

THE **LAW SOCIETY**
OF NORTHERN IRELAND



THE SOLICITORS PRACTICE REGULATIONS 1987 (AS AMENDED)*

*amended by the

- Solicitors (Advertising) Practice Regulations 1989
- Solicitors (Property Selling) Practice Regulations 1990
- Solicitors Practice (Amendment) Regulations 1995
- Solicitors Practice (Amendment) Regulations 1998
- Solicitors Practice (Amendment) Regulations 2000
- Solicitors Practice (Amendment) Regulations 2003
- Solicitors Practice (Amendment) (No.2) Regulations 2003
- Solicitors Practice (Amendment) Regulations 2005
- Solicitors' Practice (Amendment) Regulations 2011
- Solicitors' Practice (Amendment) Regulations 2013
- Solicitors' Practice (Amendment) Regulations 2018
- Solicitors' Practice (Amendment) Regulations 2020

Consolidated text of the Regulations, accurate as at 29 September 2022

The Council of the Law Society of Northern Ireland, in exercise of the power conferred on them by Articles 74(1) and 75(1) of the Solicitors (Northern Ireland) Order 1976 and all other powers enabling them in that behalf, and with the concurrence of the Lord Chief Justice of Northern Ireland hereby make the following regulations for the purposes mentioned in Article 26(1) of the said Order:

1 These regulations may be cited as the Solicitors Practice Regulations 1987 and shall come into operation on 1st September 1987.

2 (1) The Interpretation Act (Northern Ireland) 1954 shall apply to the interpretation of these regulations as it applies to a statutory instrument.

(2) In these regulations the following expressions have the following meanings respectively:

"Admission and Training Regulations" means the Solicitors Admission and Training Regulations 1986 and any amendment thereof;

"contingency fee" means a fee for services rendered in connection with contentious business which is only payable in the event of the proceedings to which the services relate being successful;

"restricted certificate" means a practising certificate which is issued subject to any of the conditions mentioned in regulation 7(2) (a) and (b) hereof;

"solicitor" shall mean a solicitor of the Supreme Court and shall include a firm of solicitors;

"established client" includes:

(a) a person or body for whom the solicitor

(i) holds deeds or other documents (other than files) for safe custody; or

(ii) has, in relation to any piece or parcel of land, previously acted in any capacity in any matter concerning the same parcel of land or part thereof; or

(iii) has rendered professional services of any kind within the previous ten years; or

(b) a person related by blood, adoption or marriage to or employed by such a person or body as is described in sub-paragraph (a) above.

(c) For the purpose of the immediately preceding sub-paragraph a person shall not be deemed to be related by blood or adoption if that person is of a more distant degree of kinship than that of first cousin and a person shall not be deemed to be related by marriage unless married to a person deemed to be related by blood or adoption as aforesaid.

(3) Other expressions in these regulations have the meanings assigned to them by the Solicitors (Northern Ireland) Order 1976.

- 3 The Society subscribes to the Code of Conduct for European Lawyers 1988 (updated 2019) and set out in Appendix 1 hereto and these regulations shall be construed and applied and a solicitor shall conduct himself in accordance with the principles enunciated in that Code and also in accordance with the International Code of Ethics of the International Bar Association as set out in Appendix 2 hereto, except insofar as the provisions of the said Codes are in conflict with the laws of Northern Ireland or inconsistent with the provisions hereinafter contained.

ADVERTISING, PUBLICITY AND ATTRACTION OF BUSINESS

- 4 (1) *Repealed by the Solicitors (Advertising) Practice Regulations 1989*
- (2) *Revoked by the Solicitors Practice (Amendment) Regulations 2005.*
- 5 In connection with his client's business a solicitor may not seek or inspire an interview with the press or other media but may on the instructions of his client make a statement with a view to its publication.
- 6 A solicitor must not -
- (a) publicly criticise another solicitor or firm of solicitors;
 - (b) do, directly or indirectly, any act or thing which may tend to bring the solicitor's profession into disrepute.

RESTRICTIONS ON PRACTICE

- 7 (1) A solicitor holding a restricted certificate shall not engage in practice on his own account whether in partnership or otherwise and shall act as a solicitor only under the supervision of another solicitor who has held a practising certificate for the previous three years.
- (2) (a) A solicitor shall be entitled only to a restricted certificate for such period immediately following his admission or the grant of his first practising certificate as the Education Committee shall have determined and during such period of restriction any practising certificate issued to him shall be subject to the further condition that he attend such lectures, tutorials or courses of practical or vocational training as the Education Committee may from time to time by ordinary resolution prescribe, such attendance not to exceed in the aggregate 14 days in any calendar year.

(b) In the event of non-compliance with any requirements so prescribed the period of restriction may at the discretion of the Education Committee be extended to three years, provided however that no period of restriction imposed under this regulation shall exceed the period specified in Article 26(2) of the Solicitors' (Northern Ireland) Order 1976 or any statutory modification or re-enactment thereof.

PROFESSIONAL CONDUCT

8 (1) A solicitor shall at all times carry out his work and conduct his practice to the highest professional standards and shall observe in relation thereto any decisions or directions which may be adopted, issued or promulgated by the Council either to the solicitor personally or to the profession at large.

(2) Where the solicitor himself is employed by any Government Department, public or local authority, quasi autonomous non-governmental organisation, commercial firm or company or any other such body or organisation, it shall be his duty to ensure that any other employee of that department, authority, organisation, firm, company or body or any allied department, authority, body or organisation shall act, in relation to any transaction or matter in which the solicitor is involved, to the same standards and subject to the same decisions and directions as the solicitor himself would have been obliged to observe had he been engaged personally in carrying out the work done by such other employee.

[8A(1)¹ In any case to which this regulation applies, for the purposes of Regulation 8(1) and without prejudice to the generality thereof, a solicitor shall comply ²with all of the requirements of the Home Charter Scheme.

³-(2) This regulation applies where a solicitor is acting in the purchase, sale, mortgage or remortgage of domestic property, and includes sales by mortgagees in possession, receivers and administrators.

⁴(3) For purposes of this regulation:

[a] "domestic property" means premises or part of premises primarily used or intended to be used for residential purposes;

[b] "The Home Charter Scheme" means the Code of Practice, associated forms and any other documents which may from time to time be adopted, issued or

¹ Regulations 8A-C inserted by the Solicitors Practice (Amendment) Regulations 2000

² Amended by Solicitors Practice Amendment Regulations 2020

³ Ibid

⁴ Ibid

promulgated by the Council in relation to domestic property transactions and entitled the Home Charter Scheme.

[c] “the Council” means the Council of the Law Society of Northern Ireland.

⁵(4) Regulation 18 of these Regulations shall not apply in any case to which this regulation applies.

⁶8B For the purpose of monitoring compliance with the solicitor’s obligations under Regulation 8A, the solicitor concerned shall, at the request of the Society:

[a] make available for inspection by any duly authorised representative of the Society the conveyancing file relating to a transaction to which Regulation 8A applies;

[b] without prejudice to the generality of Regulation 23(a) answer with reasonable expedition all enquiries by the Society in relation to his compliance with Regulation 8A.”

⁸C⁷ Revoked revoked by Solicitors’ Practice (Amendment) Regulations 2020

⁹8 A solicitor shall not refuse to act for a prospective client on account of that person’s religious belief, political opinion, racial group, age, marital status, sexual orientation, sex, disability or whether that person has dependants.

10 A solicitor shall answer with reasonable promptness any enquiry by a client or the client’s authorised agent as to the progress of that client’s business.

11 A solicitor shall not, without the knowledge of or disclosure to his client, make or receive any secret profit or commission in connection with or arising out of the business of that client.

12 A solicitor shall not, except where he is expressly permitted so to do by these regulations or any waiver thereof, directly or indirectly obtain or attempt to obtain, or permit to be obtained, instructions for professional work in any manner which compromises or impairs, or is likely to compromise or impair the client’s freedom to instruct a solicitor of his choice or the solicitor’s independence and shall not in any circumstances take any action which compromises or impairs, or is likely to compromise or impair,

(a) his integrity;

(b) his duty to act in the best interests of the client;

(c) the good repute of the solicitor or of solicitors in general;

⁵ Amended by Solicitors’ Practice (Amendment) Regulations 2020

⁶ Ibid

⁷ Regulation 8(C) revoked by Solicitors’ Practice (Amendment) Regulations 2020

⁸ Amended by Solicitors’ Practice (Amendment) Regulations 2020

- (d) his proper standard of work.

[12A ⁹A solicitor shall not for the purpose of obtaining or retaining instructions from any person or of securing the transfer of that person's instructions from another solicitor:

- (a) make or offer to make, whether directly or indirectly, any payment to or on behalf of that (or any other) person; or
- (b) give (or offer to give) any undertaking to any third party to facilitate the provision of money or credit by such third party to that (or any other) person

12B (1) Without prejudice to the provisions of Regulations 12A, a solicitor shall not directly or indirectly lend money to a client without requiring that client to obtain independent legal advice on the terms of that loan, other than as provided by paragraphs (2) and (3) of this Regulation.

- (2) A solicitor may make an advance to his client in respect of the proceeds of a claim which has been settled or for which judgment has been obtained or in respect of other funds due to the client but which have not yet been received provided:-

- (a) there is no prior claim on the proceeds or funds, whether by operation of the statutory charge under the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981, or pursuant to an undertaking, or otherwise; and

- (b) the solicitor has obtained a signed statement from the client acknowledging:-

- (i) the reasons for the advance;
- (ii) the amount of the advance;
- (iii) that no interest will be paid to the solicitor;
- (iv) that the advance is to be re-paid by deduction from the proceeds or funds due in the particular case as soon as these are received.

⁹ Regulations 12A – 12C inserted by the Solicitors Practice (Amendment) Regulations 1998 and amended by the Solicitors Practice (Amendment) Regulations 2003

(3) A solicitor may make an advance to his client in anticipation of receipt of the proceeds of a claim or of other funds which will become due to that client provided:

- (a) the advance is not made for any of the purposes specified in Regulation 12A; and
- (b) the solicitor has informed the client in writing of the estimated net amount of proceeds or funds likely to be received and that the advance may give rise to a conflict of interest at a later date which may result in the client being required to obtain independent legal advice; and
- (c) the solicitor has obtained a signed statement from the client acknowledging:
 - (i) the reasons for the advance;
 - (ii) the amount of the advance;
 - (iii) that no interest will be paid to the solicitor;
 - (iv) that the advance is to be re-paid by deduction from the proceeds or funds due to the client in the particular case as soon as these are received;
 - (v) that the advance will be due and repayable to the solicitor whether or not the anticipated proceeds or funds are received.

(4) Nothing in this Regulation shall prevent a solicitor from making payments on behalf of his client in respect of outlays which may form part of the solicitor's bill of costs.

(5) In conveyancing transactions nothing in this regulation shall prevent a solicitor making a short term advance on behalf of his client where there is a binding contract in order to facilitate completion of the transaction

12C A solicitor shall not provide an undertaking in respect of money which is or may become due to his client except where and to the extent that no other party is entitled to the money in priority to that client and the client has given written irrevocable authority to the solicitor in respect of the undertaking.]

13 A solicitor shall account promptly to his client on the conclusion of any transaction or matter and at any time immediately in response to a request from his client, for all monies held or received by him for or on account of his client.

- 14 Where a solicitor permits his name to be published in the "Legal Aid List" or other publication as a solicitor providing services under a statutory Legal Aid Advice and Assistance Scheme he shall not refuse to accept instructions from a prospective client eligible to participate in such scheme, except for reasonable cause.
- 15 Where a solicitor knows that he cannot accept instructions or that he must cease to act in any cause or matter then he shall give adequate and clear notice of that fact to his client, prospective or actual.
- 16 (1) A solicitor shall not join or act in association with any organisation or person not being a practising solicitor whose business or any part of whose business is to make, support or prosecute whether by action or otherwise and whether by a solicitor or agent or otherwise claims arising as a result of death or personal injury in such circumstances that such person or organisation solicits or receives any payment, gift or benefit in respect of such claims nor shall a solicitor act in respect of any such claim for any client introduced to him by such person or organisation.
- (2) A solicitor shall not with regard to any such claim knowingly act for any client introduced or referred to him by any person or organisation whose connection with such client arises from solicitation in respect of the cause of any such claim
- (3) It shall be the duty of a solicitor to make reasonable inquiry before accepting instructions in respect of any such claim for the purpose of ascertaining whether the acceptance of such instructions will involve a contravention of the provisions of paragraph (1) or (2) of this regulation.

(4)¹⁰ For the purposes of this Regulation:

A solicitor shall not pay any person for the referral of legal business which involves the provision of legal services relating:-

- (a) to a claim or potential claim for damages for personal injuries or death;
- (b) to any other claim or potential claim for damages arising out of circumstances involving personal injuries or death or the risk of personal injury or death.

There is a referral of legal business if:-

¹⁰ Inserted by the Solicitors Practice (Amendment) Regulations 2013

- (i) A person provides information to a solicitor
- (ii) It is information that a solicitor would need to make an offer to the Client to provide relevant services, and
- (iii) The person providing the information is not the Client and "relevant services" means any of the legal services that a solicitor provides.

"Client" means the person who makes or would make the claim.

Payment includes any form of consideration."

17 A solicitor shall not accept instructions in respect of any claim or in relation to any matter in circumstances or under any arrangement whereby he will receive, in respect of such claim or matter a contingency fee; and a solicitor shall not make any agreement with his client for payment of his fees in respect of contentious business done or to be done by way of a gross sum commission or percentage otherwise than in accordance with the Attorneys and Solicitors Act 1870 or any statutory modification or re-enactment thereof.

18 In any contentious or non-contentious business undertaken by him a solicitor shall, in so far as is practicable, having regard to his client's interests and instructions and to the circumstance of the case, observe the procedures and practices recommended or directed from time to time by the Council as being good practice in the category or type of contentious or non-contentious business so undertaken, provided however and it is hereby declared that any procedures and practices so recommended or directed shall not be regarded as being comprehensive unless they shall expressly be stated so to be.

¹¹19 (1) Subject to Regulations 19(2),19(3) and 19(4) below, a solicitor shall not act for both vendor and purchaser on a transfer of land for value at arm's length or for both lessor and lessee on the grant of lease for value at arm's length.

