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Foreign Legal Consultants: The Changing Role of the Lawyer in a Global Economy

ANDREW PARDIECK*

The lawyer, whether in government or private practice, finds himself increasingly confronted by situations requiring some knowledge of and confidence in dealing with a foreign legal system. As laws have multiplied and communication has intensified, reference to foreign law has become part of the normal background necessary in the contemporary practice of law.¹

I. INTRODUCTION

Insular views concerning the eligibility to practice law are changing. Laws regulating the legal professional are becoming, and will continue to become, more expansive as global trade and multinational treaties transform the nature of business and the legal profession. The need for competent international legal services will expand not only in the major commercial centers of New York, Paris, London, and Tokyo, but also develop in small towns as local populations benefit from a boom in direct foreign investment and increasing possibilities to export abroad.² Domestically, nineteen states and the District of Columbia have recognized this need and have passed laws allowing foreign lawyers to act in the state as "foreign legal consultants" (FLCs).³ The climate abroad is similar. The pace of change, however, has been somewhat retarded

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1. HENRY P. DEVRIS, *CIVIL LAW AND THE ANGLO-AMERICAN LAWYER* 1-2 (1976).

2. Chief Justice Randall Shepard of the Indiana Supreme Court stated, "Indiana law firms with Indiana clients have transactions involving not only U.S. law but laws in other countries" to explain Indiana's new law permitting foreign legal consultants. Bill Koenig, *Swearing-In Lets Chinese Attorney Represent New Area of Indiana Law*, *INDIANAPOLIS STAR*, Nov. 1, 1994, at E1.

3. See R. ALASKA BAR ASS'N 44.1; ARIZ. SUP. CT. R. 3(f); CAL. R. CT. 988 & CAL. ORD. 94-54; CONN. R. SUPER. CT. § 24A; R. FLA. SUP. CT. RELATING TO ADMIS. TO BAR, Ch. 16; SUP. CT. OF GA., R. GOVERNING ADMIS. TO PRAC. LAW pt. D; R. SUP. CT. HAW R. 14; ILL. SUP. CT. R., R. ON ADM & DISCIPLINE ATT'YS 712; BURNS IND. A.D. 5; MICH. R. FOR BD. LAW EXAMINERS 5(E); MINN. R. ADMISSION TO BAR VII; MO. R. BAR RULE 9.05; N.J. R. CT., R. GEN. APPLICATION 1:21-9; N.M. R. GOV. FOREIGN LEGAL CONSULT. 26-101; N.Y. R. CT., R. CT APP. pt. 521; SUP. CT. R. GOV'T BAR OHIO XI; OR. BAR R. ADMIS. 12.05; R. GOVERNING ADMIS. BAR TX. XIV; WASH. R. CT., ADMIT. TO PRAC. 14; R. OF D.C. CT. APP. 46.

by the more parochial national bar associations as current general trends in globalization remain at odds with long-established and closely-guarded legal monopolies in many countries. Despite these protectionist stances, the trend is towards a more universal acceptance of the foreign lawyer.

Part II of this note will review the efforts of the United States, England (and Wales), and Japan to accommodate the growing need for international legal advice within the constraints of the local legal systems and the concerns of the bar. These three countries provide a cross-section of the different attitudes, customs, and regulations concerning foreign lawyers. The United States, through the individual states that have passed laws allowing foreign lawyers to practice as FLCs, has chosen the middle ground.⁴ England has traditionally provided the most open climate in which foreign lawyers may practice. Japan has proven to be the most reticent of all the countries with major financial and legal markets.

Part III of this note will look at two multilateral treaties, the North American Free Trade Agreement (NAFTA) and the General Agreement on Trade and Services (GATS), and their limited success in opening legal markets and facilitating trade in transnational legal services. Part IV will address trends seen both in the evolution of the laws concerning FLCs in the three individual countries and in the multilateral treaties.

II. THE EFFORTS OF THE UNITED STATES, ENGLAND AND JAPAN

A. *The United States*

The Supreme Court of the United States set the stage in *In re Griffiths*⁵ for the recognition of the foreign lawyer in the American legal profession. In that decision, the Supreme Court held that U.S. citizenship was an unconstitutional prerequisite for admission to practice law in a state. The Court found that the

4. For the sake of consistency, FLCs will be used to refer to foreign lawyers acting as legal consultants in Japan and England as well. The Japanese refer to a foreign legal consultant as a *Gaikokuho Jimu Bengoshi*, or *gaiben*. Terry W. Schackmann, *Reflections in a Rock Garden: A Civic Commitment to International Understanding?*, 42 KAN. L. REV. 531, 542 n.36 (1994). English law refers to the foreign legal consultant as a "registered foreign lawyer." Courts and Legal Services Act, 1990, Sched. 14 (Eng.).

5. 413 U.S. 717 (1973). Compare with Case 2/14 *Reyners v. Belgium*, 1974 E.C.R. 631 (eliminating the nationality requirements in the European Community). The similarities are evidence of a growing trend and need to define the legal communities more expansively.

role of the lawyer as an officer of the court was insufficient to justify a strict ban on admission to the bar.⁶

As a result of *In re Griffiths*, there are currently three methods by which a foreign national may practice law in the United States. The first is to attend an accredited law school and pass the state bar as Ms. Griffiths did. A number of states provide a second possibility. An individual may qualify to take the state bar by completing an M.C.L. or LL.M. degree, or by completing an equivalent number of hours of study at an accredited law school.⁷ New York goes one step further by allowing those with prior education and practice in a country whose jurisprudence is based on English common law to take the bar without additional legal education.⁸ The final possibility, and the focus of this note, is certification as an FLC.

In 1974, New York became the first state to adopt a rule permitting certification of FLCs.⁹ The New York legislature authorized a rule, adopted by the Court of Appeals, which enabled members of foreign legal professions to be licensed and to directly advise clientele on the law of the foreign lawyer's home jurisdiction. Washington D.C. followed New York shortly thereafter with a similar rule.¹⁰

Licensing is subject to numerous requirements and restrictions. The New York law, allowing the licensing of FLC's, was loosely based on its general rule allowing the admission, on motion, of lawyers admitted in other jurisdictions within the United States.¹¹ Most state rules provide that the highest court of the state may license an FLC who:

- 1) is a member in good standing of a recognized legal profession in a foreign country;
- 2) has practiced the law of that country for at least five of the last seven years; and

6. *In re Griffiths*, 413 U.S. at 723.

