

Society of Indian Law Firms
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18.06.2015

The
Bar Council of Delhi
2/6, Siri Fort Institutional Area
Khel Gaon Marg
New Delhi – 49

Dear Sirs,

Sub: Complaint under Section 35, Sections 6 (1) (a), (b), (c), (d), (h), (i); Section 17, Sections 22 and 24, Section 29, Section 49 (1) (ah) of the Advocates Act, 1961 read with the Bar Council of India Rules against the unauthorised practice of law by multinational audit and accounting firms – Request for Action to be initiated against E& Y

1. The present complaint is being filed against the unauthorised practice of law by Multinational Audit and Accounting Firms in violation of the provisions of the Advocates Act, 1961 and the rules issued thereunder.
2. The Complainant Society of Indian Law Firms (“SILF”) is a collective of India’s Premier Law Firms and is the only representative body for Law Firms of India till date. SILF set up in 2000 believes in working for the interests of the legal community in general and law firms in particular. SILF was formed with the purpose of bringing together the commercial, corporate and litigation law firms, to promote and protect/safeguard the interests of the legal profession in general and the law firms in particular. It has been actively working towards achieving its goals with the help of all its Member Firms, numbering more than 100. SILF serves as a forum for exchange of ideas and information as also a medium for interaction with the government, the judiciary and the bureaucracy.
3. SILF since its inception has amassed a wealth of experience, knowledge capital as well as unity and solidarity between competing law firms which would be difficult for any other entity to match. SILF intends to push the boundaries, expand its horizons and work more vigorously in order to fulfill its mission – “protecting, safeguarding and promoting the interests of law firms in India”. SILF also has a Memorandum of

Understanding with Queensland Law Society and sustaining memberships with International Bar Association (IBA), Union Internationale des Avocats (UIA), LAWASIA and Inter-Pacific Bar Association (IPBA).

4. SILF has listed out the following goals in order to achieve its mission of protecting and safeguarding the interests of law firms in India.
 - To promote reforms in justice and law and their healthy development to suit the social and economic needs of the people, SILF intends to put to use the extensive wealth of legal knowledge and experience that the member firms have garnered over the years;
 - To promote the welfare of corporate, commercial, and litigation law firms as well as upholding of the dignity, honour, and independence of the legal profession and law firms;
 - To encourage the development of good relations between law firms (on one side) and the Bench, the Bar, the public, and lawyers from different nations (on the other);
 - To promote unity and solidarity among the various firms throughout India;
 - To encourage and conduct research in legal and allied fields, promoting legal education & continuing legal education (CLE), promoting and providing legal aid and assistance to the needy, preservation of Human Rights and redressal for violation of the same;
 - To work with other national and international societies, institutions, and organizations as well as promote international understanding and cooperation;
 - Promote publication of works on law, for the benefit of the entire legal community;
 - Promote its activities by setting up regional centers.
5. As a responsible member of the legal profession and in protecting the interests of the legal profession, SILF has been able to collect information which is being provided along with this compliant which will demonstrate that multinational audit and accounting firms have started engaging in the unauthorised practice of the profession of law.

6. The Bar Council of Delhi has been constituted under Section 3 of the Advocates Act, 1961 (hereinafter referred to as 'Act') is the apex professional body for advocates in Delhi and is concerned with the standards of legal profession and the equipment of those who seek entry into the profession.
7. The Bar Council of Delhi has been conferred the functions under the Act to admit persons as advocates on its roll, to entertain and determine cases of misconduct against advocates on its roll, to safeguard the rights, privileges and interests of advocates on its roll and to do all things necessary for discharging the functions under the Act.
8. The Act is an act to amend and consolidate the law relating to legal practitioners and to provide for the constitution of Bar Councils and an All-India Bar. Under Section 29 read with Sections 17 and 24 of the Act, only Indian citizens who are enrolled with the State Bar Councils as advocates have the right to practise the profession of law in India. The Act has only created one class of persons entitled to practise the profession of law viz. Advocates who are enrolled in the rolls of the respective State Bar Council.
9. The Hon'ble Madras High Court in the case of **A K Balaji v The Government of India and others**, [WP No. 5614 of 2010, decided on 21.02.2012] expressed a concern that many accountancy and management firms are employing law graduates and are rendering legal services contrary to the Act and are engaged in the unauthorised practice of law.
10. The Hon'ble Supreme Court of India has held in the case of **Madras Bar Association v Union of India**, [Transferred Case (C) No. 150 / 2006, decided on 25.09.2014] that Chartered Accountants and Company Secretaries would at best be specialists in understanding and explaining issues pertaining to accounts. The Hon'ble Supreme Court struck down the provision allowing Company Secretaries and Chartered Accountants to appear on behalf of a party before National Tax Tribunal.
11. The Hon'ble Supreme Court in the case of **Ex-Capt Harish Uppal v. Union of India, (2003) 2 SCC 45** has held that an advocate apart from appearing in courts can be consulted by clients, appear in arbitrations, render legal opinion, draft instruments

and other documents, pleadings, affidavits and other documents etc. Further, the Hon'ble Supreme Court held that the right to practise is the genus of which the right to appear and conduct cases in the court is a specie of the right to practise. The Hon'ble Bombay High Court in the case of **Lawyers Collective v Bar Council of India** [WP No. 1526 of 1995 decided on 16.12.2009] held quoting the Supreme Court in the case of **Ex-Capt Harish Uppal** that the Advocates Act applies to persons practising in litigious matter and also persons practising in non-litigious matters.

12. Whereas only an Advocate who is on the rolls of the State Bar Council is entitled to practise the profession of law, which includes both litigious and non-litigious matters.

13. The Hon'ble Madras High Court held in the **A K Balaji** case held:

“As noticed above, the fact of the case before the Bombay High Court were that the Respondents which were Foreign Law Firms practising the profession of law in US/UK sought permission to open their liaison office in India and render legal assistance to another person in all litigious and non-litigious matters. The Bombay High Court, therefore, rightly held that establishing liaison office in India by the Foreign Law Firm and rendering liaisoning activities in all forms cannot be permitted since such activities are opposed to the provisions of the Advocates Act and the Bar Council of India Rules. We do not differ from the view taken by the Bombay High Court on this aspect.

...

At this juncture, it is necessary to note yet another submission made by the Government of India in their counter. It has been stated that Law Firms as such or not required to register themselves or require permission to engage in non-litigation practice and that Indian Law Firms elsewhere are operating in a free environment without any curbs or regulations. **It is further submitted that the oversight of the Bar Council on non-litigation activities of such Law Firms was virtually nil till now, and exploiting this loop hole, many accountancy and management firms are employing law graduates, who are rendering legal services, which is contrary to the Advocates Act. Therefore, the concern of the Government of India as expressed in the**

Counter Affidavit requires to be addressed by the Bar Council of India.

Further, it is seen that the Government in consultation with the Bar Council of India proposes to commission a study as to the nature of activities of LPOs, and an appropriate decision would be taken in consultation with the Bar Council of India.

After giving our anxious consideration to the matter, both on facts and on law, we come to the following conclusion:

(i) Foreign Law Firms or Foreign Lawyers cannot practice the profession of law in India either on the litigation or non-litigation side, unless they fulfil the requirement of the Advocates Act, 1961 and the Bar Council of India Rules.”

(Emphasis Supplied)

14. To practise the profession of law, an Indian citizen has to be admitted as an advocate on the rolls of a State Bar Council. Whereas under section 29 of the Act only an advocates whose name appears on the roll can practice the profession of law in India.
15. Whereas the Hon'ble Supreme Court in the case of **Ex-Captain Harish Uppal v Union of India and another (2003) 2 SCC 45** has held:

“...The right of the advocate to practise envelopes a lot of acts to be performed by him in discharge of his professional duties. Apart from appearing in the courts he can be consulted by his clients, he can give his legal opinion whenever sought for, he can draft instruments, pleadings, affidavits or any other documents, he can participate in any conference involving legal discussions, he can work in any office or firm as a legal officer, he can appear for clients before an arbitrator or arbitrators etc. ...The right to practice, no doubt, is the genus of which the right to appear and conduct cases in the Court may be a specie. ...”

(Emphasis Supplied)

16. Whereas the Hon'ble Bombay High Court in the case of **Lawyers Collective v Bar Council of India (2010) 2 Comp. L.J 108 (Bom)** has held:

“In the statements of Objects & Reasons for enacting the 1961 Act, it is stated that the main object of the Act is to establish All India Bar Council and a common roll of advocates and Advocate on the common roll having a right to practise in any part of the country and in any Court, including the Supreme Court. Thus, from the Statement of Objects and Reasons, it is seen that the 1961 Act is intended to apply to (one) persons practising the profession of law in any part of the country and (two) persons practising the profession of law in any Court including the Supreme Court. Thus, from the statement of objects and reasons it is evident that the 1961 Act is intended to apply not only to the persons practising before the Courts but it is also intended to apply to persons who are practising in non litigious matters outside the Court.

Apart from the above, Section 29 of the 1961 Act specifically provides that from the appointed day, there shall be only one class of persons entitled to practise the profession of law, namely Advocates. It is apparent that prior to the 1961 Act there were different classes of persons entitled to practise the profession of law and from the appointed day all these class of persons practising the profession of law, would form one class, namely, advocates. Thus, section 29 of the 1961 Act clearly provides that from the appointed day only advocates are entitled to practise the profession of law whether before any Court/authority or outside the Court by way of practise in non litigious matters.

Section 33 of the 1961 Act is a prohibitory section in the sense that it debars any person from appearing before any Court or authority unless he is enrolled as an advocate under the 1961 Act. The bar contained in section 33 of the 1961 Act has nothing to do with the persons entitled to be enrolled as advocates under section 29 of the 1961 Act. A person enrolled as an advocate under section 29 of the 1961 Act, may or may not be desirous of appearing before the Courts. He may be interested in practising only in non litigious matters. Therefore, the bar under section 33 from appearing in any Court (except when permitted by Court under Section 32 of the 1961 Act or any other Act) unless enrolled as an advocate does not bar a person from being enrolled as an advocate under section 29 of the 1961 Act for practising the profession of law in non litigious matters. The Apex Court in the case of

Ex-Capt. Harish Uppal (supra) has held that the right to practise is the genus of which the right to appear and conduct cases in the Court may be a specie.

Therefore, the fact that section 33 of the 1961 Act provides that advocates alone are entitled to practise before any Court/authority it cannot be inferred that the 1961 Act applies only to persons practising in litigious matters and would not apply to person practising in non litigious matters.

...

... Once it is held that the persons entitled to practise the profession of law under the 1961 Act covers the persons practising the profession of law in litigious matters as well as non-litigious matters, then, the penal provisions contained in section 35 of the 1961 Act would apply not only to persons practising in litigious matter, but would also apply to persons practising the profession of law in non-litigious matters.

The very object of the 1961 Act and the Rules framed by the Bar Council of India are to ensure that the persons practising the profession of law whether in litigious matters or in non litigious matters, maintain high standards in professional conduct and etiquette and, therefore, it cannot be said that the persons practising in non litigious matters are not governed by the 1961 Act.

...

It is not the case of the respondents that in India individuals/law firms/companies are practising the profession of law in non-litigious matters without being enrolled as advocates under the 1961 Act. It is not even the case of the respondents that in the countries in which their head office as well as their branch offices are situated, persons are allowed to practice the profession of law in non-litigious matters without being subjected to the control of any authority. In these circumstances, when the Parliament has enacted the 1961 Act to regulate the persons practising the profession of law, it would not be correct to hold that the 1961 Act is restricted to the persons practising in litigious matters and that the said Act does not apply to persons practising in non litigious matters. There is no reason to hold that in India the practise in non litigious matters is unregulated.

It was contended by the counsel for Union of India that if it is held that the 1961 Act applies to persons practising in non-litigious matters, then no bureaucrat would be able to draft or give any opinion in non-litigious matters without being enrolled as an advocate. There is no merit in the above

argument, because, there is a distinction between a bureaucrat drafting or giving opinion, during the course of his employment and a law firm or an advocate drafting or giving opinion to the clients on professional basis. Moreover, a bureaucrat drafting documents or giving opinion is answerable to his superiors, whereas, a law firm or an individual engaged in non litigious matters, that is, drafting documents/giving opinion or rendering any other legal assistance are answerable to none. To avoid such anomaly, the 1961 Act has been enacted so as to cover all persons practising the profession of law be it in litigious matters or in non-litigious matters within the purview of the 1961 Act.

The argument that the 1961 Act and the Bar Councils constituted thereunder have limited role to play has been time and again negated by the Apex Court. Recently, the Apex Court in the case of Bar Council of India v. Board of Management, Dayanand College of Law reported in (2007) 2 SCC 202 held thus:—

“It may not be correct to say that the Bar Council of India is totally unconcerned with the legal education, though primarily legal education may also be within the province of the universities. But, as the apex professional body, the Bar Council of India is concerned with the standards of the legal profession and the equipment of those who seek entry into that profession. The Bar Council of India is also thus concerned with the legal education in the country. Therefore, instead of taking a pendant view of the situation, the State Government and the recommending authority are expected to ensure that the requirement set down by the Bar Council of India is also complied with.”

Thus, when efforts are being made to see that the legal profession stand tall in this fast changing world, it would be improper to hold that the 1961 Act and the Bar Council constituted there under have limited role to play in the field relating to practising the profession of law.

It is not in dispute that once a person is enrolled as an advocate, he is entitled to practise the profession of law in litigious matters as well as non-

litigious matters. If the argument of the respondents that the 1961 Act is restricted to the persons practising the profession of law in litigious matters is accepted, then an advocate found guilty of misconduct in performing his duties while practising in non-litigious matters cannot be punished under the 1961 Act. Similarly, where an advocate who is debarred for professional misconduct can merrily carry on the practise in non-litigious matters on the ground that the 1961 Act is not applicable to the persons practising the profession of law in non litigious matters. Such an argument which defeats the object of the 1961 Act cannot be accepted.

...

For all the aforesaid reasons, we hold that in the facts of the present case, the RBI was not justified in granting permission to the foreign law firms to open liaison offices in India under Section 29 of the 1973 Act. We further hold that the expressions ‘to practise the profession of law’ in section 29 of the 1961 Act is wide enough to cover the persons practising in litigious matters as well as persons practising in non litigious matters and, therefore, to practise in non litigious matters in India, the respondent Nos. 12 to 14 were bound to follow the provisions contained in the 1961 Act. The petition is disposed of accordingly with no order as to costs.”

(Emphasis Supplied)

17. Whereas Ernst and Young in India has acquiesced to practising the profession of law. Whereas in the case of Ernst and Young Ltd v Commissioner of Service Tax, New Delhi [2012 (27) S.T.R 462 (Tri-Del)] it was accepted that Ernst and Young Ltd are providing the following services:

- Immigration services: Relating to assistance provided to expatriates for obtaining registration with the Foreigners Regional Registration office
- Litigation support: assistance in preparation and filing of replies to notices issued by department, attending hearings and various other litigation support services
- Personal tax: assistance in preparation and filing of Indian tax returns for Indian nationals outside India as well as for expatriates in India
- Private client services: assistance in preparation and filing of returns, setting up trust funds etc. for high net worth individuals
- Stock Incentive plans: various compliance services in relation to stock options such as preparation and filing of the plans with the income tax authorities

- Tax withholding: assistance in preparation of tax deducted at source (TDS) returns and filing the same with the income tax authorities
- Domestic taxation: assistance in preparation of corporate tax returns other documents such as registrations, IEC code, replies to notices etc with the VAT Authorities, service tax authorities, customs authorities, excise authorities, director general of foreign trade, attending hearings before the authorities etc.;
- International tax services: assistance in representing clients before tax authorities
- Foreign investment promotion board (FIPB) related: assistance in preparation and filing of various applications, following up with the authorities and obtaining approvals;
- Assistance in preparation and filing of various applications and other documents with the various authorities such as the Registrar of Companies etc. follow up with the relevant authorities and obtaining approvals, if any
- Reserve bank of India (RBI) related: assistance in preparation of application for opening and closure of liaison / branch office and various other documents, filing of documents and follow up with the RBI authorities.

A copy of the said decision is annexed herewith as **Annexure 1**.

18. Whereas from the above it clearly brings to light the fact that E&Y in India (including E & Y India Pvt Ltd and E&Y Global Ltd) and their various affiliates (collectively referred to as 'E&Y') are engaged in practise of the profession of law by assisting in preparation and filing of replies to notices issued by the Department of Government of India, attend hearings and provide various other litigation support service. Further E&Y are engaged in representing clients before tax authorities and are engaged in providing replies to notices etc with VAT authorities / service tax authorities, custom authorities / excise authorities / DGFT and attend hearing before authorities. Whereas it is also a fact that they are involved in preparing and filing various applications with authorities and obtaining approvals from authorities including the Foreign Investment Promotion Board, Registrar of Companies, Reserve Bank of India etc. Therefore, E&Y and their affiliates in India are engaged in the practise of the unauthorised practise of law.

19. Whereas E&Y are rendering opinions on different legislations. Please see in this regard **Annexure 2**. Whereas they are rendering legal opinions on a number of legal issues which are exclusively in the domain of Advocates.

20. Whereas E&Y are engaged in providing legal advice to clients on Corporate; Secretarial; Tax; Environment, Health, Safety, Labor, Industrial and regulatory requirements by RBI, SEBI etc. (Please see **Annexure 3**) Whereas they are illegally engaged in the practise of the profession of law by engaging in advice on tax laws. (Please see **Annexure 4**)
21. Whereas E&Y are engaged in providing legal services in India and have member firms in India who provide legal services. (Please see **Annexure 5**) Where E&Y through their Global Network are providing legal services in India too. Whereas E & Y are providing legal services in the domain of M&A, labour and employment laws, corporate and commercial laws, distribution and franchising law, real estate law, financial services laws, insolvency and restructuring laws, IPR and Information technology laws etc across a wide range of sectors. Whereas E & Y have also got into arrangements with Advocates and Law firms in India to provide legal advice and represent clients before courts, tribunals and other authorities. (Please see **annexure 6**). Whereas E & Y have inducted PDS Legal as a member / affiliate firm of E&Y Global Limited. (Please see **Annexure 7**) PDS Legal is a law firm and is composed of advocates. Therefore, E & Y have in a surrogate manner engaged in the practice of law.
22. Whereas advocates are recruited as part of the E&Y Network are in fact interviewed by Chartered Accountants / other professionals. Whereas the advocates of PDS Legal attend the Partners meeting of E&Y network of firms and take part in the discussions with the members of the E&Y Network. Whereas the advocates of PDS Legal and other members of the E&Y network are involved in determining the business strategy to meet clients and cross-refer work to each other. Whereas there is a modus operandi between PDS Legal and E&Y to share remuneration etc. Whereas the logo of E&Y is being used by PDS Legal. Therefore, E&Y has unauthorised practiced the profession of law.
23. Whereas litigation work is being referred to PDS Legal by members of E&Y. The infrastructure, resources etc of E&Y is being used by PDS Legal. Whereas PDS Legal and E&Y share office space, address etc. Whereas this would also result in issues pertaining to confidentiality of clients which is only available to advocates. This abundantly brings to light the fact that the E&Y in addition to practising the profession

of law as mentioned above is also involved in the unauthorised practice of law through its alliance with PDS Legal.

24. Whereas E & Y are engaged in the unauthorised practice of the profession of law by providing legal advice on M&A transactions under the Indian regulatory framework. E & Y is also engaged in reviewing / drafting of documentation. Whereas E & Y is involved in making representations before Government authorities and provide assistance in obtaining regulatory approvals/ and are thus involved in advising clients on the various laws and legislations.
25. Whereas E & Y are engaged, inter alia, in drafting factual and legal submissions for income tax appeal before the appellate authorities, preparing the case and representing it before the tax authorities. Whereas E & Y are engaged in advising clients and are rendering legal opinions on various indirect taxes such as Customs duties, central excise, service tax and VAT (including works contract taxes and lease taxes), and anti-dumping duties. Whereas E & Y are also representing clients in Tribunals and before authorities.
26. Whereas Advocates cannot engage in multi-disciplinary practices and are not engaged in practice of auditing and accounting. Whereas Advocates cannot engage in any other business or trade or profession as the profession requires complete devotion by an advocate to the profession.
27. Whereas the Hon'ble Supreme Court in the case of **Indian Council of Legal Aid and Advice v. Bar Council of India and another** (1995) 1 SCC 732 has held:

*“The Bar Councils are rejoined with the duty to act as sentinels of professional conduct and must ensure that the dignity and purity of the profession are in no way undermined. Its job is to uphold the standards of professional conduct and etiquette. Thus every State Bar Council of India has a public duty to perform, namely, to ensure that the monopoly of practise granted under the Act is not misused or abused by a person who is enrolled as an advocate. **The Bar Councils have been created at the State level as well as the Central level not only to protect the rights, interests and privileges of its members but also to protect the litigating public by ensuring that high and noble traditions are maintained so that the purity***”

and dignity of the profession are not jeopardized. It is generally believed that members of the legal profession have certain social obligations; e.g., to render 'pro bono publico' service to the poor and the under privileged. **Since the duty of a lawyer is to assist the court in the administration of justice the practise of law has a public utility flavour and, therefore, he must strictly and scrupulously abide by the Code of Conduct behaving the noble profession and must not indulge in any activity which may tend to lower the image of the profession in society. That is why the functions of the Bar Council include the laying down of standards of professional conduct and etiquette which advocates must follow to maintain the dignity and purity of the profession.**

... So far as the Bar Council of India is concerned, its functions are of a more general nature, e.g., to lay down standards of professional conduct and etiquette for advocates, to safeguard their rights, privileges and interests to supervise and control the working of the State Bar Council, to promote legal education, to recognise universities, to organise legal aid to the poor and to perform all other functions conferred by or under the Act and do everything that may be necessary to discharge the functions enumerated in Section 7. Besides the above it too is required to exercise discipline and control over the members of the profession.”

