**Public Consultation on behalf of the Bar Council**

**on new Legal Education Regulations for the Maldives**

**Introduction**

The Legal Profession Act of 2019 (LPA) established an independent Bar Council with statutory responsibility to maintain, and where necessary enhance quality and standards in the legal education sector.

Following a stakeholder consultation process in late 2019, new Minimum Standards for Qualifying Law Degrees have been introduced. These will form the basis of a modified undergraduate law curriculum[[1]](#footnote-2) to be delivered by all Maldivian university and college law schools. Minimum standards are also being developed for a range of other law qualifications.

The Bar Council has now commenced on a further stage of reform, which is to consider establishing, through regulation, an institutional recognition and monitoring scheme for law course providers, under section 7 of the LPA.

The purpose of this Consultation Paper is to obtain the views of a wide range of stakeholders as to the scope and structure of any such scheme that might be devised. This consultation seeks views on the general approach and principles to be adopted. A further round of consultation will take place on the details of any scheme, once draft regulations have been produced.

The Bar Council welcomes responses to this paper from any interested organisations and individuals, including legal practitioners, law teachers, graduates, current students/student associations and relevant government and community organisations.

**Please reply using the response form at the end of this paper. Responses must be submitted by the consultation deadline: COB 2 August 2021, if your views are to count.**

**1. Accreditation and quality assurance of higher education**

In order to understand whether there is a case for further oversight of law qualifications, we need first to explain the existing accreditation frameworks that operate across Maldivian higher education. Consultees who are already familiar with the Maldivian higher education accreditation processes may wish to skip this first section and start at Section 2, on page 4 following.

*1.1 An overview of the system*

Higher education standards are the primary responsibility of the Ministry of Higher Education and the Maldives Qualification Authority (MQA). The responsibilities of these organisations has recently been strengthened by the Higher Education and Training Act (No 7 of 2021) (HETA). This is the first higher education Act passed in the Maldives, and it is likely to play an important role in further higher education expansion and quality assurance/enhancement. The need for such legislation has long been recognised,[[2]](#footnote-3) and was particularly identified as a priority in the Government’s *Education Sector Plan* 2019-2023,[[3]](#footnote-4) which anticipates a near doubling of higher education enrolments between 2019 and 2028,[[4]](#footnote-5) a rate of increase that could significantly stress existing institutional infrastructure and teaching quality.

The MQA is the national agency responsible for maintaining the National Qualification Framework (MNQF), programme[[5]](#footnote-6) approval and accreditation, and qualification recognition for individuals. It has been in operation as the national qualification authority for higher education since 2010. HETA confirms it in this role and puts its powers on a proper statutory footing.

The Maldivian system follows recognised international practice in adopting four distinct recognition and accreditation processes.

**Institutional recognition:** is conducted by the Ministry (formerly Department) of Higher Education examining the institution’s infrastructure and resources, quality assurance and audit processes. Thereafter MQA resources have been primarily focused on institutional audit, programme approval and individual recognition (student) functions.

**Institutional audit:** this is conducted by the MQA as a periodic check on higher education providers’ internal quality assurance processes and procedures.

**Programme approval:** the MQA defines this as “an initial assessment by the competent authority, leading to the first stage of accreditation”. [[6]](#footnote-7) This step must be undertaken in respect of any new programme offered by a higher education provider in the Maldives. It is a one-time process. The HETA affirms that the MQA is the only body in the Maldives with *programme* approval and accreditation powers.

The objectives of Programme Approval are stated to be: “(i) to assess whether programmes comply with the minimum requirements set out by MQA, and (ii) to assess whether the programmes conform to national regulations.”[[7]](#footnote-8) Programme approval requires the HEI seeking approval to submit a detailed application for approval covering:[[8]](#footnote-9)

* PART A (i) Institutional Capacity and Management (ii) Instruction and Academic Staffing (iii) General Student Assessment Policies and Procedures (iv) Student Withdrawal
* PART B (v) Admission Requirements (vi) Programme Description

To obtain initial approval, the programme must then be assessed against best practice and academic standards by an independent evaluator appointed by the MQA. Approval, once granted, is not time-limited.

Approved programmes are then, in theory, subject to a requirement to undergo continuing (periodic) **programme accreditation**. Understandable resource constraints have meant that accreditation processes, historically, have not been particularly robust by international standards. Whereas programme accreditation in larger jurisdictions tends to involve a cyclical review of programmes by a system of panel evaluation, the MQA has limited itself to a paper-based process, heavily reliant on institutions reporting baseline programme information to them on a cohort basis. This gap is to some extent addressed by institutions undertaking their own internal programme review processes. The MQA is currently reviewing its approach to accreditation in the wake of the Higher Education and Training Act 2021 and will produce new guidelines in due course. HETA also gives the MQA powers to go into institutions and inspect their systems and quality assurance practices.

Lastly, the MQA also takes responsibility for **individual recognition**of both domestic and overseas qualifications. All institutions must submit information in respect of each entering and graduating cohort. This includes information on the admission qualifications of students, details of teacher and student attendance, and module completion. Individual students may not be graduated until this information has been approved by MQA. Failure to obtain approval could result in individual students, or potentially an entire cohort, not graduating. Recognition of foreign degrees, in contrast, essentially involves a check on whether the award was issued by a government recognized institution in the country of origin, and assessment of its equivalency in terms of the level and criteria set by the Maldives National Qualifications Framework (MNQF).

1.2 *How well are current QA systems working?*

The 2019-23 *Education Sector Plan* particularly identified a need to enhance quality assurance and accreditation processes across the sector. It highlighted three key areas for strategic reforms that are relevant to the educational responsibilities of the Bar Council:[[9]](#footnote-10)

* A need to strengthen universities and colleges internal auditing policies and procedures, including developing mechanisms to follow up on the findings of institutional audit reports
* A need to enhance programme accreditation policies and procedures, including making more accreditation documents publicly available, and developing mechanisms to follow up on the findings of the programme accreditation reports
* A need to strengthen the quality assurance role of the MQA, including improving the resources, facilities and skills of the MQA, revising the guidelines and criteria for external QA, and providing regular training for institutional and programme reviewers.

