

## **POSITION PAPER FOR LEGAL SERVICES**

Access to lawyers and law firms with relevant expertise greatly facilitates the growth of world trade, related foreign direct investment in developed as well as developing nations, and cooperative ventures that cross national borders. Lawyers and law firms are also essential for access to capital markets. Individuals and business organizations participating in these trans-national economic activities thus quite rationally prefer to obtain legal advice, consultation and assistance from lawyers with relevant experience and expertise. They often prefer to use lawyers and firms with which they are familiar, and in general benefit from having a range of competitive choices for legal assistance.

In short, relaxation of restrictions on foreign lawyers and firms would promote economic development.

Agreements on legal services should ensure that individual lawyers and law firms are permitted to create and maintain their professional establishments in host countries. A lawyer or law firm should be permitted to perform services regarding matters with respect to which the lawyer or law firm is authorized to practice law and render advice in the lawyer's or law firm's home country. The host country should not restrict the manner in which a lawyer associates with other lawyers or with host country lawyers.

Foreign lawyers should be permitted to organize their practice jointly as a branch of the firm or in any business form which is used in the host country by host country lawyers. A lawyer should be permitted to practice law and to render advice under the lawyer's own name or other entity with which the lawyer is associated. A lawyer should also be permitted to use in the host country the professional title used by the lawyer in the home country, with reference to the home jurisdiction of admission. Countries should ensure that their registration authorities process applications for registration fairly and act in a reasonable period of time.

The CSI Legal Services Committee recommends the following **NEGOTIATION PROPOSAL** for any agreement on trade in legal services.

## NEGOTIATION PROPOSAL

Proposed Annex to the General Agreement on Trade in Services  
or, alternatively,  
Proposed Reference Paper relating to GATS Commitments on Legal Services

### *Scope*

This [Annex] [Reference Paper] applies to legal services supplied by a service supplier in one Member either through a commercial presence in the territory of any other Member, or through the presence of natural persons in the territory of any other Member.

### *Definitions*

For purposes of this [Annex] [Reference Paper]:

“Competent Authority” means, with respect to a Host Member, the governmental or judicial authority, or the non-governmental body, designated by that Host Member to exercise, or recognized by that Host Member as competent to exercise, authority in respect of a Lawyer or Law Firm maintaining or seeking to maintain an Establishment in the Host Member.

“Establishment” means a Lawyer or Law Firm (together with, where applicable, a Host Member’s duly authorized legal professionals) established in a Host Member for the purpose of supplying legal services.

“Home Member” of a Lawyer or Law Firm means that Member (a) in which that Lawyer or Law Firm has a presence and conducts a substantial and regular professional legal practice, and (b) which that Lawyer or Law Firm designates as his, her or its Home Member.

“Host Member” means, in respect of a Lawyer or Law Firm, any Member, other than the Home Member, in which that Lawyer or Law Firm maintains or seeks to maintain an Establishment.

“Lawyer” means a person who (a) is duly admitted or licensed by a Home Member to practice, and is in good standing in that Home Member, as an attorney or counselor at law or the equivalent, and (b), as such, is subject to effective regulation and discipline by a duly constituted professional body or public authority in that Home Member.

“Law Firm” means an association or entity that is owned and controlled exclusively by Lawyers (together with, where applicable, a Host Member’s duly authorized legal professionals) and that, under the applicable laws or rules of its Home Member, is entitled to supply professional legal services to the public.

The term “legal services” means services supplied by a Lawyer or Law Firm (together with, where applicable, a Host Member’s duly authorized legal professionals), including advice and assistance relating to litigation, the resolution of disputes, the negotiation and preparation of

documents, transactional matters, business undertakings, corporate governance, tax and fiscal questions, and legal analysis and opinions.

“Member” means a Member of the World Trade Organization and the central, regional or local governments and authorities of that Member.

