



International Economic Law Practicum

**THE DOOR LEFT AJAR: LIBERALIZATION OF INDIA'S LEGAL
SERVICES SECTOR**

August 2021,
New Delhi/Jodhpur (India)

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Research Questions and Objective

The services sector constitutes half of India's GDP as per the data from the year 2019. The market share of Indian legal services, in particular, had reached USD 1.3 billion in 2017. Though certain liberalization has been allowed in the legal services by allowing foreign legal services in India in 'fly-in, fly out' form, foreign legal services suppliers are still restricted in India to a large extent. But, the interaction of foreign legal services suppliers with their Indian counterparts becomes indispensable in transactions involving multiple jurisdictions such as cross-border mergers and acquisitions, corporate restructuring, foreign investment, etc. where the services are rendered in more than foreign jurisdiction.

The objective of this report is to carry out a comprehensive doctrinal legal analysis of Indian laws governing legal services by foreign legal services. India had always restricted its market to foreign legal professionals. Initially, foreign legal professionals were prohibited from rendering any kind of legal services in India. However, through the ruling of the Supreme Court of India, the foreign legal professionals were allowed to render service through 'fly in, fly out' mode. However, even now, the market access for foreign legal professionals in India is restricted. Against, this background, this report aims to analyze the Indian landscape concerning foreign legal services by identifying the legal services rendered by the individual legal professional or through the law firm. Further, the report aims to compare the Indian legal regime on this issue with India's commitment at the WTO. Further, the report also delves into the legal regime in the foreign jurisdictions as well as the possibility of a Mutual Recognition Agreement in this regard.

This Report achieves this in four sections:

- Analysing the Indian laws governing the legal profession and judicial decisions of Indian courts.
- Analysing the role of General Agreement on Trade in Services in the regulation of legal services.
- Analysing the viability of the Mutual Recognition Agreement for the liberalization of legal services.
- Comparison of legal regime concerning foreign legal services in India and other countries.

The research questions are as follows:

1. How legal profession is regulated in India? To what extent the foreign legal professionals are allowed to render legal services in India?
2. What are India's commitments concerning legal services at the WTO?
3. What are the considerations that India must take into account for the liberalization of legal services through the route of the Mutual Recognition Agreement?
4. Analyze the regulatory framework concerning legal services in India and their relevance on the Indian regime concerning foreign legal services?

Executive Summary

With the worldwide integration of economies, India sought to liberalise its markets back in 1990s. However, while the quantum of cross border transactions has grown over time, India has particularly been protective of its market for legal services and has imposed prohibitions which severely restrict the entry of foreign lawyers and foreign law firms in the country. This report attempts to identify the India's approach towards the liberalization of the foreign legal services in light India's multilateral commitment concerning trade in services at the WTO.

The first section of the report delves extensively into India's regulatory framework concerning the administration of legal profession. The Advocates Act, 1961 allows the entry of professionals into the legal profession on the fulfilment of criteria such as (i) being Indian citizens; (ii) having obtained a university degree from a Bar Council recognised institution; and having attained 21 years of age. The major reason behind the prohibition on foreign lawyers and law firms from setting up their legal practice in India relates to concerns about the increased competition in the legal market and the incapability of Indian advocates and firms currently to compete with their counterparts on an equal footing. However, certain form of liberalization is evident from the Supreme Court of India's ruling that the foreign lawyers are allowed to make casual visits to India on a 'fly in and fly out' basis, which would not be in contravention of the Advocates Act. The report suggests phased liberalization of the Indian legal sector that would include removal of advertising restrictions placed on advocates and law firms in India, liberalisation in certain specialised areas of law where the need of foreign lawyers is immediate, for example, where clients seek legal advice on cross border transactions, and removal of restrictions on the capability of foreign law firms to enter into joint ventures with their Indian counterpart.

The second part of the report focuses specifically on the liberalization of the Indian legal services at the bilateral level, specifically through the route of Mutual Recognition Agreement. An MRA is an agreement through which professionals of the two contracting countries are recognised and licensed and are allowed partially or fully to exercise their skill in the specific sector. Article VII of the GATS allows for such recognition. Earlier, the Institute of Chartered Accountants of India has successfully liberalised the accountancy service in India through liberalization. Similarly, the BCI has signed a list of MoUs with various countries who have expressed interest to work in Indian legal sector. Though the MoUs are not in the nature of an MRA, these signatories to the MOU can be considered for framing an MRA with. Based on the model guidelines issued by the International Bar Association, the following elements are important to be included in the MRA:

- i. Passing of a specific legislation to regulate the new foreign lawyers and law firms. At present, India does not have a set of legislation to deal with the foreign legal professionals. The legislation should cover, *inter alia*, the following issues:
 - 1) The creation of a new regulating body, its powers, functions and duties.
 - 2) The rights and obligations of the new entrants.

- 3) Delineation of sub –sectors in which they will be allowed to practice (in the latter half of the document, a partial liberalisation has been proposed and not all sub sectors are open for practice for foreign entrants.)
- ii. A harmonisation of the legal education systems of India and the other contracting countries is required. This is essential so as to provide licenses and to recognise the various education levels of the new entrants. This is a mammoth task and requires thorough scrutiny to find out the academic equivalents to each other’s degree.

The report also provides the process of conclusion of an MRA which requires (i) internal negotiation to the effect with the various India stake holders and hence negotiation; (ii) approval of the negotiated agreement by the Union cabinet. Though MRA route allows dissemination and exchange of best legal practices between the two countries, however, it poses difficulties in the identification and harmonization of contours of the legal education system.

The third part of the report assesses the substantive aspect of liberalization by identifying the policy considerations for various aspect of the legal profession. The assessment is based on the views of the BCI, through specific focus on the draft Bar Council of India (Registration and Regulation of Foreign Legal Consultants and Registered Foreign Law Firms in India) Rules, 2016, and other relevant stakeholders such lawyers and law firms. This part provides comparative analysis regulation of legal profession in France, Malaysia, Singapore, and the United Kingdom, and their relevance in the liberalization of Indian legal services. The suggestions that have been made are regarding issues to be considered during the initial stages of liberalisation including employment requirements; licensing regulations; practice areas that are permissible for practice to foreign lawyers and foreign law firms, amongst others. While providing suggestions, the report also taken into account the needs for the protection of the domestic industry.

1. Introduction

Economies across the world have adopted a model of integration to increase the rate of their development, economic growth and help reduce disparity in the distribution of resources. Since the opening up of the Indian economy in the 1990s, India has progressed on the path of rapid economic expansion and has attracted huge foreign capital investment in various sectors. The Indian service sector's growth has been tremendous after liberalisation, contributing to as much as 58 percent of India's total GDP in the 2007-2008 period.¹ However, while opening up cross border trade in services, India has traditionally been reluctant to adopt the same liberalised approach in respect of the market for legal services.

With the increase in foreign capital investment in India and with many Indian companies going global and entering into cross border transactions, it has become imperative to respond to the growing international demand for Indian legal services. International professional bodies like the Law Society of England and Wales have earlier made efforts to hold a dialogue with the Bar Council of India for the opening up of the Indian legal market. There is a particularly high demand for lawyers trained in specific areas of law like Intellectual Property law and cross border Mergers and Acquisitions, where exposure to multi-jurisdictional legal regime pertaining to the concerned field is important. The current position of the Indian legal market is not strong or specialised enough to provide such distinguished services to foreign companies and investors or Indian players engaged in cross border transactions, and it is plausible to liberalise the Indian legal services market at this stage.² Pressure is mounting up on the Indian Lawmakers to open the Indian Legal Services market to foreign players in light of the increase in demand.³

Against this background, Chapter 2 of the report provides an overview of GATS and its basic features along with classification of 'legal services' and India's commitment against it. Chapter 3 of the report analyses the salient features of the regulation of the legal profession in India and the prohibitions and regulatory bottlenecks that firms and practitioners currently face. Chapter 4 of the report identifies contours of liberalisation of the market for legal services in India, along with a proposed phased-out model that can be adopted. Chapter 5 of the report analyses the substantive and procedural aspect of the liberalization through the route of MRA. Chapter 6 of the report provides the comparative analysis of the regulation of foreign legal services in other jurisdiction and draft BCI guidelines. Finally, the report concludes by identifying the way ahead.

¹ Pralok Gupta & Rupa Chanda, *Trade Liberalization in Producer Services: Case Study of India* (Asia-Pacific Trade Economists Conference, Bangkok (Nov 2-3, 2009)).

² Rupa Chandra, *Liberalization of Indian Legal Services*,: <http://tejas.iimb.ac.in/articles/23.php>.

³ *Ibid.*

2. Regulatory Landscape of Legal Services vis-à-vis Trade in Services

2.1 WTO and regulation of Trade in Services

The General Agreement on Trade in Services (**GATS**) is part of the agreements that were signed in April 1994 when the Agreement Establishing the World Trade Organisation (**WTO**) was signed.⁴ The GATS was the first multilateral trade agreement that applied to *services*, rather than goods. The GATS and other trade agreements emerged from the “Uruguay Round” negotiations.

Under the GATS, WTO Members are free to make decision concerning the liberalization of services in each sector to foreign competition. It is also known as the “bottom up” or “positive list” approach of the GATS under which only those sectors which a WTO Member chooses to list in its schedule of commitments are subject to market opening.

Further, WTO Members are free to place limitations or conditions on access granted, and to discriminate against foreign suppliers, provided they list any such measures in their schedule of commitments. In other words, the WTO Members can maintain measures that do not conform to market access⁵ or national treatment⁶ based on the commitment undertaken by the Members in their schedule of commitments. There is also no obligation under the GATS to commit to providing the status quo in terms of market opening. Indeed, many GATS commitments represented less than the status quo even at the time of the Uruguay Round, let alone the significant unilateral liberalisation subsequently undertaken by many countries across a range of sectors.

The following choices were available to a WTO member when opting for liberalisation via GATS:⁷

- i. They may exclude an entire sector or parts of a sector from their commitments. WTO Members are free to define the sector as they wish, they may refer to a list developed for the GATS negotiations, or the United Nations Central Product Classification to which the GATS list refers, or they may use their own definitions.
- ii. They may exclude some modes of supply, or apply special conditions to particular modes of supply across all sectors in their schedules.
- iii. They may place limits on the market access they offer provided they list them in their schedules.

⁴ General Agreement on Trade in Services, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1B, 1869 U.N.T.S. 183, 33 I.L.M. 1167 (1994) (**GATS**).

⁵ Article XVI, *Ibid*.

⁶ Article XVII, *Ibid*.

⁷ *Special and Differential Treatment Under the GATS* (OECD Trade Policy Papers No. 26, 2006).

- iv. They may discriminate against foreign providers in favour of nationals provided that they list any such measures in their schedules.
- v. They may discriminate among foreign suppliers if they have a MFN exemption for the relevant service or are party to a regional trade agreement notified under Article V.
- vi. They may commit to providing less access than they currently provide in their market.
- vii. They may commit to liberalising at a chosen future date, rather than immediately.

