

30 January 2012

Ms Jan Adams  
First Assistant Secretary  
Department of Foreign Affairs and Trade  
RG Casey Building  
John McEwen Crescent  
Barton ACT 0221

By email: [indiafta@dfat.gov.au](mailto:indiafta@dfat.gov.au)

**Re: Australia-India Comprehensive Economic Cooperation Agreement (AICECA)**

Dear Ms Adams,

Please find **attached** a submission by the Law Council of Australia in relation to the Australia-India Comprehensive Economic Cooperation Agreement. On forwarding this submission to you, the Law Council will circulate a copy amongst its committees and member organisations. A copy will also be made available on the Law Council's website.

Through the AICECA and its negotiation, the Law Council of Australia seeks two primary outcomes:-

- (a) commitments from India to liberalise its legal services sector and to enable Australian lawyers to practise in India; and
- (b) support from the Australian Government for the Law Council to engage in 'Track II' diplomatic measures to improve goodwill and understanding between the Australian and Indian legal professions and with its counterpart body the Bar Council of India.

The Law Council would welcome the opportunity to meet with the Department of Foreign Affairs to elaborate on its submission.

The responsible officer in the Law Council Secretariat for this matter is Mr David Naylor. Mr Naylor may be contacted by email at [david.naylor@lawcouncil.asn.au](mailto:david.naylor@lawcouncil.asn.au), or by phone (02) 6246 3717.

On behalf of the Law Council I wish to thank you for the opportunity to make a submission in relation to the AICECA.

Yours sincerely,



Margery Nicoll  
Acting Secretary-General

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# Australia-India Comprehensive Economic Cooperation Agreement

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**Department of Foreign Affairs and Trade**

**30 January 2012**

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## Executive Summary

1. The Law Council welcomes the opportunity to make this submission to the Department of Foreign Affairs and Trade in relation to the proposed Australia-India Comprehensive Economic Cooperation Agreement (AICECA). The Law Council notes in particular the references made in the Australia-India Joint Ministerial Commission 13<sup>th</sup> Session Joint Statement to “*the critical role of the private sector in providing a parallel pathway to closer economic integration*” and the “*considerable potential in financial and legal services [trade between Australia and India].*”<sup>1</sup>
2. The Law Council notes the significance of India as a trading partner for Australia and supports the Australian Government’s activities to improve opportunities for trade and investment between India and Australia and to seek the relaxation of tariffs and behind the border barriers for trade between India and Australia. AICECA has the potential to create many opportunities for clients of Australian lawyers and law firms and this will have a significant impact on the services which Australian lawyers provide to their clients, particularly in key areas of trade and investment.
3. The Law Council notes the submission of the International Legal Services Advisory Council (ILSAC) to the *Australia-India Free Trade Agreement Feasibility Study*.<sup>2</sup> In particular the Law Council notes the likely benefits to India of the liberalisation of its legal services market and the barriers to entry identified in ILSACs submission.
4. The regulatory framework of the legal profession in India imposes many restrictions on legal practice, including the practice of foreign law in India. These restrictions prevent or substantially impede Indian companies and Australian companies in India from accessing quick, accurate and high quality advice on the operation of Australian law.
5. India’s framework for the domestic regulation of legal services maintains artificial barriers to trade in services which are contrary to India’s commitments under the General Agreement on Trade in Services (GATS). These barriers are costly to India’s economy and severely impede both the speed and efficiency of international transactions between Australian and Indian business sectors.
6. Elimination of these barriers requires careful consideration because of the risk of exposing India’s domestic market to international pressures. The Law Council believes that, as has occurred in Australia over the past two decades, legal services market liberalisation in India should be progressed through a collaborative partnership between the legal profession and government.
7. The Law Council has developed an excellent relationship with its counterpart in India, the Bar Council of India (BCI) and it is hoped that this relationship will continue to develop through its Memorandum of Understanding and the Partnership Agreement between the Law Council, the Council of Australian Law Deans, ILSAC and the BCI.
8. The Law Council supports the establishment of a Working Party under the proposed AICECA which draws together Indian and Australian stakeholders (including government officials, the BCI and the Law Council) to progress mutually beneficial reform beyond the conclusion of the AICECA.

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<sup>1</sup> Joint Statement. Australia-India Joint Ministerial Commission 13<sup>th</sup> Session, Canberra, 12 May 2011 ([http://www.trademinister.gov.au/releases/2011/ce\\_mr\\_110512a.html](http://www.trademinister.gov.au/releases/2011/ce_mr_110512a.html)) accessed 13 August, 2011.

<sup>2</sup> ILSAC, Submission on Legal Services to the Department of Foreign Affairs and Trade in respect of Australia-India Free Trade Agreement Feasibility Study, June, 2008. Available at [www.ilsac.gov.au](http://www.ilsac.gov.au) . accessed 18 August, 2011

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9. The Law Council reserves the right to make further submissions in relation to this and other aspects of the AICECA.

## Objectives of AICECA

10. The Law Council supports the benchmarks or principles for entering preferential trade agreements noted in the 'Mortimer Report',<sup>3</sup> but believes that Australia can improve mechanisms for private sector involvement in determining whether a proposed agreement has the potential to achieve outcomes that are relevant to the private sector.
11. Consistent with its past submissions in relation to preferential trade agreements, the Law Council submits that Australia's objectives for the AICECA should include objectives along the following lines:-
- (a) to obtain more open and reciprocal market access for goods and services;
  - (b) to obtain the elimination and/or reduction of barriers to trade that restrict export of goods and services to the market in question; and
  - (c) to adopt measures that strengthen the international trading system and which do not divert or distort trade in goods or services.

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<sup>3</sup> David Mortimer AO, 'Review of Export Policies and Program', Commonwealth of Australia, Canberra. at p. 104.

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## Background

12. Over the past 10 years, the Indian Government has attempted to open debate on liberalisation of legal services in India on several occasions. Its attempts have been met by strong opposition from the Indian legal profession and opponents of liberalisation have drawn support from the Bar Council of India and powerful lobby groups of Indian lawyers and law firms to oppose the government's attempts. Nevertheless, with the economic rise of India, it is becoming increasingly obvious that these protests are only delaying the inevitable. India is changing and it is not so much a question of whether it will liberalise its legal services market, but how.
13. In recent years the anti-liberalisation lobby has had several victories with the government backing down from its 2007 reform program; the significant judgement handed down by the Bombay High Court in *Lawyers Collective v Chadbourne and Park and Others*,<sup>4</sup> which effectively prohibited foreign law firms from the 'temporary practice' of providing advice in non-litigious matters on behalf of Indian or foreign clients.<sup>5</sup> It remains to be seen whether the ongoing case of *A.K. Balaji vs. Government of India & others*<sup>6</sup> against Legal Process Outsourcing (LPO) providers, ostensibly to prevent foreign law firms from practising Indian law through LPOs in India will yield a further blow against liberalisation.
14. India's LPO providers have introduced many lawyers to the idea of practising as corporate and transactional lawyers, rather than as purely litigant advocates. Equations Research identifies that the boom in LPO is part of the bigger outsourcing wave India has been experiencing for some time and provides a comprehensive analysis of India's LPO boom including the factors for its success and models of outsourcing.<sup>7</sup> Because of the advantages offered by India, many large multi-national corporations have moved parts of their in-house legal departments to their India-based units.<sup>8</sup>
15. India's highly lucrative corporate and transactional legal market is currently dominated by approximately 50 'elite' law firms and in recent years has expanded substantially to include major government procurement and infrastructure works and the substantial volume of work arising from foreign direct investment.<sup>9</sup> There is a risk that if *Balaji's* case is upheld it could impede development and progress in the legal services sector for many years.
16. Extraordinarily, the Bombay High Court noted in its decision in the *Lawyers Collective* case that the Central Government of India had been "*actively considering the issue (of) foreign law firms practising... law in India... for more than 15 years*" and directed the Central Government "*to take appropriate decision in the matter as expeditiously as possible. Til then, the 1961 Act as enacted would prevail...*"<sup>10</sup> The motivation of the Court in making this statement is not explained. However, in the context of the judgment it could easily be interpreted as a call from the judiciary to the Government to depoliticise and resolve the issue of liberalisation of legal services in India.

