



the global voice of
the legal profession

Bar Executive Exchange

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Introduction from the Co-Chairs

Dear colleagues, once again we have to send you a Bar Executives Exchange newsletter without the prospect – for now – of meeting you all in person. We do miss those in-person meetings, and we sincerely hope to be able to see you again IRL (in real life) next year.

In the meantime, we will continue to host those virtual seminars that we have all gotten accustomed to. The absence of meeting IRL also means that we cannot greet (or on-board as it is called these days) those of you who are new to the Bar Executives Committee. So, we will do it in writing here instead: Welcome to the family of the Bar Executives Committee. We are a global group of people who lead law societies and bar associations as staff members rather than elected officials, or those who lead the international departments of those organisations. We strive to meet twice a year at the Bar Leaders' Conference

and IBA Annual Conference in order to exchange views on topics of interest to the legal profession – in particular as they pertain to our task of running the organisations on a day-to-day basis. We sincerely hope you will feel at home in this group, and we welcome you to reach out to us with any questions or ideas you have for future initiatives for the Bar Executives Committee.

Sincerely yours,

Paul Mollerup *Managing Director, The Association of Danish Law Firms; Co-Chair, Bar Executives Committee, Denmark*

Merete Smith *Secretary General, Norwegian Bar Association; Co-Chair, Bar Executives Committee, Norway*

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Bar Executives Committee – Remit

The Bar Executives Committee will be directed to those involved in the day-to-day management and administration of a bar association and those involved in international liaison on behalf of a bar association. Typically, membership will include Chief Executive Officers of bar associations, bar association staff and international liaison officers. The Committee will provide opportunities for its membership to address issues and administrative matters which are of common interest. The Bar Executives Committee will provide substantive meetings and training at the bar leaders' conference and IBA Annual Conference, and where possible, at regional events. By working closely with those who

work within a bar association, the BIC will help them to enhance their skills and abilities and exchange knowledge and ideas on administration, structure and promoting the rule of law worldwide.

Of special interest to this group will be the BIC Programme for Excellence, which has been designed for member bar organisations that are keen to achieve organisational excellence. This Programme offers the benefits of a structured approach in identifying organisational strengths and areas of improvement and recognises successful efforts to implement excellence and best practice.

Bar Executive spotlight: update from the BIC Project Lawyer



George Artley

Back in May, I wrote to you about the work that the BIC has been pioneering in the field of mental wellbeing within the legal profession. Since then, I'm very happy to say that we have successfully launched our report, which can be found here: www.ibanet.org/mental-wellbeing-in-the-legal-profession. The real work begins now however, and plans are already in motion for the creation of a permanent wellbeing policy within the organisation.

Another important piece of work that I have been engaged in over the past few months is the *IBA Statement in Defence of the Principle of Lawyer-Client Confidentiality*. The statement was prepared by a Presidential Task Force on Lawyer-Client Confidentiality, which began life as a working group, before former IBA President Horacio Bernardes Neto elevated it to the status of presidential task force at the 2019 IBA Annual Conference in Seoul.

The Task Force included several members of the BIC, and I was fortunate enough to be able to assist in its drafting of the Statement. I was also able to ensure that the various BIC committees, including BIC Policy, Regulation and ITILS, were given the opportunity to comment on the draft before it was submitted to the IBA Council for approval earlier in October.

The background to the Statement stretches back several years. On 25 May 2019, the IBA updated its *International Principles on Conduct for the Legal Profession*. Principle 4, which addresses the concept of lawyer-client confidentiality, states:

'A lawyer shall at all times maintain and be afforded protection of confidentiality regarding the affairs of present or former clients, unless otherwise allowed or required by law and/or applicable rules of professional conduct.'

In light of various comments made by a variety of international organisations, it was felt the IBA needed to reinforce the importance of lawyer-client confidentiality. The purpose of the Statement is to:

- stress the importance of lawyer-client confidentiality in relation to the administration of justice, the independence of the legal profession and the rule of law;
- underscore the opinions of practising lawyers, leading judges and bars and law societies around the world regarding the integral purpose of lawyer-client confidentiality in a fair and democratic society;

- highlight the vital role that the retention and protection of lawyer-client confidentiality plays in practice in the public's perception of the legal profession, and their own justice system; and
- emphasise the risks of any disproportionate international reaction to perceived misuse of lawyer-client confidentiality.