2.2 Regulation of Trade in Services at the Regional Trade Agreement

As of August 2021, 188 RTAs have been notified pursuant to Article V of the GATS which provides the legal framework for the RTAs concerning the services sector.⁸ Concerning the approach towards trade in services, there are two broad approaches by the countries. *First*, liberalization of services covering all four modes provided under the GATS. For instance, the EFTA-Korea FTA covers the liberalization towards all four modes by referring to Article 3.3 which refers to Article 1 of the GATS. The *second* approach focuses only on the liberalization of the cross-border trade in services. For instance, Chapter 15 of the USMCA is solely concerned with the liberalization of cross-border services. As opposed to the first approach, the cross-border approach is restrictive covering only the following types or instances of services:⁹

- i. Supply of services from the territory of a Party into the territory of another Party;
- ii. In the territory of a Party by a person of that Party to a person of another Party;
- iii. By a national of a Party in the territory of another Party,

India demanded for greater market access in services in order to seek a greater degree of liberalization in trade in services, especially for the liberalization for Mode-1 (cross border supplies) and Mode-4 (movement of natural persons),¹⁰ evidencing India approach towards trade in services at the regional level through the cross-border approach.¹¹ India's trade negotiations evidence India's deviation in its negotiating approach from Mode-4 to Mode-1 and Mode 2.¹² With regard to the legal services, the liberalization is evident from the fact that India has rolled out liberalization by removing the prohibition on legal and accounting services in the Special Economic Zones. In other words, it will allow the multinationals to directly advise on international disputes or arbitration by setting up a base there in the SEZ.¹³ Though the

⁸ Regional Trade Agreement Database, <https://rtais.wto.org/UI/PublicMaintainRTAHome.aspx>.

⁹ See Article 15.1, United States-Mexico-Canada Agreement.

¹⁰ Surendar Singh, *India's Approach towards Bilateral, Regional and Multilateral Negotiations* (Discussion Paper, Consumer Unit Trust Society, 2015).

¹¹ See generally, India-Korea CEPA (*Chapter 6*); India-Japan CEPA (*Chapter 6*); India-Singapore CEPA (*Chapter 7*); India-Malaysia CECA (*Chapter 8*).

¹² Ibid.

¹³ Kian Ganz, *Will foreign law firms open first in SEZs (and GIFT)? Not yet, but gov't paves a way with rule change* (Legally India, 14 January 2017), <https://www.legallyindia.com/law-firms/will-foreign-law-firms-open-first-in-sezs-and-gift-not-yet-but-gov-t-paves-a-way-with-rule-change-20170114-8221>; Jatin Gandhi, *Govt's move to revoke SEZ ban on foreign law firms irks lawyers* (Hindustan Times, 5 Feb. 2017), <https://www.hindustantimes.com/india-news/govt-s-move-to-revoke-sez-ban-on-foreign-law-firms-irks-lawyers/story-QU1dV6stApsesonuytIdrN.html>.

amendment permits legal services in SEZs, it has major implications in affecting the competition against the domestic legal industry due to the competition from their foreign counterpart. Therefore, while liberalizing its market access for services, India should also consider sector-specific liberalization in its RTA in order to gain market access in other countries.

2.3 Special and Differential Treatment under GATS

The GATS is an unusually flexible agreement, which gives Members of the WTO wide scope to choose the most appropriate form and pace of liberalisation on a relatively disaggregated basis. The degree of flexibility afforded to all Members under the GATS shapes its approach to special and differential treatment (**SDT**). While the words “special and differential treatment” do not appear in the GATS, the Preamble to the agreement includes as one of its objectives the promotion of the development of developing countries, the facilitation of their increasing participation in trade in services, and the expansion of their services exports including through the strengthening of their domestic services capacity and its efficiency and competitiveness. Further, the Preamble notes that given the asymmetries that exist with respect to the degree of development of services regulations in different countries, the particular need of developing countries to exercise the right to regulate and to introduce new regulations on the supply of services to meet national policy objectives.¹⁴

The GATS affords developing countries additional flexibility in terms of making market opening commitments. GATS Article XIX (Progressive Liberalisation) allows flexibility to the developing country to liberalize few sectors or liberalising fewer types of transactions, and hence progressively extending market access in line with their development situation.¹⁵

2.4 Mutual Recognition Agreement

Mutual recognition Agreement (**MRA**) refers recognition of both academic qualifications and the recognition of professional qualifications. The mutual recognition of qualifications encompasses recognition of curricula and degrees. These can be used to allow students to further pursue higher education and be eligible for training. When there is a regulation of a professional activity in a country, only those who have acquired the necessary qualification will be allowed to practice. It is therefore necessary to provide for the mutual recognition between countries of each other's professional qualifications.

The idea behind mutual recognition (**MR**) of professional qualifications is that if a professional can provide services lawfully in his/her own country, s/he can do the same in any other

¹⁴ Supra note 7.

¹⁵ Article XIX, GATS.

country, without having to comply with the regulations applied in that country.¹⁶ The regulations applied in the home country, though not identical to those applied in the host country, are nevertheless regarded as equivalent to the latter.¹⁷ A professional services supplier who satisfies the requirements established in his/her home country should not be requested to comply with the requirements in force in the host country, since the two sets of requirements are deemed to be equivalent. A Mutual Recognition Agreement is one in which the respective authorities accept, in whole or in part, the regulatory authorizations obtained in the territory of the other Party(ies) to the agreement in granting their own authorization.¹⁸

There are a number of provisions in the GATS related to recognition. Article VII of GATS (Recognition) allows the Members to recognise the experience and education obtained, requirements met, or licenses or certifications granted in some WTO Members and not others. This permits the countries to circumvent their Most Favoured Nation Obligation. The main requirement of Article VII is that WTO Members entering into recognition arrangements amongst themselves must afford adequate opportunity to other interested Members to negotiate their accession to the agreement or to negotiate a comparable agreement.¹⁹ That is, other WTO Members should be given the opportunity to demonstrate that they also meet the required standards – whether they actually do or not is a matter for the country according recognition to decide.

Article VI.6 states that where a country chooses to make a commitment to allow access for a particular type of foreign professional, such as for education professionals, that country is required to have adequate procedures in place to verify the competence of those professionals from all other WTO Members. Members are given a free hand to determine the different type of procedures to do this. This Article also does not mandate any particular standard to be applied. It just requires members to have adequate evaluating procedure in place.

2.5 Obligations under the GATS

2.5.1 Modes of Services

The definition of services trade under the GATS is four-pronged, depending on the territorial presence of the supplier and the consumer at the time of the transaction.²⁰ Pursuant to Article I:2, the GATS covers services supplied:

¹⁶ K. Nicolaidis, *Non-discriminatory mutual recognition: an oxymoron in the new WTO lexicon*, in T. COTTIER, P. MAVROIDIS AND P. BLATTER (EDS), *REGULATORY BARRIERS AND THE PRINCIPLE OF NON-DISCRIMINATION IN WORLD TRADE LAW* (2000).

¹⁷ J. Nielson, *Trade Agreements and Recognition*, in *QUALITY AND RECOGNITION OF HIGHER EDUCATION – THE CROSS BORDER CHALLENGE*, OECD 167 (2004).

¹⁸ K. Nicolaidis *Managed Mutual Recognition: The New Approach to the Liberalization of Professional Services* (1997), <https://users.ox.ac.uk/~ssfc0041/managemr.htm>.

¹⁹ PETER VAN DE BOSSCHE, *THE LAW AND POLICY OF WTO* 387 (Cambridge Publication, 2005).

²⁰ WORLD TRADE ORGANIZATION SECRETARIAT, *A HANDBOOK ON GATS*, 18 (Cambridge, Publication, 2005).

- i. **Mode 1** – It is the cross-border supply of services, from the territory of one country into the territory of another country. For example, services are produced in one country but is consumed in another country. The existing statistical framework mostly measures this mode in the Balance of Payment context.
- ii. **Mode 2** – It is the consumption of services abroad. For example, the consumers will travel to the particular country where the services are provided and avail the services.
- iii. **Mode 3** – This mode refers to the commercial presence of a company of one country in the jurisdiction of another country. (An apt example would be multinational law firm Linklaters opening an office in India). This mode typically involves only residents of the country concerned i.e. Indians will work in the India office of Linklaters.
- iv. **Mode 4** – It is the presence of natural persons abroad. An example of this mode would be foreign lawyers coming to India to practice law in India.

2.5.2 Types of Commitment

All members of the WTO are signatories of the GATS framework agreement. Each country committed itself in theory to the principles of GATS i.e. national treatment, market access, and MFN and each country has made different commitments for different sector during the Uruguay Round. While determining the legal ramifications the commitments of the country under the GATS, then, all original Uruguay Round schedules, supplemental schedules, and MFN exemptions lists must be examined to get the most appropriate image of what a country has and has not agreed to guarantee foreign service suppliers.

Article XVI (1) of the GATS provides that each member shall give the service suppliers of the other Member treatment no less favourable than that provided for under terms, limitations and conditions agreed and specified in its Schedule of Specific Commitments. Any of the entries under market access or national treatment may vary within a spectrum whose opposing ends are full commitments without limitation (none) and full discretion to apply any measure falling under the relevant article (unbound).²¹ The schedule is divided into two parts. While Part I lists "horizontal commitments", i.e. entries that apply across all sectors that have been scheduled, Part II sets out commitments on a sector-by-sector basis.

- i. **None** - None indicates that there are no terms, conditions and limitations on the particular mode of supply and full commitment is being given.²² It demonstrates the ideal commitment i.e. the sector is completely open to foreign service providers, without any kind of limits.
- ii. **Unbound** - Unbound means that the member is totally free to regulate the market as it deems right, essentially this indicates the lowest possible level of commitments.²³ Essentially

²¹ Ibid.

²² Panel Report, *United States – Measures Affecting the Cross-Border Supply of Gambling and Betting Services*, [WT/DS285/R](#), adopted 20 April 2005, as modified by Appellate Body Report WT/DS285/AB/R, DSR 2005:XII, p. 5797, para. 6.279.

²³ MITSUO MATSUSHITA AND ET AL., *THE WORLD TRADE ORGANIZATION LAW, PRACTICE, AND POLICY* 598 (3rd ed., Oxford University Press, 2015).

when a member undertakes such a commitment only then it will be entitled to apply any measure given under Art. XVI (2) of GATS.²⁴ The term "UNBOUND" is listed in the market access or national treatment column essentially means that a country wishes to make no commitments in a given sector or a given mode of supply. In some cases, a country may simply leave a sector out of its schedule.

2.5.3 Domestic Regulation

The provisions under GATS also contain general obligations which aim to further the objective of fairness, due process and transparency as stipulated under Article VI:1 of the GATS which requires that the measure must be administered in a manner that further the above-mentioned objective where commitments have been taken under Articles XI, XVII, and XVIII of GATS. A measure is considered to be administered in a partial manner when the same favorable treatment is not accorded to the commercial interests of foreign service suppliers.²⁵ However, the scope of Article VI is limited to the administration of the measures, the substantive content of the measure cannot be challenged under Article VI.²⁶

2.5.4 Market Access

Market access refers to the ability in which foreign service providers can sell their service in the market of a foreign country. Usually, the countries allowing foreign service providers impose certain restrictions on the entry and these are called trade barriers. The GATS does not define explicitly the concept of "market access barriers". However, Article XVI:2(a) to (f) of GATS provides an exhaustive list²⁷ of such measures.

- limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers²⁸
- limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test²⁹
- limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement for an economic needs test³⁰
- limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly

²⁴ RÜDIGER WOLFRUM, PETER-TOBIAS STOLL AND CLEMENS FEINÄUGLE, WTO: TRADE IN SERVICES, MAX PLANCK COMMENTARIES ON WORLD TRADE LAW, VOL. 6, 392 (2008).

²⁵ M. Krajewski, *Article VI: GATS*, RÜDIGER WOLFRUM, PETER-TOBIAS STOLL AND CLEMENS FEINÄUGLE, WTO: TRADE IN SERVICES, MAX PLANCK COMMENTARIES ON WORLD TRADE LAW, VOL. 6, 172 (2008).

²⁶ Ibid.

²⁷ Supra note 19.

²⁸ Article XVI:2(a), GATS.

²⁹ Article XVI:2(b), GATS.

³⁰ Article XVI:2(c), GATS.

related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test³¹

- measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service³²
- limitations on the participation of foreign capital in terms of maximum percentage limits on foreign shareholding or the total value of individual or aggregate foreign investment³³

2.5.5 National Treatment

National treatment, defined in Article VII of the GATS, implies the absence of all discriminatory measures that may modify the conditions of competition to the detriment of foreign services or service suppliers. The National treatment is one of the provisions under the GATS that translate the principle into tangible legal ramifications. It aims to avoid discrimination between domestic and foreign services and service suppliers. National treatment obligation applies only to the extent the WTO members have explicitly committed themselves to grant national treatment in respect of specific sector service.

Typical National treatment imitations include

- nationality or residence requirements for executives;
- requirement to invest a certain amount of assets in a local company;
- restrictions on the purchase of land;
- special subsidy or tax privileges granted to domestic suppliers and;
- differential capital requirements and special operational limits applying only to operations of foreign suppliers.

2.6 Foreign Legal Services in India vis à vis India's GATS commitments

The terms, limitations and conditions on market access agreed to in the negotiations on the liberalisation of trade in services are set out in Schedules of Specific Commitments, already referred to above as Services Schedules.³⁴ the conditions and qualifications on national treatment and undertakings relating to additional commitments are set out in the Schedules of Specific Commitments. Each Member has a Schedule of Specific Commitments.

At present, under GATS, the services are classified into twelve different sectors. One of these sectors is “business services”, which is again divided into six categories. One of these sub categories is professional services, which includes providing of legal services. As per the aforementioned categorization, legal services can include within its ambit legal advisory and

³¹ Article XVI:2(d), GATS.

³² Article XVI:2(e), GATS.

³³ Article XVI:2(f), GATS.

³⁴ Council for Trade in Services, *Report by the Chairman to the Trade Negotiations Committee*, TN/S/15 (14 Apr. 2004), para 5.

representational services, drafting or legal documentation with respect to criminal law, pleading before a court of law and out of court work like interviewing of witnesses.

This WTO classification of service sectors, set out in the Services Sectoral Classification List of the WTO Secretariat³⁵ is based on the Central Product Classification (CPC) of the United Nations. In the Secretariat's List each sector is identified by the corresponding CPC number. The CPC gives a detailed explanation of the services covered by each of the sectors and sub-sectors. In the WTO "Services Sectoral Classification List", "legal services" are listed as a sub-sector of "business services" and "professional services". This entry corresponds to the CPC number 861 in the United Nations Provisional Central Product Classification. In the UN CPC the entry "legal services" is sub-divided in the following categories

CPC	Details
86111	legal advisory and representation services concerning criminal law
86119	legal advisory and representation services in judicial procedures concerning other fields of law
86120	legal advisory and representation services in statutory procedures of quasi-judicial tribunals, boards, etc
86130	legal documentation and certification services
8619	other legal and advisory information

Horizontal commitments - Horizontal commitments apply to all sectors included in the Schedule. Schedules include horizontal commitments to avoid repeating in relation to each sector contained in the Schedule the same information regarding limitations, conditions or qualifications of commitments. They often concern two modes of supply in particular, namely, supply through commercial presence (mode 3) and supply through the presence of natural persons (mode 4).³⁶

Sectoral commitments - Sectoral commitments, or sector-specific commitments, are, as the term indicates, commitments made regarding specific services sectors or sub-sectors.

Column 1	Column 2	Column 3	Column 4
It identifies the services sector or sub-sector which is the subject of the commitment.	It contains the terms, limitations and conditions on market access.	It contains the conditions and qualifications on national treatment.	It provides for undertakings relating to additional commitments

In the schedule of commitments, all those sectors of a country which have been liberalised are mentioned. In the schedule of commitments under GATS of India legal services has not been

³⁵ Group of Negotiations on Services, *Services Sectoral Classification List*, MTN.GNS/W/120 (1991).

³⁶ *Supra note* 19, 482.

mentioned. That means India has not liberalised the sector. But legal services are a subsector of professional services. Since the commitment is a horizontal commitment under GATS, all the commitments under professional services are also applicable to the legal sector. India's commitment for the market access and national treatment under various modes are as follows:

Mode	Market Access	National Treatment
<i>Mode 1</i>	Unbound	Unbound
<i>Mode 2</i>	Unbound	Unbound
<i>Mode 3</i>	Commercial Presence is only allowed through incorporation with a foreign equity ceiling of 51 per cent.	None
<i>Mode 4</i>	The commitment is unbound except as indicated in the horizontal section.	The commitment is unbound except as indicated in the horizontal section.

3. Regulation of the Indian Legal Profession: Features and Prohibitions

After the Liberalisation of the Indian economy in the 1990s, Foreign Direct Investment (**FDI**) began to pour into India from across the world. During this time, India had become a signatory to the Marrakesh Agreement establishing WTO, and taken its commitment concerning legal services under the GATS. It was speculated that India would introduce the same liberalisation reforms in the legal sector too to deal with the changing economic landscape. However, concerns were raised subsequently that such a move would increase competition in the market and Indian advocates and law firms would not be in a position to compete with foreign lawyers and international law firms.³⁷ India, having suffered under the wrath of a brutal colonial regime earlier, feared that if foreign lawyers were allowed to practise law in India, it would compromise India's sovereignty and they would end up being pseudo colonialists in the Indian legal sector, with the sector becoming completely dependent on them.³⁸ Consequentially, the prohibition on foreign lawyers and law firms from setting up their legal practice in India were imposed. The intent behind the imposition of restrictions on advertising by law firms and advocates in India subsequently was to safeguard and preserve the sanctity and nobility of the profession.

The legal profession in India is majorly regulated by the Advocates Act, 1961 (**Act**) and the Bar Council Rules, 1975 (**BCI Rules**). The responsible regulatory body is the Bar Council of India (**BCI**) which lay down and supervises the regulatory framework of the legal profession.

3.1 Eligibility conditions for the legal professionals in India

The Act essentially restricts the entry of professionals subject to nationality by stipulating that no foreign lawyers are allowed to practise law in India and Indian citizens must obtain a university degree from a BCI recognised institution and have attained 21 years of age in order to be eligible to practise law in India.³⁹ However Section 32 of the Act also lays allows foreign lawyers can appear in Indian courts after obtaining due permission from the court in specific cases.⁴⁰

3.2 Restriction on advertisement of Legal Services in India

Lawyers and law firms in India are prohibited from soliciting work or advertising any legal services offered by them, both online and offline, either directly or indirectly by circulars, advertisements, personal communications or interviews, or by furnishing or inspiring newspaper comments or producing photographs to be published in connection with their cases, as per Rule 36 of the BCI Rules.⁴¹ It also mandates that the signboard or name-plate of a lawyer

³⁷ Jayanth K. Krishnan, *Globetrotting Law Firms*, 23 GEO. J. LEGAL ETHICS 57, 85 (2010).

³⁸ *Lawyers in India: Legally Barred* (The Economist, 2008), <http://www.economist.com/node/11090513>.

³⁹ Section 2, 24, 29, 30 & 33, The Advocates Act 1961.

⁴⁰ Section 32, Ibid.

⁴¹ Part VI, Bar Council of India Rules 1975 (BCI Rules).

must be of a reasonable size and must not indicate that he is or has been President or Member of a Bar Council or of any Association or that he has been associated with any person or organisation or that he has been a Judge or an Advocate General.

However, with changing times, the BCI has introduced certain amendments to this rule. The amended Rule 36 of the Act allows the advocates and law firms to maintain websites to provide information about their business so that people can make informed choices before availing of any legal services from them. The display of any information part from the information approved by the BCI is considered as a violation of the aforementioned Rule and the advocate or firm will become liable for misconduct in such a case.⁴²

3.3 Distinction Between Litigious and Non-Litigious Practice under the Advocates Act, 1961: Analysing the Validity of the ‘Fly In Fly Out’ Model

The Supreme Court of India has ruled⁴³ that the practice of law in India includes both litigation and non-litigation work but under India’s regulatory regime, only the advocates who are enrolled with the BCI are entitled to practise law in the country while foreign lawyers are barred from practising law in India. The Court has further held that the regulatory mechanism under the Act and the BCI Rules also applies to advocates performing non-litigious work, that is, advocates not appearing before the court or authority in person.⁴⁴ If foreign lawyers make frequent visits to India with the objective to advise their clients on foreign law or international legal issues, it would amount to practising law in India as per the Supreme Court’s observations and would thus be in contravention of the Indian regulatory regime. At the same time, it can be observed that the Supreme Court has ruled that foreign lawyers are allowed to make casual visits to India on a ‘fly in and fly out’ basis. This does not constitute practice of law as per the interpretation of the court and would not amount to a violation of national law. However, the validity of this model under the Act is dependent on the frequency with which foreign lawyers fly in and out of India to provide legal advice and in recent times it has been suggested that the central government and BCI should frame comprehensive rules to regulate the same.

3.4 Status of Liaison Offices of Foreign Law Firms in India

With the liberalisation of the Indian economy in the 1990s, a number of overseas law firms were able to obtain permission from the Reserve Bank of India (**RBI**) to set up liaison offices in India. This development did not go without challenge and a petition was filed before the Bombay High Court stating that the RBI was not justified in granting permission to foreign law firms to open liaison offices to practise in India in relation to non-litigious matters.⁴⁵ It was contended that the liaison offices were a backdoor entry for foreign firms and a convenient way

⁴² Section 35, The Advocates Act 1961.

⁴³ *Bar Council of India v. AK Balaji and Ors*, AIR 2018 SC 1382.

⁴⁴ *Pravin Shah v. KA Mohd Ali* (2001) 8 SCC 650; reiterated in *Ex Capt Harish Uppal v Union of India* (2003) 2 SCC 45.

⁴⁵ *Lawyers Collective v. Bar Council of India*, High Court of Judicature at Bombay, WP No 1526/1995 (Decided on 16 Dec. 2009).

for foreign lawyers to circumvent the strict rules governing the practice of law enumerated in the Act. The High Court placed reliance on Section 29 of the Foreign Exchange Regulation Act 1973⁴⁶, which provides that a person resident outside India or a company not incorporated in India shall not establish in India a branch office or other place of business for the carrying on of any activity of a trading, commercial or industrial nature without the permission of the RBI, and emphasised on the distinction between professional and commercial activities to state that the liaison activities of foreign law firms related to the profession of law under the Act and not commercial or trading activities. Thus, it was concluded that the RBI could not have granted permission to international law firms to carry on practice in non-litigious matters by opening liaison offices in India, and the practice of international law firms having liaison offices in India was discontinued.

