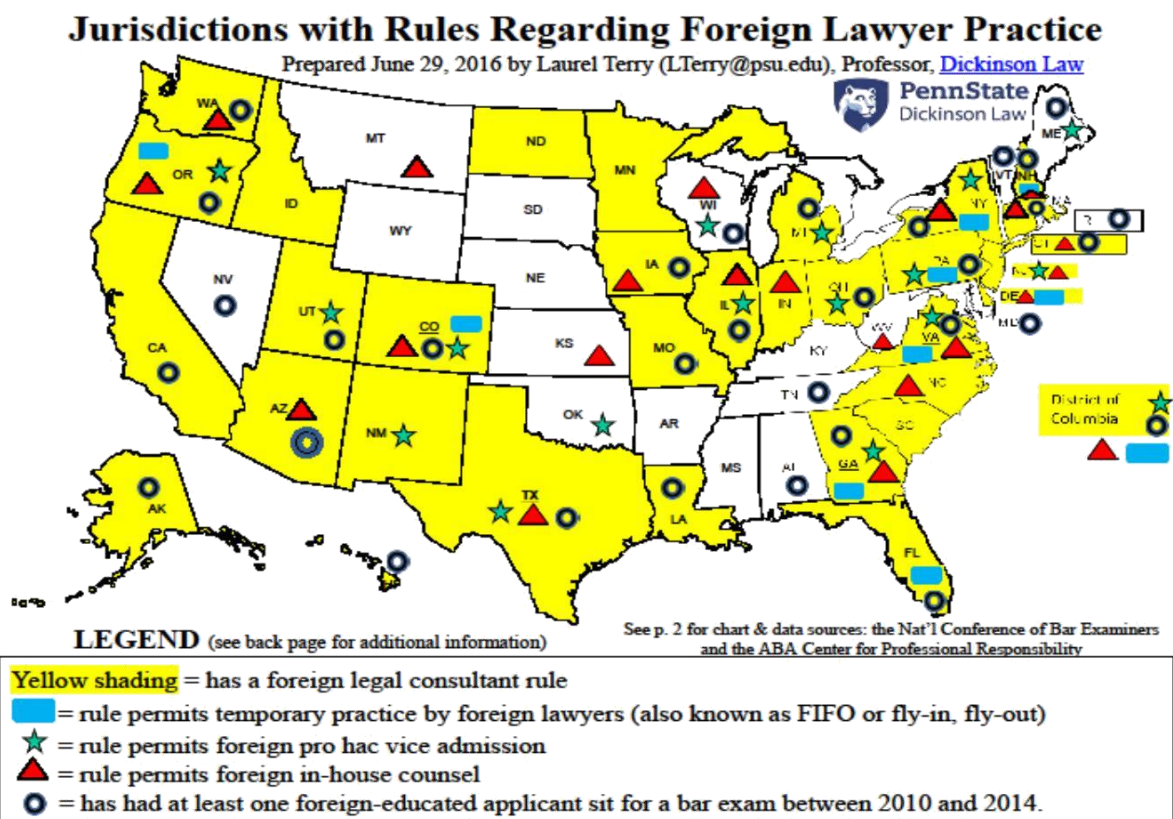
- **Hyper-competition.** Hyper-competition will cause changes in industry structure, including clearer delineation of strategic groups and proliferation in the number and type of legal services providers, and intensifying supply-side competitive dynamics.
- **De-regulation.** De-regulation will progressively reduce, even remove, restrictions on almost all aspects of the ownership of providers and the ways in which legal services are delivered.
- **Client transformation.** The speed and intensity with which clients transform the ways in which they meet their legal needs will occur more rapidly than most anticipate.
- **Exponential technology.** The impact of technology as a substitute, not just a complement, for lawyers' services will be more dramatic than most predict.
- **BigLaw firm inertia.** In the main BigLaw firms will be slow to develop the capabilities in change management and innovation that are needed to remain profitable in the conditions expected after 2025.

The sum of the % share of each type of provider in each period (Now–2020, etc) is 100. In other words, changes in the height of the columns represent gains or losses for each type over the three time periods



Source: OECD

BloombergBriefs.com



S. No	COUNTRY-WISE PROPOSALS AND REQUESTS RECEIVED BY INDIA ON LIBERALIZATION OF LEGAL SERVICES		
1.	Country	Requests made to India	Offer/commitments made by Requesting Country
2.	Australia	<p>Take commitments as per a model schedule prescribed by them, to allow foreign lawyers to enter and establish commercial presence to practice home country, third country and international law without having to meet the requirements to practice host country law.</p> <p>Right of voluntary commercial association between Australian and local lawyers/law firms and right to use own name.</p>	<p>Offered full commitments in Modes 1, 2 and 3 and Mode 4 as per horizontal section, for Legal advisory services. (host-country law)</p>
3.	USA	<p>Full MA and NT commitments for lawyers and law firms in Modes 1, 2, and 3. Permit foreign law firms to establish enterprises with partnerships/JV with local firms.</p> <p>Permit foreign firms to hire local lawyers. Take additional commitments to allow foreign legal consultants and licensed lawyers abiding by rules and regulations of host country, in accordance with a reference paper to be provided.</p>	<p>Commitments taken for legal services as or through a qualified US lawyer consultancy on law of jurisdiction where service supplier is qualified as a lawyer.</p> <p>Such consultancy excludes:</p> <ol style="list-style-type: none"> <li>appearing for a person other than himself or herself as attorney in any court, or before any magistrate or other judicial officer,</li> <li>preparing any instrument effecting the transfer or registration of title to real estate located in the United States of America;</li> <li>Preparing any will or trust instrument effecting the disposition on death of any property located in the United States of America and owned by a resident thereof, or any instrument relating to the administration of a decedent's estate in the United States of America; and</li> <li>Preparing any instrument in respect of the marital or parental relations, rights or duties of a resident of the United States of America, or the custody or care of the children of such a resident.)</li> </ol> <p>Commitments in Mode 1 and 2 and 4 are subject to condition of service by natural persons, in-state license and residency requirements in certain states.</p> <p>Mode 3 commitments are subject to conditions of services supplied by a natural person and that Partnership in law firms is limited to persons licensed as lawyers. NT limitation of residency for practice before the US Patent and Trademark Office.</p>

			<p>In addition to the above general commitments, different states such as Alaska, Arizona, Connecticut, California, Columbia, Florida, Georgia, Hawaii, Illinois Indiana, Louisiana, Massachusetts, Michigan Minnesota, Missouri, New Jersey, New Mexico, New York, North Carolina, Ohio, Oregon, Texas, Utah, and Washington have taken different Additional Commitments in respect of Practice of international law, Practice of 3rd-country law, Practice of host-country law etc.</p>
4.	EC	Commit, covering at least consultancy on public international law and on law of jurisdiction where supplier or its personnel are qualified lawyers. Take full commitments for MA & NT for Modes 1, 2, and 3. In Mode 4, commit as per horizontal commitments.	<p>Offered commitments in Modes 1, 2, 3 and 4 subject to requirement of EC nationality for the full admission to the Bar for practice of domestic law, allowing only legal representation services, reservation of Legal representation in criminal proceedings to sworn solicitors, nationality, quotas etc. scheduled by various member states.</p> <p>Several other state-wise limitations have been scheduled.</p>
5.	Canada	No requests made to India	<p>Offered commitments for Foreign Legal Consultants (advisory services on foreign and public international law only), with full commitments in Modes 12 and 4 as per horizontal section.</p> <p>Under Mode 3, requirement that Commercial presence must take the form of sole proprietorship or partnership has been scheduled.</p>
6.	New Zealand	Take full commitments for MA & NT for Modes 1, 2, and 3 and 4 as per horizontal commitments for Legal Services, including patent agents and attorney's services. (Patent agents and attorney services also include filing of applications for patents, designs and trademarks)	Commitments offered for Domestic Law, Foreign law and International law with full commitments in Modes 1, 2 and 3 and Mode 4 as per horizontal section.
7.	Brazil	Take commitments for consultancy services on international law and on law of jurisdiction where service supplier or its personnel are qualified lawyers.	No commitments offered
8.	Singapore	Take full commitments for MA & NT for Modes 1, 2, and 3 and 4 as per horizontal sections.	No commitments offered

9.	China	Take full MA and NT commitments in Modes 1 and 2. Under Mode 4, take commitments as per horizontal section. Under Mode 3, take commitments to allow establishment of firms in the form of institution in India to provide legal services for the foreign enterprises and individuals who carry out commercial and trade activities, or stay in India, to provide consultations on international treaties and practices.	<p>Taken commitments in Legal Services (excluding Chinese law practice).</p> <p>Full commitments in Modes 1 and 2, and as per horizontal section in Mode 4.</p> <p>Under Mode 3, commitments taken subject to condition that Foreign law firms can provide legal services only in the form of representative offices.</p> <p>NT limitation that all representatives shall be resident in China no less than six months each year and that the representative office shall not employ Chinese national registered lawyers have been scheduled.</p>
10.	Switzerland	Take full commitments for MA & NT for Modes 1, 2, and 3 and 4 as per horizontal sections for consultancy on all fields of law.	<p>Commitments offered for International Commercial Arbitration Services, Legal Advisory Services, Mediation and Extra-Judicial Conciliation Services, Patent Attorney Services (includes trademarks).</p> <p>Full MA commitments in Modes 1, 2, 3 and Mode 4 as per horizontal section. Certain NT limitation relating to permanent postal address in Switzerland, requirement of one year of professional experience etc. scheduled</p>
	Japan	<p>Abolish nationality requirement for obtaining qualification as lawyer, if it exists</p> <p>Take commitments for supply of legal services by foreign lawyer on home country law.</p> <p>Requirement of minimum practicing experience should not exceed 3 years in total and should not require 3 consecutive years of experience. Additional comments to permit legal services on international law and third country law, with condition that they obtain written legal advice from an attorney qualified in that jurisdiction</p> <p>Acoto</p>	<p>Commitments offered for Legal services supplied by a lawyer qualified as "Bengoshi" under Japanese law.</p> <p>Under Mode 1 and 2, commitments offered subject to the condition that services must be supplied by a natural person or by a Legal Profession Corporation and commercial presence requirement</p> <p>Under Mode 3, commitments offered are subject to the condition that services must be supplied by a natural person or by a Legal Profession Corporation</p> <p>For Legal advisory services which does not include legal representational services; expression of legal opinions concerning laws other than laws of the jurisdiction where the service supplier is qualified as a lawyer etc. Commitments in Mode 1 are subject to commercial presence and stay duration of 180 days.</p> <p>Mode 2 full commitments. Mode 3 condition of service being supplied by a natural person.</p> <p>Commitments also offered for Legal services supplied by other judicial personnel qualified as "Shiho-Shoshi", "Gyosei-Shoshi", etc. under Japanese law in various areas.</p>

### 5.3.1 Country-Wise Experience of Liberalisation of Legal Services

## COUNTRY-WISE STATUS OF LIBERALIZATION



COUNTRY	ONLY INTERNATIONAL LAW	LOCAL OFFICES	DOMESTIC LAWS	OTHER LAWS
INDONESIA MALAYSIA	✓	✗	✗	✗
CHINA USA RUSSIA SOUTH-AFRICA	✓	✓	✗	✓
SINGAPORE	✓	✓	✓	✗
BRAZIL	✓	✓	✗	✗

28

COUNTRY NAME	AREAS OF PRACTICE	REGISTRATION	CURRENT STATUS	BENEFITS OF THE LIBERILISATION
INDONESIA	<p>a. Foreign lawyers can practice law in Indonesia, but limited to international law or the law of the country that they come from.</p> <p>b. Under the present regulations, every foreign lawyer who wants to practice in Indonesia must first obtain a work permit issued by the Minister of Manpower.</p>	Each foreign lawyer seeking to work in Indonesia must pay in advance a fee of \$100USD per month for their time in Indonesia	<p>No access to Indonesian legal markets for foreign lawyers.</p> <p>Foreign law firms are not permitted to practice in their own name and are required to work with a local law firm.</p> <p>Allows only Indonesian nationals who have graduated from an Indonesian legal facility or other recognized institution to join the local bar and practice law.</p> <p>Foreign lawyers are not</p>	<p>i) Encourage and facilitate increased levels of foreign direct investment, thereby benefiting the Indonesian economy.</p> <p>ii) Encourage the local profession</p>