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<sup>4</sup> *Lawyers Collective v Chadbourne and Park and Others* Bombay High Court, case no. WP/1526/1995.

<sup>5</sup> See further discussion Harijan, Anirudh. *India: Foreign Law Firms In India*, 17 June 2010, <http://www.mondaq.com/article.asp?articleid=103088> (cited 18 October, 2011).

<sup>6</sup> *W.P. No.5614 / 2010*

<sup>7</sup> Equations Research. *Liberalising Legal Services in India through the GATS: a preliminary analysis of issues at stake*, July 2006, Bangalore, India, at p. 5-6.

<sup>8</sup> Trade Policy Review: India WT/TPR/S/182 2007, at p. 146.

<sup>9</sup> Krishnan, Jayanth K. *Globetrotting Law Firms*, 23 Geo. J. Legal Ethics (2009), at p 7-9.

<sup>10</sup> *Lawyers Collective* above n. 4, per Swatanter Kumar, CJ and J.P. Devadhar, J, at para. 59.

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17. India's low wages and high literacy rate have created huge markets in the export of manufactured goods, business services and outsourcing. To engage in international economies Indian businesses have met their demand for foreign law experts outside of India – mostly from global UK and US law firms. This has revealed a key weakness in India's restrictive legal profession regulations – they constrain both efficient access to and the quality of international law advice available in India. This constraint has placed further pressure on the legal profession to embrace liberalisation.
  18. While Indian lawyers have an excellent reputation internationally, India's domestic firms generally:
    - (a) lack the capacity to develop expert practice groups;
    - (b) are unable to compete internationally,
    - (c) are unable to provide 'full service' business services to Indian clients (i.e. are restricted from providing accountancy and other services);
    - (d) do not have access to international experts and networks of lawyers; and
    - (e) are unable to meet the demand in India for high quality, expeditious legal advice in relation to commercial transactions.
  19. While noting the need for India to implement a number of domestic reforms, the Law Council is hopeful that through the AICECA and track II diplomatic measures progress can be made towards liberalisation in India which is mutually beneficial to the Australian and Indian legal professions.

## What does the Law Council seek from the AICECA?

20. Through the AICECA and its negotiation, the Law Council of Australia seeks two primary outcomes:
  - (a) commitments from India to liberalise its legal services sector and to enable Australian lawyers to practise in India; and
  - (b) support from the Australian Government for the Law Council to engage in 'Track II' diplomatic measures to improve goodwill and understanding between the Australian and Indian legal professions and with its counterpart body the BCI.

### Practice Rights for Australian Lawyers

21. As noted by ILSAC in its submission to the Feasibility Study,<sup>11</sup> most Australian lawyers and law practices are not interested in practising as advocates in India. Rather, Australian lawyers and law practices seek permission to practise Australian and international law for the purpose of advising clients on international commercial transactions.
22. The Australian legal profession seeks practice rights in India which are no more burdensome than the rights of Indian lawyers to practise law in Australia. Specifically, the Australian legal profession seeks the introduction of measures in India to:-

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<sup>11</sup> At p 7.

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- (a) permit the 'fly-in/fly-out' practice of law by Australian lawyers in India – similar to Australian provisions which permit Indian lawyers to engage in the fly-in/fly-out practice of law in Australia;
  - (b) permit the restricted practice of foreign and international law by Australian lawyers in India through the introduction of 'registered foreign legal consultant' rules – similar to the Australian provisions which permit Indian lawyers to establish a commercial presence in Australia as a registered foreign legal consultant;
  - (c) permit Australian and Indian law practices to formally enter into commercial associations such as joint-ventures and strategic alliances and to permit them to enter into fee and profit sharing arrangements – similar to the Australian provisions which permit Indian law practices to enter into joint-ventures and strategic alliances and to share profits with Australian firms in Australia;
  - (d) permit Australian lawyers and law practices to engage in commercial arbitration, conciliation and mediation in India – similar to the Australian provisions which permit Indian lawyers to engage in commercial arbitration, conciliation and mediation in Australia; and
23. An overview of the regulation of lawyers in Australia and a summary of existing rights to and restrictions on the practice of law in Australia, including the practice of foreign law, is provided at **Attachment B**.
  24. An overview of the regulation lawyers in India and a summary of existing rights to and restrictions on the practice of law in India, including the practice of foreign law, is provided at **Attachment C**.
  25. The Law Council is currently seeking responses from Australian law practices with Indian clients or Australian clients with interests in India on practical barriers they experience in seeking to provide legal advice to their clients. A further submission on this issue is likely in due course.

### **Support for the Law Council to engage in discussions with its counterpart, the Bar Council of India**

26. In its submission to the Productivity Commission's *Issues Paper on Australia's Bilateral and Regional Free Trade Agreements* the Law Council submitted that:-

*"...greater opportunities for the export of services to other jurisdictions has been achieved through direct negotiation with relevant stakeholders overseas (e.g. bar associations, courts and government) rather than through preferential trade agreements."<sup>12</sup>*
27. In the Productivity Commission's Final Report on its Inquiry into Bilateral and Regional Trade Agreements, release in November, 2010, the Productivity Commission noted that:-

*"In practice, it appears to the Commission that for services liberalisation, the existence of a BRTA (either concluded or in negotiation) can be a*

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<sup>12</sup> Law Council submission into the Productivity Commission's Issues Paper on 'Australia's Bilateral and Regional Trade Agreements', March 2010. Available at [www.lawcouncil.asn.au](http://www.lawcouncil.asn.au).

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*catalyst for negotiations between sub-government service regulators (including professional services bodies)*<sup>13</sup>

28. The Productivity Commission noted that:-

*“high-level agreements between national governments may be unable to achieve substantive liberalisation in practice because, for many service industries, the actual barriers to trade are administered outside government. For example, in most Australian professional services, the requirements for registration and professional practice are not regulated by the Australian or even state governments, but by professional associations. In the absence of a commitment to reduce barriers by the relevant professional bodies, effective liberalisation of services trade may not be achievable without supporting agreements between national standard setting and professional bodies. To this end, the ASR noted that ‘the most constructive outcomes have been the establishment of ongoing working groups and committees to examine [the] possibility for regulatory harmonization or mutual recognition over time’.”<sup>14</sup>*

29. The Law Council has a history of close collaboration with Government to promote the Australian legal profession internationally. Since the formation of ILSAC in 1991, the Law Council has worked closely with the Attorney-General’s Department to promote liberalisation of legal services in Australia and opportunities for Australian lawyers internationally. Both the Law Council and ILSAC have collaborated with the Department of Foreign Affairs and Trade (DFAT) to promote opportunities for Australian lawyers through preferential trade agreements and initiatives targeted at fostering rights of practice for Australian lawyers as foreign lawyers in many of Australia’s key trading partners.

