

SILF COMMENTS ON THE DRAFT RULES

<p style="text-align: center;">Text of the draft of the Bar Council of India Rules for registration and regulation of foreign lawyers in India, 2016</p>	<p style="text-align: center;"><u>Text of Draft Rules proposed by Society of Indian Law Firms</u></p> <p style="text-align: center;"><u>“The Bar Council of India (Registration and Regulation of Foreign Legal Consultants and Registered Foreign Law Firms in India) Rules, 2016”</u></p>	<p style="text-align: center;"><u>Comments, observations and rationale</u></p>
<p style="text-align: center;">CHAPTER I PRELIMINARY</p> <p>1. Short title, extent and commencement. -</p> <p>(a) These Rules shall be called as the Bar Council of India Rules for registration and regulation of foreign lawyers in India .</p> <p>(b) These Rules shall come into force in whole of India as soon as notified in the official Gazette.</p>	<p style="text-align: center;">CHAPTER I PRELIMINARY</p> <p>1. Short title, extent and commencement. -</p> <p>(a)(a) These Rules shall be called as the Bar Council of India (Registration and regulation of foreign legal consultants and Registered Foreign Law Firms in India) Rules, 2016</p> <p>(b) These Rules shall come into force in whole of India as soon as notified in the official Gazette.</p>	
<p>2. Definitions. -</p>	<p>2. Definitions. -</p>	
<p>(i) 'Act' means The Advocates Act, 1961 as amended from time to time.</p>	<p>(i) 'Act' means The Advocates Act, 1961 as amended from time to time.</p>	
<p>(ii) The definitions of different terms as given in the Act shall apply to these Rules as well.</p>	<p><i>(ii) Words and expressions used but not defined in these rules shall have the meanings respectively assigned to them in the Act.</i></p>	<p style="color: red;">This is the standard form in which definitions are stated in the Rules</p>

(iii) 'Foreign lawyer' means a person, including a law firm, limited liability partnership, company or a corporation, by whatever name called or described, who/which is entitled to practice law in a foreign country.	<i>(iii)(a) 'Foreign lawyer' means a person, who is licensed, by the Competent Authority of a foreign country to practice the concerned foreign law.</i>	<ul style="list-style-type: none"> • Around the world, it is the individual – a natural person - who is enrolled to practice law. Such enrolled lawyers can then form partnerships. Defining “corporate or artificial persons” as lawyers is not the norm. For example, under the Advocates Act, only individuals can be enrolled. And an advocate may
	<i>(iii)(b) “Foreign legal consultant” means a foreign lawyer who has been registered by the Bar Council of India under these Rules.</i>	
	<i>(iii)(c) “Foreign law firm” means a partnership of foreign lawyers engaged solely and exclusively in the practice of law other than Indian Law</i>	

(iii)(d) "Registered Foreign Law Firm" means a foreign law firm which has been registered by the Bar Council of India under these Rules.

- practice individually or in partnership with other advocates.
- Even under the draft Rules (see Rule 4), as drafted, the eligibility criterion and the procedure can apply only to an individual. Rule 4, as drafted, cannot apply to a firm and much less to a company or corporation.
 - As will become clear in our subsequent comments, there is a need to have four separate definitions: foreign lawyer; foreign legal consultant; foreign law firm; and registered foreign law firm.
 - Multidisciplinary practice is not recognized or permitted by the Bar Council of India. Thus the foreign law firms must be solely and exclusively engaged in practice of law other than Indian Law.
 - **Foreign Law Firms:** While the draft rules refer to "firms" and other entities in the definition of foreign lawyer but the rest of the rules do not support the entry of a foreign firms as all the qualification and certification provisions, as drafted, have relevance only to individuals. To bring about clarity and certainty

<p>(iv) Foreign Country' means a foreign country, which is recognized as such by the Government of India and it includes a constituent State thereof in case such as a foreign country has a federal structure of governance and such constituent State has its own justice -delivery system and a separate class of persons entitled to practice law.</p>	<p>(iv) <i>Foreign Country' means a foreign country, which is recognized as such by the Government of India and it includes a constituent State thereof in case such as a foreign country has a federal structure of governance and such constituent State has its own justice -delivery system and a separate class of persons entitled to practice law.</i></p>	<p>We have detailed comments on issue of "reciprocity". Please see Annexure A hereto.</p>
<p>(v) Country of the primary qualification' means a foreign country in which, the foreign lawyer is entitled to practice law as per law of that country.</p>	<p>(v) <i>Country of the primary qualification' means a foreign country in which, the foreign lawyer is licensed to practice law, not being Indian Law, as per law of that country.</i></p>	
<p>(vi) 'Foreign law' means law, which is or was effective, in the country of primary qualification.</p>	<p>(vi) <i>'Foreign law' means law, which is or was effective, in the country of primary qualification not being Indian Law.</i></p>	
<p>(vii) 'Competent Authority of the foreign country' means the government or a Court of law or a statutory authority or Bar Council or Legally authorized Association or any other legally recognized and constituted body by whatever name called or described, which is competent to grant license to practice law.</p>	<p>(vii) <i>'Competent Authority of the foreign country' means the government or a Court of law or a statutory authority or Bar Council or Legally authorized Association or any other legally recognized and constituted body by whatever name called or described, which is competent to grant license to practice law.</i></p>	
<p>(ix) "International arbitration case" means an arbitration case concerning a commercial or monetary matter which is conducted in India in which all or any of the parties are persons who have an address or principal office or head office in a foreign country.</p>	<p>(ix) <i>"International arbitration case" means an arbitration case concerning a cross border commercial or monetary dispute which is conducted in India and in which at least one of the contesting parties is from a country other than India and the dispute is governed by foreign law.</i></p>	<p>Our proposed definition is simplified version of the definition under the Arbitration & Conciliation Act with the addition that the dispute is governed by "foreign law".</p>

	<p>(x) “Indian Law” means any statute, law, regulation, ordinance, rule, judgment, notification, rule of common law, Governmental Order, Governmental Authorization that has the force of law in India;</p> <p>“Governmental Authority” means any government, any state or other political subdivision thereof, any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, or any other government authority, agency, department, board, commission or instrumentality or any political subdivision thereof, and any court, tribunal or arbitrator(s) of competent jurisdiction, and, any governmental or non-governmental self-regulatory organization, agency or authority in India;</p> <p>“Governmental Order” means any order, writ, judgment, injunction, decree, bye-law, directive, guideline, requirement or other restriction, stipulation, determination or award or any similar form of decision of, or determination by, or any interpretation, policy or administrative matter entered, rendered, issued or made by any Governmental Authority.</p> <p>“Governmental Authorization” means any authorizations, consents, waivers, orders constituting approvals and other approvals of any Governmental Authority including the expiration of any applicable waiting periods associated therewith.</p>	<p>There is need to define “Indian Law” as distinct from “foreign law”. Foreign Legal Consultants and Foreign Law Firms are to practice foreign law and not Indian Law.</p>
<p>CHAPTER II REGISTRATION OF FOREIGN LAWYERS AND THE EXTENT AND CONDITIONS SUBJECT TO WHICH THEY CAN PRACTICE LAW IN INDIA</p>	<p>CHAPTER II REGISTRATION OF FOREIGN LEGAL CONSULTANTS AND REGISTERED FOREIGN LAW FIRMS</p>	