7. See ARIZ. ST.S. CT. R. 34; CAL. BUS. & PROF. CODE 6060; N.Y. COMP. CODES R. & REGS. TIT. 22, § 520.5; PA. ST. BAR ADMIS. R. 205; R. D.C. CT. APP. 46.

8. N.Y. COMP. CODES R. & REGS. TIT. 22, §§ 520.6, 520.10 (1994).

9. Hope B. Engel, *New York's Rules on Licensing of Foreign Legal Consultants*, N.Y. ST. B.J., Mar./Apr. 1994, at 36.

10. Along with New York and Washington D.C., a total of eighteen states have promulgated rules providing for licensing of FLCs, see sources cited *supra* note 3.

11. Louis B. Sohn, *American Bar Association Section of International Law and Practice Report to the House of Delegates Model Rule for the Licensing of Legal Consultants*, 28 INT'L LAW. 207, 213 (1994).

- 3) possesses good character, and intends to practice and maintain an office in the state.

The proof required generally consists of:

- 1) certification and recommendation from the foreign country's highest authority over professional discipline;
- 2) translations of the certification and recommendation if necessary; and
- 3) evidence of reciprocity from the foreign country of the eligibility of the licensing state's lawyers to practice in that foreign country.

The scope of practice for a licensed FLC is limited to rendering advice on the law of the foreign country where the FLC is admitted to practice. There are usually specific prohibitions against:

- 1) the consultant appearing for another in judicial proceedings;
- 2) preparing instruments transferring real property, wills or trusts, or probating estates;
- 3) preparing instruments relating to the dissolution of a marriage; and
- 4) using any title other than that of "foreign legal consultant" or holding themselves out as members of the bar.

The FLC is nonetheless bound by the same rules of professional conduct as members of the bar, including the right to affiliate with other lawyers. For purposes of discipline, the FLC is subject to the control of the state supreme court and must designate a clerk for service of process, file a commitment to observe the state's rules of professional conduct, and offer evidence of liability insurance.¹²

The impetus for the recognition of the FLC appears to be varied. In addition to providing a broader base of competent legal advice, a committee of Florida international law practitioners argued it would boost trade.¹³ While

12. The requirements listed above are based on both the Model Rule for Foreign Legal Consultants found in Sohn, *supra* note 11, at 208-12, and generalizations from my own reading of the individual state rules.

13. Rosalind Resnick, *Florida May Be Next Allowing Foreign Consultants*, NAT'L L.J., Feb. 4, 1991, at 3.

no facts have been gathered to verify an increase in trade in those jurisdictions with licensed FLCs, anecdotal evidence has shown this to be the case in New York. According to New York practitioners, FLCs not only advise on the law of their respective countries but also act as “unofficial trade emissar[ies]”¹⁴ and “intermediaries, easing the path for businesses in their countries.”¹⁵ In urging the adoption of rules allowing the licensing of FLCs, lawyers in the District of Columbia suggested the rule would “significantly facilitate the development of the District as an international commercial and financial center.”¹⁶ Given the experience of New York and the evidence offered in other states in support of recognition, the benefits of a more diverse legal community seem generally accepted. The ability to provide competent, knowledgeable, international legal advice increases demand for the legal services through the lure of “one stop shopping.” The increased demand created by a more capable legal community negates the threat of increased competition for a supposedly limited client base.

The acceptance of the FLC serves another important function. It “express[es] an attitude of international cooperation . . . [and] open[s] the door to the expansion of local law firms into the international marketplace.”¹⁷ Access to foreign legal markets is secured by allowing foreign lawyers to practice in the United States. Reciprocity has been the most influential purpose in the passage of rules regulating FLCs. New York adopted its rule recognizing the FLC shortly after France modified its law to make the requirements of foreign lawyers in France contingent upon the requirements French lawyers face abroad.¹⁸ Likewise, California’s rule governing FLCs was adopted one day after Japan adopted a law allowing the practice of foreign lawyers in Japan, provided there was reciprocity.¹⁹ In light of this concern about reciprocity, the American Bar Association House of Delegates passed

14. *Unofficial Ambassadors: Foreign Lawyers in N.Y. Assume Multiple Roles*, N.Y. L.J., Apr. 8, 1993, at 5, 5.

15. *Id.* at 6.

16. William R. Slomanson, *California Becomes Latest State to Consider “Foreign Legal Consultant,”* 80 AM. J. INT’L L. 197 (1986) (quoting the District of Columbia Bar’s Foreign Legal Consultants Committee).

17. *Id.* at 198.

18. Roger J. Goebel, *Professional Qualification and Educational Requirements for Law Practice in a Foreign Country: Bridging the Cultural Gap*, 63 TUL. L. REV. 443, 471 (1989); see also Chin Kim & Sonya Siemer, *Foreign Lawyers in Japan and the United States*, 20 KOREAN J. COMP. L., 67, 89-90 (1992).

19. *Id.* at 473.

a "Model Rule for the Licensing of Legal Consultants" in August of 1993.²⁰ Their desire was not only that the individual states pass laws providing for the practice of FLCs, but also that they do so in a uniform manner without undue restrictions which could be construed as denying access to American lawyers.²¹ The Model Rule was passed at the recommendation of the ABA Section of International Law and Practice out of "concern that the various conflicting restrictions may cause other countries to withhold reciprocity for American lawyers who seek to practice abroad."²²

One scholar called the process "cross-fertilization"--one country's liberalization of access to the legal market prompts another.²³ The inverse, unfortunately, is also true. There are obstacles to an American lawyer's ability to practice overseas. Countries are able to point to the most protective measures in the various U.S. state laws as justification for their refusing or limiting American lawyer's practices in their jurisdiction. The ABA International Section referred to this as a "mirror image" phenomenon.²⁴ The worst of the state rules regulating FLCs are reflected back to us in the laws we see applied to American lawyers overseas.

An example is the issue of forming partnerships between FLCs and licensed members of the bar. Most U.S. state rules are silent on the matter. That silence, in conjunction with the facts that FLCs are not allowed to hold themselves out as members of the bar and that states uniformly prohibit the forming of partnerships between lawyers and nonlawyers, was used by the Japanese to justify their initial prohibition against the forming of any kind of partnership between Japanese and foreign lawyers.²⁵ In order to encourage Japan to amend its law, New York affirmatively held that a partnership between a New York and Japanese lawyer was "proper insofar as the partnership did not compromise either lawyer's ability to uphold the ethical

20. *ABA Denounces New Discovery Rule, Accredits Lawyer Specialization Agencies*, [July-Dec.] *Antitrust & Trade Reg. Rep. (BNA)* No. 1629, at 285, 286 (Aug. 26, 1993).