(Emphasis Supplied)

28. Whereas the Hon'ble Supreme Court in the case of **(Dr.) Haniraj L. Chulani vs Bar Council of Maharashtra & Goa** (1996) 3 SCC 342 has held:

“The rules framed by the Bar Council of India especially relating to standards of professional conduct and etiquette clearly aim at securing high standards of competence in legal services and seek to strengthen professional relationships among its members and promote the welfare of the society as a whole. Specific norms have been laid down in respect of conduct of the persons practising the profession vis-a-vis the public, the court, the client, the opposite lawyer and professional brethren. Lawyer's duty to train juniors and impart free legal aid to poor is part of the ethics. The code thus provides standards for identification and measurement of professional deviance. As noted earlier the Act besides highlighting the essential functions of Bar

Council of India provides for enforcement of the same and sets up disciplinary authorities to chastise and, if necessary, punish members of the profession for misconduct. The punishment may include suspension from practice as well as removal of the name from the roll of advocates. Section 49(1) confers power on the Bar Council of India to make rules, inter alia, for discharging its functions under the Act. Section 49(1)(ag) when read with Section 24 of the Act confers wide powers on the Bar Council of India to indicate the class or category of persons who may be enrolled as advocates which power would include the power to refuse enrollment in certain circumstances. The obligation to maintain the dignity and purity of the profession and to punish ensuring members carries with it the power to regulate entry into the profession with a view to ensuring that only profession-oriented and service-oriented people join the Bar and those not so oriented are kept out. The role of an advocate is essentially different from the role of any other profession an advocate is said to belong to a noble profession. The Act itself envisages the State Bar Councils who are the elected peers of advocates themselves to lay down the standards for the professional conduct and etiquette. **That would naturally bring in its wake the power to regulate entry to such a noble profession. It is said that law is a jealous mistress that calls for undivided loyalty and unflinching attention from her devotees. Dry drudgery of desks' dead wood is the essential requirement of an advocate aspiring to win laurels in the profession.**

The attack on the impugned rule on the ground of excessive delegation of legislative power will have to be examined in the light of scheme of the Act which has entrusted the power and the duty to elected representatives of the profession constituting the State Bar Councils to lay down the high standards of professional etiquette as expected of the advocates enrolled by it. It is pertinent to note that the Act has entrusted to the Bar Council of India, amongst others, the functions to promote legal education and to lay down standards of such education in consultation with the Universities in India imparting such education and the State Bar Councils. The Bar Council of India is entrusted with the function to recognize Universities whose degree in law shall be a qualification for enrollments as an advocate and for that purpose to visit and inspect Universities or cause the State Bar Councils to visit and inspect Universities with such directions as it may give in this behalf. It conducts seminars and organize talks on legal topics by eminent jurists and

publishes journals and papers of legal interest. In this connection, it also exercises general supervision and control over the State bar Councils. It is also entrusted with the task of promoting and supporting law reform. All these provisions as laid down by Section 7 of the Act leave no room for doubt that even prior to the enrollment as advocate the teaching of law and laying down of the curriculum for law courses are also the tasks entrusted to the Bar Council of India, which is the apex body of professionals monitoring these matters in conjunction with the State Bar Councils. Thus even at pre-entry stage of an advocate to the profession his equipments as a student of law and the requirement of basic legal education with which he should be armed before he can aspire to be enrolled as an advocate are also looked after by the Bar Council of India and the concerned State Bar Council which works under the general supervision and control of the apex body, namely, the Bar Council of India. Thus the Bar Council of India is cast with the duty to take all such steps as it considers necessary to filter students at the entry stage to the law course e.g. by providing an entrance test, as well as at the entry point to the profession, e.g. by providing an examination or a training course before enrollment as an advocate. The Act also deals with the topic of regulation of professional conduct of advocates from the entry point itself.

The concerned State Bar Councils have to monitor the role of advocates so long as they continue to practise law after initial entry. As the enrollment by the State Bar Council entitles an advocate after entry to the profession, to practise the noble profession of law and who becomes, by such enrollment, an officer of the court, the said entrant can be validly subjected by the concerned Bar Council to the strict requirements of the profession for enabling such an aspirant to effectively cater to the needs of the legal profession. The power and the duty entrusted to the State Bar Councils to monitor such entry, in the light of the nature of the profession to which such entry is given would themselves supply the necessary yardstick and guidelines for the exercise of such power by the elected body of advocates constituting the concerned Bar Councils. The scheme of the Act thus lays down a complete code for regulating the legal education and professional equipments of an aspirant seeking entry to legal profession from the grassroot level where he is student of law till he equips himself with essential legal knowledge and seeks enrollment and even thereafter till he practices

law and completes his professional career as advocate. Thus, from the pre-entry point to legal Profession till the exit point from the legal profession, the Bar Council of India and the State Bar Councils monitor the career of the legal practitioner. It is the entire scheme of the Act when considered in the light of the nature of the legal profession to which such entry is given which has to be kept in view while considering the submission of learned senior counsel for the appellant that the power given to the State Bar Councils to regulate such entries by framing rules is a piece of excessive delegation of legislative power. It cannot be gainsaid that law is universally described as an honourable profession. An advocate is an officer of justice and friend of the court. A conduct, therefore, which is unworthy of him as an officer of justice cannot be justified by stating that he did it as the agent of his client. His status as an officer of justice does not mean that he is subordinate to the Judge. It only means that he is an integral part for the Administration of justice. Legal profession is monopolistic in character and this monopoly itself inheres certain high traditions which its members are expected to upkeep and uphold. Members of the profession claimed that they are the leaders of thought and society. The central function that the legal profession must perform is nothing less than the administration of justice.

...

It is no doubt true that under Article 19, sub-Article (1)(g) all citizens have a right to practise any profession, or to carry on any occupation, trade or business and any profession may include even plurality of professions. However, this is not an absolute right. It is subject to sub-Article (6) of Article 19 which lays down that nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause. It cannot be gainsaid that litigants are also members of general public and if in their interest any rule imposes a restriction on the entry to the legal profession and if such restriction is found to be reasonable Article 19(1)(g) would not get stultified. It is true that the appellant as a citizen of India having obtained the qualification required for being enrolled as an advocate can legitimately aspire to be enrolled as an advocate but his aforesaid right is fettered by the impugned rule framed by the State Bar Council. We have to consider whether the said restriction imposed by the rule is in any way

unreasonable. We have to keep in view the fact that the impugned rule restricts entry of a person who is otherwise qualified for being enrolled as an advocate if he is already carrying on any other profession. Question is whether such a person carrying on other profession can be validly told off the gates by the State Bar Council by resorting to the impugned rule. In our view looking to the nature of the legal profession to which we have made detailed reference earlier the State Bar Council would be justified in framing such a rule prohibiting the entry of a professional who insists on carrying on other profession simultaneously with the legal profession. As we have seen earlier legal profession requires full time attention and would not countenance an advocate riding two horses or more at a time. He has to be full time advocate or not at all. Learned senior counsel for the appellant submitted that, even though the appellant is a practising surgeon he undertaking, if given entry to the legal profession, not to practise medicine during the court hours. This is neither here nor there. It is obvious that even though medical profession also may be a dignified profession a person cannot insist that he will be a practising doctor as well as a practising advocate simultaneously. Such an insistence on his part itself would create an awkward situation not only for him but for his own clients as well as patients. It is easy to visualize that a practising surgeon like the appellant may be required to attend emergency operation, even beyond court hours either in the morning or in the evening. On the other hand the dictates of his legal profession may require him to study the cases for being argued the next day in the court. Under these circumstances his attention would be divided. We would naturally be in a dilemma as to whether to attend to his patient on the operation table in the evening or to attend to his legal profession and work for preparing cases for the next day and to take instructions from his clients for efficient conduct of the cases next day in the court. If he is an original side advocate he may be required to spend his evenings and even late nights for making witnesses ready for examination in the court next day. Under these circumstances as a practising advocate if he gives attention to his clients in his chamber after court hours and if he is also required to attend an emergency operation at that very time, it would be very difficult for him to choose whether to leave his clients and go to attend his patient in the operation theatre or to refuse to attend to his patients. If he selects the first alternative his clients would clamour, his preparation as advocate would suffer and naturally it would

reflect upon his performance in the court next day. If on the other hand he chooses to cater to the needs of his clients and his legal work, his patients may suffer and may in given contingency even stand to lose their lives without the aid of his expert hand as a surgeon. Thus he would be torn between two conflicting loyalties, loyalty to his clients on the one hand and loyalty to his patients on the other. In a way he will instead of having the best of both the worlds, have worst of both the worlds. Such a person aspiring to have simultaneous enrollment both as a lawyer and as a medical practitioner will thus be like 'trishanku' of yore who will neither be in heaven nor on earth. It is axiomatic that an advocates has to burn midnight oil for preparing his cases for being argued in the court next day. Advocate face examination every day when they appear in courts. It is not as if that after court hours advocate has not to put in hard work on his study table in his chamber with or without the presence of his clients who may be available for consultation. To put forward his best performance as an advocate he is required to give whole- hearted and full time attention to his profession. Any flinching from such unstinted attention to his legal profession would certainly have an impact on his professional ability and expertise. If he is permitted to simultaneously practise as a doctor then the requirement of his full time attention to the legal profession is bound to be adversely affected. Consequently however equally dignified may be the profession of a doctor he cannot simultaneously be permitted to practise law which is a full time occupation. It is for ensuring the full time attention of legal practitioners towards their profession and with a view to bringing out their best so that they can fulfil their role as an officer of the court and can give their best in the administration, of justice, that the impugned rule has been enacted by the State Bar Council. It, therefore, cannot be said that it is in any way arbitrary or that it imposes an unreasonable restriction on the new entrant to the profession who is told not to practise, simultaneously any other profession and if he does so to deny to him entry to the legal profession.

It is true as submitted by learned senior counsel for the appellant that the rule of Central Bar Council does not countenance an advocate simultaneously carrying on any business and it does not expressly frown upon any simultaneous profession. But these are general rules of professional conduct. So far as regulating enrollment, to the profession is concerned it is the task entrusted solely to the State Bar Council by the Legislature as seen earlier while

considering the scheme of the Act. While carrying on that task if the entry to the profession is restricted by the State Bar Council by enacting the impugned rule for not allowing any other professional to enter the Bar. When he does not want to give up the other profession but wants to carry on the same simultaneously with legal practice, it cannot be said that the Bar Council has by enacting such a rule imposed any unreasonable restriction on the fundamental right of the prospective practitioner who wants to enter the legal profession.

Learned senior advocate for the appellant vehemently contended that such a rule is not found to have been framed by other State Bar Councils. In our view that would not make any difference. We are called upon to decide the question whether the impugned rule framed by the respondent-State Bar Council stands the test of Article 19(1)(9) or not. While deciding that question whether other State Bar Councils permit by their rules entry of other professional to the legal profession, would be an aspect which would not be strictly relevant. In our view the impugned rule does not impose any unreasonable restriction on the right of the professional carrying on any other avocation and insisting on continuing to carry on such profession, while it prohibits entry of such a person to the legal profession. *If the contention of the learned senior counsel for the appellant is countenanced and any person professing any other profession is permitted to join the legal profession having obtained the Degree of Law and having fulfilled the other requirements of Section 24, then even chartered accountants, engineers and architects would also legitimately say that during court hours they will practise law and they will simultaneously carry on their other profession beyond court hours. If such simultaneous practices of professionals who want to carry on more than one profession at a time are permitted, the unflinching devotion expected by the legal profession from its members is bound to be adversely affected.* If the peers being chosen representatives of the legal profession constituting the State Bar Council, in their wisdom, had thought it fit not to permit such entries of dual practitioners to the legal profession it cannot be said that they have done anything unreasonable or have framed an arbitrary or unreasonable rule.”

(Emphasis Supplied)

29. Whereas the Hon'ble Supreme Court in the case of Bar Council of Maharashtra v M V Dabholkar (1976) 2 SCC 291 has held:

“...The rule of law cannot be built on the ruins of democracy, for where law ends tyranny begins. If such be the keynote thought for the very survival of our Republic, the integral bond between the lawyer and the public is unbreakable. And the vital role of the lawyer depends upon his probity and professional life-style. Be it remembered that the central function of the legal profession is to promote the administration of justice. ...”

(Emphasis Supplied)

30. Whereas the Hon'ble Supreme Court and the Hon'ble High Court of Bombay have held the practise of the profession of law includes litigious and non-litigious work. Whereas the practise of the profession of law includes appearance before courts/tribunals etc, giving legal advice and opinions, drafting of documents and agreements, pleadings etc. Whereas the aforementioned work being undertaken by E & Y is unauthorised practise of law.

31. Whereas as held by the Hon'ble Supreme Court, the practise of the profession of law is a noble profession and requires unflinching attention from her devotees. Whereas the Hon'ble Supreme Court has also upheld the constitutional validity of provisions that have restricted the practice of the profession of law only to one class (viz. advocates). Whereas the Hon'ble Supreme Court has held that there is public interest in ensuring that Advocates alone (and not professionals from other professions who simultaneously practise law) are entitled to practise the profession of law. Whereas the profession of law can only be practised by Advocates and there is a public utility involved in ensuring that only advocates practise the profession of law. The Advocates as members of the judicial system are a sentinel in the justice administration. Whereas there is an unbreakable bond between the Advocates and the public and the primary function of the Advocates is to promote the administration of justice. Whereas if people who are not entitled to practise law are permitted to do so the entire edifice on which our democracy is built – Rule of Law – will crumble.

32. Whereas under Section 29 of the Act read with Sections 2 (1) (a), (k) , (n); 17 and 24 Advocates alone can practise the profession of law. Whereas E & Y are engaged in the unauthorised practise of law.

33. Whereas Section 29 of the Act states:

29. Advocates to be the only recognised class of persons entitled to practise law – Subject to the provisions of this Act and any rules made thereunder, there shall, as from the appointed day, be only one class of persons entitled to practise the profession of law, namely, advocates.

34. Whereas as demonstrated from the evidence attached herewith E & Y are engaged in both litigious and non-litigious practise of law. Whereas E & Y are in violation of the Advocates Act by engaging in unauthorised practise of law.

35. Whereas the Hon'ble Supreme Court in the case of **Madras Bar Association v. Union of India** [Transferred Case (C) No. 150 / 2006, decided on 25.09.2014] held:

“Keeping in mind the fact, that in terms of Section 15 of the NTT Act, the NTT would hear appeals from the Income Tax Appellate Tribunal and the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) only on substantial questions of law, it is difficult for us to appreciate the propriety of representation, on behalf of a party to an appeal, through either Chartered Accountants or Company Secretaries, before the NTT. The determination at the hands of the NTT is shorn of factual disputes. It has to decide only substantial questions of law. In our understanding, Chartered Accountants and Company Secretaries would at best be specialists in understanding and explaining issues pertaining to accounts. These issues would, fall purely within the realm of facts. We find it difficult to accept the prayer made by the Company Secretaries to allow them, to represent a party to an appeal before the NTT. Even insofar as the Chartered Accountants are concerned, we are constrained to hold that allowing them to appear on behalf of a party before the NTT, would be unacceptable in law.”

36. Therefore, in the light of the decision of the Hon'ble Supreme Court, Chartered Accountants and Company Secretaries and other professionals are not entitled to practise law. Whereas the Chartered Accountants and Company Secretaries can at the best help in understanding issues pertaining to accounts and, therefore, they too cannot practise the profession of law.

37. Whereas the various activities undertaken by E & Y tantamount to unauthorised practice of law. Whereas under Section 29 of the Act only advocates are entitled to practise the profession of law. Whereas the practise of the profession of law before the Courts, Tribunals and rendering legal advice and opinion etc is the exclusive domain of Advocates who are enrolled in the rolls of a State Bar Council.

38. Whereas under Rule 37, Chapter II of Part VI of the Bar Council of India Rules (hereinafter referred to as 'Rules') an advocate shall not permit his professional services or his name to used in aid, or to make possible, the unauthorised practice of law by any agency. Whereas under Rule 49, Chapter II of Part VI of the Rules, an advocate cannot be a full-time salaried employee of any person, government, firm, corporation or concern so long as he continues to practise and shall upon taking up employment intimate the fact of taking up of the employment to the concerned State Bar Council.

Whereas **Rule 37**, Chapter II of Part VI of the Rules states:

37. An Advocate shall not permit his professional services or his name to be used in aid, or to make possible, the unauthorised practice of law by any agency.

Whereas **Rule 49** Chapter II of Part VI of the Rules states:

49. An Advocate shall not be a full-time salaried employee of any person, government, firm, corporation or concern, so long as he continues to practise, and shall, on taking up any employment, intimate the fact to the Bar Council on whose roll his name appears, and shall thereupon cease to practise as an advocate so long as he continues in such employment.

39. Whereas under Rule 2 of Chapter II of Part VI of the Rules, an 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.

Whereas **Rule 2** Chapter II of Part VI of the Rules states:

2. An 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.

40. Whereas E & Y are neither advocates nor a partnership among advocates. Whereas E& Y and its network of firms have entered into an arrangement with advocates and law firms to render legal advice and practise the profession of law.
41. Whereas E & Y are in violation of the aforementioned Rules as the alliance with PDS Legal is a clear case of unauthorised practice of law. Whereas the arrangement between PDS Legal and E & Y is also in violation of **Rule 2** Chapter II of Part VI of the Rules.
42. Where E& Y and their global network of firms / organizations are rendering legal advice and are engaged in the practise of the profession of law in India. Whereas the global network of E & Y are providing legal services in India including M&A, labour and employment laws, corporate and commercial laws, distribution and franchising law, real estate law, financial services laws, insolvency and restructuring laws, IPR and Information technology laws etc across a wide range of sectors. Whereas through the global network of E & Y, they are illegally practising the profession of law in India. Whereas the policies of each member firm of E&Y is determined based upon the Executive Committee and Regions. Whereas the persons who have been made noticees herein are responsible for and in charge of engaging in the practice of the profession of law by E&Y in India. (Please see **Annexure 8**)
43. Whereas there is an arrangement that E & Y has entered into with advocates to render legal advice and engage in the unauthorised practise of the profession of law. Whereas E & Y has entered into an arrangement for sharing of remuneration / fees with advocates.
44. Whereas all of the above is an unauthorised practise of the profession of law and is in violation of the Act and the Rules.
45. The Bar Council does not have a limited role in the practise of the profession of law but has to cater to the greater public interest in meeting the demands of the noble profession and the regulating the profession which is integrally involved in administration of justice. Whereas the Bar Council has been set up to also protect the litigating public by ensuring that high and noble traditions of the legal profession are maintained and also make sure that the purity and dignity of the profession are not jeopardized. Whereas Advocates are involved in the duty of administration of justice

and this element of public utility has to be safeguarded by this Council and also ensure the protection of welfare of the society as a whole.

46. Whereas it has been held in the case of **In Re Welch** 185 A.2d 458 (1962):

“We cannot over-emphasize the necessity of legal training in the proper drafting of legal documents and advice relating thereto. The absence of such training may result in legal instruments faulty in form and contents, and also lead to a failure of purpose, litigation and expense.”

(Emphasis Supplied)

47. Whereas it has been held in the case of **Lowell Bar Association v Loeb** 315 Mass. 176:

“The justification for excluding from the practice of law persons not admitted to the bar is to be found, not in the protection of the bar from competition, but in the protection of the public from being advised and represented in legal matters by incompetent and unreliable persons, over whom the judicial department could exercise little control. Matter of Shoe Manufacturers Protective Association, Inc., 295 Mass. 369, 372, 3 N.E.2d 746.”

(Emphasis Supplied)

48. Whereas by engaging in the unauthorised practise of the profession E & Y have acted in violation of Sections 29 of the Act and Rules aforementioned and are, therefore, liable to be punished with 6 months imprisonment for unauthorised practise of the profession of law liable under Section 45 of the Act. Whereas the actions of E & Y are also in violation of Rule 2 of Chapter II of Part VI of the Rules and Rule 37, Chapter II of Part VI of the Rules and are liable to be proceeded against and appropriate legal action should be initiated for the same. Further, we pray that E& Y should be directed to stop engaging in the unauthorised practice of the profession of law. We request and pray that immediate legal action be initiated against E & Y and protect the interest of the legal fraternity and the society at large.

Whereas the various affiliated parties of E & Y (and persons responsible for their functions) are enlisted herein below. We request you to kindly initiate appropriate action and direct them to stop engaging in the unauthorised practice of law.

1. Ernst & Young Global
Becket House,
1 Lambeth Palace Road,
London SE1 7EU
England

2. S R B A & Associates LLP
Tidel Park,
6th & 7th Floor, A Block (Module 601, 701-702), No. 4
Rajiv Gandhi Salai
Taramani, Chennai, 600113, India

3. Designated Partner
S R B A & Associates LLP
Tidel Park,
6th & 7th Floor, A Block (Module 601, 701-702), No. 4
Rajiv Gandhi Salai
Taramani, Chennai, 600113, India

4. Ernst & Young Associates LLP
6th Floor, HT House, 18-20 Kasturba Gandhi Marg,
Connaught Place,
New Delhi, 110001, India

5. Designated Partner
Ernst & Young Associates LLP
6th Floor, HT House, 18-20 Kasturba Gandhi Marg,
Connaught Place,
New Delhi, 110001, India

6. Ernst & Young LLP
22 Camac Street,
Block 'C', 3rd Floor,
Kolkata, 700 016,
India

7. Designated Partner
Ernst & Young LLP
22 Camac Street,
Block 'C', 3rd Floor,
Kolkata, 700 016,
India

8. S R B C & Associates LLP
22nd Camac Street,
Block B,
3rd Floor,
West Bengal, India

9. Designated Partner
S R B C & Associates LLP
22nd Camac Street,
Block B,
3rd Floor,
West Bengal, India
10. S R B C & CO LLP
22 Camac Street,
Block 'C', 3rd Floor,
Kolkata, 700 016,
India
11. Designated Partner
S R B C & CO LLP
22 Camac Street,
Block 'C', 3rd Floor,
Kolkata, 700 016,
India
12. S.R. Batliboi & Associates LLP
22 Camac Street,
Block 'C', 3rd Floor,
Kolkata, 700 016, India
13. Designated Partner
S.R. Batliboi & Associates LLP
22 Camac Street,
Block 'C', 3rd Floor,
Kolkata, 700 016, India
14. S.R. Batliboi & Co. LLP
22 Camac Street,
Block 'C', 3rd Floor,
Kolkata, 700 016, India
15. Designated Partner
S.R. Batliboi & Co. LLP
22 Camac Street,
Block 'C', 3rd Floor,
Kolkata, 700 016, India
16. S.V. Ghatalia & Associates LLP
22 Camac Street,
Block 'C', 3rd Floor,
Kolkata, 700 016, India
17. Designated Partner
S.V. Ghatalia & Associates LLP
22 Camac Street,
Block 'C', 3rd Floor,
Kolkata, 700 016, India

18. SRBA & Co LLP
Tidel Park, 6th & 7th Floor,
A Block (Module 601, 701-702), No. 4
Rajiv Gandhi Salai Taramani, Chennai, 600113, India
19. Designated Partner
SRBA & Co LLP
Tidel Park, 6th & 7th Floor,
A Block (Module 601, 701-702), No. 4
Rajiv Gandhi Salai Taramani, Chennai, 600113, India
20. Mark Weinberger
Global Chairman & CEO
E&Y Global Ltd
1101 New York Avenue N.W.
Washington
District of Columbia
20005
United States
21. Rajiv Memani
Regional Managing Partner
Golf View Corporate Tower B
Sector 42, Sector Road
Gurgaon, Haryana
122 002
India
22. Mark Otty
Area Managing Partner – EMEIA
Becket House
1 Lambeth Palace Road
London
SE1 7EU
United Kingdom
23. Carmine Di Sibio
Global Managing Partner
5 Times Square
NYC
New York
10036-6530
United States
24. Lou Pagnutti
Becket House
1 Lambeth Palace Road
London
SE1 7EU
United Kingdom
25. ERNST AND YOUNG LIMITED
6th Floor, HT House,
18-20, Kasturba Gandhi Marg,

NEW DELHI
Delhi-110001
INDIA

26. ERNST & YOUNG SERVICES PRIVATE LIMITED
6th Floor, HT House,
18-20 Kasturba Gandhi Marg, Connaught Place
New Delhi
Delhi-110001
INDIA

PRAYER

We request and pray that E & Y and its affiliates are directed not to engage in the unauthorised practice of law and appropriate legal action is initiated against them.