This last point has taken on an extra level of importance given recent statements by the UN High Level Panel on International Financial Accountability, Transparency and Integrity for Achieving the 2030 Agenda ('UN FACTI Panel'), who argue that 'Lawyers and law firms often abuse their legal professional privilege [...] to assist criminals in money-laundering and other criminal conduct', and the OECD Global Anti-Corruption & Integrity Forum who claim that 'White collar crimes like tax evasion, bribery, and corruption are often concealed through complex legal structures and financial transactions facilitated by lawyers, accountants, financial institutions and other "professional enablers" of such crimes'.

The UN FACTI Panel have even gone so far as to state that 'self-regulation' of the legal profession 'has proved to be insufficient and unreliable' and calls for governments to take 'responsibility for setting the standards for appropriate conduct'. Fortunately, IBA President Sternford Moyo was able to argue against such demands when he was invited to appear at the launch event of the UN FACTI Panel report in February 2021. President Moyo's address at the event was accompanied by an IBA press release detailing the IBA's objections to the UN FACTI Panel's conclusions. In addition, the IBA sent a joint letter to the OECD, co-signed by President Moyo and the CEO of the International Federation of Accountants, Kevin Dancy, highlighting the problematic nature of their report's broad and early characterisation of members of both professions as 'enablers' of financial crime.

In summary then, the intent behind the Statement is to set out clearly the arguments supporting the vital importance of lawyer-client confidentiality, and to provide a basis for a better dialogue with various entities, such as the UN FACTI panel and OECD, about why their comments are so misguided and potentially dangerous.

To support this, the Task Force was pleased to be able to secure two forewords by Lars Bay Larsen and David Neuberger, an eminent civil law and common law judge respectively, both of

whom strongly agreed with the significance of the Statement's message. Their words also help to demonstrate the depth of support for the principle of lawyer-client confidentiality that can be found within the judiciary, as well as the legal profession more broadly.

I look forward to being able to update you later next year about the responses we get to the Statement, and any further developments in the BIC's project work.

George Artley
BIC Project Lawyer

Bar Executive Officers Committee virtual meeting

Wednesday 24 November 1300–1430 GMT

Bar Executives Programme

Invitation only

This programme is for CEOs, bar association executives, international liaison officers and others who are responsible for the day-to-day running of their association and international project work. It is a programme created by the BIC's Bar Executives Committee, of which you are automatically a member as you have been designated as your organisation's 'Bar Executive Officer'.

Pooled client accounts and anti-money laundering: clash and conflict – and how to proceed?

Moderators

Paul Mollerup *Managing Director, The Association of Danish Law Firms Co-Chair, Bar Executives Committee, Denmark*

Merete Smith *Secretary General, Norwegian Bar Association Co-Chair, Bar Executives Committee, Norway*

Keynote Speakers

Suzie Ogilvie *Freshfields Bruckhaus Deringer LLP and Member of the Law Society of England and Wales Anti-Money Laundering Taskforce, England*

Kevin Shepherd *Venable LLP and former Chair of the American Bar Association's Task Force on Gatekeeper Regulation and the Profession; Member, IBA Regulation of Lawyers' Compliance Committee Advisory Board, Baltimore, Maryland USA*

S. Suresh *Harry Elias Partnership's LLP and Chair of the Law Society of Singapore's Anti-Money Laundering Committee, Singapore*

Frederica Wilson *Federation of Law Societies of Canada, Canada*

Law firms have to comply with national and international rules regarding anti-money laundering, but in many jurisdictions it remains unclear exactly how we are expected to 'square the circle'. On the one hand, client accounts – and in particular pooled client accounts – are a central element in the smooth running of a law firm. On the other hand, money in client accounts still belongs to the client, and therefore – according to the banks and banking authorities involved – must be subject to 'know your customer' procedures in all cases. But if law firms in some jurisdictions are not obliged – or indeed allowed – to collect this information, and if lawyers have an obligation of confidentiality towards the client, how is this possible? On top of this, what about the burden of the administrative costs incurred, as well as the risk that law firms in more restrictive jurisdictions will see clients move their business to countries where the rules are perceived to be less rigid?