21. *Id.*

22. *Id.*

23. Dennis Campbell & Jack J. Coe Jr., *Introduction to 1 TRANSNATIONAL LEGAL PRACTICE* 1, 11 (Dennis Campbell ed., 1982) ("[T]he transnationalization of law and legal systems is a process of 'cross-fertilization.'").

24. Sohn, *supra* note 11, at 235.

25. *International Partnership Prohibited in Foreign Lawyer Proposal*, Kyodo News Service, Japan Economic Newswire, Dec. 10, 1984, available in LEXIS, News Library, APCNWS File; *Foreign Attorneys' Practice in Japan, Other Services Issues Focus of Chicago Conference*, [Jan.-June] *Int'l Trade Rep. (BNA)* No. 7, at 221, 223 (Feb. 12, 1986) (comments of Sydney M. Cone, partner, Cleary, Gottlieb, Steen, and Hamilton).

standards of their respective jurisdictions.”²⁶ New York changed its rule to specifically state that an FLC has the right of “affiliation in the same law firm with one or more members of the bar of this State.”²⁷ The affiliation could be as a “partner in any partnership or shareholder in any professional corporation which includes members of the bar of this State or which maintains an office in this State.”²⁸ It was only after these changes and much negotiation that Japan amended its laws to allow a limited affiliation in a “joint enterprise” between Japanese and foreign lawyers.

In addition to the partnership issue, the mirror image phenomenon may generate a second problem--the difficulty of regulating the FLC and the burden it places on the foreign lawyer. States have attempted to protect themselves from the unknown by requiring evidence of competence in a multitude of forms. The foreign lawyer applying for certification as an FLC must respond with applications “several centimeters thick.”²⁹ The proof required is an effort to protect the consumer from incompetent legal advice, however, the proof is often unmanageable. The years of practice requirement necessitates posting only the more senior and thus more expensive lawyers as FLCs. Certification and recommendations from a professional body having final jurisdiction over professional discipline in the foreign country may have little meaning to the state bar committee. This places a heavy burden on both the bar and the foreign lawyer, from a vastly different legal system, to satisfy the requirements.³⁰

Some of these requirements may be unnecessary or do not provide the intended protection. FLCs licensed to practice in the state of New York have stated that simple liability and the threat of a malpractice suit discourage them from advising clients on areas outside of their expertise, i.e., the law of the country in which they are licensed to practice.³¹ In addition, “the foreign legal

26. N.Y. St. B. A. Comm. on Professional Ethics, Op. No. 658 (Feb. 14, 1994).

27. N.Y. COMP. CODES R. & REGS. Tit. 22, § 521.4(b)(1) (1993).

28. *Id.* at § 521.4(b)(1)(iii).

29. Koenig, *supra* note 2, at E2.

30. The practice of law in Mexico, as an example, will not generate the traditional indicia of competence. There is no bar examination after graduation from law school, nor is there an integrated bar, or continuing legal education requirements. Beverly Tarpley, *More Than You Thought You Needed to Know About NAFTA*, BAR EXAMINER, Nov. 1995, at 30, 30. Applicants may petition the supreme courts of some states for waiver of specific requirements which present an unreasonable burden. A state's willingness to do so and generate alternative criteria, however, is undetermined.

31. Based on discussions with FLCs currently practicing, Sohn concluded that the “principal limitation on the scope of the advice they are prepared to give is that of the professional liability potentially attendant . . .” Sohn, *supra* note 11, at 229 n.60.

consultant status does not cover all situations in which foreign lawyers advise in the United States on foreign law.³² There are foreign lawyers who travel to the United States, foreign lawyers who offer advice via telephone or facsimile, and foreign law clerks. All dispense legal advice without undergoing certification.³³

The adoption of a model rule appears to have been only partially successful in its aim to promote uniformity. Since adoption of the model rule, five states have adopted laws regulating FLCs, and New York has modified its law. New York changed its own rule to conform more closely to the wording and standards of the model rule. Indiana, Minnesota, and New Mexico have followed the ABA rule. Missouri and Arizona adopted rules with some notable differences. Missouri requires a prospective consultant to take and pass the Multi-State Professional Responsibility Exam. Arizona, on the other hand, requires evidence of good moral character, a complete set of finger prints, and authorizes a background search into any criminal record.³⁴

The purposes of these rules and modifications are twofold: "the protection of the public, as consumers of legal services, against the risks of unknowingly relying upon legal advice rendered by those who are not competent to render such advice and, second, the preservation of the integrity of, and public respect for, the legal profession as a whole."³⁵ Both are efforts to maintain a high level of competence within the legal profession. The question becomes whether the various requirements imposed by the states are necessary, and the answer many would suggest is "no." When an FLC is certified, he agrees to be bound by the rules of professional conduct regulating members of the bar, and as such, is subject to effective measures designed to safeguard the public. Rules such as the prohibition against the formation of partnerships between FLCs and members of the local bar would seem unnecessary.³⁶ The threat of liability is enough to discourage FLCs from masquerading as fully bona fide members of the local bar via their associations with local attorneys.³⁷

32. Robert E. Lutz, *Ethics and International Practice: A Guide to the Professional Responsibilities of Practitioners*, 16 *FORDHAM INT'L L.J.* 53, 75 (1992/1993).

33. *Id.*

34. MO. ST. SUP. CT. R. 9.05 (1994); AZ. ST. SUP. CT. R. 33(f) (1994).

35. Sohn, *supra* note 11, at 216 n.23.

36. OH R. Gov. Bar R. XI has been interpreted in the General Agreement on Trade in Services as prohibiting the forming of partnerships between FLCs and members of the Ohio bar. RESULTS OF THE URUGUAY ROUND MARKET ACCESS NEGOTIATIONS SERVICES: VOLUME IV UNITED STATES SCHEDULE OF COMMITMENTS AND LIST OF MFN EXEMPTIONS 29 (Executive Office of the President, 1994).

37. Sohn, *supra* note 11, at 229 n.60.

Accommodation between the need for international legal services and the need to protect both the local legal community and the consumer is evolving. As FLCs expand the expertise of the legal community and create the ability to provide more complete legal advice to the international client, trade should also expand to the benefit of the local legal community and the consumer without the need for excessive restrictions.

B. England

England is the most open of the three countries surveyed. Some have called it "notoriously liberal,"³⁸ while others have emphasized the good rapport that English barristers and solicitors have had with foreign lawyers.³⁹ London, specifically, has been and remains a world financial capital and one of the most active markets for transnational legal services.