Notwithstanding these concerns, we have found that, while law course providers are at different points in the quality assurance journey, there is a significant baseline of activity that is consistent with good practice. Institutions have internal programme development guidelines; they undertake internal checks on assessment processes and standards; they undertake teaching evaluation, using both student evaluations and peer review processes, and have internal periodic audits consistent with MQA guidelines. There is also considerable commitment to working collaboratively with the BCM to ensure the quality of legal education.

This is important as there are some acknowledged limitations to MQA processes. The emphasis on individual recognition is, in international terms, rather unusual and also very resource-intensive aspect of its work, work which is commonly devolved to higher education institutions in other systems.[[10]](#footnote-11) The MQA’s (consequently) limited resources have restricted its ability to roll-out its cyclical accreditation processes. There has also been some lack of transparency. Institutions do not get to see a detailed report of all accreditation process, but only a summary of conditions and recommendations. This may be sufficient to assure minimum standards, but it does not particularly support institutions in the business of quality enhancement. As noted above, there is also a lack of public transparency, as these summaries are not currently available to the community. Some of these informational deficiencies could be addressed by BCM recognition.

**2. Implications for the recognition and accreditation of law courses in the Maldives**

*2.1 Current powers and processes*

The relationship between the BCM and MQA is defined by statute law. The legal profession is an occupation which requires licensing.[[11]](#footnote-12) The Bar Council is the statutory licensing body responsible. A key function of the Bar Council is to set and approve curriculum standards under ss.7 and 67 of the LPA. It also has powers to ‘accredit’ law course providers, to monitor the quality of teaching, and, if necessary, set examinations. Following consultations in 2019 with a range of stakeholders, the Bar Council approved a set of Minimum Standards for Qualifying Law Degrees in the Maldives. These Standards prescribe a range of learning outcomes and required knowledge (including model curricula) for admission to the profession. The Standards are currently being implemented by the local law schools, and are attached as an Annex to this paper. For the future, these Standards will constitute a required ‘core’ curriculum for all undergraduate law programmes that prepare students to be licensed as members of the Bar.

As noted, however, it is the MQA that has sole responsibility for the approval and accreditation of higher education programmes, including those in law.[[12]](#footnote-13) That will not change as a result of anything the BCM does. This division of responsibility around (i) the setting of minimum programme standards, and (ii) programme approval/accreditation effectively means that the current arrangements for regulating law programmes are essentially *co-regulatory* between the BCM and MQA. This is reflected in recently agreed procedures, whereby:

* The BCM must certify to the MQA that the law programme satisfies the required Minimum Standards, before
* The MQA undertakes its evaluation of the programme.

As a process, both BCM and MQA agree that this seems to work well. However, at present, it leaves the professional body (BCM) with no formal input into what the law schools are doing at the pre-approval, programme development stage,[[13]](#footnote-14) or control over aspects of programme quality, other than curriculum. Given the relatively ‘light touch’ approach to continuing MQA accreditation this might be considered insufficient, and inconsistent with the range of responsibilities given to the BCM by the Legal Profession Act.

*2.2 International comparisons*

In looking at international best practices, it is apparent that in other jurisdictions, even those with much more mature higher education systems than the Maldives, the professional licensing body normally has an independent role in either institutional recognition, or programme approval and accreditation, For example:

* In the USA the American Bar Association (ABA) is itself accredited as the national licensing body for law degrees. Though law degrees in a small number of states may be recognised by the State Bar, without ABA accreditation, ABA accreditation is regarded as the ‘gold standard’ by most employers
* In Australia, new law degrees must be approved by the Admission Board in the relevant State or Territory. Substantial changes to curriculum and course delivery must also be notified to and agreed by the local Admission Board
* In Malaysia, domestic and overseas law qualifications must be from an institution ‘recognised’ by the Malaysian Legal Profession Qualifying Board, and must meet certain minimum requirements regarding duration and programme delivery

In each of these jurisdictions professional accreditation is in addition to, or operates alongside, any devolved university or national qualification authority processes. Even in the United Kingdom, where universities have considerable autonomy and quality assurance systems are heavily devolved, law degree approval and accreditation is generally conducted by universities with professional representation and input into the approval and accreditation process.

Moreover, professional recognition, it can be argued, performs a materially different (risk-based) function from MQA approval and accreditation, since it offers a *specific* assurance that providers have the capacity and capability to meet the professional requirements for the first stage of professional training. This is different from the MQA’s primary function which is to assure that academic programmes are consistent with the academic requirements of the MNQF and related academic standards. In sum, professional recognition has benefits for a wide range of stakeholders, over and above the benefits of MQA approval (**Table 1**).

**Table 1: Key stakeholders who benefit from recognition and accreditation of legal education programmes**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Community | Course providers | Students | Profession | Government |
| The community is assured that only appropriately trained and accredited law practitioners are able to practise. This enhances confidence for the public. | Providers are supported in offering high quality legal education to their students. Accreditation should also help providers identify their existing strengths and areas for improvement in delivery as preparation for professional practice. | Students are assured that they (and their providers) are meeting the required standards that will allow them to be licensed to practice. | The profession is supported in its mission to maintain its reputation as a competent, adequately regulated and trustworthy provider of legal services. | Government is confident providers meet the required educational standards and that practitioners are licensed in line with the LPA.  |

Consequently, there seems to be little basis, in terms of established international practices, for arguing that some form of dual oversight *of itself* imposes an unfair regulatory burden on course providers.

