

## ABA MODEL RULE FOR THE LICENSING AND PRACTICE OF FOREIGN LEGAL CONSULTANTS

### § 1. General Regulation as to Licensing

In its discretion, the [name of court] may license to practice in this United States jurisdiction as a foreign legal consultant, without examination, an applicant who:

- (a) is, and for at least five years has been, a member in good standing of a recognized legal profession in a foreign country, the members of which are admitted to practice as lawyers or counselors at law or the equivalent and are subject to effective regulation and discipline by a duly constituted professional body or a public authority;
- (b) for at least five years preceding his or her application has been a member in good standing of such legal profession and has been lawfully engaged in the practice of law in the foreign country or elsewhere substantially involving or relating to the rendering of advice or the provision of legal services concerning the law of the foreign country;<sup>1</sup>
- (c) possesses the good moral character and general fitness requisite for a member of the bar of this jurisdiction; and
- (d) intends to practice as a foreign legal consultant in this jurisdiction and to maintain an office in this jurisdiction for that purpose.

### § 2. Application

An applicant under this Rule shall file an application for a foreign legal consultant license, which shall include all of the following:

- (a) a certificate from the professional body or public authority having final jurisdiction over professional discipline in the foreign country in which the applicant is admitted, certifying the applicant's admission to practice, date of admission, and good standing as a lawyer or counselor at law or the equivalent;
- (b) a letter of recommendation from one of the members of the executive body of such professional body or public authority or from one of the judges of the highest law court or court of original jurisdiction in the foreign country in which the applicant is admitted;

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<sup>1</sup> Section 1(b) is optional; it may be included as written, modified through the substitution of shorter periods than five and seven years, respectively, or omitted entirely.

- (c) duly authenticated English translations of the certificate required by Section 2(a) of this Rule and the letter required by Section 2(b) of this Rule if they are not in English;
- (d) other evidence as the [name of court] may require regarding the applicant's educational and professional qualifications, good moral character and general fitness, and compliance with the requirements of Section 1 of this Rule;
- (e) an application fee as set by the [name of court].

§ 3. Scope of Practice

A person licensed to practice as a foreign legal consultant under this Rule may render legal services in this jurisdiction but shall not be considered admitted to practice law in this jurisdiction, or in any way hold himself or herself out as a member of the bar of this jurisdiction, or, do any of the following:

- (a) appear as a lawyer on behalf of another person in any court, or before any magistrate or other judicial officer, in this jurisdiction (except when admitted pro hac vice pursuant to [citation of applicable rule]);
- (b) prepare any instrument effecting the transfer or registration of title to real estate located in the United States of America;
- (c) prepare:
  - (i) any will or trust instrument effecting the disposition on death of any property located and owned by a resident of the United States of America, or
  - (ii) any instrument relating to the administration of a decedent's estate in the United States of America;
- (d) prepare any instrument in respect of the marital or parental relations, rights or duties of a resident of the United States of America, or the custody or care of the children of such a resident;
- (e) render professional legal advice on the law of this jurisdiction or of the United States of America (whether rendered incident to the preparation of legal instruments or otherwise) except on the basis of advice from a person duly qualified and entitled (other than by virtue of having been licensed under this Rule) to render professional legal advice in this jurisdiction;
- (f) carry on a practice under, or utilize in connection with such practice, any name, title or designation other than one or more of the following:

- (i) the foreign legal consultant's own name;
- (ii) the name of the law firm with which the foreign legal consultant is affiliated;
- (iii) the foreign legal consultant's authorized title in the foreign country of his or her admission to practice, which may be used in conjunction with the name of that country; and
- (iv) the title "foreign legal consultant," which may be used in conjunction with the words "admitted to the practice of law in [name of the foreign country of his or her admission to practice]".

[(g) render legal services in this jurisdiction pursuant to the Model Rule for the Temporary Practice by Foreign Lawyers.]

#### § 4. Practice by a Foreign Legal Consultant in Another United States Jurisdiction

[A person licensed as a foreign legal consultant in another United States jurisdiction may provide legal services in this jurisdiction on a temporary basis pursuant to the Model Rule for Temporary Practice by Foreign Lawyers. A person licensed as a foreign legal consultant in another United States jurisdiction shall not establish an office or otherwise engage in a systematic and continuous practice in this jurisdiction or hold out to the public or otherwise represent that the foreign legal consultant is licensed as a foreign legal consultant in this jurisdiction.]

