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Presented by the Council of the Bars and Law Societies of the European Community

Carl Bevernage

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Presented by the Council of the Bars and Law Societies of the European Community

Carl Bevernage*

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Introduction

The legal profession, organised as an independent body devoted to advocacy, has for a very long-time resisted to be qualified “*professionals of the practice of law engaged in tradable services.*” Lawyers have refused to see their know-how, expertise, learned opinions assimilated to a commercial commodity to which no different rules would apply than those imposed by national and international authorities on all realms of trade and industry. Lawyers must uphold the rule of law, they participate in the administration of justice, they act as guardians of the legal public order, they intercede for the humble against the powerful, they are the pillars of democracy, the protection against tyrants.

Therefore when the GATS brushed aside all of these considerations and decided that the transborder provision of legal services - whether by members of an independent regulated profession - or by anyone offering legal advice or assistance, are tradable services and must be performed in such a way that anyone who has the required qualifications may perform such services without undue hindrance, other than those barriers which are required for reasons of legal public order or the protection of the consumer, lawyers represented in and by the CCBE wondered whether the CCBE should collaborate with the Working Party on Professional Services set up by the WTO and accept to review for the benefit of the European Commission and/or National Governments, the restrictions, if any, on the practice of law by qualified professionals in Europe and elsewhere.

This reluctance is fully understandable since it took almost twenty years in order to accomplish in the European Union and the countries belonging to the European Economic Area three major steps towards a European-wide practice of law by members of the regulated legal professions represented by the CCBE. The 1979 Services Directive, the 1989 Diploma Directive and the 1998 Establishment Directive are crucial legal instruments towards a unified profession in Europe, to which one should add the CCBE Common Code of Conduct adopted on October 28, 1988.

Many within the CCBE have always regarded the “*foreign legal consultant or practitioner*” who prefers to practice under home title and resists integration in the local (national) professional regulated body, with some suspicion. Accordingly, the CCBE will never promote the liberalisation of professional practice rules which would lead to a legal practitioners’ no-mans land. However, the increasing

mobility of clients and lawyers alike, the international and even world-wide dimension of legal problems which need to be tackled and overcome, have prompted an ever increasing need for international co-operation between lawyers and have given birth to the “migration” of lawyers, transnational partnerships, foreign establishments of law firms, etc. . . . so that it appears indeed useful to revisit our practice rules and examine whether they are still in the best interests of clients and lawyers alike, wherever legal advice or assistance is provided.

Neither should one overlook that justice is administered on a more international scale than ever before. In Europe, the growing impact of the European Courts of Luxembourg and Strasbourg, and at a broader level, the role of the International Court of Justice in The Hague, the imminent creation of an International Criminal Court, the importance of the settlement of disputes by way of international arbitration, help to shape the idea that justice should no longer be sought and found solely in local courts among fellow professionals with a same educational background and subject to the same rules of ethics, but in judicial bodies which assemble professionals with different education and training, governed by different practice rules.

If it pleases lawyers to remind everyone of the universality of their mission and their services, they must face the fact that this cannot be achieved through a mere juxtaposition of national or super-regional zones of influence which are protected against intrusion by foreign colleagues. Which steps could or should be taken to bring down unnecessary barriers must be carefully examined and the object of a candid exchange of views. This is precisely the purpose of this Forum in which representatives of the legal profession in three major regions of the World meet. This friendly comparison of notes, and to some extent, confrontation of ideas or principles, will help the CCBE to better understand the effect of professional regulation on the quality and diversity of legal services. It may also create a basis for a common approach towards defining well thought measures which will enhance the image and reality of an open internationally minded legal profession in our world on the eve of the 21st Century.

A. Uniqueness and Responsibilities of the Legal Profession

No other profession but the regulated legal profession officially vows to carry out its duties within the rule of law. Accordingly, whilst the lawyer has an absolute duty to assist his client in the most

competent way, he cannot give advice or suggest solutions which would harm the basic rights of other parties or be contrary to the public order.

The mandatory respect of professional rules of conduct towards clients, colleagues and the justice system is unique.

There is hardly any other profession but ours which enforces stringent disciplinary rules, which expels members of the profession in case of serious misconduct, and which requires that all members carry adequate professional liability insurance.

The duty of independence constitutes the cornerstone of the profession. Every lawyer must act solely in the legitimate and lawful interest of his client and may not tolerate any third party interference, whether from the authorities, special interests groups, etc. . . . He must avoid any and all conflicts of interest.

