

UIA STANDARDS FOR LAWYERS ESTABLISHING A LEGAL PRACTICE OUTSIDE THEIR HOME COUNTRY

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Everywhere in the world, citizens and others subject to the rule of law must have available the possibility of recourse to the services of an independent lawyer. The lawyer undertakes representation of clients before the courts as well as legal consulting in the national and international legal system.

Representation before the courts, and legal consultancy, require the existence of and compliance with rules of ethics and fundamental values. These rules and fundamental values, in their essence, know no legal boundaries – regional differences in substantive law being no obstacle to the universality of the role of the lawyer.

The ethical rules and fundamental values of the lawyer have as their foundation loyalty, independence and absolute respect of the confidences and secrets of the client and of the rules prohibiting conflicts of interest. The rules also carry with them an obligation of competence. The respect of these ethical rules and principles must be overseen and enforced by an independent authority.

The possibility of a transnational legal practice by the lawyer, or an international legal practice, must not be limited to the detriment of clients as long as the ethical rules and fundamental values of the legal profession are respected and assured. However, the obligation of competence and regional differences in the substance of local laws could justify some restrictions on international legal practice.

Consequently, and in order to better inform the public, international organizations and governments regarding the role of the lawyer and the social values which must be preserved and respected in connection with international legal practice, the Union Internationale des Avocats adopts these Standards and encourages their circulation to all interested persons.

STANDARDS

1. Definitions.

(a) "International legal practice" means the provision of legal services on a continuing basis by a foreign lawyer participating in a law firm which has been established in a host country other than the foreign lawyer's home country.

(b) "Home country" means the country or a subdivision thereof in which the foreign lawyer has met all legal requirements to practice law including membership in the bar, bar association or law society which regulates the practice of law in that country or subdivision.

(c) "Host country" means the country in which has been established a law firm which offers or intends to offer legal services from a foreign lawyer to persons in that country.

(d) "Law firm" means a partnership, corporation or other economic enterprise including one or more lawyers who offer legal services to clients other than their employer in exchange for fees. The law firm must regularly use a location in the host country from which it offers or provides its services to host country residents, or there must be substantial evidence that it actively seeks persons in the host country as potential clients at such a location in order for the host country to regulate the activities of the law firm and its lawyers as envisaged under this statement.

(e) "Foreign lawyer" means a lawyer, barrister, solicitor or its equivalent in any country who is authorized to render legal services by the bar (or its equivalent) in his or her home country but who is not fully licensed to practice or otherwise authorized to render legal services in the host country in the same manner as host country lawyers who are fully licensed members of the bar, bar association or law society of the host country.

(f) "Public international law" means the law governing relations between states, including the treaties, rules and regulations concerning the creation and operation of international organizations such as the United Nations and the World Trade Organization, but not dispute resolution involving the interests of specific private parties conducted under rules and regulations of such multilateral organizations.

2. Role of the Lawyer. Lawyers are by definition part of the legal system in every country. As direct participants in the system of justice, lawyers ensure and maintain the quality of the legal system. Lawyers also play a critical role as counselor and assistant in accomplishing many commercial and civil transactions. However, clients of lawyers must be viewed not only as possible participants in a commercial transaction, but also and more importantly as citizens who are to be informed, counseled, aided and defended by lawyers who, in so doing, are ensuring the efficient operation of the justice system.

3. Fundamental Social Values. The following social values are of primary importance and deserving of special recognition in order to preserve the quality and efficiency of the system of justice in host countries:

(a) Free Choice of Lawyer. A person in a host country should be free to choose a lawyer of his, her or its choice for consultation on legal matters and/or for legal proceedings in its courts or administrative agencies. However, the host country may choose to require that foreign lawyers engaged in international legal practice who wish to offer services in areas other than their home country law and public international law demonstrate, by legal education or otherwise, that they provide the same assurances to host country clients as do host country lawyers, without regard to nationality. Membership in the host country bar, bar association or law society, entitling the foreign lawyer to render legal services in the host country in the same manner, and subject to the same burdens, as host country lawyers, should be available to foreign lawyers who otherwise meet the requirements for membership, without regard to nationality.

(b) Loyalty and independence. Persons in a host country should be confident of the loyalty and independent judgment of any lawyer engaged to serve in the host country, since the combination of these characteristics in the lawyer is commonly considered to be the necessary foundation of the lawyer-client relationship. Therefore, a host country should require that any foreign lawyer desiring to engage in international legal practice in the host country avoid conflicts of interest in order not to call into question the foreign lawyer's loyalty to the client in the host country.