During this interactive programme, we will explore how the anti-money laundering regulation affects law firms on different continents, and we will hear from high level experts.

To register your interest for the Bar Executives Programme, please contact
Becca Verhagen at becca@verhagen@int-bar.org

Are law firms being over-regulated?

When I speak to members – from both large and small firms – I increasingly find they are exasperated at the amount of regulation they are faced with. The conversation goes something like this: ‘In the old days, I could spend my time serving my clients. Now I spend half my time on all sorts of administrative nuisance that takes valuable time away from serving clients.’ How did we all end there?

It seems like the heart of the matter is that the world is getting more global and more complex, and that there is a general focus on the protection of rights – a focus that would be difficult for lawyers not to applaud. At the same time, politicians and policy-makers seem to have only one measure of success: ‘When in doubt – regulate!’ or, as it is said, ‘if all you have is a hammer, you see nothing but nails’.

Business regulation is necessary, but maybe we need to help politicians to look for alternatives and to look to make business regulation less onerous than it is in many countries today. In Europe we see increasingly burdensome regulations when it comes to all manners of ‘compliance’. The most cited examples are the rules governing anti-money laundering and the rules governing data protection. On both counts the policy goals that the rules are meant to achieve are laudable, but maybe their practical implementation leaves something to be desired?

It seems a paradox that even lawyers – who should be better endowed than most industries to understand and implement complex rules – struggle so much, when having to implement these pieces of legislation. First and foremost, lack of clear guidance from the authorities appears to be the most prominent problem, in a number of countries. Lawyers simply want to do the right thing, but when it is difficult to get a clear answer to what that means in practice, lawyers tend to over-compensate by imposing more draconian restrictions on themselves than might be necessary, in order to be on the safe side.

There is a lot of work to be done for bar associations and law societies to lobby authorities in order for them to strike a balance and ensure that the formal legislation is followed up by clear guidance, enabling law firms to understand more precisely what is expected of them.

Our upcoming online Bar Executives Programme seminar, taking place on Wednesday 24 November, will zoom in on one of these regulatory challenges where regulations aimed at eliminating money laundering collide with our profession’s need to retain client confidentiality – or at least so it appears in a number of jurisdictions. Join us to hear about developments around the globe and to let the voice of your bar or law society be heard in the debate.

Paul Mollerup

Managing Director, The Association of Danish Law Firms, Co-Chair, Bar Executives Committee



Paul Mollerup

New updated IBA App

– available from the App Store and the Google Play Store

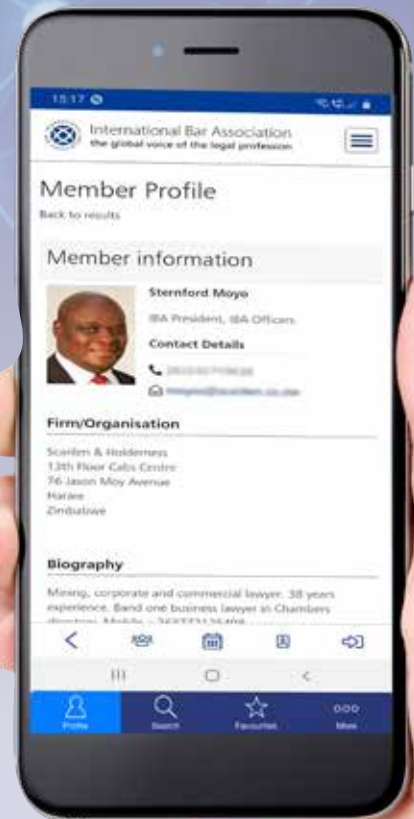
Along with the launch of our new improved website www.ibanet.org, the IBA App has also been updated.

Using the IBA App you can:

- View and update your 'MyIBA' profile
- Search the full IBA Member Directory
- Find relevant articles and topical content
- Register for IBA webinars and conferences

How do I access the App?

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