The means used to regulate foreign lawyers are vastly different in England than in either the United States or Japan. Foreign lawyers are allowed to practice in England so long as they acquire permission from the immigration authorities and obtain a work permit (if they will be employed by another).⁴⁰ In practice, the immigration authorities defer to The Law Society of England by requiring a statement by The Law Society that it has no objection to the entry of the lawyer to practice as a consultant in foreign law.⁴¹ The Law Society, in turn, requires the foreign lawyer to provide evidence of competence in a number of forms:

- 1) The foreign lawyer must take an oath that he will not attempt to act as a solicitor;⁴²
- 2) This oath or undertaking must be supported by references from three practicing solicitors; and

38. Kim & Siemer, *supra* note 18, at 81.

39. Goebel, *supra* note 18, at 480; see also LINDA S. SPEDDING, *TRANSNATIONAL LEGAL PRACTICE IN THE EEC AND THE UNITED STATES* 217 (1987).

40. Timothy J. B. Costello, *England and Wales*, in 1 *TRANSNATIONAL LEGAL PRACTICE* 87, 91 (Dennis Campbell ed., 1982).

41. *Id.*

42. The text of the undertaking is: "I hereby undertake that if I am granted permission to practice in England as a consultant on law, I will not attempt or in any way represent myself as qualified to act as an English solicitor and that I will observe the standards of conduct which are accepted by the legal profession in England. In particular, I undertake that I will not in any way advertise myself either directly or indirectly or by announcing any specialist qualifications on my letter paper or otherwise and also that I will not pay any share of my charges to persons who are not legally qualified." *Id.* at 97 n.11.

3) The lawyer must submit a *curriculum vitae*, and a certificate of admission and good standing by the foreign lawyer's native bar or professional body.⁴³

Finally, the Home Office, as part of its determination in immigration procedures, requires proof of financial resources sufficient to allow the foreign lawyer to practice and live.⁴⁴

There is some debate over the scope of practice which is permitted by the undertaking.⁴⁵ Some have argued that the oath acts as a complete ban on the practice of English law by foreign lawyers, while others have argued that it simply prohibits activities reserved for solicitors and barristers. Regardless, there is consensus that an FLC cannot make final pronouncements on issues of English or U.K. law, and should a document drafted by a foreign lawyer touch on such law, it would be necessary to consult a solicitor or barrister. The Law Society's official position is that despite the absence of a statutory prohibition against advising on English law, the FLC is bound to exercise due competence and to refrain from advising on law in which he is not professionally competent.⁴⁶

The FLC, as a result of this form of regulation, was neither originally subject to professional discipline by the Bar or The Law Society, nor subject to the control of the court.⁴⁷ A breach of his oath or other malfeasance, instead, subjected the FLC to any disciplinary measures in the home country of the lawyer and the possibility of revocation of his English residence or work permit.⁴⁸ Notwithstanding the lack of regulation, there were few reported problems.⁴⁹ The sizable financial resources necessary to establish a foreign practice may have limited FLCs in England to those competent in their domestic legal practices. It is more likely that the potential for malpractice claims, and the necessity of working successfully with the English legal

43. *Id.* at 91.

44. *Id.*

45. See *supra* note 42 for the text of the undertaking.

46. THE LAW SOCIETY, INFORMATION PACK IV, FOREIGN LAWYERS IN THE UK 2 (available from The Law Society, 50 Chancery Lane, London WC2A 1PL) [hereinafter LAW SOCIETY].

47. SPEDDING, *supra* note 39, at 215-16.

48. *Id.* at 216.

49. See Sir Thomas Lund, *Problems and Developments in Foreign Practice*, 59 A.B.A. J. 1154, 1157 (1973). Sir Thomas Lund, a former Secretary-General of the Law Society and Director-General of the International Bar Association, comments in *Problems and Developments in Foreign Practice* on the lack of complaints regarding foreign lawyers.

profession, discouraged inroads on areas of practice exclusively reserved for the English solicitor or barrister.⁵⁰

The most remarkable transition in English laws on the practice of FLCs has been change in regulating the relationship between the foreign lawyer and English solicitors. Prior to 1972, the law did not allow professional relationships between solicitors and nonsolicitors. In 1972, the law was amended so that FLCs could form associations with solicitors and share fees generated from work performed in concert, though it still prohibited general partnerships and fee sharing arrangements.⁵¹

In 1990, the laws regulating FLCs were drastically changed so that FLCs were, apart from the restrictions on the scope of practice, treated much like solicitors. An official register of certified foreign lawyers was created,⁵² and the practice of foreign lawyers was made subject to the same intervention powers, or disciplinary proceedings, that regulate a solicitor.⁵³ Foreign lawyers are now required to make contributions to an indemnification fund and are subject to removal from the register and other sanctions.⁵⁴ This added protection for the English consumer of legal services laid the foundation for the most important amendment. Foreign firms and their registered lawyers are now permitted to form partnerships with solicitor firms.⁵⁵ With this law, England paved the way for multinational legal partnerships to develop along the lines of the multinational accounting firms, and created a more competitive posture for offering complete legal service to those engaged in international transactions.

It is worth noting that the above requirements do not apply to lawyers from other countries of the European Community (E.C.) as a result of the Treaty of Rome. E.C. law provides for an uninhibited right of establishment so that lawyers from within the E.C. are free to set up practices and form associations within the E.C..⁵⁶ E.C. provisions on the recognition of qualifications also facilitate the movement of legal services.⁵⁷ England, like the United States, no longer has a citizenship requirement to practice either as a bona fide solicitor

50. Goebel, *supra* note 18, at 479.

51. Costello, *supra* note 40, at 92.

52. Courts and Legal Services Act, Sched. 14, at pt. I.

53. *Id.* at pt. II.

54. *Id.*

55. *Id.* at pt. IV; see also LAW SOCIETY, *supra* note 46, at 4.

56. SPEDDING, *supra* note 39, at 192-96.

57. *Id.* (discussing the EC's Lawyer's Service's Directive 1977 (77/249/EEC) and the member countries' right of establishment and practice).

or barrister, should one study law, pass the exams, and apprentice with a qualified legal professional.⁵⁸

Apart from the rules for E.C. lawyers and those wishing to pursue English legal training, England has a relatively simple procedure for admitting foreign lawyers to practice as legal consultants administered by the Home Office and the Law Society. It provides for complete international legal services by allowing a relatively unencumbered climate for the practice of international law both individually and in the formation of multinational partnerships.