*2.3 The options for the Maldives*

Given the statutory framework in the Maldives, professional programme approval is not an option for the BCM. However, some form of **institutional recognition process** of ‘providers’ - the faculties, departments or colleges offering law programmes - is anticipated by the LPA, and not inconsistent with the MQA’s authority under HETA.

How extensive should any BCM process be? In terms of good regulatory practice, regulation needs generally to be justified as both necessary and proportionate. As we have seen, professional regulation of legal education can be justified as necessary as a quality control mechanism that protects the range of stakeholders identified in Table 1, above. The argument that *some* regulation is necessary for these functions, of course, does not make *any and all* regulation justified. The regulator (the BCM) must be satisfied that its regulatory response is proportionate to the risks to these stakeholder interests.

Consequently, our first questions thus address what you think of the current system and whether the BCM should (or indeed must) under its regulatory obligations create an institutional recognition scheme:

**Question 1: (a) What is your personal view of the quality of Maldivian legal education currently? (b) Do you think that the current system of quality assurance is adequate to maintain or enhance the quality of Maldivian legal education?**

**Question 2: The focus of BCM regulation to date has been on the ‘qualifying’ law degree (LLB or BSL). Are there other legal education courses that you think the BCM should be concerned about in terms of any risks they create/do not adequately mitigate for law firms, or for users of legal services?**

**Question 3: Do you think, in the context of both its LPA obligations, and international best practices, the Bar Council should have an independent role in recognising existing, and any new law course providers? Please give reasons for your answer.**

We now move on to consider, if the BCM does create an institutional recognition process, what form it should take. Here there are at least three options.

**(A)** **Shared responsibility with the MQA:** The BCM could seek to enter into an agreement with the MQA that gives it some larger role in MQA programme approval and accreditation. Under this arrangement programme approval could also be used to ‘badge’ course providers as institutionally recognised by the BCM. The MQA has indicated some openness to discussing greater professional involvement in its processes, but there has been no substantive discussion as yet of what this might look like. Like all options, it has both strengths and limitations (below). At this stage, given the recency of HETA, and the fact that the MQA is changing its procedures, it is difficult to predict how timely or feasible this option is, and what it might involve.

|  |  |
| --- | --- |
| Model (A) Strengths | Model (A) Limitations |
| * Offers some increase in professional oversight relative to existing system
* Efficient use of BCM & MQA resources
* Limits regulatory cost/compliance burden on course providers
 | * Uncertain timeframe for implementation (likely contingent on MQA planning and resources)
* Limits the BCM’s autonomy to regulate legal education
* Will processes be sufficiently rigorous to assure *professional* standards?
 |

**(B) Independent BCM Recognition ‘on the papers’:** Rather like the existing MQA approval process, the BCM could implement a paper-based recognition scheme for law course providers. Recognition would thus require course providers to make an application to the BCM. Applications for recognition should be standardised. In other words, every provider would be asked to provide the same information and would be assessed against published criteria. Normally such criteria focus on: courses and curricula; teaching and assessment strategy; staffing levels; technology and library resources; examination protocols, and institutional quality assurance mechanisms.

This approach could enable the BCM to focus specifically on the ways in which qualifications develop professional competences and preparation for the intended Bar Examination. It could pitch standards somewhat above the MQA framework minima, or help build a more enhancement-based system that encourages course providers to build and take ownership of standards, again potentially above the minima.

Inevitably such processes impose a cost burden on both the regulator and the course provider. Where adequate institutional quality assurance mechanisms are in place, the additional *information* costs to course providers should be low, as most of the information being sought by the regulator should already be available, because it forms part of institutional academic audit and quality assurance processes. Where, as in the Maldives, these internal systems are at a relatively early stage of development, then there is a risk that there will be additional information costs to providers.

Who carries the *process* costs is a separate question. The regulator will incur a range of expenses in administering the scheme, both in respect of its general administration, and in the work and time of the ‘evaluators’ who undertake the institutional audit on their behalf. There may also be training costs in building a cohort of evaluators who have the necessary skills to undertake effective academic audit.[[14]](#footnote-15) In most developed systems, the cost of recognition/accreditation is normally borne by the institution seeking it. As presently drafted, however, the LPA does not seem to permit the BCM to recover costs of recognition or monitoring from course providers.

These variables are reflected in the strengths and limitations of Model (B):

|  |  |
| --- | --- |
| Model (B) Strengths | Model (B) Limitations |
| * Offers some increase in professional oversight relative to Model (A)
* Gives the BCM greater autonomy to regulate legal education
* Timeframe for implementation will be more under BCM control
 | * Regulatory cost/compliance burden on course providers greater than Model (A) but less than Model (C)
* Creates additional costs of regulation for BCM. Who pays?
* Significant implementation risks if accreditors are not adequately trained, or processes not adequately resourced
 |

**(C) Independent BCM Recognition – site assessment:**

This third option is simply a variant of Model B. It requires all the elements of a paper-based recognition process, but supplements this with a further element of ‘site assessment’, ie an expectation that the evaluator/s visit the institution, meet with management and teachers and undertake some inspection of the physical resources available.

This model has been adopted to varying degrees in many established systems. In the US, India and Australia (for example), it is a specific requirement of professional programme accreditation, with the US (ABA) model adopting a particularly rigorous approach. In developed systems like the UK and Australia, the process today tends to be limited to a single day visit, and is more focused on meeting staff and discussing programme design and delivery than on inspecting physical premises and resources. Even in smaller jurisdictions, site visits are often a feature of institution-led faculty review.

