

**Position
of the Bundesrechtsanwaltskammer
(The German Federal Bar)**

**on the Issues Papers of the ABA Commission of Ethics 20/20
concerning Multijurisdictional Practice of Law
and Alternative Business Structures**

**drafted by The German Federal Bar's
European Affairs Committee**

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The German Federal Bar (Bundesrechtsanwaltskammer) is the statutory umbrella organisation of the 27 regional Bars and the Bar at the Federal Court of Justice. The Bars represent a total of currently approximately 155,000 lawyers admitted to the profession in Germany. The German Federal Bar represents the economic and legal interests of the German legal profession.

The German Federal Bar would like to comment on the ABA Commission of Ethics 20/20 issues papers concerning *Multijurisdictional Practice of Law* and *Alternative Business Structures*.

1. Multijurisdictional Practice

We will of course not address the liberalization of US interstate practice and limit our comments to international cross-border practice.

We are sharing the Issues Paper's conclusion that the practice of law has become increasingly transnational and that this fact of life has not yet been taken totally into account by our practice rules. Under the German legal system, the right to practice law is not an issue of rules of conduct but of statute to be adopted by the federal parliament, so that ultimately it is up to the legislator to make the necessary amendments.

We would be in favour of a scheme allowing the rendering of occasional services in a host state by a lawyer fully admitted to practice in a foreign jurisdiction, provided such incoming lawyer is bound by the rules of conduct and of disciplinary control applicable in the host state. As far as judicial or administrative proceedings are concerned, the incoming lawyer should be obliged to work in conjunction with a lawyer admitted in the host state whose active participation in the proceedings would be required.

The transposition of the liberal rules governing the free movement of lawyers within the European Union to lawyers from outside the EU is not an appropriate solution, in the same way as the transposition of liberal US interstate rules to lawyers from abroad would not be feasible. The reason is that in both cases lawyers practice within an area in which the law is to a certain extent unified or at least harmonized, justifying thereby a larger degree of liberalization for lawyers qualified to practice within a territory of that area.

The rules on the practice of law are not the only restriction to transnational practice. Immigration laws can be a substantial obstacle. Until now, it has been admitted in the relations between the US and Germany that no visa is required for the entry of a lawyer providing occasional services. It has been brought to our attention that US immigration authorities think about putting an end to that liberal practice. This would be a severe restriction to the fast free movement which is looked for by our clients and the ABA's support would be appreciated in preventing this to happen.

2. Alternative Business Structures

We have closely monitored, as the ABA did, the substantial changes undertaken in England and Wales which finally led to the adoption of the Legal Services Act. Alternative Business Structures as they will be admitted soon in this jurisdiction are a major concern for us. Under German law it is prohibited for non lawyers to own law firms, subject to very limited exceptions for certain multidisciplinary partnerships. Under the English regime, banks, insurance companies, supermarket chains and others can be the shareholders and shares may even be listed on the stock exchange. We believe this to be a serious threat to the independent professional judgement of the lawyer employed by such a firm. Those firms will not be able to practice in Germany, a point which we made clear in the course of the consultation launched by the English parliament. The European Lawyers Establishment Directive allows a Member State not to admit on its territory such types of firms from another Member State which are unlawful under its national law.

Multidisciplinary partnerships are allowed under German law with a very limited number of professions (chartered accountants, tax advisors, patent attorneys) because those professions are subject to rules of conduct which are very similar to the rules governing our profession, in particular as far as the core values are concerned. This is totally different from what will be allowed in England and Wales.

We were very satisfied in learning from the ABA's Issues Paper that the introduction of Alternative Business Structures along the English or Australian model is not contemplated in the US and we think our bars should join forces in order to express our common stand on the international scene.