FOR THE SOCIETY OF INDIA LAW FIRMS

PLACE: DELHI
DATE: 18.06.2015

Society of Indian Law Firms
Through its President Mr Lalit Bhasin
10, Hailey Road, 10th Floor
New Delhi – 110001
Ph: 91-11-23322601, 91-11-23326968

18.06.2015

The
Bar Council of Delhi
2/6, Siri Fort Institutional Area
Khel Gaon Marg
New Delhi – 49

Dear Sirs,

Sub: Complaint under Section 35, Sections 6 (1) (a), (b), (c), (d), (h), (i); Section 17, Sections 22 and 24, Section 29, Section 49 (1) (ah) of the Advocates Act, 1961 read with the Bar Council of India Rules against the unauthorised practice of law by multinational audit and accounting firms – Request for Action to be initiated against Deloitte

1. The present complaint is being filed against the unauthorised practice of law by Multinational Audit and Accounting Firms in violation of the provisions of the Advocates Act, 1961 and the rules issued thereunder.
2. The Complainant Society of Indian Law Firms (“SILF”) is a collective of India’s Premier Law Firms and is the only representative body for Law Firms of India till date. SILF set up in 2000 believes in working for the interests of the legal community in general and law firms in particular. SILF was formed with the purpose of bringing together the commercial, corporate and litigation law firms, to promote and protect/safeguard the interests of the legal profession in general and the law firms in particular. It has been actively working towards achieving its goals with the help of all its Member Firms, numbering more than 100. SILF serves as a forum for exchange of ideas and information as also a medium for interaction with the government, the judiciary and the bureaucracy.
3. SILF since its inception has amassed a wealth of experience, knowledge capital as well as unity and solidarity between competing law firms which would be difficult for any other entity to match. SILF intends to push the boundaries, expand its horizons and work more vigorously in order to fulfill its mission – “protecting, safeguarding and promoting the interests of law firms in India”. SILF also has a Memorandum of

Understanding with Queensland Law Society and sustaining memberships with International Bar Association (IBA), Union Internationale des Avocats (UIA), LAWASIA and Inter-Pacific Bar Association (IPBA).

4. SILF has listed out the following goals in order to achieve its mission of protecting and safeguarding the interests of law firms in India.
 - To promote reforms in justice and law and their healthy development to suit the social and economic needs of the people, SILF intends to put to use the extensive wealth of legal knowledge and experience that the member firms have garnered over the years;
 - To promote the welfare of corporate, commercial, and litigation law firms as well as upholding of the dignity, honour, and independence of the legal profession and law firms;
 - To encourage the development of good relations between law firms (on one side) and the Bench, the Bar, the public, and lawyers from different nations (on the other);
 - To promote unity and solidarity among the various firms throughout India;
 - To encourage and conduct research in legal and allied fields, promoting legal education & continuing legal education (CLE), promoting and providing legal aid and assistance to the needy, preservation of Human Rights and redressal for violation of the same;
 - To work with other national and international societies, institutions, and organizations as well as promote international understanding and cooperation;
 - Promote publication of works on law, for the benefit of the entire legal community;
 - Promote its activities by setting up regional centers.
5. As a responsible member of the legal profession and in protecting the interests of the legal profession, SILF has been able to collect information which is being provided along with this compliant which will demonstrate that multinational audit and accounting firms have started engaging in the unauthorised practice of the profession of law.

6. The Bar Council of Delhi has been constituted under Section 3 of the Advocates Act, 1961 (hereinafter referred to as 'Act') is the apex professional body for advocates in Delhi and is concerned with the standards of legal profession and the equipment of those who seek entry into the profession.
7. The Bar Council of Delhi has been conferred the functions under the Act to admit persons as advocates on its roll, to entertain and determine cases of misconduct against advocates on its roll, to safeguard the rights, privileges and interests of advocates on its roll and to do all things necessary for discharging the functions under the Act.
8. The Act is an act to amend and consolidate the law relating to legal practitioners and to provide for the constitution of Bar Councils and an All-India Bar. Under Section 29 read with Sections 17 and 24 of the Act, only Indian citizens who are enrolled with the State Bar Councils as advocates have the right to practise the profession of law in India. The Act has only created one class of persons entitled to practise the profession of law viz. Advocates who are enrolled in the rolls of the respective State Bar Council.
9. The Hon'ble Madras High Court in the case of **A K Balaji v The Government of India and others**, [WP No. 5614 of 2010, decided on 21.02.2012] expressed a concern that many accountancy and management firms are employing law graduates and are rendering legal services contrary to the Act and are engaged in the unauthorised practice of law.
10. The Hon'ble Supreme Court of India has held in the case of **Madras Bar Association v Union of India**, [Transferred Case (C) No. 150 / 2006, decided on 25.09.2014] that Chartered Accountants and Company Secretaries would at best be specialists in understanding and explaining issues pertaining to accounts. The Hon'ble Supreme Court struck down the provision allowing Company Secretaries and Chartered Accountants to appear on behalf of a party before National Tax Tribunal.
11. The Hon'ble Supreme Court in the case of **Ex-Capt Harish Uppal v. Union of India, (2003) 2 SCC 45** has held that an advocate apart from appearing in courts can be consulted by clients, appear in arbitrations, render legal opinion, draft instruments and other documents, pleadings, affidavits and other documents etc. Further, the

Hon'ble Supreme Court held that the right to practise is the genus of which the right to appear and conduct cases in the court is a specie of the right to practise. The Hon'ble Bombay High Court in the case of **Lawyers Collective v Bar Council of India** [WP No. 1526 of 1995 decided on 16.12.2009] held quoting the Supreme Court in the case of **Ex-Capt Harish Uppal** that the Advocates Act applies to persons practising in litigious matter and also persons practising in non-litigious matters.

12. Whereas only an Advocate who is on the rolls of the State Bar Council is entitled to practise the profession of law, which includes both litigious and non-litigious matters.

13. The Hon'ble Madras High Court held in the **A K Balaji** case held:

“As noticed above, the fact of the case before the Bombay High Court were that the Respondents which were Foreign Law Firms practising the profession of law in US/UK sought permission to open their liaison office in India and render legal assistance to another person in all litigious and non-litigious matters. The Bombay High Court, therefore, rightly held that establishing liaison office in India by the Foreign Law Firm and rendering liaisons activities in all forms cannot be permitted since such activities are opposed to the provisions of the Advocates Act and the Bar Council of India Rules. We do not differ from the view taken by the Bombay High Court on this aspect.

...

At this juncture, it is necessary to note yet another submission made by the Government of India in their counter. It has been stated that Law Firms as such or not required to register themselves or require permission to engage in non-litigation practice and that Indian Law Firms elsewhere are operating in a free environment without any curbs or regulations. **It is further submitted that the oversight of the Bar Council on non-litigation activities of such Law Firms was virtually nil till now, and exploiting this loop hole, many accountancy and management firms are employing law graduates, who are rendering legal services, which is contrary to the Advocates Act. Therefore, the concern of the Government of India as expressed in the Counter Affidavit requires to be addressed by the Bar Council of India.** Further, it is seen that the Government in consultation with the Bar Council of

India proposes to commission a study as to the nature of activities of LPOs, and an appropriate decision would be taken in consultation with the Bar Council of India.

After giving our anxious consideration to the matter, both on facts and on law, we come to the following conclusion:

(i) Foreign Law Firms or Foreign Lawyers cannot practice the profession of law in India either on the litigation or non-litigation side, unless they fulfil the requirement of the Advocates Act, 1961 and the Bar Council of India Rules.”

(Emphasis Supplied)

14. To practise the profession of law, an Indian citizen has to be admitted as an advocate on the rolls of a State Bar Council. Whereas under section 29 of the Act only an advocates whose name appears on the roll can practice the profession of law in India.

15. The Hon'ble Supreme Court in the case of **Ex-Captain Harish Uppal v Union of India and another (2003) 2 SCC 45** has held:

“...The right of the advocate to practise envelopes a lot of acts to be performed by him in discharge of his professional duties. Apart from appearing in the courts he can be consulted by his clients, he can give his legal opinion whenever sought for, he can draft instruments, pleadings, affidavits or any other documents, he can participate in any conference involving legal discussions, he can work in any office or firm as a legal officer, he can appear for clients before an arbitrator or arbitrators etc. ...The right to practice, no doubt, is the genus of which the right to appear and conduct cases in the Court may be a specie. ...”

(Emphasis Supplied)

16. Whereas the Hon'ble Bombay High Court in the case of **Lawyers Collective v Bar Council of India (2010) 2 Comp. L.J 108 (Bom)** has held:

“In the statements of Objects & Reasons for enacting the 1961 Act, it is stated that the main object of the Act is to establish All India Bar Council and a common roll of advocates and Advocate on the common roll having a right to practise in any part of the country and in any Court, including the Supreme Court. Thus, from the Statement of Objects and Reasons, it is seen that the 1961 Act is intended to apply to (one) persons practising the profession of law in any part of the country and (two) persons practising the profession of law in any Court including the Supreme Court. Thus, from the statement of objects and reasons it is evident that the 1961 Act is intended to apply not only to the persons practising before the Courts but it is also intended to apply to persons who are practising in non litigious matters outside the Court.

Apart from the above, Section 29 of the 1961 Act specifically provides that from the appointed day, there shall be only one class of persons entitled to practise the profession of law, namely Advocates. It is apparent that prior to the 1961 Act there were different classes of persons entitled to practise the profession of law and from the appointed day all these class of persons practising the profession of law, would form one class, namely, advocates. Thus, section 29 of the 1961 Act clearly provides that from the appointed day only advocates are entitled to practise the profession of law whether before any Court/authority or outside the Court by way of practise in non litigious matters.

Section 33 of the 1961 Act is a prohibitory section in the sense that it debars any person from appearing before any Court or authority unless he is enrolled as an advocate under the 1961 Act. The bar contained in section 33 of the 1961 Act has nothing to do with the persons entitled to be enrolled as advocates under section 29 of the 1961 Act. A person enrolled as an advocate under section 29 of the 1961 Act, may or may not be desirous of appearing before the Courts. He may be interested in practising only in non litigious matters. Therefore, the bar under section 33 from appearing in any Court (except when permitted by Court under Section 32 of the 1961 Act or any other Act) unless enrolled as an advocate does not bar a person from being enrolled as an advocate under section 29 of the 1961 Act for practising the profession of law in non litigious matters. The Apex Court in the case of Ex-Capt. Harish Uppal (supra) has held that the right to practise is the genus

of which the right to appear and conduct cases in the Court may be a specie. Therefore, the fact that section 33 of the 1961 Act provides that advocates alone are entitled to practise before any Court/authority it cannot be inferred that the 1961 Act applies only to persons practising in litigious matters and would not apply to person practising in non litigious matters.

...

... Once it is held that the persons entitled to practise the profession of law under the 1961 Act covers the persons practising the profession of law in litigious matters as well as non-litigious matters, then, the penal provisions contained in section 35 of the 1961 Act would apply not only to persons practising in litigious matter, but would also apply to persons practising the profession of law in non-litigious matters. The very object of the 1961 Act and the Rules framed by the Bar Council of India are to ensure that the persons practising the profession of law whether in litigious matters or in non litigious matters, maintain high standards in professional conduct and etiquette and, therefore, it cannot be said that the persons practising in non litigious matters are not governed by the 1961 Act.

...

It is not the case of the respondents that in India individuals/law firms/companies are practising the profession of law in non-litigious matters without being enrolled as advocates under the 1961 Act. It is not even the case of the respondents that in the countries in which their head office as well as their branch offices are situated, persons are allowed to practice the profession of law in non-litigious matters without being subjected to the control of any authority. *In these circumstances, when the Parliament has enacted the 1961 Act to regulate the persons practising the profession of law, it would not be correct to hold that the 1961 Act is restricted to the persons practising in litigious matters and that the said Act does not apply to persons practising in non litigious matters. There is no reason to hold that in India the practise in non litigious matters is unregulated.*

It was contended by the counsel for Union of India that if it is held that the 1961 Act applies to persons practising in non-litigious matters, then no bureaucrat would be able to draft or give any opinion in non-litigious matters without being enrolled as an advocate. There is no merit in the above argument, because, there is a distinction between a bureaucrat drafting or

giving opinion, during the course of his employment and a law firm or an advocate drafting or giving opinion to the clients on professional basis. Moreover, a bureaucrat drafting documents or giving opinion is answerable to his superiors, whereas, a law firm or an individual engaged in non litigious matters, that is, drafting documents/giving opinion or rendering any other legal assistance are answerable to none. To avoid such anomaly, the 1961 Act has been enacted so as to cover all persons practising the profession of law be it in litigious matters or in non-litigious matters within the purview of the 1961 Act.

The argument that the 1961 Act and the Bar Councils constituted thereunder have limited role to play has been time and again negated by the Apex Court. Recently, the Apex Court in the case of Bar Council of India v. Board of Management, Dayanand College of Law reported in (2007) 2 SCC 202 held thus:—

“It may not be correct to say that the Bar Council of India is totally unconcerned with the legal education, though primarily legal education may also be within the province of the universities. But, as the apex professional body, the Bar Council of India is concerned with the standards of the legal profession and the equipment of those who seek entry into that profession. The Bar Council of India is also thus concerned with the legal education in the country. Therefore, instead of taking a pendantic view of the situation, the State Government and the recommending authority are expected to ensure that the requirement set down by the Bar Council of India is also complied with.”

Thus, when efforts are being made to see that the legal profession stand tall in this fast changing world, it would be improper to hold that the 1961 Act and the Bar Council constituted there under have limited role to play in the field relating to practising the profession of law.

It is not in dispute that once a person is enrolled as an advocate, he is entitled to practise the profession of law in litigious matters as well as non-litigious matters. If the argument of the respondents that the 1961 Act is restricted to the persons practising the profession of law in litigious matters is

accepted, then an advocate found guilty of misconduct in performing his duties while practising in non-litigious matters cannot be punished under the 1961 Act. Similarly, where an advocate who is debarred for professional misconduct can merrily carry on the practise in non-litigious matters on the ground that the 1961 Act is not applicable to the persons practising the profession of law in non litigious matters. Such an argument which defeats the object of the 1961 Act cannot be accepted.

...

For all the aforesaid reasons, we hold that in the facts of the present case, the RBI was not justified in granting permission to the foreign law firms to open liaison offices in India under Section 29 of the 1973 Act. We further hold that the expressions 'to practise the profession of law' in section 29 of the 1961 Act is wide enough to cover the persons practising in litigious matters as well as persons practising in non litigious matters and, therefore, to practise in non litigious matters in India, the respondent Nos. 12 to 14 were bound to follow the provisions contained in the 1961 Act. The petition is disposed of accordingly with no order as to costs.”

(Emphasis Supplied)

17. Therefore, it is submitted that as held by the Hon'ble Supreme Court and the Hon'ble High Courts, the practise of law includes litigious and non-litigious work including legal advice, opinion, drafting and review of contracts, documents etc.
18. In this background, we would like to bring to your attention that Deloitte in India (including Deloitte Touche Tohmatsu Limited and Deloitte Touche Tohmatsu India Private Limited) and its various affiliates (hereinafter collectively referred to as 'Deloitte') are engaged in the unauthorised practise of the law by advising clients on various laws and legislations. They are providing services to clients on commercial laws, corporate laws, M&A, employment laws and tax laws. In this regard, please find attached documents evidencing the same annexed herewith and marked as **Annexure 1**.
19. Deloitte are engaged in advising clients and representing clients in a large number of areas including acquisitions, divestures and joint ventures; legal purchaser and vendor due diligence; corporate reorganizations; national and cross-border mergers;

shareholder agreements; family protocols; post merger integration activities and legal entity reduction; corporate law; corporate compliance; private equity and venture capital; legal and contractual framework for supply chain management and distribution networks; restructuring business functions and outsourcing; real estate including acquisition, disposal and portfolio management; intellectual property rights including registration and defense; competition law; statutory and regulatory compliance; individual employment law; relationship with worker representative bodies; labour law issues; estates and trusts; providing support in briefing litigating lawyers appearing before courts in all matters of commercial and corporate laws; national and international social security law; pension and benefits; mobility and immigration; tax audit strategy and consulting; tax controversy lifecycle management and dispute resolution in tax matters. Whereas all of the above amount to practising the profession of law. Please find attached documents evidencing the same annexed herewith and marked as **Annexure 2**.

20. Deloitte further advice clients on commercial laws and assist clients in drafting contracts. Whereas Deloitte assist clients in drafting agreements for distribution contracts (e.g. agency, dealership), supply and transportation agreements and further assist clients in export regulations and customs. Deloitte also provide legal advice to clients in negotiating new contracts and re-evaluation and re-negotiation of existing business arrangements. Further, Deloitte also advise clients on dispute resolution, development of negotiation and litigation strategy and assisting clients in mediation, arbitration and court proceedings. Whereas Deloitte are providing legal advice and guidance to clients in the real estate sector including acquisitions, due diligence on real estate, negotiation of contracts and related commercial matters. Deloitte are also rendering legal advice and assistance to clients in handling all IP related matters, in particular the registration of trademarks, drafting of license agreements and representation before authorities. Further, Deloitte are providing legal advice to clients by providing trademark and other IP right protection services either in court or in alternative dispute resolution forums. Further, Deloitte advises clients on matters in relation to Competition Law. Deloitte also advice clients on environmental laws, intellectual property laws. Please find attached documents evidencing the same annexed herewith and marked as **Annexure 3**.

21. Deloitte are advising clients on a broad range of legal issues including business start-up requirements, trading activities of an entity, expansion efforts, dissolving or

unwinding of a business as well as general questions arising from day-to-day operational activities. Further, they are advising clients on the legal issues relating to formation and dissolving of entities, shareholder conflicts, regulatory reporting etc. In addition, they are advising listed companies, regulated and financial entities on matters relating to law. Whereas Deloitte advise clients on liability of a director in Companies, managing organization legal structure, composition and regulations. Deloitte are assisting clients with the legal issues relating to change of corporate form, national and cross-border mergers, assignment of domestic and global assets and liabilities, debt for equity swaps. Further, they are advising clients on legal issues arising out of mergers, reviewing of contracts affected by merger, drafting of documentation and execution of the transaction and are also advising clients on shareholder agreements and are also involved in advising clients on family arrangements, advising on share transfer arrangement between members of family owned companies. Deloitte are also advising clients on a wide range of legal, tax, regulatory, and other issues that arise in acquisitions, divestures, joint ventures etc including suitable structures as well as drafting of relevant agreements and ancillary documents. Deloitte are also advising clients on the legal issues relating to private equity and venture capital. Deloitte are also advising clients on the legal aspects relating to mergers and acquisitions including due diligence, drafting and negotiation of documents, highlighting legal considerations and drafting of the relevant diligence reports. Please find attached documents evidencing the same annexed herewith and marked as **Annexure 4**.

22. Deloitte are also involved in providing legal guidance and advice on labour law. Deloitte also involved in furnishing legal advice on pension and benefits, social security. Deloitte are also advising clients on immigration law, on issues relating to termination. Further they are also involved in providing legal guidance and assistance to promoters of companies on trusts and estates. Please find attached documents evidencing the same annexed herewith and marked as **Annexure 5**.

23. Deloitte is also involved in providing legal advice and consultancy to clients on tax laws. They are also involved in assisting clients in appellate tax forums, drafting advisory opinions, representing and litigating with authorities, arbitration, mediation and settlement. Whereas they are engaged, inter alia, in drafting factual and legal submissions for income tax appeal before the appellate authorities and preparing the case and representing it before the appellate authorities. Please find attached

documents evidencing the same annexed herewith and marked as **Annexure 6**. Further, they are rendering legal advice under the customs act and other indirect tax laws including VAT, Service Tax, Excise duty, GST. Please find attached documents evidencing the same annexed herewith and marked as **Annexure 7**. They are also advising clients on the legal and regulatory aspects of Mergers and Acquisitions. Please find attached documents evidencing the same annexed herewith and marked as **Annexure 8**. Deloitte are also engaged in advising clients on labour laws and advising on regulatory laws in India Please find attached documents evidencing the same annexed herewith and marked as **Annexure 9**.

24. Whereas in Tribunals and before authorities, Deloitte appear on behalf of clients. Please find attached documents evidencing the same annexed herewith and marked as **Annexure 10**. They also work alongside experienced business professionals in tax, consulting, accounting, and financial advisory practices.
25. Whereas Advocates cannot engaged in multi-disciplinary practices and are not engaged in practice of auditing and accounting. Whereas Advocates cannot engage in any other business or trade or profession as the profession requires complete devotion by an advocate to the profession.
26. Whereas the Hon'ble Supreme Court in the case of **Indian Council of Legal Aid and Advice v. Bar Council of India and another** (1995) 1 SCC 732 has held:

*"The Bar Councils are rejoined with the duty to act as sentinels of professional conduct and must ensure that the dignity and purity of the profession are in no way undermined. Its job is to uphold the standards of professional conduct and etiquette. Thus every State Bar Council of India has a public duty to perform, namely, to ensure that the monopoly of practise granted under the Act is not misused or abused by a person who is enrolled as an advocate. **The Bar Councils have been created at the State level as well as the Central level not only to protect the rights, interests and privileges of its members but also to protect the litigating public by ensuring that high and noble traditions are maintained so that the purity and dignity of the profession arc not jeopardized.** It is generally believed that members of the legal profession have certain social obligations;, e.g,to render 'probono publico' service to the poor and the under privileged. **Since***

the duty of a lawyer is to assist the court in the administration of justice the practise of law has a public utility flavour and, therefore, he must strictly and scrupulously abide by the Code of Conduct behaving the noble profession and must not indulge in any activity which may tend to lower the image of the profession in society. That is why the functions of the Bar Council include the laying down of standards of professional conduct and etiquette which advocates must follow to maintain the dignity and purity of the profession.