(2) Provided no conflict of interest appears and the vendor and/or lessor is not a builder or developer selling or leasing as such this regulation shall not apply if:

(a) the parties are associated companies; or

(b) the parties are related by blood, adoption or marriage; or civil partnership; or

¹¹ Substituted by Solicitors' Practice (Amendment) Regulations 2018

- (c) both parties are established clients
 - (d) on a transfer of land the consideration is less than £10,000; or
 - (e) one of the parties is the Northern Ireland Co-ownership Housing Association
- (3) Where a solicitor is acting in circumstances to which Regulations 19(2)(a) - (d) apply then both parties must be informed in writing that:-
- (a) the solicitor is acting for both parties; and
 - (b) no conflict of interest appears to the solicitor at the time of receipt of instructions; and
 - (c) in the event of such a conflict of interest arising the solicitor will be unable to continue acting for either party in the transaction and shall not continue to so act.
- (4) Where the vendor and/or lessor is a builder or developer this Regulation shall not apply if:
- (a) no conflict of interest appears; and
 - (b) the purchaser or lessee is :-
 - (i) an associated company of the vendor/lessor; or
 - (ii) a director or partner of the vendor/lessor; or
 - (iii) a person related by blood, adoption, marriage or civil partnership to such director or partner; or
 - (iv) the solicitor himself; or
 - (v) an employee or partner of the solicitor or his firm and
 - (c) both parties have been informed in writing that:-
 - (i) the solicitor is acting for both parties; and
 - (ii) no conflict of interest appears to the solicitor at the time of receipt of instructions; and
 - (iii) in the event of such a conflict of interest arising the solicitor will be unable to continue acting for either party in the transaction.
- (5) Notwithstanding the provisions of Regulations 19(2), 19(3) and 19(4) a solicitor shall not in any circumstances act for the purchaser on the

transfer of land for value at arm's length or for the lessee on a grant of lease for value at arm's length where he or a solicitor practising with him is instructed as an estate agent to negotiate the sale of the property concerned.

¹²20 (1) A solicitor shall not act for both a lending institution and borrower in the preparation and execution of a mortgage, charge or other security except that, provided no conflict of interest arises, it shall be permissible for a solicitor to act for a purchaser/borrower and a lending institution (or the Northern Ireland Housing Executive acting as a lending institution) in a transaction where:

- (a) the solicitor is retained by the purchaser/borrower before he receives instructions from the lending institution; and
- (b) where the terms of the security documents are standard and not subject to alteration by negotiation; and
- (c) the Certificate of Title provided by the solicitor to the lending institution is the most recent version of the Certificate of Title approved by the Council of the Society from time to time and appropriate for that lending institution.

(2) It shall also be permissible for a solicitor to act for both a lender and borrower in relation to a further charge.

(3) For the purposes of this Regulation 20 and 20(A), a "lending institution" shall be defined as any lending institution regulated by a statutory authority.

¹³20(A) (1) Subject to Regulation 20(A)(2), a solicitor shall not act for both mortgagor / chargor and mortgagee / chargee in the preparation and execution of a mortgage, charge or other security provided always that this Regulation 20(A) shall not apply to any mortgage, charge or other security given to a lending institution on the terms set out and as defined in Regulation 20.

(2) Provided no conflict of interest appears this Regulation shall not apply if:

- (a) the parties are associated companies; or
- (b) the parties are related by blood, adoption, marriage or civil partnership; or
- (c) both parties are established clients

Where a solicitor is acting pursuant to Regulations 20(A)(2)(a)-(c) above then both parties must be informed in writing that:-

¹² Substituted by Solicitors' Practice (Amendment) Regulations 2018

¹³ Inserted by Solicitors' Practice (Amendment) Regulations 2018

- (i) the solicitor is acting for both parties; and
- (ii) no conflict of interest appears to the solicitor at the time of receipt of instructions; and
- (iii) in the event of such a conflict of interest arising the solicitor will be unable to continue acting for either party in the transaction."

21 (1) A solicitor who acts in the sale or intended sale of land for a vendor who offers a free assurance or mortgage or an assisted assurance or mortgage of that land or both shall be under a duty to inform the purchaser in writing, or, if he is aware that the purchaser has instructed another solicitor to act in the matter, to inform that solicitor in writing that the purchaser is entitled to instruct any solicitor of his choice and that

- (a) in the case of an offer of a free assurance or free mortgage or both, the vendor will pay the purchaser's legal costs in respect of 'the purchase and/or mortgage or
- (b) in the case of an assisted assurance or mortgage or both the vendor will make such contribution towards the purchaser's said costs as may have been offered by the vendor.

(2) For the purpose of the foregoing paragraph

- (a) an offer of a free assurance means an offer (whether express or implied) by or on behalf of a vendor of land to arrange or procure that the land is vested in a purchaser free of legal costs in respect of the purchase;
- (b) an offer of a free mortgage means an offer (whether express or implied) by or on behalf of a vendor of land to grant or arrange for or procure the grant to the purchaser of a loan secured by a mortgage of that land on terms that the purchaser shall not be liable for any legal costs in respect of the mortgage;
- (c) an offer of an assisted assurance means an offer (whether express or implied) by or on behalf of the vendor of lands to contribute towards the purchaser's legal costs in respect of the purchase;
- (d) an offer of an assisted mortgage means an offer (whether express or implied) by or on behalf of the vendor of land to make a contribution towards the purchaser's legal costs of mortgaging that land;
- (e) for the purposes of this regulation "sale", "assurance", "vendor" and 'purchases' shall have the same meanings as are assigned to them by the Solicitors (Northern Ireland) Order 1976 for the purposes of

- (f) "legal costs" shall mean all costs and disbursements which, but for the offer of a free or assisted assurance or mortgage, would have been properly payable by the purchaser with regard to the relevant sale or mortgage
- (3) In any such case as is mentioned in paragraph (1) of this regulation a solicitor who acts for both the vendor and the purchaser in the matter shall be deemed to have committed an act of professional misconduct unless he shall, before so acting, have communicated with the purchaser in accordance with paragraph (1) of this regulation and the purchaser shall have thereafter stated in writing that he has chosen to be represented by the vendor's solicitor.
- (4) The foregoing paragraph shall apply whether or not any such solicitor shall have, by virtue of his conduct and in the circumstances of the case, committed a breach of either regulation 19(1) or regulation 20.

22 ^{VI} A solicitor shall ensure that every office where he carried on property selling is, and can reasonably be seen to be, properly supervised and that every such office is managed by either a solicitor holding a practising certificate or by an employee who has demonstrable and relevant experience either in property selling, estate agency or financial services or who has been continuously employed as a law clerk in a solicitor's office for not less than 15 years; and that such solicitor or employee is normally in attendance at that office during the hours when it is open to the public.

GENERAL

23 - A solicitor shall

- (a) reply with reasonable expedition to all letters addressed to him by the Society in relation to his professional conduct or any matter or thing arising out of or in connection with the Society's functions under the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981;
- (b) attend upon the Council or a committee thereof when notified in writing so to do;
- (c) inform the Society in writing of the address or addresses at which he practises, carries on business or is employed as a solicitor and of any changes thereof
- (d) in the event of his ceasing to practise for any reason, inform the Society of such cessation and of an address at which the Society may communicate with him;
- (e) keep the Society informed of his home address, his status in the

^{VI} Section 22 amended by the Solicitors (Property Selling) Practice Regulations 1990

profession (whether as assistant, consultant or principal in private practice or other employment of a legal nature) and of any judicial or quasi-judicial office held by him, and of any changes therein.

24^{VII}(a) So long as a Scheme shall be in operation a solicitor insured thereunder shall:

(i) give notice in writing as soon as practicable to the Managers of such Scheme, of any claim under the Scheme made against the solicitor or his firm, or the receipt by either of them of notice from any person of any intention to make a claim against them. The solicitor shall also co-operate with the Managers or any solicitor instructed by them, in every way which they may reasonably require and shall reply promptly to all letters addressed to him by the Managers or such solicitor instructed as aforesaid and shall give them all such information as they reasonably require;

(ii) when required by the Society, disclose in confidence and in such manner as the Society may direct from time to time, to the Managers or any solicitor instructed by them, such information with regard to his practice and the composition thereof as may reasonably be required under the Scheme, for the purposes of either negotiating the premium payable thereunder or determining the means of the distribution of the premium amongst the solicitors insured thereunder.

(b) If a solicitor has:-

(i) in the case of a sole practitioner more than two claims paid in any insurance year or in the case of a partnership more than three claims paid in any insurance year; or

(ii) not co-operated with the Managers or any solicitor instructed by them; or

(iii) unduly delayed in the notification of a claim; or

(iv) a claim against him which appears to the Managers or any solicitor instructed by them to be a prima facie evidence of professional misconduct

then such solicitor shall be deemed to have surrendered any right to confidentiality between himself and the Managers of such Scheme or any solicitor instructed by them and the Managers or any solicitor instructed by them shall inform the Society accordingly, to enable the Society to investigate and consider the matter.

(c) (i) if it appears to the Managers that a solicitor has failed to exercise reasonable diligence in the conduct of his practice, the

^{VII} Regulation 24 replaced by the Solicitors' Practice (Amendment) Regulations 1995

Managers shall report the matter to the Committee ^{VI} but without disclosing to the Committee^{VIII} the identity of such solicitor;

- (ii) upon receiving a report regarding a solicitor pursuant to regulation 24 (c) (i) the Committee may recommend to the Council that any right to confidentiality enjoyed by such solicitor under any Scheme be suspended;
- (iii) upon receiving a recommendation pursuant to regulation 24 (c) (ii) the Council may direct that any right to confidentiality enjoyed by the solicitor in question is suspended;
- (iv) if the Council makes a direction pursuant to regulation 24 (c) (iii) the Managers shall inform the Council of the identity of the solicitor in question.

25 A solicitor shall bring to the notice of the Society (having where necessary first obtained his client's consent) any conduct on the part of another solicitor which appears to him to be a breach of these regulations.

26 The Council shall have power to waive in writing any of the provisions of these regulations and to revoke any such waiver in any particular case or cases.

27 These regulations supersede the Solicitors' Practice Regulations 1978 and the Solicitors' Practice Regulations 1980 which are hereby revoked.

¹⁴Schedules 1 and 2 Revoked by Solicitors' Practice (Amendment) Regulations 2020

^{VIII} "the Committee" means the Professional Indemnity Insurance Committee of the Society or any other committee which shall from time to time discharge the functions of that committee

¹⁴ Schedules 1 and 2 revoked by Solicitors' Practice (Amendment) Regulations 2020



Charter of core principles of
the European legal profession
&
Code of conduct for European lawyers



Edition 2019

The 2019 edition includes the amendments to the commentary on Principle (g) of the Charter approved by the Plenary Session on 17 May 2019.

Responsible editor: Philip Buisseret

Cover illustration: ©gunnar3000 - Fotolia.com

The Council of Bars and Law Societies of Europe (CCBE) has as its principal object to represent its member Bars and Law Societies, whether they are full members (i.e. those of the European Union, the European Economic Area and the Swiss Confederation), or associated or observer members, on all matters of mutual interest relating to the exercise of the profession of lawyer, the development of the law and practice pertaining to the rule of law and the administration of justice and substantive developments in the law itself, both at a European and international level (Article III 1.a. of the CCBE Statutes).

In this respect, it is the official representative of Bars and Law Societies which between them comprise more than 1 million European lawyers.

The CCBE has adopted two foundation texts, which are included in this brochure, that are both complementary and very different in nature.

The more recent one is the ***Charter of Core Principles of the European Legal Profession*** which was adopted at the plenary session in Brussels on 24 November 2006. The Charter is not conceived as a code of conduct. It is aimed at applying to all of Europe, reaching out beyond the member, associate and observer states of the CCBE. The Charter contains a list of ten core principles common to the national and international rules regulating the legal profession.

The Charter aims, inter alia, to help bar associations that are struggling to establish their independence; and to increase understanding among lawyers of the importance of the lawyer's role in society; it is aimed both at lawyers themselves and at decision makers and the public in general.

The ***Code of Conduct for European Lawyers*** dates back to 28 October 1988. It has been amended three times; the latest amendment took place at the plenary session in Oporto on 19 May 2006. It is a binding text on all Member States: all lawyers who are members of the bars of these countries (whether their bars are full, associate or observer members of the CCBE) have to comply with the Code in their cross-border activities within the European Union, the European Economic Area and the Swiss Confederation as well as within associate and observer countries.

These two texts include a commentary for the first one, and an explanatory memorandum for the second one.

It is unnecessary to emphasise the importance of the set of norms set out in these two documents, which are the basis of the deontology of the European legal profession, and which contribute to shaping the European lawyer and the European bar.

31 January 2008

CONTENTS

4

CHARTER OF CORE PRINCIPLES OF THE EUROPEAN LEGAL PROFESSION

6

A COMMENTARY ON THE CHARTER OF CORE PRINCIPLES OF THE EUROPEAN LEGAL PROFESSION

10

CODE OF CONDUCT FOR EUROPEAN LAWYERS

1.	PREAMBLE	10
1.1.	The Function of the Lawyer in society	10
1.2.	The Nature of Rules of Professional Conduct	10
1.3.	The Purpose of the Code.....	11
1.4.	Field of Application <i>Ratione Personae</i>	11
1.5.	Field of Application <i>Ratione Materiae</i>	11
1.6.	Definitions	12

2.	GENERAL PRINCIPLES.....	12
2.1.	Independence	12
2.2.	Trust and Personal Integrity	12
2.3.	Confidentiality	12
2.4.	Respect for the Rules of Other Bars and Law Societies	13
2.5.	Incompatible Occupations	13
2.6.	Personal Publicity.....	13
2.7.	The Client's Interest.....	13
2.8.	Limitation of Lawyer's Liability towards the Client.....	13

3.	RELATIONS WITH CLIENTS	14
3.1.	Acceptance and Termination of Instructions.....	14
3.2.	Conflict of Interest	14
3.3.	Pactum de Quota Litis.....	14
3.4.	Regulation of Fees	14
3.5.	Payment on Account	15
3.6.	Fee Sharing with Non-Lawyers.....	15
3.7.	Cost of Litigation and Availability of Legal Aid	15
3.8.	Client Funds.....	15
3.9.	Professional Indemnity Insurance.....	15

4.	RELATIONS WITH THE COURTS	16
4.1.	Rules of Conduct in Court	16
4.2.	Fair Conduct of Proceedings	16
4.3.	Demeanour in Court.....	16
4.4.	False or Misleading Information	16
4.5.	Extension to Arbitrators etc.	16

5.	RELATIONS BETWEEN LAWYERS	16
5.1.	Corporate Spirit of the Profession.....	16
5.2.	Co-operation among Lawyers of Different Member States.....	16
5.3.	Correspondence between Lawyers.....	17
5.4.	Referral Fees.....	17
5.5.	Communication with Opposing Parties	17
5.6.	(Deleted by decision of the Plenary Session in Dublin on 6 December 2002)	17
5.7.	Responsibility for Fees	17
5.8.	Continuing Professional Development	17
5.9.	Disputes amongst Lawyers in Different Member States	17

18 EXPLANATORY MEMORANDUM

CHARTER OF CORE PRINCIPLES OF THE EUROPEAN LEGAL PROFESSION

“In a society founded on respect for the rule of law the lawyer fulfils a special role. The lawyer’s duties do not begin and end with the faithful performance of what he or she is instructed to do so far as the law permits. A lawyer must serve the interests of justice as well as those whose rights and liberties he or she is trusted to assert and defend and it is the lawyer’s duty not only to plead the client’s cause but to be the client’s adviser. Respect for the lawyer’s professional function is an essential condition for the rule of law and democracy in society.”