#### § 5. Rights and Obligations

Subject to the limitations listed in Section 3 of this Rule, a person licensed under this Rule shall be considered a foreign legal consultant affiliated with the bar of this jurisdiction and shall be entitled and subject to:

- (a) the rights and obligations set forth in the [Rules] [Code] of Professional [Conduct] [Responsibility] of [citation] or arising from the other conditions and requirements that apply to a member of the bar of this jurisdiction under the [rules of court governing members of the bar, including ethics]; and
- (b) the rights and obligations of a member of the bar of this jurisdiction with respect to:
  - (i) affiliation in the same law firm with one or more members of the bar of this jurisdiction, including by:
    - (A) employing one or more members of the bar of this jurisdiction;

- (B) being employed by one or more members of the bar of this jurisdiction or by any partnership [or professional corporation] that includes members of the bar of this jurisdiction or that maintains an office in this jurisdiction; and
  - (C) being a partner in any partnership [or shareholder in any professional corporation] that includes members of the bar of this jurisdiction or that maintains an office in this jurisdiction; and
- (ii) attorney-client privilege, work-product privilege and similar professional privileges.

§ 6. Discipline

A person licensed to practice as a foreign legal consultant under this Rule shall be subject to professional discipline in the same manner and to the same extent as members of the bar of this jurisdiction. To this end:

- (a) Every person licensed to practice as a foreign legal consultant under this Rule:
- (i) shall be subject to the jurisdiction of the [name of court] and to censure, suspension, removal or revocation of his or her license to practice by the [name of court] and shall otherwise be governed by [citation of applicable rules]; and
  - (ii) shall execute and file with the [name of court], in the form and manner as the court may prescribe:
    - (A) a commitment to observe the [Rules] [Code] of Professional [Conduct] [Responsibility] of [citation] and the [rules of court governing members of the bar] to the extent applicable to the legal services authorized under Section 3 of this Rule;
    - (B) an undertaking or appropriate evidence of professional liability insurance, in an amount as the court may prescribe, to assure the foreign legal consultant's proper professional conduct and responsibility;
    - (C) a written undertaking to notify the court of any change in the foreign legal consultant's good standing as a member of the foreign legal profession referred to in Section 1(a) of this Rule and of any final action of the professional body or public authority referred to in Section 2(a) of this Rule imposing any disciplinary censure, suspension, or other sanction upon the foreign legal consultant; and

- (D) a duly acknowledged instrument in writing, providing the foreign legal consultant's address in this jurisdiction and designating the clerk of [name of court] as his or her agent for service of process. The foreign legal consultant shall keep the clerk advised in writing of any changes of address in this jurisdiction. In any action or proceeding brought against the foreign legal consultant and arising out of or based upon any legal services rendered or offered to be rendered by the foreign legal consultant within or to residents of this jurisdiction, service shall first be attempted upon the foreign legal consultant at the most recent address filed with the clerk. Whenever after due diligence service cannot be made upon the foreign legal consultant at that address, service may be made upon the clerk. Service made upon the clerk in accordance with this provision is effective as if service had been made personally upon the foreign legal consultant.
- (b) Service of process on the clerk under Section 5(a)(ii)(D) of this Rule shall be made by personally delivering to the clerk's office, and leaving with the clerk, or with a deputy or assistant authorized by the clerk to receive service, duplicate copies of the process together with a fee as set by the [name of court]. The clerk shall promptly send one copy of the process to the foreign legal consultant to whom the process is directed, by certified mail, return receipt requested, addressed to the foreign legal consultant at the most recent address provided in accordance with section 5(a)(ii)(D).

#### § 7. Annual Fee

A person licensed as a foreign legal consultant shall pay an annual fee as set by the [name of court].

#### § 8. Revocation of License

If the [name of court] determines that a person licensed as a foreign legal consultant under this Rule no longer meets the requirements for licensure set forth in Section 1(a) or Section 1(b) of this Rule, it shall revoke the foreign legal consultant's license.

#### § 9. Admission to Bar

If a person licensed as a foreign legal consultant under this Rule is subsequently admitted as a member of the bar of this jurisdiction under the Rules governing admission, that person's foreign legal consultant license shall be deemed superseded by the license to practice law as a member of the bar of this jurisdiction.

#### § 10. Application for Waiver of Provisions

The [name of court], upon written application, may waive any provision or vary the application of this Rule where strict compliance will cause undue hardship to the applicant. An application for waiver shall be in the form of a verified petition setting forth the applicant's name, age and residence address, the facts relied upon and a prayer for relief.

Adopted August 10-11, 1993 by the ABA House of Delegates. Amended, August 7-8, 2006.