30. To date and partly borne from necessity, much of this collaboration has occurred on an ad hoc basis. The Law Council nevertheless believes that it would be desirable for the Law Council and Government to develop a coordinated approach to seeking to improve practice rights for Australian lawyers in India.

31. The Law Council seeks support from the Australian Government to support activities of the Law Council and the Australian legal profession generally to engage in activities which promote and foster relationships and understanding between the Australian and Indian legal professions.

32. Under its International Strategy 2012 the Law Council will seek to:-

- (a) Engage in ongoing dialogue and exchanges with the Bar Council of India under the Memorandum of Understanding it signed with the Bar Council of India in June, 2010 to strengthen the bonds between them and to maintain a strong and ongoing relationship;
- (b) Engage with the Bar Council of India, the Council of Australian Law Deans and the International Legal Services Advisory Council under the Partnership Agreement signed in June, 2010 to strengthen cooperation and develop exchanges between Indian and Australian academics, student and lawyers; and
- (c) Facilitate a visit by the Chair of the Bar Council of India in early 2012.

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<sup>13</sup> Productivity Commission Report. at p 102.

<sup>14</sup> Productivity Commission Report. at p 90.

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33. The Australian Government through its departments and agencies can support the Law Council to pursue its International Strategy 2012 in many ways, including through:-
    - (a) briefings and advice;
    - (b) support for exchanges and events; and
    - (c) diplomatic and consular support.
    - (d) Legal Services Missions;
  34. **Attachment D** provides a summary of engagement between the Australian legal profession and the Australian Government in relation to legal services in India.
  35. The Law Council looks forward to the opportunity to discuss opportunities to engage with DFAT to foster closer ties between the Australian and Indian legal professions and ultimately to seek to improve practice rights for Australian lawyers.

## Conclusion

36. The Law Council welcomes the opportunity to engage with the Department of Foreign Affairs and Trade throughout the negotiation of the AICECA.
37. The Law Council recognises the difficulty of obtaining specific commitments in relation to legal services through the AICECA. The Law Council therefore supports the establishment of a Working Party under the proposed AICECA which draws together Indian and Australian stakeholders (including government officials, the BCI and the Law Council) to progress mutually beneficial reform beyond the conclusion on the AICECA.

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## **Attachment A – Profile of the Law Council of Australia**

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The Law Council of Australia exists to represent the legal profession at the national level, to speak on behalf of its constituent bodies on national issues, and to promote the administration of justice, access to justice and general improvement of the law.

The Law Council advises governments, courts and federal agencies on ways in which the law and the justice system can be improved for the benefit of the community. The Law Council also represents the Australian legal profession overseas, and maintains close relationships with legal professional bodies throughout the world.

The Law Council was established in 1933, and represents 16 Australian State and Territory law societies and bar associations and the Large Law Firm Group, which are known collectively as the Council's constituent bodies. The Law Council's constituent bodies are:

- Australian Capital Bar Association
- Australian Capital Territory Law Society
- Bar Association of Queensland Inc
- Law Institute of Victoria
- Law Society of New South Wales
- Law Society of South Australia
- Law Society of Tasmania
- Law Society Northern Territory
- Law Society of Western Australia
- New South Wales Bar Association
- Northern Territory Bar Association
- Queensland Law Society
- South Australian Bar Association
- Tasmanian Independent Bar
- The Large Law Firm Group (LLFG)
- The Victorian Bar Inc
- Western Australian Bar Association

Through this representation, the Law Council effectively acts on behalf of approximately 56,000 lawyers across Australia.

The Law Council is governed by a board of 17 Directors – one from each of the constituent bodies and six elected Executives. The Directors meet quarterly to set objectives, policy and priorities for the Law Council. Between the meetings of Directors, policies and governance responsibility for the Law Council is exercised by the elected Executive, led by the President who serves a 12 month term. The Council's six Executive are nominated and elected by the board of Directors. Members of the 2012 Executive are:

- Ms Catherine Gale, President
- Mr Joe Catanzariti, President-Elect
- Mr Michael Colbran QC, Treasurer
- Mr Duncan McConnel, Executive Member
- Ms Leanne Topfer, Executive Member
- Mr Stuart Westgarth, Executive Member

The Secretariat serves the Law Council nationally and is based in Canberra.

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## Attachment B – Regulation of lawyers including foreign lawyers in Australia

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This paper provides an overview of legal services market liberalisation in Australia with particular emphasis on the autonomous liberalisation of legal services through a continuous reform agenda dating back to the early 1990s. It sets out provisions relating to the regulation of foreign lawyers and law practices under existing legislation using New South Wales legislation as an example and explains the impact of the recent National Legal Profession Initiative on the future of the regulation and admission of foreign lawyers in Australia.

### History of legal profession reform in Australia

The legal profession in Australia developed separately in each state during colonial times. Over time, and particularly with the establishment of universities, local differences emerged in the path of admission to practice and by the time of federation, jurisdictional particularities were firmly entrenched.<sup>15</sup> The current responsibility for regulation of the legal profession in Australia was summarised by Gleeson CJ and Hayden J in *APLA Ltd v Legal Services Commissioner of New South Wales*:<sup>16</sup>

*Legal practitioners are admitted to practise by the Supreme Court of a State or Territory. Each State or Territory has its own regulatory regime, commonly involving a principle statute and rules... Generally speaking, the right to practice, and the right of audience in a State or Territory court, depends upon admission by a State or Territory Supreme Court and the holding of a current practising certificate... In each State or Territory, the inherent power of the Supreme Court to discipline legal practitioners is preserved. A legal practitioner is an officer of the Supreme Court of the State or Territory which admits that person to practise... The Supreme Court holds out those whose names are on its roll of practitioners as fit and proper persons to be entrusted with the duties and responsibilities of a legal practitioner... (This) is a system of professional accreditation that has applied in Australia since colonial times.*

A distinction is therefore drawn between the inherent power of a state or territory to make laws providing for the licensing of legal practitioners and the power of the Supreme Court to discipline legal practitioners and make determinations as to a person's fitness or otherwise to become a legal practitioner. Since 1992, the Supreme Courts have made determinations of fitness through the application of Uniform Admission Rules<sup>17</sup> developed by the Law Admissions Consultative Committee (LACC).<sup>18</sup> The Uniform Admission Rules define 11 prescribed areas of knowledge in which an applicant for admission must have demonstrated a satisfactory level of understanding and competence in attaining his or her academic qualifications. These 11 areas of knowledge, also known as the 'Priestly 11', have been incorporated into curriculum by law schools and legal professional training

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<sup>15</sup> Linda Martin, *From Apprenticeship to Law School: A Social History of Legal Education in Nineteenth Century New South Wales* (1986) 9 UNSWL 111.

<sup>16</sup> *APLA Ltd v Legal Services Commissioner of New South Wales* (2005) 224 CLR 322. At 21.

<sup>17</sup> See for example s24 of the *Legal Profession Act* (NSW) 2004 and *Legal Profession Regulation* 2005 which provides that the agreed standards for admission to the legal profession "are the standards established from time to time by the Law Admissions Consultative Committee, being a committee constituted under the auspices of the Council of Chief Justice."

<sup>18</sup> LACCs Charter is to consider, conduct or encourage research upon, report upon, propose guidelines about, and express views to stakeholders about matters concerning qualifications for, or admission to, legal practice in Australian jurisdictions. These matters can be referred to LACC by the Council of Chief Justices, or can be matters examined by LACC on its own initiative.