On the other hand, there may be a question whether site visits add sufficient value to the process to justify the additional cost and time commitments, particularly if an intensive multi-day visit is to be required. Ensuring evaluators are properly trained in the conduct and evaluation of site visits is also important before the regulator adopts this methodology.

|  |  |
| --- | --- |
| Model (C) Strengths | Model (C) Limitations |
| * Offers some increase in professional oversight relative to Models (A) & (B)
* Gives the BCM significant autonomy to regulate legal education
* Timeframe for implementation will (like Model (B)) be more under BCM control
 | * Likely creates higher costs of regulation for BCM than Model (B). Who pays?
* Significant implementation risks if accreditors are not adequately trained, or processes not adequately resourced
* Regulatory cost/compliance burden on course providers greater than Model (A) or Model (B)
 |

Some of the cost of compliance for any recognition scheme using Model (B) or (C) could be mitigated by controlling the frequency of authorisation events. For example, if recognition is a one-off event, then the cost over the lifetime of a course (or faculty) is obviously far less than if re-authorisation is required (eg) every five or seven years. We come back to this question in section 3, following.

**Question 4: If the BCM was to develop a recognition scheme would your preference (in principle) be for Model (A),(B) or (C), above? Why? If you would prefer another alternative, please state what that is.**

**Question 5: In principle, who do you think should carry the cost of recognition: (i) the university or college seeking recognition? (ii) students seeking admission to practice (through an initial licensing fee)? (iii) the legal profession as a whole (as part of a continuing licensing fee)? (iv) Another preferred option (please specify)?**

Finally in this section, we would be grateful if you could indicate, using **Table 3**, in the response form below, the relative weight or importance that should be attached to various information in any recognition process.

**Question 6:**  **How important do you think each of the factors in Table 3 should be in evaluating, for institutional recognition purposes, the quality of legal education in the Maldives?**

**3. Ongoing recognition and monitoring**

The extent to which the BCM should engage in continuing recognition and monitoring activities is an open question for this consultation. International standards, based on the principles of the ISO 31000:2009 Risk Management Standard,[[15]](#footnote-16) suggest that an objective, consistent and risk-based approach to accreditation requires three elements of continuing oversight:

1. Cyclical re-authorisation

2. Periodic risk assessment

3. Ongoing monitoring

However, in practice, these elements are not always to be found in higher and professional education systems, or at least not always as separate components.

*3.1 Cyclical re-authorisation*

As noted above, responsibility for cyclical programme re-accreditation rests with the MQA, Under HETA, it is proposed that the accreditation cycle be set at three years. This is a short cycle by international standards, with conventional practice generally setting the accreditation period at five years. A reduction to three years obviously increases the regulatory burden on both course providers and the MQA, and this is a factor that needs to be taken into consideration in setting any additional BCM requirements.

The LPA is silent on whether any BCM institutional recognition should be open-ended or time limited. To that extent it does not appear to limit the Bar Council’s discretion either way. The decision whether or not recognition should be time-limited is a preference that, rationally, also depends on any decisions made about the nature and extent of ongoing monitoring requirements. The more thorough and reliable ongoing monitoring is, the more legitimate it may be for recognition to be unlimited. Conversely, if there are few ongoing quality checks, the more desirable it may be for providers to be subject to a cyclical re-authorisation of recognition.

*3.2 Periodic risk assessment: a separate consideration or part of continuing monitoring?*

Some advanced professional accreditation schemes have adopted a separate process of periodic risk assessment of providers. The function of periodic risk assessment is to determine whether a course provider should be placed in (eg) a high- or low-risk band for continuing accreditation purposes. Risk-banding in such models is evidence-based, that is, the banding decision is made on the basis of measurable, systemic risk factors such as:

* the institution’s history of compliance with required standards;
* whether accreditation conditions have been imposed on the provider and/or any programme it delivers;[[16]](#footnote-17)
* whether there has been a history of notifiable events[[17]](#footnote-18) to the regulator
* the level of substantiated student complaints against a programme/provider

These risk bands are then used to determine the intensity of continuing monitoring and review processes, so that an institution in the high-risk band is subject to significantly greater oversight than a low-risk provider.

In practice, however, relatively few higher education systems formally risk-assess provision in this way. While we welcome views on the merits of this approach, for a small jurisdiction like the Maldives, with relatively few providers, risk-banding likely adds unnecessary cost and complexity for the regulator.

**Question 7: In your view, is there a case for introducing periodic risk assessment and risk-banding to legal education regulation in the Maldives?**

*3.3 Ongoing monitoring*

A further design variable is the extent of ongoing monitoring of providers. In most mature quality assurance and accreditation systems, there is an expectation that course providers undertake their own, internal, monitoring. This normally comprises obligations to submit annual programme reports, and to undertake a periodic audit or internal review of programmes, and sometimes departments.

Our information to date suggests that such internal mechanisms are in place, but variable in their intensity in the Maldives. There is thus a legitimate question whether the BCM should step-in and require providers to undergo some external monitoring, in the absence of those normal internal quality processes.

For professional purposes ongoing monitoring might involve one or both of:

**(i) An annual reporting requirement**

Annual reporting requirements are a common feature where the profession has direct oversight of a professional training course (a Bar Examination or Professional Legal Training Course) , it is less common in respect of academic law programmes which are already subject to internal, university or college, oversight. Nonetheless, such reporting requirements do exist, and may take a number of forms, with some jurisdictions specifying in great detail the structure of reports and the range of information required,[[18]](#footnote-19) and others leaving it substantially to the law schools to determine the form and structure of reports.[[19]](#footnote-20) From a risk-based perspective, the regulatory value of at least some of the information required by these exercises is questionable.

A more distinctive approach is adopted by the New Zealand Council of Legal Education.[[20]](#footnote-21) The Council appoints an external ‘moderator’ (an established academic from one of the country’s six recognised law schools) for each of the six required ‘professional’ subjects in the LLB (Contract, Torts, Criminal Law, Property Law, Public Law and Legal Ethics). The moderators’ functions are threefold: (a) to ensure that the examination papers in the required subjects at each law school are compliant with the curriculum requirements for that subject; (b) to ensure that the standard of examination are comparable at each law school and (c) to report to the Council on the standards, the moderation process, and any administrative or other problems arising with the assessment process at any institution during the reporting period.

