FOREIGN LAWYERS & LAW FIRMS IN INDIA: THE ROAD AHEAD: AN ANALYSIS

Neeve Anand, B.BA. LL.B. (Hons). Gujarat, National Law University, Gandhinagar

ABSTRACT

Recently, the Bar Council of India (BCI) enforced the amended Rules for Registration and Regulation of Foreign Lawyers & Foreign Law Firms in India, 2022.[1] Under these rules, foreign legal entities may now provide advice on international legal issues and participate in non-litigious matters within the strict boundaries set by the BCI. However, they are prohibited from practicing Indian law or appearing before any Indian courts or tribunals. The full impact of these regulatory changes remains uncertain. In this light, I aim to analyse both the opportunities and challenges posed by this legal liberalization.

By comparing India's approach with that of another South-Asian jurisdiction, namely Hong Kong, this paper offers a fresh perspective on how India may balance openness to international firms while ensuring certain checks and safeguards are in place to protect the growth and prosperity of its domestic legal market and lawyers. This article argues that while India's opening of its legal market shares similarities with Hong Kong's experience, regulatory foresight and political stability should be given utmost importance to ensure sustainable growth.

[1] Apurva Vishwanath, BCI amends rules to let foreign law firms operate with partners in India, The Indian Express (Aug. 6, 2025, 4:00 PM), https://indianexpress.com/article/india/bci-amends-rules-to-let-foreign-law-firms-operate-with-partners-in-india-10007253/

New Rules

The new amendments aim to create a cooperative bridge liberalizing the Indian legal landscape in a measured manner; while ensuring due rules and regulations to ensure everything is up to standard and work is conducted in a professional and transparent manner. Summarising the main points, foreign firms may now provide legal advice to clients in India concerning foreign law and diverse international legal matters, and they are permitted to establish offices in India for non-litigious matters provided they meet specific conditions. However, they cannot practice Indian Law or appear before an Indian court or tribunal. The total duration of practice in India should not exceed 60 days in aggregate within any 12-month period, with the countdown beginning from the first day of arrival in India. There is now a formal registration process, a welcome departure from the previous system where foreign lawyers were only allowed to advise clients on Foreign Law in India on a limited "fly-in, fly-out" basis, this was due to Section 29 of the Advocate Act 1961 [2]reiterated by *the* Bombay High Court in Lawyers Collective vs Bar Council of India[3] in 2010 where it was made clear that lawmakers did not want foreign law firms and lawyers engaging in litigious or non-litigious practices in India as the foreign entries were not technically "advocates" as per the act.

The attitude shifted a bit in 2018 as observed during *A*.K. Balaji versus the Bar Council of India[4]wherein the Madras High Court partially held in favour of the respondents which was the foreign law firms and stated that there was no bar on the "fly-in, fly-out" practice or the engagement of foreign lawyers as counsels during international commercial arbitrations with matters revolving around foreign law. The status quo was maintained however as the Supreme Court after reviewing the matter stated that were was no absolute right of any foreign lawyer to conduct arbitration proceedings in respect to disputes arising out of contracts relating to international commercial arbitration, furthermore visit of a foreign lawyer on a "fly-in, fly-out" basis may also amount to practice if he is visiting on a regular basis among other things that kept the situation relatively the same, however more liberty was given to the BCI to decide appropriate rules regarding in case of disputes in which it would come under question whether a foreign lawyer was limiting himself to simply providing legal advice on casual basis to his clients in India under the system or whether he was actually in substance conducting practice in India. Later BCI would frame the rules to permit foreign lawyers to participate in India under

[2] Advocates Act, 1961, § 29, No. 25, Acts of Parliament, 1961 (India).
[3] Lawyers Collective v. Bar Council of India, AIR Bom 2011 165 (Bombay High Court, 2010).
[4] Bar Council of India v. A.K. Balaji, AIR 2018 SC 1382

non-litigious matters clearly stating the rules and regulations that would govern the system from now on.