... So far as the Bar Council of India is concerned, its functions are of a more general nature, e.g., to lay down standards of professional conduct and etiquette for advocates, to safeguard their rights, privileges and interests to supervise and control the working of the State Bar Council, to promote legal education, to recognise universities, to organise legal aid to the poor and to perform all other functions conferred by or under the Act and do everything that may be necessary to discharge the functions enumerated in Section 7. Besides the above it too is required to exercise discipline and control over the members of the profession.”

(Emphasis Supplied)

27. Whereas the Hon'ble Supreme Court in the case of **(Dr.) Haniraj L. Chulani v Bar Council of Maharashtra & Goa** (1996) 3 SCC 342 has held:

“The rules framed by the Bar Council of India especially relating to standards of professional conduct and etiquette clearly aim at securing high standards of competence in legal services and seek to strengthen professional relationships among its members and promote the welfare of the society as a whole. Specific norms have been laid down in respect of conduct of the persons practising the profession vis-a-vis the public, the court, the client, the opposite lawyer and professional brethren. Lawyer's duty to train juniors and impart free legal aid to poor is part of the ethics. The code thus provides standards for identification and measurement of professional deviance. As noted earlier the Act besides highlighting the essential functions of Bar Council of India provides for enforcement of the same and sets up disciplinary authorities to chastise and, if necessary, punish members of the profession for misconduct. The punishment may include suspension from

practice as well as removal of the name from the roll of advocates. Section 49(1) confers power on the Bar Council of India to make rules, inter alia, for discharging its functions under the Act. Section 49(1)(ag) when read with Section 24 of the Act confers wide powers on the Bar Council of India to indicate the class or category of persons who may be enrolled as advocates which power would include the power to refuse enrollment in certain circumstances. The obligation to maintain the dignity and purity of the profession and to punish ensuring members carries with it the power to regulate entry into the profession with a view to ensuring that only profession-oriented and service-oriented people join the Bar and those not so oriented are kept out. The role of an advocate is essentially different from the role of any other profession an advocate is said to belong to a noble profession. The Act itself envisages the State Bar Councils who are the elected peers of advocates themselves to lay down the standards for the professional conduct and etiquette. That would naturally bring in its wake the power to regulate entry to such a noble profession. It is said that law is a jealous mistress that calls for undivided loyalty and unflinching attention from her devotees. Dry drudgery of desks' dead wood is the essential requirement of an advocate aspiring to win laurels in the profession. The attack on the impugned rule on the ground of excessive delegation of legislative power will have to be examined in the light of scheme of the Act which has entrusted the power and the duty to elected representatives of the profession constituting the State Bar Councils to lay down the high standards of professional etiquette as expected of the advocates enrolled by it. It is pertinent to note that the Act has entrusted to the Bar Council of India, amongst others, the functions to promote legal education and to lay down standards of such education in consultation with the Universities in India imparting such education and the State Bar Councils. The Bar Council of India is entrusted with the function to recognize Universities whose degree in law shall be a qualification for enrollments as an advocate and for that purpose to visit and inspect Universities or cause the State Bar Councils to visit and inspect Universities with such directions as it may give in this behalf. It conducts seminars and organize talks on legal topics by eminent jurists and publishes journals and papers of legal interest. In this connection, it also exercises general supervision and control over the State bar Councils. It is also entrusted with the task of promoting and supporting law reform. All these

provisions as laid down by Section 7 of the Act leave no room for doubt that even prior to the enrollment as advocate the teaching of law and laying down of the curriculum for law courses are also the tasks entrusted to the Bar Council of India, which is the apex body of professionals monitoring these matters in conjunction with the State Bar Councils. Thus even at pre-entry stage of an advocate to the profession his equipments as a student of law and the requirement of basic legal education with which he should be armed before he can aspire to be enrolled as an advocate are also looked after by the Bar Council of India and the concerned State Bar Council which works under the general supervision and control of the apex body, namely, the Bar Council of India. Thus the Bar Council of India is cast with the duty to take all such steps as it considers necessary to filter students at the entry stage to the law course e.g. by providing an entrance test, as well as at the entry point to the profession, e.g. by providing an examination or a training course before enrollment as an advocate. The Act also deals with the topic of regulation of professional conduct of advocates from the entry point itself.

The concerned State Bar Councils have to monitor the role of advocates so long as they continue to practise law after initial entry. As the enrollment by the State Bar Council entitles an advocate after entry to the profession, to practise the noble profession of law and who becomes, by such enrollment, an officer of the court, the said entrant can be validly subjected by the concerned Bar Council to the strict requirements of the profession for enabling such an aspirant to effectively cater to the needs of the legal profession. The power and the duty entrusted to the State Bar Councils to monitor such entry, in the light of the nature of the profession to which such entry is given would themselves supply the necessary yardstick and guidelines for the exercise of such power by the elected body of advocates constituting the concerned Bar Councils. The scheme of the Act thus lays down a complete code for regulating the legal education and professional equipments of an aspirant seeking entry to legal profession from the grassroot level where he is student of law till he equips himself with essential legal knowledge and seeks enrollment and even thereafter till he practices law and completes his professional career as advocate. Thus, from the pre-entry point to legal Profession till the exit point from the legal profession, the Bar Council of India and the State Bar Councils monitor the career of the

legal practitioner. It is the entire scheme of the Act when considered in the light of the nature of the legal profession to which such entry is given which has to be kept in view while considering the submission of learned senior counsel for the appellant that the power given to the State Bar Councils to regulate such entries by framing rules is a piece of excessive delegation of legislative power. It cannot be gainsaid that law is universally described as an honourable profession. An advocate is an officer of justice and friend of the court. A conduct, therefore, which is unworthy of him as an officer of justice cannot be justified by stating that he did it as the agent of his client. His status as an officer of justice does not mean that he is subordinate to the Judge. It only means that he is an integral part for the Administration of justice. Legal profession is monopolistic in character and this monopoly itself inheres certain high traditions which its members are expected to upkeep and uphold. Members of the profession claimed that they are the leaders of thought and society. The central function that the legal profession must perform is nothing less than the administration of justice.

...

It is no doubt true that under Article 19, sub-Article (1)(g) all citizens have a right to practise any profession, or to carry on any occupation, trade or business and any profession may include even plurality of professions. However, this is not an absolute right. It is subject to sub-Article (6) of Article 19 which lays down that nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause. It cannot be gainsaid that litigants are also members of general public and if in their interest any rule imposes a restriction on the entry to the legal profession and if such restriction is found to be reasonable Article 19(1)(g) would not get stultified. It is true that the appellant as a citizen of India having obtained the qualification required for being enrolled as an advocate can legitimately aspire to be enrolled as an advocate but his aforesaid right is fettered by the impugned rule framed by the State Bar Council. We have to consider whether the said restriction imposed by the rule is in any way unreasonable. We have to keep in view the fact that the impugned rule restricts entry of a person who is otherwise qualified for being enrolled as an advocate if he is already carrying on any other profession. Question is

whether such a person carrying on other profession can be validly told off the gates by the State Bar Council by resorting to the impugned rule. In our view looking to the nature of the legal profession to which we have made detailed reference earlier the State Bar Council would be justified in framing such a rule prohibiting the entry of a professional who insists on carrying on other profession simultaneously with the legal profession. As we have seen earlier legal profession requires full time attention and would not countenance an advocate riding two horses or more at a time. He has to be full time advocate or not at all. Learned senior counsel for the appellant submitted that, even though the appellant is a practising surgeon he undertaking, if given entry to the legal profession, not to practise medicine during the court hours. This is neither here nor there. It is obvious that even though medical profession also may be a dignified profession a person cannot insist that he will be a practising doctor as well as a practising advocate simultaneously. Such an insistence on his part itself would create an awkward situation not only for him but for his own clients as well as patients. It is easy to visualize that a practising surgeon like the appellant may be required to attend emergency operation, even beyond court hours either in the morning or in the evening. On the other hand the dictates of his legal profession may require him to study the cases for being argued the next day in the court. Under these circumstances his attention would be divided. We would naturally be, in a dilemma as to whether to attend to his patient on the operation table in the evening or to attend to his legal profession and work for preparing cases for the next day and to take instructions from his clients for efficient conduct of the cases next day in the court. If he is an original side advocate he may be required to spend his evenings and even late nights for making witnesses ready for examination in the court next day. Under these circumstances as a practising advocate if he gives attention to his clients in his chamber after court hours and if he is also required to attend an emergency operation at that very time, it would be very difficult for him to choose whether to leave his clients and go to attend his patient in the operation theatre or to refuse to attend to his patients. If he selects the first alternative his clients would clamour, his preparation as advocate would suffer and naturally it would reflect upon his performance in the court next day. If on the other hand he chooses to cater to the needs of his clients and his legal work, his patients may suffer and may in given contingency even stand to lose their lives

without the aid of his expert hand as a surgeon. Thus he would be torn between two conflicting loyalties, loyalty to his clients on the one hand and loyalty to his patients on the other. In a way he will instead of having the best of both the worlds, have worst of both the worlds. Such a person aspiring to have simultaneous enrollment both as a lawyer and as a medical practitioner will thus be like 'trishanku' of yore who will neither be in heaven nor on earth. It is axiomatic that an advocates has to burn midnight oil for preparing his cases for being argued in the court next day. Advocate face examination every day when they appear in courts. It is not as if that after court hours advocate has not to put in hard work on his study table in his chamber with or without the presence of his clients who may be available for consultation. To put forward his best performance as an advocate he is required to give whole- hearted and full time attention to his profession. Any flinching from such unstinted attention to his legal profession would certainly have an impact on his professional ability and expertise. If he is permitted to simultaneously practise as a doctor then the requirement of his full time attention to the legal profession is bound to be adversely affected. Consequently however equally dignified may be the profession of a doctor he cannot simultaneously be permitted to practise law which is a full time occupation. It is for ensuring the full time attention of legal practitioners towards their profession and with a view to bringing out their best so that they can fulfil their role as an officer of the court and can give their best in the administration, of justice, that the impugned rule has been enacted by the State Bar Council. It, therefore, cannot be said that it is in any way arbitrary or that it imposes an unreasonable restriction on the new entrant to the profession who is told not to practise, simultaneously any other profession and if he does so to deny to him entry to the legal profession.

It is true as submitted by learned senior counsel for the appellant that the rule of Central Bar Council does not countenance an advocate simultaneously carrying on any business and it does not expressly frown upon any simultaneous profession. But these are general rules of professional conduct. So far as regulating enrollment, to the profession is concerned it is the task entrusted solely to the State Bar Council by the Legislature as seen earlier while considering the scheme of the Act. While carrying on that task if the entry to the profession is restricted by the State Bar Council by enacting the impugned rule for not allowing any other professional to enter the Bar. When he does

not want to give up the other profession but wants to carry on the same simultaneously with legal practice, it cannot be said that the Bar Council has by enacting such a rule imposed any unreasonable restriction on the fundamental right of the prospective practitioner who wants to enter the legal profession.

Learned senior advocate for the appellant vehemently contended that such a rule is not found to have been framed by other State Bar Councils. In our view that would not make any difference. We are called upon to decide the question whether the impugned rule framed by the respondent-State Bar Council stands the test of Article 19(1)(9) or not. While deciding that question whether other State Bar Councils permit by their rules entry of other professional to the legal profession, would be an aspect which would not be strictly relevant. In our view the impugned rule does not impose any unreasonable restriction on the right of the professional carrying on any other avocation and insisting on continuing to carry on such profession, while it prohibits entry of such a person to the legal profession. *If the contention of the learned senior counsel for the appellant is countenanced and any person professing any other profession is permitted to join the legal profession having obtained the Degree of Law and having fulfilled the other requirements of Section 24, then even chartered accountants, engineers and architects would also legitimately say that during court hours they will practise law and they will simultaneously carry on their other profession beyond court hours. If such simultaneous practices of professionals who want to carry on more than one profession at a time are permitted, the unflinching devotion expected by the legal profession from its members is bound to be adversely affected.* If the peers being chosen representatives of the legal profession constituting the State Bar Council, in their wisdom, had thought it fit not to permit such entries of dual practitioners to the legal profession it cannot be said that they have done anything unreasonable or have framed an arbitrary or unreasonable rule.”

(Emphasis Supplied)

28. The Hon'ble Supreme Court in the case of Bar Council of Maharashtra v M V Dabholkar (1976) 2 SCC 291 has held:

“...The rule of law cannot be built on the ruins of democracy, for where law ends tyranny begins. If such be the keynote thought for the very survival of our Republic, the integral bond between the lawyer and the public is unbreakable. And the vital role of the lawyer depends upon his probity and professional life-style. Be it remembered that the central function of the legal profession is to promote the administration of justice. ...”

(Emphasis Supplied)

- 29.** Whereas the Hon’ble Supreme Court and the Hon’ble High Court of Bombay have held the practise of the profession of law includes litigious and non-litigious work. Whereas the practise of the profession of law includes appearance before courts/tribunals etc, giving legal advice and opinions, drafting of documents and agreements, pleadings etc. Whereas the aforementioned work being undertaken by Deloitte tantamount to unauthorised practise of law.
- 30.** Whereas as held by the Hon’ble Supreme Court, the practise of the profession of law is a noble profession and requires unflinching attention from her devotees. Whereas the Hon’ble Supreme Court has also upheld the constitutional validity of provisions that have restricted the practice of the profession of law only to one class (viz. advocates). Whereas the Hon’ble Supreme Court has held that there is public interest in ensuring that Advocates alone (and not professionals from other professions who simultaneously practise law) are entitled to practise the profession of law. Whereas the profession of law can only be practised by Advocates and there is a public utility involved in ensuring that only advocates practise the profession of law. The Advocates as members of the judicial system are a sentinel in the justice administration. Whereas there is an unbreakable bond between the Advocates and the public and the primary function of the Advocates is to promote the administration of justice. Whereas if people who are not entitled to practise law are permitted to do so the entire edifice on which our democracy is built – Rule of Law – will crumble.
- 31.** Whereas under Section 29 of the Act read with Sections 2 (1) (a), (k) , (n); 17 and 24 Advocates alone can practise the profession of law. Whereas the work being undertaken by Deloitte amount to unauthorised practise of law and in violation of the provisions of the Act.
- 32.** Whereas Section 29 of the Act states:

29. Advocates to be the only recognised class of persons entitled to practise law – Subject to the provisions of this Act and any rules made thereunder, there shall, as from the appointed day, be only one class of persons entitled to practise the profession of law, namely, advocates.

33. Whereas as demonstrated from the evidence above Deloitte are engaged in both litigious and non-litigious practise of law. Whereas they are in violation of the Advocates Act by engaging in unauthorised practise of law.

34. Whereas the Hon'ble Supreme Court in the case of **Madras Bar Association v. Union of India** [Transferred Case (C) No. 150 / 2006, decided on 25.09.2014] held:

“Keeping in mind the fact, that in terms of Section 15 of the NTT Act, the NTT would hear appeals from the Income Tax Appellate Tribunal and the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) only on substantial questions of law, it is difficult for us to appreciate the propriety of representation, on behalf of a party to an appeal, through either Chartered Accountants or Company Secretaries, before the NTT. The determination at the hands of the NTT is shorn of factual disputes. It has to decide only substantial questions of law. In our understanding, Chartered Accountants and Company Secretaries would at best be specialists in understanding and explaining issues pertaining to accounts. These issues would, fall purely within the realm of facts. We find it difficult to accept the prayer made by the Company Secretaries to allow them, to represent a party to an appeal before the NTT. Even insofar as the Chartered Accountants are concerned, we are constrained to hold that allowing them to appear on behalf of a party before the NTT, would be unacceptable in law.”

35. Therefore, in the light of the decision of the Hon'ble Supreme Court, Chartered Accountants and Company Secretaries and other professionals are not entitled to practise law. Whereas the Chartered Accountants and Company Secretaries can at the best help in understanding issues pertaining to accounts and, therefore, they too cannot practise the profession of law.

36. Whereas Deloitte are neither advocates nor a partnership among advocates. Whereas under the Act and the Rules only an Advocate can practise the profession of law. Whereas only Advocates can appear in Courts, Tribunals and practise the profession of law while Deloitte are engaged in appearing for clients before Tribunals and various authorities and are also engaged in the unauthorised practice of law.
37. Whereas the global network of firms / organizations of Deloitte are rendering legal advice and are engaged in the practise of the profession of law in India. Whereas Deloitte and its network affiliate member of firms are providing legal services in the territory of India through your member affiliates in India. Whereas only Advocates can appear in Courts, Tribunals and can render legal advice and engage in practising the profession of law. In this regard please see **Annexure 11**.
38. The Bar Council does not have a limited role in the practise of the profession of law but has to cater to the greater public interest in meeting the demands of the noble profession and the regulating the profession which is integrally involved in administration of justice. Whereas the Bar Council has been set up to also protect the litigating public by ensuring that high and noble traditions of the legal profession are maintained and also make sure that the purity and dignity of the profession are not jeopardized. Whereas Advocates are involved in the duty of administration of justice and this element of public utility has to be safeguarded by this Council and also ensure the protection of welfare of the society as a whole.
39. Whereas it has been held in the case of **In Re Welch** 185 A.2d 458 (1962):

“We cannot over-emphasize the necessity of legal training in the proper drafting of legal documents and advice relating thereto. The absence of such training may result in legal instruments faulty in form and contents, and also lead to a failure of purpose, litigation and expense.”

(Emphasis Supplied)

40. Whereas it has been held in the case of **Lowell Bar Association v Loeb** 315 Mass. 176:

“The justification for excluding from the practice of law persons not admitted to the bar is to be found, not in the protection of the bar from competition, but

in the protection of the public from being advised and represented in legal matters by incompetent and unreliable persons, over whom the judicial department could exercise little control. Matter of Shoe Manufacturers Protective Association, Inc., 295 Mass. 369, 372, 3 N.E.2d 746.”

(Emphasis Supplied)

41. Whereas the Bar Council of Delhi has an interest in regulating the legal profession and maintaining the interest of the members and the general public. This Council has been given wide and extensive powers to regulate the legal profession and to protect its members and the general public. Whereas it is necessary to protect the general public who would be affected by unauthorised practice of law.
42. Whereas by engaging in the unauthorised practise of the profession Deloitte have acted in violation of Sections 29 of the Act and are, therefore, liable to be punished with 6 months imprisonment for unauthorised practise of the profession of law liable under Section 45 of the Act. We request and pray that immediate legal action be initiated against Deloitte and protect the interest of the legal fraternity and the society at large.
43. We request and pray that Deloitte and its affiliates are directed not to engage in the unauthorised practice of law and appropriate legal action is initiated against them.

Whereas the various affiliated parties of Deloitte (and persons responsible for their functions) are enlisted herein below. We request you to kindly initiate appropriate action and direct them to stop engaging in the unauthorised practice of law.

1. Deloitte Touche Tohmatsu India Private Limited
7th Floor, Building 10 Tower B
DLF Cyber City Complex
DLF City Phase II
Gurgaon Haryana
122002
India
2. Managing Director
Deloitte Touche Tohmatsu India Private Limited
7th Floor, Building 10 Tower B

DLF Cyber City Complex
DLF City Phase II
Gurgaon Haryana
122002
India

3. Head of Tax Practice
Deloitte Touche Tohmatsu India Private Limited
7th Floor, Building 10 Tower B
DLF Cyber City Complex
DLF City Phase II
Gurgaon Haryana
122002
India
4. Mr M Lakshminarayanan
Deloitte Touche Tohmatsu India Private Limited
Indiabulls Finance Centre,
Tower 3, 27th – 32nd Floor,
Senapati Bapat Marg, Elphinstone Road (West)
Mumbai - 400 013
Maharashtra
5. Mehul Modi
Deloitte Touche Tohmatsu India Private Limited
Indiabulls Finance Centre,
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Senapati Bapat Marg, Elphinstone Road (West)
Mumbai - 400 013
Maharashtra
6. Atul Mittal
Deloitte Touche Tohmatsu India Private Limited
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DLF Cyber City Complex
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122002
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7. Rajesh Srinivasan
Deloitte Touche Tohmatsu India Private Limited
Old No. 37, New No. 52,
7th Floor, ASV N Ramana Tower,
Venkatnarayana Road,
T'Nagar,
Chennai 600 017

8. Rupam Mishra
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Indiabulls Finance Centre,
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Mumbai - 400 013
9. Rajiv Anand
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DLF City Phase II
Gurgaon Haryana
122002
India
10. S Thirumalai
Deloitte Touche Tohmatsu India Private Limited

3rd Floor, Gowra Grand,
S.P. Road, Begumpet
Hyderabad
Andhra Pradesh
11. Deloitte Touche Tohmatsu Limited
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10112-0015
United States
12. Barry Salzberg
Global CEO
Deloitte Touche Tohmatsu Limited
30 Rockefeller Plaza
New York NY
10112-0015
United States
13. Punit Renjen
Director and CEO-Elect
Deloitte Touche Tohmatsu Limited
30 Rockefeller Plaza
New York NY
10112-0015
United States
14. Piet Hein Meeter
Global Leader, Legal Services
Deloitte Touche Tohmatsu Limited
30 Rockefeller Plaza
New York NY
10112-0015
United States

15. DELOITTE CONSULTING INDIA PRIVATE LIMITED
RMZ FUTURA BLOCK B, 4TH FLOOR PLOT NO.14 & 15,
ROAD NO.2, HI -TEC CITY LAYOUT, MADHAPUR HYDE
RABAD-081
Telangana
INDIA
16. Deloitte ERS India Private Limited
12, Dr. Annie Besant Road,
Opp. Shiv Sagar Estate, Worli
Mumbai
Maharashtra-400018
INDIA
17. DELOITTE FINANCIAL ADVISORY SERVICES INDIA PRIVATE LIMITED
RMZ FUTURA BLOCK C 3RD FLOOR PLOT NO 14 & 15 ROAD ,
NO 2 HI-TECH CITY LAY OUT MADHAPUR
HYDERABAD
Telangana-500081
INDIA
18. Deloitte Global Financial Advisory India Private Limited
12, Dr Annie Besant Road, Opp. Shivsagar Estate,
Worli,
Mumbai
Maharashtra-400018
INDIA
19. DELOITTE HASKINS & SELLS LLP
12, Dr. Annie Besant Road,
Opp. Shivsagar Estate, Worli
Mumbai
Maharashtra
India
20. Deloitte Shared Services India Private Limited
12, Dr. Annie Besant Road,,
Opp. Shivsagar Estate, Worli,
Mumbai
Maharashtra-400018
INDIA
21. DELOITTE TAX SERVICES INDIA PRIVATE LIMITED
RMZ FUTURA, BLOCK A, 2ND FLOOR,
PLOT #14 & 15 ROAD #2 HI-TEC CITY LAYOUT, MADHAPUR
ANDHRA PRADESH
Telangana-500081
INDIA

PRAYER

We request and pray that Deloitte and its affiliates are directed not to engage in the unauthorised practice of law and appropriate legal action is initiated against them.

