THE SOCIETY OF INDIAN LAW FIRMS

PRESIDENT
LALIT BHASIN

March 30, 2023

The Bar Council of India
21, Rouse Avenue Institutional Area
Near Bal Bhawan
New Delhi – 110 002

Attention: Mr. Manan Mishra, Chairman

Dear Mr. Mishra,

Ref: Rules framed by the Bar Council of India for registration and regulation of foreign lawyers or foreign law firms in India ("**Rules**")

Sub: Representation by the Society of Indian Law Firms (SILF) regarding the potential legal complexities with the Rules.

1. SILF congratulates the Bar Council of India ("BCI")on its endeavour to open the legal services sector to foreign lawyers and foreign law firms. SILF has supported and continues to support a regulated and phased entry in India of foreign lawyers and foreign law firms. SILF believes that such opening-up of the sector will enable new synergies and opportunities for Indian lawyers and law firms and will facilitate the exchange of knowledge, best practices and result in increased cross-

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border legal work in India, and in addition provide the needed advice to Indian businesses in respect of foreign laws.

2. As you are aware, in the last 10 years SILF has constructively engaged with the BCI and the Government of India (GoI) on reform of the Indian legal services sector with key objectives to best serve the needs of India and to prepare Indian professionals to play a significant role in the competitive global world. SILF has consistently stated that the "opening up" cannot be an ad hoc standalone item – and that it must be a part of an overall process of reform of the legal services sector. It is in the national interest to lay out a blueprint – the larger mosaic – of the future of the Indian profession – an immediate task – irrespective of "opening up" or not. SILF has the commitment and belief that a consensus of all stakeholders through consultation and engagement is imperative to achieve the results.

3. While the Rules are well intended, there are several legal concerns and complexities with and in the Rules as to their scope and implementation when considered in the context of the Advocates Act, 1961 (the "Act"). These concerns ought to be addressed. SILF is making this representation for BCI's consideration in the matter.

A. BACKGROUND

4. The first serious deliberation on the opening of the legal sector in India to foreign lawyers was undertaken in late 2014 in consultation with an Inter-Ministerial group (IMG) of GoI coordinated by the Ministry of Commerce. SILF participated in those consultations as did BCI. At a meeting held on January 8, 2015, with the participation of the IMG, SILF, and BCI, a broad consensus was reached that the opening-up of the Indian legal services sector must not be an ad hoc event but must form part of an overall plan for the reform of the sector.

5. The consensus was that the opening of the Indian legal sector should followthree sequential phases. Briefly, Phase I would be regulatory reform of the Indian profession to prepare it for the opening up such that there isa level playing field for Indian lawyers by the time foreign lawyers are allowed to enter in Phase II. Phase I includes recognition under regulations of Indian law firms, enabling advocates to organize as LLPs or corporations with limited liability, and modification and relaxation of diverse regulations governing the profession including marketing and advertising (in its various aspects including websites), ability to hire foreign lawyers to build capacity, etc. Phase II would entail amending the Act for creating a separate class of foreign lawyers, distinct from advocates, designated as "foreign legal consultants", to be given the privilege to practice their home country law with no right to practice Indian law or appear in Indian courts. Eventually, Phase III entailed certain relaxation to allow foreign lawyers to practice in certain areas of Indian law subject to conditions. In these deliberations, parallels were drawn to experiences of phased opening up of legal services in other jurisdictions - such as China, Singapore, Japan, and the Republic of Korea - and learnings therefrom which provide useful guidance on designing and implementing "opening up". In all these jurisdictions, carefully articulated programs of opening up have been and are being implemented – in most cases – over decades.

6. Crucially, Phase I i.e., domestic reforms for the Indian legal sector, was the condition precedent to the consensus arrived at for the entry of foreign lawyers and foreign law firms to practice law in India. However, in 2016, the BCI released draft rules ("**2016 Draft Rules**") for the entry of foreign lawyers and foreign law firms, without any reference to domestic reforms. SILF represented that the 2016 Draft Rules, which represent the reforms contemplated in Phase II, must be implemented after Phase I, i.e., after effecting the domestic reforms. SILF also

submitted its detailed comments on the various legal issues with the 2016 Draft Rules as reciprocity requirements, *vires*, and validity.