3. Registration of foreign lawyers and eligibility criteria therefor: -	<i>3. Registration of foreign legal consultants and eligibility criteria therefor: -</i>	
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<p>(1) A foreign lawyer shall not be entitled to practice law in India unless he/it is registered with the Bar Council of India under these Rules:</p> <p>Provided that this prohibition will not apply to law practice by a foreign lawyer in case such practice is done on a fly in and fly out basis' for the purpose of giving legal advice to the client in India regarding foreign law and on diverse international legal issues and provided further that services of such a foreign lawyer had been procured in a foreign country and he/ it does not maintain an office in India for the purpose of such practice and lastly such practice in India for one or more periods does not, in aggregate, exceed 60 days in any period of 12 months.</p>	<p>(1) <i>(1). No foreign lawyer shall practice or conduct any activity in India without being registered as a foreign legal consultant under these Rules.</i></p> <p>(2) <i>(2) The Bar Council of India may register a foreign lawyer as a “foreign legal consultant” under these Rules. To qualify for a registration as a foreign legal consultant, the applicant shall be a person who:</i></p> <p><i>(a) has been admitted to practice in a foreign country as an attorney, counselor at law, or the equivalent for a period of not less than [7] years immediately preceding the application for registration under these Rules;</i></p> <p><i>(b) has been consistently and solely engaged in the practice of law of such foreign country for a period of not less than [3] of the [5] years immediately preceding the application for registration under the Rules and has remained in good standing in such practice throughout said period;</i></p> <p><i>(c) is admitted to practice in a foreign country whose professional disciplinary system for lawyers established by the Competent Authority is generally consistent with that of an Advocate under the rules of the Bar Council of India;</i></p> <p><i>(d) has not been disciplined for professional misconduct by the bar or courts of any jurisdiction and is not the subject of any such disciplinary proceeding or investigation pending at the date of application for registration under these Rules;</i></p>	<p>Conceptually, it is not “practice of law” that a foreign lawyer would be <u>entitled to</u> but would be practice of “foreign law in India” that would be granted as a privilege to a foreign lawyer who registers. Please see our further comments at Rule 8.</p> <p>The more appropriate and conventional way is to start with “registration” or licensing of a foreign lawyer as a “foreign legal consultant” (FLC) and thereafter proceed to define what a FLC can or can’t do. This is how it is generally done – including in the US jurisdictions which permit licensing of foreign legal consultants.</p> <p>ELGIBILITY CRITERIA: Without exception rules for foreign legal consultants require “good standing” - a length of bar admission in the home country and period of continuous practice.</p> <p>The intended saving for “fly in fly out” (or temporary presence – has been provided in Rule 11A below.</p>
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<p>(2) Right to practice law' in the concerned foreign country of the primary qualification' shall be the primary qualification for practicing law in India under these rules.</p>	<p>(2) <i>Right to practice law' in the concerned foreign country of the primary qualification' shall be the primary qualification for registration as a foreign legal consultant under these rules.</i></p>	<p>There is no "practice of law in India" license – that is exclusive for Advocates under the Act. Under these Rules, it is limited to registration as a foreign legal consultant to practice "foreign law".</p>
	<p>(3) <i>Foreign legal consultant shall not practice Indian Law.</i></p>	<p>Limitation not to practice "Indian Law" – the stated policy objective being practice of foreign law in India,</p>
	<p>3A. Registration of a Foreign Law Firm and eligibility criteria therefor:-</p>	<p>As said the BCI Rules do not have any provision for registration of foreign law firms. This new provision seeks to fill that gap.</p>
	<p>(1) <i>No foreign law firm shall practice or conduct any activity in India without being registered as a registered foreign law firm under these rules.</i></p>	<p>Self-explanatory</p>
	<p>(2) <i>The Bar Council of India may register a foreign law firm as a "registered foreign law firm" under these Rules.</i></p>	<p>Self-explanatory</p>
	<p>(3) <i>The registered foreign law firm shall not practice Indian Law.</i></p>	<p>Limitation not to practice "Indian Law" – the stated policy objective being practice of foreign law in India,</p>
<p>CHAPTER III APPLICATIONS FOR REGISTRATION, RENEWAL OF REGISTRATION AND MATTERS CONNECTED WITH LAW PRACTICE IN INDIA</p>	<p>CHAPTER III APPLICATIONS FOR REGISTRATION, RENEWAL OF REGISTRATION AND MATTERS CONNECTED WITH FOREIGN LEGAL CONSULTANTS AND REGISTERED FOREIGN LAW FIRMS</p>	<p>Registration is not for practice of law but as foreign legal consultant or registered foreign law firm to practice foreign law.</p>

<p>4. Application for registration. - (1) A foreign lawyer may apply for registration -under these rules in 'FORM A' appended to these Rules along with registration fee and guarantee amount either in person or through registered Post. This application and fee may also be submitted on-line.</p> <p>Such an application shall also be accompanied by non-refundable Process charges of such an amount as may be fixed by Bar Council of India from time to time.</p> <p>This application shall be addressed to the Secretary, Bar Council of India and shall be accompanied by the following documents:</p>	<p><i>4. Application for registration:- (1) A foreign lawyer may apply for registration as a foreign legal consultant under these rules in 'FORM A' appended to these Rules along with registration fee and guarantee amount either in person or through registered Post. This application and fee may also be submitted on-line.</i></p> <p><i>Such an application shall also be accompanied by non-refundable Process charges of such an amount as may be fixed by Bar Council of India from time to time.</i></p> <p><i>This application shall be addressed to the Secretary, Bar Council of India and shall be accompanied by the following documents:</i></p>	<p>No comments</p>
<p>(i) A certificate from the Government of India, (Ministry of Law & Justice and Ministry of Commerce and Trade) or such other authority or officer as Union Government may authorize in this behalf that an effective legal system exists in concerned foreign country of the primary qualification and that it has no objection in case the applicant is registered under these Rules and practices law in India;</p>	<p><i>(i) A certificate from the Government of India, (Ministry of Law & Justice and Ministry of Commerce and Industry) or such other authority or officer as Union Government may authorize in this behalf that an effective legal system exists in concerned foreign country of the primary qualification and that it has no objection in case the applicant is registered under these Rules as a foreign legal consultant;</i></p>	<p>As said, registration is not for "practice of law" but to practice foreign law. Further it is Ministry of Commerce & Industry and not Ministry of Commerce and Trade. On elements of reciprocity, please see our detailed note.</p>
<p>(ii) A certificate from the Competent Authority of the concerned foreign country of primary qualification certifying that the applicant is entitled to practice law in that Country;</p>	<p><i>(ii) A certificate from the Competent Authority of the concerned foreign country of primary qualification certifying the date from which the applicant is entitled to practice law in that Country;</i></p>	<p>The eligibility criterion should include good standing at the bar for a period. Thus the need to include the "date from which" the applicant has been enrolled in the foreign jurisdiction.</p>