PLACE: DELHI
DATE: 18.06.2015

FOR THE SOCIETY OF INDIA LAW FIRMS

Society of Indian Law Firms
Through its President Mr Lalit Bhasin
10, Hailey Road, 10th Floor
New Delhi – 110001
Ph: 91-11-23322601, 91-11-23326968

18.06.2015

The
Bar Council of Delhi
2/6, Siri Fort Institutional Area
Khel Gaon Marg
New Delhi – 49

Dear Sirs,

Sub: Complaint under Section 35, Sections 6 (1) (a), (b), (c), (d), (h), (i); Section 17, Sections 22 and 24, Section 29, Section 49 (1) (ah) of the Advocates Act, 1961 read with the Bar Council of India Rules against the unauthorised practice of law by multinational audit and accounting firms – Request for Action to be initiated against KPMG

1. The present complaint is being filed against the unauthorised practice of law by Multinational Audit and Accounting Firms in violation of the provisions of the Advocates Act, 1961 and the rules issued thereunder.
2. The Complainant Society of Indian Law Firms (“SILF”) is a collective of India’s Premier Law Firms and is the only representative body for Law Firms of India till date. SILF set up in 2000 believes in working for the interests of the legal community in general and law firms in particular. SILF was formed with the purpose of bringing together the commercial, corporate and litigation law firms, to promote and protect/safeguard the interests of the legal profession in general and the law firms in particular. It has been actively working towards achieving its goals with the help of all its Member Firms, numbering more than 100. SILF serves as a forum for exchange of ideas and information as also a medium for interaction with the government, the judiciary and the bureaucracy.
3. SILF since its inception has amassed a wealth of experience, knowledge capital as well as unity and solidarity between competing law firms which would be difficult for any other entity to match. SILF intends to push the boundaries, expand its horizons and work more vigorously in order to fulfill its mission – “protecting, safeguarding and promoting the interests of law firms in India”. SILF also has a Memorandum of

Understanding with Queensland Law Society and sustaining memberships with International Bar Association (IBA), Union Internationale des Avocats (UIA), LAWASIA and Inter-Pacific Bar Association (IPBA).

4. SILF has listed out the following goals in order to achieve its mission of protecting and safeguarding the interests of law firms in India.
 - To promote reforms in justice and law and their healthy development to suit the social and economic needs of the people, SILF intends to put to use the extensive wealth of legal knowledge and experience that the member firms have garnered over the years;
 - To promote the welfare of corporate, commercial, and litigation law firms as well as upholding of the dignity, honour, and independence of the legal profession and law firms;
 - To encourage the development of good relations between law firms (on one side) and the Bench, the Bar, the public, and lawyers from different nations (on the other);
 - To promote unity and solidarity among the various firms throughout India;
 - To encourage and conduct research in legal and allied fields, promoting legal education & continuing legal education (CLE), promoting and providing legal aid and assistance to the needy, preservation of Human Rights and redressal for violation of the same;
 - To work with other national and international societies, institutions, and organizations as well as promote international understanding and cooperation;
 - Promote publication of works on law, for the benefit of the entire legal community;
 - Promote its activities by setting up regional centers.
5. As a responsible member of the legal profession and in protecting the interests of the legal profession, SILF has been able to collect information which is being provided along with this compliant which will demonstrate that multinational audit and accounting firms have started engaging in the unauthorised practice of the profession of law.

6. The Bar Council of Delhi has been constituted under Section 3 of the Advocates Act, 1961 (hereinafter referred to as 'Act') is the apex professional body for advocates in Delhi and is concerned with the standards of legal profession and the equipment of those who seek entry into the profession.
7. The Bar Council of Delhi has been conferred the functions under the Act to admit persons as advocates on its roll, to entertain and determine cases of misconduct against advocates on its roll, to safeguard the rights, privileges and interests of advocates on its roll and to do all things necessary for discharging the functions under the Act.
8. The Act is an act to amend and consolidate the law relating to legal practitioners and to provide for the constitution of Bar Councils and an All-India Bar. Under Section 29 read with Sections 17 and 24 of the Act, only Indian citizens who are enrolled with the State Bar Councils as advocates have the right to practise the profession of law in India. The Act has only created one class of persons entitled to practise the profession of law viz. Advocates who are enrolled in the rolls of the respective State Bar Council.
9. The Hon'ble Madras High Court in the case of **A K Balaji v The Government of India and others**, [WP No. 5614 of 2010, decided on 21.02.2012] expressed a concern that many accountancy and management firms are employing law graduates and are rendering legal services contrary to the Act and are engaged in the unauthorised practice of law.
10. The Hon'ble Supreme Court of India has held in the case of **Madras Bar Association v Union of India**, [Transferred Case (C) No. 150 / 2006, decided on 25.09.2014] that Chartered Accountants and Company Secretaries would at best be specialists in understanding and explaining issues pertaining to accounts. The Hon'ble Supreme Court struck down the provision allowing Company Secretaries and Chartered Accountants to appear on behalf of a party before National Tax Tribunal.
11. The Hon'ble Supreme Court in the case of **Ex-Capt Harish Uppal v. Union of India**, (2003) 2 SCC 45 has held that an advocate apart from appearing in courts can be consulted by clients, appear in arbitrations, render legal opinion, draft instruments

and other documents, pleadings, affidavits and other documents etc. Further, the Hon'ble Supreme Court held that the right to practise is the genus of which the right to appear and conduct cases in the court is a specie of the right to practise. The Hon'ble Bombay High Court in the case of **Lawyers Collective v Bar Council of India** [WP No. 1526 of 1995 decided on 16.12.2009] held quoting the Supreme Court in the case of **Ex-Capt Harish Uppal** that the Advocates Act applies to persons practising in litigious matter and also persons practising in non-litigious matters.

12. Whereas only an Advocate who is on the rolls of the State Bar Council is entitled to practise the profession of law, which includes both litigious and non-litigious matters.

13. The Hon'ble Madras High Court in the **A K Balaji** case held:

“As noticed above, the fact of the case before the Bombay High Court were that the Respondents which were Foreign Law Firms practising the profession of law in US/UK sought permission to open their liaison office in India and render legal assistance to another person in all litigious and non-litigious matters. The Bombay High Court, therefore, rightly held that establishing liaison office in India by the Foreign Law Firm and rendering liaisons activities in all forms cannot be permitted since such activities are opposed to the provisions of the Advocates Act and the Bar Council of India Rules. We do not differ from the view taken by the Bombay High Court on this aspect.

...

At this juncture, it is necessary to note yet another submission made by the Government of India in their counter. It has been stated that Law Firms as such or not required to register themselves or require permission to engage in non-litigation practice and that Indian Law Firms elsewhere are operating in a free environment without any curbs or regulations. **It is further submitted that the oversight of the Bar Council on non-litigation activities of such Law Firms was virtually nil till now, and exploiting this loop hole, many accountancy and management firms are employing law graduates, who are rendering legal services, which is contrary to the Advocates Act. Therefore, the concern of the Government of India as expressed in the Counter Affidavit requires to be addressed by the Bar Council of India.**

Further, it is seen that the Government in consultation with the Bar Council of India proposes to commission a study as to the nature of activities of LPOs, and an appropriate decision would be taken in consultation with the Bar Council of India.

After giving our anxious consideration to the matter, both on facts and on law, we come to the following conclusion:

(i) Foreign Law Firms or Foreign Lawyers cannot practice the profession of law in India either on the litigation or non-litigation side, unless they fulfil the requirement of the Advocates Act, 1961 and the Bar Council of India Rules.”

(Emphasis Supplied)

14. Whereas to practise the profession of law, an Indian citizen has to be admitted as an advocate on the rolls of a State Bar Council. Whereas under section 29 of the Act only an advocate whose name appears in the roll can practice the profession of law in India.
15. Whereas the Hon'ble Supreme Court in the case of **Ex-Captain Harish Uppal v Union of India and another (2003) 2 SCC 45** has held:

“...The right of the advocate to practise envelopes a lot of acts to be performed by him in discharge of his professional duties. *Apart from appearing in the courts he can be consulted by his clients, he can give his legal opinion whenever sought for, he can draft instruments, pleadings, affidavits or any other documents, he can participate in any conference involving legal discussions, he can work in any office or firm as a legal officer, he can appear for clients before an arbitrator or arbitrators etc. ...The right to practice, no doubt, is the genus of which the right to appear and conduct cases in the Court may be a specie. ...*”

(Emphasis Supplied)

16. Whereas the Hon'ble Bombay High Court in the case of **Lawyers Collective v Bar Council of India (2010) 2 Comp. L.J 108 (Bom)** has held:

“In the statements of Objects & Reasons for enacting the 1961 Act, it is stated that the main object of the Act is to establish All India Bar Council and a common roll of advocates and Advocate on the common roll having a right to practise in any part of the country and in any Court, including the Supreme Court. Thus, from the Statement of Objects and Reasons, it is seen that the 1961 Act is intended to apply to (one) persons practising the profession of law in any part of the country and (two) persons practising the profession of law in any Court including the Supreme Court. Thus, from the statement of objects and reasons it is evident that the 1961 Act is intended to apply not only to the persons practising before the Courts but it is also intended to apply to persons who are practising in non litigious matters outside the Court.

Apart from the above, Section 29 of the 1961 Act specifically provides that from the appointed day, there shall be only one class of persons entitled to practise the profession of law, namely Advocates. It is apparent that prior to the 1961 Act there were different classes of persons entitled to practise the profession of law and from the appointed day all these class of persons practising the profession of law, would form one class, namely, advocates. Thus, section 29 of the 1961 Act clearly provides that from the appointed day only advocates are entitled to practise the profession of law whether before any Court/authority or outside the Court by way of practise in non litigious matters.

Section 33 of the 1961 Act is a prohibitory section in the sense that it debars any person from appearing before any Court or authority unless he is enrolled as an advocate under the 1961 Act. The bar contained in section 33 of the 1961 Act has nothing to do with the persons entitled to be enrolled as advocates under section 29 of the 1961 Act. A person enrolled as an advocate under section 29 of the 1961 Act, may or may not be desirous of appearing before the Courts. He may be interested in practising only in non litigious matters. Therefore, the bar under section 33 from appearing in any Court (except when permitted by Court under Section 32 of the 1961 Act or any other Act) unless enrolled as an advocate does not bar a person from being enrolled as an advocate under section 29 of the 1961 Act for practising the profession of law in non litigious matters. The Apex Court in the case of Ex-Capt. Harish Uppal (supra) has held that the right to practise is the genus

of which the right to appear and conduct cases in the Court may be a specie. Therefore, the fact that section 33 of the 1961 Act provides that advocates alone are entitled to practise before any Court/authority it cannot be inferred that the 1961 Act applies only to persons practising in litigious matters and would not apply to person practising in non litigious matters.

...

... Once it is held that the persons entitled to practise the profession of law under the 1961 Act covers the persons practising the profession of law in litigious matters as well as non-litigious matters, then, the penal provisions contained in section 35 of the 1961 Act would apply not only to persons practising in litigious matter, but would also apply to persons practising the profession of law in non-litigious matters. The very object of the 1961 Act and the Rules framed by the Bar Council of India are to ensure that the persons practising the profession of law whether in litigious matters or in non litigious matters, maintain high standards in professional conduct and etiquette and, therefore, it cannot be said that the persons practising in non litigious matters are not governed by the 1961 Act.

...

It is not the case of the respondents that in India individuals/law firms/companies are practising the profession of law in non-litigious matters without being enrolled as advocates under the 1961 Act. It is not even the case of the respondents that in the countries in which their head office as well as their branch offices are situated, persons are allowed to practice the profession of law in non-litigious matters without being subjected to the control of any authority. In these circumstances, when the Parliament has enacted the 1961 Act to regulate the persons practising the profession of law, it would not be correct to hold that the 1961 Act is restricted to the persons practising in litigious matters and that the said Act does not apply to persons practising in non litigious matters. There is no reason to hold that in India the practise in non litigious matters is unregulated.

It was contended by the counsel for Union of India that if it is held that the 1961 Act applies to persons practising in non-litigious matters, then no bureaucrat would be able to draft or give any opinion in non-litigious matters without being enrolled as an advocate. There is no merit in the above argument, because, there is a distinction between a bureaucrat drafting or

giving opinion, during the course of his employment and a law firm or an advocate drafting or giving opinion to the clients on professional basis. Moreover, a bureaucrat drafting documents or giving opinion is answerable to his superiors, whereas, a law firm or an individual engaged in non litigious matters, that is, drafting documents/giving opinion or rendering any other legal assistance are answerable to none. To avoid such anomaly, the 1961 Act has been enacted so as to cover all persons practising the profession of law be it in litigious matters or in non-litigious matters within the purview of the 1961 Act.

The argument that the 1961 Act and the Bar Councils constituted thereunder have limited role to play has been time and again negated by the Apex Court. Recently, the Apex Court in the case of Bar Council of India v. Board of Management, Dayanand College of Law reported in (2007) 2 SCC 202 held thus:—

“It may not be correct to say that the Bar Council of India is totally unconcerned with the legal education, though primarily legal education may also be within the province of the universities. But, as the apex professional body, the Bar Council of India is concerned with the standards of the legal profession and the equipment of those who seek entry into that profession. The Bar Council of India is also thus concerned with the legal education in the country. Therefore, instead of taking a pendant view of the situation, the State Government and the recommending authority are expected to ensure that the requirement set down by the Bar Council of India is also complied with.”

Thus, when efforts are being made to see that the legal profession stand tall in this fast changing world, it would be improper to hold that the 1961 Act and the Bar Council constituted there under have limited role to play in the field relating to practising the profession of law.

It is not in dispute that once a person is enrolled as an advocate, he is entitled to practise the profession of law in litigious matters as well as non-litigious matters. If the argument of the respondents that the 1961 Act is

restricted to the persons practising the profession of law in litigious matters is accepted, then an advocate found guilty of misconduct in performing his duties while practising in non-litigious matters cannot be punished under the 1961 Act. Similarly, where an advocate who is debarred for professional misconduct can merrily carry on the practise in non-litigious matters on the ground that the 1961 Act is not applicable to the persons practising the profession of law in non litigious matters. Such an argument which defeats the object of the 1961 Act cannot be accepted.

...

For all the aforesaid reasons, we hold that in the facts of the present case, the RBI was not justified in granting permission to the foreign law firms to open liaison offices in India under Section 29 of the 1973 Act. We further hold that the expressions 'to practise the profession of law' in section 29 of the 1961 Act is wide enough to cover the persons practising in litigious matters as well as persons practising in non litigious matters and, therefore, to practise in non litigious matters in India, the respondent Nos. 12 to 14 were bound to follow the provisions contained in the 1961 Act. The petition is disposed of accordingly with no order as to costs."

(Emphasis Supplied)

17. Therefore, it is submitted that as held by the Hon'ble Supreme Court and the Hon'ble High Courts, the practise of law includes litigious and non-litigious work including legal advice, opinion, drafting and review of contracts, documents etc. Whereas KPMG in India and their affiliates (hereinafter collectively referred to as 'KPMG') are providing legal services to clients on M&A, Foreign Exchange Management Act amongst other laws.
18. KPMG is advising clients and representing clients in a large number of areas including acquisitions and joint ventures. KPMG is engaged in providing legal advice in assisting clients in finalizing/review of shareholders agreement, joint venture agreement and other relevant business agreements. KPMG is also engaged in providing services to clients including due diligence and Mergers and Acquisitions. KPMG is also involved in advising clients in matters relating to entry strategies and evolving optimal ownership/jurisdiction structures for investment in India and advising

clients on entry structures based on the laws on foreign investment and policy in India. KPMG is involved in furnishing legal advice to clients on FEMA and other legislations and is engaged in assisting clients in obtaining regulatory approvals from the Reserve Bank of India, foreign investment promotion board, Government of India and other regulatory authorities. Further, they are providing assistance to clients in obtaining tax rulings. (Please see **Annexure 1**)

19. KPMG also assists and provides legal advice to clients including advisory services in respect of the state level Value Added Tax (VAT)/Sales tax, Service tax, Custom and Excise duties and Foreign Trade Policy-related matters. They also provide legal advice to clients in relation to setting up a green field venture including review of tax assumptions and analysis of tax exemptions/concessions which could be relevant for the project and tax modeling involving analysis of tax costs and credits impacting the business models. Further KPMG provide legal advice to clients in relation to setting up of Special Economic Zones ('SEZs')/SEZ units. They also provide legal services to clients on R&D Cess Act. Whereas KPMG are involved in providing legal advice to clients on research and development cess act. KPMG assist clients in making representations before the revenue authorities for obtaining tax concessions, relief and seeking clarifications at state as well as federal level and thereby advice clients on tax laws. (Please see **Annexure 2**)

20. Whereas KPMG is involved in advising clients on the Securities and Exchange Act of India and its regulations. Whereas they furnish legal advice to clients on advise on the ownership structure and the legal structure. Whereas KPMG are engaged in preparation and filing applications seeking an advance ruling before the Authority for Advance Rulings. KPMG also providing advice on regulatory issues and obtain necessary approvals for clients from SEBI, RBI etc. (Please see **Annexure 3**)

21. Whereas KPMG is involved in providing legal advice and assistance to clients on labour laws and legislations and also assist clients in reviewing employment contracts. (Please see **Annexure 4**) KPMG provide legal advice to clients on Employees Provident Fund Act and other compliance requirements under other social security legislations. Further they also advise clients on tax laws and foreign exchange law. (Please see **Annexure 5**)

22. Whereas KPMG also advise clients on company law, income tax law, foreign exchange management act, SEBI Act and Regulations. Further KPMG also advise and provide legal assistance to clients in reviewing documents from tax and regulatory perspective. (Please see **Annexure 6**) Further KPMG also are engaged in providing advice to clients on potential litigious matters. (Please see **Annexure 7**)
23. Whereas KPMG are rendering legal advice on all aspects of the law relating to foreign exchange management. They are also rendering advice to clients on whether a foreign national can make investment in immovable properties, shares etc. in India, provide legal advice on the procedure for remittances of any income like rent, interest etc. earned in India, provide legal advice on the repatriation outside India of the sales proceeds of shares, immovable properties, etc, provide legal advice on foreign exchange regulations in respect of assets acquired outside India before visiting India, provide legal advice on preparation of letters seeking approval/permission from the exchange control authorities and legal advice on setting up a Branch office/Liaison office/Project office in India etc. (Please see **Annexure 8**)
24. Whereas KPMG are providing legal services in the realm of income tax laws in conjunction with other professionals including finance professionals. (Please see **Annexure 9**)
25. Whereas KPMG is involved in providing legal advice and consultancy to clients on tax laws. Further they are also involved in assisting clients in appellate tax forums and drafting advisory opinions etc. Whereas KPMG are engaged, inter alia, in drafting factual and legal submissions for tax matters before the appellate authorities and preparing the case and representing it before the appellate authorities.
26. Whereas in Tribunals and before authorities, KPMG appear on behalf of clients. Whereas KPMG work alongside experienced business professionals in tax, consulting, accounting, and financial advisory practices and provide legal services.
27. Whereas KPMG has entered into an arrangement with a law firm Advaita Legal to practise the profession of law in a surrogate manner. Whereas the professionals of Advaita Legal are in addition to being partners of Advaita Legal are also shown as being associated with KPMG. (Please see **Annexure 10**). Whereas KPMG and Advaita Legal have an arrangement to practise the profession of law. Whereas

Advaita Legal and KPMG are sharing the infrastructure, resources etc and are working together to practise the profession of law. Whereas the Partners of Advaita Legal and professionals of KPMG are working together and are providing legal advice to clients. Whereas the strategy for meeting with clients etc and referral of work is taking place between Advaita Legal and KPMG. Whereas the address and office location is also being shared between Advaita Legal and KPMG. Whereas it is also public knowledge that there is an alliance / relationship between Advaita Legal and KPMG (Please see **Annexure 11** and **12**).

28. Whereas the Hon'ble Supreme Court in the case of **Indian Council of Legal Aid and Advice v. Bar Council of India and another** (1995) 1 SCC 732 has held:

*"The Bar Councils are rejoin'd with the duty to act as sentinels of professional conduct and must ensure that the dignity and purity of the profession are in no way undermined. Its job is to uphold the standards of professional conduct and etiquette. Thus every State Bar Council of India has a public duty to perform, namely, to ensure that the monopoly of practise granted under the Act is not misused or abused by a person who is enrolled as an advocate. **The Bar Councils have been created at the State level as well as the Central level not only to protect the rights, interests and privileges of its members but also to protect the litigating public by ensuring that high and noble traditions are maintained so that the purity and dignity of the profession are not jeopardized.** It is generally believed that members of the legal profession have certain social obligations; e.g., to render 'pro bono publico' service to the poor and the under privileged. **Since the duty of a lawyer is to assist the court in the administration of justice the practise of law has a public utility flavour and, therefore, he must strictly and scrupulously abide by the Code of Conduct behaving the noble profession and must not indulge in any activity which may tend to lower the image of the profession in society. That is why the functions of the Bar Council include the laying down of standards of professional conduct and etiquette which advocates must follow to maintain the dignity and purity of the profession.***

... So far as the Bar Council of India is concerned, its functions are of a more general nature, e.g., to lay down standards of professional conduct and

etiquette for advocates, to safeguard their rights, privileges and interests to supervise and control the working of the State Bar Council, to promote legal education, to recognise universities, to organise legal aid to the poor and to perform all other functions conferred by or under the Act and do everything that may be necessary to discharge the functions enumerated in Section 7. Besides the above it too is required to exercise discipline and control over the members of the profession.”