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organisations to ensure that graduates are able to qualify for practice. Practising certificates are issued in each state and territory by a body empowered by statute to do so.<sup>19</sup>

LACC is also responsible for developing guidelines to assist state and territory admitting authorities to assess applications by foreign lawyers for admission in Australia as Australian legal practitioners. LACC has developed '*Uniform Principles for Assessing Qualifications of Overseas Applicants for Admission to the Australian Legal Profession*'<sup>20</sup> which are reviewed periodically. The Uniform Principles are to be applied consistently by each state and territory admitting authority. It is nevertheless relevant to note, that each state and territory Supreme Court retains ultimate power on determinations of an applicant lawyers' fitness for admission on its roll of lawyers.

## Unilateral legal services market liberalisation

Since 1992, Australia has embarked upon a continuous process of harmonisation and liberalisation of legal profession regulations. This process has reduced many impediments to the practice of law, including foreign law, in Australia. It has also enhanced competition within the domestic legal services market, which has in turn enabled Australian lawyers and law practices to compete internationally for foreign and international work. The liberalisation and increased competitiveness of Australia's legal services sector has facilitated access by other business sectors to accurate and timely advice on foreign and international law issues; strengthening the international competitiveness of those sectors. The National Legal Profession Initiative will bring Australia another step closer to a truly national legal profession and will introduce further provisions to promote the admission of foreign lawyers in Australia.

Until 1989, lawyers were restricted from interstate legal practice due to residency requirements which operated to ensure that a lawyer from one state could not be admitted to practice in another state without first taking up residence in that state.<sup>21</sup> In *Street v Queensland Bar Association*<sup>22</sup> the High Court reversed its decision in *Henry v Boehm and others*<sup>23</sup> and ruled that s 117 of the Constitution operated to invalidate the residency requirement in the Queensland admission rules.<sup>24</sup> Nevertheless, it was not until the *Mutual Recognition Act 1992* (Cth) and the development by the legal profession, through the Law Council of Australia, of the *Blueprint for the Structure of the Legal Profession: A National Market for Legal Services*<sup>25</sup> that a free national market for legal services began to take shape.<sup>26</sup>

The process of autonomous liberalisation of legal services continued with the development of mutual recognition of practising certificates and indemnity insurance schemes in 1997<sup>27</sup> and the National Legal Profession Model Laws Project 2001-2007 which was directed to developing and implementing uniform standards for the regulation of the legal profession in the form of model legislation and regulations.<sup>28</sup> The Model Laws Project resulted in the enactment of the 'Model Legal Profession Bill' in each State and Territory which contain

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<sup>19</sup> See for example *Legal Profession Act 2004 (NSW)* at s41.

<sup>20</sup> Available from the LACC website <http://www.lawcouncil.asn.au/lacc.cfm>

<sup>21</sup> Connolly, T. *Professions and Federation: The Emergence of a National Market in Legal Services and a National Legal Profession*. Occasional Paper, Public Law Discussion Group, Faculty of Law, Australian National University, 22 May, 2001, Canberra. See p. 2.

<sup>22</sup> *Street v Queensland Bar Association* (1989) 168 CLR 461.

<sup>23</sup> *Henry v Boehm and others* (1973) 128 CLR 482.

<sup>24</sup> Despite creating a right to apply for admission in another state many barriers to interstate practice remained in local rules. See Connolly, T above n 21 at p 5.

<sup>25</sup> Law Council of Australia, July 1994, Canberra.

<sup>26</sup> See Connolly, T above n 21 at p. 5.

<sup>27</sup> Connolly T, above n 21 at p 9.

<sup>28</sup> A Model Bill was approved by SCAG in July 2006 and has now been enacted – with minor variations – in every state and territory except South Australia. See Australian Attorney General's Department website (<http://tinyurl.com/25sh9jy>) (accessed 6 October, 2010).

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substantially similar if not identical provisions for legal profession regulation. The Model Laws Project also resulted, for the first time, in nationally consistent legislation for the practice of foreign law.

### National Legal Profession Initiative

In February 2009, the Council of Australian Governments (COAG) commenced the National Legal Profession Initiative which aims to further reform the regulation of the legal profession in Australia.<sup>29</sup> The Initiative *'seeks to create a national regulatory system for the legal profession in which lawyers are admitted to the Supreme Court in each state and territory and regulated by a single national legal services regulator.'*<sup>30</sup> This initiative seeks to adopt a cooperative federal approach to achieving uniformity in the regulation of the legal profession.

The implementation of truly 'uniform' legislation is a challenge in Australia because of our federal system and various constitutional protections.<sup>31</sup> However, a unique solution has been developed to ensure that the new rules and guidelines are identical in each jurisdiction. Victoria will introduce legislation to implement the reforms, which will then be replicated across participating jurisdictions by reference to Victoria's legislation. From 1 July 2013, a new National Legal Services Board and National Legal Services Commissioner will take over the regulation of Australian lawyers under proposed national admission rules and guidelines. The Board and Commissioner will be hosted by New South Wales.

Four jurisdictions - New South Wales, Queensland, Victoria and the Northern Territory – have committed to taking part in the reforms, covering around 85 per cent of Australia's practising lawyers. While many have expressed disappointment that Australia's remaining states and territories have not yet committed to being regulated under the national system, the reforms will nevertheless deliver benefits for the vast majority of the legal profession.<sup>32</sup>

Australia's existing liberal provisions for the practice of foreign law have been translated across to the new system. The new system will allow for greater clarity and consistency in the application of guidelines for admission of foreign lawyers as Australian lawyers by establishing a single administrative body for developing and administering guidelines and rules and more importantly for interpreting and applying those rules.

The lifting of interstate barriers to trade in legal services has been extremely beneficial to Australia and reflects the same paradigm shift from protectionism to 'free' trade by Government and industry which led to the GATS. It has created a 'single national market for legal services' which, by embracing concepts of open markets and competition, has increased the competitiveness of Australia's legal profession domestically<sup>33</sup> and facilitated its participation in the international legal services market.

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<sup>29</sup> Council of Australian Governments, 'National Legal Profession Reform Project: Consultation Report, 14 May 2010. At 1.

<sup>30</sup> Council of Australian Governments. Above n. 29.

<sup>31</sup> Gerard Carney provides an excellent summary of the policy options for achieving uniform legislation in Australia. George Carney, 'Uniform Personal Property Security Legislation for Australia: A Comment on Constitutional Issues.' (2002) *Bond Law Review*, Vol.14, No. 1, Article 5.

<sup>32</sup> See Media Release by Australian Attorney-General *'Host State for National Legal Profession Reform Announced'*, 19 October 2011; Law Council of Australia Media Release, *'Law Council congratulates Attorneys-General and the profession on national reform progress'*, 20 October, 2011.

<sup>33</sup> For example, by enabling large law firms to create truly 'national' partnerships, expertise was no longer localised and could flow freely between jurisdictions. The recasting of legal services in terms of 'markets' and competition is likely a key element in the rapid corporatisation of the legal profession since the mid 1990s, the development of incorporated legal practices and the modelling of law firm governance on business structures.

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## Regulation of foreign lawyers in Australia

Under the Model Bill which has been enacted in all Australian states and territories except South Australia, there is a general prohibition on the practice of foreign law in Australia unless the practitioner is an 'Australian-registered foreign lawyer' or is an Australian legal practitioner.

### Temporary practice of foreign law (Fly-in/Fly-Out)

In Australia an overseas-qualified foreign lawyer will be exempt from the general prohibition if the lawyer:-

- practises foreign law in Australia for one or more periods that do not in aggregate exceed 90 days in any period of 12 months; and
- does not maintain a legal office for the purpose of practising foreign law or does not become a partner or director of a law practice in Australia.<sup>34</sup>

The practical consequence of this rule is that in Australia, a foreign lawyer is entitled to come to Australia with his or her clients and act for them (for example in commercial negotiations or international arbitrations), for a maximum period of 90 days in any 12 month period **without any requirement to register with any authority in Australia**. There are no formalities which must be complied with and we use the term 'fly-in/fly-out' to describe this type of practice.