**(ii) An obligation to report notifiable events**

The reality is that while annual reporting requirements may provide some relevant and useful information to regulators, particularly if they disclose statistical data that may enable a regulator to examine trends in, eg, application numbers, entry qualifications and assessment, they may otherwise be of limited value from the perspective of risk-based regulation. Annual reports for most institutions in most years are a lengthy way of saying “nothing to see here”. By definition, they constitute ‘after-the-event’ reporting which is not always appropriate where regulators need ‘before-the-event’ or ‘just-in-time’ notification of risk events. A more risk-based and targeted approach therefore is for a regulator to require providers to alert them of the occurrence of a ‘notifiable event’. Notifiable events may include events such as:

(a) the intention to develop a programme governed by relevant professional standards and requirements

(b) a proposal to make a major curriculum change to a regulated programme

(c) a proposal to discontinue teaching a regulated programme

(d) anticipated changes in teaching mode of a regulated programme (eg from conventional face-to-face to online delivery, or the introduction of block teaching)

(e) breaches of examination security or other risks to the integrity of assessment

(f) findings of plagiarism or cheating against individual students

(g) significant increase in the number of students admitted to the programme

(h) significant changes in staffing or staff-student ratio

(i) Persistently poor teaching evaluations[[21]](#footnote-22)

(j) proposed budgetary changes which could impact on teaching standards.

Notifiable event reporting can be required in addition to an annual reporting requirement, or it may operate as a substitute for generic annual reporting.

**Question 8: In your view, should recognised providers submit an annual report to the BCM?**

**Question 9: If your answer to Question 8 is ‘yes’, what key information do you think should be reported?**

**Question 10: Do you think recognised providers should be under an obligation to report ‘notifiable events’ to the BCM? If so, what critical events should be reported?**

*3.4 Summary of regulatory options*

In conclusion, taking the discussion in sections 3.1-3.3 together, proposed regulatory options could thus comprise any of the following combinations (note that continuing MQA accreditation is non-optional; it is a requirement of HETA):

**(i) Unlimited recognition + continuing (MQA) programme accreditation**

This is likely the minimum level of regulation permissible under the LPA. It assumes providers will undergo a single recognition process, which remains valid unless and until it is revoked either by the provider discontinuing its regulated programmes, or as a consequence of a significant breach of the terms on which recognition is granted. MQA cyclical accreditation is then the only continuing check on quality (perhaps with some BCM input to the process).

**(ii) Unlimited recognition + continuing (MQA) programme accreditation + monitoring**

This option includes the same elements as (i) but adds continuing BCM monitoring, which may include an annual reporting requirement and/or notifiable event reporting.

**(iii) Unlimited recognition + continuing (MQA) programme accreditation + periodic risk assessment + monitoring**

This is more burdensome than options (i), (ii) and (iv). It is suggested that a strong risk-based justification would be needed to support this option.

**(iv) Time limited recognition + continuing (MQA) programme accreditation**

This option is rather more burdensome than (i), as it requires the BCM to develop a cyclical recognition process. This could possibly be synchronised with the MQA three-year accreditation cycle, though in most jurisdictions an unlimited or longer recognition/re-accreditation period of five or seven years is the norm. The longer period has some benefit, since it is more than the normal programme cycle (of 3-4 years), and thus gives any mid-cycle programme changes time to settle-in and be properly evaluated before periodic re-authorisation.

**(v) Time limited recognition + continuing (MQA) programme accreditation + monitoring**

This option is potentially more burdensome than all other options, except (vi). The addition of a monitoring requirement does potentially strengthen the information base available to the BCM in making its cyclical re-recognition decisions.

**(vi) Time limited recognition + continuing (MQA) programme accreditation + periodic risk assessment + monitoring**

This is simply the most burdensome of the options identified.

**Question 11: Of the six regulatory options identified in section 3.4, which do you think should be adopted by the BCM? Please give reasons; if you can identify any specific risks that you think your preference addresses that will be very helpful.**

*3.5 Monitoring of Teaching Quality*

Section 7 LPA specifically gives the BCM responsibility for ongoing ‘monitoring of teaching quality’. This is quite an open-ended responsibility. While some professional accreditation schemes still require direct observation and evaluation of teaching as an aspect of ongoing monitoring, this has been dropped as a routine or **normal requirement** from most mature quality assurance schemes. There are a number of reasons for this:

* It is expensive to do
* It can only provide a snapshot of teaching, and so it is not very reliable
* It requires the setting of clear assessment criteria, otherwise assessments may be significantly inconsistent between evaluators and across institutions
* It requires evaluators with both teaching skills and teaching evaluation expertise, otherwise judgments can be highly subjective
* It can be open to ‘gaming’ by institutions unless the whole process is conducted by surprise visit, however surprise can also be problematic, as it means teaching is taken out of the contextual setting and information provided by a more formalised site visit

There are two alternatives:

**(i) Teaching quality monitored by proxy data**

In many systems teaching quality is not assessed by direct observation but through a range of proxy measurements, notably:

* Teaching evaluation data (student evaluations and/or formal peer review, if conducted)
* Student withdrawal, progression and completion statistics
* Assessment outcomes
* Student complaints data

**(ii) Teaching quality assessment as a remedial measure**

Where significant quality concerns have been notified to the BCM by other means (eg annual reporting, complaints or notifiable events), s.7 could be used to justify direct monitoring of teaching quality as a specific, remedial, process, or to justify de-recognition of a provider.