(Emphasis Supplied)

29. Whereas the Hon'ble Supreme Court in the case of **(Dr.) Haniraj L. Chulani vs Bar Council of Maharashtra & Goa** (1996) 3 SCC 342 has held:

“The rules framed by the Bar Council of India especially relating to standards of professional conduct and etiquette clearly aim at securing high standards of competence in legal services and seek to strengthen professional relationships among its members and promote the welfare of the society as a whole. Specific norms have been laid down in respect of conduct of the persons practising the profession vis-a-vis the public, the court, the client, the opposite lawyer and professional brethren. Lawyer's duty to train juniors and impart free legal aid to poor is part of the ethics. The code thus provides standards for identification and measurement of professional deviance. As noted earlier the Act besides highlighting the essential functions of Bar Council of India provides for enforcement of the same and sets up disciplinary authorities to chastise and, if necessary, punish members of the profession for misconduct. The punishment may include suspension from practice as well as removal of the name from the roll of advocates. Section 49(1) confers power on the Bar Council of India to make rules, inter alia, for discharging its functions under the Act. Section 49(1)(ag) when read with Section 24 of the Act confers wide powers on the Bar Council of India to indicate the class or category of persons who may be enrolled as advocates which power would include the power to refuse enrollment in certain circumstances. The obligation to maintain the dignity and purity of the profession and to punish ensuring members carries with it the power to regulate entry into the profession with a view to ensuring that only profession-oriented and service-oriented people join the Bar and those not so oriented are kept out. The role of an advocate is essentially different from the role of

any other profession an advocate is said to belong to a noble profession. The Act itself envisages the State Bar Councils who are the elected peers of advocates themselves to lay down the standards for the professional conduct and etiquette. **That would naturally bring in its wake the power to regulate entry to such a noble profession. It is said that law is a jealous mistress that calls for undivided loyalty and unflinching attention from her devotees. Dry drudgery of desks' dead wood is the essential requirement of an advocate aspiring to win laurels in the profession.**

The attack on the impugned rule on the ground of excessive delegation of legislative power will have to be examined in the light of scheme of the Act which has entrusted the power and the duty to elected representatives of the profession constituting the State Bar Councils to lay down the high standards of professional etiquette as expected of the advocates enrolled by it. It is pertinent to note that the Act has entrusted to the Bar Council of India, amongst others, the functions to promote legal education and to lay down standards of such education in consultation with the Universities in India imparting such education and the State Bar Councils. The Bar Council of India is entrusted with the function to recognize Universities whose degree in law shall be a qualification for enrollments as an advocate and for that purpose to visit and inspect Universities or cause the State Bar Councils to visit and inspect Universities with such directions as it may give in this behalf. It conducts seminars and organize talks on legal topics by eminent jurists and publishes journals and papers of legal interest. In this connection, it also exercises general supervision and control over the State bar Councils. It is also entrusted with the task of promoting and supporting law reform. All these provisions as laid down by Section 7 of the Act leave no room for doubt that even prior to the enrollment as advocate the teaching of law and laying down of the curriculum for law courses are also the tasks entrusted to the Bar Council of India, which is the apex body of professionals monitoring these matters in conjunction with the State Bar Councils. Thus even at pre-entry stage of an advocate to the profession his equipments as a student of law and the requirement of basic legal education with which he should be armed before he can aspire to be enrolled as an advocate are also looked after by the Bar Council of India and the concerned State Bar Council which works under the general supervision and control of the apex body, namely, the Bar Council of India. Thus the Bar Council of India is cast with the duty to take all

such steps as it considers necessary to filter students at the entry stage to the law course e.g. by providing an entrance test, as well as at the entry point to the profession, e.g. by providing an examination or a training course before enrollment as an advocate. The Act also deals with the topic of regulation of professional conduct of advocates from the entry point itself.

The concerned State Bar Councils have to monitor the role of advocates so long as they continue to practise law after initial entry. As the enrollment by the State Bar Council entitles an advocate after entry to the profession, to practise the noble profession of law and who becomes, by such enrollment, an officer of the court, the said entrant can be validly subjected by the concerned Bar Council to the strict requirements of the profession for enabling such an aspirant to effectively cater to the needs of the legal profession. The power and the duty entrusted to the State Bar Councils to monitor such entry, in the light of the nature of the profession to which such entry is given would themselves supply the necessary yardstick and guidelines for the exercise of such power by the elected body of advocates constituting the concerned Bar Councils. The scheme of the Act thus lays down a complete code for regulating the legal education and professional equipments of an aspirant seeking entry to legal profession from the grassroot level where he is student of law till he equips himself with essential legal knowledge and seeks enrollment and even thereafter till he practices law and completes his professional career as advocate. Thus, from the pre-entry point to legal Profession till the exit point from the legal profession, the Bar Council of India and the State Bar Councils monitor the career of the legal practitioner. It is the entire scheme of the Act when considered in the light of the nature of the legal profession to which such entry is given which has to be kept in view while considering the submission of learned senior counsel for the appellant that the power given to the State Bar Councils to regulate such entries by framing rules is a piece of excessive delegation of legislative power. It cannot be gainsaid that law is universally described as an honourable profession. An advocate is an officer of justice and friend of the court. A conduct, therefore, which is unworthy of him as an officer of justice cannot be justified by stating that he did it as the agent of his client. His status as an officer of justice does not mean that he is subordinate to the Judge. It only means that he is an integral part for the Administration of justice. Legal

profession is monopolistic in character and this monopoly itself inheres certain high traditions which its members are expected to upkeep and uphold. Members of the profession claimed that they are the leaders of thought and society. The central function that the legal profession must perform is nothing less than the administration of justice.

...

It is no doubt true that under Article 19, sub-Article (1)(g) all citizens have a right to practise any profession, or to carry on any occupation, trade or business and any profession may include even plurality of professions. However, this is not an absolute right. It is subject to sub-Article (6) of Article 19 which lays down that nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause. It cannot be gainsaid that litigants are also members of general public and if in their interest any rule imposes a restriction on the entry to the legal profession and if such restriction is found to be reasonable Article 19(1)(g) would not get stultified. It is true that the appellant as a citizen of India having obtained the qualification required for being enrolled as an advocate can legitimately aspire to be enrolled as an advocate but his aforesaid right is fettered by the impugned rule framed by the State Bar Council. We have to consider whether the said restriction imposed by the rule is in any way unreasonable. We have to keep in view the fact that the impugned rule restricts entry of a person who is otherwise qualified for being enrolled as an advocate if he is already carrying on any other profession. Question is whether such a person carrying on other profession can be validly told off the gates by the State Bar Council by resorting to the impugned rule. In our view looking to the nature of the legal profession to which we have made detailed reference earlier the State Bar Council would be justified in framing such a rule prohibiting the entry of a professional who insists on carrying on other profession simultaneously with the legal profession. As we have seen earlier legal profession requires full time attention and would not countenance an advocate riding two horses or more at a time. He has to be full time advocate or not at all. Learned senior counsel for the appellant submitted that, even though the appellant is a practising surgeon he undertaking, if given entry to the legal profession, not to practise medicine during the court hours. This is

neither here nor there. It is obvious that even though medical profession also may be a dignified profession a person cannot insist that he will be a practising doctor as well as a practising advocate simultaneously. Such an insistence on his part itself would create an awkward situation not only for him but for his own clients as well as patients. It is easy to visualize that a practising surgeon like the appellant may be required to attend emergency operation, even beyond court hours either in the morning or in the evening. On the other hand the dictates of his legal profession may require him to study the cases for being argued the next day in the court. Under these circumstances his attention would be divided. We would naturally be in a dilemma as to whether to attend to his patient on the operation table in the evening or to attend to his legal profession and work for preparing cases for the next day and to take instructions from his clients for efficient conduct of the cases next day in the court. If he is an original side advocate he may be required to spend his evenings and even late nights for making witnesses ready for examination in the court next day. Under these circumstances as a practising advocate if he gives attention to his clients in his chamber after court hours and if he is also required to attend an emergency operation at that very time, it would be very difficult for him to choose whether to leave his clients and go to attend his patient in the operation theatre or to refuse to attend to his patients. If he selects the first alternative his clients would clamour, his preparation as advocate would suffer and naturally it would reflect upon his performance in the court next day. If on the other hand he chooses to cater to the needs of his clients and his legal work, his patients may suffer and may in given contingency even stand to lose their lives without the aid of his expert hand as a surgeon. Thus he would be torn between two conflicting loyalties, loyalty to his clients on the one hand and loyalty to his patients on the other. In a way he will instead of having the best of both the worlds, have worst of both the worlds. Such a person aspiring to have simultaneous enrollment both as a lawyer and as a medical practitioner will thus be like 'trishanku' of yore who will neither be in heaven nor on earth. It is axiomatic that an advocates has to burn midnight oil for preparing his cases for being argued in the court next day. Advocate face examination every day when they appear in courts. It is not as if that after court hours advocate has not to put in hard work on his study table in his chamber with or without the presence of his clients who may be available for consultation. To

put forward his best performance as an advocate he is required to give whole- hearted and full time attention to his profession. Any flinching from such unstinted attention to his legal profession would certainly have an impact on his professional ability and expertise. If he is permitted to simultaneously practise as a doctor then the requirement of his full time attention to the legal profession is bound to be adversely affected. Consequently however equally dignified may be the profession of a doctor he cannot simultaneously be permitted to practise law which is a full time occupation. It is for ensuring the full time attention of legal practitioners towards their profession and with a view to bringing out their best so that they can fulfil their role as an officer of the court and can give their best in the administration, of justice, that the impugned rule has been enacted by the State Bar Council. It, therefore, cannot be said that it is in any way arbitrary or that it imposes an unreasonable restriction on the new entrant to the profession who is told not to practise, simultaneously any other profession and if he does so to deny to him entry to the legal profession. It is true as submitted by learned senior counsel for the appellant that the rule of Central Bar Council does not countenance an advocate simultaneously carrying on any business and it does not expressly frown upon any simultaneous profession. But these are general rules of professional conduct. So far as regulating enrollment, to the profession is concerned it is the task entrusted solely to the State Bar Council by the Legislature as seen earlier while considering the scheme of the Act. While carrying on that task if the entry to the profession is restricted by the State Bar Council by enacting the impugned rule for not allowing any other professional to enter the Bar. When he does not want to give up the other profession but wants to carry on the same simultaneously with legal practice, it cannot be said that the Bar Council has by enacting such a rule imposed any unreasonable restriction on the fundamental right of the prospective practitioner who wants to enter the legal profession.

Learned senior advocate for the appellant vehemently contended that such a rule is not found to have been framed by other State Bar Councils. In our view that would not make any difference. We are called upon to decide the question whether the impugned rule framed by the respondent-State Bar Council stands the test of Article 19(1)(9) or not. While deciding that question

whether other State Bar Councils permit by their rules entry of other professional to the legal profession, would be an aspect which would not be strictly relevant. In our view the impugned rule does not impose any unreasonable restriction on the right of the professional carrying on any other avocation and insisting on continuing to carry on such profession, while it prohibits entry of such a person to the legal profession. *If the contention of the learned senior counsel for the appellant is countenanced and any person professing any other profession is permitted to join the legal profession having obtained the Degree of Law and having fulfilled the other requirements of Section 24, then even chartered accountants, engineers and architects would also legitimately say that during court hours they will practise law and they will simultaneously carry on their other profession beyond court hours. If such simultaneous practices of professionals who want to carry on more than one profession at a time are permitted, the unflinching devotion expected by the legal profession from its members is bound to be adversely affected.* If the peers being chosen representatives of the legal profession constituting the State Bar Council, in their wisdom, had thought it fit not to permit such entries of dual practitioners to the legal profession it cannot be said that they have done anything unreasonable or have framed an arbitrary or unreasonable rule.”

(Emphasis Supplied)

30. Whereas the Hon'ble Supreme Court in the case of Bar Council of Maharashtra v M V Dabholkar (1976) 2 SCC 291 has held:

“...The rule of law cannot be built on the ruins of democracy, for where law ends tyranny begins. If such be the keynote thought for the very survival of our Republic, the integral bond between the lawyer and the public is unbreakable. And the vital role of the lawyer depends upon his probity and professional life-style. *Be it remembered that the central function of the legal profession is to promote the administration of justice. ...”*

(Emphasis Supplied)

31. Whereas the Hon'ble Supreme Court and the Hon'ble High Court of Bombay have held the practise of the profession of law includes litigious and non-litigious work. Whereas the practise of the profession of law includes appearance before

courts/tribunals etc, giving legal advice and opinions, drafting of documents and agreements, pleadings etc. Whereas the aforementioned work being undertaken by KPMG is unauthorised practise of law. Whereas the Bar Council has the duty to protect the interest, privileges of its members and also to protect the interests of the general public / litigating public.

32. Whereas as held by the Hon'ble Supreme Court, the practise of the profession of law is a noble profession and requires unflinching attention from her devotees. Whereas the Hon'ble Supreme Court has also upheld the constitutional validity of provisions that have restricted the practice of the profession of law only to one class (viz. advocates). Whereas the Hon'ble Supreme Court has held that there is public interest in ensuring that Advocates alone (and not professionals from other professions who simultaneously practise law) are entitled to practise the profession of law. Whereas the profession of law can only be practised by Advocates and there is a public utility involved in ensuring that only advocates practise the profession of law. The Advocates as members of the judicial system are a sentinel in the justice administration. Whereas there is an unbreakable bond between the Advocates and the public and the primary function of the Advocates is to promote the administration of justice. Whereas if people who are not entitled to practise law are permitted to do so the entire edifice on which our democracy is built – Rule of Law – will crumble.

33. Whereas under Section 29 of the Act read with Sections 2 (1) (a), (k) , (n); 17 and 24 only Advocates can practise the profession of law. Whereas the work being undertaken by KPMG amount to unauthorised practise of law.

34. Whereas Section 29 of the Act states:

29. Advocates to be the only recognised class of persons entitled to practise law – Subject to the provisions of this Act and any rules made thereunder, there shall, as from the appointed day, be only one class of persons entitled to practise the profession of law, namely, advocates.

35. Whereas the various activities undertaken by KPMG amounts to unauthorised practice of law. Whereas under Section 29 of the Act only advocates are entitled to practise the profession of law. Whereas as demonstrated from the evidence above

KPMG are engaged in both litigious and non-litigious practise of law. Whereas KPMG are in violation of the Advocates Act by engaging in unauthorised practise of law.

36. Whereas the Hon'ble Supreme Court in the case of **Madras Bar Association v. Union of India** [Transferred Case (C) No. 150 / 2006, decided on 25.09.2014] held:

“Keeping in mind the fact, that in terms of Section 15 of the NTT Act, the NTT would hear appeals from the Income Tax Appellate Tribunal and the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) only on substantial questions of law, it is difficult for us to appreciate the propriety of representation, on behalf of a party to an appeal, through either Chartered Accountants or Company Secretaries, before the NTT. The determination at the hands of the NTT is shorn of factual disputes. It has to decide only substantial questions of law. In our understanding, Chartered Accountants and Company Secretaries would at best be specialists in understanding and explaining issues pertaining to accounts. These issues would, fall purely within the realm of facts. We find it difficult to accept the prayer made by the Company Secretaries to allow them, to represent a party to an appeal before the NTT. Even insofar as the Chartered Accountants are concerned, we are constrained to hold that allowing them to appear on behalf of a party before the NTT, would be unacceptable in law.”

37. Therefore, in the light of the decision of the Hon'ble Supreme Court, Chartered Accountants and Company Secretaries and other professionals are not entitled to practise law. Whereas the Chartered Accountants and Company Secretaries can at the best help in understanding issues pertaining to accounts and, therefore, they too cannot practise the profession of law.

38. Whereas the practise of the profession of law before the Courts, Tribunals and in rendering legal advice and opinion is the exclusive domain of Advocates. Whereas the various activities undertaken by KPMG tantamount to unauthorised practice of law. Whereas under Section 29 of the Act only advocates are entitled to practise the profession of law. Whereas the practise of the profession of law before the Courts, Tribunals and rendering legal advice and opinion is the exclusive domain of Advocates.

39. Whereas under Rule 37, Chapter II of Part VI of the Bar Council of India Rules (hereinafter referred to as 'Rules') an advocate shall not permit his professional services or his name to be used in aid, or to make possible, the unauthorised practice of law by any agency. Whereas under Rule 49, Chapter II of Part VI of the Rules, an advocate cannot be a full-time salaried employee of any person, government, firm, corporation or concern so long as he continues to practise and shall upon taking up employment intimate the fact of taking up of the employment to the concerned State Bar Council.
40. Whereas Rule 37, Chapter II of Part VI of the Rules states:
37. An Advocate shall not permit his professional services or his name to be used in air, or to make possible, the unauthorised practice of law by any agency.
41. Whereas **Rule 49** Chapter II of Part VI of the Rules states:
49. An Advocate shall not be a full-time salaried employee of any person, government, firm, corporation or concern, so long as he continues to practise, and shall, on taking up any employment, intimate the fact to the Bar Council on whose roll his name appears, and shall thereupon cease to practise as an advocate so long as he continues in such employment.
42. Whereas under Rule 2 of Chapter II of Part VI of the Rules, an 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.
43. Whereas **Rule 2** Chapter II of Part VI of the Rules states:
2. An 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.
44. Whereas KPMG are neither advocates nor a partnership among advocates. Whereas under the Act and the Rules only an Advocate can practise the profession of law. Whereas only Advocates can appear in Courts, Tribunals and KPMG are engaged in appearing for clients before Tribunals and various authorities and are providing legal advice and guidance to clients.

45. Where as it has come to our knowledge that even the global network of firms / organizations of KPMG are also involved in sharing the remuneration from the illegal practice of law by KPMG in India and are acting in violation of the provisions of the Advocates Act.

46. The Bar Council does not have a limited role in the practise of the profession of law but has to cater to the greater public interest in meeting the demands of the noble profession and the regulating the profession which is integrally involved in administration of justice. Whereas the Bar Council has been set up to also protect the litigating public by ensuring that high and noble traditions of the legal profession are maintained and also make sure that the purity and dignity of the profession are not jeopardized. Whereas Advocates are involved in the duty of administration of justice and this element of public utility has to be safeguarded by this Council and also ensure the protection of welfare of the society as a whole.

47. Whereas it has been held in the case of **In Re Welch** 185 A.2d 458 (1962):

“We cannot over-emphasize the necessity of legal training in the proper drafting of legal documents and advice relating thereto. The absence of such training may result in legal instruments faulty in form and contents, and also lead to a failure of purpose, litigation and expense.”

(Emphasis Supplied)

48. Whereas it has been held in the case of **Lowell Bar Association v Loeb** 315 Mass. 176:

“The justification for excluding from the practice of law persons not admitted to the bar is to be found, not in the protection of the bar from competition, but in the protection of the public from being advised and represented in legal matters by incompetent and unreliable persons, over whom the judicial department could exercise little control. Matter of Shoe Manufacturers Protective Association, Inc., 295 Mass. 369, 372, 3 N.E.2d 746.”

(Emphasis Supplied)

49. Whereas the Bar Council has an interest in regulating the legal profession and maintaining the interest of the members and the general public. This Council has

been given wide and extensive powers to regulate the legal profession. Whereas it is necessary to protect the general public who would be affected by unauthorised practice of law.

50. Whereas by engaging in the unauthorised practise of the profession KPMG have acted in violation of Sections 29 of the Act and are, therefore, liable to be punished with 6 months imprisonment for unauthorised practise of the profession of law liable under Section 45 of the Act. Whereas the actions of KPMG are also in violation of Rule 2 of Chapter II of Part VI of the Rules and Rule 37, Chapter II of Part VI of the Rules and are liable to be proceeded against and appropriate legal action would be initiated for the same. We request and pray that immediate legal action be initiated against KPMG and protect the interest of the legal fraternity and the society at large.

51. We request and pray that KPMG and its affiliates are directed not to engage in the unauthorised practice of law and appropriate legal action is initiated against them.

Whereas the various affiliated parties of KPMG (and persons responsible for their functions) are enlisted herein below. We request you to kindly initiate appropriate action and direct them to stop engaging in the unauthorised practice of law.

1. KPMG
A Registered Partnership firm
KPMG
Building No. 10,
8th Floor, Tower B,
DLF Cyber City, Phase II
Gurgaon
Haryana - 122 002
2. KPMG ADVISORY SERVICES PRIVATE LIMITED
1st Floor, Lodha Excellus, Apollo Mills Compound,
N. M. Joshi Marg, Mahalaxmi
Mumbai
Maharashtra-400011
INDIA
3. KPMG INDIA PRIVATE LIMITED
1st Floor, Lodha Excellus, Apollo Mills Compound,
N. M. Joshi Marg, Mahalaxmi
Mumbai
Maharashtra-400011
INDIA

4. KPMG INDIA SERVICES LLP
LODHA EXCELLUS,
APOLLO MILLS COMPOUND, N. M. JOSHI MARG, MAHALAXMI
MUMBAI
Maharashtra-400011
INDIA
5. Richard Rekhy
CEO, KPMG
Building No. 10,
8th Floor, Tower B,
DLF Cyber City, Phase II
Gurgaon
Haryana - 122 002
6. Girish Vanvari
Partner & Head of Tax Practice, KPMG
Building No. 10,
8th Floor, Tower B,
DLF Cyber City, Phase II
Gurgaon
Haryana - 122 002
7. Utkarsh Palnitkar
Partner & Head of Advisory Practice, KPMG
Building No. 10,
8th Floor, Tower B,
DLF Cyber City, Phase II
Gurgaon
Haryana - 122 002
8. John Veihmeyer
KPMG International Cooperative a Swiss registered entity & CEO KPMG USA
1801 K Street, NW
Suite 12000
Washington DC
9. John M Scott
KPMG International Cooperative a Swiss registered entity & CEO KPMG USA
1801 K Street, NW
Suite 12000
Washington DC

PRAYER

We request and pray that KPMG and its affiliates are directed not to engage in the unauthorised practice of law and appropriate legal action is initiated against them.

FOR THE SOCIETY OF INDIA LAW FIRMS

PLACE: DELHI
DATE: 18.06.2015

Society of Indian Law Firms
Through its President Mr Lalit Bhasin
10, Hailey Road, 10th Floor
New Delhi – 110001
Ph: 91-11-23322601, 91-11-23326968

18.06.2015

The
Bar Council of Delhi
2/6, Siri Fort Institutional Area
Khel Gaon Marg
New Delhi – 49

Dear Sirs,

Sub: Complaint under Section 35, Sections 6 (1) (a), (b), (c), (d), (h), (i); Section 17, Sections 22 and 24, Section 29, Section 49 (1) (ah) of the Advocates Act, 1961 read with the Bar Council of India Rules against the unauthorised practice of law by multinational audit and accounting firms – Request for Action to be initiated against PricewaterhouseCoopers

1. The present complaint is being filed against the unauthorised practice of law by Multinational Audit and Accounting Firms in violation of the provisions of the Advocates Act, 1961 and the rules issued thereunder.
2. The Complainant Society of Indian Law Firms (“SILF”) is a collective of India’s Premier Law Firms and is the only representative body for Law Firms of India till date. SILF set up in 2000 believes in working for the interests of the legal community in general and law firms in particular. SILF was formed with the purpose of bringing together the commercial, corporate and litigation law firms, to promote and protect/safeguard the interests of the legal profession in general and the law firms in particular. It has been actively working towards achieving its goals with the help of all its Member Firms, numbering more than 100. SILF serves as a forum for exchange of ideas and information as also a medium for interaction with the government, the judiciary and the bureaucracy.
3. SILF since its inception has amassed a wealth of experience, knowledge capital as well as unity and solidarity between competing law firms which would be difficult for any other entity to match. SILF intends to push the boundaries, expand its horizons and work more vigorously in order to fulfill its mission – “protecting, safeguarding and promoting the interests of law firms in India”. SILF also has a Memorandum of

Understanding with Queensland Law Society and sustaining memberships with International Bar Association (IBA), Union Internationale des Avocats (UIA), LAWASIA and Inter-Pacific Bar Association (IPBA).