3.5 Is the time for Liberalization of Indian Legal Market?

Despite the fears of the BCI and the legal professionals in India with respect to the entry of foreign lawyers and law firms in the Indian market and the restrictions in place currently, the liberalization of India legal market will drastically enhance the opportunities for India legal professional to access foreign markets, and will enhance the Indian economy.

Firstly, liberalisation is expected to reap immense benefits for the clients. The ‘fly in fly’ out model leads to an immense increase in travel costs which reflects in the charges that the clients have to pay to avail the services of the foreign lawyers flying to India. Opening up of the Indian legal market would not only drastically reduce the charges borne by clients but also ensure speedier and easy access to the services offered by international law firms.

Secondly, Indian law firms have been known to establish their offices in various jurisdictions. The latest to join the trend was leading Indian law firm Khaitan & Co. which opened its office in Singapore in May, 2021.

Thirdly, liberalisation of the Indian legal market would provide an opportunity to Indian lawyers to branch out internationally and would lead to an increase in the employment opportunities for Indian lawyers with better pay and work conditions.⁴⁷

The Central government, taking these aforementioned advantages into account, had also initiated talks with the BCI in February, 2015, to allow the foreign law firms to enter the Indian legal sector and an agreement⁴⁸ has been entered into between them for the drafting of rules to allow the entry of foreign lawyers in India.

⁴⁶ Section 29, Foreign Exchange Regulation Act, 1973.

⁴⁷ Niriksha Sanghvi & Rich Sharma, *Liberalization of Legal Profession in India- Opening Doors for Foreign Law Firms*, 3 J. CONTEMPORARY ISSUES OF L. (2017).

⁴⁸ Pragya Chaturvedi, *Foreign Law Firms in India: Why it isn't a bad thing* (Bar & Bench, 7 Sept. 2017) <https://barandbench.com/foreign-law-firms-india-not-bad-thing/>.

3.6 Exploring a Phased- out Liberalisation of the Indian Legal Sector

Given the number of contentions that have been raised by various stakeholders regarding the opening up of the Indian legal market, a phased- out liberalisation seems the most plausible option at present. To achieve the same, first and foremost, the advertising restrictions placed on advocates and law firms in India must be done away with. A free market is one that provides complete freedom to its participants to advertise their business and also helps the consumers in making informed choices with respect to the goods and services available. The objective of liberalisation cannot be achieved if the service providers are not allowed to advertise their services under the garb of protection of the nobility of the profession.

The restrictions on the entry of foreign law firms in the country must be eased out. To ensure this is done in a phased- out manner, the authorities may start by allowing liberalisation in certain specialised areas of law where the need of foreign lawyers is immediate, for example, where clients seek legal advice on cross border transactions. An Indian to foreign lawyer ratio may be put into place to be maintained along with specific grant of licenses, which would help in preventing a complete takeover of the Indian legal market by foreign lawyers. When some degree of success is observed, the restrictions on the capability of foreign law firms to enter into joint ventures with their Indian counterparts may be eased.

Chapter 3: A Bird's eye View

A major reason behind India's reluctance for liberalization of legal services has been the objections raised by various stakeholders, including advocates and law firms, who believe that Indian lawyers and law firms are not at a stage where they can compete on an equal footing with their foreign counterpart. The Supreme Court has allowed foreign lawyers to visit India and advise their clients on a fly in fly out basis, the validity of which is determined on a case-to-case basis depending on the frequency and the duration of stay of these foreign lawyers in India. Opening up of the Indian legal market will lead to a growth in employment opportunities for Indian lawyers as international law firms set up their practice in India. The process of liberalization must be carried out in a phased manner, starting with the removal of advertising restrictions, to the removal of restrictions on foreign law firms and lawyers setting up practice in India in certain specialised areas of law and then slowly allowing international law firms to enter into joint ventures with their Indian counterparts.

4. Mutual Recognition Agreement: An assessment of liberalization through bilateral route

One of the routes to liberalise the Indian legal market is through signing of Mutual Recognition Agreements (**MRA**) with various countries. As mentioned earlier, BCI Rules mandates to allow foreign nationals only of those countries in which Indians are allowed to practice, i.e. through the principle of reciprocity. Section 47 of the Advocates Act allows foreign lawyers to practice in India only on the basis of reciprocity. An MRA facilitates trade in services by the recognition among countries for professionals who are authorised, licensed or certified by the respective authorities within the framework of the MRAs.⁴⁹ An MRA enables the qualifications of services suppliers, recognised by the authorities in their home country, to be mutually recognised by other countries who are signatories to the MRAs. MRAs are not expected to override local laws but are applicable only in accordance with prevailing laws and regulations of the host country.⁵⁰ In short, it is an agreement between two trading partners to reduce technical barrier to trade.⁵¹

MRAs are also recognised under GATS. Article VII of GATS is the relevant provision with regards to recognition of professional qualifications. Article VII (1) provides that “*a Member may, in connection with the authorization, licensing or certification of services suppliers, recognize the education or experience obtained, requirements met, or licenses or certifications granted in a particular country and that such recognition may be based upon an agreement with that country or accorded autonomously*”.⁵² Article VII (3) provides that “*a Member shall not accord recognition in a manner which would constitute a means of discrimination between countries in the application of its standards or criteria for the authorization, licensing or certification of services suppliers or a disguised restriction on trade in services*”⁵³. Finally, Article VII (5) provides that, “*wherever appropriate, recognition should be based on multilaterally agreed criteria and that, in appropriate cases, Members shall work in cooperation with relevant intergovernmental and non-governmental organisations towards the establishment and adoption of common international standards and criteria for recognition*”.⁵⁴

The Institute of Chartered Accountants of India (**ICAI**) has already liberalised the accountancy services in India. ICAI, a statutory professional body like that BCI, has entered into many reciprocal agreements through MRA. The reciprocal arrangements have been made with the respective professional bodies of each country. These arrangements are usually followed with “qualification agreement” i.e. the bodies negotiate and decide upon what all qualifications foreign nationals need or the additional exams which need to be cleared to practice in the

⁴⁹ Building the ASEAN Community, *Mutual Recognition Arrangements in Services Move* <https://www.asean.org/storage/images/2015/October/outreach-document/Edited%20MRA%20Services-2.pdf>.

⁵⁰ *Ibid.*

⁵¹ Catherine Bernard, *A Changing EU* (UK in a changing Europe, May 18, 2020), <https://ukandeu.ac.uk/explainers/mutual-recognition-agreements-mras-all-you-need-to-know/>.

⁵² Article VII(1), GATS.

⁵³ Article VII(3), *Ibid.*

⁵⁴ Article VII(5), *Ibid.*

foreign country. An example of such a reciprocity agreement is the reciprocity agreement between ICAI and the Institute of Chartered Accountants in England & Wales (**ICAEW**).⁵⁵ It could be seen how the qualification agreement has been drafted. The ICAI has recognised the exams passed under ICAEW and along with that, it has a requirement of certain additional subjects to be read and tested upon.⁵⁶ The same approach can be taken by BCI. The BCI can enter into such reciprocal MoUs and allow foreign nationals to practice in India after they qualify certain exams as the BCI deems fit.

If BCI decides to sign an MRA with a particular country to liberalise the legal sector, it has to consider a few things. Unlike as in accountancy service, the WTO has not laid down any framework for an MRA in the legal sector; hence the report relies upon the recommendation of the International Bar Association (**IBA**) on the same. IBA in its 2001 report, “Standards and Criteria for Recognition of the Professional Qualifications of Lawyers” has laid down certain items which need to be scrutinised while framing an MRA for the legal sector.

4.1 Laying counters to potential Indian regime for the Regulation of Foreign Legal Services

While allowing foreign lawyers into India, a clear landscape of the domestic rules and regulation is essential. Along with it, it is also essential to have a definitive body to regulate these foreign law firms who are willing to come to India and practice. At present there is no law to regulate the new entrants into the market. Therefore, India has to first create the required legislative and administrative necessities in order to have a smooth execution of the MRA. Apart from the new rules and obligations which will be required to be complied with, the following are the regulatory compliance requirements which are already present and a foreign law firm has to comply with. The following are the restrictions and limitations which foreign lawyers and foreign law firms might face:

4.1.1 Conditions on Market Entry of Foreign Legal Professionals

Market entry conditions depict the various restrictions imposed upon a foreign service provider while entering into the domestic market of the host country. These restrictions are mentioned in the schedule of commitments of each country in GATS. In this report, the various commitments which India has committed to in the schedules of commitments have been simplified into following simple points:

1. Establishment of joint venture with a foreign firm is not allowed.⁵⁷
2. There are many restrictions on cross-border mergers and acquisitions like a foreign company needs the prior approval of the Reserve Bank of India to merge into a company registered under the Companies Act, 2013.

⁵⁵ Institute of Chartered Accountants of India, Mutual Recognition Agreement with The Institute of Chartered Accountants in England and Wales (Oct. 2, 2019) https://www.icaai.org/post.html?post_id=16369.

⁵⁶ *Ibid.*

⁵⁷ Part VI, Chapter III, No. 2, BCI Rules.

A registered Foreign Portfolio Investor (**RFPI**) may purchase shares or convertible debentures of an Indian company under the Foreign Portfolio Investment (**FPI**) Scheme subject to the terms and conditions specified in Schedule 2A and the limits and margin requirements prescribed by RBI/ SEBI.⁵⁸ This requirement is essential because as per the recommendations, one of the ways in which foreign law firms can operate in India is through forming joint ventures with Indian law firms or through an LLP. Such situations are considered foreign investment and are covered under Foreign Exchange Management Act, 1999. Therefore, an investor (in this situation a foreign law firm) has to oblige with the requirements mentioned in Schedule 2A and new guidelines given by RBI / SEBI from time to time.

3. Indian advocates are not permitted to enter into profit sharing arrangements with the persons other than Indian advocates." This restricts non-licensed individuals to invest in legal services providing company in India.⁵⁹

4.1.2 Conditions on Operation of Foreign Legal Professionals

- 1 Majority of members in the Board of Director should be Indian nationals. Every company shall have at least one director who has stayed in India for a total period of not less than one hundred and eighty-two days in the previous calendar year.⁶⁰
- 2 All partners should be qualified to practise the law of the land. This is a requirement under the GATS schedule of commitment. Only Indians are allowed to practice law in India at the present. Hence, all partners should be Indian nationals as per the current regulation.

4.1.3 Education and Practical Training

This is a tricky aspect to be maneuvered because of lack of harmonisation of the education structure of the two contracting countries. This becomes extremely essential if Mode 1 is implemented in which foreign lawyers will come to India and practice. While trying to create a harmonised standard, the following aspects have to be taken note of – the duration of the educational degree, the number of years of experience the expectant entrant already has in the field, the level of similarity between the legal systems of India and the legal system of the applicant's country.