### Registered practice of foreign law

Should a foreign lawyer wish to practise for more than 90-days, he or she is required to register with the local state or territory authority and be able to satisfy certain provisions to qualify as an 'Australian-registered foreign lawyer'.<sup>35</sup> The rules governing registration are prescribed by legislation and subordinate regulation. Once registered, an Australian-registered foreign lawyer is permitted to practise the law of those foreign jurisdictions in which the lawyer is appropriately qualified and international law.

The table below summarises the practice rights of foreign lawyers in Australia.

Permissible scope and form of practice of foreign lawyers in Australia		
	Fly-in/Fly-out	Australian-registered foreign lawyer
Scope of Practice	Permitted to practice 'home country' law.	Permitted to practice 'home country' law.
	Permitted to practice international law.	Permitted to practice international law.
	Permitted to provide legal services (including appearances in relation to arbitration proceedings of a kind prescribed by legislation).	Permitted to provide legal services (including appearances in relation to arbitration proceedings of a kind prescribed by legislation).

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<sup>34</sup> See for example *Legal Profession Act (NSW) 2004*, Pt 2.7 Div 2, s 186(2)(a)(i).

<sup>35</sup> See for example *Legal Profession Act (NSW) 2004*, Pt 2.7 Div 2, s 187.

Permissible scope and form of practice of foreign lawyers in Australia		
	Fly-in/Fly-out	Australian-registered foreign lawyer
	Permitted to provide legal services (including appearances) in relation to proceedings before a body (other than a court) in which the body is not required to apply the rules of evidence and in which knowledge of the foreign law of a country where the foreign lawyer is registered is essential.	Permitted to provide legal services (including appearances) in relation to proceedings before a body (other than a court) in which the body is not required to apply the rules of evidence and in which knowledge of the foreign law of a country where the foreign lawyer is registered is essential.
	Permitted to provide legal services for conciliation, mediation and other forms of consensual dispute resolution of a kind prescribed by regulation.	Permitted to provide legal services for conciliation, mediation and other forms of consensual dispute resolution of a kind prescribed by regulation.
<b>Forms of Practice</b>	N/A	<p>Subject to any conditions imposed on his or her registration a foreign lawyer may practise:</p> <ul style="list-style-type: none"> <li>• as a <b>sole practitioner</b> offering advisory services in foreign and international law to Australian clients;</li> <li>• in <b>partnerships</b> of two or more Australian-registered foreign lawyers and/or one or more Australian legal practitioners;</li> <li>• as a director or employee of an <b>incorporated legal practice</b>;</li> <li>• as a partner or an employee of a <b>multi-disciplinary partnership</b>;</li> <li>• as an <b>employee</b> of an Australian legal practitioner or law firm;</li> <li>• as an <b>employee</b> of another Australian-registered foreign lawyer;</li> <li>• under some other form of commercial association with a local lawyer or firm.</li> </ul>
<b>Professional indemnity Insurance</b>	N/A	<ul style="list-style-type: none"> <li>• Must hold professional indemnity insurance that conforms with the requirements for professional indemnity insurance applicable for Australian legal practitioners in any jurisdiction;- or,</li> <li>• Hold professional indemnity insurance that covers the practice of foreign law in the jurisdiction which complies with the relevant requirements of a foreign law or foreign registration authority, and, if the insurance is for less than \$1.5 million (inclusive of defence costs), the foreign lawyer must provide a disclosure statement to each client disclosing the level of cover;- or</li> <li>• If no indemnity insurance is held the foreign lawyer must provide a disclosure statement to each client stating that the lawyer does not have complying professional indemnity insurance.</li> </ul>

<b>Permissible scope and form of practice of foreign lawyers in Australia</b>		
	<b>Fly-in/Fly-out</b>	<b>Australian-registered foreign lawyer</b>
<b>Applications for Registration</b>	N/A	Applications for registration must be made to the 'domestic registration authority' prescribed by legislation in the prescribed form and accompanied by the required fees (which may not be set so as to be greater than the maximum fees for a practising certificate in the jurisdiction).
<b>Renewal of Registration</b>	N/A	Applications for renewal of registration must be made to the domestic registration authority in the prescribed form.
<b>Suspension of registration</b>	N/A	A domestic registration authority may amend, suspend or cancel the registration of an Australian-registered foreign lawyer in a range of prescribed circumstances using the prescribed procedure.
<b>Conditions on registration</b>	N/A	Conditions on registration may be imposed by the domestic registration authority, statute, legal profession rules, or under complaints and discipline rules. Conditions imposed by the registration authority must be "reasonable and relevant" and must not be more onerous than a condition that would be imposed on the practising certificate of a local legal practitioner registered in that jurisdiction in the same or similar circumstances
<b>Professional ethics and obligations</b>	Subject to ethical and practice standards of home jurisdiction. Complaints received by Australian regulatory authorities will be referred to home jurisdiction.	subject to the same ethical and practice standards (and complaints and disciplinary procedures) in the way they practise foreign law in Australia as those applicable to an Australian legal practitioner practising Australian law.
<b>Membership of local professional associations</b>	N/A	Not required, but will be permitted to join if eligible.
<b>Designation requirements</b>	N/A	Limited to: <ul style="list-style-type: none"> <li>• the lawyer's own name;</li> <li>• a title or business name the lawyer is authorised to use in a foreign country where he or she is registered;</li> <li>• the name of a foreign law practice with which the lawyer is affiliated or associated (although the principals of that firm need not be Australian-registered foreign lawyers;</li> <li>• other designations as prescribed.</li> </ul>
<b>Advertising</b>	N/A	Subject to the same general prohibitions and restrictions as Australian legal practitioners.
<b>Trust moneys and trust accounts</b>	N/A	Must maintain trust accounts in the jurisdiction in which they are registered.

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## Recognition of qualifications of foreign lawyers for the purpose of admission as an Australian legal practitioner

The *Uniform Principles for Assessing Qualifications of Overseas Applicants for Admission to the Australian Legal Profession*<sup>36</sup> set out the requirements for a foreign qualified lawyer to be admitted in an Australian jurisdiction. The Uniform Principles provides the following summary of requirements:-

### 1. SUMMARY OF REQUIREMENTS

To be admitted to the legal profession in an Australian jurisdiction on the basis of qualifications obtained outside Australia, an applicant must usually have:-

- (a) completed a tertiary course leading to legal practice in the applicant's home jurisdiction, involving the equivalent of 3 years' full-time study of law; and
- (b) successfully completed subjects within that course, which are substantially equivalent to the areas of study which Australian applicants must successfully complete before being admitted to the legal profession in Australia; and
- (c) acquired and demonstrated an appropriate understanding of, and competence in, certain skills, practice areas and values, which are substantially equivalent to the skills, practice areas and values which Australian applicants must acquire and demonstrate an understanding of and competence in, before being admitted to the legal profession in Australia; and
- (d) undertaken, or been exempted from, the International English Language Testing System Academic Module (IELTS) test within two years before seeking admission, and obtained minimum scores of 8.0 for writing, 7.5 for speaking and 7.0 for reading and listening, in the components of that test.

An Admitting Authority may dispense with one or more of the requirements referred to in items (b) and (c) in the case of an experienced practitioner from an overseas jurisdiction if it considers that the applicant's experience is sufficiently relevant, substantial and current to justify a dispensation.

