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the legal profession



Law Society of Zimbabwe



Helping Zimbabwe's Lawyers Face Globalization

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The IBA Instruments on International Trade in Legal Services

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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



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What Is The IBA?

- The world's leading International Lawyers Organization
- More than 190 Member Bars from more than 160 Countries
- More than 80,000 Individual Members

“The Global Voice Of The Legal Profession”

- The IBA’s governing body is its Council, consisting of its officers, honorary life members, member bar representatives and representatives of various other constituencies
- The Council “speaks” through *resolutions* adopted by vote of its members
- Council Resolutions represent consensus views on issues of importance to the legal profession



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Why Are Council Resolutions Of Interest To The LSZ?

Before We Answer That,
A Bit More Background Is In Order

Trade Agreements

- Over the past 35 years, globalization 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

The General Agreement On Trade In Services (GATS) Is One of the Most Important of the WTO Agreements

- 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”

Why Is This Important To LSZ?

- The WTO Agreements, including GATS, are binding on the WTO's member states
- Trade in professional services, *including legal services*, are also covered by many other international trade agreements
- In theory at least, the WTO has the power to issue “Disciplines” under GATS that have the effect of domestic law

Why Is This Important To LSZ?

- The result has been that many Bars and governments have been prompted to review their domestic regimes in light of the WTO Agreements and GATS
- In any event, globalization and increased lawyer mobility have become an important fact of life

The IBA's Role

- GATS and its implications for the IBA's Member Bars have been on the IBA's radar for many years:
 - Developments monitored by the committee on International Trade in Legal Services (ITILS)
 - Proposes Resolutions to the IBA Council



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To Date, Six Resolutions Have Been Passed By The IBA Council And Communicated To The WTO

- They can be found on the IBA's website at:

http://www.ibanet.org/PPID/Constituent/Bar_Issues_Commission/BIC_ITILS_Committee/Default.aspx



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ITILS Has Published And Updated A “GATS Handbook” For Its Member Bars (also on the website)

Of The Six Resolutions, Four Are Of Particular Interest To The IBA'S Member Bars:

- “Core Values”
- “Establishment”
- “Skills Transfer”
- “Mutual Recognition”

Core Values—Common to *ALL* Legal Professions

- A role in facilitating the administration of, and access to, justice
- A duty to the courts
- A duty to uphold the rule of law
- A duty to keep client matters confidential

Core Values—Common to *ALL* Legal Professions

- A duty to avoid conflicts of interest
- A duty to uphold specific ethical standards
- A duty to provide clients with the highest quality of advice and representation
- A duty in the public interest of securing professional independence

Core Values

Trade agreements purporting to “liberalize”
trade in legal services *must respect the
need to preserve the core values*

Establishment Of Foreign Lawyers

- Acknowledges the increasing mobility of foreign lawyers
- References Common Regulatory Principles Consistent with Core Values
- Suggests Licensing Approaches

Common Regulatory Principles

- Authority of Host Bar to regulate foreign lawyers
- Fairness and Uniform Treatment
- Transparency

Common Regulatory Principles

- Public Purpose
 - Effective delivery of services
 - Consistent with the need to protect the public
- Access to competent legal advice

Licensing Approaches

- “Full Licensing”
- “Limited Licensing”

Skills Transfer

- Recognizes that a regime permitting association of foreign lawyers with local lawyers provides the “efficient and effective” means of skills transfer
- Authorizes a *requirement* of training and skills transfer by foreign lawyers as a condition of establishment

Mutual Recognition

- Articulates “standards and criteria” for mutual recognition agreements
- Consistent with international trade norms

Effect Of Resolutions

- Guidance for Member Bars
- Helped to shape the Conceptual Framework of Trade Negotiations
- In a manner that acknowledges and preserves the Core Values



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Enhances The Rule Of Law By

- Confirming the Essential Role of the Legal Profession
- Suggesting Regulatory Approaches