(c) Professional Secret/Privilege. Since the justice system operates efficiently only when clients can communicate their private matters without fear of disclosure, a host country client of a foreign lawyer should be entitled to the protection of the attorney-client privilege and/or the professional secret to the same extent and for the same purposes as govern the attorney-client privilege and/or professional secret in connection with legal services provided by a host country lawyer. A foreign lawyer desiring to provide legal services in the host country must commit to take all necessary steps in order to ensure the host country client of the full application of the attorney-client privilege and/or professional secret, as the case may be, to no lesser degree than would be the case if the matter were handled by a host country lawyer. Any derogation from this requirement should only be permitted if the client, after full communication of the consequences, consents to the derogation and then only if the client is fully capable of understanding the nature and extent of the derogation and the derogation is not contrary to the public policy of the host country.

(d) Confidentiality. To the extent that confidentiality is required of host country lawyers, foreign lawyers should be obligated to abide by the same rules in order to meet the expectations of host country clients. Accordingly, foreign lawyers should be required to take all necessary steps to ensure that confidential information of a client in the host country is maintained as confidential to the same extent as with host country lawyers.

(e) Competence. A host country client should be entitled to presume that a foreign lawyer engaged in international legal practice is competent to provide the services offered. A foreign lawyer should not attempt to practice any law in which the lawyer is not properly qualified or trained, by education or otherwise. Any foreign lawyer who engages in international legal practice in the host country should be treated as having warranted to every client in the host country that the services he or she provides will be competent in connection with the matter for which the lawyer was engaged.

(f) Advertising. A person in the host country should be entitled to accurate information about the legal services to be provided by a foreign lawyer. Accordingly, if advertising of legal services is permitted in the host country, a host country should require that a foreign lawyer engaged in international legal practice undertake not to engage in any false or misleading advertising of legal services to persons in the host country.

(g) Holding out as lawyer. Persons in a host country should be able to easily determine the status and role of a foreign lawyer engaged in international legal practice. Therefore, the host country should require any such foreign lawyer to use the same title as is used in the foreign lawyer's home country (without translation except as necessary to make the characters readable in the host country language); and to identify and explain any restrictions on the right of the foreign lawyer to render legal services in the host country. Any foreign lawyer who identifies, by the use of a business card, curriculum vitae or otherwise, his or her legal education, or a university or higher degree in law or membership in a bar, bar association or law society as one of his or her qualifications to render services should be automatically deemed to be engaged in offering legal services in the host country and required to comply with this standard.

4. Compliance with host country ethical rules. Host country clients should be assured that those who provide legal services in the host country are subject to the same ethical rules as host country lawyers, in order to avoid confusion and potential loss of rights. Therefore, foreign lawyers engaged in international legal practice must be subjected to and undertake to comply with all relevant ethical rules applicable to host country lawyers.

5. Registration. In order to adequately audit and control the services provided by foreign lawyers in a host country, and in order to assure host country clients of compliance with applicable standards, the host country should require that any foreign lawyer who engages in international legal practice in the host country register with the bar, bar association, law society or other institution under host country law having primary responsibility for the regulation of legal services in the host country. Such registration should require that all necessary information about the foreign lawyer and any economic enterprise with which the foreign lawyer is affiliated be filed with the

regulatory authority in order that the necessary actions can be taken to determine and enforce compliance with applicable standards.

6. Form of Economic Enterprise. The host country should permit foreign lawyers who are otherwise lawfully engaged in international legal practice in the host country to establish or be employed by any form of economic enterprise for the practice of law which is permitted to a host country lawyer. In order to protect persons in the host country from confusion or unintended loss of rights, the host country should condition the rendering of legal services by lawyers in a multidisciplinary practice upon compliance by its lawyers with the Resolution on UIA-Recommended Minimum Standards for Multidisciplinary Practice as adopted by the Union Internationale des Avocats on November 3, 1999.

7. Integration of Foreign and Host Country Lawyers. The increasing integration of economies across the globe means that lawyers, in order to best perform their services, should take into account both the laws, practices and methods of the host country and the laws, practices and methods of other countries which may be relevant to a legal matter in the host country. Therefore, a law firm with foreign lawyers engaged in international legal practice should incorporate host country lawyers into its practice, directly or indirectly, in order that its clients receive the full benefit of host country lawyer expertise. Host country law firms should endeavor to ensure that the services of foreign lawyers are available in the host country in appropriate cases in order that their clients receive the full benefit of foreign lawyer expertise.