<p>(iii) A certificate from the Government of the foreign country of primary qualification or from a competent Authority thereof certifying that advocates enrolled under the Advocates Act, 1961 are permitted to practice law in that country in the manner and to the extent which is comparable to the law practice permitted under these Rules along with copies of the relevant Laws and Rules.</p>	<p>(iii) <i>A certificate from the Government of the foreign country of primary qualification or from a competent Authority thereof certifying that advocates enrolled under the Advocates Act, 1961 are permitted to practice Indian law in that country in the manner and to the extent which is comparable to the practice of foreign law by a foreign legal consultant permitted under these Rules along with copies of the relevant Laws and Rules;</i></p>	<p>Please see a detailed separate note on "Reciprocity".</p> <p>Further, it would be even handed to say that Advocates should be permitted to practice "Indian Law" in the foreign jurisdiction as "foreign legal consultants" would be permitted to practice only "foreign law' in India.</p>
<p>(iv) A certificate from the Competent Authority of the concerned country of primary qualification or any other competent authority/ies, Courts, Bar Association, Bar Council etc. that the applicant has been in active practice in that country;</p>	<p>(iv) <i>A certificate from the Competent Authority of the concerned country of primary qualification or any other competent authority/ies, Courts, Bar Association, Bar Council etc. that the applicant solely engaged in active legal practice in that country for a period of not less than [3] of the [5] years immediately preceding the application for registration under the Rules and has remained in good standing in such practice throughout said period;</i></p>	<p>The eligibility criterion should include good standing at the bar for a period. Thus the requirement of continuous practice for a duration.</p>
<p>(v) A certificate of the competent authority of the concerned foreign country of primary qualification that no proceedings of professional or other misconduct are pending either before it or before any ether authority competent to entertain and decide such proceedings;</p>	<p>(v) <i>A certificate of the competent authority of the concerned foreign country of primary qualification that no proceedings of professional or other misconduct are pending either before it or before any ether authority competent to entertain and decide such proceedings and that such competent authority will honour any disciplinary action against registered foreign legal consultant that may be taken by the Bar Council of India.</i></p>	<p>Formal undertaking from competent authority that it will honour and respect the disciplinary action of the BCI against the FLC is a must.</p>

<p>(vi) A certificate of the competent authority of the concerned foreign country of primary qualification giving details of the fee structure and other amounts chargeable from an advocate enrolled under the Act for enabling him to practice law in that country along with relevant Rules and Laws;</p>	<p>(vi) <i>A certificate of the competent authority of the concerned foreign country of primary qualification giving details of the fee structure and other amounts would be payable by an advocate enrolled under the Act for enabling him to practice Indian Law in that foreign country along with relevant Rules and Laws;</i></p>	<p>The text appears not to be very clear. Does the redraft convey the intent correctly?</p>
<p>(vii) "No objection Certificate of the competent authority of the concerned foreign country of primary qualification that it has no objection in case the applicant starts law practice in India and that the applicant enjoys a good standing in the Bar.</p>	<p>(vii) <i>"No objection Certificate of the competent authority of the concerned foreign country of primary qualification that it has no objection in case the applicant is granted a registration as foreign legal consultant in India.</i></p>	<p>FLC and not "starts law practice in India"</p>
<p>(viii) A declaration on affidavit that the applicant has not been convicted of any offence and has not suffered any adverse order in any disciplinary matter. (In case he has suffered any conviction/adverse order, relevant attested copies of the order of conviction/adverse order and other related documents about the matter like appeal and stay, if any, or sentence/tine suffered/paid etc. are to be annexed);</p>	<p>(viii) <i>A declaration on affidavit that the applicant has not been convicted of any offence and has not suffered any adverse order in any disciplinary matter. (In case he has suffered any conviction/adverse order, relevant attested copies of the order of conviction/adverse order and other related documents about the matter like appeal and stay, if any, or sentence/tine suffered/paid etc. are to be annexed);</i></p>	<p>No comment.</p>
<p>(ix) A declaration on affidavit that the applicant has no objection and consents to the making of enquiries and investigation by the Bar Council of India on its own or through such government or non-government investigating agency, as it may deem fit, to verify the veracity of the particulars disclosed by the applicant in the application and genuineness of the documents annexed therewith;</p>	<p>(ix) <i>A declaration on affidavit that the applicant has no objection and consents to the making of enquiries and investigation by the Bar Council of India on its own or through such government or non-government investigating agency, as it may deem fit, to verify the veracity of the particulars disclosed by the applicant in the application and genuineness of the documents annexed therewith;</i></p>	<p>No comment.</p>

<p>(x) An undertaking on oath that he/it shall not practice Indian law in any form or before any court of Law, Tribunal, Board or any other Authority legally entitled to record evidence on oath;</p>	<p>(x) <i>An undertaking on oath that he/it shall not practice Indian law;</i></p>	<p>The objective is to permit practice of foreign law. Therefore, it should be clear that <u>any</u> practice of Indian Law whatsoever is prohibited.</p>
<p>(xi) A declaration on oath that he/it shall not be entitled to and shall not claim any interest on the guarantee amount deposited by him/it with Bar Council of India at the time of registration under these Rules and that the Bar Council shall be entitled to adjust and apply this guarantee amount to the penalty and cost amounts that may be awarded by the Bar Council of India under rules 9 and 10;</p>	<p>(xi) <i>A declaration on oath that he/it shall not be entitled to and shall not claim any interest on the guarantee amount deposited by him/it with Bar Council of India at the time of registration under these Rules and that the Bar Council shall be entitled to adjust and apply this guarantee amount to the penalty and cost amounts that may be awarded by the Bar Council of India under rules 10 and 11;</i></p>	<p>The correct cross reference is to Rules 11 and not Rule 9. Corrected.</p>
<p>(xii) A declaration on oath that the applicant fully understands and appreciates the fact that on registration under rule 7 of these Rules, the Advocates Act, 1961 and Rules made there under, mutatis mutandis, apply to him/it in respect of law practice by him/ it in India and that he/it is subject to the jurisdiction of Courts of Law in India and to the jurisdiction of Bar Council of India in relation to such practice.</p>	<p>(xii) <i>A declaration on oath that the applicant fully understands and appreciates the fact that on registration under rule 7 of these Rules, the Advocates Act, 1961 and Rules made there under; mutatis mutandis, apply to him/it in respect of practice of foreign law by him/ it in India and that he/it is subject to the jurisdiction of Courts of Law in India and to the jurisdiction of Bar Council of India in relation to such practice.</i></p>	<p>It is practice of "foreign law" and not "practice of law". Corrected.</p>
	<p>Registration of a foreign law firm</p>	<p>As said above, the rules do not accommodate registration of a foreign law firm. These should be specifically provided.</p>

	<p><i>(2).A foreign law firm may apply for registration as a registered foreign law firm under these rules in 'FORM A-1' appended to these Rules along with registration fee and guarantee amount either in person or through registered Post. This application and fee may also be submitted on-line.</i></p> <p><i>Such an application shall also be accompanied by non-refundable Process charges of such an amount as may be fixed by Bar Council of India from time to time.</i></p> <p><i>This application shall be addressed to the Secretary, Bar Council of India and shall be accompanied by the following documents:</i></p>	<p>Framework for registration of a registered foreign law firm which is missing in the draft rules.</p>
	<p><i>(i) A certificate from the Government of India, (Ministry of Law & Justice and Ministry of Commerce and Industry) or such other authority or officer as the Union Government may authorize in this behalf that (a) an effective legal system exists in each foreign country where the foreign law firm carries on its practice; and (b) it has no objection in case the foreign law firm is registered under these Rules as a registered foreign law firm;;</i></p>	<p>Eligibility Criteria. Reciprocity for each country where the foreign firm practices.</p>
	<p><i>(ii) A certificate from the Government of each foreign country where the foreign law firm carries on its practice or from a competent authority thereof certifying that advocates enrolled under the Advocates Act, 1961 or firms of such advocates are permitted to practice [Indian] law in that country in the manner and to the extent which is comparable to the practice of foreign law by a foreign law firm permitted under these Rules along with copies of the relevant Laws and Rules;</i></p>	<p>Eligibility Criteria. Reciprocity for each country where the foreign firm practices.</p>