C. Japan

Japan, by way of comparison, presents one of the more restrictive international centers for legal services. Attorneys from both the United States and the European Community have long requested greater access to the Japanese legal market with the Japanese government reluctantly making some concessions. Though Japan currently has a restrictive posture, it has had a mixed history with regard to inclusion of foreign lawyers in its legal community. There have been periods of great openness and periods of intense isolation.

The first laws concerning foreign lawyers were part of the "Advocate Regulations of 1876," which allowed foreign lawyers to participate in civil litigation when foreign parties were involved.⁵⁹ This was followed with "Lawyers Law, Law No. 53 of 1933," which allowed foreign lawyers to maintain offices and handle cases involving foreigners or international matters so long as they came from countries offering reciprocity.⁶⁰ Legal services were brought up again during the occupation when a predictably liberal approach was adopted. "Lawyers Law, Law No. 205 of 1949" eliminated the citizenship and reciprocity requirement for bar admission. The Japanese Supreme Court authorized duly qualified foreign lawyers to practice Japanese and foreign law, and to litigate cases involving aliens.⁶¹ The removal of all major barriers limiting the foreign lawyer's practice precipitated a large influx of lawyers known as *junkaiin*. The large numbers, and, as some have argued, the abuses of the *junkaiin* in overstepping unwritten boundaries and practicing local law,

58. *Id.* at 214.

59. Susan S. Kigawa, *Gaikoku Bengoshi Ho, Foreign Lawyers in Japan: The Dynamics Behind Law* No. 66, 62 S. CAL. L. REV. 1489, 1491 (1989).

60. *Id.*

61. *Id.* at 1491-92.

caused the pendulum to swing back.⁶² In 1955, Law No. 155 completely closed Japanese legal markets to foreigners not already established in Japan.⁶³ Apart from the *junkaiin*, access could be gained only by serving as legal trainees--in essence law clerks--for Japanese law firms.⁶⁴

After thirty-two years and enormous pressure by the United States, Japan opened its doors again in 1987 with Law No. 66 which allowed foreign lawyers to practice under limited circumstances. In order to become a *gaiben*, or FLC, one must:

- 1) have practiced law in the foreign jurisdiction in which he was originally licensed for five years;
- 2) be in good legal or professional standing in his home country;
- 3) have sufficient financial resources to establish himself and be capable of self-indemnification; and
- 4) be licensed in a jurisdiction that allows Japanese lawyers to practice as FLCs in that jurisdiction.⁶⁵

The similarity between the Japanese law and the rules of many of the states ends there. Law No. 66 restricts the foreign legal consultant, or *gaiben*, to the practice of the federal laws of their country and to the practice of the laws of the state in which they were licensed.⁶⁶ In addition, FLCs may advise clients on the business law of a second foreign country if they are sufficiently qualified.⁶⁷ They may not advise on Japanese law,⁶⁸ represent clients in judicial proceedings, act as counsel in a transaction involving Japanese property or marital rights, or participate in criminal cases.⁶⁹ FLCs must also reside in Japan more than 180 days a year.⁷⁰

Perhaps the most damaging of the restrictions in the 1987 law was the requirement that an FLC function as a sole practitioner or, at best, as an

62. Japanese lawyers, *bengoshi*, have stated that the *junkaiin* abused the system and created a great deal of animosity towards foreign lawyers which still exists today. Takeo Kosugi, *Regulation of Practice by Foreign Lawyers*, 27 AM. J. COMP. L. 678, 692, 701 (1979).

63. Kigawa, *supra* note 59, at 1492.

64. *Id.* at 1492-93.

65. Kim & Siemer, *supra* note 18, at 86.

66. *Id.* at 85.

67. Kigawa, *supra* note 59, at 1505. "Sufficiently qualified" has been interpreted as requiring at least five years practice in the law of the third country. Kim & Siemer, *supra* note 18, at 87.

68. Kim & Siemer, *supra* note 18, at 85.

69. Kigawa, *supra* note 59, at 1505.

70. *Id.*

association of sole practitioners. There was also a prohibition against using the FLC's firm name, so only the name of the individual licensed FLC could appear,⁷¹ thus preventing the development of firm loyalty and continuity. A firm attempting to establish a presence in Japan would have no place in its own right and would be forced to begin anew if the licensed FLC returned to his home jurisdiction. The FLC was also prohibited from employing or forming partnerships with Japanese lawyers, or *bengoshi*.⁷² This prevented the FLC from effectively providing legal advice on the vast majority of international transactions which involve the law of a foreign jurisdiction and Japan or a third country. With Japanese *bengoshi* firms retaining the ability to employ foreign lawyers and advise on national law, the law of another country, and international law, FLCs were clearly handicapped in their ability to compete.

The restrictions which have effectively prevented foreign lawyers and firms from profitably practicing in Japan have been eased somewhat by a law passed by the Japanese Diet on June 23, 1994.⁷³ This law is the result of an attempt to honor some of the commitments made in the recent GATS agreement.

The new law permits the use of firm names by licensed foreign lawyers.⁷⁴ It allows two years of the experience requirement to be gained while practicing in Japan under the auspices of a Japanese lawyer, so that former "legal trainees" in Japan may more easily fulfill the experience requirement.⁷⁵ Most importantly, the law provides a limited exception to the prohibition on FLCs forming partnerships. A "joint enterprise" may be established, allowing foreign lawyers to contract with *bengoshi* to work "in parallel" for common clients and to share fees based on earnings from those clients.⁷⁶ The law, however, prevents meaningful working relationships between the Japanese *bengoshi* and the FLC. Because the *bengoshi* are not permitted to share in the profits of a foreign firms' total operations, there is little incentive to engage in a joint enterprise or remain loyal to one. Some FLCs currently practicing in Japan fear that the law simply encourages the *bengoshi* to enter into such

71. Sohn, *supra* note 11, at 230 n.62.

72. Kigawa, *supra* note 59, at 1505.

73. Donald L. Morgan, *Regulations of Foreign Lawyers: Modest Changes to Be Made*, E. ASIAN EXEC. REP., June 15, 1994, at 8.

