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Resolution of the IBA Council on transfer of skills and liberalization of trade in legal services

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International Bar Association

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Resolution of the IBA Council at its October 2008 Council meeting on transfer of skills and liberalization of trade in legal services

WHEREAS the IBA Council in 1998 and in the years thereafter has adopted several resolutions all aiming at providing guidance for, and facilitating, the liberalization of cross-border legal services, which are of ever growing importance for the global economy;

WHEREAS among these is a resolution adopting a “Statement of General Principles for the Establishment and Regulation of Foreign Lawyers” in which certain terms are defined, and such terms when used in capitalized form herein have the meanings as so defined;

WHEREAS a number of countries, in particular Developing Countries as referred to in Article IV of the General Agreement on Trade in Services (the “GATS”), so far have not been willing to open their legal services markets to Foreign Lawyers or have done so only to a limited extent, in particular as regards scope of practice rights and scope of rights of association with Local Lawyers;

WHEREAS the IBA Council recognises that lawyers have certain responsibilities to the legal system and to society regardless of where they practice;

WHEREAS these responsibilities relate inter alia to the standards of skill and competence of lawyers required in order effectively to serve the needs of justice and the rule of law and thus may encompass, inter alia, the transfer of skills relating to substantive legal practice and law firm management (“Skills Transfer”);

WHEREAS the extent and the modalities of Skills Transfer in cross-border legal services by Foreign Lawyers in a given Host Jurisdiction necessarily depend, inter alia, on the extent to which Foreign Lawyers in such Host Jurisdiction are permitted to practice law and to associate with Local Lawyers;

WHEREAS a regime permitting the association of Foreign Lawyers with Local Lawyers likely provides the most efficient and effective means of Skills Transfer by permitting Local Lawyers to work with more experienced Foreign Lawyers within the same firm, thus enabling them to gain practical experience and substantive knowledge in a way that would otherwise be impermissible due to the risk of breach of confidentiality;

NOW THEREFORE BE IT RESOLVED, by way of supplement to (and without modification or limitation of) the Resolutions by IBA Council referred to in the first preambular paragraph above:

- (1) Countries that so far 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, may wish to grant Foreign Lawyers access to their legal services market, or to reduce or remove any existing restrictions on such access, subject to one or both of the following conditions:
 - (A) A Foreign Lawyer who is permitted to practice through an establishment in a Host Jurisdiction may be required by the Host Authority to participate, directly or indirectly, in the provision of formal continuing legal education and training programs sponsored or approved by the Host Authority or other bodies responsible for the development of the legal profession of the Host Jurisdiction and open to Local Lawyers generally.
 - (B) A Foreign Lawyer who is permitted to practice through an establishment in a Host Jurisdiction in association with Local Lawyers may be required, in the course of his/her practice, to provide, directly or indirectly, individual training and mentoring in relevant legal skills and disciplines, as well as supervised work experience, to Local Lawyers with whom the Foreign Lawyer practices in such association.
- (2) In order to be consistent with the general principles of the GATS, any regime adopted by a Host Authority for the purpose of implementing Skills Transfer as contemplated by Paragraphs (1)(A) and (1)(B) of this resolution would need to be: (i) transparent; (ii) not unreasonably burdensome; (iii) non-discriminatory as between Foreign Lawyers and (iv) not adopted or designed for the purpose of constituting an obstacle to the establishment of Foreign Lawyers in the Host Jurisdiction.
- (3) Any measures taken pursuant to Paragraph (1)(A) of this resolution should not require a Foreign Lawyer to disclose information that is proprietary or confidential to the Foreign Lawyer, his/her firm or any client.