

SOCIETY OF INDIAN LAW FIRMS (SILF)



SILF President

Dr. LALIT BHASIN

28 June 2025

Dear Chairman Mishra Ji,

This communication is in response to BCI's recent Press Release. Our detailed Representation regarding the new Regulations will be submitted during the next week.

SILF's bona fide gesture in good faith to assist BCI in rationalising the new Regulations regarding foreign lawyers seems to have struck a wrong chord as reflected in BCI's press release. It is also surprising, given that SILF has never taken an adversarial stance on any issue with BCI. Our role has been supportive of a regulated, phased, and sequential entry of foreign lawyers.

2. It would be beneficial to outline the chronology of events over the last 11 years for a comprehensive understanding of the issues.

- (i) The first serious deliberation on the opening of the legal sector in India to foreign lawyers was undertaken in late 2014 in consultation with an Inter-Ministerial group (IMG) of the Government of India coordinated by the Ministry of Commerce. IMG held a meeting on January 8, 2015. At that meeting, both you and I were present, as besides the Regulator BCI, SILF was the only professional body of lawyers to be recognised and invited to the meeting.
- (ii) At that meeting, SILF made a detailed presentation, which was followed by a presentation by the Department of Commerce. BCI did not make any presentation. The two presentations were nearly identical in substance.

suggesting that the opening up of the Indian legal services sector should not be an ad hoc event, but instead form part of an overall plan for sector reform. SILF supported the government presentation and placed on record our conscious stand that foreign lawyers should be allowed, subject to appropriate regulations. There was a consensus on the three-phase approach to opening up the market with domestic reform as the starting point of the process. In these deliberations, parallels were drawn to experiences of phased opening up of legal services in other jurisdictions, such as China, Singapore, Japan, and the Republic of Korea, and lessons learned from them, which provide helpful guidance on designing and implementing "opening up".

- (iii) In 2016, without any prior stakeholder consultation, the BCI released draft rules ("2016 Draft Rules") for the entry of foreign lawyers and foreign law firms. BCI did not refer to domestic reforms. SILF represented that it supports the opening up of the market. Still, BCI must implement domestic reform in Phase 1 and then implement Phase 2—that is, the entry of foreign lawyers to practice foreign law. SILF also submitted its detailed comments on various legal issues with the 2016 Draft Rules, including reciprocity requirements, vires, and the text of specific rules and proposed amendments thereto.
- (iv) In October 2016, a subcommittee formed by BCI, which included representatives of SILF, deliberated on the issues, particularly the amendment to the Act to allow for the entry of foreign lawyers and foreign law firms into India. A few drafts of the Chapter were discussed in the meetings. By then, it appeared that BCI had decided not to pursue the 2016 Draft Rules.
- (v) In July 2017, further deliberations were held at the IMG in which both BCI and SILF participated. Here again, a broad consensus of a phased approach was reiterated. BCI was asked to present, within four weeks starting from July 28, 2017, a package including a draft of the Phase I reform package and draft rules for Phase II. Those drafts were to be the subject matter of stakeholder consultation under the aegis of the Ministry of

Law & Justice and the Ministry of Commerce. No such package was received from BCI.

(vi) On March 13, 2018, the Hon'ble Supreme Court gave its historic verdict in the case of Bar Council of India vs. A.K. Balaji (the Balaji Case). It may be recalled that BCI had challenged the judgment of the Madras High Court, which granted "fly-in, fly-out" rights to foreign lawyers and permitted them to appear in arbitration matters in India. Madras High Court agreed with the decision of the Bombay High Court in the Lawyers Collective case that the practice of law in India can only be under the provisions of Section 24, Section 29, and Section 33 of the Act. The ratio of the Hon'ble Supreme Court's decision in the Balaji Case, interpreting the provisions of the Act, is as follows:

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

- (vii) From 2017 to March 2023, there was complete silence on the part of BCI. No steps were taken to amend the Advocates Act, 1961, to provide for the entry of foreign lawyers to overcome the interpretation of law by the Hon'ble Supreme Court in the Balaji case. No steps were taken to initiate domestic reforms, despite a clear need to identify the regulatory landscape, where there was no level playing field between the Indian profession and foreign lawyers.
- (viii) On March 13, 2023, BCI notified "the Bar Council of India for registration and regulation of foreign lawyers or foreign law firms in India, 2022 ("2022 Rules"). It is clear that the Rules were drafted months in advance (see the title, which refers to 2022), but they were never disclosed or published until March 13, 2023. These 2022 Rules were brought even as the Balaji Case judgement stood, thus casting a serious exposure of *ultra vires*. It was clear from the "objects and reasons" stated in the 2022 Rules that BCI had "discussions and deliberations with the Law Society of England & Wales", but ironically, there had been no deliberations or discussions with the Indian legal fraternity.
- (ix) Given that there had been no consultations with the Indian legal fraternity about these 2022 Rules, there was a bit of uproar by the legal fraternity (and that did not involve SILF in any way), the BCI issued a Press Release on March 19, 2023 under the heading "True Facts about BCI's Rules regarding Entry, Rules and Regulations of Foreign Lawyers and Law firms in India" seeking to address "some misgivings in circulation about the recently published Gazette notification by BCI regarding entry of Foreign lawyers and law firms in India. This Press Release, instead of clarifying matters, contradicted the 2022 Rules.
- (ix) On March 30, 2023, SILF made a detailed representation regarding the 2022 Rules in which SILF again stated its stand that it does not oppose the opening up of the legal services market but expressed its concerns (a) on the lack of domestic reforms, (b) the vires of the Rules, (c) complexity of "reciprocity" issues considering the multi-jurisdiction presence of foreign law firms, (d) regulatory discrimination between foreign lawyers and the Indian

