



**GLOBALISING YOUR PRACTICE -  
OPPORTUNITIES AND CHALLENGES**

**“CHURNING OF THE OCEAN OF MILK”  
or  
Instruments on international trade in legal  
services and their applicability in Asia**

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## ***GLOBALISING YOUR PRACTICE - OPPORTUNITIES AND CHALLENGES***



# Globalisation – blessing or curse

- 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 of our profession must be preserved to maintain trust
- The practitioners are reacting more quickly to globalization than Bars

**Practitioners from developing countries want to get involved**

# Finding the right balance in professional regulation

- Maintain the independence of the legal profession
- Relevant to the realities of modern practice
- Incentivize to obtain international expertise
- Assist practitioners to cooperate with foreign lawyers
- Protect the legal profession to be “invaded”

# Opportunities for practitioners

- Foreign offices where permitted
- “Best friends”
- Regional and international networks and other affiliations
- Participation in other international activities, *e.g.*, the International Bar Association (IBA)

# Trade agreements – tools to assist

- 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
  - For the first time, trade in services was covered

# GATS was born

- 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”

# The impact of trade agreements and the bars

- GATS imposes binding obligations on member governments
- New agreements are under negotiation
- Little coordination between governments and bars
- Trade agreements over time have caused bars to examine the ways in which they address international trade issues
- The principal issues involve lawyer mobility and association
- Trade agreements DO NOT require liberalization, only a commitment that regulation not become more restrictive
- Legal services will continue to be on the table in trade negotiations



# The essence of GATS

- All WTO members subject to its general provisions (governmental and non-governmental bodies [regulators] alike)
- Members not obligated to liberalize domestic regulation, but;
  - Members must “stand still,” *i.e.*, regulation cannot become more restrictive
  - Members may, however, make commitments to liberalize regulation
- “General Obligations and Principles” including:
  - “Most Favoured Nation Treatment”
  - Transparency
  - Regional integration – ASEAN Framework Agreement on Services(?)
  - Domestic regulation must be administered in a “reasonable, objective and impartial manner”

# GATS Commitments

- 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
- Commitments cover:
  - “Establishment”
  - Association
  - Licensure (regulatory status and admission)
  - Scope of practice
  - Temporary Presence
  - Privileges
  - Relationship to courts and arbitral tribunals

# GATS and AFAS Commitments - Cambodia

Modes of supply: 1) Cross-Border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or sub-sector	Limitations on market access	Limitations on national treatment	Additional commitments
<b>B. SECTOR-SPECIFIC COMMITMENTS</b>			
<b>I. BUSINESS SERVICES</b>			
<b>1. Professional Services</b>			
(a) Legal services (CPC 861):	(1) None (2) None (3) In commercial association with Cambodian law firms <sup>1</sup> , and may not directly represent clients in courts. (4) Unbound, except as indicated in the horizontal section.	(1) None (2) None (3) None (4) Unbound, except as indicated in the horizontal section.	
Foreign legal consultancy on law of jurisdiction where service supplier is qualified as a lawyer (including home country law, third country law, and international law)	(1) None (2) None (3) None (4) Unbound, except as indicated in the horizontal section.	(1) None (2) None (3) None (4) Unbound, except as indicated in the horizontal section.	

# Commitments of Asean Countries in legal services

- GATS and AFAS Commitments are almost the same
- Mode 3 (local presence) limited or not permitted
- Mode 4 (“fly-in fly out”) “unbound”
- Legal markets remain mainly closed
- Limited opportunities for Asean lawyers to join international or regional cooperation
- Bars should act!

# THE IBA AND TRADE AGREEMENTS

- No regulatory authority
- Advises its member bars on developments in international trade
- Speaks for the legal profession through resolutions of its Council
- Six resolutions have been passed by the IBA Council and communicated to the WTO, four are mostly relevant to the bars
  - “Core Values”
  - “Establishment”
  - “Skills Transfer”
  - “Mutual Recognition”



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**Thank you for your attention!**



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