– the CCBE’s Code of Conduct for European Lawyers, article 1.1

There are core principles which are common to the whole European legal profession, even though these principles are expressed in slightly different ways in different jurisdictions. The core principles underlie the various national and international codes which govern the conduct of lawyers. European lawyers are committed to these principles, which are essential for the proper administration of justice, access to justice and the right to a fair trial, as required under the European Convention of Human Rights. Bars and Law Societies, courts, legislators, governments and international organisations should seek to uphold and protect the core principles in the public interest.

The core principles are, in particular:

- (a) the independence of the lawyer, and the freedom of the lawyer to pursue the client’s case;
- (b) the right and duty of the lawyer to keep clients’ matters confidential and to respect professional secrecy;
- (c) avoidance of conflicts of interest, whether between different clients or between the client and the lawyer;
- (d) the dignity and honour of the legal profession, and the integrity and good repute of the individual lawyer;
- (e) loyalty to the client;
- (f) fair treatment of clients in relation to fees;
- (g) the lawyer’s professional competence;
- (h) respect towards professional colleagues;
- (i) respect for the rule of law and the fair administration of justice; and
- (j) the self-regulation of the legal profession.

A COMMENTARY ON THE CHARTER OF CORE PRINCIPLES OF THE EUROPEAN LEGAL PROFESSION

1. On 25 November 2006 the CCBE unanimously adopted a “Charter of Core Principles of the European Legal Profession”. The Charter contains a list of ten principles common to the whole European legal profession. Respect for these principles is the basis of the right to a legal defence, which is the cornerstone of all other fundamental rights in a democracy.
2. The core principles express the common ground which underlies all the national and international rules which govern the conduct of European lawyers.
3. The Charter takes into account:
 - national professional rules from states throughout Europe, including rules from non-CCBE states, which also share these common principles of European legal practice¹,
 - the CCBE’s Code of Conduct for European Lawyers,
 - the Principles of General Application in the International Bar Association’s International Code of Ethics²,
 - recommendation Rec (2000) 21 of 25 October 2000 of the Committee of Ministers of the Council of Europe to Member States on the freedom of exercise of the profession of lawyer³,
 - the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana (Cuba), 27 August to 7 September 1990⁴,
 - the jurisprudence of the European Court of Human Rights and the European Court of Justice, and in particular the judgment of 19 February 2002 of the European Court of Justice in *Wouters v. Algemene Raad van de Nederlandse Orde van Advocaten* (C-309/99)⁵,

¹ The national codes of conduct can be found on [CCBE web site](#).

² [General Principles of the Legal Profession](#), adopted by the International Bar Association on 20 September 2006.

³ [Recommendation No. R\(2000\)21](#) of the Committee of Ministers to Member States on the freedom of exercise of the profession of lawyer (Adopted by the Committee of Ministers on 25 October 2000 at 727th meeting of the Ministers’ Deputies).

⁴ [Basic Principles on the Role of Lawyers](#), adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

⁵ [Case C-309/99 J.C.J Wouters, J.W. Savelbergh, Price Waterhouse Belastingadviseurs BV v. Algemene Raad van de Nederlandse Orde van Avocaten](#), [2002] ECR I-1577.

- the Universal Declaration of Human Rights⁶, the European Convention on Human Rights⁷, and the European Union Charter of Fundamental Rights⁸,
 - the European Parliament resolution on the legal professions and the general interest in the functioning of legal systems, 23 March 2006⁹.
4. The Charter is designed to serve as a pan-European document, reaching out beyond the member, associate and observer states of the CCBE. It is hoped that the Charter will be of help, for instance, to bar associations that are struggling to establish their independence in Europe's emerging democracies.
 5. It is hoped that the Charter will increase understanding among lawyers, decision makers and the public of the importance of the lawyer's role in society, and of the way in which the principles by which the legal profession is regulated support that role.
 6. The lawyer's role, whether retained by an individual, a corporation or the state, is as the client's trusted adviser and representative, as a professional respected by third parties, and as an indispensable participant in the fair administration of justice. By embodying all these elements, the lawyer, who faithfully serves his or her own client's interests and protects the client's rights, also fulfils the functions of the lawyer in society - which are to forestall and prevent conflicts, to ensure that conflicts are resolved in accordance with recognised principles of civil, public or criminal law and with due account of rights and interests, to further the development of the law, and to defend liberty, justice and the rule of law.
 7. The CCBE trusts that judges, legislators, governments and international organisations will strive, along with bar associations, to uphold the principles set out in the Charter.
 8. The Charter is prefaced by an extract from the preamble to the Code of Conduct for European lawyers, including the assertion that: "Respect for the lawyer's professional function is an essential condition for the rule of law and democracy in society." The rule of law is closely associated with democracy as currently understood in Europe.
 9. The Charter's introductory paragraph claims that the principles in the Charter are essential for the fair administration of justice, access to justice and the right to a fair trial, as required by the European Convention on Human Rights. Lawyers and their bar associations will continue to be in the forefront in campaigning for these rights, whether in Europe's new emerging democracies, or in the more established democracies where such rights may be threatened.

⁶ [The Universal Declaration of Human Rights](#), adopted by the General Assembly of the United Nations on 10 December 1948.

⁷ [Convention for the Protection of Human Rights and Fundamental Freedoms](#), signed by the members of the Council of Europe on 4 November 1950 in Rome.

⁸ [Charter of Fundamental Rights of the European Union](#), signed and proclaimed by the Presidents of the European Parliament, the Council and the Commission at the European Council meeting in Nice on 7 December 2000.

⁹ European Parliament [resolution](#) on the legal professions and the general interest in the functioning of the legal systems, adopted on 23 March 2006.

Principle (a) – the independence of the lawyer, and the freedom of the lawyer to pursue the client’s case:

A lawyer needs to be free - politically, economically and intellectually - in pursuing his or her activities of advising and representing the client. This means that the lawyer must be independent of the state and other powerful interests, and must not allow his or her independence to be compromised by improper pressure from business associates. The lawyer must also remain independent of his or her own client if the lawyer is to enjoy the trust of third parties and the courts. Indeed without this independence from the client there can be no guarantee of the quality of the lawyer’s work. The lawyer’s membership of a liberal profession and the authority deriving from that membership helps to maintain independence, and bar associations must play an important role in helping to guarantee lawyers’ independence. Self-regulation of the profession is seen as vital in buttressing the independence of the individual lawyer. It is notable that in unfree societies lawyers are prevented from pursuing their clients’ cases, and may suffer imprisonment or death for attempting to do so.

Principle (b) – the right and duty of the lawyer to keep clients’ matters confidential and to respect professional secrecy:

It is of the essence of a lawyer’s function that the lawyer should be told by his or her client things which the client would not tell to others - the most intimate personal details or the most valuable commercial secrets - and that the lawyer should be the recipient of other information on a basis of confidence. Without the certainty of confidentiality there can be no trust. The Charter stresses the dual nature of this principle - observing confidentiality is not only the lawyer’s duty - it is a fundamental human right of the client. The rules of “legal professional privilege” prohibit communications between lawyer and client from being used against the client. In some jurisdictions the right to confidentiality is seen as belonging to the client alone, whereas in other jurisdictions “professional secrecy” may also require that the lawyer keeps secret from his or her own client communications from the other party’s lawyer imparted on the basis of confidence. Principle (b) encompasses all these related concepts - legal professional privilege, confidentiality and professional secrecy. The lawyer’s duty to the client remains even after the lawyer has ceased to act.

Principle (c) – avoidance of conflicts of interest, whether between different clients or between the client and the lawyer:

For the proper exercise of his or her profession, the lawyer must avoid conflicts of interest. So a lawyer may not act for two clients in the same matter if there is a conflict, or a risk of conflict, between the interests of those clients. Equally a lawyer must refrain from acting for a new client if the lawyer is in possession of confidential information obtained from another current or former client. Nor must a lawyer take on a client if there is a conflict of interest between the client and the lawyer. If a conflict of interest arises in the course of acting for a client, the lawyer must cease to act. It can be seen that this principle is closely linked to principles (b) (confidentiality), (a) (independence) and (e) (loyalty).

Principle (d) – the dignity and honour of the legal profession, and the integrity and good repute of the individual lawyer:

To be trusted by clients, third parties, the courts and the state, the lawyer must be shown to be worthy of that trust. That is achieved by membership of an honourable profession; the corollary is that the lawyer must do nothing to damage either his or her own reputation or the reputation of the profession as a whole and public confidence in the profession. This does not mean that the lawyer has to be a perfect individual, but it does mean that he or she must not engage in disgraceful conduct, whether in legal practice or in other business activities or even in private life, of a sort likely to dishonour the profession. Disgraceful conduct may lead to sanctions including, in the most serious cases, expulsion from the profession.

Principle (e) – loyalty to the client:

Loyalty to the client is of the essence of the lawyer’s role. The client must be able to trust the lawyer as adviser and as representative. To be loyal to the client, the lawyer must be independent (see principle (a)), must avoid conflicts of interest (see principle (c)), and must keep the client’s confidences (see principle (b)). Some of the most delicate problems of professional conduct arise from the interaction between

the principle of loyalty to the client and principles which set out the lawyer's wider duties – principle (d) (dignity and honour), principle (h) (respect towards professional colleagues) and in particular principle (i) (respect for the rule of law and the fair administration of justice). In dealing with such issues the lawyer must make it clear to the client that the lawyer cannot compromise his or her duties to the court and to the administration of justice in order to put forward a dishonest case on behalf of the client.

Principle (f) – fair treatment of clients in relation to fees:

A fee charged by a lawyer must be fully disclosed to the client, must be fair and reasonable, and must comply with the law and professional rules to which the lawyer is subject. Although professional codes (and principle (c) in this Charter) stress the importance of avoiding conflicts of interest between lawyer and client, the matter of the lawyer's fees seems to present an inherent danger of such a conflict. Accordingly, the principle dictates the necessity of professional regulation to see that the client is not overcharged.

Principle (g) – the lawyer's professional competence:

It is self-evident that a lawyer cannot effectively advise or represent his or her client unless the lawyer undertakes the appropriate professional education and training. A lawyer should be encouraged to undertake appropriate post-qualification training (continuing professional development) in order to keep abreast of changes in law and practice, including changes in the relevant technological and economic environment in which he or she works. A lawyer should be aware of the benefits and risks of using relevant technologies in his or her practice. Professional rules often stress that a lawyer must not take on a case which he or she is not competent to deal with.

Principle (h) – respect towards professional colleagues:

This principle represents more than an assertion of the need for courtesy – although even that is important in the highly sensitive and highly contentious matters in which lawyers are frequently involved on behalf of their respective clients. The principle relates to the role of the lawyer as intermediary, who can be trusted to speak the truth, to comply with professional rules and to keep his or her promises. The proper administration of justice requires lawyers to behave with respect to each other so that contentious matters can be resolved in a civilised way. Similarly it must be in the public interest for lawyers to deal in good faith with each other and not to deceive. Mutual respect between professional colleagues facilitates the proper administration of justice, assists in the resolution of conflicts by agreement, and is in the client's interest.

Principle (i) – respect for the rule of law and the fair administration of justice:

We have characterised part of the role of the lawyer as acting as a participant in the fair administration of justice. The same idea is sometimes expressed by describing the lawyer as an "officer of the court" or as a "minister of justice". A lawyer must never knowingly give false or misleading information to the court, nor should a lawyer ever lie to third parties in the course of his or her professional activities. These prohibitions frequently run counter to the immediate interests of the lawyer's client, and the handling of this apparent conflict between the interests of the client and the interests of justice presents delicate problems that the lawyer is professionally trained to solve. The lawyer is entitled to look to his or her bar association for assistance with such problems. But in the last analysis the lawyer can only successfully represent his or her client if the lawyer can be relied on by the courts and by third parties as a trusted intermediary and as a participant in the fair administration of justice.

Principle (j) – the self-regulation of the legal profession:

It is one of the hallmarks of unfree societies that the state, either overtly or covertly, controls the legal profession and the activities of lawyers. Most European legal professions display a combination of state regulation and self-regulation. In many cases the state, recognising the importance of the core principles, uses legislation to buttress them – for instance by giving statutory support to confidentiality, or by giving bar associations statutory power to make professional rules. The CCBE is convinced that only a strong element of self-regulation can guarantee lawyers' professional independence vis-à-vis the state, and without a guarantee of independence it is impossible for lawyers to fulfil their professional and legal role.

CODE OF CONDUCT FOR EUROPEAN LAWYERS

This Code of Conduct for European Lawyers was originally adopted at the CCBE Plenary Session held on 28 October 1988, and subsequently amended during the CCBE Plenary Sessions on 28 November 1998, 6 December 2002 and 19 May 2006. The Code also takes into account amendments to the CCBE Statutes formally approved at an Extraordinary Plenary Session on 20 August 2007.

1. PREAMBLE

1.1. The Function of the Lawyer in society

In a society founded on respect for the rule of law the lawyer fulfils a special role. The lawyer's duties do not begin and end with the faithful performance of what he or she is instructed to do so far as the law permits. A lawyer must serve the interests of justice as well as those whose rights and liberties he or she is trusted to assert and defend and it is the lawyer's duty not only to plead the client's cause but to be the client's adviser. Respect for the lawyer's professional function is an essential condition for the rule of law and democracy in society.

A lawyer's function therefore lays on him or her a variety of legal and moral obligations (sometimes appearing to be in conflict with each other) towards:

- the client;
- the courts and other authorities before whom the lawyer pleads the client's cause or acts on the client's behalf;
- the legal profession in general and each fellow member of it in particular;
- the public for whom the existence of a free and independent profession, bound together by respect for rules made by the profession itself, is an essential means of safeguarding human rights in face of the power of the state and other interests in society.

1.2. The Nature of Rules of Professional Conduct

1.2.1. Rules of professional conduct are designed through their willing acceptance by those to whom they apply to ensure the proper performance by the lawyer of a function which is recognised as essential in all civilised societies. The failure of the lawyer to observe these rules may result in disciplinary sanctions.

- 1.2.2. The particular rules of each Bar or Law Society arise from its own traditions. They are adapted to the organisation and sphere of activity of the profession in the Member State concerned and to its judicial and administrative procedures and to its national legislation. It is neither possible nor desirable that they should be taken out of their context nor that an attempt should be made to give general application to rules which are inherently incapable of such application.

The particular rules of each Bar and Law Society nevertheless are based on the same values and in most cases demonstrate a common foundation.