The second most fundamental characteristic of the legal profession, is the obligation to observe the rule of professional secrecy and confidentiality, it being understood that there are jurisdictions in which this rule is an absolute one, and others in which the client (and sometimes the authorities) may absolve the lawyer from this obligation in well defined exceptional circumstances. In this respect the landmark decision of the European Court of Justice in *M&S Europe Ltd v. EC Commission* of May 18, 1982 has upheld at the European level the principle of lawyer-client privilege. Moreover the Commission is prepared to extend legal privilege to independent lawyers from outside the EU, by way of bilateral agreements.

Thirdly, the duty of delicacy, fairness and moderation is an expressly upheld in all EU jurisdictions.

Finally and more generally, history has shown that each time democratic rights are menaced, the legal profession is curtailed in the freedom to exercise independently and in full trust of the individual client.

1. Ethical Issues Presented By Transnational Legal Practice

In Europe, the ethical and professional conduct is governed by statute as well as by rules and regulations enacted and enforced by the local Bars. In some countries these rules are monitored and sanctioned by the courts. The CCBE has drafted and enacted (via the local or national Bar organisations) a Common Code of Conduct on October 28, 1988. However, violations of this Common Code can only be sanctioned by the Bar of origin. Unless there exists a case for mandatory affiliation with the Bar or Law Society of the country or

district of establishment, these professional bodies are hampered in the proper policing of good professional conduct of those who do not belong to the local Bar or Law Society.

Moreover in cases of transborder services (without foreign establishment) or transborder partnerships, improper conduct outside the jurisdiction of origin is difficult to combat whether by the host country or Bar, or by the country or Bar of origin.

Whereas there can be little discussion that the actual *rules of ethics* which must be observed by all lawyers are universal by nature, on the contrary, the *rules of professional conduct* may differ between jurisdictions in areas such as the authorised forms of professional practice, the right to advertise or not, rules pertaining to agreements on fees, certain details regarding conflicts of interest among partners, the definition of incompatible professions (or functions), the extent or scope of attorney-client privilege, etc. . . .

Therefore, when legal practitioners governed by different practice rules meet as opponents, or co-operate occasionally or enter into partnership, solutions must be found in order to reconcile possible contradictory requirements and duties.

2. Consumer Protection Issues Presented By Transnational Legal Practice

In principle this question should not be answered differently within a national or international context.

The first rule of consumer (client) protection is to ensure that the client has free access to fully qualified lawyers and the free choice to rely on advice and help from the lawyer best suited to solve the problem of the client.

When lawyers from various jurisdictions, with possibly different educational backgrounds and training (in different national laws) are working in a same jurisdiction, the client should be informed on the exact nature and origin of the qualifications of the lawyer and not be misled by the professional title used by the lawyer.

Whatever the jurisdiction of origin of the lawyer, proper redress should be available for the client who did not receive adequate or competent advice and assistance, whether by way of remedy under the professional liability insurance, or by way of disciplinary sanctions.

Of course, no regulations should be imposed or maintained which would unduly deny access of clients to fully qualified lawyers from or in other jurisdictions than the local or national one.

Clients should, certainly in Europe, be better informed on the specialisation, if any, of counsel, the fee structure, the nature, extent and result of the duties accomplished by counsel, etc. . . .

3. Social Responsibility and Independence of the Legal Profession

A very unique feature of the legal profession is the obligation to provide *pro bono* assistance to needy clients. Whatever the schemes of legal aid may be in many countries, with possibly (partial) subsidisation of legal aid, lawyers are the only professionals (together with medical doctors) who cannot refuse to assist a client who is unable to (fully) pay for his services in matters where the personal or patrimonial integrity of the client is imperilled.

Lawyers cannot refuse to defend a client in need, even if he were guilty of the most evil crime. However advice and assistance in such a case may not upset the rule of law or the public order. For this reason, lawyers are under the same duty as others to refrain from engaging even indirectly in schemes which facilitate or perpetuate a crime. The recent measures against money laundering which impose strict rules of conduct on lawyers as well as on other intermediaries or professionals are a reminder of the obligation of proper conduct which must guide lawyers in the discharge of their duties.

Lawyers may be called upon to help to administer justice, when the court case-load cannot be adequately dealt with by the professional magistrates.

In Europe, contrary to the USA, the lawyers are not (yet) under a duty to promote equal rights, legal reform, advance legal education, foster public confidence in the judicial system, secure access to justice by all citizens (except in the framework of legal aid), although these goals are generally pursued by the Bar organisations and Law Societies.