**Question 12: to what extent, if at all, should the BCM engage in direct, observational assessment of teaching as either (i) a normal requirement, or (ii) a remedial feature of monitoring arrangements? In your view, would it be adequate for the BCM to monitor teaching quality by reference to (iii) proxy data?**

**4. Treatment of Overseas Law Degrees**

The BCM’s Minimum Standards for Qualifying Law Degrees were introduced for both domestic students, and with the express intention that they would form the “basis” for the admission of overseas-educated graduates in law and/or Sharia.[[22]](#footnote-23)

While local graduates constitute a majority of those seeking entry to the profession, a minority of applicants (about 40 in 2020) are graduates from overseas universities. A significant proportion study the University of London’s External LLB, either locally or in other jurisdictions. Others study abroad: Malaysia, the United Kingdom, India, Australia, Egypt, and Sri Lanka are among the more common destinations. This diversity enriches recruitment to the Maldivian profession, but – more problematically - also introduces inconsistency in the range of knowledge that applicants possess. The Minimum Standards are intended to reflect the evolution of the modern Maldivian legal system into an increasingly mixed Islamic-Common Law[[23]](#footnote-24) system; they therefore require students to demonstrate a breadth of legal knowledge that is relatively unusual, and one that means most overseas graduates have a ‘knowledge gap’ relative to locally-educated graduates. This gap is demonstrated in **Table 2** with reference to the London External LLB and one ‘sample’ curriculum from each of five relevant common law or mixed legal systems.

**Table 2: BCM Minimum Standards mapped against sample overseas qualifications (LLB)**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **BCM prescribed knowledge areas** | **London External LLB** | **IIUM,****Malaysia[[24]](#footnote-25)** | **Jindal****Global, India** | **QUT,****Australia** | **Uni. Colombo,****Sri Lanka** | **Uni. Leicester, UK** |
| Contract | **✓** | **✓** | **✓** | **✓** | **✓** | **✓** |
| Constitutional law | **✓** | **✓** | **✓** | **✓** | **✓** | **✓** |
| Company law | **✓\*** | **✓** | **✓** | **✓** | **✓\*** | **✓\*** |
| Criminal law | **✓** | **✓** | **✓** | **✓** | **✓** | **✓** |
| Islamic crim law |  | **✓\*** |  |  |  |  |
| Islamic fam law &inheritance |  | **✓** |  |  |  |  |
| Intro to jurisprudence | **✓** | **✓\*** | **✓** | **✓\*** | **✓** | **✓\*** |
| Lawyers ethics |  | **✓** | **✓** | **✓** |  |  |
| Principles Islam jurisp | **#\*** | **✓** |  |  |  |  |
| Property law  | **✓\*\*** | **✓\*\*** | **#** | **✓\*\*** | **✓\*\*** | **✓\*\*** |
| Torts | **✓** | **✓** | **✓** | **✓** | **+** | **✓** |
| Maldives legal system(half-subject) |  |  |  |  |  |  |
| Common Law LMR(half-subject) | **✓** | **✓** | **✓** | **✓** | **✓** | **✓** |
| **Total ‘exemptions’ /12** | **7.5** | **11.5** | **7.5** | **8.5** | **6.5/7.5** | **7.5** |

**Key:**

\*Indicates an elective subject that would have to be taken

\*\* BCM Property Law would require (at minimum) students to complete both Real Property (Land) and Equity &Trusts subjects at these institutions

# Some relevant content is available in the sample programme, but not sufficient to be equivalent to the Minimum Standards

+ As the private law of Sri Lanka is significantly Romano-Dutch law, it may be debatable whether the local Delict subject sufficiently equates to the BCM knowledge area ‘tort’, however Delict does appear to be accepted as equivalent to tort for admission purposes under the uniform principles governing admission in Australia.

From Table 2, it can be seen that most graduates of Common Law degrees would likely need to make up a shortfall of at least 4.5 subjects. This could be more if Maldivian prescribed knowledge areas that are optional in the local law degree have not been studied. Students with pure Sharia degrees are likely to face a larger knowledge gap, perhaps equivalent to as much as 8 subjects. By contrast students who have studied Sharia and law overseas (eg Malaysia) may have little or no gap to close. It is assumed for the purposes of this consultation that the gap could be closed by studying the required subjects at a recognised Maldivian course provider, or possibly via a dedicated ‘bridging course’. Nonetheless, three questions of principle arise from this starting point.

**Question 13: Are there any of the Maldivian prescribed knowledge areas which, in your view, any overseas graduate should be wholly exempt from studying? If so, why?**

**Question 14: Are there any of the Maldivian prescribed knowledge areas which an overseas graduate should be obliged to take, even if they have studied a substantially equivalent subject overseas? Examples might include Maldivian Legal System (for which there is, arguably, no precise equivalent) or Constitutional Law (eg, in Australia all overseas graduates are expected to pick-up Federal and State Constitutional Law because of the distinctive characteristics of the Australian Constitution). Please indicate why you think equivalent subject/s should not ‘count’.**

**Question 15: LPA s.30(a)2 requires legal study at ‘first degree level’ [ie bachelors degree or equivalent]; s.30(b) also permits the BCM to establish ‘additional criteria’ for admission. In your view, provided a graduate has an appropriate first degree, should the BCM permit graduates to count additional relevant subjects studied at higher than first degree level as part of their required prescribed knowledge? For example: (i) an applicant has an LLB from Sri Lanka, but did not study Company Law. She subsequently completes an LLM from an Australian university where she studied Company Law – should her LLM Company Law subject (if substantially equivalent) ‘count’? (ii) an applicant studied for an LLB in the United Kingdom, which had no undergraduate course in Legal Ethics. He subsequently completed the (UK) Legal Practice Course (LPC) for solicitors (PGDip Legal Practice) but has not fully qualified as a UK solicitor. Should the Legal Ethics studied as part of the LPC ‘count’ (assuming it is substantially equivalent) towards his Maldivian prescribed knowledge requirements?**

This is the last question. Thank you for participating in this Consultation, and for your assistance in helping the BCM and law course providers to maintain and develop the quality of legal education in the Maldives. Please submit your responses using the form at Annex 2, below.