4. SILF has listed out the following goals in order to achieve its mission of protecting and safeguarding the interests of law firms in India.
 - To promote reforms in justice and law and their healthy development to suit the social and economic needs of the people, SILF intends to put to use the extensive wealth of legal knowledge and experience that the member firms have garnered over the years;
 - To promote the welfare of corporate, commercial, and litigation law firms as well as upholding of the dignity, honour, and independence of the legal profession and law firms;
 - To encourage the development of good relations between law firms (on one side) and the Bench, the Bar, the public, and lawyers from different nations (on the other);
 - To promote unity and solidarity among the various firms throughout India;
 - To encourage and conduct research in legal and allied fields, promoting legal education & continuing legal education (CLE), promoting and providing legal aid and assistance to the needy, preservation of Human Rights and redressal for violation of the same;
 - To work with other national and international societies, institutions, and organizations as well as promote international understanding and cooperation;
 - Promote publication of works on law, for the benefit of the entire legal community;
 - Promote its activities by setting up regional centers.
5. As a responsible member of the legal profession and in protecting the interests of the legal profession, SILF has been able to collect information which is being provided along with this compliant which will demonstrate that multinational audit and accounting firms have started engaging in the unauthorised practice of the profession of law.

6. The Bar Council of Delhi has been constituted under Section 3 of the Advocates Act, 1961 (hereinafter referred to as 'Act') is the apex professional body for advocates in Delhi and is concerned with the standards of legal profession and the equipment of those who seek entry into the profession.
7. The Bar Council of Delhi has been conferred the functions under the Act to admit persons as advocates on its roll, to entertain and determine cases of misconduct against advocates on its roll, to safeguard the rights, privileges and interests of advocates on its roll and to do all things necessary for discharging the functions under the Act.
8. The Act is an act to amend and consolidate the law relating to legal practitioners and to provide for the constitution of Bar Councils and an All-India Bar. Under Section 29 read with Sections 17 and 24 of the Act, only Indian citizens who are enrolled with the State Bar Councils as advocates have the right to practise the profession of law in India. The Act has, thus, only created one class of persons entitled to practise the profession of law viz. Advocates who are enrolled in the rolls of the respective State Bar Council.
9. The Hon'ble Madras High Court in the case of **A K Balaji v The Government of India and others**, [WP No. 5614 of 2010, decided on 21.02.2012] expressed a concern that many accountancy and management firms are employing law graduates and are rendering legal services contrary to the Act and are engaged in the unauthorised practice of law.
10. The Hon'ble Supreme Court of India has held in the case of **Madras Bar Association v Union of India**, [Transferred Case (C) No. 150 / 2006, decided on 25.09.2014] that Chartered Accountants and Company Secretaries would at best be specialists in understanding and explaining issues pertaining to accounts. The Hon'ble Supreme Court struck down the provision allowing Company Secretaries and Chartered Accountants to appear on behalf of a party before National Tax Tribunal.
11. The Hon'ble Supreme Court in the case of **Ex-Capt Harish Uppal v. Union of India, (2003) 2 SCC 45** has held that an advocate apart from appearing in courts can be consulted by clients, appear in arbitrations, render legal opinion, draft instruments and other documents, pleadings, affidavits and other documents etc. Further, the

Hon'ble Supreme Court held that the right to practise is the genus of which the right to appear and conduct cases in the court is a specie of the right to practise. The Hon'ble Bombay High Court in the case of **Lawyers Collective v Bar Council of India** [WP No. 1526 of 1995 decided on 16.12.2009] held quoting the Supreme Court in the case of **Ex-Capt Harish Uppal** that the Advocates Act applies to persons practising in litigious matter and also persons practising in non-litigious matters.

12. Whereas only an Advocate who is on the rolls of the State Bar Council is entitled to practise the profession of law, which includes both litigious and non-litigious matters.

13. The Hon'ble Madras High Court held in the **A K Balaji** case held:

“As noticed above, the fact of the case before the Bombay High Court were that the Respondents which were Foreign Law Firms practising the profession of law in US/UK sought permission to open their liaison office in India and render legal assistance to another person in all litigious and non-litigious matters. The Bombay High Court, therefore, rightly held that establishing liaison office in India by the Foreign Law Firm and rendering liaisoning activities in all forms cannot be permitted since such activities are opposed to the provisions of the Advocates Act and the Bar Council of India Rules. We do not differ from the view taken by the Bombay High Court on this aspect.

...

At this juncture, it is necessary to note yet another submission made by the Government of India in their counter. It has been stated that Law Firms as such or not required to register themselves or require permission to engage in non-litigation practice and that Indian Law Firms elsewhere are operating in a free environment without any curbs or regulations. **It is further submitted that the oversight of the Bar Council on non-litigation activities of such Law Firms was virtually nil till now, and exploiting this loop hole, many accountancy and management firms are employing law graduates, who are rendering legal services, which is contrary to the Advocates Act. Therefore, the concern of the Government of India as expressed in the Counter Affidavit requires to be addressed by the Bar Council of India.** Further, it is seen that the Government in consultation with the Bar Council of

India proposes to commission a study as to the nature of activities of LPOs, and an appropriate decision would be taken in consultation with the Bar Council of India.

After giving our anxious consideration to the matter, both on facts and on law, we come to the following conclusion:

(i) Foreign Law Firms or Foreign Lawyers cannot practice the profession of law in India either on the litigation or non-litigation side, unless they fulfil the requirement of the Advocates Act, 1961 and the Bar Council of India Rules.”

(Emphasis Supplied)

14. To practise the profession of law, an Indian citizen has to be admitted as an advocate on the rolls of a State Bar Council. Whereas under section 29 of the Act only an advocates whose name appears on the roll can practice the profession of law in India.

15. Whereas the Hon'ble Supreme Court in the case of **Ex-Captain Harish Uppal v Union of India and another (2003) 2 SCC 45** has held:

“...The right of the advocate to practise envelopes a lot of acts to be performed by him in discharge of his professional duties. *Apart from appearing in the courts he can be consulted by his clients, he can give his legal opinion whenever sought for, he can draft instruments, pleadings, affidavits or any other documents, he can participate in any conference involving legal discussions, he can work in any office or firm as a legal officer, he can appear for clients before an arbitrator or arbitrators etc. ...The right to practice, no doubt, is the genus of which the right to appear and conduct cases in the Court may be a specie. ...*”

(Emphasis Supplied)

16. Whereas the Hon'ble Bombay High Court in the case of **Lawyers Collective v Bar Council of India (2010) 2 Comp. L.J 108 (Bom)** has held:

“In the statements of Objects & Reasons for enacting the 1961 Act, it is stated that the main object of the Act is to establish All India Bar Council and a common roll of advocates and Advocate on the common roll having a right to practise in any part of the country and in any Court, including the Supreme Court. Thus, from the Statement of Objects and Reasons, it is seen that the 1961 Act is intended to apply to (one) persons practising the profession of law in any part of the country and (two) persons practising the profession of law in any Court including the Supreme Court. Thus, from the statement of objects and reasons it is evident that the 1961 Act is intended to apply not only to the persons practising before the Courts but it is also intended to apply to persons who are practising in non litigious matters outside the Court.

Apart from the above, Section 29 of the 1961 Act specifically provides that from the appointed day, there shall be only one class of persons entitled to practise the profession of law, namely Advocates. It is apparent that prior to the 1961 Act there were different classes of persons entitled to practise the profession of law and from the appointed day all these class of persons practising the profession of law, would form one class, namely, advocates. Thus, section 29 of the 1961 Act clearly provides that from the appointed day only advocates are entitled to practise the profession of law whether before any Court/authority or outside the Court by way of practise in non litigious matters.

Section 33 of the 1961 Act is a prohibitory section in the sense that it debars any person from appearing before any Court or authority unless he is enrolled as an advocate under the 1961 Act. The bar contained in section 33 of the 1961 Act has nothing to do with the persons entitled to be enrolled as advocates under section 29 of the 1961 Act. A person enrolled as an advocate under section 29 of the 1961 Act, may or may not be desirous of appearing before the Courts. He may be interested in practising only in non litigious matters. Therefore, the bar under section 33 from appearing in any Court (except when permitted by Court under Section 32 of the 1961 Act or any other Act) unless enrolled as an advocate does not bar a person from being enrolled as an advocate under section 29 of the 1961 Act for practising the profession of law in non litigious matters. The Apex Court in the case of Ex-Capt. Harish Uppal (supra) has held that the right to practise is the genus

of which the right to appear and conduct cases in the Court may be a specie.

Therefore, the fact that section 33 of the 1961 Act provides that advocates alone are entitled to practise before any Court/authority it cannot be inferred that the 1961 Act applies only to persons practising in litigious matters and would not apply to person practising in non litigious matters.

...

... Once it is held that the persons entitled to practise the profession of law under the 1961 Act covers the persons practising the profession of law in litigious matters as well as non-litigious matters, then, the penal provisions contained in section 35 of the 1961 Act would apply not only to persons practising in litigious matter, but would also apply to persons practising the profession of law in non-litigious matters. The very object of the 1961 Act and the Rules framed by the Bar Council of India are to ensure that the persons practising the profession of law whether in litigious matters or in non litigious matters, maintain high standards in professional conduct and etiquette and, therefore, it cannot be said that the persons practising in non litigious matters are not governed by the 1961 Act.

...

It is not the case of the respondents that in India individuals/law firms/companies are practising the profession of law in non-litigious matters without being enrolled as advocates under the 1961 Act. It is not even the case of the respondents that in the countries in which their head office as well as their branch offices are situated, persons are allowed to practice the profession of law in non-litigious matters without being subjected to the control of any authority. In these circumstances, when the Parliament has enacted the 1961 Act to regulate the persons practising the profession of law, it would not be correct to hold that the 1961 Act is restricted to the persons practising in litigious matters and that the said Act does not apply to persons practising in non litigious matters. There is no reason to hold that in India the practise in non litigious matters is unregulated.

It was contended by the counsel for Union of India that if it is held that the 1961 Act applies to persons practising in non-litigious matters, then no bureaucrat would be able to draft or give any opinion in non-litigious matters without being enrolled as an advocate. There is no merit in the above argument, because, there is a distinction between a bureaucrat drafting or

giving opinion, during the course of his employment and a law firm or an advocate drafting or giving opinion to the clients on professional basis. Moreover, a bureaucrat drafting documents or giving opinion is answerable to his superiors, whereas, a law firm or an individual engaged in non litigious matters, that is, drafting documents/giving opinion or rendering any other legal assistance are answerable to none. To avoid such anomaly, the 1961 Act has been enacted so as to cover all persons practising the profession of law be it in litigious matters or in non-litigious matters within the purview of the 1961 Act.

The argument that the 1961 Act and the Bar Councils constituted thereunder have limited role to play has been time and again negated by the Apex Court. Recently, the Apex Court in the case of Bar Council of India v. Board of Management, Dayanand College of Law reported in (2007) 2 SCC 202 held thus:—

“It may not be correct to say that the Bar Council of India is totally unconcerned with the legal education, though primarily legal education may also be within the province of the universities. But, as the apex professional body, the Bar Council of India is concerned with the standards of the legal profession and the equipment of those who seek entry into that profession. The Bar Council of India is also thus concerned with the legal education in the country. Therefore, instead of taking a pendant view of the situation, the State Government and the recommending authority are expected to ensure that the requirement set down by the Bar Council of India is also complied with.”

Thus, when efforts are being made to see that the legal profession stand tall in this fast changing world, it would be improper to hold that the 1961 Act and the Bar Council constituted there under have limited role to play in the field relating to practising the profession of law.

It is not in dispute that once a person is enrolled as an advocate, he is entitled to practise the profession of law in litigious matters as well as non-litigious matters. If the argument of the respondents that the 1961 Act is

restricted to the persons practising the profession of law in litigious matters is accepted, then an advocate found guilty of misconduct in performing his duties while practising in non-litigious matters cannot be punished under the 1961 Act. Similarly, where an advocate who is debarred for professional misconduct can merrily carry on the practise in non-litigious matters on the ground that the 1961 Act is not applicable to the persons practising the profession of law in non litigious matters. Such an argument which defeats the object of the 1961 Act cannot be accepted.

...

For all the aforesaid reasons, we hold that in the facts of the present case, the RBI was not justified in granting permission to the foreign law firms to open liaison offices in India under Section 29 of the 1973 Act. We further hold that the expressions 'to practise the profession of law' in section 29 of the 1961 Act is wide enough to cover the persons practising in litigious matters as well as persons practising in non litigious matters and, therefore, to practise in non litigious matters in India, the respondent Nos. 12 to 14 were bound to follow the provisions contained in the 1961 Act. The petition is disposed of accordingly with no order as to costs."

(Emphasis Supplied)

17. Whereas PricewaterhouseCoopers in India and their various affiliates (collectively referred to as 'PWC') are engaged in the practise of the law by advising clients on FDI policy, exchange control regulations, corporate laws, competition law and industry sectoral regulations. Whereas PWC are engaged in the unauthorised practice of the profession of law by providing legal advice on transactions/ investments/ business models and capital markets transactions under the Indian regulatory framework & laws. They further advice on India regulatory laws, draft and review documentation from regulatory standpoint. Whereas PWC are involved in making representations before Government authorities and provide assistance in obtaining regulatory approvals/ clarifications/ dispensations from various authorities (including FIPB/ DIPP/RBI/ SEZs/ SEBI/ Central Govt. administrative ministries) and are thus involved in advising clients on the various laws and legislations. Whereas PWC are also involved in providing assistance in complying with Indian legislation. Whereas PWC are also engaged in rendering advice on various regulatory

investigations and are thus involved in the unauthorised practice of the profession of law. (Please see **Annexure 1**)

18. Whereas PWC are illegally engaged in the practise of the profession of law by engaging in tax advisory work. (Please see **Annexure 2**)

19. Whereas PWC are engaged, inter alia, in drafting factual and legal submissions for income tax appeals before the appellate authorities, preparing the case and representing clients before the appellate authorities, exploring and using alternative tax dispute resolution avenues, preparing advance ruling applications and representing clients before the Authority for Advance Rulings (AAR) for settling a tax position involving non-resident, drafting and presenting applications to the competent authority for MAP under tax treaties (DTAA), reviewing pending litigation and other uncertain tax positions, to comment on adequacy of defence, probability of success and prevention of recurrence, representation before appellate authorities including tax tribunal, assisting legal counsels in preparing or representing for appeals, writ petition and special leave petition before Indian Apex court (Supreme Court) and court subordinate to it (High Court). (Please see **Annexure 3**)

20. Whereas PWC are engaged in advising clients on various indirect taxes such as Customs duties, central excise, service tax and VAT (including works contract taxes and lease taxes), foreign trade policy, free trade agreements and anti-dumping duties. Whereas PWC are engaged in providing litigation support before adjudication and appellate authorities up to the Tribunal level and brief counsels for matters beyond the Tribunal in indirect tax matters. Whereas PWC are engaged in structuring of contracts and transactions to optimise indirect tax incidence, assist in contract negotiations, review contract documentation and formulate business models based on indirect tax laws. Whereas PWC are advising on various tax legislations and providing opinions on classification, valuation, applicability of taxes on transactions and admissibility to tax benefits and exemptions. Whereas PWC are giving legal opinions on indirect tax laws and whereas PWC are engaged in conducting detailed tax laws due diligence. Whereas PWC are making representations on tax laws before different government authorities. (Please see **Annexure 4**)

21. Whereas PWC are also involved in providing legal, contractual and regulatory services. Whereas PWC are involved in providing services relating to drafting of

contracts and advising clients based on interpretation of the various legislations. (Please see **Annexure 5**)

22. Whereas PWC are advising clients and rendering services to clients on corporate laws, environment laws, labour laws, Foreign Exchange Management Act, Technology laws, health and safety laws. (Please see **Annexure 6**) Whereas PWC are involved in advising clients on tax, regulatory legislations and engage in legal due diligence and other services in the areas of FDI Policy, exchange control regulations, corporate laws and other sectoral regulations. (**Annexure 7**)
23. Whereas PWC are also involved in review of transaction documents from a legal and regulatory perspective and are engaged in advising on regulatory approvals including industrial licence, FIPB, RBI, and providing legal advice on companies act, FDI Policy, review of contracts etc (Please see **Annexure 8**)
24. Where PWC are providing advice on policy and regulatory matters and review contracts and agreements and are involved in drafting collaboration agreements, review of agreements and legal due diligence (Please see **Annexure 9 and 10**). Whereas PWC are also involved in providing legal advice in M&A by reviewing a large number of legislations and regulations including stamp duty laws, corporate laws, exchange control regulations etc. (Please see **Annexure 11**)
25. Whereas in Tribunals and before authorities, KPMG appear on behalf of clients.
26. Whereas Advocates cannot engage in multi-disciplinary practices and are not engaged in practice of auditing and accounting. Whereas Advocates cannot engage in any other business or trade or profession as the profession requires complete devotion by an advocate to the profession.
27. Whereas the Hon'ble Supreme Court in the case of **Indian Council of Legal Aid and Advice v. Bar Council of India and another** (1995) 1 SCC 732 has held:

“The Bar Councils are rejoined with the duty to act as sentinels of professional conduct and must ensure that the dignity and purity of the profession are in no way undermined. Its job is to uphold the standards of professional conduct and etiquette. Thus every State Bar Council of India has

a public duty to perform, namely, to ensure that the monopoly of practise granted under the Act is not misused or abused by a person who is enrolled as an advocate. **The Bar Councils have been created at the State level as well as the Central level not only to protect the rights, interests and privileges of its members but also to protect the litigating public by ensuring that high and noble traditions are maintained so that the purity and dignity of the profession are not jeopardized.** It is generally believed that members of the legal profession have certain social obligations; e.g., to render 'pro bono publico' service to the poor and the under privileged. **Since the duty of a lawyer is to assist the court in the administration of justice the practise of law has a public utility flavour and, therefore, he must strictly and scrupulously abide by the Code of Conduct behaving the noble profession and must not indulge in any activity which may tend to lower the image of the profession in society. That is why the functions of the Bar Council include the laying down of standards of professional conduct and etiquette which advocates must follow to maintain the dignity and purity of the profession.**

... So far as the Bar Council of India is concerned, its functions are of a more general nature, e.g., to lay down standards of professional conduct and etiquette for advocates, to safeguard their rights, privileges and interests to supervise and control the working of the State Bar Council, to promote legal education, to recognise universities, to organise legal aid to the poor and to perform all other functions conferred by or under the Act and do everything that may be necessary to discharge the functions enumerated in Section 7. Besides the above it too is required to exercise discipline and control over the members of the profession."

(Emphasis Supplied)

28. Whereas the Hon'ble Supreme Court in the case of **(Dr.) Haniraj L. Chulani vs Bar Council of Maharashtra & Goa** (1996) 3 SCC 342 has held:

"The rules framed by the Bar Council of India especially relating to standards of professional conduct and etiquette clearly aim at securing high standards of competence in legal services and seek to strengthen professional relationships among its members and promote the welfare of the society as a

whole. Specific norms have been laid down in respect of conduct of the persons practising the profession vis-a-vis the public, the court, the client, the opposite lawyer and professional brethren. Lawyer's duty to train juniors and impart free legal aid to poor is part of the ethics. The code thus provides standards for identification and measurement of professional deviance. As noted earlier the Act besides highlighting the essential functions of Bar Council of India provides for enforcement of the same and sets up disciplinary authorities to chastise and, if necessary, punish members of the profession for misconduct. The punishment may include suspension from practice as well as removal of the name from the roll of advocates. Section 49(1) confers power on the Bar Council of India to make rules, inter alia, for discharging its functions under the Act. Section 49(1)(ag) when read with Section 24 of the Act confers wide powers on the Bar Council of India to indicate the class or category of persons who may be enrolled as advocates which power would include the power to refuse enrollment in certain circumstances. The obligation to maintain the dignity and purity of the profession and to punish ensuring members carries with it the power to regulate entry into the profession with a view to ensuring that only profession-oriented and service-oriented people join the Bar and those not so oriented are kept out. The role of an advocate is essentially different from the role of any other profession an advocate is said to belong to a noble profession. The Act itself envisages the State Bar Councils who are the elected peers of advocates themselves to lay down the standards for the professional conduct and etiquette. That would naturally bring in its wake the power to regulate entry to such a noble profession. It is said that law is a jealous mistress that calls for undivided loyalty and unflinching attention from her devotees. Dry drudgery of desks' dead wood is the essential requirement of an advocate aspiring to win laurels in the profession. The attack on the impugned rule on the ground of excessive delegation of legislative power will have to be examined in the light of scheme of the Act which has entrusted the power and the duty to elected representatives of the profession constituting the State Bar Councils to lay down the high standards of professional etiquette as expected of the advocates enrolled by it. It is pertinent to note that the Act has entrusted to the Bar Council of India, amongst others, the functions to promote legal education and to lay down standards of such education in consultation with the Universities in India

imparting such education and the State Bar Councils. The Bar Council of India is entrusted with the function to recognize Universities whose degree in law shall be a qualification for enrollments as an advocate and for that purpose to visit and inspect Universities or cause the State Bar Councils to visit and inspect Universities with such directions as it may give in this behalf. It conducts seminars and organizes talks on legal topics by eminent jurists and publishes journals and papers of legal interest. In this connection, it also exercises general supervision and control over the State Bar Councils. It is also entrusted with the task of promoting and supporting law reform. All these provisions as laid down by Section 7 of the Act leave no room for doubt that even prior to the enrollment as advocate the teaching of law and laying down of the curriculum for law courses are also the tasks entrusted to the Bar Council of India, which is the apex body of professionals monitoring these matters in conjunction with the State Bar Councils. Thus even at pre-entry stage of an advocate to the profession his equipments as a student of law and the requirement of basic legal education with which he should be armed before he can aspire to be enrolled as an advocate are also looked after by the Bar Council of India and the concerned State Bar Council which works under the general supervision and control of the apex body, namely, the Bar Council of India. Thus the Bar Council of India is cast with the duty to take all such steps as it considers necessary to filter students at the entry stage to the law course e.g. by providing an entrance test, as well as at the entry point to the profession, e.g. by providing an examination or a training course before enrollment as an advocate. The Act also deals with the topic of regulation of professional conduct of advocates from the entry point itself.