4. Particular Problems Presented By Multi-disciplinary Practice

Under the Establishment Directive of February 16, 1998, clause 5 of article 11, Member States may regulate MDP's taking into account the following restrictions :

- (5) Notwithstanding points 1 to 4, a host Member State, insofar as it prohibits lawyers practising under its own relevant professional title from practising the profession of lawyer within a grouping in which some persons are not members of the profession, may refuse to allow a lawyer registered under his home-country

professional title to practise in its territory in his capacity as a member of his grouping. The grouping is deemed to include persons who are not members of the profession if

- the capital of the grouping is held entirely or partly, or
- the name under which it practises is used, or
- by persons who do not have the status of lawyer within the meaning of Article 1 (2).

Where the fundamental rules governing a grouping of lawyers in the home Member State are incompatible with the rules in force in the host Member State or with the provisions of the first subparagraph, the host Member State may oppose the opening of a branch or agency within its territory without the restrictions laid down in point (1). Of course, this clause is aimed at countries where multi-disciplinary partnerships are authorised.

The CCBE strongly opposes the concept of multi-disciplinary partnerships. Two resolutions have been adopted in the past (1993 and 1998 respectively) to this effect.

However, despite being outlawed in principle, there are already partnerships in numerous countries, which are multi-disciplinary in all but name.

They are allowed in some EU Member State and prohibited in others.

An ad hoc committee was given the task of examining this development. A preliminary report was adopted by the CCBE at its Plenary Session held in April 1998, and there is hope that before the end of 1998, a final report will be put to the vote of the national delegations.

The CCBE is concerned that some governments and European institutions claim that a ban on MDP's for lawyers will represent an unjustified restriction on competition within the profession, to the detriment of the public. The matter has been devoted much time and effort over the years, starting already in 1988, and is by no means resolved.

The main arguments put forward by the CCBE in order to oppose MDP's are the following :

- (1) There is no need or demand for MDP's which include lawyers, because they hold no advantages for clients

Clients already benefit today from the joint experience of having two or more separate advisors without the advisors having to merge. There is no reason to expect that a merger between those advisors would improve upon the quality of advice given.

(2) Independence

MDP's may affect the lawyer's independence and would hamper the duty of auditors who are in partnership with lawyers to carry out their tasks in full compliance with the Company Directive.

(3) Legal Privilege

Cooperation between professionals bound to confidentiality and professionals under a duty to report faithfully and disclose client information without the client's consent puts both professions under severe pressure.

(4) Clients choice

The client's choice should be free. The creation of MDP's would jeopardise this freedom of choice.

"Lawyers" as a reademark stands for independent advice. Allowing MDP's would lead to a split in the legal profession; on the one hand there would be MDP lawyers, and on the other hand independent lawyers. Such a split would not benefit the client or anybody else.

(5) Other problems

Assuming MDP's would be allowed, the following problems must be solved :

- Which professional code should apply and, in conflict, prevail?
- Which authority should be competent to judge an alleged disciplinary offence?
- How could the regulatory competence of the professional bodies of the separate professions be shared?
- How could the observance of such rules be guaranteed in an MDP in jurisdictions where the provisions of legal advice is only permitted by qualified lawyers?
- Would an increasing integration of legal services and accounting services affect the lawyer's special duties to the court?

In any case, a lawyer could not engage in cooperation giving a substantial influence over the lawyer's practice to non lawyers, who are themselves subject to duties, regulatory principles or interests relevantly different from those applicable to lawyers.

When, and if, exceptionally, lawyers, engage in cooperation with non-lawyers, those lawyers should exercise scrupulous and continued care to ensure :

- a) that their professional independence is not relevantly impaired;
- b) that the confidentiality of information imparted by clients cannot be detrimentally affected.

Cooperation, such as agreements on referrals (preferentially or exclusively) or agreements on sharing of premises or other facilities would, if the above precepts were respected, be allowed.

It should be mentioned, however, that partitioning combined with integration and synergy is a hard act to perform without loss of credibility.

- Denominations must not confuse or mislead on either the existence or the extent of such cooperation.
- Regulatory framework applicable to lawyers must provide that regulatory authorities have full access to all facts, including documents and other forms of data stored relevant to the observance of the rules concerning cooperation with non-lawyers, and that lawyers have an unrestricted duty to disclose such facts to the relevant authorities, with due safeguard for client confidentiality.