4.1.4 Suggestions for the Regulation of Foreign Legal Professionals

These are a few suggestions as to the subjects which can be included in the new law:

- Establishing a regulatory body to govern these new entrants. Along with that, it will be desirable to chalk out the kind of relationship the foreign lawyers and law firm will have with the regulatory body.

⁵⁸ Regulations No. 5 and Schedule I, Foreign Exchange Management (Transfer or issue of security by a person resident outside India) Regulations, 2000.

⁵⁹ Section 29 & Section 33, Chapter IV, The Advocates Act 1961.

⁶⁰ Section 149, Chapter XI, The Companies Act, 2013.

- The process in which license is to be granted to the applicant person or the applicant firm. It must also set out in detail the rights and obligations which a license holder will have.
- Delineation in clear terms the areas of law in which the foreign lawyers and law firms will be allowed to practice and advice on and the areas where they will be restricted.
- Clearly stating out the circumstances in which a legal or disciplinary action can be taken against any law firm or the employers or he employees
- The different corporate arrangements which the foreign law firms can resort to establish their offices.

4.2 Role of BCI in the administration and supervision of the Foreign Legal Services in India

BCI is one of the of statutorily established professional bodies⁶¹ along with ICAI, Institute of Company Secretaries of India⁶² (**ICSI**) and Indian Medical Commission⁶³ (**IMC**) (replaced Medical Council of India). These statutorily established professional bodies have the power to sign MRAs with their counterparts.

There are a few countries with whom BCI has signed Memorandums of Understanding for greater legal cooperation. These following countries have expressed interest, through inking MoU with BCI, for their citizens to work in the legal sector of India and can be considered to sign a reciprocal agreement through MRA.

1. **United Kingdom**⁶⁴ - The Law Society, Bar Council of England and Wales, and the Bar Council of India signed MoU for cooperation between lawyers of both jurisdictions. In the MoU, both the countries also expressed interest to work in each other's jurisdiction. This MoU, signed in 2018, is a step towards opening the legal sector in India.
2. **Australia**⁶⁵ - The Law Council of Australia had expressed interest for greater co-operation between the lawyers of both the jurisdictions and wanted to venture into the India markets. The MoU states that the Bar Council of India and the Law Council of Australia will commence ongoing and effective dialogue with the following objectives:
 - cross promotion of meetings and exchange of information regarding current issues of international significance;⁶⁶

⁶¹ Section 4, The Advocates Act, 1961.

⁶² The Company Secretaries Act, 1980.

⁶³ National Medical Commission Act, 2019.

⁶⁴ Pallavi Saluja, *Slowly but surely? MoU between UK and Indian Bar Councils in the works* (Bar and Bench, 16 Nov. 2015) <https://www.barandbench.com/news/slowly-but-surely-mou-between-uk-and-indian-bar-councils-in-the-works>.

⁶⁵ Stefanie Garber, *Aussie lawyers one step closer to India* (Lawyers Weekly, Sept 13, 2015) <https://www.lawyersweekly.com.au/news/17143-aussie-lawyers-one-step-closer-to-india>.

⁶⁶ *BCI inks MoU for cooperation between Law Council of Australia, signs partnership agreement*, The Bar Council of India (June 16, 2010), <http://www.barcouncilofindia.org/bci-inks-mou-for-cooperation-with-law-council-of-australia/>.

- the issuing of invitations to, and the provision of an opportunity to participate in meetings, workshops, seminars and conferences in either jurisdiction which may be of benefit to the other;⁶⁷
- the issuing of invitations to the president of either organisation, and the presidents of the Bar Council of India and the Law Council of Australia to attend meetings of relevance;⁶⁸
- the identification of suitable joint projects and policy initiatives and their implementation.⁶⁹

Post the MoU, a partnership agreement was signed between the countries as well. In the agreement, both the countries expressly agreed for exchange of legal professionals between both the jurisdiction.⁷⁰

3. **EU, Australia, Singapore, Japan, China, Switzerland, New Zealand and Brazil** –These countries have also requested that India show its commitment to its obligations under the GATS.⁷¹ These countries have not signed an MoU but have expressed interest to work in Indian legal sector. These requests have also been reflected in the process of plurilateral requests which are mostly for Foreign Legal Consultant's in only corporate and international law. There is no such request to practice domestic law in Indian courts.⁷² 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 certain terms and conditions.

4.3 Process of Signing an MRA

The process to sign an MRA includes the following steps:

- Step 1: Internal Consultations among Indian stakeholders & Negotiations of the MRA with foreign counterpart

The negotiations have to be done with the various stakeholders (here the BCI, SILF). As per the Revised Standard Operating Procedure on the Conclusion of International Treaties in India (**SOP**), administrative division of concerned Ministry, on preparation of draft text of the treaty, in consultation with other stake holders, submits the same with the approval of the Minister concerned to the Ministry of External Affairs (Legal and Treaties Division) for vetting before it

⁶⁷ *Ibid.*

⁶⁸ *Ibid.*

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*

⁷¹ Amal Kumar Ganguli, *Overview of the Legal Profession in India*, International Association of Lawyers, <https://www.uianet.org/en/actions/overview-legal-profession-india>.

⁷² *A Consultation Paper On Legal Services Under GATS* (Trade Policy Division, Department of Commerce, Govt of India) <http://commerce.nic.in/trade/consultation-paper-legal-services-GATS.pdf>.

is sent to the other country for consideration, through diplomatic channels. Here the concerned Ministry is Union Ministry of Law and Justice.⁷³

ii. Step 2: Approval of the MRA by the India Union Cabinet

At the second step of preparing an MRA, the prepared draft has to be approved by the Union Cabinet because as per Second Schedule to the Government of India (Transaction of Business) Rules, 1961, the approval of the Cabinet is imperative for all treaties (which include conventions, agreements, MoUs, MoCs, MoAs & protocols etc.) to be signed with any foreign agency/country.⁷⁴ After obtaining the necessary approvals, as indicated above, the text of treaty/agreement may formally be signed and concluded with foreign governments and foreign agencies. The structure and format of the MoU has been provided in the SOP of 2017.

4.4 Assessment of the viability of the liberalization through the MRA route

The route of MRA is a viable option to start the liberalisation process with. At this stage, the following are the advantages and disadvantages.

4.4.1 Advantages of Liberalization through MRA

- 1 The MRAs allows the various bodies involved in it to save a lot of time and resources to save time and resources by working together with a more effective division of labour.
- 2 It will help people from both the sides to disseminate information and best practices of both the jurisdiction.
- 3 Lastly, the very prospect of having to negotiate MRAs can constitute a stimulus for internal regulatory reform and the necessary adaptation of the professions to changing economic and social environments.⁷⁵

4.4.2 Disadvantages of Liberalization through MRA

1. The biggest disadvantage of this route is that the humungous task of harmonisation of two complex education systems is required.
2. Often there is fear on the part of government regulators and professional bodies that mutual recognition may lead to a lowering of professional standards. This is because it might allow entry of professionals trained below the standards of the host country if the harmonisation does not happen duly to create apt standards.⁷⁶

⁷³ Letter to Ministry of External Affairs concerning 'Revision of Standard Operating Procedures' with respect to MOUs/Agreement with Foreign Countries (29 Aug. 2017) <http://mea.gov.in/images/SOP-forwarding-letter-to-Ministries-with-revised-SOPs.pdf>.

⁷⁴ Government of India *Cabinet Secretariat Handbook on writing Cabinet Notes* para 34-35 (Government of India, 15 Apr. 2018), https://cabsec.gov.in/writereaddata/handbook/english/1_Upload_1409.pdf.

⁷⁵ *Supra note* 18.

⁷⁶ *Ibid.*

Chapter 4: A Bird's eye view

Reciprocity is an important route for liberalization. Keeping in mind the requirement imposed by Section 47 of Advocates Act and referring to the liberalisation process followed by ICAI in accountancy sector, one of the viable ways to liberalise the legal market would be to sign Mutual Recognition Agreements on the basis of reciprocity. Before signing an MRA, certain changes have to be done to the already existing regulatory landscape of India like creating a body to deal with foreign law firms, charting the rights and obligations of foreign entrants etc. Countries like the UK, Australia, Singapore etc. have expressed interest to work in the Indian legal sector and these countries can be considered for signing MRAs with. This route has many advantages as the best practices of other countries can be learnt and incorporated in India, it would help save time and resources, moreover it is GATS compliant. Though MRA is a viable option with many advantages, yet it has certain shortcomings like the colossal task of harmonising two complex education systems and the fear of regulating bodies that it might dissipate the quality of the existing legal practice.

5. Regulation of Foreign Lawyers and Foreign Firms in India: Identifying the Future Roadmap

With the advent of globalization, the legal services involving interpretation of multi-jurisdictional laws have become indispensable. The assessment of regulation of the foreign legal services in other jurisdiction such as France, Malaysia, United Kingdom and Singapore and their relevance and importance in laying down the future road for India for the administration of the foreign legal profession. Liberalisation of the legal market has been done by many other nations, either through GATS or through MRAs or through autonomous liberalisation. The suggestions also take into account based on the draft The Bar Council of India (Registration and Regulation of Foreign Legal Consultants and Registered Foreign Law Firms in India) Rules, 2016 (**Draft BCI Rules, 2016**). This comparative analysis becomes relevance if India liberalizes its foreign legal services through GATS or autonomously, or through MRA. If India decides to liberalise via GATS or autonomously, it shall have a number of different alternatives which have already been tested to choose for the Indian draft framework. If India proceeds with MRAs as discussed in previous sections, this data can be useful in knowing about the current regulatory bottlenecks that Indian law firms and lawyers face in these foreign jurisdictions and what further needs to be negotiated with the countries in this regard. The analysis in this part also takes into account the views Mr. Lalit Bhasin, President of the Society of Indian Law Firms concerning the market access for foreign legal services.

The analysis takes into different stances have been taken by the countries in allowing domestic lawyers to be employed in foreign law firms. Countries such as France have completely prohibited the employment of domestic lawyers by foreign law firms. On the other hand, UK and Singapore have permitted foreign firms to employ domestic lawyers. Malaysia has not only allowed domestic lawyers to work in foreign firms but also required these foreign law firms to have a minimum of 30% of the total number of lawyers in the firm to be domestic lawyers. Additionally, Malaysia also requires that the number of foreign lawyers employed by a Malaysian law firm shall not be more than 30% of the total number of lawyers in that firm. Moreover, countries such as France, Singapore and United Kingdom have been a popular choice for lawyers and law firms from India to conduct and expand their client base.

