

Bar Council of India



The Law Society
of England and Wales



Memorandum of Understanding

Between

The Law Society of England and Wales,

The Bar Council of England and Wales

&

The Bar Council of India

**on strengthening legal exchange, transitional legal
practice and friendly cooperation**

2023

BACKGROUND

The Bar Council of India is a Statutory Body created under Advocates Act, 1961 and represents the practising legal profession in India and regulates Legal Education in India. The Law Society of England and Wales is the independent professional body of solicitors in England and Wales, and the Bar Council of England and Wales is the independent professional body of barristers in England and Wales.

Collectively, all three shall be addressed as “the Bodies”.

In recognition of their longstanding mutual regard, their shared goals of protecting and developing the rule of law in their respective jurisdictions and internationally, and in recognition of the historic ties between their two jurisdictions, the Bodies have decided to formulate a Memorandum of Understanding.

The Bodies intend that this Memorandum should provide a framework through which they can strengthen their cooperation and continue to develop positive and mutually beneficial relationships.

The Bodies hereby agree as follows:

STATEMENT OF MEMORANDUM

a) **Rule of Law and the Role of Legal Profession**

The Bodies re-affirm their commitment to the rule of law, human rights and access to justice and their shared goal of ensuring that the legal profession, through the highest standards of professionalism and client care, continues to advance these principles.

b) **Mutual exchange of legal practitioners between India and England and Wales for gaining knowledge and experience:**

- **Recalling** our common legal heritage and longstanding relationship based on friendship and cooperation with the objective of advancing the rule of law and the interests of practitioners,
- **Recognising** the growing importance, ties between the two nations and their peoples and the vital part played by the law in these relationships,
- **Desiring** to strengthen their cooperation in promoting friendship and exchanges between both countries, and
- **Accepting** that closer ties between members of the legal profession in India and England and Wales will be mutually beneficial to the practice of law in both jurisdictions, and
- **Agreeing** to implement the exchange programmes on the recommendations of Bar Council of India or Bar Council of India Trust-PEARL FIRST (when it relates to Indian Advocates) and the Law Society of England and Wales or Bar Council of England and Wales (when it relates to Solicitors/Barristers of England and Wales).

Accordingly, the Law Society of England and Wales, the Bar Council of England and Wales and Bar Council of India agree to make the exchange programme of Advocates/Solicitors/Barristers and Training programmes fully successful and practical without any unnecessary hurdles.

The Law Society of England and Wales, the Bar Council of England and Wales and the Bar Council of India shall endeavour to provide internships to law students recommended by the Bar Council of India under law firms, law offices etc. subject to interest shown by those law firms or law offices.

The Law Society of England and Wales or Bar Council of England and Wales may recommend and send any Solicitor or Barrister for a maximum period of 90 days. The Bar Council of India shall make efforts to provide them the opportunity to learn in some reputed law Firm or in the office of any designated Senior Advocate. The Bar Council of India shall also provide the opportunity to such Solicitors/Barristers to watch the proceedings of Indian Law Courts/Tribunals or other Forum dealing with Legal matters, International Arbitrations and/or Mediation.

Similarly, the Law Society of England and Wales and the Bar Council of England and Wales shall make efforts to provide similar opportunities to the Advocates recommended by the Bar Council of India to learn or get trainings in International Law Firms, English Courts, Tribunals, International Arbitration Centres and other International Forums. The training programmes shall be in-person.

All the parties to this MOU shall make efforts to facilitate the visa and immigration process exchange-friendly by making requests to the respective governments or authorities.

The expenses shall be borne by the concerned Advocate/Lawyer/Solicitor/Barrister/Student only. The maximum period of stay in respective countries shall not exceed 90 days.

All participants agree:

- a) To develop a framework for the exchange of lawyers working in the legal profession between India and England and Wales, with the aim of enabling lawyers qualified in India and in England and Wales, to experience and gain knowledge of the practice of law in both jurisdictions, subject to the necessary rules and regulations of the respective authorities.
- b) To facilitate the implementation of short-term exchanges of lawyers for training and to explore mutually acceptable options to fund these exchanges (including in-country costs).
- c) To cross-promote meetings and opportunities for the exchange of information regarding current issues of international significance.

- d) To issue invitations and provide opportunities, including to the President or Chairperson of the Bar Council of India, the Bar Council of England and Wales and the Law Society of England and Wales to participate in meetings, workshops, seminars and conferences in either jurisdiction which may be of benefit to the other.

c) **Two-way mobility of lawyers between India and England and Wales**

The Bodies recognise that in a rapidly changing and globalising world, clients will require legal counsel/expertise across jurisdictions, and that legal professionals may need to adapt their forms of practice organisation and modes of legal counselling/legal assistance to best cater to the requirements of their clients in the legal field. The Bodies therefore:

- **Note** that the Bar Council of India and the Law Society of England and Wales have in recent years engaged in a productive dialogue to exchange information about issues affecting the two-way mobility of lawyers in India and England and Wales;
- **Confirm** that Indian lawyers and Indian law firms that the English and Welsh legal services market is open to lawyers and law firms from India, in accordance with applicable law and regulations and that the practice of foreign law by foreign lawyers, including by Indian lawyers and law firms, is an established part of England and Wales' legal services system;
- **Affirm** that only authorised persons have the right to practise in reserved areas of legal activity in England and Wales and Lawyers from UK may practise in India in non-litigious areas as per applicable law and regulations, framed by the Bar Council of India; and
- **Accept** that the Bar Council of India has the power to regulate the practice of law in India, including the practice of foreign law by foreign lawyers in India on the basis of reciprocity as per Bar Council of India Rules for Registration and Regulation of Foreign Lawyers and Foreign Law Firms in India, 2022.