These Uniform Principles show how Australian Admitting Authorities approach the task of assessing an applicant's compliance with each of these requirements.

Once an Overseas applicant has been admitted to the legal profession, the applicant must obtain a practising certificate before commencing to practise law. The relevant authority in each jurisdiction will invariably require an Overseas applicant to undertake a period of restricted practice under supervision, before full rights of practice are granted.

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<sup>36</sup> Available from the LACC website <http://www.lawcouncil.asn.au/lacc.cfm>

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## Attachment C – Regulation of lawyers including foreign lawyers in India

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This paper provides an overview of legal services market liberalisation in India since 1999. It sets out key aspects of India's existing regulatory framework for lawyers and notes proposed reforms.

### History of legal services market liberalisation in India

The prospect and merits of legal services market liberalisation have been seriously contemplated in India for over a decade. In 1999, the Law Commission of India together with the then Law Minister Mr Ram Jethmelani, prepared a Working Paper which proposed a variety of measures and domestic reforms of legal services in India.<sup>37</sup> Chapter IV of the Working Paper was entitled 'Entry of Foreign Legal Consultants and Liberalisation of Legal Practice' and proposed a range of measures to introduce a legal consultancy regime for foreign law firms in India.

The Working Paper noted that India was a party to the General Agreement on Trade and Services (GATS) and that from January, 2000 India would be under an obligation to enter into successive rounds of negotiation with the objective of progressively extending liberalisation of services, including legal services. It also noted the broad agreement of the Executive Committee of the Bar Council of India with the 'Resolution of the IBA Council on transfer of skills and liberalization (sic) of trade in legal services'<sup>38</sup> and specifically the view of the Executive Committee that:

'the Indian legal system ought to integrate internationally under an appropriate regulatory system which would ensure the following:

- (i) a general reciprocity of rights and non-discrimination;
- (ii) foreign lawyers/firms should be subject to the same disciplinary jurisdiction as Indian lawyers; and
- (iii) there should be greater opportunities for the future development of the entire legal profession in India.<sup>39</sup>

The Law Commission's proposals were quite moderate. The Law Commission noted the flexibility under Article XIX(2) of the GATS to advance liberalisation progressively in line with national policy objectives and the development of the domestic market. and encouraged the legal community in India to consider how best to reform the *Advocates Act* 1961 to meet the challenge of liberalisation. However, the Indian legal community vehemently rejected the Law Commissions proposals and following widespread opposition and threats from the Bar Council of India to lead the legal profession in a strike the Law Commission backed down from its proposal.<sup>40</sup>

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<sup>37</sup> Equations Research. *Liberalising Legal Services in India through the GATS: a preliminary analysis of issues at stake*, July 2006, Bangalore, India.

<sup>38</sup> International Bar Association. *Resolution of the IBA Council on transfer of skills and liberalisation (sic) of trade in legal services*, October 16, 1998, London, United Kingdom.

<sup>39</sup> Indlaw. *Law Commission's clarification on entry of foreign lawyers in India*, 24 February, 2000 <http://www.indlaw.com/guest/DisplayNews.aspx?91A58A98-E6C6-495C-ACCE-01D30F827A93> (cited 18 October, 2011).

<sup>40</sup> Krishnan above n. 9, at, p. 16-19.

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When the 184<sup>th</sup> Report of the Law Commission was published in 2002 it was confined to 'legal education' and at 1.12 the Law Commission expressly stated that the Report does not address issues relating to "*Entry of Foreign Legal Consultants and Liberalisation of Legal Practice*."<sup>41</sup> The Law Commission of India has not addressed the issue of liberalisation of legal services further.

In 2005, the Bar Council of India issued a Resolution 'strongly opposing the entry of foreign lawyers and law firms'.<sup>42</sup> In 2007, the Indian Ministry of Law and Justice sought to again reopen the liberalisation debate with the release of a consultation paper which proposed a measured liberalisation of legal services. As in 2000, the proposal was strongly opposed by the Bar Council of India and powerful legal lobby groups and once again the issue was dropped.

In a further blow to liberalisation, in 2009, the Bombay High Court handed down a significant judgment in *Lawyers Collective v Chadbourne and Park and Others*<sup>43</sup> which effectively prohibited foreign law firms from the 'temporary practice' of providing advice in non-litigious matters on behalf of Indian or foreign clients.<sup>44</sup>

In March 2010, a writ petition was filed in the Madras High Court by Chennai advocate Mr AK Balaji against 31 foreign law firms and legal process outsourcing (LPO) provider Integreon claiming that LPO by foreign law firms is prohibited by the Advocates Act 1961. The submission of the Bar Council of India to the Court supports the case against foreign lawyers by noting that the *Advocates Act* deals with both litigation and non-litigation matters.<sup>45</sup> The final hearing of the case was deferred numerous times and was due to be heard on 11 October, 2011,<sup>46</sup> although no reports or information regarding the case has been made public released since before 11 October.

In recent years there has been mounting and well documented pressure on India from other countries to open up its legal services market to foreign lawyers and law practices. As may be expected, this pressure has been strongest from the United Kingdom and the United States, both major exporters of legal services.<sup>47</sup> There have also been growing tensions around liberalisation within India; with lines being drawn between those who argue that liberalisation is inevitable in a globalised economy and that India must liberalise the regulation of legal services; and organised groups such as the Society of Indian Law Firms which oppose all forms of deregulation of legal services and which lobby strongly against the entry of foreign law firms to the Bar Council of India and the Indian Government.<sup>48</sup>

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The Commission has also pointed out that most of the law firms in India are family controlled and very few firms provide "single window services" meaning service which not only includes legal but also accountancy, financial and other advice to their clients. In light of these facts, the Commission wanted the legal community to apply its mind to devising a proper legal framework for regulating the legal profession in the context that the Bar Council of India has to choose appropriate model suiting conditions of our country so that appropriate amendments could be made in the Advocates Act, 1961 which would arm Bar Council of India with necessary powers to meet the challenges ahead.

<sup>41</sup> Law Commission of India. *The Legal Education & Professional Training and Proposals for Amendments to the Advocates Act, 1961 and the University Grants Commission Act, 1956*, December 2002, New Delhi, India. at p. 12.

<sup>42</sup> Bar Council of India, Resolution 92/2005.

<sup>43</sup> *Lawyers Collective v Chadbourne and Park and Others* Bombay High Court, case no. WP/1526/1995.

<sup>44</sup> See further discussion Harijan, Anirudh. *India: Foreign Law Firms In India*, 17 June 2010, <http://www.mondaq.com/article.asp?articleid=103088> (cited 18 October, 2011).

<sup>45</sup> Interestingly the Bar Council's submission does not expressly take any side.

<sup>46</sup> <http://tinyurl.com/3hx6czn> (cited 18 October, 2011).

<sup>47</sup> See Krishnan, above n. 7, at p 1-2.

<sup>48</sup> See Equations Research, above n 37. at p. 13.

## Domestic regulation of the legal profession in India

The most significant reform of legal professional regulation in India since the introduction of the *Advocates Act* 1961 was the passing of the *Limited Liability Partnerships Act* 2008 which made it possible for law practices to utilise alternative business structures and enabled foreign law practices to establish 'consultation offices.'<sup>49</sup> However, whether law practices may use corporate structures is very much the subject of debate and both the Government and the Bar Council of India have been silent on the issue which has led to several firms choosing to roll the dice and incorporate without clear direction.