1.3. The Purpose of the Code

- 1.3.1. The continued integration of the European Union and European Economic Area and the increasing frequency of the cross-border activities of lawyers within the European Economic Area have made necessary in the public interest the statement of common rules which apply to all lawyers from the European Economic Area whatever Bar or Law Society they belong to in relation to their cross-border practice. A particular purpose of the statement of those rules is to mitigate the difficulties which result from the application of “double deontology”, notably as set out in Articles 4 and 7.2 of Directive 77/249/EEC and Articles 6 and 7 of Directive 98/5/EC.

- 1.3.2. The organisations representing the legal profession through the CCBE propose that the rules codified in the following articles:

- be recognised at the present time as the expression of a consensus of all the Bars and Law Societies of the European Union and European Economic Area;
- be adopted as enforceable rules as soon as possible in accordance with national or EEA procedures in relation to the cross-border activities of the lawyer in the European Union and European Economic Area;
- be taken into account in all revisions of national rules of deontology or professional practice with a view to their progressive harmonisation.

They further express the wish that the national rules of deontology or professional practice be interpreted and applied whenever possible in a way consistent with the rules in this Code.

After the rules in this Code have been adopted as enforceable rules in relation to a lawyer’s cross-border activities the lawyer will remain bound to observe the rules of the Bar or Law Society to which he or she belongs to the extent that they are consistent with the rules in this Code.

1.4. Field of Application *Ratione Personae*

This Code shall apply to lawyers as they are defined by Directive 77/249/EEC and by Directive 98/5/EC and to lawyers of the Associate and Observer Members of the CCBE.

1.5. Field of Application *Ratione Materiae*

Without prejudice to the pursuit of a progressive harmonisation of rules of deontology or professional practice which apply only internally within a Member State, the following rules shall apply to the cross-border activities of the lawyer within the European Union and the European Economic Area. Cross-border activities shall mean:

- (a) all professional contacts with lawyers of Member States other than the lawyer’s own;
- (b) the professional activities of the lawyer in a Member State other than his or her own, whether or not the lawyer is physically present in that Member State.

1.6. Definitions

In this Code:

“Member State” means a member state of the European Union or any other state whose legal profession is included in Article 1.4.

“Home Member State” means the Member State where the lawyer acquired the right to bear his or her professional title.

“Host Member State” means any other Member State where the lawyer carries on cross-border activities.

“Competent Authority” means the professional organisation(s) or authority(ies) of the Member State concerned responsible for the laying down of rules of professional conduct and the administration of discipline of lawyers.

“Directive 77/249/EEC” means Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services.

“Directive 98/5/EC” means Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained.

2. GENERAL PRINCIPLES

2.1. Independence

- 2.1.1. The many duties to which a lawyer is subject require the lawyer’s absolute independence, free from all other influence, especially such as may arise from his or her personal interests or external pressure. Such independence is as necessary to trust in the process of justice as the impartiality of the judge. A lawyer must therefore avoid any impairment of his or her independence and be careful not to compromise his or her professional standards in order to please the client, the court or third parties.
- 2.1.2. This independence is necessary in non-contentious matters as well as in litigation. Advice given by a lawyer to the client has no value if the lawyer gives it only to ingratiate him- or herself, to serve his or her personal interests or in response to outside pressure.

2.2. Trust and Personal Integrity

Relationships of trust can only exist if a lawyer’s personal honour, honesty and integrity are beyond doubt. For the lawyer these traditional virtues are professional obligations.

2.3. Confidentiality

- 2.3.1. It is of the essence of a lawyer’s function that the lawyer should be told by his or her client things which the client would not tell to others, and that the lawyer should be the recipient of other information on a basis of confidence. Without the certainty of confidentiality there cannot be trust. Confidentiality is therefore a primary and fundamental right and duty of the lawyer.
- The lawyer’s obligation of confidentiality serves the interest of the administration of justice as well as the interest of the client. It is therefore entitled to special protection by the State.
- 2.3.2. A lawyer shall respect the confidentiality of all information that becomes known to the lawyer in the course of his or her professional activity.
- 2.3.3. The obligation of confidentiality is not limited in time.
- 2.3.4. A lawyer shall require his or her associates and staff and anyone engaged by him or her in the course of providing professional services to observe the same obligation of confidentiality.

2.4. Respect for the Rules of Other Bars and Law Societies

When practising cross-border, a lawyer from another Member State may be bound to comply with the professional rules of the Host Member State. Lawyers have a duty to inform themselves as to the rules which will affect them in the performance of any particular activity.

Member organisations of the CCBE are obliged to deposit their codes of conduct at the Secretariat of the CCBE so that any lawyer can get hold of the copy of the current code from the Secretariat.

2.5. Incompatible Occupations

2.5.1. In order to perform his or her functions with due independence and in a manner which is consistent with his or her duty to participate in the administration of justice a lawyer may be prohibited from undertaking certain occupations.

2.5.2. A lawyer who acts in the representation or the defence of a client in legal proceedings or before any public authorities in a Host Member State shall there observe the rules regarding incompatible occupations as they are applied to lawyers of the Host Member State.

2.5.3. A lawyer established in a Host Member State in which he or she wishes to participate directly in commercial or other activities not connected with the practice of the law shall respect the rules regarding forbidden or incompatible occupations as they are applied to lawyers of that Member State.

2.6. Personal Publicity

2.6.1. A lawyer is entitled to inform the public about his or her services provided that the information is accurate and not misleading, and respectful of the obligation of confidentiality and other core values of the profession.

2.6.2. Personal publicity by a lawyer in any form of media such as by press, radio, television, by electronic commercial communications or otherwise is permitted to the extent it complies with the requirements of 2.6.1.

2.7. The Client's Interest

Subject to due observance of all rules of law and professional conduct, a lawyer must always act in the best interests of the client and must put those interests before the lawyer's own interests or those of fellow members of the legal profession.

2.8. Limitation of Lawyer's Liability towards the Client

To the extent permitted by the law of the Home Member State and the Host Member State, the lawyer may limit his or her liabilities towards the client in accordance with the professional rules to which the lawyer is subject.

3. RELATIONS WITH CLIENTS

3.1. Acceptance and Termination of Instructions

- 3.1.1. A lawyer shall not handle a case for a party except on that party's instructions. The lawyer may, however, act in a case in which he or she has been instructed by another lawyer acting for the party or where the case has been assigned to him or her by a competent body.

The lawyer should make reasonable efforts to ascertain the identity, competence and authority of the person or body who instructs him or her when the specific circumstances show that the identity, competence and authority are uncertain.

- 3.1.2. A lawyer shall advise and represent the client promptly, conscientiously and diligently. The lawyer shall undertake personal responsibility for the discharge of the client's instructions and shall keep the client informed as to the progress of the matter with which the lawyer has been entrusted.

- 3.1.3. A lawyer shall not handle a matter which the lawyer knows or ought to know he or she is not competent to handle, without cooperating with a lawyer who is competent to handle it.

A lawyer shall not accept instructions unless he or she can discharge those instructions promptly having regard to the pressure of other work.

- 3.1.4. A lawyer shall not be entitled to exercise his or her right to withdraw from a case in such a way or in such circumstances that the client may be unable to find other legal assistance in time to prevent prejudice being suffered by the client.

3.2. Conflict of Interest

- 3.2.1. A lawyer may not advise, represent or act on behalf of two or more clients in the same matter if there is a conflict, or a significant risk of a conflict, between the interests of those clients.

- 3.2.2. A lawyer must cease to act for both or all of the clients concerned when a conflict of interests arises between those clients and also whenever there is a risk of a breach of confidence or where the lawyer's independence may be impaired.

- 3.2.3. A lawyer must also refrain from acting for a new client if there is a risk of breach of a confidence entrusted to the lawyer by a former client or if the knowledge which the lawyer possesses of the affairs of the former client would give an undue advantage to the new client.

- 3.2.4. Where lawyers are practising in association, paragraphs 3.2.1 to 3.2.3 above shall apply to the association and all its members.

3.3. *Pactum de Quota Litis*

- 3.3.1. A lawyer shall not be entitled to make a pactum de quota litis.

- 3.3.2. By "pactum de quota litis" is meant an agreement between a lawyer and the client entered into prior to final conclusion of a matter to which the client is a party, by virtue of which the client undertakes to pay the lawyer a share of the result regardless of whether this is represented by a sum of money or by any other benefit achieved by the client upon the conclusion of the matter.

- 3.3.3. "Pactum de quota litis" does not include an agreement that fees be charged in proportion to the value of a matter handled by the lawyer if this is in accordance with an officially approved fee scale or under the control of the Competent Authority having jurisdiction over the lawyer.

3.4. Regulation of Fees

A fee charged by a lawyer shall be fully disclosed to the client, shall be fair and reasonable, and shall comply with the law and professional rules to which the lawyer is subject.

3.5. Payment on Account

If a lawyer requires a payment on account of his or her fees and/or disbursements such payment should not exceed a reasonable estimate of the fees and probable disbursements involved.

Failing such payment, a lawyer may withdraw from the case or refuse to handle it, but subject always to paragraph 3.1.4 above.

3.6. Fee Sharing with Non-Lawyers

3.6.1. A lawyer may not share his or her fees with a person who is not a lawyer except where an association between the lawyer and the other person is permitted by the laws and the professional rules to which the lawyer is subject.

3.6.2. The provisions of 3.6.1 above shall not preclude a lawyer from paying a fee, commission or other compensation to a deceased lawyer's heirs or to a retired lawyer in respect of taking over the deceased or retired lawyer's practice.

3.7. Cost of Litigation and Availability of Legal Aid

3.7.1. The lawyer should at all times strive to achieve the most cost-effective resolution of the client's dispute and should advise the client at appropriate stages as to the desirability of attempting a settlement and/or a reference to alternative dispute resolution.

3.7.2. A lawyer shall inform the client of the availability of legal aid where applicable.

3.8. Client Funds

3.8.1. Lawyers who come into possession of funds on behalf of their clients or third parties (hereinafter called "client funds") have to deposit such money into an account of a bank or similar institution subject to supervision by a public authority (hereinafter called a "client account"). A client account shall be separate from any other account of the lawyer. All client funds received by a lawyer should be deposited into such an account unless the owner of such funds agrees that the funds should be dealt with otherwise.

3.8.2. The lawyer shall maintain full and accurate records showing all the lawyer's dealings with client funds and distinguishing client funds from other funds held by the lawyer. Records may have to be kept for a certain period of time according to national rules.

3.8.3. A client account cannot be in debit except in exceptional circumstances as expressly permitted in national rules or due to bank charges, which cannot be influenced by the lawyer. Such an account cannot be given as a guarantee or be used as a security for any reason. There shall not be any set-off or merger between a client account and any other bank account, nor shall the client funds in a client account be available to defray money owed by the lawyer to the bank.

3.8.4. Client funds shall be transferred to the owners of such funds in the shortest period of time or under such conditions as are authorised by them.

3.8.5. The lawyer cannot transfer funds from a client account into the lawyer's own account for payment of fees without informing the client in writing.

3.8.6. The Competent Authorities in Member States shall have the power to verify and examine any document regarding client funds, whilst respecting the confidentiality or legal professional privilege to which it may be subject.

3.9. Professional Indemnity Insurance

3.9.1. Lawyers shall be insured against civil legal liability arising out of their legal practice to an extent which is reasonable having regard to the nature and extent of the risks incurred by their professional activities.

3.9.2. Should this prove impossible, the lawyer must inform the client of this situation and its consequences.

4. RELATIONS WITH THE COURTS

4.1. Rules of Conduct in Court

A lawyer who appears, or takes part in a case, before a court or tribunal must comply with the rules of conduct applied before that court or tribunal.

4.2. Fair Conduct of Proceedings

A lawyer must always have due regard for the fair conduct of proceedings.

4.3. Demeanour in Court

A lawyer shall while maintaining due respect and courtesy towards the court defend the interests of the client honourably and fearlessly without regard to the lawyer's own interests or to any consequences to him- or herself or to any other person.

4.4. False or Misleading Information

A lawyer shall never knowingly give false or misleading information to the court.

4.5. Extension to Arbitrators etc.

The rules governing a lawyer's relations with the courts apply also to the lawyer's relations with arbitrators and any other persons exercising judicial or quasi-judicial functions, even on an occasional basis.

5. RELATIONS BETWEEN LAWYERS

5.1. Corporate Spirit of the Profession

5.1.1. The corporate spirit of the profession requires a relationship of trust and co-operation between lawyers for the benefit of their clients and in order to avoid unnecessary litigation and other behaviour harmful to the reputation of the profession. It can, however, never justify setting the interests of the profession against those of the client.

5.1.2. A lawyer should recognise all other lawyers of Member States as professional colleagues and act fairly and courteously towards them.

5.2. Co-operation among Lawyers of Different Member States

5.2.1. It is the duty of a lawyer who is approached by a colleague from another Member State not to accept instructions in a matter which the lawyer is not competent to undertake. The lawyer should in such case be prepared to help that colleague to obtain the information necessary to enable him or her to instruct a lawyer who is capable of providing the service asked for.

5.2.2. Where a lawyer of a Member State co-operates with a lawyer from another Member State, both have a general duty to take into account the differences which may exist between their respective legal systems and the professional organisations, competences and obligations of lawyers in the Member States concerned.

5.3. Correspondence between Lawyers

- 5.3.1. If a lawyer intends to send communications to a lawyer in another Member State, which the sender wishes to remain confidential or without prejudice he or she should clearly express this intention prior to communicating the first of the documents.
- 5.3.2. If the prospective recipient of the communications is unable to ensure their status as confidential or without prejudice he or she should inform the sender accordingly without delay.

5.4. Referral Fees

- 5.4.1. A lawyer may not demand or accept from another lawyer or any other person a fee, commission or any other compensation for referring or recommending the lawyer to a client.
- 5.4.2. A lawyer may not pay anyone a fee, commission or any other compensation as a consideration for referring a client to him- or herself.

5.5. Communication with Opposing Parties

A lawyer shall not communicate about a particular case or matter directly with any person whom he or she knows to be represented or advised in the case or matter by another lawyer, without the consent of that other lawyer (and shall keep the other lawyer informed of any such communications).

5.6. (Deleted by decision of the Plenary Session in Dublin on 6 December 2002)

5.7. Responsibility for Fees

In professional relations between members of Bars of different Member States, where a lawyer does not confine him- or herself to recommending another lawyer or introducing that other lawyer to the client but instead him- or herself entrusts a correspondent with a particular matter or seeks the correspondent's advice, the instructing lawyer is personally bound, even if the client is insolvent, to pay the fees, costs and outlays which are due to the foreign correspondent. The lawyers concerned may, however, at the outset of the relationship between them make special arrangements on this matter. Further, the instructing lawyer may at any time limit his or her personal responsibility to the amount of the fees, costs and outlays incurred before intimation to the foreign lawyer of the instructing lawyer's disclaimer of responsibility for the future.