B. Measures that Might be Taken for the Reduction of Impediments to the Ability of Lawyers to Practice in Jurisdictions Other than that of Their Original Qualification

The cross-border supply of services involves in principle the export of services from one Member State to another; the temporary provision of services in another Member State; and the provision of services on a permanent basis in another Member State.

In order to be able to supply "intellectual" services within a cross-border context, it is important to determine the qualification criteria (education - training), the conditions of access to the profession (licensing, registration) as well as those governing the practice of the profession (establishment - joint practice - partnerships, etc.), both in the country of origin and the host country, and to

determine whether the criteria or conditions in the (two) countries in question are identical, similar or (in)compatible, and, if first and foremost, the legislation or regulations applicable are sufficiently transparent and accessible for the foreign service-supplier.

Within this framework, the Standing Committee of the CCBE has approved an internal working paper which is based on a method of analysis aimed at determining the possible obstacles which may remain within the European Union (hereafter EU) for EU lawyers supplying services B alone or within a joint practice, a partnership or a corporation (of a "civil" or of a "commercial" nature) - in another EU Member State, both in relation to qualification/training and access to the profession and its practice.

By way of example, a general survey of the situation of lawyers in Germany, the United-Kingdom, Belgium, Denmark and France has been prepared.

A similar survey concerned the conditions imposed on non-EU lawyers supplying their services in an EU Member State (except the special category of lawyers from a third country having a bilateral convention with an EU Member State: for example the facilities granted to lawyers from the Commonwealth by England & Wales special agreements between some countries from South-America and Spain, etc.).

Finally, in a third part, the working group tried to define the conditions of qualification, of access and practice reserved to EU lawyers supplying services or establishing themselves outside the EU.

In this last case, the working group chose as an example the establishment (the supply of services) in Central Europe, China, Japan and in three US States (Washington, D.C., New York and California).

The situation of lawyers in one of the observer countries from the CCBE, Switzerland was also examined.

The Working Group made the following observations :

1. Required Qualifications, Conditions of Access to the Profession and Practice Within the European Union for EU Lawyers Wishing to Have Access to the Profession or Practice in Another EU Member State.

a. *Qualifications*

Pursuant to Council Directive 89/48/EEC of 21 December 1988¹ on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration (the Diploma Directive), a holder of a diploma² and thus having the professional qualifications required for the taking up or pursuit of a regulated profession in a Member State, may ask to have his diploma recognised with a view to establishing himself in another Member State in order to practise the profession of lawyer there under the professional title used in that State.

According to directive 98/5/EC of the European Parliament and of the Council of 16 February 1998³ aiming to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained (the Establishment Directive), some lawyers may become integrated into the profession in the host Member State, *inter alia* by passing an aptitude test as provided for in Directive 89/48/EEC, in the language of the host Member State, dealing with, in principle, rather simple questions related to most important domestic law subjects.

No condition of nationality remains.

b. *Access to the profession of lawyer*

Regarding EU lawyers who passed successfully the aptitude test imposed by the Diplomas Directive, there is no discrimination against holders of local law degrees, except regarding access to certain professions where the practitioner carries out activities connected with the exercise of official authority (notaries) or where the number of applicants is restricted (accredited lawyers in the Supreme Court).

1. OJ L 19, Jan. 24, 1989, 16.

2. According to Article 1 a) of directive 89/48/EEC :
"diploma: any diploma, certificate or other evidence of formal qualifications or any set of such diplomas, certificates or other evidence :
-which has been awarded by a competent authority in a Member State, designated in accordance with its own laws, regulations or administrative provisions;
-which shows that the holder has successfully completed a post-secondary course of at least three years' duration, or of an equivalent duration part-time, at a university or establishment of higher education or another establishment of similar level and, where appropriate, that he has successfully completed the professional training required in addition to the post-secondary course (...)."

3. OJEC L 77 of Mar. 14, 1998, 36.

c. *Cross-border practice of the profession of lawyer*

The Establishment Directive allows any duly qualified EU lawyer registered with an EU Bar to establish himself in another EU Member State under his home-country professional title, as well as under the professional title of the host Member State if he respects some rather simple conditions related to practice.

No obstacle remains to joint practices/partnerships/ corporations /associations, etc. between EU lawyers both between lawyers from the host EU Member State and between lawyers from other EU Member States establishing themselves jointly in one single jurisdiction (foreign jurisdiction).