7. In October 2016, BCI formed a sub-committee to examine the amendment to the Act to allow for the entry of foreign lawyers and foreign law firms into India. SILF participated in the sub-committee meetings. The sub-committee deliberations were that the Act has to be amended by introducing a separate Chapter to cover foreign lawyers and foreign law firms. A few drafts of the Chapter were discussed in the meetings. By then it seemed that the 2016 Draft Rules had been abandoned.

8. In July 2017, further deliberations were held atthe IMG in which both BCI and SILF participated. Here again, a broad consensus of a phased approach was reiterated. BCI was requested to present, within a period of four weeks of July 28, 2017, a draft of the Phase I reform package and draft rules for Phase II. Those drafts were to be the subject matter of stakeholder consultation under the aegis of the Ministry of Law & Justice and the Ministry of Commerce. No such package was received from BCI.

B. DECLARATION OF LAW BY HON'BLE SUPREME COURT IN BALAJI CASE

9. The plea to reform the Indian legal sector remained on the shelf since 2017. In the meanwhile, on 13th March 2018, the Hon'ble Supreme Court gave a historic verdict in the Bar Council of India vs. A.K.Balaji (the Balaji Case). It may be recalled that Bar Council of India had challenged the judgment of the Madras High Court granting fly in fly out rights to foreign lawyers and permitting them to appear in arbitration matters in India. Madras High Court agreed with the decision of the Bombay High Court in the Lawyers Collective case that the practice of law in India can only be in accordance with the provisions of Section 24, Section 29,

and Section 33 of the Act. For ease of reference, cited below are the most relevant paragraphs from the Balaji Case judgment of the Hon'ble Supreme Court:

> *38. In Pravin C. Shah versus K.A. Mohd. Ali17, it was observed that right to practice is genus of which right to appear and conduct cases is specie. It was observed:*
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> > *"……The right of the advocate to practice envelopes a lot of acts to be performed by him in discharge of his professional duties. Apart from appearing in the courts he can be consulted byhis clients, he can give his legal opinion whenever sought for, he can draft instruments, pleadings, affidavits or any other documents, he can participate in any conference involving legal discussions etc. ……"*
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> *In Ex. Capt. Harish Uppal versus Union of India, same view was reiterated.*
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> *39. Ethics of the legal profession apply not only when an advocate appears before the Court. The same also apply to regulate practice outside the Court. Adhering to such Ethics is integral to the administration of justice. The professional standards laid down from time to time are required to be followed.* ***Thus, we uphold the view that practice of law includes litigation as well as non litigation.***
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> *40. We have already held that practicing of law includes not only appearance in courts but also giving of opinion, drafting of instruments, participation in conferences involving legal discussion. These are parts of non-litigation practice which is part of practice of law.* ***Scheme in Chapter-IV of the Advocates Act makes it clear that advocates enrolled with the Bar Council alone are entitled to practice law, except as otherwise provided in any other law.*** *All others can appear only with the permission of the court, authority or person before whom the proceedings*

are pending. Regulatory mechanism for conduct of advocates applies to non-litigation work also. ***The prohibition applicable to any person in India, other than advocate enrolled under the Advocates Act, certainly applies to any foreigner also.***

41. ***Visit of any foreign lawyer on fly in and fly out basis may amount to practice of law if it is on regular basis. A casual visit for giving advice may not be covered by the expression 'practice'.*** *Whether a particular visit is casual or frequent so as to amount to practice is a question of fact to be determined from situation to situation.* ***Bar Council of India or Union of India are at liberty to make appropriate rules in this regard.*** *We may,* ***however, make it clear that the contention that the Advocates Act applies only if a person is practicing Indian law cannot be accepted.*** *Conversely,* ***plea that a foreign lawyer is entitled to practice foreign law in India without subjecting himself to the regulatory mechanism of the Bar Council of India Rules can also be not accepted.*** *We do not find any merit in the contention that the Advocates Act does not deal with companies or firms and only individuals. If prohibition applies to an individual, it equally applies to group of individuals or juridical persons.*

42. It is not possible to hold that there is absolutely no bar to a foreign lawyer for conducting arbitrations in India. If the matter is governed by particular rules of an institution or if the matter otherwise falls under Section 32 or 33, there is no bar to conduct such proceedings in prescribed manner. If the matter is governed by an international commercial arbitration agreement, conduct of proceedings may fall under Section 32 or 33 read with the provisions of the Arbitration Act. ***Even in such cases, Code of Conduct, if any, applicable to the legal profession in India has to be followed. It is for the Bar Council of India or Central***

Government to make a specific provision in this regard, if considered appropriate.