<sup>28</sup> "Liberalisation of Legal Sector in India by Manoj Kumar, Founder, Hammurabi & Solomon at *India International Legal Conclave & GC Manthan on 13.08.2016 @ Thimphu, Bhutan.*



			allowed to open offices in Indonesia. Foreign lawyers can practice in Indonesia only if they work as employee or consultants,	
<b>CHINA</b>	Foreign Lawyers are active in a wide variety of legal areas, such as banking, finance, commercial arbitration, property, tax, maritime law, direct investment, intellectual property, and general corporate consulting.	Chinese law will have to engage a Chinese law firm for advice either directly or via a foreign representative office through the Entrustment Clause	<ul style="list-style-type: none"> <li>• Foreign law firms can provide legal services in China only in the form of representative offices</li> <li>• The representatives of the representative office are required to be practitioner lawyers have practiced for not less than two years outside of China (a chief representative requires to have practiced for not less than three years outside China).</li> </ul> Foreign representative offices and their representative offices are only allowed to conduct a limited number of activities, which do not encompass Chinese legal affairs	
<b>MALAYSIA</b>	<p>International Partnerships, QFLFs and foreign lawyers employed by Malaysian law firms can only practice in the permitted practice areas. This is defined as a transaction regulated by Malaysian law and at least one other national law, or a transaction regulated solely by any law other than Malaysian law.</p> <p><b>EXCLUDED AREAS:</b> Practice in the permitted practice areas will specifically exclude: constitutional and administrative law;</p>	<p>1) Qualified Foreign Law Firm (QFLF) – the stand-alone model where the foreign firm must demonstrate relevant legal expertise and experience in the permitted practice areas;</p> <p>(2) International Partnership (IP) – the joint venture model with at least 60% equity by a Malaysian firm and not more than 40% by the foreign firm; and</p> <p>(3) Registration as a Foreign Lawyer.</p>	<p>Allows a foreign lawyer to enter Malaysia to advise or consult with a client on any matter pertaining to foreign law provided that the accumulated period of stay will not exceed 60 days in a calendar year and that immigration authorization has been obtained.</p> <p>Further, foreign lawyers advising or rendering any other assistance in arbitrations, or who appear as counsel or arbitrators in arbitrations in Malaysia, will be permitted to enter the country at any time and with no limit on the duration of their stay</p>	<p>One year since Malaysia's legal market liberalized and allowed the entry of foreign law firms, we have seen only the entry of one firm under the new legal framework. Trowers &amp; Hamlin's earlier had a presence through a non-trading <a href="#">representative office</a> and in April 2015, became the <a href="#">first QFLF</a> in Malaysia.</p>

	conveyancing; criminal law; family law; succession law, including wills, intestacy, probate and administration; trust law,			
<b>SINGAPORE</b>	Foreign lawyers are prohibited from practicing Singapore law. A foreign lawyer can practice foreign law in Singapore, including his or her home country law, as a third-country law, or international law, without re-qualifying. However, foreign lawyers are free to constitute an LLP to practice foreign law subject to the written approval of the Attorney-General's office	A Foreign Law Practice ("FLP") is allowed to provide in or from Singapore: Foreign law-related legal services in all areas of legal practice that the FLP is competent to offer; and Singapore law-related legal services only in the limited context of international commercial arbitration or in relation to the Singapore International Commercial Court ("SICC"), through certain types of registered lawyers.	A foreign law firm cannot employ a Singapore qualified lawyer to practice Singapore law or hold shares of any kind in a Singapore law firm. Also, foreign law firms can only provide legal services in relation to Singapore law through a Joint Law Venture ("JLV). For decades foreign law firms have been granted admission into the country, but until recently they had been prohibited from practicing Singaporean law") or Formal Law Alliance ("FLA") with a Singapore law firm, subject to a series of conditions and requirements Malaysia	A) The arbitration scene in Singapore has indeed boomed over the last few years, due to the growth in business between Asian and Western companies. B) Offshore firms are bringing international work to Singapore
<b>United States of America</b>	Foreign lawyers can practice law in USA provided that to practice law in the United States, a lawyer must sit for and pass one of the Bar Examinations in one of these states (New York, California, Alabama, New Hampshire and Virginia).	Foreign lawyers who have law degrees from certain schools and studying English law may be eligible to sit for the Bar without having to obtain any further American law school study. Graduates of other law schools outside of the United States will generally be eligible to sit for the Bar after graduating from a one-year LL.M. program at an ABA accredited school.	Currently in U.S.A only fifteen states permit bar membership to foreign lawyers including New York and California.	The liberalization of USA's legal service market is on country to country basis, not on country to state basis.
<b>United</b>	Foreign lawyers	Each foreign lawyer	Presently, there are no	Due to

<b>Kingdom</b>	<p>can practice law in U.K after registering with the SRA (Solicitors Regulation Authority) Qualified and eligible lawyers from certain, (generally common law) countries may also undertake the Qualified Lawyers Transfer Scheme which enables them to become English solicitors without performing any training contract or the requirement of any other qualification. There is also a similar test, which is known as the Bar Transfer Test.</p>	<p>seeking to work in U.K after registering with the SRA (Solicitors Regulation Authority)</p>	<p>formal eligibility requirements as such to register and take the QLTS (Qualified Lawyers Transfer Scheme Examinations, but in order to be admitted as an English solicitor by the SRA after passing the same, one needs to be a qualified lawyer of good reputation in a recognized jurisdiction. There is no requirement of experience and there is no vocational training period either.</p>	<p>liberalization the legal market in the United Kingdom sector has been showing excellent financial results in the recent years. Gross fees generated by law firms in the UK amplified by 1.3% in 2014/15 to a record £30.9bn, the fifth successive year of growth</p>
<b>South Africa</b>	<p>Foreign lawyers may establish under home title and are permitted to practice home and international law. In addition, they can also practice international finance, project management, arbitration</p> <p><b>EXCEPTION:</b> Work relating to litigation, South African attorneys can only conduct appearance in court and convincing.</p>	<p>An LL.M does not give access to the profession. A South African Qualification Authority (SAQA) or university certificate is a foreign degree that is of the same or higher status as the LL.B is not sufficient in this case. In case of a degree from a university in a designated country, a South African university may certify that such degree is of the same or higher status.</p>	<p>Foreign firms are not permitted to practice local law or to enter into partnerships or fee-sharing arrangements with South African firms.</p>	<ul style="list-style-type: none"> <li>• South Africa and Lesotho made commitments in domestic law and advisory services in foreign and international law.</li> <li>• South Africa and Lesotho remain unbound with respect to cross-border supply and</li> </ul>

				consumption abroad of legal services.
<b>Brazil</b>	Foreign lawyers to practice law in Brazil must Qualify as Brazilian advogado by a process of re-validating their degree and passing the Bar examination	The domestic and foreign law firms should comply with the rules contained in Law 8906/1994, the OAB (Ordem dos Advogados) Code of Ethics and Discipline and the OAB regulations	Foreign firms are not allowed to enter into partnership or hire Brazilian lawyers. Also they cannot Appear in court, Advisor or consultant on the Brazilian law. The fees or equity with a Brazilian law firm is banned	Due to liberalization: <b>a.</b> UK government, either through Ministerial interventions, or UK Trade and Investment or other channels, to help UK law firms to operate freely in Brazil.
<b>Russia</b>	There is no requirement to procure a license for temporary legal practice by foreign lawyers as there is a general rule that any foreigner who is going to provide any services (not only legal) in Russia during even a temporary stay in Russia must take authorization from immigration authorities to provide such services. There are several exceptions to this general rule which may be applicable to foreign lawyers	A foreign lawyer may become a foreign advocate and be entered in the special Russian register maintained by the Ministry of Justice provided that his/her status in his/her home jurisdiction is similar to that of a Russian advocate (interalia requiring equivalent education, experience, and the passing of an examination).	Foreign lawyers from Belorussia and Kazakhstan may be treated differently under the Agreement on Trade in Services and Investments in States. Foreign lawyers would be expelled from representing clients in commercial and civil disputes considered by Russian courts.	In Russia there are no curbs on foreign law firm operations (apart from in the criminal courts), but in the remaining BRIC countries, such restrictions present more of a challenge

## 6. INDIAN SCENARIO

### 6.1 Profession of Law in India

The Legal profession is called a 'noble profession', law in India has been considered to be a service and not business. Lawyers are considered to be the preservers of the Constitution and are the guardians of the modern Legal Systems. The first step in the direction of organizing a legal profession in India was taken in 1774 with the establishment of the Supreme Court at Calcutta. The Supreme Court was empowered **"to approve, admit and enroll such and so many advocates, Vakils and Attorneys-at-law"** as to the court **"shall seem meet"**. The Bengal Regulation VII of 1793 for the first time created a regular legal profession for the companies' courts. Other, similar regulations were passed to regulate the legal profession in the Companies courts in Bengal, Bihar, Orissa, Madras, and Bombay.

The Legal Practitioner Act of 1879 was enacted to consolidate and amend the law relating to legal practitioners. This empowered an advocate/Vakil to enroll on the roll in any high court and to practice in all the Courts subordinate to the High Court concerned, and also to practice in any court in British India other than the High Court on whose roll he was not enrolled.

After independence of India, it was felt that the judicial administration in India should be changed according to the needs of the time. Presently, the legal profession in India is governed by the Advocates Act of 1961, which was enacted on the recommendation made by the Law Commission of India to consolidate the law relating to legal practitioners and to provide for the constitution of the Bar Council and the All India Bar. Under the Advocates Act, the Bar Council of India has been created as a statutory body to admit persons as advocates on its roll, to prepare and maintain such roll, to entertain and determine instances of misconduct against advocates on its roll and to safeguard the rights, privileges, and interests of advocates on its roll. The Bar Council of India is also an apex statutory body, which lays down standards of professional conduct and etiquette for advocates, while promoting and supporting law reform.



## 6.2 Indian Legal Market Timeline

The Indian legal profession is one of the largest in the world, with over **1.4 million enrolled advocates nationwide**. The estimated total value of the Indian legal market as of 2010 was approximately USD 1.25 billion. The chief players providing service in this sector includes individual lawyers and majorly family run law firms. It is pertinent to note here that the right of an advocate to practice law is not a fundamental right but a statutory right as it is governed by the provisions of the Advocates Act, 1961 (hereinafter to be known as 'the Act') and the Bar Council of India Rules, 1975 (hereinafter to be known as 'the Rules').

Each of the States in India has a State Bar Council. Each of the State Bar Councils has a varying number of members **depending upon the numerical strength of advocates** on its rolls, who are elected to the membership of the State Bar Council in accordance with the system of proportional representation by means of a single transferable vote amongst advocates on the electoral roll of the respective State Bar Council.

### Features of Indian Legal System:

There are also some distinctive features of the Indian legal system which perhaps are quite surprisingly similar to those of the pre-independence era which was adversarial in nature and perhaps make it unique, which Marc Galanter finds in his article entitled 'The Indian Legal Profession in the Age of Globalization' (2012). These features form the core structure of the legal profession in India:

(a) **Individualistic approach** - Lawyers mostly practice by themselves i.e. they have their own chamber/office assisted by clerks and a few juniors depending upon their seniority. And in case of the law firms, most of them are not oriented towards litigation.

(b) **Most of the lawyers are oriented towards courts**. So if an advocate practices at Delhi High Court, most of his time will be dedicated to this particular court. Even though these days, some of the lawyers have started flocking to other courts, but such cases are restricted to few lawyers only.

(c) **Courtroom advocacy continues to remain the central point of the profession**. More focus is laid on the oral arguments made before the court than written submissions. It reflects the dominance of the English barrister model in the Indian Bar and, with the kind of prevalent remuneration structure; it only reinforces its dominance.

