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# GLOBALISING YOUR PRACTICE – OPPORTUNITIES AND CHALLENGES

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## INTERNATIONAL TRADE AGREEMENTS AND THEIR APPLICABILITY IN THE EAST AFRICAN COMMUNITY

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Nairobi, 18 and 19 May 2017

Awareness is growing that some regulations may be inappropriate in a globalised world and that a better balance should be struck between the need for regulation and the necessity to ensure competition. *Organization for Economic Cooperation and Development, Regulatory Reform Project, Draft Chapter on Professional Business Services, October 22, 1996, at 4.*

# A Few Preliminary Observations

- Globalization is here to stay
- Globalization facilitates economic development
- A robust legal framework (the rule of law) sustains globalization and economic development
- A competent, independent and well-regulated legal profession is a key element of the Rule of Law
- Core Values must be preserved to maintain trust
- The practitioners are reacting more quickly to globalization than Bars

WHAT DO TRADE AGREEMENTS HAVE TO DO WITH  
ANY OF THIS??

# Trade Agreements - I

- Over the past 35 years, globalisation of many economic sectors has promoted a reexamination of the practices and structure of the world trading system
- This process culminated in the WTO Agreements in 1995
  - These comprise a series of international treaties designed to liberalize international trade
  - Together, they create an expanded, rule-based international trading system
  - For the first time, trade in services was covered

# Trade Agreements - II

- The General Agreement on Trade in Services (GATS)
- Covers trade in services, including professional services, *including legal services*
- Contains provisions on “*domestic regulation*” of professional services
- “No more restrictive than necessary to protect the public interest”
- So ... How does GATS work?

# GATS Applied – I

- All WTO members subject to its general provisions (governmental and non-governmental bodies [regulators] alike)
- Members not obligated to liberalise domestic regulation, but;
  - Members must “stand still,” *i.e.*, regulation cannot become more restrictive
  - Members may, however, make commitments to liberalise regulation

## GATS Applied – II

- “General Obligations and Principles” including:
  - “Most Favoured Nation Treatment”
  - Transparency
  - Economic Integration (EAC) – faster than WTO process
  - Domestic regulation must be administered in a “reasonable, objective and impartial manner”



## GATS Applied – III

- Predominantly concerned with regulatory measures that discriminate between local and foreign service providers
- Right to regulate is acknowledged, but subject to GATS principles
- Members not obligated to make commitments in legal services, but if they do, then subject to GATS principles

# GATS Applied – IV

- If made, what do commitments cover?
- Examples:
  - “Establishment”
  - Association
  - Licensure (regulatory status and admission)
    - Scope of practice
  - Temporary Presence
  - Privileges
  - Relationship to courts and arbitral tribunals

# What About the EAC?

<u>Country</u>	<u>WTO Member</u>	<u>Commitment on Legal Services</u>
Burundi	Yes	No
Kenya	Yes	No
Rwanda	Yes	Yes (no restrictions)
Tanzania	Yes	No
Uganda	Yes	No

# EAC Common Market Protocol

- Covers all services, including legal services
- 2014 “Scorecard”
- Mutual Recognition Agreement Process

# Lessons Learned

- Bars must stay in touch with their governments
- Regulation should aim for a better balance between legitimate regulatory concerns and maintenance of a competitive environment
- At the same time, ensure core values
- The IBA can help!