	(iii) <i>A certificate from the Competent Authority or Courts, Bar Association, Bar Council of each country in which the foreign law firm carries on its practice that the foreign law firm has been solely and exclusively engaged in practice of law in each of those countries for a period of not less than [3] years immediately preceding the application for registration under these Rules.</i>	Eligibility Criteria. Reciprocity for each country where the foreign firm practices.
	(iv) <i>A certificate of the competent authority of the each of the foreign countries in which the foreign law firm carries on its practice giving details of the fee structure and other amounts that would be payable by an advocate enrolled under the Act or a firm of such advocates for enabling him / them to practice Indian law in that foreign country along with copies of the relevant Rules and Laws;</i>	Eligibility Criteria. Reciprocity for each country where the foreign firm practices.
	(v) <i>A declaration on an affidavit by the Managing Partner (or equivalent) of the foreign law firm that that foreign law firm has not been found guilty of malpractice or professional negligence in any of the foreign countries in which it carries on its practice.</i>	Self-explanatory
	(vi) <i>A declaration on affidavit by the Managing Partner (or equivalent) of the foreign law firm that that foreign law firm has no objection and consents to the making of enquiries and investigation by the Bar Council of India on its own or through such government or non-government investigating agency, as it may deem fit, to verify the veracity of the particulars disclosed by the applicant in the application and genuineness of the documents annexed therewith;</i>	Self-explanatory
	(vii) <i>An undertaking on oath by the Managing Partner (or equivalent) of the foreign law firm that that the foreign law firm shall not practice Indian law.;</i>	Self-explanatory. Objective is to permit practice of "foreign law".

	<i>(viii) A declaration on oath by the Managing Partner (or equivalent) of the foreign law firm that that the foreign law firm shall not be entitled to and shall not claim any interest on the guarantee amount deposited by the foreign law firm with Bar Council of India at the time of registration under these Rules and that the Bar Council shall be entitled to adjust and apply this guarantee amount to the penalty and cost amounts that may be awarded by the Bar Council of India under rules 10 and 11;</i>	Self-explanatory
	<i>(ix) A declaration on oath by the Managing Partner (or equivalent) of the foreign law firm that the foreign law firm fully understands and appreciates the fact that on registration under rule 7 of these Rules, it and its foreign legal consultants shall be subject to the code of conduct prescribed by the Bar Council of India and the foreign law firm is subject to the jurisdiction of Courts of Law in India and to the jurisdiction of Bar Council of India;</i>	Self-explanatory
	<i>(x) A notarised copy of the formation documents such as articles of partnership of the foreign law firm and list of all partners of the foreign law firm (with respective details of the country of primary qualification) with the undertaking that any changes in the formation documents and the list of partners will be notified to and amended documents filed with the BCI within three months of any such changes being effected;</i>	Self-explanatory
	<i>(xi) a notarised copy of the Audited Balance sheet and P&L Account for the last [*] years with the undertaking that upon registration under these Rules, the foreign law firm will file its latest Audited Balance Sheet and P&L Account with the BCI within six months of the end of the firm's accounting year;</i>	Self-explanatory

	<i>(xii) A Declaration by the Managing Partner (or equivalent) of the foreign law firm that it is in compliance with Rule 9 (2) of these Rules; and</i>	Self-explanatory. Compliance issue.
	<i>(xiii) An undertaking on oath by the Managing Partner (or equivalent) of the Foreign law firm that the foreign law firm will declare that all income arising out of or accruing from India will be invoiced and received in India and be submitted for taxation in India.</i>	Self-explanatory. To stop tax avoidance and tax evasion.
<p>5. Validity of registration and renewal of registration. - (1)</p> <p>The registration done under rule 7 shall be valid for a period of 5 (five) years only and the foreign lawyer would be required to renew it by filing an application for renewal in Form B within 5 months before the date on which such validity expires.</p>	<p>5. Validity of registration and renewal of registration. - (1)</p> <p><i>The registration done under rule 7 shall be valid for a period of 5 (five) years only and the foreign legal consultant or the registered foreign law firm, as the case may be, would be required to renew it by filing an application for renewal in Form B within 5 months before the date on which such validity expires.</i></p>	Substitution of FLC for foreign lawyer and addition of registered foreign law firm.
<p>(2) A foreign lawyer may apply for renewal of registration under these rules in 'FORM B' appended to these Rules along with renewal fee either in person or through registered Post</p>	<p><i>(2)(1) A foreign legal consultant may apply for renewal of registration under these rules in 'FORM B' appended to these Rules.</i></p> <p><i>2(2) A registered foreign law firm may apply for renewal of registration under these rules in 'FORM B-1' appended to these Rules.</i></p> <p><i>2(3) An application for renewal will be filed along with renewal fee either in person or through registered Post</i></p>	Substitution of FLC for foreign lawyer and addition of registered foreign law firm

<p>(3) This application for renewal shall be addressed to the Secretary Bar Council of India and shall be accompanied by the following documents:</p> <p>(i). A certificate from the government of India or such other authority or officer as it may authorize in this behalf that an effective legal system continues exist in concerned foreign country of the primary qualification since his/ its registration under rule 7 and that it has no objection if the registration of the applicant is renewed under these Rules and he /it continues to practice law in India;</p> <p>(ii) Certificate from the Competent Authority of the concerned foreign country of primary qualification certifying that the applicant continues to be entitled to practice law in that Country since his/its registration under rule 7;</p> <p>(iii). A certificate from the government of the foreign country of primary qualification or from a competent Authority there of certifying that advocates enrolled under the Advocates Act, 1961 are continued to be permitted to practice law in that country in the manner and to the extent which is comparable to the law practice permitted under these Rules since his/ its registration under rule 7 along with copies of the relevant law and Rules.</p> <p>iv). Certificate of the competent authority of the concerned foreign country of primary qualification that no proceedings of professional or other misconduct have been</p>	<p>(3) This application for renewal shall be addressed to the Secretary Bar Council of India and shall be accompanied by the following documents:</p> <p>(A) In case of foreign legal consultant:</p> <p>(i) <i>A certificate from the Government of India, (Ministry of Law & Justice and Ministry of Commerce and Industry) or such other authority or officer as Union Government may authorize in this behalf that an effective legal system exists in concerned foreign country of the primary qualification and that it has no objection in case registration of the applicant as foreign legal consultant under these Rules is renewed;</i></p> <p>(ii) <i>Certificate from the Competent Authority of the concerned foreign country of primary qualification certifying that the applicant continues to be entitled to practice law in that Country since his/its registration under rule 7;</i></p> <p>(iii) <i>A certificate from the Government of the foreign country of primary qualification or from a competent Authority thereof certifying that advocates enrolled under the Advocates Act, 1961 are permitted to practice Indian law in that country in the manner and to the extent which is comparable to the practice of foreign law by a foreign legal consultant permitted under these Rules along with copies of the relevant Laws and Rules;</i></p> <p>(iv) <i>A certificate of the competent authority of the concerned foreign country of primary qualification that no proceedings of professional or other misconduct are pending either before it</i></p>	<p>As said, registration is not for "practice of law" but to practice foreign law as a foreign legal consultant.</p> <p>No comment</p> <p>Please see a detailed separate note on "Reciprocity".</p> <p>Further, it would be even handed to say that Advocates should be permitted to practice "Indian Law" in the foreign jurisdiction as "foreign legal consultants" would be permitted to practice only "foreign law' in India.</p> <p>No comment.</p>
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<p>6. Registration and fee and guarantee amount. -</p> <p>(A). After receipt of such application, the Bar Council of India or a committee constituted by the Council in this behalf, shall examine the application , hold an enquiry with regard to genuineness of the contents and the documents attached with the application. The Council will also examine the truth about the reciprocity with the concerned foreign country. And after such examination and enquiry, if the application is found to be fit for registration, the Council shall grant a Certificate of Registration with a separate Registration Number.</p>	<p>6. Registration , fees and security deposit</p> <p>After receipt of any application for registration or renewal of registration, the Bar Council of India or a committee constituted by the Council in this behalf, shall examine the application as provided in Rule 7 and after such examination and enquiry, if the application is found to be fit for registration or renewal, as the case may be, the Council shall grant a Certificate of Registration with a separate Registration Number.</p>	<p>Rule heading amended to replace “guarantee amount” with “security deposit”</p> <p>Seems there is an overlap between Rules 6 and 7. Is the registration/ renewal granted under Rule 6 or 7? Revised proposal seeks to reconcile the position.</p>
<p>(B). The Council will inform the Government of India soon after such registration and shall also send a copy of such Registration certificate.</p>	<p><i>The Council will inform the Government of India soon after such registration and shall also send a copy of such Registration certificate to [name of the recipient].</i></p>	<p>Send copy to whom?</p>
<p>(C). In the matter of Registration the Designated Advocates (or whatever name they are known in the concerned foreign country) are to be given preference as the rights and privileges of such senior Advocates are prescribed under Section 23 of the Advocates Act 1961.</p>	<p>delete</p>	<p>Rule 6 (C) suggests that foreign lawyers will be designated as Senior Advocates and will be given preference. This suggests that they will be entitled to appear in courts and tribunals. This does not seem consistent with the stated objectives that litigious practice in India is reserved for Advocates.</p> <p>Also the concept of “preference” in the matter of registration needs to be understood.</p>