Taking cue from the fact that the British legal system of the Commonwealth Nations as also of India was largely based on the adversarial system and the same still follows and holds much water to this date. However we have not been doing enough to update the old and archaic pre-independence legal system, which is mostly rotten from within and there, seem no chances of revival unless a drastic change is incorporated. The time now is ripe and right for the transformation to mould into the new, modernized and globalized model from the old, antiquated and trite one.

## 6.3 Market Size, Sectors, and Trends

It is pertinent to mention here that over a past decade there has been a vast change in this profession and it has become very competitive and promising. It may be said that the credit, though not absolutely, goes to the processes of globalization and commercialization, which has, by enlarging and modifying the Indian economy, resulted in an enormous demand for professional legal services all around the Indian nation. Needless to say, with the advent of globalization and the consequent development of corporate and other allied laws and regulations, the importance of corporate legal advice from lawyers has evolved into a much bigger practice than litigation practice and consequently has led to the establishment of overwhelming number of law firms. The topic of liberalization of the Indian legal profession has once again gained steam to become a hot point of conversation, both in India and globally. While the world eyes India, a host of Indian firms have opened offices in places like Palo Alto, London, Geneva, Dubai, Singapore and Tokyo, as part of their own plans to go global.



## 6.4 Industry Structure

### CLASSES OF PRACTITIONERS<sup>29</sup>:

#### 6.4.1 Individuals: Senior Advocates and Advocates

Advocates are divided into two classes – **Senior Advocates and Other Advocates**. Lawyers can be designated as Senior Advocates by the Supreme Court or any of the 21 High Courts. Advocates are designated as Senior Advocates with their consent, if the Supreme Court or High Court is of the opinion that by virtue of their ability (standing at the Bar or special knowledge or experience in law) they are deserving of that distinction. Only 1% of the lawyers constitute this elite group of senior lawyers who wield exemplary influence in the profession. Senior Advocates enjoys priority of audience. A Senior Advocate designated by one court is recognized as a senior in other courts as well. It is only the Senior Advocates who have a combined seniority roll maintained by the Bar Council of India. Senior Advocates have certain restrictions placed upon them by the Advocates Act, 1961 and the Bar Council of India. They cannot appear without a separate “briefing” advocate (or, in the Supreme Court, an Advocate on Record).

Seniors are foreclosed from drafting pleadings and conveyances or taking evidence<sup>30</sup>. **A Senior Advocate is not allowed to accept any brief directly from a client.** The reasons for these restrictions are to enhance opportunities for the younger members of the Bar, as well as enable the senior members of the Bar to spend their time profitably on research and academia.

#### 6.4.2 Law Firms – Diverse tiers of Law Firms with niche to full-service expertise:

Law firms were always present in India, but were restricted mainly to the Metropolitan cities of Bombay, Calcutta and Madras before India's Independence in 1947. These cities had firms of solicitors, as well as attorneys. The dual-system of classification between solicitors and attorneys was abolished in 1970 with uniform enrolment as advocates, but in Bombay and Calcutta the system of dual license is still followed, and examinations are still conducted for persons who wish to qualify as solicitors, upon the completion of a three year training period in a solicitor's office as an 'article clerk' and the passing of a solicitors' exam.

With the opening up of the economy, presently there are **law firms in almost every city in India**. Major Law firms have their presence in multiple States and cities throughout the country.

Law firms in India include firms of different tiers and sizes, with niche to full service expertise. Smaller amongst these law firms are even organized as sole proprietorships.

The law firm segment has been the most touched by globalization and has seen tremendous growth, contributing heavily to transactional and litigation work. They also attract the best talent from law schools in India.

The impact of globalization necessitated **the need to have Limited Liability Partnerships (LLPs)** to enable the law firms to meet the new challenges. In 2008, the Limited Liability Partnerships Act was passed which recognizes law firms with more than 20 partners and enables them to limit their liability. However, the law firms have been unable to move on to LLP structures owing to the present Bar Council rules not permitting practice of law by body corporate.

#### 6.4.3 The Focus on Litigation

The emergence of **Practice** of the National Law Schools and rising standards in legal education, there are still not enough litigating lawyers to keep up with the demands of India's burgeoning population. There is a lot of potential for the further growth of the Bar. The concentration of advocates and law firms is mostly in the big cities. In towns, urban areas and in villages the advocates are mostly involved in private practice.

#### 6.4.4 The Shift Away from Litigation to Corporate Law Firms

The trend in recent times has seen the law graduates from prestigious law schools gravitating **towards the law firms and companies, rather than litigation**. The reasons for this may be because young

<sup>29</sup> Overview of the Legal Profession in India By Amal Kumar Ganguli, Co-Director of National and Regional Activities <http://www.uanet.org/en/content/overview-legal-profession-india>

<sup>30</sup> (Bar Council of India Rules 2009, Part 6, Ch. 1)

lawyers in litigation do not earn as much at the outset, as compared to their counterparts in law firms who are paid handsomely. Furthermore, the gestation period for a litigating lawyer is quite long when compared to careers at law firms and companies.

## 6.5 Liberalization in India

### 6.5.1 Need for liberalization in Legal Services:

The present prevailing scenario in the legal services sector has witnessed major challenges that have made it essential to look at liberalization of legal services sector as inevitable. Legal services sector has to meet the demands of a fast growing economy and often complex industry sectors requiring legal counsel, both by law makers as well as entrepreneurs.

Additionally, the process of reforms in the legal services sector, apart from any other consideration or commitment, should also be driven by national policy and growth considerations.

Numerous initiatives of the Government of India such as Start-Up India, Digital India, Mudra Yojana, Skill Development, focus on creation and strengthening of young entrepreneurs.

The success of Start-Up India's thus far can be measured from the fact that India now ranks no.3 with over 4200 start-ups and over \$18 billion investments till 2015. Additionally, the Mudra Yojana has enabled 3 crores small entrepreneurs in India to receive collateral free loan by way of formal access to credit, thereby enabling the Indian economy and small entrepreneurs to grow and prosper.

These growing numbers of entrepreneurs engaged in diverse fields and competing in an open economy are bound to seek global multi-jurisdiction access for their growing business and will be requiring high quality but in-expensive (competitively priced) advice on domestic and foreign laws.

Some of the key challenges today include:

Is our legal services sector geared up or capable to meet this demand to enable unfettered growth of India's business and economy?

Do we have a basket of lawyers in India capable and competent to advise on domestic and foreign laws?

Does the basket of lawyers in need to be enlarged multi-fold to meet the growing demand of experts in domestic and foreign/international laws at very affordable and competitive price?

The answer to the above is all but positive i.e.

- No lawyers in India are available to the entrepreneurs to assist them on foreign/international laws.
- Pricing of legal services is anything but competitive with the services being driven largely by few law firms across India owing to scalability constraints.
- Thus the hardship of recipients of legal services continues to grow with the fast addition of new entrepreneurs in large numbers.

There is thus a great need to liberalize the Legal Service sector for the Global growth of the Country. In order to liberalize, we first need to identify the urge/necessity for the same:

- 1.) **Increase of overseas Deals:** Indian Companies are increasing its hold in markets abroad by expanding sectors like IT, Biotechnology and BPOs. These sectors work full time for the international Clients thereby increasing the need for legal services spanning jurisdiction.
- 2.) **Bespoke Advisory:** Foreign companies possess expertise in specialized areas. A recent example would be licensing of 3G Spectrum.
- 3.) **Reciprocity Benefits:** Indian law Firms should support the opening up and expand internationally if they want to take cue from other Sectors.
- 4.) **Impact on other Sectors:** Liberalizing the Legal Services will have a positive Impact on other emerging Indian Sectors like Real Estate and Retail. This played a crucial role in making Singapore, a financial Hub.

## Professional approach:

As per the Current Scenario, Indian law firms are family owned and fall behind in terms of the professional approach as compared to the Foreign Law firms. Finally, Opening up will result in flourishing of Foreign Practices. India is targeting achieving a \$5 trillion GDP in the next 6-7 years. The 2015-16 GDP grew 7.6% which in the fourth quarter was 7.9%. The corresponding rise in trade and commerce would require increased legal services support, both for domestic and Foreign/International Law apart from the need for diverse expertise, diverse skill-set with capability to scale up.

Can such a rising demand for legal services (both for domestic and Foreign/International Law apart from the need for diverse expertise, diverse skill-set with capability to scale up) be met by organic growth alone in the legal services sector?

Can such a rising demand for legal services (both for domestic and Foreign/International Law apart from the need for diverse expertise, diverse skill-set with capability to scale up) be met by organic growth alone in the legal services sector?

Can allowing foreign lawyers capable in filling the gap to practice in India fill the deficit?

If not filled up on time, will the continuing and growing gap impact the pace of growth in India?

The legal vocation in India is one of the most profitable and growing vocation, with approximately more than 6 million advocates practicing in this sphere. The dominating practitioners are providing facility in this arena, which includes individual lawyers and law firms (which consist of majorly family owned firms). It is relevant to emphasize here that the right of an advocate to practice law is not a fundamental right but it is a statutory right; as the provisions of the Advocates Act, 1961 and the Bar Council of India Rules, 1975, regulate it.

The Advocates Act mentions that from the appointed day, there will be only one recognized class of persons entitled to practice the profession of law; that is advocates. Section 2 (1) (a) of the Act defines who is an advocate. An advocate is one entered in any roll under the provisions of the Act. To be more specific, any person who has a law degree from a University which is recognized by the Bar Council of India and who is enrolled with any State Bar Council is an advocate who is eligible to practice law in India. It is also worthy to be mentioned that the Rules may set down a class of or category of persons entitled to be enrolled as advocates, also the circumstances subject to which an advocate must have the right to practice and the conditions under which a person must be deemed to practice as an advocate in a court.

India was a closed economy until 1991 after the landmark LPG Policy (Liberalization, Privatization, and Globalization) where India enacted economic reforms to allow multinational companies to function in the country. This saw the advent of a large number of Foreign Corporations along with FDI.<sup>31</sup> But here was the catch. The foreign companies were allowed, but the Foreign Law Firms, which represented them, were kept away. In a way, the Legal Market was deprived of the liberalization, which affected the rest of the sectors.

It is note-worthy to specify here that over the period of last ten years, there has been a rising change in this line of work and it has become very challenging and promising with a healthy dose of competition. Here we can say that the recognition goes to the processes of globalization and commercialization, but not that significantly as other sectors, which has been responsible for widening and modernizing the Indian economy. It has also led to an increase in the demand for professional and sophisticated legal services from all sectors of our developing nation. It is pertinent to mention that with the advent of globalization and liberalization which has brought with it the consequent development of corporate and other relevant policies, laws and regulations, the significance of professional corporate legal advice from lawyers and legal professionals has developed into a much wider arena of practice than classical litigation practice and resulted in the organization of quite a large number of law firms.

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<sup>31</sup> Shishir Sharma, *Issues Relevant for Foreign Companies Doing Business in India*, in *Doing Business in India* 275 (PLI Corp. Law and Practice, Course Handbook Ser. No. 11926, Feb.–Mar. 2007)

Although the domestic lawyers predominantly meet the demand in the Indian legal sphere, there is still a lack of constructive professional legal advice and services, due to the lack of complexities and fierce but healthy competition. At this point of discussion, it would be helpful to throw light upon the following remark made by the Hon'ble Justice Krishna Iyer which was ahead of its time in the year 1976, in the case entitled *Bar Council of India v. M V Dhabolkar*. The Hon'ble jurist said that *"the law is not a trade, not briefs not merchandise, and so the heaven of commercial competition should not vulgarise the legal profession"*.

Although with India's economic growth, the demand for sophisticated corporate counsel in India increased, yet there were no reforms regulating foreign law firms, which sought to assist their corporate clients. They were facing a large quantity of legal and regulatory drawbacks until now. These Barriers include the Advocates Act of 1961, which significantly restricted the foreign practice of law, and the 2009 *Lawyers Collective* decision, which held that litigation and non-courtroom corporate advisory work are included within the ambit of the practice of law, and, therefore, these are only allowed to be practiced by Indian citizens. Alongside the burden of these legal hurdles, there has been a policy dispute, which has been raging, as to the admission of foreign firms in the country.

