It is permissible under the Model Rules for U.S. lawyers to form partnerships or other entities to practice law in which foreign lawyers are partners or owners, as long as the foreign lawyers are members of a recognized legal profession in a foreign jurisdiction and the arrangement is in compliance with the law of jurisdictions where the firm practices. Members of a profession that is not recognized as a legal profession by the foreign jurisdiction would, however, be deemed “nonlawyers” such that admitting them to partnership would violate Rule 5.4 (Professional Independence of Lawyer). Before accepting a foreign lawyer as a partner, the responsible lawyers in a U.S. law firm have an ethical obligation to take reasonable steps to ensure that the foreign lawyer qualifies under this standard and that the arrangement is in compliance with the law of the jurisdictions where the firm practices. The responsible lawyers in a U.S. law firm also have ethical obligations to take reasonable steps to ensure that matters in their U.S. offices involving representation in a foreign jurisdiction are managed in accordance with applicable ethical rules, and that all lawyers in the firm comply with other applicable ethical rules.

As business has become more international in scope, American business officials wish to be represented by law firms capable of advising them concerning the laws of foreign countries. To meet these expectations, more U.S. law firms have sought to gain international legal expertise. Some of these firms have formed partnerships and similar affiliations with lawyers from other countries.

1. Law firms generally conduct their international services in one of several modes: (1) the global firm endeavors to maintain an office in each major jurisdiction and some minor jurisdictions, providing in-depth, local law coverage; (2) the international firm seeks a presence in most major jurisdictions and a few minor ones in which clients need their presence, but with little emphasis on local law capabilities; (3) the international network calls for exclusive or nonexclusive cross-referrals and local law capabilities among firms in each major jurisdiction and many minor ones, with firms...
Growing numbers of foreign-based law firms have acquired expertise in the law and practices of jurisdictions foreign to them by hiring locally-licensed lawyers to help advise their clients. Some of these foreign-based law firms either have hired U.S. lawyers or merged with U.S. law firms in order to provide legal advice in matters dependent upon U.S. law.2

The Committee is asked whether the practice of U.S. lawyers forming partnerships with foreign lawyers 3 violates the Model Rules of Professional Conduct prescriptions against forming law partnerships or similar associations with nonlawyers, against sharing legal fees with nonlawyers, and against engaging in or assisting another in the unauthorized practice of law. After considering the purposes for these proscriptions, the Committee concludes that the Model Rules do not prohibit U.S. lawyers from forming partnerships with foreign lawyers 4 for the purpose of practicing law. The foreign lawyers must, however, be members of a recognized legal profession in the foreign jurisdiction and the arrangement must be in compliance with the law of the foreign and U.S. jurisdictions where the firm practices.

Forming Partnerships With Foreign Lawyers Does Not Violate Any Model Rule

No provision of the Model Rules specifically addresses whether a foreign lawyer may be admitted to partnership in a U.S. firm. There are, however, prohibitions in Rule 5.4 against nonlawyers sharing in legal fees or being partners or

in each jurisdiction qualified to provide local law expertise. Each pays a membership fee based on size and agrees to provide any other member firm free advice on a matter. See generally Mairead Keohane, Net Beneficiary, EUROPEAN LEGAL BUSINESS (November/December 1999). For ethical issues involved in law firm affiliations, see ABA Committee on Ethics and Prof. Responsibility Formal Op. 94-388 (Relationships Among Law Firms), in FORMAL AND INFORMAL ETHICS OPINIONS 1983-1998 262 (ABA 2000), and ABA Formal Op. 84-351 (Letterhead Designation of “Affiliated” or “Associated” Law Firms), id. at 4.


3. The term “foreign lawyer” is used here to denote a person who has not been licensed generally to practice law by any state, territory, or commonwealth of the United States, but who is authorized to practice in a recognized legal profession by a jurisdiction elsewhere. Foreign legal consultants are considered foreign lawyers for this purpose, even though they may have qualified under the laws of a state to counsel clients in that jurisdiction on the laws of a non-U.S. jurisdiction. See, e.g., New York Rules of the Court of Appeals, Rules for the Licensing of Legal Consultants, N.Y.R.Ct. § 521.1 et seq. (McKinney 2000).

4. The analysis in this opinion also applies to holding membership in limited liability companies, to owning shares in professional associations, and to owning an interest in any other type of entity that practices law.
holding any other interest or office in an organization that practices law. Therefore, if a member of the legal profession of a foreign country were considered a “nonlawyer” under Rule 5.4, he would be prohibited from being a partner in a U.S. law firm.