Annex I: Copy of Minimum Standards for QLDs

Annex 2

**RESPONSE FORM**

**Please use this form to respond to the questions identified in the Bar Council’s Consultation on Legal Education Regulation. When completed this form should be returned by the deadline to** **applications@maldivesbarcouncil.org**.

**Responses must be submitted by the consultation deadline: 11:00pm on 2nd August 2021, if your views are to count.**

**1. About you**

You do not have to give us any personal details,but we would like to know (please complete either (a) or (b)):

(a) If you are responding on behalf of an organisation, is your organisation (select one only)

[ ] A law firm

[ ]  A university or college faculty/department

[ ]  A student organisation

[ ]  Other business

[ ]  Government department

[ ]  Community organisation

[ ]  Other organisation (please specify)……………………………………………………………..

(b) If you are responding on your own behalf, are you (select one only)

[ ]  A practising lawyer

[ ]  A law graduate (non-practising)

[ ]  A law student studying in the Maldives

[ ]  A Maldivian law student studying overseas

[ ]  A law teacher

[ ]  A judge

[ ]  Other occupation/profession (please specify)………………………………………….

**2. Consultation questions**

Please answer as many of the 15 questions as you feel able. It is not necessary to answer every question for your responses to be considered as part of this consultation.

**Question 1: (a) What is your personal view of the quality of Maldivian legal education currently? (b) Do you think that the current system of quality assurance is adequate to maintain or enhance the quality of Maldivian legal education?**

**Question 2: The focus of BCM regulation to date has been on the ‘qualifying’ law degree (LLB or BSL). Are there other legal education courses that you think the BCM should be concerned about in terms of any risks they create/do not adequately mitigate for law firms, or for users of legal services?**

**Question 3: Do you think, in the context of both its LPA obligations, and international best practices, the Bar Council should have an independent role in recognising existing, and any new law course providers? Please give reasons for your answer.**

**Question 4: If the BCM was to develop a recognition scheme would your preference (in principle) be for Model (A),(B) or (C), (section 2.3) above? Why? If you would prefer another alternative, please state what that is.**

**Question 5: In principle, who do you think should carry the cost of recognition: (i) the university or college seeking recognition? (ii) students seeking admission to practice (through an initial licensing fee)? (iii) the legal profession as a whole (as part of a continuing licensing fee)? (iv) Another preferred option (please specify)?**

**Question 6:**  **How important do you think each of the factors in Table 3 should be in evaluating, for institutional recognition purposes, the quality of legal education in the Maldives? Please rate each item.**

Table 3: Importance of factors in evaluating the quality of legal education

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|  | Not at all  |  | Neu-tral |  | Very | Don’t know |
| Institutional goals/objectives of the law school | **1** | **2** | **3** | **4** | **5** | **0** |
| Institutional teaching strategy | **1** | **2** | **3** | **4** | **5** | **0** |
| Institutional research strategy | **1** | **2** | **3** | **4** | **5** | **0** |
| Connection between teaching and research | **1** | **2** | **3** | **4** | **5** | **0** |
| Quality of management team | **1** | **2** | **3** | **4** | **5** | **0** |
| Internal quality assurance systems | **1** | **2** | **3** | **4** | **5** | **0** |
| Academic qualifications of teachers | **1** | **2** | **3** | **4** | **5** | **0** |
| Teaching qualifications of teachers | **1** | **2** | **3** | **4** | **5** | **0** |
| Teachers’ experience of legal practice | **1** | **2** | **3** | **4** | **5** | **0** |
| Research publications by academic staff | **1** | **2** | **3** | **4** | **5** | **0** |
| Proportion of full-time teachers delivering courses | **1** | **2** | **3** | **4** | **5** | **0** |
| Arrangements for student evaluation of teachers | **1** | **2** | **3** | **4** | **5** | **0** |
| Range of teaching approaches adopted | **1** | **2** | **3** | **4** | **5** | **0** |
| Computing and IT resources for students | **1** | **2** | **3** | **4** | **5** | **0** |
| Quality of teaching spaces | **1** | **2** | **3** | **4** | **5** | **0** |
| Range of library resources (including online) | **1** | **2** | **3** | **4** | **5** | **0** |
| Curriculum/syllabus content | **1** | **2** | **3** | **4** | **5** | **0** |
| Development of students’ practical skills | **1** | **2** | **3** | **4** | **5** | **0** |
| Assessment methods adopted | **1** | **2** | **3** | **4** | **5** | **0** |
| Feedback policy on assessments | **1** | **2** | **3** | **4** | **5** | **0** |
| Rigour of grading practices | **1** | **2** | **3** | **4** | **5** | **0** |
| Academic and personal support for students | **1** | **2** | **3** | **4** | **5** | **0** |

**Question 7: In your view, is there a case for introducing periodic risk assessment and risk-banding to legal education regulation in the Maldives?**

**Question 8: In your view, should recognised providers submit an annual report to the BCM?**

**Question 9: If your answer to Question 8 is ‘yes’, what key information do you think should be reported?**

**Question 10: Do you think recognised providers should be under an obligation to report ‘notifiable events’ to the BCM? If so, what critical events should be reported?**

**Question 11: Of the six regulatory options identified in section 3.4, which do you think should be adopted by the BCM? Please give reasons; if you can identify any specific risks that you think your preference addresses that will be very helpful.**

**Question 12: to what extent, if at all, should the BCM engage in direct, observational assessment of teaching as either (i) a normal requirement, or (ii) a remedial feature of monitoring arrangements? In your view, would it be adequate for the BCM to monitor teaching quality by reference to (iii) proxy data?**

**Question 13: Are there any of the Maldivian prescribed knowledge areas which, in your view, any overseas graduate should be wholly exempt from studying? If so, why?**

**Question 14: Are there any of the Maldivian prescribed knowledge areas which an overseas graduate should be obliged to take, even if they have studied a substantially equivalent subject overseas? Please indicate why you think the equivalent subject/s should not ‘count’.**

[Examples might include Maldivian Legal System (for which there is, arguably, no precise equivalent) or Constitutional Law (eg, in Australia all overseas graduates are expected to pick-up Federal and State Constitutional Law because of the distinctive characteristics of the Australian Constitution).]

