



Stronger when united: Kazakh lawyers facing new challenges

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International trade in legal services

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Lawyers crossing borders (1)



- Kazakhstan joined the World Trade Organisation on 30 November 2015
(https://www.wto.org/english/thewto_e/countries_e/kazakhstan_e.htm)
- WTO Agreements of 1995
- The General Agreement On Trade In Services (GATS)
- GATS covers trade in services, including professional services, including legal services
- IBA GATS handbook

Lawyers crossing borders (2)



Kazakhstan's commitments on legal services:

- “Legal services (consultancy, representations and participation in arbitration affairs and conciliation procedures) on law of the jurisdiction where the service supplier is qualified as a lawyer and on international law, excluding:
 - notary services
 - criminal law of the Republic of Kazakhstan”

IBA instruments



- http://www.ibanet.org/PPID/Constituent/Bar_Issues_Commission/BIC_ITIL_S_Committee/Default.aspx
- Core Values
- Establishment
- Skills Transfer
- Mutual Recognition

Core values



Trade agreements should respect the following regarding lawyers:

- role in facilitating the administration of, and guaranteeing access to, justice;
- duty to the courts;
- duty to uphold the rule of law;
- duty to keep client matters confidential;
- duty to avoid conflicts of interest;
- duty to uphold specific ethical and professional standards;
- duty to provide clients with the highest and most beneficial quality of advice, representation and legal services;
- duty, in the public interest, of securing its independence, professionally, politically and economically, from any influence affecting its service;

Establishment (1)



- Host authority has the right to regulate foreign lawyers
- Fair and uniform treatment of foreign lawyers
- Transparency in rules applying to foreign lawyers
- Regulation of foreign lawyers should serve a public purpose
 - effective delivery of services
 - consistent with the need to protect the public
- Regulation of foreign lawyers should promote access to competent legal advice

Establishment (2)



- Two licensing approaches:
 - full licensing
 - limited licensing
- Kazakhstan's system is closer to the limited licensing approach

Skills transfer



- Envisages a requirement of training and skills transfer by foreign lawyers as a condition of establishment
- Envisages a requirement of individual training and mentoring in relevant legal skills and disciplines, as well as supervised work experience, to local lawyers with whom the foreign lawyer practises in association

Association (1)



Individual lawyers

- Employment of a foreign lawyer/by a foreign lawyer
- Partnership with foreign lawyers

Law firms

- Networks and alliances (joint ventures, vereins etc)
- Full mergers

Association (2)



Regulatory issues

- Which foreign lawyers? (e.g. WTO list versus approved list etc)
- What kind of structures? (e.g. partnership, limited liability, ABS etc)
- Approval processes
- How to maintain regulatory oversight and to what level?
- Insurance/social security/compensation fund contributions
- Fees
- Code of Conduct application and challenges e.g. names of firms
- Mix of domestic regulation and international rules (e.g. WTO, trade agreements)

Conclusions



- You are not on your own – others have come across this problem
- IBA instruments and guides
- Next year there will be an IBA handbook for bars on association
- There are usually various models, various solutions