The prohibitions in Rule 5.4 are directed mainly against entrepreneurial relationships with nonlawyers and primarily are for the purpose of protecting a lawyer's independence in exercising professional judgment on the client's behalf free from control by nonlawyers. This Committee consistently has interpreted

5. Model Rule 5.4 states:
(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:
   (1) an agreement by a lawyer with the lawyer's firm, partner, or associate
       may provide for the payment of money, over a reasonable period of time after
       the lawyer's death, to the lawyer's estate or to one or more specified persons;
   (2) a lawyer who purchases the practice of a deceased, disabled, or disappeared lawyer may, pursuant to the provisions of Rule 1.7, pay to the estate or other representative of that lawyer the agreed-upon purchase price; and
   (3) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profiting-sharing arrangement.
(b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.
(c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.
(d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:
   (1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;
   (2) a nonlawyer is a corporate director or officer thereof; or
   (3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.

The District of Columbia is the only U.S. jurisdiction that allows lawyers to have nonlawyer partners subject, however, to stringent conditions. See D.C. Rule of Professional Conduct 5.4 (a) (4) and (b) (2001).

6. See Rule 5.4 cmt. [1]. The rule was developed in the ABA House of Delegates during debates on the Kutak Commission's Proposed Rule 5.4, which the House rejected. See 2 G.C. HAZARD AND W.W. HODES, THE LAW OF LAWYERING (3d ed. 2001) § 45-4. Threats to lawyer professional independence resulting from corporate ownership or public investment in law firms led the House of Delegates to substitute nearly verbatim the provisions of the disciplinary rules in the former Model Code of Professional Conduct for the Kutak Commission's proposal. See ABA Model Rules of Professional Conduct (2001 ed.), Correlation Tables, Table A at 123, where it is noted that each paragraph of Rule 5.4 is substantially identical to a disciplinary rule, e.g., paragraph (a), to DR 3-102(A); paragraph (b), to DR 3-103(A); paragraph (c), to DR 5-107(b); and paragraph (d), to DR 5-107(C). See HAZARD & HODES id. at ch. 45 for a
Rule 5.4 with this purpose in mind, and on occasion has rejected a literal application of its provisions that did not accord with the purpose for the Rule.\(^7\) Rule 5.4 accomplishes this purpose by requiring that lawyers, to the exclusion of nonlawyers, own and control law practices, which thus helps assure that clients are accorded the protections of the professional standards lawyers must maintain. The Committee believes that foreign lawyers who are members of a recognized legal profession are qualified to accord these same protections to clients of U.S. law firms in which they become partners. Therefore, those foreign lawyers should be considered lawyers rather than nonlawyers for purposes of Rule 5.4.

This concept finds support in Rule 7.5(b) because that rule recognizes that there may be associations in law practice with lawyers not admitted in the jurisdiction, and requires only that the firm indicate “the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.”\(^8\) When the Model Rules were adopted, some U.S. law firms had foreign lawyers as partners; hence, any intent to render the practice a rules violation needed to be clearly stated. Yet nothing in this or any other Model Rule, or in the legislative history of the Model Rules, suggests that the term “jurisdiction” as used in Rule 7.5(b) excludes jurisdictions outside the United States.

critique of each paragraph of Rule 5.4 as adopted. In February and August 2000, concern that admission of nonlawyer professionals as partners in law firms would interfere with lawyers’ professional independence and the preservation of the core values of the profession led the House of Delegates to reject proposals to allow partnerships with nonlawyer professionals and to direct that no change be made to Rule 5.4. See ABA House of Delegates Revised Report 10F, adopted July 10-11, 2000.

7. See, e.g., ABA Formal Op. Formal Op. 93-374, FORMAL AND INFORMAL ETHICS OPINIONS 1983-1998 at 182-84 (analyzing the four paragraphs of Rule 5.4 in light of its purpose to protect professional independence and concluding that the rule is not violated by a lawyer's sharing court-awarded fees with a pro bono organization that sponsors the litigation; the conclusion was based partly on the absence in such fee-sharing of any threat to the lawyer's independent professional judgment); ABA Formal Op. 88-356, id. at 35 (paying service fee to a temporary lawyer agency based on a percentage of lawyer's wages did not constitute illegal fee-splitting under Rule 5.4(a) or a violation of Rule 5.4(c)).

