Going Global: Association between Local and Foreign Lawyers and Law Firms

SPONSORED BY: ABA TASK FORCE ON INTERNATIONAL TRADE IN LEGAL SERVICES

Saturday, August 6, 2016
10:00am — 11:30am

St. Regis San Francisco
Impressionist Room (4th Floor)

This non-CLE session will feature a roundtable discussion on issues relating to the regulation of forms of association between domestic and foreign lawyers and law firms around the world. According to the 2014 IBA Global Regulation and Trade in Legal Services Report, 80% of the countries surveyed allow local lawyers to employ foreign lawyers, 35% allow foreign lawyers to employ local lawyers, and 56% permit local and foreign lawyers to enter into partnership. Panelists will present information on the forms of association currently permitted in selected countries and encourage an interactive discussion among attendees about the advantages and disadvantages of various regulatory models.

Panel:

Stephen Denyer, Law Society of England & Wales
David Tang, K&L Gates
Professor Laurel Terry, Penn State Dickinson Law

For more information contact: Kristi Gaines, at 202-662-1763 or kristi.gaines@americanbar.org.
The Issue of “Association”

American Bar Association Annual Meeting
San Francisco, August 6, 2016

Professor Laurel S. Terry (LTerry@psu.edu)
Penn State University - Dickinson Law
Carlisle, Pennsylvania

Overview of Remarks

• Definition: What is Association?
• Association “on the ground”
• “Association” policies
• Association issues
What Do We Mean by “Association”?

• **Employment:**
  – Local lawyers can employ “foreign” lawyers
  – Foreign lawyers/firms can employ “local” lawyers

• **Partnership**
  – Local lawyers can be partners with “foreign” lawyers
  – Foreign lawyers/firms can have local lawyer partners

• **Association involves RELATIONSHIPS**

• **Practice rights are governed by other rules**
  – E.g., FLC, FIFO, Pro Hac, In-house, full admission

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**Association “on the Ground”**

Law Offices *per State That Also Have Foreign Offices*

Data provided by General Counsel Metrics, LLC based on April 2014 websites of law firms with ≥37 lawyers; tinyurl.com/terrymap2
More Evidence of Association

From the 2014 AmLaw Global 100 issue:

“More than 25,000 lawyers from Am Law 200 firms work in foreign offices in more than 70 countries.”

Indirect Evidence of Association: NY

In 2013 in NY:

- Foreign-educated applicants were 29% of the exam pool
- Foreign-educated applicants came from 111 countries
- Between 2015 and 2015, >47,500 foreign-educated applicants PASSED the New York bar exam

“[The CCJ] strongly encourages its members to adopt explicit policies that permit the following qualified activities by foreign lawyers as a means to increase available legal services and to facilitate movement of goods and services between the United States and foreign nations:

[5 methods of active inbound practice by foreign lawyers AND association]

The CCJ’s “Association” Language

6) Formal professional association between foreign and United States lawyers who are duly licensed in their home country (ABA Model Rule of Professional Conduct 5.4 and ABA Model Rule for the Licensing and Practice of Foreign Legal Consultants allow such association), and

7) Foreign lawyer employment of United States lawyers and United States lawyer employment of foreign lawyers who are duly licensed in the United States as a foreign legal consultant or in their home country (ABA Model Rule for the Licensing and Practice of Foreign Legal Consultants provides that locally licensed lawyers may be employed by a law firm based in another country (or lawyer based in another country).
ABA Statements & Policies

Re the CCBE’s Association TTIP “request”

Some Issues re Association

• Some jurisdictions find association controversial
  – E.g., the Brazilian Bar’s position re the draft IBA Association resolution

• Association is an issue in trade negotiations

• Note: Regulators in jurisdictions that have association gave some surprising answers here:

IBA Global Regulation and Trade in Legal Services Report 2014
Regulators are Engaged in Int’l Dialogue

- ABA Resolution on Regulatory Cooperation
- See CCJ Resolutions re regulatory cooperation
- See CCJ-sponsored international conf. calls
- See CCJ/NOBC/NCBE/ABA support of International Conference of Legal Regulators
- See NOBC’s Global Resources webpage
- See NCBE’s annual meeting “int’l slot”

Conclusion

- Association is an issue of interest
- As a practical matter, it is quite common
- Recent events have highlighted the fact there often is no explicit association provision
- Regulators need input from practicing lawyers and clients
- In my view, association benefits clients and the public – IT’s ABOUT RELATIONSHIPS
ABA Annual Meeting 2016
Resources Related to “Association”

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2. Note: CCJ and ABA Policies are Available on the Webpage of the ABA Task Force on International Trade in Legal Services (ITILS), http://tinyurl.com/ABAITILS


7. ABA Standing Committee on Ethics and Professional Responsibility Formal Opinion 01-423: Forming Partnerships With Foreign Lawyers (Sept. 22, 2001)


10. Laurel Terry, Map Showing Law Firms Located in U.S. States That Have At Least One Foreign Office (April 9, 2015) (using data provided by General Counsel Metrics, LLC.), (available as a link at www.tinyurl.com/laurelterryslides)


12. Laurel Terry’s Presentation Slides (including the association slides from the 2016 ABA Annual Meeting), www.tinyurl.com/laurelterryslides