Debate over the proposed *Legal Practitioners (Regulations and Maintenance of Standards in Professions, Protecting the Interest of Clients and Promoting the Rule of Law) Bill* 2010 and *Higher Legal Education Bill* 2011, continues to rage.<sup>50</sup>

The table below provides an overview of key features of the regulation of the legal profession in India.

Key features of legal profession regulation in India	
Requirements for Practice	
<b>Admission to Practice</b>	<p>Section 24 of the <i>Advocates Act</i> 1961 sets out requirements for admission of a person on a State roll and consequently eligibility for admission under the <i>Advocates Act</i> as an advocate. Importantly, Section 24 provides, inter alia, that in order to be admitted as an advocate a person must:-</p> <ul style="list-style-type: none"> <li>(a) be a citizen of India;<sup>51</sup> and</li> <li>(b) be a natural person.</li> </ul> <p>The person seeking admission must hold at least a Bachelors Degree in Law<sup>52</sup> from any university which is recognised by the Bar Council of India<sup>53</sup> and must pass the All India Bar Exam.<sup>54</sup></p> <p>Section 24 (a) contains reciprocity provision which permits “a national of any other country... to be admitted as an advocate on a State roll, if citizens of India, duly qualified, are permitted to practise law in that other country.”</p> <p>See also Rule 3 of Res. No. 6/1997 of the Bar Council of India Rules.</p> <p>“a foreign national who has obtained a degree in law from any Institution/ University recognised by the Bar Council of India and who is otherwise duly qualified to practice law in his own country would be allowed to be enrolled and /or allowed to practice law in India provided</p>

<sup>49</sup> Section 59 *Limited Liability Partnership Act* 2008.

<sup>50</sup> See for example <http://www.thehindu.com/news/national/article2791254.ece> (viewed 15 January, 2011), <http://ibnlive.in.com/generalnewsfeed/news/bsbc-lawyers-to-protest-against-proposed-central-legislations/951532.html> (viewed 16 January, 2011).

<sup>51</sup> Section 24 (a) *Advocates Act* 1961.

<sup>52</sup> Section 24 (c) *Advocates Act* 1961.

<sup>53</sup> Section 7 *Advocates Act* 1961.

<sup>54</sup> Notification bringing the All India Bar Exam into force was passed at meetings of the Bar Council of India's Legal Education Committee and Members on April 10, 2010 and April 30, 2010.

Key features of legal profession regulation in India	
	<p><i>that a citizen of India, duly qualified, is permitted to practice law in that country”</i></p> <p>The provision itself is consistent with encouraging competition and liberalisation. However, it has been interpreted narrowly in India to mean ‘reciprocity without any further education or training requirements.’</p>
<b>Professional ethics and obligations</b>	Lawyers in India must abide by the Bar Council of India’s Rules. <sup>55</sup> Part VI Chapter II of the Rules sets out the standards of professional conduct and etiquette.
<b>Professional indemnity Insurance</b>	Professional indemnity insurance is not mandatory for Indian lawyers. Professional indemnity insurance is widely available in India and many law firms take out insurance policies.
<b>Trust moneys and trust accounts</b>	Under Rule 25 of the Bar Council of India Rules, an advocate is required to keep accounts and records of monies received from clients or on their behalf. Rules 26 – 32 provide further provisions relating to the handling of client money.
<b>Membership of local professional associations</b>	Membership of the Bar Council of India is mandatory.
<b>Restrictions on Practice</b>	
<b>Scope of Practices</b>	<p>Section 33 of the <i>Advocates Act</i> 1961 provides that only an advocate may practise law in India – except where provided by ‘any other law’.</p> <p>This exception has operated to permit accounting professionals to practise taxation law in any court or before any authority in India as provided by Section 288 of the <i>Income Tax Act</i> 1961.</p>
	<p>A law practice in India is restricted to a maximum of 20 partners by operation of the <i>Companies Act</i> 1956 which requires partnerships in India with more than 20 partners to register as a company<sup>56</sup>, and the <i>Advocates Act</i> 1961 which provides that only ‘natural persons’ are permitted to practise law in India.<sup>57</sup></p> <p>This limits the size of law practices and prevents growth and specialisation of practices.</p> <p>The <i>Limited Liability Partnerships Act</i> 2008 is modelled on equivalent UK and Singaporean legislation and has opened the path for removing the</p>

<sup>55</sup> Under section 49 of the *Advocates Act* 1961, the Bar Council of India is empowered to make Rules to carry out its function under section 7 (a) of the Act and under section 49 (1) (c) is specifically empowered to make rules providing for standard of professional conduct and etiquette to be observed by advocates.

<sup>56</sup> Section 11 of the *Companies Act* 1956.

<sup>57</sup> Section 24 *Advocates Act* 1961.

Key features of legal profession regulation in India	
	restriction on the number of partners. However, secondary legislation amending the 'natural persons' requirement under the <i>Advocates Act 1961</i> has prevented the LLP model from being used by Indian law practices.
<b>Forms of Practice</b>	<p>Subject to any conditions imposed on his or her registration an Indian lawyer may practise:-</p> <ul style="list-style-type: none"> <li>• as a <b>sole practitioner</b>;</li> <li>• in <b>partnerships</b> of two or more Indian lawyers;</li> </ul> <p>Rule 2 of Chapter III under Section 49(1)(ah) of the <i>Advocates Act 1961</i> provides that an “<i>advocate shall not enter into a partnership or any other arrangement for sharing remuneration with any person or legal Practitioner who is not an advocate.</i>”</p> <p>This Rule prohibits lawyers in India from:-</p> <ul style="list-style-type: none"> <li>• entering into joint venture arrangements involving revenue sharing between foreign and local law firms;</li> <li>• forming multi-disciplinary partnerships (with accountants, economists, etc) providing comprehensive 'one stop shop' services to corporate clients.</li> </ul> <p>Foreign lawyers may be employed by an Indian law firm as an employee or consultant, but may not provide legal advice or engage in any activity which could be construed as engaging in legal practice.<sup>58</sup></p>
<b>Advertising Restriction</b>	<p>Advocates in India are strictly prohibited from advertising under Rule 36 of the Bar Council of India Rules. Penalties for misconduct under section 35 of the <i>Advocates Act 1961</i> apply for breaches of this rule.</p> <p>Notwithstanding this Rule, advocates may furnish website information on approval by the Bar Council of India.</p>
<b>Other Restrictions</b>	Under the <i>Foreign Exchange Management Act 1999</i> any foreign resident or foreign national must obtain permission from the Reserve Bank of India before carrying on any business in India.

<sup>58</sup> By operation of Section 33 of the *Advocates Act 1961*.

## **Attachment D – Summary of engagement for greater engagement between the Law Council and the Australian Government to promote legal services market liberalisation in India and foster closer ties between the Australian and Indian legal profession**

The table below sets out a timeline of collaboration between the Law Council of Australia, the Council of Australian Law Deans and the Australian Government in relation to legal services market liberalisation in India and establishing links between the Australian and Indian legal profession.