5.8. Continuing Professional Development

Lawyers should maintain and develop their professional knowledge and skills taking proper account of the European dimension of their profession.

5.9. Disputes amongst Lawyers in Different Member States

- 5.9.1. If a lawyer considers that a colleague in another Member State has acted in breach of a rule of professional conduct the lawyer shall draw the matter to the attention of that colleague.
- 5.9.2. If any personal dispute of a professional nature arises amongst lawyers in different Member States they should if possible first try to settle it in a friendly way.
- 5.9.3. A lawyer shall not commence any form of proceedings against a colleague in another Member State on matters referred to in 5.9.1 or 5.9.2 above without first informing the Bars or Law Societies to which they both belong for the purpose of allowing both Bars or Law Societies concerned an opportunity to assist in reaching a settlement.

EXPLANATORY MEMORANDUM

This Explanatory Memorandum was prepared at the request of the CCBE Standing Committee by the CCBE's deontology working party, who were responsible for drafting the first version of the Code of Conduct itself. It seeks to explain the origin of the provisions of the Code, to illustrate the problems which they are designed to resolve, particularly in relation to cross-border activities, and to provide assistance to the Competent Authorities in the Member States in the application of the Code. It is not intended to have any binding force in the interpretation of the Code. The Explanatory Memorandum was adopted on 28 October 1988 and updated on the occasion of the CCBE Plenary Session on 19 May 2006. The Explanatory Memorandum also takes into account amendments to the CCBE Statutes formally approved at an Extraordinary Plenary Session on 20 August 2007. The list of professions in the commentary on article 1.4 is subject to modification.

The original versions of the Code are in the French and English languages. Translations into other Community languages are prepared under the authority of the national delegations.

Commentary on Article 1.1 – The Function of the Lawyer in society

The Declaration of Perugia, adopted by the CCBE in 1977, laid down the fundamental principles of professional conduct applicable to lawyers throughout the EC. The provisions of Article 1.1 reaffirm the statement in the Declaration of Perugia of the function of the lawyer in society which forms the basis for the rules governing the performance of that function.

Commentary on Article 1.2 – The Nature of Rules of Professional Conduct

These provisions substantially restate the explanation in the Declaration of Perugia of the nature of rules of professional conduct and how particular rules depend on particular local circumstances but are nevertheless based on common values.

Commentary on Article 1.3 – The Purpose of the Code

These provisions introduce the development of the principles in the Declaration of Perugia into a specific Code of Conduct for lawyers throughout the EU, the EEA and Swiss Confederation, and lawyers of the Associate and Observer Members of the CCBE, with particular reference to their cross-border activities (defined in Article 1.5). The provisions of Article 1.3.2 lay down the specific intentions of the CCBE with regard to the substantive provisions in the Code.

Commentary on Article 1.4 – Field of Application Ratione Personae

The rules are stated to apply to all lawyers as defined in the Lawyers Services Directive of 1977 and the Lawyers Establishment Directive of 1998, and lawyers of the Associate and Observer Members of the CCBE. This includes lawyers of the states which subsequently acceded to the Directives, whose names have been added by amendment to the Directives. The Code accordingly applies to all the

lawyers represented on the CCBE, whether as full Members, Associate Members or Observer Members, namely:

Albania	Avokat
Andorra	Advocat
Armenia	Pastaban
Austria	Rechtsanwalt
Belgium	Avocat / Advocaat / Rechtsanwalt
Bosnia and Herzegovina	Advokat / Odvjetnik
Bulgaria	Advokat
Croatia	Odvjetnik
Cyprus	Dikegóros
Czech Republic	Advokát
Denmark	Advokat
Estonia	Vandeadvokaat
Finland	Asianajaja / Advokat
FYROM	Advokat
France	Avocat
Georgia	Advokati / Advokatebi
Germany	Rechtsanwalt
Greece	Dikegóros
Hungary	ügyvéd
Iceland	Lögmaður
Ireland	Barrister / Solicitor
Italy	Avvocato
Latvia	Zvērināts advokāts
Liechtenstein	Rechtsanwalt
Lithuania	Advokatas
Luxembourg	Avocat / Rechtsanwalt
Malta	Avukat / Prokuratur Legali
Montenegro	Advokat
Moldova	Avocat
Netherlands	Advocaat
Norway	Advokat
Poland	Adwokát / Radca prawny
Portugal	Advogado
Romania	Avocat
Serbia	Advokat
Slovak Republic	Advokát / Advokátka
Slovenia	Odvetnik / Odvetnica
Spain	Abogado / Advocat / Abokatu / Avogado
Sweden	Advokat
Switzerland	Rechtsanwalt / Anwalt / Fürsprech / Fürsprecher / Advokat/ avocat / avvocato / advocat
Turkey	Avukat
Ukraine	Advokat
United Kingdom	Advocate / Barrister / Solicitor

It is also hoped that the Code will be acceptable to the legal professions of other non-Member States in Europe and elsewhere so that it could also be applied by appropriate conventions between them and the Member States.

Commentary on Article 1.5 – Field of Application Ratione Materiae

The rules are here given direct application only to “cross-border activities”, as defined, of lawyers within the EU, the EEA and Swiss Confederation and lawyers of the Associate and Observer Members of the CCBE - see above on Article 1.4, and the definition of “Member State” in Article 1.6. (See also above as to possible extensions in the future to lawyers of other states.) The definition of cross-border activities would, for example, include contacts in state A even on a matter of law internal to state A between a lawyer of state A and a lawyer of state B; it would exclude contacts between lawyers of state A in state A of a matter arising in state B, provided that none of their professional activities takes place in state B; it would include any activities of lawyers of state A in state B, even if only in the form of communications sent from state A to state B.

Commentary on Article 1.6 – Definitions

This provision defines a number of terms used in the Code, “Member State”, “Home Member State”, “Host Member State”, “Competent Authority”, “Directive 77/249/EEC” and “Directive 98/5/EC”. The reference to “where the lawyer carries on cross-border activities” should be interpreted in light of the definition of “cross-border activities” in Article 1.5.

Commentary on Article 2.1 – Independence

This provision substantially reaffirms the general statement of principle in the Declaration of Perugia.

Commentary on Article 2.2 – Trust and Personal Integrity

This provision also restates a general principle contained in the Declaration of Perugia.

Commentary on Article 2.3 – Confidentiality

This provision first restates, in Article 2.3.1, general principles laid down in the Declaration of Perugia and recognised by the ECJ in the AM&S case (157/79). It then, in Articles 2.3.2 to 4, develops them into a specific rule relating to the protection of confidentiality. Article 2.3.2 contains the basic rule requiring respect for confidentiality. Article 2.3.3 confirms that the obligation remains binding on the lawyer even if he or she ceases to act for the client in question. Article 2.3.4 confirms that the lawyer must not only respect the obligation of confidentiality him- or herself but must require all members and employees of his or her firm to do likewise.

Commentary on Article 2.4 – Respect for the Rules of Other Bars and Law Societies

Article 4 of the Lawyers Services Directive contains the provisions with regard to the rules to be observed by a lawyer from one Member State providing services on an occasional or temporary basis in another Member State by virtue of Article 49 of the consolidated EC treaty, as follows:

- (a) activities relating to the representation of a client in legal proceedings or before public authorities shall be pursued in each Host Member State under the conditions laid down for lawyers established in that state, with the exception of any conditions requiring residence, or registration with a professional organisation, in that state;
- (b) a lawyer pursuing these activities shall observe the rules of professional conduct of the Host Member State, without prejudice to the lawyer’s obligations in the Member State from which he or she comes;
- (c) when these activities are pursued in the UK, “rules of professional conduct of the Host Member State” means the rules of professional conduct applicable to solicitors, where such activities are not reserved for barristers and advocates. Otherwise the rules of professional conduct applicable to the latter shall apply. However, barristers from Ireland shall always be subject to the rules of professional conduct

applicable in the UK to barristers and advocates. When these activities are pursued in Ireland “rules of professional conduct of the Host Member State” means, in so far as they govern the oral presentation of a case in court, the rules of professional conduct applicable to barristers. In all other cases the rules of professional conduct applicable to solicitors shall apply. However, barristers and advocates from the UK shall always be subject to the rules of professional conduct applicable in Ireland to barristers; and

- (d) a lawyer pursuing activities other than those referred to in (a) above shall remain subject to the conditions and rules of professional conduct of the Member State from which he or she comes without prejudice to respect for the rules, whatever their source, which govern the profession in the Host Member State, especially those concerning the incompatibility of the exercise of the activities of a lawyer with the exercise of other activities in that state, professional secrecy, relations with other lawyers, the prohibition on the same lawyer acting for parties with mutually conflicting interests, and publicity. The latter rules are applicable only if they are capable of being observed by a lawyer who is not established in the Host Member State and to the extent to which their observance is objectively justified to ensure, in that state, the proper exercise of a lawyer’s activities, the standing of the profession and respect for the rules concerning incompatibility.

The Lawyers Establishment Directive contains the provisions with regard to the rules to be observed by a lawyer from one Member State practising on a permanent basis in another Member State by virtue of Article 43 of the consolidated EC treaty, as follows:

- (a) irrespective of the rules of professional conduct to which he or she is subject in his or her Home Member State, a lawyer practising under his home-country professional title shall be subject to the same rules of professional conduct as lawyers practising under the relevant professional title of the Host Member State in respect of all the activities the lawyer pursues in its territory (Article 6.1);
- (b) the Host Member State may require a lawyer practising under his or her home-country professional title either to take out professional indemnity insurance or to become a member of a professional guarantee fund in accordance with the rules which that state lays down for professional activities pursued in its territory.

Nevertheless, a lawyer practising under his or her home-country professional title shall be exempted from that requirement if the lawyer can prove that he or she is covered by insurance taken out or a guarantee provided in accordance with the rules of the Home Member State, insofar as such insurance or guarantee is equivalent in terms of the conditions and extent of cover. Where the equivalence is only partial, the Competent Authority in the Host Member State may require that additional insurance or an additional guarantee be contracted to cover the elements which are not already covered by the insurance or guarantee contracted in accordance with the rules of the Home Member State (Article 6.3); and

- (c) a lawyer registered in a Host Member State under his or her home-country professional title may practise as a salaried lawyer in the employ of another lawyer, an association or firm of lawyers, or a public or private enterprise to the extent that the Host Member State so permits for lawyers registered under the professional title used in that state (Article 8).

In cases not covered by either of these Directives, or over and above the requirements of these Directives, the obligations of a lawyer under Community law to observe the rules of other Bars and Law Societies are a matter of interpretation of any relevant provision, such as the Directive on Electronic Commerce (2000/31/EC). A major purpose of the Code is to minimise, and if possible eliminate altogether, the problems which may arise from “double deontology”, that is the application of more than one set of potentially conflicting national rules to a particular situation (see Article 1.3.1).

Commentary on Article 2.5 – Incompatible Occupations

There are differences both between and within Member States on the extent to which lawyers are permitted to engage in other occupations, for example in commercial activities. The general purpose of rules excluding a lawyer from other occupations is to protect the lawyer from influences which might impair the lawyer’s independence or his or her role in the administration of justice. The variations in these rules reflect different local conditions, different perceptions of the proper function of lawyers and different techniques of rule-making. For instance in some cases there is a complete prohibition of

engagement in certain named occupations, whereas in other cases engagement in other occupations is generally permitted, subject to observance of specific safeguards for the lawyer's independence.

Articles 2.5.2 and 3 make provision for different circumstances in which a lawyer of one Member State is engaging in cross-border activities (as defined in Article 1.5) in a Host Member State when he or she is not a member of the Host State legal profession.

Article 2.5.2 imposes full observation of Host State rules regarding incompatible occupations on the lawyer acting in national legal proceedings or before national public authorities in the Host State. This applies whether the lawyer is established in the Host State or not.

Article 2.5.3, on the other hand, imposes "respect" for the rules of the Host State regarding forbidden or incompatible occupations in other cases, but only where the lawyer who is established in the Host Member State wishes to participate directly in commercial or other activities not connected with the practice of the law.

Commentary on Article 2.6 – Personal Publicity

The term "personal publicity" covers publicity by firms of lawyers, as well as individual lawyers, as opposed to corporate publicity organised by Bars and Law Societies for their members as a whole. The rules governing personal publicity by lawyers vary considerably in the Member States. Article 2.6 makes it clear that there is no overriding objection to personal publicity in cross-border practice. However, lawyers are nevertheless subject to prohibitions or restrictions laid down by their home professional rules, and a lawyer will still be subject to prohibitions or restrictions laid down by Host State rules when these are binding on the lawyer by virtue of the Lawyers Services Directive or the Lawyers Establishment Directive.

Commentary on Article 2.7 – The Client's Interest

This provision emphasises the general principle that the lawyer must always place the client's interests before the lawyer's own interests or those of fellow members of the legal profession.

Commentary on Article 2.8 – Limitation of Lawyer's Liability towards the Client

This provision makes clear that there is no overriding objection to limiting a lawyer's liability towards his or her client in cross-border practice, whether by contract or by use of a limited company, limited partnership or limited liability partnership. However it points out that this can only be contemplated where the relevant law and the relevant rules of conduct permit - and in a number of jurisdictions the law or the professional rules prohibit or restrict such limitation of liability.

Commentary on Article 3.1 – Acceptance and Termination of Instructions

The provisions of Article 3.1.1 are designed to ensure that a relationship is maintained between lawyer and client and that the lawyer in fact receives instructions from the client, even though these may be transmitted through a duly authorised intermediary. It is the responsibility of the lawyer to satisfy him- or herself as to the authority of the intermediary and the wishes of the client.

Article 3.1.2 deals with the manner in which the lawyer should carry out his or her duties. The provision that the lawyer shall undertake personal responsibility for the discharge of the instructions given to him or her means that the lawyer cannot avoid responsibility by delegation to others. It does not prevent the lawyer from seeking to limit his or her legal liability to the extent that this is permitted by the relevant law or professional rules - see Article 2.8.

Article 3.1.3 states a principle which is of particular relevance in cross-border activities, for example when a lawyer is asked to handle a matter on behalf of a lawyer or client from another state who may be unfamiliar with the relevant law and practice, or when a lawyer is asked to handle a matter relating to the law of another state with which he or she is unfamiliar.

A lawyer generally has the right to refuse to accept instructions in the first place, but Article 3.1.4 states that, having once accepted them, the lawyer has an obligation not to withdraw without ensuring that the client's interests are safeguarded.

Commentary on Article 3.2 – Conflict of Interest

The provisions of Article 3.2.1 do not prevent a lawyer acting for two or more clients in the same matter provided that their interests are not in fact in conflict and that there is no significant risk of such a conflict arising. Where a lawyer is already acting for two or more clients in this way and subsequently there arises a conflict of interests between those clients or a risk of a breach of confidence or other circumstances where the lawyer's independence may be impaired, then the lawyer must cease to act for both or all of them.