profession, (e) lack of clarity in the domain of practice of foreign lawyer, (f) sensitivity of relationship between foreign lawyers and the Indian profession to prevent surrogacy, and (g) gaps in and vagueness of the 2022 Rules.

- (x) In the months following SILF representation, we had further deliberations with you and your colleagues at BCI during which we shared detailed comments on the 2022 Rules and provided suggestions on the text.
- (xi) The BCI decided not to implement those rules. The matter rested there for almost two years until May 13, 2025, when BCI notified another set of Rules (2025 Rules") which BCI describes as an "amendment" to the 2022 Rules. It may be noted that – though the 2025 Rules do not indicate which provisions of the 2022 Rules have been amended. These 2025 Rules wholly "substitute" the 2022 Rules. The "objects and reasons" as set out in 2025 Rules, continue to emphasize the interactions between BCI and the Law Society of England & Wales.

3. With great respect, what history shows is that the issue of opening up the market has been considered in an ad hoc and stand-alone manner, rather than within the overall context of the Indian legal profession and its future. There is no blueprint for the reform and development of the Indian legal profession. Rules for the entry of foreign lawyers and foreign law firms have been introduced over time without any meaningful consultation with or participation from the Indian legal fraternity. Representations made by SILF, which does represent the most impacted segment of the profession, have not been given any consideration. Then there is the phenomenon of introducing rules, followed by confusing clarifications, and ultimately, non-implementation. And the cycle continues to repeat itself. The motivation and timing of introducing the rules appear to be driven by external factors. None of this lends credibility to our country.

4. While three versions of these rules have been produced by BCI over the last 10 years, no meaningful reform or update to centuries-old, outdated regulations has been proposed in the last 50 years. On a simple matter, such as the admissibility of the LLP format for law firms, SILF's request for clarification has been pending with the BCI for the last 15 years. SILF proposed draft rules for recognition and registration of law firms in LLP format, submitted to BCI two years ago, with no

response from BCI. Discussions with BCI over the past 10 years regarding the amendment to Rule 36 to enable the dissemination of information by law firms have yielded no results.

5. I would like to reiterate that over the last 10 years, SILF has maintained a consistent stand and expressed consistent concerns, as outlined in our meetings with IMG and BCI, and documented in our representations to BCI since 2015. To recapitulate in summary what we have said over this period:

- (i) The Advocates Act, 1961, needs to be amended appropriately to provide specifically for entry of foreign lawyers, failing which any secondary legislation like the BCI Rules would suffer from the vice of ultra vires, given the ratio of the Balaji Case. To clarify, in that case, the Hon'ble Supreme Court gave liberty to BCI and the Government to make suitable rules only in respect of two specific matters concerning foreign lawyers – that is, concerning fly-in fly-out practice and participation in arbitration matters and not for permitting entry of foreign lawyers and foreign law firms in India.
- (ii) SILF does not oppose the regulated entry of foreign lawyers and supports the efforts of BCI in that direction. The opening of the legal services market must be done in a regulated, phased, and sequenced manner. The experience of several other countries gives practical guidance and insights.
- (iii) SILF reiterates that BCI, as the regulator of the profession, must place equal, if not greater, emphasis on bringing about domestic reforms to ensure a level playing field.
- (iv) There must not be regulatory discrimination between the Indian profession and the foreign lawyers and foreign law firms. So far, each version of the rules produced by BCI, including the 2025 Rules, suffers from serious discriminatory treatment of the Indian profession.
- (v) The Foreign lawyers and foreign law firms' practice domain must be set out, both in terms of what they can practice and what they cannot practice.

- (vi) The relationship between the foreign lawyers and foreign law firms and the domestic profession must be strictly regulated to ensure that foreign lawyers and foreign law firms cannot do "indirectly" what they cannot do "directly".
- (vii) "Reciprocity" is a critical and fundamental principle in this exercise. There are significant issues when "reciprocity" is applied to multi-jurisdiction foreign law firms.

This has been SILF's consistent stand and continues to be so.

6. It is unfortunate that BCI deemed it necessary to publicly make rather strong and uncharitable comments regarding the motives and standing of SILF.