**Question 15: LPA s.30(a)2 requires legal study at ‘first degree level’ [ie bachelors degree or equivalent]; s.30(b) also permits the BCM to establish ‘additional criteria’ for admission. In your view, provided a graduate has an appropriate first degree, should the BCM permit graduates to count additional relevant subjects studied at higher than first degree level as part of their required prescribed knowledge?**

[For example: (i) an applicant has an LLB from Sri Lanka, but did not study Company Law. She subsequently completes an LLM from an Australian university where she studied Company Law – should her LLM Company Law subject (if substantially equivalent) ‘count’? (ii) an applicant studied for an LLB in the UK, which had no undergraduate course in Legal Ethics. He subsequently completed the (UK) Legal Practice Course (LPC) for solicitors (PGDip Legal Practice) but has not fully qualified as a UK solicitor. Should the Legal Ethics studied as part of the LPC ‘count’ (assuming it is substantially equivalent) towards his Maldivian prescribed knowledge requirements?]

**Thank you for your responses. If you have anything else you would like us to consider, please use the space below:**

1. We use the terms ‘law curriculum’, ‘law qualification’ and ‘law programme’ in this paper to describe any prescribed curriculum or programme of study leading to a qualification in law and/or Sharia that constitutes a programme of legal education regulated by the Bar Council under the Legal Profession Act 2019. [↑](#footnote-ref-2)
2. See, eg, World Bank, *Human Capital for a Knowledge Society. Higher Education in the Maldives: An Evolving Seascape* (Washington DC: IBRD/World Bank, 2011) <http://documents1.worldbank.org/curated/en/689701468279855774/pdf/660380ESW0P1220iety0Report0Jan02012.pdf> [↑](#footnote-ref-3)
3. Available at <https://www.globalpartnership.org/sites/default/files/2019-05-maldives-education-sector-plan-2019-2023.pdf> [↑](#footnote-ref-4)
4. Id. Table 3.3 [↑](#footnote-ref-5)
5. We use ‘programme’ to describe a course or programme of study that leads to a higher education ‘award’ – eg Certificate, Diploma, Degree. [↑](#footnote-ref-6)
6. See <http://www.mqa.gov.mv/static/uploads/Guidelines-for-Programme-Approval_2018-06-26T00-59-01.pdf> [↑](#footnote-ref-7)
7. Id. [↑](#footnote-ref-8)
8. See <http://www.mqa.gov.mv/static/uploads/Manual-for-Conducting-Programme-Approval_2018-06-26T01-00-48.pdf> [↑](#footnote-ref-9)
9. Above n.3, 67-70. [↑](#footnote-ref-10)
10. See World Bank, above n.2 [↑](#footnote-ref-11)
11. Section 2, LPA [↑](#footnote-ref-12)
12. Section 16, HETA. The MQA’s role is acknowledged also by s.67(c) LPA. [↑](#footnote-ref-13)
13. There was some indication from meetings with course providers that other professional licensing bodies engaged with the institution at the programme development stage, and that this was welcomed by the institutions concerned. [↑](#footnote-ref-14)
14. This is likely to be a real issue: the MQA has acknowledged that there is a shortage of skilled evaluators in the Maldives, and this has been a constraint on its accreditation activities. [↑](#footnote-ref-15)
15. <https://www.iso.org/standard/43170.html> [↑](#footnote-ref-16)
16. Conventionally, an institution or programme may be accredited with ‘conditions’ and/or ‘recommendations’. Where accreditation is conditional, it is subject to the provider taking steps identified and required by the evaluating body. Such ‘conditions’ are thus non-discretionary and tend to be imposed only in respect of serious shortcomings in quality systems, or programme design or delivery. ‘Recommendations’ are less serious and give the provider discretion in how it responds. [↑](#footnote-ref-17)
17. Notifiable events are often a feature of professional accreditation schemes. These are events that the provider is obliged to report immediately to the regulator. See section 3.3 following. [↑](#footnote-ref-18)
18. See, eg, the ‘Questionnaires and Applications’ requirements of the American Bar Association at <https://www.americanbar.org/groups/legal_education/resources/questionnaire/>. The Bar Council of India similarly has quite extensive requirements. The BCI annual questionnaire is no longer published on its website, but for an earlier version, see <http://103.25.172.19/legal-education/edu-rules-section-c.php> [↑](#footnote-ref-19)
19. See, eg, Hong Kong, Standing Committee on Legal Education and Training Annual Reports at <https://www.sclet.gov.hk/eng/pub.htm> [↑](#footnote-ref-20)
20. See, eg, <https://nzcle.org.nz/Docs/29TH_REPORT_2019.pdf> [↑](#footnote-ref-21)
21. See further section 3.5, below. [↑](#footnote-ref-22)
22. Bar Council of the Maldives, Statement of Minimum Standards for Qualifying Law Degrees, para. 3 [↑](#footnote-ref-23)
23. ‘Common Law’ is used here in its ordinary comparative law sense to describe legal systems that follow the dominant Commonwealth legal tradition (it will be recalled that the Maldives rejoined the Commonwealth in 2020), not as shorthand for purely ‘judge-made’ law. By referring to the Maldives as a mixed Islamic-Common Law system, we acknowledge (i) the Constitutional primacy of Sharia law, and (ii) the statutory rather than caselaw footing of Maldivian law, regardless of whether those principles are derived from the Islamic or Common Law traditions. [↑](#footnote-ref-24)
24. This column refers only to the single honours LLB; a graduate of the five-year LLB (Sharia) double degree could, on our estimate, achieve exemption in all subjects except Maldivian legal system and Jurisprudence. [↑](#footnote-ref-25)