<b>Date</b>	<b>Activity/Event</b>
<b>March 2004</b>	<p>A Legal Services Mission to India was led by Dr David Bennett AO QC, Solicitor-General of Australia. The Mission, consisted of 19 delegates from seven law firms, delegates from five law schools, a legal practice management consultant, representatives from the Law Council of Australia and Queensland Law Society, ILSAC and the Australian Attorney-General's Department.</p> <p>Following this Mission, six Australian university law schools<sup>59</sup> made applications to the Bar Council of India for recognition of their undergraduate law degrees as a basis for admission to practice in India.</p>
<b>October 2004</b>	<p>A ten-member Bar Council of India delegation led by the Chair visited Australia from 18 to 22 October 2004 to inspect the six Law Schools.</p> <p>The Commonwealth Attorney-General's Department (AGD) provided an officer to accompany the delegation during the visit. The delegation's visit was funded by the then Department of Education Science and Training (DEST), the Council of Australian Law Deans (CALD) and the law schools concerned.</p>
<b>November 2005</b>	<p>Professor Duncan Bentley, a member of ILSAC, visited India for meetings with government and private legal bodies.</p>
<b>2006</b>	<p>The Law Council, the Department of Foreign Affairs and Trade (DFAT) and the Attorney-General's Department (AGD) continued to engage in discussions about how to advance Australia-India legal cooperation with a view to liberalising foreign lawyer access to the Indian legal services market.</p> <p>Following a suggestion by India's Minister for Commerce and Industry, the Hon Kamal Nath, to Australia's then Minister for Trade, the Hon Mark Vaile MP, in 2005 it was determined that the best approach would be to approach the Government of India with a proposal to establish a Joint Australia-India Consultative Committee on Legal Services (JAICCOLS). Draft Terms of Reference for JAICCOLS were drawn up with the following proposed objectives:-</p> <p>(a) To promote closer Australia-India links in law and legal</p>

<sup>59</sup> Australian National University, Bond University, Griffith University, Melbourne University, the Queensland University of Technology and the University of New South Wales.

	<p>services;</p> <p>(b) To encourage the exchange of information relevant to the above;</p> <p>(c) To foster professional contact, interchange and mobility on the basis of mutual interest or benefit, and</p> <p>(d) To pursue any other objective which has the support of the Co-Chairs of the Joint Committee.</p> <p>The JAIICCOLS proposal ultimately failed due to a lack of engagement by the Bar Council of India.</p>
<b>July 2006</b>	Recognition granted to each of the applicant institutions in respect of their law degree programs.
<b>September 2006</b>	<p>On 26-27 September a Law Council delegation visited India for meetings with:-</p> <ul style="list-style-type: none"> <li>• Bar Association of India (BAI)</li> <li>• Ministry of Commerce</li> <li>• Society of Indian Law Firms (SILF)</li> <li>• FICCI (Federation of Indian Chambers of Commerce and Industry)</li> <li>• Prof Nomita Aggarwal, Dean of the Law Faculty, Delhi University</li> <li>• Mr P H Parekh, a former President of the Supreme Court Bar Association and acurrent Vice-President of the Bar Association of India</li> </ul> <p>A senior officer of the Attorney-General's Department was originally nominated to participate in these meetings, but ultimately was unable to participate.</p> <p>On 26 September, the Law Council of Australia signed a Memorandum of Understanding with the Bar Association of India – a non-statutory legal professional body.*</p>
<b>October 2007</b>	The Australian Solicitor-General, Dr David Bennett AO QC, and Mr Iain Anderson of the Attorney-General's Department visited India and met with the Bar Association of Madras, the Ministry of Law and Justice, the Minister of Commerce and Industry, and the Chair of the Bar Council of India.
<b>November 2007</b>	<p>An additional seven Australian law schools sought recognition of their LLB degrees by the Bar Council of India.<sup>60</sup></p> <p>The Attorney-General, the Minister for Trade and the Minister for Education, Science and Training send a joint-letter of support for these applications.</p> <p>Letters of support were also provided by CALD and the Law Council of Australia.</p>

<sup>60</sup> The University of Adelaide, Flinders University, Monash University, Southern Cross University, University of Sydney, University of Tasmania, and University of Technology, Sydney.

<p><b>December 2007 – April 2010</b></p>	<p>Applications by Australian Universities were followed up numerous times by the Australian High Commission in India, the Law Council of Australia and ILSAC, with regular invitations to visit Australia being issued by the Law Council of Australia to the Bar Council of India.</p>
<p><b>June 2010</b></p>	<p>In June 2010, a 14-member delegation from the BCI led by the then Chair and Solicitor-General of India, Mr Gopal Subramaniam visited Australia. The visit had two key objectives:-</p> <ul style="list-style-type: none"> <li>• to enable the BCI to visit 7 Australian universities which applied to the BCI for recognition of their LLB degree in 2007;</li> <li>• to enable discussions to take place in relation to the recognition of legal qualifications and legal services market access.</li> </ul> <p>These objectives were achieved through a visit program which encompassed site inspections of universities, roundtables, meetings with key people and organisations in the law and justice and legal education sectors and events and functions to enable the delegation to meet with Australian lawyers, academics and students.</p> <p>The Law Council and the AGD each provided an officer to accompany the delegation during the visit. The visit was jointly-funded by the Australia-India Council (DFAT), Australian Education International (DEEWR), CALD and the applicant law schools.</p> <p>Key outcomes of the visit in 2010 included:-</p> <ul style="list-style-type: none"> <li>• completion of site inspections of each of the 7 Australian universities which had applied for recognition of their law degrees by the BCI.</li> <li>• signing of a Memorandum of Understanding between the BCI and the Law Council of Australia.*</li> <li>• signing of a Partnership Agreement between the BCI, the Law Council of Australia, CALD and ILSAC on Strengthening Legal Cooperation and Exchange ('the Partnership Agreement').*</li> <li>• holding of the first Australia-India Legal Education Roundtable to exchange information on legal education, academic standards of law schools and outcomes focused models for legal education and training.</li> <li>• holding of the first Australia-India Legal Services Roundtable to exchange information on the professional mobility of lawyers, international commercial dispute resolution and the future of the legal profession.</li> </ul>
<p><b>July 2010</b></p>	<p>The Law Council President wrote to the Chair of the Bar Council of India regarding the structure and composition of the proposed India-Australia Legal Cooperation Committee (IALCC) to be formed under the Partnership Agreement. No response addressing the proposal was received.</p>
<p><b>October 2010</b></p>	<p>On 1 October, formal notice was received from the Bar Council of India that it had given recognition to the of integrated LLB, Masters and PhD programs of the seven law schools which it visited in June 2010.</p>

<b>January 2011</b>	The Law Council coordinated a meeting of the Australian Stakeholders of the Partnership Agreement to discuss progress of the IALCC.
<b>February 2011</b>	<p>The Law Council President met with the Chair of the Bar Council of India in Hyderabad during the Commonwealth Lawyers' Association Regional Conference, Hyderabad, India 5-9 February, 2011.</p> <p>The following key issues were discussed in the President's meeting with Mr Subramaniam in Hyderabad:-</p> <ul style="list-style-type: none"> <li>• confirmation of details and representatives for the Committee;</li> <li>• commitment to the mutual improvement in the exchange of legal education and in improving legal education standards;</li> <li>• review of opportunities for appearance/practice rights;</li> <li>• the establishment of a possible exchange program between Indian and Australian law firms.</li> </ul>
<b>March 2011 to August 2011</b>	Numerous unsuccessful attempts were made by the Law Council and ILSAC to engage with the Bar Council of India in relation to advancing the objectives of the Partnership Agreement.
<b>September to October 2011</b>	<p>Following contact from the Chair of the BCI, Mr Ashok Parija to ILSAC, it was proposed that the Chair and a small delegation (2-3 members) would visit Australia in November 2011.</p> <p>Due to difficulties in securing funding to support the visit, the visit has been postponed to early 2012.</p>

\* Copies of Memoranda of Understanding and the Partnership Agreement are available on the Law Council's website [www.lawcouncil.asn.au](http://www.lawcouncil.asn.au)