<p>(D). An application for registration/renewal of registration shall be accompanied by registration/renewal fee of such an amount as is equivalent to the fee and other charges chargeable in the concerned foreign country of primary qualification from an advocate enrolled under the Act on account of registration/permission to practice law there but such fee shall not be less than fee amount given herein below:</p> <p>(i) Registration fee in case of a foreign lawyer, if he is an individual: USD 25, 000 (USD twenty five thousand only);</p> <p>(ii) Registration fee in case of a foreign lawyer, if it is a firm, private limited partnership, company, Limited Liability Partnership (LLP) etc.: USD 50, 000/- (USD fifty thousand only);</p> <p>(iii) Renewal fee in case of a foreign lawyer: USD 10, 000/- (USD ten thousand only);</p> <p>(iv) Renewal fee in case of a foreign lawyer, if it is a firm, private limited partnership, company, Limited Liability Partnership (LLP) etc.: USD 20, 000/- (USD twenty thousand only).</p>	<p><i>(D). An application for registration/renewal of registration shall be accompanied by registration/renewal fee of such an amount as is equivalent to the fee and other charges chargeable in the concerned foreign country of primary qualification from an advocate enrolled under the Act for registration/permission to practice Indian law there but such fee shall not be less than fee amount given herein below:</i></p> <p><i>(i) Registration fee in case of a foreign lawyer applying for registration as a foreign legal consultant: USD 25, 000 (USD twenty five thousand only);</i></p> <p><i>(ii) Registration fee in case of a foreign law firm applying for registration as a registered foreign law firm: USD 50, 000/- (USD fifty thousand only);</i></p> <p><i>(iii) Renewal fee in case of a foreign legal consultant: USD 10, 000/- (USD ten thousand only);</i></p> <p><i>(iv) Renewal fee in case of a registered foreign law firm USD 20, 000/- (USD twenty thousand</i></p>	<p>Registration fee for registration as a foreign legal consultant</p> <p>Registration fee for registration of a foreign law firm as a "registered foreign law firm"</p>
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<p>(E). The application for registration shall, also be accompanied by Security Deposit as follows: -</p> <p>(i) Security Deposit in case of a foreign lawyer, if he is an individual: USD 15, 000/- (USD fifteen thousand only);</p> <p>ii) Guarantee amount in case of a foreign lawyer, if it is a firm, private limited partnership, company, limited liability partnership (LLP) etc.: USD 40, 000/- (USD forty thousand only).</p> <p>The Security deposit shall be returnable to the foreign lawyer when he/it voluntarily terminates foreign law practice in India or when its/ his registration expires or when his registration is cancelled permanently but Bar Council of India shall be entitled to adjust and deduct amounts equivalent to the penalty and costs imposed by it on it/him under rule 9 and 10 from this Security deposit in case it/he omits to pay.</p>	<p><i>(E). The application for registration shall, also be accompanied by Security Deposit as follows: -</i></p> <p><i>(i) Security Deposit in case of an individual foreign lawyer applying for registration as a “foreign legal consultant: USD 15, 000/- (USD fifteen thousand only);</i></p> <p><i>ii) Security Deposit in case of a foreign law firm applying for registration as a registered foreign law firm: USD 40, 000/- (USD forty thousand only).</i></p> <p><i>The Security deposit shall be returnable to the foreign lawyer or the foreign law firm : (a) if the application for registration is not allowed; (ii) when he/it voluntarily terminates the registration; (c) when his/its foreign law registration expires; or (iv) when his/its registration is cancelled permanently . In any case, the Bar Council of India shall be entitled to adjust and deduct amounts equivalent to the penalty and costs imposed by it on ion the foreign lawyer or the foreign law firm him under rule 10 and 11 from this Security deposit in case it/he omits to pay.</i></p>	<p>SD for application of registration as FLC</p> <p>Replaced the words “Guarantee amount” with SD for a foreign law firm applying for registration as a registered foreign law firm.</p> <p>Clarified that the SD is returnable if the registration is not granted and other situations after the registration has been granted. Corrected the cross reference to the Rule 11 instead of Rule 9.</p>
<p>(F) The Security deposit shall be kept by the Bar Council of India under a separate Head and interest accruing thereon shall be used by it for meeting its expenses for the due implementation and management of these Rules,</p>	<p><i>(F) The Security deposit shall be kept by the Bar Council of India under a separate Head and interest accruing thereon shall be used by it for meeting its expenses for the due implementation and management of these Rules,</i></p>	<p>No comment</p>

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

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

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

Provided that the aforesaid registration and renewal thereof shall not, in any way, entitle the

7. Disposal of applications for registration and renewal. – *The Bar Council of India or a committee constituted by the Council in this behalf shall examine the application for registration filed under rule 4 and for renewal filed under rule 5 for its satisfaction, including holding an enquiry with regard to genuineness of the contents and the documents attached with the application and the truth about the reciprocity with the concerned foreign country. If the Bar Council of India will further satisfy itself that: (a) the application is supported by all the relevant documents, security deposit, process charges, fee etc. as required under these Rules; (b) the applicant meets each of the eligibility criterion; (c) suffer from any other disqualification which make the applicant unsuitable for registration under these Rules.*

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

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

Provided that the aforesaid registration and

The consideration process consolidated in this Rule by bringing in relevant provisions of draft rule 6.