The Services Directive of 1977 allows EU lawyers to supply, under their home-country professional title, cross-border services of a temporary nature in other Member States. Under the 1977 Directive, when the cross-border services involve litigation, the host State may require the visiting lawyer to work in conjunction with a local lawyer.

d. *Reflections with a view to a greater liberalisation*

The present situation being satisfactory, any supplementary measures is not necessary with a view to promote the full practice of the profession within the EU by EU lawyers.

2. Required qualifications/conditions of access to the profession and practice within the European Union for non-EU lawyers, wishing to have access to the profession or practice in an EU Member State.

a. *Qualifications*

- 1) Non-EU lawyers wishing to have access to the profession of lawyers in an EU Member State must follow the complete local educational requirements and successfully pass the recognised examinations of the host State.
- 2) The rule sub 2.a.1 applies both to EU nationals and to non-EU nationals.
- 3) A non-EU national holder of an EU law degree cannot obtain the equivalence of this law degree in another EU Member State, under the ambit of the Diplomas Directive. He/she has to take over again and successfully pass the complete professional education required in that other Member State, unless ad hoc facilities are available.

b. Access to the profession of lawyer

- 1) A non-EU lawyer duly registered with his/her home-country Bar cannot practise under the professional title used in the host Member State without having completed the professional education required within the jurisdiction, except where legislative provisions on bilateral agreements provide otherwise (B or C list) in Brussels B “article 100 in Paris”).
- 2) A non-EU lawyer duly registered with a particular EU Bar, cannot register with a Bar of another EU Member State, except if he/she is locally qualified.

c. Cross-border practice of the profession of lawyer

- 1) A non-EU lawyer can practise his/her profession under his/her home-country professional title both on a permanent basis and cross-border services of a temporary nature in most EU Member States without being registered with the local Bar upon condition to have obtained a certificate of residence and a work permit granted by the host Member State.
- 2) The lawyer mentioned under 2.c.1. is allowed to form a joint practice, a partnership, etc., freely with qualified lawyers duly registered with the Bar of the host state himself under the firm name/under the names of the lawyers of the host State, without any other conditions, in some States, than the prohibition to practice domestic law (unless qualified for that and after having received the approval of the Host Bar).

d. Reflections with a view to a possible greater liberalisation

The above-mentioned restrictions are not contrary to the public interest and aim at the protection of the consumers/citizens.

Nevertheless, it is conceivable to invite the competent authorities of every EU Member State to establish, regarding every lawyer, member of a Bar or a regulated profession, having the professional qualifications required for the taking up or pursuit of a regulated profession in his/her home Member State, the opportunity to pass an aptitude test in the host Member State, the difficulty of which, especially in terms of subject matters to be taken, would be between a test of mutual recognition of diploma and a complete local professional examination, but with the possibility to agree on a more liberal regime in agreements between countries or regions such as the EU or the United-States.

3. Required qualifications/conditions of access to the profession by EU lawyers and conditions of practice for EU lawyers wishing to have access to the profession or to practice in a third country (outside the EU).

- a. *Qualifications*

Except in most states of the United States where it is sufficient to succeed in the same “Bar Exam” as the graduates of an American law faculty, EU lawyers have to complete the entire educational process and pass the exams of those jurisdictions where they wish to have access to the profession of lawyer, with the exception of a number of bilateral agreements.

In the legislations or regulations of the countries (Poland, Russia, China, Japan, the United States (Washington DC, New York, California), examined by the working group, there are no conditions of nationality.

- b. *Access to the profession*

Provided he/she has obtained the local degree, the EU lawyer can have access to the profession on the same conditions as the lawyer of the host State.

Specific categories of lawyers, reserved to local lawyers, may exist.

- c. *Cross-border practice of the legal profession*

- 1) Under home-country professional title

The provision of services and the establishment of an EU lawyer are subject to obligations in most of the countries outside the EU, examined by the working group :

- geographical, quantitative and qualitative restrictions in China;
- qualitative restrictions in Japan and Poland (use of the firm name of the foreign lawyer);
- exclusion of the practice in the host law, if not locally qualified.

- 3) Under host-country professional title

The practice under host professional title is possible only after having completed the full professional education required, except in the United States where the holder of a law degree can take the “Bar

exam” of the host State. Passing the “Bar Exam” does not enable lawyers to practice in another US State. However, this restriction applies to American lawyers too.

d. Reflections with a view to a greater liberalisation

1) In order to facilitate access to the profession in the host state, it is conceivable to establish an aptitude test for EU lawyers, the difficulty level of which, in terms of subject matters to be taken, would be between a test of mutual recognition of diploma and the aptitude test for EU citizens within the EU.