In Singapore, there are already various foreign firms present given the supportive environment that it provides for foreign lawyers and law firms. In fact, in March 2021, Khaitan & Co. and Cyril Amarchand Mangaldas opened their first foreign offices in Singapore.⁷⁷

⁷⁷ *Khaitan & Co to open new office in Singapore* (13 March 2021), <https://www.khaitanco.com/sites/default/files/2021-03/Press-Release-Khaitan-&Co-to-open-a-new-office-in-Singapore-New.pdf>; *Cyril Amarchand to open representative office in Singapore* (Legally India, 27 January 2021) <https://www.legallyindia.com/lawfirms/cyril-amarchand-to-open-representative-office-in-singapore-despite-recent-lack-of-action-from-rivals-20210128-11909>

The United Kingdom has long been an ideal location for Indian law firms and lawyers given the amount of business that goes on between the two countries and also because London has long been a global commercial hotspot. For this reason, a lot of talent drain has also taken place as many London law firms such as Linklaters LLP, Allen and Overy LLP and Herbert Smith Freehills LLP regularly recruit talent from India to set up Indian desks in London to manage the huge amount of transactions that take place with respect to India. According to the International Bar Association, there are over 60 foreign firms in France, mostly based in Paris and including US, UK, German, Spanish, Canadian, Indian and others.⁷⁸ The following provides comparative analysis of each factor concerned with liberalization:

5.1 Licensing Requirements

Registration and licensing are one of the very first requirements that come into picture when the question of allowing foreign law firms and foreign lawyers arises. Licensing helps one identify whether the applicant is qualifying all the requisite criteria to be able to be given the status of an advisor in India. It is essential for the functioning of the legal fraternity as well as the customers and clients that licensing be made mandatory especially for foreign firms and lawyers such as the dignity of the legal profession in India and the safeguards accorded to the customers in India are protected. Currently, India even lacks a regulatory body which could govern the domestic law firms and their registration.

Draft BCI Rules Chapter II	Stakeholder's Concerns
<p>According to the draft, it is mandatory of foreign lawyers and foreign law firms to get themselves registered with the BCI. Only post registration, they are to be permitted practice of law in India.</p> <p>The requirements for registration majorly focus on:</p> <ol style="list-style-type: none"> 1. That the applicant should have the requisite primary education in the foreign country to practice legal service and has in fact been in active practice in that foreign country; 2. That the applicant's country should maintain reciprocity of the same quality and level that is being offered to the applicant in India; and 3. That there is no objection of any manner (either disciplinary or offence related) from the foreign country, BCI or the Government of India.⁷⁹ 	<p>There is consensus amongst the stakeholders and the government that there is need for a proper registration and licensing mechanism which would allow the BCI and the government (or any other regulatory body) to decide whether a particular foreign lawyer/law firm, or a foreign lawyer/law firm from a particular country can be allowed to practice law in India.</p>

⁷⁸ *France International Trade in Legal Services*, INTERNATIONAL BAR ASSOCIATION (verified by Confederation Nationale des Barreaux (CNB)) https://www.ibanet.org/PPID/Constituent/Bar_Issues_Commission/ITILS_France.

⁷⁹ Chapter II, (Draft) The Bar Council of India (Registration and Regulation of Foreign Legal Consultants and Registered Foreign Law Firms in India) Rules, 2016 (**Draft BCI Rules, 2016**).

SUGGESTION

There is consensus that there is a strong regulatory body that can regulate and provide licenses to foreign law firms and foreign lawyers in India. However, as of now, there is no such body. BCI only regulated lawyers. Therefore, the very first step towards liberalising Indian legal market has to be the establishment of regulatory bodies that can govern domestic as well as foreign lawyers and law firms, without which it is impossible to have the much-needed licensing procedure in India.

The three broad factors chosen by the government for licensing i.e. professional and academic qualification, reciprocity (that is, similar facilitative conditions for Indian lawyers in foreign lawyer's country), and professional and civil conduct are comprehensive to judge if a person can be allowed to practice in India. It is important to have reciprocity as a parameter because it helps us negotiate access for our domestic talent in foreign countries. There have been certain countries, such as Singapore and UK, which have largely liberalised their legal sectors irrespective of whether there is any reciprocity. When foreign lawyers/law firms are allowed to find employment in India, it must be ensured that Indians have the same set of rights abroad (if nothing else, to make up for the loss of employment due to foreign access). While it is necessary to retain it, India might take a flexible position as to the exact conditions prevalent in foreign countries for Indian lawyers/law firms. This should apply for both foreign lawyers and foreign law firms.

5.2 Practice Areas

Countries often only open up limited practice areas to foreign lawyers and foreign firms. In some jurisdictions practice in areas such as criminal law, family law, administrative law is absolutely prohibited, whereas in some jurisdictions if a foreign lawyer or firm wishes to practice in these areas then they must fulfil certain requirements such as either partnering with a domestic law firm or engaging a domestic lawyer as far as the restricted practice areas are concerned. These are laws that are unique to each country given their sociological and societal composition and development and are hence best left to the domestic lawyers. Ideally, it would be best to liberalise the Indian legal service market only with respect to the commercial laws in the first phase. Further liberalisation can be done with respect to other practice areas in second or third phase only if it is beneficial.

Draft BCI Rules, 2016 Chapter IV – Clause 8	Stakeholder's Concerns
<p>The draft Rules suggest that for the non-litigious <i>practice of law</i> in India by foreign lawyers.</p> <p>In the following sub-clauses, they do highlight their intention of restricting the practice areas of lawyers to only those that</p>	<p>Their concern is that practice of law should be explicitly defined to only include practice of foreign or international law, and not domestic law.</p> <p>However, this concern is not an issue in so much so that one can decipher that the Rules</p>

involve either a foreign or an international element. Their language shows an indication that they wish to exclude domestic law from their scope of practice. The same has been drafted for foreign firms as well. ⁸⁰	intend to include practice of foreign or international law only and any other indication might just be an error in drafting.
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SUGGESTION
<p>In <i>Lawyers Collective v. Bar Council of India</i>⁸¹, it was held that “practice of law” would include both litigious as well as non-litigious service. Therefore, it is important that India does not open the entire “practice of law” to the foreign lawyers or foreign law firms but only non-litigious service.</p> <p>Moreover, the non-litigious practice of law needs to be restricted only to foreign law or international law. They should not be allowed non-litigious practice of law in domestic law as it might lead to erosion of a substantial client base of Indian lawyers and law firms. Even if they are to be allowed practice in certain transactional domestic laws, it should only be done at mature stages of liberalisation when the domestic firms have reached a platform to compete with their foreign counterparts directly.</p> <p>The same has been done in most jurisdictions, with some jurisdictions now allowing practice in certain domestic laws on fulfilment of certain criteria. However, most of these are in their mature stages of liberalisation.</p>

5.3 Prior Experience Requirements

Different jurisdictions often put in place different prior experience requirements before they allow any foreign lawyer or law firm to practice in their country. This is done to ensure that the foreign entities will actually be able to give credible advice to the clients in that jurisdiction. It also often makes up for the lack of trust or reliance when it comes to the credibility of educational institutions in some other foreign jurisdictions.

However, one way around this is to set up bilateral or regional relations where countries do away with the requirement of prior experience if the foreign lawyers or law firms belong to certain countries. For example, in UK as well there is no prior experience requirement for foreign lawyers. The only requirement is that they must be from a recognised jurisdiction. India is a recognised jurisdiction for this purpose.⁸²

Draft BCI Rules Chapter II	Stakeholder’s Concerns
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⁸⁰ Chapter IV – Clause 8, Draft BCI Rules, 2016.

⁸¹ *Supra note 45*.

⁸² Recognised Jurisdictions, SOLICITORS REGULATION AUTHORITY (August 2019) SRA | List of recognised jurisdictions and qualified lawyers | Solicitors Regulation Authority.

<p>The draft Rules explicitly provide for a prior experience requirement in Chapter II that deals with registration and licensing requirements of the foreign law firms or foreign lawyers.</p> <p>However, the requirements are very vague and do not specify any quantum of experience or level of education required.⁸³</p>	<p>The stakeholders are also of the view that it is essential to have a minimum experience requirement for the registration of foreign lawyers/law firms in their home country.</p>
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SUGGESTION

It is necessary to have specific and well-defined prior experience requirement. Now this issue can be approached in two ways:

1. There is a standard minimum experience requirement for all foreign nationals are required to a minimum number of years as prior experience; or
2. The prior experience requirement is imposed on foreign lawyers or foreign law firms based on their home country.

The second type of arrangement is used by the UK where there is no prior experience requirement for foreign lawyers if they are from a “recognised jurisdiction”. If India opts for an MRA, then the question of recognised jurisdiction would not arise as the contracting country is itself the jurisdiction recognised for India.

But if there is a full-fledged liberalization, these recognised jurisdictions may be decided by the BCI and Government of India after taking into account a number of factors such as the quality of legal service provided in those countries, the regulatory checks to ensure quality of legal service in those countries by those foreign lawyers/law firms, the quality of legal education imparted in those countries etc. This will also make up for the lack of trust or reliance when it comes to the credibility of educational institutions in some other foreign jurisdictions. In cases where there is lack of trust, the minimum experience requirement will be applicable.

5.4 Employment Requirements

Employment requirements refer to the obligations or restrictions imposed on a foreign lawyer or foreign law firm in terms of employment of foreign lawyers and domestic lawyers. This is regulated in both aspects, that is; one, employment of domestic lawyers by foreign lawyers and foreign law firms, and two, employment of foreign lawyers by domestic lawyers and domestic law firms. Employment requirements have often been given due consideration by the jurisdictions because it helps them regulate the workforce in the country.

⁸³ Chapter II, Draft BCI Rules, 2016.

Where there has been a dearth of talent in the country and regulators have felt that allowing foreign firms to recruit domestic lawyers may result in domestic firms losing out on talent, they have placed restrictions on recruitment by foreign firms and foreign lawyers. On the other hand, where there has been a need to increase employment of the domestic lawyers, regulators have allowed foreign firms to recruit from the domestic market, and in some cases even made it mandatory to recruit a percentage of their total workforce from the domestic market. Similar considerations are also present in case of allowing or preventing domestic firms or domestic lawyers from hiring foreign lawyers.

Draft BCI Rules Chapter IV – Clause 8	Stakeholder’s Concerns
Foreign lawyers or law firms are allowed to employ Indian lawyers, Indian-registered foreign lawyers as well as enter into partnerships with Indian lawyers or law firms. Domestic lawyers or law firms are also permitted to hire foreign lawyers. ⁸⁴	There are two primary concerns that the stakeholder’s have in this regard: <ol style="list-style-type: none"> 1. That there may be lack of employment opportunities for Indian lawyers in case foreign firms/lawyers only hire foreign lawyers and, moreover, domestic law firms/lawyers also start hiring foreign lawyers for their foreign/international expertise; and 2. That foreign lawyers/ law firms might hire domestic lawyers/law firms in order to bypass the restriction imposed on them for not practicing domestic law.

SUGGESTION
<p>It is fair and beneficial to allow domestic and foreign lawyers or law firms to employ one another or to enter into partnerships with one another because it will be instrumental in exchange of culture and professional conduct between the two which shall be helpful in bringing the two at par in the Indian market. However, the concerns voiced by the stakeholder’s are also valid and therefore the following approach may be considered:</p> <ol style="list-style-type: none"> 1. There must be a minimum percentage (say 30%) of domestic lawyers out of the total workforce that the foreign firms must employ in order to ensure that the Indian graduates also benefit from this liberalisation and are not left unemployed. Malaysia has also opted for a similar framework. Moreover, if need be, restriction can also be imposed on Indian firms as well in terms of the maximum limit for recruitment of foreign lawyers in domestic firms. 2. There needs to be a blanket provision that prohibits foreign law firms or foreign lawyers from practicing in domestic law even if they recruit domestic lawyers or partner with domestic lawyers/law firms. This is to ensure that, at least in the initial stages of liberalisation, the foreign firms or lawyers don’t take away the Indian firms or lawyers’ clients before they have had a chance to become competitive.