<p>CHAPTER IV LAW PRACTICE BY FOREIGN LAWYERS</p>	<p>CHAPTER IV SCOPE OF ACTIVITIES OF FOREIGN LEGAL CONSULTANTS AND REGISTERED FOREIGN LAW FIRMS</p>	<p>To repeat – it is not “practice of law” by foreign lawyers/foreign law firms but permission to undertake certain stated activities.</p>
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<p>8. Law practice by a foreign lawyer: nature and extent thereof: (1) A foreign lawyer registered under rules shall be entitled to practice law in India in non-litigious matters only subject to such exceptions, conditions and limitations as are laid down under these Rules and he/it shall be deemed to be an advocate within the meaning sections 29, 30 and 33 of the Act qua such acts and deeds as are envisaged to be performed by him under these Rules as a foreign lawyer.</p>	<p><i>8.Scope of activities of foreign legal consultant and registered foreign law firm: nature and extent thereof: (1) A foreign legal consultant and registered foreign law firm shall be entitled to conduct only those activities which are set out in Section 8(2) below subject to such exceptions, conditions and limitations as are laid down under these Rules.</i></p>	<p>The construct of entitlement to "practice law in India" and more particularly the "deemed" Advocate is impermissible under the Act and would be ultra vires. See our detailed note on the vires of the Rules.</p> <p>It could also have some unintended and contrarian consequences.</p> <p><u>As an illustration, in Lawyers Collective vs. Bar Council of India</u>, the Bombay High Court has held that "practice of law" would include litigious and non-litigious matters. In <u>V. Sudeer v. Bar Council of India</u>, the Hon'ble Supreme Court questioned the legitimacy of regulation or monitoring of what an Advocate can or can't do in practice of law once he has been enrolled. This was the "trainee" case in which under the impugned rules a "trainee" "advocate" had only limited right to ask for adjournment or mentioning the case. The Supreme Court struck down the rule.</p> <p>Thus a foreign lawyer registered as a "deemed advocate" could legitimately ask to be treated as any other Advocate without any limitation on the right to practice of</p>
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<p>(2) The practice of law by a foreign lawyer shall include the following legal services: -</p> <p>(i) doing work, transacting business, giving advice and opinion concerning the laws of the country of the primary qualification;</p>	<p>2 The scope of activities of foreign legal consultants and registered foreign law firms is the following:</p> <p>(i) <i>doing work, transacting business, giving advice and opinion concerning the laws of the country of the primary qualification including (a) preparation of instruments and rendition of legal advice with respect to investments in and establishment and operation of business in concerned foreign country by any resident of India; and (b) preparation of documents and rendition of legal advice with respect to commercial transactions where the governing law is expressly stated to be the foreign law and the transaction is a cross border transaction in which at least one party is from the foreign country.</i></p>	<p>As stated objective and purpose is to enable foreign lawyers and foreign firms to practice foreign law, then the Rules should address that objective by stating expressly what is permitted and what is not to provide certainty to all concerned.</p>
<p>(ii) providing legal services and appearing as a lawyer for a person, firm, company, corporation, trust, society etc. who/which is having an address or principal office or head office in a foreign country in an international arbitration case which is conducted in India and in such arbitration case foreign law may or may not be involved;</p>	<p>(ii) <i>providing legal services and appearing as a lawyer for a person, firm, company, corporation, trust, society etc. who/ which is having an address or principal office or head office in a foreign country in an international arbitration case which is conducted in India, which (i) is not governed by Indian Law; and (ii) arises out of or is reasonably related to the country of primary qualification of the foreign legal consultant conducting such arbitration;</i></p>	

<p>(iii) providing legal services and appearing as a lawyer for a person, firm, company, corporation, trust, society etc. who 'which is having an address or principal office or head office in the foreign country of the primary qualification in proceedings before bodies other than Courts, Tribunals. Boards, statutory authorities who are not legally entitled to take evidence on oath, in which knowledge of foreign law of the country of the primary qualification is essential;</p>	<p><i>(iii) providing legal services and appearing as a lawyer for a resident of India in proceedings before any Courts, Tribunals. Boards, statutory authorities in the foreign country in respect of matters concerning foreign law of the country of the primary qualification;</i></p>	<p>These are clearly representational services and should be restricted to representing Indian residents in foreign fora where foreign law is involved.</p>
<p>(iv) providing legal services concerning the laws of the Country of primary qualification and on diverse international legal issues, provided that such legal services, unless otherwise provided for in these Rules, shall not include representation or the preparation of documents regarding procedures before a Court of Law, Tribunal or any other Authority competent to record evidence on oath or preparation of any documents, petitions etc. to be submitted to any such forum regarding such procedures.</p>	<p><i>(iv) providing legal services concerning the laws of the Country of primary qualification and on diverse international legal issues (other than concerning Indian Law), provided that such legal services, unless otherwise provided for in these Rules, shall not include representation or the preparation of documents regarding procedures before a Court of Law, Tribunal or any Governmental Authority in India.</i></p>	<p>The words “diverse international legal issues” seem to have been adopted from Paragraph 63(ii) of the A K Balaji judgement of the Madras High Court. This expression has not been defined. In any event, it needs to be clarified that Indian Law is excluded from the scope.</p>
	<p><i>Additional Provision: Rule 8(3)</i> <i>No practice of Indian Law</i></p>	

	<p><i>Notwithstanding anything to the contrary contained herein, a Foreign Legal Consultant or a registered foreign law firm shall not practice Indian law including but not limited to:</i></p> <ul style="list-style-type: none"> <i>(i) Appearing as a lawyer on behalf of another person in any court, tribunal, board or statutory authority in India;</i> <i>(ii) Preparing any instrument effecting the transfer or registration of title to real estate or other tangible or intangible property located, or the situs of which is deemed to be, in India;</i> <i>(iii) Preparing: (i) any will or trust instrument effecting the disposition on death of any property (tangible or intangible) located in India; or (ii) any instrument relating to the administration of a decedent's estate in India;</i> <i>(iv) Preparing any instrument in respect to marital or parental relations, rights or duties of a resident or citizen of India or the custody or care of the children of such resident or citizen; or</i> <i>(v) Rendering advice on Indian Law (whether rendered incidental to the preparation of legal documentation or otherwise);</i> 	<p>It is common practice in other jurisdictions that not only is there a positive description of what the foreign legal consultant can do, there is also a negative list of what he can't do. This is important for certainty and clarity.</p>
	<p><i>Additional Provision: Rule 8(4)</i></p> <p><i>Title and description of practice</i></p>	<p>It is a requirement in almost all jurisdictions that the title of a foreign legal consultant clearly and accurately describes the permitted activities in his or her title. Similarly for a registered foreign law firm.</p>