### ***Right of Establishment***

A Lawyer or Law Firm having a presence in his, her or its Home Member shall be entitled to create and maintain in the territory of every other Member one or more Establishments and, in connection therewith, to supply legal services under the name used by the Lawyer or Law Firm in his, her or its Home Member, *provided* that the name is not one which, under the rules, customs or usage of the Host Member, creates a misleading impression that the Establishment is operated by persons other than those actually or formerly involved in the provision of legal services by that Lawyer or Law Firm.

### ***Supervision of Establishments***

A Host Member shall be entitled to require, or to authorize, Lawyers or Law Firms from other Members to register Establishments with a Competent Authority designated by that Host Member. In the event registration is required or authorized, the Host Member shall ensure that the Competent Authority acts on applications for registration within a reasonable period of time.

With respect to the registration of Establishments, the Competent Authority shall make all administrative criteria and procedures, including procedures for applying for registration, publicly, promptly and fully available in writing, shall ensure that they are administered in a reasonable, objective and impartial manner, and shall otherwise observe Article III of the Agreement.

In the event an application for registration is denied, the Competent Authority shall provide the applicant with a written statement of reasons therefore, shall provide a reasonable opportunity for renewal of the application, and, where appeals from decisions of the Competent Authority are available in the Host Member, shall permit appeal of the denial.

As a condition to registration of an Establishment by a Law Firm, the Competent Authority shall be entitled to require (i) registration with the Competent Authority by one or more Lawyers who are responsible for the Establishment, including such Lawyers (if any) who are from Members or countries other than the Host Member, and (ii) the giving of an undertaking by the Law Firm as to its responsibility for the Establishment.

In connection with the registration and continuing presence of an Establishment, the Competent Authority shall be entitled, except as otherwise provided in this [Annex] [Reference Paper], (i) to require Lawyers and Law Firms affiliated with the Establishment to abide by the rules applicable to the legal profession in the Host Member, and (ii) to subject such Lawyers and Law Firms to the disciplinary rules applicable to the legal profession in the Host Member. The Competent Authority shall see to it that all such rules are available in writing to representatives of the

Establishment, and, in the event of disciplinary action, shall ensure that it is administered in a reasonable, objective and impartial manner.

### ***Scope of Practice of Establishments***

A Host Member shall permit an Establishment in that Host Member to supply legal services in a manner that is not inconsistent with the following:

The Establishment shall be permitted to supply legal services regarding matters in respect of which the Lawyer or Law Firm maintaining the Establishment is authorized to render legal services in his, her or its Home Member.

The Establishment shall be permitted to supply legal services that include services relating to the law of the Host Member if those services are supplied by, or are based on services supplied by, one or more legal professionals who are duly authorized by the Host Member to supply such services, and who may or may not be members of the professional staff of the Establishment.

Every Lawyer on the Establishment's professional staff who seeks to qualify as a legal professional in the Host Member shall be afforded a reasonable opportunity so to qualify. In this connection, rules applicable to Lawyers from Members other than the Host Member shall be no more restrictive than rules applicable to nationals of the Host Member.

### ***Forms of Practice and Association***

A Host Member shall permit forms of legal practice and association in a manner that is not inconsistent with the following:

An Establishment shall be permitted to include members of the Host Member's legal profession on its professional staff, either as employees, or as partners or shareholders or the equivalent, and also to include them in any such capacity in the Law Firm responsible for the Establishment.

A Lawyer or Law Firm from a Home Member other than the Host Member shall be permitted, at his, her or its option, to establish a presence in the Host Member (i) in any form that is available to suppliers of legal services in the Host Member, or (ii) as a branch of the business, commercial or professional entity through which the Lawyer or Law Firm supplies legal services in his, her or its Home Member.

A Lawyer shall be permitted to use: (i) any professional title authorized by the Lawyer's Home Member together with an appropriate reference to the Lawyer's Home Member, and (ii), where the lawyer is properly registered and otherwise qualified in the Host Member, any professional title authorized for use by the Host Member by virtue of such registration and qualification.

### ***Arbitration***

Each Host Member shall permit Lawyers from other Members to participate in any capacity in arbitration proceedings in the Host Member without subjecting the Lawyers to any registration or other requirements applicable to Establishments.