...

44. In view of above, we uphold the view of the Bombay High Court and Madras High Court in para 63 (i) ***of the judgment to the effect that foreign law firms/companies or foreign lawyers cannot practice profession of law in India either in the litigation or in nonlitigation side.*** *We, however, modify the direction of the Madras High Court in Para 63(ii) that there was no bar for the foreign law firms or foreign lawyers to visit India for a temporary period on a "fly in and fly out" basis for the purpose of giving legal advice to their clients in India regarding foreign law or their own system of law and on diverse international legal issues.* ***We hold that the expression "fly in and fly out" will only cover a casual visit not amounting to "practice".*** *In case of a dispute whether a foreign lawyer was limiting himself to "fly in and fly out" on casual basis for the purpose of giving legal advice to their clients in India regarding foreign law or their own system of law and on diverse international legal issues or whether in substance he was doing practice which is prohibited can be determined by the Bar Council of India.* ***However, the Bar Council of India or Union of India will be at liberty to make appropriate Rules in this regard including extending Code of Ethics being applicable even to such cases.***

(Emphasis added)

10. In summary, the ratio of the Hon'ble Supreme Court's decision interpreting the provisions of the Act is as follows:

- advocates enrolled with the Bar Council alone are entitled to practice law, except as otherwise provided in any other law;
- practice of law includes litigation as well as non-litigation;
- the Act applies to a person practicing Indian law or foreign law;

- foreign law firms/companies or foreign lawyers cannot practice profession of law in India either in the litigation or in the non-litigation area.
- There are two clarifications or exceptions to the above:
    - visit of any foreign lawyer on a fly-in and fly-out basis may amount to practice of law if it is on a regular basis. A casual visit for giving advice may not be covered by the expression 'practice'. Bar Council of India or Union of India are at liberty to make appropriate rules concerning what is a casual or frequent visit;
    - there is absolutely no bar to a foreign lawyer from conducting arbitrations in India in certain situations but in such cases, Code of Conduct, if any, applicable to the legal profession in India has to be followed. Bar Council of India or Central Government to make a specific provision in this regard, if considered appropriate.

Thus, the Hon'ble Court gave liberty to the Government of India and BCI to make rules concerning two matters; fly-in and fly-out; and the code of conduct to be applied to foreign lawyers who conduct international commercial arbitrations in India. Above is the law of the land as it stands today.

11. Though the plan to reform the Indian legal sector remained on the shelf since 2017, without any consultation with the Indian legal fraternity or prior intimation, the Rules were notified on March 13, 2023.As you will no doubt appreciate, the Rules do not conform to the law laid down by the Hon'ble Supreme Court. The Rules are thus open to be challenged. The resultant proceedings will not be in the interests of anyone and could be an embarrassment before the international community – an outcome that no one wishes.

12. Quite apart from the question on the legal footing of the Rules, these also ignore the submissions made by BCI itself before the Hon'ble Supreme Court (see Paragraphs 30 to 36of the judgement of the Balaji Case) when opposing the

practice of law in India by foreign lawyers and foreign law firms, where the BCI rightly recognized that the ethics for the profession as applicable in India are different from ethics applicable in other countries, differences in types of fees that maybe charged including contingency fees that are not allowed under Indian law, lack of rules relating to 'sale of law practice' in India while these are regulated in USA and UK, position of Senior Advocates in India vis-a-vis the UK where QCs are permitted to join a law firm as partners, the issue of different types of funding of litigation including third party funding, and permissibility of lawyers to be in partnerships with non-lawyers in the UK and other countries. Thus, the Rules put the foreign lawyers and law firms in India on a different pedestal to the Indian advocates which could never have been the intention of the BCI. Without addressing these divergences, the Rules will have a severe adverse impact on the practice of law in India.

