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IBA Statement of General Principles for the Establishment and Regulation of Foreign Lawyers

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IBA Statement of General Principles for the Establishment and Regulation of Foreign Lawyers

WHEREAS, the phenomenon known as globalisation has resulted in a dramatic increase in the movement of people, capital, goods and services across national borders; and

WHEREAS, the increase in cross-border activity of all types has posed particular challenges to the legal profession, one of the most important of which is the establishment in certain jurisdictions by foreign lawyers authorised to practice in other jurisdictions; and

WHEREAS, the IBA believes that it is desirable and in the public interest for its member organisations to review and consider the manner in which their respective regulatory regimes address all issues posed by cross-border legal practice, including, but not limited to, the issue of cross-border establishment by foreign lawyers; and

WHEREAS, the IBA recognises and acknowledges that in connection with such review and consideration, the legal profession in each of its member jurisdictions may take into account its own characteristics, influenced, *inter alia*, by its system of laws, historical factors and level of economic development, and, accordingly, legitimate approaches taken to issues of cross-border legal practice may differ in certain respects; and

WHEREAS, notwithstanding the differences among legal professions, certain essential principles are common to all legal professions, and these principles include:

- The commitment to the independence of lawyers and the legal profession;
- The commitment to preservation of client confidences;
- The prohibition against conflicts of interest in the practice of law;
- The maintenance of high ethical standards; and

WHEREAS, notwithstanding the differing approaches to regulation, the IBA believes that all regimes regulating the conduct of the legal profession should reflect and promote these common principles; and

WHEREAS, the IBA recognises that either of the following two approaches to the establishment of foreign lawyers, may be consistent with the foregoing principles, provided that they are adopted and administered in a manner which recognises the education and experience of foreign lawyers and facilitates the effective delivery of legal services, and these are:

- A regulation of foreign lawyers by allowing them to become fully licensed to practice the law of the host jurisdiction through examination or otherwise (the ‘Full Licensing Approach’); and

- B regulation of foreign lawyers as practitioners of foreign law for the limited purpose of permitting them to practice the law of their home jurisdiction in the host jurisdiction without examination of full admission to the host bar (the ‘Limited Licensing Approach’); and

WHEREAS, the IBA believes that for the jurisdictions represented by its member organisations which have not adopted regimes regulating this aspect of cross-border legal practice: (i) those with the authority to regulate should consider, and (ii) those without the authority to regulate should encourage, the adoption of rules which:

- A are consistent with the common principles described above;
- B promote the rule of law and the respect for lawyers of all jurisdictions; and
- C address the issue of cross-border establishment by adopting either the Full Licensing or the Limited Licensing Approach or appropriate combinations of both;

NOW THEREFORE BE IT RESOLVED THAT the IBA’s Council hereby approves the ‘Statement of General Principles for the Establishment and Regulation of Foreign Lawyers’ set forth below as a statement which fairly describes the essential principles on which regulation of cross-border establishment of lawyers should be based; as one which emphasises and promotes principles which are common to the legal profession worldwide; and encourages those of its member organisations in jurisdictions which have not addressed the issue of cross-border establishment of lawyers to adopt, or encourage the adoption of, appropriate amendments to their regulatory regimes which are consistent with the Common Regulatory Principles and at least one of the licensing approaches set forth therein.

I. Applicability; Certain Definitions

These General Principles apply to the establishment and regulation of ‘Foreign Lawyers’. A ‘Foreign Lawyer’ is: (i) a person licensed or otherwise authorised to practice law in a given country, or internal jurisdiction thereof (the ‘Home Jurisdiction’), and subject to regulation by a body with the authority to regulate the legal profession (the ‘Home Authority’), who (ii) desires to become established and thereby authorised to practice law in a country, or internal jurisdiction thereof, other than his or her Home Jurisdiction (the ‘Host Jurisdiction’) by a body with the authority to regulate the legal profession in such jurisdiction (the ‘Host Authority’).

II. Common Regulatory Principles

The Common Regulatory Principles set forth below should govern any regime regulating the establishment of Foreign Lawyers:

A. Authority to Regulate

The Host Authority has the legitimate right to regulate the establishment of Foreign Lawyers.

B. Fairness and Uniform Treatment

Regulation and/or admission of Foreign Lawyers should be fair, non-discriminatory, and based upon uniformly applied, objective criteria. Any restrictions on the practice of Foreign Lawyers should be justifiable in the public interest in the Host Jurisdiction.

C. Transparency

Applicable rules and regulations (including codes of ethics and professional responsibility) governing Foreign Lawyers should be clear and consistently applied.

D. Public Purpose

Regulation should be designed and administered in a manner which promotes the interests of clients and encourages and facilitates the effective delivery of legal services to the fullest extent practicable, consistent with the protection of the public in the Host Jurisdiction, the maintenance of professional standards and independence of the legal profession of the Host Jurisdiction.

E. Access

Regulation of Foreign Lawyers should promote access to competent legal advice in the Host Jurisdiction on foreign law, subject to appropriate safeguards consistent with these General Principles.

III. Full Licensing Approach

A. Conditions of Issuance of License

Under this approach, the Host Authority should admit to practice any Foreign Lawyer if the applicant:

- 1 is licensed or authorised to practice law by, and in good standing with, his or her Home Authority;
- 2 has satisfied reasonable minimum practice requirements;

- 3 is a person of good character and repute;
- 4 agrees to submit to the Code of Ethics, or its equivalent, and all other rules and regulations applicable to fully admitted lawyers in the Host Jurisdiction; and
- 5 has satisfied reasonable qualification requirements in the Host Jurisdiction, by examination or otherwise, provided that (a) due consideration shall be given to the Foreign Lawyer's knowledge and skills acquired through earlier training and experience (whether acquired in the Home Jurisdiction or elsewhere); and (b) any such requirements shall be no more than necessary for the protection of the public, and clients, and the maintenance of public confidence in the legal profession in the Host Jurisdiction.

B. Scope of Practice

A Foreign Lawyer admitted by the Host Authority should have the same right to practice as all other duly admitted members of the Host Authority, and, in addition, should be expressly authorised by the Host Authority to render advice on the law of the Home Jurisdiction and as otherwise authorised by his or her Home Authority.

IV. Limited Licensing Approach

A. Conditions on Issuance of License

Under this approach the Host Authority should grant a license permitting the practice of foreign law if the applicant:

- 1 is licensed or authorised to practice law by, and in good standing with, his or her Home Authority;
- 2 has satisfied reasonable minimum practice requirements;
- 3 is a person of good character and repute;
- 4 agrees to submit to the Code of Ethics, or its equivalent, of the Host Authority;
- 5 carries liability insurance or bond indemnity or other security consistent with local law and which, if applicable, is no more burdensome than required by the Host Authority of fully licensed lawyers; and
- 6 consents to local service of legal process.

B. Scope of Practice

The Host Authority may impose the following conditions and limitations on the scope of the practice of law by Foreign Lawyers to the extent necessary to protect the public:

- 1 Foreign Lawyers may be prohibited from appearing or pleading in courts or other judicial tribunals in the Host Jurisdiction;
- 2 Foreign Lawyers may be prohibited from rendering advice on the law of the Host Jurisdiction or other jurisdictions where the Foreign Lawyers are not fully qualified and licensed; and
- 3 Foreign Lawyers may be required to use a title and make disclosure reasonably designed to inform the public regarding their status.