Legal services encompass numerous activities of economic and social consequences. Most of the demand for legal services comes from business and organizations. The Indian legal profession has undergone a significant change in recent years. The interest of foreign law firms to open shop in India is therefore, hardly surprising. Exposure to foreign law firms can only be advantageous and the nation stands to gain immensely from the resulting arrangement<sup>32</sup>.

There have been protests lately as well in the past, both at the international as well as at the national sphere, against these obsolete conditions of the Indian Legal Market. This has undeniably compelled the Government of India as well as the Bar Council of India to consider and analyze the said matter. The 15th Law Commission of India (chaired by Hon'ble Justice B.P. Jeevan Reddy), had already taken up in the past, the analysis and scheme for regulation of the entry of foreign legal professionals and firms as well as the liberalization of legal practices and profession in India, also keeping up with the procedure evolved by the International Bar Association (IBA), and General Agreement of Trade in Services (which is a part of World Trade Organization). The Law Commission had discussed in its Working Paper, and inspected that since India was a party to the General Agreement on Trade and Services (GATS) and within the passing of a period of five years from January 1, 1995, it would be under an obligation to enter into successive rounds of dialogue periodically to enable it to achieve a increasingly higher level of liberalization and globalization which also regulated trade and commerce as well as services irrespective of the national boundaries.

Liberalization in GATS envisages a contact between developing and developed nations which is slated to materialize through a set of trade-off. The experience tells us that every sector of Indian economy which has been opened up has come out stronger and become more competitive in the long run. This will be even true for the legal services as Indian legal system has already had some limited but valuable legal exposures. Moreover, Indian legal system will do well to imbibe in themselves certain aspects of the work culture of the west<sup>33</sup>. A case in point will be the emphasis given in the west on 'corporate legal compliance', avoidance of litigation and recourse to arbitration. This might help us solve many of our chronic problems and create a leaner and more professional and flexible legal system.

Legal outsourcing, also known as legal process outsourcing (LPO) refers to the practice of a law firm or corporation obtaining legal support services from an outside law firm or legal support services company (LPO provider). When the LPO provider is based in another country, the practice is called off-shoring and involves the practice of outsourcing any activity except those where personal presence or contact is required, e.g. appearances in court and face-to-face negotiations. When the LPO provider is based in the same country, the practice of outsourcing includes agency work and other services requiring a physical

<sup>32</sup>[http://www.sciencepub.net/researcher/research0602/009\\_23406research060214\\_65\\_72.pdf](http://www.sciencepub.net/researcher/research0602/009_23406research060214_65_72.pdf)

<sup>33</sup><http://www.manupatrafast.com/articles/PopOpenArticle.aspx?ID=b079546b-f512-43fa-964d-3f6970127a26&txtsearch=Subject:%20Civil>

presence, such as court appearances. This process is one of the incidents of the larger movement towards outsourcing. The most commonly offered services have been agency work, document review, legal research and writing, drafting of pleadings and briefs, and patent services.

LPO firms in India had predicted an annual growth of 200% due to recession related litigation and the increased need to save costs in the US. Their expectations have not been met. The major reason for this is that US lawyers themselves have started looking at alternative fee structures due to the recession and job losses. In spite of setbacks, the LPO industry has seen growth of about 40-60% in the last year. Although some areas of practice, such as real estate, have drastically collapsed due to the recession, some areas such as litigation, document review, and corporate compliance have gained ground, resulting in business directed to LPO firms in India.

One of the major concerns with outsourcing is the potential for breaches of client confidentiality. In legal process outsourcing the issue of client confidentiality assumes utmost importance. The attorney–client privilege is a doctrine that says anything conveyed between an attorney and his client shall be treated with utmost confidentiality and is exempted from disclosure even in a court of law. However, when either party discloses confidential information to a third party or the opposite party, the privileges are deemed to be waived. During the early years of legal process outsourcing, many law firms hesitated to outsource their work. Another criticism is that people performing legal work may not be bound to necessary ethical standards.

In the present era, globalization has become the norm and the exponential development of the Internet ensures that businesses either evolve to the next level or perish. The direction, supervision, and control of the overseas legal support system have become critical to legal outsourcing. In the contemporary context, the outsourcing of legal work to economically viable destinations such as India has become a practical necessity. If the industry develops and overcomes the initial hiccups, LPOs could very well go on to become the backbone of India's booming service industry, along with BPOs and other KPOs. There is a strong political opposition in the US against outsourcing as may affect the livelihood of US attorneys may also serve as a roadblock.

### 6.5.2 Identifying the stakeholders



<sup>34</sup> "Liberalisation of Legal Sector in India by Manoj Kumar, Founder, Hammurabi & Solomon at India International Legal Conclave & GC Manthan on 13.08.2016 @ Thimphu, Bhutan.



Amongst the multitude of stakeholders who together comprise of the legal services sector in India, the key notables are as follows:

- Wide section of emerging entrepreneurs achieving their aspirations as a result of initiatives of the Government of India, requiring high quality but in-expensive (competitively priced) advise on domestic and foreign laws;
- India Inc., comprising of businesses, large medium and small, requiring high quality but in-expensive (competitively priced) advise on domestic and foreign laws;
- Individual Lawyers registered under the Advocates Act,1961 and engaged in the practice of law in India;
- Law firms organized as sole proprietary concerns i.e. proprietors registered under the Advocates Act,1961 and engaged in the practice of law in India
- Law firms organized as partnerships i.e. partners registered under the Advocates Act,1961 and engaged in the practice of law in India:
  - law firms having 200 + fee earners
  - law firms having 100-199 fee earners
  - law firms having 50-99 fee earners
  - small law firms having 10-49 fee earners
  - start-up law firms
- Law Universities and Law Schools/Colleges in India providing graduation, masters or doctoral courses for law students;
- Students of law and interns undertaking graduation, masters or doctoral courses at Law Universities and Law Schools/Colleges in India
- General Counsels and members of in-house legal teams of various Indian Businesses
- Industry bodies/Institutions such as CII, FICCI, PHD Chamber, ICADR, ICA, ASSOCHAM etc,
- Mediation and Alternate Dispute Resolution Professionals.

Reforms in the Legal Services sector would therefore need to evaluate and drive the growth of all the above stakeholders.

As per rough estimates, there are approximately 3500 Bar Associations in India. They are specifically based in each court that is district courts, high courts and other courts & judicial forums. Their memberships consist of local litigation lawyers of that particular court.

A Bar Association is a professional body of lawyers. Some Bar Associations are responsible for the regulation of the legal profession in their jurisdiction; others are professional organizations dedicated to serving their members; in many cases, they are both. Membership in bar associations may be mandatory or optional for practicing attorneys, depending on jurisdiction. An organization of lawyers established to promote professional competence, enforce standards of ethical conduct, and encourage a spirit of public service among members of the legal profession.

Bar Associations accomplish these objectives by offering continuing education for lawyers in the form of publications and seminars. This education includes instruction on recent developments in the law and in managing a law practice successfully as a business. Bar Associations encourage members to offer Pro Bono legal services (to provide legal services at no cost to members of society who cannot afford them). Bar Associations develop guidelines and rules relating to ethics and professional responsibility and enforce sanctions for violation of rules by governing the conduct lawyers. Bar Associations also offer attorneys the opportunity to meet socially to discuss employment prospects and legal theories.

Law is vast and it touches all of us in some way or the other, law is not just about the intensity or the money or the status, it more than that. The Indian legal market is in a nascent stage in terms of growth.

The growth of the legal industry has brought with it an increase in the number of stakeholders. In this age of globalization, Indian as well as international law firms, various governments, courts, lawyers, attorneys, advisors, clients, law universities, law students etc. are parties who have legitimate interest in law and the way the legal system functions. The private sector is also a major stakeholder in the legal market as it



provides legal services to the public; and also are the users of legal services. Foreign investors, financial corporations, International corporations, small and large businesses, law magazines and newsletter agencies, are all various stakeholders.

Various industries, public relations offices, politicians, media houses, non-profit organizations, workmen and the public are also major stakeholders. Other stakeholders comprise of bodies and persons who have direct or indirect association with the legal community. They are an important part of the legal industry as they play key roles in shaping the legal system.

The service industry in India has the potential to generate higher revenues than what it currently generates. The foreign revenue earned by the service industry brings about certain debate as to why the legal services industry is not kept at the same footing. There is negligible representation of the legal industry by the state. Without adequate promotion and representation by the government, there is considerable loss to the legal service industry as major portion of collaborated legal services are outsourced to other countries competing with India.

The government should consult experts and analysts of the legal industry so as to bring about regulations, which work in the favour of the legal industry and does not inhibit interested foreign parties from partnering or collaborating with Indian legal offices. The process needs to be streamlined and fewer checks and balances ought to be introduced by doing away with all outdated laws and regulations that could pose a threat to the further development of the industry.

The efforts of independent Bar Associations and other bodies working in promotion of the legal sector could only bear fruit if the government itself would recognize the industry and ensure its growth. Law is still not recognized as a valuable industry, this is delaying the surplus revenue it could generate for the nation. If the legal industry were given the same foothold as other existing industries, there would be ample opportunities in the job market for legal professionals. As a common law country, with a vast English-speaking workforce there is no doubt that the legal industry could become one of the most successful and flourishing sectors.

As stakeholders, businessmen face a lot, roadblocks as they have to comply with complicated laws and regulations. The streamlining of the compliance and regulatory laws could prove to be an incentive for new businesses. Less intellectual property laws are also having a negative effect as innovators and inventors suffer from the lack of motivation.

Most of arbitrations between corporate giants take place in international jurisdictions. We can imagine the loss in revenue because of this. If India focuses on operating arbitration courts and tribunals of international standards then there is an unimaginable potential for growth and further recognition. Foreign lawyers should be allowed to work on arbitrations in India to make domestic arbitration more attractive and to unburden the courts. The Bar Council has been vocal against the entry of foreign law firms, while the Law Ministry has always claimed that the entry will only be after consulting all necessary stakeholders.

The legal process outsourcing industry is not placed at par with Litigation and other legal sector jobs. There is a need for change to change our view towards it. The LPO industry has the potential to become one of the top foreign revenue generating bodies. Lawyers working with LPOs have knowledge about laws and regulations of other countries. There is immediate need for better regulations to increase the capability of this field. Once this is done there would be no dearth in getting legal business to India, which would definitely benefit the economy. There is urgent need to recognize the legal industry as an important sector in India.



## HOW DOES IT IMPACT INDIAN LEGAL SYSTEM?



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- **Practicing Lawyers-** The gap between the cost of living and lifestyle and salaries in India and abroad also forms an integral part of the liberalization debate. Indian law firms fear against liberalization that they will be losing demand for the junior associate jobs available at their firms to a (much higher-paying) foreign firm. Whereas firms that are in favor of this liberalization opine that the best Indian law students are already availing the opportunity to work for elite and sophisticated foreign firms abroad and that liberalization of the legal sector would not have such an impact on the Indian firms that do not pay so much.<sup>36</sup> Another argument forwarded by the anti-liberalization firms is that while Indian citizens could technically go abroad to attend law school and practice there, it is, in practicality, very complicated because of high tuition fees, high cost of living and other expenses, and the stressful lifestyle abroad.<sup>37</sup>

Large overseas firms such as Clifford Chance, etc. the so-called “Brain Drain” were draining the existing legal talent in the country. This short-term brain drain phenomenon can be reversed in the long run if the sector is opened up and more opportunities are available here. But view in this regard is that, this is totally misconceived, as the entry of foreign law firms would among other benefits result in better pay for the entry level lawyers, exposure to international best practices, exposure to cross border transactions and a wealth of opportunities for the 80,000 lawyers graduating from Indian law schools every year.

Exposure to foreign law firms can only be advantageous and we as a nation stand to gain immensely from the resulting arrangement. Presently there is a huge potential of legal market in the field of

<sup>35</sup> “Liberalisation of Legal Sector in India by Manoj Kumar, Founder, Hammurabi & Solomon at **India International Legal Conclave & GC Manthan on 13.08.2016 @ Thimphu, Bhutan.**

<sup>36</sup> Jayanth K. Krishnan, *The Joint Law Venture: A Pilot Study*, 28 Berkeley J. Int’l L. 431 (2010).