13. The Rules have been framed but there has been no action on domestic reforms, which should have preceded the Rules. For over a decade now regulatory reforms for the profession have been discussed and consensus reached on those. The absence of such reform results in the denial of a level playing field for the Indian legal profession. Crucially:

i. No reforms have been undertaken to modernize the profession to meet contemporary requirements such as the recognition of law firms and LLP structure with corresponding changes for conversion of existing structures into corporations;

ii. Two centuries-old rules and regulations continue to govern the Indian profession while the world has moved on. For example, in this day and age Indian advocates and firms are not permitted to disseminate information about their practice to potential clients (such as by maintaining websites, directory listings and by adopting and adapting to other legitimate means not amounting to advertising or soliciting work to

create awareness with public at large regarding areas of practice, identity of lawyers and specializations of the said lawyers and law firms, etc.); and there are many other concepts that have been introduced in many other jurisdictions which require consideration and adoption or adaptation in the Indian legal profession;

iii. No action has been taken in respect of the surrogate practice of Indian law by foreign law firms, through various devices and structures including such practice outside India where these firms regularly claim, on their websites, that they have dozens of lawyers on their "India Practice" teams.

14. To reiterate, SILF welcomes the initiative taken by BCI in framing the Rules but SILF maintains that reform of the domestic sector must precede such a decision.

C. SECTION I: VIRES OF THE RULES

15. As summarized in Paragraph 10, the Rules framed by the BCI, (which are subordinate legislation), may be susceptible to challenge on the ground that they are *ultra vires* the provisions of the Act. Given the decision of the Hon'ble Supreme Court in the Balaji case, the Act will need to be amended to insert enabling provisions for foreign lawyers and foreign law firms to practice law in India as no person other than an Advocate enrolled under the Act is entitled to practice law in India.

16. Rule 8 of the Rules creates a fiction by which foreign lawyers shall be "deemed" to be advocates for the purposes of Sections 29, 30 and 33 of the Act. This fiction is questionable given the unequivocal pronouncement of the law in Balaji Case that Advocates are the only class of persons who are entitled to the practice of law in India – be it Indian law or foreign law. That position could only be altered by appropriate amendments to the Act.

17. Further, if foreign lawyers are deemed to be Advocates under Sections 29, 30, and 33, they cannot be restrained from appearing in courts in India or practicing Indian law. As discussed above, there are only two classes of advocates i.e., advocates and senior advocates. There can be no further types of lawyers that BCI can create by classification such as foreign lawyers as deemed advocates. Under Section 29 of the Act, the practice of law by advocates includes both litigation and chamber practice as well as the practice of Indian law and foreign law. If someone is deemed as an Advocate then no fetters on type of practice or area of practice can be imposed on such foreign lawyers enrolled as advocates. Exemptions from disciplinary proceedings cannot also be granted to foreign lawyers who are "advocates" under the Act. The Act does not empower the BCIto exclude the applicability of the provisions of the Act to any class of advocates. Resultantly, the legal sector, on that reasoning, will be opened to foreign lawyers completely without any fetters on the type of practice or area of practice.

18. The 266th Law Commission Report (see pg. 44 of the report), after reviewing the provisions of the Advocates Act, 1961 and the judgments rendered with regard to the practice of law in India by foreign lawyers and law firms states that *"it necessary to have enabling provisions in the Advocates Act which will enable the Bar Council of India to frame rules to recognise and register foreign law firms and lawyers in India"*.Absent such enabling provisions in the Act, the Rules may be *ultra vires*.It is only by an amendment to the Act that a separate category of legal practitioners be created – that of foreign lawyers (or more appropriately, foreign legal consultants) and thereby enable rules to be made to circumscribe the scope of practice of foreign legal consultants and their foreign firms. With the greatest of respect, the Rules incorrectly draw power from various clauses of section 7 and section 49 read with sections 24, 29, and 47. Absent that power, the Rules may be open to the challenge of *ultra vires*.

D. SECTION II: RULES ARE DISCRIMINATORY

19. Further, the Rules discriminate between Indian lawyers and law firms as one class and foreign lawyers and foreign law firms as another class.