8. Rule 7.5(b). In the former Model Code of Professional Responsibility, the similar provision, DR 2-102(D), was phrased prohibitively rather than permissively and provided that a law partnership shall not be formed or continued between or among lawyers licensed in different jurisdictions unless all enumerations of the members and associates of the firm on its letterhead and in other permissible listings make clear the jurisdictional limitations on those members and associates of the firm not licensed to practice in all listed jurisdictions; however, the same firm name may be used in each jurisdiction. We believe the DR is the same in substance as Model Rule 7.5(b), which sets the parameters for properly listing nonadmitted lawyers in such a way as to comply with the Rule 7.1 proscription against making “a false or misleading communication about the lawyer or the lawyer's services.”
The American Bar Association has, moreover, recognized the desirability of assuring the availability of foreign lawyers to assist clients in the United States with issues involving foreign law and has furthered the reciprocal opportunities for U.S. lawyers to practice abroad by adopting a “Model Rule for the Licensing of Legal Consultants.”9 This rule specifies that licensed foreign legal consultants may be partners in law firms, thus according some recognition to the arrangement.10

Rule 5.511 provides a basis for disciplining lawyers when they violate or assist in a violation of a jurisdiction’s law practice admissions standards and unauthorized practice of law regulations.12 These standards and regulations are for the


10. Once licensed, and with specified limitations on the scope of the legal consultant’s practice, the consultant is subject to the licensing jurisdiction’s rules of professional conduct and to discipline there and is subject to the attorney-client, work-product, and similar professional privileges. §§ 5, 6, id. at 31-33. Not surprisingly, restrictions on the scope of practice, § 4, id. at 31, resemble those that lawfully could be imposed on a legal professional licensed in one European community member country wishing to practice in another. See Detlev F. Vagts, Professional Responsibility in Transborder Practice: Conflict and Resolution, 13 Geo. J. Leg. Ethics 677, 686 (2000) (describing the effect of Reyners v. Belgium, 1974 E.C.R. 631, which stands for the proposition that citizens of other European countries cannot be excluded by one state from the practice of law). The ABA Model Foreign Consultant Rule is nearly identical to the New York Rule on licensing foreign legal consultants, supra note 3.

11. Rule 5.5 states:

A lawyer shall not:

(a) practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction; or

(b) assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law.

12. 2 Hazard & Hodes, supra note 6, at § 46-3. “Practicing law” is a regulatory concept dependent upon the law of each jurisdiction. Appropriate authorization to practice in a jurisdiction usually is gained through bar examination and general admission; admission as a lawyer either on motion or through a shorter bar examination; pro hac vice admission for occasional appearances in courts, arbitrations, or administrative hearings; authorization for in-house counsel to represent her employer; special licensure as a foreign legal consultant; or (as allowed by statute, rule or custom) temporary appearances in a jurisdiction in furtherance of matters having a relationship to another jurisdiction in which the lawyer is authorized to handle the legal matter. See 1 Restatement (Third) of the Law Governing Lawyers, Topic 2, Title B § 3(3), Jurisdictional Scope of the Practice of Law by a Lawyer 24 (2000) (hereinafter “Restatement”), defining the jurisdictional scope of the practice of law by a lawyer as including provision of legal services to a client “at a place within a jurisdiction in which the lawyer is not admitted to the extent that the lawyer’s activities arise out of or are otherwise reasonably related to the lawyer’s practice in another jurisdiction where authorized.” See also cmt. e, id. at 26-30.
purpose of protecting clients and the jurisdiction's legal system from the adverse effects of incompetence or unethical conduct.\textsuperscript{13} The rule is not violated by a foreign lawyer who, although a partner or associate in a law firm that has an office to practice law in the jurisdiction, nevertheless does not himself "practice law" in the jurisdiction as the term is defined there.

For these reasons, the Committee is of the opinion that U.S. lawyers may in general form partnerships with foreign lawyers provided the foreign lawyers satisfy the requirements described in the next part.

**The Foreign Lawyer Must Be a Member of a Recognized Legal Profession**

In order to qualify as a foreign lawyer for purposes of Rule 5.4, a person must be a member of a recognized legal profession in a foreign jurisdiction. The term "profession" itself generally connotes the attributes of education and formal training, licensure to practice, standards, and a system of sanctions for violations of the standards.\textsuperscript{14} There nevertheless is no arbitrary definition of "lawyer" or "legal profession" that must be applied to determine whether a person in a foreign jurisdiction is a lawyer. The determination essentially is factual, requiring consideration of the jurisdiction's legal structure as well as the nature of the services customarily performed by the persons in question.

