

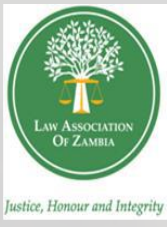
**GLOBALIZING YOUR PRACTICE –
OPPORTUNITIES AND CHALLENGES**
Livingstone, 3 and 4 April, 2018

GLOBALIZING YOUR PRACTICE – OPPORTUNITIES AND CHALLENGES

INTERNATIONAL TRADE AGREEMENTS AND THEIR APPLICABILITY IN THE SADC

Ben Greer

Livingstone, 3 and 4 April, 2018



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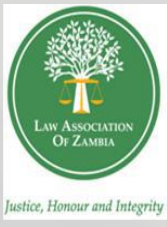
Awareness is growing that some regulations may be inappropriate in a globalized world and that a better balance should be struck between the need for regulation and the necessity to ensure competition. *Organization for Economic Cooperation and Development, Regulatory Reform Project, Draft Chapter on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



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TO SET THE STAGE, ...

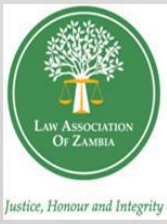
LET ME TELL YOU ABOUT MY FRIEND BILL



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



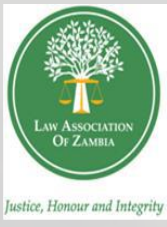
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PROFESSIONAL REGULATION

- Essential to the maintenance of an independent legal profession

AND/BUT

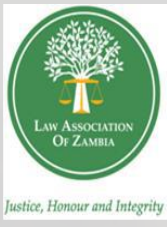
- To be effective and respected, it must be relevant to the realities of modern practice



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PRACTITIONER REACTION TO OPPORTUNITIES CONTINUES

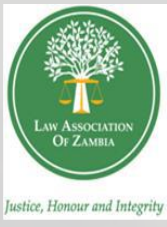
- Foreign offices where permitted
- Networks and other affiliations
- Participation in other international activities, *e.g.*, the International Bar Association (IBA)
- According to the Chambers Directory, international affiliations are common in the SADC



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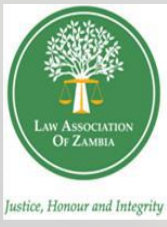
WITH THREE DREADED WORDS:

“EXPERTISE FROM ABROAD”



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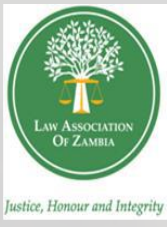
WHAT DO TRADE AGREEMENTS HAVE TO
DO WITH ANY OF THIS??



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THE IMPACT OF TRADE AGREEMENTS; WHAT ARE THEY, AND DO THEY MATTER TO BARS?

- The WTO agreements - in particular the General Agreement on Trade in Services (GATS) and various regional agreements remain in force
- GATS covers international trade in legal services
- GATS imposes binding obligations on member governments
- New agreements are under negotiation
- Often a haphazard process, with little coordination between governments and bars



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TRADE AGREEMENTS - II

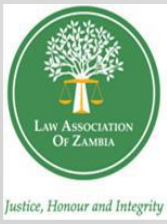
- Notwithstanding the sometimes haphazard process, trade agreements over time have caused bars to examine the ways in which they address international trade issues
- The principal issues involve lawyer mobility and association
- Trade agreements DO NOT require liberalization, only a commitment that regulation not become more restrictive
- Legal services will continue to be on the table in trade negotiations



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MORE ABOUT GATS

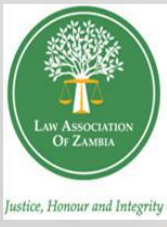
- Covers trade in services, including professional services, *including legal services*
- Contains provisions on “*domestic regulation*” of professional services
- “No more restrictive than necessary to protect the public interest”



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GATS APPLIED - I

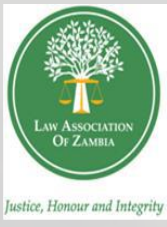
- All WTO members subject to its general provisions (governmental and non-governmental bodies [regulators] alike)
- Members not obligated to liberalize domestic regulation, but;
 - Members must “stand still,” *i.e.*, regulation cannot become more restrictive
 - Members may, however, make commitments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



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GATS APPLIED - II

- “General Obligations and Principles” including:
 - “Most Favored Nation Treatment”
 - Transparency
 - Regional arrangements permitted – faster than WTO process
 - Domestic regulation must be administered in a “reasonable, objective and impartial manner”