20. At present, the Act only provides for the enrolment/admission of individual natural persons as advocates and does not provide for the registration/enrolment/admission of firms for the practice of law. It is under the BCI rules, as to conduct of practice, an Advocate is permitted to practice in partnership with another Advocate or other Advocates. The BCI does not have any rules to recognize or register a law firm as such. In fact, that has been one of the grievances of the profession and in Phase I reforms, a key item is "Recognition and registration of law firms by BCI'. Apart from that, the Indian profession has sought approval of further forms of corporate organization of advocates, such as by forming LLPs. On the other hand, the Rules define a "foreign lawyer" as "means a person, including a law firm, limited liability partnership, company, or a corporation". This is discriminatory – while foreign lawyers may conduct practice through corporate structures, Indian advocates are not even permitted to organize themselves as LLPs and must continue as unlimited liability partnerships.

21. Indian advocates are not permitted to introduce or disseminate information about their practice, they cannot freely maintain websites, distribute marketing materials, advertise, or have directory listings, etc., while foreign lawyers and foreign law firms are allowed to do so as under their respective home country laws. Since BCI has ceded its regulatory and disciplinary jurisdiction to the home country's regulator, no action can be taken against foreign lawyers and foreign law firms marketing and advertising their practice in India. This discriminates between Indian advocates and foreign lawyers and foreign law firms in terms of market access.

22. Foreign lawyers and law firms enter into different forms of fee arrangements with their clients such as contingency fees, success fees, etc., which arrangements are not permitted to be executed by Indian advocates. This discriminates between Indian advocates and foreign lawyers and foreign law firms. Foreign law firms can raise capital from non-lawyers while in the traditionand ethics of the Indian profession that is not permitted. As mentioned in Paragraph 12, it has been understood and appreciated for long by BCI that the professional standards and ethics rules of the Indian profession are different from those prescribed by the regulators of foreign countries. BCI has also for a long time held the view that the lawyers practicing in India must adhere to the standard that it has prescribed (BCI's statement before the Supreme Court in *Balaji's* case). However, Rule 10 of the Rules says that the professional standards applicable to Indian advocates shall "normally" apply to foreign lawyers. This is somewhat strange. Please see our detailed comments in Section F.

23. Rule 8 (2) (v) of the Rules provides that an Advocate enrolled with any State Bar Council in India and is a partner or associate in any foreign law firm registered in India, can take up only the non-litigious matters and can advise on issues relating to countries other than the Indian laws only and that such lawyer shall have no advantage / right of his being an Advocate enrolled in India. This discriminates between the same class of persons i.e., Indian advocates. And not only that, the underlying concept in this Rule is fallacious because BCI's own rules allow an Advocate to partner only with other Advocates, then where how would an Indian Advocate become a partner with foreign lawyers in a foreign firm in the first place?

24. We can go into more detail on the subject of discrimination but suffice it to say for the time being that on the face of it, the Rules are patently discriminatory.

E. SECTION III: RECIPROCITY

25. Sections 24 and 47 of the Act deal with "reciprocity" under the Act and are to be read conjunctively. Section 24 provides the conditions for a person to be enrolled as an Advocate and sub-clause (1)(a) says that such a person is either a citizen of India or is a "national of any other country" if citizens of India "duly qualified" are permitted to "practice law" in such other country. Section 47 on the other hand enables the Central Government to notify a country "which prevents citizens of India from practicing the profession of law or subjects them to unfair discrimination in that country". Section 47 then goes on to say that "no subject of any such country shall be entitled to practice the profession of law in India".

26. Thus, the expression "duly qualified" must be understood to mean and as possessing "qualifications required to practice law" in a country. For example, if an Indian citizen, has all the qualifications required to be licensed to practice law in Country X (and these being no different from or onerous than those that would apply to a citizen of X) and this Indian citizen can be admitted to practice in Country X, then a citizen of X who has obtained the qualifications required under the Advocates Act, would be eligible for enrolment as an "Advocate"with a State Bar Council an thereby be entitled to practice law in India as an Advocate. This is how the "reciprocity" is understood and applied.