- (i) SILF's status and standing have been recognised by the government, the judiciary and most importantly by BCI itself over more than a decade under your Chairmanship since 2014.
- (ii) SILF, to the knowledge of BCI, is the only body of its kind in the world and represents a brilliant think tank, the like of which does not exist in the country.
- (iii) SILF has been recognised by international bodies such as the IBA, UIA, IPBA, and the Law Society of England and Wales. Please see the attached email from the Law Society seeking a meeting with SILF on the implications of the new Regulations. This constructive dialogue has been ongoing for many years. They recognize that SILF is a facilitator and not an opponent for the entry of foreign lawyers.
- (iv) As the Regulator BCI is entitled to regulate the profession, but not to throttle existing institutions like SILF, which has been in existence since the year 2000. It was inaugurated by the late Mr. Arun Jaitley, who provided full support to SILF activities, including the allotment of land where the SILF building now stands. The building was subsequently inaugurated by the Hon'ble Vice President of India, Shri Jagdeep Dhankhar. BCI may set up any other body of law firms if it is so mandated. SILF has its credibility and standing.

- (v) SILF continues to evolve as it learns from its experiences as an organisation. All significant decisions are made by the general body in town hall meetings, where all members are free to share their views and contribute to the discussions. Much before the BCI's statement to the Media, SILF, in its general body held on June 3, 2025, announced the elections to be held for various office bearers, including the post of President and Members of the Executive Committee. The election schedule commenced on 7 June 2025. The election rules provide for due and separate representation of law firms that have been in existence for up to 10 years, those that have been in existence for up to 20 years, and those that have been in existence for more than 20 years. Accordingly, the interests of young and emerging law firms are duly protected and represented.

7. BCI's statement that corporate, transactional and arbitration work has been monopolised by a small group of Indian law firms is devoid of logic and is factually incorrect. Law Firms do not choose the clients – the clients select the law firms of their choice. These Regulations are sought to be justified on the ground that these would dismantle the monopolies of some law firms in India. Does BCI want to bring in foreign interests to demolish Indian entities? Firstly, there are no monopolies. Even young and emerging law firms are engaged in big corporate and transactional legal work. These young firms are technology-driven and very competent and knowledgeable. Further, thanks to the policies and initiatives of the government under the leadership of Prime Minister Modi, there has been, due to India's position as one of the top four economies in the world, significant surge in legal work resulting in more and more emerging law firm firms getting a big pie of the legal work. Indian law firms are more cost-effective, a consideration which is vital for foreign clients.

8. Attacking so-called "big" law firms is most unfortunate. Big firms did not become big overnight. By sheer merit, hard work, knowledge, experience and expertise, they have modernised the Indian legal profession. Does BCI aim to dismantle the architects of India's corporate law practice? The Hon'ble Prime Minister and the worthy PMO have called for reforms in the accountancy profession by pushing for the creation of India's own Big Four in place of the Big Four. There is a stark

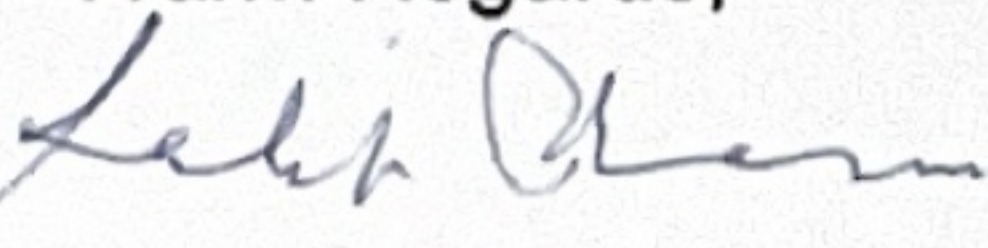
parallel – a reminder – of what happened in the accountancy profession, where no domestic firm of significance remains standing. If BCI envisions a place under the sun for the Indian profession, then BCI should recognise the role of India's law firms, whether big or small, and BCI should create conditions in which Indian law firms can dream "big" of becoming global law firms. Do not dismantle our law firms on the alleged ground of being "big" or "monopolies". "Big" is a relative term. Here are some statistics. The largest three law firms in the world (in 2023) were: (i) Kirkland & Ellis (Revenue USD 7.2 Billion, that is, approximately Rs.61,200 Crores; 3500 lawyers), (ii) Latham & Watkins (Revenue USD 5.7 Billion, that is, approximately Rs.48,450 Crores; 3400 lawyers), and (iii) DLA Piper USD 3.8 Billion, that is, approximately Rs.32,300 Crores; 4500 lawyers). The aggregate revenues of the entire corporate practice in India are a minuscule fraction of the annual revenue of just one of these "big" firms. There is no comparison between "big" Indian law firms and foreign law firms in terms of size and scale.

9. Despite the accusatory and aggressive nature of BCI's press release, SILF is steadfast in its commitment to not taking any adversarial role. We assure you that we are not opposed to the entry of foreign lawyers. At the same time, we are of the view that the Regulations are not perfect and have many lacunae. Shortly, we will send our detailed comments on the Rules.

We again request a meeting of BCI with our members.

We are sharing this communication with the worthy members of the BCI constituted Committee as well.

Warm Regards,



LALIT BHASIN

President

Shri Manan Kumar Mishra
Chairman
Bar Council of India
21, Rouse Avenue Institutional Area
New Delhi - 110 002