<sup>37</sup> Id.

emerging laws concerning cyber law, space law, international commercial arbitration, mass torts, etc. To tackle these situations, if these firms are present in India, they can guide their Indian counterparts better and quicker, in relation to their investments outside India.

LPO is a fabulous opportunity for lawyers who desire to work in a corporate structure like other blue-chip companies. In the beginning, these consisted mostly of low-end transcription work along with other related jobs. But now a typical LPO includes a huge range of legal processes, like writing software licensing agreements, communicating with clients, drafting of patent applications, legal research, litigation, documentation, and so on.

Moreover, working with an LPO can give an individual, global exposure and a good career path. Most of the lawyers are likely to get best working environment with better job satisfaction in the area of Legal Process Outsourcing. One of the advantages is the increasing number of job opportunities for law school graduates in India.

The arguments advanced in favor of liberalization is that the entry of foreign firms into the Indian legal arena will result in increasing competition and augment the quality of transactional law in India, particularly in terms of quality practices, referrals, enhancement of legal and technical knowledge, and formation of requisite professional norms.

The Foreign law firms have already been interfacing and associating in the with law firms in the Indian market for a long period of time and have brought with them much greater standards and new methods and techniques into the Indian legal market. Some Indian firms have been quick to imbibe them and this should be encouraged to continue and thrive.<sup>38</sup> These affiliations bridge the gap in expertise between foreign and Indian firms in order to benefit the client.

This in turn would affect the Indian law market will surely be affected in this move. Most of the Indian law firms will have the likely option to go for collaborations with the foreign firms or might eventually merge with Indian divisions of foreign law firms. They would not be able to continue independently. It would also bring reforms in the legal and judicial system.

As we see the vague reciprocity provisions of the Advocates Act<sup>39</sup> the uncertainty and disputes still exist. The proponents of anti-liberalization stress on these reciprocity provisions in the Act and claim that they do not want to open up the legal sector market because foreign jurisdictions do not endow absolute and quick reciprocity.<sup>40</sup> Taking the instance of the United States, it can be said that it unfairly prevents Indian citizens from practicing law by enforcing the difficult LL.M. and Bar Exam requirements, immigration requisites, and the elevated expenditure associated with acquiring a U.S. legal degree. But those who favor the liberalization do not view things in such a simple manner. They claim that neither the United States nor the United Kingdom completely and absolutely prohibits lawyers of Indian origin from practicing or studying law in their respective countries,<sup>41</sup> but they simply require that all foreign citizens should pass an exam which enables them to get a license in that country and also take some classes to enhance their capabilities. India should also enact such licensing examinations or regulations and that the Indian Bar Council can be confined sufficiently by the provisions of tests, licensing, and other requisite examinations. Discussing the application of the reciprocity provisions in India, it can be said that the reciprocity provision is mostly theoretical in nature, and lacks practicability.

Lawyers graduating from newly set up national law schools are now "ready to compete" with those from other nations. There will be an upgradation in the quality of services to clients, and the time of transaction will be comparatively less. As 20% of the world's lawyers are Indians, the nation is emerging as a booming market in this field and has got rich potential to lodge the future lawyers<sup>42</sup>. If foreign law firms are allowed to practice in India or to render legal assistance/advice, there should be a reciprocal arrangement, whereby the Indian lawyers will be allowed to practice in those foreign

<sup>38</sup> MuraliNeelakatan, *Foreign Firms Raise Standards*, India Bus. L.J., Nov. 2007, at 15, available at <http://www.indilaw.com/pdfs/Is%20India%20ready%20for%20foreign%20lawyers.pdf>.

<sup>39</sup> *Advocates Act* § 47.

<sup>40</sup> *Supra* note 7.

<sup>41</sup> *Lawyers Collective v. Bar Council of India*, Writ Petition No. 1526/1995 (Bombay H.C. 2009).

<sup>42</sup> [http://www.business-standard.com/article/economy-policy/government-mulls-legal-services-liberalisation-115062900875\\_1.html](http://www.business-standard.com/article/economy-policy/government-mulls-legal-services-liberalisation-115062900875_1.html)

countries<sup>43</sup>. If Indian government decides to open up the legal market to foreign law firms, it should also seek acknowledgement from other foreign countries on a reciprocal basis, so that Indian lawyers can also work and reside there.

Students from premier law schools in India who take up jobs abroad having intentions to come back. This short-term brain drain phenomenon can be reversed in the long run if the sector is opened up and more opportunities are available here. This would also make people start returning to India. A case relevant to our discussion may be of Australia and New Zealand. When they opened up initially they lost lawyers to UK and US firms. As a consequence the native firms strove to become more competent and started attracting the best talent again.

Foreign law firms employ graduates from NLS which clearly brings out that Indian graduates are perceived on par with others in this field. Also for practicing Indian law (if allowed to), foreign firms will have to recruit Indian lawyers. Therefore, to a certain extent we can say that employment opportunities will be created. Legal Process Outsourcing (LPOs) will also benefit hugely and consequently offer better salaries to students of tier-II and tier-III law colleges to attract talent.

- **Law Schools** - The basic reform process has to come from the educational system. Some of the recommendations based on comparison of Indian and British legal education systems are:
  - 1) Professionalize educational setup and centralize admission process.
  - 2) Consider phasing out of the old legal education system and move into a uniform process.
  - 3) Increase spending on teachers and campus infrastructure.
  - 4) Follow the Japan system of separately identifying students eligible to be judges and lawyers and train them accordingly.
  - 5) Grant autonomous status to the universities and set up a regulatory body for legal education.
  - 6) Increase the role of information technology in delivering legal education.
  - 7) Increase focus on drafting and other soft skills.

There is an immense need for collaborative curriculum structuring to bridge the gap between the curriculums being followed by law schools and the actual need of skill-sets amongst graduating law students from law firms and industry perspective. In this regard there is need for collaboration between law firms and law school in structuring curriculum and education programme in a manner to benefit all the stakeholders namely; Law school, Faculty Law, Students, and the Law Firms. Foreign law firms have all far deeper legacy of expertise and experience in bridging this gap and presence of foreign lawyers in the India legal market would enable a far deeper collaboration between law firms and law school and accordingly hugely enrich the quality and content of legal education in India in such a manner that the needs of growing and developing India are met such that adequate legal support in specific industry sectors comparable to global standards are available to the emerging class of entrepreneurs and India Inc at our door step. This would be a huge enabler to the ease of doing business in India in a multitude of practice areas and diverse industry sectors.

- **Law Firms**- Liberalization of legal services sector by permitting foreign lawyers to practice in India would impact law firms of different tiers and expertise differently, and in all cases positively. As most of the Indian lawyers practice individually or comparatively in small firms and much of their work is litigation, they seem to be somewhat scared of being invaded by the big corporate Western law firms. Moreover, there are comparatively less Indian corporate law firms. If there is an influx of foreign law firms, they will need expertise of Indian lawyers to support their daily proceedings. The former provide qualitatively competitive services in a cost-effective manner and they would need to hire Indian

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<sup>43</sup><http://www.merineews.com/article/influx-of-foreign-law-firms-boon-or-curse/15782659.shtml&cp>

lawyers as their employees in India and as counsels to appear for them in the Indian courts. The sheer size and revenue generated by the multinational law firms in comparison to the largest domestic firms in India was one more issue raised in the meeting. It is apparent that in the presence of a level playing field in India for the legal services sector, there are glaring disparities among law firms in terms of size, revenue and expertise even now. Going by the arguments advanced by those domestic law firms opposing the entry of foreign law firms, smaller law firms should have already perished and the market should have been consolidated and dominated by a few firms. However, the truth is to the contrary, where all firms operating in the market today have managed to consolidate and discover a niche market for themselves. In the event foreign firms enter the market, disparities would remain and each firm would work around to ensure that it remains in competition. This has been a worldwide phenomenon and is not going to change in the Indian context. If one looks carefully at all those countries which opened its door to foreign lawyers, one would see that the lawyers especially at the major firms have always been very skeptical of the opening of services since they are the most affected. Those in favor of formally opening the Indian legal arena to facilitate the entry of foreign law firms also argue that there is a deficiency of complex and proficient Indian firms that can handle complicated transactions for their Indian clients.<sup>44</sup>

Various Indian law firm partners who have been approached, have pointed out that there are certain family-run Indian law firms do not reimburse their partners or even associates at nearly equivalent rates as foreign firms do, and that there is a discrepancy in the salaries and bonuses paid to their own family partners and those that are paid to the other partners and associates in such firms who are not related. In addition, other arguments also pertain to the entry of foreign firms into the Indian market and that would eventually force the family-run Indian firms to modify their framework or their pay scheme or, otherwise, lose all their finest associates and partners to higher paying foreign firms.

Those stakeholders in favor of liberalization also contend that permitting foreign lawyers into Indian Legal arena would lead to the reduction in the costs that some Indian clients presently spend while working across international borders and travelling to foreign firms' branch offices.<sup>45</sup> Again reiterating the fact that Foreign law firms are in India already, their offices may be based in the U.K. or New York but they still providing professional legal advice in India from their international offices and their big Indian clients, most of who are big global names and corporate houses are already availing their services on a regular basis.<sup>46</sup> There are also certain views that are skeptical of foreign attorneys' and firms' motives and contend that the U.S. market is already highly competitive and hence the U.S. lawyers are in the search of new service opportunities, whereas Indian firms' rates are much affordable and cater to the need of their clients.

It should be noted that there will be likely monopolization by large foreign law firms in different aspects. There will be paradigm shifts in the legal sector and probable collapse in the structure of professional ethics mainly due to the possible conflicting practices ahead. But if the Indian government allows the foreign law firms to practice in India, the profession is likely to become a business, which may not hold well in some aspects. So, it can be perceived that the Indian lawyers are not worried about the competition. But it is the custom and morality of legal practice here that has been developed over past several years, which is thought to be affected.

#### 6.5.4 Apprehensions of Bar Associations:

The Bar Associations and the professional fraternity in general have expressed their apprehensions very loud and clear. The thought clouding the minds of the lawyers are a set of manifold apprehensions. Some of these are as follows:

1. Monopolization, creation and abuse of dominant positions by large foreign law firms with tremendous infrastructure and international clout.

<sup>44</sup>Jayanth K. Krishnan, *The Joint Law Venture: A Pilot Study*, 28 Berkeley J. Int'l L. 431 (2010)

<sup>45</sup>Supra note 10.

<sup>46</sup>Nigel Thompson, *Indian Clients Will Benefit*, India Bus. L.J., Nov. 2007, at 17.



2. Foreign lawyers providing services in India especially in super specializations like Intellectual Property Rights, International Commercial Arbitration, Mass Torts, etc.
3. Loss of wealth of the legal services sector to the foreign nations (least important).
4. Possible changes and breakdown in the structure of professional ethics mainly due to the conflicting practices in vogue in the foreign countries<sup>47</sup>.

### 6.5.5 Advantages & Disadvantages

- **Advantages** - Those domestic law firms powered in performance and revenue may be affected by its counter foreign law firms. "The size, power, influence and economical standards of these large international law firms would definitely affect the share of the domestic law firms. It can be inferred that the Indian law firms cannot match the present scenario; howsoever far they may stretch up to the foreign law firm's size, power and most importantly economical standard. Furthermore, we can say that the domestic law firms are precluded from entering into any kind of co-operation with non-lawyers. We can say that there are fewer disadvantages regarding the entry of foreign law firms into India. "The domestic law firms which are not strong enough to face the competition, many of them collapse and they get bought out for ridiculously low values and as the result the domestic players, they shrink in size."

The logic that could be fervently discussed in permitting foreign law firms to work and carry on transaction in India is that the foreign firms will bring along a distinct standard of professionalism, competence, experience and expertise, which the legal vocation here in India has scantily developed. More specifically, allowing the access to foreign law firms in Indian legal market will definitely bring in competition and lift the standards of the profession in the legal sector, which most Indian law firms and legal professionals are not competent to tackle. Furthermore, it would be relevant to point out here that the advantages of entry of the foreign law firms in the Indian Legal Market could also be welcomed in the light of the probable increase in foreign direct investment and abundant profits to the well wishers of the legal services and legal professionals and also to the law aspirants.