Generally speaking, a person who is specially trained to provide advice on the laws of the foreign jurisdiction and to represent clients in its legal system, and is licensed by the jurisdiction to do so, will qualify as a foreign lawyer. Before accepting a foreign lawyer as a partner, the responsible lawyers of a U.S. law firm must take reasonable steps to ensure that the foreign lawyer is a member of a recognized legal profession authorized to engage in the practice of law in the foreign jurisdiction and that the arrangement complies with the law of the jurisdictions where the firm practices.\textsuperscript{15} For example, foreign lawyers admitted to practice in

\textsuperscript{13} See, e.g., Restatement, Topic 2, Title A, Admission to Practice Law, Introductory Note, supra note 12, at 16: "[i]n general, a jurisdiction's requirements for admission and for renewal of a license to practice law are best designed when directed primarily toward protecting the legal system against incompetent practitioners or those whose professional acts would predictably cause harm to clients, the legal system or the public."

\textsuperscript{14} A precise definition of "profession" has been subject to debate. See, e.g., "... In the Spirit of Public Service: " A Blueprint for the Rekindling of Lawyer Professionalism, 1986 ABA Commission on Professionalism 10-11 and sources cited therein. Dean Pound cites as three attributes of a profession: organization, learning, and a spirit of public service. See Roscoe Pound, The Lawyer From Antiquity To Modern Times 4-10 (1953).

\textsuperscript{15} State and local bar ethics committees have imposed similar obligations on lawyers in firms that admit foreign lawyers to partnership. See, e.g., Association of the Bar of the City of New York Committee on Prof. and Judicial Ethics Formal Op. 81-72 (commenting on letterhead designations of foreign lawyers and noting that whether New York lawyers may form a partnership relationship with a foreign law firm requires a factual inquiry "whether the training of and ethical standards applicable to the foreign lawyer are comparable to those for an American lawyer" such that the for-
Sweden, Japan, Great Britain and other European Union countries would satisfy these requirements and have been found by bar association ethics committees to qualify for partnership in U.S. law firms.\textsuperscript{16}

If, however, professionals in a foreign jurisdiction are not members of a recognized legal profession in that jurisdiction, the professionals should, in our opinion, be considered nonlawyers rather than lawyers for purposes of Model Rule 5.4. Hence, they would not be eligible for partnership in a U.S. law firm. For example, qualification as foreign lawyer for purposes of Rule 5.4 ordinarily should be accorded members of the profession of \textit{avocat} (courtroom lawyer) or \textit{conseil juridique} (transactional or business lawyer), but might not be accorded members of the profession of \textit{notario} or notary, a substantially different functionary in most civil law jurisdictions.\textsuperscript{17} In some countries, moreover, there may be no recognized foreign lawyer is a “lawyer” within the meaning of DR 3-103(A) of the New York Code of Professional Responsibility; Utah State Bar Ethics Advisory Op. 96-14 (January 24, 1997) (Utah lawyer may form a partnership or associate with legal practitioners from a foreign country who are authorized by the laws of the foreign country to engage in the functional equivalent of U.S. legal practice).


\textsuperscript{17} In Belgium, “[t]ransfer of real estate and authentication of signatures, wills, etc. is the monopoly of notaries, who remain organized separately from the lawyers. Whereas lawyers have the possibility to advise in matters falling within the competence of notaries, they have no authority to perform the official functions of a notary. Quite often, the notary and lawyer will therefore work together, although it is not yet permitted that lawyers and notaries combine their offices in the firm.” Roel Nieuwdorp, \textit{Belgium in Law Without Frontiers, A Comparative Survey of the Rules of Professional Ethics Applicable to Cross-Border Practice of Law} 30 (Edwin Godfrey ed. 1995), a publication containing essays on the ethical and regulatory rules applicable in most European Union countries.
legal profession. In that case, admitting the foreign professional as a partner or sharing legal fees with the foreign professional also would not be ethically permissible under Rule 5.4.\(^{18}\)

The law and ethical standards applicable to the legal profession in foreign countries will differ from some of the law and ethical standards that apply to U.S. lawyers. For example, the scope of client confidentiality may differ, just as Rule 1.6 and the attorney-client privilege differ among United States jurisdictions.\(^{19}\) This difference would not disqualify a foreign lawyer from partnership in a U.S. law firm. However, when necessary to enable a client to make informed decisions about representation in a foreign jurisdiction where the attorney-client privilege is materially more limited than in the United States, a lawyer working on the matter in a U.S. office has an obligation under Rules 1.4 and 1.6 to explain the risks of diminished protection to the client. Moreover, responsible lawyers in U.S. law firms must, in accordance with Rule 5.1,\(^{20}\) make reasonable efforts to ensure that

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18. The Model Rules would not, however, bar a contractual relationship with a separate organization in which the foreign professionals were partners that could, with appropriate disclosures, also be partly owned by U.S. lawyers as a law-related entity. See Rule 5.7. Lawyers also may use nonlawyers as “paraprofessionals” to assist them in the performance of legal services as long as the nonlawyers are supervised appropriately. See Rule 5.5 cmt. [1] (not assisting unauthorized practice for a lawyer to employ “the services of paraprofessionals and [delegates] functions to them, as long as the lawyer supervises the delegated work and retains responsibility for their work” as provided in Rule 5.3).