⁸⁴ Chapter IV - Clause 8, Draft BCI Rules, 2016.

5.5 Corporate Forms a Firm Can Take

Jurisdictions differ in the manner in which they chose to regulate the corporate forms that a firm can take. A firm may take multiple options into consideration when setting itself up as a particular corporate form; and the regulators must decide which of these options it may provide to the law firms. Following are some of the factors that law firms take into consideration when setting up as a particular corporate form:

1. Whether the firm wishes to establish itself as an independent foreign entity or whether it wishes to enter into a partnership with any of the domestic firms;
2. Whether the firm wishes to practice in those practice areas that are otherwise prohibited to foreign law firms; or
3. Whether the partners decide to restrict their personal liabilities.

Draft BCI Rules, 2016 Chapter IV – Clause 9	Stakeholder’s Concerns
<p>The draft Rules do allow the foreign lawyers to set up firms and establish partnerships. However, there is no explicit categorisation of what forms/structures these firms could. This categorization might be helpful in regulating the law firms. Kindly refer to Annexure A (Regulation of Foreign Firms in Other Jurisdictions) to have a look at various categorizations made by certain countries to regulate the law firms in their country.⁸⁵</p>	<p>The primary concern with the stakeholders is that they are concerned that the foreign firms will get involved in “surrogacy practices” with the domestic firms. This means that the foreign firms will practice domestic law by entering into “surrogate” relations with domestic firms and the domestic firms will only be a surrogate for the foreign firm’s domestic activities.</p> <p>They also are of the view that foreign firms should not be allowed to open multiple branches in India at the same time, as this might severely affect those domestic firms that are unable to match the speed of expansion of other firms.</p>

SUGGESTION
<p>If the Indian firms and lawyers are to be provided a secure and exclusive environment to practice domestic law, then they must be safeguarded against any such indirect methods such as “surrogate relations”. SILF in its report to the BCI on the draft Rules had suggested a</p>

⁸⁵ Chapter IV – Clause 9, Draft BCI Rules, 2016.

method to curb this where they made reference to China’s regulatory mechanism of such activities.⁸⁶ It will be pertinent for India to have its own such regulatory mechanism where it ensures that no fair opportunity is being taken away from the Indian law firms and lawyers.

It also seems fair to consider the contention that certain limits may be placed on the number of foreign firms that will be allowed into India during the initial years of liberalisation, and also how many offices they are allowed to open or how many lawyers they are allowed to employ.

Apart from the stakeholder’s concerns, it may also be important to consider the question of what structures would be allowed for the law firms. It is still unclear in India as to whether law firms are able to use LLP structures. Therefore, reliance can be made to Annexure A (Regulation of Foreign Firms in Other Jurisdictions) to have a look at various categorizations made by certain countries to regulate the law firms in their country. However, this is a decision that the BCI and the respective regulators will together have to make.

5.6 Appearance before Courts and Tribunals

Appearance before courts is perhaps the most contentious issue when it comes to liberalising the Indian market. There is a strong feeling amongst the litigators (or those who practice in courts) that if the foreign lawyers and law firms are permitted to practice in India, they stand to lose their clients and thereby lose their earnings. This concern primarily arises from the misconception widely present amongst the Indian lawyers that permission to practice law in India includes all aspects of legal practice i.e. advising, consulting, preparing agreements and documents, negotiating as well as appearing in courts on behalf of the Indian clients. This is a misconception as it is not necessary that liberalisation will lead to all facets of legal practice being made available to the foreign lawyers; it is entirely upto India if it only chooses to liberalise the transaction-related work of legal service and not the litigation work which required appearances before courts and tribunals.

Draft BCI Rules Chapter II	Stakeholder’s Concerns
<p>The draft Rules suggest that for the non-litigious practice of law in India by foreign lawyers, they must be <i>deemed to be advocates</i> under Section 29, 30 and 33 of the Advocates Act, 1961.</p> <p>However, from the language of the text, one can interpret that their intention is to not</p>	<p>They agree that foreign lawyers or law firms should not be allowed access to courts or tribunals.</p> <p>However, they are of the view that foreign lawyers should not be “deemed to be advocates” since that would be misleading as to their scope of practice.</p>

⁸⁶ *Liberalisation: SILF submits 52-page vision about how legal market should open in phases*, (Legally India, 24 August 2016) <https://www.legallyindia.com/law-firms/liberalisation-silf-submits-52-page-vision-about-how-legal-market-should-open-in-phases-20160824-7920>.

allow the foreign lawyers or law firms to practice before courts or tribunals. ⁸⁷	
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SUGGESTION
<p>One of the main concerns that existed with the Indian lawyers is that they would lose their briefs and clients in litigation if these foreign lawyers and foreign firms came to India and started practicing in courts or tribunals. Therefore, we believe this a step in the right direction.</p> <p>It would not be proper to register foreign lawyers as “deemed to advocates” for two primary reasons:</p> <ol style="list-style-type: none"> 1. That the terminology suggests that they may be allowed to practice in Courts or Tribunals since only advocates are allowed to do that in India; and 2. More importantly, that it will become immensely difficult to regulate foreign lawyers unless they are given a separate category. In case there are regulations/requirements that are to be brought out specifically for foreign lawyers, then we need to have a separate category that can be regulated without any confusion or overlap. An ideal practice would be to bring them under the category of “Foreign Legal Professionals” – a category which might have its own requirements and regulations – as has been done by most nations.

5.7 Fly-in & Fly-out

Fly-in & fly-out has been the alternate for permitting foreign lawyers and law firms to practice in India. Fly-in & fly-out has been allowed in all of our chosen jurisdictions. The same practice has also been accepted in India following the Supreme Court’s ruling in *Bar Council of India v AK Balaji*.⁸⁸

Draft BCI Rules	Stakeholder’s Concerns
The draft Rules do not mention anything specific to fly-in & fly-out services.	There are no concerns regarding fly-in & fly-out services.

SUGGESTION
The current position of permitting fly-in & fly-out services for foreign lawyers and law firms is the best possible alternative in the absence of liberalisation. Its use may diminish once India decided to liberalise the legal sector, at least for those countries for which India will liberalise the sector.

Chapter 5: A bird’s eye view
<i>This part contains suggestions on various factors and concerns that must be taken into account for liberalisation of the Indian legal service market. These suggestions have been based on the basis of the only</i>

⁸⁷ Chapter II, Draft BCI Rules, 2016.

⁸⁸ *Supra note 43.*

draft regulation proposed in India for the regulation of foreign lawyers and law firms – The Bar Council of India (Registration and Regulation of Foreign Legal Consultants and Registered Foreign Law Firms in India) Rules, 2016 and also the concerns of the stakeholders that had been raised. While suggesting the solutions for India, reliance has been made to foreign jurisdictions as well to have a broader image of the global alternative approaches.

6. Conclusion

The discussion to liberalise the market for legal services in India has been brewing since the 1990s and the time has come to take steps to actualise the goal. To achieve this goal, we suggest the first step would be to usher in a series of much needed legal reform in the domestic legal market as discussed throughout the paper. At present the laws in India are insufficient on many levels to tackle and regulate the foreign lawyers and law firms who will enter India once liberalisation takes place. The authors have suggested a series of changes which can be made to lay appropriate ground- work for open legal markets in India and attempted to cover all the possible issues that were discussed by the BCI in its Rules and have further suggested certain other issues that might be of concern to the lawyers and law firms and has perhaps not been taken into account by the BCI. If any need be, the list can be expanded to take into account those issues as well. It is also advised that during the initial stages, the domestic industry may also be offered support by accommodating some of their other concerns such as the being granted the right to advertise the business and to be supported by a regulatory body that can actually license, regulate and support the law firm. The next step once the regulatory changes have been ushered in is to liberalise the market in a phased manner. For this step to be successful, we suggest establishment of a separate regulating body to deal with the foreign lawyers. We suggest that liberalisation through the route of signing MRA is the most appropriate option. MRAs are bilateral agreements and India would have control over the nationals of which country to allow into its territory. The authors have also mentioned the countries with which India can sign an MRA and have also suggested what the angles that can be covered in the MRA.

However, these suggestions are only with respect to the initial stages of liberalisation. As foreign lawyers and law firms are allowed into the market within a regulated environment, the dynamics of the industry will begin to change. As and when this happens, new inputs will be required from the regulators and the stakeholders to adopt the regulatory environment in accordance with future needs.

Annexure I: Regulation of Foreign Lawyers in Other Jurisdictions

UNITED KINGDOM (ENGLAND AND WALES)	FRANCE	SINGAPORE	MALAYSIA
PERMITTED PRACTICE AREAS			
Permitted to provide legal service in international law, foreign law and their home country law. ⁸⁹ They may also practice English law outside of the reserved areas.	Permitted to provide legal service in international law and their home country law. ⁹⁰	Foreign lawyers may practise foreign law, and Singapore law in the “permitted areas of legal practice” in a SLP, QFLP or JLV (if they pass a Foreign Practitioner Examination and obtain a Foreign Practitioner Certificate (FPC)). ⁹¹ In a FLP, a foreign-qualified lawyer who holds an FPC can practise foreign law, and Singapore law in the limited context of international commercial arbitration. ⁹²	Foreign lawyers employed by Malaysian law firms can only practise 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. ⁹³
FLY-IN & FLY-OUT			

⁸⁹ *United Kingdom (England and Wales) International Trade in Legal Services* (International Bar Association) https://www.ibanet.org/PPID/Constituent/Bar_Issues_Commission/ITILS_United_Kingdom_England_and_Wales.

⁹⁰ Sydney M. Cone III, *Foreign Lawyers in France and New York*, https://digitalcommons.nyls.edu/cgi/viewcontent.cgi?article=1629&context=fac_articles_chapters.

⁹¹ *Committee to Review the Regulatory Framework of the Singapore Legal Services Sector* Final Report (January 2014), <https://www.mlaw.gov.sg/files/Final-Report-of-the-Committee-to-Review-the-Reg-Framework-of-the-Spore-Legal-Sector.pdf/>.

⁹² *Ibid.*

⁹³ *Guidance Note for Applicants* | Qualified Foreign Law Firm, [https://www.malaysianbar.org.my/cms/upload_files/document/Guidance%20Notes%20for%20QFLF%20\(Updated%202022%20July%202020\).pdf](https://www.malaysianbar.org.my/cms/upload_files/document/Guidance%20Notes%20for%20QFLF%20(Updated%202022%20July%202020).pdf).