Additionally, it is to be known that with the influx of the foreign law firms there will also be a wonderful rush in employment avenues for the Indian lawyers and legal professionals. Moreover, their entrance will allow the junior lawyers clutch an enviable pay package and law students can easily access their internship programs; which is obviously not their catch in the current set-up. The entry foreign firms in India should not really be seen as a negative effect that would decrease the number of available jobs. They would mostly recruit law graduates and in the procedure, provide them with an opportunity to enable them to gain a first-hand experience in international and even domestic commercial transactions and business, which will be the chief agenda of such firms.

Additionally, it's fascinating to note here that the law schools and colleges in India have been hopeful with the entry of foreign legal firms; as they think that legal sector should not be barred when India is opening up other sectors to foreign entities. In fact, law schools and colleges claim that the government's planned progress in this regard would enhance competition in the legal arena.

It would also be useful to note here that the impact of the entry of foreign legal firms on the profession here in India would be welcomed.

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<sup>47</sup> Entry of Foreign Law Firms: A boon or Bane for Indian Lawyers Author : Mr. Kush Kalra  
<http://www.manupatrafast.com/articles/PopOpenArticle.aspx?ID=b079546b-f512-43fa-964d-3f6970127a26&txtsearch=Subject:%20Civil>



On the legal education system also, it would be a very positive development. Any move that enhances the competition would be a great for the progress of this vocation. Permitting foreign private law firms in India will surely assist the lawyers to get more lucrative job opportunities and challenge the monopoly of a few private law firms working in India. It is equally significant that the government must put enough regulations to guard the interest of the Indian legal community and professionals.

In the age of consumerism and competition, consumer's right to free and fair competition is paramount and cannot be denied by any other consideration. Trade in legal services focuses on benefits accruing to consumers from legal services sector, particularly the quality of service available with respect to particular fields. It is to be noted that with the advent of foreign law firms in India, the patrons of legal services will be highly benefited, on account of more available options, the resultant competition and accessibility to a fresh pool of professionalism, competence and expertise, which the legal profession here has incessantly failed to develop.

- **Disadvantages**

***“We must take care that globalization does not become something people become afraid of” - Gerhard Schröder.***

Coming to the disadvantages; it is contended that they aren't many. Nevertheless, the most vital one that needs to be brought to the consideration is the prospect of the domestic law firms, in light of the existing unfavorable situations, being overwhelmed in performance and income by its foreign counterparts. The law firms situated in countries like United Kingdom, United States and Australia have great lawyer and legal professional's team; they also function on International scale and primarily work as business institutions intended to support commercial interest of their big client corporations and entities. Their sheer size, authority, sway and economical standards of these hefty international law firms would definitely affect the share of the domestic law firms. It can also be claimed that the Indian law firms cannot, in the present situation, contest, howsoever far they may stretch it, the foreign law firm's size, competence and most specifically, their economical standard.

It is applicable to note here that the incompetence of the Indian law firms to compete with their foreign counter-parts arises from the various superfluous and irrelevant constraints, which the domestic law firms here are subjected to in India; and the same constraints have been discussed above. In short, the Indian law firms are statutorily prohibited from advertising/promoting and thus representing their area of expertise and skills.

Furthermore, the domestic law firms are forbidden from raising their capital and are also prohibited from entering into any kind of co-operation with non legal professionals. Foreign law firms, conversely, are not restricted by any such shortcomings.

#### **6.5.6 Current Laws- Advocates Act**

##### **The State of Play in India and Indian Market:**

The Advocates Act, 1961 and the Bar Council of India Rules, 1975 are the rules which regulate the legal services sector in India and the Bar Council constituted under Advocates Act acts as the final regulating body. India has the world's second largest legal profession with more than 600,000 lawyers.

The service providers are individual lawyers, small or family based firms. In India, Legal services can be provided only by natural persons who are citizens of India, who are on the rolls of the advocates in the states where the service is being provided. The service provider can either be a sole proprietorship or a partnership firm consisting of persons similarly qualifies to practice law. In order to be eligible for enrolment as an advocate, a candidate has to be citizen of the country or a country which allows Indian

nationals to practice as per the reciprocity treatment, has to hold a degree in law from an institution/university recognized by the Bar Council of India (BCI) and be at least twenty one years of age.

Cross border trade and the temporary movement of natural persons are the two most important modes of supply of legal services under GATS. India has not undertaken any commitment in the legal services sector during the Uruguay Round of negotiations. It has neither offered for any commitments in legal services in its Initial Offer nor in its Revised Offer submitted at the WTO during the Course of on- going Services negotiations under GATS.

FDI is not permitted in this sector. International law firms are not allowed to establish offices in India. Moreover, Indian advocates are not permitted to enter into profit sharing arrangements with the persons other than Indian advocates. Foreign Law firms are not permitted to open offices in India as per the Advocates Act 1961 and they are also prohibited from giving any legal advice that could constitute practicing of Indian law.

There is a strong sentiment amongst various members of the profession that permitting foreign law firms even in a limited way would lead to the shrinking of the opportunities available to domestic lawyers. The Bar Council of India, the apex body representing the interest of Indian Advocates has on various occasions expressed its apprehensions in allowing foreign lawyers/law firms into India.

It is important that we look into the immense trade potential of the Indian legal profession, but without compromising on the interests of Indian Advocates. At the same time, it is a reality that the Indian economy is fast integrating into the global economy.

While a number of foreign companies are investing in India, Indian companies are also acquiring foreign companies on a regular basis. This requires capacity building of Indian lawyers and Indian law firms in areas such as international law, third country law, patents law etc. so that they can not only advise the foreign companies in India, but also support Indian companies acquiring assets abroad. Lawyers have played a crucial role in helping formulate policy to enhance foreign investment and to create a favorable environment for foreign investors. Despite limiting circumstances, Indian law firms in particular over the last few years, have displayed a youthful dynamism by re-inventing themselves to provide cutting edge legal advice.

Leading firms in different jurisdictions have worked with Indian lawyers/law firms, who have several cross-country transactions in the fields of international commercial and financial law to their credit. Expansion into the international market will not go unimpeded. Indian lawyers will continue to face competitive challenges from existing global players, principally the internationally focused legal practices operating from the United States, Canada, the United Kingdom, France, Germany and Spain.

### **Domestic Restrictions on Indian lawyers / firms:**

Development of legal profession in India has been restricted in India on account of the number of impediments in the current regulatory system, which hinders Indian law firms from competing effectively against foreign firms. Some of the current restrictions, which severely limit the scope of growth in the legal profession, are:

- i) Partnerships are the only permitted model of practice for law firms in India.
- ii) Further modes of practice such as limited liability partnerships or Limited Liability Corporation are not permitted.
- iii) Limitation on the number of partners to 20. This limits the growth and size of Indian law firms.
- iv) Bar on advertising even having entries in law directories.
- v) Practice of law is treated as a profession and not an industry resulting in lack of finance for lawyers.
- vi) Ban on advertising.
- vii) Multidisciplinary practicing firms not allowed .Having functioned in such a limiting framework for the past fifty-years, the Indian legal profession is today ill-equipped to compete on par with international lawyers, who have grown their practices in liberalized regimes and have vast

resources at their disposal. It is further to be noted that there are only a few firms in India having the expertise to handle commercial work for multinationals.

## 6.6 Future Trends

### 6.6.1 What foreign law firms want<sup>48</sup>?

First, we need to establish what the foreign law firms would like from the Indian profession. For example there are a number of key areas that UK lawyers' state they would like to practice if permitted to enter India.

These are:

1. Foreign firms do not wish to access those parts of the Indian market traditionally served by local Indian lawyers. UK firms have no interest in this area, but wish to focus on advising inward and outward investors in the international business community. The Law Society of England & Wales agrees that court appearances should be restricted to nationally qualified lawyers.
2. That English solicitors be permitted to offer English law advisory services (that is not advocacy/ court work) in India without having to become members of the Indian Bar.
3. That these advisory services cover home title, third country and international law.
4. That English solicitors be permitted to enter into partnerships with and employ Indian lawyers in India.
5. That English solicitors be permitted to establish branch offices in India to offer advisory services in English law.
  - The Law Society of England & Wales accepts that the Bar Council of India should regulate the conduct of foreign lawyers in India and that foreign lawyers should not be permitted to appear as advocates in Indian courts without first re-qualifying as Indian lawyers. UK lawyers would also have the additional regulation and monitoring of the Law Society of England & Wales.
  - The foreign law firms are seeking to expand their client-base and profit margins.

### 6.6.2 Current & Future Trends in the Indian Legal Services Market place

Some hard facts of the Indian legal market that establishes the enormous promise of this burgeoning sector.

1. India's legal profession is the world's second-largest, with more than 600,000 lawyers in more than 500 legal practices nationwide.
2. In 2010, the total value of the Indian legal market was estimated to be approximately US\$1.25 billion.
3. Expertise is flourishing in such practice areas as arbitration and ADR, competition law, environmental law, international trade law, outbound foreign direct investment, and restructuring and insolvency.
4. Growing numbers of firms are exploring alternative pricing models, heralding a not-too-distant day when the billable hour will no longer be a viable pricing arrangement.
5. Many large and mid-sized law firms are aiming to build a pan-India presence, adding more practices and expanding their reach by acquiring smaller firms.

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<sup>48</sup> Entry of Foreign Law Firms: A boon or Bane for Indian Lawyers Author : Mr. Kush Kalra  
<http://www.manupatrafast.com/articles/PopOpenArticle.aspx?ID=b079546b-f512-43fa-964d-3f6970127a26&txtsearch=Subject:%20Civil>

6. Increasing numbers of firms are investing in technology to strengthen their knowledge management processes.
7. To compete in an increasingly tough environment, a number of leading law firms is recruiting executives from overseas.
8. Thanks to the widespread availability of high-quality and ambitious legal professionals, the industry has seen many partners leave existing firms to start their own enterprises.
9. This remarkable time of growth and change marks the onset of a new age for the Indian legal industry. The new breed of mid-sized and boutique law firms is now seeking professional assistance to increase revenues and control costs to enhance profits. These firms are recruiting teams of experts to manage business support functions or simply outsourcing these functions altogether, as well as weaving technology into processes and functions related to HR and knowledge management.
10. Moreover, Indian law firms are looking beyond national borders, taking part in major international deals and working out arrangements for sustained work through referral and best-friend arrangements with international law firms. Some firms are even opening offices outside India, leading to a need for enhanced brand image. In many respects, a whole new legal profession is now emerging in India.

### **6.6.3 Legal Sector – Growing but Competition/Consolidation**

India's consumption-led economy continues to make the country a highly attractive investment destination in the short- to medium-term. Its domestic demand-driven growth model has helped and will continue to help the country weather volatility in the global markets, providing significant growth opportunities to local businesses. Beyond the myriad concerns and challenges, according to Dun & Bradstreet, lie opportunities and a promise of growth: India's economy is expected to grow to a staggering US\$5.6 trillion by 2020 at current market prices, up from US\$1.7 trillion in 2010–11.

This continued growth should help law firms to prosper, driving a more profitable industry. India and other emerging economies in Asia will continue to be attractive destinations for law firms from North America and Europe; their success in this regard will have a major impact on the potential benefit and future viability of their internationalization strategies.

#### **So what can we expect from the Indian legal Services Sector in future?**

##### **Look for:**

1. A clear distinction between the management and ownership of firms, with management responsible for firm operations and strategic business decisions;
2. Firms that are more process-driven and professionally managed, with active participation by non-lawyers in management and ownership;
3. Firms more focused on achieving real strategic growth, as opposed to the simple maintenance of clients;
4. A transparent and dynamic judiciary;
5. Large and mid-sized law firms "percolating" down to smaller centers to cater to the demands of litigants there;
6. Better-trained lawyers, with vast improvements in Indian legal education and the arrival of more national and international law schools;
7. A more litigious society, as rising literacy levels result in greater awareness of individual rights and a corresponding growth in lawsuits;
8. "First-generation lawyers" on the rise, eventually bringing to an end the tradition of law as a family-run profession;
9. Increasing use of ADR techniques such as arbitration and mediation, as they receive unprecedented levels of recognition and acceptance in the corporate world; and
10. The ongoing march of liberalization, with the eventual entry of foreign law firms creating more and better lawyer job opportunities and an increase in the quality of litigation.

