December 5, 2017

Denis Novak
Deputy Minister of Justice
Ministry of Justice of the Russian Federation
14 Zhitnaya Street
Moscow 119991
Russia

Dear Deputy Minister Novak:

The American Bar Association (ABA) is a voluntary, professional membership organization with over 412,000 members, including lawyers from practice settings of all sizes and types and from every U.S. jurisdiction and many foreign countries. Founded in 1878, the ABA accredits U.S. law schools, provides continuing legal education, offers programs to assist lawyers and judges in their work, develops model rules and ethical codes, and implements initiatives to improve the legal system for the public.

We understand that the Ministry of Justice of the Russian Federation is currently consulting on a draft concept paper concerning regulation of the legal services market. We thought you might find helpful the information below on the United States legal services market and the regulatory approach to foreign law firms and lawyers.

As you may know, the regulation of lawyers and law firms in the United States is conducted at the state level; there is no federal regulation of lawyers or law firms. The general regulatory approach for practice authority, professional conduct, and discipline in the United States addresses individual lawyers, domestic and foreign, not firms. Although not a regulatory body, the ABA has developed model rules for the regulation of foreign lawyers in various capacities, and these have been the basis for state adoption of identical or substantively similar regulatory approaches. Through these rules, foreign lawyers and law firms can utilize a variety of mechanisms to offer legal services in the United States.

Generally, foreign law firms may establish offices in U.S. jurisdictions on the same or similar bases as a U.S. law firm, although the specific rules vary by state. This includes forming as limited liability partnerships, professional corporations, or other legal structures allowed under the relevant state rules. In most cases, foreign firms can operate under their own name, opening branch offices in the United States, and are allowed to take on U.S. clients and enter into employment and partner relationships with U.S.-licensed lawyers.
Additionally, in a majority of U.S. jurisdictions, individual foreign-licensed lawyers may establish an office through registration as a foreign legal consultant and provide legal services to clients located in or doing business in the United States. The ABA's Model Rule for Licensing and Practice by Foreign Legal Consultants has been adopted by 33 U.S. jurisdictions (including the leading U.S. commercial states, such as New York, California, Florida, and Illinois, as well as the District of Columbia). This regime allows lawyers from outside the United States, upon certain conditions, to establish an office in the relevant state and advise clients on the law of the jurisdictions in which they are licensed without passing any examinations or undergoing any additional training. Foreign legal consultants (operating individually or within a firm) generally may also associate freely with U.S.-licensed lawyers, including employing, being employed by, and entering into partnership with them.

Finally, one of the primary means through which foreign lawyers access the U.S. legal services market is through becoming fully admitted in a U.S. jurisdiction. The U.S. Supreme Court has held that bar admissions may not be denied solely on the basis of citizenship. Each year thousands of foreign-educated lawyers sit for the bar exam in the U.S. In 2017, nearly 5,000 foreign-educated lawyers sat for the bar exam in New York alone, comprising over 35% of all candidates. Once admitted to a U.S. jurisdiction, foreign lawyers enjoy all the rights and privileges afforded to U.S. citizens who are members of the bar.

In addition to the more permanent presence allowed through the methods described above, foreign lawyers may be able to provide services within a U.S. jurisdiction through engaging in temporary practice (fly-in/fly-out); registering as an in-house counsel; and appearing in court through pro hac vice admission.

The ABA has long supported liberalized legal services markets, both in the United States and abroad, as a means to enhance the ability of lawyers and law firms to serve their clients effectively through cross-border practice. We take this view not to advance one group of lawyers or law firms, but rather to ensure that all clients, regardless of jurisdiction, are able to benefit from the expert advice of their counsel of choice. The ABA believes that allowing these activities is critical not only for the mutual benefit of our legal practitioners and their clients, but also to promoting positive engagement between our respective legal professions and countries.

We hope that you will take these issues into account as you consider any revisions to the rules enabling foreign law firms to practice in Russia. The ABA would be happy to answer any questions or provide additional information on the system of lawyer regulation in the United States.

Sincerely,

Thomas M. Susman