74. *Id.*

75. *Id.* at 15. The time spent practicing home country law in a third jurisdiction, however, would not be credited. *Id.*

76. *Id.* at 15-16.

relationships with the sole purpose of educating themselves and then enticing existing clients away after the relationship dissolves.⁷⁷

The restrictions on the foreign lawyer parallel rigorous requirements for Japanese who wish to practice law. The early Japanese legal community was held in low esteem and plagued by ethical problems, which resulted in successively harsher restrictions and regulations.⁷⁸ Reform of the Japanese legal community produced a monopoly and an elitism that created the current entrenched interests and environment of protectionism. The restrictions also preserve the government's strict regulatory plan and serve the Japanese National Bar Association's, or *Nichibenren's*, desire for protection.⁷⁹ This historical trend combines with other significant societal factors. Culturally, "Japanese society considers litigation an unacceptable activity."⁸⁰ Economically, the government has long held the mind set of a developing country, believing it important to protect the income of the *bengoshi* involved in international transactions because the sector is an "infant industry."⁸¹

The notion of the Japanese international lawyer engaged in an "infant industry" belies the facts. Ninety-seven percent of Japanese lawyers do not practice international law and many are not adverse to further liberalization.⁸² The three percent who do practice international law earn, on average, four times that of other lawyers in Japan, and will fight relinquishing such a lucrative monopoly.⁸³ Even though most practitioners agree that the large presence of foreign lawyers in England has generated business for all lawyers rather than subject the English to excessive competition, the *bengoshi* are still reticent and believe "Japanese earnings would be seriously damaged and the talent and expertise of Japanese attorneys in American law would not be developed."⁸⁴

The overall result leaves foreign firms "struggling for survival" in Japan, forced to downsize for lack of further liberalization.⁸⁵ If FLCs are unable to

77. Karen Dillon, *Unfair Trade?*, AM. LAW., Apr. 1994, at 52, 55.

78. J. Mark Ramseyer, *Lawyers, Foreign Lawyers, and Lawyer-Substitutes: The Market for Regulation in Japan*, 27 HARV. INT'L L.J. 499, 501 (1986) (stating that "Draconian barriers to entry, a ban on advertising, and mandatory fee schedules," which face the Japanese legal profession as a whole, are the result of prestige problems in the past). *Id.*

79. Kigawa, *supra* note 59, at 1510.

80. *Id.*

81. *Id.* at 1511.

82. Kim & Siemer, *supra* note 18, at 81.

83. *Id.*

84. *Id.* at 80-81.

85. Victoria Slind-Flor, *Struggling for Survival in Japan*, NAT'L L. J., Dec. 6, 1993, at 1.

practice profitably in Japan, and their firms go elsewhere in order to provide a full range of international legal services, the Japanese government and the *Nichibenren's* protectionist stance will ultimately harm only themselves. The Pacific Rim, as a growing economic region, will require an increasing amount of international legal services. If the Japanese legal community is not in a position to offer these services, business will inevitably go elsewhere.

III. THE STATUS OF FLCs UNDER NAFTA AND GATS

A. *The North American Free Trade Agreement (NAFTA)*

The North American Free Trade Agreement essentially endorses the status quo with regard to Canadian, Mexican, and U.S. laws concerning foreign lawyers and the FLC. The agreement is significant for the legal profession however, because unlike its predecessors, such as the Canadian Free Trade Agreement (CFTA), it specifically includes legal services as an item under the rubric of liberalization of trade. It also commits the signatory countries to further liberalization within a specific time frame.

NAFTA addresses the question of legal services in three increasingly specific sections. Legal services are covered most generally in Chapter 12 under "Cross-Border Trade in Services." Nationality requirements are eliminated, as the signatory countries must accord no less favorable treatment to service providers of other parties (countries) to the treaty than it does of its own.⁸⁶ Presence requirements are also eliminated as a prerequisite for the cross-border provision of services.⁸⁷ In addition, the licensing and certification of service providers are to be based on "objective and transparent criteria . . . not more burdensome than necessary to ensure the quality of the service . . . [and can] not constitute a disguised restriction."⁸⁸

Annex 1210.5 addresses professional services and the FLC directly. Each party obligates itself to make licensing and certification determinations within a "reasonable time."⁸⁹ The parties are to encourage the relevant bodies to develop mutually acceptable standards and criteria for licensing, and provide recommendations on mutual recognition to the Commission with review by the

86. North American Free Trade Agreement, Oct. 7, 1992, U.S.-Can.-Mex., art. 1202, 32 I.L.M. 289 (1993), 32 I.L.M. 605 (1993) [hereinafter NAFTA].

87. *Id.* at art. 1205.

88. *Id.* at art. 1210(1)(a)-(c).

89. *Id.* at annex 1210.5(A)(1).

Commission at least once every three years.⁹⁰ Each party is to consult the relevant professional bodies to obtain recommendations on forms of associations or partnerships between lawyers authorized to practice in the territory and FLCs, and the developments of standards for the authorization of FLCs, and other matters.⁹¹

Under a section entitled "Future Liberalization," each party is to "establish a work program to develop common procedures throughout its territory for the authorization of FLCs," as well as report to the Commission yearly on its progress.⁹² The parties also agree to meet within a year to assess and amend the regulations concerning FLCs.⁹³

In Annex I, Mexico reserves the right of ownership of law firms to those licensed in Mexico. However, lawyers licensed in Canadian provinces, which allow partnership with Mexican lawyers, are permitted to form partnerships as long as the number of Canadian lawyers and their ownership interest does not exceed that of the Mexicans.⁹⁴ Canada has acquiesced to this reservation of at least fifty percent ownership and control, but the United States has not.⁹⁵ The United States, in Annex I, provides for the phasing-out in two years of the traditional citizenship and residency requirements for patent attorneys, agents, and other practitioners before the Patent and Trademark Office.⁹⁶ In Annex II, the United States reserves the right to "adopt or maintain any measure relating to the provision of legal services, including foreign legal consultancy services, by persons of Mexico."⁹⁷ Annex VI provides that lawyers from Mexico or the United States will be permitted to provide legal consultancy services in those provinces that so permit by the date the agreement is to take effect.⁹⁸ Annex VI also provides that Mexico will grant a license to lawyers from Canada or the United States if lawyers licensed in Mexico are accorded equal treatment in the particular Canadian province or U.S. state in which the petitioning lawyer is licensed.⁹⁹ The same is true for law firms seeking to establish

90. *Id.* at annex 1210.5(A)(2)-(6).

91. *Id.* at annex 1210.5(B)(2).

92. *Id.* at annex 1210.5(B)(4),(6).

93. *Id.* at annex 1210.5(B)(7).

94. *Id.* at annex I-Schedule of Mexico.

95. Tarpley, *supra* note 30, at 33.

96. NAFTA, *supra* note 86, annex I-Schedule of the United States.

97. *Id.* at annex II-Schedule of the United States.

