



# GLOBALISING YOUR PRACTICE

## OPPORTUNITIES AND CHALLENGES

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## **INTRODUCTION**

- Globalization is a process of integration among people, organisations, and governments of different nations. It is a process driven by international trade and investment and aided by information technology.
- As globalization intensifies economic, political, social and cultural relations across borders, an increasing number of transactions are affected by multiple legal orders.
- Globalisation and reforms in the power, construction, agriculture, telecommunications, accounting, banking and other sectors demand more than the conventional legal practice from lawyers.
- It demands a global outlook, specialisation, a commitment to international standards and business acumen.

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## **CROSS BORDER SERVICES AND GLOBALISATION OF LEGAL PRACTICE**

- Traditionally, the legal profession has operated primarily within national borders.
- However, globalisation has fueled an increase in the cross border exchange of goods and service which invariably require legal advisory support.
- Between 2011-2015 the global legal service market had total revenues of \$593.4bn, representing a compound annual growth rate (CAGR) of 3.9% between 2011 and 2015.
- The increased complexity of law practice has resulted in a growing need for legal norms to evolve to accommodate the expansion of cross border trade of goods and services.

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## **IMPACT ASSESSMENT OF THE INTERNATIONAL BAR ASSOCIATION ON GLOBALISATION OF LEGAL SERVICES**

IBA President launched the IBA Global Cross Border Legal Services Report 2014 which stated some positive statistics with respect to the globalization of legal services

According to the report:

- In 80% of countries studied, foreign firms are now permitted to open offices (although often with restrictions)
- In 35% of countries, foreign firms may now employ local lawyers
- In 80% of countries, local firms may now employ foreign lawyers.
- 56% of jurisdictions covered by the study now allow partnership or association between foreign and domestic lawyers
- 77% of jurisdictions no longer have nationality restrictions on foreign lawyers requalifying as local lawyers
- In 47% of the jurisdictions studied, foreign law firms are present, facilitating cross-border trade and investment



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## MODES OF CROSS BORDER LEGAL SERVICES

- Non-resident service suppliers. Via fax or email, internet etc.
- Temporary physical presence of a legal practitioner.
- **Acting as Joint Solicitors** – Where two or more firms act jointly as per Client's request
- **Merger** – Where two law firms integrate to form one law firm
- **Verein Structure** – Where a collection of firms in different countries present themselves internationally as a single entity. Examples of verein structure firms include Baker McKenzie, Norton Rose Fullbright etc.
- **Joint Law Venture** – Where two or more law firms pool resources to engage in a defined project or transaction

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## **EXAMPLES OF GLOBALISED LAW PRACTICES**

- Bowmans Law Group of South Africa has established offices in Kenya (Coulson Harney LLP), Uganda and Tanzania with a relationship firm in Nigeria.
- The Centurion Law Group also has established offices in South Africa, Equatorial Guinea, Ghana, Cameroon and Mauritius
- Allen & Overy, Baker & Mckenzie and White and Chase have established legal practices in Singapore through the use of Joint Law Ventures.
- Deloitte Legal is a global legal provider located in over 75 countries worldwide including Algeria, Angola, Belgium, Croatia, France, Panama, Peru and Russia.

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## **OPPORTUNITIES**

- There are various opportunities resulting from globalisation that can be beneficial to the promotion of cross border legal practice.
- These include:
  - Increased foreign direct investments;
  - Sector growth and emerging practice areas including, capital markets, project finance, private equity, personal and corporate data protection, ICT, energy and natural resources among others;
  - Increase of bilateral and multilateral trade in goods and services occasioned by the reduction of a number of trade tariffs and embargoes;



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## **OPPORTUNITIES (CONT.)**

- Rapid evolution of technology and telecommunications and their regulating laws. For example: enactment of the Nigeria Cybercrime (Prohibition, Prevention, Etc.) Act, 2015;
- Free trade agreements, unification of tariffs and regulating laws, for example,
  - North American Free Trade Agreement (“NAFTA”)
  - European Union (“EU”)
  - Association of South East Asian Nations (“ASEAN”)
  - Economic Community of West African States Common Exchange Tariff (“ECOWAS CET”)
- Expansion of laws relating to the carriage of goods;
- Ease of access to internet banking and funds transfers;