UNITED KINGDOM (ENGLAND AND WALES)	FRANCE	SINGAPORE	MALAYSIA
Fly-in and fly-out is permitted, however, the law suggests that a foreign lawyer should register with the Chamber of Advocates. ⁹⁴	Fly-in fly-out practice is only allowed for nationals of States which have concluded bilateral conventions with France covering this issue. ⁹⁵	Permitted. No special licenses are required for fly-in fly-out. ⁹⁶	Permitted. ⁹⁷
APPEARANCE BEFORE COURTS			
Foreign lawyers may apply for temporary call to the Bar (via the Bar Standards Board) in order to conduct a specific case (or cases) in England and Wales. ⁹⁸	Foreign lawyers are not permitted to make appearance before courts or tribunals. ⁹⁹ However, EEA lawyers who practice in France on a temporary basis may appear in civil courts subject to certain conditions.	Foreign lawyers cannot appear in any court of justice in Singapore unless they have been granted ad hoc admission. ¹⁰⁰	Not permitted under any circumstance.
LICENSING REQUIREMENTS			
There is no requirement for a foreign lawyer to obtain a license to	No requirements are formally laid down but registration is	Foreign lawyers need to pass a Foreign Practitioner Examination and obtain a	All individual foreign lawyers working in an International

⁹⁴ *Registered Foreign Lawyers* (Solicitors Regulation Authority), <https://www.sra.org.uk/solicitors/guidance/registered-foreign-lawyers/>.

⁹⁵ *France International Trade in Legal Services*, *Supra note 78*.

⁹⁶ *Singapore International Trade in Legal Services* (International Bar Association) https://www.ibanet.org/PPID/Constituent/Bar_Issues_Commission/ITILS-Singapore.

⁹⁷ Section 37A, Legal Profession Act, 1976 added by Legal Profession Amendment Act, 2013.

⁹⁸ *The Bar Qualification Manual*, Bar Standards Board, <https://www.barstandardsboard.org.uk/training-qualification/bar-qualification-manual-new.html?part=D0B58626-F6F3-4586-9948AE3451179488&q=>.

⁹⁹ *Supra note 95*.

¹⁰⁰ Section 15, Legal Profession Act, 2009.

UNITED KINGDOM (ENGLAND AND WALES)	FRANCE	SINGAPORE	MALAYSIA
<p>practice as a foreign legal consultant.¹⁰¹</p> <p>Foreign lawyers who wish to enter into partnership with English solicitors must then register as Registered Foreign Lawyers.¹⁰²</p>	<p>dependent on each local bar. Hence, the requirements may differ from bar to bar.</p>	<p>Foreign Practitioner Certificate (FPC).</p>	<p>Partnership, QFLF or Malaysian law firm will have to register as a foreign lawyer. Registrations are granted subject to terms and conditions and will have to be renewed annually.</p> <p>Foreign lawyers will also have to show that they have the relevant legal expertise and experience in the permitted practice areas.</p>

¹⁰¹ Section 89, Courts and Legal Services Act, 1990.

¹⁰² *Ibid.*

Annexure II: Regulation of Foreign Law Firms in Other Jurisdictions

UNITED KINGDOM (BRITAIN AND WALES)	FRANCE	SINGAPORE	MALAYSIA
PERMITTED PRACTICE AREAS			
<p>Permitted to provide legal service in international law, foreign law and their home country law.¹⁰³ They may also practice English law outside of the reserved areas.¹⁰⁴</p> <p>If wanting to practice in reserved areas, it shall register itself as a recognised body with the Solicitors Regulation Authority, or as an Alternative Business Structure.</p>	<p>Foreign law firms are permitted to provide legal service in international law and their home country law.</p>	<p>The scope of practice that a foreign law entity is allowed to undertake depends on the licence it obtains, such as:</p> <p>A Foreign Law Practice (FLP) with an FLP licence may only practise foreign law.¹⁰⁵</p> <p>A FLP with a Qualifying Foreign Law Practice (QFLP) licence may, in addition to foreign law, practise Singapore law in “permitted areas of legal practice” through hiring Singapore lawyers with Practising Certificates or foreign lawyers who hold the Foreign Practitioner Certificate (FPC).¹⁰⁶</p>	<p>International Partnerships and QFLFs can only practise 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>In the case of a QFLF, the Malaysian Bar has stated that there should be a proviso that such aspect of work regulated by Malaysian law shall be undertaken in conjunction with one or more advocates and solicitors of the High Court of Malaya holding a valid and subsisting Practising Certificate.</p>

¹⁰³ *Supra note* 89.

¹⁰⁴ *Ibid.*

¹⁰⁵ See generally Part IV-A, The Legal Profession (Amendment) Act, 2012.

¹⁰⁶ *Ibid.*

UNITED KINGDOM (BRITAIN AND WALES)	FRANCE	SINGAPORE	MALAYSIA
		<p>A JLV (which is an entity jointly established between a FLP and SLP) can offer legal services covering foreign law as well as Singapore law in the “permitted areas of legal practice”.¹⁰⁷ Only Singapore lawyers with Practising Certificates or foreign lawyers who hold the FPC may practise in the “permitted areas” of Singapore law.¹⁰⁸</p> <p>The FLP and SLP in an FLA may only provide legal services that the respective firm and their lawyers are competent to provide.¹⁰⁹</p>	
CORPORATE FORMS			
There is no restriction on the corporate form a law firm may take, unless that foreign law firm wishes to become licensed to undertake reserved English law work. ¹¹⁰	Foreign lawyers established in France may work under any of the legal forms provided for in Articles 7 and 8 of the Act 71-1130 of December 31, 1971.	Foreign law firms may choose to set up an office in Singapore using any of the regulatory requirements governing each structure are set out in the LPA and LPIS Rules. ¹¹²	Under Part IVA of the Legal Profession Act, licences may be issued to foreign law firms to operate either an International Partnership with a Malaysian law firm, or as a Qualified Foreign Law Firm (QFLF). ¹¹⁷

¹⁰⁷ *Ibid.*

¹⁰⁸ *Ibid.*

¹⁰⁹ *Ibid.*

¹¹⁰ *Supra note 89.*

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	<p>The routes that are available to foreign lawyers in France are set out in Article 7 of the Act 71-1130 of December 31, 1971. They are as follows:¹¹¹</p> <ol style="list-style-type: none"> 1. Self-employment (Entreprise individuelle, EI); 2. Professional Partnership (Societe Civile Professionnelle, SCP); 3. Independent Professional Company (Societe d'exercice Liberal, SEL); 4. Jointly Owned Company (société en participation). 	<p>Foreign Law Practice: An FLP may choose to set up as a licensed FLP in Singapore. An FLP licensed to practise foreign law in Singapore may offer the full range of foreign law-related legal services that the firm is competent to offer.¹¹³</p> <p>Qualifying Foreign Law Practice (QFLP): The QFLP scheme allows FLPs which successfully obtain a QFLP license to practise Singapore law in “permitted areas of legal practice” through hiring Singapore lawyers with Practising Certificates or foreign lawyers who hold the FPC.¹¹⁴ The permitted areas of legal practice are set out in the LPA and LPIS Rules.¹¹⁵</p> <p>Joint Law Venture (JLV) or Formal</p>	

¹¹² See generally Legal Profession (Admission) Rules 2011; Legal Profession (International Services) Rules 2008.

¹¹⁷ Section 40F, The Legal Profession (Amendment) Act, 2012.

¹¹¹ Articles 7 and 8 of the Act 71-1130 of December 31, 1971.

¹¹³ *Types of Licence or Registration* (Ministry of Law, Singapore), <https://www.mlaw.gov.sg/law-practice-entities-and-lawyers/licensing-or-registration-of-law-practice-entities/types-of-licence-or-registration/>.

¹¹⁴ See generally Legal Profession (Qualified Persons) Rules 2015.

¹¹⁵ *Ibid.*

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		Law Alliance (FLA). An FLP that wishes to enter into collaboration with a SLP has the option to enter into a JLV or an FLA with an SLP. ¹¹⁶ These two schemes provide a platform for SLPs and FLPs to enter into collaborative arrangements. The JLV is a new legal entity formed jointly between a SLP and an FLP, whereas the FLA enables a SLP and an FLP to enter into a “best friend’s” relationship and collaborate as two freestanding firms.	
LICENSING REQUIREMENTS			
Foreign law firms do not require licenses to open offices to practice law in England and Wales, provided they are not practicing reserved areas of work and are not fee sharing with English solicitors or barristers. ¹¹⁸	There are no separate rules on licensing of law firms, however, the Conseil de l'ordre of the bar association where the foreign lawyer is registered must be informed of his/her establishment. Moreover, any legal form of practice for lawyers must be	For law firms, FLPs and QFLPs require a licence from the Attorney-General. ¹²⁰ A FLP and a SLP forming a JLV or FLA also have to jointly apply for a licence from the Attorney-General. ¹²¹	Foreign law firm licences are issued by the Malaysian Bar Council. ¹²² Only 5 QFLF licences are available. There is no quota for number of International Partnership licences issued. Foreign firms are limited to one licence, which means that foreign firms can only

¹¹⁶ Supra note 113..

¹¹⁸ Supra note 89.

¹²⁰ Section 171 and Section 172, Legal Profession Act.

¹²¹ Section 169, *Ibid.*

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Foreign law firms who do wish to have English solicitor partners and practice reserved areas of work need to obtain a license as a recognised body from the Solicitors Regulation Authority. ¹¹⁹	registered with the bar association (barreau) together with notification of their intended place of establishment.		open up a single branch in Malaysia. The renewal of licenses of the foreign lawyers is subject to the terms and conditions that Malaysian Bar Council may specify. ¹²³
EMPLOYMENT REQUIREMENTS			
Foreign law firms are allowed to employ domestic lawyers. ¹²⁴ Domestic law firms are allowed to employ foreign lawyers. ¹²⁵	Foreign law firms are not allowed to employ domestic lawyers. There are no restrictions on domestic advocates or law firms hiring foreign lawyers, however, they must be admitted to practice law in France before they could be	A domestic lawyer may be employed by a foreign law firm, however, the extent to which the domestic Advocate or Solicitor is then allowed to practice Singapore law is subject to what the law firm entity is licensed to practice. ¹²⁶ A domestic lawyer or a domestic law firm is free to employ a foreign lawyer. ¹²⁷	The Malaysian Bar has recommended the following employment requirements: ¹²⁸ (i) The Malaysian law firm should not have less than 60%, and the foreign law firm no more than 40%, of the equity and voting rights and of the total number of lawyers in the International Partnership; (ii) The number of Malaysian lawyers in a QFLF shall not be less than 30% of the

¹²² Section 40A, Legal Profession (Amendment) Act 2012.

¹¹⁹ *Ibid.*

¹²³ Section 40G and Section 40J, Legal Profession (Amendment) Act 2012.

¹²⁴ *Supra note 89.*

¹²⁵ *Ibid.*

¹²⁶ *Supra note 96.*

¹²⁷ *Supra note 96.*

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	employed as lawyers.		total number of lawyers in that firm; and (iii) The number of foreign lawyers employed by a Malaysian law firm shall not be more than 30% of the total number of lawyers in that firm.

¹²⁸ *Guidance Note for Applicants | Malaysian Law Firm to Employ Foreign Lawyer* (Malaysian Bar Association, 22 July 2020) [https://www.malaysianbar.org.my/cms/upload_files/document/Guidance%20Notes%20for%20Malaysian%20Law%20Firm%20\(Updated%2022%20July%202020\).pdf](https://www.malaysianbar.org.my/cms/upload_files/document/Guidance%20Notes%20for%20Malaysian%20Law%20Firm%20(Updated%2022%20July%202020).pdf).

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