98. *Id.* at annex VI-Schedule of Canada. As of the signing this included British Columbia, Ontario, and Saskatchewan.

99. *Id.* at annex VI-Schedule of Mexico.

themselves in Mexico.¹⁰⁰ The U.S. agreement in Annex VI is very similar to that of Canada. It authorizes licensed Mexican or Canadian lawyers to provide legal consultancy services in those states which so permit by the date the agreement becomes effective.¹⁰¹

The reservation in Annex I wherein Mexico's limited ownership interests stemmed from a fear of being swamped by the larger, better-capitalized U.S. firms, and a fear of the "worst of American practice"--senseless litigation--being exported.¹⁰² Multinational U.S. firms are said to find the restriction a "Pandora's box of problems on sharing of profits and losses, liability, name recognition, etc."¹⁰³

The service provisions offer little in the way of immediate change for lawyers from each of the signatory nations. The agreement does, however, commit the countries to recognition of the international issues surrounding the traditionally localized regulation of different legal communities. The requirement of "objective and transparent" criteria will subject rules generated within jurisdictions with narrowly defined interests to inspection by a committee dedicated to the liberalization of legal services.

The details of future liberalization have begun to emerge from a series of meetings by a "Tri-Lateral Working Group on Cross-Border Delivery of Legal Services Under NAFTA." The group consists of an American delegation generated by the American Bar Association and Mexican and Canadian delegations appointed by their respective governments.¹⁰⁴ Two major differences remain as to scope of practice and rights of association. While the U.S. delegation advocates a rule permitting the FLC to practice home-country law, third-country law, international law, and host-country law if based on advice of a home-country-lawyer, Canada has only indicated a willingness to accept an FLC practice apart from Canadian law.¹⁰⁵ Mexico is the most conservative, as revealed by its attempt to limit the role of the FLC to the practice of home-country law without advising on the law of third countries or

100. *Id.*

101. *Id.* at annex VI-Schedule of the United States.

102. Stephanie B. Goldberg, *South of the Border: Implementation of NAFTA Has U.S. Law Firms Looking to Mexico for New Business*, A.B.A. J., Mar. 1994, at 74, 77 (quoting Eduardo Ramos Gomez).

103. Tarpley, *supra* note 30, at 32.

104. REPORT ON MEETING OF TRI-LATERAL WORKING GROUP ON CROSS-BORDER DELIVERY OF LEGAL SERVICES UNDER NAFTA, Sept. 23, 1995 [hereinafter TRI-LATERAL WORKING GROUP]; Tarpley, *supra* note 30, at 30-31.

105. Tarpley, *supra* note 30, at 31.

international law, and to limit foreign ownership of a firm including FLCs and licensed Mexican attorneys to less than fifty percent.¹⁰⁶

Their joint recommendation is that each country adopt the most liberal model FLC rule currently acceptable.¹⁰⁷ So long as individual jurisdictions within the country adopt a rule no more restrictive than the model rule, the rule will be considered reciprocal, even if not identical to its counterpart.¹⁰⁸ The commitment to liberalization of legal services and the trilateral working group's first tentative steps illustrate recognition among governments and practitioners of international law that the practice of law is changing and more comprehensive legal services are necessary.

B. The General Agreement on Trade in Services (GATS)

The General Agreement on Trade in Services (GATS), like NAFTA, essentially codifies the status quo for the United States. The agreement, as it pertains to legal services is again, like NAFTA, a general statement of principles on professional services with specific agreements delineated on a country-by-country basis in the "Schedule of Commitments and List of MFN Exemptions." The "Decision on Professional Services" calls for a working party to report on qualifications, standards, and licensing to insure there are no unnecessary barriers to trade.¹⁰⁹ The working party is to foster "objective and transparent" criteria which are "not more burdensome than necessary to ensure the quality of the service,"¹¹⁰ and concentrate on the use of international standards and establishing guidelines for the recognition of qualifications.¹¹¹

The U.S. commitments and exemptions found in Volume IV of the GATS trace the status of FLCs on a state-by-state basis as it existed at the time of the negotiations, binding those states with laws regulating FLCs and leaving unbound those without. The schedule also codifies the differences between the various state laws regulating the practice of FLCs.

The schedule divides the practice of the FLC into different categories: host-country law, the law of the FLC's home jurisdiction, third-country law,

106. *Id.* at 31.

107. The American rule will be the ABA model rule. TRI-LATERAL WORKING GROUP, *supra* note 104; Tarpley, *supra* note 30, at 32.

108. Tarpley, *supra* note 30, at 32.

109. RESULTS OF THE URUGUAY ROUND MARKET ACCESS NEGOTIATIONS SERVICES: DECISION ON PROFESSIONAL SERVICES I (Executive Office of the President, 1994).

110. *Id.* at 463.

111. *Id.*

and international law. All states which recognize FLCs permit the FLC to advise on the law of his home jurisdiction. The states vary in the degree to which they permit the FLC to practice international law, third-country law, and host-country law.¹¹²

The GATS agreement is notable for two reasons. For the first time, the U.S. government is given limited power to regulate the legal profession. The GATS agreement prohibits and requires the federal government to prohibit the states mentioned above from further restricting the rights of the FLC.¹¹³ Further, what the United States relinquished is significant for those with transnational practices. The ABA had been negotiating for an equivalent of the New York state rule in Japan; however, Japan only agreed to the "joint enterprise scheme" mentioned earlier. The U.S. negotiator for the GATS, however, committed the U.S. government to preventing further restrictions and using its "best efforts" to encourage other states to adopt rules allowing FLCs.¹¹⁴ The Japanese law allows for an association and for foreign lawyers to provide, in conjunction with Japanese lawyers, more complete legal services. It falls far short, however, of providing the flexibility to establish a meaningful relationship through profit sharing arrangements, and it prevents the "one-stop shopping" that clients request and that firms need to be