	<p>(a) <i>Neither a foreign legal consultant nor a registered foreign law firm shall represent in any manner whether in India or elsewhere, that he or it is permitted to practice Indian Law.</i></p> <p>(b) <i>A foreign legal consultant shall not use any title other than “Foreign Legal Consultant, Not Licensed to Practice Indian Law,” although such person’s authorized title and firm name in the foreign country in which the person is admitted to practice as an attorney counselor at law, or the equivalent may be used subject to the condition that the title, firm name, and the name of the foreign country are stated together with the abovementioned designation. Nothing may be added to title to create the impression that the Foreign Legal Consultant is licensed or authorized to practice Indian Law.</i></p> <p>(c) <i>A registered foreign law firm shall not use any title other than “Registered Foreign Law Firm Not Licensed to Practice Indian Law,” although such firm’s description in the foreign country may be used subject to the condition that the title, firm name, and the name of the foreign country are stated together with the abovementioned designation. Nothing may be added to title to create the impression that the registered foreign law firm is licensed or authorized to practice Indian Laws.</i></p> <p>(d) <i>A foreign legal consultant or a registered foreign firm shall not advertise or solicit anywhere in the world that he or it or any firm or entity or organization or any Connected</i></p>	
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<p>9. Incidental matters as regards opening of law offices, entering into partnerships, procuring other legal services etc. in connection with the practice of law in India. - (1) The registered foreign lawyer shall be entitled to do the following things in connection with the practice of law in India: -</p>	<p>9. <i>Incidental matters in connection with the permitted activities of foreign legal consultants and registered foreign law firms -</i> <i>(1) A foreign legal consultant or the registered foreign law firm, as the case may be, shall be entitled to do the following things in connection with conducting activities permitted under the registration and these rules:</i></p>	<p>To repeat – it is not “practice of law” by foreign lawyers/foreign law firms but permission to undertake certain stated activities.</p>
<p>(i) to open law office or offices in India for carrying on law practice in India subject to the condition that Bar Council of India shall be kept informed of the particulars of such office/offices viz. postal address, name of the owner/lessee of the property in which the office/offices are located and the documents enabling and entitling him/it to occupy it.</p>	<p>(i) <i>to open an office in India. Provided a registered foreign law firm may be permitted to open a second office in India after a period of [*] years so long as it and its foreign legal consultants are in compliance with these rules. The foreign legal consultant / registered foreign law firm shall keep the Bar Council of India informed of the particulars of such office viz. postal address, name of the owner/lessee of the property in which the office/offices are located and the documents enabling and entitling him/it to occupy it.</i></p>	<p>It would be appropriate to regulate the number of offices a FLC or a registered foreign firm can open in India.</p>

<p>(ii) to engage and procure the services of one or more advocate enrolled under the Act, but such engagement shall not entitle and allow the foreign lawyer to practice Indian Law,</p>	<p>(ii) <i>to introduce Advocates enrolled under the Act or firms of Advocates to foreign clients for engagement of such Advocate/firms of Advocates for any matter concerning Indian Law, but subject to Rule 9(2) of these Rules.</i></p>	<p>The consequence of the BCI proposed sub-rule will be that foreign legal consultants/foreign law firms can directly/indirectly practice Indian law through Advocate/s hired by him/them.</p> <p>In any phased opening up of the market, it is critical that the relationship with the local bar which results in direct or indirect participation in practice of local law is regulated. Hiring local lawyers who practice local law is not a permitted activity in the phase where only "foreign law" practice is the norm.</p> <p>However, foreign legal consultants and registered foreign law firms should be able to introduce to their clients Advocates and firms of Advocates for matters concerning Indian law. This has to be with safeguards to avoid "surrogacy" practices which have been observed in other jurisdictions.</p>
<p>(iii) to engage and procure the services of one or more Indian-Registered foreign lawyers,</p>	<p>(iii) <i>to engage and procure the services of one or more foreign legal consultants registered under these Rules.</i></p>	<p>No comment. Suggested drafting change is for purposes of clarity.</p>

<p>(iv) to enter into partnership with one or more Indian registered foreign lawyers and/or advocates enrolled under the Act,</p>	<p>(iv) to enter into partnership with one or more foreign legal consultant/s registered under these Rules.,</p>	<p>The effect of this is that foreign legal consultants and foreign law firms can directly/indirectly conduct practice of Indian law in partnership with Advocates. That is not the objective of these Rules which are for the phase where foreign legal consultants and registered foreign law firms practice only "foreign law". The extent and manner of relationship with local bar is to be determined in the next phase of opening up and not in this phase.</p>
<p>(v) to work for an advocate enrolled under the Act and for any Indian Law firm,</p>	<p>(v) <i>to work for an advocate enrolled under the Act and for any firm of Advocate;</i></p>	<p>Add "firm of Advocates" rather than Indian Law firm – which is not defined.</p>
<p>(vi) to work for another Indian-registered foreign lawyer.</p>	<p>(vi) <i>to work for another foreign legal consultant registered under these Rules.</i></p>	<p>No comment. Suggested drafting change is for purposes of clarity.</p>
	<p>New provision: 9 (2). Restrictions on relationship with Advocates and firms of Advocates</p>	

	<p><i>A foreign legal consultant or a registered foreign law firm or any other person who is not an Advocate, or any firm, entity or organization of which such foreign legal consultant or registered foreign law firm or person is an owner, partner, consultant, employee, retainer or with which the foreign legal consultant or registered foreign law firm is connected in any other similar capacity (collectively “Connected Entity”), shall not, directly or indirectly:</i></p> <p><i>(a) (i) partner with; or (ii) participate in the sharing of revenues or profits or assumption of risks in any joint venture, arrangement, or association, with an Advocate or firm of Advocates in the practice of Indian law irrespective of where such partnership, venture, association or arrangement is constituted;</i></p> <p><i>(b) establish a joint office with, or assign, depute or designate any of its partners, associates, employees, or other personnel to, any Advocate or firm of Advocates to engage in practice of Indian law;</i></p> <p><i>(c) manage, operate, control or enjoy equity interests in any firm of Advocates; or</i></p> <p><i>(d) employ an Advocate as a part of registered foreign lawyer’s operations in India or any where in the world, provided that if an Advocate is so employed, then such Advocate shall cease to be an enrolled member of the Bar Council of India and shall not be entitled to practice Indian Law.</i></p> <p><i>Explanation:</i></p> <p><i>For the purposes of the above Rule 9(2), any of the following circumstances shall be regarded as the</i></p>	<p>One of the problematic areas is the issue of controlled relationships or surrogacy – where so control and influence equal to ownership or near ownership – de facto but not de jure – is known to exist.</p> <p>This has been highlighted several times in the past. It needs to be ensured that the entry of foreign lawyers and foreign law firms is for purposes intended in Phase II and not for backdoor implementation of Phase III.</p> <p>Therefore, adequate safeguards must be in place to ensure that surrogacy is effectively and in a meaningful real way prohibited. It may be noted that the regulations in China have similar provisions in Phase II situation.</p>
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<p style="text-align: center;">CHAPTER V DISCIPLINARY ISSUES AND PENALTIES FOR SECURING REGISTRATION BY MISREPRESENTATION ETC,</p>	<p style="text-align: center;">CHAPTER V DISCIPLINARY ISSUES AND PENALTIES FOR SECURING REGISTRATION BY MISREPRESENTATION ETC,</p>	
<p>10. Disciplinary issues. - (1) A foreign lawyer registered under these rules shall be subject to the same ethical and practice standards laid down under the Advocates Act, 1961 and Rules made there under as are the advocates enrolled under the Act.</p>	<p>10. <i>Compliance: - (1) A foreign legal consultant and a registered foreign law firm shall comply with the terms and conditions of the registration granted under these rules. A foreign legal consultant shall be subject to the same rules for “Standards of Professional Conduct and Etiquette” (including but not limited to Rule 36 on solicitation and advertising) established by the Bar Council of India under the Advocates Act, 1961 as are the advocates enrolled under the Act. A registered foreign law firm shall be responsible for the acts of commission and omission of any foreign legal consultant who is a member of such foreign firm.</i></p>	<p>FLC and registered foreign law firms must comply with the terms of registration and with the ethical and practice standards including rules as to solicitation and advertising. Further a registered foreign firm will take responsibility for FLC who is a member of such firm.</p>
<p>(2) Where on receipt of a complaint or otherwise the Bar Council of India has reason to believe that any foreign lawyer registered under these Rules has been guilty of professional or other misconduct in connection with law practice in India, it shall refer the case for disposal to any of its disciplinary committee under section 36 of the Advocates Act, 1961.</p>	<p><i>(2)Where on receipt of a complaint or otherwise the Bar Council of India has reason to believe that any foreign legal consultant or a registered foreign law firm has been guilty of professional or other misconduct in connection with his activities or has been in violation of the terms and conditions of registration hereunder, it shall refer the case for disposal to any of its disciplinary committee under section 36 of the Advocates Act, 1961.</i></p>	<p>The disciplinary and regulatory authority of BCI should also extend to violation of terms and conditions of registration apart from professional misconduct.</p>