It is clarified that the Bar Council of India Rules for Registration and Regulation of Foreign Lawyers and Foreign Law Firms in India, 2022 (as it exists at the relevant time) shall have overriding effect on this MoU in so far as practice by foreign lawyers in India is concerned.

All participants agree:

- a) That there are mutual benefits for both foreign lawyers and the domestic legal profession and professionals in both jurisdictions through the transfer of knowledge and expertise and exposure to international best practices, and
- b) That the essential features of the regulation of the practice of foreign law in England and Wales, which permits any foreign lawyer or law firm,

including Indian lawyers and law firms, to practise law in England and Wales, are set out in the Schedule A to this Memorandum of Understanding.

The Law Society of England and Wales and the Bar Council of England and Wales:

- c) **Agree that, where** requested, they will provide further information to the Bar Council of India to support the implementation and further development of regulations to permit the practice of English Law by English and Welsh lawyers and law firms in India in International Commercial Arbitration and in non-litigious matters only, on the basis of reciprocity.

The Bar Council of India confirms that it has:

- d) Framed Bar Council of India Rules for Registration and Regulation of Foreign Law Firms in India, which was published in the official gazette of India, on 13th March, 2023 bearing, No.CG-DL-E-14032023-244365, under Extraordinary, Part III, Section 4 of the Official Gazette, which permitted English and Welsh lawyers and law firms, to practise non-litigious English law in India and which Rules and Regulations (*as referred to above*) was passed on the basis of judgment dated 13th March, 2018 passed in (Civil Appeal No.7875-7879 with Civil Appeal No.7170 of 2015 and Civil Appeal No.8028 of 2015 in Bar Council of India Vs A.K. Balaji and ors.) and also on the principle of reciprocity and as per other provisions of the Advocates Act, 1961.

For the Law Society of England and Wales

For Bar Council of England and Wales

**Lubna Shuja
President**

Date: _____

**Nicholas Vineall KC
Chair**

Date: _____

For Bar Council of India

**Manan Kumar Mishra
Chairman**

Date: _____

SCHEDULE-A

The regulation of the practice of foreign law in England and Wales

Objective of Regulation

To encourage and facilitate the internationalisation of legal services by providing a framework for the regulation of the practice of foreign law by foreign lawyers as a recognised aspect of legal practice in England and Wales.

Practice Without Registration

Foreign lawyers in England and Wales are free to practise any type and jurisdiction of law, including English and Welsh law, and without any requalification requirement, except for those reserved legal activities that may only be carried out by authorised or exempt persons under the Legal Services Act 2007 set out below under the heading "Scope of Practice".

Form of Practice

Foreign lawyers may practise in England and Wales, through the following vehicles:

- as a sole practitioner
- in a partnership of foreign lawyers
- as an assistant or consultant with a firm of foreign lawyers
- in partnership with solicitors (if registered with the Solicitors Regulation Authority as a "Registered Foreign Lawyer")
- as an employee of a solicitor, and
- in employment as an in-house lawyer.

Scope of Practice

There are six reserved legal activities in England and Wales:

- The exercise of a right of audience in the courts and certain tribunals.
- The conduct of litigation.
- Reserved instrument activities.
- Probate activities.
- Notarial activities.
- The administration of oaths.

In order to practise in these areas, a person must be either an authorised or an exempt person under the Legal Services Act 2007. Subject to the above restrictions, any foreign lawyer can practise any type of law in the UK:

- As an unauthorised sole practitioner (using any title that cannot be confused with the protected titles of "barrister" or "solicitor" or any other protected title)
- As an assistant or consultant with a firm of foreign lawyers
- In a partnership of foreign lawyers
- Employed by English solicitors

- In partnership with English solicitors (but in some types of bodies, only if registered with the Solicitors Regulation Authority as a Registered Foreign Lawyer)
- In employment as an in-house lawyer (e.g. in the legal department of a commercial company)

There are no restrictions on foreign lawyers practising in areas of law that do not fall within the categories set out above.

Furthermore, in a carve-out to the abovementioned reserved activity of exercising rights of audience, the Bar Standards Board (BSB) provides for a procedure to obtain so-called “temporary call” to the Bar for the purpose of conducting a specific case (or related series of hearings). [This is set out in Section 7E of Part 7 of the Bar Qualification Manual.](#)

Please refer to the Bar Standards Board's (required to obtain full rights of audience). Further information on transferring lawyers can also be found on the [BSB's website here.](#)

Please refer to Law Society's online guidance on how to become a solicitor: a guide for international lawyers [here](#) (SRA online guidance [here](#))