27. However, the Rules provide a substantially different framework and construct for establishing "reciprocity". The Rules, allow registration to a foreign lawyer simply on the basis of a certificate issued by the Government of the foreign country or other competent authority certifying that advocates enrolled under the Act are entitled to practice law in that country in the manner and to the extent permissible under the Rules.Thus, upon registration of a "foreign lawyer", he would be "deemed" to be an advocate under the Act – this does not meet the rigour of Section 47 – which by its terms involves a finding by the Central

Government that there is no (i) prevention of citizens of India from practicing law in that country; and (ii) imposition of any unfair discriminatory practices on Indian citizens desirous of practicing the profession of law in that country.

28. In cases of artificial persons it is not clear which country would be considered the "country of primary qualification" on the basis of which reciprocity and the competent authoritywould be determined. For example, a global firm may have offices in 40 countries but reciprocity is available only in 20 of those countries; or, an international firm based in London has offices in and partners from all over the world including China and Pakistan, who may be non-reciprocating territories; there are international firms with complex structures – operating under the same name with an external projection of one identity – but with separate legal entities in different markets. Further, the case of the United States of America (USA) – the most developed legal market in the world presents a complex scenario. In the USA, even now only about 33 state jurisdictions permit "foreign legal consultants" while 17 other states do not. There could be cases where a USA-based firm has partners who are from one or more of these 17 states. The Rules do not contemplate reciprocity in such scenarios.

29. The regime of registering a "foreign firm" under the Rules would then automatically provide a back door entry to lawyers who are from non-reciprocating territories. There is a need to examine this aspect with a greater degree of diligence than in case of individual foreign lawyers.

30. While a foreign government or competent authority may acknowledge reciprocity, other discriminatory practices like immigration rules and work permits can make a mockery of reciprocity. Free movement of professionals across borders then has to be permitted on an equal basis to establish "real and meaningful" reciprocity. Therefore, apart from vires under the Act of such Rules which seek a new definition and evidence of "reciprocity" there is indeed the

larger practical question of what "reciprocity" really means in the context of professionals – be it lawyers or other professionals.

F. SECTION IV: DISCIPLINARY ACTION

31. Some issues with the disciplinary actions in respect of foreign lawyers were dealt with in Sections I and II. Those are not being repeated herein for the sake of brevity.

32. The Rules expressly exclude the applicability of Chapter V of the Act for foreign lawyers resulting in such foreign lawyers being outside the purview of disciplinary action by the State Bar Councils or the BCI and may lead to undesirable results in cases of professional misconduct and negligence by foreign lawyers. This is also completely contrary to the view of the Hon'ble Supreme Court as expressed in Balaji case (see para 41 and 42 of the judgment and as extracted supra at Paragraph 9 of this Representation).

33. The Hon'ble Supreme Court held that foreign lawyers and law firms in India must adhere to professional standards and ethics in India and be subject to disciplinary oversight in India. Rule 10 has a liberal and vague recognition that our professional and ethical standards will "normally" apply to foreign lawyers and foreign law firms. What does that mean? Either a rule applies or it does not apply. However, unexpectedly and contrary to the Hon'ble Supreme Court, the BCI excludes the applicability of Chapter V of the Act and with it any disciplinary oversight over the foreign lawyers and foreign law firms. The situation gets more unhappy as BCI would not have the power to take disciplinary action against foreign lawyers and foreign law firms if they do not "normally" (whatever that may mean) follow the professional code of ethics.

34. Instead,BCI has ceded its regulatory and disciplinary jurisdiction to the home country's regulator – the same is against public policy of India. A contravention of Indian law (the Act and the Rules) within the territory of India must be dealt with and proceeded against in India as per Indian law. Exemption of disciplinary action against foreign lawyers in India is thus against the public policy of India. Further, Indian advocates will suffer and be remediless if foreign lawyers and foreign law firms practice the law of India because BCI will be powerless under the Rules created by it.

35. It may be mentioned that a foreign regulator may exercise its regulatory oversight over a foreign lawyer, even practicing outside its territory, because the practice of law by such foreign lawyers is of the foreign substantive law. But such foreign regulatory oversight is never meant to override the regulatory oversight of the domestic professional regulator in the territory in which the practice is carried on. Interestingly, the BCI has not retained any regulatory oversight in respect of Indian advocates practicing Indian law outside India, such that a foreign jurisdiction will not cede its disciplinary jurisdiction in respect of Indian lawyers. Judged from the touchstone of reciprocity, Indian advocates will be disadvantaged as they will be subject to disciplinary action in the foreign jurisdiction, whereas the lawyers of such foreign jurisdiction will escape disciplinary action in India.