There may, however, be circumstances in which differences arise between two or more clients for whom the same lawyer is acting where it may be appropriate for the lawyer to attempt to act as a mediator. It is for the lawyer in such cases to use his or her own judgement on whether or not there is such a conflict of interest between them as to require the lawyer to cease to act. If not, the lawyer may consider whether it would be appropriate to explain the position to the clients, obtain their agreement and attempt to act as mediator to resolve the difference between them, and only if this attempt to mediate should fail, to cease to act for them.

Article 3.2.4 applies the foregoing provisions of Article 3 to lawyers practising in association. For example a firm of lawyers should cease to act when there is a conflict of interest between two clients of the firm, even if different lawyers in the firm are acting for each client. On the other hand, exceptionally, in the "chambers" form of association used by English barristers, where each lawyer acts for clients individually, it is possible for different lawyers in the association to act for clients with opposing interests.

Commentary on Article 3.3 – Pactum de Quota Litis

These provisions reflect the common position in all Member States that an unregulated agreement for contingency fees (*pactum de quota litis*) is contrary to the proper administration of justice because it encourages speculative litigation and is liable to be abused. The provisions are not, however, intended to prevent the maintenance or introduction of arrangements under which lawyers are paid according to results or only if the action or matter is successful, provided that these arrangements are under sufficient regulation and control for the protection of the client and the proper administration of justice.

Commentary on Article 3.4 – Regulation of Fees

Article 3.4 lays down three requirements: a general standard of disclosure of a lawyer's fees to the client, a requirement that they should be fair and reasonable in amount, and a requirement to comply with the applicable law and professional rules.

In many Member States machinery exists for regulating lawyers' fees under national law or rules of conduct, whether by reference to a power of adjudication by the Bar authorities or otherwise. In situations governed by the Lawyers Establishment Directive, where the lawyer is subject to Host State rules as well as the rules of the Home State, the basis of charging may have to comply with both sets of rules.

Commentary on Article 3.5 – Payment on Account

Article 3.5 assumes that a lawyer may require a payment on account of the lawyer's fees and/or disbursements, but sets a limit by reference to a reasonable estimate of them. See also on Article 3.1.4 regarding the right to withdraw.

Commentary on Article 3.6 – Fee Sharing with Non-Lawyers

In some Member States lawyers are permitted to practise in association with members of certain other approved professions, whether legal professions or not. The provisions of Article 3.6.1 are not designed to prevent fee sharing within such an approved form of association. Nor are the provisions designed to prevent fee sharing by the lawyers to whom the Code applies (see on Article 1.4 above) with other "lawyers", for example lawyers from non-Member States or members of other legal professions in the Member States such as notaries.

Commentary on Article 3.7 – Cost of Litigation and Availability of Legal Aid

Article 3.7.1 stresses the importance of attempting to resolve disputes in a way which is cost-effective for the client, including advising on whether to attempt to negotiate a settlement, and whether to propose referring the dispute to some form of alternative dispute resolution.

Article 3.7.2 requires a lawyer to inform the client of the availability of legal aid where applicable. There are widely differing provisions in the Member States on the availability of legal aid. In cross-border activities a lawyer should have in mind the possibility that the legal aid provisions of a national law with which the lawyer is unfamiliar may be applicable.

Commentary on Article 3.8 – Client Funds

The provisions of Article 3.8 reflect the recommendation adopted by the CCBE in Brussels in November 1985 on the need for minimum regulations to be made and enforced governing the proper control and disposal of clients' funds held by lawyers within the Community. Article 3.8 lays down minimum standards to be observed, while not interfering with the details of national systems which provide fuller or more stringent protection for clients' funds.

The lawyer who holds clients' funds, even in the course of a cross-border activity, has to observe the rules of his or her home Bar. The lawyer needs to be aware of questions which arise where the rules of more than one Member State may be applicable, especially where the lawyer is established in a Host State under the Lawyers Establishment Directive.

Commentary on Article 3.9 – Professional Indemnity Insurance

Article 3.9.1 reflects a recommendation, also adopted by the CCBE in Brussels in November 1985, on the need for all lawyers in the Community to be insured against the risks arising from professional negligence claims against them. Article 3.9.2 deals with the situation where insurance cannot be obtained on the basis set out in Article 3.9.1.

Commentary on Article 4.1 – Rules of Conduct in Court

This provision applies the principle that a lawyer is bound to comply with the rules of the court or tribunal before which the lawyer practises or appears.

Commentary on Article 4.2 – Fair Conduct of Proceedings

This provision applies the general principle that in adversarial proceedings a lawyer must not attempt to take unfair advantage of his or her opponent. The lawyer must not, for example, make contact with the judge without first informing the lawyer acting for the opposing party or submit exhibits, notes or documents to the judge without communicating them in good time to the lawyer on the other side unless such steps are permitted under the relevant rules of procedure. To the extent not prohibited by law a lawyer must not divulge or submit to the court any proposals for settlement of the case made by the other party or its lawyer without the express consent of the other party's lawyer. See also on Article 4.5 below.

Commentary on Article 4.3 – Demeanour in Court

This provision reflects the necessary balance between respect for the court and for the law on the one hand and the pursuit of the client's best interest on the other.

Commentary on Article 4.4 – False or Misleading Information

This provision applies the principle that the lawyer must never knowingly mislead the court. This is necessary if there is to be trust between the courts and the legal profession.

Commentary on Article 4.5 – Extension to Arbitrators etc.

This provision extends the preceding provisions relating to courts to other bodies exercising judicial or quasi-judicial functions.

Commentary on Article 5.1 – Corporate Spirit of the Profession

These provisions, which are based on statements in the Declaration of Perugia, emphasise that it is in the public interest for the legal profession to maintain a relationship of trust and cooperation between its members. However, this cannot be used to justify setting the interests of the profession against those of justice or of clients (see also on Article 2.7).

Commentary on Article 5.2 – Co-operation among Lawyers of Different Member States

This provision also develops a principle stated in the Declaration of Perugia with a view to avoiding misunderstandings in dealings between lawyers of different Member States.

Commentary on Article 5.3 – Correspondence between Lawyers

In certain Member States communications between lawyers (written or by word of mouth) are normally regarded as to be kept confidential as between the lawyers. This means that the content of these communications cannot be disclosed to others, cannot normally be passed to the lawyers' clients, and at any event cannot be produced in court. In other Member States, such consequences will not follow unless the correspondence is marked as "confidential".

In yet other Member States, the lawyer has to keep the client fully informed of all relevant communications from a professional colleague acting for another party, and marking a letter as "confidential" only means that it is a legal matter intended for the recipient lawyer and his or her client, and not to be misused by third parties.

In some states, if a lawyer wishes to indicate that a letter is sent in an attempt to settle a dispute, and is not to be produced in a court, the lawyer should mark the letter as "without prejudice".

These important national differences give rise to many misunderstandings.

That is why lawyers must be very careful in conducting cross-border correspondence.

Whenever a lawyer wants to send a letter to a professional colleague in another Member State on the basis that it is to be kept confidential as between the lawyers, or that it is "without prejudice", the lawyer should ask in advance whether the letter can be accepted on that basis. A lawyer wishing that a communication should be accepted on such a basis must express that clearly in the communication or in a covering letter.

A lawyer who is the intended recipient of such a communication, but who is not in a position to respect, or to ensure respect for, the basis on which it is to be sent, must inform the sender immediately so that the communication is not sent. If the communication has already been received, the recipient must return it to the sender without revealing its contents or referring to it in any way; if the recipient's national law or rules prevent the recipient from complying with this requirement, he or she must inform the sender immediately.

Commentary on Article 5.4 – Referral Fees

This provision reflects the principle that a lawyer should not pay or receive payment purely for the reference of a client, which would risk impairing the client's free choice of lawyer or the client's interest in being referred to the best available service. It does not prevent fee-sharing arrangements between lawyers on a proper basis (see also on Article 3.6 above).

In some Member States lawyers are permitted to accept and retain commissions in certain cases provided: a) the client's best interests are served, b) there is full disclosure to the client and c) the client has consented to the retention of the commission. In such cases the retention of the commission by the lawyer represents part of the lawyer's remuneration for the service provided to the client and is not within the scope of the prohibition on referral fees which is designed to prevent lawyers making a secret profit.

Commentary on Article 5.5 – Communication with Opposing Parties

This provision reflects a generally accepted principle, and is designed both to promote the smooth conduct of business between lawyers and to prevent any attempt to take advantage of the client of another lawyer.

Commentary on Article 5.6 – Change of Lawyer

Article 5.6 dealt with change of lawyer. It was deleted from the Code on 6 December 2002.

Commentary on Article 5.7 – Responsibility for Fees

These provisions substantially reaffirm provisions contained in the Declaration of Perugia. Since misunderstandings about responsibility for unpaid fees are a common cause of difference between lawyers of different Member States, it is important that a lawyer who wishes to exclude or limit his or her personal obligation to be responsible for the fees of a foreign colleague should reach a clear agreement on this at the outset of the transaction.

Commentary on Article 5.8 – Continuing Professional Development

Keeping abreast of developments in the law is a professional obligation. In particular it is essential that lawyers are aware of the growing impact of European law on their field of practice.

Commentary on Article 5.9 – Disputes amongst Lawyers in Different Member States

A lawyer has the right to pursue any legal or other remedy to which he or she is entitled against a colleague in another Member State. Nevertheless it is desirable that, where a breach of a rule of professional conduct or a dispute of a professional nature is involved, the possibilities of friendly settlement should be exhausted, if necessary with the assistance of the Bars or Law Societies concerned, before such remedies are exercised.

IBA

International Principles on Conduct for the Legal Profession

Adopted on 28 May 2011
by the International Bar Association

Update adopted on 11 October 2018
by the International Bar Association



the global voice of
the legal profession®

This Commentary is dedicated to the memory of Steve Krane, former President of the New York State Bar, who assisted greatly with its earlier versions and sadly died during its final drafting.

The IBA wishes to thank the following for their contribution to the International Principles on Conduct for the Legal Profession

Members of the BIC Policy Committee 2006-2011

Olufunke Adekoya (Nigeria)
Arturo Alessandri (Chile)
Horacio Bernardes-Neto (Brazil)
Michael Clancy (Scotland)
Alain de Foucaud (France)
Hans-Jürgen Hellwig (Germany)
Philip Jeyaretnam (Singapore)
Tatsu Katayama (Japan)
Peter Kim (Korea)
Jim Klotz (Canada)
Helge Jakob Kolrud (Norway)
Péter Köves (Hungary)
Michael Kutschera (Austria)
Laurent Martinet (France)
Ed Nally (England)
Margery Nicoll (Australia)
Alejandro Ogarrio (Mexico)
Sam Okudzeto (Ghana)
Mikiko Otani (Japan)
Ken Reisenfeld (USA)
Haji Sulaimain (Malaysia)
Hugh Stubbs (England)
Claudio Visco (Italy)
Sidney Weiss (USA)

Co-opted member

Ellyn Rosen (USA)

Members of the IBA Professional Ethics Committee

Victoria Rees (Canada)
Paul Monahan (Australia)

With special thanks to

Jonathan Goldsmith (Europe)

Contents

The International Principles	5
Commentary on the International Principles	9
Introduction	10
1 Independence	12
2 Honesty, integrity and fairness	15
3 Conflicts of interest	18
4 Confidentiality/professional secrecy	21
5 Clients' interest	26
6 Lawyers' undertaking	28
7 Clients' freedom	29
8 Property of clients and third parties	30
9 Competence	31
10 Fees	32
Appendix – Definitions	34

International Principles on Conduct for the Legal Profession

Lawyers throughout the world are specialised professionals who place the interests of their clients above their own, and strive to obtain respect for the Rule of Law. They have to combine a continuous update on legal developments with service to their clients, respect for the courts, and the legitimate aspiration to maintain a reasonable standard of living. Between these elements there is often tension. These principles aim at establishing a generally accepted framework to serve as a basis on which codes of conduct may be established by the appropriate authorities for lawyers in any part of the world. In addition, the purpose of adopting these International Principles is to promote and foster the ideals of the legal profession. These International Principles are not intended to replace or limit a lawyer's obligation under applicable laws or rules of professional conduct. Nor are they to be used as criteria for imposing liability, sanctions, or disciplinary measures of any kind.

1. Independence

A lawyer shall maintain independence and be afforded the protection such independence offers in giving clients unbiased advice and representation. A lawyer shall exercise independent, unbiased professional judgment in advising a client, including as to the likelihood of success of the client's case.

2. Honesty, integrity and fairness

A lawyer shall at all times maintain the highest standards of honesty, integrity and fairness towards the lawyer's clients, the court, colleagues and all those with whom the lawyer comes into professional contact.

A lawyer shall ensure that equality of opportunity and respect for diversity govern all aspects of conduct in the lawyer's exercise of the profession.

A lawyer shall take reasonable steps to ensure that those unable to pay or otherwise gain access to justice because of personal circumstances are guided to the best alternatives for such access.

3. Conflicts of interest

A lawyer shall not assume a position in which a client's interests conflict with those of the lawyer, another lawyer in the same firm, or another client, unless otherwise permitted by law, applicable rules of professional conduct, or, if permitted, by client's authorisation.

4. Confidentiality/professional secrecy

A lawyer shall at all times maintain and be afforded protection of confidentiality regarding the affairs of present or former clients, unless otherwise allowed or required by law and/or applicable rules of professional conduct.

5. Clients' interest

A lawyer shall treat client interests as paramount, subject always to there being no conflict with the lawyer's duties to the court and the interests of justice, to observe the law, and to maintain ethical standards.

6. Lawyers' undertaking

A lawyer shall honour any undertaking given in the course of the lawyer's practice in a timely manner, until the undertaking is performed, released or excused.

7. Clients' freedom

A lawyer shall respect the freedom of clients to be represented by the lawyer of their choice. Unless prevented by professional conduct rules or by law, a lawyer shall be free to take on or reject a case.

8. Property of clients and third parties

A lawyer shall account promptly and faithfully for and prudently hold any property of clients or third parties that comes into the lawyer's trust, and shall keep it separate from the lawyer's own property.

9. Competence

A lawyer's work shall be carried out in a competent and timely manner. A lawyer shall not take on work that the lawyer does not reasonably believe can be carried out in that manner.

10. Fees

Lawyers are entitled to a reasonable fee for their work, and shall not charge an unreasonable fee. A lawyer shall not generate unnecessary work.

