



GLOBALISING YOUR PRACTICE - OPPORTUNITIES AND CHALLENGES

Globalization and Its Effect on Lawyers Practicing in Non-Global Law Firms

Iain Sandford, Partner, Sidley Austin LLP

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Road Map

1. Instruments governing international trade in legal services applicable to the Pacific Islands
2. Personal reflections on globalization and legal practice everywhere



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“Trade in legal services” and instruments regulating trade in legal services applicable in this region



What is trade in legal services?

- Supplying services to consumers in another country
- Several “modes of supply”
- Supply of legal services generally regulated in each jurisdiction
 - qualified lawyers often enjoy monopoly on certain services
 - Restrictions/rules on commercial vehicles
- Governments have agreed commitments on trade in legal services
- **Key Point**: long-term trajectory towards greater competition balanced against need to regulate profession for legitimate purposes



Multilateral rules World Trade Organization (“WTO”)

- WTO Agreements, designed to liberalize international trade (1995)
 - For the first time, trade in services was covered, in the General Agreement on Trade in Services (“GATS”)
- 164 Members in total – members in the Pacific region:
 - WTO Members: Australia, New Zealand, Fiji, Papua New Guinea and the Solomon Islands
 - Observer status: Tonga, Samoa and Vanuatu
- **Key point**: WTO rules are generally based on principles of good governance, so principles relevant even for non-Members



GATS

- **Key point:** GATS aims to create a framework for gradual liberalization of trade in services by increasing openness and competition and reducing discrimination
 - Modest progress towards these goals.
 - Complex framework: some rules apply generally, others on an “opt in” basis.
 - “Domestic regulation” (qualifications and licensing) carved out: regulators retain discretion in this area but mutual recognition allowed
 - Opt in rules include market access and national treatment – allowing foreign suppliers to compete, subject to meeting reasonable regulatory requirements.
 - Regional liberalization permitted



GATS in the Pacific

- **Key point:** Pacific WTO Members have all “opted in” with market access/national treatment for legal services
 - There is, therefore, some requirements to allow foreign firms to establish (subject to meeting regulatory requirements) and foreign persons to provide services (if qualified)
 - Because of commitments, qualification and licensing requirements must be administered reasonably and without discrimination.
 - Members retain discretion on “presence of natural persons” (FIFO)
 - No requirement to let unqualified lawyers practice



Plurilateral discussions

- Unfulfilled promise of liberalization under GATS has led to “plurilateral initiatives” that include Australia and New Zealand
- Plurilaterals give a sense of where the global framework is headed
- Trade in Services Agreement (TiSA)
 - on hold
 - Potential updating of approach to scheduling legal service commitments
- E-commerce negotiations
 - Big new focus. Lawyers have interest in localization and data flows, regulatory balance for services supplied by digital means and protection of confidential information



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Regional level

- Little coverage of legal services in existing regional agreements:
 - South-Pacific Regional Trade and Economic Cooperation Agreement (“SPARTECA”)
 - Pacific Islands Countries Trade Agreement (“PICTA”) & Melanesian Spearhead Group (“MSG”) Trade Agreement
 - Pacific Agreement on closer Economic Relations Plus (“PACER-PLUS”)
- Mutual recognition of practice rights in Australia & New Zealand
- Opportunities for closer integration/efficiencies?



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Globalization and lawyers in the Pacific



Globalization and lawyers

- Much legal practice remains local and domestic regulation of lawyers usually carves out monopoly area for locally-qualified practitioners.
- Cross border investment and trade create opportunities for lawyers/firms to help existing clients in their international activities.
- **But local nature of local law requires international firms and lawyers to collaborate with local lawyers.**



Paradigm shift

- New coverage of legal services
 - Provision of services and advice across multiple jurisdictions
- New fields of the law
 - *E.g.* foreign investment law, international trade, international arbitration, international tax, etc.
- New forms of delivery
 - Through electronic means rather than face to face and paper bound
- New business models
 - *E.g.* virtual law firms, forms of collaboration between foreign and local firms, employment of local lawyers by foreign firms and of foreign lawyers by local firms



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Opportunities

- The importance of connections
- Examples