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## **CHALLENGES**

- A number of jurisdictions, despite free trade agreements, restrict transnational practice with high entry requirements for legal practitioners. An example is Tunisia, which has high barriers to globalisation, as legal practice is reserved solely for nationals, despite being a signatory to WTO's trade liberalisation agreements.
- Except where a Tunisian avocat or groups of avocats open an office which is associated with a foreign law firm
- Certain countries implement laws that deter investment by foreign companies and by extension the foreign lawyers acting on their behalf.
  - For example, according to the United State Department's Office of Investment Affairs, Investment Climate Statement in 2016, Morocco limits foreign ownership stake in air and maritime transport companies and maritime fisheries. In addition, foreigners are not allowed to own agricultural land, although they may lease it.

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## **CHALLENGES (CONT.)**

- Furthermore, in Morocco, foreign law firms can only open offices in association with Moroccan law firms.
- Individual lawyers under certain circumstances, can obtain approval to appear in the Moroccan courts in relation to specific cases and there are no rules on temporary practice for foreign lawyers outside of the courts.
- In other cases, the participation by foreign law firms are completely prohibited.
  - For example, according to the IBA database, foreign law firms are currently not permitted in the Democratic Republic of Congo.

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## **CHALLENGES (CONT.)**

- Disparities in the level of technological advances between Countries thereby limiting effective communication between prospective global practice partners.
- After collaborative efforts between law firms, lawyers may ferociously bid to retain Clients which can cause conflict, unhealthy competition and lack of trust.
- Fluctuations in exchange rates could affect return on investment. This is a common challenge for African Countries.

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## **RECOMMENDATIONS**

### **Practical steps towards globalising your legal practice:**

- Harmonize business laws on a wider scale. Begin by implementing a unified curriculum on business law at the university level as a foundation to encourage international legal practice.
- National Bars should be more proactive to incorporate an international element in practical training.
- Unification of African Lawyer's Union i.e. Pan African Lawyer's Union and (PALU) and African Bar Association to provide a more unified voice on liberalization of legal services



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## **RECOMMENDATIONS (CONT.)**

- Choose the appropriate mode of collaboration
  - Pay close attention to governing laws and treaties relating to the target jurisdiction e.g In Singapore, the law firm must consider the provisions of Legal Profession Act (Cap. 161), Legal Profession (Law Practice Entities) Rules 2015, and other relevant subsidiary legislation.
- Build capacity to remain competitive on the global platform. It is advisable to develop specific area(s) of interest and observe the trends within the practice jurisdiction of choice.

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## **RECOMMENDATIONS (CONT.)**

- Incorporate local lawyers within the jurisdiction of choice. This will be very helpful in integrating local practice and procedure.
- Establish relationships within the target jurisdiction.
- It is advisable to create a system where the income generated from a specific jurisdiction is used to service the law firm or legal practice within that jurisdiction.

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## **CONCLUSION**

- The globalization of the legal profession is inevitable especially with the advent of modern technology. Lawyers and law firms are able to provide legal advice without having to be established in a host country.
- It has become more relevant to build capacity through the strengthening of educational infrastructure and standard of practice to remain competitive on the globalised platform.
- We should seek for proper international regulations for cross border legal services which remains largely unstructured. This way the fears of many anti-globalisation forces can be addressed.

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## **CONCLUSION (CONT.)**

- Bar Associations are enjoined to advise their respective legislature on the importance of reviewing foreign lawyer participation requirements in line with the current trends.
- The future is bright as some African countries have begun to experience increased collaborative efforts.
  - Earlier this year, a strategic alliance agreement was signed between the Pan-African law group, Centurion and a South Sudanese law firm, Awatkeer Law Chambers.

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*It is the long history of humankind; those who learned  
to collaborate and improvise most effectively have  
prevailed*

*- Charles Darwin*



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**ANY QUESTIONS?**



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**THANK YOU**