#### 6.6.4 What should the Foreign Law Firms do<sup>49</sup>?

Over a hundred international firms have increased their focus on India in the recent past. Even without liberalization, evidently there are opportunities well within the legal framework that these foreign law firms find profitable. These firms stand to gain immensely with the opening up of the legal industry.

The following are some aspects that international firms who are already in India – as well as those looking to enter India – should consider in light of India's current environment.

##### **Strategize**

Just as it is in any venture, the most important factor is to reduce ad-hocism. Having a plan in place with a long-term vision is imperative. There are pros and cons to the various ways that international firms plan their India strategy including best friend relationships, referral arrangements, India desks and outsourcing. The differentiating factor for success is to strategize the strength of the firm and the kind of work the firm is planning to undertake.

##### **Understand the culture**

As the world's largest cultural mix, India's diversity is often difficult even for us Indians to completely understand. International firms that are interested in India need to account for this diversity including simple aspects such as wishing your clients on important festivals, learning key words in the different languages, and understanding the food and other local preferences

##### **Pro-bono activities**

A sure shot way for gaining accessibility in any new country is to cater to the society. Law firms can look at lecturing law students, taking up pro-bono initiatives and tying up with NGOs as some of the ways that this can be achieved.

**Invest in India:** Show clients in India and in your home country that you are serious about India. This could include making India-specific collaterals and knowledge kits, increasing visibility by writing and taking up speaking opportunities in India related journals and forums, amongst other activities. With or without liberalization, one thing is for sure: there are exciting times ahead for the Indian legal industry.

Some of the above thoughts will help international firms make the most of their foray into India, while staying well within the stipulated legal framework.

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<sup>49</sup> FOREIGN LAW FIRMS AND THE INDIAN LEGAL MARKET By [Bithika Anand](http://www.edge.ai/2015/02/foreign-law-firms-and-the-indian-legal-market/)<http://www.edge.ai/2015/02/foreign-law-firms-and-the-indian-legal-market/>



## 6.6.5 Market Forecasts – 2020

### 6.6.5.1 What to Achieve– Issues & Challenges?

**Issues & Challenges**



- Partnerships & Liability :** Indian lawyers cannot practice as an LLP - requires at least one equity-holder to be bearing unlimited liability – BCI needs to permit LLP
- Citizenship :** In India, legal services can be provided only by naturalized citizens – does not include non-citizens
- Multidisciplinary Practice :** Corporate who prefers a law firm to provide all professional services like accounting, taxation etc. across jurisdictions may not find an Indian law firm attractive
- Level Playing Field :** Non-level playing field compared to foreign firms that have extensive websites and advertising flexibility but Indian firms cannot advertise their existence in any form

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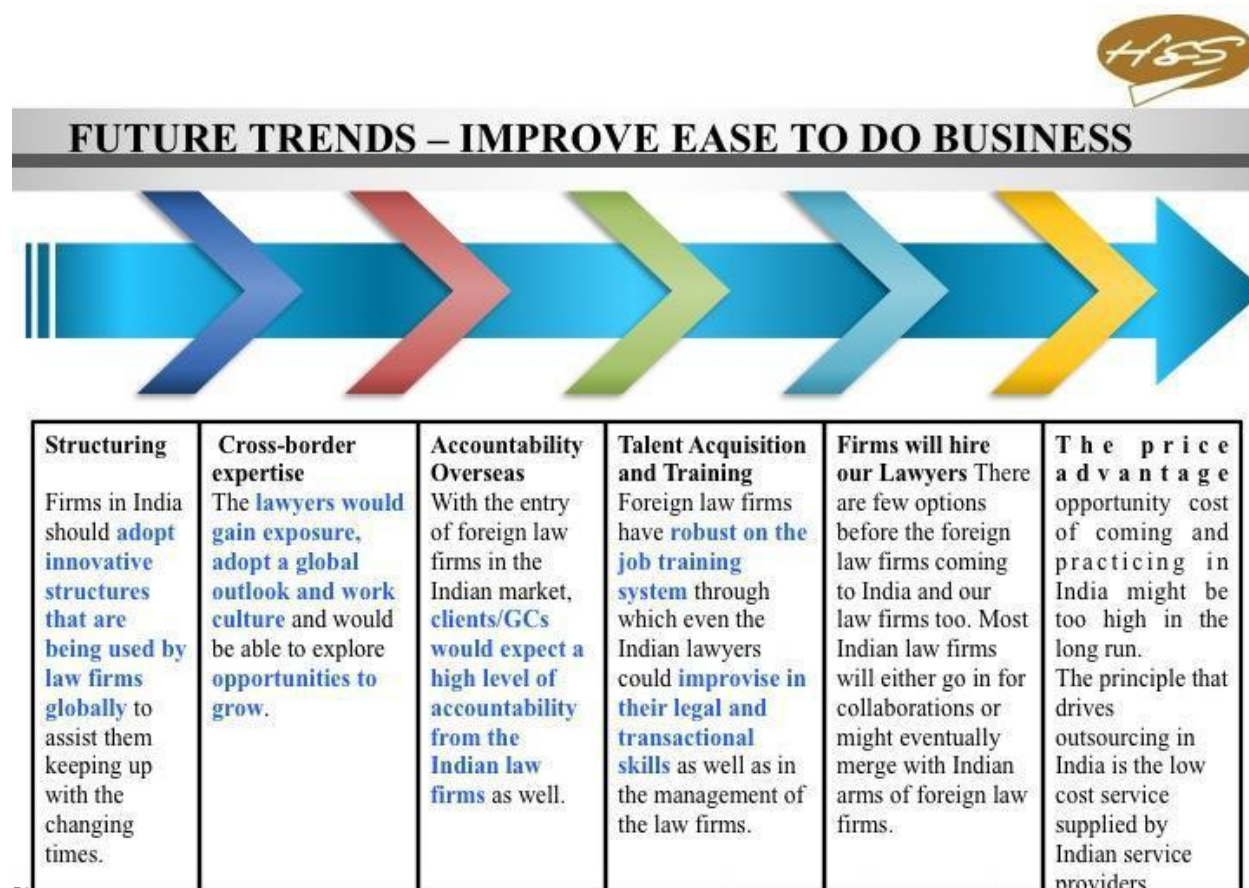
1. **Citizenship:** In India, legal services can be provided only by naturalized citizens or by citizens of a country with whom India has reciprocity agreement (provided the law degree is recognized by the Bar council of India (BCI)). Foreign firms that set up operations may not prefer to use the services of Indian lawyers alone and they would want to bring in experts from different places.
2. **Definition of Legal Practice:** Legal Services can be classified as –
  - i) counseling done by solicitors,
  - ii) pleading (representing the client in the court) done by barristers and
  - iii) notarial activities done by public notaries.
3. The Advocates' Act 1961 integrated the entire profession and all functions (counseling, drafting and pleading) under advocate's responsibility. The problem with this structure now is that for practicing any form of advocacy, the person has to be admitted by the BCI as an advocate. So even if India wants to liberalize only the soliciting activity, it faces obstacles as per the present Advocates Act, 1961.
4. **Multidisciplinary Practice:** An advocate in India cannot enter into a partnership or any other arrangement with a non-advocate. So, a corporate client who prefers a law firm to provide all professional services like accounting, taxation etc. across jurisdictions may not find an Indian law firm attractive.

<sup>50</sup> "Liberalisation of Legal Sector in India by Manoj Kumar, Founder, Hammurabi & Solomon at **India International Legal Conclave & GC Manthan on 13.08.2016 @ Thimphu, Bhutan.**



5. **Partnerships & Liability:** Sec.11 of the Companies Act provides that a partnership with more than 20 partners if not registered as a company, shall be an unlawful assembly. Thus Indian law firms cannot have more than 20 partners. Also, Indian law firms do not have limited liability requiring at least one equity-holder to be bearing unlimited liability. This limits the size and expansion options of Indian law firms.
6. **Advertising:** Indian firms presently are prohibited to advertise their existence in any form of media including internet. This creates a non-level playing field compared to foreign firms that have extensive websites and advertising flexibility. But developments in this regard seem to be heading in the direction of allowing Indian firms to advertise with the BCI indicating its intention through the draft rules amending the rule.

#### 6.6.5.2 FUTURE TRENDS-IMPORVE EASE TO DO BUSINESS:



- i) **Structuring:** Firms in India should adopt innovative structures that are being used by law firms globally to assist them keeping up with the changing times. This will also ensure that they are able to adapt to the entry of foreign law firms. This may also include consolidation and mergers. Specialization As and when foreign law firms are allowed to make an entry into the Indian market, the Indian firms will have to showcase themselves with the required expertise as clients would prefer to approach firms who would understand the nuances of the required practice areas.

<sup>51</sup> "Liberalisation of Legal Sector in India by Manoj Kumar, Founder, Hammurabi & Solomon at *India International Legal Conclave & GC Manthan on 13.08.2016 @ Thimphu, Bhutan.*

- ii) **Cross-border expertise:** The lawyers would gain exposure in working over cross border transactions. The lawyers would adopt a global outlook in the mannerism of the work and would be able to explore opportunities to grow.
- iii) **Accountability Overseas:** The law firms are accountable for the advice/opinion they provide to their clients. However, in India there is no concept of professional indemnity. With the entry of foreign law firms in the Indian market, clients would expect a high level of accountability from the Indian law firms as well.
- iv) **Talent Acquisition and Training:** With the opening up of the legal industry, law firms would endeavor to hire and retain the best talent in their teams. Also, Foreign law firms have robust on the job training system through which even the Indian lawyers could improvise in their legal and transactional work as well as in the management of the law firms.
- v) **Trust the Market:** If we go by conventional wisdom and modern economics, the above-discussed regulations are a passé. The market may be trusted to decide its own players and the fittest will survive. This will happen mostly with regard to the host country law. It has to be understood even for lawyers from common law system, it will be difficult if not impairing to fight cases under statutory law in India. This inherent impairment in competence will itself create an advantage for the practicing lawyers of the host country (India) to survive and compete in their host country.
- vi) **The price advantage:** The principle that drives outsourcing in India is the low cost service supplied by Indian service providers. This advantage, which fuelled our software boom, remains even in the legal services and a slashing of fees by European, Australian, or American lawyers cannot pose a threat to the cost advantage that we have over these firms. Moreover, the opportunity cost of coming and practicing in India might be too high in the long run. This factor will, as is obvious, be the most natural regulator of foreign lawyers practicing in India.
- vii) **Firms will hire our lawyers:** There are few options before the foreign law firms coming to India and our law firms too. Most Indian law firms will either go in for collaborations or might eventually merge with Indian arms of foreign law firms. This is not to say that there will be no Indian firms surviving independently. Basic economics requires that for foreign law firms to provide competitive services both qualitatively and financially they need to hire Indian lawyers as employees in India and as counsels to appear for them in Indian courts. In many ways this will be beneficial for the general practicing lawyers of this country and even more for those who will enter the profession in future. There is a good chance that liberalization will result in drastic increase in the per capita earnings for a common lawyer in India
- viii) **The Trade-off is in our favour:** Liberalization in GATS envisages a contact between developing and developed nations, which is slated to materialize through a set of trade-off. The experience tells us that every sector of Indian economy, which has been opened up, has come out stronger and become more competitive in the long run. This will be even true for the legal services as Indian legal system has already had some limited but valuable legal exposures. Moreover, Indian legal system will do well to imbibe in themselves certain aspects of the work culture of the west. A case in point will be the emphasis given in the west on 'corporate legal compliance', avoidance of litigation and recourse to arbitration. This might help us solve many of our chronic problems and create a leaner, more professional and flexible legal system. Indian firms have, evidently, grown tremendously in both financial and manpower numbers. The various ups and downs of the market, international expansion of Indian corporations, introduction of new practice areas such as competition law, cyber laws etc., a mix of fragmentation as well as consolidation of law firms have all helped the Indian Legal Profession to grow in strength and learn from its experiences.