G. SECTION V: OTHER ELIGIBILITY CONSIDERATIONS

36. No criteria other than a diluted version of reciprocity, such as suitability, credential verification, criminal or disciplinary action history or verification, background searches, or security evaluations, are laid down to register foreign lawyers and foreign law firms to practice law in India. For example, a foreign firm that is engaged in multi-disciplinary practice including law may enter India, even though such practices are barred for Indian advocates.

37. The law must prescribe a category of prohibited entities or persons, such as those who potentially pose a challenge to the national interest or security of India (for example, firms with significant business in unfriendly countries or firms with nationals of unfriendly countries as partners or firms that have devised or implemented structures that may allow a contravention of public laws of India such as India's anti-money-laundering laws, black money laws, exchange control laws or tax laws). Unfettered discretion must be maintained for rejection of applications on these grounds.

H. SECTION VI: RELATIONSHIP WITH THE LOCAL BAR

38. As per Rule 9 of the Rules, any relationship of the foreign lawyers or foreign law firms with Indian advocates or firms must not result in control by the foreign lawyers or foreign law firms directly or indirectly. The Indian legal profession must be kept independent from foreign lawyers and foreign law firms. Thus, any such relationships formed by foreign lawyers or foreign law firms must be under regulated conditions to avoid a surrogate practice of Indian law by foreign lawyers or foreign law firms. Such regulation is common in jurisdictions that allow foreign lawyers and foreign law firms. However, the Rules are silent on regulatory oversight on this aspect. The cession of regulatory and disciplinary jurisdiction over foreign lawyers and foreign law firms by the BCI raises severe concerns with regard to the independence of the Indian legal profession.

I. SECTION VII: DRAFTING VAGUENESS AND LACUNE

39. The Rules are unfortunately riddled with drafting vagueness and gaps. We are not dealing with those aspects in this representation. We would at an appropriate time soon enough share with you several concerns that arise out of the text of the Rules. Several of those have significant implications.

J. SECTION VII: BCI'S CLARIFICATION

40. On March 19, 2023, the BCI issued a press release ("**Clarification**") clarifying certain aspects of the Rules, based on what it thought were the mis-apprehensions of the Indian legal fraternity. The Clarification states that foreign lawyers will only be allowed to practice foreign law in non-litigious matters and that too only for "foreign clients" (leaving aside the exceedingly vague definition of "foreign client" in the Rules). However, vires of the Rules apart, Rule 8 of the Rules deems foreign lawyers registered with the BCI as advocates for the purposes of Sections 29, 30 and 33 of the Act, under which an advocate is entitled to practice Indian law and appear before Indian courts. Thus, the Clarification is ostensibly contrary to the Rules issued by the BCI and is thus meaningless.

41. Further, as stated above, since BCI has abdicated its regulatory and disciplinary jurisdiction to the home country's regulator, no disciplinary action can be taken against foreign lawyers and law firms by BCI if they practice Indian law or appear in Indian courts. Therefore, in real terms, there is no fetter on foreign lawyers practicing Indian law and appearing before Indian courts. Resultantly, the Indian legal fraternity will suffer grave prejudice, harm and loss of livelihood.

K. SECTION VIII: SILF'S REQUESTS

42. In view of the above SILF requests that BCI enter into in-person dialogue with SILF on this matter and further BCI take the following actions immediately:

i. Commence consultation with SILF and other stakeholders of the Indian legal fraternity on Phase I reforms to be implemented as per the previously agreed chronology i.e., Phase I for domestic reforms before any foreign lawyers or foreign law firms are given the privilege to practice any type of law in India;

ii. Implementation of Phase I for domestic reforms in an immediate and time bound manner;

iii. Repeal / Suspension of the Rules pending the above consultation;

iv. Rejection / keeping in indefinite abeyance of all applications, if any, received from foreign lawyers or foreign law firms seeking registration in India.

Best Regards

LALIT BHASIN
President

JYOTI SAGAR
Associate President