

BCI amends rules to let foreign law firms operate with partners in India

Earlier foreign law firms could only operate in “non-litigious” areas and were restricted to advise their clients only on foreign or international law

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The “Indian-foreign law firms” are essentially a route for Indian firms to compete with foreign firms in India.

In a significant decision that opens up the market for legal practice for foreign players, the Bar Council of India (BCI) has amended its rules to allow foreign law firms to represent clients in all international arbitration cases in India and effectively practice before courts by referring cases to their advocates and partners who are licensed to practice in India.

“...Indian advocates and partners in such law firms, in accordance with their enrollment rights and privileges to practice law in Indian courts, may take up matters referred by their respective foreign law firms, provided such matters fall within the scope of Indian law and the advocate’s permissible area of practice,” Rule 8(3) of the new BCI rules state.

This means that a foreign law firm registered in India can refer cases to an Indian lawyer who can then argue before a court of law. This is a big concession from the earlier position that foreign law firms could only operate in “non-litigious” areas and were restricted to advise their clients only on foreign or international law.

Vyapak Desai, who heads International Disputes and Investigations at Nishith Desai Associates, a leading law firm, said the BCI decision marks a “big shift” in the market.

“Indian advocates can work in foreign law firms registered in India without giving up their right to audience in a court. This really opens up the market for Indian lawyers,” he said.

The BCI had brought in the Rules for Registration and Regulation of Foreign Lawyers and Foreign Law Firms in India, 2022 which came into force in 2023 allowed foreign law firms to set up offices in India to practice transactional and corporate work on reciprocal basis.

“A foreign lawyer registered under rules shall be entitled to practice law in India in non-litigious matters only,” the rules had stated.

On arbitration, the new Rules state that “practice by foreign lawyers or foreign law firms in India” can include “providing legal advice, conducting transactions, and giving opinions on the laws of their country of primary qualification, international law, and the foreign laws of other jurisdictions” and “representing clients in international arbitration cases conducted in India.”

“These arbitration cases may involve foreign law, international law, or a combination thereof,” the Rules added. Since the Rules do not expressly bar arbitrations involving domestic law, foreign law firms can take up any arbitration in India as long as the clients are “individuals, firms, companies, corporations, trusts, or societies with their principal office or address in a foreign country.”

The amended Rules for the first time also allow Indian law firms to register as foreign law firms. Under the earlier rules, if an Indian lawyer registered or worked with a foreign law firm, they had to forfeit their Bar licence to practice in India. However as a “Indian-foreign law firm,” Indian lawyers continue to work as Indian lawyers while taking on work in foreign or international law in India.

The “Indian-foreign law firms” are essentially a route for Indian firms to compete with foreign firms in India.

With India signalling its intent to transform into a global arbitration hub, entry of foreign law firms was a crucial regulatory issue. There has been a demand that foreign companies doing business in India or engaged in arbitration in India must be allowed to engage foreign law firms. It is learnt that the issue was also raised in the UK-India FTA but was later dropped from being packaged with the trade agreement.



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