## 7. WAY FORWARD

It could be argued further that if India was to liberalise its legal services, much of the work that is taken up by foreign law firms based in other jurisdictions will return back to the country, resulting in a significant economic benefit. Those other jurisdictions have benefitted in a significant manner by the liberalisation of their own legal services while generating huge amounts of revenues in the sector; this could become a reality for India, too. Finally, there can be no proper solution to this issue without considering the position of all stakeholders, apart from the usual stakeholders - foreign law firms, international organisations and foreign countries' government bodies. This group argues that the opening up of the market would be a win-win situation not only for foreign lawyers but also for the Indian legal profession, as it will improve the overall productivity and work ethic of the domestic legal market, result in a free transfer of skills and knowledge between foreign law firms and domestic firms and provide excellent employment opportunities to law graduates with wide expertise, and clients would have a wider choice of services at competitive rates.<sup>52</sup>

In this regard:

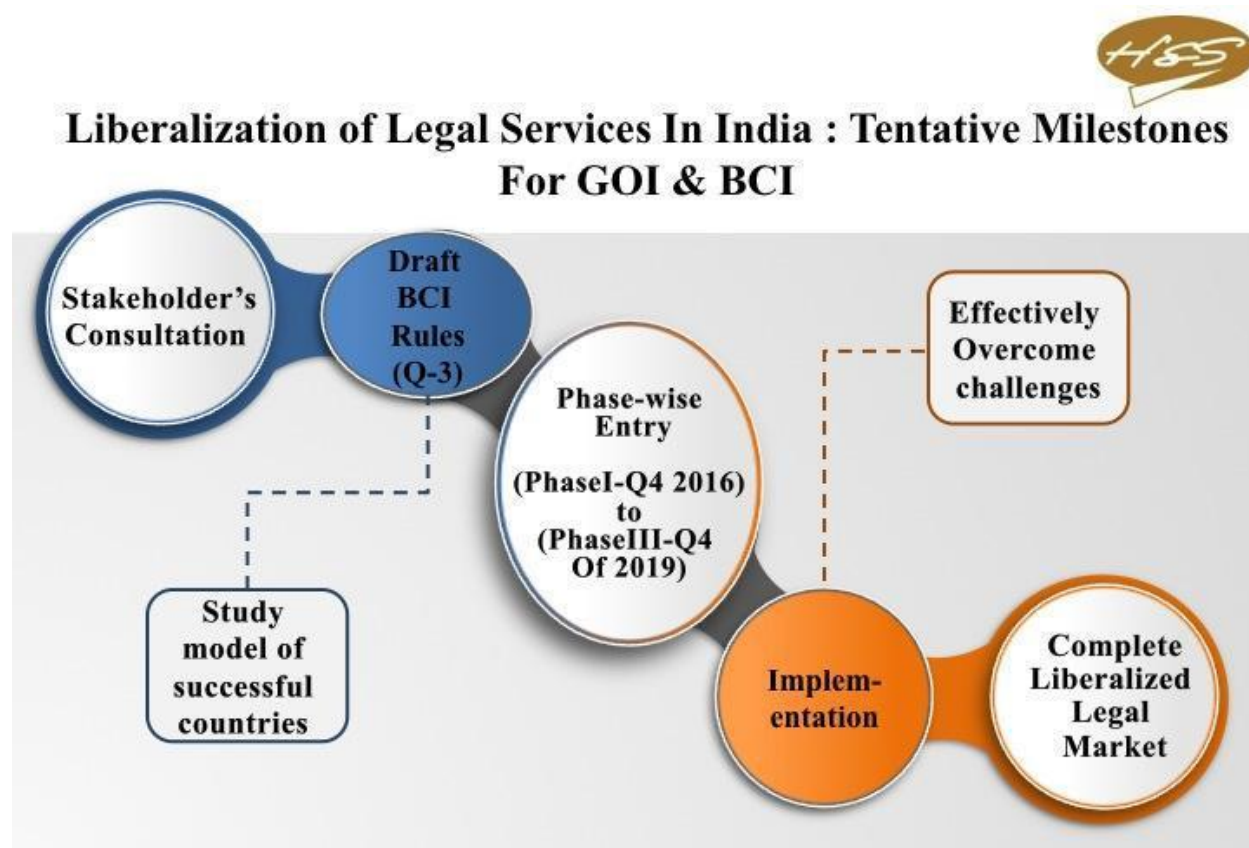
1. The government should take initiatives to allow Indian Lawyers to be at par and at a level playing field with the foreign lawyers.
2. The right step in this regard would be to, inter-alia, allow the Indian lawyers to advertise, publicize and make websites for themselves.
3. Allow a phase wise entry in the Indian legal market for foreign lawyer which gives suitable time for both foreign as well as Indian lawyers and consumers of legal services in India to adapt to the change.
4. The first phase would be to allow foreign lawyers to practice in the areas covered in the Draft BCI Rules.
5. The second phase would be bringing about internal reforms in various applicable laws such as the Advocates Act, 1961 and Limited Liability Partnership Act, 2008 which would in turn allow more partners to be part of the firm, removing restrictions on advertising and initiating reforms in the education sector is necessary to ensure availability of a good talent pool in legal profession. .
6. Last Phase can be policy changes as necessary for expansion of the practice of foreign firms by allowing foreign lawyers to practice law in India including by forming joint ventures (JVs) and in Collaboration with Indian Lawyers. To come up with rules and policies to regulate the foreign lawyers and keep a check on their activity and to set up a disciplinary body to keep a tab on foreign lawyers as well.
7. We need to understand that the mindset behind foreign firms to come to India is to expand their clientele and increase profit sharing. So the Indian market needs to come out as a lucrative market with scope for profitability for both foreign as well as Indian lawyers.
8. A clear distinction between the management and ownership of firms, with management responsible for firm operations and strategic business decisions for better efficiency and quality of service to clients;
9. Firms that are more process-driven and professionally managed, with active participation by non-lawyers in management and ownership;

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<sup>52</sup> <http://www.governancenow.com/news/blogs/liberalisation-of-legal-services-in-india>

10. Indian lawyers need to upgrade themselves technologically in a short span of time so as to be in a position to compete with the international lawyers.

## RECOMMENDATIONS ON WAY FORWARD



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In Summary the Report recommends:

1. Entry for Foreign Lawyers with adequate safeguards in a Phased Manner
2. Right to formation of LLP, Corporatize , Advertising to Indian Lawyers/ Law Firms
3. Reciprocity to Indian Lawyers in Practice in Foreign Country
4. To enable a level playing field to Indian Lawyers/ Law Firm

<sup>53</sup> "Liberalisation of Legal Sector in India by Manoj Kumar, Founder, Hammurabi & Solomon at *India International Legal Conclave & GC Manthan* on 13.08.2016 @ *Thimphu, Bhutan*.

## CONTRIBUTIONS & CONSULTATIONS

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# BIBLIOGRAPHY

1. Lawyers Collective v. Bar Council of India, Writ Petition No. 1526/1995 (Bombay H.C. 2009), available at : <http://barandbench.com/userfiles/files/File/LawyersCollectiveforeignfirmsBbayHC.pdf>.
2. The Advocates Act, No. 25 of 1961, India Code available at: <http://www.sharmalawco.in/downloads/the%20advocates%20act%201961.pdf>.
3. UK legal services (2016) available at <https://www.thecityuk.com/research/uk-legal-services-2016-report/>
4. Solicitor Regulator Authority, Recognized Jurisdiction, available at: <http://www.sra.org.uk/solicitors/qlts/recognised-jurisdictions.page>
5. Solicitor Regulatory Authority, Registered Foreign Lawyers, available at: <http://www.sra.org.uk/sra/regulatory-framework/Registered-Foreign-Lawyers-Order-2009.page>
6. Ross Dawson, Future Timeline: The Reconstructing of the global legal services industry, May 2, 2016, available at: <http://futureexploration.net/blog/2016/05/future-timeline-the-restructuring-of-the-global-legal-services-industry.html>
7. BRICSA: the evolution of five legal markets in emerging world economies, Nov 23, 2006, available at: <http://uk.practicallaw.com/2-207-2254?source=relatedcontent>
8. The Legal 500, Legal Market Overview, available at: <http://www.legal500.com/c/brazil/legal-market-overview>
9. Indian University, Bloomington, Repository Law, available at: <http://www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=1570&context=ijgls>.
10. Martindale, Legal Management, available at: [http://www.martindale.com/legal-management/article\\_Machado-Associados-Advogados-e\\_1171398.htm](http://www.martindale.com/legal-management/article_Machado-Associados-Advogados-e_1171398.htm).
11. Julie Mamou, How to practice Law in Russia, 19 September, 2014, available at: <http://communities.lawsociety.org.uk/international/regions/cis/russia/how-to-practise-in-russia/5043353.fullarticle>
12. Constituent Bar, ITILS Russia available at: [http://www.ibanet.org/PPID/Constituent/Bar\\_Issues\\_Commission/ITILS\\_Russia.aspx](http://www.ibanet.org/PPID/Constituent/Bar_Issues_Commission/ITILS_Russia.aspx)
13. Development of Country strategies for Japan, China, India, Indonesia and South Korea, available at: <https://www.lawcouncil.asn.au/lawcouncil/images/LCA-PDF/docs-2700-/2732-DevelopmentofCountryStrategiesforJapanChinaIndonesiaIndiaandSouthKorea.pdf>
14. The Legal Service Market In China: Implementation Of China's Gats Commitments And Foreign Legal Services In China available at : [http://www.tsinghuachinalawreview.org/articles/PDF/TCLR\\_0501\\_HUANG.pdf](http://www.tsinghuachinalawreview.org/articles/PDF/TCLR_0501_HUANG.pdf)
15. Dr. Woong Shik Shin, Liberalization of Legal Service Market in Korea, available at: [http://www2.law.columbia.edu/course\\_00S\\_L9436\\_001/2004/legal%20market.pdf](http://www2.law.columbia.edu/course_00S_L9436_001/2004/legal%20market.pdf)
16. International Bar Association 3rd Asia-Pacific Regional Forum Conference "Liberalisation Of Legal Services Freeing The Legal Landscape: Is South-East Asia Ready?" available at: <https://www.agc.gov.sg/DATA/0/Docs/NewsFiles/Speech%20by%20AG%20at%20IBA%203rd%20Asia%20Pacific%20Regional%20Conference.pdf>



17. Overview of the Legal Profession in India By Amal Kumar Ganguli, Co-Director of National and Regional Activities <http://www.uanet.org/en/content/overview-legal-profession-india>
18. Mr. Kush Karla, Entry of Foreign Law Firms –a boon or a bane for Indian Lawyers, available at: <http://www.manupatrafast.com/articles/PopOpenArticle.aspx?ID=b079546b-f512-43fa-964d-3f6970127a26&txtsearch=Subject:%20Civil>
19. Jayanth K. Krishnan, *The Joint Law Venture: A Pilot Study*, 28 Berkeley J. Int'l L. 431 (2010).
20. Murali Neelakatan, *Foreign Firms Raise Standards*, India Bus. L.J., Nov. 2007, at 15, available at <http://www.indilaw.com/pdfs/Is%20India%20ready%20for%20foreign%20lawyers.pdf>.
21. Nigel Thompson, *Indian Clients Will Benefit*, India Bus. L.J., Nov. 2007, at 17.
22. Foreign Law Firms And The Indian Legal Market By [Bithika Anand](#) <http://www.edge.ai/2015/02/foreign-law-firms-and-the-indian-legal-market/>
23. Manoj Kumar, Founder, Hammurabi & Solomon, *Liberalisation of Legal Sector in India*, presentation at **India International Legal Conclave & GC Manthan on 13.08.2016 @ Thimphu, Bhutan**.
24. <http://www.governancenow.com/news/blogs/liberalisation-of-legal-services-in-india>



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