112. Alaska, according to the GATS, permits a licensed foreign legal consultant to practice international law if "competent" as well as third-country and host-country law if the FLC obtains written legal advice from a lawyer licensed in the jurisdiction. California, Illinois, Michigan, and Minnesota permit a licensed FLC to practice international law to the extent that law is incorporated in the FLC's home country law. Practice of third-country law or host-country law, however, is not permitted. Connecticut provides for the FLC to practice international law to the extent it is incorporated in the FLC's home-country law. Practice of third-country law is permitted provided the FLC first obtains advice from an attorney licensed in the jurisdiction, while practice of host-country law is not permitted. New Jersey and Oregon have similar provisions but require identification to the client of the attorney consulted. The District of Columbia and Hawaii allow the FLC to practice international law and third-country law if competent. Practice of host-country law is permitted provided the FLC first obtains advice from an attorney licensed in that jurisdiction and identifies the attorney to the client. Florida, Georgia, Texas, and Washington allow the FLC to practice international law to the extent it is incorporated in the FLC home-country law, while practice of third-country law and host-country law is not permitted. New York is the most liberal of the states with the practice of international law and third-country law permitted if the FLC is "competent." Practice of New York law and federal law is permitted provided the FLC relies on advice from a person qualified and entitled to render advice on New York and United States law. Practice of the law of other U.S. states is permitted provided the FLC is competent. Ohio, in contrast, is the most restrictive. Like other states, it permits the practice of international law, as well as third-country law and host-country law if the FLC obtains advice from an attorney licensed in the jurisdiction. FLCs may not form associations and partnerships; however, they are permitted to employ local lawyers.

113. Edward A. Adams, *U.S. Lawyers Lose Opportunities in GATT Agreement*, N.Y. L.J., Dec. 17, 1993, at 1, 8.

114. *Id.*

profitable.¹¹⁵ In effect, the U.S. negotiator for GATS eliminated the ABA bargaining position with Japan.

Those with Pacific Rim practices were obviously disappointed as they had been working for many years to gain five concessions:

- 1) the right to have members of the Japanese bar as partners in Japan;
- 2) the right to hire *bengoshi* as associates in Japan;
- 3) the right to practice in Japan under a firm's own name;
- 4) the right of a U.S. lawyer to count time worked in any jurisdiction toward the five year experience requirement; and
- 5) the right to handle international arbitrations in Japan.¹¹⁶

The new law concerning FLCs in Japan favorably addresses the third and fourth goals, but the lack of meaningful reform on the formation of partnerships left some practitioners feeling that "[a]ll the lawyers who are interested in pursuing multinational practices have lost."¹¹⁷ The impact of the GATS concessions could send the wrong message to other countries considering opening up their markets.¹¹⁸

The GATS failed to live up to its promise in the area of legal reform for two reasons. Including legal services in the negotiations was a recognition that the practice of international law was changing. It, however, fell prey to larger economic issues. "There was always the risk of an eleventh-hour trade-off of legal services as a minor economic item, which, because it is highly visible and highly irritating, can be leveraged into a trade for something of significant economic value."¹¹⁹ It was rumored, though never officially accepted, that the Japanese agreed not to oppose United States' efforts to restrict patent flooding in semiconductors in return for the watered down agreement on legal services.¹²⁰

115. Japanese lawyers under the new laws are allowed to share only in the profits generated by the joint firm in Japan as opposed to sharing in the firm's profits generated world-wide. In addition, the joint enterprise could not employ Japanese lawyers directly as associates and offer them a fixed salary. The joint enterprise must even follow strict accounting procedures if they are to share office space. Dillon, *supra* note 77, at 53.

116. *Id.* at 54.

117. *Id.* at 53.

118. *Id.*

119. *Id.* (quoting Sydney Cone III of Cleary, Gottlieb, Steen & Hamilton in Paris).

120. *Id.* at 56.

The GATS was also limited in its success due to simple maneuvering. The E.C. ultimately agreed to prevent further restrictions on the practice of FLCs.¹²¹ During the negotiations, however, they were concerned with E.C. law being classified as a federal law much like that found in the United States, rather than international law, and thus the exclusive domain of E.C. lawyers. With the United States interested in concessions on forming partnerships in Japan and in retaining the right to advise on E.C. law as international law, the Japanese were able to divide and conquer in their negotiations.¹²²

IV. TRENDS AND CONCLUSIONS

The much-discussed "globalization of trade" has changed the kind of legal services needed as demand for advice transcends national borders. Jurisdictions not allowing or prohibitively regulating FLCs will see the need for international lawyers met elsewhere. English solicitors have suggested the large presence of foreign lawyers in England expands the market for legal services. The opposite is also true. In 1987, France amended its law regulating FLCs to require lawyers, other than those from E.C. countries, to pass an examination and to be admitted to full membership in the French bar.¹²³ This new requirement has shifted international legal practice from Paris to the more liberal regulatory environment in Brussels.¹²⁴

Interestingly, this was also the experience of Japan prior to 1955. Foreign lawyers created a market for international transactional work which had been virtually nonexistent before World War II. The few *bengoshi* who began specializing in this area greatly benefitted from the demand the *junkaiin* created for international transactional skills.¹²⁵ Corporate activity in Japan today supports this notion. Many note that "Japanese lawyers are not equipped to assist . . . in dealing with the complexities of foreign law,"¹²⁶ and it is common for corporations to go overseas to find the business expertise and

121. Adams, *supra* note 113, at 8.

122. Dillon, *supra* note 77, at 53.

123. Goebel, *supra* note 18, at 563.

124. A 1988 Martindale-Hubbel search found over three times as many U.S. firms in Paris as in Brussels. Goebel, *supra* note 18, at 467, 477. I conducted a similar search in November 1994 and found slightly more large U.S. firms in Brussels than in Paris.

125. See generally Kigawa, *supra* note 59, at 1515-16 (discussing the growth and decline of the *junkaiin*).

126. Yuko Inoue, *Clients Press Case for Foreign Lawyers: Corporations Seek Help for Expansion Abroad*, JAPAN ECON. J., Mar. 9, 1991, at 6.

legal services they need. “[L]iberalization of the market [in Japan] would bring in competition and raise the level of legal services,”¹²⁷ and most importantly, attract clients to the Japanese legal market. Forty-three percent of the Japanese corporations surveyed are in favor of entirely lifting the restrictions on FLCs.¹²⁸ The markets and clients suggest they are no longer willing to consult a team of lawyers from around the globe in order to obtain competent international legal advice. “Increasingly, clients base the selection of their lawyers . . . not for their nationality, formal qualifications or the jurisdiction in which they are licensed, but rather for their experience and expertise.”¹²⁹

More liberal regulation of FLCs will support and provide more comprehensive service. Countries and states that prohibit or unduly restrict the activities of foreign lawyers will forego the opportunities to expand services provided within their jurisdiction and may well lose their consumer and client base because necessary services are not available.

127. *Id.*

128. *Id.*

129. Bernard L. Greer, Jr., *The EEC and the Trend Toward Internationalisation of Legal Services: Some Observations*, 15 INT’L BUS. LAW. 383 (1987).