The concerned State Bar Councils have to monitor the role of advocates so long as they continue to practise law after initial entry. As the enrollment by the State Bar Council entitles an advocate after entry to the profession, to practise the noble profession of law and who becomes, by such enrollment, an officer of the court, the said entrant can be validly subjected by the concerned Bar Council to the strict requirements of the profession for enabling such an aspirant to effectively cater to the needs of the legal profession. The power and the duty entrusted to the State Bar Councils to monitor such entry, in the light of the nature of the profession to which such entry is given would themselves supply the necessary yardstick and

guidelines for the exercise of such power by the elected body of advocates constituting the concerned Bar Councils. The scheme of the Act thus lays down a complete code for regulating the legal education and professional equipments of an aspirant seeking entry to legal profession from the grassroot level where he is student of law till he equips himself with essential legal knowledge and seeks enrollment and even thereafter till he practices law and completes his professional career as advocate. Thus, from the pre-entry point to legal Profession till the exit point from the legal profession, the Bar Council of India and the State Bar Councils monitor the career of the legal practioner. It is the entire scheme of the Act when considered in the light of the nature of the legal profession to which such entry is given which has to be kept in view while considering the submission of learned senior counsel for the appellant that the power given to the State Bar Councils to regulate such entries by framing rules is a piece of excessive delegation of legislative power. It cannot be gainsaid that law is universally described as an honourable profession. An advocate is an officer of justice and friend of the court. A conduct, therefore, which is unworthy of him as an officer of justice cannot be justified by stating that he did it as the agent of his client. His status as an officer of justice does not mean that he is subordinate to the Judge. It only means that he is an integral part for the Administration of justice. Legal profession is monopolistic in character and this monopoly itself inheres certain high traditions which its members are expected to upkeep and uphold. Members of the profession claimed that they are the leaders of thought and society. The central function that the legal profession must perform is nothing less than the administration of justice.

...

It is no doubt true that under Article 19, sub-Article (1)(g) all citizens have a right to practise any profession, or to carry on any occupation, trade or business and any profession may include even plurality of professions. However, this is not an absolute right. It is subject to sub-Article (6) of Article 19 which lays down that nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause. It cannot be gainsaid that litigants are also members of general public and if in their interest any rule imposes a restriction on the entry to the legal

profession and if such restriction is found to be reasonable Article 19(1)(g) would not get stultified. It is true that the appellant as a citizen of India having obtained the qualification required for being enrolled as an advocate can legitimately aspire to be enrolled as an advocate but his aforesaid right is fettered by the impugned rule framed by the State Bar Council. We have to consider whether the said restriction imposed by the rule is in any way unreasonable. We have to keep in view the fact that the impugned rule restricts entry of a person who is otherwise qualified for being enrolled as an advocate if he is already carrying on any other profession. Question is whether such a person carrying on other profession can be validly told off the gates by the State Bar Council by resorting to the impugned rule. In our view looking to the nature of the legal profession to which we have made detailed reference earlier the State Bar Council would be justified in framing such a rule prohibiting the entry of a professional who insists on carrying on other profession simultaneously with the legal profession. As we have seen earlier legal profession requires full time attention and would not countenance an advocate riding two horses or more at a time. He has to be full time advocate or not at all. Learned senior counsel for the appellant submitted that, even though the appellant is a practising surgeon he undertaking, if given entry to the legal profession, not to practise medicine during the court hours. This is neither here nor there. It is obvious that even though medical profession also may be a dignified profession a person cannot insist that he will be a practising doctor as well as a practising advocate simultaneously. Such an insistence on his part itself would create an awkward situation not only for him but for his own clients as well as patients. It is easy to visualize that a practising surgeon like the appellant may be required to attend emergency operation, even beyond court hours either in the morning or in the evening. On the other hand the dictates of his legal profession may require him to study the cases for being argued the next day in the court. Under these circumstances his attention would be divided. We would naturally be in a dilemma as to whether to attend to his patient on the operation table in the evening or to attend to his legal profession and work for preparing cases for the next day and to take instructions from his clients for efficient conduct of the cases next day in the court. If he is an original side advocate he may be required to spend his evenings and even late nights for making witnesses ready for examination in the court next day. Under these circumstances as a

practising advocate if he gives attention to his clients in his chamber after court hours and if he is also required to attend an emergency operation at that very time, it would be very difficult for him to choose whether to leave his clients and go to attend his patient in the operation theatre or to refuse to attend to his patients. If he selects the first alternative his clients would clamour, his preparation as advocate would suffer and naturally it would reflect upon his performance in the court next day. If on the other hand he chooses to cater to the needs of his clients and his legal work, his patients may suffer and may in given contingency even stand to lose their lives without the aid of his expert hand as a surgeon. Thus he would be torn between two conflicting loyalties, loyalty to his clients on the one hand and loyalty to his patients on the other. In a way he will instead of having the best of both the worlds, have worst of both the worlds. Such a person aspiring to have simultaneous enrollment both as a lawyer and as a medical practitioner will thus be like 'trishanku' of yore who will neither be in heaven nor on earth. It is axiomatic that an advocates has to burn midnight oil for preparing his cases for being argued in the court next day. Advocate face examination every day when they appear in courts. It is not as if that after court hours advocate has not to put in hard work on his study table in his chamber with or without the presence of his clients who may be available for consultation. To put forward his best performance as an advocate he is required to give whole- hearted and full time attention to his profession. Any flinching from such unstinted attention to his legal profession would certainly have an impact on his professional ability and expertise. If he is permitted to simultaneously practise as a doctor then the requirement of his full time attention to the legal profession is bound to be adversely affected. Consequently however equally dignified may be the profession of a doctor he cannot simultaneously be permitted to practise law which is a full time occupation. It is for ensuring the full time attention of legal practitioners towards their profession and with a view to bringing out their best so that they can fulfil their role as an officer of the court and can give their best in the administration, of justice, that the impugned rule has been enacted by the State Bar Council. It, therefore, cannot be said that it is in any way arbitrary or that it imposes an unreasonable restriction on the new entrant to the profession who is told not to practise, simultaneously any other profession and if he does so to deny to him entry to the legal profession. It is true as

submitted by learned senior counsel for the appellant that the rule of Central Bar Council does not countenance an advocate simultaneously carrying on any business and it does not expressly frown upon any simultaneous profession. But these are general rules of professional conduct. So far as regulating enrollment, to the profession is concerned it is the task entrusted solely to the State Bar Council by the Legislature as seen earlier while considering the scheme of the Act. While carrying on that task if the entry to the profession is restricted by the State Bar Council by enacting the impugned rule for not allowing any other professional to enter the Bar. When he does not want to give up the other profession but wants to carry on the same simultaneously with legal practice, it cannot be said that the Bar Council has by enacting such a rule imposed any unreasonable restriction on the fundamental right of the prospective practitioner who wants to enter the legal profession.

Learned senior advocate for the appellant vehemently contended that such a rule is not found to have been framed by other State Bar Councils. In our view that would not make any difference. We are called upon to decide the question whether the impugned rule framed by the respondent-State Bar Council stands the test of Article 19(1)(9) or not. While deciding that question whether other State Bar Councils permit by their rules entry of other professional to the legal profession, would be an aspect which would not be strictly relevant. In our view the impugned rule does not impose any unreasonable restriction on the right of the professional carrying on any other avocation and insisting on continuing to carry on such profession, while it prohibits entry of such a person to the legal profession. *If the contention of the learned senior counsel for the appellant is countenanced and any person professing any other profession is permitted to join the legal profession having obtained the Degree of Law and having fulfilled the other requirements of Section 24, then even chartered accountants, engineers and architects would also legitimately say that during court hours they will practise law and they will simultaneously carry on their other profession beyond court hours. If such simultaneous practices of professionals who want to carry on more than one profession at a time are permitted, the unflinching devotion expected by the legal profession from its members is bound to be adversely affected.* If the peers being chosen representatives of the legal profession

constituting the State Bar Council, in their wisdom, had thought it fit not to permit such entries of dual practitioners to the legal profession it cannot be said that they have done anything unreasonable or have framed an arbitrary or unreasonable rule.”

(Emphasis Supplied)

29. Whereas the Hon'ble Supreme Court in the case of **Bar Council of Maharashtra v M V Dabholkar** (1976) 2 SCC 291 has held:

“...The rule of law cannot be built on the ruins of democracy, for where law ends tyranny begins. If such be the keynote thought for the very survival of our Republic, the integral bond between the lawyer and the public is unbreakable. And the vital role of the lawyer depends upon his probity and professional life-style. Be it remembered that the central function of the legal profession is to promote the administration of justice. ...”

(Emphasis Supplied)

30. Whereas the Hon'ble Supreme Court and the Hon'ble High Court of Bombay have held the practise of the profession of law includes litigious and non-litigious work. Whereas the practise of the profession of law includes appearance before courts/tribunals etc, giving legal advice and opinions, drafting of documents and agreements, pleadings etc. Whereas the Bar Council has the duty to protect the interest, privileges of its members and also to protect the interests of the general public / litigating public. Whereas the above work undertaken by PWC amounts to practising the profession of law.

31. Whereas as held by the Hon'ble Supreme Court, the practise of the profession of law is a noble profession and requires unflinching attention from her devotees. Whereas the Hon'ble Supreme Court has also upheld the constitutional validity of provisions that have restricted the practice of the profession of law only to one class (viz. advocates). Whereas the Hon'ble Supreme Court has held that there is public interest in ensuring that Advocates alone (and not professionals from other professions who simultaneously practise law) are entitled to practise the profession of law. Whereas the profession of law can only be practised by Advocates and there is a public utility involved in ensuring that only advocates practise the profession of law. The Advocates as members of the judicial system are a sentinel in the justice

administration. Whereas there is an unbreakable bond between the Advocates and the public and the primary function of the Advocates is to promote the administration of justice. Whereas if people who are not entitled to practise law are permitted to do so the entire edifice on which our democracy is built – Rule of Law – will crumble.

32. Whereas under Section 29 of the Act read with Sections 2 (1) (a), (k) , (n); 17 and 24 only Advocates can practise the profession of law. Whereas the work being undertaken by PWC amount to unauthorised practise of law.

33. Whereas Section 29 of the Act states:

29. Advocates to be the only recognised class of persons entitled to practise law – Subject to the provisions of this Act and any rules made thereunder, there shall, as from the appointed day, be only one class of persons entitled to practise the profession of law, namely, advocates.

34. Whereas as demonstrated from the evidence attached herewith PWC are engaged in both litigious and non-litigious practise of law. Whereas PWC are in violation of the Act by engaging in unauthorised practise of law.

35. Whereas the Hon'ble Supreme Court in the case of **Madras Bar Association v. Union of India** [Transferred Case (C) No. 150 / 2006, decided on 25.09.2014] held:

“Keeping in mind the fact, that in terms of Section 15 of the NTT Act, the NTT would hear appeals from the Income Tax Appellate Tribunal and the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) only on substantial questions of law, it is difficult for us to appreciate the propriety of representation, on behalf of a party to an appeal, through either Chartered Accountants or Company Secretaries, before the NTT. The determination at the hands of the NTT is shorn of factual disputes. It has to decide only substantial questions of law. In our understanding, Chartered Accountants and Company Secretaries would at best be specialists in understanding and explaining issues pertaining to accounts. These issues would, fall purely within the realm of facts. We find it difficult to accept the prayer made by the Company Secretaries to allow them, to represent a party to an appeal before the NTT. Even insofar as the Chartered

Accountants are concerned, we are constrained to hold that allowing them to appear on behalf of a party before the NTT, would be unacceptable in law."

36. Therefore, in the light of the decision of the Hon'ble Supreme Court, Chartered Accountants and Company Secretaries and other professionals are not entitled to practise law. Whereas the Chartered Accountants and Company Secretaries can at the best help in understanding issues pertaining to accounts and, therefore, they too cannot practise the profession of law.
37. Whereas the various activities undertaken by PWC tantamount to unauthorised practice of law. Whereas under Section 29 of the Act only advocates are entitled to practise the profession of law. Whereas the practise of the profession of law before the Courts, Tribunals and rendering legal advice and opinion is the exclusive domain of Advocates who have enrolled in the rolls of a State Bar Council.
38. Whereas under Rule 37, Chapter II of Part VI of the Bar Council of India Rules (hereinafter referred to as 'Rules') an advocate shall not permit his professional services or his name to be used in aid, or to make possible, the unauthorised practice of law by any agency. Whereas under Rule 49, Chapter II of Part VI of the Rules, an advocate cannot be a full-time salaried employee of any person, government, firm, corporation or concern so long as he continues to practise and shall upon taking up employment intimate the fact of taking up of the employment to the concerned State Bar Council.
39. Whereas **Rule 37**, Chapter II of Part VI of the Rules states:
37. An Advocate shall not permit his professional services or his name to be used in air, or to make possible, the unauthorised practice of law by any agency.
40. Whereas **Rule 49** Chapter II of Part VI of the Rules states:
49. An Advocate shall not be a full-time salaried employee of any person, government, firm, corporation or concern, so long as he continues to practise, and shall, on taking up any employment, intimate the fact to the Bar Council on whose roll his name appears, and shall thereupon cease to practise as an advocate so long as he continues in such employment.

41. Whereas under Rule 2 of Chapter II of Part VI of the Rules, an 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.
42. Whereas **Rule 2** Chapter II of Part VI of the Rules states:
2. An 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.
43. Whereas PWC are neither advocates nor a partnership among advocates. Whereas under the Act and the Rules only an Advocate can practise the profession of law. Whereas only Advocates can appear in Courts, Tribunals and PWC are engaged in appearing for clients before Tribunals and various authorities.
44. Where PWC through their global network of firms / organizations are rendering legal advice and are engaged in the practise of the profession of law in India. Whereas these global network of firms are providing legal services in India including on matters relating to employment, immigration, mergers and acquisitions, legal transaction documentation, due diligence, and other legal services etc. Whereas they are providing these services and evidence of the same is annexed herewith (Please see **Annexure 12**). The global network is monitored and assisted by the Global network leadership team. We understand that focusing on key areas such as strategy, brand, and risk and quality, the Network Leadership Team implement policies and initiatives to achieve a common and coordinated approach among individual firms where appropriate. (Please see **Annexure 13**)
45. The Bar Council does not have a limited role in the practise of the profession of law but has to cater to the greater public interest in meeting the demands of the noble profession and the regulating the profession which is integrally involved in administration of justice. Whereas the Bar Council has been set up to also protect the litigating public by ensuring that high and noble traditions of the legal profession are maintained and also make sure that the purity and dignity of the profession are not jeopardized. Whereas Advocates are involved in the duty of administration of justice and this element of public utility has to be safeguarded by this Council and also ensure the protection of welfare of the society as a whole.

46. Whereas it has been held in the case of **In Re Welch** 185 A.2d 458 (1962):

“We cannot over-emphasize the necessity of legal training in the proper drafting of legal documents and advice relating thereto. The absence of such training may result in legal instruments faulty in form and contents, and also lead to a failure of purpose, litigation and expense.”

(Emphasis Supplied)

47. Whereas it has been held in the case of **Lowell Bar Association v Loeb** 315 Mass. 176:

“The justification for excluding from the practice of law persons not admitted to the bar is to be found, not in the protection of the bar from competition, but in the protection of the public from being advised and represented in legal matters by incompetent and unreliable persons, over whom the judicial department could exercise little control. Matter of Shoe Manufacturers Protective Association, Inc., 295 Mass. 369, 372, 3 N.E.2d 746.”

(Emphasis Supplied)

48. Whereas the Bar Council has an interest in regulating the legal profession and maintaining the interest of the members and the general public. This Council has been given wide and extensive powers to regulate the legal profession. Whereas it is necessary to protect the general public who would be affected by unauthorised practice of law.

49. Whereas by engaging in the unauthorised practise of the profession PWC have acted in violation of Sections 29 of the Act and are, therefore, liable to be punished with 6 months imprisonment for unauthorised practise of the profession of law liable under Section 45 of the Act. We request and pray that immediate legal action be initiated against PWC and protect the interest of the legal fraternity and the society at large.

50. We request and pray that PWC and its affiliates are directed not to engage in the unauthorised practice of law and appropriate legal action is initiated against them.

Whereas the various affiliated parties of PWC (and persons responsible for their functions) are enlisted herein below. We request you to kindly initiate appropriate action and direct them to stop engaging in the unauthorised practice of law.

1. PricewaterhouseCoopers Pvt Ltd
Building 10, Tower C
DLF Cyber City
Gurgaon, Haryana 122002
India

2. Deepak Kapoor
Chairman & Territory Senior Partner
PricewaterhouseCoopers Pvt Ltd
Building 10, Tower C
DLF Cyber City
Gurgaon, Haryana 122002
India

3. Neil Wilson
PricewaterhouseCoopers Pvt Ltd
Building 10, Tower C
DLF Cyber City
Gurgaon, Haryana 122002
India

4. Michael Surface
PricewaterhouseCoopers Pvt Ltd
Building 10, Tower C
DLF Cyber City
Gurgaon, Haryana 122002
India

5. Ketan Dalal
Regional Managing Partner
PricewaterhouseCoopers Pvt Ltd
252 Veer Savarkar Marg,
Next to Mayor's Bungalow
Shivaji Park, Dadar
Mumbai, Maharashtra 400 028
India

6. Shyamal Mukherjee
PricewaterhouseCoopers Pvt Ltd
Building 10, Tower C
DLF Cyber City
Gurgaon, Haryana 122002
India

7. Satyavati Berera

PricewaterhouseCoopers Pvt Ltd
Building 10, Tower C
DLF Cyber City
Gurgaon, Haryana 122002
India

8. Rohit Bhasin
PricewaterhouseCoopers Pvt Ltd
Building 10, Tower C
DLF Cyber City
Gurgaon, Haryana 122002
India

9. Deepankar Sanwalka
PricewaterhouseCoopers Pvt Ltd
Building 10, Tower C
DLF Cyber City
Gurgaon, Haryana 122002
India

10. Akash Gupt
PricewaterhouseCoopers Pvt Ltd
Building 10, Tower C
DLF Cyber City
Gurgaon, Haryana 122002
India

11. Rahul Garg
PricewaterhouseCoopers Pvt Ltd
Building 10, Tower C
DLF Cyber City
Gurgaon, Haryana 122002
India

12. Pawan Kumar
PricewaterhouseCoopers Pvt Ltd
Building 10, Tower C
DLF Cyber City
Gurgaon, Haryana 122002
India

13. Vivek Mishra
PricewaterhouseCoopers Pvt Ltd
Building 10, Tower C
DLF Cyber City
Gurgaon, Haryana 122002
India

14. Harpreet Singh
PricewaterhouseCoopers Pvt Ltd
Building 10, Tower C
DLF Cyber City

Gurgaon, Haryana 122002
India

15. Vivek Mehra
PricewaterhouseCoopers Pvt Ltd
Building 10, Tower C
DLF Cyber City
Gurgaon, Haryana 122002
India
16. Deepak Gupta
PricewaterhouseCoopers Pvt Ltd
Building 10, Tower C
DLF Cyber City
Gurgaon, Haryana 122002
India
17. Dennis M Nally
Chairman
PricewaterhouseCoopers International Ltd
PricewaterhouseCoopers LLP
300 Madison Avenue
New York, New York 10017-6204
United States of America
18. Robert E Moritz
Chairman and Senior Partner
PricewaterhouseCoopers International Limited
300 Madison Avenue
New York, New York 10017-6204
United States of America
19. Ian Powell
PricewaterhouseCoopers International Limited & PricewaterhouseCoopers LLP
7 More London Riverside
London, SE1 2RT
United Kingdom
20. Norbert Winkeljohann
PricewaterhouseCoopers AG Wirtschaftsprüfungsgesellschaft &
PricewaterhouseCoopers International Limited
Lise-Meitner-Strasse 1
D-10589 Berlin
Germany
21. Silas S. S. Yang
19/F, Tower A
Manulife Financial Centre
223-231 Wai Yip Street, Kwun Tong, Kowloon
Hong Kong,
Hong Kong, SAR

22/F Prince's Building

10 Chater Road
Central
Hong Kong,
Hong Kong, SAR

21/F Edinburgh Tower, The Landmark
15 Queen's Road Central
Central
Hong Kong,
Hong Kong, SAR

22. PRICE WATERHOUSE & CO BANGALORE LLP

5th Floor, Tower D, The Millenia,
1 & 2 Murphy Road, Ulsoor
Bangalore
Karnataka-560008
INDIA

23. PRICE WATERHOUSE & CO CHARTERED ACCOUNTANTS LLP

Plot No. Y-14, Block EP, Sector V,
Salt Lake Electronic Complex, Bidhan Nagar
Kolkata
West Bengal-700091
INDIA

24. PRICE WATERHOUSE & CO LLP

SUCHETA BHAVAN, GATE NO. 2,
11-A, VISHNU DIGAMBER MARG
NEW DELHI
Delhi-110002
INDIA

25. PRICE WATERHOUSE CHARTERED ACCOUNTANTS LLP

SUCHETA BHAWAN,
11A VISHNU DIGAMBAR MARG
NEW DELHI
Delhi-110002
INDIA

26. PRICE WATERHOUSE COOPERS SERVICES PRIVATE LIMITED

Y 14 BLOCK EP SECTOR VSALT LAKE,
P S BIDHAN NAGAR
KOLKATA
West Bengal-700091
INDIA

27. PricewaterhouseCoopers India Coordination Company

3rd Floor, Chairman's Office, 252 Veer Savarkar Marg,
Shivaji Park, Dadar (West)
Mumbai
Maharashtra-400028
INDIA

28. PRICEWATERHOUSECOOPERS INDIA LLP
BUILDING 8, 7TH FLOOR,
TOWER - B, DLF CYBER CITY
GURGAON
Haryana-122002
INDIA
29. PricewaterhouseCoopers Service Delivery Center (Bangalore) Private Limited
Pine Valley, 4th Flr, Embassy Golf Links Business,
Park, Challaghatta Village, Varthur Hobli
Bangalore
Karnataka-560071
INDIA
30. PricewaterhouseCoopers Service Delivery Center (Kolkata) Private Limited
South City Pinnacle, 13th Floor, Plot No. X1-1,,
Block EP, Sector V, Salt Lake, Kolkata- 700091
Salt Lake
West Bengal-700091
INDIA
31. PricewaterhouseCoopers AIMS Support Services India Private Limited
PwC House, Plot No. 18/A,,
Guru Nanak Road, Station Road, Bandra West,
Mumbai
Maharashtra-400050
INDIA
32. PwC Strategy& (India) Private Limited
Swatantryaveer Savarkar Rashtriya Smarak, 252,
Veer Savarkar Marg, Shivaji Park, Dadar (W)
Mumbai
Maharashtra-400028
INDIA

PRAYER

We request and pray that PWC and its affiliates are directed not to engage in the unauthorised practice of law and appropriate legal action is initiated against them.

FOR THE SOCIETY OF INDIA LAW FIRMS

PLACE: DELHI
DATE: 18.06.2015