Comparative Perspective

Taking a look at another jurisdiction, Hong Kong's experience with foreign law firm[5]s can help offer valuable insights into both the positives and negatives of allowing entry. Hong Kong opened itself up in 1994 seeking to integrate foreign legal services like India is currently. In 1995, 135 foreign lawyers from 12 jurisdictions sat for the first Overseas Lawyers Qualification Examination which has now been completed by more than 1800 people over the past 20 years, but besides this many others practice foreign law without a Hong Kong qualification. Hong Kong became home to international law firms brokering trade between China & the rest of the world, it is also home to the Hong Kong International Arbitration Centre which provides and facilitates international arbitration and alternative dispute resolution services. In addition, Hong Kong houses many prominent foreign law firms such as Linklaters & Clifford Chance and allows non-permanent foreign judges to sit in its court of final appeal. This openness increased confidence significantly in the Hong Kong legal system. The enactment of the National Security Law (NSL) in 2020 drastically shifted Hong Kong's legal landscape by giving mainland China much more autonomy and power in cases, much less than international firms and lawyer would prefer.

Many law firms have now scaled back or shut their offices in Hong Kong [6]such as DLA Piper LLP and Dechert LLP, furthermore the legal industry in Hong Kong is growing at the slowest pace in a decade as it is caught in the crossfire between USA and other western countries attempting to counter China and the National Security Act. As Hong Kong depends heavily on international law firms, this decline poses serious issues as local legal talent would now find it difficult to gain employment in reputable foreign firms, furthermore there would be the urgent need to restore credibility in the political and legal system.

Critique

India's political environment is comparatively stable, however lessons from Hong Kong

[5] Yves Dezalay & Bryant G. Garth, Hong Kong as a Paradigm Case: An Open Market for Corporate Law Firms and the Technologies of Legal Education Reform—as Chinese Hegemony Grows 121–136 (University of California Press 2021).

[6] Reuters, https://www.reuters.com/world/china/hong-kong-commercial-law-hub-allure-damaged-by-foreign-judges-row-lawyers-say-2024-07-02/ (last visited Aug. 5, 2025).

highlight certain potential risks. Over admission of foreign firms may lead to domestic law firms being marginalized during high profile international matters and lose top Indian talent to the well-resourced global law firms willing to pay a better salary and offering more exposure to complex transnational deals leaving small Indian firms to struggle such as what happened in Hong Kong, hence phased entry and partnership agreements may be beneficial. The dominance of Big Indian Law Firms in cross-border transactions, international commercial arbitration and advisory work may also come undone.

Indian Law firms will have to adopt more modern and innovative practices to remain competitive in the face of this new competition and remain attractive to young lawyers who will seek more flexible working hours and an international perspective as even in Hong Kong where foreign law firms could not practice local law, their dominance in the international market segments forced domestic firms to step up or risk marginalisation in global work, small firms being especially vulnerable.

There has also been some valid criticism towards the new amendment such as the 60-day time period to complete legal transactions within any 12-month period which may be less sufficient than needed, moreover the USD 50,000 registration fee for law firms is quite hefty and may not be acceptable to every single international firm as besides this, there is also a USD 30,000 security deposit and additional individual registration fees.

BCI has taken many positive steps such as formulating a high-level committee chaired by Cyril Shroff and other senior partners from leading law firms tasked to review to the rules and provide feedback in consultation with even the Society of Indian Law Firms which was formed in 2000 to safeguard their interests against international law firms. Furthermore, many domestic law firm heads have welcomed the new amendment and believe it is a positive step towards increased knowledge sharing, innovation and adoption of efficient international practices.

Conclusion

Looking ahead, it is clear that the success of these new rules will rest not just on their implementation, but also on how all stakeholders like foreign firms, Indian law practices, the BCI, and future legal professionals like us adapt, collaborate, and innovate to build a thriving, inclusive, and globally respected legal market in India. The Bar Council of India should listen to the suggestions and feedback of the High-Level Committee with an open mind and should do whatever it can to make the liberalization process smoother. By thoughtfully modifying certain provisions of the new changes, it can demonstrate that foreign firms are indeed welcome in India, thereby ushering in a new era for the legal market in India- one which will be even more dynamic and competitive than before.