

IBA Global Regulation and Trade in Legal Services Report: the findings

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As economies have continued to globalise, the demand for global cross-border legal services has grown significantly. The legal profession is responding to the rapid pace of change. The International Bar Association (IBA) has been at the forefront in providing guidance on how the profession might do so, consistent with commitments to uphold the rule of law. Established in 1947, its aims include:

'...influencing the development of international law reform and shapes the future of the legal profession throughout the world.'

In a recently released **report** on legal practice in 90 countries, or over 160 jurisdictions – the first ever attempted on a global scale – the IBA found that:

- 56 per cent of jurisdictions covered by the study now allow partnership or association between foreign and domestic lawyers;
- 77 per cent do not have a nationality restriction on foreign lawyers requalifying as local lawyers; and
- in 47 per cent of the jurisdictions, foreign law firms are present, facilitating cross-border trade and investment.

The data is contained in the ***IBA Global Regulation and Trade in Legal Services Report***, now available on the IBA website.¹ It is a deep and rich dataset, organised on a country-by-country basis, ranging from the world's largest economies to many of the smallest. Countries covered by the report, and an accompanying website, include all of Europe and North America, 18 countries in the Middle East, 12 in Central and South America and 18 in Africa and the Asia Pacific Region.

What does the Report tell us?

The Report deals with some fundamental questions, such as:

- what is a lawyer? – how do you become one and what they do: academic requirements, practical experience/training, ethical position;
- differences and similarities (eg, age requirements for becoming a lawyer); and
- what is the practice of law? – the most common definition of which is: 'monopoly on representation in court and the right to practice local law'

While we do not have reliable data on the position 10 years ago, we can safely say that there has been a significant change in a relatively short period of time as the legal profession adapts to new trends in trade liberalisation. There are some important thoughts that emerge. First, a close examination of the data suggests something that the IBA understands – that as lawyers there is more that we have in common across boundaries than there is that separates us.

¹ www.ibanet.org/PPID/Constituent/Bar_Issues_Commission/BIC_ITILS_Committee/The_Regulation_of_International_Legal_Services.aspx

Secondly, it is striking that nearly every jurisdiction covered in the report has some kind of presence or practice by law firms from other jurisdictions. But perhaps even more importantly, the report shows something that we might not have found a decade ago, that practice in other jurisdictions is by no means the preserve of traditional 'international' law firms. 'Independent' regional practices in places such as Central Asia and South America, linguistic collaborations between Portuguese speaking Africa, Brazil and Portugal, and foreign offices of Chinese, Korean and Japanese firms, are all relatively recent developments. They all underscore that globalisation has been quietly transforming legal practice.

Other data on each country includes:

- the legislation governing legal practice;
- how lawyers from the country become licensed to practise;
- what trade in legal services commitments the country has made in the WTO;
- the other commitments in free trade agreements or other reciprocal arrangements the country has made;
- possibilities for foreign lawyers to provide transactional legal services, appear in court or undertake arbitration;
- conditions governing practice in the country of individual foreign qualified lawyers, including licensing arrangements if relevant;
- conditions governing practice in the country by foreign law firms, including licensing arrangements if relevant; and
- possibilities for foreign and local lawyers to work together formally in employment and partnership arrangements

According to the author of the report, Alison Hook of Hook International (UK), other data shows: that in 80 per cent of countries foreign firms are now permitted to open offices (although often with restrictions); 35 per cent of countries foreign firms may now employ local lawyers; and in 80 per cent of the countries covered local firms may now employ foreign lawyers.

For over 15 years the IBA Council, the global voice of the legal profession, has responded to this trend by taking a leading role in providing guidance on the responsible delivery of cross-border legal services, while upholding the rule of law and the independence of the legal profession. Earlier work has included:

- Resolution on *Regulation of the Legal Profession* (1998) – emphasising the independent obligations of the legal profession to the courts and the role of the profession in upholding the Rule of Law;
- the *Statement of General Principles for the Establishment and Regulation of Foreign Lawyers* (1998);
- Resolution on *Standards and Criteria for Recognition of the Professional Qualifications of Lawyers* (2001) – standards and criteria that should be applied by WTO members that have undertaken legal services market access commitments under Article XVI of the GATS; and
- Resolution on *Transfer of Skills and Liberalization of Trade in Legal Services* (2008) – suggested skills transfer conditions for countries that have not been willing to open their legal services market to foreign lawyers, or that have done so to a limited extent only as regards the scope of practice rights or rights of association with local lawyers.

This new report and website are a part of that initiative.

The report is supplemented by the IBA Global Legal Services bulletin board, which tracks information from public sources on the latest developments in legal services in the global marketplace. Recent entries on the bulletin board include developments in cross-border legal services in Australia, China, Egypt, Kenya, Singapore, Taipei and Zimbabwe.

The bulletin board can be viewed at tinyurl.com/kjnkwaq