19. Wholly apart from admission of foreign lawyers to partnership, protecting client confidences is a major concern in any transnational legal representation. In most civil law countries, the attorney-client privilege applies differently, and may not apply at all in some circumstances where it would be applicable in the United States, e.g., to communications with in-house, corporate counsel. See generally Daiske Yoshida, The Applicability of the Attorney-Client Privilege to Communications with Foreign Legal Professionals, 66 Fordham L. Rev. 209, 227 (1997); Joseph Pratt, The Parameters of the Attorney-Client Privilege for In-House Counsel at the International Level: Protecting the Company’s Confidential Information, 20 N.W.J. Int’l Law & Bus. 145, 159 (1999).

20. Rule 5.1 states:

(a) A partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.

(b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.

(c) A lawyer shall be responsible for another lawyer’s violation of the Rules of Professional Conduct if:

(1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.
client information respecting matters in their U.S. offices is protected in accordance with Rule 1.6, that conflicts with the interests of clients with U.S. matters are managed as Rule 1.7 and related rules require, and that all the lawyers in the firm comply with other applicable rules of professional conduct.\textsuperscript{21}

Finally, when foreign lawyers are partners in or otherwise are associated with U.S. law firms, the U.S. lawyers in the firm are prohibited by Rule 5.5(b) from assisting their foreign partners and associates in what would be deemed the unauthorized practice of law in any U.S. jurisdiction. Calling upon a foreign lawyer to provide advice on the law of a foreign jurisdiction to a client who is located in a U.S. jurisdiction, however, ordinarily should not violate Rule 5.5 even though the foreign lawyer neither is admitted to practice generally nor licensed as a foreign legal consultant as long as the foreign lawyer is not regularly in the jurisdiction and the matter has a relationship to the jurisdiction in which the foreign lawyer is admitted or otherwise permitted to practice.\textsuperscript{22}

\textbf{Summary}

In the Committee's opinion, it is ethically permissible under the Model Rules for U.S. lawyers to form partnerships or other entities in which foreign lawyers are partners or owners, as long as the foreign lawyers are members of a recognized legal profession in the foreign jurisdiction, and the arrangement complies with laws of the U.S. and foreign jurisdictions in which the firm practices. Persons who are not members of a recognized legal profession, including those from jurisdictions with no recognized legal profession, do not qualify as lawyers for purposes of Rule 5.4. Responsible lawyers in a U.S. law firm must make reasonable efforts to ensure that foreign lawyers admitted to partnership or ownership in the firm satisfy these requirements; that the arrangement is in compliance with the law of jurisdictions where the firm practices; that matters in their U.S. offices that involve representation in a foreign jurisdiction are managed in accordance with applicable Model Rules; and that all lawyers in the firms comply with other applicable ethical rules.

\textsuperscript{21} We apply the term "rules of professional conduct" to mean the Model Rules, if in effect in a jurisdiction, but if not, other denominated ethical and disciplinary standards in effect in U.S. and foreign jurisdictions, the rules in which apply to the conduct in question. We do not, however, address here the difficult choice of law issues that arise when determining which jurisdictions’ ethical and disciplinary standards apply to lawyers engaged in a multinational legal matter. \textit{See} Model Rule 8.5(b).

\textsuperscript{22} \textit{See}, e.g., Virginia Unauthorized Practice of Law Committee Op. No. 195 (April 13, 2000); \textit{Restatement, supra} note 12, at 24, Topic 2, Title B § 3, \textit{Jurisdictional Scope of the Practice of Law by a Lawyer} 24 (incidental work in a jurisdiction where a lawyer is not admitted to practice that is related to a legal matter on which the lawyer works from an office in a jurisdiction where the lawyer is admitted does not involve unauthorized practice of law). From an ethical standpoint, a foreign lawyer should be afforded the same treatment although the law in each jurisdiction determines what conduct constitutes unauthorized practice of law.