With a view to practice under the home-country professional title, it is conceivable to apply the same rules as those which govern the practice of the profession of lawyer under home-country professional title within the EU regarding non-EU citizens, this involves that any obstacle, imposing quantitative, geographical restrictions or restrictions on duration of residence, on seniority of Bar’s membership, on origin, on joint practice, also on name of the grouping, etc. be removed.

C. In addition to the aforesaid facts, general principles and reflections, a number of specific issues or questions may need some further comments or clarification.

1. Ownership restrictions

Restrictions of this type generally take the form, not on direct restrictions on foreign investment in and ownership of law firms, but rather of Bar and Law Society regulations prohibiting or restricting the entry by their own members into partnerships with foreign lawyers, which subject is addressed under section 2 below.

2. Restrictions on partnerships between foreign and locally qualified lawyers, including restrictions on partnership names.

a. Cooperation, partnerships and employment

There are states where local lawyers are prohibited from entering into partnership with foreign lawyers and also prohibited from being hired by foreign lawyers.

These two restrictions make it practically impossible for foreign-based firms to provide comprehensive, integrated advice on matters which may be materially affected by the law of the host state.

When local lawyers are hired they must obviously be fully qualified and given proper supervision or assistance.

b. Branch offices

Restrictions regarding branch operations of law firms may have a detrimental effect upon the ability of foreign-based law firms to deliver an integrated transnational legal service through an establishment in a country which has such restrictions because they effectively prevent the foreign-based firms from competing with host- firms for the most qualified practitioners in that state.

3. Restrictions on the scope of practice

Article 5 of the Establishment Directive has abolished the restrictions on the scope of practice among EU lawyers. An established lawyer may give advice not only on the law of his home Member State but also on that of the host Member State. Some restrictions remain possible in fields in which certain types of work are reserved to a Notary Public and for representation in court which is reserved to certain categories of lawyers in a Member State. In the latter case out of State EU lawyers may appear in court provided they work in conjunction with a lawyer of the host Member State who belongs to that category and who is answerable to the authority of the State.

There can be no case to grant this liberalised regime to non EU lawyers except if they are qualified locally, either after a full curriculum examination, or having succeeded in the ad hoc aptitude test suggested in this paper, or if they benefit from bilateral or multilateral agreements on the subject.

4. Nationality requirements.

Nationality requirements should not exist. In the great majority of countries there are currently no nationality requirements, so this kind of restriction has not been of particular importance so far.

Where nationality requirements still exist they should be removed.

D. Practice conditions

1. Foreign legal practitioners practising under home title

The registration of foreign legal practitioners (i.e., lawyers duly qualified in their home State who practice elsewhere, without passing

an examination in the host State) may be made mandatory, subject to the following possible conditions.

a. Fees or costs of registration

The costs of fees for registration with the host Bar should only cover administrative cost of processing and not be used as means to discourage applications.

b. Seniority requirements

If it is reasonably justified to require a period of previous experience in the home State as a member in good standing of a recognised legal profession in that jurisdiction - prior to the application-, this period should not exceed five years.

c. Ethical requirements

The applicant should be a person of good character and repute, and not in violation of the standards imposed by the home and/or host Bar.

d. Clients' funds

The candidate should be able to give proper assurances that clients funds will be handled correctly.

e. Liability insurance

The candidate should give evidence that he/she carries liability insurance or bond indemnity or other security in a form and amount which is satisfactory to the host State Bar and which specifically covers services provided in the host State.

2. Practice under host professional title

The practice under host professional title should be possible only after having completed the full professional education required or passed the examinations in that respect, subject to possible exceptions under an ad hoc test or special bilateral arrangements mentioned in this paper.

E. Conclusion

The world is shrinking. We practise law in a global village. Yet the laws of our jurisdictions, even in Europe, remain rather different

and not always easy to correctly read, interpret and apply for a lawyer who has not qualified in that jurisdiction. Therefore, if client needs exceed historic borders and the solution of legal problems requires multi-jurisdictional expertise, co-operation among lawyers from various jurisdictions, including partnerships, should be encouraged and any barriers preventing this evolution should be removed. It is the urgent task of the professional bodies of lawyers such as the ABA, Japan Federation of Bar Associations, CCBE and others to offer common reasonable solutions so that the interest of clients as well as of the profession are best served and the rule of law upheld. If we speak with a single voice and act together, our views will prevail with the authorities, more in particular the WPPS and the WTO.