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GATS APPLIED - III

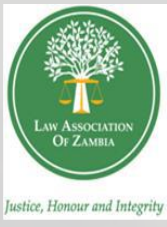
- Predominantly concerned with regulatory measures that discriminate between local and foreign service providers
- Right to regulate is acknowledged, but subject to GATS principles



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GATS APPLIED - IV

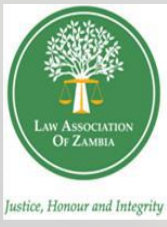
- If made, what do commitments cover?
- Examples:
 - “Establishment”
 - Association
 - Licensure (regulatory status and admission)
 - Scope of practice
 - Temporary Presence
 - Privileges
 - Relationship to courts and arbitral tribunals



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WHAT ABOUT THE SADC?

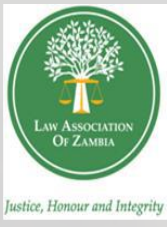
- With one exception (Botswana) no commitments to liberalize domestic regulation
- SADC protocol on trade in services an important step
- What is the Bars' response?



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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



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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:

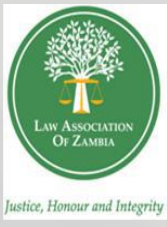
http://www.ibanet.org/PPID/Constituent/Bar_Issues_Commission/BIC_ITILS_Committee/Default.aspx



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OF THE SIX RESOLUTIONS, FOUR ARE OF PARTICULAR INTEREST TO THE IBA'S MEMBER BARS:

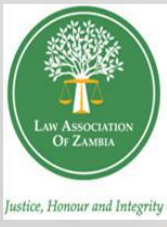
- “Core Values”
- “Establishment”
- “Skills Transfer”
- “Mutual Recognition”



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CORE VALUES—COMMON TO ALL LEGAL PROFESSIONS

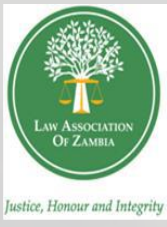
- A role in facilitating the administration of, and access to, justice
- A duty to the courts
- A duty to uphold the rule of law
- A duty to keep client matters confidential
- A duty to avoid conflicts of interest
- A duty to uphold specific ethical standards
- A duty to provide clients with the highest quality of advice and representation
- A duty in the public interest of securing professional independence



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CORE VALUES

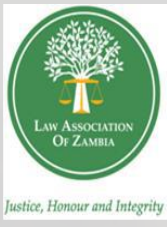
Trade agreements purporting to “liberalize”
trade in legal services *must respect the
need to preserve the core values*



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ESTABLISHMENT OF FOREIGN LAWYERS

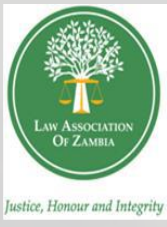
- Acknowledges the increasing mobility of foreign lawyers
- References Common Regulatory Principles Consistent with Core Values
- Suggests Licensing Approaches



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COMMON REGULATORY PRINCIPLES

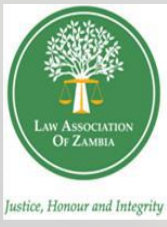
- Authority of Host Bar to regulate foreign lawyers
- Fairness and Uniform Treatment
- Transparency
- Public Purpose
 - Effective delivery of services
 - Consistent with the need to protect the public
- Access to competent legal advice



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LICENSING APPROACHES

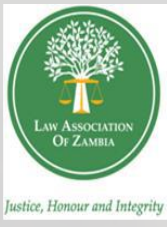
- “Full Licensing”
- “Limited Licensing”



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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



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MUTUAL RECOGNITION

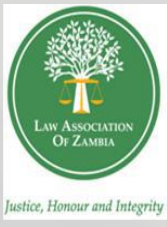
- Articulates “standards and criteria” for mutual recognition agreements
- Consistent with international trade norms



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EFFECT OF RESOLUTIONS

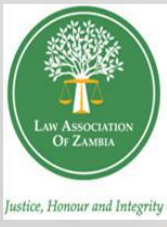
- Guidance for Member Bars
- Helped to shape the Conceptual Framework of Trade Negotiations
- In a manner that acknowledges and preserves the Core Values
- Confirm the Essential Role of the Legal Profession
- Suggest Regulatory Approaches



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IN CONCLUSION

- For bars, the challenge is to remain relevant to practice realities – lawyer mobility, technology, association, etc.
- While at the same time ensuring proper protection of the public interest and the core values of our profession



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THANK YOU