Commentary on IBA International Principles on Conduct for the Legal Profession

Adopted by the International Bar Association
at the Warsaw Council Meeting
28 May 2011

Update adopted by the International Bar Association
at the IBA Annual Conference
on 11 October 2018

Introduction

- 1 The lawyer's role, whether retained by an individual, a corporation or the state, is as the client's trusted adviser and representative, as a professional respected by third parties, and as an indispensable participant in the fair administration of justice. By embodying all these elements, the lawyer, who faithfully serves a client's interests and protects the client's rights, also fulfils the functions of the lawyer in society – which are to forestall and prevent conflicts, to ensure that conflicts are resolved in accordance with recognised principles of civil, public or criminal law and with due account of rights and interests, to negotiate and draft agreements and other transactional necessities, to further the development of the law, and to defend liberty, justice and the rule of law
- 2 The International Principles consist of ten principles common to the legal profession worldwide. Respect for these principles is the basis of the right to a legal defence, which is the cornerstone of all other fundamental rights in a democracy.
- 3 The International Principles express the common ground which underlies all the national and international rules which govern the conduct of lawyers, principally in relation to their clients. The General Principles do not cover in detail other areas of lawyer conduct, for instance regarding the courts, other lawyers or the lawyer's own bar.
- 4 The International Principles take into consideration:
 - national professional rules from states throughout the world;

- the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana (Cuba), 27 August to 7 September 1990;
- the Universal Declaration of Human Rights.

- 5 It is hoped that the Principles and this Commentary will be of help, for instance, to bars that are struggling to establish their independence and that of their members in emerging democracies, and to lawyers and bars to understand better the issues arising in cross-border situations as a consequence of conflicting national rules and regulations.
- 6 It is hoped that the Principles will increase understanding among lawyers, decision makers and the public of the importance of the lawyer's role in society, and of the way in which the principles by which the legal profession is regulated support that role.
- 7 The IBA urges judges, legislators, governments and international organisations to strive, along with lawyers and bars, to uphold the principles set out in the International Principles. However, no statement of principles or code of ethics can provide for every situation or circumstance that may arise. Consequently, lawyers must act not only in accordance with the professional rules and applicable laws in their own state (and maybe also the rules and laws of another state in which they are practising), but also in accordance with the dictates of their conscience, in keeping with the general sense and ethical culture that inspires these International Principles.
- 8 The Appendix to this Commentary contains definitions of some of the terms contained in it.

1. Independence

1.1 General principle

A lawyer shall maintain independence and be afforded the protection such independence offers in giving clients unbiased advice and representation. A lawyer shall exercise independent, unbiased professional judgment in advising a client, including as to the likelihood of success of the client's case.

1.2 Explanatory note

It is indispensable to the administration of justice and the operation of the Rule of Law that a lawyer act for the client in a professional capacity free from direction, control or interference. If a lawyer is not guaranteed independence and is subject to interference from others, especially those in power, it will be difficult for the lawyer fully to protect clients. Therefore, the guarantee of a lawyer's independence is an essential requirement for the protection of citizens' rights in a democratic society. The requirement of independence calls upon the individual practicing lawyer, government and civil society to give priority to the independence of the legal profession over personal aspirations and to respect the need for an independent legal profession. Clients are entitled to expect independent, unbiased and candid advice, irrespective of whether or not the advice is to the client's liking.

Independence requires that a lawyer act for a client in the absence of improper conflicting self-interest, undue external influences or any concern which may interfere with a client's best interest or the lawyer's professional judgment.

Circumstances in which a lawyer's independence will or may be at risk or impaired include:

- the involvement of the lawyer in a business transaction with a client absent proper disclosure and client consent;

- where the lawyer becomes involved in a business, occupation or activity whilst acting for a client and such an interest takes or is likely to take precedence over the client's interest;
- unless otherwise authorised by law, knowingly acquiring an ownership, possessory or security interest adverse to the client; and
- holding or acquiring a financial interest in the subject matter of a case which the lawyer is conducting, whether or not before a court or administrative body, except, where authorised by law, for contingent fee agreements and liens to secure fees.

The fact that lawyers are paid by a third party must not affect their independence and professional judgement in rendering their services to the client.

Independence of a lawyer requires also that the process for the lawyer's admission to the bar, professional discipline, and professional supervision in general, are organised and carried out in a manner that guarantees that administration of the legal profession is free from undue or improper influence, whether governmental, by the courts or otherwise.

1.3 International implications

While the principles of independence of the lawyer and of the legal profession are undisputed in all jurisdictions adhering to, and striving for, the improvement of the Rule of Law, the respective regulatory and organisational frameworks vary significantly from jurisdiction to jurisdiction. In certain jurisdictions, the bars enjoy specific regulatory autonomy on a statutory and sometimes constitutional basis. In others, legal practice is administered by the judicial branch of government and/or governmental bodies or regulatory agencies. Often the courts or statutory bodies are assisted by bar associations established on a private basis. The various systems for the organisation and regulation of the legal profession should ensure not only the independence of practicing lawyers but also administration of the profession in a manner that is itself in line with the Rule of Law. Therefore, decisions of the Bars should

be subject to an appropriate review mechanism. There is an ongoing debate as to the extent to which governmental and legislative interference with the administration and conduct of the legal profession may be warranted. Lawyers and bars should strive for and preserve the true independence of the legal profession and encourage governments to avoid and combat the challenges to the Rule of Law.

Some jurisdictions hold certain types of activities and the handling of certain matters by members of the bar as incompatible with their independent practice; others see no conflict at all. As regards employment of a lawyer admitted to the bar, it is allowed in some jurisdictions and prohibited in others for a lawyer to be employed by another lawyer or a third party (in-house or corporate counsel). Of those jurisdictions that allow a lawyer to be employed, some jurisdictions acknowledge the privileges of a lawyer (protection of independence and confidentiality) only in those cases where the lawyer works for a client other than the lawyer's employer, while other jurisdictions grant this protection also for work performed for the employer.

Differences in jurisdictional approach should be taken into account in cases of cross-border or multi-jurisdictional practice. Every lawyer is called upon to observe applicable rules of professional conduct in both home and host jurisdictions (Double Deontology) when engaging in the practice of law outside the jurisdiction in which the lawyer is admitted to practice. Every international law firm will have to examine whether its entire organisation is in conformity with such rules in every jurisdiction in which it is established or engaged in the provision of legal services. A universally accepted framework for determining proper conduct in the event of conflicting or incompatible rules has yet to be developed, although certain jurisdictions have adopted conflict of law principles to determine which rules of professional conduct apply in cross-border practice.

2. Honest, integrity and fairness

2.1 General principle

A lawyer shall at all times maintain the highest standards of honesty, integrity and fairness towards the lawyer's clients, the court, colleagues and all those with whom the lawyer comes into professional contact. A lawyer shall ensure that equality of opportunity and respect for diversity govern all aspects of conduct in the lawyer's exercise of the profession. A lawyer shall take reasonable steps to ensure that those unable to pay or otherwise gain access to justice because of personal circumstances are guided to the best alternatives for such access.

2.2 Explanatory note

Trust in the legal profession requires that every member of the legal profession exemplifies personal integrity, honesty and fairness.

A lawyer shall not knowingly make a false statement of fact or law in the course of representing a client or fail to correct a false statement of material fact or law previously made by the lawyer. Lawyers have an obligation to be professional with clients, other parties and counsel, the courts, court personnel, and the public. This obligation includes civility, professional integrity, personal dignity, candor, diligence, respect, courtesy, and cooperation, all of which are essential to the fair administration of justice and conflict resolution. Lawyers should be mindful that while their duties are often carried out in an adversarial forum, lawyers should not treat the court, other lawyers, or the public in a hostile manner. Nevertheless, it is also true that there are different standards expected towards the client, the court or a professional colleague since the lawyer has different responsibilities towards each category. The expression of these responsibilities varies jurisdiction by jurisdiction.

Regarding diversity and equality, a lawyer shall not discriminate unlawfully, or victimise or harass anyone, in the course of professional dealings. A lawyer shall provide services to clients in a way that respects diversity. A lawyer shall approach recruitment and employment in a way that encourages equality of opportunity and respect for diversity. Complaints of discrimination against the lawyer or the firm shall be dealt with promptly, fairly, openly, and effectively.

The Council of the IBA Human Rights Institute passed a resolution in 2010 on sexual orientation and gender identity¹ which confirms ‘a policy of opposition to discrimination, violence and other breaches of human rights directed to people on the ground of their actual or imputed sexual orientation or gender identity’.

Regarding access to justice, the IBA has several times over the years recognised access to justice as a universal right.

Most recently, in its Pro Bono declaration,² the IBA recognised ‘that access to justice is essential to liberty, fairness, dignity, progress, development and the Rule of Law’ and ‘that access to justice for all individuals is a human right’.

In its resolution on legal aid adopted in 1996,³ it resolved:

‘1 That the IBA reaffirms its commitment to the principle that access to justice for all individuals is a human right which requires the provision by all countries of effective legal aid programmes funded by the state’

And in June 1991, it adopted a resolution stating:

‘Whereupon it is universally recognised that the interests of justice imply

1 Availability of access to courts for all individuals regardless of means;

1 https://www.ibanet.org/Human_Rights_Institute/council-resolutions.aspx

2 <https://www.internationalprobono.com/declarations/>

3 https://www.ibanet.org/About_the_IBA/IBA_instruments.aspx

2 That no individual should be prejudiced in preparation of his case or in seeking and receiving legal advice by reason only of inadequate financial means'

Governments clearly have a primary role to play in ensuring that structures and funding are properly available to ensure access to justice. Lawyers play their own part supplementing that primary role, for instance through advice on alternative routes to justice or through offering pro bono services.

2.3 International implications

A lawyer who appears before or becomes otherwise engaged with a court or tribunal must comply with the rules applied by such court or tribunal.

Cross-border cooperation between lawyers from different jurisdictions requires respect for the differences that may exist between their respective legal systems, and the relevant rules for the regulation of the legal profession.

A lawyer who undertakes professional work in a jurisdiction where the lawyer is not a full member of the local profession shall adhere to applicable law and the standards of professional ethics in the jurisdiction of which the lawyer is a full member, and the lawyer shall practice only to the extent this is permitted in the host jurisdiction and provided that all applicable law and ethical standards of the host jurisdiction are observed.

3. Conflicts of interest

3.1 General principle

A lawyer shall not assume a position in which a client's interests conflict with those of the lawyer, another lawyer in the same firm, or another client, unless otherwise permitted by law, applicable rules of professional conduct, or, if permitted, by client's authorisation.

3.2 Explanatory note

Trust and confidence in the legal profession and the rule of law depends upon lawyers' loyalty to clients. Rules regarding conflicts of interest vary from jurisdiction to jurisdiction. The definition of what constitutes a conflict also differs from jurisdiction to jurisdiction, including (but not exhaustively) whether information barriers are permitted at all, and also whether conflict of interest prohibitions cover all the law firm or whether information barriers can help. Generally, a lawyer shall not represent a client if the representation involves a conflict of interest. A conflict of interest exists if the representation of one client will be directly adverse to another client; or there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client, a third person or by a personal interest of the lawyer. Notwithstanding the existence of conflict of interest, in some jurisdictions a lawyer may represent the client if the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client, the representation is not prohibited by law, the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal, and each affected client gives informed consent, confirmed in writing. A lawyer who has formerly represented a

client in a matter or whose present or former firm has formerly represented a client in a matter shall not use information relating to the representation to the disadvantage of the former client except when permitted by applicable law or ethics rules.

In some jurisdictions, certain potentially conflicting situations may be permitted subject to proper disclosure to and, to the extent permitted by applicable law or ethics rules, consent by all parties involved, provided always that disclosure may be made without breaching confidentiality obligations. Without prejudice to additional duties, if a conflict becomes apparent only after the lawyer's work has commenced, some jurisdictions require the conflicted lawyer to withdraw from the case in its entirety and in respect of all clients concerned; others require withdrawal from representing one client only, but not all of them.

In addition, legal and professional conduct conflict of interest must be clearly distinguished from commercial conflict of interest. A lawyer should be entitled to defend the interests of or represent a client in a case even if that client is a competitor or its interests conflict with the commercial interests of another present or former client, not involved or related in that particular case assigned to the lawyer. Also, a lawyer may defend the interests of or represent a client against another client in any circumstance where the latter, whether in negotiating an agreement, or in another legal action or arbitration, has chosen to place its interests for those cases with another lawyer; however, in such cases, the first-mentioned lawyer will have to comply with all other applicable rules of professional conduct, and in particular with rules of confidentiality, professional secrecy and independence.

In upholding the interests of clients, lawyers must not allow their own interests to conflict with or displace those of their client. A lawyer must not exercise any undue influence intended to benefit the lawyer in preference to that of a client. A lawyer must not accept instructions or continue to act for a client, when the lawyer becomes aware that the client's interest in the proceedings would be in conflict with the lawyer's own interest.

3.3 International implications

The differences in national rules on conflicts of interest will have to be taken into account in any case of cross-border practice. Every lawyer is called upon to observe the relevant rules on conflicts of interest when engaging in the practice of law outside the jurisdiction in which the lawyer is admitted to practice. Every international law firm will have to examine whether its entire organisation complies with such rules in every jurisdiction in which it is established and engaged in the provision of legal services. A universally accepted framework for determining proper conduct in the event of conflicting or incompatible rules has yet to be developed, although certain jurisdictions have adopted conflict of law principles to determine which rules of professional conduct apply in cross-border practice.

4. Confidentiality/ professional secrecy

4.1 General principle

A lawyer shall at all times maintain and be afforded protection of confidentiality regarding the affairs of present or former clients, unless otherwise allowed or required by law and/or applicable rules of professional conduct.

4.2 Explanatory note

The right and duty of a lawyer to keep confidential the information received from and advice given to clients is an indispensable feature of the rule of law and another element essential to public trust and confidence in the administration of justice and the independence of the legal profession.

The principles of confidentiality and professional secrecy have two main features. On the one hand there is the contractual, ethical and frequently statutory duty on the part of the lawyer to keep client secrets confidential. The statutory duty is sometimes in the form of an evidentiary attorney-client privilege; this differs from the lawyer's obligations under applicable rules of professional conduct. Such obligations extend beyond the termination of the attorney-client relationship. Most jurisdictions respect and protect such confidentiality obligations, for example, by exempting the lawyer from the duty to testify before courts and other public authorities as to the information the lawyer has gathered from clients, and/or by affording lawyer-client communications special protection.

On the other hand, there are manifest situations in which the principles of confidentiality and professional secrecy of lawyer-client communications no longer apply in full or in part. Lawyers can not claim the protection of confidentiality when assisting and abetting the unlawful conduct of their clients. Some jurisdictions also allow or require a lawyer to

reveal information relating to the representation of the client to the extent the lawyer reasonably believes it necessary to prevent reasonably certain crimes resulting, for example in death or substantial bodily harm, or to prevent the client from committing such a crime in furtherance of which the client has used or is using the lawyer's services. Recent legislation imposing special duties upon lawyers to assist in the prevention of criminal phenomena such as terrorism, money laundering or organised crime has led to further erosion of the protection of the lawyer's duty of confidentiality. Many bars are opposed in principle to the scope of this legislation. Any encroachment on the lawyer's duty should be limited to information that is absolutely indispensable to enable lawyers to comply with their legal obligations or to prevent lawyers from being unknowingly abused by criminals to assist their improper goals. If neither of the above is the case and a suspect of a past crime seeks advice from a lawyer, the duty of confidentiality should be fully protected. However, a lawyer cannot invoke confidentiality/professional secrecy in circumstances where the lawyer acts as an accomplice to a crime.