<p>(3) In disposing of the proceedings under section 36 of the Act and this rule* the disciplinary committee of the Bar Council of India may make any of the following orders, namely: -</p> <p>(a) dismiss the complaint or drop the proceedings; (b) reprimand the foreign lawyer; (c) suspend the registration of the foreign lawyer for such period as it may deem fit; (d) cancel the registration, permanently; (e) impose penalty of such an amount as it may deem fit; (f) impose costs.</p>	<p><i>(3)In disposing of the proceedings under section 36 of the Act and this rule* the disciplinary committee of the Bar Council of India may make any of the following orders, namely: -</i></p> <p><i>(a) dismiss the complaint or drop the proceedings; (b) reprimand the foreign legal consultant / the registered foreign law firm, as the case may be;</i> <i>(c) suspend the registration of the foreign legal consultant / the registered foreign law firm for such period as it may deem fit;</i> <i>(d) cancel the registration, permanently;</i> <i>(e) impose penalty of such an amount as it may deem fit;</i> <i>(f) impose costs.</i></p>	
	<p><i>(4) The Bar Council of India shall communicate to the concerned Competent Authority of the concerned foreign country of primary qualification the action taken by the Bar Council of India under these Rules against a foreign lawyer and against any foreign law firm with whom a foreign lawyer is associated with a requisition that such Competent Authority take such further action as is necessary at its end.</i></p>	<p>It is imperative that any action taken by the BCI is also communicated to the concerned competent authority.</p>

<p>11. Consequences of securing registration by misrepresentation, fraud etc.: - (1) The Bar Council of India may, if satisfied, either on a complaint made to it or otherwise that any person has secured registration/renewal of registration as a foreign lawyer by misrepresentation as to an essential fact or by fraud or undue influence, it may make, after giving him/it an opportunity of being heard, cancel the registration/renewal of registration of such a foreign lawyer with or without penalty of such an amount as it may deem fit.</p> <p>However, if such misrepresentation relates to a fact, which is not essential, it may make any of the following orders, namely:-</p> <p>(a) dismiss the complaint or drop the proceedings; (b) reprimand the foreign lawyer; (c) suspend the registration of the foreign lawyer for such period as it may deem fit; (d) impose penalty of such an amount as it may deem fit; (f) impose costs.</p>	<p><i>11. Consequences of securing registration by misrepresentation, fraud etc.:</i> - (1) The Bar Council of India may, if satisfied, either on a complaint made to it or otherwise that any person/s has/have secured registration/renewal of registration as a foreign legal consultant or registered foreign law firm, as the case may be, by misrepresentation as to an essential fact or by fraud or undue influence, it may make, after giving him/it an opportunity of being heard, cancel such registration/renewal of such registration with or without penalty of such an amount as it may deem fit.</p> <p><i>However, if such misrepresentation relates to a fact, which is not essential to the grant or renewal of the registration, Bar Council of India may make any of the following orders, namely:-</i></p> <p><i>(a) dismiss the complaint or drop the proceedings; (b) reprimand the foreign legal consultant / registered foreign law firm, as the case may be; (c) suspend the registration of the foreign legal consultant / registered foreign law firm for such period as it may deem fit; (d) impose penalty of such an amount as it may deem fit; (f) impose costs.</i></p>	<p>Registered foreign law firm added in this provision.</p>
<p style="text-align: center;">CHAPTER VI MISCELLANEOUS</p>	<p style="text-align: center;">CHAPTER VI MISCELLANEOUS</p>	
	<p>New Provision: 11A. Saving for temporary presence / fly in fly out</p>	

	<p><i>Nothing in these rules shall prevent a foreign lawyer not registered under these rules, to fly in and fly out for the purpose of giving legal advice to a client in India on foreign law if:</i></p> <p><i>(i) the foreign lawyer is not present in India for 60 days in any period of 12 months; and</i></p> <p><i>(ii) such foreign lawyer referred to in clause (i) above is associated with a foreign law firm, then the cumulative number of days spent in India by all foreign lawyers associated with such law firm is less than 180 days in any period of 12 months.</i></p>	<p>Covers both foreign lawyers and foreign law firms.</p>
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<p>12. Regulatory authority. - The Bar Council of India shall have the right of issuing such directions and regulations from time to time, as are necessary for the proper implementation and execution of these Rules. The Bar Council of India may hold deliberations and consultations with its counterparts i.e. statutory authorities in management of the legal profession in different foreign countries in consultations with the Government of India on the principle of reciprocity so as to promote and strengthen the legal services in India to keep pace with the globalization of trade and commerce and to provide a vibrant and effective framework of legal service that can cater to the ever changing needs of the people, belonging to different religions, faiths and having different personal laws, migrating from one country to the other and to promote international progress, coherence and unity.</p> <p>The Bar Council of India is responsible for ensuring the reciprocity: The Council can cancel the registration of any foreign lawyer or law firm if it comes to the notice of the council through any source that the Indian lawyers or Indian Law firm are being discriminated by the concerned counterpart foreign country. The Council shall cancel such registration after giving the concerned foreign lawyers/ foreign law firm or the Government an opportunity to place their views before the Council.</p>	<p>12. Regulatory authority: The Bar Council of India shall have the right of issuing such directions and regulations from time to time, as are necessary for the proper implementation and execution of these Rules. The Bar Council of India may hold deliberations and consultations with its counterparts i.e. statutory authorities in management of the legal profession in different foreign countries in consultations with the Government of India on the principle of reciprocity so as to promote and strengthen the legal services in India to keep pace with the globalization of trade and commerce and to provide a vibrant and effective framework of legal service that can cater to the ever changing needs of the people, belonging to different religions, faiths and having different personal laws, migrating from one country to the other and to promote international progress, coherence and unity.</p> <p>The Bar Council of India is responsible for ensuring the reciprocity: The Council can cancel the registration of any foreign lawyer or law firm if it comes to the notice of the council through any source that the Indian lawyers or Indian Law firm are being discriminated by the concerned counterpart foreign country. The Council shall cancel such registration after giving the concerned foreign lawyers/ foreign law firm or the Government an opportunity to place their views before the Council.</p>	<p>We have not suggested any changes in these provisions because these are dependent on the larger issue of reciprocity and how it will actually operate. We refer to our detailed note on Reciprocity.</p> <p>Law firms operating in multiple jurisdictions and with partners from multiple jurisdictions. The basic understanding of what "reciprocity" means in that situation? See our separate note on "Reciprocity"</p>
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<p>13. Removal of Difficulties: In case any doubt or dispute as to the meaning, interpretation and execution of these Rules arise the Bar Council of India shall be the final authority to resolve and settle all such disputes and its decision thereon shall be final.</p>	<p><i>13. Removal of Difficulties: If any difficulty arises in giving effect to any provision of this Rules, the Bar Council may make such order, not inconsistent with the provisions of these Rules, as may appear to it to be necessary to remove the difficulty.</i></p>	<p>This is not a removal of difficulties clause but a dispute resolution clause? We have amended this to read as a standard difficulties removal provision.</p>
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