As governments take further action on tax evasion, tax avoidance and financial crimes, an increasing number of decision-makers have been expressing disquiet about the extent to which confidentiality/professional secrecy shields wrong-doers from discovery, or hides behaviour of which governments disapprove (even if it is not illegal). This in turn exposes lawyers to accusations that their long-held values facilitate criminality or behaviour that is considered by some decision-makers to be socially harmful, even if the lawyer is an unwitting party, and even if those values underlie other aspects of due process and fairness in the legal system. Of course, lawyers are forbidden from aiding criminality or fraud, but much of the recent discussion has been around client conduct which is lawful.⁴

4 An example has been the discussion around lawyers helping clients to minimise their tax obligations through off-shore structures. Such structures may follow the letter of the law but do not necessarily follow the spirit of the law and could be depriving governments of valuable tax income.

Bars are encouraged to ensure that they have measures in place to satisfy themselves that the public can have full confidence that lawyer-client confidentiality is not being abused. When appropriate, bars are encouraged to engage their national decision-makers in discussions to explain the important societal role that confidentiality/professional secrecy plays in the administration of justice and the rule of law, and the need for decision-makers to take full account of this.

Jurisdictions differ on the scope of protection and its geographical extension. In some jurisdictions clients may waive the lawyer's obligation of confidentiality and professional secrecy, but in others clients may not. In some jurisdictions, the obligation can be broken for self-defence purposes in judicial proceedings. Apart from client waiver, such self-defence and any requirements imposed by law, the lawyer's obligation of confidentiality and professional secrecy is usually without time limit. The obligation also applies to assistants, interns and all employed within the law firm. In any event, lawyers shall be under a duty to ensure that those who work in the same law firm, in whatever capacity, maintain the obligation of confidentiality and professional secrecy.

Law firms or associations raise different aspects of the duty of confidentiality and professional secrecy. The basic and general rule must be that any information or fact known by a lawyer in a law firm is held to be known by the entire organisation, even if that organisation is present in different branches and countries. This means that extraordinary measures must be adopted within the organisation if a lawyer is involved in a case that should be considered as strictly confidential even beyond the general standards of the professional secrecy principle.

Lawyers should also take care to ensure that confidentiality and professional secrecy are maintained in respect of electronic communications, and data stored on computers. Standards are evolving in this sphere as technology itself evolves, and lawyers are under a duty to keep themselves informed of the required professional standards so as to maintain their professional obligations.

The extent to which clients may waive the right to confidentiality is subject to differing rules in different jurisdictions. Those rules limiting the ability to waive argue that clients frequently cannot properly assess the disadvantages of issuing such a waiver. Restrictions on waivers are of paramount importance to protect against a court or governmental authority putting inappropriate pressure on a client to waive his or her right to confidentiality.

Finally, lawyers should not benefit from the secrets confided to them by their clients.

4.3 International implications

Although there is a clear common goal behind the various regimes governing the duty of confidentiality and its protection, national rules differ substantially. While civil law countries entitle and oblige the lawyer not to testify, and protect the lawyer against search and seizure, common law countries protect the confidentiality of certain attorney-client communications, even if, for example, privileged correspondence is found with a client suspected of having committed a criminal offence.

Lawyers engaged in cross-border practice and international law firms will have to investigate all rules that may be of relevance and will have to ensure that information to which they gain access and the communication in which they are engaged will in fact enjoy the protection of confidentiality.

Generally, the national rules of all relevant jurisdictions must be complied with (Double Deontology). But national rules sometimes do not address the issue of how to deal with conflicting rules. If the conflicting rules are broadly similar, then the stricter rule should be complied with. There is, however, no universally accepted solution for those cases where the rules contradict each other (for instance secrecy protection versus reporting obligation), although certain jurisdictions have adopted conflict of law principles to determine which rules of professional conduct apply in cross-border practice.

Likewise, national rules as to the ability of a client to waive confidentiality vary, and the applicable rule or rules will have to be determined individually in every case.

A special international consideration arises from the fact that some jurisdictions permit employment of a lawyer admitted to the Bar, while others do not permit employment of in-house counsel. Accordingly, the question arises how jurisdictions that do not recognise in whole or in part the duty of confidentiality on the part of in-house counsel deal with foreign in-house counsel who enjoy that protection in their home jurisdiction.

5. Clients' interests

5.1 General principle

A lawyer shall treat client interests as paramount, subject always to there being no conflict with the lawyer's duties to the court and the interests of justice, to observe the law, and to maintain ethical standards.

5.2 Explanatory note

This means that lawyers in all of their dealings with the courts, by written or oral form, or by instructing an advocate on the client's behalf, should act with competence and honesty.

Lawyers should serve their clients competently, diligently, promptly and without any conflict to their duty to the court. They should deal with their clients free of the influence of any interest which may conflict with a client's best interests; and with commitment and dedication to the interest of the client. A lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and take whatever lawful and ethical measures may be required to vindicate a client's cause or endeavour.

Lawyers should maintain confidentiality. They should also provide all relevant information to their clients, in order to protect their clients' interests and advise them competently, subject to any contrary law or ethics rule.

Lawyers must not engage in, or assist their client with, conduct that is intended to mislead or adversely affect the interest of justice, or wilfully breach the law.

Lawyers' duty to safeguard clients' interests commences from their retainer until their effective release from the case or the final disposition of the whole subject matter of the litigation. During that period, they are expected to take such steps and such ordinary care as clients' interests may require.

Even if not required by the applicable law of a jurisdiction, it is considered good practice in many jurisdictions for lawyers to ensure that they secure in the interest of their clients adequate insurance cover against claims based on professional negligence or malpractice.

6. Lawyers' undertaking

6.1 General principle

A lawyer shall honour any undertaking given in the course of the lawyer's practice in a timely manner, until the undertaking is performed, released or excused.

6.2 Explanatory note

A lawyer's undertaking is a personal promise, engagement, stipulation and responsibility, as well as a professional and legal obligation. A lawyer must therefore exercise extreme caution when giving and accepting undertakings. A lawyer may not give an undertaking on behalf of a client if they do not have a prior mandate, unless they are requested to do so by another lawyer representing that client. A lawyer should not give or request an undertaking that cannot be fulfilled, and must exercise due diligence in this regard. This therefore requires that a lawyer has full control over the ability to fulfil any undertaking given. Ideally, a lawyer should provide a written confirmation of an undertaking in clear and unambiguous terms, and in a timely manner – if the lawyer does not intend to accept personal responsibility this should be made clear in the undertaking. Breaches of undertakings adversely affect both the lawyer's own reputation as being honourable and trustworthy, as well as the reputation and trustworthiness of the legal profession as a whole.

In those jurisdictions in which undertakings are not recognised as described here, lawyers should nevertheless exercise the same extreme caution in engaging themselves in the way outlined.

7. Clients' freedom

7.1 General principle

A lawyer shall respect the freedom of clients to be represented by the lawyer of their choice. Unless prevented by professional conduct rules or by law, a lawyer shall be free to take on or reject a case.

7.2 Explanatory note

The client may issue an instruction or mandate to the lawyer, instructing the transfer of all papers and files to another lawyer. The lawyer is under an obligation to comply with the instruction or mandate, subject to any lawful right of retention or lien. A lawyer should not withdraw from representation of a client except for good cause or upon reasonable notice to the client, and must minimize any potential harm to the client's interests, and (where appropriate or required) with the permission of the court. A lawyer should do everything reasonable to mitigate the consequences of the change of instructions.

8. Protection of property of clients and third parties

8.1 General principle

A lawyer shall account promptly and faithfully for and prudently hold any property of clients or third parties that comes into the lawyer's trust, and shall keep it separate from the lawyer's own property.

8.2 Explanatory note

A lawyer shall hold property of clients or third parties that is in the lawyer's possession in connection with a representation separate from the lawyer's own business or personal property. Client or third-party funds should be held in a separate bank account and not commingled with the lawyer's own funds. Property other than funds should be identified as such and appropriately safeguarded. Complete records of such funds and other property shall be kept by the lawyer and shall be preserved after termination of a representation to the extent required by applicable law or professional regulations. The lawyer should ascertain the identity, competence and authority of the third person that is transferring the possession of the property or the funds.

Upon receiving funds or other property in which a client or third person has an interest, the lawyer shall promptly notify the client or third person. Except as permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property. A lawyer cannot use a client's property or client's funds in order to set off or compensate any outstanding payment of the lawyers' professional fees or expenses unless so is authorised by law or in writing by the client.

9. Competence

9.1 General principle

A lawyer's work shall be carried out in a competent and timely manner. A lawyer shall not take on work that the lawyer does not reasonably believe can be carried out in that manner.

9.2 Explanatory note

As a member of the legal profession, a lawyer is presumed to be knowledgeable, skilled, and capable in the practice of law. Accordingly, the client is entitled to assume that the lawyer has the ability and capacity to deal adequately with all legal matters to be undertaken on the client's behalf or to procure that somebody else either in or outside the law firm will do it.

Competence is founded upon both ethical and legal principles. It involves more than an understanding of legal principles: it involves an adequate knowledge of the practice and procedures by which such principles can be effectively applied, and includes competent and effective client, file and practice-management strategies.

A lawyer must consider the client's suggestion to obtain other opinions in a complex matter or from a specialist, without deeming such requests to be a lack of trust.

10. Fees

10.1 General principle

Lawyers are entitled to a reasonable fee for their work, and shall not charge an unreasonable fee. A lawyer shall not generate unnecessary work.

10.2 Explanatory note

The basis for the claim of a lawyer to fees for services performed may be contractual or statutory. The lawyer shall make a clear and transparent arrangement on fees with the client jointly with the giving and taking of instructions. If permitted by law or applicable rules of professional conduct, such arrangement may contain an agreement on the limitation of the lawyer's liability.

On whatever basis a fee arrangement is made, it shall be reasonable. Reasonableness is normally determined with a view to the nature of the assignment, its difficulty, the amount involved, the scope of work to be undertaken and other suitable criteria. The lawyer shall strive to achieve the most cost effective resolution of the client's dispute.

The lawyer's invoices shall be submitted in accordance with the agreement with the client and statutory rules, if any.

Where permitted, a lawyer may require the payment of reasonable deposits to cover the likely fees and expenses as a condition to commencing or continuing his or her work. As mentioned in Principle 7, the lawyer may have a lawful right of retention or lien if the client instructs the lawyer to transfer all the papers and files to another lawyer. A lawyer shall also hold separate from the lawyer's own business or personal property any legal fees and expenses that a client has paid in advance, to be withdrawn by the lawyer only as those fees are earned or expenses are incurred. If a dispute arises between the client and the lawyer as to the lawyer's entitlement to withdraw funds for fees or expenses, then, subject to applicable law, the disputed portion of the funds must be held separate until the

dispute is resolved. The undisputed portion of the funds shall be promptly distributed to the client.

If a lawyer engages or involves another lawyer to handle a matter, the responsibility for such other lawyer's fees and expenses shall be clarified among the client and the lawyers involved beforehand. In the absence of such clarification and depending on applicable law the lawyer so having involved another lawyer may be liable for the latter lawyer's fees and expenses.

10.3 International implications

When engaging in cross-border practice, the lawyer should investigate whether arrangements on fees, payments of deposits and limitations of liability are permitted under all applicable rules and, if relevant, the rules which govern the responsibility for fees of other lawyers who may become involved. In particular, a contingency fee or *pactum de quota litis* is permitted in certain jurisdictions provided certain requirements are met but prohibited as a matter of public policy in other jurisdictions.

In some jurisdictions, it is not appropriate for a lawyer to ask another lawyer or a third party for a fee, or to pay a fee to another lawyer or a third party for referring work.

Appendix

Definitions

Bar An officially recognised professional organisation consisting of members of the legal profession that is dedicated to serving its members in a representative capacity to maintain the practice of law as profession, and, in many countries possessing regulatory authority over the bar in its jurisdiction. Membership in the bar may be compulsory or voluntary.

Client-lawyer confidentiality Subject to specific exceptions, the lawyer's ethical duty of confidentiality prohibits a lawyer from disclosing information relating to the representation of or advice given to a client from any source, not just to communications between the lawyer and client, and also requires the lawyer to safeguard that information from disclosure. The principle of confidentiality is greater in scope than the legal professional privilege. Matters that are protected by the legal professional privilege are also protected by the principle of confidentiality; the converse, however, is not true.

Confirmed in writing Informed consent provided via a writing from the person from whom such consent is sought or a writing that a lawyer promptly transmits to that person confirming an oral informed consent. The written consent may take the form of a tangible or electronic record. It may consist of handwriting, typewriting, printing, photocopy, photograph, audio or video recording, and electronic communication such as an e-mail or Twitter message.

Court/tribunal An entity, whether part of the judicial, legislative or executive branch of government, including an arbitrator in a binding arbitration proceeding, administrative agency or other body, acting in an adjudicative capacity. This entity acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a binding legal judgment directly affecting a party's interests in a particular matter.

Informed consent Agreement by a person to allow something to happen in response to a proposal by a lawyer after the lawyer has made full disclosure of the facts, material risks of, and reasonably available alternatives to the proposed course of action.

Knowingly Actual knowledge of the fact in question. Knowledge may be inferred from the circumstances.

Legal profession The body of lawyers qualified and licensed to practice law in a jurisdiction or before a tribunal, collectively, or any organised subset thereof, and who are subject to regulation by a legally constituted professional body or governmental authority.

Legal professional privilege An evidentiary privilege that protects a lawyer from being compelled to disclose certain communications between a lawyer and a client in a judicial or other proceeding where a lawyer may be called as a witness.

Professional secrecy The handling of information about a client received during the course of the representation from the client or other sources that the lawyer may not be able to disclose, regardless of client consent. This principle is effective in many civil law jurisdictions.

Reasonable or reasonably In reference to a lawyer's actions, the level of conduct of a prudent and competent lawyer.

Reasonably believes or reasonable belief A belief by a prudent and competent lawyer in a fact or set of facts that is appropriate under the circumstances in which that belief exists.

Secrets Information gained by the lawyer in the course of a representation that the client specifically requests that the lawyer not reveal or information the nature of which would be potentially embarrassing or detrimental to the client if revealed.



the global voice of
the legal profession*

International Bar Association

4th Floor

10 St Bride Street
London EC4A 4AD

Tel: +44 (0)20 7842 0090

Fax: +44 (0)20 7842 0091

www.ibanet.org